STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
LAW DOCKET NO. PUC-24-322

SNAKEROOT SOLAR, LLC

Appellants

v.

PUBLIC UTILITIES COMMISSION

Appellees

On Appeal From the Order of the
Public Utilities Commission

Reply of Appellants Snakeroot Solar, LLC to Brief of Amici Curiae

---

Jonathan M. Dunitz, Bar No. 007752
Hans C. Eysenbach, Bar No. 006015
Attorneys for Appellants Snakeroot Solar, LLC

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101
(207) 774-4000

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

I. INTRODUCTION

The Industrial Energy Consumer Group (IECG)'s *amicus curiae* brief provides no real assistance to this Court on the principal issues before it. IECG seems to have provided a brief to be sure the Court understands IECG's strong disdain for the Net Energy Billing (NEB) program. Disdain and pejorative descriptions of the participants in the NEB program do not, however, translate to a valid argument to deny the appeal of Snakeroot Solar, LLC ("Snakeroot). IECG's desire for the NEB program and this proposed generator to fail is not a legal or factual basis for causing Snakeroot's forfeiture of its good faith investment of time, effort, and money to participate in a program established by the Maine Legislature. As is discussed herein, the Court need not credit any of IECG's arguments.

II. ARGUMENT

A. Issues Raised By IECG That Were Not Fully Developed Below Are Not Properly Before The Court

It is well-settled that *amicus curiae* cannot raise contentions that were "not meaningfully developed" below because such issues are "not preserved for appellate consideration." *Ross v. Acadian Seaplants, Ltd.*, 2019 ME 45, ¶ 5, n. 2 (citations omitted). Indeed, this Court has long held that it will not consider an argument raised in an *amicus curiae* brief unless "it addresses issues raised [below] and pursued there by the parties themselves." *Jacobs v. Jacobs*, 507 A.2d 596, 597

n. 1 (Me. 1986). Here, IECG's *amicus curiae* brief, at least in part, raises issues that were never pursued below and, as such, are not properly before this Court.[1]

According to IECG, none of the facts matter "for the simple reason that Snakeroot exerted the ultimate form of control when it decided when and where to seek to interconnect its project, with full knowledge" that a cluster study was within CMP's discretion. (Gr. Br. At 12).[2] No party below argued that the good cause statutory provision included a foreseeability test based on the choice of location and technology of a proposed generation project. In IECG's view – one

[1] While Snakeroot consented to IECG filing an *amicus curiae* brief, it believes the context for why IECG filed as an *amicus* instead of as a party is relevant to the new issues that it raises here. To wit, IECG had multiple opportunities to intervene in the matter below, litigate as a party, and join this appeal as party. IECG neglected to timely intervene below and then flouted the process for intervening when it realized its error. Specifically, after Snakeroot filed its petition with the Maine Public Utilities Commission (MPUC), the Hearing Examiner set a September 22, 2023 deadline for interested parties to intervene. (App. at 006, Item No. 5). IECG did not seek to intervene by the deadline. IECG then attempted to file a document in the underlying docket on November 28, 2023 – long after the intervention deadline had expired. (App. at 004, Item No. 33). In that filing, IECG, included a footnote asking the Hearing Examiner to waive MPUC regulations and allow it to intervene after the deadline and without filing an appropriate petition. (*Id.* at p. 1, n. 1) On December 13, 2023, the Hearing Examiner declined to bend the rules for IECG and directed IECG to file a petition to intervene that complies with Commission regulations. (App. at 004, Item No. 36, p. 2). Despite this personal invitation to intervene, IECG again neglected to file a petition to intervene. Finally, IECG filed a petition on February 28, 2024 after the evidentiary record was closed and the parties had fully briefed the matter. (App. at 003, Item No. 63). The Hearing Examiner referred IECG's late-filed petition to intervene to the Commission. The Commission noted that while it is "generally lenient with late-filed petitions…the IECG filing, when it was finally made in proper form, came very late in the case. Indeed, it was filed after the evidentiary record was closed and meaningful opportunity for participation had lapsed." (App. at 002, Item No. 78, p. 2). As a result, the Commission denied IECG's petition. (*Id.*). IECG should not now be permitted to avoid its failure to timely intervene in the case below by raising arguments or contentions that it could have made had it simply abided the MPUC's well-established procedures.

[2] Snakeroot does not concede that it had "full knowledge" that a cluster study was possible where it was the first applicant to interconnect at this substation.

apparently not held by any other party – the scope and timing of the cluster study cannot be considered an external delay because it was purportedly foreseeable based on where Snakeroot situated its project, and the type of generator Snakeroot proposed. (Gr. Br. 12-13).[3]

The good cause statute does not, however, look to whether a delay was foreseeable. Rather, in this case, the test is whether there was an "external delay" beyond the control of the developer that caused this otherwise qualified project to miss the commercial operation date deadline. 35-A M.R.S. § 3209-A(7). There is no evidence in the record to support any claim that Snakeroot could have avoided the cluster study by selecting a different site or other generation technology. Notably, Snakeroot was first in the interconnection queue at its substation, meaning that it had every reason to believe it would be interconnected in a timely manner.[4] Rather than addressing this and other undisputed facts, IECG resorts to calling Snakeroot a gold miner that should have anticipated what other developers might do. Again, there is no foundation for this argument in the good cause statute, which does not require a petitioner to be clairvoyant about other developer's intentions.[5]

[3] Snakeroot does not concede that a prolonged cluster study was foreseeable at any relevant time.
[4] Notably, IECG concedes that Snakeroot was the first in line that the relevant substation. (Gr. Br. At p. 14 "even if it was the first to seek interconnection at this particular substation").
[5] IECG's argument also conveniently ignores that at the time Snakeroot identified the site and applied for interconnection there were no milestones and there was no December 31, 2024 deadline. Thus, even if Snakeroot had reason to know that others might join it at the substation, it

IECG's interpretation of the statute renders the good cause provision superfluous. As IECG would have this Court interpret this provision, no project located in Maine that is potentially subject to a cluster study could ever qualify for the exemption. Under IECG's theory, everything that occurs after a site is chosen and an interconnection application filed is within the control of the developer. Taken to its illogical conclusion, this would mean that *any* delays after the site is chosen – regardless of cause – are within the developer's control. No rational or plain reading of the statute allows the PUC to inject IECG's additional prerequisites into the good cause statute. Given these obvious infirmities, it is no surprise that this contention was not argued below. The Court need not consider it here.

B. The Commission Does Not Have Unfettered Discretion To Deny Good Cause Petitions That Meet The Good Cause Standard

When the Law Court interprets a statute, its "single goal is to give effect to the Legislature's intent in enacting the statute." *Dickau v. Vt. Mut. Ins. Co.,* 2014 ME 158, ¶ 19, 107 A.3d 621. Although the Law Court typically defers to an agency's interpretation of a statute it administers, it "must always consider whether a given interpretation is consistent with the legislative intent and avoids absurd,

---

had no reason to believe that the State of Maine and PUC would later install roadblocks and seek to force a forfeiture of its investments.

illogical, or inconsistent results." *Mosher v. State Harness Racing Com'n.*, 2016 ME 104, ¶ 8, 144 A.3d 42 (citing *FPL Energy Me. Hydro LLC v. Dep't of Envtl. Prot.*, 2007 ME 97, ¶ 12, 926 A.2d 1197).[6] When the Law Court interprets a statute, it first looks to the statute's plain meaning "to discern the real purpose of the legislation." *Tenants Harbor General Store, LLC v. Dep't of Envtl Prot.*, 2011 ME 6, ¶ 9, 10 A.3d 722 (citations omitted). The Law Court will "construe the statute based on the plain, common, and ordinary meaning of its terms, and we avoid absurd, inconsistent, illogical, or unreasonable results. *Id.*, (citations omitted). To understand the plain meaning, the Law Court takes "into account the structure of the statute and the placement of the statute in context to generate a harmonious result." *Id.*

[6] The justification for the Law Court's deference to agency interpretations is the agency's expertise in matters delegated to it and its experience administering and interpreting those particular statutes. *See S.D. Warren Co. v. Board of Envtl. Prot.*, 2005 ME 27, ¶ 5, 868 A.2d 210. Still, the Law Court will determine whether the Commission's conclusion is reasonable and comports with legislative intent. *FPL Energy Me. Hydro LLC v. Dep't of Envtl. Prot.*, 2007 ME 97, ¶ 24, 926 A.2d 1197. Here, the question is not whether interconnecting Snakeroot will adversely impact Maine's electrical grid. That analysis was the purpose of the cluster study because the reliability of the grid is a prerequisite for obtaining I.3.9 approval from ISO-NE. The upgrades identified by ISO-NE and CMP – and paid for by developers – are intended to safeguard the grid from potential issues related to the interconnection. Thus, the issue in this case is not whether the grid will be impacted, but whether Snakeroot met the standard for good cause for missing a certain milestone. As such, the issue here is one of law that is well-within the expertise of this Court and on which the Court need not give the Commission unfettered discretion. *Accord Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412, 144 S.Ct. 2244, 2273 (2024) (citations omitted) (where the question is one of legal interpretation, that has been emphatically the province and duty of the judicial department for over 221 years) (overruling *Chevron U.S.A., Inc. v. Natural Resources Defense Counsel, Inc.* 467 U.S. 837, 104 S.Ct. 2278 (1984)).

According to the good cause provision:

> An entity proposing the development of a distributed generation resource that does not meet one or more of the requirements of this subsection may petition the commission for a good-cause exemption due to external delays outside of the entity's control, which the commission may grant if it finds that, without the external delays, the entity could reasonably have been expected to meet the requirements.

35-A M.R.S. § 3209-A(7) (emphasis added).

As noted in Snakeroot's initial brief, the good cause provision was enacted as part of a modification of the NEB statute that significantly curtailed the program. One need not refer to the legislative history to see that the milestones set forth in that amendment created eligibility requirements--and in some provisions, retroactive deadlines, that did not exist in the original statute. The legislative intention of those new eligibility requirements, including those that were retroactive, was to reduce the number of projects eligible to participate in the NEB program. There is, in fact, no dispute over the purpose of the enactment of these roadblocks for developers participating in the NEB program.

There is, however, dispute over whether the good cause provisions provide the Commission with unrestrained discretion. Contrary to IECG's position, the structure of the subject statute, including the wording of the good cause provision and its placement following the newly created deadlines shows that the legislative intent was not to give the Commission unfettered discretion to eliminate projects.

Rather, the legislature's intent was to ensure that projects that acted in good faith and timely took the steps within their control, would not be forced to forfeit their rights and investments if events over which they had no control caused a missed deadline. Otherwise, the Legislature would have omitted the good cause provision and simply invalidated all of the applications and contracts signed by the developers – regardless of cause – if the new deadlines were missed. Instead, the legislature provided a safety net for projects that were diligent and missed deadlines through no fault of their own.

When the statute is read as a whole, IECG's position does violence to this clear legislative intent. IECG posits that the word "may" in this provision grants the Commission absolute discretion to deny good cause no matter the facts of the case. Although the PUC has the discretion to grant or deny exemptions, that discretion is guided by the statute's two factors enunciated by the Legislature. Otherwise, the Commission could grant or deny the exemption for unstated reasons or reasons not articulated in the statute. Not only would such a ruling go beyond the legislative directive, but it would also provide this Court with no ability to determine whether the Commission properly exercised its discretion. To avoid rendering the provision superfluous – and contrary to IECG's argument that affords the Commission unfettered discretion – the factors necessarily guide the Commission in the exercise of its discretion. The plain import of the two

conditions for exemptions is that if the PUC determines the conditions are met it may grant the exemption, and if it determines the conditions are not met it may deny. Thus, a far more reasonable reading of the statute – and one that is in keeping with the legislative intent is that "may" modifies what occurs after analysis of the factors: if the factors are met, the Commission grants the petition, but if they are not, it may not grant the petition.[7] In other words, the statute requires the Commission to faithfully apply the plain meaning of the factors and not to alter or deprive them of meaning by resort to so-called "unconditioned discretion."

C. The Changes in CMP's Application of the ISO-NE Cluster Study Process Are Beyond Snakeroot Solar's Control

According to IECG, the extensive cluster study process that the Snakeroot project underwent is not a new development and, as such, "Snakeroot voluntarily chose to play by ISO-NE rules when it first submitted its interconnection application." (Gr. Br. 13). This ignores the overwhelming evidence in the record that demonstrated changes to the process *after* Snakeroot applied and the numerous

[7] IECG also relies on the 750 MW goal found in the NEB statute. (Gr. Br. 10-11). Specifically, IECG argues that the 750 MW goal was "the specific reason provided by the Legislature to deny" good cause exemptions. (*Id.*). As IECG did not actually develop this argument, the Court need not consider it. *Melhorn v. Derby,* 2006 ME 100, ¶11, 905 A.2d 290 (barely mentioned issues are the equivalent of issues not mentioned at all). Moreover, the issues related to the 750 MW goal were more fully addressed by the Commission in its brief. As such, in the interests of judicial economy, Snakeroot will fully address this issue in its Reply to the Commission's brief.

delays and changes to the process that occurred during the course of the subject cluster study. Wholly absent from IECG's brief is any explanation for how Snakeroot "accepted indefinite cluster study risks" by applying in the first queue position at a substation. It similarly omits any discussion of how Snakeroot accepted the risk of delay before the sea changes in CMP's and ISO-NE's cluster study processes occurred from the outset and through the completion of the cluster study here, all to the to the detriment of the Snakeroot project's timely interconnection.

Moreover, nothing in the good cause statute makes acceptance of the risk a factor for denying good cause. IECG is forced to couch its argument in "assumption of the risk" terms because it knows that Snakeroot did not control the delays in the cluster study that caused it to miss the December 31, 2024 deadline. As each of the changes and iterations of the cluster study process were within the control of ISO-NE and CMP, the only way IECG can argue that the delays are not relevant to good cause is by alleging that Snakeroot assumed the risk. As Snakeroot did nothing to delay the cluster study, it could not have assumed any risk that the study itself would delay the project's interconnection beyond the deadline.[8]

[8] In addition, and as noted above, at the time Snakeroot applied for interconnection, there was no December 31, 2024 deadline. Thus, even if assumption of the risk were applicable, Snakeroot

III. CONCLUSION

For the reasons discussed herein, this Court can disregard the amicus brief filed by IECG. To the extent that it argues new contentions not addressed by the parties below, they are not preserved for appeal. The remainder of IECG's brief fails to interpret the subject statute in accordance with well-established rules of statutory construction. In short, the Court need not credit any of IECG's arguments.

Dated at Portland, Maine this 13th day of January 2025.

Jonathan M. Dunitz, Bar No. 007752
Hans C. Eysenbach, Bar No. 006015
Attorneys for Appellants Snakeroot Solar, LLC

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101
(207) 774-4000

could not possibly have assumed the risks that a cluster study would cause it to miss a deadline that did not exist when it sited the project.

CERTIFICATE OF SERVICE

I, Jonathan M. Dunitz, hereby certify that I have on this date served copies of the Appellants' Reply Brief to Amicus Curiae by electronic mail to counsel of record as follows:

Daya J. Taylor, Esq.
Maine Public Utilities Commission
18 State House Station
Augusta, ME 04333-0018
Daya.Taylor@maine.gov

Richard P. Hevey, Esq.
Maine Office of the Public Advocate
112 State House Station
Augusta, ME 04333-0112
Richard.P.Hevey@maine.gov

Katherine McDonough, Esq.
Avangrid/CMP
18 Edison Drive
Augusta, ME 04330
Katherine.mcdonough@avangrid.com

Joseph G. Donahue, Esq.
Preti Flaherty
PO Box 1058
Augusta, ME 04332-1058
jdonahue@preti.com

Dated: January 13, 2025

Jonathan M. Dunitz, Bar No. 007752
Hans C. Eysenbach, Bar No. 006015
Attorneys for Appellants Snakeroot Solar, LLC

VERRILL DANA, LLP
One Portland Square
Portland, ME 04101
(207) 774-4000