STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. PUC-24-322

SNAKEROOT SOLAR, LLC,

Appellant

v.

MAINE PUBLIC UTILITIES COMMISSION, et al.,

Appellees

On Appeal from the Maine Public Utilities Commission

BRIEF OF APPELLEE MAINE PUBLIC UTILITIES COMMISSION

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INTRODUCTION

On June 24, 2024, the Maine Public Utilities Commission ("Commission") issued an Order in Commission Docket No. 2023-00236 denying Snakeroot Solar, LLC (Snakeroot Solar) a good-cause exemption on the basis that a long transmission study process and a construction schedule that includes procurement of items with long lead times, do not constitute external delays for the purposes of a good-cause exemption. *Snakeroot Solar, et al.,* Request for a Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2023-00236, Order (June 24, 2024) (the "Order").

The Appellant appeals the denial of its request for a good-cause exemption. For the reasons stated herein, the Commission respectfully requests this Court affirm the Commission's Order.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. STATUTORY AND REGULATORY BACKGROUND

Since the 1980s, net energy billing (NEB) has provided an opportunity for individual ratepayers to produce their own power, thereby reducing their electric bill.[1] For much of that time, Maine's NEB program focused on small, renewable energy generation facilities, co-located near the electrical load they serve.[2]

[1] *See, generally* 65-407 C.M.R. ch. 360 (1982) (fmr ch. 36).
[2] *See, generally* 65-407 C.M.R. ch. 360 (1996); 65-407 C.M.R. ch. 313 (2011); P.L. 2011, ch 262.

The NEB program underwent major changes in 2019 through the enactment of P.L. 2019, ch. 478 (2019 NEB Act), which considerably broadened the program. The law revised 35-A M.R.S. § 3209-A (hereinafter, the kWh program) and enacted 35-A M.R.S. § 3209-B, a new section directed at institutional customers (hereinafter, the C&I program)[3], both with the intention to promote more renewable energy resources in Maine.[4]

Focusing on the kWh program, the 2019 NEB Act expanded the statute in a number of ways.[5] The kWh program now allows "a customer to participate in net energy billing if the customer has a financial interest in a distributed generation resource or a generation resource that has a net energy billing arrangement."[6] A "distributed generation resource" (DER) is defined as "an electric generating facility that uses renewable fuel or technology" as defined by 35-A M.R.S. § 3210(2)(B-3). It also expanded the nameplate capacity for facilities to under 5

[3] The C&I program is also sometimes referred to as the Tariff Rate Program.
[4] The Appellant states that the Legislature passed this law "as part of Maine's commitment to achieve 100% sourcing of electric supply from renewable generators by 2050." (Blue Br. at 2.) However, the NEB law contains no requirement that a project participating in either the kWh program or the C&I program retire its Renewable Energy Credits (RECs) in Maine. A project would have to voluntarily retire its RECs in Maine in order to contribute to this commitment. *See Pub. Utils. Comm'n,* Amendments to Net Energy Billing Rule (Chapter 313), No. 2021-00253, Order Adopting Rule and Statement of Factual and Policy Basis at 7 (Me. P.U.C. Nov. 29, 2021) ("If RECs are not retired, the load of customers participating in the NEB kWh program that is offset by credits is not subject to the renewable percentage requirements mandated by the State's portfolio requirement.").
[5] This Brief focuses on the provisions of section 3209-A (kWh program) because that is the governing law of the NEB agreement Snakeroot Solar has with CMP. (A. at 006, CMS Item No. 7.) (For the convenience of the Court, throughout this Brief, the Commission will refer to items in the administrative record that are not contained in the Appendix by the item's "CMS Item No." The CMS Item No. corresponds to the "Item No." column in the docket sheets found on pages A. 001-008 of the Appendix.)
[6] 35-A M.R.S. § 3209-A(2) (2024).

MW.[7] The updated version of the NEB program also allows a large number of customers to subscribe to a project within their service territory.[8] As a result of the amendments to the NEB statute, dozens of photovoltaic DERs of up to 5 megawatts (MW) in size have been built, or are in the process of being built, in the service territories of Maine's two investor-owned transmission and distribution utilities, Central Maine Power Company (CMP) and Versant Power.[9]

The 2019 NEB Act also required the Commission to evaluate the effectiveness of the kWh program in achieving state policy goals and providing ratepayer benefits when the total amount of NEB-eligible generation capacity reached 10% of the total maximum load of T&D utilities in the State or three years after the effective date of the Act, whichever came first.[10]

By May 20, 2020, CMP provided notice to the Commission that the cumulative capacity of the generating facilities for which CMP has executed NEB arrangements under Chapter 313 was approximately 10.1% of CMP's annual peak demand, which caused the Commission to begin its evaluation.[11] On September 15,

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[7] *Id.* § 3209-A(4).
[8] *Id.* § 3209-A(3)
[9] As of the submission of this Brief, there are 16,000 total NEB-eligible facilities in Maine, the majority of which are rooftop facilities. Currently, there are 181 NEB-eligible facilities in the 2-5 MW size range. *See Pub. Utils. Comm'n*, Inquiry Regarding Net Energy Billing Evaluation, No. 2020-00199. While there are some DER projects located in the service territories of Maine's consumer-owned transmission and distribution utilities, the Commission's rules governing NEB provide that these projects are limited in size to 100 kw unless the utility agrees otherwise. *See* 65-407 C.M.R. ch. 313, § 2(J)(2).
[10] P.L. 2019, ch. 478, § A-5.
[11] *Pub Utils. Comm'n*, Net Energy Billing Evaluation, No. 2020-00199, Notice of Inquiry at 1 (Me. P.U.C. July 6, 2020).

2020, Versant Power provided notice that the 10% threshold had been met in its service territory.[12] The Commission submitted the required evaluation to the Legislature on November 10, 2020.[13] At the conclusion of the evaluation, the Commission noted that while the NEB program promoted the energy goals of increasing resource diversity through renewable resource generation and solar generation, and addressed climate change, the resulting substantial increase in electric rates could have a negative impact on promoting beneficial electrification and reducing oil dependence.[14] The report calculated the estimated annual cost to ratepayers for the NEB program was $160 million per year,[15] which would be in effect for the twenty-year eligibility period provided for in the NEB agreements.

In response to the report, several bills were introduced during the 130th Legislature in an attempt to limit both the kWh program and the C&I program. The Energy, Utility, and Technology (EUT) Committee created the NEB Subcommittee

[12] *Pub. Utils. Comm'n*, Net Energy Billing Evaluation, No. 2020-00199, Versant Power Threshold Letter at 1 (Me. P.U.C. Sept. 15, 2020).
[13] *See Pub. Utils. Comm'n*, Net Energy Billing Evaluation, No. 2020-00199, Report on the Effectiveness of Net Energy Billing in Achieving State Policy Goals and Providing Benefits to Ratepayers, and Renewable Distributed Generation Solicitation (Me. P.U.C. Sept. 15, 2020).
[14] *See id.* at 10.
[15] The Commission's estimate in the November 2020 report is somewhat lower than the costs that have been generated by the NEB program to date. During the period March 1, 2023 through February 29, 2024 actual NEB program costs totaled $102,558,225. *See Central Me. Power Co.,* Request for Approval of Rate Change Regarding Annual Reconciliation of Stranded Cost Revenue and Costs, No. 2024-00015, Stranded Cost Update (Me. P.U.C. May 24, 2024); *Versant Power,* Request for Approval of Rate Change Regarding Annual Reconciliation of Stranded Cost Revenue and Costs, No. 2024-00078, Stipulation Attachment (Me. P.U.C Jun. 20, 2024). As of March 1, 2023 there was 402 MW of operational NEB capacity online, which had grown to 754 of operational NEB capacity by March 2024. That number has grown in calendar year 2024.

to evaluate options to modify the NEB programs. The NEB Subcommittee met numerous times over the course of several months to obtain data and consider various proposals from stakeholders, including the Commission, the Governor's Energy Office, the Office of the Public Advocate, and representatives from the renewable energy sector.

As a result of the work of the NEB subcommittee, the Legislature passed P.L. 2021, ch. 390 (2021 NEB Act), now codified at 35-A M.R.S. § 3209-A(7), which introduced certain milestone requirements that must be met for a distributed generation resource with a nameplate capacity of greater than 2 MW and no more than 5 MW to be able to participate in NEB under either the kWh program and the C&I program.[16] One of the milestones requires that any proposed DER must meet commercial operation on or before December 31, 2024.[17] The 2021 NEB Act included a provision that allowed an entity developing a DER that does not meet one or more of the milestone requirements to 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."[18] The Commission began receiving good-cause exemption petitions in late 2021.

[16] 35-A M.R.S. § 3209-A(7); § 3209-B(7).
[17] 35-A M.R.S § 3209-A(7)(E)(1).
[18] *Id.* § 3209-A(7).

II. PROCEDURAL BACKGROUND

On September 8, 2023, Snakeroot Solar filed a request for a good-cause exemption on the grounds that its 4.98 MW project located in Pittsfield, Maine would be unable to achieve commercial operation by December 31, 2024 due to alleged delays in the ISO-New England (ISO-NE) transmission system impact study (transmission study or cluster study) process and the subsequent upgrade construction timeframe arising from the results of the cluster study. (A. 027.) Snakeroot Solar filed in conjunction with five co-petitioners who were seeking good-cause exemptions for their projects.

The Commission adjudicated Snakeroot Solar's and the other petitioners' request for good-cause exemption over the next 10 months, which included submission of testimony, written discovery, a technical conference, briefing, an Examiner's Report, and exceptions to the Examiner's Report. (A.001-006.)

On June 24, 2024, the Commission issued the Order denying the request for a good-cause exemption for all the projects described in the petition. (A.009-026.) With regard to the ISO-NE[19] cluster study, the Commission found that, as a general matter, the time it takes to conduct a cluster study administered pursuant to the ISO-NE tariff does not constitute an external delay beyond the control of the

[19] ISO-NE is the acronym for the Independent System Operator of New England. ISO-NE is the governing authority and operator of the New England transmission system.

developer. (A. 021.) The Commission also found that while there may be certain events that occur during the course of a cluster study that might constitute a delay, there were no events that occurred during the administration of the cluster study that occurred with respect to the Snakeroot Solar project that constituted an external delay. (A. 21.) With regard to the upgrade construction timeline for Snakeroot Solar's project, the Commission found that long construction schedules do not constitute an external delay, but rather represent the current process for developing and interconnecting a distributed generation project in Maine. (A. 022.)

Snakeroot Solar filed a timely appeal of the Commission's Order with respect to the denial of a good-cause exemption for its project. No other project sponsor that filed a good-cause petition in conjunction with Snakeroot Solar has appealed the Commission's order with respect to their projects and thus, the Commission's order with respect to those projects has become final as a matter of law. 35-A M.R.S. § 1320(1); M.R. App. P. 2B(c)(1).

III. FACTUAL BACKGROUND

This case concerns alleged delays arising out of CMP's administration of required cluster studies and construction schedules when interconnecting NEB-eligible DERs in its territory. Because Snakeroot Solar is the only petitioner that filed an appeal of the Commission's Order, this appeal will only address the facts and issues relating to Snakeroot Solar's project.

A. CMP's Cluster Study Process

A cluster study is a kind of a transmission study. It is a required transmission-level reliability study performed by CMP pursuant to the ISO-NE Open Access Transmission Tariff (OATT or Tariff), Section I.3.9. Approval from ISO-NE is required for all Level 4[20] generators above 1 MW in size, as defined in Chapter 324 of the Commission's rules governing the interconnection of small generating projects. Such approval is known as an I.3.9 Approval.

Per the ISO-NE OATT, each generator seeking interconnection must submit its plans for interconnection "in such form, manner and detail as the ISO may prescribe." ISO Section I OATT at § I.3.9.1.[21] Once a particular Pool Transmission Facility (PTF) node has incurred 20 MW of proposed distributed generation, ISO-NE requires a formal group analysis of all DER projects, a study process known as a cluster study. (A. 017.)

Starting in Q1 and Q2 of 2020, ISO-NE and CMP began the process of administering cluster studies rather than conducting sequential transmission studies for DER projects. (*Id*.) A cluster study process balances the previous sequential study approach and a single area-wide study and does so by grouping projects

[20] A Level 4 project is defined as "all generating facilities that do not qualify for Level 1, Level 2 or Level 3." 65-407 C.M.R. ch. 324 § 1(MM). This definition applies to any generating facility that can be required by a T&D Utility to undergo an Impact Study in order to safely connect to a T&D Utility's System, which includes any exporting generating facility with a nameplate capacity greater than 2 MW.
[21] The ISO-NE Tariff is publicly available at the following web address: https://www.iso-ne.com/participate/rules-procedures/tariff.

based on maturity and proximity. (*Id.*) A cluster study advances projects through the interconnection process at a faster pace than other transmission study options because projects do not have to wait for distant projects or projects that are still awaiting results from distribution-level studies. (*Id.*)

CMP fully included transmission level study information in its publicly available interconnection queue by August 2020. (*Id.*) On August 4, 2020, CMP held a webinar with solar developers that highlighted aggregate study areas, with Detroit-Guilford-Belfast as the sixth area on the list (Cluster 06). (A. 018.) As a project located in Pittsfield, Snakeroot Solar was included in Cluster 06. CMP also explained its practice of discussing transmission level studies with developers during the scoping meeting for their projects, which are held early in the interconnection process. (*Id.*)[22] CMP defined Cluster 06 in consultation with ISO-NE. (*Id.*)

On January 12, 2021, CMP set a cluster closure date of February 1, 2021, for projects in Cluster 06. (*Id.*) Following the cluster closure date, CMP estimated an ISO-NE approval date of March 2022. (*Id.*) The initial time estimate given by CMP was based on a study schedule that considered data gathering, model building, and scope development. (*Id.*) On April 13, 2021, CMP held a webinar

[22] Under Chapter 324 of the Commission rules, scoping meetings are held ten (10) days following the submission of completed interconnection application. 65-407 C.M.R. ch. 324, § 14(E).

with all developers explaining the current status of various cluster studies in progress, and the state of cluster studies generally. (A. 008, ODR-002-001, Att. 3.) During the webinar CMP discussed ISO-NE's power system computer aided design (PSCAD) requirements and the possibility that PSCAD analysis may affect the cluster study timelines. (*Id.*)

Cluster 06 began on June 9, 2021. (A. 018.) After the cluster study began, Cluster 06 was impacted by multiple schedule changes due to complex mitigation issues, issues with PSCAD models, and stability study results. (*Id.*) Starting in March 2022 and throughout the summer of 2022, the cluster went through several months of work due to PSCAD analyses and other mitigation issues. (A. 019.) In September 2022, CMP presented a draft of the system impact study for Cluster 06 to ISO-NE. (*Id.*) ISO-NE required CMP to redo the PSCAD analyses due to questions it had and to account for three FERC-level generators in the ISO-NE interconnection queue. (*Id.*)[23]

In November 2022, one FERC-level generator dropped out of the ISO-NE queue, which changed the baseline assumptions for Cluster 06 and resulted in the untimely delivery of models from two other FERC-level generators. (*Id.*) CMP did

[23] Projects participating in a cluster study are not formally a part of the ISO-NE queue because they are distribution level rather than transmission level projects. (A. 019.) Because of this status, cluster study projects are subject to "freefall" from ISO-NE, meaning that if an interconnecting generator in ISO-NE's FERC queue impacts the same transmission area as the projects in the cluster study, the cluster study is put on hold while ISO-NE first studies the interconnecting generator in its queue. (*Id.*)

not receive the requisite models from these generators until March 2023. (*Id.*) Also in March 2023, two participants withdrew from Cluster 06 and one participant downsized, which required a new PSCAD analysis of Cluster 06. (*Id.*) The Guilford-Detroit area of Cluster 06 received final ISO-NE I.3.9 approval, following review from the New England Power Pool (NEPOOL) Reliability Committee, in August 2023. (*Id.*)

B. Leapfrogging and Construction Schedules

Having received I.3.9 approval, Snakeroot Solar was next required to submit the remainder of its final interconnection payments, which is the entire portion of the bill for transmission upgrades, and 75% of the invoice for distribution level upgrades, to move to the next interconnection stage. (A. 017, 019.) However, Snakeroot Solar had not been issued its final invoice due to "leapfrogging"[24] of other projects in the Chapter 324 interconnection queue. (*Id.*) Snakeroot Solar had been leapfrogged, getting re-queued in the Chapter 324 distribution queue and thus

[24] "Leapfrogging" refers to the practice, under the then-applicable definition of "aggregated generation" in Section 2 of Chapter 324 of the Commission's rules, which allowed Level 1 and Level 2 projects to proceed with interconnection ahead of Level 4 projects in the queue if the Level 4 projects that had not yet paid their distribution-level upgrade costs in full. *Pub. Utils. Comm'n*, Amendments to Small Generator Interconnection Procedures (Chapter 324), No. 2021-00167, Order Amending Rule and Statement of Factual and Policy Basis at 4 (Me. P.U.C. Dec. 21, 2021). The interconnection of the smaller Level 1 and Level 2 projects may lead to the need to restudy Level 4 projects that had not yet completed the interconnection process. The act of interconnecting later-applying smaller projects before Level 4 projects that had submitted an earlier application is called "leapfrogging." The Commission subsequently amended the rule to change the definition of "aggregated generation" and to remove the requirement of paying the distribution upgrade costs as a means of avoiding the issue of projects being leapfrogged. *Pub. Utils. Comm'n,* Amendments to Small Generator Interconnection Procedures (Chapter 324), No. 2023-00103, Order Amending Rule and Statement of Factual and Policy Basis at 11 (Me. P.U.C. Nov. 3, 2023).

it must be re-studied at the distribution level to account for newly interconnected generation. (A. 020.)[25] At the conclusion of any distribution re-study, the interconnection agreement for the project will be updated and the project will receive an invoice for the final amount due for both distribution and transmission upgrades. (*Id.*)

Once Snakeroot Solar has made its final payment, CMP is estimating a 24 to 30 month construction schedule for the required upgrades, including a 20 MVA capacitor bank. (*Id.*) CMP must also account for the time to engineer and construct the interconnection upgrades. (*Id.*) The construction timeline provided by CMP represents the current state of procurement common in the solar development industry, which involves long lead times for critical pieces of equipment. (*Id.*) As of the technical conference held on October 19, 2023, CMP had not started any engineering or procurement for the upgrades required to interconnect the project. (*Id.*)

[25] At the time Snakeroot Solar received its I.3.9 approval, it was subject to a version of Chapter 324 that allowed Level 1 and Level 2 projects to move ahead of prior-queued Level 4 projects and complete interconnection if any preceding Level 4 projects had not yet paid any interconnection costs. (A. 019-020.) Under this earlier version of Chapter 324, once the Level 1 and Level 2 projects were interconnected, it led to situations in which the Level 4 projects needed to be restudied at the distribution level in order to account for new generation on the system. (A. 020, n. 8.) Level 1 projects are exporting generators that are less than 25 kW in size and tend to be smaller rooftop photovoltaic arrays. Level 2 projects are exporting generators less than 2 MW in size and tend to be co-located with a business or a school. *See also* 65-407 C.M.R. ch. 324 § 2(JJ)-(KK) (2022).

ISSUES PRESENTED FOR REVIEW

1. WHETHER THE COMMISSION'S INTERPRETATION OF THE GOOD-CAUSE EXEMPTION STANDARD IS CORRECT AS A MATTER OF LAW.

2. WHETHER THE COMMISSION'S DENIAL OF THE GOOD-CAUSE EXEMPTION TO THE SNAKEROOT SOLAR PROJECT IS SUPPORTED BY SUBSTANTIAL EVIDENCE IN THE RECORD.

STANDARD OF REVIEW

"Generally, decisions of the Commission are reviewed only to determin[e] whether the agency's conclusions are unreasonable, unjust or unlawful in light of the record." *Central Me. Power Co. v. Pub. Utils. Comm'n*, 2014 ME 56, ¶ 18, 90 A.3d 451, 458 (*quoting Competitive Energy Servs. LLC v. Pub. Utils. Comm'n*, 2003 ME 12, ¶ 15, 818 A.2d 1039). The Law Court's review of a Commission decision is deferential, and a Commission decision is reviewed for an abuse of discretion. *Friedman v. Pub. Utils. Comm'n*, 2012 ME 90, ¶ 6, 48 A.3d 794, 797 (*quoting Dunn v. Pub. Utils. Comm'n*, 2006 ME 4, ¶ 5, 890 A.2d 269) ("Only when the Commission abuses the discretion entrusted to it, or fails to follow the mandate of the legislature, or to be bound by the prohibitions of the constitution, can this court intervene."); *see also Central Me. Power Co. v. Pub. Utils. Comm'n*, 405 A.2d 153, 182 (Me. 1979) (The Law Court "possesses neither the resources, the expertise, nor the inclination to act as a '*super-commission.*'") (emphasis in original).

An abuse of discretion may be found where an appellant demonstrates that the decision maker exceeded the bounds of reasonable choices available to it, considering the facts and circumstances of the particular case and the governing law. *Sager v. Town of Bowdoinham*, 2004 ME 40, ¶ 11, 845 A.2d 567. A party appealing a decision committed to the reasonable discretion of a state decision maker has the burden of demonstrating that the decision maker abused its discretion in reaching the decision under appeal. *Id.* It is not sufficient to demonstrate that on the facts of the case, the decision maker could have made choices more acceptable to the appellant or to the reviewing court. *Id.*

When the Law Court reviews the Commission's "interpretation of a statute that is both administered by the agency and within the agency's expertise," it determines "de novo whether the statute is ambiguous or unambiguous." *Competitive Energy Svcs v. Pub. Utils. Comm'n*, 2003 ME 12, ¶ 15, 818 A.2d 1039, 1046. "If the statute is plain," the Law Court gives "effect to the unambiguous intent of the Legislature." *Guilford Transp. Indus. v. Pub. Utils Comm'n*, 2000 ME 31, ¶ 11, 746 A.2d 910, 913. The Law Court must further "interpret the plain language by taking into account the subject matter and purposes of the statute, and the consequences of a particular interpretation." *Dickau v. Vermont Mut. Ins. Co.*, 2014 ME 158, ¶ 21, 107 A.2d 621, 627. When the Legislature gives a "grant of authority to the PUC," it "implies that it presumed

that the PUC's expertise in utility matters would provide a more informed resolution." *Guilford Transp. Indus.*, 2000 ME 31, ¶ 12, 746 A2d 910. The Law Court "will sustain findings of fact issued by the Commission unless not supported by substantial evidence in the record. *Dunn v. Pub. Utils. Comm'n*, 2006 ME 4, ¶ 5, 890 A.2d 269, 270.

SUMMARY OF ARGUMENT

The Commission's interpretation of 35-A M.R.S. § 3209(7) is correct and lawful. This statutory provision sets forth milestones that interconnecting distributed generation projects, with a nameplate capacity between 2 and 5 MW, must meet to be eligible to participate in the NEB program. The Legislature enacted the milestones with the objective of limiting the number of projects that would be eligible to receive the NEB subsidy, which would minimize the impact that the high cost of the program would have on ratepayers. The Legislature included the good-cause exemption to address narrow circumstances in which it would be unfair to exclude a project that experienced an unexpected delay beyond its control and but for which it would have been able to meet the statutory milestone in issue.

Contrary to the Appellant's argument, the Legislature did not design the good-cause exemption to serve as a safe harbor for developers of distributed generation projects. The language of the good-cause exemption, and the

Commission's interpretation of the good-cause exemption since its inception, supports a narrow construction so as not to undermine the goal of the milestones, which the Legislature intended to limit the rapidly expanding NEB program. The good-cause exemption language gives the Commission the discretion to review, on a case-by-case basis, unique facts and circumstances to determine whether the timeline and events related to bringing a distributed generation project on-line involved a delay that a developer could neither have anticipated nor controlled. In good-cause exemption cases, the Commission examines the facts to determine whether the developer requesting an exemption made reasonable decisions to move a project forward with an expectation of meeting the statutory milestone in issue, based on the information available to the developer at the time of the decision.

In its analysis of petitions requesting a good-cause exemption, the Commission has consistently held that the exemption does not insulate a developer from the normal events of the interconnection process, which often include protracted timeframes and complicated issues. The cluster study process at issue in this appeal is an example of the complexity that is an integral part of the interconnection process, and therefore does not constitute an external delay that was beyond the control of the developer.

ARGUMENT

I. THE COMMISSION'S INTERPRETATION OF 35-A M.R.S. § 3209-A IS CORRECT AS A MATTER OF LAW

A. The Commission Adopts a Plain Language Reading of 35-A M.R.S. § 3209-A(7).

The Appellant asserts that the Commission's denial of a good-cause exemption is based on an erroneous reading of the phrase "external delay outside the developer's control." (Blue Br. at 16). It would be illogical to read the statute as representing a safe-harbor provision or as mandating the Commission to broadly interpret the good-cause exemption as suggested by Snakeroot Solar. The Commission's interpretation of the term "external delay outside the developer's control" in this case, and in all of the good-cause exemption cases it has considered, is based on the plain meaning of the statute when taking the entire statutory scheme established by Section 3209-A(7) into account.

Through the 2021 NEB Act, the Legislature set milestones that projects seeking to participate in Maine's NEB program must meet. The milestone at issue in this case is the final milestone for a project, that is, the date by which it must reach commercial operation. The law unambiguously requires that:

> E. In order for a distributed generation resource to be used for net energy billing, the following must be met on or before December 31, 2024:

> (1) The proposed distributed generation resource must reach commercial operation by the due date specified in the net energy billing agreement or by the date specified with an allowable modification to that agreement.

35-A M.R.S. § 3209-A(7)(E)(1).[26] For projects in danger of missing any statutory milestone, the Legislature carved out a process through which a project may petition for an exemption to a milestone:

> 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). In other words, a petitioner such as Snakeroot Solar must (1) prove that it experienced an external delay outside of its control, and (2) prove that, but for the external delay, it could reasonably have been expected to meet the statutory milestone. Further, the language includes that "the commission *may* grant a good-cause exemption." *Id.* (emphasis added).[27]

[26] The other milestones a project must achieve are set forth in full at 35-A M.R.S. § 3209-A(7)(A)-(D).
[27] In granting a good-cause exemption for projects between 2 and 5 MW, the Commission may also consider the goal of 750 MW of commercially operational distributed generation resources governed by 35-A M.R.S. § 3209-A(7). The goal was not a salient factor in the Commission's determination of Snakeroot Solar's case based on the amount of commercially operational distributed generation online at the time of its decision. As of the filing of this Brief, there are 761 MW of commercially operational projects between 2 and 5 MW participating in NEB. *See Pub. Utils. Comm'n*, Net Energy Billing Evaluation, No. 2020-00199, CMP Monthly NEB Report (Me. P.U.C. Dec. 4, 2024); *Pub. Utils. Comm'n.*, Net Energy Billing Evaluation, No. 2020-00199, Versant NEB Report (Me. P.U.C. Dec. 10, 2024).

As the Commission has explained in previous good-cause exemptions, the language "contained in section 3209-A(7) is clear on its face." *Naples Roosevelt Trail Solar 1, LLC*, Petition for Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-00215, Order at 11 (Me. P.U.C. Mar. 2, 2022). When granting good-cause exemptions, the Commission is required "to adhere to the amended language of the NEB statute, which limits eligibility for participation in NEB to projects that meet certain milestones within very specific timeframes." *UGE USA, Inc.*, Petition for Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-00255, Order on Reconsideration at 5 (Me. P.U.C. Jun. 7, 2022). Thus, the Commission interprets the meaning of external delay "taking into account the statutory scheme set forth in the revised NEB statute." *Id.* And while the Commission is mindful of Maine's renewable energy goals, "the Commission must look to the specific intent of the statute, which in the case of the amendments to the NEB statute, were intended to place limitations on the number of projects eligible to participate in NEB." *Id.* When the Legislature "amended the NEB statute, it was making the policy choice to decrease the number of NEB projects that were on the drawing board." *Id.*

Therefore, because the legislative intent of Section 3209-A(7) is to impose a limiting factor on the number of NEB eligible projects, the Commission disagrees with Snakeroot Solar and interprets the good-cause exemption narrowly. Were the

Commission to "to take a broad interpretation of the good-cause exemption," it "would be an exercise of 'unfettered discretion'" by the Commission. *Id.* Such a reading would have the effect of eviscerating the milestones set by the Legislature and allow any developer to claim a delay to bypass the milestones all together and result in almost all projects qualifying for a good-cause exemption.

B. The Good-Cause Exemption Standard is not a Foreseeability Test.

Snakeroot Solar argues that the Commission has impermissibly applied a foreseeability test to its reading of the good-cause exemption language. (Blue Br. at 21.)[28] When interpreting the good cause exemption, however, the Commission does not apply a foreseeability test, as explained below.

In all good-cause exemption cases, the Commission must determine whether the alleged delay is considered normal within the complicated process of interconnection. The Commission "acknowledges that there are complications and delays inherent to the process itself," *196 Hanscom Rd Solar LLC*, Petition for Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2022-00008, Order at 8 (Me. P.U.C. Jul. 29, 2022), but completion of the long parts of the interconnection process "does not represent a 'delay' but rather is the normal course of the interconnection process, whether [a developer] could have foreseen

[28] Snakeroot Solar did not argue that foreseeability was an impermissible standard in its brief to the Commission in support of its petition for a good-cause exemption. Rather, Snakeroot Solar argued that the length of the cluster study "is not a reasonably foreseeable interconnection delay." (A. 004, CMS Item No. 44.)

it." *Id.* To determine the nature of any delay, the Commission analyzes the facts presented in each case and assesses what information was available to the developer at the time the developer was making key decisions about its project, and how that information influenced the developer's decisions in moving the project forward.

The Commission does not expect Snakeroot Solar, or any developer, to know or predict with precision the exact path of interconnection at the time it selects its site and submits an interconnection application. There is an expectation, however, that a developer will make careful, informed decisions about its project using information available to it at each step of the interconnection process. At every step, there are opportunities for a developer to reevaluate its project and determine whether it makes sense to continue. This has particularly been the case since the enactment of the 2021 NEB Act that introduced the milestones. From that point forward, the developers were on notice that their projects' viability depended on their ability to meet the statutory timeframes for each stage of development, with the final deadline being December 31, 2024, to have the project commercially operational.

In considering the facts of a good-cause exemption petition, the Commission looks to what information was available to the developer and how the developer utilized the information when making decisions that would affect the project's

eligibility. For example, in *Loki Solar 1*, the Commission granted a good-cause exemption when a developer learned about the rebuilding of a substation that would prevent it from acquiring an interconnection agreement by the required deadline after it had chosen a site and submitted its interconnection application. *Loki Solar LLC*, Petition for Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-00246, Order at 5-6 (Me. P.U.C. Mar. 2, 2022). The developer could not have anticipated this unusual situation, which it learned about several months after siting its project and applying for interconnection. *Id.* at 4. In a later case involving the same developer, however, the Commission denied a good-cause exemption for a different project, which was affected by the same substation rebuilding because the developer knew about the situation and decided to site a project where it knew there was no chance it could receive an interconnection agreement within the statutory timeframe. *Loki Solar LLC*, Petition for Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-00317, Order at 5 (Me. P.U.C. April 26, 2022). In the second instance, the rebuilding was not an unexpected delay but rather was a circumstance of which the developer was fully aware at the time it was making critical decisions about the development of its project. *Id.*

C. The Good-Cause Exemption Does not Apply to Save a Project from the Complicated but Normal Process of Interconnection.

In its first decision interpreting the good-cause exemption, *Naples Roosevelt Trail Solar 1*, the Commission found that "the interconnection process is complicated and can easily become protracted and difficult when issues arise." Docket No. 2021-00215, Order at 13 (Mar. 2, 2022). The Commission further held that should those complications lead to a change in the timeline, "[s]uch timing does not represent a 'delay'." *Id.* The Commission sees such changes in timing as "the state of affairs" when a project moves through the interconnection process. *Id.*

Some parts of the interconnection process are long, complicated, and because they often involve several other projects in the interconnection queue, are subject to frequent disruptions and setbacks. Whether those disruptions or setbacks constitute a delay can be gleaned from the evidentiary record at issue, which will show whether the developer was aware of the potential issue, or the potential for an issue, when making decisions about its project.

Snakeroot Solar's recitation of the length and difficulty of the interconnection process is not sufficient on its own to demonstrate an "external delay" over which it had no control. The Commission must determine, based on the facts presented, what the developer's knowledge was of the facts on the ground, what the developer's expectations were as a result of that knowledge, and

whether those expectations were reasonable in light of the circumstances. As explained in more detail below, in the case of the ISO-NE cluster study process and the estimated construction schedule at issue in this case, there is substantial evidence in the record to support the Commission's conclusion that Snakeroot Solar had information regarding the cluster study process and the projected construction schedule that made it unreasonable for it to assume that it could meet the statutory milestone of reaching commercial operation by December 31, 2024.

II. A CLUSTER STUDY IS A NORMAL AND EXPECTED PART OF THE INTERCONNECTION PROCESS.

The Commission's denial of Snakeroot Solar's petition is based on the finding that any transmission study, including a cluster study, is a normal albeit lengthy and complicated part of the interconnection process and did not constitute an external delay beyond its control. This finding is supported by substantial evidence on the record.

A. Snakeroot Solar Should Have Expected a Cluster Study.

Snakeroot Solar asserts that the cluster study is a "discretionary interconnection impact study implemented by CMP." (Blue Br. at 4.) This characterization of a cluster study is incorrect. The Commission properly found and concluded that

> [t]ransmission studies are an integral part of the interconnection process and projects more than 1 MW in

> size must have a reasonable expectation that they may be required to engage in a cluster study. In this case, Petitioners were aware, or should have been aware, that a cluster study would be required given the size of the projects and the number of proposed projects in the local area.

(A. 021.) Transmission studies, including cluster studies, are a required part of the interconnection process. The record in this case shows that Snakeroot Solar had either actual or constructive knowledge that the required transmission study would take the form of a cluster study.

First, the standard interconnection agreement (IA) all developers sign alerts developers that its IA "is not valid and permission to operate will not be granted until" an interconnecting generator has completed any "required transmission study, including but not limited to non-comprehensive, *cluster*, or regional studies." (A. 006, CMS Item Nos. 1, 2, 3 (emphasis added).) Snakeroot Solar signed its IA with CMP on September 18, 2020, and thus was on notice of potential cluster study requirements well in advance of its inclusion in the cluster study. (A. 016.) In addition, CMP explained "its practice of discussing transmission level studies with developers during the scoping meeting, which are held early in the interconnection process." (A. 018.)

Second, at the time that Snakeroot Solar was developing its project, CMP had a public interconnection queue, which Snakeroot Solar could have studied to

determine its proximity to other projects may trigger a cluster study.[29] In an earlier case, the Commission concluded that "a developer seeking to develop an NEB project controls where to site its project." Docket No. 2021-00215, Order at 14 (Mar. 2, 2022). Snakeroot Solar made the decision to site its project in an area where high levels of penetration led to increased competition for space on CMP's distribution circuits hence resulting in the need for a cluster study.

Thus, the record makes clear that Snakeroot Solar knew, or should have known, by August 2020 at the latest, that it would be subject to a cluster study as its required transmission level study. That is the point at which the Commission expected Snakeroot Solar's decision making process to reflect its understanding of the cluster study process, not when it initially filed for interconnection in 2019. While Snakeroot Solar could not have known the full extent of these conditions when it submitted its interconnection application, such information became available to Snakeroot Solar as it moved through the interconnection process and before it entered the cluster study. Armed with this knowledge, Snakeroot Solar still elected to execute its IA and move forward with its project.

[29] The other petitioners in the case before the Commission admitted that they had consulted the CMP interconnection queue, as Snakeroot Solar could have done. (A. 018.)

B. The disruptions faced by Cluster 06 were contemplated and predictable while Snakeroot Solar was in the cluster study.

Snakeroot Solar argues that it has proven an external delay existed simply because the cluster study "is controlled entirely by entities other than" Snakeroot Solar. (Blue Br. at 22.) Snakeroot Solar's argument ignores its role as a developer seeking to interconnect a project in Maine. As a developer of a DER, Snakeroot Solar is responsible for having an understanding of the language of the Tariff and ISO-NE's broad discretion in the administration of a cluster study, as well as the possible occurrence of several disruptions all of which are contemplated in the cluster study process. In addition to this expected level of understanding, the regularly updated information provided by CMP demonstrated to Snakeroot Solar that the cluster study timeline was never concrete and was, in fact, on a shifting schedule.

1. The Tariff gives ISO-NE broad discretion in administering transmission studies.

First, per the language of the Tariff, ISO-NE retains broad discretion in conducting transmission studies. The Tariff states that any study submitted for approval by ISO-NE must be "in such form, manner and detail as the ISO may prescribe." ISO Section I OATT at § I.3.9.1. This language unambiguously puts developers of generation projects on notice that ISO-NE may request any

information, at any level of detail, that it believes is required to conduct and complete the study.

The facts of this case show ISO-NE required Cluster 06 to provide complicated PSCAD analyses in order to progress with the study. (A. 019.) While earlier clusters may not have required these analyses, ISO-NE had the authority to make the request at any time for any cluster. Then, when the first PSCAD studies did not give ISO-NE enough information, Cluster 06 was asked to rerun the models. (*Id.*) This decision was also fully within ISO-NE's discretion. While Snakeroot Solar did not "control" these additional requests, they are contemplated by the Tariff and therefore are not unexpected.

ISO-NE's discretion is compounded by the fact that its study process "does not contain deadlines or expected timelines." (A. 021.) The implication is that ISO-NE needs time and detailed analysis to ensure that interconnecting projects do not present safety or reliability problems for the transmission system as a whole, for which ISO-NE is responsible. The Commission agrees with Snakeroot Solar's statement (Blue Br. at 23) that CMP is in a better position to estimate the timelines for completion of a cluster study, but CMP is not obligated to, nor could it, provide commitments to meeting certain timelines. The ultimate goal for ISO-NE and CMP in any transmission study is a safe and reliable interconnection, not an interconnection that meets the needs of a particular developer.

2. Projects were warned about potential disruptions early in the process.

Snakeroot Solar points to several events it experienced during the course of the cluster study, which it says constitute delays. (Blue Br. at 30-31.) The Commission properly concluded that the events that the cluster experienced were not out of the ordinary and were known to the developers in the study. The record shows that CMP communicated to cluster participants that its estimated timeframes were subject to issues that routinely come up in the course of studying a cluster.

In a presentation to developers on April 13, 2021, less than three months after the closure of Cluster 06, CMP clearly laid out the process developers could expect as they moved through the process. (A. 008, CMS Item No. ODR-002-001, Att. 3.) Here, CMP notified cluster participants of key issues that in fact came up later in the study.

First, CMP explained the requirements of a transmission study and ISO-NE's discretion, as discussed above. (*Id.*) Second, CMP explained the PSCAD requirements and the need to account for projects in the ISO-NE queue. (*Id.*; A. 019.) Finally, CMP discussed the cluster study timelines and explicitly stated that the above events may introduce delays into the process. (A. 008, CMS Item No. ODR-002-001, Att. 3.)

Any developer in attendance at this meeting (or a similar meeting, as CMP held meetings monthly) should have understood that there were many factors that could adversely affect the timing of the cluster study. Additionally, these events and issues presented problems for many clusters and were not unique to Cluster 06. (*Id.*) These hurdles were common and were known by developers, who should have taken them into account as they moved forward with their projects.

3. The cluster study timeline was never concrete.

Snakeroot Solar argues that the Commission "erred by finding that when CMP incorrectly estimated and repeatedly extended the expected study time, those extensions were not delays because CMP does not control the process." (Blue Br. at 23.) The Commission's finding is based on evidence in the record that showed regular extensions of the timeframe for completing the study. This ever-increasing cluster study timeline should have been apparent to Snakeroot Solar early in the cluster study process. At a certain point, it should have become clear to Snakeroot Solar that the cluster study length would place it at risk of missing the statutory milestone for commercial operation. Snakeroot Solar made the decision to stay in the cluster study until completion when it was clear from the information provided by CMP that its project could not expect to reach commercial operation in 2024.

The timeline provided by CMP shows Cluster 06 experienced eleven instances in which its schedule was pushed back due to various events or

circumstances. (A. 002, CMS Item No. 68.) By September 2022, Cluster 06 received its first review from ISO-NE, which rejected its study. (A. 019.) By November 2022, CMP informed Cluster 06 that I.3.9 approval was not possible until March 2023, at the earliest. At both points, and at any point after, Snakeroot Solar and other developers in the cluster who hoped to reach commercial operation by the end of 2024 should have reevaluated whether it was reasonable to remain in the queue. By November 2022, the NEB milestones had been firmly established by the 2021 NEB Act and projects still needed to be constructed in two years' time.

C. The Two-year Benchmark Calculation for Cluster Studies is Supported by Substantial Evidence in the Record

Snakeroot Solar argues that the Commission's finding of a two year benchmark for cluster studies "is unsupported by the evidence because there was not an average length of a cluster study at the time" Snakeroot Solar submitted its interconnection application and the prior cluster studies "were far shorter than the two-year benchmark applied by the Commission." (Blue Br. at 36-37.) Snakeroot Solar believes that because the cluster study took seven months longer than two years, it constituted a delay that was not foreseeable and was beyond its control.

First, the Commission's calculation of the benchmark is supported by substantial evidence in the record. The Commission calculated the average cluster study length to be "just over two years, or 2.03 years." (A. 017.) The Commission

calculated this by taking the length of all cluster studies completed in CMP territory into account. (*Id.*) Second, and more important, the Commission's calculation of a benchmark was not the basis of its holding that the cluster study process in this instance did not constitute an external delay. Rather, it represented the Commission's attempt to understand how the cluster study process worked and whether there were unusual events or processes that could constitute an external delay. (A. 021-022.) Subsequent to the Order issued in this case, the Commission denied a good-cause exemption in a case that involved a cluster study that took longer than the two-year benchmark set forth in the Commission's Order in this case. In *USS Maple Solar LLC*, Request for Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2023-00328, Order (Me. P.U.C. Oct. 23, 2024), the Commission held that a cluster study that took nine to ten months longer than two years did not constitute an external delay. "The mere fact that the cluster study took a long time is not evidence of a delay." *Id.* at 7.

In the case on appeal, the Commission determined that Snakeroot Solar and the other petitioners had failed to produce evidence that there were errors on the part of CMP or ISO-NE in conducting the study, nor was there any suggestion that the parties seeking to interconnect had been given any hard deadlines or timing commitments on which they could rely to get the study completed. (A. 021.) Finally, the Commission held that even assuming that the cluster study had taken

two years, it was very unlikely that Snakeroot Solar and the other petitioners would be able to reach commercial operation by December 31, 2024, as discussed in the next section. (A. 022.) In short, Snakeroot Solar's argument regarding the two-year benchmark for cluster studies does not constitute error in the Commission's interpretation of the good-cause exemption.

D. The Cluster Study and "But For" Causation

As set forth above, a petitioner seeking a good-cause exemption must not only show that there was an external delay beyond its control, it must also show that but for that external delay, it would have been able to meet the statutory milestone in issue. In this case, even if the Commission had concluded that Snakeroot Solar was able to show that the events and process relating to the Cluster 06 study constituted an external delay over which it had no control, the record supports the Commission's finding that Snakeroot Solar did not demonstrate that, but for the delays it experienced, it could have met the December 31, 2024 milestone.

Snakeroot Solar states that "facility construction and upgrade construction would, absent the cluster study, have commenced shortly after the interconnection agreement's execution on September 18, 2020." (Blue Br. at 8.) This expectation is not supported by the evidence in the record.

As set forth above, some form of ISO-NE transmission study was always a required part of the interconnection process. Snakeroot Solar's argument reads out the fact that its project was subject to a cluster study as a requirement of interconnection. Simply put, Snakeroot Solar could not be interconnected in the absence of a completed transmission-level study, whether it was studied in a cluster or studied in another method allowed under the Tariff and the IA. As Snakeroot Solar notes, part of its required interconnection upgrades includes a capacitor bank, an equipment upgrade identified at the conclusion of the cluster study. (Blue Br. at 39.) For Snakeroot Solar to argue that it could have started and completed construction, without knowing what the full extent of the required upgrades would be, ignores the reality of the interconnection process for its project.

Snakeroot Solar's argument also ignores the reality of the equipment procurement process to which its project is now subject. Snakeroot Solar has yet to receive any official construction timeline from CMP. The timeline Snakeroot Solar relies upon is merely an estimated timeline provided by CMP when it completed the I.3.9 process. The actual construction timeline could be shorter or longer but there is no way to know for sure until CMP performs that analysis.

III. A LONG CONSTRUCTION SCHEDULE IS AN EXPECTED PART OF THE INTERCONNECTION PROCESS.

Snakeroot Solar argues that procurement and construction timeframes are external delays over which it has no control and that the Commission has abused its discretion by denying Snakeroot Solar relief while granting other projects relief for procurement-related issues. (Blue Br. at 24, 37.) The Commission's finding is supported by substantial evidence on the record.

Turning to Snakeroot Solar's first argument, in this case the Commission found

> no evidence that the process or construction schedule as presented by CMP is delayed. CMP has estimated that construction of necessary upgrades is projected to take at least two years largely based on procurement lead times as provided by vendors. These lead times currently represent the industry standard and obtaining the necessary equipment sooner is not possible.

(A. 022.) Snakeroot Solar argues that the Commission erred by relying on timelines that were based on what was happening at the time it issued its Order, rather than timelines that Snakeroot Solar could have anticipated at the time that it first entered the queue. (Blue Br. at 25.) This argument is unavailing.

The participants in the Cluster 06 study did not receive I.3.9 approval from ISO-NE until August 31, 2023. This is the point in time at which a project developer would be making decisions as to whether to go forward with

construction of the project, with the knowledge that there was a statutory deadline of December 31, 2024, that had to be met. Snakeroot Solar's expectation back in 2020 when it entered the queue as to how long it would take to get its project operational was significantly altered by its experience in the cluster study process. As of the time the Commission issued its Order in this case, Snakeroot Solar had not made payment to CMP to go forward with the construction, which CMP estimated would take 24 to 30 months to complete. (A. 020.) At this point in the interconnection process, Snakeroot Solar has been given clear information from CMP about when it can expect its project to come on line, estimated in late 2025 as of the date of Snakeroot Solar's petition, and it is clear that the project cannot expect to interconnect prior to December 31, 2024.

Turning to Snakeroot Solar's second argument, the Commission has granted good-cause exemptions for other projects experiencing specific and limited procurement delays. In *Pembroke Solar, LLC*, Petition for Good-Cause Exemption Pursuant to 3209-A, No. 2023-00394, Order (Me. P.U.C. Jun. 18, 2024), the Commission granted a developer a good-cause exemption when it was able to show the procurement timeline for a specific piece of equipment was delayed after the developer had received an official construction timeline with an estimated commercial operation date firmly in 2024 from the interconnecting utility, and after the project had made all required interconnection payments in reliance on the

estimated date to reach operation. *Id.* at 6. The developer in *Pembroke Solar*, at the time it was making a critical decision about moving forward with its project, evaluated all of the information available to it and reasonably determined that it could reach commercial operation by the end of 2024. *Id.*

Snakeroot Solar does not find itself similarly situated. First, Snakeroot Solar has never been given any official construction schedule from CMP. As of the filing of Snakeroot Solar's petition, CMP had not started any procurement or design activities that would trigger the issuance of a construction schedule that it could reasonably rely upon. (A. 020.) Snakeroot Solar has only paid 25% of the required distribution upgrade costs and no portion of the transmission upgrade costs. (A. 017.) And while Snakeroot Solar had commenced construction of the facility at the time of its filing, it did so without any assurance that it could reasonably expect to be commercially operational at any point in 2024. (Blue Br. at 38.)

IV. LEAP-FROGGING IS A CONSEQUENCE OF THE CHAPTER 324 RULES IN PLACE AT THE TIME AND DOES NOT CONSTITUTE AN EXTERNAL DELAY OVER WHICH IT HAD NO CONTROL.

Snakeroot Solar argues that it "was delayed by leapfrogging," a process that arose as "the result of Commission rulemaking" and thus, "not in control of" Snakeroot Solar. (Blue Br. at 28.) As a project seeking to interconnect, Snakeroot Solar was always subject to the Commission's Chapter 324 interconnection rules,

and it was also subject to the Commission's ability to amend and interpret Chapter 324, as were all developers of distributed generation projects during the period of time following the 2019 NEB Act that expanded NEB and led to the massive influx of projects to the interconnection queue. The version of the rule applicable during the period when Snakeroot Solar was moving through the interconnection process allowed leapfrogging as set forth in section III(B) above. *See* 65-407 C.M.R. ch. 324 § 2(KK) (2022). Because leapfrogging was a part of Chapter 324, it was known to developers seeking to interconnect DERs who could anticipate the issues leapfrogging might cause and mitigate the situation should their project be subjected to leapfrogging.

V. A GOOD-CAUSE EXEMPTION IS DISCRETIONARY

The Commission concluded that Snakeroot Solar failed to meet its burden of showing that its experiences in attempting to interconnect its project constituted an external delay but for which it would have been able to achieve commercial operation by the statutory deadline of December 31, 2024. It is important to recognize that the Legislature gave the Commission the discretion to interpret the good-cause exemption and apply it in the manner that best serves the intent of the statute.

The plain language of the good-cause exemption clearly states that the Commission "*may*" grant a good-cause exemption should it find that an external

delay exists. The Legislature did not direct that the Commission *shall* grant a good-cause exemption upon the finding of an external delay, nor did the Legislature require the Commission to provide a safe harbor for projects that were in the queue at the time the statutory milestones were put in place as Snakeroot Solar suggests. (Blue Br. at 13.)

Snakeroot Solar argues that because it has met the other milestones in the statute, it is "precisely the sort of facility the legislature intended to participate in the NEB program and to find relief in the good-cause exemption." (Blue Br. at 20.). The Commission disagrees. Through the four years the Commission has been interpreting the good-cause provision it has taken a narrow view of the exemption. The Legislature was clear in its intent that projects must meet the milestones in order to qualify for participation in the NEB program, and that a developer may petition if it does not meet a particular milestone. The statute is devoid of language to instruct the Commission as to which sort of facility would be entitled to an exemption. In cases involving the interconnection process, the Commission has been consistent in holding that the developer must show more than the usual complicated and lengthy process that is inherent to interconnecting a project to prove that there was an external delay beyond its control. The Commission's interpretation of the good-cause exemption in this case properly interpreted the

exemption as a matter of law and in support of the legislative goal of limiting the growth of the NEB program.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that this honorable Court affirm the Commission's June 24, 2024 Order in Docket No. 2023-00236.

DATED: December 31, 2024

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CERTIFICATE OF SERVICE

I, Daya J. Taylor, hereby certify that I have emailed a copy of the above Brief of Appellee Maine Public Utilities Commission to the following parties in the above-described matter at the time when it was delivered via email to the Court:

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