

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

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LAW COURT DOCKET NO. PUC-25-60

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**ELLSWORTH ME SOLAR, LLC,**

**Appellant**

v.

**PUBLIC ADVOCATE, et al.,**

**Appellees**

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On Appeal from the Maine Public Utilities Commission

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**BRIEF OF APPELLEE MAINE PUBLIC UTILITIES COMMISSION**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	4
INTRODUCTION .....	6
STATEMENT OF FACTS AND PROCEDURAL HISTORY .....	7
I. STATUTORY AND REGULATORY BACKGROUND .....	7
II. FACTUAL BACKGROUND.....	9
A. Early Development of the Ellsworth Project .....	9
B. Equipment Procurement and Construction of the Ellsworth Project.....	10
III. PROCEDURAL BACKGROUND .....	14
ISSUES PRESENTED FOR REVIEW .....	16
STANDARD OF REVIEW .....	16
SUMMARY OF ARGUMENT.....	18
ARGUMENT .....	19
I. THE COMMISSION’S ORDER DENYING ELLSWORTH SOLAR A GOOD-CAUSE EXEMPTION DOES NOT CONSTITUTE ERROR. ....	19
A. The Good-Cause Exemption Statute Requires a Petitioner to Prove It Experienced an External Delay Outside Its Control.....	20
B. The Commission’s Decision is Supported by Substantial Evidence. ....	22
1. There is No Evidence Supporting Ellsworth Solar’s Claim that It Received a Construction Schedule from Versant in Spring 2023. ....	23
2. The Record Shows that Ellsworth Solar Did Not Experience an External Delay but for Which it Could Have Met the Required COD. ....	27
C. The Commission’s Denial of Ellsworth Solar’s Petition is Consistent with Commission Precedent. ....	29
II. THE COMMISSION’S ORDER DOES NOT IMPERMISSIBLY ALTER THE STATUTE.....	31
A. The Commission Analyzed Ellsworth Solar’s Reasonable Reliance Because That is the Argument Made in the Proceeding.....	32
B. Ellsworth Solar’s Decision to Move Forward With Construction Was Not Reasonable Based on the Information Received From Versant. ....	35

III. THE ORDER DOES NOT CREATE A NEW EVIDENTIARY STANDARD NOR REQUIRE THE REOPENING OF THE RECORD. ....	37
A. The Order Does Not Violate the Change in Policy Doctrine.....	37
B. The Commission is Not Required to Reopen the Record.....	39
CONCLUSION .....	42

## TABLE OF AUTHORITIES

### Cases

<i>Cent. Me. Power Co. v. Pub. Utils. Comm’n</i> , 2014 ME 56, 90 A.3d 451 .....	16
<i>Cent. Me. Power Co. v. Pub. Utils. Comm’n</i> , 405 A.2d 153 (Me. 1979) .....	16
<i>Competitive Energy Servs. LLC v. Pub. Utils. Comm’n</i> , 2003 ME 12, 818 A.2d 1039 .....	16
<i>Friedman v. Pub. Utils. Comm’n</i> , 2012 ME 90, 48 A.3d 794 .....	16
<i>Me. Coal. to Stop Smart Meters v. Pub. Utils. Comm’n</i> , 2023 ME 8, 703 A.3d 1195 .....	17
<i>Nisson v. Emp. Sec. Comm’n</i> , 455 A.2d 945 (Me. 1983) .....	38
<i>Oullette v. Saco River Corridor Comm’n</i> , 2022 ME 42, 278 3.Ad 1183 .....	17
<i>Sager v. Town of Bowdoinham</i> , 2004 ME 40, 845 A.2d 567 .....	17
<i>Snakeroot Solar, LLC v. Pub. Utils. Comm’n</i> , 25 ME 64, 340 A.3d 99 .... 20, 21, 22, 25, 29	

### Statutes

35-A M.R.S. § 3209-A(1)(B) .....	8
35-A M.R.S. § 3209-A(2) .....	7
35-A M.R.S. § 3209-A(7) .....	8
35-A M.R.S. § 3209-A(7)(E)(1) .....	8
35-A M.R.S. § 3209-B(7) .....	8
35-A M.R.S. § 3210(2)(B-3) .....	8
35-A M.R.S. §3209-A(9) .....	6, 21

### Public Laws

P.L. 2019, ch. 478 .....	7
P.L. 2021, ch. 390 .....	8
P.L. 2023, ch. 411 .....	8, 27

### Rules

67-407 C.M.R. Ch. 110, § 11(D) (2009) .....	15, 39
67-407 C.M.R. Ch. 313, § 2(M) (2025) .....	14

## Administrative Rulings and Proceedings

<i>BD Solar Daves Way LLC</i> , Petition for Good Cause Exemption Pursuant to 35-A § 3209-A, No. 2021-00398, Order (Me. P.U.C. Apr. 20, 2022) .....	33
<i>Ellsworth ME Solar, LLC</i> , Request for Good-Cause Exemption Pursuant to 35-A M.R.S. 3209-A, No. 2024-00108, Order (Me. P.U.C. Dec. 13, 2024).....	6
<i>Ellsworth Renewables, LLC</i> , Request for Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2023-00333, Order (Me. P.U.C. Sept. 25, 2024) 29, 30, 38	
<i>Loki Solar LLC</i> , Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-00317, Order (Me. P.U.C. Apr. 26, 2022) .....	35
<i>Pembroke Solar LLC</i> , Petition for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00304, Order (Me. P.U.C. June 20, 2024) . 29, 30, 38	
<i>Penobscot River Solar, LLC</i> , Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00091, Reconsideration Order (Me. P.U.C. Mar. 6, 2024) .....	31
<i>Penobscot River Solar, LLC</i> , Request for a Good-cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00091, Order (Me. P.U.C. Nov. 20, 2024) .....	30
<i>Roxbury Solar Farm, LLC</i> , Request for a Good-Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00043, Procedural Order at 1 (Me. P.U.C. Nov. 7, 2024) .....	40
<i>TPE Development, LLC (Pond Road Project)</i> , Petition for Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2022-00365, Order (Me. P.U.C. June 7, 2023).....	33
<i>Trenton Solar, LLC</i> , Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00183, Notice of Hearing (Me. P.U.C. Jun. 13, 2025) .....	41
<i>Trenton Solar, LLC</i> , Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00183, Order (Me. P.U.C. Aug 25, 2025).....	35

## INTRODUCTION

In an Order issued December 13, 2024, the Maine Public Utilities Commission (Commission) denied the Petition of Ellsworth ME Solar, LLC (Ellsworth Solar) for a good-cause exemption because Ellsworth Solar did not demonstrate that its 1.99 megawatts (MW) photovoltaic generator (the Ellsworth Project) experienced an external delay but for which it could have been expected to be commercially operational by December 31, 2024. (A. 0009-0014); *Ellsworth ME Solar, LLC*, Request for Good-Cause Exemption Pursuant to 35-A M.R.S. 3209-A, No. 2024-00108, Order (Me. P.U.C. Dec. 13, 2024) (the Order). The Commission weighed the record evidence and found that Ellsworth Solar failed to establish by substantial credible evidence that it received a construction schedule from its interconnecting transmission and distribution (T&D) utility, Versant Power (Versant), in March 2023 as it claimed in its Petition. The Commission, therefore, further found that Ellsworth Solar failed to demonstrate that it moved forward with the Ellsworth Project based on the best estimation of Versant as to when the project would become commercially operational.

The Commission has previously granted good-cause exemptions, as directed by 35-A M.R.S. § 3209-A(9), when a petitioning project developer has demonstrated that it reasonably expected its project to be commercially operational by the statutorily established December 31, 2024 commercial operation deadline

(COD) but then, due to factors beyond the vicissitudes of the normal process of interconnection, that reasonable expectation could not come to fruition due to an external delay in the development process. In the matter before the Court, Ellsworth Solar did not demonstrate that it could have reasonably expected a 2024 COD, therefore its reliance on an alleged late delivery of a meter and voltage regulator did not constitute external delays but for which the Ellsworth Project could have been commercially operational by December 31, 2024.

Ellsworth Solar appeals the Commission's December 13, 2024 Order, denying 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**

In 2019, Maine's Net Energy Billing (NEB) program underwent major changes through the enactment of P.L. 2019, ch. 478 (2019 NEB Act), which considerably broadened the program. The 2019 NEB Act expanded the NEB program to allow "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." 35-A M.R.S. § 3209-A(2) (2024). 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). 35-A M.R.S. § 3209-A(1)(B) (2024).

Due to the rapid expansion of the NEB program in response to the 2019 NEB Act, the Legislature subsequently 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 DERs with a nameplate capacity of greater than 2 MW and not more than 5 MW must meet to be eligible to participate in the NEB program. 35-A M.R.S. § 3209-A(7) (2024); 35-A M.R.S. § 3209-B(7) (2024). One milestone is that any proposed DER must be commercially operational, in other words have a COD, on or before December 31, 2024. *Id.* § 3209-A(7)(E)(1). The 2021 NEB Act also included a provision that allowed an entity developing a DER that does not meet the COD requirement 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.” *Id.* § 3209-A(7).

In 2023, the Legislature again tightened the eligibility requirements for the NEB program by passing P.L. 2023, ch. 411 (2023 NEB Act), now codified at 35-A M.R.S. § 3209-A(9). The 2023 NEB Act expanded the December 31, 2024, commercially operational milestone to projects with a nameplate capacity over 1 MW in size but less than 2 MW in size. *Id.* § 3209-A(9). The Legislature again



included an opportunity for projects that could not meet the deadline to petition the Commission for a good-cause exemption. *Id.* The 2023 NEB Act, signed by the Governor on July 10, 2023, and effective on October 25, 2023, is the legislation applicable to the matter on appeal.

## **II. FACTUAL BACKGROUND**

Substantial record evidence demonstrates the following facts regarding the matter on appeal, Ellsworth Solar’s development of the Ellsworth Project.

### **A. Early Development of the Ellsworth Project**

Ellsworth Solar began developing the Ellsworth Project when it submitted an interconnection application to Versant on May 27, 2020 and signed an interconnection agreement on February 17, 2021. (A. 0010.) In March 2021, Versant notified the owners of the Ellsworth Project of the Independent System Operator New England’s (ISO-NE)<sup>1</sup> determination that a cluster study would be required for the project due to high levels of DER penetration in the area of interconnection. (*Id.*) The Ellsworth Project received I.3.9 approval from ISO-NE on September 6, 2022.<sup>2</sup> (*Id.*) Ellsworth Solar and Versant executed an NEB Agreement on December 19, 2022. (*Id.*) The City of Ellsworth issued a local

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<sup>1</sup> ISO-NE is the governing authority and operator of the New England transmission system.

<sup>2</sup> I.3.9 approval from ISO-NE means that ISO-NE has reviewed the project pursuant to Section I.3.9 of the ISO Tariff and found the project will have no significant adverse effects on the reliability or operating characteristics of the New England transmission system.

zoning permit on February 24, 2023. (*Id.*) The Ellsworth Project received required permits from the Maine Department of Environmental Protection on January 24, 2024. (*Id.*)

## **B. Equipment Procurement and Construction of the Ellsworth Project**

Ellsworth Solar received its first interconnection cost invoice for the Ellsworth Project from Versant on October 25, 2022 and a second invoice on February 22, 2023. (*Id.*) As confirmed by Versant, Ellsworth Solar paid 100% of its interconnection costs on February 22, 2023. (*Id.*) Following this full payment the Ellsworth Project moved “into the Project Management stage to begin [its] design” with Versant. (*Id.*)

On March 25, 2023, Ellsworth Solar began civil construction work and tree clearing on site and states that it began this work “based on Versant’s initial schedule.” Petition at 9. (A. 0005, CMS Item No. 1.)<sup>3</sup> On March 30, 2023, a representative from Versant sent Ellsworth Solar an introductory email identifying himself as the Project Manager assigned to the Ellsworth Project and requesting an initial meeting. ODR-001-003, Att. 9 (A. 0007, ODR-001-003.) The Project Manager did not include a construction schedule in his introductory emails to

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<sup>3</sup> 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.” or “DR No.” The CMS Item No. corresponds to the “Item No.” column in the docket sheets found on pages A. 0003-0006 of the Appendix. The DR No. corresponds with the “DRSetID” found on pages A. 0007-0008 of the Appendix.

Ellsworth Solar. (*Id.*) Subsequent emails in the chain show that the Project Manager and Ellsworth Solar met for the first time on April 5, 2023. (*Id.*) Follow-up emails after the meeting do not indicate that Versant forwarded any construction schedule to Ellsworth Solar following this initial meeting. (*Id.*) On April 18, 2023, Versant started procuring equipment for the project, including a voltage regulator. (A. 0011.)

Versant's Project Manager contacted Ellsworth Solar again on June 6, 2023. ODR-001-003, Att. 8. (A. 0007, ODR-001-003.) In that email, the Project Manager noted that he had "a preliminary schedule put together and [he] would like to get that over" to Ellsworth Solar the following week. (*Id.*) Versant testified that it provided the first construction schedule to Ellsworth Solar on June 21, 2023. (A. 0011.) Emails provided by Ellsworth Solar confirm this because on June 21, 2023, Versant's Project Manager sent an email to Ellsworth Solar that contains the "initial Versant Power Construction Schedule" for the Ellsworth Project. ODR-001-003, Att. 12. (A. 0007, ODR-001-003.)

In a subsequent sent email on the same day and to other members of the Ellsworth Solar team, a representative of Ellsworth Solar states that the "interconnection schedule at Ellsworth has been pushed back from 6/1/2024 to 2/11/2025." (*Id.*) Another representative of Ellsworth Solar responds, acknowledging that the schedule was "concerning as one of the Bills being

proposed in ME would require NEB projects to be COD by the end of 2024.” (*Id.*)

On June 26, 2023, after a call with Versant, Ellsworth Solar learned that a long lead time for the required meter was affecting the construction schedule.<sup>4</sup> (*Id.*) On July 10, 2023, Governor Mills signed L.D. 1986, the bill which became P.L. 2023, ch. 411, 2023 NEB Act, and set a December 31, 2024 COD for any project between 1 MW and 2 MW in size, such as the Ellsworth Project.

After receiving the June 21, 2023 email containing a construction schedule identifying a February 11, 2025 COD, Ellsworth Solar paused construction on the project. (A. 0011.) Ellsworth Solar paused construction because if it moved forward and installed inverters at the project site, the inverters would “not survive two winters without power.” ODR-001-003, Att. 12. (A. 0007, ODR-001-003.) At that point, as noted above, Versant had notified Ellsworth Solar that the meter may arrive earlier than scheduled, (*Id.*), and Ellsworth Solar and Versant pressed forward with other development activities despite the construction pause.

Ellsworth Solar provided its own internal construction schedule to Versant in an email dated August 2, 2023. ODR-001-003, Att. 6. (A. 0007, ODR-001-003.)

Between August 2023 and February 2024, Versant also commenced work on the

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<sup>4</sup> Ellsworth Solar learned that “the long lead time item is the Tariff Meter which they [Versant] expect will come in earlier than the schedule.” (*Id.*)

necessary real estate easements for the project. ODR-001-003, Att. 2. (A. 0007, ODR-001-003.)

Following enactment of the 2023 NEB Act and after having received the June 21, 2023, email containing a construction schedule identifying a February 11, 2025 COD, Ellsworth Solar nonetheless resumed construction starting in February 2024. (A. 0011.) Ellsworth Solar explained that it restarted construction “to ensure it could achieve the COD Deadline and maintain the timeline for construction of the Project.” EXM-001-017 (A. 0007, EXM-001-017.) On February 26, 2024, a representative of Ellsworth Solar contacted Versant inquiring “about the type of equipment that is potentially causing delay into 2025” and requesting “any updates on that equipment schedule and what equipment it is” in preparation for a good-cause exemption petition. ODR-001-003, Att. 6 (A. 0007, ODR-001-003.) On February 29, 2024, a Versant representative now responded that it was a voltage regulator that was pushing the COD into 2025, a different piece of equipment than the meter, which was the equipment responsible for delaying the Ellsworth Project when it received its first construction schedule in the June 21, 2023 email. (*Id.*) On March 27, 2024, Ellsworth Solar received an updated construction schedule from Versant which accounted for the delay associated with the voltage regulator. (*Id.*) The updated construction schedule further delayed the COD of February 11, 2025, to an estimated COD of March 6, 2025. (*Id.*)

On April 11, 2024, Versant emailed a construction schedule for the project showing a 2024 COD and provided it to Ellsworth Solar “for good cause exemption purposes.” ODR-001-003, Att. 2. (A. 0007, ODR-001-003.) Versant later emailed Ellsworth Solar copies of all construction schedules created for the project for Ellsworth Solar to use for its good-cause exemption petition. (*Id.*)

Ellsworth Solar started solar array construction in May 2024. (A. 0011.) On July 14, 2024, Ellsworth Solar confirmed with Versant that the meter, the equipment that was originally delaying the project when it received the June 21, 2023 construction schedule, had actually arrived in late 2023. ODR-001-003, Att. 1 (A. 0007, ODR-001-003.) Ellsworth Solar reached mechanical completion on August 30, 2024.<sup>5</sup> (A. 0011) Ellsworth Solar did not reach final COD in 2024 because Versant did not complete the interconnection upgrades due to the delayed voltage regulator.

### **III. PROCEDURAL BACKGROUND**

On May 7, 2024, Ellsworth Solar filed a request for a good-cause exemption on the grounds that the Ellsworth Project would be unable to achieve commercial operation by December 31, 2024. (A. 0009.)

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<sup>5</sup> “Mechanical completion” means that the eligible facility has been fully physically constructed and is ready for operation. 67-407 C.M.R. Ch. 313, § 2(M) (2025).

The Commission adjudicated Ellsworth Solar's request for good-cause exemption over the next eight months, which included submission of testimony, written discovery, a technical conference, and briefing. (A. 0010.) On November 18, 2024, Commission Staff issued an Examiner's Report which recommended granting a good-cause exemption. (A. 0067-0075.) On December 2, 2024 the Office of the Public Advocate (OPA), an intervenor in the matter, filed exceptions to the Examiner's Report highlighting inconsistencies in the record. The OPA urged the Commission to deny the request for a good-cause exemption. (A. 0003, CMS Item No. 33.)

On December 13, 2024, the Commission issued the Order denying the request for a good-cause exemption for Ellsworth Solar. (A. 0009-0014.) With regard to the interconnection process experienced by Ellsworth Solar, the Commission found that Ellsworth Solar made critical development decisions and moved ahead with its project with full knowledge that the project would be unable to meet the December 31, 2024 COD milestone. (A. 0013.)

On January 2, 2025, Ellsworth Solar filed a Request for Reconsideration, Re-opening of Record. (A. 0044-0093.) On January 9, 2025, the OPA filed an Opposition to Reconsideration, Re-opening of the Record. (A. 0003, CMS Item No. 36.) On January 13, 2025, Ellsworth Solar filed a Reply to the OPA's Opposition to Reconsideration. (A. 0003, CMS Item No. 37.) The Commission

denied Ellsworth Solar's Request for Reconsideration by operation of law pursuant to Commission Rule, which provides that any petition for reopening or reconsideration not granted within 20 days from the date of filing is denied. 67-407 C.M.R. Ch. 110, § 11(D) (2009).

Ellsworth Solar filed a timely appeal of the Commission's Order denying a good-cause exemption for its project and the Commission's denial of the petition to reconsider and reopen the record.

### **ISSUES PRESENTED FOR REVIEW**

1. THE COMMISSION'S DENIAL OF A GOOD-CAUSE EXEMPTION FOR ELLSWORTH SOLAR DOES NOT CONSTITUTE LEGAL ERROR BECAUSE IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND IS CONSISTENT WITH STATUTE AND COMMISSION PRECEDENT.
2. THE COMMISSION DID NOT IMPERMISSIBLY ALTER THE GOOD-CAUSE EXEMPTION STATUTE.
3. THE COMMISSION'S ORDER DOES NOT CREATE A NEW EVIDENTIARY STANDARD NOR REQUIRE THE COMMISSION TO REOPEN 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." *Cent. 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 *Cent. 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).

The Law Court will “sustain findings of the facts issued by the Commission unless they are not supported by substantial evidence on the record.” *Me. Coal. to Stop Smart Meters v. Pub. Utils. Comm’n*, 2023 ME 8, ¶ 7, 703 A.3d 1195 (quotation marks and alteration omitted). In its review of decisions, the Law Court “does not involve any weighing of the merits of evidence; instead [it] will vacate an agency’s factual findings only if there is no competent evidence in the record to support the findings . . . even if the record contains inconsistent evidence or evidence contrary to the result reached by the agency.” *Oullette v. Saco River Corridor Comm’n*, 2022 ME 42, ¶ 20, 278 3.Ad 1183 (citation and quotation mark omitted).

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.*

### **SUMMARY OF ARGUMENT**

The Commission correctly denied Ellsworth Solar's request for a good-cause exemption pursuant to the language contained in 35-A M.R.S. § 3209-A(9). This statutory provision sets a December 31, 2024 commercial operation deadline that interconnecting distributed generation projects, with a nameplate capacity between 1 and 2 MW, must meet to be eligible to participate in the NEB program. The Commission interprets the statute narrowly to effectuate the legislative goal of limiting the number of projects eligible for Maine's NEB program. The Commission determined that Ellsworth Solar did not meet its evidentiary burden to show that interconnection equipment with long lead times, which ultimately pushed the Ellsworth Project's anticipated COD beyond the statutorily mandated

COD, was an external delay and that but for the delay, the Ellsworth Project could have expected to come online prior to the end of 2024.

The Commission's Order is based on the finding that Ellsworth Solar did not receive a construction schedule that anticipated a 2024 COD as it claimed it did and therefore its decision to move forward with construction of the Ellsworth Project was unreasonable in light of the information it received from the interconnecting T&D utility. The Commission's Order does not impermissibly alter the statute but rather issues a ruling in direct response to Ellsworth Solar's claims and arguments. The Commission's Order is also consistent with previous Commission orders addressing similar circumstances and was decided using the same evidentiary burden.

## **ARGUMENT**

### **I. THE COMMISSION'S DENIAL OF A GOOD-CAUSE EXEMPTION FOR ELLSWORTH SOLAR DOES NOT CONSTITUTE LEGAL ERROR.**

Ellsworth Solar asserts that the "evidence demonstrates that equipment procurement delays by Versant were the sole reason that [Ellsworth Solar] failed to meet the COD Deadline and, as such, it has met the test for a good cause exemption" and that any contrary decision constitutes error. (Blue Br. 23.) Ellsworth Solar urges the Court to "vacate the Order and remand to the

Commission with instructions to grant Ellsworth Solar a good cause exemption.”  
(*Id.* at 24.)

The Court, however, should reject Ellsworth Solar’s argument and uphold the decision because Ellsworth Solar failed to meet its burden to show that the procurement of equipment constituted an external delay and to show that, but for the delay, it could have achieved a December 31, 2024 statutory COD. The Commission’s decision is based on substantial evidence in the record and is consistent with prior Commission decisions based on similar facts.

**A. The Good-Cause Exemption Statute Requires a Petitioner to Prove It Experienced an External Delay Outside Its Control.**

The Commission has consistently applied a narrow interpretation of the good-cause exemption provision contained in 35-A M.R.S. § 3209-A(9) to serve the Legislative intent of the statute, which was to reduce participation in the NEB program. This Court has recently upheld this interpretation with regard to the identically worded 35-A M.R.S. § 3209-A(7).<sup>6</sup> See *Snakeroot Solar, LLC v. Pub. Utils. Comm’n*, 25 ME 64, ¶¶ 31-33, 340 A.3d 99.

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<sup>6</sup> Subsection 3209-A(7) applied in *Snakeroot Solar*, *Snakeroot Solar v. Pub. Utils. Comm’n*, 25 ME 64, 340 A.3d 99, because the project at issue was sized between 2 MW and 5 MW, whereas subsection 3209-A(9) applies to the Ellsworth Project because its proposed size is 1.99 MW.

In 2023 the Legislature enacted limiting milestones on NEB projects, such as the one at issue on appeal, sized between 1 MW and 2 MW. The 2023 Act allows:

(9) [a] distributed generation resource with a nameplate capacity of at least one megawatt and not more than 2 megawatts may be used for net energy billing under this section only if the requirements of paragraph A are met.

A. On or before December 31, 2024, the proposed distributed generation resource must reach commercial operation by the 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(9). As with regard to subsection 3209-A(7), the Legislature carved out a good-cause exemption process for meritorious projects in danger of missing the milestone:

An entity proposing the development of a distributed generation resource that does not meet the requirement 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 requirement.

*Id.* Just as in section 3209-A(7) a petitioner seeking an exemption pursuant to section 3209-A(9) must (1) prove that it experienced a delay outside of its control, and (2) prove that, but for the external delay, it could have reasonably been expected to meet the COD milestone. The burden is on NEB project developers to

demonstrate they have satisfied the good-cause exemption standard. *See Snakeroot Solar, LLC v. Pub. Utils. Comm’n*, ¶¶ 33-35, 340 A.3d 99.

The Commission interprets the good-cause exemption standard narrowly so as to “effectuate[] the Legislature’s intent to curtail eligibility for participation in the NEB program even for projects . . . underway.” *Id.* ¶ 33. The Commission will find an external delay when the developer is able to show it experienced more than “the vicissitudes of the normal interconnection process.” *Id.* ¶ 35. The “language of the statute is discretionary” and creates “no entitlement to an exemption.” *Id.* ¶ 34.

Thus, the burden was on Ellsworth Solar to demonstrate it had satisfied the good-cause exemption standard. As explained below, the Commission properly found that the interconnection process experienced by Ellsworth Solar, which included long lead times to procure a meter and then later a voltage regulator, did not constitute “an eleventh-hour, unanticipated change in” circumstances. *See id.* ¶ 42.

#### **B. The Commission’s Decision is Supported by Substantial Evidence.**

Ellsworth Solar argues that, because it proceeded with its project “during a period when the utility was estimating an in-service date in 2024,” its case is distinguished from Commission decisions denying good-cause exemptions where petitioners received “an initial interconnection schedule extending well into 2025.” (Blue Br. 32.) The Commission’s decision in Ellsworth Solar, however, is based on

substantial record evidence showing that the initial construction schedule received by Ellsworth Solar showed an interconnection schedule extending well into 2025. As the Order correctly finds “the first time [Versant] provided Ellsworth Solar with any construction schedule was in June 2023 and that schedule projected a COD of February 11, 2025.” (A. 0012.) The Commission’s decision is based on the finding that there is no credible, substantial evidence to support Ellsworth Solar’s claim that it received a construction schedule in-hand prior to June 21, 2023 with a COD 2024, and therefore, the procurement process Ellsworth Solar experienced did not constitute an external delay but for which it could have been expected to reach the December 31, 2024 COD milestone required by 35-A M.R.S. § 3209-A(9).

*1. There is No Evidence Supporting Ellsworth Solar’s Claim that It Received a Construction Schedule from Versant in Spring 2023.*

Ellsworth Solar has maintained throughout this proceeding, and now on appeal, that it started and “completed construction in reliance upon an interconnection schedule that the utility could not maintain due to late deliveries by its equipment suppliers.” (Blue Br. 7.) In Ellsworth Solar’s initial good-cause Petition, Ellsworth Solar stated that it “began tree clearing and civil construction work on the project site on March 25, 2023 based on Versant’s initial schedule with an expected COD for the Project in November 2023.”<sup>7</sup> Petition at 9. (A. 0005,

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<sup>7</sup> The reference to November 2023 appears to be a typographical error.

CMS Item No. 1.) Then, in its testimony, Ellsworth Solar stated that it had “made significant investments in the Project in reliance upon the March 2023 schedule” and this schedule anticipated a 2024 COD. Test. 7:9-10. (A. 0004, CMS Item No. 11.) This claim is repeated in Ellsworth Solar’s answer to a data request, EXM-001-017, where it states that “in March 2023, Ellsworth Solar received an interconnection schedule from Versant indicating an expected in service date (“ISD”) in November 2024.”<sup>8</sup> EXM-001-017. (A. 0007, EXM-001-017.)

Ellsworth Solar also maintains that its version of events is “undisputed.” (Blue Br. 20, 23, 40, 41.) The record, however, is ambiguous in this regard and the record does not compel the conclusion that in March 2023 Ellsworth Solar received a construction schedule with a 2024 COD as it claims it did. The only evidence of this claim is from Ellsworth Solar’s own inconsistent statements.

The record in this proceeding, including a series of responses to data requests, demonstrates a much different version of events than Ellsworth Solar’s recitation. First, the record shows that Versant assigned a Project Manager to the Ellsworth Project and that on March 30, 2023 the Project Manager initially contacted Ellsworth Solar via email. ODR-001-003, Att. 9. (A. 0007, ODR-001-003.) There is no indication in the email that the Project Manager included any construction schedule at that time. *Id.* Ellsworth Solar and the Project Manager

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<sup>8</sup> “In-service date” is the term Versant uses for COD.



subsequently met on April 5, 2023. *Id.* There is no evidence that Versant provided any construction schedule in subsequent emails between Ellsworth Solar and the Project Manager following the initial meeting. *Id.*

The record next shows that on June 5, 2023 the Project Manager contacted Ellsworth Solar with an update on procurement. ODR-001-003, Att. 8. (A. 0007, ODR-001-003.) In the email, the Project Manager specifically states that he has “a preliminary schedule roughly put together” and that he would “like to get that over to you guys next week.” *Id.* On June 21, 2023, the Project Manager included a schedule in an email sent to Ellsworth Solar, and the email referred to the schedule as the “initial Versant Power Construction Schedule.” ODR-001-003, Att. 12. (A. 0008, ODR-001-003.) In a data request Versant stated that it provided Ellsworth Solar with the first construction schedule in June 2023, and this schedule showed that the COD for the project was February 11, 2025. ODR-002-002. (A. 0008, ODR-002-002; A. 0011.) Finally, in an email sent the next calendar year, on April 11, 2024, Versant provided an earlier draft construction schedule, the construction schedule Ellsworth Solar claims it relied upon in March 2023, and the email shows that Versant provided the document to Ellsworth Solar in preparation for the good-cause exemption petition. (A. 0011.) Versant provided this construction schedule despite giving Ellsworth Solar a construction schedule less than one month earlier, on March 27, 2024, which estimated a COD of March 6, 2025. ODR-001-003, Att.

6 (A. 0007, ODR-001-003.) Receipt of the more favorable construction schedule in April 2024 does not change that on June 21, 2023 Ellsworth Solar had a construction schedule which, as in a prior proceeding where the Commission denied a good cause exemption, “clearly foretold” that the Ellsworth Project “would be unable to reach commercial operation until well beyond the statutory deadline of December 31, 2024.” *Snakeroot Solar v. Pub. Utils. Comm’n.*, ¶ 38, 340 A.3d 99.

Even without the construction schedule Ellsworth Solar claimed it received in March 2023, Ellsworth Solar argues that it had every reason to anticipate a 2024 COD prior to the issuance of a schedule on June 21, 2023. (Blue Br. 36-37.) First, Ellsworth Solar states that Versant’s “receipt of the ISO-NE letter in September 2022, which communicated Versant’s anticipated in-service date on June 30, 2024” demonstrated Versant’s anticipated COD projections for the project. (Blue Br. 36.) It was not reasonable to rely upon this letter because the letter in question is a communication between Versant and ISO-NE and there is nothing in the record indicating that this anticipated COD was ever communicated to Ellsworth Solar directly and even it was, there is nothing in the record explaining why such a statement is reliable.

Second, Ellsworth Solar states that “[i]n regular interconnection meetings to discuss the schedule from March – June of 2023, Versant confirmed the scheduled

COD for [the Ellsworth Project] remained November 25, 2024.” (Blue Br. 37.)

There is little evidence of these meetings or what was discussed during the meetings in the record developed before the Commission in this case. The only reference to these meetings are in Ellsworth Solar’s Request for Reconsideration and they are raised in an attempt to reopen the record to present evidence that it did not present during the proceeding.

The Commission concluded Ellsworth Solar’s assertion that it moved ahead with its project in March 2023 based on a schedule that Versant provided at that time, which showed a 2024 COD was not credible. There is no credible evidence showing that Ellsworth Solar received a physical construction schedule or any specific COD estimates from Versant prior to June 21, 2023. The June 21, 2023 schedule, issued at a time when Ellsworth Solar was poised to make a decision as to whether it would proceed with the project, communicated a February 11, 2025 COD. If Versant or Versant’s Project Manager shared any other definitive, documented time estimations with Ellsworth Solar in meetings or communications prior to June 21, 2023, that information was not entered into the record.

*2. The Record Shows that Ellsworth Solar Did Not Experience an External Delay but for Which it Could Have Met the Required COD.*

The Commission’s Order is based on evidence showing that “the first time [Versant] provided Ellsworth Solar with any construction schedule was in June

2023 and that schedule projected a COD of February 11, 2025,” thus, the Commission concluded Ellsworth Solar proceeded with its project “at its own risk, without any assurance that the project could be online prior to the statutory deadline.” (A. 0012.)

On July 10, 2023, the Governor signed L.D. 1986, and the law became effective on October 25, 2023. P.L. 2023, ch. 411. Thus, as of July 10, 2023, Ellsworth Solar was on notice that it was subject to the 2023 NEB Act and subject to a December 31, 2024 COD deadline. Simply put, as of July 10, 2023, Ellsworth Solar knew or should have known that the 2024 COD deadline would be missed, and the record shows that representatives of Ellsworth Solar had some knowledge of the potential change in law and that it could affect the viability of its project. ODR-001-003, Att. 12 (A. 0007, ODR-001-003.) On July 10, 2023, the only tangible construction schedule estimate provided by Versant estimated a 2025 COD. (A. 0011.)

Rather than reevaluate its options in light of the new deadline it was subject to, Ellsworth Solar pressed forward. It emailed its own schedule to Versant on August 2, 2023. ODR-001-003, Att. 6. (A. 0008, ODR-001-003.) While the record shows that Ellsworth Solar had some hope that the meter, the piece of equipment delaying the project as of July 2023, would come in sooner than expected, there is nothing to suggest that this was an expectation that Ellsworth Solar could rely

upon. ODR-001-003, Att. 12 (A. 0008, ODR-001-003.) Ellsworth Solar’s decision to move forward with its project under these circumstances was a risk that it undertook. That decision was within Ellsworth Solar’s control and does not constitute an external delay under Title 35-A.

**C. The Commission’s Denial of Ellsworth Solar’s Petition is Consistent with Commission Precedent.**

The Petitioner argues that “[t]he same factors relied on previously by the Commission in prior exemption orders . . . compel the conclusion that the postponed delivery of Versant’s equipment was an external delay justifying exempting [Ellsworth Solar] from the COD deadline.” (Blue Br. 25.) The two cases the Petitioner relies on are *Pembroke Solar LLC*, Petition for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00304, Order (Me. P.U.C. June 20, 2024) (*Pembroke Solar*) and *Ellsworth Renewables, LLC*, Request for Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2023-00333, Order (Me. P.U.C. Sept. 25, 2024) (*Ellsworth Renewables*).<sup>9</sup> As this Court noted in the *Snakeroot Solar* decision, the timing of events matter, and in *Pembroke Solar* and *Ellsworth Renewables* both developers experienced an “eleventh-hour change” that altered their reasonable expectations that their projects could come online by

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<sup>9</sup> Ellsworth ME Solar, LLC and Ellsworth Renewables, LLC are different companies, owned by different parent companies, constructing different projects in different locations.

the end of 2024. *See Snakeroot Solar, LLC v. Pub. Utils. Comm’n.*, ¶ 42, 340 A.3d 99. The facts currently before the Court do not align with the facts in these two other cases.

*Pembroke Solar* and *Ellsworth Renewables* are nearly identical with regard to the key events in their development timelines: both petitioners received construction schedules in-hand from Versant, which anticipated a 2024 COD, and then later learned that delays in the equipment procurement process meant that the projects would miss the COD deadline. *Pembroke Solar* Order at 5-6; *Ellsworth Renewables* Order at 5-6. In all Commission decisions involving alleged utility procurement delays, the receipt of the construction schedule from the interconnecting utility serves as a brightline event signaling to developers that it is safe to move forward. *See Pembroke Solar* Order at 5; *Ellsworth Renewables* Order at 5; *Cf. Penobscot River Solar, LLC*, Request for a Good-cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00091, Order at 4, 6-7 (Nov. 20, 2024) (finding that the first construction schedule received by the petitioner anticipated a COD in 2025).

The decisions in *Pembroke Solar* and *Ellsworth Renewables* were based on substantial record evidence showing that the projects received construction schedules directly from Versant that comfortably anticipated COD in 2024. *Pembroke Solar* Order at 5; *Ellsworth Renewables* Order at 5. The Commission’s

decisions in these two cases are based on the 2024 COD provided by Versant in construction schedules and are not based upon any COD provided by ISO-NE as Ellsworth Solar argues. (Blue Br. 27.) In a previous case, the Commission found that any COD provided by ISO-NE should not be relied upon. *See Penobscot River Solar, LLC*, Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00091, Reconsideration Order at 3 (Mar. 6, 2024). The Commission explained that “[b]ecause ISO-NE is not the entity designing, procuring, and constructing the interconnection facilities, any reliance on this COD by [a developer is] misplaced. There is no basis for assuming that this estimate takes into account updated lead times for equipment procurement or Versant’s own process for design and construction.” *Id.*

Ultimately, the record does not establish that Ellsworth Solar experienced the same procurement process as *Pembroke Solar* and *Ellsworth Renewables*. As explained above, the record lacks substantial evidence to show that Ellsworth Solar had any construction schedule that demonstrated the Ellsworth Project had any reasonable expectation it could be online prior to December 31, 2024.

## **II. THE COMMISSION’S ORDER DOES NOT IMPERMISSIBLY ALTER THE STATUTE.**

Ellsworth Solar argues that the Commission’s “Order errs as a matter of law by grafting . . . a ‘reasonable reliance’ test despite the lack of such language in the

statute.” (Blue Br. 34.) What Ellsworth Solar reads as adding a “third requirement” to the good-cause exemption statute, however, is simply the Commission explaining that the record does not support Ellsworth Solar’s own statements and assertions with regard to its claims of reasonable reliance.

Ellsworth Solar argued that it moved ahead with its project based on a construction schedule it claims Versant provided, a claim the Commission did not find credible. Even if Ellsworth Solar now claims that it was not relying on the alleged March 2023 construction schedule with a purported 2024 COD, Ellsworth Solar’s construction decisions were not reasonable in light of the 2025 COD provided by Versant and Ellsworth Solar’s knowledge of the statutorily enacted December 31, 2024 COD deadline as of July of 2023 when the 2023 NEB law was enacted. The record shows, in July 2023, Ellsworth Solar was aware of the 2025 COD and there was still a year and a half before the end of 2024. On these facts, Ellsworth Solar’s decision to go forward with its project when it had received a schedule from Versant that the project would not be completed until first quarter of 2025 was not reasonable.

#### **A. The Commission Analyzed Ellsworth Solar’s Reasonable Reliance**

##### **Because That is the Argument Made in the Proceeding.**

Ellsworth Solar has stated and argued at multiple points in the proceeding that it “completed construction in *reliance* upon an interconnection schedule that



the utility could not maintain.” (Blue Br. 7 (emphasis added).) In its testimony, Ellsworth Solar stated that it “made significant investments in the Project in *reliance* upon the March 2023 schedule.” Test. 7:9-10 (emphasis added) (A. 0004, CMS Item No. 11.) In its initial Brief to the Commission, Ellsworth Solar argued that it “*relied* on Versant’s anticipated in-service date occurring before December 31, 2024.” Brief of Petitioner 8 (emphasis added) (A. 0003, CMS Item No. 28.) Ellsworth Solar now argues that it was error for the Commission to consider Ellsworth Solar’s own reliance claims at all.

In making its case to the Commission, Ellsworth Solar conceded that there is an inherent reasonable reliance standard in the Commission’s interpretation of the statute. The Commission has consistently interpreted the good-cause exemption language as containing a reliability standard. The Commission looks at 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 the NEB program. It is presumed by the Commission that the information provided by a utility will be reliable and represent the most current assessment of the individual interconnection circumstances for each project.<sup>10</sup> Thus, there is an

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<sup>10</sup> See *BD Solar Daves Way LLC*, Petition for Good Cause Exemption Pursuant to 35-A § 3209-A, No. 2021-00398, Order (Me. P.U.C. Apr. 20, 2022) (granting a good-cause exemption to a developer because neither Versant nor Central Maine Power Company could ascertain which territory the project was in); *TPE Development, LLC (Pond Road Project)*, Petition for Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2022-00365, Order (Me. P.U.C. June 7, 2023) (granting a good-cause exemption

expectation that a developer will use the information provided by the utilities to make careful, informed decisions about the project using the information available to it. The Commission must then determine whether the developer's decisions were reasonable.

To prevail in its request for a good-cause exemption, Ellsworth Solar needed to show what information it received from Versant, when it received it, and how that information informed its development decisions in moving the project forward. More specifically to Ellsworth Solar, it needed to prove receipt of a construction schedule from Versant in March 2023 and show that its reliance on such a schedule was, in fact, reasonable as it decided to move forward with development. As explained above, the record does not support Ellsworth Solar's claim that it received a construction schedule from Versant any earlier than the schedule received on June 21, 2023, which showed a 2025 COD. The Commission correctly determined that any reliance claimed by Ellsworth Solar was not reasonable.

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when the interconnecting utility did not disclose important information about a nearby non-wires alternative plan which would significantly impact the development of the project).

**B. Ellsworth Solar’s Decision to Move Forward With Construction Was Not Reasonable Based on the Information Received From Versant.**

Ellsworth Solar argues that its decision to move ahead with construction was reasonable and informed by Versant’s construction schedules, even if it wasn’t necessarily relying on the March 2023 construction schedule. (Blue Br. 36-39.) This argument is unavailing. While Ellsworth Solar’s work at the site, such as civil construction and tree work in March 2023 may have reflected wishful thinking, it was not reasonable to move forward after Versant provided the schedule in June of 2023 showing that the Ellsworth Project would miss the statutory deadline. Construction decisions are always within the developer’s control.<sup>11</sup> Any decisions Ellsworth Solar made to progress its project after July 10, 2023 were not reasonable.

Ellsworth Solar’s argument that it “had no choice but to continue with construction” after the law took effect is based on speculation about procurement events. (Blue Br. 38.) As discussed above, there was no reason for Ellsworth Solar

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<sup>11</sup> See *Loki Solar LLC*, Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2021-00317, Order (Me. P.U.C. Apr. 26, 2022) (denying a good-cause exemption because the developer chose a project site that it knew had to go through a substation rebuild prior to executing an interconnection agreement); *Trenton Solar, LLC*, Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00183, Order (Me. P.U.C. Aug 25, 2025) (denying a good-cause exemption due to a developer’s own lackadaisical approach to construction which prevented its project from coming online by the required date even when allowing for certain delays).

to assume the meter, or any other piece of long-lead time equipment, would arrive early enough to effectuate a 2024 COD.

Ellsworth Solar also states that it was reasonable for it “to re-start construction, once Versant received the meter ahead of schedule near the end of 2023.” (*Id.*) However, based on the record in this case, it is unclear what Ellsworth Solar understood about the status of the meter when it restarted construction in February 2024 and how that knowledge affected its decisions. In EXM-001-017, Ellsworth Solar testified that the meter did not factor into its decision to move forward with construction in February 2024. EXM-001-017 (A. 0007, EXM-001-017.) Further, in an email exchange between Ellsworth Solar and Versant in February 2024, Ellsworth Solar still understood it needed a good-cause exemption to qualify for the NEB program but had not yet learned about the delay attributed to the voltage regulator. ODR-001-003, Att. 6 (A. 0007, ODR-001-003.) Ellsworth Solar did not confirm the status of the meter until July 14, 2024, when it was well into its good-cause exemption proceeding before the Commission. ODR-001-003, Att. 1 (A. 0007, ODR-001-003.) It was not reasonable for Ellsworth Solar to restart construction in February 2024 because the record shows that the status of the Ellsworth Project was largely unchanged from what it was in June 2023. Ellsworth Solar made a decision to continue construction on a project that, the record shows,

it should have known could not achieve COD by the statutory deadline of December 31, 2024.

### **III. THE ORDER DOES NOT CREATE A NEW EVIDENTIARY STANDARD NOR REQUIRE THE REOPENING OF THE RECORD.**

Ellsworth Solar argues that the Commission “committed legal error and abused its discretion by seeking ‘corroborating evidence’ of an undisputed fact for the first time during its deliberations and thereafter denying Ellsworth Solar’s proffer of such evidence.” (Blue Br. 40.) Ellsworth Solar argues the Commission’s Order violates “the change in policy doctrine” and that the change requires, from the Commission, “(i) acknowledgement, (ii) explanation of the change, and (iii) an opportunity for the impacted party to provide information responsive to the new standard.” (Blue Br. 42.)

#### **A. The Order Does Not Violate the Change in Policy Doctrine**

Ellsworth Solar’s argument mistakenly conflates the deliberative, fact-finding process the Commission undertakes when rendering its decisions as the Commission imposing novel evidentiary requirements on Ellsworth Solar and thus allegedly violating the change in policy doctrine. Here, the record lacks substantial evidence supporting Ellsworth Solar’s claims surrounding receipt of the March 2023 construction schedule, the same kind of evidence the Commission has used in other good-cause exemption proceedings. Because the Commission is not applying

a new evidentiary standard, it is not violating the change in policy doctrine and thus is not required to take any of the steps identified by Ellsworth Solar.

Ellsworth Solar first argues that “the requirement for evidence corroborating that Versant timely emailed Ellsworth Solar the written schedule was a new evidentiary standard not applied in similar proceedings.” (Blue Br. 41.) This argument reflects an incorrect reading of previous, similar orders. The Commission’s requirement that a physical construction schedule, not merely a verbal representation by the T&D utility, serve as evidence of an interconnecting project’s COD expectations has been applied in other, similar cases. In *Pembroke Solar* and *Ellsworth Renewables*, the two cases cited by Ellsworth Solar, the evidentiary records for each case establish that Versant provided a physical construction schedule to each project when the project claims it received it. *Pembroke Solar* Order at 5; *Ellsworth Renewables* Order at 5. Such evidence then served as the basis for the claims that each petitioner moved forward with its project with the expectation that it could achieve a COD in 2024.

For example, the record in *Pembroke Solar* shows the petitioner received the construction schedule via email from Versant on February 23, 2023 and cites to the email in the record, which supports this finding of fact. *Pembroke Solar* Order at 5. Because the email corroborates Pembroke Solar’s statements and claims, the

Commission concluded there was substantial evidence to support granting a good-cause exemption in the matter.

However, when there is a dispute in the record as the projected schedule for a project, as there is here, the Commission concluded corroboration, or more evidence, was needed for Ellsworth Solar to demonstrate substantial, credible, record evidence in support of its request for an exemption. Ellsworth Solar claimed it relied on a March 2023 construction schedule it purported Versant gave to them. The record evidence, however, including the emails between Versant and Ellsworth Solar, and Versant's testimony, contradict this claim. As the Commission weighed the evidence in this record, it did not find Ellsworth Solar's claims credible. Given this inconsistency, the Commission concluded Ellsworth Solar had failed to produce substantial evidence to support the conclusion that it received a construction schedule from Versant with a 2024 COD in March 2023, and thus a lack of corroborating evidence supported the Commission's decision. This Court has consistently held that credibility findings are within the province of the agency and will not be disturbed on appeal. *See Nisson v. Emp. Sec. Comm'n*, 455 A.2d 945, 949 (Me. 1983).

**B. The Commission is Not Required to Reopen the Record.**

The Commission was under no obligation to reopen the record after its final Order as suggested by Ellsworth Solar. (Blue Br. 46-47.) Chapter 110 Section

11(D) of the Commission's rules allow parties to petition the Commission to reopen the record at the discretion of the Commission. 67-407 C.M.R. Ch. 110 § 11(D). Any petition "not granted within 20 days from the date of filing is denied." *Id.*

As explained in this Brief, Ellsworth Solar did not meet its evidentiary burden showing that it experienced an external delay, a determination that ultimately hinged on whether it received the construction schedule as claimed. If there is conclusive evidence showing that Versant did in fact provide the construction schedule as claimed by Ellsworth Solar, it was Ellsworth Solar's burden to provide that information prior to the record closing. Ellsworth Solar had ample opportunity to present evidence of having the alleged March 2023 construction schedule through responses to data requests and testimony. Nonetheless, following issuance of the Commission's final Order, Ellsworth Solar sought to admit an affidavit from the Project Manager assigned by Versant, and Microsoft Teams invitations with accompanying notes as proof of discussions between it and Versant's Project Manager regarding the alleged March 2023 construction schedule.

The Commission has exercised its discretion and re-opened the record in a limited set of instances where no final order had been issued and clarification was required. For example, in *Roxbury Solar Farm, LLC*, Request for a Good-Cause



Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00043, Procedural Order at 1 (Me. P.U.C. Nov. 7, 2024) (*Roxbury Solar*), the Commission re-opened the record *sua sponte* to request information on an interconnection process for which the Commission sought additional clarification prior to rendering a decision. In *Roxbury Solar*, the Commission reopened the record prior to the issuance of the final order. The additional information provided by the petitioner and other parties in the case were afforded an opportunity for cross-examination as required by the Maine Administrative Procedures Act. 5 M.R.S. § 9057(4)-(5) (2024). More recently, the Commission reopened the record in good-cause exemption proceeding for *Trenton Solar, LLC*, Request for a Good Cause Exemption Pursuant to 35-A M.R.S. § 3209-A, No. 2024-00183, Notice of Hearing (Me. P.U.C. Jun. 13, 2025) (*Trenton Solar*). In this instance, the Commission again reopened the record prior to the issuance of a final order. The Commission's determination in the matter required additional information about events that took place after the December 31, 2024 COD deadline and which were not developed over the course of the proceeding.

Thus, while the Commission has exercised its discretion to re-open proceedings prior to a final order and when it determines clarification is required, those circumstances were not present with respect to Ellsworth Solar. The issue of when and how Ellsworth Solar received construction schedules from Versant was

fully litigated in this proceeding. Ellsworth Solar's request to reopen the record regarded information that could have and should have been provided at hearing or in response to data requests propounded upon it. Ellsworth Solar had ample opportunity to present this evidence during the proceeding and failed to do so. Admitting an affidavit into the record without an opportunity for cross-examination would have been a violation of the Maine Administrative Procedures Act. 5 M.R.S. § 9057(4)-(5). As to the Microsoft Teams invitations, Ellsworth Solar failed to provide such evidence when it had the opportunity to do so. Discovery, ODR-001-003, requested any and all written communication between Versant and the Ellsworth Project between January 1, 2023 and August 2, 2024. The Microsoft Teams invitations with accompanying notes are within the scope of the data request. In short, Ellsworth Solar's argument that it was denied due process is without merit. For all these reasons, the Commission was within its discretion to deny Ellsworth Solar's request to reopen the record.

### **CONCLUSION**

For the foregoing reasons, the Commission respectfully requests that this honorable Court affirm the Commission's December 13, 2024 Order in Docket No. 2024-00108.

DATED: September 16, 2025

Respectfully Submitted,  
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## CERTIFICATE OF SERVICE

I, Daya J. Taylor, hereby certify that I have delivered 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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