

March 6, 2020

MAINE PUBLIC UTILITIES COMMISSION  
Amendments to Small Generator  
Interconnection Rules (Chapter 324)

ORDER AMENDING RULE  
AND STATEMENT OF FACTUAL  
AND POLICY BASIS

BARTLETT, Chair; WILLIAMSON and DAVIS, Commissioners

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## I. SUMMARY

Through this Order, the Commission amends its Small Generator Interconnection Rule (Chapter 324). The purpose of the amendments is to ensure the timeliness of the small generator interconnection process under Chapter 324, as directed by the Legislature through An Act to Promote Solar Energy Projects and Distributed Generation Resources in Maine, P.L. 2019, Chapter 478 (the Act).

## II. BACKGROUND

### A. Chapter 324

Chapter 324 of the Commission's Rules establishes procedures and protocols for interconnections to transmission and distribution (T&D) systems for small generators. The rule establishes requirements for four discrete generator categories: Levels 1, Level 2, Level 3 and Level 4, including protocols for application and review procedures.

Chapter 324 was last amended on November 27, 2019 in an emergency rulemaking. *Maine Public Utilities Commission, Amendments to Small Generator Interconnection Procedures Rule (Chapter 324)*, Docket No. 2019-00303, Order Adopting Emergency Rule (Nov. 27, 2019) (Order Adopting Emergency Rule). The emergency rule was based on proposed edits filed by Central Maine Power Company (CMP), Emera Maine, Maine Renewable Energy Association (MREA), and the Coalition for Community Solar Access (CCSA) (the "Joint Petitioners") on November 11, 2019.

### B. Legislation

The purpose of the amendments made in the emergency rulemaking was to ensure the timeliness of the small generator interconnection process under Chapter 324 as directed by the Legislature in the Act. Part B of the Act created a new distributed generation procurement program that requires the Commission to periodically solicit long-term contract proposals for specified target amounts of energy, capacity and renewable energy credits (RECs) from developers of renewable distributed generation (DG) facilities.

The Act includes the following language:

The commission shall ensure the timely review and execution of interconnection requests and the timely completion of work needed for the safe, reliable and cost-effective interconnection of distributed generation resources. The commission shall establish by rule requirements for investor-owned transmission and distribution utilities to interconnect distributed generation resources to the grid and financial penalties to ensure timely actions by those utilities to achieve the procurements under sections 3485 and 3486.

In its Order Adopting Emergency Rule, the Commission stated that it may adopt an emergency rule if it determines that following the rulemaking timelines set forth in 5 M.R.S. §§ 8052 and 8053 would present an immediate threat to public health, safety or general welfare. The Commission noted that to participate in the upcoming DG solicitation as required by the Act, bidders must have an executed interconnection agreement before July 1, 2020. Without improvements to the interconnection process as provided for in the emergency rule, the Commission found that many developers could be prevented from participating in the solicitation required by the Act, thereby reducing the competitiveness of the procurement and thwarting the objectives of the Act.

C. Notice of Rulemaking

As required by 5 M.R.S. § 8054, an emergency rule shall be in effect only until it is amended in accordance with 5 M.R.S. §§ 8052 and 8053, but in no event shall an emergency rule remain in effect for longer than 90 days from its effective date. Therefore, the Commission initiated a new rulemaking proceeding on January 13, 2020 when it issued a Notice of Rulemaking (NOR). *Maine Public Utilities Commission, Amendments to Small Generator Interconnection Procedures Rule (Chapter 324)*, Docket No. 2020-00004, Notice of Rulemaking (Jan. 13, 2020).

The NOR set an initial comment deadline of February 10, 2020, and a final comment deadline of February 23, 2020. A hearing was held on February 13, 2020. Additionally, multiple stakeholder conferences were held, involving both utilities and developers. Final comments were filed by Dimension Energy, ENGIE, Soltage, TurningPoint Energy (collectively, the "Solar Parties"), Borrego Solar Systems, Inc. (Borrego), BlueWave Solar (BlueWave), SunRaise Investments (SunRaise), MREA and CCSA, Emera Maine, and CMP. Additionally, Joint Final Comments were filed by the Joint Petitioners. The Joint Final Comments included a redlined version of Chapter 324 that reflected agreed-upon changes (Joint Proposed Rule) to the proposed Chapter 324 that accompanied the NOR.

D. Advisory Rulings

While the rulemaking was pending, the Commission issued two Advisory Rulings clarifying the currently effective emergency rule.

On February 19, 2020, the Commission issued an Advisory Ruling regarding Section 13(D)<sup>1</sup> of the emergency rule, which addresses allowed modifications to a DG facility that does not result in the loss of queue positions. The Commission found that the removal of battery storage from a DG facility is an allowed modification under Section 13(D)(1) of Chapter 324. However, whether it is a one-time modification under Section 13(D)(1)(d) of the emergency rule or a modification to technical parameters under Section 13(D)(1)(c) will depend on the configuration of the facility. *Borrego Solar Systems, Inc., SunRaise Development, LLC, Petition for Advisory Ruling Regarding Chapter 324 – Removal of Battery Storage*, Docket No. 2020-00035, Advisory Ruling (Feb. 19, 2020).

On February 26, 2020, the Commission found that Section 13(D)(1)(d) of the emergency rule requires that T&D utilities provide to applicants, to the best of their ability, the assumptions and technical thresholds that trigger modifications or upgrades of substantial expense in order to inform a one-time allowed modification at or after the Impact Study results meeting. The Commission found that Chapter 324 does not require the utilities to provide additional analysis or modeling beyond what is available at the time of the Impact Study results meeting, nor provide developers with their system model information, which could include Critical Energy/Electric Infrastructure Information (CEII). *Borrego Solar Systems, Inc. Petition for Advisory Ruling Regarding Chapter 324 – Impact Study Information Sharing*, Docket No. 2020-00036, Advisory Ruling (Feb. 26, 2020).

### III. COMMENTS

#### A. Joint Comments and Joint Proposed Rule

The Joint Final Comments noted that while the parties were able to reach consensus on many major issues in Chapter 324, which are reflected in the Joint Proposed Rule, there were several other areas where the parties could not reach consensus. The individual final comments filed by the utilities and developers detail each party's position on the non-consensus items, including inclusion of construction schedules in the interconnection agreement, penalties, and the timeline to issue a Notice of Approved Operations. Areas of consensus are described below.

#### 1. Scope of Chapter 324 (Transmission)

The Joint Petitioners noted that during the public hearing, Commission Staff asked whether the scope of Chapter 324 should be updated to reflect that under some conditions, it might be appropriate to apply Chapter 324 to an interconnection to the

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<sup>1</sup> Section 13 of the emergency rule is Section 12 in the version of the rule adopted in this Order.

transmission (rather than distribution system) system. The Joint Petitioners expect that transmission level interconnections under Chapter 324 will be rare but acknowledge that it could be theoretically possible for a transmission-level interconnection to fall under one of the exemptions in Schedule 23 of the ISO New England (ISO-NE) tariff. Therefore, the Joint Petitioners revised the definition of "T&D Distribution System" to include the "transmission system" and revised Section 7(H) to state that a Point of Common Coupling could be on a transmission line if the Interconnection Request falls under an authorized exemption under Schedule 23 of the ISO-NE Small Generator Interconnection Procedures.

## 2. Cost Sharing

Section 12(G) addresses cost sharing and the Joint Petitioners have clarified the pro rata calculation for a Contingent Upgrade on the basis of both megawatt nameplate and linear feet. Under this Joint Proposed Rule the cost of interconnection upgrades that are more than \$200,000 and are necessary for more than one project will be shared among the projects that use those facilities. The sharing will be calculated based on the proportional share of AC watts of each project, and if applicable, the distance of the upgrade used by each project. The mechanism for the sharing requires the first project to pay for the total cost of the shared facilities with subsequent projects paying their share of the costs as they become operational. To the extent the upgrade can accommodate additional projects, sharing will occur for new projects for up to 10 years from the effective date of the earliest affected interconnection agreement or until the prorated amount of cost sharing is \$100,000 or less for each affected customer, whichever occurs sooner. The T&D utility will administer the cost sharing and may assess a fee to the developers for this administration. See Attachment A to the rule for examples of how the cost sharing mechanism will function. Projects less than 250 kW may elect not to participate in this cost sharing.

## 3. In-Kind Modifications

The Joint Proposed Rule includes a definition of "In-Kind Modifications" to clarify the type of modifications that are permissible as technical parameter changes under Section 12(D)(1)(c). Additionally, Section 12(D)(1)(d) has also been revised to further clarify the circumstances that allow an Applicant to make a one-time modification of the interconnection configuration.

The Joint Petitioners state that these edits are consistent with the Commission's Advisory Ruling in Docket No. 2020-00035 regarding removal of energy storage. Additionally, the changes to Section 12(D)(1)(c), together with the new defined term "In-Kind Modification," clarifies the type of storage removal (and other) changes that fall under a change in technical parameters.

Additionally, the Joint Proposed Rule includes a definition of "Interconnection Request" because this defined term is used in several of the revisions to Chapter 324 (primarily for queue management and timeline provisions).

## 4. Site Control Definition

The Joint Petitioners have clarified that the 12-month period required for demonstrating site control begins from the date of the Application submission to the T&D utility.

5. Queue Position

Section 12(D) has been amended to state that if an Applicant has not responded to the T&D utility's written communications for three consecutive months, the T&D utility shall notify the Applicant of impending loss of queue position.

6. Feasibility Study

Section 12(I) of the Joint Proposed Rule includes a sentence clarifying the type of information an Applicant can request at the study results meeting.

7. Impact Study

Section 12(J) includes language adapted from Section 1.3.9 of the ISO-NE tariff to broaden the circumstances that might require filing of a generator notification form with ISO-NE.

8. Payment System Modifications

Section 12(T) includes provisions related to the payment schedule for interconnection costs. Under this provision, an Applicant of a project that is less than \$500,000 generally has 90 business days to pay 25% of the quoted cost for any required Distribution Upgrades and Interconnection Facilities, and an additional 90 days to pay the remaining 75% of the quoted costs. For upgrades in excess of \$500,000, the T&D utility will provide a payment schedule to expand the schedule to coincide with design, procurement and construction.

9. Cancellation of Interconnection Agreements

Section 13(I) includes a provision that allows interconnection requests to be cancelled under certain conditions and provides that the cancellation relieves the parties of their liabilities and obligations, except for then-pending and accrued owed amounts.

10. Cost Reconciliation

Section 13(J) provides that the utilities will provide final reconciliation statements of the actual costs and detailed breakdowns of those costs associated with the interconnection work.

11. Dispute Resolution

Section 14, as proposed by the Joint Petitioners, includes a specific dispute resolution process that first requires good-faith negotiations, then an informal dispute resolution effort, and finally a Commission process to resolve any disputes.

12. Application of New Chapter 324 to Pending Queue

The Joint Petitioners note their concern that certain applicants may seek the advantages of the new Chapter 324 (such as clearer timelines, allowed modifications,

cost sharing, or the payment schedule for interconnection upgrades) without paying the new Level 4 interconnection application fee of \$3,000 (less any amount they previously paid for an application fee). The Joint Petitioners recommend that the Commission make clear in their order that in order to take advantage of the new Chapter 324, applicants shall pay the current application fee.

B. Central Maine Power Company

CMP states that, without intensive review of the issue, the Commission should not adopt binding construction milestones and timelines. CMP believes that establishing appropriate construction timelines is a very complex issue involving many factors, including the size and nature of the system upgrades necessary to interconnect a particular generator. CMP states this issue has not been sufficiently developed and does not appear ripe for decision at this time

CMP states that another issue that has not been sufficiently developed is the financial penalties that would be imposed on a T&D utility for failure to accomplish timely interconnections pursuant to 35-A M.R.S. § 3482. To implement this requirement, CMP states that one option would be an annual reporting and enforcement requirement similar to that approved in Massachusetts in its Order on a Timeline Enforcement Mechanism, D.P.U. 11-75-F. This would include a requirement that a T&D utility report on the actual number of days taken to process each interconnection request up until the execution of an Interconnection Agreement. The utility would submit a report annually and may be assessed a penalty based upon the overage/underage percentage of all projects from the preceding year

CMP states that it has not had the opportunity to work through the details of this proposal with other stakeholders and proposes this methodology as a starting point for consideration by other stakeholders and the Commission.

C. Emera Maine

Like CMP, Emera does not believe it is reasonable or feasible to provide specific deadlines in Chapter 324 for when the utilities are required to provide a detailed construction schedule to an applicant. Emera states that it will need to have completed a detailed engineering analysis, and that cannot be done until the applicant has paid the 25% deposit required in the redlined draft. Emera states that the variability of applications is too great to apply uniform timelines to all projects.

Similar to CMP, Emera suggests that penalties could possibly be imposed through a methodology similar to that used in Massachusetts.

Emera encourages the Commission to continue hosting policy and technical interconnection stakeholder meetings regarding the implementation of Chapter 324.

Finally, Emera states that it is concerned that interconnecting a high volume of solar projects to its distribution system will negatively impact reliability. Emera states

that it expects that significant upgrades and protection schemes will be required to interconnect many of the pending projects.

D. MREA and CCSA

MREA and CCSA state that construction schedules are a critical element of an Interconnection Agreement and ultimately affect the financing of the interconnected project, the procurement of resources and materials, and ability to meet requirements in offtake agreements or in programs like the Chapter 312 DG procurement. Additionally, they state that it is unusual for an Interconnection Agreement to not contain at least a form of milestone schedule that reflects the T&D utility's good-faith expectation to construct and interconnect a generating facility.

MREA and CCSA do not endorse a methodology or application of penalties in any particular jurisdiction but do believe penalties can be an effective tool to ensure the interconnection process is administered and resourced appropriately. MREA and CCSA state they believe penalties should be sufficiently structured to incentivize timeframe compliance without being excessively punitive. MREA and CCSA do suggest that the following principles apply:

1. Penalties should be paid by utility shareholders, not ratepayers;
2. The developer and utility can mutually agree to an extension;
3. There are reasonable caveats for allowable third-party delays and force majeure events;
4. Performance measurement requires developers to be current on their payment schedule in order to enforce such timelines; and
5. There should be an opportunity to offset penalties should the T&D utilities exceed the timeframes outlined as part of the interconnection study phase or construction process.

E. SunRaise

In its comments, SunRaises recommends that stakeholder group meetings continue on a regular basis to facilitate improvements of the interconnection process over time. SunRaise suggests that the Commission's presence could be limited, but that Commission presence is necessary to fully understand the topics. SunRaise notes that such meetings are a standard process in states like Massachusetts and New York.

SunRaise believes that it should be permissible to transfer interconnection applications, and ultimately interconnection agreements, from the developer company to a project specific LLC for the purposes of facilitating financing.

SunRaise believes that an applicant should be allowed to move its point of interconnection (POI) and maintain the same QP, so long as the solar facility is remaining at the same address and/or on the same parcel of land. SunRaise states that the POI may need to change based on site or permitting conditions, and a change such as this should not jeopardize the QP as the project is otherwise substantially the same.

However, SunRaise does not support the assignment or sale of a queue position if the purpose is to move the POI to a location associated with a separate project that is deeper in the queue, or perhaps has yet to apply for interconnection, and at a different parcel/address.

Like MREA and CCSA, SunRaise recommends that the Commission include a requirement that utilities provide applicants with a construction schedule.

#### F. Solar Parties

The Solar parties state that they believe that assigning interconnection queue positions is already prohibited under Chapter 324 and that such a prohibition is important. The Solar Parties note that Section 3 identifies the elements of an interconnection application which include a distinct applicant, project site and other information about the project. The Solar Parties state that current regulations stipulate that the relocation of POI associated with a queue position is a material modification, and thus grounds for expulsion from or positioning at the end of the queue. The Solar Companies state that a queue position and site are permanently linked, and any attempt to transfer a queue position without also transferring the associated site (or simply changing sites with no change to queue position ownership) remains a material modification subject to expulsion from the queue or positioning at the end of the queue.

The Solar Parties do not read the rules to allow for entities to sell their queue positions, which is distinct and different from the more encompassing word "transfer." The Solar Parties believe there are some transfers that are reasonable, such as an entity creating an affiliated project-specific LLC and transferring the application to that LLC. However, the Solar Parties state that there are other "transfers" that could be inappropriate.

However, the Solar Parties do not currently recommend changing the rule to clarify what transfers may or may not be appropriate, they believe the rule provides enough direction to the utilities to determine which transfers are appropriate.

#### G. BlueWave

Like other developers, BlueWave states that construction duration estimates provide the project a predicable timeline and help with construction financing.

BlueWave states that the 25% interconnection payment made by the Interconnection Customer kicks off the detailed design period for the system modifications referred to in the Impact Study. Additionally, they state that it should be completed before the 75% payment is due for the project since the 75% payment is intended to support construction of the system modifications. BlueWave states that as



part of the design process, utilities should establish calendar time frames for completing construction of all modifications, broken down by milestones.

H. Borrego

Like the other developers, Borrego states that timeframes associated with the construction and energization of a project are a critical issue for the Commission to consider in the final rulemaking in light of The Act.

IV. **ADOPTED RULE PROVISIONS**

A. Joint Proposed Rule

All amendments made in the Joint Proposed Rule were the result of consensus among various stakeholders and are adopted in the final rule.

B. Non-Consensus Issues

As noted in the comments, the stakeholders were unable to reach consensus on construction timelines and penalties.

1. Estimated Construction Schedules

The Commission appreciates the developers' concern that a basic construction schedule is extremely important for developers, particularly with respect to the financing of the interconnected project, the procurement of resources and materials, and the ability to meet requirements in programs like the Chapter 312 DG procurement. However, the Commission also understands that it may be difficult for T&D utilities to provide a detailed and precise construction timeline to the applicant at the time the Interconnection Agreement is executed.

Section 12(S) of the amended rule, which addresses installation milestones, now includes a requirement that the T&D utilities provide good-faith estimates of construction timelines in the Interconnection Agreement. The Commission believes this language balances the concerns of both the utilities and the developers and recognizes that utilities may be unable to comply with precise construction timelines listed in Interconnection Agreements. However, the Commission directs the stakeholder group to continue developing this issue and directs the utilities to begin tracking information on the interconnection construction milestones and actual completion times.

Additionally, there is insufficient information in this proceeding to determine the appropriate Notice of Approved Operations timeline. Therefore, the Commission does not identify a specific date, but expects this can be further explored by the stakeholder group.

The Commission declines to adopt SunRaise's suggestion that the POI should be allowed to change. This is an area that does not have broad agreement and, at least

generally, would appear to be a fundamental feature of a project that should not be allowed to change significantly.

## 2. Penalties

The Act requires that the Commission establish financial penalties in the rule to ensure timely actions by the T&D utilities in the interconnection process. The amended rule includes a new Section 14, which addresses penalties. This section notes that the Commission may assess T&D utilities financial penalties consistent with the maximum penalties included in 35-A M.R.S. § 1508-A for failure to comply with the required timelines listed in Chapter 324 and timelines in an Interconnection Agreement. Specific penalties will be developed by Commission Order.

The Commission recognizes that while the Act requires the Commission to establish financial penalties in the rule, this area has not yet been sufficiently developed for the Commission to determine specific penalties at this time. All parties agree that this area needs to be further developed in the stakeholder process. Additionally, while the utilities suggest that penalties should only be assessed for failure to meet timelines up until the point of execution of the Interconnection Agreement, MREA and CCSA recommend that penalties also apply to timeliness during the construction phase, which occurs after the Interconnection Agreement is signed. Therefore, while the new Section 14 provides that the Commission may assess penalties during any time in the interconnection process, including after execution of the Interconnection Agreement, more work is required to develop whether and when penalties should be assessed and the methodology for assessment. The Commission directs the stakeholder group to continue to develop this area. The Commission will address the appropriateness of more specific penalty provisions in a future Commission Order.

## C. Other Issues

The Commission agrees that the adopted rule provisions do not conflict with the Advisory Rulings. Additionally, with respect to assigning interconnection queue positions, the Commission agrees what the Solar Parties that the rule provides enough direction to the utilities to determine which transfers are appropriate.

Additionally, the Commission agrees with the Joint Petitioners that the provisions of this newly effective rule will apply to a pending Level 4 interconnection request only if the applicant has made or, within 30 business days of the effective date of the approved Chapter 324, makes interconnection application fee payments equal to \$3,000 (less any amount an applicant previously paid for an application fee).

## V. **STAKEHOLDER GROUP**

The Commission commends the collaborative effort by the stakeholder group to come to consensus on many important issues related to Chapter 324. The Commission sees value in continuing the stakeholder effort with Commission Staff involvement to further develop the provisions of Chapter 324.

Accordingly, the Commission,

O R D E R S

1. That Chapter 324, Small Generator Interconnection Procedures, is hereby amended as described in the body of this Order and as set forth in the amended Rule attached to this Order;
2. That the Administrative Director shall file the amended Rule with the Secretary of State;
3. That the Administrative Director shall notify the following of this amended rule:
  - a. All transmission and distribution utilities in the State
  - b. All persons who have commented in this rulemaking proceeding, Docket No. 2020-00004;
  - c. All persons who have filed with the Commission with the past year a request for notice of rulemakings; and
  - d. The Office of the Public Advocate.
4. That the Administrative Director shall send a copy of the amended Rule to the Executive Director of the Legislative Council, 115 State House Station, Augusta, Maine, 04333-0015.

Dated at Hallowell, Maine, this 6<sup>th</sup> day of March, 2020.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear,  
Administrative Director

COMMISSIONERS VOTING FOR:     Bartlett  
   Williamson  
   Davis

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.