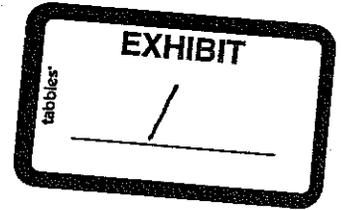


# Rule-Making Fact Sheet

(5 MRSA §8057-A)

AGENCY: INA00 – INTERAGENCY REVIEW PANEL  
94Y – Interagency Review Panel  
Unit 655



NAME, ADDRESS, PHONE NUMBER OF AGENCY CONTACT PERSON:

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Governor's Office of Energy Independence and Security  
62 State House Station  
Augusta, Maine 04333-0062  
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CHAPTER NUMBER AND RULE TITLE: Chapter 1, "Bylaws, Administration, and the Energy Infrastructure Proposal and Review Process"

STATUTORY AUTHORITY: 35-A MRSA § 122

DATE AND PLACE OF PUBLIC HEARING: 3:00 p.m. Monday, February 13, 2012, Room 216, Transportation Building (MaineDOT Office), Child St., Augusta, Maine

COMMENT DEADLINE: 5:00 p.m. Wednesday, March 14, 2012

PRINCIPAL REASON OR PURPOSE FOR PROPOSING THIS RULE: The Interagency Review Panel, was established by P.L. 2009, Chapter 655 to oversee the use of statutory corridors for energy infrastructure projects. In order to accomplish its purpose effectively and efficiently, the Panel needs to establish bylaws to govern its operation and administration and procedures under which it will conduct the energy infrastructure proposal and review process.

ANALYSIS AND EXPECTED OPERATION OF THE RULE: These are procedural rules necessary to establish the bylaws, administration and the energy infrastructure proposal and review process for the Interagency Review Panel.

FISCAL IMPACT OF THE RULE: No negative fiscal impact is expected.

***FOR RULES WITH FISCAL IMPACT OF \$1 MILLION OR MORE, ALSO INCLUDE:***

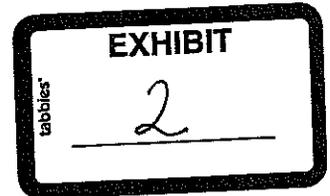
ECONOMIC IMPACT, WHETHER OR NOT QUANTIFIABLE IN MONETARY TERMS:

INDIVIDUALS OR GROUPS AFFECTED AND HOW THEY WILL BE AFFECTED:

BENEFITS OF THE RULE:

*Note: If necessary, additional pages may be used.*

# Notice of Agency Rule-making Proposal



AGENCY: INA00 – INTERAGENCY REVIEW PANEL  
 94Y – Interagency Review Panel  
 Unit 655

CHAPTER NUMBER AND TITLE: Chapter 1, "Bylaws, Administration, and the Energy Infrastructure Proposal and Review Process"

PROPOSED RULE NUMBER (*leave blank; assigned by Secretary of State*):

CONTACT PERSONS FOR THIS FILING:

Jeffrey Marks Governor's Office of Energy Independence and Security 62 State House Station Augusta, Maine 04333-0062 (207) 287-8927 Jeffrey.marks@maine.gov	William Akins Maine Department of Transportation 16 State House Station Augusta, Maine 04333-0016 (207) 624-3020 william.akins@maine.gov
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CONTACT PERSON FOR SMALL BUSINESS INFORMATION (if different): same as above

PUBLIC HEARING: 3:00 p.m. Monday, February 13, 2012, Room 216, Transportation Building (MaineDOT Office), Child St., Augusta, Maine

COMMENT DEADLINE: 5:00 p.m. Wednesday, March 14, 2012

BRIEF SUMMARY: The proposed rule establishes the bylaws, administration and the energy infrastructure proposal and review process for the Interagency Review Panel, which was established by P.L. 2009, Chapter 655 to oversee the use of statutory corridors for energy infrastructure projects.

IMPACT ON MUNICIPALITIES OR COUNTIES (if any): No negative fiscal impact is expected

STATUTORY AUTHORITY FOR THIS RULE: 35-A MRSA § 122

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED (if different):

E-MAIL FOR OVERALL AGENCY RULE-MAKING LIAISON: Jeffrey.marks@maine.gov

\* Check one of the following two boxes.

The above summary is for use in both the newspaper and website notices.

The above summary is for the newspaper notice only. A more detailed summary / basis statement is attached.

Please approve bottom portion of this form and assign appropriate AdvantageME number.

APPROVED FOR PAYMENT \_\_\_\_\_ DATE: \_\_\_\_\_  
 (authorized signature)

FUND	AGENCY	ORG	APP	JOB	OBJT	AMOUNT
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EXHIBIT  
3



**Energy Infrastructure  
Interagency Review Panel**

**Bylaws, Administration, and the Energy  
Infrastructure Proposal and Review Process**

**DRAFT**

Revised and Approved on December 5, 2011

## SECTION I: BYLAWS AND ADMINISTRATION

### A. ADMINISTRATIVE FUNCTIONS

The Chair of the Energy Infrastructure Interagency Review Panel (the "Panel") is authorized to carry out all administrative functions of the Panel, including execution of instruments, documents and agreements, appearing in or instituting legal proceedings, managing funds, making determinations pertaining to confidentiality of records, carrying out any resolution of the members or agreement of the Panel and employing experts, officers, agents and other personnel and determining their qualifications, duties and compensation. Compensation of Panel members and Panel consultants will be at the direction of the Panel.

### B. BYLAWS OF THE MEMBERS OF THE PANEL

1. **Name.** The name of the Panel is the Interagency Review Panel.
2. **Purpose.** The Panel was created by the Maine Legislature for the purposes set forth in *An Act Regarding Energy Infrastructure Development*, Chapter 655 of the 2010 Public Laws (the "Act").
3. **Members of the Panel.** The members of the Panel shall be appointed and compensated and shall serve such terms as the Act may specify.
4. **Quorum of and action by the members.** If four members are present at the beginning of any meeting, then a quorum exists for the transaction of business. If any member(s) departs from a meeting at which a quorum was originally present, a quorum continues to exist. The affirmative vote of the greater of a majority of those present and voting or four members is necessary for any action taken by the members, except that (1) in the case of an action to enter into Executive Session, the affirmative vote of at least 3/5 of those present and voting is required, and (2) in the case of an action to approve the minutes of a prior meeting, the affirmative vote of a majority of those present and voting who were present at the prior meeting is sufficient. For all actions specific to one or more designated statutory corridors, as that term is defined in the Act, the Commissioner of Transportation or the Commissioner's designee, the Executive Director of the Maine Turnpike Authority or the Executive Director's designee, and the Executive Director of the Loring Development Authority or the Executive Director's designee, shall be voting members only with respect to actions affecting the corridors for which they have designated responsibility.
5. **Officers of the members.** The Chair of the Panel shall be the Director of the Office of Energy Independence and Security (OEIS). The members shall elect from among themselves a Vice Chair who shall serve as secretary, and such other officers as it may from time to time determine. The Vice Chair or other offices other than the Chair shall have a term of one year and shall serve until the election of their successors. The Chair shall preside over meetings of the members. In the absence or incapacity of the Chair or if for any reason there is no Chair, then the Vice Chair shall perform the duties of the Chair. In addition, the Vice Chair, as Secretary, shall sign the minutes of all meetings of the members, after such minutes have been approved by the members.

6. **Regular meetings.** The members will ordinarily meet on the first Monday of each month. The regular meeting schedule will be available on the OEIS website. In the absence of business, the Chair may cancel a regular monthly meeting by notice to the members.
7. **Special meetings.** Special meetings of the members may be called by either the Chair or any three members.
8. **Location of Meetings.** Meetings shall ordinarily be held in Augusta, unless another location is designated by the Chair. The location of the meeting shall be included in the public notice of the meeting.
9. **Notice of Meetings.** Any meeting held on the first Monday of the month shall be deemed a regular meeting for which no advance notice is required other than as required by law. Meetings held on any other day shall be deemed special meetings for which notice must be delivered to the members at least two (2) business days prior to the date of the meeting, by mail, telephone, or e-mail and to the public by posting on the OEIS website and by mail, telephone or email to those interested parties who have requested notice.
10. **Order of Business.** The Chair shall determine the Order of Business of each meeting.
11. **Open Meetings.** Except for matters which may be the subject of executive session as provided in 1 M.R.S.A. § 405, all meetings, public proceedings and deliberative sessions of the Commission shall be open to the public. The Chair may establish time for public comment and may impose limits on public commenters as necessary to promote the effective operation of the Panel.
12. **Records.** All records of the Panel and its actions shall be kept by the Governor's Office of Energy Independence and Security and made available to the public for inspection upon reasonable request except to the extent such records are protected from disclosure by 1 M.R.S.A. § 402(3) or 5-A M.R.S.A. § 122 pursuant to Sect. II (B)(3) of this rule.
13. **Subcommittees.** The Chair may appoint such subcommittees as may be necessary or desirable for the efficient conduct of the Panel's business and negotiations, provided that no action of a subcommittee is final or binding without the approval of the Panel at a public meeting. The subcommittee shall report a summary of any meetings to the Panel as a whole at its next meeting and included in the Minutes.
14. **Meetings recorded.** At the direction of the Chair, or upon the request of a Proposer or another party, a meeting of the Panel may be recorded. If the recording is at the request of a Proposer or another party, the requesting party will be responsible for the reasonable costs of making the recording and providing the recording to the Panel for its records.
15. **Decision.** The Panel shall issue a written decision on each proposal for use of a statutory corridor. The written decision shall make findings of fact and conclusions of law with respect to the applicable statutory criteria. An aggrieved person as determined by the Panel may request reconsideration based on new evidence that could not have been presented prior to the decision, a mistake of law or other grounds. The decision of the Panel on whether to reconsider a decision is final.

### C. CODE OF ETHICS

The members of the Panel recognize that either the existence or the perception of a Conflict of Interest can be harmful. Therefore, the members of the Panel adopt this Code of Ethics regarding Conflict of Interest.

1. Ineligible for any benefits from the Panel:

No member of the Panel or contractor or employee of the Panel and/or such person's immediate relations may benefit from an application for use of a statutory corridor, other than as a member of the public or in connection with the Panel member's public sector employment.

No firm, partnership, corporation or other entity, including a sole proprietorship may file or object to an application with the Panel if a member of the board or contractor or employee of the Panel, or such person's immediate relations, is materially involved in management of that entity or has an ownership position in excess of 0.1%. This provision does not apply to the Department of Transportation, Maine Turnpike Authority or Loring Development Authority.

2. Panel members must recuse themselves from any proceeding in which there is an actual or appearance of a conflict of interest. Any potential appearance of a conflict must be disclosed to the Chair and to the Panel in public session, and the Panel shall determine whether such potential conflict is significant or not.
3. A member of the Board, contractor or employee may not accept any gift, compensation or service with a value of more than \$5.00 from any person or organization that is either a Proposer, a potential Proposer or an objector to an application. Compensation includes the withholding of any penalty and is also interpreted to include gifts, services or compensation to members of the employee's immediate family or household and to gifts, services or compensations which may be given to anyone on behalf of the employee.

## SECTION II: ENERGY INFRASTRUCTURE PROCESS

### A. GENERAL

#### 1. Purpose

The purpose of this Rule is to comply with Maine Revised Statutes Title 35-A §122 Energy Infrastructure Corridors and to define a process for any proposal to use an energy infrastructure corridor.

#### 2. Applicability

This Rule applies to any energy infrastructure proposal that is within the jurisdiction of the Panel as defined by Title 35-A MRSA §122.

#### 3. Definitions

The following words and terms, when used in this Rule, shall have the following meanings, unless the context clearly indicates otherwise.

- a) **Conflict of interest:** Situation where a person, because of other activities or relationships with other persons, gives, or may potentially give, any Proposer an unfair competitive advantage. As used in this definition, the term "person" includes both individuals and entities. Members are governed by the conflict of interest provisions of Title 5, section 18. If a member believes that a conflict of interest may require that member's abstention in a proceeding, unless the member in question decides to abstain, the question of the conflict of interest must be submitted to a vote of the members present, excluding the member in question.
- b) **Energy Infrastructure:** Includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include:
  - (1) Generation interconnection transmission facilities;
  - (2) Energy generation facilities; or
  - (3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles.
- c) **LOI:** Letter of interest indicating intent to pursue a project involving the location of energy infrastructure within a designated statutory corridor(s).
- d) **Memorandum of Understanding (MOU):** A document describing an agreement between the Panel, the Proposer and the owner/controller of the corridor on the specifics of a Proposal, including the procedures for the Technical review which shall include the terms for reimbursements of reasonable costs incurred by the Panel in evaluation of the Proposal.
- e) **Occupancy Agreement:** A contractual relationship between the Panel, Owner and/or Controller of the corridor and the Proposer to occupy an area within an energy infrastructure corridor to construct, maintain and operate energy infrastructure for a specified period of time.

- f) **Panel:** The Interagency Review Panel as defined in 35-A MRSA §122, 1-B.
- g) **Panel's Web Site or Web Site:** The Panel's official web site is hosted by the Governor's Office of Energy Independence and Security and is available at the following address: <http://www.maine.gov/oeis/irp/>
- h) **Proposal:** A formal application to develop, design, construct, operate and/or maintain energy infrastructure in a statutory corridor pursuant to the requirements in Sect. II(D)(3).
- i) **Proposer:** Any entity, including any division or affiliate of the entity, that has submitted a LOI or Proposal in order to initiate or participate in a procurement for the development, design, construction, operation, or maintenance of energy infrastructure.
- j) **State:** State of Maine.

**4. Criteria for Selection of Projects for Energy Infrastructure**

- a) The Panel will approve an application only if the proposed project:
  - (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
  - (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and
  - (3) Is in the long-term public interest of the State, based on a consideration of the extent to which the project:
    - i. Materially enhances or does not harm transmission opportunities for energy generation within the State;
    - ii. Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;
    - iii. Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
    - iv. Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy

- infrastructure developers and the preservation of options for future uses;
- v. Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;
  - vi. Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;
  - vii. Increases the energy reliability, security and independence of the State; and
  - viii. Reduces the release of greenhouse gases.

**B. FREEDOM OF INFORMATION, PROTECTION OF PROPRIETARY INFORMATION**

**1. Purpose.**

The purpose of this Section is to provide for free public access to all records of the Panel with certain exceptions. Exceptions shall be construed strictly and narrowly. The purpose of this Section is also to provide protection for proprietary information defined by 35-A MRSA § 122(F-1) and other protection provided for by law.

**2. Scope.**

This rule applies to all records of the Panel including all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any member of the Panel in her or his official capacity.

**3. Access to Information**

**a) Right to Information.**

Any person shall be allowed access to any record of the Panel unless the record is protected by 1 MRSA § 402 (3) or 35-A MRSA § 122(1-B)(G).

**b) Procedure.**

A person seeking access to records of the Panel should request access in person at the offices of the Panel maintained by the Office of Energy Independence and Security, 62 State House Station, 111 Sewall Street, Augusta, Maine 04333-0062, by telephone 207-624-7405, or by first class mail. Inspection shall be conducted within the offices of the Panel at a date and time during ordinary working hours reasonably scheduled by the Director of the Office of Energy Independence and Security.

No charge shall be made for inspection of records.

The Panel may require a person desiring copies of any record to pay in advance the actual cost of preparing such copies.

**c) Exempt Information****(1) General Principles.**

Records that are exempt from disclosure as described in Sect. II(B)(3)(d) below shall not be made available to the public. Only that part of a record which comes within an exemption shall not be made available. Those parts of a record that are not exempt from disclosure shall be made available through the procedures of Sect. II(B)(3)(b), provided that the Panel may require a person seeking access to information to pay the actual cost of separating exempt from non-exempt information.

**(2) Exemptions.**

Records shall not be made available to the public if they are within any of the enumerated exemptions in 1 MRSA 302 (3), designated as proprietary information under 35-A MRSA Section 122, or otherwise protected from disclosure under applicable law.

**d) Treatment of Records Claimed Proprietary****(1) General.**

A Proposer or any other person may assert that any records submitted to the Panel by that Proposer or person in connection with an application is either exempt from disclosure under one of the exceptions enumerated in 1 MRSA § 402 (3), or constitutes proprietary information as defined by 35-A MRSA § 122 (1) (F-1) and is protected from disclosure by 35-A MRSA § 122 (1-B) (G). The Proposer must mark such records with the phrase "CLAIMED PROPRIETARY" in a prominent location on each page of the document or on the outside of an instrument, such as a computer diskette. If a record is marked by an applicant as "CLAIMED PROPRIETARY" it does not necessarily mean that the record will be protected from disclosure, only that the Panel will follow the procedure below.

In the event the Panel receives a request to inspect or copy records marked by the provider of that information as Claimed Proprietary Information, the Chair will notify the provider of that information that such a request has been received. If the provider of that information wants the record to be protected from disclosure under Maine's Freedom of Access Act, then the provider of that information shall, within five business days of receiving the Chair's notice, provide the Panel with a confirmatory list of the records that it asserts are protected from disclosure under Title 1 MRSA § 402 (3) (A) or (3) (B) or 35-A MRSA § 122 (1-B)(G), and a brief statement of the Proposer's position. If the Panel determines that the law requires disclosure of the records, the Panel will not release the records for five business days in order to allow any party aggrieved by the decision to seek a court order barring disclosure.

**4. Executive Session**

- a) The Panel may conduct Executive Sessions for the purposes and subject to the procedures established in 1 MRSA Section 405. The Panel may vote to allow others to attend the Executive Session, including, without limitation, staff, counsel,

consultants, and advisors. If the purpose of an Executive Session is to discuss confidential information, the Panel may vote allow the provider of that information to attend the Executive Session.

## C. VALUATION

### 1. Solicitation of Valuation Expert

- a) The Panel shall contract for the services of one or more valuation experts to assist the Panel in its duties. At least one expert entering into a contract for valuation services with the Panel must:
- (1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;
  - (2) Hold a professional designation from a nationally recognized Organization of appraisers; and
  - (3) Be licensed in Maine as a certified general real property appraiser in accordance with Title 32, Section 14035 or hold a comparable license from another state.

### 2. Required Considerations for Valuation

- a) Aspects of valuation that must be considered by an expert contracting with the Panel for valuation services shall include, but not be limited to the following:
- (1) Costs avoided as a result of using a State or utility corridor including but not limited to costs of acquisition, lease or rental of private land;
  - (2) Costs of property taxes on private land;
  - (3) Costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land;
  - (4) Costs of time and potential conflict regarding use of private land;
  - (5) The unique and limited nature of a State-owned land or asset; and
  - (6) All revenues estimated reasonably to be generated by use of the State-owned land or asset.

### 3. Payment of Costs

- a) The costs for the services of a valuation expert hired by the Panel under this section must be paid by one or more Proposers. In the case of multiple Proposers each making partial use of a corridor subject to the Panel's jurisdiction, costs of valuation shall be allocated among Proposers in approximate proportionately, as determined by the Panel.

## D. PROPOSALS

### 1. Solicitation Process

- a) The Panel will utilize an ongoing solicitation process for Energy Infrastructure proposals. An ongoing request for LOIs regarding proposals for projects involving the location of energy infrastructure within designated statutory corridors will be available on the Panel's Web Site. In addition, the Panel may, from time to time, issue other solicitations, whether general or specific in nature, by using any other means/media it considers appropriate.

## **2. Letter of Interest (LOI)**

a) **Purpose:**

An LOI provides a conceptual proposal describing a project and the Proposer's intended use in sufficient detail to enable the Panel and the Proposer to determine the feasibility and availability of the statutory corridor for the proposed use. Detailed plans and specifications are not required at this point. To the greatest extent practicable, the LOI should contain no proprietary or other information that would be considered exempt from disclosure under Sect. II(B)(3)(c).

b) **Content:**

An LOI shall include the following information:

- (1) Proposer's name, address, contact information, and background, including that of any existing or potential partners;
- (2) A description of the proposed project including a conceptual design of the facility and an identification of known or anticipated interconnections with existing or planned transportation facilities that will be required if the project is approved;
- (3) Proposed project start and end points (including coordinates in decimal degrees, WGS 1984), proposed route, and total length;
- (4) A topographic map with a scale of 1:2,000, or other appropriate scale, that delineates the location of the proposed transportation facility;
- (5) How independent access to the site will be provided by authorized persons, both during construction and subsequent maintenance operations;
- (6) A preliminary list of local, state, or federal agency permits or approvals expected to be required in order to develop or operate the proposed project and a projected schedule for obtaining such permits or approvals;
- (7) Date site is needed (timeframe);
- (8) Anticipated length of construction (number of months);
- (9) Plans for collocation with another carrier;
- (10) Legal status of the Proposer and preliminary information concerning the Proposer's legal and financial capacity to carry out the proposal;

- (11) A declaration as to whether the Proposer will also be the owner of the infrastructure to be installed, and information regarding the legal status of the owner if different from the Proposer;
- (12) A brief analysis of the public benefits of the project and how the project meets the statutory project selection criteria;
- (13) Diagram of the typical cross section of proposed facilities, including access and utilities, showing the potential impact it will have on the surrounding facilities; and,
- (14) Any additional information that may help the Panel more fully understand the design, purpose, impact, and benefits of the project.

### c) Submittal Requirements

#### (1) Review

The Panel will acknowledge receipt of an LOI at their next regularly scheduled meeting and may schedule a time for the Proposer to make a formal presentation to the Panel or return the proposal as incomplete and specify in writing the reasons it was returned.

The Panel shall request any additional information from the Proposer that may be necessary to determine if the proposal provides reasonable potential for long-term benefits to the State of Maine as required under Sect. II(A)(4)(a).

If the Panel finds that the LOI does not provide reasonable potential for long-term benefits to the State of Maine, the Proposer will be notified in writing of the finding as described in Sect. II(D)(5) and no further action will be required of the Panel.

Whenever these rules require or allow the filing of any paper or submission, that filing is complete upon receipt by the Panel.

### 3. Proposal requirements.

- a) **General requirements.** Proposal forms must be developed by the Panel and must require such information as the Panel deems necessary to make the necessary regulatory findings.

A proposal from a corporation must be submitted in the corporation's registered corporate name, and must include either a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.

- b) **Initial Fee**

Prior to submittal of a detailed proposal, the Proposer shall pay an initial fee of \$10,000 to the Panel. This fee is separate from, and will not be credited towards, any of the costs for which the Proposer is responsible under the terms of a future

MOU. Upon receipt of the initial fee, the Panel will send the Proposer specific requirements for submitting a detailed Proposal.

#### **4. Technical Review Phase**

Upon finding that a proposal does provides reasonable potential to meet the technical requirements of the corridor owner/controller and to provide long-term benefits to the State of Maine, the Panel shall develop and enter into a Memorandum of Understanding (MOU) with the Proposer to conduct a "Technical Review". The signed MOU shall be posted on the Panel's Web Site and shall specify: the end date of the agreement, whether the proposal is known to be a competing proposal to any existing proposals pending before the Panel, and the terms of reimbursement by the Proposer for any reasonable costs incurred by the Panel to evaluate the proposal.

##### **a) Purpose**

The purpose of the Technical Review Phase is to identify or address any of the following:

- (1) Whether the proposal is likely to meet the requirements of Sect. II(A)(4)(a).
- (2) The value of the land or assets proposed for use.
- (3) The concerns or considerations of any state or federal entity having ownership or control over the proposed corridor. Examples would include MaineDOT, the Maine Turnpike Authority, and the Federal Highway Administration.
- (4) The concerns or considerations of any state or federal entity having a regulatory role over any aspect of the proposal.
- (5) Any other questions or concerns that the Panel may deem pertinent to a final decision and the development of a final Occupancy Agreement.

##### **b) Duration**

The Technical Review Phase shall be in place for a minimum of three (3) months from the date the MOU is signed. However, the Panel may choose to extend this period as necessary to ensure that all of the above questions are adequately and thoroughly answered. During this period, the Panel may continue to consider additional LOIs and may also enter into multiple MOUs that may or may not conflict or compete with other proposals from either a physical location or market analysis standpoint.

##### **c) Cancellation**

If, at any point, the Panel determines that a proposal does not meet one or more of the requirements of Sect. II (A)(4)(a), cannot be reasonably located at the proposed location or the Proposer is found to be uncooperative in any manner, the Panel may end the MOU by notifying the Proposer of the reasons behind the decision and the amount of any outstanding expenses owed under the agreement.

Similarly, if the Proposer determines that their proposal is no longer feasible or in their best interest, they may request to withdraw from the MOU and the Panel, upon such notice, shall notify any consultants, departments, and/or state agencies that may be working on aspects of the Technical Review to cease any further activity, and close out any necessary billing associated with the MOU. Upon payment of any outstanding expenses, the Panel shall formally release the Proposer from the MOU and shall post the release upon the Panel's Web Site.

**d) Negotiations**

The Panel may elect to enter into negotiations with a single Proposer or competitive negotiations with multiple Proposers regarding the terms of the proposal, Occupancy Agreement with the selected Proposer or Proposers

**e) Approval of Proposal**

The Panel may approve a proposal upon finding that the proposal meets the requirements of Sect. II (A)(4)(a). Upon approval of a proposal, the Panel will issue a written decision as described in Sect. II (D)(5). Approval of the proposal shall be subject to execution of the Occupancy Agreement by the successful Proposer, and satisfaction of such other conditions as may be required by the Panel. The Panel shall notify the Proposers of the Panel's approval of the selected proposal and intent to award an Occupancy Agreement.

**5. Decisions.**

The Panel will issue a written decision with respect to any final decision accepting or approving a proposal. A decision approving a proposal may set forth conditions for such approval. A decision either approving or rejecting a decision will set be in a manner sufficient to inform the applicant and the public of the basis of its findings. The decision will make findings of fact and conclusions of law with respect to the decision criteria set forth in 35-A MRSA § 122(1-D) and Sect. II (A)(4)(a) of this rule.

**6. Notice of appeal rights.**

Each decision approving or denying a proposal must be accompanied by a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised. Correspondence notifying the applicant of the Panel's denial must be made by certified mail, return receipt requested. Any person with standing may seek judicial review of a final Panel decision by filing a petition in Superior Court in accordance with 5 M.R.S.A. Section 11001 *et seq.* and M.R.Civ.P. 80C.

**E. PUBLIC COMMENT**

**1. Public notice of proposals.**

Following receipt and initial review of all formal proposals and prior to negotiating a

final Occupancy Agreement, the Panel shall post a summary of the proposal on the Panel's Web Site for public comment for a period of no less than two (2) weeks. All comments and the final responses of the Panel shall be posted on the Panel's Web Site.

2. **Public comment on proposals.** Written public comments on proposals are allowed during the course of processing the proposal. The Panel may establish a deadline for the submission of written comments by posting a notice on its Web Site.

3. **Public Meetings**

- a) The Panel will hold at least one non-testimonial public meeting on a proposal. Such meetings are not subject to the procedural requirements of the Maine Administrative Procedures Act, Title 5, Chapter 375, Subchapter IV. The purpose of non-testimonial public meetings is to allow any member of the public to appear and provide oral comment to the Panel on a pending Proposal.
- b) The costs associated with providing public notice of a meeting on an application shall be paid for by the Proposer. The meeting shall be conducted substantially as follows:
  - (1) The Proposer shall make a statement in support of the application, addressing the findings required to be made by the Panel in considering the application.
  - (2) Members of the public shall be given an opportunity to comment on the application.
- c) The Proposer shall be given an opportunity to respond to the comments presented. The Panel may ask questions of the Proposer and any party addressing the Panel, and may require additional information of the Proposer. The Panel may continue the meeting at its discretion to a later date or specify a period within which it will accept further information or comment.

4. **Discretionary Public Hearings.**

- a) **Criteria for holding public hearings.** Public evidentiary hearings will be held at the discretion of the Panel. In determining whether to hold an evidentiary hearing, the Panel may consider the availability of administrative resources required for such a hearing, the degree of public interest in the proposal, and whether receiving sworn testimony and observing cross examination of witnesses would be helpful to its consideration of the proposal.
- b) **Conduct of public hearings.** Any evidentiary hearings will be held in accordance with the Maine Administrative Procedure Act, Title 5, Chapter 375, Subchapter IV. When scheduling evidentiary hearings, the Panel shall also establish a date by which petitions for intervention must be submitted to the Panel.

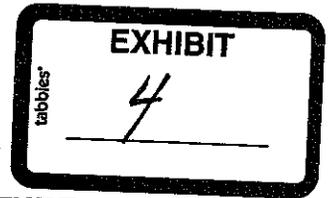
**F. OCCUPANCY AGREEMENT**

Prior to developing and/or operating an energy infrastructure project, the Proposer approved by the Panel shall enter into an Occupancy Agreement with the owner/controller of the corridor. The Occupancy Agreement shall include the following to the extent applicable:

- a) Delivery of performance and payment bonds or other forms of performance security acceptable to the Panel in connection with the construction of or improvements to the energy corridor, in the forms and in amounts satisfactory to the Panel.
- b) Review and approval of plans and specifications for the Project by the Panel and responsible public entity if the plans and specifications conform to established standards of the Panel and responsible public entity.
- c) Inspection of construction or improvements to the project by the Panel and responsible public entity to ensure conformance with engineering standards acceptable to the Panel and responsible public entity.
- d) Maintenance of a policy or policies of public liability insurance certificates, which shall be provided to the responsible public entity, or maintenance of self-insurance, each in form and amount satisfactory to the Panel and responsible public entity and sufficient to ensure liability coverage to the public and employees of the facility and to enable the continued operation of the Project.
- e) Monitoring of the operations and maintenance practices of the private entity by the Panel and responsible public entity. The private entity shall take all actions as specified in the Comprehensive Agreement to ensure that the qualifying energy infrastructure project is properly operated and maintained.
- f) Reimbursement to be paid to the Panel and responsible public entity for services provided by the responsible public entity.
- g) Filing appropriate financial statements on a periodic basis.
- h) The date of termination of the agreement.
- i) User fees, lease payments, service payments, or the availability or other performance-related payments as may be established by agreement of the parties.
- j) A copy of any lease or service contract to be filed with the Panel and responsible public entity.
- k) Such other terms and conditions as the Panel may require.

SIGN UP SHEET

MONDAY, FEBRUARY 13, 2012

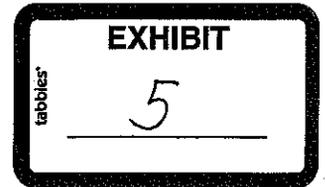


INTERAGENCY REVIEW PANEL FOR ENERGY INFRASTRUCTURE  
 PUBLIC HEARING FOR PROPOSED RULES THAT GOVERN THE USE OF ENERGY  
 INFRASTRUCTURE CORRIDORS DESIGNATED IN 35-A MRSA § 122 (1-B)  
 MAIN CONFERENCE ROOM, TRANSPORTATION BUILDING AUGUSTA, MAINE

Print Name	Address	Company/Firm (if applicable)
KENNETH FLETCHER	392 Garland Rd Windsor	Director OEIS
JEDREY MARKS	OEIS, SHS C2, AUGUSTA, ME 04333	OEIS
Fenwick Fowler	nmca, 209 Church St. East Witten	public member
Tim Agnew		"
HARRISON HORNING		"
Nancy Macinowka		OAG
Kathy Billings	970 Illinois Ave. Bangor	Bangor Hydro Electric Co.
Joe Rossi	40 Sylvan Rd Ledyard	Natural Grid
GIL PAQUETTE	TRC 400 SOUTHBOROUGH DRIVE SOUTHPORTLAND, ME	TRC/BNE
Steve Ward	116 Perkins Pt Newcastle 04553	NA
Andrew Landry	45 Memorial Cir, Augusta ME	Preti Flaherty / IECG
Carol Puzinton	83 Edison Drive, Aug ME	Comp
TOOD PEWETEN		MAINE DOT
Toni Kemmerle		Maine DOT Legal
Conrad W. Welch		ME TURNPIKE AUTH.
Iina Fisher		Maine DOT
Bruce Van Note		IRP Panel Member Maine DOT - Commissioner's Resignee

# Interagency Review Panel

Monday, February 13, 2012  
3-5 p.m. MaineDOT Conference Room



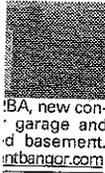
- 1) Welcome and Introductions – Ken Fletcher
- 2) Public Meeting on Proposed “Bylaws, Administration, and the Energy Infrastructure Proposal and Review Process”
  - a. Review of proposed rule – Panel
  - b. Public Comments
- 3) Business Meeting Begins
- 4) Review of agenda and minutes from meeting held on December 5, 2011 – Ken Fletcher
- 5) Review of Valuation/Appraisal Subcommittee – DOT
- 6) Review of Panel Annual Report to the Maine Legislature, Committee on Utilities, Energy and Technology – Ken Fletcher
- 7) New Business
- 8) Discussion of 2012 Agenda and meeting dates
- 9) Closing

NOTICE OF AGENCY RULEMAKING PROPOSAL

OFFICES
F HUDSON
Public Hearing
the Flood-
Ordin-
at 6:30 pm
Town Office.
2

Legal Notices
BY ORDER of the Hermon
Town Council the following
Public Hearing has been
scheduled for Thursday
February 2, 2012 at 7:00pm
in the Public Safety Meeting
Room:
TO CONSIDER the adoption
of a Political Sign Ordinance.

Sale 530



2BA, new con-
garage and
d basement.
infbangor.com

The public shall be given
the right to comment before
the Council takes action.
The proposed Ordinance is
on file at the Town Office
for review during regular
business hours.
Jan. 25, 26, 27, 2012

Mobile/Manufactured
Homes 535



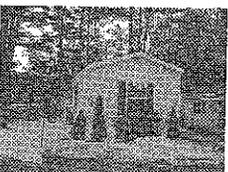
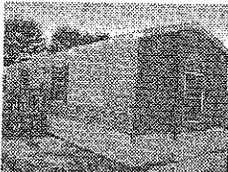
1998 Astro 14 x 70 (66), white,
3BR, 1BA. \$26,500 Call 989-
2337 or andy@showcase-
homesofmaine.com.

BRADFORD -2 BR, 2 BA, 2 ac,
owner fin. \$49,000 w/\$4,000
down, \$510.97/mo. 991-4328



Eddington - Mobile home & 2 ac
on Penob. River, lg lawn over-
looking vtr, 2 car gar. \$69,900
ERA Dawson 417 Main St., Bgr
TriciaQuirk.com call 852-1680

Al Benner
Homes



HOLDEN PARK
All set up! New and used.
3BR/2BA and 2BR/1 BA.
Ready to move into.
Rt 1A, Holden. 1 800-287-1071
Al Benner Homes • 989-1070

MOBILE HOMES - in Corinth-
Bgr parks. Owner financing
avail. 207-285-3634, 852-4116

OLD TOWN - 1993, 2 BR/1 BA,
14x80, in park, possible owner
financing. 207-827-1980

Shore Property 550

Public Input for Proposed
Rules

Notices are published
each Wednesday to alert
the public regarding state
agency rule-making. You
may obtain a copy of any
rule by notifying the agency
contact person. You may
also comment on the rule,
and/or attend the public
hearing. If no hearing
is scheduled, you may
request one - the agency
may then schedule a hear-
ing, and must do so if 5 or
more persons request it. If
you are disabled or need
special services to attend
a hearing, please notify the
agency contact person at
least 7 days prior to it. Pet-
itions: you can petition an
agency to adopt, amend, or
repeal any rule; the agency
must provide you with
petition forms, and must
respond to your petition
within 60 days. The agency
must enter rule-making if
the petition is signed by
150 or more registered
voters, and may begin
rule-making if there are
fewer. You can also petition
the Legislature to review a
rule; the Executive Director
of the Legislative Council
(115 State House Station,
Augusta, ME 04333, phone
(207) 287-1615) will provide
you with the necessary
petition forms. The appro-
priate legislative committee
will review a rule upon
receipt of a petition from
100 or more registered vot-
ers, or from "...any person
who may be directly,
substantially and adversely
affected by the application
of a rule..." (Title 5 §1112).
World-Wide Web: Copies
of the weekly notices and
the full texts of adopted
rule chapters may be found
on the internet at: http://
www.maine.gov/sos/cec/
rules. There is also a list of
rule-making liaisons (http://
www.maine.gov/sos/cec/
rules/liaisons.html), who are
single points of contact for
each agency.

PROPOSALS

AGENCY: 09-137 - De-
partment of Inland Fisher-
ies and Wildlife (IF&W)
CHAPTER NUMBER AND
TITLE: Ch. 4.05, Moose
Hunting
PROPOSED RULE NUM-
BER: 2012-P4
CONTACT PERSON FOR
THIS FILING: Becky Orff,
Inland Fisheries & Wildlife,
284 State Street, #41 State
House Station, Augusta,
ME 04333. Telephone: (207)

Apts. Furnished 605

BANGOR - 1 BR, West side,
sunny, quiet, no smoke/pets,
\$710 incl. heat/utills. 404-4066

Apts. Unfurnished 610



287-5202. E-mail: Becky.
Orff@Maine.gov .

PUBLIC HEARING: None
scheduled - one may be
requested.

COMMENT DEADLINE:
February 24, 2012

BRIEF SUMMARY: The
Department of Inland
Fisheries and Wildlife is
proposing to adopt a rule
establishing the number
of moose hunting permits
to be issued for the 2012
season. Permits will be
issued for bulls, antlerless
and any-moose. Permits
are allocated according
to Wildlife Management
District as follows:

- WMD 1 - 150 bulls / 150 antlerless
WMD 2 - 300 bulls / 300 antlerless
WMD 3 - 200 bulls / 300 antlerless
WMD 4 - 300 bulls / 300 antlerless
WMD 5 - 125 bulls / 50 antlerless
WMD 6 - 175 bulls / 175 antlerless
WMD 7 - 125 bulls / 30 antlerless
WMD 8 - 235 bulls / 60 antlerless
WMD 9 - 50 bulls
WMD 10 - 60 bulls / 10 antlerless
WMD 11 - 100 bulls / 100 antlerless
WMD 12 - 35 bulls / 20 antlerless
WMD 13 - 35 bulls / 10 antlerless
WMD 14 - 35 bulls
WMD 15 - 25 any-moose
WMD 16 - 20 any-moose
WMD 17 - 20 bulls / 10 antlerless
WMD 18 - 50 bulls / 10 antlerless
WMD 19 - 75 bulls
WMD 22 - 20 any-moose
WMD 23 - 45 any-moose
WMD 25 - 45 any-moose
WMD 26 - 45 any-moose
WMD 27 - 20 bulls
WMD 28 - 25 bulls

TOTAL: 2,115 bulls / 1525
antlerless / 200 any-
moose

in WMDs 1, 2, 3, 4, 5,
6, 11 and 19 the season
will begin on the Monday
following the close of the
bear baiting season and
remain open for 6 days and
in WMDs 1 - 14, 17, 18, 19,
27 and 28 the season will
begin on the second Mon-
day of October and remain
open for 6 days.

There shall be an open
season in WMDs 1 - 8, 10
and 11 to begin on the first
Monday of November and
remaining open for 6 days
with antlerless only permits
being allocated.

In WMDs 15, 16, 22, 23, 25
and 26 the season begins
the 4th Monday preceding
Thanksgiving to the Satur-
day following Thanksgiving;
the Saturday preceding
the first day of this season
is open for the hunting of
moose by permit holders
who are residents of this
State only. The term "any-
moose" means a moose of
either sex. Persons hunting
moose during this season
must comply with the same
hunter orange requirements

Apts. Unfurnished 610

BANGOR - 2 BR, 1st flr., 59
Cedar St. storage, exc. cond.
Heated, no dogs. \$680. 866-4349

BANGOR - 2 BR, 1st flr.,
heat, HW, parking. \$800 +
sec. No pets. Call 947-2822

BANGOR - 2 BR, 1 ba. apt. off-
st parking, coin op, \$750/mo +
dep. all utills. incl. 951-2661

BANGOR - 2 BR, 1 BR, furn. rm.,
utills. incl. \$725, \$600, \$120/wk.
dep. no pet/smoke. 207-470-6807

as deer hunters. The legal
hunting hours will be from
1/2 hour before sunrise to 1/2
hour after sunset.
IMPACT ON MUNICIPALI-
TIES OR COUNTIES: No
fiscal impact anticipated.

AGENCY: 94-655 - Inter-
agency Review Panel
CHAPTER NUMBER AND
TITLE: Ch. 1, Bylaws,
Administration, and the En-
ergy Infrastructure Proposal
and Review Process
PROPOSED RULE NUM-
BER: 2012-P5

CONTACT PERSONS FOR
THIS FILING / SMALL
BUSINESS INFORMATION:
Jeffrey Marks, Governor's
Office of Energy Inde-
pendence and Security,
62 State House Station,
Augusta, Maine 04333-
0062 - Telephone: (207)
287-8927 - E-mail: Jeffrey.
Marks@Maine.gov; and
William Akins, Maine De-
partment of Transportation,
16 State House Station,
Augusta, Maine 04333-
0016 - Telephone: (207)
624-3020 - E-mail: William.
Akins@Maine.gov .

PUBLIC HEARING: 3:00
p.m. Monday, February 13,
2012, Room 216, Transpor-
tation Building (MaineDOT
Office), Child St., Augusta,
Maine

COMMENT DEADLINE:
5:00 p.m. Wednesday,
March 14, 2012

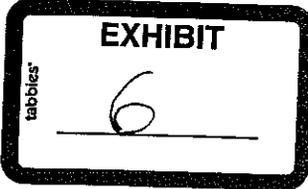
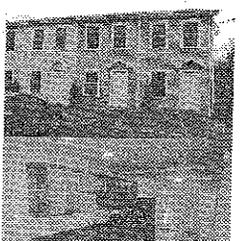
BRIEF SUMMARY: The
proposed rule establishes
the bylaws, administration
and the energy infrastruc-
ture proposal and review
process for the Interagency
Review Panel, which was
established by P.L. 2009,
Ch. 655 to oversee the
use of statutory corridors
for energy infrastructure
projects.

IMPACT ON MUNICIPALI-
TIES OR COUNTIES: No
negative fiscal impact is
expected

ADOPTIONS

Pursuant to Ch. 380 of the
Public Laws of 2011, notice
of the adoption of rules will
no longer be published in
the newspaper rule-making
notices; our Wednesday
web notices will continue
to carry them, however.
Information on rules
adopted through the Maine
Administrative Procedure
Act as well as the full
text of adopted rules are
available on the internet at
http://www.maine.gov/sos/
cec/rules .

Apts. Unfurnished 610



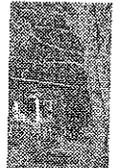
2BA, quiet,
m, lg. eat-in kit.
ed. \$129,900
MLS 1014484
463, 478-2212



5 BA, 073A, cust.
victd tub, deck
gar. \$222,400
Main St., Bgr
Call 852-1680



5BA Colonial,
playgrounds in bkyd
2 flrs \$125,000
Main St., Bgr
call 852-1680



Classic location!
shops and restau-
lot. \$124,900
942-8100,
X Advantage



ly restored 4BR-
b. River, Inland
earn. \$399,900
Main St., Bgr
Call 852-1680

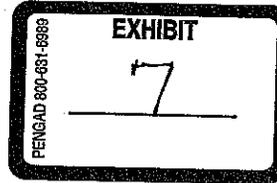
rs 534

On Sale
\$10,000.



PAUL R. LEPAGE  
GOVERNOR

STATE OF MAINE  
OFFICE OF THE GOVERNOR  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0001



KENNETH C. FLETCHER  
DIRECTOR  
OFFICE OF ENERGY  
INDEPENDENCE AND SECURITY

February 1, 2012

Senator Michael D. Thibodeau, Senate Chair  
Representative Stacey Allen Fitts, House Chair  
Joint Standing Committee on Energy, Utilities and Technology  
115 State House Station  
Augusta, ME 04333

Dear Senator Thibodeau and Representative Fitts:

**Pursuant to 35-A MRS § 122 sub § 1-B (H), the Interagency Review Panel shall provide an annual report to the Joint Standing Committee on Energy, Utilities and Technology documenting the activities of the Panel.**

### Interagency Review Panel

The Interagency Review Panel was established by *LD 1786 An Act Regarding Energy Infrastructure, Public Law, Chapter 655 (2010)* to oversee the use of statutory corridors for energy infrastructure projects. The Panel is to carry out the following tasks:

1. Identify an initial range of value for the use of state-owned land or assets within a statutory corridor. The initial range of value must be determined by a professional appraiser who meets certain qualifications.
2. Establish and implement a regular process for soliciting, accepting and evaluating energy infrastructure proposals for use of a statutory corridor. As part of this process, the panel shall provide public notice of the availability of the statutory corridor for energy infrastructure development, a description of the type of development anticipated in the statutory corridor and the opportunity for potential developers to submit proposals for use of the statutory corridor.
3. Evaluate and render a decision on energy infrastructure proposals for use of a statutory corridor.
4. If a proposal is accepted, the panel may enter into negotiations with the potential developer who submitted the proposal regarding a long-term occupancy agreement with the State for the use of the statutory corridor.

### Membership

The Interagency Review Panel is comprised of the following members:

- Director, Governor's Office of Energy Independence and Security, or designee;

- a. Purpose, applicability of rule and definitions;
- b. Criteria for selection of projects for energy infrastructure;
- c. Freedom of information and protection of proprietary information;
- d. Valuation of corridors;
- e. Solicitation process for proposals, including letters of interest, proposal requirements, technical review, decisions and appeals;
- f. Public comments; and
- g. Occupancy agreements.

The purpose of this Rule is to comply with Maine Revised Statutes Title 35-A §122 Energy Infrastructure Corridors and to define a process for any proposal to use an energy infrastructure corridor. Under the Rule, the Panel will approve an application only if the proposed project:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and
- (3) Is in the long-term public interest of the State, based on a consideration of the extent to which the project:
  - i. Materially enhances or does not harm transmission opportunities for energy generation within the State;
  - ii. Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;
  - iii. Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
  - iv. Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy infrastructure developers and the preservation of options for future uses;
  - v. Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts;
  - vi. Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;
  - vii. Increases the energy reliability, security and independence of the State; and
  - viii. Reduces the release of greenhouse gases.

**Meetings and Additional Information**

Kenneth Fletcher became the new Director of the OEIS, and Chair of the Panel, in March 2011. John Kerry was the previous Director and Chair.

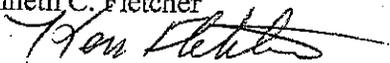
The Panel held eight meetings in 2011.

All meeting minutes and agendas, as well as background information and documents, are posted on the OEIS Web site at <http://www.maine.gov/oeis/irp/index.html>.

The Draft Rule and Process Flowchart are included with this report.

Respectfully submitted, this 1<sup>st</sup> day of February 2012.

Kenneth C. Fletcher



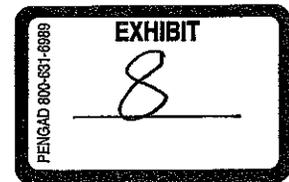
Director

Governor's Office of Energy Independence and Security

## Marks, Jeffrey

---

**From:** Josh Broder [jbroder@tilsontech.com]  
**Sent:** Monday, February 13, 2012 10:03 AM  
**To:** Akins, William; Marks, Jeffrey  
**Subject:** Public Comment item  
**Attachments:** IRP\_Rule\_01-5-12.docx



Hello, Mr. Akins and Mr. Marks,

On behalf of Tilson Government Services, LLC, a Portland, Maine based telecom consulting firm, I would like to submit public comment on the matter of adopting Bylaws, Administration, and the Energy Infrastructure Proposal and Review Process for the Energy Infrastructure Interagency Review Panel.

I have attached the form of the suggested change as a redline in the attached draft IRP Rule.

The substance of my comment is that the State of Maine should consider the importance of fiber optic infrastructure in the public right of way to support broadband expansion and intelligent highway development as a necessary condition for approving future energy corridor projects requiring a public easement. Installation of such facilities is often required in DC cable operation anyway, and the incremental cost to install additional fiber optic strands (for uses above and beyond the cable's usual operation) is de minimus in projects like the kind of large energy corridor projects contemplated by the enabling statute. Conversely, installing this kind of infrastructure on its own, outside of a 'dig once' environment is very expensive, and once a power cable goes in, risks life safety and grid reliability to dig again in the same vicinity. Given that many states require fiber optics in the public way to support intelligent transportation systems, it would seem prudent to ensure that planning for such needs is included in this process.

Best regards,  
Josh



**Joshua Broder** | President  
Tilson Government Services, LLC  
245 Commercial Street | Portland, ME 04101  
t: +1 207-358-7402 | m: +1 (207) 653-0573 | f: +1 (207) 772-3427  
[jbroder@tilsontech.com](mailto:jbroder@tilsontech.com) | [www.tilsongov.com](http://www.tilsongov.com)



Tilson was recently selected as  
one of America's fastest-growing  
private companies.



**Energy Infrastructure  
Interagency Review Panel**

**Bylaws, Administration, and the Energy  
Infrastructure Proposal and Review Process**

**R**

Revised and Approved on December 5, 2011

## SECTION I: BYLAWS AND ADMINISTRATION

### A. ADMINISTRATIVE FUNCTIONS

The Chair of the Energy Infrastructure Interagency Review Panel (the "Panel") is authorized to carry out all administrative functions of the Panel, including execution of instruments, documents and agreements, appearing in or instituting legal proceedings, managing funds, making determinations pertaining to confidentiality of records, carrying out any resolution of the members or agreement of the Panel and employing experts, officers, agents and other personnel and determining their qualifications, duties and compensation. Compensation of Panel members and Panel consultants will be at the direction of the Panel.

### B. BYLAWS OF THE MEMBERS OF THE PANEL

1. **Name.** The name of the Panel is the Interagency Review Panel.
2. **Purpose.** The Panel was created by the Maine Legislature for the purposes set forth in *An Act Regarding Energy Infrastructure Development*, Chapter 655 of the 2010 Public Laws (the "Act").
3. **Members of the Panel.** The members of the Panel shall be appointed and compensated and shall serve such terms as the Act may specify.
4. **Quorum of and action by the members.** If four members are present at the beginning of any meeting, then a quorum exists for the transaction of business. If any member(s) departs from a meeting at which a quorum was originally present, a quorum continues to exist. The affirmative vote of the greater of a majority of those present and voting or four members is necessary for any action taken by the members, except that (1) in the case of an action to enter into Executive Session, the affirmative vote of at least 3/5 of those present and voting is required, and (2) in the case of an action to approve the minutes of a prior meeting, the affirmative vote of a majority of those present and voting who were present at the prior meeting is sufficient. For all actions specific to one or more designated statutory corridors, as that term is defined in the Act, the Commissioner of Transportation or the Commissioner's designee, the Executive Director of the Maine Turnpike Authority or the Executive Director's designee, and the Executive Director of the Loring Development Authority or the Executive Director's designee, shall be voting members only with respect to actions affecting the corridors for which they have designated responsibility.
5. **Officers of the members.** The Chair of the Panel shall be the Director of the Office of Energy Independence and Security (OEIS). The members shall elect from among themselves a Vice Chair who shall serve as secretary, and such other officers as it may from time to time determine. The Vice Chair or other offices other than the Chair shall have a term of one year and shall serve until the election of their successors. The Chair shall preside over meetings of the members. In the absence or incapacity of the Chair or if for any reason there is no Chair, then the Vice Chair shall perform the duties of the Chair. In addition, the Vice Chair, as Secretary, shall sign the minutes of all meetings of the members, after such minutes have been approved by the members.

6. **Regular meetings.** The members will ordinarily meet on the first Monday of each month. The regular meeting schedule will be available on the OEIS website. In the absence of business, the Chair may cancel a regular monthly meeting by notice to the members.
7. **Special meetings.** Special meetings of the members may be called by either the Chair or any three members.
8. **Location of Meetings.** Meetings shall ordinarily be held in Augusta, unless another location is designated by the Chair. The location of the meeting shall be included in the public notice of the meeting.
9. **Notice of Meetings.** Any meeting held on the first Monday of the month shall be deemed a regular meeting for which no advance notice is required other than as required by law. Meetings held on any other day shall be deemed special meetings for which notice must be delivered to the members at least two (2) business days prior to the date of the meeting, by mail, telephone, or e-mail and to the public by posting on the OEIS website and by mail, telephone or email to those interested parties who have requested notice.
10. **Order of Business.** The Chair shall determine the Order of Business of each meeting.
11. **Open Meetings.** Except for matters which may be the subject of executive session as provided in 1 M.R.S.A. § 405, all meetings, public proceedings and deliberative sessions of the Commission shall be open to the public. The Chair may establish time for public comment and may impose limits on public commenters as necessary to promote the effective operation of the Panel.
12. **Records.** All records of the Panel and its actions shall be kept by the Governor's Office of Energy Independence and Security and made available to the public for inspection upon reasonable request except to the extent such records are protected from disclosure by 1 MRSA § 402(3) or 35-A MRSA § 122 pursuant to Sect. II (B)(3) of this rule.
13. **Subcommittees.** The Chair may appoint such subcommittees as may be necessary or desirable for the efficient conduct of the Panel's business and negotiations, provided that no action of a subcommittee is final or binding without the approval of the Panel at a public meeting. The subcommittee shall report a summary of any meetings to the Panel as a whole at its next meeting and included in the Minutes.
14. **Meetings recorded.** At the direction of the Chair, or upon the request of a Proposer or another party, a meeting of the Panel may be recorded. If the recording is at the request of a Proposer or another party, the requesting party will be responsible for the reasonable costs of making the recording and providing the recording to the Panel for its records.
15. **Decision.** The Panel shall issue a written decision on each proposal for use of a statutory corridor. The written decision shall make findings of fact and conclusions of law with respect to the applicable statutory criteria. An aggrieved person as determined by the Panel may request reconsideration based on new evidence that could not have been presented prior to the decision, a mistake of law or other grounds. The decision of the Panel on whether to reconsider a decision is final.

### C. CODE OF ETHICS

The members of the Panel recognize that either the existence or the perception of a Conflict of Interest can be harmful. Therefore, the members of the Panel adopt this Code of Ethics regarding Conflict of Interest.

1. Ineligible for any benefits from the Panel:

No member of the Panel or contractor or employee of the Panel and/or such person's immediate relations may benefit from an application for use of a statutory corridor, other than as a member of the public or in connection with the Panel member's public sector employment.

No firm, partnership, corporation or other entity, including a sole proprietorship may file or object to an application with the Panel if a member of the board or contractor or employee of the Panel, or such person's immediate relations, is materially involved in management of that entity or has an ownership position in excess of 0.1%. This provision does not apply to the Department of Transportation, Maine Turnpike Authority or Loring Development Authority.

2. Panel members must recuse themselves from any proceeding in which there is an actual or appearance of a conflict of interest. Any potential appearance of a conflict must be disclosed to the Chair and to the Panel in public session, and the Panel shall determine whether such potential conflict is significant or not.
3. A member of the Board, contractor or employee may not accept any gift, compensation or service with a value of more than \$5.00 from any person or organization that is either a Proposer, a potential Proposer or an objector to an application. Compensation includes the withholding of any penalty and is also interpreted to include gifts, services or compensation to members of the employee's immediate family or household and to gifts, services or compensations which may be given to anyone on behalf of the employee.

## SECTION II: ENERGY INFRASTRUCTURE PROCESS

### A. GENERAL

#### 1. Purpose

The purpose of this Rule is to comply with Maine Revised Statutes Title 35-A §122 Energy Infrastructure Corridors and to define a process for any proposal to use an energy infrastructure corridor.

#### 2. Applicability

This Rule applies to any energy infrastructure proposal that is within the jurisdiction of the Panel as defined by Title 35-A MRSA §122.

#### 3. Definitions

The following words and terms, when used in this Rule, shall have the following meanings, unless the context clearly indicates otherwise.

- a) **Conflict of interest:** Situation where a person, because of other activities or relationships with other persons, gives, or may potentially give, any Proposer an unfair competitive advantage. As used in this definition, the term "person" includes both individuals and entities. Members are governed by the conflict of interest provisions of Title 5, section 18. If a member believes that a conflict of interest may require that member's abstention in a proceeding, unless the member in question decides to abstain, the question of the conflict of interest must be submitted to a vote of the members present, excluding the member in question.
- b) **Energy Infrastructure:** Includes electric transmission and distribution facilities, natural gas transmission lines, carbon dioxide pipelines and other energy transport pipelines or conduits. "Energy infrastructure" does not include:
- (1) Generation interconnection transmission facilities;
  - (2) Energy generation facilities; or
  - (3) Electric transmission and distribution facilities or energy transport pipelines that cross an energy infrastructure corridor or are within an energy infrastructure corridor for a distance of less than 5 miles.
- c) **LOI:** Letter of interest indicating intent to pursue a project involving the location of energy infrastructure within a designated statutory corridor(s).
- d) **Memorandum of Understanding (MOU):** A document describing an agreement between the Panel, the Proposer and the owner/controller of the corridor on the specifics of a Proposal, including the procedures for the Technical review which shall include the terms for reimbursements of reasonable costs incurred by the Panel in evaluation of the Proposal.
- e) **Occupancy Agreement:** A contractual relationship between the Panel, Owner and/or Controller of the corridor and the Proposer to occupy an area within an energy infrastructure corridor to construct, maintain and operate energy infrastructure for a specified period of time.

- f) **Panel:** The Interagency Review Panel as defined in 35-A MRS §122, 1-B.
- g) **Panel's Web Site or Web Site:** The Panel's official web site is hosted by the Governor's Office of Energy Independence and Security and is available at the following address: <http://www.maine.gov/oeis/irp/>
- h) **Proposal:** A formal application to develop, design, construct, operate and/or maintain energy infrastructure in a statutory corridor pursuant to the requirements in Sect. II(D)(3).
- i) **Proposer:** Any entity, including any division or affiliate of the entity, that has submitted a LOI or Proposal in order to initiate or participate in a procurement for the development, design, construction, operation, or maintenance of energy infrastructure.
- j) **State:** State of Maine.

#### 4. Criteria for Selection of Projects for Energy Infrastructure

a) The Panel will approve an application only if the proposed project:

- (1) Materially enhances or does not harm transmission opportunities for energy generation within the State;
- (2) Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the value of those rates, prices or costs but for the proposed energy infrastructure development or, if the deciding authority is unable to determine to its satisfaction the impact of the proposal on rates, prices or costs, the owner or operator of the proposed energy infrastructure agrees to pay annually an amount of money, determined by the deciding authority, to reduce rates, prices or costs over the life of the proposed energy infrastructure; and
- (3) Is in the long-term public interest of the State, based on a consideration of the extent to which the project:
  - i. Materially enhances or does not harm transmission opportunities for energy generation within the State;
  - ii. Is reasonably likely to reduce electric rates or other relevant energy prices or costs for residents and businesses within the State relative to the expected value of those electric rates or other energy prices or costs but for the proposed energy infrastructure development;
  - iii. Increases long-term economic benefits for the State, including but not limited to direct financial benefits, employment opportunities and economic development;
  - iv. Ensures efficient use of the statutory corridor through collocation of energy infrastructure, collaboration between energy

- infrastructure developers and the preservation of options for future uses;
- v. Minimizes conflict with the public purposes for which the state-owned land or asset is owned and any management plans for the land or asset within the statutory corridor and, when necessary, mitigates unavoidable impacts. In recognition of the importance of energy corridor use to support telecommunications, broadband expansion, and intelligent transportation systems<sup>1</sup> provide a public benefit by including fiber optic strands on an open-access, non-discriminatory basis along cable infrastructure projects using large public easements;
  - vi. Limits and mitigates the effects of energy infrastructure on the landscape, including but not limited to using underground installation when economically and technically feasible;
  - vii. Increases the energy reliability, security and independence of the State; and
  - viii. Reduces the release of greenhouse gases.

## **B. FREEDOM OF INFORMATION, PROTECTION OF PROPRIETARY INFORMATION**

### **1. Purpose.**

The purpose of this Section is to provide for free public access to all records of the Panel with certain exceptions. Exceptions shall be construed strictly and narrowly. The purpose of this Section is also to provide protection for proprietary information defined by 35-A MRSA § 122(F-1) and other protection provided for by law.

### **2. Scope.**

This rule applies to all records of the Panel including all books, papers, maps, photographs, recorded tapes, financial statements, statistical tabulations, or other documentary materials or data, regardless of physical form or characteristics, made or received by any member of the Panel in her or his official capacity.

### **3. Access to Information**

<sup>1</sup> 35-A M.R.S.A. § 7101 states that “a modern state-of-the-art telecommunications network is essential for the economic health and vitality of the State and for improvement in the quality of life for all Maine citizens. Therefore, it is the goal of the State that all Maine’s businesses and citizens should have affordable access to an integrated telecommunication infrastructure capable of providing voice, data and image-based services...” In order to fulfill this policy objective, the State of Maine already allows buried fiber optic cable in the public right of way on highways. Given the importance to utility infrastructure reliability and cost, projects should consider the importance of a ‘dig once’ approach to electric cables and telecom cables. Furthermore, where the State of Maine may someday utilize its own right of way for buried fiber optic cable to facilitate Intelligent Transportation Systems (ITS), the Panel should consider the importance of providing fiber optic cable facilities as part and parcel to any major power cable installation project in the public way. To the extent such facilities are implemented in the public way, the State of Maine may consider managing them on an open access, non-discriminatory basis to the benefit of all telecom carriers and public agencies that may wish to use them on a fee for service basis.

**a) Right to Information.**

Any person shall be allowed access to any record of the Panel unless the record is protected by 1 MRSA § 402 (3) or 35-A MRSA § 122(1-B)(G).

**b) Procedure.**

A person seeking access to records of the Panel should request access in person at the offices of the Panel maintained by the Office of Energy Independence and Security, 62 State House Station, 111 Sewall Street, Augusta, Maine 04333-0062, by telephone 207-624-7405, or by first class mail. Inspection shall be conducted within the offices of the Panel at a date and time during ordinary working hours reasonably scheduled by the Director of the Office of Energy Independence and Security.

No charge shall be made for inspection of records.

The Panel may require a person desiring copies of any record to pay in advance the actual cost of preparing such copies.

**c) Exempt Information**

(1) General Principles.

Records that are exempt from disclosure as described in Sect. II(B)(3)(d) below shall not be made available to the public. Only that part of a record which comes within an exemption shall not be made available. Those parts of a record that are not exempt from disclosure shall be made available through the procedures of Sect. II(B)(3)(b), provided that the Panel may require a person seeking access to information to pay the actual cost of separating exempt from non-exempt information.

(2) Exemptions.

Records shall not be made available to the public if they are within any of the enumerated exemptions in 1 MRSA 302 (3), designated as proprietary information under 35-A MRSA Section 122, or otherwise protected from disclosure under applicable law.

**d) Treatment of Records Claimed Proprietary**

(1) General

A Proposer or any other person may assert that any records submitted to the Panel by that Proposer or person in connection with an application is either exempt from disclosure under one of the exceptions enumerated in 1 MRSA § 402(3), or constitutes proprietary information as defined by 35-A MRSA § 122 (1) (F-1) and is protected from disclosure by 35-A MRSA § 122 (1-B) (G). The Proposer must mark such records with the phrase "CLAIMED PROPRIETARY" in a prominent location on each page of the document or on the outside of an instrument, such as a computer diskette. If a record is marked by an applicant as "CLAIMED PROPRIETARY" it does not necessarily mean that the record will be protected from disclosure, only that the Panel will follow the procedure below.

In the event the Panel receives a request to inspect or copy records marked by the provider of that information as Claimed Proprietary Information, the Chair will notify the provider of that information that such a request has been received. If the provider of that information wants the record to be protected from disclosure under Maine's Freedom of Access Act, then the provider of that information shall, within five business days of receiving the Chair's notice, provide the Panel with a confirmatory list of the records that it asserts are protected from disclosure under Title 1 MRSA § 402 (3) (A) or (3) (B) or 35-A MRSA § 122 (1-B)(G), and a brief statement of the Proposer's position. If the Panel determines that the law requires disclosure of the records, the Panel will not release the records for five business days in order to allow any party aggrieved by the decision to seek a court order barring disclosure.

#### **4. Executive Session**

- a) The Panel may conduct Executive Sessions for the purposes and subject to the procedures established in 1 MRSA Section 405. The Panel may vote to allow others to attend the Executive Session, including, without limitation, staff, counsel, consultants, and advisors. If the purpose of an Executive Session is to discuss confidential information, the Panel may vote allow the provider of that information to attend the Executive Session.

### **C. VALUATION**

#### **1. Solicitation of Valuation Expert**

- a) The Panel shall contract for the services of one or more valuation experts to assist the Panel in its duties. At least one expert entering into a contract for valuation services with the Panel must:
  - (1) Have demonstrated experience in the valuation and evaluation of utility corridors or transportation corridors;
  - (2) Hold a professional designation from a nationally recognized Organization of appraisers; and
  - (3) Be licensed in Maine as a certified general real property appraiser in accordance with Title 32, Section 14035 or hold a comparable license from another state.

#### **2. Required Considerations for Valuation**

- a) Aspects of valuation that must be considered by an expert contracting with the Panel for valuation services shall include, but not be limited to the following:
  - (1) Costs avoided as a result of using a State or utility corridor including but not limited to costs of acquisition, lease or rental of private land;
  - (2) Costs of property taxes on private land;
  - (3) Costs of surveying, appraisal, environmental, engineering and other work necessary for use of private land;

- (4) Costs of time and potential conflict regarding use of private land;
- (5) The unique and limited nature of a State-owned land or asset; and
- (6) All revenues estimated reasonably to be generated by use of the State-owned land or asset.

**3. Payment of Costs**

- a) The costs for the services of a valuation expert hired by the Panel under this section must be paid by one or more Proposers. In the case of multiple Proposers each making partial use of a corridor subject to the Panel's jurisdiction, costs of valuation shall be allocated among Proposers in approximate proportionately, as determined by the Panel.

**D. PROPOSALS**

**1. Solicitation Process**

- a) The Panel will utilize an ongoing solicitation process for Energy Infrastructure proposals. An ongoing request for LOIs regarding proposals for projects involving the location of energy infrastructure within designated statutory corridors will be available on the Panel's Web Site. In addition, the Panel may, from time to time, issue other solicitations, whether general or specific in nature, by using any other means/media it considers appropriate.

**2. Letter of Interest (LOI)**

**a) Purpose:**

An LOI provides a conceptual proposal describing a project and the Proposer's intended use in sufficient detail to enable the Panel and the Proposer to determine the feasibility and availability of the statutory corridor for the proposed use. Detailed plans and specifications are not required at this point. To the greatest extent practicable, the LOI should contain no proprietary or other information that would be considered exempt from disclosure under Sect. 10(B)(3)(c).

**b) Content:**

An LOI shall include the following information:

- (1) Proposer's name, address, contact information, and background, including that of any existing or potential partners;
- (2) A description of the proposed project including a conceptual design of the facility and an identification of known or anticipated interconnections with existing or planned transportation facilities that will be required if the project is approved;

- (3) Proposed project start and end points (including coordinates in decimal degrees, WGS 1984), proposed route, and total length;
- (4) A topographic map with a scale of 1:2,000, or other appropriate scale, that delineates the location of the proposed transportation facility;
- (5) How independent access to the site will be provided by authorized persons, both during construction and subsequent maintenance operations;
- (6) A preliminary list of local, state, or federal agency permits or approvals expected to be required in order to develop or operate the proposed project and a projected schedule for obtaining such permits or approvals;
- (7) Date site is needed (timeframe);
- (8) Anticipated length of construction (number of months);
- (9) Plans for collocation with another carrier;
- (10) Legal status of the Proposer and preliminary information concerning the Proposer's legal and financial capacity to carry out the proposal;
- (11) A declaration as to whether the Proposer will also be the owner of the infrastructure to be installed, and information regarding the legal status of the owner if different from the Proposer;
- (12) A brief analysis of the public benefits of the project and how the project meets the statutory project selection criteria;
- (13) Diagram of the typical cross section of proposed facilities, including access and utilities, showing the potential impact it will have on the surrounding facilities; and
- (14) A description of the plan for telecommunication use in such a project to meet the objectives outlined in section II(A)(4)(a)(3)(v) above.
- (15) Any additional information that may help the Panel more fully understand the design, purpose, impact, and benefits of the project.

### c) Submittal Requirements

#### (1) Review

The Panel will acknowledge receipt of an LOI at their next regularly scheduled meeting and may schedule a time for the Proposer to make a formal presentation to the Panel or return the proposal as incomplete and specify in writing the reasons it was returned.

The Panel shall request any additional information from the Proposer that may be necessary to determine if the proposal provides reasonable potential for long-term benefits to the State of Maine as required under Sect. II(A)(4)(a).

If the Panel finds that the LOI does not provide reasonable potential for long-term benefits to the State of Maine, the Proposer will be notified in writing of the finding as described in Sect. II(D)(5) and no further action will be required of the Panel.

Whenever these rules require or allow the filing of any paper or submission, that filing is complete upon receipt by the Panel.

### **3. Proposal requirements.**

- a) **General requirements.** Proposal forms must be developed by the Panel and must require such information as the Panel deems necessary to make the necessary regulatory findings.

A proposal from a corporation must be submitted in the corporation's registered corporate name, and must include either a *Certificate of Good Standing* or a statement signed by a corporate officer affirming that the corporation is in good standing.

- b) **Initial Fee**

Prior to submittal of a detailed proposal, the Proposer shall pay an initial fee of \$10,000 to the Panel. This fee is separate from, and will not be credited towards, any of the costs for which the Proposer is responsible under the terms of a future MOU. Upon receipt of the initial fee, the Panel will send the Proposer specific requirements for submitting a detailed Proposal.

### **4. Technical Review Phase**

Upon finding that a proposal does provides reasonable potential to meet the technical requirements of the corridor owner/controller and to provide long-term benefits to the State of Maine, the Panel shall develop and enter into a Memorandum of Understanding (MOU) with the Proposer to conduct a "Technical Review". The signed MOU shall be posted on the Panel's Web Site and shall specify: the end date of the agreement, whether the proposal is known to be a competing proposal to any existing proposals pending before the Panel, and the terms of reimbursement by the Proposer for any reasonable costs incurred by the Panel to evaluate the proposal.

- a) **Purpose**

The purpose of the Technical Review Phase is to identify or address any of the following:

- (1) Whether the proposal is likely to meet the requirements of Sect. II(A)(4)(a).
- (2) The value of the land or assets proposed for use.
- (3) The concerns or considerations of any state or federal entity having ownership or control over the proposed corridor. Examples would include MaineDOT, the Maine Turnpike Authority, and the Federal Highway Administration.
- (4) The concerns or considerations of any state or federal entity having a regulatory role over any aspect of the proposal.
- (5) Any other questions or concerns that the Panel may deem pertinent to a final decision and the development of a final Occupancy Agreement.

**b) Duration**

The Technical Review Phase shall be in place for a minimum of three (3) months from the date the MOU is signed. However, the Panel may choose to extend this period as necessary to ensure that all of the above questions are adequately and thoroughly answered. During this period, the Panel may continue to consider additional LOIs and may also enter into multiple MOUs that may or may not conflict or compete with other proposals from either a physical location or market analysis standpoint.

**c) Cancellation**

If, at any point, the Panel determines that a proposal does not meet one or more of the requirements of Sect. II (A)(4)(a), cannot be reasonably located at the proposed location or the Proposer is found to be uncooperative in any manner, the Panel may end the MOU by notifying the Proposer of the reasons behind the decision and the amount of any outstanding expenses owed under the agreement. Similarly, if the Proposer determines that their proposal is no longer feasible or in their best interest, they may request to withdraw from the MOU and the Panel, upon such notice, shall notify any consultants, departments, and/or state agencies that may be working on aspects of the Technical Review to cease any further activity, and close out any necessary billing associated with the MOU. Upon payment of any outstanding expenses, the Panel shall formally release the Proposer from the MOU and shall post the release upon the Panel's Web Site.

**d) Negotiations**

The Panel may elect to enter into negotiations with a single Proposer or competitive negotiations with multiple Proposers regarding the terms of the proposal, Occupancy Agreement with the selected Proposer or Proposers

**e) Approval of Proposal**

The Panel may approve a proposal upon finding that the proposal meets the requirements of Sect. II (A)(4)(a). Upon approval of a proposal, the Panel will issue a written decision as described in Sect. II (D)(5). Approval of the proposal shall be subject to execution of the Occupancy Agreement by the successful Proposer, and satisfaction of such other conditions as may be required by the

Panel. The Panel shall notify the Proposers of the Panel's approval of the selected proposal and intent to award an Occupancy Agreement.

## 5. Decisions.

The Panel will issue a written decision with respect to any final decision accepting or approving a proposal. A decision approving a proposal may set forth conditions for such approval. A decision either approving or rejecting a decision will set be in a manner sufficient to inform the applicant and the public of the basis of its findings. The decision will make findings of fact and conclusions of law with respect to the decision criteria set forth in 35-A MRSA § 122(1-D) and Sect. II (A)(4)(a) of this rule.

## 6. Notice of appeal rights.

Each decision approving or denying a proposal must be accompanied by a plain statement of the appropriate rights of administrative and judicial review and the time within which those rights must be exercised. Correspondence notifying the applicant of the Panel's denial must be made by certified mail, return receipt requested. Any person with standing may seek judicial review of a final Panel decision by filing a petition in Superior Court in accordance with 5 M.R.S.A. Section 11001 *et seq.* and M.R.C.P. 80C.

## E. PUBLIC COMMENT

### 1. Public notice of proposals.

Following receipt and initial review of all formal proposals and prior to negotiating a final Occupancy Agreement, the Panel shall post a summary of the proposal on the Panel's Web Site for public comment for a period of no less than two (2) weeks. All comments and the final responses of the Panel shall be posted on the Panel's Web Site.

2. Public comment on proposals. Written public comments on proposals are allowed during the course of processing the proposal. The Panel may establish a deadline for the submission of written comments by posting a notice on its Web Site.

### 3. Public Meetings

- a) The Panel will hold at least one non-testimonial public meeting on a proposal. Such meetings are not subject to the procedural requirements of the Maine Administrative Procedures Act, Title 5, Chapter 375, Subchapter IV. The purpose of non-testimonial public meetings is to allow any member of the public to appear and provide oral comment to the Panel on a pending Proposal.

- b) The costs associated with providing public notice of a meeting on an application shall be paid for by the Proposer. The meeting shall be conducted substantially as follows:
  - (1) The Proposer shall make a statement in support of the application, addressing the findings required to be made by the Panel in considering the application.
  - (2) Members of the public shall be given an opportunity to comment on the application.
- c) The Proposer shall be given an opportunity to respond to the comments presented. The Panel may ask questions of the Proposer and any party addressing the Panel, and may require additional information of the Proposer. The Panel may continue the meeting at its discretion to a later date or specify a period within which it will accept further information or comment.

#### 4. Discretionary Public Hearings.

- a) **Criteria for holding public hearings.** Public evidentiary hearings will be held at the discretion of the Panel. In determining whether to hold an evidentiary hearing, the Panel may consider the availability of administrative resources required for such a hearing, the degree of public interest in the proposal, and whether receiving sworn testimony and observing cross examination of witnesses would be helpful to its consideration of the proposal.
- b) **Conduct of public hearings.** Any evidentiary hearings will be held in accordance with the Maine Administrative Procedure Act, Title 5, Chapter 375, Subchapter IV. When scheduling evidentiary hearings, the Panel shall also establish a date by which petitions for intervention must be submitted to the Panel.

#### F. OCCUPANCY AGREEMENT

Prior to developing and/or operating an energy infrastructure project, the Proposer approved by the Panel shall enter into an Occupancy Agreement with the owner/controller of the corridor. The Occupancy Agreement shall include the following to the extent applicable:

- a) Delivery of performance and payment bonds or other forms of performance security acceptable to the Panel in connection with the construction of or improvements to the energy corridor, in the forms and in amounts satisfactory to the Panel.
- b) Review and approval of plans and specifications for the Project by the Panel and responsible public entity if the plans and specifications conform to established standards of the Panel and responsible public entity.
- c) Inspection of construction or improvements to the project by the Panel and responsible public entity to ensure conformance with engineering

standards acceptable to the Panel and responsible public entity.

- d) Maintenance of a policy or policies of public liability insurance certificates, which shall be provided to the responsible public entity, or maintenance of self-insurance, each in form and amount satisfactory to the Panel and responsible public entity and sufficient to ensure liability coverage to the public and employees of the facility and to enable the continued operation of the Project.
- e) Monitoring of the operations and maintenance practices of the private entity by the Panel and responsible public entity. The private entity shall take all actions as specified in the Comprehensive Agreement to ensure that the qualifying energy infrastructure project is properly operated and maintained.
- f) Reimbursement to be paid to the Panel and responsible public entity for services provided by the responsible public entity.
- g) Filing appropriate financial statements on a periodic basis.
- h) The date of termination of the agreement.
- i) User fees, lease payments, service payments, or the availability or other performance-related payments as may be established by agreement of the parties.
- j) A copy of any lease or service contract to be filed with the Panel and responsible public entity.
- k) An indefeasible right to use (IRU) excess fiber optic strands for the State to manage on an open access, non-discriminatory basis.
- l) Such other terms and conditions as the Panel may require.

