



DEPARTMENT ORDER

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY	) SITE LOCATION OF DEVELOPMENT ACT
See Appendix A for Location	) NATURAL RESOURCES PROTECTION ACT
NEW ENGLAND CLEAN	) FRESHWATER WETLAND ALTERATION
ENERGY CONNECT	) SIGNIFICANT WILDLIFE HABITAT
L-27625-26-A-N (approval)	) WATER QUALITY CERTIFICATION
L-27625-TG-B-N (approval))
L-27625-2C-C-N (approval))
L-27625-VP-D-N (approval))
L-27625-IW-E-N (approval)	) FINDINGS OF FACT AND ORDER

OVERVIEW

This Order conditionally approves Central Maine Power Company's applications for State land use permits for the New England Clean Energy Connect project. The record of this proceeding demonstrates that the project will satisfy the Department's permitting standards subject to the conditions in this Order. Issuance of this Order follows a 29-month regulatory review, which included six days of evidentiary hearings and two nights of public testimony. Twenty-two parties, consolidated into ten groups, participated in the evidentiary hearings by helping to shape the administrative review process, providing sworn testimony from dozens of witnesses, cross examining those witnesses, and submitting argument on the interpretation and application of relevant permitting criteria. Hundreds of Maine citizens testified during the public hearings and submitted written comment on the many issues the application presented. The hearing and public comment process provided the Department with critical information and analysis of the applicant's proposal, its impacts, whether and how those impacts can be mitigated, and the availability of alternatives.

The record shows the project as originally proposed would have had substantial impacts, particularly in the 53.1-mile portion of the corridor that extends from the Quebec border to The Forks, known as Segment 1. The record also shows that it is feasible to avoid or minimize those impacts through a variety of mitigation measures. This Order does so by imposing a set of conditions identified and developed through the public process. These conditions provide an unprecedented level of natural resource protection for transmission line construction in the State of Maine. They are also fully supported by the evidence. For example, the hearings highlighted the impacts the proposed project would have on fish and wildlife habitat, scenic character, and recreational uses of the Segment 1 area. The evidence shows that the width of the corridor, and the manner in which vegetation is managed within it, are key factors that drive the severity of those impacts. This Order limits the width of the cleared corridor in Segment 1 – originally proposed to be 150 feet – to 54 feet at its widest point. The Order requires the applicant to use poles in ecologically sensitive areas that are tall enough to preserve forest canopy. It requires that wildlife corridors be preserved in deer wintering area.

In all other portions of Segment 1, the Order requires that cutting of vegetation be limited and tapered tree growth be maintained within the corridor, significantly reducing the area cleared and minimizing visibility of the project. Herbicide use is prohibited throughout Segment 1. The combined effect of these conditions is to shrink the footprint of the project and reduce its overall impacts dramatically.

Some project impacts, however, will remain. The Order requires substantial measures to compensate for these impacts, including that the applicant conserve 40,000 acres in western Maine permanently. The conserved lands may be open to commercial forestry utilizing sustainable harvesting practices. The Order also requires the applicant to set aside \$1,875,000 for culvert replacements in western Maine, which includes the Segment 1 area. The evidence shows this should be adequate to fund 25 culvert replacement projects, which will enhance fish habitat by facilitating passage, reducing erosion, and improving water quality.

The hearings also focused on whether a practicable alternative exists to the applicant's chosen route and proposed design that would be less damaging to the environment. The evidence shows that it does not. The alternative routes potentially available are each problematic for their own reasons, including the need to cross or go around conservation lands such as the Bigelow Preserve, greater impacts to the Appalachian Trail, and an increase in cleared corridor area. Nor is the undergrounding alternative preferable. Record evidence supports the conclusion that undergrounding in Segment 1 may be so technically challenging as to be impracticable. Even if technically practicable, the trenching that undergrounding entails would result in greater impacts to natural resources such as wetlands. Undergrounding also would require a permanent clearing in Segment 1 that is 75 feet in width, almost 50% wider than the corridor clearing approved in this Order.

The applicant's stated purpose for this project is to provide renewable electricity from Quebec to the New England grid. The Department applied the statutes and regulations it administers in this Order to approve the least environmentally damaging alternative available to achieve that purpose. The Order puts in place a comprehensive set of conditions designed to avoid and minimize the project's impacts to the extent possible, while also requiring substantial offsite compensation for those impacts that remain. So conditioned, the project fully satisfies the Department's permitting standards.

ANALYSIS, FINDINGS, & CONCLUSIONS

Pursuant to the provisions of the Natural Resources Protection Act (38 M.R.S. §§ 481–489-E) (NRPA), the Site Location of Development Act (38 M.R.S. §§ 480-A–480-JJ) (Site Law), Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341), and Chapters 310, 315, 335, 373, 375, 376, 500 and 502 of the Department of Environmental Protection (Department) rules, the Department has considered the application of CENTRAL MAINE POWER COMPANY (CMP or applicant) with the supportive data, agency review comments, party comments, public comments, hearing materials, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION AND ADMINISTRATIVE BACKGROUND

A. History

CMP has been developing its transmission corridors over a period of years. Much of this development pre-dated the Site Law and the NRPA, but there also have been Department Orders issued in the past that have approved the construction of new electrical transmission lines, upgrades of existing electrical transmission lines and the construction or expansion of new and existing substations. Previous Department Orders issued for projects located in the transmission corridor at issue in this proceeding include the Maine Power Reliability Program (MPRP) #L-24620-26-A-N/ L-24620-TG-B-N/ L-24620-VP-C-N/ L-24620-IW-D-N/ L-24620-L6-A-N, dated April 5, 2010. Previous Department Orders issued for substation projects located within the corridor under consideration in this Order include: #L-T00822-TB-A-N (Surowiec Substation expansion in Pownal), dated September 8, 1999; #L-17973-26-AJ-M and #L-17973-26-AK-T (Maine Yankee Substation expansion in Wiscasset), dated December 15, 2006; and the MPRP Order. CMP submitted an application summarized below on September 27, 2017 for the New England Clean Energy Connect (NECEC) project seeking both a Site Law and NRPA permit. Portions of the proposed NECEC project are located on or adjacent to the projects listed above.

B. Overview

The applicant proposes to construct a 145.3-mile long, 320 kilovolt (kV) High Voltage Direct Current (HVDC) transmission line from Beattie Township to Lewiston; a converter station to convert the Direct Current (DC) electricity to Alternating Current (AC) electricity on Merrill Road in Lewiston; a new substation on Fickett Road in Pownal; and a new 26.5-mile, 345-kV AC transmission line from the existing Coopers Mills Substation in Windsor to the existing Maine Yankee Substation in Wiscasset. The applicant also proposes to rebuild several existing transmission lines and upgrade three substations. The HVDC portion of the transmission line will be placed on single steel poles that will average approximately 100 feet tall and will be spaced approximately 1,000 feet apart. The new 345-kV lines and the reconstructed 115-kV lines will be constructed on a variety of different structures, including 125-foot tall steel structures, 80-foot tall single pole structures, 75-foot tall, wooden H-frames, and 45-foot tall, wooden, single pole structures. The applicant divided the project into five transmission line segments and construction or upgrades of substations.

(1) Transmission Lines

a. Segment 1

Segment 1 starts at the Maine/Quebec border in Beattie Township and continues within a 300-foot wide right-of-way (ROW) to The Forks Plantation. Segment 1 is an approximately 53.1-mile long, 320-kV DC transmission line. The applicant proposes to use the southernmost 150 feet of the ROW for the Segment 1 corridor.

This segment is located primarily in working forest. Segment 1 crosses 480 freshwater wetlands; 280 rivers, streams, or brooks, of which 237 contain coldwater fisheries habitat, including the Upper Kennebec River, which is an Outstanding River Segment; six Inland Waterfowl and Wading Bird Habitats (IWWH) with 8.23 acres of conversion; and six Significant Vernal Pools (SVP).¹ As originally proposed, a 150-foot wide cleared corridor would have been created except for areas within 25 feet of rivers, streams, or brooks. Within 25 feet of these resources, the applicant originally proposed to remove all woody vegetation during initial clearing and subsequently to allow non-capable woody vegetation to grow up to ten feet tall outside the wire zone.

During the course of the permit review process, the applicant modified its proposal to include: (a) tapered vegetation within the corridor near Rock Pond and Coburn Mountain, (b) full canopy height vegetation near Gold Brook, Mountain Brook, and the Upper Kennebec River, (c) 25- to 35-foot tall vegetation managed for deer habitat in eight areas in the Upper Kennebec River Deer Wintering Area, and (d) 100-foot wide riparian filter areas² on either side of all perennial streams in Segment 1.³

In areas where the corridor will be tapered, instead of clearing the entire width of the 150-foot corridor only a 54-foot side section, centered under the conductors, will be cleared. Non-capable species⁴ of vegetation will be allowed to regrow in this area after construction, establishing scrub-shrub habitat with a height of approximately 10 feet. Taller, capable vegetation outside of this 54-foot wide area will be retained, with the height of the retained vegetation increasing from approximately 15 feet to 35 feet as the distance from the scrub-shrub area increases.⁵

On September 18, 2019, the applicant submitted a Petition to Reopen the Record to allow it to amend the pending application. The amendment modified the proposed route of a short section of the Segment 1 corridor in the area near Beattie Pond. This alternative, the Merrill Strip Alternative, as discussed below in Finding 7, initially was rejected by CMP due to the cost to obtain the land from the current landowner. The Merrill Strip Alternative is approximately 0.4 miles shorter than the originally proposed route, results in one less pole (also referred to as transmission line structure or structure), reduces the wetland impact by 12,286 square feet, and eliminates impacts to one SVP and one stream that contains brook trout.⁶

¹ As used in this Order, unless context clearly indicates otherwise, the term Significant Vernal Pool or SVP is used to refer to significant vernal pool habitat, which includes the significant vernal pool depression and that portion of the critical terrestrial habitat within 250 feet of the depression. See 06-096 C.M.R. Ch. 335, § 9.

² Appendix C discusses riparian filter areas.

³ This Order imposes substantial, additional conditions on the construction and maintenance of the Segment 1 corridor, for example, by requiring taller vegetation in 12 Wildlife Areas and tapering the entirety of Segment 1 outside of these areas.

⁴ Capable species are species capable of growing tall enough to reach into the conductor safety zone. Non-capable species are not capable of growing that tall and typically grow no taller than 10 feet.

⁵ Appendix C contains a discussion of different vegetation management along the corridor, including tapering and management for deer travel corridors.

⁶ The ROW obtained by CMP for the Merrill Strip Alternative is 150-foot wide. The remainder of the ROW within Segment 1 is 300-foot wide.

b. Segment 2

Segment 2 extends from The Forks Plantation to the Wyman Substation in Moscow and is a 21.9-mile long, 320-kV DC transmission line. The applicant proposes to co-locate Segment 2 with the existing line that runs from Harris Dam to the Wyman Substation. The corridor within the existing utility ROW will be widened by an average of 75 feet to accommodate co-location of the proposed transmission line. Segment 2 is located primarily in working forest. Segment 2 crosses 146 freshwater wetlands; 68 rivers, streams, or brooks, 46 of which contain coldwater fisheries habitat; two IWWHs with 1.13 acres of conversion; and two SVPs. With the exception of areas within 100 feet of coldwater fisheries, the corridor will be widened an average of 75 feet and maintained as scrub/shrub vegetation following construction. Within 100 feet of coldwater fisheries and 75 feet of other rivers, streams and brooks, the applicant proposes to remove all woody vegetation during initial clearing for construction and subsequently allow non-capable woody vegetation to grow up to 10 feet tall outside the wire zone.

c. Segment 3

Segment 3 runs from the Wyman Substation in Moscow to the proposed Merrill Road Converter Station in Lewiston. This segment is 71.1 miles long and is co-located with transmission lines in an existing ROW. This segment also includes the rebuilding of 0.8 miles of 345-kV AC line outside the Larrabee Road Substation and constructing 1.2 miles of new 345-kV AC transmission line from the Merrill Road Converter Station to the Larrabee Road Substation. The utilized portion of the ROW will be widened by an average of 75 feet. Segment 3 crosses: 489 freshwater wetlands; 235 rivers, streams, or brooks, of which 138 contain coldwater fisheries habitat, including the Kennebec River, the Carrabassett River, and the Sandy River, which are Outstanding River Segments; eight IWWHs with 5.65 acres of conversion; and 40 SVPs. With the exception of areas within 100 feet of coldwater fisheries and 75 feet of other rivers, streams and brooks, the corridor will be widened an average of 75 feet and maintained as scrub/shrub vegetation following construction. Within 100 feet of coldwater fisheries and 75 feet of other rivers, streams, and brooks, the applicant proposes remove all woody vegetation during initial clearing for construction and subsequently allow non-capable woody vegetation to grow up to 10 feet tall within the wire zone.

d. Segment 4

Segment 4 consists of: rebuilding 16.1 miles of 115-kV AC transmission line between the Larrabee Road Substation and the Surowiec Substation; rebuilding 9.3 miles of 115-kV AC transmission line between the Crowley's Substation and the Surowiec Substation; and constructing a new 345-kV AC transmission line from the Surowiec Substation to a proposed substation on Fickett Road in Pownal. Segment 4 will not require any additional clearing but will result in 0.006 acres of SVP upland fill and 0.02 acres of wetland fill. Segment 4 crosses: 132 freshwater wetlands; 33 rivers, streams, or brooks, 23 of which contain coldwater fisheries habitat; no IWWHs; and 10 SVPs.

e. Segment 5

Segment 5 consists of a proposed 26.5-mile long 345-kV AC transmission line from the existing Coopers Mills Substation in Windsor to the Maine Yankee Substation in Wiscasset within an existing corridor; partial rebuilding of 0.3 miles of 345-kV AC line near the Coopers Mills Substation; rebuilding a 0.8-mile section of 345-kV AC line near the Coopers Mills Substation; and rebuilding a 0.8-mile section of 115-kV AC line outside the Coopers Mills Substation. Segment 5 will not require any additional clearing and will result in 0.03 acres of wetland fill and 3.6 acres of DWA conversion. Segment 5 crosses 157 freshwater wetlands; 104 rivers, streams, or brooks, including the West Branch of the Sheepscot River, which is an Outstanding River Segment, and all of which contain coldwater fisheries habitat; two IWWHs; and four SVPs.

(2) Substations

a. Merrill Road Converter Station

The Merrill Road Converter Station will convert DC electricity from Canada to AC electricity to be fed into the power grid. The converter station will be located immediately adjacent to the transmission corridor, and with the access road, will occupy 13.4 acres of the site. The proposed converter station will result in 3.16 acres of wetland fill and 0.273 acres of fill in a SVP.

b. Fickett Road Substation

The Fickett Road Substation will be constructed across Allen Road from the Surowiec Substation and will occupy 4.87 acres of the site. The site currently contains existing 345-kV and 115-kV transmission lines, which were permitted as part of the MPRP. The substation will result in 1.33 acres of direct impact to a freshwater wetland.

c. Coopers Mills Substation

The Coopers Mills Substation was originally permitted as part of MPRP. Proposed work on the Coopers Mills Substation includes 345-kV bus work, circuit breaker installations, and relocating 345-kV transmission lines from the Maine Yankee Substation and the Larrabee Road Substation. These improvements will not require the existing yard to be expanded. The proposed work will result in 0.275 acres of new impervious area. No new impacts to any protected natural resource are proposed for this portion of the project.

d. Crowley's Substation

Proposed modifications at Crowley's Substation include the replacement of a 115-kV switch and bus wire. No new impervious area is proposed. No new impacts to protected natural resources are proposed for this portion of the project.

e. Larrabee Road Substation

The Larrabee Road Substation originally was permitted as part of the MPRP. The Larrabee Road Substation upgrades include the addition of a 345-kV line termination structure, a 345-kV circuit breaker, disconnect switches, instrument transformers, surge arrestors, buswork modifications, support structures, foundation modifications to the existing protection and control system, and network upgrades. The upgrades also include the replacement of an existing transformer with three single-phase autotransformers. The Larrabee Road Substation currently occupies 15.44 acres. These upgrades will result in 0.08 acres of new impervious area. No impacts to protected natural resources are proposed for this portion of the project.

f. Maine Yankee Substation

Proposed modifications at the Maine Yankee Substation involve the addition of a 345-kV three-circuit breaker bay, the relocation of the existing Coopers Mills 345-kV line, the addition of a terminal for the new 345-kV line from Coopers Mills Substation, and the repositioning of the existing 345-kV line from the Surowiec Substation. The substation currently occupies 4.91 acres. All proposed work will be in the existing yard and will result in 0.02 acres of new impervious area. No new impacts to protected natural resources are proposed for this portion of the project.

g. Surowiec Substation

Proposed additions at the Surowiec Substation include a terminal for a new 345-kV transmission line from the proposed Fickett Road Substation, a new dead-end A-frame structure, and a new 345-kV circuit breaker. The existing substation occupies 9.41 acres and all of the additions will be located within the existing yard. There will be 0.01 acres of new impervious area. No new impacts to protected natural resources are proposed for this portion of the project.

h. Raven Farm Substation

The Raven Farm Substation originally was permitted as part of the MPRP, which approved the construction of a 15.5-acre substation yard. Currently, the entire yard has been brought up to subgrade, but only half of the substation has been built to date. This half contains electrical equipment that was part of the MPRP. The proposed additions will be placed on top of a layer of crushed stone and will be on the remaining half of the yard. The electrical equipment will include a new 345/115-kV autotransformer and three new 115-kV transmission line terminations with associated equipment and foundations. No new wetland impacts are proposed for this portion of the project.

(3) Overall

The project, in its entirety, is shown on a set of plans, the first of which is entitled "New England Clean Energy Connect Existing and Proposed ROW Segment 1," prepared by

Central Maine Power, and dated April 11, 2017, with a last revision date of September 18, 2019. The project site is located in 24 municipalities, 14 townships/plantations, and seven counties. (See Appendix A.)

C. Title, Right, or Interest

Applicants for Site Law and NRPA permits are required by 06-096 C.M.R. Chapter 2, § 11(D) to submit evidence demonstrating that they have sufficient title, right, or interest in all the property proposed for development. This can be in the form of deeds, leases, or easements, among other forms. The applicant submitted deeds or leases for the entire project. Several members of the public and Intervenor Groups 2 and 8 (see discussion of the public hearing below for a list of intervenor groups) contend that CMP does not have sufficient title, right, or interest in one portion of the corridor. Specifically, they question the legality of the lease CMP entered into with the Bureau of Parks and Lands for the corridor across West Forks Plantation and Johnson Mountain Township T2R6 BKP WKR. That lease decision was never appealed and is therefore final. The Department accepts the decision of its sister agency to enter into the leases and the fully executed leases as sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project.

At the time of the initial submission of the application, CMP submitted a Letter of Understanding between CMP and the Passamaquoddy Tribe pertaining to a section of the corridor in Lowelltown Township. That Letter of Understanding stated that parties would negotiate in good faith the terms of a lease. The Letter of Understanding had an expiration date of January 31, 2018. At the request of Department staff, the applicant submitted a signed lease for the property, dated October 23, 2017. The lease term is 25 years and can be renewed. The lease has the signatures of representatives of the Passamaquoddy Tribe and CMP, but the copy submitted does not have a signature for a representative of the Bureau of Indian Affairs. These documents constitute sufficient showing of title, right, or interest in this portion of the proposed corridor for the Department to process the application. The Merrill Strip Alternative, which is described in more detail below, eliminates the portion of the line which was to be located on land owned by the Passamaquoddy Tribe.

D. Public Hearing

The Department accepted CMP's permit application for the NECEC project as complete for processing on October 13, 2017. On November 17, 2017, the Department's Commissioner determined that a public hearing would be held on this project pursuant to the Department's Rule Concerning the Processing of Applications and Other Administrative Matters, 06-096 C.M.R. Chapter 2, § 7(B). The Commissioner delegated the authority to conduct and preside over the hearing to Christina Hodgeman, an employee of the Department. The Presiding Officer's role was to conduct an adjudicatory hearing by administering governing procedural statutes and regulations and develop the administrative record.

The Presiding Officer's delegation did not include the ultimate decision-making authority, which was retained by the Commissioner.

On December 7, 2017, the Land Use Planning Commission (Commission) voted to hold a public hearing on the allowed use portion of the Certification process only, specifically with regard to whether the project is an allowed use within the Commission's Recreation Protection (P-RR) subdistrict. The Commission's role in the Department's proceeding would be to certify to the Department whether the project meets those land use standards administered by the Commission that are not duplicative of Department standards, and whether the project is an allowed use in the zoning subdistricts in which it is proposed. Utility facilities are allowed by special exception in the P-RR subdistrict. As originally proposed, the NECEC project crossed through three separate P-RR subdistricts, one around Beattie Pond, one near the upper Kennebec River crossing, and one near the crossing of the Appalachian Trail (AT). The Merrill Strip Alternative moved that portion of the project originally proposed in the P-RR Subdistrict around Beattie Pond outside of that subdistrict.

On June 27, 2018, the Department's Presiding Officer issued a notice setting July 19, 2018, as the deadline to submit petitions for leave to intervene. The Department received 23 petitions to intervene. On July 24, 2018, the Department requested more information from four of the petitioners and by July 31, 2018, three of those petitioners provided additional information, and one petitioner, the Sierra Club, withdrew its petition. On August 18, 2018, the Presiding Officer issued the First Procedural Order in the matter, and granted intervenor status to 22 parties. The parties granted intervenor status in the Department's proceeding were:

1. Old Canada Road National Scenic Byway (Old Canada Road)
2. Ed Buzzell
3. The City of Lewiston
4. Friends of the Boundary Mountains
5. The Appalachian Mountain Club (AMC)
6. Western Mountains and Rivers Corporation (WM&RC)
7. NextEra Energy Resources, LLC (Nextera)
8. Hawk's Nest Lodge
9. The Industrial Energy Consumer Group (IECG)
10. Natural Resources Council of Maine (NRCM)
11. The Town of Caratunk
12. The Maine State Chamber of Commerce
13. The International Brotherhood of Electrical Workers (IBEW)
14. Ashli Coleman
15. Maine Guide Services (MGS)
16. Brookfield White Pine Hydro, LLC (Brookfield)
17. Trout Unlimited (TU)
18. Chris Russell
19. The Nature Conservancy (TNC)
20. Maine Wilderness Guides Organization (MWGO)

21. The Conservation Law Foundation (CLF)
22. Mike Pilsbury

The first pre-hearing conference was held on September 7, 2018. At the conference the parties were notified that a consolidated hearing would be held by the Department and the Commission to make the two processes more efficient for the agencies, the applicant, the intervenors, and members of the public. In the Second Procedural Order, issued on October 5, 2018, the parties were notified of a new Presiding Officer. Presiding Officer Christina Hodgeman had left her position with the State of Maine and the Commissioner designated Susanne Miller, another employee of the Department, as the Presiding Officer. The Second Procedural Order granted intervenor status to Wagner Forest Management, Ltd. (Wagner), an entity that was not included in the Department's First Procedural Order. The Second Procedural Order also outlined how intervenor groups would be grouped together and consolidated for purposes of making the hearing more efficient.

These groupings are described below:

Group 1: Friends of Boundary Mountains, MWGO, and Old Canada Road. These intervenors were all opposed to the project and were intervenors for the Department proceeding only.

Group 2: West Forks Plantation, Town of Caratunk, Kennebec River Anglers, MGS, Peter Dostie (Hawk's Nest Lodge), and Mike Pilsbury. These intervenors were opposed to the project. With the exception of West Forks Plantation, all of the members of this group were intervenors in both the Department and Commission proceedings. West Forks Plantation was an intervenor in the Department proceeding only.

Group 3: IECG; City of Lewiston; IBEW; Maine Chamber of Commerce; and the Lewiston/Auburn Chamber of Commerce. These intervenors were in support of the project. With the exception of the Lewiston/Auburn Chamber of Commerce, all of the members of this group were intervenors in both the Department and Commission proceedings. The Lewiston/Auburn Chamber of Commerce was an intervenor in the Commission proceeding only.

Group 4: NRCM, AMC, and TU. These intervenors were opposed to the project, and were intervenors in both the Department and Commission proceedings.

Group 5: Brookfield and Wagner Forest Management, Ltd. These intervenors were neither for nor against the project. Both were intervenors in the Department's proceeding, but Wagner was also an intervenor in the Commission's proceeding.

Group 6: TNC and CLF. These intervenors were neither for nor against the project and were Department-only intervenors.

Group 7: WM&RC was in support of the project and was an intervenor in both the Department and Commission proceedings.

Group 8: NextEra. NextEra was opposed to the project and was an intervenor in both the Department and Commission proceedings.

Group 9: Office of the Public Advocate (OPA). The OPA was neither for nor against the project, was granted intervenor status in the Department⁷ proceeding, and was granted status as a governmental entity in the Commission proceeding.

Group 10: Edwin Buzzell, and “Local Residents and Recreational Users,” which included eleven individuals named in the Commission’s Second Procedural Order. These intervenors were opposed to the project. Edwin Buzzell was an intervenor in both the Department and Commission proceedings. The remaining individuals were intervenors in the Commission proceeding only.

After consideration of input from the parties, the Department’s Second Procedural Order identified the topics to be covered at the hearing. Those topics included:

- A. Scenic Character and Existing Uses – 38 M.R.S. § 480-D(1), 38 M.R.S. § 484(3), Department Rules 06-096 C.M.R. Chapters 315 and 375, § 14: The applicant must demonstrate that the proposed activity would not unreasonably interfere with the scenic character, or existing scenic, aesthetic, recreational, or navigational uses, and that the development fits harmoniously into the natural environment.
 - i. Visual Impact Assessment and Scenic/Aesthetic Uses
 - ii. Buffering for Visual Impacts
 - iii. Recreational and Navigational Uses

- B. Wildlife Habitat and Fisheries – 38 M.R.S. § 480-D(3), 38 M.R.S. § 484(3), and Department Rules 06-096 C.M.R. Chapters 335 and 375, § 15: The applicant must demonstrate that the proposed activity would not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, or threatened or endangered plant habitat.
 - i. Endangered Species – Roaring Brook Mayfly (RBM), Northern Spring Salamanders (NSS)
 - ii. Brook Trout Habitat
 - iii. Habitat Fragmentation
 - iv. Buffer Strips around Coldwater Fisheries

- C. Alternatives Analysis – 38 M.R.S. § 480-D (1) & (3), 38 M.R.S. § 484(3), Department Rules 06-096 C.M.R. Chapters 310, 315, and 335: The applicant must demonstrate that the proposed project would not unreasonably impact

⁷ While not explicitly stated in any of the Department’s Procedural Orders, the Office of the Public Advocate was granted intervenor status in the Department’s proceedings by the Department in a letter dated and signed August 31, 2018 by Presiding Officer Hodgeman.

“protected natural resources” as defined by the NRPA, in light of practicable alternatives to the proposal that would be less damaging to the environment. Topics for the hearing also included evidence addressing 38 M.R.S. § 480-D (8): The applicant must demonstrate that, with regard to the crossing of the outstanding river segment, no reasonable alternative exists that would have less adverse impact upon the recreational and natural features of the river segment.

- D. Compensation and Mitigation – 38 M.R.S. § 480-D, 38 M.R.S. § 484(3), Department Rules 06-096 C.M.R. Chapters 310 and 375, § 15. The applicant must demonstrate compensation for unavoidable impacts to certain resources.
- i. Coldwater Fisheries Habitats
 - ii. Outstanding River Segments
 - iii. Wetlands

On January 17, 2019, the Department and the Commission held a second pre-hearing conference to discuss logistics and planning for the hearing. At the conference, the Department and Commission stated that information in CMP’s application was sufficient to move forward with the hearing process. Intervenors requested inclusion of greenhouse gas emissions as a topic to be considered at the hearing, maps listing the submissions on title, right, or interest for the project, clarification on the timing of the close of the record, and postponement of the hearing and the filing deadlines for pre-hearing filings. In response to the requests, the Presiding Officers:

1. Granted parties until January 24, 2019, to submit, in writing and with the statutory and regulatory basis, a request for greenhouse gas emissions to be one of the hearing topics. Other parties would be allowed to respond to those requests until January 31, 2019.
2. Reiterated that the Department and the Commission had determined that they had sufficient information from CMP to demonstrate title, right or interest.
3. Denied requests to postpone the hearing, but agreed to consider postponing the pre-hearing filing deadlines.
4. Clarified that the date the record would close had not yet been determined.

CMP stated at the pre-hearing conference that it would provide maps to all intervening parties regarding title, right or interest, and provided these updated maps on January 25, 2019.

On January 24, 2019, Intervenor Group 4 filed a written request to include greenhouse gas emissions as a hearing topic and Intervenor Groups 2 and 10 filed a letter in support of that request. In the February 5, 2019 Third Procedural Order, the Presiding Officer determined that greenhouse gas emissions would not be included as a hearing topic. However, intervenors and the general public would be allowed to submit evidence including comments, data, and reports on this topic until the close of the record.

On February 1, 2019, Intervenor Groups 2 and 10 submitted a Motion for Reconsideration, requesting to postpone the hearing and the deadlines for the pre-hearing

filings. On February 4, 2019, Intervenor Group 4 submitted a letter in support of this motion. The Presiding Officer denied the February 1, 2019 Motion for Reconsideration in the February 5, 2019, Third Procedural Order and confirmed the dates for the hearing to be April 1 through April 5, 2019, at the University of Maine at Farmington.

On March 19, 2019, a Motion to Delay the Hearing and Allow Additional Testimony was filed, based on information that was submitted on March 18, 2019 from the Maine Department of Inland Fisheries and Wildlife (MDIFW). On March 21, 2019, the Department and Commission issued a joint Sixth Procedural Order that denied the motion.

On March 25, 2019, CMP submitted 469 pages of exhibits and rebuttal testimony and included five new rebuttal witnesses. On March 26, 2019, the third pre-hearing conference was held, by telephone. During the call the establishment of a potential additional hearing date was discussed.

The Department and the Commission issued a Seventh Procedural Order on March 28, 2019. This Order confirmed that an additional hearing day would take place May 9, 2019. The Seventh Procedural Order also allowed the intervenors to file sur-rebuttal testimony in response to CMP's March 25, 2019, filings.

The Department conducted five days of public hearing from April 1 through April 5, 2019, with the Commission joining the hearing on April 2, 2019. Two evening sessions were devoted to receiving testimony from the general public. The testimony from both the parties and the public generally focused on the impacts of Segment 1. Many of the witnesses in opposition to the project testified that the applicant failed to meet the licensing criteria regarding impacts to scenic character, recreational impacts, impacts to brook trout habitat, and impacts to water quality from herbicide applications. Witnesses in support of the project testified that the proposed project meets the licensing criteria because it would not cause an unreasonable impact and the applicant has proposed adequate compensation for the wildlife, wetland and scenic impacts that will occur.

On April 3, 2019, during the April hearing week, Intervenor Groups 2 and 10 filed a motion requesting additional public hearing time be scheduled for cross-examination of the applicant's engineers on questions that were deferred the first few days of the hearing. Many of the questions that were deferred were deferred to the applicant's and Group 3's sur-rebuttal witnesses who were not present during the April hearing. This motion was denied in the Ninth Procedural Order issued April 10, 2019. The order stated that time would instead be allotted for this purpose on the May 9, 2019 hearing date.

On April 19, 2019, the Department issued a Tenth Procedural Order in which the Department requested specific supplemental information from the Applicant to assist the Department with its analysis of the application and in an attempt to make the hearing process on May 9, 2019 more efficient.

The hearing continued on May 9, 2019, and the majority of testimony pertained to habitat fragmentation and the alternatives analysis, including the underground alternative.

At the close of the May 9, 2019, hearing, the Presiding Officer allowed the record to remain open for specific limited evidence to be entered into the record by May 17, 2019, and responses from parties to that evidence until May 24, 2019. The record also remained open for written comments from the general public until May 20, 2019, and then the parties' responses to those written comments from the general public until May 27, 2019.

On June 27, 2019, the Department and Commission conducted separate site visits to sites of interest pertaining to the project.

On October 3, 2019, at the applicant's request, the Presiding Officers issued the 15th Procedural Order reopening the record to allow the applicant to amend its application to propose the Merrill Strip Alternative route around Beattie Pond. On October 7, 2019, the Presiding Officers issued the 16th Procedural Order outlining the process by which the agencies would gather evidence on the Merrill Strip Alternative and providing a deadline for the parties and the public to submit comments.

2. FINANCIAL CAPACITY

Pursuant to the financial capacity standard of Site Law, and Chapter 373, § 2, the applicant must demonstrate financial capacity to design, construct, operate, and maintain the proposed development in a manner consistent with state environmental standards and the provisions of Site Law. The applicant must have the financial capacity for all aspects of the development and not solely the environmental protection aspects. Evidence regarding financial capacity must be provided prior to a decision on an application, except, pursuant to 38 M.R.S. § 484(1), the Department may defer a final finding on financial capacity by placing a condition on a permit that requires the permittee to provide final evidence of financial capacity before the start of any site alterations.

The applicant submitted financial capacity materials and a capital cost estimate with the original September 2017 Site Law application materials.⁸ During the application review process, the applicant submitted the following revised data relating to financial capacity:

- A. On December 12, 2017, the applicant submitted a total revised project cost estimate of \$949,745,330. Line items were included for various aspects of the design and construction of the project and included \$73,405,592 for erosion control and access roads.
- B. On July 31, 2018, the applicant submitted revised financial capacity documents, but did not change the total project cost estimate.
- C. On August 13, 2018, a revised project construction schedule was submitted, but the total project cost estimate remained unchanged.

⁸ The applicant requested that the original cost estimate data be protected from disclosure as a trade secret under Chapter 2, § 6(B) of the Department's rules, to which the Department agreed. In the December 2017 submission and further cost estimate submissions, the applicant stated that the revised cost estimates did not constitute a trade secret.

D. On October 19, 2018, the applicant submitted a Site Law amendment application to incorporate horizontal directional drilling (HDD) of the line beneath the upper Kennebec River to avoid an overhead crossing. The applicant stated that the HDD alternative would not affect the line items or capital cost total of \$949,745,330.

The applicant proposed the project in response to a 2017 Request for Proposals for long-term contracts for clean energy projects issued by the Massachusetts Department of Energy Resources and the Electric Distribution Companies of Massachusetts. The proposed project was selected in 2018 as the winning bidder to deliver annually 9,450,000 megawatt-hours of clean energy generation. The applicant provided evidence demonstrating that the proposed project's costs will be recovered from Hydro-Quebec and Massachusetts electricity ratepayers in accordance with Federal Energy Regulatory Commission-approved transmission service agreements.

The applicant states that Central Maine Power Company and its parent companies, Avangrid, Inc. and Iberdrola, S.A., will finance the cost of the proposed project. This will be done using short-term and long-term debt financing and equity funding through retained earnings and capital contributions from Avangrid, Inc. The applicant submitted audited copies of Avangrid Networks, Inc. 2015 and 2016 Combined and Consolidated Financial Statements, and CMP's 2015 and 2016 Consolidated Financial Statement, as well as a letter of commitment to fund dated September 18, 2017, from Howard Coon, Vice President and Treasurer of Avangrid Management Company. These documents adequately demonstrate that the applicant will have adequate funds to construct, operate and maintain all aspects of the project.

In light of the significant cost associated with complying with the conditions of approval, prior to the start of construction, the applicant must submit additional information that confirms that it has the ability to finance the project at that time, including the ability to construct and operate the project in compliance with the terms and conditions of this Order. Prior to the start of construction, the applicant must submit evidence that it has been granted, to the extent necessary, a line of credit or a loan by a financial institution authorized to do business in this State or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 2(B), to the Department for review and approval.

Based on the information in the Department's administrative record, the Department finds that the applicant has demonstrated adequate financial capacity, provided the applicant:

- Submits evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 2(B), to the Department for review and approval prior to the start of construction.

3. TECHNICAL ABILITY

The applicant has a long history of operating and maintaining an electrical grid and the associated infrastructure. CMP is the largest transmission and distribution utility in Maine and serves 615,000 customers in southern, western, and central Maine. CMP currently operates and maintains over 2,536 miles of transmission lines and 254 substations, 63 of which are administered by ISO-NE.

Over the last 10 years, CMP has constructed approximately 500 miles of new transmission facilities in Maine. The applicant provided resume information for key persons involved with the proposed project and a list of projects CMP has successfully constructed. The applicant also retained the services of the following companies to assist in the permitting of the project.

- Burns and McDonnell for environmental matters, including noise
- Boyle Associates and Power Engineers for wetlands and vernal pool assessments
- T.J. DeWan and Associates for visual impact assessment
- MCBER and Daymark for economic consulting
- Powers Engineers for transmission line and substation design
- Dirigo Partners, Ltd. for real estate services

The Department finds that the applicant, through the combination of its institutional knowledge and experience, and its retained consultant expertise, has demonstrated the technical ability to develop the proposed project in compliance with Department standards.

4. NOISE

The Department's noise standards are set forth in Chapter 375, § 10. Section 10(B)(1) states that "when a development is located in a municipality which has duly enacted by ordinance an applicable quantifiable noise standard, which ... (1) contains limits that are not higher than the sound level limits contained in this regulation by more than 5 decibels (dBA), and (2) limits or addresses the various types of noises contained in this regulation or all types of noise generated by the development, that local standard, rather than this regulation, shall be applied by the Department within that municipality for each of the types of sounds the ordinance regulates."

In those municipalities without a local noise standard meeting these criteria, the project is required to meet the Department's noise standards. Chapter 375, § 10 applies hourly sound pressure level limits (LAeq-Hr) at facility property boundaries and at nearby protected locations. Chapter 375, § 10(G)(16) defines a protected location as "any location accessible by foot, on a parcel of land containing a residence or approved subdivision" In addition to residential parcels, protected locations include, but are not limited to, schools, state parks, and designated wilderness areas.

The hourly equivalent level resulting from routine operation of a development is limited to 75 dBA at any development property boundary as outlined in Chapter 375, § 10(C)(1)(a)(i). The hourly equivalent sound level limits at any protected location varies depending on local zoning or surrounding land uses and existing (pre-development) ambient sound levels. At protected locations within commercially or industrially zoned areas, or where the predominant surrounding land use is non-residential, the hourly sound level limits for routine operation are 70 dBA daytime (7:00 a.m. to 7:00 p.m.) and 60 dBA nighttime (7:00 p.m. to 7:00 a.m.).

At protected locations within residentially zoned areas or where the predominant surrounding land use is residential, the hourly sound level limits for routine operation are 60 dBA daytime and 50 dBA nighttime. In addition, where the daytime pre-development ambient hourly sound level is equal to or less than 45 dBA and/or nighttime ambient hourly sound level is equal to or less than 35 dBA, “quiet location” limits apply. For such “quiet locations,” the hourly sound level limits for routine operation are 55 dBA daytime and 45 dBA nighttime. At protected locations more than 500 feet from living and sleeping quarters, the daytime hourly sound level limits shall apply regardless of the time of day.

The Department finds that tonal sound exists if, at a protected location, one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of two contiguous one-third octave bands by 5 dBA for center frequencies at or between 500 Hertz (Hz) and 10,000 Hz, by 8 dBA for center frequencies at or between 160 and 400 Hz, and by 15 dBA for center frequencies at or between 25 Hz and 125 Hz as outlined in Chapter 375, § 10(G)(24). For the purpose of determining compliance with the sound limits, 5 dBA shall be added to the observed levels of any tonal sounds that result from routine operation of the development, as outlined in Chapter 375, § 10(1)(d).

Several municipalities that the project passes through have their own noise regulations. The local regulations would be applied by the Department in place of the Department noise standards, provided that the local regulation meet the requirements of Chapter 375, § 10(B)(1), as described above. The municipalities with local regulations are: Lewiston, Greene, Leeds, New Sharon, and Pownal.⁹ None of these municipal ordinances contain provisions more restrictive than the Department’s nighttime standard for quiet areas – 45 dBA. As a result, if the proposed transmission lines satisfy the nighttime quiet area standard in Chapter 375, § 10, they also will satisfy the ordinance requirements of these municipalities. (As described below, the proposed transmission lines satisfy the Department’s nighttime quiet areas standard.)

⁹ See City of Lewiston’s Code of Ordinances, Appendix A, Section 19 (most restrictive standard is 50 dBA in residential areas); Town of Greene’s Code of Ordinances, Section 6-501.1 (most restrictive standard is 45 dBA between 10:00pm and 7:00am in residential zone); Town of Leeds’ Code of Ordinances, Section 5.F.14 (most restrictive standard is 45 dBA between 10:00pm and 7:00am in residential zone); Town of New Sharon’s Site Plan Review Ordinance, Section IV; and Town of Pownal’s Site Plan Review Ordinance, Article 4 (55 dBA).

Two municipalities in which the applicant proposes new or upgraded substations have their own noise standards, Pownal and Lewiston. Pownal's standard of 55 dBA, which is not limited to time of day, is more than 5dBA higher than the Department's quiet area nighttime standard of 45 dBA, which is the Department standard that applies to the project at the substation locations in Pownal. As a result, the Department does not apply Pownal's standard. Lewiston's ordinance establishes a 50-dBA limit in residential areas for all times of day. As discussed below, the substation locations in Lewiston are not located in quiet areas, so under the Department's rules the 60-dBA daytime and 50 dBA nighttime standards would apply. Even applying a 5-dBA penalty to account for potential tonal sound, Lewiston's standard is not more than 5 dBA less restrictive than the applicable Department nighttime standard. As a result, the Department must apply Lewiston's standard of 50 dBA pursuant to Chapter 375, § 10(B)(1).

A. Overview of Project Sound

The applicant hired Burns & McDonnell to study and model transmission line and substation sound levels for the project and to compare the model results to the applicable sound level standards. The Department retained the services Tech Environmental (TE) to conduct a peer review of the noise report.

(1) Construction Noise

Site Law, in 38 M.R.S. § 484(3)(A), exempts construction noise generated between the hours of 7 a.m. and 7 p.m. or during daylight hours, whichever is longer. The applicant has agreed to construct the project between 7 a.m. and 7 p.m., or during daylight hours with the exception of the HDD construction as the applicant proposed in its October 19,2018 application amendment.

(2) Transmission Lines

The applicant proposes to use conductors that, under dry conditions, are nearly noise free. In high humidity and storm conditions these conductors would produce a slight crackling sound. The applicant modeled sound levels for the operations of new 345-kV AC and 320-kV HVDC transmission lines, using the Bonneville Power Administration (BPA) Corona and Field Effects Program to calculate the expected sound from the transmission lines. Based on the BPA model results for the project, the applicant expects all sound levels produced by new and/or upgraded transmission lines associated with the project to remain within the levels allowed under Chapter 375, § 10. The applicant calculated the 320-kV HVDC and 345-kV transmission line conductor noise levels at the edges of the various rights-of-way (ROWs), in fair weather. The results showed the noise level at the closest ROW edge (75 feet) would be well below the applicable noise standards, with the maximum fair-weather level expected to be 28 dBA. During foul weather or when the moisture content in the air is higher, the applicant states that the expected maximum sound produced by a conductor that is part of the project is expected to be 41 dBA at the edge of the ROW. This sound level would be produced by a 345-kV line.

The applicant notes this maximum is below the most stringent Department standard – a nighttime hourly sound level limit of 45 dBA.

The applicant's assessment and modeling results were reviewed by TE. In June 13, 2018 comments TE stated there was no supporting data in the reviewed materials for the acoustic modeling. TE further commented that the transmission line noise assessment should be updated to include tonal noise and discussion of the 5-dBA tonal sound penalty.

The applicant provided additional information on July 3, 2018. This information included the modeling assumptions and the amplitude of tonal noise.

The additional information demonstrated that under worst-case conditions, the maximum predicted sound level of 41 dBA at the transmission corridor ROW edge is not tonal in character and, thus, is below the Department's most restrictive limit. TE reviewed this information and, in its July 9, 2018 review memo, stated that the applicant's transmission line sound assessment was technically correct and complete.

(3) Substations

There are three existing substations that would be associated with the project – Maine Yankee Substation in Wiscasset, Surowiec Substation in Pownal, and Crowley's Substation in Lewiston – that do not require noise studies since the proposed modifications do not include the installation of significant noise emitting equipment or increase noise. The proposed project includes the construction of two new substations, the Merrill Road Converter Station in Lewiston and the Fickett Road Substation in Pownal; both include noise producing equipment. The proposed project also includes expansions at three existing substations at which the applicant does propose to install new noise producing equipment: the Larrabee Road Substation in Lewiston, Coopers Mills Substation in Windsor, and Raven Farm Substation in Cumberland.

At the two new substations, Burns & McDonnell personnel recorded ambient noise throughout the day and night to determine whether the areas would be considered quiet areas as defined in Chapter 375, § 10(C)(1)(v). The area around the Merrill Road Converter Station was determined not to be a quiet area. The area around the Fickett Road Substation qualified as quiet area. Additionally, short-term measurements were performed as part of the noise survey to establish operational sound levels of the existing substations. Burns & McDonnell took measurements at the fence lines of the existing substations in the directions of the nearest protected areas.

a. Merrill Road Converter Station

The proposed Merrill Road Converter Station consists of converter transformers, valves, reactors, capacitors, and switches. The substation converts DC power to AC power. The applicant monitored ambient sound levels and stated that the area around the proposed converter station is not a quiet area, since the ambient daytime and nighttime hourly

averages were 47 dBA and 39 dBA, respectively. The most restrictive Department standard, which applies to residential areas, would be a daytime limit of 60 dBA and a nighttime limit of 50 dBA. The City of Lewiston Code of Ordinances limits noise to 50 dBA during the day and night at the nearest residential property lines. Burns & McDonnell modeled the noise for this substation using CadnaA. The applicant's results showed that sound levels from the converter station would not exceed the applicable noise level standard, Lewiston's 50 dBA standard, at any of the adjacent residential property lines. The highest modeled result at any property line was 48.3 dBA.

TE reviewed the information and commented that the analysis did not include information on any possible tonal noise produced by the substation.

TE also stated that the analysis still needed the ground factor "G" used in the CadnaA modeling; octave band sound power levels for all noise sources used in the acoustic modeling; the CadnaA-predicted octave band sound levels, by source and the total, for receptor PL-5; and a discussion of tonal sound.

Burn & McDonnell responded to these data requests on July 3, 2018, providing the requested information and discussing Lewiston's ordinance. They reaffirmed the original modeling that showed the equipment selected will have sound levels no higher than 48.3 dBA at the nearest property line. This is under the City of Lewiston Ordinance standard of 50 dBA. TE reviewed this information and determined that the sound assessment was technically correct and complete and recommended that any new equipment installed at the Merrill Road Substation meet the sound power limits listed in Table 5-8 of the application.

b. Larrabee Road Substation

The applicant proposes to add a 345-kV line termination structure, a 345-kV circuit breaker, disconnect switches, instrument transformers, surge arrestors, buswork modifications, support structures, foundations, and modifications to the existing protection and control systems at the Larrabee Road Substation in Lewiston. According to the Burns & McDonnell noise study, the highest predicted sound level at a residential property line pertinent to this substation is 43.1 dBA. Lewiston's ordinance sound level limit for this portion of the project is 50 dBA at the nearest residential property line.

TE reviewed this information and requested that the applicant provide the ground factor "G" used in the CadnaA modeling. Burns & McDonnell provided the requested information on July 3, 2018. TE reviewed this information and application materials and determined that the sound assessment is technically correct and complete. TE recommended that any permit issued by the Department require that new equipment installed at the Larrabee Road Substation meet the sound power limits listed in application Table 5-11.

c. Fickett Road Substation and Surowiec Substation

Given space constraints at the Surowiec Substation in Pownal, the applicant proposes to construct the Fickett Road substation, which is across Allen Road from the Surowiec Substation. The Fickett Road Substation would house a static synchronous condenser (STATCOM) device, which does produce sound. The expansion at the Surowiec Substation would not generate any additional sound. The applicant proposes to expand the existing Surowiec Substation to facilitate the STATCOM at the Fickett Road Substation. The applicant proposes to add a 345-kV line terminal, 345-kV circuit breakers, disconnect switches, instrument transformers, surge arrestors, buswork modifications, support structures, foundations, and modifications to the existing protection and control system. All existing Surowiec Substation equipment is excluded from the analysis since the substation was constructed prior to 1970, and therefore is not subject to the Site Law.

Burns & McDonnell took measurements at the fence line and surrounding areas of the Surowiec Substation where the Fickett Road Substation would be constructed. A long-term noise meter was installed near the proposed substation to monitor ambient noise. The data showed that the area surrounding the substation would be considered a quiet area according to Department criteria since the daytime sound levels are below 45 dBA. As a result, the Department's sound level limits would be 55 dBA during the day and 45 dBA during the night at the property lines. The nearest residential receiver is located 500 feet from the substation. The noise impacts were modeled using a CadnaA noise model. The noise sources were determined not to have a tonal component. The applicant determined that the substation would not exceed noise level standards at the adjacent property lines.

TE reviewed the information and requested additional information on June 13, 2018. This information included providing the ground factor "G" used in the modeling, providing the octave band sound power levels used for modeling, and explaining whether the 5-dB penalty was added or not added to the results.

Burns & McDonnell responded on July 3, 2018 to this request. Burns & McDonnell summarized in this response that the highest predicted sound level, without a tonal penalty, would be 41.9 dBA. TE determined that the sound assessment was technically correct and complete and recommended that any new equipment installed at the Fickett Road Substation meets the sound power limits listed in Table 5-15 of the application.

d. Coopers Mills Substation

The applicant proposes to expand the existing Coopers Mills Substation located in Windsor. The expansion would require the addition of a 345-kV line termination structure, 345-kV circuit breakers, disconnect switches, instrument transformers, surge arrestors, buswork modifications, support structures, foundations, and modifications to the existing protection and control system. In addition, the substation work would require reconfiguration of the existing 345-kV lines.

The project also requires the addition of a +/-200 MVAR STATCOM to provided dynamic reactive support. The addition of the STATCOM would include multiple noise sources, which would increase sound levels at the property line and beyond.

Burns & McDonnell took short-term measurements at the fence line and surrounding the area of the substation. A long-term noise monitor was installed near the substation to monitor ambient noise. The measurements confirmed that the substation area would be considered a quiet area. Therefore, sound level limits would be 55 dBA during the day and 45 dBA during the night at residential property lines. The noise was modeled using CadnaA. The sound level was assessed using the 5-dBA penalty for tonal noise. The applicant determined that the sound levels from the substation would need to be mitigated to meet the applicable noise level standards at two of the adjacent residential property lines. The applicant proposes to mitigate with two sound walls, a 20-foot tall wall next to the main transformer and a 10-foot tall wall next to the STATCOM cooling fans, to lower the predicted sound levels below 45 dBA, assuming new sources produce tonal sound. TE reviewed this information and requested the applicant provide the ground factor "G" used in the CadnaA modeling, verify that the three existing transformers were included in the CadnaA model, and provide a firm commitment to construct the two sound walls described in the response to Information Request #8.

The applicant responded to these requests on July 3, 2018. TE reviewed the additional information and determined that the sound assessment for the Coopers Mills Substation is technically correct and complete. TE recommended that any permit issued require that new equipment installed at Coopers Mills Substation meet the sound power limits listed in the application Table 5-19, and the installation of the sound walls, as proposed by the applicant, with final design supported by additional acoustic modeling using vendor-supplied octave band sound power levels.

e. Raven Farm Substation

The applicant proposes to expand the terminal at the existing Raven Farm Substation in Cumberland. The applicant would add a 345-/115-kV, 448-MVA auto-transformer and a breaker, and one half 115-kV bus at the existing Raven Farm Substation.

Burns & McDonnell took measurements around the existing substation to establish the ambient sound level, as there is currently no noise emitting equipment on site. The measurements showed that the area surrounding the Raven Farm Substation would not be considered a quiet area. At five monitoring points daytime ambient sound levels ranged from 45.3 to 50.2 dBA, with nighttime levels ranging from 42.4 to 46.4 dBA. Therefore, sound level limits would be 60 dBA during the day and 50 dBA during the night at residential property lines. Since the substation will produce tonal noise, a 5-dBA penalty was applied by Burns & McDonnell. The modeling results included in the original application predicted the highest sound level at a property line, including a 5-dBA penalty, would be 49 dBA. The applicant later supplemented its application with The Raven Farm Substation Sound Study, prepared by Burns & McDonnell and dated May 17, 2018. This sound study contained updated modeling results that showed the highest

expected sound level, including a 5-dBA penalty, would be 44.6 dBA. This lower model estimate was the result of the applicant updating the transformer and associated sound pressure level. The transformer planned for in the sound study would emit less sound (75 dBA at 6 feet).

TE reviewed the Raven Farm Substation Sound Study and stated, in its July 9, 2018 review, that the study assessment is technically correct and complete. TE recommended that any permit by the Department require that the new transformer installed at the Raven Farm Substation meet the sound source limit for the base option listed in the study Table 6-1, a sound pressure level of 75 dBA at 6 feet.

B. Department Analysis and Findings

Based on the applicant's submissions, and with consideration of the comments provided by TE, the Department finds the applicant will construct the project between 7 a.m. and 7 p.m., or during daylight hours, with the exception of the HDD construction as the applicant proposed in its October 19, 2018 application amendment, and, therefore, will comply with the controlling statutory standard regulating construction noise. The Department finds the maximum sound generated by the new transmission lines proposed as part of the project will be approximately 41 dBA at the nearest edge of the ROW. This sound level is below the Department's most restrictive nighttime standard of 45 dBA and is also below the municipal standards in Lewiston, Greene, Leeds, and New Sharon.

With regard to the new substations and substation modifications, the Department finds the supplemented application materials assessing expected sound levels were complete and technically sound. The Maine Yankee Substation in Wiscasset, Surowiec Substation in Pownal, and Crowley's Substation in Lewiston, while part of the project, will not be modified in a way that will have a material impact on the noise generated at these facilities. The Department finds the project work at the Merrill Road Converter Station in Lewiston, the Fickett Road Substation in Pownal, the Larrabee Road Substation in Lewiston, the Coopers Mills Substation in Windsor, and the Raven Farm Substation in Cumberland will satisfy the applicable standards of Chapter 375, § 10, including any applicable municipal ordinance provisions, provided the applicant:

- For any new equipment at Merrill Road, Larrabee Road, Fickett Road, and Coopers Mills, installs equipment that meets the sound power limits listed in Appendix D, Table D-1 (incorporating the limits from the Site Law application, Tables 5-8, 5-11, 5-15, and 5-19);
- For any new equipment at Raven Farm, installs equipment that meets the sound power limit listed in Appendix D, Table D-1 (incorporating the base option listed in the Table 6-1 of the Raven Farm Substation Sound Study); and
- Installs sound walls at the Coopers Mills Substation, as proposed, with the final design supported by additional acoustic modeling using vendor-supplied octave band sound power levels, and submits the final design and modeling results to the Department for review and approval prior to operation of the new equipment at the substation.

5. SCENIC CHARACTER

Site Law, 38 M.R.S. § 484(3), and NRPA, 38 M.R.S. § 480-D(1), both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit from the Department. Pursuant to section 484(3), an applicant must make adequate provision for fitting the proposed project into the existing natural environment and the development may not adversely affect scenic character in the surrounding area. Pursuant to section 480-D(1), an applicant must demonstrate that the proposed project will not unreasonably interfere with scenic or aesthetic uses of protected natural resources.

A. Overview – Visual Impact Assessment

To address the scenic impact criteria, the applicant submitted a Visual Impact Assessment (VIA) prepared by Terrence J. DeWan & Associates. The VIA examined the potential scenic impacts of the transmission line and related substation upgrades by describing in both narrative and graphic forms the changes to the visual environment that may result from the project. The initial VIA included photosimulations from 32 key observation points (KOP) and also noted efforts taken by the applicant to avoid, minimize, and mitigate visual impacts. Through the course of the review process, the applicant responded to questions and comments about the VIA and provided additional information, including 21¹⁰ additional photosimulations. These photosimulations were submitted to provide additional evidence concerning the project's impacts when viewed from additional locations and at various times of the year.

As explained in the VIA and outlined in the applicant's witnesses' testimony, preparing the VIA involved the following steps:

- Develop project understanding
- Determine viewshed study area of potential effect (APE or study area) based on viewing distances
- Research, inventory, and identify scenic resources
- Prepare viewshed analysis to determine potential project visibility
- Perform fieldwork to document regional and local landscape character and site context
- Determine project visibility from identified scenic resources
- Prepare photosimulations from key observation points and other identified locations
- Rate potential visual impacts based on evaluation of photosimulations and other analysis
- Determine sensitivity levels of user groups
- Determine visual impact
- Develop mitigation recommendations

¹⁰ At several KOP multiple photosimulations were created depicting views of the project from different directions.

With regard to the identification of potentially impacted scenic resources, the applicant focused its assessment and inventory development on the area within three miles of the project, and within five miles if it would be viewed from an elevated area. These three/five-mile radius areas served as the APE. Within these areas the applicant identified scenic resources within the categories identified in Chapter 315, § 10.

The VIA also included a viewshed analysis. This consisted of both a topographic analysis and a landcover analysis. In the topographic viewshed analysis the areas from where the project would be visible were identified assuming no obstructions other than topography. Trees, buildings, and other obstructions were assumed not to exist. The landcover viewshed analysis incorporated structures and assumed 40-foot tall vegetation in forested areas.

Based on identified scenic resources and important public vantage points, the viewshed analysis, additional desktop analysis and GIS review, and on-the-ground field work, the applicant identified KOPs. The KOPs were intended to capture areas where the visual impact could be greatest, as well as reflect the project as a whole along the entire corridor and at the related substations. The applicant developed photosimulations for the KOPs. As noted above, through the course of the Department's review process additional photosimulations were produced, beyond the original 32. In total, 53 photosimulations were submitted, including photosimulations for the following locations¹¹:

Segment 1

- Beattie Pond, Lowelltown Township
- Wing Pond, Lowelltown Township
- Rock Pond, T5 R6 BKP WKR
- Fish Pond, Hobbstown Township
- No. 5 Mountain, T5 R7 BKP WKR
- Parlin Pond, Parlin Pond Township
- Coburn Mountain, Upper Enchanted Township
- Route 201, Johnson Mountain Township
- Attean View Rest Area, Jackman
- Kennebec Gorge, Moxie Gore (two locations with six different photosimulations)
- Moxie Stream, Moxie Gore

Segment 2

- Moxie Pond, East Moxie Township (three locations)
- Mosquito Mountain, The Forks Plantation (two locations)
- Troutdale Road, The Forks Plantation
- AT, Pleasant Pond Mountain, The Forks Plantation
- AT, Troutdale Road, Bald Mountain Township
- AT, Bald Mountain, Bald Mountain Township

¹¹The photosimulations for the Brookfield Alternative at Harris Dam are not included in this list.

Segment 3

- Wyman Lake Recreation Area, Pleasant Ridge Plantation
- Route 201, Moscow
- Route 8, Anson
- Route 2, Farmington
- Androscoggin Riverlands State Park, Leeds
- Merrill Road, Lewiston
- Sandy River, Farmington
- Carrabassett River, Anson

Segment 4

- Riverside Drive, Auburn
- Fickett Road Substation, Pownal

Segment 5

- Route 194, Whitefield
- Route 27, Wiscasset
- Route 1, Wiscasset
- West Branch Sheepscot River, Windsor (two locations)

Using the Department's Basic Visual Impact Assessment Form, the applicant rated impacts to the following resources as Minimal, Moderate, or Strong. This assessment was part of the VIA included in its initial application. Summaries of the applicant's descriptions of the impacts to each of these resources and the applicant's ratings are set forth below. Design changes made in the course of the review process that modified some ratings are also noted below.

Segment 1

- A. Beattie Pond – Beattie Pond is a remote pond with one camp located at the southeast end. Initially, the applicant proposed a transmission structure to be located 1,300 feet away, which would have been visible from the pond. At the request of the Commission and prior to the hearing, the applicant reduced the height of that one structure. The applicant subsequently, on September 18, 2019, proposed a different route called the Merrill Strip Alternative, which would further reduce the project's visibility from Beattie Pond. With the Merrill Strip Alternative route, existing vegetation and topography will screen structures, conductors, and shield wires from view from all but approximately 8 percent of the pond. Where visible, the tops of two structures, conductors, and shield wires could be seen in between the tops of trees at a distance ranging from approximately 0.75 to 1 mile. (Minimal, as revised)
- B. Wing Pond – Wing Pond is located in Lowelltown and Skinner townships and is recognized as a remote pond. The pond does not have a scenic resource rating, as

identified in the *Maine Wildlands Lake Assessment*¹². Views of the project from Wing Pond would include two structures and conductors within 1.75 miles. The visible portions of the project are within a recently harvested area visible from the pond. The contrast with the surrounding vegetation would be minimal since the structures would be self-weathering steel. (Minimal/Moderate)

- C. Rock Pond – Rock Pond is a 124-acre pond with a boat launch and campsites. The pond is rated as a Significant scenic resource by the *Maine Wildlands Lake Assessment*. Project structures and the corridor would be visible approximately 3,100 feet away from the Pond. A portion of the corridor visible from Rock Pond crosses Gold Brook, which contains Roaring Brook Mayflies (RBM) (see Finding 7 for a discussion of RBM).

At the request of the MDIFW several structures near Gold Brook were elevated to allow for full canopy vegetation within 250 feet of the brook.

This increased the visibility of those structures from Rock Pond. To minimize the visual impacts, the applicant proposed to taper vegetation in a portion of the corridor and use non-specular conductors¹³ in the areas where they would be visible from Rock Pond. (Moderate)

- D. Fish Pond – Fish Pond is located in Hobbstown Township and is rated a Significant scenic resource by the *Maine Wildlands Lake Assessment*. A boat launch is located on the northwestern end of the pond adjacent to a small campground; overall, the shoreline appears undeveloped. Project visibility would be very limited to the tips of up to four structures above the tree line at a distance of three to four miles. The corridor clearing will not be visible. (Minimal)
- E. No. 5 Mountain – No. 5 Mountain is located in T5 R7 BKP WKR and within the Leuthold Forest Preserve. The summit can be reached via an existing trail that is open to the public. The VIA states the project structures and corridor would be visible approximately 3.9 miles away. (Minimal/Moderate)
- F. Parlin Pond – Parlin Pond is a 543-acre pond with a boat launch, numerous camps, and a rest area. The pond is rated as a Significant scenic resource by the *Maine Wildlands Lake Assessment*. Project structures and the corridor would be visible at a distance of 1.8 miles or more from the pond. (Minimal/Moderate)
- G. Coburn Mountain – Also known as the Upper Enchanted Township Unit, the viewpoints from Coburn Mountain were designated as Scenic Viewpoints of State or National Significance in 2010. This designation was established for the purposes of evaluating impacts from grid-scale wind energy projects.

¹² The *Maine Wildlands Lake Assessment* is a report prepared by the Land Use Regulation Commission on June 1, 1987 that evaluated, among other things, the scenic quality of 1,500 lakes in the unorganized areas of the State.

¹³ Segal explained in her testimony on April 1, 2019 that non-specular conductors are pre-treated so they reduce potential reflectivity from sunlight.

The project corridor and numerous structures would be visible from the summit, which is accessible via a multi-use trail maintained by the Bureau of Parks and Lands. A small building, communications infrastructure, and a solar array are located at the top of the mountain. From the summit, the corridor will be visible in the midground looking toward the west side of the mountain at distances of 1.2 to 3.0 miles, and in the background (4+ miles) to the southeast. During the application review process, to address concerns and minimize the visual impact of the project, the applicant proposed tapering the vegetation in the corridor within the viewshed of Coburn Mountain and using non-specular conductors¹⁴ in this same area. (Moderate)

- H. Route 201 – Also known as the Old Canada Road Scenic Byway, Route 201 is designated as both a State and a National scenic byway. The 78.2-mile long byway will be impacted by both Segments 1 and 2. The VIA states that the project poles and conductors will be visible to motorists traveling on the byway. The applicant proposed to plant a vegetative, visual buffer along both sides of Route 201 at both crossing locations. (Moderate)
- I. Attean View Rest Area – From the rest area located on Route 201 the project will be visible at a distance of 7+ miles. (Minimal)
- J. Upper Kennebec River – The applicant modified the application, which originally included an overhead crossing, to incorporate an underground crossing using HDD technology. In the initial VIA with an overhead crossing the applicant rated the visual impact as Strong. Utilizing HDD to run the transmission line under the river results in no project visibility from the Kennebec River. (No visibility, as revised)
- K. Moxie Stream – This stream has been designated as scenic in the *Maine River Study*. The corridor and conductors would be visible at approximately 760 feet on the upstream side and approximately 1,000 feet on the downstream side. The line is proposed to be sited to avoid an adjacent open wetland which minimizes visibility from upstream. The structures would be set back more than 400 feet from the stream on the north side and more than 550 feet on the south side. Riparian vegetation, consisting of non-capable species, along the stream bank is proposed to be maintained and would minimize views into the corridor.¹⁵ The applicant also proposes to use non-specular conductors at this crossing. The VIA concludes the limited duration of exposure and screening effects of preserved vegetation result in minimal visual impact. (Minimal)

¹⁴ Use of non-specular conductors in the viewshed of Coburn Mountain was not discussed in the original VIA but is identified as part of the project in Exhibit CMP -5-C, pg. 7, included with Segal direct testimony for the hearing.

¹⁵ This order requires taller vegetation at the Moxie Stream crossing. (See Section 7 and Appendix C, Table C-1.) This taller vegetation will increase buffering of the corridor beyond the riparian vegetation and screening evaluated by the applicant in the VIA.

Segment 2

- A. Moxie Pond – Moxie Pond is a 2,370-acre pond rated as an Outstanding scenic resource by the *Maine Wildlands Lake Assessment*. The pond contains a boat launch and over 100 camps. The proposed project will be co-located in the existing transmission corridor that parallels the western side of Moxie Pond before crossing the southern end of the pond. The existing corridor will be widened by 75 feet to accommodate the proposed transmission line. The majority of new transmission structures adjacent to the pond will be screened by existing vegetation and will not be visible from the pond; however, the tops of approximately 12 structures will be visible from various areas of the pond. The widened corridor will be visible from two locations; the existing corridor is visible from these same locations today.

The VIA concludes the presence of the existing transmission line and the screening effects of shoreline vegetation result in the project having a minimal visual impact on the lake. (Minimal)

- B. Mosquito Mountain – Mosquito Mountain is located on private land but used informally by the public for hiking. The widened corridor and numerous structures would be visible from the mountain, adjacent to the existing transmission line that is presently visible. The VIA concludes that in the context of the existing transmission line and existing roads seen from the mountain the visual impact of the proposed line would be minimal. (Minimal)
- C. Troutdale Road – This private road is used to access camps on Moxie Pond, as well as several other roads in the Town of Moscow. The road runs parallel to, and within the cleared corridor of, the existing transmission line. The VIA states the project structures and widened corridor would be visible from the road. The longest duration of exposure would be for approximately 1,000 feet where the road is located within the eastern side of the existing cleared corridor. Due to the project being co-located with the existing corridor the VIA concludes the impact on motorists' continued use and enjoyment of the Troutdale Road, and other private roads in the area where there would be less exposure to the project than along the Troutdale Road, would be minimal. (Minimal)
- D. Appalachian Trail (AT) – Approximately 14.5 miles of the AT is located within five miles of Segment 2. The proposed Segment 2 transmission line would be co-located with an existing 115-kV transmission line. The applicant evaluated the visual impact on AT hikers from three general areas: Pleasant Pond Mountain summit area, Troutdale Road area, and Bald Mountain summit area. Within these three general areas a total of 11 viewpoints were reviewed (including from Middle Mountain). From Pleasant Pond Mountain the VIA concluded there would be minimal visual impact due to the viewing distance and the resulting minimal project visibility. From the areas near Troutdale Road, including where the AT runs along the road, the VIA concludes that the visual impact from the AT would

be minimal to moderate due to the presence of the existing transmission line corridor. The applicant proposes to plant a buffer along Troutdale Road to minimize the visual impact of the corridor. From the Bald Mountain summit area, the VIA concludes there would be minimal visual impact due to the partial screening and viewing distance. (Minimal/Moderate)

- E. Wyman Lake Recreation Area – This area is located in Pleasant Ridge Plantation and managed by Brookfield Renewables and the Bingham-Moscow Chamber of Commerce. The project will be visible from the recreation area and from Wyman Lake, but will be located near the existing Wyman Hydroelectric Dam, which impounds Wyman Lake and also is visible from the lake and recreation area. (Minimal)

Segment 3

- A. Road Crossings – Segment 3 will cross several State roads, including Route 2 in Farmington, Route 8 in Anson and Route 201 in Moscow. A total of 64 road crossings are proposed in this segment. At 39 of these crossings, motorists currently see an existing 115-kV transmission line. At the remaining 25 crossings, motorists currently see two 115-kV transmission lines. The widened corridor and structures would be visible at the crossings. The VIA states the project will result in a minimal increase in overall visual impact. (Minimal)
- B. Androscoggin Riverlands State Park – This 2,675-acre State Park includes 12 miles of Androscoggin River frontage. The park provides river access for boating and numerous all-season trails. The existing corridor crosses a portion of the park, and the widened corridor and new structures would be visible to park visitors from land. The corridor would not be visible from the river. (Moderate)
- C. Merrill Road – The existing corridor crosses Merrill Road in Lewiston. The proposed new Merrill Road Converter Substation would be located approximately 2,400 feet north of the road and would not be visible from the road where the corridor crosses it. There are no scenic resources with potential views of the converter station. (Moderate)

Segment 4

- A. Riverside Drive – The rebuilt line crosses Riverside Drive and then the Androscoggin River in Auburn. The existing 45-foot high H-frame structures would be replaced by 75-foot high single pole supports. (Minimal)
- B. Fickett Point Substation – The applicant proposes to construct a new 345-kV STATCOM substation in Pownal. The substation would be located on a 4-acre parcel, approximately 60 feet from Allen Road and 115 feet or more from Fickett Road. The substation would be visible to motorists and several homes on the

north side of Fickett Road. The applicant proposed to plant a vegetative, visual buffer along the south side of Fickett Road. (Moderate)

Segment 5

- A. Route 27 – The new transmission line would be located between two existing lines, within the current corridor. The new structures and conductors would be visible as the line crosses Route 27 in Wiscasset. No new corridor clearing is proposed. (Minimal)
- B. Route 194 – The new transmission line would be located between two existing lines, within the current corridor.

The new structures and conductors would be visible as the line crosses Route 194 in Whitefield. No new corridor clearing is proposed. (Minimal)

Additionally, the applicant analyzed potential impacts for the following sites and determined there would be limited impact (typically minimal or no impact), or determined there is no reasonable public access to the site:

Segment 1

- No. 5 Bog
- Snowmobile Trails, ITS 89 and ITS 87
- Moose River
- South Branch Moose River
- Iron Pond
- Egg Pond
- Grace Pond, Upper Enchanted Parcel

Segment 2

- Arnold Trail Historic District
- Snowmobile Trail, ITS 86
- Moxie Mountain
- Baker Stream

Segment 3

- Monument Hill
- Clearwater Pond
- Dead River
- Allen Pond
- Berry Pond
- Sterry Hill
- Nutting
- Snowmobile Trails, ITS 82, 84, 87, and 115
- Kennebec Valley Trail
- Mount David

Segment 4

- No Name Pond
- Androscoggin River
- Randall Road Ballfields
- Snowmobile Trails, ITS 87 and 115

Segment 5

- Montsweag Dam Preserve
- Residential structures

The VIA also included proposed mitigation strategies, including the use of self-weathering single steel poles to minimize visual contrast, particularly in Segment 1 where structures would often be seen against a wooded backdrop.

Co-location in Segments 2 and 3 also was noted as minimizing new clearing. Mitigation strategies at substations described in the VIA included limiting additional clearing and development of buffer plans. Through the course of the Department's review of the application, additional mitigation measures were incorporated into the overall VIA, including vegetation tapering at Coburn Mountain and Rock Pond, non-specular conductors at Rock Pond, Coburn Mountain, and Moxie Stream, and plantings at several locations, such as Route 201 crossings.

Finally, on May 1, 2019, the applicant submitted supplemental testimony in response to the Department's request in the Tenth Procedural Order. In this supplemental filing the applicant evaluated both whether taller poles within Segment 1 would be visible and their potential visual effect. The focus of this evaluation was the area surrounding the nine priority areas for habitat connectivity identified by TNC through pre-filed witness testimony.¹⁶ In the vicinity of these nine areas the applicant identified resources with potential views, identified whether taller poles with a height of 130 feet would be visible from the resource, and discussed the nature of any impact.

The applicant states that its VIA demonstrates that the project meets the standards for scenic character in both Site Law and NRPA.

B. Peer Review Comments and Applicant Response

The Department hired James F. Palmer of Scenic Quality Consultants (SQC) to provide comments to the Department on the portions of the application related to scenic character. SQC reviewed the VIA included by the applicant in its initial submission and provided the Department with comments dated August 20, 2018. SQC also visited several of the project photosimulation locations on September 5, 2018. The Department reviewed and considered SQC's August 20 comments, as well as subsequent comments provided by

¹⁶ The purpose of the taller poles would be to allow taller vegetation to grow within the corridor under the conductors, improving wildlife connectivity. Wildlife impacts, including the benefits of taller vegetation within the corridor, is discussed in Section 7.

SQC dated November 23, 2018.¹⁷ SQC's comments presented a number of questions, including about the viewshed analysis, whether scenic resources were appropriately identified, and the process for selecting key observation points for which photosimulations were produced. These questions all related to the overall value of the applicant's VIA in assessing potential visual impacts of the project.

Following consideration of each set of comments from SQC, the Department asked the applicant for clarification or for additional information the Department determined was needed to further its review of the project's visual impacts. The applicant provided responses to Department information requests on October 19, 2018 and December 7, 2018.¹⁸ Both responses contained sections focused on assessment of visual impacts, including responses to the questions posed by the Department and comments prepared by SQC. Through this process the applicant significantly supplemented its VIA.

In addition to providing comments on the applicant's VIA, SQC also reviewed and commented on an Upper Kennebec River rafting experience survey commissioned by the applicant. The survey, which involved individuals rafting on the Upper Kennebec and Dead Rivers in the fall of 2018, was completed in response to comments SQC offered at the time the applicant was proposing an overhead crossing of the Upper Kennebec River. The survey was designed to help assess the impact an overhead crossing would have on rafters. SQC offered its interpretation of the survey results – that rafters would notice degraded scenery from an overhead crossing, but would still enjoy the rafting trip and likely return for a repeat rafting experience. SQC also commented that the survey may have value when assessing the visual impacts at other locations, particularly for people engaged in water-based activities, and saw the survey as indicating that people believe seeing power lines has a greater negative impact on the river recreation experience than most other human activities, including wind turbines, clear cuts, and bridges. The applicant responded to SQC's comments, explaining why it believed SQC overstated the relative visual impact of transmission lines relative to other types of human activity or development.

C. Public Hearing Evidence and Written Comments

(1) Applicant Testimony

During the applicant's testimony, Terrence DeWan and Amy Segal, from Terrence J. DeWan & Associates, explained their methodology for the creation of the VIA. In their testimony they stated that they evaluated scenic impacts within three miles of the corridor, which is standard procedure.

¹⁷ The August 20 and November 23, 2018 comments noted here were the most lengthy and substantive comments offered by SQC. SQC provided additional comments, including on the Merrill Strip Alternative and the Winter Recreation Survey conducted by Sandra Howard, PhD, as well as on potential wildlife impact mitigation strategies in April 23, 2019 comments.

¹⁸ On December 9, 2018, the applicant submitted revised Attachments E and F to its December 7, 2018 response to the Department's additional information request. Both attachments relate to the assessment of visual impacts. Reference in this Order to the applicant's December 7 submission includes the December 9 revisions.

In addition, they also evaluated impacts beyond that, out to five miles from the corridor, for scenic resources as defined in Chapter 315. DeWan and Segal provided testimony on methods used to avoid, minimize, and mitigate the impacts to the numerous affected scenic resources. Some of these methods include: avoiding ridge lines; planting visual buffers in the corridor along the Old Canada Road (Route 201); using non-specular conductors to avoid reflecting sunlight; tapering vegetation around Rock Pond and the areas visible from Coburn Mountain to minimize the line contrast between the corridor and the surrounding forest; and using self-weathering steel poles to maximize landscape compatibility.

DeWan and Segal testified that in their professional opinion, the project would not have an unreasonable adverse effect on the scenic character of the area and would fit harmoniously into the environment. The applicant also testified that the proposed compensation plan adequately compensates for any unavoidable impacts to recreational use of all the scenic resources impacted by the project.

(2) Intervenor Testimony

Group 1 argues that the impact to the Old Canada Road Scenic Byway extends beyond what is visible from the road. In testimony, Robert Hayes argues that travelers coming to the byway come for the entire experience, not just for driving. In his view, the purpose of the byway is to promote tourism in the area and part of that promotion is the scenic beauty of the Upper Kennebec and Moose River valleys, as well as Coburn Mountain. He contends that the project will diminish the proud character of the area resulting in decreased tourism and traditional economic activity.

Groups 2 & 10 argue that the applicant's VIA is inadequate, pointing to comments of SQC in its review memos pertaining to the project. They also contend that the applicant should have conducted user surveys of snowmobilers utilizing the trails in and around the project area near The Forks and argue that this omission is a fatal flaw in the application. Groups 2 & 10 witnesses testified that the project would have a serious impact on the recreational use of the area because many of their clients would no longer come to the area due to the negative scenic impact of the transmission line.

A witness for Group 3, Robert Meyers, the Executive Director of the Maine Snowmobile Association, testified that the snowmobile clubs that make up the association have many miles of trails located in power line corridors. He further testified that he has never received a complaint from a snowmobiler about viewing transmission lines.

A Group 4 witness, Dr. David Publicover, testified that the applicant had not adequately buffered the new transmission line from views that would be experienced by users of the AT. He suggested that this could be accomplished by relocating the trail and recommended that this be a condition of approval if the proposed project is approved.

Group 7 witnesses testified that the applicant's proposal to run the proposed transmission line under the Upper Kennebec River addressed the most significant scenic impact and

that based on their familiarity with the character of the area of the proposed corridor, experience in the outdoor recreation industry, and other steps the applicant took to site the project to minimize visual impacts, the project will not have an adverse impact on existing scenic, aesthetic, and recreational uses of the area surrounding the project.

(3) Public Testimony and Written Public Comments

Many of the written and oral comments the Department received from members of the public related to the scenic impact of the project, particularly from Segment 1.

A large majority of the comments in opposition to the project contained statements that the scenic impacts of the proposed project would be unreasonable. Often these comments were general in nature without focusing on potential impacts at specific locations. When reference was made to specific locations, the impacts to views from Coburn Mountain and the Old Canada Road were commonly noted. Many of the comments received by the Department in support of the project that mention scenic impacts state that the scenic impacts are outweighed by the benefits of the project in terms of a reduction in greenhouse gas emissions.

D. Department Analysis and Findings

(1) Regulatory Framework

Site Law, 38 M.R.S. § 484(3), and NRPA, 38 M.R.S. § 480-D(1), both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit from the Department. Site Law prohibits development that will “adversely affect” scenic character, while NRPA prohibits activity that will “unreasonably interfere” with existing scenic and aesthetic uses. The criteria of the two laws reflect a similar intent in that they both allow development or activity that will result in a visual impact, but when this impact is too great an applicant fails to satisfy the review criteria. This is reflected in the corresponding NRPA and Site Law rules, both of which specify that the applicant’s burden is to demonstrate that there would be no “unreasonable adverse” impacts or effects and the Department’s assessment is on that basis. Ch. 315, §§ 1 & 4 and Ch. 375, § 14(B) & (C).

When reviewing scenic impacts under NRPA and evaluating whether an impact is unreasonable, the Department is guided in part by Chapter 315, § 9. This section provides:

The Department’s determination of impact is based on the following visual elements of the landscape:

- A. Landscape compatibility, which is a function of the sub-elements of color, form, line, and texture. Compatibility is determined by whether the proposed activity differs significantly from its existing surroundings and the context from which they are viewed such that it becomes an

unreasonable adverse impact on the visual quality of a protected natural resource as viewed from a scenic resource;

- B. Scale contrast, which is determined by the size and scope of the proposed activity given its specific location within the viewshed of a scenic resource; and
- C. Spatial dominance, which is the degree to which an activity dominates the whole landscape composition or dominates landform, water, or sky backdrop as viewed from a scenic resource.

In making a determination within the context of this rule, the Department considers the type, area, and intransience of an activity related to a scenic resource that will be affected by the activity, the significance of the scenic resource, and the degree to which the use or viewer expectations of a scenic resource will be altered, including alteration beyond the physical boundaries of the activity. In addition to the scenic resource, the Department also considers the functions and values of the protected natural resource, any proposed mitigation, practicable alternatives to the proposed activity that will have less visual impact, and cumulative effects of frequent minor alterations on the scenic resource. An application may be denied if the activity will have an unreasonable impact on the visual quality of protected natural resources as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation. An “unreasonable impact” means that the standards of the NRPA, 38 M.R.S. § 480-D, will not be met.

Site Law similarly requires the Department to evaluate whether a scenic impact is unreasonable. The corresponding Site Law rules instruct the Department to consider all relevant evidence as part of its evaluation, including evidence on whether:

- A. The design of the proposed development takes into account the scenic character of the surrounding area;
- B. A development which is not in keeping with the surrounding scenic character will be located, designed, and landscaped to minimize its visual impact to the fullest extent possible;
- C. Structures will be designed and landscaped to minimize their visual impact on the surrounding area;
- D. The plans for the proposed development provide for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.

The Site Law rules do not contain a section similar to NRPA's Chapter 315, § 9, which identifies more specific elements to be considered that guide the Department in determining whether a scenic impact is unreasonable. Finding the guiding concepts in Chapter 315, § 9 instructive to the Department's charge under Site Law in evaluating visual impacts, the Department considers the same elements for evaluating visual impacts set out in Chapter 315, § 9 when evaluating the same type of impacts under Site Law.¹⁹ As noted above, while similar, NRPA and Site Law are not identical. The Department's evaluation of visual impacts under NRPA focuses on impacts to existing scenic uses. As specifically set forth in Chapter 315, scenic impacts under NRPA are evaluated from those public resources and public lands used by the public, defined as "scenic resources." Ch. 315, §§ 5(H) and 10.

The Department's review of visual impacts under Site Law is broader. Under Site Law the Department must consider whether the applicant has made adequate provision for fitting the proposed project harmoniously into the natural environment and whether the proposed project would adversely affect scenic character in the municipality or in neighboring municipalities. As a result, in reviewing the project the Department evaluated potential visual impacts from locations fitting the NRPA definition of scenic resources, as well as from other areas where the project would be visible to the public, including from privately owned land. Through evaluating the project from these many vantage points, the Department is able to evaluate the project as a whole and assess both whether the project unreasonably impacts existing scenic uses and whether it adversely affects scenic character of the area. For the purpose of this Order, where the Department finds the project will not have an unreasonable adverse effect on scenic uses or character it finds the scenic impact standards in both NRPA and Site Law, where applicable, are satisfied.

(2) Sufficiency of the VIA

The burden rests with the applicant to demonstrate that its proposal satisfies the visual impact standards under Site Law and NRPA. The applicant's VIA is an important component of its application with respect to visual impacts. Along with the original VIA, supplemental information provided in response to questions and comments on the original VIA, including from the Department and the consultant it retained, became part of the overall VIA. The Department evaluated the sufficiency of the overall VIA, guided by Chapter 315, § 7 and Chapter 375, § 14(C), which address the components of VIAs.

The applicant selected an Area of Potential Effects (APE) of three miles, extending to five miles from elevated viewpoints. As explained in the VIA, the project would be considered to be in the foreground when within 0 to 0.5 miles from the observer, in the midground at a distance of 0.5 to three miles, and in the background at a distance of greater than three miles.

¹⁹ When applying this general framework as part of its Site Law review, the Department does so without focusing on scenic resources as specifically defined in Chapter 315. The general framework includes consideration of the elements of landscape compatibility, scale contrast, and spatial dominance when evaluating visual impacts, as well as consideration of context, such as the type of area, significance of the area, and viewer expectations.

At distances greater than three miles, changes to the landscape are highly visible only if they present noticeable contrast in form or line. While poles could be visible to some observers when in the background, the corridor itself, depending on the angle of the observer relative to the corridor, is more likely to be noticeable. The APE is tailored accordingly, extending to three miles everywhere and to five miles where viewpoints are elevated, making the ability to see poles or wires in the background more likely and identification of the corridor, which typically will have trees on both sides, particularly along Segment 1, easier. This approach is the APE the Department – informed by decades of experience applying Site Law and NRPA – typically requires for large-scale projects such as the present one.

In its comments, SQC observed that the APE distances for the transmission wires and poles are in general agreement with the literature, but expressed uncertainty about whether those distances were sufficient to evaluate the visual impact of the corridor. It was not clear to SQC at the time of initial comments to what extent the applicant had considered visibility of the corridor (as opposed to just the structures in it) when selecting the APE. In its October 19, 2018 response to a Department information request, the applicant explained where and how corridor visibility had been considered and accounted for in photosimulations. Also, additional photosimulations were provided on December 7, 2018 and January 9, 2019, showing the corridor in the winter, when most visible, from Coburn Mountain and elsewhere. This responsive material and accompanying photosimulations allowed evaluation of the APE with respect to the corridor. Based on the evidence in the record, the Department finds the APE is appropriately sized for the size, scope, and nature of the project, recognizing its location, including the location of Segment 1 in a primarily forested, largely undeveloped area.

Within the APE, identifying locations from which the project would be visible and then assessing the visual impact from key locations is a central component of the VIA. SQC's comments and the applicant's responses assist with review of the sufficiency of the VIA in this area. SQC expressed uncertainty about whether the VIA evaluated impacts from the appropriate places. SQC posed questions about the applicant's viewshed analysis, identification of scenic resources, and selection of key observation points – the points for which photosimulations were created.

The applicant's viewshed analysis includes one analysis based on topography only and another analysis assuming the presence of vegetation, structures, and other obstructions. SQC questioned the data used to reflect forested conditions in the second (landcover) viewshed analysis. While SQC stated the forest cover height of 40 feet used by the applicant was consistent with professional practice, SQC pointed to different and more recent data reflecting the location of forest cover that could have been used. SQC acknowledged, however, that the precision of the viewshed analysis in and of itself was not particularly significant. The significance of the viewshed analysis was dependent on how it was used. SQC believed the landcover viewshed analysis was central to the applicant's identification of locations within the APE from which to evaluate the scenic impacts of the project. Reliance on the viewshed analysis, for example, could mean a place could incorrectly be assumed to be screened from the project. SQC pointed to the

fact that roughly half of the key observation points selected by the applicant for photosimulations, because the project would be visible from those points, are not points identified on the landcover viewshed map. SQC stated that this reflected the limited value of the viewshed analysis.

The Department concurs with SQC on its observations about how the viewshed analysis was used as part of the VIA and notes that the relative role of the viewshed analysis in the overall identification of key observation points could have been more thorough in the original VIA. However, the explanation provided by the applicant in its December 7, 2018 response adds important clarity.

The applicant noted that the landcover viewshed analysis was just a starting point and that for Segments 1 and 2, recognizing forestry patterns change, a topographic viewshed analysis also was used. Vegetation was not included in this analysis. Additionally, the viewshed analysis (both landcover and topographic) was supplemented by Google Earth aerial imagery for 2016 to determine where harvesting operations may have recently altered visibility. The applicant explained that while field investigations started with locations where it appeared there would be views of the project, its consultants collected GIS data, conducted on-line research to identify scenic resources, reviewed aerial imagery, and field checked viewshed maps. The table listing scenic resources submitted by the applicant shows the extensive field work done by the applicant, including site visits to locations where viewshed mapping suggested no visibility. The Department finds SQC's comments helpful and informative; they identified the limitations of the landcover viewshed analysis completed by the applicant. The Department also finds the applicant recognized the value and limitations of the landcover viewshed analysis and appropriately used the analysis, in conjunction with field work and other tools and analysis, as part of the overall VIA. This is supported by the fact that the applicant appropriately identified many KOPs outside the landcover viewshed.

NRPA requires evaluation of visual impacts from scenic resources. While the term scenic resource is defined in Chapter 315, § 5(H), in its review of the applicant's VIA, SQC questioned whether the applicant may have failed to identify scenic resources within the APE. For example, in its August 20, 2018, comments SQC wondered whether all public roads, cemeteries, and land included in Maine's Open Space Tax Law program qualify as scenic resources. The Department notes that privately owned lands, by virtue of inclusion in the Open Space tax program, are not converted to "public natural resources" or "public lands." However, certain cemeteries (those on public land) and public roads (those with notable scenic views) are scenic resources. In its December 7, 2018 submission, the applicant expanded its analysis to include these resources and provided a comprehensive list of all identified scenic resources in its Attachment F, Scenic Resources Chart.²⁰ The Department finds the applicant identified the scenic resources within the APE, consistent with the Department's expectations for a VIA as laid out in Chapter 315, § 7.

²⁰ The applicant continued to update this chart, for example, submitting an updated Attachment F on January 30, 2019.

The applicant selected KOPs and prepared photosimulations from these points to illustrate what observers see from these vantage points presently and what they would see if the project were constructed. These points reflect worst-case scenarios and, by including KOPs across the entire project, also reflect the project as a whole. The initial VIA included photosimulations from 32 KOPs. Through the course of review, 21 additional photosimulations were added²¹, including:

- One photosimulation depicting the tapered vegetation proposed at Rock Pond, and
- Thirteen photosimulations at ten locations showing snow cover conditions.

While the initial submissions by the applicant on this issue were lacking in thoroughness, the submission of additional information in response to questions and comments is not unusual during project review. The Department finds the resulting package of photosimulations is robust and allows full evaluation of the project, including transmission structures and wires, the corridor, and substation, and under various conditions (including snow cover and leaf-off). The Department recognizes the project has drawn considerable public attention and generated extensive comment from intervenors and the public, including from individuals who live and recreate in the area of the project. Much of the evidence presented by intervenors and testimony and written comments submitted by members of the public has addressed the potential visual impacts from various locations. Particular areas of focus in the evidence are the Upper Kennebec River crossing, Coburn Mountain, Rock Pond, several areas along the Spencer Road, the Appalachian Trail, Old Canada Road (Route 201), and Beattie Pond. These are among the places focused on by the applicant in the VIA.

In addition to the identification of scenic resources and KOPs, and the development of photosimulations, the overall VIA describes the significance of visual impacts from various locations, addresses uses of the area and viewers' expectation, and discusses proposed measures to avoid and minimize impacts to scenic resources, including: use of self-weathering poles, co-location of segments with existing transmission line corridor, tapering in certain areas, reducing pole heights in certain areas, and planting buffer vegetation in select areas to minimize impacts looking up a corridor and at the Fickett Road substation. The applicant's supplemental testimony also addresses the potential visibility of and associated visual impact of taller poles in certain areas along Segment 1. The Department finds the VIA, with the supplementary evidence submitted, was developed in a manner consistent with Chapter 315, § 7 and Chapter 375, § 14(C) and is sufficient to enable evaluation of whether the project satisfies the visual impact standards in NRPA, 38 M.R.S. § 480-D(1), and Site Law, 38 M.R.S. § 484(3).

²¹ During the course of the Department's review of the project, the applicant submitted photosimulations that supplemented its initial VIA and were for alternatives that are not part of the final proposal, including four photosimulations for the Brookfield Alternative and four photosimulations for a three-structure design for an overhead crossing of the Upper Kennebec River.

(3) Evaluation of Scenic Impacts

In evaluating the scenic impacts of the proposed project under Site Law, 38 M.R.S. § 484(3), and NRPA, 38 M.R.S. § 480-D(1), the Department considered all relevant evidence in the record, including the application and supplementary filings by the applicant, information gathered during the public hearing, the written comments received, the comments of the independent scenic consultant, and the evidence gathered directly by Department staff. The Department staff visited the project area several times in 2018. In addition, on June 29, 2019, the Commissioner, Presiding Officer, Assistant Attorney General, and Department staff conducted a site visit.

The Department evaluated the scenic impact of the project as a whole, as well as from specific vantage points along the length of the project.

This evaluation includes consideration of the potential visual impact of taller poles, transmission structures with a height of 130 feet, within Wildlife Areas identified in Appendix C and required by this Order as explained in Section 7. As SQC commented with regard to taller poles, recreators in the forest will not have views of taller poles and will not encounter a cleared corridor. The taller poles are intended to allow the growth of vegetation within the corridor. Potential visual impacts of taller poles would occur in two situations, open waters and rivers associated with wetlands and elevated viewpoints.

The following discussion and analysis focus on the key locations and topics identified by the Department, its consultant, the applicant, the intervenors, and members of the public during the course of the Department's review.

a. Upper Kennebec River Crossing

The section of the Upper Kennebec River where the applicant originally proposed an overhead crossing is nationally known for its whitewater rafting with approximately 40,000 people a year booking trips with local rafting companies to float this section of the river. Initially, the applicant proposed an overhead crossing utilizing a five-structure design. The conductors, shield wires and the tops of at least two structures would have been visible from the Kennebec River. The applicant redesigned the crossing to eliminate two of the structures in an attempt to reduce the visibility of the project from the river. After the early portions of its review, and review of public input submitted to that point, on May 7, 2018, the Department sent the applicant a letter expressing its concerns with an overhead crossing of the Kennebec River and the scenic impact it would have on existing recreational use of the area. It is unlikely the Department could have found an overhead crossing in this area satisfied the scenic impact standards in NRPA and Site Law.

In October 2018, the applicant amended its application and proposed to utilize a HDD to install the transmission line under the river. With this design, none of the project elements will be visible from the river, although some area of reduced vegetation may be visible from the river.

Based on the change from an overhead crossing to a HDD crossing with no project visibility from the Upper Kennebec River, the Department finds that the proposed project will not have an unreasonable adverse effect on scenic uses or character of the Upper Kennebec River.

b. Spencer Road, Hardscrabble Road, and Other Logging Roads Near Segment 1

These roads, located on private land, were constructed and are maintained to support the commercial forestry operations in the area. It is not uncommon for an individual traveling these roads to see evidence of recently harvested areas or logging equipment, as well as scenic vistas. There even may be areas where a harvest opens up a scenic view from the logging road that was not there prior to commercial forestry operations. Although a person may travel a private land management road and enjoy the surrounding scenic qualities or even travel such a road specifically for the scenery, private roads do not qualify as scenic resources under NRPA. They are neither a public natural resource nor public land.

Under Site Law, scenic impacts to the public from private property may be considered. With regard to land management roads, Maine has a long tradition of private timberland owners allowing members of the public, by permission, to access their timberland for recreational purposes, as well as to reach points more conveniently accessed by travelling private logging roads. The granting of this permission to access and travel across private property does not establish an expectation that any such traveler will enjoy a particular view. Reasonable viewer expectations are a factor considered by the Department when applying the scenic standards in Site Law and untouched forest is not a reasonable expectation when traveling roads used for forest management and harvesting. Some views of a transmission line with low-growth or tapered vegetation would not be sharply out of character along a land management road. The Department declines to interpret the concept of reasonable viewer expectations under the Site Law as including an expectation of certain scenic character when traveling on a private road across private property, by permission. There is no indication that the Legislature intended the Site Law to have that result, which could have a chilling effect on the long tradition of public access to private land in Maine. The Department finds the project will not have an unreasonable adverse effect on scenic uses or character of the Spencer Road, Hardscrabble Road, or the other impacted private land management roads, including as a result of the installation of taller poles in the Wildlife Areas identified in Appendix C.

c. Coburn Mountain

The initial VIA contained only photosimulations with leaf on conditions. On September 4, 2018, the Department requested additional information, including photosimulations depicting the project when snow covered the ground. In response to this request, on October 19, 2018, the applicant submitted photographs taken by an unknown person in 2004 from the top of Coburn Mountain. The Department, in a November 5, 2018 letter, again requested the applicant produce photosimulations with snow cover conditions and

stated that the October 19, 2018 submission was not satisfactory. On December 7, 2018, the applicant submitted the requested photosimulations, including simulations from the top of Coburn Mountain. The Department finds that the snow-cover photosimulations from the top of Coburn Mountain depict the project as a highly visible cleared area that is not compatible with the existing landscape because the cleared, snow-covered corridor differed significantly from the existing surroundings, and the cleared, snow-covered corridor becomes the dominant landform due to the contrast between it and the primarily forested areas surrounding it.

To mitigate this impact, on January 9, 2019, the applicant proposed to taper the vegetation in the corridor for an approximately 2.2-mile section of corridor that is visible from Coburn Mountain.

Instead of clearing the full width of the 150-foot wide corridor, tapering retains increasingly taller vegetation within the corridor as the distance from the wire zone increases. Under the proposed tapering, the wire zone – the 54-foot wide, middle section of the corridor centered under the two conductors – would be cleared during construction and allowed to regrow with noncapable vegetation up to a height of approximately 10 feet, but immediately outside the wire zone, vegetation up to 15 feet tall would be maintained, with vegetation height increasing to 35 feet at the edges of the corridor. (Appendix C contains a further description of tapering.) Within this same section of the corridor the applicant also proposed to use non-specular conductors.

The Department received numerous comments from the parties, as well as interested persons, concerning scenic impact, generally, and from the summit of Coburn Mountain, specifically. Intervenor Groups 1, 2, and 10 all testified that the scenic impact from the top of Coburn Mountain in general, and particularly the impact to snowmobilers' use and enjoyment of Coburn Mountain, would be adversely impacted by the project. These groups provided testimony regarding the amount and value of the recreational use of Coburn Mountain, especially for the snowmobiling community. Intervenor Group 2 witness Greg Caruso testified that the adverse scenic impacts to views from the trails around Coburn and Johnson Mountains would severely affect his snowmobiling business. He described this area as the "mecca" of snowmobiling in Maine. Others provided similar testimony. It is not clear whether those offering testimony on the visual impact of the corridor from Coburn Mountain considered how tapering would affect this impact.

Intervenor Group 3 witness Robert Meyers, the Executive Director of the Maine Snowmobile Association, testified that the project would not adversely affect snowmobilers' enjoyment of the area. Meyers stated that many of the existing snowmobile trails in Maine are located along transmission lines and that he has never heard a complaint from the members of his organization about having a view of a power line.

The Department finds compelling the evidence that the project, as originally proposed, would have an adverse impact on the users of Coburn Mountain, particularly snowmobilers. The applicant's proposal to taper vegetation in the area visible from the summit, as well as to use non-specular conductors, significantly reduces the visual impact

of the project. Tapering softens the edge of the corridor and makes the corridor less visible overall. The addition of tapered vegetation reduces the spatial dominance of the project and improves its compatibility within the landscape. This is shown in the photosimulations with snow cover. A fully cleared, 150-foot wide corridor is the dominant feature in the landscape. The tapered corridor, in contrast, is no longer dominant, and is just one of the features of the landscape seen from the summit of Coburn Mountain, and no more prominent, for example, than an existing land management road.

Any taller poles needed to achieve the minimum required vegetation height in the Wildlife Areas identified in Appendix C would not be visible from Coburn Mountain.

The Department finds that the project will not have an unreasonable adverse effect on scenic uses or character of Coburn Mountain, provided the applicant:

- Tapers the vegetation in the corridor within the viewshed of Coburn Mountain (between structures #3006-634 and #3006-616), and
- Uses non-specular conductors within the viewshed of Coburn Mountain (between structures #3006-634 and #3006-616).

d. Number 5 Mountain, T5 R7 BKP WKR

Number 5 Mountain is owned by TNC and is located 3.9 miles from the project. TNC has developed a parking area, a large informational map, and a trail to the top of the mountain. TNC invites members of the public to hike the mountain. No. 5 Mountain is within the Leuthold Preserve, which is collaboratively managed by TNC, Forest Society of Maine, and the Maine Bureau of Parks and Lands. Access to the trailhead parking area for No. 5 Mountain is over the privately-owned Spencer Road, a land management road owned by a third party. The applicant identified the mountain as a scenic resource as a result of being part of the preserve.

The corridor and structures, located at a distance of 3.9 miles, will be visible from the summit of No. 5 Mountain. The project will have a moderate impact as a line zigzagging within the scenic view. However, since the structures will not be silhouetted against the sky backdrop, the project lines are not a significant object in the viewshed. Additionally, taller poles within Wildlife Area 2 would be eight miles from No. 5 Mountain and would not affect the view from the mountain due to this distance. The Department finds the overall scenic impact to be minimal; the project will not have an unreasonable adverse effect on scenic uses or character of No. 5 Mountain.

e. Beattie Pond

Beattie Pond is a remote pond developed with a single camp that is accessed by a private road. The applicant's original proposal included standard poles heights (approximately 100 feet tall) in the area near Beattie Pond. At the request of the Commission, one of these structures was redesigned to be shorter. As redesigned, the visibility of the project

from the pond would be limited to just the very top of that structure. On September 18, 2019, the applicant submitted a petition to reopen the record to allow it to modify the application to change the proposed route and use the Merrill Strip Alternative. As described in Section 1, this alternative moved the project out of the P-RR Subdistrict around Beattie Pond. Existing vegetation and topography would screen the project from view from most of the pond. Any project visibility would be minimal. Within Wildlife Area 1, taller poles may be needed to achieve the required minimum vegetation height. This Wildlife Area does not include the structures closest to Beattie Pond, which would be visible if increased to a height of 130 feet. Wildlife Area 1 is outside of the viewshed of Beattie Pond. Based on the applicant's proposal to use the Merrill Strip Alternative, the Department finds that the project will not have an unreasonable adverse effect on scenic uses or character of Beattie Pond.

f. Rock Pond

Rock Pond is a 124-acre pond with a boat launch and campsite. Project structures and the corridor would be visible approximately 3,100 feet away. The portion of the project that is most visible from Rock Pond is the area where the corridor is perpendicular to the view from the pond, when an individual is looking northwest and up the corridor. The applicant's revised plan incorporates tapering vegetation along this section of the corridor. This minimizes the visibility of the corridor, making it much less prominent and improving compatibility with the landscape. The applicant also proposes to use non-specular conductors in this area where the project is visible from the pond. This further reduces visual intrusion. The Department notes that in contrast to Coburn Mountain, the Department received very few comments from users of Rock Pond, or individuals concerned about the view from the pond. In addition, the Department staff, the Commissioner, Assistant Attorney General, and the Presiding Officer visited Rock Pond during their June 29, 2019 site visit. During that visit the existing conditions were compared with the photosimulations contained in the record.

The Wildlife Areas closest to Rock Pond are Wildlife Areas 3 and 4. The Department finds the applicant's supplemental testimony demonstrates taller poles in these areas will not be visible from Rock Pond. Wildlife Area 3 corresponds with TNC's priority area 3 and Wildlife Area 4 corresponds with a portion of TNC's priority area 4, but not the portion of this area that would be visible from the pond if taller poles were used.

Based on the applicant's VIA, evidence concerning potential impacts to uses of Rock Pond, and the site visit, the Department finds the project will not have an unreasonable adverse effect on scenic uses or character of Rock Pond, provided the applicant:

- Tapers the vegetation in the corridor within the viewshed of Rock Pond (between structures #3006-731 and #3006-729), and
- Uses non-specular conductors within the viewshed of Rock Pond (between structures #3006-731 and #3006-724).

g. Old Canada Road (Route 201)

The Old Canada Road Scenic Byway is a 78.2-mile long section of Route 201. People experience the byway when traveling by motor vehicle. The project is perpendicular to and intersects the Old Canada Road in Johnson Mountain Township. The project will introduce a moderately incompatible line to the landscape when it crosses Route 201. Due to a rise in the roadway, when traveling northwest the line will be silhouetted against the scenic backdrop. However, it appears as a small object and is insignificant in dominance. Motorists will see the project for a very short time as they drive by (approximately 30 seconds when traveling south and 60 seconds when traveling north), compared to the overall time it takes to travel the entire scenic byway, which is approximately 78 miles long. In Moscow, the crossing is not perpendicular to the road, it crosses at an angle, and it is co-located with another transmission line.

The existing corridor will be widened by 75 feet. From the roadway, the additional cleared corridor and several structures will be visible. The new structures are a moderate color difference from the surrounding landscape and the existing wooden transmission line poles. The new structures will introduce minimally incompatible lines to the landscape. Because this crossing is very close to the Wyman Dam and its associated electrical infrastructure, the view is not sharply out of character from other views in the vicinity. The applicant proposes to add buffer plantings at both crossings to minimize visibility down the corridor from the road.

The project will also be visible from two other areas along the byway; however, these views do not involve the corridor crossing the road. In Parlin Pond Township a field on the west side of the road will allow an intermittent view of the corridor for southbound motorists for approximately 15 seconds of travel time. As the photosimulations show, existing distribution lines running along Old Canada Road also may be visible in the foreground. Northbound motorists will not have a view of the project at that location, and the project will not be visible from the rest area in this township. The second viewpoint that is not a crossing is from the Attean View Rest Area in Jackman. While visible from the scenic viewpoint, the Department finds the scale of the structures will be minimal and the spatial dominance will be insignificant as the project will be more than seven miles away from this rest area.

None of the Wildlife Areas will be visible from Old Canada Road.

Based on the minimal time a motorist will have views of the corridor, the scale of the structures involved in comparison to the landscape, and the proposed buffer plantings, the Department finds the project will not have an unreasonable adverse effect on scenic uses or character of the Old Canada Road, provided the applicant:

- Plants and maintains vegetated roadside buffers at the Old Canada Road (Route 201) crossing in Johnson Mountain Twp and in Moscow.

h. Moxie Stream

The project, including the corridor, transmission lines and structures are discussed in the VIA and summarized above. The applicant proposes to use non-specular conductors to reduce the reflectiveness of the wires from the stream. In addition, the applicant originally proposed additional buffer plantings following the clearing for construction. However, the topography in the area enables retaining vegetation up to the height of 35 feet across the entire corridor within 100 feet of the stream. In response to Department questioning at the hearing, the applicant acknowledged this could be achieved without taller poles. This taller vegetation, required in this Order to minimize wildlife impacts, and identified as Wildlife Area 10, also would minimize the scenic impact and eliminate the need for the additional planting originally proposed by the applicant.

The Department finds the project will not have an unreasonable adverse effect on the scenic uses or character of Moxie Stream, provided the applicant:

- Maintains a minimum vegetation height of 35 feet within 100 feet of Moxie Stream (Appendix C lists the Wildlife Areas where taller vegetation is required, including at Moxie Stream), and
- Uses non-specular conductors within the viewshed of Moxie Stream (between structures #3006-542 and #3006-541).

i. Appalachian Trail

The applicant evaluated the scenic impacts of the project on the AT from three general areas: Pleasant Pond Mountain summit area (including Middle Mountain); Troutdale Road area, where the trail crosses the line in three locations; and the Bald Mountain summit area. Within these three general areas the applicant examined 11 viewpoints.

- AT, Pleasant Pond Mountain summit area, The Forks Plantation. The new transmission line will be visible from the mountain at a distance ranging from 2.7 to 6.5 miles. The project will create a minimally incompatible line in the background. The conductors may be more visible in the afternoon when sunlight reflects off the lines. This impact may be reduced through the use of non-specular conductors. The Department finds the visual impact will be minimal from the Pleasant Pond Mountain summit area due to viewing distance and the resulting minimal project visibility, provided the applicant uses non-specular conductors within the viewshed of the summit area, including Middle Mountain.
- AT, Troutdale Road area, Bald Mountain Township. The widened corridor and new structures will be clearly visible from the AT, which runs on Troutdale Road for 0.2 miles. Additionally, the corridor will be visible at a perpendicular angle to the trail where it crosses the southwest corner of Moxie Pond. The Department finds that, although the new structures and widened corridor will increase the scale of intrusion to the landscape, it is subordinate when considered with the existing road and transmission line (which affect the expectations of the users in

this area), provided the applicant plants and maintains the proposed buffer vegetation along Troutdale Road.

- AT, Bald Mountain summit area, Bald Mountain Township. At the point closest to the AT at this location, the co-located transmission line will be visible at a distance of 2.8 miles. The widened corridor will be visible at a distance of 5.1 miles. When viewed from the summit area, the widened corridor will create a moderately incompatible line within the context of the existing viewshed along the west side of Moxie Pond. Additionally, due to the height of the structures, the lines will be a moderately incompatible line in the midground. The conductors will be the most visible project component, especially in the morning when the sun reflects off of the lines. This impact can be minimized with non-specular conductors. On June 29, 2018, the applicant submitted revised plans proposing a lowered height for the structures along Moxie Pond, which will minimize the scenic impact from both Bald Mountain and Moxie Pond.

The Department finds the visual impact from the Bald Mountain summit area will be minimal due to the viewing distance, partial screening, and the resulting minimal project visibility, provided the applicant uses non-specular conductors within the viewshed of the summit area and shorter poles along Moxie Pond.

The Department finds the project will not have an unreasonable adverse effect on the scenic uses or character of the AT, provided the applicant:

- Uses non-specular conductors within the viewshed of the Appalachian Trail (between structures #3006-529 and #3006-458);
- Plants and maintains vegetated roadside buffers along Troutdale Road; and
- Uses shorter poles along Moxie Pond (between structure #3006-529 and #3006-458).

j. Other Scenic Resources and Vantage Points Along the Corridor

Other scenic resources and vantage points along the corridor evaluated by the Department include the following:

Segment 1

- Wing Pond, Lowelltown Township. Two structures and lines are visible approximately 1.75 miles from the pond. No clearing will be visible from the pond. The structures do not introduce any incompatible lines or shapes to the sky backdrop and are subordinate when seen against the backdrop of Smart Mountain.
- Fish Pond, Hobbstown Township. No corridor clearing will be visible from the pond. The structures do not introduce any incompatible lines or shapes to the sky backdrop and are largely obscured by existing vegetation.
- Northern Forest Canoe Trail, Hobbstown Township, T5 R7 BKP. Four structures may be visible to paddlers from Fish Pond and the line will be visible during a portage on Spencer Rips Road and Spencer Road.

As discussed above, the scenic impact on Fish Pond will be minimal. The structures do not introduce any incompatible lines or shapes to the sky backdrop and are largely obscured by existing vegetation. While portaging on both roads, there may be intermittent views of the project. The scenic impacts will be minimal to moderate.

- Parlin Pond, Parlin Pond Township. The project will have a moderate impact as an incompatible line crossing the shoulder of Coburn Mountain and continuing to the northwest. Additionally, one structure will appear as a silhouette line against the sky. Overall from this pond, the project will be compatible with the landscape given the viewing distance of 1.8 to 2.8 miles and only a single silhouetted pole will be visible.
- Iron Pond, T5 R6 BKP WKR, Hobbstown Township. The top of one structure will be visible, approximately 2,700 feet from the pond. This impact will be minimal.
- Toby Pond, Hobbstown Township. The pond is not a rated waterbody. With taller structures within Wildlife Area 5, two poles would be visible from the pond, with one of these silhouetted against the sky. This impact will be minimal.
- Whipple Pond/Whipple Brook, T5 R7 BKP WKR. As demonstrated in the applicant's supplemental testimony, no structures would be visible from Whipple Pond, including any taller structures within Wildlife Area 5. Where the corridor crosses Whipple Brook, the taller vegetation required in Wildlife Area 5 would screen the poles on either side of the brook and eliminate a view down the corridor. In front of the campsite located on Whipple Brook south of the corridor, a single taller pole might be visible. Overall, the visual impact of the project on Whipple Pond and Whipple Brook, including any taller poles within Wildlife Area 5, will be minimal.
- Egg Pond, Bradstreet Township. The top of one structure, located 332 feet from the pond, will be visible. Given the inaccessible nature of the pond, and the insignificance of the single structure in the overall viewshed, the scenic impacts from the project for this site are minimal.
- Little Wilson Hill Pond, Johnson Mountain Township. The top of two structures will be visible, approximately 1,300 feet from the pond. This impact will be minimal.
- South Branch Moose River, Skinner Township. In response to questions by Department staff at the public hearing, the applicant testified that due to the topography in this location, without changing pole heights, only vegetation taller than 35 feet will need to be cut along the river. Such a change from the proposed plan will reduce project visibility, resulting in a significantly mitigated, moderate visual impact. Even if taller poles were used as part of Wildlife Area 2, the taller vegetation would continue to help screen the taller poles by preventing a view down a cleared corridor.
- Cold Stream, Johnson Mountain Township. As a requirement of this Order, the applicant will be required to maintain 35-foot tall vegetation within 100 feet of this stream. This may require the installation of taller poles on both sides of Cold Stream. (See Wildlife Area 7 in Appendix C, Table C-1.) Poles and wires will be

visible from the stream regardless of final pole height. The taller vegetation will minimize visual impacts by buffering the view of the corridor from the stream.

Segment 2

- Moxie Pond, East Moxie Township. The co-located project lines and structures will be visible near the west side of the pond. The applicant modified the design of the project to reduce the height of the structures and lines so that the majority of the structures are screened from view from the pond. The redesigned project will not be silhouetted against the sky backdrop and the project is not a significant object in the viewshed. The Department finds the visual impact will be moderate.
- Mosquito Mountain, The Forks Plantation.²² The transmission line will be visible to the northeast and east when viewed from the scenic overlook. Some clearing for the widened corridor also will be visible. However, the transmission line will be partially screened by existing vegetation and is subordinate in the whole landscape composition.
- Troutdale Road, The Forks Plantation. The transmission line will be visible immediately adjacent to the existing line but will be only briefly visible to passing motorists. This road is a private land management road accessed by the public with permission, like Spencer Road discussed above. With the existing line there and user expectations, including forest management activities, the Department finds that this impact will not unreasonably impact the scenic character of the area.
- Wyman Lake Recreation Area, Pleasant Ridge Plantation. The Department finds that, although the proposed project is visible from the Recreation Area, with approximately four structures and conductors visible, it is subordinate in the landscape composition to the existing dam that impounds the lake and visible from other vantage points on the lake. The visual impact of the project on the recreation area is minimal.

Segment 3

- Route 8, Anson. The co-located transmission line will cross Route 8 in Anson. The new line will require an additional 75 feet of cleared corridor. From the roadway, the additional cleared corridor and several structures will be visible. The new structures will be a moderate color difference from the surrounding landscape as well as the existing wooden structures. The new structures will introduce minimally incompatible lines to the landscape.
- Route 2, Farmington. The co-located transmission line will cross Route 2 in Farmington. The new line will require an additional 75 feet of cleared corridor for a portion of the visible section, however, some of the area is already open fields. From the roadway, the additional cleared corridor and several structures will be visible.

²² Mosquito Mountain is privately owned and contains an informal hiking trail used by the public. The Department does not consider this elevated viewpoint to be a scenic resource as that term is defined in Chapter 315. Regardless, the project will not have an unreasonable adverse effect on scenic uses or character of Mosquito Mountain.

The new structures will be a moderate color difference from the surrounding landscape and the existing wooden structures. The new structures will introduce minimally incompatible lines to the landscape.

- Androscoggin Riverlands State Park, Leeds. The new co-located line will only be visible in the State Park as it crosses an access road in Leeds. The additional 75 feet of corridor clearing and the new structures will be visible for a considerable distance when viewed at the crossing due to the topography. Though there will be moderate contrast in material, color, and structure height, the visual impact to users of the park is expected to be minimal.
- Merrill Road, Lewiston. The additional 75 feet of corridor clearing and the new structures will increase the scale contrast to moderate, but the new transmission line is compatible with the existing landscape.
- Sandy River, Farmington. The corridor will be visible at a perpendicular angle to the River. The Department finds that although the new structures and widened corridor will increase the scale of intrusion to the landscape, it is codominant when considered with the existing transmission line.
- Carrabassett River, Anson. The new structures will be a moderate color difference from the surrounding landscape and the existing wooden structures. The Department finds that although the new structures and widened corridor will increase the scale of intrusion to the landscape, it is codominant when considered with the existing transmission line.

Segment 4

- Riverside Drive, Auburn. The new self-weathering steel structures will be a moderately different color from the landscape and existing structures. A total of six wooden poles will be replaced with two steel structures. The reduction in the number of man-made structures reduces the scenic impact and the new line will be compatible with the existing landscape.

Segment 5

- Route 194, Whitefield. The new transmission line will be located between two existing sets of structures. No new corridor clearing is proposed. The Department finds the new line is compatible with the existing landscape.
- Route 27, Wiscasset. The new transmission line will be located between two existing sets of structures. No new corridor clearing is proposed. The Department finds the new line is compatible with the existing landscape.
- Route 1, Wiscasset. The proposed project will add conductor lines to an existing lattice structure. The Department finds minimal to no visual impact from the additional lines.
- West Branch Sheepscot River, Windsor. The proposed corridor is located between two existing transmission lines. The Department finds minimal to no visual impact from the additional lines.

For each of these scenic resources and vantage points, the Department evaluated any photosimulations included in the VIA and the VIA as a whole, and considered the testimony and comments of its consultant, the applicant's testimony and supplementary

submissions, the testimony of the intervenors, and the testimony and written comments from members of the public. In addition, Department staff conducted site visits to many of the locations at issue and examined topographic maps of the areas. Based on this information and the record as a whole, the Department finds the five transmission line segments, including the poles, wires, and corridor, will not have an unreasonable adverse effect on scenic uses or character at any of the locations listed in this subsection.

k. Substations

The Department evaluated the scenic impacts of the substation upgrades that are part of the project.

- Merrill Road Converter Station. The proposed converter station will be approximately 85 feet or less in height. Existing vegetation with heights between 50 and 70 feet will remain as a visual buffer surrounding the station. Several residences are located within 600 feet of the proposed converter station but will have minimal views of the converter station due to the surrounding vegetation.
- Fickett Road Substation – Portions of the substation, including the access road and infrastructure, will be visible from Fickett Road, Allen Road, and three residences off Fickett Road. The applicant submitted a planting plan, dated August 9, 2018, with proposed plantings on both sides of the substation entrance on Fickett Road. The plantings range in heights at maturity from 4 to 70 feet and are intended to provide buffering to motorists and residents on Fickett Road. The substation will introduce a moderately incompatible form and moderately incompatible edges to the landscape; however, the proposed plantings will significantly mitigate these impacts.
- Coopers Mills Substation. Proposed additions to the north side of the Coopers Mills Substation include a new 345-kV transmission line terminal. No tree clearing is proposed. While three abutting residences and motorists on Coopers Mill Road will have some views of the project, the form, line, and texture will be compatible with the existing substation.
- Crowley's Substation. Replacement of a 115-kV switch and bus wire are proposed within the existing substation structure. No tree clearing is proposed.
- Larrabee Road Substation. Proposed upgrades to the existing substation include an additional 345-kV transmission line terminal and the replacement of an autotransformer. The upgrades will be visible from Mount David, a scenic hike on the Bates College campus, however, no significant changes in line, form, texture, or color will result from the project. An existing vegetative buffer will provide visual screening to a residence that abuts the substation.
- Maine Yankee Substation. An additional 345-kV transmission line terminal will be installed within the fenced yard of the existing substation, but it will be compatible with the existing character at this location.
- Surowiec Substation. A terminal for a new 345-kV transmission line from the proposed Fickett Road Substation, a new dead-end A-frame structure, and a new 345-kV circuit breaker will be installed at the existing substation.

No tree clearing is proposed and the additional structures will be similar in color, texture, and line to the existing substation.

- Raven Farm Substation. Proposed additions to the existing substation include a new 345/115-kV autotransformer and three new 115-kV transmission line terminations with associated equipment and foundations. An existing berm installed for the MPRP will provide visual screening for the project.

For each of the substation upgrades, the Department considered, along with all the record evidence, the surrounding area and its character, the nature and extent of the changes relative to the existing substation development, and the buffering and screening (both existing and proposed).

The Department finds the substation upgrades will not have an unreasonable adverse effect on scenic uses or character of the surrounding area, provided the applicant:

- Plants and maintains vegetated roadside buffers on the south side of Fickett Road in conjunction with the Fickett Road Substation.

I. Cumulative Impacts

Consistent with Chapter 315, § 9, the Department considered the cumulative effects of the project. These are effects that even if minimal or not adverse in any one instance could, in aggregate, unreasonably interfere with existing scenic and aesthetic uses. Given the length of the project, it will be visible from multiple viewpoints and multiple scenic resources. In evaluating cumulative effects under Chapter 315, the Department considered the frequency with which an observer might see the project from scenic resources, which is influenced by the distance and travel time between viewpoints.

Hikers along the AT and travelers along Old Canada Road (Route 201) are two groups with the potential to view the project from multiple points. Along the AT, the project will be visible from three general locations: Pleasant Pond Mountain, Troutdale Road, and Bald Mountain. The visibility of the project from these locations is discussed above. Hiking down from Pleasant Pond Mountain to Troutdale Road would take approximately three to three and a half hours, although hiking pace can vary considerably. Hiking up from Troutdale Road to Bald Mountain would take a similar amount of time. The Department finds that as a result of this separation, and the limited extent of the visual impact of the project at these locations (which takes into account the co-location of the line), there will not be an unreasonable cumulative interference with existing scenic or aesthetic uses of the AT.

With regard to Old Canada Road, the four locations from which the project will be visible are separated by the following distances: 6.2, 6.7, and 17.1 miles. While the travel time between viewpoints for a motorist on the road is short, so too is the amount of time for which the project would be visible at each point for someone traveling at the speed limit. (View times are discussed above.) In the context of the 78-mile stretch of road designated as a scenic byway, the cumulative time the project would be visible is

minimal. The Department finds that when the viewing time, distance between viewpoints, and scenic impact at each viewpoint are considered, the project will not result in an unreasonable cumulative interference with the existing scenic or aesthetic use of Old Canada Road.

The Department also considered that an observer could experience successive views of the project through travel that involved views from more than the AT or Old Canada Road alone. For example, by driving along Old Canada Road to Jackman and then snowmobiling to Coburn Mountain, an individual could engage in multiple activities where the project could be seen from different scenic resources.

In this example, the travel along the road and subsequent snowmobile travel are sufficiently distinct and separated by intervening activities, such as unloading snowmobiles and preparing for that activity, that any cumulative visual impact would be minimal. The Department finds that this example is representative and that even if an individual engages in multiple activities that included viewing the project from a scenic resource these views would be sufficiently distinct, separated by time, distance, and differences between the different activities that the cumulative effects of the project will not unreasonably interfere with existing scenic or aesthetic uses.

The cumulative impact of the project and other structures in its vicinity will also be not unreasonable. Pre-existing scenic impacts from land use activities in the Segment 1 area are almost entirely the result of commercial forestry. The cumulative impact of the project and these forestry activities, discussed in more detail in the following subsection, is not unreasonable. Outside of the Segment 1 area, the co-location of the project in an existing transmission line corridor will minimize its scenic impacts, and the cumulative impact of the pre-existing infrastructure and the project is likewise not unreasonable.

m. Forest Management Activities in the Vicinity of the Project

Portions of the project are proposed to be located in predominantly forested areas. Segment 1, in particular, would involve creation of a new corridor through a forested area in western Maine. Witness testimony and other record evidence establish the existing landscape in this broader area is a mosaic of various aged forests, ranging from mature forest to recently harvested areas. The mosaic changes over time as harvested areas mature and mature areas are harvested. It is important to emphasize that while remote, the area that Segment 1 would traverse is not untouched wilderness, but instead mostly consists of intensively managed commercial timberland.

As a general matter, the Department characterizes commercial timberland as forested, regardless of the age of the growth of the trees on the land at any given point in time. The reasonable expectation of an individual viewing timberland and the surrounding area, however, may vary depending on whether they are viewing a mature forest or a recently harvested area.

The Department is not able to predict which privately owned timberland in the vicinity of the project will be harvested and, if harvested, when a landowner may elect to do so. In evaluating the scenic impact of the project, the Department considered the likely possibility that commercial forestry activity will alter the landscape surrounding the project, particularly Segment 1. The Department considered elevated viewpoints and other viewpoints where existing vegetation could provide screening. From elevated viewpoints, such as Coburn Mountain, the corridor will remain a consistent feature compatible within the landscape as a result of the required tapering of the Segment 1 corridor.²³

The Department finds this is the case when the tapered corridor runs through a forested area and, as the visual simulations for Coburn Mountain show, when more recent forestry activity is visible, the prominence of a tapered corridor is even further reduced. In addition to the corridor, the poles and wires that are part of the project will have a visual impact. With a tapered corridor, vegetation adjacent to the transmission line wire zone will be retained and will not be subject to commercial forestry. This tapered vegetation will minimize the contrast of the poles and wires and overall visual impact.

From other viewpoints, including those that are not elevated, existing forest patterns may provide screening. The converse also may be true; recently harvested areas may enhance visibility of the project. The Department recognizes that as a result, regeneration of harvested areas may increase screening from some vantage points, and future harvesting may reduce screening. Harvesting limitations adjacent to resources such as rivers, streams, and great ponds will preserve screening in many important areas. Finally, the Department recognizes that, should commercial forestry activity result in significant clearing that increases visibility of the project, the reasonable expectations of an individual viewing this cleared area along with the project should be adjusted. As a result of these factors, the Department finds the location of portions of the project within commercial timberland that may be harvested at some point in the future does not alter the Department's conclusions regarding the scenic impacts of the project.

(4) Overall Findings Regarding Scenic Impacts

The project from Beattie Township to Lewiston extends a total of approximately 145 miles within the State. Much of the project, 92 miles, is co-located alongside an existing transmission line, while Segment 1 will be a new 53.1-mile corridor that will run through a predominantly forested and undeveloped area in western Maine. The scenic character of all these areas is important to residents and visitors, alike. The project as designed and as required through conditions of this Order minimizes the visual impact to the fullest extent possible and takes into account the scenic character of the surrounding area.

²³ Tapering near Coburn Mountain and Rock Pond (which are in Segment 1) is required in this Order to mitigate visual impacts. Tapering along the entire Segment 1 corridor, except for where taller vegetation is required across the entire width of the corridor, is also a condition of this Order and discussed further in Section 7, below.

As discussed above, in some areas the corridor will be the most visible component of the project, while from other locations the poles or conductors will be the visible project feature. From a range of vantage points along the entire corridor and near substations proposed for upgrades, the Department considered landscape compatibility, scale contrast, and spatial dominance of the project. Key observation points and other vantage points are discussed above. Upon completing this review, the Department finds the project will not have an unreasonable adverse effect on scenic uses or character of the surrounding area, provided the applicant:

- Tapers the vegetation in the corridor within the viewshed of Coburn Mountain (between structures #3006-634 and #3006-616) and Rock Pond (between structures #3006-731 and #3006-729);
- Maintains a minimum vegetation height of 35 feet within 100 feet of Moxie Stream;
- Uses non-specular conductors within the viewshed of Coburn Mountain (between structures #3006-634 and #3006-616), Rock Pond (between structures #3006-731 and #3006-724), Moxie Stream (between structures #3006-542 and #3006-541), and the Appalachian Trail (between structures #3006-529 and #3006-458);
- Uses shorter poles along Moxie Pond (structures #3006-529 and #3006-458); and
- Plants and maintains vegetated roadside buffers, and replaces any dead buffer plantings within one year of the vegetation dying, at the following locations: Old Canada Road (Route 201) crossings in Johnson Mountain Twp and Moscow, Troutdale Road crossing in Bald Mountain Twp, and on the south side of Fickett Road in conjunction with the Fickett Road Substation.

6. EXISTING USES

Site Law requires an applicant to demonstrate that the proposed development will not adversely affect existing uses or scenic character. 38 M.R.S. § 484(3). Similarly, NRPA requires that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses. 38 M.R.S. § 480-D(1). Scenic impacts of the project are evaluated in Section 5 of this Order. The Department addressed the scenic impact standards of both Site Law and NRPA and found that the project will not have an unreasonable adverse effect on scenic uses or scenic character. As a result, because the scenic impact of the project is not unreasonable, the Department further finds the project will not have an unreasonable adverse effect on existing uses that are related to the scenic character.

The impact of a project on existing uses, however, is not limited to a project's impact on scenic uses and scenic character. A project could, for example, physically interfere with existing uses and result in an unreasonable adverse effect. Thus, the Department evaluated the potential impact of the applicant's project on existing uses, looking beyond the scenic impacts.

The majority of testimony, public comment, and record evidence focuses on the potential impact of Segment 1.

In this area of the project the primary activity is commercial forestry. The applicant has negotiated acquisition of the corridor and access to the corridor with private landowners engaged in commercial forestry adjacent to the corridor. The successful result of these negotiations is compelling evidence the project will not have an unreasonable adverse effect on existing commercial forestry activity. Testimony from Kenneth Freye also established that the location of the project was shaped to ensure compatibility with forestry activity. The owner of Spencer Road at the time the applicant was acquiring the rights-of-way for the project opposed locating the transmission line along this land management road because the owner wanted to preserve flexibility in its future use and location of this road as part of its forestry operations. It is a reasonable inference that the landowners and forestry operators involved that did sell a right-of-way or property to the applicant to be used for this proposed project were of the view that the construction and existence of the project would be compatible with the commercial forestry uses in the affected areas.

Testimony established that outdoor recreation is an important activity in the western Maine region in which the Segment 1 corridor is proposed.

Recreation is important to residents and camp owners, as well as to visitors and those who own businesses that cater to visitors, such as those offering lodging to guests or guide services. Recreation activities in the area include hunting, fishing, hiking, and snowmobiling. The project will not impose limitations on these activities. Outdoor recreationalists will be able to cross the corridor and access the same areas they have traditionally used. For example, with regard to snowmobiling, Bob Meyers, Executive Director of the Maine Snowmobile Association, testified that many snowmobile trails are located along transmission line corridors. With regard to hiking, the corridor can be crossed by foot. The most prominent hiking trail that intersects the corridor is the Appalachian Trail.

Testimony established that in the 1980s this segment of the AT was rerouted, resulting in the trail crossing a previously existing transmission line corridor. The proposed line will be co-located with this previously existing transmission line corridor and within a previously existing transmission line right-of-way where the AT and the project intersect. Hiking will not be impeded here or at other hiking trails. With regard to fishing, the proposed line was routed to avoid some particularly sensitive fish spawning stream headwaters, and the line in some potentially affected sensitive fish spawning areas will be elevated to allow for the growth of taller vegetation within the corridor that will provide shade for fish habitat. In addition, culvert replacements required to be funded by the applicant as a condition of this Order (see Section 7) will improve fish passage and should therefore enhance fishing opportunities.

Finally, with regard to navigational uses, no portion of the project will be located in a water used for navigation. Therefore, the project will not impact navigational uses.

In Segments 2 through 5, the transmission line is proposed to be co-located either within or immediately adjacent to an existing corridor.

The Department finds this co-location of the proposed line will greatly limit the impact on existing uses and not result in an unreasonable impact.

In sum, the Department finds the project will not have an unreasonable adverse impact on existing uses, including recreational or navigational uses.

7. NATURAL RESOURCE IMPACTS

Site Law, 38 M.R.S. § 484(3), requires an applicant to demonstrate that a project will not adversely affect any natural resources. Chapter 375, § 15, which is part of the Department's rules implementing Site Law, recognizes the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat, including travel lanes between areas of available habitat, and the susceptibility of certain species to disruption and interference of lifecycles by proposed alterations and activities. Chapter 375, § 12 recognizes the importance of preserving unusual natural areas for educational and scientific purposes. In addition, 38 M.R.S. § 487-A(4) requires the Department to consider whether any alternatives to the proposed location and character of the transmission line may lessen its impact without unreasonably increasing its cost.

NRPA, 38 M.R.S. § 480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm significant wildlife habitat; freshwater wetland plant habitat; threatened or endangered plant habitat; aquatic or adjacent upland habitat; travel corridors; freshwater, estuarine, or marine fisheries; or other aquatic life. The Wetland and Waterbodies Protection Rules, Chapter 310, and the Significant Wildlife Habitat Rules, Chapter 335, interpret and elaborate on the NRPA criteria for obtaining a permit. These rules guide the Department in its determination of whether a project's impacts would be unreasonable. Each application for a NRPA permit that involves a wetland alteration; an alteration to a river, stream, or brook; Inland Waterfowl and Wading Bird Habitat (IWWH); a SVP²⁴; or TWWH, must provide an analysis of alternatives, which is a part of the Department's analysis of whether a proposed project's environmental impacts are unreasonable.

A. Overview

(1) Alternatives Considered by Applicant

The applicant submitted an alternatives analysis for the proposed project completed by Burns and McDonnell and dated September 27, 2017. The stated project purpose is to deliver up to 1,200 MW of Clean Energy Generation from Quebec to the New England Control Area via a HVDC transmission line. The applicant evaluated the No-Action alternative but determined that it would not meet the project goals.

²⁴ See the project description for further discussion of how the abbreviation SVP is used in this Order and refers to vernal pool depressions and critical terrestrial habitat.

a. Corridor Routes and Underground Alternative

The applicant evaluated five potential transmission corridor routes as part of its initial analysis. The evaluation process included assessment criteria for the following priorities (in order of importance): avoidance of conserved lands; undeveloped right-of-way; amount of clearing required; number of stream crossings; transmission length; wetland impacts based on National Wetland Inventory mapping; Deer Wintering Area (DWA) impacts; IWWH impacts; public water supplies impacted; sand and gravel aquifers impacted; and number of parcels crossed.

Alternative Route 1 was based on a similar project the applicant proposed in the late 1980's. At that time, CMP had acquired title, right, or interest in a corridor that ran from western Maine to Lewiston and was 119.3 miles long. However, the options that CMP had to acquire much of that ROW have expired and portions of the area are now subject to conservation easements. A new crossing of the AT, where no transmission line currently crosses the trail, also would be required. CMP concluded the existence of these conservation easements makes acquiring new ROW easements along this route nearly impossible. AT crossing rights also would be difficult to obtain and a new crossing less desirable than the proposed co-located crossing under the Preferred Alternative.

When compared to the Preferred Alternative, this alternative Route 1 would have resulted in: crossing two more conserved parcels with an increase in the impacts on conserved land of 233.3 acres; an increase of 39.6 miles of undeveloped ROW; an increase in the amount of cleared area of 111 acres; a decrease of 27 stream crossings; a decrease of 25 wetland crossings, but an increase of 42 acres of wetland impact; the same number of DWA crossings, but an increase of 27 acres of impact; a reduction of 3 IWWH crossings, but a 0.4 acre increase in impact.

Alternative Route 2 would cross into Maine in Beattie Township and follow the proposed route for several miles, then turn south until it reached the existing Kibby Wind Farm generator lead line. The corridor would parallel the Kibby Wind Farm generator lead line to the Bigelow Substation in the Town of Carrabassett Valley. From the Bigelow Substation, Alternative Route 2 would proceed east to the Wyman Hydro Substation in Moscow and continue to Lewiston in the same corridor as is proposed. This route would cross the AT near the Wyman/Carrabassett Valley town line. A crossing of the AT in this area by a utility corridor does not presently exist. The U.S. Department of Interior refused to grant the Kibby Wind Farm generator lead line the right to cross the AT, either overhead or below ground, in this same general area. CMP concluded it was unlikely it could obtain an easement for this portion of the project, making this alternative not practicable. Alternative Route 2 would be 138.5 miles long. When compared to the Preferred Alternative, this route would have resulted in: crossing three more conserved parcels with an increase in the impacts on conserved land of 11.2 acres; a decrease of 36.2 miles of undeveloped ROW; a decrease in the amount of cleared area of 153 acres; an increase of 8 stream crossings; an increase of 20 wetland crossings, with an increase of 37 acres of wetland impact; the same number of DWA crossings, but a decrease of 0.3 acres of impact; the same number of IWWH crossings, but a 6.2 acre decrease of impact.

The applicant examined two alternative locations and HDD for the crossing of the Upper Kennebec River. The two alternative locations considered for the crossing of the Upper Kennebec River consisted of one at Harris Station (referred to as the Brookfield Alternative, or the third route alternative), and one just below Harris Station, (referred to as the CMP Land Alternative, or the fourth route alternative). These alternatives would have resulted in an extra 14.5 miles and 13.3 miles of transmission line construction, respectively. The Brookfield Alternative would have required Brookfield to agree to reopen its Federal Energy Regulatory Commission license for its hydroelectric dam to allow the additional transmission line within the project boundary. Both the Brookfield Alternative and the CMP Land Alternative would require additional ROW easements within the Moosehead Kennebec Headwaters conservation easement, which CMP concluded is not allowed under the terms of the conservation easement, making these alternatives not practicable.

The fifth alternative considered by CMP involved running the transmission line under the Upper Kennebec River using HDD technology. The applicant initially stated this alternative was too expensive and potentially not technically feasible.

However, following requests by the intervenors and members of the public to avoid an overhead crossing of the river to reduce scenic impacts, and the Department's expression of concerns with the overhead crossing, CMP further examined locating the transmission line under the Upper Kennebec River. CMP subsequently proposed running the transmission line underground in this location as part of its Preferred Alternative.

The Preferred Alternative described more fully in Section 1, Project Description, does not contain the least amount of new corridor clearing; however, CMP concluded in its analysis, that the Preferred Alternative is the shortest practicable route from the Canadian Border to an existing transmission line corridor. In siting the Preferred Alternative, the applicant chose a route that it states would avoid crossing conserved lands or ridgelines and would avoid natural resources and scenic resources to the greatest practical extent.

CMP's initial alternatives analysis did not include examination of locating the transmission line underground, except for the proposed underground crossing of the Upper Kennebec River described above. A more widespread underground alternative, however, was examined through hearing testimony. This includes the feasibility of locating the line underground, in general, as well as along the Spencer Road or Route 201.

Finally, in the course of the permit review process the applicant also proposed modifying the original preferred route with the Merrill Strip Alternative. This alternative is a slight modification of the original preferred route. It is approximately 0.4 miles shorter, eliminates impacts to one SVP (0.02-acre reduction) and one stream crossing, and reduces the wetland impacts by 32,037 square feet. CMP stated that this route was initially ruled out because the landowner was asking 50 times the market value for the land. Ultimately, the applicant and this landowner reached an agreement and CMP obtained an easement for approximately 20 acres of land to enable it to propose using the

Merrill Strip Alternative as part of its Preferred Alternative. This strip is 1.0 mile long and 150 feet wide.

b. Substation and STATCOM Locations

The applicant evaluated six alternative locations and designs for the Merrill Road Converter Station. Two of the locations were ruled out because they were not large enough, one location was ruled out because a large portion of the property was mapped as either Scantic silt loam (typically a wetland soil) or Peat and muck (also wetland soils), and two other parcels were ruled out because they would have resulted in additional transmission line construction across Route 202 and the placement of double-circuit structures, which are not preferable from a reliability standpoint.

The applicant also evaluated other locations across the transmission system for the STATCOM units ultimately proposed to be located at the Fickett Road Substation. The applicant determined that the best location was as close to the Surowiec Substation as possible.

The Surowiec Substation is not large enough and site constraints, due to the location of Runaround Brook, prevent the equipment being located on the Surowiec Substation parcel. The preferred parcel minimizes the length of new transmission line that would need to be constructed between the two substations. The Fickett Road substation is located on the parcel to maximize the upland area used by the necessary structures and minimize the wetland impacts.

(2) Impact Minimization Efforts by Applicant

In addition to the landscape scale analysis, the applicant also evaluated site specific means to minimize impacts.

These included proposing to use 100-foot tall steel poles that can be placed farther apart than typical H-Frame structures, site-specific adjustments to structure locations, use and location of temporary roads, and substation design. The proposed use of taller structures reduces the number of poles that need to be placed, the amount of temporary construction road that would need to be created, and the number of poles located in wetlands. Other procedures the applicant proposed to minimize impacts included implementation of CMP's Environmental Guidelines, which include erosion and sedimentation control measures, pre-construction wildlife surveys, time of year restrictions on certain construction activities, and the use of third-party inspectors.

(3) Summary of Project Impacts

With the alternative ultimately selected by the applicant, which includes HDD for the Upper Kennebec River crossing and the Merrill Strip Alternative, CMP proposes to directly alter 4.124 acres of freshwater wetland and to indirectly alter 105.55 acres of forested wetland by converting it to shrub-scrub wetland to complete the NECEC project.

The applicant's proposal also includes: 674 crossings of rivers, streams, or brooks, of which 471 contain coldwater fisheries and five are Outstanding River Segments; 15.026 acres of impact to IWWH, which includes 0.017 acres of fill; 31.487 acres of impact to SVPs,²⁵ which includes 1.46 acres of permanent fill, 29.607 acres of clearing in uplands, and 3.895 acres of clearing forested wetland. The applicant's proposed route also crosses 22 DWAs resulting in a total of 83.5 acres of clearing, including 39.2 acres of impact to the Upper Kennebec River DWA. None of the DWAs are rated moderate or high value.

The project is located in or near habitat for the following species included on Maine's Endangered or Threatened Species list, or identified as species of special concern:²⁶

- Roaring Brook Mayfly
- Northern Spring Salamander
- Rusty Black Bird
- Long Eared Bat
- Little Brown Bat
- Small Footed Bat
- Brook Floater Mussel
- Northern Bog Lemming
- Great Blue Heron
- Golden Eagle
- Canada Lynx
- Bicknell's Thrush
- Wood Turtle

Additionally, the project was evaluated for impacts to 15 rare plant occurrences, as well as impacts to five unique natural communities, which were identified in or adjacent to the corridor. The identified rare plant occurrences and unique natural communities include: small whorled pogonia (a federally listed rare plant), Goldie's wood fern (a species of special concern), Jack Pine Forest (a critically imperiled plant community), Hardwood River Terrace Forest (an imperiled community), and Enriched Northern Hardwood Forest (a rare community).

B. Agency Comments

(1) Wildlife, Fisheries, and Other Natural Resources

MDIFW and Department staff reviewed the project impacts to wildlife, fisheries, and other natural resources.

²⁵ In its initial application, CMP identified 42 SVPs and 23 Potentially Significant Vernal Pools (PSVP). MDIFW raised identification concerns with 13 of these pools and apparent discrepancies in total area of impact to SVP habitat. Ultimately, after further analysis, CMP, DEP, and MDIFW agreed that the total number of SVPs impacted by the project is 61.

²⁶ Several of these species (Long Eared Bat, Canada Lynx) are federally listed, as well. Atlantic salmon also are federally listed, but not listed in Maine.

In a December 11, 2017, letter to the applicant following initial review of the proposal, Department staff stated: "The project crosses 67²⁷ rivers, streams, or brooks which contain brook trout habitat and five Outstanding River Segments and according to the vegetation management plan all vegetation over ten feet tall will be removed. While the Department has not yet made a determination whether the impacts to these resources are unreasonable there will certainly be impacts to these resources. Please provide a mitigation package to compensate for these impacts. The Department envisions this mitigation package will be the responsibility of CMP to implement, not simply providing additional [In-Lieu fee program] monies."

MDIFW provided comments on wildlife and fisheries impacts on March 15, 2018, June 29, 2018; December 7, 2018; February 1, 2019; and March 18, 2019. In its March 15, 2018 comments, MDIFW raised concerns about the lack of data on the presence or absence of a number of species listed on the Endangered or Threatened Species list, including Northern Bog Lemmings, Northern Spring Salamanders, Roaring Brook Mayflies, several species of bats, Wood Turtles, Rusty Black Birds, Great Blue Herons, and Golden Eagles. In addition, MDIFW requested more information on the project impacts to SVPs and requested marker balls be installed on the overhead crossing of the Upper Kennebec River to minimize the chance of Bald Eagles colliding with the wires. MDIFW requested a 25-foot setback for the use of herbicides from any wetland located in an IWWH and only the use of spot spraying of herbicides within the IWWH. MDIFW also expressed concern that the 25-foot wide buffers the applicant had proposed for streams crossed by the project was too narrow. This was a particular concern for the streams in Segment 1 and other coldwater fisheries streams.

Between March and December 2018, the applicant and MDIFW continued to meet and discuss the proposed project's various impacts to fish and wildlife and the applicant conducted field surveys for several wildlife species. During this time:

- The applicant determined the area identified as potentially providing habitat for Northern Bog Lemming did not contain that species.
- The applicant determined there were Northern Spring Salamanders and Roaring Brook Mayflies in two streams crossed by the project, Gold Brook and Mountain Brook.
- MDIFW recommended time of year restrictions for construction activities for wood turtles and Rusty Black Birds. For wood turtles, they recommended construction activities be limited in the 16 mapped habitats to between October 15 and April 15. For Rusty Black Birds, MDIFW recommended no construction activities in the mapped habitat between April 30 and June 30.
- MDIFW also recommended that a 10-15-foot high dense stand of spruce and fir be left in the Rusty Black Bird habitat, which is located in Parlin Pond Twp. and Johnson Mountain Twp.

²⁷ Based on further field analysis by the applicant, and verification by the Department, the number of brook trout habitat streams crossed by the project has been corrected to 375 since this letter was written. (See Appendix E for a list of waterbodies crossed by the project.)

- The applicant proposed in its Site Law application, prior to initial transmission line clearing and between April 20 and May 31, to complete surveys for heron colonies within or immediately adjacent to (within 75-feet) existing IWWH's within the NECEC project area. If discovered, CMP would notify and consult with MDIFW biologists.
- The applicant noted the requested herbicide spraying setbacks were already a part of CMP's Vegetation Construction Plan (VCP) and the Vegetation Management Plan (VMP).

In its December 7, 2018, comments, MDIFW memorialized a commitment by CMP to incorporate into its proposal:

- Ten travel corridors in Upper Kennebec River DWA. Eight of these travel corridors would be created by selectively cutting the NECEC corridor to promote softwood growth necessary to provide winter habitat for deer (Appendix C describes the vegetation management for deer travel corridors); two of these corridors would be adjacent to the Upper Kennebec River in the area where the transmission line would be underground, allowing maintenance of full height vegetation;
- The utilization of taller poles near Gold Brook and Mountain Brook, which would allow full canopy height vegetation over these streams to minimize the impact to Roaring Brook Mayflies and Northern Spring Salamanders; and
- The preservation of 717 acres of land in the Upper Kennebec River DWA.

Additionally, in response to the Department's December 11, 2017 letter, as well the Department's and MDIFW's concerns about project impacts to coldwater fisheries, the applicant modified its proposal in several ways. CMP agreed to incorporate into its proposal:

- A 100-foot riparian filter areas around all perennial streams in Segment 1 and all coldwater fisheries streams in the other segments (Appendix C describes these filter areas, referred to as buffers by the applicant; Appendix E identifies waterbodies crossed by the project); and
- Compensation for unavoidable impacts in the form of: (a) land preservation (Grand Falls Tract, Basin Tract, and Lower Enchanted Tract), (b) funding to improve fish passage by providing \$200,000 for replacement of culverts, and (c) providing \$180,000 for compensation for the conversion of forested riparian habitat.

(2) Unusual Natural Areas

The Maine Natural Areas Program (MNAP) reviewed the project for impacts to rare or unique botanical features. Much of the area in Segment 1 had never been surveyed for these features and MNAP requested that the applicant conduct surveys using qualified consultants. The applicant conducted those surveys during 2018. Surveys also were conducted in the remaining portions of the project to update surveys that had been conducted for previous projects. The surveys identified 15 rare plant occurrences and

five unique natural communities in or adjacent to the corridor, including the following: small whorled pogonia (also a federally listed rare plant), Goldie's wood fern (a species of special concern), Jack Pine Forest (critically imperiled plant community), Hardwood River Terrace Forest (an imperiled community), and Northern Hardwood Forest (a rare community).

To avoid impacts to the small whorled pogonia, CMP redesigned a short section of the transmission line in Greene. To minimize impacts to Goldie's wood fern, the applicant proposed to maintain a riparian buffer along a small stream but to remove capable species in the corridor. Within this buffer along the stream the applicant still will remove all capable vegetation and will remove the canopy. MNAP commented that this species is sensitive to canopy disturbances and requested the applicant provide compensation for the impacts by protecting a documented occurrence of Goldie's wood fern outside of the corridor or, if no suitable site is found, by protecting other properties containing rare forest-dwelling plant species in Western or Central Maine, providing funding toward MNAP's rare plant surveys, or some other mitigation proposal to conserve rare plant communities.

The project will result in 9.229 acres of clearing in a Jack Pine Forest located in Bradstreet Township.

There is only one other Jack Pine Forest Community known in the State and that is several miles north of this affected one, in the Number 5 Bog, which is a National Natural Landmark. MNAP requested compensation for this impact to the Jack Pine Forest. MNAP also reviewed the information on the Hardwood River Terrace Forest, which had been documented in 2007 for the MPRP project and determined that it is outside the NECEC Corridor.

In response to MNAP's comments, the applicant revised its proposed compensation plan to mitigate impacts to rare or unique botanical features. This revised plan includes a contribution to the Maine Natural Areas Compensation Fund for impacts to Goldie's Wood Fern and the Jack Pine Forest. In an email dated February 4, 2019, MNAP stated that the revised compensation plan addresses their concerns. The compensation plan proposes that the applicant will make a contribution to the Maine Natural Areas Conservation Fund in the amount of \$1,234,526.82. (See Appendix F, Table F-2 for the allocation of funding for different impacts.)

C. Public Hearing and Comments

(1) Alternatives Analysis

a. Applicant Testimony and Evidence on Alternatives

In its application, supporting documents, and witnesses' pre-filed testimony for the first segment of the public hearing, CMP provided evidence on its methods to avoid and minimize the impacts from the project, as described above.

This evidence included evaluation of the alternative routes described above, as well as the efforts the applicant took to site the line once a general location was chosen. On April 1, 2019, CMP's witnesses provided oral testimony on its alternatives analysis. The applicant's witnesses on this first day did not address the feasibility of locating the transmission line, or sections of the line, such as Segment 1, underground.

In response to the pre-filed direct testimony of witnesses for intervenor Groups 2, 6, and 8 highlighting the absence of evidence from the applicant on the option to bury the line (the underground alternative), the applicant provided pre-filed rebuttal testimony on the issue, including from new witnesses. Following this pre-filed rebuttal testimony and further pre-filed sur-rebuttal and supplemental testimony, the underground alternative was the focus of the second segment of the hearing, held on May 9, 2019.

On May 9, CMP's witnesses Justin Tribbet, Justin Bardwell, Thorn Dickinson, and Kenneth Freye provided testimony on the underground alternative for Segment 1 and the entire corridor, as well as along Route 201 and Spencer Road. CMP provided testimony concerning the constructability of an underground line, the feasibility of burying the line in the existing corridor, along Route 201, and along the Spencer Road, and the cost of different underground alternatives. For example, Bardwell testified that for each overhead conductor two underground cables would be needed, plus a spare. This is because of the power transfer capacity of the project, with the fifth cable being a spare. He explained that while other proposed projects with the same voltage included underground components with fewer cables, this was because other projects did not have the same power transfer capacity. Bardwell provided an overview of the construction process, including trenching and other techniques, the need to splice together cable sections approximately every 2,200 feet, and the use of concrete enclosures to protect the splices. He also testified to the environmental impacts of underground construction. Tribbet and Bardwell both testified to the cost of different underground alternatives. They estimated, for example, that locating just Segment 1 underground in the currently proposed corridor would result in a total project cost of \$1.6 billion, adding approximately \$640 million to the overall cost, or roughly an increase of 67 percent. Tribbet also addressed other transmission line projects with undergrounding technology, noting that each involves project-specific considerations. He listed projects such as Connect New York, Northern Pass, TDI Vermont, and Vermont Greenline and testified that none of these projects had demonstrated economic feasibility or secured a long-term transmission service agreement.

CMP witness Kenneth Freye testified that at the time CMP was evaluating route alternative it discussed options with the landowner of Spencer Road, Plum Creek Maine Timberlands, LLC. Plum Creek was opposed to having a transmission line along the road. Freye also testified that locating the line along Route 201 was not practicable for several reasons, principally because the Department of Transportation would not allow

the underground transmission line within the travel way of the road.²⁸ He testified that the remainder of the DOT right-of-way was not wide enough to accommodate an underground alternative. As a result, running the line underground along Route 201 would require acquiring land rights from residential, recreational, and small commercial landowners, which Freye testified likely would prove difficult.

b. Intervenor Testimony and Evidence on Alternatives

Group 1 testified that a similar project in Vermont has been permitted that could provide the power for the Massachusetts request for proposal, that the Vermont project would have no impacts in Maine, and therefore, Group 1 argued, the no action alternative is practicable.

Groups 2, 4, and 10 all argued that the applicant failed to meet its burden by not evaluating the underground alternative and that the project should be located either under Spencer Road or adjacent to Route 201.

Group 8 witness Christopher Russo testified concerning the undergrounding alternative. He stated that HVDC lines of the length proposed by CMP are located underground or underwater in the 13 of 14 instances worldwide.

Russo also reiterated the point other intervenors made that the Vermont route and the Northern Pass route were proposed to be located at least partially underground.

Group 6 witnesses also argued the lack of an analysis of the underground alternative was a flaw in the CMP application.

Group 3 witness Gil Paquette testified that locating the transmission line underground was not a practicable alternative. Among the factors he discussed in support of his overall conclusion were cost, cable slicing and associated vaults, and the need for thermal sand.

With regard to thermal sand he testified that in his experience the need for, logistics concerning, and cost of thermal sand is the single most overlooked aspect of undergrounding an HVDC transmission line. He cited his experience with a project where the need for thermal sand was not appreciated until late in the planning process and that based on his familiarity with the geology in western Maine it is highly likely the majority of Segment 1 would require thermal sand.

²⁸ Bardwell stated in his pre-filed supplemental testimony that splice vaults, which would be a required component for underground construction, are prohibited within the travel lanes by Maine DOT rule, 17-229 CMR Ch. 210, § 10(5), Pt. D.

c. Public Testimony and Comments on Alternatives

Members of the public submitted written comments and testified at the hearing on the applicant's alternatives analysis and the choice of the proposed route. Several members of the public opposed to the project testified that an underground alternative would have less visual impact, be safer, and require a narrower cleared corridor. Many interested persons testified they believed the line should be buried under Spencer Road or Route 201. Several members of the public testified that they believed the line should be buried under Spencer Road. One person in favor of the project testified that undergrounding would be too costly, and therefore is not a practicable alternative.

(2) Impacts to Wildlife, Fisheries, and Other Natural Resources

a. Applicant Testimony and Evidence on Impacts

In its application and its hearing testimony, the applicant described the methods used to locate and design the project in the least environmentally damaging manner. The applicant's witnesses at the hearing testified that the project would not cause unreasonable fragmentation of the forest habitat because the project is located in working forest that is already fragmented by clear cuts, partial-cuts, log yards, skid trails, and logging roads. They contend that the project will provide improved habitat for certain species of wildlife that prefer early successional forest, such as deer, moose, bear, fox, rabbits, and other wildlife species. The applicant provided testimony that the proposed project would not unreasonably impact coldwater fisheries or rare or threatened species and that sufficient compensation had been proposed for the impacts that would occur. In the course of the hearing process the applicant also committed to not using herbicides within Segment 1; this was stated by CMP witness Mirabile in his pre-filed supplemental testimony and reaffirmed orally at the May 9 hearing.

The applicant also provided testimony, in response to questions from the Department, on the possibility of tapering additional areas along Segment 1 or allowing for taller vegetation in the corridor, including through the use of taller poles. Mark Goodwin testified that the applicant did not believe additional tapering or taller poles/vegetation were necessary, but expressed a preference for tapering. Nicholas Achorn testified on the construction process for poles 100-feet and taller. He noted some differences in construction and extent of permanent impacts depending on whether poles are directly imbedded or constructed using caisson foundations. Under either type of construction, he testified the work pad size requirement around the pole would be same.

b. Intervenor Evidence on Impacts

Intervenor Groups in Opposition: Group 1 witness Janet S. McMahon; Group 2 witnesses, Chris Russell, Greg Caruso, and Roger Merchant; Group 4 witnesses Dr. David Publicover, Dr. Aram Calhoun, Ronald Joseph, Todd Towle, and Jeffrey Reardon, all testified that the project would have an adverse impact on wildlife and fisheries. Witnesses McMahon, Merchant, Publicover, Calhoun, and Joseph testified on the

potential impacts the project may have on forest fragmentation. Witnesses Russell, Caruso, Towle, and Reardon all testified on the impacts to coldwater fisheries, particularly brook trout.

McMahon and Merchant testified on the importance of unfragmented habitat to so-called “umbrella” species such as pine marten.²⁹ They stated that even though the forest may be somewhat fragmented due to logging practices, these features are temporary in nature. The transmission corridor would represent a permanent fragmenting feature in the landscape. Publicover testified that the fragmentation of the forest would be permanent, and asserted the global importance of the western Maine mountains region in terms of ecological diversity.

Reardon testified that the smaller perennial and intermittent streams that would be impacted by the project are “the best of the best” brook trout habitat. He testified that many of the streams impacted by the project in Segment 1 are exceptionally valuable, such as Gold Brook and Tomhegan Stream, which provide brook trout spawning and rearing habitat, and Cold Stream, in which brook trout seek thermal refuge during warm temperature months. He explained that in a 150-foot wide, cleared corridor without taller trees or a full canopy the streams would not have the necessary input of large woody debris from dead trees necessary for healthy habitat. He stated that the proposed compensation parcels offered by CMP as mitigation for these impacts do not contain the same quality habitat as the area being impacted by the project. Finally, he stated that based on his experience with stream-crossing replacements, CMP’s statement that 20 to 30 culverts could be replaced with the \$200,000 proposed in the compensation fund was not realistic. He testified that in his experience, a single crossing could cost in the range of \$50,000 to \$100,000.

An Intervenor Group 4 witness, Ronald Joseph, testified concerning the impacts to deer wintering areas. Joseph stated that the proposed project crosses 22 deer yards. He described several instances of deer mortality due to a loss or fragmentation of the winter habitat, including an example of Chub Pond deer yard, not far from the project, that is no longer used because of timber harvesting in the area. He testified that the loss of deer yards and the decline in the deer population has a negative impact on the local economy in the vicinity of the proposed corridor due to the decline in the recreational use by hunters in the area.

An Intervenor Group 4 witness, Calhoun, testified that the project would adversely impact vernal pools and in particular pools that are in proximity to one another. Calhoun testified that these closely related pools, known as poolscapes, would be unreasonably impacted by being fragmented by the clearing of vegetation for the proposed transmission line.

²⁹ As described at the hearing, protecting for an umbrella species will also provide protection for a wide range of other wildlife with overlapping or similar habitat needs, including the need for unfragmented habitat.

Neutral Intervenor Groups: Group 5 did not provide any testimony concerning impacts to wildlife and fisheries.

Intervenor Group 6 witnesses, Dr. Malcolm Hunter, Jr., Rob Wood, Andy Cutko, Bryan Emerson, and Dr. Erin Simons-Legaard provided testimony concerning forest fragmentation. Hunter testified on the types of impacts associated with fragmentation, including habitat loss and alteration, increased edge and reduced interior, and potential long-term consequences. He asserted: “The proposed mitigation and compensation does not adequately address the cumulative impacts of the full array of Maine’s wildlife.” Group 6 witnesses Wood, Cutko, and Emerson jointly testified that the effect of the proposed corridor would be greater than traditional sustainable forestry. They suggested in their testimony methods to minimize the impacts of the project on forest fragmentation. They submitted an exhibit that is a map showing nine areas where taller poles could be utilized to allow 35-foot tall vegetation to remain under the wire zone in order to provide passage for umbrella species such as pine martin. They testified that the taller vegetation also would minimize impacts to any coldwater fisheries located within those nine areas. They suggested that the corridor could be narrowed or built using what they referred to as “V-shaped vegetation management,” to further reduce impacts to wildlife habitat. They emphasized the need for mitigating or compensating for remaining habitat fragmentation impacts by reducing or preventing fragmentation elsewhere in the affected region through land conservation. They offered testimony, similar to that of Reardon, explaining why the funding for culvert replacements proposed by CMP was unlikely to be sufficient to support the number of replacements described by the applicant. Finally, Simons-Legaard testified that the proposed corridor would have significant adverse impacts on pine marten and other species, and on the value of mitigation alternatives, including tapering, taller vegetation, and conservation.

Intervenor Groups in Support: Intervenor Groups 3 and 7 did not provide testimony concerning wildlife or fisheries.

c. Public Testimony and Comments

Members of the public submitted written comments and testified at the hearing on the issues of impacts to wildlife, fisheries and other natural resources. Some members of the public commented that herbicide use and an increase in water temperatures from less shading would result in an unreasonable impact to brook trout. Although it was not always clear from the testimony and comments which portion of the 145-mile long project members of the public were discussing, generally the focus was the 53.1-mile long Segment 1.

Many public comments and testimony in support of the project acknowledged the impacts to wildlife and fisheries, but stated that the benefits of the project, in particular with respect to a reduction in greenhouse gas emissions, outweigh the impacts, thereby urging the Department to find that the impacts would be reasonable.

D. Department Analysis, Findings, and Conclusions

(1) Alternatives Analysis

The Department begins its evaluation of natural resource impacts of the NECEC project with a review of the applicant's analysis of alternatives. Chapters 310 and 335 require an applicant to submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts.

The basic methodology the applicant used in its analysis of alternative routes is sound. The applicant began by evaluating alternatives at a landscape scale and used a reasonable list of factors to assist with comparison. These are factors available to the applicant at the site selection stage of the project and that serve as a reasonable proxy for likely environmental impacts, as well as the practicability of a project. For example, National Wetland Inventory data, while not accurate enough to use at the permitting phase, is appropriate for a prospective developer to review when selecting between alternative sites or routes and attempting to minimize wetland impacts. Consideration of the location of conserved lands is reasonable and appropriate for several reasons. For example, conserved lands often are conserved because of their environmental value and are more likely to be areas used by the public for recreation purposes. Additionally, locating a corridor within conserved lands may not be legally possible depending on the nature of the conservation. The length of undeveloped right-of-way also is a valuable site selection factor. While a shorter corridor could contain more significant natural resources than a longer corridor, the length of corridor to be cleared is a reasonable proxy for environmental impact, especially when considered in conjunction with other environmental screening factors (e.g., presence of IWWH and DWAs), as was done by the applicant. In sum, the Department finds the factors considered by the applicant in its alternative analysis were appropriate and sufficient in number and scope.

The Department also finds the applicant applied these factors appropriately and reasonably selected the route reviewed in this Order.

Alternative Route 1 is not the least environmentally damaging alternative in light of the added length of undeveloped right-of-way, extent of conservation lands impacts, and new Appalachian Trail crossing. The route also does not appear practicable given the easement areas it would have to cross, parcel count, and AT crossing rights that would be needed. Alternative Route 2 is slightly shorter than the Preferred Alternative and would involve considerably less new right-of-way, although the identified resource impacts within Alternative Route 2 and the Preferred Alternative are comparable. The new AT crossing and challenge and cost of navigating through or around the Bigelow Preserve do not make Alternative Route 2 a practicable alternative. The Department also finds that neither the Brookfield Alternative nor the CMP Land Alternative are the least environmentally damaging practicable alternative in light of having to run the corridor through an area subject to a conservation easement that does not allow the project development, the added new right-of way needed, and environmental impacts when compared to running the transmission line under the Upper Kennebec River.

Within the corridor and project area for the Preferred Alternative, on the site-specific scale, the applicant sited structures, including buildings and equipment for the substations and the poles for the transmission line, outside of protected natural resources and valuable habitat to the extent practicable. The applicant also proposes to utilize construction Best Management Practices to minimize impacts to resources adjacent to the structures and roads being built. Special design accommodations are proposed for individual resources in specific locations. For example, in Greene (Segment 3) the applicant proposes to rebuild two existing lines and redesign and relocate a 1.5-mile portion of the proposed transmission line to avoid tree clearing and the associated impacts to nearby whorled pogonia. In Appleton Twp. and Johnson Mountain Twp. (both Segment 1) the applicant proposes taller poles at the crossings of Gold Brook and Mountain Brook to allow for taller vegetation to help conserve Roaring Brook Mayflies and Northern Spring Salamanders. In Parlin Pond Twp. (Segment 1) maintenance of 10- to 15-foot tall spruce/fir within the corridor is proposed to protect Rusty Black Bird habitat. Numerous rare plant occurrences also would be avoided and worked around.

The applicant has made two notable modifications to its proposal after its original alternatives analysis, locating the proposed transmission line under the Upper Kennebec River through the use of HDD technology and adjusting the corridor to stay out of the LUPC's Recreation Protection Subdistrict around Beattie Pond through selection of the Merrill Strip Alternative. The underground crossing of the Upper Kennebec River reduced impacts to existing scenic and recreational uses of that resource and the Merrill Strip Alternative reduced impacts for users of Beattie Pond. Both have been appropriately incorporated into the project by the applicant and reflect the value of the permit review process and the potential for projects to evolve during this process. It is unlikely an overhead crossing of the Kennebec River would have satisfied the applicable visual impact standards and the modification of the route in the vicinity of Beattie Pond, through the Merrill Strip Alternative, responded to concerns raised in the course of the LUPC's review.

Also, in the course of the review process, CMP considered and presented testimony on the alternative of locating the transmission line underground. This alternative was not originally considered by CMP in its application materials. Hearing testimony by Paquette indicated this exclusion was rational because locating the line underground was so obviously unreasonable to anyone with expertise in this construction technique that it made sense CMP did not devote time to analyzing an option that would not be viable. While this may explain the exclusion, the Department finds consideration of the underground alternative is both a relevant and important component of an evaluation of the project. As intervenors testified, other existing and proposed transmission lines have been constructed or proposed to be constructed underground. The possibility of doing the same with the present transmission line warrants consideration, even if ultimately ruled out.

The applicant submitted testimony and exhibits on the underground alternative in response to evidence submitted and arguments made by intervenors. The Presiding Officers allowed the intervenors to submit written sur-rebuttal and scheduled an

additional hearing day for testimony and cross-examination of witnesses on this topic, as well as some other testimony. The Department finds that the evidence in the record on the underground alternative is sufficient for the Department's review of whether the applicant has met its burden of proof on the licensing criteria, including the requirement that the applicant provide an analysis of alternatives.

There is intuitive appeal to the argument that locating the transmission line underground would be less damaging to the environment and have less of a scenic impact. No conductors or poles would be visible and a narrower corridor could be maintained. Upon examination of the underground alternative, however, the Department finds that constructing the line underground, outside of the Upper Kennebec River crossing, is not a less damaging practicable alternative. In reaching this conclusion, the Department considered the evidence submitted by all the parties and the research of Department staff.

Bardwell, in testimony the Department found credible, explained underground construction. To locate a transmission line underground, the most affordable and common construction technique, in most areas, would be direct burial. This involves laying sections of cable within an open trench. For this project, because of its power transfer capacity, four cables, plus a spare for reliability, would be located in the trench. The trench would be a minimum of six feet deep and five feet wide at the base and have a minimum surface width of 12 feet. A work area approximately 75 feet wide would be needed during installation and a cleared corridor of this same width would be maintained after construction. The 75-foot wide cleared area, allowed to regenerate with scrub-shrub species, is needed to keep root systems from larger trees out of the cables.

A trench would be opened to accommodate a length of cable, which would be delivered in 2,500-foot long segments that would be spliced together approximately every 2,200 feet. Each splice would be protected by pre-cast concrete components measuring approximately 12 feet long by four feet wide. At each jointing location an excavation approximately 60 feet long, 20 feet wide, and seven feet deep would be opened.

A concrete pad would be poured in the bottom and the spliced cables, each with its pre-cast concrete protection, would be located on top of this pad and backfilled. Beyond the splice vault, cables would be located on a sand bedding and covered with a protective concrete layer. The trench would be backfilled above the concrete. To facilitate construction and ongoing maintenance, permanent access to each splice vault is required.

Paquette testified that thermal sand likely would be needed for much of the Segment 1 corridor due to the cable that would have to be used for this project and the properties of the soils in western Maine. While the volume of thermal sand that would have to be used is not clear from the record, the Department finds credible that thermal sand would have to be imported to enable running the transmission line underground.

This type of underground construction effort would result in a greater environmental impact than the proposed overhead alternative. In order to install cables underground in Segment 1, the cables would need to be buried under the streams, wetlands, vernal pools,

and other natural resources. While this is possible, as was the case for the natural gas pipelines that were installed in the late 1990's, the construction is costly, time consuming, and difficult, especially if there is rainy weather. While some impacts from trenching might be temporary, such as trenching through a wetland, this same impact is avoided with the overhead alternative. The nature and extent of required site access during construction and the permanent access that would be maintained post-construction is more extensive with the underground alternative and would result in greater impact. Furthermore, with the underground alternative a cleared corridor still must be maintained and would be wider, at 75 feet of clearing, than a tapered corridor, with approximately 54 feet of clearing as discussed in this section. Additionally, a wider clearing would have greater scenic impacts from some locations, such as Coburn Mountain, and create more of a fragmenting feature. Taller vegetation within certain portions of the corridor, something required in this Order to minimize environmental impacts associated with overhead construction, would not be an option with an underground alternative.

When the environmental impacts of undergrounding is considered along-side the logistical challenges, such as the splicing boxes needed every 2,200 feet, the need for permanent access roads to these splicing boxes, hauling in thermal sand, hauling out or otherwise disposing of material that cannot be backfilled, the infrastructure upgrades needed to the road network, and the increased cost of this method, the Department finds locating Segment 1 (or the entire project) underground within the corridor is not a less environmentally damaging practicable alternative.

While some of the environmental impacts associated with the underground alternative along the proposed corridor, particularly Segment 1, could be reduced with co-location of an underground transmission line along Route 201 or Spencer Road, the Department finds neither alternative is practicable for the reasons testified to by Freye and Bardwell, including the feasibility of acquiring the legal right to run the transmission line in either location and the associated cost.

Additionally, the Department concurs with the applicant's alternatives analysis for the Merrill Road Converter Station, the Fickett Road Substation, and the remainder of the substation upgrades.

Finally, the Department considered the no action alternative. Group 1 argues that the Department should deny the applications because there is already an approved project in Vermont that, if constructed, would not have any impacts in Maine. The Department did not evaluate that approved project as an alternative because it does not meet this applicant's project needs. The Department declines to interpret an alternatives analysis as requiring an assessment of whether third party commercial competitors in other states may be able to fulfill the stated project purpose by some other means. The Department requires applicants to examine the no build alternative, alternative sites, alternative designs, and reductions in the scope of the project in an alternatives analysis and the applicant has done so in this case.

In sum, the Department finds that the selected above ground alternative and associated substation improvements are the least environmentally damaging practicable alternatives. Additionally, in the course of evaluating the proposed transmission line, including as part of the Department's assessment of the applicant's alternatives analysis and review of scenic impacts and wildlife impacts, the Department considered evidence regarding the transmission line location, character and impact on the environment and risks to public health or safety. The Department finds no further project modification or conditions regarding the transmission line's location, character, width, or appearance, beyond what is required by this Order, are warranted, under 38 M.R.S. § 487-A(4) or otherwise, to lessen the transmission line's impact.

(2) Wildlife, Fisheries, and Other Natural Resources

Chapter 375, § 15, implementing Site Law, requires an applicant to make adequate provision for the protection of wildlife and fisheries by maintaining suitable and sufficient habitat, including travel lanes between areas of habitat. NRPA, and the pertinent regulations promulgated under it, Chapters 310 and 335, recognize the importance of rivers, streams, and brooks; wetlands; and SWHs, including SVPs and IWWHs. The rules support a goal of no net loss of function and values, establish the criteria for avoidance and minimization of project impacts and state that some projects, even if the impacts have been avoided and minimized to the greatest practical extent, still may be unreasonable. In its review, the Department considers evidence concerning buffer strips of sufficient area to provide wildlife with travel lanes, protection of wildlife and fisheries lifecycles, and disturbances to high and moderate value deer wintering areas, threatened or endangered species, SVPs, and high or moderate value waterfowl and wading bird habitat.

a. Habitat Fragmentation and Wildlife Travel Corridors

Segment 1 of the project involves the creation of a new corridor through a forested area in western Maine. Group 6 testimony establishes this area is part of a largely unfragmented forest block that is more than 500,000 acres, which itself is part of an even larger area that is one of the world's last remaining contiguous temperate broadleaf-mixed forests. The western Maine region supports exceptional biodiversity and is expected to be especially effective at maintaining biodiversity as the climate changes. These qualities make the area unique and important for wildlife.

Within this area there also is an extensive network of land management roads and some residential camp and other development. Forest management is the predominant activity. Several witnesses testified the existing landscape is a mosaic of various aged forest, ranging from mature forest to recently harvested areas. The mosaic changes over time as harvested areas mature and mature areas are harvested.

Although the area is not completely undeveloped and is subject to active timber management, a transmission line corridor in the western Maine area where Segment 1 is proposed could contribute to habitat fragmentation and have unreasonable adverse

impacts on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat. Fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches. CMP acknowledged in its Site Law permit application: “Transmission line corridors present potential direct impacts, as they may affect species movement, dispersal, density, nesting success and/or survival. . . . For the undeveloped corridor of Segment 1, impact may include fragmentation and creation of new linear edges. . . . Habitat conversion along transmission line corridors results in a loss of habitat types which, in turn, may adversely impact species that are reliant on the original habitat types.” (Site Law Application, pg. 7-23.) Group 4 and Group 6 testimony addresses the negative results associated with fragmentation, such as impacts to wildlife movement, reduction in accessible habitat, an increased in “edge” – the border between forest and an opening – and reduced interior, as well as biodiversity decline.

The Department finds that as Segment 1 initially was proposed, the applicant had not made adequate provision for the protection of wildlife; the proposal’s contribution to habitat fragmentation and impact on habitat and habitat connectivity was an unreasonable impact on wildlife habitat. Through modifications CMP made to its proposal during the permitting process, these potential wildlife impacts have been reduced. Through further modification required as a condition of this Order, adequate provision for the protection of wildlife will be achieved.

The project improvements to which CMP committed through written submissions filed with the Department during the permitting process include:

- Maintaining taller, softwood vegetation in the Upper Kennebec River DWA to provide travel corridors for deer.
- Maintaining full canopy height vegetation at the Gold Brook and Mountain Brook crossings. While the primary purpose of maintaining taller vegetation within the corridor in these locations is the protection of Roaring Brook Mayfly and Northern Spring Salamander habitat, the taller vegetation also helps minimize the fragmenting effect of the corridor.
- Maintaining tapered vegetation in the area visible from Coburn Mountain and another area visible from Rock Pond, for the purpose of minimizing the visual impact. The tapered vegetation in the corridor also benefits wildlife.
- Expanding the riparian filter areas on coldwater fisheries streams to 100 feet, and on all other streams to 75 feet.

These measures are expected to reduce the impacts of the Segment 1 corridor, but are not sufficient to avoid substantial and harmful fragmenting of habitat.

The Department finds that additional mitigation is required to satisfy the Site Law standards discussed above. This finding is supported by testimony from Group 4 and Group 6 intervenors. For example, Hunter states in his February 25, 2019 pre-filed testimony: “CMP has made adjustments to its original compensation plan to accommodate for corridor impacts to white-tailed deer (particularly wintering habitat) and a few selected rare species (Roaring Brook Mayfly and Northern Spring Salamander).

While deer have been identified in this process because of their regulatory standing, there are approximately 800 species of vertebrate wildlife in Maine and thousands of species of invertebrates, and many hundreds of species are present in the region affected by this corridor. Although habitat fragmentation affects different species in different ways, it is clear that many other species would be affected in addition to deer.” Simons-Legaard in her May 1, 2019 pre-filed testimony and her testimony at the hearing discussed pine marten, which she identified as an umbrella species – meaning that planning for marten often serves the purpose of planning for a wide range of other wildlife. She testified that pine marten utilize tree to tree movement and generally avoid large forest openings where they are vulnerable to predators. Although marten will cross corridors, they do not prefer cleared areas and their home ranges typically include areas with less than 30 percent unsuitable habitat. Simons-Legaard explained the relative benefit of modifying the project with tapering of vegetation and/or taller poles that would allow taller vegetation within the corridor. The weight of the evidence leads the Department to find that to ensure adequate provision for the protection of wildlife, CMP must take the following steps with regard to tapering, taller poles and taller vegetation, and conservation.

1. Tapering

A new, 150-foot wide, 50-plus mile long corridor, initially cleared and then maintained with non-capable vegetation only up to 10 feet in height, in the relatively undeveloped, forested region of western Maine would have an unreasonable adverse impact on wildlife and wildlife habitat. However, evidence in the record shows the project could be designed and built in a manner that would minimize these impacts so that the impacts would not be unreasonable. The Department finds that to do so CMP must maintain tapered vegetation, as described below, along the entire Segment 1 corridor except for the areas where CMP must maintain full height canopy vegetation, vegetation with a minimum height of 35 feet, or taller vegetation managed for deer travel corridors. A tapered corridor, more fully described in Appendix C, includes an approximately 54-foot wide area under the conductors (the wire zone) that is cleared during construction and maintained as scrub-shrub habitat during operation of the project. Outside the wire zone, which is located at the center of the 150-foot wide corridor, taller vegetation is maintained. This taller vegetation increases from 15 to 35 feet in height as the distance from the wires zone towards the outside of the corridor increases. The reduction in clearing and narrowing of the scrub-shrub area within the tapered corridor, and taller vegetation along the sides of the corridor, will substantially reduce the impacts on wildlife.

The Department recognizes much of the forested area around the proposed Segment 1 corridor is actively managed as commercial timberland. This contributes to the mosaic of different aged forest in the western Maine region. Private landowners who actively manage their land do so in response to market conditions and to achieve their individual objectives. As a result, it is not possible for the Department to predict the exact type of forested habitat that will exist along the entire Segment 1 corridor throughout the lifespan of the project. Tapering along Segment 1, however, will provide improved habitat and improved passage between areas of suitable habitat where and when they exist adjacent to the corridor. Tapering will avoid creation of a hard forest edge and help mitigate the

edge effect explained by Hunter in his testimony. A tapered corridor also will result in a narrower scrub-shrub opening closer to the width of a land management road, which testimony established is less fragmenting than a 150-foot wide cleared transmission corridor. This tapering will allow a greater opportunity for wildlife to cross the corridor and reduce the time/distance crossing wildlife would be out in the more open shrub-shrub habitat.

How the vegetation within the tapered areas along Segment 1 is managed will influence the environmental benefit of this form of mitigation. In updating its VCP and VMP as required by this Order, in addition to explaining how the tapered vegetation heights more fully described in Appendix C will be achieved, the applicant must describe how the vegetation will be managed to ensure tapering minimizes the environmental impact of the corridor to the greatest extent practicable, including reasonable efforts to avoid the growth of even-aged stands within each taper.

2. Taller Poles and Taller Vegetation

A tapered corridor helps minimize impacts to habitat and wildlife movement, but, by itself, does not adequately provide for the protection of wildlife throughout Segment 1 of the corridor. For example, Publicover testified “vegetation in the range of 30 to 40 feet would meet minimum height and density requirements for marten.” Simons-Legaard offered similar testimony regarding pine marten habitat and this umbrella species’ preference for habitat with trees at least 30 feet tall. Taller poles can allow for taller vegetation under the conductors. Additionally, in some locations taller vegetation may be feasible under the corridors simply as a result of taking advantage of existing topography.

The Department finds that additional protection for wildlife habitat and travel corridors can be provided by maintaining taller vegetation in the corridor, including in riparian areas and adjacent to conservation lands. Based on Department staff’s knowledge that wildlife utilize riparian areas as travel lanes, the Department finds that significant gains in protection can and must be made in such areas. Additionally, as Simons-Legaard testified, when evaluating where along the corridor to maintain taller vegetation, locations where mature forest in the areas abutting the corridor is most likely to remain should be targeted. Riparian areas and areas adjacent to conserved land are two such areas she noted. TNC identified nine areas where it suggested taller vegetation would benefit wildlife.

Department staff, in questions to CMP at the May 9, 2019 hearing, identified five areas (including nine stream or river crossings) where taller vegetation with a minimum height of 35 feet could be maintained due to existing topography with poles only minimally taller, or no taller, than proposed.³⁰

³⁰ These areas are: the South Branch Moose River crossing (structures 3006-768 to 3006-767), the crossing of a group of five unnamed streams (structures 3006-742 to 3006-741), unnamed stream crossing (structures 3006-589 to 3006-588), Tomhegan Stream crossing (structures 3006-576 to 3006-575), and Moxie Stream crossing (structures 3006-542 to 3006-541). Four of these five areas – South Branch of Moose River, the groups of five unnamed

In a May 17 submission, CMP agreed that this appeared feasible. Since the hearing, the Department has continued its review of the evidence in the record and identified additional areas where taller vegetation, with a minimum height of 35 feet, is appropriate to support wildlife and reasonably achievable in light of existing topography or by using taller poles in areas where the taller structures would not be visible from scenic resources, or any visual impacts would be minimal and not have an unreasonable adverse effect on scenic uses or character of the surrounding area.

In identifying areas where a minimum vegetation height of 35 feet must be maintained the Department focused on areas with stream crossings and areas adjacent to conserved land, and also considered the habitat connectivity priority areas identified by TNC. The identified areas with a required minimum vegetation height of 35 feet are listed in Appendix C and identified as Wildlife Areas 1 through 5 and 7 through 10 in Table C-1.³¹

In response to concerns about the potential impact of the project to Roaring Brook Mayfly and Northern Spring Salamander habitat, the applicant proposed to retain full canopy height vegetation at the Gold Brook and Mountain Brook crossings. The location of this taller vegetation also is listed in Appendix C, Table C-1. The Gold Brook crossing is part of the larger Wildlife Area 4. The Mountain Brook crossing is identified as Wildlife Area 6.

Finally, in response to concerns about potential impacts to DWAs the applicant proposed to provide 10 deer travel corridors within the Upper Kennebec River DWA. Two of the corridors would be adjacent to the Upper Kennebec River in the area where the transmission line would be underground, allowing retention of full canopy height vegetation. Eight of the travel corridors would be created by selectively cutting the corridor to promote softwood growth necessary to provide winter habitat for deer. This softwood vegetation would range in height from 25 to 35 feet. Both forms of vegetation management within the corridor are described more fully in Appendix C. In this same appendix, the locations of these travel corridors are listed. The two full canopy height travel corridors are identified as Wildlife Area 11. The eight softwood vegetation travel corridors managed specifically for deer, collectively, are identified as Wildlife Area 12.³²

Together, the areas along Segment 1 with full canopy height vegetation, vegetation with a 35-foot minimum height, and softwood vegetation managed for deer travel make up 12 Wildlife Areas.

streams, Tomhegan Stream and Moxie Stream – correspond with portions of the nine TNC-identified priority areas (numbers 2, 4, 8, and 9, respectively).

³¹ Wildlife Area 1 includes part of TNC area 1; Wildlife Area 2 includes all of TNC area 2; Wildlife Area 3 includes all of TNC area 3; Wildlife Area 4 includes part of TNC area 4; Wildlife Area 5 includes all of TNC area 5, plus several additional structures, including the crossing of an unnamed stream where 35-foot tall vegetation likely can be retained without taller poles (3006-708 to 3006-707); Wildlife Area 7 includes the crossing of Cold Stream; Wildlife Area 8 includes an unnamed stream crossing where 35-foot tall vegetation likely can be maintained without taller poles; Wildlife Area 9 includes Tomhegan Stream and part of TNC area 8; and Wildlife Area 10 crosses Moxie stream and is within TNC area 9.

³² Wildlife Area 11 and most of Wildlife Area 12 are within TNC area 9.

These Wildlife Areas, which total approximately 14.08 miles along the 53.1-mile-long Segment 1 corridor, will provide improved passage and connectivity across Segment 1, helping to protect wildlife, provide travel lanes between areas of habitat, and mitigate wildlife habitat impacts overall. The majority of these travel lanes will exceed 400 feet in width and benefit multiple species that prefer interior forest habitats, including pine marten.

3. Conservation

Tapering and maintaining taller vegetation, as required above, will help mitigate the impact of Segment 1 of the corridor on wildlife and wildlife habitat. The 53.1-mile section of corridor, however, still will have a fragmenting effect on the landscape of this unique forested region, affecting wildlife. For example, an approximately 54-foot wide cleared strip maintained as scrub-shrub habitat will run along much of Segment 1 and the edge effect and reduction in interior forest habitat impacts testified to by Hunter, will remain, although taller vegetation will reduce the edge effect. Additionally, even within areas with taller vegetation access ways will be required during construction and maintained as scrub-shrub habitat. Where the minimum vegetation height is 35 feet, some taller vegetation may need to be selectively cut if it would encroach into the conductor safety zone. The tapering and taller vegetation required by this Order help minimize the impacts associated with fragmentation; they do not eliminate them. The proposed corridor will not provide habitat for interior forest species such as the pine martin and there remains an edge effect created by access roads even in areas with taller vegetation. The shorter vegetation in the wire zone of the tapered areas creates an edge effect as well.

Because of the impacts to wildlife, even with on-site mitigation, the Department finds additional, off-site, mitigation in the form of land conservation is required to ensure the applicant has made adequate provision for the protection of wildlife in the region affected by the project.

TNC advocated through its witness testimony and post-hearing brief that conservation in the range of 40,000 to 100,000 acres would be necessary to mitigate for habitat fragmentation impacts. TNC estimates that approximately 5,000 acres would be impacted by the corridor itself and associated edge effect, assuming an edge effect width of 330 feet. While this 5,000-acre calculation of impact pre-dates the slightly shorter Merrill Strip Alternative and was made without knowing taller vegetation would be required in some areas, the Department finds this estimated area of impact remains a reasonable baseline for evaluating the appropriate amount of additional conservation that should be required. This is based on the fact that even with tapering and taller vegetation, Segment 1 will have an impact on wildlife for which mitigation is required. Factoring in the other forms of mitigation required in this Order, the Department finds a 20:1 ratio, which would yield approximately 100,000 acres of conservation, or even a 10:1 ratio, unreasonably high. In evaluating other environmental impacts and allowing for off-site preservation as

mitigation of those impacts, the Department commonly applies an 8:1 ratio³³ and finds that that ratio and resulting conservation, 40,000 acres, is reasonable and appropriate here to ensure the applicant has made adequate provision for the protection of wildlife.

Within 18 months of the date of this Order, CMP must develop and submit to the Department for review and approval a plan (the Conservation Plan) to permanently conserve 40,000 acres in the vicinity of Segment 1. The Conservation Plan must:

- Establish as its primary goal the compensation for the fragmenting effect of the transmission line on habitat in the region of Segment 1 and the related edge effect by promoting habitat connectivity and conservation of mature forest areas;
- Identify the area(s), with a focus on large habitat blocks, to be conserved and explain the conservation value of this land; any conservation area must be at least 5,000 acres unless the area is adjacent to existing conserved land or the applicant demonstrates that the conservation of any smaller block, based on its location and other characteristics, is uniquely appropriate to further the goals of the Conservation Plan;
- Include a draft forest management plan establishing how, consistent with the primary goal of the Conservation Plan, the conservation area(s) will be managed, including to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat;
- Explain the legal interest, such as fee ownership or a working forest conservation easement, that will be acquired in each area; the proposed owner or holder of this interest; and the qualifications of each proposed owner or holder;
- Include preliminary consent from any proposed owner or holder;
- Explain how the applicant will ensure the availability stewardship funding (e.g., funding for monitoring and enforcement) needed to support achievement of the goals of the Conservation Plan; and
- Ensure the Department will have third party enforcement rights.

Prior to commercial operation of the project, the approved Conservation Plan must be fully implemented, unless, upon a showing by the applicant that it has made reasonable, good faith efforts to implement the Conservation Plan and additional time, not more than four years from the date of this Order, is needed, the Department approves an extension of the implementation deadline. Prior to implementation, all forest management plans, and all conservation easements, deed restrictions, covenants, or other legal instruments designed to fulfill the objectives of the Conservation Plan, must be submitted to the Department for review and approval.

³³ See, e.g., Ch. 310, § 5(C)(5)(c) (requiring an 8:1 ratio for compensation for wetlands impacts) and Ch. 335, § 3(D)(3)(b) (requiring an 8:1 ratio for compensation for SWH impacts).

4. Summary

The combination of vegetation management proposed by CMP and the additional requirements imposed as conditions of this Order, which include tapering and maintenance of taller vegetation, will reduce habitat impacts, provide wildlife sufficient ability to move between suitable habitats, regardless of where adjacent to the corridor this habitat changes as forestry patterns shift. Furthermore, the landscape-scale wildlife habitat impacts associated with fragmentation that will occur, even with this vegetation management, will not be unreasonable, given that they will be mitigated and offset through the required additional conservation within the western Maine forest area in which Segment 1 is located. Provided the applicant implements these measures, the Department finds that the project will result in adequate provision for the protection of wildlife.³⁴

b. Significant Vernal Pools and Other Significant Wildlife Habitat

Significant wildlife habitat is a statutorily defined term and, of particular relevance in review of present project, includes significant vernal pool habitat and high and moderate value waterfowl and wading bird habitat. 38 M.R.S. § 480-B(10). Which vernal pools and surrounding habitat qualify as a SVP is based on the criteria in Chapter 335, § 9³⁵; what habitat qualifies as an IWWH and TWWH is specified in Chapter 335, § 10.

As discussed in more detail above, the applicant's project will impact 61 SVPs, including 1.46 acres of permanent fill in the critical terrestrial habitat, 27.57 acres of clearing in uplands, and 3.68 acres of clearing forested wetlands; 16 IWWHs, including 15.03 acres of impact, all but 0.003 acres of which is from clearing; and one TWWH.

NRPA, in 38 M.R.S. § 480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm significant wildlife habitat. Site Law also regulates impacts to natural resources, 38 M.R.S. § 484(3), with the Site Law rule Chapter 375, § 15(B) specifically identifying significant vernal pools and high and moderate value waterfowl and wading bird habitat, among the habitats important to protecting wildlife.

Chapter 335 interprets and elaborates on the NRPA criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would degrade the significant wildlife habitat, disturb the subject wildlife, or affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, and there is a practicable alternative to the project that would be

³⁴ The vegetation management required by this Order, including as identified in Appendix C, is integral to the Department's decision and necessary to ensure the project does not violate applicable statutory or regulatory standards.

³⁵ Dr. Calhoun testified about vernal poolscapes and advocated for the regulation of these in the same manner as significant vernal pools. Where a vernal pool that is part of a poolscapes qualifies as a significant vernal pool, this pool is regulated as such under Chapter 335. Vernal pools that do not meet the definition of significant are regulated under NRPA as wetlands pursuant to Chapter 310.

less damaging to the environment. As discussed above, the Department has reviewed project alternatives and finds there is no practicable alternative to the project that would be less damaging to the environment.

Chapter 335 requires that the amount of habitat to be altered and the disturbance of the subject wildlife must be kept to the minimum amount necessary for meeting the overall purpose of the project. The Department finds that within the corridor and at associated substations, the applicant has designed the project to minimize impacts to significant wildlife habitat, for example, through the selection of pole locations and siting of access roads. Also, the applicant's Vegetation Construction Plan (VCP) and Vegetation Management Plan (VMP) establish:

- Protected natural resources³⁶ and their associated buffers will be flagged or located using a Global Positioning System (GPS) prior to all construction and maintenance activities;
- Initial clearing within SVP habitat will take place during frozen ground conditions, if practicable. If not practicable, clearing will be accomplished using hand tools or reach-in techniques. If required to remove vegetation, any travel lanes within the SVP habitat must be approved by the Department;
- During routine maintenance, between April 1 and June 30 in any calendar year, no vegetation will be removed using tracked or wheeled equipment in SVP habitat;
- No mechanized equipment will be used within IWWH between April 15 and July 15 in any calendar year;
- Herbicide will not be applied within 25 feet of any IWWH;³⁷ and
- Provided they do not pose a safety hazard, naturally occurring snags within IWWH will be allowed to remain, at a minimum of two to three snags per acre.

In accordance with Chapter 335, § 3(D)(1), if an impact to significant wildlife habitat will cause habitat functions or values to be lost or degraded, compensation is required to achieve the goal of no net loss of significant wildlife habitat functions and values. The applicant proposes to make a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Program in the amount of \$623,657.53 to compensate for SVP impacts and \$253,352.53 to compensate for IWWH impacts. Prior to the start of construction, the applicant must submit a payment in the amount of \$877,010.06 payable to "Treasurer, State of Maine", and directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333. (See Appendix F.)

The Department finds that the applicant has avoided and minimized Significant Wildlife Habitat impacts to the greatest extent practicable, and that, with the compensation that will be achieved through the ILF payment, the proposed project represents the least

³⁶ Protected natural resources include rivers, streams, brooks, SVP, IWWH, coastal wetlands, and habitats for threatened, or endangered species.

³⁷ Within Segment 1, CMP will not use any herbicide at all.

environmentally damaging alternative that meets the overall purpose of the project, provided the applicant:

- Submits an In-Lieu Fee payment to the Department for the Maine Natural Resource Conservation Program in the amount of \$877,010.06 prior to the start of construction (See Appendix F, Table F-1.)

The Department further finds that the activity will not unreasonably harm or disturb any significant vernal pool habitat or other Significant Wildlife Habitat, including high and moderate value waterfowl and wading bird habitat, provided the applicant:

- Marks the location of all natural resource buffers with flagging prior to the start of construction;
- Permanently marks all natural resource buffers upon completion of construction; and
- Marks all natural resource buffers with flagging prior to any maintenance activities.

c. Brook Trout and Coldwater Fisheries

The project corridor crosses 471 rivers, streams, or brooks that contain brook trout habitat, 351 of which will have clearing impacts, and five Outstanding River Segments. Maine is one of the last places where native brook trout habitat is still intact and wild brook trout still thrive. This fishery and the related use of the resource by fishing guides, owners of sporting camps, and Maine residents and tourists are an important use of the resource involving many communities in the area near the project. While Brook trout habitat is not among the habitats protected in NRPA as Significant Wildlife Habitat, the impacts of a proposed project on the functions and values of rivers, streams and brooks, as set forth in Chapter 310, § 5(D)(b), is a factor in the determination of whether the proposal would have an unreasonable impact on the protected resource. Fisheries, aquatic habitat, and wildlife habitat are listed among the functions to be considered. Chapter 310, § 3(J). In addition, impacts to brook trout from activities that may adversely affect fisheries lifecycles and general impacts to waterbodies that serve as brook trout habitat are considered by the Department under Site Law, 38 M.R.S. § 484(3), and Chapter 375 §15. As a result, to obtain approval for a proposed project under NRPA and Site Law an applicant must make adequate provision for the protection of fisheries and avoid, minimize, and compensate for impacts to fish habitat.

As discussed above, the Department has reviewed project alternatives and finds there is no practicable alternative to the project that would be less damaging to the environment. As the project has evolved through the permit review process, the applicant has taken steps to minimize the impact of the project on brook trout and coldwater fisheries. The applicant has committed to:

- Increase the riparian filter areas (buffers) along streams crossed by the project from the 25 feet originally proposed to 100 feet around all perennial streams in

Segment 1, all coldwater fisheries streams in all segments, all Outstanding River Segments, and all streams containing threatened or endangered species. A complete list of all rivers, streams and brooks that are crossed by the project and their fisheries status is attached as Appendix E.

- Conserve the Grand Falls Tract, Basin Tract, and Lower Enchanted Tract, which contain 12.02 miles of streams combined. These tracts also contain frontage on Dead River, an Outstanding River Segment.

Where a 100-foot riparian filter area will be maintained along streams, capable species (vegetation capable of growing tall enough to reach into the conductor safety zone) will be removed using hand tools or reach-in techniques. (See Appendix C for a summary of riparian filter areas.) No herbicides will be used within these riparian filter areas.³⁸ Inside the wire zone all capable woody vegetation will be removed down to ground level. Outside the wire zone non-capable species will be allowed to exceed ten feet in height if it is determined the specimens will not encroach into the conductor safety zone.

In addition, as noted above in the discussion of habitat fragmentation, CMP proposed to allow full canopy vegetation at Gold and Mountain brooks and is required to maintain taller vegetation with a minimum height of 35 feet in additional Wildlife Areas, which also are listed in Appendix C of this Order and include the crossing of numerous coldwater streams. The Department finds that this full canopy and taller vegetation will minimize the impacts of habitat fragmentation, and the taller vegetation at these crossings will benefit brook trout by providing shading, buffering runoff, and providing large woody debris to the streams. In areas where tapering or vegetation with a minimum height of 35 feet is required, the applicant must leave trees that have been cut during routine maintenance unless it would be violation of the Slash Law or create a fire or safety hazard. This will provide for large woody debris imports into the streams, which helps create pools and provides nutrients and more closely mimics natural forest succession.

Finally, in the course of the permitting process CMP proposed, as part of its compensation for impacts to coldwater fisheries, to provide \$200,000 to fund culvert replacements in order to improve fish passage. CMP estimated this funding would be sufficient to implement 20 to 25 culvert replacements. The Department agrees with CMP that replacing 25 culverts, when viewed in light of the mitigation and conservation noted above, would adequately compensate for project impacts to coldwater fisheries. However, the Department finds the proposed \$200,000 insufficient to provide this level of compensation.

The Department recently awarded grants to numerous municipalities to install Stream Smart crossings in public roads. The average grant award was approximately \$87,000 and was matched by the municipality or other funding sources in order to fully fund the replacement.

³⁸ Additionally, no herbicide use will be allowed anywhere in the Segment 1 corridor.

Many of the culverts that may be replaced by the funding proposed by CMP would not be located under town roads and, therefore, would be less expensive to construct. However, based on Department experience and intervenors' witness testimony, sufficiently improved crossings will cost substantially more than \$10,000 each. The Department finds the Reardon testimony on culvert replacement costs to be credible. He stated that the cost to construct a proper culvert crossing is in the range of \$50,000 to \$100,000, depending on the type of crossing. Assuming an average cost of \$75,000, the Department finds that replacing approximately 25 culverts would require \$1,875,000 in funding.

Prior to the start of construction, CMP must establish an escrow account, secure an irrevocable letter or credit, or otherwise provide a financial guarantee acceptable to the Department, to fund \$1,875,000 of culvert replacements. Prior to commercial operation of the project, the applicant must submit a plan to the Department for review and approval that establishes the locations of the culvert replacements and how the funds will be disbursed. The culverts to be replaced must be in the vicinity of Segments 1 or 2, must completely or partially block fish passage, must be replaced with crossings consistent with Stream Smart³⁹ principles, and must be selected to provide the greatest possible habitat benefit. CMP must document each culvert replacement, monitor those replacements for one year from the date of replacement, and submit a summary report to the Department for review within eighteen months of the date of the last replacement.

The Department finds the applicant has minimized impacts to waterbodies that serve as fisheries habitat to the greatest extent practicable, that the project will not unreasonably harm any aquatic habitat or fisheries, and that the applicant has made adequate provision for the protection of fisheries, provided the applicant:

- Conserves the Grand Falls Tract, Basin Tract, and Lower Enchanted Tract;
- Implements the vegetation management outlined in Appendix C; and
- Funds and implements \$1,875,000 of culvert replacements, and reports on the culvert replacement program, as required in this section.

See Appendix F for a list of compensation requirements.

d. Deer Wintering Areas

Impacts to deer wintering areas that have been designated as high or moderate value are reviewed under both NRPA as significant wildlife habitat pursuant to 38 M.R.S. § 480-B(10), and Site Law pursuant to Chapter 375, § 15(B)(3)(a).

³⁹ Stream Smart principles were developed to design road crossings of streams in a manner that allows for fish and aquatic organism passage while maintaining a safe, reliable road. Stream smart crossings typically involve either an open-bottom arch crossing or a culvert that is large enough to be embedded in the stream bottom.

The project is proposed to cross 22 DWAs, including 39.02 acres of impact to the Upper Kennebec River DWA. None of the impacted DWAs have been rated by MDIFW as high or moderate value.

Although they have not been rated by MDIFW as high or moderate value, credible witness testimony from Joseph established the recent challenges for the deer population and the habitat value of these DWAs. CMP also recognizes their value, and following discussions with MDIFW, agreed to offset impacts to the Upper Kennebec River DWA by:

- Providing 10 travel corridors within this DWA. Eight of the travel corridors would be created by selectively cutting the corridor to promote softwood growth necessary to provide winter habitat for deer (see Appendix C, Table C-1); two of these corridors would be adjacent to the Upper Kennebec River in the area where the transmission line would be underground, allowing retention of full canopy height vegetation; and
- Preserving 717 acres of land within this DWA (see Appendix F, Table F-2).

These actions reduce wildlife impacts and promote the protection of wildlife generally, but especially deer, and will provide travel lanes for deer between available DWA habitat. These measures, together with the conditions contained in this Order, ensure the Project will not unreasonably impact significant wildlife habitat.

e. Threatened and Endangered Species Habitat

The project is located in or near the habitat for 10 species included on the Maine's Endangered or Threatened species list. An applicant must make adequate provision for the protection of wildlife and this includes ensuring no unreasonable disturbance to the habitat of species listed as threatened or endangered. Chapter 375, § 15(B).

During the application review process, CMP gathered additional information and adjusted its proposal to minimize impacts to threatened or endangered species and their habitat in response to questions and concerns raised by MDIFW. CMP also proposed to compensate for these impacts.

CMP has committed to the following impact minimization efforts:

- Preserving full height canopy at the Gold Brook and Mountain Brook crossings, crossings where NSS and RBM habitat is present;
- Limiting construction activities in mapped habitat for wood turtles to between October 15 and April 15 (prohibiting construction between April 16 and October 14);
- Limiting construction activities in mapped habitat for Rusty Black Birds to between June 1 and April 19 (prohibiting construction between April 20 and June 30); and

- Completing a survey for Great Blue Heron colonies within or immediately adjacent to existing IWWH between April 20 and May 31, and prior to initial transmission line clearing (consultation with MDIFW and possible modifications to the proposed project would follow the identification of any colony).

To compensate for impacts, CMP has proposed to:

- Contribute \$469,771.95 to Maine's Endangered and Nongame Wildlife Fund for impacts to NSS and RBM habitat; and
- Contribute \$180,000 to Maine's Endangered and Nongame Wildlife Fund for impacts associated with 11.02 miles of forested conversion in riparian buffers.

Provided CMP implements the steps outlined above, the Department finds the applicant has made adequate provision for the protection of threatened or endangered species. (See Appendix F for a list of compensation requirements.)

f. Wetlands and Waterbodies

The applicant proposes to directly alter 4.12 acres of wetland and indirectly impact 105.25 acres of wetland to construct the proposed project. The direct impacts include construction of the Merrill Road Converter Station, the Fickett Road Substation, filling and grading for structure placement, and the installation of foundations for structures. Some of the wetlands are considered wetlands of special significance.⁴⁰ In addition, the transmission line will cross 674 rivers, streams, or brooks, 131 of which will have no additional clearing. Rivers, streams, and brooks that serve as brook trout habitat also are discussed above in subsection c.

As discussed above the applicant submitted an alternatives analysis for the project and the Department finds the proposed project route is the least environmentally damaging practicable alternative.

The Department further finds that the alteration of the wetlands will be kept to the minimum amount necessary for meeting the overall purpose of the project. For example, the applicant's project is designed to locate poles and roads outside wetlands when possible and the applicant proposes to maintain 100-foot riparian filter areas (buffers) on all perennial streams in Segment 1, all Outstanding River Segments, and on all coldwater fisheries streams, and to maintain 75-foot riparian filter areas (buffers) on all other streams. Within these riparian filter areas, and throughout the Segment 1 corridor, no herbicides will be used. Additionally, as specified in the VCP, any work in freshwater wetlands will occur on construction mats unless the area is frozen or the Department approves another method.

⁴⁰ As specified in Chapter 310, § 5-A(1)(b), construction of utility lines is one of the types of activities for which a permit may be sought for a project proposed to impact a wetland of special significance, subject to there being no practicable alternative to the activity that would be less damaging to the environment.

In accordance with Chapter 310, § 5(C), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. The applicant proposes to preserve 1,022.4 acres of land in three separate parcels (Little Jimmy Pond Tract, Flagstaff Lake Tract, and Pooler Pond Tract), which contain 510.75 acres of wetland. The applicant proposes to use the Department's Declaration of Covenants and Restrictions to preserve these parcels.

The Department finds that the applicant has avoided and minimized freshwater wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project, provided the applicant:

- Preserves the Little Jimmy Pond Tract, the Flagstaff Lake Tract and the Pooler Pond Tract, as described above. (See Appendix F for a list of compensation requirements.)

(3) Unusual Natural Areas

In Chapter 375, § 12, the Department recognizes the importance of protection of unusual natural areas, including rare botanical communities or plants. As noted above, the applicant has identified 15 rare plant occurrences and five unique natural communities in or adjacent to the corridor. The applicant has discussed these occurrences and communities with the MNAP and, among other things, agreed to redesign a section of the proposed transmission line to avoid impacts to nearby whorled pogonia and to maintain a riparian buffer to minimize impacts to Goldie's Wood Fern. The applicant's VCP and VCM also take into account rare plant locations; herbicides will not be used in these areas and, mechanized equipment will only be allowed to cross these locations if the rare plant locations encompass the entire corridor and in such an instance the crossing will only occur during frozen conditions, on existing travel paths, or with the use of mats.⁴¹ The Department finds the applicant has avoided and minimized impacts to these natural areas to the extent practicable. In response to comments from MNAP suggesting compensation for impacts the applicant revised the compensation plan. This revised plan includes a contribution to the Maine Natural Areas Compensation Fund for impacts to Goldie's Wood Fern and the Jack Pine Forest. The compensation plan requires the applicant to make a contribution to this fund in the amount of \$1,234,526.82.

The Department finds that the proposed development will not have an adverse effect on unusual natural areas either on or near the development site, provided the applicant:

- Contributes \$1,234,526.82 to the Maine Natural Areas Compensation Fund prior to the start of construction. (See Appendix F, Table F-2.)

⁴¹ The VCP establishes that prior to construction the applicant will identify any invasive plant species within the corridor and submit to the Department for review and approval, a vegetation monitoring plan. The objective of the plan would be prevention of the introduction or spreading of invasive species as a result of construction.

(4) Overall Findings Regarding Natural Resource Impacts

Upon review of the administrative record, including the application materials, hearing testimony and exhibits, agency comments, and written public comments, the Department has considered whether the applicant has met its burden of proof on the criteria pertaining to the natural resource impacts of the project. The potential impacts of most significance and that generated the most testimony and public comment are discussed in more detail above. Having completed its review and evaluation, the Department finds that the applicant has avoided and minimized natural resource impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project, provided the applicant meets the requirements summarized below and discussed more fully in Section 7 of this Order.

The Department finds that the applicant has made adequate provision for the protection of wildlife and fisheries, unusual natural areas, significant wildlife habitat, and freshwater wetlands, provided the applicant:

- Maintains taller vegetation within the Segment 1 corridor as outlined in Appendix C, including by:
 - Maintaining full canopy height vegetation in the locations identified in Table C-1,
 - Maintaining vegetation with a minimum height of 35 feet in the locations identified in Table C-1,
 - Maintaining deer travel corridors in the locations identified in Table C-1, and
 - Maintaining tapered vegetation along the entire Segment 1 corridor, except where full canopy height vegetation, vegetation with a minimum height of 35 feet, or taller vegetation managed for deer travel corridors is required;
- Leaves trees that have been cut during routine maintenance in areas where tapering or vegetation with a minimum height of 35 feet is required, unless doing so would violate the Slash Law or create a fire or safety hazard;
- Maintains 100-foot riparian filter areas along all perennial streams in Segment 1, all coldwater fisheries streams in all project segments as identified in Appendix E, all streams containing threatened or endangered species, and all Outstanding River Segments; and maintains 75-foot riparian filter areas on all other streams;
- Conserves the Basin Tract, Lower Enchanted Tract, and Grand Falls Tract, which together include 1,053.5 acres of land and 12.02 linear miles of stream;
- Conserves the Little Jimmy Pond Tract, Flagstaff Lake Tract, and Pooler Pond Tract, which together include 510.75 acres of wetland and 1,022.4 acres of land area;
- Conserves 717 acres of land within the Upper Kennebec River DWA and provides 10 travel corridors within this DWA consistent with Appendix C;
- Limits construction activities in mapped habitat for wood turtles to between October 15 and April 15 (prohibiting construction between April 16 and October

- 14) in any calendar year, unless CMP follows the measures described in its July 13, 2018 Response to MDIFW March 15, 2018 Environmental Review comments;
- Limits construction activities in mapped habitat for Rusty Black Birds to between July 1 and April 19 (prohibiting construction between April 20 and June 30) in any calendar year;
 - Maintains 10-15-foot tall spruce/fir vegetation in the mapped Rusty Black Bird habitat;
 - Completes a survey for Great Blue Heron colonies within or immediately adjacent to existing IWWH between April 20 and May 31, and prior to initial transmission line clearing; if any colonies are identified, the applicant must consult with MDIFW and obtain approval from the Department prior to construction in the vicinity of any colony;
 - Marks the location of all natural resource buffers with flagging prior to the start of construction;
 - Permanently marks all natural resource buffers upon completion of construction;
 - Marks all natural resource buffers with flagging prior to any maintenance activities;
 - Updates its VCP and VMP to be consistent with the requirements of this Order, including but not limited to vegetation management requirements in Appendix C, and submits the updated plans to the Department for review and approval prior to the start of construction (which includes clearing) within the corridor;
 - Contributes, prior to the start of construction:
 - A total of \$877010.06 to the ILF program for unavoidable impacts to SVPs (\$623,657.53) and IWWHs (\$253,352.53), and
 - A total of \$649,771.95 to Maine Endangered and Nongame Fund for impacts to RBM and NSS (\$469,771.95) and riparian buffers (\$180,000.00);
 - Ensures \$1,875,000 of funding to replace culverts as described above; and
 - Within 18 months of the date of this Order, develops and submits to the Department for review and approval a Conservation Plan, consistent with Section 7(D)(2)(a)(3), to permanently conserve 40,000 acres in the vicinity of Segment 1. Prior to commercial operation of the project, the approved Conservation Plan must be fully implemented, unless, upon a showing by the applicant that it has made reasonable, good faith efforts to implement the Conservation Plan and additional time, not more than four years from the date of this Order, is needed, the Department approves an extension of the implementation deadline. Prior to implementation, all forest management plans, and all conservation easements, deed restrictions, covenants, or other legal instruments designed to fulfill the objectives of the Conservation Plan, must be submitted to the Department for review and approval.

The Department finds that the proposed development will not have an adverse effect on unusual natural areas either on or near the development site, provided the applicant:

- Contributes, prior to the start of construction, \$1,234,526.82 to the Maine Natural Areas Conservation Fund for impacts to Goldie's Wood Fern and the Jack Pine Forest.

8. HISTORIC SITES

The Department recognizes the value of preserving sites of historic significance and, pursuant to Chapter 375, § 11(C), considers whether a proposed development will have an adverse effect on the preservation of historic sites either on or near the development site.

The applicant evaluated the project impacts to archeological sites within the right-of-way (ROW) and to architectural resources within a half mile of the project centerline. As part of its review of potential impacts to archeological sites the applicant conducted a Phase I archeological survey. This survey was prepared and updated by the applicant in consultation with the Maine Historic Preservation Commission (MHPC). As part of this survey, which included both desktop analysis and field work, the applicant identified sensitive areas where archaeological sites were likely and conducted shovel tests at 4,537 locations. There were 440 positive shovel tests, which identified 47 archaeological resources, including 29 archaeological sites and 18 isolated finds. The applicant found that the 18 isolated finds were not eligible for National Register of Historic Places (NRHP) listing. The 29 archaeological sites, plus 16 previously recorded sites, produced a total of 45 such sites within the ROW. The applicant focused further analysis on the 29 previously unidentified sites, finding that 28 are historic and one is prehistoric. The applicant recommended 14 sites as not eligible for NRHP listing and identified one as potentially extending beyond the ROW, but not containing significant deposits within the ROW. For the remaining sites the applicant opted for avoidance because of their potential significance. The applicant noted seven of the 14 may potentially be impacted by the project and offered a treatment plan for these seven sites. With the proposed treatment the applicant concluded there would be no adverse effect on these sites. Other sites would not be adversely affected as they would not be impacted at all.

MHPC reviewed the Phase I archeological report and on February 11, 2019, issued comments concurring with the final report and report recommendations. MHPC stated that plans for site avoidance, treatments, and site monitoring during and after construction should be detailed in a project memorandum of agreement between the applicant and MHPC.

The Department finds the Phase I archeological report is thorough and informative, and the measures proposed by the applicant to avoid and minimize any impact to archeological resources reasonable and appropriate. The Department finds that the proposed development will not have an adverse effect on the preservation of historic archeological resources, provided the applicant:

- Implements the plans for site avoidance and treatments described in the final Phase I archeological survey report.

With regard to architectural resources, the applicant conducted an above ground resources survey in which it identified over 1,500 historic resources within a half mile of the project.

The applicant identified which of these resources were listed or already recommended for listing on the NRHP, as well as those which it recommended as eligible for listing. The applicant prepared its above ground resources survey in consultation with MHPC, responding to MHPC comments throughout the survey process. The applicant identified historic resources that could be adversely affected by the project and proposed mitigation measures. MHPC agreed with the survey methods and largely agreed with the applicant's conclusions. Ultimately, of all the historic resources identified, MHPC determined, in letters dated January 18 and March 26, 2019, the project will have an adverse effect on five:

- Farmstead at 1195 Hilton Hill (Anson) Road, Starks (SM#s 1014-1020)
- Farmstead at 1294 Hilton Hill (Anson) Road, Starks (SM#s 1022-1033)
- Barn at 40 Turmel Road, Livermore Falls (SM# 795)
- Bowman Airfield, River Road, Livermore Falls (SM# 719)
- Appalachian Trail, near Troutdale Road, Bald Mountain Twp. (SM# 66)

MHPC's determination was based on Section 106 of the National Historic Preservation Act and accompanying federal regulations defining adverse effect. Based on its determination, MHPC requested that the federal permitting agency, the U.S. Army Corps of Engineers enter into a memorandum of agreement with MHPC.

The Department finds the comments provided by MHPC informative, while recognizing they are focused on a separate federal review process. For those historic resources where the applicant's analysis and the assessment of MHPC are in agreement that the project will not have an adverse effect, the Department finds the project will not have an adverse effect on the preservation of these historic properties. For the remaining five historic resources, the federal process resulting in a determination of adverse effect by MHPC, under the federal definition of that term, does not mandate a conclusion that the impacts are unreasonable under the Site Law. Where MHPC makes such a determination, however, the Department finds closer scrutiny of the impacts is warranted.

With regard to the two farmsteads, the barn, and airfield the Department finds the impact of the project on these historic properties would be indirect. The structures and the airfield themselves would not be impacted, but the setting in which they are located would be affected. The Department finds, however, that this impact would not affect the preservation of these historic properties, nor would the impact be unreasonable. Factors the Department considered include that the project at each of these sites is being co-located with existing transmission lines and the long-standing presence of these existing lines in the setting of these historic properties. Research provided by the applicant shows a transmission line has been part of the barn's setting for nearly eighty years, with two transmission lines present for over 50 years. Similarly, the existing transmission line has been a part of the setting of two farmsteads since approximately 1930.

With regard to the airfield, it was established in the 1960s, with hangers ranging in age from the 1960s to the 1990s. An initial transmission line was constructed in 1930, well before the establishment of the airfield, with a second line added in approximately 2012.

The crossing of the Appalachian Trail (AT) is discussed above as part of the Department's review of the scenic impacts of the project. In addition to being a scenic resource, the AT also is a historic resource. In evaluating the impact of the project under Chapter 375, § 11(C), the Department finds the history of the trail in this area of Troutdale Road important. The transmission line corridor, which is currently developed with a transmission line, predates the trail in the location of the present crossing. The corridor was developed with a transmission line in the 1950s; the AT was rerouted and crossed the corridor in its present location in the 1980s. The project will increase the cleared width of the existing corridor and include taller poles, increasing visibility of transmission infrastructure within the setting of the AT. The Department finds, however, that this impact will not affect the preservation of the AT, nor will the impact of the co-located line within a pre-existing transmission line right of way be unreasonable.⁴²

In sum, the Department finds that the proposed development will not have an adverse effect on the preservation of any historic sites either on or near the development site, provided the applicant:

- Implements the plans for site avoidance and treatments described in the final Phase I archaeological survey report.

9 BUFFER STRIPS

Natural buffer strips play an important role in protecting water quality and wildlife habitat. Buffer strips also provide screening that can serve to lessen the visual impact of incompatible or undesirable land uses. Pursuant to Chapter 375, § 9, an applicant must demonstrate that it has made adequate provision for buffer strips where appropriate. When evaluating whether an applicant has made adequate provision for buffers, the Department considers all relevant evidence, including evidence that:

- Water bodies within or adjacent to the development will be adequately protected from sedimentation and surface runoff by buffer strips;
- Buffer strips will provide adequate space for movement of wildlife between important habitats; and
- Buffer strips will shield adjacent uses from unsightly developments and lighting. (Ch. 375, § 9(B).)

⁴² CMP has stated it "has agreed with [Maine Appalachian Trail Club] that CMP will pay to re-locate the trail to an alignment farther to the southwest where the trail currently parallels the CMP corridor south of the Baker Stream Crossing" and that "CMP's long-term goal is to secure a permanent re-route acceptable to both MATC and [the National Park Service], and CMP is willing to commit the necessary funds to this end." (May 7, 2019, Letter from M. Manahan on Behalf of CMP to the Department regarding "NECEC – Preservation of Historic Sites.") While the Department does not find re-routing the AT is necessary to satisfy the permitting standards addressed in this Order, the Department acknowledges this commitment by CMP.

A. Overview

The applicant submitted a Vegetation Clearing Plan (VCP) that describes the methods it proposed to be used to initially clear the ROW and a Vegetation Management Plan (VMP) that describes the methods it proposed to be used to maintain the vegetation in the ROW. These plans specify the types and heights of vegetation the applicant proposed to be maintained as buffers around various resources. To protect water bodies crossed by the corridor, the applicant initially proposed to maintain a 25-foot wide buffer strip adjacent to rivers, streams, and brooks where all woody vegetation would be removed from the wire zone, and proposed that outside the wire zone all capable species would be removed. In response to comments from both MDIFW and the Department, the applicant revised the VCP and the VMP to specify that it would maintain a 100-foot buffer around all coldwater fisheries streams, all perennial streams within Segment 1, all streams containing threatened or endangered species, and Outstanding River Segments and a 75-foot buffer adjacent to all other rivers, streams, and brooks. In these buffers all capable woody vegetation in the wire zone would be cut during initial clearing. Outside the wire zone, non-capable species would be allowed to grow after initial clearing if it is determined the specimens would not grow into the conductor zone prior to the next scheduled maintenance. These proposed buffers, referred to as riparian filter areas in this Order, are described more fully in Appendix C.

The VCP and VMP contain additional provisions that buffer resources beyond river, streams, and brooks. For example, when terrain conditions permit capable vegetation will be permitted to grow within and adjacent to protected natural resources or critical habitats where maximum growing height can be expected to remain well below the conductor safety zone.

In addition, the applicant proposed vegetation management intended to protect certain habitat and to facilitate wildlife movement. Specifically, the applicant proposed to maintain full canopy height vegetation at the Gold Brook and Mountain Brook crossings for the protection of Roaring Brook Mayfly and Northern Spring Salamander. Within the Upper Kennebec River DWA, the applicant also proposed to maintain taller softwood stands to create eight deer travel corridors, and to retain full canopy height vegetation along both sides of the river to preserve two additional travel corridors.

The applicant proposed additional buffering to serve as screening to minimize the visual impacts of the project, including tapering vegetation in 2.2 miles of the corridor visible from Coburn Mountain and planting screening vegetation at the Fickett Road Substation and certain road crossings, such as along the Old Canada Road (Route 201) in Johnson Mountain Township and Moscow and at the Troutdale Road.

The applicant also proposed no herbicide use, mixing, or transfer within 100 feet of private wells or 200 feet of public wells, identified by the applicant.

B. Department Analysis, Findings, and Conclusions

The Department has evaluated the applicant's proposal and the evidence related to buffers. With regard to the protection of waterbodies from sedimentation and surface runoff, the Department finds the project will be set back from great ponds, except for a short section of Segment 2 where the co-located corridor crosses Moxie Pond. The setbacks from great ponds (except Moxie Pond) serve as an adequate buffer. The Department further finds that the increased riparian filter areas (buffers) – 100 feet on all streams in Segment 1, all Outstanding River Segments, all streams containing threatened or endangered species, and on coldwater streams along the entire corridor; and 75 feet on all other crossings – will adequately protect rivers, streams, and brooks crossed by the project. In the area adjacent to Moxie Pond in Segment 2, the applicant must construct and maintain the project with a 100-foot riparian filter area identical to the riparian filter areas adjacent to coldwater fishery streams in Segment 1.

With regard to wildlife, the potential impact of the project on wildlife, wildlife movement, and habitat connectivity are evaluated in Section 7 of this Order. While the applicant proposed full canopy height vegetation at Gold and Mountain brooks, and adjacent to the Upper Kennebec River, along with eight additional deer travel corridors in the Upper Kennebec River DWA, these measures, by themselves, are insufficient to protect wildlife and adequately provide for wildlife movement. This is discussed more fully in Section 7. As a condition of this Order, a total of 12 Wildlife Areas are required, all of which include taller vegetation across the entire width of the 150-foot wide corridor to facilitate wildlife movement. (See Appendix C.) In addition, outside the areas where taller vegetation is required the entire Segment 1 corridor must be maintained with tapered vegetation. This tapered vegetation reduces the scrub-shrub portion of the corridor from 150 to approximately 54 feet (the area under the wire zone), benefiting wildlife movement. Outside of Segment 1, the proposed transmission line will be co-located with or immediately adjacent to an existing cleared corridor, minimizing fragmentation and the impact to wildlife movement. The Department finds that with this required vegetation management and co-location, the buffer strips proposed and required by this Order will provide adequate space for movement of wildlife between important habitats.

With regard to screening, the visual impacts of the project are evaluated in Section 5, above. Tapering the vegetation for the Segment 1 corridor will minimize the visual impact of that portion of the corridor, particularly from elevated viewpoints. Taller vegetation within Wildlife Areas also will buffer the view of the corridor for those fishing or otherwise recreating on the streams crossed by the project. In addition, the applicant proposes plantings at both crossings of the Old Canada Road, the AT crossing at the Troutdale Road, and the Fickett Road Substation. The Department finds the required vegetation management, maintaining existing vegetation at the Merrill Road Converter Station, and the plantings proposed by the applicant will adequately shield adjacent uses from the project.

With regard to water quality and protection of wells, the proposed buffers are sufficient, provided they are adhered to by the applicant.

Overall, with the conditions imposed in this Order, the Department finds the applicant has made adequate provision for buffer strips, provided the applicant:

- Maintains taller vegetation and tapered vegetation within the corridor as outlined in Appendix C;
- Plants and maintains vegetated roadside buffers, and replaces any dead buffer plantings within one year of the vegetation dying, at the following locations: Old Canada Road (Route 201) crossings in Johnson Mountain Twp and Moscow, Troutdale Road crossing in Bald Mountain Twp, and on the south side of Fickett Road in conjunction with the Fickett Road Substation;
- In the area adjacent to Moxie Pond in Segment 2, the applicant must construct and maintain the project with a 100-foot riparian filter area identical to the riparian filter areas adjacent to coldwater fishery streams in Segment 1; and
- Provides a list of buffers surrounding private or public water supply wells to the Department prior to construction and adheres to the buffers during construction.

10. SOILS

As set forth in 38 M.R.S. § 484(4), an applicant must demonstrate that the proposed project will be built on soil types that are suitable to the nature of the development. An applicant also must demonstrate the proposed activity will not cause unreasonable erosion of soil or sediment. Pursuant to 38 M.R.S. § 484(9), any blasting that is required for the project must comply with the requirements of 38 M.R.S. § 490(Z).

To demonstrate the suitability of the soils, the applicant submitted a soil survey map and report and a geotechnical report describing the soils found within the NECEC project site. The applicant submitted a Class B soil survey and report for the Merrill Road Converter Station and the Fickett Road Substation. In addition, the applicant submitted a Class D soil survey and report for the transmission line portion of the project. These reports were prepared by a certified soil scientist and reviewed by the Department. The Department also reviewed a blasting plan submitted by the applicant that outlines the proposed procedures for removing ledge at the Merrill Road Converter Station and for installation of structures where necessary. If a rock crusher is utilized on site, the applicant must insure that the crusher is licensed by the Department's Bureau of Air Quality and is operated in accordance with that license.

The Department finds that, based on the soil and geotechnical reports and the blasting plan, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices. The Department further finds the proposed project will be built on soil types that are suitable to the nature of the undertaking and, for the reasons noted here and discussed below in Section 11, will not cause unreasonable erosion of soil or sediment.

11. STORMWATER MANAGEMENT

The Site Law, in 38 M.R.S §484(4-A), requires an applicant to demonstrate that the proposed development meets the standards for stormwater management set forth in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C. Additionally, an applicant must demonstrate the proposed activity will not cause unreasonable erosion of soil or sediment. The proposed project includes approximately 19.27 acres of developed area, of which 12.55 acres is impervious area at the converter station and substations. The transmission line corridor is not developed area as defined in Chapter 500 because it is not mowed more than twice per year.

A. Basic Standards

(1) Erosion and Sedimentation Control

The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of its Site Law application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments from, Department staff. Staff recommend the applicant perform a complete GIS analysis, including both soils and topographic data, on Segment 1 to determine the areas with high erosion risk. The Department commented that the high-risk areas must:

- Receive a higher frequency of environmental inspection as outlined in page 14-3 of the application;
- Have a dedicated Erosion and Sediment Control (ESC) maintenance crew;
- Have additional structural ESC measures, which can include multiple layers of sediment barriers, upgradient flow diversion structures, and temporary sediment basins, depending on the location; and
- Have an accelerated work schedule to the maximum extent practicable.

In response to these comments, on June 29, 2018, the applicant submitted a table that identifies areas along Segment 1 that meet the criteria for higher risk of erosion. The areas identified by the applicant have been incorporated into Appendix G. These areas must receive the additional erosion and sedimentation control measure described above.

In its review of the application amendment for a HDD under the Upper Kennebec River, the Department commented that prior to start of the drilling operation, the applicant should submit for review and approval, the location of the disposal area for the cuttings from the drilling operation.

Due to the length of the transmission line portion of the project, the number of segments involved, and the amount of material that must be removed for construction of the Merrill Road Converter Station, the applicant must retain the services of no fewer than one third-party inspector for each transmission line segment under construction at any one time,

and one third-party inspector for the converter station. If CMP's contractors employ multiple crews working in multiple locations within a segment, the Department may require more third-party inspectors. Details of the erosion control requirements will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor. Prior to the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspectors. The applicant must retain the services of the third-party inspectors in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order.

(2) Inspection and Maintenance

The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and adequately revised in response to comments from, the Department.

(3) Housekeeping

The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

(4) Summary

Based on the Department's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500, § 4(B), provided the applicant:

- Retains no fewer than one third-party inspector for each transmission line segment under construction at any one time, and one third-party inspector for the Merrill Road Converter Station. The inspectors must be retained and work in accordance with the Special Condition for Third Party Inspection Program included with this Order.
- Conducts additional erosion control inspections, have dedicated crews, install additional erosion control structures, and have an accelerated work schedules, for the areas identified in Appendix G.
- Prior to start of the drilling operation under the Kennebec River, submits for review and approval, the location of the disposal area for the cuttings from the drilling operation.

B. General and Phosphorus Standards

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to

runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation will be achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area. The access road to the proposed project meets the definition of "a linear portion of a project" in Chapter 500 and the applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area.

(1) Merrill Road Converter Station

The Merrill Road Converter Station will result in 13.42 acres of new developed area, of which 8.11 acres are impervious. It lies within the watershed of the Androscoggin River. The applicant submitted a stormwater management plan based on the Basic, General, and Flooding standards contained in Chapter 500. As currently designed, the converter station pad is self-treating. The proposed stormwater management system for other impervious and developed areas consists of two grassed, underdrained soil filters.

(2) Fickett Road and Surowiec Substations

The Fickett Road Substation will result in 4.87 acres of developed area, of which 3.90 acres are impervious. The applicant submitted a stormwater management plan based on the Basic, Phosphorus, and Flooding standards contained in Chapter 500. The stormwater management system will consist of a self-treating pad for the substation and a grassed, underdrained soil filter. The Surowiec Substation upgrades will result in no new developed area and 0.01 acre of new impervious area within the existing yard. No additional stormwater management system is required for this small amount of new impervious area. Because both the Fickett Road Substation and the Surowiec Substation are located in the watershed of Runaround Pond, a lake most at risk from development, stormwater runoff from the project site will be treated to meet the phosphorus standard outlined in Chapter 500, § 4(D). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development." For the Fickett Road Substation, the Permitted Phosphorus Export is 0.51 pounds of phosphorus per year. The predicted phosphorus export for the project site based on the applicant's model is 0.45 pounds of phosphorus per year. For the Surowiec Substation, the Permitted Phosphorus Export is 2.19175 pounds of phosphorus per year. The current export is 0.4225 pounds per year and the proposed increase is 0.4275 pounds per year, for a total of 0.85 pounds of phosphorus per year from the site. The proposed stormwater treatment at both the Fickett Road Substation and the Surowiec Substation will be able to reduce the export of phosphorus in the stormwater runoff below the maximum permitted phosphorus export for the sites.

(3) Other Substations

Improvements at the other substations will not result in any increased developed or impervious area and stormwater treatment is not required.

(4) Summary

The stormwater management system proposed by the applicant was reviewed by the Department and revised by the applicant in response to these comments. After a final review, the Department finds that the proposed stormwater management system is designed in accordance with the General and the Phosphorus Standards contained in Chapter 500, § 4(C). The applicant must retain the stormwater design engineer to oversee the installation of the stormwater best management practices. At least once per year, or within 30 days of completion, the applicant must submit an update or as-built plans to the Department for review.

Based on the stormwater system's design, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General and the Phosphorus Standards contained in Chapter 500, § 4(C), provided the applicant:

- Complies with the reporting and inspection requirements summarized in Section 11(B)(4) of this Order.

C. Flooding Standard

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained using Hydrocad. Hydrocad is a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service, and retains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the substations will not exceed the pre-development peak flow from the site.

Based on the system's design and the Department's review, the Department finds the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500, § 4(F) for peak flow from the project site, and channel limits and runoff areas.

12. GROUNDWATER

Site Law, in 38 M.R.S.A. § 484(5), requires an applicant to demonstrate that the proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur. Chapter 375, §§ 7 & 8 require an applicant to show that that a proposed development will not have an unreasonable adverse effect on groundwater quality or quantity.

The applicant does not propose any withdrawal from, or discharge to, the groundwater. The transmission line portion of the project traverses 30 significant sand and gravel aquifers. The proposed Fickett Road Substation and the Merrill Road Converter Station are not located in sole source aquifer areas or over significant sand and gravel aquifers. Existing substations affected by the proposed project include Crowley's, Coopers Mills,

Larrabee Road, Maine Yankee, Raven Farm, and Surowiec substations. Larrabee Road Substation is the only substation positioned over a sand and gravel aquifer. Department staff reviewed the project and determined that if a Spill Prevention, Control, and Countermeasures (SPCC) Plan is required for the equipment to be installed at the Merrill Road Converter Station, it must be submitted for review prior to operation.

The Department finds that the proposed project will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur. The Department further finds that the proposed project will not have an unreasonable adverse effect on ground water quality or quantity, provided the applicant:

- Submits an SPCC Plan for the Merrill Road Converter Station to the Department prior to operation, if such a plan is required by 40 CFR Part 112.

13. WATER SUPPLY

The Department evaluates the availability of adequate water supply pursuant to Chapter 375, § 18.

No wells are proposed for the new Merrill Road Converter Station or the new Fickett Road Substation. Coopers Mills, Larrabee Road, Raven Farm and Surowiec substations have existing wells. No common wells or public water supply wells are proposed to be used. Water may be necessary during construction for dust control. For dust control CMP proposes to use either municipal water or publicly available surface water sources, accessible from stable locations, such as bridges, roads or boat ramps, if necessary.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

14. WASTEWATER DISPOSAL

Pursuant to the Site Law, 38 M.R.S. § 484(6), an applicant must demonstrate that it has made adequate provision for wastewater disposal.

The proposed project will not generate any additional wastewater. Existing wastewater disposal systems at Coopers Mills, Larrabee Road, Raven Farm, and Surowiec substations will be utilized by the applicant.

The Department finds that the applicant has made adequate provisions for wastewater disposal.

15. SOLID WASTE

Pursuant to the Site Law, 38 M.R.S. § 484(6) and Chapter 375, § 16, an applicant must demonstrate that it has made adequate provision for solid waste disposal

The proposed project is anticipated to generate 50 cubic yards of food waste, plastics, and common trash, when completed, which will be hauled to a licensed disposal location by a licensed non-hazardous waste transporter. All general solid wastes from the proposed project will be disposed of at facilities pre-approved by CMP and the list of facilities will be submitted to the Department for review and approval prior to construction. Facilities operated by Casella Waste Systems, Inc., including the State-owned Juniper Ridge Landfill in Old Town, ME, have been pre-approved by CMP and have been demonstrated to have adequate capacity as approved by the Department. These facilities are currently in substantial compliance with the Maine Solid Waste Management Rules.

The proposed project will generate approximately 30,000 cubic yards of stumps and grubblings. Wood materials associated with clearing will be sold as marketable timber, chipped for biomass facilities, manufactured into erosion control mulch, and/or chipped and spread within the corridor. These materials are not proposed to be shipped to a landfill. Any excess soils removed as part of this project will be utilized on site or will be removed to other exempt or permitted facilities. Any wood that is chipped and spread on the corridor must be left in layers no more than two inches thick, as measured above the mineral soil surface.

The proposed project will generate approximately 153 cubic yards of construction debris and demolition debris, including wooden cable spools and pallets, wooden insulator crates, and concrete debris. Wooden cable spools, metals, concrete debris, and porcelain insulators will be recycled by Casella Waste Systems. Metals will be disposed of at Schnitzer Steel Industries, Inc. facilities in Auburn and Portland, Maine. All remaining construction and demolition debris will be disposed of at facilities pre-approved by CMP. Facilities operated by Casella Waste Systems, Inc. have been pre-approved by CMP and have been approved by the Department. They are currently in substantial compliance with the Maine Solid Waste Management Rules. If a contractor chooses a facility other than one operated by Casella Waste Systems or Schnitzer Steel Industries, the applicant must receive approval from the Department prior to material being taken to that facility.

Based on the evidence summarized above, the Department finds that the applicant has made adequate provision for solid waste disposal, provided the applicant:

- Receives approval from the Department prior to any material being taken to a facility other than Casella Waste Systems or Schnitzer Steel Industries.

16. FLOODING

Site Law, in 38 M.R.S. § 484(7), and NRPA, in 38 M.R.S. § 480-D(6), require an applicant to demonstrate that the proposed activity will not unreasonably cause or increase flooding

The transmission line portion of the proposed project will have 30 structures located within the 100-year flood plain of any river or stream, three in Segment 3, 22 in Segment 4, and five in Segment 5.

There is limited additional impervious area associated with each structure. The placement of these structures is not expected to result in any increase in flooding. Portions of the Surowiec Substation and the Fickett Road Substation are also located in the 100-year flood plain. The substations will be designed and constructed at a final elevation such that the equipment will not be inundated during a 100-year flood event.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

17. ALTERATION OF CLIMATE

The Department received extensive public comment, as well as written argument from Groups 3 and 4 and the Applicant, concerning whether and how potential greenhouse gas (GHG) emission reductions resulting from the project have regulatory significance under the applicable permitting standards. Some members of the public testified the project is urgently needed to reduce regional GHG emissions, while others challenged whether such emission reductions would even occur, and argued any such reductions have not been adequately proven. Groups 3 and 4 also asserted that the Department's standards for evaluating adverse environmental effects under Site Law, as set forth in Chapter 375, require the Department to undertake an analysis of a proposed project's impact on global climate change. The relevant section of Chapter 375 reads in its entirety as follows:

2. No Unreasonable Alteration of Climate

- A. Preamble.** The Department recognizes the potential of large-scale, heavy industrial facilities, such as power generating plants, to affect the climate in the vicinity of their location by causing changes in climatic characteristics such as rainfall, fog, and relative humidity patterns.
- B. Scope of Review.** In determining whether the proposed development will cause an unreasonable alteration of climate, the Department shall consider all relevant evidence to that effect.
- C. Submissions.** Applications for approval of large-scale, heavy industrial developments, such as power generating plants, shall include evidence that affirmatively demonstrates that there will be no unreasonable alteration of climate, including information such as the following, when appropriate:
 - (1) Evidence that the proposed development will not unreasonably alter the existing cloud cover, fog, or rainfall characteristics of the area.
- D. Terms and Conditions.** The Department may, as a term or condition of approval, establish any reasonable requirement to ensure that the proposed development will not cause an unreasonable alteration of climate.

Chapter 375, § 2. Read in context, this provision is not directed at issues of global climate change, but instead is exclusively concerned with the potential for highly localized climate impacts that facilities such as powerplants could have on atmospheric conditions such as rainfall, fog, and humidity. Chapter 375, § 2(A) & (C)(1). The Department has consistently interpreted Chapter 375, § 2 in this manner, and has never before construed it as applying to issues of global climate change. Neither Site Law nor NRPA in their current form, and as applicable to this project, require an applicant to make any particular showing regarding a project's impact on global climate change. To the extent Chapter 375, § 2 has any applicability to this project, the Department finds the project will not cause any adverse environmental impact on climate, as that term is used in the regulation.

Although not relevant under Chapter 375, § 2, the issue of GHG emission reductions is material to the Department's review of this project because its stated purpose is to provide clean, renewable energy to the regional energy grid. The Department considers a project's purpose in the context of evaluating whether the totality of its adverse environmental effects is reasonable. As described in detail above, construction and maintenance of the project will cause some adverse environmental effects on habitat, scenic character, and existing uses. Climate change, however, is the single greatest threat to Maine's natural environment. It is already negatively affecting brook trout habitat, and those impacts are projected to worsen. It also threatens forest habitat for iconic species such as moose, and for pine marten, an indicator species much discussed in the evidentiary hearing. Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts. The Maine Public Utilities Commission (PUC), which has jurisdiction necessary to assess GHG emissions from the project in light of its impact on the electricity grid, concluded that, "the NECEC [project] will result in significant incremental hydroelectric generation from existing and new sources in Quebec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region."⁴³ The Department reviewed documents in the PUC's proceeding, including the London Economics International, LLC report.⁴⁴ The Department also reviewed the Examiner's Report and finds its conclusions to be credible. The Department accepts the PUC's finding on this issue and weighs the NECEC project's reductions in GHG emissions against the project's other impacts in its reasonableness determination.

In doing so, the Department finds the adverse effects to be reasonable in light of the project purpose and its GHG benefits, provided the project is constructed in accordance with the terms and conditions of this Order.

⁴³ Public Utilities Commission Examiner's Report (March 29, 2019), Docket No. 2017-00232 at 114.

⁴⁴ "Independent Analysis of Electricity Market and Macroeconomic Benefits of the New England Clean Energy Conned Project" dated May 21, 2018, prepared by London Economics International, LLC.

18. DECOMMISSIONING REQUIREMENTS

Segment 1 is a new transmission line corridor in a largely undeveloped area of the State. The Department finds that to ensure this segment of the project and associated infrastructure will not adversely affect the scenic character and natural resources of the region, 38 M.R.S. § 484(3), Segment 1 must be decommissioned when this portion of the project reaches the end of its useful life or the applicant ceases operation of this transmission line. Therefore, the applicant must demonstrate, in the form of a decommissioning plan, the means by which decommissioning of Segment will be accomplished. The plan must be submitted within one year of the start of commercial operation of the project. The decommissioning plan must include the following:

- A. Trigger for implementation of decommissioning. The current contracts are valid for a period of 20 years, but may be renewed. If the contracts are not renewed or for some other reason, the Segment 1 transmission line does not conduct electricity for a period of 12 consecutive months, decommission must begin within 18 months of the end of the contract or the last day of operation, whichever comes first.
- B. Description of work. The description of work contained in the plan must include the manner in which the transmission line, structures, and other components of the project would be dismantled and removed from the site. Subsurface components must be removed to a minimum of 24 inches below grade, and disturbed areas must be permanently stabilized. At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any components proposed to be left on-site to the Department for review and approval.
- C. Financial Assurance. The plan must include financial assurance for the decommissioning costs in the form of a decommissioning bond, irrevocable letter of credit, establishment of an escrow account, or other form of financial assurance accepted by the Department, for the total cost of decommissioning. The cost of decommissioning must be reevaluated in years 10 and 15 of commercial operation, and every five years thereafter, and the amount of financial assurance adjusted remains sufficient to cover the full cost of decommissioning.

Provided the applicant submits a decommissioning plan and complies with the requirements described above, the Department finds the project will be adequately decommissioned at the end of its useful life and will not adversely affect the scenic character and natural resources of the region. 38 M.R.S. § 484(3).

19. MAINE LAND USE PLANNING COMMISSION CERTIFICATION

The LUPC reviewed the portion of the proposed NECEC project located in the unorganized or deorganized areas of the State. On January 8, 2020, the LUPC certified to the Department (SLC-9) that the project is an allowed use within the subdistricts in which it is proposed and that the project complies with all of the Commission's applicable land use standards, those not considered in the Department's review.

The LUPC certification, including its conditions, is incorporated into and made part of this Order. A copy of the LUPC's certification is included in Appendix H.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses, provided the applicant complies with the requirements in Section 5 and the corresponding conditions below.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment, provided the applicant complies with the requirements in Section 11 and the corresponding conditions below.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life, provided the applicant complies with the requirements in Section 7 and the corresponding conditions below.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed project is a crossing of five outstanding river segments identified in 38 M.R.S. § 480-P, however, the applicant has demonstrated there are no practicable alternatives that would have less adverse effect upon the natural and recreational features of the river segments.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards,

provided the applicant submits additional financial information as required in Section 2 and in the corresponding condition below.

- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities provided the applicant complies with the requirements in Sections 4, 5, 6, 7, 8, 9, 12, 15, and 18 and the corresponding conditions below.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil. The applicant has made adequate provision to ensure blasting during construction of the project will be in compliance with 38 M.R.S. § 490-Z.
- D. The proposed development meets the standards for stormwater management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that the applicant complies with the requirements in Section 11 and the corresponding conditions below.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur provided that the applicant complies with the requirements in Section 12 and the corresponding condition below.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services provided the applicant complies with the requirements in Section 15 and the corresponding condition below.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.
- H. No further project modification or conditions regarding the transmission line's location, character, width, or appearance, beyond what is required by this Order, are warranted, under 38 M.R.S. § 487-A(4) or otherwise, to lessen the transmission line's impact on the environment or risk to public health or safety.

THEREFORE, the Department APPROVES the application of CENTRAL MAINE POWER COMPANY for the New England Clean Energy Connect Project as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions, unless the Department determines that said invalidity or unenforceability results in a project that would violate applicable statutory or regulatory standards, in which case the applicant shall file an application to modify the license to ensure full compliance. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. Prior to the start of construction, the applicant shall submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 2(B), to the Department for review and approval.
5. Prior to the start of construction, CMP shall establish an escrow account, secure an irrevocable letter or credit, or otherwise provide a financial guarantee acceptable to the Department, to fund \$1,875,000 of culvert replacements. Prior to commercial operation of the project, the applicant shall submit a plan to the Department for review and approval that establishes the locations of the culvert replacements and how the funds will be disbursed. The culverts to be replaced must be in the vicinity of Segments 1 or 2, must completely or partially block fish passage, must be replaced with crossings consistent with Stream Smart principles, and must be selected to provide the greatest possible habitat benefit. CMP shall document each culvert replacement, monitor those replacements for one year from the date of replacement, and submit a summary report to the Department for review within eighteen months of the date of the last replacement.
6. Prior to the start of construction, the applicant shall conserve the Basin Tract, Lower Enchanted Tract, and Grand Falls Tract, which together include 1,053.5 acres of land and 12.02 linear miles of stream.
7. Prior to the start of construction, the applicant shall conserve the Little Jimmy Pond Tract, Flagstaff Lake Tract, and Pooler Pond Tract, which together include 510.75 acres of wetland and 1,022.4 acres of land area.
8. Prior to the start of construction, the applicant shall conserve 717 acres of land within the Upper Kennebec River DWA.

9. Prior to the start of construction, the applicant shall contribute:
 - a. A total of \$877,010.06 in In-Lieu-Fee payments to the Department for the Maine Natural Resource Conservation Program for impacts to SVPs (\$623,657.53) and IWWHs (\$253,352.53), and
 - b. A total of \$649,771.95 to Maine Endangered and Nongame Fund for impacts to NSS and RBM habitat (\$469,771.95) and forest conversion in riparian buffers (\$180,000.00).
10. Prior to the start of construction, the applicant shall contribute \$1,234,526.82 to the Maine Natural Areas Conservation Fund for impacts to Goldie's Wood Fern and the Jack Pine Forest.
11. Prior the start of construction on each transmission line segment, the HDD under the Upper Kennebec River, the Merrill Road Converter Station, and the Fickett Road Substation, the applicant shall conduct a pre-construction meeting to discuss, among other topics, construction schedule, erosion and sedimentation control, and adherence to the conditions of this Order. This meeting shall be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector for that portion of the project.
12. The applicant shall update its VCP and VMP to be consistent with the requirements of this Order, including but not limited to the vegetation management required in Appendix C, and submit the updated plans to the Department for review and approval prior to the start of construction (which includes clearing) within the corridor.
13. The applicant shall maintain taller vegetation within the Segment 1 corridor as outlined in Appendix C, including by:
 - a. Maintaining full canopy height vegetation in the locations identified in Table C-1,
 - b. Maintaining vegetation with a minimum height of 35 feet in the locations identified in Table C-1,
 - c. Maintaining deer travel corridors in the locations identified in Table C-1, and
 - d. Maintaining tapered vegetation along the entire Segment 1 corridor, except where full canopy height vegetation, vegetation with a minimum height of 35 feet, or taller vegetation managed for deer travel corridors is required.
14. The applicant shall leave any trees that have been cut during routine maintenance in areas where tapering or vegetation with a minimum height of 35 feet is required, unless doing so would violate the Slash Law or create a fire or safety hazard.
15. Any wood that is chipped and spread on the corridor shall be left in layers no more than two inches thick, as measured above the mineral soil surface.
16. The applicant shall maintain 100-foot riparian filter areas along all perennial streams in Segment 1, all coldwater fisheries streams in other segments as identified in Appendix E, all streams containing threatened or endangered species, and all Outstanding River Segments; and maintain 75-foot riparian filter areas on all other streams.

17. In the area adjacent to Moxie Pond in Segment 2, the applicant shall construct and maintain the project with a 100-foot riparian filter area identical to the riparian filter areas adjacent to coldwater fishery streams in Segment 1.
18. The applicant shall provide a list of buffers surrounding private or public water supply wells to the Department prior to construction and adhere to the buffers during construction.
19. The applicant shall limit construction activities in mapped habitat for wood turtles to between October 15 and April 15 (prohibiting construction between April 16 and October 14) in any calendar year.
20. The applicant shall limit construction activities in mapped habitat for Rusty Black Birds to between July 1 and April 19 (prohibiting construction between April 20 and June 30) in any calendar year.
21. The applicant shall maintain 10-15-foot tall spruce/fir vegetation in the mapped Rusty Black Bird habitat.
22. The applicant shall complete a survey for Great Blue Heron colonies within or immediately adjacent to existing IWWH between April 20 and May 31, and prior to initial transmission line clearing; if any colonies are identified, the applicant shall consult with MDIFW and obtain approval from the Department prior to construction in the vicinity of any colony.
23. The applicant shall plant and maintain vegetated roadside buffers, and replace any dead buffer plantings with one year of the vegetation dying, at the following locations: Old Canada Road (Route 201) crossings in Johnson Mountain Twp and Moscow, Troutdale Road crossing in Bald Mountain Twp, and on the south side of Fickett Road in conjunction with the Fickett Road Substation.
24. The applicant shall mark the location of all natural resource buffers with flagging prior to the start of construction.
25. The applicant shall permanently mark all natural resource buffers upon completion of construction.
26. The applicant shall mark all natural resource buffers with flagging prior to any maintenance activities.
27. The applicant shall retain no fewer than one third-party inspector for each transmission line segment under construction at any one time, and one third-party inspector for the Merrill Road Converter Station. The inspectors must be retained and work in accordance with the Special Condition for Third Party Inspection Program included with this Order.

28. Prior to start of the drilling operation under the Kennebec River, the applicant shall submit for review and approval, the location of the disposal area for the cuttings from the drilling operation.
29. Any new equipment the applicant installs at Merrill Road Converter Station, the Larrabee Road, Fickett Road, and Coopers Mills Road substations, shall meet the sound power limits listed in Appendix D, Table D-1 (incorporating the limits from the Site Law application, Tables 5-8, 5-11, 5-15, and 5-19).
30. Any new equipment the applicant installs at Raven Farm Substation shall meet the sound power limit listed in Appendix D, Table D-1 (incorporating the base option listed in the Table 6-1 of the Raven Farm Substation Sound Study).
31. The applicant shall install sound walls at the Coopers Mills Road Substation, as proposed, with the final design supported by additional acoustic modeling using vendor-supplied octave band sound power levels, and submit the final design and modeling results to the Department for review and approval prior to operation of the new equipment at the substation.
32. The applicant shall install non-specular conductors within the viewshed of Coburn Mountain (between structures #3006-634 and #3006-616), Rock Pond (between structures #3006-731 and #3006-724), Moxie Stream (between structures #3006-542 and #3006-541), and the Appalachian Trail (between structures #3006-529 and #3006-458).
33. The applicant shall install shorter poles along Moxie Pond (structures #3006-529 and #3006-458).
34. The applicant shall conduct additional erosion control inspections, have dedicated crews, install additional erosion control structures, and have accelerated work schedules, for the areas identified in Appendix G.
35. The applicant shall retain the stormwater design engineer to oversee the installation of the stormwater best management practices. At least once per year, or within 30 days of completion, the applicant shall submit an update or as-built plans to the Department for review.
36. The applicant shall submit an SPCC Plan for the Merrill Road Converter Station to the Department prior to operation, if such a plan is required pursuant to 40 CFR Part 112.
37. The applicant shall receive approval from the Department prior to any material being taken to a facility other than Casella Waste Systems or Schnitzer Steel Industries.
38. The applicant shall implement the plans for site avoidance and treatments described in the final Phase I archaeological survey report.

39. Within 18 months of the date of this Order, the applicant shall develop and submit to the Department for review and approval a Conservation Plan, consistent with Section 7(D)(2)(a)(3), to permanently conserve 40,000 acres in the vicinity of Segment 1. Prior to commercial operation of the project, the applicant must fully implement the approved Conservation Plan, unless, upon a showing by the applicant that it has made reasonable, good faith efforts to implement the Conservation Plan and addition time, not more than four years from the date of this Order, is needed, the Department approves an extension of the implementation deadline. Prior to implementation, all forest management plans, and all conservation easements, deed restrictions, covenants, or other legal instruments designed to fulfill the objectives of the Conservation Plan, must be submitted to the Department for review and approval.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 11th DAY OF MAY, 2020,
DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
Gerald D Reid, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625ANBNCNDN/ATS#82334, 82335, 82336, 82337, 82338

FILED
MAY 11, 2020
State of Maine
Board of Environmental Protection

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- I. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.



Natural Resources Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S.A. § 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. §420-D(8) and is subject to penalties under 38 M.R.S.A. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the developer, and the owner and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been

- received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.
- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the department.
 - (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
 - (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the facilities.
 - (c) The erosion and stormwater maintenance plan for the site is being implemented as written, or modifications to the plan have been submitted to and approved by the department, and the maintenance log is being maintained.
 - (9) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

November 16, 2005 (revised December 27, 2011)

Special Condition
for
Third Party Inspection Program

THIRD-PARTY INSPECTION PROGRAM

1.0 THE PURPOSE OF THE THIRD-PARTY INSPECTION

As a condition of this permit, the Maine Department of Environmental Protection (MDEP) requires the permit applicant to retain the services of a third-party inspector to monitor compliance with MDEP permit conditions during construction. The objectives of this condition are as follows:

- 1) to ensure that all construction and stabilization activities comply with the permit conditions and the MDEP-approved drawings and specifications,
- 2) to ensure that field decisions regarding erosion control implementation, stormwater system installation, and natural resource protection are based on sound engineering and environmental considerations, and
- 3) to ensure communication between the contractor and MDEP regarding any changes to the development's erosion control plan, stormwater management plan, or final stabilization plan.

This document establishes the inspection program and outlines the responsibilities of the permit applicant, the MDEP, and the inspector.

2.0 SELECTING THE INSPECTOR

At least 30 days prior to starting any construction activity on the site, the applicant will submit the names of at least two inspector candidates to the MDEP. Each candidate must meet the minimum qualifications listed under section 3.0. The candidates may not be employees, partners, or contracted consultants involved with the permitting of the project or otherwise employed by the same company or agency except that the MDEP may accept subcontractors who worked for the project's primary consultant on some aspect of the project such as, but not limited to, completing wetland delineations, identifying significant wildlife habitats, or conducting geotechnical investigations, but who were not directly employed by the applicant, as Third Party inspectors on a case by case basis. The MDEP will have 15 days from receiving the names to select one of the candidates as the inspector or to reject both candidates. If the MDEP rejects both candidates, then the MDEP shall state the particular reasons for the rejections. In this case, the applicant may either dispute the rejection to the Director of the Bureau of Land Resources or start the selection process over by nominating two, new candidates.

3.0 THE INSPECTOR'S QUALIFICATIONS

Each inspector candidate nominated by the applicant shall have the following minimum qualifications:

- 1) a degree in an environmental science or civil engineering, or other demonstrated expertise,
- 2) a practical knowledge of erosion control practices and stormwater hydrology,
- 3) experience in management or supervision on large construction projects,
- 4) the ability to understand and articulate permit conditions to contractors concerning erosion control or stormwater management,
- 5) the ability to clearly document activities being inspected,
- 6) appropriate facilities and, if necessary, support staff to carry out the duties and responsibilities set forth in section 6.0 in a timely manner, and
- 7) no ownership or financial interest in the development other than that created by being retained as the third-party inspector.

4.0 INITIATING THE INSPECTOR'S SERVICES

The applicant will not formally and finally engage for service any inspector under this permit condition prior to MDEP approval or waiver by omission under section 2.0. No clearing, grubbing, grading, filling, stockpiling, or other construction activity will take place on the development site until the applicant retains the MDEP-approved inspector for service.

5.0 TERMINATING THE INSPECTOR'S SERVICES

The applicant will not terminate the services of the MDEP-approved inspector at any time between commencing construction and completing final site stabilization without first getting written approval to do so from the MDEP.

6.0 THE INSPECTOR'S DUTIES AND RESPONSIBILITIES

The inspector's work shall consist of the duties and responsibilities outlined below.

- 1) Prior to construction, the inspector will become thoroughly familiar with the terms and conditions of the state-issued site permit, natural resources protection permit, or both.
- 2) Prior to construction, the inspector will become thoroughly familiar with the proposed construction schedule, including the timing for installing and removing erosion controls, the timing for constructing and stabilizing any basins or ponds, and the deadlines for completing stabilization of disturbed soils.
- 3) Prior to construction, the inspector will become thoroughly familiar with the project plans and specifications, including those for building detention basins, those for installing the erosion control measures to be used on the site, and those for temporarily or permanently stabilizing disturbed soils in a timely manner.
- 4) During construction, the inspector will monitor the contractor's installation and maintenance of the erosion control measures called for in the state permit(s) and any additional measures the inspector believes are necessary to prevent sediment discharge to off-site properties or natural resources. This direction will be based on the approved erosion control plan, field conditions at the time of construction, and the natural resources potentially impacted by construction activities.
- 5) During construction, the inspector will monitor the contractor's construction of the stormwater system, including the construction and stabilization of ditches, culverts, detention basins, water quality treatment measures, and storm sewers.
- 6) During construction, the inspector will monitor the contractor's installation of any stream or wetland crossings.
- 7) During construction, the inspector will monitor the contractor's final stabilization of the project site.
- 8) During construction, the inspector will keep logs recording any rain storms at the site, the contractor's activities on the site, discussions with the contractor(s), and possible violations of the permit conditions.
- 9) During construction, the inspector will inspect the project site at least once a week and before and after any significant rain event. The inspector will photograph all protected natural resources both before and after construction and will photograph all areas under construction. All photographs will be identified with, at a minimum the date the photo was taken, the location and the name of the individual taking the photograph.
Note: the frequency of these inspections as contained in this condition may be varied to best address particular project needs.
- 10) During construction, the inspector will prepare and submit weekly (*or other frequency*) inspection reports to the MDEP.

- 11) During construction, the inspector will notify the designated person at the MDEP immediately of any sediment-laden discharges to a protected natural resource or other significant issues such as the improper construction of a stormwater control structure or the use of construction plans not approved by the MDEP.

7.0 INSPECTION REPORTS

The inspector will submit weekly written reports (*or at another designated frequency*), including photographs of areas that are under construction, on a form provided by the Department to the designated person at the MDEP. Each report will be due at the MDEP by the Friday (*or other designated day*) following the inspection week (Monday through Sunday).

The weekly report will summarize construction activities and events on the site for the previous week as outlined below.

- 1) The report will state the name of the development, its permit number(s), and the start and end dates for the inspection week (Monday through Sunday).
- 2) The report will state the date(s) and time(s) when the inspector was on the site making inspections.
- 3) The report will state the date(s) and approximate duration(s) of any rainfall events on the site for the week.
- 4) The report will identify and describe any erosion problems that resulted in sediment leaving the property or sediment being discharged into a wetland, brook, stream, river, lake, or public storm sewer system. The report will describe the contractor's actions to repair any damage to other properties or natural resources, actions to eliminate the erosion source, and actions to prevent future sediment discharges from the area.
- 5) The report will list the buildings, roads, parking lots, detention basins, stream crossings or other features open to construction for the week, including those features or areas actively worked and those left unworked (dormant).
- 6) For each area open to construction, the report will list the date of initial soil disturbance for the area.
- 7) For each area open to construction, the report will note which areas were actively worked that week and which were left dormant for the week. For those areas actively worked, the report will briefly state the work performed in the area that week and the progress toward final stabilization of the area -- e.g. "grubbing in progress", "grubbing complete", "rough grading in progress", "rough grading complete", "finish grading in progress", "finish grading complete", "permanent seeding completed", "area fully stable and temporary erosion controls removed", etc.
- 8) For each area open to construction, the report will list the erosion and sedimentation control measures installed, maintained, or removed during the week.
- 9) For each erosion control measure in-place, the report will note the condition of the measure and any maintenance performed to bring it to standard.

Third Party Inspection Form

This report is prepared by a Third Party Inspector to meet the requirements of the Third Party Inspector Condition attached as a Special Condition to the Department Order that was issued for the project identified below. The information in this report/form is not intended to serve as a determination of whether the project is in compliance with the Department permit or other applicable Department laws and rules. Only Department staff may make that determination.

TO: <i>PM, Maine DEP (@maine.gov)</i>	FROM:
PROJECT NAME/ LOCATION:	DEP #:
DATE OF INSPECTION:	DATE OF REPORT:
WEATHER:	CONDITIONS:

SITE CHARACTERISTICS:

# ACRES OPEN:	# ACRES ACTIVE:	# ACRES INACTIVE:
LOCATION OF OPEN LAND:	LOCATION OF ACTIVE LAND:	LOCATION OF INACTIVE LAND:
OPEN SINCE:	OPEN SINCE:	OPEN SINCE:

PROGRESS OF WORK:

INSPECTION OF:	Satisfactory	Minor Deviation (corrective action required)	Unsatisfactory (include photos)
STORMWATER CONTROL (VEGETATIVE & STRUCTURAL BMP'S)			
EROSION & SEDIMENTATION CONTROL (TEMPORARY & PERMANENT BMP'S)			
OTHER: (PERMIT CONDITIONS, ENGINEERING DESIGN, ETC.)			

COMMENTS/CORRECTIVE ACTIONS TAKEN (attach additional sheets as necessary):

Photos (must be labeled with date, photographer and location):

Cc:		
<i>Original and all copies were sent by email only.</i>		

Appendix A
List of Municipal and County Governments

Town	County	Senate District	House District	Congressional District
City of Auburn 60 Court Street Auburn, Maine 04210 Phone (207) 333-6600 pcrichton@auburnmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 62 Rep. Gina M. Melaragno 25 James Street, Apt. 3 Auburn, Maine 04210 Phone (207)740-8860 gina.melaragno@legislature.maine.gov House District 63 Rep. Bruce A. Bickford 64 Cameron Lane Auburn, Maine 04210 Cell Phone (207) 740-0328 bruce.bickford@legislature.maine.gov House District 64 Rep. Bettyann W. Sheats 32 Waterview Drive Auburn, Maine 04210 Cell Phone (207)740-2613 bettyann.sheats@legislature.maine.gov	Congressional District 2 Representative Bruce Poliquin 179 Lisbon Street Lewiston, ME 04240 Phone (207) 784-0768
City of Lewiston 27 Pine Street Lewiston, Maine 4240-7204 Phone (207) 513-3000 ebarrett@lewistonmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801	Senate District 21 Senator Nate Libby 44 Robinson Gardens Lewiston, ME 04240 Phone (207)713-8449 nathan.libby@legislature.maine.gov	House District 58 Rep. James R. Handy 9 Maplewood Road Lewiston, Maine 04240 Phone (207) 784-5595 jim.handy@legislature.maine.gov	2

	ipost@androscoggincounty.maine.gov		<p>House District 59 Rep. Roger Jason Fuller 36 Elliott Avenue Lewiston, ME 04240 Phone (207) 783-9091 roger.fuller@legislature.maine.gov</p> <p>House District 60 Rep. Jared F. Golden 3 Diamond Court Lewiston, ME 04240 Phone (207) 287-1430 jared.golden@legislature.maine.gov</p> <p>House District 61 Rep. Heidi E. Brooks 1 Pleasant Street, #2 Lewiston, Maine 04240 Cell Phone (207) 740-5229 heidi.brooks@legislature.maine.gov</p>	
Town of Alna 1568 Alna Rd Alna, Maine 04535 PHONE: (207) 586-5313 mmaymcc@yahoo.com dcbaston@northatlanticenergy.com	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	<p>Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov</p>	<p>House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov</p>	1
Town of Anson 5 Kennebec Street, PO Box 297 Anson, Maine 04911-0297	Somerset County Commissioners Office 41 Court Street	<p>Senate District 3 Senator Rod Whittemore PO Box 96</p>	<p>House District 112 Rep. Thomas H. Skolfield 349 Phillips Road</p>	2

<p>Phone (207) 696-3979</p>	<p>Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org</p>	<p>Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov</p>	<p>Weld, Maine 04285 Phone (207) 585-2638 thomas.skolfield@legislature.maine.gov</p>	
<p>Town of Caratunk Elizabeth Caruso - 1st Select PO Box 180 Caratunk, Maine 04925-0180 OFFICE PHONE: 672-3030</p>	<p>Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org</p>	<p>Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov</p>	<p>House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov</p>	<p>2</p>
<p>Town of Chesterville 409 Dutch Gap Road Chesterville, Maine 04938 Phone (207) 778-2433 chesterville.me@gmail.com</p>	<p>Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov</p>	<p>Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov</p>	<p>House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov</p>	<p>2</p>
<p>Town of Cumberland William R. Shane, Town Manager 290 Tuttle Road Cumberland, Maine 04021 Phone (207) 829-5559</p>	<p>Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org</p>	<p>Senate District 25 Senator Catherine Breen 15 Falmouth Ridges Drive Falmouth, Maine 04105 Phone (207) 329-6142 Cathy.breen@legislature.maine.gov</p>	<p>House District 45 Rep. Dale J. Denno 275 Main Street Cumberland Center, Maine 04021 Cell Phone (207) 400-1123 dale.denno@legislature.maine.gov</p>	<p>1 Senator Susan Collins 55 Lisbon Street Lewison, ME 04240 Phone (207) 784-6969 Senator Angus King 4 Gabriel Drive, Suite 3 Augusta, ME 04330 Phone (207) 622-8292 Phone (800) 432-1599 Representative Chellie Pingree 2Portland Fish Pier, Suite 304 Portland, ME 04101 Phone (207) 774-5019 Phone (888) 862-6500</p>

<p>Town of Durham 630 Hallowell Road Durham, Maine 04222 Phone (207) 353-2561</p>	<p>Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov</p>	<p>Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov</p>	<p>House District 46 Rep. Paul B. Chace 31 Colonial Drive Durham, ME 04222 Cell Phone (207)240-9300 paul.chace@legislature.maine.gov</p>	<p>2</p>
<p>Town of Embden 809 Embden Pond Road Embden, Maine 04958-3521 Phone (207) 566-5551 embden-clerk@roadrunner.com</p>	<p>Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org</p>	<p>Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodneyn.whittemore@legislature.maine.gov</p>	<p>House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov</p>	<p>2</p>
<p>Town of Farmington 153 Farmington Falls Road Farmington, Maine 04938 Phone (207) 778-5871 rdavis@farmington-maine.org</p>	<p>Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov</p>	<p>Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov</p>	<p>House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov</p>	<p>2</p>
<p>Town of Greene 220 Main St, PO Box 510 Greene, Maine 04236-0510 Phone (207) 946-5146 tmgreene@fairpoint.net</p>	<p>Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov</p>	<p>Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov</p>	<p>House District 57 Rep. Stephen J. Wood PO Box 927 Sabattus, Maine 04280 Cell Phone (207) 740-3723 stephen.wood@legislature.maine.gov</p>	<p>2</p>
<p>Town of Industry 1033 Industry Road Industry, Maine 04938 Phone (207) 778-5050</p>	<p>Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov</p>	<p>Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov</p>	<p>House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov</p>	<p>2</p>

<p>Town of Jay 340 Main Street Jay, Maine 04239 Phone (207) 897-6785 joffice@jay-maine.org</p>	<p>Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov</p>	<p>Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov</p>	<p>House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239 Phone (207)897-2288 tina.riley@legislature.maine.gov</p>	<p>2</p>
<p>Town of Leeds 8 Community Drive Leeds, Maine 04263 Phone (207) 524-5171 townofleeds@fairpoint.net</p>	<p>Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov</p>	<p>Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov</p>	<p>House District 75 Rep. Jeffrey L. Timberlake 284 Ricker Hill Road Turner, Maine 07282 Cell Phone (207)754-6000 jeffrey.timberlake@legislature.maine.gov</p>	<p>2</p>
<p>Town of Livermore Falls 2 Main Street Livermore Falls, Maine 04254 Phone (207) 897-3321 townoffice@lfme.org</p>	<p>Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov</p>	<p>Senate District 18 Senator Lisa Keim 1505 Main Street Dixfield, ME 04224 Phone (207) 562-6023 Lisa.keim@legislature.maine.gov</p>	<p>House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239 Phone (207)897-2288 tina.riley@legislature.maine.gov</p>	<p>2</p>
<p>Town of Moscow 110 Canada Road Moscow, Maine 04920 Phone (207) 672-4834 moscow@myfairpoint.net</p>	<p>Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org</p>	<p>Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov</p>	<p>House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov</p>	<p>2</p>
<p>Town of New Gloucester 385 Intervale Road New Gloucester, Maine 04260 Phone (207) 926-4126 ccastonguay@newgloucester.com</p>	<p>Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380</p>	<p>Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov</p>	<p>House District 65 Rep. Ellie Espling 12 Lewiston Rd New Gloucester, Maine 04260 Cell Phone (207) 891-8280 ellie.espling@legislature.maine.gov</p>	<p>1</p>

	gailey@cumberlandcounty.org			
Town of New Sharon 11 School Lane, PO Box 7 New Sharon, Maine 04955-0007 Phone (207) 778-4046 townclerk@newsharon.maine.gov	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov	2
Town of Pownal 429 Hollowell Road Pownal, Maine 04069 Phone (207) 688-4611	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 24 Senator Brownie Carson PO Box 68 Harpwell, Maine 04079 Phone (207) 751-9076 Brownie.carson@legislature.maine.gov	House District 46 Rep. Paul B. Chace 31 Colonial Drive Durham, Maine 04222 Phone (207) 240-9300 Paul.chace@legislature.maine.gov House District 48 Rep. Sara Gideon 37 South Freeport Road Freeport, Maine 40032 Phone (207) 287-1300 sara.gideon@legislature.maine.gov	2
Town of Starks 57 Anson Road Starks, Maine 04911 Phone (207) 696-8069 townofstarks@gmail.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 Rodney.Whittemore@legislature.maine.gov	House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638 thomas.skolfield@legislature.maine.gov	2
Town of Whitefield 36 Townhouse Road Whitefield, Maine 04353 Phone (207) 549-5175 whitefield@roadrunner.com	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658	House District 88 Rep. Deborah J. Sanderson 64 Whittier Drive Chelsea, Maine 04330 Phone (207) 376-7515	1

	Phone (207) 882-6311 ckipfer@lincounty.me	dana.dow@legislature.maine.gov	deborah.sanderson@legislature.maine.gov	
Town of Wilton 158 Weld Road Wilton, Maine 04294 Phone (207) 645-4961 office@wiltonmaine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Windsor 523 Ridge Road, PO Box 179 Windsor, Maine 04363-0179 Phone (207) 445-2998 FAX: 445-3762	Kennebec County Commissioner's Office 125 State Street, 2nd Floor Augusta, Maine 04330 Phone: (207) 622-0971	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 80 Rep. Richard T. Bradstreet 44 Harmony Lane Vassalboro, Maine 04989 Cell Phone (207)861-1657 dick.bradstreet@legislature.maine.gov	1
Town of Wiscasset 51 Bath Road Wiscasset, Maine 04578-4108 Phone (207) 882-8200 admin@wiscasset.org	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov	1
Town of Woolwich 13 Nequasset Road Woolwich, Maine 04579-9734 PHONE (207) 442-7094	Sagadahoc County Commissioner's Office 752 High Street Bath, Maine 04530 Phone (207) 443-8202	Senate District 23 Senator Eloise Vitelli 73 Newton Road Arrowsic, Maine 04530 Phone (207) 443-4660 eloise.Vitelli@legislature.maine.gov	House District 53 Rep. Jeffrey K. Pierce PO Box 51 Dresden, Maine 04342 Phone (207) 737-9051 Cell (207)441-3006 jeff.pierce@legislature.maine.gov	1

**Appendix B
Service List**

APPLICANT		
Central Maine Power Company	Gerry Mirabile	gerry.mirabile@cmpco.com
	Matt Manahan	mmanahan@pierceatwood.com
	Mark Goodwin	magoodwin@burnsmcd.com
AGENCY CONTACTS		
Department of Environmental Protection	Susanne Miller, Presiding Officer	Susanne.Miller@maine.gov
	Jim Beyer	NECEC.DEP@maine.gov
	Nicholas Livesay	Nick.Livesay@maine.gov
Land Use Planning Commission	Bill Hinkel	bill.hinkel@maine.gov
Maine Department of Inland Fisheries and Wildlife	Bob Stratton	Robert.D.Stratton@maine.gov
Maine Natural Areas Program	Kristen Puryear	Kristen.Puryear@maine.gov
Maine Historic Preservation Commission	Megan Rideout	Megan.M.Rideout@maine.gov
U.S. Army Corps of Engineers	Jay Clement	Jay.L.Clement@usace.army.mil
Department of Energy	Melissa Pauley	Melissa.Pauley@hq.doe.gov
ASSISTANT ATTORNEYS GENERAL		
Maine Office of the Attorney General	Peggy Bensinger	Peggy.Bensinger@maine.gov
	Lauren Parker	Lauren.Parker@maine.gov
DEP ONLY INTERVENORS		
Friends of Boundary Mountains	Robert Weingarten	bpw1@midmaine.com
Maine Wilderness Guides	Nick Leadley	leadley@myfairpoint.net
West Forks Plantation	Ashli Coleman	ashli.goodenow@gmail.com
Old Canada Road	Bob Haynes	oldcanadaroad@myfairpoint.net
Brookfield Renewable	Steven Zuretti	Steven.Zuretti@brookfieldrenewable.com
	Jeffery Talbert	jtalbert@preti.com
The Nature Conservancy	Rob Wood	robert.wood@tnc.org
Conservation Law Foundation	Emily Green	egreen@clf.org
	Phelps Turner	pturner@clf.org
LUPC ONLY INTERVENORS		
Carrie Carpenter ⁽¹⁾		Carrie_carpenter@rocketmail.com
Eric Sherman ⁽¹⁾		eshermanbpr@gmail.com
Kathy Barkley ⁽¹⁾		kbraft@gmail.com
Kim Lyman ⁽¹⁾		klyman9672@gmail.com
Mandy Farrar ⁽¹⁾		manfarr1974@yahoo.com
Matt Wagner ⁽¹⁾		mwagner@insourcerenewables.com

¹ These Intervenors are represented by Elizabeth Beopple, Esq., BCM Environmental & Land Law, PLLC.

LUPC ONLY INTERVENORS		
Noah Hale ⁽¹⁾		lwithwhitewaters@gmail.com
Taylor Walker ⁽¹⁾		twalkerfilm@gmail.com
Tony DiBlasi ⁽¹⁾		diblasi.tony@gmail.com
Lewiston Auburn Metropolitan Chamber of Commerce ⁽²⁾		maureen@lmetrochamber.com
DEP AND LUPC INTERVENORS		
Mike Pilsbury ⁽¹⁾		mspils15@hotmail.com
Town of Caratunk ⁽¹⁾	Elizabeth Caruso	caratunkselectmen@myfairpoint.net
Kennebec River Anglers ⁽¹⁾	Chris Russell	info@kennebecriverangler.com
Maine Guide Service ⁽¹⁾	Greg Caruso	gcaruso@myfairpoint.net
Edwin Buzzell ⁽¹⁾	Edwin Buzzell	edbuzzel@gmail.com
Industrial Energy Consumer Group	Anthony Buxton	ABuxton@preti.com
	Robert Borowski	RBorowski@preti.com
City of Lewiston ⁽²⁾	Ed Barrett	EBarrett@lewistonmaine.gov
International Brotherhood of Electrical Workers	Anthony Buxton	burgess@ibew104.org
Maine State Chamber of Commerce ⁽²⁾	Dana Connors	Amorin@mainechamber.org
Western Mountains & Rivers Corp.	Ben Smith	bsmith@smithlawmaine.com
NextEra Energy Resources, LLC	Joanna Tourangeau	jtourangeau@dwmlaw.com
	Brian Murphy	Brian.J.Murphy@nexteraenergy.com
	Emily Howe	ehowe@dwmlaw.com
Wagner Forest Management	Mike Novello	mnovello@wagnerforest.com
Hawk's Nest Lodge ⁽¹⁾	Peter Dostie	hawksnestlodge@gmail.com
Appalachian Mountain Club	David Publicover	dpublicover@outdoors.org
Natural Resources Council of Maine	Cathy Johnson	cjohnson@nrcm.org
	Nick Bennett	nbennett@nrcm.org
	Sue Ely	sely@nrcm.org
Trout Unlimited	Jeffery Reardon	Jeffrey.Reardon@tu.org
	David Hedrick	dhedrick@roadrunner.com
Maine Office of the Public Advocate ⁽³⁾	Barry Hobbins	Barry.Hobbins@maine.gov
	Andrew Landry	Andrew.Landry@maine.gov
Elizabeth Boepple, Esq.	BCM Environmental & Land Law, PLLC	boepple@nhlandlaw.com
Gerald F. Petruccelli, Esq.	Petruccelli, Martin & Haddow LLP	gpetruccelli@pmhlegal.com

¹ These Intervenor are represented by Elizabeth Beopple, Esq., BCM Environmental & Land Law, PLLC.

² These Intervenor are represented by Gerald F. Petruccelli, Esq., Petruccelli, Martin & Haddow LLP.

³ Maine Office of the Public Advocate is not an Intervenor with the LUPC but, as a governmental agency, may still participate in the LUPC's portion of the NECEC hearing in accordance with Chapter 5, section 5.16. The OPA is an Intervenor in the DEP's hearing.

This page was left intentionally blank.

Appendix C Vegetation Management

This appendix describes the four types of vegetation management required along the Segment 1 corridor, which achieve:

- Full canopy height vegetation,
- Vegetation with a 35-foot minimum height,
- Deer travel corridors, and
- Tapered vegetation.

This appendix also describes riparian filter areas adjacent to rivers, streams, and brooks.

Full Canopy Height Vegetation

Full canopy height vegetation is required in three locations along the Segment 1 corridor. The locations, identified more specifically below in Table C-1, include the Gold Brook crossing (which is within Wildlife Area 4), the Mountain Brook crossing (Wildlife Area 6), and the Upper Kennebec River crossing (Wildlife Area 11).

In areas where full canopy height vegetation must be maintained, vegetation will be removed only in areas necessary to access pole locations and place the poles. (There are no pole locations in Wildlife Area 11.) This includes the area within the entire width of the 150-foot wide corridor. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line.

35-Foot Minimum Vegetation Height

In areas where 35-foot tall vegetation must be maintained, only areas necessary to access pole locations or install poles will be cleared during construction. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. In other areas within the entire width of the corridor only trees taller than 35 feet, or trees that may grow taller than 35 feet prior to the next scheduled maintenance will be removed during construction. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and may not exceed a three-year cycle within any particular area within this segment without prior approval from the Department.

With regard to ongoing vegetation management, trees that exceed 35 feet or are anticipated to exceed this height before the next scheduled maintenance cycle will be selected and cut at ground level and will only be removed if leaving them will cause a violation of the Maine Slash Law or create a fire or safety hazard.

Deer Travel Corridors

Eight deer travel corridors must be managed as softwood stands to promote deer movement across the transmission line corridor during the winter months when snow depths have the potential to inhibit deer travel. These travel corridors are located on either side of the four structures identified in Table C-1 and will extend along the corridor, under the conductors, where conductor height allows for taller vegetation within the corridor. These deer travel corridors must be managed, designated, and labeled corridors 1 through 8, as softwood stands and allow for the maximum tree height that can practically be maintained without encroaching into the conductor safety zone (approximately 24 feet of clearance between a conductor and the top of vegetation) or into the necessary cleared area adjacent to structures. Tree heights will vary based on structure height, conductor sag, and topography, but must generally range from 25 to 35 feet.

Within designated deer travel corridors 1 through 8, during the initial vegetation clearing for construction all capable hardwood species will be cut and individual softwood specimens will be cut to heights necessary so that they do not intrude into the conductor safety zone and are not at risk of growing into the conductor safety zone prior to the next scheduled vegetation maintenance. On an ongoing basis, softwood specimens that are not intruding into the conductor safety zone and are not at risk of growing into the conductor safety zone prior to the next scheduled vegetation maintenance will be retained. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line.

Table C-1

Area Name	From Structure	To Structure	Location	Min. Veg Height	Notes	Approximate Length (miles)
Wildlife Area 1	3006-800	3006-799	Beattie Twp	35'	Includes Number One Brook not visible from Beattie Pond	0.22
Wildlife Area 2	3006-771	3006-765	Skinner Twp	35'	Includes crossing of the South Branch of the Moose River (all of TNC 2)	1.19
Wildlife Area 3	3006-758	3006-752	Skinner Twp Appleton Twp	35'	Includes five perennial streams and four intermittent streams	1.25
Wildlife Area 4	3006-742	3006-731	Appleton Twp	35' (except full canopy height at Gold Brook crossing)	Includes Gold Brook crossing (structures 3006-735 to 3006-732) and Roaring Brook Mayfly habitat adjacent to that crossing where full canopy height vegetation is required, as well as group of 5 unnamed streams; portions adjacent to Leuthold Preserve	2.18
Wildlife Area 5	3006-708	3006-683	Hobbs town Twp T7 BKP WKR Bradstreet Twp	35'	Includes area near Moose Pond and surrounding land owned by BPL, Whipple Brook crossing, areas adjacent to Leuthold Preserve, and unnamed stream crossing where topography may allow crossing without taller poles (structures 3006-708 to 3006-707)	4.87
Wildlife Area 6	3006-635	3006-633	Johnson Mtn Twp	Full canopy height	Mountain Brook crossing, includes Roaring Brook Mayfly habitat	0.38
Wildlife Area 7	3006-598	3006-597	Johnson Mtn Twp	35'	Cold Stream crossing; adjacent to Cold Stream Forest Tract	0.23
Wildlife Area 8	3006-589	3006-588	Johnson Mtn Twp	35'	Unnamed stream crossing where 35-foot vegetation likely can be maintained without taller poles	0.20
Wildlife Area 9	3006-576	3006-563	West Forks	35'	Includes Tomhegan Stream crossing and adjacent to Cold Stream Forest Tract	2.21
Wildlife Area 10	3006-542	3006-541	Moxie Gore	35'	Moxie Stream crossing where 35-foot vegetation likely can be maintained without taller poles	0.19

Area Name	From Structure	To Structure	Location	Min. Veg Height	Notes	Approximate Length (miles)
Wildlife Area 11	Eastern edge of clearing for the HDD Termination Station in West Forks	Western edge of clearing for the HDD Termination Station in Moxie Gore	West Forks Moxie Gore	Full canopy height	Upper Kennebec River crossing; deer travel corridors 9 and 10	0.56
Wildlife Area 12						
	3006-548		Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA; corridors 7 and 8	0.23
	3006-543		Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA; corridors 5 and 6	0.18
	3006-542		Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA; corridors 3 and 4	0.09
	3006-541		Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA; corridors 1 and 2	0.1

Total distance along the Segment 1 corridor with taller vegetation is approximately 14.08 mile.

Tapered Vegetation

Tapered vegetation is required along the entire Segment 1 corridor, except where full canopy height vegetation, vegetation with a minimum height of 35 feet, or taller vegetation managed for deer travel corridors is required. In Wildlife Area 12 taller vegetation is required for deer travel corridors 1 through 8. Within this wildlife area, tapering is required along the transmission line corridor in the sections outside the deer travel corridors. For example, the section of the transmission line corridor between structures 3006-542 and 3006-543 that is not within a deer travel corridor must be tapered.

“Tapering” refers to a form of vegetation management along the transmission line corridor where increasingly taller vegetation is allowed to grow as the distance from the wire zone increases. Along Segment 1 where tapering is required, the transmission line includes two conductors running parallel to each other and separated by 24 feet. A shield wire runs over each conductor. The wire zone is the 54-foot wide area that runs along the center of the 150-foot wide corridor and includes the 24-foot wide area below and between the two conductors, plus 15 feet on each side of the set of conductors (15 ft. + 24 ft. + 15 ft. = 54 ft.).

In a tapered corridor, within this 54-foot wide wire zone all woody vegetation will be cut to ground level during construction. During maintenance of this portion of the corridor non-capable species are allowed to grow. (Capable species includes vegetation capable of growing tall enough to reach up, into the conductor safety zone). Within a tapered corridor, the result is that within the 54-foot wide wire zone vegetation that is approximately 10 feet tall regenerates so that the wire zone primarily consists of native, scrub-shrub habitat with non-capable species. (Without tapering, the corridor would be cleared and maintained as scrub-shrub habitat across the entire 150-foot width.)

In a tapered corridor, the area outside the wire zone will be selectively cut during construction to create a taper with vegetation approximately 15 feet tall near the wire zone and increasing to approximately 35 feet tall near the edge of the 150-foot wide corridor. The first taper includes the areas within 16 feet of either side of the wire zone, within which vegetation 15 feet tall and under, including capable species, will be maintained. The second taper includes the next 16 feet on either side of the corridor, within which taller vegetation up to 25 feet tall will be maintained. The third and final taper includes the next 16 feet on either side of the corridor, within which even taller vegetation up to 35 feet tall will be maintained.

As vegetation is maintained within a tapered corridor, any trees that exceed the height for the taper they are within or are anticipated to exceed the height before the next scheduled maintenance cycle, will be selected and cut at ground level. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and may not exceed a three-year cycle within any particular area within this segment without prior approval from the Department. Any trees that are cut will only be removed if leaving them will cause a violation of the Maine Slash Law or create a fire or safety hazard.

The overall result is that a cross section of a 150-foot wide tapered corridor breaks down into the following components:

16' 3rd taper + 16' 2nd taper + 16' 1st taper + 54' wire zone + 16' 1st taper + 16' 2nd taper + 16' 3rd taper = 150' wide corridor. The approximate maximum vegetation height of each taper is:

- 1st taper: 15-foot vegetation
- 2nd taper: 25-foot vegetation
- 3rd taper: 35-foot vegetation

How the vegetation within the tapered areas along Segment 1 is managed will influence the environmental benefit of this form of mitigation. Reasonable steps will be taken to manage the vegetation to ensure tapering minimizes the environmental impact of the corridor to the greatest extent practicable, including reasonable efforts to avoid the growth of even-aged stands within each taper.

Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. Soil disturbance and grading will be minimized through careful planning of temporary access ways. When the temporary access ways are removed, the disturbed areas will be restored to their pre-construction grade and allowed to revegetate. Except for the areas immediately around the base of each transmission line structure, the full width and length of the transmission corridor will remain vegetated following construction of the Project.

Riparian Filter Areas

Unless more restrictive requirements apply,⁴⁵ within 100 feet of all perennial streams in Segment 1, all coldwater fisheries streams in other segments as identified in Appendix E, all streams containing threatened or endangered species, and all Outstanding River Segments; and within 75 feet of all other streams, a riparian filter area will be maintained. Riparian filter areas will be established and maintained in the following manner:

- The boundary of each riparian filter area will have unique flagging installed to distinguish between the applicable 75-foot or 100-foot filter area prior to clearing. Flagging will be maintained throughout construction.
- Foliar herbicides will be prohibited within the riparian filter area,⁴⁶ and all refueling/maintenance of equipment will be excluded from the filter area unless it occurs on an existing paved road or if secondary containment is used with oversight from an environmental inspector.
- All stream crossings by heavy equipment will be performed through the installation of equipment spans with no in-stream disturbances. Streams will not be forded by heavy equipment.
- Initial tree clearing will be performed during frozen ground conditions whenever practicable, and if not practicable, the recommendations of the environmental inspector

⁴⁵ More restrictive requirements include, but are not limited to, requirements to maintain taller vegetation within the corridor such as provided for in Appendix C, Table C-1.

⁴⁶ Additionally, no herbicide will be used in the Segment 1 corridor.

will be followed regarding the appropriate techniques to minimize disturbance, such as the use of selectively placed travel lanes within the riparian filter area. Transmission line structures will not be placed within the riparian filter area, unless specifically authorized by the Department and accompanied by a site-specific erosion control plan. No structures will be placed within 25 feet of any stream regardless of its classification.

- Within that portion of the appropriate riparian filter area that is within the wire zone (i.e., within 15 feet, horizontally, of any conductor), all woody vegetation over 10 feet in height, whether capable or non-capable, will be cut back to ground level and resulting slash will be managed in accordance with Maine's Slash Law. No other vegetation, other than dead or hazard trees, will be removed. Within the riparian filter area and outside of the wire zone, non-capable species may be allowed to exceed 10 feet in height unless it is determined that they may encroach into the conductor safety zone prior to the next maintenance cycle. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and must not exceed a three-year cycle within any particular area within this segment, without prior approval from the Department. Vegetation maintenance within other segments will be on an approximately four-year cycle.
- Removal of capable species, dead or hazard trees within the appropriate riparian filter area will typically be accomplished by hand-cutting. Use of mechanized harvesting equipment is allowed if supported by construction matting or during frozen conditions in a manner (i.e., use of travel lanes and reach-in techniques) that preserves non-capable vegetation less than 10 feet in height to the greatest extent practicable; within the wire zone, all woody vegetation may be cut to ground level.
- Any construction access roads that must cross streams or brooks must be designed, constructed, and maintained to minimize erosion and sedimentation.

Appendix D Sound Level Requirements

**Table D-1
New Equipment Sound Level Requirements**

Sound Level Requirement		Source
Merrill Road Converter Station		
Reactor/Valve Building (1) Transformers (4) Radiators (10)	66 dBA (SPL) at 3 feet 90 dBA (SWL) per transformer 80 dBA (SWL) per radiator	Site Law Application, Table 5-8
Larrabee Road Substation		
New Autotransformer (3)	82 dBA (SPL) at 3 feet	Site Law Application, Table 5-11
Fickett Road Substation		
Transformer (2) Air Core Reactor – D1 (3) Air Core Reactor – CA1 (3) Capacitor Bank (3) Dry Air Cooler (5) HVAC Fans (2)	91 dBA (SWL) 74 dBA (SWL) 64 dBA (SWL) 71 dBA (SWL) 80 dBA (SWL) 80 dBA (SWL)	Site Law Application, Table 5-15
Coopers Mills Substation		
Transformer (2) Air Core Reactor – D1 (3) Air Core Reactor – CA1 (3) Capacitor Bank (3) Dry Air Cooler (5) HVAC Fans (2)	91 dBA (SWL) 74 dBA (SWL) 64 dBA (SWL) 71 dBA (SWL) 80 dBA (SWL) 80 dBA (SWL)	Site Law Application, Table 5-19
Raven Farm Substation		
Transformer	75 dBA at 6 feet	Raven Farm Substation Sound Study (5/17/18), Table 6-1

Notes:

SPL – Sound Pressure Level, averaged along acoustical envelope

SWL – Sound Power Level

**Appendix E
 Waterbody Crossing Table**

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Beattie Twp	ISTR-01-02	Trib. to West Branch Mill Brook	2	INT	N	Y	439	Y	3
1	Skinner Twp	ISTR-08-01	Trib. to West Branch Moose River	4	INT	N	Y	382	Y	20, 21
1	Appleton Twp	WB-16-101	Water body assoc. with trib. to Gold Brook	30	Open Water	N	Y	131	N	3 7
1	Bradstreet Twp	ISTR-24-01	Trib. to Bitter Brook	2	INT	N	N/A	435	Y	5 6
1	Johnson Mountain Twp	ISTR-39-01	Trib. to Cold Stream	4	INT	N	Y	220	N	8 9
1	Johnson Mountain Twp	ISTR-39-03	Trib. to East Branch Salmon Stream	4	INT	N	N/A	274	N	8 8
1	Johnson Mountain Twp	ISTR-42-09	Trib. to Tomhegan Stream	5	INT	N	Y	133	N	9 4
1	West Forks Plt	ISTR-45-02-02	Trib. to Tomhegan Stream	3	INT	N	Y	317	N	10 0
1	West Forks Plt	ISTR-46-05	Trib. to Cold Stream	4	INT	N	Y	43	N	10 3
1	West Forks Plt	ISTR-48-02	Trib. To Kennebec River	3	INT	N	N/A	89	N	108, 109
1	Moxie Gore	ISTR-49-01	Trib. to Moxie Stream	5	INT	N	Y	375	N	11 1
1	Moxie Gore	ISTR-51-07	Trib. to Moxie Stream	2	INT	N	N/A	269	N	11 4
1	Moxie Gore	ISTR-51-15	Trib. to Moxie Stream	1.5	INT	N	N/A	353	N	11 5

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Moxie Gore	ISTR-51-16	Trib. to Moxie Stream	3	INT	N	N/A	320	N	11 5
1	The Forks Plt	ISTR-52-07	Trib. to Moxie Stream	3	INT	N	N/A	394	N	11 6
1	Moxie Gore/The Forks Plt	ISTR-52-08	Trib. to Moxie Stream	1	INT	N	N/A	227	N	11 6
1	The Forks Plt	ISTR-52-12	Trib. to Moxie Stream	2	INT	N	N/A	258	N	116, 117
1	Appleton Twp	ISTR-RR-11-01	Trib. to Bog Brook	5	INT	N	Y	517	N	2 7
1	Appleton Twp/Skinner Twp	ISTR-RR-11-3-RR1	Trib. to Bog Brook	3	INT	N	Y	328	N	2 7
1	Appleton Twp/Skinner Twp	ISTR-RR1-1	Trib. to Bog Brook	5	INT	N	Y	348	N	2 7
1	Appleton Twp	ISTR-RR1-2	Trib. to Bog Brook	2	INT	N	Y	230	N	2 7
1	Beattie Twp	PSTR-00-10	Trib. to West Branch Mill Brook	3	PER	N	Y	21	N	3
1	Skinner Twp	PSTR-09-11	South Branch Moose River	46	PER	N	Y	524	N	2 1
1	Appleton Twp	PSTR-11-07-RR1	Trib. to Bog Brook	6	PER	N	Y	378	N	2 7
1	Appleton Twp	PSTR-11-08-RR1	Trib. to Bog Brook	4	PER	N	Y	353	N	2 7
1	Appleton Twp	PSTR-15-06	Gold Brook	25	PER	N	Y	187	N	3 6
1	Appleton Twp	PSTR-17R-03	Baker Stream	12	PER	N	Y	159	N	3 9
1	T5 R7 BKP WKR	PSTR-23-02	Whipple Brook	60	PER	N	Y	128	N	5 2
1	Bradstreet Twp	PSTR-24-03	Bitter Brook	45	PER	N	Y	462	N	5 5

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Johnson Mountain Twp	PSTR-39-02	Trib. to Cold Stream	2	PER	N	Y	128	N	88, 89
1	Appleton Twp	PSTR-RR1-3	Trib. to Bog Brook	4	PER	N	Y	389	Y	27
1	West Forks Plt/Moxie Gore	PSTR-48-03	Kennebec River	300	PER	N	Y	399	N	109
1	Moxie Gore	STRM-50-01	Moxie Stream	80	PER	N	Y	401	N	113
1	Moxie Gore	ISTR-50-02	Trib. to Moxie Stream	1.5	INT	N	Y	37	N	113
1	Moxie Gore	ISTR-51-01	Trib. to Moxie Stream	80	INT	N	Y	331	N	113
1	Moxie Gore	ISTR-51-02	Trib. to Moxie Stream	5	INT	N	Y	279	N	113
1	Moxie Gore	ISTR-51-03	Trib. to Moxie Stream	4	INT	N	Y	292	N	113
1	Moxie Gore	ISTR-51-04	Trib. to Moxie Stream	2	INT	N	Y	325	N	113
1	Moxie Gore	ISTR-51-05	Trib. to Moxie Stream	8	INT	N	Y	361	N	113
1	Moxie Gore	ISTR-51-06	Trib. to Moxie Stream	3	INT	N	Y	383	N	113, 114
1	Moxie Gore	ISTR-51-08	Trib. to Moxie Stream	1.5	INT	N	Y	244	N	114, 115
1	Moxie Gore	ISTR-51-09	Trib. to Moxie Stream	3	INT	N	Y	267	N	114, 115
1	Moxie Gore	ISTR-51-10	Trib. to Moxie Stream	6	INT	N	Y	312	N	114, 115

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Moxie Gore	ISTR-51-11	Trib. to Moxie Stream	4	INT	N	Y	307	N	114, 115
1	Moxie Gore	ISTR-51-12	Trib. to Moxie Stream	3	INT	N	Y	522	N	114, 115
1	Moxie Gore	ISTR-51-13	Trib. to Moxie Stream	6	INT	N	Y	333	N	115
1	Moxie Gore	ISTR-51-14	Trib. to Moxie Stream	5	INT	N	Y	3	N	115
1	Moxie Gore	ISTR-51-17	Trib. to Moxie Stream	2	INT	N	Y	235	N	115
1	Moxie Gore	ISTR-51-18	Trib. to Moxie Stream	2	INT	N	Y	226	N	115
1	Moxie Gore	ISTR-51-19	Trib. to Moxie Stream	2	INT	N	Y	251	N	115
1	Moxie Gore	ISTR-51-20	Trib. to Moxie Stream	1.5	INT	N	Y	215	N	115
1	Moxie Gore	ISTR-51-21	Trib. to Moxie Stream	3	INT	N	Y	416	N	115
1	Moxie Gore	ISTR-52-01	Trib. to Moxie Stream	5	INT	N	Y	337	N	115, 116
1	Moxie Gore	ISTR-52-02	Trib. to Moxie Stream	3	INT	N	Y	317	N	115, 116
1	Moxie Gore	ISTR-52-03	Trib. to Moxie Stream	3	INT	N	Y	295	N	115, 116
1	Moxie Gore	ISTR-52-04	Trib. to Moxie Stream	5	INT	N	Y	304	N	116
1	Moxie Gore	ISTR-52-05	Trib. to Moxie Stream	5	INT	N	Y	299	N	116

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Moxie Gore	ISTR-52-06	Trib. to Moxie Stream	2	INT	N	Y	379	N	116
1	The Forks Plt	ISTR-52-09	Trib. to Moxie Stream	2	INT	N	Y	192	N	116
1	The Forks Plt	ISTR-52-10	Trib. to Moxie Stream	3	INT	N	Y	62	N	116, 117
1	The Forks Plt	ISTR-52-11	Trib. to Moxie Stream	4	INT	N	Y	195	N	116, 117
1	The Forks Plt	ISTR-52-13	Trib. to Moxie Stream	8	INT	N	Y	518	N	117
1	The Forks Plt	ISTR-52-14	Trib. to Moxie Stream	6	INT	N	Y	419	N	117
1	The Forks Plt	ISTR-52-15	Trib. to Moxie Stream	5	INT	N	Y	486	N	117
1	The Forks Plt	ISTR-52-16	Trib. to Moxie Stream	2	INT	N	Y	288	N	117
1	The Forks Plt	ISTR-52-17	Trib. to Moxie Stream	2	INT	N	Y	399	N	117
1	Beattie Twp	ISTR-00-07	Trib. to West Branch Mill Brook	1	INT	N	Y	408	N	1
1	Beattie Twp	ISTR-01-11	Trib. to Mill Brook	1	INT	N	Y	644	N	5
1	Skinner Twp	ISTR-05-05	Trib. to Smart Brook	1	INT	N	Y	103	N	13
1	Skinner Twp	ISTR-10-04	Trib. to Bog Brook	1	INT	N	Y	108	N	25
1	Appleton Twp	ISTR-12-02	Trib. to Bog Brook	1	INT	N	Y	510	N	29
1	Appleton Twp	ISTR-12-12	Trib. to Bog Brook	1	INT	N	Y	348	N	30

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Appleton Twp	ISTR-14-11	Trib. to Gold Brook	1	INT	N	Y	293	N	34
1	Johnson Mountain Twp	ISTR-41-02	Trib. to Tomhegan Stream	1	INT	N	Y	484	Y	94
1	Johnson Mountain Twp	ISTR-41-04	Trib. to Cold Stream	2	PER	N	Y	342	N	92, 93
1	Beattie Twp	ISTR-01-12	Trib. to Mill Brook	1.5	INT	N	Y	668	N	5
1	Beattie Twp	ISTR-02-09	Trib. to Number One Brook	1.5	INT	N	Y	464	N	7
1	Skinner Twp	ISTR-05-09	Trib. to Smart Brook	1.5	INT	N	Y	99	N	12
1	Skinner Twp	ISTR-06-04	Trib. to Smart Brook	1.5	INT	N	Y	52	N	16
1	Appleton Twp	ISTR-12-09	Trib. to Bog Brook	1.5	INT	N	Y	368	N	28
1	Appleton Twp	ISTR-12-11	Trib. to Bog Brook	1.5	INT	N	Y	321	N	30
1	Appleton Twp	ISTR-14-37	Trib. to Barrett Brook	1.5	INT	N	Y	416	N	33
1	Johnson Mountain Twp	ISTR-33-02	Trib. to Mountain Brook	1.5	INT	N	N/A	214	N	76
1	Johnson Mountain Twp	ISTR-36-05	Trib. to Salmon Stream	1.5	INT	N	N/A	393	N	83
1	Johnson Mountain Twp	ISTR-38-11	Trib. to East Branch Salmon Stream	1.5	INT	N	N/A	144	N	85, 86
1	Johnson Mountain Twp	ISTR-38-13	Trib. to East Branch Salmon Stream	1.5	INT	N	N/A	206	N	85, 86
1	Johnson Mountain Twp	ISTR-38-14	Trib. to East Branch Salmon Stream	1.5	INT	N	N/A	82	N	85, 86

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Beattie Twp	ISTR-02-13	Trib. to Number One Brook	2	INT	N	Y	115	N	7
1	Skinner Twp	ISTR-05-03	Trib. to Smart Brook	2	INT	N	Y	40	Y	13
1	Skinner Twp	ISTR-05-04	Trib. to Smart Brook	2	INT	N	Y	58	N	13
1	Skinner Twp	ISTR-05-10	Trib. to Smart Brook	2	INT	N	Y	336	N	12
1	Skinner Twp	ISTR-06-01	Trib. to Smart Brook	2	INT	N	Y	331	N	16
1	Skinner Twp	ISTR-06-02	Trib. to Smart Brook	2	INT	N	Y	361	N	16
1	Skinner Twp	ISTR-06-03	Trib. to Smart Brook	2	INT	N	Y	249	N	16
1	Skinner Twp	ISTR-06-07	Trib. to Smart Brook	2	INT	N	Y	277	Y	15, 16
1	Skinner Twp	ISTR-07-03	Trib. to West Branch Moose River	2	INT	N	Y	133	N	18
1	Skinner Twp	ISTR-07-04	Trib. to West Branch Moose River	2	INT	N	Y	365	N	18
1	Skinner Twp	ISTR-07-08	Trib. to Hay Bog Brook	2	INT	N	N/A	169	N	17
1	Skinner Twp	ISTR-09-03	Trib. to South Branch Moose River	2	INT	N	Y	549	N	22
1	Skinner Twp	ISTR-09-04	Trib. to South Branch Moose River	2	INT	N	Y	267	N	22

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Skinner Twp	ISTR-09-07	Trib. to South Branch Moose River	2	INT	N	Y	271	N	22, 23
1	Skinner Twp	ISTR-09-08	Trib. to South Branch Moose River	2	INT	N	Y	235	N	23
1	Skinner Twp	ISTR-09-09	Trib. to South Branch Moose River	2	INT	N	Y	183	N	22
1	Skinner Twp	ISTR-10-09	Trib. to Bog Brook	2	INT	N	Y	60	N	25
1	Appleton Twp	ISTR-12-01	Trib. to Bog Brook	2	INT	N	Y	451	N	29
1	Appleton Twp	ISTR-12-05	Trib. to Bog Brook	2	INT	N	Y	380	N	29, 30
1	Appleton Twp	ISTR-13-01	Trib. to Barrett Brook	2	INT	N	Y	166	N	32
1	Appleton Twp	ISTR-13-02	Trib. to Barrett Brook	2	INT	N	Y	149	N	32
1	Appleton Twp	ISTR-13-08	Trib. to Barrett Brook	2	INT	N	Y	485	N	31
1	Appleton Twp	ISTR-13-10	Trib. to Barrett Brook	2	INT	N	Y	90	N	31
1	Appleton Twp	ISTR-13-15	Trib. to Bog Brook	2	INT	N	Y	242	Y	30, 31
1	Appleton Twp	ISTR-13-16	Trib. to Bog Brook	2	INT	N	Y	257	N	30, 31
1	Appleton Twp	ISTR-14-03	Trib. to Gold Brook	2	INT	N	Y	205	N	34
1	Appleton Twp	ISTR-14-04	Trib. to Gold Brook	2	INT	N	Y	170	N	34

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Appleton Twp	ISTR-14-05	Trib. to Gold Brook	2	INT	N	Y	284	N	34
1	Appleton Twp	ISTR-14-08	Trib. to Gold Brook	2	INT	N	Y	194	N	34
1	Appleton Twp	ISTR-14-09	Trib. to Gold Brook	2	INT	N	Y	173	N	34
1	Appleton Twp	ISTR-14-10	Trib. to Gold Brook	2	INT	N	Y	120	N	34
1	Appleton Twp	ISTR-14-23	Trib. to Barrett Brook	2	INT	N	Y	443	N	33
1	Appleton Twp	ISTR-14-27	Trib. to Barrett Brook	2	INT	N	Y	339	N	33
1	Appleton Twp	ISTR-14-45	Trib. to Barrett Brook	2	INT	N	Y	512	N	33
1	Appleton Twp	ISTR-14-46	Trib. to Barrett Brook	2	INT	N	Y	639	N	33
1	Appleton Twp	ISTR-14-51	Trib. to Barrett Brook	2	INT	N	Y	114	N	33
1	Appleton Twp	ISTR-14-62	Trib. to Barrett Brook	2	INT	N	Y	206	Y	32
1	Appleton Twp	ISTR-14-66	Trib. to Barrett Brook	2	INT	N	Y	512	N	32
1	Appleton Twp	ISTR-15-02	Trib. to Gold Brook	2	INT	N	Y	178	Y	35
1	Appleton Twp	ISTR-15-05	Trib. to Gold Brook	2	INT	N	Y	12	N	35
1	Appleton Twp	ISTR-15-09	Trib. to Gold Brook	2	INT	N	Y	223	N	36
1	Appleton Twp	ISTR-15-12	Trib. to Gold Brook	2	INT	N	Y	297	N	36
1	Appleton Twp	ISTR-15-18	Trib. to Gold Brook	2	INT	N	Y	382	N	34
1	Appleton Twp	ISTR-16-16	Trib. to Gold Brook	2	INT	N	Y	52	N	37

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Appleton Twp	ISTR-17-04	Trib. To Rock Pond	2	INT	N	N/A	424	N	40
1	Appleton Twp	ISTR-17R-05	Trib. To Rock Pond	2	INT	N	N/A	554	N	40
1	Parlin Pond Twp	ISTR-30-02	Trib. to Piel Brook	2	INT	N	Y	227	N	69
1	Johnson Mountain Twp	ISTR-35-02	Trib. to Salmon Stream	2	INT	N	N/A	423	N	80
1	Johnson Mountain Twp	ISTR-36-01	Trib. to Salmon Stream	2	INT	N	N/A	379	N	83
1	Johnson Mountain Twp	ISTR-36-04	Trib. to Salmon Stream	2	INT	N	N/A	440	N	83
1	Johnson Mountain Twp	ISTR-38-01	Trib. to East Branch Salmon Stream	2	INT	N	N/A	213	N	87
1	Johnson Mountain Twp	ISTR-38-08	Trib. to East Branch Salmon Stream	2	INT	N	N/A	131	N	86
1	Johnson Mountain Twp	ISTR-38-12	Trib. to East Branch Salmon Stream	2	INT	N	N/A	99	N	85, 86
1	Johnson Mountain Twp	ISTR-41-04	Trib. to Cold Stream	2	INT	N	Y	140	N	92, 93
1	Johnson Mountain Twp	ISTR-42-10	Trib. to Tomhegan Stream	2	INT	N	Y	124	N	94
1	Appleton Twp	ISTR-RR-11-03	Trib. to Bog Brook	2	INT	N	Y	343	N	27
1	Appleton Twp	ISTR-RR-12-01	Trib. to Bog Brook	2	INT	N	Y	174	N	27, 28
1	Bradstreet Twp	ISTR-SR-29-03	Trib. To Fourmile Brook	2	INT	N	N/A	174	N	66

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Appleton Twp	PSTR-14-28	Trib. to Barrett Brook	2	PER	N	Y	142	Y	33
1	Appleton Twp	PSTR-14-34	Trib. to Barrett Brook	2	PER	N	Y	257	N	33
1	Johnson Mountain Twp	PSTR-40-08	Trib. to Cold Stream	2	PER	N	Y	353	N	91
1	Johnson Mountain Twp	PSTR-40-09	Trib. to Cold Stream	2	PER	N	Y	300	N	91
1	Beattie Twp	ISTR-01-10	Trib. to Mill Brook	2.5	INT	N	Y	663	N	5
1	Skinner Twp	ISTR-05-08	Trib. to Smart Brook	2.5	INT	N	Y	163	N	12
1	Johnson Mountain Twp	ISTR-36-02	Trib. to Salmon Stream	2.5	INT	N	N/A	254	Y	82, 83
1	Johnson Mountain Twp	ISTR-37-01	Trib. to East Branch Salmon Stream	2.5	INT	N	N/A	223	N	84
1	Beattie Twp	ISTR-MS-02-10	Trib. to Number One Brook	2.5	INT	N	Y	272	N	7
1	Beattie Twp	PSTR-01-09	Trib. To Mill Brook	2.5	PER	N	Y	726	N	5
1	Beattie Twp	ISTR-00-01	Trib. to West Branch Mill Brook	3	INT	N	Y	402	N	1
1	Beattie Twp	ISTR-00-08	Trib. to West Branch Mill Brook	3	INT	N	Y	176	N	1
1	Beattie Twp	ISTR-02-04	Trib. to Number One Brook	3	INT	N	Y	310	N	7
1	Beattie Twp	ISTR-02-08	Trib. to Number One Brook	3	INT	N	Y	429	N	7

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Skinner Twp	ISTR-05-06	Trib. to Smart Brook	3	INT	N	Y	328	N	12, 13
1	Skinner Twp	ISTR-05-07	Trib. to Smart Brook	3	INT	N	Y	454	N	12, 13
1	Skinner Twp	ISTR-06-05	Trib. to Smart Brook	3	INT	N	Y	152	Y	16
1	Skinner Twp	ISTR-06-08	Trib. to Smart Brook	3	INT	N	Y	65	N	15
1	Skinner Twp	ISTR-07-01	Trib. to West Branch Moose River	3	INT	N	Y	73	N	18, 19
1	Skinner Twp	ISTR-07-07	Trib. to Hay Bog Brook	3	INT	N	N/A	417	N	17
1	Skinner Twp	ISTR-09-10	Trib. to South Branch Moose River	3	INT	N	Y	376	N	21, 22
1	Skinner Twp	ISTR-10-10	Trib. to Bog Brook	3	INT	N	Y	190	N	25
1	Appleton Twp	ISTR-12-04	Trib. to Bog Brook	3	INT	N	Y	408	N	29, 30
1	Appleton Twp	ISTR-14-06	Trib. to Gold Brook	3	INT	N	Y	287	N	34
1	Appleton Twp	ISTR-14-67	Trib. to Barrett Brook	3	INT	N	Y	361	Y	32
1	Appleton Twp	ISTR-15-10	Trib. to Gold Brook	3	INT	N	Y	257	N	36
1	Appleton Twp	PSTR-16-01	Trib. to Baker Stream	25	INT	N	Y	285	N	37
1	Appleton Twp	ISTR-17-02	Trib. to Baker Stream	3	INT	N	N/A	20	Y	39
1	T5 R7 BKP WKR	ISTR-18-08	Trib. to Fish Pond	3	INT	N	N/A	429	N	41, 42
1	T5 R7 BKP WKR/Hobbstown Twp	ISTR-18-11	Trib. to Fish Pond	3	INT	N	N/A	405	N	42

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Bradstreet Twp	ISTR-26-03	Trib. to Horse Brook	3	INT	N	N/A	60	N	60
1	Bradstreet Twp	ISTR-26-04	Trib. to Horse Brook	3	INT	N	N/A	45	N	60
1	Johnson Mountain Twp	ISTR-38-03	Trib. to East Branch Salmon Stream	3	INT	N	N/A	528	N	87
1	Johnson Mountain Twp	ISTR-38-07	East Branch Salmon Stream	3	INT	N	N/A	115	N	86, 87
1	Johnson Mountain Twp	ISTR-42-08	Trib. to Tomhegan Stream	3	INT	N	Y	221	N	94
1	West Forks Plt	ISTR-44-08	Tomhegan Stream	3	INT	N	Y	231	N	100
1	West Forks Plt	ISTR-45-04	Trib. to Tomhegan Stream	3	INT	N	Y	311	N	100, 101
1	Beattie Twp	ISTR-MS-02-08	Trib. to Number One Brook	3	INT	N	Y	359	N	7
1	Beattie Twp	ISTR-MS-02-09	Trib. to Number One Brook	3	INT	N	Y	359	N	7
1	Skinner Twp	ISTR-RR-11-04	Trib. to Bog Brook	3	INT	N	Y	8	N	26
1	Beattie Twp	PSTR-00-06	Trib. to West Branch Mill Brook	3	PER	N	Y	398	N	1
1	Appleton Twp	PSTR-16-10	Trib. to Gold Brook	3	PER	N	Y	313	N	37
1	Appleton Twp	PSTR-16-101	Trib. to Gold Brook	3	PER	N	Y	226	N	37
1	T5 R7 BKP WKR	PSTR-18-15	Trib. to Fish Pond	3	PER	N	Y	198	N	41

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Hobbstown Twp	PSTR-20-01	Trib. to Little Spencer Stream	3	PER	N	Y	443	N	46
1	T5 R7 BKP WKR	PSTR-23-01	Trib. to Whipple Brook	3	PER	N	Y	258	N	52
1	Bradstreet Twp	PSTR-26-05	Trib. to Horse Brook	3	PER	N	Y	298	N	60
1	West Forks Plt	PSTR-44-07	Tomhegan Stream	3	PER	N	Y	37	N	100
1	Beattie Twp	ISTR-MS-02-11	Trib. to Number One Brook	3.5	INT	N	Y	512	N	7
1	Beattie Twp	ISTR-02-01	Trib. to Number One Brook	4	INT	N	Y	505	N	7
1	Skinner Twp	ISTR-08-02	Trib. to West Branch Moose River	4	INT	N	Y	421	N	20, 21
1	Skinner Twp	ISTR-09-05	Trib. to South Branch Moose River	4	INT	N	Y	199	N	22, 23
1	Appleton Twp	ISTR-12-06	Trib. to Bog Brook	4	INT	N	Y	409	N	29, 30
1	Appleton Twp	ISTR-14-01	Trib. to Gold Brook	4	INT	N	Y	328	N	34
1	Appleton Twp	ISTR-16-04	Trib. to Gold Brook	4	INT	N	Y	465	N	37
1	Appleton Twp	ISTR-16-05	Trib. to Gold Brook	4	INT	N	Y	182	N	37
1	T5 R7 BKP WKR	ISTR-18-16	Trib. to Fish Pond	4	INT	N	Y	48	N	41
1	Johnson Mountain Twp	PSTR-31-02	Trib. to Piel Brook	3	INT	N	Y	214	N	68, 69

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Width of Additional Corridor Clearing ⁸ (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Johnson Mountain Twp	ISTR-38-05	Trib. to East Branch Salmon Stream	4	INT	N	N/A	72	150	Y	86, 87
1	Johnson Mountain Twp	ISTR-41-05	Trib. to Cold Stream	4	INT	N	Y	466	150	N	93
1	Johnson Mountain Twp	ISTR-42-02	Trib. to Tomhegan Stream	4	INT	N	Y	279	150	N	96
1	Johnson Mountain Twp	ISTR-42-13	Trib. To Little Wilson Hill Pond	4	INT	N	N/A	329	150	Y	94
1	West Forks Plt	ISTR-45-02	Trib. to Tomhegan Stream	4	INT	N	Y	281	150	N	100
1	Bradstreet Twp	ISTR-SRD1-28-03	Fourmile Brook	4	INT	N	N/A	5	150	Y	63
1	Skinner Twp	PSTR-05-02	Smart Brook	4	PER	N	Y	8	150	N	13
1	Skinner Twp	PSTR-09-06	Trib. to South Branch Moose River	4	PER	N	Y	100	150	N	22, 23
1	Appleton Twp	PSTR-14-30	Trib. to Barrett Brook	4	PER	N	Y	185	150	N	33
1	Appleton Twp	PSTR-14-36	Trib. to Barrett Brook	4	PER	N	Y	329	150	N	33
1	Appleton Twp	PSTR-14-68	Trib. to Barrett Brook	4	PER	N	Y	109	150	Y	32
1	Appleton Twp	PSTR-15-04	Trib. to Gold Brook	4	PER	N	Y	93	150	N	35, 36
1	Appleton Twp	PSTR-16-14	Trib. to Gold Brook	4	PER	N	Y	176	150	N	37
1	T5 R7 BKP WKR/Hobbs town Twp	PSTR-18-06	Trib. to Fish Pond	4	PER	N	Y	527	150	N	42

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Johnson Mountain Twp	PSTR-38-02	Trib. to East Branch Salmon Stream	4	PER	N	Y	441	N	87
1	Johnson Mountain Twp	PSTR-38-15	Trib. to East Branch Salmon Stream	4	PER	N	Y	146	N	85
1	West Forks Plt	PSTR-44-09	Tomhegan Stream	4	PER	N	Y	440	N	100
1	Bradstreet Twp	PSTR-SR-29-05	Trib. to Piel Brook	4	PER	N	Y	213	N	66, 67
1	Johnson Mountain Twp	ISTR-31-01	Trib. to Piel Brook	5	INT	N	Y	388	N	68
1	Johnson Mountain Twp	ISTR-32-01	Trib. to Piel Brook	5	INT	N	Y	198	N	74
1	Johnson Mountain Twp	ISTR-32-02	Trib. to Piel Brook	5	INT	N	Y	163	N	74
1	Johnson Mountain Twp	ISTR-42-07	Trib. to Tomhegan Stream	5	INT	N	Y	177	N	94
1	Johnson Mountain Twp	ISTR-EM-33-01	Trib. To Twomile Brook	5	INT	N	N/A	170	N	75
1	Johnson Mountain Twp	ISTR-EM-34-03	Trib. To Mountain	5	INT	N	N/A	58	N	77
1	Johnson Mountain Twp	ISTR-EM-34-05	Trib. To Mountain	5	INT	N	N/A	142	N	77
1	Appleton Twp	PSTR-14-24	Trib. to Barrett Brook	5	PER	N	Y	255	Y	33
1	Appleton Twp	PSTR-14-47	Trib. to Barrett Brook	5	PER	N	Y	509	N	33
1	T5 R7 BKP WKR/Hobbstown Twp	PSTR-18-05	Trib. to Fish Pond	5	PER	N	Y	421	Y	42

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	T5 R7 BKP WKR	PSTR-21-02	Trib. to Little Spencer Stream	5	PER	N	Y	454	N	48, 49
1	T5 R7 BKP WKR	PSTR-21-2A	Trib. to Little Spencer Stream	5	PER	N	Y	544	N	48, 49
1	Johnson Mountain Twp	PSTR-40-07	Trib. to Cold Stream	5	PER	N	Y	268	N	91, 92
1	West Forks Plt	PSTR-44-05	Tomhegan Stream	5	PER	N	Y	278	N	100
1	West Forks Plt	PSTR-44-06	Tomhegan Stream	5	PER	N	Y	167	N	100
1	West Forks Plt	PSTR-45-03	Trib. to Tomhegan Stream	5	PER	N	Y	7	Y	100
1	Bradstreet Twp	PSTR-SRD1-02	Trib. to Piel Brook	5	PER	N	Y	274	N	66
1	West Forks Plt	PSTR-45-3	Tomhegan Stream	6	PER	N	Y	249	N	100
1	Skinner Twp	PSTR-05-01	Smart Brook	6	PER	N	N/A	80	N	13
1	Skinner Twp	PSTR-07-02	Trib. to West Branch Moose River	6	PER	N	Y	54	N	18
1	Skinner Twp	PSTR-08-04	Trib. to West Branch Moose River	6	PER	N	Y	27	Y	20
1	Appleton Twp	PSTR-11-07	Trib. to Bog Brook	6	PER	N	Y	583	N	27
1	Appleton Twp	PSTR-14-49	Trib. to Barrett Brook	6	PER	N	Y	458	N	33
1	Johnson Mountain Twp	PSTR-38-06	Trib. to East Branch Salmon Stream	6	PER	N	Y	8	Y	86, 87

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Johnson Mountain Twp	PSTR-38-10	Trib. to East Branch Salmon Stream	6	PER	N	Y	41	N	86
1	Merrill Strip Twp/Beattie Twp	PSTR-LT-1	Trib. to Number One Brook	6	PER	N	Y	190	Y	10
1	Appleton Twp	PSTR-14-33	Trib. to Barrett Brook	7	PER	N	Y	298	N	33
1	Bradstreet Twp	ISTR-27-02	Trib. To Fourmile Brook	8	INT	N	N/A	233	N	61, 62
1	T5 R7 BKP WKR	PSTR-18-14	Trib. to Fish Pond	8	PER	N	Y	123	N	41
1	Johnson Mountain Twp	PSTR-31-06	Trib. to Piel Brook	8	PER	N	Y	100	Y	71
1	Bradstreet Twp	PSTR-SRD1-28-04	Fourmile Brook	8	PER	N	Y	17	N	63
1	Johnson Mountain Twp	PSTR-EM-34-01	Mountain Brook	9	PER	N	Y	31	N	76
1	Appleton Twp	PSTR-12-07	Trib. to Bog Brook	10	PER	N	Y	264	N	28
1	Appleton Twp	PSTR-16-07	Trib. to Gold Brook	10	PER	N	Y	178	N	37
1	Bradstreet Twp	PSTR-26-01	Trib. to Moose River	10	PER	N	Y	326	N	59
1	Johnson Mountain Twp	PSTR-31-SRD2-01	Piel Brook	0	PER	N	Y	239	N	70
1	West Forks Plt	PSTR-45-01	Trib. to Cold stream	10	PER	N	Y	150	N	102
1	West Forks Plt	PSTR-46-04	Trib. To Kennebec River	10	PER	N	Y	201	N	104
1	Appleton Twp	PSTR-11-07-RR1	Trib. to Bog Brook	6	PER	N	Y	583	N	27

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Johnson Mountain Twp	PSTR-SR-31-01	Piel Brook	10	PER	N	Y	219	N	70
1	Bradstreet Twp	PSTR-SRD1-28-01	Fourmile Brook	10	PER	N	Y	6	N	63
1	T5 R7 BKP WKR/Hobbstown Twp	PSTR-21-03	Trib. to Little Spencer Stream	12	PER	N	Y	221	N	48
1	Bradstreet Twp	ISTR-30-01	Piel Brook	1	PER	N	Y	261	N	
1	Johnson Mountain Twp	ISTR-35-02	Trib. to Salmon Stream	2	PER	N	N/A	524	N	80
1	Appleton Twp	ISTR-15-07	Gold Brook	15	INT	N	Y	248	N	36
1	Beattie Twp	PSTR-01-05	Mill Brook	15	PER	N	Y	612	N	4
1	Skinner Twp	PSTR-11-01	Trib. to Bog Brook	15	PER	N	Y	125	N	26
1	Appleton Twp	PSTR-17R-04	Baker Stream	15	PER	N	Y	390	N	39
1	West Forks Plt	PSTR-44-01 (TOB)	Tomhegan Stream	15	PER	N	Y	414	N	100
1	West Forks Plt	PSTR-44-01 EAST	Tomhegan Stream	15	PER	N	Y	290	N	100
1	West Forks Plt	PSTR-44-01 WEST	Tomhegan Stream	15	PER	N	Y	301	N	99, 100
1	West Forks Plt	PSTR-44-02	Tomhegan Stream	15	PER	N	Y	355	N	100
1	West Forks Plt	PSTR-44-04	Tomhegan Stream	15	PER	N	Y	228	N	100
1	Johnson Mountain Twp	PSTR-33-01	Mountain Brook	18	PER	N	Y	33	N	76
1	Appleton Twp	PSTR-17-07	Baker Stream	20	PER	N	Y	354	N	39
1	Appleton Twp	PSTR-16-01	Gold Brook	25	PER	N	Y	32	N	37
1	T5 R7 BKP WKR/Hobbstown Twp	PSTR-21-04	Little Spencer Stream	25	PER	N	Y	358	N	48

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
1	Johnson Mountain Twp	PSTR-40-06	Cold Stream	25	PER	N	Y	391	N	91
1	Bradstreet Twp	PSTR-25-01	Horse Brook	30	PER	N	Y	119	Y	58
1	Johnson Mountain Twp	PSTR-42-03 (TOB)	Trib. to Tomhegan Stream	40	PER	N	Y	121	N	95
2	Bald Mountain Twp T2 R3	ISTR-60-08	Trib. to Joes Hole	2	INT	N	N/A	212	N	133
2	Moscow	ISTR-71-101	Trib. to Austin Stream	1	INT	N	N/A	120	N	158
2	Moscow	ISTR-72-101	Trib. to Chase Stream	3	INT	N	N/A	228	N	159, 160
2	Moscow	ISTR-72-102	Trib. to Chase Stream	3	INT	N	N/A	405	N	159
2	Moscow	ISTR-72-106	Trib. to Chase Stream	2	INT	N	N/A	209	N	160
2	Moscow	ISTR-73-02	Mink Brook	1.5	INT	N	Y	416	N	161
2	Moscow	ISTR-73-03	Mink Brook	2	INT	N	Y	574	N	
2	Moscow	ISTR-73-05	Trib. to Mink Brook	2	INT	N	Y	15	Y	161, 162
2	Moscow	ISTR-73-06	Trib. to Mink Brook	3	INT	N	N/A	20	Y	162
2	Moscow	ISTR-73-07	Mink Brook	3	INT	N	Y	341	N	
2	Moscow	ISTR-73-08	Trib. to Austin Stream	2	INT	N	N/A	461	N	163
2	Bald Mountain Twp T2 R3	POND-59-05	Joes Hole	100	Open Water	N	Y	118	N	131, 132
2	Bald Mountain Twp T2 R3	POND-60-01	Joes Hole	180	Open Water	N	Y	109	N	133, 134
2	The Forks Plt	ISTR-54-01	Trib. to Moxie Pond	9	PER	N	Y	397	N	120

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
2	Moscow	PSTR-71-102	Trib. to Austin Stream	4	PER	N	Y	378	N	157
2	Moscow	PSTR-72-103	Chase Stream	30	PER	N	Y	1	Y	159, 160
2	Moscow	PSTR-72-104	Trib. to Chase Stream	3.5	PER	N	Y	40	N	159, 160
2	Moscow	PSTR-72-105	Trib. to Chase Stream	2	PER	N	Y	124	N	159, 160
2	Moscow	ISTR-73-01	Mink Brook	2	PER	N	Y	139	N	
2	Moscow	ISTR-73-04	Trib. to Mink Brook	2	PER	N	Y	21	N	
2	Moscow	PSTR-74-01	Trib. to Kennebec River	2	PER	N	Y	172	N	164, 165
2	Bald Mountain Twp T2 R3	ISTR-61-05	Trib. to Wild Brook	1	INT	N	N/A	295	N	136
2	The Forks Pt	ISTR-55-03	Trib. to Moxie Pond	1.5	INT	N	N/A	297	N	123
2	Moscow	ESTR-66-12	Trib. to Heald Stream	2	INT	N	N/A	520	N	148, 149
2	The Forks Pt	ISTR-53-01	Trib. to Moxie Pond	2	INT	N	N/A	59	N	119
2	The Forks Pt	ISTR-55-02	Trib. to Moxie Pond	2	INT	N	N/A	274	N	123
2	The Forks Pt	ISTR-56-03	Trib. to Moxie Pond	2	INT	N	N/A	442	N	125
2	Bald Mountain Twp T2 R3	ISTR-63-07	Trib. to Wild Brook	2	INT	N	N/A	467	N	141
2	Bald Mountain Twp T2 R3	PSTR-60-02	Trib. to Baker Stream	2	PER	N	Y	124	Y	135
2	Bald Mountain Twp T2 R3	ISTR-60-05	Trib. to Joes Hole	2.5	INT	N	N/A	119	N	134

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
2	Bald Mountain Twp T2 R3	ISTR-63-05	Trib. to Wild Brook	2.5	INT	N	N/A	446	N	140
2	Bald Mountain Twp T2 R3	ISTR-64-03	Trib. to Wild Brook	2.5	INT	N	N/A	368	N	142, 143
2	Moscow	ISTR-65-04	Trib. to Little Heald Brook	2.5	INT	N	Y	217	N	146
2	Bald Mountain Twp T2 R3	PSTR-60-07	Trib. to Joes Hole	2.5	PER	N	Y	314	N	133
2	Moscow	PSTR-65-03	Little Heald Stream	2.5	PER	N	Y	136	N	146
2	The Forks Plt	ISTR-54-02	Trib. to Moxie Pond	3	INT	N	Y	322	N	120
2	Bald Mountain Twp T2 R3	ISTR-62-01	Trib. to Wild Brook	3	INT	N	N/A	267	N	139
2	Bald Mountain Twp T2 R3	ISTR-62-02	Trib. to Wild Brook	3	INT	N	N/A	342	N	139
2	Bald Mountain Twp T2 R3	ISTR-62-03	Trib. to Wild Brook	3	INT	N	N/A	330	N	140
2	Bald Mountain Twp T2 R3	ISTR-63-08	Trib. to Wild Brook	3	INT	N	N/A	438	N	141
2	Bald Mountain Twp T2 R3	ISTR-63-09	Trib. to Wild Brook	3	INT	N	N/A	322	N	141
2	Bald Mountain Twp T2 R3	ISTR-64-05	Trib. to Wild Brook	3	INT	N	N/A	288	N	142
2	Moscow	ISTR-66-05	Heald Stream	3	INT	N	Y	454	N	147
2	Moscow	PSTR-65-01	Trib. to Little Heald Brook	3	PER	N	Y	119	Y	145
2	Bald Mountain Twp T2 R3	PSTR-61-08	Trib. to Baker Stream	3.5	PER	N	Y	191	N	136

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
2	Moscow	ISTR-66-07	Trib. to Heald Stream	4	INT	N	N/A	238	Y	147
2	Bald Mountain Twp T2 R3	PSTR-60-01	Trib. to Baker Stream	4	PER	N	Y	161	N	135
2	Bald Mountain Twp T2 R3	PSTR-63-06	Trib. to Wild Brook	4	PER	N	Y	333	N	141
2	Bald Mountain Twp T2 R3	PSTR-63-11	Trib. to Wild Brook	4	PER	N	Y	283	N	142
2	Bald Mountain Twp T2 R3	PSTR-64-06	Trib. to Wild Brook	4	PER	N	Y	118	Y	143
2	The Forks Plt	ISTR-57-02	Trib. to Mosquito Stream	5	INT	N	Y	532	N	127
2	Moscow	ISTR-66-08	Trib. to Heald Stream	5	INT	N	Y	416	N	148
2	Moscow	ISTR-66-09	Trib. to Heald Stream	5	INT	N	Y	3	Y	148
2	Moscow	ISTR-66-10	Trib. to Heald Stream	5	INT	N	Y	5	Y	148, 149
2	Bald Mountain Twp T2 R3	PSTR-60-06	Trib. to Joes Hole	5	PER	N	Y	316	N	133
2	Bald Mountain Twp T2 R3	PSTR-61-01	Wild Brook	5	PER	N	Y	511	Y	137
2	Bald Mountain Twp T2 R3	PSTR-64-02	Trib. to Wild Brook	5	PER	N	Y	413	N	142, 143
2	The Forks Plt	ISTR-55-01	Trib. to Moxie Pond	6	INT	N	Y	212	N	123
2	Bald Mountain Twp T2 R3	ISTR-59-02	Trib. to Little Sandy Stream	6	INT	N	Y	16	Y	131

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
2	Moscow	ISTR-66-06	Trib. to Heald Stream	6	INT	N	Y	258	Y	147
2	Moscow	ISTR-67-01	Trib. to Austin Stream	6	INT	N	Y	120	Y	149
2	Bald Mountain Twp T2 R3	PSTR-63-10	Trib. to Wild Brook	6	PER	N	Y	215	N	142
2	Moscow	ISTR-69-01	Trib. to Austin Stream	7	INT	N	Y	155	N	156, 157
2	Bald Mountain Twp T2 R3	PSTR-63-03	Wild Brook	7	PER	N	Y	380	N	140
2	Bald Mountain Twp T2 R3	PSTR-63-04	Wild Brook	7	PER	N	Y	284	N	140
2	Moscow	ISTR-72-107	Trib. to Chase Stream	8	INT	N	Y	66	Y	160
2	The Forks Plt	PSTR-57-01	Mosquito Stream	10	PER	N	Y	470	N	127
2	Bald Mountain Twp T2 R3	PSTR-59-01	Little Sandy Stream	15	PER	N	Y	107	Y	131
2	Moscow	PSTR-66-02	Heald Stream	15	PER	N	Y	459	N	146, 147
2	Moscow	PSTR-65-02	Little Heald Brook	25	PER	N	Y	82	N	146
3	Industry	ISTR-101-01	Trib. to Josiah Brook	5	INT	Y	Y	272	N	223
3	Industry	ISTR-101-02	Trib. to Josiah Brook	2	INT	Y	N/A	219	N	223
3	Industry	ISTR-102-01	Trib. to Josiah Brook	8	INT	Y	Y	294	N	225
3	Industry	ISTR-103-01	Trib. to Goodrich Brook	5	INT	Y	Y	349	N	229

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Industry	ISTR-103-02	Trib. to Goodrich Brook	1.5	INT	Y	N/A	302	N	229
3	Industry	ISTR-103-03	Trib. to Goodrich Brook	3	INT	Y	N/A	72	N	228, 229
3	Industry	ISTR-103-04	Trib. to Goodrich Brook	3	INT	Y	N/A	102	N	228, 229
3	Industry	ISTR-103-05	Trib. to Goodrich Brook	3	INT	Y	N/A	195	N	228
3	Industry	ISTR-103-06	Trib. to Goodrich Brook	1.5	INT	Y	N/A	375	N	228
3	Industry	ISTR-103-07	Trib. to Goodrich Brook	5	INT	Y	Y	330	N	228
3	Industry	ISTR-103-08	Trib. to Goodrich Brook	4	INT	Y	N/A	209	N	227, 228
3	Industry	ISTR-103-09	Trib. to Goodrich Brook	5	INT	Y	Y	274	N	227, 228
3	Farmington	ISTR-107-01	Trib. to Beales Brook	1.5	INT	Y	N/A	299	N	238
3	Farmington	ISTR-108-01	Trib. to Cascade Brook	3	INT	Y	N/A	200	N	240
3	Farmington	ISTR-108-02	Trib. to Cascade Brook	2.5	INT	Y	N/A	246	N	240
3	Farmington	ISTR-108-03	Trib. to Cascade Brook	1.5	INT	Y	N/A	275	N	240
3	Farmington	ISTR-108-04	Trib. to Cascade Brook	1	INT	Y	N/A	196	N	239
3	Farmington	ISTR-111-01	Trib. to Wilson Stream	2	INT	Y	N/A	162	N	246

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Jay	ISTR-114-02	Trib. to Wilson Stream	3	INT	Y	N/A	107	N	253
3	Chesterville	ISTR-114-03	Trib. to Wilson Stream	6	INT	Y	Y	349	Y	253
3	Jay	ISTR-116-02	Trib. To Sugar Brook	8	INT	Y	Y	140	Y	256
3	Jay	ISTR-117-01	Trib. to Fuller Brook	2	INT	Y	N/A	86	Y	259
3	Livermore Falls	ISTR-127-01	Trib. to Androscoggin River	10	INT	N	N/A	411	Y	280, 281
3	Leeds	ISTR-132-02	Trib. To Dead River	3	INT	N	N/A	277	N	292
3	Leeds	ISTR-135-04	Trib. to Allen Stream	4	INT	N	N/A	201	N	299
3	Concord Twp	ISTR-75-03	Trib. to Kennebec River	4	INT	N	N/A	287	Y	167
3	Concord Twp	ISTR-76-02	Trib. to Kennebec River	1	INT	N	N/A	251	N	
3	Concord Twp	ISTR-76-03	Trib. to Kennebec River	20	INT	N	Y	536	N	
3	Concord Twp	ISTR-76-04	Trib. to Kennebec River	2	INT	N	N/A	366	N	
3	Concord Twp	ISTR-76-05	Trib. to Kennebec River	15	INT	N	Y	247	N	
3	Concord Twp	ISTR-76-06	Trib. to Kennebec River	20	INT	N	Y	238	N	
3	Concord Twp	ISTR-77-03	Trib. to Kennebec River	2.5	INT	N	N/A	228	N	171
3	Concord Twp	ISTR-78-01	Trib. To Mill Stream	3	INT	N	N/A	204	Y	173

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Concord Twp	ISTR-78-02	Trib. To Mill Stream	3	INT	N	N/A	254	N	173
3	Concord Twp	ISTR-80-01	Trib. to Kennebec River	2	INT	N	N/A	480	N	177
3	Concord Twp	ISTR-80-02	Trib. to Kennebec River	3	INT	N	N/A	267	N	176
3	Concord Twp	ISTR-80-03	Trib. to Kennebec River	2	INT	N	N/A	93	N	176
3	Concord Twp	ISTR-80-04	Trib. to Kennebec River	1.5	INT	N	N/A	468	N	177
3	Concord Twp	ISTR-80-05	Trib. to Kennebec River	3	INT	N	N/A	247	N	177
3	Concord Twp	ISTR-81-01	Trib. to Kennebec River	4	INT	N	N/A	256	N	178, 179
3	Concord Twp	ISTR-81-02	Trib. to Kennebec River	4	INT	N	N/A	243	N	178, 179
3	Embden	ISTR-82-01	Trib. to Alder Brook	5	INT	N	Y	330	N	182, 183
3	Embden	ISTR-83-02	Trib. to Alder Brook	4	INT	N	N/A	429	N	184
3	Embden	ISTR-83-05	Trib. to Alder Brook	3	INT	N	Y	327	N	184
3	Embden	ISTR-83-06	Trib. to Alder Brook	2	INT	N	Y	281	Y	183, 184
3	Embden	ISTR-84-01	Trib. to Alder Brook	4	INT	N	N/A	312	N	185
3	Embden	ISTR-85-01	Jackin Brook	2	INT	N	Y	232	N	187
3	Starks	ISTR-96-07	Trib. to Pelton Brook	3	INT	Y	N/A	374	N	213
3	Starks	ISTR-96-08	Trib. to Pelton Brook	4	INT	Y	N/A	245	N	213

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Starks	ISTR-96-09	Trib. to Pelton Brook	2	INT	Y	N/A	251	N	213
3	Starks	ISTR-96-10	Trib. to Pelton Brook	5	INT	Y	Y	319	N	213
3	Starks	ISTR-96-11	Trib. to Pelton Brook	2	INT	Y	N/A	335	N	213
3	Starks	ISTR-96-12	Trib. to Pelton Brook	2	INT	Y	N/A	260	N	213
3	Starks	ISTR-97-02	Trib. to Pelton Brook	100	INT	Y	Y	460	N	214, 215
3	Starks	ISTR-97-03	Trib. to Pelton Brook	2.5	INT	Y	N/A	494	N	214, 215
3	Starks	ISTR-97-04	Trib. to Pelton Brook	3	INT	Y	N/A	341	N	214, 215
3	Starks	ISTR-97-06	Trib. to Cold Pond/Hilton Brook	4	INT	Y	N/A	533	N	216
3	Starks	ISTR-97-07	Trib. to Cold Pond/Hilton Brook	2	INT	Y	N/A	562	N	216
3	Starks	ISTR-98-01	Trib. to Lemon Stream	2	INT	Y	N/A	110	N	217, 218
3	Starks	ISTR-99-01	Trib. to Lemon Stream	2	INT	Y	Y	193	N	219
3	Lewiston	ISTR-PERRON-1	Trib. to Stetson Brook	0	INT	N	N/A	353	N	320
3	Farmington	PSTR-112-01	Trib. to Wilson Stream	2	PER	Y	Y	290	N	249

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Chester ville	PSTR-114-01	Trib. to Wilson Stream	8	PER	Y	Y	352	N	253
3	Chester ville	PSTR-114-04	Trib. to Wilson Stream	1	PER	Y	Y	354	N	252
3	Greene	PSTR-141-01	Trib. to Daggett Bog	3	PER	N	N/A	92	N	312
3	Moscow/ Concord Twp	ISTR-75-01	Kennebec River	3	PER	N	Y	218	N	
3	Concord Twp	ISTR-75-02	Trib. to Kennebec River	2	PER	N	Y	206	N	
3	Concord Twp	ISTR-76-01	Trib. to Kennebec River	0	PER	N	Y	192	N	
3	Concord Twp	PSTR-77-01	Trib. to Kennebec River	30	PER	N	Y	209	N	171
3	Concord Twp	PSTR-77-02	Trib. to Kennebec River	2	PER	N	Y	293	N	171
3	Embden	PSTR-83-01	Trib. to Alder Brook	6	PER	N	Y	364	Y	184
3	Embden	PSTR-83-03	Alder Brook	35	PER	N	Y	81	Y	183
3	Embden	PSTR-83-04	Alder Brook	8	PER	N	Y	615	N	184
3	Embden	PSTR-83-07	Trib. to Alder Brook	2.5	PER	N	Y	93	N	183
3	Embden	PSTR-83-08	Trib. to Alder Brook	6	PER	N	Y	107	N	182, 183
3	Anson	PSTR-89-01	Jackin Brook	4.5	PER	N	Y	348	N	196
3	Anson	PSTR-90-02	Carrabassett River	400	PER	N	Y	193	N	199, 200
3	Anson	PSTR-91-01	Gilbert Brook	190	PER	Y	N/A	242	N	201
3	Starks	PSTR-96-01	Trib. to Pelton Brook	20	PER	Y	Y	340	Y	212
3	Starks	PSTR-96-05	Pelton Brook	30	PER	Y	Y	300	N	213

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁵	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Starks	PSTR-97-01	Trib. to Pelton Brook	85	PER	Y	Y	125	Y	214
3	Starks	PSTR-97-05	Trib. to Cold Pond/Hilton Brook	20	PER	Y	Y	424	N	216
3	Starks	ISTR-100-01	Trib. To Meadow Brook	2	PER	Y	N/A	499	N	220
3	Starks	ISTR-100-02	Trib. To Meadow Brook	2	INT	Y	N/A	454	N	221
3	Starks	ISTR-100-03	Trib. To Meadow Brook	1	INT	Y	N/A	310	N	221
3	Industry	PSTR-101-03	Trib. to Josiah Brook	6	PER	Y	Y	312	N	223
3	Industry	ISTR-101-04	Trib. to Josiah Brook	4	PER	Y	Y	334	N	223
3	Industry	PSTR-101-05	Josiah Brook	3	PER	Y	Y	208	Y	224
3	Industry	ISTR-101-06	Trib. to Josiah Brook	3	INT	Y	N/A	469	Y	224
3	Industry	ISTR-102-01	Trib. to Josiah Brook	8	PER	Y	Y	216	N	225
3	Industry	ISTR-102-02	Trib. to Josiah Brook	5	INT	Y	Y	270	Y	225
3	Industry	ISTR-102-03	Trib. to Goodrich Brook	3	UNK	Y	N/A	367	N	227
3	Industry	ISTR-103-10	Trib. to Goodrich Brook	4	UNK	Y	N/A	321	N	227
3	Industry	PSTR-103-11	Trib. to Goodrich Brook	7	UNK	Y	Y	349	N	228

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Industry	PSTR-103-12	Goodrich Brook	15	PER	Y	Y	245	N	229
3	Industry	PSTR-103-13	Trib. to Goodrich Brook	7	UNK	Y	Y	104	N	229
3	Industry	PSTR-103-14	Trib. to Goodrich Brook	8	UNK	Y	Y	131	N	229
3	Industry	ISTR-103-15	Trib. to Goodrich Brook	3	UNK	Y	N/A	38	N	227
3	Industry	ISTR-103-16	Trib. to Goodrich Brook	5	UNK	Y	Y	362	N	227
3	Industry	ISTR-104-02	Trib. to Goodrich Brook	4	UNK	Y	N/A	146	N	230
3	Industry	PSTR-104-04	Trib. to Goodrich Brook	6	UNK	Y	Y	135	Y	230
3	New Sharon	PSTR-105-01	Muddy Brook	40	PER	Y	Y	521	N	232
3	Farmington	ISTR-107-01	Trib. to Beales Brook	1.5	UNK	Y	N/A	280	N	238
3	Farmington	PSTR-107-02	Trib. to Beales Brook	3.5	UNK	Y	N/A	116	Y	237
3	Farmington	ISTR-107-03	Trib. to Beales Brook	1	UNK	Y	N/A	275	N	236, 237
3	Farmington	PSTR-107-04	Beales Brook	5	PER	Y	Y	335	N	236
3	Farmington	ISTR-108-05	Trib. to Cascade Brook	1.5	UNK	Y	N/A	29	N	239
3	Farmington	ISTR-108-06	Trib. to Cascade Brook	1.5	UNK	Y	N/A	317	N	239
3	Farmington	ISTR-108-07	Trib. to Cascade Brook	4	UNK	Y	N/A	91	N	239, 240

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Farmington	ISTR-108-08	Trib. to Cascade Brook	1.5	UNK	Y	N/A	62	N	239
3	Farmington	ISTR-108-09	Trib. to Cascade Brook	1	UNK	Y	N/A	404	N	239
3	Farmington	ISTR-109-01	Trib. to Cascade Brook	3	UNK	Y	N/A	162	N	241
3	Farmington	PSTR-109-02	Cascade Brook	8	PER	Y	N/A	113	N	242
3	Farmington	ISTR-109-03	Trib. to Cascade Brook	3	UNK	Y	N/A	386	Y	241
3	Farmington	PSTR-110-	Sandy River	70	PER	Y	Y	136	N	242, 243
3	Farmington	ISTR-111-02	Trib. to Wilson Stream	3.5	UNK	Y	Y	240	N	246, 247
3	Farmington	ISTR-111-03	Trib. to Wilson Stream	4	UNK	Y	Y	51	N	246
3	Farmington	PSTR-112-02	Trib. to Wilson Stream	6	UNK	Y	Y	77	N	247, 248
3	Farmington	PSTR-112-03	Wilson Stream	40	UNK	Y	Y	61	N	247
3	Jay	PSTR-114-01	Trib. to Wilson Stream	8	UNK	Y	Y	169	Y	253
3	Chesterville	PSTR-114-05	Trib. to Wilson Stream	25	UNK	Y	Y	243	Y	252
3	Chesterville	ISTR-114-06	Trib. to Wilson Stream	5	UNK	Y	Y	391	N	252
3	Chesterville	PSTR-114-07	Trib. to Wilson Stream	5	PER	Y	Y	85	Y	252, 253
3	Jay	ISTR-116-03	Trib. to Sugar Brook	2	UNK	Y	N/A	35	Y	256

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Jay	PSTR-116-04	Sugar Brook	3.5	PER	Y	N/A	302	Y	257
3	Jay	PSTR-117-02	Trib. To Fuller Brook	5	UNK	Y	N/A	98	N	258, 259
3	Jay	ISTR-117-03	Trib. To Fuller Brook	4	UNK	Y	N/A	53	N	259
3	Jay	PSTR-117-	Fuller Brook	3	PER	Y	N/A	37	N	260
3	Jay	PSTR-118-	Fuller Brook	15	PER	Y	N/A	492	N	262
3	Jay	PSTR-119-01	James Brook	15	PER	Y	N/A	130	Y	263
3	Embden	ISTR-85-01	Trib. to Jackin Brook	2	UNK	N	Y	175	N	187
3	Anson	ISTR-89-03	Trib. to Fahi Brook	3.5	INT	N	N/A	328	N	196
3	Anson	PSTR-90-01	Trib. to Carrabasset River	5.5	UNK	N	Y	373	N	198
3	Anson	ISTR-90-04	Trib. to Carrabasset River	1.5	UNK	Y	N/A	165	N	200
3	Anson	ISTR-92-01	Trib. to Carrabasset River	2	INT	Y	N/A	332	N	204
3	Anson	ISTR-92-02	Trib. to Carrabasset River	1.5	INT	Y	N/A	307	N	204
3	Anson	PSTR-92-03	Gilman Brook	20	UNK	Y	Y	305	N	205
3	Anson	ISTR-92-05	Trib. to Gilman Brook	4.5	UNK	Y	N/A	365	N	205
3	Anson	PSTR-93-01	Getchell Brook	15	INT	Y	N/A	59	N	207, 208
3	Anson	ISTR-93-02	Trib. to Getchell Brook	4	INT	Y	N/A	162	N	208
3	Anson	PSTR-93-03	Trib. to Getchell Brook	2	UNK	Y	N/A	413	N	208

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Anson	ISTR-95-01	Trib. to Kennebec River	2.5	INT	Y	N/A	123	N	209, 210
3	Anson	ISTR-95-02	Trib. to Kennebec River	6	INT	Y	Y	416	N	209, 210
3	Anson	ISTR-95-03	Trib. to Kennebec River	1	UNK	Y	N/A	504	N	210
3	Anson	ISTR-95-04	Trib. to Kennebec River	1	UNK	Y	N/A	412	N	210
3	Starks	PSTR-95-05	Trib. to Kennebec River	2	UNK	Y	N/A	119	N	210
3	Starks	PSTR-99-02	Trib. to Lemon Stream	6	UNK	Y	Y	43	Y	219
3	Starks	ISTR-99-03	Trib. to Lemon Stream	1	UNK	Y	Y	128	Y	219
3	Starks	ISTR-99-04	Trib. to Lemon Stream	3	UNK	Y	Y	125	N	219
3	Starks	PSTR-99-05	Lemon Stream	55	PER	Y	Y	116	N	219, 220
3	Starks	PSTR-99-06	Trib. to Lemon Stream	6	UNK	Y	Y	406	N	219
3	Starks	ISTR-99-07	Lemon Stream	1	UNK	Y	Y	206	N	220
3	Anson	WB-94-01	Trib. to Getchell Brook	85	Open Water	Y	N/A	299	N	208
3	Anson	ISTR-88-01	Trib. to Fahi Brook	1	INT	N	N/A	444	N	196
3	Industry	ISTR-104-01	Trib. to Goodrich Brook	2	INT	Y	N/A	426	N	229
3	Livermore Falls	ISTR-123-03	Trib. to Clay Brook	4	INT	N	N/A	150	N	272

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Livermore Falls	ISTR-128-02	Trib. to Androscoggin River	2	INT	N	N/A	196	N	283
3	Livermore Falls	ISTR-128-03	Trib. to Androscoggin River	2	INT	N	N/A	157	N	283
3	Leeds	ISTR-135-02	Trib. to Allen Stream	2	INT	N	N/A	54	N	299
3	Leeds	ISTR-135-03	Trib. to Allen Stream	2	INT	N	N/A	153	N	299, 300
3	Greene	ISTR-139-03	Trib. to Allen Pond	2	INT	N	N/A	366	N	309
3	Greene	ISTR-140-02	Trib. to Allen Pond	1.5	INT	N	N/A	228	N	309
3	Greene	ISTR-140-07	Trib. to Allen Pond	2	INT	N	N/A	153	N	310, 311
3	Lewiston	ISTR-145-02	Trib. to Stetson Brook	2	INT	N	Y	157	N	322
3	Lewiston	ISTR-145-03	Trib. to Stetson Brook	8	INT	N	N/A	170	N	321
3	Lewiston	ISTR-146-04	Trib. to Stetson Brook	2	INT	N	Y	482	N	323
3	Starks	ISTR-96-03	Trib. to Pelton Brook	2	INT	Y	N/A	186	N	212
3	Livermore Falls	PSTR-121-03	Trib. to Clay Brook	2	PER	N	N/A	318	N	269
3	Livermore Falls	PSTR-122-04	Trib. to Clay Brook	2	PER	N	N/A	271	N	269, 270
3	Livermore Falls	PSTR-122-05	Trib. to Clay Brook	6	PER	N	N/A	295	N	269
3	Livermore Falls	PSTR-122-06	Trib. to Clay Brook	2	PER	N	N/A	250	N	269
3	Livermore Falls	PSTR-125-01	Trib. to Androscoggin River	2	PER	N	N/A	303	N	276

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Leeds	PSTR-135-01	Trib. to Allen Stream	2	PER	N	N/A	333	N	299
3	Greene	PSTR-144-02	Trib. to Daggett Bog	2	PER	N	N/A	76	N	319
3	Livermore Falls	ISTR-125-06	Trib. to Androscoggin River	2	UNK	N	N/A	244	N	277
3	Livermore Falls	ISTR-126-06	Trib. to Androscoggin River	2	UNK	N	N/A	422	N	279
3	Leeds	ISTR-134-01	Trib. to Allen Stream	2	UNK	N	N/A	131	N	298
3	Leeds	ISTR-134-02	Trib. to Allen Stream	2.5	INT	N	N/A	116	N	297
3	Leeds	ISTR-134-03	Trib. to Allen Stream	2.5	INT	N	N/A	51	N	297
3	Jay	ISTR-121-01	Trib. to Clay Brook	3	INT	N	N/A	227	N	268
3	Livermore Falls	ISTR-123-02	Trib. to Clay Brook	3	INT	N	N/A	146	N	272
3	Livermore Falls	ISTR-124-01	Trib. to Androscoggin River	3	INT	N	N/A	279	N	274
3	Livermore Falls	ISTR-124-02	Trib. to Androscoggin River	3	INT	N	N/A	459	N	274
3	Livermore Falls	ISTR-126-01	Trib. to Androscoggin River	3	INT	N	N/A	297	N	279
3	Livermore Falls	ISTR-127-03	Trib. to Hunton Brook	30	INT	N	N/A	539	N	282
3	Leeds	ISTR-130-02	Trib. to Androscoggin River	3	INT	N	N/A	58	N	287

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Leeds	ISTR-130-03	Trib. to Androscoggin River	3	INT	N	N/A	330	Y	287, 288
3	Leeds	ISTR-131-02	Trib. To Dead River	3	INT	N	N/A	142	N	291
3	Leeds	ISTR-132-01	Trib. To Dead River	3	INT	N	N/A	190	N	292
3	Greene	ISTR-138-03	Trib. to Allen Stream	3	INT	N	N/A	295	N	306
3	Greene	ISTR-140-04	Trib. to Allen Pond	3	INT	N	N/A	215	N	309
3	Greene	ISTR-140-05	Trib. to Allen Pond	3	INT	N	N/A	199	N	309
3	Starks	ISTR-96-04	Trib. to Pelton Brook	3	INT	Y	N/A	524	N	212
3	Jay/Livermore Falls	PSTR-121-02	Trib. to Clay Brook	3	PER	N	N/A	138	N	268, 269
3	Jay	PSTR-121-04	Trib. to Clay Brook	3	PER	N	N/A	92	N	267, 268, 269
3	Livermore Falls	PSTR-128-01	Trib. to Androscoggin River	3	PER	N	N/A	108	Y	282, 283
3	Leeds	PSTR-133-01	Trib. to Allen Stream	3	PER	N	N/A	113	Y	295
3	Starks	PSTR-96-02	Trib. to Pelton Brook	3	PER	Y	Y	334	N	212
3	Livermore Falls	ISTR-123-01	Trib. to Clay Brook	4	INT	N	N/A	110	N	272
3	Livermore Falls	PSTR-125-02	Trib. to Androscoggin River	2	INT	N	N/A	295	Y	277
3	Livermore Falls	ISTR-125-05	Trib. to Androscoggin River	4	INT	N	N/A	319	N	277
3	Leeds	ISTR-131-01	Trib. to Dead River	4	INT	N	N/A	15	Y	289
3	Greene	ISTR-138-01	Trib. to Allen Pond	4	INT	N	N/A	24	N	307

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Greene	ISTR-138-02	Trib. to Allen Pond	4	INT	N	N/A	194	N	307
3	Greene	ISTR-140-03	Trib. to Allen Pond	6	INT	N	N/A	174	Y	310
3	Greene	ISTR-141-02	Trib. to Daggett Bog	4	INT	N	N/A	200	N	312
3	Livermore Falls	PSTR-126-02	Trib. to Androscoggin River	4	PER	N	N/A	333	N	279
3	Livermore Falls	PSTR-126-05	Trib. to Androscoggin River	4	PER	N	N/A	346	N	279
3	Livermore Falls	PSTR-127-02	Trib. To Hunton Brook	30	PER	N	N/A	426	N	281
3	Greene	PSTR-139-01	Trib. to Allen Stream	4	PER	N	N/A	351	Y	307
3	Greene	PSTR-139-02	Trib. to Allen Stream	4	PER	N	N/A	373	N	307
3	Greene	PSTR-140-06	Trib. to Allen Pond	4	PER	N	N/A	354	N	310
3	Greene	PSTR-140-08	Trib. to Allen Pond	4	PER	N	N/A	139	Y	309
3	Greene	PSTR-140-09	Trib. to Allen Pond	4	PER	N	N/A	142	N	309
3	Lewiston	PSTR-145-01	Trib. to Stetson Brook	4	PER	N	Y	8	Y	321, 322
3	Anson	PSTR-89-02	Trib. to Fahi Brook	5	PER	N	N/A	503	N	196
3	Livermore Falls	PSTR-122-02	Trib. to Clay Brook	5	PER	N	N/A	208	N	270
3	Livermore Falls	PSTR-122-03	Clay Brook/Redwater Brook	5	PER	N	N/A	60	N	270, 271
3	Livermore Falls	PSTR-126-03	Trib. to Androscoggin River	5	PER	N	N/A	141	N	280

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
3	Lewiston	PSTR-146-03	Trib. to Androscoggin River	2	PER	N	N/A	419	N	323
3	Lewiston	PSTR-146-05	Trib. to Androscoggin River	1	PER	N	N/A	35	N	323
3	Starks	PSTR-96-06	Pelton Brook	5	PER	Y	Y	336	N	213
3	Leeds	PSTR-136-01	Trib. to Androscoggin River	6	PER	N	N/A	194	Y	302
3	Greene	PSTR-140-01	Allen Stream	6	PER	N	N/A	323	N	310
3	Greene	PSTR-143-01	Stetson Brook	6	PER	N	N/A	26	Y	318
3	Greene	PSTR-144-01	Trib. to Stetson Brook	6	PER	N	Y	32	Y	318
3	Livermore Falls	ISTR-126-04	Trib. to Androscoggin River	3	INT	N	N/A	132	Y	280
3	Leeds	ISTR-130-01	Trib. to Dead River	8	INT	N	N/A	296	N	289
3	Leeds	PSTR-130-	Dead River	60	INT	N	N/A	91	N	289
3	Livermore Falls	PSTR-122-01	Trib. to Clay Brook	5	PER	N	N/A	466	N	269, 270
3	Livermore Falls	PSTR-122-07	Trib. to Clay Brook	5	PER	N	N/A	311	N	270
3	Greene	PSTR-143-02	Stetson Brook	10	PER	N	N/A	210	N	318
3	Livermore Falls	PSTR-125-03	Trib. to Androscoggin River	2	PER	N	N/A	42	N	277, 278
3	Livermore Falls	PSTR-125-04	Trib. to Androscoggin River	4	PER	N	N/A	191	N	277, 278
3	Livermore Falls	PSTR-129-01	Scott Brook	20	PER	N	N/A	166	N	285, 286
3	Livermore Falls	PSTR-127-04	Hunton Brook	4	PER	N	N/A	106	N	281

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
4	Lewiston	ISTR-153-01	Trib. to Androscoggin River	3	UNK	Y	N/A	120	N	340
4	Durham	ISTR-156-02	Trib. to Androscoggin River	1	INT	Y	N/A	103	N	346
4	Durham	ISTR-158-01	Trib. to Libby Brook	15	INT	N	N/A	143	N	351
4	Durham	ISTR-158-02	Trib. to Libby Brook	2	INT	N	N/A	134	N	351
4	Lewiston	ISTR-155-01	Trib. to Androscoggin River	2	INT	Y	N/A	127	N	343
4	Durham	ISTR-157-01	Trib. to House Brook	1.5	INT	Y	N/A	116	Y	348
4	Pownal	ISTR-161-04	Trib. to Runaround Brook	6	INT	N	N/A	66	N	
4	Auburn	PSTR-156-01	Trib. to Androscoggin River	2	PER	Y	N/A	211	N	345
4	Auburn	PSTR-156-03	Trib. to Androscoggin River	1	PER	Y	N/A	91	N	346
4	Auburn	PSTR-156-04	Trib. to Androscoggin River	2	PER	Y	N/A	165	Y	345
4	Auburn	PSTR-156-05	Trib. to Androscoggin River	2	PER	Y	N/A	90	N	346
4	Auburn	PSTR-156-06	Trib. to Androscoggin River	2	PER	Y	N/A	178	N	345
4	Auburn	PSTR-156-07	Trib. to Androscoggin River	2	PER	Y	N/A	85	N	346
4	Durham	PSTR-157-02	House Brook	2	PER	Y	N/A	105	Y	348

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
4	Lewiston	ISTR-150-02	Trib. to No Name Brook	3	INT	Y	N/A	197	Y	333
4	Pownal	ISTR-161-02	Trib. to Runaround Brook	3	INT	N	N/A	117	Y	356
4	Lewiston	PSTR-146-01	Trib. to Stetson Brook	4	PER	N	Y	87	N	324
4	Lewiston	PSTR-146-02	Trib. to Stetson Brook	4	PER	N	Y	144	N	324
4	Lewiston	PSTR-152-01	Trib. to No Name Brook	3	PER	Y	N/A	58	N	337
4	Lewiston	PSTR-147-01	Trib. to No Name Brook	3.5	PER	Y	N/A	80	Y	326, 327
4	Lewiston	PSTR-148-01	Trib. to No Name Pond	3.5	PER	Y	N/A	87	Y	329
4	Lewiston	ISTR-150-01	Trib. to No Name Brook	4	INT	Y	N/A	106	Y	332
4	Lewiston	PSTR-148-02	Trib. to No Name Pond	4.5	PER	Y	N/A	81	Y	329
4	Pownal	PSTR-161-01	Runaround Brook	5	PER	N	N/A	15	N	358
4	Pownal	PSTR-161-03	Runaround Brook	5	PER	N	N/A	472	N	358
4	Auburn	PSTR-155-02	House Brook	8	PER	Y	N/A	160	N	345
4	Durham	PSTR-160-01	Runaround Brook	9	PER	N	N/A	108	Y	355
4	Durham	PSTR-160-03	Trib. to Runaround Brook	12	PER	N	N/A	105	N	355
4	Durham	PSTR-158-03	Libby Brook	15	PER	N	N/A	47	Y	351, 352
4	Lewiston	PSTR-151-01	No Name Brook	25	PER	Y	N/A	83	N	334, 335
4	Lewiston	PSTR-147-02	Stetson Brook	50	PER	N	Y	86	N	325
4	Lewiston	PSTR-149-01	No Name Brook	50	PER	Y	N/A	90	N	330
4	Auburn/ Lewiston	PSTR-155-03	Androscoggin River	645	PER	Y	N/A	104	N	344

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Wiscasset	ISTR-183-01	Trib. to Montsweag Brook	2	INT	Y	N/A	140	N	370
5	Wiscasset	ISTR-188-09	Trib. to Back River/Montsweag Bay	3	INT	Y	N/A	15,281	N	359
5	Whitefield	PSTR-171-01	Trib. to Sheepscot River	40	PER	Y	Y	355	Y	397
5	Whitefield	PSTR-172-02	Trib. to Sheepscot River	20	PER	Y	Y	101	N	395
5	Whitefield	ISTR-166-01	Trib. To Finn Brook	2	UNK	Y	N/A	140	N	408
5	Whitefield	PSTR-166-	Finn Brook	5	PER	Y	Y	395	Y	408
5	Whitefield	PSTR-168-01	East Branch Eastern River	11	PER	Y	N/A	206	N	403
5	Whitefield	PSTR-168-02	East Branch Eastern River	3	PER	Y	N/A	58	Y	403
5	Whitefield	PSTR-169-01	East Branch Eastern River	5	PER	Y	N/A	149	Y	402
5	Whitefield	ISTR-169-02	Trib. to East Branch Eastern River	2	UNK	Y	N/A	296	N	402
5	Whitefield	ISTR-169-03	Trib. to East Branch Eastern River	2	UNK	Y	N/A	178	Y	402
5	Whitefield	ISTR-169-04	Trib. to East Branch Eastern River	1	UNK	Y	N/A	136	N	402
5	Whitefield	PSTR-170-01	East Branch Eastern River	9	PER	Y	N/A	189	Y	399, 400

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Whitefield	ISTR-170-02	Trib. to East Branch Eastern River	2	INT	Y	N/A	129	N	400
5	Whitefield	PSTR-172-01	Trib. to Sheepscot River	6	PER	Y	Y	226	N	394
5	Whitefield	PSTR-172-03	Trib. to Sheepscot River	2	UNK	Y	N/A	320	N	396
5	Whitefield	ISTR-173-01	Trib. to Sheepscot River	3	UNK	Y	N/A	285	Y	392
5	Whitefield	PSTR-174-01	Trib. to Sheepscot River	6	PER	Y	Y	333	Y	391
5	Whitefield	ISTR-174-02	Trib. to Sheepscot River	3	UNK	Y	Y	385	Y	391
5	Whitefield	PSTR-174-03	Trib. to Sheepscot River	7	PER	Y	Y	366	Y	389
5	Whitefield	ISTR-174-04	Trib. to Sheepscot River	1	UNK	Y	Y	366	N	389
5	Whitefield	ISTR-175-01	Trib. to Sheepscot River	1	UNK	Y	N/A	218	Y	388
5	Whitefield	PSTR-175-02	Trib. to Sheepscot River	3	UNK	Y	Y	201	Y	388
5	Alna	PSTR-176-01	Trib. to Sheepscot River	5	INT	Y	Y	209	Y	387
5	Alna	PSTR-177-01	Trib. to Trout Brook	25	PER	Y	Y	107	N	383
5	Alna	PSTR-178-	Trout Brook	8	PER	Y	Y	264	N	381, 382
5	Alna	PSTR-178-	Trout Brook	15	PER	Y	Y	133	N	381, 382
5	Alna	PSTR-179-02	Trib. to Trout Brook	6	INT	Y	N/A	119	Y	379, 380
5	Alna	PSTR-179-03	Trib. to Trout Brook	6	PER	Y	Y	198	N	379

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Alna	ISTR-180-01	Trib. to Trout Brook	1	INT	Y	N/A	112	N	377
5	Wiscasset	ISTR-181-01	Trib. to Ward Brook	3	UNK	Y	N/A	82	Y	374
5	Wiscasset	ISTR-181-02	Ward Brook	2	UNK	Y	N/A	114	Y	374, 375
5	Wiscasset	ISTR-182-01	Trib. Ward Brook	4	UNK	Y	N/A	247	N	373
5	Wiscasset	PSTR-183-02	Trib. to Montsweag Brook	0.5	UNK	Y	N/A	39	Y	370
5	Wiscasset	ISTR-183-03	Trib. to Montsweag Brook	2	UNK	Y	N/A	94	N	370
5	Wiscasset	ISTR-184-01	Trib. to Montsweag Brook	1.5	INT	Y	N/A	140	N	369
5	Woolwich	ISTR-184-02	Trib. to Montsweag Brook	2.5	UNK	Y	N/A	318	Y	367
5	Woolwich	ISTR-184-03	Trib. To Montsweag Brook	150	UNK	Y	N/A	113	N	367, 368
5	Woolwich	ISTR-184-04	Trib. to Montsweag Brook	2.5	UNK	Y	N/A	209	Y	367, 368
5	Wiscasset	ISTR-184-05	Trib. to Montsweag Brook	3	UNK	Y	N/A	253	N	369
5	Wiscasset	ISTR-184-06	Trib. to Montsweag Brook	2	UNK	Y	N/A	195	N	369
5	Wiscasset	ISTR-184-08	Montsweag Brook	25	UNK	Y	N/A	55	Y	369
5	Wiscasset	ISTR-184-09	Montsweag Brook	30	PER	Y	N/A	45	N	368, 369
5	Wiscasset	ISTR-184-10	Montsweag Brook	2.5	PER	Y	N/A	66	N	368
5	Woolwich	ISTR-185-02	Trib. to Montsweag Brook	2.5	UNK	Y	N/A	28	N	366

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Woolwich	ISTR-185-03	Trib. to Montsweag Brook	1	UNK	Y	N/A	23	N	366
5	Woolwich	ISTR-185-04	Trib. to Montsweag Brook	1	UNK	Y	N/A	37	N	366
5	Woolwich	ISTR-185-05	Trib. to Montsweag Brook	1	UNK	Y	N/A	62	Y	366
5	Woolwich	ISTR-185-06	Trib. to Montsweag Brook	3	UNK	Y	N/A	312	N	
5	Wiscasset	ISTR-186-02	Trib. to Chewonki Creek	1	INT	Y	N/A	4,335	N	364
5	Wiscasset	ISTR-187-01	Trib. to Chewonki Creek	2.5	INT	Y	N/A	6,250	N	363
5	Wiscasset	ISTR-187-02	Trib. to Chewonki Creek	1.5	INT	Y	N/A	6,262	N	363
5	Wiscasset	ISTR-187-03	Trib. to Chewonki Creek	1.5	INT	Y	N/A	6,300	N	363
5	Wiscasset	ISTR-187-05	Trib. to Chewonki Creek	1	INT	Y	N/A	6,728	N	362, 363
5	Wiscasset	ISTR-187-07	Trib. to Chewonki Creek	1	INT	Y	N/A	7,099	N	362
5	Wiscasset	ISTR-187-15	Trib. to Back River/ Monstweag Bay	1	INT	Y	N/A	10,413	N	361
5	Wiscasset	ISTR-187-16	Trib. to Back River/ Monstweag Bay	1	INT	Y	N/A	10,248	N	361
5	Wiscasset	ISTR-187-17	Trib. to Back River/ Monstweag Bay	1	INT	Y	N/A	10,265	N	361

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Wiscasset	ISTR-187-18	Trib. to Back River/ Monstswear Bay	1	INT	Y	N/A	10,246	N	361
5	Wiscasset	ISTR-187-22	Trib. to Chewonki Creek	1	INT	Y	N/A	7,549	N	362
5	Wiscasset	ISTR-187-23	Trib. to Back River/ Monstswear Bay	2.5	INT	Y	N/A	10,710	N	361
5	Wiscasset	ISTR-188-05	Trib. to Back River/ Monstswear Bay	1	INT	Y	N/A	11,591	N	360
5	Wiscasset	ISTR-188-06	Trib. to Back River/ Monstswear Bay	1	INT	Y	N/A	11,601	N	360
5	Wiscasset	ISTR-186-03	Trib. to Chewonki Creek	1.5	INT	Y	N/A	3,628	Y	364
5	Wiscasset	ISTR-186-04	Trib. to Chewonki Creek	1.5	INT	Y	N/A	3,810	Y	364
5	Wiscasset/Woolwich	ISTR-186-06	Trib. to Montswear Brook	1.5	INT	Y	N/A	1,334	N	365
5	Wiscasset	ISTR-187-13	Trib. to Chewonki Creek	2	INT	Y	N/A	7,645	N	362
5	Wiscasset	ISTR-187-20	Trib. to Chewonki Creek	1.5	INT	Y	N/A	9,419	N	361
5	Wiscasset	ISTR-187-21	Trib. to Chewonki Creek	1.5	INT	Y	N/A	9,380	N	361
5	Wiscasset	PSTR-187-19	Trib. to Chewonki Creek	1.5	PER	Y	N/A	9,386	N	361

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Wiscasset	PSTR-187-24	Trib. to Chewonki Creek	1.5	PER	Y	N/A	8,911	N	361, 362
5	Windsor	ISTR-162-03	Trib. to West Branch Sheepscot River	2	INT	Y	N/A	339	N	417
5	Windsor	ISTR-162-04	Trib. to West Branch Sheepscot River	2	INT	Y	N/A	566	N	417
5	Windsor	ISTR-162-05	Trib. to West Branch Sheepscot River	2	INT	Y	N/A	628	N	417
5	Windsor	ISTR-162-08	Trib. to West Branch Sheepscot River	2	INT	Y	N/A	1,664	N	
5	Wiscasset	ISTR-187-06	Trib. to Chewonki Creek	2	INT	Y	N/A	8,231	N	362
5	Wiscasset	ISTR-187-08	Trib. to Chewonki Creek	2	INT	Y	N/A	7,599	N	362
5	Wiscasset	ISTR-187-09	Trib. to Chewonki Creek	2	INT	Y	N/A	7,709	N	362
5	Wiscasset	ISTR-187-10	Trib. to Chewonki Creek	2	INT	Y	N/A	7,607	N	362
5	Wiscasset	ISTR-187-11	Trib. to Chewonki Creek	2	INT	Y	N/A	7,490	N	362
5	Wiscasset	ISTR-187-12	Trib. to Chewonki Creek	2	INT	Y	N/A	7,409	N	362

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Wiscasset	ISTR-187-14	Trib. to Chewonki Creek	2	INT	Y	N/A	7,906	N	362
5	Wiscasset	ISTR-188-02	Trib. to Back River/ Monstswag Bay	2	INT	Y	N/A	14,492	N	359
5	Wiscasset	ISTR-188-03	Trib. to Back River/ Monstswag Bay	2	INT	Y	N/A	13,444	N	359, 360
5	Wiscasset	ISTR-188-07	Trib. to Back River/ Monstswag Bay	2	INT	Y	N/A	14,547	N	359
5	Windsor	PSTR-162-02	Trib. to West Branch Sheepscot River	2	PER	Y	Y	291	N	417
5	Windsor	PSTR-162-06	Trib. to West Branch of Sheepscot River	1.5	PER	Y	Y	1,595	N	
5	Wiscasset	ISTR-186-05	Trib. to Montswag Brook	1.5	INT	Y	N/A	2,386	N	364, 365
5	Wiscasset	ISTR-186-07	Trib. to Montswag Brook	3	INT	Y	N/A	2,193	N	365
5	Wiscasset	ISTR-188-01	Trib. to Back River/ Montswag Bay	3	INT	Y	N/A	15,388	N	359
5	Wiscasset	ISTR-188-08	Trib. to Back River/ Monstswag Bay	3	INT	Y	N/A	12,829	N	360
5	Wiscasset	ISTR-186-01	Trib. to Chewonki Creek	4	INT	Y	N/A	5,614	N	363

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/ INT) ³	Atlantic Salmon Habitat (Y/N) ⁶	Brook Trout ⁷ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing ⁹ (Y/N)	Natural Resource Map/Sheet Number
5	Wiscasset	PSTR-188-04	Trib. to Back River/ Monstswag Bay	1	PER	Y	N/A	12,450	Y	360
5	Wiscasset	ISTR-187-04	Trib. to Chewonki Creek	5	INT	Y	N/A	6,112	N	363
5	Windsor	PSTR-162-01	Trib. to West Branch Sheepscot River	8	PER	Y	Y	265	N	417
5	Windsor	PSTR-162-09	Trib. to West Branch Sheepscot River	3	PER	Y	Y	158	N	416, 417
5	Windsor	PSTR-162-13	Trib. to West Branch Sheepscot River	1.5	PER	Y	Y	778	N	417
5	Windsor	ISTR-162-07	Trib. to West Branch Sheepscot River	8	INT	Y	N/A	268	N	417
5	Windsor	ISTR-162-14	Trib. to West Branch Sheepscot River	8	INT	Y	N/A	53	N	416
5	Windsor	PSTR-163-01	Trib. to West Branch Sheepscot River	40	PER	Y	Y	319	N	415
5	Woolwich	PSTR-185-01	Trib. to Montswag Brook	9.5	PER	Y	N/A	559	N	365
5	Wiscasset/Woolwich	PSTR-186-08	Montswag Brook	17.5	PER	Y	N/A	1,219	N	365

Segment	Town	Feature ID	Stream Name ¹	Ave. Stream Width (ft) ²	Stream Type (PER/INT) ³	Atlantic Salmon Habitat (Y/N) ⁴	Brook Trout ⁵ (Y/N)	Nearest New Structure Location (ft)	Temp. Equip. Crossing (Y/N)	Natural Resource Map/Sheet Number
5	Windsor	PSTR-162-12	Trib. to West Branch Sheepscot River	40	PER	Y	Y	362	N	416
5	Windsor	PSTR-163-02	West Branch Sheepscot River	40	PER	Y	Y	51	N	414, 415, 416

Notes:

- ¹ Stream name is based on USGS National Hydrography dataset.
- Tributary names are based on a review by the applicant of the watershed areas and drainage patterns.
- ² Stream widths are based on field data collected by the applicant
- ³ Stream type is based on field work by the applicant.
- ⁴ Atlantic Salmon habitat is based on Maine Office of GIS data catalog. Edition 2016-03-21.
- ⁵ Brook trout habitat is based on information submitted by MDIFW on January 24, 2019

Appendix F Compensation Requirements

Table F-1: Summary of Compensation as Required by NRPA and/or USACE

Resource Type & Impact	Agency Requiring	Form of Compensation	Type and Amount of Compensation
47.638 acres of Temporary Wetland Fill	USACE	Preservation & In-Lieu Fee	Preservation of 56.97 acres of wetlands. \$154,369.29
105.252 acres of Permanent Cover Type Conversion of Forested Wetlands ¹	USACE & MDEP	Preservation	Preservation of three parcels, (Little Jimmie Pond, Flagstaff Lake, and Pooler Pond tracts) 440.29 acres of wetlands.
3.814 acres of Permanent Fill in Wetlands of Special Significance (WOSS) ²			
0.307 acres of Permanent Fill in Wetland (Non-WOSS)			
0.743 acres of Permanent Wetland Fill in SVP Habitat	MDEP	In-Lieu Fee	\$623,657.53
3.678 acres of Permanent Forested Wetland Conversion in SVP Habitat			
0.719 acres of Permanent Upland Fill in SVP Habitat			
27.572 acres of Permanent Upland Conversion in SVP Habitat			
Direct and Indirect Impact to USACE Jurisdictional Vernal Pools	USACE	In-Lieu Fee	\$2,015,269.01
0.003 acres of Permanent Wetland Fill in IWWH	MDEP	In-Lieu Fee	\$253,352.53
2.622 acres of Permanent Forested Wetland Conversion in IWWH			
0.014 acres of Permanent Upland Fill in IWWH			
12.387 acres of Permanent Upland Conversion in IWWH			
		In-Lieu Fee	\$3,046,648.37
		Land Preservation	1022.4 acres of preservation containing 510.75 acres of wetland.

¹The USACE requires compensation for Permanent Cover Type Conversion of Forested Wetlands. The MDEP requires compensation for Permanent Cover Type Conversion of significant wildlife habitat. Compensation for wetlands within significant wildlife habitat, IWWH and SVPH, are not included within the Permanent Cover Type Conversion of Forested Wetlands calculation and are calculated separately within their respective categories. Cover type conversion within upland areas of IWWH and SVPH are compensated separately as well.

²Permanent fill in WOSS excludes fill in IWWH and SVPH, which are calculated separately, in their respective categories.

Table F-2: Summary of Compensation Resulting from Consultation with Resource Agencies

Resource Type & Impact	Agency Requiring	Form of Compensation	Amount of Compensation
9.229 acres of forested conversion in Unique Natural Communities	MNAP	Fee contribution to Maine Natural Areas Conservation Fund	\$1,224,526.82
Forested conversion to the Goldie's Wood Fern	MNAP	Funding for rare plant surveys to the Maine Natural Areas Conservation Fund	\$10,000
26.416 acres of forest conversion in Roaring Brook Mayfly and Northern Spring Salamander Conservation Management Areas	MDIFW	Fee contribution to Maine Endangered and Nongame Wildlife Fund	\$469,771.95
39.209 acres of forest conversion in the Upper Kennebec Deer Wintering Area	MDIFW	Preservation	Seven parcels, totaling 717 acres of land in the Upper Kennebec DWA
Habitat and fisheries impacts, including 11.02 linear miles of forested conversion in riparian buffers	MDEP & MDIFW	Preservation	Three preservation parcels (Basin, Lower Enchanted, and Grand Falls tracts), totaling 1053.5 acres, containing 12.02 linear miles of stream
		Fee contribution to Maine Endangered and Nongame Wildlife Fund	\$180,000
Impacts to Brook Trout and Coldwater Fisheries	MDEP	Funding for culvert replacements	\$1,875,000
Impact to Outstanding River Segments	MDEP	Preservation	Three preservation parcels, (Basin, Lower Enchanted, and Grand Falls tracts) offering 7.9 miles of frontage on the Dead River, an Outstanding River Segment
Habitat fragmentation and impact to wildlife movement	MDEP	Conservation	Conservation of 40,000 acres in the vicinity of Segment 1
Total Additional Monetary Contribution			\$3,759,298.76
Total Additional Land Preservation/Conservation			41,770.5 Acres

Appendix G
Table of Areas Requiring Additional Erosion Control Measures

Transmission Line Spans				
Pole #			Pole #	
From	To		From	To
3006-541	3006-542		3006-633	3006-648
3006-547	3006-549		3006-659	3006-664
3006-549	3006-555		3006-674	3006-678
3006-556	3006-559		3006-684	3006-685
3006-563	3006-564		3006-697	3006-699
3006-570	3006-572		3006-705	3006-706
3006-576	3006-577		3006-706	3006-727
3006-579	3006-580		3006-728	3006-747
3006-582	3006-589		3006-748	3006-758
3006-594	3006-599		3006-760	3006-764
3006-603	3006-604		3006-765	3006-769
3006-606	3006-608		3006-771	3006-788
3006-609	3006-613		3006-793	3006-794
3006-616	3006-622		3006-796	3006-797
3006-624	3006-626		3006-799	3006-817

L-27625-26-A-N/ L-27625-TG-B-N/ L-27625-2C-C-N
L-27625-VP-D-N/ L-27625-IW-E-N

0204

H-1

Appendix H
Land Use Planning Commission
Site Law Certification



JANET T. MILLS
GOVERNOR

0205
STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

AMANDA E. BEAL
COMMISSIONER
JUDY C. EAST
EXECUTIVE DIRECTOR

**SITE LAW
CERTIFICATION**

COMMISSION DETERMINATION
IN THE MATTER OF

REQUEST OF MAINE DEPARTMENT OF ENVIRONMENTAL PROTECTION
FOR SITE LOCATION OF DEVELOPMENT LAW CERTIFICATION
CENTRAL MAINE POWER COMPANY
NEW ENGLAND CLEAN ENERGY CONNECT
SITE LAW CERTIFICATION SLC-9

FINDINGS OF FACT AND DETERMINATION

The Maine Land Use Planning Commission (“Commission”), at a meeting of the Commission held on January 8, 2020, and after reviewing the request of the Maine Department of Environmental Protection (“Department”) for Site Location of Development Law (“Site Law”) Certification (“SLC”) SLC-9, supporting documents and other related materials on file, makes the following findings of fact and determination.

PROJECT DESCRIPTION AND LOCATION

Central Maine Power Company (“CMP”) proposes to construct the New England Clean Energy Connect Project (“proposed Project”), a high voltage direct current (“HVDC”) transmission line and related facilities to deliver electricity from Quebec, Canada to a new converter station in Lewiston, Maine. The proposed Project would include three main components: construction of a new transmission line corridor, expansion of an existing transmission line corridor, reconstruction of existing transmission lines within existing corridors, and rebuilding and upgrading substations.

The areas that would be involved in the proposed Project extend from Beattie Township at the Maine border with Quebec, Canada to Lewiston, Maine. The transmission line corridor and other components associated with the proposed Project would be located in the following townships, plantations, towns and municipalities:

- Franklin County townships: Beattie Township, Merrill Strip Township, Skinner Township;



- Somerset County townships and plantations: Appleton Township, Bald Mountain Township, Bradstreet Township, Concord Township, Hobbstown Township, Johnson Mountain Township, Moxie Gore, Parlin Pond Township, The Forks Plantation, T5 R7 BKP WKR, West Forks Plantation; and
- Towns and municipalities: Alna, Anson, Auburn, Caratunk, Chesterville, Cumberland, Durham, Embden, Farmington, Greene, Industry, Jay, Leeds, Lewiston, Livermore Falls, Moscow, New Sharon, Pownal, Starks, Whitefield, Wilton, Windsor, Wiscasset, Woolwich.

The proposed Project is described by CMP in five segments. A project scope map showing the extent of each segment is included as **Appendix A** of this Site Law Certification.¹ Segment 1 would be approximately 53.5 miles in length and would begin in Beattie Township and end in Moxie Gore, entirely within townships and plantations served by the Commission. Segment 2 would be approximately 21.9 miles in length and would begin in The Forks Plantation and end in Moscow, within which The Forks Plantation and Bald Mountain Township are served by the Commission. Segment 3 would be approximately 71.5 miles in length and would begin in Concord Township and end in Lewiston, within which only Concord Township is served by the Commission. Segments 4 and 5 would be wholly within towns and municipalities not served by the Commission.

A new approximately 145.3-mile, 320-kilovolt HVDC transmission line would be constructed in Segments 1, 2, and 3. In Segment 1, the transmission line corridor would be 300 feet wide, is generally forested, and is not currently developed. A 150-foot wide portion of the Segment 1 corridor would be cleared of vegetation capable of growing into the conductor safety zone, as required by the National Electric Reliability Corporation.² In Segments 2 and 3, the proposed Project would be co-located with an existing transmission line and clearing of the corridor would be increased by 75 feet to accommodate the new line.

No new permanent roads would be constructed for portions of the proposed Project within the Commission's jurisdiction. Access to portions of the proposed Project within the Commission's jurisdiction in Segments 1, 2, and 3 would be over existing land management roads.³

CMP would utilize a backhoe to excavate holes to install transmission line structures. Placement of transmission line structures would disturb areas ranging from 30 square feet to 195 square feet, depending on the height of the transmission line structure required at a specific location and the size of the base needed to install each transmission line structure. Additional holes would be excavated to install guy wire anchors, as needed. Blasting may be required in some areas to achieve the

¹ Excerpts from CMP's Site Law application, exhibit 1-1, and September 18, 2019, Site Law application amendment.

² The North American Electric Reliability Corporation is a not-for-profit international regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid. The North American Electric Reliability Corporation develops and enforces reliability standards, including the management of vegetation to prevent encroachments into the Minimum Vegetation Clearance Distance of its transmission lines.

³ Access to Segments 1, 2, and 3 would be largely over privately-owned roads used for timber harvesting activities. Land management roads are used primarily for agricultural or forest management activities; however, some private landowners in the remote areas of Maine where the proposed Project would be located allow members of the public to utilize land management roads for recreation, hunting, fishing and other similar uses.

necessary depth for the transmission line structures and guy wire anchor bases. Once a hole is dug to the proper depth, a crane would be used to place the pole in proper alignment.⁴

SCOPE OF COMMISSION’S REVIEW: ZONING, LAND USE STANDARDS, AND COMPREHENSIVE LAND USE PLAN

Pursuant to 12 M.R.S. § 685-B(1-A)(B-1), the Commission must determine whether the proposed Project is an allowed use within the subdistricts in which it is proposed and whether the proposed Project meets any land use standards established by the Commission that are not considered in the Department’s review under the Site Law.

a. Commission’s Zoning Subdistricts & Use Listings

Within the Commission’s jurisdictional area, there are three major zoning district classifications—management, protection, and development districts—which the Commission has further delineated into zoning subdistricts to protect important resources and prevent conflicts between incompatible uses. For each subdistrict, the Commission designated uses that are allowed without a permit, uses that are allowed without a permit subject to standards, uses that are allowed with a permit, uses that are allowed with a permit by special exception, and uses that are prohibited. The Commission’s zoning subdistricts are codified in the Commission’s Land Use Districts and Standards, 01-672 C.M.R. ch. 10 (“Chapter 10”).

The proposed Project would be located within the following subdistricts, listed in the Table 1 below. Because the proposed Project is a “utility facility” as that term is defined in Ch. 10, § 10.02(248), the table identifies the status of utility facilities within each listed subdistrict.

Table 1. Subdistricts in which the proposed Project is proposed and use listing status.

Subdistrict	Use Listing Status
General Development	Allowed with a permit
Residential Development	Allowed with a permit
General Management	Allowed with a permit
Flood Prone Protection	Allowed with a permit
Fish and Wildlife Protection	Allowed with a permit
Great Pond Protection	Allowed with a permit
Shoreland Protection	Allowed with a permit
Recreation Protection	Allowed with a permit by special exception
Wetland Protection	Allowed with a permit by special exception

⁴ Additional details regarding proposed construction plans are found in CMP’s Natural Resources Protection Act application, section 7.0. The proposed Project would include other components that are either exempt from Site Law review by the Department or that are otherwise not proposed within the Commission’s jurisdiction. Additional information regarding these components is provided in CMP’s Site Law permit application.

b. Land Use Standards

The Commission's land use standards are codified in Ch. 10, §§ 10.24 – 10.27, and are grouped into three categories: development standards, dimensional requirements, and activity-specific standards.⁵ The Commission's role in certifying the proposed Project to the Department is limited to reviewing development standards that are not duplicative of the Department's review pursuant to the Site Law. 12 M.R.S. § 685-B(1-A)(B-1). Applicable statutory criteria⁶ and review standards that are not duplicative of the Department's review are:

- a. Vehicular Circulation, Access and Parking – Ch. 10, §§ 10.24(B) and 10.25(D);
- b. Conformance with Chapter 10 and the regulations, standards and plans adopted pursuant to Ch. 10 – Ch. 10, § 10.24(E);
- c. Subdivision and Lot Creation – Ch. 10, §§ 10.24(F) and 10.25(Q);
- d. Public's Health, Safety and General Welfare – Ch. 10, § 10.24
- e. Lighting – Ch. 10, § 10.25(F);
- f. Activities in Flood Prone Areas – Ch. 10, § 10.25(T);
- g. Dimensional Standards – Ch. 10, § 10.26(D) and (F);
- h. Vegetative Clearing – Ch. 10, § 10.27(B);
- i. Pesticide Application – Ch. 10, § 10.27(I); and
- j. Signs – Ch. 10, § 10.27(J).

c. Comprehensive Land Use Plan

Pursuant to 12 M.R.S. § 685-C(1), the Commission has a Comprehensive Land Use Plan that guides the Commission in developing specific land use standards, delineating district boundaries, siting development, and generally fulfilling the purposes of the Commission's governing statute. If approving applications submitted to it pursuant to 12 M.R.S. § 685-A(10) and § 685-B, the Commission may impose such reasonable terms and conditions as the Commission considers appropriate to satisfy the criteria of approval and purpose set forth in these statutes, rules, and the Comprehensive Land Use Plan.⁷

⁵ Ch. 10, subchapter III.

⁶ The criteria for approval set forth at 12 M.R.S. § 685-B(4) are restated in Chapter 10, § 10.24.

⁷ Ch. 10, § 10.24.

PROCEDURAL BACKGROUND

On March 31, 2017, Massachusetts Electric Distribution Companies, in coordination with the Massachusetts Department of Energy Resources, issued a Request for Proposal for Long-Term Contracts for Clean Energy Projects (“Massachusetts RFP”).

On July 27, 2017, CMP and Hydro Renewable Energy, Inc., an affiliate of Hydro Quebec, submitted to Massachusetts Electric Distribution Companies a joint bid proposal, *New England Clean Energy Connect: 100% Hydro*, in response to the Massachusetts RFP.

On September 27, 2017, CMP submitted to the Department an application for a Natural Resources Protection Act (“NRPA”) permit pursuant to 38 M.R.S. §§ 480-A – 480-JJ and a Site Law permit pursuant to 38 M.R.S. §§ 481 – 490 for its proposed Project.

On October 12, 2017, the Department submitted to the Commission a Request for Certification for CMP’s proposed Project.

On October 13, 2017, the Commission provided the Department with a Completeness Determination in which staff determined that there was sufficient information to begin the review of the certification request pursuant to 12 M.R.S. § 685-B(1-A)(B-1), and the Department accepted the applications as complete for processing.

On November 17, 2017, the Commissioner of the Department decided that the Department would hold a public hearing on CMP’s NRPA and Site Law permit applications. On June 27, 2018, the Department provided notice of the opportunity to intervene in its hearing.

On December 11, 2017, the Appalachian Mountain Club, Maine Audubon, and the Natural Resources Council of Maine, in a joint letter to the Commission, filed a request for a hearing on the allowed use determination portion of the Commission’s certification of the proposed Project.

On December 19, 2017, the Commission voted to hold a public hearing limited to whether the proposed Project is an allowed use within the Recreation Protection (“P-RR”) subdistricts. On March 28, 2018, Massachusetts Electric Distribution Companies selected the proposed Project as the winning bid in the Massachusetts RFP.

On July 12, 2018, the Commission provided notice of the public hearing and opportunity to intervene.

To facilitate efficient review and avoid the need for duplicative testimony by the same parties and interested members of the public in different proceedings, the Commission decided to hold its public hearing jointly with the Department.

Through its First Procedural Order, the Commission granted intervenor status to the 30 petitioners identified in Table 2 below. Additionally, the Commission allowed the Office of the Public Advocate to participate as a governmental agency, which, pursuant to Chapter 5 § 5.15, has all the rights of an intervenor.

Table 2. Persons and entities granted leave to intervene.

Hawk’s Nest Lodge	Taylor Walker
Kennebec River Angler	Tony DiBlasi
Kingfisher River Guides	Edwin Buzzell
Maine Guide Service, LLC	Appalachian Mountain Club
Mike Pilsbury	Natural Resources Council of Maine
Alison Quick	Trout Unlimited
Carrie Carpenter	City of Lewiston
Courtney Fraley	Town of Caratunk
Eric Sherman	Wagner Forest Management
Kathy Barkley	NextEra Energy Resources, LLC
Kim Lyman	Western Mountains & Rivers Corp.
Linda Lee	International Brotherhood of Electrical Workers
Mandy Farrar	Industrial Energy Consumer Group
Matt Wagner	Lewiston Auburn Metropolitan Chamber of Commerce
Noah Hale	Maine State Chamber of Commerce

The Presiding Officer consolidated the following twelve intervenors: 1) Alison Quick, 2) Carrie Carpenter, 3) Courtney Fraley, 4) Eric Sherman, 5) Kathy Barkley, 6) Kim Lyman, 7) Linda Lee, 8) Mandy Farrar, 9) Matt Wagner, 10) Noah Hale, 11) Taylor Walker, and 12) Tony DiBlasi. This group is referred to as the “Local Residents and Recreational Users” in Intervenor Group 10 (see next paragraph).

The Department’s and the Commission’s Presiding Officers further consolidated the Intervenor groups into the following ten (10) intervenor groups.

- Group 1: Friends of Boundary Mountains*; Maine Wilderness Guides*; Old Canada Road*
- Group 2: West Forks Plantation*; Town of Caratunk**; Kennebec River Anglers**; Maine Guide Services**; Hawk’s Nest Lodge**; Mike Pilsbury**
- Group 3: International Energy Consumer Group**; City of Lewiston**; International Brotherhood of Electrical Workers**; Maine Chamber of Commerce**;
Lewiston/Auburn Chamber of Commerce***

-
- Group 4: Natural Resources Council of Maine^{**}; Appalachian Mountain Club^{**}; Trout Unlimited^{**}
- Group 5: Brookfield Energy^{*}; Wagner Forest^{**}
- Group 6: The Nature Conservancy^{*}; Conservation Law Foundation^{*}
- Group 7: Western Mountains and Rivers Corporation^{**}
- Group 8: NextEra^{**}
- Group 9: Office of the Public Advocate^{*}
- Group 10: Edwin Buzzell^{**}; Local Residents and Recreational Users^{***}

Note:

- * indicates: Intervenors with the Department only
- ** indicates: Intervenors with the Department and the Commission
- *** indicates: Intervenors with the Commission only

After receiving input from the parties, the Department's and the Commission's Presiding Officers selected the following hearing topics:

- a. Scenic Character and Existing Uses;
- b. Wildlife Habitat and Fisheries;
- c. Alternatives Analysis; and
- d. Compensation and Mitigation.

The Commission required pre-filing of all direct and rebuttal testimony in advance of the hearing. On April 1-5, 2019, in Farmington, and on May 9, 2019, in Bangor, the Department held a public hearing on CMP's proposed Project. On April 2, 2019, and May 9, 2019, only, the hearing was held jointly with the Commission. The hearing included both daytime and evening sessions. Participation in the daytime sessions was limited to the parties. The evening sessions, held on April 2, 2019, for the Commission and the Department jointly, and April 4, 2019, for the Department only, were devoted to receiving testimony from members of the public. The Commission allowed the submission of post-hearing briefs, proposed findings of fact, and reply briefs following the hearing. The Commission and the Department concluded the hearing in this matter on May 9, 2019. The record remained open until May 31, 2019, for the parties to submit limited additional evidence and responses. The Commission's hearing record closed on May 31, 2019.

The opportunity for public comment on the proposed Project began with receipt of the request for certification on October 12, 2017. In October 2017, the Commission created a webpage for the proposed Project on which pertinent information regarding the Commission's certification process was posted.⁸ A GovDelivery distribution list specific to the proposed Project was created by the Commission in October 2017 to provide updates on the proposed Project.⁹ Any interested person was provided the option to enter their email address to receive updates regarding the proposed Project. The Commission received approximately 300 written comments from members of the public, municipalities, plantations, and townships regarding the proposed Project. Additionally, the Commission received written and oral testimony from dozens of members of the public at the public hearing on April 2, 2019. Following the conclusion of the hearing, the Presiding Officers held open the opportunity for public comment until May 20, 2019, then until May 28, 2019, to allow the public to file statements in rebuttal of those written statements filed by May 20, as required by Commission rule Chapter 5.

On September 11, 2019, the Commission conducted a deliberative session to consider a draft Site Law Certification decision document. The Commission did not vote or make any decisions regarding the draft decision document at the September meeting.

On September 18, 2019, CMP submitted to the Department and the Commission a petition to reopen the record with attachments that describe an amendment to the Site Law and NRPA applications pertaining to the originally proposed route in the area near Beattie Pond. On October 3, 2019, the Presiding Officers of the Department and the Commission reopened the record for the purpose of allowing CMP to amend its Site Law and NRPA applications and to gather additional evidence needed to evaluate the proposed alternative route outside of the P-RR subdistrict at Beattie Pond. Intervenors were permitted to submit evidence and comments pertaining to the amendment until November 12, 2019. CMP was permitted to submit evidence and comments responsive to the Intervenors' submissions until November 26, 2019. The general public was permitted to submit evidence and comments until November 26, 2019.

ALLOWED USE DETERMINATION: SPECIAL EXCEPTION REVIEW CRITERIA

As set forth in Table 1 above, a utility facility is a use allowed with a permit within all subdistricts in which it is proposed, except in the P-RR and Wetland Protection ("P-WL") subdistricts. Within the P-RR and P-WL subdistricts, a utility facility is allowed with a permit by special exception. For the Commission to find that a use is allowed by special exception in both the P-RR and P-WL subdistricts, pursuant to Ch. 10, §§ 10.23(I)(3)(d) and 10.23(N)(3)(d) respectively, an applicant must show by substantial evidence that:

- a. there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant;

⁸ https://www.maine.gov/dacf/lupc/projects/site_law_certification/slc9.html (last accessed December 30, 2019).

⁹ GovDelivery is a Maine government subscription service allowing citizens to sign up for free text and email updates about topics relevant to the subscriber.

-
- b. the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and
 - c. such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.

The proposed Project would cross or traverse two separate P-RR subdistricts: 1) where the proposed Project would cross the Kennebec River in West Forks Plantation and Moxie Gore; and 2) at a proposed crossing of the Appalachian Trail in Bald Mountain Township. The proposed Project crosses P-WL subdistricts in numerous locations throughout Segments 1, 2, and 3.¹⁰

The purpose of the P-RR subdistrict is to provide protection from development and intensive recreational uses to those areas that currently support, or have opportunities for, unusually significant primitive recreation activities. By so doing, the natural environment that is essential to the primitive recreational experience will be conserved. Ch. 10, § 10.23(I). The purpose of the P-WL subdistrict is to conserve coastal and freshwater wetlands in essentially their natural state because of the indispensable biologic, hydrologic and environmental functions which they perform. Ch. 10, § 10.23(N).

SPECIAL EXCEPTION ALTERNATIVES ANALYSIS

The Commission considers alternatives analysis information to determine whether a proposed activity is an allowed use by special exception within P-RR and P-WL subdistricts.¹¹ Although the Commission's role does not include evaluation of alternatives outside the P-RR and P-WL subdistricts, an understanding of CMP's overall alternatives analyses for siting the proposed Project is necessary context for the Commission's evaluation of the P-RR and P-WL special exception criteria.¹²

¹⁰ CMP's initial proposal was to cross or traverse three separate P-RR subdistricts: 1) where the proposed Project would cross the Kennebec River; 2) adjacent to Beattie Pond in Beattie Township, Lowelltown Township, Skinner Township, and Merrill Strip Township; and 3) at a proposed crossing of the Appalachian Trail. CMP's September 2019 application amendment revised the route of the proposed Project to avoid the P-RR subdistrict at Beattie Pond. As a result, no portion of the revised proposed Project route is within the Beattie Pond P-RR subdistrict or within Lowelltown Township.

¹¹ The Department requires a broader alternatives analysis as part of its review under the NRPA that addresses avoidance and minimization of impacts to protected natural resources over the entire proposed Project, including impacts to protected natural resources within the Commission's jurisdiction.

¹² CMP's complete alternatives analysis is provided in section 2.0 of its NRPA permit application with the Department. Alternatives analyses pertaining to the P-RR and P-WL subdistricts are discussed in section 25 of CMP's Site Law permit application as well as in its hearing testimony before the Commission.

a. Alternative Routes for Transmission Line Corridor: Above Ground Alternatives

CMP analyzed three HVDC transmission line alternative routes when designing the proposed Project, each of which it stated would meet the project purpose of delivering energy generation from Québec to the New England Control Area.¹³ In doing so, CMP specifically evaluated alternatives that would avoid the P-RR subdistricts. The three routes CMP evaluated are the Preferred Route, which is the route selected by CMP for its proposed Project for which it seeks permits; Alternative 1; and Alternative 2. Alternative 1 would require a new and additional crossing of the Appalachian Trail, would require acquisition of lands held in conservation, would include 93 miles of new corridor as compared to the Preferred Route distance of 53.5 miles, and would require more landowner acquisitions. Alternative 2 would also require a new crossing of the Appalachian Trail, the acquisitions of land in the 36,000-acre Bigelow Preserve and from the Penobscot Indian Nation, contains more wetland and stream crossings than the Preferred Alternative, and requires more landowner acquisitions than the Preferred Alternative.

CMP considered the following in conducting its evaluation of alternatives: conserved lands, undeveloped right-of-way, amount of clearing required, number of stream crossings, transmission line length, National Wetlands Inventory mapped wetlands, deer wintering areas, inland waterfowl and wading bird habitat, public water supplies, significant sand and gravel aquifers, and parcel count total. In siting Segment 1, CMP stated that it considered the presence of publicly owned conservation lands (e.g., the Appalachian National Scenic Trail and Maine Bureau of Parks and Lands properties), as well as those held by private conservation organizations such as The Nature Conservancy and the New England Forestry Foundation. The paramount goal of the route selection was to avoid iconic scenic and recreational areas that characterize this part of western Maine, including the Bigelow Preserve, the Crocker Mountain High Peaks area, Mount Abraham, Saddleback Mountain, the Moosehead Region Conservation Easement, Grace Pond in Upper Enchanted Township, the Leuthold Forest Preserve, the Number 5 Bog Ecological Reserve, and the Moose River/Attean and Holeb Ponds. CMP further stated that care was taken to microsite the new corridor in a manner that would avoid visual impacts to smaller but visually sensitive areas such as the Moxie Falls Scenic Area and the Cold Stream Forest.

CMP stated that it would utilize existing transmission line corridors to the greatest extent practicable for the proposed Project. Approximately 73 percent of the proposed Project would be sited in existing transmission corridors, and CMP already holds title, right, or interest to lands within these existing corridors. Regarding Segment 1, the undeveloped corridor between the Canadian border and The Forks Plantation, CMP asserts that it has fee title, leases, and easements to all the land within the Preferred Alternative corridor.

Ultimately, CMP decided that the Preferred Alternative would be the least environmentally damaging and most cost-effective option and is the route selected for the proposed Project.

¹³ CMP witness Brian Berube, hearing transcript, April 2, 2019, pages 129-130; NRPA application, section 2.0.

CMP evaluated additional specific alternatives to avoid crossing the P-RR subdistricts at the Kennebec River, Beattie Pond, and the Appalachian Trail.

In an effort to avoid the P-RR subdistrict at Beattie Pond, CMP negotiated an agreement with a landowner for a corridor south of the pond through Merrill Strip Township.¹⁴

CMP provided an easement to the United States government for the construction of the Appalachian Trail at the location where it now seeks to install an additional transmission line as part of the proposed Project.¹⁵ The easement reserves the right to build and maintain additional transmission lines and clear within the corridor. CMP contends that alternative alignments at this location would result in one or more new crossings of the Appalachian Trail where there is not an existing transmission line.

None of the components of the proposed underground crossing of the Kennebec River would be visible from the P-RR subdistrict. CMP concluded that the previously proposed overhead crossing of the Kennebec River is no longer suitable as it would have a greater environmental impact than the current proposal.

More detailed discussion of alternatives for sections of the proposed Project that would cross or traverse the P-RR subdistricts is provided below.

b. Alternative Routes for Transmission Line Corridor: Undergrounding Alternative

Several intervenors raised the concern that CMP did not include undergrounding the transmission line as an alternative considered to the proposed overhead crossing of the Appalachian Trail P-RR subdistrict. In response, CMP argued that it “is under no obligation to analyze alternatives that are too remote, speculative, or impractical to pass the threshold test of reasonableness.... It was and remains so obvious that undergrounding would not be practicable that CMP did not initially include it as an alternative in its Applications.”¹⁶ CMP testified that when the proposed Project was designed and put to bid for the Massachusetts RFP, incorporating the costs associated with undergrounding would have resulted in CMP’s proposal not being competitive relative to the other proposals and therefore not selected by the Massachusetts Electric Distribution Companies.¹⁷ Additional costs to underground the proposed Project at the Appalachian Trail P-RR subdistrict would be borne by CMP (or an affiliate owner of the [proposed] Project) and its investors.¹⁸

¹⁴ Prior to submitting its September 2019 application amendment, CMP testified that the landowner demanded approximately 50 times the fair market value for the land necessary to avoid the Beattie Pond P-RR. Consequently, CMP concluded that this alternative was not reasonably available. (CMP witness Brian Berube, hearing transcript, April 2, 2019, page 130.)

¹⁵ CMP rebuttal testimony, exhibit 9-B.

¹⁶ CMP post-hearing reply brief, page 20.

¹⁷ CMP witness Thorn Dickinson, prefiled rebuttal testimony.

¹⁸ CMP witness Thorn Dickinson, prefiled rebuttal testimony, page 11.

Despite CMP's conclusion that undergrounding would be obviously cost prohibitive without conducting a thorough analysis, CMP provided an underground alternatives analysis in response to the testimony of witnesses in Intervenor Groups 2, 6, and 8. CMP additionally provided detailed cost analysis information to the Commission and Department on May 17, 2019. CMP argued that "this analysis confirmed CMP's initial determination that undergrounding the [proposed] Project, or even portions of the [proposed] Project beyond the proposed undergrounding at the upper Kennebec River, is not reasonable, and therefore also could not be 'practicable,' because the costs of doing so would defeat the purpose of the [proposed] Project. For the same reason, undergrounding in the two other P-RR subdistricts that the [proposed] Project will cross is not suitable or reasonably available to CMP."^{19,20}

Intervenor Groups 2, 4, and 10 argued that CMP did not conduct a proper and thorough alternatives analysis, in part, because the time to conduct such analysis was at the time the proposed Project was being sited, not during the hearing. Intervenor Group 4 argued that the amount of redacted information in CMP's undergrounding cost analysis renders the analysis of limited use in evaluating whether or not these figures are reasonable, what they include, and whether the alternatives could have been practicable, had they ever truly been considered by CMP.²¹

Intervenor Group 8 argued that HVDC transmission lines installed worldwide that are similar to the one proposed by CMP are routed underground and therefore are technically feasible. Undergrounding some or all of the proposed Project in Segment 1, Intervenor Group 8 argues, is a financially viable alternative that would mitigate scenic and recreational concerns in this section of the proposed Project. CMP committed to route the proposed Project under the Kennebec River, which will cost \$42 million, approximately four percent of the project's capital cost.

Intervenor Group 8 argued the incremental cost increases for undergrounding the specific areas within the P-RR subdistrict for Segment 1 range from \$13, 28, and 30 million, which is approximately one, three, and three percent increases in the capital costs for the proposed Project. The total associated cost attributable to routing under the Kennebec River and specific areas in Segment 1, therefore, sum to only 11 percent of the proposed Project's total costs. Intervenor Group 8 argued that CMP conceded that its budget includes a contingency of 15 percent of the total project cost. Accordingly, undergrounding specific areas within the P-RR subdistrict for Segment 1 is well within CMP's anticipated contingency funds for the NECEC.²²

CMP argued that, contrary to the assertions of Intervenor Group 8, undergrounding is not available or feasible considering the technology and logistics and doing so would defeat the purpose of the proposed Project because it would not have been selected by the Massachusetts Electric Distribution

¹⁹ CMP post-hearing reply brief, pages 20-21.

²⁰ CMP considered undergrounding alternatives for all three P-RR subdistricts proposed in its initial application. However, the September 2019 application amendment eliminated all portions of the proposed Project from the Beattie Pond P-RR subdistrict. This change in the proposed Project is not reflected in testimony and other record evidence from the hearing that is cited in this order.

²¹ Intervenor Group 4 post-hearing brief.

²² Intervenor Group 8 post-hearing brief, page 4 (footnotes omitted).

Companies.²³ CMP argued that “[t]he design of transmission lines that interconnect systems is very, very site dependent” and that “underground transmission installations cause a continuous surface disruption (rather than intermittent and widely spaced at each overhead structure installation location), require additional control measures for soil erosion, sedimentation, and dust generation during construction, require permanent access roads to every jointing location along the route, and can only avoid wetlands and waterways by using higher cost and higher risk trenchless methods.”²⁴

In both prefiled rebuttal testimony and at the live hearing, CMP’s witness, Justin Bardwell provided testimony regarding underground transmission methods, potential alternate routes, estimated costs, anticipated environmental and public impacts, and additional risk during construction. Mr. Bardwell identified and discussed direct burial and trenchless installation technologies used as alternatives to overhead transmission lines. Key points relative to the Commission’s review include the following.

- Generally, direct burial of a transmission line in a trench is the lowest cost underground option. This requires digging a trench, management of spoils, erosion control, and removal of trees along a 75-foot wide corridor.
- Direct burial is often unsuitable for installation within roadways.
- Trenchless horizontal directional drill (“HDD”) technology methodology can be used to overcome or avoid surface obstacles, such as highways, railroads, sensitive wetlands, or waterways.
- HDD installation is two to ten times more expensive than trenched installations.
- HDD requires termination stations, similar in appearance to a substation, when transitioning between overhead and underground segments.
- Underground construction for the proposed Project would be expected to be mostly direct burial with HDD installations used for major highway, waterway, and wetlands crossings.
- The cost estimate for undergrounding the entirety of the proposed route in the proposed Project would be approximately \$1.9 billion. The cost estimate for undergrounding only Segment 1 would be approximately \$750 million. These costs are approximately 5 to 7 times more than the expected cost of overhead transmission construction.
- The vast majority of environmental impacts would be temporary impacts associated with construction.
- Outage rates for overhead and underground installations are respectively 0.53 incidents per 100 miles and 0.141 incidents per 100 miles. Outages in an overhead line are often restored

²³ CMP witness Thorn Dickinson, prefiled rebuttal testimony, pages 2-3, 10.

²⁴ CMP post-hearing reply brief, page 21.

in a few hours, while outages in underground cables typically require 2 to 5 weeks to restore.

- Larger vehicles are needed to service an underground transmission line than an overhead transmission line making access during winter and spring more challenging.

c. Kennebec River P-RR subdistrict alternatives analysis

The proposed Project includes the proposed crossing of the Kennebec River at a location north of Moxie Stream, between West Forks Plantation and Moxie Gore. This river segment is commonly referred to as the Kennebec Gorge and is located just below the Harris Station Dam, the largest hydropower generating facility in Maine. The P-RR subdistrict extends 250 feet from the normal high water mark on both sides of the Kennebec River from the outlet of Indian Pond at the Harris Station Dam to 0.5 miles above its confluence with the Dead River in The Forks Plantation.²⁵

Recreational whitewater rafting in Maine is centered on the Kennebec River, particularly within the Kennebec Gorge, the Dead River, and the West Branch of the Penobscot River.²⁶ Controlled flow releases from the Harris Station Dam support commercial and recreational rafting in this reach of the Kennebec. Between the dam and its confluence with the Dead River, there are no known residential or commercial developments within the Kennebec River P-RR subdistrict. Several individuals and companies representing the recreational and commercial uses of the Kennebec Gorge for whitewater rafting intervened in and testified at the hearing held by the Commission in April and May 2019.

In addition to the broader alternatives analyses discussed above, CMP evaluated three alternatives specific to the proposed crossing of the Kennebec River: 1) at a location north of Moxie Stream, between West Forks Plantation and Moxie Gore; 2) a crossing of the Kennebec River on CMP-owned land about one mile downstream of Harris Dam; and 3) a crossing of the Kennebec River near the Harris Station powerhouse. These are depicted in Figure 25-3 of CMP's Site Law application.

CMP selected the option north of Moxie Stream, between West Forks Plantation and Moxie Gore as its preferred alternative and, in its September 27, 2017, Site Law application, proposed to cross the Kennebec Gorge with an overhead transmission line. In response to early concerns about the impact of the overhead crossing proposal on scenic character and compatibility with the existing recreational uses, CMP, on October 19, 2018, filed an amendment to its Site Law and NRPA applications to incorporate an underground crossing of the Upper Kennebec River using HDD technology.

The proposed HDD crossing of the Kennebec River would not include the construction or placement of any structures within the P-RR subdistrict. The proposed HDD crossing would consist

²⁵ Comprehensive Land Use Plan, Appendix B, Rivers with Special Zoning (2010).

²⁶ Comprehensive Land Use Plan, page 102.

of three main components: 1) the HDD bore, a subgrade conduit containing the HDVC line; 2) two termination stations, one on each side of the river, where the transmission lines transition from underground to overhead; and 3) trenching, a direct buried conduit used to carry the transmission cables from the HDD bore to the termination station.

Intervenors provided no final arguments opposing CMP's proposed HDD crossing of the Kennebec River.

d. Commission findings and conclusions regarding the Kennebec P-RR subdistrict alternatives analysis

Given the potential for significant visual impacts to recreational users on the Kennebec River from an overhead alternative at that location, that the undergrounding alternative using a directional drill would result in no construction activity within the Kennebec River P-RR subdistrict, and the termination stations, which would also be located outside the Kennebec River P-RR, will be well buffered from the river, the Commission concludes that there is no other alternative that is both suitable and reasonably available to the applicant outside of the Kennebec River P-RR subdistrict.

e. The Merrill Strip Alternative (M-GN subdistrict) to the original Beattie Pond Proposed Route (P-RR subdistrict)

In its initial application, CMP proposed a section of the new corridor within the Beattie Pond P-RR subdistrict encompassing portions of Beattie Pond Township, Lowelltown Township, and Skinner Township. Beattie Pond is a remote, undeveloped, management class 6 lake.²⁷ The management objective of management class 6 ponds is prohibiting development within 1/2 mile of these ponds to protect the primitive recreational experience and coldwater lake fisheries in remote settings.²⁸ In 1978, the Commission established a P-RR subdistrict within 1/2 mile of the normal high water mark of Beattie Pond.

As stated above, a utility facility in a P-RR subdistrict is allowed by special exception, which requires an alternatives analysis. In its initial application, CMP evaluated an alternative route south of the Beattie Pond P-RR, an alternative route north of the Beattie Pond P-RR, and undergrounding. Regarding the alternative route south of the Beattie Pond P-RR, CMP stated that it attempted to negotiate an alternative alignment south of the Beattie Pond P-RR subdistrict through Merrill Strip Township, but the landowner required compensation of approximately 50 times fair market value for that property. (Thus, CMP concluded that that alternative was not practicable.)

Following the Commission's September deliberations, CMP petitioned to reopen the record:

[I]n light of the questions and concerns expressed by [the Commission] during the hearing, CMP continued to pursue the Merrill Strip Alternative

²⁷ Commission's Wildlands Lake Assessment Findings, Ch. 10, Appendix C

²⁸ Comprehensive Land Use Plan, page 290.

and recently had the opportunity to re-engage in negotiations with the landowner. Good cause exists to reopen the record because on August 30, 2019 CMP was able to close on the purchase of an easement, reviving the Merrill Strip Alternative and enabling CMP to propose construction of the [proposed] Project entirely outside of the Beattie Pond P-RR subdistrict.²⁹

The Commission and the Department granted CMP's request to reopen the record and, in its September 2019 application amendment, CMP proposed to avoid the Beattie Pond P-RR subdistrict by routing the proposed Project through a new tract, the Merrill Strip Alternative. The Merrill Strip Alternative is a 150-foot wide proposed transmission line corridor that would extend for approximately one mile across the northeast corner of Merrill Strip between Skinner and Beattie Townships. The Merrill Strip Alternative is located within a General Management subdistrict, where a utility facility is allowed with a permit.

The 150-foot wide corridor would be cleared of capable woody vegetation and managed in a persistent early successional habitat (i.e., scrub-shrub), consistent with CMP's Vegetation Management Plans to accommodate construction and maintenance of the transmission line. The Merrill Strip Alternative would require six new structures, five of which will be direct-embed monopoles and one will be a direct-embed two pole structure. The structures would be self-weathering steel, consistent with the CMP's original proposal, ranging in heights from 96 feet to 118.5 feet above ground level.³⁰

Intervenor Groups 2 and 10 "agree that the new location avoids Beattie Pond and consequently eliminates the negative impacts on this particular special resource by removing a small segment of the route from this sub-district. However, the short time frame to study this new area and the inability to give this new route adequate peer review leaves open the question of whether there are other as yet unidentified, negative affects created in this newly impacted area. It is also important to note that simply shifting 1 mile of the 53 miles through Maine's north western woods does not suddenly make the entirety of the 145 mile corridor acceptable nor mean that CMP has met its burden of proof under either the Department's or the Commission's legal standards."³¹

Intervenor Group 4 stated that CMP "did not conduct an adequate alternatives analysis" and that "[i]t did not fully analyze all of the alternative routes and it too quickly dismissed alternatives that the company deemed too expensive at the time. As a result, [CMP] failed to truly evaluate whether or not there were opportunities to avoid and minimize environmental impacts to achieve the least environmentally damaging practicable alternative."³²

Intervenor Group 3 stated that "[t]he [proposed Project] should be approved with or without the [Merrill Strip Alternative] because its benefits vastly outweigh its environmental costs, especially given proposed mitigation techniques. The [Merrill Strip Alternative], however, is on its face an

²⁹ Petition of Central Maine Power Company to Reopen the Record, page 2.

³⁰ Site Law amendment application, section 1.0.

³¹ Intervenor Groups 2 and 10's Response to CMP's Petition to Reopen the Record, page 3.

³² Intervenor Group 4's Comment on Supplemental Information on the Merrill Strip Alternative from Central Maine Power, pages 9-10.

environmentally superior alternative to [the proposed Project] crossing the Beattie Pond P-RR Subdistrict. The [Merrill Strip Alternative] is shorter by nearly 30 percent (1 mile versus 1.4 miles) and will use fewer structures, in an area almost exclusively used for private commercial timber harvesting. Therefore, [the Merrill Strip Alternative] will create fewer and less significant construction, maintenance, and environmental impacts.”³³

Intervenor Group 7 stated that “CMP’s [a]mendment presents a straight-forward alternative warranting consideration and approval by the [Department] and [the Commission] [sic] The [Merrill Strip Alternative] clearly meets the [Commission’s] land use standards, the [Department’s] Site Law and NRPA standards, and is preferable to the originally proposed alignment of the [proposed] Project in the vicinity of Beattie Pond and through the Beattie Pond P-RR subdistrict.”³⁴

In response to Intervenor comments, CMP stated that “the evidence demonstrates that the Merrill Strip Alternative alignment meets the [Commission’s] land use standards and the Site Law and NRPA standards, and is preferable to alignment of the [proposed] Project through the Lowelltown P-RR subdistrict. In sum, the [proposed] Project as modified by the Merrill Strip Alternative meets all Site Law and NRPA approval standards, and [Commission] certification requirements.”³⁵

The Commission considered all relevant testimony and documents in the record for this proceeding. Regarding alternatives for locating the proposed Project outside of the P-RR subdistricts, CMP has proposed the Merrill Strip Alternative to address the relevant Chapter 10 criteria. As a result, no portion of the proposed Project, as amended to include the Merrill Strip Alternative, would be located within the Beattie Pond P-RR subdistrict. The Merrill Strip Alternative is located in a General Management subdistrict in which a utility facility is a use allowed with a permit. As such, the Commission’s special exception analysis, including the alternatives analysis, does not apply to this portion of the proposed Project.

f. Appalachian Trail P-RR subdistrict alternatives analysis

The Commission has established a 200-foot wide P-RR subdistrict centered on the entire length of the Appalachian Trail within its jurisdictional area. The proposed Project would cross the P-RR subdistrict in three locations at the Appalachian Trail adjacent to Moxie Pond in Bald Mountain Township. At this location, the Appalachian Trail is located in an existing CMP corridor containing a 115-kilovolt transmission line. One of the three proposed Appalachian Trail crossings is located at an area referred to as Joe’s Hole, which crossing is depicted in Figure 25-4 of CMP’s Site Law application and in “Photosimulation 50: Troutdale Road, Bald Mountain Twp” included as Appendix D of CMP’s December 7, 2018, response to an additional information request.

³³ Intervenor Group 3’s Comments in Support of the Merrill Strip Alternative and CMP’s Request for Prompt LUPC Deliberation, page 2

³⁴ Intervenor Group 7’s Comments of Western Mountains & Rivers Corporation on Merrill Strip Alternative, page 5.

³⁵ CMP’s Objection and Reply of Central Maine Power Company to Public Comments and to Intervenor Comments and Testimony, pages 13-14.

The cleared portion of CMP's existing corridor in the Appalachian Trail P-RR is approximately 150 feet wide. CMP proposes to widen the clearing by an additional 75 feet on the southern side of the corridor to accommodate the new HVDC transmission line. The resulting cleared portion of the corridor in this location would be 225 feet wide. Portions of six proposed HVDC transmission structures would be visible from the Appalachian Trail P-RR and co-located within an existing CMP transmission line corridor.

CMP's witness testified that while the existing corridor intersects the P-RR subdistrict near the Troutdale Road, the proposed clearing associated with the proposed Project is entirely outside the P-RR and in a Residential Development subdistrict. CMP's witness introduced Applicant Exhibit "Cross-1" depicting the location of the proposed clearing associated with the proposed Project and the zoning boundaries for the P-RR subdistricts.³⁶ Based on information provided by CMP regarding the extent and location of vegetative clearing at the proposed Appalachian Trail crossing, the Commission finds that the proposed Project crosses the Appalachian Trail P-RR in two rather than the three locations identified in the September 2017 Site Law application.

CMP stated in their Site Law application that "[t]he configuration of the [Appalachian Trail], within and adjacent to an approximately 3,500-foot long portion of transmission line corridor, prevented CMP from avoiding direct impacts to the subdistrict through the siting of the transmission line structures. As a result, one of five transmission line structures in this portion of the Project corridor is located within the P-RR subdistrict." CMP additionally stated that "[a]lternative alignments of the transmission line to meet the purpose and need of the [proposed] Project would result in crossings of the Appalachian Trail in one or more locations where there are no existing transmission line corridors. Co-location of the transmission line within the existing transmission line corridor is therefore the least environmentally-damaging practicable alternative."³⁷

In 1987, CMP granted to the United States of America an easement for the Appalachian Trail to cross CMP's land.³⁸ Pursuant to the easement, CMP reserves the right to construct electric transmission lines in the corridor that the Appalachian Trail crosses. With respect to undergrounding at the proposed Appalachian Trail crossing, CMP's witness testified that CMP would have to acquire the underground rights from the United States National Park Service and CMP has not sought to acquire such rights. Intervenor Group 4 argued that CMP, as part of its alternative analysis, should have initiated discussions with private land owners, the National Park Service, and the Maine Appalachian Trail Club to explore the potential alternative of relocating the Appalachian Trail outside CMP's corridor.³⁹

Additional numerical cost analysis information concerning the proposed crossing of the Appalachian Trail provided by CMP on May 17, 2019, included estimates for undergrounding the proposed transmission line at the Appalachian Trail crossing. The estimated cost of an underground alternative for the approximately 1.0 mile of transmission line within the Appalachian Trail P-RR is \$29.8 million, or 3.13% of the overall proposed Project cost of approximately \$950 million. CMP's

³⁶ CMP witness Peggy Dwyer, hearing transcript, April 2, 2019, pages 143-145.

³⁷ Site Law application section 25.3.1.3.

³⁸ CMP prefiled rebuttal testimony, exhibit CMP-9-B.

³⁹ Intervenor Group 4 post-hearing brief, page 9.

witness testified that underground construction is a not a practicable or reasonable alternative and that underground construction would have increased environmental impacts, increased impacts to the public and increased cost to overhead construction. CMP argued that undergrounding of the transmission line at Joe's Hole would require a large hydraulic rig to be set up next to the Appalachian Trail for several months causing significant noise and visual impacts and would require construction of termination stations within site of the trail.⁴⁰ CMP did not address whether the timing of such construction could be coordinated during a period of reduced trail use to minimize the impacts on trail users.

Intervenor Groups 2 and 10 argued that the proposed Project will “degrade the hiking experience for users of the Appalachian Trail. It would be the first crossing of the [Appalachian Trail] by a transmission line of this size anywhere in the state.”⁴¹

Intervenor Group 4 argued that “[t]he widening of the corridor and the addition of a second much larger line would significantly increase the visual impact of these transmission line crossings on users of the [Appalachian Trail].” “The proposed [P]roject would greatly exceed the size, in both height and clearing width, of any existing transmission line crossing of the [Appalachian Trail] in Maine, and increase the sense of users that the trail at this location crosses a developed landscape.” “We agree that creating a new crossing of the [Appalachian Trail] where none currently exists is not a preferable alternative. However, there are at least three other potential alternatives that have not been adequately explored: routing the project along existing roads to avoid this [Appalachian Trail] crossing, relocating the [Appalachian Trail], or burying the line at the proposed [Appalachian Trail] crossing.” Intervenor Group 4 argues that CMP has not met the burden to demonstrate that the proposed Project satisfies the requirements for a special exception to cross the P-RR subdistrict at the Appalachian Trail.⁴²

g. Commission findings and conclusions regarding the Appalachian Trail P-RR subdistrict alternatives analysis

The Commission considered all relevant testimony and documents in the record for this proceeding. Regarding alternatives for locating the proposed Project outside of the Appalachian Trail P-RR subdistrict, the Commission finds most credible CMP's testimony and other evidence provided by CMP. The Commission finds that alternative routes for crossing the Appalachian Trail are not suitable because they would cross the Appalachian Trail in places not already impacted by an existing transmission line.⁴³

Undergrounding at the Appalachian Trail P-RR would necessitate construction of termination stations that would be visible to remote recreational hikers and necessitate the positioning of a large hydraulic drilling rig next to the trail for several months which would result in greater noise and visual impacts than the construction of the proposed overhead transmission lines.

⁴⁰ CMP witness Justin Bardwell, hearing transcript, May 9, 2019, page 343; CMP's post-hearing brief, p. 27.

⁴¹ Intervenor Groups 2 and 10 post-hearing brief, page 7.

⁴² Intervenor Group 4 post-hearing brief and proposed finding of facts, pages 6-8.

⁴³ CMP witness Brian Berube, hearing transcript, April 2, 2019, page 170.

The Commission considers cost as a factor in evaluating whether an alternative is reasonably available to an applicant. CMP's estimated costs associated with undergrounding the transmission line in the Appalachian Trail P-RR subdistricts is \$29.8 million (or 3.13% of the overall proposed Project).

Overall, as compared to the proposed overhead transmission line, undergrounding at the Appalachian Trail P-RR subdistrict would necessitate the use of more heavy equipment, longer construction time, greater disruption to traffic, additional temporary environmental impacts, construction of permanent access roads, and higher construction costs. Both overhead and undergrounding methods of installing a transmission line result in some environmental and scenic impacts within the P-RR subdistrict. The Commission finds that, on balance, the benefit to recreational users on the Appalachian Trail of undergrounding the transmission line does not outweigh the environmental, technological, logistical, and financial implications of using this methodology in the Appalachian Trail P-RR subdistrict and is therefore not suitable to the proposed use or reasonably available to the applicant.

h. P-WL subdistrict alternatives analysis

The Wetland Protection subdistrict includes the area enclosed by the normal high water mark of surface water bodies, including coastal and freshwater wetlands and rivers, streams and brooks, within the Commission's jurisdictional area. Freshwater wetlands means “[f]reshwater swamps, marshes, bogs and similar areas that are inundated or saturated by surface or groundwater at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils and not below the normal high water mark of a body of standing water, coastal wetland, or flowing water.” Ch. 10, § 10.02(87).

The Commission's Chapter 10 describes three categories of coastal or freshwater wetlands included in P-WL subdistricts: P-WL1, P-WL2, and P-WL3. Ch. 10, § 10.23(N)(2)(a).

The Department considers impacts to freshwater wetlands, including the wetlands zoned as P-WL, in its review of the proposed Project pursuant to the NRPA and the Department's related rule, Wetlands and Waterbodies Protection, 06-096 C.M.R. ch. 310. The Commission's Protected Natural Resource standards set forth in Ch. 10, § 10.25(P) are therefore duplicative and not considered by the Commission in its certification decision.

In preparing its NRPA application, CMP provided an alternatives analysis that identified wetlands and water bodies generally one acre and larger that are listed in the National Wetlands Inventory maps developed by the United States Fish and Wildlife Service, which would be crossed by the proposed Project. CMP considered and favored transmission line routes that minimized crossings of wetlands and water bodies to minimize unavoidable temporary (e.g., construction mat crossings) and permanent (e.g., habitat conversion, filling) impacts to these resources. CMP concluded that frequency of wetland occurrence per mile of transmission line corridor is greater along the route

alternatives than along the preferred route for which it seeks permits. As such, a route meeting the purpose and need of the proposed Project and reasonably available to CMP could not be found without similar or greater impact to P-WL subdistricts.⁴⁴

CMP’s preferred alternative route, for which it seeks permits, includes 76.3 acres of mapped wetland impacts compared to 118.3 acres for Alternative 1 and 113.3 acres for Alternative 2.⁴⁵ CMP’s application identifies that the proposed Project would cross P-WL subdistricts a total of 34 times.⁴⁶ CMP did not provide information regarding the number of crossings of P-WL subdistricts the two alternative routes would involve.

The Commission finds that the proposed Project would intersect a total of 73 individually zoned P-WL subdistricts. A summary of the locations and wetland category for each crossing is provided in Table 3 below. A total of two transmission structures, identified in Table 4 below, are located within the P-WL subdistricts.⁴⁷ The primary impact to wetlands from the proposed Project would be the conversion of forested wetlands to scrub-shrub wetlands and emergent wetlands. The footprint of the two proposed transmission structures within P-WL3 wetlands would result in permanent impacts.

Table 3. Location and category of P-WL wetlands within the proposed Project area.

Location	Nearest Transmission Structure	Wetland Category
Appleton Township	3006-723	P-WL1: Wetlands of Special Significance
	3006-727	P-WL2: Scrub-shrub Wetlands
	3006-728	P-WL3: Forested Wetlands
	3006-731	P-WL3: Forested Wetlands
	3006-754	P-WL1: Wetlands of Special Significance
Bald Mountain Township	3006-436	P-WL1: Wetlands of Special Significance
	3006-436	P-WL3: Forested Wetlands
	3006-440	P-WL3: Forested Wetlands
	3006-441	P-WL3: Forested Wetlands
	3006-447	P-WL2: Scrub-shrub Wetlands
	3006-453	P-WL3: Forested Wetlands
	3006-463	P-WL1: Wetlands of Special Significance
	3006-483	P-WL1: Wetlands of Special Significance
	3006-483	P-WL1: Wetlands of Special Significance
Bradstreet Township	3006-667	P-WL2: Scrub-shrub Wetlands
	3006-667	P-WL1: Wetlands of Special Significance

⁴⁴ Site Law application, section 25.3.2. CMP’s alternatives analysis is included in section 2.0 of its NRPA application.

⁴⁵ CMP Witness Gerry Mirabile, prefiled direct testimony, pages 19-20.

⁴⁶ Site Law application, section 25.3.2.

⁴⁷ CMP’s August 13, 2018, response to additional information request.

	3006-671	P-WL2: Scrub-shrub Wetlands
	3006-678	P-WL1: Wetlands of Special Significance
	3006-678	P-WL2: Scrub-shrub Wetlands
	3006-680	P-WL1: Wetlands of Special Significance
	3006-682	P-WL3: Forested Wetlands
	3006-685	P-WL1: Wetlands of Special Significance
	3006-687	P-WL3: Forested Wetlands
	3006-687	P-WL2: Scrub-shrub Wetlands
	3006-687	P-WL1: Wetlands of Special Significance
	3006-688	P-WL1: Wetlands of Special Significance
Concord Township	3006-354	P-WL3: Forested Wetlands
	3006-357	P-WL3: Forested Wetlands
	3006-361	P-WL3: Forested Wetlands
	3006-365	P-WL1: Wetlands of Special Significance
	3006-365	P-WL3: Forested Wetlands
	3006-365	P-WL2: Scrub-shrub Wetlands
	3006-365	P-WL3: Forested Wetlands
	3006-366	P-WL3: Forested Wetlands
	3006-370	P-WL2: Scrub-shrub Wetlands
	3006-375	P-WL2: Scrub-shrub Wetlands
	3006-376	P-WL2: Scrub-shrub Wetlands
	3006-376	P-WL3: Forested Wetlands
	3006-378	P-WL3: Forested Wetlands
	3006-708	P-WL1: Wetlands of Special Significance
Hobbsdown Township	3006-703	P-WL1: Wetlands of Special Significance
	3006-708	P-WL3: Forested Wetlands
	3006-710	P-WL3: Forested Wetlands
	3006-721	P-WL2: Scrub-shrub Wetlands
Johnson Mountain Township	3006-588	P-WL2: Scrub-shrub Wetlands
	3006-599	P-WL3: Forested Wetlands
	3006-614	P-WL2: Scrub-shrub Wetlands
	3006-650	P-WL2: Scrub-shrub Wetlands
Moxie Gore	3006-540	P-WL3: Forested Wetlands
	3006-541	P-WL3: Forested Wetlands
	3006-543	P-WL3: Forested Wetlands
	3006-548	P-WL3: Forested Wetlands
Skinner Township	3006-770	P-WL2: Scrub-shrub Wetlands
T5 R7 BKP WKR	3006-693	P-WL2: Scrub-shrub Wetlands
	3006-693	P-WL3: Forested Wetlands
	3006-694	P-WL3: Forested Wetlands

	3006-694	P-WL3: Forested Wetlands
	3006-694	P-WL3: Forested Wetlands
	3006-695	P-WL3: Forested Wetlands
	3006-700	P-WL1: Wetlands of Special Significance
	3006-700	P-WL3: Forested Wetlands
	3006-702	P-WL1: Wetlands of Special Significance
	3006-702	P-WL3: Forested Wetlands
	3006-703	P-WL1: Wetlands of Special Significance
	3006-703	P-WL3: Forested Wetlands
	3006-704	P-WL3: Forested Wetlands
	3006-705	P-WL3: Forested Wetlands
The Forks Plantation	3006-502	P-WL2: Scrub-shrub Wetlands
	3006-502	P-WL1: Wetlands of Special Significance
	3006-502	P-WL1: Wetlands of Special Significance
	3006-530	P-WL3: Forested Wetlands
West Forks Plantation	3006-566	P-WL3: Forested Wetlands
	3006-567	P-WL3: Forested Wetlands

Table 4. Proposed transmission structures located within P-WL subdistricts.

Structure Number	Subdistrict	Location	Natural Resource Map Number
3006-541	P-WL3	Moxie Gore	Segment 1 - Map 113
3006-548	P-WL3	Moxie Gore	Segment 1 - Map 110

Capable tree species include, but are not limited to, fir, spruce, oaks, pines, maples, birches, poplar, elm, beech, and basswood.⁴⁸ CMP developed a Construction Vegetation Clearing Plan which describes the restrictive management practices required for protected natural resources, including freshwater wetlands, during vegetation clearing associated with proposed Project construction.⁴⁹ CMP also developed a Post-Construction Vegetation Maintenance Plan which describes the restrictive maintenance requirements for protected natural resources within the transmission line corridor and applies to routine maintenance.⁵⁰

i. Commission findings and conclusions regarding the P-WL subdistrict alternatives analysis

The Commission finds that the two alternative routes analyzed by CMP would result in greater wetland impact than CMP’s preferred alternative for which it seeks permits. In addition, the Commission finds that the trench method of installing transmission lines, as discussed by Mr.

⁴⁸ Site Law application, section 10.1.

⁴⁹ Site Law application, exhibit 10-1.

⁵⁰ Site Law application, exhibit 10-2.

Bardwell, would necessitate excavation of a trench through each wetland area resulting in temporary wetland impacts from the removal of vegetation and disturbance of soils. The underground trench alternative would also involve permanent changes in wetland vegetation, including the conversion of forested wetland to scrub-shrub wetland. Mr. Bardwell testified to the cost of horizontal directional drilling beneath wetlands. The Commission finds that the cost of horizontal direction drilling beneath wetlands would be cost prohibitive and not an alternative that is reasonably available for the 73 individually zoned P-WL subdistricts within the Commission's jurisdictional area. In consideration of all the evidence, the Commission concludes that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant relative to the P-WL subdistricts.

SPECIAL EXCEPTION BUFFERING ANALYSIS

The special exception criteria for the P-RR and P-WL subdistricts require that the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible. For purposes of Chapter 10, the proposed Project use is a utility facility. Because components of the proposed Project will be visible, the Commission considers visual screening of the proposed use from other uses and resources with which it is incompatible to determine whether the proposed use is sufficiently buffered.

CMP submitted a visual impact assessment, prepared by Terrence J. DeWan & Associates. CMP's visual impact assessment, which includes photosimulations, examines the potential scenic impact of the transmission line from 32 key observation points, including the site of the proposed Kennebec River crossing, and the site of the proposed crossing of the Appalachian Trail.^{51,52}

The Department contracted with Dr. James F. Palmer, Scenic Quality Consultants, an independent scenic consultant, to assist in the Department's review of the evidence submitted on scenic character. Given the overlap of the Department's scenic character review with the Commission's consideration of scenic impacts as they relate to the buffering special exception criterion, the Commission considered Dr. Palmer's review of CMP's visual impact assessment.

⁵¹ Site Law application, section 6.16, Appendix D, Photosimulations I and IA; section 6.16, Appendix D, Photosimulations 10, 10A, 10B, 11, and 11A; and section 6.16, Appendix E.

⁵² The perspective of some key observation points is from private property. In its prefiled direct testimony, Wagner Forest testified that "the inclusion of photos and photo simulations from private lands, including those from our managed property, taken without our consent. This project will pass through several miles of private working forests, which only allow public recreational access at the sole discretion of the individual landowners. Based on recent public comments regarding the NECEC project, it is apparent this access privilege is misunderstood by many in the public. We ask you to not encourage this misunderstanding by considering photos or simulations from viewpoints that occur on private land." The photosimulations provided for the Kennebec River, Beattie Pond and the Appalachian Trail were not taken from lands owned by Wagner Forest.

In siting the proposed Project, and specifically the segments within the P-RR subdistricts, CMP stated that it maximized the use of natural buffers, such as topography and intervening vegetation, to maintain visual buffers, and also sited the proposed new transmission line within existing transmission line corridors.⁵³

a. Kennebec River P-RR buffering analysis and conclusions

As stated above, the proposed use is a utility facility. The P-RR subdistrict extends 250 feet from the normal high water mark on each side of the Kennebec River. Existing uses of the Kennebec River at the site of the proposed crossing include recreational whitewater rafting, kayaking, and fishing. CMP's proposed crossing of the river using underground horizontal directional drilling technology would result in no project components being visible from this P-RR subdistrict.

CMP proposed to retain a forested buffer of approximately 1,200 in length within the corridor between the northwest shoreline and the termination station and a forested buffer of approximately 1,000 in length will be preserved within the corridor between the southeast shoreline and the termination station. Updated photographic simulations and computer model images of the proposed HDD crossing, submitted by CMP with its October 19, 2018, Site Law application amendment, demonstrate that no components of the proposed Project would be visible from the Kennebec River P-RR subdistrict.

Intervenor Groups 2 and 10 argued that “[t]he West Forks has seen over 100,000 people a year recreate on their two class A Rivers – the Kennebec River Gorge and the Dead River – for whitewater boating, commercial and private rafting as well as canoeing, kayaking and fishing”; that no level of buffering can protect the use of recreational whitewater rafting on this type of river; that “CMP has failed to meet the special exception criterion regarding buffering”; and that “[n]o visual assessment has been done or study of what damage directional drilling will do to the surrounding area, Kennebec Gorge or the cold stream fisheries located just below the crossing.”⁵⁴ The Commission disagrees. Specifically, the proposed undergrounding of the transmission line at the Kennebec River crossing will prevent the proposed Project from being seen by users of the river. Based on CMP's photosimulations, the Commission finds that CMP's revised proposal to underground the line within the Kennebec River P-RR would entirely avoid scenic impacts within the Kennebec River P-RR subdistrict. The Commission concludes that CMP's proposed Project will be buffered from those other uses and resources within the Kennebec River P-RR subdistrict with which it is potentially incompatible because no portion of the proposed Project will be visible within or from the P-RR subdistrict on either side of the river, provided CMP, for the life of the project, maintains a vegetative buffer at the Kennebec River necessary to provide visual screening (buffering) of all transmission line structures in accordance with Condition #1 of this Site Law Certification.

⁵³ CMP post-hearing brief, page 8 (footnotes omitted).

⁵⁴ Intervenor Groups 2 and 10 post-hearing brief, pages 8, 20, and 52; Intervenor Groups 2 and 10 post-hearing brief, page 8.

b. Appalachian Trail P-RR buffering analysis and conclusions

The Appalachian Trail, a resource of national as well as world-wide significance, valued for the scenic qualities that surround it, is a nearly 2,200-mile trail stretching from Georgia to Maine. Maine's portion of the Appalachian National Scenic Trail ("Appalachian Trail") stretches from Mount Success on the New Hampshire border to Mount Katahdin in Baxter State Park. Of the 281 miles of the Appalachian Trail in Maine, almost all are located in the Commission's jurisdictional area. The Appalachian Trail in Maine is identified as one of the distinctive recreational resources used by recreational hikers. The Commission has placed P-RR subdistricts on approximately 300 miles of hiking trails, including nearly the entire Appalachian Trail within Maine.⁵⁵

CMP's summary of visual impact ratings for leaf-off snow cover describes the visual impact of the proposed Project at the [Appalachian Trail] crossing on Troutdale Road as "strong."⁵⁶ CMP proposes to utilize vegetative screening to reduce the visual impact of the proposed crossing of the Appalachian Trail P-RR. Native woody shrub species are proposed in CMP's "Joe's Hole (Moxie Pond) Planting Plan" submitted as Attachment J of CMP's August 13, 2018, response to additional information request. A total of 93 shrubs are proposed to be planted on either side of Troutdale Road in addition to maintaining non-capable vegetation within the corridor.

Intervenor Group 4 argued that "[a] special exception for construction of the proposed project should not be granted for the proposed transmission line crossing of the Appalachian Trail [] in Bald Mountain Twp....because CMP has not shown by substantial evidence that...the transmission line can be buffered from [Appalachian Trail] users."⁵⁷ "The widening of the corridor and the addition of a second much larger line would significantly increase the visual impact of these transmission line crossings on users of the [Appalachian Trail]" and that "no user surveys were conducted to actually assess users' expectations and reactions to the project."⁵⁸ "The proposed project would greatly exceed the size, in both height and clearing width, of any existing transmission line crossing of the [Appalachian Trail] in Maine, and increase the sense of users that the trail at this location crosses a developed landscape. CMP's contention that the impact on trail users would be 'negligible' is without foundation."⁵⁹ With regard to CMP's proposed planting plan for Joe's Hole, Intervenor Group 4 argued that "these plantings do not, and cannot, come close to buffering the existing use of the [Appalachian Trail], remote hiking, from the increased and incompatible impact of the wider corridor and additional much taller transmission line."⁶⁰

Where the Appalachian Trail intersects the proposed Project, it does so within an existing CMP corridor containing a 115-kilovolt transmission line. CMP argued, "[w]hile the location of the trail throughout this 3,500-foot section of existing transmission line corridor prevented CMP from entirely avoiding impacts within the P-RR subdistrict, the use of the [Appalachian Trail] in these

⁵⁵ Comprehensive Land Use Plan, pages 245, 247, 259, 273.

⁵⁶ CMP's Basis Visual Impact Form Summary Table, January 30, 2019.

⁵⁷ Intervenor Group 4 post-hearing brief, pages 6-7.

⁵⁸ Intervenor Group 4 post-hearing brief, page 7.

⁵⁹ Intervenor Group 4 post-hearing brief, page 8.

⁶⁰ Intervenor Group 4 post-hearing brief, page 10.

locations is not incompatible with transmission lines, as evidenced by both the existing use of the corridor by [Appalachian Trail] hikers and by the easement from CMP allowing such use and by which the National Park Service [] agreed to the construction by CMP of additional above ground electric transmission lines.... The Project will add additional transmission structures, but the character of the [Appalachian Trail] in this location will not change.”⁶¹ CMP stated,

CMP is willing to relocate the [Appalachian Trail] so that it crosses the CMP transmission line corridor only once in the vicinity of Troutdale Road, eliminating two existing crossings. Before CMP could commit to such a condition, though, the National Park Service [] would need to agree to it, and CMP would need to acquire, on behalf of [National Park Service], the necessary property interests in the new location. CMP has secured rights to a parcel that would allow a reroute that eliminates two of the transmission line crossings. However, because this reroute would pass by one or two camps, the Maine Appalachian Trail Club [] prefers the existing two crossings of the transmission line corridor. CMP will continue to explore all options to find a new route that is satisfactory to [the Maine Appalachian Trail Club] and [the National Park Service]. In the interim, CMP is working with [the Maine Appalachian Trail Club] on an interim relocation that will eliminate two crossings but will approach the edge of the [proposed Project]. Provided this interim alignment is ultimately acceptable to [the Maine Appalachian Trail Club] and [the National Park Service], CMP will pay for the cost of the realignment, including any appropriate buffer plantings. CMP’s long-term goal is to secure a permanent re-route acceptable to both [the Maine Appalachian Trail Club] and [the National Park Service], and CMP is willing to commit the necessary funds to this end.⁶²

The Commission encourages CMP’s willingness to work with the National Park Service and the Maine Appalachian Trail Club to relocate the Appalachian Trail in the vicinity of the existing and proposed new crossing of the trail by the transmission line corridor.

Intervenor Groups 2 and 10 argued, “[t]he proposed [P]roject will also degrade the hiking experience for users of the Appalachian Trail. It would be the first crossing of the [Appalachian Trail] by a transmission line of this size anywhere in the state.”⁶³ Intervenor Group 4 testified, “the Appalachian Trail passes through an existing transmission line corridor containing 115 kilovolt transmission line three times at the southern end of Moxie Pond. The existing towers are about 45 feet high, less than the height of the surrounding forested vegetation. The proposed project would widen this corridor by 50 percent and install a second transmission line with towers that are 100 feet tall, more than twice the height of the existing towers and significantly taller than the surrounding forest.”⁶⁴ “As proposed the project fails the second criteria for a special exception in that this

⁶¹ CMP post-hearing brief, pages 10-11.

⁶² CMP post-hearing brief, page 10, footnote 40.

⁶³ Intervenor Group 4 proposed findings of fact, page 7.

⁶⁴ Hearing transcript, April 2, 2019, page 97.

increased impact cannot be buffered from existing uses. The opportunity exists to improve rather than degrade the users' experience by relocating the trail in this area. [The Commission] should condition the granting of the special exception on a resolution of this issue between [CMP] and [Appalachian Trail] trail managers.”⁶⁵

The existing transmission line predates the Appalachian Trail and the P-RR subdistrict at the proposed location for the new crossing, and numerous transmission line structures are visible from the three areas where the proposed Project would cross the trail this area. CMP's easement to the United States of America for the Appalachian Trail states that the easement

...shall not be interpreted or exercised to, in any way, interfere with [CMP's] erection, construction, maintenance, repair, rebuilding, respacing, replacing, operation, patrol and removal of electric transmission, distribution and communication lines consisting of suitable and sufficient poles and towers with sufficient foundations, together with wires strung upon and extending between the same for the transmission of electric energy and intelligence, together with all necessary fixtures, anchors, guys, crossarms, and other electrical equipment and appurtenances, or the clearing and keeping clear Tract 108-04 of all trees, timber and bushes growing on said tract only by such means as [CMP] may select which do not interfere with the footpaths continuity or endanger hiker's passing along the footpath.⁶⁶

Although the proposed Project would increase the width of vegetative clearing in the transmission corridor and the height of the proposed transmission pole structures would be considerably higher than the existing transmission poles, the Commission finds that these conditions were contemplated at the time the easement was granted.

In consideration of all the evidence, the Commission concludes that the proposed Project, given the visibility of the existing transmission line, will be adequately buffered from those other uses and resources within the subdistrict with which it is incompatible, namely primitive recreational hiking on the Appalachian Trail, provided the vegetative planting described in CMP's "Joe's Hole (Moxie Pond) Planting Plan" is installed and maintained for the life of the project in accordance with Condition #2 of this Site Law Certification.

c. P-WL subdistrict buffering analysis and conclusions

The Wetland Protection subdistrict provides protection to areas that serve as important habitat for terrestrial and aquatic species.⁶⁷ Uses within P-WL subdistricts vary depending on the type of

⁶⁵ Intervenor Group 4 witness David Publicover, prefiled direct testimony, pages 3-4.

⁶⁶ CMP prefiled rebuttal testimony, CMP to USA Easement, exhibit CMP-9-B.

⁶⁷ Comprehensive Land Use Plan, page 235.

wetland system. Examples of uses that occur within P-WL subdistricts include hunting, fishing, boating, bird watching, swimming, scientific research, and habitat for fish and wildlife.⁶⁸

Within Segment 1, the proposed Project would cross or traverse 480 freshwater wetlands and convert 8.23 acres of wetland to shrub-scrub wetland. Within Segment 2, the proposed Project would cross or traverse 147 freshwater wetlands and convert 1.13 acres of wetland to shrub-scrub wetland. Within Segment 3, the proposed Project would cross or traverse 227 freshwater wetlands and convert 5.65 acres of wetland to shrub-scrub wetland. The Department reviews all freshwater wetland impacts pursuant to the NRPA, which requires measures for avoidance and minimization of proposed wetland impacts and compensation for wetland impacts that are unavoidable.

Regarding the Commission's special exception criterion that the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible, CMP stated,

A wetlands functions and values assessment [] was performed for the [proposed] Project and is included in Attachment 12 of the NRPA application. The [functions and values assessment] concluded that none of the functions or values identified within forested wetlands would be eliminated or significantly diminished by the conversion of forested wetlands to scrub-shrub and emergent wetlands, and that, on balance, there will be a positive net benefit with regards to functions and values. As a result, the construction of the transmission line in accordance with the methods described in Section 10 (Buffers) of the Site Law Application is consistent with the objective of the P-WL subdistrict.⁶⁹

CMP's proposed Post-Construction Vegetation Maintenance Plan describes the restrictive maintenance requirements for protected natural resources within the transmission line corridor and specifies that shrub and herbaceous vegetation will remain in place to the extent possible. The Post-Construction Vegetation Maintenance Plan identifies the following procedures to be implemented during vegetation maintenance activities to protect sensitive natural resources:

- Protected resources and their associated buffers will be flagged or located with a Global Positioning System prior to all maintenance operations;
- Hand-cutting will be the preferred method of vegetation maintenance within buffers and sensitive areas, where reasonable and practicable;
- Equipment access through wetlands or over streams will be avoided as much as practicable by utilizing existing public or private access roads, with landowner approval where required;

⁶⁸ A detailed discussion of wetland functions and values for areas that would be impacted by the proposed Project is included in section 12.0 of CMP's NRPA permit application.

⁶⁹ Site Law application, section 25.3.2.

- Equipment access in upland areas with saturated soils will be minimized to the extent practicable to avoid rutting or other ground disturbance;
- Significant damage to wetland or stream bank vegetation, if any, will be repaired following completion of maintenance activities in the area; and
- Areas of significant soil disturbance will be stabilized and reseeded following completion of maintenance activity in the area.⁷⁰

The Post-Construction Vegetation Maintenance Plan provides that vegetation maintenance within, and within 25 feet of, freshwater wetlands with standing water will be conducted only by hand cutting with hand tools or chainsaws. Herbicides will not be used in Segment 1. In other segments, the Post-Construction Vegetation Maintenance Plan provides that herbicide use would occur in wetlands only when no standing water is present in the wetland at the time of the application.

To the extent that the proposed Project is incompatible with any resources in the P-WL subdistricts, the Commission finds that the proposed Project will be buffered from any such resources, provided CMP complies with the Post-Construction Vegetation Maintenance Plan as stipulated in Condition #3 of this Site Law Certification.

LAND USE STANDARDS

The Commission must determine whether the proposed Project meets any land use standards established by the Commission that are not considered in the Department's review under the Site Law.⁷¹

a. Vehicular Circulation, Access and Parking, Ch. 10, §§ 10.24(B) and 10.25(D)

In considering this land use standard, the Commission evaluates whether the proposal ensures adequate provision has been made for loading, parking and circulation of land; traffic movement in, on and from the site; and for assurance that the proposal will not cause congestion or unsafe conditions with respect to existing or proposed transportation arteries or methods.

⁷⁰ CMP's Post-Construction Vegetation Maintenance Plan, Site Law application exhibit 10-2, December 2018, page 3.

⁷¹ 12 M.R.S. § 685-B(1-A)(B-1).

CMP stated:

There are approximately 125 miles of existing gravel roads primarily used for forest management that provide direct access to the Project from State Route 201 in Johnson Mountain Twp. Since the Project is an HVDC transmission line right of way, vehicular traffic would only result during construction (short-term) and maintenance (infrequent), and as such the Project is not expected to generate a significant amount of traffic. The Project will only access construction areas through the use public roads and existing land management roads. There will be no Level C road projects constructed in any P-RR subdistrict as a result of the Project.^[72]

Temporary, unpaved access roads through sections of the new transmission line corridor will need to be established for the clearing and construction phases of the Project. However, these access roads will be restored to pre-existing contours and revegetated once construction is complete and final restoration has been established. No new permanent roadways will be developed and project construction and maintenance related parking would primarily be in upland locations on the Project corridor or in existing developed areas. No on-street parking will be associated with this project.⁷³

CMP stated, “Poles will either be hauled in by truck or skidder or flown in via helicopter. In areas where access is suitable (e.g., level uplands near roads), trucks may be used. In areas with more difficult access, skidders or forwarders may be used to bring the poles to the proposed pole locations. In very remote areas or areas with extreme terrain, or during accelerated construction, helicopter transportation may be used.”⁷⁴

Access to the proposed Project for construction and maintenance would be over both public and private roadways. Public roadways may be under the jurisdiction of the Maine Department of Transportation, Franklin County, or Somerset County. Any vehicle transporting non-divisible loads

⁷² Level C Road Project means “[c]onstruction of new roads, and relocations or reconstruction of existing roads, other than that involved in level A or level B road projects; such roads shall include both public and private roadways excluding land management roads.” Ch. 10, § 10.02(112). Within P-RR subdistricts, Level C road projects may be allowed upon issuance of a permit as a special exception. Level A Road Project means “[r]econstruction within existing rights-of-way of public or private roads other than land management roads, and of railroads, excepting bridge replacements.” Ch. 10, § 10.02(110). Level A road projects are allowed without a permit subject to land use standards. Level B Road Project means “[m]inor relocations, and reconstructions, involving limited work outside of the existing right-of-way of public roads or private roads other than land management roads and of railroads; bridge reconstruction and minor relocations whether within or outside of existing right-of-way of such roads.” Ch. 10, § 10.02(111). Level B road projects are allowed upon issuance of a permit, subject to land use standards.

⁷³ Site Law application, section 25.4.3.

⁷⁴ NRPA application, section 7.2.1.6.

in excess of legal dimension and weight limits on roads and bridges maintained by the Maine Department of Transportation must obtain an overlmit permit from the Department of the Secretary of State, Bureau of Motor Vehicles. Municipalities may have their own restrictions and permitting systems in place and would have to be checked individually. Access over privately owned roadways would be subject to individual landowner approval and any terms or conditions so stipulated.

The Commission concludes that the proposed Project adequately provides for loading, parking and circulation of traffic, in, on and from the site, and assurance that the proposal will not cause congestion or unsafe conditions, provided CMP complies with all applicable regulations of the Maine Department of Transportation, Franklin County, and Somerset County in accordance with Condition #4 of this Site Law Certification.

b. Subdivision and Lot Creation, Ch. 10, §§ 10.24(F) and 10.25(Q)

In considering this land use standard, the Commission evaluates whether the proposal to place a structure upon any lot in a subdivision and whether any divisions of land comply with the Commission’s laws and rules governing subdivisions. “‘Subdivision’ means a division of an existing parcel of land into 3 or more parcels or lots within any 5-year period, whether this division is accomplished by platting of the land for immediate or future sale, by sale of the land or by leasing.”⁷⁵ A lot or parcel that when sold or leased created a subdivision requiring a permit from the Commission is not considered a subdivision lot and is exempt from the permit requirement if the permit has not been obtained and the subdivision has been in existence for 20 or more years.⁷⁶

CMP provided a 20-year land division history, prepared by Curtis Thaxter, LLC, for all parcels within the proposed Project area that are within the Commission’s jurisdictional area, except for parcels within Moxie Gore. CMP stated that it “acquired most of the 300-foot wide corridor located in Moxie Gore in a deed from T-M Corporation dated November 10, 1988 and recorded in the Somerset County Registry of Deeds in Book 1480, Page 89. This transaction was part of a land exchange and boundary line agreement with T-M Corporation in which CMP reconfigured part of its ownership that dated back to the early 1900s. The remainder of the proposed corridor in Moxie Gore crosses land along the Kennebec River that CMP currently owns. This land was also acquired by several deeds in the early 1900s.”⁷⁷ The land division history prepared by Curtis Thaxter, LLC concludes that no unauthorized land divisions appear to have occurred within the twenty-year review period.

The Commission finds that CMP’s proposal does not include the development of any structures on lots that are part of a subdivision and that the land division history provided by CMP demonstrates that CMP has not created a subdivision. The Commission concludes that the proposed Project complies with Ch. 10, §§ 10.24(F) and 10.25(Q).

⁷⁵ 12 M.R.S. § 682(2-A).

⁷⁶ 12 M.R.S. § 682-B (5).

⁷⁷ Site Law application, section 25.4.1.

c. Public’s Health, Safety and General Welfare – Ch. 10, § 10.24

The burden is upon the applicant to demonstrate by substantial evidence that the criteria for approval are satisfied, and that the public’s health, safety and general welfare will be adequately protected. In the context of utility facilities the applicant “generally must show that the proposed use[] will not burden local public facilities and services” including “fire and ambulance services.”⁷⁸

The Maine State Federation of Firefighters (“Firefighters Federation”), in a letter dated February 12, 2019, expressed concerns regarding fire and other emergency response capacities within the proposed Project area. The Firefighters Federation has a membership of over 6,000 firefighters of which many are volunteers within small departments in rural communities. The Firefighters Federation stated:

Several of our volunteer members, who serve areas within the proposed NECEC Corridor, contacted us to express their concerns for fire and safety response. These concerns focus not only on the major construction phases of the project, but also on significant risks that will be established and which will continue to exist long after construction crews have left the area and wide areas of high voltage power lines cross their jurisdictions. Further conversations and investigation indicate that to date, no evaluation, assessment, or documentation of the fire, emergency medical, terrorism and other risks, or the services and equipment needed to mitigate those risks, have been formally identified, discussed, studied, and/or reported on.

...

The first 100 miles of the proposed Corridor, including the 70 miles covered by the [Maine Forest Service] and Rangers, has only three (3) volunteer departments within a one-mile (1-mile) buffer of the proposed Corridor. These are the Bingham, Anson, and Solon Volunteer Fire Departments. This area has no staffed fire services and daytime coverage is extremely limited.

South of Bingham, and still within Somerset County, there are three (3) additional fire departments [within] a two-mile (2-mile) buffer of the proposed NECEC transmission line. These are the volunteer departments of Starks, Madison, and Industry. Once again, these three additional departments have no staffed fire services and daytime coverage is extremely limited.

...

⁷⁸ Comprehensive Land Use Plan, § 4.3.E.

Non-fire emergency medical services (EMS) paramedic response is provided by Upper Kennebec Valley Ambulance out of Bingham. Emergency transports are taken to Redington-Fariview [sic] Hospital, 35-miles away. Redington-Fariview [sic] hospital has a Lifeflight landing pad, with helicopter transport dispatched from Bangor, Lewiston, or Sanford, if available.

Concerns regarding the ability of emergency crews to respond to fires within the proposed Project in the Commission's jurisdiction were raised by Intervenor Group 2 and by members of the public.⁷⁹

CMP provided no evidence addressing the proposed Project's impact on fire and ambulance services. The Commission concludes that the public's health, safety and general welfare will be adequately protected provided CMP submits to the Commission, prior to commencing construction of the proposed Project, written agreement(s) with state, local, or private emergency services providers to ensure fire and emergency services are available at all times and at all locations of the proposed Project that are within the Commission's jurisdictional area during and following construction of the proposed Project in accordance with Condition #5 of this Site Law Certification.

d. Lighting – Ch. 10, § 10.25(F)

In considering this land use standard, the Commission evaluates whether the proposed activity will comply with standards for exterior light levels, glare reduction, and energy conservation.

CMP proposes no permanent operation of lights on transmission line structures installed within the Commission's jurisdiction. CMP does propose that temporary nighttime lighting may be necessary during construction of the proposed Project.

The Commission finds that temporary lighting proposed by CMP is anticipated to comply with the applicable standards and concludes that the proposed Project will comply with the lighting standards set forth at Ch. 10, § 10.25(F).

e. Activities in Flood Prone Areas – Ch. 10, § 10.25(T)

In considering this land use standard, the Commission evaluates whether all development in flood prone areas, including areas of special flood hazard, as identified by Flood Prone Area Protection subdistricts or Federal Emergency Management Agency Flood Boundary and Floodway, Flood Hazard Boundary or Flood Insurance Rate maps comply with the procedural requirements and development standards set forth in Ch. 10, § 10.25(T).⁸⁰

⁷⁹ Hearing transcript, April 2, 2019, pages 96, 202, 204; Hearing transcript, May 9, 2019, page 58; Hearing transcript, April 2, 2019 – Public Comment Session, pages 23, 37, 89, 106-107.

⁸⁰ The purpose and description of the Flood Prone Area Protection subdistrict is set forth in Ch. 10, § 10.23(C).

CMP stated that the proposed Project would cross one Flood Prone Area Protection subdistrict in Appleton Township. The only portion of the proposed Project that crosses a flood hazard area mapped by the Federal Emergency Management Agency is in Concord Township. CMP proposes no transmission line structures within a Flood Prone Area Protection subdistrict or within mapped 100-year floodplains within the Commission's jurisdictional area.

The Commission concludes that the proposed Project will not directly impact or increase the risk of flooding and will comply with Ch. 10, § 10.25(T).

f. Dimensional Standards – Minimum Setbacks, Ch. 10, § 10.26(D)

The Commission's dimensional requirements for minimum setbacks apply to all lots on which structural development is proposed, unless otherwise provided by Ch. 10, § 10.26(G).

In CMP's proposal, no proposed structures are located within the applicable roadway setbacks (75 feet in all subdistricts, except 30 feet in Residential Development and General Development subdistricts).⁸¹

All infrastructure associated with the proposed Project within the Commission's jurisdictional area will be at least 75 feet from all side and rear property lines.

Ch. 10, § 10.26(D)(2)(a) establishes a setback of 100 feet from the nearest shoreline of a flowing water draining less than 50 square miles, a body of standing water less than 10 acres in size, or a coastal wetland, and from the upland edge of non-forested wetlands located in Wetland Protection (P-WL1) subdistricts. Ch. 10, § 10.26(D)(2)(b) establishes a setback of 150 feet from the nearest shoreline of a flowing water draining 50 square miles or more and a body of standing water 10 acres or greater in size.

CMP stated that “[t]ransmission line structures and guy wires will be positioned outside of the setback requirements to the fullest extent practicable. However, the design of the transmission line is constrained by both topography and the presence of natural resources and other features (e.g., roadways). The transmission line was designed to place transmission line structures such that they avoid natural resource impacts to the maximum extent practicable while maintaining necessary safety clearances for the overhead conductors.”⁸² As a result, CMP proposes 135 transmission line structures within the 100-foot shoreline setback due to the nature of the proposed Project, engineering constraints, and other design parameters.⁸³ CMP stated that only one transmission structure, Structure 3006-378, would be located within the 150-foot setback required by Ch. 10, § 10.26(D)(2)(b).

⁸¹ CMP's August 13, 2018, update to NRPA and Site Law Applications, page 5.

⁸² Site Law application, section 25.4.2.

⁸³ Structure numbers and the setback distances are provided in the table provided in CMP's August 13, 2018, update to NRPA and Site Law applications, page 6.

CMP requested an exception to the minimum setbacks in accordance with Ch. 10, § 10.26(G)(5), which states, in part, “[a]n exception may be made to the shoreline, road, and/or property line setback requirements for structures where the Commission finds that such structures must be located near to the shoreline, road, or property line due to the nature of their use.” Pursuant to Ch. 10, § 10.26(G)(19), the Commission may reduce the minimum setback requirements for guy wire anchors provided such reduction will not result in unsafe conditions.

The Commission finds that the linear nature of the proposed Project and requirement to maintain minimum safety clearances for the overhead conductors results in the placement of transmission structures in locations that cannot meet the Commission’s default setback distances from certain water bodies. The Commission finds that CMP has attempted to design the proposed Project in such a way as to avoid conflict with the shoreline setbacks to the greatest extent practicable and that the 135 proposed transmission structures and guy wire placements that do not meet shoreline setbacks is an operational necessity and will not result in unsafe conditions. The Commission concludes that the proposed Project complies with applicable dimensional standards for minimum setbacks.

g. Dimensional Standards – Maximum Structure Height, Ch. 10, § 10.26(F)

Pursuant to Ch. 10, § 10.26(F)(1)(b), the maximum structure height for commercial, industrial, and other non-residential uses involving one or more structures is 100 feet. Pursuant to Ch. 10, § 10.26(F)(2), within 500 feet of the normal high water mark of a body of standing water 10 acres or greater, is 30 feet. Pursuant to Ch. 10, § 10.26(F)(3), features of structures which contain no floor area such as chimneys, towers, ventilators and spires and freestanding towers and turbines may exceed these maximum heights with the Commission's approval.

CMP stated:

Transmission line structure heights are determined during project design based on a number of parameters governed by the safety standards of the National Electric Safety Code. Specifically, for safe operation of the line, the transmission line must be designed in a manner that provides adequate clearance from the ground to the maximum sag of the transmission line. Structure locations are placed, to the extent practicable, in a manner that avoids and spans protected natural resources. Additionally, topographic constraints, the presence of existing utilities, and the span length needed to place structures outside of sensitive areas often requires transmission line structures to be taller than 100 feet.⁸⁴

CMP has identified a total of 96 transmission line structures within the Commission’s jurisdictional area that would exceed the maximum structure height of 100 feet.⁸⁵ Additionally, four structures in

⁸⁴ Site Law application, section 25.4.1.F.

⁸⁵ See Site Law application, Table 25-4 for a listing of proposed structures that would exceed 100 feet in height.

the Merrill Strip Alternative would exceed the maximum structure height of 100 feet.⁸⁶ CMP does not propose any structures within 500 feet of a body of standing water 10 acres or greater.

The Commission finds that the proposed transmission structures contain no floor area and thus may exceed the 100-foot height limitation pursuant to Ch. 10, § 10.26(F)(3). The Commission concludes that the proposed Project is consistent with applicable dimensional requirements for maximum structure height.

h. Vegetative Clearing – Ch. 10, § 10.27(B)

The Commission has established vegetative clearing standards for areas within 250 feet of certain water bodies. Vegetation clearing activities not in conformance with these standards may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved and that an applicant for such permit shows by a preponderance of the evidence that the proposed activity, which is not in conformance with the standards will be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area.

Pursuant to Ch. 10, § 10.27(B)(1), a vegetative buffer strip shall be retained within either 30 or 50 feet of the right-of-way of any public roadway, depending on the subdistrict involved, and within either 75 or 100 feet of the normal high water mark of standing and flowing water bodies, depending on the type of water body in proximity to proposed structures. The Department retains jurisdiction over vegetative clearing subject to the NRPA, including clearing adjacent to standing and flowing waters.

Within the vegetative buffer strip, Chapter 10 requires that there shall be no cleared opening greater than 250 square feet in the forest canopy, and selective cutting of trees is permitted provided that a well-distributed stand of trees and other natural vegetation is maintained.⁸⁷

In Segment 1 of the proposed Project, CMP proposes to clear a 150-foot wide strip of capable vegetation to accommodate the new transmission line. In Segments 2 and 3, CMP proposes to clear a 75-foot wide strip of capable vegetation to accommodate the new transmission line.

Relating to road buffers, CMP stated,

Due to the nature of the [proposed] Project, the buffer strips identified in [Ch. 10,] § 10.27, B will be retained but the Project cannot conform to the selective cutting requirements associated with the maintenance of vegetation ([Ch. 10,] § 10.27, B, 2). The Project will maintain vegetative buffers in all scenarios but these buffers will not include capable vegetation that could grow to heights that would grow into the conductor

⁸⁶ Site Law amendment application, section 25.3.

⁸⁷ The Commission's rating system for a well-distributed stand of trees is set forth in Ch. 10, § 10.27(B), Table 10.27(B-1).

safety zone of the transmission line. A description of buffers and CMP vegetation clearing and maintenance practices is included in Section 10 of the Site Law application.⁸⁸

Section 10 of CMP's Site Law application describes the proposed natural resource buffers and clearing guidelines CMP will employ for the proposed Project. CMP stated that all tree species capable of growing into the conductor safety zone must be removed from the buffers during construction and be prevented from re-establishing during periodic scheduled vegetation maintenance operations. Selective transmission line corridor management techniques are discussed in Section 10 of the Site Law application and have also been incorporated into CMP's Construction Vegetation Clearing Plan and CMP's Post-Construction Vegetation Management Plan. The objective of CMP's proposed vegetative buffer management plan "is to maintain ecological values of resources without sacrificing the operational safety of the electric transmission line and associated conductors."⁸⁹ CMP proposes mechanized clearing, including motorized equipment, to prepare the corridor for construction. However, for periodic maintenance of the corridor, CMP testified that it "practices integrated vegetation management [], including the selective use of herbicides, to safely and effectively maintain its transmission line corridors in a scrub/shrub cover."⁹⁰ Within Segment 1, CMP testified that it will not apply herbicides but instead utilize mechanical methods for vegetation maintenance on this portion of the proposed Project.⁹¹ For portions of the proposed Project in which vegetative tapering is proposed or required, CMP stated that mechanized methods, primarily chainsaws, would be used to selectively remove capable vegetation.

CMP's Site Law application section 10.3, Buffer and Resource Protection Concepts, identifies that vegetative buffers are designed to:

- Prevent soil erosion and sedimentation of surface waters;
- Slow the velocity, increase the infiltration, and otherwise remove sediment and other contaminants in runoff before it enters surface waters;
- Reduce access of all-terrain vehicles to streams;
- Provide shade, to reduce the warming effect of sunlight (insolation) on water; and
- Provide cover and habitat for wildlife that use riparian and significant habitats.

CMP's proposed Construction Vegetation Clearing Plan specifies restrictive vegetation management requirements for sensitive areas within the proposed Project area including:

⁸⁸ Site Law application, section 25.4.6.

⁸⁹ Site Law application, section 10.2.

⁹⁰ CMP Witness Gerry Mirabile, supplemental testimony, page 4.

⁹¹ CMP Witness Gerry Mirabile, supplemental testimony, page 5.

-
- Wetlands and streams;
 - Perennial streams within designated Atlantic salmon habitat;
 - Significant vernal pools;
 - Inland waterfowl and wading bird habitat;
 - Deer wintering areas;
 - Rare plant locations; and
 - Locations over mapped significant sand and gravel aquifers.

On January 30, 2019, CMP submitted revisions to its Construction Vegetation Clearing Plan and Post-Construction Vegetation Management Plan to incorporate 100-foot buffers on perennial streams located in Segment 1, including all coldwater fisheries, waterbodies containing special concern, threatened, and/or endangered species, and outstanding river segments; and 75-foot buffers on all other streams. In addition, CMP proposes to employ tapered vegetation management areas to minimize the visual impact of the proposed Project from the summit of Coburn Mountain in Upper Enchanted Township and from Rock Pond in T5 R6 BKP WKR.

The Commission concludes that the proposed Project will be conducted in a manner which produces no undue adverse impact upon the resources and uses in the area provided CMP adheres to the vegetative clearing and maintenance as described its Construction Vegetation Clearing Plan and Post-Construction Vegetation Management Plan in accordance with Condition #3 of this Site Law Certification.

i. Pesticide Application – Ch. 10, § 10.27(I)

Pursuant to Ch. 10, § 10.27(I), pesticide application in any of the subdistricts will not require a permit from the Commission provided such application is in conformance with applicable state and federal statutes and regulations.

CMP proposes to use herbicide applications after initial clearing of the corridor is completed to gain control of vegetation growth. When control is achieved, treatment will typically occur as part of scheduled maintenance on a 4-year cycle or as needed to discourage the establishment of capable tree species. CMP would not use herbicides within the 53.5 miles of new corridor in Segment 1 of the proposed Project. For the remainder of the line, CMP stated that “[h]erbicides will be selectively applied to capable species, using low-pressure (hand-pressurized) backpack applicators, to prevent growth of individual capable specimens and to prevent regrowth of cut capable specimens. Individual capable specimens will be treated with herbicides, and no broadcast application will be done. CMP will not use herbicides within 25 feet of any waterbody or standing water. In addition, CMP will not use herbicides within 100 feet of a known well or spring or within 200 feet of any

known public water supply.”⁹² CMP also stated that “[h]erbicides will be used in strict accordance with the manufacturer’s [United States Environmental Protection Agency]-approved labeling and will not be applied directly to waterbodies or areas where surface water is present.”⁹³

The Commission concludes that the proposed use of herbicides complies with the Commission’s land use standards for pesticide application.

j. Signs – Ch. 10, § 10.27(J)

The Commission’s regulations pertaining to signs, set forth in Ch. 10, § 10.27(J)(2), establishes standards to ensure placement of signs does not produce undue adverse impact upon the resources and uses in the area.

CMP does not propose to install signs as part of the proposed Project within the Commission’s jurisdictional area. Traffic control signs and directional signs utilized during the proposed Project construction would be limited and temporary and do not require a permit pursuant to Ch. 10, § 10.27(J)(1)(d).

The Commission concludes that the proposed Project will comply with the Commission’s land use standards for signs.

FINAL CONCLUSIONS

1. The proposed Project is an allowed use in the General Development, Residential Development, General Management, Flood Prone Protection, Fish and Wildlife Protection, Great Pond Protection, and Shoreland Protection subdistricts.
2. The proposed Project is an allowed use in the Recreation Protection subdistricts provided CMP installs and maintains for the life of the project the vegetative plantings described in CMP’s “Joe’s Hole (Moxie Pond) Planting Plan” within the Recreation Protection subdistrict surrounding the Appalachian Trail.
3. The proposed Project is an allowed use in the Wetland Protection subdistricts provided CMP complies with its proposed Construction Vegetation Clearing Plan and Post-Construction Vegetation Maintenance Plan.

⁹² Site Law application, section 15.2.

⁹³ Site Law application, exhibit 10-1, section 2.2.

-
4. The proposed Project complies with all applicable sections of the Commission's land use standards provided CMP:
 - a. secures all necessary approvals from the Maine Department of Transportation, Franklin County, and Somerset County for the transportation of materials during and following construction of the proposed Project; and
 - b. submits, prior to construction, written agreement(s) with state, local or private emergency services providers to ensure fire and emergency services are available at all times and at all locations of the proposed Project that are within the Commission's jurisdiction during and following construction of the proposed Project.
 5. The proposed Project is consistent with the policies of the Comprehensive Land Use Plan without additional conditions.

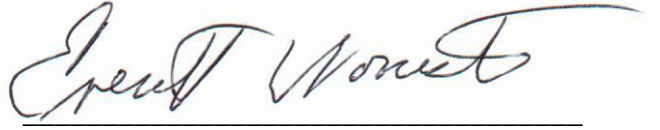
Therefore, the Commission CERTIFIES to the Maine Department of Environmental Protection that Site Law Certification SLC-9 for Central Maine Power's proposed New England Clean Energy Connect Project, as proposed, complies with the relevant provisions of the Commission's rule Chapter 10, subject to the findings of fact, conclusions, and conditions contained herein.

CONDITIONS

1. CMP shall, for the life of the project, maintain a vegetative buffer at the Kennebec River necessary to provide visual screening (buffering) of all transmission line structures from the Recreation Protection subdistrict.
2. CMP shall install and for the life of the project maintain the vegetative plantings described in CMP's "Joe's Hole (Moxie Pond) Planting Plan" within the Recreation Protection subdistrict surrounding the Appalachian Trail.
3. CMP shall comply with its Construction Vegetation Clearing Plan and Post-Construction Vegetation Management Plan.
4. CMP shall secure all necessary approvals from the Maine Department of Transportation, Franklin County, and Somerset County for the transportation of materials during and following construction of the proposed Project.
5. Prior to construction, CMP shall submit to the Land Use Planning Commission, written agreement(s) with state, local or private emergency service providers to ensure fire and emergency services are available at all times and at all locations of the proposed Project within the Commission's jurisdiction during and following construction of the proposed Project.

Pursuant to Ch. 4 § 4.11(12)(b), a determination to approve or deny a request for certification of a Site Law application pending before the Maine Department of Environmental Protection is not final agency action and is not appealable except as part of the Department of Environmental Protection permitting decision.

DONE AND DATED AT ORONO, MAINE, THIS 8th DAY OF JANUARY 2020.

A handwritten signature in black ink, reading "Everett Worcester", is written over a horizontal line. The signature is cursive and includes a long, sweeping flourish at the end.

Everett Worcester, Chair



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the

extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status.* The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

II. OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

III. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

THIS PAGE INTENTIONALLY LEFT BLANK



STATE OF MAINE
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

NECEC TRANSMISSION LLC	) SITE LOCATION OF DEVELOPMENT ACT
See Appendix)
NEW ENGLAND CLEAN)
ENERGY CONNECT	) PARTIAL TRANSFER
L-27625-26-K-T (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapter 2 of Department Rules Concerning the Processing of Applications (06-096 C.M.R. ch. 2, §21 (C)), the Department of Environmental Protection has considered the application of NECEC TRANSMISSION, LLC (NECEC LLC or applicant) for a partial transfer, with its supportive data, the comments received, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. In Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, dated May 11, 2020, the Department approved the New England Clean Energy Connect project (CMP NECEC Order). The project involves 145 miles of high voltage direct current (HVDC) transmission line from Beattie Township to Lewiston, a converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission lines.
2. The applicant is applying to the Department to transfer a portion of Department Order #L27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, currently held by Central Maine Power Company (CMP), to NECEC LLC. The Public Utilities Commission, in its Certificate of Finding of Public Convenience and Necessity, required CMP to transfer a portion of the project and its associated development costs to a special purpose entity; NECEC LLC has been designated by CMP as that entity. The portions of the project subject to this transfer application include the new HVDC transmission line (Segments 1, 2, and 3 of the transmission line), the converter station in Lewiston, a 1.2-mile long 345 kilovolt transmission line from the converter station to the Larrabee Road Substation also in Lewiston, and the two termination stations for the horizontal directional drill on either side of the Kennebec River. The portions of the project that will remain in CMP's ownership include transmission line Segments 4 and 5, the new Fickett Road Substation, the Larrabee Road Substation, the Coopers Mills Substation, the Crowley's Substation, the Maine Yankee Substation, the Surowiec Substation, and the Raven Farm Substation.
3. The applicant also submitted a Permit by Rule notification form (PBR #71019) pursuant to Chapter 305 Permit by Rule Standards Section (06-096 Ch. 305, § 17) to transfer the Natural Resources Protection Act permits associated with the project. The Department accepted the PBR on October 13, 2020.

4. Comments on the transfer application were received from the Natural Resources Council of Maine (NRCM), an intervenor in the CMP NECEC licensing proceeding, and a group of intervenors from that proceeding that includes West Forks, the town of Carratunk, and several others (West Forks Group).
5. **Transfer of Property Rights:** The transfer application, dated September 25, 2020, was signed by Gerry J. Mirabile, NECEC Permitting Manager, on behalf of CMP and Thorn C. Dickinson, President and CEO of NECEC LLC. With the transfer application, NECEC LLC submitted a transfer agreement describing the transfers that will occur between NECEC LLC and CMP and the parcels of the land required to construct and operate the portions of the project to be transferred, including deed or lease references to the corridor from Beattie Township to Lewiston, the 20-acre parcel for the converter station, the land for the transmission line from the converter station to the Larrabee Road Substation, the conservation parcels, and a parcel in Bald Mountain Township for the relocation of the Appalachian Trail. The submissions included a lease between the State of Maine, Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands (BPL) and CMP, signed on June 23, 2020 (2020 Lease), for property located in West Forks Plantation and Johnson Mountain Township. The transfer agreement also provides for the transfer of the seven Transmission Service Agreements CMP entered into with the utility companies in Massachusetts and the agreement with H. Q. Energy Services, Inc. The Transmission Service Agreement requires CMP to assign and NECEC LLC to accept all third party vendor agreements and related assets related to the project at the time of closing.

In its comments NRCM argues that the 2020 BPL Lease is not valid because BPL lacked the authority to issue the lease and the scope of the lease is not broad enough to allow the construction of the project.

As was the case in the CMP NECEC Order, the Department accepts the decision of its sister agency to enter into the lease and the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project. The initial demonstration of title, right or interest made by CMP for its permit application underlies the transfer agreement submitted with the transfer application, and the findings made in the CMP NECEC Order, are incorporated herein. Based on those findings, and the evidence described above, the Department finds the applicant has demonstrated sufficient title, right, or interest in the property.

6. **Financial Capacity:** The cost for the project as a whole is estimated to be \$950,000,000. including the cost associated with compliance with the conditions of approval. The cost estimate for the portions of the project being transferred to NECEC LLC is \$727,000,000. NECEC LLC's application for transfer states that NECEC LLC is a wholly owned subsidiary of Avangrid Networks, Inc., which is an indirect wholly owned subsidiary of Avangrid, Inc. The applicant submitted a letter from Howard Coon, Vice-President and Treasure of Avangrid Inc., stating that Avangrid, Inc. will make an equity contribution of \$1,000,000,000 to Avangrid Networks, which in turn will make these funds available to NECEC LLC. In addition, Avangrid and NECEC LLC will execute a \$500,000,000

revolving loan agreement to provide a source of debt financing to NECEC LLC during construction.

The funding mechanism and the overall project cost remain the same as described in the original CMP NECEC Order. However, this Order only transfers a portion of the project which is estimated to cost \$727,000,000.

NRCM argues that the applicant has not demonstrated that funds have been set aside for the project by NECEC LLC's parent companies. In addition, NRCM contends that the applicant failed to demonstrate a clear link between the parent company financing the project and the applicant.

The Department considers the information the applicant submitted as commitments by NECEC LLC's parent companies to provide funding for the project as allowed by Chapter 373, § 2(B)(3)(a). That funding is adequate to finance the project and there is a clear connection between the parent companies and NECEC LLC. The Department finds that the applicant has demonstrated adequate financial capacity to construct and operate the project.

7. **Technical Ability:** The applicant submitted a service agreement between CMP and NECEC LLC that stipulates CMP will provide certain services to NECEC LLC, including the use of CMP personnel and expertise to construct the project. The applicant also submitted resume information for key personnel involved with the project. As required by the transfer agreement, NECEC LLC will retain all of the third party contractors that originally designed and permitted the project and the remainder of the project team as described in the CMP NECEC Order remains in place.

The Department finds the applicant has demonstrated adequate technical ability to construct and operate the project.

8. NECEC LLC submitted a Certificate of Good Standing issued by the Delaware Secretary of State for NECEC LLC, dated December 18, 2018.
9. The West Forks group joins in the NRCM arguments and, in addition, requests that a decision on the transfer application be withheld until the pending appeals of the CMP NECEC Order are resolved, as the permit that was issued may be altered during the course of the appeals. While the Board may modify or vacate the permit issued, at this time the permit is in effect and, pursuant to 38 M.R.S. § 344(9) and Chapter 2, § 21(C), is subject to transfer.

BASED on the above findings of fact, the Department **CONCLUDES** that NECEC LLC has provided adequate evidence of the acquisition of title, right, or interest; financial capacity; and technical ability to comply with all conditions of Department Order and subsequent Orders, and to satisfy all applicable statutory and regulatory criteria.

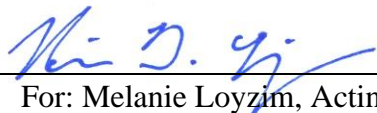
THEREFORE, the Department APPROVES the application of NECEC TRANSMISSION LLC, to partially transfer, as described above, Department Order #L27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:

1. The Standard Conditions of Approval, a copy attached.
2. This transfer Order shall not become effective until either CMP or NECEC LLC certifies in writing to the Department that the transaction contemplated by the NECEC Transfer Agreement between the parties has occurred.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N , and subsequent Orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 4TH DAY OF DECEMBER, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Acting Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625KT/ATS#86584

FILED
December 4, 2020
State of Maine
Board of Environmental Protection

Appendix A
List of Municipal and County Governments

Town	County	Senate District	House District	Congressional District
City of Auburn 60 Court Street Auburn, Maine 04210 Phone (207) 333-6600 pcrichton@auburnmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 62 Rep. Gina M. Melaragno 25 James Street, Apt. 3 Auburn, Maine 04210 Phone (207)740-8860 gina.melaragno@legislature.maine.gov House District 63 Rep. Bruce A. Bickford 64 Cameron Lane Auburn, Maine 04210 Cell Phone (207) 740-0328 bruce.bickford@legislature.maine.gov House District 64 Rep. Bettyann W. Sheats 32 Waterview Drive Auburn, Maine 04210 Cell Phone (207)740-2613 bettyann.sheats@legislature.maine.gov	Congressional District 2 Representative Bruce Poliquin 179 Lisbon Street Lewiston, ME 04240 Phone (207) 784-0768
City of Lewiston 27 Pine Street Lewiston, Maine 4240-7204 Phone (207) 513-3000 ebarrett@lewistonmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 21 Senator Nate Libby 44 Robinson Gardens Lewiston, ME 04240 Phone (207)713-8449 nathan.libby@legislature.maine.gov	House District 58 Rep. James R. Handy 9 Maplewood Road Lewiston, Maine 04240 Phone (207) 784-5595 jim.handy@legislature.maine.gov	2

			<p>House District 59 Rep. Roger Jason Fuller 36 Elliott Avenue Lewiston, ME 04240 Phone (207) 783-9091 roger.fuller@legislature.maine.gov</p> <p>House District 60 Rep. Jared F. Golden 3 Diamond Court Lewiston, ME 04240 Phone (207) 287-1430 jared.golden@legislature.maine.gov</p> <p>House District 61 Rep. Heidi E. Brooks 1 Pleasant Street, #2 Lewiston, Maine 04240 Cell Phone (207) 740-5229 heidi.brooks@legislature.maine.gov</p>	
<p>Town of Alna 1568 Alna Rd Alna, Maine 04535 PHONE: (207) 586-5313 mmaymcc@yahoo.com dcbaston@northatlanticenergy.com</p>	<p>Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me</p>	<p>Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov</p>	<p>House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov</p>	1
<p>Town of Anson 5 Kennebec Street, PO Box 297 Anson, Maine 04911-0297 Phone (207) 696-3979</p>	<p>Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861</p>	<p>Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703</p>	<p>House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638</p>	2

	ddibiasi@SomersetCounty-ME.org	rodney.whittemore@legislature.maine.gov	thomas.skolfield@legislature.maine.gov	
Town of Caratunk Elizabeth Caruso - 1st Select PO Box 180 Caratunk, Maine 04925-0180 OFFICE PHONE: 672-3030	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of Chesterville 409 Dutch Gap Road Chesterville, Maine 04938 Phone (207) 778-2433 chesterville.me@gmail.com	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Cumberland William R. Shane, Town Manager 290 Tuttle Road Cumberland, Maine 04021 Phone (207) 829-5559	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 25 Senator Catherine Breen 15 Falmouth Ridges Drive Falmouth, Maine 04105 Phone (207) 329-6142 Cathy.breen@legislature.maine.gov	House District 45 Rep. Dale J. Denno 275 Main Street Cumberland Center, Maine 04021 Cell Phone (207) 400-1123 dale.denno@legislature.maine.gov	1 Senator Susan Collins 55 Lisbon Street Lewison, ME 04240 Phone (207) 784-6969 Senator Angus King 4 Gabriel Drive, Suite 3 Augusta, ME 04330 Phone (207) 622-8292 Phone (800) 432-1599 Representative Chellie Pingree 2Portland Fish Pier, Suite 304 Portland, ME 04101 Phone (207) 774-5019 Phone (888) 862-6500
Town of Durham 630 Hallowell Road Durham, Maine 04222	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2	Senate District 22 Senator Garrett Mason PO Box 395	House District 46 Rep. Paul B. Chace 31 Colonial Drive	2

Phone (207) 353-2561	Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	Durham, ME 04222 Cell Phone (207)240-9300 paul.chace@legislature.maine.gov	
Town of Embden 809 Embden Pond Road Embden, Maine 04958-3521 Phone (207) 566-5551 embden-clerk@roadrunner.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of Farmington 153 Farmington Falls Road Farmington, Maine 04938 Phone (207) 778-5871 rdavis@farmington-maine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov	2
Town of Greene 220 Main St, PO Box 510 Greene, Maine 04236-0510 Phone (207) 946-5146 imgreene@fairpoint.net	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	House District 57 Rep. Stephen J. Wood PO Box 927 Sabattus, Maine 04280 Cell Phone (207) 740-3723 stephen.wood@legislature.maine.gov	2
Town of Industry 1033 Industry Road Industry, Maine 04938 Phone (207) 778-5050	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Jay 340 Main Street Jay, Maine 04239 Phone (207) 897-6785	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924	House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239	2

joffice@jay-maine.org	Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	Phone (207)897-2288 tina.riley@legislature.maine.gov	
Town of Leeds 8 Community Drive Leeds, Maine 04263 Phone (207) 524-5171 townofleeds@fairpoint.net	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	House District 75 Rep. Jeffrey L. Timberlake 284 Ricker Hill Road Turner, Maine 07282 Cell Phone (207)754-6000 jeffrey.timberlake@legislature.maine.gov	2
Town of Livermore Falls 2 Main Street Livermore Falls, Maine 04254 Phone (207) 897-3321 townoffice@lfme.org	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 18 Senator Lisa Keim 1505 Main Street Dixfield, ME 04224 Phone (207) 562-6023 Lisa.keim@legislature.maine.gov	House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239 Phone (207)897-2288 tina.riley@legislature.maine.gov	2
Town of Moscow 110 Canada Road Moscow, Maine 04920 Phone (207) 672-4834 moscow@myfairpoint.net	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of New Gloucester 385 Intervale Road New Gloucester, Maine 04260 Phone (207) 926-4126 ccastonguay@newgloucester.com	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 65 Rep. Ellie Espling 12 Lewiston Rd New Gloucester, Maine 04260 Cell Phone (207) 891-8280 ellie.espling@legislature.maine.gov	1
Town of New Sharon 11 School Lane, PO Box 7 New Sharon, Maine 04955-0007 Phone (207) 778-4046	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road	2

townclerk@newsharon.maine.gov	Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov	
Town of Pownal 429 Hallowell Road Pownal, Maine 04069 Phone (207) 688-4611	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 24 Senator Brownie Carson PO Box 68 Harpswell, Maine 04079 Phone (207) 751-9076 Brownie.carson@legislature.maine.gov	House District 46 Rep. Paul B. Chace 31 Colonial Drive Durham, Maine 04222 Phone (207) 240-9300 Paul.chace@legislature.maine.gov House District 48 Rep. Sara Gideon 37 South Freeport Road Freeport, Maine 40032 Phone (207) 287-1300 sara.gideon@legislature.maine.gov	2
Town of Starks 57 Anson Road Starks, Maine 04911 Phone (207) 696-8069 townofstarks@gmail.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 Rodney.Whittemore@legislature.maine.gov	House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638 thomas.skolfield@legislature.maine.gov	2
Town of Whitefield 36 Townhouse Road Whitefield, Maine 04353 Phone (207) 549-5175 whitefield@roadrunner.com	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 88 Rep. Deborah J. Sanderson 64 Whittier Drive Chelsea, Maine 04330 Phone (207) 376-7515 deborah.sanderson@legislature.maine.gov	1
Town of Wilton 158 Weld Road Wilton, Maine 04294 Phone (207) 645-4961 office@wiltonmaine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667	2

	jmagoon@franklincountymaine.gov	thomas.saviello@legislature.maine.gov	russell.black@legislature.maine.gov	
Town of Windsor 523 Ridge Road, PO Box 179 Windsor, Maine 04363-0179 Phone (207) 445-2998 FAX: 445-3762	Kennebec County Commissioner's Office 125 State Street, 2nd Floor Augusta, Maine 04330 Phone: (207) 622-0971	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 80 Rep. Richard T. Bradstreet 44 Harmony Lane Vassalboro, Maine 04989 Cell Phone (207)861-1657 dick.bradstreet@legislature.maine.gov	1
Town of Wiscasset 51 Bath Road Wiscasset, Maine 04578-4108 Phone (207) 882-8200 admin@wiscasset.org	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov	1
Town of Woolwich 13 Nequasset Road Woolwich, Maine 04579-9734 PHONE (207) 442-7094	Sagadahoc County Commissioner's Office 752 High Street Bath, Maine 04530 Phone (207) 443-8202	Senate District 23 Senator Eloise Vitelli 73 Newton Road Arrowsic, Maine 04530 Phone (207) 443-4660 eloise.Vitelli@legislature.maine.gov	House District 53 Rep. Jeffrey K. Pierce PO Box 51 Dresden, Maine 04342 Phone (207) 737-9051 Cell (207)441-3006 jeff.pierce@legislature.maine.gov	1

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

THIS PAGE INTENTIONALLY LEFT BLANK

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB- B-N
L-27625-2C- C-N
L-27625-VP- D-N
L-27625-IW- E-N

Public Hearing Requested

**NATURAL RESOURCES COUNCIL OF
MAINE REQUEST FOR BOARD OF
ENVIRONMENTAL PROTECTION
REVIEW OF NECEC AND,
ALTERNATIVELY, APPEAL OF THE
DEPARTMENT’S ORDER APPROVING
NECEC**

The Natural Resources Council of Maine (“NRCM”) requests that the Board of Environmental Protection (“Board”) (i) vacate the May 11, 2020 Order (“Order”) of the Maine Department of Environmental Protection (“Department”) conditionally approving Central Maine Power Company’s (“CMP”) applications for approval of the New England Clean Energy Connect (“NECEC” or “Corridor”), and (ii) exercise its sole and mandatory authority to determine compliance of NECEC with Maine’s environmental statutes, specifically the Natural Resource Protection Act (“NRPA”) at 38 M.R.S. §§ 480-A – 480-JJ and the Site Location of Development Act (“Site Law”) at 38 M.R.S. §§ 481 – 490, as required by 38 M.R.S. §§ 341-D(2), 344(2-A) and 06-096 CMR. Ch. 2 § 17(C). Alternatively, NRCM appeals the Order. NRCM respectfully requests that the Board either assume original jurisdiction over this project of statewide significance and hold a public hearing or, alternatively, hold such a hearing and consider

supplemental evidence in reviewing the Order on appeal.¹ As detailed below, the extensive and onerous adverse impacts to natural resources and the environment from the NECEC are unreasonable and thus do not comply with NRPA or the Site Law. Consequently, even if the Board declines to exercise its mandatory review authority, it must reverse the Order on appeal.

BACKGROUND

CMP proposes construction and operation of a 145-mile, high-voltage, direct current (HVDC) transmission line, called the New England Clean Energy Connect, from Québec to an interconnection with the New England energy grid in Lewiston. About 54 miles of the transmission line route would consist of an entirely new 150-foot wide partially-cleared transmission corridor through a currently undeveloped section of Maine's North Woods. The NECEC includes above-ground transmission lines that would severely fragment this critical forest habitat, crossing the Appalachian Trail, countless wetlands and streams, deer wintering areas, and encroaching upon Beattie Pond, a Class 6 remote pond.

CMP also proposes expansion of the clearing running under and beside its existing lines, requiring removal of additional vegetation and increasing the density and intensity of impacts to the entirety of the existing corridor. The NECEC poses a unique threat to Maine's environment. Unlike other transmission line projects contemplated by the Department and the Land Use Planning Commission (Commission or LUPC), the NECEC does not ensure reliable power for Mainers. Instead, it is simply a profit making operation by a Maine public utility that, unlike utility operations, is more akin to a giant subdivision or shopping mall. However, unlike such a traditional

¹ NRCM hereby incorporates by reference herein all of the prefiled direct, rebuttal, surrebuttal, and hearing testimony of and comments on the Draft Department Order—and any attachments or exhibits thereto—by Groups 1, 2, 4, 6, 8, and 10 and the comments on the Draft Department Order by the Innu Nation, including all attachments thereto, for review by the Board as part of its original jurisdiction review of the NECEC or appellate review of the Order.

development project, this project carves a wide, nearly 150-mile long continuous swath from the Canadian border to Lewiston, including roughly 53 miles of new line in Maine's North Woods.

Commissioner Mercer, commencing in 2017, improperly failed to refer the NECEC, a project of statewide significance, to the Board for its review as required by 38 M.R.S. §§ 341-D(2), 344(2-A) and 06-96 CMR. Ch. 2 § 17(C). Instead, the Commissioner assigned a hearing officer, and the Department proceeded to consider, review and then, in May of 2020, conditionally approve CMP's applications for NRPA and Site Law approvals for NECEC resulting in the Order. Because only the Board, and not the Commissioner, is statutorily authorized to review and approve projects of statewide significance, the Board must vacate the Order and independently and *de novo* review compliance of the NECEC with NRPA and the Site Law as required by statute and as implemented by Chapters 2 and 3 of the Department's Rules.

It is clear from the record before the Department that the NECEC fails to comply with NRPA or the Site Law. Thus, should the Board fail to exercise its original jurisdiction over the NECEC as required by statute, it must overturn the Department's decision on appeal. 06-096 CMR Ch. 2 § 24. NECEC impacts to protected resources and the environment are unreasonable and unsupported by a demonstration that there are not practicable alternatives. The project will not fit harmoniously into the existing natural environment and will adversely and unreasonably affect existing uses, scenic character, and natural resources, including significant vernal pools and wetlands, brook trout habitat, wildlife habitat and lifecycles, water quality, and deer wintering areas.

DISCUSSION

I. **NRCM Has Standing as an Aggrieved Party and as a Party to Department Proceedings on the Order.**

NRCM is Maine's largest environmental advocacy group with over 25,000 members and supporters. NRCM's mission is protecting, restoring, and conserving Maine's environment, now and for future generations.² Many of NRCM's members use the area proposed for the NECEC for their outdoor recreation, such as fishing, hunting, and hiking. NRCM also has members and supporters who are guides in this area, and NECEC would harm their businesses. As such, NRCM is an aggrieved party with standing to pursue this appeal. *See* 06-096 CMR Ch. 2 § 24(B)(1).

NRCM petitioned to intervene as a party to Department proceedings resulting in the Order, and the First Procedural Order³ therein held that NRCM established particularized injury as required for party status under 06-096 CMR Ch. 3 § 11. NRCM's submissions and the Department's findings there are incorporated by reference in support of its request for the Board to exercise original jurisdiction pursuant to 06-096 CMR Ch. 2 § 17 and, alternatively, on appeal of the Order pursuant to 06-096 CMR Ch. 2 § 24.⁴

II. **Because the Commissioner Lacks Authority to Review Projects of Statewide Significance Like NECEC, the Board Must Vacate the Order and Assume Original Jurisdiction.**

Controlling statutes require the Board to assume jurisdiction over and decide license applications that involve projects of statewide significance. 38 M.R.S. §§ 341-D(2), 344(2-A); 06-

² *See* <https://www.nrcm.org/about-nrcm/>.

³ NRCM incorporates by reference its intervention petition and the First Procedural Order granting NRCM's intervention.

⁴ NRCM's standing is consistent with the Department's previous finding in this matter, and Maine courts also regularly hold that similarly situated parties have standing to pursue appeals. *See, e.g., Conservation Law Found., Inc. v. Town of Lincolnville*, No. AP-00-3, 2001 WL 1736584, at *7 (Me. Super. Feb. 28, 2001); *Nat. Res. Council of Maine v. Pub. Utilities Comm'n*, 567 A.2d 71, 73 (Me. 1989); *Hammond Lumber Co. v. Fin. Auth. of Maine*, 521 A.2d 283, 287 (Me. 1987).

96 CMR Ch. 2 § 17(C). These statutes require that the Board—not the Commissioner—“**shall** decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance.” 38 M.R.S. § 341-D(2). A project is of statewide significance if it meets at least 3 of the 4 statutorily defined criteria:

1. Will have an environmental or economic impact in more than one municipality, territory or county;
2. Involves an activity not previously permitted or licensed in the State;
3. Is likely to come under significant public scrutiny; and
4. Is located in more than one municipality, territory or county.

Id. § 341-D(2)(E); *accord* 06-096 CMR Ch. 2 § 17(C).

Use of the word “shall” imposes a mandatory duty and does not provide the Board or Commissioner with discretion. The Legislature provided specific rules to “be observed in the construction of statutes, unless such construction is inconsistent with the plain meaning of the enactment.” 1 M.R.S. § 71. One such specific rule is that, when used in laws enacted after December 1, 1989, the words “‘shall’ and ‘must’ are terms of equal weight that indicate a mandatory duty, action or requirement.” *Id.* § 71(9-A); *accord* *McGee v. Sec’y of State*, 2006 ME 50, ¶ 14 & n.3, 896 A.2d 933, 938–39. “If the meaning of the language is clear, we interpret the statute to mean what it says.” *N.A. Burkitt, Inc. v. Champion Rd. Mach. Ltd.*, 2000 ME 209, ¶ 6, 763 A.2d 106, 107 (*citing* *Kimball v. Land Use Regulation Comm’n*, 2000 ME 20, ¶ 18, 745 A.2d 387, 392). Here, the statutory mandate is clear. Only the Board has jurisdiction to review the NECEC.

Nor is there legal authority supporting the Commissioner’s retention of jurisdiction over an application that meets 3 of the 4 criteria and is thereby defined as a project of statewide significance. 38 M.R.S. § 344(2-A) (“the commissioner **shall** decide as expeditiously as possible if an application meets 3 of the 4 criteria set forth in section 341-D, subsection 2 and **shall** request

that the board assume jurisdiction of that application. If at any subsequent time during the review of an application the commissioner decides that the application falls under section 341-D, subsection 2, the commissioner **shall** request that the board assume jurisdiction of the application”) (emphasis added).⁵

Thus, unless the Board determines that NECEC does not meet the definition of project of statewide significance—a conclusion that would be flatly contrary to the statutory definition of “statewide significance”—then the Order is without legal effect because the Commissioner lacked jurisdiction to issue it.

NECEC is the prototypical project of statewide significance, handily meeting all four statutory and regulatory definitional standards:

- *First*, NECEC will have environmental or economic effects across more than one municipality, territory, or county. The Order describes the breadth of the project, which includes a 145.3 mile long transmission line from Beattie Township to Lewiston, a 26.5 mile line from Windsor to Wiscasset, and multiple new or renovated converter stations or substations. Order, 3. The environmental impacts pursuant to NRPA and the Site Law are, as described in the Order, significant. Order, 1.
- *Second*, NECEC involves an activity not previously permitted or licensed in the State—namely the transmission of energy from one foreign jurisdiction (Québec) to an interconnection with the New England grid in Lewiston in order to benefit ratepayers in another foreign jurisdiction (Massachusetts). Unlike other transmission line projects contemplated by the Department and LUPC in the past, this project does not meet any reliability need for Maine or connect a new generator within Maine but instead proposes a massive corridor as a for-profit venture primarily for the benefit of foreign jurisdictions.

⁵ This section of the law also contemplates that interested persons may request that the Commissioner refer an application to the Board, and that the Commissioner is required to issue a written decision if s/he declines to do so. 38 M.R.S. § 344(2-A). It is unclear whether this occurred. However, the statutory mandate imposed on the Commissioner and the Board is entirely independent of a request from any interested person. 38 M.R.S. §§ 341-D(2); 344(2-A); 06-96 CMR. Ch. 2 § 17(C). Moreover, because the statutes are written with regard to whether the Commissioner or the Board shall “assume jurisdiction” of a particular decision, *id.*, this issue of subject matter jurisdiction within the agency may be raised at anytime—including on appeal—and is decided based on the “jurisdiction, powers and authority that are conferred on the Board by express legislative grant.” *Ford Motor Co. v. Darling's*, 2014 ME 7, ¶¶ 41-42, 86 A.3d 35, 49.

- *Third*, NECEC has undoubtedly come under significant public scrutiny. The sheer number of parties to the underlying Department proceeding evidence the hotly contested nature of the project. [REDACTED]
[REDACTED]
[REDACTED] *Reed v. Sec'y of State*, 2020 ME 57, ¶ 2. This project has attracted significant and ongoing public scrutiny because people are rightly concerned about its negative effects.
- *Fourth*, as described above, the NECEC spans nearly 150 miles and multiple municipalities and counties. *See Order*, 3.

In light of the foregoing, the Board is the proper—and only—licensing decision maker. The Commissioner is required to refer projects of statewide significance, like NECEC, to the Board. The Board is required to assert original jurisdiction over and determine compliance of a project of statewide significance like NECEC with NRPA and the Site Law. *See* 38 M.R.S. §§ 341-D(2), 344(2-A); 06-096 CMR Ch. 2 § 17(C). The Board must correct this flawed process and assume responsibility by holding a public hearing and undertaking its own independent review of CMP's application.

III. Exercise of Original Jurisdiction Allows the Board to Address the Threshold Question of Jurisdiction as well as Numerous Errors in and Lack of Substantial Evidence Supporting the Order.

In addition to issuance without jurisdiction, the Order contains numerous errors of law and is unsupported by substantial evidence. The Order likewise imposes conditions that purport to mitigate NECEC's impacts to protected resources and the environment but which fail to meet the standards set for the in NRPA and the Site Law. *Order*, 1-2. Whether the Board assumes original jurisdiction, or considers these issues on appeal, the Board should conduct a *de novo* review of this matter, 38 M.R.S. § 341-D(4)(A) (“The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law

established by the commissioner”); *accord* 06-096 CMR Ch. 2 § 24(G), and reverse the Order for the reasons detailed below.⁶

A. CMP does not have sufficient right, title or interest in the NECEC.

Right, title and interest (“TRI”) presents a jurisdictional bar to Board or Department review and must exist at all times. 06-096 CMR Ch. 2 § 11(D). CMP does not have TRI in NECEC both because it agreed to transfer its interest in NECEC before NECEC is built or operated and because the documentation of TRI it presented is patently illegal.

First, during the course of the Department proceedings on NECEC, CMP’s TRI in the NECEC materially changed through execution and approval of a stipulation before the PUC (which CMP was required to do in order to obtain its Certificate of Public Convenience and Necessity (“CPCN”)). That stipulation specified that “CMP will transfer and convey the NECEC to NECEC Transmission LLC (“NECEC LLC”), a Delaware limited liability company that is a wholly owned subsidiary within the Avangrid Networks family of companies and is not a subsidiary of CMP.” *Cent. Me. Power Co.*, Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston (NECEC) and Related Network Upgrades, Docket No. 2017-00232, Stipulation at 16 (Me. P.U.C. Feb. 21, 2019), attached hereto as Appendix D. Because neither CMP nor any subsidiary thereof is legally authorized to construct or operate the NECEC, CMP lacks “the kind of relationship to the ... site, that gives [...] legally cognizable expectation of having the power to use that site in the way that would be authorized by the permit or license he seeks.” *Picker v. State Dep’t of Env’tl. Prot.*, No. CIV.A. AP-01-75, 2002 WL 1023629, at *3 (Me. Super. Apr. 6, 2002) (*quoting and citing Southridge Corp. v. Board of Env’t.*

⁶ NRCM seeks reversal of the Order and denial of NECEC authorization under NRPA and the Site Law.

Protection, 655 A.2d 345, 348 (Me. 1995) and *Walsh v. City of Brewer*, 315 A.2d 200, 207 (Me. 1974)).

Furthermore, Chapter 2 of the Department's Rules defines a transfer of ownership at Section 1(R). 06-096 CMR Ch. 2 § 1(R). The conveyances required by the CMP Stipulation clearly fall within this definition.⁷ Compliance with the CMP Stipulation substitutes a new entity for CMP, one which has not yet presented itself for Department review,⁸ and which means that CMP will not, by its very terms, own or operate the NECEC as required by Chapter 2 rules on TRI.

Second, the Bureau of Parks and Lands lease of State Public Reserved Land in Johnson Mountain and West Forks Plantation Northeast⁹ parcels ("Illegal BPL Lease") was not authorized by the Maine Legislature. The Illegal BPL Lease was also issued to a utility (CMP) which had not yet obtained the required CPCN. As a result, the Illegal BPL Lease is void on its face and does not meet the submission requirements for documentation of TRI set forth in Chapter 2 Section 11(D) of the Department's Rules.

Department reliance on the Illegal BPL Lease as documentation of TRI is improper as even a cursory review reveals significant legal flaws, information about which was readily available during the course of Department review of the NECEC. BPL granted the Illegal BPL Lease prior

⁷ Section 1(R) of Chapter 2 of the Department's Rules defines "Transfer of Ownership" as a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock (or in the case of a limited liability corporation, of membership interests), or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns or operates the property, facility or structure remains the same.

⁸ The CMP Stipulation also calls into question numerous Order findings such as those regarding financial and technical ability, where there is no record evidence of NECEC Transmission, LLC's financial and technical qualifications to construct, own, and operate the NECEC.

⁹ 2014. Transmission Line Lease Between Department of Agriculture, Conservation, and Forestry, Bureau of Parks and Lands and Central Maine Power, at 11. Attachment A to Group 4's Comments on Draft Order.

to CMP obtaining a CPCN, a clear violation of 35-A MRS § 3132(13).¹⁰ CMP did not receive a CPCN from the Maine Public Utilities Commission (“PUC”) for the NECEC until May 3, 2019. Four and a half years before that, without any public notice or awareness of the NECEC (and perhaps without itself knowing what the lease was for), BPL issued the Illegal BPL Lease to CMP on December 8, 2014. When notified of the CPCN requirement at a February 18, 2020,¹¹ work session held by the Agriculture, Forestry, and Conservation (“ACF”) Committee of the Maine Legislature on LD 1893, “An Act To Require a Lease of Public Lands To Be Based on Reasonable Market Value and To Require Approval of Such Leases for Commercial Purposes,” BPL Director Andy Cutko stated that, “Now that I am aware of the utilities requirement I would certainly want to follow the law and get that secured prior.”¹² The ACF Committee unanimously voted out of committee an amended version of LD 1893 finding that the Illegal BPL Lease violated 35-A M.R.S. § 3132 and requiring any new lease to receive a two-thirds vote of all elected members of both houses of the Legislature. For the Illegal BPL Lease, the requirement of such a vote was already the law because construction of the NECEC would substantially alter that State Public Reserved Land—Article IX, Section 23 of the Maine Constitution requires that any reduction or substantial alteration of public reserved lands requires approval by a 2/3rd vote of the Legislature. *See also* 12 M.R.S. §§ 598 to 598-B.

¹⁰ 35-A M.R.S. § 3132 states: Public lands. The State, any agency or authority of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land, other than a future interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of this subsection, to any person for the purpose of constructing a transmission line subject to this section, unless the person has received a certificate of public convenience and necessity from the commission pursuant to this section. (emphasis added).

¹¹ Notably, this occurred months before issuance of the Order.

¹² Cutko statement available at: <https://www.mainepublic.org/post/maine-lawmakers-questionlegality-2014-cmp-lease-state-lands-transmission-corridor>.

More troubling is the Department's disparate treatment of two functionally identical facially void leases. With regard to a lease with the Passamaquoddy presented to the Department by CMP, but which was not yet signed by the Bureau of Indian Affairs ("BIA"), the Department's draft Order conditioned approval on CMP obtaining the requisite approval. Logically, this would require the same condition with regard to the lease over Public Reserved Lands: the permit must be conditioned on CMP obtaining the requisite legislative approval. There is no rational basis for the Department to propose to treat the Public Lands lease any differently than it proposed for the Passamaquoddy lease.¹³

Accordingly, the Board should mandate receipt of TRI sufficient to meet the requirements of Chapter 2 of the Department's Rules and sufficient to ensure that the Board is aware of the actual location of the NECEC in order to provide a legal foundation for evaluation of compliance with NRPA and the Site Law and appropriate conditions before considering the application. The Board should initiate its review (including a hearing) only after NECEC LLC obtains TRI (including a valid lease from BPL) and submits all necessary information for the Department to determine whether the proposed owner and operator of NECEC can comply with NRPA and the Site Law. At a minimum, however, were the Board to consider the application prior to a Legislative vote, the Board should impose a condition, similar to the condition originally proposed by the Department for the BIA lease, that NECEC LLC obtain the necessary legislative approval pursuant to Me. Const. art. IX, § 23; 12 M.R.S. §§ 598 to 598-B for the BPL lease of State Public Reserved Land in Johnson Mountain and West Forks Plantation Northeast.

¹³ The Order eliminated this proposed condition likely due to NRCM's comments noting that the CMP's revisions to the NECEC route meant that the Passamaquoddy land was no longer part of the project. However, while this changes nothing about the above analysis—the Department's proposed approach of a permit condition is the only lawful option—it does present the troubling indication that by the end of its multi-year review of the NECEC the Department remained uncertain of the location of the NECEC. One wonders then, how reliable its assessment of and accounting for of impacts to the environment can be?

B. The NECEC causes unreasonable adverse impacts to brook trout habitat in violation of NRPA and the Site Law even after mitigating Order conditions.

NRPA, the Site Law, and Chapters 335 and 375 of the Department's Rules require CMP to prove that the NECEC will not result in unreasonable adverse impacts to significant wildlife habitat, freshwater wetland plant habitat, or threatened or endangered plant habitat. 38 M.R.S. § 480-D(3); 38 M.R.S. § 484(3); 06-096 CMR Chs. 310, 335, and 375. In so doing, CMP must adequately document avoidance and mitigation of and compensation for such impacts. The Order describes the significant impacts to fisheries and wildlife from the NECEC. Specifically, endangered species (Roaring Brook Mayfly and Northern Spring Salamanders); brook trout habitat; habitat fragmentation and buffer strips around cold water fisheries. The NECEC impacts to such resources are unreasonable even considering implementation of Order conditions intended to ameliorate them.

The Order sets forth the following measures in an effort to make reasonable the NECEC adverse impacts to brook trout and coldwater fisheries: (1) Increasing riparian filter areas (buffers) along streams from 25 feet to 100 feet around all perennial streams in Segment 1, all coldwater fisheries streams in other segments, and all Outstanding River Segments; (2) Protection of the Grand Falls, Basin, and Lower Enchanted Tracts, protecting 12.02 miles of streams combined; (3) Providing for full canopy vegetation at Gold Brook and Mountain Brook; (4) Maintaining 35-foot height vegetation in 12 "Wildlife Areas" that total 12.2 miles of Segment 1; (5) Tapered vegetation within the remaining length of Segment 1; and (6) \$1,875,000 in funding for culvert replacements.¹⁴ These measures are inadequate. The NECEC adverse impacts remain unreasonable as discussed in detail below.

¹⁴ Order, 82-84.

1. The NECEC does not include adequate riparian filter areas (buffers) to address unreasonable adverse impacts to brook trout habitat.

The Order requires maintenance of a “riparian filter area” or buffer within 100 feet of all perennial streams in Segment 1, all coldwater fisheries streams in other segments as identified in Appendix E, all streams containing threatened or endangered species, and all Outstanding River Segments; and within 75 feet of all other streams. Appendix C to the Order outlines the vegetation management plan for these areas. Despite providing more protection for riparian areas than that included in CMP’s applications for the NECEC, the vegetation management plan for riparian filter areas still requires significant clearing within the wire zone (within 15 feet, horizontally, of any conductor). Within the wire zone of riparian filter areas, all vegetation taller than 10 feet would be cut to ground level during initial clearing. Outside the wire zone, in the remainder of the 150-foot-wide corridor, only non-capable vegetation would be allowed to exceed 10 feet in height. All vegetation capable of reaching into the wire zone would be removed on a two- to three-year cycle in Segment 1, and a four-year cycle in other segments.

Order conditions regarding vegetation management convert existing vegetation along the NECEC route from intact forest with strict limits on tree removal during timber harvest to a permanent 150-foot swath of short scrub-shrub vegetation. This vegetative condition would be regularly maintained, preventing recovery of vegetation that could serve critical buffer functions such as providing shade and overhead cover to streams, woody debris inputs that are essential for fish habitat, or a forest canopy that provides leaf fall and insect inputs to aquatic food chains. Stripping an area of vegetation defies its ability to serve as a buffer. Thus, increasing the width of this area where vegetation is slightly less stripped (from 25 feet to 100 feet) does not create a buffer or reduce NECEC adverse impacts to fisheries and other protected resources except that it may somewhat improve sediment removal.

2. NECEC compensation for impacts to brook trout habitat in the Grand Falls, Basin, and Lower Enchanted Tracts is not comparable to nor does it address impacts to brook trout habitat and is thus inadequate to comply with NRPA or the Site Law.

As discussed in detail in Jeff Reardon’s pre-filed direct and surrebuttal testimony on behalf of consolidated Group 4, consisting of NRCM, the Maine Chapter of Trout Unlimited, and the Appalachian Mountain Club, most of the river and stream habitat protected in the proposed compensation parcels is significantly different from the higher-value stream habitat impacted by the NECEC’s inadequate buffers.¹⁵ The impacted streams are mostly cold, high-elevation, headwater streams that are highly productive of wild brook trout. The streams “protected” in the compensation parcels are mostly large main stem rivers that warm significantly in the summer, have a recreational fishery at least partially supported by stocking, and have limited or no potential to produce wild brook trout.¹⁶ This defies the purpose of compensation parcels—*i.e.*, replacing the functions and values of the adversely impacted natural resource. CMP’s failure to propose compensation parcels which hew closely to those impacted by the NECEC impermissibly allows unreasonable adverse impacts.

3. Full-height vegetation at Gold Brook and Mountain Brook only protects one Gold Brook crossing and one crossing of Mountain Brook, not any tributaries, and thus allows unreasonable adverse impacts to brook trout habitat.

The Order condition requiring full canopy vegetation at Gold Brook and Mountain Brook was proposed to protect Roaring Brook Mayfly habitat in part of Wildlife Area 4 (Gold Brook) and Wildlife Area 6 (Mountain Brook) but is also cited for benefits to brook trout at these stream crossings.¹⁷ Full canopy vegetation at these two sites is provided by taller poles or pole locations

¹⁵ Reardon Pre-filed Direct Testimony, 21-23; Reardon Surrebuttal Testimony, 6-7.

¹⁶ Reardon Pre-filed Direct Testimony, 22-23; Reardon Surrebuttal Testimony, 6-7.

¹⁷ Wildlife Area 11, which includes the Kennebec River crossing and no other streams, will have full canopy vegetation, because CMP agreed to undergrounding in this location. CMP’s original overland crossing maintained full canopy vegetation via pole heights and locations.

that allow for mature tree canopy below the wire zone, and is required between four structures spanning 0.65 miles with two crossings of Gold Brook and between three structures spanning 0.38 miles with a single crossing of Mountain Brook. Thus, full height vegetation is required at only three of the 271 stream crossings in Segment 1 (only 1.1% of stream crossings in Segment 1). While full canopy closure reduces adverse impacts to these two streams, these protections do not apply to tributaries to either Gold or Mountain Brook.

At Gold Brook, five tributary streams adjacent to the Gold Brook crossings are excluded from the “full canopy vegetation” zone, and therefore get only 35-foot tall vegetation. The effectiveness of these “full canopy” areas is further reduced by clearing within the “full canopy” areas for access roads and structures. Within the footprint of each structure and for the entire length of the access roads, NECEC will result in removal of all capable and non-capable species during initial clearing, and these areas would be maintained as scrub-shrub thereafter. Based on the Google Earth map layers provided,¹⁸ access roads coincide with approximately 0.4 miles of the 0.65 miles of full canopy in Wildlife Area 4, including one of the two Gold Brook crossings. The cleared road will cross Gold Brook, leaving a maintained scrub-shrub buffer rather than full canopy in perpetuity at the crossing. As a result, uninterrupted full canopy vegetation is applied to less than one mile of the 53-mile-long Segment 1, and only two of the 271 stream crossings would retain full canopy vegetation. At Gold Brook, one of the two “full canopy” crossings of Gold Brook will be compromised by a cleared and maintained construction road.

In short, even the limited area of “full canopy” vegetation required by the Order only applies fully to the sole crossing of Mountain Brook itself (exclusive of tributaries). While both Gold and Mountain Brook are important brook trout resources, the overall significance of these

two improved crossings is very small in the context of the entirety of the NECEC's adverse impacts to brook trout and other aquatic habitat and certainly does not suffice to make those adverse impacts reasonable.

4. Thirty-five-foot tall vegetation in 12 Wildlife Areas only reduces adverse impacts to 5 miles of the NECEC and, thus, leaves unreasonable adverse impacts to brook trout habitat.

The Order specifies 35 foot tall vegetation to address adverse impacts to fisheries and wildlife habitat in Wildlife Areas 1-10. In these areas, instead of the clear cutting proposed by CMP, the Order requires that trees that are taller than 35 feet, or may reach heights greater than 35 feet before the next scheduled maintenance (within two to three years), may be removed. Trees would be removed when they either reach 35 feet in height, or when they have the potential to reach 35 feet before the next scheduled maintenance. Note that the Order labels these "35-Foot Minimum Vegetation Height" areas, but the prescription for vegetation maintenance would actually result in a 35-foot **maximum** vegetation height, as all vegetation approaching 35 feet would be removed.

The Order applies this prescription to the NECEC adverse impacts in 12.23 miles within Segment 1 of the approximately 150 mile NECEC. These areas include crossings of 21 streams or, according to the Order, 7.7% of the 271 intermittent and permanent stream crossings in Segment 1.¹⁹ Of the 12 miles benefiting from this additional protection, more than seven miles include access roads that will still be cleared and maintained as scrub-shrub habitat. Thus, a mere 5 miles of the NECEC will comply with this condition and support 35-foot vegetation.

Importantly, vegetation maintenance within the 35-foot vegetation area allows tree cutting at ground level, rather than topping, when trees reach 35 feet or have the potential to reach 35 feet

¹⁹ Order, 135-136 (Table C-1).

within 2-3 years. As a result, this area, though it may support some vegetation taller than scrub-shrub, will never grow mature trees that support spreading canopies or larger trunks. A study of re-generating even-aged hardwood stands in upstate New York found that at age 19, sugar maple, beech, yellow birch, and white ash were all exceeding 30 feet in height; and all reached heights of 35 feet or taller by age 24.²⁰ At age 24, trunk diameters (dbh) ranged from 3.08” to 4.29”.²¹ Even at age 29, when all species but beech were exceeding 45 feet, dbh never exceeded 6 inches for any species.²² Although trees with a maximum heights of 35 feet in the corridor may provide some shade, they will not grow to heights that support full crown development and provide substantial shading before their removal. They will also not attain trunk diameters large enough to count as large wood for instream habitat.

To summarize, 35 foot vegetation areas are required in only 12 of the 53 miles in Segment 1 and 150 mile NECEC. The 35-foot canopy is interrupted by cleared and maintained access roads for all but 5 miles. Even counting those areas that include access roads, 35 foot vegetation is required for only 21 stream crossings, less than 8% of the stream crossings in Segment 1 alone. On the streams to which it applies, it would result in vegetation taller than scrub-shrub but not in trees tall enough to provide full shade to streams or large enough to serve as large woody debris if recruited into the stream channel.

5. It is not known whether tapered vegetation will effectively alleviate adverse impacts to brook trout habitat caused by the NECEC.

²⁰ Nyland, Ralph D; Ray, David G; and Yanai, Ruth D, Height Development of Upper-Canopy Trees Within Even-Aged Adirondack Hardwood Stands, *Northern Journal of Applied Forestry*, September 2004 (Table 1, p. 119), *available at* https://www.researchgate.net/profile/Ruth_Yanai/publication/233671448_Height_Development_of_Upper-Canopy_Trees_Within_Even-Aged_Adirondack_Northern_Hardwood_Stands/links/5552a64f08ae980ca606c177/Height-Development-of-Upper-Canopy-Trees-Within-Even-Aged-Adirondack-Northern-Hardwood-Stands.pdf (attached as Appendix C).

²¹ *Id.*

²² *Id.*

The Order requires tapered vegetation for the entire length of Segment 1. The effectiveness of this measure at mitigation of adverse impacts to brook trout habitat is unproven, untested, and anticipated to be very limited. The Order specifies that tapering will include (1) a 54-foot wide “wire zone” within which all woody vegetation would be cut to ground level and allowed to regenerate to no taller than 10 feet; (2) a 16-foot wide taper on each side of the wire zone that would be selectively cut to remove vegetation taller than 15 feet and maintained with vegetation of 15-foot maximum height; (3) a 16-foot wide taper within which vegetation up to 25 feet would be maintained; and (4) a final 16-foot wide taper within which vegetation up to 35 feet would be maintained. As with the “Full Canopy” and “35-Foot Canopy” areas discussed above, access roads would be cleared and maintained as scrub-shrub.

The record does not support a conclusion that tapering will effectively counteract unreasonable adverse impacts from the NECEC.²³ Trees removed upon reaching heights near 35 feet will be young, short, and with have small trunk diameters and limited canopy spread. This substantially limits their ability to provide shade or to serve as large woody debris. These limitations increase for each progression to shorter woody vegetation in the taper (*i.e.*, removal at 25 feet or 15 feet in height). The wire zone, which occupies more than 1/3 of the total width of the NECEC, will be permanent scrub-shrub, as will all access roads. Thus, tapering will provide neither sufficient shade nor input of large wood materials to protect the many high-quality brook trout stream crossing that comprise the NECEC.

²³ Group 4 Comments on Draft Order, April 13, 2020.

6. The \$1,875,000 culvert fund does not address adverse impacts to brook trout habitat.

The Order requires fish passage improvements through culvert replacements to improve brook trout access to habitat as an offset to NECEC unreasonable adverse impacts to brook trout. NRCM agrees that NECEC's impacts to brook trout are unreasonable and adverse, and that improving fish passage at culverts can improve habitat access for brook trout. However, there is no nexus between the two and the Department erred in conflating the two issues. The NECEC presents numerous and varied significant impacts to brook trout habitat through its removal and degradation of forested buffers but NECEC does not impede fish passage. Even if the NECEC did present fish passage impacts, the proposed fish passage projects funded by CMP's culvert replacement fund are not necessarily in the same streams or even watersheds impacted by the NECEC.

The Order allows the culvert fund to be spent "in the vicinity of Segment 1,"²⁴ a facially vague standard. NECEC impacts and the existing quality of brook trout habitat are both highest in Segment 1, where there are few public roads and the land and the logging road network are owned and used primarily for timber harvest. Private forest landowners are generally less willing than municipalities to use funds to improve fish passage because of the associated restrictions on use of their property and maintenance obligations. Further, the Order contains no guidelines ensuring use of or priority of use of the culvert fund for crossings of high-quality brook trout streams equivalent to those adversely impacted by NECEC.

In Segment 1, roads are typically privately owned and used primarily for logging, culvert replacement costs would almost certainly exceed the \$50,000-\$100,000 range cited, with the result that far fewer than 25 culverts would likely be replaced. Worse, there is no clear linkage between

²⁴ Order, 86.

the handful of culverts constructed and improvements to brook trout habitat. In short, there is no relationship between paying for culverts (which may improve fish passage) and addressing impacts to brook trout habitat resulting from hundreds of stream crossings laying that habitat bare to the warming effect of sun and removal of all woody inputs.

C. NECEC habitat fragmentation impacts are unreasonable even considering Order conditions intended to mitigate impacts.

The Department's Rules implementing the Site Law (06-096 CMR Ch. 375 § 15) require adequate provision for the protection of wildlife and fisheries through maintenance of suitable and sufficient habitat, including travel lanes and avoiding habitat fragmentation. NRPA (06-096 CMR Ch. 310 and 335) similarly prohibits unreasonable impacts to protected natural resources including a goal of no net loss of function and values of rivers, streams, brooks, wetlands, and significant wetland habitat.

The proposed NECEC carves a swath through an unfragmented forest block that encompasses more than 500,000 acres within a larger area that is one of the last remaining temperate broadleaf mixed forests. This part of Maine's North Woods supports exceptional biodiversity and maintains that biodiversity even as the climate changes. These qualities make the area unique and important wildlife habitat. The Order acknowledges that the NECEC "could contribute to habitat fragmentation and have unreasonable adverse impacts on wildlife as a result of the effects on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat. Fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches." Order at 75-76. These impacts result even though there is already forest management in this area. *Id.* The Department found that:

as Segment 1 initially was proposed, the applicant had not made adequate provision for the protection of wildlife; the proposal's contribution to habitat fragmentation and impact on habitat and habitat connectivity was an unreasonable impact on

wildlife habitat. Through modifications CMP made to its proposal during the permitting process, these potential wildlife impacts have been reduced. Through further modification required as a condition of this Order, adequate provision for the protection of wildlife will be achieved.

Order, 76.

Unfortunately, examination of the Order conditions modifying the NECEC indicates continued failure to comply with NRPA and the Site Law. These deficiencies are fatal and the Board should deny the permits.

1. Tapering is a scenic impact²⁵ mitigation measure that does not mitigate adverse impacts to wildlife habitat from forest fragmentation and will be difficult to implement and monitor for compliance.

Tapering is intended to reduce the scenic impact of the corridor in areas of high scenic sensitivity such as Coburn Mountain. There is no evidence that tapering mitigates impacts to wildlife habitat or addresses forest fragmentation. While tapering the entire length of the NECEC may have some benefit for reducing edge effects in adjacent forested areas, this strategy has not been studied. Tapering provides almost no connectivity benefit for mature forest species to offset fragmentation. Even along the edges, where tapering would result in trees that are a maximum of 35-feet high (as discussed above), these trees will be mere saplings in the 3-inch to 5-inch diameter range (excluding damaged or broken trees with larger diameters). While there may be some species that would avoid 10-foot high scrub-shrub but would utilize 15-foot to 35-foot-tall sapling vegetation, it is insufficient to provide adequate connecting habitat for marten or other mature forest species. As such, reliance on tapering conditions to offset what the Department concedes are unreasonable fragmentation impacts is impermissible under NRPA and the Site Law.

²⁵ NRPA (38 M.R.S. § 480-D(1)) and the Site Law (38 M.R.S. § 484(3)) both specify standards pertaining to scenic impacts that NECEC must satisfy- but doesn't. The Board should likewise consider NECEC's failure in this regard.

NRCM also has serious concerns about how this tapered condition would be established, and whether the Department has sufficient capacity to monitor and enforce this condition for the life of the NECEC. The tapering diagram provided by the Applicant shows nicely tapered vegetation.²⁶ However, Section 1 of the proposed corridor would pass through a range of stand types and ages and it is unrealistic to expect the uniform condition presented in Applicant's Exhibit CMP 5-B to exist immediately following construction. Initial clearing will consist of a nearly complete overstory removal of all trees greater than 5-inch diameter, leaving seedlings and saplings of a range of heights and densities. Closed canopy stands may have little established regeneration and will require time for the regeneration to grow to the desired heights. This regeneration may itself be even-aged (as will regeneration where the NECEC passes through recent clearcuts), and most trees may reach the target height at the same time, resulting in another heavy removal during the next maintenance cycle. Rather than the nicely tapered vegetation pictured by the Department, the NECEC will consist of an on-going patchwork of seedlings and saplings that may only achieve the desired tapered condition after decades of careful tending, if ever.

It is not clear how progress toward the required tapered condition will be monitored and enforced or whether there will be any benefit whatsoever in terms of an offset to habitat fragmentation. Will a monitor be onsite during clearing to ensure that clearing is being done appropriately to reach the desired condition in the shortest possible time? How will the Department determine condition compliance? What, if any, penalties will CMP have to pay for non-compliance, and will those penalties be sufficient to ensure compliance? Without monitoring and substantial penalties, the Applicant could decide that maintaining tapered vegetation is too expensive and simply choose to pay the penalties as a cost of business. Will there be any effort to

²⁶ Pre-filed Testimony of Amy Bell Segal, Exhibit CMP 5-B at 60.

determine the value of tapering by quantifying habitat use impacts and the loss associated with NECEC?

2. Requirements for proposed Wildlife Areas are not sufficient to ensure that these protected areas provide any significant connectivity benefit.

In theory, the Wildlife Areas prescribed by the Order may enhance habitat connectivity, primarily for species that do not require mature forest. However, in practice there would be numerous difficulties and significant delays in achieving such benefits—if achievement were ever accomplished.

In her supplemental testimony, Group 6 witness Dr. Simons-Legaard set forth the minimum characteristics for pine marten habitat that should be maintained in the Wildlife Areas in order to provide habitat connectivity. These bare minimums were not so simple as maintaining a set canopy height.²⁷ As she stressed in her testimony, it is critical that all of these requirements be incorporated into the NECEC to address the unreasonable adverse impacts otherwise resulting from the NECEC. These include: (a) the trees be at least 30 feet tall (preferably greater than 40 feet tall); (b) a minimum basal area of 80 ft²/acre; (c) a minimum of 30% canopy closure in all seasons; and (d) frequent snags (dead trees). The NECEC meets none of these measures for avoiding unreasonable adverse impacts to wildlife habitat associated with fragmentation.

The Order holds that NECEC impacts are unreasonable without tapering. Yet, as discussed above, tapering results in a **maximum** tree height of 35 feet with the most likely outcome being that the average tree height in the area impacted by NECEC is well below 30 feet.²⁸

Maintenance of a minimum basal area of 80 square feet per acre is at least as important as the minimum 30 foot height requirement because a regenerating stand with only a few scattered

²⁷ Supplemental testimony of Group 6 witness Dr. Erin Simons-Legaard, 1.

²⁸ Order, Appendix C.

taller trees will not mitigate fragmentation. The removal of all trees greater than 35 feet tall from the Wildlife Areas during construction means that large parts of these Wildlife Areas will not meet this threshold following construction. Those stands that provide the greatest connectivity benefit (mature closed canopy stands) would undoubtedly see the greatest level of overstory removal. As a result, achieving this basal area threshold would largely depend on restoration through future growth. As such, this criterion for avoiding adverse fragmentation effects is likewise unlikely to be met.

Likewise, the minimum size tree that can be counted toward this requirement is not specified. However, simple math indicates that there is likely an extremely narrow potential window for trees that can provide enough basal area without tipping over the 35-foot threshold for removal. Research indicates that this requirement could be met by a tree with a minimum diameter at breast height of 7.6 cm (3 inches),²⁹ meaning that this basal area must be maintained in trees at least 3 inches in diameter but no more than 35 feet tall. Stands fitting this very narrow range of tree sizes would likely be dense, even-aged sapling stands and could require extensive removal once the canopy reaches 35 feet, reducing the stand below the basal area threshold mere years after finally attaining the minimum requirements outlined by Dr. Simons-Legaard. Thus, these stands could end up in a cycle of heavy clearing followed by regeneration without ever really offering any mitigation of the unreasonable fragmentation impacts NECEC imposes.

Based on examination of aerial photography and National Land Cover data, there are several extensive areas of hardwood forest within these Wildlife Areas. Yet, if this basal density requirement can be met at all, it can only be achieved by mixed wood or softwood stands. Absent planting of softwoods, hardwood stands of less than 35 feet will never meet this criterion. There

²⁹ See Payer, D. and Harrison, D.J. (2003, 2004), discussed and cited in the pre-filed testimony of David Publicover (February 22, 2019).

is no information indicating how much of the Wildlife Areas consists of mixed wood or softwood stands capable of meeting this threshold and without requiring planting or active management to achieve a mixed wood or softwood stands.

Finally, frequent snags are unlikely in the Wildlife Areas. Once cleared, the remaining tree sizes are so short and of such minimal diameter that the interconnections of snags are effectively eliminated as relevant to habitat fragmentation.

In short, the Wildlife Areas established in the Order are highly unlikely to provide the characteristics necessary to avoid habitat fragmentation. Further, there is no clarity regarding maximization of the benefits of the Wildlife Areas for mature forest connectivity or if there are alternative which would better mitigate the admittedly unreasonable habitat fragmentation impacts of the NECEC. Specifically:

- There is no evidence in the record regarding which stands within the Wildlife Areas currently meet the thresholds set forth above for canopy height, basal area, and softwood canopy cover, and which stands would meet these thresholds following NECEC construction.
- There is no evidence in the record of the tallest poles that can be utilized in different areas as an alternative to habitat fragmentation associated with a maximum tree height of 35 feet.
- There is no evidence in the record of the maximum tree height that can be maintained given poles of the maximum height. This will vary by location based on topography and other factors. These heights, not a blanket 35 feet, should be set at the desired tree height in different areas.
- There has been no provision of any plan based on forest growth modeling (such as the Forest Vegetation Simulator) demonstrating how progress toward the desired conditions would be achieved, how long it would take to achieve these conditions, and that these conditions could be maintained given the need for on-going removal of trees above the maximum 35 foot height.

There is no provision for long-term monitoring to ensure that progress toward these required conditions is achieved and maintained. It is not sufficient to examine aerial photography or simply measure canopy height – basal area must also be periodically monitored.

Finally, there are no “triggers” requiring additional land conservation as compensation for failed Wildlife Areas or portions of Wildlife Areas which do not attain the conditions necessary to mitigate habitat fragmentation (such as hardwood stands that will not meet the winter canopy closure threshold), which will not achieve them in a reasonable time, or which cannot be maintained in the necessary condition over the long term.

3. The Order-mandated land conservation does not adequately compensate for the NECEC abnegation of functions and values of significant wildlife habitat.

The NECEC, as proposed by CMP, included insufficient compensation for impacts to significant wildlife habitat even with the on-site mitigation of tapering and Wildlife Areas. The amount of land conservation required by the Order is the bare minimum recommended by any non-Applicant expert witness and is based on best-case assumptions about the environmental benefits of tapering and Wildlife Areas. Given that, as discussed in detail above, the environmental benefits of tapering and Wildlife Areas are unlikely to be fully realized for some time (perhaps several decades), if at all, the habitat protections provided by compensatory land conservation are especially critical. Furthermore, some impacts, including the Site Law requirement that the project fit harmoniously into the environment cannot be mitigated by offsite measures. Unfortunately, the Order does not contain a sufficient quantity or quality conservation lands to provide these necessary benefits. Conservation easements in an area with limited development threat, but which allow commercial forestry to continue as usual, would provide very limited additional benefits and are insufficient and unacceptable as a replacement for the lost functions and values associated with the NECEC impacts.

D. CMP failed to perform an adequate alternatives analysis, ignored practicable alternatives, and the NECEC results in unreasonable adverse impacts in contravention of NRPA and the Site Law.

A fulsome alternatives analysis is foundational to NRPA review and compliance. Under NRPA, CMP must demonstrate that the NECEC “will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses” and “will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine or other aquatic life.”³⁰

Chapters 310 (Wetlands), 315 (Scenic and Aesthetic), and 335 (Wildlife) all contain explicit requirements that an applicant conduct an alternatives analysis to determine whether a less harmful alternative exists. Under no circumstances can an application be approved where this analysis is not done or where the project would cause unreasonable harm to a protected resource, even where no practicable alternative exists. Chapter 310 states that an:

activity will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. The applicant shall provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist.³¹

However, “[e]ven if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland.”³²

Chapter 315 of the Department’s Rules addressing scenic and aesthetic uses requires the Department to consider all “practicable alternatives to the proposed activity that will have less

³⁰ 38 M.R.S. § 480-D.

³¹ 06-096 CMR Ch. 310, § 5.

³² 06-096 CMR Ch. 310, § 5(D).

visual impact, and cumulative effects of frequent minor alterations on the scenic resource” and states that:

[a]n application may be denied if the activity will have an unreasonable impact on the visual quality of a protected natural resource as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation. An “unreasonable impact” means that the standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met.³³

Chapter 335, of the Department’s Rules addressing significant wildlife habitats, also requires:

[a] narrative describing whether a practicable alternative to the alteration exists that would be less damaging to the environment and what alternatives were considered during project design. The narrative must address why the activity cannot avoid or lessen impacts to the significant wildlife habitat by utilizing, managing or expanding one or more other sites; reducing the size, scope, configuration or density of the proposed activity; developing alternative project designs; or by some other means.³⁴

The alternatives analysis requirement underlying NRPA as set forth in Chapters 310, 315, and 335 is clear. Is there a practicable alternative? If so, the reasonableness of adverse impacts is called into question. But, “[e]ven if the activity has no practicable alternative, and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on protected natural resources or the subject wildlife.”³⁵

Here CMP did not conduct a reasonable and complete alternatives analysis, did not demonstrate that there is no practicable alternative, and did not demonstrate that the NECEC does not unreasonably impact protected natural resources.

1. CMP’s Alternatives Analysis is Inadequate.

A NRPA alternatives analysis is a report that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose,

³³ 06-096 CMR Ch. 315, § 9.

³⁴ 06-096 CMR Ch. 335, § 5(A).

³⁵ 06-096 CMR Ch. 335, § 3(A) and (C).

exists. Determining whether a practicable alternative exists includes:

1. Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;
2. Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
3. Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and
4. Demonstrating the need, whether public or private, for the proposed alteration.³⁶

CMP's alternatives analysis failed to make this determination. CMP never looked at alternate routes for NECEC along existing disturbed corridors, such as the Spencer Road or Route 201. CMP's alternatives analysis contains no discussion of undergrounding all or any portion of the NECEC except the after the fact addition of burial of the Kennebec Gorge crossing.³⁷ The crossing of the Kennebec Gorge and the Merrill Strip Alternative are perfect demonstrations of CMP's failure to consider practicable alternatives. In both instances, CMP considered and dismissed these alternatives as impracticable only to change course when the threat of permit denial loomed close. Indeed, CMP's NECEC Project Developer, Thorn Dickinson, testified that neither CMP, nor any consultants hired by CMP, did any formal analysis of undergrounding options until directed to do so by the Department.³⁸

2. CMP's Alternatives Analysis Ignored Practicable Underground Alternatives.

CMP claims that its failure to analyze even a single underground route option was due to the fact that undergrounding the 53 miles of new transmission corridor was "not reasonable or

³⁶ 06-096 CMR Ch. 310, § 9(A).

³⁷ Compare CMP NRPA Application (Alternative Analysis) with CMP Amended NRPA Application of October 19, 2018.

³⁸ May 9, 2019 Hearing Transcript, 410.

feasible because the costs of doing so would defeat the purpose of the Project.”³⁹ However, these calculations were not done until long after CMP made the decision to select its preferred route.⁴⁰ The actual cost data provided by CMP, the itemized calculations of material and labor costs, were redacted under the label “Proprietary” throughout CMP’s May 17, 2019 submission regarding “costs, dollars, or a numerical backup sheet for CMP Exhibits 11-B through 11-G in Mr. Bardwell’s pre-filed rebuttal testimony” requested by the Department.⁴¹ On cross examination, CMP conceded that the incremental cost increase for undergrounding specific areas within the LUPC P-RR subdistrict for the 53 miles of greenfield corridor in Maine’s North Woods range from \$13, 28 and to 30 million which is approximately one, three, and three percent increases in the capital costs for the project (or a total of 7 percent) of the capital cost of the NECEC.⁴² CMP also conceded that its budget includes a contingency of at least 15 percent of the total project cost. Accordingly, CMP’s claims that undergrounding portions of the NECEC is not financially feasible are false. The undergrounding alternative is financially feasible given CMP’s contingency funds.⁴³

CMP also argues that undergrounding a transmission line is not technically or logistically feasible.⁴⁴ In fact, burial of HVDC lines is exceedingly common, even here in New England.⁴⁵ The fully permitted HVDC line from Hydro-Québec through Vermont, TDI, would be 157 miles long with 97 miles in underwater cables and 57 in buried cables.⁴⁶ Similarly 60 miles of the

³⁹ CMP Dickinson Rebuttal Testimony, 2-3.

⁴⁰ In bolstering their argument that burying the new portion of the line would dramatically increase the cost of the project, CMP’s consultants analyzed the cost of burying the line along the 53 new miles of transmission corridor along CMP’s preferred route through the woods but did not disclose the actual cost of only burying the line along existing roads until meeting the existing corridor. CMP Tribbet Rebuttal Testimony, 5; May 9, 2019 Hearing Transcript, 414-15.

⁴¹ May 17 CMP Response to Department Request for Information, 4-28.

⁴² May 9, 2019 Hearing Transcript, 395: 5-10.

⁴³ May 9, 2019 Hearing Transcript, 389: 1-2, 15-18.

⁴⁴ See generally, CMP Bardwell Rebuttal Testimony, 2-9.

⁴⁵ Group 8 Russo Direct Testimony, 3-4, and Exhibits CR-3 and CR-4.

⁴⁶ *Id.* at 4.

Northern Pass Project through New Hampshire would have been buried.⁴⁷ CMP claims that Northern Pass and TDI should not be used as an example of an underground transmission project because they have not “demonstrated that is feasible” and have not secured long-term transmission service agreements.⁴⁸ This is misleading. Northern Pass was initially selected as the winning bid in the Massachusetts 83D RFP process, but was rejected after the New Hampshire Site Evaluation Committee denied the project a necessary permit siting concerns over siting concerns.⁴⁹

In short, CMP failed to consider utilization of undergrounding techniques (whether directional drilling, micro boring, or otherwise) to avoid or mitigate adverse impacts from the NECEC even though such alternatives are practicable.

3. CMP’s Alternatives Analysis Ignored Practicable Alternatives that Would Minimize Scenic, Wildlife Habitat and Wetland Impacts by Following Existing Roads and Leaving Full-height Vegetation Via Taller Poles.

CMP’s alternatives analysis is impermissibly silent regarding alternate routes utilizing existing disturbances, such as roads, or other techniques such as taller poles to allow full-height vegetation and reduce scenic, wetland, or wildlife impacts.⁵⁰ Whether buried or not, a route that followed existing roads, whether along the Spencer Road or Route 201 to Jackman, would dramatically reduce wildlife and fisheries impacts.⁵¹ Unfortunately, CMP’s alternatives analysis does not discuss the practicability of such alternatives.

CMP also failed to consider an alternative that utilized a combination of mitigation strategies. For example, CMP could have selectively designed a route that used some combination of undergrounding such as directional drilling, trenching, micro tunneling, co-location, and taller

⁴⁷ *Id.*

⁴⁸ CMP Tribbet Rebuttal Testimony, 3.

⁴⁹ Group 4 Comments, 2 (citing New Hampshire Site Evaluation Committee March 30, 2018 Decision and Order Denying Application for Certificate of Site and Facility).

⁵⁰ *See generally* CMP NRPA Application (Alternatives Analysis).

⁵¹ May 9, 2019 Hearing Transcript, 62, 66-67.

poles to mitigate some of the worst environmental and scenic impacts from NECEC. Unfortunately, CMP did not evaluate any alternatives that utilized any of these approaches, even though this would align with common practice.

Similarly, CMP did not delineate NRPA protected resources and develop alternative project designs to avoid or mitigate impacts even where practicable alternatives exist. CMP could readily, as discussed above, utilize any number of practicable alternatives (pole heights and locations, directional drilling) to avoid or mitigate NECEC impacts to brook trout habitat. Yet, CMP declined to do so even despite NRPA's plain language requiring this analysis.

CMP's insufficient alternatives analysis, the availability of practicable alternatives, and the unreasonableness of the NECEC adverse impacts preclude Board approval under NRPA.

E. The Department barred critical analysis of CMP's claims that the NECEC results in greenhouse gas benefit claims then improperly credited CMP for these purported benefits as a mitigation for the NECEC's adverse impacts to protected resources.

Despite denying parties an opportunity to vet CMP's greenhouse gas claims in an open hearing process and leading parties to believe that their comments would be reviewed in any final Departmental decision-making process,⁵² the Department simply accepted CMP's assertions regarding greenhouse gas benefits from the NECEC and referenced findings of the Maine PUC on this issue.⁵³ In its comments to the Department, NRCM noted that the PUC and the Department failed to examine whether the NECEC would simply divert electricity from other markets to supply this contract or whether those other markets would ramp up fossil-fuel-generated electricity to make up for lost supply going through NECEC.⁵⁴ This is the most important issue in determining

⁵² See Order, 12 (“In the February 5, 2019 Third Procedural Order, the Presiding Officer determined that greenhouse gas emissions would not be included as a hearing topic.”).

⁵³ Order, 105.

⁵⁴ See, e.g., Group 4 April 12, 2020 Comments on Draft Order, 23-24; Group 4 May 9, 2019 Comments, 7-8.

whether NECEC would reduce carbon emissions. NRCM provided extensive evidence that NECEC would result in this sort of energy “shell game.”⁵⁵ However, the Department never mentioned NRCM’s comments or discussed this issue in any of its decision documents.

Moreover, the Department ignored compelling evidence from NRCM showing that Hydro-Québec’s impoundments emit substantial amounts of carbon pollution, among the highest levels for impoundments in the world.⁵⁶ Instead, in simply accepting the PUC’s conclusions, the Department accepted the underlying assumption in the PUC’s flawed finding that carbon emissions from Hydro-Québec’s reservoirs are zero.⁵⁷ Massachusetts Institute of Technology Professor Bradford Hager submitted additional evidence on this topic during the Army Corps hearing process. His testimony and supplemental testimony on Hydro-Québec’s carbon emissions to the Army Corps of Engineers on this project was included as Attachment D of NRCM’s comment on the draft Permit, incorporated herein by reference.

Counsel for the Department indicated that this exclusion was the result of a lack of jurisdiction for review of greenhouse gas emissions under NRPA or the Site Law. Despite this, the Order then relied on CMP’s assertions of greenhouse gas emissions benefits from NECEC in offsetting NECEC adverse impacts under NRPA.⁵⁸ Notwithstanding the Department’s obligation to assess greenhouse gas emissions generally, *see* 38 MRSA §577, the Department erroneously excluded evidence on and analysis of the greenhouse gas impacts, and then concluded that the permits could not be granted without counting the unsupported assertions of such benefits by CMP, which the parties were never allowed to address with evidence. Such double talk is impermissible.

⁵⁵ *See* Group 4 May 9, 2019 Comments, 1-13.

⁵⁶ *See id.* at 7-8 (citing Bradford M. Hager, Commentary: Hydro-Québec offers misleading claims about power’s climate impact. *Portland Press Herald*, January 5, 2019).

⁵⁷ *See* Order, 105.

⁵⁸ *See id.*

Either the impacts are quantified and assessed with the ability to cogently examine evidence presented supporting mitigation strategies, or the mitigation cannot be counted.

Board review of the NECEC should include an independent greenhouse gas analysis to verify CMP's claims or should explicitly reject those claims given the existing evidence indicating their falsity. Based on its independent greenhouse gas analysis, the Board should, pursuant to NRPA, increase the amount of compensatory land conservation and require that the land conservation be near the impacted area and managed to improve forest health and mitigate climate impacts.

IV. The Board Should Hold a Public Hearing, Take Additional Testimony, and Consider Supplemental Evidence.

As explained above, because this is a project of statewide significance, the Board should assume original jurisdiction of these permits and conduct a public hearing. Even if it does not do so, the Board is required to conduct a *de novo* review of the record in this matter. 38 M.R.S. § 342-D(4)(A) (“The board is not bound by the commissioner’s findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner.”). Furthermore, the Board is authorized to conduct public hearings as part of its *de novo* review of the Department, and NRCM specifically requests that it do so pursuant to 06-096 CMR Ch. 2 § 24(B)(4).

The same factors that make this a project of statewide significance also weigh in favor of the Board holding a public hearing. The NECEC would be one of Maine’s largest-ever industrial projects and would damage a vast area of forest that is a resource of statewide and global significance as well as a significant source of recreation and tourism-based revenue for the entire region. Not only is the NECEC one of the largest industrial projects ever proposed in Maine, the

impacts would be felt for decades, with CMP admitting that the company has no plans to ever decommission this project.

Where, as here, both the Department's draft permits and the Order differ substantially from the NECEC proposed by CMP (and, notably, substantial changes occurred between the draft and final Order) it is particularly important for the Board itself to hold a hearing and take additional testimony. Testimony before the Department focused on the inadequacies of the application as proposed, but the Board should hold a hearing to take testimony on whether the conditions to the Order allow for compliance with NRPA and the Site Law. Such testimony was impossible before the Department because CMP did not include these measures until after the close of the record. While NRCM and others submitted substantial comments on the draft Order, there were not meaningful responses or changes addressing those comments, nor an opportunity to comment on CMP's post-record proposals.

In addition to the evidence and comments in the record before the Department, NRCM makes the following offer of proof with regard to the testimony it would offer at a Board public hearing, and identifies the following supplemental evidence that the Board should consider whether or not a public hearing is held:

- NRCM would submit written or oral testimony on CMP's lack of TRI, in particular with regard to the illegal BPL lease and change in ownership issues. The Department rejected requests to include TRI as a hearing topic during its process. Just as the Board is tasked with considering the environmental impacts of projects of statewide significance, it must determine whether the NECEC (and/or the Order on appeal) is supported by sufficient TRI to clear the low jurisdiction threshold without conditions such as a requirement that CMP obtain the necessary legislative authorization to substantially alter public reserved lands.

- NRCM makes an offer of proof to the Board to take testimony on the Illegal BPL lease. NRCM’s testimony would be consistent with the testimony provided to the Agriculture, Conservation and Forestry Committee (“ACF Committee”) record on LD 1893, which addressed CMP’s illegal BPL lease and includes:
 - All testimony;⁵⁹
 - The January 30, 2020 ACF Committee letter to BPL concerning LD 1893 and BPL’s response (attached as Appendix A); and
 - The recordings of the ACF Committee LD 1893 hearing, work session, and language review.⁶⁰
- NRCM would submit written or oral testimony on the inadequacy of Order conditions implementing measures to alleviate the unreasonable adverse impacts of the NECEC to brook trout habitat and habitat fragmentation, including, among others:
 - Lack of full-height vegetation in all riparian filter areas (such as by directional drilling, taller pole heights, careful pole location or a combination of these techniques);
 - Failure to include cold, high-elevation, headwater streams that are highly productive of wild brook trout;

⁵⁹ [REDACTED]

⁶⁰ [REDACTED]

- Lack of full canopy crossings for all brook trout streams and their tributaries through directional drilling, taller pole heights, careful pole locations, or some combination of these or other techniques;
 - Lack of full canopy stream crossings in all Wildlife Areas via taller pole heights, careful pole location, directional drilling, or some combination of these or other techniques;
 - Lack of full canopy vegetation in all Wildlife Areas; and
 - Failure to include long-term monitoring and “triggers” that mandate additional land conservation as compensation for any failure of any portion of a Wildlife Areas to attain the conditions necessary to mitigate fragmentation (such as hardwood stands that will not meet the winter canopy closure threshold), which will not achieve them in a reasonable time or which cannot be maintained in the necessary condition over the long term
- NRCM would submit written or oral testimony on the inadequacy of the proposed mitigation and compensation.
 - NRCM would submit written or oral testimony on the lack of carbon emissions reduction benefits from NECEC. NRCM repeatedly sought to introduce such evidence before the Commissioner, yet the Commissioner denied NRCM’s requests and did not respond to its written comments in the record. NRCM repeatedly requested that greenhouse gas emissions be included as a hearing topic.⁶¹ The Department denied these requests, ruling instead that intervenors could submit written comments on the issue of greenhouse gas

⁶¹ Group 4 oral request to include greenhouse gas emissions in hearing, Second Pre-Hearing Conference, Jan. 17, 2019; Group 4 request to include greenhouse gas emissions, Jan. 24, 2019 (supported by Intervenor Groups 2 and 10).

emissions until the close of the record.⁶² Order, 12. NRCM submitted extensive written comments on greenhouse gas emission, which the Department failed to address.⁶³ Instead, the Department stated that it:

[A]ccepts the PUC's finding on this issue and weighs the NECEC project's reductions in GHG emissions against the project's other impacts in its reasonableness determination. In doing so, the Department finds the adverse effects to be reasonable in light of the project purpose and its GHG benefits, provided the project is constructed in accordance with the terms and conditions of this Order.⁶⁴

The Department's failure to independently review evidence on greenhouse gasses and then to accept the PUC's conclusion that CMP's purported greenhouse gas benefits were real as a mitigating factor for the damage the project does not meet the requirements of NRPA or the Site Law.

- NRCM would submit written or oral testimony consistent with its comments on the draft Order on how the conditional approval is inconsistent with NRPA and Site Law.

In addition to the above-referenced information, NRCM offers the following categories of supplemental evidence, detailed in Appendix B (Index of Supplemental Evidence), which NRCM has used due diligence to bring to the attention of the Department, but was either ignored or could not have been brought to the attention of the Department earlier in the licensing process.⁶⁵

⁶² February 2019 Third Procedural Order, 4 (“The Presiding Officer has determined that net greenhouse gas emissions will not be added as a topic to be addressed at the hearing, however the parties may submit written evidence on this issue into the record. The issue can be adequately addressed through written submissions.”).

⁶³ Group 4 Greenhouse Gas Comments, May 9, 2019.

⁶⁴ Order, 105.

⁶⁵ Pursuant to 06-096 CMR Ch. 2 § 24(b), NRCM has clearly labeled each exhibit with its date, source, and a note indicating whether it is in the existing record or is proposed supplemental evidence. Appendix B, the Index, summarizes this information.

- The February 21, 2019 Stipulation between Central Maine Power Company and the PUC. *See* Appendix D.
- Testimony provided in connection with LD 640 in March 2019, which Resolve sought specifically to require a study of the greenhouse gas emissions impacts of NECEC. *See* Appendices B (Index of Supplemental Evidence), J, K, L.
- Information excluded by the Department that resulted in the wholesale exclusion or redaction of certain testimony. Because the Department erred by excluding this evidence, the Board should now permit NRCM to introduce this evidence. *See* Appendices B (Index of Supplemental Evidence), E, F, G, H, I, M, N.

Chapter 2 of the Department's Rules specifies that the Board has discretion to hold a public hearing on request regardless whether it reviews the NECEC pursuant to its original jurisdiction over projects of statewide significance or on appeal of the Order. 06-096 CMR Ch. 2 § 7(B). Here, NRCM respectfully requests both. Further, should the Board exercise only its appellate jurisdiction pursuant to Section 24 of Chapter 2, NRCM seeks to supplement the record with evidence that is relevant and material, and which it is bringing to the Board's attention at the earliest possible time as specified above. 06-096 CMR Ch 2 § 24(B)(4) & (D).

V. Remedy

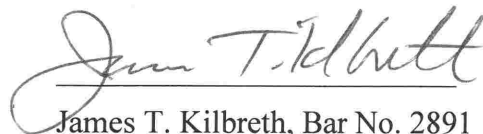
NRCM respectfully requests that the Board vacate the Order and assume original jurisdiction over and hold a public hearing on this project of statewide significance. NRCM asks that the Board take, review, and consider all the evidence necessary to determine compliance of the NECEC with NRPA and the Site Law. Alternatively, NRCM respectfully requests that the Board exercise its appellate jurisdiction to review and overturn the Order.

CONCLUSION

For the foregoing reasons, NRCM respectfully requests that the Board vacate the Order, exercise its original jurisdiction and review the NECEC *de novo*, including holding a public hearing. Alternatively, NRCM appeals the Order, requests a public hearing, requests submission of supplemental evidence as detailed above, and seeks denial of NECEC. In either case, Board review of the NECEC will show its failure to comply with either NRPA or the Site Law.

[Remainder of Page Intentionally Left Blank]

Dated at Portland, Maine
this 10th day of June 2020

A handwritten signature in cursive script, reading "James T. Kilbreth". The signature is written in black ink and is positioned above a horizontal line.

James T. Kilbreth, Bar No. 2891
David M. Kallin, Bar No. 4558
Elizabeth C. Mooney, Bar No. 6438
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, Maine 04101-2480
Tel: (207) 772-1941
jkilbreth@dwmlaw.com
dkallin@dwmlaw.com
emooney@dwmlaw.com

Letter from Sen. Dill and Rep. Hickman to Dir. Cutko

Attachment B to Group 4 Comments on Draft Order

January 30, 2020

(In Existing Record)

SENATE

JAMES F. DILL, DISTRICT 5, CHAIR
 G. WILLIAM DIAMOND, DISTRICT 28
 RUSSELL BLACK, DISTRICT 17

KAREN S. NADEAU, LEGISLATIVE ANALYST
 CHERYL MCGOWAN, COMMITTEE CLERK



HOUSE

CRAIG V. HICKMAN, WINTHROP, CHAIR
 DAVID HAROLD MCCREA, FORT FAIRFIELD
 MARGARET M. O'NEIL, SACO
 CHLOE S. MAXMIN, NOBLEBORO
 TIFFANY ROBERTS-LOVELL, SOUTH BERWICK
 MARYANNE KINNEY, KNOX
 THOMAS H. SKOLFIELD, WELD
 RANDALL C. HALL, WILTON
 THEODORE JOSEPH KRYZAK, JR., ACTON
 WILLIAM D. PLUECKER, WARREN

STATE OF MAINE
 ONE HUNDRED AND TWENTY-NINTH LEGISLATURE
 COMMITTEE ON AGRICULTURE, CONSERVATION AND FORESTRY

January 30, 2020

Andy Cutko, Director
 Bureau of Parks and Lands
 Department of Agriculture, Conservation and Forestry
 22 State House Station
 Augusta, ME 04333-0022

Dear Director Cutko,

As you know, the Joint Standing Committee on Agriculture, Conservation and Forestry (ACF Committee) held a public hearing on Tuesday, January 21st for LD 1893, "An Act To Require a Lease of Public Lands To Be Based on Reasonable Market Value and To Require Approval of Such Leases for Commercial Purposes."

At the public hearing it became evident that LD 1893 was introduced to address concerns relating to the lease of public lands to Central Maine Power (CMP) for a transmission line through western Maine. This legislation also raises the question of whether the lease agreement between the State and CMP required approval by two-thirds of the Legislature. Article IX, Section 23 of the Constitution of Maine states:

State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all the members elected to each House.

As you know, at the public hearing last week, we requested that you provide the ACF Committee with relevant documents and communications regarding the lease of public lands to CMP. Please include documents and communications, including emails and handwritten notes or notations, among or between staff in the Bureau of Parks and Lands, the Bureau of Forestry, the Office of the Commissioner, the Office of the Attorney General, the Office of the Governor, and representatives of CMP. More specifically, we are interested in any materials from January 1, 2013 through January 1, 2016 and after July 1, 2018 relating to the determination that the lease of public lands on the West Forks Plantation and Johnson Mountain Township in Somerset County by CMP did not constitute a reduction or substantial alteration of those lands and, therefore, did not require a two-thirds vote of the Legislature.

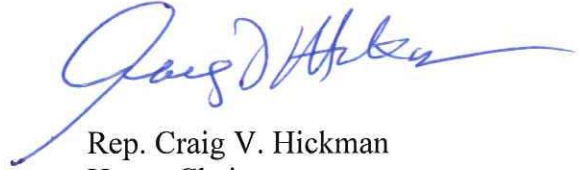
(over)

It is our understanding that the public records search will require approximately 40 staff hours. With this in mind, we respectfully request that you complete this search by Friday, February 14th.

Sincerely,



Sen. James F. Dill
Senate Chair



Rep. Craig V. Hickman
House Chair

cc: Members, Joint Standing Committee on Agriculture, Conservation and Forestry
Amanda Beal, Commissioner, Department of Agriculture, Conservation and Forestry
Emily Horton, Department of Agriculture, Conservation and Forestry

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB- B-N
L-27625-2C- C-N
L-27625-VP- D-N
L-27625-IW- E-N

APPENDIX B

**INDEX OF SUPPLEMENTAL
EVIDENCE SUBMITTED IN SUPPORT
OF NRCM’S APPEAL OF
DEPARTMENT’S MAY 11, 2020 ORDER**

Appendix	Document Date	Document Description	Location in Record/ Supplemental Evidence
C	September 2004	Height Development of Upper Canopy Trees Within Even-Aged Adirondack Hardwood Stands	Referenced in record at page 7 of NRCM’s April 13, 2020 Comments to Draft Permit
D	February 21, 2019	CMP Stipulation	Supplemental Evidence
E	February 28, 2019	Dr. Aram Calhoun Testimony	Supplemental Evidence (redacted version appears in record)
F	February 28, 2019	Elizabeth Caruso Testimony	Supplemental Evidence (redacted version appears in record)
G	February 28, 2019	Greg Caruso Testimony	Supplemental Evidence (redacted version appears in record)
H	February 28, 2019	Janet McMahon Testimony	Supplemental Evidence (redacted version appears in record)
I	February 28,	Roger Merchant Testimony	Supplemental Evidence

	2019		(redacted version appears in record)
J	March 15, 2019	Tom Saviello Testimony	Supplemental Evidence
K	March 15, 2019	Nick Bennett Testimony in Support of LD 640	Supplemental Evidence
L	April 8, 2019	Memo from Nick Bennett to Members of the Environment and Natural Resources Committee	Supplemental Evidence
M	April 15, 2019	David Publicover Surrebuttal Testimony	Supplemental Evidence (submitted in Department proceedings but struck by Eleventh Procedural Order)
N	April 19, 2019	Dr. Aram Calhoun Surrebuttal Testimony	Supplemental Evidence (submitted in Department proceedings but struck by Eleventh Procedural Order)
N/A		Recordings of ACF Committee LD 1893 hearing, work sessions, and language review ¹	Supplemental Evidence

¹ NRCM respectfully requests that the Board consider these audio files as supplemental evidence. Because they are audio files and not printed documents, they cannot be attached to this appeal and linking to the audio files is the only appropriate method of presentation. The files are available at <http://sg001-harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20200121/-1/13889> (hearing starts at 1:30 and runs to 4:09); <http://sg001-harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20200218/-1/14054> (starts at 1:20:50 and runs to 2:30:05, containing a discussion by BPL Director Andy Cutko of the BPL response to the ACF Committee FOAA as well as legislators' statements on the lease being invalid and the vote); and <http://sg001-harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20200305/-1/14177> (language review starts at 3:58:28 and runs to 4:13:20, and also includes testimony from legislators).

**Central Maine Power Company
Stipulation**

February 21, 2019

(Supplemental Evidence)

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2017-00232

February 21, 2019

CENTRAL MAINE POWER COMPANY,
Request for Approval of CPCN for the New
England Clean Energy Connect Consisting
of the Construction of a 1,200 MW HVDC
Transmission Line from the Québec-Maine
Border to Lewiston (NECEC) and Related
Network Upgrades

STIPULATION

STIPULATION

Table of Contents

I.	PURPOSE	1
II.	PROCEDURAL BACKGROUND	3
	A. CMP’s Response To The Section 83D RFP	3
	B. CPCN Petition	4
	C. Intervenors	5
	D. Intervenor Testimony, Updates Regarding the Status of the NECEC RFP Bid and London Economics International Report	6
	E. CMP Rebuttal Testimony	8
	F. Surrebuttal Testimony, Additional LEI Analysis and CMP Visual Renderings	9
	G. Hearings – Phase I	9
	H. Supplemental Testimony and Additional Visual Renderings	10
	I. Discovery and Public Comment	10
	J. Hearings – Phase 2	11
III.	RECORD	12
IV.	PARTIES AND SETTLEMENT PROCESS	13
V.	RECOMMENDED APPROVALS AND FINDINGS	14
	A. Certificate of Public Convenience and Necessity	14
	B. CPCN Conditions	15
	1. NECEC Project Ownership	16
	2. Transmission Rates Customer Credit:	20
	3. New Corridor Removed from Transmission Rates	20
	4. NECEC Low-Income Customer Benefits Fund	21
	5. NECEC Rate Relief Fund	22
	6. Broadband Benefit	23
	7. Heat Pump Benefit	24
	8. NECEC Electric Vehicle (“EV”) Funds	25
	9. Franklin County Host Community Benefits	27
	10. Education Grant Funding	28
	11. Mitigating NECEC’s Impacts on Transmission System and Existing and Future Maine Energy Resources	29

12. **Commitment to Long-term Planning for Regional Decarbonization** 32

13. **Securitization** 33

14. **HQUS Support Agreement** 34

15. **Maine Workers Preference** 36

16. **Funding Commitments Conditions Precedent** 36

C. **Nontransmission Alternatives Findings**..... 36

VI. **ADDITIONAL STIPULATION TERMS** 36

ATTACHMENTS

Attachment A: NECEC Transmission Facilities

Attachment B: NECEC Transfer Agreement

Central Maine Power Company (“CMP” or the “Company”), the Maine Office of the Public Advocate (the “OPA”), the Governor’s Energy Office, Industrial Energy Consumer Group (the “IECG”), Conservation Law Foundation (“CLF”), Acadia Center, Western Mountains & Rivers Corporation (“WMRC”), City of Lewiston, Maine State Chamber of Commerce (“Chamber”), and International Brotherhood of Electrical Workers (“IBEW”)¹ (collectively referred to as the “Stipulating Parties”) agree and stipulate as follows:

I. PURPOSE

The purpose of this Stipulation is to achieve an agreed upon resolution of CMP’s Petition for Certificate of Public Convenience and Necessity (“CPCN”) for the New England Clean Energy Connect transmission project (“NECEC” or the “Project”). The Stipulating Parties agree that a “public need” exists for the NECEC as specifically described in Section IV.A, Paragraph 1 below and listed in **Attachment A** under Maine law, including 35-A M.R.S. § 3132 and Chapter 330 of the Commission’s Rules and, therefore, the Commission should grant a CPCN for the Project in accordance with the terms and conditions provided in this Stipulation.

The Stipulating Parties further agree that the construction of the NECEC in accordance with the terms and conditions set forth in this Stipulation is in the public interest because the Project and the hydropower it will deliver from Québec to New England will provide, at no cost to Maine electricity customers, (i) lower electricity supply prices and, by reducing reliance on fossil fuel generation, material energy price protection

¹ Additional parties including the Town of Wilton and the Town of Farmington are still considering whether to join the Stipulation. If they do join, the Stipulating Parties will supplement the Stipulation with additional signature pages from the joining parties.

in natural gas price spike events; (ii) increased reliability for Maine and the ISO-New England (“ISO-NE”) region, by delivering baseload energy to replace retiring baseload resources, as well as other reliability benefits associated with the NECEC’s providing an additional intertie between ISO-NE and Québec and transmission system upgrades associated with the NECEC; (iii) significant carbon dioxide emission reductions as a result of the Project including the increased use of electric vehicle and heat pump programs in Maine, among others, funded pursuant to this Stipulation, which advance Maine’s progress toward its long-term greenhouse gas (“GHG”) emissions reductions goals; and (iv) significant other benefits including a rate relief fund, a low-income customer benefits fund, and a broadband benefits fund, among other benefits.

The Stipulating Parties recognize that there are additional benefits to Maine associated with the NECEC memorialized in agreements in addition to this Stipulation. In addition, the Stipulating Parties also recognize that the environmental impacts of the Project will be determined by agencies other than the Commission including but not limited to the Maine Department of Environmental Protection (“MDEP”), the Maine Land Use Planning Commission (“LUPC”), and the United States Army Corps of Engineers (“USACE”).

This Stipulation is the result of extensive settlement negotiations and discussions among CMP, the other Stipulating Parties, and Commission Staff. The Stipulating Parties recommend that the Commission approve the provisions as set forth below.

The provisions agreed to in this Stipulation have been reached as a result of fair, open, and transparent settlement negotiations based on information presented in this proceeding and gathered through discovery and discussions among CMP and the

intervening parties, including the Stipulating Parties, and Commission Staff.² The Stipulating Parties represent a broad spectrum of interests and constitute many of the active participants in the proceeding.

II. PROCEDURAL BACKGROUND

The procedural history of this proceeding is presented below.

A. CMP's Response To The Section 83D RFP

1. On March 31, 2017, the Massachusetts electric distribution companies (the "Massachusetts EDCs"), in coordination with the Massachusetts Department of Energy Resources ("MA DOER"), issued the Section 83D RFP, requesting proposals from clean energy generation³ and associated transmission to enter into contracts of 15 to 20 years duration with the Massachusetts EDCs to meet Massachusetts' statutorily required annual procurement of 9.45 TWh (the "Section 83D RFP" or the "RFP"). The RFP set a July 27, 2017, deadline for parties to submit bid proposals.

2. On July 27, 2017, CMP and Hydro Renewable Energy, Inc. ("HRE"),⁴ submitted joint bids offering two different NECEC configurations.⁵ Under the terms of the

² The Commission Staff indicated as part of the settlement process that it takes no position on the Stipulation and will present its recommended decision on the issues presented in this proceeding and on the Stipulation in an Examiners' Report.

³ Under the terms of the RFP, "Clean Energy Generation" includes the following: (i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Massachusetts Class I RPS eligible resources that are firm up with firm service hydroelectric generation; and (iii) new Massachusetts Class I RPS eligible resources.

⁴ HRE was proposed as a new U.S. affiliate of Hydro-Québec created for purposes of the Section 83D RFP. Ultimately, Hydro-Québec decided to have its existing U.S. affiliate, H.Q. Energy Services (U.S.), Inc. ("HQUS") serve as the counterparty for the NECEC PPAs and TSAs. Hereinafter HRE is referred to as HQUS.

⁵ The joint bids proposed either (1) 1,090 MW of Incremental Hydropower Generation provided by HQ Production or (2) 300 MW of new Massachusetts Class I Renewable Portfolio Standard ("RPS") eligible wind generation resources to be constructed by the NECEC Wind Developer firm up with Incremental Hydropower Generation provided by Hydro-Québec Production, the business unit within Hydro-Québec

RFP and the Massachusetts Energy Diversity Act, winning bids recover supply costs from the Massachusetts EDCs through long-term power purchase agreements (“PPAs”) and, as applicable, transmission-related costs through FERC-approved transmission service agreements (“TSAs”).⁶

B. CPCN Petition

3. On September 27, 2017, CMP filed the Petition and associated Exhibits NECEC-1 through NECEC-15 requesting that the Commission issue a CPCN for the NECEC.

The Petition asserted, among other things:

- a. The NECEC is a high voltage direct current (“HVDC”) transmission line capable of delivering 1,200 MW of electricity from Québec, Canada to the New England Control Area, and consisting in its entirety of (1) 207 miles (145.3 miles in Maine) of +/- 320 kV overhead HVDC transmission line that will run between the existing Appalaches Substation in Thetford Mines, Québec and a new HVDC converter station approximately 1.6 miles from the existing CMP Larrabee Road Substation in Lewiston, Maine; (2) new HVDC converter stations at both ends of the line; and (3) certain upgrades to the existing high voltage alternating current (“AC”) New England transmission system necessary to permit the interconnection of the NECEC to the New England Control Area at the existing Larrabee Road Substation consistent with the requirements of Section I.3.9 of the ISO-NE Transmission, Markets and Services Tariff (hereinafter referred to as Section I.3.9 Approval) and the Capacity Capability Interconnection Standard (“CCIS”) of the ISO-NE Open Access Transmission Tariff (“OATT”);
- b. CMP would develop, construct, and operate the NECEC transmission facilities located in Maine;

(footnote cont'd)

responsible for the production and marketing of wholesale energy and capacity for export (hereinafter “HQ Production”) and 790 MW of Incremental Hydropower Generation provided by HQ Production, and transmission rights for the remaining 110 MW of transmission capacity to use on a merchant basis. *See* Petition at 2.

⁶ M.G.L. ch. 169 § 83D (2016); Section 83D RFP at 2-3.

- c. The NECEC constitutes the transmission component of the two joint bids for clean energy generation and associated transmission submitted by CMP and HQUS, in response to the RFP;⁷ and
- d. The NECEC would allow HQUS to use 1,090 MW of NECEC’s transmission capacity to annually deliver up to 9.4 TWh of clean energy generation originating from hydropower generation facilities owned and operated by Hydro-Québec Production (“HQ Production”). The Petition also stated that HQUS had agreed to purchase transmission rights for the remaining 110 MW of transmission capacity on the Project to use on a merchant basis.

C. Intervenor

4. On October 3, 2017, the Hearing Examiners issued a Notice of Proceeding that provided all interested persons with the opportunity to file a petition to intervene in this matter on or before October 13, 2017.

5. The Commission received seven timely-filed petitions to intervene. The Hearing Examiners granted all such petitions at the October 19, 2017 initial case conference and by subsequent procedural order dated October 25, 2017. The intervenors in this proceeding that filed timely petitions to intervene include: OPA, CLF, Ms. Dorothy Kelly (“Dot Kelly”), IECG, Maine Renewable Energy Association, Natural Resources Council of Maine (“NRCM”), and WMRC.

6. The Commission also received numerous late-filed petitions to intervene. The Hearing Examiners granted all such requests for intervention on either a mandatory or discretionary basis by procedural orders dated November 27, 2017; March 28, 2018; April 27, 2018; August 28, 2018; September 6, 2018; October 2, 2018; October 11, 2018;

⁷ The Petition described the two different joint-bids that were submitted as different configurations of the NECEC Project. The first bid was a Hydro and Wind Solution, and the second bid was a 100% Hydro Solution. As discussed below, the Massachusetts EDCs, in consultation with the MA DOER, selected the NECEC 100% Hydro Solution as the lone winning bid in the RFP. Accordingly, this summary hereinafter only refers to the 100% Hydro Solution bid.

October 15, 2018; and October 29, 2018. The intervenors in this proceeding that submitted late-filed petitions to intervene include: The Governor’s Energy Office, NextEra Energy Resources (“NextEra”), RENEW Northeast, Inc. (“RENEW”); Calpine Corporation (“Calpine”), Vistra Energy Corporation (formerly known as Dynegy Inc.) (“Vistra”), and Bucksport Generation LLC (“Bucksport”) (Calpine, Vistra and Bucksport hereinafter collectively referred to as the “Generator Intervenors”); Acadia Center; Friends of Maine Mountains; ReEnergy Biomass Operations LLC (“ReEnergy”); IBEW; City of Lewiston; Town of Caratunk; Town of Farmington; Greater Franklin Development Council; Maine State Chamber of Commerce; Trout Unlimited; Senator Thomas Saviello; Mr. Darryl Wood; Town of Alna; Town of Wilton; Town of New Sharon; Town of Jackman; Old Canada Road Scenic Byway, Inc.; and Franklin County Commissioner Terry Brann. In all instances in which the Hearing Examiners granted a late-filed petition to intervene on a discretionary basis, intervention was conditioned on the party’s “taking the case as they find it with respect to discovery.”⁸

D. Intervenor Testimony, Updates Regarding the Status of the NECEC RFP Bid and London Economics International Report

7. On January 12, 2018, CMP supplemented its Petition by submitting an Electric and Magnetic Fields (“EMF”) Study for the NECEC, prepared by Dr. William Bailey of Exponent. Dr. Bailey’s report was submitted as Exhibit NECEC-16.

8. On January 26, 2018, Dot Kelly submitted intervenor testimony.

9. On January 31, 2018, the Hearing Examiners issued a procedural order temporarily suspending the proceeding on the basis that the Massachusetts EDCs did not

⁸ See, e.g., Procedural Order – Granting Late-Filed Petitions to Intervene at 1-2 (Oct. 29, 2018).

initially select NECEC as the Section 83D RFP winning bid. In that same order, the Hearing Examiners sought comments from the parties on whether to dismiss or suspend the proceeding.

10. On February 17, 2018, CMP submitted a letter informing the Commission that the Massachusetts EDCs, in consultation with the MA DOER, had selected the NECEC 100% Hydro Solution as the alternative winning bid in the RFP, and that the Massachusetts EDCs would move forward with the 100% Hydro Solution, provided that the NECEC had negotiated acceptable contract terms with the Massachusetts EDCs and the Northern Pass Hydro Project was not able to receive all necessary permitting from the New Hampshire Site Evaluation Committee by March 27, 2018.

11. On February 22, 2018, the Hearing Examiners issued a procedural order that lifted the temporary suspension and resumed the proceeding.

12. On March 28, 2018, CMP filed an additional letter informing the Commission of the MA DOER announcement that the Massachusetts EDCs had terminated the conditional selection of the Northern Pass Hydro Project as the Section 83D RFP winning bid, leaving the NECEC 100% Hydro Solution as the lone winning bid in the RFP. On that same day, the Hearing Examiners issued a procedural order setting a revised schedule for the remainder of the case through hearings.

13. On April 1, 2018, Dot Kelly submitted additional intervenor testimony.

14. On April 30, 2018, as permitted by the March 28, 2018 Procedural Order, the Generator Intervenors submitted direct intervenor testimony from Tanya L. Bodell, William S. Fowler, and James M. Speyer. In addition NextEra submitted intervenor

testimony from Christopher Russo and Stephen Whitley, and RENEW submitted intervenor testimony from Francis Pullaro.

15. On May 21, 2018, Commission Staff filed a report prepared by the Commission’s consultants, London Economics International LLC (“LEI”) entitled “Independent Analysis of Electricity Market and Macroeconomic Benefits of the New England Clean Energy Connect Project” (“LEI Report”). The LEI report was filed in lieu of a bench analysis.⁹

16. On June 13, 2018, the Massachusetts EDCs executed long-term TSAs and PPAs with CMP and HQUS respectively for the NECEC 100% Hydro Solution proposal.

E. CMP Rebuttal Testimony

17. On July 13, 2018, CMP filed Rebuttal Testimony from (1) Thorn Dickinson, Eric Stinneford, and Bernardo Escudero with associated Exhibits NECEC-16 through NECEC-26; (2) Chris Malone, Scott Hodgdon, and Justin Tribbet with associated Exhibits NECEC-27 through NECEC-30; and (3) Daniel Peaco, Douglas Smith, and Jeffrey Bower of Daymark Energy Advisors with associated Exhibit NECEC-31.¹⁰

⁹ Procedural Order – Clarification at 1 (May 24, 2018).

¹⁰ The TSAs that CMP executed with the Massachusetts EDCs are filed in the record as Exhibits NECEC-17 (Eversource TSA), NECEC-18 (National Grid TSA), and NECEC-19 (Unitil TSA). The additional TSAs that CMP executed with HQUS for the period after the TSAs with the EDCs expire and for the 110 MW that the EDCs did not contract for, are filed in the record as Exhibits NECEC-20 through NECEC-23. The executed PPAs are filed in the record as Exhibit NECEC-16 (National Grid PPA), and NEXRE-002-006 Attachment 1 (Eversource PPA) and Attachment 2 (Unitil PPA). On July 24, 2018, CMP submitted public versions of Exhibits NECEC-17 through NECEC-20 upon learning that the Massachusetts EDCs had publicly filed the same documents in ongoing proceedings before the Massachusetts Department of Public Utilities. On October 5, 2018, CMP filed corrected public versions of Exhibit NECEC-18 (National Grid TSA) and Exhibit NECEC-19 (Unitil TSA), known as Revised Supplemental Exhibit NECEC-18 and Revised Supplemental Exhibit NECEC-19, respectively.

F. Surrebuttal Testimony, Additional LEI Analysis and CMP Visual Renderings

18. On August 18, 2018, Tanya L. Bodell and William S. Fowler each filed Surrebuttal Testimony on behalf of the Generator Intervenors. Also on August 18, 2018, the following witnesses filed Surrebuttal Testimony on behalf of NextEra: (1) Christopher Russo; (2) Robert Stoddard; and (3) Stephen Whitley, Dan Mayers, and Francis Wang.

19. On September 10, 2018, in response to Mr. Stoddard's Surrebuttal Testimony on behalf of NextEra regarding the Minimum Offer Price Rule ("MOPR"), Commission Staff submitted a memorandum prepared by LEI entitled "MOPR Estimate for the New England Clean Energy Connect Transmission Project" and attached workbook ("LEI MOPR Memo"). Additional exhibits to the LEI MOPR Memo were filed by Commission Staff on September 19, 2018.

20. On September 18, 2018, in response to a request by Commission Staff, CMP filed visual rendering materials for the NECEC transmission line that the Company had previously filed with the MDEP.

21. On October 12, 2018, CMP filed the visual rendering slide deck and supplemental visual renderings that the Company referred to in the September 21, 2018 technical conference.

G. Hearings – Phase I

22. The Commission held evidentiary hearings regarding the NECEC on October 19, 2018 (LEI) and on October 22, 2018 (CMP witnesses Malone, Hodgdon, and Tribbet and NextEra witnesses Whitley, Wang, and Mayer).

23. On October 26, 2018, at the request of NextEra supported by other intervening parties, the Hearing Examiners suspended the remaining evidentiary hearings

until January 2019 in order to allow Commission Staff and intervening parties additional time to review and analyze the documents that CMP produced in response to ODR-014-004.¹¹

H. Supplemental Testimony and Additional Visual Renderings

24. On December 10, 2018, the Generator Intervenors filed Supplemental Testimony from Tanya Bodell and William Fowler regarding the MOPR analysis and other issues. NextEra also filed Supplemental Testimony from Christopher Russo and LEI filed a Supplemental MOPR Memo.

25. On that same day, at the request of Commission Staff, CMP filed additional visual renderings and visual impact documents that it had filed with the MDEP, LUPC and the USACE a few days prior.

I. Discovery and Public Comment

26. Written discovery was conducted and technical conferences were held after every phase of testimony, with the exception of the LEI MOPR Memo submitted by Commission Staff, which was only subject to a technical conference. Collectively, the parties and LEI responded to 58 sets of data requests and 33 sets of oral data requests, each containing multiple individual data requests. CMP, alone, responded to more than 600 data requests during the discovery process.

27. On September 12, 2018, CMP began data production in response to Commission Staff's follow-up questions to ODR-014-004. In total, CMP filed over 97,000

¹¹ ODR-014-004 included an initial data request and a series of follow-up questions from Commission Staff that sought all documents relied upon by the primary decision makers and senior management personnel of CMP or any of its affiliates when making the decision to submit the NECEC RFP proposal.

pages of documents in 18 data production rounds that occurred from September 12, 2018 through December 4, 2018.

28. The Hearing Examiners held 17 days of technical conferences throughout this proceeding on the following dates: November 28, 2017 (CMP testimony regarding the Petition); December 11, 2017 (CMP testimony regarding the Petition); April 5, 2018 (CMP testimony regarding the Petition); June 14, 19, 20, and 28, 2018 (Intervenor and LEI testimony); August 1 and 2, 2018 (CMP testimony regarding Rebuttal); September 6, 7, and 14, 2018 (Intervenor testimony regarding Surrebuttal); September 19, 2018 (LEI testimony regarding the MOPR Memo); September 21, 2018 (CMP testimony regarding the Visual Renderings); November 28 and 30, 2018 (CMP testimony regarding the ODR-014-004 Documents); and December 19, 2018 (Intervenor and LEI Supplemental Testimony).

29. The Commission convened three public witness hearings, each of which was noticed in advance by procedural order. The Commission held the first two public witness hearings on September 14, 2018 in Farmington and The Forks Plantation. The Commission held the third public witness hearing on October 17, 2018 at the Commission's offices in Hallowell. In total, the Commission heard approximately 14 hours of public comment and approximately 89 people provided oral and/or written testimony during the public witness hearings.

30. To date, approximately 1,000 public comments have been filed in the Commission's case management system in this docket.

J. Hearings - Phase 2

31. The Commission held the remaining evidentiary hearings on January 8, 2019 (Generator Intervenor witnesses Bodell and Speyer); January 9, 2019 (CMP witnesses

Dickinson, Stinneford and Escudero); January 10, 2019 (CMP witnesses Malone, Hodgdon and Tribbet, and Daymark witnesses Peaco, Smith and Bower); and January 11, 2019 (NextEra witnesses Russo and Stoddard; and Generator Intervenor witnesses Bodell and Fowler).

32. On January 14, 2019, the Hearing Examiners issued an order identifying specific issues for the parties to address in post-hearing briefs.

33. On January 19, 2019, the Hearing Examiners extended the deadline for opening post-hearing briefs to February 1, 2019, and similarly revised the remainder of the proceeding by extending each subsequent deadline by 7 days.

34. On February 1, 2019, CMP, OPA, IECG, Generator Intervenors, NextEra, CLF, NRCM, Acadia Center, Town of Caratunk, City of Lewiston, IBEW, Chamber, Dot Kelly, RENEW, and WMRC filed opening briefs and on February 13, 2019, CMP, OPA, IECG, Generator Intervenors, NextEra, Town of Caratunk, and Dot Kelly filed reply briefs.

III. RECORD

The record in this proceeding provides ample information on which the Stipulating Parties and the Commission may base their conclusions regarding the NECEC and this Stipulation. These materials include:

- CMP's Petition for CPCN, CMP's Rebuttal Testimony and all supporting exhibits and materials;
- Intervenor Direct, Surrebuttal, and Supplemental testimony submitted by intervening parties and supporting exhibits and materials;
- The May 21, 2018, September 10, 2018 and December 10, 2018 LEI reports;
- Responses to written and oral data requests and attachments to such responses that have been admitted into the record pursuant to the Procedural Orders dated October 24, 2018, February 4, 2019, and February 5, 2019;

- Transcripts of all technical conferences, public witness hearings and evidentiary hearings; and
- Post-hearing briefs and reply briefs.

IV. PARTIES AND SETTLEMENT PROCESS

To accept a stipulation, the Commission must find that:

- a. The Parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- b. The process that led to the stipulation was fair to all parties;
- c. The stipulated result is reasonable and is not contrary to legislative mandate; and
- d. The overall stipulated result is in the public interest.¹²

The undersigned Stipulating Parties believe that each of these factors is satisfied through this Stipulation. The parties joining this Stipulation represent a broad spectrum of interests and many of the active participants in this proceeding.

The process that achieved this Stipulation was fair to all intervening parties, and all intervening parties had the opportunity to participate. CMP engaged in extensive settlement communications with numerous intervening parties and other interested stakeholders throughout the pendency of this proceeding. In addition, formal settlement conferences, noticed in advance by procedural order, were held on September 7, 2018, September 14, 2018, February 5, 2019, and February 12, 2019. Commission Staff participated in these settlement conferences, and no party objected to such participation.

¹² Chapter 110, § 8(D)(7).

As a result of these settlement discussions, the Stipulating Parties have resolved all issues between them in this proceeding, Commission Docket No. 2017-00232.

V. RECOMMENDED APPROVALS AND FINDINGS.

A. Certificate of Public Convenience and Necessity

1. Based upon the record in this case, the Stipulating Parties agree and recommend that the Commission issue an order which: (a) approves, accepts and adopts this Stipulation; (b) finds that a public need exists for the NECEC on the basis that the Project, including the hydropower deliveries from Québec to New England it will enable, provides (i) significant economic benefits for Maine and the ISO-NE region in the form of lower electricity supply prices, reduced reliance on fossil fuel generation, material energy price protection in natural gas price spike events, new jobs, increased gross domestic product, and property tax revenues to host communities in Maine; (ii) reliability benefits to Maine and the ISO-NE region, by delivering baseload hydropower to replace retiring baseload resources, as well as other reliability benefits associated with the NECEC's providing an additional inertia between ISO-NE and Québec and transmission system upgrades associated with the NECEC, all at no cost to Maine electricity customers; and (iii) significant carbon dioxide emission reductions as a result of the Project including the increased use of electric vehicle and heat pump programs in Maine, among others, funded pursuant to this Stipulation, which advance Maine's progress toward meeting its long-term GHG emissions reductions goals as set forth in Maine law;¹³ and (c) grants a CPCN for the

¹³ See Act to Provide Leadership in Addressing the Threat of Climate Change, P.L. 2003, Ch. 237, codified in the Maine Revised Statutes Title 38, Chapter 3-A.

NECEC permitting the construction of the Project in accordance with the terms of this Stipulation.

2. Specifically, the CPCN shall permit the construction of the transmission lines and substation components listed in **Attachment A** of this Stipulation, as either a core project element of the NECEC or a necessary transmission network upgrade associated with the NECEC, and shall further permit construction of any related additional transmission facilities that ISO-NE determines are necessary to meet the requirements of (i) Section I.3.9 of the ISO-NE's Transmission, Markets and Services Tariff; or (ii) the ISO-NE's CCIS, all at no cost to Maine electricity customers, without further Commission review in this docket or otherwise.

3. Beginning on July 1, 2019, and every three months thereafter until the NECEC is placed into commercial operation, NECEC LLC, as defined below, will file progress reports with the Commission summarizing any significant developments in the permitting, development and construction of the NECEC. These progress reports will (i) summarize the status of the system impact studies or other studies conducted by ISO-NE regarding the NECEC; (ii) identify all transmission network upgrades determined by ISO-NE as needed to permit the interconnection of the NECEC under the CCIS and Section I.3.9 of the ISO-NE Tariff; (iii) identify any federal, state or local permits or approvals received authorizing construction of the NECEC; and (iv) summarize the Project's progress towards completion.

B. CPCN Conditions

The Stipulating Parties further agree and recommend that the Commission Order granting the CPCN for the NECEC be conditioned on the following terms.

1. **NECEC Project Ownership:** CMP will transfer and convey the NECEC to NECEC Transmission LLC (“NECEC LLC”), a Delaware limited liability company that is a wholly owned subsidiary within the Avangrid Networks family of companies and is not a subsidiary of CMP.

- a. **Transfer Agreement:** CMP and NECEC LLC will complete the transfer and conveyance of the NECEC in accordance with an agreement substantially in the form of the NECEC Transfer Agreement provided as **Attachment B** to this Stipulation. Under the terms of the NECEC Transfer Agreement, CMP will transfer and assign to NECEC LLC and NECEC LLC will assume:
- i. Certain real estate interests sufficient to construct and operate the High Voltage Direct Current (“HVDC”) transmission line between the Canada-United States border in Beattie Township, Maine and Lewiston, Maine together with land for the construction and operation of a converter station in Lewiston, Maine, together with real estate interests needed to construct and operate a 345 kV alternating current (“AC”) transmission line from the converter station to CMP’s substation at Larrabee Road, Lewiston, Maine, and together with certain land offered as compensatory mitigation for environmental permits related to the NECEC and the right to purchase additional land to access the converter station (the “Real Estate Interests”);
 - ii. All land use permits, any outstanding land use permit applications, and other regulatory permits (the “Permits”) related to the NECEC;
 - iii. The Transmission Service Agreements among CMP, the Massachusetts Electric Distribution Companies (“Massachusetts EDCs”) and H.Q. Energy Services (U.S.) Inc. (“HQUS”) (the “TSAs”);
 - iv. All agreements executed by CMP with third party vendors and service providers in connection with the development and construction of the NECEC (“Third Party Vendor Agreements”) and certain agreements between CMP and HQUS, Hydro-Québec and WMRC (collectively the “Miscellaneous Agreements”); and
 - v. Such other tangible and intangible assets related to the NECEC that CMP may possess including, without limitation, designs, plans and other work

product of CMP or vendors related to the NECEC, and intellectual property related to the NECEC (collectively, the “Related Assets”).

- b. NECEC Transfer Consideration: As consideration for the conveyance and transfer of the NECEC, including without limitation, the Real Estate Interests, the Permits, the TSAs, the Third Party Vendor Agreements, the Related Assets, and any goodwill of CMP related to the NECEC, NECEC LLC will pay CMP the sum total of **\$60,000,000**, payable in forty (40) equal installments of **\$1,500,000** each year commencing on the date the NECEC first achieves commercial operation (the “Commercial Operation Date” or “COD”) and continuing on each anniversary thereof. All payments by NECEC LLC to CMP under the NECEC Transfer Agreement will be disbursed by CMP as part of the NECEC Rate Relief Fund as set forth in Section V.B, Paragraph 5 below.
- c. CMP/NECEC LLC Service Agreement: Effective upon the transfer of the NECEC, CMP and NECEC LLC will enter into a service agreement substantially in the form of the Service Agreement provided as **Exhibit H** to the NECEC Transfer Agreement provided as **Attachment B** to Stipulation.
- d. Other NECEC Transfer Commitments:
- i. CMP and NECEC LLC agree to complete the transfer of the NECEC before construction of the NECEC commences.
 - ii. NECEC LLC will not participate in any money pooling arrangement, credit facility or other financing agreement with CMP without the prior approval of the Commission.
 - iii. CMP and NECEC LLC will make such accounting entries as are necessary in order to remove NECEC related development expenses from CMP’s books and accounts.
 - iv. NECEC LLC will put in place and maintain a guaranty by AVANGRID, Inc., or its successor, with respect to NECEC LLC’s payment obligations to

CMP under the NECEC Transfer Agreement and NECEC LLC's payment obligations for the Heat Pump Fund (Section V.B, Paragraph 7), the Dirigo EV Fund (Section V.B., Paragraph 8(a)), the Franklin County Host Community Benefits Fund (Section V.B., Paragraph 9) and the Education Grant Funding (Section V.B., Paragraph 10) for as long as such payment obligations exist; provided, however, that such guaranty may be terminated in the event that NECEC LLC obtains and maintains a credit rating from a nationally recognized rating organization that is satisfactory to the Commission in its discretion. NECEC LLC also agrees to grant a first priority security interest to CMP in NECEC LLC's payment rights under the HQUS Support Agreement or related Hydro-Québec guaranty or other credit support discussed in Section V, Paragraph 14 below for the purpose of funding the NECEC Low-Income Customer Benefits Fund and the NECEC Rate Relief Fund. NECEC LLC further covenants not to amend, fail to vigorously enforce, or waive any provision of the HQUS Support Agreement or any guaranty provided by Hydro-Québec or other credit support relating to HQUS's obligations under the HQUS Support Agreement in a manner that could impair any payment obligation of either entity to NECEC LLC.

- v. NECEC LLC and CMP will cooperate in good faith to facilitate access to the use of the NECEC transmission corridor for ATV, snowmobile and other recreational uses, consistent with applicable laws, regulations, ordinances, permits and licenses and CMP's generally applicable standards and practices.
- vi. NECEC LLC will not use CMP's brand name, reputation or customer relations to its benefit and will not engage in joint marketing or joint advertising with CMP at any time.
- vii. Maine transmission and distribution customers shall not be legally or financially responsible for any portion of NECEC LLC's revenue requirement for the NECEC Transmission Project accruing during at least the first 40 years of the useful life of the NECEC.
- viii. CMP and NECEC LLC will not take or support any action to modify the cost recovery mechanism applicable to the NECEC that would result in Maine transmission and distribution customers being legally or financially responsible for any portion of NECEC LLC's revenue requirement for the NECEC accruing during the first 40 years of the useful life of the project, without first obtaining Commission approval for such change.
- ix. Notwithstanding the foregoing, this Stipulation shall not prohibit Maine electricity customers from directly, or through a third party such as the Maine transmission and distribution utilities as approved by the

Commission or a Maine competitive energy provider as approved by the Commission, purchasing energy provided through the 110 MW of the NECEC transmission capacity not contracted for by the Massachusetts EDCs pursuant to the Section 83D RFP even if that purchase has the effect of directly or indirectly paying for a portion of the revenue requirement for the NECEC.

- e. NECEC Network Upgrades: As part of the NECEC, upgrades to certain of CMP's existing transmission facilities will be necessary in order to permit the interconnection of the NECEC to the transmission system administered by ISO-NE in accordance with Section I.3.9 and the Capacity Capability Interconnection Standard ("CCIS") of the ISO-NE Open Access Transmission Tariff (the "ISO-NE Tariff") (the "Network Upgrades"). NECEC LLC agrees to complete all such Network Upgrades determined by ISO-NE through the necessary studies (currently underway and scheduled for completion in Q-3 2019) to be necessary under Section I.3.9 and the CCIS of the ISO-NE Tariff to ensure a total transfer capacity at the Surowiec-South Interface of no less than 2,600 MW. NECEC LLC shall be financially responsible for all costs associated with the construction of the Network Upgrades in accordance with applicable ISO-NE Tariff provisions. Upon completion, the Network Upgrades shall remain the property of CMP, and CMP will be responsible for the operation and maintenance of such transmission facilities. These facilities shall be subject to Section V.B., Paragraph 1(d)(v, vi and vii) above.
- f. Affiliate Transactions: CMP and NECEC LLC agree to obtain Commission approval of all affiliate transactions related to the transfer, construction, operation or maintenance of the NECEC requiring approval under Maine law, including, without limitation, any interconnection agreement and affiliate

service agreements between NECEC LLC and any affiliate within the Avangrid family of companies. Any amounts charged to NECEC LLC for services provided by affiliates, including the Avangrid Service Company, will not count towards any annual cap on total affiliate charges applicable to CMP and other Avangrid affiliates within Maine. NECEC LLC, CMP and other affiliates may share employees, directors, officers and information as necessary for the construction, operation and maintenance of the NECEC.

- g. **Compliance Filing:** Prior to the commencement of construction of the NECEC, CMP and NECEC LLC will make a compliance filing which confirms completion of the transfer of the NECEC from CMP to NECEC LLC in accordance with the terms of this Stipulation and provides the AVANGRID Inc. guaranty and first priority security interest called for in Section V.B. Paragraph 1(d)(iv) above.

2. **Transmission Rates Customer Credit:** Effective with the 2019 rate change for transmission customers, CMP will provide a rate credit for RNS and LNS transmission customers totaling **\$1.005 million**. This credit represents the amounts paid in rates by RNS and LNS transmission customers for those portions of the transmission corridor necessary for the NECEC that have been included in FERC Account 105 for Plant Held for Future Use, plus carrying costs calculated using the FERC refund formula. In addition, upon the issuance of the CPCN for the NECEC, CMP will remove on a going forward basis all NECEC-related property from FERC Account 105 – Plant Held for Future Use.

3. **New Corridor Removed from Transmission Rates:** Upon the issuance of the CPCN for the NECEC, CMP will classify the unused portion of the transmission corridor

it has assembled from the Canada-United States border in Beattie Township to the Company's existing Section 222 transmission corridor as Non-Operating Property in Account 121 of FERC's Uniform System of Accounts until such time as CMP identifies with sufficient clarity a specific transmission project for development in such transmission corridor in accordance with applicable FERC precedent, regulations and standards. CMP agrees that it will not seek to recover the cost of this unused portion of transmission corridor through transmission rates by reclassifying the property as Plant Held For Future Use in Account 105 of FERC's Uniform System of Accounts or by any other means, unless the transmission project that will use this corridor is otherwise eligible for rate recovery in whole or in part from Maine retail customers pursuant to the then applicable FERC-approved transmission tariff.

4. **NECEC Low-Income Customer Benefits Fund:** NECEC LLC will establish a **\$50,000,000** NECEC Low-Income Customer Benefits Fund to fund one or more programs that benefit low-income energy customers in Maine in a manner designated by the OPA, in consultation with the Efficiency Maine Trust ("EMT") and the Governor's designee(s). NECEC LLC will fund the NECEC Low-Income Customer Benefits Fund by making annual payments to the program(s) identified by the OPA, in consultation with the EMT and the Governor's designee(s), of **\$1,250,000** beginning on the NECEC COD and continuing on each anniversary thereof for a period of forty (40) years. The NECEC Low-Income Customer Benefits Fund may be used to fund programs that are intended to reduce the amounts that low-income customers expend for electricity or other sources of energy and may include weatherization and household energy efficiency programs. In designating uses for these funds, the OPA, in consultation with the EMT and the Governor's designee(s),

may apply a preference for low-income energy customers located in the NECEC Host Communities. For purposes of this Stipulation, the “NECEC Host Communities” are defined as the municipalities and communities in which the NECEC Core Project Elements and Network Upgrades as identified in **Attachment A** are located and other municipalities and communities in Franklin and Somerset Counties materially impacted by the construction and operation of the Project.

5. **NECEC Rate Relief Fund**: NECEC LLC and CMP will establish a **\$140,000,000** NECEC Rate Relief Fund to be used to provide per kilowatt hour rate relief for retail electricity customers within CMP’s service territory. To fund the NECEC Rate Relief Fund, CMP will contribute the annual **\$1,500,000** transfer payments to be received from NECEC LLC under Section V.B, Paragraph 1(b) above. In addition, NECEC LLC will make annual contributions to the NECEC Rate Relief Fund of **\$2,000,000** beginning on the NECEC COD and continuing on each anniversary thereof for a period of forty (40) years. In addition, using commercially reasonable efforts CMP will each year seek to sell or otherwise monetize for maximum value the Environmental Attributes provided by HQUS in accordance with NECEC Support Agreement discussed below and contribute those funds to the NECEC Rate Relief Fund. CMP will then credit the **\$3,500,000** contributed annually to the NECEC Rate Relief Fund plus the proceeds from the sales of the Environmental Attributes, net of expenses to complete such sales, to CMP’s stranded cost account or such other account as the Commission may determine in the future will provide comparable per kilowatt hour sharing by all retail electricity customer classes within CMP’s service territory.

6. **Broadband Benefit:**

- a. CMP and NECEC LLC commit that the final design for the NECEC transmission lines will include the necessary facilities and equipment to provide additional fiber optic capacity on the NECEC HVDC transmission line and other AC transmission lines included within the Network Upgrades for the benefit of the State of Maine and in particular the NECEC Host Communities, with an estimated value of \$5,000,000.
- b. CMP and NECEC LLC further commit to construct the necessary fiber optic infrastructure to provide access to this fiber optic capacity at major road crossings or other appropriate access points along the NECEC project route, pursuant to the NECEC Support Agreement discussed in Section V.B, Paragraph 14 below.
- c. In consultation with ConnectME, the Governor's designee(s), OPA and HQUS, NECEC LLC will establish a \$10,000,000 NECEC Broadband Fund. The NECEC Broadband Fund will be funded by five (5) annual contributions of \$2,000,000 by HQUS starting on the NECEC COD. The NECEC Broadband Fund will be available to provide grants to support the implementation and maintenance of high speed broadband infrastructure in the host communities through which the NECEC transmission facilities run. This grant funding may be used for the following purposes:

- i. Payment of any and all costs to study the feasibility and, if commercially, technically and legally feasible, the implementation and construction of a fiber optic connection between the State of Maine and the fiber optic network serving Montreal, Province of Québec through NECEC, pursuant to the NECEC Support Agreement discussed in Section V.B, Paragraph 14 below, provided that no more than \$2,000,000 of the NECEC Broadband Fund may be used for these purposes;
- ii. Payment of legal, consulting and financial planning fees related to the establishment of public/private partnerships to expand the availability of high speed broadband in the host communities or ongoing project management required to expand and maintain the availability of high speed broadband in such communities including, but not limited to, providing broadband service to public buildings where citizens may access the service for personal or business use;
- iii. Payment of annual pole license fees in unserved and underserved areas; or
- iv. Payment of make-ready costs for utility poles in unserved and underserved areas.

7. **Heat Pump Benefit:** NECEC LLC will establish a **\$15,000,000** NECEC Heat Pump Fund for the installation in Maine of heat pumps, or other future efficient heating technologies that are as efficient, or more efficient, than the most efficient heat pumps agreed to by the OPA, the Governor’s designee(s), CLF, Acadia Center, and IECG in consultation with Efficiency Maine Trust (“EMT”). Program specifications, eligibility criteria and other details of the NECEC Heat Pump Fund will be developed on a collaborative basis by NECEC LLC, HQUS, OPA, the Governor’s designee(s), CLF, Acadia Center, and IECG in consultation with Efficiency Maine Trust (“EMT”) and may include a preference for targeted initiatives to reach low- and moderate-income individuals and communities in Maine. The NECEC Heat Pump Fund will be funded by HQUS and NECEC LLC as follows:

- a. Starting on the NECEC COD and annually on the first, second, third and fourth anniversaries thereof, HQUS will make annual contributions of \$2,000,000 to the NECEC Heat Pump Fund, pursuant to the NECEC Support Agreement discussed in Section V.B, Paragraph 14 below;
- b. On the fifth and sixth anniversaries of the NECEC COD, NECEC LLC will make annual contributions of \$2,000,000 to the NECEC Heat Pump Fund; and
- c. On the seventh anniversary of the NECEC COD, NECEC LLC will make a contribution of \$1,000,000 to the NECEC Heat Pump Fund.

8. **NECEC Electric Vehicle (“EV”) Funds:** NECEC LLC, in consultation with CLF, Acadia Center, OPA, the Governor’s designee(s), EMT and IECG, and with the support of HQUS, will establish two funds totaling **\$15,000,000** for the purpose of expanding the numbers of electric vehicles (“EVs”) in Maine and maximizing access and exposure in Maine to EVs and EV infrastructure. The two funds are described below.

- a. **The Dirigo EV Fund:** The Dirigo EV Fund will be used to provide: (1) rebates to defray the cost of workplace, multi-unit dwelling and other public vehicle charging installations in Maine; and (2) consumer rebates for the purchase of qualifying EVs by Maine residents. The Dirigo EV Fund will be managed pursuant to a written agreement between CLF, Acadia Center and the Governor’s designee(s) prepared in consultation with CMP and NECEC LLC. Funding for the Dirigo EV Fund will be provided through a contribution of **\$5,000,000** from NECEC LLC. At the election of CLF, Acadia Center and the Governor’s designee(s) NECEC LLC may make this contribution, either through a lump sum payment based on documented program needs or

through alternative annual contributions, established by CLF, Acadia Center, and the Governor's designee(s) beginning in the year in which NECEC LLC and Hydro-Québec receive all necessary permits and approvals to construct the NECEC and the interconnecting transmission facilities in Québec. In the event that CLF, Acadia Center and the Governor's designee(s) elect that the NECEC EV Fund be funded by a lump sum payment, CLF, Acadia Center and the Governor's designee(s) shall provide NECEC LLC with detailed written descriptions of any such initiatives or programs to be funded with any such lump sum payment, including details as to the magnitude and timing of the funding requirements of such initiatives or programs. NECEC LLC, CLF, Acadia Center and the Governor's designee(s) shall jointly select a party to design the rebate program and/or administer the distribution of the Dirigo EV Fund. NECEC LLC further agrees to reimburse the Dirigo EV Fund up to \$50,000 for the charges for such program design and/or administration related work. The programs or initiatives funded by the Dirigo EV Fund, where applicable, shall be designed to:

- i. facilitate competitive development of charging stations by third parties;
 - ii. coordinate with other policy programs including Volkswagen settlement Appendix D expenditures;
 - iii. include targeted initiatives to reach low- and moderate-income individuals and communities in Maine; and
 - iv. exclude transmission and distribution utility ownership of end use charging stations, except in cases of market failure.
- b. The Hydro-Québec EV Fund: The **\$10,000,000** Hydro-Québec EV Fund will be used to fund the deployment of a state-wide fast and ultra-fast public

charging infrastructure network for EVs in Maine. Hydro-Québec will collaborate with CMP, OPA, IECG the Governor's designee(s), and other interested stakeholders in developing this network, which will enable Maine EV drivers and visitors to enjoy safe electric travel across the state, with the guaranteed availability of fast chargers at regular intervals of distance. This charging network will be compatible with other public networks already present in Maine and neighboring jurisdictions and will be operated and supported by Hydro-Québec. The Stipulating Parties will provide for public ownership of the equipment comprising, and general public access rights to reasonably use and enjoy, the EV charging infrastructure network developed pursuant to the Hydro-Quebec EV Fund, each for the useful of life of such equipment or charging infrastructure. The Hydro-Québec EV Fund will be funded through five payments of **\$2,000,000** by HQUS starting on the NECEC COD and annually on the first, second, third and fourth anniversaries thereof, pursuant to the NECEC Support Agreement discussed in Section V.B, Paragraph 14 below.

9. **Franklin County Host Community Benefits:** NECEC LLC will establish a **\$5,000,000** NECEC Franklin County Host Communities Fund for the benefit of communities in Franklin County. NECEC LLC will fund this fund through ten (10) annual payments of \$500,000 starting on the NECEC COD and continuing on each of the ensuing anniversaries of the COD. The NECEC Franklin County Host Communities Fund will provide grant funding to support the charitable mission of the Greater Franklin Development Council ("GFDC"), a 501(c)(3) economic and community development

organization operating for the benefit of Franklin County residents) including the marketing of the Franklin County region, workforce development, business retention, and entrepreneurial support. NECEC LLC and GFDC will administer the NECEC Franklin County Host Communities Fund on a collaborative basis, and funds will be disbursed through a grant process that requires applicants to demonstrate the availability of matching funds. Applications for projects to help low-income citizens of Franklin County will be given a priority.

10. **Education Grant Funding:** NECEC LLC will contribute \$6,000,000 for education-related grants and programs as follows:

- a. Once the NECEC receives all State of Maine permits and approvals, NECEC LLC will contribute \$1,000,000 to Maine Prime Technologies LLC at the University of Maine to fund research and development activities associated with marine wind generation technology commercialization;
- b. Starting on the NECEC COD, NECEC LLC will make ten annual contributions of \$500,000 to fund the following:
 - i. Internship programs and scholarships for needy Maine students to attend the University of Maine Farmington totaling \$1,000,000 over ten years (\$100,000 per year); and
 - ii. Vocational programs, scholarships and innovative training programs in the areas of math, science and technology for the School Districts within Franklin and Somerset Counties or such programs and scholarships for Maine Community Colleges that serve students from Franklin and Somerset Counties, totaling \$4,000,000 over ten years. The Stipulating Parties agree to establish a governing board for the (\$400,000 per year) administration and use of these funds. Such board shall include two representatives from school districts in Franklin County, two representatives from Somerset County, and three representatives designated by the Maine Governor.

11. **Mitigating NECEC's Impacts on Transmission System and Existing and Future Maine Energy Resources:**
- a. CMP and NECEC LLC agree to actively participate in all ISO-NE studies to determine the thermal, voltage and stability ratings for the Surowiec-South interface applicable upon the completion of the NECEC and, consistent with good utility practice, advocate to ISO-NE to maximize the stability rating and the total transfer capacity at the Surowiec-South interface after the completion of the NECEC so that such rating is as close as possible to the expected thermal and/or voltage limits (2812 MW and 2930 MW, respectively) for that interface. This advocacy (whether oral or in writing) will address the reasonableness of applicable study assumptions and planning criteria and the appropriate balance between system reliability and achievement of New England's clean energy public policy objectives and will occur through direct interaction with ISO-NE and at appropriate stakeholder and ISO-NE committee meetings.
 - b. CMP, CLF, Acadia Center, the Governor's designee(s), OPA, IECG and other interested stakeholders (to be chosen by a process agreed to by CMP, CLF, Acadia Center and the Governor's designee(s)) will engage one or more mutually agreed-upon transmission consultant(s) to evaluate and report on a suite of potential transmission and non-wires solutions (including but not limited to large scale solar and storage), and their respective estimated costs, that would reduce existing and projected congestion at the Maine/New Hampshire Interface and at the Surowiec-South interface. The consultant(s) will be selected through a jointly developed request for proposals or other

agreed upon method that establishes minimum consultant qualifications, services sought, scope of study and solutions to be analyzed. CMP will pay for this study, the costs of which shall not exceed \$2,000,000, and the study shall be commenced once all applicable permits and approvals for the construction of the NECEC transmission project in Maine are received and Hydro-Québec receives all applicable permits and approvals for the construction of the interconnecting transmission facilities in Québec. CMP agrees that it will not seek to recover the costs of this study from electricity customers.

- c. For any cost effective and commercially viable transmission and non-wires solution(s) identified in the Maine/New Hampshire and Surowiec-South interface report prepared pursuant to Section V.B, Paragraph 11(b) above, CMP agrees (directly or through an Avangrid affiliate) to fully assess and pursue all available means of approval and cost allocation pursuant to the ISO-NE Tariff, including but not limited to as a Reliability Transmission Upgrade, a Market Efficiency Transmission Upgrade or a Public Policy Transmission Upgrade, or as part of any future solicitation for clean energy and transmission capacity. To the extent a viable mechanism is determined to fund such solutions, CMP further agrees to, directly or through an Avangrid affiliate, propose such solution(s) in any applicable competitive solicitation, including without limitation any solicitation conducted under the ISO-NE Tariff, and, if such proposal is selected in such solicitation, seek all necessary permits and approvals to implement such solution(s) in

accordance with the then terms of the ISO-NE Tariff. In pursuing the development of such cost effective and commercially viable transmission and non-wires solution(s), CMP and its parent company, Avangrid Networks, agree to bear commercial risk associated with the development of the project.

- d. Within one year of NECEC COD, CMP (directly or through an Avangrid affiliate) shall create and make available an annual electric transmission and distribution system report for public notice (subject to CEII provisions) which analyzes system needs that may potentially be met by non-wires alternatives (“NWAs”). This report will detail capacity and load by substation and circuit and identify corresponding growth-related investments being planned for. This report will also include a detailed description of CMP’s planning and decision-making processes related to NWAs during the year, including transparency into the application of its NWA suitability criteria. CMP will work to develop and implement systems and analyses that can provide heat maps that: (i) show where integration of distributed generation is least likely to require substantial upgrades (i.e., hosting capacity maps); (ii) show the electric load on the electric distribution system, including electric loads during peak electricity demand time periods; and (iii) highlight the most congested or constrained areas of the electric distribution system. Additionally, CMP will support policies and regulations that seek to evaluate NWAs against traditional transmission and distribution projects through (i) the use of competitive solicitations and (ii) the use of

compensation mechanisms that create incentives to place NWAs on an equal footing from a ratemaking perspective. Such tools and heat maps will be available within one-year after NECEC COD.

- e. The above commitments in this Paragraph 11 are conditioned on (i) a CPCN being granted for the NECEC, (ii) NECEC LLC receiving all other necessary permits and approvals for the NECEC including, but not limited to, those issued by the MDEP, the LUPC, the USACE and the MDPU, and (iii) Hydro-Québec receiving all applicable permits and approvals for the construction of the interconnecting transmission facilities in Québec.

12. **Commitment to Long-term Planning for Regional Decarbonization:**

- a. As part of a regional decarbonization collaborative comprised of CLF, Acadia Center, utilities, the Governor's designee(s), OPA, IECG and other stakeholders (to be chosen by a process agreed to by CLF, Acadia Center, the Governor's designee(s) and CMP), CMP and NECEC LLC agree to work with the collaborative to jointly select and hire a consultant to perform an analysis of the means by which the Northeast Region may achieve economy-wide decarbonization of zero emissions by 2050 as called for by the most recent report of the Intergovernmental Panel on Climate Change Special Report on Global Warming of 1.5°C. CMP agrees to contribute at least 50 percent of the cost of this study and associated selection process. This contribution to the study cost by or on behalf of CMP shall not exceed \$500,000. As a member of the collaborative, CMP (directly or through an Avangrid affiliate) will actively engage in a regional stakeholder process to introduce and receive input on

the analysis and assess potential actions by which state policymakers could advance decarbonization in each energy consumption sector. CMP agrees that it will not seek to recover the costs of this study or stakeholder process from electricity customers.

- b. CMP agrees to work (directly or through an Avangrid affiliate) with a stakeholder group made up of CLF, Acadia Center, the Governor's designee(s), OPA, IECG, and other stakeholders (to be chosen by a process agreed to by CMP, CLF, Acadia Center and the Governor's designee(s)) to research and develop a set of utility policies and actions, and state regulatory reforms, that can most effectively facilitate economy-wide decarbonization in the region, consistent with the analysis conducted pursuant to Section V.B, Paragraph 12(a) above. CMP (directly or through an Avangrid affiliate), will work with this stakeholder group to develop a consensus around these approaches, draft proposed regulatory and legislative provisions by which the consensus approaches can be authorized, and actively seek state approval and implementation of them.
- c. The above commitments in this Paragraph 12 are conditioned on (i) a CPCN being granted for the NECEC and (ii) NECEC LLC receiving all other necessary permits and approvals for the NECEC including, but not limited to, those issued by the MDEP, the LUPC, the USACE and the MDPU.

13. **Securitization:** CMP, OPA, the Governor's Energy Office and IECG agree that electricity customers in Maine may benefit if the annual payments to the NECEC Low-income Customer Benefit Fund provided in Section V.B, Paragraph 4 and the annual payments to the

NECEC Rate Relief Fund provided in Section V.B, Paragraph 5 are leveraged through securitization. To facilitate the securitization of such payment streams, if possible, NECEC LLC, upon the NECEC COD, will establish a fund of **\$1,000,000** to be used to pay for any investment bank, investment advisor or consultant and/or legal fees incurred by OPA, the Governor's designee(s), IECG and CMP related to such securitization. In the event any of these funds are not needed to complete the securitization of either the NECEC Low-income Customer Benefit Fund or the NECEC Rate Relief Fund, any remaining balance will be disbursed to CMP to provide rate relief in accordance with Section V.B, Paragraph 5 above.

14. **HQUS Support Agreement:**

- a. In order to confirm HQUS's commitments herein, CMP, NECEC LLC and HQUS will enter a binding agreement enforceable under Maine law which reflects the following terms:
 - i. HQUS's commitment to provide CMP annually 400,000 MWh of environmental attributes related to deliveries of hydroelectric power to New England over the NECEC or otherwise (the "NECEC Environmental Attributes") for a twenty (20) year period starting in the first full year after NECEC COD. The NECEC Environmental Attributes shall mean any and all generation attributes under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now or in the future, to the favorable generation or environmental attributes of Hydro-Québec hydropower generation resources including, but not limited to: (a) any such credits, certificates, benefits, offsets and allowances computed on the basis of the Hydro-Québec hydropower generation resources using renewable technology or displacement of fossil-fuel derived or other conventional energy generation; or (b) any certificates issued pursuant to the NEPOOL Generation Information System Operating Rules ("GIS") in connection with energy generated by the Hydro-Québec hydropower generation resources;

- ii. Hydro-Québec's commitment to include sufficient fiber optic capacity in the Québec transmission facilities interconnecting to the NECEC to provide a fiber optic connection between the State of Maine and the fiber optic network serving Montreal, Province of Québec, subject to commercial, technical and legal feasibility;
 - iii. HQUS's commitment to contribute \$10,000,000 to the NECEC Broadband Fund through five payments of \$2,000,000 starting on the NECEC COD and annually on the first, second, third and fourth anniversaries thereof and to share its expertise on broadband infrastructure;
 - iv. HQUS's commitment to contribute \$10,000,000 to the NECEC Heat Pump Fund through five payments of \$2,000,000 starting on the NECEC COD and annually on the first, second, third and fourth anniversaries thereof;
 - v. Hydro-Québec's commitment to share its expertise with respect to EV infrastructure in developing the programs and initiatives funded by the Hydro-Québec EV Fund for the benefit of the State of Maine;
 - vi. HQUS's commitment to contribute \$10,000,000 to the Hydro-Québec EV Fund through five payments of \$2,000,000 starting on the NECEC COD and annually on the first, second, third and fourth anniversaries thereof;
 - vii. HQUS's commitment to pay NECEC LLC annually \$3,500,000 beginning on the NECEC COD and continuing on each anniversary thereof for a period of forty (40) years in addition to all amounts due under the TSAs; and
 - viii. A guaranty from Hydro-Québec of HQUS's payment obligations under the HQUS Support Agreement or such other appropriate credit support for such obligations as the parties to the HQUS Support Agreement agree.
- b. Prior to the commencement of construction of the NECEC, NECEC LLC will file the HQUS Support Agreement and the Hydro-Québec guaranty or other credit support with the Commission as a compliance filing in this docket.

15. **Maine Workers Preference:** All other factors being equal and consistent with applicable law and applicable labor agreements, NECEC LLC, and its contractors working on the construction of the NECEC will give preference to hiring Maine workers.

16. **Funding Commitments Conditions Precedent:** The funding commitments in Section V.B, Paragraphs 4, 5, 6, 7, 8(b), 9, and 10(b) above are conditioned on the NECEC achieving commercial operation.

C. Nontransmission Alternatives Findings

1. The Stipulating Parties further agree and recommend that the Commission find, based on the record in this proceeding, that no nontransmission alternative (“NTA”), whether large-scale generation, distributed generation, demand response resource, or conservation alternative, can feasibly substitute for the NECEC at a lower cost to Maine electricity customers. The NECEC will serve the public need by transmitting up to 1,200 MW of hydropower energy from Québec to New England effectively replacing retiring baseload generation, and providing the State of Maine with its first transmission interconnection with the vast Hydro-Québec hydropower generation system. No NTA has the technical capability, size or scale to satisfy this public need, and even if an NTA could meet this public need, no such alternative could so do at a lower total cost to Maine electricity customers, since no NECEC related costs will be borne by Maine electricity customers.

VI. ADDITIONAL STIPULATION TERMS

1. The execution of this Stipulation by any Stipulating Party shall not constitute precedent as to any matter of law or fact and, except as expressly provided herein, shall not foreclose any of the Stipulating Parties from making any contention or exercising any right,

including rights of appeal, in any other Commission proceeding or investigation, or any other trial or action.

2. The Stipulating Parties intend that this Stipulation be considered by the Commission for adoption as an integrated solution to the issues addressed herein which arose in the above-captioned proceeding and as otherwise presented in this Stipulation. The Stipulating Parties also intend that this Stipulation shall be null and void, and not bind the Stipulating Parties in the above-captioned proceeding, in the event the Commission does not adopt this Stipulation without material modification.

3. If not accepted by the Commission in accordance with the provisions hereof, this Stipulation shall not prejudice the positions taken by any Stipulating Party on these issues before the Commission in this proceeding and shall not be admissible evidence therein or in any other proceeding before the Commission.

4. Upon approval by the Commission, this Stipulation shall have the legal effect of a binding contractual agreement and shall not be amended without the written agreement of CMP, NECEC LLC, OPA, IECG, CLF, Acadia Center, the Governor's Energy Office, WMRC, City of Lewiston, Chamber, and IBEW.

5. All rights, commitments and obligations under this Stipulation shall be binding upon and inure to the benefit of the lawful successors or assigns of the applicable responsible entities identified herein. In the event that a responsible entity ceases to operate or legally exist without a successor or assign, the Stipulating Parties, in consultation with Commission Staff, will confer to identify an appropriate successor or assign in order that the purposes of this Stipulation may be achieved and, as necessary and appropriate, seek Commission approval of such successor or assign.

6. The Stipulating Parties agree that the record in support of this Stipulation includes: (a) this Stipulation, and (b) any and all confidential or public materials contained in the Commission's Administrative Record of Docket No. 2017-00232 as of this date, as set forth in Section III of this Stipulation.

7. The Stipulating Parties hereby waive any rights that they have under 5 M.R.S. § 9062(4) and Chapter 110, Section 8(F)(4) of the Commission Rules of Practice and Procedure to the extent necessary to permit Commission Staff to discuss this Stipulation and the resolution of the issues addressed in this Stipulation with the Commissioners, either before or at the Commission's scheduled deliberations, without providing to the Stipulating Parties an Examiners' Report or the opportunity to file Exceptions.

8. All Attachments referred to in this Stipulation are incorporated herein by reference and are intended to be considered as part of this Stipulation as if their terms were fully set forth in the body of this Stipulation.

9. In the event that the Stipulating Parties cannot agree on the implementation of necessary details related the administration or use of any of the funds described in Sections V.B, Paragraphs 4, 5, 6, 7, 8, 9, or 10 of this Stipulation, the Commission shall retain jurisdiction to interpret the binding contractual effect of such provisions in accordance with its authority under Maine law.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Stipulating Parties have caused this Stipulation to be executed by their respective attorneys or representatives, or have caused their lack of objection to be noted by the signature of their respective attorneys or representatives.

CENTRAL MAINE POWER COMPANY

By: *Douglas A. Herlihy*

By: *Eric W. Sennep*

MAINE OFFICE OF THE PUBLIC ADVOCATE

By: _____

GOVERNOR'S ENERGY OFFICE

By: _____

INDUSTRIAL ENERGY CONSUMER GROUP

By: _____

CONSERVATION LAW FOUNDATION

By: _____

IN WITNESS WHEREOF, the Stipulating Parties have caused this Stipulation to be executed by their respective attorneys or representatives, or have caused their lack of objection to be noted by the signature of their respective attorneys or representatives.

CENTRAL MAINE POWER COMPANY

By: _____

By: _____

MAINE OFFICE OF THE PUBLIC ADVOCATE

By: Barry J. Hobbins _____

Barry J. Hobbins, Public Advocate

GOVERNOR'S ENERGY OFFICE

By: _____

INDUSTRIAL ENERGY CONSUMER GROUP

By: _____

CONSERVATION LAW FOUNDATION

By: _____

IN WITNESS WHEREOF, the Stipulating Parties have caused this Stipulation to be executed by their respective attorneys or representatives, or have caused their lack of objection to be noted by the signature of their respective attorneys or representatives.

CENTRAL MAINE POWER COMPANY

By: _____

By: _____

MAINE OFFICE OF THE PUBLIC ADVOCATE

By: _____

GOVERNOR'S ENERGY OFFICE

By: Angela Monroe

INDUSTRIAL ENERGY CONSUMER GROUP

By: _____

CONSERVATION LAW FOUNDATION

By: _____

IN WITNESS WHEREOF, the Stipulating Parties have caused this Stipulation to be executed by their respective attorneys or representatives, or have caused their lack of objection to be noted by the signature of their respective attorneys or representatives.

CENTRAL MAINE POWER COMPANY

By: _____

By: _____

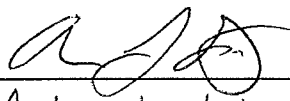
MAINE OFFICE OF THE PUBLIC ADVOCATE

By: _____

GOVERNOR'S ENERGY OFFICE

By: _____

INDUSTRIAL ENERGY CONSUMER GROUP

By:  _____
Andrew Landry
counsel for IECG

CONSERVATION LAW FOUNDATION

By: _____

IN WITNESS WHEREOF, the Stipulating Parties have caused this Stipulation to be executed by their respective attorneys or representatives, or have caused their lack of objection to be noted by the signature of their respective attorneys or representatives.

CENTRAL MAINE POWER COMPANY

By: _____

By: _____

MAINE OFFICE OF THE PUBLIC ADVOCATE

By: _____

GOVERNOR'S ENERGY OFFICE

By: _____

INDUSTRIAL ENERGY CONSUMER GROUP

By: _____

CONSERVATION LAW FOUNDATION

By: 

ACADIA CENTER

By: Deborah Donovan

MAINE STATE CHAMBER OF COMMERCE

By: _____

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

By: _____

CITY OF LEWISTON

By: _____

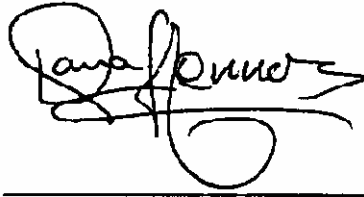
WESTERN MOUNTAINS & RIVERS
CORPORATION

By: _____

ACADIA CENTER

By: _____

MAINE STATE CHAMBER OF COMMERCE

A handwritten signature in black ink, appearing to read "Paula Penno", written over a horizontal line.

By: _____

**INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS**

By: _____

CITY OF LEWISTON

By: _____

**WESTERN MOUNTAINS & RIVERS
CORPORATION**

By: _____

ACADIA CENTER

By: _____

MAINE STATE CHAMBER OF COMMERCE

By: _____

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

By: Jan P. Buzgan

CITY OF LEWISTON

By: _____

WESTERN MOUNTAINS & RIVERS
CORPORATION

By: _____

ACADIA CENTER

By: _____

MAINE STATE CHAMBER OF COMMERCE

By: _____

INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS

By: _____

CITY OF LEWISTON

By: Edward G. Burt

WESTERN MOUNTAINS & RIVERS
CORPORATION

By: _____

**LD 640 Testimony by Tom Saviello to the
Joint Standing Committee on Environment
and Natural Resources**

March 15, 2019

(Supplemental Evidence)

LD 640 testimony presented by Tom Saviello to the joint sanding committee on Environment and Natural Resources on 3-15-19.

Good morning. I am Tom Saviello. I am here representing myself and came to Augusta today because of the importance of LD 640. It is my first time testifying before any committee since being termed out after 16 years serving the people of Franklin County as both their State Rep and Senator. During that time I served on this committee 9 years, 6 as chair.(1)

Let me quickly give you my background: I have BS in Forestry from the University of Tennessee; a MS in Agronomy from the UM and a PHD in Forest Resources from UM. I was the manager of International Paper Northern Forest Research Center and the Environmental Manager at the Androscoggin Mill in Jay. I was instrumental in setting up the USFS climate change research site in Howland.

(<https://crsf.umaine.edu/forest-research/howland-research-forest/>)

I am sure all of you have heard about the New England Clean Energy Connect. Some know it as the "corridor". Some know it as the "one way" electric extension cord to Massachusetts. The proposed Corridor is supposed to bring so called green energy from Hydro Quebec's Dams to Massachusetts. The question remains is it really clean energy? I strongly believe the passage of this resolve will answer that question.

First we all must recognize all power generate has some environmental impact. Consider the following:

1. Solar needs panels....panels need metals.... Metals come from mining
2. Wind need wind mills..... windmill installation blasting the top of mountains off..... You and I have to look at them every day.
3. Hyrdo need flowing rivers..... Rivers need to be dammed... dams cause impoundments which destroy the habitat.

So nothing is "free". However, in the case of the hydro Quebec power source I actually am confused (easily done). Is it really green? Consider the following:

1. CLF is working to ensure that clean energy projects across New England do the most good and least harm for our climate and our communities – including emitting the lowest greenhouse gas emissions possible.
The Northern Pass project fails to meet this test. It will make us reliant on big, carbon-emitting Canadian hydropower, undermining the market for New England's own home-grown, zero-carbon renewable energy. And the construction of enormous new transmission towers will spoil some of New Hampshire's most scenic and sensitive areas.

<https://www.clf.org/making-an-impact/stopping-northern-pass/>

Yet in Maine CLF is comfortable with this “carbon emitting “ hydropower. And now CLF has signed off on the NECEC settlement agreement. I guess electric car charging stations and heat pumps made the power green enough...

2 . Fred Langan Special to The Christian Science Monitor quoted Les Milford from CLF:

“Our major concern is that an energy glut, in this case caused by buying cheap power from Quebec, means there is not economic incentive for conservation measures in New England,” says Lewis Milford of the Conservation Law Foundation, a New England environmental group.”(2)

3.Dams create greenhouse gases. When dams are built in Québec large areas of Boreal Forest are flooded. As a result, organic matter decomposes and releases methane and carbon dioxide. (I WILL COME BACK TO THIS)Currently, it is estimated that Canadian reservoirs contribute 12% to total

Canadian greenhouse gas emissions (Rosenberg et al., 1997).

By the way to date HQ has flooded nearly 7 million acres, 41 % the size of Maine.

So is the hydro power clean?

First, bear with me and let me go a bit further. Let me talk about Forest Soils and Trees as carbon sinks.

A.Forest Soil:

Please look at the three soil diagrams I have provided.

Under these conditions the organic layer comprising the topsoil is usually thick and consists of a litter layer (L) (largely undecomposed), overlying a fermentation layer (F) in which there is some decomposition of the organic remains, and this in turn overlies a humus layer (H) in which decomposition of the organic remains is more or less complete. The turnover of plant remains into nutrients that can be re-used by the trees is very slow here, and is in strong contrast with the rapid turnover experienced in the tropical rainforest.

Ideal soil 5-6% organic matter

Forest soil can have top layers 100% Organic matter to 10-20% in lower soil horizons.

Boggy soils 100%

CARBON principle element

In the Boreal Forest OM is slow to decompose due to climate.... Holds carbon... sequesters carbon!(3)

http://www.soil-net.com/dev/page.cfm?pageid=casestudies_boreal&loginas=anon_casestudies

Recognition of the vital role played by soil carbon could mark an important if subtle shift in the discussion about global warming, which has been heavily focused on curbing emissions of fossil fuels. But a look at soil brings a sharper focus on potential carbon *sinks*. Reducing emissions is crucial, but soil carbon sequestration needs to be part of the picture as well, says Lal. The top priorities, he says, are restoring degraded and eroded lands, as well as avoiding deforestation and the farming of peatlands, which are a major reservoir of carbon and are easily decomposed upon drainage and cultivation.

https://e360.yale.edu/features/soil_as_carbon_storehouse_new_weapon_in_climate_fight

It's thought that the earth beneath our feet is holding up to three times as much carbon as is found in the atmosphere. If we can tap into its potential to suck even more carbon pollution out of the air, it would be a massive advantage.

<https://www.sciencealert.com/soil-minerals-could-be-huge-carbon-dioxide-sink>

B. Trees/Forest

Photosynthetic organisms are photoautotrophs, which means that they are able to synthesize food directly from carbon dioxide and water using energy from light

Don't be fooled by the name; a carbon sink is not where we go to wash carbon. Actually, it's something found in nature that holds or stores carbon — technically anything that absorbs more carbon than it releases.

Forests are great examples for carbon sequestration. In fact, U.S. forests alone store 14 percent of all annual carbon dioxide (CO₂) emissions from the national economy. But how does it happen? You may know that trees survive by performing a process called photosynthesis, in which the tree actually consumes CO₂. Being absorbed by trees is just one way that carbon moves through forests as part of the carbon cycle. This cycle is the process by which carbon travels from the atmosphere into the Earth and its organisms, and then travels back into the atmosphere

How? During photosynthesis, trees and plants "sequester," or absorb, carbon from the atmosphere in the form of CO₂, using it as food. The chemical equation for photosynthesis is: 6 CO₂ (the carbon they take in) + 6 H₂O (the water they absorb) + sunlight = C₆H₁₂O₆ (a sugar

called glucose) + 6 O₂ (the oxygen they release). The carbon from the CO₂ becomes part of the plant and is stored as wood. Eventually, when the plant or tree dies, the carbon it has been storing is released into the atmosphere.

<https://www.americanforests.org/blog/forests-carbon-sinks/>

4 Now let's talk about Hydro Quebec:

1. Last spring this committee held a hearing on the HQ corridor. One of the questions was about the actual "capacity" of HQ to supply this power.

In the application to Mass they stated: The HQ Hydropower Resources are already in service and require no further procurement (HRE Section 83D Application., p. 6).

Yet in a follow up email to Dan they stated:

Hydro Quebec does not need to build any additional generation infrastructure because it is in the final stages of a significant hydropower capacity build out that has added over 5000 MW of new capacity to its system. That the needed capacity would be on line by 2020. (see the email from Carolyn O'Connor HQ)

I suspect this is HQ's Romaine hydro sequence. The Romaine sequence of dams is to be completed in 2020. It will flood nearly 70,000 acres or the equivalent of 3 Maine unorganized townships.

"

When Hydro-Quebec dams rivers on northern Quebec's relatively flat terrain, it floods vast areas of forests and wetlands under shallow water. The amount of power Hydro-Quebec produces per acre flooded is among the lowest of any hydropower in the world. The trees, bogs and soils Hydro-Quebec floods have been storing carbon since the last Ice Age. When flooded, this stored carbon decomposes, releasing CO₂ and methane. Both add to climate change.

To make things worse, drowned trees are gone forever and cannot grow back to remove CO₂ in the future.

Bradford H. Hager is a professor of earth sciences at MIT and a part-time resident of Mercer.

<https://www.centralmaine.com/2019/01/12/maine-compass-what-hydro-quebec-gets-wrong/>

Here's an example of their own best available science that Hydro-Quebec did not provide to the newspaper: About a decade ago, Hydro-Quebec built dams to divert the Rupert River to the Eastmain hydro facility, flooding 175 square (5)miles of virgin forest and wetlands. As a result, the first year after flooding, as much CO2 was released as would have been released by a coal-fired power plant generating the same amount of electricity.

Fortunately, the release of CO2 slows with time. Unfortunately, it never becomes insignificant. After five years, the total emissions from these Hydro-Quebec dams and natural gas power plants are about equal; after 10 years, the total release from hydro is "only" two-thirds that of natural gas. Extrapolating for a century, Quebec's hydro is about half as dirty as gas — something of an improvement, but in no way "carbon free."

Right of way

I have not discussed the 300 foot right of way to be cut through the middle of Maine. This will be a about a 3000 acre clear cut that will not be allowed to grown back for at least 40 years. There will be no carbon sequestration in the soil and certainly none in the trees!

Now to the "punch line

So is hydro Quebec really green power? Personally I do not think so. But I have not put the numbers to the information I have presented. I believe the resolve Senator Carson will do this.

In closing I offer the following:

1. I believe what I have presented could be basis of the mass balance analysis identified in the Resolve, which would require the Department of Environmental Protection to review all relevant, verifiable evidence on the total net effect on greenhouse gas emissions from Central Maine Power Company's New England Clean Energy Connect project.
2. DEP must either do the work or be the facilitator.
3. CMP and HQ need to be forth coming with any information required to complete this study. Lack of participation is a clear sign there is something to hide.
4. I realize the project will require revenue. Today I believe I can offer money to assist in completing this project. However, HQ and CMP each needs to match every dollar I may be able to secure.

With that I close and thank the committee for it indulgence. May I answer any questions? (6)

Filing with Mass:

... HQ probably wants to keep building more dams, but they went out of their way to tell Massachusetts they weren't going to have to build anything new to supply this contract. Building new dams is highly controversial and has its own environmental impacts because of the decomposition of all the forest that gets drowned.

WHY WOULDN'T HYDRO-QUÉBEC INVEST IN UPGRADES OF EXISTING UNITS TO MEET NECEC SUPPLY OBLIGATIONS?

Hydro-Québec's application explicitly states that it is not going to invest in upgrades to meet its supply obligations via NECEC:

All of the hydroelectric generation units that comprise the HQ Hydropower Resources are in operation and therefore have already been constructed. Although new hydroelectric generation units may be added to the HQ Hydropower Resources portfolio in the future, no new facilities or capital investments for hydroelectric generation units are required as part of this Proposal (emphasis added, HRE Section 83D Application Form, pp. 62 and 82).

WHAT WILL BE THE SOURCE OF ENERGY SUPPLY PROVIDED INTO NEW ENGLAND VIA NECEC?

NECEC is a joint venture between CMP and two of Hydro-Québec's subsidiaries: Hydro-Québec TransÉnergie ("TransÉnergie") and Hydro Renewable Energy, Inc. ("HRE"). The NECEC proposal would have HRE supply energy across a transmission line sited in Québec (built by TransÉnergie) and continuing into Maine (built by CMP). Both CMP and HRE submitted a completed application form as part of the NECEC Section 83D bid; only CMP's application was provided as part of the hearing before the Maine PUC. The public, non-confidential version of HRE's completed application form to Massachusetts (Exhibit No. JMS-5, "HRE Section 83D Application") makes it very clear that energy supplied via NECEC would come from existing hydroelectric facilities already built and operating in Québec, as illustrated by the following excerpts:

--The HQ Hydropower Resources are already in service and require no further procurement (HRE Section 83D Application., p. 6).

-- This Proposal offers a viable, low cost Clean Energy Generation delivery project with limited risk, because (i) there is no construction risk related to the generation resources which are already in service . . . (p. 4).

-- Because no new hydroelectric generation projects will be required, there will be no incremental environmental impacts from hydroelectric generation as a result of this Proposal (p. 56).1

Therefore, NECEC energy would be supplied from a portfolio of existing hydroelectric facilities already in operation located in Québec, and there would be no new incremental hydroelectric capacity built or upgraded for purposes of producing energy for delivery via NECEC.

When I pushed back we received this:

Hydro Quebec capacity

From: O'Connor, Carolyn [mailto:OConnor.Carolyn@hydro.qc.ca]
Sent: Friday, May 25, 2018 4:56 PM
To: Tartakoff, Daniel
Subject: Follow up from Hydro Quebec

Good Afternoon Daniel,

I am writing at the request of Joel Harrington from Central Maine Power. Joel asked that I provide information to you and the Environment Committee about the generation that will support the energy contract with the Massachusetts utilities. I understand that you specifically asked if any new generation infrastructure would need to be built to supply the contract.

Hydro Quebec does not need to build any additional generation infrastructure because it is in the final stages of a significant hydropower capacity build out that has added over 5000 MW of new capacity to its system. The attached slide provides

a snapshot of the timing and amount of that capacity. As you will see, a final 245-MW unit is currently under construction and expected to become operational by 2020.

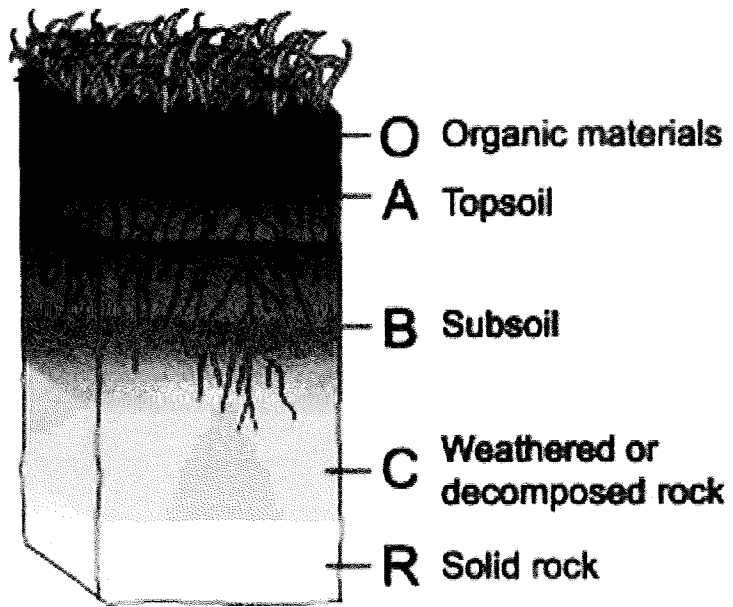
Please do not hesitate to contact me if you have any additional questions about this information.

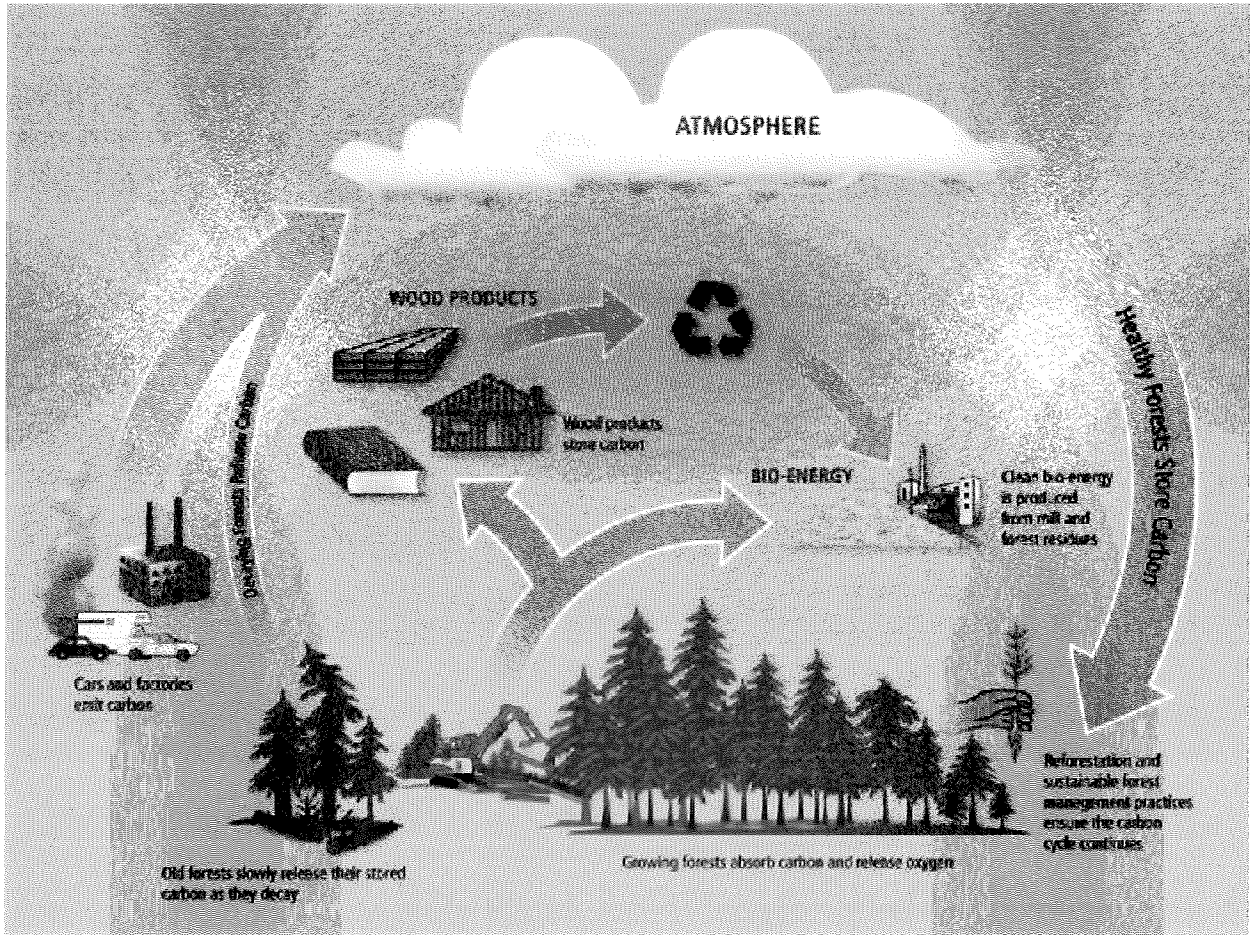
Carolyn O'Connor

External Affairs

HQUS

413-531-4353





**Testimony in Support of LD 640
by Nick Bennett of
Natural Resources Council of Maine**

March 15, 2019

(Supplemental Evidence)



Testimony in Support of LD 640, “Resolve, To Require a Study of Greenhouse Gas Emissions Reductions from the Proposed Central Maine Power Company Transmission Corridor”

By Nick Bennett, Staff Scientist

March 15, 2019

Senator Carson, Representative Tucker, and distinguished members of the Environment and Natural Resources Committee. My name is Nick Bennett, and I am the Staff Scientist at the Natural Resources Council of Maine (NRCM). NRCM is Maine’s largest environmental advocacy group with more than 20,000 members and supporters. I am testifying in strong support of LD 640.

We believe this bill is necessary to determine whether the Central Maine Power (CMP) transmission corridor would result in significant reductions in greenhouse gas emissions.

NRCM is skeptical of CMP’s claims that its proposed corridor (euphemistically called the New England Clean Energy Connect or “NECEC”) through Maine’s North Woods would provide any benefits for the climate. Members of this Committee, and the Maine Legislature as a whole, should be skeptical as well.

The New Hampshire Site Evaluation Committee (SEC) faced this same question of whether a transmission line from Hydro-Quebec (HQ) through New Hampshire to Massachusetts (called “Northern Pass”) would reduce greenhouse gas emissions. After years of study, the SEC concluded that there was no evidence that Northern Pass would have any greenhouse gas benefits. Specifically, it stated:

As to the savings associated with a decrease in carbon emissions, we agree with Counsel for the Public that no actual greenhouse gas emission reductions would be realized if no new source of hydropower is introduced and the power delivered by the Project to New England is simply diverted from Ontario or New York. The record is unclear as to whether the hydropower is new or will be diverted from another region.¹

In the case of NECEC, the record is now clear that HQ will build no new hydropower facilities for generating electricity to send to Massachusetts. HQ stated the following in its application for a contract with the Massachusetts Department of Public Utilities:

¹ New Hampshire Site Evaluation Committee. 2018. Decision and Order Denying Application for Certificate of Site and Facility. March 30. P. 161. Accessed at https://www.nhsec.nh.gov/projects/2015-06/orders-notices/2015-06-2018-03-30_order_deny_app_cert_site_facility.pdf.

This Proposal offers a viable, low cost Clean Energy Generation delivery project with limited risk, because (i) there is no construction risk related to the generation resources which are already in service... ***Because no new hydroelectric generation projects will be required, there will be no incremental environmental impacts from hydroelectric generation as a result of this Proposal.***² (emphasis added)

Because HQ has stated that it will build no new generation specifically for NECEC, HQ will have to shift sales of energy to Massachusetts from other customers. Massachusetts ratepayers and Maine's North Woods would pay the price for this HQ electricity shell game.

Just last month, a witness for the Massachusetts Attorney General (AG), Dean M. Murphy, submitted rebuttal testimony in ongoing contract hearings at the Massachusetts Department of Public Utilities echoing our concern that HQ could meet its contractual obligations to NECEC by shifting electricity away from existing HQ customers, such as New York and New Brunswick. Because Massachusetts would pay more for HQ's electricity under the proposed contracts for CMP's corridor, HQ has a substantial incentive to do this. In his initial testimony in December 2018, Mr. Murphy stated that HQ and CMP could meet the requirements of these contracts:

through resource shuffling—reassignment of a fixed amount of clean energy so as to increase the clean energy delivered to a particular destination without increasing the total amount of clean energy overall. For instance, with the new NECEC transmission link, if HQ increased deliveries into New England by the contracts' 9.55 TWh relative to historical New England deliveries, this would achieve full incrementality as defined in the RFP. ***But if HQ accomplished this by reducing its exports to other neighboring regions rather than by increasing clean energy generation overall, then global GHG emissions would not necessarily be reduced. Diverting clean energy from other regions to New England would enable a reduction in fossil generation and emissions within New England, but the reduced deliveries to other regions may need to be replaced by additional fossil generation in those regions. This would effectively substitute fossil generation in other regions for fossil generation in New England, shifting emissions from one region to another, without causing a material decrease...***³ (emphasis added)

The Massachusetts AG's witness stated that for any project to reduce greenhouse gas emissions it must be "additional," meaning that it provides greenhouse gas emissions reductions that would not occur without the project in question. This is important, because ratepayers should not pay

² HRE Section 83D Request for Proposal Application Form. Pp. 4, 56. Accessible at <https://www.nrcm.org/wp-content/uploads/2019/01/HRERequestforProposal.pdf>.

³ Testimony of Dean W. Murphy (Brattle Group), Witness for the Massachusetts Attorney General. Petition for approval by the Department of Public Utilities of a long-term contract for procurement of Clean Energy Generation, pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c.169, as amended by St. 2016, c. 188, § 12, p. 15 of 27, Dec. 21, 2018. See Attachment A.

for a project that is going to happen anyway under business as usual scenarios. Specifically, the AG's witness stated:

For the 83D⁴ contracts, or any project, to reliably reduce GHG emissions, they would need to provide clean energy that is "additional." Additionality is a commonly-used concept in the climate change discussions; it refers to emissions reductions that occur because of a proposed action, reductions that would not have occurred otherwise under "business as usual".⁵

The AG's witness has even stated that the process that awarded contracts to CMP and HQ may have been unfair:

I am also concerned about the inclusion of bidders' affiliates in the Evaluation Team. This is generally considered inappropriate because it can bias the evaluation and selection process. Such concerns arose in multiple instances in the 83D evaluation process and were noted by the Independent Evaluator.⁶

I have attached Mr. Murphy's testimony from both February 2019 and December 2018 to my testimony as Attachment A.

NRCM has tried in meetings with representatives of CMP and Avangrid, and throughout the Maine Public Utilities Commission (PUC) process that is evaluating CMP's corridor, to gain information that would verify claims that the corridor would provide "additional" greenhouse gas reductions, as the Massachusetts AG has stated is necessary to guarantee real emissions reductions. CMP and HQ have refused to provide the specific information we have requested, such as:

- What facilities would HQ use to provide power to NECEC and where does power from these facilities currently go?; and
- What power sources would likely be used by existing customers if HQ reduces its exports to them in order to sell to Massachusetts?

These are the type of straightforward questions that HQ and CMP must to answer to prove that NECEC will reduce greenhouse gas emissions. They have refused, which is why passage of LD 640 is necessary. The Maine PUC consultant reports have also not looked at the impacts of NECEC on emissions from current Hydro-Quebec customers that would lose power as a result of NECEC.

NRCM also tried to make greenhouse gas emissions a hearing topic in DEP's Site Law hearing process, currently underway, for the proposed corridor. We described how CMP has made its claims about greenhouse gas reduction the key justification for putting a giant powerline through Maine's North Woods. Therefore, we argued, the topic of climate impacts should be relevant to

⁴ 83D is the section of law that requires Massachusetts to solicit bids for clean energy contracts.

⁵ Dean M. Murphy, *Op. Cit.*, p. 15 of 27.

⁶ *Ibid.*, P. 4 of 27.

whether DEP grants CMP a Site Law permit. CMP's attorney stated in his objection to NRCM's request to provide expert testimony on greenhouse gas emissions that NRCM:

asserts that CMP relies on the Project's GHG [greenhouse gas] reduction benefits as the Project's "purpose and need," and thus that the opposition intervenors should be able to rebut at the hearing CMP's statements concerning those benefits. In fact, *nowhere has CMP stated that the Project's purpose and need includes GHG emissions reductions.*⁷ (emphasis added)

DEP upheld CMP's objections and greenhouse gas emissions will not be a topic of expert testimony in the Site Law hearings.

CMP and HQ have successfully kept their claims of greenhouse gas reductions from regulatory scrutiny in Maine. They may do so in Massachusetts as well. That is why LD 640 is so important. The public and the Legislature have a right to know with certainty whether CMP's transmission corridor would result in real, additional greenhouse gas benefits or not. There should be a clear answer to this before Maine allows CMP to cut a 53-mile gash through Maine's Western Mountains. The PUC and the Department have made clear that they will not seek a definitive answer to this question as part of regulatory processes. Therefore, the Legislature must intervene to ensure that this question is answered—so that lawmakers, Maine people, and Massachusetts ratepayers know if CMP is engaged in false advertising. Substantial evidence shows that CMP is likely engaged in false advertising. This bill makes a highly reasonable request to resolve that question decisively. We urge you to vote Ought to Pass on LD 640.

I would be happy to answer any questions now and at work session.

⁷ 2019. Matthew Mannahan. Letter to Susanne Miller, Maine DEP, Re: NECEC – NRCM, AMC, and TU Request to Include Greenhouse Gas Impacts in Public Hearings. P. 3. January 29. See Attachment B.

**Natural Resources Council of Maine Response to
March 28, 2019 Memo of Thorn Dickinson to Members of the
Environmental and Natural Resources Committee**

April 8, 2019

(Supplemental Evidence)



To: Members of the Environment and Natural Resources Committee
From: Nick Bennett, Staff Scientist, Natural Resources Council of Maine (NRCM)
Re: Response to March 28, 2019 memo of Thorn Dickenson on Central Maine Power's (CMP) proposed transmission corridor
Date: April 8, 2019

Dear Senator Carson, Representative Tucker, and distinguished members of the ENR Committee:

I am writing in response to Thorn Dickenson's memo of March 28, 2019 about LD 640, "Resolve, To Require a Study of Greenhouse Gas Emissions Reductions from the Proposed Central Maine Power (CMP) Transmission Corridor."

Mr. Dickenson's memo actually justifies why LD 640 is necessary. In the second paragraph, he cites several studies backing CMP's claim that its proposed transmission corridor would "reduce carbon dioxide emissions in New England by at least 3 million tons per year." **Reducing greenhouse gas emissions in New England is irrelevant if they increase by a corresponding amount in other jurisdictions. Greenhouse gases are a global pollutant, and we must reduce them globally to have an impact on climate change.**

Maine needs LD 640 precisely because CMP and Hydro-Quebec have not provided the information necessary for policymakers and the public to know whether the transmission corridor would reduce *global* carbon emissions, not just *New England* carbon emissions. When asked about the global greenhouse gas impacts of this project, CMP invariably responds with a statement about emissions reductions in New England.

None of the studies that Mr. Dickenson cites in his March 28, 2019 memo examined the impacts of shifting electricity sales from Hydro-Quebec's current customers to Massachusetts. If Hydro-Quebec shifts sales of electricity from current customers, and those customers then need to increase fossil fuel generation in response, there will be no overall reduction in carbon emissions and no benefit to the climate from CMP's transmission corridor.

The expert witness for the Massachusetts Attorney General stated in his testimony in ongoing Massachusetts Department of Public Utilities (DPU) hearings on the contracts for CMP's transmission corridor that CMP and Hydro-Quebec could meet the requirements of the proposed contracts through:

resource shuffling—reassignment of a fixed amount of clean energy so as to increase the clean energy delivered to a particular destination without increasing the total amount of clean energy overall. For instance, with the new NECEC transmission link, if HQ [Hydro-Quebec] increased deliveries into New England by the contracts' 9.55 TWh relative to historical New England deliveries, this would achieve full incrementality as defined in the RFP. ***But if HQ accomplished this by reducing its exports to other neighboring regions rather than by increasing clean energy generation overall, then global GHG emissions would not necessarily be reduced. Diverting clean energy from other regions to New England would enable a***

reduction in fossil generation and emissions within New England, but the reduced deliveries to other regions may need to be replaced by additional fossil generation in those regions. This would effectively substitute fossil generation in other regions for fossil generation in New England, shifting emissions from one region to another, without causing a material decrease...¹ (emphasis added)

The Maine Public Utilities Commission (PUC) has not examined whether there will be global greenhouse gas reductions from the corridor project. Its expert, London Economics International, stated in its report to the PUC (which Mr. Dickenson attached to his March 28, 2019 memo) that:

For this analysis, LEI did not monetize the social benefits of the CO2 emissions reduction, ***nor did it analyze the emissions changes in other jurisdictions as a result of NECEC.*** (emphasis added)

Mr. Dickenson also asserts in his memo, with no evidence other than a translated video of a statement from Hydro-Quebec's president, that Hydro-Quebec is spilling water because of a lack of transmission capacity. There is solid evidence that this claim is false. For example, in an op-ed to the *Portland Press Herald*, Massachusetts Institute of Technology professor Bradford Hager stated:

Hydro-Quebec's assertion that it has "wasted" enough water to provide 10 terawatt hours of electricity because it lacks transmission capacity is not backed by documentation. In contrast, a 2017 study of Hydro-Quebec's export capacity found that the limiting factor for total energy output is generation, not transmission capacity.² This makes sense – why would Hydro-Quebec pay the high cost of building dams and installing generators and not also provide adequate transmission capability?

Like any hydropower operation, Hydro-Quebec must deal with large variations in rainfall. It is expensive to build enough generation to handle peak flows, and then let the generators stand idle during years that are either dry or have normal rainfall. During unusually wet times, the water is "wasted" because it is more economical to spill water occasionally than to waste generation capacity most of the time. While it may be true that enough water to generate 10 terawatt hours of electricity has been spilled during times of unusually high water, that in no way shows that the rate and timing of this spillage could have been used to fulfill a contract for a more steady supply of power.³

Moreover, we know that Hydro-Quebec will provide no additional generation to supply electricity through the CMP corridor to Massachusetts. Hydro-Quebec stated specifically in its response to the Massachusetts Request for Proposal for the CMP contract that:

¹ Testimony of Dean W. Murphy (Brattle Group), Witness for the Massachusetts Attorney General. Petition for approval by the Department of Public Utilities of a long- term contract for procurement of Clean Energy Generation, pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c.169, as amended by St. 2016, c. 188, § 12, p. 15 of 27, Dec. 21, 2018. Accessed at <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/10195907>

² ESAI. 2017. Analysis of Greenhouse Gas Emissions Impacts: New Class I Resources vs. Existing Large Hydro. P.1. September. Accessed at <https://granitestatepowerlink.com/wp-content/uploads/2017/10/ESAI-GSPL-CO2-Analysis-9-13-17-FINAL.pdf>.

³ Bradford M. Hager. 2019. Commentary: Hydro-Quebec offers misleading claims about power's climate impact. *Portland Press Herald*. January 5. Accessed at <https://www.pressherald.com/2019/01/05/commentary-hydro-quebec-offers-misleading-claims-about-their-powers-climate-impact/>

This Proposal offers a viable, low cost Clean Energy Generation delivery project with limited risk, because (i) there is no construction risk related to the generation resources which are already in service... ***Because no new hydroelectric generation projects will be required, there will be no incremental environmental impacts from hydroelectric generation as a result of this Proposal.***⁴ (emphasis added)

Hydro-Quebec and CMP have provided no information to the PUC that changes this fact and have offered no evidence, plan, or commitment to ensure that the power that goes through CMP's transmission corridor will come from new generation.

The goal of LD 640 is to ensure that an independent analysis is conducted to determine what the greenhouse gas impacts of the CMP corridor would be. The PUC has not verified whether the project will provide net greenhouse gas benefits. A thorough and independent study can be completed in a timely fashion that will not introduce any delay for CMP. In a recent *Bangor Daily News* article, Maine Department of Environmental Protection spokesperson David Madore stated that DEP will not issue a permit until late October or early November.⁵ That means that there will be plenty of time for a consultant to conduct the study that LD 640 would require.

Please feel free to contact me with any questions at (207) 430-0116 or nbennett@nrcm.org.

Sincerely,



Nick Bennett
Staff Scientist

⁴ HRE Section 83D Request for Proposal Application Form. Pp. 4, 56. Accessible at <https://www.nrcm.org/wp-content/uploads/2019/01/HRERequestforProposal.pdf>.

⁵ Lori Viligra. 2019. How and when Maine will decide whether to approve permits for CMP's \$1B transmission line. *Bangor Daily News*. April 5. Accessible at: <https://bangordailynews.com/2019/04/05/business/how-and-when-maine-will-decide-whether-to-approve-permits-for-cmps-1b-transmission-line/>.

September 25, 2020

SENT VIA EMAIL AND FEDEX
TRK NO. 7716 2790 4726

Mark C. Draper, Chair
c/o Cynthia Bertocci, Executive Analyst
Board of Environmental Protection
17 State House Station
28 Tyson Drive
Augusta, ME 04333-0017

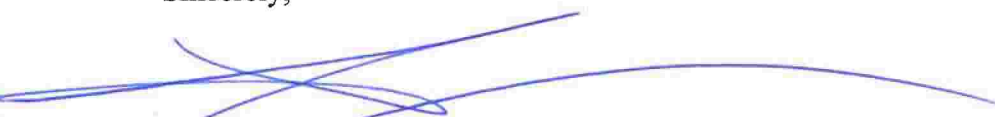
**RE: Central Maine Power Company Application for Site Location of
Development Act permit and Natural Resources Protection Act
permit for the New England Clean Energy Connect**

Dear Chair Draper and Members of the Board of Environmental Protection:

Pursuant to your letter dated August 26, 2020, and in accordance with the Superior Court's ruling, please find NextEra Energy Resources, LLC's Notice of Appeal of the Department's Order from May 11, 2020 which conditionally approved Central Maine Power Company's New England Clean Energy Connect project.

Thank you for your review.

Sincerely,



Joanna B. Tourangeau
Attorney for NextEra Energy Resources, LLC

JBT/mnw
Enclosures
DWM No. 24274-2

ecc: NECEC Service List dated September 22, 2020

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB- B-N
L-27625-2C- C-N
L-27625-VP- D-N
L-27625-IW- E-N

Hearing Requested

**NEXTERA ENERGY RESOURCES,
LLC’S APPEAL OF THE
DEPARTMENT’S ORDER
CONDITIONALLY APPROVING
NECEC**

NextEra Energy Resources, LLC (“NextEra”) hereby appeals to the Board of Environmental Protection (“Board”) the May 11, 2020 Order (“Order”) of the Maine Department of Environmental Protection (“Department”) which conditionally approved Central Maine Power Company’s (“CMP”) application for the New England Clean Energy Connect (“NECEC” or “Corridor”). Specifically, the Department’s Order should be reversed and remanded for failing to comply with Maine’s environmental statutes, specifically the Natural Resource Protection Act (“NRPA”) at 38 M.R.S. §§ 480-A – 480-JJ; the Site Location of Development Act (“Site Law”) at 38 M.R.S. §§ 481 – 490, Section 401 of the Federal Water Pollution Control Act (33 U.S.C. § 1341) (“WQC”); and Chapter 310 of the Department Rules.

As detailed below, CMP’s evidence and the Department’s Order fail to meet Maine’s environmental requirements thereby requiring *de novo* Board review. NextEra, therefore,

respectfully requests that the Board direct CMP to submit supplemental evidence and conduct a public hearing on the evidence as part of this review of NECEC and the Order.¹

BACKGROUND

On September 27, 2017, CMP applied to the Department pursuant to the Site Law, NRPA, and WQC for approvals necessary to construct and operate a 145-mile, 1,200 MW high-voltage direct current (“HVDC”) transmission line, from the Quebec-Maine border to a new converter station in Lewiston and related upgrades. Approximately 54 miles of the proposed transmission line route consists of an entirely new cleared transmission corridor through Maine’s North Woods. CMP also filed an application with the Land Use Planning Commission (“LUPC” or “Commission”) seeking qualification of portions of the NECEC as a special exception within the P-RR subdistrict as required by the Site Law. 38 M.R.S. § 489-A-1; 01-672 CMR Chp. 10 Sub-chapter II §10.23(I)(3).

In the May 11, 2020 Order, the Department erred in approving NECEC, because it does not comply with NRPA, the Site Law, and WQC. More specifically, the Department failed to require CMP to file, as part of its Application or through an amendment to its Application, alternate construction methodologies and routes to avoid NRPA impacts or to reduce Site Law environmental impacts or risks to public health or safety. In addition, the Department’s *sua sponte* imposition of a new corridor width and vegetation management conditions (which the Department finds necessary for SLODA and NRPA compliance), without any findings on whether the conditions are consistent with the federally mandated clearance requirements for such corridors was also in error.

¹ NextEra incorporates by reference all of the prefiled direct, rebuttal, surrebuttal, and hearing testimony of and comments on the Draft Department Order—and any attachments or exhibits thereto—by Groups 1, 2, 4, 6, 8, and 10, for review by the Board as part of its appellate review of the Order.

For these reasons, the Board must provide *de novo* review and hold a hearing on the NECEC. 06-096 CMR, Ch. 2 (hereinafter “Ch. 2”) § 24 (G).

DISCUSSION

I. **NextEra has Standing as an Aggrieved Party and as a Party to the Department Proceedings on the Order.**

NextEra petitioned to intervene as a party to the Department and LUPC proceedings resulting in the Order.² NextEra sought and obtained intervenor status as being directly and adversely impacted because the NECEC route would run directly through the proposed development area of the Moose Wind, LLC project, which is owned by a subsidiary of NextEra. NECEC would directly and adversely impact the ability of the Moose Wind project to access and interconnect to the transmission grid and the ISO-New England market, because NECEC is proposing to use HVDC technology which is not conducive to interconnecting Maine-based renewable generating projects.³ NextEra established in the Department proceedings that it would be substantially and directly affected by the proceeding as required for party status under 06-096 CMR Ch. 3 § 11(A).

NextEra participated in all proceedings, including submitting prefiled testimony, presenting an expert witness, cross-examining CMP’s expert witnesses and other intervenors’ witnesses, filing a post-hearing brief, and submitting comments on the March 13, 2020 Department Draft Order (“Draft Order”).⁴

² NextEra incorporates by reference its petition to intervene and the First Procedural Order granting NextEra intervenor status.

³ On appeal of the Maine Public Utilities Commission’s approval of NECEC, the Maine Supreme Judicial Court, over the objections Industrial Energy Consumer Group, concluded that NextEra had standing as a party who was adversely effected by the Commission’s decision. *NextEra Energy Resources, LLC v. Public Utilities Commission*, 2020 ME 34, ¶ 15.

⁴ NextEra incorporates by reference its submissions and the Department’s findings on the Draft Order.

On June 8, 2020, NextEra timely appealed the Order to the Maine Superior Court in Kennebec County, Docket No. KEN-AP-20-27, pursuant to Maine Rule of Civil Procedure 80C. By the Court's August 11, 2020 Order, Justice Murphy remanded NextEra's 80C appeal for further consideration by the Board.

NextEra is substantially and directly affected by the NECEC and the Order and is an aggrieved party with standing to pursue this appeal in compliance with Justice Murphy's order. *See* Ch. 2 § 24(B)(1); August 11, 2020 Order issued by Justice Murphy.

II. The Order Does Not Comply with Maine's Environmental Statutes and Regulations and is Not Supported by the Department Record.

The Order is unsupported by the NRPA required alternatives analysis, Site Law required alternatives analysis, nor any evidence regarding CMP's ability to comply with Order conditions and applicable federal law.

A. CMP's Alternatives Analysis Does Not Comply with NRPA because CMP Failed to Identify or Implement Practicable Alternatives that Would Not Defeat the Project Purpose and that Would Avoid or Minimize Impacts to Protected Natural Resources.

Pursuant to NRPA, CMP must establish that there is no "practicable alternative to the activity that would be less damaging to the environment." 06-096 CMR Ch. 310 (hereinafter "Ch. 310") § 5(A); 38 M.R.S. §§ 480-A *et seq.* To make this showing, "[t]he applicant shall provide an analysis of alternatives . . . to demonstrate that a practicable alternative does not exist." Ch. 310 § 5(A). NRPA defines "practicable" as "[a]vailable and feasible considering cost, existing technology and logistics⁵ based on the overall purpose of the project." Ch. 310 § 3(R).

⁵ Undergrounding is technically and logistically feasible. HVDC transmission lines similar to NECEC are routed underground or underwater. Prefiled testimony of Chris Russo Exhibit (hereinafter "Exhibit CR") 3 and CR-4. In fact, HVDC transmission lines of the same length or shorter than NECEC are routed underground or underwater, with only one exception in the world, Exhibit CR-3, which uses the HVDC line commutate converter technology, Exhibit CR-4, rather than the HVDC voltage-sourced conversion technology selected by CMP. In addition, CMP's HVDC vendor, Siemens, indicated that, between those

Therefore, the Department cannot allow impacts to protected natural resources if there are practicable alternatives that meet the project purpose. The NECEC's Project Purpose "is to deliver up to 1,200 MW of Clean Energy Generation from Quebec to the New England Control Areal via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers." CMP Application at 2-1.

CMP's NRPA application failed to comply with NRPA because it did not include an alternative analysis that included consideration of undergrounding the 54 miles of the greenfield, new transmission corridor from the Forks to the Canadian border. Order at 60. In fact, the application was devoid of any competent evidence regarding undergrounding this section of the NECEC or any other section. *Id.* In response to NextEra's identification of this deficiency, CMP submitted testimony attempting to rebut the use of undergrounding for the 54 miles of greenfield corridor. *Id.* at 66. CMP's rebuttal testimony, however, does not meet NRPA requirements for an alternatives analysis. An alternatives analysis, including consideration at the application stage of whether alternative routes and undergrounding would be less damaging to the environment as required by NRPA, was not conducted by CMP. Order at 72-74.

Further, the Order describes the significant impacts to natural resources (110 acres of impacted wetlands, 674 river/stream crossings including 471 with coldwater fisheries and 5 outstanding river segments, 15 acres of IWWH, 31.5 acres of SVP, 83.5 acres of DWA, 13 protected species, 15 rare plant species) (together, herein, these impacts are referred to as the "Preferred Route NRPA Impacts"). Order at 61-62. The Order also details careful review by the Maine Department of Inland Fisheries and Wildlife, Order at 62-64, and the Maine Natural Areas

projects that are already in-service or planned, only one out of 14 HVDC VSC transmission lines of any length are aboveground in the world, *id.*, and that one project involves DC and alternating current lines sharing overhead transmission towers. Exhibit CR-5 at 25.

Program, Order at 64-65, and the avoidance and mitigation measures required by those entities for the rare plants and species flowing from the Preferred Route NRPA Impacts. Yet, the Order and the record are silent regarding any CMP analysis of NRPA practicable alternatives (such as undergrounding) to the Preferred Route NRPA Impacts. Given that CMP performed no analysis of alternatives to the Preferred Route NRPA Impacts and that such analysis is required by NRPA, the Order is inconsistent with the NRPA. Ch. 310 § 5(A).

B. The Order Does Not Comply with the Site Law because It Does Not Establish That There are No Alternatives that would Lessen its Impact on the Environment or Risks to Public Health or Safety without Unreasonably Increasing Costs.

The Site Law requires the Department to determine whether there are alternatives to specific hazardous activities, including transmission lines such as NECEC. The Site Law specifies that “[t]he department shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline.” 38 M.R.S. § 487-A(4). “[T]he department... shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost.” *Id.* In this context, “[t]he department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.” *Id.*

The DEP’s Order does not properly address this Site Law standard. CMP made conclusory assertions in its post hearing brief that the NECEC complied with Section 487-A(4), claiming that “no proposed alternatives to the proposed location and character of the transmission line would lessen its impact on the environment or the risks it would engender to

the public health or safety, without unreasonably increasing its cost” and that it “did not conduct an alternative route analysis for....Segment 4...and ...Segment 5...because those components are proposed in existing CMP corridors and thus any route alternatives would occur in new corridors and would not lessen project impact on the environment.” CMP Post Hearing Brief at 20-21. The Order similarly summarily concluded that “[n]o further project modification or conditions regarding the transmission line’s location, character, width, or appearance, beyond what is required by this Order, are warranted, under 38 M.R.S. § 487-A(4) or otherwise, to lessen the transmission line’s impact on the environment or risk to public health or safety.” Order at 108.

This is the entirety of the record and the Department’s rationale supporting NECEC compliance with this section of the Site Law. Such conclusory allegations are insufficient to comply with the legal requirement that the Order’s findings and conclusions be based on substantial evidence. *See* 5 M.R.S. § 11007(4)(C)(5) (providing that a court may reverse an administrative decision if it is “[u]nsupported by substantial evidence on the whole record”); *Lewiston Daily Sun v. Unemployment Ins. Comm’n*, 1999 ME 90, ¶ 7, 733 A.2d 344, 346 (defining substantial evidence as “such relevant evidence as a reasonable mind might accept as adequate to support the resultant conclusion.”) (internal quotes omitted); *Griswold v. Town of Denmark*, 2007 ME 93, ¶ 9, 927 A.2d 410, 414 (noting “[s]ubstantial evidence exists when a reasonable mind would rely on that evidence as sufficient support for a conclusion.”) (internal quotes omitted).

C. The Department erred Ordering of a Narrower Transmission Corridor than that proposed by CMP without any consideration whether such a can be constructed and operated consistent with federal mandates on transmission clearance.

The Department Order acknowledges that NECEC will have substantial impacts, including specific and substantial impacts on the new 53.5 mile corridor that runs from the

Maine-Québec border to The Forks. To address the impacts, the Department, conditioned approval on the following:

1. The width of the cleared corridor in Segment 1 must be reduced from 150 feet to 54 feet at its widest point. (Order at 1, 4, 42-43, Appendix C)
2. The establishment of vegetation within the cleared area that can grow 10 feet.⁶ (Order at 4, 42-43, Appendix C)
3. The establishment of taller vegetation with a 35-foot height outside of the 54-foot cleared area. (Order at 4, 42-43, Appendix C)
4. Full canopies in specified areas. (Appendix C)

The Department's imposition of narrower corridors and more vegetation under the conductors as well as alongside the conductors was ordered without any record evidence showing whether these conditions are consistent with federal law, specifically North American Electric Reliability Corporation Reliability Standard FAC-003-4. It is axiomatic that the Department cannot impose a condition that is inconsistent with a federally approved and mandated NERC Reliability Standard. *See, cf, Hughes v. Talen Energy*, 136 S. Ct. 1288 (2016) (struck down Maryland law because it disregarded FERC's regulation of wholesale rates); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U. S. 354, 365, 370-373, 108 S. Ct. 2428, 101 L. Ed. 2d 322 (1988) (holding that an order regulating wholesale purchases fell within FERC's jurisdiction, and preempted contrary state action, even though it clearly affected retail prices); *Algonquin Gas Transmission, LLC v. Weymouth*, 365 F. Supp. 147 (D. Mass. 2019) (local environmental ordinance that conflicted with FERC's delegated authority was preempted). The Department, therefore, erred in not seeking evidence to support whether its conditions are enforceable or conflict with federal law.

⁶ Footnote 4 to the Order states that that 10 feet should not reach the conductor safety zone; however, the Order cites no evidence supporting this conclusion.

Even if, *arguendo*, NECEC can be constructed and not be in conflict with federal law, the Order effectively amends the NECEC project by narrowing the transmission corridor which directly impacts the pole height and configurations to ensure compliance with federal law. However, there is no evidence in the record establishing the new pole heights, and, thus, no consideration of new pole heights in light of the Department's criteria. Put simply, the Order is legally defective as it orders the narrowing of corridors with no understanding of the consequences to CMP's ability to comply with federal law or impact on NECEC's poles.

D. NextEra Respectfully Requests that the Board Hold a Public Hearing and Accept Supplemental Evidence.

On appeal, the Board is required to conduct a *de novo* review of the record in this matter. 38 M.R.S. § 341-D(4)(A) ("The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner."). As part of its *de novo* review, the Board is authorized to conduct public hearings and NextEra specifically requests that it do so pursuant to Chapter 2, Section 24 of the Department's Rules.

As discussed above, the Department record and the Order contain no:

- NRPA compliant alternatives analysis;
- Evidence regarding compliance with the Site Law's special restrictions for hazardous activities; and
- Evidence regarding the narrowed corridor, altered pole heights, and vegetation management practices required in the Order including:
 - Whether the new pole and conductor designs required to comply with the Order will also comply with NERC FAC-003-4 under all proposed conditions, including (a) the narrowing of the corridor in certain areas to 54 feet and (b) the minimum conductor height (with max sag and blowout) of 60 feet needed for the deer travel corridor management requirements?

- What are the current and proposed tree species present in the areas where the proposed conditions in the Order proposed narrowed corridors, and are their growth rates consistent with the ability to comply with NERC FAC-003-4?
- Will LIDAR be employed at any location with a fully maintained canopy to ensure compliance with NERC FAC-003-4? and
- What will be used to accurately measure clearance distance between a conductor and vegetation in order to ensure compliance with NERC FAC-003-4, given the undergrowth conditions, and narrowing of the corridor?

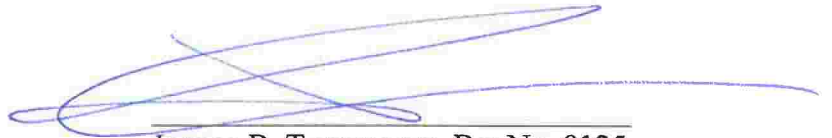
A hearing on evidence regarding these topics is warranted under Ch. 2 Section 7(B) of the Department's Rules because there will be "credible conflicting technical information regarding a licensing criterion" that will assist the Board in understanding the evidence.

Consistent with NextEra's comments on the March 13, 2020 draft order and comments herein, NextEra requests that the Board direct CMP submit the above evidence and that the evidence be subject to a public hearing.

CONCLUSION AND REMEDY

For the foregoing reasons, NextEra respectfully requests *de novo* Board review through which the Board will take, review, and consider all the evidence necessary to address the above discussed issues to ensure NECEC compliance with NRPA the Site Law, WQC, and Department Rules. NextEra respectfully requests that this Board review include a public hearing pursuant to Ch. 2 § 24 (G).

Dated: September 25, 2020



Joanna B. Tourangeau, Bar No. 9125

Emily T. Howe. Bar No. 5777

Drummond Woodsum

84 Marginal Way, Suite 600

Portland, Maine 04101

(207) 772-1941

jtouangeau@dwmlaw.com

ehowe@dwmlaw.com

Counsel to NextEra Energy Resources, LLC

THIS PAGE INTENTIONALLY LEFT BLANK

public hearing and consider supplemental evidence in reviewing the Order on appeal.¹ In doing so as shown below, the Board will find that the adverse impacts to the environment are unreasonable and therefore do not comply with Natural Resources Protection Act (“NRPA”) or the Site Location of Development Law (“Site Law”). Alternatively, if the Board grants Natural Resources Council of Maine’s (“NRCM”) request to vacate the Order and exercise original jurisdiction over the NECEC application, Petitioners request participation as interested parties.

BACKGROUND

On September 27, 2017, CMP submitted its application to the Department for a NRPA permit pursuant to 38 M.R.S. §§ 480-A – 480-JJ and a Site Law permit pursuant to 38 M.R.S. §§ 481–490 for its proposed NECEC project. CMP’s proposal included new construction and/or expansion of a 145.4 miles-long, 320 kilovolt (kV) High Voltage Direct Current transmission line in a corridor running from the Canadian border in Beattie Township to a new substation in the Town of Lewiston, with associated substations, poles and other structures.

The first portion of the proposed line, Segment 1, would cut a new swath within a 150² foot wide by 53.1 mile corridor through the unfragmented forest region of north western Maine extending from the Quebec, Canada border in Beattie Township to Moxie Gore. Segment 1 is entirely within townships and plantations served by the LUPC. Segment 2 would be approximately 21.9 miles. LUPC jurisdiction extends into this Segment with The Forks Plantation and Bald Mountain Township.

¹ West Forks Plantation, et al. incorporates by reference all of the prefiled direct, rebuttal, surrebuttal, and hearing testimony of and comments on the Draft Department Order—and any attachments or exhibits thereto—by Groups 1, 2, 4, 6, 8, and 10, for review by the Board as part of its appellate review of the Order.

² The Order limited the width of the corridor in Segment 1 to 54 feet. However, the application and design called for a 150 foot wide cleared corridor within a 300 foot wide right of way. Absent further limiting language and constrictions in the Order, CMP is free to seek expansion of that 54 foot width at any time even before beginning construction.

On October 13, 2017, the Department accepted CMP's application as complete for processing and then decided to hold public hearings on a limited number of topics: Scenic Character and Existing Uses, Wildlife Habitat and Fisheries, Alternatives Analysis, and Compensation and Mitigation. Over the two years the DEP and LUPC reviewed the project, they held joint public hearings in a mere six days before the DEP and only one day before the LUPC, decided numerous motions, heard witnesses, and accepted evidence about the NECEC on those limited topics. Before, during, and after the hearings, CMP made changes to the Project without adequate review of the potential environmental and/or visual impact of those changes.

On June 8, 2020, Petitioners initiated a Rule 80C appeal in Somerset Superior Court. On that same day, NextEra Energy Resources, LLC ("NextEra") also filed a Rule 80C appeal in Kennebec Superior Court requesting review of the same final agency action: the Commissioner of the Department of Environmental Protection's ("Respondent" or "DEP") licensing decision granting a permit to construct the NECEC transmission line. On June 10, 2020, Natural Resources Council of Maine ("NRCM") filed an administrative appeal to the Board of Environmental Protection ("BEP" or "the Board"). All three appeals were timely and appropriately filed in each respective venue. All deadlines for filing appeals of this final agency action have now passed.

On August 11, 2020, the Superior Court issued an Order (the "Combined Order") consolidating the two Rule 80C appeals and remanding to the Board for review along with NRCM's appeal. The Superior Court issued a further Order on August 26, 2020 ("Clarifying Order") clarifying that its Combined Order was intended to allow West Forks Plantation, et al. to participate fully in the pending appeal before the Board. Accordingly, this filing supplements

Petitioners' Superior Court filing, requests a hearing and requests that the Board accept additional evidence for all of the reasons set forth below.

DISCUSSION

This appeal follows in six sections. As an initial matter, Petitioners reiterate their standing to participate in this appeal. This Appeal then raises five major issues with the Order issued by the Department on NECEC. First, the forest fragmentation caused by the NECEC is unreasonable, even after considering the mitigation included in the Order by the Department. Second, the Order improperly altered the Project Purpose and therefore failed to consider undergrounding as a viable alternative in light of the original Purpose. Third, the Order fails to consider the significant evidence already in the record on forest fragmentation and wildlife corridors and habitat, the lack of evidence on the visual impact of a tapered corridor, and the insufficiency of evidence supporting mitigation by preservation of other land. Fourth, CMP does not have sufficient right, title, or interest in the NECEC. Finally, approval without evidence supporting a feasible Decommissioning Plan, including evidence that environmental damage can be restored and assurance of CMP's financial capacity to properly decommission, fails to meet NRPA standards.

As an initial matter, Petitioners have standing as an aggrieved party and as a party to Department proceedings on the Order, as affirmed by the clarification of the Superior Court. Petitioners include individual residents of Segment 1 of the proposed NECEC project, local citizens' groups, local nonprofits, local businesses, and a local township and town. All Petitioners will be specifically negatively impacted by the NECEC cutting through the local landscape because of impact to tourism, local businesses, ecosystem services, and property

values. The Petitioners are an aggrieved party with standing to participate in this appeal. See 06-096 CMR Ch. 2 § 24(B)(1). In addition, the Superior Court issued its Clarifying Order making it clear that Petitioners are allowed to participate in NRCM's appeal to the Board.

Each of the Petitioners sought to intervene as a party in the Department and proceedings and were granted intervenor status. Each of their respective interests were sufficiently established and now give them standing to appeal. See attached Appendix WF- B, M.R.C.P. 80C Petition for Review and Petitioners' filings with the DEP seeking status as intervenors.

I. The Forest Fragmentation Caused by NECEC is Unreasonable, Even After Mitigating Conditions.

CMP was required to prove that the NECEC will not result in unreasonable adverse impacts to significant wildlife habitat, freshwater wetland plant habitat, or threatened or endangered plant habitat. 38 M.R.S. § 480-D(3); 38 M.R.S. § 484(3); 06-096 CMR Chs. 310, 335, and 375.

Petitioners have maintained throughout the agency process that the 145-mile, 150-foot wide transmission corridor should not be permitted. The DEP Commissioner's decision to conditionally grant the permits was unreasonable, unjust, and/or unlawful in light of the evidence in the record. The first 53.1 miles slicing through Maine's western mountains, unfragmented forest, and exceptional brook trout streams and across the Kennebec Gorge will adversely affect Maine's natural resources and wildlife habitat. NECEC will unreasonably and irreparably cause ecological damage to Maine's landscape and environment.

As the Order correctly understood from the evidence, Segment 1 is an enormously important area now and even more so with climate change:

[T]his area is part of a largely unfragmented forest block that is more than 500,000 acres, which itself is part of an even larger area that is one of the world's last remaining contiguous temperate broadleaf-mixed forests. The western Maine region supports exceptional biodiversity and is expected to be especially effective

at maintaining biodiversity as the climate changes. These qualities make the area unique and important for wildlife.

Within this area there also is an extensive network of land management roads and some residential camp and other development. Forest management is the predominant activity. Several witnesses testified the existing landscape is a mosaic of various aged forest, ranging from mature forest to recently harvested areas. The mosaic changes over time as harvested areas mature and mature areas are harvested. Although the area is not completely undeveloped and is subject to active timber management, a transmission line corridor in the western Maine area where Segment 1 is proposed could contribute to habitat fragmentation and have unreasonable adverse impacts on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat. Fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches.

Order at 75–76. The Order also points out that even CMP acknowledged in its Application the negative impacts a transmission corridor will have on wildlife habitat and species:

CMP acknowledged in its Site Law permit application: “Transmission line corridors present potential direct impacts, as they may affect species movement, dispersal, density, nesting success and/or survival. . . . For the undeveloped corridor of Segment 1, impact may include fragmentation and creation of new linear edges. . . . Habitat conversion along transmission line corridors results in a loss of habitat types which, in turn, may adversely impact species that are reliant on the original habitat types.”

Order at 76, quoting Site Law Application, pg 7-23.

Evidence and witness testimony in the record shows that NECEC will fragment the largest contiguous forest east of the Mississippi into smaller pieces with its wide cleared corridor. The record supports that such fragmentation cannot be buffered from the existing recreational uses and natural resources within the P-RR subdistricts. There is also no evidence in the record to support the Commissioner’s conclusion that a narrower 54-foot-wide corridor will not create the same undue and unreasonable ecological and environmental impacts created by forest fragmentation that an otherwise 150-foot-wide cleared corridor would create. A narrower footprint may reduce some impacts, but there is no evidence it will effectively do anything to

avoid the permanent and devastating effects on habit of an umbrella species like the Pine Marten. See Appendix WF-C, Simons-Legaard Supplemental Testimony.

The mitigation conditionally approved by the DEP, including conservation of 40,000 acres of land elsewhere (but not in an identified location), tapering the height of vegetation in the corridor, and conservation of some over-brook canopy, does not fix the problem. In essence, the Commissioner's mitigation measures plays whack-a-mole: mitigation of an adverse impact to one environmental effect increases the adverse impact to another environmental impact. Raising the pole height in some areas allows for higher vegetation, ostensibly to protect brook trout habitat, but then taller pole heights increase the visual impact on scenic resources.

The DEP Commissioner's decision to conditionally approve the NECEC without changing the route to avoid forest fragmentation and visual impact was unreasonable and unjust in the light of the record. NECEC will unreasonably interfere with existing scenic and aesthetic uses. Evidence and witness testimony in the record shows that, especially in Segment 1 of the proposed project, the corridor will impact the Appalachian Trail, several scenic roads, unfragmented forest, ponds and rivers, and local residents. The mitigation conditionally approved by the DEP for visual impact of the corridor also is not reasonable based on the evidence in the record.

II. The Order improperly altered the Project Purpose and therefore failed to consider undergrounding as a viable alternative in light of the original Purpose.

The Order misstates the Project Purpose CMP submitted for the NECEC and then wrongly determined undergrounding was not a practicable alternative. The NECEC's Project Purpose "is to deliver up to 1,200 MW of Clean Energy Generation from Quebec to the New England Control Area via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers." CMP Application at 2-1. Notably, the Order deletes the last clause of

CMP's statement of the NECEC's Project Purpose—"at the lowest cost to ratepayers." See Order at 58. This changes the purpose set by the applicant. See Ch. 310 § 9(A). This is a significant error.

The deleted language is directly relevant to the cost criteria of whether an alternative is practicable. The Order concludes that undergrounding the entirety of Segment 1 is not a practicable alternative due, in part, to the additional costs, Order at 73-75, despite CMP testimony that ratepayers will not bear any of the costs of the NECEC. Hearing Transcript Day 1 ("Tr.") 270; 17-22.

Because the NECEC Project Purpose includes "at the lowest cost to ratepayers" and CMP testified that no NECEC costs would be passed to ratepayers, the Order could not properly include other costs in balancing the practicability of alternatives. The assessment of practicable alternatives is limited to those that are "[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project." Ch. 310 § 3(R) (emphasis added). None of the costs cited in the Order are related to the lowest cost to ratepayers and were improperly considered by the Department.

Even if the Order did not inappropriately revise the NECEC Project Purpose in order to consider costs outside the NECEC Project Purpose, the Department record is clear that undergrounding costs are not unreasonable. CMP did not provide any assessment of the costs of undergrounding to avoid any individual Preferred Route NRPA Impacts. Without that evidence, it is impossible to determine the practicability of the undergrounding alternative in compliance with NRPA. Second, CMP testified that its NECEC budget has a contingency of at least 15% of the total project cost (\$150 million). Tr. Day 6, 389:1-2, 15-18. This is significantly more than the estimated cost of significant undergrounding, supported by evidence in the record, as \$43,

\$13, \$28, and \$30 million estimated costs in different sections. See Tr. Day 6, 394: 10-25, 395:1-4, 395: 5-10. The record is clear that undergrounding can be a practicable alternative to individual or aggregate Preferred Route NRPA Impacts. CMP simply declined to comply with NRPA and the Order declined to address that failure. See Order at 2, 74, 83, 107.

Undergrounding is technically and logistically feasible and bears no cost to ratepayers. Thus, it is a practicable alternative to the NECEC and to all Preferred Route NRPA Impacts. Failure to require consideration of this alternative to the Preferred Route NRPA Impacts defies NRPA. For these reasons, the Board must review the NECEC *de novo* and take supplemental evidence at a hearing to address these Order issues on appeal.

III. The Department's Order Disregarded the Clear Testimony and Evidence of NECEC's Impact on the Environment in Violation of NRPA and Site Law and Made Conclusions Unsupported by Any Evidence in the Record

A. NECEC will cause unreasonable environmental and ecological impacts due to forest fragmentation.

The Department's May 11, 2020 Order makes reference to testimony and evidence provided to it by Petitioners and others related to forest fragmentation but reached conclusions contrary to and unsupported by substantial evidence of direct and irreparable ecological harm to wildlife habitat for various species including umbrella species such as the Pine Marten. See WF Ex 1 of Petitioners' Motion for Stay of Agency Decision and Appeal of Commissioner Denial of Application for Stay dated September 25, 2020, Appendix WF-D, David Publicover Testimony and Appendix WF-E, Roger Merchant Response to Dr. Erin Simons-Legaard Testimony. The Order does not meaningfully analyze or discuss the evidence before it. The Order acknowledges that Group 1 witness Janet S. McMahon, Groups 2 & 10 (Petitioners - West Forks Plantation, et al.) witness Roger Merchant, and Group 4 witness David Publicover testified about the importance of unfragmented habitat and the effect of that permanent fragmentation on the

ecological diversity in Maine. See Order, at 69. The Order notes that McMahon and Merchant stated that “[t]he transmission corridor would represent a permanent fragmenting feature in the landscape.” Id. The Order also acknowledges testimony on forest fragmentation by additional witnesses from Intervenor Group 6, including Dr. Malcolm Hunter, Jr., Rob Wood, Andy Cutko, Bryan Emerson, and Dr. Erin Simons-Legaard, including detailed testimony about what mitigation would be necessary to protect the umbrella species, the Pine Marten. See Order, at 70. These witnesses also testified about the insufficiency of the proposed mitigation and compensation to “address the cumulative impacts of the full array of Maine’s wildlife.” Order, at 70.

The Order fails to meaningfully discuss and apply the testimony of witnesses on forest fragmentation. After outlining the testimony provided by these witnesses, the Order fails to sufficiently address “forest fragmentation” or the testimony of these witnesses. For example, when the Order discusses the alternatives, including burying the transmission line that would avoid forest fragmentation to some degree, the DEP concludes that “the selected above ground alternative and associated substation improvements are the least environmentally damaging practicable alternatives” without any discussion about forest fragmentation. Order, at 75. The Order continues, “The Department finds no further project modification or conditions regarding the transmission line’s location, character, width, or appearance, beyond what is required by this Order, are warranted, under 38 M.R.S. § 487-A(4) or otherwise, to lessen the transmission line’s impact” without discussing the witnesses’ testimony on forest fragmentation. Id. This shows that the Order did not sufficiently address the witnesses’ testimony on forest fragmentation because it was not addressed when directly implicated.

B. Proposed conditions on NECEC will not alleviate the permanent and unreasonable negative impacts to wildlife and wildlife habitat.

When the Order does address what it deems to be suitable mitigation of fragmentation to protect wildlife and habitat, it first cites to expert witness testimony but then ignores or mischaracterizes the testimony. For example, the Order described Simons-Legaard's testimony for pine marten habitat as "home ranges typically include areas with less than 30 percent unsuitable habitat." Order, at 77. Despite recognizing that Simons-Legaard testified that pine marten "generally avoid large forest openings where they are vulnerable to predators . . . [and] they do not prefer cleared areas", the Order deems cutting a new corridor through Segment 1 to not be unreasonable. Id. This is in direct contradiction of Simon-Legaard's actual testimony. Similarly, the Order discusses deer habitat and travel corridors, but does not acknowledge that the cutting of the corridor will disrupt smaller species like pine marten, even with vegetative tapering.

The Order arrives at the conclusion that CMP in its initial proposal did not provide for adequate protection for wildlife and that as proposed, habitat fragmentation and impact on habitat connectivity "was an unreasonable impact on wildlife." Order, at 76. The Order then lists mitigation measures including narrowing of the corridor width and tapering of the vegetation. This standard applied in the Order appears to be that the original proposal was unacceptable, but because the proposal has been improved over the original, the slightly-improved wildlife impacts become reasonable by virtue of that slight improvement. The evidence simply does not support the mitigation as being sufficient. At best this would be an experiment to see whether pine marten and other species of animals and plants can survive. At this juncture with climate change impacts escalating worldwide, can we risk running such an experiment in one of the world's last remaining contiguous broadleaf-mixed forests? All for the

benefit of a profit making venture? The answer must be a resounding no and the Department's Order vacated.

C. Tapered vegetation as mitigation of visual impact is not supported by the evidence and does not comply with Site Law.

Moreover, the Order states that the tapering of vegetation is sufficient to minimize adverse impacts to viewsheds including Rock Pond and Coburn Mountain, "making it much less prominent and improving compatibility with the landscape." Order, at 45. But, in requiring tapering, pole heights will be increased. At a minimum, a full VIA with narrowed corridor, tapered vegetation in full leaf-off conditions would begin to show how this approach might impact the scenic resources and should be required as additional evidence. There is scant evidence in the record concerning the impact of the tapered corridor and increased pole heights on the visual impact on nearby scenic resources. It is unreasonable to approve this project without such evidence being entered into the record, analyzed by the Department, and addressed in the Order.

D. Conservation of unidentified lands fails to mitigate the destruction of the largest contiguous broad-leaf forest east of the Mississippi and perhaps in the world.

The Order then discussed mitigation of the impacts on the to-be-fragmented lands by preserving unidentified lands elsewhere. When discussing mitigation through preservation of other lands, the discussion focused on the reasonableness of the ratio of impacted areas to preserved areas elsewhere, and only uses the Department's common practice to justify a low ratio. Order, at 80–81. It does not address the severity of fragmentation or the witness testimony on the actual impacts on wildlife and ecology.

The Department accepted that mitigation in the form of preserving unknown and unidentified forest land elsewhere in Maine was sufficient, without discussing how or why this is

sufficient in the light of the provided evidence and testimony. Again, the Order ignores significant testimony in the record. In fact, the Order recognized that Reardon, a witness who testified on the impact of NECEC on brook trout habitat, stated that certain identified compensation parcels offered to mitigate impacts “do not contain the same quality habitat as the area being impacted by the project.” Order, at 69. The Order issued the permit without identifying the mitigation land. See Order, at 81. The Order states that “Within 18 months of the date of this Order, CMP must develop and submit to the Department for review and approval a plan . . . to permanently conserve 40,000 acres in the vicinity of Segment 1.” Order, at 81. This cannot be sufficient mitigation and does not take into account the specific testimony of the witnesses on forest fragmentation and provides no opportunity for those witnesses (or any others) to provide testimony and evidence on the sufficiency of specific mitigation parcels to mitigate the impact of this project. There is no evidence in the record about the environmental and ecological values of the preserved lands because it is impossible to do so without those lands having been identified. Without identifying the parcels before approval, the Order deprives the public and the intervenors of the opportunity to provide analysis and testimony on the sufficiency of the specific parcels. There is also no evidence in the record that any tract of land of the required size, comparable ecological value, and environmental state even exists and is available for preservation “in the vicinity of Segment 1.”

IV. CMP Does Not Have Sufficient Right, Title, or Interest in the NECEC.

The Department’s failure to adequately and independently assess the validity of CMP’s claim to Right, Title or Interest in all of the proposed corridor, was unreasonable and unjust. Without right, title, and interest at all times, CMP does not have the ability to legally apply for permits from the Department and/or Board. 06-096 CMR Ch. 2 § 11(D). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As noted in comments to the Department on the Draft Order, more than a year before issuance of that draft, CMP entered a Stipulation in Maine PUC Docket No. 2017-00232 (“CMP Stipulation”) agreeing that CMP will not construct, own or operate the NECEC. The CMP Stipulation requires CMP to transfer its interest in the NECEC, including underlying properties, to NECEC Transmission, LLC, which “is not a subsidiary of CMP.” CMP Stipulation at 16.

Chapter 2 of the Department’s Rules defines a transfer of ownership at Section 1(R) as:

a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock (or in the case of a limited liability corporation, of membership interests), or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns or operates the property, facility or structure remains the same.

The CMP Stipulation requirement that construction, operation and ownership of the NECEC will be by NECEC Transmission LLC is a transfer of ownership as defined by Chapter 2.

When there is a transfer of ownership, Section 21(C)(1) of Chapter 2 of the Department’s Rules requires that “written consent [by the Department] must be applied for no later than two weeks after any transfer of ownership of property subject to a license.” Given that CMP must comply with the CMP Stipulation and transfer NECEC to NECEC Transmission, LLC prior to the start of construction, the Order must be amended. See Ch. 2 § 11(D) (requiring that an applicant maintain and update right, title and interest at all times in the Department process).

Under the order of the PUC, CMP was required to transfer the NECEC assets to a newly-created entity, but CMP has never produced sufficient documentation of the creation of that entity and/or transfer of all NECEC assets to that entity. [REDACTED]

[REDACTED] As reported in the news media, (Portland Press Herald article, *Despite its opponents, CMP corridor project well underway*, dated March 8, 2020) CMP set up an entity called NECEC Transmission, LLC. The reported purpose of the new entity is to act as the developer for the Project but the record is completely devoid of any evidence to support this entity's Right, Title or Interest in *any* of the land in the Project area.

The failure to provide documentation of any transfer to a new entity, plus the inability of CMP to construct, own, and operate NECEC itself, invalidates the Department's findings on financial and technical ability. There is no record evidence of NECEC Transmission, LLC's financial and technical qualifications to construct, own, and operate the NECEC. Thus, the Order is flawed and the Board should take supplemental evidence in a hearing in order to address these issues and afford the parties an opportunity to comment on the information provided by the entity that will actually construct, own and operate the NECEC.

V. Approval without evidence supporting a feasible Decommissioning Plan, including evidence that environmental damage can be restored and assurance of CMP's financial capacity to properly decommission, fails to meet NRPA standards.

The Order imposes decommissioning requirements for the Segment 1 portion of the transmission line. Order, at 106. The Order sets out a benchmark trigger for when a decommissioning plan would need to be implemented and certain broad parameters for the scope

of the work. *Id.* However, the plan, including the financial assurance component, is not required before construction begins. The Order states: “The plan must be submitted within one year of the start of commercial operation of the project.” This fails to satisfy the financial capacity standard set forth in Chapter 373.

Under Chapter 373 of the Site Location and Development Act, the applicant must show it has the “financial capacity for *all* aspects of the development” and that “Evidence of financial capacity must be provided *prior* to a decision on an application” Ch. 373, 2 A (emphasis added). While prior proof of financial capacity is the overall standard, the Department may “defer a final finding on financial capacity by placing a condition on a permit that requires the permittee to provide final evidence of financial capacity *before the start of any site alterations.*” Chapter 373, § 2 A (emphasis supplied). Here, the Order would allow CMP to not only begin site alterations, but could conceivably complete the entire construction of the Segment 1 portion without any showing of financial capacity to take it down. The Department simply has no authority under the financial capacity standard to give CMP this kind of latitude.

Nor is there any evidence in the record to suggest that the Department can rely on CMP’s technical capabilities to dismantle the Segment 1 portion of the line, that design alterations may be required to enable deconstruction, or that it will effectively undo the environmental damage the Department seems willing to accept will occur from construction and installation. During the hearings, CMP asserted that this was not a permanent installation. On cross-examination, CMP admitted it did not have and had not submitted a decommissioning plan. See Appendix WF-F Hearing Day 1 Transcript 97, 134-139 and Hearing Day 2 AM 158-159. While the Order requires CMP to put their money where their proverbial mouth is by requiring CMP to eventually submit and eventually implement a decommissioning plan, the condition falls short.

A decommissioning plan requirement that leaves open so many questions must be assessed not after construction begins but before. It is unfair and unreasonable for CMP to effectively be able to construct a project of this size without the public having the opportunity to question it on its ability to fully restore the landscape to its current state (or better) after the project exhausts its usable life.

VI. Request for Additional Witnesses and/or Evidence

Further, for all of the reasons stated above, Petitioners request that CMP be required to produce a full VIA in leaf-off conditions reflecting the entire route with the narrowed corridor, tapered vegetation, and taller pole heights plus any additional evidence and/or testimony. Petitioners request that evidence be taken addressing the inadequacy of the Order's 40,000-acre conservation condition, including the insufficiency of conservation of unidentified land elsewhere. Additional evidence is further required to counter the Department's findings on the sufficiency of tapered vegetation conditions and sufficiency of the narrowing of the width of the corridor. Finally, Petitioners request that additional evidence from CMP be admitted addressing a) a complete decommissioning plan and its cost, b) how a decommissioning plan may alter the design, location, and structure of the transmission line and c) any rebuttal testimony and evidence Petitioners may decide to submit on this issue.

Petitioners also request the opportunity to cross-examine and/or produce rebuttal witnesses to rebut any and all additional testimony or evidence submitted by CMP to this proceeding.

CONCLUSION

The Order granting a permit to NECEC was unreasonable, unjust and unlawful. The conclusions of the Department in the Order show that the Department failed to consider significant evidence in the record about the impacts of forest fragmentation and disruption of wildlife habitats and corridors. It also ignores that there is no evidence that tapering the corridor will sufficiently mitigate environmental impacts of the corridor, no evidence in the record about the visual impacts of a tapered corridor with higher towers, no evidence in the record supporting the preservation of unidentified lands elsewhere is sufficient mitigation (or is possible at all), and no evidence in the record supporting a financially and technically feasible decommissioning plan that will restore the environmental and ecological values of Segment 1. Further, it ignores significant issues with CMP's right, title, and interest in NECEC. Finally, the failure of the Order to require a decommissioning plan before approval and/or construction of NECEC violates Chapter 373 of the Site Law, and deprives the people of Maine with adequate opportunity to examine the ability of CMP to sufficiently decommission NECEC. For all of these reasons, Petitioners request the Board vacate the Department's Order, hold hearings and take additional evidence and ultimately deny NECEC the permits and approvals received through the Order.

WHEREFORE, for all of the foregoing reasons, Petitioners respectfully request the Board hold a hearing, accept additional evidence and vacate the Department's Order.

Respectfully Submitted,

West Forks Plantation, Town of Caratunk,
Kennebec River Anglers, Maine Guide Service,
LLC, Hawks Nest Lodge, Ed Buzzell, Kathy
Barkley, Kim Lyman, Noah Hale, Eric Sherman,
Mike Pilsbury, Matt Wagner, Mandy Farrar and
Carrie Carpenter

By their attorneys,



Dated: September 25, 2020

Elizabeth A. Boepple, Esq. (Me. Bar No. 004422)
BCM ENVIRONMENTAL & LAND LAW, PLLC
2 Union St., Suite 402
Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB- B-N
L-27625-2C- C-N
L-27625-VP- D-N
L-27625-IW- E-N

APPENDIX A

**INDEX OF SUPPLEMENTAL
EVIDENCE SUBMITTED IN SUPPORT
OF WEST FORKS, ET AL’S APPEAL
OF DEPARTMENT’S MAY 11, 2020
ORDER**

Appendix¹	Document Date	Document Description	Location in Record/ Supplemental Evidence
WF-B	June 8, 2020	Petition for Review of Final Agency Action Pursuant to M.R. Civ. P. 80C	Supplemental Evidence
WF-C	May 1, 2019	Dr. Erin Simons-Legaard Supplemental Testimony	Supplemental Evidence
WF-D	February 22, 2019	David Publicover Testimony	Supplemental Evidence
WF-E	May 28, 2019	Roger Merchant Response to Dr. Erin Simons-Legaard Testimony	Supplemental Evidence
WF-F	April 1 and April 2, 2019	Hearing Transcripts Day 1 and 2 Excerpts	Supplemental Evidence

¹ West Forks Plantation, et al. incorporates by reference all of the prefiled direct, rebuttal, surrebuttal, and hearing testimony of and comments on the Draft Department Order—and any attachments or exhibits thereto—by Groups 1, 2, 4, 6, 8, and 10, for review by the Board as part of its appellate review of the Order.

WF Ex 1	February 28, 2019	Janet S. McMahon Testimony	Referenced in record of Petitioners' September 25, 2020 Motion for Stay of Agency Decision and Appeal of Commissioner Denial of Application for Stay
WF Ex 2	February 25, 2019	Malcolm L. Hunter Jr., PhD. Testimony	Referenced in record of Petitioners' September 25, 2020 Motion for Stay of Agency Decision and Appeal of Commissioner Denial of Application for Stay
WF Ex 3	March 15, 2019	Greg Caruso Rebuttal Testimony of Robert Myers, Larry Warren and Joseph Christopher	Referenced in record of Petitioners' September 25, 2020 Motion for Stay of Agency Decision and Appeal of Commissioner Denial of Application for Stay

THIS PAGE INTENTIONALLY LEFT BLANK



James T. Kilbreth
Admitted in ME

207.253.0555
jkilbreth@dwmlaw.com

84 Marginal Way, Suite 600
Portland, Maine 04101-2480
207.772.1941 Main
207.772.3627 Fax

By Email and Overnight Mail

January 4, 2021

Mark C. Draper, Chair
Board of Environmental Protection
17 State House Station
Augusta, Maine 04333

RE: Request to Vacate/Appeal of Order L-27625-26-K-T
Granting Partial Transfer of Permits to NECEC LLC

Dear Chair Draper:

Enclosed please find Natural Resources Council of Maine's request that the Board vacate Department Order L-27625-26-K-T granting the request to partially transfer permits to NECEC LLC, or, in the alternative, stay the Order during the pendency of this appeal. NRCM further requests that the Board hold a hearing in this matter.

Very Truly Yours,

A handwritten signature in black ink that reads "James T. Kilbreth".

James T. Kilbreth

cc: Service List (by email only)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NECEC TRANSMISSION LLC

NEW ENGLAND CLEAN ENERGY
CONNECT

L-27625-26-K-T

**REQUEST TO VACATE
DECEMBER 4, 2020
APPROVAL OF TRANSFER
APPLICATION**

HEARING REQUESTED

The Natural Resources Council of Maine (“NRCM”)¹ hereby requests that the Board vacate Acting Commissioner Loyzim’s (“Commissioner”) approval of NECEC Transmission LLC’s (“NECEC LLC” or “applicant”) application for a partial transfer (“Transfer Application” or “TA”).² Because the Transfer Application involves a project of statewide significance—the New England Clean Energy Connect transmission line (“NECEC”)—only the Board, not the Commissioner, has the authority to review and act on the Transfer Application, particularly while NRCM’s request that the Board vacate and assume original jurisdiction of the original permits remains pending before the Board.

¹ NRCM is an aggrieved party because its mission is protecting, restoring, and conserving Maine’s environment, now and for future generations. If the Department transfers certain of CMP’s permits to NECEC LLC, which is a necessary step forward toward building the NECEC transmission line, NRCM and its members will be harmed. Additionally, NRCM was a party to the proceedings before the Commissioner.

² In the alternative, NRCM appeals the December 4, 2020 Order (“Transfer Order”) pursuant to DEP Rule Ch. 2 § 24 and requests that the Board stay the Transfer Order during the pendency of this appeal.

Even assuming, *arguendo*, that the Commissioner had authority in these circumstances, which she did not, she should not have granted the Transfer Application. As NRCM argued to the Commissioner and will show before the Board, NECEC LLC does not have sufficient title, right, or interest (“TRI”) in the public reserved lands on which it plans to build the transmission line in Segment 1. Rather than adhering to the Department’s own rules regarding TRI, the Commissioner instead improperly deferred to the decision of a sister agency, the Bureau of Parks and Lands, to grant CMP leases of public reserved lands that violate both the Maine Constitution and statute.³ The Commissioner also incorrectly determined that NECEC LLC has the financial wherewithal to fund the project when NECEC LLC has made no such showing. The Board must assume original jurisdiction over the Transfer Application and deny it. Because the transfer application is inextricable from the underlying permits granted by the Department to CMP on May 11, 2020 (“Permit Order”), the Board should also consolidate its review of the Transfer Application with its review of the Permit Order.⁴

ARGUMENT

I. The Board Alone Can Consider Applications Relating to Projects of Statewide Significance

The Commissioner’s order granting the Transfer Application is invalid because the Board alone “*shall* assume jurisdiction over and decide” all license applications that relate to projects of statewide significance. 38 M.R.S. § 341-D; 06-96 CMR Ch. 2 § 17(C). While there is a pending

³ References to the “2014 Lease” and the “2020 Lease” refer to the leases issued by the Bureau of Parks and Land to CMP of public reserved lands in West Forks and Johnson Mountain in 2014 and 2020, respectively. The 2014 Lease is attached hereto as Exhibit 1. CMP attached the 2020 Lease to its Transfer Application at Attachment D and NRCM has not attached it again here.

⁴ In an October 27, 2020 Letter, Board Chair Draper declined to consolidate the Department’s review of the Transfer Application with pending appeals of the Permit Order as requested by NRCM. In light of the Commissioner’s Transfer Order, the Board should consolidate this appeal with the others because there now exists “administrative economy in consolidating appeals of related agency licensing decisions.” Ex. 4, Oct. 27, 2020 Letter at 2.

request that the Board vacate the Permit Order and assume original jurisdiction over the license applications, the Board's original jurisdiction must also extend to transfers or revisions of the Permit Order. CMP's proposed transmission line clearly meets the statutory criteria for such a project stated in 38 M.R.S. § 341-D(2):

1. First, the NECEC will have environmental or economic effects across many more than one municipality, territory, or county. It includes a 145.3-mile-long transmission line from Beattie Township to Lewiston, a 26.5 mile line from Windsor to Wiscasset, and multiple new or renovated converter stations or substations. Permit Order at 3; Ex. 7, Transfer Order at 1. The environmental impacts pursuant to the Natural Resources Protection Act and the Site Law are significant. Permit Order at 1.

2. Second, the NECEC involves an activity not previously permitted or licensed in the State—it is the first high-impact electric transmission line in Maine, as that term is defined in 35-A M.R.S. § 3131(4-A). Additionally, unlike other transmission line projects contemplated by the Department and the Land Use Planning Commission in the past, the NECEC does not meet any reliability need for Maine or connect a new generator within Maine to the grid, but instead proposes a massive corridor as a for-profit pass through primarily for the benefit of foreign jurisdictions. This type of activity is so unusual in the State of Maine that the Public Utilities Commission required that CMP not own or operate the transmission line, which is the very reason that CMP and NECEC LLC have filed this Transfer Application.

3. Third, the NECEC has come under significant public scrutiny, as evidenced by, among other things, the number of intervenors in, and the length of the process before, the Department in connection with CMP's environmental permit applications, [REDACTED], legislative initiatives (L.D. 1893, An Act To Require a Lease of Public Lands To Be Based on

Reasonable Market Value and To Require Approval of Such Leases for Commercial Purposes), and various state and federal court cases aimed at stopping it.

4. Fourth, as described above, the project is located across multiple municipalities and counties. *See* Permit Order at 3.

The NECEC is a project of statewide significance, and the Board alone can consider the Transfer Application. 38 M.R.S. § 341-D(2)(E-H); 06-96 CMR Ch. 2 § 17(C)(1-4). The Commissioner did not have the authority to review or act on the Transfer Application, and she erred when she declined to request that the Board assume jurisdiction. *See* 38 M.R.S. § 344(2-A) (“the commissioner **shall decide** as expeditiously as possible if an application meets 3 of the 4 criteria set forth in section 341-D, subsection 2 and **shall request** that the board assume jurisdiction of that application . . .”) (emphasis added). This conclusion will be borne out by testimony before the Board, where NRCM plans to offer the testimony of former Maine Senator Thomas Saviello regarding the history and purpose of this legislation.

The Commissioner’s November 13, 2020 letter determining that the Transfer Application does not rise to the level of statewide significance is a dodge. *See* Ex. 6, November 13, 2020 Letter at 3. The thrust of the Commissioner’s argument is that the Transfer Application is purely administrative and does not implicate the underlying project. *See id.* But it is impossible and improper to assess the Transfer Application in a vacuum, divorced from its underlying purpose. NECEC LLC submitted the Transfer Application for the *sole reason* of obtaining DEP permits granted to CMP to construct the largest new transmission line in Maine’s history, a statutorily defined “high impact electric transmission line” that has a purpose and financial structure that is so unusual in Maine that the PUC determined it could not be owned or operated by CMP. As outlined above, the NECEC is the very definition of a project of statewide significance, and the

Commissioner's arguments to the contrary defy both a plain reading of the statute and logic. The Board must not countenance the Commissioner's failure to comply with the statutory mandate to refer all projects of statewide significance to the Board. Where, as here, the Commissioner did not have the authority to review or approve the Transfer Application, the Commissioner's Order is invalid and the Board must assert its original jurisdiction and consider the Application anew.

II. NECEC LLC Does Not Have Sufficient TRI

In granting the Transfer Application based on BPL's unlawful decision to lease public reserved lands in Johnson Mountain and West Forks to CMP, the Commissioner compounded the error of her predecessor. *See* Ex. 7, Transfer Order at 2; Permit Order at 8. Department Rule 11(D) states that an "applicant must maintain sufficient title, right or interest throughout the entire application processing period." CMP based its TRI throughout the permitting process on the illegal and invalid 2014 Lease, which BPL issued to CMP before CMP obtained the requisite Certificate of Public Convenience and Necessity ("CPCN"). 35-A M.R.S. § 3132 states: "Public lands. The State, any agency or authority of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land... to any person for the purpose of constructing a transmission line subject to this section, unless the person **has received** a certificate of public convenience and necessity from the commission pursuant to this section" (emphasis added). CMP and NECEC LLC now attempt an end run around this issue via the 2020 Lease, but the Department must not countenance such gamesmanship. The 2020 Lease was not part of CMP's original permit application, and CMP did not have sufficient TRI during the permitting process. Where, as here, the applicant did not have TRI during the permitting process, a transfer to another entity is inappropriate and should be denied.

Moreover, where an applicant bases its TRI on a lease, it “must be of sufficient duration and terms, *as determined by the Department*, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care, where required.” 06-96 CMR Ch. 2 § 11(D)(2) (emphasis added). Here, the Commissioner “accept[ed] the decision of [DEP’s] sister agency to enter into the lease and the fully executed [2020] lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project.” Ex. 7, Transfer Order at 2. But no sister agency ever determined whether the 2020 Lease is of sufficient duration and terms to accommodate the NECEC as approved in the Permit Order. Moreover, the Department itself must determine the sufficiency of the applicant’s TRI, and the Commissioner’s reliance on BPL violates Department rules. Had the Commissioner independently analyzed NECEC LLC’s TRI, as she was required to do, her review would have revealed that the 2020 Lease on which NECEC LLC bases its TRI for the public reserved lands is unlawful and invalid, and even if valid as a lease of the land, is facially insufficient to meet the requirements of DEP Rule Ch. 2 § 11(D)(2). *See* Transfer Application at 166 (2020 Lease).⁵ The 2020 Lease is currently the subject of litigation in *Black et al. v. Cutko et al.*, and BPL issued it (and the 2014 Lease before it) without first obtaining the constitutionally mandated 2/3 vote of the State Legislature for any substantial alteration to public reserved lands. Me. Const. art. IX, § 23; 12 M.R.S. § 598-A. Without this legislative approval, the 2020 Lease has no legal force, and the Department cannot rely on it as proof of TRI.

Furthermore, the Commissioner failed to assess whether the 2020 Lease is “of sufficient *duration*” to allow for the construction, use, and ultimate decommissioning of the project. CMR Ch. 2 § 11(D)(2) (emphasis added). Here, the term of the 2020 Lease is 25 years and is set to

⁵ The Transfer Application as a whole is a 485 page PDF with numerous exhibits and sub-exhibits. The exhibits are not themselves paginated, and NRCM cites herein to the relevant PDF page for ease of reference.

expire on March 31, 2045. Transfer Application at 166. However, the NECEC involves Transmission Service Agreements (“TSAs”) that extend for 40 years, and the Permit Order expressly mandates certain decommissioning requirements after those contracts expire. Permit Order at 106. The Transfer Application must demonstrate TRI sufficient for that entire duration, yet—unlike the 2014 Lease—the 2020 Lease does not indicate that it may be renewed. Furthermore the Permit Order itself indicates that CMP’s “current contracts are valid for a period of 20 years but may be renewed.” Permit Order at 106. If they are renewed, CMP and NECEC LLC will not have the requisite ongoing TRI required for the duration of the project.

The 2020 Lease also mandates compliance with the CPCN, *see* Transfer Application at 167, which indicates that CMP’s Power Purchase Agreements with Massachusetts have a term of 20 years (Ex. 2, CPCN at 12, Figure II.1) and which is the term referenced by the Department in the Permit Order (at 106). However, the actual life of the project is forty years. *See, e.g.*, Ex. 2, CPCN at 12 (expected life of NECEC is 40 years), 75-76. The CPCN identifies seven TSAs, including four contracts longer than the 20 years listed in the Permit Order. There are three TSAs “between CMP and HQUS for years 21-40 of the expected life of the NECEC line” and one “40-year agreement between CMP and HQUS.” Ex. 2, CPCN at 12. The Transfer Application likewise indicates that all seven of these TSAs, including the four that extend for forty years, are to be transferred to NECEC LLC. Transfer Application at 15, n. 1 (Sept. 24, 2020 Letter from Howard Coon). Having deferred to the Public Utilities Commission’s determination’s regarding greenhouse gas emissions, *see* Permit Order at 105, the Department should credit the PUC’s determination that the NECEC has an expected life of 40 years and should have demanded sufficient proof of TRI for that 40 year period. Where, as here, any “closure and post closure care” required by the Permit Order (at 106) will necessarily be 40 or more years in the future, after

expiration of the TSAs, the 25 year term of the 2020 Lease is facially too short to provide for “construction and reasonable use of the property, including reclamation, closure and post closure care.” 06-96 CMR Ch. 2 § 11(D)(2). Accordingly, even if the 2020 Lease were lawful and valid, which it is not, its 25 year term is of insufficient duration per Department Rule 11 and is therefore inadequate proof of TRI.

III. NECEC LLC Has Not Provided Sufficient Evidence of Its Capacity to Fund the Construction, Maintenance, and Removal of the Transmission Line

NECEC LLC has not provided sufficient evidence of technical and financial capacity and intent to comply with all terms and conditions of the Permit Order and satisfy all applicable statutory and regulatory criteria. 06-96 CMR Ch. 2 § 21(C)(1). Pursuant to the Permit Order, CMP and NECEC will have to decommission the transmission line in Segment 1 once it is out of service. Permit Order at 106. They must show “financial assurance for the decommissioning costs in the form of a decommissioning bond,” Permit Order at 106, yet NECEC LLC submitted no such proof.⁶ Attachment B to the Transfer Application is a September 24, 2020 Letter from Howard Coon, Vice-President & Treasurer of Avangrid, that lays out how Avangrid will purportedly fund NECEC LLC. The letter says NECEC LLC will have the financial capacity to cover “the construction and operation costs” of the transmission line, in addition to the “approved compensation work, including subsequent monitoring and corrective actions.” Mr. Coon’s letter is notably silent, however, as to the Permit Order’s decommissioning requirements and how NECEC LLC will pay to remove the transmission line from Segment 1 as required. The Commissioner likewise made no related findings, writing only “that the applicant has

⁶ Although the Permit Order requires CMP to submit this financial assurance as part of a decommissioning plan that must be submitted within one year of the start of commercial operation of the project,” Permit Order at 106, Department rules require not only that the transferee assume the responsibility to timely make that submission, but it must separately demonstrate at the time of the Transfer Application that it has the financial capacity to do so.

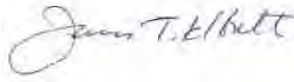
demonstrated adequate financial capacity to construct and operate the project.” Transfer Order at 3. In the absence of sufficient proof that NECEC LLC will in fact have the financial wherewithal to decommission the NECEC in Segment 1, the Department should not grant the Transfer Application.

CONCLUSION

For the foregoing reasons, NRCM respectfully requests that the Board assert its original jurisdiction over the Transfer Application and deny it. In the alternative, NRCM requests that the Board stay the Transfer Order during the pendency of this appeal. NRCM further respectfully requests that the Board consolidate its review of this matter with the pending appeals of the Department’s May 2020 Permit Order.

Dated at Portland, Maine
this 4th day of January 2021

/s/



James T. Kilbreth, Bar No. 2891
David M. Kallin, Bar No. 4558
Elizabeth C. Mooney, Bar No. 6438
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, Maine 04101-2480
Tel: (207) 772-1941
jkilbreth@dwmlaw.com
dkallin@dwmlaw.com
emooney@dwmlaw.com

*Attorneys for Natural Resources
Council of Maine*

**Exhibit List for NRCM's Request to Vacate or, in the Alternative,
Appeal of Order Transferring Permits to NECEC LLC**

- 1) 2014 Lease Between Bureau of Parks and Lands and CMP (not in Transfer Application record)
- 2) May 3, 2019 Certificate of Public Convenience and Necessity (not in Transfer Application record)
- 3) October 7, 2020 NRCM Request for Board Jurisdiction Over Transfer Application (in record)
- 4) October 27, 2020 Chair Ruling Regarding Consolidation of Transfer Application with Appeal (in record)
- 5) November 6, 2020 Letter from James Kilbreth to Acting Commissioner Loyzim re: Request for Board Jurisdiction (in record)
- 6) November 13, 2020 Letter from Acting Commissioner Loyzim to James Kilbreth (in record)
- 7) December 4, 2020 Transfer Order (in record)

EXHIBIT 1

TRANSMISSION LINE LEASE
BETWEEN
DEPARTMENT OF AGRICULTURE, CONSERVATION AND
FORESTRY
BUREAU OF PARKS AND LANDS
and CENTRAL MAINE POWER COMPANY

This Lease Agreement is made by and between the State of Maine, by the Bureau of Parks and Lands, Department of Agriculture, Conservation and Forestry (hereinafter called the "Lessor"), acting pursuant to the provisions of Title 12 M.R.S.A. §1852(4), and Central Maine Power Company, a Maine corporation with its principal place of business at 83 Edison Drive, Augusta, Maine (hereinafter called "Lessee"). For the considerations hereinafter set forth, the Lessor hereby leases to Lessee, and Lessee hereby takes from the Lessor, the non-exclusive use of that portion of the West Forks Plantation and Johnson Mountain Township (T2 R6 BKP WKR) Maine Public Reserved Lands in Somerset County, Maine described in Exhibit "A" and shown on Exhibit "B" attached hereto and incorporated herein, being a three hundred (300) foot wide by approximately one mile long transmission line corridor located on a portion of the aforementioned Maine Public Reserved Lands. The described transmission line corridor, together with the improvements now or hereafter to be placed thereon, is hereinafter referred to as the "Property" or "Premises," and is subject to the following terms and conditions:

1. Term:

- a. This lease shall be in effect from the date of execution of this instrument for a term of twenty-five (25) years and, at no less than 5 year intervals, the term of this lease may be extended by mutual agreement for additional years as will grant Lessee a remaining lease term totaling no more than twenty-five (25) years, so long as Lessee is in compliance with the conditions of this lease. Lessee shall not request a lease term extension any more often than once every five years. Notice of any lease extension shall be given to Lessor at least six (6) months prior to the expiration of any initial term or renewal period.
- b. Lessor reserves the right to terminate this Lease at any time during the term hereof to the extent permitted under the provisions contained in paragraph 13 Default.
- c. Lessee has the right to terminate this Lease upon at least ninety (90) days prior written notice to Lessor, or such lesser notice period as agreed to by Lessor in writing.
- d. Any notice required by this paragraph, whether by Lessee or Lessor, shall be sent postage pre-paid, registered or certified mail, return receipt requested, to the party at the address set forth in paragraph 24.

2. Rent. Lessee shall pay to the Lessor rental as follows:

An annual payment of \$1,400.00. The first payment shall be due on the date of execution of this lease (the "Initial Payment") and subsequent annual payments shall be made on or before December first of each following year. Lessor or Lessee may, within the first twelve months of the lease and at either Lessor's or Lessee's sole discretion, commission an appraisal of the Premises. Both Lessor and Lessee shall agree on the Appraiser to be assigned the appraisal assignment. Lessee agrees to pay any additional value above the Initial Payment indicated by the appraisal and the cost of the appraisal. The annual payment shall be adjusted each year in an amount not to exceed the average increase in the Consumer Price Index as published by the Bureau of Labor Statistics, United States Department of Labor over the preceding one year period.

In addition, Lessee shall pay to Lessor the negotiated price of the timber present on the Premises based on mill scale and stumpage value at time the corridor is harvested for the construction of the utility corridor.

3. Use. The Property shall be used by the Lessee as follows: to erect, construct, reconstruct, replace, remove, maintain, operate, repair, upgrade, and use poles, towers, wires, switches, and other above-ground structures and apparatus used or useful for the above-ground transmission of electricity ("Facilities"), all as the Lessee, its successors and assigns, may from time to time require upon, along, and across said Property; to enter upon the Property at any time with personnel and conveyances and all necessary tools and machinery to maintain the Premises and facilities; the non-exclusive right of ingress to and egress from the Premises over and across the land of the Lessor; to transmit electricity and communication, as conditioned below, over said wires, cables, or apparatus installed on Lessee's facilities. Lessee shall own all communication facilities and such facilities shall be for Lessee's use in its business as a public utility. In the event Lessee desires to provide capacity to others on Lessee's communication facilities, Lessee shall first obtain Lessor's written approval, which shall not be unreasonably withheld. Lessor may adjust the rent at such time as Lessee provides communication capacity to others. The rent adjustment is to be determined by an appraisal paid for by Lessee. Both Lessor and Lessee shall agree on the Appraiser to be assigned the appraisal assignment. Lessee shall not sub-lease or contract the communication facilities for any other commercial use. The Lessor further grants to said Lessee the right to establish any and all safety and reliability regulations applicable to said transmission line corridor which said Lessee deems necessary and proper for the safe and reliable construction and maintenance of said structures, wires, and apparatus and for the transmission of electricity.

4. Quiet Enjoyment. So long as Lessee pays the rent, performs all of its non-monetary obligations, and otherwise complies with the provisions of this Lease, the Lessee's possession of the Premises for its intended use will not be disturbed by the Lessor, its successors and assigns except as otherwise provided under the terms of this Lease. Notwithstanding any provision to the contrary herein, Lessor reserves the right to enter onto the Premises at any time and from time to time to inspect the Premises.

5. Access.

- a. It is agreed by the parties to this Lease that Lessor is under no obligation to construct or maintain access to the Premises, notwithstanding any provisions of any federal, state and local law to the contrary. However, the Lessee shall be allowed to cross Lessor's abutting land by using Lessor's Forest Management Roads for access to the Premises for construction, maintenance and repairs, subject to reasonable restrictions and regulations imposed by Lessor, and the rights of others using said roads. Upon reasonable advance notice to Lessee, Lessor reserves the right to close, lock or otherwise restrict access along or through the Forest Management Roads at any time it appears reasonably necessary to protect the safety of persons or property. Such situations include, but are not limited to, spring mud season or periods of high fire danger. Lessee shall immediately repair any damage to the road caused by Lessee. Lessor is under no obligation to provide maintenance to the road. If Lessee wishes to undertake performing repairs or upgrades to the Forest Management Roads, Lessee must acquire prior written approval from Lessor. Lessee shall acquire prior written approval for the construction or use of any other access location across Lessor's land abutting the Premises which approval shall not be unreasonably withheld, delayed, or conditioned.
- b. The Lessor expressly reserves the right for itself or its guests, servants, or agents to pass and repass over the described Premises at any and all times with machinery and equipment necessary for the operation or conduct of Lessor's uses as such uses may from time to time exist, provided that: said uses will comply with the above referenced safety regulations and any applicable state law, and will not prohibit the Lessee from complying with the conditions or requirements imposed by permitting agencies; that the Lessor shall provide Lessee with at least three business days prior written notice if Lessor will be on the Premises with construction or logging equipment; and that such use will not unreasonably interfere with the rights of Lessee herein conveyed.

6. Lessee Covenants. The Lessee covenants as follows:

- a. No buildings, either permanent or temporary, may be constructed or placed upon the described Premises, except temporary structures during construction of the Facilities, such as field trailers.
- b. Crossing mats for stream or wetland crossings shall not be made of ash or hemlock, so as to avoid introduction of invasive pests associated with these species.
- c. No hazardous or toxic waste substance or material, residual pesticides or fertilizers, other than organic compost, shall be used or kept upon the Premises or any portion thereof, nor shall any livestock or poultry be kept temporarily or permanently thereon. Pesticides, herbicides, and chemical defoliants registered for use in Maine may be applied to the Premises only after acquiring prior written approval from Lessor and only by trained applicators working under the supervision of applicators

licensed by the State of Maine in formulations and dosages approved by the Environmental Protection Agency and Lessor. One month prior to all pesticide applications, Lessee shall provide information to Lessor, including, but not limited to pesticides, herbicides, and chemical defoliant to be used, dates and methods of application, application locations and reasons for use.

- d. There shall be no vegetation removal that would result in less than 50% aerial coverage of woody vegetation and stream shading within 25 feet of a stream.
- e. There shall be no vegetation maintenance or disturbance within a 50-foot radius around the high water boundary of a significant vernal pool from March 15 – July 15; provided, however, that Lessee may take all appropriate actions with regards to vegetation management to ensure that Lessee is in compliance with all federal and state laws, rules and regulations imposed upon Lessee as the owner and operator of the Facilities.
- f. Lessee shall not make any strip or waste of the Leased Premises or of any other lands of Lessor. Vegetation clearing within the Leased Premises for Lessee's Facilities shall be limited to standards approved by the Maine Public Utilities Commission and shall encourage a ground cover of woody species with a maximum mature height approaching but not exceeding 15 feet. Lessee shall make every effort to minimize clearings and cutting of vegetation.
- g. Lessee acknowledges that lease of the Premises by the Bureau of Parks and Lands, Department of Agriculture, Conservation and Forestry is unique, and that in authorizing the Lease under 12 M.R.S. § 1852(4)(A), Lessor requires that Lessee shall make every reasonable effort within the leased Premises to be in conformance with the Maine Department of Inland Fisheries and Wildlife "Recommended Performance Standards for Inland Waterfowl and Wadingbird Habitats in Overhead Utility ROW Projects", "Recommended Performance Standards for Maine's Significant Vernal Pools in Overhead Utility ROW Projects", and "Recommended Performance Standards for Riparian Buffers in Overhead Utility ROW Projects", all dated March 26, 2012, which copies are attached to this lease, or the publication's most current version.
- h. Lessee shall not kindle any outside fires on the Premises or any other land of the Lessor, except in accordance with applicable federal, state and local regulations, and hereby agrees to assist with any means at Lessee's disposal in putting out fires occurring on the Premises or adjacent areas, and to report promptly such fires to Lessor or its representative and to the appropriate authorities.
- i. Lessee agrees to maintain the Premises in a neat and sanitary manner and to provide for proper disposal of all garbage, trash, septic (for purposes of this Lease, "septic" shall mean, but is not limited to, sewage, wash water, black water, gray water and slop water), and other waste in compliance with all applicable federal, state and local laws and in a manner so as not to be objectionable or detract from the aesthetic values of the general area. Lessee shall not discharge any untreated or partially treated sewage or other waste materials directly or indirectly into any body of water including but not limited to, any wetland, stream, river, lake, pond, or

groundwater. In addition, Lessee covenants that it bears the responsibility for any noncompliance with all federal, state and local laws and regulations governing septic and other waste disposal resulting from Lessee's activities and Lessee shall indemnify and hold harmless Lessor from and against any and all actions, suits, damages and claims by any party by reason of noncompliance by Lessee with such laws and regulations. Such indemnification shall include all Lessor's costs, including, but not limited to reasonable attorney fees.

- j. No non-forest waste including, but not limited to, broken equipment, spilt fuels, fluids and lubricants, fluid and lubricant containers, equipment parts, tires, debris, garbage, or trash shall be deposited, discharged, dumped or buried upon the Premises. Forest woody waste (e.g., wood chips and stumps) may be disposed of on the premises, but may not be disposed of in piles. Stumps shall be buried in "stump dump" holes, except that small numbers of stumps (four or less) may be left aboveground. All non-forest waste shall be disposed of legally and not on property of Lessor.
- k. Lessee shall not build permanent roads on the Premises without obtaining prior specific written permission from the Lessor; provided, however, that Lessee may construct a minimal number of temporary roads and trails to facilitate the construction of the transmission line (tree clearing, pole setting, wiring). At the time construction is completed, all temporary roads and trails shall be dismantled and put to bed or converted to permanent access trails. All access trails shall be built to Best Management Practices (BMP) standards as shown in the "Maine Motorized Trail Construction and Maintenance Manual" written by the Bureau of Parks and Lands Off-Road Vehicle Division, dated May 2011 and all roads shall be built pursuant to those Best Management Practices (BMPs) standards pertaining to forest management and road construction practices set forth in the publication entitled, "Best Management Practices for Forestry: Protecting Maine's Water Quality," prepared by the Maine Department of Agriculture, Conservation and Forestry, Maine Forest Service, in such publication's most current version at the time of the grant of this lease, and as the same may be further amended, supplemented or replaced after the date of the execution of this lease.

Prior to start of construction, Lessee shall provide an Access and Maintenance Plan to Lessor for review and approval. This plan shall provide details and maps on proposed roads, permanent and temporary, access points, temporary trails, inspection, and maintenance access, and descriptions of any proposed bridges, temporary or permanent.

- l. Natural Plant Community, wetland and Significant Vernal Pool field surveys of the Premises must be conducted by Lessee or Lessee's designee prior to any construction on the Premises. Lessee shall send to Lessor and to the Maine Department of Inland Fisheries and Wildlife a copy of all completed surveys before commencing any construction on the Premises.
- m. Lessee shall be in compliance with all Federal, State and local statutes, ordinances, rules, and regulations, now or hereinafter enacted which may be applicable to Lessee in connection to its use of the Premises. Lessee further shall

not construct, alter or operate the described Premises in any way until all necessary permits and licenses have been obtained for such construction, alteration or operation. Lessee shall provide written confirmation that Lessee has obtained all material permits and licenses to construct and operate the Facilities. Lessee shall furnish Lessor with copies of all such permits and licenses, together with renewals thereof to Lessor upon the written request of Lessor. This lease shall terminate at the discretion of the Lessor for failure of Lessee to obtain all such required permits. Prior to such termination, however, Lessor shall provide written notice to Lessee of such failure and Lessee shall have 30 days in which to cure such failure.

n. In the event of the following:

- a) Lessee constructs an electric transmission line on the Premises; and
- b) Lessee has determined, in its sole discretion, to rebuild the existing transmission line (the "Jackman Tie Line") located on that part of the existing 100-foot wide utility corridor described in a lease dated July 9, 1963 and recorded in the Somerset County Registry of Deeds, Book 679, Page 37 (the "Jackman Tie Line Lease") that is located westerly of the Premises and easterly of Route 201; and
- c) Lessee receives all permits and regulatory approvals necessary to rebuild the line in such new location including, but not limited to, approvals of the Maine Public Utilities Commission and the Maine Department of Environmental Protection; then

Lessee agrees to relocate said Jackman Tie Line from the above described portion of the Jackman Tie Line Lease to a location on the Premises and such other corridor as acquired by the Lessee from others. Upon completion of any such relocation of the Jackman Tie Line or its functional replacement pursuant to this section and removal of Lessee's facilities from that portion of the Jackman Tie Line Lease lying westerly of the Premises, Lessor and Lessee agree to amend the Jackman Tie Line Lease to delete from the lease area that portion of the Jackman Tie Line Lease lying westerly of the Premises. All other terms and conditions of the Jackman Tie Line Lease shall remain in full force and effect. The term "rebuild" as used in this paragraph, shall not include routine repair or replacement of poles, crossarms, insulators, braces or conductor.

7. Liability and Insurance.

a. Lessee shall without unreasonable delay inform Lessor of all risks, hazards and dangerous conditions caused by Lessee which are outside of the normal scope of constructing and operating the Facilities of which Lessee becomes aware of with regards to the Premises. Lessee assumes full control of the Premises, except as is reserved by Lessor herein, and is responsible for all risks, hazards and conditions on the Premises caused by Lessee.

b. Except for the conduct of Lessor and Lessor's guests and agents, Lessor shall not be liable to Lessee for any injury or harm to any person, including Lessee, occurring in or on the Premises or for any injury or damage to the Premises, to any property of the Lessee, or to any property of any third person or entity. Lessee shall indemnify and defend and hold and save Lessor harmless, including, but not limited

to costs and attorney fees, from: (a) any and all suits, claims and demands of any kind or nature, by and on behalf of any person or entity, arising out of or based upon any incident, occurrence, injury, or damage which shall or may happen in or on the Premises that is caused by the Lessee or its Agents; and (b) any matter or thing arising out of the condition, maintenance, repair, alteration, use, occupation or operation of the Premises, the installation of any property thereon or the removal of any property therefrom that is done by the Lessee or its Agents. Lessee shall further indemnify Lessor against all actions, suits, damages, and claims by whoever brought or made by reason of the nonobservance or nonperformance of Lessee or its Agents of: (a) any obligation under this Lease; or (b) any federal, state, local law or regulation pertaining to Lessee's use of the Premises.

c. The Lessee shall obtain and keep in force, for the duration of this lease, a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Lease with adequate liability coverage over at least one million dollars for each occurrence and two million dollars in annual aggregate in general commercial liability coverage to protect the Lessee and the Lessor from suits for bodily injury and damage to property. Nothing in this provision, however, is intended to waive the immunity of the Lessor. Upon execution of this Lease, the Lessee shall furnish the Lessor with a certificate of insurance as verification of the existence of such liability insurance policy.

8. Lessee's Liability for Damages. Lessee shall be responsible to Lessor for any damages caused directly or indirectly by Lessee or its guests, servants or agents, including, but not limited to, interference or meddling with any tools, machinery, equipment, gates, buildings, furniture, provisions or other property of the Lessor on the Premises, its agents, employees or guests.
9. Tax Proration. Lessee shall pay when due all taxes levied on the personal property and improvements constructed by Lessee and located on the Premises. Lessor shall be responsible for any real property taxes levied on the Premises based on unimproved land. Lessor shall have no ownership or other interest in any of the Facilities on the Property and Lessee may remove any or all of the Facilities at any time.
10. Lease Assignment, Sublease and Colocation; Lessee shall not assign or sublease in whole or part without prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessor may lease the Premises for other compatible uses and colocation of other utilities so long as such rights do not extend to access to the Facilities, said uses will not prohibit the Lessee from complying with the conditions or requirements imposed by permitting agencies, and such use will not interfere with the rights herein conveyed, including the right to build such additional Facilities as may be accommodated on the Premises using transmission line spacing standards approved by the Maine Public Utilities Commission.
11. Lessee's Removal of Structures; Lessee must obtain Lessor's advance written consent, which consent shall not be unreasonably withheld, delayed, or conditioned, to the method of removal before any structures or improvements are removed from the Premises.

12. Surrender. Upon termination of this Lease for any reason, Lessee shall deliver the Premises to Lessor peaceably, without demand, and in reasonably good condition clear of all trash and debris, unusable equipment, unregistered vehicles and abandoned equipment and structures, located on the Premises by Lessee or its Agents. If such trash and debris and other unusable equipment, unregistered vehicles, and abandoned equipment and structures are not removed within one hundred eighty days (180) days of the termination of this Lease, the Lessor shall thereafter have the right to remove it and Lessee shall reimburse Lessor for the costs of such removal and disposal. Any other personal property, fixture, or structure on the Premises belonging to Lessee shall be removed by Lessee, unless Lessor requests in writing, that the other personal property, fixture, or structure may remain and Lessee agrees in writing not to remove it. If the Lessee fails to remove such other personal property, fixture, or structure such items shall be deemed the property of the Lessor two hundred and ten days (210) days after termination of the Lease and the Lessor shall thereafter have the right to remove it and charge the Lessee with the costs of such removal and disposal. In the event that any of this other personal property, fixtures, or structures on the Premises are incapable of being removed within one hundred eighty days (180) days, Lessee may be allotted up to one year to remove the items, with prior written approval from Lessor, which approval shall not be unreasonably, delayed, or conditioned. Any holding over by Lessee without Lessor's prior written consent shall be considered a tenancy at sufferance.

13. Default.

a. The following constitutes a default under this Lease: (1) Lessee's failure to perform any of its monetary or nonmonetary obligations under this Lease; (2) the filing of any bankruptcy or insolvency petition by or against Lessee or if Lessee makes a general assignment for the benefit of creditors which is not resolved or withdrawn within 30 days of such petition being filed; (3) an execution, lien, or attachment issued against the Lease, the Premises, or Lessee's property on the Premises, unless Lessee provides Lessor with satisfactory assurances and evidence that such execution, lien, or attachment will be released within a reasonable time not to exceed ninety (90) days, unless a shorter period of time is provided for by any applicable law or proceeding for the removal thereof, in which case the more restrictive time limitation applies; (4) the assignment or sublease of this lease to any third party without Lessor's prior written consent; or (5) the violation of any state, federal or local law, rule, regulation, or ordinance; or (6) Lessee's abandonment of the leased premises.

b. Upon the occurrence of any such event of default and subject to any applicable cure period as defined in paragraph 6(m), above, Lessor may, in addition to (and not instead of) any other remedies available at law or in equity, terminate this lease with notice or demand to Lessee and enter and take possession of the leased premises. Lessee shall be liable to Lessor for loss and expense, including reasonable attorney fees, incurred by reason of such default or termination hereof. Lessor will provide Lessee with written notice of an event or occurrence of default under paragraph 13(a)(1) and Lessee shall have a reasonable period of time, as determined by Lessor, to cure said default which period shall not exceed thirty (30) days; provided, however, that if Lessee satisfies to Lessor that Lessee has

undertaken the appropriate actions to cure said default and such default has not been cured within the said time permitted, the Lessor may exercise its sole discretion to extend the cure period.

14. Statutory Authority Over Public Lands. Lessor shall have the right to request that this Lease be amended from time to time and throughout the term of this lease in the event that any Lease term is found not to comply with Maine state law regarding the lease of property under 12 M.R.S. § 1852(4). Lessor shall send notice to Lessee of the proposed revision. Upon receipt of such notice, Lessee shall have the option to either terminate the Lease by notifying Lessor in writing within thirty (30) days of receipt of notice or negotiate an amendment to the Lease in order to bring such term in compliance with said state law. Except as provided in this Lease, neither Party shall have the right to terminate this lease unless the resulting non-compliance constitutes a default under Section 13 hereof, in which case Section 13 shall govern.
15. Mechanics Lien. If any notice is filed at the county registry of deeds of a builder's, supplier's or mechanic's lien on the Premises, arising out of any work performed by or on behalf of Lessee, Lessee shall cause such lien to be discharged or released immediately and shall indemnify Lessor against any such claim or lien, including all costs and attorney fees that Lessor may incur in connection with the same.
16. Succession; No Partnership. This Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors in interest and assigns of the parties hereto. Nothing in this agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation, or liability on or with regards to any of the parties to this agreement.
17. Waiver. Any consent, express or implied, by Lessor to any breach by Lessee of any covenant or condition of this Lease shall not constitute a waiver by the Lessor of any prior or succeeding breach by Lessee of the same or any other covenant or condition of this Lease. Acceptance by Lessor of rent or other payment with knowledge of a breach or default by Lessee under any term on this Lease shall not constitute a waiver by Lessor of such breach or default.
18. Force Majeure. Except as expressly provided herein, there shall be no abatement, diminution, or reduction of the rent or other charges payable by Lessee hereunder, based upon any act of God, any act of the enemy, governmental action, or other casualty, cause or happening beyond the control of the parties hereto.
19. Eminent Domain. In the event that the Premises or any portion thereof shall be lawfully condemned or taken by any public authority, Lessor may, in its discretion, elect either: (a) to terminate the Lease; or (b) to allow this Lease to continue in effect in accordance with its terms, provided, however, that a portion of the rent shall abate equal to the proportion of the Premises so condemned or taken. All condemnation proceeds shall be Lessor's sole property without any offset for Lessee's interests hereunder.
20. Holding Over. If Lessee holds over after the termination of this Lease, said hold over shall be deemed to be a trespass.

21. Lessor Protection. Lessor expressly retains and nothing contained herein shall be construed as a release or limitation by Lessor of any and all applicable liability protections under Maine law. Lessor specifically retains any and all protections provided under Maine law to owners of land, including but not limited to those provided under the Maine Tort Claims Act, 14 M.R.S.A. §§ 8101-8118.
22. Cumulative Remedies. The remedies provided Lessor by this Lease are not exclusive of other remedies available by current or later existing laws.
23. Entire Agreement. This Lease sets forth all of the covenants, promises, agreements, conditions and understandings between Lessor and Lessee governing the Premises. There are no covenants, promises, agreements, conditions, and understandings, either oral or written, between them other than those herein set forth. Except as herein provided, no subsequent alterations, amendments, changes, or additions to this Lease shall be binding upon the Lessor or Lessee unless and until reduced to writing and signed by both parties.
24. Notices. All notice, demands, and other communications required hereunder shall be in writing and shall be given by first class mail, postage prepaid, registered or certified mail, return receipt requested; if addressed to Lessor, to:
 State of Maine, Department of Agriculture, Conservation and Forestry, Division
 of Parks and Lands,
 22 State House Station, Augusta, ME 04333-0022, Attn: Director;
 and if to Lessee, to:
 Central Maine Power Company, Real Estate Services
 83 Edison Drive, Augusta, Maine 04364, Attn: Supervisor, Real Estate
25. General Provisions:
- a. Governing Law. This Lease shall be construed and interpreted in accordance with the laws of the State of Maine.
 - b. Savings Clause. The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity of any other provision. To the extent any provision herein is inconsistent with applicable state statute, the statute is deemed to govern.
 - c. Paragraph Headings. The paragraph titles herein are for convenience only and do not define, limit, or construe the contents of such paragraph.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written. For purposes of this Lease, a facsimile signature shall be deemed an original.

Lessor:

STATE OF MAINE
Department of Agriculture, Conservation, and Forestry
Bureau of Parks and Lands

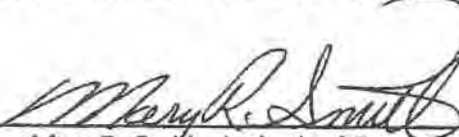
By: _____
Thomas Morrison Acting Director

Dated: _____, 2014

Witness

Lessee:

CENTRAL MAINE POWER COMPANY

BY: 
Mary R. Smith, Authorized Representative

Dated: 12-8-14

Roberta B Holahan

Witness

ROBERTA B. HOLAHAN
Notary Public, State of New York
No. 01HO6040322
Qualified in Monroe County 13
Commission Expires April 17, 20...

EXHIBIT A

Leased Premises
 Department of Agriculture, Conservation and Forestry
 Bureau of Parks and Lands
 and
 Central Maine Power Company

A non-exclusive lease over a portion of the Lessor's land located in Johnson Mountain Township (T2 R6 BKP WKR), and West Forks Plantation, Somerset County, Maine, more particularly described as follows:

A strip of land 300 feet in width beginning at the southerly line of the Maine Public Reserved Lot located on the northerly line of West Forks Plantation and extending northerly a distance of 4700 feet, more or less, to the northerly line of the Maine Public Reserved Lot located on the common line between West Forks Plantation and Johnson Mountain Township (T2 R6 BKP WKR). The centerline of said strip beginning at a point on the southerly line of the Lessor's land at a point that is 7,500 feet westerly of the southeasterly corner of said Lot in West Forks Plantation; thence on a bearing of 342.2 degrees a distance of 4,700 feet, more or less, to a point on the northerly line of said Lot in Johnson Mountain Township, said point being 2640 feet, more or less, westerly of the northeast corner of said Lot and the east line of Johnson Mountain Township; said leased area containing 33 acres, more or less (the "Leased Premises").

The description of the Leased Premises is based on a current conceptual design of the Lessee's proposed transmission line corridor and may be subject to modification by Lessee to minimize impacts on environmentally sensitive areas. Lessor and Lessee agree that upon completion of environmental assessments, final engineering, and if applicable, any survey prepared by Lessee, Lessee will prepare a final description of the Leased Premises to be incorporated into this Lease. Lessor and Lessee further agree that the final alignment of the transmission line corridor will be substantially as described herein and any significant deviation from the above described line will be agreed to in writing by Lessor and Lessee.

Seller's Initials _____

EXHIBIT 2

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2017-00232

May 3, 2019

CENTRAL MAINE POWER COMPANY
Request for Approval of CPCN for the
New England Clean Energy Connect
Consisting of the Construction of a 1,200
MW HVDC Transmission Line from the
Québec-Maine Border to Lewiston
(NECEC) and Related Network Upgrades

ORDER GRANTING
CERTIFICATE OF PUBLIC
CONVENIENCE AND
NECESSITY AND APPROVING
STIPULATION

VANNOY, Chairman; WILLIAMSON and DAVIS, Commissioners

TABLE OF CONTENTS

- I. SUMMARY 6**
- II. PROJECT BACKGROUND 7**
 - A. NECEC Facilities 7
 - B. Core Project Elements 8
 - 1. Transmission Line Equipment..... 8
 - 2. Substation Equipment..... 8
 - C. Network Upgrades 8
 - 1. Transmission Line Equipment..... 8
 - 2. Substation Equipment..... 9
 - D. Massachusetts RFP Process and Results 10
- III. PROCEDURAL BACKGROUND**
 - A. Petition..... 13
 - B. Intervention 13
 - C. Testimony, Discovery, Hearings 14
 - D. Briefs and Public Comments..... 15
 - E. Stipulation 16
 - F. Examiners’ Report
- IV. STATUTORY REQUIREMENTS**
 - A. Public Need 17
 - 1. Positions of the Parties 18
 - 2. Discussion 19
 - B. Nontransmission Alternatives (NTA) 19

1.	<u>Positions of the Parties</u>	19
2.	<u>Discussion</u>	19
C.	<u>Public Health and Safety, Scenic, Historic and Recreational Values</u>	20
1.	<u>Positions of the Parties</u>	20
2.	<u>Discussion</u>	21
D.	<u>State Renewable Energy Generation Goals</u>	22
1.	<u>Positions of the Parties</u>	22
2.	<u>Discussion</u>	23

V. ANALYSIS OF NECEC IMPACTS

A.	<u>Electricity Market Price and Ratepayer Impacts</u>	24
1.	<u>Overview</u>	24
2.	<u>Energy Market Impacts</u>	25
a.	<u>Overview</u>	25
b.	<u>Description of the Wholesale Energy Market</u>	25
c.	<u>Price-Taking Resources</u>	27
d.	<u>Analysis in the Record and Positions of the Parties</u>	28
e.	<u>Discussion</u>	30
3.	<u>Capacity</u>	30
a.	<u>Overview</u>	31
b.	<u>Description of Forward Capacity Market</u>	31
c.	<u>Qualification</u>	31
d.	<u>The Minimum Offer Price Rule (MOPR)</u>	32
e.	<u>Competitive Auctions with Sponsored Policy Resources (CASPR)</u>	33
f.	<u>Analyses in the Record and Positions of the Parties</u>	33
g.	<u>Discussion</u>	36
4.	<u>Reliability</u>	37
a.	<u>Reliability Elements and Positions of the Parties</u>	37
b.	<u>Discussion</u>	39
5.	<u>Effect of the NECEC on New and Existing Generators in Maine</u> ...	41
a.	<u>Overview</u>	41
b.	<u>Positions of the Parties</u>	42
c.	<u>Discussion</u>	43
B.	<u>In-State Economic Impacts</u>	44
1.	<u>Economic Impact Studies</u>	44
2.	<u>Position of the Parties</u>	46
3.	<u>Discussion</u>	46
C.	<u>Public Health and Safety</u>	47
1.	<u>Background</u>	47
2.	<u>Public Health</u>	47
3.	<u>Public Safety</u>	48
4.	<u>Discussion</u>	50
D.	<u>Scenic, Historic, and Recreational Values</u>	50
1.	<u>Background</u>	50

2.	<u>Positions of the Parties</u>	51
a.	<u>Scenic Values</u>	51
i.	<u>Proponents of the Project</u>	52
ii.	<u>Opponents of the Project</u>	52
iii.	<u>Testimony Presented During Public Witness Hearings</u>	53
b.	<u>Historic Values</u>	54
c.	<u>Recreational Values</u>	54
i.	<u>Proponents of the Project</u>	54
ii.	<u>Opponents of the Project</u>	55
iii.	<u>Testimony Presented During Public Witness Hearings</u>	55
3.	<u>CMP's Efforts to Mitigate the NECEC's Adverse Impacts on Scenic, Historic, and Recreational Values Through the Negotiation of a MOU with WM&RC</u>	56
a.	<u>Background</u>	56
b.	<u>Positions of the Parties</u>	58
i.	<u>Proponents of the Project</u>	58
ii.	<u>Opponents of the Project</u>	59
iii.	<u>Testimony Presented During Public Witness Hearing</u>	60
4.	<u>Balancing the NECEC's Impacts on Scenic, Historic, and Recreational Values with CMP's Mitigation Efforts</u>	61
a.	<u>Proponents of the Project</u>	61
b.	<u>Opponents of the Project</u>	62
5.	<u>Discussion</u>	63
a.	<u>The NECEC's Impacts on Scenic Value</u>	63
b.	<u>The NECEC's Impacts on Historic Values</u>	64
c.	<u>The NECEC's Impact on Recreational Values</u>	64
d.	<u>CMP's Efforts to Mitigate the NECEC's Adverse Impacts on Scenic, Historic, and Recreational Values</u>	66
e.	<u>Balancing the NECEC's Impacts on Scenic, Historic, and Recreational Values with CMP's Mitigation Efforts</u>	68
E.	<u>Proximity to Inhabited Dwellings</u>	68
F.	<u>State Renewable Energy Goals</u>	69
1.	<u>Incremental Hydroelectric Generation and GHG Emissions</u>	69
a.	<u>Positions of the Parties</u>	70
b.	<u>Discussion</u>	71
2.	<u>Renewable Generation Development in Maine</u>	72
a.	<u>Position of the Parties</u>	72
b.	<u>Discussion</u>	73

VI. REVIEW AND DISCUSSION OF STIPULATION

A.	<u>Stipulation Provisions</u>	74
1.	<u>Ratepayer Protections and Compensation</u>	75
a.	<u>NECEC Project Ownership</u>	75
b.	<u>Consideration Payment</u>	76
c.	<u>Transmission Rates Customer Credit</u>	76
d.	<u>New Corridor Removed from Transmission Rates</u>	76
2.	<u>Public and Ratepayer Benefits</u>	76
a.	<u>Low-Income Customer Benefits Fund</u>	76
b.	<u>Rate Relief Fund</u>	77
c.	<u>Broadband Benefits</u>	77
d.	<u>Heat Pump Benefits</u>	77
e.	<u>Electric Vehicle (EV) Funds</u>	77
f.	<u>Franklin County Host Community Benefits</u>	77
g.	<u>Education Grant Funding</u>	78
3.	<u>Other Commitments</u>	78
a.	<u>Mitigating Impacts on Transmission System</u>	78
b.	<u>Regional Carbonization</u>	78
c.	<u>Securitization</u>	79
d.	<u>HQ Support Agreement</u>	79
e.	<u>Maine Worker Preferences</u>	79
B.	<u>Stipulation Review and Approval Requirements</u>	79
C.	<u>Do the Parties to the Stipulation Represent a Sufficiently Broad Spectrum of Interests</u>	80
1.	<u>Background</u>	80
2.	<u>Positions of the Parties</u>	80
a.	<u>Signatories to the Stipulation</u>	80
b.	<u>Parties that Did Not Sign the Stipulation</u>	81
3.	<u>Discussion</u>	83
D.	<u>Fairness of the Process to All Parties</u>	84
1.	<u>Positions of the Parties</u>	84
a.	<u>Signatories to the Stipulation</u>	84
b.	<u>Parties that Did Not Sign the Stipulation</u>	85
2.	<u>Discussion</u>	86
a.	<u>Summary of Settlement Process</u>	86
b.	<u>Decision</u>	87
E.	<u>Stipulated Result is Reasonable, Is Not Contrary to Legislative Mandate, and in the Public Interest</u>	89
1.	<u>Positions of the Parties on the Stipulation Benefits</u>	89
2.	<u>Discussion and Evaluation of Stipulation Benefits</u>	91
a.	<u>Ratepayer Protections and Compensation</u>	91

i.	<u>NECEC Project Ownership and Affiliate Transactions</u>	91
ii.	<u>Consideration Payment</u>	92
iii.	<u>Transmission Rates Customer Credit</u>	94
iv.	<u>New Corridor Removed from Transmission Rates</u>	94
b.	<u>Public and Ratepayer Benefits</u>	95
i.	<u>Low-Income Customer Benefits Fund</u>	95
ii.	<u>Rate Relief Fund</u>	95
iii.	<u>Broadband Benefits</u>	95
iv.	<u>Heat Pump Benefits</u>	95
v.	<u>Electric Vehicle (EV) Funds</u>	96
vi.	<u>Franklin County Host Community Benefits</u>	96
vii.	<u>Education Grant Funding</u>	96
c.	<u>Other Commitments</u>	96
i.	<u>Mitigating Impacts on Transmission System</u>	96
ii.	<u>Regional Carbonization</u>	96
iii.	<u>Securitization</u>	97
iv.	<u>HQ Support Agreement</u>	97
v.	<u>Maine Worker Preferences</u>	97
VII.	CONCLUSION	98
	Concurring Opinion of Commissioner Williamson	101

I. SUMMARY

The Commission finds that the construction and operation of the New England Clean Energy Connect (NECEC or Project) is in the public interest and, therefore, there is a public need for the Project. Accordingly, the Commission issues a certificate of public convenience and necessity (CPCN) for the NECEC. In addition, the Commission approves the Stipulation filed in this proceeding on February 21, 2019.

The Commission's finding that the NECEC meets the public interest and public need standards is based on a careful weighing of the benefits and costs of the NECEC to the ratepayers and residents of the State of Maine. As required by Maine statute, these include the effects of the NECEC on economics, reliability, public health and safety, scenic, historic and recreational values, and state renewable energy goals. 35-A M.R.S. § 3132(6). Based on its consideration of these factors, the Commission finds that the NECEC is in the public interest.

The Commission concludes that the NECEC meets the applicable statutory standards for a CPCN independent of the additional benefits that will be conveyed by the February 21, 2019 Stipulation. However, the provisions of the Stipulation augment the benefits of the Project.

The NECEC will allow for up to 1,200 MW of hydropower to be delivered to New England from Québec, Canada. The cost of constructing and operating the NECEC will be borne by customers of Electric Distribution Companies in Massachusetts (MA EDCs) and Hydro Québec (HQ). Because the NECEC-enabled power will be delivered into Maine, however, significant benefits will accrue to Maine electricity consumers through operation of the regional wholesale market. These benefits are expected to accrue for a period of at least 20 years. In addition to the wholesale electricity price reductions that will result from the NECEC, the Project will also enhance system reliability and fuel security within Maine and the ISO-New England (ISO-NE) region. In addition, the NECEC will provide environmental benefits by displacing fossil fuel generation in the region, and associated greenhouse gas (GHG) production, and will provide substantial benefits to the Maine economy through the more than 1,600 jobs expected to be created during the NECEC construction phase, and on an ongoing basis through property taxes.

The provisions of the NECEC Stipulation augment the benefits that will be realized by Maine ratepayers, communities and the environment by funding mechanisms and programs to provide rate relief to Maine ratepayers, benefits for low-income customers, and support for a variety of other programs intended to benefit Maine communities and the environment.

With respect to the effects of the Project on scenic and recreational values, and the associated impacts on tourism and the economies of communities in proximity to the Project, the Commission finds that these effects will be adverse. However, when these adverse impacts are balanced against the ratepayer, economic, and environmental benefits of the NECEC, the Commission finds that these adverse effects are

outweighed by the benefits. Moreover, the Commission expects that the scenic and recreational impacts of the NECEC will be reviewed and, to the extent appropriate and feasible, mitigated, through the processes at the Maine Department of Environmental Protection (DEP) and Land Use Planning Commission (LUPC).

Figure I.1 provides a summary of the impacts to Maine of the NECEC and the Stipulation provisions:

Figure I.1

Summary of NECEC Impacts			
Wholesale Market Effects	Description	Value to Maine	
		Nominal	Present Value
Energy Market Prices	Energy price suppression effect	\$1.4-\$4.4 million annually	\$122-\$384 million
Capacity Market Effect	Estimated capacity market price reduction	\$19 million annually for first 10 years	\$101 million
Reliability and Fuel Security	Enhancements to transmission reliability and supply reliability and diversity	Not quantified*	Not quantified*
Macroeconomic Effects	Description	Value to Maine	
		GDP is reported in chained 2009 dollars	
During Construction Period	Positive impact on Maine GDP	Annual average, 2017-2022	\$94-\$98 million
During Operations	Positive impact on Maine GDP. Includes effect of wholesale energy and capacity market savings.	Annual average, 2023-2027	\$25-\$29 million
Regional Environmental and Local Community Impacts	Description	Value	
		Not quantified	
Effects on Host Communities	Detrimental impact on scenic, historic and recreational values associated tourism and local economy	Not quantified	
GHG Emissions Reductions	Reduction in regional carbon emissions	3.0 to 3.6 million metric tons/year	
Stipulation Conditions	Description	Value to Maine	
		Nominal	Present Value
Stipulation provisions	Benefits package included in Stipulation	Total: \$220 million over 40 years	\$72-\$88 million

*As discussed in the Conforming Opinion of Commissioner Williamson, ISO-NE has provided estimates that suggest that fuel security and reliability benefits could provide value to Maine of approximately \$9 million annually for the years 2023-2024 and 2024-2025.

II. PROJECT BACKGROUND

A. NECEC Facilities

The NECEC will enable the delivery of up to 1,200 MW of hydroelectric power from Québec, Canada to New England for a period of at least 20 years. The expected commercial operation date of the NECEC is December 2022. The core elements of the Project are: (1) a new 320 kV overhead high voltage direct current (HVDC) transmission line, approximately 145 miles in length, from the Québec/Maine border to a new converter station in Lewiston, Maine and a new 1.6 mile 345 kV AC transmission line from the new converter station to Central Maine Power Company's (CMP) existing Larrabee Road Substation in Lewiston and (2) a new converter station at Merrill Road in

Lewiston (Merrill Road Converter Station) and certain required upgrades to the Larrabee Road Substation. The NECEC also includes several other upgrades to CMP's existing transmission lines and substations. As set forth in Appendix 1 of CMP's initial post-hearing brief, a complete list of the components that comprise the NECEC is listed in Sections II. B and II. C below.¹

B. Core Project Elements

1. Transmission Line Equipment

- New 145.3-mile +/-320 kV HVDC Transmission Line from the Canadian border to a new converter station located on Merrill Road in Lewiston (Section 3006) and
- New 1.6-mile 345 kV AC Transmission Line from the new Merrill Road Converter Station to the existing Larrabee Road Substation (Section 3007).

2. Substation Equipment

- New 345 kV AC to +/-320 kV HVDC 1200MW Merrill Road Converter Station and
- Additional 345 kV AC Transmission Line Terminal at the existing Larrabee Road Substation.

C. Network Upgrades

1. Transmission Line Equipment

- New 26.5-mile 345 kV AC Transmission Line from the existing Coopers Mills Road Substation in Windsor to the existing Maine Yankee Substation in Wiscasset (Section 3027);
- New 0.3-mile 345 kV AC Transmission Line from the existing Surowiec Substation in Pownal to a new substation on Fickett Road in Pownal (Section 3005);
- Rebuild of 9.3-mile 115 kV Section 62 AC Transmission Line from the existing Crowley's Substation in Lewiston to the existing Surowiec Substation;

¹ As noted in Ordering Paragraph 1 to this Order, the CPCN shall include and permit construction of any additional transmission facilities that ISO-NE determines are necessary to meet the requirements of Section I.3.9 of the ISO-NE Transmission Markets and Services Tariff or ISO-NE's Capacity Capability Interconnection Standard without further Commission review.

- Rebuild of 16.1-mile 115 kV Section 64 AC Transmission Line from the existing Larrabee Road Substation to the existing Surowiec Substation;
- Partial rebuild of 0.8 miles each of 115 kV Sections 60 and 88 AC Transmission Lines outside of the Coopers Mills Road Substation;
- Partial rebuild of 0.3 miles of 345 kV Section 392 AC Transmission Line between the Coopers Mills Road Substation and the Maine Yankee Substation and approximately 3.5 miles of reconductor work on existing double circuit lattice steel towers outside of the Maine Yankee Substation;
- Partial rebuild of 0.3 miles of 345 kV Section 3025 AC Transmission Line between the Coopers Mills Road Substation and the Larrabee Road Substation; and
- Partial Rebuild of 0.8 miles of 34.5 kV Section 72 AC Transmission Line outside of the Larrabee Road Substation.

2. Substation Equipment

- Replace existing Larrabee Road 345/115 kV 448MVA autotransformer with a 600MVA autotransformer;
- Additional 345 kV AC Transmission Line Terminal at the existing Maine Yankee Substation;
- Additional 345 kV AC Transmission Line Terminal and 115 kV switch replacements at the existing Surowiec Substation;
- 115 kV switch and bus wire replacements at Crowley's Substation;
- New 345 kV Fickett Road Substation with 345 kV +/-200MVAR Static Compensator (STATCOM);
- Additional 345 kV AC Transmission Line Terminal and additional 345 kV +/-200MVAR STATCOM (+/-400MVAR total with the +/-200MVAR existing) at the existing Coopers Mills Road Substation; and
- Additional 345/115 kV 448MVA Autotransformer, associated 115kV buswork and terminate existing 115 kV Sections 164, 164A, and 165 into 3 new breaker-and-a-half bays at the existing Raven Farm Substation.

The NECEC's proposed route is on private land that CMP owns or controls, including existing corridors for more than half its length. The proposed corridor for the new HVDC transmission line portion of the NECEC extends approximately 145.3 miles

from the Québec-Maine border at Beattie Township, in northern Franklin County, to the Larrabee Road Substation in Lewiston. Additionally, the Project includes upgrades to existing AC network facilities in various locations on CMP's existing transmission system.

The northern portion of the HVDC line is proposed to be built in currently undeveloped corridor primarily traversing commercial forest land, and the remainder of the corridor will be built within the undeveloped width of existing transmission corridors. The corridor begins in western Maine in Beattie Township (Franklin County) and extends southeast for about 4½ miles across Beattie Township, touches the southwest corner of Lowelltown Township (Franklin County) and then extends easterly about 27 miles across Skinner Township (Franklin County), then across Appleton Township, Raytown Township, Hobbstown Township, Bradstreet Township, and across the southwest corner of Parlin Pond Township (all in Somerset County). From that point, the corridor crosses onto Johnson Mountain Township extending southerly about 6½ miles over the approach to Coburn Mountain and into the valley between Coburn Mountain and Johnson Mountain and then turning east for about 2½ miles to the U.S. Route 201. Between the border and U.S. Route 201, the corridor is a 300-foot wide parcel.

The 300-foot wide corridor continues south across West Forks Plantation about 4¾ miles to the Kennebec River and the West Forks Plantation/Moxie Gore line (all in Somerset County). From the Kennebec River, the 300-foot wide corridor extends about 49 miles southeast across Moxie Gore and the Forks Plantation to the intersection with an existing transmission corridor near the Lake Moxie Road. The remaining section of the NECEC will be constructed on the existing corridor.

The estimated cost of the NECEC is approximately \$1 billion. As noted above, these costs will be paid for entirely by H.Q. Energy Services (U.S.) INC. (HQUS) and the MA EDCs.

D. Massachusetts RFP Process and Results

The NECEC is a component of a bid prepared jointly by CMP and Hydro Renewable Energy Inc. (HRE), an affiliate of Hydro-Québec, that was submitted in response to a Request for Proposals (RFP) issued by the MA EDCs pursuant to Section 83D of the 2008 Massachusetts Green Communities Act (Green Communities Act). Pursuant to the Green Communities Act, on March 31, 2017, NSTAR Electric Company d/b/a Eversource Energy (Eversource), Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid (National Grid) and Fitchburg Gas and Electric Light Company d/b/a Unitil (Unitil), in coordination with the Massachusetts Department of Energy Resources (DOER), issued an RFP seeking bids to provide incremental clean energy and associated environmental attributes for approximately 9.45 TWh annually under long-term contracts of 15-20 years. The RFP set a proposal due date of July 27, 2017.

Forty-six bid packages² were received on or by the due date, including joint bids submitted by CMP and HRE³ offering two different NECEC configurations. Following an evaluation process by the MA EDCs and DOER, on January 25, 2018, an all-hydroelectric bid submitted by HRE and Northern Pass Transmission LLC (Northern Pass) was selected for contract negotiations. On February 1, 2018, the New Hampshire Site Evaluation Committee (NHSEC) denied the Northern Pass siting permit. On February 17, 2018, CMP was notified that the NECEC had been selected as the alternate winning bid.

The contractual arrangements underlying the NECEC include power purchase agreements (PPA) between HQUS (the successor to HRE) and each of the purchasing utilities in Massachusetts and transmission services agreements (TSA) between CMP and the MA EDCs and between CMP and HQUS. The PPAs and the TSAs were filed for approval with the Massachusetts Department of Public Utilities (DPU) on July 23, 2018.⁴ The Massachusetts DPU proceedings are on-going. In addition, CMP filed the TSAs for approval by the Federal Energy Regulatory Commission (FERC) and, on October 19, 2018, the TSAs were accepted by FERC to become effective October 20, 2018.⁵

As shown in Figure II.1, the PPAs are for different amounts of capacity, totaling 1,090 MW of the 1,200 MW capacity of the NECEC, and all extend for a 20-year term.

² The 83D bids can be viewed at <https://macleanenergy.com/83d/83d-bids/>.

³ HRE was proposed as a new U.S. affiliate of Canadian-based Hydro-Québec created for purposes of the Section 83D RFP. Ultimately, Hydro-Québec decided to have its existing U.S. affiliate, HQUS, serve as the counterparty for the NECEC PPAs and TSAs.

⁴ *Commonwealth of Massachusetts, Department of Public Utilities*, Petition of NSTAR Electric Company d/b/a Eversource Energy for Approval of Proposed Long Term Contracts for Clean Energy Projects Pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12, Docket No. D.P.U. 18-64; Petition of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid for Approval of Proposed Long Term Contracts for Clean Energy Projects Pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12, Docket No. D.P.U. 18-65; and Petition of Fitchburg Gas and Electric Light Company d/b/a Unitil for Approval of Proposed Long-Term Contracts for Clean Energy Projects pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12, Docket No. D.P.U. 18-66. (MA EDC Petitions).

⁵ *Central Maine Power Company*, 165 FERC ¶ 61, 034 (2018).

Figure II.1

Power Purchase Agreements				
Counterparties		MW	Years	Reference
HQUS	Eversource	579.3	1-20	NEXRE-002-006, Attachment 1
HQUS	National Grid	498.3	1-20	Exhibit NECEC-16
HQUS	Unitil	12.3	1-20	NEXRE-002-006, Attachment 2

As shown in Figure II.2, there are seven different TSAs with CMP, three corresponding to the capacity and term of the PPAs with the MA EDCs. Three additional TSAs correspond to the capacity of the PPAs with the MA EDCs, but are between CMP and HQUS for years 21-40 of the expected life of the NECEC line. The final TSA is a 40-year agreement between CMP and HQUS for the remaining 110 MW of the line.

Figure II.2

Transmission Services Agreements				
Counterparties		MW	Years	Reference
CMP	Eversource	579.3	1-20	Exhibit NECEC-17
CMP	National Grid	498.3	1-20	Exhibit NECEC-18
CMP	Unitil	12.3	1-20	Exhibit NECEC-19
CMP	HQUS	579.3	21-40	Exhibit NECEC-20
CMP	HQUS	498.3	21-40	Exhibit NECEC-21
CMP	HQUS	12.3	21-40	Exhibit NECEC-22
CMP	HQUS	110.0	1-40	Exhibit NECEC-23

The PPAs and TSAs contain customary commercial terms and conditions and include provisions specific to the Green Communities Act and Section 83D solicitation. Generally, the PPAs provide for the delivery of an aggregate of 9,554,940 MWh annually of incremental hydroelectric generation and related Environmental Attributes from HQUS delivered through the NECEC Transmission Line to the delivery point in Lewiston, Maine. Each PPA also includes a methodology by which baseline and incremental energy deliveries are calculated.⁶ The PPAs also include provisions for reimbursement from HQUS for failure to meet delivery obligations. The PPAs do not

⁶ Specifically, the baseline hydroelectric delivery volume in the National Grid PPA is based on an initial 9.45 TWh volume subject to certain potential adjustments, while the Eversource and Unitil initial annual volume is 3 TWh, adjusted only for *force majeure* events.

include an obligation on the part of HQUS to obtain a Capacity Supply Obligation (CSO) in the ISO-NE Forward Capacity Market (FCM). The TSAs provide the terms by which the MA EDCs will purchase firm transmission service from CMP for the delivery of energy into New England over the NECEC line. Commercial operations under both the PPAs and the TSAs is expected to be no later than December 2022.⁷

III. PROCEDURAL BACKGROUND

A. Petition

On September 27, 2017, CMP filed its Petition for a CPCN, pursuant to 35-A M.R.S. § 3132(6) and Chapter 330 of the Commission Rules, to construct the NECEC, an HVDC transmission line from the Maine-Québec border at Beattie Township to Lewiston, Maine that would be capable of delivering 1,200 MW of electricity from Québec to the ISO-NE grid (CMP Petition).

On October 3, 2017, the Hearing Examiners issued a Notice of Proceeding that provided all interested persons with the opportunity to file a petition to intervene in this matter on or before October 13, 2017.

B. Intervention

The Commission received the following timely-filed petitions to intervene that were granted by the Hearing Examiners: The Office of the Public Advocate (OPA), the Industrial Energy Consumer Group (IECG), the Conservation Law Foundation (CLF), Ms. Dorothy Kelly, the Maine Renewable Energy Association (MREA), the Natural Resources Counsel of Maine (NRCM), and Western Mountains and Rivers Corporation (WM&RC).

Throughout the proceeding, the Commission also received numerous late-filed petitions to intervene. The Hearing Examiners granted all such requests for intervention on either a mandatory or discretionary basis by procedural orders dated November 27, 2017; March 28, 2018; April 27, 2018; August 28, 2018; September 6, 2018; October 2, 2018; October 11, 2018; October 15, 2018; and October 29, 2018. The intervenors in this proceeding that submitted late-filed petitions to intervene are the Governor's Energy Office (GEO), NextEra Energy Resources, LLC (NextEra), RENEW Northeast, Inc. (RENEW); Calpine Corporation, Vistra Energy Corporation (formerly known as Dynegy Inc.), and Bucksport Generation LLC (Calpine, Vistra, and Bucksport hereinafter collectively referred to as "GINT"; the Acadia Center; Friends of Maine Mountains (FMM); ReEnergy Biomass Operations LLC (ReEnergy); International Brotherhood of Electrical Workers Local Union 104 (IBEW); City of Lewiston (Lewiston); Town of Caratunk (Caratunk); Maine Chamber of Commerce (Chamber); Town of Farmington; Greater Franklin Development Council (GFDC); Trout Unlimited; Former Senator

⁷ MA EDC Petitions, Joint Direct Testimony of Jeffery S. Waltman, Timothy J. Brennan and Robert S. Furino, July 23, 2018 at 15, 36-37.

Thomas Saviello; Darryl Wood; Town of Alna; Town of Wilton; Town of New Sharon; Old Canada Road National Scenic Byway, Inc. (Old Canada Road); Town of Jackman; and Terry Brann.

C. Testimony, Discovery, Hearings

A variety of witnesses testified on behalf of CMP and intervenors in this proceeding. Written discovery was conducted and technical conferences were held after every phase of testimony.

The following prefiled testimony was submitted:

On January 26, 2018, Ms. Kelly submitted intervenor testimony.

On April 1, 2018, Ms. Kelly submitted additional intervenor testimony.

On April 30, 2018, GINT submitted direct intervenor testimony from Tanya L. Bodell, William S. Fowler, and James M. Speyer; NextEra submitted intervenor testimony from Christopher Russo and Stephen Whitley; and RENEW submitted intervenor testimony from Francis Pullaro.

On May 21, 2018, the Commission Staff filed a London Economics International (LEI) Report (LEI Report) on electricity market and macroeconomic benefits of the NECEC.

On July 13, 2018, CMP filed Rebuttal Testimony from Thorn Dickinson, Eric Stinneford, and Bernardo Escudero (Business and Policy Panel) (2) Chris Malone, Scott Hodgdon, and Justin Tribbet (Transmission Planning and Engineering Panel); and (3) Daniel Peaco, Douglas Smith, and Jeffrey Bower of Daymark Energy Advisors (Daymark).

On August 18, 2018, GINT submitted Surrebuttal Testimony of Tanya L. Bodell and William S. Fowler; and NextEra submitted Surrebuttal Testimony of: (1) Christopher Russo; (2) Robert Stoddard; and (3) Stephen Whitley, Dan Mayers, and Francis Wang.

On September 10, 2018, the Commission Staff submitted a memo prepared by LEI (LEI MOPR Memo) in response to the NextEra Surrebuttal Testimony regarding the Minimum Offer Price Rule (MOPR).

The Commission held evidentiary hearings in this matter on October 19, 2018 (LEI) and on October 22, 2018 (CMP Transmission Planning and Engineering Panel and NextEra witnesses Whitley, Wang and Mayer).

On October 26, 2018, at the request of the intervenors, the Hearing Examiners suspended the remaining evidentiary hearings until January 2019 to allow the Commission Staff and parties additional time to review and analyze the documents that CMP produced in response to ODR-014-004.

On December 10, 2018, GINT filed Supplemental Testimony from Tanya Bodell and William Fowler regarding the MOPR analysis. NextEra also filed Supplemental Testimony from Christopher Russo and LEI filed a Supplemental MOPR Memo.

The Commission held the remaining evidentiary hearings on January 8, 2019 (GINT witnesses Tanya Bodell and James Speyer); January 9, 2019 (CMP Business and Policy Panel witnesses Thorn Dickinson, Eric Stinneford and Bernardo Escudero); January 10, 2019 (CMP Transmission Planning and Engineering witnesses Christopher Malone, Scott Hodgdon and Justin Tribbet, and Daymark witnesses Daniel Peaco, Douglas Smith, and Jeffrey Bower); and January 11, 2019 (NextEra witnesses Christopher Russo and Robert Stoddard; and GINT witness Tanya Bodell).

The Commission convened three public witness hearings, each of which were noticed in advance by procedural order. The Commission held the first two public witness hearings on September 14, 2018 in Farmington and The Forks Plantation. The Commission held the third public witness hearing on October 17, 2018 at the Commission's offices in Hallowell. A total of 116 witnesses testified at these three public witness hearings. Twenty witnesses testified in support of the NECEC, 93 spoke in opposition to the Project, and three witnesses testified neither for nor against the Project.

D. Briefs and Public Comments

On February 1, 2019, CMP, OPA, IECG, GINT, NextEra, CLF, NRCM, Acadia Center, Caratunk, Lewiston, IBEW, Chamber, Ms. Kelly, RENEW, and WM&RC filed initial briefs and on February 13, 2019, CMP, OPA, IECG, GINT, NextEra, Caratunk, and Ms. Kelly filed reply briefs.

In their initial briefs, CMP, IECG, OPA, Chamber, Lewiston, IBEW, and WM&RC argue that the Commission should find a public need for the NECEC and issue a CPCN. These parties argue that the NECEC will lower regional energy and capacity costs, provide needed infrastructure to enhance the resilience of the grid, result in the export of clean hydropower generation from Québec into New England, and provide economic benefits through increased tax revenue and employment. The IECG and OPA's support for the Project is conditioned on CMP transferring the NECEC into an affiliate, or special purpose entity (SPE) to construct, own and operate the NECEC line and that Maine ratepayers be held harmless from the prior inclusion of costs arising from NECEC in regional or local transmission rates.

GINT, NRCM, NextEra, Caratunk, RENEW, and Ms. Kelly oppose the approval of the Project, arguing that CMP has not satisfied its burden to demonstrate that there is a public need for the NECEC. These intervenors argue that the NECEC is about an environmental policy initiated by another state (Massachusetts); it will not result in significantly lower electricity rates; it will not reduce GHG emissions, and could even result in increased emissions; its design will discourage the development of Maine-based wind and solar renewable generation; and it will permanently damage scenic,

historical, and recreational values in western Maine and result in a substantial loss of tourism. RENEW states that any approval of the Project should be conditioned on CMP increasing the transfer capability on the Surowiec-South interface.

CLF and Acadia Center argue that the Commission should require CMP to commit to a significantly more robust Project benefits package that includes substantial financial, resource and planning commitments that will, among other things, advance Maine's renewable energy goals, Maine's economy, and Maine's public health. Specifically, the Commission should require the Project to mitigate potential impacts on existing and future Maine-based renewables and to do more to advance the public health in Maine, including substantial financial contributions toward the decarbonization and electrification of Maine's transportation and heating sectors, including toward the expansion of electric vehicle and electric heat pumps.

In addition to the party arguments presented in the briefs, the Commission received over 1,350 public comments. Most of the public comments oppose the NECEC, primarily on the grounds the Project will result in irreparable harm to the environment and scenic values of western Maine, harm to wildlife, and negative impacts on regional tourism.

E. Stipulation

On February 21, 2019, CMP filed a Stipulation and supporting memorandum in this case. The Stipulation is supported by OPA, GEO, IECG, CLF, Acadia Center, WM&RC, Lewiston, the Chamber, IBEW, and FMM. The following parties oppose the Stipulation: NextEra; Ms. Kelly; GINT; NRCM; RENEW; MREA; ReEnergy; Caratunk; Former Senator Thomas Saviello, the Town of Wilton, and Old Canada Road.

On a February 21, 2019, a Procedural Order was issued that provided parties an opportunity to provide written comment on the Stipulation. Written comments were filed by GFDC, FMM, Caratunk, IBEW, NRCM, the Chamber, RENEW/MREA, Ms. Kelly, ReEnergy, CLF/Acadia Center, IECG/OPA, GEO, GINT, and Old Canada Road. A hearing was held on the Stipulation on March 7, 2019.

F. Examiners' Report

On March 29, 2019, an Examiners' Report was issued which contained Staff's recommendations on the issues in this proceeding. Exceptions or comments on the Examiners' Report were filed on April 8, 2019 by the following parties: ReEnergy, IECG, GINT, NRCM, WM&RC, Caratunk, CMP, NextEra, and Ms. Kelly.

IV. **STATUTORY REQUIREMENTS**

The governing statute in this proceeding is Title 35-A, Section 3132. This Section states that "a person may not construct any transmission line ... unless the commission has issued a certificate of public convenience and necessity approving construction." Section 3132(6) requires that, in its Order, the Commission "shall make

specific findings with regard to the public need for the proposed transmission line.” The Section also states that the Commission “shall make specific findings with regard to the likelihood that nontransmission alternatives can sufficiently address the identified public need over the effective life of the transmission line at lower total cost.”

Specifically, Section 3132(6) requires that:

In determining public need, the commission shall, at a minimum, take into account economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings and alternatives to construction of the transmission line, including energy conservation, distributed generation or load management.

Chapter 330 of the Commission’s Rules, Section 9(B), specifies that a “public need” is established upon a determination that “ratepayers will benefit by the proposed line” taking into account the statutory criteria cited above.

In recognition of the unique nature of this proceeding, the Hearing Examiners, on January 14, 2019, issued a Procedural Order identifying several specific legal issues for the parties to address in post-hearing briefs. The Commission discusses these legal issues and various requirements of Section 3132(6) below.⁸

A. Public Need

As stated above, Section 3132(6) provides, in part, that the Commission shall make specific findings with regard to the public need for the proposed transmission line and, if the Commission finds that a public need does exist, it must issue a CPCN. In determining public need, the Commission is directed to consider a number of factors. However, the terms “public need” and “public convenience and necessity” are not expressly defined in the statute.

In a typical CPCN proceeding, a Transmission and Distribution (T&D) utility identifies a reliability need and proposes a transmission project to address that need. The Commission then examines the extent of the reliability need and whether the proposed project is the lowest-cost means to address what is a “public need.” In contrast, the NECEC is not proposed to address an identified reliability need, but rather to import power from Québec through Maine to meet a public policy of Massachusetts.

The January 14, 2019 Procedural Order asked the parties to address:

⁸ The issues identified in the January 14, 2019 Procedural Order included the applicability of Title 35-A, Section 707 and Chapter 820 of the Commission’s Rules with respect to housing the project in a separate corporate affiliate and good will payments. Provisions included in the Stipulation address these matters; accordingly, the Commission does not address these legal issues in this Order.

How should the “public need” standard pursuant to section 3132(6) be considered and evaluated in the context of the NECEC as opposed to the more typical reliability transmission project?

1. Positions of the Parties

CMP, IECG, and WM&RC argue that, in determining whether the public need has been met, the statute does not preclude the Commission from considering the impact of these various factors on the broader region, including other New England states or needs specified by the Massachusetts solicitation. CMP Initial Br. at 8-15; IECG Initial Br. at 11-12; WM&R Initial Br. at 4-5. CMP, IECG and IBEW argue that “public need” is analogous to a “public benefit” or “public welfare,” which is a flexible concept that requires a balancing of the benefits of the Project against its costs and risks. CMP Initial Br. at 5-8; IECG Initial Br. at 11-14; IBEW Initial Br. at 2-3. The OPA takes the position that the term “public need” is broad enough to encompass funds provided to Maine communities and citizens to mitigate any harms that could flow from the construction and operation of the NECEC. OPA Initial Br. at 19-22.

GINT and Caratunk argue that the Commission should only focus on whether the NECEC meets a Maine public need in that it must be assumed that the Maine law governing the approval of electric transmission projects in Maine was not designed to accommodate a public need in another state. GINT Initial Br. at 73-76; Caratunk Initial Br. at 7-9. NextEra argues, that, in interpreting public need, the Commission should not approve the NECEC if it conflicts with one or more of the statutory criteria. NextEra Initial Br. at 2-4.

2. Discussion

Section 3132 does not define what constitutes a “public need.” However, the meaning of public need in the context of a public convenience and necessity proceeding is established in case law. The Law Court has recently construed “public convenience and necessity” as being synonymous with “public benefit” or “public interest.” *Enhanced Communications of Northern New England, Inc. v. Public Utilities Commission*, 2017 ME 178, at fn. 4; *See also Zachs v. Department of Public Utilities*, 547 N.E.2d 28, 32 (Mass. 1989) (holding that the phrase “public convenience and necessity” is a term of art that stands for the general notion of public interest).

Thus, the “public need” standard in this case is essentially a general standard of meeting the public interest. A determination of “public interest” generally requires a careful weighing of the benefits and costs of the Project, including those that are quantifiable and those that are not. With respect to whether the “public” includes regions beyond Maine, the Commission interprets the statutory public interest standard to pertain to Maine. In this case, the standard involves consideration of the benefits and costs of the NECEC to Maine’s ratepayers and residents, rather than its role in meeting energy policies in another state. Finally, the Commission disagrees that every factor identified in the statute for consideration by the Commission must be satisfied or

promoted for a “public need” determination to be made, as long as, on balance, the overall benefits of the Project outweigh the costs.

B. Nontransmission Alternatives (NTA)

Title 35-A, Section 3132(2-D) requires that the Commission “consider the results of an investigation by an independent 3rd party... of nontransmission alternatives to construction of the proposed transmission line.” In addition, Section 3132(6) states that the Commission “shall make specific findings with regard to the likelihood that nontransmission alternatives can sufficiently address the identified public need over the effective life of the transmission line at lower total cost.”

In the January 14, 2019 Procedural Order, the Hearing Examiners asked parties to address:

How should section 3132(2-D), which states that the Commission shall consider the results of an independent third-party investigation of nontransmission alternatives to the proposed transmission project, be considered in the context of the NECEC as opposed to a reliability transmission project?

1. Positions of the Parties

CMP, IECG, OPA, Acadia Center, CLF, and WM&RC argue that the statutory provisions were drafted under an expectation that a proposed transmission line is being constructed either for reliability purposes or to provide Maine with energy, as historically has been the case. CMP Initial Br. at 166-169; IECG Initial Br. at 17-18; OPA Initial Br. at 23-24; Acadia Center Initial Br. at 4; Kelly Initial Br. at 8-9, NextEra Initial Br. at 6-8. In this case, the public need is to deliver hydroelectric energy from Québec to Massachusetts. In addition, these parties note that, because the NECEC will not be paid for by Maine ratepayers, there cannot be a lower-cost NTA alternative.

NRCM, NextEra, GINT, and Ms. Kelly argue that nothing in the statute exempts a project with no reliability component, like the NECEC, from the requirement of a CPCN applicant to conduct an NTA investigation. NRCM Initial Br. at 5-7; NextEra Initial Br. at 6-8; GINT Initial Br. at 76-78; Kelly Initial Br. at 8-9. Therefore, an investigation must be conducted in this proceeding to determine whether an NTA can economically and reliably address the public need identified for the NECEC.

2. Discussion

The Commission concludes that, because there is no NTA that can feasibly substitute for the NECEC, the statute does not require that an independent analysis of the costs of potential NTAs be conducted. The purpose of the NECEC is to transmit hydroelectric generation from Québec to New England to meet the requirements of the MA EDCs. Thus, no NTA, whether large-scale generation, distributed generation, demand response resource, or conservation alternative, can replace the NECEC. A

contrary interpretation of the statute that would require an NTA analysis would lead to absurd results and cannot be the intent of the Legislature. *Town of Madison, Dep't. of Elec. Works v. Pub. Utils. Comm'n*, 682 A.2d 231, 234 (Me. 1996) (plain meaning will be applied so long as it does not lead to an absurd, illogical, or inconsistent result).⁹

This conclusion is consistent with the Commission's decision in Docket No. 2010-00180 that approved a stipulation and issued a CPCN allowing CMP to construct a transmission line reinforcement, despite the absence of an NTA analysis. In that proceeding, the Commission held that an NTA was "not feasible," because it required adding load behind an identified export constraint, and CMP could not "force the location of customers." *Central Maine Power Company and Public Service Company of New Hampshire, Request for Certificate of Public Convenience and Necessity for the Somerset County Reinforcement Project Consisting of the Construction of Approximately 39 miles of 115 kV Transmission Lines ("Section 241")*, Docket No. 2010-00180, Order Approving Stipulation at 10-11 (Aug. 15, 2011).

C. Public Health and Safety, Scenic, Historic and Recreational Values

The January 14, 2019 Procedural Order asked parties to address the following issue:

Based upon the assumption that the Legislature did not intend that the Commission duplicate the functions of the Department of Environmental Protection (DEP), how should the requirement in section 3132(6) that the Commission consider "public health and safety, scenic, historic and recreational values" be interpreted and applied? Is the interpretation and application of this requirement different in the context of the NECEC as opposed to a reliability transmission project?

1. Positions of the Parties

CMP, IECG, WM&RC, and IBEW argue that the Commission should defer to the DEP and the LUPC, with respect to issues relating to public health and safety, scenic, historic and recreational values, and that approval may be conditioned on future receipt of all necessary permits and approvals from such agencies. CMP Initial Br. at 16-25; IECG Initial Br. at 14-15; WM&R Initial Br. at 14-15; IBEW Initial Br. at 3-4. Sections 3132(6), (7), and (8) provide the Commission an opportunity to consider the findings of the DEP with respect to any modifications ordered by the DEP and contemplates an iterative process, if necessary, in which the Commission would review the DEP's findings if it imposes additional costs on the project. In this manner, redundant and potentially inconsistent project reviews by State agencies can be avoided.

⁹ The Commission notes that, even if an NTA could meet the identified public need, such an alternative could not do so at a lower total cost to Maine customers because Maine customers will not pay for the NECEC.

NRCM, CLF, Acadia Center, NextEra, GINT, and Caratunk argue that the Commission does not have to duplicate the specific responsibilities of DEP and LUPC and is the only regulatory agency that can adequately consider the overall impacts to Maine's "public health and safety, scenic, historic and recreational values" in the context of a broader cost-benefit analysis. NRCM Initial Br. at 4-5; CLF Initial Br. at 10-13; Acadia Center Initial Br. at 3; NextEra Initial Br. at 4; GINT Initial Br. at 74-76; Caratunk Initial Br. at 9-11. DEP and LUPC only focus on their specific statutory criteria, which do not include energy market issues and ratepayer impacts. Moreover, there is no language in the CPCN statute that authorizes the Commission to delegate its consideration of these statutory criteria to DEP. Finally, the Commission, the DEP and LUPC are charged with administering different statutes, and each agency is equipped to administer its duties with different standards of review.

2. Discussion

In the typical reliability project, the Commission would first consider whether there is a public need for the proposed transmission line. Upon such a finding, the Commission would then review the other statutory considerations, including the need to mitigate impacts on such things as public health and safety, scenic, historic, and recreation value.

To interpret the statutory language in the context of the current proceeding, and upon the assumption that the Legislature did not intend duplication among State agencies, the Commission examines the statutory authority and functions of Maine's DEP and LUPC. This examination reveals different types of reviews undertaken by the various agencies. While the Commission's review of these statutory criteria is in the context of whether the utility has met its burden of showing there is a public need for the project, DEP's review of similar criteria is different in that it considers whether the utility has shown that its project (1) does not unreasonably interfere with existing scenic, aesthetic, and recreational uses, among others and (2) whether the utility has shown that it "has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character" 38 M.R.S §§ 480-D, 484. The LUPC's role is to determine, among other things, whether there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant and that the use can be buffered from those other uses and resources for which it is incompatible.

In addition, the statutory scheme generally contemplates that the Commission's decision would occur prior to that of the DEP or LUPC. Thus, the overall statutory scheme can be read to contemplate that if the Commission does not grant the CPCN, such a determination eliminates the need for the DEP or LUPC to conduct their reviews. Accordingly, upon reviewing the applicable statutes together, the Commission finds that the evaluation of the NECEC by the Commission, the DEP, and LUPC are complementary and the evaluation of impacts, such as scenic and recreational values, can be accomplished without significant duplicating or overlapping reviews.

Thus, the Commission concludes that it is not appropriate for the Commission to defer to other agencies. Accordingly, the Commission must consider the impact of the NECEC on public health and safety, scenic, historic, and recreation values as part of its overall assessment of whether the NECEC is in Maine's public interest.

D. State Renewable Energy Generation Goals

The January 14, 2019 Procedural Order asked parties to comment on the following:

How should the requirement in section 3132(6) that the Commission consider "state renewable energy goals" be considered in the context of the NECEC?

- *Referring to the definitions of "renewable capacity resource" in section 3210(2)(B-3) and of "renewable resource" in section 3210(2)(C), should the hydroelectric generation to be transmitted over the NECEC be considered "renewable" for purposes of promoting "state renewable energy goals" under Maine law?*
- *Referring to the "State's goals for reduction of greenhouse gas emissions within the State" contained in Title 38, section 576, is this provision relevant to the consideration of the NECEC proposal and the associated hydroelectric power located in Canada?*
- *Are there other Maine statutory provisions that are relevant to the Commission's consideration of "state renewable energy goals" in this proceeding?*

1. Positions of the Parties

CMP argues that, although the NECEC-enabled generation does not fall within the definition of a renewable resource or a new renewable capacity resource under Title 35-A, because the NECEC energy will come primarily from dams with more than 100 MW of production capacity, the Project will provide many of the same benefits as hydroelectric power that satisfies Maine's definition of a renewable resource. CMP Initial Br. at 115-125. CMP asserts that the NECEC is a substantial source of clean, reliable baseload hydroelectric generation that diversifies the sources of electricity production for all of New England, including Maine, and reduces the region's and Maine's dependence on natural gas-fired generation. CMP argues, further, that the Commission may consider the extent to which the proposed Project will facilitate Maine's achievement of GHG emissions reduction targets set forth in 38 M.R.S., Section 576 (Climate Change Act). CMP Initial Br. at 163-165.

NRCM, GINT, Caratunk, and Ms. Kelly argue that the Commission should not consider hydroelectric generation transmitted over the NECEC from Québec to

Massachusetts as a renewable resource for the purposes of promoting “state renewable energy goals,” because it would not qualify as a “renewable capacity resource” under Section 3210(2)(B-3) or as a “renewable resource” under Section 3210(2)(C). NRCM Initial Br. at 4-7; GINT Initial Br. at 78-80; Caratunk Initial Br. at 17-19; Kelly Initial Br. at 9-12. In both instances qualifying generation is limited to capacity below 100 MW for hydroelectric generators, while most of Hydro Québec’s generation portfolio exceeds 100 MW. In addition, these parties argue that consideration of “state renewable energy goals” requires that the Commission take into account the goals as expressed in the Maine Wind Energy Act and the Maine Solar Energy Act, arguing that the NECEC would make it more difficult for the goals of these Acts to be achieved.

2. Discussion

Title 35-A, Section 3210 governs Maine’s renewable portfolio standards (RPS). Section 3210(1) states:

In order to ensure an adequate and reliable supply of electricity for Maine residents and to encourage the use of renewable, efficient and indigenous resources, it is the policy of this State to encourage the generation of electricity from renewable and efficient sources and to diversify electricity production on which residents of this State rely in a manner consistent with this section.

The statute specifies “hydroelectric generators” as a “renewable resource,” but limits the size of any RPS qualifying resource¹⁰ (except for wind power) to 100 MW or less. Title 35-A M.R.S. § 3210(2)(C)(f). Chapters 3-A (Climate Change) and 3-B (Regional Greenhouse Gas Initiative) of Title 38 address State policies and programs specifically related to GHG emissions. Chapter 3-A establishes GHG reduction targets for the State, and Chapter 3-B authorizes Maine’s participation in the Regional Greenhouse Gas Initiative (RGGI), which is a multi-state cooperative effort to cap and reduce CO₂ emissions from electric generators. Taken together, these statutory provisions include various renewable energy related goals, including supply diversity and reliability, and GHG emission reductions.

In addition, the Legislature has found that in-state hydropower makes a “significant contribution to the general welfare of the citizens of the State” in that it is a “large-scale energy resource which does not rely on combustion of a fuel, thereby avoiding air pollution, solid waste disposal problems and hazards to human health from emissions, wastes and by-products.” 38 M.R.S. § 631(1). For these reasons, the Commission finds that the promotion of incremental hydroelectric generation for import into the New England market supports the “state renewable energy generation goals” as set forth in Section 3132(6). As enumerated in the statutory provisions discussed above, these goals include promoting adequate, reliable, and diverse sources of electricity supply and GHG emission reductions.

¹⁰ The fact that hydropower facilities larger than 100 MW do not qualify for Maine’s RPS does not mean that they are not producing energy that is renewable.

The Commission also concludes that both the Maine Solar Energy Act, 35-A M.R.S. § 3472 *et. seq.* and the Maine Wind Energy Act, 35-A M.R.S. § 3402 *et. seq.*, are relevant to the Commission's consideration of "state renewable energy goals" in this proceeding. The Maine Solar Energy Act advances the goals of "[e]nsuring that solar electricity generation, along with electricity generation from other renewable energy technologies, meaningfully contributes to the generation capacity of the State through increasing private investment in solar capacity in the State." In furtherance of these and other goals, the Act creates a State policy of "encourag[ing] the attraction of appropriately-sited development related to solar energy generation, including any additional transmission, distribution and other energy infrastructure needed to transport additional solar energy to market . . . for the benefit of all ratepayers." Similarly, the Maine Wind Energy Act creates a state policy of "encourag[ing] the attraction of appropriately sited development related to wind energy" and establishes Maine's in-state wind goals of at least 3,000 MW of installed wind by 2020, and 8,000 MW of installed wind by 2030.

Thus, the question of whether the NECEC facilitates or hinders solar or wind resource development in Maine is an issue when considering whether the NECEC is in the overall public interest.

V. ANALYSIS OF NECEC IMPACTS

A. Electricity Market Price and Ratepayer Impacts

1. Overview

Based on the record in this proceeding, the Commission finds that the NECEC will result in substantial benefits to Maine electricity customers because of the effect it will have on reducing energy and capacity prices in the wholesale market. These market price benefits accrue to Maine customers due to the reductions in wholesale prices that will result from the delivery over the NECEC from Hydro Québec of a substantial amount of energy and capacity into the Maine Zone at the Larrabee Road Substation in Lewiston. As a contractual matter, the NECEC will deliver energy to the MA EDCs. As a *physical* matter, however, the beneficial effects of that energy will be realized directly by Maine consumers through lower electricity supply prices.

As discussed below, the record demonstrates that market price reduction benefits will result from the NECEC, notwithstanding the divergence among the experts and the parties with respect to their magnitude. Moreover, the record demonstrates that benefits will flow to Maine for a period of at least 20 years.

In addition, the Commission finds that the NECEC will enhance transmission reliability, and supply reliability and diversity in the region, and serve as a hedge against high and volatile natural gas prices.

2. Energy Market Impacts

a. Overview

The evidence in the record in this proceeding demonstrates that the NECEC will result in a reduction to wholesale energy prices in Maine and across the New England region. The wholesale energy benefits in Maine, as estimated by the Commission's expert, LEI, and CMP's expert, Daymark,¹¹ range from \$14 million to \$44 million dollars per year in nominal dollars, and the estimated net present value (NPV) benefits over the first 15 years of NECEC operations range from \$122 million to \$384 million (2023\$). LEI Report Figure 4.

b. Description of the Wholesale Energy Market

Maine is part of a regional electricity system and market operated and administered by ISO-NE. The rules of the energy market are set forth in ISO-NE Market Rule 1.¹² Energy prices in the ISO-NE market, referred to as "locational marginal prices" or "LMP", are comprised of three components: an energy component, a loss component, and a congestion component. Suppliers of energy to the market are paid the LMP applicable to their location, or "node", and entities that serve customer loads are charged the LMP applicable to the locational "zone" within which the load is located.

As described by the ISO-NE:

Locational marginal pricing is a way for wholesale electric energy prices to reflect the value of electric energy at different locations, accounting for the patterns of load, generation, and the physical limits of the transmission system....

An LMP is the price for electric energy at each load zone, external interface with neighboring regions, and the Hub that reflects (1) the operating characteristics of, and (2) the major constraints on, the New England transmission system at each area, as well as (3) the losses resulting from physical limits of the transmission system. The energy component of all LMPs is the price for electric energy at the "reference point," which is the load-weighted average of the system node prices...

¹¹ GINT provided an analysis of the energy market benefits of the NECEC using Calpine's UPLAN model during, but only for a single year of operation, 2023. Bodell Dir. Test. at 22.

¹² Information relating to ISO-NE's Market Rule 1 can be found at <https://www.iso-ne.com/participate/rules-procedures/tariff/market-rule-1>

The congestion component of a nodal LMP reflects the marginal cost of congestion at a given node or external node relative to the load-weighted average of the system node prices. The congestion component of a zonal price is the weighted average of the congestion components of the nodal prices that comprise the zonal price. The congestion component of the Hub price is the average of the congestion components of the nodes that comprise the Hub.

The loss component of an LMP at a given node or external node reflects the cost of losses at that location relative to the load-weighted average of the system node prices. The loss component of a zonal price is the weighted average of the loss components of the nodal prices that comprise the zonal price. The loss component of the Hub price is the average of the loss components of the nodes that comprise the Hub.¹³

Because prices paid to a generator/supplier for energy reflect the LMP at the generator's physical point of delivery, or node, they convey to the generator the value of its energy taking into account the effects of energy delivered at that node on losses and congestion. In particular, if delivery of energy at a given node would increase congestion and losses, the LMP paid to the supplier for that energy would be reduced to reflect those effects. The intent of the three-part LMP, at least in part, is to send a price signal to incentivize generators to locate where it is efficient to do so.

As noted by GINT witness Ms. Bodell:

...The point of these prices as calculated by ISO New England is to send a price signal. And the price signal, if it's lower, says don't build here because we don't need you as much, and if it's higher, it says we'd like you to build here, with respect to generation. And it can send the same type of signal with respect to load if you're passing through the price. So, the price signal that ISO New England calculates is meant to send the signal to create economic buildout where it's needed.

...

Generally, the highest prices occur at load centers. So, I would expect Boston would have among the highest because it's hard to get energy in there....

Hearing Tr. at 125-6 (Jan. 8, 2019).

Thus, if there were no barriers to locating new sources of supply anywhere in New England, nor any practical considerations such as proximity to fuel sources (such as natural gas pipelines or, in the case of hydropower, water sources) then presumably

¹³ Information relating to ISO-NE's Locational Marginal Pricing can be found at <https://www.iso-ne.com/participate/support/faq/lmp>

new power plants and other sources of supply would choose to locate at the nodes where LMPs are the highest and with the least negative congestion and loss effects. However, there are such barriers and practical factors that drive location decisions by generators. These considerations, together with the LMP price signal, influence where new plants will be sited. If a new supply source chooses to locate at a point that results, for example, in an increase to the loss component of the LMP, that does not by itself suggest the decision was not economically rational.

In this case, because the NECEC-enabled energy will be paid based on a contract price, rather than the LMP at Larrabee Road, the 83D RFP process and results may also bear on the economic rationality question. As discussed at the January 8, 2019 hearing, the NECEC was selected as part of competitive solicitation process in which more than 50 bids from 46 different bidders were received. Hearing Tr. at 129 (Jan. 8, 2019). The Commission presumes that the evaluation of the competing bids would have taken into account the relative economics of the various projects, including the energy value at the project's delivery node given that, at least with respect to the NECEC, is the energy market value the MA EDCs will realize. As noted above, although the LMP would be higher in load centers such as Boston, it would be difficult and expensive to actually site a new power plant in, or deliver energy to, those areas. Thus, in evaluating economic rationality, the analysis, either in the wholesale market or a competitive bid process, becomes one of tradeoffs among various factors. Finally, it should be noted that, from a consumer's point of view, lower zonal LMP's, *i.e.*, more negative loss and congestion components, translate directly into lower prices for customers located in that zone.

c. Price-Taking Resources

A supplier bidding energy into the ISO-NE market will generally bid a price that reflects its marginal cost of production. Resources such as the NECEC, which have delivery obligations and are paid pursuant to a pre-established contract, or resources like hydropower that have a low marginal cost of production, have the economic incentive to bid a low or zero price with ISO-NE to ensure they will be dispatched. This type of resource is described as "price taking" in that the resource will commit to, or "take," the market clearing price, whatever it turns out to be when actually dispatched. Price-taking resources lower the energy market clearing price by displacing energy from more expensive units.

The NECEC is likely to be a price-taking resource. As noted by LEI: "LEI also assumed that the shippers on NECEC would offer as price takers in the wholesale energy market in order to fulfill their contractual obligations to Massachusetts." LEI Report at 18. By offering NECEC energy as a price-taking resource, HQUS can ensure that the NECEC energy will be selected before higher-priced resources.

d. Analysis in the Record and Positions of the Parties

As noted above, analyses of the effect of the NECEC on wholesale energy prices in Maine and the region were provided by Daymark and LEI.¹⁴ Daymark's analysis, which was conducted using its AURORA production cost model, indicated that the import of energy at the full 1,200 MW capacity of the NECEC transmission line would reduce LMPs on average by \$3.70/MWh. CMP Exh. NECEC 5 at 11. Daymark concluded that these price reductions would save Maine electricity customers \$44 million per year relative to what customers would have paid but for the NECEC. *Id.* Daymark concluded, further, that the NECEC would provide a benefit of \$496 million NPV (2023\$) for Maine electricity customers over the first 20 years of the project. *Id.*

LEI's analysis of the energy market benefits of the NECEC, conducted for a 15-year period using LEI's proprietary production cost model POOLMod, also indicated savings for Maine electricity customers, albeit at a lower level than Daymark's. Specifically, LEI found that over the first 15 years of operation, the NECEC would yield wholesale energy cost reductions for Maine customers of about \$14 million per year, which equates to an aggregate benefit of \$122 million NPV (2023\$) over this period. LEI Report at 31-32.

CMP asserts that the NECEC will lower wholesale electricity supply prices in Maine, and that this is consistent with Maine's policy to encourage the reduction of electricity costs for Maine customers. CMP Initial Br. at 29. CMP cites to the analyses of energy market price impacts on the record, including the single-year analysis of GINT, as evidence that the NECEC will reduce wholesale and retail electricity prices in Maine and throughout New England. *Id.* at 30. According to CMP, the models taken together delineate a potential range of energy price suppression benefits from the NECEC, with LEI on the low end at \$13 million per year in retail energy price suppression benefits, GINT in the middle at \$26-\$36 million wholesale energy price suppression benefits for the year 2023, to Daymark on the high end at \$44 million per year in wholesale energy price suppression benefits. *Id.* at 35. CMP disputes the claims of GINT and NextEra that NECEC will create material congestion in the ISO-NE wholesale energy market. *Id.* at 36-38. CMP argues, further, that the NECEC will mitigate the impacts of sustained natural gas price increases by inducing an average annual reduction of 54.2 million MMBtu of natural gas and provide a hedge against temporary increases in natural gas prices. *Id.* at 39-40.

The IECG states that there is no dispute in this proceeding that increasing the available supply of zero-bid energy into the ISO-NE market would provide energy market price benefits to Maine electricity consumers. IECG Initial Br. at 20. The IECG notes that, as a generation resource with no incremental fuel cost, HQ's hydroelectric power will be able to bid into the ISO-NE energy markets a price of zero, allowing it to collect the locational marginal price for its output in all hours that it supplies energy. In every hour that this occurs, the market clearing price will be lowered as the most

¹⁴ GINT also conducted an analysis of energy market benefits of the NECEC using Calpine's UPLAN model. However, the analysis was conducted for only the first year of the NECEC operations.

expensive generation resource is replaced by a lower-cost generation resource as the unit that sets the market clearing price. The IECG notes, further, that because the market clearing price is paid to all successful bidders, regardless of the price that they themselves bid, this represents a price reduction for every kilowatt hour sold in such hours. *Id.* at 21.

The IBEW argues that the LEI estimates of energy and capacity market savings are based on extremely conservative assumptions, but provide additional corroboration of Daymark's conclusion that there are significant ratepayer savings that would be provided by the NECEC. IBEW urges the Commission to make such a finding. IBEW Br. at 3. The City of Lewiston argues that the NECEC will facilitate the transmission of up to 1,200 MW clean hydropower generation to the New England transmission grid for 40 years and help to lower electricity costs. Lewiston Initial Br. at 4. The Chamber notes that, although it supports the NECEC for a variety of reasons, the energy cost reduction benefits of the Project are particularly significant for Maine businesses that use a lot of electric energy and any prospective Maine business considering its energy costs. Chamber Initial Br. at 4. Acadia Center states the region will economically benefit from the NECEC through expected reductions in regional wholesale market prices. Acadia Center Initial Br. at 3. WM&RC also asserts that the NECEC will likely provide lower wholesale market prices. WM&RC Initial Br. at 11. Finally, the NRCM agrees that the NECEC will depress energy prices in Maine; however, NRCM asserts that the NECEC could increase congestion, making it more costly for Maine renewable generators to reach the market. NRCM Initial Br. at 17.

GINT argues there is no meaningful energy market price suppression benefit to ratepayers. GINT Initial Br. at 33. GINT bases this position on a number of different factors. First, natural gas price futures have decreased since the energy price impact analyses have been conducted. *Id.* at 34. Second, GINT asserts that, because there is no meaningful requirement for NECEC deliveries to be incremental, price suppression will be minimal. *Id.* at 35. GINT also argues that any energy market price reductions would be negated by increases to capacity market prices as generators submit higher capacity market bids in an effort to recover revenues needed to remain viable. *Id.* at 39. GINT asserts, further, that the NECEC will increase "wasteful" line losses and congestion to the detriment of Maine's existing and future generation base. *Id.* at 43. Finally, GINT argues that any energy market price suppression due to the NECEC could harm Maine generators, especially biomass and small hydropower plants. *Id.* at 59-60.

NextEra asserts any energy benefits from the NECEC are speculative and limited in time. NextEra Initial Br. at 19. According to NextEra, the flexibility of the contract delivery terms with the MA EDCs can affect when and how much energy flows over the NECEC, which in turn, impacts whether and how much of the claimed energy price suppression benefits will be realized. *Id.* at 21. Finally, because the analytical estimates of energy benefits extend to only the first 20 years of the contract, NextEra argues that any price suppression benefits from years 21-40 are only speculative. *Id.* at 24.

Caratunk argues that the NECEC will not do much if anything to lower costs for ratepayers. Caratunk Initial Br. at 4. Ms. Kelly cautions that there are no assurances that the NECEC will, in fact, lower costs for Maine ratepayers over the long term, and that the analyses conducted to estimate the benefits are based on assumptions. Kelly Initial Br. at 13.

e. Discussion

As noted above, HQUS has contractually committed to provide, and the MA EDCs have committed to purchase, 9.45 TWh of energy per year for 20 years to be delivered over the NECEC. Given the available capacity of the NECEC, this obligation will require energy to be delivered at a very high capacity factor. Stated another way, energy will have to be delivered in almost every hour of the year. To ensure that it meets its contractual obligations, HQUS can be expected to participate in the market as a price-taking resource, *i.e.*, submitting a low- or zero-price bid, and taking the clearing price in all hours. It is clear that the injection of such a large quantity of price-taking energy into the Maine Zone will have a materially beneficial effect on energy prices in Maine.

Although the magnitude of these benefits cannot be measured precisely, the LEI and Daymark analyses provide a credible range. As noted above, these analyses indicate wholesale market benefits of from \$14 million per year (LEI) to \$44 million per year (Daymark), with estimated NPV benefits ranging from \$122 to \$496 million (2023\$).

With respect to the congestion issues raised by GINT and NextEra, the Commission finds that the record does not support a finding that the NECEC will result in a material increase in congestion in Maine. The analyses of both Daymark and LEI indicate only small increases in the number of hours that either the Surowiec-South or Maine-New Hampshire interface would be congested. Daymark Report at 25; LEI Report at 25. In addition, the GINT modeling indicated no congestion at the Surowiec-South interface and only modest congestion at the Maine-New Hampshire interface. Hearing Tr. at 127 (Jan. 8, 2019); Daymark Reb. Test. at 19. NextEra, based on its initial modeling, asserted that the NECEC would result in significant congestion. However, NextEra subsequently acknowledged errors in its modeling that render their results unreliable. Hearing Tr. at 7-55 (Oct. 22, 2018). Finally, the Commission notes that, to the extent the NECEC did result in increased congestion and/or losses in Maine, this would result in lower wholesale energy prices in the Maine Zone.

Finally, for the reasons discussed in Section V(A)(5) below, the Commission finds that the energy benefits resulting from the NECEC will not be offset by other factors, such as early retirement of other Maine generators.

3. Capacity

a. Overview

The evidence in the record also indicates that the NECEC will likely result in a reduction to wholesale capacity prices in Maine and across the New England region. The wholesale capacity market benefits in Maine, as estimated by the Commission's expert, LEI, and CMP's expert Daymark, range from \$19 million to \$27 million per year in nominal dollars, and the estimated NPV benefits over the first 15 years of NECEC operations range from \$223 million to \$292 million (2023\$). LEI Report Figure 4. For the reasons discussed below, however, capacity market savings from the NECEC are less certain than those in the energy market.

As with the energy market, the capacity market benefits would accrue to Maine due to the substantial amount of capacity that could be delivered across the NECEC into Lewiston. Bringing such a large quantity of incremental capacity into the regional market will tend to lower prices, given the simple supply/demand balance in the region.

b. Description of Forward Capacity Market

The ISO-NE FCM is governed by ISO-NE Market Rule 1, Section 13.¹⁵ Pursuant to the ISO-NE Rule, FCM auctions (FCA) are conducted each year to acquire capacity 3 years in advance of when it is to be delivered. Resources eligible to participate in the FCM include in-region generating plants and demand resources, and imports from other regions. Resources are awarded CSOs when their offer price clears the auction. Resources may exit the market and relieve themselves of their CSO by submitting de-list bids in subsequent auctions. Only new or de-listing resources may set the auction clearing price. All other resources are considered "Existing Resources" and "take" the FCM clearing price. Pursuant to the market rules, the NECEC would participate in the FCM as an "Elective Transmission Upgrade" (ETU) backed by a "New Import Capacity Resource."

As is clear from the record in this proceeding, the FCM rules are complicated, and how they would apply to the NECEC has been extensively debated by the experts and the parties. The three elements of the FCM rules that have been most debated are (1) the Qualification, (2) the MOPR, and (3) the Competitive Auctions for Supported Policy Resources (CASPR). Each of these is discussed in more detail below.

c. Qualification

Before participating in an FCA, a resource must go through a Qualification process administered by ISO-NE. With respect to the NECEC, which as noted above is both an Import and an ETU, Section 13.1.3 of the ISO market rules governs the Qualification process. First, the rules require that an ETU must be built to a higher interconnection standard than non-ETU resources. This higher standard, which is referred to as the Capacity Capability Interconnection Standard, or CCIS, is intended to ensure that capacity from an ETU can be delivered into the relevant zone without

¹⁵ Information relating to ISO-NE's FCM can be found at <https://www.iso-ne.com/participate/rules-procedures/tariff/market-rule-1>.

relying on the system delivery capability being used by other resources in the zone that already have a CSO.¹⁶ Second, with respect to a New Capacity Import, the resource must demonstrate the reliability of the generation source behind the import to qualify. This can be done by providing contracts for capacity for one or more years, demonstrating proof of ownership over one or more External Resources to back the Import, or ensuring that the capacity it supplies to the New England Control Area will not be recalled or curtailed to satisfy the load of the external Control Area, or that the external Control Area in which it is located will afford New England Control Area load the same curtailment priority that it affords its own Control Area native load.¹⁷

d. The Minimum Offer Price Rule (MOPR)

The ISO-NE Internal Market Monitor (IMM) oversees the FCAs to ensure they are conducted in a fair and competitive manner. Pursuant to the rules for new entrants, all offers of capacity that are below the Offer Review Trigger Price (ORTP) are subject to review by the IMM for consistency with the facilities' costs. This is known as the "MOPR."¹⁸ The objectives of MOPR are to prevent the exercise of buyer-side market power and resulting capacity price suppression and to ensure that new resources are offered into FCM on a competitive basis. EXM Exh. 3 at 1.

The ORTP reflects the IMM's calculation of what a given capacity resource should require for compensation from the capacity market. Prior to each FCA, the IMM publishes the ORTP for all resources. Market Rule 1, Appendix A, Section III.A.21.1.1. Pursuant to the MOPR, any offer of capacity from a new facility that is below the applicable ORTP is subject to review by the IMM for consistency with the facility's costs. As part of this review process, a facility can provide information to the IMM that

¹⁶ On this point, CMP states:

This interconnection standard is more stringent than the Minimum Interconnection Standard (MIS) that is typically used for Section I.3.9 Approval. Unlike the MIS, which allows other generation to be dispatched off to permit the interconnection of the proposed new resources, the more stressful overlapping impact analysis that is performed pursuant to the terms of the ISO-NE Planning Procedure No. 10 to satisfy the CCIS, requires that new generation be fully deliverable to a Load Zone (in this case Maine), without dispatching off existing generation within the same zone of interconnection.

CMP Petition at 43. See also Section 1 of Schedule 25 of the ISO Open Access Transmission Tariff.

¹⁷ Thus, should an emergency situation require the shedding of load to preserve overall system reliability, the external control area would not preserve operations in its own control area by shedding load in the receiving control area first.

¹⁸ MOPR is not a defined term in the ISO tariff. It is the IMM administration of the Offer Floor Price and Offer Review Trigger Price collectively that is referred to as the "MOPR."

demonstrates that its offer is reasonable. Based on this review process, the IMM may establish an alternative “Offer Floor Price” which is the value below which the facility may not bid.¹⁹ If the MOPR set by the IMM for a given facility is higher than the FCA clearing price, the facility would be prevented from clearing in the auction.

e. Competitive Auctions with Sponsored Policy Resources (CASPR)

In 2018, ISO-NE adopted rules related to CASPR to address the concerns about the participation of subsidized resources in the FCM. CMP Exh. NECEC 48 at 1. CASPR allows state-sponsored resources which otherwise do not clear the primary auction due to the MOPR to acquire a CSO by “trading” with an existing generator.²⁰ Immediately following an FCA primary auction, there is a second “substitution auction” in which the subsidized resource has an opportunity to buy out the position(s) of a resource (or resources) that was (were) awarded a CSO in the primary FCA. Once the CASPR resource acquires the existing generator’s CSO, the existing generator must then permanently retire from the capacity market. The subsidized resource then holds a CSO and receives capacity revenues as an existing resource for subsequent capacity auction periods, but the total amount of capacity on the system is unchanged, and prices remain competitive. Fowler Dir. Test. at 9. Additionally, as LEI testified, once a CASPR resource acquires a CSO in the substitution auction, it does not have any MOPR constraints in future primary auctions. Tech. Conf. Tr. at 54 (Dec. 19, 2018).

Finally, as is the case with the energy market, prices in the FCM can vary by zone. While not as granular as LMPs in the energy market, there are also locational pricing incentives built into the capacity market. Market Rule 1 Section III.12. When constraints occur in Import Constrained Zones, the capacity clearing price in the constrained zone will be higher relative to clearing prices in the rest of the pool. When constraints occur in Export Constrained Zones, prices in the constrained zone will be lower relative to the prices in the rest of the pool.

f. Analyses in the Record and Positions of the Parties

Four expert witnesses provided analyses of the NECEC with respect to the capacity market benefits and the issues discussed above. Daymark provided estimated capacity market benefits for Maine and the region. LEI provided an analysis of the potential capacity market benefits from the NECEC, and also provided expert testimony and analysis on the likelihood that the NECEC-enabled capacity would clear the auction. Finally, witnesses for GINT and NextEra provided testimony and analysis regarding the likelihood of NECEC-enabled capacity being able to qualify and meet the MOPR.

¹⁹ The terms “Offer Floor Price” and “MOPR” are sometimes used interchangeably.

²⁰ The capacity offers of these subsidized resources do not affect FCA clearing prices.

Daymark assumed that 1,090 MW of capacity from the NECEC would qualify in, and clear, the FCM. Daymark's estimated capacity market price reductions for Maine averaged \$50 million per year during the first 8 years of the Project, yielding a \$312 million NPV over the life of the Project. Daymark Report at 13-14. Daymark did not provide any analysis on the MOPR issue.

LEI provided multiple capacity market analyses. In its initial Report, LEI provided its estimate of the capacity market benefits from the NECEC, assuming that 1,090 MW cleared. LEI estimated that this would result in savings for Maine of \$19 million per year, and \$223 million NPV over the 15-year LEI study period. LEI Report, Figure 4. Subsequently, in a memo dated September 10, 2018, LEI provided support for its conclusions about the NECEC MOPR price, and the likelihood that, given this MOPR price, the NECEC capacity would clear the capacity market. LEI MOPR Memo. LEI also recalculated the MOPR price and estimated capacity market benefits that would result for the entire New England region if HQUS were to qualify a lower amount of capacity. LEI Supplemental MOPR Memo at 4-6. LEI's analysis of the benefits to the market region-wide indicated savings of between \$2 and \$3 billion NPV (2023\$). *Id.* at 5-6. This equates to approximately between \$155 and \$243 million (2023\$) in benefits to Maine. CMP Initial Br. at 48, fn. 143. Finally, LEI highlighted a number of different ways HQUS might choose to offer different levels of capacity into the market based on an assessment of all options and economic opportunities. *Id.* at 5.

GINT experts testified that there would be no capacity market price suppression benefits because the NECEC would fail the MOPR. Fowler Sur. Test. at 13. Mr. Fowler's testimony regarding how the IMM would interpret the provisions for setting the Offer Floor Price indicated that NECEC MOPR prices would exceed future auction clearing prices. Corrected Fowler Sur. Test. at 4.

NextEra witness Robert Stoddard testified that the NECEC is unlikely to have a measurable change on capacity prices in New England because HQ does not have surplus winter capacity and because the Project cost is likely to exceed the relevant clearing price in the FCA. Stoddard Sur. Test. at 4. Dr. Stoddard's MOPR analysis indicated that the NECEC's minimum offer price would not clear the market, "this capacity is far too expensive to clear in the primary auction of the FCA in the foreseeable future." *Id.* at 14.

CMP argues that NECEC's participation in the FCM is likely to reduce capacity prices for customers in Maine and New England. CMP Initial Br. at 44. CMP notes that there is substantial evidence in the record that demonstrates HQ Production will have capacity to offer via the NECEC. *Id.* at 46. CMP argues that LEI's MOPR Memo, which establishes that the NECEC-enabled capacity will clear in the primary auction, is reasonable and should be adopted by the Commission. *Id.* at 50. CMP notes that LEI's method of calculating the relevant transmission costs more accurately reflects the true costs of the capacity resource because HQ TransEnergie, not HQ Production, will be responsible for paying the construction costs of the line on the Canadian side, and HQ TransEnergie's transmission rate for firm point-to-point transmission service is designed

to capture the marginal cost of new transmission construction in Québec. *Id.* at 53. With respect to energy costs, CMP agrees with LEI's and NextEra's use of an energy opportunity cost approach, and disagrees with GINT's claim that the energy cost factor must be calculated using the total cost of new energy generation capacity required to serve the NECEC. *Id.* at 54-55. CMP notes that the energy opportunity cost approach is the appropriate methodology to reflect the energy costs associated with the NECEC capacity resource because it is the most accurate representation of the true costs of the resource, particularly in light of market conditions, which indicate that HQ Production is not building new generation for the NECEC; but in the absence of the NECEC, HQ Production would sell its energy to other markets. *Id.* at 56. Even if the NECEC-enabled capacity does not clear in the primary auction, and acquires a CSO through the substitution auction, CMP asserts that customers in Maine and in the ISO-NE region will still benefit. *Id.* at 65.

IECG argues that the LEI estimate of the value of capacity market benefits is reliable and should be used by the Commission as a basis for estimating benefits to Maine energy consumers. IECG Initial Br. at 28. However, according to the IECG, given the uncertainty related to the MOPR issue, it may be prudent to discount the LEI estimate by 50% to reflect this uncertainty. IECG therefore recommends that the Commission adopt a value of \$110 million in benefits to Maine energy consumers related to capacity market savings. *Id.*

WM&RC asserts that the NECEC will likely provide capacity benefits. WM&RC Initial Br. at 13-14. WM&RC argues: "LEI's ultimate conclusion was that, based on a range of conditions and likely MOPR estimates, the NECEC should not be constrained from clearing in the primary auction." *Id.* at 14. WM&RC notes further that even if the NECEC does not clear the primary auction, ratepayers would not be adversely impacted and the Project would still yield net benefits to Maine's consumers. *Id.*

IBEW argues that that the LEI estimates of energy and capacity market savings are based on extremely conservative estimates, but corroborate Daymark's conclusion that there are significant ratepayer savings that would be provided by the NECEC. IBEW Initial Br. at 6.

GINT argues there is no capacity market price suppression benefit to ratepayers. GINT Initial Br. at 9. GINT notes that there is no evidence that Hydro-Québec has excess incremental generating capacity beyond what it is already offering into the New England market. *Id.* at 10. GINT notes that Hydro-Québec and CMP have stated that Hydro-Québec would not need to construct any new dams or other generating capacity in order to provide energy under the Massachusetts contracts. *Id.* at 11-12. Moreover, according to GINT, the North American Reliability Corporation has projected a significant shortfall in Hydro-Québec capacity levels by 2024. *Id.* at 13. GINT also asserts that, the Hydro-Québec Minimum Offer Price would not clear in the FCA and that LEI calculation of the NECEC MOPR is unreasonable. *Id.* at 19. GINT asserts that the appropriate calculation should rely on the capital cost to build new generating capacity, and the capital cost to build new transmission on both sides of the border

and, that, if calculated this way, any capacity that could be offered through the NECEC would cost more than the market clearing price. *Id.* at 22.

NextEra agrees with GINT that the NECEC will produce no capacity benefits. NextEra asserts that HQUS will be unlikely to qualify in the capacity market unless the load in Québec can be curtailed on the same basis as the HQUS deliveries into New England, and argues that CMP failed to submit substantial evidence demonstrating this to be the case. NextEra Initial Br. at 20. NextEra also asserts that the Offer Floor Price for the NECEC would prevent it from clearing the auctions. Finally, NextEra argues there has been no showing of a seller of capacity over the NECEC for years 21–40 of the Project. *Id.*

NRCM agrees with GINT and NextEra that the NECEC will provide no capacity benefit because it is unlikely to satisfy the MOPR due to the significant out-of-market revenues it will receive by virtue of its selection in the MA 83D solicitation process. Instead, it is more likely that the NECEC would have to obtain a Capacity Supply Obligation through the new CASPR substitution auction, which would require the permanent retirement of an equal number of MWs of existing generation in Maine for the number of MWs the NECEC wished to clear in the FCA, noting that such retirements would result in some loss of jobs and tax revenues in the state. NRCM Initial Br. at 16. NRCM notes that, in evaluating bids into the MA RFP process, the MA EDCs did not calculate capacity benefits for different projects because of the difficulty in forecasting capacity market prices and because the new FCM rules, such as CASPR, were likely to make it more difficult for state-sponsored resources, such as the NECEC, to impact capacity clearing prices. NRCM argues that the Commission should follow suit and ascribe zero benefits to potential capacity price suppression effects. *Id.* at 16-17.

g. Discussion

The Commission finds that the NECEC will result in capacity market benefits to Maine. As noted above, the NECEC must satisfy the CCIS standard of the ISO-NE Open Access Transmission Tariff (OATT), which will ensure that NECEC-enabled capacity can participate in the FCM. In addition, the energy product that will be provided by HQUS, which is firm delivery of 1,090 MW of energy per hour in virtually all hours, is very much like a capacity product and is likely to require capacity to ensure that these firm energy delivery obligations will be met. Furthermore, the Commission notes that HQP has recently added new capacity to its system (Romaine 3), and is planning to add additional capacity over the next several years, suggesting that it will have incremental capacity for sale over the NECEC into the ISO-NE FCM. CLF Exh. 14 at 17.

With respect to the MOPR issue, the Commission finds the analysis and testimony of LEI to be the most internally consistent and credible and, thus, the Commission concludes that NECEC-enabled capacity is likely to clear in the primary auction. Given these factors, HQUS would have the ability to participate in the FCA

and, given the substantial revenue it would receive, would have a strong financial incentive to do so.

However, the Commission also recognizes the uncertainty regarding the capacity market benefits. As noted above, the record reflects benefits for Maine that range from \$19 million to \$27 million per year. Moreover, given the fluctuating nature of the ISO-NE capacity market and related rules, any such benefits, even if certain in the near term, cannot be certain over the longer term. Thus, the Commission concludes that the lower end of the range of benefits, \$19 million per year, for the first 10 years of NECEC operation, is a reasonable and conservative estimate of the capacity market benefits to Maine from the NECEC.

4. Reliability

a. Reliability Elements and Positions of the Parties

There are two distinct elements related to reliability that have been raised in this proceeding. The first is the degree to which transmission system reliability may be affected by the NECEC HVDC facility and the associated AC system upgrades required to accommodate it. The second is the degree to which the NECEC affects regional “fuel security.”²¹

CMP and NextEra have both conducted transmission system studies for the NECEC. CMP provided two studies: The “New England Clean Energy Connect (NECEC) Project Analysis and Technical Report,” and the “New England Clean Energy Connect Surowiec-South Interface Limits and Overlapping Impacts Study.” CMP Exh. NECEC 3. The Project Analysis and Technical Report was conducted pursuant to the ISO-NE I.3.9 process. The I.3.9 process ensures that any changes to the system, such as generator additions, do not have an adverse impact on the system. The Overlapping Impacts Study examines the NECEC to ensure that, along with identified upgrades, it would meet the CCIS. These studies identify the system upgrades needed for the NECEC. CMP Exh. NECEC 3; CMP Petition at 40-42.

NextEra also conducted transmission system modeling. Based on its assumptions that the NECEC would cause Maine-based generators to retire, NextEra witnesses conducted a study of the resulting reliability issues from such retirements. The NextEra study results, which were provided in the surrebuttal testimony of Mr. Whitley, indicated a potential need for future reliability upgrades given those assumptions. Whitley, Mayers, Wang Sur. Test. at 11.

In its brief, CMP highlights transmission reliability benefits that it asserts the NECEC will provide. First, CMP argues that the NECEC will add important redundancy between the Québec and New England systems, which will better protect the region in

²¹ “Fuel security” is a term that is frequently being used within ISO-NE. By its use of the term, the Commission is referring to the reliability, adequacy, and diversity of the fuel types behind supply resources serving the region.

the event of the loss of the existing Phase II intertie, one of the largest possible losses of supply in New England. CMP Initial Br. at 94. The additional interconnection between New England and Québec would also allow both control areas to provide incremental emergency support in the event of capacity deficiencies (tie benefits). *Id.* at 95. According to CMP, the AC upgrades required by the NECEC will increase the transfer limits at the Surowiec-South interface from 1,600 MW to 2,600 MW. CMP further states that the new 345 kV line between the Coopers Mills Road substation and the Maine Yankee substation (Section 3027) and the rebuilding of the 115 kV lines (Sections 62 and 64) out of Larrabee Road will add redundancy and additional transmission capacity to the transmission system across central Maine. *Id.* Finally, CMP argues that the additional transformer at Raven Farm will improve reliability in the greater Portland area. *Id.* at 95-96. CMP also states that the NECEC will provide significant fuel security benefits by delivering clean baseload hydropower to replace retiring resources in the region and by reducing the region's dependence on natural gas fired generation. *Id.* at 83.

The IECG argues that the additional capacity and fuel diversity provided by the NECEC will help to address a portion of the energy price spikes and reliability risk posed to Maine and New England by the lack of adequate natural gas pipeline infrastructure. IECG Initial Br. at 29.

GINT argues that the NECEC would make electric service in Maine less reliable by hastening the retirement, or preventing the development, of reliable generators under dispatch control here in New England and replacing them with less reliable power from Québec. GINT Initial Br. at 1. GINT asserts that the NECEC would provide no reliability if it does not deliver incremental energy. *Id.* at 63. GINT notes, further, that because New England and Québec experience winter weather at the same time and because Québec is a winter peaking system, relying on energy from HQ in the winter may have risks. *Id.* at 64. Finally, GINT argues that NECEC could reduce the reliability of the ISO-NE system by inducing the retirement of a potentially fuel-diverse resource through the CASPR program. *Id.* at 68.

NextEra does not refute the transmission modeling conducted by CMP and its consultants. NextEra Initial Br. at 25-26. However, NextEra argues that CMP has failed to show that the NECEC will not have a negative impact on reliability in future years because it did not present any probabilistic transmission studies regarding this issue. Without such studies, claims NextEra, it is not reasonable for CMP to claim there will be no reliability upgrades resulting from the operation of the NECEC. *Id.*

NRCM argues that attention devoted by CMP to the NECEC could strain CMP resources and result in less reliability and diminished ratepayer experience. NRCM Initial Br. at 20. NRCM also notes that, if the NECEC were to substitute for one or more of these (Maine) generators through CASPR, in-state resources with stored fuel would be traded for a long transmission line to Québec which would not help regional fuel security. *Id.* at 21.

b. Discussion

The Commission finds that the NECEC and associated upgrades will increase the reliability of the Maine transmission system. As noted above, because of the requirement that the Project meet the CCIS, the overlapping impact test requires that the NECEC must not erode the capacity deliverability of other resources in the Maine Zone. Because the overlapping impact test requires all of the generators with a CSO in the same zone to be “turned on” at their full output before the impact of the NECEC is modeled, any system upgrades necessary to ensure that the NECEC, as well as all of the other resources with CSOs in Maine, can operate at full output without being curtailed are the responsibility of the NECEC. Because, in reality, the system rarely operates this way, the system upgrades required by (and provided by) the NECEC will provide extra redundancy and reliability to the Maine system during normal operations modes.

The Commission finds that NextEra’s assertions about the potential adverse impacts of the NECEC 5-10 years in the future is not persuasive. As noted above, NextEra’s position reflects its assumed retirement of one or more Maine generators, the retirement of which is not indicated by the modeling done by LEI or Daymark. Moreover, the Commission notes that the NextEra witnesses admitted that NECEC system upgrades would resolve the N-1 reliability problems their study revealed. Hearing Tr. at 71-74 (Oct. 22, 2018).

The Commission notes, further, that seven Maine generation facilities totaling 1,370 MW in capacity, including those cited by GINT and NextEra as “at risk” due to the NECEC, had already submitted de-list bids in FCA 13 that were accepted by the ISO-NE.²² Had the de-listing of any of these facilities created the type of reliability problem that is here asserted by NextEra, these de-list bids would never have been accepted by the ISO-NE.

With respect to “fuel security,” the Commission concludes that the addition of this interconnection to Québec, and the substantial amounts of baseload hydroelectric energy it will enable, will enhance supply reliability and supply diversity in Maine and the region. The Commission notes that there are significant challenges to siting new energy infrastructure in the region, as is evidenced by local opposition to natural gas pipeline and electric transmission projects. At the same time, natural gas supplies from remaining gas fields offshore of Nova Scotia have diminished, and most of the supply from that region is expected to be gone by 2020. CMP Exh. NECEC 45 at 23. The Commission notes, further, that in response to fuel security concerns stemming from the potential loss of existing generators in the region, such as the Mystic Units 8 and 9 in Massachusetts, the ISO-NE is taking steps to prevent their retirement through

²² See Forward Capacity Obligations spreadsheet for FCA 13 which can be found at <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/>.

mechanisms such as cost-of-service Reliability Must Run contracts with ISO-NE. CMP Exh. NECEC 40 at 5.

With respect to fuel diversity, the region's dependence on natural gas presents serious challenges and risks, such as exposure to price spikes and concerns about supply adequacy in the winter periods. In an effort to address these concerns, ISO-NE has adopted various market rule changes over the past few years, such as Pay for Performance and the Winter Reliability Program. Excerpts from ISO-NE filings and presentations on these matters are provided below.

From the ISO January 17, 2014 filing for PfP - ER14-1050-000 MR1 Performance Incentives Changes

Indeed, as fully detailed in the testimony of Peter Brandien, the ISO's Vice President of Operations, the ISO has observed and documented pervasive and worsening performance problems among the existing generation fleet in New England. These problems, which are not limited to a single resource or fuel type, fall into three general categories. First, the region's growing dependence on natural gas leaves it extremely vulnerable to interruptions in gas supply, which can occur with little notice and which can affect multiple generators simultaneously. Second, a significant portion of New England's oil and coal units cannot provide reliable backup when gas problems arise due to increased outage rates, start-up problems, and other operational difficulties. Third, across the entire fleet, the ISO is observing increasing outage rates, poor responses to contingencies, and a host of other issues, such as failure to maintain liquid oil inventory, mothballing dual fuel capability, and inadequate staffing.

From the June 28, 2013 filing for the Winter 2013-2014 Reliability Program - ER13-1851-000

In the last few years, the ISO and stakeholders have identified a number of strategic risks. Two of these risks – related to New England's increased reliance on natural gas-fueled generation and to resource performance during periods of stressed system conditions – are most pressing, and the region is working on a number of solutions to address these concerns. For example, the ISO has implemented a change in Day-Ahead Energy Market timing and is making filings to improve offer flexibility and amend the reserve market. In addition, review of two sets of ISO-proposed revisions to the Forward Capacity Market ("FCM") rules is or will be underway with stakeholders. These proposed revisions aim to tighten the shortage event trigger and to redesign market incentives and, at the conclusion of the stakeholder processes, will likely be filed with the Commission later this year. The ISO intends that the proposed changes to FCM to redesign market incentives will directly address the gas dependence and resource performance issues discussed herein. This FCM performance incentive proposal is planned for implementation for the 2018-2019 Capacity Commitment Period. As a transition between the Winter Reliability Project and the FCM performance incentives project, the ISO intends to propose a scaled-down version of the

performance incentives project to purchase a fuel-neutral, winter-based reliability product for the winters of 2014-15 through 2017-18.

From the ISO March 6, 2018 Markets Committee meeting presentation on "Winter Energy Security Improvements: Market Based Approaches."

In accordance with FERC's July 2, 2018 order in EL18-182-000, the ISO must develop and file improvements to its market design to better address regional fuel security.

Finally, as noted above, fuel security has been a growing issue in the ISO-NE region such that it has become a subset of system reliability as viewed by ISO-NE and the FERC. The Commission points to the Operational Fuel Security Analysis provided by ISO-NE in January 2018. This analysis was later adopted by FERC in its fuel security order. *Order Denying Waiver Request*, FERC Dockets ER18-1509-000, EL18-182-000 (July 2, 2018). The study conclusions state: "The study indicates that over the next several decades, New England's power system will largely depend on the availability of two key elements, sufficient injections of LNG and electricity imports from neighboring regions." The Commission recognizes that there may be challenges associated with depending on imports, but given the difficulty that the region faces in terms of siting any energy infrastructure, the ISO NE's conclusions regarding the future are compelling. Thus, in this case, the Commission is presented with a transmission line that will provide a pathway to import up to 1,200 MW at no cost to Maine and will provide significant mitigation for the issues identified in Operational Fuel Security Analysis. Because fuel security, through FERC jurisdiction and its ruling on the Mystic Units, has been determined to be a regional issue and, thus, the costs to address it are socialized across the region, if a significant import line is not built now, it will likely be built later, the costs for which are likely to be treated in a way that is much less favorable to Maine than the NECEC.

5. Effect of the NECEC on New and Existing Generators in Maine

a. Overview

There have been three questions raised in this proceeding related to potential adverse effects on new and existing generators in Maine resulting from the NECEC. First, whether the NECEC would result in reductions to energy prices in Maine which, in turn, would reduce revenues for in-state generators. Second, whether, by its participation in the CASPR, the NECEC would cause existing Maine generators to retire. Third, with respect to new generators, whether the NECEC would "use up" the existing transfer capacity "headroom" at the Surowiec-South interface, thereby rendering that transfer capacity unavailable to new generators seeking to locate in Maine.

b. Positions of the Parties

GINT and NextEra argue that the NECEC, because of its effect on wholesale energy prices in Maine, will cause in-state generating plants to be more likely to retire.²³ In addition, GINT and NRCM note that because it is likely that NECEC would have to obtain a CSO through the new CASPR substitution auction, the NECEC would result in permanent retirement of an equal number of MWs of existing generation in Maine for the number of MWs the NECEC wished to clear in the auction. These parties note that such retirements would result in a loss of jobs and tax revenues in the State. GINT Initial Br. at 53; NRCM Initial Br. at 16.

On these points, CMP notes that the analyses of both LEI and Daymark do not indicate that the NECEC will result in any early retirement of Maine generators. CMP Initial Br. at 131-132. CMP notes that these results make sense, given the low capacity factors of the units. *Id* at 132. In addition, CMP cites to evidence in the record that certain Maine generators, most notably the Wyman units, are already at risk of retirement for reasons entirely unrelated to the NECEC, including their location, age, and the significant financial risks they face under ISO-NE's new Pay for Performance rules.²⁴ *Id* at 134.

The IECG agrees with CMP in regard to the tenuous position of the Maine generators today, due to their poor capacity factors and low revenues. IECG Initial Br. at 32. IECG observes, further, that, with respect to property tax revenues, the facilities most at risk contribute only \$5.5 million per year, which is substantially less than the estimated property tax revenues of \$18.4 million from the NECEC. *Id*.

In addition, several parties have raised concerns related to potential new generators in Maine. RENEW argues that, if NECEC capacity were to absorb existing transfer capacity "headroom," the Commission should condition any approval on (1) CMP increasing the Surowiec-South interface by the full 1,000 MW as planned regardless of whether ISO-NE finds a lower amount would be satisfactory, and (2) requiring that HQ seek qualification of a lower amount of capacity. RENEW Initial Br. at 5. On this point, GINT argues that the NECEC would "fill the headroom at Surowiec-South, increasing the expense of transmission development for Maine renewables." GINT Initial Br. at 60.

Acadia Center, CLF, and NRCM share these concerns, noting that the NECEC could hinder the development of new Maine-based renewable resources by consuming spare transmission system transfer capability. Acadia Center Initial Br. at 4; CLF Initial Br. at 6; NRCM Initial Br. at 19.

²³ GINT witness Bodell asserted the NECEC's participation in ISO-NE energy markets would hasten Maine generating plant retirements, eliminating jobs and property tax base. Bodell Dir. Test. at 40. However, no quantitative analysis or modeling to support these claims was provided.

²⁴ As noted in Section V(A), many of these generators submitted de-list bids in FCA 13.

CMP argues that, on the contrary, the NECEC will not prevent the development of renewable energy in Maine. CMP notes that the NECEC will have no effect on any of the proposed 765.5 MW of renewable generation that are ahead of it in the ISO-NE interconnection queue. CMP Reply Br. at 47-48. With respect to other renewable generation projects, CMP argues that the NECEC-related transmission system upgrades will actually benefit new renewable projects by increasing the transfer capability at the Surowiec-South interface and defraying system upgrades and costs that would otherwise be required of these projects by ISO-NE in order to interconnect. *Id* at 51-53.

IECG argues that the decision regarding the NECEC should not involve consideration of negative effects on generators, new or existing, in Maine's restructured market. IECG Initial Br. at 8. IECG argues that generators are not entitled to, and should not receive, protection from the entry of new entrants in a competitive market. *Id* at 10. According to the IECG, the Commission's decision whether to grant a CPCN must be based on considerations relating to electric consumers, not generators. *Id* at 8.

c. Discussion

Based on the record in this proceeding, the Commission does not find that the NECEC will result in the adverse effects on Maine generators as alleged by GINT and NextEra. With respect to the effects the NECEC will have on energy market prices, the Commission finds that, because of the already low capacity factors and energy revenues of these facilities, reductions in energy market prices are unlikely to be material for them. The Commission notes, further, that other factors, including the ISO-NE Pay for Performance rules, create far greater risks for these generators than the NECEC. It may be, at least in part, that because of these risks, most GINT and NextEra generators submitted de-list bids in FCA 13.²⁵ Moreover, the Commission agrees with the IECG that, as a policy matter, it is the interests of customers, not generation competitors, that must be the priority consideration in deciding whether or not to grant a CPCN for the NECEC.

The Commission also finds little merit to the concerns regarding the extent to which the NECEC may frustrate Maine-based renewables development by absorbing "headroom" on the transmission system. First, as noted above, there is more than 750 MW of new, renewable capacity in Maine ahead of the NECEC in ISO-NE's interconnection queue. Second, as also noted above, the Surowiec-South interface must be upgraded to accommodate 1,200 MW of capacity in order for the NECEC to meet the CCIS. If, as some parties argue, the level of NECEC-enabled capacity will be less than 1,200 MW, the available headroom at the interface may be substantially greater than the 200 MW that currently exists. Moreover, for the reasons expressed by CMP and the IECG, the Commission finds that "preserving" headroom for potential future competing projects at the expense of a project in development is poor public

²⁵ See Forward Capacity Auction Capacity Obligations FCA 13: <https://www.iso-ne.com/markets-operations/markets/forward-capacity-market/>

policy, as well as being wholly inconsistent with the ISO-NE interconnection rules and processes.

B. In-State Economic Impacts²⁶

1. Economic Impact Studies

In its Petition, CMP presented a study conducted by Ryan Wallace, Director of the Maine Center for Business and Economic Research (MCBER) of the University of Southern Maine (USM) that assessed the macroeconomic effects of the NECEC in Maine and New England using economic models developed by the Regional Economic Models Inc. (REMI). (USM Study). The USM Study grouped the effects into three broad areas or time periods: development/construction related; post-construction, or operations, phase; and market price reduction related. The USM Study indicates that NECEC transmission infrastructure investments are expected to support a \$573 million (2009\$) addition to Maine GDP and over \$440 million (2009\$) in total worker compensation during the 6-year development and construction period (2017-2022). CMP Initial Br. at 70. In addition, the USM Study indicates that the NECEC would support over 1,740 direct, indirect, and induced jobs per year in Maine during that same period. *Id.* According to Mr. Wallace, these construction-period benefits would be realized throughout the State. *Id.* at 71. During the NECEC post-construction, or operations, period, the USM Study indicates that the NECEC would support a total of 37 jobs, 21 of which would be to maintain and operate the NECEC and the remaining 16 from indirect and induced spending. *Id.* at 72. Finally, the Study indicates that the NECEC's energy market price suppression effects will result in over 260 jobs in Maine, on average, and more than \$23 million in GDP and \$17 million in total compensation each year over the 20-year term of the PPAs. *Id.* at 73.

The LEI Study included a review of the USM Study and an independent analysis of the macroeconomic benefits resulting from the NECEC. In conducting its analysis, LEI used the same REMI PI+ software as USM. LEI Report at 32. As was done in the USM Study, LEI analyzed the macroeconomic effects during (1) the development/construction period and (2) the operations period. LEI's analysis reflected its projected energy market prices (rather than Daymark's), and included certain factors that were omitted in the USM analysis, most notably, NECEC capacity market price impacts, contract costs borne by Massachusetts ratepayers, and early retirement and deferred investment in generation capacity triggered by the NECEC. *Id.* at 54. LEI also provided its independent analysis of tax revenue from the NECEC by municipality. *Id.* at 37.

²⁶ For the reasons discussed in Section IV(A) above, the Commission's focus is on benefits to Maine rather than to the New England region as a whole.

A comparison of the LEI and USM macroeconomic benefits is shown in Figure V.1 below:²⁷

Figure V.1

Figure 5. Comparison of LEI's analysis and USM's analysis

Benefit categories	LEI Analysis		USM Analysis	
	Maine	New England	Maine	New England
Jobs - development and construction period (Annual average for 2017-2022)				
Direct	856	N/A	868	N/A
Indirect and Induced	775	N/A	824	N/A
Total	1,631	N/A	1,691	N/A
Jobs - operations period (Annual average for 2023-2037)				
Total	291	1,826	329	3,735
GDP - development and construction period (Annual average for 2017-2022), fixed 2009\$ million				
	\$98.2	N/A	\$94.1	N/A
GDP - operations period (Annual average for 2023-2037), fixed 2009\$ million				
	\$29.1	\$205.3	\$25.8	\$406.2

Note:

1. Economic impacts in terms of incremental jobs and GDP presented in the table are the annual average of the modeling periods in LEI's study, namely 2017-2022 for the construction period and 2023-2037 for the operations period.
2. The incremental jobs and GDP in New England do not include those created by O&M activities of the NECEC project (indicated in the table as "N/A"), since the macroeconomic impacts of O&M spending is modeled within Maine, to be consistent with USM's approach.

LEI Report at 15.

As shown in Figure V.1, LEI's analysis reflects employment and GDP benefits in Maine that are generally consistent with those reflected in the USM Study. With respect to the broader New England region, LEI's analysis reflects benefits that are significantly less than those in the USM Study due to LEI's inclusion of the contract costs borne by ratepayers in Massachusetts, as well as early retirement of generators in Connecticut. *Id.* at 16.

Both LEI and the USM Study estimate approximately \$18 million annual incremental municipal tax revenue received from the NECEC based on the Project's taxable value and the municipal mill rates in effect in 2016. LEI Report at 64; USM Study, Section 6. As noted by LEI, the actual tax payments from the Project will depend

²⁷ CMP provided an update to the information in its Petition in which it estimated the number of direct, indirect and induced jobs would be 1,742 on an annual average basis based on updated projected NECEC costs. ODR-003-011, Highly Confidential Attachment 2.

on a number of factors, including the taxable valuation in each municipality, the budget plan and mill rates in each municipality, and the change in valuation of other properties. LEI Report at 64-65. Additionally, tax payments from the NECEC are expected to decline as the taxable value of the project depreciates. *Id.* at 65.

2. Positions of the Parties

CMP describes the USM Study as “conservative” in that it does not reflect any potential NECEC capacity market price suppression effects, nor any benefits from increased property and sales taxes. CMP Initial Br. at 73. CMP notes that LEI’s analysis confirms that the NECEC will produce substantial jobs and increased GDP during its development/construction and operations periods, and that LEI generally confirms the macroeconomic benefits to Maine shown in the USM Study. *Id.*

GINT argues that the USM Study overstates macroeconomic benefits and is unreliable. GINT Initial Br. at 61. GINT points to the following flaws of the USM Study to support its assertion: (1) reliance on Daymark’s energy price forecast; (2) failure to include the contract costs borne by Massachusetts ratepayers; (3) failure to include the effect of early retirement of or deferred investment in generation in Maine;²⁸ and (4) the adverse effect on the tourism industry in Maine. *Id.* at 62-63. Other parties, including the NRCM and Caratunk, also dispute the macroeconomic benefits as estimated by the USM and LEI Studies, for reasons such as overstated property taxes and failure to consider the effect of the NECEC on local economies. NRCM Initial Br. at 18-19; Caratunk Initial Br. at 36-38.

The IECG observes that the USM and LEI Studies show macroeconomic benefits for Maine that are highly consistent with one another. IECG Initial Br. at 31. The IECG agrees with GINT that, as a general matter, lost tax revenues and employment from shutdowns or cutbacks at existing Maine generators are appropriately included in this type of analysis; however, the IECG disagrees with GINT’s position that the NECEC would cause any such shutdowns or cutbacks. *Id.* at 32. Other parties, including the Chamber, Lewiston, IBEW, and WM&RC, support the Project due to the economic benefits it will provide at the local level through increased employment, property tax revenue, and eco-tourism opportunities.

3. Discussion

The Commission finds both the USM and LEI Studies to be supportive of the fact that positive and substantial direct, indirect, and induced macroeconomic benefits will accrue to Maine from the development, construction, and operation of the NECEC. Although the numbers of jobs and dollar increases in GDP cannot be precisely quantified, the Commission finds that the range reflected by the USM and LEI Studies

²⁸ The LEI Study, which does include the effects of the NECEC on generator retirement, concludes that most of the impact will be on generators in other states, and there would be only a minor impact in Maine. LEI Report at 35.

provides a reasonable estimate. Moreover, the Commission agrees with the observation of CMP that a \$1 billion investment in a project located entirely in Maine, with the resulting employment and taxes it will produce, would result in substantial macroeconomic benefits to the State. CMP Initial Br. at 32. With respect to offsetting negative impacts due to premature shutdowns or cutbacks of Maine generators, for the reasons discussed in Section V(A)(5) above, the Commission finds that such shutdowns or cutbacks, if they occur, are not attributable to the NECEC. And, with respect to deferral of investment, the Commission notes that, according to the LEI Study, any such deferrals would affect new investment in Massachusetts, not Maine. LEI Report at 63. Finally, as will be discussed in Section V(D) below, the NECEC will have an adverse effect on scenic and property values, and local tourism and recreational economies, which cannot be quantified. These adverse economic impacts offset to some degree the economic benefits of the Project.

C. Public Health and Safety

1. Background

Section 3132(2-C)(A) directs the applicant for approval of a CPCN to include in its petition, among other things, “[a] description of the effect of the proposed transmission line on public health and safety.” Section 3132(6) directs the Commission to, in determining public need for the proposed project, consider the project’s impact on “public health and safety.”

2. Public Health

In its initial filing in this case on September 27, 2017, CMP indicated it had retained Exponent, Inc. to conduct an electric and magnetic fields (EMF) study for the NECEC which would be submitted as a supplement to CMP’s initial petition when the report is completed. On January 12, 2018, CMP filed Exponent’s report titled *Modeling of the Electrical Environment, Report New England Clean Energy Connect Transmission Project* (Exponent Report). CMP Ex. NECEC 16. The Exponent Report presents the EMF levels and ion densities for transmission lines and interconnections (1) along the NECEC route and (2) in portions of the transmission system in which CMP proposes to complete necessary upgrades.

CMP summarizes the findings and conclusions of the Exponent Report as follows:

Exponent found that the NECEC HVDC line will produce static EMFs similar to those encountered in the natural environment, with magnetic-field levels similar to the earth’s static geomagnetic field and electric-field levels similar to those produced by atmospheric phenomena, weather, and friction charging. Such levels are below the National Radiation Protection Board’s threshold that static fields above 25 kV/m may be annoying, and well below International Commission on Non-Ionizing Radiation Protection (ICNIRP) and Food and Drug

Administration guidelines for static magnetic-field exposure. Exponent also concluded that calculated ion densities for the project are within the range of levels encountered in the natural environment, and the new AC lines associated with the NECEC's necessary network upgrades will produce EMF levels that are well below the assessment criteria established by ICNIRP and the International Committee on Electromagnetic Safety.

CMP Initial Br. at 122-123.

The scope of issues addressed, and conclusions reached, in the Exponent Report received relatively little attention in this proceeding. CMP argues: "In discovery, CMP made clear its intent to focus on EMFs as the only public health impact that CMP will be investigating. No party has submitted any testimony contesting Exponent's findings or demonstrated any other health concern related to the NECEC." *Id.* at 123.

WM&RC echoes CMP's argument that no testimony has been presented in this case that contradicts the findings of the Exponent Report. WM&RC Initial Br. at 16.

Ms. Kelly argues that the Exponent Report is flawed and that CMP has failed to make a sufficient showing that the NECEC does not present risks to the public health. Referring to the Exponent Report, Ms. Kelly asserts:

It is a narrow report that uses models developed in 1983 to 1991 to determine static electric fields, magnetic fields and air ions associated with the operation of the DC and AC portion of the NECEC project. There was no mention of experimental testing to validate the modelling, not even on the AC modelling where the transmission lines are already in existence. The report makes no representation about whether these values will be guaranteed maximum levels or even within an order of magnitude to the levels that will exist once the line is constructed and used over time.

Kelly Reply Br. at 8. Ms. Kelly outlines what she considers to be additional flaws in the Exponent Study and concludes that CMP has failed to demonstrate that the NECEC adequately protects the public health. *Id.* at 10.

The topic of the NECEC's impacts on public health rarely came up during the three public witness hearings that the Commission held in this case. The most specific testimony on health issues relating to the Project was provided by Julie Tibbetts, a medical technologist specializing in oncology and hematology. Ms. Tibbetts noted that, although the ill effects of living under high tension power lines is debatable, both the World Health Organization and the Center for Disease Control acknowledge that increased electromagnetic fields increase the risk of various health issues, including heart arrhythmias and cancer. The Forks PWH Tr. at 81-82 (Sept. 14, 2018).

3. Public Safety

As with the public health issues relating to the NECEC, issues relating to the public safety implications of the Project were addressed by only a few parties in this proceeding. Regarding the public safety issues relating to the NECEC, CMP asserts:

CMP has committed to design and construct the project in accordance with the applicable North American Electric Reliability Corporation (NERC), Northeast Power Coordinating Council, Inc. (NPCC) and ISO-NE transmission planning standards and criteria as well as all applicable safety codes including the National Electric Safety Code (NESC), the American National Standards Institute (ANSI) standards, and the Occupational Safety and Health Administration standards, among others. CMP's lead engineer responsible for the design of the project, Justin Tribbet, also described CMP's commitment to project safety for the NECEC, including the retention of a full-time safety engineer tasked with reviewing the project designs to ensure that they comply with applicable OSHA standards. No party has offered testimony demonstrating in any way that the NECEC will be designed, constructed or operated in an unsafe manner.

CMP Initial Br. at 123-124.

WM&RC asserts that no party introduced evidence asserting or demonstrating that "the construction, operation, or maintenance of the NECEC will be inconsistent with applicable standards (i.e., NERC, NPCC, ISO-NE) and would jeopardize public health and safety." WM&RC Initial Br. at 16.

Caratunk raised issues relating to the host communities' ability to provide adequate accommodations for work crews on the Project. Caratunk also argues that CMP did not consider whether the affected communities in rural Somerset County would be able to provide adequate fire and emergency response services during the construction of the Project and after the Project is complete. Hearing Tr. at 123-124; 126 (Jan. 9, 2019).

Similar concerns about whether local emergency services would be able to respond to the potential public safety issues posed by the NECEC were raised during the public witness hearings. For example, Heather Sylvester noted that the West Forks Volunteer Fire Department is small and primarily a volunteer department and that members work full-time jobs out of the area. Ms. Sylvester expressed her concern that potential medical, fire, or trauma events associated with construction of the NECEC may tax such small and primarily volunteer departments. The Forks PWH Tr. at 12 (Sept. 14, 2018).

In responding to these concerns on behalf of CMP at the January 9, 2019 hearing, Mr. Stinneford noted that CMP has existing transmission lines that traverse areas of Maine that are equally or even more remote than the NECEC corridor. Hearing Tr. at 126 (Jan. 9, 2019). According to Mr. Stinneford, there are CMP transmission lines that run through many unorganized townships that have no fire departments and no

public safety resources, noting that the public safety issues raised by Caratunk (and others) are issues that CMP is accustomed to. *Id.*

4. Discussion

As noted above, issues relating to the NECEC's effect on public health and safety were not addressed by many of the parties in this proceeding. Based on the Commission's review of the record, the Commission concludes that CMP has, through the Exponent Report and the written and oral testimony by Mr. Malone, Mr. Hodgdon, Mr. Tribbet, and Mr. Stinneford, satisfied the filing requirements relating to public health and safety set forth in section 3132(2-C) and provide a sufficient basis for the Commission to consider these issues pursuant to Section 3132(6).

In her Exceptions, Ms. Kelly takes issue with the lack of attention to safety that is incorporated into the Examiners' Report. Kelly Exceptions to Examiners' Report at 2-3. The Commission emphasizes that ensuring public safety with respect to public utility operations is a central purpose of the Commission outlined in Section 101 of Title 35-A. That section states that the "basic purpose of this regulatory system is to ensure safe, reasonable, and adequate service." The above ground HVDC line is designed by professional engineers who by the nature of their training and licensure requirements attest to safety when final stamping of the design occurs. While there were many issues in this case that were raised during the 18 months of litigation, this Order details the areas of disagreement of the parties and makes findings with respect to statute. The Commission does not agree that it is necessary in this case to have had hired a consultant on these matters when licensed engineers responsible for the design were witnesses and were available for cross examination.

The Commission finds that, with respect to the safety concerns raised by Caratunk, Ms. Kelly, and several public witnesses relating to the availability of fire protection and other emergency response services in the proposed transmission corridor, the record reflects that CMP has adequately addressed such safety concerns throughout other remote areas of its existing transmission system. The Commission, therefore, finds that the NECEC does not pose a threat to public health and safety. However, it is evident that there are ongoing concerns about safety issues posed by the NECEC. The Commission therefore directs CMP to, as part of its ongoing outreach and communications with the host communities, provide direct and clear information to the affected community about how CMP (1) has dealt with fire and medical support issues in comparable rural areas of its system and (2) plans to deal with fire and medical support issues in the context of the NECEC.

D. Scenic, Historic, and Recreational Values

1. Background

Section 3132(6) directs the Commission to, in determining public need for the proposed project, “at a minimum, take into account ... scenic, historic and recreational values.”

As discussed in Section IV(C) above, there is overlapping jurisdiction among the Commission, the DEP, and the LUPC regarding the review of such things as the NECEC’s impact on scenic, historic, and recreational values. Several parties in this case suggested the Commission defer to the DEP and LUPC’s evaluation of scenic, historic, and recreational values. For the reasons outlined in Section IV(C) above, the Commission finds that in the context of this proceeding, it is required by statute to consider the specified issues of scenic, historic, and recreational values as part of its overall assessment of the benefits and costs of the NECEC.

To discharge its responsibilities under Section 3132 with respect to consideration of scenic, historic, and recreational values, the Commission must engage in a two-step balancing process. Step one involves the Commission’s evaluation of the NECEC’s impacts on scenic, historic, and recreational values. In this initial step, the Commission must weigh and balance the NECEC’s impacts to determine whether the Project will have a net beneficial or a net adverse impact on scenic, historic, and recreational values. Step two is a more comprehensive balancing activity in which the Commission must weigh its determination of the NECEC’s impact on scenic, historic, and recreational values against the other factors listed in Section 3132(6) which include economics, reliability, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings, and alternatives to construction of the transmission line, including energy conservation, distributed generation or load management. At the conclusion of the second step of the balancing process, the Commission will be able to determine whether sufficient public benefits exist to justify the issuance of the requested CPCN.

In this Section of the Order, the Commission focuses on only the impact of the NECEC on scenic, historic, and recreational values. The more comprehensive balancing of these impacts and the other factors set forth in Section 3132(6) is addressed in Section V(D)(5)(e) of this Order.

2. Positions of the Parties

a. Scenic Values

There is wide disagreement between the proponents and the opponents of the NECEC relating to the impacts the Project will have on scenic values. To begin with, parties disagree over the current scenic value of the affected area. Some parties argue that the proposed new corridor will run through a pristine wilderness, while others assert the area in question is more properly characterized as a heavily-harvested working forest. Parties also differ on the extent to which the Project will alter the current character of the area in question. Finally, the parties disagree on whether CMP

sufficiently analyzed the scenic impact of the NECEC and whether CMP adequately explored lower-impact options.

i. Proponents of the Project

CMP asserts that the NECEC is designed to minimize adverse impacts on scenic values. CMP notes that, where reasonably practical, the NECEC is sited in an existing transmission corridor to minimize impacts, and where new corridor is needed the Project is designed to reasonably avoid environmentally sensitive areas and resources, including conserved lands, stream crossings, wetlands, deer wintering habitat, and inland waterfowl and wading bird habitat. CMP notes, further, that approximately 73% of the NECEC route lies within CMP-owned, existing transmission corridor, and that the remainder of the route is located on nearly all privately-owned, commercial forest land, better allowing CMP to site the project to avoid adverse impacts on scenic, historic, and recreational values. CMP Initial Br. at 124.

A major issue of contention in the scenic value debate is the current quality of the 53 miles of new corridor. On this point, WM&RC argues that, as shown by the Natural Resource Maps provided by CMP in response to the September 12, 2018 Procedural Order, the land that will be the site of the new transmission corridor extending to the Canadian border are working forests that have been heavily harvested in recent years. Thus, according to WM&RC, the transmission corridor should not unreasonably detract from the scenic, historic and recreational values offered by these areas. WM&RC Initial Br. at 16.

Two other major points of disagreement between those who support the Project and those who oppose it are whether CMP (1) sufficiently analyzed the scenic impact of the NECEC and (2) adequately explored lower-impact options. CMP argues that it went to great lengths to consider the impacts of the new corridor on scenic values and to take steps to reduce the extent of those impacts. On these points, CMP states that it designed the Project to comply with DEP requirements that a transmission project not unreasonably interfere with existing scenic and aesthetic uses of resources within and nearby the project area, or Area of Potential Effect. CMP notes that, in accordance with these requirements, it prepared a comprehensive Visual Impact Assessment that articulates its methodology for determining potential visual impacts of the Project, and establishes clear mitigation strategies for minimizing impacts. CMP Initial Br. at 124-125.

ii. Opponents of the Project

The opponents of the NECEC focus primarily on the portion of the line that would be constructed in the new corridor. NRCM asserts that the route of the NECEC would disturb 53 new miles of habitat from Beattie Township to Caratunk, and would clear over 1,800 acres of land, cross 115 streams, disturb 263 wetlands covering 76.3 acres, and cross 8 deer wintering areas and 12 inland waterfowl and wading bird habitat areas. NRCM Initial Br. at 21. NRCM argues that the NECEC is likely to have a permanent

and dramatic impact to environmental and scenic resources, along the line, most notably along the 53 miles currently undisturbed by transmission lines. *Id.*

Caratunk asserts that the characterization by CMP of the 53 miles of proposed corridor as “working forest,” as if to say an already spoiled landscape, is dismissive of local concerns and is untrue and disrespectful. Caratunk Initial Br. at 11. Caratunk notes, further, that clear-cuts in a working forest grow back, but the NECEC corridor will not. Caratunk Comments on Stip. at 8 (Mar. 1, 2019).

Caratunk also argues that CMP’s analysis of the NECEC’s impacts on the scenery along the proposed 53 miles of new corridor was inadequate. Caratunk argues that CMP’s Visual Impact Analysis was insufficient, noting that the DEP found it to be “sorely lacking” and “sent them back to the drawing board.” Caratunk Initial Br. at 11-12. Caratunk is also critical of the adequacy of CMP’s consideration of installing the proposed new line underground. *Id.* at 11. Caratunk asserts that the relatively superficial analyses CMP conducted regarding Project impacts is extremely disturbing to the local communities and to those whose livelihoods and families are at stake. *Id.*

iii. Testimony Presented During Public Witness Hearings

The disagreement over the NECEC’s impacts on scenic values was nowhere more apparent than during the three public witness hearings the Commission held in this proceeding. Comments were provided by those that supported the Project and disagreed with the proposition that the NECEC would go through wilderness that was pristine, including by Richard B. Anderson, a former Commissioner of the Maine Department of Conservation and Executive Director of the Maine Audubon Society, and Lloyd Ireland who served as Maine’s Director of Public Lands and also as State Economist during the 1980s. Farmington PWH Tr. at 50-51 (Sept. 14, 2018); Hallowell PWH Tr. at 109 (Oct. 17, 2018).

Other commenters offered a different perspective. Former State Senator Thomas Saviello noted that, notwithstanding the fact that the new corridor would be located in areas that are currently forested, the impact of the NECEC would be significant, noting that the NECEC clear cut corridor will not grow back. Farmington PWH Tr. at 11-12 (Sept. 14, 2018).

Speaking to the amount of logging traffic currently in the area of the proposed new corridor, Jennifer Poirier testified she seldom even passes a logging truck. Ms. Poirier also echoed Senator Saviello’s comments about the permanent nature of the NECEC clear-cut in contrast to forest harvesting, in which case the trees come back. The Forks PWH Tr. at 72-73 (Sept. 14, 2018).

Many other commenters spoke with passion about the scenic value of the area, noting the significance of the area’s beauty, remoteness, and lack of development. Commenters noted that these attributes not only contributed to their own quality of life, but were integral to drawing visitors who sustain the local tourist economies to the

region. Robert Kimber (Farmington PWH Tr. at 68-69 (Sept. 14, 2018)); Drew Bates (*Id.* at 81); Todd Towle (*Id.* at 46); Cecil Gray (Hallowell PWH Tr. at 31 (Oct. 17, 2018)).

Finally, in written comments that were read by Susan Percy, Field Rider stated, with some irony, that the remoteness and low population density of the area through which the proposed new corridor would run make it both attractive to tourists and vulnerable to projects like the NECEC. Hallowell PWH Tr. at 156 (Oct. 17, 2018).

b. Historic Values

When compared to the Project's impact on scenic and recreational values, the effect the NECEC would have on historic values received relatively little attention by the parties in this proceeding. In support of the steps it took to consider the Project's potential effects on historical values, CMP noted that it undertook a comprehensive desktop review to identify historic properties potentially affected by the Project. CMP noted, further, that impacts on historic values are undergoing a thorough review by the Maine Historic Preservation Commission and DEP. CMP Initial Br. at 126.

c. Recreational Values

As with scenic values, there is considerable disagreement between the proponents and the opponents of the NECEC regarding the Project's impacts on recreational values. Proponents and opponents disagree on whether CMP adequately identified, and took reasonable steps to avoid, the Project's detrimental impacts on recreational values. Proponents and opponents also disagree on the extent to which the NECEC will degrade recreational values. There is also marked disagreement between the proponents and the opponents on whether there are beneficial recreational effects from the NECEC. Finally, the proponents and opponents disagree on the NECEC's likely effects on tourism in the new corridor portion of the Project.

i. Proponents of the Project

CMP argues that it was mindful of the potential impacts of the NECEC on recreational values and that it took steps when designing the Project to minimize the negative impacts from the Project. CMP Initial Br. at 126-127. CMP argues that the Project route within the new corridor almost entirely avoids sensitive recreational resources, such as state and national parks, and that the remaining portions of the transmission corridor contain existing transmission lines, thus, the addition of the NECEC will have minimal impacts on those areas. *Id.*

CMP asserts that it was receptive to comments about the Project's impacts on the recreational values associated with the crossing of the Kennebec Gorge and made adjustments to the Project in response to those comments. *Id.* at 127. CMP states that it is aware of concerns that have been expressed about the Project's impact on the Appalachian Trail, but believes those concerns lack merit. *Id.* at 127-128.

While stating that the NECEC's detrimental effects on the recreational values in the 53 miles of new corridor are not unreasonable, CMP further asserts that the Project will have positive effects on the recreational values of the area through which the new corridor passes. CMP states that its "siting of the NECEC will also facilitate snowmobile touring, one of Maine's primary winter recreational industries." *Id.* at 128. CMP points to this as a benefit to tourism in Somerset County by strengthening one of Maine's strongest recreational industries and the local economies in which the snowmobile riders spend time. *Id.*

ii. Opponents of the Project

The opponents to the NECEC state that the negative impacts of the Project on recreational values of the host communities are undeniable and substantial. On this point, Caratunk notes that installing 100-foot-tall transmission towers along a new corridor as wide as the New Jersey Turnpike through relatively undeveloped western Maine will have numerous, significant, and permanent impacts. Caratunk Initial Br. at 10. Caratunk describes this conclusion as "self-evident." *Id.*

The opponents to the Project contest CMP's assertions that it was (1) mindful of the potential impact of the NECEC on recreational values and (2) took sufficient steps when designing the Project to minimize negative recreational impacts. For example, Caratunk argues that CMP did not adequately identify or analyze the Project's impacts on recreational values, describing CMP's consideration of these matters as after-the-fact and dismissive. *Id.* at 13.

Caratunk also contests CMP's claim that the Project will attract snowmobilers. First, Caratunk argues that CMP failed to do the analysis necessary to support the claim that the NECEC will promote snowmobiling in the area. Second, Caratunk refutes CMP's assertion that snowmobilers will be attracted to the new corridor. *Id.* at 10. Caratunk argues that, to the contrary, if given the choice, the snowmobile community will elect not to ride on a trail in the proposed new corridor. Caratunk Reply Br. at 11-12.

Caratunk also refutes CMP's assertion that it actively engaged the communities along the proposed new corridor and modified the Project design based on feedback from the local stakeholders. Caratunk describes CMP's efforts and analysis in this regard as unsupported and inaccurate. Caratunk Initial Br. at 13.

iii. Testimony Presented During Public Witness Hearings

As with the public witness testimony on the NECEC's impact on scenic values, testimony on the Project's effects on recreational values was quite divided. With respect to CMP's position that the NECEC provides recreational value benefits related to snowmobiling, Mr. Bob Meyers, who is the Executive Director of the Maine Snowmobile Association, Inc. (MSA), presented testimony in support of this proposition, noting that the entire length of the new corridor would be open to snowmobile access,

thus, creating significant new opportunities for Maine residents and non-residents. *Hallowell PWH Tr.* at 44-46 (Oct. 17, 2018).

However, other members of the MSA testified that such benefits are illusory. For example, Tania Merrett and John Willard testified strongly against the proposition that snowmobilers would want to ride under a power line. *Id.* at 60-61.

Two other themes that were repeatedly addressed in public witness hearing testimony were the wild nature of the area and the broad appeal that the wilderness has for people. Tony Diblasi, a registered Maine Guide, testified to the natural splendor of the region and the wilderness river trips he has shared with people from around the world. *The Forks PWH Tr.* at 42 (Sept. 14, 2018).

Greg Caruso, a resident of Caratunk and owner of Maine Guide Services LLC, testified to his experience in guiding visitors who come to the region for whitewater rafting, hunting, and ATVing and snowmobiling. In particular, Mr. Caruso noted that visitors come to the region to get away from the modern industrial world, and that comments he has heard from thousands of visitors reinforce the importance of the region's beauty, remoteness, and silence. *Id.* at 118-120.

These comments were echoed by other public witnesses who articulated their concerns about the effect the Project would have on their own quality of life, as well as on the Maine economy. Witnesses noted that the economic impacts would be felt not only in the communities in proximity to the Project, but also statewide, citing the negative impact the Project would have on the "Maine Brand." Kate Stevens (*Hallowell PWH Tr.* at 121 (Oct. 17, 2018)); Monica McCarthy (*Id.* at 67-69); Beverly Hughey (*The Forks PWH Tr.* at 129 (Sept. 14, 2018)); Jan Collins (*Farmington PWH Tr.* at 104 (Sept. 14, 2018)); Heather Sylvester (*The Forks PWH Tr.* at 125 (Sept. 14, 2018)); Eric Sherman (*Id.* at 59).

3. CMP's Efforts to Mitigate the NECEC's Adverse Impacts on Scenic, Historic, and Recreational Values Through the Negotiation of an MOU with WM&RC

a. Background

CMP's mitigation efforts relating to the NECEC's detrimental effects on the host communities in Somerset County have focused on CMP's Memorandum of Understanding (MOU) with WM&RC and the placement of the transmission line under the Kennebec Gorge. On May 30, 2018, CMP and WM&RC entered into an MOU. CMP Exh. NECEC 25. In the MOU, WM&RC is identified as

a Maine nonprofit public benefit corporation that was formed for the purpose of expanding conservation of the Kennebec, Dead, Sandy, Moose, Sebec and Carrabassett rivers; developing recreation projects; developing education

programs about the history, ecology and uses of Maine's rivers; and expanding economic development opportunities along the rivers of Western Maine.

WM&RC MOU at 1, Section C.

The MOU provides that "CMP and WM&RC wish to establish a framework to mitigate any environmental, natural resource and community impacts of the Project and to provide additional economic development opportunities to Somerset County." *Id.*, Section (D).

Section 4(a) of the MOU addresses the situation in which the Project crosses the Kennebec Gorge overhead and provides that, under such circumstance, CMP will provide WM&RC a lump sum of \$22 million. Sections 4(a)(iii) and (iv) provide a breakdown of the \$22 million that CMP will pay to WM&RC in the event of an overhead crossing, and state that CMP will:

(iii) Contribute in a lump sum to the trust described in Section 4(c) \$16,000,000 to support and enhance tourism and outdoor recreation in the Central and Northern Somerset County, including construction, operation and staffing of a visitor center, maintenance of trails, funding of education programs to improve the local tourism economy; WM&RC commits to leverage these grant funds to obtain funds from philanthropic donations, the local tourism bureau, local businesses and other sources to the maximum extent possible.

(iv) Contribute in a lump sum to the trust described in Section 4(c) \$6,000,000 to fund maintenance costs associated with the tourism infrastructure described in clause (iii) above and for continued funding of education and other programs to improve the local tourism.

Section 4(b) of the MOU addresses the situation in which the Project crosses the Kennebec Gorge underground and provides:

(b) In the event that the Project is constructed such that it (i) crosses the Kennebec Gorge underground, (ii) crosses overhead at Harris Dam, or (iii) completes the Project by any other overhead or underground crossing of the Kennebec or Dead rivers, and subject to the Preconditions being met, CMP agrees to contribute in a lump sum to the Trust described in Section 4(c) to support the programs described in clause (a)(iii) above of at least \$5,000,000, but in no case exceeding \$10,000,000.

The MOU provides specific instructions regarding WM&RC's participation in the regulatory review process of the NECEC.

At the request of CMP, WM&RC will provide written and/or oral testimony to one or more regulatory agencies with the power to issue one or more of the Required Approvals. The essence and extent of WM&RC's testimony will be that

the mitigation packages for the crossings described in Sections 4(a) and 4(b) of this MOU are appropriate offsets to the environmental, natural resource and community impacts of the Project because the benefits of the packages to the region are substantial and long lasting.

Id. at 6, Section 7(a).

In its September 27, 2017 Petition, CMP included an NECEC Communications Plan (Communications Plan). CMP Ex. NECEC 9. The Communications Plan emphasizes such things as keeping key stakeholders well-informed through early and frequent outreach activities and building trust throughout the area where the Project will be built. CMP Petition at 88-89.

b. Positions of the Parties

The proponents and opponents of the NECEC are divided on CMP's efforts to mitigate the Project's detrimental impacts on scenic and recreational values. The proponents and opponents also differ on the sufficiency of CMP's outreach activities and CMP's communication efforts with key stakeholders regarding the negotiation and content of the MOU. Proponents and opponents disagree on the following aspects of CMP's MOU with WM&RC: (1) the legitimacy of WM&RC, (2) the sufficiency of funding provided by the MOU, and (3) the adequacy of the way MOU funds are allocated.

i. Proponents of the Project

CMP states that the MOU "was the result of extensive discussions with WM&RC representatives that began in Spring 2017 regarding the project's river crossing at the Kennebec River Gorge and Moxie Stream in Somerset County." CMP Initial Br. at 81. CMP summarizes the terms of the WM&RC MOU as follows:

CMP has provided WM&RC with a \$250,000 initial donation, and will, subject to the NECEC's receipt of all relevant regulatory approvals, provide additional annual grants of \$50,000 to WM&RC for five years, to support WM&RC's charitable mission, including, in particular, the promotion of outdoor activities in central and northern Somerset County and the improvement of the current trail and track network in those areas. To ensure that the NECEC does not unreasonably interfere with or adversely affect existing scenic, aesthetic, recreational or navigational uses, CMP has also consulted with WM&RC on the design, construction, and ongoing maintenance plan for the NECEC in the vicinity of the Kennebec Gorge.

As part of the MOU, CMP has also agreed to certain measures regarding relevant, CMP-owned land in the NECEC project area, including to negotiate in good faith with businesses operating on land leased from CMP regarding options to purchase such land, to consider making available for purchase land that is not essential for CMP's current or anticipated future needs, and to cooperate in good

faith in facilitating access to the NECEC corridor for recreational uses, consistent with applicable law. In the event that CMP constructs the NECEC, the Company has also agreed to facilitate broadband, wide area Wi-Fi, and other enhanced communication services for the residents and business of Somerset and Franklin counties by laying an optical ground cable with multiple strands of fiber-optic cable, at CMP's sole expense. CMP has also agreed to additional mitigation measures based on the NECEC's proposed underground crossing of the Kennebec Gorge. The Company has established and will fund an irrevocable Maine charitable trust fund to support and enhance tourism and outdoor recreation in central and northern Somerset County and contribute a lump sum of at least \$5 million, and as much as \$10 million, to fund maintenance costs associated with such tourism infrastructure. All of these provisions provide real and tangible benefits to Somerset County.

Id. at 81-82.

Other proponents of the Project assert that the benefits included in the MOU are substantial and provide significant mitigation of any negative impacts to the host communities in Somerset County that may result from the NECEC. In its initial brief in this case, WM&RC describes the provisions of the MOU and the benefits the MOU would provide to the people of Somerset County. WM&RC concludes that the record supports a finding that the various financial and non-financial contributions offered by CMP under the MOU will likely provide additional economic development opportunities in western Maine and Somerset County. MW&RC Initial Br. at 8-9.

The Chamber argues that the MOU will provide robust economic development opportunities for the promotion of outdoor activities and tourism in that part of our State. Chamber Initial Br. at 5.

Regarding CMP's broader outreach and communications activities, CMP witnesses were questioned during the January 9, 2019 hearing about the adequacy of CMP's implementation of its Communications Plan. CMP witnesses stated repeatedly that CMP's pre- and post-filing outreach efforts were robust, that the outreach team was committed to complying with the requirements of the Communications Plan, and that, knowing what it knows now, CMP would not change the way it conducted its outreach efforts. Hearing Tr. at 115, 121-122 (Jan. 9, 2019).

ii. Opponents of the Project

Opponents of the Project are critical of CMP's MOU with WM&RC on four fundamental grounds. First, opponents question the legitimacy of WM&RC and whether it sufficiently represents the people in Somerset County who would be directly affected by the Project. Second, opponents argue that CMP has not done the analysis necessary to quantify the damage caused by the new corridor. Third, opponents assert that, notwithstanding CMP's failure to conduct any analysis of the monetary damage caused by the Project, it is clear that the amount offered by CMP in the MOU (between

\$5 million and \$10 million) is insufficient to offset the damages caused by the Project. Finally, opponents assert that the mitigation included in the MOU is not equitably distributed among those along the new corridor who will be most harmed by the Project.

Regarding the legitimacy of WM&RC, Caratunk asserts that the WM&RC is simply a shell organization created by CMP, noting that the MOU also requires WM&RC to proactively support NECEC in front of governmental bodies. Caratunk Initial Br. at 38.

Opponents also assert that CMP has not conducted a sufficient analysis to quantify the impacts of the proposed new corridor on scenic and recreational values and tourism. Relating the lack of analysis and quantification of the harm caused by new corridor to the adequacy of the benefits package contained in the MOU, Caratunk questions how a proper mitigation package could ever be determined. *Id.* at 27.

In questioning the adequacy of the MOU's funding for Somerset County residents, Caratunk notes the indefinite amount of funds being committed (somewhere between \$5 million and \$10 million) and complains that this uncertainty makes it difficult to evaluate the actual value of the mitigation package. Hearing Tr. at 75 (Jan. 9, 2019). Caratunk adds that the MOU is structured in a way that places primary emphasis on the crossing of the Kennebec Gorge and further notes that CMP's decision to underground that portion of the line substantially reduced the value of the mitigation package from a guaranteed amount of \$22 million to a guaranteed amount of \$5 million. Caratunk Initial Br. at 38. Caratunk asserts that this \$5 million is insufficient to offset the damage caused by the Project to the people of Somerset County.

In addition to the MOU providing insufficient funding, Caratunk argues that the MOU is structured in a way that inequitably distributes those insufficient mitigation dollars. Speaking to the mismatch between the beneficiaries of the MOU and those who would be most harmed by the Project, Caratunk argues that funds should be directed to where the direct impacts will be. *Id.* at 27.

In addition to its criticism of the contents of the MOU, Caratunk also criticizes CMP for its failure to include any Caratunk Town officials in any of its negotiations with WM&RC regarding the MOU. Hearing Tr. at 112-113 (Jan. 9, 2019). Finally, Caratunk criticizes CMP's broader outreach and communications activities and its failure to comply with its Communications Plan. *Id.* at 116.

iii. Testimony Presented During Public Witness Hearings

Public witness hearing testimony relating to WM&RC and the MOU focused primarily on two issues: (1) whether WM&RC was representative of the affected local communities and (2) whether the MOU allocates mitigation funds to the proper people.

In their Procedural Order issued on September 6, 2018, the Examiners noted: "These public witness hearings are being held pursuant to Chapter 110, Section 8(B)(6) of the Commission's Rules to allow persons who are not parties in this case to present

testimony or argument to the Commission.” Consistent with the September 6th Order, no person testified on behalf of WM&RC at any of the public witness hearings. But, there was a great deal of testimony critical of WM&RC and the MOU regarding each of the two issues. Witnesses testified that WM&RC does not speak for them, some even expressing feelings of betrayal. Ed Buzzell (Forks PWH Tr. at 78 (Sept. 14, 2018)); Julie Tibbetts (*Id.* at 82);

In the opinion of others, the MOU and the process that led to it was described as a “done deal” put together by CMP behind the scenes. Cecil Gray (Hallowell PWH Tr. at 30 (Oct. 17, 2018)); Former Senator Howard Trotsky (*Id.* at 160).

There was no testimony during the public witness hearings that explicitly referenced CMP’s Communications Plan or whether CMP had complied with that Plan. However, there was testimony about CMP’s trustworthiness, which the Plan noted as a goal for CMP to be achieved through its outreach and communications efforts in the affected communities. Several witnesses spoke critically of CMP’s trustworthiness, citing presentations about the Project by CMP that were “deceptive” and meetings in which county commissioners and residents were told “half-truths”. Vaughan Woodruff (Farmington PWH Tr. at 34-37 (Sept. 14, 2018)); Beverly Hughey (The Forks PWH Tr. at 130 (Sept. 14, 2018)); Former Senator Saviello (Farmington PWH Tr. at 7 (Sept. 14, 2018)); Eric Sherman (The Forks PWH at 49 (Sept. 14, 2018)); Kathy Barkley (*Id.* at 46); Pete Dostie (Hallowell PWH Tr. at 105 (Oct. 17, 2018)).

4. Balancing the NECEC’s Impacts on Scenic, Historic, and Recreational Values with CMP’s Mitigation Efforts

In addition to evaluating the Project’s positive and negative impacts on the scenic, historic, and recreational values in and around the new corridor, and CMP’s efforts to identify and mitigate the detrimental impacts of the Project, the Commission must also balance the totality of the impacts and mitigation to determine the NECEC’s net impact on scenic, historic, and recreational values. Not surprisingly, the proponents and opponents of the Project have different positions on how the Commission should do the balancing and the results of that balancing activity.

a. Proponents of the Project

The proponents note that Section 3132 and Chapter 330 provide little guidance on how the Commission should weigh the various impacts of the Project and then compare and balance those impacts. CMP describes the process as “flexible,” reflecting the context of the circumstances that exist at the time of the determination. CMP Initial Br. at 8. The IECG argues that the public interest balancing takes into account all relevant information contributing to the determination of whether the Project provides a positive net benefit to energy consumers. IECG Reply Br. at 16.

The IECG notes, further, that this case presents many benefits and detriments that are difficult to quantify and weigh. On this point, the IECG warns that “the complexity of many of the issues raised by the parties and the volume of such issues

have the potential to confuse the analysis and to obscure the value of benefits of NECEC that are substantial and indisputable.” *Id.* at 2. The IECG adds that it “is confident that the Commission and its staff have the technical expertise to evaluate the record on these issues and to make appropriate findings, but the complexities are dwarfed by the indisputable.” *Id.* The IECG notes that some issues are more difficult to quantify and argues that “rather than ‘wandering into the weeds’ to address these issues in significant detail,” the Commission should stay focused on the more easily quantifiable benefits of the Project “that are known to exist with a high degree of certainty.” *Id.*

WM&RC echoes the IECG’s comments about the complexity of the issues relating to scenic, historic, and recreational values and argues that, with respect to in-depth assessments of the Project’s impacts upon the natural environment and existing uses of lands, the Commission should defer to the Maine DEP and LUPC because they are the agencies charged to make such evaluations and have the expertise to do so. WM&RC initial Br. at 18. Notwithstanding its recommendation that the Commission defer on such issues, WM&RC concludes: “The Commission should find that any intrusions of the Project upon the scenic, historic and recreational values are not unreasonable and are outweighed by the benefits of the Project.” *Id.*

b. Opponents of the Project

The opponents to the Project make two fundamental points regarding the balancing of the Project’s beneficial and detrimental impacts. First, the opponents assert that CMP has failed to conduct sufficient analysis of the NECEC’s detrimental impacts on the scenic, historic, and recreational values associated with the Project. Second, the opponents argue that, in spite of CMP’s insufficient analysis, the record in this docket supports a finding that, on net, the NECEC is harmful to scenic, historic, and recreational values.

Regarding the sufficiency of CMP’s analysis, Caratunk argues that CMP’s failure to adequately examine the Project’s impacts compromises the Commission’s ability to weigh and balance those impacts. Caratunk Initial Br. at 42-43. Caratunk argues, nevertheless, that there is evidence in the record that shows how the NECEC will result in significant impacts to natural resources, and that it could cause economic harm to the local economy. *Id.*

NextEra makes a similar point, focusing on CMP’s failure to analyze the possibility of placing the portion of the proposed transmission line from The Forks to the Canadian border underground. NextEra argues because of CMP’s failure to provide any substantive evaluation of the scenic and recreational values impacted by NECEC for the 53 miles of greenfield forested corridor, its request for a CPCN should be denied. NextEra Initial Br. at 32-33

On the other hand, GINT argues that there is ample discussion in the record of the environmental harms that would be caused by NECEC, upon which the Commission can render a determination. GINT Initial Br. at 75.

5. Discussion

a. The NECEC's Impacts on Scenic Values

There was little discussion in this case regarding the portions of the NECEC that would lie within CMP's existing transmission corridor. The Commission's assessment on the Project's impacts on scenic values therefore focuses on the 53 miles of proposed new corridor that runs from the Canadian border in Beattie Township to the Town of Caratunk.

As noted above, some proponents of the Project characterize the proposed 53-mile corridor as a heavily-harvested working forest that cannot be considered "wilderness." Some opponents refer to the area in question as "pristine." The record suggests that the truth lies somewhere between these two characterizations.

The proposed new corridor would run through a well-managed working forest. That fact is not in dispute. However, the record also confirms that this area has special qualities that are treasured by residents in the area, as well as important to visitors that come to the area to recreate and enjoy its beauty, solitude, and remoteness.

As the testimony indicates, well-managed working forests that are clear-cut grow back, while the proposed new corridor would be cleared and maintained in a way that will not allow it to regenerate. The NECEC would result in the clearing of over 970 acres of land and the transmission line would cross streams, impact wetlands, and have an impact on the flora and fauna in and around the new corridor. The average pole height along the new transmission corridor would be 100 feet tall. Thus, the Commission finds that the Project will have an adverse impact on local scenic values.

The record does not allow the Commission to quantify the NECEC's potential impact on scenic values. However, it is important to note that the NECEC's proposed route is on private land which CMP owns or controls, including existing corridors for 73% of the Project's length. With respect to suggestions that the line should be underground rather than overhead, CMP considered the overhead solution as potentially lower impact given the environmental issues related to burying significant portions of the line underground. In addition, CMP incorporated the following design features to limit the Project's impact on scenic values:

- Adopting a perpendicular crossing to minimize visual impacts from approaching traffic, where the NECEC route intersects U.S. Route 201;

- Distancing the transmission corridor from major access roads, and, where possible, providing for a vegetative screen between the corridor and access roads;
- Siting the NECEC in mountain notches (as opposed to atop mountain peaks) to minimize visual impacts for those in the area, where the project route crosses high elevations, including in the area around Coburn Mountain;
- Installing taller pole structures where the project route crosses Gold Brook in Appleton Township to allow for full height canopy and thus minimize impacts to conservation management areas associated with the Roaring Brook Mayfly;
- Using “tapering” vegetation management methods that will soften the appearance of corridor visible from Rock Pond;
- Using roadside buffers to mitigate visual impacts in the locations in which the NECEC will cross U.S. Route 201 in Johnson Mountain Township and Moscow;
- Using specific vegetation management practices to reduce impacts within the Kennebec Deer Wintering Area, rare species conservation management areas at Mountain Brook in Johnson Mountain Township and Gold Brook in Appleton Township, and Rusty Blackbird habitat areas; and
- Using shorter, 75-foot poles, in the vicinity of Moxie Pond.

CMP Exceptions to Examiners’ Report at 9-11.

Based on the record, the Commission concludes: (1) the scenic value of the area through which the proposed new corridor would run is substantial; (2) the running of an overhead transmission line through this area would have an adverse impact on the scenic value of the area; (3) the Commission is unable to quantify the adverse impact of the NECEC on the scenic value within the area in question; and (4) the DEP and the LUPC, the agencies with expertise in these matters, will conduct expert reviews of the scenic impacts of the NECEC and will, to the extent appropriate and feasible, mitigate these effect through their own proceedings.

b. The NECEC’s Impacts on Historic Values

The question of the NECEC’s impact on historic values received little attention by the parties. As required by Section 3132(2-C)(A), CMP included a description of the effect the Project would have on historic values in its September 27, 2017 Petition. No party in this case offered testimony on this issue and the issue was not directly addressed by any of the people who testified during the three public witness hearings in this case.

Based on the limited record in this case on this issue, the Commission finds that the NECEC will not have an adverse impact on historic values in the area through which it passes.

c. The NECEC's Impact on Recreational Values

As with the Commission's consideration of the NECEC's impact on scenic values, the consideration of the Project's impact on recreational values focuses primarily on the portions of the 53 miles of proposed new corridor that attract tourists and outdoor enthusiasts. The record indicates that the recreational activities that currently take place in the affected area are many and diverse. A partial list of these recreational activities includes: fishing, hunting, birding, moose watching, leaf-watching, star gazing, hiking, camping, rafting, tubing, canoeing, kayaking, snowmobiling, ATVing, skiing, taking photos, swimming, rejuvenating, and relaxing. The record further indicates that visitors come to this area to engage in these, or other, forms of recreation. Finally, the record indicates that the beauty, remoteness, and undeveloped character of the region contribute to its value as a recreational destination.

The record supports a finding that the perpetually-cleared corridor, and the transmission line located in that corridor, will have an adverse impact on the recreational values in the area in question and, a corresponding impact on tourism and the economy in the host communities.

As with NECEC's impact on scenic values, CMP did not attempt to analyze or evaluate the Project's impacts on recreational values and the potential effects on tourism and the local economy. As part of its initial Petition, CMP included the USM Study titled "The Economic and Employment Contributions of the New England Clean Energy Connect in Maine" (USM Study).²⁹ While the USM Study does address several macroeconomic issues relating to the NECEC, it does not consider, or attempt to quantify, the effects of the Project on recreational values, or, more specifically, the micro-impact the Project would have on the tourism industry in the host communities. None of the other studies and analyses filed in this case attempts to quantify the Project's impact on tourism in the affected area. Therefore, the record in this case does not include information that would allow for the quantification of the NECEC's impacts on recreational values and the Commission is left with the task of evaluating such impacts in general terms.

²⁹ CMP Exh. NECEC No 7. The Executive Summary of the USM Study indicates that CMP commissioned MCBER to "to estimate the employment and other economic development impacts provided by the NECEC Project." USM Study at 1. Based on its analysis, MCBER found that "Maine ratepayers and communities will benefit from a reduction in electricity rates and the development, construction, and operations of the NECEC will support significant employment and other economic development impacts in Maine." *Id.*

Based on the record, the Commission concludes (1) the current recreational value of the area through which the proposed new corridor would run is substantial; (2) the NECEC will adversely affect this value; (3) the NECEC's impact on recreational value would have a corresponding impact on tourism and the economy in the host communities; (4) the record does not support the assertion that increases in snowmobile riding or other recreational activity in the new corridor would offset these detrimental effects; (5) the Commission is unable to precisely quantify the extent of the adverse impact the NECEC would have on recreational values of the area in question; and (6) the DEP and the LUPC, the agencies with expertise in these matters, will conduct expert reviews of the recreational impacts of the NECEC and will, to the extent appropriate and feasible, mitigate these effects through their own proceedings .

d. CMP's Efforts to Mitigate the NECEC's Adverse Impacts on Scenic, Historic, and Recreational Values³⁰

There are two sets of issues relating to CMP's mitigation efforts regarding the people of Somerset County. First, the Commission must consider such things as the composition of the WM&RC, and if it adequately reflected the interests of key stakeholders in Somerset County, and the extent to which some stakeholders were excluded from discussions that resulted in the MOU.

The record indicates that CMP's negotiations of its mitigation package for Somerset County took place with a small number of people representing a relatively narrow set of interests. Several key stakeholders, including the Town of Caratunk, were not given an opportunity to see or comment on preliminary drafts of the MOU. There is nothing in the record that adequately explains the reason for this omission.

The second set of issues relating to CMP's mitigation efforts regarding the people of Somerset County that the Commission must consider relates to the specific terms of the MOU and the amount and allocation of mitigation they provide. The MOU provides for:

- A \$250,000 initial donation and additional annual grants of \$50,000 to WM&RC for 5 years, to support WM&RC's charitable mission, including, in particular, the promotion of outdoor activities in central and northern Somerset County and the improvement of the current trail and track network in those areas;
- The creation of an irrevocable Maine charitable trust fund to support and enhance tourism and outdoor recreation in central and northern Somerset County and contribute a lump sum of at least \$5 million, and as much as \$10 million, to fund maintenance costs associated with such tourism infrastructure;

³⁰ CMP's mitigation, outreach, and communications activities discussed in this section address only the process and outcome related to the MOU with WM&RC and the decision to cross the Kennebec Gorge underground, and do not address either the process or outcome related to the February 21, 2019 Stipulation.

- Options to purchase CMP land;
- Access to portions of the corridor; and
- Access to broadband, Wi-Fi and other enhanced communications services to the people of Somerset and Franklin counties.

Although not part of the MOU, CMP has also agreed to the underground crossing of the Kennebec Gorge as part of its impact mitigation in that area.

It is clear that the MOU provides significant and quantifiable benefits. Less clear is how the funds from the MOU will ultimately be spent and who the primary and secondary beneficiaries of those funds will be. It is also evident that the undergrounding of the Kennebec Gorge crossing has positive value, though it is difficult to quantify that value.

In addition to CMP's failure to include key stakeholders, such as the Town of Caratunk, in the MOU process, the Commission finds that CMP's overall outreach and communications activities regarding the Project did not comply with its Communications Plan, which provides that "it is essential to provide clear information, address any concerns, offer Project updates and build trust throughout the area where the Project will be built;" that "interested members of the public want to feel engaged and have their concerns noted and validated by the Project team;" and that such a strategy "leads to the development of meaningful and valuable relationships built on mutual understanding, trust and respect." CMP Exh. NECEC 9 at 2 and 8.

When CMP witnesses were questioned about the adequacy of CMP's implementation of the Communications Plan, they stated repeatedly that CMP's outreach efforts were robust and that the outreach team was committed to complying with the goals reflected in the Communications Plan. Hearing Tr. at 115, 119, 121-122 (Jan. 9, 2019).

However, the record includes substantial criticism about CMP's communications efforts. The criticism accuses CMP of failing to provide some key stakeholders with accurate and timely information about the Project, failing to be transparent, failing to build trust throughout the area, and failing to develop relationships among the affected community that is built on mutual respect.

However, notwithstanding this criticism, Mr. Dickinson stated repeatedly during the January 9th hearing that he is either "incredibly proud" or "very proud" of the outreach team and its efforts on this Project and that, in spite of this criticism, "I can't point to a specific thing that we would do differently." *Id.* Such a response suggests a strong disconnect from the views of members of the host communities and appears at odds with the results achieved by CMP's Communications Plan.

Thus, based on the record in this proceeding, the Commission concludes (1) with respect to some stakeholders, CMP failed to comply with several of the core goals of its Communications Plan; (2) CMP's after-the-fact view of its success in complying with its Communications Plan appears unrealistic; and (3) whether intentional or not, CMP's failure to reach out to, and communicate with, certain key stakeholders compromised those stakeholders' ability to understand the details of the NECEC, evaluate the Project's negative impacts on scenic and recreational values along the proposed new corridor, and to participate in discussions relating to the mitigation of those negative impacts.

In addition to these findings, as noted above, there are a significant number of people in this proceeding who have questioned CMP's trustworthiness.³¹ The assertion that CMP has not been forthright with respect to the NECEC is reflected in the arguments of several opponents to the Project, the testimony of numerous people at the public witness hearings, and the majority of the more than 1,350 public comments the Commission has received in this case.

e. Balancing the NECEC's Impacts on Scenic, Historic, and Recreational Values with CMP's Mitigation Efforts

There are qualitative and quantitative differences between (1) the scenic, historic, and recreational values that are under consideration in this Section of the Order and (2) other factors listed in Section 3132(6), such as economic, reliability, state renewable energy generation goals, and alternatives to construction of the transmission line, that are discussed elsewhere in this Order. The unquantifiable and subjective nature of the NECEC's impact on scenic, historic, and recreational values reverberates repeatedly throughout the arguments of several parties and the testimony provided at each of the three public witness hearings held in this case. Testimony provided at those hearings clearly demonstrates that the assessment of the Project's impact on scenic, historic, and recreational values varies dramatically depending on, among other things, the identity and experience of the commenter. Moreover, the scenic, historic, and recreational impacts of the NECEC are relatively localized, whereas other impacts, such as the market price benefits discussed elsewhere in Section V of this Order, are much broader, if not statewide.

As noted above, neither CMP, nor any other party, provided evidence that would allow the Commission to quantify the NECEC's impact on these values. As a result, the weighing and balancing of the Project's impact on scenic, historic, and recreational values must necessarily be subjective.

Based on the record in this case and the above discussion, the Commission finds that the NECEC will have adverse impacts on the scenic and recreational values in

³¹ There is also some inevitable confounding of unrelated CMP billing and outage matters with any NECEC concerns in some public witness testimony and some public comments with regard to CMP's "trustworthiness."

certain communities in Somerset and Franklin counties, as well as the associated tourism and recreation-based economy in these communities. The Commission also finds that the benefits represented by the MOU and the undergrounding of the line at the Kennebec Gorge are positive and offset the adverse impacts to some extent.

E. Proximity to Inhabited Dwellings

Section 3132(2-C)(A) directs the applicant for approval of a CPCN to include in its petition, among other things, “[a] description of the effect of the proposed transmission line on... the proximity of the proposed transmission line to inhabited dwellings.”³² Section 3132(6) directs the Commission, in determining public need for a proposed project, consider “the proximity of the proposed transmission line to inhabited dwellings.”

The issue of the NECEC’s proximity to inhabited dwellings received little discussion in this case. Addressing this issue, CMP asserts that its design of the project route also reflects its diligent efforts to avoid impacts on inhabited dwellings. Foremost, CMP sited approximately 73% of the NECEC within existing transmission corridor owned by CMP. Where the Company was unable to site the project within existing corridor, CMP conducted due diligence on necessary real estate purchases and sited the project within newly acquired corridor nearby few, if any, inhabited dwellings. Following this approach, the NECEC route runs almost exclusively on privately-owned, commercial forestland containing few, if any, nearby inhabited dwellings. During the discovery phase of this proceeding, CMP provided written responses to data requests on this issue in at least two instances. Other parties neither offered these data responses as record evidence nor presented any testimony on this subject. CMP Initial Br. at 128-129.

No party in this case offered testimony on this issue and the issue was not directly addressed by any of the people who testified during the three public witness hearings in this case. Based on the limited record in this case on this issue, the Commission finds that CMP has designed the Project in a way that results in sufficient distance between the proposed transmission line and inhabited dwellings.

F. State Renewable Energy Goals

1. Incremental Hydroelectric Generation and GHG Emissions

As discussed in Section IV(D) above, the Commission finds that incremental hydroelectric generation for delivery into New England promotes the State’s renewable energy generation goals. At issue, then, is whether the NECEC will result in incremental hydroelectric generation and, thus, advance the State’s renewable energy

³² As required by section 3132(2-C)(A), CMP included a discussion of the proposed transmission line’s proximity to inhabited dwellings in its September 27, 2017 Petition. CMP Petition, Vol. 1, at 69-70.

generation goals, including GHG emissions reductions.³³ As discussed below, this issue involves consideration of: (1) whether there would be excess water within the HQ system that could be used to generate energy as a result of the NECEC export path; (2) whether it is reasonably likely that HQ will develop additional hydroelectric capacity on its system, at least to some significant degree, as a result of the NECEC; and (3) if HQ did divert energy from another market to meet its NECEC obligations, as has been argued by some parties, what type of supply would that other market use to replace the diverted HQ energy.

a. Positions of the Parties

CMP and IECG argue that HQ Production currently has excess energy available to supply the NECEC without diverting energy from other markets. CMP Initial Br. at 98-110; IECG Initial Br. at 35-38. In support of this, these parties cite to publicly available information, as well as to a letter in which Hydro-Québec states that it spilled over 4.5 TWh worth of energy in 2017 and 10.4 TWh worth of energy in 2018 due to lack of economic transmission, and that without additional transmission export capability, the quantity of spilled water in future years is expected to be comparable. CMP Initial Br. at 108-109; Kelly-004-001. CMP and IECG note, further, that the PPAs between HQUS and the MA EDCs are firm contracts that impose significant financial consequences for failure to perform to provide incremental energy. CMP Initial Br. at 138-150. CMP also argues that the NECEC will contribute to HQ Production's economic incentives to develop new hydroelectric facilities. *Id.*

Moreover, CMP states that all three analyses conducted in this case regarding the NECEC's GHG reduction benefits show that the Project's operation would result substantial GHG reductions for Maine. CMP Initial Br. at 102-104. Specifically, CMP refers to the Energyzt analysis³⁴ that found that the NECEC would reduce Maine GHG emissions levels by approximately 255,000 metric tons per year, the Daymark analysis that found that the NECEC would result in reductions of 264,000 metric tons per year, and the LEI analysis that found that the NECEC would reduce Maine's GHG emissions levels by approximately 306,000 metric tons per year. On a regional level, these amounts are equivalent to GHG emissions reductions of between 3.0 and 3.6 million metric tons per year. According to LEI, such reductions are equivalent to removing approximately 700,000 passenger vehicles from the road. LEI Report at 30.

³³ Regarding the issue of potential increases in CO₂ emissions from the HQ facilities, as noted in the LEI Report, on a lifecycle basis, any such increases would be substantially lower than emissions by natural gas generation. LEI Report at 30.

³⁴ The Energyzt analysis also concluded that the NECEC would result in increases in GHG emissions in other regions (New York, PJM, Ontario) and may actually increase overall emissions. Speyer Dir. Test., Exh. JMS-4, Technical Report: New England Clean Energy Connect (NECEC) Regional Carbon Emissions Impacts at 3 (Apr. 2018).

GINT, NextEra, NRCM, and Ms. Kelly argue that the NECEC would not have any meaningful GHG reductions benefits, and, in fact, would increase GHG emissions because HQ Production would divert energy from other regions to serve its obligations under the NECEC. GINT Initial Br. at 71-73; NextEra Initial Br. at 15-19; NRCM Initial Br. at 14-16; Kelly Initial Br. at 9-11. GINT and NextEra support this position by asserting that the PPAs with the MA EDCs do not actually require HQ Production to fulfil its obligations with incremental hydroelectric generation GINT argues that HQ Production spilled water for reasons other than those stated by Hydro-Québec, arguing that Hydro-Québec has more than enough physical transmission available to export that energy to market. GINT Initial Br. at 70-73. GINT asserts, based on the testimony of Ms. Bodell and Mr. Fowler,³⁵ that because Hydro-Québec did not do so, that there were other non-transmission constraints that led to the spillage (e.g., reservoir management, multi-year smoothing, opportunity cost). *Id.*

b. Discussion

The Commission concludes that the NECEC will result in significant incremental hydroelectric generation from existing and new resources in Québec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region. In making this decision, the Commission recognizes the inherent uncertainty in determining how HQ Production will develop and operate hydroelectric facilities over the next 20 years and beyond; thus, the levels of incremental hydroelectric generation and GHG reductions resulting from the NECEC cannot be precisely determined.³⁶

In support of this conclusion, the Commission observes the representations made by Hydro-Québec in Kelly-004-001 that it was a lack of transmission that resulted in the spilling of a substantial amount TWh in 2017 and 2018 (4.5 TWh worth of energy in 2017 and 10.4 TWh worth of energy in 2018). Hydro-Québec represented, further, that, “without additional transmission export capability,” a comparable amount of water will be spilled in future years. *Id.* This conclusion is supported by both the Daymark and LEI analyses, as well as through LEI’s testimony stating that HQ Production has surplus capacity and the NECEC will provide a means to sell that surplus capacity into New England. CMP Exh. NECEC-5 at 4; LEI Report at 12; Hearing Tr. at 127-128 (October 19, 2018). The Daymark and LEI testimony, thus, corroborate the Hydro-Québec statements in this regard.

³⁵ Corrected Fowler and Bodell Supp. Test. at 53-54.

³⁶ Hydro-Québec did not seek to intervene or participate in this proceeding. The Commission notes that such participation would have been helpful in understanding its prior and near-term operations. However, the operations over 20- to 40-year period would have remained uncertain to a large degree.

Furthermore, HQ Production, as a rational economic actor, will seek to maximize profits, and therefore will use whatever water it has available to generate energy for the NECEC rather than using the NECEC to divert energy from existing markets into New England. In addition, the Commission agrees with CMP that HQ Production has systematically increased capacity and storage capability over time in response to market signals for more clean energy. Dickinson, Stinneford, and Escudero Reb. Test. at 30-35 and Figures 4 and 5; CMP Initial Br. at 107. Thus, the Commission finds that the generation imported into New England over the NECEC is likely to be incremental at least to a large degree, and not, in any significant way, be simply diverted from other markets.³⁷

With respect to Ms. Bodell's analysis that concluded that HQ Production's spillage was due to factors other than transmission availability, the Commission notes that it was based on one-year (2017) of data and did not account for numerous material factors regarding the actual available transmission capacity and market conditions that actually determine whether it would be economic for HQ Production to sell available additional energy into New England or some other export market. Hearing Tr. at 55-83 (Jan. 8, 2019).

Further, the Commission notes that, because the PPAs between HQUS and the MA EDCs are firm contracts, that, except for a *force majeure* or transmission outage, HQUS is required to sell and deliver the specified amounts of energy. If it fails to do so, it will incur significant financial consequences for failure to perform. The PPAs do not permit HQUS to choose non-performance for economic reasons (*i.e.*, to sell available energy into an adjoining spot market in one or more hours in which the spot price in the market exceeds the PPA price for the Products) and to then cure the resulting delivery shortfall at a later time. Moreover, a willful breach of the PPAs would subject HQUS to substantial termination payments being owed to both the MA EDCs and CMP, and would also result in substantial reputational damage to HQUS, and its parent Hydro-Québec, that would hinder future business relationships with current and prospective purchasers of hydropower generation in the region.

Therefore, because the Commission finds that the NECEC will result in incremental hydroelectric generation, it follows that the Project will also provide GHG emissions reduction benefits in the region. As noted above, the expert analyses provided in the record in this proceeding indicates that the GHG emission reductions in the region resulting from the NECEC would be in the range of approximately 3.0 to 3.6 million metric tons per year, which as noted above, is equivalent to removing approximately 700,000 passenger vehicles from the road.

2. Renewable Generation Development in Maine

³⁷ The Commission notes that, even if significant power were to be diverted from New York, that State's renewable energy power policies goals would likely limit to a large degree replacement of the power with fossil fuels. CLF-002-003.

a. Positions of the Parties

NextEra, RENEW, and NRCM argue that the NECEC will prevent the development of renewable energy generation in western Maine. NextEra Initial Br. at 16-19; RENEW Initial Br. at 4-6; NRCM Initial Br. at 8-9. Specifically, these parties argue that, in the event that CMP constructs the Surowiec-South interface upgrades as required, and the NECEC proceeds, the Project will “use up” the existing “headroom” at that interface to the detriment of future Maine-based renewable projects. For this reason, RENEW suggests that the Commission condition issuance of a CPCN for the NECEC on limiting the amount of import capacity that it can seek to qualify in the FCM so as not to disadvantage Maine-based renewable generation development. RENEW Initial Br. at 2-6.

NextEra argues that if the NECEC was constructed as an AC transmission facility rather than a DC facility, the NECEC would be congruent with Maine’s renewable energy generation goals. NextEra Initial Br. at 34-38. NextEra also argues that, if the NECEC were an AC facility, Maine-based solar and wind projects could use the line by buying transmission rights from HQUS for the 110 MWs of unused transmission in years 1-40 and 1,090 MWs of unused transmission in years 21-40. *Id.*

CMP argues that that the NECEC will have no impact on renewable generation ahead of it in the interconnection queue and that there is no record evidence to support the claims that the NECEC will impede the development of renewable generation projects that are behind it in the interconnection queue. CMP Initial Br. at 116-122; CMP Reply Br. at 47-54. CMP states, that in fact, the NECEC’s transmission system upgrades will likely render it cheaper for renewable generation in western and northern Maine to interconnect to the regional transmission grid, which is an additional benefit to generation developers. *Id.* In response to NextEra’s argument that a significant portion of the NECEC should be HVAC transmission, CMP states that the use of additional HVAC transmission would result in: (1) the use of larger, unsightly transmission structures; (2) a more expensive project; and (3) higher transmission losses. CMP Reply Br. at 57-59.

b. Discussion

In Section V(A) above, the Commission discusses the impact of the NECEC on existing Maine generators, as well as on the development of new generation facilities in Maine. In that section, the Commission finds little merit to the concerns that the NECEC would frustrate Maine-based renewable energy development by absorbing “headroom” on the transmission system. Accordingly, the Commission concludes that NECEC will not hinder Maine in making progress towards meeting its statutory renewable portfolio requirements and the goals under the Maine Wind Energy Act and Maine Solar Energy Act.

The Commission agrees with CMP that the NECEC will have no impact on any proposed renewable generation projects in Maine with a better interconnection queue

position. As noted above, there are currently more than 750 MW of renewable capacity in Maine ahead of the NECEC in the queue. For projects that are behind NECEC in the queue or are not yet in the queue, whether these projects move forward depends on numerous factors, including the results of ISO-NE's planning studies, the economic viability of each project, and the availability of PPAs that may be necessary for the financing of such projects.

The Commission notes that the NECEC could facilitate renewable generation in Maine in that it will provide for additional transfer capacity at no cost to future generation developers if, as argued by several parties, the NECEC does not qualify in the FCM, or qualifies less than 1,200 MW.

In addition, as described in Section II(C) above, the NECEC requires construction of several reinforcements to the transmission system south of Larrabee Road, including a parallel 345 kV line between the Coopers Mills Road Substation and the Maine Yankee Substation. The ISO-NE has identified certain of these upgrades, including the new Coopers Mills line, as necessary to the interconnection of new renewable generation in western and northern Maine.³⁸ Because the costs of these reinforcements will be borne by the NECEC, future renewable generation projects may benefit from the fact that they already exist at the time their projects seek to interconnect.

For these reasons, the Commission rejects RENEW's suggestion that the Commission limit the amount of NECEC-enabled capacity for participation in the capacity market and "reserve" that amount for certain generation types or projects. Such a condition would not be in the public interest and would be contrary to the first-come, first-served design of the ISO-NE interconnection queue and study process.³⁹

VI. REVIEW AND DISCUSSION OF STIPULATION

A. Stipulation Provisions

The major provisions of the Stipulation include the issuance of a CPCN for the NECEC and a set of "CPCN Conditions" that contains benefit provisions in various categories. Specifically, certain CPCN Condition provisions provide ratepayer protections against costs and financial risks associated with the Project or are intended

³⁸ CMP-010-006, Attachment 1 (2016/2017 Maine Resource Integration Study) at 3 (identifying a "second 345 kV Coopers Mills – Maine Yankee 302 line" as a shared requirement for interconnection of both the northern and western Maine clusters).

³⁹ CMP argues that a condition that an amount of NECEC-enabled capacity eligible for participation in the capacity market be "reserved" for other generation projects is preempted by federal law in that the Federal Power Act vests in FERC "exclusive jurisdiction over wholesale sales of electricity in the interstate market." Because the Commission finds that such a condition would not be in the public interest, it need not address the preemption issue.

to reimburse ratepayers for prior costs associated with the Project and to compensate ratepayers for the benefits provided to the Project. Additionally, certain provisions provide a series of public benefits through funding of various initiatives and commitments. The Stipulation also includes various additional commitments by the Project sponsors. Each of the CPCN Condition provisions is described below.

1. Ratepayer Protections and Compensation

a. NECEC Project Ownership

The Stipulation includes a condition that CMP will convey the Project to NECEC Transmission LLC (NECEC LLC), a newly-organized subsidiary within the Avangrid Networks that is not a subsidiary of CMP. Stip. Sec. V.B.1. Upon the transfer, CMP and NECEC LLC will enter into a Service Agreement which contains the provisions under which CMP will provide various services to NECEC LLC, including accounting, legal, information technology, other corporate support, supply chain and engineering services. Stip. Sec. V.B.1.c. In addition to the transfer of the Project, the Stipulation provides for the following:

- The transfer of the Project from CMP to NECEC LLC will occur prior to the start of construction;
- NECEC LLC will not participate in any money pooling arrangements, credit facilities or other financing agreements with CMP without Commission consent;
- NECEC LLC and CMP will remove NECEC-related development expenses from CMP's books;
- NECEC LLC will put in place a guaranty by AVANGRID, Inc. of its payment obligations to CMP and with respect to the Heat Pump Fund, the Dirigo EV Fund, the Franklin County Host Community Benefits Fund and the Education Grant Funding. In addition, NECEC LLC will grant a first priority security interest to CMP in NECEC LLC's payment rights from HQUS or Hydro-Québec with respect to the Low-Income Customer Benefits Fund and the Rate Relief Fund;
- NECEC LLC and CMP will facilitate access to the NECEC transmission corridor for ATV, snowmobile, and other recreational uses;
- NECEC LLC will not use CMP's brand name, reputation or customer relations and will not engage in joint marketing or advertising with CMP;
- Maine transmission and distribution customers shall not be responsible for any portion of the revenue requirement for the Project during at least the first 40 years of its useful life;

- CMP and NECEC LLC will not take or support any action to change the NECEC cost recovery mechanism that would result in Maine customers being responsible for any portion of NECEC LLC's revenue requirement during the first 40 years of the Project without Commission approval; and
- Provided, however, that these provisions would not prohibit Maine customers from paying for a portion of the Project through the purchase of electricity provided through the 110 MW not contracted by the Massachusetts EDCs.

Stip. Sec. V.B.1.d.

b. Consideration Payment

As consideration for the transfer of the Project assets and any goodwill of CMP related to the Project, NECEC LLC will pay CMP \$60 million, payable in 40 installments of \$1.5 million annually. CMP will direct these payments to the NECEC Rate Relief Fund described below. Stip. Sec. V.B.1.b.

c. Transmission Rates Customer Credit

Effective with the 2019 transmission rate change, CMP will provide a one-time credit for RNS and LNS transmission customers of \$1.005 million. This credit represents the amounts paid in rates by transmission customers for those portions of the transmission corridor held by CMP that have been included in FERC Account 105 for Plant Held for Future Use. CMP will remove all NECEC-related property from FERC Account 105 upon issuance of the CPCN. Stip. Sec. V.B.2.

d. New Corridor Removed from Transmission Rates

Upon issuance of the CPCN, CMP will remove the unused portion of the transmission corridor from the Canadian border to the existing Section 222 from Account 105 and classify it as Non-Operating Property in FERC Account 121. CMP agrees that it will not reclassify this unused corridor or seek recovery in any other way unless the transmission project that will use this corridor is otherwise eligible for rate recovery from Maine retail customers pursuant to a FERC-approved transmission tariff. Stip. Sec. V.B.3.

2. Public and Ratepayer Benefits

a. Low-Income Customer Benefits Fund

Beginning with the NECEC commercial operations date (COD), NECEC LLC will fund a \$40 million Low-Income Customer Benefits Fund by making 40 annual payments of \$1.25 million. This fund will be available to fund programs that benefit low-income energy customers in Maine and may be used to reduce the amounts paid by low-income customers for electricity or other sources of energy, for weatherization and household efficiency programs. The specific use of these funds will be as designated by the OPA in consultation with the Efficiency Maine Trust (EMT) and a designee of the

Governor. In designating the use of these funds, a preference for customers located in the NECEC Host Communities may be applied. Stip. Sec. V.B.4.

b. Rate Relief Fund

Effective with the NECEC COD, a \$140 million Rate Relief Fund will be established to provide per kilowatt hour rate relief for CMP's retail customers. As noted, CMP will direct the annual \$1.5 million consideration payment received from NECEC LLC to this fund. NECEC LLC will provide an additional \$2 million annual payment. The Rate Relief Fund will be funded over 40 years and will flow to ratepayers through stranded costs or comparable per kilowatt hour mechanism. In addition, to the extent that CMP is able to monetize the Environmental Attributes discussed in Section VI.A.3.d, those funds will also be contributed to the Rate Relief Fund. Stip. Sec. V.B.5.

c. Broadband Benefits

As part of the final design, CMP and NECEC LLC will include facilities and equipment necessary to provide additional fiber optic capacity on the transmission line with an estimated value of \$5 million. In addition, beginning with COD, a \$10 million Broadband Fund will be established and funded by five annual contributions of \$2 million by HQUS. This fund may be used for grants to study and implement expanded availability of high speed broadband in the host communities. Stip. Sec. V.B.6.

d. Heat Pump Benefits

Beginning with COD, a \$15 million Heat Pump Fund will be established and funded by annual contributions over 8 years of \$10 million by HQUS and \$5 million by NECEC LLC. This fund will be used for the installation of heat pumps or other efficient heating technologies as agreed to by the OPA, the Governor's designee(s), CLF, Acadia Center, and IECG in consultation with EMT. Stip. Sec. V.B.7.

e. Electric Vehicle (EV) Funds

The Stipulation provides for two EV funds. The \$5 million Dirigo EV Fund, to be funded either by a lump sum contribution or over time by NECEC LLC beginning in the year NECEC LLC and Hydro-Québec receive all necessary permits. This Fund will provide consumer rebates for the purchase of qualifying EVs by Maine residents and rebates to defray the cost of workplace and other public vehicle charging installations and be managed pursuant to an agreement among CLF, Acadia Center, and the Governor's designee. Stip. Sec. V.B.8.a.

The \$10 million Hydro-Québec EV Fund will be funded through five payments of \$2 million annually from HQUS beginning on COD. This Fund will be used to fund the deployment of a state-wide fast and ultra-fast public charging infrastructure network for EVs in Maine. In addition, Hydro-Québec commits to share its expertise with respect to EV infrastructure in developing the programs funded by the Hydro-Québec EV Fund. Stip. Sec. V.B.8.b.

f. Franklin County Host Community Benefits

Beginning with COD, a \$5 million fund for the benefit of communities in Franklin County will be established and funded by ten annual contributions of \$500,000 by NECEC LLC. This fund will be used to support the economic and community development efforts of the Greater Franklin Development Council. Stip. Sec. V.B.9.

g. Education Grant Funding

NECEC LLC will provide a total of \$6 million for education-related grants and programs. NECEC LLC will contribute \$1 million to the University of Maine for research and development associated with the commercialization of marine wind generation technology once all State of Maine permits and approvals are received. Stip. Sec. V.B.10.a. Beginning with COD, NECEC LLC will make 10 annual contributions of \$500,000 each to fund programs and scholarships for needy Maine students to attend the University of Maine at Farmington and vocational and training programs and scholarships in the math, science and technology fields in Franklin and Somerset Counties. Stip. Sec. V.B.10.b.

3. Other Commitments

Finally, the Stipulation contains the following additional commitments on the part of CMP and NECEC LLC.

a. Mitigating Impacts on Transmission System

In the Stipulation, CMP and NECEC LLC agree to a number of initiatives intended to mitigate the impacts of the NECEC on the transmission system and existing and future energy resources in Maine. Stip. Sec. V.B.11. These provisions are conditioned on the NECEC receiving a CPCN and all other necessary approvals and include commitments by CMP and NECEC to:

- Participate in all ISO-NE studies to determine the thermal, voltage and stability ratings for the Surowiec-South interface and advocating to maximize its stability rating and the total transfer capacity;
- Engage a consultant at CMP's expense, not to exceed \$2 million, to evaluate non-wires solutions that would reduce congestion at the Maine/New Hampshire and Surowiec-South interfaces;
- For any cost-effective and commercially viable non-wires solution identified, assess and pursue approval and cost allocation pursuant to the ISO-NE Tariff and to propose such solutions in applicable competitive solicitations; and
- Within one year of COD, create and make available an annual electric transmission and distribution system report which analyzes system needs that may potentially be met by non-wires alternatives.

Id.

b. Regional Carbonization

Conditioned upon the NECEC receiving a CPCN and all other necessary approvals, CMP and NECEC LLC will participate in a regional decarbonization

collaborative comprised of CLF, Acadia Center, utilities, the Governor's designee, OPA, IECG, and other stakeholders to study ways by which the Northeast Region may achieve economy-wide decarbonization of zero emissions by 2050. CMP will provide 50% of the cost of the study, not to exceed \$500,000. Stip. Sec. V.B.12.

c. Securitization

Upon COD, NECEC LLC will provide \$1 million to pay for any investment bank, investment advisor or consultant and/or legal fees incurred by OPA, the Governor's designee, IECG, and CMP related to the securitization of the annual payments to the Low-Income Customer Benefits Fund and the Rate Relief Fund. Any funds not used for this purpose will be disbursed to the Rate Relief Fund. Stip. Sec. V.B.13.

d. HQ Support Agreement

Prior to the start of construction, CMP, NECEC LLC, and HQUS will enter into a support agreement reflecting HQUS's funding commitments for the Broadband Fund, Heat Pump Fund, Hydro-Québec EV Fund, HQUS's commitment to pay NECEC LLC \$3.5 million annually and HQUS's commitment to provide CMP 400,000 MWh annually of Environmental Attributes related to deliveries of hydroelectric power to New England. CMP will seek to monetize the Environmental Attributes and any proceeds, net of costs to CMP, will be directed to the Rate Relief Fund.

The HQ Support Agreement will also reflect Hydro-Québec's commitment to share EV infrastructure expertise and to include sufficient fiber optic capacity in the Québec transmission facilities to provide a fiber optic connection between Maine and Montreal. Finally, the Support Agreement will reflect the guaranty from Hydro-Québec of HQUS's payment obligations. Stip. Sec. V.B.14.

e. Maine Worker Preferences

NECEC LLC, and its contractors working on the construction of the NECEC will give preference to hiring Maine workers. Stip. Sec. V.B.15.

B. Stipulation Review and Approval Requirements

Chapter 110 of the Commission's Rules specifies that, in deciding whether to approve a stipulation, the Commission will consider the following criteria:

- a. Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- b. Whether the process that led to the stipulation was fair to all parties;
- c. Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- d. Whether the overall stipulated result is in the public interest.

Ch. 110, Sec. 8(D)(7). These review requirements are discussed below.

C. Do the Parties to the Stipulation Represent a Sufficiently Broad Spectrum of Interests?

1. Background

There are 30 parties in this case. Of these 30 parties, the following 11 parties were signatories to the Stipulation: CMP; OPA; GEO; IECG; CLF; Acadia Center; WM&RC; Lewiston; the Chamber; IBEW; and FMM (Stipulating Parties). The following 11 parties expressed opposition to the Stipulation in either written comments or oral comments made during the hearing on the Stipulation that was held on March 7, 2019: NextEra; Ms. Kelly; GINT; NRCM; RENEW; MREA; ReEnergy; Caratunk; Former Senator Thomas Saviello; Old Canada Road; and the Town of Wilton. On March 28, 2019, the Town of Farmington filed a letter stating its formal opposition to the NECEC.⁴⁰ This letter did not specify the Town of Farmington's position regarding the Stipulation. The remaining seven parties have expressed no formal position regarding the Stipulation: GFDC⁴¹; Trout Unlimited; Darryl Wood; Town of Alna; Town of New Sharon; Town of Jackman; and Franklin County Commissioner Terry Brann.

2. Positions of the Parties

a. Signatories to the Stipulation

The signatories to the Stipulation argue that they represent a sufficiently broad spectrum of interests to ensure that there is no appearance or reality of disenfranchisement. After identifying the "interest" represented by each of the signatories, CMP argues "[t]he Stipulating Parties' varied obligations, missions, and constituencies all demonstrate that the Stipulation has the support of a diverse group of stakeholders, and that the signing parties do not 'represent only a narrow interest.'" Cover Letter to Stipulation, February 21, 2019, at 3-5.

⁴⁰ The Town of Farmington's letter is dated March 26, 2019.

⁴¹ On February 22, 2019, GFDC filed a letter in which it "endorse[d] the project," expressed "disappointment that CMP is not doing more to benefit Franklin County from a broadband expansion perspective," noted its unsuccessful efforts to get CMP to support the "Franklin County Broadband Initiative's efforts," and urged the Commission to "modify the Settlement Agreement to better utilize the value of CMP's commitment, to provide greater incentives for additional private investment to expand the availability of broadband. Implementing our recommendation will have a much greater impact to the expansion of broadband than the current plan incorporated into the Settlement Agreement." However, the Greater Franklin Development Council took no formal position on the merits of the Stipulation. Letter dated Feb. 19, 2019 and filed on Feb. 22, 2019 at 1-2.

Citing *Central Maine Power Company and Public Service of New Hampshire, Request for Certificate of Public Convenience and Necessity for the Maine Power Reliability Program Consisting of the Construction of Approximately 350 Miles of 345 kV and 115 kV Transmission Lines (“MPRP”)*, Docket No. 2008-00255, Order Approving Stipulation at 20 (June 10, 2010), (*MPRP Order*) CMP states:

[T]he Stipulation satisfies the “primary purpose” of the sufficiently broad spectrum of interests standard in Chapter 110, as articulated in Docket No. 2008-00255, particularly:

[T]o ensure that the Commission does not approve stipulations where the signing parties represent only a narrow interest. The criterion is not intended to require, and does not mean, that all parties participating in a case must sign a stipulation for the Commission to approve it.

Id. at 5.

CMP argues that in the *MPRP Order*, the Commission found that “a stipulation entered into by 19 of more than 100 parties to a CPCN proceeding, including the petitioning utility, ‘the OPA, representatives of the environmental community, representatives of the business and construction communities, the City of Lewiston, and an abutter’ satisfied the ‘first criterion for approval of a stipulation.’” *Id.* at 5, fn. 12.

The IECG and OPA filed joint comments regarding the Stipulation. Citing *Public Utilities Commission, Investigation into Verizon Maine’s Alternative Form of Regulation*, Docket No. 2005-155, Order Approving Stipulation, Docket No. 2005-155 (Oct. 3, 2007) (*Verizon AFOR Order*), IECG and the OPA assert that the Commission found that the participation in the stipulation by the OPA was sufficient to address the interest of all consumers in Maine in a manner to satisfy this prong of the Commission’s test. IECG and OPA Comments at 12 (Mar. 1, 2019).

The IECG and OPA further argue the failure of certain interests to join a stipulation does not mean that the stipulating parties have failed the “broad spectrum of interests” requirement in Section 8(D)(7)(a). The IECG and OPA cite the *MPRP Order* as support for their position on this point. *Id.* at 12-13.

In its written comments on the Stipulation, IBEW states that it supports the IECG’s comments regarding the sufficiency of breadth of interests joining the Stipulation. IBEW comments at 1 (Mar. 1, 2019). In their comments, the Chamber, the City of Lewiston, CLF, Acadia Center, the GEO, and FMM agree that the joining parties reflect a sufficiently broad spectrum of interests to meet the first evaluation criterion of Section 8(D)(7). Chamber and Lewiston Comments at 2 (Mar. 1, 2019); CLF and Acadia Center Comments at 4 (Mar. 1, 2019); GEO Comments at 1-2 (Mar. 1, 2019); FMM Comments at 1 (Feb. 28, 2019).

b. Parties that Did Not Sign the Stipulation

NRCM asserts that the parties joining the Stipulation do not represent a sufficiently broad spectrum of interests. NRCM Comments at 1 (Mar. 1, 2019). NRCM notes that approximately two-thirds of the parties in this case did not sign the Stipulation. *Id.* at 2. NRCM argues that notwithstanding CMP's claim that the parties to the contested stipulation represent a broad spectrum of interests, the limited number of stipulating parties represents only a relatively narrow list of interests. *Id.* at 3.

NextEra argues that the Stipulation fails to represent a sufficiently broad spectrum of interests and should be denied because it does not represent the relevant interests of Maine generators. NextEra Comments at 3 (Mar. 1, 2019). NextEra attempts to distinguish this Stipulation from the stipulation approved by the Commission in the *MPRP Order*, noting differences between the two in terms of both support for and participation by generators. *Id.*

Noting that more parties oppose the Stipulation than support it, GINT argues that the signatories do not represent a sufficiently broad spectrum of interests. GINT Comments at 9 (Mar. 1, 2019). GINT asserts that generators are not represented by the settling parties and that environmental groups and the affected towns are divided in their support of the Stipulation. *Id.*

Caratunk defines "public" to include the rural people located along the proposed corridor who will be "directly harmed by the NECEC" and asserts that this broader public is not represented in this Stipulation and has been "disenfranchised." Caratunk Comments at 2 (Mar. 1, 2019). Caratunk argues that the affected people of Somerset County are not being adequately compensated for the harm that the NECEC would cause them. *Id.* at 2. Caratunk also argues that the Stipulation does not address the interests of Maine's existing generators and would suppress the future location of renewable energy projects in Maine. *Id.* at 4.

Ms. Kelly argues a different standard, *i.e.*, that the breadth of interests in the joining parties to the Stipulation reflects "an appearance and reality of disenfranchisement." Kelly Comments at 4 (Mar. 1, 2019).

ReEnergy argues that a sufficiently broad spectrum of signatories requires a majority of the parties in a case to join a stipulation. ReEnergy Comments at 2 (Mar. 1, 2019). ReEnergy asserts that here, only one third of the parties are signatories to the Stipulation. *Id.* ReEnergy further asserts that the fact that no independent power generator has joined the Stipulation indicates a lack of diversity in the Stipulating Parties. *Id.*

Old Canada Road states that the stipulating parties lack inclusion of those who will be most affected by the construction and presence of the powerline. Old Canada Road Comments at 1 (Mar. 1, 2019).

RENEW and MREA filed joint comments in opposition to the Stipulation. However, those comments did not specifically address the issue of whether the stipulating parties represent a sufficiently broad spectrum of interests.

3. Discussion

The Stipulation presented to the Commission in this case is signed by 11 of 30 parties and is opposed by an equal number of active parties. As summarized above, several parties argue that any stipulation signed by a smaller percentage of parties, and opposed by a larger percentage, must fail to satisfy the “sufficiently broad spectrum of interests” criterion of the four Section 8(D)(7) stipulation approval criteria.

In the *MPRP Order*, the Commission stated:

In the case before us, the Stipulation was entered into by 19 parties, including all of the utilities involved in the project, the OPA, GridSolar, the IECG, representatives of the environmental community, representatives of the business and construction communities, the City of Lewiston, and an abutter. We find that these signatories represent a broad spectrum of interests and that there is no disenfranchisement or appearance of disenfranchisement.... We thus conclude, that the first criterion for approval of a stipulation has been satisfied here.

MPRP Order at 20.

In case before us, the Stipulation is signed by parties that represent a comparably diverse and broad spectrum of interests. Here, the signing parties include the utility seeking the CPCN; OPA, that is charged with representing the interests of Maine’s ratepayers; IECG, that represents the interests of large industrial customers; CLF and Acadia Center, that are representatives of the environmental community; the Chamber, that represents both large and small businesses; Lewiston; and the IBEW, that represents the interests of electrical workers.

In addition to the broad group of interests represented by the above-listed signatories, the GEO also joined the Stipulation. Furthermore, the Governor’s Office played a significant role in the negotiation of the Stipulation. IECG and OPA Comments at 12 (Mar. 31, 2019). The Governor is the only elected state official representative of all Maine citizens. The Governor’s participation in the negotiations, and her endorsement of the results of those negotiations through the GEO signing the Stipulation, enhance the breadth of the spectrum of interests joining the Stipulation. *Verizon AFOR Order* at 7.

Because of the diverse interests represented by the signatories, the Commission finds that the parties joining the Stipulation represent a sufficiently broad spectrum of interests to ensure that there was no appearance or reality of disenfranchisement. The Commission therefore concludes that the Stipulation satisfies the first criterion for approval of a stipulation.

D. Fairness of the Process to All Parties

1. Positions of the Parties

a. Signatories to the Stipulation

In the cover letter to the Stipulation, CMP asserts that the process that gave rise to the Stipulation was “fair, open and transparent” and that the provisions of the Stipulation are “based on extensive information presented in this proceeding and gathered through exhaustive discovery and discussions among CMP and the intervening parties, including the Stipulating Parties and Staff.” Stip. Cover Letter at 5. CMP further states:

During the case, CMP and interested intervenors participated in bilateral settlement discussions from time to time. In addition, Staff, CMP, and many of the intervenors participated in formal settlement conferences on September 7 and 14, 2018, and February 5 and 12, 2019. Staff provided advance notice of all such settlement conferences by procedural order or email notifications sent to all parties on the service list. None of the participating parties objected to Staff’s participation in such settlement conferences.

All Intervenors had the opportunity to participate in the settlement conferences and there is no appearance or reality of disenfranchisement. All of the settlement conferences were publicly noticed in advance and the parties were given a reasonable opportunity to participate. Additionally, those intervenors who were active in the proceeding and who now oppose the Stipulation attended and participated in the settlement conferences (e.g., Ms. Kelly, NRCM, the Generator Intervenors, and NextEra).

Id. at 6.

Citing the *Verizon AFOR Order*, IECG and OPA assert that Chapter 110 does not require that every party participate in every settlement discussion and that it is “reasonable not to include all individual parties in certain settlement discussions, for instance parties whose views are clear and the other parties did not plan to incorporate such views in their agreement.” IECG and OPA Comments at 10 (Mar. 1. 2019). The IECG and OPA further argue that the Commission affirmed these findings in the *MPPRP Order*. *Id.* at 10-11.

The IECG and OPA argue that, in evaluating the fairness of the process, the Commission must look at the entire process as a whole. The IECG and OPA note that, in this case, the Stipulation was filed after the briefing and hearing stages of the proceeding and after the case had been fully developed. *Id.* at 11. The IECG and OPA further note that in this case, all parties were given an opportunity to (1) participate in settlement conferences prior to the filing of the Stipulation, (2) file written comments on

the Stipulation, and (3) make oral argument during a hearing that was held on the Stipulation. *Id.*

Finally, the IECG and OPA note the similarity between the process that produced this stipulation and the processes in the *Verizon AFOR* and *MPRP* cases, concluding that under Commission precedent the process leading to this Stipulation was fair. *Id.* at 18.

In its written comments on the Stipulation, IBEW states that it supports the IECG's comments regarding the fairness of the process that led to the Stipulation. IBEW Comments at 1 (Mar. 1, 2019). In their jointly-filed comments, the Chamber and Lewiston also state their support for the IECG's comments regarding the second evaluation criterion of Section 8(D)(7). Chamber and Lewiston Comments at 2 (Mar. 1, 2019).

In their joint comments, CLF and Acadia Center describe the Stipulation process as fair, open, and transparent. CLF and Acadia Center Comments at 4 (Mar. 1, 2019).

To support its position that the process that produced the Stipulation was fair, the GEO notes the fact that there were four formal settlement conferences that were noticed in advance by the Hearing Examiner in the proceeding. GEO Comments at 2 (Mar. 1, 2019).

FMM asserts that when considering the fairness of the stipulation process, the Commission should look at the process for the entire case and notes that that process has been "exhaustive." FMM comments at 1 (Mar. 1, 2019). Furthermore, FMM notes that any party could have participated in the stipulation discussions, and that many did. *Id.*

b. Parties that Did Not Sign the Stipulation

NRCM argues that the process that produced the Stipulation was not fair to all parties in this case. NRCM Comments at 3 (Mar. 1, 2019). NRCM argues that, notwithstanding the formal settlement conferences convened by the Commission Staff, the Stipulation was largely "fixed" when NRCM and other parties were first provided the settlement terms in February. NRCM supports that provision by noting that the stipulation changed very little after that point. *Id.*

GINT argues that the process that produced the Stipulation was not fair to all parties. GINT Comments at 9 (Mar. 1, 2019). GINT notes that it would not be fair to them nor to other intervenors, who invested substantial funds and effort in the proceeding to have their factual issues resolved by a stipulation to which they did not agree. *Id.*

Caratunk asserts that the process that produced the Stipulation was not fair. Caratunk argues that the process should have incorporated some of the valid concerns

of the parties and addressed some of the issues brought up in the hearings and briefs. Caratunk Comments at 4 (Mar. 1, 2019). In support of its assertion that the Stipulation process was not fair, Caratunk notes that CMP failed to sufficiently analyze critical issues and failed to explore reasonable amendments to its proposed Project. *Id.* at 4-5. Caratunk also asserts that CMP's failure to include Caratunk in the Stipulation negotiations is similar to CMP's failure to include Caratunk and other key stakeholders in CMP's outreach efforts regarding the Project and its discussion with WM&RC about the MOU. *Id.* at 3.

Ms. Kelly and Old Canada Road agree with these parties that the process that led to the Stipulation was not fair. Kelly Comments at 5-4 (Mar. 1, 2019); Old Canada Road Comments at 1 (Mar. 1, 2019).

Finally, ReEnergy and NextEra noted that they took no position on the fairness of the process, and RENEW and MREA did not address the issue. ReEnergy Comments at 2 (Mar. 1, 2019); NextEra Comments at 2, fn. 7 (Mar. 1, 2019).

2. Discussion

a. Summary of Settlement Process

The Commission held settlement conferences in the Commission's hearing room on September 7 and 14, 2018. Through separate procedural orders, all parties were given notice of the settlement conferences and an opportunity to attend the conferences. After the September 14th conference, CMP pursued bilateral discussions with several parties including the IECG, OPA, CLF, Ms. Kelly, and "representatives from Franklin County." Hearing Tr. at 153, 179 (Mar. 7, 2019). On November 8, 2018, CMP, Avangrid, the IECG and OPA met to discuss settlement issues. *Id.* at 155. Following that meeting, CMP had bilateral discussions with the GEO, CLF, Acadia Center, and "other interested stakeholders." *Id.* at 157.

On or about December 30, 2018, IECG and OPA met with representatives of HQUS. *Id.* at 158. During the month of January, there were several meetings involving HQ, HQUS, CMP, GEO, IECG, and OPA. *Id.* at 158. Also during the month of January, CMP had bilateral discussions with several parties and stakeholders including CLF, Acadia Center, IBEW, the Chamber, Lewiston, WM&RC, Former State Senator Saviello, GFDC, Representative Landry, Ms. Kelly, and FMM about issues relating to settlement. *Id.* at 160-162, 179. During this time, OPA also had bilateral discussions with Former State Senator Saviello, GFDC, Representative Landry, and CLF, and IECG had discussions with NRCM. *Id.* at 163-165.

As a result of their bilateral and multilateral settlement discussions, HQ, HQUS, CMP, IECG, OPA, GEO, CLF, and Acadia Center entered into a term sheet in late January 2019. *Id.* at 160.

The Commission held settlement conferences in the Commission's hearing room on February 5 and 12, 2019. Through separate procedural orders, all parties were given notice of the settlement conferences and an opportunity to attend the conferences. During the February 5th settlement conference, CMP presented the term sheet that had been agreed to in late January. *Id.* at 169. After the February 5th settlement conference, CMP had bilateral discussions about the term sheet with Former State Senator Saviello, GFDC, Representative Landry, NextEra, and the Towns of Alna and Jackman. *Id.* at 169, 171. The evolving Stipulation was modified based on these conversations. *Id.*

CMP presented the Stipulation to those present during the settlement conference held at the Commission on February 12th. *Id.* at 170. Additional changes were made to the Stipulation following the February 12th settlement conference. *Id.* Between February 12th and February 20th, CMP had bilateral discussions with MREA and RENEW. *Id.* at 171. CMP sent the final Stipulation to all parties via e-mail on February 20, 2019. *Id.* at 170. CMP received feedback on the Stipulation from FMM and the Towns of Alna and Jackman. *Id.* at 171. CMP filed the Stipulation on February 21, 2019.

While GINT participated in all four settlement conferences held in the Commission's hearing room, GINT does not recall ever receiving notice of, or invitation to, any bilateral or multilateral settlement discussions that took place between September 14, 2018 and February 20, 2019. *Id.* at 176. Neither the Town of Caratunk nor Old Canada Road received notice of, or invitation to, any bilateral or multilateral settlement discussions that took place between September 14, 2018 and February 20, 2019. *Id.* at 180. The IECG states that, during the September 14, 2018 to February 20, 2019 timeframe, it had two conversations with an NRCM representative about settlement issues and, from those conversations, "it was clear...that there was no interest in settling." *Id.* at 178.

b. Decision

Section 8(D)(1) of the Commission's Rules of Practice and Procedure provides:

All parties shall be given an opportunity to participate in stipulation discussions. Accordingly, persons initiating such discussions should provide reasonable notice of discussions to all other parties where feasible, hold discussions at the office of the Public Utilities Commission where practicable and defer execution of comprehensive stipulations until the deadline for petitions to intervene, if any, has passed. In addition, all parties and proposed intervenors must be provided sufficient opportunity to review any executed stipulation in order to allow reasonable opportunity to object to the stipulation.

As noted above, Section 8(D)(7) provides that, when deciding whether to approve a stipulation, the Commission must consider four criteria. The second of

the four criteria is “[w]hether the process that led to the stipulation was fair to all parties.”

In this case, parties opposed to the Stipulation argue that the process that led to the Stipulation was not fair for several reasons including (1) the Stipulation was negotiated between and among a small number of parties; (2) there were few changes made to the agreement after it was presented to the parties during the February 5th and February 12th settlement conferences; (3) the settling parties excluded some parties in the settlement discussions; (4) the public was not adequately represented in settlement discussions; (5) the settling parties were not required to provide evidence, analysis, or explanation about the specific Stipulation terms; (6) the Stipulation does not address many of the key issues raised in the case; (7) CMP failed to do the analysis necessary to evaluate the provisions of the Stipulation; and (8) the stipulating parties failed to adequately consider possible amendments to the Stipulation.

In the *Verizon AFOR Case*, the Commission held that neither Section 8(D)(1) nor the Commission’s second stipulation review criterion requires that every party be included in every settlement meeting. In the *Verizon AFOR Case*, the Commission also found that failure to include a party in certain settlement discussions was not unreasonable, because the views of the party were clear and the other parties did not plan to incorporate such views in their agreement. As the above summary of the Stipulation settlement indicates, CMP, IECG, and OPA had numerous bilateral and multilateral discussions with several parties in this case and during the course of such discussions, and the four settlement conferences held in the Commission’s hearing room, it became clear that the positions of parties such as NRCM, GINT, Caratunk, and Old Canada Road, were not reconcilable with the positions of the settling parties.

In deciding whether the process that lead to the Stipulation was fair, the entire process must be looked at as a whole. *See, Verizon AFOR Case, Order Approving Stip.* at 9. In this case, the Stipulation was filed with the Commission after the hearing and briefing stages and the parties have had a full opportunity to present their positions to the Commission. In addition, the Examiners scheduled four noticed settlement conferences, which were open to all parties in the case. Furthermore, the process allowed those parties who were not signatories to the Stipulation, to file written objections and also provided such parties with an opportunity to present oral argument on the Stipulation. Under comparable circumstances in the *MPRP Case*, the Commission found that the stipulation process in that that case was fair to all parties. *MPRP Case, Order Approving Stipulation* at 21-22. In this case, the Commission finds that the overall process, including the process provided by the full litigation schedule, noticed settlement conferences, and process subsequent to the presentation of the Stipulation, was fair and that the Commission’s second stipulation review criterion has been satisfied here.

E. Stipulated Result is Reasonable, is Not Contrary to Legislative Mandate, and is in the Public Interest

The third and fourth stipulation review criteria are whether the stipulated result is reasonable and not contrary to Legislative mandate, and in the public interest. In the context of this proceeding, the Commission concludes that these stipulation approval criteria are essentially the same as the requirement in statute that the Commission find a public need to approve a transmission line project. The issue of public need is discussed in Sections IV(A), above.

As discussed above, the Commission finds that, even without the additional benefits provided by the CPCN Conditions set forth in Stipulation Section V.B (Stipulation Benefits), the NECEC would meet the statutory public need and public interest standards of Title 35-A, Section 3132 and, thus, would be granted a CPCN. The Commission finds, further, that these provisions of the NECEC Stipulation, and the benefits they provide, augment the market benefits and the direct, indirect, and induced macroeconomic benefits which will accrue to Maine from the development, construction, and operation of the NECEC. The Stipulation Benefits are described in Section VI(A) and discussed and evaluated below.

1. Positions of the Parties on the Stipulation Benefits

CMP, OPA, and IECG argue that the Stipulation will provide additional, substantial benefits that supplement the benefits provided by the Project and further support the conclusion that the Stipulation is in the public interest. Specifically, the transfer of the Project into a separate entity and other ring-fencing provisions ensure that Maine ratepayers will not bear the cost of the NECEC. Additionally, they cite the creation of a \$50 million Low-Income Customer Fund and \$140 million Rate Relief Fund; the construction of broadband infrastructure in the NECEC corridor; the creation of additional funds, including, \$15 million for heat pumps, the \$15 million EV fund, the \$5 million Franklin County fund, and the \$6 million education fund as providing an additional \$250 million in benefits to Maine Citizens and energy consumers. OPA and IECG also argue that these benefits are tangible and enforceable, are incremental to the \$1 billion in benefits already provided by the NECEC and incorporate the customer protections previously agreed to by CMP as part of this proceeding. Finally, OPA and IECG state that, collectively, the benefits and protections substantially exceed any costs or risks related to the Project.

GINT argues that most of the benefits are illusory or unproven and that CMP overstates the value of the benefits, for example, payments to the rate relief fund are “paltry” and represent only about 9 cents per month for the average CMP residential customer.⁴² GINT states that the negative effects of the Project include: decrease in

⁴² Exhibit A to GINT’s March 1, 2019 Comments on the Stipulation contains GINT’s calculation of the Rate Relief Fund benefits. GINT’s Total Rate Relief shown includes the annual \$1.5 million consideration payment from NECEC LLC to CMP and the

efficiency in the regional electric grid resulting from increased system congestion and line losses; distortion of the wholesale energy markets; premature retirement of electric generating plants in Maine; elimination of new renewable plants in Maine due to increased interconnection costs and system inefficiencies; consequent loss of Maine jobs and taxes; increased carbon dioxide emissions in the region; and adverse effects on tourism in Western Maine. Finally, GINT states that the Stipulation does not adequately reimburse ratepayers for the purchase of the NECEC corridor or for the value of having CMP employees available for operations and repair of the line.

Citing a statement made at the March 7th Hearing in which CMP expressed concerns about the effect that including community benefits packages in the proposed transmission projects would have on transmission rates, NextEra states that, by CMP's own admission, the benefits contained in the Stipulation are not in the public interest. NextEra also questions the Commission's authority to enforce a number of the Stipulation benefits against Hydro-Québec and HQUS because the Commission lacks jurisdiction over third-party, foreign entities.

Other supporters of the Stipulation, including CLF, Acadia Center, GEO, FMM, IBEW, the Chamber, and Lewiston state that the Stipulation includes many benefits for Maine and the Project is poised to create additional jobs, fund electric vehicles, reduce electricity prices expand broadband access, and substantially reduce the State's carbon footprint. The Chamber and Lewiston argue that certain benefits are of particular significance, most notably the Low-Income and Rate Relief Funds which will particularly benefit the City because of its relatively high poverty rate and old housing stock and the likelihood of new local jobs because Lewiston will be the site of the NECEC converter station.

Other opponents of the Stipulation, including Caratunk, NRCM, RENEW, MREA, ReEnergy, and Old Canada Road cite a number of concerns with the settlement package, including that it does little to address the fundamental flaws in the Project or address the likely impacts of the Project on the land, brand, citizens, or ratepayers of Maine. Additionally, they argue that some of the benefits are spread over such a long period of time that the results will be imperceptible to Maine ratepayers, specifically the Rate Relief Fund payable over 40 years and the Low-Income Customer Benefits Fund, also payable over 40 years. Opponents with an interest in renewable generation argue that the NECEC will harm renewable energy development in Maine and the associated benefits to Maine ratepayers and will harm the attainment of Maine's economic development, renewable energy, and GHG reduction goals. Additionally, ReEnergy argues that the Stipulation does nothing to mitigate the substantial and irrevocable damage that will be done to in-state generators due to congestion on the Maine-New

annual \$3.5 million CMP Rate Relief Fund as separate and additive items. The Commission understands that the Stipulation provides that CMP will direct the annual consideration payment from NECEC LLC to the Rate Relief Fund and it is not, therefore, a separate, additive benefit.

Hampshire interface. Finally, Ms. Kelly urges the Commission to delay any action on the Stipulation or the proceeding until the DEP and LUPC proceedings are complete.

2. Discussion and Evaluation of Stipulation Benefits

As noted above, the Commission finds that the benefits provided by the Stipulation augment the market benefits and the direct, indirect, and induced macroeconomic benefits which will accrue to Maine from the development, construction, and operation of the NECEC. In addition, the Stipulation Benefits contain a number of provisions intended to protect CMP ratepayers from the risks and costs associated with the NECEC development, construction, and operation. As noted above, the Stipulation characterizes these benefits and protections as “CPCN Conditions” and the Stipulating Parties recommend that the issuance of a CPCN be conditioned on these terms contained in Section V.B. of the Stipulation. The Commission’s assessment and valuation of these benefits and ratepayer protections is discussed below and summarized in Figure VI.2. Because many of the benefit funds are established and/or disbursed over time, the valuation is provided on both a nominal and present value basis.⁴³

a. Ratepayer Protections and Compensation

i. NECEC Project Ownership and Affiliate Transactions

Stipulation Sections V.B.1. a, c, d, f, and g contain a number of provisions intended to insulate CMP from the risks of the NECEC. Specifically, the Project and any associated development costs will be transferred from CMP to the special purpose entity, NECEC LLC, prior to the start of construction. NECEC LLC will be within the Avangrid Networks family of companies but will not be a direct subsidiary of CMP. Additionally, NECEC LLC will not participate in money-pooling arrangements or credit facilities with CMP and CMP will have no responsibility for any on-going costs of the Project. Any transactions between CMP and NECEC LLC will be governed by a Service Agreement or other affiliate agreements to be approved by the Commission. NECEC LLC will put into place an AVANGRID, Inc. guaranty with respect to its payment obligations for the EV, heat pump, host community and education funds and grant CMP a security interest in its payment rights from HQ and HQUS for the rate relief and low-income funds. Finally, NECEC LLC will not use CMP’s brand name, reputation or customer relations to its benefit.

These ring fencing arrangements provide effective separation of CMP from the risks associated with the remaining development efforts and, most particularly, the construction of the Project. These protections provide a clear benefit to CMP ratepayers. The transactions and on-going interactions between CMP and NECEC

⁴³ The present values shown in Figure VI.2 were calculated using an 8.5% discount rate. The ranges shown in Figure I.1 are based on present value calculations using discount rates of 7% and 8.5%.

LLC, and among CMP, NECEC LLC, and other entities involved in the NECEC Project, including HQ, HQUS and AVANGRID, Inc., will be governed by various agreements, including the proposed NECEC Transfer Agreement (Attachment B to the Stipulation), the Service Agreement (Exhibit H to the NECEC Transfer Agreement), the guaranty provided by AVANGRID, Inc., and the HQUS Support Agreement. The Commission does not approve the form of any agreements provided in connection with the Stipulation but will conduct proceedings pursuant to Title 35-A, Sections 707 and 708 to approve the creation of NECEC, LLC and all associated affiliated transactions. The Commission emphasizes that, in these proceedings, the issues determined in this proceeding will not be relitigated.

ii. Consideration Payment

Section V.B.1.b provides that, as “consideration for the conveyance of the NECEC, including without limitation, the Real Estate Interests, the Permits, the TSAs, the Third-Party Vendor Agreements, the Related Assets, and any goodwill of CMP related to the NECEC,” NECEC LLC will pay to CMP the sum total of \$60 million, payable in 40 annual installments of \$1.5 million beginning when the NECEC reaches commercial operations. The present value of this flow of payments is approximately \$12 million. CMP will direct these payments to the Rate Relief Fund and the benefit the Rate Relief Fund provides to ratepayers is discussed below. Pursuant to statute and rule, however, the Commission must determine the appropriate value to assign to the consideration payment for the transfer of the NECEC irrespective of how CMP is directing the funds it receives. Title 35-A, Section 707(3)(G), requires that “for any contract of arrangement expected to involve the use by an affiliated interest of utility facilities, services or intangibles, including good will or use of a brand name, the Commission shall determine the value of those facilities, services or intangibles.” In addition, although the Commission is making no determination here as to whether the NECEC is a non-core utility service, Section 4.C.3 of Chapter 820 of the Commission’s Rules provides useful guidance as to the valuation of any goodwill associated with the NECEC that CMP is transferring. Section 4.C.3 provides:

The value of good will shall be presumed to be, and calculated as, 1% of the total capitalization of the affiliate, or 2% of the gross revenues of the affiliate, whichever is less, and shall be paid annually by the affiliate. Where the name of the utility has been used in Maine by the utility for less than 3 years, the value of good will shall be presumed to be zero. At the end of six years from the date the affiliated transaction is approved or upon the date that the affiliate commences use of the good will, whichever is later, the value of good will is zero.

GINT argues that the Commission should value the right-of-way by reference to a 2012 study for the Western Electricity Coordinating Council and estimates made by American Electric Power, both of which suggest that the value of the corridor should be 10% of total project costs, or \$100 million. GINT Comments at 4 (Mar. 1, 2019). The Commission declines to follow that estimating methodology. In this case, NECEC LLC can be viewed as any other interconnecting generator which is required to pay for incremental upgrades but not for facilities and land that already exist. The property cost

of the new corridor from the Canadian border to the Kennebec Gorge was approximately \$12.5 million. EXM-001-017, Attachment 1. These parcels were acquired largely between 2016 and 2017 in what appear to be arms-length transactions. There is no evidence that the cost of real property in Western Maine has changed substantially in the last several years. The Transfer Agreement contemplates the transfer of only half of this part of the corridor with a value of approximately \$6 million.

With respect to goodwill, in the context of the Massachusetts 83D solicitation, CMP emphasized the value of its experience, proven track record in developing large transmission projects and financial strength as competitive advantages it offered. In this situation, where establishing a precise value for goodwill would be exceptionally difficult, the Commission can follow the guidance contained in Chapter 820. Using this methodology does not constitute a Commission finding that the NECEC is a Non-Core Service. As shown in Figure VI.1, assuming the total capitalization of NECEC LLC is approximately equal to the project cost and using the payment stream provided for in the TSAs, the value of goodwill would total approximately \$15 million over the first 6 years of the TSA terms or approximately \$9 million on a present value basis.

Figure VI.1

Goodwill Payments from NECEC LLC to CMP Pursuant to Chapter 820					
	At 1% of Total Capitalization		At 2% of Gross Revenue		Lesser Amount
2023	\$	10.0	\$	2.4	\$ 2.4
2024	\$	10.0	\$	2.4	\$ 2.4
2025	\$	10.0	\$	2.5	\$ 2.5
2026	\$	10.0	\$	2.5	\$ 2.5
2027	\$	10.0	\$	2.6	\$ 2.6
2028	\$	10.0	\$	2.6	\$ 2.6
Sum					\$ 15.1
PV					\$8.9

The proposed transfer includes the assumption by NECEC LLC of the obligations of CMP pursuant to the 83D bid and the TSAs. Specifically, NECEC LLC will assume the costs and risks associated with the construction of the Project. These risk of cost overruns may be substantial, especially with respect to any environmental mitigation that may be ordered by the DEP and the LUPC and the costs of the underground crossing of the Kennebec Gorge. On balance, the Commission determines that the proposed Transfer Consideration is reasonable.

iii. Transmission Rates Customer Credit

Since CMP acquired the property in the 2016-2017 time-period for the approximately 53-mile long corridor from the Québec border to the Kennebec Gorge, CMP has recorded the property as a rate base item in FERC Account 105, Plant Held for Future Use. Pursuant to FERC regulations, property may be recorded in Account 105 if and when a transmission project for development on the property is sufficiently definite. Once recorded in this account, the revenue requirements, which are comprised of a return on the property rate base (investment amount), are recovered from ratepayers through operation of the FERC formula rate. Since 2016, CMP has recovered from ratepayers in Maine and the region approximately \$1 million associated with the NECEC corridor.

Section V.B.2 of the Stipulation provides that, effective with the 2019 transmission rate change, CMP will provide a \$1.005 million rate credit to regional and local network service customers. This credit reflects the amounts that have been paid by these customers for the NECEC corridor, plus carrying costs using the FERC refund formula. Finally, Section V.B.2 provides that, upon issuance of a CPCN, CMP will remove from FERC Account 105 all NECEC-related property.

This provision provides equity for ratepayers by crediting back to them all amounts that they have paid in rates since 2016 for the NECEC property and requiring the property to be accounted for in a manner such that, on a going forward basis, no amounts will be included in rates. Because transmission rates and accounting rules are FERC-jurisdictional, including this provision in the Stipulation produces a result that avoids any potential preemption challenge that might ensue if the Commission sought to impose a condition that would produce the same result. This is a clear benefit provided by the Stipulation.

iv. New Corridor Removed from Transmission Rates

Paragraph V.B.3 of the Stipulation requires CMP to classify the portion of the corridor that will not be used by the NECEC, which will remain CMP property, as Non-Operating Property. Pursuant to FERC requirements, Non-Operating Property is recorded in FERC Account 121 and may not be included in transmission rates until such time CMP identifies a sufficiently definite transmission project for development in the corridor. Pursuant to this Stipulation provision, CMP agrees that it will not seek to recover any amounts associated with this property unless the identified transmission project that would use the corridor is otherwise eligible for rate recovery in whole or in part from Maine customers pursuant to the then-applicable FERC transmission tariff. Thus, this provision eliminates the risk that ratepayers would again be charged amounts for property associated with an NECEC-like project, or a generator lead, as they have been since 2016 for the NECEC corridor.

As with the transmission rate credit provision discussed above, because the accounting and ratemaking treatment of transmission property are FERC-jurisdictional,

including this provision in the Stipulation produces a result that avoids any potential preemption challenge that might ensue if the Commission sought to impose a condition that would produce the same result and, as such, is a clear benefit of the Stipulation.

b. Public and Ratepayer Benefits

i. Low-Income Customer Benefits Fund

Section V.B.4 of the Stipulation provides for annual payments of \$1.25 million over the 40 years following COD that will be directed to a fund to be used for the benefit of low-income electric customers throughout the State. The funds may be used to reduce the amounts that low-income customers spend for energy and may include weatherization and household energy efficiency programs. In designating uses for these funds, the OPA, in consultation with the Efficiency Maine Trust and the Governor's designee, may apply a preference for low-income energy customers in the NECEC Host Communities. This direct benefit will total \$50 million over 40 years. On a present value basis, the Low-Income Customer Fund provides approximately \$10 Million of direct benefit to the citizens of Maine.

ii. Rate Relief Fund

Section V.B.5 of the Stipulation provides for two payment streams totaling \$3.5 million annually over the 40 years following COD that will be directed to the Rate Relief Fund. First, the annual \$1.5 million consideration payment from NECEC LLC to CMP will be directed by CMP to the Rate Relief Fund. Second, NECEC LLC commits to provide an annual payment of \$2 million to CMP for the Rate Relief Fund. The Stipulation provides that the Rate Relief Fund will be paid to ratepayers on a per kilowatt hour basis through stranded costs or a similar per kilowatt hour mechanism. This direct ratepayer benefit will total \$140 million over 40 years. On a present value basis, the Rate Relief Fund provides approximately \$28 Million of direct ratepayer benefit.

iii. Broadband Benefits

The broadband benefits in Section V.B.6 of the Stipulation include provisions for including fiber optic facilities and equipment on the transmission line, with an estimated value of \$5 million, and the creation of a \$10 million broadband fund to be used to support high speed broadband infrastructure in the host communities. This direct benefit will total \$15 million. On a present value basis, the broadband benefits provide approximately \$9 million of direct benefit to the host communities.

iv. Heat Pump Benefits

Section V.B.7 establishes the Heat Pump Benefits Fund which includes the creation of a \$15 million fund to support the installation of heat pumps or other future efficient heating technologies. The disbursement of these funds may include a

preference for targeted initiatives to reach low- and moderate-income individuals and communities. This direct benefit will total \$15 million. On a present value basis, the heat pump benefits provide approximately \$7.5 million of direct benefit to the State.

v. Electric Vehicle (EV) Funds

The EV benefits contained in Section V.B.8 include two funds, a \$5 million fund to provide rebates to defray the cost of charging installations and consumer rebates on the purchase of an EV, and a \$10 million fund to support the deployment of a statewide fast and ultra-fast public charging station infrastructure throughout the State. This direct benefit will total \$15 million. On a present value basis, the EV benefits provide approximately \$9 million of direct benefit to the State.

vi. Franklin County Host Community Benefits

The Franklin County community benefits in Section V.B.9 include the establishment of a \$5 million fund for the benefit of communities in Franklin County. This fund will support economic and community development activities for the benefit of Franklin County residents. This direct benefit will total \$5 million. On a present value basis, this fund provides approximately \$2.4 million of direct benefit to Franklin County.

vii. Education Grant Funding

Section V.B.10 contains the education benefits which provide for a \$1 million grant to the University of Maine for research and development associated with the commercialization of marine wind generation technology and for the creation of a \$5 million fund to provide programs and scholarships for needy Maine students to attend the University of Maine at Farmington and vocational and training programs and scholarships in the math, science, and technology fields in Franklin and Somerset Counties. This direct benefit will total \$6 million. On a present value basis, this fund provides approximately \$3.3 million of direct benefit to the University of Maine and the residents of Franklin and Somerset Counties.

c. Other Commitments

i. Mitigating Impacts on Transmission System

Section V.B.11 of the Stipulation contains several commitments by CMP and NECEC LLC to initiatives intended to mitigate the impacts of the NECEC on the transmission system and existing and future energy resources in Maine. Although these initiatives may be valuable undertakings, the Commission does not assign a direct monetary benefit to these commitments.

ii. Regional Carbonization

Section V.B.12 contains the commitment by CMP and NECEC LLC to participate in and provide funding for regional decarbonization studies. Although this initiative may be a valuable undertaking, the Commission does not assign a direct monetary benefit to this commitment.

iii. Securitization

The provisions of Section V.B.13 address ways to accelerate the receipt of benefits associated with the Low-Income Fund and the Rate Relief Fund by providing \$1 million in underwriting fees and other costs. Any funds not used for this purpose will be disbursed to the Rate Relief Fund. The Commission values this commitment at \$1 million on a nominal basis. Because no time frame is associated with the use of these funds for their intended purpose, the Commission cannot determine a present value.

iv. HQ Support Agreement

The HQ Support Agreement contained in Section V.B.14 is intended to provide support to the commitments made by HQUS as part of the Stipulation. The Commission does not assign any value to this support other than the values already established as part of other Stipulation sections.

In addition, the HQ Support Agreement will contain HQUS's commitment to provide CMP 400,000 MWh annually of Environmental Attributes related to deliveries of hydroelectric power to New England. There is no active market for these Environmental Attributes, which are a creation of the Massachusetts statute which led to the 83D solicitation. The Commission does not assign any value to this commitment.

v. Maine Worker Preferences

Section V.B.15 contains the commitment of NECEC LLC, and its contractors working on the construction of the NECEC, to give preference to hiring Maine workers, all other factors being equal and consistent with applicable law and applicable labor agreements. Although this commitment may be valuable, the Commission does not assign a direct monetary benefit to it.

Figure VI.2

NECEC Stipulation Benefits			
Item	Timing	Total Nominal (\$ millions)	Present Value (\$ millions)
Ratepayer Benefits			
Rate Relief Fund	2023-2062	\$ 140.000	\$ 28.575
Transmission Credit	July 1, 2019	\$ 1.005	\$ 1.005
Low Income Customer Benefits			
Low Income Fund	2023-2062	\$ 50.000	\$ 10.205
Community and State-wide Benefits			
Broadband Benefits	2023-2027	\$ 15.000	\$ 9.295
Heat Pump Benefit	2023-2030	\$ 15.000	\$ 7.762
Host Community Benefits	2023-2030	\$ 5.000	\$ 2.367
EV Benefits	2021-2028	\$ 15.050	\$ 9.319
Education Grants	2019-2032	\$ 6.000	\$ 3.289
NTA Study	Unknown	\$ -	\$ -
Regional Decarbonization Planning	Unknown	\$ -	\$ -
Securitization	Unknown	\$ 1.000	\$ -
Environmental Attributes	2023-2062	\$ -	\$ -

VII. CONCLUSION

For the reasons discussed in this Order, the Commission concludes that the benefits from the development and operation of the NECEC to Maine ratepayers and citizens significantly outweigh the costs and detriments of the Project. In addition, the Commission concludes that the Stipulation, filed in this proceeding on February 21, 2019, provides significant additional benefits to Maine. Accordingly, the Commission concludes that: (1) the NECEC meets the public need and public interest standards required by Title 35-A, Section 3132; and (2) the Stipulation filed in this proceeding on February 21, 2019 satisfies the stipulation approval criteria contained in Chapter 110, Section 8(D)(7) of the Commission rules.

Accordingly, the Commission

ORDERS

1. That Central Maine Power Company is, hereby, granted a Certificate of Public Convenience and Necessity for the New England Clean Energy Connect. Specifically, the Certificate of Public Convenience and Necessity applies to the construction of the transmission lines and

substation components listed in Section II(A) of this Order, and any related additional transmission facilities that ISO-NE determines are necessary to meet the requirements of (i) Section I.3.9 of the ISO-NE's Transmission, Markets and Services Tariff or (ii) the ISO-NE's CCIS, all at no cost to Maine electricity customers;

2. That the Stipulation, filed in this proceeding on February 21, 2019, and attached to this Order, is hereby approved;
3. That, beginning on July 1, 2019, and every 6 months thereafter, until the New England Clean Energy Connect is placed into commercial operation, NECEC LLC will file progress reports with the Commission summarizing any significant developments in the permitting, development and construction of the NECEC;
4. That, beginning on July 1, 2019, and every six months thereafter, Central Maine Power Company and NECEC LLC will file compliance reports detailing the activities and provision of benefits required by the Terms of the February 21, 2019 Stipulation;
5. That, on or before July 1, 2019, Central Maine Power Company shall file a proposal for: (1) tracking and reporting to the Commission, on an annual basis, the property tax revenues paid by the NECEC LLC during the construction phase of the Project and during the first 10 years of its commercial operation. Such information shall include the: (1) estimated tax revenue by municipality provided by Central Maine Power Company in this proceeding; (2) a description of the New England Clean Energy Connect facilities located in each municipality; (3) the amount of property taxes for the New England Clean Energy Connect facilities paid to each of those municipalities and townships for the tax year in question; and (4) an explanation for any differences between item (1) and item (3);
6. That, beginning on July 1, 2019 and concluding with the commercial operations of the New England Clean Energy Connect, Central Maine Power Company and NECEC LLC shall provide annual reports to the Commission detailing its ongoing outreach and communications with the host communities regarding: (1) fire and medical support issues in comparable rural areas of its system; and (2) plans to address fire and medical support issues related to the construction and operation of the New England Clean Energy Connect; and
7. That, Central Maine Power Company shall file: (1) a petition for reorganization approval, pursuant to Title 35-A, Section 708, to authorize the establishment of the NECEC LLC; and (2) a petition for approval for affiliate transactions, pursuant to Title 35-A, Section 707, related to the development and operations of the New England Clean Energy Connect.

Dated at Hallowell, Maine, this 3rd day of May, 2019.

/s/ Harry Lanphear
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Vannoy
Williamson (See Separate Concurring Opinion)
Davis

Concurring Opinion of Commissioner Williamson

I concur with the Commission's decision in this proceeding. I write separately on one point concerning the ratepayer benefits of NECEC. I agree with the finding that the NECEC will provide clear benefits with respect to grid reliability and fuel security. The Commission's decision, however, states that these benefits cannot be quantified. That is the way that Figure I.1 had been presented.

Although I generally agree that certain other monetary benefits cannot be easily quantified, that is not the case here: there is an empirical basis to assess the value of regional grid reliability and fuel security. There is a price range estimate for the willingness to pay for fuel security in the New England region and, accordingly, a means to calculate the cost (if fuel security were to be supplied without NECEC), or a benefit (if regional fuel security were to be augmented by NECEC) for Maine ratepayers and electric customers.

ISO-NE estimates that the Reliability Must Run (RMR) provisions related to the two Mystic units at the Boston load center will increase regional costs by approximately \$102 million to \$148 million per year during the two-year program.⁴⁴ This amount is ISO-NE's willingness to pay for what it terms "fuel security" for the system we depend upon. Using the midpoint of the range as a conservative estimate, this means \$123 million is the regional price tag for the value of system reliability and wintertime fuel security. Because RMR costs are regionalized, the LNG-supplied Mystic units would cost Maine electric customers at least \$9.8 million a year annually for the years 2023-2024 and 2024-2025. Such additional costs could very well extend longer if natural gas pipeline development remains stalled in lower New England and ISO-NE continues to be short of fuel secure alternatives for winter reliability for several more winter periods.

This level of annual cost represents the market value being assigned to the region's winter fuel security problem right now for the time when NECEC transmission could be available, or more technically, what certain costs to Maine customers could be avoided if the NECEC is put in-service on schedule. This data should be reflected in our assessment.

⁴⁴ *ISO New England Inc.*, Inventoried Energy Program, Docket No. ER19-1428-000, ISO-NE Filing at 19 (Mar. 25, 2019).

NOTICE OF RIGHTS TO REVIEW OR APPEAL

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

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

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

EXHIBIT 3



James T. Kilbreth
Admitted in ME

207.253.0555
jkilbreth@dwmlaw.com

84 Marginal Way, Suite 600
Portland, Maine 04101-2480
207.772.1941 Main
207.772.3627 Fax

By Email and Overnight Mail

October 7, 2020

Mark C. Draper, Chair
c/o Executive Analysts Hinkel and Bertocci
Board of Environmental Protection

Jim Beyer, NECEC Project Manager
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

RE: Request for Board Jurisdiction Over CMP's Application
for Partial Transfer of MDEP Site Law and NRPA Permits
and Water Quality Certification DEP APPLICATION #L-
27625-26-A-N/L-27625-TG-B-N/ L-27625-2C-C-N/ L-
27625-VP-D-N/ L-27625-IW-E-N

Dear Chair Draper and Board Members, Executive Analysts, and NECEC Project Manager
Beyer:

Pursuant to 06-96 CMR, Ch. 2 § 17(A), the Natural Resources Council of Maine ("NRCM") hereby requests that the Board of Environmental Protection ("Board") consolidate jurisdiction over Central Maine Power Co.'s ("CMP") September 25, 2020 Application for Partial Transfer of MDEP Site Law and NRPA Permits and Water Quality Certification in connection with the New England Clean Energy Connect ("NECEC") transmission line ("Partial Transfer Application") with its pending review of the Department's May 11, 2020 Order conditionally authorizing the NECEC ("Permit Order"). NRCM also requests a public hearing in connection with this application as consolidated into any hearing held by the Board in connection with its review of the Permit Order. Consolidation of this application to amend the Permit Order with Board review of the Permit Order is required as a matter of law and is in the interests of efficiency and administrative economy.

First, under the Department's rules, a transfer application is a permit amendment and, when filed during the pendency of a Board review, must be considered by the Board.¹ Pursuant to 06-96

¹ NRCM notes that on October 6, 2020, the Department accepted the Partial Transfer Application as complete for processing by the Commissioner. This decision is in error because of the foregoing and because it purports to effectuate transfer of the NRPA portion of the Permit Order via a permit by rule process which is not properly applicable to a NRPA permit like the Permit Order. For the reasons stated herein, the Board alone has jurisdiction

October 7, 2020

Page 2

CMR. Ch. 2 § 1(L), the terms “permit” and “license” are “used interchangeably” in the Department’s rules, and mean “the whole or any part of a new license, amended license, renewal license, transfer ... approval, or similar form of permission issued by the Department that is required by law.” The Department also broadly defines “Amendment Application” to include any “application to modify a license previously granted by the Department, except for minor revisions.” *Id.* § 1(C). Thus, by definition the Permit Order currently on appeal to the Board *includes* the Partial Transfer Application.² CMP’s attempt to submit the Partial Transfer Application for Department review as a separate, new Commissioner decision is improper.³ The Partial Transfer Application is directly relevant to issues on appeal, and provides certain of the supplemental evidence specifically requested by parties seeking Board review of the Permit Order. The Board must conduct the Department review of the Partial Transfer Application because, by definition, it is part of the Permit Order and any decision thereon will substantively alter the terms of the Permit Order.

CMP now concedes in its cover letter for its Partial Transfer Application that “[i]n May 2019 the Maine Public Utilities Commission approved a Stipulation requiring that ownership of the NECEC be transferred from CMP to NECEC Transmission LLC (NECEC LLC), including ‘[A]ll land use permits, any outstanding land use permit applications, and other regulatory permits (the “Permits”) related to the NECEC’” (“PUC Stipulation”). CMP thus acknowledges that, as of May of 2019, it was required to transfer any outstanding permit applications before the Department, but did not do so in the year that passed while the Commissioner considered the Permit Order. NRCM raised this exact issue in its appeal to the Board of the Permit Order with regard to right title and interest, as well as findings regarding financial capacity and technical ability. *See* NRCM Request for Board Review, 8-9. The Board cannot properly review CMP’s submissions regarding financial capacity and technical ability in the context of the Permit Order while the Commissioner is simultaneously considering changes to those exact findings in the Permit Order through the Partial Transfer Application.

Finally, consolidation of the Partial Transfer Application with the currently pending Board review is in the interest of administrative economy and complies with the rationale under which

over this application, if the Commissioner nonetheless proceeds to process the transfer application, NRCM requests that a hearing be held and that NRCM be allowed to intervene.

² NRCM previously established that the NECEC is a project of statewide significance. *See* NRCM Request for Board Review (June 10, 2020) at 4-7. This is an independent reason that the Board must take original jurisdiction over the Partial Transfer Application. 38 M.R.S. § 341-D; 06-96 CMR. Ch. 2 § 17. Now that CMP has filed this Application, it makes little sense to take appellate jurisdiction over the Permit Orders while the Board takes original jurisdiction, as it must, over the Partial Transfer Application that amends the Permit Order. If the Board does take this bifurcated approach, it should nonetheless consolidate the matters and conduct *de novo* evidentiary hearings on the issues raised by all appellants.

³ CMP’s notice of the Partial Transfer Application was defective. Pursuant to 06-96 CMR. Ch. 2 § 21(B), “If a licensee seeks to amend a license regarding an issue that was the subject of an appeal to the Board, notice of the amendment application must be provided to the prior appellant(s) as if they were abutters, in accordance with section 14(A) of this rule.” Here, CMP seeks to amend the technical and financial capability portions of the Permit Order while those same criteria are on appeal before the Board. Accordingly, CMP was required to (but did not) give prior notice of its “Intent to File” the Partial Transfer Application “mailed by certified mail or Certificate of Mailing to all appellants before the Board.” Instead, CMP merely filed the Application and distributed it to the service list without prior notice.

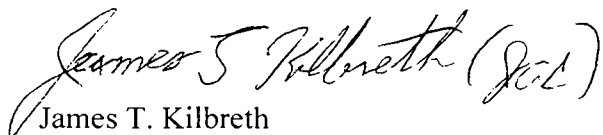
October 7, 2020

Page 3

the Department asked the Superior Court to remand the two judicial appeals of the Permit Order, Docket Nos. KEN-AP-20-27 and SOM-AP-20-04. As the Department there argued, consolidation of all matters before the Board is “the only way to ensure fairness to all parties in this high-profile matter of Statewide interest.” *See* Department Remand Motion in KEN-AP-20-27 at 8. The Court agreed with the Department, reasoning that any Board decision in this matter will supersede the Permit Order and become the Department’s final decision on the NECEC application and that the Board may amend or reverse the Permit Order, changing the final agency action in the matter. Combined Order on Motions (August 11, 2020). The same rationale applies here and requires consolidated Board review of the Permit Order and Partial Transfer Application.

It is inconsistent with Department rules and impractical, inefficient, and wasteful of Department resources for the Board to review the Permit Order while the Commissioner is simultaneously reviewing and potentially changing the Permit Order findings on the financial and technical capability of the NECEC applicant. The Board must therefore consolidate these matters, take original jurisdiction over this project of statewide significance, and hold a hearing on the various issues raised by all appellants with regard to the Permit Orders including the amendments requested in the Partial Transfer Application.

Sincerely,

A handwritten signature in cursive script that reads "James T. Kilbreth (J.T.)". The signature is written in black ink and is positioned above the printed name.

James T. Kilbreth

cc: Service List (by email only)

EXHIBIT 4

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTIONJANET T. MILLS
GOVERNOR

Mark C. Draper, Chair

William F. Hinkel
Executive AnalystRuth Ann Burke
Board Clerk

October 27, 2020

SENT VIA ELECTRONIC MAIL ONLYMatthew D. Manahan, Esq.
Pierce Atwood, LLP
mmanahan@pierceanwood.comGerry Mirabile
Central Maine Power Company
gerry.mirabile@cmpco.comNatural Resources Council of Maine
James Kilbreth, Esq.
David Kallin, Esq.
Elizabeth Mooney, Esq.
Tynan Lawrence, Legal Assistant
jkilbreth@dwmlaw.com
dkallin@dwmlaw.com
emooney@dwmlaw.com
tlawrence@dwmlaw.comNextEra Energy Resources, LLC
Joanna B. Tourangeau, Esq.
Drummond Woodsum
jtourangeau@dwmlaw.comWest Forks Plantation, et al.
Elizabeth A. Boepple, Esq.
BCM Environmental & Land Law, PLLC
boepple@nhlandlaw.com**Re: Central Maine Power Company, New England Clean Energy Connect
Department Order L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N,
L27625-VP-D-N, L-27625-IW-E-N (“NECEC Order”)
Chair ruling regarding consolidation of transfer application with appeal**

Dear Participants:

On October 6, 2020, the Department of Environmental Protection (“Department”) accepted as complete for processing an application of Central Maine Power Company (“CMP”) and NECEC Transmission LLC for partial transfer of the May 11, 2020, Department Order conditionally approving the application of CMP to construct the New England Clean Energy Connect (“NECEC Order”) from CMP to NECEC Transmission LLC (“Transfer Application”).

Three appeals of the NECEC Order are pending before the Board of Environmental Protection (“Board”).

On October 7, 2020, and by and through its attorney, appellant Natural Resources Council of Maine (“NRCM”) requested – to both the Department and the Board – that the Board consolidate and consider together the Transfer Application and the pending appeals of the NECEC Order. NRCM argues that the Transfer Application is a permit amendment and, when filed during the pendency of a Board review of a license, must be considered by the Board. In doing so, NRCM seeks to move consideration of the Transfer Application from the Commissioner to the Board and consolidate two different types of Board proceedings – an application for the transfer of a license and the procedurally distinct appeals to the Board of a final Department licensing decision. CMP’s response opposing NRCM’s request, dated October 27, 2020, has also been received and considered.

Putting aside the question of whether a transfer application should be treated as an amendment of a license, the Board’s rules do not expressly provide for consolidation of these different types of Board proceedings, which are subject to different provisions of Department rule Chapter 2. While there may be administrative economy in consolidating appeals of related agency licensing decisions, consolidating original jurisdiction of this Transfer Application with the pending appeals of the NECEC Order would be procedurally problematic. I see no compelling grounds to consolidate the licensing and appeal processes and decline to do so here.

In addition, Board action with respect to assumption of original jurisdiction over the Transfer Application appears to be premature. Pursuant to Chapter 2, § 17(B), within 45 days after an application has been accepted as complete for processing, the Commissioner must make a preliminary determination as to whether the Board should assume jurisdiction of the application and so notify the Board of the determination. While NRCM’s October 7, 2020, request for consolidation does not expressly request that the Commissioner refer the Transfer Application to the Board for assumption of original jurisdiction, it will be treated as such. Accordingly, the Board will await the Commissioner’s preliminary determination regarding NRCM’s request to the Commissioner to refer the application to the Board. I note it would be unusual for the Board to assume original jurisdiction of an application to transfer a license.

If you have any questions, you may contact Board Analyst, William F. Hinkel, at bill.hinkel@maine.gov (207) 314-1458 or Assistant Attorney General, Peggy Bensinger, at peggy.bensinger@maine.gov (207) 626-8578.

Respectfully,



Mark C. Draper, Chair
Board of Environmental Protection

cc (via e-mail only): Service List (rev. October 19, 2020)

EXHIBIT 5

By Email and Overnight Mail

November 6, 2020

Melanie Loyzim
Acting Commissioner
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

RE: Request for Board Jurisdiction Over CMP's Application
for Partial Transfer of MDEP Site Law and NRPA Permits
and Water Quality Certification DEP APPLICATION #L-
27625-26-A-N/L-27625-TG-B-N/ L-27625-2C-C-N/ L-
27625-VP-D-N/ L-27625-IW-E-N

Dear Commissioner Loyzim:

As you know, on October 27, 2020 Board Chair Draper referred to you Natural Resources Council of Maine's request that the Board take jurisdiction over Central Maine Power Company's partial transfer application. 38 M.R.S. § 344(2-A(A)) requires that any project of statewide significance, as defined in 38 M.R.S. § 341-D(2), be referred to the Board. Since CMP's proposed transmission line, the New England Clean Energy Connect ("NECEC"), undeniably meets that definition, this transfer application must be referred to the Board. *See* 38 M.R.S. §§ 341-D(2), 344(2-A(A)); 06-96 CMR Ch. 2 § 17(B-C).

CMP's proposed transmission line, which will cut a swath of more than 145 miles across Maine in large part to benefit consumers in foreign jurisdictions, is undoubtedly a project of statewide significance and meets all four criteria established by statute and the Department's rules:

1. First, the NECEC will have environmental or economic effects across many more than one municipality, territory, or county. The Department's May 11, 2020 Order issuing conditional permits to CMP ("Permit Order") describes the breadth of the project, which includes a 145.3-mile-long transmission line from Beattie Township to Lewiston, a 26.5 mile line from Windsor to Wiscasset, and multiple new or renovated converter stations or substations. Permit Order, 3. The environmental impacts pursuant to NRPA and the Site Law are, as described in the Order, significant. Permit Order, 1.
2. Second, the NECEC involves an activity not previously permitted or licensed in the State. Unlike other transmission line projects contemplated by the Department and the Land Use Planning Commission in the past, NECEC is the first proposed high-impact transmission line in Maine.

November 6, 2020

Page 2

3. Third, the NECEC has undoubtedly come under significant public scrutiny. The sheer number of parties to the underlying Department proceeding evidence the hotly contested nature of the project. This project has attracted significant and ongoing public scrutiny because people are rightly concerned about its negative effects.
4. Fourth, as described above, the project is located across multiple municipalities and counties. *See* Permit Order, 3.¹

To attain statewide significance and mandatory Board review, a project need only meet 3 of the 4 criteria established by 38 M.R.S. § 341-D(2). The NECEC meets 4 out of 4. In such a situation, the Board alone can consider CMP's transfer application. 38 M.R.S. § 341-D(2); 06-96 CMR Ch. 2 § 17(C).

In addition to the statutory mandate requiring you to refer to the Board, and the Board to consider, all applications relating to projects of statewide significance, common sense dictates that the Board review CMP's transfer application. The Board currently has before it appeals of the Permit Order, and it would be impractical, inefficient, and wasteful of Department resources for the Board to review the Permit Order while you simultaneously review and potentially change the Permit Order findings on the financial and technical capability of the NECEC applicant.

For the foregoing reasons, NRCM requests that you immediately refer CMP's transfer application to the Board.

Sincerely,



James T. Kilbreth

cc (by email only): DEP Service List (rev. October 19, 2020)

¹ NRCM previously established that the NECEC is a project of statewide significance. *See* NRCM Request for Board Review (June 10, 2020) at 4-7. Any arguments to the contrary are meritless based on the sheer scope of the project, its environmental impact, and the intense public opposition.

EXHIBIT 6



JANET T. MILLS
GOVERNER

0557
STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
ACTING COMMISSIONER

November 13, 2020

Via E-mail Only

James T. Kilbreth
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480

RE: DEP Project #L-27625-26-K-T, New England Clean Energy Connect Partial Transfer

Dear Mr. Kilbreth:

Thank you for your letter dated October 7, 2020, on behalf of the Natural Resources Council of Maine (NRCM), concerning NECEC Transmission LLC and Central Maine Power Company's joint application to transfer portions of the license issued to Central Maine Power Company for the New England Clean Energy Connect project.

NRCM's letter is addressed to both Department staff and the Chair of the Board of Environmental Protection. This response addresses the request made of the Commissioner, through her staff, that she recommend the Board assume jurisdiction over the transfer application. We interpret the NRCM letter to include, in the alternative, a request for public hearing before the Department.¹ Requests for the Board to assume jurisdiction or for a hearing on an application must be received by the Department, in writing, no later than 20 days after the date the application is accepted as complete for processing. Ch. 2, §§ 7, 16, and 17. The Department accepted the transfer application as complete for processing on October 6, 2020. NRCM's October 7, 2020 requests were timely filed. NRCM's November 6, 2020 letter to the Department, also styled as request for Board jurisdiction with a subject line identical to the prior filing, is untimely and will not be considered by the Commissioner.²

¹ It appears that NRCM's request for a public hearing is limited to requesting a hearing before the Board if the Board assumes jurisdiction over the transfer application. For the purpose of this response, however, because there is some uncertainty about the scope of NRCM's request, I read the letter and included requests broadly to include a request for a public hearing before the Commissioner if the Board does not assume jurisdiction.

² On November 6, 2020, the Department received an email from David Kallin of the law firm Drummond Woodsum stating NRCM's November 6 request for Board jurisdiction over the transfer application is not untimely. This argument is based on a reading of the Board Chair's October 27, 2020 letter as inviting the submission of further filings with the Commissioner and, thereby, extending the deadline in Chapter 2 for requesting Board jurisdiction over an application. The Board Chair's letter does neither. Rather, the letter expressly states the Board treats NRCM's October 7 letter as a request that the Commissioner refer the transfer application to the Board for assumption of original jurisdiction and notes that pursuant to Chapter 2, § 17(B) the Commissioner has 45 days after an application has been accepted as complete for processing to make a determination as to whether the Board should assume jurisdiction. The 45-day period having not run, the Board Chair concluded: "Accordingly, the Board will await the Commissioner's preliminary determination regarding NRCM's [October 7] request to the Commissioner to refer the application to the Board." The present letter is the one the Board awaited.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
207-941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

Letter to James Kilbreth
November 13, 2020

I. Request for Board Assumption of Jurisdiction Over an Application

The Department, as established in its Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, recognizes multiple different types of license applications, including new license applications, amendment applications, minor revision applications, renewal applications, and transfer applications. *See, e.g.*, Ch. 2, § 1(L) (defining the term license and listing the many types of licenses) and Ch. 2, § 21 (establishing different requirements for renewal applications, amendment applications, and transfer applications). The pending transfer application, #L-27625-26-K-T, is governed by Chapter 2, § 21(C), which contains the standards for the Department’s review of such an application:

The transferee shall demonstrate to the Department’s satisfaction the technical and financial capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory and regulatory criteria.

Ch. 2, § 21(C)(1). Accordingly, when reviewing a transfer application the Department evaluates the technical and financial capacity of the transferee – here NECEC Transmission LLC – and its intent to comply with the license and the licensing criteria. The Department does not re-evaluate the development activity that is the subject of the Order proposed for transfer or re-engage in substantive review of that development activity under the environmental statutes pursuant to which the development originally was permitted (e.g., Site Location of Development Act, Natural Resources Protection Act). In short, the prospective license holder – the transferee – is the focus of a transfer application, not the underlying project that is the subject of the license sought to be transferred.

The Board may assume jurisdiction over applications for projects of statewide significance. The criteria used by the Commissioner when deciding whether to recommend to the Board that it assume jurisdiction, and by the Board when deciding whether to exercise its discretion to assume jurisdiction, are set forth in 38 M.R.S. § 341-D(2) and in Chapter 2, § 17(C). The statute (and rules) provide:

A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- (1) Will have an environmental or economic impact in more than one municipality, territory or county;
- (2) Involves an activity not previously permitted or licensed in the State;
- (3) Is likely to come under significant public scrutiny; and
- (4) Is located in more than one municipality, territory or county.

CMP, in its October 27, 2020 filing in response to NRCM’s letter, argues among other things that a transfer application itself cannot be a “project” and, therefore, the four criteria for Board jurisdiction are irrelevant and inapplicable. (CMP Response at 4.)

To CMP’s argument, there is no development project under review as part of a transfer application. In the context of a transfer application, however, the Department views the proposed transfer as the “project” and evaluates whether the transfer application represents a project of statewide significance. This interpretation and application of Chapter 2 is consistent with statute. 38 M.R.S. § 344(2-A)(A) (providing “the [C]ommissioner shall decide as expeditiously as possible if an *application* meets 3 of the 4 criteria” for assumption of Board jurisdiction (emphasis added)).

Letter to James Kilbreth
November 13, 2020

With regard to the first criterion, the proposed transfer will not have an environmental or economic impact on more than one municipality, territory or county. The result of the transfer, if approved, will be purely administrative. The proposed transfer will not alter the proposed development or the obligations of the permittee. Therefore, the proposed transfer will not have any environmental impact or economic impact.

With regard to the second criterion, the Department has decades of experience reviewing and processing transfer applications. The proposed transfer is not an activity not previously permitted or licensed.

With regard to the third criterion, following public notice of the transfer application no person other than NRCM has requested original Board jurisdiction over, or a public hearing on, the transfer application. The transfer request has not come under significant public scrutiny, to date. The third criterion, however, requires the Department to look ahead and assess whether it is likely the transfer application will come under public scrutiny in the future. The Department's experience is that transfer applications generate little public interest. The single request for a public hearing is further evidence of this. Although future public interest could be higher than normal with respect to the present application because of the interest in the underlying project, the Department does not anticipate future interest will rise to the level of significant public scrutiny given the administrative result of the transfer, if approved, and the fact the transfer was required by the Maine Public Utilities Commission and involves a transfer among organizations under the same corporate umbrella.

With regard to the fourth criterion, the proposed transfer is administrative in nature – the transfer itself, if approved, would not authorize any development that has not been previously authorized – therefore, the location of the transfer is the location where the transfer order (whether an approval or denial) is signed. The transfer occurs in one location, which is expected to be the City of Augusta. The transfer application is not located in more than one municipality, territory, or county.

For the reasons above, my determination is that none of the four criteria for Board assumption of jurisdiction are met with respect to NECEC Transmission LLC and CMP's transfer application. By copy of this letter I am notifying the Board of my determination. (A copy of NRCM's October 7, 2020 request is enclosed.)

II. Request for Public Hearing

Chapter 2, § 7 governs requests for public hearings and establishes: "The request must indicate the interest of the person filing the request and specify the reasons why a hearing is warranted." Ch. 2, § 7(A).

Public hearings are discretionary unless otherwise provided by law, and the NRCM letter cites to no law requiring a hearing on a transfer application. While the Commissioner may elect to conduct a hearing on any application, there are two factors identified in Chapter 2, that if the Department determines are met will prompt the Department to exercise its discretion and hold a hearing. Specifically: "The Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence." Ch. 2, § 7(B).

The transfer application criteria, noted above, are limited. NRCM's request does not include conflicting technical information regarding a transfer application criterion or identify such information it would provide in the future, if a hearing were held. Additionally, NRCM's request does not specify the reasons

Letter to James Kilbreth
November 13, 2020

why a hearing would be warranted even if such information were presented. How a hearing would assist the Department in understanding the evidence is not addressed. Accordingly, I deny the request that the Department conduct a public hearing on the pending transfer application.

Should NRCM wish to provide further written comments on the application, please submit those as soon as possible to Jim Beyer at NECEC.DEP@maine.gov so that the comments may be considered as the Department continues its review of the transfer request.

Sincerely,



Melanie Loyzim, Acting Commissioner
Maine Department of Environmental Protection

Enclosure

cc: Mark Draper, Chair BEP
William Hinkel, Executive Analyst BEP
Service List

EXHIBIT 7



STATE OF MAINE
 DEPARTMENT OF ENVIRONMENTAL PROTECTION
 17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

NECEC TRANSMISSION LLC	) SITE LOCATION OF DEVELOPMENT ACT
See Appendix)
NEW ENGLAND CLEAN)
ENERGY CONNECT	) PARTIAL TRANSFER
L-27625-26-K-T (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapter 2 of Department Rules Concerning the Processing of Applications (06-096 C.M.R. ch. 2, §21 (C)), the Department of Environmental Protection has considered the application of NECEC TRANSMISSION, LLC (NECEC LLC or applicant) for a partial transfer, with its supportive data, the comments received, and other related materials on file, and FINDS THE FOLLOWING FACTS:

1. In Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, dated May 11, 2020, the Department approved the New England Clean Energy Connect project (CMP NECEC Order). The project involves 145 miles of high voltage direct current (HVDC) transmission line from Beattie Township to Lewiston, a converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission lines.
2. The applicant is applying to the Department to transfer a portion of Department Order #L27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, currently held by Central Maine Power Company (CMP), to NECEC LLC. The Public Utilities Commission, in its Certificate of Finding of Public Convenience and Necessity, required CMP to transfer a portion of the project and its associated development costs to a special purpose entity; NECEC LLC has been designated by CMP as that entity. The portions of the project subject to this transfer application include the new HVDC transmission line (Segments 1, 2, and 3 of the transmission line), the converter station in Lewiston, a 1.2-mile long 345 kilovolt transmission line from the converter station to the Larrabee Road Substation also in Lewiston, and the two termination stations for the horizontal directional drill on either side of the Kennebec River. The portions of the project that will remain in CMP's ownership include transmission line Segments 4 and 5, the new Fickett Road Substation, the Larrabee Road Substation, the Coopers Mills Substation, the Crowley's Substation, the Maine Yankee Substation, the Surowiec Substation, and the Raven Farm Substation.
3. The applicant also submitted a Permit by Rule notification form (PBR #71019) pursuant to Chapter 305 Permit by Rule Standards Section (06-096 Ch. 305, § 17) to transfer the Natural Resources Protection Act permits associated with the project. The Department accepted the PBR on October 13, 2020.

4. Comments on the transfer application were received from the Natural Resources Council of Maine (NRCM), an intervenor in the CMP NECEC licensing proceeding, and a group of intervenors from that proceeding that includes West Forks, the town of Carratunk, and several others (West Forks Group).
5. **Transfer of Property Rights:** The transfer application, dated September 25, 2020, was signed by Gerry J. Mirabile, NECEC Permitting Manager, on behalf of CMP and Thorn C. Dickinson, President and CEO of NECEC LLC. With the transfer application, NECEC LLC submitted a transfer agreement describing the transfers that will occur between NECEC LLC and CMP and the parcels of the land required to construct and operate the portions of the project to be transferred, including deed or lease references to the corridor from Beattie Township to Lewiston, the 20-acre parcel for the converter station, the land for the transmission line from the converter station to the Larrabee Road Substation, the conservation parcels, and a parcel in Bald Mountain Township for the relocation of the Appalachian Trail. The submissions included a lease between the State of Maine, Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands (BPL) and CMP, signed on June 23, 2020 (2020 Lease), for property located in West Forks Plantation and Johnson Mountain Township. The transfer agreement also provides for the transfer of the seven Transmission Service Agreements CMP entered into with the utility companies in Massachusetts and the agreement with H. Q. Energy Services, Inc. The Transmission Service Agreement requires CMP to assign and NECEC LLC to accept all third party vendor agreements and related assets related to the project at the time of closing.

In its comments NRCM argues that the 2020 BPL Lease is not valid because BPL lacked the authority to issue the lease and the scope of the lease is not broad enough to allow the construction of the project.

As was the case in the CMP NECEC Order, the Department accepts the decision of its sister agency to enter into the lease and the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project. The initial demonstration of title, right or interest made by CMP for its permit application underlies the transfer agreement submitted with the transfer application, and the findings made in the CMP NECEC Order, are incorporated herein. Based on those findings, and the evidence described above, the Department finds the applicant has demonstrated sufficient title, right, or interest in the property.

6. **Financial Capacity:** The cost for the project as a whole is estimated to be \$950,000,000. including the cost associated with compliance with the conditions of approval. The cost estimate for the portions of the project being transferred to NECEC LLC is \$727,000,000. NECEC LLC's application for transfer states that NECEC LLC is a wholly owned subsidiary of Avangrid Networks, Inc., which is an indirect wholly owned subsidiary of Avangrid, Inc. The applicant submitted a letter from Howard Coon, Vice-President and Treasure of Avangrid Inc., stating that Avangrid, Inc. will make an equity contribution of \$1,000,000,000 to Avangrid Networks, which in turn will make these funds available to NECEC LLC. In addition, Avangrid and NECEC LLC will execute a \$500,000,000

revolving loan agreement to provide a source of debt financing to NECEC LLC during construction.

The funding mechanism and the overall project cost remain the same as described in the original CMP NECEC Order. However, this Order only transfers a portion of the project which is estimated to cost \$727,000,000.

NRCM argues that the applicant has not demonstrated that funds have been set aside for the project by NECEC LLC's parent companies. In addition, NRCM contends that the applicant failed to demonstrate a clear link between the parent company financing the project and the applicant.

The Department considers the information the applicant submitted as commitments by NECEC LLC's parent companies to provide funding for the project as allowed by Chapter 373, § 2(B)(3)(a). That funding is adequate to finance the project and there is a clear connection between the parent companies and NECEC LLC. The Department finds that the applicant has demonstrated adequate financial capacity to construct and operate the project.

7. **Technical Ability:** The applicant submitted a service agreement between CMP and NECEC LLC that stipulates CMP will provide certain services to NECEC LLC, including the use of CMP personnel and expertise to construct the project. The applicant also submitted resume information for key personnel involved with the project. As required by the transfer agreement, NECEC LLC will retain all of the third party contractors that originally designed and permitted the project and the remainder of the project team as described in the CMP NECEC Order remains in place.

The Department finds the applicant has demonstrated adequate technical ability to construct and operate the project.

8. NECEC LLC submitted a Certificate of Good Standing issued by the Delaware Secretary of State for NECEC LLC, dated December 18, 2018.
9. The West Forks group joins in the NRCM arguments and, in addition, requests that a decision on the transfer application be withheld until the pending appeals of the CMP NECEC Order are resolved, as the permit that was issued may be altered during the course of the appeals. While the Board may modify or vacate the permit issued, at this time the permit is in effect and, pursuant to 38 M.R.S. § 344(9) and Chapter 2, § 21(C), is subject to transfer.

BASED on the above findings of fact, the Department **CONCLUDES** that NECEC LLC has provided adequate evidence of the acquisition of title, right, or interest; financial capacity; and technical ability to comply with all conditions of Department Order and subsequent Orders, and to satisfy all applicable statutory and regulatory criteria.

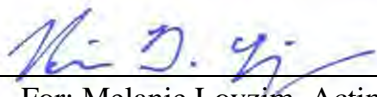
THEREFORE, the Department APPROVES the application of NECEC TRANSMISSION LLC, to partially transfer, as described above, Department Order #L27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards:

1. The Standard Conditions of Approval, a copy attached.
2. This transfer Order shall not become effective until either CMP or NECEC LLC certifies in writing to the Department that the transaction contemplated by the NECEC Transfer Agreement between the parties has occurred.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N , and subsequent Orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 4TH DAY OF DECEMBER, 2020.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
 For: Melanie Loyzim, Acting Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625KT/ATS#86584

<p>FILED December 4, 2020 State of Maine Board of Environmental Protection</p>
--

Appendix A
List of Municipal and County Governments

Town	County	Senate District	House District	Congressional District
City of Auburn 60 Court Street Auburn, Maine 04210 Phone (207) 333-6600 pcrichton@auburnmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 62 Rep. Gina M. Melaragno 25 James Street, Apt. 3 Auburn, Maine 04210 Phone (207)740-8860 gina.melaragno@legislature.maine.gov House District 63 Rep. Bruce A. Bickford 64 Cameron Lane Auburn, Maine 04210 Cell Phone (207) 740-0328 bruce.bickford@legislature.maine.gov House District 64 Rep. Bettyann W. Sheats 32 Waterview Drive Auburn, Maine 04210 Cell Phone (207)740-2613 bettyann.sheats@legislature.maine.gov	Congressional District 2 Representative Bruce Poliquin 179 Lisbon Street Lewiston, ME 04240 Phone (207) 784-0768
City of Lewiston 27 Pine Street Lewiston, Maine 4240-7204 Phone (207) 513-3000 ebarrett@lewistonmaine.gov	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 21 Senator Nate Libby 44 Robinson Gardens Lewiston, ME 04240 Phone (207)713-8449 nathan.libby@legislature.maine.gov	House District 58 Rep. James R. Handy 9 Maplewood Road Lewiston, Maine 04240 Phone (207) 784-5595 jim.handy@legislature.maine.gov	2

			<p>House District 59 Rep. Roger Jason Fuller 36 Elliott Avenue Lewiston, ME 04240 Phone (207) 783-9091 roger.fuller@legislature.maine.gov</p> <p>House District 60 Rep. Jared F. Golden 3 Diamond Court Lewiston, ME 04240 Phone (207) 287-1430 jared.golden@legislature.maine.gov</p> <p>House District 61 Rep. Heidi E. Brooks 1 Pleasant Street, #2 Lewiston, Maine 04240 Cell Phone (207) 740-5229 heidi.brooks@legislature.maine.gov</p>	
<p>Town of Alna 1568 Alna Rd Alna, Maine 04535 PHONE: (207) 586-5313 mmaymcc@yahoo.com dcbaston@northatlanticenergy.com</p>	<p>Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me</p>	<p>Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov</p>	<p>House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov</p>	1
<p>Town of Anson 5 Kennebec Street, PO Box 297 Anson, Maine 04911-0297 Phone (207) 696-3979</p>	<p>Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861</p>	<p>Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703</p>	<p>House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638</p>	2

	ddibiasi@SomersetCounty-ME.org	rodney.whittemore@legislature.maine.gov	thomas.skolfield@legislature.maine.gov	
Town of Caratunk Elizabeth Caruso - 1st Select PO Box 180 Caratunk, Maine 04925-0180 OFFICE PHONE: 672-3030	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of Chesterville 409 Dutch Gap Road Chesterville, Maine 04938 Phone (207) 778-2433 chesterville.me@gmail.com	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Cumberland William R. Shane, Town Manager 290 Tuttle Road Cumberland, Maine 04021 Phone (207) 829-5559	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 25 Senator Catherine Breen 15 Falmouth Ridges Drive Falmouth, Maine 04105 Phone (207) 329-6142 Cathy.breen@legislature.maine.gov	House District 45 Rep. Dale J. Denno 275 Main Street Cumberland Center, Maine 04021 Cell Phone (207) 400-1123 dale.denno@legislature.maine.gov	1 Senator Susan Collins 55 Lisbon Street Lewison, ME 04240 Phone (207) 784-6969 Senator Angus King 4 Gabriel Drive, Suite 3 Augusta, ME 04330 Phone (207) 622-8292 Phone (800) 432-1599 Representative Chellie Pingree 2Portland Fish Pier, Suite 304 Portland, ME 04101 Phone (207) 774-5019 Phone (888) 862-6500
Town of Durham 630 Hallowell Road Durham, Maine 04222	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2	Senate District 22 Senator Garrett Mason PO Box 395	House District 46 Rep. Paul B. Chace 31 Colonial Drive	2

Phone (207) 353-2561	Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	Durham, ME 04222 Cell Phone (207)240-9300 paul.chace@legislature.maine.gov	
Town of Embden 809 Embden Pond Road Embden, Maine 04958-3521 Phone (207) 566-5551 embden-clerk@roadrunner.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of Farmington 153 Farmington Falls Road Farmington, Maine 04938 Phone (207) 778-5871 rdavis@farmington-maine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov	2
Town of Greene 220 Main St, PO Box 510 Greene, Maine 04236-0510 Phone (207) 946-5146 imgreene@fairpoint.net	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincounty.maine.gov	Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	House District 57 Rep. Stephen J. Wood PO Box 927 Sabattus, Maine 04280 Cell Phone (207) 740-3723 stephen.wood@legislature.maine.gov	2
Town of Industry 1033 Industry Road Industry, Maine 04938 Phone (207) 778-5050	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667 russell.black@legislature.maine.gov	2
Town of Jay 340 Main Street Jay, Maine 04239 Phone (207) 897-6785	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924	House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239	2

joffice@jay-maine.org	Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	Phone (207)897-2288 tina.riley@legislature.maine.gov	
Town of Leeds 8 Community Drive Leeds, Maine 04263 Phone (207) 524-5171 townofleeds@fairpoint.net	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 22 Senator Garrett Mason PO Box 395 Lisbon Falls, Maine 04252 Phone (207) 557-1521 garret.mason@legislature.maine.gov	House District 75 Rep. Jeffrey L. Timberlake 284 Ricker Hill Road Turner, Maine 07282 Cell Phone (207)754-6000 jeffrey.timberlake@legislature.maine.gov	2
Town of Livermore Falls 2 Main Street Livermore Falls, Maine 04254 Phone (207) 897-3321 townoffice@lfme.org	Androscoggin County Commissioners' Office 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 lpost@androscoggincountymaine.gov	Senate District 18 Senator Lisa Keim 1505 Main Street Dixfield, ME 04224 Phone (207) 562-6023 Lisa.keim@legislature.maine.gov	House District 74 Rep. Christina Riley 437 Main Street Jay, Maine 04239 Phone (207)897-2288 tina.riley@legislature.maine.gov	2
Town of Moscow 110 Canada Road Moscow, Maine 04920 Phone (207) 672-4834 moscow@myfairpoint.net	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddiblasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 rodney.whittemore@legislature.maine.gov	House District 118 Rep. Chad Wayne Grignon 181 Fox Hill Road Athens, Maine 04912 Phone (207) 654-2771 Cell Phone (207) 612-6499 chad.grignon@legislature.maine.gov	2
Town of New Gloucester 385 Intervale Road New Gloucester, Maine 04260 Phone (207) 926-4126 ccastonguay@newgloucester.com	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 20 Senator Eric L. Brakey 146 Pleasant Street Auburn, ME 04210 Phone (207) 406-0897 Eric.brakey@legislature.maine.gov	House District 65 Rep. Ellie Espling 12 Lewiston Rd New Gloucester, Maine 04260 Cell Phone (207) 891-8280 ellie.espling@legislature.maine.gov	1
Town of New Sharon 11 School Lane, PO Box 7 New Sharon, Maine 04955-0007 Phone (207) 778-4046	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924	House District 113 Rep. Lance Evans Harvell 398 Knowlton Corner Road	2

townclerk@newsharon.maine.gov	Phone (207) 778-6614 jmagoon@franklincountymaine.gov	Phone (207) 287-1505 thomas.saviello@legislature.maine.gov	Farmington, Maine 04938 Phone (207) 491-8971 lance.harvell@legislature.maine.gov	
Town of Pownal 429 Hallowell Road Pownal, Maine 04069 Phone (207) 688-4611	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 gailey@cumberlandcounty.org	Senate District 24 Senator Brownie Carson PO Box 68 Harpswell, Maine 04079 Phone (207) 751-9076 Brownie.carson@legislature.maine.gov	House District 46 Rep. Paul B. Chace 31 Colonial Drive Durham, Maine 04222 Phone (207) 240-9300 Paul.chace@legislature.maine.gov House District 48 Rep. Sara Gideon 37 South Freeport Road Freeport, Maine 40032 Phone (207) 287-1300 sara.gideon@legislature.maine.gov	2
Town of Starks 57 Anson Road Starks, Maine 04911 Phone (207) 696-8069 townofstarks@gmail.com	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 ddibiasi@SomersetCounty-ME.org	Senate District 3 Senator Rod Whittemore PO Box 96 Skowhegan, Maine 04976 Phone (207) 474-6703 Rodney.Whittemore@legislature.maine.gov	House District 112 Rep. Thomas H. Skolfield 349 Phillips Road Weld, Maine 04285 Phone (207) 585-2638 thomas.skolfield@legislature.maine.gov	2
Town of Whitefield 36 Townhouse Road Whitefield, Maine 04353 Phone (207) 549-5175 whitefield@roadrunner.com	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 88 Rep. Deborah J. Sanderson 64 Whittier Drive Chelsea, Maine 04330 Phone (207) 376-7515 deborah.sanderson@legislature.maine.gov	1
Town of Wilton 158 Weld Road Wilton, Maine 04294 Phone (207) 645-4961 office@wiltonmaine.org	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614	Senate District 17 Senator Thomas Saviello 60 Applegate Lane Wilton, ME 042924 Phone (207) 287-1505	House District 114 Rep. Russell J. Black 123 Black Road Wilton, Maine 04294 Phone (207) 491-4667	2

	jmagoon@franklincountymaine.gov	thomas.saviello@legislature.maine.gov	russell.black@legislature.maine.gov	
Town of Windsor 523 Ridge Road, PO Box 179 Windsor, Maine 04363-0179 Phone (207) 445-2998 FAX: 445-3762	Kennebec County Commissioner's Office 125 State Street, 2nd Floor Augusta, Maine 04330 Phone: (207) 622-0971	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 80 Rep. Richard T. Bradstreet 44 Harmony Lane Vassalboro, Maine 04989 Cell Phone (207)861-1657 dick.bradstreet@legislature.maine.gov	1
Town of Wiscasset 51 Bath Road Wiscasset, Maine 04578-4108 Phone (207) 882-8200 admin@wiscasset.org	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 ckipfer@lincounty.me	Senate District 13 Senator Dana Dow 30 Kalers Pond Road Waldoboro, Maine 04572 Phone (207) 832-4658 dana.dow@legislature.maine.gov	House District 87 Rep. Jeffery P. Hanley 52 Turner Drive Pittston, Maine 04345 Phone (207) 582-1524 Cell Phone (207) 458-9009 jeff.hanley@legislature.maine.gov	1
Town of Woolwich 13 Nequasset Road Woolwich, Maine 04579-9734 PHONE (207) 442-7094	Sagadahoc County Commissioner's Office 752 High Street Bath, Maine 04530 Phone (207) 443-8202	Senate District 23 Senator Eloise Vitelli 73 Newton Road Arrowsic, Maine 04530 Phone (207) 443-4660 eloise.Vitelli@legislature.maine.gov	House District 53 Rep. Jeffrey K. Pierce PO Box 51 Dresden, Maine 04342 Phone (207) 737-9051 Cell (207)441-3006 jeff.pierce@legislature.maine.gov	1

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE) STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL.

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

June 14, 2019

James R. Beyer
Maine Dept. of Environmental Protection
106 Hogan Road, Suite 6
Bangor, ME 04401

Bill Hinkel
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

RE: NECEC – Post-Hearing Brief and Proposed Findings of Fact of Central Maine Power Company

Dear Jim and Bill:

Enclosed is the Post-Hearing Brief and Proposed Findings of Fact of Central Maine Power Company. Pursuant to Procedural Orders, we are sending, via overnight delivery, the following:

- Original and 4 copies of CMP's Pre-Filed Direct Testimony for the DEP;
- Original and 9 copies of CMP's Pre-Filed Direct Testimony for LUPC.

Thank you.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Service Lists (via email)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
#L-27625-26-A-N/#L-27625-TG-B-N/)
#L-27625-2C-C-N/#L-27625-VP-D-N/)
#L-27625-IW-E-N)

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
SITE LAW CERTIFICATION SLC-9)
Beattie Twp, Merrill Strip Twp, Lowelltown Twp,)
Skinner Twp, Appleton Twp, T5 R7 BKP WKR,)
Hobbs town Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

POST-HEARING BRIEF AND PROPOSED FINDINGS OF FACT
OF CENTRAL MAINE POWER COMPANY

TABLE OF CONTENTS

I. POST-HEARING BRIEF RELEVANT TO DEP HEARING TOPICS	1
A. BACKGROUND	1
B. DEP REVIEW CRITERIA RELEVANT TO THE HEARING TOPICS	3
1. Site Law Review Criteria and Implementing Regulations.....	3
2. NRPA Review Criteria and Implementing Regulations.....	4
C. DISCUSSION.....	6
1. Scenic Character and Existing Uses.....	6
a) Visual Impact Assessment and Scenic/Aesthetic Uses.....	6
b) Buffering for Visual Impacts.....	8
c) Recreational and Navigational Uses	11
2. Wildlife Habitat and Fisheries.....	13
a) Endangered Species – Roaring Brook Mayfly, Spring Salamanders	13
b) Brook Trout Habitat	15
c) Habitat Fragmentation.....	16
d) Buffer Strips around Cold Water Fisheries.....	18
3. Alternatives Analysis	20
a) Alternative Route Analysis	21
b) Undergrounding Analysis	24
c) Taller Structures and Tapering Analysis.....	28
4. Compensation and Mitigation	31
a) Cold Water Fisheries Habitat.....	32
b) Outstanding River Segments.....	33
c) Wetlands.....	34
D. CONCLUSION	35
II. POST-HEARING BRIEF RELEVANT TO LUPC HEARING TOPICS	37
A. BACKGROUND	37
B. LUPC REVIEW CRITERIA RELEVANT TO THE HEARING TOPICS	39
C. DISCUSSION.....	41
1. Scenic Character and Existing Uses.....	41
2. Alternatives Analysis	45
a) Alternative Route Analysis	46
b) Undergrounding Analysis.....	49
D. CONCLUSION	53

ATTACHMENT A: DEP PROPOSED FINDINGS OF FACT 55
ATTACHMENT B: LUPC PROPOSED FINDINGS OF FACT 81

**POST-HEARING BRIEF AND PROPOSED FINDINGS OF FACT
OF CENTRAL MAINE POWER COMPANY**

Pursuant to the Maine Department of Environmental Protection (DEP or Department) rules governing licensing hearings,¹ as well as the procedural orders of the DEP and the Maine Land Use Planning Commission (LUPC),² Central Maine Power Company (CMP) hereby files this post-hearing brief, which includes the attached proposed findings of fact, regarding CMP's applications for a Site Location of Development Act (Site Law) permit, a Natural Resources Protection Act (NRPA) permit, and a Federal Water Pollution Control Act Section 401 Water Quality Certification (collectively, Applications) for the New England Clean Energy Connect (NECEC) Project (NECEC Project or the Project).

I. POST-HEARING BRIEF RELEVANT TO DEP HEARING TOPICS

A. BACKGROUND

The NECEC Project is a High Voltage Direct Current (HVDC) transmission line and related facilities capable of delivering up to 1,200 MW of Clean Energy Generation³ from the

¹ DEP Reg. Ch. 3 § 23.

² Joint Eleventh Procedural Order ¶ 3.d. (“The request to allow the parties to address licensing criteria other than the hearing topics in post-hearing briefs and findings of fact is granted. Parties may provide legal arguments, based on information in the agencies’ overall record, on all topics relevant to the Department and Commission’s licensing criteria.”); Joint Seventh Procedural Order ¶ I.6.c. (“Parties may not submit any evidence or comments after the close of the actual hearing. The parties will have the opportunity to submit post-hearing briefs, proposed findings of fact, and reply briefs in accordance with a schedule which will be set forth by the Department’s Presiding Officers at the close of the hearing.”); Joint Fourth Procedural Order ¶ 3 (“Parties will have an opportunity to submit post-hearing briefs and proposed findings of fact. This will be due after the transcript of the hearing has been produced and disseminated to the parties.”).

³ The Massachusetts RFP defines “Clean Energy Generation” as “(i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Class I Renewable Portfolio Standard (“RPS”) eligible resources that are firm up with firm service hydroelectric generation; or (iii) new Class I RPS eligible resources.” Massachusetts RFP at A, available at <https://macleanenergy.files.wordpress.com/2017/03/83d-rfp-and-appendicesfinal.pdf>.

Canadian border to the New England Control Area,⁴ which was proposed and selected in response to the Request for Proposals for Long-Term Contracts for Clean Energy Projects (RFP) issued by the Massachusetts Department of Energy Resources and the Electric Distribution Companies of Massachusetts.⁵

CMP filed with DEP and LUPC extensive application materials, including the Site Law and NRPA Applications themselves; an amendment to each of those Applications; responses to multiple information requests, intervenor comments, and comments from public agencies; pre-filed direct, rebuttal, and supplemental testimony; and responses to post-hearing information requests by the DEP. Because there were only a handful of topics that DEP and LUPC determined are “most significant and contentious” and thus warranted “an in-depth examination” at the hearing,⁶ for the convenience of DEP, this initial post-hearing brief will focus only on those topics.

Those topics ordered by the DEP⁷ are:

1. Scenic Character and Existing Uses
 - i. Visual Impact Assessment and Scenic/Aesthetic Uses
 - ii. Buffering for Visual Impacts
 - iii. Recreational and Navigational Uses
2. Wildlife Habitat and Fisheries
 - i. Endangered Species – Roaring Brook Mayfly, Spring Salamanders
 - ii. Brook Trout Habitat
 - iii. Habitat Fragmentation
 - iv. Buffer Strips around Cold Water Fisheries

⁴ The New England Control Area includes the transmission system administered by ISO-New England, the regional transmission organization (RTO), located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, but does not include the transmission system in northern Maine (i.e., Aroostook County and parts of Penobscot and Washington counties).

⁵ Fitchburg Gas & Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource (collectively, the Distribution Companies).

⁶ See, e.g., DEP First Procedural Order ¶¶ 18-19; LUPC First Procedural Order ¶ B.6; DEP Second Procedural Order ¶ 7; LUPC Second Procedural Order ¶¶ III.A-C.

⁷ DEP Second Procedural Order ¶ 7.

3. Alternatives Analysis
4. Compensation and Mitigation
 - i. Cold Water Fisheries Habitat
 - ii. Outstanding River Segment
 - iii. Wetlands

B. DEP REVIEW CRITERIA RELEVANT TO THE HEARING TOPICS

Inherent in the DEP’s review of the evidence presented in this matter is an analysis of the reasonableness of any Project impacts. In other words, adverse impact is not determinative. Rather, DEP must consider whether such impact is reasonable, and must grant the requested permits where the applicant has shown no unreasonable adverse impact.

1. Site Law Review Criteria and Implementing Regulations

The Site Law requires that the DEP shall approve a development proposal where, among other standards, “[t]he developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.”⁸ DEP’s Chapter 375 regulations, which implement this statutory standard, dictate that the Department may find “adverse effect” on scenic character⁹ and wildlife habitat and fisheries, and require mitigation, for example, only

⁸ 38 M.R.S. § 484(3).

⁹ Because Chapter 375 Section 14 could be interpreted to require evaluation of scenic impacts beyond impacts to “scenic resources,” which are defined in Chapter 315 as public natural resources or public lands, DEP Ch. 315 §§ 5(H), 10, CMP evaluated impacts to scenic and aesthetic uses on both public and private lands. CMP’s evaluation of such uses from private lands was challenged by Group 5 as outside the scope of the Department’s review. *See* Direct Testimony of Mike Novello; *see also* Hearing Day 2 Transcript 103:20-104:3 (Novello). CMP is mindful that many private landowners do not wish for the DEP to consider whether this or any other project will have an unreasonable adverse effect on the scenic character of those portions of the surrounding area that are privately held. *Id.*; *see also* Segal Rebuttal at 3-4.

CMP reserves the right to argue that the DEP’s Site Law Chapter 375.14 provision requiring that the DEP must consider the “scenic character of the surrounding area” is unconstitutionally vague and that review of impacts to scenic and aesthetic uses must be limited to scenic resources as that term is defined in the NRPA rules. Without such a limitation, or any clarifying provisions in the Site Law or Site Law rules, developers cannot know with reasonable clarity what they must do

where such adverse effect is “unreasonable.”¹⁰ Similarly, the Site Law incorporates a reasonableness standard in any alternatives analysis conducted for a proposed transmission line development, providing that the DEP must consider proposed alternatives to the project’s proposed location that “may lessen its impact on the environment . . . without unreasonably increasing its cost.”¹¹

2. NRPA Review Criteria and Implementing Regulations

The NRPA provides that the applicant must demonstrate that “[t]he activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.”¹² In making its determination as to whether adverse impacts to existing scenic and aesthetic uses¹³ are unreasonable, the DEP’s regulations provide that it must consider whether the applicant’s activity design is visually compatible with its surroundings, incorporating environmentally

under the Site Law to ensure no unreasonable impact on the scenic character of a wholly subjective area surrounding a project. There is no way to quantify a project’s “visual surroundings” without express designations such as those set forth in Chapter 315. *See, e.g., Kosalka v. Town of Georgetown*, 752 A.2d 183, 186-87 (Me. 2000) (finding an ordinance provision that requires a development to “conserve natural beauty” void for vagueness); *Cope v. Inhabitants of Brunswick*, 464 A.2d 223, 227 (Me.1983) (finding compliance with the “health, safety and welfare of the public and the essential character of the area” not sufficiently specific); *Shapiro Bros. Shoe Co. v. Lewiston–Auburn Shoeworkers Protective Ass’n*, 320 A.2d 247, 253 (Me.1974) (holding that the public should not have to guess at the meaning of a statute “leaving them without assurance that their behavior complies with legal requirements”). In any event, the evidence shows that CMP meets this broad standard of Site Law Chapter 375, as well as the narrower scenic resources standard of Chapter 315, as described below. *See also* Site Law Application § 6.0; Segal Rebuttal at 3-4, 11-19; Exhibit CMP-5-B.

¹⁰ *See, e.g.,* Ch. 375 §§ 14; 15(B)(2), 15(D). *See also In re Spring Valley Development*, 300 A.2d 736, 751 (Me. 1973) (interpreting the Site Law and finding that “[w]hile most such developments may be expected to ‘affect’ the environment adversely to the extent that they add to the demands already made upon it, it is the unreasonable effect upon existing uses, scenic character and natural resources which the Legislature seeks to avoid by empowering the Commission to measure the nature and extent of the proposed use against the environment’s capacity to tolerate the use.”).

¹¹ 38 M.R.S. § 487-A(4).

¹² 38 M.R.S. § 480-D(1).

¹³ The DEP’s review of impact to scenic and aesthetic uses is limited to “scenic resources,” which are the typical points from which an activity in, on, over, or adjacent to a protected natural resource is viewed. DEP Ch. 315 §§ 3, 4, 10.

sensitive design principles and components according to planning and siting, design, and offset strategies.¹⁴ The DEP bases its determination of impact on the following visual elements of the landscape: landscape compatibility, scale contrast, and spatial dominance.¹⁵ It also considers evidence that buffer strips will shield adjacent uses from unsightly developments.¹⁶

With regard to wildlife habitat and fisheries, NRPA and DEP's regulations implementing NRPA also require DEP to grant a permit where the activity's impact will not be unreasonable.¹⁷ So too does a reasonableness inquiry inhere in the DEP's review of proposed alternatives. Alternatives, generally, must be "practicable,"¹⁸ which means that they must be "[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project."¹⁹ The Law Court has concluded, however, that it is improper to treat a practicable alternative as determinative; rather, "it must instead consider the practicable alternatives as part of determining reasonableness: 'Whether a proposed project's interference with existing uses is reasonable depends on a multiplicity of factors, one of which is the existence of a practicable alternative. A balancing analysis inheres in any reasonableness inquiry.'"²⁰ This balancing analysis also is integral to the Department's review of CMP's proposed compensation and

¹⁴ DEP Ch. 315 § 8.

¹⁵ DEP Ch. 315 § 9.

¹⁶ DEP Ch. 315 § 8(B).

¹⁷ 38 M.R.S. § 480-D(3); DEP Ch. 335 §§ 3(A), (C).

¹⁸ DEP Ch. 310 §§ 5(A), (D); DEP Ch. 310 § 9; DEP Ch. 315 § 9; DEP Ch. 335 § 3(A).

¹⁹ DEP Ch. 310 § 3(R); DEP Ch. 315 § 5(D); DEP Ch. 335 § 2(D).

²⁰ *Uliano v. Bd. of Env'tl. Prot.*, 977 A.2d 400, 410 (Me. 2009) (quoting *Uliano v. Bd. of Env'tl. Prot.*, 876 A.2d, 19 (Me. 2005)); *see also* 38 M.R.S. § 480-D(8), which requires that, for any proposed activities that cross an outstanding river segment, "the applicant shall demonstrate that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment."

mitigation, the method, location, and amount of which varies with the unique differences in habitat type and location.²¹

C. DISCUSSION

For the reasons discussed below, in the Applications, and the additional materials in the record, the proposed Project satisfies all applicable review criteria, specifically with respect to the four hearing topics and subtopics.

1. Scenic Character and Existing Uses

CMP has made adequate provision for fitting the Project harmoniously into the existing natural environment and the development will not adversely affect scenic character in the municipality or in neighboring municipalities, and the activity will not unreasonably interfere with existing scenic and aesthetic uses. CMP has made adequate provision for buffer strips.²² The Project design takes into account the scenic character of the surrounding area, the Project has been located, designed, and landscaped to minimize its visual impact to the fullest extent possible, the Project has been designed and landscaped to minimize its visual impact on the surrounding area, and the Project provides for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.

a) Visual Impact Assessment and Scenic/Aesthetic Uses

CMP made great effort to fit the Project harmoniously into the existing natural environment by siting it such that the Project's route and design avoids or minimizes potential visual and other environmental impacts on scenic and other natural resources.²³ CMP's rigorous approach to siting achieved this harmonious fit through consideration of a wide range of factors, including: ownership patterns, conserved lands, stream crossings, location of existing rights of

²¹ DEP Ch. 310 § 5(C); DEP Ch. 335 § 3(D).

²² Hearing Day 1 Transcript at 357:14-24 (Segal).

²³ Exhibit CMP-5-B; *see also* Hearing Day 3 Transcript at 191:1-12 (Christopher).

way, clearing requirements, transmission line length, wetlands, significant vernal pools, deer wintering areas, inland waterfowl and wading bird habitats, public water supplies, and significant sand and gravel aquifers.²⁴

CMP also employed numerous mitigation measures to avoid unreasonable adverse effect on existing uses and scenic character, including co-locating the majority (more than 70%) of the transmission line in current right-of-way (ROW), locating Segment 1 of the transmission line in private timberland that continues to be actively harvested, proposing self-weathering steel monopole structures to reduce visibility, proposing non-specular conductors at Rock Pond to reduce visibility, reducing structure heights near Moxie and Beattie ponds, maintaining vegetation at certain road crossings and river and stream crossings,²⁵ developing buffer screening plans, and proposing tapered vegetation in certain locations.²⁶ Accordingly, scenic and aesthetic users of the Project area, who are well accustomed to the sights, sounds, and smells of active forest management in the area, will experience no adverse impact to their use and enjoyment of the Project area.²⁷

²⁴ Segal Direct at 20-22.

²⁵ CMP also provided the DEP with pole and tree height information in response to DEP Project Manager Jim Beyer's May 9, 2019 request for information on whether topographic changes between the proposed structure locations and the streams being crossed in five areas identified by Mr. Beyer would allow CMP to leave in place existing vegetation. *See also* Hearing Day 6 Transcript at 493:13-494:3. All five crossing locations that Mr. Beyer suggested can accommodate 35'-tall vegetation with limited impact to currently proposed structure heights. Three of the five crossings (Moxie Stream, South Branch Moose River, and Tomhegan Stream) require no structure height increases to accommodate 35'-tall vegetation along the entire span, one span requires one structure to increase in height by 10.5' (area near Wilson Hill Pond and Tobey Pond), and the remaining span requires one structure to increase in height by 5.5' (area near Spencer Road). The two spans where the 35'-tall vegetation is not possible for short distances along the span can accommodate up to 25'-tall vegetation in those locations. *See* CMP Response to MDEP May 9, 2019 Additional Information Request, Attachment B.

²⁶ Segal Direct at 22-27; Segal Rebuttal at 3.

²⁷ Dwyer Direct at 3.

Indeed, the Visual Impact Assessment of Terrence J. DeWan & Associates concluded that the Project will not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource and will not have an unreasonable adverse effect on the scenic character of the surrounding area. This conclusion is based on the explicit and objective regulatory requirements of the Department's Chapters 315 and 375.14.²⁸ The visual impact statements made by the intervenors that oppose the Project, conversely, are entirely subjective.²⁹

b) Buffering for Visual Impacts

CMP sited the transmission line portion of the Project to maximize the use of natural buffers such as topography and intervening vegetation, proposed to create and maintain visual buffer strips, and also sited more than 70% of the Project in existing transmission line corridors.³⁰ Similarly, substations³¹ and horizontal directional drill (HDD) termination stations are proposed in areas where similar infrastructure already exists or where the stations will be screened from adjacent uses by topography, intervening vegetation, and/or a visual buffer planting plan.³² CMP therefore has adequately buffered the Project for potential visual impacts.³³

²⁸ Site Law Application § 6.0; Hearing Day 1 Transcript at 298:2-299:6 (DeWan); Segal Direct; Segal Rebuttal; DeWan Supplemental; Exhibit CMP-5-B; Exhibit CMP-5-C; Exhibit CMP-5.1-A; Exhibit CMP-6.2-A.

²⁹ Hearing Day 3 Transcript at 91:18-92:25 (Merchant).

³⁰ Mirabile Direct at 5-7, 11; Goodwin Direct at 5; *see also* Site Law Application Exhibit 10-1: New England Clean Energy Connect Plan for Protection of Sensitive Natural Resources During Initial Vegetation Clearing (VCP) and Exhibit 10-2: New England Clean Energy Connect Post-Construction Vegetation Management Plan (VMP) (updated January 30, 2019).

³¹ Merrill Road Converter Station (Lewiston), Larrabee Road Substation (Lewiston), Crowley's Substation (Lewiston), Surowiec Substation (Pownal), Fickett Road Substation (Pownal), Raven Farm Substation (Cumberland), Coopers Mills Substation (Windsor), and Maine Yankee Substation (Wiscasset).

³² Goodwin Direct at 5; *see also* Aug. 13, 2018 visual buffer planting plan and Dec. 8, 2018 visual buffer planting plan.

³³ Hearing Day 1 Transcript at 357:14-24 (Segal).

CMP took specific care to buffer the Project from other uses and resources within the LUPC's Recreation Protection (P-RR) subdistricts in which the Project is proposed.³⁴ While one transmission line structure would have been visible from Beattie Pond as the Project was originally proposed, CMP submitted an application modification to the DEP and LUPC on January 25, 2019 that, at the request of LUPC staff, reduced the height of this structure to further buffer the Project from Beattie Pond.³⁵ Furthermore, the self-weathering steel will minimize contrasts with the surrounding wooded hillside and none of the structures will be seen against the sky.³⁶ Accordingly, the redesigned structures will be considerably less visually prominent, if noticeable at all, to recreational users on the pond.³⁷

CMP's underground crossing of the upper Kennebec River, proposed in an amendment to the Applications on October 19, 2018, will be undetectable to the Kennebec river-running community, and CMP will maintain forested buffers on both sides of the river such that there are no views of transmission line structures or overhead conductors, or of either termination station, from the river.³⁸

Where the Appalachian Trail (AT) intersects the Project, it does so within an existing CMP corridor containing a 115kV transmission line.³⁹ While the location of the trail throughout this 3,500-foot section of existing transmission line corridor prevented CMP from entirely

³⁴ Segal Rebuttal at 24; Group 4 Warren Direct at 4-5.

³⁵ Mirabile Direct at 7-8; Segal Direct at 32; Goodwin Direct at 6, 9; Exhibit CMP-2-E.

³⁶ Segal Direct at 32.

³⁷ Segal Direct at 32.

³⁸ Mirabile Direct at 8; Goodwin Direct at 6, 9; Segal Direct at 32; Dwyer Direct at 4; Segal Rebuttal at 10-11; Exhibit CMP-2-F.

³⁹ Site Law Application § 25.3.1.3; Berube Direct at 15-16; Goodwin Direct at 9-10; Segal Direct at 32.

avoiding impacts within the P-RR subdistrict,⁴⁰ the use of the AT in these locations is not incompatible with transmission lines,⁴¹ as evidenced by both the existing use of the corridor by AT hikers and by the easement from CMP allowing such use and by which the National Park Service (NPS) agreed to the construction by CMP of additional above ground electric transmission lines.⁴² Indeed, “[t]he Appalachian Trail has crossed the existing transmission line since its construction in the 1950s, and the transmission line is a landmark noted in Trail Guides.”⁴³ The existing transmission line predates the AT at this location, and the earlier AT route on the south end of Moxie Pond followed Troutdale Road for 2.25 miles.⁴⁴ Accordingly, the historic setting of the AT at this location is not one of secluded wilderness or broad vistas; 12 existing transmission structures are visible from the first crossing, seven are visible from the

⁴⁰ Segal Direct at 33. As stated in its May 7, 2019 letter to Mr. Beyer, CMP is willing to relocate the AT so that it crosses the CMP transmission line corridor only once in the vicinity of Troutdale Road, eliminating two existing crossings. Before CMP could commit to such a condition, though, the National Park Service (NPS) would need to agree to it, and CMP would need to acquire, on behalf of NPS, the necessary property interests in the new location. CMP has secured rights to a parcel that would allow a reroute that eliminates two of the transmission line crossings. However, because this reroute would pass by one or two camps, the Maine Appalachian Trail Club (MATC) prefers the existing two crossings of the transmission line corridor. CMP will continue to explore all options to find a new route that is satisfactory to MATC and NPS. In the interim, CMP is working with MATC on an interim relocation that will eliminate two crossings but will approach the edge of the new NECEC corridor. Provided this interim alignment is ultimately acceptable to MATC and NPS, CMP will pay for the cost of the realignment, including any appropriate buffer plantings. CMP’s long-term goal is to secure a permanent re-route acceptable to both MATC and NPS, and CMP is willing to commit the necessary funds to this end. See May 7, 2019 letter from M. Manahan to J. Beyer RE: NECEC – Preservation of Historic Sites.

⁴¹ Goodwin Rebuttal at 2; Freye Rebuttal at 2-3; Segal Rebuttal at 7-9.

⁴² Exhibit CMP-9-B.

⁴³ October 2018 SEARCH submission to MHPC.

⁴⁴ *Id.*

second crossing, and 15 are visible from the third crossing.⁴⁵ The Project will add additional transmission structures, but the character of the AT in this location will not change.⁴⁶

Furthermore, CMP proposed mitigation to adequately buffer the Project, including vegetative buffers along the east and west sides of Troutdale Road where the new corridor crosses the road, which is co-located with the AT in this area, and is able to buffer the Project at the other crossings with similar plantings.⁴⁷ Moreover, co-location minimizes visual impact, as alternative alignments of the Project would result in crossings of the AT in one or more locations where there are no existing transmission line corridors.⁴⁸ CMP also reduced structure heights along the length of Moxie Pond to further minimize visual impacts from viewpoints from the AT on the summits of Pleasant Pond Mountain and Bald Mountain and from Moxie Pond.⁴⁹

c) **Recreational and Navigational Uses**

The Project creates no interference with the recreational and navigational uses of the surrounding area.⁵⁰ Indeed, CMP's existing transmission line corridors are widely utilized year-round for private and commercial recreational activities including hunting, fishing, foraging, hiking (including on the AT within existing corridor), biking, skiing, snowmobiling, birding, and boating.⁵¹

For example, the co-location of new transmission line within a CMP-owned corridor crossed by the AT is consistent with the existing use and with hikers' expectation of crossing a

⁴⁵ *Id.*

⁴⁶ Additionally, as SEARCH noted in its October 2018 submission to MHPC, “[t]he setting in this area would be classified as developed, with the trail paralleling a road for part of the section and several houses in the vicinity.”

⁴⁷ Mirabile Direct at 8; Segal Direct at 33.

⁴⁸ Goodwin Direct at 10; Segal Direct at 33.

⁴⁹ Goodwin Direct at 10.

⁵⁰ Dwyer Rebuttal at 2; Group 4 Christopher Direct at 3; Group 4 Warren Direct at 3-4.

⁵¹ CMP September 4, 2018 AIR Response; Dwyer Rebuttal at 2; Tribbet Rebuttal at 7; Group 4 Warren Direct at 3-4.

transmission line corridor in the associated P-RR subdistrict.⁵² Further, when the NPS acquired by easement the portions of the trail that cross CMP's existing transmission line corridor, it anticipated and agreed to the construction of additional above ground electric transmission lines, and related clearing, in that CMP-owned corridor.⁵³ This agreement establishes that the addition of overhead transmission lines at the AT in that location would not unreasonably interfere with uses of that trail.

Furthermore, because recreational and navigations users of Segment 1 are “well accustomed to the sights, sounds, and smells of active forest management on an industrial scale,” similar impacts from a new transmission line corridor will in no way affect recreational and navigational uses, including those areas within the LUPC's P-RR subdistrict.⁵⁴ As Group 7 witness Christopher noted, “rafters along Maine's primitive waterways, including the upper Kennebec and Penobscot Rivers usually begin their trips close to hydro facilities that include Harris Station along the Kennebec River, as well as McKay Station along the Penobscot River. For those rafting, fishing, or boating downstream of McKay Station, these persons are accustomed to not only seeing the large hydro-electric facilities, but also transmission lines that run in close proximity to, and even cross, the Penobscot River. These users are generally appreciative of the benefit offered by hydro-electric dams, transmission lines, and related electricity infrastructure.”⁵⁵

⁵² Goodwin Rebuttal at 20; Segal Rebuttal at 8-9.

⁵³ Exhibit CMP-9-B; Freye Rebuttal at 2-3.

⁵⁴ Dwyer Direct at 3; Group 4 Christopher Direct at 3, 4.

⁵⁵ Christopher Direct at 3-4.

2. **Wildlife Habitat and Fisheries**

Through extensive consultations and coordination with the Maine Department of Inland Fisheries and Wildlife (MDIFW) to the satisfaction of that agency,⁵⁶ and by careful evaluation of Project impacts, CMP avoided and minimized, and developed proposed compensation and mitigation to address, impacts to endangered species and brook trout habitat, avoided, minimized, and compensated for habitat fragmentation, and proposed adequate buffer strips around cold water fisheries.⁵⁷ The evidence thus shows that the Project will not unreasonably harm the Roaring Brook Mayfly, Northern Spring Salamander, or brook trout habitat, and that adequate provision has been provided for buffer strips around cold water fisheries. Similarly, CMP's vegetation management practices make practical and appropriate provision for the maintenance of wildlife travel lanes and connectivity of adjacent habitats; are consistent with techniques promoted by the United States Environmental Protection Agency and other federal agencies to minimize impacts to wildlife and habitat; and will not result in unreasonable disturbance or harm resulting from habitat fragmentation.

a) **Endangered Species – Roaring Brook Mayfly, Spring Salamanders**

In its March 15, 2018 environmental permit review letter to DEP Project Manager Jim Beyer, MDIFW identified the presence of Roaring Brook Mayfly, a state threatened species, and

⁵⁶ Johnston Rebuttal at 7-9; Exhibit CMP-4.1-A. This comprehensive consultation process has allowed MDIFW to provide final comments on the NECEC Project Compensation Plan, in response to a March 11, 2019 email and attachments from CMP requesting “that MDIFW confirm that the attached clarification materials address all of MDIFW’s remaining concerns, and that MDIFW is satisfied that the latest (January 30, 2019) NECEC Project Compensation Plan, as supplemented by these attached clarifications, provides satisfactory mitigation of the NECEC Project’s impacts.” In its March 18, 2019 response, DIFW thanked CMP “for the March 11 email as a follow-up to address the Department remaining resource impact concerns for the NECEC project,” and noted DIFW’s appreciation for CMP’s “willingness to work with us to finalize the complex fish and wildlife resource issues.” DIFW said that CMP’s response and explanations were “sufficient to allow DEP to apply applicable natural resource law to the permitting process.” Exhibit CMP-4.1-A.

⁵⁷ Mirabile Direct at 9; Goodwin Direct at 11.

the likely presence of Northern Spring Salamander, a special concern species, within the NECEC Project area.⁵⁸ Following the completion of extensive field surveys, laboratory samples, assumption of presence of the species where unknown, and review by MDIFW, MDIFW determined two locations, Mountain Brook in Johnson Mountain Township and Gold Brook in Appleton Township, to be ecologically significant.⁵⁹ Accordingly, and upon consultation with MDIFW, CMP revised its proposal to incorporate taller structures and avoid clearing by allowing full height canopy within the 250-foot riparian management zone for Mountain Brook and Gold Brook.⁶⁰

For all other streams with presence of Northern Spring Salamander and/or Roaring Brook Mayfly, assumed or known, MDIFW agreed that CMP's vegetation management practices and a contribution of approximately \$470,000 to the Maine Endangered and Non-game Wildlife Fund would adequately protect the habitat and species.⁶¹

Finally, CMP expanded riparian buffers for vegetation management and maintenance activities to 100 feet for cold water fishery streams, threatened or endangered species streams, all perennial streams in the new corridor (Segment 1) of the Project, and all outstanding river segments crossed aerially by the Project.⁶² For all other water bodies, DEP and MDIFW recommended, and CMP proposed, an expanded buffer of 75 feet.⁶³ CMP incorporated these changes into Exhibit 10-1 VCP and Exhibit 10-2 VMP of CMP's amended Site Law application,

⁵⁸ Goodwin Direct at 11-12. Note that that species of "special concern" are not protected under the Maine Endangered Species Act (Maine ESA), but are administrative categories established by policy for planning and information purposes. Goodwin Direct at 12.

⁵⁹ Goodwin Direct at 13.

⁶⁰ Mirabile Direct at 9; Goodwin Direct at 13; Exhibit CMP-2-G; Exhibit CMP-3-F.

⁶¹ Mirabile Direct at 9, 29; Goodwin Direct at 13.

⁶² Mirabile Direct at 10; Goodwin Direct at 19-20.

⁶³ Mirabile Direct at 10; Goodwin Direct at 20.

filed with the DEP on January 30, 2019.⁶⁴ CMP also has committed to no herbicide use within the new corridor portion (Segment 1) of the Project.⁶⁵

b) Brook Trout Habitat

CMP does not agree that brook trout habitat is a “significant wildlife habitat,”⁶⁶ given that brook trout are pervasive in the Project area, and the populations in some of the streams over which the Project passes are natural and self-supporting (particularly those populations associated with the smaller, colder streams that are sustained by groundwater input).⁶⁷ Indeed, brook trout have no special legal or regulatory protections in Maine.⁶⁸ Furthermore, with the exception of culvert removals and replacements intended to improve habitat quality and connectivity proposed as part of CMP’s Compensation Plan, the Project will have no direct impact (i.e., in-stream construction) on brook trout habitat.⁶⁹

Nevertheless, and despite the pervasiveness of this cold water species and the evidence of a *de minimis* impact to brook trout habitat,⁷⁰ CMP has proposed widened riparian buffers of 100 feet for all cold water fishery streams (as determined by MDIFW), which include brook trout habitat,⁷¹ and has proposed to use no herbicides within the Segment 1 corridor,⁷² as well as additional protective measures that ensure no unreasonable disturbance or harm to this habitat.⁷³

⁶⁴ Goodwin Direct at 20.

⁶⁵ Mirabile Supplemental at 5.

⁶⁶ 38 M.R.S. § 480-B(10).

⁶⁷ Goodwin Direct at 14. Of the 743 waterbodies located within the NECEC corridor, MDIFW identified 223 as containing brook trout (*Salvelinus fontinalis*). Mirabile Direct at 10; Goodwin Direct at 13.

⁶⁸ Hearing Day 4 Transcript 144:7-23 (Reardon).

⁶⁹ Goodwin Direct at 14.

⁷⁰ Goodwin Direct at 14; Johnston Rebuttal at 2-4.

⁷¹ Mirabile Direct at 10; Johnston Rebuttal at 4-5.

⁷² Mirabile Supplemental at 5; Hearing Day 6 Transcript at 327:18-328:17 (Mirabile).

⁷³ Mirabile Direct at 10-11.

CMP also provided, in response to the DEP's May 9, 2019 Additional Information Request, information demonstrating that the five crossing locations Mr. Beyer suggested can accommodate 35'-tall vegetation with limited impact to currently proposed structure heights.⁷⁴ Three of the five crossings (Moxie Stream, South Branch Moose River, and Tomhegan Stream) require no structure height increases to accommodate 35'-tall vegetation along the entire span, one span requires one structure to increase in height by 10.5' (area near Wilson Hill Pond and Tobey Pond), and the remaining span requires one structure to increase in height by 5.5' (area near Spencer Road). The two spans where the 35'-tall vegetation is not possible for short distances along the span can accommodate up to 25'-tall vegetation in those locations.

c) Habitat Fragmentation

CMP has minimized and avoided habitat fragmentation impacts by co-locating the majority (more than 70%) of the transmission line within existing corridors and locating the remainder of the transmission line primarily within areas already subject to and fragmented by intensive industrial forestry practices.⁷⁵ The evidence demonstrates that maintained transmission line ROWs are compatible with, coexist with, and support healthy and productive habitat such as significant vernal pools,⁷⁶ and do not result in fragmentation that would adversely affect "umbrella species" such as the pine marten.⁷⁷

Nevertheless, CMP has taken mitigating steps to address any fragmenting effects of the Segment 1 corridor, including implementing vegetation management practices that are wildlife-friendly and promote early successional habitat throughout its corridors, and allowing for taller

⁷⁴ See CMP Response to DEP May 9, 2019 Additional Information Request Attachment B.

⁷⁵ Mirabile Direct at 11; Goodwin Direct at 15-16; Goodwin Rebuttal at 3-4; Giumarro Supplemental at 11-12.

⁷⁶ Goodwin Rebuttal at 5-6; Emond Rebuttal at 4-6; Exhibit CMP-12-B.

⁷⁷ Giumarro Supplemental; Hearing Day 6 Transcript at 236:6-23 (Giumarro).

vegetative growth to be maintained in select locations of the NECEC ROW to address species-specific concerns.⁷⁸

CMP's vegetation management practices will avoid the hard edge impact generally associated with habitat fragmentation and negative impacts on species resiliency by creating a soft edge that maintains landscape permeability and establishes areas of dense shrubby vegetation and taller vegetation where topographic conditions allow (e.g., steep ravines), thereby providing a vegetation bridge for wildlife movement across the NECEC corridor.⁷⁹ Further, CMP's integrated vegetation management (IVM) practices require riparian buffers, ranging from 75 to 100 feet in width measured from the top of bank, to be maintained on both sides of all stream crossings in a manner that will allow taller non-capable vegetation to persist, promoting the movement of wildlife across the corridor and increasing habitat connectivity in these areas.⁸⁰

In addition to the minimization and avoidance of habitat fragmentation through co-location and IVM practices, CMP will retain and maintain taller vegetation in select locations to address habitat fragmentation concerns identified through consultation with MDIFW, including deer travel corridors in the upper Kennebec Deer Wintering Area (DWA) and in Rusty Blackbird habitat in Johnson Mountain Township and Parlin Pond Township.⁸¹ CMP also provided the DEP with pole and tree height information in response to DEP Project Manager Jim Beyer's May 9, 2019 request, which demonstrates that the five crossing locations that Mr. Beyer

⁷⁸ Goodwin Direct at 15-16.

⁷⁹ Mirabile Direct at 12; Goodwin Direct at 17; Goodwin Rebuttal at 18; Emond Rebuttal at 8-9.

⁸⁰ Goodwin Direct at 17; *see also* See CMP Response to MDEP May 9, 2019 Additional Information Request Attachment B, Cross-Section Typical Wildlife Travel Corridor.

⁸¹ Goodwin Direct at 19; Goodwin Rebuttal at 14-15; Exhibit CMP-3-G; Exhibit CMP-3-H.

suggested can accommodate 35'-tall vegetation with limited modifications to currently proposed structure heights.⁸²

d) Buffer Strips around Cold Water Fisheries

While CMP does not agree that cold water fisheries are “significant wildlife habitat,”⁸³ given the rich and significant cold water fisheries in the area, the Project proposal includes several measures to avoid, reduce, minimize, and compensate for unavoidable impacts to these important fisheries, including:

- Preserving 12.02 linear miles of cold water streams, including 7.9 miles of habitat and frontage along the Dead River;
- Replacing missing, non-functional and improperly installed culverts - both within the Project footprint and outside of the Project - to reconnect isolated cold water fishery habitat to downstream areas, and funding \$200,000 for culvert replacements on properties not controlled by CMP;
- Donating \$180,000 to the Maine Endangered and Nongame Wildlife Fund, to pay for additional mitigation for unavoidable cold water fishery impacts; and
- Performing stream crossings by heavy equipment during construction through the installation of equipment spans with no in-stream disturbances; streams will not be forded by heavy equipment.⁸⁴

So too has CMP proposed, in consultation with DEP and MDIFW, riparian buffers for vegetation management and maintenance activities of 100 feet for cold water fishery habitats, outstanding river segments crossed aurally by the Project, threatened or endangered species water bodies, and all perennial streams in the new corridor of the Project.⁸⁵ For all other water bodies, DEP and MDIFW recommended an expanded buffer of 75 feet.⁸⁶ CMP accepted those

⁸² See CMP Response to MDEP May 9, 2019 Additional Information Request Attachment B, Cross Section Typical Wildlife Travel Corridor; Hearing Day 6 Transcript 325:15-326:15 (Mirabile).

⁸³ 38 M.R.S. § 480-B(10).

⁸⁴ Mirabile Direct at 14-15.

⁸⁵ Mirabile Direct at 15-16; Goodwin Direct at 19-20.

⁸⁶ Goodwin Direct at 20.

recommendations and incorporated them into its January 30, 2019 filing with the DEP.⁸⁷ Group 4 made much ado at the hearing about email correspondence subsequently entered into the record between MDIFW's Bob Stratton and DEP's Jim Beyer, in which Mr. Stratton discussed the classification of certain streams in the Waterbody Crossing Table in CMP's Site Law Application Exhibit 7-7.⁸⁸ However, this is irrelevant, as it does not affect CMP's commitment to apply 100-foot riparian buffers to all brook trout streams.⁸⁹ Furthermore, MDIFW has noted that CMP's Compensation Plan satisfies its fish and wildlife resource issues.⁹⁰ Additionally,

⁸⁷ Goodwin Direct at 20.

⁸⁸ Hearing Day 6 Transcript at 273:10-280:1 (Reardon, Goodwin, Johnston). While it does not appear that the January 22, 2019 (4:23 PM) email from MDIFW's Bob Stratton to DEP's Jim Beyer (Group 4 Exhibit 22-JR) was forwarded to the service list in this proceeding, it was posted on the DEP's website for this proceeding on February 4, 2019.

⁸⁹ Hearing Day 6 Transcript at 308:18-310:3, 324:19-325:14 (Goodwin); Johnston Rebuttal at 7-8. CMP further notes that the Water Body Crossing Table that Mr. Reardon attached to his testimony as Group 4 Exhibit 23-JR was not forwarded to the service list (nor was it posted to DEP's website) until February 4, 2019 – i.e., after CMP had submitted its updated Compensation Plan on January 30, 2019. Instead, CMP updated its Site Law Application Exhibit 7-7 that was filed on January 30 (along with its revised Compensation Plan) with the Water Body Crossing Table that was attached to a January 22, 2019 (8:26 AM) email from MDIFW's Bob Stratton to DEP's Jim Beyer, which was the most recent information from MDIFW that CMP had in its possession at that time. Subsequent to CMP's filing of its updated Compensation Plan on January 30, 2019, MDIFW's Bob Stratton sent DEP's Jim Beyer an email on February 1 (5:10 PM) stating, "Upon preliminary review of the 1/30/19 Revised Compensation Plan, MDIFW finds that the proposed package of three conservation parcels (Grand Falls, Lower Enchanted, Basin Tracts) with stream habitats and associated buffers, and monetary contributions (\$180,000 to Maine Nongame Wildlife Fund, \$200,000 for aquatic passage upgrades) appears to adequately address and mitigate for impacts based on MDEP's 1/22/19 guidance, updated brook trout information, and MDIFW's consistent recommendations for 100-foot vegetated buffers for all intermittent and perennial streams and associated floodplain wetlands. MDIFW looks forward to further discussions to finalize the details." That email was posted to the DEP's website on February 4, 2019.

⁹⁰ In response to a March 11, 2019 email and attachments from CMP requesting "that MDIFW confirm that the attached clarification materials address all of MDIFW's remaining concerns, and that MDIFW is satisfied that the latest (January 30, 2019) NECEC Project Compensation Plan, as supplemented by these attached clarifications, provides satisfactory mitigation of the NECEC Project's impacts." In its March 18, 2019 response, DIFW thanked CMP "for the March 11 email as a follow-up to address the Department remaining resource impact concerns for the NECEC project," and noting DIFW's appreciation for CMP's "willingness to work with us to finalize the complex fish and wildlife resource issues." DIFW said that CMP's response

undisturbed buffers also will be maintained on both the east (for 1,450 feet) and west (for 1,160 feet) sides of the upper Kennebec River in the vicinity of the HDD crossing.⁹¹

These expanded riparian buffers will protect water quality, minimizing ground disturbance and the potential for sediments or herbicides to enter cold water fisheries (and other streams); minimize insolation and water temperature increases; and retain wildlife travel corridors within riparian zones.⁹² CMP therefore has made adequate provision for buffer strips around cold water fisheries, given that water bodies within or adjacent to the Project will be adequately protected from sedimentation and surface runoff by buffer strips, and these buffer strips will provide adequate space for movement of wildlife between important habitats. The Project will not unreasonably harm cold water fisheries.

3. Alternatives Analysis

CMP conducted a thorough analysis of alternatives to the Project, as set forth in its Applications, pre-filed testimony, and live testimony at the hearing. This evidence demonstrates that a less environmentally damaging practicable alternative to the Project, which meets the Project's purpose, does not exist. No proposed alternatives to the proposed location and character of the transmission line would lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. Where the Project crosses an outstanding river segment as identified in title 38, section 480-P, the evidence demonstrates that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of those river segments.

and explanations were "sufficient to allow DEP to apply applicable natural resource law to the permitting process." Exhibit CMP-4.1-A.

⁹¹ Mirabile Direct at 16.

⁹² Mirabile Direct at 16.

a) Alternative Route Analysis

The Applications describe the lack of any practicable alternative that would meet the project purpose and have less environmental impact, pursuant to the NRPA standards⁹³ and Section 404(b)(1) Guidelines,⁹⁴ as well as the LUPC criteria,⁹⁵ and also describe the process by which alternatives were developed and evaluated to identify a technically and economically sound solution that avoids and minimizes environmental impacts to achieve the least environmentally damaging practicable alternative, including undergrounding the Project at its upper Kennebec River crossing.⁹⁶

The alternative route analysis that CMP performed for the Project considered the entirety of the new HVDC line, which will run from the Canadian border to an interconnection point at Larrabee Road Substation in Lewiston (Segments 1, 2, and 3), and associated substation upgrades.⁹⁷ CMP did not conduct an alternative route analysis for the remaining Project components (i.e., Section 62/64 115kV rebuilds (Segment 4) and the new Section 3027 345kV line (Segment 5)) because those components are proposed in existing CMP corridors and thus any route alternatives would occur in new corridors and would not lessen project impact on the environment.⁹⁸

While the three routes that CMP analyzed would meet the Project's purpose of delivering clean energy generation from Québec to New England, two of the routes would result in more

⁹³ DEP Ch. 310 § 5; DEP Ch. 315 § 9; DEP Ch. 335 § 3.

⁹⁴ 40 C.F.R. § 230.10(a)(2).

⁹⁵ LUPC Ch. 10.23(I)(3)(d)(8).

⁹⁶ NRPA Application § 2.0; NRPA Application Amendment for the Kennebec River Horizontal Directional Drill § 2.0; Site Law Application § 25.3.1; Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1.

⁹⁷ Mirabile Direct at 17; Berube Direct at 4-5; *see also* NRPA Application § 2.3.

⁹⁸ Mirabile Direct at 17; Berube Direct at 4-5; *see also* DEP Ch. 310 § 5; DEP Ch. 335 § 3.

environmental impact than the proposed route for the NECEC corridor, and are not practicable.⁹⁹ CMP also considered the no-action alternative (i.e., not constructing the NECEC Project), but that alternative would not meet the Project's purpose and need of allowing CMP to deliver 1,200 MW of clean energy generation from Quebec to New England at the lowest cost to ratepayers.¹⁰⁰

So too did CMP consider alternatives to crossing the five outstanding river segments that the Project as proposed will cross. As described in the Applications and in CMP's testimony, CMP's alternatives analysis demonstrates that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment for each outstanding river segment the transmission line will cross.¹⁰¹ This is because there are no reasonable alternatives to undergrounding the upper Kennebec River crossing that would have less adverse effect on that river segment, and because all other outstanding river segment crossings are within existing transmission line corridors, so any alternatives would be in new corridors and would significantly and unreasonably increase clearing and visual impact for those crossings.¹⁰² Crossing at a new location (i.e., a crossing that is not co-located within an existing transmission line corridor) would have a greater adverse impact on the river, and is therefore not reasonable, because such crossing would be a new crossing location. By using the existing ROW, additional clearing in the four outstanding river segments crossed aurally by the Project will be limited to a typical width of 75 feet and impacts will be concentrated in locations where transmission lines already cross the rivers.¹⁰³ Nor is undergrounding at the four outstanding

⁹⁹ NRPA Application §§ 2.3.2.2 and 2.3.2.3; Mirabile Direct at 18-21; Berube Direct at 6-9.

¹⁰⁰ NRPA Application § 2.3.1; Berube Direct at 4.

¹⁰¹ Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1; Segal Direct at 35; Berube Direct at 11-12.

¹⁰² Segal Direct at 35; Berube Direct at 11-12.

¹⁰³ Segal Direct at 35.

river segments crossed aerially by the Project a reasonable alternative, given the prohibitive cost and existing overhead transmission lines at those locations.¹⁰⁴

Further, in response to environmental review comments from MDIFW, CMP will retain 100-foot riparian buffers at all outstanding river segments, which will minimize views of the corridor for anglers, duck hunters, boaters, and other recreational users.¹⁰⁵ Given the minimal visual impact on these outstanding river segments, CMP has demonstrated that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the outstanding river segments it crosses.

Finally, CMP considered whether there are any alternative sites to the crossings of the Project in the P-RR subdistrict.¹⁰⁶ At Beattie Pond, CMP attempted to negotiate an alternative alignment south of the Beattie Pond P-RR subdistrict through Merrill Strip Twp., but the landowner required compensation of approximately 50 times fair market value for that property, so that alternative is not practicable.¹⁰⁷ The AT crosses the Project within an existing CMP corridor containing a 115kV transmission line.¹⁰⁸ Co-location of the transmission line within the existing transmission line corridor is the least environmentally damaging practicable alternative, and undergrounding the transmission line at these crossings is not practicable.¹⁰⁹

¹⁰⁴ Mirabile Direct at 26; Goodwin Direct at 24-25; Segal Direct at 3, 34-36; Berube Direct at 11-12; Bardwell Rebuttal at 23-24.

¹⁰⁵ Segal Direct at 35.

¹⁰⁶ NRPA Application § 2.0; NRPA Application Amendment for the Kennebec River Horizontal Directional Drill § 2.0; Site Law Application § 25.3.1; Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1; Berube Direct at 13-16; Freye Rebuttal at 2-6.

¹⁰⁷ Site Law Application § 25.3.1.1; Mirabile Direct at 21; Berube Direct at 13-16; Goodwin Direct at 8-9.

¹⁰⁸ Site Law Application § 25.3.1.3; Mirabile Direct at 22; Berube Direct at 15-16; Freye Rebuttal at 4.

¹⁰⁹ Freye Rebuttal at 2-6.

b) Undergrounding Analysis

In addition to its analysis of alternate routes for the Project, CMP also analyzed whether undergrounding certain portions or the entirety of the Project is a less environmentally damaging practicable alternative to the proposed overhead HVDC transmission line.¹¹⁰ It was so obvious that undergrounding would not meet the Project purpose or otherwise be practicable that CMP did not initially include it as an alternative in the application materials filed with DEP and LUPC.¹¹¹ In other words, had additional portions of the Project been buried, the Project would not have moved forward.¹¹² Nevertheless, CMP conducted a thorough underground alternative analysis in response to the testimony of witnesses in Intervenor Groups 2, 6, and 8.¹¹³

As described in the pre-filed and live testimony of several CMP and intervenor witnesses, the extremely high cost, logistical difficulties, visual impact, negligible environmental benefits, increased risk and adverse impacts during construction, and potential adverse impacts during operation render any additional undergrounding not practicable.¹¹⁴ Indeed, numerous intervenor witnesses testified that undergrounding is not a preferred alternative due to their concerns with the environmental and visual impacts of undergrounding.¹¹⁵ Crucially, burying any additional portion of the NECEC HVDC line underground in the 54-mile new corridor of Segment 1 is not

¹¹⁰ Bardwell Rebuttal at 2-3; Bardwell Supplemental at 2-13.

¹¹¹ Bardwell Rebuttal at 3; Hearing Day 6 Transcript at 347:20-348:23 (Tribbet).

¹¹² Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

¹¹³ See Bardwell Rebuttal; Tribbet Rebuttal; Bardwell Supplemental.

¹¹⁴ Bardwell Rebuttal at 3-16, 23-27; Tribbet Rebuttal at 5; Freye Rebuttal at 5-6; Bardwell Supplemental at 2-8; Hearing Day 1 Transcript at 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile); Hearing Day 3 Transcript at 192: 12-14 (Warren); Hearing Day 6 Transcript at 341:5-344:22, 431:7-432:4 (Bardwell); Hearing Day 6 Transcript at 346:23-347:1 (Tribbet); Hearing Day 6 Transcript at 432:5-12 (Achorn); Hearing Day 6 Transcript at 445:7-447:12 (Paquette); Exhibits CMP-11-A through CMP-11.1-G.

¹¹⁵ Publicover Supplemental at 2-3; Hearing Day 5 Transcript at 94:13-95:14, 97:16-98:15 (Cutko); Hearing Day 6 Transcript at 61:4-25, 78:23 (Publicover); Hearing Day 6 Transcript at 72:12-14 (Reardon). See also Bardwell Rebuttal at 21-27.

reasonable or feasible because the costs and logistics of doing so would defeat the purpose of the Project.¹¹⁶ In other words, the alternative of burying the transmission line is not practicable because it would result in the NECEC not moving forward.¹¹⁷

Putting cost aside, the underground proposals offered by the intervenors in this proceeding are not practicable for other reasons as well. For example, Group 4 witness Publicover alleges that CMP could bury the NECEC transmission line along the edge of the Spencer Road.¹¹⁸ But Spencer Road is not a public road, and its private owners specifically did not want a transmission line located along the Spencer Road because such a transmission line, whether overhead or underground, would limit the landowner's ability to ditch, blast, create, and use landings, operate heavy equipment, or relocate the road.¹¹⁹

Nor is there any other corridor available that connects to Québec in the upper Kennebec River area, other than the proposed route.¹²⁰ While there is a distribution line from Harris Dam to the village of Jackman (the Jackman Tie Line or JTL), the JTL is entirely roadside and does not connect to Québec.¹²¹ Contrary to Intervenor Group 2 witness Caruso,¹²² the JTL instead terminates in Jackman about 16 miles from the Canadian border and would require new corridor through the towns of Jackman and Moose River as well as additional corridor along Route 201, a state and federally designated scenic byway, for the entire distance from Jackman to West Forks

¹¹⁶ Dickinson Rebuttal at 2-3, 9-10, 13; Tribbet Rebuttal at 5; Tribbet Supplemental at 4-6; Hearing Day 1 Transcript at 285:13-287:3 (Dickinson).

¹¹⁷ Dickinson Rebuttal at 13; Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

¹¹⁸ Publicover Direct at 19-20.

¹¹⁹ Freye Rebuttal at 5; Freye Supplemental at 5-6.

¹²⁰ Freye Supplemental at 2-4.

¹²¹ Freye Rebuttal at 6.

¹²² E. Caruso Direct at 6.

Plantation.¹²³ In addition, the JTL corridor between Harris Dam and Route 201 would need to be expanded through two conservation easements and across the State-owned Cold Stream Forest.¹²⁴ Burying the transmission line along Route 201 is further unavailable due to lack of sufficient space within the highway limits,¹²⁵ safety constraints with co-locating with the existing overhead distribution line,¹²⁶ and the restrictions placed on such burial and the installation of splicing vaults by the MDOT,¹²⁷ in addition to the cost, safety, and environmental issues of doing so.¹²⁸

Specific to the Project's crossing of the P-RR subdistrict at Beattie Pond, undergrounding the line in this area would consist of installing termination stations just outside of the P-RR subdistrict and connecting them with approximately 1.2 miles of direct buried cables, including three jointing locations and crossings of two wetlands by approximately 1,000-foot long HDD installations.¹²⁹ Underground construction would require clearing and continuous surface disruption in the P-RR subdistrict and would cost approximately \$15.3 million, \$13.2 million of which would be an incremental additional cost to the Project when removing associated overhead transmission line costs.¹³⁰ In addition to this incremental cost, this short underground cable segment of the NECEC HVDC transmission line at Beattie Pond would require construction of additional access points and would create operational problems for CMP

¹²³ Freye Rebuttal at 7; Bardwell Supplemental at 12.

¹²⁴ Freye Rebuttal at 7.

¹²⁵ Freye Supplemental at 4; Hearing Day 6 Transcript at 487:1-19 (Bardwell).

¹²⁶ Freye Supplemental at 5.

¹²⁷ Bardwell Rebuttal at 10; Bardwell Supplemental at 12.

¹²⁸ Freye Rebuttal at 7-8.

¹²⁹ Bardwell Rebuttal at 19.

¹³⁰ Bardwell Rebuttal at 19; Exhibit CMP-11-F.

including limited winter accessibility and protracted service restoration timelines.¹³¹

Undergrounding the transmission line in this area would not be practicable, especially when the practicable and reasonable alternative of shortening the pole previously visible from Beattie Pond has been proposed and does not result in an unreasonable impact.

Undergrounding also is not practicable at the AT crossings. An underground alternative would require construction of termination stations within sight of the trail, along with a trenchless crossing of the AT, approximately 3,500 feet long, at a cost of approximately \$28.9 million, \$28 million of which would be an incremental additional cost to the Project when removing associated overhead transmission line costs.¹³² Furthermore, construction activities would last approximately 10 months and would require HDD rigs powered by an external diesel-powered hydraulic power plant that generate noise of approximately 110 decibels continuously while in operation.¹³³ Additionally, the easement allowing the AT in CMP's corridor includes provisions for additional overhead lines, but does not contemplate underground installations, so CMP would need to seek such rights from the NPS to allow underground installation.¹³⁴ Given the presence of the existing transmission line corridor, the very high cost of undergrounding in this location, and the fact that the underground alternative would have additional environmental and public impacts, undergrounding in this location is not practicable.

¹³¹ Bardwell Rebuttal at 19-20.

¹³² Bardwell Rebuttal at 17-18; Exhibit CMP-11-E.

¹³³ Bardwell Rebuttal at 18.

¹³⁴ Bardwell Rebuttal at 18; Freye Rebuttal at 2-3; Hearing Day 6 Transcript at 396:10-19, 429:14-15 (Freye).

c) Taller Structures and Tapering Analysis

CMP evaluated the alternatives of taller poles and/or tapering to minimize visual impact and of taller poles and/or tapering to provide habitat connectivity.¹³⁵ CMP's analysis determined that, to the extent that additional tapering or taller transmission structures are being evaluated for habitat protection or other environmental considerations,¹³⁶ tapering would be preferable to taller transmission poles in all locations identified by the interveners because of the potential for greater visual impacts associated with taller structures when viewed from lakes and ponds, roads, or elevated viewpoints,¹³⁷ as well as because of cost, safety, reliability, and environmental impact considerations.¹³⁸

¹³⁵ CMP has proposed tapered vegetation management in certain areas (Upper Kennebec deer wintering area, south of Coburn Mountain, and the shoulder of Tumbledown Mountain) and the use of taller structures to allow full height vegetation to remain at Gold Brook and Mountain Brook. Tapering is being specifically proposed to mitigate for potential visual impacts from Coburn Mountain and the shoulder of Tumbledown Mountain (as seen from Rock Pond), and CMP further is able to taper at Troutdale Road to similarly mitigate for potential visual impacts along the AT. The taller structures being proposed at Gold Brook to address habitat issues resulted in greater Project visibility from Rock Pond; this was mitigated by tapering vegetation on the shoulder of Tumbledown Mountain to soften the edges of the transmission corridor (as depicted in the photosimulation from Rock Pond). DeWan Supplemental at 1-2. Tapering would consist of the maintenance of the wire zone as it is currently proposed in Exhibit 10-1 and 10-2 of CMP's Site Law application (revised January 30, 2019), with taller trees being allowed to grow outside of the wire zone. Goodwin Supplemental at 2; Mirabile Supplemental at 1-3; See CMP Response to MDEP May 9, 2019 Additional Information Request Attachment B.

¹³⁶ Neither tapering nor taller structures are necessary or appropriate, given that CMP's consultation with the MDIFW and the inclusion of MDIFW's recommendations into CMP's proposed Compensation Plan demonstrates that there will be no unreasonable impact or adverse effects to wildlife due to diminished habitat connectivity. Thus, although taller vegetation and associated habitat would benefit some species, CMP has demonstrated that its proposed clearing and vegetation management practices will not cause an unreasonable impact or an adverse effect. Goodwin Supplemental at 2.

¹³⁷ DeWan Supplemental at 2-6; Goodwin Supplemental at 2; Exhibit CMP-6.2-A.

¹³⁸ Goodwin Supplemental at 2; Hearing Day 6 Transcript at 232:11-14 (Johnston).

Furthermore, taller poles and tapering would provide minimal, if any, habitat connectivity benefits in the shifting mosaic of forest surrounding Segment 1,¹³⁹ which “contains a fairly limited amount of mature forest”¹⁴⁰ and would have “limited effectiveness” with regard to pine marten habitat¹⁴¹ and brook trout habitat.¹⁴² As the evidence demonstrates, “intermediate-age” and “mature” forest habitat is, at best, marginally and intermittently present along the 150-foot-wide Segment 1 corridor, rendering travel corridors potential bridges to nowhere, as taller structure heights and travel corridors would not provide links between habitat patches that are not directly proximal to the corridor.¹⁴³

If the nine areas of habitat that Group 6’s TNC witnesses presented in their direct testimony actually represent mature forest in areas that would be consistently maintained in a mature forested state for the life of the Project, then there could be a benefit from tapering to minimize the effects on habitat.¹⁴⁴ Thus – again assuming TNC’s nine areas of habitat represent mature forest that would be consistently maintained – the tapering methods proposed in CMP’s Compensation Plan, combined with the tapering proposed at select perennial stream and riparian

¹³⁹ Giumarro Supplemental at 2-13; Hearing Day 6 Transcript at 241:17-242:1, 295:6-25 (Mirabile); Hearing Day 6 Transcript 102:12-103:8 (Publicover); Hearing Day 6 Transcript at 133:22-134:6 (Simons-Legaard).

¹⁴⁰ Hearing Day 4 Transcript at 79:10-16 (Publicover).

¹⁴¹ Publicover Supplemental at 4; Hearing Day 4 Transcript at 66:14-67:5 (Publicover); Hearing Day 6 Transcript at 62:12-22, 78:20 (Publicover).

¹⁴² Reardon Supplemental at 7; Hearing Day 4 Transcript at 131:8-12 (Reardon); Hearing Day 4 Transcript at 72:24-73:1 (Reardon).

¹⁴³ Giumarro Supplemental at 2-13; Hearing Day 6 Transcript at 237:21-240:11 (Giumarro); Hearing Day 6 Transcript at 128:17-129:17 (Simons-Legaard); Hearing Day 6 Transcript at 146:2-25 (Wood); Hearing Day 6 Transcript at 102:12-103:8 (Publicover).

¹⁴⁴ Giumarro Supplemental at 12-13; Goodwin Supplemental at 5.

areas,¹⁴⁵ could appropriately and adequately the address habitat fragmentation concerns the intervenors have raised.¹⁴⁶

Taller structures are not practicable in any location, as allowing full height canopy by using taller structures may present negative safety, environmental, reliability, and cost concerns, which tapering does not present.¹⁴⁷ So too do they present greater environmental impact, as an increase in pole height to allow for the full-height vegetation would cause an otherwise direct embed structure to instead require a caisson foundation to support additional loads from this height increase (e.g., larger permanent footprint, additional equipment required to transport concrete, etc.).¹⁴⁸ These full-height vegetation areas would have more environmental impact during construction to accommodate the additional equipment required.¹⁴⁹

Group 4 witness Reardon incorrectly suggests that alternative measures, such as taller poles to maintain full height trees, were not but should have been evaluated with regard to brook trout.¹⁵⁰ To the contrary, CMP consulted with MDIFW beginning in May 2017, numerous times during development of the Applications, and in multiple consultation working sessions since the Applications were filed in September 2017.¹⁵¹ CMP and MDIFW reviewed an extensive list of priority resources, but MDIFW identified no resources or particular areas that would require taller vegetation to address brook trout or cold water fishery concerns.¹⁵²

¹⁴⁵ Goodwin Supplemental at 5.

¹⁴⁶ Giumarro Supplemental at 13; Goodwin Supplemental at 5; Publicover Supplemental at 3-4; Hearing Day 3 Transcript 119:14-24 (Merchant); Hearing Day 4 Transcript at 117:16-118:7 (Publicover).

¹⁴⁷ Goodwin Supplemental at 3-4.

¹⁴⁸ Achorn Supplemental at 2; Hearing Day 6 Transcript at 345:19-346:5 (Achorn).

¹⁴⁹ Achorn Supplemental at 2-3; Hearing Day 6 Transcript at 346:5-12 (Achorn).

¹⁵⁰ Reardon Direct at 14.

¹⁵¹ Johnston Rebuttal at 6.

¹⁵² Johnston Rebuttal at 7.

Furthermore, the structure relocations recommended by Group 4 witness Reardon in the Gold Brook – Rock Pond¹⁵³ area are impractical from both an environmental and visual standpoint, and would result in the corridor being more visible from Rock Pond.¹⁵⁴ Nor does his testimony regarding the Cold Stream and Tomhegan Stream crossing locations accurately consider the physical and land ownership constraints that exist.¹⁵⁵ Consequently, the taller pole structures to maintain full height trees suggested by Group 4 do not constitute a less environmentally damaging practicable alternative to the Project as currently proposed.

4. Compensation and Mitigation

CMP carefully and thoughtfully designed and sited the Project in a manner that avoids and minimizes impacts to the greatest extent possible and, where impacts are unavoidable, has proposed mitigation measures and provided a robust and comprehensive compensation plan, which not only accounts for lost functions and values, but significantly exceeds the requirements of NRPA. Indeed, CMP's Compensation Plan achieves a no-net-loss of ecological functions and values through a combination of: use of the In-Lieu-Fee (ILF) Program used by the DEP and the U.S. Army Corps of Engineers (USACE) as a compensatory mitigation option for permit applicants; preservation of regionally significant natural resources; and implementation of a number of wildlife habitat enhancement projects.¹⁵⁶ Compensation of unavoidable NECEC Project impacts has been offered in multiple forms and for numerous purposes. Offered in-lieu fees total \$3.074 million and other compensation fees total \$2.085 million.¹⁵⁷ Lands proposed for permanent preservation total nearly 2,800 acres.¹⁵⁸ Provisions for tapering of transmission

¹⁵³ Reardon Direct at 12-14.

¹⁵⁴ Freye Rebuttal at 8-10.

¹⁵⁵ Freye Rebuttal at 11-12.

¹⁵⁶ Goodwin Direct at 22; Goodwin Rebuttal at 11; Exhibit CMP-3-J.

¹⁵⁷ Exhibit CMP-3-J.

¹⁵⁸ Mirabile Direct at 30; Exhibit CMP-3-J.

corridor vegetation at two locations - Coburn Mountain and Gold Brook - increase vegetation maintenance costs by more than \$22,000 per year, and maintenance of winter deer travel corridors in the upper Kennebec River deer wintering area increase vegetation management costs by more than \$9,000 per year.¹⁵⁹ The evidence shows that this Plan meets, and in the case of compensation for wetlands and other impact types exceeds, the applicable compensation requirements.

a) Cold Water Fisheries Habitat

CMP worked with DEP and MDIFW to determine appropriate and practical compensatory mitigation for impacts to cold water fisheries that cannot be otherwise avoided or mitigated. During the application process, CMP responded to the guidance provided by DEP and MDIFW and provided a robust, multifaceted Compensation Plan that uses various compensation tools as mitigation for cold water fishery impacts.¹⁶⁰ CMP worked closely with those agencies to determine the appropriate mitigation for those impacts and incorporated their recommendations into its proposal.

CMP's Compensation Plan proposes a variety of mitigation and compensation measures that address impacts to cold water fisheries, including 100-foot cold water fishery resource buffers, preservation of 12.02 linear miles of streams, a \$180,000 contribution to the Maine Endangered and Nongame Wildlife Fund, and implementation of the Culvert Replacement Program, such that the Project will not result in an unreasonable disturbance of this habitat.¹⁶¹ Undisturbed buffers also will be maintained on both the east (for 1,450 feet) and west (for 1,160

¹⁵⁹ Mirabile Direct at 32.

¹⁶⁰ Johnston Rebuttal at 11.

¹⁶¹ Mirabile Direct at 24; Goodwin Direct at 22-24; Johnston Rebuttal at 10-11.

feet) sides of the upper Kennebec River in the vicinity of the HDD crossing.¹⁶² CMP has adequately mitigated and compensated for impacts to cold water fisheries habitat.

b) Outstanding River Segments

CMP minimized impact to the five outstanding river segments that the Project is proposed to cross by crossing under the upper Kennebec River using HDD technology, and by co-locating the HDVC line within existing transmission line corridors for the remaining four crossings.¹⁶³ CMP also proposed to retain 100-foot riparian buffers along each of the four outstanding river segment aerial crossings, as well as vegetation clearing and management practices that adequately mitigate impacts to those outstanding river segments.¹⁶⁴ And, as noted above, undisturbed buffers also will be maintained on both the east (for 1,450 feet) and west (for 1,160 feet) sides of the upper Kennebec River in the vicinity of the HDD crossing.¹⁶⁵ These riparian buffers will protect water quality, minimizing ground disturbance and the potential for sediments or herbicides to enter cold water fisheries (and other streams); minimize insolation and water temperature increases; retain wildlife travel corridors within riparian zones; and help retain the outstanding river segments' natural and recreational values.¹⁶⁶

To compensate for the 850 feet of outstanding river frontage that will be permanently impacted by forest conversion during construction of the Project, CMP's Compensation Plan includes land preservation of three tracts along the Dead River.¹⁶⁷ These tracts collectively will add 1,053.5 acres to Maine's conserved lands and provide protection in perpetuity for 7.9 miles

¹⁶² Mirabile Direct at 25.

¹⁶³ Mirabile Direct at 26; Goodwin Direct at 24.

¹⁶⁴ Mirabile Direct at 26-27.

¹⁶⁵ Mirabile Direct at 27.

¹⁶⁶ Mirabile Direct at 27.

¹⁶⁷ Goodwin Direct at 25.

of river frontage along the Dead River, an outstanding river segment, an amount that far exceeds the 850 feet of river frontage that will be impacted by the Project.¹⁶⁸

c) Wetlands

CMP located and designed the Project to avoid as many wetlands as possible, but because of the pervasive nature of wetlands in Maine, the NECEC Project unavoidably crosses wetlands. Some unavoidable fill of wetlands (ranging from approximately 30 to 185 square feet of permanent fill per structure for those structures unavoidably located in wetlands) will result from structures, soil mounding associated with pole placement, and, where necessary, concrete foundations.¹⁶⁹ This small loss of wetland area from the structure fill (approximately 0.150 acres in total) equates to a negligible loss of wetland functions and values relative to the remaining wetland area at each structure site.¹⁷⁰ The Merrill Road Converter Station, Fickett Road Substation, and HDD termination stations will have permanent wetland impacts from fill of approximately 3.130 acres, 1.328 acres, and 0.259 acres, respectively.¹⁷¹ Of this 4.868 acres of permanent wetland fill, fill in wetlands of special significance (WOSS) and in non-WOSS wetlands totals 4.561 acres and 0.307 acre, respectively.¹⁷² The 4.561 acres of direct fill in WOSS includes wetland areas in significant vernal pool habitat (SVPH) and inland waterfowl and wading bird habitat (IWWH).¹⁷³

CMP's Compensation Plan proposes to use the preservation of lands of comparable habitat to compensate for permanent fill within wetlands.¹⁷⁴ CMP's proposed 123.65 acres of

¹⁶⁸ Goodwin Direct at 25.

¹⁶⁹ Goodwin Direct at 25.

¹⁷⁰ Goodwin Direct at 25-26.

¹⁷¹ Goodwin Direct at 26.

¹⁷² Goodwin Direct at 26.

¹⁷³ Goodwin Direct at 26.

¹⁷⁴ Mirabile Direct at 28; Goodwin Direct at 26.

wetland preservation of comparable habitat types was calculated at a ratio of 30:1, significantly more than 8:1 ratio required by the DEP and the 20:1 ratio required by USACE.¹⁷⁵

For wetlands within SVPH and IWWH, CMP's Plan proposes using the ILF Program. The ILF for permanent wetland fill in IWWH and SVPH was calculated using the ILF Program's wetland compensation formula for WOSS (resource multiplier of two), and exceeds the compensation requirements for wetlands under NRPA. The fee proposed to compensate for permanent wetland fill in SVPH is \$244,669 and in IWWH is \$1,165.18.¹⁷⁶

D. CONCLUSION

The voluminous evidence in this matter, including the Site Law and NRPA Applications; an amendment to each of those Applications; responses to multiple information requests, intervenor comments, and comments from public agencies; pre-filed direct, rebuttal, and supplemental testimony; and responses to post-hearing information requests by the DEP clearly demonstrates that CMP has made adequate provision for fitting the Project harmoniously into the existing natural environment and that the Project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. The evidence further shows that the Project will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

Nor is there any practicable alternative to the Project that would have less visual impact and would be less damaging to the environment, and no alternative to the proposed location and character of the Project that would lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. Where the Project is proposed to cross outstanding river segments, the evidence shows that no reasonable

¹⁷⁵ Goodwin Direct at 26-28.

¹⁷⁶ Goodwin Direct at 26-28.

alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

For all these reasons, the DEP should grant CMP's applications for Site Law and NRPA permits for the NECEC Project, and adopt CMP's proposed findings of fact, attached hereto as Attachment A.

II. POST-HEARING BRIEF RELEVANT TO LUPC HEARING TOPICS

A. BACKGROUND

The NECEC Project is a High Voltage Direct Current (HVDC) transmission line and related facilities capable of delivering up to 1,200 MW of Clean Energy Generation¹⁷⁷ starting at the Canadian Border in Beattie Twp. and connecting to the New England Control Area¹⁷⁸ through the new Merrill Road Converter Station and existing Larrabee Road Substation in Lewiston, Maine. It was proposed and selected in response to the Request for Proposals for Long-Term Contracts for Clean Energy Projects issued by the Massachusetts Department of Energy Resources and the Electric Distribution Companies of Massachusetts.¹⁷⁹

The Project is composed of five segments, two of which are in LUPC territory. Segment 1 includes 53.5 miles of new HVDC transmission line corridor in a 150'-wide cleared corridor within a 300'-wide right of way (ROW) supported by single pole self-weathering steel structures with an average height of 100'.¹⁸⁰ The new HVDC transmission line corridor will be located in Beattie Twp., Lowelltown Twp., Skinner Twp., Appleton Twp., T5 R7 BKP WKR, Hobbstown Twp., Bradstreet Twp., Parlin Pond Twp., Johnson Mountain Twp., West Forks Twp., Moxie Gore, and The Forks Plt.¹⁸¹ Segment 2 includes approximately 18.17 miles of HVDC

¹⁷⁷ The Massachusetts RFP defines “Clean Energy Generation” as “(i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Class I Renewable Portfolio Standard (“RPS”) eligible resources that are firm up with firm service hydroelectric generation; or (iii) new Class I RPS eligible resources.” Massachusetts RFP at A, available at <https://macleanenergy.files.wordpress.com/2017/03/83d-rfp-and-appendicesfinal.pdf>.

¹⁷⁸ The New England Control Area includes the transmission system administered by ISO-New England, the regional transmission organization, located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, but does not include the transmission system in northern Maine (i.e., Aroostook County and parts of Penobscot and Washington counties).

¹⁷⁹ Fitchburg Gas & Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, NSTAR Electric Company and Western Massachusetts Electric Company d/b/a Eversource (collectively, the Distribution Companies).

¹⁸⁰ Site Law Application Section 6.1.

¹⁸¹ Site Law Application Section 6.1.

transmission line to be co-located within an existing 115kV transmission line corridor in The Forks Plt., Bald Mountain Twp., and Concord Twp..¹⁸² The portion of the co-located HVDC transmission line, which runs along Moxie Pond and in the vicinity of the AT crossing, will be supported by single pole self-weathering steel structures ranging from 75' to 105' in height.¹⁸³

CMP filed with DEP and LUPC extensive application materials, including the Site Law and NRPA Applications themselves;¹⁸⁴ an amendment to each of those Applications; responses to multiple information requests, intervenor comments, and comments from public agencies; pre-filed direct, rebuttal, and supplemental testimony; and responses to post-hearing information requests from DEP. Because there were only a handful of topics that DEP and LUPC determined are “most significant and contentious” and thus warranted “an in-depth examination” at the hearing,¹⁸⁵ for the convenience of the LUPC, this initial post-hearing brief will focus only on those topics as they relate to LUPC’s certification criteria.

The LUPC determined that its portion of the public hearing would be “focused on its allowed use determination and specifically on the topic of whether the proposed Project is an allowed use within the P-RR subdistrict,”¹⁸⁶ and ordered that the hearing topics are limited to (1) Scenic Character and Existing Uses and (2) Alternatives Analysis.¹⁸⁷ LUPC’s Presiding Officer clarified that “[f]or consideration in certifying to the Department whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed, testimony provided under the Scenic Character and Existing Uses topic area must be relevant to

¹⁸² Site Law Application Section 6.1.

¹⁸³ Site Law Application Section 6.1.

¹⁸⁴ Site Law Application Section 25.0 addresses LUPC Certification; NRPA Application Section 2.4.1 addresses the LUPC site-specific alternative analysis.

¹⁸⁵ *See, e.g.*, DEP First Procedural Order ¶¶ 18-19; LUPC First Procedural Order ¶ B.6; DEP Second Procedural Order ¶ 7; LUPC Second Procedural Order ¶¶ III.A-C.

¹⁸⁶ LUPC First Procedural Order ¶ 6.

¹⁸⁷ LUPC Second Procedural Order ¶ III.C.

the Commission’s evaluation of whether the ‘use can be buffered from those other uses and resources within the subdistrict with which it is incompatible,’ including buffering for visual impacts and recreational and navigational uses within a P-RR subdistrict. Similarly, testimony provided under the Alternatives Analysis topic area must be relevant to the Commission’s evaluation of whether the applicant has shown by substantial evidence that ‘there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant’ for portions of the Project within a P-RR subdistrict.”¹⁸⁸

B. LUPC REVIEW CRITERIA RELEVANT TO THE HEARING TOPICS

Because the Project crosses the P-RR subdistrict in three locations (near Beattie Pond in Beattie and Lowelltown Twps., beneath the Kennebec River in Moxie Gore, and at the AT in Bald Mountain Twp.), the LUPC must certify that the Project meets its special exception criteria,¹⁸⁹ as well as any land use standards not otherwise considered by the DEP (i.e., vehicular access, lighting, subdivision review, activities in flood prone areas, dimensional requirements, vegetation clearing, and signs).¹⁹⁰

Utility facilities are “expressly allowed” uses in the P-RR subdistrict, by special exception, provided that they meet the following special exception criteria: (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the LUPC may reasonably impose.¹⁹¹ In determining whether an alternative is “reasonably available,” LUPC

¹⁸⁸ LUPC Third Procedural Order ¶ I.A.

¹⁸⁹ CMP reiterates and preserves its argument that the LUPC cannot deny certification based on one or both of the special exception criteria, given that the DEP reviews the same criteria (buffering and alternatives) in issuing Site Law and NRPA permits.

¹⁹⁰ 38 M.R.S. § 489-A-1(2)(D); *see also* Site Law Application § 25.4.

¹⁹¹ LUPC Ch. 10.23(I)(3)(d)(8).

considers the reasonableness of alternatives in terms of their relative benefits, including cost.¹⁹² In other words, the LUPC considers reasonableness not just in terms of what is available via acquisition of property rights, but also in terms of whether an available alternative is “reasonable” or “suitable” when comparing its impacts to the proposed alternative’s impacts, or lack thereof.

For example, in a recent utility permit proceeding concerning a 500-foot underwater cable to the applicants’ island lot,¹⁹³ LUPC considered the reasonableness of utilizing that alternative in making its determination of whether an alternative is “reasonably available.” It noted at the outset, in its “Alternative Analysis,” the following:

The only alternative to installing a submerged utility cable would be to install the cable overhead. This alternative would be considerably higher in cost of installation and would result in an unfavorable visual impact on the area. In addition, the 500 feet of cable would need to be supported approximately mid-length, necessitating installation of a utility pole in the lake bottom. Further, the overhead transmission cable would represent a hazard to aircraft that utilize an existing sea-plane base located in Spencer Cove.¹⁹⁴

It then outlined the special exception review criteria,¹⁹⁵ and made the following finding specific to the alternative site criterion:

Specifically, a potential overland route to bring electric power to the island is not a reasonable alternative for the applicants given the cost and the adverse visual and safety impact to the surrounding area.¹⁹⁶

In short, LUPC considers the reasonableness of utilizing alternatives in terms of the costs and benefits of the proposed alternative.

¹⁹² See also SLC-5 Certification ¶10 (finding that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant precisely because none of the alternatives provided any benefit above the chosen site) available at: http://www.maine.gov/dacf/lupc/projects/site_law_certification/slc5.pdf.

¹⁹³ Amendment A to ULP 178, available at: <http://www.maine.gov/dacf/lupc/signedpermits/ulp178a.pdf>.

¹⁹⁴ *Id.* at Permit ¶ 12.

¹⁹⁵ *Id.* at Permit ¶ 15.

¹⁹⁶ *Id.* at Permit Conclusions ¶ 2.

C. DISCUSSION

For the reasons stated below and in the Applications and the additional materials in the record, the proposed Project satisfies all applicable special exception review criteria, and specifically with respect to the two hearing topics established by the LUPC.

1. Scenic Character and Existing Uses

The Project will be sufficiently buffered from other uses and resources, and meets the LUPC's special exception criteria for the P-RR subdistrict. CMP made great effort to fit the Project harmoniously into the existing natural environment by siting it such that the Project's route and design avoids or minimizes potential visual and other environmental impacts on scenic and other natural resources.¹⁹⁷ CMP also employed numerous mitigation measures to avoid unreasonable adverse effects on existing uses and scenic character, including siting the Project to maximize the use of natural buffers such as topography and intervening vegetation, siting more than 70% of the Project in existing transmission line corridors, locating Segment 1 of the transmission line in private timberland that continues to be actively harvested, proposing visual buffer strips and tapered vegetation in certain locations,¹⁹⁸ proposing self-weathering steel monopole structures to reduce visibility and enhance visual compatibility, and reducing structure height near Beattie pond. Indeed, the Visual Impact Assessment prepared by Terrence J. DeWan & Associates concluded that the Project will not unreasonably interfere with existing scenic and aesthetic uses and will not have an unreasonable adverse effect on the scenic character of the surrounding area. This conclusion is based on the explicit and specific regulatory requirements

¹⁹⁷ Exhibit CMP-5-B; *see also* Hearing Day 3 Transcript at 191:1-12 (Christopher).

¹⁹⁸ Mirabile Direct at 5-7, 11; Goodwin Direct at 5; Segal Direct at 22-27; Segal Rebuttal at 3; *see also* Site Law Application Exhibit 10-1: New England Clean Energy Connect Plan for Protection of Sensitive Natural Resources During Initial Vegetation Clearing (VCP) and Exhibit 10-2: New England Clean Energy Connect Post-Construction Vegetation Management Plan (VMP) (updated January 30, 2019).

of the Department's Chapters 315 and 375.14.¹⁹⁹ The visual impact statements made by the intervenors that oppose the Project, conversely, are entirely subjective.²⁰⁰

Specifically with respect to LUPC, the Project will be adequately buffered from other uses and resources within the P-RR subdistrict.²⁰¹ First, with respect to Beattie Pond, while one transmission line structure would have been visible from Beattie Pond as the Project was originally proposed, CMP submitted an application modification to the DEP and LUPC on January 25, 2019 that, at the request of LUPC staff, reduced the height of this structure to further buffer the Project from Beattie Pond.²⁰² The self-weathering steel of the structures near Beattie Pond will minimize contrast with the surrounding wooded hillside, and none of the structures will be seen against the sky.²⁰³ The redesigned structures will be considerably less prominent, if noticeable at all, to recreational users on the pond.²⁰⁴

Additionally, the NECEC corridor creates no new access to Beattie Pond, and current landowner policy does not allow public vehicle access beyond a point 0.6 mile from the pond, making the Project compatible with existing uses of the pond.²⁰⁵ The Project will be located at a distance greater than the existing developed road access, will not include permanent improvements that promote more intensive use or development of the pond, and will not be visible from the pond. Therefore, there will be no permanent improvements in access that could

¹⁹⁹ Site Law Application § 6.0; Hearing Day 1 Transcript at 298:2-299:6 (DeWan); Segal Direct; Segal Rebuttal; DeWan Supplemental; Exhibit CMP-5-B; Exhibit CMP-5-C; Exhibit CMP-5.1-A; Exhibit CMP-6.2-A.

²⁰⁰ Hearing Day 3 Transcript at 91:18-92:25 (Merchant).

²⁰¹ Segal Rebuttal at 24; Group 4 Warren Direct at 4-5.

²⁰² Mirabile Direct at 7-8; Segal Direct at 32; Goodwin Direct at 6, 9; Exhibit CMP-2-E.

²⁰³ Segal Direct at 26, 32.

²⁰⁴ Segal Direct at 26, 32.

²⁰⁵ Dwyer Direct at 3-4.

lead to more intensive use or development of Beattie Pond, which is the basis for the subdistrict designation.

Second, with respect to the upper Kennebec River, CMP's underground crossing of the upper Kennebec River, proposed in an amendment to the Application on October 19, 2018, will be undetectable to the Kennebec river-running community, and CMP will maintain forested buffers on both sides of the river such that there are no views of transmission line structures or overhead conductors, or of either termination station, from the P-RR subdistrict.²⁰⁶

Third, with respect to the Appalachian Trail (AT), the Project crosses the P-RR subdistrict in two of three AT crossing locations²⁰⁷ within an existing CMP corridor containing a 115kV transmission line.²⁰⁸ The location of the trail throughout this 3,500-foot section of existing transmission line corridor prevented CMP from avoiding impacts within the subdistrict.²⁰⁹ However, the use of the AT in these locations is not incompatible with

²⁰⁶ Mirabile Direct at 8; Goodwin Direct at 6, 9; Segal Direct at 32; Dwyer Direct at 4; Segal Rebuttal at 10-11; Exhibit CMP-2-F.

²⁰⁷ Exhibit Applicant-Cross-1; CMP also proposed vegetative buffers along the east and west sides of Troutdale Road where the new corridor crosses the road, which is co-located with the AT in this area but is not located in the P-RR. Mirabile Direct at 8; Segal Direct at 33. Even if the portion of the AT that crosses the CMP corridor along Troutdale Road were within the P-RR subdistrict, the proposed buffering adequately buffers the Project from uses along that road, and the transmission line is not incompatible with the AT in that location, as discussed below.

²⁰⁸ Site Law Application § 25.3.1.3; Berube Direct at 15-16; Goodwin Direct at 9-10; Segal Direct at 32.

²⁰⁹ Segal Direct at 33. As stated in its May 7, 2019 letter to Mr. Beyer, CMP is willing to relocate the AT so that it crosses the CMP transmission line corridor only once in the vicinity of Troutdale Road, eliminating two existing AT crossings, so there would be only a single P-RR subdistrict crossing. Before CMP could commit to such a condition, though, the National Park Service (NPS) would need to agree to it, and CMP would need to acquire, on behalf of NPS, the necessary property interests in the new location. CMP has secured rights to a parcel that would allow a reroute that eliminates two of the transmission line crossings. However, because this reroute would pass by one or two camps, the Maine Appalachian Trail Club (MATC) prefers the existing crossings of the transmission line corridor. CMP will continue to explore all options to find a new route that is satisfactory to MATC and NPS. In the interim, CMP is working with MATC on an interim relocation that will eliminate two crossings but will approach the edge of the new NECEC corridor. Provided this interim alignment is ultimately acceptable to MATC and

transmission lines,²¹⁰ as evidenced by both the existing use of the corridor by AT hikers and the easement from CMP allowing such use, by which the National Park Service (NPS) agreed to the construction by CMP of additional above ground electric transmission lines.²¹¹

With respect to existing use of the AT by hikers, the co-location of the new transmission line within a CMP-owned ROW crossed by the AT is consistent with hikers' expectation of crossing a transmission line corridor in the associated P-RR subdistrict.²¹² Indeed, "[t]he Appalachian Trail has crossed the existing transmission line since its construction in the 1950s, and the transmission line is a landmark noted in Trail Guides."²¹³ The existing transmission line predates the AT at this location, and the earlier AT route on the south end of Moxie Pond followed Troutdale Road for 2.25 miles.²¹⁴ Accordingly, the historic setting of the AT at this location is not one of secluded wilderness or broad vistas; 12 existing transmission structures are visible from the first crossing, seven are visible from the second crossing, and 15 are visible from the third crossing.²¹⁵ The Project will add additional transmission structures, but the character of the AT in this location will not change.²¹⁶

With respect to the easement from CMP allowing such use and by which NPS agreed to the construction by CMP of additional above ground electric transmission lines, when NPS

NPS, CMP will pay for the cost of the realignment, including any appropriate buffer plantings. CMP's long-term goal is to secure a permanent re-route acceptable to both MATC and NPS, and CMP is willing to commit the necessary funds to this end. See May 7, 2019 letter from M. Manahan to J. Beyer RE: NECEC – Preservation of Historic Sites.

²¹⁰ Goodwin Rebuttal at 2; Freye Rebuttal at 2-3; Segal Rebuttal at 7-9.

²¹¹ Exhibit CMP-9-B.

²¹² Goodwin Rebuttal at 20; Segal Rebuttal at 8-9.

²¹³ October 2018 SEARCH submission to MHPC.

²¹⁴ *Id.*

²¹⁵ *Id.*

²¹⁶ Additionally, as SEARCH noted in its October 2018 submission to MHPC, "[t]he setting in this area would be classified as developed, with the trail paralleling a road for part of the section and several houses in the vicinity."

acquired by easement the portions of the trail that cross CMP's existing transmission line ROW, it anticipated and agreed to the construction of additional above ground electric transmission lines, and related clearing, in that CMP-owned ROW.²¹⁷ The agreement establishes that the addition of overhead transmission lines at the AT in that location would not unreasonably interfere with uses of that trail.

Furthermore, CMP proposed mitigation to adequately buffer the Project, including vegetative buffers along the east and west sides of Troutdale Road where the new corridor crosses the road, which is co-located with the AT in this area, and is able to buffer the Project at the other crossings with similar plantings.²¹⁸ Moreover, co-location minimizes visual impact, as alternative alignments of the Project would result in crossings of the AT in one or more locations where there are no existing transmission line corridors.²¹⁹ Nor does the Project create interference with the recreational and navigational uses of the surrounding area.²²⁰ Indeed, CMP's existing transmission line corridors are widely utilized year-round for private and commercial recreational activities including hunting, fishing, foraging, hiking (including on the AT within existing corridor), biking, skiing, snowmobiling, birding, and boating.²²¹

2. Alternatives Analysis

CMP conducted a thorough analysis of alternatives to the Project, as set forth in its Applications, pre-filed testimony, and live testimony at the hearing. This analysis demonstrates that there is no alternative site to the Project's three P-RR subdistrict crossings that is both suitable to the proposed use and reasonably available to CMP.

²¹⁷ Exhibit CMP-9-B; Freye Rebuttal at 2-3.

²¹⁸ Mirabile Direct at 8; Segal Direct at 33.

²¹⁹ Goodwin Direct at 10; Segal Direct at 33.

²²⁰ Dwyer Rebuttal at 2; Group 4 Christopher Direct at 3; Group 4 Warren Direct at 3-4.

²²¹ CMP September 4, 2018 AIR Response; Dwyer Rebuttal at 2; Tribbet Rebuttal at 7; Group 4 Warren Direct at 3-4.

a) Alternative Route Analysis

The Applications describe the lack of any alternative sites pursuant to the LUPC criteria,²²² and also describe the process by which alternatives were developed and evaluated to identify a technically and economically sound Project route that is both suitable to the proposed use and reasonably available to the applicant, including undergrounding the Project at its upper Kennebec River crossing.²²³

The alternative route analysis that CMP performed for the Project considered the entirety of the new HVDC line, which will run from the Canadian border to an interconnection point at Larrabee Road Substation in Lewiston (Segments 1, 2, and 3), and associated substation upgrades.²²⁴ While the three routes that CMP analyzed would meet the Project's purpose of delivering clean energy generation from Québec to New England, two of the routes would result in more environmental impact than the proposed route for the NECEC corridor, and are not suitable to the proposed use and reasonably available to CMP.²²⁵ CMP also considered the no-action alternative (i.e., not constructing the NECEC Project), but that alternative would not meet the Project's purpose and need of allowing CMP to deliver 1,200 MW of clean energy generation from Quebec to New England at the lowest cost to ratepayers.²²⁶

CMP specifically considered whether there are any alternative sites to the crossings of the Project in the P-RR subdistrict that are both suitable to the proposed use and reasonably available

²²² LUPC Ch. 10.23(I)(3)(d)(8).

²²³ NRPA Application § 2.0; NRPA Application Amendment for the Kennebec River Horizontal Directional Drill § 2.0; Site Law Application § 25.3.1; Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1.

²²⁴ Mirabile Direct at 17; Berube Direct at 4-5; *see also* NRPA Application § 2.3.

²²⁵ NRPA Application §§ 2.3.2.2 and 2.3.2.3; Mirabile Direct at 18-21; Berube Direct at 6-9.

²²⁶ NRPA Application § 2.3.1; Berube Direct at 4.

to CMP.²²⁷ At Beattie Pond, CMP attempted to negotiate an alternative alignment south of the Beattie Pond P-RR subdistrict through Merrill Strip Twp., but the landowner required compensation of approximately 50 times fair market value for that property, so that alternative is not reasonably available to CMP.²²⁸ Re-routing north of the pond to avoid the P-RR subdistrict would result in approximately two miles of additional corridor and associated vegetation clearing, and would lead to potentially higher visibility from the pond, due to the higher elevations associated with Caswell Mountain. Accordingly, the environmental and aesthetic impacts of either alternative site would be greater, particularly given the lack of adverse impact on Beattie Pond in the currently proposed Project location. As noted above, CMP has reduced the structure height at Beattie Pond such that the redesigned structure will be considerably less prominent, if noticeable at all, to recreational users on the pond and no Project structure will be visible against the sky.²²⁹ The NECEC corridor does not create new access to Beattie Pond, and the Project will be located at a distance greater than the existing developed road access.²³⁰ Alternative sites do not present the same benefits, so are neither suitable nor reasonably available.

At the upper Kennebec River crossing, the proposed transmission line within the horizontal directional drill (HDD) crossing is entirely underground as it passes below the P-RR subdistrict, and the termination stations on either side of the river are located outside the P-RR

²²⁷ NRPA Application § 2.0; NRPA Application Amendment for the Kennebec River Horizontal Directional Drill § 2.0; Site Law Application § 25.3.1; Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1; Berube Direct at 13-16; Freye Rebuttal at 2-6.

²²⁸ Site Law Application § 25.3.1.1; Mirabile Direct at 21; Berube Direct at 13-16; Goodwin Direct at 8-9.

²²⁹ Mirabile Direct at 7-8; Segal Direct at 32; Goodwin Direct at 6, 9; Exhibit CMP-2-E.

²³⁰ Dwyer Direct at 3-4.

subdistrict.²³¹ Thus, because there will be no impact within the P-RR subdistrict in this location, there is no alternative that is suitable to the proposed use and reasonably available to CMP; any alternative would have greater adverse impacts, making it unreasonable compared to the proposed crossing.

At the AT, the Project crosses the P-RR subdistrict in two locations²³² within an existing CMP corridor containing a 115kV transmission line.²³³ Given the co-location of the proposed Project, there is no alternative site both suitable to the proposed use and reasonably available to CMP. A crossing of the AT cannot be avoided, and co-location of new transmission line within a CMP-owned corridor crossed by the AT is consistent with the existing use and with hikers' expectations of crossing a transmission line corridor in the associated P-RR subdistrict.²³⁴ As noted above, "[t]he Appalachian Trail has crossed the existing transmission line since its construction in the 1950s, and the transmission line is a landmark noted in Trail Guides."²³⁵ The existing transmission line predates the AT at this location, and the earlier AT route on the south end of Moxie Pond followed Troutdale Road for 2.25 miles. Accordingly, the historic setting of the AT at this location is not one of secluded wilderness or broad vistas, and the character of the AT in this location will not change.²³⁶ Further, when the NPS acquired by easement the portions of the trail that cross CMP's existing transmission line corridor, it anticipated and agreed to the

²³¹ NRPA Application Amendment for the Kennebec River Horizontal Directional Drill § 2.0; Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1; Mirabile Direct at 22-23; Berube Direct at 14-15.

²³² Exhibit Applicant-Cross-1.

²³³ Site Law Application § 25.3.1.3; Mirabile Direct at 22; Berube Direct at 15-16; Freye Rebuttal at 4.

²³⁴ Goodwin Rebuttal at 20; Segal Rebuttal at 8-9.

²³⁵ October 2018 SEARCH submission to MHPC.

²³⁶ Additionally, as SEARCH noted in its October 2018 submission to MHPC, "[t]he setting in this area would be classified as developed, with the trail paralleling a road for part of the section and several houses in the vicinity."

construction of additional above ground electric transmission lines, and related clearing, in that CMP-owned corridor.²³⁷ This agreement establishes that the addition of overhead transmission lines at the AT in that location would not unreasonably interfere with uses of that trail. An AT crossing of the Project outside of the existing corridor would not be reasonably available, given the current use of CMP's property where the AT would cross the Project within the P-RR subdistrict.

b) Undergrounding Analysis

In addition to its analysis of alternate routes for the Project, CMP also analyzed whether undergrounding certain portions or the entirety of the Project is a less environmentally damaging practicable alternative to the proposed overhead HVDC transmission line, and whether such burial in P-RR subdistricts is suitable to the proposed use and reasonably available to CMP.²³⁸ The evidence shows that undergrounding is not a viable alternative under any applicable review standard. Indeed, it was so obvious that undergrounding would not meet the Project purpose or otherwise be suitable or reasonably available, that CMP did not initially include it as an alternative in the application materials filed with DEP and LUPC.²³⁹ In other words, had additional portions of the Project been buried, the Project would not have moved forward.²⁴⁰ Nevertheless, CMP conducted a thorough underground alternative analysis in response to the testimony of witnesses in Intervenor Groups 2, 6, and 8.²⁴¹

As described in the pre-filed and live testimony of several CMP and intervenor witnesses, the extremely high cost, logistical difficulties, visual impact, negligible environmental benefits,

²³⁷ Exhibit CMP-9-B; Freye Rebuttal at 2-3.

²³⁸ Bardwell Rebuttal at 2-3; Bardwell Supplemental at 2-13.

²³⁹ Bardwell Rebuttal at 3; Hearing Day 6 Transcript at 347:20-348:23 (Tribbet).

²⁴⁰ Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

²⁴¹ See Bardwell Rebuttal; Tribbet Rebuttal; Bardwell Supplemental.

increased risk and adverse impacts during construction, and potential adverse impacts during operation render any additional undergrounding not suitable or reasonably available.²⁴² Indeed, numerous intervenor witnesses testified that undergrounding is not a preferred alternative due to their concerns with the environmental and visual impacts of undergrounding.²⁴³ Crucially, burying any additional portion of the NECEC HVDC line underground in the 54-mile new corridor of Segment 1 is not suitable or reasonably available because the costs and logistics of doing so would defeat the purpose of the Project.²⁴⁴ In other words, the alternative of burying the transmission line is not suitable or reasonably available because it would result in the NECEC not moving forward.²⁴⁵

Putting cost aside, the underground proposals offered by the intervenors in this proceeding are neither suitable nor reasonably available. For example, Group 4 witness Publicover alleges that CMP could bury the NECEC transmission line along the edge of the Spencer Road, though it is unclear how this proposal would avoid the three P-RR subdistricts.²⁴⁶

²⁴² Bardwell Rebuttal at 3-16, 23-27; Tribbet Rebuttal at 5; Freye Rebuttal at 5-6; Bardwell Supplemental at 2-8; Hearing Day 1 Transcript at 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 3 Transcript at 192:12-14 (Warren); Hearing Day 6 Transcript at 341:5-344:22, 431:7-432:4 (Bardwell); Hearing Day 6 Transcript at 346:23-347:1 (Tribbet); Hearing Day 6 Transcript at 432:5-12 (Achorn); Hearing Day 6 Transcript at 445:7-447:12 (Paquette); Exhibits CMP-11-A through CMP-11.1-G.

²⁴³ Publicover Supplemental at 2-3; Hearing Day 5 Transcript at 94:13-95:14, 97:16-98:15 (Cutko); Hearing Day 6 Transcript at 61:4-25, 78:23 (Publicover); Hearing Day 6 Transcript at 72:12-14 (Reardon). *See also* Bardwell Rebuttal at 21-27.

²⁴⁴ Dickinson Rebuttal at 2-3, 9-10, 13; Tribbet Rebuttal at 5; Tribbet Supplemental at 4-6; Hearing Day 1 Transcript at 285:13-287:3 (Dickinson).

²⁴⁵ Dickinson Rebuttal at 13; Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

²⁴⁶ Publicover Direct at 19-20. Group 4 never stated how the Project would get to Spencer Road. If it followed Spencer Road from Route 201 to Québec, the Beattie Pond P-RR subdistrict may be avoided, though a portion of the road appears within the P-RR subdistrict at Beattie Pond. However, simply following Spencer Road would not eliminate the Kennebec River P-RR zone or the AT P-RR zone. The only way to avoid all three P-RR zones would be to locate the Project in Route 201 starting in Moscow and then in Spencer Road, which is not possible given the Route 201 restrictions discussed below.

Furthermore Spencer Road is not a public road, and its private owners specifically did not want a transmission line located along the Spencer Road because such a transmission line, whether overhead or underground, would limit the landowner's ability to ditch, blast, create, and use landings, operate heavy equipment, or relocate the road.²⁴⁷

Nor is there any other corridor available that connects to Québec in the upper Kennebec River area, other than the proposed route.²⁴⁸ While there is a distribution line from Harris Dam to the village of Jackman (the Jackman Tie Line or JTL), the JTL is entirely roadside between West Forks Plt and Jackman, and does not connect to Québec.²⁴⁹ Contrary to Intervenor Group 2 witness Caruso,²⁵⁰ the JTL instead terminates in Jackman, about 16 miles from the Canadian border and would require new corridor through the towns of Jackman and Moose River as well as additional corridor along Route 201, a state and federally designated scenic byway, for the entire distance from Jackman to West Forks Plantation.²⁵¹ In addition, the JTL corridor between Harris Dam and Route 201 would need to be expanded through two conservation easements and across the State-owned Cold Stream Forest.²⁵² Burying the transmission line along Route 201 is further unavailable due to lack of sufficient space within the highway limits,²⁵³ safety constraints with co-locating with the existing overhead distribution line,²⁵⁴ and the restrictions placed on

²⁴⁷ Freye Rebuttal at 5; Freye Supplemental at 5-6.

²⁴⁸ Freye Supplemental at 2-4.

²⁴⁹ Freye Rebuttal at 6.

²⁵⁰ E. Caruso Direct at 6.

²⁵¹ Freye Rebuttal at 7; Bardwell Supplemental at 12.

²⁵² Freye Rebuttal at 7.

²⁵³ Freye Supplemental at 4; Hearing Day 6 Transcript at 487:1-19 (Bardwell).

²⁵⁴ Freye Supplemental at 5.

such burial and the installation of splicing vaults by the MDOT,²⁵⁵ in addition to the cost, safety, and environmental issues of doing so.²⁵⁶

CMP did consider, and ultimately amended its Applications to include, an HDD underground routing of the Project under the upper Kennebec River. As explained in the amendments to the Application and at the hearing, undergrounding at the upper Kennebec River is suitable and reasonably available to CMP.²⁵⁷

Undergrounding the line in the P-RR at Beattie Pond would consist of installing termination stations just outside of the P-RR subdistrict and connecting them with approximately 1.2 miles of direct buried cables, including three jointing locations and crossings of two wetlands by approximately 1,000-foot long HDD installations.²⁵⁸ Underground construction would require clearing and continuous surface disruption in the P-RR subdistrict and would cost approximately \$15.3 million, \$13.2 million of which would be an incremental additional cost to the Project when removing associated overhead transmission line costs.²⁵⁹ In addition to this additional cost, this short underground cable segment of the NECEC HVDC transmission line at Beattie Pond would require construction of additional access points and would create operational problems for CMP including limited winter accessibility and protracted service restoration timelines.²⁶⁰ Undergrounding the transmission line in this area would not be suitable to the proposed use, and is not reasonably available, especially given that the impact from the shortened structure previously visible from Beattie Pond will be so minor.

²⁵⁵ Bardwell Rebuttal at 10; Bardwell Supplemental at 12.

²⁵⁶ Freye Rebuttal at 7-8.

²⁵⁷ Site Law Application Amendment Section 25.3.1.1; Day 2 Transcript 125:1-18 (Goodwin), 130:5-22 (Berube), 136:6-139:8 (Dickinson).

²⁵⁸ Bardwell Rebuttal at 19.

²⁵⁹ Bardwell Rebuttal at 19; Exhibit CMP-11-F.

²⁶⁰ Bardwell Rebuttal at 19-20.

Undergrounding also is not suitable to the proposed use, and is not reasonably available to CMP, at the AT crossings within the P-RR subdistrict. An underground alternative would require construction of termination stations within sight of the trail, along with a trenchless crossing of the AT, approximately 3,500 feet long, at a cost of approximately \$28.9 million, \$28 million of which would be an incremental additional cost to the Project when removing associated overhead transmission line costs.²⁶¹ Furthermore, construction activities would last approximately 10 months and would require HDD rigs powered by an external diesel-powered hydraulic power plant that generate noise of approximately 110 decibels continuously while in operation.²⁶² Additionally, the easement allowing the AT in CMP's corridor includes provisions for additional overhead lines, but does not contemplate underground installations, so CMP would need to seek such rights from the NPS to allow underground installation.²⁶³ Given the presence of the existing transmission line corridor, the very high cost of undergrounding in this location, and the fact that the underground alternative would have additional environmental and public impacts, undergrounding is not suitable to the proposed use and is not reasonably available to the applicant within this P-RR subdistrict.

D. CONCLUSION

The voluminous evidence in this matter, including the Site Law and NRPA Applications; an amendment to each of those Applications; responses to multiple information requests, intervenor comments, and comments from public agencies; pre-filed direct, rebuttal, and supplemental testimony; and responses to post-hearing information requests by the DEP clearly demonstrates that there is no alternative site which is both suitable to the proposed use and

²⁶¹ Bardwell Rebuttal at 17-18; Exhibit CMP-11-E.

²⁶² Bardwell Rebuttal at 18.

²⁶³ Bardwell Rebuttal at 18; Freye Rebuttal at 2-3; Hearing Day 6 Transcript at 396:10-19, 429:14-15 (Freye).

reasonably available to CMP, and that the use can be buffered from those other uses and resources within the P-RR subdistricts with which it is incompatible.

For all these reasons, the LUPC should certify to the DEP that the NECEC Project is an allowed use in the P-RR subdistrict, and adopt CMP's proposed findings of fact, attached hereto as Attachment B.

Dated this 14th day of June, 2019.



Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100
*Attorneys for Applicant Central Maine
Power Company*

A. ATTACHMENT A: DEP PROPOSED FINDINGS OF FACT

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)	
NEW ENGLAND CLEAN ENERGY CONNECT)	
#L-27625-26-A-N/#L-27625-TG-B-N/	)	FINDINGS OF FACT
#L-27625-2C-C-N/#L-27625-VP-D-N/)	
#L-27625-IW-E-N (Approval))	

Pursuant to the provisions of 38 M.R.S. 480-A et seq. and Sections 481 et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of CENTRAL MAINE POWER COMPANY with the supportive data, agency review comments, comments from members of the public, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

Central Maine Power Company's (CMP's) proposed New England Clean Energy Connect (NECEC) Project (NECEC Project or the Project) is a High Voltage Direct Current (HVDC) transmission line and related facilities capable of delivering up to 1,200 MW of electric generation from the Canadian border to the New England Control Area in response to the Request for Proposals for Long-Term Contracts for Clean Energy Projects dated March 31, 2017 and issued by the Massachusetts Department of Energy Resources and the Electric Distribution Companies of Massachusetts. The Maine Public Utilities Commission, in Docket No. 2017-00232, issued a Certificate of Public Convenience and Necessity for the Project on May 3, 2019.

The Project is composed of the following components:

Segments 1, 2, & 3 – HVDC Components and Associated Upgrades

- New 145.3-mile +/-320kV HVDC transmission line from the Canadian border to a new converter station located north of Merrill Road in Lewiston;
- New 1.2-mile 345kV to +/-320kV transmission line from the new Merrill Road Converter Station to the existing Larrabee Road Substation;
- Partial rebuild of 0.8 mile of 34.5kV Section 72 AC transmission line outside of the Larrabee Road Substation to make room in the corridor for the 1.2-mile 345kV transmission line;
- New 345kV to +/-320kV HVDC 1200MW Merrill Road Converter Station;
- Addition of 345kV transmission line terminal at the existing Larrabee Road Substation;

Segment 4 – 345kV STATCOM Substation and 115kV Rebuilds

- New 345kV +/-200MVAR STATCOM Fickett Road Substation;
- New 0.3-mile 345kV AC transmission line from the existing Surowiec Substation in Pownal to a new substation on Fickett Road in Pownal;
- Rebuild 16.1 miles of 115kV Section 64 AC transmission line from the existing Larrabee Road Substation to the existing Surowiec Substation;

- Rebuild 9.3 miles of 115kV Section 62 AC transmission line from the existing Crowley’s Substation in Lewiston to the existing Surowiec Substation;

Segment 5 – New 345kV Transmission Line and Associated Rebuilds

- New 26.5-mile 345kV AC transmission line from the existing Coopers Mills Substation in Windsor to the existing Maine Yankee Substation in Wiscasset;
- Partial rebuild of 0.3 mile of 345kV Section 3025 transmission line between Larrabee Road Substation and Coopers Mills Substation;
- Partial rebuild of 0.8 mile of 345kV Section 392 transmission line between Maine Yankee Substation and Coopers Mills Substation; and,
- Partial rebuild of 0.8 mile each of 115kV Section 60/88 transmission line outside of Coopers Mills Substation.

Additional equipment installation and upgrades will be required at Larrabee Road Substation (Lewiston), Crowley’s Substation (Lewiston), Surowiec Substation (Pownal), Raven Farm Substation (Cumberland), Coopers Mills Substation (Windsor), and Maine Yankee Substation (Wiscasset).

Transmission Lines: The Project’s transmission line components include two basic forms: building new lines and rebuilding existing lines.

New Transmission Lines. The Project will include a total of approximately 201.1 miles of new or rebuilt transmission lines constructed within approximately 193 miles of transmission line corridor. Of this, approximately 139.5 miles is existing corridor, and approximately 53.5 miles is new corridor. New transmission lines will be built in locations where existing transmission line infrastructure does not exist or was determined to be inadequate to meet the needs of the proposed electrical load. The new transmission line equipment includes approximately 145.3 miles of new HVDC line and 28 miles of new 345kV line. The transmission line components of the Project will consist of construction of approximately 28% in new corridor; 49% co-located in existing corridor requiring widening; and 23% in existing corridor with no widening required.

- A. Section 3006: +/- 320kV High Voltage Direct Current Transmission Line. A new 145.3-mile High Voltage Direct Current transmission line, “Section 3006,” located in Segments 1, 2, and 3 of the Project, will be constructed from Beattie Twp on the Canadian border to a new converter station north of Merrill Road in Lewiston. A portion of Section 3006, from Beattie Twp to The Forks Plt (approximately 53.5 miles), will be located within a 150-foot wide cleared transmission line corridor in a previously undeveloped, 300-foot-wide right-of-way (ROW). Section 3006 crosses one fragile mountain area (i.e. greater than 2,700 feet in elevation), Coburn Mountain, in Johnson Mountain Twp. From The Forks Plt to Wyman Hydropower Station in Moscow, Section 3006 will be located within an existing, partially developed 300-foot-wide ROW (Section 222, approximately 21.9 miles). From Wyman Hydropower Station in Moscow to a new DC to AC converter station in Lewiston, Section 3006 will be located within an existing, partially developed 400-foot-wide ROW (Sections 63, 278 and 200, approximately 71.5 miles). Section 3006 will rely on a mix of direct embed and self-supporting tubular steel single and double pole structures.
- B. Section 3007: 345kV Transmission Line. A new, approximately 1.2-mile 345kV transmission line, “Section 3007,” located in Segment 3 of the Project, within an existing,

partially developed 400-foot-wide transmission line corridor (Section 200), will be constructed to connect the Merrill Road Converter Station to the existing Larrabee Road Substation. The conductor will be supported primarily by wood frame structures in a two-pole H-frame configuration. Based on final detailed design requirements, CMP also may use steel, round wood, and/or laminated wood structures that may be direct embedded or self-supporting on foundations.

- C. Section 3005: 345kV Transmission Line. A new, approximately 0.3-mile 345kV transmission line, “Section 3005,” located in Segment 4 of the Project, partially within existing corridor, will be constructed to connect Fickett Road Substation to Surowiec Substation.
- D. Section 3027: 345kV Transmission Line. A new, approximately 26.5-mile 345kV transmission line, “Section 3027,” located in Segment 5 of the Project, will be constructed within the existing 270-foot-wide transmission line corridor from Coopers Mills Substation in Windsor to Maine Yankee Substation in Wiscasset.

Rebuilding Existing Transmission Lines. Rebuilding existing lines may be required to: (i) replace structures that are approaching the end of their service life, (ii) increase a line’s capacity, (iii) reconfigure to create additional space within an existing corridor, or (iv) limit electrical outages. In some cases, the rebuild will consist of relocating a transmission line section by rebuilding the line at a different location within the same existing corridor. In doing so, adequate space is then created for an additional transmission line in the same corridor without the need for corridor expansion. The relocated line may be rebuilt in a different configuration: for example, an H-frame double pole structure may be replaced with a single pole structure. All rebuilds will be operated at the same voltage as the original lines. Rebuilding or reconstruction of existing transmission lines within the same ROW is exempt from the Site Location of Development Act (Site Law) under 38 M.R.S. § 488. Approximately 0.8 mile of 34.5kV and 26.2 miles of 115kV and 1.1 miles of 345kV transmission line will be rebuilt as part of NECEC, all within existing corridors.

- A. Section 72: 34.5kV Transmission Line Rebuild. Approximately 0.8 mile of the existing 34.5kV “Section 72” transmission line, located in Segment 3 of the Project, will be rebuilt just outside of the existing Larrabee Road Substation. This rebuild will provide space in the corridor to allow for the new 345kV Section 3007 line between the Merrill Road Converter Station and Larrabee Road Substation. The conductor will be supported primarily by wood pole structures in a monopole configuration. This work is a rebuild only, and is therefore exempt from review under the Site Law.
- B. Section 62 and Section 64: 115 kV Transmission Line Rebuilds. Approximately 16.1 miles of the existing “Section 64” 115kV transmission line, located in Segment 4 of the Project, will be rebuilt between Larrabee Road Substation in Lewiston and Surowiec Substation in Pownal, and approximately 9.3 miles of the existing Section 62 115kV transmission line will be rebuilt between Crowley’s Substation in Lewiston and Surowiec Substation in Pownal. For both sections, the conductor will be supported primarily by wood framed structures in a single pole configuration. Based on the final detailed design requirements, CMP also may use steel, round wood, and/or laminated wood structures that may be direct embedded or self-supporting on foundations. As part of these rebuilds, the existing H-frame structures will be replaced with single pole structures to maximize

available space within the corridor. This work consists of rebuild only, and is therefore exempt from review under the Site Law.

- C. Section 3025: 345kV Transmission Line Rebuild. Approximately 0.3 mile of the existing “Section 3025” transmission line, located in Segment 5 of the Project, will be partially rebuilt, just outside of the existing Coopers Mills Substation. This rebuild will create space in the corridor for the new 345kV Section 3027 line between Maine Yankee Substation and Coopers Mills Substation. The conductor will be supported primary by H-frame wood pole structures. This work is a rebuild only, and is therefore exempt from review under the Site Law.
- D. Section 392: 345kV Transmission Line Rebuild. Approximately 0.8 mile of the existing “Section 392” transmission line located in Segment 5 of the Project will be partially rebuilt, just outside of the existing Coopers Mills Substation. This rebuild will create space in the corridor for the new 345kV Section 3027 line between Maine Yankee Substation and Coopers Mills Substation. The conductor will be supported primary by H-frame wood pole structures. This work is a rebuild only, and is therefore exempt from review under the Site Law.
- E. Section 60 and Section 88: 115kV Transmission Line Rebuilds. Approximately .8 mile of both the existing “Section 60” and “Section 88” transmission lines, located in Segment 5 of the Project, will be rebuilt (for a total of approximately 0.6 mile of rebuilt line), just outside of the existing Coopers Mills Substation. This rebuild will create space in the corridor for the new 345kV Section 3027 line between Maine Yankee Substation and Coopers Mills Substation. The conductor will be supported primary by wood pole structures in a monopole configuration. This work is a rebuild only, and is therefore exempt from review under the Site Law.

Substations: The substations of the NECEC are a combination of DC to AC conversion equipment; dynamic voltage support and reactive compensation equipment (STATCOM); switching and voltage step-down equipment arranged to interconnect the various transmission lines and reduce transmission voltage from 345kV to 115kV and/or from 115kV to 34.5kV; and termination stations on either side of the horizontal directional drilling (HDD) crossing beneath the Upper Kennebec River. The Project will involve eight substations, including the development of an AC to DC converter station and new STATCOM substation. Six substations will have equipment upgrades and installations that will not require yard expansion.

New Substation Facilities.

- A. Merrill Road Converter Station: 345kV to +/- 320kV HVDC 1200MW. A new DC to AC converter station is proposed north of Merrill Road in Lewiston, approximately 1.2 miles north of Larrabee Road Substation. The converter station will occupy approximately 7 acres on a site directly adjacent to an existing transmission line corridor.
- B. Fickett Road Substation: 345kV +/-200 MVAR STATCOM. The proposed Fickett Road Substation will be located directly across Allen Road from the existing Surowiec Substation and will occupy approximately 6.12 acres adjacent to Fickett Road in Pownal. Substation construction will include the installation of a 345kV +/-200MVAR STATCOM, the installation of three 345kV 100MVAR capacitor banks, and related bus

and site work. This new substation will be in a field currently occupied by existing 345kV and 115kV transmission lines.

- C. Two termination stations, the Moxie Gore Termination Station and the West Forks Termination Station, will be required on either side of the HDD crossing beneath the Upper Kennebec River. Each termination station will be passive and will contain no sound or light emitting equipment. Both sites will be nearly identical in size and structure (each designed with a minimal footprint of 135 feet by 135 feet), and will occupy approximately 0.77 acre and 0.72 acre, respectively.

Substation Modifications and Upgrades. Modifications are proposed to the existing Coopers Mills Substation in Windsor, Crowley's Substation in Lewiston, Larrabee Road Substation in Lewiston, Maine Yankee Substation in Wiscasset, Surowiec Substation in Pownal, and Raven Farm Substation in Cumberland.

- A. Coopers Mills Substation. Modifications to the Coopers Mills Substation will include 345kV bus work and circuit breaker installations to reposition the existing Larrabee Road Substation and Maine Yankee Substation 345kV transmission lines; the addition of a terminal for the new 345kV transmission line to Maine Yankee Substation; and the addition of a +/-200 MVAR STATCOM.
- B. Crowley's Substation. Modifications to the Crowley's Substation will include the replacement of a 115kV switch and bus wire.
- C. Larrabee Road Substation. Modifications to the Larrabee Road Substation will include a 345kV line terminal expansion, requiring the addition of a 345kV line termination structure, a 345kV circuit breaker, disconnect switches, instrument transformers, surge arrestors, bus work modifications, support structures, foundations, modifications to the existing protection and control system, and network upgrades. The existing T1 transformer will be replaced with three single-phase autotransformers with a total nameplate rating of 600MVA (from 448MVA) to mitigate thermal overloads under contingency conditions.
- D. Maine Yankee Substation. Modifications to the Maine Yankee Substation will include upgrading the existing 345kV bus arrangement to breaker and a half configuration through the addition of a 345kV three-circuit breaker bay, the relocation of the existing Coopers Mills 345kV line, the addition of a terminal for the new 345kV line from Coopers Mills Substation, and the repositioning of the existing 345kV line from Surowiec Substation.
- E. Surowiec Substation. Modifications to the Surowiec Substation will include the addition of a terminal for the new 345kV transmission line from the proposed Fickett Road Substation, the addition of a new dead-end A-frame structure, and the addition of a new 345kV circuit breaker.
- F. Raven Farm Substation. Modifications to the Raven Farm Substation will include the addition of a 345/115kV 448MVA autotransformer, associated bus work, and termination of the existing 115kV Sections 164, 164A, and 165 transmission lines at the substation.

2. TITLE, RIGHT OR INTEREST:

The applicant demonstrated title, right, or interest (TRI) in the properties proposed for development or use by submitting copies of deeds and easements, and, although not required, maps depicting and identifying the parcels on or over which the Project is proposed to be located and for which CMP has documented TRI. The Department finds that the documentation

submitted by the applicant is credible and demonstrates a right to the reasonable use of the properties, and adequate duration and terms for that use, for the proposed Project sufficient for the processing of this application.

The Department finds that the applicant demonstrated sufficient TRI in all of the properties that are proposed for development or use.

3. FINANCIAL CAPACITY:

The total cost of the Project is estimated to be \$950 million. The financial strength of CMP and its parent companies AVANGRID, Inc. (AVANGRID) and Iberdrola SA ensures that CMP will be able to attract the capital needed to finance the NECEC Project on financially viable and favorable terms. CMP Group, Inc. owns 100 percent of outstanding shares of CMP's common stock. CMP Group, Inc. is a wholly-owned subsidiary of Avangrid Networks, Inc., which in turn is a wholly-owned subsidiary of AVANGRID, a New York corporation listed on the New York Stock Exchange (NYSE: AGR). AVANGRID is a diversified energy and utility holding company with more than \$30 billion in assets and operations in more than 27 states across the United States.

CMP plans to finance the full cost of the NECEC Transmission Project. CMP will use short- and long-term debt financing including AVANGRID's significant existing credit facilities, and equity funding sourced through retained earnings and capital contributions from AVANGRID, if necessary, to finance the Project. The NECEC RFP response includes a Transmission Service Agreement (TSA) under which CMP's revenue requirements for the NECEC Project will be recovered from the Electric Distribution Companies of Massachusetts over the Power Purchase Agreement (PPA) term. With the firm revenue stream provided under the TSA, these sources of capital will be more than sufficient for CMP to finance the NECEC Project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with state environmental standards.

4. TECHNICAL ABILITY:

CMP provided resume information for key persons involved with the Project and a list of projects it has successfully constructed. CMP also retained the services of Burns & McDonnell, Boyle Associates, Terrence J. DeWan & Associates, Search, Inc., MCBER, Daymark, Power Engineers, TetraTech, Gilman and Briggs, and Dirigo Partners, Ltd., all of which are professional firms with expertise in various areas appropriate for this Project, to assist in the design and engineering of the Project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

5. NOISE:

Transmission Lines

For electric transmission lines, audible noise is relative to conductor (wire) size. CMP has selected conductor sizes that under ideal, dry conditions are designed to be nearly noise free; under adverse weather conditions (e.g., very high humidity and storm conditions) these same

conductors may emit a slight crackling sound. CMP modeled noise levels for conductors based on conservative assumptions and program defaults for conditions relating to the operation of existing transmission lines and to the operation of new 345kV and 320kV DC transmission lines. CMP used the Bonneville Power Administration (BPA) Corona and Field Effects Program to calculate the expected audible noise from the transmission lines. Based on the BPA model results for the Project, all sound levels produced by new and/or upgraded transmission lines associated with the NECEC Project are expected to remain within the levels allowed by the Department. CMP calculated that the transmission line conductor noise levels at the edges of the various ROWs, in fair weather conditions, will be well below the applicable noise standards, with the maximum typical levels at the edge of ROW expected to be approximately 28 dBA. This level is generally negligible, and the noise in general will attenuate quickly as distance from the edges of the ROW increases.

CMP's modeling results for foul weather/wet conditions show that additions and upgrades to the transmission lines associated with the Project would generally produce modest increases in noise levels at the edges of ROW. This noise would attenuate quickly as distance increases due to the frequency components of the noise generated (higher frequency noise dissipates quickly with distance). The maximum sound produced by a typical conductor at the closest edge of ROW, under foul weather/wet conditions, is expected to be approximately 41 dBA (comparable to a quiet office). The distances provided are from the center of the structures, or basically from the line itself, to the edge of the ROW. The distance from the line to the edge of the ROW will vary along the transmission line path. The worst-cast (closest) distance the line could be to the edge of the ROW is 75 feet, which corresponds to approximately 41 dBA sound level generated by the 345kV transmission line under foul weather conditions. However, while louder levels of audible noise could occur during foul weather, it would generally be masked by the background noise caused by rain and wind.

Substations.

Three existing substations associated with the Project – Maine Yankee Substation in Wiscasset, Surowiec Substation in Pownal, and Crowley's Substation in Lewiston – will be adding equipment such as transmission line terminal structures that are needed to permit the interconnection of the NECEC. These substations do not require noise studies, as the modifications would not install significant noise emitting equipment or increase overall noise levels in the surrounding area. Two proposed new substations – Merrill Road Converter Station in Lewiston and Fickett Road Substation in Pownal – will include the installation of noise producing equipment, and thus warrant noise studies. Three existing substations – Larrabee Road Substation in Lewiston, Coopers Mills Substation in Windsor, and Raven Farm Substation in Cumberland – are proposed to install new noise producing equipment and thus also warrant noise studies. There will be no sound-emitting equipment at the two termination stations at the HDD crossing of the Upper Kennebec River.

- A. Merrill Road Converter Station. CMP prepared a detailed noise study to assess the potential noise impacts associated with the proposed Merrill Road Converter Station. The study included identification of nearby protected locations, an ambient noise monitoring program to identify baseline conditions, detailed computer noise modeling, and compliance with DEP and local noise standards. The City of Lewiston noise ordinance limits noise at residential properties to 50 dBA during the day and night. The DEP limits sound at protected areas to 50 dBA at night, with a 5 dBA penalty when tonal sounds are present. The City of Lewiston regulation will be followed at all points along

the property lines. The ambient noise monitoring program, conducted continuously over three days and two nights, revealed that the daytime hourly average sound levels were greater than 45 dBA, and the nighttime hourly average sound level was greater than 35 dBA. As such, the areas surrounding the converter station would not be defined as quiet areas under MDEP's noise standard. The Project noise is limited to 50 dBA, per the City of Lewiston noise ordinance, along the adjacent property lines. The noise modeling study revealed that by installing equipment capable of meeting the modeled sound levels, no additional noise control measures would be required to achieve compliance with the Lewiston noise standards for the modeled operating conditions. Accordingly, construction and operation of the proposed Merrill Road Converter Station will comply with the applicable City of Lewiston noise standards at all residential property lines.

- B. Fickett Road Substation. CMP prepared a detailed noise study to assess the potential noise impacts associated with operation of the Fickett Road Substation with the new STATCOM equipment installed. The study included identification of nearby protected locations, an ambient noise monitoring program to identify baseline conditions, detailed computer noise modeling, identification of required noise mitigation measures, and compliance with DEP noise standards. The new substation equipment's 40 dBA limitation at protected locations where a pure tone could be measured is consistent with DEP limits. The ambient noise monitoring program, conducted continuously over three days and two nights, revealed that the daytime hourly average sound levels were below 45 dBA. As such, the areas surrounding the substation are considered protected quiet areas. Project noise is limited to 45 dBA along the adjacent property lines, inclusive of a 5 dBA penalty added to measured levels when a tone is present. Properties near the cooling fans would not experience tonal noise and would have a limit of 45 dBA with no inclusion of a penalty for measured levels. The noise modeling study revealed that the new equipment would require no additional noise control measures to achieve compliance with the MDEP standards for the modeled operating conditions. The current substation operations are below the MDEP sound level requirements. Accordingly, construction and operation of the new Fickett Road Substation will comply with the applicable DEP noise standards.
- C. Larrabee Road Substation. CMP prepared a detailed noise study to assess the potential noise impacts associated with operation of the Larrabee Road Substation after modifications are made. The study included identification of nearby protected locations, an ambient noise monitoring program to identify baseline conditions, detailed computer noise modeling, identification of required noise mitigation measures, and compliance with DEP and local noise standards. The City of Lewiston's noise ordinance limits noise at residential properties to 50 dBA during the day and night. The ambient noise monitoring program, conducted continuously over three days and two nights, revealed that the daytime hourly average sound levels (at a location where the existing substation was not audible) were greater than 45 dBA, and the hourly nighttime sound level was greater than 35 dBA. As such, the areas surrounding the substation are not defined as quiet areas under DEP's noise standard, but are considered protected areas. Therefore, Project noise is limited to 50 dBA along the adjacent property lines. The noise modeling study revealed that the new equipment would require no additional noise control measures to achieve compliance with the City of Lewiston standards for the modeled operating conditions. The current substation operations are below the sound level requirements and the replacement autotransformers are expected to emit similar sound levels to the existing unit. Accordingly, construction and operation of the Larrabee Road

Substation are expected to comply with the applicable DEP and Lewiston noise standards.

- D. Coopers Mills Substation. CMP prepared a detailed noise study to assess the potential noise impacts associated with operation of the Coopers Mills Substation after modifications are made. The study included identification of nearby protected locations, an ambient noise monitoring program to identify baseline conditions, and detailed computer noise modeling. The DEP limits sound at protected quiet areas to 45 dBA at night, inclusive of a 5 dBA penalty added to measured sound levels when tonal sounds are present. The ambient noise monitoring program, conducted continuously over three days and two nights, revealed that the daytime hourly average sound levels were below 45 dBA and nighttime sound levels were below 35 dBA. As such, the areas surrounding the substation are protected quiet areas. Project noise is limited to 45 dBA along the adjacent property lines. A 5 dBA penalty is applied to measured values when a tone is present, in order to remain below the MDEP limit of 45 dBA. The noise modeling study revealed that the new equipment may require additional noise control measures to achieve compliance with the MDEP standards for the modeled operating conditions. Additional noise control measures will be implemented during detailed design as needed to achieve compliance with the MDEP noise standards. Noise mitigation will be applied to the sources in order to meet all property line sound level limits and may include, but not be limited to, specification of quieter equipment, sound barriers, and/or potential acquisition of property. Accordingly, construction and operation of the Coopers Mills Substation STATCOM, in combination with sound generated by the existing substation, will comply with the applicable DEP noise standards.
- E. Raven Farm Substation. CMP prepared a detailed noise study to assess the potential noise impacts associated with operation of the Raven Farm Substation after modifications are made. The study included identification of nearby protected locations, an ambient noise monitoring program to identify baseline conditions, detailed computer noise modeling, identification of required noise mitigation measures, and compliance with MDEP noise standards. The DEP limits sound at protected areas to 55 dBA at night, and requires a 5 dBA penalty be applied to measured tonal sounds. The ambient noise monitoring program, conducted continuously over three days and two nights, revealed that the daytime hourly average sound levels (the existing substation was not audible) were greater than 45 dBA and nighttime sound levels were greater than 35 dBA. As such, the areas surrounding the substation are protected areas, but are not defined as quiet areas under DEP's noise standard. Ambient noise in the area is dominated by the nearby Interstate 295, which is located approximately 2,000 feet from the center of the substation. Project modeled noise is limited to 45 dBA along the adjacent property lines, in order to remain below the MDEP limit of 50 dBA limit when a tone is present. The noise modeling study revealed that the new equipment would require no additional noise control measures to achieve compliance with the DEP standards for the modeled operating conditions. The current substation operations are below the State sound level requirements. Accordingly, construction and operation of the Raven Farm Substation will comply with the applicable DEP noise standards.

Construction.

Noise from construction equipment will be temporary during construction of the NECEC Project. Construction of the proposed Project is expected to involve site clearing, excavation, placement of concrete and the use of typical utility construction equipment and best practices. The construction contractor selected is expected to implement, where appropriate, construction

methods that maintain construction noise levels below the applicable maximum levels. Because the Project involves work on an existing power system that serves customers, there may also be times that work needs to be accomplished in part outside the specified working hours. Such work generally consists of activities that must occur continuously once begun (such as filling transformers with oil and horizontal directional drilling). The construction contractor will comply with all applicable noise level limits.

Based on its analysis of the evidence submitted by the applicant, the Department finds that the applicant has made adequate provision for the control of excessive environmental noise from the proposed Project.

6. SCENIC CHARACTER:

The NRPA and Chapter 315 require an applicant to demonstrate that a proposed activity will not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource and only apply to activities in, on, over, or adjacent to a protected natural resource. More broadly, the Site Law and Chapter 375.14 require an applicant to demonstrate that the development will not have an unreasonable adverse effect on the scenic character of the surrounding area.

In order to assess such impacts to identified scenic resources, and other points of local sensitivity, the applicant submitted a visual impact assessment (VIA) for the Project area prepared by Terrence J. DeWan & Associates (TJD&A). The VIA assessed each segment and substation where visible changes will occur using standard visual impact assessment methodologies, following the methodology and standards described in NRPA Chapter 315 regulations and Site Law Chapter 375.14 regulations. TJD&A further reviewed and responded to the reports of the Department's peer reviewer, Dr. James Palmer, and worked with Dr. Palmer and the Department to their satisfaction with regard to the reasonableness of its visual impact assessment.

Transmission lines.

New structures will be set back as far from streams, rivers, and other areas of visual/habitat sensitivity as practicable. There are many areas where favorable growing conditions and CMP's maintenance procedures have resulted in effective stands of non-capable species near the roadside which act as visual buffers. Wherever practicable, existing vegetation will be preserved within the transmission line corridor by careful layout of access roads and monitoring of construction practices during the installation process.

In Segment 1, the primary mitigation measure being employed is to use self-weathering steel single poles to minimize visual contrast, especially when viewed from elevated viewpoints and where the structure is seen against a wooded backdrop. The new HVDC transmission line corridor is also primarily located in areas of commercial timber production which have been, and continue to be, periodically harvested. Due to a shortening of the pole heights near Beattie Pond, the Project will not be visible from Beattie Pond. Nonspecular conductors and tapering will be used at Rock Pond to reduce reflective qualities of the conductors when viewed from the most visually sensitive locations. Tapering will be used near Coburn Mountain to reduce Project visibility from the summit. At the Upper Kennebec River crossing, the Project will be buried and the termination stations will not be visible from the river.

In Segments 2 and 3, the primary mitigation measure being employed is to co-locate the HVDC transmission line within an existing corridor, rather than acquiring and developing an entirely separate transmission line corridor. This co-location strategy significantly reduces potential visual impacts. The HVDC structures will be made of self-weathering steel, which will result in minimal color contrast with the surrounding wooded landscape when viewed from elevated viewpoints and water bodies. The height of the HVDC structures on the western side of Moxie Pond has been minimized to the extent possible to reduce the contrast in scale and reduce potential visibility from Moxie Pond and the Appalachian Trail (AT). Where widening of the cleared corridor results in a longer duration of exposure to AT hikers (east of Baker Stream), a planting plan has been proposed that will adequately buffer the Project from that use. Similarly, a visual buffer planting plan has been proposed where the Project intersects Troutdale Road in the vicinity of Moxie Pond and the AT. Furthermore, CMP has proposed to re-locate the trail, which provides an increased buffer between the trail and the cleared portion of CMP's corridor.

Segment 4 and 5 have been designed to minimize additional clearing and the need for land acquisition by making the most effective use of existing corridors, existing structures, and rebuilding existing transmission lines, which results in no additional tree removal. The proposed single pole 115kV structures in Segment 4 will be made of wood, which will be similar to the existing structures and minimize contrast in color, line, form and texture. The proposed H-frame 345kV structures in Segment 5 will be made of wood, which will be similar to the existing structures and minimize contrast in color, line, form and texture.

Substations.

CMP employed two main mitigation strategies in the development of the site plans for the new and improved substations to reduce their potential visual impact and achieve a harmonious balance between the facilities and the surrounding landscape. These include upgrading existing substations within the existing facility footprint, which minimizes the need for additional clearing. Also, a Buffer Planting Plan was developed for the areas north and east of the Fickett Road Substation in Pownal to minimize views of the substation. The Merrill Road Converter Station has been sited to avoid visibility from public roads. The preserved vegetation around the station will screen it from view from Merrill Road. The two termination stations at the HDD crossing of the Upper Kennebec River will not be visible from any viewpoints, including the Kennebec River.

- A. Merrill Road Converter Station. The primary mitigation strategy used to minimize potential visual impacts from the Merrill Road Converter Station include siting the facility in a wooded area that provides the opportunity to preserve a significant vegetative buffer on all sides of the converter station and where there is minimal potential for public viewpoints or roads. The only potential impacts will be to snowmobile users.
- B. Fickett Road Substation. The proposed Fickett Road Substation has been sited within a landscape filled with electrical infrastructure in an area that requires minimal additional clearing and within a short distance from Surowiec Substation. Though there are no scenic resources impacted, the adjacent homes will have expanded views of the developed landscape. As part of NECEC, visual buffer plantings will be installed on the south side of Fickett Road to minimize adverse effects on the scenic character of the surrounding area. This additional buffer will also minimize views of the Surowiec Substation. Buffer plantings will take into consideration the need for proper setbacks, avoiding wetland impacts, limitations on planting within and adjacent to transmission line corridors, and visibility requirements for security around the proposed substation.

- C. Surowiec Substation. The primary mitigation strategy used to minimize potential visual impacts for the expansion to the Surowiec Substation was to locate the proposed components within the cleared/developed area north of the existing substation. No additional tree removal will be necessary.
- D. Larrabee Road Substation. The primary mitigation strategy used at the Larrabee Road Substation is to site the NECEC Project within the existing substation facility. No additional tree removal will be required. Mitigation (buffer plantings) completed for the Maine Power Reliability Program (MPRP) provides partial screening of the facility from the end of Larrabee Road. The Substation will not be visible from any public roads, with the exception of the end of Larrabee Road. Preserved vegetation surrounding the substation will screen the NECEC Project components from most public views.
- E. Coopers Mills Substation. The primary mitigation strategy used at the Coopers Mills Substation is to site the NECEC Project within the existing substation facility. No additional tree removal will be required. Mitigation (earth berms and preserved vegetation) completed for MPRP provides partial screening of the facility from Coopers Mills Road.
- F. Crowley's Substation. The primary mitigation strategy used at the Crowley's Substation is to upgrade within the existing substation. No additional tree removal will be required.
- G. Maine Yankee Substation. The primary mitigation strategy being employed at the Maine Yankee Substation is to expand this existing substation adjacent to an existing transmission line within an existing industrial area.
- H. Raven Farm Substation. The primary mitigation strategy used to minimize potential visual impacts for the expansion to the Raven Farm Substation is to locate the proposed components within the cleared/developed area west of the existing substation. No additional tree removal will be necessary. The existing planted earthen berm and buffer plantings will screen the majority of the expansion from Greely Road.

The Department finds that CMP has demonstrated that the proposed activity meets the standards for visual quality established under Chapter 315 and the Site Law's Chapter 375.14 (i.e., that the proposed activity will not unreasonably interfere with existing scenic and aesthetic uses, that the developer has made adequate provision for fitting the development harmoniously into the existing natural environment, and that the development will not adversely affect scenic character in the surrounding area).

7. WILDLIFE AND FISHERIES:

The NRPA requires an applicant to demonstrate that the proposed activity will not unreasonably harm any significant wildlife habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries, or other aquatic life. The pertinent regulation promulgated under the NRPA, Chapter 335, requires the applicant to demonstrate that a proposed activity will not unreasonably harm significant wildlife habitats, including significant vernal pool habitats, and high and moderate value inland wading bird and waterfowl habitats. Under the Site Law, an applicant must demonstrate that the development will not adversely affect wildlife and fisheries. The pertinent regulation promulgated under the Site Law, Chapter 375.15, requires the applicant to demonstrate that the development will not have an unreasonable adverse effect on wildlife and fisheries.

CMP consulted with the Maine Department of Inland Fisheries and Wildlife (MDIFW) and the United States Fish and Wildlife Service (USFWS), and requested that MDIFW conduct a Project

review and provide existing data on wildlife and fisheries resources, including the identification of significant habitats, rare or listed species, and significant communities that may be present on or within the Project area. CMP met extensively with the MDIFW to discuss the Project's effect on endangered species, brook trout habitat, habitat fragmentation, and buffer strips around cold water fisheries; avoidance of impacts to wildlife and fisheries; and compensation for unavoidable impacts. CMP also conducted resource surveys and verifications of natural resources surveys previously conducted by CMP, in 2015, 2016, 2017, and 2018, and conducted wildlife and fishery database searches to identify the existing wildlife and fishery resources associated with the NECEC, and to implement actions that protect wildlife and fish and their habitats.

This consultation resulted in CMP's Site Law Application Section 7, which demonstrates, along with the additional measures discussed below, that the Project will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

In its March 15, 2018 environmental permit review letter to DEP Project Manager James Beyer, MDIFW identified the presence of Roaring Brook Mayfly, a state threatened species, and the likely presence of Northern Spring Salamander, a state special concern species, within the NECEC Project area. CMP subsequently conducted field surveys for these species in streams meeting habitat preferences set by MDIFW, i.e., streams draining slopes above 1,000 feet elevation mean sea level with coarse substrates and bordered by relatively undisturbed mixed or hardwood forest, within the NECEC corridor from the Maine/Quebec border through Johnson Mountain Twp. Burns & McDonnell evaluated all perennial water bodies within the survey area and submitted a subset of these water bodies (75 streams), including stream characterizations developed through evaluation of the original natural resource survey field data forms, to the MDIFW on August 7, 2018. Upon review of the data provided, as well as additional field surveys and evaluation of laboratory samples, MDIFW confirmed the presence of Roaring Brook Mayfly in two water bodies, Mountain Brook in Johnson Mountain Twp and Gold Brook in Appleton Twp. Accordingly, and upon consultation with MDIFW, CMP revised its proposal to incorporate taller structures and avoid clearing by allowing full height canopy within the 250-foot riparian management zone for Mountain Brook and Gold Brook. For all other streams with presence of Northern Spring Salamander and/or Roaring Brook Mayfly, assumed or known, MDIFW agreed that CMP's vegetation management practices and a contribution to the Maine Endangered and Nongame Wildlife Fund would adequately protect the habitat and species.

Of the 743 waterbodies located within the NECEC corridor, 379 have been identified by the MDIFW as containing brook trout (*Salvelinus fontinalis*). With the exception of culvert removals and replacements intended to improve habitat quality and connectivity proposed as part of CMP's Compensation Plan, the Project will have no direct impact (i.e., in-stream construction) on brook trout habitat. Nevertheless, CMP's Compensation Plan proposes a variety of mitigation and compensation measures that address impacts to cold water fisheries, including 100-foot cold water fishery resource riparian buffers, preservation of 12.02 linear miles of streams, a \$180,000 contribution to the Maine Endangered and Nongame Wildlife Fund, and implementation of the Culvert Replacement Program, such that the Project will not result in an unreasonable disturbance of this habitat.

CMP minimized and avoided habitat fragmentation impacts in several ways including co-locating the majority of the transmission line components within existing corridors and locating

the remainder of the transmission line components within areas already subject to intensive industrial forestry practices; implementing vegetation management practices that are wildlife friendly and promote early successional habitat throughout its corridors; and allowing for taller vegetative growth to be maintained in select locations of the NECEC ROW to address species-specific concerns. CMP also proposed travel corridors in the biologically significant Upper Kennebec Deer Wintering Area (DWA) and in Rusty Blackbird habitat in Johnson Mountain Twp and Parlin Pond Twp, and proposed preservation of seven tracts within the Upper Kennebec DWA. Through consultation with the MDIFW, CMP developed a series of ten deer travel corridors, ranging in size from 247 to 1,450 linear feet, which will allow full height or taller trees to persist in the ROW to promote habitat connectivity and minimize fragmentation of the Upper Kennebec DWA. Also, through consultation with MDIFW, CMP proposes to allow softwoods up to 15 feet in height to grow within the ROW in locations where it overlaps Rusty Blackbird habitat.

The construction and vegetation management practices described in Exhibit 10-1 VCP and Exhibit 10-2 VMP of CMP's September 27, 2017 Site Law application establish protections for stream buffers within the NECEC Project area. Riparian natural buffers or stream buffers were expanded from CMP's initial proposal in September 2017. In a meeting held between CMP, DEP, and MDIFW on January 22, 2019, DEP and MDIFW recommended that for CMP to adequately protect cold water fisheries, protections of riparian buffers for vegetation management and maintenance activities should be expanded to 100 feet for cold water fishery habitats, outstanding river segments, threatened or endangered species streams, and all perennial streams in the new corridor portion (Segment 1) of the Project. For all other water bodies, DEP and MDIFW recommended an expanded buffer of 75 feet. Based on this guidance, CMP incorporated these changes into Exhibit 10-1 VCP and Exhibit 10-2 VMP of CMP's amended Site Law application, filed with the DEP on January 30, 2019.

The Department finds that the Project will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

8. HISTORIC SITES:

In consultation with the Maine Historic Preservation Commission (MHPC), the applicant conducted cultural resource surveys on the Project area to identify significant historic sites within the Area of Potential Effect (APE) along the proposed transmission line corridors and the new or expanded substations.

MHPC concurred with the findings of the Phase I archeological survey report but determined that the Project would have an adverse effect on the barn at 40 Turmel Road, Livermore Falls; the potential historic district comprised of 1195 and 1294 Hilton Hill Road, Starks; Bowman Airfield, Livermore Falls; and the Appalachian Trail near Troutdale Road. The Department finds that the Project will not have an unreasonable adverse effect on preservation of these properties as historic sites, for the following reasons.

Barn at 40 Turmel Road, Livermore Falls. The barn at 40 Turmel Road, Livermore Falls is significant under National Register of Historic Places (NRHP) Criterion A for Agriculture and Criterion C for Architecture. Based on a review of historic aerial photographs and USGS

topographic maps, the existing transmission line corridor east of this property has existed since approximately 1930, when CMP acquired the corridor in connection with construction of Wyman Dam. On the 1941 USGS map for the Livermore, Maine quadrangle, a single transmission line is shown. A 1963 aerial photograph shows two parallel transmission lines and a substation (presently extant) 1,000 feet south of the barn at 40 Turmel Road. A third transmission line was added in approximately 2012 between the two existing transmission lines. The new NECEC transmission line will be located between two of the existing transmission lines.

The Project would not diminish the integrity or remove characteristics of the property that qualify it for NRHP eligibility under Criterion C. A transmission line has been part of the barn's historic setting for nearly eighty years, with two transmission lines for over 50 years. The presence of a transmission line to the east of the barn has not prevented it from being able to convey its agricultural significance under Criterion A nor prevented a determination of eligibility for NRHP listing. The addition of taller structures may present a cumulative impact that qualifies as an adverse effect under Section 106 of the NHPA, but does not result in an unreasonable effect on this property under the Site Law because the historic setting has included transmission lines for nearly 90 years.

Historic District Comprised of 1195 and 1294 Hilton Hill Road, Starks. The historic district at 1195 and 1294 Hilton Hill Road, Starks is significant under NRHP Criterion A for Agriculture and Criterion C for Architecture. The Project would not diminish the integrity or remove characteristics of the historic district that qualify it for NRHP eligibility under Criterion C. CMP's original finding of effect was an adverse effect on 1294 Hilton Hill Road (E. Gray Farm) and no adverse effect on 1195 (B.F. Hilton Farm) based on the proximity of the existing transmission corridor to each of the properties. The existing transmission lines have been part of the historic setting of both of these properties since approximately 1930, when CMP acquired the corridor in connection with construction of Wyman Dam. A 1953 aerial photograph also shows much more extensive areas of cleared pasture areas on the west side of Hilton Hill Road associated with these two properties than is present today.

While the pastoral setting and feeling of the historic district composed of these two dairy farms is important to conveying its significance under Criterion A, it has changed since the historic period and only in part due to the early 1950s transmission corridor. The addition of taller structures within the existing corridor may present a cumulative impact qualifying as an adverse effect under Section 106 of the NHPA, but does not impose an unreasonable adverse effect under the Site Law because this district has an altered historic setting and feeling that includes transmission lines since at least 1953.

Bowman Airfield, Livermore Falls. Bowman Airfield is significant under NRHP Criterion A for Transportation. Bowman Airfield was established in about 1960 and has hangars ranging in age from the 1960s to 1990s, and a 1960s-1970s era clubhouse. The 1941 USGS Lewiston, Maine quadrangle map shows a transmission line in the existing corridor. The original transmission line was built in approximately 1930, and a second transmission line was built in approximately 2012. The NECEC line will be on the west side of the corridor and will not impact the operation of the field. The existence of a transmission line adjacent to the airfield is a part of the property's historic setting. Therefore, the presence of the NECEC does not detract from the airfield's historic integrity of setting or feeling.

While the construction of additional structures with a greater height than the existing structures may incrementally impact the airfield's integrity of setting and feeling enough to be determined an adverse effect under Section 106 of the NHPA, it is not an unreasonable adverse effect under the Site Law because the adjacent transmission lines pre-dated the construction of the airfield and have always been part of its setting.

Appalachian Trail Near Troutdale Road. There are several reasons the Project will not have an unreasonable adverse effect on preservation of the AT as an historic site, or any adverse effect at all on its preservation as an historic site.

First, the character of the AT in this location will not change as a result of the Project, given the historic siting of the AT and given that the AT currently crosses the existing transmission line corridor three times. In its October 2018 submission, SEARCH stated that "The Appalachian Trail has crossed the existing transmission line since its construction in the 1950s, and the transmission line is a landmark noted in Trail Guides." The existing transmission line was constructed before the AT at this location and the earlier AT route on the south end of Moxie Pond followed Troutdale Road for 2.25 miles. The historic setting of the AT at this location is not one of secluded wilderness or broad vistas; 12 existing transmission structures are visible from the first crossing, seven are visible from the second crossing, and 15 are visible from the third crossing. The Project will add additional transmission structures, but the character of the AT in this location will not change.

Second, the AT runs along an existing road in this location, Troutdale Road. Troutdale Road is an access road for the many camps along Moxie Pond and a major haul road for the industrial timberland owners in several towns. In its October 2018 submission, SEARCH stated that "The setting in this area would be classified as developed, with the trail paralleling a road for part of the section and several houses in the vicinity." Thus, the AT in this location is already impacted by human development. In fact, the area of new clearing along the Troutdale Road is in a development zone.

Third, the AT also does not retain significant historic integrity in this location because of the historic re-routes, as recently as the late 1980s. In its October 2018 submission SEARCH stated that "The integrity of location as it relates to the significance of the Appalachian Trail is not a prioritized aspect, particularly in sections of previous reroutes." Thus, an incremental additional impact on the AT in this location will not adversely affect its historic integrity.

Fourth, the AT is located on CMP's land where it crosses the transmission line corridor, and the easement that allows the AT to be located there expressly allows CMP to construct additional transmission lines. The NPS knew this when it agreed to relocate onto CMP's land in the late 1980s. It therefore would not be reasonable to conclude that work expressly allowed by that easement, and anticipated by the NPS, can be considered to have an adverse impact.

Fifth, CMP has proposed a vegetative buffer planting plan to minimize the Project's impact on the AT. This plan will add plantings to both sides of the AT where it crosses the transmission line corridor, and is comprised of native species that will provide effective buffering and will be compatible with a transmission line corridor with respect to electrical safety and required clearances.

Sixth, CMP has proposed to re-locate the trail, which provides an increased buffer between the trail and the cleared portion of CMP's corridor, and thus will not adversely affect the AT's historic integrity.

Based on the surveys conducted by the applicant and the comments of MPHC and the applicant, the Department finds the proposed development will not have an adverse effect on the preservation of any historic sites or archeological resources either on or near the development site.

9. UNUSUAL NATURAL AREAS:

Numerous plant species in Maine are considered rare, threatened, or endangered (RTE), and are protected under the federal Endangered Species Act of 1973 (16 U.S.C. §§ 1531 et seq.) and/or Maine's Natural Areas Program (MNAP) statute (12 M.R.S. §§ 544, 544-B & 544-C). The Official Species List, obtained through the ECOS-IPAC website, identifies the possible presence of the federally threatened small whorled pogonia within the boundaries of the NECEC Project. MNAP further searched the Natural Areas Program's Biological and Conservation Data System files for rare or unique botanical features in the vicinity of the proposed Project site, and identified several rare botanical features documented on or within 1,000 feet of the NECEC. CMP incorporated MNAP's recommendations into its Compensation Plan, which was revised on January 30, 2019.

The Department finds that the proposed development will not have an adverse effect on the preservation of any unusual natural areas either on or near the development site.

10. BUFFER STRIPS:

In its analysis of whether an applicant has made adequate provision for fitting a proposed project harmoniously into the existing natural environment, as required under the Site law, the Department considers whether natural buffer strips are necessary to protect wildlife and water quality and as visual screens to protect existing uses. Chapter 375.9 of the Department's Rules outlines certain factors the Department may consider in making these determinations and provides that the Department may, as a term or condition of approval, establish any reasonable requirement to ensure that a developer has made adequate provision for the establishment of buffer strips.

Visual buffers are described above in Finding 6. This finding analyzes the proposed natural resource buffers and clearing guidelines for the Project, and finds that the use of vegetative buffers and mitigating construction techniques proposed will minimize the potential for soil erosion and sedimentation into water bodies and wetlands, minimize water temperature increase due to insolation, and protect riparian and other significant habitat values.

All Project transmission line corridors will be continuously vegetated with herbaceous plants and shrubs, but restrictions on clearing and maintenance within and immediately adjacent to protected and sensitive resources will allow a greater density of non-capable vegetation to remain in these areas. CMP will avoid disturbance of vegetation within these areas to the greatest extent practicable. Buffers bordering streams and rivers will be protected and maintained by selective clearing during construction and reduced cutting of vegetation during transmission line maintenance. All tree species capable of growing into the conductor safety

zone will be removed from the buffers during construction and prevented from re-establishing during periodic scheduled vegetation maintenance operations. These species are known as “capable species” and include, but are not limited to, fir, spruce, oaks, pines, maples, birches, poplar, elm, beech, and basswood. Selective transmission line corridor management incorporated into the NECEC Plan for Protection of Sensitive Natural Resources During Initial Vegetation Clearing (VCP, Site Law Application Exhibit 10-1) and CMP’s Post-Construction Vegetation Management Plan (VMP, Site Law Application Exhibit 10-2) further maintain ecological values of resources without sacrificing the operational safety of the electric transmission line and associated conductors. The VCP and VMP as revised include 100-foot riparian buffers for vegetation management and maintenance activities for cold water fishery streams, threatened or endangered species streams, all perennial streams in the Segment 1 new corridor, and for all outstanding river segments crossed aerially by the Project. CMP also has committed to no herbicide use within Segment 1 of the Project.

The Department finds that the applicant has made adequate provision for buffer strips provided that the applicant construct and maintain the Project in accordance with the NECEC VCP and VMP, as well as the applicant’s commitment to no herbicide use within Segment 1 of the Project.

11. SOILS:

CMP analyzed soils within the Project’s transmission line corridor and related substation facilities locations, provided descriptions of all soils identified along the NECEC corridor, provided Floodplain and Soils Series Maps depicting soils located along each Project Segment, and completed Class B high intensity soil surveys for the Merrill Road Converter Station, the Fickett Road Substation, and the proposed Moxie Gore and West Forks termination stations. Soil surveys for the existing substation facilities (Coopers Mills, Crowley’s, Larrabee Road, Maine Yankee, Surowiec, and Raven Farm) were not completed because all upgrades will be located within the existing fence lines or within areas where soils have previously been characterized.

CMP also developed a standard manual, “Environmental Guidelines for Construction and Maintenance Activities on Transmission Line and Substation Projects” (Environmental Guidelines), which it uses as a routine part of all transmission and substation projects, and which contains effective and proven erosion and sedimentation control requirements, standards, and methods that will be used to protect soil and water resources during construction of the various NECEC Project components. The manual is modeled after and is consistent with the DEP Maine Erosion and Sediment Control Best Management Practices (BMPs) dated March 2014, DEP’s Erosion and Sediment Control Law (38 M.R.S. § 420-C), DEP’s Chapter 500 (38 M.R.S. § 420-D), and Maine Forest Service (MFS) Slash Law (12 M.R.S. § 9333), and contains specific BMPs appropriate for electric transmission line and substation construction. Pursuant to the manual, CMP will minimize the extent and duration of soil disturbance, protect exposed soil by diverting runoff to stabilized areas or vegetated filter strips, install temporary and permanent erosion control measures, and implement an effective inspection and maintenance program.

Based on the information the applicant provided, the Department finds that proposed development will be built on soil types that are suitable to the nature of the undertaking. Nor will the activity cause unreasonable erosion of soil or sediment or unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

12. STORMWATER MANAGEMENT:

- A. Transmission Lines. The NECEC does not require stormwater analysis for the transmission line components because they have been designed to minimize potential impacts to the environment and, as such, the permanent conversion of vegetated areas to impervious surfaces along the corridor will be limited to the transmission line structures themselves. Necessary clearing of the transmission line corridor will be limited to the removal of mature trees and capable species (i.e., trees capable of attaining heights that would cause safety/reliability problems due to their proximity to the conductors), as necessary, to allow placement of structures and to ensure adequate clearance between any vegetation and the conductors. The removal of understory vegetation and ground cover will be required only as needed to install structures, to create access to or within the corridor, and for puller/tensioner sites. Restoration activities following construction will restore site contours to pre-construction conditions and ensure that areas disturbed during construction will be revegetated. After construction, the corridor will be allowed to revegetate and will be maintained in an early successional state in accordance with CMP's Post-Construction Vegetation Management Plan.
- B. Existing Substations. Substations in this category are those substations with proposed equipment additions and a minimal amount of additional impervious area (e.g., concrete foundations). Per Chapter 500 criteria, these sites would not trigger a stormwater permit requirement if they were stand-alone applications. However, because the entire NECEC Project is jurisdictional under the Site Law, CMP described the proposed improvements at each location, and confirmed that each substation meets the requirements of the Basic Standards (Erosion and Sedimentation Control).
- C. New Substations. For the Merrill Road Converter Station, the Fickett Road Substation, and the HDD termination stations, CMP applied the applicable Chapter 500 standards. The General Standards for water quality treatment of stormwater runoff from the substation yards will be met in that all new yards will be constructed in accordance with the substation yard cross section specified in the CMP/MDEP agreement letter dated June 5, 2008. CMP also will meet the requirements of the Flooding, Phosphorus and Urban Impaired Stream Standards, as applicable.

13. WATER QUALITY:

Construction and maintenance of the NECEC Project transmission lines or the new substation facilities will not require use of groundwater, therefore there will be no impact to groundwater quantity. Potential sources of groundwater quality degradation differ during the construction, maintenance, and operation phases of transmission line and substation facilities, but CMP has proposed adequate measures to minimize these potential threats as set forth in CMP's Environmental Control Requirements for Contractors and Subcontractors - Oil and Hazardous Material Contingency Plan.

The Urban Impaired Streams Watersheds GIS data, updated February 6, 2016, demonstrates that no components of the Project will be constructed in or near an Urban Impaired Stream and/or

Watershed. Department Chapter 502-Direct Watersheds of Lakes Most at Risk from New Development and Urban Impaired Streams List, confirms these findings.

The evidence further shows that the Project will not unreasonably interfere with the natural flow of any surface or subsurface waters.

The Department finds that the proposed development will not pose an unreasonable risk that a discharge to a significant ground water aquifer will occur. Nor will the activity unreasonably interfere with the natural flow of any surface or subsurface waters, or violate any state water quality law, including those governing the classification of the State's waters.

14. WATER SUPPLY:

None of the NECEC Project's transmission lines will require water supply facilities. There are no individual wells proposed for the new Merrill Road Converter Station or the new Fickett Road Substation. The Coopers Mills, Larrabee Road, Raven Farm, and Surowiec substations have existing wells, and no modifications to the wells at those locations are needed. The existing water supply at each facility will be used, and all are sufficient to meet anticipated future needs. There are no water supply facilities associated with Crowley's Substation or Maine Yankee Substation, and none is proposed. No common wells or public water supply wells are proposed at any of the NECEC Project substations.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

15. WASEWATER DISPOSAL:

None of the NECEC Project's transmission line segments will require wastewater disposal facilities. There are no wastewater facilities or wastewater holding tanks proposed at the new Merrill Road Converter Station or the new Fickett Road Substation. Existing on-site wastewater disposal systems will continue to be used at the Coopers Mills, Larrabee Road, Raven Farm, and Surowiec substations. There are no wastewater holding tanks at Maine Yankee or Crowley's substations.

Based on the above information, the Department finds that the applicant has made adequate provision for wastewater disposal.

16. SOLID WASTE:

Solid waste generated from construction and demolition activities associated with the Project will be limited to minimal land clearing and construction debris. This debris is inert, non-hazardous material that will be handled in accordance with the Maine State Solid Waste Management and Recycling Law (38 M.R.S. §§ 2101 et seq.). CMP will monitor the disposal of all solid waste material, including documentation of waste streams. CMP will contract with a licensed waste hauler and solid waste will be managed at an appropriate and licensed facility.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

17. FLOODING:

Transmission Lines. A total of 30 new Project transmission line structures will be installed in a 100-year flood zone. Because of the limited additional impervious surface associated with each transmission line structure, construction and maintenance of the proposed transmission lines will not cause or increase flooding or cause an unreasonable flood hazard to any neighboring structures. Furthermore, the Project will not negatively affect runoff infiltration relationships.

Substations. Surowiec Substation and the proposed Fickett Road Substation are partially located within FEMA designated 100-year flood zones. The Larrabee Road Substation, Crowley's Substation, Raven Farm Substation, Coopers Mills Substation, Maine Yankee Substation, and the proposed Merrill Road Converter Station are not located within a FEMA designated 100-year flood zone. Based on the available FEMA information, the two HDD termination stations are located within an unmapped area of Maine; however, there are no apparent flooding concerns for those locations. The Merrill Road Converter Station and the Fickett Road Substation will be designed and constructed at a final elevation such that their equipment will not be inundated during a 100-year flood event.

The Department finds that the activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

18. BLASTING:

Blasting may be required in order to install transmission line support structures, and/or for substation construction. For transmission line construction, blasting activity will be limited to the small volume of material needed to be removed to fit and plumb pole structures. Blasting that may be required for construction of substations will be achieved through blast detonation in delayed series that will result in no greater impact or vibration than those charges required for setting transmission line structures. CMP submitted a Blasting Plan with its Site Law Application that describes the proposed pre-blast procedure, the monitoring of surrounding properties and infrastructure, and all proposed safety measures, including those pertaining to transportation and use.

Based on the submitted information, the Department finds that the applicant has made adequate provision for blasting.

19. AIR EMISSIONS:

No degradation of air quality will result from construction and operation of the NECEC Project. Minimal, temporary influences on air quality as a result of construction activities may occur, such as from construction personnel commuter traffic, exhaust from construction vehicles, and temporary dust generated by construction activities. Given the limited duration of activities at any one location, the generally rural nature of the NECEC Project area and the existing uses of unpaved roads along the transmission line corridors (e.g., logging and associated trucking), any influences on overall air quality will be insignificant. CMP will employ best management construction practices to minimize emissions of fugitive dust.

Based on the above information, the Department finds that the applicant has made adequate provision for air emissions.

20. ODORS:

The clearing, construction, maintenance, and operation of the NECEC Project will not result in or create significant odors. Limited and short-term odors may be caused as a result of tree harvesting and the operation of construction equipment. Clearing of vegetation will be performed utilizing standard forestry equipment. A construction supervisor and environmental inspector will be on site to ensure that any brush burning that may occur will be closely supervised. All burning will be conducted in compliance with local and state open burning permit requirements. There are no odors generated by operation of electrical transmission lines or substations.

Based on the above information, the Department finds that the applicant has made adequate provision for odors.

21. WATER VAPOR:

The Project will not generate any water vapor during construction and operation. Therefore, the Project will not alter the existing cloud cover or rainfall characteristics of the area.

22. SUNLIGHT:

The Project will not block access to direct sunlight for any adjacent buildings that may utilize solar energy through active or passive solar systems. Based on the total area occupied by poles and conductors in a cleared transmission line corridor and the dispersed nature of substation and converter station equipment, the potential for shading of adjacent properties or structures is essentially nonexistent.

Based on the above information, the Department finds that the applicant has made adequate provision for sunlight.

23. WETLAND IMPACTS:

The Project will cause unavoidable wetland impacts including direct impacts (temporary and permanent fill) and indirect impacts (conversion of forested wetlands to scrub-shrub wetlands).

For the 47.7 acres of temporary wetland fill, CMP proposed preservation of 57 acres of wetlands plus a \$154,500 in-lieu fee. For the 105.5 acres of permanent cover type conversion of forested wetlands, 3.8 acres of permanent fill in wetlands of special significance (WOSS), and 0.3 acre of permanent fill in non-WOSS wetlands, CMP proposed preservation of 440 acres of wetlands.

CMP's proposed compensation for temporary wetland impacts required by the U.S. Army Corps of Engineers (USACE) consists of the preservation of three compensation tracts – Flagstaff Lake Tract, Little Jimmie Pond-Harwood Tract, and Pooler Pond Tract – plus an in-lieu fee. Collectively, these tracts contain 511 acres of wetlands, and are offered to offset temporary fill in wetlands, and other wetland impacts, at the USACE-required ratios and using USACE-approved adjustments. CMP's proposed compensation for forested wetland conversion required by USACE, using the USACE ratio of 20:1 and the 15% adjustment, consists of 316 acres of wetland preservation.

Vernal pool impacts have been avoided on the NECEC Project to the maximum extent practicable; however, because of the large land area of vernal pools' critical terrestrial habitat (CTH), i.e., 250 feet beyond the pool depression for state-regulated significant vernal pools (SVPs) and 750 feet beyond the pool depression for USACE-jurisdictional vernal pools, impacts from fill and conversion of forested to scrub-shrub cover types within their CTH is unavoidable.

CMP's Compensation Plan includes the following fees to offset unavoidable impacts to protected and sensitive natural resources:

In-Lieu Fees

- \$154,500 (compensation for temporary wetland fill in PEM [palustrine emergent] wetlands)
- \$642,000 (compensation for significant vernal pool habitat impacts)
- \$253,000 (compensation for inland wading bird and waterfowl habitat impacts)
- \$2,025,000 (Army Corps jurisdictional vernal pool impacts)
- Total in-lieu fees = \$3,074,000

Other Compensation Fees

- \$1,225,000 (conversion of unique forest communities to shrub)
- \$470,000 (conversion from forested to shrub in Roaring brook mayfly (threatened) and Northern Spring salamander (special concern) conservation management areas)
- \$200,000 (culvert replacement program to enhance cold water fisheries habitat connectivity)
- \$180,000 (Maine Endangered & Nongame Wildlife Fund contribution)
- \$10,000 (Goldie's wood fern (special concern species) survey funding to Maine Natural Areas Program)
- Total Other Fees = \$2,085,000

Total Fees = \$5.159M

Conserved Land

- 1,022 acres (to offset wetland cover type conversion, temporary wetland fill in PEM, permanent fill in WOSS and non-WOSS)
- 1,051 acres containing 12.02 linear miles of stream, including 7.9 miles of frontage on the Dead River (outstanding river segment) (to offset cover type conversion impacts on outstanding river segments and cover type conversion impacts to cold water fisheries)
- 717 acres (within the Upper Kennebec Deer Wintering Area)

Total Conserved Land = 2,793 acres

For the 3.9 acres of permanent cover type conversion of wetlands in significant vernal pool habitat (SVPH) and 0.7 acre of permanent wetland fill in SVPH, CMP proposes a \$580,000 in-lieu fee. For the 2.6 acres of permanent cover type conversion of wetlands in inland wading bird and waterfowl habitat (IWWH) and 0.003 acre of permanent wetland fill in IWWH, CMP proposes a \$239,600 in-lieu fee.

Direct fill impacts to SVPs include 0.74 acre of wetland and 0.72 acre in upland. Indirect impacts within SVPs include 3.9 acres of permanent forested wetland conversion, and 29.6 acres

of permanent upland conversion. Using the DEP's in-lieu fee formula, CMP proposes a payment of approximately \$642,000 to offset these impacts.

The NECEC Project will result in direct fill and/or indirect (cover type conversion) impacts to 49 high value, 122 medium value, and 71 low-value USACE-jurisdictional vernal pools. CMP calculated that the existing average forested cover within the 750-foot CTH of these pools is 73.6%, and that post-construction, the average forested cover within these pools' CTH would be 68.9%, a reduction of 4.7%. Based on this, and based on data gathered and analyzed by TRC during the 2009 to 2015 MPRP project that demonstrates a *de minimis* impact of tree clearing on vernal pool productivity, application of the USACE's 2016 Compensatory Mitigation Guidance resulted in an in-lieu fee of approximately \$1.64 million to offset these impacts. In addition, CMP has calculated and offered a fee of approximately \$382,000 to offset direct (fill) impacts to these vernal pools, for a total fee of approximately \$2.02 million. The location, type, and amount of compensation that CMP has offered fully satisfies the DEP's rules and the USACE's Guidance.

Based on the above, as well as CMP's Compensation Plan, the Department finds that the applicant has adequately avoided and minimized impact to wetlands, and has proposed adequate compensation where such impacts are unavoidable.

24. OUTSTANDING RIVER SEGMENTS:

CMP minimized impact to the five outstanding river segments that the Project is proposed to cross by crossing the NECEC transmission line under the Upper Kennebec River using HDD technology, and by co-locating the HDVC line within existing transmission line ROWs for the remaining four crossings. Undisturbed buffers will be maintained on both the east (for 1,450 feet) and west (for 1,160 feet) sides of the Upper Kennebec River in the vicinity of the HDD crossing. CMP also proposes to retain 100-foot riparian buffers along each of these four outstanding river segment aerial crossings, as well as vegetation clearing and management practices that adequately mitigate impacts to these those outstanding river segments.

The Department finds that CMP has demonstrated that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment.

25. ALTERNATIVES:

CMP analyzed alternatives to the Project, including a no-action alternative, alternative routes for the entirety of the new HVDC line, alternatives to crossing the five outstanding river segments that the Project as proposed will cross, undergrounding certain portions of the Project, as well as alternatives of taller poles and/or tapering to minimize visual impact and of taller poles and/or tapering to provide habitat connectivity.

Based on the evidence provided, the Department finds that a less environmentally damaging practicable alternative to the Project, which meets the Project's purpose, does not exist, and that no proposed alternatives to the proposed location and character of the transmission line would lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. As stated in Finding 24, the Department finds that where the Project crosses outstanding river segments as identified in title 38, section 480-P, no

reasonable alternative exists which would have less adverse effect upon the natural and recreational features of those river segments.

26. LUPC CERTIFICATION:

The Maine Land Use Planning Commission certified to the Department that the NECEC Project, as proposed, is an allowed use within the subdistricts in which it is proposed and complies with the Commission's land use standards not considered by the Department in its Site Law review.

B. ATTACHMENT B: LUPC PROPOSED FINDINGS OF FACT

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
 NEW ENGLAND CLEAN ENERGY CONNECT)
 SITE LAW CERTIFICATION SLC-9)
 Beattie Twp, Merrill Strip Twp, Lowelltown Twp,)
 Skinner Twp, Appleton Twp, T5 R7 BKP WKR,) SITE LAW CERTIFICATION #SLC-9
 Hobbstown Twp, Bradstreet Twp,)
 Parlin Pond Twp, Johnson Mountain Twp,)
 West Forks Plt, Moxie Gore,)
 The Forks Plt, Bald Mountain Twp, Concord Twp)

1. Person Requesting Certification: Central Maine Power Company
 83 Edison Drive
 Augusta, Maine 04336

2. Accepted as Complete for Processing: October 13, 2017

3. Location of Proposal: Beattie Twp, Lowelltown Twp, Skinner Twp, Appleton Twp, T5 R7 BKP WKR, Hobbstown Twp, Bradstreet Twp, Parlin Pond Twp, Johnston Mountain Twp, West Forks Plt, Moxie Gore, The Forks Plt, Bald Mountain Twp (T2 R3), Concord Twp.

4. Current Zoning: General Development Subdistrict (D-GN)
 Residential Development Subdistrict (D-RS)
 General Management Subdistrict (M-GN)
 Flood Prone Protection Subdistrict (P-FP)
 Fish and Wildlife Protection Subdistrict (P-FW)
 Great Pond Protection Subdistrict (P-GP)
 Resource Plan Protection Subdistrict (P-RR)
 Shoreland Protection Subdistrict (P-SL)
 Wetland Protection Subdistrict (P-WL)

5. Permanent Project Area: Clearing of approximately 53.5 miles of new transmission line corridor located between Beattie Twp and The Forks Plt, and co-location of the Project within an existing transmission line corridor from The Forks Plt to Lewiston. To accommodate the new transmission line, approximately 18.17 miles of existing corridor located in The Forks Plt, Bald Mountain Twp, and Concord Twp will require the removal of capable vegetation for a width of 75 feet. There will be approximately 380 new transmission structures within LUPC jurisdiction.

INTRODUCTION

6. Pursuant to 12 M.R.S. § 685-B(1-A)(B-1) and 38 M.R.S. § 489-A-1(2), for development in the unorganized and deorganized areas reviewed by the Department of Environmental Protection (DEP or Department) and requiring a Site Location of Development Act (“Site Law”) permit, the Department may issue a Site Law permit only if it receives certification from the Land Use Planning Commission (“Commission” or “LUPC”) that the proposed development is an allowed use within the subdistrict or subdistricts for which it is proposed and the proposed development meets any land use standard established by the Commission that is not considered in the Department’s review. The following Findings and Conclusions constitute the Commission’s certification that the New England Clean Energy Connect Project (NECEC or Project), as proposed, is an allowed use in the subdistricts in which it is proposed and meets the applicable Land Use Standards that are not considered in the DEP’s review.

PROPOSAL

7. The NECEC Project is a High Voltage Direct Current (HVDC) transmission line and related facilities capable of delivering up to 1,200 MW of Clean Energy Generation from the Canadian border to the New England Control Area, which was proposed and selected in response to the Request for Proposals for Long-Term Contracts for Clean Energy Projects issued by the Massachusetts Department of Energy Resources and the Electric Distribution Companies of Massachusetts. Approximately 71.67 miles of the HVDC transmission line corridor will be located within LUPC’s jurisdiction.

TITLE, RIGHT, OR INTEREST

8. CMP elected to apply simultaneously to the DEP for a Site Law permit and to the Commission for certification. The DEP application was accepted as complete for processing on October 13, 2017. Pursuant to LUPC Reg. 4.11(e), the Commission will not evaluate whether CMP has title, right, or interest in the property proposed for development, but will instead rely on the Department’s title, right, or interest review.

CERTIFICATION OF ALLOWED USE

9. The Project is an allowed use in the subdistricts in which it is proposed. It is an allowed use by permit in the following subdistricts:

- General Development Subdistrict (D-GN)
- Residential Development Subdistrict (D-RS)
- General Management Subdistrict (M-GN)
- Flood Prone Protection Subdistrict (P-FP)
- Fish and Wildlife Protection Subdistrict (P-FW)
- Great Pond Protection Subdistrict (P-GP)
- Shoreland Protection Subdistrict (P-SL)

It is an allowed use by special exception in the following subdistricts:

- Recreation Protection Subdistrict (P-RR)
- Wetland Protection Subdistrict (P-WL)

The special exception criteria at sections 10.23,I,3,d and 10.23,N,3,d are:

- a) “[T]here is no alternative site which is both suitable to the proposed use and reasonably available to the applicant.”

Within the P-RR subdistrict at Beattie Pond, there is no alternative site both suitable to the proposed use and reasonably available to the applicant. CMP attempted to negotiate an alternative alignment south of the Beattie Pond P-RR subdistrict through Merrill Strip Twp, but the landowner required compensation of approximately 50 times fair market value for that property. Re-routing north of the pond to avoid the P-RR subdistrict would result in approximately two miles of additional corridor and associated vegetation clearing, and would lead to potentially greater visibility from the pond, due to the higher elevations associated with Caswell Mountain. The lack of adverse impact on Beattie Pond in the currently proposed Project location, given the redesigned structure and lack of new access to Beattie Pond, demonstrate that there is no alternative that is suitable to the proposed use, and reasonably available to CMP.

Within the P-RR subdistrict at the upper Kennebec River, there is no alternative site both suitable to the proposed use and reasonably available to the applicant. The Project’s horizontal directional drill (HDD) crossing at this location would be entirely underground as it passes below the P-RR subdistrict. The termination stations on either side of the river are located outside of the P-RR subdistrict. CMP’s previously proposed overhead transmission line at this location is not suitable for the crossing of the P-RR because overhead conductors would be visible to rafters passing through or stopping in this portion of the river, and transmission line structures would be visible on the west side of the river with the overhead crossing. Nor are the CMP Land Alternative or the Brookfield Alternative suitable or reasonably available. Not only are portions of both alternatives subject to an existing conservation easement, but both the CMP Land Alternative and the Brookfield Alternative would result in greater environmental impacts than the HDD crossing due to greater transmission line length, and both would have a visual impact on recreational users of the Indian Pond area.

Within the P-RR subdistrict at the Appalachian Trail crossings, there is no alternative site both suitable to the proposed use and reasonably available to the applicant. Alternative siting of the transmission line would result in crossings of the Appalachian Trail in one or more locations where there are no existing transmission line corridors, and thus are neither suitable to the proposed use nor reasonably available to CMP. While not an alternative site, and thus not applicable to the special exception criteria, the Commission further notes that burying the Project at the Appalachian Trail crossings is not suitable or reasonably available to CMP, as doing so would be prohibitively expensive and would result in greater impact due to the necessary termination stations. Nor does CMP have property rights to do so, and the length of time and uncertainty in relying on the National Park Service to amend its easement and grant CMP undergrounding rights makes it unsuitable to the proposed use.

- b) “[T]he use can be buffered from those other uses and resources within the subdistrict with which it is incompatible.”

Within the P-RR subdistrict at Beattie Pond, the Project can be buffered from those other uses and resources within the subdistrict with which it is or may be incompatible. The Project will be located at a distance greater than the existing developed road access, will not include permanent improvements that promote more intensive use or development of the pond, and will not be visible from the pond due to redesign of a transmission line structure. Therefore, there will be no permanent improvements in access that could lead to more intensive use or development of Beattie Pond, which is the basis for the subdistrict designation.

Within the P-RR subdistrict at the upper Kennebec River, the Project can be buffered from those other uses and resources within the subdistrict with which it is or may be incompatible. At this location, the NECEC will be buried underground. The HDD installation and the development of the termination stations will not be visible from the P-RR subdistrict and the underground crossing of the upper Kennebec River thus would have no impact on the P-RR subdistrict. Therefore, there will be no disruption for the users of the river, which is the basis for the subdistrict designation.

Within the P-RR subdistrict at the Appalachian Trail crossings, the Project is not incompatible with the other uses in the district because there currently exists a transmission line in the corridor that the Appalachian Trail crosses. Because the existing land use is transmission line corridor, there would be a negligible change in visual impact to hikers using the trail. Nevertheless, the Project can be buffered from those other uses and resources within the subdistrict with which it is or may be incompatible. The vegetation management plans and visual buffer planting plans submitted by CMP will adequately buffer the Project from other uses and resources within the subdistrict with which it is incompatible. Furthermore, CMP has proposed to re-locate the trail, which provides an increased buffer between the trail and the cleared portion of CMP's corridor.

c) “[S]uch other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.” There are no other conditions necessary.

10. Therefore, the LUPC certifies to the DEP that the Project is an allowed use in the subdistricts in which it is proposed.

CERTIFICATION OF COMPLIANCE WITH LUPC LAND USE STANDARDS

11. Vehicular Access, Circulation and Parking.

A. Review Criteria. LUPC Land Use Standards § 10.24,B and § 10.25,D.

B. Project. There are approximately 125 miles of existing gravel roads primarily used for forest management that provide direct access to the Project from State Route 201 in Johnson Mountain Twp. The Project also is accessible from the following public roads: Lake Moxie Road in Moxie Gore, The Forks Plt, and Bald Mountain Twp, Ridge Road in Concord Twp, and Route 16 in Concord Twp. Because the Project is an HVDC transmission line right of way, vehicular traffic would result only during construction (short-term) and maintenance and repairs (infrequent). The Project will access construction areas only through public roads and existing land management roads. There will be no Level C road projects constructed in any P-RR subdistrict as a result of the Project. Temporary, unpaved access roads through sections of the new transmission line

corridor will be established for the clearing and construction phases of the Project. However, these access roads will be restored to pre-existing contours and revegetated once construction is complete and final restoration has been established. No new permanent roadways will be developed and construction and maintenance-related parking will primarily be in upland locations on the Project corridor or in existing developed areas. No on-street parking will be associated with this Project.

- C. Conclusions. The Commission concludes that CMP has demonstrated that the applicable criteria for vehicular access, circulation, and parking have been met.

12. Lighting.

- A. Review Criteria. LUPC Land Use Standards § 10.25,F.
- B. Project. There will be no operation of lights on transmission line structures installed in LUPC jurisdiction. Some temporary nighttime lighting may be necessary during construction of the Project. There will be no electrical service or permanent lighting installed at the HDD termination stations. During operation and maintenance activities in the termination stations technicians will use portable lighting, as needed.
- C. Conclusions. The Commission concludes that CMP has demonstrated that the applicable criteria for lighting have been met.

13. Land Division History.

- A. Review Criteria. LUPC Land Use Standards § 10.25,Q.
- B. Land Division History. Site Law Application Exhibit 25-2 is a 20-year land division history and associated maps demonstrating that none of the land divisions during that period created a subdivision. Project lands in Moxie Gore are not included in Exhibit 25-2. CMP acquired most of the 300-foot wide corridor located in Moxie Gore in a deed from T-M Corporation dated November 10, 1988 and recorded in the Somerset County Registry of Deeds in Book 1480, Page 89. This transaction was part of a land exchange and boundary line agreement with T-M Corporation in which CMP reconfigured part of its ownership that dated back to the early 1900s. The remainder of the proposed corridor in Moxie Gore crosses land along the Kennebec River that CMP currently owns. This land was also acquired by several deeds in the early 1900s. All other CMP lands in the unorganized territory have been owned by CMP for over 20 years with no divisions.
- C. Conclusion. Based on the materials supplied by CMP, no land divisions requiring subdivision approval from the Commission occurred during the preceding 20 years for any of the Project parcels. The Commission concludes that CMP has demonstrated that the applicable criteria for subdivision and lot creation have been met.

14. Activities in Flood Prone Areas.

- A. Review Criteria. LUPC Land Use Standards § 10.25,T.
- B. Project. The Project crosses one P-FP subdistrict in Appleton Twp. Concord Twp, rated as a minimal flood hazard area, is the only LUPC jurisdictional area mapped for flood hazard by FEMA. No transmission line structures will be installed within the P-FP subdistrict or within mapped 100 year floodplains within LUPC jurisdiction. Therefore, the installation of transmission line structures will not directly impact or increase the risk of flooding along the proposed Project route.
- C. Conclusion. The Commission concludes that the provisions of §10.25,T are not applicable to the Project.

15. Dimensional Requirements.

- A. Review Criteria. LUPC Land Use Standards §§ 10.26, D and 10.26, F. Because the only Project facilities proposed in LUPC jurisdiction are transmission structures (poles) and overhead wires, and the termination stations near the upper Kennebec River (which will include only electrical components and overhead wires), the dimensional requirements for lot size (§10.26, A), shoreline frontage (§10.26, B), road frontage (§10.26, C), and lot coverage (§10.26, E) do not apply to the Project.
- B. Minimum Setbacks. Section 10.26, D(2) states that the minimum setback for commercial or industrial development is 100 feet from minor flowing waters, P-WL1 wetlands, and water bodies less than 10 acres. The setbacks from water bodies greater than 10 acres and major flowing waters is 150 feet in all locations. Section 10.26, D, 3, states that project components must be set back 75 feet from traveled portions of roads used by the public for access; and 25 feet from side and rear property boundary lines. Because the design of the Project is constrained by both topography and the presence of natural resources and other features (e.g., roadways), and because the Project was designed to place transmission line structures such that they avoid natural resource impacts to the maximum extent practicable while maintaining necessary safety clearances for the overhead conductors, a number of poles do not conform with the defined setback in § 10.26, D(2). However, as described in the Site Law Application, the locations of those structures located less than the minimum setback distances in § 10.26, D(2) are consistent with § 10.26, G(5), which provides that an exception may be made to a setback requirement if the structure must be located closer due to the nature of its use. The termination stations near the upper Kennebec River will be positioned outside of the setback requirements.
- C. Maximum Structure Height. Section 10.26, F(1) states that the maximum structure height is 100 feet for commercial, industrial, and other non-residential uses involving one or more structures. Transmission line structure heights are determined during project design based on a number of parameters governed by the safety standards of the National Electrical Safety Code. Specifically, for safe operation of the line, the transmission line must be designed in a manner that provides adequate clearance from the ground to the maximum sag of the transmission line. Structure locations are placed, to the extent practicable, in a manner that avoids and spans protected natural resources. Additionally, topographic constraints, the presence of existing utilities, and the span length needed to place structures outside of sensitive areas often require transmission line structures to be taller than 100 feet. 96 of the approximately 380 transmission line structures in LUPC jurisdiction exceed the maximum structure height defined in § 10.26, F(2). However, transmission line structures are freestanding and contain no “floor area,” and thus the Commission grants its approval for NECEC transmission line structure heights to exceed 100 feet, pursuant to § 10.26, F(3). Infrastructure within the termination stations will be no taller than 100 feet.
- D. Conclusion. The Commission grants an exception to the setback requirements, pursuant to § 10.26, G(5), and approves transmission line structure heights in excess of 100 feet, pursuant to § 10.26, F(3).

16. Vegetation Clearing.

- A. Review Criteria. LUPC Land Use Standards § 10.27, B.
- B. Project. Approximately 150 feet of the 300-foot wide, 53.5-mile right-of-way will need to be cleared of capable vegetation from Beattie Township to the point at which it enters the existing transmission line corridor in The Forks Plt. Within the existing transmission

line corridor, a strip approximately 75 feet wide will be cleared of capable vegetation to accommodate the new transmission line. This includes approximately 18.17 miles of existing corridor located in The Forks Plt, Bald Mountain Twp, and Concord Twp. Due to the nature of the Project, the buffer strips identified in Section 10.27,B will be retained, but the Project cannot conform to the selective cutting requirements associated with the maintenance of vegetation (§10.27,B,2). However, vegetation clearing activities not in conformance with the standards of Section 10.27,B may be allowed upon issuance of a permit from the Commission provided that such types of activities are allowed in the subdistrict involved.

- C. Conclusion. Because the Commission has found that the Project is an allowed use in all subdistricts including those allowed by special exception, it will allow the buffers and CMP vegetation clearing and maintenance practices described in Site Law Exhibits 10-1 and 10-2 (revised January 30, 2019), and therefore concludes that the applicable criteria for Section 10.27,B have been met.

17. Signs.

- A. Review Criteria. LUPC Land Use Standards § 10.27,J.
- B. Project. The Project will not include any permanent signs within LUPC jurisdiction. Traffic control signs and directional signs related to Project construction will be limited and temporary, and that signage does not require a permit from the LUPC, provided such signs are in conformance with the requirements of Section 10.27, J(1) and (2).
- C. Conclusion. The Commission concludes that CMP has demonstrated that the applicable criteria for signage have been met.

FINAL CONCLUSION

18. Therefore, the Commission CERTIFIES to the Department of Environmental Protection that the NECEC Project, as proposed by Central Maine Power Company, is an allowed use within the subdistricts in which it is proposed and complies with the Commission's land use standards not considered by the Department in its Site Law review.

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

and

**STATE OF MAINE
LAND USE PLANNING COMMISSION**

IN THE MATTER OF:)	
)	
CENTRAL MAINE POWER COMPANY	)	APPLICATION FOR SITE LOCATION OF
25 Municipalities, 13 Townships/Plantations,	)	DEVELOPMENT ACT PERMIT AND
7 Counties	)	NATURAL RESOURCES PROTECTION
	)	ACT PERMIT FOR THE NEW ENGLAND
L-27625-26-A-N	)	CLEAN ENERGY CONNECT
L-27625-TB-B-N)	
L-27625-2C-C-N)	
L-27625-VP-D-N)	
L-27625-IW-E-N)	
)	
CENTRAL MAINE POWER COMPANY)	
NEW ENGLAND CLEAN ENERGY CONNECT)	
SITE LAW CERTIFICATION SLC-9)	

GROUPS 2 AND 10'S POST -HEARING BRIEF

Intervenor Group 2 and Intervenor Group 10 (collectively, "Groups 2 and 10") by and through their attorneys, BCM Environmental & Land Law, PLLC, pursuant to Section 23 of Chapter 3 of the Maine Department of Environmental Protection (the "Department") Rules and Rule 5.18 of the Land Use Planning Commission (the "Commission") Rules, submits this Post-Hearing Brief and Appendix of Proposed Findings of Fact and Conclusions of Law incorporated by reference, to deny Central Maine Power Company's ("CMP" or "Applicant") application for the so-

called New England Clean Energy Connect (“NECEC” or “Project”), 145-mile, 150 foot wide¹ transmission corridor.

SUMMARY

CMP has not met its burden. The 145-mile, 150-foot wide transmission corridor will unreasonably interfere with existing scenic and aesthetic uses. The first 53.5 miles slicing through Maine’s western mountains and exceptional brook trout streams and across the Kennebec Gorge will adversely affect Maine’s natural resources and wildlife habitat. This industrial corridor running through the largest contiguous forest east of the Mississippi cannot be buffered from the existing recreational uses and natural resources within the P-RR subdistricts. Alternatives exist. The Applicant chooses not to spend its money on more expensive but far less damaging routes. The Department and the Commission should just say no to NECEC.

DEPARTMENT HEARING TOPICS AND RELATED LEGAL CRITERIA

I. Applicant Failed to Demonstrate that the Project Will Not Unreasonably Interfere with the Scenic Character, Existing Scenic, Aesthetic, Recreational Uses and that the Development Fits Harmoniously into the Natural Environment.²

Maine’s northwestern region is home to some of the northeast’s most diverse and remotely beautiful landscapes. From the vistas atop Coburn Mountain, to the rapids of the Kennebec, the waters of Beattie Pond, and the cold-water Brook Trout streams — the proposed project would touch it all. Beyond mere scenery, these scenic landscapes of Maine are one of the state’s most valuable assets, providing the lifeblood for a thriving outdoor-based tourism industry and culture. The purposes of 38 MRS § 480-A make clear it is the Department’s responsibility to ensure these precious elements of Maine’s natural environment are not permanently scarred by this for-profit utility line project bringing zero energy to this state’s energy needs: “The Legislature further finds

¹ The actual width of the right of way under the control of CMP is 300 feet wide.

² 38 M.R.S. § 480-D(1), 38 M.R.S. § 484(3), DEP Rules Chapters 315 and 375: § 14.

and declares that the cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.”³ There is only one conclusion to be reached: CMP has failed to meet its burden. The Applicant has not demonstrated that the proposed project will not have unreasonable adverse visual impacts, does not unreasonably interfere with existing scenic and aesthetic uses, does not diminish the public enjoyment and appreciation of the qualities of a scenic resource pursuant to 06-096 C.M.R. 315(4).

1. Applicant Failed to Demonstrate that the Project Would Not Unreasonably Interfere with Scenic Resources.

Applicant has deliberately chosen to limit its—and by extension the Department’s—field of view; minimizing the visual impacts of the proposed project. Applicant has intentionally created a view for the Department of merely a few, scattered impacted scenic landscapes, with only marginal potential adverse effects that can be simply mitigated.⁴ Peer review of Applicant’s consultant TJD&A conducted by James F. Palmer, Scenic Quality Consultants and evidence presented by Intervenors in Groups 2 and 10, NRCM and other Intervenors, which encompasses a broader view consistent with legal requirements, shows that the proposed project would have unreasonable adverse effects on Maine’s scenic resources. Applicant exceeds credulity when it asks the Department to accept that this proposed project would have virtually no effect on the iconic landscapes of Maine’s western mountains and river valleys when it has utterly failed to capture all potentially impacted scenic resources. The Department and the Commission specifically requested that the Applicant, “...provide a complete inventory of scenic resources potentially impacted by the

³ 38 MRS § 480-A.

⁴ Even for the Applicant, it is difficult to argue there is any way to mitigate the potential impact of the proposed project. See Tr. 05/09/19, Hearing Day 6, at 196, line 25 through 197, 15 (DeWan/Segal)

MS. BOEPPLE: Is there a way to mitigate the visual impact that this particular design would create?

TERRY DEWAN: You're not going to make them any less visible.

project, including but not limited to historic sites, streams and public roads.”⁵ As Mr. Palmer noted, rather than comply with this request, Applicant said that the format and methodology used for the Maine Power Reliability Project was “virtually identical”⁶ to that which it used here. As Mr. Palmer stated: “This may be the case, but it is not an adequate response. The MPRP VIA was not subject to peer review, and now that the NECEC is being peer reviewed there are questions about why the identification of scenic resources does not follow the plain language interpretation of Chapter 315.10 as described in Palmer’s (2018) review of the NECEC VIA.”⁷

Applicant’s deficiencies in its evaluation of visual impacts are well documented in Mr. Palmer’s peer review. For example, in his memo to Bill Hinkel regarding Summary of Problems and Discussions of Improvements, Mr. Palmer questions the accuracy of the land cover height information. He stated: “The accuracy of the viewshed analysis is important because it provides the initial identification of the viewpoints which are the basis of the VIA analysis and evaluation. An inaccurate viewshed analysis leads to a poor understanding of the project’s visibility.”⁸ This fatal flaw in the initial analysis was never corrected. As Mr. Palmer stated in his supplemental report: “The question remains, why does the VIA not use the most accurate available land cover height information?”⁹

Further in his Supplemental report, Mr. Palmer points to a range of scenic resources that were not fully considered. Among them were the following:

- Public roads visited in part for the enjoyment of visual qualities.
- Properties within the study area that are eligible for inclusion in the National Register of Historic Places.

⁵ November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p. 15.

⁶ Id.

⁷ November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p.15.

⁸ August 24, 2018 Memorandum to Bill Hinkel from James Palmer, p. 1.

⁹ November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p.15.

- Properties that take advantage of Maine’s Open Space Tax Law offers property tax reductions in return for public access to private conservation lands; lands that would be visible in part for the enjoyment of visual qualities.¹⁰

Among those scenic resource types, Mr. Palmer further elaborated on and discussed: clusters of properties, cemeteries, and public land that are visited in part for the enjoyment of visual qualities.

Mr. Palmer enumerated several examples including:

Several locations where clusters of properties eligible for inclusion in the National Register of Historic Places appear to have potential for visual impacts: along the west side of Moxie Pond, and the villages of Bingham, Solon, North Anson, Anson, Madison, Farmington... There are 222 cemeteries within 3 miles of the NECEC centerline, of these 47 appear to be in the landcover viewshed.... Attachment K: Conservation Area Charts indicate that the BPL owned West Forks Parcel and Johnson Mountain Parcel are not scenic resources because they are managed primarily for timber and not visual resources. However, it is not necessary for the primary objectives to include resource management – it is whether the general public visits them in part for enjoyment of their visual qualities.¹¹

Aside from the flawed methodology which failed to capture all of the scenic resources, this calls into question whether the Applicant truly appreciates what Maine’s scenic resources are. As Mr. Palmer stated:

How many other public resources or public lands have been eliminated from consideration because they were ‘not managed for preservation of Visual Resources?’... These are examples, not an exhaustive listing. The question remains – why is there not a full accounting of potential scenic resources and a documented evaluation of all those with potential visibility? There does not even appear to be a process to attempt a full accounting.”¹²

In addition to missing scores of scenic resources, Mr. Palmer also faults Mr. DeWan’s methodology employed in completing the DEP’s Basic Visual Impact Assessment Form in the evaluation of visual impacts on the meager 37 viewpoints (as Mr. Palmer pointed out, some of which represent the same scenic resource) that were evaluated. Mr. Palmer sites Mr. DeWan’s use of

¹⁰ November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p.16.

¹¹ Id.

¹² November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p.17.

only two raters. He stated: “The use of only two raters clearly does not approach the standard recommended by the research that established the contrast rating approach to VIA.”¹³

Even if the Applicant sufficiently identified the potentially impacted scenic resources, and even if the methodology of assessing those that were identified was not fatally flawed, the Applicant compounded these failings with a too-little-too-late attempt to identify whether people’s use and enjoyment of the resources would be impacted. Again, Mr. Palmer’s peer review assessed the intercept study. Again, he found the methodology flawed:

It would be misleading to generalize from finding about the effect of seeing wind turbines on the fishing experience of people at Baskahegan Lake in order to explain the effect of seeing a large transmission line while on a Kennebec River rafting trip. There is simply no data to suggest that either study could shed light on the effect to people appreciating the view of a historic site, hiking on a trail, or driving along a road chosen in part for the enjoyment of its scenic quality.¹⁴

Flawed data in the making of the survey means the results are unreliable and therefore the conclusions drawn are meaningless. The Applicant’s efforts to fill the gaping holes in their application fall well short of the required legal standard: that the activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses pursuant to 38 M.R.S. § 480-D(1).

Inadequate identification of scenic resources, flawed methodology, and failure to identify impacts result in only one possible conclusion: Applicant failed to meet its burden. Thus, the Applicant cannot show that the project will not unreasonably interfere with the scenic character of the area pursuant to 06-096 C.M.R. 375 (14). The Application should simply be denied.

¹³ November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p.18.

¹⁴ November 23, 2018, James F. Palmer, *Review of the New England Clean Energy Connect October 2018 Supplemental Materials*, p.11.

2. Applicant Failed to Demonstrate that the Project Would Not Unreasonably Interfere with Existing Scenic, Aesthetic and Recreational Uses.

Applicant must establish that the proposed project would not unreasonably interfere with Maine's recreational uses – uses that are integrally related to Maine's scenic and natural wildlife habitat. If not for the nexus between recreational uses and Maine's natural environment, the Legislature would not have included a demand that a utility project such as this be assessed for not only impacts on recreational uses, but affirmatively find that the project *will not* unreasonably interfere with those recreational activities. The Applicant has failed to do that. The record demonstrates the proposed project would undermine Maine's unique brand of outdoor-based, recreational tourism and superior scenic beauty. That, perhaps, is why the vast majority of registered Maine voters oppose the project at least in part because of unreasonable interference with existing uses.¹⁵

Whether year-round or seasonal residents, tourists, first-time visitors or generational, Maine's western mountains beckon for hiking, snowmobile travel, and hunting amidst the seemingly wild and remote natural landscape. Rafting or fishing in the cold mountain streams and rivers, home to the "last true stronghold for brook trout in the United States,"¹⁶ are the existing uses with which this project will unreasonably interfere. No buffering can protect fly fishing on a Great Pond or Lake, or hiking a mountain trail or the AT, or rafting a clear water river.

The Applicant does not adequately address the impact to existing uses. CMP ignores the very components that make Maine's western mountains and rivers so special. As Justin Preisendorfer stated on Hearing Day 3:

"Maine has our country's largest contiguous block of undeveloped forestland east of the Mississippi and that undeveloped landscape is essential to Maine's brand. Roughly 36.7 million tourists visited Maine in 2017 and the primary reason when surveyed was beautiful scenery. They leave development behind to enjoy the undeveloped

¹⁵ Pre-filed Testimony of Elizabeth Caruso, CRTK 3.

¹⁶ Tr. 04/02/19, AM, Testimony of Sue Ely, p. 41, lines 6-7.

landscapes Maine has to offer. The postcards they send home do not contain images of utility corridors. Nature-based tourism and outdoor recreation is affected by scenic impacts.”¹⁷

Group 2 Intervenor and witnesses made clear what the existing uses are in the 53.5 miles of non-existing transmission corridor. As Justin Preisendorfer stated in his pre-file testimony:

The transmission corridors and lines required by the NECEC project would negatively impact scenic integrity from a wide range of vantage points. The proposal states that only six conservation parcels are crossed but the reality is that the impacts are far wider when you consider views beyond the foreground. Those who live in Maine or come to visit don’t care about scenic qualities just when they’re on conserved lands. Maine has more than 20 million acres of land and the forests of Maine are predominantly privately owned. The most recent Maine State Comprehensive Outdoor Recreation Plan (SCORP) survey indicates that over 50% of each sample group (resident recreationists, nonresident recreationists, and general resident sample) have visited private lands for recreation in the last two years. Many of the private lands that are impacted by the NECEC proposal have high recreation value where the scenic integrity is central to the experience. A scar on the landscape looks the same regardless of who owns the land you stand on.¹⁸

Using the terminology of the statute, “existing uses” belies the significance of what “existing uses” means in the 53.5 miles of segment one of the proposed corridor. The testimony of Intervenor and the public comment of many people from this area tell a far more personally impactful tale:

The West Forks is in the epicenter of the proposed 145-mile corridor and the first organized community on the 53-miles of proposed new construction of the corridor. Residents consider the West Forks to be the ‘doorstep to the North Woods,’ where outdoor recreation and tourism is their lifeline. The West Forks has seen over 100,000 people a year recreate on their two class A Rivers - the Kennebec River Gorge and the Dead River - for whitewater boating, commercial and private rafting as well as canoeing, kayaking and fishing.

In the winter, the greater Forks area is also a major destination for snowmobiling, because of destinations that include Grand Falls, Coburn Mountain and a central trail grid leading out in all directions. This region of western Maine is considered one of the most scenic and well maintained anywhere in the state. It is also the central “Hub” of Old Canada Road National Scenic Byway where hundreds of thousands of tourists travel between Quebec, the Maine coast, and other southern locations.

¹⁷ Tr. 04/04/19, AM, Testimony of Justin Preisendorfer, p. 57, lines 6-23.

¹⁸ Pre-filed Testimony of Justin Preisendorfer, p. 7, lines 9-21.

This area attracts not only visitors, but also residents and camp owners who make this place their homes and second homes. Just to the north, the Boundary Mountains and the North Woods, are one of the last places on the east coast of the U.S. that have been safe from “hard commercial sprawl” and it should stay that way.¹⁹

Single voices and those speaking on behalf of others are equally prevalent in these proceedings and are all consistent in the real and personal impacts this project would have on their lives by affecting the existing uses. For example, Elizabeth Caruso speaking in these proceedings on behalf of the Town of Caratunk:

The Town of Caratunk has grave concerns with regards to many facets of the NECEC proposal. As a democratic government, our voters (residents) expect the town to defend and represent their welfare. Most year-round residents derive their income in the tourism industry as independent guides or by working for the recreational outfitters, lodges, cabins and restaurants, area gas stations, etc. A few of these residents are intervenors in this proceeding, and many have submitted sworn testimonies and public comments against the project. Other residents work as carpenters, roofers, woodsmen, and handymen catering to the needs of the area’s landowners, both year-round and seasonal. However, most of Caratunk’s landowners are from out-of-state and own vacation homes and camps along Pleasant Pond and the Kennebec River. Caratunk residents will not only be impacted financially through their livelihoods from which they derive income to support families, but also in their ways-of-life. All residents chose homes and vacation homes or camps in Caratunk for the area’s peace and beauty in surroundings and also for the recreational opportunities provided by the local mountains, ponds, lakes, rivers, streams, etc. NECEC will invade the beautiful and valuable view shed which they enjoy but which also provides financial worth. NECEC will assault the nature’s silence and the nighttime darkness from their decks and during year-round recreation activities.²⁰

Moreover, while analyzed separately, forest fragmentation and loss of wildlife habitat are integrally related to existing uses. As Ron Joseph stated in Hearing Day 4: “The continued loss of our remaining deer yards is a significant economic impact on traditional Maine sporting lodges in rural communities that depend on income from deer hunters.”²¹

The record is laced with examples of how this project will interfere with existing uses. Once done it cannot be undone and the harm cannot be buffered. How do you shield a snowmobile trail

¹⁹ May 17, 2019, Public Comment, Sandra Howard, p. 3

²⁰ Pre-file Testimony, Elizabeth Caruso, p. 3 lines 6-21.

²¹ TR. 04/04/19, AM, Testimony of Ron Joseph, , p.25, lines 3- 7.

rider from experiencing the altered viewshed that would now include a transmission line corridor with permanent steel poles where once a wooded landscape existed? How do you “buffer” a rafter’s experience that came for the natural landscape along the Kennebec but came away with visions of industrial structures related to the transmission line even if undergrounded across the Gorge? Or how do you “buffer” the impacts on the cold-water habitat that is now gone and with it the unique brook trout that brings anglers from all over the country? You cannot. The interference with the existing uses is incapable of mitigation. There is no buffering that would allow these uses to co-exist in the 53.5 miles of new territory.

3. The Applicant Failed to Show that the Project Will Not Unreasonably Harm any Significant Wildlife Habitat, Travel Corridor or Freshwater Fisheries.²²

The Applicant’s own witnesses admitted that they did not look at the direct and irreparable adverse effects along the first 53.5 miles where they would be cutting a new swath through forested habitat. Instead, they considered the project as a whole to justify damaging Maine’s “rivers and streams, great ponds, fragile mountain areas, freshwater wetland [and] significant wildlife habitat...”²³ The Applicant erroneously believes that analysis of the project as a whole justifies extreme impacts to pristine areas because of existing development in other areas, like Lewiston. “Our job is to permit a project and take the impacts as a whole. You can't just focus on one portion of the project over another. So we try to minimize impacts in total and by co-locating we're able to minimize impact in total...”²⁴ In other words, in CMP’s estimation, co-locating and expanding a corridor in already impacted and adversely affected regions of Maine makes it okay to permanently damage the natural landscape for close to 1/3 of the project route. If the Applicant had accurately assessed the impact to the first section of the proposed route, it would have been clear that the

²² 38 M.R.S.A. 480-D(3).

²³ 38 M.R.S. § 480-A.

²⁴ Tr. 04/01/19, Testimony of Mark Goodwin, p. 92, 19-23.

negative impacts are so significant that any purported benefit in other sections cannot make up for the damage that would be done.

The Applicant argues that a new 150' wide by 53.5 mile clear cut of forest would have a negligible forest fragmentation effect. They posit that because this area is bisected by commercial logging activity, the installation of permanent²⁵ industrial structures and clear cutting with a permanently maintained cleared corridor will not unreasonably harm significant wildlife habitat. This is simply not supported by the record. The qualified wildlife biologists put forward by the Intervenors say otherwise. Loss of wildlife habitat and permanent forest fragmentation *will* unreasonably harm significant wildlife habitat.

The Applicant's position is clearly not shared by every single qualified forester and wildlife expert who testified in opposition to this project as the following small sampling from the record illustrates, first with respect to forest fragmentation:

- “The slippery slope in fragmentation is that one on top of another feeds into cumulative fragmentation and associated cumulative impacts and I think that is going to be maximized by this power line and not minimized as CMP seems to insist concerning scenery and habitat.”²⁶
- “This project would create a permanently non-forested 150 foot wide corridor across the entire region, one of the largest fragmenting features in this mostly undeveloped landscape.”²⁷
- “So in terms of just forest fragmentation from timber harvesting practices, that's the mix of what exists currently in the landscape. Added into that factor... the existing, or the newer base of permanent gravel logging roads, some are wide like the Spencer Road out on the front end and some over there in Lowelltown, they're pretty narrow.... so those narrow ones are going to have less fragmenting impact, but in terms of landscape vegetation change, I factor that into impacts that begin to accumulate. You put the Central Maine Power line through there and that is permanent and radically different.... when you look at where that power line comes down across the landscape, you can see how... the power line cuts right

²⁵ Mr. Thorn Dickinson testified on Hearing Day 1 that this should not be considered a “permanent” installation. However, under cross, he admitted that there is no decommissioning plan or cost allocation included in the plan for removal of the structures or restoration of the land at any point in the future. It must therefore be considered a permanent installation.

²⁶ Tr. 04/03/19, Testimony of Roger Merchant, p. 66, lines 20-25.

²⁷ Tr. 04/04/19, AM, Testimony of David Publicover, p.12, lines 18-22.

through that... splits that chunk of deeper continuous forest in half. That's fragmentation on top of fragmentation."²⁸

- “The Applicant's assessment of forest fragmentation is rudimentary and lacking in any analysis of impacts. It consists primarily of general statements that are contradicted by the literature and unsupported by any evidence in the application. Statements to the effect of some species will benefit while others will not are followed by a discussion of the habitat benefits of utility corridors while avoiding any discussion of which species are adversely affected. In the end, the Applicant's argument amounts to little more than this landscape is already trashed and this is just another clearcut so there will be no impact.”²⁹
- “In short, when we consider the long-term, cumulative nature of fragmentation impacts, the forest of western Maine may already be stressed by forestry roads and the addition of the NECEC could, while not the ‘straw that breaks the camel's back’, still be a log that significantly weakens the camel.”³⁰

The clear importance of forest fragmentation speaks directly to the viability of wildlife species and their habitat. The Applicant failed to identify not only impacted habitat but species as well. The following illustrates those species and habitat impacts:

- “There are numerous examples of the detrimental effects of forest conversions and fragmentation in and around deer yards. The Chub Pond deer yard, a few miles south of Whipple Pond where the transmission line would pass, has undergone numerous timber harvests within and adjacent to the deer yard... [W]e do know that the deer yard no longer supports wintering deer. The Mud Pond deer yard in Parkman serves as a stark reminder of their critical importance. Timber harvest within and adjacent to the Mud Pond deer yard during the winter of 1979-80 killed between 90 and 100 deer according to the Maine Warden Service. Surrounded by deep snows and clearcuts the stranded deer died of starvation. My point in mentioning these is to stress that the loss of deer wintering areas and the fragmentation and the loss of habitat connectivity between deer wintering areas and the surrounding forest land are the major limiting factors for deer populations in northern, western and eastern Maine. CMP's proposed project further contributes to deer yard degradation and fragmentation.”³¹
- “The Applicant does not acknowledge that there are critical regional ecological values that will be impacted by this project. The Applicant does not demonstrate an understanding of basic conservation biology principals such as how permanently dividing large forest blocks into smaller ones or changing their shape can negatively impact forest wildlife species because of edge effects.”³²

²⁸ Tr. 04/03/19, Testimony of Roger Merchant, p. 116, line 9 through p. 117, line 17.

²⁹ Tr. 04/04/19, AM, Testimony of David Publicover, p. 14, line 19 through p. 15, line 6.

³⁰ Pre-Filed Testimony, p. 8, Group 6, Malcolm Hunter.

³¹ Tr. 04/04/19, AM, Testimony of Ron Joseph, p. 24, line 5 through p. 25, line 3.

³² Tr. 04/05/19, Testimony of Janet McMahon, p. 11, lines 4-9.

- “[I]t's a cumulative process that happens over time, but a big feature like this is going to have a major impact. It's just -- it's a big feature and it's going to fragment a number of forest blocks, which is not addressed at all in their application... We can't even gauge what the overall impact is from the application because it's going to break so many other forest blocks into smaller ones. And also going over mountainous terrains, the mountain is -- the mountains are the most resilient part of the state because that's where there is more room for species to move up or down or to northern slopes as I mentioned, so putting it through a mountainous area on average elevations of 2,000 or 3,000 feet is problematic.”³³
- “In all 11 deer yards where CMP plans to clear trees they are proposing to revegetate disturbed soils with a wildlife seed mix. CMP failed to recognize that its wildlife seed mix will be buried in open areas beneath 3 to 4 feet of snow during Maine's long winters and thus provide no benefit to deer. In the summer when CMP's seed mix will be available to deer natural food is not a limiting factor. CMP downplays the deer yard impacts in sections of its proposed corridor that it widens claiming that, quote, corridor construction will only widen the existing non-forested transmission line corridors and conclude by saying that, quote, it will not significantly affect habitat functional attributes of the deer intersected by the project and that after construction deer yards, quote, will function similarly to the way they currently do. This claim is simply preposterous. We know from the University of Maine research and my own deer yard work that loss of deer yard and loss of connectivity between deer yards and surrounding habitat are detrimental to deer survival. Wide non-forested strips in deer yards are barriers to deer and the additional width of 75 feet would make them an even greater barrier. Deer can't walk or bound through deep snows without burning precious fat reserves needed to survive until snow depths decrease in April.”³⁴
- “[I]t's important to remember that when we talk about marten we're not just talking about one species. Marten is one of the two primary umbrella species in the north Maine woods as determined by extensive research at the University of Maine and it is the umbrella species for mature forest habitat.... So when we talk about marten we're not just talking about one species, we're talking about the whole suite of species that share the same habitat needs.”³⁵
- “The scale and cumulative impact of the habitat fragmentation caused by Segment 1 of the proposed NECEC corridor could potentially ‘adversely affect wildlife and fisheries lifecycles’ for many years into the future.”³⁶
- “Maine’s western forest is unique in the eastern United States for its concentration of well-connected and climate-resilient wildlife habitat. The Conservancy is concerned about the potential of NECEC Segment 1 to contribute to new and unprecedented fragmentation of this connected and resilient landscape.”³⁷

³³ Tr. 04/05/19, Testimony of Janet McMahon, p. 40, line 23 through p. 41, line 13.

³⁴ Tr. 04/04/19, AM, Testimony of Ron Joseph, p. 28, line 1 through p. 29, line 3.

³⁵ Tr. 04/04/19, AM, Testimony of David Publicover, p. 161, line 3-13.

³⁶ Pre-file Testimony, p. 2, Group 6, Rob Wood, Energy Policy and Projects Advisor, Andy Cutko, Director of Science, and Bryan Emerson, Mitigation Program Manager, for The Nature Conservancy in Maine.

³⁷ Pre-file Testimony, p. 3, Group 6, Rob Wood, Energy Policy and Projects Advisor, Andy Cutko, Director of Science, and Bryan Emerson, Mitigation Program Manager, for The Nature Conservancy in Maine.

- “Segment 1 of the proposed NECEC corridor would create a new linear fragmenting feature in what is currently a large, mostly unfragmented forest block.... this new fragmentation will have unpredictable implications for the health and viability of wildlife and plant species over time, and that such implications could be significant.”³⁸
- “The impacts of fragmentation have been widely evaluated in the scientific literature, and there are at least hundreds, probably thousands, of peer reviewed publications on this topic. In short, it is widely recognized that fragmentation is one of the leading causes of biodiversity decline across the globe, but its role is context-dependent.... In multiple parts of its application, CMP argues that in a working landscape such as this, the additional impacts from a powerline corridor are inconsequential. However, it is important to recognize that with the exception of major haul roads, clearing from forest management is temporary, and even industrial forest management requires forests to grow back to maturity before they are harvested again. The results of forest management across the western Maine landscape create a patchwork of age classes that shift over time. Although these shifts are more frequent, and the patches larger, than would occur in a totally natural forest setting (i.e., under a regime of natural disturbance such as windstorm and insect damage), because of the largely intact and connected landscape, over time Maine's wildlife are able to move among these patches. In contrast to these temporary and shifting impacts of forest management, the proposed NECEC corridor would be a permanent fragmenting feature, much like the few major forest roads in the region.”³⁹
- “Forest loss associated with a transmission line and associated construction roads is amplified by the edge effects that extend the corridor's impact far into the adjacent forest. At the global scale, forest edges influence more than half of the world's forests and contribute to worldwide declines in biodiversity and ecosystem functions.⁵ These changes occur as a result of differences in light and wind exposure at forest edges, associated changes in plant community composition and structure (e.g., forest vs. shrub), introductions of invasive species, and changes in predator/prey relationships. ***Segment 1 of the NECEC will create more than 100 linear miles of permanent new edge habitat in Segment 1 alone.***⁴⁰
- “It is not possible to build a new energy infrastructure project of this size without unreasonable adverse impacts to wildlife, the project is simply too big. The Applicant does not acknowledge that there are critical regional ecological values that will be impacted by this project. The Applicant does not demonstrate an understanding of basic conservation biology principals such as how permanently dividing large forest blocks into smaller ones or changing their shape can negatively impact forest wildlife species because of edge effects.”⁴¹
- The proposed transmission corridor would pass through the heart of western Maine mountains. This region is ecologically significant for many reasons. It is the largest and least fragmented area of tempered forests remaining in North America and some studies suggest the world. The combination of mountainous terrain, high landscape diversity and contiguous

³⁸ Pre-file Testimony, p. 4, Group 6, Rob Wood, Energy Policy and Projects Advisor, Andy Cutko, Director of Science, and Bryan Emerson, Mitigation Program Manager, for The Nature Conservancy in Maine.

³⁹ Pre-Filed Testimony, p. 3, Group 6, Malcolm Hunter.

⁴⁰ Pre-Filed Testimony, p. 4, Group 6, Malcolm Hunter.

⁴¹ Tr. 04/05/18, Testimony of Janet McMahon, p.10, line 23 through p. 11, line 9.

forest land make the region ecologically significant or ecologically resilient in the face of climate change. It is a globally important bird area. It is the last stronghold for brook trout in the eastern United States. It is a source area for marten, lynx and other forest species. It is the key ecological link between forests in the eastern U.S. and Canada.”⁴² “[T]he proposed CMP project will likely impact hundreds more functioning pools than the regulatory or legislative definitions alone would indicate. The project will have both direct and indirect effects on pools... It will also harm the ecological webs of pool and post-breeding habitats through fragmentation of forests associated with the pools.”⁴³

- “[T]he effects of a clear-cut ROW through existing vernal pools, adjacent vernal pools, and travel routes to and from breeding pools will result in impacts ranging from devastation for some individual vernal pools to greatly compromised habitat for others. The literature is clear that some amphibians will make their way through inhospitable cover but that many will avoid the journey or perish along the way.”⁴⁴
- “What we do know is that populations along the corridor will be compromised, some lost, and some severely degraded. We know that significant numbers of animals will be directly impacted through operations. We know that we should avoid all such impacts when feasible. We know that climate change related warming and altered precipitation patterns stress amphibian populations already. The proposed ROW will be a significant further stressor.”⁴⁵
- “[V]ernal pools... we shouldn't be looking at them as discreet single wetlands that are primarily habitat for pool-breeding amphibians, but they have a large number of other ecosystem functions, hydrologic, biogeochemical support of non-breeding wildlife... they should be assessed as a network of wetlands that are integrated into the forested ecosystem, so the greater the distances between vernal pools from losses, all of these things have effect on the ecology of vernal pools in forests in wetlands.”⁴⁶
- “The region through which the proposed NECEC project will be completed is the heart of the largest reservoir of intact aquatic habitat in the Northeast. This habitat supports populations of native brook trout that have been identified as the "last true stronghold for brook trout in the United States." The proposed new corridor would substantially fragment this habitat, with multiple stream crossings that impact brook trout habitat, and the creation of a new corridor that could be a vector for increased human use and introduction of invasive species. The Applicant's assessment of these resources and impacts is inadequate, does not contain a specific analysis of impacts to brook trout habitat, and assumes the impacts of the new permanent corridor will be identical to the impacts of past and present forest management.”⁴⁷

⁴² Tr. 04/05/19, Testimony of Janet McMahon, p. 10, line 23 through p.11, line 9.

⁴³ Pre-file Testimony, p. 8, Group 4, Aram Calhoun.

⁴⁴ Pre-file Testimony, p. 13, Group 4, Aram Calhoun.

⁴⁵ Pre-file Testimony, p. 14, Group 4, Aram Calhoun.

⁴⁶ Tr. 05/09/19, Testimony of Aram Calhoun, p. 38, lines 5-15.

⁴⁷ Pre-file Testimony, p. 6, Group 4, Jeff Reardon.

In sum, while the above is a lengthy list of citations from the record, it only scratches the surface of the wealth of information provided throughout the six days of hearings and submissions into the record that illustrate: 1) the Applicant failed to meet its burden to show the project would not unreasonably harm any significant wildlife habitat, travel corridor or fresh water fisheries, and 2) harm to these precious resources will occur if the project is approved even with the grossly inadequate mitigation measures such as vegetation tapering.

It is clear that CMP failed to assess, and now fails to acknowledge, the extensive harm its proposed transmission corridor will engender to Maine's western mountains and streams. So perhaps it is not surprising that Applicant's mitigation and compensation plan is also woefully inadequate.

38 MRSA 480-D(3) sets out mitigation measures that the Department *may* consider "in determining whether there is unreasonable harm to significant wildlife habitat... aquatic or adjacent upland habitat, travel corridor, [or] freshwater." Those measures include: "Avoiding an impact altogether by not taking a certain action or parts of an action; Minimizing an impact by limiting the magnitude, duration or location of an activity or by controlling the timing of an activity; Rectifying an impact by repairing, rehabilitating or restoring the affected environment; Reducing or eliminating an impact over time through preservation and maintenance operations during the life of the project; or, Compensating for an impact by replacing the affected significant wildlife habitat." CMP has failed to adequately utilize any of these mitigation measures as Dr. Hunter succinctly stated in his prefile testimony:

"The NECEC corridor would be one of the largest fragmenting features in the region, and as previously noted, there really is no comparable precedent for assessing the impacts to wildlife connectivity. CMP has made adjustments to its original compensation plan to accommodate for corridor impacts to white-tailed deer (particularly wintering habitat) and a few selected rare species (roaring brook mayfly and northern spring salamander). While deer have been identified in this process because of their regulatory standing, there are approximately 800 species of vertebrate wildlife in Maine and thousands of species of invertebrates, and many hundreds of species are present in the region affected by this

corridor. Although habitat fragmentation affects different species in different ways, it is clear that many other species would be affected in addition to deer. These include birds such as scarlet tanager and black-throated blue warbler, mammals including pine marten and Canada lynx, amphibians such as spotted salamander and wood frog, and reptiles such as the wood turtle. The proposed mitigation and compensation plan does not adequately address the cumulative impacts to the full array of Maine's wildlife."⁴⁸

The Applicant addresses seemingly an incomplete and random list of species in its proposed mitigation after failing to adequately identify actual species and wildlife habitat impacts. Given that the Applicant failed to first adequately assess the potential harm to the wildlife habitat and fisheries within the first 53.5 miles of the proposed corridor, and second used a scattershot approach in attempts to now mitigate the unreasonable harm, only reinforces the fact that this project was ill conceived at inception and woefully inadequately planned. The Application for a Certificate of Site Location should be denied.

II. The Applicant Failed to Show by Substantial Evidence that there is No Alternative Site Which is Both Suitable to the Proposed Use and Reasonably Available to the Applicant.

The Applicant failed to do an Alternatives Analysis until the hearing process began.⁴⁹ Rather than assess alternatives which would not unreasonably impact the protected natural resources, as required by Maine law, CMP simply took a route it had identified for another possible project and repurposed it into a package for delivery of Hydro-Quebec power to meet the MASS RFP. Only after being challenged on what, if any alternatives CMP considered, did they do even a cursory review of possible burial of the line.⁵⁰ However, even with the benefit of seeing suggestions for alternatives, the Applicant has failed to show by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant for the 53.5 mile segment including portions of the Project within a P-RR subdistrict.

⁴⁸ Pre-file testimony, p. 8, Group 6, Malcolm Hunter.

⁴⁹ Tr. 04/01/2019, Testimony of Thorn Dickinson, p. 248, line 7- 15.

⁵⁰ Tr. 04/01/19, Testimony of Mark Goodwin, p. 276, line 7 through 277, line 5.

On Hearing Day 2 it became clear how deficient the Applicant's consideration was of the alternatives as the following colloquy illustrates:

MS. TOURANGEAU: Part of your work for CMP on the project was to assess the environmental impact associated with the project and the relative impacts associated with available alternatives.

BRIAN BERUBE: That was part of it, yes.

MS. TOURANGEAU: Thank you. Did that work include assessment of the underground alternative?

BRIAN BERUBE: My work did not include assessment of the underground alternative.

MS. TOURANGEAU: Did you assess the alternative of undergrounding the Joe's Hole Troutdale Road Appalachian Trail crossing?

BRIAN BERUBE: No.

MS. TOURANGEAU: Did you assess the alternative of undergrounding the portion of the project near Beattie Pond?

BRIAN BERUBE: No.⁵¹

The lack of alternative analysis was pointed out in Garnett Robinson's pre-file testimony as well:

[T]he applicant in Section 2.3.2 of the application, transmission alternatives, does not list burying the line in the 53.5 mile new section of the corridor. CMP rejected this alternative with a simple statement that burying the cable costs four to ten times more than aboveground costs, but it is not supported by any documentation or analysis... Without a thorough analysis of costs to bury, and likewise an analysis of projected revenue over the life of the project, there is no way for the Applicant to demonstrate that the alternative of burying, which would largely mitigate impacts to views and fire hazards associated by aboveground lines is unreasonable or not preferable.⁵²

Throughout the proceedings, the Applicant's constant refrain was that burial, or for that matter any alternative, was cost prohibitive. It would make the project not viable.⁵³ However, such a claim is completely unsubstantiated even with the supplemental information the Applicant finally provided after the April hearing dates as Mr. Garnett Robinson explained in his sur-rebuttal testimony:

CMP has not provided Maine DEP/LUPC in their permit application, testimony, exhibits or record, the information required to establish that burying is not reasonable. CMP has, as part of their rebuttal, now provided estimated costs for burying the entire line, the 54-mile new corridor section and other smaller sections but has not provided actual contract prices and power purchase agreements, i.e., financial data that is needed to determine whether burying is reasonable or practicable. CMP is offering hundreds of millions of dollars in both short-

⁵¹ Tr. 04/02/19, Testimony of Brian Berube, p. 171, line 18 through 172, line 9.

⁵² Pre-filed Testimony of Garnett Robinson, p. 8.

⁵³ Tr. 05/09/19, Testimony of Thorn Dickinson, p. 371, line 2 through p. 372, line 5.

and long-term mitigation, as well as for advertising and lobbying but is not providing information needed to make the analysis.⁵⁴

Mr. Robinson also accurately points out that the Applicant's cost analysis is not whether the expense of burying the line is viable in the context of anything other than whether or not CMP would have won the Massachusetts RFP:

They are now trying to persuade the Maine DEP/LUPC that burial is not feasible, practicable or reasonable because of where they might have been in the bidding process had they considered all options alternatives including burial. The exhibits in the evaluators report and Exhibit CMP-1.1-B are useless for the Maine DEP/LUPC to use in determining reasonableness, practicableness or feasibility of undergrounding the 54-mile section new corridor since it only looks at whether they might of have been chosen with these additional costs being borne by Massachusetts ratepayers in a bid process, not whether it is a reasonable or practicable alternative that CMP should have considered as required in DEP Reg 310.5 (A) or should be required in any permits issued by the DEP/LUPC.⁵⁵

As Mr. Robinson testified, whether or not CMP would have been selected as the second choice in the Massachusetts RFP is not relevant to the Department's or the Commission's consideration.

Finally, when asked about other transmission line projects (NorthernPass in New Hampshire and New England Clean Power Link in VT) with significant portions of those routes buried, the Applicant's responses were both inaccurate about those projects and again lacking sufficient data to be credible.⁵⁶ Credible testimony however was provided for the Department and Commission's consideration on behalf of Group 8.⁵⁷ For example, witness Chris Russo's prefile testimony and hearing testimony illustrated the viability of an underground alternative. As he stated:

The facts set forth in this testimony highlight the viability of an underground route for NECEC for the first 53 miles from the Forks to the Canadian border, particularly in the context of other proposed New England HVDC transmission lines. Furthermore, CMP, by its own admission, failed to even evaluate the underground option. Therefore, CMP has not

⁵⁴ Sur-rebuttal Testimony of Garnett Robinson, p. 4-5.

⁵⁵ Tr. 05/09/19, Testimony of Garnett Robinson, p 57, lines 6-16.

⁵⁶ Tr. 04/01/19, Testimony of Thorn Dickinson, p. 120, line 8 through p. 125, line 19; Tr. 05/09/19, Testimony of Justin Bardwell, p. 473, lines 11-25.

⁵⁷ Tr. 04/04/19, AM, Testimony of Chris Russo, p. 168, line 13 through p. 174, line 24; Pre-filed Testimony of Chris Russo.

conducted the requisite studies and analysis to show that NECEC avoids unreasonable interference with scenic character, existing scenic, aesthetic, recreational or navigational uses, and unreasonable impacts to protected natural resources.⁵⁸

The Applicant should have, but did not, assess alternative underground routes when it designed this project route. The Applicant should have, but did not, consider underground alternatives to the first 53.5 mile segment after assessing the adverse impacts to the scenic resources and wildlife habitat and fisheries. The Applicant's failure to conduct an alternative analysis that seriously considered avoiding the now evident damaging effects of this proposed route should be the final blow to this poorly designed project. The Applicant has not met its burden and the Department and Commission should deny the Application.

LUPC HEARING TOPICS AND RELATED LEGAL CRITERIA

III The Applicant Failed to Prove that the Proposed Use can be Buffered from the Existing Uses and Resources within the Subdistricts with Which it is Incompatible.

Applicant must establish that the proposed project would not unreasonably interfere with Maine's recreational uses – uses that are integrally related to Maine's scenic and natural wildlife habitat. If not for the nexus between recreational uses and Maine's natural environment, the Legislature would not have included a demand that a utility project such as this be assessed for not only impacts on recreational uses, but affirmatively find that the project *will not* unreasonably interfere with those recreational activities. The Applicant has failed to do that. The record demonstrates that the proposed project would undermine Maine's unique brand of outdoor-based, recreational tourism and superior scenic beauty. That, perhaps, is why the vast majority of registered

⁵⁸ Pre-filed Testimony of Chris Russo, p. 5.

Maine voters oppose the project at least in part because of unreasonable interference with existing uses.

Whether year-round or seasonal residents, tourists, first-time visitors or generational, Maine's western mountains beckon for hiking on the AT, snowmobile travel, and hunting amidst the seemingly wild and remote natural landscape. Rafting or fishing in the cold mountain streams and rivers, home to the "last true stronghold for brook trout in the United States,"⁵⁹ are the existing uses with which this project will unreasonably interfere. No buffering can protect flying fishing on a Great Pond or Lake, or hiking a mountain trail or the AT, or rafting a clear water river.

The Applicant does not adequately address the impact to existing uses. CMP ignores the very components that make Maine's western mountains and rivers so special. As Justin Preisendorfer stated on Hearing Day 3:

"Maine has our country's largest contiguous block of undeveloped forestland east of the Mississippi and that undeveloped landscape is essential to Maine's brand. Roughly 36.7 million tourists visited Maine in 2017 and the primary reason when surveyed was beautiful scenery. They leave development behind to enjoy the undeveloped landscapes Maine has to offer. The postcards they send home do not contain images of utility corridors. Nature-based tourism and outdoor recreation is affected by scenic impacts."⁶⁰

Group 2 and 10 Intervenors and witnesses made clear what the existing uses are in the 53.5 miles of non-existing transmission corridor. As Justin Preisendorfer stated in his pre-file testimony:

The transmission corridors and lines required by the NECEC project would negatively impact scenic integrity from a wide range of vantage points. The proposal states that only six conservation parcels are crossed but the reality is that the impacts are far wider when you consider views beyond the foreground. Those who live in Maine or come to visit don't care about scenic qualities just when they're on conserved lands. Maine has more than 20 million acres of land and the forests of Maine are predominantly privately owned. The most recent Maine State Comprehensive Outdoor Recreation Plan (SCORP) survey indicates that over 50% of each sample group (resident recreationists, nonresident recreationists, and general resident sample) have visited private lands for recreation in the last two years. Many of the private lands that are impacted by the NECEC proposal have high recreation value where the scenic

⁵⁹ Tr. 04/02/19, AM, Testimony of Sue Ely, p. 41, lines 6-7.

⁶⁰ Tr. 04/04/19, AM, Testimony of Justin Preisendorfer, p. 57, lines 6-23.

integrity is central to the experience. A scar on the landscape looks the same regardless of who owns the land you stand on.⁶¹

Using the terminology of the statute, “existing uses” belies the significance of what “existing uses” means in the Subdistricts of the proposed corridor. The testimony of Intervenors and the public comment of many people from this area tell a far more personally impactful tale:

The West Forks is in the epicenter of the proposed 145-mile corridor and the first organized community on the 53-miles of proposed new construction of the corridor. Residents consider the West Forks to be the ‘doorstep to the North Woods,’ where outdoor recreation and tourism is their lifeline. The West Forks has seen over 100,000 people a year recreate on their two class A Rivers - the Kennebec River Gorge and the Dead River - for whitewater boating, commercial and private rafting as well as canoeing, kayaking and fishing.

In the winter, the greater Forks area is also a major destination for snowmobiling, because of destinations that include Grand Falls, Coburn Mountain and a central trail grid leading out in all directions. This region of western Maine is considered one of the most scenic and well maintained anywhere in the state. It is also the central “Hub” of Old Canada Road National Scenic Byway where hundreds of thousands of tourists travel between Quebec, the Maine coast, and other southern locations.

This area attracts not only visitors, but also residents and camp owners who make this place their homes and second homes. Just to the north, the Boundary Mountains and the North Woods, are one of the last places on the east coast of the U.S. that have been safe from “hard commercial sprawl” and it should stay that way.⁶²

Single voices and those speaking on behalf of others are equally prevalent in these proceedings and are all consistent in the real and personal impacts this project would have on their lives by affecting the existing uses. For example, Elizabeth Caruso speaking in these proceedings on behalf of the Town of Caratunk:

The Town of Caratunk has grave concerns with regards to many facets of the NECEC proposal. As a democratic government, our voters (residents) expect the town to defend and represent their welfare. Most year-round residents derive their income in the tourism industry as independent guides or by working for the recreational outfitters, lodges, cabins and restaurants, area gas stations, etc. A few of these residents are intervenors in this proceeding, and many have submitted sworn testimonies and public comments against the project. Other residents work as carpenters, roofers, woodsmen, and handymen catering to the needs of the area’s landowners, both year-round and seasonal. However, most of Caratunk’s

⁶¹ Pre-filed Testimony of Justin Preisendorfer, p. 7, lines 9-21.

⁶² May 17, 2019, Public Comment, Sandra Howard, p. 3

landowners are from out-of-state and own vacation homes and camps along Pleasant Pond and the Kennebec River. Caratunk residents will not only be impacted financially through their livelihoods from which they derive income to support families, but also in their ways-of-life. All residents chose homes and vacation homes or camps in Caratunk for the area's peace and beauty in surroundings and also for the recreational opportunities provided by the local mountains, ponds, lakes, rivers, streams, etc. NECEC will invade the beautiful and valuable view shed which they enjoy but which also provides financial worth. NECEC will assault the nature's silence and the nighttime darkness from their decks and during year-round recreation activities.⁶³

Moreover, while analyzed separately, forest fragmentation and loss of wildlife habitat are integrally related to existing uses. As Ron Joseph stated in Hearing Day 4: "The continued loss of our remaining deer yards is a significant economic impact on traditional Maine sporting lodges in rural communities that depend on income from deer hunters."⁶⁴

The record is laced with examples of how this project will interfere with existing uses. Once done it cannot be undone and the harm cannot be buffered. How do you shield a snowmobile trail rider from experiencing the altered viewshed that would now include a transmission line corridor with permanent steel poles where once a wooded landscape existed? How do you "buffer" a rafter's experience that came for the natural landscape along the Kennebec but came away with visions of industrial structures related to the transmission line even if undergrounded across the Gorge? Or how do you "buffer" the impacts on the cold-water habitat that is now gone and with it the unique brook trout that brings anglers from all over the country? You cannot. The interference with the existing uses is incapable of mitigation. There is no buffering that would allow these uses to co-exist in the 53.5 miles of new territory.

IV The Applicant Failed to Show by Substantial Evidence that there is No Alternative Site Which is Both Suitable to the Proposed Use and Reasonably Available to the Applicant.

⁶³ Pre-file Testimony, Elizabeth Caruso, p. 3 lines 6-21.

⁶⁴ TR. 04/04/19, AM, Testimony of Ron Joseph, , p.25, lines 3- 7.

The Applicant failed to do an Alternatives Analysis until the hearing process began.⁶⁵ Rather than assess alternatives which would not unreasonably impact the protected natural resources, as required by Maine law, CMP simply took a route it had identified for another possible project and repurposed it into a package for delivery of Hydro-Quebec power to meet the MASS RFP. Only after being challenged on what, if any alternatives CMP considered, did they do even a cursory review of possible burial of the line.⁶⁶ However, even with the benefit of seeing suggestions for alternatives, the Applicant has failed to show by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant for the 53.5 mile segment including portions of the Project within a P-RR subdistrict.

On Hearing Day 2 it became clear how deficient the Applicant's consideration was of the alternatives as the following colloquy illustrates:

MS. TOURANGEAU: Part of your work for CMP on the project was to assess the environmental impact associated with the project and the relative impacts associated with available alternatives.

BRIAN BERUBE: That was part of it, yes.

MS. TOURANGEAU: Thank you. Did that work include assessment of the underground alternative?

BRIAN BERUBE: My work did not include assessment of the underground alternative.

MS. TOURANGEAU: Did you assess the alternative of undergrounding the Joe's Hole Troutdale Road Appalachian Trail crossing?

BRIAN BERUBE: No.

MS. TOURANGEAU: Did you assess the alternative of undergrounding the portion of the project near Beattie Pond?

BRIAN BERUBE: No.⁶⁷

The lack of alternative analysis was pointed out in pre-file testimony as well.:

[T]he applicant in Section 2.3.2 of the application, transmission alternatives, does not list burying the line in the 53.5 mile new section of the corridor. CMP rejected this alternative with a simple statement that burying the cable costs four to ten times more than aboveground costs, but it is not supported by any documentation or analysis... Without a thorough analysis of costs to bury, and likewise an analysis of projected revenue over the life of the project, there is no way for the Applicant to demonstrate that the alternative of

⁶⁵ Tr. 04/01/2019, Testimony of Thorn Dickinson, p. 248, line 7- 15.

⁶⁶ Tr. 04/01/19, Testimony of Mark Goodwin, p. 276, line 7 through 277, line 5.

⁶⁷ Tr. 04/02/19, Testimony of Brian Berube, p. 171, line 18 through 172, line 9.

burying, which would largely mitigate impacts to views and fire hazards associated by aboveground lines is unreasonable or not preferable.⁶⁸

Throughout the proceedings, the Applicant's constant refrain was that burial, or for that matter any alternative, was cost prohibitive. It would make the project not viable.⁶⁹ However, such a claim is completely unsubstantiated even with the supplemental information the Applicant finally provided after the April hearing dates as Mr. Garnett Robinson explained in his sur-rebuttal testimony:

CMP has not provided Maine DEP/LUPC in their permit application, testimony, exhibits or record, the information required to establish that burying is not reasonable. CMP has, as part of their rebuttal, now provided estimated costs for burying the entire line, the 54-mile new corridor section and other smaller sections but has not provided actual contract prices and power purchase agreements, i.e., financial data that is needed to determine whether burying is reasonable or practicable. CMP is offering hundreds of millions of dollars in both short- and long-term mitigation, as well as for advertising and lobbying but is not providing information needed to make the analysis.⁷⁰

Mr. Robinson also accurately points out that the Applicant's cost analysis is not whether the expense of burying the line is viable in the context of anything other than whether or not CMP would have won the Massachusetts RFP:

They are now trying to persuade the Maine DEP/LUPC that burial is not feasible, practicable or reasonable because of where they might have been in the bidding process had they considered all options alternatives including burial. The exhibits in the evaluators report and Exhibit CMP-1.1-B are useless for the Maine DEP/LUPC to use in determining reasonableness, practicableness or feasibility of undergrounding the 54-mile section new corridor since it only looks at whether they might of have been chosen with these additional costs being borne by Massachusetts ratepayers in a bid process, not whether it is a reasonable or practicable alternative that CMP should have considered as required in DEP Reg 310.5 (A) or should be required in any permits issued by the DEP/LUPC.⁷¹

⁶⁸ Pre-filed Testimony of Garnett Robinson, p. 8.

⁶⁹ Tr. 05/09/19, Testimony of Thorn Dickinson, p. 371, line 2 through p. 372, line 5.

⁷⁰ Sur-rebuttal Testimony of Garnett Robinson, p. 4-5.

⁷¹ Tr. 05/09/19, Testimony of Garnett Robinson, p 57, lines 6-16.

As Mr. Robinson testified, whether or not CMP would have been selected as the second choice in the Massachusetts RFP is not relevant to the Department's or the Commission's consideration.

Finally, when asked about other transmission line projects (NorthernPass in New Hampshire and New England Clean Power Link in VT) with significant portions of those routes buried, the Applicant's responses were both inaccurate about those projects and again lacking sufficient data to be credible.⁷² Credible testimony however was provided for the Department's and Commission's consideration on behalf of Group 8.⁷³ For example, witness Chris Russo's prefile testimony and hearing testimony illustrated the viability of an underground alternative. As he stated:

The facts set forth in this testimony highlight the viability of an underground route for NECEC for the first 53 miles from the Forks to the Canadian border, particularly in the context of other proposed New England HVDC transmission lines. Furthermore, CMP, by its own admission, failed to even evaluate the underground option. Therefore, CMP has not conducted the requisite studies and analysis to show that NECEC avoids unreasonable interference with scenic character, existing scenic, aesthetic, recreational or navigational uses, and unreasonable impacts to protected natural resources.⁷⁴

The Applicant should have, but did not, assess alternative underground routes when it designed this project route. The Applicant should have, but did not, consider underground alternatives to the first 53.5 mile segment after assessing the adverse impacts to the scenic resources and wildlife habitat and fisheries. The Applicant's failure to conduct an alternative analysis that seriously considered avoiding the now evident damaging effects of this proposed route should be the final blow to this poorly designed project. The Applicant has not met its burden and the Department and Commission should deny the Application.

CONCLUSION

⁷² Tr. 04/01/19, Testimony of Thorn Dickinson, p. 120, line 8 through p. 125, line 19; Tr. 05/09/19, Testimony of Justin Bardwell, p. 473, lines 11-25.

⁷³ Tr. 04/04/19, AM, Testimony of Chris Russo, p. 168, line 13 through p. 174, line 24; Pre-filed Testimony of Chris Russo.

⁷⁴ Pre-filed Testimony of Chris Russo, p. 5.

The Applicant failed to meet its burden. The unreasonable adverse effects to Maine's wildlife habitat and fisheries cannot be adequately mitigated. There is no set of conditions that could possibly address all of the unreasonable adverse effects and undue interference identified above without materially changing the project to something different than what Applicant proposed, or without impermissibly deflecting the Department's and Land Use Planning Commission's responsibility to measure adverse effects and undue interference based on the record at the close of the hearing. While it is possible to envision an underground proposal satisfying the required criteria and avoiding nearly all of the adverse effects and undue interference this proposed project would cause, it is clear that alternative is not part of the application. Neither the Department nor the Commission could, on the evidence Applicant has presented, confidently assess the consequences of such a burial.

Denial is the only way to avoid the permanent scarring of Maine's western mountains and rivers with a proposed project that would bring virtually no benefit to Maine in return for its enormous cost to current and future generations of Mainers.

Respectfully Submitted,
Intervenor Group 2 and Intervenor Group 10
By their attorneys,



Dated: June 14, 2019

Elizabeth A. Boepple, Esq. (Me. Bar No. 004422)
BCM ENVIRONMENTAL & LAND LAW, PLLC
148 Middle Street, Suite 1D Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com

APPENDIX A
DRAFT PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Forest Fragmentation:

Finding: The Western Maine region is the heart of a globally significant forest region that is notable for this relatively natural forest composition, lack of permanent development and high level of ecological connectivity. Tr. 04/01/19, p. 40, line 13-18 (Ely).

Finding: The proposed new corridor would be one of the largest permanent fragmenting features bisecting this region and would have an unreasonable adverse effect on wildlife habitat, wildlife life cycles and travel corridors. Tr. 04/01/19, p. 40, lines 18-22 (Ely).

Finding: Forest habitat will be lost through the construction of the project. Tr. 04/01/19, p. 167, line 1-2 (Goodwin).

Finding: CMP's proposed project does not contain buffer strips of sufficient area to provide wildlife with travel corridors between areas of available habitat, will adversely affect wildlife and fisheries lifecycles, and will result in unreasonable disturbance of deer wintering areas, significant vernal pools, waterfowl and wading bird habitat, and species declared threatened or endangered. (Pre-filed Testimony, Elizabeth Caruso, p. 14).

Finding: CMP's proposed project will not adequately utilize natural buffer strips to protect water quality, wildlife habitat, and visual impacts from the proposed transmission line. (Pre-filed Testimony, Elizabeth Caruso, p. 23).

Finding: It is widely recognized in peer-reviewed scientific literature that fragmentation is one of the leading causes of biodiversity decline across the globe, but its role is context-dependent. Group 6, Malcom Hunter, Pre-filed Testimony, p. 3.

Finding: With the exception of major haul roads, clearing from forest management is temporary, and even industrial forest management requires forests to grow back to maturity before they are harvested again. Group 6, Malcom Hunter, Pre-filed Testimony, p. 3.

Finding: Forest management activities across Western Maine creates a patchwork of age classes that shift over time. Over time, wildlife are able to move among these patches. In contrast to these temporary and shifting impacts of forest management, CMP's proposed project corridor would be a permanent fragmenting feature. Group 6, Malcom Hunter, Pre-filed Testimony, p. 3.

Finding: Forest fragmentation will also have direct and indirect effects on vernal pools and the ecological webs they support. Group 4 A. Calhoun, Pre-filed Testimony. p.8.

Finding: CMP's proposed project would create a permanently non-forested 150 foot wide corridor across the entire region, one of the largest fragmenting features in this mostly undeveloped landscape." Tr. 04/04/19, AM, p. 12, lines 18-22 (Publicover).

Finding: The continued loss and degradation of intact forests is one of the major threats to biodiversity worldwide and the effects of fragmentation on forests have been well documented. Tr. 04/04/19, AM, p. 12, lines 18-22 (Publicover).

Finding: Fragmentation has multiple adverse effects on forests in addition to the direct loss of habitat, the most significant include edge effects and the barriers to species movement. Tr. 04/04/19, AM, p. 12, lines 18-22 (Publicover).

Finding: The edge created by the proposed project corridor will be distinct and permanent and the linear configuration maximizes the amount of edge that's compared to a more compact shape. Tr. 04/04/19, AM, p. 14, line 1-4 (Publicover).

Finding: Forest loss associated with a transmission line and associated construction roads is amplified by the edge effects that extend the corridor's impact far into the adjacent forest. Group 6, Malcolm Hunter, Pre-filed Testimony, p. 4.

Finding: Edge effects result from differences in light and wind exposure at forest edges, associated changes in plant community composition and structure, introductions of invasive species, and changes in predator/prey relationships. Group 6, Malcolm Hunter, Pre-filed Testimony, p. 4.

Finding: Segment 1 of the NECEC will create more than 100 linear miles of permanent new edge habitat in Segment 1 alone. Group 6, Malcolm Hunter, Pre-filed Testimony, p. 4.

Finding: Utility corridors also create barriers to species movement. The corridor will reduce the permeability of the landscape for species such as marten and many other species that require minimum levels of mature forest cover and avoid early successional habitat in non-forested openings. Tr. 04/04/19, AM, p. 14, lines 4-12 (Publicover).

Finding: Creating barriers to species movement divides populations into small subpopulations that are at higher risk of going extinct because of the increased inability to avoiding genetic inbreeding, avoiding a shortage of males or females in a given population, or responding to climate change. Tr. 04/05/19, p. 82 line 13 through p. 83, line 18 (Hunter).

Finding: CMP concludes that animals will adapt to scrub/shrub habitat of the corridor. Only animals that can utilize early successional habitat and fragmented landscapes will adapt. The animals that require mature forest habitat and sort of connected landscapes may not adapt as well. CMP provides no evidence that shows how species that are mature forest specialists will cross those corridors, how they will not be impacted by the corridor, and does not cite to any studies to that effect that show that corridors do not impact movement of mature forest species. Tr. 05/09/19, p. 85, line 13 through p. 86, line 11 (Publicover).

Finding: A “working forest” like in Western Maine can be wilderness with scenic qualities that provide economic opportunities and jobs for local residents and existing uses do not render this area unimportant or open to unfettered development. (Pre-filed Testimony, Elizabeth Caruso, p. 8).

Finding: Cutting industries that harvest wood allow the wood to grow back and be sustainably managed, unlike herbicides that would be applied in the proposed project corridor. Tr. 04/04/19, PM, p. 88, lines 7-11 (Walters).

Finding: There is a large difference in environmental impact between periodic logging of a working forest and the application of herbicide sprays to maintain a permanently open corridor for a transmission line. Tr. 04/04/19, PM, p. 94, lines 14-24 (Huish).

Finding: The corridor for the proposed project would add large-scale, permanent fragmentation on top of existing fragmentation in the area from roads and logging cuts that creates cumulative fragmentation with associated cumulative impacts. Tr. 04/03/19, p. 66, lines 20-25 (Merchant).

Finding: To avoid and minimize habitat fragmentation the most preferable method would be co-location with roads and undergrounding to the extent possible and that beyond that taller poles would best achieve avoidance and minimization of fragmentation. Tr. 05/09/19, p. 139, line 22 through p. 140, line 2 (Wood).

Finding: The CMP application does not include any assessment of fragmentation of forests through which the proposed project would pass. Tr. 04/04/19, AM, p. 82, line 19 through p. 83, line 7 (Publicover).

Finding: CMP's assessment of forest fragmentation is rudimentary and lacking in any analysis of impacts, as it consists primarily of general statements that are contradicted by the literature and unsupported by any evidence in the application. Tr. 04/04/19, AM, p. 14, lines 19-24 (Publicover).

Finding: CMP's assessment of these impacts is cursory, overly general, lacking in specific analysis and inappropriately conflates the impacts of the corridor with those of timber management. Tr. 04/01/19, Hearing Day 1, at 40, line 13 through p. 41, line 1 (Ely).

Finding: CMP has provided no information in the record as to where taller vegetation areas will be maintained after construction. Tr. 04/01/19, Hearing Day 1, at 187, lines 18-22 (Goodwin).

Finding: The region through which the proposed project will be completed is the heart of the largest reservoir of intact aquatic habitat in the Northeast. This habitat supports populations of native brook trout that have been identified as the last true stronghold for brook trout in the United States. Jeff Reardon Pre-filed testimony, at 6.

Finding: The proposed new corridor would substantially fragment brook trout habitat, with multiple stream crossings that impact brook trout habitat, and the creation of a new corridor that could be a vector for increased human use and introduction of invasive species. Jeff Reardon Pre-filed testimony, at 6.

Finding: The Applicant's assessment of these resources and impacts is inadequate, does not contain a specific analysis of impacts to brook trout habitat, and assumes the impacts of the new permanent corridor will be identical to the impacts of past and present forest management. Jeff Reardon Pre-filed testimony, at 6.

Vernal Pools:

Finding: Vernal pools are not only discreet single wetlands that are primarily habitat for pool-breeding amphibians; they have a large number of other ecosystem functions, hydrologic, biogeochemical support of non-breeding wildlife. Tr. 05/09/19, p. 38, lines 5-10 (Calhoun)

Finding: Vernal pools should be assessed as a network of wetlands that are integrated into the forested ecosystem. As a result, increase of distances between vernal pools from losses effect the ecology of vernal pools in forests. Tr. 05/09/19, p. 38, lines 5-15. (Calhoun).

Finding: CMP's proposed project may adversely impact significant vernal pool habitat. Clear-cutting a right-of-way through existing vernal pools, adjacent to vernal pools, and through travel routes to and from breeding pools will result in impacts ranging from devastation for some individual vernal pools to greatly compromised habitat for others. The literature is clear that some amphibians will make their way through inhospitable cover but that many will avoid the journey or perish. Group 4 A. Calhoun, Pre-filed Testimony. p.13.

Finding: As a result of the proposed project, significant populations of animals along the corridor will be compromised, lost, or severely degraded. These populations of amphibians are already stressed by climate change related warming and altered precipitation patterns. The proposed ROW will be a significant further stressor. Group 4 A. Calhoun, Pre-filed Testimony. p.14.

Finding: CMP's proposed project may adversely impact significant vernal pool habitat. CMP's application indicates that there are at least 42 significant vernal pools and 23 potentially significant vernal pools wholly or partially located within the proposed action area. Group 4 A. Calhoun, Pre-filed Testimony, p. 14.

Finding: CMP's proposed project clear cut would impact hundreds of vernal pools and important travel routes to and from these pools, resulting in impacts ranging from complete destruction of some vernal pools to greatly compromised habitat for others. Tr. 04/01/19, p. 41, lines13-21 (Ely).

Deer Habitat:

Finding: The project would dramatically impact deer wintering areas, a habitat type that is critical to help Maine deer survive Maine's long winters when food and shelter are critically limited. Tr. 04/01/19, p. 41, lines 18 -21 (Ely).

Finding: Deer yards are critical because they help deer conserve energy during Maine's long winters when food quality and abundance is limited. Tr. 04/04/19, AM, at 23, lines 21-24 (Joseph).

Finding: According to CMP's compensation plan submitted to DEP, the proposed transmission line would cross 22 deer yards. Of those, CMP's proposal would increase deer fragmentation in 11 deer yards by clearing multiple acres of trees. Tr. 04/04/19, AM, p. 23, line 25 through p. 24, line 4 (Joseph).

Finding: The loss of deer wintering areas and the fragmentation and the loss of habitat connectivity between deer wintering areas and the surrounding forest land are the major limiting factors for deer populations in northern, western and eastern Maine. Tr. 04/04/19, AM, p. 24, line 21 through 29, line 23 (Joseph).

Finding: CMP's proposed project further contributes to deer yard degradation and fragmentation. Tr. 04/04/19, AM, p. 25, line 2-3 (Joseph).

Finding: The continued loss of our remaining deer yards is a significant economic impact on traditional Maine sporting lodges in rural communities that depend on income from deer hunters. Tr. 04/04/19, AM, at 25, lines 3-7 (Joseph).

Finding: CMP's proposed mitigation to the impact to deer yards is inadequate. In all 11 deer yards where CMP plans to clear trees they are proposing to revegetate disturbed soils with a wildlife seed mix. CMP failed to recognize that its wildlife seed mix will be buried in open areas beneath 3 to 4 feet of snow during Maine's long winters and thus provide no benefit to deer. Tr. 04/04/19, AM, p. 28, lines 1-7 (Joseph).

American Marten:

Finding: CMP failed to include any discussion of the American Marten in its application or testimony by Mark Goodwin. Tr. 04/01/19, p. 160, line 3 through p. 160, line 12 (Goodwin).

Finding: American Marten is considered an "umbrella species" for mature forest habitat in Maine, indicating when the habitat needs of multiple other species are met. Tr. 04/01/19, p. 159, line 17 through 160, line 2 (Goodwin/Mirabile).

Finding: As an umbrella species, if a habitat is supporting pine marten, then it is likely also supporting 70 percent of other vertebrate wildlife species. Tr. 04/03/19, p. 67, lines 14-17 (Merchant).

Finding: CMP provided no information or assessment of the habitat for American Marten along the proposed project or surrounding impacted areas where the deepest edge effect occurs. No assessment or field work was provided to evaluate the presence or lack of pine marten area of the proposed project. Tr. 04/03/19, Hearing Day 3, at 67, line 2-22 (Merchant).

Finding: For every 10 percent loss in habitat, approximately 20 to 25 percent of the American Marten population is lost. Tr. 05/09/19, p. 120, lines 7-11 (Simon-Legaard).

Finding: CMP failed to provide information about the current marten population and location of the home ranges that would be impacted, making it difficult to determine total impact on marten populations. Tr. 05/09/19, p. 120, lines 7-15 (Simon-Legaard).

Finding: Tapering of vegetation in the corridor for the proposed project in the 53 miles of new transmission line could reduce the negative impact of the transmission line on forest fragmentation generally, but could not solve all of the issues including negative impact on pine marten. Tr. 04/04/19, AM, p. 117, 16 through p. 118, line 7 (Publicover).

Finding: Opening the corridor to snowmobiling could have additional negative impacts on the pine marten, in part because coyotes and other generalist predators will have greater, quicker access to larger areas of pine marten habitat over the packed snow of the snowmobile trail. Tr. 04/04/19, AM, 158, line 6 through 159, line 18 (Publicover).

Finding: CMP also failed to provide information or testimony that addresses important breeding song bird species that rely on the habitat in Maine for key habitat in their annual north-south cycle. Tr. 04/03/19, p. 67, lines 3-8 (Merchant).

Failure to Analyze Existing Uses:

Finding: CMP failed to assess the area surrounding the new 53 miles of corridor for existing uses. (Pre-filed Testimony, Elizabeth Caruso, p. 19, lines 22-31); Tr. 04/02/19, p. 202, lines 16-18 (Elizabeth Caruso).

Finding: CMP failed to conduct any studies on the impacts of tourism in the area surrounding the new 53 miles of corridor. (Pre-filed Testimony, Elizabeth Caruso, p. 19, line 33 through p. 20, line 3).

Finding: CMP failed to consider the winter season tourism impacts of the proposed project. (Pre-filed Testimony, Elizabeth Caruso, p. 5, line 19 through p. 6, line 2).

Finding: CMP failed to conduct any analysis of snowmobile recreation users within the area of the proposed corridor which would have provided critical information about the impact on tourism of the corridor in the winter months. (Pre-filed Testimony, Elizabeth Caruso, p. 20, lines 5-10).

Finding: CMP failed to meaningfully engage with local stakeholders regarding if, how, and how much the economy of the greater Forks area would be impacted by the corridor. (Pre-filed Testimony, Elizabeth Caruso).

Impact on Existing Uses:

Finding: The proposed project would cut through remote wilderness areas in the greater Forks area that local residents rely on for economic opportunity and jobs, including but not limited to guides, waitstaff, housekeepers, office staff, cooks, cashiers, gas attendants. (Pre-filed Testimony, Elizabeth Caruso, p. 5, line 18 through p. 6, line 4)

Finding: Maine's tourism appeal and brand relies on the country's largest contiguous block of undeveloped forestland east of the Mississippi. Tr. 04/03/19, p. 57, lines 6-9 (Preisendorfer).

Finding: Roughly 36.7 million tourists visited Maine in 2017 and the primary reason when surveyed was beautiful scenery. Tr. 04/04/19, p. 57, lines 9-11 (Preisendorfer).

Finding: Nature-based tourism and outdoor recreation is affected by scenic impacts. Tr. 04/04/19, p. 57, lines 16-17 (Preisendorfer).

Finding: A 2018 special report on fishing commissioned by the Recreational Boating and Fishing Foundation and the Outdoor Foundation found that fishing participation grew by 1.9 million with fly fishing making up the biggest segment of that growth. Tr. 04/02/19, AM, p. 223, line 15 through 224, line 5 (Preisendorfer).

Finding: Beattie Pond is a fly fishing only pond and the scenic character and existing uses of Beattie Pond will be negatively affected, including the existing guided fishing industry. Tr. 04/02/, AM, p. 223, line 23 through 224, line 5 (Preisendorfer).

Finding: The continued loss of our remaining deer yards is a significant economic impact on traditional Maine sporting lodges in rural communities that depend on income from deer hunters. Tr. 04/04/19, AM, p. 25, lines 3-7 (Joseph).

Finding: CMP's proposed project will cross the Appalachian Trail, Old Canada Scenic Byway, Kennebec Gorge, Spencer Road, Cold Stream, and the Forks Area – Jackman Snowmobile Trail system. (Pre-filed Testimony, Elizabeth Caruso, p. 13, lines 7-9).

Finding: The proposed project would significantly degrade the remote undeveloped scenic character of the region and harm the experience of existing recreational users including hikers, boaters, paddlers and those who hunt and fish in these remote areas. Tr. 04/01/19, p. 40, lines 3-8(Ely).

Finding: The proposed project will also degrade the hiking experience for users of the Appalachian Trail. It would be the first crossing of the AT by a transmission line of this size anywhere in the state. Tr. 04/01/19, p. 40, lines 9-12 (Ely).

Finding: The proposed project corridor would negatively impact the Coburn Connector Trail and ITS 89, two popular snowmobiling destinations. (Pre-filed Testimony, Elizabeth Caruso, p. 5, lines 14-15).

Finding: The proposed project corridor will be a permanent visual scar on the base of Coburn Mountain that will be seen from over 12 miles away from any elevated area. Tr. 04/01/19, p. 52, 17-22 (Buzzell).

Visual Impact Assessment:

Finding: CMP has failed to show that the transmission lines and corridor can be buffered enough to not impact the wild and scenic landscape in Western Maine. (Pre-filed Testimony, Elizabeth Caruso, p. 4, lines 18-19).

Finding: Visual impact from the transmission lines and corridor is incompatible with existing outdoor recreation, tourism, and rural economy. (Pre-filed Testimony, Elizabeth Caruso, p. 4, line 20 through p. 5, line 10).

Finding: CMP's photo-simulation of the corridor in the Forks area was inadequate. (Pre-filed Testimony, Elizabeth Caruso, p. 5, lines 11-12).

Finding: CMP's photo-simulation selectively showed uninhabited and undesirable views along the proposed route instead of tourist destinations and desirable mountains, ponds, and natural landscapes. (Pre-filed Testimony, Elizabeth Caruso, p. 13, lines 14-15).

Finding: Further, the simulations offered by CMP do not represent the full range of existing uses and approaches to the viewsheds in four seasons from vantage points above and below the proposed project. Tr. 04/04/19, PM, p. 96, line 1 through p. 97, line 6 (McCarthy).

Finding: CMP's visual impact assessment contained an inaccuracy viewshed analysis and therefore inaccurate identification of viewpoints. November 23, 2018, James F. Palmer, Review of the New England Clean Energy Connect October 2018 Supplemental Materials, p.15.

Finding: An inaccurate viewshed analysis leads to a poor understanding of the project's visibility. November 23, 2018, James F. Palmer, Review of the New England Clean Energy Connect October 2018 Supplemental Materials, p.15.

Finding: CMP's visual impact assessment failed to include many scenic resources and took too narrow a view of scenic resources that should be analyzed. November 23, 2018, James F. Palmer, Review of the New England Clean Energy Connect October 2018 Supplemental Materials, p.15-16.

Finding: The visual simulations were largely limited to a single season from vantage points below the project, which minimize the extent to which the viewshed is impacted. Tr. 04/04/19, PM, p. 97, line 3-6 (McCarthy).

Finding: CMP's visual impact assessments failed to include the access routes to public water resources. Tr. 04/03/19, p. 96, lines 7-12 (Preisendorfer).

Finding: The Visual Impact Assessment was conducted with a land public data from 1991 to 2001. The 2017 data was available for most of the project area and was disregarded by the firm that conducted the VIA. Tr. 04/04/19, PM, p. 96, lines 6-10 (McCarthy).

Finding: CMP has not provided sufficient data to determine is proposed mitigation of the impact on viewsheds is acceptable. Tr. 04/04/19, PM, p. 96, lines 16-19 (McCarthy).

Finding: CMP witnesses stated under oath that none of them has ever seen a self-weathering steel monopole used in a project, so they cannot claim to understand what the proposed project would look like when complete. Tr. 04/04/19, PM, p. 96, lines 19-23 (McCarthy).

Finding: The Visual Impact Assessment failed to consider alternative materials, wire types, and tower designs for the length of the route. Tr. 05/09/19, p. 176, 12 through 177, 4 (DeWan/Segal); Tr. 05/09/19, p. 174, line 19 through 175, line 21 (DeWan); Tr. 05/09/19, pg. 166, lines 2-25 (DeWan).

Finding: No visual assessment has been done or study of what damage directional drilling will do to the surrounding area, Kennebec Gorge or the cold stream fisheries located just below the crossing. Tr. 04/01/19, Hearing Day 1, p. 52 lines 11-15 (Buzzell).

Local Infrastructure:

Finding: CMP provided no evidence related to local communities' emergency response capabilities. (Pre-filed Testimony, Elizabeth Caruso, p. 148).

Finding: Western Maine lacks the fire and emergency infrastructure necessary to support the construction and operation of a high-transmission power line. (Pre-filed Testimony, Elizabeth Caruso, p. 153-154).

Finding: Western Maine lacks fire and emergency medical care necessary to support a population of temporary construction workers. (Pre-filed Testimony, Elizabeth Caruso, p. 154-155).

Finding: Large areas of the greater Forks area relies on a single ambulance service out of Bingham, a small fire department in Jackman, and a small volunteer fire department at West Forks. (Pre-filed Testimony, Elizabeth Caruso, p. 156o).

Failure to Consider Alternatives:

Finding: At least three alternatives could have been utilized by CMP. (Pre-filed Testimony, Elizabeth Caruso, p. 6, lines 4-11).

Finding: An existing corridor runs from the Quebec border to Route 201 and is listed in the MOU with Western Mountains and Rivers Corporation. (Pre-filed Testimony, Elizabeth Caruso, p 6, lines 5-7).

Finding: CMP could have buried the transmission line along Route 201 in previously-disturbed areas. (Pre-filed Testimony, Elizabeth Caruso, p. 6, lines 8-9).

Finding: CMP could have buried the transmission line under pre-existing dirt roads. (Pre-filed Testimony, Elizabeth Caruso, p. 6, line 9).

Finding: CMP failed to consider full burial of the transmission line in previously-disturbed areas as an alternative to impacting the scenic character of the Forks area. (Pre-filed Testimony, Elizabeth Caruso, p. 6, lines 8-9); Tr. 04/02/19, AM, p. 202, line 16 through p. 203, line 9 (Elizabeth Caruso).

Finding: CMP failed to give any evidence that it realistically considered these alternatives or otherwise sought to find another alternate route. (Pre-filed Testimony, Elizabeth Caruso, p. 6, lines 33-34).

Finding: CMP failed to conduct any analysis regarding the alternative of full burial to avoid visual impacts, except for a 1000' section of line under the Kennebec River. (Pre-filed Testimony, Elizabeth Caruso); Tr. 04/02/19, AM, p. 202, line 23 through p. 203, line 2 (Elizabeth Caruso); Tr. 04/02/, AM, p. 223, lines 15-19 (Preisendorfer).

Finding: CMP has failed to demonstrate that there is not a practicable alternative to the proposed project that is less damaging to the natural environment such as burying the project underground or considering alternatives to reduce impacts on the unfragmented forest, brook trout habitat, vernal pools and deer wintering areas. Tr. 04/01/19, p. 41, lines 22 through p. 42, line 3(Ely).

Finding: Alternatives may exist for transmitting electricity from Quebec to Massachusetts that would not damage the State of Maine. Tr. 04/01/19, p. 51, lines 15-19 (Buzzell).

Finding: An alternative underground project has been permitted in the State of Vermont to transmit electricity to Massachusetts with no damage to Maine. Tr. 04/01/19, p. 51, lines 19-22 (Buzzell).

Finding: CMP chose not to pursue practical alternatives that would have avoided or greatly lessened the damage that would be caused by its own proposed project. Tr. 04/01/19, p. 51, lines 22-25 (Buzzell).

Finding: CMP failed to study or even consider burying the transmission line from Canada to The Forks. Tr. 04/01/19, p. 52, lines 1-2 (Buzzell).

Finding: A direct burial trenching within the proposed corridor either in short sections or for long distances is an inadequate solution of the issue of fragmentation as it would still require the clearing of a new corridor through this undeveloped forest region. Tr. 05/09/19, p. 61, lines 4-9 (Publicover).

Finding: Horizontal direct drilling may allow short portions of the line to remain forested but would still result in significant disturbance in the areas near the injection points and there would still be extensive sections of above-ground line with its associated corridor. Tr. 05/09/19, p. 62, lines 11-17 (Publicover).

Finding: CMP only considered the Kennebec River crossing when doing mitigation and compensation analysis, not including many other businesses affected by this project, analysis of regional jobs by type and economic impacts of any loss of revenues both long-term and during construction. Tr. 04/02/19, p. 54, 11- 17 (Robinson).

Finding: CMP has provided no compensation for the unavoidable or unmitigated impact that would result from this project. It compensated for impacts required by law, such as wetland impacts, but provided no compensation for the major landscape level impacts. Tr. 04/04/19, p. 15, lines 20-25 (Publicover).

Finding: The small amount of land proposed for conservation have no nexus to the fragmenting impacts created by the corridor and do not compensate for the reduction of the interior forest habitat or loss of connectivity created by the project. Tr. 04/04/19, p. 15, line 25 through 16, line 5 (Publicover).

Financial and Technical:

Finding: CMP failed to submit a decommissioning plan. Tr. 04/01/19, p. 134, lines 2-5 (Dickinson).

Finding: CMP failed to set up a decommissioning fund or include any financial assurances for decommissioning in its application. Tr. 04/01/19, p. 273, lines 15-16 (Dickinson).

Finding: CMP failed to provide documentation to support that burying the transmission line is not financially reasonable, or practical. Tr. 05/09/19, p. 58, lines 11-14 (Robinson).

Finding: CMP has also failed to provide its power purchase contracts and distribution contracts. Tr. 05/09/19, p. 94, lines 10-18 (Robinson).

Finding: CMP has not provided Maine DEP and LUPC in their permit application testimony, exhibits, or record, the information required to establish burying the HVDC line is not reasonable or practicable. Tr. 05/09/19, p. 58, line 11-22 (Robinson).

Finding: CMP provided estimated costs for burying the entire line, the 53 new mile corridor, and other smaller sections but has not provided actual financial data that is needed to determine whether burying is reasonable or practicable. Tr. 05/09/19, p. 58, line 11-22 (Robinson).

Finding: The proposed design of NECEC is unusual for not being undergrounded when the vast majority of the DC power lines in the world are undergrounded. Tr. 04/02/19, AM, p. 214, lines 20-23 (Russo).

CONCLUSIONS OF LAW

BASED on the above Findings of Fact, the Commissioner and the Board makes the following CONCLUSIONS pursuant to the General Permit, 38 M.R.S. §§ 480-A through 480-JJ and 484, and the applicable Department rules:

The Applicant has failed to provide adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.

The Applicant has failed to make adequate provisions for air quality, water quality, control of noise and other natural resources in the municipality or in neighboring municipalities.

The Applicant has failed to make adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in surrounding area, pursuant to 38 M.R.S.A. § 484(3).

The Applicant has failed to sufficiently demonstrate that the Project will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses pursuant to 38 M.R.S. § 480-D(1).

The Applicant has failed to sufficiently demonstrate that the proposed project will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life pursuant to 38 M.R.S. § 480-D(3).

1. Scenic Character and Existing Uses

CMP has failed to demonstrate that the activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses pursuant to 38 M.R.S. § 480-D(1).

CMP has not made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities pursuant to 38 M.R.S. § 484(3).

CMP failed to adequately consider vernal pool habitat pursuant to 38 M.R.S. § 484(3)(H).

In making a determination under this subsection regarding a development's effects on significant vernal pool habitat, the department shall apply the same standards applied to significant vernal pool habitat under rules adopted pursuant to the Natural Resources Protection Act.

CMP has failed to meet its burden to demonstrate that the proposed project will not have unreasonable adverse visual impacts, does not unreasonably interfere with existing scenic and aesthetic uses, and does not diminish the public enjoyment and appreciation of the qualities of a scenic resource pursuant to 06-096 C.M.R. 315(4).

CMP also has failed to meet its burden to demonstrate that any potential impacts have been minimized pursuant to 06-096 C.M.R. 315.

The proposed project will unreasonably impair the public's visual enjoyment and appreciation of the significant scenic resources in Western Maine.

The proposed project will unreasonably interfere with the existing rural, scenic, and wilderness character of the area surrounding the proposed corridor and unreasonably interfere with the expectations of the typical viewer visiting the area.

The proposed project is not compatible with the existing rural, wilderness surroundings and has an unreasonable adverse impact on the visual quality of the scenic resources of Western Maine

The scale of the proposed project is outsized to its specific location within the viewshed of the scenic resources of Western Maine and will dominate the whole landscape composition and dominate landform, water, or sky backdrop as viewed from the scenic, rural, wilderness resources of Western Maine.

The landscape of Western Maine is visited by large numbers who come from across the country or state and therefore has national or statewide significance.

The landscape of Western Maine is also a scenic resource enjoyed by local residents.

The landscape of Western Maine is of national, statewide, and local significance and CMP has failed to demonstrate that the proposed project will not unreasonably impact those scenic resources.

CMP has failed to demonstrate the proposed project will have no unreasonable effect on scenic character pursuant to 06-096 C.M.R. 375(14).

The proposed project will have an unreasonable adverse effect on the scenic character of the surrounding area.

CMP has failed to demonstrate that the design of the proposed project takes into account the scenic character of the surrounding area.

The proposed project is not in keeping with the surrounding scenic character will be located and CMP has failed to design and landscape it to minimize its visual impact to the fullest extent possible.

The proposed structures have not been designed and landscaped to minimize their visual impact on the surrounding area.

CMP has failed to demonstrate that the "use can be buffered from those other uses and resources within the subdistrict with which it is incompatible" pursuant to 01-672 C.M.R. 10.21(I)(3)(d).

2. Wildlife Habitat and Fisheries

CMP has failed to demonstrate that the proposed project will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, including pine marten and brook trout habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life, pursuant to 38 M.R.S. § 480-D(3) and DEP Rules 335 and 375 § 15.

CMP has failed to demonstrate that the proposed activity will not unreasonably harm significant wildlife habitat by causing increased habitat fragmentation.

The proposed project would degrade the significant wildlife habitat, disturb the subject wildlife, and affect the continued use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity.

Specifically, the proposed project would degrade the significant wildlife habitat of the pine marten, disturb the pine marten, and affect the continued use of the significant wildlife habitat by the pine marten.

The proposed project has unreasonable impact because there are practicable alternatives to the project that would be less damaging to the environment.

CMP has failed to minimize the alteration of the habitat and disturbance of subject wildlife to the minimum amount necessary by minimizing the size of the alteration, the duration of the activity, and its proximity to the significant wildlife habitat and subject wildlife.

The proposed project will have an unreasonable impact on protected natural resources or the subject wildlife because one or more of the standards of the NRPA at 38 M.R.S.A. §480-D will not be met.

CMP failed to submit evidence that affirmatively demonstrates that the activity will meet the standards of the NRPA and 06-096 C.M.R. 335.

CMP has failed to make adequate provision for the protection of wildlife and fisheries.

The proposed project does not establish buffer strips of sufficient area to provide travel lanes for wildlife between available habitat areas required by 06-096 C.M.R. 375.15 (B)(1).

The proposed project includes alterations to the landscape that will adversely affect wildlife and fisheries lifestyles, including brook trout and pine marten governed by 06-096 C.M.R. 375.15(B)(2).

The proposed project will cause unreasonable disturbances to habitat of the pine marten pursuant to 06-096 C.M.R. 375.15(B)(3)(b).

The proposed project will cause unreasonable disturbances to significant vernal pools pursuant to 06-096 C.M.R. 375.15(B)(3)(d).

CMP has failed to make adequate provision for buffer strips under 06-096 C.M.R. 375.9.

3. Alternatives Analysis

CMP has failed to show by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant for portions of the Project within a P-RR subdistrict.

The applicant must demonstrate that the proposed project would not unreasonably impact “protected natural resources,” as defined by the Natural Resources Protection Act . . . , in light of practicable alternatives to the proposal that would be less damaging to the environment.

CMP has failed to demonstrate that the proposed project would not unreasonably impact protected natural resources under the Natural Resources Protection Act in light of practicable alternatives to the project that would be less damaging to the environment.

CMP has failed to provide information about less environmentally damaging practical alternatives to the proposed alteration as required under 06-096 CMR 310(9)(A).

CMP failed to show that the proposed project would not “have an unreasonable impact on the visual quality of a protected natural resources as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation” under 06-096 C.M.R. 315(9).

CMP failed to “submit evidence that affirmatively demonstrates that the activity will meet the standards of the NRPA and this chapter . . . ” under 06-096 C.M.R. 335(5).

CMP failed to show by substantial evidence that “there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant” pursuant to 01-672 C.M.R. 10.21(I)(d).

4. Compensation and Mitigation

CMP failed to provide information sufficient to establish that proposed mitigation “does not diminish in the vicinity of the proposed activity the overall value of significant wildlife habitat and species utilization of the habitat and if there is no specific biological or physical feature unique to the habitat that would be adversely affected by the proposed activity” under 38 M.R.S.A 480-D(3).

THIS PAGE INTENTIONALLY LEFT BLANK

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB-B-N
L-27625-2C-C-N
L-27625-VP-D-N
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

GROUP 4 (AMC, NRCM, TU) INITIAL
BRIEF

INTRODUCTION

Central Maine Power (Applicant or CMP) is proposing to build a 145-mile, high-voltage, direct current (HVDC) transmission line, called the New England Clean Energy Connect (NECEC), from Quebec to an interconnection with the New England grid in Lewiston. About 54 miles of the transmission line route would consist of an entirely new 150-foot wide cleared transmission corridor through a currently undeveloped section of Maine’s North Woods. CMP’s proposed line includes above-ground transmission lines that would severely fragment this critical forest habitat, crossing the Appalachian Trail, countless wetlands and streams, deer wintering areas, and encroaching upon Beattie Pond, a Class 6 remote pond.

CMP would also expand the clearing along a significant portion of the remaining corridor length that runs within its existing power lines, requiring clearing even more vegetation and undertaking additional development within existing corridors.

This project poses a unique threat to Maine's environment. Unlike other transmission line projects contemplated by the Maine Department of Environmental Protection (Department or DEP) and the Land Use Planning Commission (Commission or LUPC) in the past, this project is not born out of a reliability need for Maine. Instead, it is simply a for-profit venture more akin to other traditional development projects such as subdivisions and shopping centers. However, unlike a more traditional for-profit development project, this project would create an unbroken, 150-foot wide, 54-mile long linear disturbance that would have uniquely harmful and significant environmental, scenic, and recreational impacts within the undeveloped forestland stretching from the Canadian border to The Forks.

The Department and Commission have before them applications for a Natural Resources Protection Act (NRPA) permit pursuant to 38 M.R.S. §§ 480-A – 480-JJ and a Site Location of Development Law (Site Law) permit pursuant to 38 M.R.S. §§ 481 – 490 for CMP's proposed NECEC Project. CMP has failed to demonstrate that this project will fit harmoniously into the existing natural environment and will not adversely affect existing uses, scenic character, and natural resources, including significant vernal pools, brook trout habitat, wildlife habitat and lifecycles, and deer wintering areas. Based on the evidence contained in the record and discussed below, these permit applications must be denied.

ARGUMENT

I. **CMP has not met its burden of proof to affirmatively demonstrate to the Department and Commission that each of the licensing criteria in statute or rule has been met. (*Relevant to DEP and LUPC*)**

The laws and regulations governing this permitting process require CMP to affirmatively demonstrate that all of the requirements of all applicable laws and regulations have been met. Under the Commission’s Rules of Practice, Chapter 4.3(9) places the burden of proof on the applicant, CMP, and requires the applicant to “demonstrate by substantial evidence that the criteria of all applicable statutes and regulations have been met.”¹ Similarly, Chapter 2, section 11(F), of the Department’s rules direct that

An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that each of the licensing criteria in statute or rule has been met. . . . For those matters relating to licensing criteria that are disputed by evidence the Department determines is credible, *the applicant has the burden of proving by a preponderance of the evidence that the licensing criteria are satisfied.*²

Here, CMP repeatedly failed to demonstrate that its proposed project satisfies even the minimum permitting requirements set out in the Commission’s and Department’s rules and failed to adequately respond to the significant and credible evidence put forward by intervening parties and the public that CMP failed to satisfy numerous permitting criteria. Without demonstrating by a preponderance of the evidence that these contested criteria are satisfied, the Commission should not grant a special exception and the Department should not grant a permit.

¹ 01-674 Ch. 4.3(9).

² 06-096, Ch. 2(11)(F).

II. CMP failed to demonstrate that it has right, title, or interest in the land proposed for development because CMP proposes a substantial change in use to two parcels of Public Reserved Lands, necessitating approval by two-thirds of the elected members of each body of the Legislature (*Relevant to DEP and LUPC*)

In order to receive certification from the Land Use Planning Commission and a permit from the Department of Environmental Protection, the applicant is required to show that it has valid right, title, or interest in the land proposed for development.

The Department of Environmental Protection Rules, Chapter 2, section 11(D) require an applicant to “demonstrate to the Department's satisfaction sufficient title, right or interest in all of the property that is proposed for development or use.”³

Likewise, the Land Use Regulation Commission requires “[e]vidence of sufficient right, title or interest in all of the property that is proposed for development or use.” 12 M.R.S. § 685-B(2)(D).

While the applicant owns much of the land the proposed project would cross, it does not own two parcels of Maine Public Reserved Lands in Johnson Mountain Township and West Forks Plantation that it proposes to cross. The proposed project would bisect the Johnson Mountain parcel and the West Forks Plantation Northeast parcel.

As evidence of a purported right or interest to cross these publicly owned lands, the Applicant provided a 2014 lease with the Bureau of Parks and Lands.⁴ This lease, however, does not demonstrate a valid right or interest to cross these Public Reserved Lands because it has not been approved by a two-thirds vote of the Maine Legislature.

³ 06-096 Ch. 372, § 9.

⁴ Lease between Department of Agriculture, Conservation and Forestry Bureau of Parks and Lands and CMP, available at: <https://www.maine.gov/dep/ftp/projects/necec/applications/SiteLocation/Right,%20Title,%20or%20Interest/Part%20A%20-%20Canada%20To%20Larrabee%20RD%20SS/Other%20Existing%20Deeds/Signed%20Lease%20-%20State%20of%20Maine.pdf>.

As discussed in more detail in the memorandum by Attorney Maureen M. Sturtevant, Esq. of Lambert/Coffin,⁵ in 1993, Maine voters adopted a constitutional amendment requiring the approval of two-thirds of the elected members of the Maine House and the Maine Senate for any substantial change in use in certain publicly owned lands.

State park land. State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or *its uses substantially altered except on the vote of 2/3 of all the members elected to each House.*⁶

As part of Maine's Public Reserved Lands, the two parcels in Johnson Mountain Township and West Forks Plantation were subsequently designated as lands subject to this constitutional requirement.⁷

These two parcels of land have been allocated by the Bureau of Parks and Lands for timber management, wildlife management, and recreational uses. The applicant's proposal to bisect these two parcels with a permanent 150-foot-wide, one-mile-long clearcut corridor is without question a substantial change in use. All timber and wildlife habitat would be removed from the corridor and not available for future management, and all opportunities for remote backcountry recreation would be destroyed in the area where the corridor would be cut. In addition, because the proposed corridor would cut each parcel in half, adjacent areas of the Public Reserved Lands will be adversely impacted as a result of the fragmenting effects of the corridor described by multiple witnesses including Malcolm Hunter, Janet McMahon, David Publicover, and Aram Calhoun in their testimony and discussed in this brief in Section XX.

Given this proposed substantial alteration of uses of the Public Reserved Lands, the lease purporting to grant the applicant right or interest to cross the public lands is not valid for the uses

⁵ Group 2 Comment, RTI Attachment B, pp. 193-198 of 491.

⁶ Me. Const. art. IX, § 23 (Emphasis added.).

⁷ 12 M.R.S. § 598-A(2-A)(D).

proposed unless and until “2/3 of the members elected to each House” of the Legislature have voted to approve the lease. Lacking a lease approved by the Maine Legislature, the applicant has not shown that it has a valid right or interest in the land owned by the public, and the application must be denied.

III. The proposed project does not satisfy the requirements for a special exception to cross the Recreation Protection subdistrict at the Appalachian Trail (*Relevant to LUPC*)

The proposed Project crosses or traverses three separate Recreation Protection (P-RR) subdistricts: West Forks Plantation and Moxie Gore; Beattie Twp., Lowelltown Twp., Skinner Twp., and Merrill Strip Twp.; and Bald Mountain Twp. P-RRs are designated “to provide protection from development and intensive recreational uses to those areas that currently support, or have opportunities for, unusually significant primitive recreation activities. By so doing, the natural environment that is essential to the primitive recreational experience will be conserved.”⁸ No utility facilities, such as the ones proposed by the Applicant for this project, are allowed within a P-RR subdistrict unless the Commission grants a special exception.⁹

In order to grant this special exception for construction of utility facilities within a P-RR subdistrict, the applicant must show “by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan.”¹⁰

A special exception for construction of the proposed project should not be granted for the proposed transmission line crossing of the Appalachian Trail (AT) in Bald Mountain Twp.

⁸ Land Use Districts and Standards, 01-672 C.M.R. 10 (Chapter 10), section 10.23,I,1.

⁹ Land Use Districts and Standards, 01-672 C.M.R. 10 (Chapter 10), section 10.23,I,3.d.

¹⁰ *Id.*

because CMP has not shown by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant. CMP has also not demonstrated by substantial evidence that the transmission line can be buffered from AT users.

A. The proposed Appalachian Trail crossing in Bald Mountain Twp. should not be allowed by special exception.

Segment 2 of the proposed project would intersect the AT within an existing transmission line corridor. The AT crosses this corridor three times within a distance of about two-thirds of a mile. The proposed project would require widening the existing corridor from 150 feet to 225 feet and add a second line with towers 100 feet tall adjacent to the existing 115 kV line with towers 45 feet tall. The significant difference in visual impact is evident in CMP's photosimulations.¹¹

The widening of the corridor and the addition of a second much larger line would significantly increase the visual impact of these transmission line crossings on users of the AT. However, CMP consistently attempted to downplay this increased impact as follows:

- CMP's Visual Impact Assessment rates the impact of the project at the middle of these three crossings (along Troutdale Road) as "minimal to moderate".¹² The Applicant also states that there would be a "negligible" change in visual impact to hikers using the trail.¹³ However, these conclusions are contradicted by the revised Scenic Resources Chart that rates the impact as "Moderate/Strong".¹⁴
- CMP states that AT users expect to see transmission lines, and thus the additional line would not impact users' enjoyment of the trail.¹⁵ However, no user surveys were conducted to actually assess users' expectations and reactions to the project.¹⁶ Users of the AT also expect to see towns, highways and railroads, but encountering those features is still likely to detract from their experience.

¹¹ Application Chapter 6, Appendix E, p. 27-28.

¹² Application Chapter 6, Section 6.2.2.4, p. 6-44.

¹³ Application Chapter 25, Section 25.3.1.3, p. 25-5.

¹⁴ Application Chapter 6, Appendix F (revised 1/30/19).

¹⁵ Application Chapter 6, Section 6.2.2.5, p. 6-50; CMP witness Goodwin Direct at p. 10.

¹⁶ CMP witness Segal cross-examination, Tr. 4/2/19, p. 163, lines 9-14.

- CMP witness Goodwin states that there are 56 transmission line crossings of at least 230 kV along the length of the AT.¹⁷ However, upon cross-examination he admitted that 70 percent of these crossings were located in the stretch of the AT between Virginia and New York and that none were located in Maine.¹⁸ A transmission line of the size of the proposed project would be a unique impact to the AT in Maine and it is likely that user expectations would differ from those of users in the more heavily developed mid-Atlantic region.
- CMP witness Goodwin also states that there are five crossings of the AT by 115 kV transmission lines in Maine.¹⁹ However, three of those are at the location of the proposed project. The other two are located in proximity to much larger roads (Route 16 in Carrabassett Valley and the Golden Road at the crossing of the Penobscot River).

The proposed project would greatly exceed the size, in both height and clearing width, of any existing transmission line crossing of the AT in Maine, and increase the sense of users that the trail at this location crosses a developed landscape. CMP's contention that the impact on trail users would be "negligible" is without foundation.

1. CMP has not shown by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant.

CMP's alternatives analysis for the AT P-RR zone considers only a single alternative, locating the proposed AT crossing at a different location. We agree that creating a new crossing of the AT where none currently exists is not a preferable alternative. However, there are at least three other potential alternatives that have not been adequately explored: routing the project along existing roads to avoid this AT crossing,²⁰ relocating the AT, or burying the line at the proposed AT crossing.

Relocation of the AT at this location could reduce the number of crossings and minimize the exposure of trail users to the new corridor. We understand that CMP engaged in discussions with the Maine Appalachian Trail Club about potential relocations within the existing National

¹⁷ CMP witness Goodwin Direct at p. 10.

¹⁸ CMP witness Goodwin cross-examination, Tr. 4/2/19, p. 159 line 10 through p. 161, line 2.

¹⁹ CMP witness Goodwin Direct, p. 10.

²⁰ This alternative is discussed in greater detail in Section VI below and will not be discussed in this section.

Park Service easement area, but that these discussions have not yet reached a final resolution. However, the possibility of relocating the trail outside of the existing easement area has not been explored. This would require acquiring property interests from the adjacent landowner (Weyerhaeuser). CMP witness Kenneth Freye stated “*The decision to relocate the AT rests with the NPS, assuming it can arrange sufficient alternative property rights. It is not within CMP’s control.*”²¹ While CMP cannot force such a relocation, there is nothing to prevent them from undertaking discussions with Weyerhaeuser, the National Park Service, and the Maine Appalachian Trail Club to explore this potential alternative. However there is nothing in the record to indicate that they have done so.

Another unexplored alternative is burying the new line within the existing corridor. This alternative was the subject of questioning by both Commission Director Livesay²² and Department Commissioner Reid.²³ CMP contended that the easement to the National Park Service did not allow them the right to construct underground lines.²⁴ However, under questioning CMP witness Freye agreed that the NPS could grant permission for them to do so, but that they have not explored that possibility with the NPS.²⁵

There is very little information in the record about the suitability or availability of any of these alternatives because they were not adequately considered by CMP. The fact that these alternatives have not been explored indicates that CMP has not met its burden of proof to demonstrate that there is not a suitable and available alternative.

²¹ CMP witness Freye Rebuttal, p. 3.

²² Tr. 5/9/19 beginning at p. 429.

²³ *Id.* at p. 439.

²⁴ *Id.*

²⁵ *Id.* at p. 440 lines 8-15.

2. *CMP has not shown by substantial evidence that the proposed transmission line can be buffered from hikers along the AT.*

Widening the existing 150 foot clearing to 225 feet and adding 100 foot tall poles is incompatible with remote hiking along the AT in this section of Maine. To buffer this incompatible use, CMP proposed vegetation plantings along only one of the three crossings (at Troutdale Road).²⁶ The inclusion of these plantings is an admission by CMP that the project will cause a substantially increased visual and user impact on the AT. If the impact on AT users was “negligible” as they have claimed, there would be no need for mitigation of this type.

However, these plantings do not, and cannot, come close to buffering the existing use of the AT, remote hiking, from the increased and incompatible impact of the wider corridor and additional much taller transmission line. The photosimulation of the proposed planting speaks for itself in its failure to shield users from views of the wider corridor and additional larger line. CMP witness Segal admits that the plantings will only “partially” screen the widened corridor for AT hikers²⁷ and that hikers will still see the proposed structures.²⁸ In addition, these plantings were proposed at only one of the three trail crossings in this area.

CMP clearly failed to meet its burden of proof that the proposed use can be buffered from those other uses and resources within the subdistrict with which it is incompatible. For the above-stated reasons LUPC should deny the special exemption for this project.

²⁶ CMP witness Segal Direct, p. 29; CMP Exhibit 5-B, p. 119.

²⁷ CMP witness Segal Direct, p. 29.

²⁸ Tr. 4/2/19, p. 166 line 17 through p. 167 line. 1.

IV. CMP's proposed project will adversely affect existing uses and scenic character and therefore fails to satisfy the minimum requirements of the Site Law and NRPA (*Relevant to DEP and LUPC*)

A. CMP failed to demonstrate that the proposed project will not have an unreasonable adverse impact on the scenic character and resources of the region. (*Relevant to DEP and LUPC*)

1. *CMP failed to show that its project will have no unreasonable adverse impact on the scenic character, scenic resources, and scenic uses of the region and that the project can be buffered from other uses with which it is incompatible.*

Both the Site Law and the NRPA require the applicant to show that its proposed project will have no unreasonable adverse impact on scenic character, scenic resources, and scenic uses.²⁹ In addition, the Commission's criteria require that the applicant show that there is no alternative site that is both suitable and reasonably available and that the proposed use can be buffered from other uses with which it is incompatible.³⁰ The applicant bears the burden of proof to make this showing.

2. *Scenic resources are very important to the character and economy of the region through which Segment 1 of the corridor passes.*

The area through which Segment 1 of the proposed corridor passes includes the Kennebec River, the Old Canada Road National Scenic Byway, the Appalachian National Scenic Trail, numerous lakes, ponds, and streams, and numerous mountains with recreational trails. These places are important national, statewide, and local scenic resources, crucial elements of the region's scenic character, and the foundation of the region's recreational uses. The scenic resources are the backbone of both the region's quality of life and its tourism economy.³¹ As Elizabeth Caruso, First Selectman of the Town of Caratunk, stated,

²⁹ 30 M.R.S. §484 (3); 06-096 Ch. 375, § 14; 38 M.R.S. §480-D(1); 06-096 Ch. 315

³⁰ 12 M.R.S. §685-B(1-A)(B-1); 01-672 C.M.R. 10 (Chapter 10), §10.23.I.3.d.

³¹ Group 2 E. Caruso Direct, p. 3 – 2.

Most year-round residents derive their income in the tourism industry as independent guides or by working for the recreational outfitters, lodges, cabins and restaurants, area gas stations, etc... All residents chose homes and vacation homes or camps in Caratunk for the area's peace and beauty in surroundings and also for the recreational opportunities provided by the local mountains, ponds, lakes, rivers, streams, etc.³²

As virtually every guide in the region said, the scenic character of the region is a primary reason hikers, snowmobilers, anglers, and hunters come to the region.³³

Concern about the adverse impact of the project on the scenic resources and character of the region and the resulting adverse impact on the quality of life and economy in the region is a prime reason why six towns (Caratunk, Dennistown, Jackman, Moose River, The Forks, West Forks) of the 15 towns that have opposed the project or withdrawn their support have done so.³⁴ It is also a prime reason at least 10,466 individuals expressed their opposition to the proposed project through an online petition.³⁵

3. An overhead transmission line with poles up to 100, 130, or 165 feet tall would cause significant adverse impacts on the scenic character of a region.

Overhead transmission lines result in significant adverse impacts on the scenic character of a region. Dr. James Palmer, the scenic expert hired by the Department and LUPC, noted in his report that “[t]he conclusion [of CMP’s survey of Kennebec rafters] is that views of power lines on hillsides create visual impacts that are among the highest of any human activity or development.”³⁶ In fact, the CMP survey found that power lines have greater visual impact than

³² *Id.* at p.3

³³ Group 2 G. Caruso Direct, p. 2 – 3; Group 10 Lyman Direct, p. 2-3.

³⁴ Group 4 Comments, p. 447-91.

³⁵ *Id.* at p. 216-446.

³⁶ James Palmer, Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials (hereinafter Palmer VIA Review), Nov. 23, 2018, sec. 2.2.

large clear cuts, wind power projects, other rafts or kayaks on the river, hydroelectric dams, and bridges and roads.³⁷

Dr. Palmer also noted that CMP's "survey provided information to assess the visual impacts at other locations" than just the Kennebec River.³⁸ In particular, he noted that the survey indicated that "it may not be necessary to see transmission structures or the cleared ROW for the scenic quality to be degraded. In this survey, views of the conductors and warning balls were sufficient to degrade the scenic quality at the Kennebec River crossing."³⁹

4. CMP failed to provide sufficient information to allow a complete scenic analysis of Segment 1 of the proposed corridor.

Despite the finding in its survey of Kennebec rafters that power lines create visual impacts that are among the highest of any human activity or development, CMP carried out no further surveys to determine the adverse impact on other scenic resources in the region. Nor did it submit any other credible evidence about potential scenic impacts. The only additional information CMP submitted was from a survey of Baskahegan Lake visitors, "only 4% of whom identified viewing scenery as their primary activity" and was a post-construction survey "not designed to determine how construction of the Stetson Mountain Wind Farm would affect use of the lake."⁴⁰ By contrast, CMP's witness acknowledged that 74% of the people surveyed by CMP said that viewing scenery was one of the activities they planned for during their visit to the region.⁴¹

³⁷ CMP 9.4 AIR Attachment A, Upper Kennebec River Survey, p.32.

³⁸ *Id.* at sec. 2.5

³⁹ *Id.*

⁴⁰ *Id.* at sec. 2.6

⁴¹ Tr. 4/1/19, p. 350.

CMP's witness acknowledged that she was aware that this region of the state attracts many visitors because of its undeveloped scenic character.⁴² The failure of CMP to survey visitors to the Old Canada Road National Scenic Byway, the Appalachian National Scenic Trail, or other recreationists such as wintertime snowmobilers renders its scenic analysis unreliable. CMP failed to analyze the alternative of putting the transmission line under rather than across the National Scenic Byway. The Old Canada Road National Scenic Byway is one of only two national scenic byways in Maine. As such, it demands greater consideration than CMP gave it in its scenic analysis. Likewise, the proposed corridor would cross the Appalachian National Scenic Trail three times, yet CMP failed to conduct any serious analysis of the alternative of reducing the number of crossings or doing an underground crossing of the Appalachian National Scenic Trail. Finally, this region relies on all four seasons of recreational visitors and yet summertime rafters were the only users surveyed, excluding users such as hiking, fishing, hunting, and snowmobiling users.

In addition to failing to provide sufficient information about the adverse impacts of the proposed power line on visitors to the region, CMP has also failed to provide sufficient information about the actual pole heights and corridor management to allow a thorough and accurate evaluation of the scenic impacts from important locations. As confirmed by Mr. Bergeron, nowhere in the record is information on "how high each pole is and [] how many concrete or direct embedded foundations" would be required.⁴³ CMP claims to have this information but did not make it available to the Department or parties to evaluate.⁴⁴ By not providing this data, continually changing the heights and locations of poles, and introducing vague and changing proposals regarding "tapering" to address adverse impacts on fish and

⁴² *Id.* at 348

⁴³ Tr. 5/9/19, p. 470-71.

⁴⁴ *Id.*

wildlife habitat, CMP has made it impossible to do a thorough analysis of the actual scenic impacts of this project.

Even CMP's visual experts acknowledged that they did not do a formal assessment of the potential visibility of higher poles.⁴⁵ Nor could they do so, they stated, without having the exact height of the planned poles.⁴⁶ The opinions they provided were based on a lower "level of analysis" incorporating an assumption that the pole heights would be 130 feet tall, even though they acknowledged that the poles could be as tall as the "more typical" height of 165 feet.⁴⁷ They did not analyze the scenic impacts of poles that were 140, 150 or 160 feet tall.⁴⁸

CMP has the burden of providing a specific project proposal whose scenic impacts can be evaluated. CMP must also evaluate alternatives and ways to mitigate potential scenic impacts. Without providing a plan that shows specific pole heights and doing a thorough analysis of the scenic impacts of those poles, CMP failed to show that the project will not have an unreasonable adverse impact on scenic resources, scenic character, or scenic uses or that there is no suitable and reasonably available alternative site for the proposed use.

5. The information regarding the scenic impact of the corridor relied on by CMP is outdated and unreliable.

CMP's witness asserted that the transmission line will not impact the use or enjoyment of scenic resources.⁴⁹ This opinion was based on a Visual Impact Analysis conducted by CMP's witness.⁵⁰ That visibility analysis used data from 1999/2001.⁵¹ Even after being questioned by both the Department and Commission about why they didn't use more recent, available data, CMP failed to update its analysis using the more recent, available data.⁵² Dr. James Palmer was

⁴⁵ *Id.* at 166.

⁴⁶ *Id.* at 167.

⁴⁷ *Id.* at 191, 224 – 226.

⁴⁸ *Id.* at 226.

concerned about the failure to use the more recent, available data because data that is 20 years old does not include the effects of recent harvesting.⁵³

Instead of using the more recent data, CMP's witness simply argued that what they did was good enough because newer data was not available for the entire 145-mile study area.⁵⁴ Dr. Palmer, on the other hand, raised multiple concerns about the visibility analysis, noting that the analysis understates the potential visibility by fifty percent.⁵⁵ Dr. Palmer further noted that the problems with the analysis all stemmed from the fact that CMP did not use the most up to date data.⁵⁶

CMP's failure to use the most recent data available, a failure that led to understating the potential visibility of the project by fifty percent, renders CMP's Visual Impact Analysis entirely unreliable. With no reliable Visual Impact Analysis, CMP failed to fulfill its burden of proof to show that this project will have no unreasonable adverse impact on scenic resources, scenic character, and scenic uses.

6. CMP's conclusions regarding the level of adverse scenic impact of segment 1 of the proposed corridor are unsupported by the evidence and cannot be relied on.

The problems with CMP's Visual Impact Analysis of this project are legion. In spite of the highly significant scenic resources in the region, CMP failed to conduct adequate surveys of the potential impacts of the proposed transmission lines on visitors who had come to the region to enjoy its scenic character and resources; failed to use the most recent, available data in conducting its analysis; and came to conclusions that are unsupported by the evidence in the

⁴⁹ CMP Segal Direct, p. 184.

⁵⁰ *Id.* at 233.

⁵¹ Palmer VIA Review, sec. 3.

⁵² *Id.* at sec. 3 and 3.5; Tr. 4/1/19, p. 350-51.

⁵³ Palmer VIA Review, sec. 3.1.

⁵⁴ Tr. 4/1/19, p. 351.

⁵⁵ Palmer VIA Review, sec. 3.2 and 3.5.

⁵⁶ *Id.* at sec. 3.5

record. CMP's visual consultants concluded that the project would have no unreasonable adverse impact despite the fact that six towns in the region and more than 10,000 individuals say otherwise.⁵⁷

Even while CMP's visual consultants were opining that the project, including an overhead transmission line across the Kennebec Gorge, would have no adverse scenic impact,⁵⁸ CMP was acknowledging the adverse scenic impact by rerouting the proposed line underneath the Kennebec Gorge.⁵⁹ The failure of the visual consultants to acknowledge the unquestionably adverse scenic impacts of an overhead line across the Kennebec Gorge renders their opinions about potential scenic impacts along other parts of the corridor entirely unreliable.

Given their spectacularly wrong conclusion about the scenic impacts of the transmission line over the Kennebec Gorge, CMP's consultants' conclusion that the transmission line would have no unreasonable adverse impact on Coburn Mountain, Number 5 Mountain, Parlin Pond, Rock Pond, the Old Canada Road National Scenic Byway, Moxie Stream, the Appalachian National Scenic Trail, and other beloved undeveloped scenic resources along the proposed corridor cannot be relied on.

7. The applicant failed to meet its burden of proving that the project will not cause an unreasonable adverse impact on the scenic resources, scenic character, and scenic uses of the region.

By failing to do a thorough visual impact analysis itself and by failing to provide a specific and unchanging application allowing the public, other intervenors, and the reviewing agencies to do a thorough scenic impact analysis, CMP failed to meet its burden of proof showing that the proposed corridor will not have an unreasonable adverse impact on scenic

⁵⁷ Group 4 Comments, p. 216-491.

⁵⁸ Tr. 4/1/19, p. 538.

⁵⁹ See generally, CMP Oct. 19, 2019, Application Amendments.

resources, scenic character, and scenic uses. CMP has also failed to show that there is no suitable and reasonably available alternative site for the proposed use.

Furthermore, even if the agencies determine that CMP has done a sufficient scenic analysis and has provided sufficient information to evaluate whether the project has an unreasonable adverse impact on scenic resources, the permit should nevertheless be denied because the evidence in the record, including statements of multiple towns and thousands of individual citizens, demonstrates that the project will have an undue adverse impact on multiple national, state, and local scenic resources, scenic character, and scenic uses.

B. CMP failed to demonstrate that the proposed project will not have an unreasonable adverse impact on the scenic character and existing uses along the Appalachian Trail. (Relevant to DEP)

As explained above, both the Site Law and NRPA require the applicant to show that its proposed project will have no unreasonable adverse impact on scenic character, scenic resources, and scenic uses, such as the AT.⁶⁰ In addition, the Commission's criteria require that the applicant show that that there is no alternative site that is both suitable and reasonably available and that the proposed use can be buffered from other uses with which it is incompatible.⁶¹ The burden of proof for making these showings is on the applicant.

Segment 2 of the proposed project would intersect the AT within an existing transmission line corridor. The AT crosses this corridor three times within a distance of about two-thirds of a mile. The proposed project would require widening the existing corridor from 150 feet to 225 feet and add a second line with towers 100 feet tall adjacent to the existing 115 kV line with

⁶⁰ 30 M.R.S. §484 (3); 06-096 Ch. 375, § 14; 38 M.R.S. §480-D(1); 06-096 Ch. 315

⁶¹ 12 M.R.S. §685-B(1-A)(B-1); 01-672 C.M.R. 10 (Chapter 10), §10.23.I.3.d.

towers 45 feet tall. The significant difference in visual impact is evident in CMP's photosimulations.⁶²

The widening of the corridor and the addition of a second much larger line would significantly increase the visual impact of these transmission line crossings on users of the AT.

However, CMP consistently attempted to downplay this increased impact as follows:

- CMP's Visual Impact Assessment rates the impact of the project at the middle of these three crossings (along Troutdale Road) as "minimal to moderate".⁶³ The Applicant also states that there would be a "negligible" change in visual impact to hikers using the trail.⁶⁴ However, these conclusions are contradicted by the revised Scenic Resources Chart that rates the impact as "Moderate/Strong".⁶⁵
- CMP states that AT users expect to see transmission lines, and thus the additional line would not impact users' enjoyment of the trail.⁶⁶ However, no user surveys were conducted to actually assess users' expectations and reactions to the project.⁶⁷ Users of the AT also expect to see towns, highways and railroads, but encountering those features is still likely to detract from their experience.
- CMP witness Goodwin states that there are 56 transmission line crossings of at least 230 kV along the length of the AT.⁶⁸ However, upon cross-examination he admitted that 70 percent of these crossings were located in the stretch of the AT between Virginia and New York and that none were located in Maine.⁶⁹ A transmission line of the size of the proposed project would be a unique impact to the AT in Maine and it is likely that user expectations would differ from those of users in the more heavily developed mid-Atlantic region.
- CMP witness Goodwin also states that there are five crossings of the AT by 115 kV transmission lines in Maine.⁷⁰ However, three of those are at the location of the proposed project. The other two are located in proximity to much larger roads (Route 16 in Carrabassett Valley and the Golden Road at the crossing of the Penobscot River).

The proposed project would greatly exceed the size, in both height and clearing width, of any existing transmission line crossing of the AT in Maine, and increase the sense of users that

⁶² Application Chapter 6, Appendix E, p. 27-28.

⁶³ Application Chapter 6, Section 6.2.2.4, p. 6-44.

⁶⁴ Application Chapter 25, Section 25.3.1.3, p. 25-5.

⁶⁵ Application Chapter 6, Appendix F (revised 1/30/19).

⁶⁶ Application Chapter 6, Section 6.2.2.5, p. 6-50; CMP witness Goodwin Direct at p. 10.

⁶⁷ CMP witness Segal cross-examination, Tr. 4/2/19, p. 163, lines 9-14.

⁶⁸ CMP witness Goodwin Direct at p. 10.

⁶⁹ CMP witness Goodwin cross-examination, Tr. 4/2/19, p. 159 line 10 through p. 161, line 2.

⁷⁰ CMP witness Goodwin Direct, p. 10.

the trail at this location crosses a developed landscape. CMP's contention that the impact on trail users would be "negligible" is without foundation, and they have not met its burden of proof to demonstrate that the project would fit harmoniously into the existing natural environment and would not adversely affect existing uses and scenic character.

V. CMP's proposed project will adversely affect wildlife habitat and other natural resources and therefore fails to satisfy the minimum requirements of the Site Law and NRPA (*Relevant to DEP and LUPC*)

A. CMP failed to demonstrate that the proposed project will not adversely impact significant vernal pool habitat. (*Relevant to DEP*)

Vernal pools are one of the most important types of habitat in New England.⁷¹ As such, they enjoy protection under both NRPA and Site Law. Under NRPA, CMP must demonstrate that its proposed project "will not unreasonably harm any significant wildlife habitat, freshwater plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life."⁷² Similarly, Site Law requires that a project proponent demonstrate that the development will not adversely affect natural resources.⁷³ Chapter 375, Section 15(B)(3)(d), of the Department's rules, clarifies that CMP must make adequate provision for the protection of wildlife and fisheries and provide evidence that "[t]here will be no unreasonable disturbance to . . . [s]ignificant vernal pools."

Dr. Aram Calhoun, Maine's leading authority on vernal pools, testified that CMP's proposed project would adversely impact significant vernal pool habitat.⁷⁴ Dr. Calhoun concluded that CMP's proposed project would not only destroy individual pools but would also

⁷¹ "High value vernal pools are one of the most valuable aquatic systems we have in New England, rivaling salt marshes in their productivity, yet the bulk of breeding animals only use them in the spring. These animals typically live in the forest and must travel to and from the vernal pools each year. Tree clearing near vernal pools would cause secondary impacts to the pools..." U.S. Environmental Protection Agency letter to U.S. Army Corps of Engineers, re: Public Notice 2017-01342 CMP NECEC Electric Transmission Line Project, April 25, 2019, p. 4.

⁷² 38 M.R.S. § 480-D(3);

⁷³ 38 M.R.S. § 484(3).

⁷⁴ Group 4 witness Calhoun Direct at p. 13

fragment vernal pool webs and impede the migrations of amphibians to and from pools that maintain the genetic diversity of vernal pool specialists, stating that “the effects of a clear-cut ROW through existing vernal pools, adjacent vernal pools, and travel routes to and from breeding pools will result in impacts ranging from devastation for some individual vernal pools to greatly compromised habitat for others.”⁷⁵

Moreover, vernal pool specialists, such as wood frogs, are adapted to shaded pools. Pools exposed to the sun due to clearing under powerlines favor habitat generalists, such as green frogs and bullfrogs.⁷⁶ Populations of wood frogs and other pool specialists are therefore likely to decline due to CMP’s corridor even in pools CMP does not fill.⁷⁷ Moreover, the shrubby vegetation that would take over if CMP builds its proposed corridor would damage pool specialists’ ability to move from pool to pool because they are adapted to move through forested landscapes.⁷⁸ This will restrict the ability of amphibians to move from pool to pool, limiting genetic diversity, and resulting in reduced populations of vernal pool amphibians.

Professor Calhoun also concluded that CMP’s proposed mitigation for the corridor’s damage is inadequate:

This project will cause harm to potentially hundreds of individual pools. Clearing for the powerline will also fragment pool networks causing undue stress to local amphibian populations. The ability of amphibians to move from pool to pool is critical to vernal pool ecological functions. The mitigation only compensates for direct impacts to vernal pools that have regulatory or legal status--- a small subset of the overall impacts to pools. There is no compensation for fragmentation in the form of interruption of migration and dispersal routes, connections among pools, and connections from breeding to post breeding habitats. Therefore, I do not believe that this project meets the no unreasonable adverse impact standard. Its impacts are severe and the applicant's mitigation proposal is inadequate.⁷⁹

⁷⁵ *Id. at 13*

⁷⁶ *Id. at 11*

⁷⁷ Tr. 5/9/19, p. 39.

⁷⁸ Group 4 witness Calhoun Direct, p. 12.

⁷⁹ *Id. at 17*

In response to Professor Calhoun's expert testimony, CMP witness Gary Emond provided rebuttal testimony to justify CMP's minimal mitigation proposal based solely on a TRC Engineers position paper⁸⁰ for CMP's Maine Power Reliability Project (MPRP). Mr. Emond made numerous assertions about powerline impact on vernal pools based on the TRC paper that cross examination showed to be misleading and unsubstantiated.

Mr. Emond asserted that: "Constructing and maintaining transmission line corridors does not negatively affect vernal pool hydro-period."⁸¹ Under cross-examination, Mr. Emond admitted that TRC had performed no studies of hydro-period before and after clearing of the MPRP right-of-way.⁸² He also stated that: "The ground was not disturbed. Everything was left intact in terms of grade, so the pool basins were not affected."⁸³ This is irrelevant to whether or not hydro-period was affected by the right-of-way construction. Increased precipitation and sun exposure due to loss of tree cover would both likely affect hydro-period, and therefore, without before-and-after studies of hydro period, which Mr. Emond admitted TRC never did, there is no way to conclude that right-of-way construction does not alter hydro-period.

Mr. Emond also asserted that: "The MPRP data strongly indicate that several generations of spotted salamanders have successfully reproduced in these vernal pools. It is therefore logical to conclude that their offspring continue to breed in these pools."⁸⁴ However, Mr. Emond admitted under cross examination that TRC never performed mark and recapture studies to measure whether several generations of salamanders had spawned in the pools. Group 4 attorney Sue Ely asked Mr. Emond: "Without mark and recapture studies that would tie juvenile salamanders leaving the pool and then recapture them when they return you can't say

⁸⁰ CMP rebuttal witness Emond testimony, exhibit CMP-12-B.

⁸¹ CMP rebuttal witness Emond testimony, p. 5.

⁸² Tr. 5/9/1, p. 41.

⁸³ *Id.* at 41

⁸⁴ CMP rebuttal witness Emond testimony, p. 5.

conclusively that multiple generations of salamanders have spawned in these pools; is that correct?” Mr. Emond replied, “That is correct.”⁸⁵

Mr. Emond further undermined CMP’s claims that the TRC MPRP report shows that transmission corridors do not harm vernal pools when he stated in his testimony that: “maintained transmission line ROWs are compatible with and, in fact, coexist with and support healthy and productive significant vernal pools”.⁸⁶ Under cross examination, however, Mr. Emond admitted, as with his other statements above, that he had no evidence to support this conclusion.

MS. ELY: Okay. Did you or TRC do any studies of individual amphibian health in these pools for the MPRP survey?

MR. EMOND: No, there was nothing done.

MS. ELY: Did you or TRC do any studies of the number of generalist species such as green frogs that may prey on juvenile forest specialists that were present in these pools?

MR. EMOND: That was outside the scope of the permitting process, so no.

MS. ELY: So -- I'm sorry, did you or did you not?

MR. EMOND: We did not.

MS. ELY: Okay. Did you do any studies on what percentage of wood frogs and spotted salamander eggs that survived to maturity and leave the pool in the right of way?

MR. EMOND: No, we did not.

MS. ELY: Is the TRC study that you cite as the basis for your conclusions about power lines and vernal pool ecosystems a peer-reviewed study published in a scientific journal?

MR. EMOND: Not in a scientific journal, no.⁸⁷

In sum, CMP’s witness, Gary Emond, was unable to provide evidence for any of the major assertions in his testimony, and CMP provided no evidence that its NECEC proposal would not severely damage individual vernal pools through loss of shade, fragment pool habitat and break up pool webs, and hinder amphibian migration due to increased predation and

⁸⁵ Tr. 5/9/19, p. 42.

⁸⁶ CMP rebuttal witness Emond testimony, p. 9.

⁸⁷ Tr. 5/9/19, p. 44-45.

unsuitable shrub habitat. He provided no evidence to support CMP's claims that its mitigation proposal for pool damage is adequate.

Given this, the Department must conclude that Professor Calhoun, the undisputed leading expert on vernal pools in Maine, is correct that the NECEC would cause severe damage to vernal pools through both individual pool destruction and fragmentation and that CMP's mitigation proposal is inadequate. The Department must also conclude that NECEC would unreasonably adversely impact significant vernal pool habitat, and therefore, would not meet the standards of the Site Law.

B. CMP failed to demonstrate that the proposed project will not unreasonably harm brook trout habitat. (*Relevant to DEP*)

Brook trout and its habitat enjoy robust protections under both NRPA and Site Law. Under NRPA, CMP must demonstrate that its proposed project “will not unreasonably harm any significant wildlife habitat, freshwater plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.”⁸⁸ This means that any project that will “unreasonably degrade the significant wildlife habitat, unreasonably disturb subject wildlife, or unreasonably affect the continued use of the cite by the subject wildlife” may not be permitted.⁸⁹

Similarly, the Site Law requires that a project proponent demonstrate that the development will not adversely affect natural resources.⁹⁰ Chapter 375 of the Department's rules prohibits any adverse impacts to unusual natural areas⁹¹ or wildlife and fisheries lifecycles.⁹²

⁸⁸ 38 M.R.S. § 480-D(3);
⁸⁹ 06-096, Ch. 335, § 3(C).
⁹⁰ 38 M.R.S. § 484(3).
⁹¹ 06-096, Ch. 375 §(12).
⁹² 06-096, Ch. 375 §(15).

1. The Applicant failed to demonstrate that their proposed buffer strips will protect water quality and fisheries habitat from the impacts of the new clearing proposed for the corridor.

The Applicant failed to meet their burden of proof to demonstrate that their proposed buffer strips will protect water quality fisheries habitat from the impacts of the new clearing proposed for the corridor. Specifically, the Applicant states that:

CMP will retain riparian natural buffers (or “riparian buffers”) and implement restrictions, consistent with those described in Exhibits 10-1 and 10-2, within 100 feet of all rivers, streams or brooks which meet the following criteria:

- Presence of Special Concern, Threatened, or Endangered Species,
- Coldwater Fisheries,
- Outstanding River Segments, as identified in 38 MRS § 480-P and 12 MRS § 403,
- All perennial streams within the Segment 1 portion of the Project.⁹³

This sounds consistent with the Maine Department of Inland Fisheries and Wildlife’s (MDIFW) repeated comments requesting undisturbed 100 foot riparian buffers. For example:

To reiterate, MDIFW recommends that the previously recommended 100-foot buffer be maintained along all streams, including perennial, intermittent, and ephemeral streams, within the Project area. To be effective, these 100-foot buffers should be measured from the upland edge of stream or associated fringe and floodplain wetlands. As proposed, without the protection of 100-foot buffers at all streams, the quality of fisheries and habitat in these watersheds will be impaired. This is also critically important for the other stream-dependent species of concern noted earlier in this document.⁹⁴

However, the details in CMP Exhibit 10-1 indicate that no special consideration will be given to brook trout streams during clearing activities, and, in contrast to the requests from MDIFW for undisturbed buffers, all woody vegetation taller than 10 feet tall will be removed within the wire zone, even within the “retained” “natural” riparian buffer.⁹⁵ Outside the wire zone, all “capable” woody vegetation will be removed, essentially limiting the maximum

⁹³ Revised Compensation Plan dated Jan. 30, 2019, p. 21.

⁹⁴ Maine Department of Inland Fisheries and Wildlife, Comments, Environmental Permit Review, Central Maine Power Company, New England Clean Energy Connect, 3-15-2018.

⁹⁵ Site Law Application, Chapter 10, Exhibit 10-1, p. 8

potential height of vegetation within the “retained” buffer to 25 feet.⁹⁶ After clearing, the details in Exhibit 10-2 state that areas within the wire zone will have woody vegetation maintained at no taller than 10 feet. Outside the wire zone, within the entire 150-foot-wide corridor all vegetation capable of attaining heights of over 25 feet will be removed every 4 years.⁹⁷ With this intensive management, the NECEC’s 150-foot-wide corridor will be transformed from forest to scrub-shrub habitat, eliminating many of the existing functions of riparian buffers to protect and maintain high quality coldwater fish habitat.

The Applicant’s assessment of these impacts, as presented in Application Section 10, including Exhibits 10-1 and 10-2 and the pre-filed direct testimony of Mark Goodwin (also adopted by Laura Johnston), is significantly flawed.⁹⁸ It essentially amounts to repeatedly (and selectively) citing two studies:

- (1) Gleason, N.C. 2008. Impacts of Powerline Rights of Way on Forested Stream Habitat Western Washington, Environmental Symposium in Rights of Way Management, 8th International Symposium, pages 665-678;⁹⁹ and
- (2) Peterson, A.M. 1993. Effects of Electric Transmission Rights-of-Way on Trout in Forested Headwater Streams in New York. North American Journal of Fisheries Management, vol. 13 pp. 581-585.¹⁰⁰

Based primarily on these studies—and ignoring broad consensus based on decades of research that intact forest buffers are important for protecting coldwater fish habitat¹⁰¹—Goodwin concludes that “there will be no unreasonable disturbance to or unreasonable impact on . . . Brook Trout habitat and the project will not result in unreasonable habitat fragmentation . . . CMP has made adequate provision for buffer strips around cold-water fisheries.”¹⁰²

⁹⁶ *Id.* at p. 8 and Figure 1 on p. 13.

⁹⁷ Site Law Application, Chapter 10, Exhibit 10-2, pages 5-6.

⁹⁸ CMP Goodwin Direct, p. 22.

⁹⁹ The abstract of this study is included in Group 4 Witness Reardon’s Rebuttal Testimony at pages 2-3.

¹⁰⁰ Attached to Group 4 Witness Reardon’s Rebuttal Testimony as Group 4 Exhibit 19-JR-Rebuttal.

¹⁰¹ For example, Group 4 Exhibit 20-JR-Rebuttal; Group 4 Exhibit 6-JR; Group 4 Exhibit 7-JR.

¹⁰² CMP Witness Goodwin Direct Testimony at page 22.

But that opinion is not supported by even the plain text of the references Mr. Goodwin cites. For example, a key finding reported by Gleason was that canopy cover (a key habitat element for coldwater fish) was much lower in disturbed transmission corridors than in nearby undisturbed streams, with “a mean of 29% in rights-of-way and 75% upstream.”¹⁰³ Moreover, Gleason concluded that, “Overall, the elements show a decrease from ideal salmonid habitat conditions.”¹⁰⁴

Similarly, Goodwin cites a 1993 Peterson study¹⁰⁵ as evidence that transmission corridors do not adversely impact natural stream habitat for coldwater fish,¹⁰⁶ but ignores Peterson’s primary findings regarding habitat—namely, that of 12 habitat parameters evaluated, 6 were altered at a level that was statistically significant in streams within rights-of-way.¹⁰⁷ Of greatest importance to fish habitat, streams within rights of way had 31.5% mean shade compared to 83.3% in forested streams, and bank vegetation within rights of way was 91.8% shrubs and grass, compared to only 4% shrubs and grass in forested streams.¹⁰⁸ In other words, Peterson documented that in the rights of way studied, a forested buffer with an 83% canopy cover, which would meet the recommendation of MDIFW¹⁰⁹ and the Maine Natural Areas Program,¹¹⁰ was

¹⁰³ Abstract of Gleason, N.C.2008. Impacts of Powerline Rights of Way on Forested Stream Habitat Western Washington, Environmental Symposium in Rights of Way Management, 8th International Symposium, p. 665-78. Abstract is excerpted in full in Group 4 Witness Reardon Rebuttal Testimony at page 3.

¹⁰⁴ *Id.* (Emphasis added.)

¹⁰⁵ Peterson, A.M. 1993. Effects of Electric Transmission Rights-of-Way on Trout in Forested Headwater Streams in New York. North American Journal of Fisheries Management, vol. 13. Group 4 Exhibit 19-JR-Rebuttal. Hereinafter 1993 Peterson Study.

¹⁰⁶ CMP Goodwin Direct, p. 15.

¹⁰⁷ 1993 Peterson Study, p. 583 Table 2.

¹⁰⁸ *Id.* at 581-85.

¹⁰⁹ Group 4 Exhibit 20-JR-Rebuttal: Maine Department of Inland Fisheries and Wildlife: Forest Management Recommendations for Brook Trout.

¹¹⁰ Group 4 Exhibit 6-JR: Maine Natural Areas Program: Forest Management Recommendations for Maine’s Riparian Ecosystems.

replaced with an open, shrub-and- grass-banked stream. CMP's application would create this condition at every stream crossing.¹¹¹

Goodwin's testimony on buffers emphasizes CMP's "concession" to allow 75-100-foot buffers at stream crossings. But this focus on width, rather than on the nature of the vegetation allowed to remain within the buffer, ignores the importance of canopy closure, presence of mature trees, forested buffers, and inputs of large woody debris to instream habitat. Goodwin emphasizes buffer functions that can be provided by low ground cover or even grasses, like sediment and nutrient removal, but ignores buffer functions like large woody debris and organic matter inputs that are provided by mature trees—trees that will not be allowed within CMP's buffers. He also exaggerates the degree to which the non-capable vegetation allowed to remain within CMPs proposed buffers will provide functions like shade. For example, Goodwin states:

Allowing non-capable vegetation to remain as described within the appropriate buffer will provide shading and reduce the warming effect of direct sunlight (insolation). Low ground cover will also remain within these buffers to filter any sediment or other pollutants in surface runoff. These conditions will allow the stream buffers to provide functions and values similar to those prior to transmission line construction.¹¹²

This statement is directly contradicted by the only two references Goodwin cites.¹¹³ Mr. Goodwin in his direct testimony also overstates the degree to which CMP's proposed buffers can provide functions like shade and large woody debris.¹¹⁴

Because all capable vegetation will be removed from the buffer, CMP's proposed buffers will not provide any recruitment of large woody debris of a size sufficient to maintain instream

¹¹¹ CMP's misrepresentation of the implications of these studies is discussed in greater detail in Group 4 Witness Reardon's rebuttal testimony on pages 1-5.

¹¹² CMP Goodwin Direct, p. 21.

¹¹³ See generally, Gleason, N.C. 2008. Impacts of Powerline Rights of Way on Forested Stream Habitat Western Washington, Environmental Symposium in Rights of Way Management, 8th International Symposium, pages 665-678; and 1993 Peterson.

¹¹⁴ CMP Goodwin Direct, p.15.

habitat.¹¹⁵ In rebuttal testimony CMP witnesses maintained that the proposed buffers would continue to supply “moderate sized woody debris” but conceded on cross examination that any recruited wood would likely be shorter and smaller in diameter than sizes specified in standards for large wood addition projects.¹¹⁶ Nor will CMP’s proposed buffer provide anything close to the 60-70% closed canopy vegetation that ME DIFW requested. CMP witness Johnston, on cross-examination, stated that proposed buffers would not provide canopy trees and that under summer conditions when the sun is high, there would be zero shade.¹¹⁷

In summary, the Applicant clearly failed to meet the burden of proof to demonstrate that their proposed buffer strips will adequately protect habitat for coldwater fish. The Applicant’s argument that proposed buffers are sufficient rests on two studies that contradict long-accepted principles embodied in documents about riparian buffers maintained by the MDIFW and Maine Natural Areas Program. CMP selectively cites their findings, obscuring conclusions in those studies that physical stream habitat was significantly impacted by right of way clearing, particularly by severe reductions in overhead canopy cover, and one study’s clear conclusion that right of way clearing resulted in “a decrease from ideal salmonid habitat conditions.” The Applicant’s witnesses assert, but cannot support, the hypothesis that the non-capable vegetation remaining in the cleared riparian corridor will provide woody debris inputs. But on cross examination, the Applicant’s witnesses concede that maximum wood sizes will be no more than 4” in diameter and 15-20’ long—far too small to provide important functions of large wood in even moderate sized streams. And the Applicant’s witnesses agree that their proposed buffers will not provide canopy closure over even small streams.

¹¹⁵ Group 4 Reardon Direct, p. 21; Group 4 Exhibit 6-JR; Group 4 Reardon Rebuttal, p. 5-6.

¹¹⁶ CMP Johnston Rebuttal, p. 12, but see Tr. 4/1/19, p. 198-201.

¹¹⁷ Tr. 4/1/19, p. 194, 196-97.

2. *CMP failed to demonstrate that NECEC will not harm brook trout habitat.*

The Applicant failed to meet its burden of proof to demonstrate that the 53.5 miles of new corridor (Section 1) will not have an adverse impact on the natural environment via impacts on brook trout habitat. The proposed new corridor would be one of the largest permanent fragmenting features impacting watersheds in this region, crossing watersheds that have been recognized as among the least impacted aquatic habitats in the northeastern United States¹¹⁸ and as the nation's most important stronghold for native brook trout.¹¹⁹ The Applicant's assessment of these impacts (as set forth in Application Sections 7.5 and 7.6 and the pre-filed direct testimony of Mark Goodwin and Laura Johnston) fails to recognize the importance of this intact habitat to Maine and the nation, inadequately discusses the impacts of the project on brook trout habitat, and does not include measures to protect some of the Maine's and the nation's finest habitat for brook trout.

- i. CMP failed to recognize the significance of the brook trout resource impacted by Section 1 of the new corridor.

The streams impacted by the 251 water body crossings in Section 1 are among the most intact watersheds remaining in the continental United States.¹²⁰ Western Maine contains the vast majority of un-degraded aquatic habitat in the northeastern states. This intact habitat supports the nation's most significant stronghold of native brook trout populations. Every water body crossing in Section 1, identified in CMP Exhibit 7-7: NECEC Waterbody Crossing

¹¹⁸ National Fish Habitat Partnership, 2015. *Through a Fish's Eye, the Status of Fish Habitat's in the United States, 2015.*

¹¹⁹ Eastern Brook Trout Joint Venture (2006): *Eastern Brook Trout: Status and Threats.* <https://easternbrooktrout.org/reports/eastern-brook-trout-status-and-threats%20%282006%29/view;>

¹²⁰ Group 4 Reardon Direct, p. 7; Group 4 Exhibit 1-JR; National Fish Habitat Partnership, 2015. *Through a Fish's Eye, the Status of Fish Habitat's in the United States, 2015.*

Table,¹²¹ is within a subwatershed designated as supporting an “intact” population of brook trout.¹²² MDIFW staff biologist Bob Stratton confirmed this assessment, writing:

I’m quite certain that all the perennial streams in Region E contain wild BKT. All those brooks in Beattie, Appleton, Johnson Mtn, and Bradstreet Twps are full of BKT. I’m not sure about the intermittent streams, but anything connected to the Moose River, Gold Bk, Barrett Bk, Cold Stream, Baker Bk, Tomhegan Stream, Bog Bk, Smart Bk, Number One Bk, Mill Bk, and Piel Bk would have potential. I really think we are safe ground by assuming all the Region E streams (all headwaters) have BKT.¹²³

In contrast to these assessments by state fisheries biologists and the Eastern Brook Trout Joint Venture, CMP’s description of the brook trout resource is cursory and limited to a few paragraphs in the Site Law Application.¹²⁴

- ii. CMP did not incorporate critical information from the MDIFW into their application materials.

As of the May 9, 2019, hearing, CMP had still not incorporated critical information from the MDIFW into their application materials, despite assertions that they had done so. In his direct testimony, Group 4 witness Jeff Reardon raised this issue, writing that “[c]onsultation with MDIFW staff about brook trout presence at crossings appears to have been left until very late in the process, with handwritten comments on the NECEC Water Body Crossing Table (Exhibit 7-7) provided on by MDIFW February 2, 2019.”¹²⁵ His testimony referred to correspondence between CMP and the Maine Department of Inland Fisheries Wildlife.¹²⁶

In response, CMP witness Lauren Johnston’s pre-filed rebuttal testimony stated that:

¹²¹ Site Law Application, Chapter 7, pages 179-198

¹²² Group 4 Exhibit 1-JR; Eastern Brook Trout Joint Venture (2006): Eastern Brook Trout: Status and Threats. <https://easternbrooktrout.org/reports/eastern-brook-trout-status-and-threats%20%282006%29/view>

¹²³ 1/22/2019 email from Bob Stratton (MDIFW) to Jim Beyer (Department). Included in consultation record under “Review Comments”.

¹²⁴ Application, Chapter 7, Section 7.5.1 at p 7-40.

¹²⁵ Reardon Direct, p. 9.

¹²⁶ Two emails from Bob Stratton (ME DIFW) to Jim Beyer (Department) on January 22, 2019; 4 emails from Bob Stratton to Jim Beyer on January 24, 2019; and one email from Bob Stratton to Jim Beyer on February 4, 2019, all accessed at <https://www.maine.gov/dep/ftp/projects/necec/review-comments/2019-02-01%20MDIFW%20Comments/>.

It is also inaccurate to describe CMP's consultations regarding brook trout presence "to have been left very late in the process." As described above, CMP's consultation with DIFW began in May 2017 during the application development process and included multiple consultation working sessions through 2018 and into early 2019. DIFW provided CMP with a brook trout GIS data layer on July 12, 2017, prior to the application submission. Designated brook trout streams were incorporated into CMP's geodatabase and Site Law Exhibit 7-7 NECEC Waterbody Crossing Table (9/27/2017). In a January 22, 2019 meeting with DEP and DIFW, DIFW notified CMP that the GIS layer previously provided was incomplete and then provided a list of additional identified resources. ***CMP incorporated the additional resources into the January 30, 2019 Compensation Plan and Exhibit 7-7 NECEC Waterbody Crossing Table.***¹²⁷

If this change had been made, Table 7-7 would have reflected the input contained in DIFW's emails on January 24, and in their hand marked edits to Table 7-7, discussed during the January 22, 2019, meeting between the Department, DIFW and CMP, and contained in two emails from Bob Stratton to Jim Beyer after that meeting.¹²⁸ However, in supplemental testimony in response to question 16 from DEP staff regarding locations where tapering vs. taller overhead pole structures would be preferred, CMP witness Mark Goodwin was either unaware of this consultation or ignored it. He included a table that indicated that out of the nine areas where the Nature Conservancy had suggested tapering or taller pole structures to minimize project impacts, Areas 1, 2, and 3 did not contain brook trout habitat.¹²⁹ Additionally, the table did not mention brook trout habitat as a resource of concern in Areas 6, 7, 8, and 9.¹³⁰

- Area 1 includes Number 1 Brook, identified by Maine DIFW as brook trout habitat in the email referenced above.
- Area 2 contains the South Branch Moose River, identified by Maine DIFW as a brook trout stream in the email quoted above.
- Area 3 contains three unnamed perennial streams; ME DIFW email comments indicate that: "*Region E Fisheries indicates, "I'm quite certain that all the perennial streams in*

¹²⁷ CMP Johnston Rebuttal, p. 7 (emphasis added).

¹²⁸ 2019-01-24 MDIFW comments on waterbody crossing table1.pdf; 2019-01-24 MDIFW comments on waterbody crossing table 2.pdf. Both accessed at: <https://www.maine.gov/dep/ftp/projects/necec/review-comments/2019-02-01%20MDIFW%20Comments/>

¹²⁹ CMP Goodwin Supp. Testimony, table on p. 5.n

¹³⁰ *Id.*

*Region E contain wild BKT. All those brooks in Beattie, Appleton, Johnson Mtn, and Bradstreet Twps are full of BKT.*¹³¹

- Area 6 contains Parlin Brook and two other perennial streams; Parlin Brook (also known as Piel Brook, a tributary to Parlin Pond) is identified as brook trout habitat in ME DIFW's marked up Exhibit 7-7.
- Area 8 contains Tomhegan Stream and three perennial tributaries; Tomhegan Stream and those tributaries are identified as brook trout habitat in ME DIFW's marked up Exhibit 7-7.
- Area 9 contains Moxie Stream; Moxie Stream is identified as brook trout habitat in ME DIFW's marked up Exhibit 7-7.¹³²

In short, information provided by Mr. Goodwin was incorrect for 6 of TNC's 9 areas.

On cross examination, CMP witness Johnston was asked whether Number One Brook contained brook trout habitat. She responded:

Well, I'd have to refer to this table because I don't believe at the time when we updated our table I believe it was January 30 when we filed that we were provided the attached email, we were provided this spread -- hand marked-up spreadsheet and we updated our information based on the -- based on the mark-up of this spreadsheet.¹³³

Asked whether CMP had incorporated information provided by MDIFW to update information on brook trout presence at water body crossings identified in Exhibit 7-7, Ms. Johnston stated "I don't believe that the information contained in that email was incorporated into the table that we reviewed at that time."¹³⁴ This directly contradicts her rebuttal testimony statement that "CMP incorporated the additional resources into the January 30, 2019 Compensation Plan and Exhibit 7-7 NECEC Waterbody Crossing Table."¹³⁵

¹³¹ 1/22/2019 email from Bob Stratton (MIFW) to Jim Beyer (Department). Included in consultation record under "Review Comments."

¹³² Information regarding streams crossings in TNC's nine areas from CMP Witness Giumarro's Prefiled Supplemental Testimony, table on p.8. Information regarding brook trout presence from 2019-01-22 email from Bob Stratton (MDIFW) to Jim Beyer (Department) and 2019-01-24 MDIFW comments on waterbody crossing table1.pdf. Both accessed at: <https://www.maine.gov/dep/ftp/projects/neccec/review-comments/2019-02-01%20MDIFW%20Comments/>

¹³³ Tr. 5/9/19, p. 276.

¹³⁴ *Id.*

¹³⁵ CMP Johnston Rebuttal, p. 8.

In later testimony, both Mr. Goodwin and Ms. Johnston claim that CMP was not party to the correspondence that MDIFW sent to the Department. However, a link to these emails was provided to all parties to the proceeding by the Department's Mr. Jim Beyer in a February 4th email that included CMP's Gerry Mirabile and CMP's attorney Matt Manahan as recipients. In response to questions later in the hearing from Mr. Beyer, CMP witness Goodwin testified that:

I guess a point of clarification, on the cold fisheries, whether they're currently known as a cold water fishery or known to be in the future, they're -- they -- I guess, let me rephrase that. All of the waterbodies that are currently known to be cold water fisheries will be provided the 100 foot riparian buffer on Segment 1. So if it comes to light that there are other cold water fisheries it would be applied to those as well.¹³⁶

This statement begs the question of how CMP could do that—and how permitting and reviewing agencies could monitor CMP's performance—without clear information in the record about which streams contain brook trout and will receive such buffers. The simple answer is that they can't. It is not clear whether “all of the waterbodies that are currently known to be coldwater fisheries” refers to those that have been identified by MDIFW, or only those where MDIFW's input has been incorporated into CMP's version of Exhibit 7-7.

- iii. CMP's proposed riparian buffers are inadequate to protect brook trout habitat.

Chapter 375, Section 9, of the Department's rules “recognizes the importance of natural buffer strips in protecting water quality and wildlife habitat.” Because the NECEC corridor will require clearing of a 150 foot right of way, and because CMP's proposed buffers will not provide mature trees or closed canopy, brook trout habitat in every stream crossed—all of which, according to MDIFW contain brook trout—will be impacted. Loss of shade, woody debris inputs, and overhead cover are the primary impacts. The buffers proposed by CMP fall far short

¹³⁶ *Id.* at p. 309-310.

of MDIFW’s suggested “Forest Management Recommendations for Brook Trout,” which states that

Stream habitat suitability is maintained by the presence of intact, mature wooded riparian corridors that conserve forest soils, provide shade to reduce stream warming, protect stream water quality, provide cover for fish, and provide a source of woody debris and leaf litter from mature trees that maintain in-stream habitat for fish and the aquatic insects they feed upon.

That document recommends:

The MDIFW also recommends limiting the harvest of trees and alteration of other vegetation within 100 feet of streams and their associated fringe and floodplain wetlands to maintain an intact and stable mature stand of trees, characterized by heavy crown closure (at least 60 – 70%) and resistance to wind-throw. In some situations wider buffers should be considered where severe site conditions (e.g., steep slope, vulnerable soils, poor drainage, etc) increase risk to soil and stand stability. Any harvest within the riparian management zone should be selective with a goal of maintaining relatively uniform crown closure.¹³⁷

Given the number of streams impacted—227 brook trout streams in Section One alone—with a minimum of 150 feet of impact on each stream, it is likely that CMP’s corridor would convert more than 6 miles of streams from forested to unforested.¹³⁸ Other impacts such as lack of woody debris and organic inputs from mature trees; warming due to increased insolation; and loss of overhead cover from predators, will affect brook trout populations above and below the areas directly impacted.¹³⁹ Short of the Department placing additional terms and conditions on CMP’s permit to mandate full canopy stream buffers, CMP’s current failure to provide adequate buffers will unreasonably impact brook trout habitat.

- iv. The NECEC will cross a number of streams identified as priorities for conservation and provides no special provisions to protect brook trout habitat at those sites.

¹³⁷ Group 4 Reardon Rebuttal Exhibit 20-JR-Rebuttal. ME DIFW Publication: “Forest Management Recommendations for Brook Trout.”

¹³⁸ Stream numbers from Exhibit 7-7: Waterbody Crossing Table, ME DIFW Mark-Up, provided to the Department via email: 2019-01-24 MDIFW comments on waterbody crossing table1.pdf; 2019-01-24

¹³⁹ Group 4 Reardon Direct, p. 18-21; Group 4 Reardon Rebuttal, p. 1-6.

The NECEC will cross Cold Stream and its tributaries Mountain Brook and Tomhegan Stream, as well as multiple unnamed and intermittent tributaries. For example, the Cold Stream watershed was been identified by the MDIFW, Maine Bureau of Public Lands, Trout Unlimited, and other partners as a high priority for riparian conservation to maintain intact buffers for brook trout habitat protection, and more than \$7 million in state and federal funds were used to purchase the entire length of Cold Stream with the one exception of the NECEC crossing site.¹⁴⁰ This crossing site, as well as the crossing of Tomhegan Stream, a major tributary, are both crossings with extensive impacts not only on the mainstem of Cold Stream and Tomhegan Stream, but also on associated tributaries, multiple channels and wetlands.¹⁴¹ The Applicant failed to avoid these resources in route planning (see additional discussion below), and also failed to provide any measures to reduce the impact at these crossings. Significantly, such measures, in particular taller poles to maintain intact riparian canopy over aquatic habitat, have been adopted to protect other aquatic resources and are clearly feasible.¹⁴² The Applicant simply failed to properly identify brook trout, and where brook trout presence has been acknowledged, failed to take any measures beyond very minimal buffers to provide additional protection to exemplary brook trout streams.

The Applicant clearly failed to meet the burden of proof to demonstrate that there will not be an adverse impact on the natural environment due to unavoidable impacts to brook trout habitat from the project as proposed. The Applicant's understanding of the location of brook trout habitat in the streams crossed the NECEC is at best incomplete, and contrary to the applicant's repeated assertions that it incorporated information on brook trout presence provided by the MDIFW, has ignored or lost track of or disregarded extensive comments provided in

¹⁴⁰ Group 4 Reardon Direct, p. 4.

¹⁴¹ *Id.* at 11-12, Group 4 Exhibit 3-JR.

¹⁴² *Id.* at 13-14, Group 4 Exhibit 4-JR.

February. The Applicant's proposed buffers are inadequate, and the Applicant failed to provide any additional protection to even the most impacted and most valuable brook trout streams, including Cold Stream, where state and federal partners have invested millions of dollars to protect the Cold Stream Forest specifically for its value as brook trout habitat. Impacts to brook trout habitat will occur over a wide area acknowledged as some the most intact habitat for brook trout in its native range. The impacts of the corridor will be permanent and irreversible, and cumulatively amount to clearcutting more than 6 miles of brook trout streams on both banks.

C. CMP failed to demonstrate that the 53.5 miles of new corridor (Section 1) will not have an adverse impact on the natural environment through habitat fragmentation.

The Applicant failed to meet its burden of proof to demonstrate that the 53.5 miles of new corridor (Section 1) will not have an adverse impact on the natural environment through habitat fragmentation. The proposed new corridor would be one of the largest permanent fragmenting features bisecting a nationally significant forest region and would have an adverse effect on wildlife habitat, wildlife life cycles and travel corridors. However, the Applicant's assessment of these impacts, set forth in Application Section 7.4.1 and the pre-filed direct testimonies of Gerry Mirabile and Mark Goodwin, is cursory, overly general and lacking in specific analyses of the project's impacts. In particular, the application suffers from the following specific flaws.

1. CMP failed to recognize the significance of the Western Maine Mountains region.

The Western Maine Mountains is the heart of a globally significant forest region that is notable for its relatively natural forest composition, lack of permanent development, and high level of ecological connectivity. The values of this region are set forth in the pre-filed direct testimony of Group 4 witness Dr. David Publicover, Group 1 witness Janet McMahon, and Group 6 witnesses Rob Wood, Andy Cutko and Bryan Emerson. Nowhere in the application

does the Applicant recognize or discuss the value of this region. In contrast, the Applicant consistently minimizes the value of the region as merely heavily harvested commercial forest (e.g. “*this area of the state is already intensively managed (i.e., periodically clearcut) forested land*”¹⁴³; “*...53.5 miles of new ROW which, as discussed previously, is located in an intensively managed timber production area...*”¹⁴⁴). However, the fact that commercial timber harvesting as practiced in this region is consistent with the recognized high value of the region was addressed during the cross-examination of Dr. Malcolm Hunter.¹⁴⁵

2. *CMP inappropriately conflates forestry impacts with corridor impacts.*

The Applicant consistently presents the project’s impacts as no different than the on-going pattern of timber harvesting in the region, for example:

In general, given the existing landscape characteristics of the overall NECEC Project area, construction and maintenance of the transmission line corridors will result in habitat conversion that is already common to the area, i.e. forested to scrub-shrub. It is anticipated that local wildlife populations will adapt and respond to any additional alterations much as they already do to uses within the vicinity of the transmission line corridor.¹⁴⁶

However, the record contains extensive evidence contradicting this mischaracterization of timber harvest impacts being similar to the expected impacts of the corridor and documenting multiple ways in which the project’s impacts would differ from those of timber harvesting:

- As opposed to the temporary and shifting pattern of timber harvesting, the corridor would be an essentially permanent feature on the landscape.¹⁴⁷
- As opposed to the spatially compact configuration of timber harvest areas, the corridor would be an extensive linear feature.¹⁴⁸

¹⁴³ Application Chapter 7, Section 7.4.1.1.1, p. 7-24.

¹⁴⁴ Application Chapter 7, Section 7.4.1.2, p. 7-25.

¹⁴⁵ Tr. 4/5/19, p. 80 line 19 through p. 82 line 9.

¹⁴⁶ Application Chapter 7, Section 7.4.1.1.1, p. 7-24.

¹⁴⁷ Group 4 Publicover Direct, p. 15; Tr. 4/5/19, p. 61 line 3.

¹⁴⁸ Group 4 Publicover Direct, p. 15; 4/5/19, p. 61 line 7-9.

- The corridor would create permanent scrub-shrub habitat devoid of any trees. In contrast, only 6-7% of harvested acreage in the state consists of clearcuts.¹⁴⁹ In addition, many areas meeting the regulatory definition of a clearcut retain some level of overstory trees.¹⁵⁰ The great majority of harvesting since 2000 consists of various forms of partial harvesting.¹⁵¹

In contrast to the Applicant's characterization of the project region as intensively managed forest, Dr. Hunter stated, "[i]t's important to note that the fragmentation effects of the forest management in this region are quite light handed compared to some other forests like the industrial plantations of the southeastern United States or even parts of New Brunswick."¹⁵² When asked during cross-examination whether he agreed with the Applicant's contention that the fragmenting effects of the new corridor were no different than those of timber harvesting, Dr. Hunter clearly answered "No".¹⁵³

3. CMP failed to adequately consider the project's impacts on mature and interior forest habitat.

The Applicant goes to great lengths to emphasize the habitat benefits provided by the creation of early-successional habitat in the new corridor.¹⁵⁴ However, the significance of this habitat benefit is minimized by the Applicant's own admission that this habitat is "already common to the area."¹⁵⁵ When asked whether he believed that the permanent maintenance of early-successional habitat in the corridor would result in an overall improvement to habitat quality in the region, Dr. Hunter answered "No."¹⁵⁶

¹⁴⁹ Group 4 Publicover Direct, p. 15; Tr. 4/1/19 at p. 173 lines 10-15.

¹⁵⁰ Tr. 4/5/19, p. 66 line 1 through p. 67 line 1.

¹⁵¹ CMP Goodwin Sup. Testimony Exhibit CMP-3.2-A; Group 6 Simons-Legard Sup. Testimony (marten habitat maps submitted at request of the Department).

¹⁵² Tr. 4/5/19, p. 61 lines 13-18.

¹⁵³ *Id.* at p. 84 lines 14-20.

¹⁵⁴ *See, e.g.*, Application Chapter 7, Section 7.4.1.1.1.

¹⁵⁵ Application Chapter 7, Section 7.4.1.1.1 at p. 7-24. We note that the statement in the Application that shrub-shrub habitat is "common" in the project region is directly contradicted by CMP witness Gerry Mirabile's pre-filed testimony which stated on page 13 that there is a "scarcity" of such habitat in the region. Upon cross-examination Mr. Mirabile could not point to any evidence as to the scarcity of this habitat. (Mirabile cross-examination, Transcript 4/1/19, p 162 lines 3-25).

¹⁵⁶ Tr. 4/5/19, p. 84 lines 3-7.

While the application contains a specific description of early-successional habitat,¹⁵⁷ there is no corresponding description of mature forest habitat or the species associated with it and the application contains essentially no information on or analysis of the project’s impacts on mature or interior forest habitat. This mature or interior forest habitat is considered far more limiting in northern Maine than early-successional habitat.¹⁵⁸ Much of the discussion on this topic during the hearings focused on American (or pine) marten, which is considered an “umbrella” species for mature forest habitat and which has undergone population declines due to the cumulative effects of forest management.¹⁵⁹

While CMP makes cursory note of some potential impacts to mature forest habitat as a result of this project, the full scope of the impact is ignored and downplayed. For example, the application notes that “[h]abitat conversion is most pronounced in those areas where the proposed transmission line corridor traverses mature forest stands”¹⁶⁰ and that “[s]ome bird species within the NECEC Project area that may be sensitive to forest fragmentation are the long distance, neotropical migrants that rely on forest interior habitats”¹⁶¹ the full scope and severity of impacts are not acknowledged. These impacts are summarily dismissed with general statements such as “plentiful suitable habitat is available near the NECEC Project areas for these interior forest species”¹⁶² and “[m]ost of the terrestrial mammal species that are likely to be found near the proposed transmission line corridors are likewise not dependent on mature forest.”¹⁶³ No evidence is presented to support these conclusions. There is no discussion of

¹⁵⁷ Application Chapter 7, Section 7.3.1.2.

¹⁵⁸ Group 4 Publicover Direct, p. 11.

¹⁵⁹ Group 6 Simons-Legard Sup. Testimony, p. 2.

¹⁶⁰ Application Chapter 7, Section 7.4.1.1.1 at p. 7-24.

¹⁶¹ Application Chapter 7, Section 7.4.1.2 at p. 7-25.

¹⁶² In another example of the Applicant’s contradictory statements, the contention that interior forest habitat is “plentiful” is inconsistent with their contention that this landscape is already so heavily fragmented that the additional impact of the project is inconsequential.

¹⁶³ Both from Application Chapter 7, Section 7.4.1.2 at p. 7-25.

which species might be adversely affected and no assessment of the extent to which the project would impact mature and interior forest habitats. The word “marten” appears nowhere in the application, and neither of CMP’s witnesses on the issue of fragmentation (Mirabile and Goodwin) could define the term “umbrella species,” raising questions about their understanding of this issue and their qualifications to testify on these impacts.¹⁶⁴

Finally, CMP witness Gino Giumarro states that intermediate-age and mature forest pine marten habitat is “at best, marginally and intermittently present along the 150-foot wide Segment 1 right of way.”¹⁶⁵ However, his conclusion is contradicted by Dr. Simons-Legard and her marten habitat suitability maps submitted at the request of the Department, which indicate that High and Moderate suitability marten habitat is present throughout the region of Segment 1.¹⁶⁶

However, the impacts of the project will affect many more species than just marten. Mature and interior forest habitat is utilized by many breeding birds, including those considered Species of Greatest Conservation Need in Maine.¹⁶⁷ The impacts include both the direct loss of this habitat (both as it currently exists and as it may develop through the regrowth of harvested areas), as well as the additional loss through edge effects (see below).

4. CMP Failed to adequately assess the impact of edge effects.

One of the Applicant’s own references states that “[f]ragmentation produced by ROWs is likely to have a negative impact on the greatest number of species as a result of edge effects.”¹⁶⁸ However, as with other impacts of fragmentation, the application and the Applicant’s testimony

¹⁶⁴ Tr. 4/1/19, p. 159 lines 4-16.

¹⁶⁵ CMP Giumarro Sup. Testimony, p. 2.

¹⁶⁶ Tr. 5/9/19, p. 117 line 25 through p. 122 line 12.

¹⁶⁷ Group 6 Hunter Direct, p. 5; Tr. 5/9/19, p. 121 line 16 to p. 122 line 3; Group 1 McMahon Direct, p. 12.

¹⁶⁸ Willyard, C.J., S.M. Tikalsky and P.A. Mullins. 2004. Ecological Effects of Fragmentation Related to Transmission Line Rights-of-Way: A Review of the State of the Science. Unpublished report to: State of Wisconsin Department of Administration Division of Energy. Quoted material at p. 14.

is marked by lack of analysis and overly optimistic conclusions unsupported by evidence and contradicted by other expert witness testimony.

Edge effects are discussed in Application Section 7.4.1.3. The discussion of the negative impacts of edge effects consists of a single paragraph of just six and one-half lines. There is no discussion or assessment of what species within this landscape may be adversely impacted, how much area may be affected by edge effects, or how much the new permanent edge habitat created by the corridor compares to the amount of existing edge habitat. This brief section concludes that “this transmission line segment [i.e. Segment 1] is therefore not likely to significantly alter or increase the existing edge effect” since it is “located in an intensively managed area for timber production.”¹⁶⁹ However, as noted previously, the new corridor differs in many ways from the existing pattern of timber harvesting, which dominantly consists of partial harvesting that does not create the type of distinct edge created by the corridor.

CMP witness Mirabile states, “[i]n many cases, edge effect results in greater species diversity, and greater population density of certain species, than that observed within individual habitats.”¹⁷⁰ This statement implies that edge actually creates a habitat benefit within forested landscape. While true, it is misleading in that ignores the fact that edge habitats favors common generalist species at the expense of less common forest interior species.¹⁷¹

In contrast to the Applicant’s cursory discussion and unsupported conclusions, the negative impacts of edge effects are discussed extensively by multiple expert witnesses.¹⁷² These witnesses establish that edge effects can extend for many hundreds of meters into the adjacent

¹⁶⁹ Application Section 7.4.1.3.

¹⁷⁰ CMP Mirabile Direct, p. 12.

¹⁷¹ Group 4 Publicover Rebuttal, p. 5; Group 6 Hunter Direct, p. 5.

¹⁷² Group 4 Publicover Direct, p. 10-12; Group 4 Publicover Rebuttal, p.4-5; Group 1 McMahan Direct, p. 11; Group 6 Hunter Direct, p. 4-6.

forest and will impact an area significantly larger than the actual footprint of the cleared corridor.¹⁷³

5. *CMP failed to demonstrate that habitat connectivity will be maintained.*

The high level of ecological connectivity is one of the most significant characteristics of the Western Maine Mountains region, and the new corridor would be one of the most significant features impeding this connectivity due to its width and its extent across the entire region. Despite the applicant's contention, it is significantly different than timber harvesting, as clearcuts are required to maintain forested buffers around them that provide travel corridors for species that avoid non-forested areas. While the area contains timber harvesting roads, most are significantly narrower than the proposed corridor and present less of an impediment to species movement.¹⁷⁴

The issue of habitat connectivity was also a major concern during the public hearing, with a particular focus on mature forest species (most notably marten and amphibians).¹⁷⁵ Marten generally avoid areas lacking forest cover at least 30-40 feet high.¹⁷⁶ Some species of amphibians also avoid non-forested areas.¹⁷⁷ While the corridor may not present an absolute barrier it will significantly impede the ability of these species to move throughout the landscape.¹⁷⁸

The Applicant recognizes the potential of transmission line corridors to affect species movement, writing “[t]ransmission line corridors present potential direct impacts, as they may affect species movement, dispersal, density, nesting success and/or survival.”¹⁷⁹ However, this

¹⁷³

Id.

¹⁷⁴ Group 6 Hunter Direct, p. 3; Tr. 4/5/19, p. 61 lines 5-7; Tr. 4/5/19, p. 81 lines 19 through p. 82 lines 9.

¹⁷⁵ See generally, Tr. 4/2/19 and Tr. 4/4/19.

¹⁷⁶ Group 4 Publicover Direct, p. 13; Group 6 Simons-Legard Sup. Testimony, p. 1.

¹⁷⁷ Group 4 Publicover Direct, p. 13; Tr. 4/5/19, p. 62 lines 7-11.

¹⁷⁸ Tr. 4/5/19, p. 62 lines 7-11.

¹⁷⁹ Application Chapter 7, Section 7.4, p. 7-23.

section contains no discussion or analysis of these impacts. The Applicant contends that habitat connectivity will be maintained by the maintenance of shrub-scrub habitat throughout the corridor and the proposed riparian buffers.¹⁸⁰ Regardless, CMP's conclusions are not supported by the record:

- As noted above, the shrub-scrub habitat in the corridor is inadequate to allow for travel by mature forest-dependent species such as marten and amphibians.
- Taller vegetation will be maintained in only three areas – the Kennebec DWA, Mountain Brook and Gold Brook. These are inadequate to provide connectivity along a 53-mile-long corridor.
- The riparian buffers will be maintained in an early-successional condition, with the only difference from the corridor being the maintenance of somewhat taller shrub vegetation. All non-capable species (i.e. trees) will still be removed.¹⁸¹ This type of vegetation will not facilitate movement of mature forest species.¹⁸²
- Even if taller vegetation is maintained, the 200' width of the riparian corridors is insufficient to maintain interior forest habitat.¹⁸³

In summary, the Applicant clearly failed to meet the burden of proof to demonstrate that there will not be an adverse impact on the natural environment due to the habitat fragmentation impacts of the new Segment 1 corridor as required under the Site Law. The Applicant's assessment of the impacts of habitat fragmentation (including impacts to mature and interior forest habitat, the impacts of edge effects, and the impact on habitat connectivity) are rudimentary or in some cases absent, and its conclusions are unsupported by evidence or

¹⁸⁰ See, e.g., CMP witness Goodwin Direct at p. 17.

¹⁸¹ Tr. 4/1/19, p. 183 lines 22 through p. 186 lines 14.

¹⁸² Tr. 5/9/19, p. 121 lines 8-18.

¹⁸³ *Id.* at p. 121 lines 4-8.

analysis. The Applicant consistently emphasizes the minimal or non-existent habitat benefits of constructing the new corridor while minimizing or ignoring adverse impacts. The Applicant fails to recognize the value of the Western Maine Mountains region through which the new corridor would pass and mischaracterizes the nature and intensity of timber harvesting in the region. The Applicant inappropriately equates the impacts of the new corridor with those of timber harvesting. The minimization and mitigation measures for these impacts are inadequate and ineffective. In the end the Applicant's argument boils down to, "This region is already heavily impacted by timber harvesting and the effects of the new corridor are the same and will not create any additional impact." The Applicant's assessment and conclusions have been contradicted by the detailed testimony of multiple expert witnesses.

D. The proposed project will unreasonably harm high and moderate value deer wintering areas.

Deer wintering areas are given specific protection under Maine law. CMP is required to demonstrate that its proposed project "will not unreasonably harm any significant wildlife habitat, freshwater plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life."¹⁸⁴ The Site Law requires that a project proponent demonstrate that the development will not adversely affect natural resources.¹⁸⁵ Any "activity that would degrade [a] significant wildlife habitat, disturb the subject wildlife, or affect the continues use of the significant wildlife habitat by the subject wildlife, either during or as a result of the activity, will be considered to have an unreasonable impact if there is a practicable alternative to the project that would be less damaging to the environment."¹⁸⁶ If avoidance is not possible, impacts must be minimized but no

¹⁸⁴ 38 M.R.S. § 480-D(3);

¹⁸⁵ 38 M.R.S. § 484(3).

¹⁸⁶ 06-096, Ch.335, § 3(A).

activity can be permitted that would cause unreasonable disturbance to high and moderate value deer wintering areas.¹⁸⁷

The proposed project, including the new section and sections that will be widened along the existing corridor, will have significant adverse impacts on deer wintering areas along the proposed corridor route. In his prefiled testimony, Mr. Ron Joseph, a leading deer biologist formerly with MDIFW, testified that deer wintering areas, large areas of intact forest with mature evergreens, are critical to deer survival in Maine:

[T]he loss of deer wintering areas and the fragmentation and loss of habitat connectivity between deer wintering areas and surrounding forestland are THE major limiting factors for deer populations in northern, western, and eastern Maine. In northern Somerset County, a few miles west of Parlin Pond, the proposed transmission line would cross the Spencer Road in an area so depleted of deer yards, radio-collared deer summering there spend their winters at a deer yard at Harlow Pond in Guilford—a distance of about 50 miles. It is a sad commentary on the state of deer yards when the best remaining ones in the Jackman-Moose River area are in backyards of urban and suburban settings. CMP's proposed project further contributes to deer yard degradation and fragmentation.

Please bear in mind that the continued loss of our remaining deer yards has a significant economic impact on traditional Maine sporting lodges and rural communities that depend on income from deer hunters. Across western and northern Maine, sporting lodges are going out of business, in part because deer numbers are so low, hunters are turning away from Maine and traveling to NY, VT, PA, and elsewhere to hunt deer. For example, Claybrook Mountain Lodge is located in Highland Plantation in western Maine. It opened in the mid-1970s. For 20 years, the owners—Pat and Greg Drummond—earned the bulk of their yearly income from deer hunters. By the mid-1990s, as the deer population plummeted following a series of hard winters combined with the loss of deer yards, deer hunters stopped coming to the lodge. To survive economically, the couple reinvented themselves by transitioning from a hunting lodge to a cross-country skiing, moose watching, and bird watching lodge. Cobb's Camps on Pierce Pond—one of Maine's most renowned sporting lodges—located across the river from The Forks is no longer open in November due to a lack of deer following a significant loss of deer yards.¹⁸⁸

¹⁸⁷ 06-096, Ch.335, § 3(B-C); 06-096, Ch. 375, § 15(B)(3)(a).

¹⁸⁸ Group 4 Joseph, Direct, p.2-3.

Unfortunately, this project would bisect one of the last remaining areas of high quality deer wintering habitat in western Maine, the Upper Kennebec Deer Wintering Area:

CMP's impacts to the deer yard near The Forks (called the Upper Kennebec Deer Wintering Area) would be especially significant because it would occur in a region of Maine already suffering from low deer densities due to difficult winters and dearth of deer yards. In fact, this deer yard is the only remaining substantial deer yard in the entire length of CMP's proposed new stretch of corridor. That makes it incredibly important to the low numbers of deer still hanging on in the region and to the remaining guides and sporting camps that count on these deer as an economic resource. The deer yard is also critically important to support recreational deer hunting for the residents of the region.¹⁸⁹

Impacts to deer wintering areas would not be limited to only the new sections. Significant negative impacts would also occur where the existing line would be expanded to accommodate the NECEC:

CMP downplays the deer yard impacts in the sections of its proposed corridor that it plans to widen by claiming that "corridor construction will only widen existing, non-forested transmission line corridors by an average of approximately 75 feet."¹⁹⁰ In its compensation plan, CMP then makes a giant leap by concluding that construction "will not significantly affect the habitat functional attributes of the DWAs intersected by the Project."¹⁹¹ And that after construction, deer yards "will function similarly to the way they currently do."¹⁹² This claim is preposterous. We know from University of Maine research¹⁹³ and my own deer yard work that the loss of deer yards and the loss of connectivity between deer yards and surrounding habitat are detrimental to deer survival. Wide, non-forested strips in deer yards are barriers to deer and the additional width of 75 feet would make them an even greater barrier. Deer can't walk or bound through deep snows without burning precious fat reserves needed to survive until snow depths decrease in April.¹⁹⁴

In light of these significant impacts, mitigation and compensation are necessary.

Unfortunately, CMP's proposed mitigation and compensation measures are inadequate.

¹⁸⁹ *Id.* at p. 4

¹⁹⁰ CMP, NECEC Compensation Plan dated Jan. 30, 2019, p. 23.

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ Erin Simons-Legaard et al. Ineffectiveness of local zoning to reduce regional loss and fragmentation of wintering habitat for white-tailed deer. *Forest Ecology and Management*: 427(78-85). November 2018.

¹⁹⁴ Group 4 Joseph Direct at p. 6.

Regarding CMP's proposal for "deer corridors" in the transmission right-of-way through the Upper Kennebec Deer Wintering Area, Mr. Joseph stated that:

The most significant deer yard along the transmission corridor will essentially be split in half during winter. Deep snows beneath the powerlines will function as a wall, prohibiting deer from crossing between the newly bisected DWA. CMP's proposed "deer corridors," consisting of trees that in eight out of 10 "deer corridors" will not be allowed to grow to full maturity, will not adequately remedy this situation. The new transmission corridor through the DWA will largely prevent deer from moving through it in winter. Deer require intact wintering areas to provide shelter, food, and escape routes from predators.¹⁹⁵

Regarding the impacts to deer yards in other sections of NECEC where CMP proposes to widen existing rights-of-way that pass through deer yards, Mr. Joseph stated:

In all 11 deer yards where CMP plans to clear trees, they are proposing to revegetate disturbed soils with a wildlife seed mix. CMP fails to recognize that its wildlife seed mix (which will create "food plots") will be buried in open areas beneath 3-4 feet of snow during long Maine winters and thus will provide no benefit to the deer. In summer, when CMP's seed mix would be available to deer, natural food is not a limiting factor.¹⁹⁶

In conclusion, CMP's proposed corridor would bisect one of the last remaining high-quality deer wintering areas in western Maine. It proposed inadequate, experimental¹⁹⁷ "deer corridors" that would not contain fully mature trees that deer need to survive in deep snow. These experimental corridors would not allow deer to move across the cleared right-of-way between parts of the deer wintering area as they could in the presence of intact mature forest. CMP's conclusion that widening existing rights-of-way through deer wintering areas will have no impact on deer is also false. Impacts to deer yards are cumulative. Furthermore, CMP's proposed use of a "wildlife seed mix" to revegetate the soils in the deer wintering areas where CMP proposes to widen existing rights-of-way would not benefit deer. These food plants would be buried under snow in the winter when deer are most stressed, and they would not provide a

¹⁹⁵ Id. at p. 1.

¹⁹⁶ Id. at p. 6.

¹⁹⁷ Tr. 4/4/2019, p. 48.

substitute for the shelter of mature trees. CMP failed to demonstrate that its proposals would protect deer wintering areas as required in Department rules.¹⁹⁸

E. CMP failed to demonstrate that the proposed project will not result in unreasonable alteration of climate.

Chapter 375, Section 2, of the Department’s rules states that “[t]he Department recognizes the potential of large-scale, heavy industrial facilities, such as power generating plants, to affect the climate in the vicinity of their location by causing changes in climatic characteristics such as rainfall, fog, and relative humidity patterns.” Section 2(B) of this same chapter contains broad language stating that “the Department shall consider all relevant evidence” “[i]n determining whether the proposed development will cause an unreasonable alteration of climate.”

While CMP’s proposed high voltage, direct current transmission line will not have direct emissions, the proposed transmission line will have a dramatic impact on numerous power generating plants throughout the region with the potential for dramatic shifts in where and how much greenhouse gas is emitted. Furthermore, CMP has justified causing significant environmental, scenic, and social harm to Maine’s North Woods by claiming that it’s proposed project is necessary to achieve greenhouse gas emissions reductions.

In Section 1.4 of CMP’s Site Location of Development Application, CMP writes: The use of the NECEC for delivery of up to 8,500,000 MWh of Clean Energy Generation will provide many significant benefits to Maine and all of New England. In particular, the delivery of Quebec-sourced Clean Energy Generation is expected to reduce greenhouse gas emissions from fossil-fuel fired thermal generation in New England, enhance electric reliability (particularly during winter months when natural gas supply constraints have occurred in recent years), and reduce the wholesale cost of electricity for the benefit of retail customers across the region.

In this same section, CMP notes that “Clean Energy Generation” is defined by Massachusetts as “(i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Class I Renewable Portfolio Standard (“RPS”) eligible resources that are firmed up with

¹⁹⁸ 06-096 Ch. 375, §§ 12 and 15.

firm service hydroelectric generation; or (iii) new Class I RPS eligible resources.” CMP’s full Site Law Application was incorporated by reference into CMP’s NRPA Application.¹⁹⁹

In its NRPA Application, CMP states that:

The NECEC project is expected to reduce regional CO₂ (greenhouse gas) emissions by over one million metric tons per year in Massachusetts, which is a direct benefit to neighboring states, including Maine. This amount would help achieve the stated goals of the Regional Greenhouse Gas Initiative (RGGI) by reducing the total amount of CO₂ emissions from the power sector of the six New England states, and Delaware, Maryland, and New York. The NECEC’s ability to deliver reliable, renewably-generated electricity from Québec will help alleviate the need to build new non-renewable generation plants, and may allow retirement of older, less efficient fossil fueled power plants.²⁰⁰

As CMP is alleging that this project is necessary *because* it will result in specific greenhouse gas emissions reductions, the Department should weigh how likely it is that these greenhouse gas emissions reductions will actually occur, whether there is a risk that this project could actually result in a greenhouse gas emissions increase or flat emissions, and whether the environmental, scenic, and social harms are justified. The evidence indicates that this project will not provide greenhouse gas emissions reductions and that therefore, the environmental, scenic, and social harms are not justified.

Fundamentally, this issue is simple. There are two primary ways to reduce the emissions of greenhouse gasses from the electricity generation sector: 1) use less electricity through energy efficiency and conservation; and 2) construct new renewable energy generation facilities that displace generation from fossil fuel generation facilities.²⁰¹

NECEC would do neither of these things.

As documented in our comments, Hydro-Quebec will build no additional renewable energy generating facilities to supply power for NECEC. Hydro-Quebec’s own proposal to

¹⁹⁹ NECEC NRPA Application at p. 1-1.

²⁰⁰ NRPA Application at 2-2.

²⁰¹ Group 4 Comments, p. 13.

Massachusetts decision-makers identified their lack of intent to build any new additional renewable energy generating facilities as a benefit to the project.

This Proposal offers a viable, low cost Clean Energy Generation delivery project with limited risk, because (i) there is no construction risk related to the generation resources which are already in service... ***Because no new hydroelectric generation projects will be required, there will be no incremental environmental impacts from hydroelectric generation as a result of this Proposal.***²⁰²

New Hampshire's Site Evaluation Committee, after years of study of a similar project called "Northern Pass," determined that it would provide no greenhouse gas benefits unless Hydro-Quebec constructed new generating facilities, which Hydro-Quebec claims it would not do as shown above. Specifically, New Hampshire's Site Evaluation Committee stated:

As to the savings associated with a decrease in carbon emissions, we agree with Counsel for the Public that no actual greenhouse gas emission reductions would be realized if no new source of hydropower is introduced and the power delivered by the Project to New England is simply diverted from Ontario or New York.²⁰³

The Massachusetts Attorney General's Office (AGO) also questioned the carbon benefits of this specific project, the NECEC, in proceedings before the Department of Public Utilities. The AGO's witness, Mr. Dean M. Murphy of the Brattle Group, testified that Hydro-Quebec could, under the terms on the proposed contracts, meet its contractual obligations to NECEC by simply shifting electricity away from existing customers, such as New York and New Brunswick.²⁰⁴ As Mr. Murphy explains in his testimony, because Massachusetts would pay more for Hydro-Quebec's electricity under the proposed contracts for CMP's corridor, Hydro-Quebec has a substantial incentive to do this and could meet the requirements of these contracts:

through resource shuffling—reassignment of a fixed amount of clean energy so as to increase the clean energy delivered to a particular destination without

²⁰² *Id.* at p. 3 (citing HRE Section 83D Request for Proposal Application Form. Pp. 4, 56 (emphasis added)).

²⁰³ *Id.* at p. 2 (citing New Hampshire Site Evaluation Committee. 2018. Decision and Order Denying Application for Certificate of Site and Facility. March 30. P. 161.).

²⁰⁴ Group 4 Comment Attachment A. Direct Testimony of Dean W. Murphy (Brattle Group), Witness for the Massachusetts Attorney General. DPU 18-64 18-65 18-66.

increasing the total amount of clean energy overall. For instance, with the new NECEC transmission link, if HQ [Hydro-Quebec] increased deliveries into New England by the contracts' 9.55 TWh relative to historical New England deliveries, this would achieve full incrementality as defined in the RFP. ***But if HQ accomplished this by reducing its exports to other neighboring regions rather than by increasing clean energy generation overall, then global GHG emissions would not necessarily be reduced. Diverting clean energy from other regions to New England would enable a reduction in fossil generation and emissions within New England, but the reduced deliveries to other regions may need to be replaced by additional fossil generation in those regions. This would effectively substitute fossil generation in other regions for fossil generation in New England, shifting emissions from one region to another, without causing a material decrease.***²⁰⁵

Although the Maine Public Utilities Commission found in its decision granting CMP a Certificate of Public Convenience and Necessity that NECEC would cause a reduction in carbon emissions “regionally,” it did so without the benefit of any study of global greenhouse gas emissions impacts from the project and all greenhouse gas studies were limited to emissions impact within the New England energy market.²⁰⁶ For example, the Commission’s own study from London Economics International (LEI) asserted that NECEC would result in 3.6 million tons of greenhouse gas reductions in New England per year, but it admitted that it failed to look at the impacts of NECEC on jurisdictions outside of New England in its analysis stating that “[f]or this analysis, LEI did not monetize the social benefits of the CO2 emissions reduction, nor did it analyze the emissions changes in other jurisdictions as a result of NECEC.”²⁰⁷ Concluding NECEC will have carbon benefits is meaningless without looking at corresponding emissions increases when Hydro-Quebec’s existing customers must make up for the electricity they would lose if NECEC shifts power to Massachusetts.

²⁰⁵ *Id.* at p. 15 of 27.

²⁰⁶ Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation, PUC Docket No. 2017-232, p. 71 (May 3, 2019).

²⁰⁷ London Economics International. 2018. Independent Analysis of Electricity Market and Macroeconomic Benefits of the New England Clean Energy Connect Project, p. 12 (May 21, 2018).

CMP claims that Hydro-Quebec’s “spillage” represents an untapped resource that NECEC could use. However, Hydro-Quebec has provided no evidence that spillage is due to lack of transmission capacity²⁰⁸ and a former Hydro-Quebec employee testified that “there’s no way, considering the future hydrological conditions in Quebec, to predict how much water would be spilled each and every year.”²⁰⁹

Similarly, CMP’s claims that future Hydro-Quebec upgrades would provide “additional” power for NECEC are unsubstantiated. The proposed upgrades are exactly that: proposed. Neither CMP nor Hydro-Quebec has provided evidence or guarantees that the upgrades would occur.²¹⁰

CMP’s claims of greenhouse gas reductions and concurrent benefits are unsubstantiated, misleading, or false. If the Department receives an application for a project based on unsubstantiated, misleading or false information, it must deny the application. Section 2(B) of Chapter 375 gives the Department broad authority to consider all relevant evidence regarding climate for a Site Law permit. Allowing a large project such as NECEC, justified on the basis of false greenhouse gas reduction claims, but with verified and severe environmental, scenic, and social impacts would be the wrong outcome. NECEC would have an unreasonable undue impact on the climate and the Department should deny CMP’s permit application.

**VI. CMP failed to adequately consider alternatives to the proposed project.
(Relevant to DEP and LUPC)**

The alternatives analysis is a critical component of any NRPA or Site Law permit. Under NRPA, an applicant must demonstrate that a proposed project “will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses” and “will not unreasonably

²⁰⁸ Group 4 Comment at 10.

²⁰⁹ Group 4 Comment at 9 (citing PUC Docket No. 2017-232, Dec. 19, 2018, PUC Technical Conference Transcript, p. 72-73.

²¹⁰ *Id.* at p. 12.

harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine or other aquatic life.”²¹¹

Chapters 310 (Wetlands), 315 (Scenic and Aesthetic), and 335 (Wildlife) all contain explicit requirements that an applicant conduct an alternatives analysis to determine whether a less harmful alternative exists. Under no circumstances can an application be approved where this analysis is not done or where the project would cause unreasonable harm to a protected resource, even where it is determined that no practicable alternative exists. Chapter 310 states that an

activity will be considered to result in an unreasonable impact if the activity will cause a loss in wetland area, functions, or values, and there is a practicable alternative to the activity that would be less damaging to the environment. The applicant shall provide an analysis of alternatives (see Section 9(A)) in order to demonstrate that a practicable alternative does not exist.²¹²

However “[e]ven if a project has no practicable alternative and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on the wetland.”²¹³ The “Alternatives Analysis” required in Section 9 of this chapter is explained as follows:

A report that analyzes whether a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose, exists. Determining whether a practicable alternative exists includes:

- (1) Utilizing, managing or expanding one or more other sites that would avoid the wetland impact;
- (2) Reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact;
- (3) Developing alternative project designs, such as cluster development, that avoid or lessen the wetland impact; and

²¹¹ 38 M.R.S. § 480-D.

²¹² 06-096, Ch. 310, § 5.

²¹³ 06-096, Ch. 310, § 5(D).

(4) Demonstrating the need, whether public or private, for the proposed alteration.²¹⁴

Chapter 315 of the Department’s rules addressing scenic and aesthetic uses requires the Department to consider any “practicable alternatives to the proposed activity that will have less visual impact, and cumulative effects of frequent minor alterations on the scenic resource” and states that

[a]n application may be denied if the activity will have an unreasonable impact on the visual quality of a protected natural resources as viewed from a scenic resource even if the activity has no practicable alternative and the applicant has minimized the proposed alteration and its impacts as much as possible through mitigation. An “unreasonable impact” means that the standards of the Natural Resources Protection Act, 38 M.R.S.A. § 480-D, will not be met.²¹⁵

Chapter 335, the Department’s rule addressing significant wildlife habitats, also require an applicant to produce

[a] narrative describing whether a practicable alternative to the alteration exists that would be less damaging to the environment and what alternatives were considered during project design. The narrative must address why the activity cannot avoid or lessen impacts to the significant wildlife habitat by utilizing, managing or expanding one or more other sites; reducing the size, scope, configuration or density of the proposed activity; developing alternative project designs; or by some other means.²¹⁶

Like Chapters 310 and 315, the rules in Chapter 335 are clear that the existence of a practicable alternative is evidence that the project would have an unreasonable impact but “[e]ven if the activity has no practicable alternative, and the applicant has minimized the proposed alteration as much as possible, the application will be denied if the activity will have an unreasonable impact on protected natural resources or the subject wildlife.”²¹⁷

Similarly, the Site Law requires that a project fit “harmoniously into the existing natural environment” and “will not adversely affect existing uses, scenic character, air quality or other

²¹⁴ 06-096, Ch. 310, § 9(A).

²¹⁵ 06-096, Ch. 315, § 9.

²¹⁶ 06-096, Ch. 335, § 5(A).

²¹⁷ 06-096, Ch. 335, § 3(A) and (C).

natural resources.”²¹⁸ One measure of whether a project adversely affects certain resources protected under Site Law is whether or not there is a reasonable alternative that would have a lesser impact on these protected resources.

Here CMP did not conduct a reasonable and complete alternatives analysis, did not demonstrated that there is not a practicable alternative, and did not demonstrated that its proposed project would not have an unreasonable impact on protected natural resources.

A. CMP’s alternatives analysis is insufficient because did not consider any alternatives that included burying the line.

The alternatives analysis in CMP’s applications to the Commission and Department did not include a single alternative that utilized any type of undergrounding or line burial techniques.²¹⁹ Burial of even a small section of CMP’s proposed route was not contemplated in any application material submitted by CMP until it amended its Site Law and NRPA applications to include an underground crossing at the Kennebec River.²²⁰ CMP’s NECEC Project Developer, Thorn Dickinson, testified that CMP, nor any consultants hired by CMP, did any formal analysis of undergrounding options until directed to do so by the Department in this proceeding.²²¹

CMP claims that its failure to analyze even a single underground route option was due to the fact that undergrounding the 54 miles of new transmission corridor was “not reasonable or feasible because the costs of doing so would defeat the purpose of the Project.”²²² However, these calculations were not done until long after CMP made the decision to select its preferred route.²²³ The actual cost data provided by CMP, the itemized calculations of material and labor

²¹⁸ 38 M.R.S. § 484(3) and

²¹⁹ See generally, CMP Alternative Analysis.

²²⁰ CMP Amended Application, October 19, 2018.

²²¹ Tr. 5/9/19, p. 410.

²²² CMP Dickinson Rebuttal, p. 2-3.

²²³ In bolstering their argument that burying the new portion of the line would dramatically increase the cost of the project, CMP’s consultants analyzed the cost of burying the line along the 54 new miles of transmission corridor

costs, were redacted under the label “Proprietary” throughout CMP’s May 17, 2019, submission regarding “costs, dollars, or a numerical backup sheet for CMP Exhibits 11-B through 11-G in Mr. Bardwell’s pre-filed rebuttal testimony” requested by Mr. Bergeron.²²⁴ This level of redaction renders this information of limited use in evaluating whether or not these figures are reasonable, what they include, and whether the alternatives could have been practicable, had they ever truly been considered by CMP.

CMP also argues that undergrounding a transmission line is not technically or environmentally practicable, requiring significant surface disturbance and clearing.²²⁵ While it goes without saying that trenching through and pouring cement into wetlands and streams is not an ideal outcome, the testimony attempts to imply that because CMP’s preferred alternative route has a high number of important scenic areas, significant vernal pools, brook trout habitats, and other important wildlife areas that would be impacted by burial, that burial is always more environmentally harmful. This is simply not the case.

In fact, burial of HVDC lines is exceedingly common, even here in New England.²²⁶ The fully permitted HVDC line from Hydro-Quebec through Vermont, TDI, would be 157 miles long with 97 miles in underwater cables and 57 in buried cables.²²⁷ Similarly 60 miles of the Northern Pass Project through New Hampshire would have been buried.²²⁸ CMP claims that Northern Pass and TDI should not be used as an example of an underground transmission project because they have not “demonstrated that is feasible” and have not secured long-term transmission service

along CMP’s preferred route through the woods but did not disclose the actual cost of only burying the line along existing roads until meeting the existing corridor. CMP Tribbet Rebuttal, p. 5; Tr. 5/9/19, p. 414-15.

²²⁴ May 17 submittal by CMP in response to DEP request, p. 4-28.

²²⁵ *See generally*, CMP Bardwell Rebuttal, p. 2-9.

²²⁶ Group 8 Russo Direct, p. 3-4, Exhibits CR-3 and CR-4.

²²⁷ *Id.* at 4.

²²⁸ *Id.*

agreements.²²⁹ This is misleading. Northern Pass was initially selected as the winning bid in the Massachusetts 83D RFP process but was rejected after the New Hampshire Site Evaluation Committee denied the project a necessary permit siting concerns over siting concerns.²³⁰

In short, CMP failed to consider burying all or even short portions of its proposed 145 mile long HVDC transmission line. No alternatives analysis on any burial option was done by CMP.

B. CMP did not consider alternatives that would have minimized scenic, wildlife habitat destruction and wetland impacts by following existing roads and leaving full-height vegetation through taller poles.

CMP also failed to consider any routes that utilized existing disturbances, such as roads, or other techniques such using taller poles to allow for full-height vegetation to reduce scenic, wetland, or wildlife impacts.²³¹ Whether buried or not, a route that followed existing roads, whether along the Spencer Road or Route 201 to Jackman, could have dramatically reduced wildlife and fisheries impacts.²³² Unfortunately, CMP failed to consider any of these other alternatives and only provided a rough estimate of the cost to bury the line along existing roads for the entire length of the transmission line, rendering that analysis useless as a tool to contemplate whether burial along existing roads until the line could connect to an existing transmission corridor could have been a practicable alternative.²³³

CMP also failed to consider an alternative that utilized a combination of mitigation strategies. For example, CMP could have selectively designed a route that used some combination of HDD, trenching, co-location, and taller poles to mitigate some of the worst

²²⁹ CMP Tribbet Rebuttal, p. 3.

²³⁰ Group 4 Comments, p. 2 (citing New Hampshire Site Evaluation Committee. 2018. Decision and Order Denying Application for Certificate of Site and Facility. March 30, 2018.)

²³¹ See generally, CMP Alternative Analysis.

²³² Tr. 5/9/19, p. 62, 66-67

²³³ CMP Tribbet Rebuttal, p. 5; Tr. 5/9/19, p. 414-15.

environmental and scenic impacts of the project. Unfortunately, CMP did not evaluate any alternatives that utilized any of these approaches, even though this would align with common practice. CMP's post hoc rationalization for its initial failure to do an adequate alternatives analysis cannot cure this fatal defect in CMP's application and the application should be denied.

VII. CMP's mitigation and compensation plans are inadequate. (*Relevant to DEP*)

A. CMP did not minimized or mitigated the alteration of habitat and disturbance of wildlife.

1. The Applicant failed to meet their burden of proof to that they have thoroughly minimized impacts to brook trout habitat by considering alternatives to the project as proposed and incorporating these alternatives where feasible.

The Applicant failed to meet its burden of proof to that they have thoroughly minimized impacts to brook trout habitat by considering alternatives to the project as proposed and incorporating these alternatives where feasible. At stream crossings, whether or not the crossings contain brook trout habitat, the only variable the Applicant considered altering to better protect brook trout habitat was buffer width—with 100-foot buffers proposed for brook trout streams, and 75-foot buffers proposed elsewhere.²³⁴ Other alternatives, in particular taller pole structures to maintain intact tree canopy, were implemented to protect aquatic habitat for Roaring Brook Mayfly and Northern Spring Salamander at only two locations, Mountain Brook and Gold Brook.²³⁵ Similar minor modifications to the route or to the size and location of structures could have been considered or implemented to avoid or reduce the impacts of lost riparian buffers on brook trout and salmon habitat but were not. These potential minimization techniques could have included utilizing taller poles to put the wires high enough that full forest canopy closure could be maintained; changing pole locations so that they were higher on slopes, to achieve the same

²³⁴ Revised Compensation Plan dated 1-30-2019, p. 21-22; CMP Goodwin Direct, p. 19-21; CMP Johnston Rebuttal, p. 7.

²³⁵ CMP Goodwin Direct, p. 11-13; Exhibit CMP-3F.

full canopy effect; and minor route changes to cross at locations where impacts would be smaller or to avoid stream crossings altogether.²³⁶ CMP did not pursue any of these minimization techniques in its application.

In rebuttal testimony, Applicant's witnesses argued that these measures were not necessary for brook trout but elsewhere cited the benefits to intact buffers in these areas for brook trout.²³⁷ The Applicant was therefore aware of the benefits of such measures for brook trout and simply chose not to implement them to reduce their impacts on brook trout habitat.

Applicant's witnesses also argued that allowing full canopy vegetation over brook streams would require extensive and expensive changes to pole structures, but under cross-examination acknowledged that vegetation of at least 35 feet could be maintained even with structure locations and pole heights largely as currently proposed.²³⁸ The Department subsequently requested additional information on this topic from CMP at five specific stream crossings and CMP's response indicated that "[a]ll five crossing locations you suggested can accommodate 35' tall vegetation with limited impact to currently proposed structure heights."²³⁹ A table attached to that filing indicates at three of the five sites 35 foot tall trees could be maintained with no changes to the currently proposed structures, and at the other two sites pole height increases of 10.5 and 5.5 feet to a single structure at each site would accommodate 35 foot tall trees.²⁴⁰ With proposed structure locations and heights, vegetative management practices could be modified to allow for canopy closure at many stream crossings, and with minor changes to pole heights canopy could be maintained over most crossings. It is notable that the feasibility

²³⁶ Group 4 Reardon Direct, p. 12-15; Group 4 Exhibit 4-JR.

²³⁷ CMP Johnston, Rebuttal, p. 6-7, *but see id.* at 10.

²³⁸ CMP Achorn, pre-filed Sup. Testimony, p. 1-3, *but see* Tr. 5/9/19, p. 449-458.

²³⁹ May 17, 2019 Letter from Gerry Mirabile (CMP) to James Beyer (Department) at page 2.

²⁴⁰ May 17, 2019, Letter from Gerry Mirabile (CMP) to James Beyer (Department), Attachment B: Pole and Tree Height Information.

of these minor modifications was only solicited after extensive cross-examination and a request for additional information by the Department. Nothing about the feasibility of these options was presented in the Applicant's proposal. When such measures were suggested by intervenors, Applicant's witnesses asserted that they were not feasible, too expensive, or of limited benefit.²⁴¹ These assertions are directly refuted by those witnesses' own testimony on cross-examination, and the feasibility of providing for taller vegetation at many stream crossings is clearly demonstrated in the Applicant's May 17, 2019, letter to the Department.

2. The Application's proposed mitigation for impacts to brook trout habitat is inadequate to offset lost function.

The proposed mitigation for impacts to brook trout habitat is inadequate to offset lost function. Other than streams buffers (the inadequacy of which is discussed extensively above), the Applicant's Final Compensation Plan contains three elements related to cold water fish habitat: (1) Conservation of three tracts of land that contain about 12 miles of streams,²⁴² (2) a \$180,000 contribution to the Maine Endangered and Non-Game Wildlife Fund to protect coldwater fishery habitat,²⁴³ and (3) a \$200,000 Culvert Replacement Project.²⁴⁴ Extensive information in the record indicates significant deficiencies in each of these.

- (1) Preservation Tracts to Protect Brook Trout Habitat. The Applicant proposes three tracts to protect brook trout habitat as compensation—the Grand Falls Tract, Basin Tract, and Lower Enchanted Tract. These tracts do contain streams, but the attachments to the Compensation Plan provide no evidence that there are significant wild brook trout resources or habitat on these tracts. These tracts are described in detail and the wetland functions and values (including fish habitat) are assessed in Exhibit I-9, NECEC

²⁴¹ Applicant's May 1, 2019 Sup. Testimony: Goodwin, p. 2-4, and 5; Achorn, p. 2-3; Giumarro, p. 11-13.

²⁴² Revised Compensation Plan dated 1-30-2019, p. 22.

²⁴³ *Id.*

²⁴⁴ *Id.*, Exhibit I-11.

Potential Compensation Tracts, Natural Resource Survey Results, an attachment to the January 20 Final Compensation Plan. The only documentation of fisheries habitat values on these parcels is contained in a table for each property that summarizes functions and values of resources on each tract. For the Grand Falls Tract, the only information provided regarding fisheries is that the Dead River is popular for fishing and that landlocked salmon and brook trout are stocked in it.²⁴⁵ The same is true for the Basin Tract²⁴⁶ and the Lower Enchanted Tract,²⁴⁷ with the exception that the lower Enchanted Tract also includes a short section of Enchanted Stream immediately upstream of its confluence with the Dead River. These waters—the Dead River and the lowermost part of Enchanted Stream—are unlike the streams impacted by the NECEC. The streams impacted by NECEC are mostly cold, high elevation, headwater streams that are highly productive for wild brook trout. The streams on the compensation parcels are mostly large mainstem rivers that warm significantly in the summer, have a recreational fishery at least partially supported by stocking, and have limited potential to produce wild brook trout.²⁴⁸ A better strategy for coldwater habitat conservation would have been to protect headwater streams like those that are impacted. This would have provided far more brook trout habitat value, particularly if the compensation parcels include long stream reaches where both shorelines and important tributaries are protected.²⁴⁹ For example, the Cold Stream Forest Project protected 15 miles of stream, commensurate with the Applicant's claim of protecting 12 miles of habitat on these parcels.

²⁴⁵ *Id.*, Exhibit I-9, Table 5-1 on page 119.

²⁴⁶ *Id.*, Exhibit I-9, Table 7-1 on page 183.

²⁴⁷ *Id.*, Exhibit I-9, Table 6-1 on page 151.

²⁴⁸ Group 4 Reardon Direct, p. 21-22.

²⁴⁹ *Id.* at p.23.

(2) \$180,000 contribution to the Maine Endangered and Non-Game Wildlife Fund to protect coldwater fishery habitat. While the concept of preservation of intact, unaltered, high value brook trout habitat to offset impacts of the NECEC's cleared corridor on brook trout could have merit, no details are provided about the target area for such projects, what their purpose would be, or how they would be selected. As discussed above with respect to the proposed Preservation Tracts, to be "in-kind" mitigation, such measures should be applied on cold headwater streams with robust brook trout populations. There is no indication that these funds would be used to protect this type of habitat. However, regardless of CMP's failure to adequately describe how these funds would be used, the bigger problem is that \$180,000 is simply not a large enough fund to accomplish meaningful preservation or restoration. Applicant's witness Kenneth Freye testified that land in the region would likely sell at around \$1,000/acre.²⁵⁰ Given these prices, applying this sum towards the acquisition of fee title or conservation easements to protect additional preservation parcels could preserve at most ~200 acres, which might contain a mile or two of high value brook trout stream. If applied to improving fish passage through improving or removing culverts, it might fund just a handful of culvert projects.²⁵¹

(3) \$200,000 Culvert Replacement Project. Unlike preserving intact high value habitat, improving the function of degraded habitat does not directly replace cold water fisheries values impacted by the NECEC. Despite this shortcoming, such projects could have limited merit to improve function in intact streams fragmented by culverts. However, as

²⁵⁰ Tr. 5/9/19, p. 383-384.

²⁵¹ Group 4 Reardon Direct, p. 24-25; Group 6 Direct, p. 8.

noted above, \$200,000 is an insufficient amount of money to address more than a few culverts.²⁵²

Clearly, CMP failed to minimize and mitigate alteration of brook trout habitat as a result of its proposed project. Abundant evidence, including evidence provided by the Applicant's witnesses on cross-examination and in written responses to agency questions, demonstrates that with minimal changes, the project could have provided for intact 35-foot tall vegetation at several critical stream crossings with high value for brook trout. By extension, this same practice could have been applied broadly to many or even most stream crossings across the entire corridor, even without changing structure locations or pole heights. By failing to even consider these minimization and mitigation measure until pressed to do so by intervenors and representatives from the Department and Commission, CMP failed to comply with the requirements of NRPA and the Site Law and its permit should be denied.

The Department should require CMP to revisit its application to do the minimization and mitigation required by law. Only at that point, when we understand the truly unavoidable impacts, should we revisit the appropriate amount of meaningful mitigation to compensate for those unavoidable losses. As it stands currently, the Applicant's proposals in this regard are inadequate and misguided. As discussed elsewhere in detail, its proposed buffers do not maintain critical buffer functions like shading and large woody debris inputs (Section V.B.1.). Its compensation parcels protect streams that contain primarily stocked brook trout (Section VII), and the streams are compromised as brook trout habitat by warm water and competing species like smallmouth bass. The two mitigation funds proposed for coldwater fisheries habitat and a

²⁵² Group 4 Reardon Direct, p. 24-25; Group 6 Direct, p. 8.

culvert replacement program are insufficient to accomplish meaningful conservation that could offset the unavoidable impacts of the project (see above).

B. CMP's minimization, mitigation, and compensation are inadequate to off-set significant habitat function losses.

Segment 1 of the NECEC project would be one of the largest permanent fragmenting features in the undeveloped forests of Maine.²⁵³ CMP's proposed approach to avoiding and minimizing the project's impacts, mitigating its effects, and compensating for unavoidable impacts is insufficient with regards to its impacts on wildlife habitat through habitat fragmentation. CMP's attempts to minimize project impacts are insufficient; mitigation measures are too limited and ineffective; and proposed compensation is woefully inadequate compared to the magnitude of the impact of the project on a globally significant forest region.

1. CMP's attempts to minimize impacts to wildlife habitats are inadequate.

CMP's efforts at minimization of impacts to wildlife habitat as a result of habitat conversion and fragmentation is described in its application as follows:

The NECEC has been located (routed) and designed to minimize the creation of new transmission line corridors by constructing approximately 73 percent of the Project within existing corridors. Approximately 27 percent of the Project will require new clearing, however this area of the state is already intensively managed (i.e., periodically clearcut) forested land and the creation of a transmission corridor is not likely to disrupt or significantly alter existing land uses.²⁵⁴

This argument is flawed in three ways. First, CMP has not adequately considered alternatives that would avoid the need for a new corridor entirely through co-location and burial along existing roads or other corridors, as described in Section V of this Brief.

Second, the fact that the new corridor is located through managed commercial forest land cannot be considered minimization, as the alternative of locating it through conservation land is

²⁵³ Group 4 Publicover Direct, p. 10; Group 1 McMahon Direct, p. 8.

²⁵⁴ Application Chapter 7, Section 7.4.1.1.1, p. 7-24.

not a realistic option and the corridor is not equivalent to timber management in its impacts (as described in Section IV.D.2 of this Brief).

Third, the fact that the majority of the project is located within existing corridors is irrelevant to assessing whether the impacts of 53.5 miles of new corridor have been minimized. The impact of the new corridor would be exactly the same even if it terminated at existing lines without any construction of new co-located line. The fact that additional line was constructed beyond the connection point within the existing corridor does not constitute minimization of impacts from the construction of a new corridor. By this standard, construction of even more line within existing corridors would constitute even greater minimization.

2. CMP's attempts to mitigate impacts to wildlife habitats are inadequate.

Three of the primary fragmenting impacts of the new corridor are habitat conversion, edge effects, and loss of habitat connectivity. No mitigation for the loss of forest habitat is proposed, and the maintenance of shrub-scrub vegetation cannot be considered mitigation for this loss. The maintenance of tapered vegetation along the corridor edges would provide some mitigation for edge effects, but it has been proposed only in two limited areas as mitigation for scenic impacts. Finally, the primary mitigation proposed for the loss of habitat connectivity is the maintenance of riparian buffers as travel corridors. However, these have little to no value for species dependent on mature forest as described in Section IV.D.2 above. In total, the mitigation proposed for the impacts of habitat fragmentation falls far short of adequately reducing the impacts of the project. In fact, the summary of mitigation measures in CMP's Compensation Plan makes no mention of mitigation of habitat fragmentation impacts.²⁵⁵

During the hearings there was extensive discussion of the potential for expanded use of tapered or taller vegetation to provide additional mitigation of fragmentation impacts. Tapered

²⁵⁵ CMP NECEC Compensation Plan (revised 1/30/19) Section 1.1, p. 1.

vegetation could have some value in mitigating edge effects but would have little value for improving habitat connectivity.²⁵⁶ However, in order to mitigate edge effects tapered vegetation would have to be maintained throughout the length of the corridor – its use in limited areas would leave large parts of the corridor open to the full force of edge effects.

Taller vegetation (primarily proposed for riparian corridors) could provide benefit in maintaining habitat connectivity across the corridor, with full-height vegetation having greater benefit than vegetation maintained at 30-40 feet tall.²⁵⁷ However, in order to provide adequate benefit it would have to be applied extensively along the length of the corridor; its use in just a few additional areas would leave large stretches of the corridor without adequate connectivity. In addition, if taller vegetation were applied only to the 200-foot wide riparian corridors it would consist entirely of edge habitat and would be of limited effectiveness for mature forest-dependent species.²⁵⁸

CMP's witnesses have argued that these mitigation techniques would be impractical and ineffective.²⁵⁹ We disagree. CMP's failure or inability to incorporate these techniques into its original proposal is a clear indication that the project's fragmenting impacts have not been adequately mitigated.

3. CMP's Compensation Plan is inadequate.

CMP's Compensation Plan states that it “achieves no-net-loss of ecological functions and values.”²⁶⁰ The plan provides the absolute minimum level of compensation required for impacts to NRPA-regulated natural resources. However, the project's broader impacts to the Western Maine Mountains landscape through habitat fragmentation will clearly lead to a significant loss

²⁵⁶ Group 4 Publiccover Sup. Testimony, p. 3-4; Tr. 5/9/19. p.129 line 18 to p. 130 line 8.

²⁵⁷ Group 4 Publiccover Sup. Testimony, p. 4-6; Group 6 Simons-Legaard Sup. Testimony, p. 1.

²⁵⁸ Tr. 5/9/19, p.121 lines 4-18.

²⁵⁹ CMP Mirabile Sup. Testimony, p. 1-2; CMP Goodwin Sup. Testimony, p. 1-4.

²⁶⁰ CMP NECEC Compensation Plan (revised 1/30/19) Section 1.1, p. 1.

of ecological function in this high value region. These impacts include 1) the permanent loss of nearly 1,000 acres of forested habitat and its replacement with less valuable shrub-scrub habitat, 2) additional stress on adjacent forest through edge effects, which can affect many thousands or even tens of thousands of acres,²⁶¹ and 3) a reduction in habitat connectivity that will impact the ability of species dependent on mature or interior forest to move through the landscape. No compensation is provided for these landscape-level fragmenting impacts.

The Department's evaluation of the Compensation Plan must consider more than NRPA-regulated resources. The Site Law considers impacts at a broader level. For example, 38 M.R.S. § 484(3) addresses impacts to "other natural resources" without limitation. The Department's rules in Chapter 375, Section 15(A), highlight "the need to protect wildlife and fisheries by maintaining suitable and sufficient habitat," indicating that it is appropriate to give consideration of the full range of wildlife and fisheries impacted by a proposed project. Chapter 375, Sections 15(B)(1) and (2), speak generally of "travel lanes" and "fish and wildlife lifecycles" without reference to specific species or habitats (which are considered in Ch. 375 §15(B)(3)). Chapter 375 §15(C) addresses the need for an applicant to provide that they have made "adequate provision for the protection of wildlife and fisheries" (again without limitation). Finally, Ch. 375 § 15(D) allows the Department to "establish any reasonable requirement to ensure that a developer has made adequate provision for the protection of wildlife and fisheries" and Ch. 375 §15(C)(2) includes off-site habitat preservation as a component of mitigation for adverse impacts to wildlife. In total, this section makes clear that compensatory mitigation is not limited just exclusively to NRPA-protected resources but may be applied to all wildlife habitat impacts.

Given the extent and magnitude of habitat fragmentation impacts across a broad and valuable landscape, large-scale compensatory mitigation is required. In essence, compensation

²⁶¹ Group 4 Publicover Direct at p. 12; Group 6 Wood, Cutko, Emerson Direct, p. 9; Group 1 McMahon Direct, p. 4.

must allow for “de-fragmentation” of large parts of the landscape commensurate with the level of impact. We agree with The Nature Conservancy’s contention that permanent land conservation of up to 100,000 acres would be necessary to compensate for the magnitude of habitat fragmentation impacts.²⁶² CMP’s failure to include compensation for these impacts is a fatal flaw in its application and must result in a denial of its application.

In total, CMP has clearly not met its burden of proof to demonstrate that the project’s impacts have been adequately minimized, that effective mitigation measures have been considered and applied, and that sufficient compensation has been provided for unavoidable impacts.

VIII. Before any approvals are granted, the Department should require a reclamation bond sufficient to ensure that the development is constructed, operated, maintained, and restored in compliance with state environmental standards. (Relevant to DEP)

For the reasons outline in this brief, Group 4 affirms that the Department should deny CMP’s application. However, in the event that the Department decides to approve a permit for the NECEC, the Department should require a reclamation bond as a term and condition of approval. The performance bond should be sufficient to ensure that the development is constructed, operated, maintained, and restored in compliance with state environmental standards.

Under Chapter 373, section 2(C)(1), of the Department’s rules, “[t]he Department may, as a term or condition of approval, establish any reasonable requirement to ensure that the developer has and will maintain the financial capacity to meet permit requirements and state environmental standards, such as [a performance bond].”²⁶³ Due to the unique nature of this proposed project (a for-profit transmission line as opposed to a traditional reliability project)

²⁶² Group 6 Wood, Cutko and Emerson Direct at p. 10.

²⁶³ 06-096 Ch. 373, § 2(C)(1).

with a limited contracted lifetime (back to back 20 year contracts) and significant and unique environmental risks and impacts, the applicant should be required to post a bond for construction, operation, maintenance, and restoration.

Two additional risks not identified above must be addressed. First, as was identified during the hearings, high voltage transmission lines present a small but significant risk of devastating fire damage.²⁶⁴ While the likelihood of severe fire damage may be low, the potential harm is vast and unpredictable, exactly the type of unforeseen and debilitating danger that performance and reclamation bonds can help protect the public against.

Second, despite assertions from witnesses from CMP, this project may become obsolete after one or both 20 year contracts expire. Unlike a transmission line that is built to satisfy reliability concerns in Maine, this project is proposed to supply power to electric distribution companies in Massachusetts. These consumers are outside the regulatory control of Maine and should choose to purchase power from other sources after the initial 20 year contract expires, increasing the risk that this line could become underutilized. Therefore, CMP should be required to post a bond that is sufficient to remove all unused poles, wires, and other infrastructure and facilitate full restoration of the corridor in the event that the line is not used. Furthermore, CMP has not included any decommissioning costs into its contracts in Massachusetts and therefore, these costs would have to be absorbed by the Applicant at a time when the transmission line would already be unprofitable enough to warrant decommissioning. By this time, it may be too late to obtain the necessary funding to adequately reclaim this region.

CONCLUSION

CMP has not met its burden to show that this project complies with the requirements of NRPA or Site Law. CMP failed to demonstrate that this project will fit harmoniously into the

²⁶⁴ Tr.4/2/19 at p. 96; Public Hearing Tr. 4/2/19 at p. 37, 106-07.

existing natural environment and will not adversely affect existing uses, scenic character, and natural resources, including significant vernal pools, brook trout habitat, wildlife habitat and lifecycles, and deer wintering areas. CMP's minimization, mitigation, and compensation measures are inadequate. CMP also failed to satisfy the requirement to conduct an alternatives analysis. Therefore, the Commission should not grant a P-RR special exception, and the Department should deny CMP's permit application. Based on the evidence contained in the record and discussed herein, these permit applications must be denied.

Submitted on June 14, 2019

Respectfully,



Susan J. Ely
On Behalf of Group 4 AMC, NRCM, and TU
3 Wade Street
Augusta, ME 04330
(207) 430-0175

Appendix A: Group 4 Proposed Findings of Fact

Intervenor Group 4, consisting of the Appalachian Mountain Club, Natural Resources Council of Maine and Trout Unlimited, submit the following proposed Findings of Fact in the above-captioned matter.

1. Title, Right or Interest (relevant to DEP and LUPC)

- Finding: The proposed project would bisect two parcels of Maine Public Reserved Lands in Johnson Mountain Township and West Forks Plantation that are not owned by the Applicant.
- Finding: Article IX Section 23 of the Maine State Constitution requires a vote of “2/3 of all the members elected to each House” of the Legislature before the use of public lots is “substantially altered”.
- Finding: The Johnson Mountain and West Forks Plantation Northeast Public Reserved Lands are subject to this constitutional provision.¹
- Finding: The Johnson Mountain parcel and the West Forks Plantation Northeast parcel have been allocated by the Bureau of Parks and Lands for timber management, wildlife management, and recreational uses.²
- Finding: CMP’s basis for claiming the right to construct the new corridor is a 2014 lease with the Maine Bureau of Parks and Lands.
- Finding: The proposed project would permanently clear a 150-foot-wide, one-mile-long corridor through the middle of each lot, which would remove and preclude the future management of timber, destroy and degrade wildlife habitat, and foreclose opportunities for public recreation. This action changes the corridor from an area devoted to the sustainable management of multiple uses for public benefit to one devoted to a single use for private benefit.
- Finding: The proposed project would “substantially alter” the use of these Public Reserved Lands, and as such the lease requires legislative approval as required by the Maine State Constitution.³
- Finding: The substantial alteration of use allowed by the 2014 lease has not received legislative approval.
- Finding: CMP does not have title, right or interest to construct the NECEC line across the Johnson Mountain and West Forks Plantation Northeast Public Reserved Lands as required under 12 M.R.S. § 685-B(2)(D) and 06-096 C.M.R. ch. 2 § 11(D).

¹ 12 M.R.S. § 598-A(2-A)(D).

² MBPL Upper Kennebec River Management Plan, pg. 95 (Attachment C to Group 4’s 5/9/19 comments on title, right or interest).

³ See legal analysis by Maureen M. Sturtevant, Esq. (Attachment B to Group 4’s 5/9/19 comments on title, right or interest).

2. Appalachian Trail P-RR zone special exception (relevant to LUPC)

- Finding: The proposed project would be the first crossing of the Appalachian National Scenic Trail by a transmission line of this size in the state. It would require widening the existing corridor (crossed three times by the AT) from 150 to 225 feet and install a new line with towers 100 feet tall (considerably taller than the surrounding forest) adjacent to the existing 115 kV line with towers 45 feet tall.
- Finding: The widening of the corridor and the addition of a second much larger line would significantly increase the visual impact of these transmission line crossings on users of the AT. CMP's visual experts state that there would be a "negligible" change in visual impact to hikers using the trail.⁴ However, this conclusion is contradicted by the revised Scenic Resources Chart that rates the impact as "Moderate/Strong".⁵
- Finding: CMP's visual experts state that trail users expect to see transmission lines, and thus the additional line would not impact users' enjoyment of the trail.⁶ However, no user surveys were conducted to actually assess users' expectations and reactions to the project.⁷
- Finding: CMP's alternatives analysis for the AT P-RR zone considered only a single alternative – location of the proposed line in a new corridor at a different location.⁸
- Finding: CMP engaged in discussions with AT managers about relocating the trail within the existing National Park Service easement to reduce exposure of the trail to the new line. However, they did not consider the alternative of relocating the trail outside of the existing easement or NPS-owned corridor.
- Finding: CMP did not consider the alternative of burying the line under the trail. CMP contended that the easement to the National Park Service did not allow them the right to construct underground lines. However, under questioning they agreed that the NPS could grant permission for them to do so, but that they have not explored that possibility with the NPS.⁹
- Finding: CMP has not shown by substantial evidence that there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant as required by 01-672 C.M.R. ch. 10, section 10(23)(I)(3)(d).
- Finding: CMP has proposed to buffer the new line from users of the trail through vegetation plantings along one of the three crossings of the transmission line corridor in

⁴ Application Chapter 25, Section 25.3.1.3, p. 25-5.

⁵ Application Chapter 6, Appendix F (revised 1/30/19).

⁶ Application Chapter 6, Section 6.2.2.5, p. 6-50; CMP Goodwin Direct, p. 10.

⁷ Tr. 4/2/19, p. 163 lines 9-14.

⁸ Site Law Application Chapter 25, Section 25.3.1.3, p. 25-5.

⁹ Tr. 5/9/19, p. 440 lines 8-15.

this vicinity (at Troutdale Road).¹⁰ The need for these plantings is an admission by CMP that the project will have a substantially increased visual impact on the AT.

- Finding: The photosimulation of the proposed planting does not provide strong evidence that it will be effective at shielding users from view of the wider corridor and additional larger line.
- Finding: CMP visual expert admitted that the plantings will only “partially” screen the widened corridor for AT hikers¹¹ and that hikers will still see the proposed structures.¹²
- Finding: These plantings were proposed at only one of the three crossings of the transmission line corridor by the trail in this area.
- Finding: CMP has not shown by substantial evidence that the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible as required by 01-672 C.M.R. ch. 10, section 10(23)(I)(3)(d).
- Finding: CMP has not met the requirements for the granting of a special exception for the construction of NECEC within the Appalachian Trail P-RR zone, and NECEC should not be certified as an allowed use as required by 12 M.R.S. § 685-B(1-A)(B-1).

3. Scenic Character (relevant to DEP)

- Finding: The area through which NECEC Segment 1 would pass includes the Kennebec River, the Old Canada Road National Scenic Byway, the Appalachian National Scenic Trail, numerous lakes, ponds, and streams, and numerous mountains with recreational trails. These places are important national, statewide, and local scenic resources, crucial elements of the region’s scenic character, and the foundation of the region’s recreational uses. The scenic resources are the backbone of both the region’s quality of life and its tourism economy.¹³
- Finding: Concern about the adverse impact of the project on the scenic resources and character of the region and the resulting adverse impact on the quality of life and economy in the region is a prime reason why six towns (Caratunk, Dennistown, Jackman, Moose River, The Forks, West Forks) of the 15 towns that have opposed the project or withdrawn their support have done so.¹⁴
- Finding: CMP’s visual expert acknowledged that she was aware that this region of the state attracts many visitors because of its undeveloped scenic character.¹⁵
- Finding: CMP’s survey of Kennebec River rafters found that power lines have greater visual impact than large clearcuts, wind power projects, hydroelectric dams, and bridges and roads.¹⁶

¹⁰ CMP Segal Direct, p. 29; CMP Exhibit 5-B, p. 119.

¹¹ CMP Segal Direct, p. 29.

¹² Tr. 4/2/19, p. 166 line 17 to p. 167 line 1.

¹³ Group 2 E. Caruso Direct, p. 3.

¹⁴ Group 4 5/9/19 comments, p. 447-91.

¹⁵ Tr. 4/1/19, p.348.

- Finding: Despite the finding in its survey of Kennebec rafters that power lines create visual impacts that are among the highest of any human activity or development, CMP carried out no further surveys to determine the adverse impact on other scenic resources in the region or the reactions of other user groups including hikers, snowmobilers, hunters or fishermen/women.
- Finding: CMP did not analyze the alternative of putting the transmission line under rather than across the Old Canada Road National Scenic Byway, one of only two national scenic byways in Maine.
- Finding: The proposed project would be the first crossing of the Appalachian National Scenic Trail by a transmission line of this size in the state. It would require widening the existing corridor (crossed three times by the AT) from 150 to 225 feet and install a new line with towers 100 feet tall (considerably taller than the surrounding forest) adjacent to the existing 115 kV line with towers 45 feet tall.
- Finding: CMP’s visual experts state that there would be a “negligible” change in visual impact to hikers using the Appalachian Trail.¹⁷ However, this conclusion is contradicted by the revised Scenic Resources Chart that rates the impact as “Moderate/Strong”.¹⁸
- Finding: CMP did not analyze the alternative of putting the transmission line under rather than across the Appalachian Trail.
- Finding: CMP did not provide information on actual pole heights.¹⁹ CMP’s visual experts acknowledged that their assessment and opinions were based on an assumption that the pole heights would be 130 feet tall, even though they acknowledged that the poles could be as tall as the “more typical” height of 165 feet.²⁰
- Finding: Dr. James Palmer raised multiple concerns about the visibility analysis, noting that the analysis utilizes outdated data and understates the potential visibility of the project by fifty percent.²¹
- Finding: CMP’s visual consultants concluded that the project, including an overhead transmission line across the Kennebec Gorge, would have no adverse scenic impact.²² However, CMP acknowledged the adverse scenic impact by amending the proposal to bury the proposed line underneath the Kennebec Gorge.²³ The failure of the visual consultants to acknowledge the unquestionably adverse scenic impacts of an overhead line across the Kennebec Gorge renders their conclusions about potential scenic impacts along other parts of the corridor unreliable.

¹⁶ James Palmer, Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials, Nov. 23, 2018, sec. 2.2.

¹⁷ Application Chapter 25, Section 25.3.1.3, p. 25-5.

¹⁸ Application Chapter 6, Appendix F (revised 1/30/19).

¹⁹ Tr. 5/9/19, p. 470-71.

²⁰ Tr. 5/9/19, p. 191, 224–226.

²¹ Palmer *op. cit.*, sec. 3.2 and 3.5.

²² Tr. 4/1/19, p. 538.

²³ See generally, CMP Oct. 19, 2019, Application Amendments.

- Finding: CMP has failed to meet their burden of proof to demonstrate that the proposed NECEC project would fit harmoniously into the existing natural environment and would not adversely affect existing uses and scenic character (per 38 M.R.S. § 484(3)). CMP's Visual Impact Assessment is unreliable due to the following flaws: 1) the failure to conduct user surveys beyond rafters on the Kennebec Gorge, ignoring the reaction of other user groups and their evaluation of the project's impact on other scenic resources of national, state and local significance; 2) the failure to properly assess the extent of visibility of the project and underestimating the actual visibility by up to fifty percent; 3) the failure to base the assessment on actual (and potentially higher) rather than assumed structure heights; 4) the failure to properly assess the evidently adverse visual impact of an overhead crossing of the Kennebec Gorge, which renders their other judgments suspect.

4. Natural Resources – Vernal Pools (relevant to DEP)

- Finding: Vernal pools are one of the most important habitat types in New England.²⁴
- Finding: NECEC would harm hundreds of individual pools and the amphibian migrations that tie pool webs together.²⁵
- Finding: Shrub/scrub vegetation that would dominate if NECEC were built would impede vernal pool specialist migration.²⁶
- CMP's proposed compensation plan does not mitigate for these fragmenting effects and is therefore inadequate.²⁷
- Finding: CMP has not met its burden of proof to demonstrate that the proposed NECEC project would not adversely affect other natural resources (per 38 M.R.S. § 484(3)); specifically that the project would not adversely affect significant vernal pool habitat (per 06-096 C.M.R. ch. 375 § 15) through the impacts of clearing and habitat fragmentation.
- Finding: The proposed NECEC project would create an adverse effect on the natural environment under 38 M.R.S. § 484(3); specifically that the project would create an adverse effect on significant vernal pools due to the impacts of clearing and habitat fragmentation.

²⁴ U.S. Environmental Protection Agency letter to U.S. Army Corps of Engineers, re: Public Notice 2017-01342 CMP NECEC Electric Transmission Line Project, April 25, 2019, p. 4.

High value vernal pools are one of the most valuable aquatic systems we have in New England, rivaling salt marshes in their productivity, yet the bulk of breeding animals only use them in the spring. These animals typically live in the forest and must travel to and from the vernal pools each year. Tree clearing near vernal pools would cause secondary impacts to the pools...

²⁵ Group 4 Calhoun Direct, p. 13.

²⁶ *Id.*, p. 12.

²⁷ *Id.*, p. 17.

5. Natural Resources – Brook Trout (relevant to DEP)

- Finding: The streams impacted by the 251 water body crossings in Section 1 have aquatic habitat that is among the least degraded in the northeast.²⁸
- Finding: All of the streams crossed by Section 1 are within subwatersheds designated as supporting an intact population of brook trout by the Eastern Brook Trout Joint Venture.²⁹
- ME DIFW staff indicate that all perennial stream crossings in Segment 1 support brook trout.³⁰
- Finding: The applicant has not incorporated key information from ME DIFW on brook trout presence at stream crossings into its application materials.³¹
- Finding: According to the ME DIFW, intact, mature, wooded riparian corridors are important to conserve forest soils, provide shade to reduce stream warming, protect stream water quality, provide cover for fish, and provide a source of woody debris and leaf litter from mature trees that maintain in-stream habitat for fish and the aquatic insects they feed upon.³²
- Finding: To provide these functions, ME DIFW recommends maintaining an intact and stable stand of mature trees, characterized by heavy crown closure (60-70%) and resistance to windthrow.³³
- Finding: The Applicant’s vegetation maintenance activities post-construction will not allow for re-development of mature trees or closed canopy cover within the NECEC right of way.³⁴
- Finding: References cited by the Applicant document that habitat in rights of way had canopy closure of around 30%, while nearby forested streams had canopy closure of 70-80% or higher.³⁵

²⁸ National Fish Habitat Partnership, 2015. Through a Fish’s Eye, the Status of Fish Habitat’s in the United States, 2015; Group 4 Exhibit 1-JR.

²⁹ Group 4 Exhibit 1-JR; Eastern Brook Trout Joint Venture (2006): Eastern Brook Trout: Status and Threats. <https://easternbrooktrout.org/reports/eastern-brook-trout-status-and-threats%20%282006%29/view>

³⁰ 1/22/2019 email from Bob Stratton (ME DIFW) to Jim Beyer (ME DEP). Included in consultation record under “Review Comments”; Two emails from Bob Stratton (ME DIFW) to Jim Beyer (ME DEP) on January 22, 2019; 4 emails from Bob Stratton to Jim Beyer on January 24, 2019; and one email from Bob Stratton to Jim Beyer on February 4, 2019, all accessed at <https://www.maine.gov/dep/ftp/projects/necec/review-comments/2019-02-01%20MDIFW%20Comments/>.

³¹ Tr. 5/9/19, p. 276.

³² Group 4 Reardon Rebuttal, Exhibit 20-JR-Rebuttal.

³³ *Id.*

³⁴ Site Law Application, Chapter 10, Exhibit 10-2, p. 5-6.

³⁵ Abstract of Gleason, N.C.2008. Impacts of Powerline Rights of Way on Forested Stream Habitat Western Washington, Environmental Symposium in Rights of Way Management, 8th International Symposium, pages 665-678; Peterson, A.M. 1993. Effects of Electric Transmission Rights-of-Way on Trout in Forested Headwater Streams in New York. North American Journal of Fisheries Management, vol. 13 pp. 581-585. Group 4 Reardon Rebuttal, Exhibit 19-JR-Rebuttal.

- Finding: A reference cited by the Applicant documents that bank vegetation within rights of way was 91.8% shrubs and grass, while bank vegetation in nearby forested streams was only 4.6% shrubs and grass.
- Finding: The Applicant's clearing activities for construction will result in a conversion of riparian habitat from intact stands of mature trees characterized by crown closure to herbaceous vegetation and scrub-shrub habitat.³⁶
- Finding: Because of this conversion from mature trees to grasses and shrubs, the applicant's proposed buffers will not provide large woody debris to adjacent streams.³⁷
- Finding: With the sole exception of expanding buffers on brook trout streams to 100 feet rather than 75 feet on other streams, the Applicant has neither evaluated nor adopted other measures to minimize its impacts on brook trout habitat.³⁸
- Finding: Such measures were evaluated and proposed to protect other aquatic resources, particularly Northern Spring Salamander and Roaring Brook Mayfly, by raising pole heights to allow mature canopy trees underneath the transmission lines.³⁹
- Finding: Critical brook trout resources at multiple streams could have benefited from similar measures.⁴⁰
- Finding: Although Applicant's witnesses testified that such measures were not necessary for brook trout,⁴¹ they also cited the benefits of these measures (where applied for other species) to brook trout and brook trout habitat.⁴²
- Finding: The Applicant argued that such modifications to provide full canopy closure over brook trout habitat would require extensive and expensive changes to pole structures,⁴³ but acknowledged on cross examination that trees of up to 35' in height could be maintained even with structure locations and pole heights as proposed.⁴⁴
- Finding: In response to questions from DEP about 5 specific crossings, the Applicant indicated that at 3 of 5 sites 35' tall trees could be accommodated with proposed structures, and at the other two could be accommodated with minor increases in pole height.⁴⁵
- Finding: The applicant proposes three preservation tracts to compensate (among other things) for impacts to brook trout habitat: the Grand Falls Tract, the Basin Tract, and the Lower Enchanted Tract.⁴⁶

³⁶ Site Law Application, Chapter 10, Exhibit 10-1, p. 8 and Figure 1, p. 13.

³⁷ Group 4 Reardon Direct, p. 21 and Exhibit 6-JR; Group 4 Reardon Rebuttal, p. 5-6; Tr. 4/1/19, p. 196-201.
³⁸ Final Compensation Plan (revised 1/30/19), p. 21-22; CMP Goodwin Direct, p. 19-21; CMP Johnston Rebuttal, p. 7.

³⁹ CMP Goodwin Direct, p. 11-13 and Exhibit CMP-3F.

⁴⁰ Group 4 Reardon Direct, p. 12-15 and Exhibit 4-JR.

⁴¹ CMP Johnston Rebuttal, p. 6-7.

⁴² *Id.*, p. 10.

⁴³ CMP Achorn Supplemental, p. 1-3.

⁴⁴ Tr. 5/9/19, p. 449-458.

⁴⁵ 5/17/19 letter from Gerry Mirabile (CMP) to James Beyer (ME DEP), p. 2 and Attachment B.

⁴⁶ Final Compensation Plan (revised 1/30/19), p. 22.

- Finding: The only information provided about brook trout presence, population status, or habitat quality is contained in tables for each tract that summarize functions and values of wetland resources on each tract. These tables indicated that these tracts provide recreational fishing, and that both brook trout and landlocked salmon are stocked the portion of the Dead River that flows through each tract. No information regarding wild brook trout presence or habitat quality is presented.⁴⁷
- Finding: Unlike the streams impacts by the NECEC, which tend to be cold, high elevation, headwater streams with documented wild brook trout habitat and no non-native species, the Dead River is warm, has a recreational fishery supported by stocking of hatchery fish, supports a population of smallmouth bass, a severe competitor with brook trout, and has limited potential to produce wild brook trout.⁴⁸
- Finding: The Applicant proposes a \$180,000 contribution to the Maine Endangered and Non-Game Wildlife Fund to protect coldwater fishery habitat.⁴⁹
- Finding: This amount will not provide for habitat protection of a scale sufficient to compensate for NECEC impacts on brook trout habitat.⁵⁰
- Finding: \$180,000 would, based on the Applicant's witness's testimony, be sufficient to protect about 180 acres of land.⁵¹
- Finding: The Applicant proposes a \$200,000 Culvert Replacement Program and proposes to replace 20-35 culverts with these funds.⁵²
- Finding: Witnesses familiar with the costs of culvert projects in Maine testified that this is not possible, and that perhaps 2-4 culvert replacements might be completed with these funds.⁵³

6. Natural Resources – Habitat Fragmentation (relevant to DEP)

- Finding: The Western Maine Mountains is the heart of a globally significant forest region that is notable for its relatively natural forest composition, lack of permanent development, and high level of ecological connectivity.⁵⁴
- Finding: NECEC Segment 1 would permanently clear a 150-foot-wide 53.5-mile-long corridor across the Western Maine Mountains region from the Canadian border at Beattie Township to an existing transmission line corridor in The Forks.⁵⁵

⁴⁷ Final Compensation Plan (revised 1/30/19), Exhibit I-9, Table 5-1, Table 6-1 and Table 7-1.

⁴⁸ Group 4 Reardon Direct, p. 21-22.

⁴⁹ Compensation Plan (revised 1/30/19), p. 22.

⁵⁰ Group 4 Reardon Direct, p. 24-25; Group 6 Wood/Cutko/Emerson Direct, p. 8.

⁵¹ Tr. 5/9/19, p. 383-384.

⁵² Final Compensation Plan (revised 1/30/19), Exhibit I-11.

⁵³ Group 4 Reardon Direct, p. 23; Group 6 Wood/Cutko/Emerson Direct, p. 8.

⁵⁴ Group 4 Publicover Direct, p. 4-7; Group 1 McMahon Direct, p. 6-7; Group 6 Wood/Cutko/Emerson Direct, p. 3-4.

⁵⁵ Site Law Application Chapter 1, Section 1.2.1, p. 1-3.

- Finding: The Segment 1 corridor would be one of the largest permanent fragmenting features in the Western Maine Mountains region, and one of the few permanent features other than logging roads to completely bisect the region.⁵⁶
- Finding: Fragmentation of forest habitat is one of the leading causes of biodiversity decline across the world.⁵⁷
- Finding: The impacts of the Segment 1 corridor include direct loss of forest habitat, a reduction in existing and future interior forest habitat due to edge effects, and a reduction in habitat connectivity across the corridor.⁵⁸
- Finding: The fragmenting impacts of the Segment 1 corridor would be significantly different than those of timber harvesting due to the greater intensity and permanence of forest clearing and the extended linear extent of the corridor.⁵⁹ Also, the corridor would have a greater impact than most logging roads due to its much greater width.⁶⁰
- Finding: The Segment 1 corridor would permanently convert nearly 1,000 acres of forest to shrub-scrub habitat.⁶¹
- Finding: The Segment 1 corridor would create up to 107 miles of new permanent high-contrast edge throughout this forest region.⁶²
- Finding: Forest edges create dramatic changes in the adjacent forest, including altered climate due to increased penetration of light and wind and altered forest structure and composition. Depending on the specific effect, edge effects can extend from tens to hundreds of meters into the adjacent forest and affect an area many times that affected by the direct clearing of the corridor.⁶³
- Finding: Edge habitat favors more common generalist species at the expense of species that avoid edges and require interior forest habitat. Species adversely affected by the creation of edge habitat include mammals, birds and amphibians, include many species identified as Species of Greatest Conservation Need in Maine.⁶⁴
- Finding: The creation of a broad continuous swath of early-successional habitat would create an impediment to species movement and reduce habitat connectivity for species that avoid this habitat and forest edges and depend on mature or interior forest habitat.⁶⁵
- Finding: American marten is an “umbrella species” that serves as a proxy for a broad range of other mature and interior forest species. Marten habitat requirements in Maine

⁵⁶ Group 4 Publicover Direct, p. 10; Group 1 McMahon Direct, p. 8.

⁵⁷ Group 4 Publicover Direct, p. 10; Group 6 Hunter Direct, p. 3.

⁵⁸ Group 4 Publicover Direct, p. 10-13.

⁵⁹ Group 4 Publicover Direct, p. 15; Tr. 4/5/19, p. 61.

⁶⁰ Group 6 Hunter Direct, p. 3; Tr. 4/5/19, p. 61 lines 5-7; Tr. 4/5/19, p. 81 line 19 to p. 82 line 9.

⁶¹ Site Law Application Chapter 7, Section 7.4.4.2, p. 7-35; Group 1 McMahon Direct, p. 4.

⁶² Group 1 McMahon Direct, p. 8.

⁶³ Group 4 Publicover Direct, p. 10-12 and Rebuttal, p. 4-5; Group 1 McMahon Direct, p. 11; Group 6 Hunter Direct, p. 4-6.

⁶⁴ Group 4 Publicover Rebuttal, p. 5; Group 6 Hunter Direct, p. 5.

⁶⁵ Tr. 4/5/19, p. 62 lines 7-11.

have been extensively studied. They generally avoid areas without forest vegetation at least 35 feet tall.⁶⁶

- Finding: Taller vegetation that would enhance the ability of marten and associated species to cross the corridor will be maintained at only three locations along the 53.5-mile corridor.⁶⁷
- Finding: The shrub-scrub vegetation maintained in riparian buffers would not maintain adequate connectivity for marten and other mature and interior forest-dependent species.⁶⁸
- Finding: The Site Law Application does not include an assessment of the amount of mature and interior forest habitat that would be lost through clearing of the corridor.
- Finding: The Site Law Application includes minimal discussion of the adverse effects of forest edges and includes no assessment of the amount of edge habitat that would be created or which species would be adversely affected.
- Finding: The Site Law Application recognizes but does not assess the impact of the new corridor on habitat connectivity.
- Finding: CMP's contention that the new corridor will not have an adverse effect on wildlife habitat due to forest fragmentation is based solely on drawing a false equivalence between the corridor and the on-going pattern of timber harvesting in the region.⁶⁹
- Finding: The Applicant's assessment and conclusions regarding the impacts of the project due to habitat fragmentation have been contradicted by the detailed testimony of multiple expert witnesses.
- Finding: The alternatives analyses contained in the Site Law and NRPA applications do not consider the alternative of co-location and burial along existing corridors as has been proposed for other transmission line projects in New England and New York as a means to minimize the impacts of the project.⁷⁰
- Finding: CMP has proposed no mitigation for the impacts of permanent conversion of forested habitat or the degradation of extensive forest habitat through edge effects.
- Finding: Maintenance of taller vegetation at just three locations is inadequate mitigation for the impact on habitat connectivity along a 53.5-mile corridor.
- Finding: Maintaining taller shrub-scrub vegetation within riparian buffers is inadequate mitigation for the impact on habitat connectivity as this vegetation will not facilitate the movement of mature forest dependent species across the corridor.⁷¹
- Finding: CMP has not proposed any land conservation as compensation for the permanent loss of nearly 1,000 acres of forest habitat, the degradation of thousands of

⁶⁶ Group 4 Publicover Direct, p. 13; Group 6 Simons-Legaard Supplemental, p. 1.

⁶⁷ CMP Mirabile Direct, p. 30.

⁶⁸ Tr. 5/9/19, p. 121 lines 8-18.

⁶⁹ Site Law Application Section 7.4.1.1.1, p. 7-24, Section 7.4.1.2, p. 7-25 and Section 7.4.1.3, p. 7-26.

⁷⁰ Group 4 Publicover Direct, p. 18-21.

⁷¹ Tr. 5/9/19, p. 121 lines 8-18.

additional acres through edge effects, and the reduction in habitat connectivity across the Western Maine Mountains region.

- Finding: CMP has not met its burden of proof (as required under 38 M.R.S. § 486-A(2)) to demonstrate that the proposed NECEC project would not adversely affect other natural resources (per 38 M.R.S. § 484(3)); specifically that the project would not adversely affect wildlife, wildlife habitat and wildlife lifecycles (per 06-096 C.M.R. ch. 375 § 15) through the impacts of habitat fragmentation.
- Finding: CMP has not met its burden of proof to demonstrate that the impacts of the proposed NECEC project have been adequately avoided, minimized and mitigated.
- Finding: The proposed NECEC project would create an adverse effect on the natural environment under 38 M.R.S. § 484(3); specifically that the project would create an adverse effect on wildlife, wildlife habitat and wildlife lifecycles due to the impacts of habitat fragmentation.

7. Natural Resources – Deer Wintering Areas (relevant to DEP)

- Finding: Loss of deer wintering areas and the fragmentation and loss of habitat connectivity between deer wintering areas and surrounding forestland are THE major limiting factors for deer populations in northern, western, and eastern Maine.⁷²
- Finding: NECEC would bisect the Upper Kennebec Deer Wintering Area, one of the last high-quality deer wintering areas in western Maine.⁷³
- Finding: CMP's proposed deer travels corridor's across the right-of-way though the Upper Kennebec Deer Wintering Area are entirely experimental.⁷⁴
- Finding: These corridors are unlikely to work effectively because they will not contain fully mature trees in eight of 10 cases.⁷⁵
- Finding: CMP's widening of existing rights-of-way in 11 deer wintering areas will cause further fragmentation, damaging the deer herd.⁷⁶

8. Climate (relevant to DEP)

- Finding: Hydro-Quebec will build no additional renewable energy generating facilities to supply power for NECEC.⁷⁷
- Finding: The New Hampshire Site Evaluation Committee, after years of study, determined that there would be no greenhouse gas benefits from Northern Pass, a virtually identical project to NECEC, without construction of new generating facilities.⁷⁸

⁷² Group 4 Joseph Direct, p. 2-3.

⁷³ *Id.*

⁷⁴ Tr. 4/4/2019, p. 48.

⁷⁵ Group 4 Joseph Rebuttal, p. 1.

⁷⁶ Group 4 Joseph Direct, p. 6.

⁷⁷ Group 4 5/9/19 comments, p. 3.

- Finding: A witness for the Massachusetts Attorney General’s Office testified in hearings there that Hydro-Quebec and CMP could meet their NECEC contract through resource shuffling, shifting electricity sales from New York, New Brunswick, and other existing customers to more lucrative markets in Massachusetts. This would result in no overall reduction in greenhouse gas emissions.⁷⁹
- Finding: The PUC relied on flawed and incomplete information in the LEI study to conclude that NECEC would have greenhouse gas benefits. The LEI study failed to look at emissions increases in other jurisdictions when Hydro-Quebec shifts electricity sales to Massachusetts.⁸⁰
- Finding: CMP has repeatedly made false and misleading claims about the greenhouse gas reduction benefits of NECEC while simultaneously stating in its Site Law and Natural Resource Protection Act applications that the purpose of NECEC is to reduce greenhouse gas emissions.⁸¹

9. Alternatives Analysis (relevant to DEP and LUPC)

1. Finding: The alternatives analysis in CMP’s applications to the Commission and Department did not include a single alternative that utilized any type of undergrounding or line burial techniques.⁸²
2. Finding: CMP failed to evaluate an alternative route using an underground route.⁸³
3. Finding: CMP failed to evaluate an alternative route utilizing existing roads and disturbances.⁸⁴
4. Finding: CMP failed to evaluate an alternative utilizing a combination of burial, co-location with existing roads, and taller poles.⁸⁵
5. Finding: Burial of even a small section of CMP’s proposed route was not contemplated in any application material submitted by CMP until it amended its Site Law and NRPA applications to include an underground crossing at the Kennebec River Gorge.⁸⁶
6. Finding: Neither CMP nor any consultants hired by CMP did any formal analysis of undergrounding options until directed to do so by the Department in this proceeding.⁸⁷
7. Finding: CMP’s cost estimates for burying the transmission line were not done until long after CMP made the decision to select its preferred route.⁸⁸

⁷⁸ *Id.*, p. 2.

⁷⁹ *Id.*, p. 4.

⁸⁰ *Id.*, p. 7.

⁸¹ *Id.*, p. 9-10, 12.

⁸² See generally, CMP Alternative Analysis.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ CMP Amended Application, October 19, 2018.

⁸⁷ Tr. 5/9/19, p. 410.

⁸⁸ In bolstering their argument that burying the new portion of the line would dramatically increase the cost of the project, CMP’s consultants analyzed the cost of burying the line along the 54 new miles of transmission

8. Finding: The “costs, dollars, or a numerical backup sheet for CMP Exhibits 11-B through 11-G in Mr. Bardwell’s pre-filed rebuttal testimony” were not available to intervenors, the Department, or the Commission for inspection or analysis because large portions of the document were redacted under the label “Proprietary.”⁸⁹
9. Finding: Burial of HVDC lines is exceedingly common, even here in New England.⁹⁰
10. Finding: Other HVDC projects of a similar length contain all or significant portions of the project buried underground.⁹¹
11. Finding: TDI in Vermont would be 157 miles long with 97 miles in underwater cables and 57 in buried cables.⁹²
12. Finding: 60 miles of the Northern Pass Project through New Hampshire would have been buried.⁹³
13. Finding: Northern Pass was initially selected as the winning bid in the Massachusetts 83D RFP process but was rejected after the New Hampshire Site Evaluation Committee denied the project a necessary permit siting concerns over siting concerns.⁹⁴
14. Finding: Northern Pass was not rejected in the Massachusetts 83D RFP process due to the cost of undergrounding portions of the transmission line.⁹⁵
15. Finding: Whether buried or not, a route that followed existing roads, whether the Spencer Road or Route 201 to Jackman, could have dramatically reduced wildlife and fisheries impacts.⁹⁶
16. Finding: CMP failed to do a cost estimate of burying the line along existing roads until the line could tie into an existing transmission corridor.⁹⁷
17. Finding: CMP has failed to meet its burden of proof to demonstrate that there is not a practicable alternative that is less damaging to the environment.

10. Mitigation and Compensation (relevant to DEP).

- Finding: At stream crossings, the only variable the Applicant considered altering to better protect brook trout habitat was buffer width—with 100-foot buffers proposed for brook

corridor along CMP’s preferred Segment 1 route but did not disclose the actual cost of only burying the line along existing roads until meeting the existing corridor. CMP Tribbet Rebuttal, p. 5; Tr. 5/9/19, p. 414-15.

⁸⁹ May 17, 2019 submittal by CMP in response to DEP request, p. 4-28.

⁹⁰ Group 8 Russo Direct, p. 3-4, Exhibits CR-3 and CR-4.

⁹¹ Group 8 Russo Direct, p. 3-4, Exhibits CR-3 and CR-4.

⁹² *Id.* at 4.

⁹³ *Id.*

⁹⁴ Group 4 5/9/19 comments, p. 2 (citing New Hampshire Site Evaluation Committee. 2018. Decision and Order Denying Application for Certificate of Site and Facility. March 30, 2018).

⁹⁵ *Id.*

⁹⁶ Tr. 5/9/19, p. 62, 66-67

⁹⁷ CMP Tribbet Rebuttal, p. 5; Tr. 5/9/19, p. 414-15.

trout streams, and 75-foot buffers elsewhere.⁹⁸ Within these buffers all capable vegetation (i.e. trees) would be removed.

- Finding: Taller pole structures to allow the maintenance of an intact riparian tree canopy were implemented to protect aquatic habitat for Roaring Brook Mayfly and Northern Spring Salamander at two locations (Mountain Brook and Gold Brook)⁹⁹ but were not considered to better protect brook trout habitat.
- Finding: CMP's witnesses argued that allowing full canopy vegetation over brook streams would require extensive and expensive changes to pole structures, but under cross-examination acknowledged that vegetation of at least 35 feet could be maintained even with structure locations and pole heights largely as currently proposed.¹⁰⁰
- Finding: CMP's witnesses asserted that maintaining taller vegetation at brook trout stream crossings was not feasible, too expensive, or of limited benefit.¹⁰¹ However, the feasibility of providing for taller vegetation at many stream crossings is clearly demonstrated in CMP's May 17, 2019, letter to the Department.
- Finding: CMP's Final Compensation Plan contains three elements related to cold water fish habitat: (1) conservation of three tracts of land that contain about 12 miles of streams,¹⁰² (2) a \$180,000 contribution to the Maine Endangered and Non-Game Wildlife Fund to protect coldwater fishery habitat,¹⁰³ and (3) a \$200,000 Culvert Replacement Project.¹⁰⁴
- Finding: The streams impacted by NECEC are mostly cold, high elevation, headwater streams that are highly productive for wild brook trout. The streams on the compensation parcels are mostly large mainstem rivers that warm significantly in the summer, have a recreational fishery at least partially supported by stocking, and have limited potential to produce wild brook trout.¹⁰⁵
- Finding: The \$180,000 contribution to the Maine Endangered and Non-Game Wildlife Fund is not large enough to accomplish meaningful preservation or restoration. If applied to improving fish passage through improving or removing culverts, it might fund a handful of culvert projects.¹⁰⁶ Applying this sum towards the acquisition of additional preservation parcels could preserve at most about 200 acres, which might contain a mile or two of high value brook trout stream.¹⁰⁷

⁹⁸ Final Compensation Plan (revised 1/30/19), p. 21-22; CMP Goodwin Direct, p. 19-21; CMP Johnston Rebuttal, p. 7.

⁹⁹ CMP Goodwin Direct, p. 11-13 and Exhibit CMP-3F.

¹⁰⁰ CMP Achorn Supplemental, p. 1-3, *but see* Tr. 5/9/19, p. 449-458.

¹⁰¹ Applicant's May 1, 2019 Supplemental Testimony: Goodwin, p. 2-4 and 5; Achorn, p. 2-3; Giumarro, p. 11-13.

¹⁰² Final Compensation Plan (revised 1/30/19), p. 22.

¹⁰³ *Id.*

¹⁰⁴ *Id.*, Exhibit I-11.

¹⁰⁵ Group 4 Reardon Direct, p. 21-22.

¹⁰⁶ Group 4 Reardon Direct, p. 24-25; Group 6 Wood/Cutko/Emerson Direct, p. 8.

¹⁰⁷ Tr. 5/9/19, p. 383-384.

- Finding: The \$200,000 Culvert Replacement project is insufficient to address more than a few culverts. 108
- Finding: CMP has failed to demonstrate that the impacts to brook trout habitat created by the NECEC project have been adequately minimized and mitigated.
- Finding: CMP has not adequately considered alternatives that would avoid the need for a new corridor entirely through co-location and burial along existing roads or other corridors. 109
- Finding: CMP has not proposed any mitigation for the loss of nearly 1,000 acres of forest habitat and the creation of over 100 miles of new permanent edge and many thousands of acres of edge habitat from the clearing of Segment 1.
- Finding: The primary mitigation proposed for the loss of habitat connectivity is the maintenance of riparian buffers as travel corridors. However, the shrub-scrub habitat that would be maintained in these buffers has little to no value for maintaining habitat connectivity for species such as marten dependent on mature forest. 110
- Finding: CMP's failure or inability to incorporate techniques along extensive sections of Segment 1 such as tapered vegetation to reduce edge effects or taller vegetation to improve habitat connectivity along extensive sections of Segment 1 into its original proposal is evidence that the project's fragmenting impacts have not been adequately mitigated.
- Finding: CMP's Compensation Plan states that it "achieves no-net-loss of ecological functions and values." 111 However, the project's broader impacts to the Western Maine Mountains landscape through habitat fragmentation will lead to a significant loss of ecological function.
- Finding: 06-096 C.M.R Ch. 375, § 15 makes clear that compensatory mitigation is not limited just exclusively to NRPA-protected resources but may be applied to all wildlife habitat impacts.
- Finding: CMP has not proposed any compensation for the loss of ecological functions and values of wildlife habitat in the Western Maine Mountains landscape that NECEC would create due to habitat fragmentation.
- Finding: CMP has failed to demonstrate that the impacts to wildlife habitat and wildlife lifecycles created by the NECEC project due to habitat fragmentation have been adequately minimized and mitigated.

¹⁰⁸ Group 4 Reardon Direct, p. 24-25; Group 6 Wood/Cutko/Emerson Direct, p. 8.

¹⁰⁹ Group 4 Post-hearing brief, Section V.

¹¹⁰ Group 4 Post-hearing brief, Section IV.D.2.

¹¹¹ Final Compensation Plan (revised 1/30/19), Section 1.1.

June 14, 2019

Susanne Miller, Presiding Officer
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Everett Worcester, Chair and Presiding Officer
Land Use Planning Commission
22 State House Station
Augusta, Maine 04333

RE: NECEC Project: L-27625-26-A-N/ L-27625-TG-B-N/
L-27625-2C-C-N/ L-27625-VP-D-N/ L-27625-IW-E-N and
Site Law Certification SLC 9

Dear Presiding Officer Miller and Presiding Officer Worcester:

Pursuant to the Thirteenth Procedural Order please find the Post-Hearing Brief of NextEra Energy Resources, LLC for filing in the above-captioned matter.

Please feel free to contact me if you have questions or concerns.

Sincerely,



Joanna B. Tourangeau

JBT/d

Enclosure

cc: NECEC Service List

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND LAND USE PLANNING COMMISSION
IN THE MATTERS OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY)
CONNECT) APPLICATION FOR NATURAL
25 Municipalities, 13 Townships/Plantations,) RESOURCES PROTECTION ACT
7 Counties) AND SITE LOCATION OF DEVELOPMENT
L-27625-26- A-N) ACT PERMITS
L-27625-TB-B-N)
L-27625-2C-C-N) And
L-27625-VP-D-N)
L-27625-IW-E-N)
) SITE LAW CERTIFICATION
And)
))
Site Law Certification)
SLC 9)

POST HEARING BRIEF OF NEXTERA ENERGY RESOURCES, LLC

Pursuant to Section 23 of Chapter 3 of the Maine Department of Environmental Protection's ("Department") Rules and the Land Use Planning Commission's ("Commission") Thirteenth Procedural Order, NextEra Energy Resources, LLC ("NextEra") submits this post hearing brief to the Department and the Commission.

I. THE APPLICABLE RECORD TO DEPARTMENT AND COMMISSION REVIEW

On September 27, 2017, Central Maine Power ("CMP") filed an Application with the Department pursuant to Maine's Site Location of Development Act and Natural Resource Protection Act to construct the New England Clean Energy Connect, a 1,200 MW high voltage direct current ("HVDC") transmission line from the Quebec-Maine border to a new converter station in Lewiston and related upgrades ("NECEC"). CMP also filed an application with the

Commission seeking qualification of portions of the NECEC as a special exception within the P-RR subdistrict,

The Department and Commission record is replete with evidence that: (1) HVDC transmission lines similar to NECEC are routed underground or underwater (*i.e.*, are technically feasible); (2) undergrounding some of all of NECEC in the 53 mile greenfield corridor is a financially viable alternative; and (3) there are significant scenic and recreational concerns with routing NECEC through the 53 miles of greenfield corridor that undergrounding NECEC would address.

On the first point, the record is clear that HVDC transmission lines like that proposed by CMP are routed underwater or underground.¹ In fact, HVDC transmission lines of the same length or shorter than NECEC are routed underground or underwater, with only 1 exception in the world,² which uses the HVDC line commutate converter technology,³ rather than the HVDC voltage-sourced conversion (“VSC”) technology selected by CMP. Also, CMP’s HVDC vendor, Siemens, indicated that, between those projects that are already in-service or planned, only 1 out of 14 HVDC VSC transmission lines of any length are aboveground in the world,⁴ and that one project involves DC and alternating current lines sharing overhead transmission towers.⁵ Further, even in New England, other proposed HVDC transmission projects incorporate significant portions of underground or underwater routing into their design when compared to NECEC:

¹ Exhibit CR-3 and CR-4.

² Exhibit CR-3.

³ Exhibit CR-4.

⁴ *Id.*

⁵ *Id.* and Exhibit CR-5 at 25.

Routing HVDC Underground or Underwater					
Project Name/ State	Length in US (miles)	Underwater Cable (miles)	Buried Cable (miles)	Overhead (miles)	Totals (columns 3+4)
NECEC (Maine)	145	0	~1	144	~1
TDI (Vermont)	154	97	57	0	154⁶
Green Line (New York and Vermont)	60	40	20	0	60⁷
Northern Pass (New Hampshire)	192	0	60	132	60⁸

A CMP affiliate also proposed a HVDC transmission line project in New York that was 244 miles long and routed completely underground.⁹

⁶ Exhibit CR-7 at 241 (TDI Mass. 83 D RFP bid). “The 154 mile transmission line will utilize high voltage direct current (HVDC) technology, capable of transmitting 1,000 megawatts (MW) of electricity. The underwater portions of the transmission line, approximately 97 miles in length, will be buried in the bed of Lake Champlain, except at water depths of greater than 150 feet where the cables will be placed on the bottom. The overland (terrestrial) portions of the transmission line, approximately 57 miles in length, will be buried underground within existing public road and railroad rights-of-way (‘ROWS’), or on private land under TDI-NE ownership or control.” *See also* Exhibit CR-8 at 1 (CMP Slide Deck).

⁷ Exhibit CR-9 at 14 (Vt. Clean Line bid into Conn. Zero Carbon Energy RFP). “Approximately 40 miles of HVDC underwater cable bundled with a fiber optic cable (‘Underwater Cable’) to be buried along the lakebed of Lake Champlain with landfall at Pointe Au Roche Park, New York and Kingsland Bay State Park in Vermont. Approximately 4.8 miles are located within waters regulated by New York and 35.4 miles are located within waters of Vermont. Two segments of HVDC underground cable with associated fiber optic cable (‘HVDC Land Cable’) linking the Underwater Cable to the Converter Stations, one segment in New York and one in Vermont. The New York HVDC Land Cable segment length is approximately 6.7 miles and the Vermont HVDC Land Cable segment is approximately 13.3 miles.”

⁸ Exhibit CR-10 at 6-3, 6-5, and 7-20 (Northern Pass Mass. 83 D RFP bid). Proposing approximately 8 miles of undergrounding in the towns of Pittsburg, Clarksville and Stewartstown and approximately 52 miles of underground line within Bethlehem, Sugar Hill, Franconia, Easton, Woodstock, Thornton, Campton, and Plymouth and Bridgewater. “NPT now proposes to build nearly one-third of the project underground, in public highways, to avoid or minimize potential visual impacts to the most sensitive scenic resources in the state, including areas in and around the White Mountain National Forest, Appalachian Trail, and Franconia Notch area.”

⁹ Exhibit CR-11.

On the second point, CMP has the funds to route under all or certain segments of the 53-mile greenfield corridor that are within the P-RR subdistrict. Specifically, CMP committed to route NECEC under the Kennebec River, which will cost \$42 million, approximately four percent of the project's capital cost.¹⁰ The incremental cost increases for undergrounding the specific areas within the P-RR subdistrict for the 53 miles of greenfield corridor range from \$13, 28, and 30 million, which is approximately one, three, and three percent increases in the capital costs for the project.¹¹ The total associated cost attributable to routing under the Kennebec River and specific areas in the 53 miles greenfield corridor, therefore, sum to only 11 percent of NECEC's total costs. CMP conceded that its budget includes a contingency of 15 percent of the total project cost.¹² Accordingly, undergrounding specific areas within the P-RR subdistrict for the 53 mile of greenfield corridor is well within CMP's anticipated contingency funds for the NECEC.

On the third point, numerous parties¹³ and stakeholders¹⁴ oppose the NECEC's use of the 53-mile greenfield forested land due to the negative impact on natural resources, scenic, and recreational values.¹⁵ Indeed, the testimony of parties and stakeholders show that there are

¹⁰ Tr. 394: 10-25, 395: 1-4 (May 9, 2019).

¹¹ Tr. 395: 5-10 (May 9, 2019).

¹² Tr. 389: 1-2, 15-18 (May 9, 2019).

¹³ See, e.g., Tr. 41:22 through 42:3; 50:8-20; 51:19-25 (April 1, 2019).

¹⁴ Exhibit CR-6 (Excerpts from PUC Public Hearing Transcript University of Maine - Farmington 9/14/18 at 12-13, 24, 31-32, 41-43, 45-48, 67-70; and 75-76; Public Hearing Transcript The Forks 9/14/18 at 30-31, 45-46, 62; 73, 78, 89, and 121 and Public Hearing Transcript 10/17/18 at 43, 57, 64, 67-68, 81-82, 114, 130, 141).

¹⁵ 06-096 C.M.R. Ch. 315 § 6 (hereinafter "Ch. 315") ("An applicant is required to demonstrate that the proposed activity will not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource listed in Section 10"); Ch. 315 § 9 ("It is the responsibility of the applicant to demonstrate that the proposed design does not unreasonably interfere with existing scenic and aesthetic uses, and thereby diminish the public enjoyment and appreciation of the qualities of a scenic resource, and that any potential impacts have been minimized"); *see also* Ch. 315 § 8.

significant environmental impacts associated with the aboveground routing of the NECEC¹⁶ that would be mitigated if some or all of NECEC is routed underground.

II. THE DEPARTMENT’S ALTERNATIVES ANALYSIS

A. CMP’s Application Does Not Comply with the Natural Resource Protection Act because CMP Failed to Consider Practicable Alternatives that Would Not Defeat the Project Purpose.

Pursuant to the Natural Resource Protection Act (“NRPA”), CMP’s Application must demonstrate there is no “practicable alternative to the activity that would be less damaging to the environment.”¹⁷ The NRPA further requires that “[t]he applicant . . . provide an analysis of alternatives . . . in order to demonstrate that a practicable alternative does not exist.”¹⁸ The NRPA defines practicable as the “[a]vailable and feasible [consideration of] cost, existing technology and logistics based on the overall purpose of the project.”¹⁹ Therefore, a project will not be permitted by the Department if there are practicable alternatives that would meet the project purpose and have less environmental impact.²⁰ CMP has failed to comply with these fundamental and straightforward requirements of the NRPA on the consideration of alternative routes and undergrounding. Therefore, its Application should be denied.

i. Undergrounding Meets the Project Purpose

The NECEC’s Project Purpose “is to deliver up to 1,200 MW of Clean Energy Generation from Québec to the New England Control Area1 via a High Voltage Direct Current

¹⁶ *Supra*, notes 13 and 14.

¹⁷ 06-096 C.M.R. Ch. 310 § 5(A) (hereinafter “Ch. 310”); 38 M.R.S. §§ 480-A *et seq.*; *see also* CMP Application at 2-1 acknowledging that CMP has this burden of proof.

¹⁸ Ch. 310 § 5(A)

¹⁹ Ch. 310 § 3(R).

²⁰ CMP Application at 2-1.

(HVDC) transmission line, at the lowest cost to ratepayers.”²¹ The purpose of NECEC is to transport energy from Canada. That purpose can be accomplished with some or all of NECEC routed underground. It can also be accomplished with no additional costs to ratepayers, as CMP testified that ratepayers will not bear any of the costs of the NECEC.²²

ii. CMP Failed to Conduct an Alternatives Analysis

CMP’s Application failed to comply with Chapter 310 of the NRPA because its Application did not include an alternative analysis for undergrounding the 53-miles of the greenfield, new transmission corridor from the Forks to the Canadian border. In fact, the Application is devoid of any competent evidence regarding undergrounding the NECEC for the 53-miles of greenfield corridor or any individual section therein.²³

In response to NextEra identifying the deficiency in CMP’s Application,²⁴ CMP submitted testimony attempting to rebut the use of undergrounding for the 53-miles of greenfield corridor.²⁵ CMP’s rebuttal, however, does not amount to an alternatives analysis.

First, any alternatives analysis on undergrounding during the first 53-miles of NECEC needed to be conducted during the selection of the proposed routes, well before the filing of the Application. By failing to conduct an alternatives analysis at the time the routes were selected,²⁶

²¹ *Id.*

²² Tr. 270: 17-22 (April 1, 2019).

²³ *See e.g.*, Tr. 393:2-17 (May 9, 2019).

²⁴ Pre-filed Testimony of NextEra witness Christopher Russo (February 15, 2019).

²⁵ *See* Rebuttal Testimony of Thorn Dickinson (March 25, 2019); Rebuttal Testimony of Justin Tribbet (March 25, 2019); Rebuttal Testimony of Justin Bardwell (March 25, 2019); Supplemental Testimony of Justin Tribbet (May 1, 2019); Supplemental Testimony of Justin Bardwell (May 1, 2019).

²⁶ CMP repeatedly admitted it did not conduct such an analysis *See, e.g.*, Pre-filed testimony of Chris Russo Exhibit CR-1 (hereinafter “Exhibit CR”) at 37, lines 1-9; Tr. at 335:15-336:24 (April 1, 2019); Tr. 47:1-5; 172:2-9 (April 2, 2019).

CMP's analysis is fatally flawed because it did not consider undergrounding in light of all practicable routes. Therefore, as the record stands, there is no ability for CMP to meet its burden under Chapter 310, because the undergrounding of NECEC has only been reviewed in the context of the two proposed CMP routes in its Application, and not all practicable alternative routes that would meet the project purpose and have less environmental impact were reviewed.

Second, CMP's rebuttal testimony fails to comply with the Department's requirements for an acceptable alternatives analysis, because it did not include site-specific and field information on its proposed routes. CMP's failure to provide this information for the alternative of the undergrounding of NECEC for the first 53 miles of greenfield corridor is in stark contrast to the technical, site-specific alternative analysis it conducted for routing NECEC under the Kennebec River.²⁷ Due to CMP's failure to conduct an alternatives analysis for the first 53 miles of greenfield corridor, there is only speculation on which route the Department should consider for approval and what part of the approved route should be undergrounded to reduce environmental impacts. Accordingly, CMP failed to conduct the necessary studies to meet its burden under Chapter 310, and, therefore the Department cannot approve any route for NECEC.

Consequently, CMP's failure to conduct an alternatives analysis requires the Department to deny its Application. Without a proper alternatives analysis CMP cannot prove that no practicable alternatives exist that would be less damaging to the environment.

²⁷ See CMP's Natural Resource Protection Act Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018) and CMP's Site Location of Development Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018).

iii. Undergrounding is Financially Viable

The record shows that a CMP affiliate proposed a completely underground 244 mile HVDC transmission line in New York, and that the all but one HVDC lines of similar length to NECEC are routed underground or underwater.²⁸

In the face of this evidence, CMP argues that undergrounding all, or any additional section of the NECEC beyond the Kennebec River, is cost prohibitive.²⁹ However, CMP has a 15 percent cost contingency for NECEC.³⁰ The incremental costs of undergrounding the three locations in the P-RR subdistrict range in the 53 the miles of greenfield corridor, as requested by certain parties, range from one to three percent of the project's capital cost.³¹ Adding these costs to routing under the Kennebec River, which is approximately four percent of the project's capital cost,³² is well within the 15 percent contingency for NECEC.³³ Therefore, CMP's assertion that it is cost prohibitive to underground some of the NECEC in the 53 mile greenfield corridor is without merit.

iv. Undergrounding is Logistically and Technically Feasible

It is telling that every HDVC line of similar length to NECEC, except one, is routed underground or underwater. Clearly, the technology exists and is available to underground transmission lines such as NECEC. CMP, by its own Application Amendment, established that

²⁸ See Notes 1-9 *supra*.

²⁹ Tr. 169: 20-25, 170: 1-11 (April 2, 2019).

³⁰ Tr. 389: 1-2, 15-18 (May 9, 2019).

³¹ *Id.* at 395: 5-10.

³² *Id.* at 394: 10-25, 395: 1-4.

³³ Tr. 389: 1-2, 15-18 (May 9, 2019).

undergrounding is logistically and technically feasible within the NECEC.³⁴ CMP is undergrounding the transmission line under the Kennebec River. CMP failed to show any evidence differentiating the Kennebec River and the other areas of significance noted by intervening parties and the Department that would make undergrounding logistically and technically feasible for the Kennebec River, but not logistically and technically feasible for any other area within the NECEC. In fact, CMP cannot make this showing because, as CMP repeatedly admitted, it did not assess the site-specific features of undergrounding (such as depth to and competency of bedrock, soils testing, etc.) for the greenfield corridor.³⁵

The record is clear that undergrounding meets the project purpose and is technically and logistically feasible. It also shows that cost to CMP is not prohibitive nor do the costs defeat NECEC's purpose. For all of these reasons, the Department must deny CMP's application as unsupported by substantial evidence.

B. The Site Law Requires Rejection of CMP's Alternatives Analysis

Pursuant to the Site Law, the Department has independent authority to consider, and, in fact, must consider, alternatives: "[T]he department...shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost."³⁶ In this context, "The department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such

³⁴ See CMP's Natural Resource Protection Act Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018) and CMP's Site Location of Development Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018).

³⁵ See, e.g., Exhibit CR-1 at 37, lines 1-9; Tr. at 335:15-25, 336: 1-24 (April 1, 2019); Tr. 47:1-5; 172:2-9 (April 2, 2019); Tr. 392: 3-8; 393: 2-17 (May 9, 2019).

³⁶ 38 M.R.S. § 487-A(4).

orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.”

The record shows there are undergrounding alternatives that will lessen the NECEC’s impact on the environment. In fact, CMP’s testimony established that the environmental impacts associated with undergrounding are primarily temporary construction impacts and that undergrounding specific sections of the NECEC is within its cost contingency.³⁷ As already established, the record is also clear that undergrounding is an alternative which will lessen environmental impacts and will not unreasonably increase NECEC’s costs. Accordingly, CMP’s assertions that the Department should approve CMP’s Application without an alternative analysis that addresses the need to underground some or all of NECEC for the 53 mile greenfield corridor is baseless, and contrary to the Site Law. Therefore, CMP’s Application should be denied.

III. NECEC’S ALTERNATIVES ANALYSIS IS LEGALLY INADEQUATE

Under Commission Rules, for the NECEC to qualify as a special exception within the P-RR subdistrict, CMP must establish “by substantial evidence” that “there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant”.³⁸ Even then, the Commission has discretion whether or not to allow the use as a special exception.³⁹

³⁷ Tr. 393: 18-23; 394: 10-25, 395: 1-4; Tr. 395: 5-10; Tr. 389: 1-2, 15-18 (May 9, 2019).

³⁸ 01-672 C.M.R. Ch. 10 § 23(I)(3)(d) (hereinafter “Ch. 10”).

³⁹ See Ch. 10 § 23(I)(3)(d) (“The following uses...*may be allowed* within the P-RR subdistrict as special exceptions...*provided that* the applicant shows by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the Comprehensive Land Use Plan...”). (emphasis added).

A. CMP Failed to Prove Undergrounding within the P-RR Subdistrict is Not an Alternative which is Suitable to the Proposed Use and Reasonably Available to the Applicant.

CMP failed to meet its burden under Chapter 10,⁴⁰ because it did not provide nor evaluate site-specific information within the P-RR subdistrict. Therefore, CMP cannot prove “by substantial evidence” that undergrounding is not suitable. Indeed, except for the Kennebec River Application Amendment,⁴¹ CMP’s Application and subsequent testimony⁴² are devoid of any site-specific and field information on any area within the P-RR Subdistrict.⁴³ Thus, CMP’s Application should be denied as it failed to meet its burden of proof under Chapter 10.

i. Undergrounding within the P-RR Subdistrict is Suitable and Reasonably Available

It is telling that every HDVC line of similar length, except one, is underground or underwater. Clearly, the technology exists and is available to underground transmission lines like the NECEC. CMP, by its own Application Amendment to route under the Kennebec River, established that undergrounding is reasonably available and suitable within the NECEC.⁴⁴ Further, CMP failed to show any evidence or analysis differentiating the Kennebec River and the areas within the P-RR subdistrict that would make undergrounding reasonably available and

⁴⁰ Ch. 10 § 23(I)(3)(d).

⁴¹ See CMP’s Natural Resource Protection Act Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018) and CMP’s Site Location of Development Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018).

⁴² See Rebuttal Testimony of Thorn Dickinson (March 25, 2019); Rebuttal Testimony of Justin Tribbet (March 25, 2019); Rebuttal Testimony of Justin Bardwell (March 25, 2019); Supplemental Testimony of Justin Tribbet (May 1, 2019); Supplemental Testimony of Justin Bardwell (May 1, 2019).

⁴³ See, e.g., Exhibit CR-1 at 37, lines 1-9; Tr. at 335:15-25, 336: 1-24 (April 1, 2019); Tr. 47:1-5; 172:2-9 (April 2, 2019); Tr. 392: 3-8, 393: 2-17 (May 9, 2019).

⁴⁴ See CMP’s Natural Resource Protection Act Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018) and CMP’s Site Location of Development Application Amendment for the Kennebec River Horizontal Directional Drill (October 19, 2018).

suitable for the Kennebec River, but not available or suitable to any other area within the P-RR subdistrict. In fact, CMP cannot make this showing because, as CMP admitted repeatedly, it did not analyze site-specific features to undergrounding all or a portion of the greenfield corridor.⁴⁵

The record is clear that undergrounding is an alternative which is both suitable to the proposed use and reasonable available to CMP. There is no evidence in the record to the contrary. Consequently, the Commission must deny CMP's application.

ii. *Undergrounding is Financially Viable*

Although costs are not a Commission consideration,⁴⁶ CMP's sole ground for objection to undergrounding all, or any additional section, of the NECEC beyond the Kennebec River is the assertion that the costs are prohibitive.⁴⁷ However, the record evidence establishes that undergrounding is not cost prohibitive. Not only did a CMP affiliate propose a completely undergrounded HVDC transmission line in New York, all but one HVDC lines of similar length are underground or underwater.⁴⁸ Further, CMP's failure to do any site-specific testing or analysis makes any cost argument baseless, as that information is needed to provide a reasonable cost estimate for undergrounding in the P-RR subdistrict.

CMP's estimated costs of undergrounding the three locations in the P-RR subdistrict only constitute seven percent of the project's capital cost.⁴⁹ Including the cost to underground the Kennebec River and CMP's other incremental costs relative to overhead improvements only

⁴⁵ See, e.g., Exhibit CR-1 at 37, lines 1-9; Tr. at 335:15-336:24 (April 1, 2019); Tr. 47:1-5; 172:2-9 (April 2, 2019).

⁴⁶ Tr. 269: 18-20 (April 2, 2019).

⁴⁷ *Id.* at 169: 20-25, 170: 1-11.

⁴⁸ See Notes 1-9 *supra*.

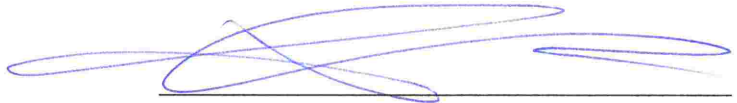
⁴⁹ Tr. 395: 5-10 (May 9, 2019).

results in approximately four percent of the project's capital cost.⁵⁰ CMP conceded that it included approximately a 15 percent project cost contingency.⁵¹ Even assuming the Commission could properly consider costs in determining suitability, undergrounding specific areas within the P-RR subdistrict is well within the capital costs CMP anticipated for the NECEC.

IV. CONCLUSION - APPLICABLE TO DEPARTMENT AND COMMISSION REVIEW

CMP's Application fails to meet the Department's requirements under both NRPA and the Site Law, and, also, fails to meet the Commission's requirements to qualify as a special exception within the P-RR subdistrict. Accordingly, NextEra respectfully requests that the Department and the Commission deny CMP's Application for the NECEC.

Date: June 14, 2019



Joanna B. Tourangeau, Me. Bar No. 9125
Attorney for NextEra Energy Resources,
LLC

⁵⁰ *Id.* at 394: 10-25, 395: 1-4.

⁵¹ *Id.* at 389: 1-2, 15-18.

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

June 28, 2019

James R. Beyer
Maine Dept. of Environmental Protection
106 Hogan Road, Suite 6
Bangor, ME 04401

Bill Hinkel
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

RE: NECEC – Post-Hearing Reply Brief of Central Maine Power Company

Dear Jim and Bill:

Enclosed is the Post-Hearing Reply Brief of Central Maine Power Company. Pursuant to Procedural Orders, we are sending, via overnight delivery, the following:

- Original and 4 copies of CMP's Pre-Filed Direct Testimony for the DEP;
- Original and 9 copies of CMP's Pre-Filed Direct Testimony for LUPC.

Thank you.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Service Lists (via email)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
#L-27625-26-A-N/#L-27625-TG-B-N/)
#L-27625-2C-C-N/#L-27625-VP-D-N/)
#L-27625-IW-E-N)

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
SITE LAW CERTIFICATION SLC-9)
Beattie Twp, Merrill Strip Twp, Lowelltown Twp,)
Skinner Twp, Appleton Twp, T5 R7 BKP WKR,)
Hobbsdown Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

POST-HEARING REPLY BRIEF
OF CENTRAL MAINE POWER COMPANY

TABLE OF CONTENTS

I.	TITLE, RIGHT, OR INTEREST (Relevant to DEP and LUPC Review).....	1
II.	FINANCIAL CAPACITY (Relevant to DEP Review)	6
III.	SCENIC CHARACTER AND EXISTING USES (Relevant to DEP and LUPC Review).....	8
IV.	WILDLIFE HABITAT AND FISHERIES (Relevant to DEP Review)	15
V.	ALTERNATIVES ANALYSIS (Relevant to DEP and LUPC Review).....	19
VI.	COMPENSATION AND MITIGATION (Relevant to DEP Review)	24
VII.	GREENHOUSE GAS IMPACTS (Purportedly Relevant to DEP Review)	30
VIII.	CONCLUSION (Relevant to DEP and LUPC Review).....	33

POST-HEARING REPLY BRIEF
OF CENTRAL MAINE POWER COMPANY

Pursuant to the Maine Department of Environmental Protection (DEP or Department) rules governing licensing hearings,¹ as well as the procedural orders of the DEP and the Maine Land Use Planning Commission (LUPC),² Central Maine Power Company (CMP) hereby files this post-hearing reply brief, which responds to those intervenor groups that filed on June 14, 2019 initial briefs³ regarding CMP's applications for a Site Location of Development Act (Site Law) permit, a Natural Resources Protection Act (NRPA) permit, and a Federal Water Pollution Control Act Section 401 Water Quality Certification (collectively, Applications) for the New England Clean Energy Connect (NECEC) Project (NECEC Project or the Project).

I. TITLE, RIGHT, OR INTEREST (Relevant to DEP and LUPC Review)

Group 4 opens its brief with the already rejected argument that CMP has failed to demonstrate title, right, or interest (TRI) in two public reserved land parcels in Johnson Mountain Township and West Forks Plantation.⁴ As explained in detail below, this argument ignores the clear language of the Maine Constitution upon which it is based, as well as the statutory authority that the Maine Legislature granted to the Bureau of Parks and Lands (BPL) to enter into its lease agreements with CMP for these two parcels.

¹ DEP Reg. Ch. 3 § 23.

² *See, e.g.*, Joint Seventh Procedural Order ¶ I.6.c.

³ Certain intervenor groups also filed proposed findings of fact. CMP notes that while this is permissible under the DEP's and LUPC's rules, Groups 2 and 10 also include conclusions of law, which are neither provided for in the rules nor ordered by the Presiding Officers. *See* Joint Eleventh Procedural Order ¶ 3.d.; Joint Seventh Procedural Order ¶ I.6.c.; Joint Fourth Procedural Order ¶ 3. For that reason, Groups 2 and 10's proposed conclusions of law should be disregarded. Furthermore, in its proposed findings of fact, Groups 2 and 10 inappropriately cite the "testimony" of Group 4 counsel at pp. 1, 3, 4, 7, and 9. Because legal counsel's statements are not "testimony," Groups 2 and 10's Draft Proposed Findings of Fact should be disregarded.

⁴ Group 4 Initial Brief at 4-6.

At the outset, CMP notes that this very same argument already was raised in this proceeding and dismissed by the DEP Presiding Officer. In its November 13, 2018 letter to the Department, Group 8's NextEra stated that it is "unclear whether the Transmission Line Lease between Department of Agriculture, Conservation and Forestry Bureau of Parks and Lands and Central Maine Power Company dated December 2014 is statutorily permissible." The Presiding Officer responded on November 16, 2018, stating as follows:

Further, Nextera questions whether the Transmission Line Lease between CMP and the Department of Agriculture, Conservation, and Forestry, Bureau of Public Lands (the Bureau), dated December 15, 2014, is "statutorily permissible." The Bureau entered into that lease with CMP pursuant to 12 M.R.S. § 1852(4), which authorizes the Bureau to "lease the right, for a term not exceeding 25 years, to," among other things, "[s]et and maintain or use poles, electric power transmission and telecommunications facilities." CMP's lease with the Bureau, a copy of which CMP provided to the Department, demonstrates to the Department's satisfaction sufficient title, right, or interest to the lands subject to that lease. 096 C.M.R. ch. 2, § 11(D)(2) (2018). Legal challenges to the Bureau's authority to enter a transmission line lease pursuant to 12 M.R.S. § 1852(4) would be for the courts—not the Department—to adjudicate.

Despite this unequivocal directive from the Presiding Officer, Group 4 nevertheless alleges that the leases in question do not demonstrate TRI because they were not approved by a two-thirds vote of the Legislature. But the constitutional provision at the heart of Group 4's argument, and its implementing statutory provisions, clearly is inapplicable.

The Maine Constitution, Article IX Section 23, provides:

State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all the members elected to each House [emphasis added].

For this provision to apply, therefore, the public lots must (1) be held by the State for conservation or recreation purposes *and* (2) be designated by legislation implementing this provision. The lots at issue in Johnson Mountain Township and West Forks Plantation do not meet either parameter, rendering this constitutional provision inapplicable. Even assuming

arguendo that parameters (1) and (2) are met, which they are not, the action also must (3) reduce or substantially alter the uses of the public lot in order for it to run afoul of the constitution. The NECEC leases do not.

First, neither the Johnson Mountain Township lot nor the West Forks Plantation is “held by the State for conservation or recreation purposes.” Instead, these are original public lots held for the respective townships and not for conservation or recreation purposes.⁵ Thus, Maine Constitution Article IX Section 23 does not apply.

Second, the legislation implementing Article IX Section 23 was superseded by later-enacted legislation that allows precisely what occurred here – the lease of these public reserved lands for utility purposes. Group 4 cites Title 12 Section 598-A, which Group 4 correctly notes was enacted in 1993, and which implements Article IX Section 23 by providing that “[d]esignated lands under this section may not be reduced or substantially altered, except by a 2/3 vote of the Legislature.” That statute provides that “designated lands” include “public reserved lands.” 12 M.R.S. § 598-A(2-A)(D). But Group 4 ignores the later-enacted Title 12 Section 1852, which was enacted in 1997 and which explicitly allows the BPL to “transfer or lease” “public reserved lands.” Specifically, the BPL may lease the right to “set and maintain or use poles, electric power transmission and telecommunication transmission facilities,” and to “establish and maintain or use other rights-of-way.” 12 M.R.S. § 1852(4). Thus, the lands identified in Section 598-A are not subject to the 2/3 vote of the Legislature where the BPL is

⁵ Response of Central Maine Power Company (CMP) to James Palmer’s November 23, 2018 Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials at 17-18 (Dec. 9, 2018) (quoting Maine Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands, Draft Upper Kennebec Region Management Plan (Management Plan) at 82, available at: https://www.maine.gov/dacf/parks/get_involved/planning_and_acquisition/management_plans/upper_kennebec_region.html); *see also* Final Draft Management Plan at 4).

acting under its Section 1852 authority, because the Legislature has, by means of Section 1852, withdrawn those lands from the scope of Section 598-A (i.e., the Legislature has determined that they are not “held for conservation or recreation purposes” and that the uses authorized by Section 1852 do not “reduce” or substantially alter” the uses of those lands). An interpretation to the contrary would render the later-enacted Title 12 Section 1852 meaningless. Thus, Maine Constitution Article IX Section 23 does not apply to these lands.

Third, even if Article IX Section 23 as implemented by Title 12 Section 598-A were applicable here, a careful reading of the implementing statutes demonstrates that leases of public reserved lots for the proposed utility use allowed by Section 1852 do not “reduce or substantially alter” designated lands, as Group 4 alleges.

“Reduced” is defined to mean “a reduction in the acreage of an individual parcel or lot of designated land under section 598-A.” 12 M.R.S. § 598(4). The lease for the two parcels in Johnson Mountain Township and West Forks Plantation results in no reduction in acreage of those lots.

“Substantially altered,” in the use of designated lands, means “changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which that land is held by the State.” 12 M.R.S. § 598(5). The statute defines the “essential purposes” of public reserved lands as “the protection, management and improvement of these properties for the multiple use objectives established in section 1847.” 12 M.R.S. § 598(5) (emphasis added). Following the statutory trail, Section 1847 makes clear that the essential purpose of public reserved lands is to “be managed under the principles of multiple use to produce a sustained yield of products and services by the use of prudent business practices and the principles of sound planning.” 12 M.R.S. § 1847(1). To achieve that purpose, the

Legislature mandated that the BPL prepare management plans for public reserved lands that “provide for a flexible and practical approach to the coordinated management of the public reserved lands” and that “provide for the demonstration of appropriate management practices that will enhance the timber, wildlife, recreation, economic and other values of the lands. 12 M.R.S. § 1847(2) (emphasis added).

The BPL has drafted a 15-year Management Plan for approximately 43,300 acres of lands known as the Upper Kennebec Region, which includes the two parcels in Johnson Mountain Township and West Forks Plantation. This Management Plan,⁶ which is in final draft form, clearly contemplates transmission line use of the parcels, and explicitly references the leases with which Group 4 takes issue. It notes that 36 acres of the West Forks lot is in a utility corridor, and that “[a] 100-foot wide CMP transmission line right-of-way (established in 1963) follows the town line across the West Forks Plt. Lot. A new 300-foot wide by mile-long transmission line lease crossing both lots from north to south was executed with CMP in December 2014; the line has not yet been built.”⁷

Because the Project does not “frustrate the essential purposes for which that land is held by the State,” it does not rise to a substantial alteration of the public reserved lands that it crosses, and Maine Constitution Article IX Section 23 does not apply.

In any event, Group 4’s TRI argument is a red herring. As CMP stated in its January 25, 2019 letter to the DEP Presiding Officer, Maine courts are clear that an applicant need only make a *prima facie* showing of TRI.⁸ Nothing requires or authorizes DEP to act as an adjudicatory

⁶ *Supra*, n. 5.

⁷ *Id.* at 17-18 (Management Plan at 82).

⁸ *See Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (finding that an applicant need only have a “legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permit or license he seeks.”).

body to determine ownership rights or resolve property disputes.⁹ Presiding Officer Miller acknowledged this in her November 16, 2019 letter to NextEra.¹⁰ Rather, the standard set forth in Chapter 2.11(D) establishes merely the threshold showing an applicant must make before the application is sufficient for review. To have a “legally cognizable expectation” an applicant need only present *prima facie* evidence of title, right, or interest, which CMP has done here.

II. FINANCIAL CAPACITY (Relevant to DEP Review)

Group 4 suggests that the Department should require a performance bond as a term and condition of approval of CMP’s Applications.¹¹ Nowhere in the DEP’s regulations implementing the Site Law is the Department required to do so. Rather, to obtain a Site Law permit, an applicant must have “financial capacity to design, construct, operate, and maintain the development in a manner consistent with state environmental standards and the provisions of the Site Law.”¹² In compliance with DEP’s Chapter 373, CMP submitted to the Department in its Site Law Application evidence that affirmatively demonstrates that it has the financial capacity to design, construct, operate, and maintain the proposed development.¹³

No party has questioned CMP’s financial capacity to date, and Group 4 does not do so in its brief. Instead, it claims that two questionable and unsubstantiated “risks” support a bond requirement: a “small but significant risk” of fire damage and a “risk” that the Project “may become obsolete” in 20 years. The issue of fire damage was raised at the hearing by Group 2’s

⁹ See *Southridge Corp. v. Bd. of Env’tl Prot.*, 655 A.2d 345 (Me. 1995) (holding that a landowner whose property interest was based entirely on an adverse possession claim, on which he may or may not prevail, had sufficient TRI in the disputed land to apply to the DEP for a permit).

¹⁰ “Legal challenges to the Bureau’s authority to enter a transmission line lease pursuant to 12 M.R.S. § 1852(4) would be for the courts—not the Department—to adjudicate.”

¹¹ Group 4 Initial Brief at 69-70.

¹² DEP Reg. Ch. 373 § 2(A).

¹³ Site Law Application Ch. 3.

non-engineer witnesses Elizabeth Caruso and Garnett Robinson,¹⁴ and by four public comment witnesses,¹⁵ none of whom held themselves out to be an engineer or described any experience with overhead transmission lines and any purported fire hazard. This “risk” is unfounded, and there is no substantial evidence to support it.¹⁶ So too is Group 4’s alleged “risk” of the Project becoming obsolete – which Group 4 invented out of whole cloth and without any citation to the record – an entirely new allegation unsupported (and indeed, not found) in the record. The Department should disregard these tenuous and unfounded “risks.”

Not only are these contrived risks unsupported by evidence in the record, but in no way do they necessitate a performance bond to ensure that the Project will meet its permit requirements and “state environmental standards,” which is the test Group 4 cites. To the contrary, DEP’s authority to require financial assurance extends only to the ability to operate and

¹⁴ Hearing Day 2 Transcript 204:3-9 (Caruso); Hearing Day 3 Transcript 55:3-9, 139:12-19 (Robinson); Hearing Day 6 Transcript 57:22-58:2 (Robinson).

¹⁵ Hearing Day 2 PM Transcript 23:23-24 (Nicholas); Hearing Day 2 PM Transcript 37:6-9 (discussing “fire and hazards” from “security risks from arson, explosives and firearms”), 37:14-25 (Kelly); Hearing Day 2 PM Transcript 88:7-22 (discussing fire risks because “every one of these towers has between 150 and 300 gallons of flammable oil located between 350 and 600 feet up in the air” and referencing turbine fires) (MacDonald); Hearing Day 2 PM Transcript 106:11-20, 107:3-10 (asking, “If terrorists cover their evidence by setting northern Maine woods on fire, could corporations claim this was an act of war and release themselves from liability for reimbursing families, communities and businesses for fire damage?”) (Rains).

¹⁶ Potential fire hazards related to the construction and operation of the Project were considered by the Maine Public Utilities Commission (MPUC or Commission) in its review of the Project. MPUC Docket No. 2017-00232. In the Order approving the Certificate of Public Convenience and Necessity, the MPUC noted “that ensuring public safety with respect to public utility operations is a central purpose of the Commission outlined in Section 101 of Title 35-A. The above ground HVDC line is designed by professional engineers who by the nature of their training and licensure requirements attest to safety when final stamping of the design occurs. . . . The Commission finds that, with respect to the safety concerns raised by Caratunk, Ms. Kelly, and several public witnesses relating to the availability of fire protection and other emergency response services in the proposed transmission corridor, the record reflects that CMP has adequately addressed such safety concerns throughout other remote areas of its existing transmission system. The Commission, therefore, finds that the NECEC does not pose a threat to public health and safety.” MPUC, Docket # 2017-00232, Order at 50 (May 3, 2019).

maintain a project consistent with state environmental standards and the Site Law – not public safety. Because CMP has shown adequate financial capacity to meet such standards, Group 4’s request should be denied.

III. SCENIC CHARACTER AND EXISTING USES (Relevant to DEP and LUPC Review)

The scenic character and existing uses arguments of intervenor groups in opposition to the Project suffer from an erroneous understanding of the relevant review standards.¹⁷ Contrary to the regulations relevant to this issue, opposition intervenors would remove entirely the reasonableness standard from agency review and would hold CMP to additional standards not set forth in statute or regulation.

Groups 2 and 10 cite purported examples of “how this project will interfere with existing uses,” arguing that *any* interference with existing uses is incapable of buffering or other mitigation.¹⁸ Moreover, Groups 2 and 10 make no mention of whether or not the Project is incompatible with existing uses, which is an important element of the LUPC standard. Instead, those groups take the staunch position that “[o]nce done it cannot be undone and the harm cannot be buffered.”¹⁹ In other words, Groups 2 and 10 argue that any adverse impact is determinative. This is a recipe for regulatory paralysis²⁰ and is not what the rules call for.

Rather, DEP’s Chapter 375 regulations require that the DEP consider whether the impact is unreasonable, and require that the DEP must grant the requested permits where (as relevant

¹⁷ In addition to its misunderstanding and misapplication of the relevant review standards, Groups 2 and 10’s Post-Hearing Brief is riddled with additional errors, including citing to the “testimony” of counsel for Group 4 numerous times; comments of counsel are not testimony. See Groups 2 and 10 Post-Hearing Brief at 7, 21 and Appendix A 1, 3, 4, 7, 9.

¹⁸ Groups 2 and 10 Post-Hearing Brief at 7-10, 20-23.

¹⁹ Groups 2 and 10 Post-Hearing Brief at 9, 23.

²⁰ See Group 3 Post-Hearing Brief at 7-11.

here) the applicant has shown no unreasonable adverse impact on scenic character.²¹ The Maine Law Court agrees, finding that while most developments seeking Site Law permits “may be expected to ‘affect’ the environment adversely to the extent that they add to the demands already made upon it, it is the unreasonable effect upon existing uses, scenic character and natural resources which the Legislature seeks to avoid by empowering the [Department] to measure the nature and extent of the proposed use against the environment’s capacity to tolerate the use.”²² So too does NRPA require consideration of whether the development will “unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.”²³ Groups 2 and 10’s stubborn anti-development conclusion that “interference with the existing uses is incapable of mitigation,”²⁴ after citing a litany of ways in which buffering allegedly is impossible, takes no account of the DEP’s rules in Chapters 315 and 375 that set forth the parameters for reasonable interference.

Similarly, the LUPC’s rules call for an analysis of whether “the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible.”²⁵ This word choice is conscious and unambiguous, but the opposition intervenors instead appear to interpret buffering as screening and wholly ignore that buffering is required only where there is an incompatible use. The verb “buffer” means to lessen or moderate the impact of something. That

²¹ DEP Reg. Ch. 375 § 14.

²² *In re Spring Valley Development*, 300 A.2d 736, 751 (Me. 1973).

²³ 38 M.R.S. § 480-D(1). The DEP’s NRPA review of impact to scenic and aesthetic uses is limited to “scenic resources,” which are the typical points from which an activity in, on, over, or adjacent to a protected natural resource is viewed by the public. DEP Ch. 315 §§ 3, 4, 10.

²⁴ Groups 2 and 10 Post-Hearing Brief at 7-10.

²⁵ LUPC Reg. Ch. 10.23(I)(3)(d)(8) (emphasis added).

does not mean no visibility.²⁶ The verb “screen,” on the other hand, means to conceal, protect, or shelter someone or something with a screen or something forming a screen. Groups 2 and 10 fail to consider or analyze these words, or the incompatibility standard, in their brief, and instead take a dogged anti-development position that buffering a transmission line is impossible, with scant reference to the P-RR subdistrict.

Group 4 also similarly fails to consider the entirety of the LUPC’s buffering standard, when it takes issue with the planting plans intended to buffer Appalachian Trail (AT) hikers from the Project at Troutdale Road. Group 4 makes no reference to, nor does it consider, the actual standard governing the buffering of a proposed use,²⁷ perhaps because the AT at that location crosses an existing transmission line corridor, and is within Troutdale Road, such that the Project is not “incompatible” with the AT’s use at that location.²⁸ Nor is the use of the AT at any of the locations at which it crosses the Project incompatible with transmission lines,²⁹ as evidenced by both (1) the existing use of the transmission line corridor by AT hikers and (2) the easement from CMP allowing the AT use and by which the National Park Service (NPS) agreed to CMP’s construction of additional above ground electric transmission lines on CMP’s land.³⁰

²⁶ Hearing Day 1 Transcript at 355:16-18 (Segal).

²⁷ Group 4 Initial Brief at 10. Instead, Group 4 suggests three alternatives to the AT crossings – routing the Project along existing roads, relocating the AT, or burying the Project at the AT crossing – which it alleges “have not been adequately explored.” Group 4 Initial Brief at 8. Not only have these three alternatives been explored, but they are neither practicable nor reasonably available to CMP. *See* CMP Post-Hearing Brief at 25-27, 43, 50-51, 53.

²⁸ LUPC Reg. Ch. 10.23(I)(3)(d)(8).

²⁹ Goodwin Rebuttal at 2; Freye Rebuttal at 2-3; Segal Rebuttal at 7-9.

³⁰ Exhibit CMP-9-B.

Several intervenors further urge the DEP and LUPC to hold CMP to standards not set forth in statute or regulation, demanding “greater consideration” or a more “serious analysis”³¹ of a range of views and resources³² where the rules simply do not so require. These declarations are no more than a perpetuation of the entirely subjective visual claims made by the intervenors that oppose the Project,³³ and should be disregarded. As the Department is well aware, Chapters 315 and 375 of its regulations set forth an explicit, standardized, and objective methodology for evaluating impacts to existing scenic and aesthetic uses, as well as the scenic character of the surrounding area. Terrence J. DeWan & Associates (TJD&A) followed this methodology in preparing the Visual Impact Assessment for the Project.³⁴ As CMP witness Terrence J. DeWan explained,³⁵

We prepared the VIA for the New England Clean Energy Connect using standard Visual Impact Assessment methodologies that we have used over the years and we’ve refined our methodology as we’ve gone along following the standards described in the Natural Resources Protection Act, Chapter 315 regulations as well as those in the Site Law Chapter 375, the regulations for scenic character.

Under NRPA, the DEP is to consider whether or not an activity will not unreasonably interfere with existing scenic aesthetic recreational or navigational uses. So what is unreasonable adverse visual impact? That seems to be the crux of the issue here before us today. Every time we make a change to the landscape no matter what we do there is an impact. Every time it can be seen, well, that can be considered to be seen as a visual impact because you can see it. It’s visually apparent. But if the change is perceived to have an objectionable level of contrast, and by contrast we mean contrast in color, form, line, character, scale and so forth and may be considered to be adverse, but then the real question is where is the line that makes it unreasonable? So Chapter 315 supplies us an answer. . . . Chapter 315 requires that an applicant demonstrate that the proposed design

³¹ *See, e.g.*, Group 4 Initial Brief at 14.

³² Groups 2 and 10 Post-Hearing Brief at 4-5.

³³ Hearing Day 3 Transcript at 91:18-92:25 (Merchant).

³⁴ Site Law Application § 6.0; Hearing Day 1 Transcript at 296:13-297:1 (Segal); Hearing Day 1 Transcript at 297:4-304:18 (DeWan); Segal Direct; Segal Rebuttal; DeWan Supplemental; Exhibit CMP-5-B; Exhibit CMP-5-C; Exhibit CMP-5.1-A; Exhibit CMP-6.2-A.

³⁵ Hearing Day 1 Transcript at 297:15-299:6 (DeWan).

does not unreasonably interfere with the existing scenic and aesthetic uses and thereby diminishes the public enjoyment and appreciation of the qualities of scenic resources and that any potential impacts have been minimized. More broadly under 375 the applicant must demonstrate that the project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

Opposition intervenor witnesses, however, disregarded the explicit, standardized, and objective methodology for evaluating impacts in favor of subjective and very personal impressions. As Group 2 witness Roger Merchant explained:

MR. MANAHAN: Isn't the point of Chapter 315, Visual Impact Assessment, to take that subjectivity out of the assessment and make it more objective?

ROGER MERCHANT: Probably that's where we depart respectfully because as a photographer it's as much instinct, it's much more instinct and impression. I mean, when I'm traveling along, I'm not expecting to see anything and it shows up, I respond, I react, I says wow, let's capture that. So it doesn't quite fit the constraints of the VIA assessment. I understand what you're getting at. Well, there are formalized ways of developing that and VIA does reflect that, I would agree. But from the field perspective, boots on the ground, I haven't got any VIA assessment score card in my back pocket to make a decision, well, this is high, medium or low. For me it's this is it, period.³⁶

Despite lying entirely outside of the regulations, opposition witnesses continue to cite these subjective impressions in an effort to contradict the VIA.³⁷

So too do opposition witnesses rely in their briefs on the already-resolved criticisms of the Department's VIA peer reviewer, Dr. James Palmer.³⁸ As Mr. DeWan explained at the hearing, TJD&A worked closely with DEP's Jim Beyer and Dr. Palmer to resolve the issues Dr. Palmer raised in this review, including his initial statement that the VIA fails to provide a complete inventory of scenic resources potentially impacted by the Project.³⁹

³⁶ Hearing Day 3 Transcript at 92:12-93:4 (Merchant).

³⁷ Group 1 Post-Hearing Brief at 1; Groups 2 and 10 Post-Hearing Brief at 7-10; Group 4 Initial Brief at 11-12.

³⁸ Groups 2 and 10 Post-Hearing Brief at 4-5.

³⁹ Response of Central Maine Power Company (CMP) to James Palmer's November 23, 2018 Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials at 8-20 (Dec. 9, 2018); Hearing Day 1 Transcript 346:20-347:6 (DeWan).

Nevertheless, and based largely on the retracted comments of Dr. Palmer,⁴⁰ opposition intervenor groups demand additional user intercept surveys that the rules do not require.⁴¹ Furthermore, user intercept surveys beyond the survey of rafters on the upper Kennebec River were not requested by either the DEP or Dr. Palmer,⁴² and would mark a departure from transmission line permitting standard practices both in Maine and across the nation.⁴³ Indeed, Dr. Palmer is unaware of any intercept study done on transmission lines anywhere in the country, but was “quite impressed” by the work that TJD&A did on the survey of rafters on the upper Kennebec River.⁴⁴ Furthermore, such surveys are unnecessary, as the evidence shows that views of transmission infrastructure create visual impacts comparable to other types of human activity or development and do not dissuade scenic, aesthetic, recreational, or navigational uses.⁴⁵ As Mr. DeWan explained at the hearing,

As you know, the previous governor established a commission to establish -- to look at the effect of wind energy on the way people use recreation resources and in December of last year a survey was conducted by a well-known survey firm between December 5 and 12 looking at 536 panelists most of these people were from out of state, sort of people who come to this area for recreation asking -- they were asking a number of questions and just to quote from the report, 3 percent of the travelers surveyed considered the views of alternative energy resource infrastructure to be very important when selecting a vacation destination, 3 percent. Among 12 items that travelers might consider when selecting a vacation destination views of alternative energy source infrastructure was a consideration that rated the least important. Now, granted, this doesn't address the

⁴⁰ Hearing Day 1 Transcript at 343:8-16 (Segal); Hearing Day 1 Transcript at 346:12-347:6 (DeWan).

⁴¹ Groups 2 and 10 Post-Hearing Brief at 6; Group 4 Initial Brief at 13.

⁴² Hearing Day 1 Transcript at 343:8-16 (Segal); Hearing Day 1 Transcript at 346:12-347:6 (DeWan).

⁴³ Hearing Day 2 Transcript at 71:18-72:3 (DeWan); Hearing Day 3 Transcript 93:21-24 (Merchant).

⁴⁴ Hearing Day 2 Transcript at 71:18-72:3, 73:8-13 (DeWan).

⁴⁵ Response of Central Maine Power Company (CMP) to James Palmer's November 23, 2018 Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials at 2-4 (Dec. 9, 2018); Hearing Day 1 Transcript at 343:17-346:11 (DeWan).

specific question about the fact that the same transmission lines would have, but it does give an indication of how the general public takes into consideration views of infrastructure such as transmission lines and making decisions about whether or not to go to a place and enjoy the scenic resources.⁴⁶

The remaining criticisms of CMP's VIA also ring hollow, and have already been addressed in this proceeding. For example, Groups 2, 4, and 10 cite Dr. Palmer's comment that CMP's land cover data were outdated.⁴⁷ However, TJD&A cross-checked its viewshed mapping and verified potential visibility using Google Earth aerial imagery from 2016, which is the most recent aerial imagery available; used MELCD data, an accepted standard professional practice for preparing VIAs in Maine, to provide consistency across its analysis; and conducted field visits to the vast majority of the scenic resources, even those where the landcover viewshed maps did not indicate potential visibility.⁴⁸

The evidence shows that CMP has made adequate provision for fitting the Project harmoniously into the existing natural environment and that the development will not adversely affect scenic character in the municipality or in neighboring municipalities, the activity will not unreasonably interfere with existing scenic and aesthetic uses, and CMP has made adequate provision for buffering, including for buffering from other uses and resources, and meets the LUPC's special exception criteria for the P-RR subdistrict. As demonstrated in the record, the Project design takes into account the scenic character of the surrounding area, the Project has been located, designed, and landscaped to minimize its visual impact to the fullest extent possible, the Project has been designed and landscaped to minimize its visual impact on the

⁴⁶ Hearing Day 1 Transcript at 345:12-346:11 (DeWan).

⁴⁷ Groups 2 and 10 Post-Hearing Brief at 4; Group 4 Initial Brief at 15-16.

⁴⁸ Response of Central Maine Power Company (CMP) to James Palmer's November 23, 2018 Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials at 4-8 (Dec. 9, 2018); Hearing Day 1 Transcript at 352:20-353:13 (Segal/DeWan).

surrounding area, and the Project provides for the preservation of existing elements of the development site which contribute to the maintenance of scenic character.

IV. WILDLIFE HABITAT AND FISHERIES (Relevant to DEP Review)

Given their failure to address the review standards applicable to scenic character and existing uses, it is not surprising that the briefs of opposition intervenors include numerous misstatements and misapplications of the review criteria relevant to the DEP's review of wildlife habitat and fisheries.

As stated above, DEP's Chapter 375 regulations dictate that the Department may find "adverse effect" only where such adverse effect is "unreasonable."⁴⁹ Similarly, NRPA and DEP's regulations implementing NRPA also require DEP to grant a permit where the activity's impact will not be unreasonable.⁵⁰ Nevertheless, Groups 2 and 10 would have the Department consider the Project's impact to Segment 1 in isolation and outside of any reasonableness context.⁵¹

Group 4 goes so far as to construe hearing testimony as germane to non-hearing topics, asserting that CMP's witness Gary Emond provides no evidence that CMP's proposal "would not severely damage individual vernal pools" and no evidence "to support CMP's claims that its mitigation proposal for pool damage is adequate."⁵² Given the extensive striking of the

⁴⁹ See, e.g., Ch. 375 §§ 14, 15(B)(2), 15(D). See also *In re Spring Valley Development*, 300 A.2d 736, 751 (Me. 1973) (interpreting the Site Law and finding that "[w]hile most such developments may be expected to 'affect' the environment adversely to the extent that they add to the demands already made upon it, it is the unreasonable effect upon existing uses, scenic character and natural resources which the Legislature seeks to avoid by empowering the Commission to measure the nature and extent of the proposed use against the environment's capacity to tolerate the use.").

⁵⁰ 38 M.R.S. § 480-D(3); DEP Ch. 335 §§ 3(A), (C).

⁵¹ Groups 2 and 10 Post-Hearing Brief at 10.

⁵² Group 4 Initial Brief at 23-24.

testimony of its vernal pool witness Dr. Aram Calhoun, Group 4 should be well aware that vernal pools were not a hearing topic, and that Mr. Emond's comments were made in the context of habitat fragmentation. He was not providing evidence relating to other potential impacts to vernal pools.

Group 4 further makes assertions relative to CMP's vegetation management plans that are contrary to the evidence.⁵³ Indeed, the studies with which Group 4 takes issue⁵⁴ found – contrary to Group 4's assertions – that despite the open canopy condition, water temperatures were slightly lower than in off-ROW areas and that none of the water quality parameters was significantly different between the on-ROW and off-ROW study areas, and that the increase in incident sunshine due to open canopy conditions resulted in a denser root mass, which further stabilized stream banks and resulted in less stream bank erosion, deeper channels, and higher populations of trout.⁵⁵ Nor does Group 4 acknowledge that CMP has consulted and coordinated with the Maine Department of Inland Fisheries and Wildlife (MDIFW) on wildlife habitat and fisheries to the satisfaction of that agency.⁵⁶ Instead Group 4 continues to make much ado about the email correspondence between MDIFW's Bob Stratton and DEP's Jim Beyer, in which Mr.

⁵³ Group 4 Initial Brief at 24-28.

⁵⁴ Group 4 Initial Brief at 24-29; *see also* Goodwin Direct at 14-15 and Johnston Rebuttal at 3.

⁵⁵ Johnston Rebuttal at 3.

⁵⁶ Johnston Rebuttal at 7-9; Exhibit CMP-4.1-A. This comprehensive consultation process has allowed MDIFW to provide final comments on the NECEC Project Compensation Plan, in response to a March 11, 2019 email and attachments from CMP requesting “that MDIFW confirm that the attached clarification materials address all of MDIFW's remaining concerns, and that MDIFW is satisfied that the latest (January 30, 2019) NECEC Project Compensation Plan, as supplemented by these attached clarifications, provides satisfactory mitigation of the NECEC Project's impacts.” In its March 18, 2019 response, DIFW thanked CMP “for the March 11 email as a follow-up to address the Department remaining resource impact concerns for the NECEC project,” and noted DIFW's appreciation for CMP's “willingness to work with us to finalize the complex fish and wildlife resource issues.” DIFW said that CMP's response and explanations were “sufficient to allow DEP to apply applicable natural resource law to the permitting process.” Exhibit CMP-4.1-A.

Stratton discussed the classification of certain streams in the Waterbody Crossing Table in CMP's Site Law Application Exhibit 7-7.⁵⁷ This is yet another misleading distraction put forward by opposition intervenors, as it does not affect CMP's commitment to apply 100-foot riparian buffers to all brook trout streams.⁵⁸

So too is Group 4's assertion that CMP has failed to protect brook trout at specific sites patently false.⁵⁹ CMP, upon consultation with MDIFW, revised its proposal to incorporate taller structures and avoid clearing by allowing full height canopy within the 250-foot riparian management zone for Mountain Brook and Gold Brook⁶⁰ and, at the request of the DEP, identified three additional streams (Moxie Stream, South Branch Moose River, and Tomhegan Stream) that require no structure height increases to accommodate 35-foot-tall vegetation along the entire span.⁶¹ The record is replete with evidence that the Project will not unreasonably affect brook trout habitat, and adequate provision has been provided for buffer strips around cold water fisheries.

With regard to habitat fragmentation, Groups 4 and 6 continue to mischaracterize the area through which the Project's Segment 1 will cross as "mature" forest habitat.⁶² The evidence

⁵⁷ Group 4 Initial Brief at 31-34, 36. *See also* Hearing Day 6 Transcript at 273:10-280:1 (Reardon, Goodwin, Johnston).

⁵⁸ Hearing Day 6 Transcript at 308:18-310:3, 324:19-325:14 (Goodwin); Johnston Rebuttal at 7-8. As Group 4 admits, the Water Body Crossing Table that Mr. Reardon attached to his testimony as Group 4 Exhibit 23-JR was not forwarded to the service list (nor was it posted to DEP's website) until February 4, 2019 – i.e., after CMP had submitted its updated Compensation Plan on January 30, 2019. Group 4 Initial Brief at 34.

⁵⁹ Group 4 Initial Brief at 35-37.

⁶⁰ Mirabile Direct at 9; Goodwin Direct at 13; Exhibit CMP-2-G; Exhibit CMP-3-F.

⁶¹ CMP Response to DEP May 9, 2019 Additional Information Request Attachment B.

⁶² Group 4 Initial Brief at 39-41; Group 6 Post-Hearing Brief at 18.

proffered by a wide swath of witnesses demonstrates otherwise.⁶³ As Group 4's witness testified, the area "contains a fairly limited amount of mature forest."⁶⁴ It is for that reason that travel corridors are potential bridges from nowhere to nowhere, as taller structure heights and travel corridors cannot provide links between habitat patches that are not directly proximal to the corridor.⁶⁵ Nevertheless, Group 4 criticizes CMP for failing to demonstrate that habitat connectivity will be maintained.⁶⁶ Group 4 misses the point – CMP is able to minimize and avoid habitat fragmentation through co-location and its vegetation management practices. Where taller vegetation actually would address habitat fragmentation concerns, CMP worked with MDIFW to propose travel corridors, such as in the upper Kennebec Deer Wintering Area and in Rusty Blackbird habitat in Johnson Mountain Township and Parlin Pond Township.⁶⁷ CMP also provided the DEP with pole and tree height information in response to DEP Project Manager Jim Beyer's May 9, 2019 request, which demonstrates that the five crossing locations that Mr. Beyer suggested can accommodate 35-foot-tall vegetation with limited modifications to

⁶³ Giumarro Supplemental at 2-13; Publicover Supplemental at 4; Hearing Day 4 Transcript at 66:14-67:5 (Publicover); Hearing Day 6 Transcript at 62:12-22, 78:20 (Publicover); Hearing Day 6 Transcript 102:12-103:8 (Publicover); Hearing Day 6 Transcript at 128:17-129:17, 133:22-134:6 (Simons-Legaard); Hearing Day 6 Transcript at 146:2-25 (Wood); Hearing Day 6 Transcript at 237:21-240:11 (Giumarro); Hearing Day 6 Transcript at 241:17-242:1, 295:6-25 (Mirabile).

⁶⁴ Hearing Day 4 Transcript at 79:10-16 (Publicover).

⁶⁵ Giumarro Supplemental at 2-13; Hearing Day 6 Transcript at 237:21-240:11 (Giumarro); Hearing Day 6 Transcript at 128:17-129:17 (Simons-Legaard); Hearing Day 6 Transcript at 146:2-25 (Wood); Hearing Day 6 Transcript at 102:12-103:8 (Publicover).

⁶⁶ Group 4 Initial Brief at 43-45.

⁶⁷ Goodwin Direct at 19; Goodwin Rebuttal at 14-15; Exhibit CMP-3-G; Exhibit CMP-3-H.

currently proposed structure heights.⁶⁸ CMP clearly is committed to maximizing habitat connectivity where it is practicable and achievable.

The evidence thus shows that CMP coordinated with MDIFW to avoid and minimize, and develop proposed compensation and mitigation to address, impacts to endangered species and brook trout habitat, avoided, minimized, and compensated for habitat fragmentation, and proposed adequate buffer strips around cold water fisheries.⁶⁹ Contrary to Group 4's statements on edge effect,⁷⁰ CMP's vegetation management practices will avoid the hard edge impact generally associated with habitat fragmentation and negative impacts on species resiliency by creating a soft edge that maintains landscape permeability and establishes areas of dense shrubby vegetation and taller vegetation where topographic conditions allow (e.g., steep ravines), thereby providing a vegetation bridge for wildlife movement across the NECEC corridor.⁷¹ The Project will not unreasonably harm the Roaring Brook Mayfly, Northern Spring Salamander, or brook trout habitat, and adequate provision has been made for buffer strips around cold water fisheries. Similarly, CMP's vegetation management practices make practical and appropriate provision for the maintenance of wildlife travel lanes and connectivity of adjacent habitats and will not result in unreasonable disturbance or harm resulting from habitat fragmentation.

V. ALTERNATIVES ANALYSIS (Relevant to DEP and LUPC Review)

The opposition intervenors focus their alternatives argument almost exclusively on the undergrounding alternative, arguing that CMP's failure to include an undergrounding

⁶⁸ See CMP Response to MDEP May 9, 2019 Additional Information Request Attachment B, Cross Section Typical Wildlife Travel Corridor; Hearing Day 6 Transcript 325:15-326:15 (Mirabile).

⁶⁹ Mirabile Direct at 9; Goodwin Direct at 11.

⁷⁰ Group 4 Initial Brief at 41-43.

⁷¹ Mirabile Direct at 12; Goodwin Direct at 17; Goodwin Rebuttal at 18; Emond Rebuttal at 8-9. See also CMP Post-Hearing Brief at 16-18.

alternatives analysis in its Applications is fatal.⁷² Such arguments reveal not only a patent misunderstanding of the applicable review criteria, but also a flagrant disregard of the evidence in this case and a misplaced reliance on Group 8's expert witness who revealed himself to have limited, if any, knowledge relevant to this proceeding.

CMP is under no obligation to analyze alternatives that are too remote, speculative, or impractical to pass the threshold test of reasonableness. To the contrary, an applicant must determine the least environmentally damaging practicable alternative only among those alternatives that are reasonable. DEP Rule Chapters 310, 315, and 335 require CMP to demonstrate that there is no "practicable alternative to the activity" that "would be less damaging to the environment" or "will have less visual impact."⁷³ "Practicable" is defined as "[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project."⁷⁴ It was and remains so obvious that undergrounding would not be practicable that CMP did not initially include it as an alternative in its Applications.⁷⁵

Despite the unavailability of undergrounding, as the cost of doing so would push CMP past a tipping point such that the Project would not have moved forward,⁷⁶ CMP conducted a thorough underground alternatives analysis in response to the testimony of witnesses in Intervenor Groups 2, 6, and 8.⁷⁷ This analysis confirmed CMP's initial determination that undergrounding the Project, or even portions of the Project beyond the proposed undergrounding

⁷² Group 4 Initial Brief at 8-9, 56-58; Groups 2 and 10's Post-Hearing Brief at 17-20, 24-26; Group 8 Post-Hearing Brief at 1-13.

⁷³ DEP Reg. Ch. 310 §§ 5(A), 5(D), 9; DEP Reg. Ch. 315 § 9; DEP Reg. Ch. 335 § 3(A).

⁷⁴ DEP Reg. Ch. 310 § 3(R); DEP Reg. Ch. 315 § 5(D); DEP Reg. Ch. 335 § 2(D).

⁷⁵ Bardwell Rebuttal at 3; Hearing Day 6 Transcript at 347:20-348:23 (Tribbet).

⁷⁶ Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

⁷⁷ See Bardwell Rebuttal; Tribbet Rebuttal; Bardwell Supplemental.

at the upper Kennebec River, is not reasonable, and therefore also could not be “practicable,” because the costs of doing so would defeat the purpose of the Project.⁷⁸ For the same reason, undergrounding in the two other P-RR subdistricts that the Project will cross is not suitable or reasonably available to CMP.⁷⁹

Nor is undergrounding available and feasible considering existing technology and logistics, contrary to the assertions of Group 8.⁸⁰ Group 8 disagrees, based on the proposed, but neither developed nor in-state, examples of other projects that would bury a portion of a transmission line, as well as the fact that CMP has proposed undergrounding at the upper Kennebec River.⁸¹ However, the testimony of Group 8’s own witness Christopher Russo belies these simplistic conclusions,⁸² and acknowledges that the feasibility of burial depends on “the unique circumstances in geography. Many of them are under water connecting different islands or bodies of water. The design of transmission lines that interconnect systems is very, very site dependent.”⁸³ Furthermore, on questioning at the hearing, Mr. Russo could provide no details on the feasibility of undergrounding as it relates to existing technology and logistics that are specific

⁷⁸ Dickinson Rebuttal at 2-3, 9-10, 13; Tribbet Rebuttal at 5; Tribbet Supplemental at 4-6; Hearing Day 1 Transcript at 248:12-15, 285:13-287:3 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

⁷⁹ Bardwell Rebuttal at 3-16, 23-27; Tribbet Rebuttal at 5; Freye Rebuttal at 5-6; Bardwell Supplemental at 2-8; Hearing Day 1 Transcript at 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 3 Transcript at 192:12-14 (Warren); Hearing Day 6 Transcript at 341:5-344:22, 431:7-432:4 (Bardwell); Hearing Day 6 Transcript at 346:23-347:1 (Tribbet); Hearing Day 6 Transcript at 432:5-12 (Achor); Hearing Day 6 Transcript at 445:7-447:12 (Paquette); Exhibits CMP-11-A through CMP-11.1-G.

⁸⁰ Group 8 Post-Hearing Brief at 8-12.

⁸¹ Group 8 Post-Hearing Brief at 2-4, 8-9.

⁸² See Group 3 Post-Hearing Brief at 14-19.

⁸³ Hearing Day 4 Transcript at 179:24-180:4 (Russo).

to this Project.⁸⁴ Nevertheless, Groups 2, 8, and 10 continue to rely on Mr. Russo's self-discredited analysis of the "viability" of an underground route.⁸⁵ CMP's evidence, on the other hand, clearly shows that undergrounding is neither available nor feasible considering existing technology and logistics,⁸⁶ and Group 3's rebuttal evidence further confirmed CMP's obvious conclusion that undergrounding is a "fruitless option."⁸⁷

The evidence further demonstrates that undergrounding will not lessen environmental impacts, as Group 8 alleges.⁸⁸ To the contrary, underground transmission installations cause a continuous surface disruption (rather than intermittent and widely spaced at each overhead structure installation location), require additional control measures for soil erosion, sedimentation, and dust generation during construction, require permanent access roads to every jointing location along the route, and can only avoid wetlands and waterways by using higher cost and higher risk trenchless methods.⁸⁹

Nor is undergrounding available along the alternate routes suggested by intervenors.⁹⁰ The evidence shows that Spencer Road is not a public road, and its private owners specifically did not want a transmission line located along that road.⁹¹ While Route 201 is a public road, "the Maine Department of Transportation [MDOT] will not allow the line to be built in the travel

⁸⁴ See Group 3 Post-Hearing Brief at 15-17.

⁸⁵ Groups 2 and 10 Post-Hearing Brief at 19-20, 26; Group 8 Post-Hearing Brief at 2-3, 8.

⁸⁶ Bardwell Rebuttal at 9-16; Hearing Day 6 Transcript 341:22-342:1; 355:2-5 (Paquette); 356:11-14; 418:7-15, 431:20-432:4; 443:16-444:20.

⁸⁷ Paquette Surrebuttal at 3-4, 7, 16-17.

⁸⁸ Group 8 Post-Hearing Brief at 10.

⁸⁹ Bardwell Rebuttal at 12-13; Paquette Surrebuttal at 7-17.

⁹⁰ Group 4 Initial Brief at 58-59; Group 6 Post-Hearing Brief at 19, 20-21.

⁹¹ Freye Rebuttal at 5; Freye Supplemental at 5-6; Hearing Day 6 Transcript at 338:10-15 (Freye).

lanes and there is insufficient room alongside the travel lanes to actually install the line.”⁹² In other words, Route 201 is unavailable due to lack of sufficient space within the highway limits,⁹³ the restrictions MDOT places on such burial and the installation of splicing vaults,⁹⁴ safety constraints with co-locating with the existing overhead distribution line,⁹⁵ and other cost, safety, and environmental issues of doing so.⁹⁶ The presence of the existing overhead distribution line in Route 201, “rather than indicating a potential pathway actually means much of the available space is currently occupied.”⁹⁷ Intervenor suggestions to the contrary should be disregarded.

The evidence set forth in its Applications, pre-filed testimony, and live testimony at the hearing shows that CMP conducted a thorough analysis of alternatives to the Project, and that a less environmentally damaging practicable alternative to the Project, which meets the Project’s purpose, does not exist. No proposed alternatives to the proposed location and character of the transmission line would lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. Where the Project crosses an outstanding river segment as identified in title 38, section 480-P, the evidence demonstrates that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of those river segments. Nor is there any alternative site to the Project’s

⁹² Hearing Day 6 Transcript at 487:14-19 (Bardwell).

⁹³ Freye Supplemental at 4; Hearing Day 6 Transcript at 337:22-338:10 (Freye); Hearing Day 6 Transcript at 342:5-343:3, 487:1-19 (Bardwell).

⁹⁴ Bardwell Rebuttal at 10; Bardwell Supplemental at 12; Hearing Day 6 Transcript at 487:1-19 (Bardwell).

⁹⁵ Freye Supplemental at 5, 7-8.

⁹⁶ Freye Rebuttal at 7-8; Freye Supplemental at 5; Hearing Day 6 Transcript at 342:5-343:3 (Bardwell); Hearing Day 6 Transcript at 464:3-23 (Dickinson).

⁹⁷ Hearing Day 6 Transcript at 337:25-338:4 (Freye).

three P-RR subdistrict crossings that is both suitable to the proposed use and reasonably available to CMP.

VI. COMPENSATION AND MITIGATION (Relevant to DEP Review)

In criticizing CMP's proposed compensation and mitigation, the opposition intervenor groups fail to acknowledge the careful and considered siting and design of the Project that occurred in the years prior to its proposal.⁹⁸ The siting of the Project prior to initiating the permitting process took about three years,⁹⁹ and, as CMP witness Peggy Dwyer explained,

Every angle point you see on that project map represents a thoughtful, proactive effort to minimize an impact at the planning stage to move away from a waterbody, road or viewshed here or tuck the line behind screening topography there. Those efforts minimized impacts in significant ways.¹⁰⁰

Group 4's allegation that CMP did not pursue any avoidance, minimization, and mitigation techniques until pressed to do so at the hearing is patently false.¹⁰¹ Groups 2 and 10 make a similar allegation,¹⁰² as does Group 1, stating incorrectly that CMP relied on intervenors to suggest "remedies" to address Project impacts.¹⁰³ The evidence shows that CMP carefully considered modifications to the route and to the size and location of structures as CMP sited the

⁹⁸ Hearing Day 1 Transcript at 62:22-65:1, 66:24-67:7 (Mirabile); Hearing Day 1 Transcript at 85:11-19 (Johnston); Hearing Day 1 Transcript at 291:16-292:9 (Goodwin); Hearing Day 1 Transcript at 332:18-333:9 (Dwyer); Hearing Day 2 Transcript at 28:18-29:6 (Segal); Hearing Day 3 Transcript at 191:1-12 (Christopher); Hearing Day 4 PM Transcript at 92:16-25 (Robinson).

⁹⁹ Hearing Day 6 Transcript at 337:16-19, 459:19-460:1 (Freye).

¹⁰⁰ Hearing Day 1 Transcript at 333:1-9 (Dwyer).

¹⁰¹ Group 4 Initial Brief at 59-60, 61, 64.

¹⁰² Groups 2 and 10 Post-Hearing Brief at 16.

¹⁰³ Group 1 Post-Hearing Brief at 2.

Project.¹⁰⁴

In any event, many of the avoidance, minimization, and mitigation proposals made by the opposition intervenors simply are not possible. Group 6 proposes that the Project be re-routed to be co-located with Route 201 or Spencer Road, and proposes that such re-routing should include undergrounding of the line. As CMP has explained numerous times, this option is not available to CMP.

Co-location along Route 201, either overhead or underground, is not available to CMP. Not only is there insufficient space within the highway limits,¹⁰⁵ but there are numerous safety constraints associated with co-locating with the existing overhead distribution line that runs along Route 201,¹⁰⁶ in addition to the visual and environmental issues associated with doing so.¹⁰⁷ Indeed, “[t]he presence of this [existing overhead distribution] line rather than indicating a potential pathway actually means much of the available space is currently occupied.”¹⁰⁸ Moreover, CMP specifically designed the Project to minimize visibility along and from this scenic byway – co-location, on the other hand, would have a significant visual impact.¹⁰⁹

¹⁰⁴ Hearing Day 1 Transcript at 62:22-65:1, 66:24-67:7 (Mirabile); Hearing Day 1 Transcript at 85:11-19 (Johnston); Hearing Day 1 Transcript at 291:16-292:9 (Goodwin); Hearing Day 1 Transcript at 332:18-333:9 (Dwyer); Hearing Day 2 Transcript at 28:18-29:6 (Segal); Hearing Day 3 Transcript at 191:1-12 (Christopher); Hearing Day 4 PM Transcript at 92:16-25 (Robinson).

¹⁰⁵ Freye Supplemental at 4; Hearing Day 6 Transcript at 337:22-338:10 (Freye); Hearing Day 6 Transcript at 342:5-343:3, 487:1-19 (Bardwell).

¹⁰⁶ Freye Supplemental at 5, 7-8.

¹⁰⁷ Freye Rebuttal at 7-8; Hearing Day 6 Transcript at 342:5-343:3 (Bardwell); Hearing Day 6 Transcript at 464:3-23 (Dickinson).

¹⁰⁸ Hearing Day 6 Transcript at 337:25-338:4 (Freye).

¹⁰⁹ Hearing Day 1 Transcript at 107:18-22, 108:2-4 (Mirabile); Hearing Day 1 Transcript at 332:1-327:19 (Segal); Hearing Day 2 Transcript at 34:9-16 (Segal); Hearing Day 6 Transcript at 201:3-8 (Segal); Hearing Day 6 Transcript at 464:11-17 (Dickinson).

Undergrounding further is not an available option along Route 201 due to topography,¹¹⁰ the winding nature of the road,¹¹¹ and the restrictions placed on burial and the installation of splicing vaults by MDOT.¹¹² Simply put, “the Maine Department of Transportation will not allow the line to be built in the travel lanes and there is insufficient room alongside the travel lanes to actually install the line.”¹¹³ The same is true of the Spencer Road, whose owners specifically did not want a transmission line located along that private road.¹¹⁴

Even if co-location along Route 201 or Spencer Road were available, such co-location would require new corridor in any case, as there is no corridor that connects the upper Kennebec River area to Québec other than the proposed route of the Project. As CMP witness Kenneth Freye explained in his pre-filed testimony,

There is a distribution line from Harris Dam to the village of Jackman (the Jackman Tie Line or JTL). The JTL extends west from Harris Dam to a point on Route 201 in West Forks Plantation south of the Johnson Mountain town line. From that point to the Town of Jackman, about 18 miles, the JTL is a standard roadside distribution line located within the highway limits of Route 201. The JTL originally diverged from Route 201 about 1.5 miles south of the intersection of Routes 201 and 6/15 in the village of Jackman, and was located on a 100-foot wide easement for about 1.75 miles to the termination on Coburn Avenue in Jackman. That cross-country section was abandoned, however, and the JTL is now entirely roadside, terminating on Route 6/15.

This could be the corridor that Ms. Caruso mistakenly believes connects to Quebec. It does not; the JTL terminates in Jackman about 16 miles from the Canadian border. Not only would new corridor need to be acquired through the towns of Jackman and Moose River, but corridor would need to be acquired along Route 201, a designated scenic highway, for the entire distance from Jackman to West Forks Plantation. In addition, the

¹¹⁰ Hearing Day 6 Transcript at 405:15-23, 409:10-23 (Freye).

¹¹¹ Hearing Day 6 Transcript at 407:18-408:8 (Freye).

¹¹² Bardwell Rebuttal at 10; Bardwell Supplemental at 12; Hearing Day 6 Transcript at 487:1-19 (Bardwell).

¹¹³ Hearing Day 6 Transcript at 487:14-19 (Bardwell).

¹¹⁴ Freye Rebuttal at 5; Freye Supplemental at 5-6; Hearing Day 6 Transcript at 338:10-15 (Freye).

JTL corridor between Harris Dam and Route 201 would need to be expanded through two conservation easements and across the State-owned Cold Stream Forest.¹¹⁵

Any change in the border crossing now would require the acquisition of a new corridor by both CMP and Hydro-Québec, as well as new natural and cultural resource and cadastral surveys, and there are no existing transmission line crossings on the Québec/Maine border that could allow co-location of a new transmission line border crossing.¹¹⁶

Group 6 next proposes that avoidance, minimization, and mitigation could be achieved with taller pole structures to allow for trees at least 30-feet high to grow within the ROW, “taking into consideration visual impacts.”¹¹⁷ Groups 1 and 4 echo this and further claim that evidence allowing such techniques is missing from CMP’s proposal.¹¹⁸ This is not the case.

CMP’s Applications contain an allowance for mature forest canopy.¹¹⁹ CMP’s vegetation management plans, filed with its Site Law Application as Exhibit 10-1 and 10-2, allow for avoidance and minimization to protect sensitive natural resources, and specify that only capable vegetation (woody vegetation capable of growing tall enough to violate the required clearance between the conductors and vegetation established by the North American Electric Reliability Corporation) will be removed:

When and if terrain conditions permit (e.g., certain ravines and narrow valleys) capable vegetation will be permitted to grow within and adjacent to protected natural resources or

¹¹⁵ Freye Rebuttal at 6-7; *see also* Hearing Day 6 Transcript at 364:13-367:8 (Freye).

¹¹⁶ Freye Supplemental at 2-3; Hearing Day 6 Transcript at 338:16-339:5, 366:17-367:8 (Freye).

¹¹⁷ Group 6 Post-Hearing Brief at 19-21.

¹¹⁸ Group 1 Post-Hearing Brief at 2; Group 4 Initial Brief at 59-60, 61, 64.

¹¹⁹ CMP’s Applications also allow for mechanical methods of vegetation management, which CMP will use exclusively within Segment 1. Site Law Application Exhibit 10-1 at 4-5, Exhibit 10-2 at 3; Mirabile Supplemental at 5; Hearing Day 6 Transcript at 246:8-17, 289:22-25, 290:16-292:3, 310:4-11, 313:21-314:1, 328:8-17 (Mirabile). Group 1’s call for an amendment to or modification of CMP’s proposal to allow for no herbicide use in Segment 1 is unnecessary. Group 1 Post-Hearing Brief at 4.

critical habitats where maximum growing height can be expected to remain well below the conductor safety zone. Narrow valleys are those that are spanned by a single section of transmission line, structure-to-structure.¹²⁰

CMP confirmed this language in response to questioning by Mr. Beyer at the hearing.¹²¹

Nevertheless, the evidence shows that taller structures that would allow full-height vegetation have minimal, if any, benefit. Not only do taller pole structures have greater visual impact,¹²² as Group 6 acknowledges,¹²³ but they have additional cost, safety, reliability, and environmental impacts.¹²⁴ Crucially, as Group 4's witness testified, the Segment 1 area "contains a fairly limited amount of mature forest."¹²⁵ It is for that reason that travel corridors achieved by taller pole structures may be bridges from areas of marginal or no habitat to other areas of marginal or no habitat, allowing for mature forest adjacent to a shifting mosaic of forest that is anything but mature.¹²⁶ In other words, where habitat patches are not directly and permanently proximal to the corridor, taller pole structures provide no benefit.¹²⁷

¹²⁰ Site Law Application Exhibit 10-1 at 2.

¹²¹ Hearing Day 6 Transcript at 312:20-313:18 (Mirabile).

¹²² DeWan Supplemental at 2-6; Goodwin Supplemental at 2; Exhibit CMP-6.2-A.

¹²³ Group 6 Post-Hearing Brief at 21.

¹²⁴ Goodwin Supplemental at 2; Hearing Day 6 Transcript at 232:11-14 (Johnston).

¹²⁵ Hearing Day 4 Transcript at 79:10-16 (Publicover). *See also* Giumarro Supplemental at 2-13; Hearing Day 6 Transcript at 237:21-240:11 (Giumarro); Hearing Day 6 Transcript at 128:17-129:17 (Simons-Legaard); Hearing Day 6 Transcript at 146:2-25 (Wood); Hearing Day 6 Transcript at 102:12-103:8 (Publicover).

¹²⁶ Giumarro Supplemental at 2-13; Hearing Day 6 Transcript at 241:17-242:1, 295:6-25 (Mirabile); Hearing Day 6 Transcript 102:12-103:8 (Publicover); Hearing Day 6 Transcript at 133:22-134:6 (Simons-Legaard).

¹²⁷ Giumarro Supplemental at 12-13; Goodwin Supplemental at 5; Hearing Day 6 Transcript at 237:21-240:11 (Giumarro); Hearing Day 6 Transcript at 128:17-129:17 (Simons-Legaard); Hearing Day 6 Transcript at 146:2-25 (Wood); Hearing Day 6 Transcript at 102:12-103:8 (Publicover).

So too are Group 4's complaints about the adequacy of CMP's Compensation Plan to mitigate for impacts to brook trout habitat and to offset significant habitat function losses contrary to the evidence.¹²⁸ CMP worked collaboratively and extensively with MDIFW to develop a robust compensation package, to the satisfaction of that agency.¹²⁹ This comprehensive consultation process allowed MDIFW to provide final comments on the Compensation Plan, in response to a March 11, 2019 email and attachments from CMP requesting "that MDIFW confirm that the attached clarification materials address all of MDIFW's remaining concerns, and that MDIFW is satisfied that the latest (January 30, 2019) NECEC Project Compensation Plan, as supplemented by these attached clarifications, provides satisfactory mitigation of the NECEC Project's impacts."¹³⁰ In its March 18, 2019 response, DIFW thanked CMP "for the March 11 email as a follow-up to address the Department remaining resource impact concerns for the NECEC project," and noted DIFW's appreciation for CMP's "willingness to work with us to finalize the complex fish and wildlife resource issues."¹³¹ DIFW said that CMP's response and explanations were "sufficient to allow DEP to apply applicable natural resource law to the permitting process."¹³²

Specifically, MDIFW voiced no concerns over the compensation parcels and monetary contribution amounts¹³³ of which Group 4 complains.¹³⁴ CMP further has committed to work

¹²⁸ Group 4 Initial Brief at 69.

¹²⁹ Johnston Rebuttal at 7-9; Hearing transcript Day 1 at 291:16-292:25 (Goodwin/Johnston); Johnston Rebuttal Exhibit CMP-4.1-A.

¹³⁰ Exhibit CMP-4.1-A.

¹³¹ *Id.*

¹³² *Id.*

¹³³ Johnston Rebuttal at 11-12, 14-15; Goodwin Direct at 23.

¹³⁴ Group 4 Initial Brief at 61-65.

with MDIFW and cooperating nongovernmental organizations to conduct a qualitative assessment to determine the most beneficial use of the proposed funding.¹³⁵ Yet Group 4 stubbornly maintains that the proposed funds are not sufficient, and that the MDIFW simply was wrong in agreeing to such amounts.¹³⁶ Distrust of the expertise of DEP and LUPC's sister agency, and blunt allegations that MDIFW "dropped the ball," is not convincing evidence of any faults or deficiencies in CMP's proposed compensation and mitigation.

The evidence shows that CMP carefully and thoughtfully designed and sited the Project in a manner that avoids and minimizes impacts to the greatest extent possible and, where impacts are unavoidable, CMP proposed mitigation measures and provided a robust and comprehensive Compensation Plan that significantly exceeds the requirements of NRPA.

VII. GREENHOUSE GAS IMPACTS (Purportedly Relevant to DEP Review)

In yet another attempt to put this irrelevant issue before the Department, Group 4 continues to misapply the Chapter 375 regulations in an effort to vest in the DEP a broad authority to review the greenhouse gas benefits the Project will provide.¹³⁷ In so doing, Group 4 relies exclusively on Chapter 375, Section 2(B), which provides that the DEP shall consider all relevant evidence "in determining whether the proposed development will cause an unreasonable alteration of climate," and which is very limited in scope.

Chapter 375, Section 2, addresses "alteration of climate" and considers "large-scale, heavy industrial facilities, such as power generating plants" and those facilities' potential "to affect the climate in the vicinity of their location by causing changes in climatic characteristics

¹³⁵ Johnston Rebuttal at 11, 14-15.

¹³⁶ Hearing Day 4 Transcript at 34:14-35:2, 44:24-46:4 (Reardon); Hearing Day 4 Transcript at 53:21-54:14 (Joseph), 58:4-14 (Publicover).

¹³⁷ Group 4 Initial Brief at 49-53.

such as rainfall, fog, and relative humidity patterns.” At the September 7, 2018 prehearing conference, Assistant Attorney General Bensinger noted that these provisions are limited to consideration of impacts from the specific development being proposed, and whether it would have climate impacts “in the vicinity of” the development’s location. In other words, the rule limits consideration of climate impacts to any such impacts that result from the development itself, in its location – not from distant benefits or impacts attributable to a product that will pass through the development (such as electricity or goods sold at a store).

Group 4 attempts to maneuver around this plain limitation by stating that the Project “will have a dramatic impact on numerous power generating plants throughout the region with the potential for dramatic shifts in where and how much greenhouse gas is emitted.”¹³⁸ This does not expand the DEP’s review of the Project’s impacts beyond its localized effects, nor does the argument that a Clean Energy Generation project will cause “unreasonable alteration of climate” pass the straight-face test.

Yet, and despite firm evidence in this and the Maine Public Utilities Commission proceeding,¹³⁹ Group 4 questions whether the Project will result in greenhouse gas emissions reductions. As CMP stated in its May 24, 2019 Response to Group 4’s May 9, 2019 Comments Regarding Greenhouse Gas Emissions Reductions, three different experts, including CMP’s expert Daymark Energy Advisors, the Generator Intervenors’¹⁴⁰ expert Energyzt Advisors, LLC (Energyzt), and the MPUC’s independent expert London Economics International (LEI),

¹³⁸ Group 4 Initial Brief at 49.

¹³⁹ MPUC Docket No. 2017-00232.

¹⁴⁰ The Generator Intervenors are Calpine Corporation, Vistra Energy Corporation, and Bucksport Energy LLC.

presented reports that modeled the Project’s regional GHG emissions impacts.¹⁴¹ Additionally, NRCM, along with the Maine Renewable Energy Association (MREA), and the Sierra Club, retained the Generator Intervenors’ expert, Energyzt, to produce an additional study of the NECEC’s GHG impacts.¹⁴² This study came to the same conclusions as the report conducted for the Generator Intervenors, but NRCM never directly submitted the study to the MPUC and has not offered the study to the DEP.¹⁴³

In any event, CMP has never taken the position that “this project is necessary because it will result in specific greenhouse gas emissions reductions,” as Group 4 alleges.¹⁴⁴ To the contrary, the Project is intended to “fulfill the purpose and need of delivering renewable energy from Canada to New England, which has a continuing need for such power.”¹⁴⁵ As CMP stated in its Site Law Application, “[t]he NECEC is designed to provide a cost-effective and environmentally friendly transmission path to deliver the Clean Energy Generation sought by the Massachusetts RFP from Quebec-based sources and will be capable of delivering the entire annual quantity of clean energy sought.”¹⁴⁶ Greenhouse gas emissions reductions are a benefit

¹⁴¹ Response of Central Maine Power Company to the Group 4 May 9, 2019 Comments Regarding Greenhouse Gas Emissions at 4-5 (May 24, 2019) (citing MPUC Order at 70).

¹⁴² *Id.* at 5 (citing MPUC Docket No. 2017-00232 January 8, 2019 Hearing Transcript at 6:11-7:2 (Hearing Testimony of Generator Intervenor Witnesses Tanya Bodell and James Speyer acknowledging that they also worked on and produced the October 2018 GHG Report for NRCM, MREA and the Sierra Club). See the October 2018 Energyzt Report, “Greenwashing and Carbon Emissions: Understanding the True Impacts of New England Clean Energy Connect,” produced for NRCM, MREA and the Sierra Club, available in the MPUC case management system (CMS) under Docket No. 2017-00232 at CMS entry 429).

¹⁴³ *Id.* (citing MPUC Docket No. 2017-00232, CMS entry 429, by which Carol Howard, a non-party to the MPUC proceeding who provided public witness testimony, submitted the Energyzt Report as Exhibit F to her testimony).

¹⁴⁴ Group 4 Initial Brief at 50.

¹⁴⁵ NRPA Application at 2-1 – 2-2.

¹⁴⁶ Site Law Application at 1.4.

of the Project, but are not the Project need.¹⁴⁷ And those benefits are actual, as stated in the May 24 Comments of CMP and of Group 3, which are incorporated herein by reference.

VIII. CONCLUSION (Relevant to DEP and LUPC Review)

The voluminous evidence in this matter demonstrates that CMP has made adequate provision for fitting the Project harmoniously into the existing natural environment and that the Project will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities. The evidence further shows that the Project will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.

Nor is there any practicable alternative to the Project that would have less visual impact and would be less damaging to the environment, and no alternative to the proposed location and character of the Project that would lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost. Where the Project is proposed to cross outstanding river segments, the evidence shows that no reasonable alternative exists which would have less adverse effect upon the natural and recreational features of the river segment. The evidence further demonstrates that there is no alternative site which is both suitable to the proposed use and reasonably available to CMP, and that the use can be buffered from those other uses and resources within the P-RR subdistricts with which it is or may be incompatible.

For all these reasons, the LUPC should certify to the DEP that the NECEC Project is an allowed use in the P-RR subdistrict, and the DEP should grant CMP's applications for Site Law and NRPA permits and Water Quality Certification for the NECEC Project. The agencies should

¹⁴⁷ *Id.*

further adopt CMP's proposed findings of fact, attached to its June 14, 2019 Post-Hearing Brief as Attachment A and Attachment B.

Dated this 28th day of June, 2019.



Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100
*Attorneys for Applicant Central Maine
Power Company*

THIS PAGE INTENTIONALLY LEFT BLANK

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF:)	
)	
CENTRAL MAINE POWER COMPANY	)	APPLICATION FOR SITE LOCATION OF
25 Municipalities, 13 Townships/Plantations,	)	DEVELOPMENT ACT PERMIT AND
7 Counties	)	NATURAL RESOURCES PROTECTION
	)	ACT PERMIT FOR THE NEW ENGLAND
L-27625-26-A-N	)	CLEAN ENERGY CONNECT
L-27625-TB-B-N)	
L-27625-2C-C-N)	
L-27625-VP-D-N)	
L-27625-IW-E-N)	
)	
CENTRAL MAINE POWER COMPANY)	
NEW ENGLAND CLEAN ENERGY CONNECT)	
SITE LAW CERTIFICATION SLC-9)	

GROUPS 2 AND 10'S POST-HEARING REPLY BRIEF

Intervenor Group 2 and Intervenor Group 10 (collectively, "Groups 2 and 10") by and through their attorneys, BCM Environmental & Land Law, PLLC, submit this Post-Hearing Reply Brief, in support of their position to deny Central Maine Power Company's ("CMP" or "Applicant") application for the so-called New England Clean Energy Connect ("NECEC" or "Project"), 145-mile, 150 foot wide¹ transmission corridor.

I. Group 3 Asserts the Wrong Legal Standard for the Alternatives Analysis.

¹ The actual width of the right of way under the control of CMP is 300 feet wide.

Group 3 clearly enjoyed finding phrases to illustrate its concept² – however misguided – for its proposition that project opponents desire a “perfect” project. Contrary to Group 3’s literary descriptions, Groups 2 and 10 and other NECEC opponents do not ask the Applicant to attain perfection with its project. We simply ask that CMP meet its burden of proof to satisfy the established legal standards set forth in 38 M.R.S.A. § 480-D. Nothing in the record suggests that CMP even attempted to meet its burden, regardless of how Group 3 project supporters may wish it to be so by focusing on “practicable alternatives” in the abstract. Moreover, Group 3’s constricted view of the alternatives analysis loses sight of the forest for its focus on the trees, i.e., the overarching purpose of Maine’s Natural Resources Protection Act (“NRPA”). As the Legislature declared in its purpose statement: “[T]he cumulative effect of frequent minor alterations and occasional major alterations of these resources poses a substantial threat to the environment and economy of the State and its quality of life.” 38 M.R.S.A. § 480-A.

The threat posed by NECEC to Maine’s western mountains environment and economy is real, not something contemplated in the abstract nor something to be treated with such a marginalized perspective. By claiming that the opponents would only be satisfied with a “perfect” project makes light of the real and substantial impacts this industrial corridor will wreak upon the people and businesses in the northern segment. But perhaps that is not surprising since Group 3 is comprised of interests strictly focused on the economy of the Lewiston/Auburn area of the state, an area that has suffered economically for years. However, even assuming NECEC would deliver an economic benefit to that area (we do not concede that it would) that does not justify destroying the environment and economy of another area of the state. This is a prime example of the divisive nature of this project: pitting neighbor against neighbor, one area of the state against another. This

² Voltaire famously said, “the best is the enemy of the good.” Similar sage advice is attributed to Confucius (“[b]etter a diamond with a flaw than a pebble without”) and Shakespeare (“[s]triving to better, oft we mar what’s well”), Group 3’s Post Hearing Brief, p. 1.

does nothing to further the legislative intent and goals of NRPA and flies in the face of the defined purpose of protecting the citizens of the state of Maine from “significant adverse economic and environmental impacts...” that threaten, “the health, safety and general welfare” of the people. 38 M.R.S.A. § 480-A.

In addition to Group 3’s mischaracterization of the project opponents’ criticism of CMP’s inadequate alternatives analysis, Group 3 misapplies federal law and erroneously interprets Maine law. Group 3 cites to several federal cases involving the US Army Corps of Engineers and the application of the Clean Water Act. Group 3 stretches to analogize the alternatives analysis embodied within 40 C.F.R. 230.10 Restrictions on Discharge which directs the Army Corps as the permitting agency to conduct an evaluation of practicable alternatives for dredging or filling. While the terminology may be similar to that which is found in Maine’s NRPA and the promulgated Department Rule Chapters, it is axiomatic and therefore wrong as a matter of law to apply a federal standard when 1) there is no pre-emption of federal law and 2) there is a clearly defined applicable state law.³ Here, there is no need to analogize. The state law standards for the practicable alternatives analysis is set forth and, not only defined under state statute, but also interpreted by Maine’s Law Court. For example, in *Uliano et al. v. Brd. of Envntl. Prot.*, 2005 ME 88, 876 A.2d 16, the Law Court did not find fault with the Board of Environmental Protection’s analysis of determining whether a practicable alternative exists, citing to 2 C.M.R. 06-096 310-7 § 9(A) which includes: “(1) utilizing, managing or expanding one or more other sites that would avoid the wetland impact; (2) reducing the size, scope, configuration or density of the project as proposed, thereby avoiding or reducing the wetland impact; (3) developing alternative project designs, such as cluster development,

³ See *Roadway Package Systems v. Kayser*, 257 F.3d 287, 293 (3rd Cir. 2000) (“When required to determine the legal standards governing a particular controversy, courts typically confront two choice-of-law questions. The first is the horizontal question: whether the laws of State X or State Y supply the relevant rule of decision. Choice-of-law doctrines and, consequently, choice-of-law clauses speak to this issue. The second choice-of-law question that courts face is the vertical one: whether the rule of decision is supplied by the laws of State X or by federal law.”)

that avoid or lessen the wetland impact; and (4) demonstrating the need, whether public or private, for the proposed alteration.” *Uliano et al. v. Bd. of Env'tl. Prot.*, 2005 ME 88, 89, 876 A.2d 16, 19.

The Law Court found that the Board had adequately conducted the alternatives assessment because practicable alternatives were presented as part of the record. However, the Law Court remanded because the Board failed to conduct a balancing analysis weighing the practicable alternative as a factor in determining whether the project in that case would “unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.”

Group 3's proposition that federal law is necessary for the Department to understand how to conduct an assessment of the practicable alternatives, or that reliance on federal law somehow lends credence to the Applicant's failure to conduct *any* adequate alternatives assessment in its application, is simply wrong as a matter of law.

Finally, Group 3's Post-Hearing Brief misrepresents the role of the practicable alternatives as a balancing factor. The Law Court in the 2005 *Uliano* appeal set forth the legal principle that the alternatives analysis is a factor in assessing the unreasonable interference of a project with existing scenic, aesthetic, recreational or navigational uses. However, in order for a practicable alternative to be considered as a factor, one would assume that a practicable alternative exists in the record. Group 3 would have the Department simply accept whatever the Applicant says it considered and rejected because the project had to meet the price point it set when it submitted the project for consideration under the Mass RFP. Alternatives that would have added to the cost, such as burial in an already disturbed area, according to CMP's own witnesses, would have defeated the purpose of the project, i.e., to win the Mass RFP. Since real world practicable alternatives were simply rejected out of hand, there is no alternative factor to weigh. Accordingly, Group 3's alternatives analysis section in its Post-Hearing Brief fails to state the applicable legal standard and fails to correctly characterize the practicable alternatives factor.

II. Group 3's "Context" Section of Their Brief is Irrelevant to the Standards the Department Must Assess.

Group 3 continues to misunderstand and mischaracterize the legal process in which this industrial project is being evaluated. As Group 3 did in their pre-file testimony, (all of which was stricken) they yet again paint this large-scale industrial project as mana from heaven with overblown and unsubstantiated claims of benefits for the environment and the general economy of Maine. Not only unsubstantiated but also irrelevant. Given that the statements made therein are not relevant to the standards set forth in 38 M.R.S.A. § 480-D or the relevant rules, the Department should strike that section of Group 3's Post-Hearing Brief as they did with Group 3's pre-file testimony.

CONCLUSION

The Applicant failed to meet its burden. Group 3's supporting Post-Hearing Brief is rife with irrelevant, unsubstantiated claims and erroneous legal conclusions. Group 3's attempts to gloss over the Applicant's inadequate and problematic application should be disregarded or simply viewed for what it is: a voice pleading for recognition but failing to understand the process. The Department's job is clear: to measure adverse effects and undue interference based on the record at the close of the hearing. In doing so, Groups 2 and 10 believe the Department will arrive at the correct conclusion: for the benefit of all Mainers, this project should be denied.

Respectfully Submitted,
Intervenor Group 2 and Intervenor Group 10
By their attorneys,



Dated: June 28, 2019

Elizabeth A. Boepple, Esq. (Me. Bar No. 004422)
BCM ENVIRONMENTAL & LAND LAW, PLLC
148 Middle Street, Suite 1D Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and
STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB-B-N
L-27625-2C-C-N
L-27625-VP-D-N
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

GROUP 4 (AMC, NRCM, TU) REPLY
BRIEF

Group 4, consisting of Appalachian Mountain Club (AMC), Natural Resources Council of Maine (NRCM), and the Maine Council of Trout Unlimited (TU), collectively referred to as Group 4, respectfully submits this reply brief in response to briefs filed by Central Maine Power Company (CMP or Applicant), Group 3, and Group 7.

I. CMP’s conclusion regarding the potential adverse impacts of the project on scenic resources, scenic uses and scenic character is completely unreliable and should be rejected.

In its brief, CMP notes that its consultants, Terrence J. Dewan and Associates, concluded that the proposed project would “not unreasonably interfere with existing scenic and aesthetic uses of a scenic resource and will not have an unreasonable adverse effect on the scenic character of the surrounding area.”¹ These conclusions are entirely unreliable and should be ignored.

¹ CMP Brief, p. 8.

During his testimony, Mr. Dewan acknowledged that his firm has worked for CMP on at least 15 projects over the past 25-30 years.² Under cross examination, Mr. DeWan admitted that not once in reviewing those at least 15 projects has he ever concluded that a proposed project would have an unreasonable adverse impact on scenic resources or scenic character.³ Given a track record of never finding an unreasonable adverse impact, his conclusions in this case are entirely predictable and completely unreliable.

By contrast, the multiple concerns raised by Dr. Palmer in his review of the DeWan Visual Impact Assessment⁴ provide clear support for the conclusion that CMP has failed its burden of showing that the proposed project will not have an unreasonable adverse impact on scenic uses, scenic resources, and scenic character.

II. CMP's proposed Findings of Fact regarding scenic character misrepresent Dr. Palmer's conclusions.

CMP asserts that it “worked with Dr. Palmer and the Department *to their satisfaction* with regard to the reasonableness of its visual impact.”⁵ In fact, there is no evidence in the record that Dr. Palmer was ever satisfied with regard to the reasonableness of the visual impact assessment. The record includes two reports from Dr. Palmer, one dated Aug. 20, 2018⁶ and one dated Nov. 23, 2018⁷. These reports raised multiple concerns about the Visual Impact Assessment. The concerns in the later of the two reports include:

- The visual impact of the proposed transmission line on locations other than the Kennebec Gorge;
- The very limited relevance of the Baskahegan survey;

² CMP witness DeWan cross-examination, Tr. 4/2/19, p. 16 lines 8-10.

³ *Id.* p. 18 lines 8-14.

⁴ James Palmer, Review of the New England Clean Energy Connect October 2018 Supplemental Application Materials (hereinafter Palmer Nov. 23 Supplemental VIA Review), Nov. 23, 2018.

⁵ CMP Post-hearing Brief, Attachment A, Proposed Findings of Fact, p. 65 (Emphasis added).

⁶ James Palmer, Review of the New England Clean Energy Connect Visual Quality and Scenic Character (hereinafter Palmer Aug. 20 VIA Review), Aug. 20, 2018.

⁷ Palmer Nov. 23 Supplemental VIA Review.

- The failure of CMP to use the most accurate available land cover height information for conducting the visibility assessment;
- The inaccuracy of the land cover viewshed map which “did not correctly identify visibility of NECEC structures at many viewpoints;”⁸
- Inconsistencies up to 50% between the viewshed map and the photo simulations;
- The failure to provide “a full accounting of potential scenic resources and a documented evaluation of all those with potential visibility;”⁹
- The questionable accuracy of the photo simulations;
- The use of only two raters to evaluate visual impacts when the research suggests more than five should be used;
- The failure to evaluate all of the more than 50 scenic resources with potential visibility of the project; and
- The failure to even discuss compensatory mitigation for these visual impacts of the project.

The record does not include any further conclusions from Dr. Palmer addressing these many concerns. Given the many problems with the Visual Impact Assessment identified by Dr. Palmer, it is impossible to conclude that the Assessment satisfies CMP’s burden of showing that the project would have no unreasonable adverse impact on the scenic resources, scenic uses or scenic character of the region. Because of CMP’s failure to show that the project would have no unreasonable adverse impact of the scenic resources, scenic uses or scenic character of the region, the permits should be denied.

III. DEP’s Site Law Chapter 375.14 is not unconstitutionally vague.

In its brief, CMP seems to threaten to challenge an adverse decision related to unreasonable effects on scenic character under the Site Law by “reserve[ing] the right to argue that the DEP’s Site Law Chapter 375.14 provision requiring that DEP must consider the ‘scenic character of the surrounding area’ is unconstitutionally vague and that the review of impacts to scenic and aesthetic uses must be limited to scenic resources as that term is defined in the NRPA

⁸ *Id.* at sec. 3.4.

⁹ *Id.* at sec. 4.

rules.”¹⁰ This threat lacks teeth. The Supreme Judicial Court of Maine has already addressed a challenge to the protections for existing scenic and aesthetic uses under NRPA in *Uliano v. Board of Environmental Protection*, 977 A.2d 400 (2009). In that case the Law Court upheld Section 480-D(1)’s scenic and aesthetic uses standard, finding that

the concept of scenic and aesthetic uses within a particular natural resource is, when viewed through the lens of modern sensibilities, sufficiently definite so that such uses can, in any given case, be reliably identified based on competent proof. The same is true as to the determination of whether, under all relevant circumstances, a proposed activity will unreasonably interfere with the uses.¹¹

The NRPA standard in question required an applicant to demonstrate that “[t]he activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses.”¹² The Site Law standard that CMP questions requires the Department to find that “the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.”¹³ The two standards are very similar, identifying “existing scenic, aesthetic . . . uses” (NRPA) and “existing uses, scenic character” (Site Law) as deserving special consideration.

Of the NRPA standard, the Law Court wrote that

Section 480–D(1)’s scenic and aesthetic uses standard is distinguishable from the municipal ordinances whose terms we have found unconstitutionally vague due to their failure to provide cognizable, quantitative standards. First and foremost, unlike the terms in section 480–D(1), which are susceptible to a logical construction as discussed above, the standards at issue in the *Kosalka* line of cases were wholly subjective and permitted municipal employees or board members to make “legislative-type decisions based on any factor they independently deem[ed] appropriate.” Identifying an existing scenic or aesthetic use for purposes of section 480–D(1) and determining whether a proposed activity will unreasonably interfere with those uses is a far more concrete exercise than the amorphous

¹⁰ CMP Brief, p. 3 fn. 9.

¹¹ *Uliano v. Brd of Envntl. Protection*, 977 A.2d 400, 412 (2009).

¹² 38 M.R.S. § 480-D(1).

¹³ 38 M.R.S. § 484(3).

command we considered in *Kosalka* requiring an applicant to prove that a project will “conserve natural beauty.”¹⁴

The analysis would not vary for the Site Law. Just as with the scenic and aesthetic uses standard in the NRPA, the existing uses and scenic character standard in the Site Law is susceptible to a logical construction.

Furthermore, as was the case with the NRPA scenic and aesthetic uses standard, the Department’s implementation of this provision of the Site Law is subject to the Maine Administrative Procedure Act, and the rules implementing 38 M.R.S. § 484 (1) “are subject to public notice, modification, and judicial review.”¹⁵ CMP’s concern over the Site Law provision requiring the Department to consider the “scenic character of the surrounding area” is unfounded.

IV. CMP failed to demonstrate that there is no reasonable alternative to an aboveground crossing of the Appalachian Trail (AT) or that the transmission line can be buffered from AT users.

In its initial brief, CMP attempts to paint its proposed overhead transmission line crossing at the AT as a foregone conclusion, claiming that “[t]he visual impact statements made by the intervenors that oppose the Project . . . are entirely subjective.”¹⁶ It is curious that CMP would feel emboldened to characterize certain opponents’ testimony as “entirely subjective” when its own visual witness admitted that he had not ever, in the course of at least 15 projects for CMP, concluded that a proposed project would have an unreasonable adverse impact on scenic resources or scenic character.¹⁷ This same witness concluded that the impact of an overhead

¹⁴ *Uliano v. Brd of Env'tl. Protection*, 977 A.2d 400, 411 (2009) (citations omitted).

¹⁵ *Id.*

¹⁶ CMP Post-hearing Brief, p. 42.

¹⁷ CMP witness DeWan cross-examination, Tr. 4/2/19, p. 16 lines 8-10.

crossing of the Kennebec River on recreational users would be “minimal to moderate.”¹⁸ Before criticizing oppositional witnesses, CMP would be wise to consider the age old advice that people in glass houses should not throw stones. CMP cites only a single statement made by a single opposition witness to support its claim that testimony indicating unreasonable visual impacts is “entirely subjective.” Extending this statement to all opposition witnesses is inappropriate and ignores testimony from Group 4 witness Dr. Publicover that the proposed changes would increase the exposure of hikers to the open corridor and intensify the experience of being in a developed rather than backcountry environment.¹⁹ Regardless of whether they’re characterized as subjective or objective, given CMP’s flippant disregard for local opposition to this project from users of this resources, it seems likely that the applicant’s characterization of the impact to the AT will once again be proven to be spectacularly wrong, and that the supposedly subjective conclusions of project opponents (who have much greater knowledge of the region) will prevail.

CMP also argues that certain factors either require an overhead crossing of the AT or entitle CMP to cross the AT overhead, regardless of the size or configuration of its proposed transmission line. Several of these points are refuted below.

- CMP’s easement with the National Park Service does not entitle CMP to an overhead crossing. CMP references its easement with the National Park Service as evidence that the proposed project is not incompatible with the Appalachian Trail.²⁰ While the easement may be sufficient to demonstrate title, right or interest, it does not conclusively establish that the proposed use meets LUPC standards for a special exception. All transmission or distribution

¹⁸ Application Chapter 6, Section 6.2.1.5, p. 34. In their 7/10/18 response to questions from DEP, CMP indicated that the project would have a “Moderate” level of visual impact on the river, and that the project “will not adversely affect scenic character in the surrounding area.” This conclusion has since been shown to be in error as the applicant now proposes to spend tens of millions of dollars to bury the line under this scenic river due to intense public opposition.

¹⁹ Publicover Direct Testimony, p.27.

²⁰ CMP Post-hearing Brief, p. 43-45;

lines are not equal. Certainly an existing crossing does not mean that any future crossing, regardless of how large the clearing or how tall the poles, must be allowed. Furthermore, CMP's utilization of visual buffer techniques (in the form of vegetative planting) is an admission by the applicant that it believes that the use is incompatible as buffering is only necessary for incompatible uses.

- Existence of a transmission line crossing, and notation of those crossings in guide books does not indicate that a new and bigger transmission line crossing would be a compatible use.

CMP states that “[t]he Appalachian Trail has crossed the existing transmission line since its construction in the 1950s, and the transmission line is a landmark noted in Trail Guides.”²¹

The use of the word “landmark” in this context is disingenuous. AT trail guides note many “landmarks” that are incompatible with the trail experience, most notably highways. These merely serve to help orient users as to their location on the trail. The fact that these features are noted in trail guides says nothing about their compatibility with or impact on the trail experience. Similarly, CMP states that “...co-location of new transmission line within a CMP-owned corridor crossed by the AT is consistent with the existing use and with hikers’ expectations of crossing a transmission line corridor in the associated P-RR subdistrict.”²²

Hikers expect to see a single transmission line with 45 foot tall wooden towers. Hikers’ reaction to seeing a second line with 100 foot tall metal towers are unknown, since no crossings of the AT by a transmission line of this size currently exist in Maine²³ and no user surveys were undertaken.²⁴ In fact, Ms. Segal admitted that the trail guides (which CMP

²¹ CMP Post-hearing Brief, p. 44.

²² *Id.* at 52.

²³ Tr. 4/2/19, p. 159:8-18.

²⁴ *Id.* at p. 163:9-14.

uses as the basis for judging user expectations) do not describe the proposed condition²⁵, thus any claims about user expectations are without any basis in the record. By CMP's logic, if users expect to encounter a country road, their reaction would be unchanged if they encountered a highway.

Finally, CMP's proposed Findings of Fact related to the AT crossing²⁶ should be rejected. First, the proposed Finding is self-contradictory in that it claims that the project is "not incompatible" with use of the AT but recognizes that additional buffering is needed because it is incompatible. Second, CMP claims that there would be a "negligible change" in visual impact to the AT. This is contradicted by CMP's own admission that the Troutdale Road crossing has a "moderate to strong" visual impact²⁷ – a more severe rating than they gave to the overhead crossing of the Kennebec River Gorge. There is simply no basis for claiming that the addition of a second much larger transmission line would have negligible visual impact. Third, by the testimony of CMP's own witnesses, the proposed vegetative planting would only partially screen the project from users of the trail²⁸ and hikers will still see the proposed structures.²⁹ In addition, buffer plantings are proposed for only one of the three crossings in this area. Therefore, the project has not been adequately buffered.

V. CMP's discussion of alternatives misrepresents and distorts the testimony of intervenor witnesses to justify erroneous conclusions.

Throughout its alternatives discussion CMP misrepresents, oversimplifies, or takes out of context Group 4 witness testimony to create an impression of concurrence with CMP's erroneous

²⁵ Tr. 4/2/19, p. 163:15-164:15.

²⁶ CMP Post-hearing Brief, p. 85.

²⁷ Application Chapter 6, Appendix F (revised 1/30/19).

²⁸ CMP witness Segal Direct, p. 29.

²⁹ Tr. 4/2/19, p. 166:17-167:1.

conclusions where none exists. Group 4 has identified the following instances where Group 4's testimony does not support CMP's assertions.

A. Misrepresentations in CMP's underground analysis Section (C)(3)(b).

In its discussion of undergrounding alternatives in Section (C)(3)(b), CMP cites Dr. Publicover's supplemental testimony and Dr. Publicover and Mr. Reardon's Day 6 testimony in support of the statement that "numerous intervenor witnesses testified that undergrounding is not a preferred alternative due to their concerns with the environmental and visual impacts of undergrounding."³⁰ CMP's brief leaves the impression that Dr. Publicover and Mr. Reardon object to undergrounding generally, which is not the case. In all cases cited by CMP Group 4 testimony is clear that the concern was with undergrounding *within the proposed* [Segment 1] *corridor* and not with undergrounding along a more appropriate route, such as a disturbed corridor.

For instance, in page 3 of Mr. Publicover's Supplemental Testimony (cited in CMP's Brief to support the statement that "undergrounding is not a preferred alternative"), Mr. Publicover was again very clear that his opposition to undergrounding was limited to CMP's failure to consider a route well-suited to an undergrounding approach such as a route along a disturbed corridor. Dr. Publicover's words cited by CMP speak for themselves and are reproduced below:

A direct burial trenching within the proposed corridor either in short sections or for long distances is an inadequate solution of the issue of fragmentation as it would still require the clearing of a new, albeit, narrower corridor through this undeveloped forest region. It is not the above-ground line that is of concern but rather the permanent deforested corridor. Horizontal direct drilling may allow short portions of the line to remain forested but would still result in significant disturbance in the areas near the injection points and there would still be extensive sections of above-ground line with its associated corridor.

³⁰ CMP Brief, p. 24.

In addition, the new impacts created by the use of either of these burial techniques would have to be thoroughly described and analyzed in an amended application. It is highly unlikely that a properly designed underground route would be proposed in a remote undeveloped location due to the numerous environmental and logistical challenges identified by both CMP witnesses and Group 3 witness Gil Paquette.

Finally, Mr. Reardon also did not testify that he was opposed to undergrounding in general. Instead, Mr. Reardon specifically raised concerns about the potential impacts of undergrounding along Section 1 of CMP's proposed route and suggested that undergrounding should have been considered along disturbed corridors such as the Spencer Road.

Regarding undergrounding I would have substantial concerns about the impacts of trenching on stream habitat on the proposed route. Directionally drilled stream crossings might have little or no impact on streams, but, as Dr. Publicover said, we don't have that proposal in front of us to evaluate in a site specific way. Undergrounding along the existing corridor, for example, the Spencer Road or as I discussed earlier, Route 201 could substantially reduce the impacts in Segment 1. I do not believe undergrounding on the existing Segment 1 would be a desirable alternative.

CMP's after-the-fact "analysis" of burial along Segment 1 of its proposed route is legally inadequate and inappropriate from an environmental and engineering perspective. CMP did not conduct a good faith analysis of burial along an existing disturbed corridor, which would have relieved a significant number of environmental and scenic concerns raised by the public and intervening parties throughout this proceeding. CMP's attempt to mischaracterize Group 4's testimony on this topic adds insult to the environmental and scenic injury that this project is guaranteed to cause.

B. Misrepresentations in CMP's taller structures and tapering analysis in Section (C)(3)(c).

In Section (C)(3)(c), "Taller Structures and Tapering Analysis", CMP again misrepresents Group 4 testimony by conflating testimony specifically addressing tapering as addressing both tapering and taller structures; stringing together snippets of testimony from

different days and differing lines of questions in a manner that leads to a conclusion that is not supported in the cited testimony; and simply distorting the cited testimony.

Most troubling is CMP's failure to accurately characterize testimony regarding tapering and taller structures. On pages 29-30 of CMP's brief, CMP writes that "the tapering methods proposed in CMP's Compensation Plan, combined with the tapering proposed at select perennial stream and riparian areas, could appropriately and adequately [sic] the address habitat fragmentation concerns the intervenors have raised." In support of this specious statement, CMP cites, in part, Dr. Publicover's April 4th testimony at page 117, line 16, through page 118, line 7.³¹ The cited testimony states:

MR. BEYER: If the 53 miles of new line, if that was tapered such as what they're doing along the stretch near Coburn Mountain, would that lessen the impact of habitat fragmentation in your opinion?

DAVID PUBLICOVER: It would lessen it to some degree. *It would certainly be an improvement, you know, it would take a bad situation and make it somewhat less bad.* It would reduce the edge effects because you would have less penetration of light and wind and things into the adjacent forest. It might increase -- it would probably increase the ability of some species to get across the corridor. I would say I'm not sure it would have that much benefit for pine marten if vegetation was only 35 feet at the edges and they generally require forest 30 feet or above. So would it be an improvement? Yes. *Would it solve all of the issues? No.* (Emphasis added)

The cited testimony from Dr. Publicover in no way indicates that tapering "could appropriately and adequately" address habitat fragmentation concerns. In fact, in addition to this testimony clearly stating that tapering would not solve habitat fragmentation concerns, Dr. Publicover repeatedly, in both pre-filed testimony and under cross-examination, testified that tapering would not adequately address his concerns regarding habitat fragmentation.³² If CMP

³¹ CMP Brief at 29-30, fn. 146.

³² Publicover Supplemental Testimony at p. 3 ("As for tapering or taller vegetation, they are merely band aids on a very serious wound, and would have limited value for reasons described below. The value of tapered vegetation. Tapering was proposed as a way to mitigate the scenic impact of the corridor in certain locations, not as mitigation for fragmentation impacts, and it would have limited benefit for the latter purpose."); Tr. 5/9/19 at 62:12-18 ("Tapering was proposed as a way to mitigate the scenic impacts of the corridor in certain locations not as mitigation

believes this to be a ringing endorsement for its compensation plan we now have some frightening insight into the dramatic mismatch between the likely adverse impacts from this project and CMP's exuberant rhetoric surrounding this project.

Furthermore, CMP knows better than to insinuate that Dr. Publicover believes that CMP's Compensation Plan addressed habitat fragmentation. CMP's attorney, Mr. Manahan, specifically asked Dr. Publicover on cross-examination if tapering or taller structures addressed his fragmentation concerns and Dr. Publicover unequivocally said that they did not.³³ And yet CMP in its brief insinuates that Dr. Publicover concurred with CMP's contention that tapering at a limited number of locations would address his concerns.

Below we address some of the additional mistakes in this section of CMP's brief that require correction or clarification. One sentence in CMP's brief in particular requires significant correction:

Furthermore, taller poles and tapering would provide minimal, if any, habitat connectivity benefits in the shifting mosaic of forest surrounding Segment 1, [fn.139] which 'contains a fairly limited amount of mature forest'[fn. 140] and would have 'limited effectiveness' with regard to pine marten habitat[fn. 141] and brook trout habitat.[fn.142]³⁴

for fragmentation impacts and it would have limited benefits for the latter purpose. Tapered vegetation would have little benefit for maintaining connectivity across the corridor."); Tr. 4/4/19 at 118:6-7.

³³ Tr. 5/9/19 at 79:6 - 80:1.

MR. MANAHAN: On Page 2 of your supplemental testimony you stated, as a general opinion, I do not believe that any of the proposed techniques would adequately correct the fatal flaws in the application. Is that still your belief?

DAVID PUBLICOVER: I think they all have concerns. I haven't seen anything -- any proposal that would indicate that use of those techniques would satisfy my concerns.

MR. MANAHAN: Okay. And on Page 6 you say -- I'll give you time to get there. To summarize, in my opinion none of the proposed techniques, and we're talking undergrounding, tapering and taller vegetation, would adequately address the fragmenting impacts of the project. They are inadequate fixes proposed to salvage a project that was improperly located in the first place and are a poor substitute for burying the project along existing and already disturbed corridors. Is that still your belief?

DAVID PUBLICOVER: Yes.

³⁴ CMP Brief, p. 29. Footnotes are noted in [brackets] within the quote for ease of discussion.

First, in footnote 139, CMP cites Dr. Publicover’s May 9 testimony in support of the statement that “taller poles and tapering would provide minimal, if any, habitat connectivity benefits in the shifting mosaic of forest surrounding Segment 1”³⁵ While Group 4 agrees that CMP’s proposed limited use of taller poles and tapering would provide minimal habitat connectivity benefits, the cited testimony from Dr. Publicover does not even address habitat impacts from taller poles or tapering. The cited testimony merely describes how marten will utilize all parts of the landscape at different times based on the shifting mosaic of timber harvesting.

Second, CMP cites a direct quote “contains a fairly limited amount of mature forest” from Dr. Publicover’s Day 4 testimony to imply that taller poles and tapering would provide minimal benefits to habitat connectivity in part because Segment 1 does not contain much mature forest.³⁶ CMP has taken this quote out of context, and taken testimony intended for one purpose and misleadingly applied it to a separate issue. Dr. Publicover’s discussion of mature forest in his rebuttal testimony,³⁷ which was the topic of the cross-examination cited in footnote 140, was focused on the balance between early-successional and mature forest habitat in the project region. It was intended to rebut CMP’s contention that the early-successional habitat created by the new corridor would provide habitat benefits. It was unrelated to the issue of marten and habitat connectivity. Marten habitat is not limited to mature forest as the term is used by Dr. Publicover, as is made clear later in the same cross-examination cited by CMP.³⁸

³⁵ CMP Brief at p. 29, fn. 139, citing in part Hearing Day 6 Transcript 102:12-103:8 (Publicover).

³⁶ *Id.* at p. 29, fn. 140, citing Hearing Day 4 Transcript at 79:10-16 (Publicover).

³⁷ Group 4 Publicover Rebuttal, p. 6-7.

³⁸ Tr. 4/4/19, p. 80: 3-14 (Publicover). CMP perpetuates this error in the next sentence as well. Citing Dr. Publicover’s cross-examination on May 9th, CMP writes that “As the evidence demonstrates, ‘intermediate-age’ and ‘mature’ forest habitat is, at best, marginally and intermittently present along the 150-footwide Segment 1 corridor, rendering travel corridors potential bridges to nowhere, as taller structure heights and travel corridors would not provide links between habitat patches that are not directly proximal to the corridor.” However, Dr. Publicover’s testimony does not support this statement and in fact contradicts it – marten use the entire landscape, with use of

Third, CMP cites Dr. Publicover's supplemental testimony and Days 4 and 6 cross-examination to support the phrase "...and would have 'limited effectiveness' with regard to pine marten habitat..."³⁹ Contrary to CMP's portrayal, Dr. Publicover's use of the phrase "limited effectiveness" occurred only on Day 4 and was made in response to a question specifically about tapering. In fact, all of CMP's citations in this section relate to Dr. Publicover's testimony on tapering, but CMP misrepresents this as applying to taller vegetation as well. Directly following the Day 6 material cited by CMP, Dr. Publicover gave a detailed and nuanced opinion on the utility of taller structures, stating that

Maintaining taller vegetation would have greater value than tapering, but [sic] would be difficult to assess its effectiveness in the absence of a specific proposal as to where and how extensively this technique would be applied. Creating travel corridors with taller vegetation in a few widely scattered locations would only be a marginal improvement. Maintaining full height mature forest vegetation would be the most effective as it would allow for the presence of larger trees and the retention and the recruitment of woody debris. Shorter vegetation in the range of 30 to 40 feet would meet the minimum height and density requirements for marten but would require the removal of larger trees and limit the recruitment of woody debris which would reduce its value of [sic] mature forest species."⁴⁰

CMP's citations to Dr. Publicover on this topic misrepresent his more nuanced testimony on the potential value of taller vegetation.

Finally, CMP cites Mr. Reardon's Supplemental Testimony and cross-examination on days 4 and 6 to support its contention that taller poles and tapering would have equally limited effectiveness in protecting brook trout habitat.⁴¹ This is simply not what Mr. Reardon's testimony states. In his Supplemental Testimony at page 7 Mr. Reardon does state that he "do[es]

specific areas depending on timber harvesting patterns and successional stages. Dr. Publicover did not testify that marten habitat is scarce or that travel corridors would be ineffective. CMP's use of Dr. Publicover's testimony to support this statement is at best careless or at worse purposefully misleading.

³⁹ CMP Post-hearing Brief, p. 28.

⁴⁰ Tr. 5/9/19, p. 62:23-63:14 (Publicover).

⁴¹ Group 4 believes that CMP's citation in footnote 142 to Hearing Day 4 Transcript at 72:24-73:1 (Reardon) was intended to refer to Hearing Day 6 as those pages in the Day 4 transcript contain testimony by Mr. Joseph on deer wintering areas.

not believe that tapering, as proposed in CMP's Exhibit 10-2, would have much benefit for streams.” However, on page 6 of that same Supplemental Testimony cited by CMP, Mr. Reardon testified that “[b]ased on the fact that they have been proposed for several sites to avoid impacts to Roaring Brook Mayfly and Northern Spotted Salamander, taller pole structures are clearly feasible and would reduce impacts on stream habitat by maintaining intact canopy cover. This would have substantial benefits for brook trout and other aquatic life in the affected streams.” CMP’s characterization of Mr. Reardon’s Supplemental Testimony is misleading and irresponsible. Similarly, Mr. Reardon’s Day 4 testimony cited by CMP dismissed tapering as not providing benefits to brook trout but encouraged Commissioner Reid “to consider taller poles to keep an intact canopy over the stream crosses.”⁴² Finally, again, Mr. Reardon’s cited testimony was limited to tapering, stating again that “I also do not believe that tapering as proposed in CMP's Exhibit 10-2 would have much benefit for streams.” But just a page earlier Mr. Reardon testified positively about the potential benefits of taller pole structures that could allow “intact canopy and reduce stream impacts on stream habitat.”⁴³

In summary, contrary to CMP’s misleading characterizations, Mr. Reardon’s and Dr. Publicover’s testimony, both in pre-filed testimony and on cross-examination, clearly states their conclusions that tapering would provide no significant habitat protection for streams and would not effectively avoid or minimize the adverse impacts of fragmentation on marten and other wildlife. In contrast, Mr. Reardon’s and Dr. Publicover’s testimony identified taller structures as a potentially beneficial mitigation technique if it allowed for the retention of intact canopy but that CMP had not utilized the technique enough and had not provided sufficient information about this option in its application to fully evaluate it as an option.

⁴² Tr. 4/4/19 at 131:8-20.

⁴³ Tr. 5/9/19 at 71:24-25.

VI. CMP's proposed Findings of Fact regarding right, title or interest fail to demonstrate a valid right, title or interest over the public reserved lands in Johnson Mountain Township and West Forks Plantation.

CMP's proposed findings of fact regarding right, title or interest⁴⁴ assert right, title or interest based on "deeds and easements." However, the proposed transmission line would cross two parcels of public reserved lands in Johnson Mountain Township and West Forks Plantation over which CMP has no deed or easement. The only purported right, title or interest CMP has over these two parcels of public reserved lands is a 2014 lease which is not valid because it has not been approved by 2/3rds of the elected members of both Houses of the Maine Legislature.

Unless and until CMP can provide a valid lease approved by 2/3rds of the elected members of both Houses of the Maine Legislature, CMP has failed to show that it has valid right, title or interest to the land needed for its proposed project, and all permits for the project should be denied.

VII. Brook Trout Habitat and Cold Water Fisheries Enjoy Protection in Maine

CMP argues that brook trout habitat is not "significant wildlife habitat" as defined at 38 M.R.S. § 480-B(10) and that "brook trout are pervasive in the project area."⁴⁵ CMP goes on to state that "[i]ndeed, brook trout have no special legal or regulatory protections in Maine."⁴⁶ In support of this statement CMP cites Group 4 witness Reardon. This is a gross misrepresentation of Mr. Reardon's response, below, to a question from Mr. Mark Bergeron about whether brook trout were, like Northern Spotted Salamander or Roaring Brook Mayfly, listed as threatened or endangered.

MR. BERGERON: Thank you. Also in your direct testimony you talked about Roaring Brook Mayflies and spotted salamanders and the protections -- the legal protections -- the regulatory protections they may have, are there any of those

⁴⁴ CMP Brief, Attachment A, Proposed Findings of Fact, p.60 -61 and p. 83.

⁴⁵ *Id.* at p. 15.

⁴⁶ *Id.*

same protections or similar protections for any other species of brook trout in this area?

JEFF REARDON: No. I think the question you're asking me is have we -- have we identified brook trout habitat as significant wildlife habitat under the Natural Resources Protection Act?

MR. BERGERON: No. Are there other protections for threaten/endangered or other classifications by the Department of Inland Fisheries and Wildlife for brook trout?

JEFF REARDON: No. Brook trout are not a threatened and endangered species. They are a species of greatest conservation need as identified in the most recent state wildlife action plan, which I think is dated 2015 and was finished in 2016.⁴⁷

As is obvious from the transcript of the exchange above, Mr. Reardon specifically asked if Mr. Bergeron was asking about brook trout as significant wildlife habitat under NRPA and Mr. Bergeron said “No”. Instead, Mr. Bergeron clarified that he was asking whether or not there are “other protections for threaten/endangered or other classifications by the Department of Inland Fisheries and Wildlife for brook trout.” To insinuate that Mr. Reardon testified that “brook trout have no special legal or regulatory protections in Maine” is a gross misrepresentation of Mr. Reardon’s testimony.

In fact, the permitting requirements outlined in statute and rule under the Natural Resources Protection Act (NRPA)⁴⁸ and Site Location of Development Law (Site Law)⁴⁹ go well beyond impacts to just those species listed as threatened or endangered or species for which significant wildlife habitat has been designated. NRPA prohibits any activity that will “unreasonably harm any . . . freshwater, estuarine or marine fisheries or other aquatic life.”⁵⁰ Similarly, Site Law prohibits projects that will adversely impact “other natural resources . . .”⁵¹ Adding further detail to this requirement, Chapter 375 of the Department’s rules require that an applicant demonstrate that the “[p]roposed alterations and activities will not adversely affect

⁴⁷ Tr. 4/4/18 at p. 144:7-145:1 (Reardon).

⁴⁸ 38 M.R.S. §§ 480-A – 480-JJ.

⁴⁹ 38 M.R.S. §§ 481 – 490.

⁵⁰ 38 M.R.S. § 480-D(3).

⁵¹ 38 M.R.S. § 484(3).

wildlife and fisheries lifecycles”⁵² and promote the use of buffer strips to protect water quality and wildlife habitat.⁵³ Furthermore, “Brook Trout Habitat” and “Buffer Strips Around Coldwater Fisheries” were identified by the Department as hearing topics in the Second Procedural Order, identifying 38 M.R.S. § 480-D(3), 38 M.R.S. § 484(3), and DEP Chapters 335 and 375 § 15 as provisions requiring the protection of these important resources. It is difficult to fathom how CMP reached the erroneous conclusion that brook trout “have no special legal or regulatory protections in Maine” but clearly this conclusion is wrong and casts doubt on CMP’s proposed mitigation of impacts on brook trout habitat. If CMP is under the mistaken impression that brook trout habitat does not require protection because “brook trout are pervasive in the Project area” and “have no special legal or regulatory protections in Maine” how can we trust that the company took adequate steps to protect this valuable and protected resource?

CMP also erred in claiming that the NECEC’s impacts on brook trout will be “de minimus.”⁵⁴ CMP ignores evidence in the record that: (1) the “pervasive” brook trout populations in the region which Segment 1 of the proposed corridor will pass are incredibly important as they are the “last true stronghold for brook trout in the United States”;⁵⁵ (2) this last remaining extensive and unique brook trout resource persists here and here alone as a result of the lack of impacts from human development on forested habitat in this region;⁵⁶ (3) the NECEC Corridor will be one of the largest fragmenting features in the Western Mountains region;⁵⁷ (4) CMP’s proposed “widened riparian buffers of 100 feet”⁵⁸ will prevent the growth of shade trees

⁵² 06-096, Ch. 375 §(15)(B)(2).

⁵³ 06-096, Ch. 375 §(9).

⁵⁴ CMP brief, page 15.

⁵⁵ Group 4 Witness Reardon Direct Testimony, p. 7-8; Group 4 Exhibit 2-JR.

⁵⁶ Group 4 Exhibit 1-JR.

⁵⁷ Group 4 Witness Publicover Direct Testimony, p. 9-10

⁵⁸ CMP brief, p. 16.

and recruitment of large woody debris into stream;⁵⁹ and that (5) closed canopy shade and large wood recruitment in buffers are important for brook trout habitat.⁶⁰ CMP's assurances that these buffers will be applied on "all cold water fishery streams (as determined by MDIFW)"⁶¹ cannot be relied upon due to CMP's failure to incorporate information on brook trout presence in streams into its application materials⁶² or use that information in its planning or even in its responses to written questions from DEP staff.⁶³

Finally, CMP's statement that seven stream crossings identified by Mr. Jim Beyer could accommodate 35-foot-tall trees with only limited changes to the heights of two poles⁶⁴ suggests that CMP did not adequately design its project to avoid or minimize impacts to brook trout habitat. That seven out of seven sites could be easily modified to dramatically reduce impacts to brook trout streams, but weren't until CMP was required to do that analysis by the Department, indicates that CMP has not adequately evaluated potential avoidance and mitigation measures throughout the project footprint. Interestingly, this failure by CMP to utilize readily available avoidance and mitigation measures is consistent with the applicant's assertions that they do not believe brook trout warrant special treatment under Maine law and calls into question the applicant's alternatives analysis, mitigation plan, and compensation plan.

VIII. The Department, not the Maine Department of Inland Fisheries and Wildlife (MDIFW), is responsible for determining whether CMP has adequately addressed harms to wildlife habitat and cold water fisheries.

In its brief the Western Mountains and Rivers Corporation (WMRC), whose legal representation is funded by money given to WMRC by CMP as a provision of an MOU between

⁵⁹ Group 4 Witness Reardon Rebuttal Testimony, pp 1-6;

⁶⁰ Group 4 Exhibit 6-JR; Group 4 Exhibit 7-JR.

⁶¹ CMP Brief, p. 15

⁶² Tr. 5/9/19, p. 276.

⁶³ CMP Goodwin Supp. Testimony, table on p. 5.

⁶⁴ CMP Brief, p. 16; CMP May 17, 2019 Response to MDEP May 9, 2019 Questions, pp. 30-35.

CMP and WMRC,⁶⁵ erroneously concludes that CMP's project "will fit harmoniously into the existing natural environment and will not have any unreasonable adverse effect upon existing scenic, aesthetic, recreational or other uses or other natural resources." To reach this sweeping conclusion, WMRC conflates the roles of the Department as decision maker with the role of MDIFW as a reviewer of the application and mischaracterizes an exchange of emails between CMP and MDIFW in March.

First, the Department is the agency tasked with determining whether or not CMP's proposed transmission line meets the NRPA and Site Law permitting requirements, not MDIFW. While MDIFW's expertise and input is incredibly valuable in evaluating CMP's applications, MDIFW does not have the statutory authority to approve or certify any components of CMP's application.

Second, WMRC alleges, based on emails between CMP and MDIFW and CMP witness Lauren Johnson's redirect testimony, that "it is clear that the MDIFW found that CMP's revisions to its compensation plan sufficiently addressed wildlife habitat and cold water fisheries issues."⁶⁶ But that conclusion is at odds with what DIFW's letter actually states. Gerry Mirabile's March 11, 2019 email to Robert Stratton requested that "MDIFW confirm that the attached clarification materials address all of MDIFW's remaining concerns" and that "MDIFW is satisfied that the latest (January 30, 2019) NECEC Project Compensation Plan, as supplemented by these attached clarifications, provides satisfactory mitigation of the NECEC Project's impacts."⁶⁷ In response to this email, Mr. James Conolly from MDIFW wrote on March 18 that MDIFW "accept[s] the explanations provided in the March 11 email as *sufficient to allow DEP to apply applicable*

⁶⁵ Tr. 4/3/19, p.198:10-199-18 (Christopher).

⁶⁶ WM&RC Brief, p. 18.

⁶⁷ Exhibit CMP-4.

natural resource law to the permitting process.”⁶⁸ Far from a ringing endorsement of CMP’s mitigation, MDIFW’s response merely indicates that MDIFW deemed the reviewed material ready for the Department’s evaluation.

IX. CMP’s failure to conduct a good faith alternatives analysis is a fatal flaw that cannot be remedied

Group 3, representing numerous parties with significant financial interest in this project, attempts to paint opposition to CMP’s proposed project as mere quibbling over minor impacts and disparages calls for a meaningful alternatives analysis as attempts to “defeat or delay by any means.” Group 3 misunderstands the evidence in the record and the intentions of intervenors gravely concerned about the significant impact this project will have on Maine.

CMP’s failure to evaluate a reasonable route for undergrounding, and instead looking only at above-ground routes which the applicant already owned, rendered CMP’s alternative analysis meaningless and unhelpful in determining whether a truly practicable alternative exists. Group 3’s attempt to justify CMP’s failure to evaluate an underground alternative by citing jurisprudence on unrelated statutes in other jurisdictions is unpersuasive. CMP’s after-the-fact cost estimate of how expensive it would be to bury the line along CMP’s pre-chosen route, based on aboveground siting considerations, cannot take the place of an alternative route specifically designed with the unique design parameters of undergrounding in mind. Because that analysis was not done, CMP cannot prove that no reasonable alternative exists that would avoid the impacts to scenic and aesthetic uses, significant wildlife habitat, and wetlands.

X. Group 3’s discussion of NECEC’s “Context” in Maine has no relevance to the Department’s or Commission’s permitting authority and should be disregarded

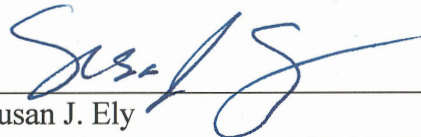
Group 3 dedicates significant space in its brief detailing what it calls the “significant, unique, and timely benefits of NECEC to Maine.” Tellingly, Group 3 does not cite to a single

⁶⁸ *Id.* (emphasis added).

Department or Commission statute or regulation in its discussion of these 'benefits'. That is because this information, struck from the record by the Department and Commission during the hearing for being irrelevant, remains just so – irrelevant. The Department and Commission should disregard Section I.C. of Group 3's brief as it has no relevancy to any statutory or regulatory criteria at issue in this matter.

Submitted on June 28, 2019

Respectfully,



Susan J. Ely
On Behalf of Group 4 AMC, NRCM, and TU
3 Wade Street
Augusta, ME 04330
(207) 430-0175

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

February 18, 2021

VIA ELECTRONIC MAIL AND U.S. MAIL

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

RE: Central Maine Power Company, New England Clean Energy Connect
Department Order L-27625-26-A-N, L-27625-TG-B-N, L-27625-2C-C-N,
L-27625-VP-D-N, L-27625-IW-E-N, and L-27625-26-K-T

Dear Chair Draper:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC, please find enclosed a Response to NRCM's Transfer Order Appeal.

Please let me know if you have any questions.

Sincerely,



Matthew D. Manahan

Enclosure
cc (via email only): Service List (rev. October 19, 2020)

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
L-27625-26-A-N/L-27625-TG-B-N/)
L-27625-2C-C-N/L-27625-VP-D-N/)
L-27625-IW-E-N and L-27625-26-K-T)

**CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION LLC'S
RESPONSE TO NRCM'S TRANSFER ORDER APPEAL**

Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC LLC) (collectively, Licensees) hereby respond to the January 4, 2021 appeal of the Natural Resources Council of Maine (NRCM) of the Commissioner's December 4, 2020 Transfer Order approving the partial transfer to NECEC LLC of the DEP permits for the New England Clean Energy Connect Project (Project).

I. The Board has already addressed and declined NRCM's meritless request that the Board must assume jurisdiction over the Transfer Application.

NRCM has already requested, and the Board has already declined, Board assumption of jurisdiction over the Transfer Application. NRCM Exhibits 3, 6; BEP Meeting Minutes at 2 (Nov. 19, 2020); DEP Regs. Ch. 2 § 17(B). The Board should reject NRCM's effort to reargue this issue now, after it has already been resolved; the DEP's rules do not allow NRCM yet another bite at the apple.¹

¹ Furthermore, NRCM again disregards the Chapter 2 section 17 procedure for requesting Board jurisdiction (as it previously did on November 6, 2020 when it submitted a second, untimely request for the Board to assume jurisdiction), making its renewed request directly to the Board because both the Commissioner and the Board previously rejected NRCM's request for Board assumption of jurisdiction, as described below. See NRCM Exhibit 5; NRCM Exhibit 6 at 1 ("NRCM's November 6, 2020 letter to the Department, also styled as a request for Board jurisdiction with a subject line identical to the prior filing, is untimely and will not be considered by the Commissioner."). The applicable procedure is clear, notwithstanding NRCM's attempts to obfuscate it, and NRCM cannot here prescribe additional procedure simply because its request for Board jurisdiction over the Transfer

On October 7, 2020 NRCM made a sweeping request to the Chair, the Board Members, the BEP Executive Analyst, and the DEP's NECEC Project Manager that the Board assume jurisdiction over the Transfer Application and consolidate that application with the pending appeals of the Permit Order. NRCM Exhibit 3. The Chair ruled that NRCM's request for Board jurisdiction was improper to the extent that it was made to the Board because it was not first made to the Commissioner, and further declined to consolidate the Transfer Application with the pending appeals because doing so made no sense. NRCM Exhibit 4 at 2 (October 27, 2020 Chair Draper Letter). Instead, and following the procedures set forth in Chapter 2 section 17, the Commissioner and the Board addressed NRCM's request for Board jurisdiction as follows.

First, the Commissioner considered NRCM's request, and in no uncertain terms determined that none of the four criteria for Board assumption of jurisdiction set forth in 38 M.R.S. section 341-D(2) and in Chapter 2 section 17(C) is met:

With regard to the first criterion, the proposed transfer will not have an environmental or economic impact on more than one municipality, territory or county. The result of the transfer, if approved, will be purely administrative. The proposed transfer will not alter the proposed development or the obligations of the permittee. Therefore, the proposed transfer will not have any environmental impact or economic impact.

With regard to the second criterion, the Department has decades of experience reviewing and processing transfer applications. The proposed transfer is not an activity not previously permitted or licensed.

With regard to the third criterion, following public notice of the transfer application no person other than NRCM has requested original Board jurisdiction over, or a public hearing on, the transfer application. The transfer request has not come under significant public scrutiny, to date. The third criterion, however, requires the Department to look ahead and assess whether it is likely the transfer application will come under public scrutiny in the future. The Department's experience is that transfer applications generate little public interest. The single request for a public hearing is further evidence of this. Although future public interest could be higher than normal with respect to the present application because of the interest in the underlying project, the Department does not

Application was declined under the prescribed procedure. In effect, NRCM's present argument for Board jurisdiction is a request for reconsideration of the Board's decision not to assume jurisdiction and to allow the Commissioner to process the Transfer Application. Such a reconsideration request is not allowed by the rules.

anticipate future interest will rise to the level of significant public scrutiny given the administrative result of the transfer, if approved, and the fact the transfer was required by the Maine Public Utilities Commission and involves a transfer among organizations under the same corporate umbrella.

With regard to the fourth criterion, the proposed transfer is administrative in nature – the transfer itself, if approved, would not authorize any development that has not been previously authorized – therefore, the location of the transfer is the location where the transfer order (whether an approval or denial) is signed. The transfer occurs in one location, which is expected to be the City of Augusta. The transfer application is not located in more than one municipality, territory, or county.

NRCM Exhibit 6 at 3 (November 13, 2020 Commissioner Loyzim Letter to NRCM); DEP Regs. Ch. 2 § 17(B)-(C).

Second, on November 13, 2020 the Commissioner sent her response and NRCM’s October 7, 2020 request to Chair Draper and BEP Executive Analyst William Hinkel. NRCM Exhibit 6 at 4; DEP Regs. Ch. 2 § 17(B). On November 13, 2020, Executive Analyst Hinkel forwarded to all Board members NRCM’s October 7, 2020 request and the Commissioner’s November 13, 2020 response. BEP Meeting Minutes at 2 (Nov. 19, 2020).

Third, the Board considered NRCM’s request and the Commissioner’s response during the Executive Analyst’s Comments at the Board’s November 19, 2020 meeting. BEP Meeting Minutes at 2 (Nov. 19, 2020). DEP Regs. Ch. 2 § 17(B). At that meeting, no Board member requested that the Board schedule time at a future Board meeting to discuss the Commissioner’s determination or the Board assuming jurisdiction of the Transfer Application, no Board member indicated that any of the four criteria for Board jurisdiction have been met, and the Board did not assume jurisdiction. BEP Meeting Minutes at 2 (Nov. 19, 2020).²

² The Board has broad discretion to decide whether to consider a request for Board jurisdiction where the Commissioner has not recommended such jurisdiction. DEP Regs. Ch. 2 § 17(B) 9 (“If upon such notification by the Commissioner the Board determines the criteria for Board jurisdiction have been met, the Board may assume jurisdiction over the application.”); Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 6, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.) (interpreting the 38 MRS § 344(2-A)(A) scenario in which an interested person requests that the Commissioner refer an application to the board and the Commissioner determines that the criteria are not met, which the Court found “appears to pair with the sentence in the Board-

Accordingly, the Chapter 2 section 17 process by which the Board may assume jurisdiction over an application was complete and the Commissioner processed the Transfer Application. NRCM's untimely request that the Board now, months after its request for Board jurisdiction was declined and the Commissioner processed the Transfer Application, start the entire process over by considering (again) its request for Board jurisdiction and processing (again) of the Transfer Application is a waste of the Board's time and resources.

Even if the Board were to consider, again, NRCM's request that it assume jurisdiction over the Transfer Application, NRCM's request is without merit, for the reasons set forth in the Commissioner's November 13, 2020 letter.³ Because a Transfer Application is not a project of statewide significance, NRCM tries to drag in the underlying permit, arguing that "the NECEC is the very definition of a project of statewide significance," the Transfer Application seeks to transfer that project, and therefore it would make sense to treat the Transfer Application as a project of statewide significance and for the Board to assume jurisdiction over the entire matter. NRCM Appeal at 4-5. But not only is a transfer application substantively different than the underlying permit, but the Maine Superior Court has already determined that NRCM waived its

responsibility section that says the Board 'may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.' *Id.* § 341-D(2).")

³ See NRCM Appeal Exhibit 6 at 3 (Commissioner's findings that the Transfer Application meets none of the four statewide significance criteria). Furthermore, NRCM's novel interpretation of 38 M.R.S. § 341-D(2), which requires that the Board "decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance," is not germane to the Transfer Application. Title 38 M.R.S. § 341-D(2) plainly applies only to an "application for approval of permits and licenses," and not to transfers of such approvals. 38 M.R.S. § 341-D(2); *see also* DEP Regs. Ch. 2 § 17(C) ("The Board shall assume jurisdiction over and decide each license application that in its judgment represents a project of statewide significance.") (emphasis added). NRCM does not, and cannot, allege that the Transfer application meets any of the four criteria that could result in Board assumption of jurisdiction, because those criteria apply to the permitting of an underlying project and not to a subsequent transfer of the permits issued for that project. In other words, a Transfer Application itself cannot be "a project" of statewide significance.

argument that the Board should have assumed jurisdiction over the underlying Permit Application, by making that request too late in the process.⁴

Because NRCM waived its argument that the Board should assume jurisdiction over the Permit Application, NRMC cannot seek to use the underlying Permit Application as a way to bootstrap Board jurisdiction over the Transfer Application. And doing so would be illogical because it would merge Board jurisdiction over the Transfer *Application* with the appeals of the Permit *Order*. The Chair has already determined that “consolidating original jurisdiction of this Transfer Application with the pending appeals of the NECEC Order would be procedurally problematic.” NRCM Appeal at 4; NRCM Exhibit 4 at 2 (October 27, 2020 Chair Draper Letter). It is far more logical and efficient, as the Board has already determined, to consolidate the appeals of the Permit Order and Transfer Order and consider both in the Board’s appellate capacity. Chair Draper Letter at 2 (Jan. 19, 2021).⁵

II. Licensees maintained sufficient title, right or interest (TRI) throughout the entire Transfer Application processing period.

NRCM argues that the 2014 BPL lease (2014 Lease) and the June 23, 2020 BPL lease (2020 Lease) with the Bureau of Parks and Lands (BPL) are both invalid and of insufficient duration, and therefore inadequate proof of TRI. NRCM is wrong on both counts; Licensees made a sufficient *prima facie* showing of TRI required of a licensee.

⁴ Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 6-7, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.) (“Even assuming movants are correct that the Board *should* have been the entity to decide CMP’s permit application, any such argument was waived because it was not raised in the several-year process before the Commissioner until after the Commissioner issued the conditional approval of the permits.”).

⁵ NRCM’s request is a conspicuous attempt at delay. The Transfer Application isn’t before the Board, but NRCM’s appeal of the Transfer Order is. Thus, NRCM’s arguments for Board jurisdiction are not about substance – the Board is not bound by the Commissioner’s findings of fact or conclusions of law when considering NRCM’s appeal of the Transfer Order – but rather are about process, trying to delay the Project by starting the process over. NRCM’s obstructionist tactics should be disregarded.

First, NRCM argues that submission with the Transfer Application of the 2020 Lease, which amends and restates the 2014 Lease, is an “end run” around Licensees’ showing of TRI during the pendency of the Permit Application, which NRCM argues was deficient because it claims the 2014 Lease was “illegal.” NRCM Appeal at 5. But the 2020 Lease has no relevance whatsoever to the sufficiency of TRI during processing of the Permit Application, because the 2020 Lease did not exist until after the Commissioner issued the Permit Order. Instead, the 2014 Lease was sufficient TRI during the pendency of the Permit Application and the 2020 Lease was sufficient TRI during the pendency of the Transfer Application. It is NRCM that here exercises “gamesmanship,” muddying this very clear delineation between leases and applications by arguing that the alleged “invalidity” of the 2014 Lease somehow impacts the showing of TRI in the Transfer Application.

Even if the validity of the 2014 Lease were relevant to the 2020 Lease, which it is not, the Superior Court has already rejected NRCM’s TRI argument regarding the validity of the 2014 Lease. The Maine Superior Court recently addressed the same contention NRCM makes here – that Licensees did not have TRI because the lease of land from the BPL is “illegal” and is currently being challenged in *Black v. Cutko* – and Justice Murphy (who also presides over the *Black v. Cutko* litigation) affirmed that “The fact that an applicant’s TRI is based on a possessory interest that might later be invalidated by a court does not mean the applicant lacked TRI to proceed before the DEP.” Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 8, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021), citing *Southridge*;⁶ NRCM Appeal at 5-6. NRCM’s argument that “CMP did not have sufficient TRI during the permitting process”

⁶ *Southridge Corp. v. Bd. of Env’t Prot.*, 655 A.2d 345 (Me. 1995) (holding that a landowner whose property interest was based entirely on an adverse possession claim, on which he may or may not prevail, had sufficient TRI in the disputed land to apply to the DEP for a permit).

because the 2014 Lease was “illegal,” and therefore that “a transfer to another entity is inappropriate and should be denied,” crumbles under the Superior Court’s holding that a challenge to the validity of the 2014 Lease has no bearing on the sufficiency of that lease as evidence of TRI. For the same reason, NRCM’s assertion that the 2020 Lease is “unlawful and invalid” is insufficient grounds to overturn the Commissioner’s findings on TRI. NRCM Appeal at 6.

Second, NRCM for the first time challenges the duration of the 2020 Lease, and argues without any citation that the Commissioner’s acceptance of the decision of BPL to enter into the lease “violates Department rules.” NRCM Appeal at 6. NRCM did not make this argument during the processing of Transfer Application and has therefore waived it. In any case, NRCM is again manufacturing facts and obfuscating the DEP’s rules. The Commissioner stated that “the Department accepts the decision of its sister agency to enter into the lease” and that “the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project.” NRCM Exhibit 7 at 2. These are two separate findings, the first regarding the validity of the 2020 Lease and the second regarding the duration and terms of that lease. DEP Regs. Ch. 2 § 11(D)(2). As described above, the DEP does not determine the BPL’s authority to grant the 2020 Lease, and a challenge to the validity of that lease cannot be grounds to overturn the Commissioner’s reliance on its sister agency in concluding that the 2020 Lease (like the 2014 Lease) is valid TRI. And NRCM’s suggestion that the Commissioner failed to “independently analyze NECEC LLC’s TRI” is nothing more than baseless assertion. The Commissioner has no obligation to make explicit findings as to the duration of the 2020 Lease, nor is NRCM correct that the 2020 Lease is *not* of sufficient duration “to permit the proposed construction and reasonable use of the property.” DEP Regs. Ch. 2 § 11(D)(2).

NRCM makes much ado of the 25-year term of the 2020 Lease and the 40-year expected life of the Project. Neither is incompatible, and NRCM mischaracterizes both. Notably, nothing prohibits the BPL from renewing the 2020 Lease. *See* 12 M.R.S. § 1852(4). NRCM infers that because there is no express renewal provision in the statute allowing leases for utilities and rights-of-way, no renewal is possible. Such a reading, however, would prohibit the BPL from renewing other leases subject to a 25-year lease period, such as leases to other agencies for purposes of protecting, enhancing, or developing the natural, scenic, or wilderness qualities or recreational, scientific, or educational uses. *See* 12 M.R.S. § 1852(3). That cannot be the intent of the Legislature. The most NRCM possibly could muster is that the statute is ambiguous because it does not affirmatively authorize consecutive leases of the same land, but even if there were such ambiguity here, the BPL’s reasonable interpretation of the statute prevails. *See Goodrich v. Maine Pub. Employees Ret. Sys.*, 2012 ME 95, ¶ 6, 48 A.3d 212 (“When a statute administered by an agency is silent or ambiguous on a particular point, we will review whether the agency’s interpretation of the statute is reasonable and uphold its interpretation unless the statute plainly compels a contrary result.”). The BPL has made clear in the *Black v. Cutko* litigation that it rejects NRCM’s reading of the statute and agrees that BPL has the authority to renew leases issued under 12 M.R.S. § 1852(4) following the expiration of their initial term.⁷ The BPL’s reading of the statute is reasonable, at a minimum, and thus there is no

⁷ In its recent brief in the *Black v. Cutko* litigation, the Maine Attorney General in no uncertain terms stated, “The lease terms specified in 12 M.R.S. § 1852 impose a practical limitation on the scope of the use of the leased premises and an opportunity for the Bureau to reconsider at the end of the specified lease term whether to issue a new lease and, if so, whether to impose new or different conditions. . . . Upon expiration or termination of a lease, the Bureau may lease the same property to the same lessee for the same use. And, especially in the case of campsite leases, commercial sporting camps, and other structures on Bureau jurisdiction lands, it often does.” Director’s and Bureau’s Rebuttal: Leases Issued Pursuant to 12 M.R.S. § 1852(4) Are Categorically Exempt from Article IX, Section 23 of the Maine Constitution at 12, *Black v. Cutko*, Docket No. BCD-CV-20-29 (Feb. 5, 2021)

basis for NRCM's argument that the 2020 Lease is of insufficient duration because it cannot be renewed.

Furthermore, as NRCM is aware because it was a party to the Maine Public Utilities Commission (MPUC) NECEC proceeding and attaches the MPUC's CPCN Order to its Transfer Appeal, CMP's Transmission Service Agreements (TSAs) with the Electric Distribution Companies in Massachusetts (MA EDCs) correspond with the *capacity and term* of Hydro-Québec's Power Purchase Agreements (PPAs) with the MA EDCs, all of which extend for a *term* of 20 years. NRCM Exhibit 2 at 12. In other words, CMP is contractually obligated to deliver 1,090 MW of energy through the NECEC Project to the MA EDCs only for 20 years. The four TSAs between CMP and Hydro-Québec are for the available *capacity* on the transmission line, with three TSAs covering 1,090 MW of capacity for years 21-40 and the fourth TSA for the remaining capacity (110 MW) covering years 1-40. *Id.* at 11-12. Thus, even if the 2020 Lease could not be renewed – and the BPL has made clear that it can be renewed – the 25-year *term* of the 2020 Lease is of more than sufficient duration to accommodate the Project construction and reasonable use of those lands to deliver power purchased by the MA EDCs.⁸

In any event, the DEP's rules require Licensees to submit as TRI a lease of sufficient duration and terms "as determined by the Department" to permit construction of the Project and use of the property. The Commissioner therefore has broad discretion to determine the sufficiency of the duration of a lease, and an applicant need only make a prima facie showing of TRI. *See Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983)

⁸ In fact, NRCM has argued in the *Black v. Cutko* litigation that the BPL lease terms are too long, complaining that "the term of the combined leases exceeding 25 years in violation of 12 M.R.S. § 1852(4)." Plaintiffs' Motion Regarding Record and Creation of a Factual Record at 1, *Black v. Cutko*, Docket No. BCD-CV-20-29 (Jan. 7, 2021).

(finding that an applicant need only have a “legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permit or license he seeks.”). The DEP’s TRI consideration is limited to whether a lease on its face gives the lessee this “legally cognizable expectation” to construct and use the property, which the 2020 Lease plainly does. DEP Regs. Ch. 2 § 11(D)(2). Notably, the BPL has not challenged the scope of the 2014 Lease or the 2020 Lease. It thus is reasonable for the Commissioner to conclude that “the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project.” NRCM Exhibit 7 at 2.

III. NECEC LLC has demonstrated financial capacity and intent to comply with all terms of the Permit Order.

Grasping at straws, NRCM manufactures an obligation not present in any DEP statute, rule, or order, that NECEC LLC must submit to the DEP now, as part of the Transfer Application, evidence of financial ability to decommission Segment 1 at the end of its useful life. That is not what the DEP’s rules or the Permit Order require.

The DEP’s rules governing license transfers provide as follows:

The transferee shall demonstrate to the Department’s satisfaction the technical and financial capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory and regulatory criteria.

DEP Regs. Ch. 2 § 21(C)(1) (emphasis added). The terms of the Permit Order are as follows:

[T]he applicant must demonstrate, in the form of a decommissioning plan, the means by which decommissioning of Segment [1] will be accomplished. The plan must be submitted within one year of the start of commercial operation of the project. The decommissioning plan must include . . . financial assurance for the decommissioning costs in the form of a decommissioning bond, irrevocable letter of credit, establishment of an escrow account, or other form of financial assurance accepted by the Department, for the total cost of decommissioning.

DEP Permit Order at 106 (May 11, 2020) (emphasis added). CMP, as a permittee, has no obligation to provide financial assurance for decommissioning until one year after the start of

commercial operation of the Project. Accordingly, NECEC LLC, as the transferee, similarly had no obligation to provide in the Transfer Application “sufficient proof that NECEC LLC will in fact have the financial wherewithal to decommission the NECEC in Segment 1.”⁹ NRCM Appeal at 8-9. Rather, to “comply with all terms and conditions of the applicable license,” NECEC LLC must, within one year of the start of commercial operation, provide such financial assurance. NRCM’s appeal is “notably silent” on this future deadline, instead again misrepresenting facts in furtherance of its strategy of obfuscation.

Provided that NECEC LLC provides financial assurance for the decommissioning costs in the future as required by DEP Permit Order, the DEP has determined that “the project will be adequately decommissioned at the end of its useful life and will not adversely affect the scenic character and natural resources of the region.” DEP Permit Order at 106.

IV. A hearing before the Board is unwarranted.

A hearing on the Transfer Order is unwarranted and would result in the waste of the Board’s and parties’ resources.

If a hearing is requested, the DEP’s rules require that an appellant “provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify.” DEP Regs. Ch. 2 § 24(B)(4). A hearing, discretionary under the DEP’s rules, is appropriate only in those instances where there is (1) credible conflicting technical information, (2) regarding a licensing criterion, and (3) it is likely that a hearing will assist the Department in understanding the

⁹ Note, however, that NECEC LLC provided evidence of its financial ability to satisfy the costs of decommissioning. *See* Transfer Application Attachment A (listing decommissioning costs as an included operational expense) and Attachment B (providing proof of availability and commitment of funds “for NECEC LLC to acquire the project from CMP and for construction and operation of the NECEC Project as approved”).

evidence. DEP Regs. Ch. 2 § 7(B). NRCM failed to make these required showings, and thus its hearing request should be denied.

NRCM's scant offer of "the testimony of former Maine Senator Thomas Saviello regarding the history and purpose of [statewide significance] legislation" fails to meet the requirements for a hearing. NRCM Appeal at 4. NRCM fails to describe the substance of Mr. Saviello's evidence, let alone the relevance to the BEP of the testimony of a former legislator regarding the DEP's interpretation of its own rules and governing statutes. This offer falls short of the section 24(B)(4) offer of proof requirements. DEP Regs. Ch. 2 § 24(B)(4).

In any case, NRCM does not specify the reasons why a hearing is warranted and makes no showing as to which licensing criterion Mr. Saviello would opine on, because NRCM's arguments on statewide significance implicate no licensing criterion, and certainly do not involve any technical evidence. Nor could NRCM allege any credible conflicting technical information. As NRCM is well aware, because the Commissioner explicitly told it so, a transfer application requires only a showing of the transferee's technical ability and financial capacity, and does not involve the production of technical information relevant to the construction of the project itself:

Accordingly, when reviewing a transfer application the Department evaluates the technical and financial capacity of the transferee – here NECEC Transmission LLC – and its intent to comply with the license and the licensing criteria. The Department does not re-evaluate the development activity that is the subject of the Order proposed for transfer or re-engage in substantive review of that development activity under the environmental statutes pursuant to which the development originally was permitted (e.g., Site Location of Development Act, Natural Resources Protection Act). In short, the prospective license holder – the transferee – is the focus of a transfer application, not the underlying project that is the subject of the license sought to be transferred.

NRCM Exhibit 6 at 2 (November 13, 2020 Commissioner Loyzim Letter to NRCM). There is no reason, and NRCM states no reason, to further develop the record in the Transfer Appeal by holding a hearing. Accordingly, there is no "credible conflicting technical information regarding

a licensing criterion” and no hearing is warranted here. DEP Regs. Ch. 2 § 7(B). *Concerned Citizens to Save Roxbury v. BEP*, 2011 ME 39, 15 A.3d 1263; *Martha A. Powers Trust v. BEP*, 2011 ME 40, 15 A.3d 1273.

For the foregoing reasons, the Board should decline to hold a hearing on NRCM’s appeal of the Transfer Order and deny that appeal.

Dated this 18th day of February, 2021.



Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill’s Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for Central Maine Power
Company and NECEC Transmission LLC*

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NECEC TRANSMISSION LLC)	
NEW ENGLAND CLEAN ENERGY)	
CONNECT	)	APPEAL OF TRANSFER ORDER
)	
L-27625-26-K-T)	

RESPONSE IN SUPPORT OF NRCM APPEAL OF TRANSFER ORDER

West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Mike Pilsbury, Matt Wagner, Mandy Farrar and Carrie Carpenter (“West Forks”), by and through their undersigned counsel, submit this response in support of Natural Resources Council of Maine’s (“NRCM”) Appeal of Acting Commissioner’s approval of Central Maine Power Company’s (“CMP”) Partial Transfer Application of the New England Clean Energy Connect project (“NECEC”) to NECEC Transmission LLC (“NECEC Transmission”).

West Forks agrees with NRCM’s arguments that: 1) only the Board not the Commissioner can review projects of this scope and scale; 2) the Applicant does not have sufficient right, title or interest; and 3) NECEC Transmission has not proven its financial capacity to meet the conditions of the permit including the decommissioning requirement. Additionally, NECEC Transmission provided not a shred of information or evidence of its technical capability for *all* aspects of the project including the technical knowledge and capability to plan and implement a decommissioning of the project as is specifically required as a condition of the permit. The only evidence of NECEC Transmission’s technical capability can

be found in Attachment C to the Transfer Application. In that self-serving, unsigned statement NECEC Transmission asserts its technical ability is entirely based upon service agreements running between it and its sister companies, CMP and Avangrid Service Company, both of which are majority owned subsidiaries of the Spanish parent company, Iberdrola S.A. *See* Transfer Application Attachment C. However, there is not a scintilla of evidence in the Transfer Application or in the underlying project application that any of these companies has the technical know-how or ability to create or undertake a decommissioning plan, to say nothing of the technical capability to design and construct a project of this scale, scope and size that will be decommissioned in the future.

Further, NECEC Transmission's technical capability is attested to by Thorn Dickinson, *See* Transfer Application Attachment G, the same company spokesperson who, under oath, admitted neither he nor CMP had ever planned for nor undertaken implementation of a decommission plan for a transmission line. *See Hearing Transcript Day 1, page 223*. If anything, this illustrates not only that NECEC Transmission has not provided evidence of technical capability to fulfill a critical condition of the permit it will be assuming, but its reliance on the technical capability of CMP is unequivocally and equally insufficient evidence.

In sum, as requested by NRCM, West Forks respectfully requests the Board vacate the Transfer Order, assert original jurisdiction over the Transfer Application and consolidate review with the pending appeals of the underlying Permits. In the alternative, the Board should schedule a hearing on the appeal of the Transfer Order.

Respectfully Submitted,

West Forks Plantation, Town of Caratunk,
Kennebec River Anglers, Maine Guide Service,
LLC, Hawks Nest Lodge, Ed Buzzell, Kathy

0895

Barkley, Kim Lyman, Noah Hale, Eric Sherman,
Mike Pilsbury, Matt Wagner, Mandy Farrar and
Carrie Carpenter

By their attorneys,



Dated: February 18, 2021

Elizabeth A. Boepple, Esq.
BCM ENVIRONMENTAL & LAND LAW, PLLC
2 Union St., Suite 402
Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com



Via USPS and Email

February 18, 2021

Mark Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

**RE: Central Maine Power Company, New England Clean Energy Connect
Appeal of Department Order L-27625-26-K-T**

Dear Chair Draper,

On behalf of my clients, West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Mike Pilsbury, Matt Wagner, Mandy Farrar and Carrie Carpenter (“Petitioners” or “West Forks Plantation, et al.”), enclosed please find our Response in Support of Natural Resources Council of Maine’s January 4, 2021 Request to Vacate/Appeal of Order L-27625-26-K-T.

Service is being made electronically to the Service List and the original Response will be sent today via USPS.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Elizabeth A. Boepple, Esq.
Licensed in Maine, New Hampshire & Vermont
(802) 779-8628
boepple@nhlandlaw.com
2 Union St., Suite 402
Portland ME 04101

Encl. (1)
cc: Service list (ver. 10/19/20)

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26-A-N
L-27625-TB-B-N
L-27625-2C-C-N
L-27625-VP-D-N
L-27625-IW-E-N

**BRIEF OF MAINE STATE
CHAMBER OF COMMERCE,
LEWISTON-AUBURN METRO
CHAMBER OF COMMERCE, AND
CITY OF LEWISTON IN
OPPOSITION TO APPEALS**

The Maine State Chamber of Commerce (“Maine Chamber”), the Lewiston-Auburn Metro Chamber of Commerce (“LA Metro Chamber”) (jointly “the Chambers”), and the City of Lewiston (“the City”) respectfully urge the Board of Environmental Protection to reject the pending appeals by opponents of the New England Clean Energy Connect Project (“NECEC” or “Project”). The Permit under review provides a carefully balanced and well-supported analysis. It imposes several conditions and codifies the changes and improvements to the Project made during the lengthy professional hearings. The record before the Board presents the legal and evidentiary foundation for the Permit’s appropriate balancing of multiple interests.

At the risk of stating the obvious, most administrative licensing or permitting proceedings, and all environmental permitting processes, inherently involve sensitive and complex judgments balancing multiple competing considerations. The arguments presented by opponents of this Project refocus the elemental point that the question is not whether there will be some environmental impacts or effects. The question is whether the environmental changes

to be expected are legally permissible considering the Project's objectives and public benefits, given the conditions, the mitigation, and the compensation. This Permit is well justified legally and factually; these appeals are not.

Often, the task of the Department or the Board is to consider the non-environmental benefits presented to justify environmental changes that will or may result from construction and operation of new or expanded physical assets. Unlike many proposed projects, however, NECEC brings its own significant *environmental* benefits. Introduction of renewable hydropower is an essential element of any comprehensive and durable plan to reduce the carbon footprint of the New England electric grid. Hydropower that is available from Canada cannot be used in New England unless it is transmitted. To defeat the transmission is to reject the hydropower and instead to embrace increased fossil-fueled generation of the electricity needed to meet growing demand for, say, electric vehicles, among other things.

The Chambers and the City have emphasized the improved reliability of electric energy at reduced cost to Maine people and Maine businesses. They have also contended in these and other proceedings that the additional jobs, the enhanced economic development, and the substantial added tax base justify the environmental effects to be expected from this Project. As a matter of physics, the fact that this Project began in response to a Massachusetts initiative cannot confine its benefits to Massachusetts, either environmentally or economically. All Maine electric energy costs will be lower for every user. Significant other targeted provisions will benefit many Maine people directly, and many more indirectly. There will be temporary and permanent jobs with the inevitable multiplier effects of the enhanced payrolls. And the City will realize critical new tax revenues, without raising tax rates, because of the added tax base to be constructed in Lewiston.

The Chambers and the City urge the Board to recognize that the environmental and economic benefits of the Project are amply sufficient under all applicable law to justify the Permit. The Chambers and the City more specifically emphasize that the economic benefits are neither speculative nor insubstantial. All of Maine, but especially the City and the Lewiston-Auburn area, will realize substantial economic and associated civic benefits from construction and operation of this Project. All of this is intuitively obvious and common knowledge. It is also well documented in the PUC Order approving the Stipulation in proceedings in which NRCM was a party. At pages 91-98, the PUC summarizes the important benefits justifying its approval of the Stipulation. The PUC decision has been affirmed by the Law Court.¹ The Board may take administrative notice of the work of other agencies involving the same matter and the same parties. *See, e.g.*, 5 M.R.S. § 9058(1) (“Agencies may take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and nonconfidential agency records. Parties shall be notified of the material so noticed, and they shall be afforded an opportunity to contest the substance or materiality of the facts noticed.”); *Friedman v. PUC*, 2016 ME 19, 132 A.3d 183 (noting that the PUC “properly took administrative notice of several documents and exposure regulations in the United States and beyond” when it made its decision about the safety of smart meters); *Middlesex Mut. Assur. Co. v. Maine*, 2003 Me. Super. LEXIS 208, 2003 WL 22309109 (finding that the Superintendent of Insurance did not violate the APA by taking notice of rules beyond those specifically for insurance, i.e., looking at the rules of the Maine Fuel Board, after the close of the evidence in an administrative proceeding).

¹ *NextEra Energy Res., LLC v. Me. PUC*, 2020 ME 34, 227 A.3d 1117.

EMPLOYMENT BENEFITS FROM THE NECEC

The PUC Staff's consultant, London Economic International (LEI), authored a report for the Commission entitled "Independent Analysis of Electricity Market and Macroeconomic Benefits of the New England Clean Energy Conned Project" (May 21, 2018), which was reviewed by the DEP prior to issuing its Permit.² The report forecast that the Project will generate, on average, over 1,600 direct, indirect, and induced Maine jobs each year during the six-year development and construction period. Over 850 of these are direct jobs and the remaining 750+ jobs will be indirect and induced. Although the direct jobs are projected only through the construction and development period, not all the indirect and induced jobs will simply disappear when construction is complete, as some of those jobs are likely to transition into other economic activity, which will benefit not only those who are employed, but also the State at large.

LEI also modeled the number of Maine jobs that the NECEC will generate once it goes into service. LEI's analysis found that the NECEC will generate 291 new Maine jobs on average each year during the 15-year operations period that was the subject of the LEI study, many of which are due to the lower wholesale electricity market prices that will result from completion and operation of the NECEC. The jobs created by the NECEC will be steady, good paying jobs that will benefit Maine residents and businesses. In a time when Maine has been losing paper mills and confronting the challenge of how to encourage economic growth and prosperity, the

² *Central Maine Power, New England Clean Energy Connect*, Site Location of Development Act, Natural Resources Protection Act, Freshwater Wetland Alteration, Significant Wildlife Habitat Water Quality Certification, Nos. L-27625-26-A-N, L-27625-TG-B-N, L-27625-2C-C-N, L027625-VP-D-N, L-27625-IW-E-N, Order at 105 (Me. Dep't of Env'tl. Prot. Jan. 8, 2020).

Chambers and the City emphasize that the employment opportunities created by the Project provide a concrete and substantial benefit to all of Maine.

ENERGY PRICE EFFECTS

The NECEC is also good for Maine businesses and residential energy consumers because it will reduce electricity prices in Maine and across the region. Energy prices are an important concern for the Chambers and their members and for the City and all municipalities. Energy costs are a significant factor for every Maine company in making day-to-day decisions and in planning for future growth. Businesses considering a move to Maine must account for the extent to which energy costs will affect their bottom lines. The Maine Chamber has repeatedly been advised that energy costs are one of the leading reasons why businesses are reluctant to relocate to our State or expand into Maine. Even though Maine offers many advantages, including a hard-working and capable workforce, high energy costs can be a deal breaker.

The NECEC will help to remedy that problem. There can be no dispute that the NECEC will lower energy prices. In the PUC proceedings, there was expert testimony agreeing that the NECEC will reduce wholesale electricity market prices in New England, which will result in lower electricity costs for Maine's retail electricity consumers. These savings for Maine's people and businesses are significant. Although the Chambers and the City support the NECEC for several reasons, the energy cost reduction benefits of the Project are particularly significant for the City itself, for other large and small municipalities and non-profits, for Maine businesses that use a lot of electric energy, and for any prospective Maine business that is considering its future energy costs.

OTHER MACROECONOMIC BENEFITS OF THE NECEC

In addition to increased jobs and lower energy costs, and the general positive effect on Maine's GDP, the NECEC will benefit Maine by increasing property tax revenues. These benefits, too, are significant. In fact, LEI estimated that the NECEC will increase Maine's GDP, on average, over \$98 million per year (fixed 2009 dollars) during the construction and operations period, and over \$29 million per year (fixed 2009 dollars) during the operations period. Maine's towns and cities where Project infrastructure will be located will directly benefit through additional municipal property tax revenues. Both LEI and CMP estimate that the NECEC will generate over \$18 million in total property tax revenues each year, once the NECEC investments are fully reflected in property valuations.

Part of the Project will be sited in Somerset County. The memorandum of understanding between CMP and stakeholders in Somerset County will provide significant economic development opportunities for the promotion of outdoor activities and tourism in that part of our State. And, when the NECEC is in fact constructed, CMP has agreed to fund additional development of broadband and Wi-Fi in the area, which would benefit all businesses, and the community generally, particularly in today's economy, where high-speed connectivity is often a necessity for businesses of all sizes.

INCREASED TAX REVENUES FOR LEWISTON

Because the Converter Station – a new station that will convert the Direct Current electricity to Alternating Current electricity that can enter the New England electric grid in Maine – will be constructed and operated in Lewiston, businesses and residents in the Lewiston-Auburn region will particularly benefit from enhanced employment opportunities and enhanced economic activity. In addition to local citizens and businesses realizing their respective

individual shares of statewide benefits, the City of Lewiston's municipal revenues will be materially enhanced. Increased municipal property tax revenues provided by the NECEC will help Lewiston meet the needs of its residents, including those who need it most. More than other cities among the ten largest in Maine, Lewiston is struggling with increasing demands for services. Coupled with this increased demand, the City has a much lower assessed property value per capita than any of its peer cities. For example, based on the U.S. Census Bureau's July 1, 2017 population estimates and Maine Revenue Service 2018 data, Lewiston's per capita assessed value was approximately \$61,728, the lowest of any of the ten largest cities in Maine. At the same time, the community's median household income (\$39,890) is only about 75% of Maine's (\$53,024) overall, and the City's poverty rate of 21.4% is nearly double Maine's overall rate of 11.1%.

In recent years, Lewiston has also experienced a significant influx of New Mainers. Many of these families understandably need additional support and social services to adjust to their new lives here in Maine, particularly given their initial language and economic challenges. Likewise, about two-thirds of Lewiston's school students come from economically challenged backgrounds, with one-third present or former English language learners. The NECEC will provide increased municipal tax revenues to communities in which the Project is sited, including especially to Lewiston. These new revenues will allow Lewiston to better address the needs of its residents, including those who need social services support from the City. Importantly, the NECEC will provide this benefit without any increase in the tax rate and may even permit the City to lower a state adjusted tax rate of \$23.66 that is already approximately 57% higher than the statewide average rate of \$15.06. This economic benefit to the City and its residents will be

accomplished at no cost to the City or its residents and businesses and, as importantly, at no cost to any neighboring community or to the State. This is all net added value.

THERE IS NO JURISDICTION QUESTION

As the Superior Court already ruled in litigation involving these same parties, the question of whether the Board, instead of former Commissioner Reid, should have presided at the NECEC hearing is not at all a matter of “jurisdiction” and has been waived both by the failure to ask the Board to hold the hearing and by the explicit request that the Commissioner hold the hearing that was held.³ This is not a matter about which these Appellants have any right to complain.

The fundamental point is that there is no jurisdiction question at all. The authority to determine the issuance or denial of environmental permits lies within a single administrative agency in Maine, the Department of Environmental Protection. Decisional authority ranges from routine administrative staff level approvals, or permits by rule, to Commissioner decisions, to Board decisions. The distribution of those responsibilities is not jurisdictional in any meaningful operational sense for purposes of this appeal.

Jurisdiction is a term uncomfortably borrowed from centuries of jurisprudence concerning the authority of courts. The judicial analogue is properly termed “subject matter jurisdiction,” (i.e., what business in what court) to distinguish it from “personal jurisdiction” (i.e., what parties in what court). Subject matter of one kind or another may be exclusively committed to the authority of a single court or concurrently within the jurisdiction of two or

³ Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 6-7, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (*Murphy, J.*).

more courts. For example, cases within the diversity jurisdiction of the federal courts may lawfully be litigated in either a state court or a federal court. In Maine, there are cases that may be litigated in the District Court or the Probate Court⁴, and there are cases that may be litigated in the Superior Court or the District Court.⁵

As the Superior Court recognized, the Board's "jurisdiction" to hear permit applications is more akin to a claims-processing rule.⁶ Within the DEP, the respective roles of the Commissioner and the Board are not an issue of "jurisdiction." The DEP's Chapter 2 rules set forth the authority of both the Board (in certain circumstances) and the Commissioner to consider permit applications that are within DEP's jurisdiction. Accordingly, it no longer matters whether the issues now before the Board on appeal might have been decided in the first instance by the Board. When the Board did not take the case, it did not leave the Commissioner without authority to act. Indeed, because the Board had not assumed the authority to decide the permit application, the Commissioner had the duty to decide, and he did so skillfully, thoroughly, thoughtfully, and most of all fairly.

These Appellants must necessarily contend either that everything that has occurred to date (including the Permit itself) was a nullity and should be disregarded *or* they must admit that the case is now properly before the Board on appeal (and on remand from the Superior Court) for appellate review of the record. They appear to have acknowledged that the years of work should not now be expunged from the record requiring everyone to start again. No jurisdiction issue

⁴ See, e.g., 18-C M.R.S. § 9-103 (adoptions), and others that may be litigated in the Superior Court or the Probate Court, see, e.g., 4 M.R.S. § 252 (equity regarding administration of estates).

⁵ See, e.g., 4 M.R.S. § 165 (criminal matters); 4 M.R.S. § 152(2) (certain civil actions when no equitable relief is demanded); 4 M.R.S. § 152(3) (enforcement of liens); 4 M.R.S. § 152(5) (foreclosures).

⁶ *NextEra Energy Resources, LLC v. Maine DEP*, SOM-AP-20-04, p. 5-6 (Bus. & Consumer Ct. Aug. 11, 2020, *Murphy, J.*).

really matters unless its functional effect is to delete from all history all the work that has been done, including issuance of the Permit, so as to require a judicial determination that the Permit is a juridical nullity. However, Justice Murphy in the Superior Court has already decided that the Permit is not a juridical nullity and has remanded it to this Board for appellate review.⁷ Because there was never a true jurisdiction issue and any timing issues are long waived or moot, the Board should now proceed to consider the Permit on appeal.

THE BIG PICTURE

Contextually, it is appropriate to note what this Project does not involve. This is not a proposal to build an industrial facility requiring a determination of what levels of new air pollution or new water pollution the public health, safety, and comfort can be legally required to accept. This is not a proposal to replace forests or fields, or wetlands with acres of impervious surface, hosting shopping malls or casinos or office parks. This is a proposal to transmit clean hydropower from Quebec to Lewiston to enter the New England electric grid, reducing the carbonization resulting from the use of electrical energy in New England, including in Maine. This is not to say there are no environmental tradeoffs, but only to say that the function of all environmental legislation and regulation is to evaluate the appropriateness of the tradeoffs, not to generate interminable proceedings within proceedings on top of proceedings to stall proposed projects to death, or to preclude approval of any project that may affect a part of a working forest, no matter how reasonable or responsible its purposes and design.

Stated otherwise, the issue before the Board is not whether some new industrial facility ought to be allowed to emit particulates or gasses or effluents that are harmful for miles around.

⁷ See *NextEra Energy Resources, LLC*, SOM-AP-20-04 at 5-6.

The balancing question is whether some habitats for some species may reasonably be disrupted or adjusted to some degree to facilitate the transmission of energy that does not involve fossil fuels, despite the objections of the fossil fuels industry and its allies. Instead of questions about a proposed project's potential effect on public health, opponents here argue that the views from some private land to locations on other private land must not be altered lest they offend the aesthetic sensibilities of tourists who have no right to be on any of that private land anyway, except by consent of the owners, and they argue that a working forest will somehow be desecrated forever if a transmission line is widened or extended or constructed in places where there are already logging activities involving logging roads.

The Chambers and the City understand that the Board's appellate review is not deferential and that the Board legally is empowered to come to different judgments about the balances to be struck. Given the careful and conscientious balances reflected in the Commissioner's thorough Order, however, with all the conditions and mitigation and compensation, it is unlikely that there is any good reason for striking a materially different balance. And it is implausible that the law would even allow, much less require, rejection of the Project, given the conditions the Order documents as part of the legal analysis. That is not a matter of deference. That is simply a matter of recognizing the high probability that the balances in the Permit, given the legal substrate for the analysis, are as good as or better than alternatives likely to be chosen in even a non-deferential review of the entire evidentiary record.

CONCLUSION

The Chambers and the City fully support Maine's longstanding commitment to robust administrative procedures, conducted and staffed by expert professionals for the full consideration of the environmental risks of any proposed business development. But all

applicants, whatever the project, are entitled to basic procedural fairness for the timely consideration of the evidence and the facts in accordance with the law as written, and not as opponents might wish it had been written. The opponents of this Project have been accommodated at least as fully as they might reasonably expect in a fair process. In fact, the Applicant and the Commissioner have responded to their legitimate concerns and made this Project better. That is all to the good for the people and for the Project. The quality of that iterative process and its product now leaves the opponents with nothing except procedural obfuscation and obstruction, not to improve the Project further, but to hope to defeat it on a fabricated procedural technicality, or to string out the process to stall the Project to death.

A good example is the recent futile challenge to the transfer of the Permit to meet the reasonable requirements of the PUC, given its concerns about separating or not commingling the business activities or economics of the Project with those of its affiliates. There was no legitimate basis for supposing that a routine transfer among related parties was a matter of environmental concern meriting any attention by this Board. However, the Appellants' challenges to that routine reorganization, and their serial demands for reconsideration of every decision, do much to expose what is actually at work here. Process arguments in any appellate process draw their legitimacy, if any, from a showing that the process used had a significantly improper effect on the decision of the merits. These opponents' many process arguments fail that basic test and are only distractions from the merits. The Board should get to the real issues as expeditiously as reasonably possible and decide them with finality.

The Chambers and the City thoroughly respect the integrity, the professionalism, the diligence, the patience, and the fairness of everyone in State government who has worked on this Project at any time. The Chambers and the City also respect those intervenors and members of

the public who have raised legitimate considerations that have been accommodated in the Permit now before the Board. The remaining transparently obstructionist tactics need to be addressed promptly and efficiently. In the unlikely event that any of them should have any merit, the Board will undoubtedly fulfill its public responsibilities.

Having followed this matter closely, the Chambers and the City have no doubt that the Permit is an excellent culmination of a fair and thorough process taking full account of all legal requirements and appropriately weighing all credible evidence of all environmental and other concerns that are properly the subject of modern environmental regulation. If every project that will reduce the carbon footprint of the New England electric grid can be defeated because some trees will be cut down in a working forest, we will have turned environmental regulation on its head. The Chambers and the City respectfully urge the Board to act promptly, decisively, and with unmistakable finality.

Respectfully submitted,

Dated: MARCH 12, 2021



Gerald F. Petruccelli, Esq. – Bar No. 1245
Attorney for Maine State Chamber of
Commerce, LA Metro Chamber, and the
City of Lewiston

Petruccelli Martin & Haddow, LLP
P.O. Box 17555
Portland, Maine 04112-8555
gpetruccelli@pmhlegal.com
Tel: 207-775-0200
Fax: 207-775-2360

THIS PAGE INTENTIONALLY LEFT BLANK

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

March 12, 2021

VIA ELECTRONIC MAIL AND U.S. MAIL

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

RE: Central Maine Power Company, New England Clean Energy Connect
Department Order L-27625-26-A-N, L-27625-TG-B-N, L-27625-2C-C-N,
L-27625-VP-D-N, L-27625-IW-E-N, and L-27625-26-K-T

Dear Chair Draper:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC,
please find enclosed a Response to the Consolidated Permit Order Appeals.

Please let me know if you have any questions.

Sincerely,



Matthew D. Manahan

Enclosure
cc (via email only): Service List (rev. October 19, 2020)

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
L-27625-26-A-N/L-27625-TG-B-N/)
L-27625-2C-C-N/L-27625-VP-D-N/)
L-27625-IW-E-N and L-27625-26-K-T)

**CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION LLC'S
RESPONSE TO THE CONSOLIDATED PERMIT ORDER APPEALS**

These consolidated appeals seek to overturn one of the most extensive and thorough permitting processes ever conducted by the DEP. The DEP and its professional and expert staff analyzed the NECEC Project’s impacts and carefully crafted conditions that reduce those reasonable impacts. The culmination of this years-long analysis is the Commissioner’s May 11, 2020 Order (the Permit Order), a comprehensive, 236-page document that specifically sets forth the arguments, and the DEP’s reasoned findings and conclusions, on the issues the Natural Resources Council of Maine (NRCM), NextEra Energy Resources, LLC (NextEra) and the West Forks Petitioners (West Forks) (collectively, Appellants¹) raise in these consolidated appeals.

¹ Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC LLC) (collectively, Licensees) object for the record to any responses to the merits of these consolidated appeals of the Permit Order filed (1) by an Appellant or (2) by persons who did not comment on the underlying September 2017 Site Law and NRPA applications. Neither is a respondent in these consolidated appeals, and their comments should be disregarded. DEP Regs. Ch. 2 § 24(C) (“A written response to the merits of an appeal may be filed by a licensee (if the licensee is not the appellant) and any person who submitted written comment on the application (hereafter collectively referred to as the respondents.)”); Chair Draper ruling on supplemental evidence at 9 (Feb. 12, 2021) (setting March 12, 2021 as the deadline for written responses by Appellees and respondents); Combined Order on Motions at 6, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Aug. 11, 2020) (Murphy, J.) (consolidating the appeals of West Forks and NextEra and remanding them to the BEP).

Licensees further object to any responses that exceed the scope of the merits of the appeal of the Permit Order, including those that address the appeal of the December 4, 2020 Transfer Order, responses to which were due by February 18, 2021. Chair Draper letter on NRCM appeal of the Transfer Order and ruling on proposed supplemental evidence and stay request at 2 (Jan. 19, 2021). Any such responses should be disregarded.

This Permit Order carefully describes how and why the Project meets all applicable Site Location and Development Act (Site Law) and Natural Resources Protection Act (NRPA) standards, as well as the DEP's rules implementing those standards. Appellants disagree with the Commissioner's determinations on those standards. But that mere disagreement is no basis to challenge, let alone modify, a thoughtful and thorough permitting decision. In fact, the robust record, including testimony and cross-examination at six days of hearings and tens of thousands of pages of testimony and evidence, demonstrates that each of Appellants' claims is without merit:

- (1) BEP Jurisdiction. As the Maine Superior Court determined, NRCM waived its claim that the Board should have assumed original jurisdiction over the September 2017 Site Law and NRPA permit applications (permit applications) by not raising that issue until more than two and one-half years after the deadline to do so, at significant prejudice to all parties who participated in the years-long permitting proceeding. Furthermore, Title 38 Section 341-D(2) does not require the Board to make determinations that every project is or is not of statewide significance.
- (2) TRI. CMP had sufficient title, right, or interest (TRI) in the property the Project will cross throughout the application processing period. The PUC's requirement that CMP transfer the Project to NECEC LLC at some point in the future has no bearing on CMP's property rights during the pendency of its permit applications. Nor does a subsequent (and unresolved) challenge to the legality of CMP's lease of lands from the Bureau of Parks and Lands (BPL) affect CMP's demonstration of TRI during the application processing period, as the Maine Superior Court recently determined.
- (3) Environmental Impact. The Project does not unreasonably impact the environment because its impacts are relatively minor and the avoidance, minimization, mitigation, and compensation the Commissioner ordered is over-protective of brook trout habitat, on which the Project will have no direct impact, and mitigates any potential habitat fragmentation, consistent with federal standards. Furthermore, the DEP did allow and consider evidence of the Project's impact on greenhouse gases (GHGs), contrary to NRCM's claims otherwise, and reached the same conclusion that two other state agencies (affirmed by two state courts), two federal agencies, and one federal court have reached – the Project will reduce GHG emissions. So too does the record support the Commissioner's decommissioning requirements, which go above and beyond any statutory or rule requirement.

- (4) Alternatives Analysis. CMP performed a thorough alternatives analysis, which demonstrates that undergrounding alternatives are not practicable and which explicitly considered impacts to natural resources.

While the Project necessarily results in some impact – as all projects that trigger DEP permitting do – this reasonable and fully compensated impact pales in comparison to the climate crisis facing Maine, the United States, and the world. Due speed is essential because, as the DEP recognized, the Project will mitigate the threat climate change poses to Maine’s natural environment by helping to reduce GHG emissions:

As described in detail above, construction and maintenance of the project will cause some adverse environmental effects on habitat, scenic character, and existing uses. *Climate change, however, is the single greatest threat to Maine’s natural environment.* It is already negatively affecting brook trout habitat, and those impacts are projected to worsen. It also threatens forest habitat for iconic species such as moose, and for pine marten, an indicator species much discussed in the evidentiary hearing. Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts. The Maine Public Utilities Commission (PUC), which has jurisdiction necessary to assess GHG emissions from the project in light of its impact on the electricity grid, concluded that, “the NECEC [project] will result in significant incremental hydroelectric generation from existing and new sources in Quebec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region.”²

DEP recognized that the Project’s relatively minor impacts pale in comparison to the urgent need to address this threat.

The Appellants had ample opportunity to present testimony and evidence over the course of six days of hearings before the DEP, as well as outside the hearing itself. DEP thoroughly considered all that evidence, and concluded that the Project meets all applicable standards, as conditioned by the Permit Order. Appellants don’t like that conclusion, either because they don’t like hydropower, or they don’t like market competition, or they want to keep this development

² DEP Order at 105 (emphasis added).

out of their “backyard,” but they can’t point to any error in the Permit Order. So they try to make process arguments and hope something sticks. The Board should reject those transparent efforts and affirm the Commissioner’s Permit Order with due speed and without a further duplicative hearing.

I. NRCM waived its claim that the Board should have assumed original jurisdiction over the 2017 permit applications, which is meritless.

Contrary to the clear and logical applicable rules of procedure, NRCM asserts that the Board must now, long after the conclusion of the application processing period, determine that it should have assumed jurisdiction in 2017 when the applications were first made. NRCM wants the Board to re-start the entire permitting process, throwing out the years-long public proceedings undertaken by the DEP’s expert staff that generated a record in the tens of thousands of pages, six days of public hearings, and the comments of hundreds of Maine citizens. This makes no sense, and is a particularly bold request given that NRCM never requested Board jurisdiction at any point while the DEP was processing the permit applications. Instead, NRCM explicitly requested that the Commissioner – not the Board – should hold a hearing on the applications.³ Its belated argument now that the reverse should have occurred clearly has nothing to do with process and everything to do with strategic delay. By lying in wait until the entire permitting process was complete, NRCM has waived its argument that the Board should have assumed jurisdiction in 2017, which is in any event meritless for the reasons described below.

³ NRCM, Conservation Law Foundation, and Appalachian Mountain Club Petition for a Public Hearing (Nov. 2, 2017).

A. NRCM waived its original jurisdiction claim.

NRCM’s claim that the Board must assume original jurisdiction over CMP’s September 2017 Site Law and NRPA applications has already been rejected by the Commissioner, the Chair, and the Maine Superior Court.⁴ NRCM Appeal at 4-7. While these decisions demonstrate that there is no mandatory Board jurisdiction here, as further explained below, NRCM has waived its claim by waiting to raise Board jurisdiction until the years-long and robust public proceedings concerning the applications closed.⁵ The Superior Court agrees, determining this January that NRCM waived its argument that the Board should have assumed jurisdiction over the underlying permit applications. Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 6-7, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.) (“Even assuming movants are correct that the Board *should* have been the entity to decide CMP’s permit application, any such argument was waived because it was not raised in the several-year process before the Commissioner until after the Commissioner issued the conditional approval of the permits.”).⁶

⁴ Letter from Commissioner Reid denying stay requests at 5 (Aug. 26, 2020) (finding that NRCM cannot show that the Board was required to assume jurisdiction over the application); Letter from Chair Draper denying stay requests at 2 (Oct. 23, 2020) (declining to revisit and reconsider the Commissioner’s August 26, 2020 decision); Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 5, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.) (concluding that “neither scenario invoking mandatory referral from the Commissioner to the Board occurred here.”).

⁵ The DEP’s rules provide that “Any person may request that the Board assume jurisdiction over an application by submitting the request to the Department in writing no later than 20 days after the application is accepted as complete for processing.” DEP Regs. Ch. 2 § 17(A); *see also* DEP Regs. Ch. 2 § 16. The DEP accepted CMP’s applications as complete for processing on October 13, 2017. The deadline for any person to request that the Board assume jurisdiction therefore was November 2, 2017, well over three years ago.

⁶ The Superior Court further noted that a request for Board jurisdiction is “akin to a claims-processing rule that can be waived if not timely raised, as compared to a jurisdictional prescription that cannot be waived.” Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 5-6, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.). Accordingly, a request for Board jurisdiction “may be forfeited if the party asserting the rule waits too long to raise the point.” *Id.* at 6 (citing *Eberhart v. United States*, 546 U.S. 12, 15 (2005) (internal quotation marks omitted)). Certainly three years is too long to wait to raise the point here.

Like the Superior Court, it is imperative that the Board not “endorse such an extended delay in raising the issue, particularly when it would unfairly prejudice CMP, DEP, and the 2-plus-year process engaged in by numerous individuals and entities to reach the ultimate conditional approval.”⁷ Even if there were some validity to NRCM’s original jurisdiction claim – which there is not – assuming original jurisdiction of the 2017 permit applications now, nearly 42 months after they were submitted to the DEP and after the DEP held six full days of hearings and considered tens of thousands of pages of record evidence, would be an incredible waste of the Board’s, the parties’, and the public’s time and resources. That is why the DEP’s rules do not permit parties like NRCM to lie in wait, holding back to make the Board jurisdiction argument until very late in the process to try to derail that process, and instead require that requests for Board jurisdiction must be made at the start of the permitting process, no later than 20 days after an application’s acceptance for processing. DEP Regs. Ch. 2 § 17(A); *see also* DEP Regs. Ch. 2 § 16. The Board should summarily deny NRCM’s attempt to delay the Project by hitting the restart button.⁸

⁷ *Id.* at 7.

⁸ In any event, NRCM’s argument is beside the point, as former Commissioner Reid recognized, because “[e]ven if NRCM could show that the Board was required to assume jurisdiction over the application at the outset, which they cannot, it is difficult to see how the Board’s current involvement would not render that harmless error.” Letter from Commissioner Reid denying stay requests at 5 (Aug. 26, 2020). The Superior Court agreed, noting that “the relief requested by [NRCM] for this alleged error is similar to what the Board will be doing as it reviews the Commissioner’s conditional approval. Compare NRCM Mot. 7 (‘[T]he Board should review the previously created record, treat the NECEC Order as a recommendation, and allow focused testimony on that Order before it makes a determination.’) with 38 M.R.S. §341-D(4)(A) (‘The board is not bound by the commissioner’s findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner. Any changes made by the board under this paragraph must be based upon the board’s review of the record, any supplemental evidence admitted by the board and any hearing held by the board . . .’).” Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 7, n.9, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.).

B. NRCM’s claim that the Board should have assumed original jurisdiction is meritless.

Even if NRCM had not waived its original jurisdiction argument, NRCM’s argument is without merit and, in fact, turns the statute on its head. Title 38 Section 341-D(2) does not require the Board to make determinations that every project is or is not of statewide significance, nor does it establish that the Board is the only entity authorized to consider the permit applications, as NRCM claims. NRCM Appeal at 6. Rather, the Board retains significant discretion under the statute.

Section 341-D(2) states that the Board “shall decide each application for approval of permits and licenses that *in its judgment* represents a project of statewide significance.” 38 M.R.S. § 341-D(2) (emphasis added). That section provides clear standards for how and when the Board is called upon to exercise its judgment regarding whether a project is of statewide significance, which standards NRCM ignores. *Id.*; DEP Regs. Ch. 2, § 17.⁹ The Board is required to assume jurisdiction over licensing applications in only two instances:

1. *Referral by Commissioner and Applicant.* The Board must assume jurisdiction without a vote when the Commissioner and the applicant request Board jurisdiction. 38 M.R.S. § 341-D(2) (“The board shall decide each application for approval of permits and licenses that is referred to it jointly by the commissioner and the applicant.”).

2. *Commissioner Recommendation or Public Request.* The Board must assume jurisdiction on license applications after a vote if it makes a finding that at least three of the four criteria set out in Section 341-D(2) have been met, following referral to the Board by (a) recommendation of the Commissioner, or (b) request of an interested person. *Id.* § 341-D(2) (“The board shall assume jurisdiction over applications referred to it under section 344, subsection 2-A when it finds that at least 3 of the 4 criteria of this subsection have been met.”); *see id.* § 344(2-A) (providing for requests by the commissioner or by interested persons).

⁹ See also BEP Information Sheet: Guidance on Requests for Board Jurisdiction over an Application, *available at* <https://www.maine.gov/dep/bep/Guidance%20Information%20Sheets/Information%20Sheet%20BEP%20Jurisdiction%20October%202020.pdf>.

Otherwise, the Board need not assume jurisdiction over a project of statewide significance, though it may in its own discretion decide to exercise jurisdiction. As Section 341-D(2) states, apart from the mandatory jurisdiction and the mandatory vote on jurisdiction outlined above, the Board “*may* vote to assume jurisdiction of an application.” 38 M.R.S. § 341-D(2) (emphasis added). Thus, the Board need not always vote to make findings regarding whether an application fits the Section 341-D(2) criteria.

Accordingly, regardless of whether the Project met the criteria for determining that a project is of statewide significance, the Board was not required to assume jurisdiction. First, the prerequisite for triggering mandatory jurisdiction without a vote did not occur because CMP and the Commissioner did not jointly request jurisdiction. Second, the prerequisite for triggering mandatory jurisdiction following a Board vote did not occur. The Commissioner did not, on his own initiative, recommend that the Board assume jurisdiction. Further, no person – including NRCM – requested Board jurisdiction prior to the November 2, 2017 deadline to do so.¹⁰ In short, CMP’s application was not referred to the Board under circumstances that would have made it mandatory for the Board to exercise jurisdiction either with or without a vote by the Board.¹¹

It was therefore entirely within the Board’s discretion to determine whether to vote to assume jurisdiction over CMP’s permit applications when it was presented with those applications in 2017. The Board chose not to do so. The permit applications were accepted as

¹⁰ As noted by former Commissioner Reid, “[t]he record reflects that neither NRCM nor any other party requested that the Board assume jurisdiction of the permit applications during the 20-day period for filing such a request set forth in Ch. 2, § 17(A). Similarly, no party ever attempted to raise this issue in the two and a half years the applications were pending.” Letter from Commissioner Reid denying stay requests at 5 (Aug. 26, 2020). *See also* DEP Regs. Ch. 2 § 17(A); DEP Regs. Ch. 2 § 16; *supra*, n.5.

¹¹ Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 5, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.).

complete for processing on October 13, 2017 and included in the October 20, 2017 list of applications accepted for processing that was in the Board packet for the November 2, 2017 Board meeting.¹² The minutes of the Board meeting on November 2, 2017 reflect that the Board did not assert jurisdiction over the applications.¹³ The Board in 2017 did not identify the Project as one that rose to the level of significance that would warrant a vote on the § 341-D(2) factors. Accordingly, the DEP continued to process the applications and, at the conclusion of the multi-year proceeding in which the Appellants were heavily involved, issued the Permit Order.

C. The Board may not now assume original jurisdiction over the underlying applications.

Even if NRCM had not waived its original jurisdiction argument, and even if it were appropriate for the Board to vote now – 42 months after the applications were submitted – on the § 341-D(2) factors, the Board cannot assume jurisdiction because the Project was not of statewide significance in 2017, when it was timely for the Board to consider the § 341-D(2) factors.

A determination that a project is of statewide significance is a determination that must be made at the outset of the licensing proceeding and not, as NRCM attempts here, after the DEP has issued the permit. In any event, the Project did not and still does not meet two of the four significance factors: (F) involves an activity not previously permitted or licensed in the State, and (G) is likely to come under significant public scrutiny. Regarding factor (F), transmission lines are routinely permitted in Maine, and are specifically addressed in the Site Law. *See, e.g.*, 38 M.R.S. § 487-A, which governs “Hazardous activities; transmission lines.”

¹² *See Applications Accepted for Processing, Accepted applications for: LAND at 7-8; BEP Meeting Minutes at Item I.E (Oct. 20, 2017).*

¹³ *See BEP Meeting Agenda and Applications Accepted for Processing, Accepted applications for: LAND at 7-8; BEP Meeting Minutes at Item I.E (Nov. 2, 2017).*

Regarding factor (G), public scrutiny, that factor contemplates a determination in the early stages of a proceeding of whether the application is “likely to come” under significant public scrutiny – not based on manufactured opposition drummed up by a few vocal Project opponents over the years after the applications were submitted. NRCM cites the number of parties to the underlying proceeding as evidence of significant public scrutiny. But not one of those parties requested Board jurisdiction during the timeframe set forth in the DEP’s Chapter 2, section 17, rules, nor at *any* point during the two and one-half years-long proceeding. Instead, NRCM requested within the applicable timeframe that the *Commissioner* hold a public hearing, and the Commissioner granted that request on November 17, 2017.¹⁴ It is the height of hypocrisy for NRCM now to complain that the Board should have assumed jurisdiction and held a hearing when the Commissioner actually granted the hearing request NRCM made at that time – that *the Commissioner* hold a hearing.

It is illogical and contrary to the DEP’s rules for NRCM to make its belated arguments of statewide significance long after the conclusion of the processing of the applications. The DEP’s rules require that any request that the Board assume jurisdiction must be made “in writing no later than 20 days after the application is accepted as complete for processing.” DEP Regs. Ch. 2 § 17(A); *see also* DEP Regs. Ch. 2 § 16. This allows the Commissioner and the Board to assess the likelihood of statewide significance at the outset of a permitting proceeding, and not nearly 42 months after-the-fact.¹⁵ Doing so now, as NRCM requests of the Board, would turn the

¹⁴ NRCM, Conservation Law Foundation, and Appalachian Mountain Club Petition for a Public Hearing (Nov. 2, 2017).

¹⁵ The DEP’s deadline for requests for Board jurisdiction also prevent the prejudice to the Licensees and great inconvenience to all parties that NRCM suggests the Board should inflict here by restarting the entire licensing process in a new venue. *See* Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 6-7, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.).

DEP's procedures on their head, allowing the Board to assume original jurisdiction at the same time it assumes appellate jurisdiction.¹⁶ This makes no sense, and demonstrates that NRCM's request has nothing to do with process and everything to do with delay.

Again, it is imperative that the Board not endorse NRCM's strategy to lie in wait and then spring its original jurisdiction argument on the Board and the parties after the Commissioner held the hearing NRCM requested. In an effort to inflict maximum damage to the process, and on the Project, NRCM waited until after the Commissioner issued the Permit Order to claim that the Commissioner lacked authority to issue that order (even though NRCM requested that the Commissioner – not the Board – hold a hearing). That was strategic, and NRCM should not be rewarded for abusing the process in this manner. NRCM's strategy of obfuscation and delay should be rejected and the Board should continue to consider Appellants' consolidated appeals of the Permit Order in its appellate capacity, relying on the very robust record developed by the DEP over the course of its multi-year review.

II. CMP maintained TRI throughout the entire processing period.

DEP correctly determined that CMP properly made a sufficient showing of TRI during the application processing period. DEP Regs. Ch. 2 § 11(D). The Maine Law Court has made clear that, even when there is doubt about an applicant's TRI – which there was not here – the permitting authority should process the permit application if the applicant has provided a *prima*

¹⁶ The Maine Superior Court and former Commissioner Reid recognized the fallacy of NRCM's request. *See supra*, n.8. Board assumption of jurisdiction over a project that has received the permit at issue makes no sense, because the Board can have a hearing on an appeal and, if it chooses, render a new permitting decision. For this reason, and because of the prejudice that would result from the Board assuming jurisdiction after permit issuance, the Section 17 rules do not permit the Board to take original jurisdiction over an application for which the Commissioner has already issued a permit; rather, they require that the Commissioner refer an application to the Board if the Commissioner determines during an application processing period – prior to issuance of the permit – that the project is of statewide significance. Once that process is complete the Board does not have authority to assume “original” jurisdiction.

facie TRI showing, and that the DEP is not required or authorized to act as an adjudicatory body to determine title.¹⁷ In any event, NRCM’s and West Forks’ purported challenges have no bearing whatsoever on CMP’s TRI. Instead, NRCM’s claim (which West Forks echoes) that CMP’s TRI “materially changed” during the DEP’s proceedings because the PUC required that CMP at some point in the future must transfer the Project, and that CMP’s TRI was deficient because the 2014 Bureau of Parks and Lands lease (2014 BPL lease) was “illegal” (a claim rejected by the Maine Superior Court), are irrelevant to CMP’s demonstration of interest in “all of the property that is proposed for development or use . . . throughout the entire application processing period.” DEP Regs. Ch. 2 § 11(D).

A. The January 4, 2021 transfer of the Project has no bearing on CMP’s showing of TRI throughout the DEP’s processing of the 2017 permit applications.

NRCM’s and West Forks’ claim that CMP lacked TRI because at some point in the future CMP would transfer the Project is a red herring. NRCM Appeal at 8-9; West Forks Appeal at 13-15. First and foremost, as NRCM is aware because it was a party to the PUC Certificate of Public Convenience and Necessity (CPCN) proceeding¹⁸ and as both NRCM and West Forks are aware because they were parties to the DEP’s Transfer Order proceeding, no

¹⁷ See *Murray v. Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (finding that an applicant need only have a “legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permit or license he seeks”); *Southridge Corp. v. Bd. of Env’tl Prot.*, 655 A.2d 345, 348 (Me. 1995) (holding that a landowner whose property interest was based entirely on an adverse possession claim, on which he may or may not prevail, had sufficient TRI in the disputed land to apply to the DEP for a permit).

¹⁸ Central Maine Power Company, Request for Approval of CPCN for the New England Clean Energy Connect, Docket No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation (May 3, 2019) (CPCN Order), *aff’d*, *NextEra Energy Resources v. Public Utils. Comm’n*, 2020 ME 34, 227 A.3d 1117 (Mar. 17, 2020). In his January 19, 2021 letter at 2, the Chair stated that the May 3, 2019 PUC Order is “already in the Department’s underlying administrative record for the NECEC Order, which was considered by the Department in the processing of the Transfer Order.” The Chair further admitted the February 21, 2019 Stipulation, which required that CMP transfer the Project to a special purpose entity to shield Maine ratepayers from Project costs and which is discussed in the CPCN Order, into the administrative record here. Chair Draper ruling on supplemental evidence at 5 (Feb. 12, 2021).

transfer of the Project or any of its underlying property occurred during the pendency of CMP's Site Law and NRPA permit applications. Nor could it, because additional regulatory processes were required before the transfer of the Project could occur.¹⁹ Before the Project transfer could occur, the PUC needed to authorize the creation of NECEC LLC as a Maine public utility pursuant to 35-A M.R.S. § 708 and grant the necessary approvals to effectuate the Project transfer pursuant to Maine's public utility affiliated interest transaction statute, 35-A M.R.S. § 707, and CMP and NECEC LLC needed to finalize and execute the Transfer Agreement.²⁰ Such PUC authorization did not occur until October 20, 2020 when the PUC Commissioners unanimously authorized the creation of NECEC LLC as a public utility and granted the affiliate transaction approvals required to effectuate the transfer of the Project to NECEC LLC.²¹ Transfer of the Project occurred on January 4, 2021, at which time CMP conveyed the Project property interests and transferred its land use permits to NECEC LLC.²² Accordingly, CMP maintained TRI in all Project property throughout the entire application processing period, as required by Chapter 2. The PUC's requirement that CMP transfer the Project at some point in

¹⁹ Indeed, the Stipulation to which CMP agreed and which the PUC approved is forward-looking, requiring "that CMP *will convey* the Project to NECEC Transmission LLC (NECEC LLC)" and "[u]pon the transfer, CMP and NECEC LLC will enter into a Service Agreement which contains the provisions under which CMP will provide various services to NECEC LLC, including accounting, legal, information technology, other corporate support, supply chain and engineering services." CPCN Order at 75 (emphasis added); NRCM Appeal Appendix D at §§ V.B.1 and V.B.1.c.

²⁰ Application for Partial Transfer of MDEP Site Law and NRPA Permits and Water Quality Certification at Attachment D, #L-27625-26-K-T (Sept. 25, 2020).

²¹ See Response to CMP to NRCM's Request for Board Jurisdiction over CMP's Application for Partial Transfer of its NECEC Permits and Certification at 8, n.8 (Oct. 27, 2020).

²² CMP Certification of Partial Transfer, #L-27625-26-K-T (Jan. 5, 2021).

the future has no bearing on CMP's TRI in the property up to the date of the Commissioner's May 11, 2020 Permit Order.

B. NRCM's challenge to the legality of the BPL lease has no bearing on the sufficiency of CMP's showing of TRI or the Commissioner's findings on TRI.

NRCM's next claim is that CMP's TRI was deficient because the 2014 Bureau of Parks and Lands lease (2014 BPL lease) was "illegal." NRCM Appeal at 9-11. Like NRCM's original jurisdiction argument, this claim also was rejected by the Commissioner²³ and the Maine Superior Court. Addressing NRCM's identical challenge to the validity of the 2014 Lease, the Court noted that NRCM is challenging the validity of that lease in parallel litigation,²⁴ and found

²³ Appellants have already raised, and the DEP has already considered, the allegation that the 2014 Lease is void. In its November 13, 2018 letter to the Department, NextEra stated that it is "unclear whether the Transmission Line Lease between Department of Agriculture, Conservation and Forestry Bureau of Parks and Lands and Central Maine Power Company dated December 2014 is statutorily permissible." The Presiding Officer responded on November 16, 2018, stating as follows:

Further, Nextera questions whether the Transmission Line Lease between CMP and the Department of Agriculture, Conservation, and Forestry, Bureau of Public Lands (the Bureau), dated December 15, 2014, is "statutorily permissible." The Bureau entered into that lease with CMP pursuant to 12 M.R.S. § 1852(4), which authorizes the Bureau to "lease the right, for a term not exceeding 25 years, to," among other things, "[s]et and maintain or use poles, electric power transmission and telecommunications facilities." CMP's lease with the Bureau, a copy of which CMP provided to the Department, demonstrates to the Department's satisfaction sufficient title, right, or interest to the lands subject to that lease. 096 C.M.R. ch. 2, § 11(D)(2) (2018). Legal challenges to the Bureau's authority to enter a transmission line lease pursuant to 12 M.R.S. § 1852(4) would be for the courts—not the Department—to adjudicate.

Despite this unequivocal directive from the Presiding Officer, NRCM persisted, arguing in the permitting proceeding as they do now that the leases in question do not demonstrate TRI because they were not approved by a two-thirds vote of the Legislature. This issue therefore was fully briefed, and considered and addressed by the DEP. *See, e.g.*, Group 4 Initial Brief at 4-6; CMP Reply Brief at 1-6; Permit Order at 8. NRCM's allegation that there is "no rational basis" for the DEP's treatment of the 2014 Lease rings hollow. NRCM Appeal at 11.

²⁴ *Black v. Cutko*, Dkt. No. BCD-CV-20-29 (Me. Super. Ct.).

that “[t]he fact that an applicant’s TRI is based on a possessory interest that might later be invalidated by a court does not mean the applicant lacked TRI to proceed before the DEP.”²⁵

Pending litigation on the validity of the 2014 Lease does not affect CMP’s showing of or the DEP’s findings on CMP’s TRI because an applicant need only make a colorable showing of TRI during the “application processing period.” DEP Regs. Ch. 2 § 11(D); *see also Murray v. Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (finding that an applicant need only have a “legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permit or license he seeks”). Maine law is clear that, even when there is doubt about an applicant’s TRI, the permitting authority should process the permit application unless the applicant clearly lacks TRI. *Id.* The DEP is not required or authorized to act as an adjudicatory body to determine title. *Southridge Corp. v. Bd. of Env’tl Prot.*, 655 A.2d 345, 348 (Me. 1995) (holding that a landowner whose property interest was based entirely on an adverse possession claim, on which he may or may not prevail, had sufficient TRI in the disputed land to apply to the DEP for a permit).

Thus, even if the 2014 Lease were ultimately found to be infirm, that eventuality would not mean that CMP failed to make the required colorable showing of TRI during the processing of the application. *See Southridge Corp.*, 655 A.3d at 348. Neither CMP nor the BPL have conceded that the 2014 Lease was invalid, and Justice Murphy has noted that “[t]hat case is still in its relative infancy, and the issue will be decided on the merits after further factual development and argument.”²⁶ But whatever the outcome of the lease litigation, it does not

²⁵ Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 7-8, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Ct. Jan. 11, 2021) (Murphy, J.) (citing *Southridge Corp. v. Bd. of Env’tl Prot.*, 655 A.2d 345, 348 (Me. 1995)).

²⁶ *Id.* at 8.

affect the Permit Order itself because, again, “[t]he fact that an applicant’s TRI is based on a possessory interest that might later be invalidated by a court does not mean the applicant lacked TRI to proceed before the DEP.”²⁷

Here, CMP made the requisite *prima facie* showing by providing the DEP with the 2014 Lease, and the DEP appropriately accepted that lease as establishing TRI. *See* Permit Order at 8 (accepting “the decision of its sister agency to enter into the leases” and concluding that the leases established sufficient TRI).²⁸ The 2014 Lease remained in effect throughout the entirety of the DEP application process. Developments after May 11, 2020 – the date of issuance of the permit – are quite simply irrelevant to the validity of the permit.²⁹ NRCM’s assertion that the 2014 Lease is “illegal” is insufficient grounds to overturn the Permit Order.³⁰ NRCM Appeal at 9.

²⁷ *Id.* Thus, even if the 2014 Lease is ultimately found to be infirm, and that DEP had erroneously relied on the validity of that lease, that would not be a basis to reverse the Permit Order because CMP had sufficient administrative standing to pursue its permits. A mistake in concluding that an applicant has sufficient TRI does not necessitate reversal of a DEP permit, after that permit has issued, because TRI has nothing to do with the DEP’s Chapter 2 approval standards. *See Southridge Corp. v. Bd. of Env’tl Prot.*, 655 A.2d 345 (Me. 1995) (holding that a landowner whose property interest was based entirely on an adverse possession claim, on which he may or may not prevail, had sufficient TRI in the disputed land to apply to the DEP for a permit). It would be merely a procedural error, which does not undermine the validity of the Permit Order itself. Again, TRI is intended to avoid a waste of the agency’s resources. Thus, when the permit has been issued, any issues regarding TRI are moot.

²⁸ As former Commissioner Reid rightly recognized in denying NRCM’s request for stay, “the Department’s determination that a lease that on its face gives the lessee the right to construct the proposed project, absent a court ruling otherwise, is likely to be upheld.” Letter from Commissioner Reid denying stay requests at 6 (Aug. 26, 2020).

²⁹ Even if developments after the application processing period were relevant to the DEP’s findings on TRI, which they are not, on June 23, 2020 CMP and the BPL amended and restated the 2014 Lease, at which time CMP *did* have a CPCN for the Project. NRCM’s argument that CMP’s TRI is invalid because its lease with the BPL predated the PUC’s issuance of the CPCN therefore is moot. NRCM Appeal at 11.

³⁰ Regarding NRCM’s allegation that any BPL lease requires a Legislative vote, NRCM misunderstands the law. The Legislature that drafted and passed Article IX, Section 23 of the Maine Constitution also passed legislation defining the term “substantially altered” in such a way that made clear the Legislature’s judgment that leases for utility facilities do not “substantially alter” the lands at issue and, thus, do not require a two-thirds vote of the Legislature. *See* “An Act to Designate Certain Lands under the Constitution of Maine, Article IX, Section 23,” P.L. 1993, ch. 639 § 1 (Designated Lands Act), codified at 12 M.R.S. Ch. 202-D (containing sections 598, 598-A, and 598-B). The Designated Lands Act defined “substantially altered” to mean “changes in use” that would frustrate the “protection, management and improvement of those lands” for the “multiple use objectives” then set forth in 12 M.R.S. § 585. In other words, the Legislature determined that a “substantially altered” use consisted of significant

III. The Project does not unreasonably impact the environment.

The Permit Order – the culmination of nearly three years of intensive and iterative work by the DEP’s expert staff in coordination with the Maine Department of Inland Fisheries and Wildlife (MDIFW) that built a record of tens of thousands of pages – goes above and beyond the mandates of the Site Law and NRPA. Despite the extensive avoidance, mitigation, and compensation measures that the Commissioner ordered to reduce the reasonable Project impacts, and without pointing to any errors in the Permit Order, NRCM and West Forks claim that the Permit Order is somehow insufficiently protective of the environment simply because they do not like the Project. They allege that, notwithstanding the Commissioner’s order of “an unprecedented level of natural resource protection for transmission line construction in the State of Maine,”³¹ the Project (A) will unreasonably impact brook trout habitat (NRCM Appeal at 12-20), (B) will unreasonably fragment wildlife habitat (NRCM Appeal at 20-26; West Forks

deviations from the existing multiple use standard governing public reserved lands. Notably, the Designated Lands Act expressly pointed to both the BPL’s general multiple use standard and its specific leasing authority as within the “multiple use objectives” which, if adhered to, would not constitute a substantial alteration for purposes of Article IX, Section 23. *See* 12 M.R.S. § 585.

The Legislature’s judgment in this regard has endured across revisions to the Maine code. For instance, in 1997, the Legislature enacted P.L. 1997, ch. 678, “An Act to Reorganize and Clarify the Laws Relating to the Establishment, Powers and Duties of the Bureau of Parks and Lands” (BPL Act), which, among other things, revised the Designated Lands Act and provided the statutory framework that governs the BPL today. The BPL Act maintained the multiple use concept set forth in 12 M.R.S. § 1852 and again authorized the BPL to lease public reserved lands to those who would “[s]et and maintain or use poles, electric power transmission and telecommunication transmission facilities.” P.L. 1997, ch. 678 § 13 (codified at 12 M.R.S. § 1852(4)). The BPL Act enacted 12 M.R.S. § 1851 to authorize the BPL to sell public reserved lands in certain circumstances and expressly stated that such transactions would be subject to 12 M.R.S. § 598-A, which incorporated and implemented the two-thirds voting requirement of Article IX, Section 23. By contrast, 12 M.R.S. § 1852 does not make the leasing authority set forth therein subject to 12 M.R.S. § 598-A or Article IX, Section 23. This omission again reflects the Legislature’s judgment that leases of the kind identified in 12 M.R.S. § 1852 did not require legislative approval under Article IX, Section 23.

In short, NRCM’s allegation, and request for conditional approval of TRI, ignores the statutory authority that the Maine Legislature granted to the BPL to enter into its lease agreements without legislative approval. NRCM Appeal at 11; *see also* CMP’s Reply Brief at 1-5 (June 28, 2019). Indeed, in the more-than-25 years since the adoption of Article IX, Section 23, CMP is not aware of even one occasion where the BPL sought two-thirds legislative approval for a lease granted under 12 M.R.S. § 1852, such as the one at issue here.

³¹ Permit Order at 1.

Appeal at 5-7, 9-10), (C) will not achieve the greenhouse gas benefits that no fewer than three state agencies³² affirmed by two state courts,³³ two federal agencies,³⁴ and one federal court³⁵ have found will be achieved (NRCM Appeal at 32-34), and (D) is subject to decommissioning requirements not supported by the record (West Forks Appeal at 15-17). The record demonstrates otherwise, as former Commissioner Reid has already found:

West Forks and NRCM challenge the findings on the practicability of the underground option and alternative routes, the impacts to brook trout habitat and forest fragmentation, and the conservation land. Petitioners made these same arguments during the processing of the application, and the evidence of potential harm to the environment received great scrutiny. The terms and conditions of the NECEC Order are supported by extensive evidence in the record, and are the product of thorough analysis by the Department's professional staff. [Commissioner Decision on Stay at 5 (Aug. 26, 2020).]

Indeed, the Permit Order is a comprehensive document that specifically sets forth the arguments of the parties, echoed in this appeal, and the DEP's reasoned findings and conclusions on those

³² *Id.* at 105 (May 11, 2020); Massachusetts Department of Public Utilities Order D.P.U. 18-64; 18-65; 18-66 at 65 (Mass. D.P.U. June 25, 2019) (“[T]he Department finds that the firm hydroelectric power delivered . . . will create steady GHG emissions reduction benefits to Massachusetts.”), *aff'd*, *NextEra Energy Resources, LLC v. Dept. of Pub. Utils.*, 485 Mass. 595, 152 N.E.3d 48 (2020); Maine PUC CPCN Order at 71 (“The Commission concludes that the NECEC will result in significant incremental hydroelectric generation from existing and new resources in Québec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region.”), *aff'd*, *NextEra Energy Resources v. Public Utils. Comm'n*, 2020 ME 34, 227 A.3d 1117 (Mar. 17, 2020).

³³ *NextEra Energy Resources, LLC v. Dept. of Pub. Utils.*, 485 Mass. 595, 152 N.E.3d 48 (2020); *NextEra Energy Resources, LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, 227 A.3d 1117 (2020).

³⁴ U.S. Department of Energy, New England Clean Energy Connect Environmental Assessment, DOE/EA-2155 at 120-21 (“operation of the Proposed Project would reduce emissions of GHGs in New England to the extent that the hydropower generated by Hydro-Québec and supplied via the Proposed Project would displace electricity generated by combustion of fossil fuels. . . . Since Hydro-Québec is predicted to have excess hydropower generating capacity, and so could maximize its revenue by supplying electricity via the Proposed Project without diverting the electricity from other markets, it is unlikely that GHG emissions produced by combustion of fossil fuels would increase.”); U.S. Army Corps of Engineers, Memorandum for Record at 56 (July 7, 2020) (“NECEC would likely result in a reduction in greenhouse gas (GHG) emissions, specifically carbon dioxide emissions, in New England and neighboring markets,” and “it is likely that Hydro-Québec would be able to meet the energy delivery requirements for the NECEC with its current and planned incremental supply without diverting hydropower from other areas that it would otherwise serve.”).

³⁵ Order on Motion for Preliminary Injunction, *Sierra Club, et al. v. U.S. Army Corps of Eng'rs, et al.*, Case No. 2:20-cv-00396-LEW, Order at 49, ECF No. 42 (D. Me. Dec. 16, 2020) (“the Project will benefit Maine in a variety of ways, including by . . . reducing greenhouse gas emissions.”).

arguments. Based on conditions developed in large part by Appellants' own witness testimony, the DEP found that the mitigation ordered sufficiently assuaged the harm they allege again here (to the extent it would exist).³⁶ NRCM's and West Forks' allegations that the Project impacts nevertheless remain unreasonable are not supported by the record and are plainly incorrect.

A. The Project does not unreasonably impact brook trout habitat.

NRCM takes issue with the Commissioner's determinations on (1) riparian filter areas, (2) vegetation management, and (3) compensation where impacts are unavoidable, claiming that the Project as permitted does not include adequate riparian filter buffers for brook trout (NRCM Appeal at 13), the vegetation management ordered is insufficient to mitigate impacts to brook trout habitat or its effects are unknown (NRCM Appeal at 14-18), and the compensation ordered does not address adverse impacts to brook trout habitat (NRCM Appeal at 14, 19-20). These claims do not comport with the record.³⁷

1. Riparian filter areas avoid and minimize impact to brook trout habitat.

First, the record clearly demonstrates that the riparian filter areas (buffers) adequately protect brook trout habitat. NRCM cites no evidence to the contrary, because it cannot. Instead, the record shows that CMP carefully and thoughtfully designed and sited the Project in a manner that avoids and minimizes impacts to brook trout habitat after extensive consultation with the

³⁶ See, e.g., Permit Order at 76-92.

³⁷ Licensees note that brook trout have no special legal or regulatory protections in Maine. Hearing Day 4 Transcript 144:7-23 (Reardon). Nor is brook trout habitat "significant wildlife habitat," 38 M.R.S. § 480-B(10), given that brook trout are pervasive in the Project area, and the populations in some of the streams over which the Project passes are natural and self-supporting (particularly those populations associated with the smaller, colder streams that are sustained by groundwater input). Permit Order at 84; Goodwin Direct at 14. NRCM's own evidence shows that nearly the entire state of Maine has intact sub-watersheds supporting brook trout populations despite the presence of human activity and disturbance on the landscape. Reardon Direct Exhibit 4. Nevertheless, as detailed below, NRCM's and West Forks' impact claims have all been thoughtfully and comprehensively addressed in the Commissioner's Permit Order.

DEP and MDIFW, the agency charged with preservation, protection, and enhancement of inland fisheries. In fact, with the exception of the ordered culvert replacements that will *enhance* fish habitat by facilitating passage, reducing erosion, and improving water quality, the Project will have *no* direct impact (*i.e.*, in-stream construction) on brook trout habitat.³⁸

CMP's and the DEP's iterative work with MDIFW was extensive. MDIFW provided comments on wildlife and fisheries impacts on March 15, 2018; June 29, 2018; December 7, 2018; February 1, 2019; and March 18, 2019,³⁹ during which time CMP and MDIFW continued to meet and discuss the Project's various impacts to fish and wildlife and the field surveys for several wildlife species.⁴⁰ As a result of these consultations, during a January 22, 2019 meeting of CMP, DEP, and MDIFW, DEP recommended that for CMP to adequately protect cold water fisheries, riparian buffers for vegetation management and maintenance activities should be expanded to 100 feet for coldwater fishery habitats, outstanding river segments, threatened or endangered species water bodies, and all perennial streams in the Project's Segment 1.⁴¹ CMP incorporated these changes into Exhibit 10-1 and Exhibit 10-2 of CMP's Site Law application, filed with the DEP as part of its revised Compensation Plan on January 30, 2019.⁴² After doing so, CMP requested that MDIFW comment on its revised Compensation Plan, including riparian buffers, to ensure it addressed "all of MDIFW's remaining concerns, and that MDIFW is satisfied that the latest (January 30, 2019) NECEC Project Compensation Plan . . . provides

³⁸ Goodwin Direct at 2; Permit Order at 2.

³⁹ Permit Order at 63.

⁴⁰ *Id.*; Johnston Rebuttal at 7-9; Exhibit CMP-4.1-A.

⁴¹ Goodwin Direct at 19.

⁴² Permit Order at 64, 76, 84-85; Goodwin Direct at 11, 19-21; Johnston Rebuttal at 7-9.

satisfactory mitigation of the NECEC Project's impacts."⁴³ In its March 18, 2019 response, MDIFW concurred with the Compensation Plan, noting its appreciation for CMP's "willingness to work with us to finalize the complex fish and wildlife resource issues."⁴⁴

The 100-foot buffer, in fact, is an added protective measure for trout habitat, on which the Project will have *no* direct impact and only a *de minimis* indirect impact, as demonstrated by peer reviewed studies,⁴⁵ because stream crossings that represent a short linear distance compared to the overall watershed result in a negligible impact on coldwater fisheries. One study on the impacts of power line rights-of-way (ROWs) on forested stream habitat found that despite the open canopy condition in the ROW, the water quality was not significantly different between the on-ROW and off-ROW study areas.⁴⁶ In that study, the author further concluded that "it is likely that the streams intersected by rights-of-way have recovered from their initial disturbances."⁴⁷ A second study on the effects of electric transmission line ROWs on trout in forested headwater streams found that trout were more abundant in stream reaches within ROWs and concluded that the increase in incident sunshine resulted in a denser forb and shrub root mass, which further stabilized stream banks, resulting in less stream bank erosion, deeper channels, and higher

⁴³ Exhibit CMP-4.1-A.

⁴⁴ *Id.*

⁴⁵ Goodwin Direct at 13-14; Johnston Rebuttal at 2-4.

⁴⁶ Johnston Rebuttal at 3; Gleason, N.C. 2008. *Impacts of Power Line Rights-of-Way on Forested Stream Habitat in Western Washington*. Environmental Symposium in Rights-of-Way Management, 8th International Symposium, pages 665-678.

⁴⁷ *Id.*

populations of trout.⁴⁸ The author concluded that electric transmission line ROWs do not constitute an adverse effect on headwater trout population densities in forested basins.⁴⁹

Furthermore, the avoidance, minimization, and best management practices DEP ordered for coldwater fisheries habitat on the Project ROW go above and beyond accepted practices. For example, they are more restrictive than the proposal that DEP and the U.S. Army Corps of Engineers approved in 2010 for the Maine Power Reliability Program (MPRP) to protect fisheries.⁵⁰ These MPRP minimization measures and best management practices satisfied the United States Fish and Wildlife Service, which concluded that there would be no adverse effect to Atlantic salmon coldwater fisheries.⁵¹ It follows that the *more* restrictive minimization measures for the NECEC will adequately protect coldwater fish habitats, like brook trout habitat.

2. The vegetation management ordered mitigates impact to brook trout habitat.

Second, the record shows that the vegetation management ordered sufficiently mitigates impacts to brook trout habitat, despite NRCM's stated doubts as to its effectiveness. NRCM Appeal at 14-18. NRCM complains individually and in a vacuum about the vegetation management methods ordered to avoid and minimize impacts in Segment 1: full-height vegetation at Gold Brook and Mountain Brook (NRCM Appeal at 14-16), 35-foot tall vegetation in the remaining portions of the 12 Wildlife Areas identified in Permit Order Table C-1 that cross The Nature Conservancy's (TNC's) 9 priority areas for habitat connectivity in Segment 1⁵²

⁴⁸ Johnston Rebuttal at 3-4; Peterson, A.M. 1993. *Effects of Electric Transmission Rights-of-Way on Trout in Forested Headwater Streams in New York*. North American Journal of Fisheries Management, vol. 13 pp. 581-585.

⁴⁹ *Id.*

⁵⁰ Johnston Rebuttal at 5.

⁵¹ *Id.*

⁵² TNC Exhibit 7. Wildlife Area 1 includes part of TNC area 1; Wildlife Area 2 includes all of TNC area 2; Wildlife Area 3 includes all of TNC area 3; Wildlife Area 4 includes part of TNC area 4; Wildlife Area 5 includes all of TNC area 5, plus several additional structures, including the crossing of an unnamed stream where 35-foot tall vegetation

(NRCM Appeal at 16-17), and tapering of vegetation across the remainder of Segment 1 (NRCM Appeal at 17-18). Isolating these vegetation management requirements, NRCM claims that each mitigates alleged brook trout habitat impacts across an insufficient percentage of the Project.

What NRCM fails to note, however, is that these highly restrictive mitigation methods collectively cover the entirety of Segment 1. Viewing these mitigation methods – which were “identified and developed through the public process,” in large part through the testimony of NRCM’s own witnesses – in context, it is clear that they “provide an unprecedented level of natural resource protection for transmission line construction in the State of Maine,”⁵³ particularly with regard to protection of brook trout habitat.

NRCM’s suggestion that the DEP considered full-height vegetation only at Gold Brook and Mountain Brook, and only for the purposes of protecting Roaring Brook Mayfly habitat, is false.⁵⁴ NRCM Appeal at 14-16. To the contrary, DEP considered NRCM’s assertions that full-height vegetation is required elsewhere along the Project route to protect brook trout habitat, but determined that no such additional measures were required.⁵⁵ DEP’s conclusion is the result of the consultation between CMP and MDIFW, during which time MDIFW identified an extensive list of its priority resources but identified no resources or particular areas that would require taller vegetation to address brook trout or coldwater fishery concerns.⁵⁶ Instead, and as a result

likely can be retained without taller poles (3006-708 to 3006-707); Wildlife Area 7 includes the crossing of Cold Stream; Wildlife Area 8 includes an unnamed stream crossing where 35-foot tall vegetation likely can be maintained without taller poles; Wildlife Area 9 includes Tomhegan Stream and part of TNC area 8; and Wildlife Area 10 crosses Moxie stream and is within TNC area 9; and Wildlife Area 11 and most of Wildlife Area 12 are within TNC area 9. Permit Order at 79, n.31-32.

⁵³ Permit Order at 1.

⁵⁴ NRCM Appeal at 14-15; Reardon Direct at 14; Permit Order at 69.

⁵⁵ Permit Order at 69.

⁵⁶ Johnston Rebuttal at 6-7.

of its consultation with MDIFW, CMP revised its proposal to incorporate taller structures and avoid clearing by allowing full height canopy vegetation within the 250-foot riparian management zone for Mountain Brook and Gold Brook⁵⁷ and, at the request of DEP, identified *additional* streams that require no structure height increases to accommodate 35-foot-tall vegetation.⁵⁸

While NRCM claims that 35-foot tall trees provide insufficient shade and instream habitat for brook trout, it ignores the fact that the Commissioner’s ordering of taller vegetation in 12 Wildlife Areas will maintain existing conditions and, in some instances, allow greater growth than presently exists. NRCM’s own witness testified that the Segment 1 area “contains a fairly limited amount of mature forest.”⁵⁹ Commercial forest land adjoining the Project ROW in Segment 1, if not clear-cut within the last 10 years, has been cut within the last 15 to 35 years and therefore is not mature forest.⁶⁰ This is particularly true in certain areas NRCM identifies as “high value brook trout streams - some of the ‘best of the best’ of the state’s headwater brook trout water.”⁶¹ Where the Project crosses Tomhegan Stream, for example, the existing vegetation is “fairly low” – DEP staff estimated it to be “less than 35 feet tall.”⁶² This area “consists of one primary channel and a

⁵⁷ Mirabile Direct at 9; Goodwin Direct at 13; Exhibit CMP-2-G; Exhibit CMP-3-F.

⁵⁸ “Department staff, in questions to CMP at the May 9, 2019 hearing, identified five areas (including nine stream or river crossings) where taller vegetation with a minimum height of 35 feet could be maintained due to existing topography with poles only minimally taller, or no taller, than proposed.” Permit Order at 78 and Appendix C. *See also* CMP’s May 17, 2019 Response to DEP May 9, 2019 Additional Information Request Attachment B. These areas “include the crossing of numerous coldwater streams.” Permit Order at 85.

⁵⁹ Hearing Day 4 Transcript at 79:10-16 (Publicover). *See also* Giumarro Supplemental at 2-13 (explaining that the Segment 1 region is continuously shifting cover types, because of rotational forest harvest); Hearing Day 6 Transcript at 237:21-240:11 (Giumarro); Hearing Day 6 Transcript at 128:17-129:17 (Simons-Legaard); Hearing Day 6 Transcript at 146:2-25 (Wood); Hearing Day 6 Transcript at 102:12-103:8 (Publicover).

⁶⁰ Giumarro Supplemental at 4.

⁶¹ Reardon Direct at 11-12, 15-17.

⁶² Hearing Day 6 Transcript at 457:21-24 (Beyer).

number of braided channels flowing through an area with sparse tree cover.”⁶³ Allowing 35-foot vegetation in this area, as the Permit Order requires, “would provide good cover.”⁶⁴

The location where the NECEC corridor crosses Cold Stream, which NRCM recognizes as “one of the most intact and highest value watersheds for native brook trout in Maine,”⁶⁵ also is very open.⁶⁶ The entire stream channel is visible on aerial imagery due to sparse tree coverage,⁶⁷ as the Project crossing location here is in a developed area, with Capital Road on the south side of the corridor and the former location of Capital Road on the north side of the corridor. As NRCM recognized, “one of the reasons that there is not a lot of vegetation there is there is still gravel in the roadbed.”⁶⁸ Even without the taller vegetation ordered by the Commissioner, the elevation change at Cold Stream aids in preservation of vegetation.⁶⁹ Nor will this area be cleared, as NRCM suggests. The unnamed feeder stream on the east side of Cold Stream, while on CMP land, is not in the Project corridor and will not be cleared.⁷⁰ The “feeder stream” on the west side of Cold Stream is a wetland with no stream channel present.⁷¹ Accordingly, in “some of the ‘best of the best’ of the state’s headwater brook trout water,”⁷² the Permit Order allows vegetation heights in excess of current conditions.

⁶³ Freye Rebuttal at 12.

⁶⁴ Hearing Day 6 Transcript at 458: 1-11 (Freye).

⁶⁵ Reardon Direct at 15.

⁶⁶ Freye Rebuttal at 11.

⁶⁷ *Id.*

⁶⁸ Hearing Day 6 Transcript at 96:10-19 (Beyer and Reardon).

⁶⁹ Hearing Day 6 Transcript at 164:10-15 (DeWan).

⁷⁰ Freye Rebuttal at 11; Hearing Day Transcript at 98:18-99:2 (Reardon).

⁷¹ Freye Rebuttal at 11.

⁷² Reardon Direct at 11-12, 15-17.

Compounding the benefits of 100-foot buffers, full-height vegetation, and taller vegetation is the Commissioner's ordering of tapering across the remainder of Segment 1. The record shows that tapering benefits "those areas having higher value wildlife features and [that] are known to be used specifically as travel corridors for wildlife, i.e., riparian buffers."⁷³ Indeed, CMP's witness specifically recommended tapering to protect brook trout habitat.⁷⁴ While riparian buffers provide significant shading through lower-growing vegetation that overhangs streams 10 feet wide or less – the majority of streams in Segment 1⁷⁵ – the addition of tapered vegetation management in these areas supplements that shade and provides additional woody debris input, contrary to NRCM's claims. NRCM Appeal at 18. Indeed, as NRCM's witness admits, "you can layer multiple things that are compensating for the losses that you will have and so tapering adds a couple of trees to the corridor."⁷⁶ That is precisely what the DEP has done, ordering that in areas where tapering *and* where taller vegetation is required, "the applicant must leave trees that have been cut during routine maintenance unless it would be a violation of the Slash Law or create a fire or safety hazard. This will provide for large woody debris imports into the streams, which helps create pools and provides nutrients and more closely mimics natural forest succession."⁷⁷

NRCM's conclusion that the full-height and taller vegetation ordered across much of Segment 1 protects an insufficient number of stream crossings, and that tapered vegetation

⁷³ Goodwin Supplemental at 4; Hearing Day 6 Transcript at 233:15-234:8 (Goodwin).

⁷⁴ *See, e.g.*, Goodwin Supplemental at 5 (recommending tapering in the following brook trout habitat: Spencer Stream and tributaries, Whipple Brook, Piel Brook, Tomhegan Stream, and tributaries to Cold Stream).

⁷⁵ Goodwin Supplemental at 6; Hearing Day 6 Transcript at 235:3-12 (Goodwin).

⁷⁶ Day 6 Hearing Transcript at 106:19-23 (Reardon).

⁷⁷ Permit Order at 85. *See also* Goodwin Supplemental at 6 (explaining that tapering within the 100-foot buffers around streams would provide adequate large woody vegetation for streams in Segment 1).

provides insufficient shade and woody debris input, ignores the cumulative benefit of those mitigation methods. The Commissioner’s ordering of taller vegetation in multiple areas across Segment 1 – and in particular those streams that NRCM’s witness identified as exceptionally valuable, such as Gold Brook, Tomhegan Stream, and Cold Stream – “will benefit brook trout by providing shading, buffering runoff, and providing large woody debris to the streams.”⁷⁸ The Commissioner’s ordering of tapering across the remainder of Segment 1 – and in particular at the smaller streams that constitute the majority of Segment 1 – completes this benefit, as “the addition of tapered vegetation management practices in the riparian buffers of perennial coldwater streams would provide adequate large woody vegetation.”⁷⁹ NRCM’s strategy of compartmentalizing – isolating each vegetation management method to give the impression of minimal effect – does not do justice to the Commissioner’s comprehensive Permit Order, which achieves an unprecedented level of brook trout habitat protection despite the Project’s *de minimis* impact.⁸⁰

3. The compensation tracts and culvert replacement fees appropriately compensate for unavoidable impact to brook trout habitat.

Finally, NRCM claims that the ample compensation ordered where the Project’s indirect impacts to brook trout habitat are unavoidable – three compensation tracts plus a \$1,875,000

⁷⁸ Permit Order at 69, 85 (addressing the testimony of NRCM witness Reardon). Other areas where NRCM claims the Project will have significant impact on brook trout habitat, such as at the West Branch of the Sheepscot River (Reardon Direct at 18), are already impacted by a transmission line crossings and will benefit from the 100-foot riparian buffer. Johnston Rebuttal at 7. For example, at MDIFW’s suggestion, CMP provided DEP and MDIFW a buffer planting plan for the West Branch of the Sheepscot River, on January 9, 2019. *Id.*

⁷⁹ Goodwin Supplemental at 6.

⁸⁰ In fact, as noted in the Gleason and Peterson studies cited in n.46-49, *supra*, water temperatures have been found to be lower in some cleared runs of streams within ROWs. Goodwin Direct at 13-14; Johnston Rebuttal at 2-4, 12. Organic matter and moderate sized woody debris will be contributed to streams from dense riparian zone herbaceous and woody non-capable vegetation that will remain and will be maintained on the NECEC Project ROW after construction. *Id.* Further, as also noted in the studies cited above, increased insolation in riparian zones cleared of tall trees increases stream bank vegetation and improves stream bank stabilization. *Id.*

culvert replacement fund – are insufficient. NRCM Appeal at 14, 19-20. These allegations ignore the record evidence, as well as the additional \$180,000 fee to the Maine Endangered and Nongame Wildlife Fund that the Commissioner ordered to compensate for fishery habitat impacts. As noted above, CMP worked collaboratively and extensively with MDIFW to develop a robust compensation package, to the satisfaction of that agency (whose objective mission is to preserve, protect, and enhance inland fisheries).⁸¹ At no point during this multi-year collaboration did MDIFW voice concerns over the proposed compensation parcels or the culvert replacement fund, which was proposed to be \$200,000 but which DEP increased by almost \$1.7 million.⁸²

In fact, the preservation parcels – the Grand Falls Tract, Lower Enchanted Tract, and Basin Tract – do replace the functions and values of adversely impacted brook trout habitat. NRCM Appeal at 14. According to the NECEC Potential Compensation Tracts - Natural Resources Survey Results, these parcels, which were proposed for the purposes of coldwater fisheries impact mitigation and are located along the Dead River, contain perennial and intermittent feeder streams that support known brook trout populations.⁸³ The Grand Falls Tract, Lower Enchanted Tract, and Basin Tract are located in an area of the State with an abundance of valuable coldwater fisheries and collectively contain 63,440 linear feet or 12.02 miles of streams, including frontage on the Dead River and Enchanted Stream, in excess of the 11.02 linear miles

⁸¹ Goodwin Direct at 11; Johnston Rebuttal at 7-9; Hearing transcript Day 1 at 291:16-292:25 (Goodwin/Johnston); Johnston Rebuttal Exhibit CMP-4.1-A.

⁸² Johnston Rebuttal at 7-9, 11; Goodwin Direct at 23.

⁸³ Compensation Plan at 32 and Exhibit 1-9 (Jan. 30, 2019); Johnston Rebuttal at 10-11.

of forested conversion impact to streams (inclusive of all streams, not only coldwater fisheries) that will result from the Project.⁸⁴

Importantly, these parcels connect to existing preservation lands, creating a comprehensive network of brook trout habitat in an area NRCM acknowledges is known for “extensive migrations of brook trout between the Kennebec and Dead River mainstems and multiple small tributaries.”⁸⁵ The Grand Falls Tract is highly regarded for trout and salmon fishing opportunities and is linked, along the Dead River, to the 50,000-acre Bigelow Mountain-Flagstaff Lake-North Branch of the Dead River Focus Area of Statewide Ecological Significance via a 1,542-acre moderate value inland waterfowl wading bird habitat (IWWH).⁸⁶ The Lower Enchanted Tract abuts the Western Mountain Conservation Easement parcel on both sides (east and west),⁸⁷ and completes the protection of the north side of the Dead River.⁸⁸ The north end of the Lower Enchanted Tract extends along Enchanted Stream to the southern end of a 275 +/- acre IWWH zone that provides protection to Enchanted Stream and Lower Enchanted Pond, upstream of the Lower Enchanted Tract.⁸⁹ Lower Enchanted Stream and the Dead River are very popular for brook trout fishing. Preservation of the Basin Tract, located on the south side of the Dead River, also dovetails with existing preservation by the Western Mountains Charitable Trust conservation easement.⁹⁰ The preservation of the Basin Tract will complete the protection of

⁸⁴ Compensation Plan at 22 and Table 8-2 (Jan. 30, 2019).

⁸⁵ Reardon Direct at 3.

⁸⁶ Compensation Plan at 32 (Jan. 30, 2019).

⁸⁷ *Id.* at 33 (Jan. 30, 2019); Freye Direct at 10; Exhibit CMP-9-E.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Compensation Plan at 33 (Jan. 30, 2019); Freye Direct at 10-11; Exhibit CMP-9-E.

both sides of the Dead River for 4.8 miles.⁹¹ Approximately one mile south of the 697-acre Basin Tract are approximately 10,000 contiguous acres of Conserved Lands encompassing Pierce Pond, Grass Pond, Kilgore Pond, Split Rock Pond, Higher Pond, Dixon Pond, Fernald Pond, and Horseshoe Pond, and the Appalachian Trail.⁹²

Regarding the compensation funding the Commissioner ordered, NRCM claims that there is no “nexus” between the culvert replacement funds and the Project’s impact on brook trout habitat because the Project does not impede fish passage. NRCM Appeal at 19-20. But the rules require no such nexus. Instead, NRPA expressly allows the DEP discretion to approve the type⁹³ and location⁹⁴ of compensatory mitigation. Accordingly, the DEP “requires a compensation package that consists of a combination of preservation, enhancement, and/or ILF to offset the variety of project impacts including those impacts that are outside the purview of the ILF Program (38 M.R.S § 480-Z, e.g. indirect impact to rivers, streams or brooks, indirect impact to local and/or regional recreational values and outstanding river segments and wildlife habitat).”⁹⁵

Such robust compensation for the Project’s indirect impact to coldwater fisheries, which is outside the purview of DEP mitigation guidance,⁹⁶ is precisely what the Commissioner ordered – a combination of programmatic funding, fees, and preservation.⁹⁷ As compensation

⁹¹ Compensation Plan at 33 (Jan. 30, 2019); Freye Direct at 11; Exhibit CMP-9-E.

⁹² Compensation Plan at 33 (Jan. 30, 2019).

⁹³ 38 M.R.S § 480-Z (“Compensation must include the restoration, enhancement, creation or preservation of an area or areas that have functions or values similar to the area impacted by the activity, *unless otherwise approved by the department.*”) (emphasis added).

⁹⁴ 38 M.R.S § 480-Z(1) (“A compensation project must be located on or adjacent to the project site, *unless otherwise approved by the department.*”) (emphasis added).

⁹⁵ Compensation Plan at 2 (Jan. 30, 2019).

⁹⁶ Compensation Plan at 4, Table 1-2, and Exhibit 1-5B (Jan. 30, 2019).

⁹⁷ Permit Order at Appendix F, Table F-2.

for the Project's forested conversion in riparian buffers, and in consultation with DEP and MDIFW, CMP proposed a \$200,000 culvert replacement fund in addition to a \$180,000 fee to the Maine Endangered and Nongame Wildlife Fund and the preservation of 12.02 miles of streams in the Grand Falls, Lower Enchanted, and Basin Tracts in excess of the 11.02 linear miles of forested conversion impact to streams. At no point during its review of CMP's proposed compensation did MDIFW voice concerns over the use or amount of culvert funding as compensatory mitigation for Project impacts to coldwater fisheries.⁹⁸ And the record supports such funding; for example, TNC recognized the benefits of replacing undersized culverts using Stream Smart principles to improve habitat connectivity, as proposed by CMP.⁹⁹ CMP further committed to work with MDIFW and cooperating nongovernmental organizations to conduct a qualitative assessment to determine the most beneficial use of the proposed funding.¹⁰⁰ The Commissioner's determination that "replacing 25 culverts, *when viewed in light of the mitigation and conservation noted above*, would adequately compensate for project impacts to coldwater fisheries"¹⁰¹ is well within the DEP's discretion under NRPA and provides diverse compensation for forested conversion in riparian buffers via fees and preservation, as contemplated under NRPA.

Nevertheless, and despite a nearly ten-fold increase in the culvert replacement fund from what CMP proposed, NRCM stubbornly maintains that the proposed amount is not sufficient. NRCM Appeal at 19. But the fee the Commissioner ordered is precisely the fee that NRCM recommended. In the underlying proceeding, NRCM's witness argued that culvert replacement

⁹⁸ Johnston Rebuttal at 11-12, 14-15; Goodwin Direct at 23.

⁹⁹ TNC Direct at 8; *see also* Reardon Direct at 23-24.

¹⁰⁰ Johnston Rebuttal at 11, 14-15.

¹⁰¹ Permit Order at 85 (emphasis added).

projects “improve function in intact streams fragmented by culverts,” but that CMP’s proposed “\$200,000 is an insufficient amount of money to address more than a few culverts.”¹⁰² NRCM’s witness stated that a better cost estimate for culvert projects is \$50,000 to \$100,000 per culvert, and that such costs may be lower if the culverts to be replaced are on logging roads.¹⁰³ The DEP agreed, stating that it “finds the Reardon testimony on culvert replacement costs to be credible”¹⁰⁴ and ordering CMP to set aside \$1,875,000 to fund approximately 25 culvert replacement projects.¹⁰⁵ NRCM now inexplicably back-peddles, arguing to the Board that on logging roads, which are the predominant road systems in Segment 1, “culvert replacement costs would almost certainly exceed the \$50,000-\$100,000 range cited” by its own witness. NRCM Appeal at 19. Despite NRCM’s contradiction of its own record testimony, the Commissioner’s ordered compensation for the Project’s indirect impact to coldwater fisheries is supported by the record evidence.

B. The record supports mitigation of potential habitat fragmentation impacts with a narrower corridor, tapered vegetation, and taller poles.

1. The ordered vegetation management mitigates potential habitat fragmentation.

NRCM and West Forks allege that the mitigation the Commissioner ordered – vegetation management in Segment 1 and land conservation – is insufficient to address impacts to wildlife habitat, particularly resulting from habitat fragmentation.¹⁰⁶ NRCM Appeal at 20-26; West

¹⁰² NRCM Initial Post-Hearing Brief at 63-64.

¹⁰³ Reardon Direct at 23-24; Permit Order at 69 and 86 (citing NRCM witness Reardon).

¹⁰⁴ Permit Order at 86.

¹⁰⁵ *Id.* at 2.

¹⁰⁶ Appellants’ claims of habitat fragmentation resulting from the transmission corridor are overstated. The record shows that CMP employs integrated vegetation management (IVM) practices, which have been adopted by federal agencies as the best practices standard for utility rights-of-way, for vegetation management. “IVM is recognized as a

Forks Appeal at 5-7, 9-13. The Permit Order – a comprehensive and extensive document that specifically sets forth the arguments of the parties and the DEP’s reasoned findings and conclusions addressing those arguments – belies this allegation.

Based on the testimony of NRCM’s and other witnesses, the Commissioner found that mitigation additional to the project improvements to which CMP committed – maintaining taller vegetation in the Upper Kennebec Deer Wintering Area, maintaining full-height canopy at Gold Brook and Mountain Brook, maintaining tapered vegetation in the areas visible from Coburn Mountain and Rock Pond, and expanding to 100 feet riparian filter areas on coldwater fishery streams – was necessary to satisfy the Chapter 375 § 15 protection of wildlife and fisheries standards, stating that “This finding is supported by testimony from Group 4 [including NRCM] and Group 6 intervenors.”¹⁰⁷ Accordingly, the Commissioner ordered tapering, taller vegetation, and conservation conditions developed in large part based on Appellants’ own witness testimony, concluding that the mitigation ordered sufficiently mitigated the harm NRCM and West Forks continue to allege.¹⁰⁸

practice that reduces impacts on land, water, habitat and wildlife while meeting the goals of providing reliable and safe electrical service. According to the EPA, ‘the IVM approach can create natural, diverse, and sustaining ecosystems, such as a meadow transition habitat. These transition landscapes, in turn, reduce wildlife habitat fragmentation and allow species to be geographically diverse, remaining in areas from which they might otherwise be excluded. A variety of wildlife species (including threatened and endangered species) consider these habitats home, such as butterflies, songbirds, small mammals, and deer. These habitats also encourage the growth of native plant species and can increase plant diversity.’ IVM optimizes wildlife habitat potential and produces a soft edge effect which lessens the impact of fragmentation.” Goodwin Direct at 16-17 (quoting from <https://www.epa.gov/pesp/benefits-integrated-vegetation-management-ivm-rights-way#benefit> and citing Bramble, W.C., and W.R. Byrnes. 1996. Integrated vegetation management of an electric utility right-of-way ecosystem. *Down to Earth* 51(1):29-34).

¹⁰⁷ Permit Order at 76.

¹⁰⁸ See, e.g., *id.* at 75-82.

The mitigation methods of tapering and taller vegetation were thoroughly addressed in written and live testimony and filings before the DEP. In its Tenth Procedural Order, the DEP requested the filing of evidence relating to the appropriate mitigation methods:

Whether undergrounding, tapering, or taller pole structures in areas identified during the hearing as environmentally sensitive or of special concern (for example, The Nature Conservancy's nine identified areas, Trout Unlimited's mention of Tomhegan Stream, and other specific wildlife corridors identified by parties) are technically feasible and economically viable minimization or mitigation measures. Also, whether any of these techniques would satisfy concerns raised at the hearing or be a preferred alternative.¹⁰⁹

Specifically, the DEP requested evidence on (among other topics) whether taller poles and travel corridors could provide enough of a link between the habitat on both sides of the corridor for species like the pine marten, whether travel corridors must be located within a certain distance of the poles and what the minimum width would be of the travel corridors in order for species like the pine marten to use them, whether tapering would adequately reduce forest fragmentation, and identifying locations where tapering or taller poles would be preferred.¹¹⁰ In response, Groups 3, 4 (which includes NRCM), and 6, as well as CMP, filed hundreds of pages of testimony and evidence on these topics.¹¹¹ The DEP further requested that the parties be prepared to discuss these topics at the May 9, 2019 hearing, which they did.¹¹² Also at the hearing DEP requested additional information on these topics, which Group 6 (TNC) and CMP filed on May 17, 2019.¹¹³

¹⁰⁹ Tenth Procedural Order at ¶ 2 and Appendix A.

¹¹⁰ *Id.* at Appendix A.

¹¹¹ See Supplemental Testimony filed May 1, 2019.

¹¹² Tenth Procedural Order at ¶ 3; Hearing Day 6 Transcript.

¹¹³ CMP's Response to DEP's May 9, 2019 Additional Information Request (May 17, 2019).

Contrary to the assertions of NRCM and West Forks, this substantial record demonstrates that tapering (and the resulting narrower corridor) and taller vegetation can mitigate impacts to wildlife habitat and address forest fragmentation. NRCM Appeal at 21; West Forks Appeal at 6. Indeed, tapering is used along powerline corridors to ease transitions “and thereby reduce edge effect.”¹¹⁴ NRCM’s witness admitted that tapering “could have some limited benefit in reducing edge effects by reducing the penetration of light and wind into the adjacent forest.”¹¹⁵ CMP testified that tapering could be useful in areas having higher value wildlife features that are known to be used as travel corridors, and specifically analyzed the benefits of tapering in TNC’s 9 priority areas.¹¹⁶ Furthermore, the record established precisely how tapering would be achieved,¹¹⁷ contrary to NRCM’s suggestion otherwise. NRCM Appeal at 22. Tapering, which would consist of the maintenance of the wire zone, is described in Exhibits 10-1 and 10-2 of CMP’s Site Law application with taller trees being allowed to grow outside the wire zone.¹¹⁸ This record evidence supports the DEP’s determination that “[t]he reduction in clearing and narrowing of the scrub-shrub area within the tapered corridor, and taller vegetation along the sides of the corridor, will substantially reduce the impacts on wildlife.”¹¹⁹

¹¹⁴ Giumarro Supplemental at 6 (citing Gates, J. E. 1991. *Powerline Corridors, Edge Effects, and Wildlife in Forested Landscapes of the Central Appalachians*. Pages 12-32 in J. E. Rodiek, and E. G. Bolen, eds. *Wildlife and habitats in managed landscapes*. Island Press, Washington, D. C.).

¹¹⁵ Hearing Day 6 Transcript at 77:10-13 (Publicover); *see also* Hearing Day 6 Transcript at 130:4-8 (Simons-Legaard) (noting that creating a softer edge through tapering could have a benefit to species that have small home ranges like forest interior birds).

¹¹⁶ Goodwin supplemental at 5; Hearing Day 6 Transcript at 233:15-234:8 (Goodwin).

¹¹⁷ Hearing Day 6 Transcript at 242:2-243:21, 283:4-284:8, 314:2-315:7 (Mirabile); Hearing Day 6 Transcript at 415:24-416:3 (Dickinson).

¹¹⁸ Goodwin Supplemental at 2; Mirabile Supplemental at 1-3; *See* CMP Response to MDEP May 9, 2019 Additional Information Request Attachment B.

¹¹⁹ Permit Order at 77.

So too does the record support the taller vegetation that the DEP ordered in the 12 Wildlife Areas.¹²⁰ TNC's (Group 6) witnesses testified as to the effectiveness of tapering with taller poles to mitigate habitat fragmentation.¹²¹ Dr. Simons-Legaard, whom NRCM cites extensively (NRCM Appeal at 23-24), stated that both tapering and taller poles to allow for taller vegetation could be beneficial in some Project areas:

Tapering, combined with wildlife travel corridors, could be somewhat beneficial for interior forest nesting birds-especially if applied in areas that are primarily coniferous-as well as for some amphibians. However, raising pole heights to allow for full forest canopy would be even more beneficial for these species. Tapering may be a reasonable alternative in areas with existing young forest coupled with scenic/visibility concerns. Standard pole heights and vegetation management may be appropriate in areas where the transmission line crosses open wetlands.¹²²

Dr. Simons-Legaard went on to recommend that taller poles would be preferable, but that “the condition of the forest adjacent to the transmission lines is critical for species such as pine marten.”¹²³ Accordingly, mitigation through taller poles should be “targeted to locations more likely to retain mature forest on either side of the corridor,”¹²⁴ such as TNC priority areas 8 and 9.¹²⁵ In response to the DEP's questioning at the hearing, Dr. Simons-Legaard filed a series of

¹²⁰ *Id.* at Table C-1.

¹²¹ Hearing Day 6 Transcript at 137:11-16 (Wood) (testifying that taller poles “to allow vegetation up over 30 feet under the wires and in conjunction with tapering the wildlife traveling corridors you could wind up with, you know, significant mature forests under the wires.”).

¹²² Simons-Legaard Supplemental at 2.

¹²³ *Id.* at 3.

¹²⁴ *Id.*; *see also* Hearing Day 6 Transcript at 143:4-11 (Simons-Legaard) (responding to Commissioner Reid's request for recommendations as to how the DEP should assess the optimal locations for travel corridors to benefit marten, that “considering where the larger remaining patches of mature forest are on other side [*sic*] would be the best place to start.”).

¹²⁵ Hearing Day 6 Transcript at 145:11-25 (Simons-Legaard). CMP's witness Gino Giumarro agreed, testifying that the habitat benefit of taller poles “is predicated on there being habitat on both sides of the corridor for species like pine marten.” Giumarro Supplemental at 2. The 12 Wildlife Areas identified by DEP overlap with TNC's 9 priority areas. *See supra*, n.52. Wildlife Area 9 includes Tomhegan Stream and part of TNC area 8; and Wildlife Area 10 crosses Moxie stream and is within TNC area 9; and Wildlife Area 11 and most of Wildlife Area 12 are within TNC area 9. Permit Order at 79, n.31-32.

maps that show such locations.¹²⁶ Because TNC testified that “vegetation 30 feet or higher ... obviously will provide some habitat benefit,”¹²⁷ and because TNC identified areas of forest in which such taller vegetation would mitigate habitat fragmentation,¹²⁸ the DEP’s ordering of a minimum 35-foot vegetation height in 12 designated Wildlife Areas, that total approximately 14.08 miles along the Segment 1 corridor, is fully supported by the record.¹²⁹ NRCM’s concerns as to the viability of taller vegetation in the 12 Wildlife Areas are contrary to the record evidence. NRCM Appeal at 23-26.

Furthermore, West Forks’ confusing statement that “fragmentation cannot be buffered from the existing recreational uses and natural resources within the P-RR subdistricts” misstates the standard. West Forks Appeal at 6. The Maine Land Use Planning Commission’s review standard relevant to buffering within its P-RR subdistrict is whether “the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible.” LUPC Regs. Ch. 10 § 10.23(I)(3)(d). Indeed, the Project as designed was adequately visually buffered from those other uses and resources within the LUPC’s two P-RR subdistricts because no portion of the Project will be visible within or from the P-RR subdistrict on either side of the Kennebec river and because CMP proposed plantings at Joe’s Hole (Moxie Pond) where the Appalachian Trail crosses the Project.¹³⁰ And the vegetation management the Commissioner ordered provides

¹²⁶ Simons-Legaard Supplemental Maps (May 17, 2019).

¹²⁷ Hearing Day 6 Transcript at 137:7-8 (Wood).

¹²⁸ Simons-Legaard Supplemental Maps (May 17, 2019).

¹²⁹ Permit Order at 79-80.

¹³⁰ Site Law Certification SLC-9 at 24-28.

more than ample buffer strips to allow for the movement of wildlife within its habitat, as the record demonstrates.¹³¹

Finally, NRCM's and West Forks' complaint that conservation of 40,000 acres of land in the vicinity of Segment 1 is insufficient and does not meet the requirements of the Site Law is unfounded. NRCM Appeal at 26; West Forks Appeal at 7, 12-13. First and foremost, the Site Law does not require any form of compensation, including land conservation. Instead, the land conservation ordered is above and beyond the compensatory mitigation required under NRPA. 38 M.R.S § 480-Z. The DEP ordered such land conservation at the recommendation of TNC, whose witness Dr. Simons-Legaard testified that "the cumulative impacts of the transmission line cannot be entirely mitigated by onsite actions," and thus, "[r]egardless of the avoidance and minimization measures utilized, there will be unavoidable impacts that should be compensated through a fund for land conservation in the region, and that compensation should include considerations for retaining large patches of mature forestland."¹³²

As to the appropriate amount of such land conservation, TNC's witness Wood testified that, using the DEP's 8:1 compensation ratio for similar habitat impacts,¹³³ a "rough estimate" of 40,000 acres of additional land conservation to mitigate the impacts of habitat fragmentation is appropriate.¹³⁴ Notably, TNC recommended such amount only "if there were no additional mitigation," explaining that TNC prioritizes avoidance and minimization efforts and

¹³¹ See, e.g., DEP Order at C-5 (ordering deer travel corridors); Goodwin Direct at 19; Exhibit CMP-3-G; Giumarro Supplemental at 6; Simons-Legaard Supplemental at 2; Hearing Day 6 Transcript at 130:4-8 (Simons-Legaard) (noting that creating a softer edge through tapering could have a benefit to species that have small home ranges like forest interior birds).

¹³² Simons-Legaard Supplemental at 3.

¹³³ See, e.g., Ch. 310, § 5(C)(5)(c) (requiring an 8:1 ratio for compensation for wetlands impacts) and Ch. 335, § 3(D)(3)(b) (requiring an 8:1 ratio for compensation for SWH impacts).

¹³⁴ Hearing Day 6 Transcript at 143:18-144:15 (Wood).

recommends land conservation “if there are residual impacts.”¹³⁵ As to the appropriate location of such land conservation, TNC recommended that any such land conservation be “in the region”¹³⁶ and directed “toward where there is currently mature forests that could support marten populations and all of the species that fall under that umbrella.”¹³⁷ The DEP’s use of an 8:1 impact multiplier to determine the appropriate amount of land conservation, as well as its requirement that such land conservation be in the vicinity of Segment 1 in areas with large habitat blocks of at least 5,000 acres (unless adjacent to existing conserved land), is fully supported by the record evidence and supports the goal of compensation for the Project’s potential fragmenting effect.¹³⁸

2. The Commissioner’s order of a narrower corridor, tapered vegetation, and taller poles is consistent with federal standards.

NextEra fabricates a DEP obligation to consider North American Electric Reliability Corporation (NERC) requirements that are well beyond the scope of DEP’s statutory duties or the applicable approval standards. NextEra Appeal at 7-9. NextEra fails to include a citation to any DEP rule or law that requires compliance with NERC standards, because none exists. DEP in fact has no duty or authority to determine whether its conditions “conflict with federal law.” NextEra Appeal at 8. Rather, DEP must apply the requirements of the applicable Maine laws and rules.

Nevertheless, CMP maintained throughout the entire permitting process a commitment “to remove woody vegetation capable of encroaching into the Minimum Vegetation Clearance

¹³⁵ *Id.*

¹³⁶ Simons-Legaard Supplemental at 3.

¹³⁷ Hearing Day 6 Transcript at 143:15-145:5 (Wood).

¹³⁸ Permit Order at 80-81.

Distance (MVCD) of the new transmission lines to facilitate construction and maintain the integrity and safe operation of the transmission line consistent with the standards of North American Electric Reliability Corporation's (NERC) Transmission Vegetation Management.”¹³⁹ Accordingly, regardless of the vegetation management ultimately ordered, CMP committed to maintain the integrity and safe operation of the Project consistent with NERC standards. That is CMP's responsibility, not DEP's.

Nor is the record devoid of “record evidence showing whether these conditions are consistent with federal law, specifically North American Electric Reliability Corporation Reliability Standards FAC-003-4.” NextEra Appeal at 8. To the contrary, the record shows that the Project was designed to exceed the NERC minimum clearance from vegetation to the energized wire zone, no pole height increases are required to satisfy the Permit Order's tapering requirement, and the vegetation management methods set forth in the Permit Order do not impact the energized wire zone.¹⁴⁰

Accordingly, CMP can and will comply with both NERC FAC-003-4 and the Permit Order. NextEra's assertions to the contrary should be disregarded, and are not within the purview of the DEP in any event.

¹³⁹ See Site Law Application Plan for Protection of Sensitive Natural Resources During Initial Vegetation Clearing (VCP), Exhibit 10-1 at 1; Site Law Application Post-Construction Vegetation Maintenance Plan (VMP), Exhibit 10-2 at 1-2 (Sept. 27, 2017); CMP Response to DEP Additional Information Request Attachment J, Revised Exhibit 10-1 at 2 (Dec. 7, 2018 and Jan. 30, 2019); *Id.* Revised Exhibit 10-2 at 2.

¹⁴⁰ Hearing Day 6 Transcript at 283:4-285:5, 314:17-315:7 (Mirabile) (explaining tapering and full-height canopy in the context of the energized wire zone); Hearing Day 6 Transcript at 452:3-456:2 (Achorn) (explaining the typical sag between two 100-foot structures and the feasibility of full-height and taller vegetation without requiring taller structures). See also CMP's Response to DEP's May 9, 2019 Additional Information Request at 2 and Attachment B (May 17, 2019).

C. The DEP allowed and considered evidence of the Project’s impact on greenhouse gases.

NRCM’s complaint that the DEP excluded evidence on and analysis of GHG impacts, and that the DEP relied on CMP’s representations of climate benefits without independent assessment, is patently false. NRCM Appeal at 32-34. While NRCM’s January 24, 2019 written request to include GHG emissions as a hearing topic was denied,¹⁴¹ the Presiding Officer allowed the parties to submit written evidence on this issue into the record, determining that “[t]he issue can be adequately addressed through written submissions.”¹⁴² The Presiding Officer thus allowed the parties and the general public to submit evidence on GHGs, “which may include, for example, comments, data, and reports, until the close of the record.”¹⁴³ NRCM availed itself of this opportunity, filing extensive comments on May 9, 2019, to which CMP responded on May 24, 2019.¹⁴⁴

¹⁴¹ DEP Third Procedural Order at 3-4.

¹⁴² *Id.* at 4. The issue of whether GHGs should be included as a topic at the hearing was fully briefed in the underlying proceeding. Parties who requested the addition of greenhouse gases and climate change to the topics to be addressed at the hearing were provided until January 24, 2019, to submit such a request in writing, which NRCM did (later joined by West Forks). Parties who wished to respond to these requests were given until January 31, 2019 to file a response, which CMP did. The Presiding Officer declined to include GHGs as a hearing topic, reserving the hearing instead for “major” approval criteria: scenic character and existing uses, wildlife habitat and fisheries, alternatives analysis, and compensation and mitigation. Third Procedural Order at 3-4.

GHGs and climate change are not approval criteria and thus were appropriately addressed through written evidence. The Chapter 375, Sections 1 and 2, “air quality” and “climate” criteria, as concluded by Assistant Attorney General Bensinger, are limited to consideration of impacts from the specific development being proposed, and whether it would have climate impacts “in the vicinity of” the development’s location. In other words, the rule limits consideration of climate impacts to any such impacts that result from the development itself, in its location – not from distant benefits or impacts attributable to a product that will pass through the development (such as electricity or goods sold at a store). Accordingly, GHG benefits are not an approval criterion but instead relevant only to the DEP’s balancing of the reasonableness of impact, and in that balancing GHGs are but one of numerous considerations of reasonableness.

¹⁴³ DEP Third Procedural Order at 4.

¹⁴⁴ CMP provided additional evidence on the GHG emissions benefits of the Project on January 29, 2019, March 25, 2019 and April 24, 2019.

In its May 9 comments, NRCM argued that “the Department must include greenhouse gas emissions as part of its permitting decision” and that CMP has claimed that the Project will reduce carbon emissions “without providing proof that the reductions are real.”¹⁴⁵ At the behest of NRCM, DEP did indeed include consideration of GHG emissions in its Permit Order¹⁴⁶ and weighed the substantial amount of evidence submitted by NRCM, CMP, and members of the public that overwhelmingly demonstrate the GHG emissions reduction benefits of the Project.¹⁴⁷ In fact, the Commissioner expressly stated that “[t]he Department reviewed documents in the PUC’s proceeding,” which include several independent studies and testimony discrediting the same arguments NRCM raises here.¹⁴⁸ The PUC’s finding that the Project would result in a reduction of greenhouse gas emissions, which NRCM complains the DEP relies on too heavily,¹⁴⁹ was recently affirmed by the Maine Law Court. *NextEra Energy Res., LLC v. Maine PUC*, 2020 ME 34, ¶¶ 30, 36-38, 227 A.3d 1117, 1125-26 (2020) (“The Commission’s conclusions regarding the NECEC project and Maine’s Renewable Energy Goals were

¹⁴⁵ NRCM’s Comments on the lack of carbon benefits from the New England Clean Energy Connect at 1 (May 9, 2019).

¹⁴⁶ Permit Order at 12, 35, 70, 104-105.

¹⁴⁷ *Id.*

¹⁴⁸ Permit Order at 105. The DEP, PUC, and the myriad other agencies and courts that have considered the Project’s GHG impacts examined extensive evidence – on the same claims NRCM raises again before the Board – and uniformly rejected those claims. *See supra*, n.32-35; NRCM Appeal at 32-33. The record here mandates the same outcome. *See, e.g.*, PUC CPCN Order at 69-72 (May 3, 2019); Comments of CMP Regarding Greenhouse Gas Emissions at 2-11 (Mar. 25, 2019); Response of CMP to the Group 4 May 9, 2019 Comments Regarding Greenhouse Gas Emissions Reductions at 4-18 (May 24, 2019); Phillips, Bruce, *Fully Decarbonizing the New England Electric System; Implications for New Reservoir Hydro* (Jan. 31, 2019) (submitted by CMP on April 24, 2019). In fact, the GHG modeling analyses of NRCM’s own consultant, Energyzt, demonstrate that the Project will reduce carbon emissions throughout the larger Northeast region if the NECEC energy is assumed to be incremental, which the PUC determined it is. Response of CMP to the Group 4 May 9, 2019 Comments Regarding Greenhouse Gas Emissions Reductions at 8-18 (May 24, 2019). NRCM never offered the Energyzt report containing these analyses as evidence in the PUC proceeding or the DEP proceeding, and instead continued in those proceedings to make its baseless claims that the Project has no GHG emissions benefits. *Id.*

¹⁴⁹ NRCM Appeal at 32.

reasonable and consistent with the law”).¹⁵⁰ Disappointed with this result, NRCM claims that the DEP “excluded evidence on and analysis of the greenhouse gas impacts.” NRCM Appeal at 33. The record shows otherwise.

D. The record supports the Commissioner’s decommissioning requirements.

West Forks complains that the record does not support the Commissioner’s condition requiring decommissioning of Segment 1 when this portion of the Project reaches the end of its useful life. West Forks Appeal at 15-17. This complaint is ironic, given that West Forks objected to precisely this type of evidence at the hearing.¹⁵¹ In any event, no statute or rule requires a decommissioning plan or evidence of financial or technical capacity to ultimately decommission a transmission line project in a Site Law or NRPA application. West Forks extends the DEP’s Chapter 373 requirement that an applicant must demonstrate financial and technical capacity to obtain a Site Law permit to the possible eventual dismantling of that Project. But the rules do not deal in such hypotheticals, and instead require demonstration of financial capacity and technical ability “to design, construct, operate and maintain the development”¹⁵² – not to decommission the project at the end of its productive life. For this reason, typically transmission project proposals do not include a decommissioning plan.¹⁵³

¹⁵⁰ The U.S. District Court for the District of Maine reached the same conclusion. Order on Motion for Preliminary Injunction, *Sierra Club, et al. v. U.S. Army Corps of Eng’rs, et al.*, Case No. 2:20-cv-00396-LEW, Order at 49, ECF No. 42 (D. Me. Dec. 16, 2020) (“**the Project will benefit Maine in a variety of ways, including by . . . reducing greenhouse gas emissions.**”). So too did the Massachusetts Department of Public Utilities and the Massachusetts Supreme Judicial Court reach that conclusion. Order of Massachusetts Department of Public Utilities, D.P.U. 18-64; 18-65; 18-66 at 65 (Mass. D.P.U. June 25, 2019) (“**[T]he Department finds that the firm hydroelectric power delivered . . . will create steady GHG emissions reduction benefits to Massachusetts.**”), *affirmed*, *NextEra Energy Resources, LLC v. Dept. of Pub. Utils.*, 485 Mass. 595, 152 N.E.3d 48 (2020).

¹⁵¹ Hearing Day 1 Transcript at 97:23-98:19 (the Presiding Officer overruled West Forks counsel Boepple’s objection to CMP witness testimony that “Eventually the project is going to be decommissioned, the poles will be taken up, the wire will be rolled up and . . .”).

¹⁵² DEP Regs. Ch. 373 § 1.

¹⁵³ Hearing Day 1 Transcript at 137:5-138:2 (Dickinson).

Nevertheless, CMP and NECEC LLC do not challenge the Commissioner’s decommissioning condition, and the record demonstrates that NECEC LLC has the financial and technical capacity for decommissioning Segment 1.¹⁵⁴

IV. CMP performed a fulsome and sufficient alternatives analysis.

It is important to understand that CMP was under no obligation to analyze alternatives that are too remote, speculative, or impractical to pass the threshold test of reasonableness. To the contrary, an applicant must determine the least environmentally damaging practicable alternative only among those alternatives that are reasonable. DEP Rule Chapters 310, 315, and 335 required CMP to demonstrate that there is no “practicable alternative to the activity” that “would be less damaging to the environment” or “will have less visual impact.”¹⁵⁵ “Practicable” is defined as “[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project.”¹⁵⁶ It was and remains so obvious that undergrounding the Project would not be practicable that CMP did not initially include it as an alternative in its permit applications.¹⁵⁷

Nevertheless, the record shows that the underground alternatives Appellants push – which were the subject of multiple days of hearing testimony, hundreds of pages of pre-filed testimony and evidence, and briefing by the parties – are not practicable and that there is no other practicable alternative that would meet the project purpose and have less environmental impact.

¹⁵⁴ See Transfer Application Attachment A (listing decommissioning costs as an included operational expense), Attachment B (providing proof of availability and commitment of funds “for NECEC LLC to acquire the project from CMP and for construction and operation of the NECEC Project as approved”), and Attachment C (demonstrating NECEC LLC’s technical ability to comply with the terms of the Permit Order).

¹⁵⁵ DEP Reg. Ch. 310 §§ 5(A), 5(D), 9; DEP Reg. Ch. 315 § 9; DEP Reg. Ch. 335 § 3(A).

¹⁵⁶ DEP Reg. Ch. 310 § 3(R); DEP Reg. Ch. 315 § 5(D); DEP Reg. Ch. 335 § 2(D).

¹⁵⁷ Bardwell Rebuttal at 3; Hearing Day 6 Transcript at 347:20-348:23 (Tribbet).

A. The record demonstrates that undergrounding alternatives are not practicable.

Just as they did in the underlying proceeding, Appellants focus their alternatives analysis complaints on the impracticable undergrounding alternative, relying on NextEra's discredited witness on transmission line undergrounding. NRCM Appeal at 27-32; NextEra Appeal at 4-7; West Forks Appeal at 7-9. The record shows, however, that the extremely high cost, logistical difficulties, visual impact, negligible environmental benefits, increased risk and adverse impacts during construction, and potential adverse impacts during operation render any additional undergrounding not practicable or appropriate.¹⁵⁸ Indeed, numerous intervenor witnesses testified that undergrounding is not a preferred alternative due to their concerns with the environmental and visual impacts of undergrounding.¹⁵⁹ Crucially, burying any additional portion of the NECEC HVDC line underground in the 54-mile new corridor of Segment 1 is not reasonable or feasible because the costs and logistics of doing so would defeat the purpose of the Project.¹⁶⁰

Taking costs first, the alternative of burying the transmission line is not practicable because it would result in the Project not moving forward.¹⁶¹ West Forks' jumbled argument that because no Maine ratepayers will bear the costs of the Project, the DEP inappropriately

¹⁵⁸ Bardwell Rebuttal at 3-16, 23-27; Tribbet Rebuttal at 5; Freye Rebuttal at 5-6; Bardwell Supplemental at 2-8; Hearing Day 1 Transcript at 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile); Hearing Day 3 Transcript at 192:12-14 (Warren); Hearing Day 6 Transcript at 341:5-344:22, 431:7-432:4 (Bardwell); Hearing Day 6 Transcript at 346:23-347:1 (Tribbet); Hearing Day 6 Transcript at 432:5-12 (Achorn); Hearing Day 6 Transcript at 445:7-447:12 (Paquette); Exhibits CMP-11-A through CMP-11.1-G.

¹⁵⁹ Publicover Supplemental at 2-3; Hearing Day 5 Transcript at 94:13-95:14, 97:16-98:15 (Cutko); Hearing Day 6 Transcript at 61:4-25, 78:23 (Publicover); Hearing Day 6 Transcript at 72:12-14 (Reardon). *See also* Bardwell Rebuttal at 21-27.

¹⁶⁰ Dickinson Rebuttal at 2-3, 9-10, 13; Tribbet Rebuttal at 5; Tribbet Supplemental at 4-6; Hearing Day 1 Transcript at 285:13-287:3 (Dickinson).

¹⁶¹ Dickinson Rebuttal at 13; Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

considered the costs of undergrounding in its alternatives analysis, has no merit. West Forks Appeal at 7-8. West Forks argues that “because the NECEC Project Purpose includes ‘at the lowest cost to ratepayers’ and CMP testified that no NECEC costs would be passed to ratepayers,” the DEP should not have considered the cost of undergrounding in determining whether that alternative is practicable. *Id.* But the record clearly shows that while no costs will be passed on to *Maine* ratepayers, *Massachusetts* ratepayers will bear the costs of the Project, which the Commissioner recognized.¹⁶²

It appears that West Forks is trying to argue that because the Project CMP bid into the Massachusetts Request for Proposals for Long-Term Contracts for Clean Energy Projects (RFP) is fixed, any Project costs that were not part of that fixed bid would not be borne by ratepayers. That is beside the point. Burial of additional portions of the Project would have rendered the Project so expensive for Massachusetts ratepayers that it would not have been selected by the Massachusetts Department of Energy Resources and Electric Distribution Companies of Massachusetts (EDCs) and would not have moved forward – it would not have met its overall purpose.¹⁶³ Because the excessive costs of undergrounding would not meet the Project purpose or otherwise be practicable, CMP did not consider undergrounding in its Project design bid submitted in response to the RFP.¹⁶⁴ Intervenor evidence provided at the hearing confirmed

¹⁶² Permit Order at 15 (“the proposed project’s costs will be recovered from Hydro-Quebec and Massachusetts electricity ratepayers in accordance with Federal Energy Regulatory Commission-approved transmission service agreements.”). CMP had to propose a relatively low-cost option in order for the Project to be selected by the Massachusetts EDCs.

¹⁶³ Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

¹⁶⁴ Bardwell Rebuttal at 3; Hearing Day 6 Transcript at 347:20-348:23 (Tribbet).

CMP's obvious conclusion that undergrounding is a "fruitless option" that would not have met the Project purpose from the get-go.¹⁶⁵

Despite the impracticability of undergrounding, as the cost of doing so would mean that the Project would not have moved forward¹⁶⁶ and the logistics of doing so would render any analysis futile,¹⁶⁷ CMP conducted a thorough underground alternatives analysis in response to the testimony of West Forks' and NextEra's witnesses.¹⁶⁸ This analysis irrefutably confirmed CMP's initial determination that undergrounding the Project, or even portions of the Project beyond the proposed undergrounding at the upper Kennebec River, is not reasonable, and therefore also could not be "practicable," because the costs of doing so would have defeated the

¹⁶⁵ Paquette Surrebuttal at 3-4, 7, 16-17. Undergrounding the Project is cost-prohibitive even when factored into Project costs after the Project was selected in the RFP. "In general, underground construction costs five to seven times and much as overhead construction. Specific site conditions such as shallow rock and wetlands crossing can increase that price difference significantly." Bardwell 341:18-20. CMP determined that undergrounding the entire line utilizing the current route, undergrounding the entire line using an alternative route, and undergrounding only in Segment 1 would result in an incremental project cost of \$750 million to \$1.9 billion to the currently proposed \$950 million NECEC Project. Bardwell Rebuttal at 11; Exhibit CMP-11-B, CMP-11-C, and CMP-11-D. "This would result in a total project cost of 1.6 to 2.8 billion dollars." Hearing Day 6 Transcript at 348:15-23 (Tribbet); Hearing Day 6 Transcript at 371:2-372:5 (Dickinson); Tribbet Rebuttal at 5.

¹⁶⁶ Hearing Day 1 Transcript at 248:12-15 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

¹⁶⁷ Paquette Surrebuttal at 4 ("CMP was correct in not initially considering an underground alternative for Segment 1 from a legal perspective, i.e., doing a full-blown regulatory alternatives analysis, because based on initial engineering considerations it could reasonably be determined that undergrounding would not work for myriad reasons associated with practicability, including cost, transportation logistics, and construction challenges, many of which would increase negative environmental impacts compared to an overhead line. One of the most important criteria in determining the ability to install an HVDC cable underground is location. Segment 1's relative remoteness, topography, geology, hydrology, and long stretches of ROW between access points make it inherently unsuitable for burying an HVDC cable. Engineering and other power line construction professionals are or should be aware of these factors, especially as they present in Segment 1, and would not want to invest scarce time, money, and resources in analyzing a fruitless option.").

¹⁶⁸ See Bardwell Rebuttal; Tribbet Rebuttal; Bardwell Supplemental.

purpose of the Project.¹⁶⁹ For the same reason, undergrounding in the two other P-RR subdistricts that the Project will cross is not suitable or reasonably available to CMP.¹⁷⁰

Putting cost aside, the underground proposals offered by the intervenors in this proceeding are not practicable for other reasons as well. For example, NRCM alleges that CMP could bury the NECEC transmission line along the edge of the Spencer Road. NRCM Appeal at 31-32.¹⁷¹ But Spencer Road is not a public road, and its private owners specifically did not want a transmission line located along the Spencer Road because such a transmission line, whether overhead or underground, would limit the landowner's ability to ditch, blast, create, and use landings, operate heavy equipment, or relocate the road.¹⁷² Despite NRCM's suggestion, Spencer Road is unavailable, whether or not the Project is buried.

NRCM's suggestion that CMP did not analyze the feasibility of co-location along Route 201 also is contradicted by significant evidence of record. NRCM Appeal at 31-32. While Route 201 is a public road, it also is a state and federally designated scenic byway. In any event, "the Maine Department of Transportation [MDOT] will not allow the line to be built in the travel lanes and there is insufficient room alongside the travel lanes to actually install the line."¹⁷³ In other words, Route 201 is unavailable due to lack of sufficient space within the highway

¹⁶⁹ Dickinson Rebuttal at 2-3, 9-10, 13; Tribbet Rebuttal at 5; Tribbet Supplemental at 4-6; Hearing Day 1 Transcript at 248:12-15, 285:13-287:3 (Dickinson); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 6 Transcript at 441:15-442:5 (Dickinson).

¹⁷⁰ Bardwell Rebuttal at 3-16, 23-27; Tribbet Rebuttal at 5; Freye Rebuttal at 5-6; Bardwell Supplemental at 2-8; Hearing Day 1 Transcript at 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile); Hearing Day 2 Transcript 146:8-150:7 (Dickinson); Hearing Day 3 Transcript at 192: 12-14 (Warren); Hearing Day 6 Transcript at 341:5-344:22, 431:7-432:4 (Bardwell); Hearing Day 6 Transcript at 346:23-347:1 (Tribbet); Hearing Day 6 Transcript at 432:5-12 (Achorn); Hearing Day 6 Transcript at 445:7-447:12 (Paquette); Exhibits CMP-11-A through CMP-11.1-G.

¹⁷¹ *See also* Publicover Direct at 19-20.

¹⁷² Freye Rebuttal at 5; Freye Supplemental at 5-6; Hearing Day 6 Transcript at 338:10-15 (Freye).

¹⁷³ Hearing Day 6 Transcript at 407:18-408:8, 409:10-23 (Freye); Hearing Day 6 Transcript at 487:14-19 (Bardwell).

limits,¹⁷⁴ the restrictions MDOT places on such burial and the installation of splicing vaults,¹⁷⁵ safety constraints associated with co-locating with the existing overhead distribution line,¹⁷⁶ and other cost, safety, and environmental issues of doing so.¹⁷⁷ The presence of the existing overhead distribution line in Route 201, “rather than indicating a potential pathway actually means much of the available space is currently occupied.”¹⁷⁸ Furthermore, given that the roads in the area of Segment 1 are not straight, cross terrain changes, and are largely privately owned by forest management companies and re-routed frequently, overhead transmission is not practicable.¹⁷⁹

Furthermore, there is no other corridor available that connects to Québec in the upper Kennebec River area, other than the proposed route.¹⁸⁰ While there is a distribution line from Harris Dam to the village of Jackman (the Jackman Tie Line or JTL), the JTL is entirely roadside

¹⁷⁴ Freye Supplemental at 4; Hearing Day 6 Transcript at 337:22-338:10 (Freye); Hearing Day 6 Transcript at 342:5-343:3, 487:1-19 (Bardwell).

¹⁷⁵ Bardwell Rebuttal at 10; Bardwell Supplemental at 12; Hearing Day 6 Transcript at 487:1-19 (Bardwell).

¹⁷⁶ Freye Supplemental at 5, 7-8.

¹⁷⁷ Freye Rebuttal at 7-8; Freye Supplemental at 5; Hearing Day 6 Transcript at 342:5-343:3 (Bardwell); Hearing Day 6 Transcript at 464:3-23 (Dickinson).

¹⁷⁸ Hearing Day 6 Transcript at 337:25-338:4 (Freye).

¹⁷⁹ The evidence shows that, “particularly in this part of the world where we’re looking here where you have a lot of terrain changes, your roads are not straight particularly on private roads, which the owners tend to move frequently or with some regularity and a good example is the Capital Road. You saw the imagery of that where the owner decided to rebuild a bridge and they moved it over by several hundred feet. We know of other forest management owners that have acquired land and completely rebuilt the road system. So putting a piece of infrastructure particularly next to a logging road has a certain amount of risk associated with it.” Hearing Day 6 Transcript at 409:10-23 (Freye). Furthermore, “putting any transmission line either overhead or underground along a road is not necessarily a good idea unless you’re in some place where the roads are very straight and the land is very flat on either side. The roads tend to be a series of curves and transmission lines -- overhead lines tend to be -- they are a series of straight tangents and when you try to match the two together you end up with angle points that are in wetlands, your pole locations end up in low spots instead of high spots, so it’s one of these ideas that people think, oh, this is great, we’ve got a road, we’ll run the overhead transmission line next to it and it’s really not good idea from a siting standpoint.” Hearing Day 6 Transcript at 407:18-408:8 (Freye).

¹⁸⁰ Freye Supplemental at 2-4.

and does not connect to Québec.¹⁸¹ The JTL instead terminates in Jackman about 16 miles from the Canadian border and would require new corridor through the towns of Jackman and Moose River as well as additional corridor along Route 201 for the entire distance from Jackman to West Forks Plantation.¹⁸² In addition, the JTL corridor between Harris Dam and Route 201 would need to be expanded through two conservation easements and across the State-owned Cold Stream Forest.¹⁸³ Co-location along Route 201 is thus unfeasible and results in new corridor in any event.

Nor is undergrounding available and feasible here simply because other projects have undergrounded portions of transmission line elsewhere, contrary to the assertions of NextEra and NRCM. NextEra Appeal at 4, n.5; NRCM Appeal at 30-31.¹⁸⁴ In the underlying proceeding as well as here, NextEra claimed that undergrounding is technically and logistically feasible based on proposed, but neither developed nor in-state, examples of other projects that would bury a portion of a transmission line.¹⁸⁵ However, the testimony of NextEra's own witness belies these simplistic conclusions,¹⁸⁶ acknowledging that the feasibility of burial depends on "the unique circumstances in geography. Many of them are under water connecting different islands or bodies of water. The design of transmission lines that interconnect systems is very, very site dependent."¹⁸⁷ Furthermore, on questioning at the hearing, NextEra's witness could provide no details on the feasibility of undergrounding as it relates to existing technology and logistics that

¹⁸¹ Freye Rebuttal at 6; Hearing Day 6 Transcript at 364:23-367:8 (Freye).

¹⁸² Freye Rebuttal at 7; Bardwell Supplemental at 12; Hearing Day 6 Transcript at 364:23-367:8 (Freye).

¹⁸³ Freye Rebuttal at 7.

¹⁸⁴ See also Group 8 Post-Hearing Brief at 8-12.

¹⁸⁵ Group 8 Post-Hearing Brief at 2-4, 8-9.

¹⁸⁶ See Group 3 Post-Hearing Brief at 14-19.

¹⁸⁷ Hearing Day 4 Transcript at 179:24-180:4 (Russo).

are specific to this Project.¹⁸⁸ Indeed, the evidence shows that projects that have undergrounded large portions of transmission line, and which NRCM cites in its appeal, are factually *dissimilar* from the NECEC.¹⁸⁹ NRCM Appeal at 30-31.

The evidence clearly shows that undergrounding is neither available nor feasible considering location, existing technology, and logistics,¹⁹⁰ and is instead a “fruitless option.”¹⁹¹ Furthermore, as described below, undergrounding will not lessen environmental impacts, but instead would cause a continuous surface disruption (rather than intermittent and widely spaced at each overhead structure installation location) that would have a greater fragmenting effect, would require additional control measures for soil erosion, sedimentation, and dust generation during construction, would require permanent access roads to every jointing location along the route, and could only avoid wetlands and waterways by using higher cost and higher risk trenchless methods.¹⁹² The record demonstrates that the extremely high cost, technical feasibility, logistical difficulties, and adverse impacts render any undergrounding beyond the HDD installation at the Kennebec River not practicable.¹⁹³ The DEP therefore correctly found that “[r]ecord evidence supports the conclusion that undergrounding in Segment 1 may be so

¹⁸⁸ See Group 3 Post-Hearing Brief at 15-17.

¹⁸⁹ Hearing Day 6 Transcript at 462:2-13 (Bergeron), 473:11-16 (Bensinger) and 463:9-464:2, 473:17-25 (Bardwell) (in response to the questions of Mr. Bergeron and Ms. Bensinger, explaining the differences between the NECEC and other transmission line projects – Northern Pass, Connect New York, TDI Vermont – and why given those differences undergrounding is unfeasible for the NECEC Project).

¹⁹⁰ Bardwell Rebuttal at 9-16; Hearing Day 6 Transcript 341:22-342:1; 355:2-5 (Paquette); 356:11-14; 418:7-15, 431:20-432:4; 443:16-444:20.

¹⁹¹ Paquette Surrebuttal at 3-4, 7, 16-17.

¹⁹² Bardwell Rebuttal at 12-13; Paquette Surrebuttal at 7-17.

¹⁹³ Bardwell Rebuttal at 3-16, 23-27; Tribbet Rebuttal at 5; Freye Rebuttal at 5-6; Bardwell Supplemental at 2-8; Hearing Day 1 Transcript at 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile); Hearing Day 3 Transcript at 192:12-14 (Warren); Hearing Day 6 Transcript at 341:5-344:22, 431:7-432:4 (Bardwell); Hearing Day 6 Transcript at 346:23-347:1 (Tribbet); Hearing Day 6 Transcript at 432:5-12 (Achorn); Hearing Day 6 Transcript at 445:7-447:12 (Paquette); Exhibits CMP-11-A through CMP-11.1-G.

technically challenging as to be impracticable. Even if technically practicable, the trenching that undergrounding entails would result in greater impacts to natural resources such as wetlands. Undergrounding also would require a permanent clearing in Segment 1 that is 75 feet in width, almost 50% wider than the corridor clearing approved in this Order.”¹⁹⁴

B. CMP’s alternatives analysis considered impacts to natural resources, including as part of its undergrounding analysis.

NextEra claims, and West Forks echoes NextEra’s claim, that while the Order describes impacts to natural resources along the Project corridor “the Order and record are silent regarding any CMP analysis of NRPA practicable alternatives (such as undergrounding) to the Preferred Route NRPA Impact.” NextEra Appeal at 5-6; West Forks Appeal at 8; *see also* NRCM Appeal at 28-29, 32. West Forks further claims that the DEP ignored evidence on the impact of underground transmission lines on forest fragmentation. West Forks Appeal at 10. These claims are patently false. So too is NextEra’s claim that the record is devoid of Section 487-A(4) evidence regarding alternatives to the proposed location and character of the Project that may lessen its impact on the environment or the risks it would engender to the public health or safety, a standard which the Permit Order explicitly references when describing the applicable standards under which it conducted its natural resource impacts review and alternatives analysis. NextEra Appeal at 6-7; Permit Order at 58, 75, and 108. To the contrary, that is precisely what CMP’s alternatives analysis, set forth in its 2017 permit applications and further developed throughout the iterative permitting process, accomplishes. CMP’s alternatives analysis, and the Permit Order, exhaustively describe the lack of any practicable alternative that would meet the project

¹⁹⁴ Permit Order at 2.

purpose and have less environmental impact, pursuant to the Site Law,¹⁹⁵ NRPA standards,¹⁹⁶ Section 404(b)(1) Guidelines,¹⁹⁷ and LUPC criteria,¹⁹⁸ and also describe the process by which alternatives were developed and evaluated to identify a technically and economically sound solution that avoids and minimizes environmental impacts to achieve the least environmentally damaging practicable alternative, including undergrounding the Project at its upper Kennebec River crossing.¹⁹⁹

While the three routes that CMP analyzed would meet the Project's purpose, the routes that CMP did not select would result in more environmental impact than the selected corridor route (the Preferred Alternative),²⁰⁰ as summarized in the following tables.²⁰¹

¹⁹⁵ 38 MRS § 487-A(4).

¹⁹⁶ DEP Regs. Ch. 310 § 5; DEP Regs. Ch. 315 § 9; DEP Regs. Ch. 335 § 3.

¹⁹⁷ 40 CFR § 230.10(a)(2).

¹⁹⁸ LUPC Regs. Ch. 10.23(I)(3)(d)(8).

¹⁹⁹ NRPA Application § 2.0; NRPA Application Amendment for the Kennebec River Horizontal Directional Drill § 2.0; Site Law Application § 25.3.1; Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1.

²⁰⁰ NRPA Application §§ 2.3.2.2 and 2.3.2.3; Mirabile Direct at 18-21; Berube Direct at 6-9. CMP also considered the no-action alternative (i.e., not constructing the NECEC Project), but that alternative would not meet the Project's purpose and need of allowing CMP to deliver 1,200 MW of clean energy generation from Quebec to New England at the lowest cost to ratepayers. NRPA Application § 2.3.1; Berube Direct at 4.

²⁰¹ NRPA Application § 2.3.2.2.2 HVDC Alternative 1 Comparison; NRPA Application 2.3.2.3.2 Alternative 2 Comparison.

2.3.2.2.2 HVDC Alternative 1 Comparison

Table 2-1, below, compares the NECEC Preferred Alternative to Alternative 1.

Table 2-1: Comparison of NECEC Preferred Alternative to Alternative 1

Point of Comparison	Unit	Preferred Alternative	Alternative 1
Conserved lands	no./acres	6 parcels/42 acres	8 parcels/275.3 acres
Undeveloped ROW	miles	53.5	93.1
Clearing	acres	1,823	1,934
Parcel count total	no.	7	120
Stream crossings	no.	115	88
Transmission line length	miles	146.5	119.3
NWI mapped wetlands	no./acres	263 wetlands/76.3 acres	238 wetlands/118.3 acres
Deer wintering areas	no./acres	8 DWAs/44.3 acres	8 DWAs/71.3 acres
Inland waterfowl and wading bird habitat	no./acres	12 IWWH/22.7 acres	9 IWWH/23.1 acres
Public water supplies within 500 feet	no.	1	1
Significant sand and gravel aquifers	no.	12	7

2.3.2.3.2 Alternative 2 Comparison

Table 2-2, below, compares the NECEC Preferred Alternative to Alternative 2.

Table 2-2: Comparison of NECEC Preferred Alternative to Alternative 2

Point of Comparison	Unit	Preferred Alternative	Alternative 2
Conserved lands	no./acres	6 parcels/42 acres	9 parcels/53.2 acres
Undeveloped ROW	miles	53.5	17.3
Clearing	acres	1,823	1,670
Parcel count total	no.	7	34
Stream crossings	no.	115	123
Transmission line length	miles	146.5	138.5
NWI mapped wetlands	no./acres	263 wetlands/ 76.3 acres	283 wetlands/ 113.3 acres
Deer wintering areas	no./acres	8 DWAs/44.3 acres	8 DWAs/44 acres
Inland waterfowl and wading bird habitat	no./acres	12 IWWH/22.7 acres	12 IWWH/16.5 acres
Public water supplies within 500 feet	no.	1	1
Significant sand and gravel aquifers	no.	12	10

So too did CMP analyze the environmental and natural resources impact of undergrounding the Project, contrary to NextEra's and West Forks' allegations. NextEra Appeal at 5-6; West Forks Appeal at 10. The evidence shows that underground transmission installations cause a continuous surface disruption (rather than intermittent and widely spaced at each overhead structure installation location), require additional control measures for soil erosion, sedimentation, and dust generation during construction, require permanent access roads to every jointing location along the route, and can only avoid wetlands and waterways by using

higher cost and higher risk trenchless methods.²⁰² Undergrounding the Project would result in a continuous clearing of an average width of 75 feet, a far greater fragmenting source than the 54-foot scrub shrub Project centerline permitted here.²⁰³ So too does undergrounding require termination stations, access roads for the termination stations, permanent access roads for every jointing location along the route, and vaults that create impervious surface – all environmental impacts that do not arise with overhead transmission lines.²⁰⁴ Overhead transmission, on the other hand, has minimal impact between structures.²⁰⁵ Undergrounding therefore does not lessen the Project’s impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost.²⁰⁶

CMP also considered alternatives to crossing the five outstanding river segments that the Project will cross, and the record shows that no reasonable alternative exists which would have less adverse effect on the natural and recreational features of the river segment for each outstanding river segment the transmission line will cross.²⁰⁷ This is because there are no reasonable alternatives to undergrounding the upper Kennebec River crossing that would have less adverse effect on that river segment, and because all other outstanding river segment

²⁰² Bardwell Rebuttal at 12-13; Paquette Surrebuttal at 7-17; Hearing Day 6 Transcript 341:5-7 (Bardwell). CMP also analyzed undergrounding in combination with other mitigation methods, and “has made significant efforts to evaluate and incorporate alternatives into its project design. The most significant example of this is the Upper Kennebec where the project electively decided to implement approximately one mile of underground estimated at approximate incremental cost to the project of \$31 million. In addition to this major commitment, the project has also agreed to significant and costly overhead line design alternatives totaling nearly \$11 million for a total incremental commitment of \$42 million.” Hearing Day 6 Transcript 347:20-348:5 (Tribbet).

²⁰³ Bardwell Rebuttal at 12; Bardwell Supplemental at 5; Exhibit CMP-11.1-C; Hearing Day 6 Transcript at 419:24-420:23 (Bardwell) (noting that the clearing area for an underground transmission cable can be as wide as 100 feet).

²⁰⁴ Bardwell Rebuttal at 12-13; Bardwell Supplemental at 6.

²⁰⁵ Bardwell Rebuttal at 13.

²⁰⁶ 38 MRS § 487-A(4).

²⁰⁷ Site Law Application Amendment for the Kennebec River Horizontal Directional Drill § 25.3.1.1; Segal Direct at 35; Berube Direct at 11-12.

crossings are within existing transmission line corridors, so any alternatives would be in new corridors and would significantly and unreasonably increase clearing and visual impact for those crossings.²⁰⁸ Crossing at a new location (i.e., a crossing that is not co-located within an existing transmission line corridor) would have a greater adverse impact on the river, and is therefore not reasonable, because such crossing would be a new crossing location. By using the existing ROW, additional clearing in the four outstanding river segments crossed aerially by the Project will be limited to a typical width of 75 feet and impacts will be concentrated in locations where transmission lines already cross the rivers.²⁰⁹ Nor is undergrounding at the four outstanding river segments crossed aerially by the Project a reasonable alternative, given the prohibitive cost and existing overhead transmission lines at those locations.²¹⁰

Cumulatively, these analyses demonstrate that there are no alternatives to the Project that would lessen its impact on the environment or risks to public health or safety without unreasonably increasing its costs. This evidence is not “conclusory” nor is it deficient, as NextEra claims, and fully satisfies DEP’s 38 M.R.S. § 487-A(4) duty to receive and consider evidence regarding the location, character, and impact of the Project. Indeed, this evidence demonstrates that there is no “practicable alternative to the activity” that “would be less damaging to the environment” or “will have less visual impact.”²¹¹ The Project does necessarily result in some impact, as all projects that trigger DEP permitting do, but the record clearly shows that this impact is less than that of the reasonable and practicable alternatives. Appellants’

²⁰⁸ Segal Direct at 35; Berube Direct at 11-12.

²⁰⁹ Segal Direct at 35.

²¹⁰ Mirabile Direct at 26; Goodwin Direct at 24-25; Segal Direct at 3, 34-36; Berube Direct at 11-12; Bardwell Rebuttal at 23-24.

²¹¹ DEP Reg. Ch. 310 §§ 5(A), 5(D), 9; DEP Reg. Ch. 315 § 9; DEP Reg. Ch. 335 §§ 3(A), 5(A).

preferred alternative would be no project at all – their parochial position is that any impact is unreasonable impact. This simply is untenable, given the growing and existential climate change threat to Maine’s natural environment.

V. A hearing before the Board is unwarranted.

A hearing on the Permit Order is unwarranted and would result in the waste of the Board’s and public’s resources. Over the course of the DEP’s years-long regulatory review, which extended from September 2017 to May 2020 and included six days of evidentiary hearings and two nights of public testimony by hundreds of Maine citizens, hundreds of written comments, sworn testimony from and cross-examination of dozens of witnesses, and extensive briefing on the interpretation and application of relevant permitting criteria, the DEP developed an administrative record stretching tens of thousands of pages. The breadth of this record is matched only in its depth, particularly on the issues that are the subject of these appeals.²¹²

²¹² See, e.g., Mirabile Direct at 9, Goodwin Direct at 11-13, Johnston Rebuttal at 7-9, Exhibit CMP-2-G, Exhibit CMP-3-F, Exhibit CMP-4.1-A, Hearing transcript Day 1 at 291:16-292:25 (Goodwin/Johnston), Hearing Day 6 Transcript at 308:18-310:3, 324:19-325:14 (Goodwin), CMP Response to DEP May 9, 2019 Additional Information Request Attachment B, Group 4 Initial Brief at 35-37, and CMP Reply Brief at 16-17 and 19 **regarding brook trout habitat**; Mirabile Direct at 9-12, Goodwin Direct at 11, 19, Goodwin Rebuttal at 14-18, Emond Rebuttal at 8-9, Giumarro Supplemental at 2-13, Publicover Supplemental at 4, Exhibit CMP-3-G, Exhibit CMP-3-H, Hearing Day 4 Transcript at 66:14-67:5, 79:10-16 (Publicover), Hearing Day 6 Transcript at 62:12-22, 78:20, 102:12-103:8 (Publicover), 128:17-129:17, 133:22-134:6 (Simons-Legaard), 146:2-25 (Wood), 237:21-240:11 (Giumarro), and 241:17-242:1, 295:6-25, 325:15-326:15 (Mirabile), CMP Response to MDEP May 9, 2019 Additional Information Request Attachment B (Cross Section Typical Wildlife Travel Corridor), Group 4 Initial Brief at 39-41, CMP Initial Brief at 16-18, and CMP Reply Brief at 17-19 **regarding habitat fragmentation**; CMP January 29, 2019 letter to DEP, CMP March 25, 2019 Comments Regarding GHG Emission Reductions, CMP April 24, 2019 Supplemental Comments Regarding GHG Emissions Reductions, CMP May 24, 2019 Response to the Group 4 May 9, 2019 Comments Regarding GHG Emissions, Group 4 Initial Brief at 49-53, and CMP Reply Brief at 30-33 **regarding greenhouse gas benefits**; Dickinson Rebuttal at 2-3, 9-10, and 13, Bardwell Rebuttal, Tribbet Rebuttal, Freye Rebuttal at 5-8, Paquette Surrebuttal at 3-17, Bardwell Supplemental, Freye Supplemental at 4-8, Hearing Day 1 Transcript at 248:12-15, 285:13-287:3 (Dickinson) and 265:16-266:12, 266:13-23, 289:20-290:9 (Mirabile), Hearing Day 2 Transcript 146:8-150:7 (Dickinson), Hearing Day 3 Transcript at 192: 12-14 (Warren), Hearing Day 4 Transcript at 179:24-180:4 (Russo), Hearing Day 6 Transcript at 337:22-338:10-15 (Freye), 341:5-344:22, 431:7-432:4, 487:1-19 (Bardwell), 346:23-348:23 (Tribbet), 355:2-5, 445:7-447:12 (Paquette), 432:5-12 (Achorn), and 441:15-442:5, 464:3-23 (Dickinson), Exhibits CMP-11-A through CMP-11.1-G, Group 3 Initial Brief at 14-19, Group 4 Initial Brief at 8-9 and 56-58, and CMP Reply Brief at 19-24 **regarding alternatives analysis**.

Appellants have made no showing that a second bite at the apple is warranted here. It is in fact not warranted, as explained below, and would be a waste of the Board's time and resources.

If a hearing is requested, the DEP's rules require that an appellant "provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify." DEP Regs. Ch. 2 § 24(B)(4). A hearing, discretionary under the DEP's rules, is appropriate only in those instances where there is (1) credible conflicting technical information, (2) regarding a licensing criterion, and (3) it is likely that a hearing will assist the Board in understanding the evidence. DEP Regs. Ch. 2 § 7(B). Appellants fail to make these required showings, and thus their hearing requests should be denied.

A. West Forks' and NextEra's hearing requests do not meet the DEP's requirements.

West Forks and NextEra both request a hearing on their appeals of the Permit Order, but both fail to make any of the required proffers. Instead, West Forks and NextEra invert the DEP's rules, calling on the Board to require testimony and evidence by the Licensees, rather than providing the required offer of proof regarding specific testimony and other evidence that they would present at the hearing. West Forks Appeal at 17; NextEra Appeal at 9-10. Proffering supplemental evidence on behalf of the Licensees, who stand firmly behind the existing administrative record, is both illogical and contrary to the DEP's rules. These appellants' failure to follow the DEP's straightforward rules of procedure is fatal to their hearing requests.

West Forks requests that the Board require CMP to submit certain evidence, as well as that the Board "take" certain evidence that West Forks alleges "is required to counter the Department's findings," but makes no offer of proof regarding any testimony and other evidence

that they would present at the hearing. West Forks Appeal at 17. Instead, West Forks merely requests that it be permitted to submit “any rebuttal testimony and evidence Petitioners may decide to submit on [decommissioning].” *Id.* But nowhere does West Forks describe the substance of this rebuttal evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify on this rebuttal evidence, as required under section 24(B)(4). Failure to do so makes it impossible to determine if West Forks’ hearing testimony would meet the requirements of section 7(B), i.e., whether there would be (1) credible conflicting technical information, (2) regarding a licensing criterion, and (3) that it is likely that a hearing will assist the Board in understanding the evidence. West Forks’ hearing request should be denied.

NextEra similarly requests that the Board direct CMP to submit hearing evidence that will consist of “credible conflicting technical information regarding a licensing criterion that will assist the Board in understanding the evidence,” but makes no statement as to what evidence it would present at the hearing, let alone of the substance and relevance of its evidence or whether it would call any expert or technical witnesses to testify. NextEra Appeal at 10. NextEra’s failure to do so makes it impossible to determine whether NextEra’s hearing testimony would meet the requirements of section 7(B), and thus is fatal to its hearing request, which should be denied.

B. NRCM’s hearing request does not meet the DEP’s requirements and does not offer credible conflicting technical information regarding a licensing criterion that will assist the Board in understanding the evidence.

NRCM purports to follow the DEP’s offer of proof requirements, submitting that it will offer testimony on the following categories of evidence: (1) TRI, (2) the 2014 BPL lease, (3) Permit Order conditions regarding brook trout habitat and habitat fragmentation, (4) mitigation and compensation, (5) greenhouse gas benefits, and (6) Permit Order conditions generally.

NRCM Appeal at 35-39. However, NRCM's offer of proof is deficient. Nowhere does NRCM explain the relevance of its general categories of proffered evidence to the issues on appeal, nor whether any expert or technical witnesses would testify, as required under section 24(B)(4).

Even if the Board were to infer a connection between NRCM's proffered categories of evidence and its issues on appeal, and even if the Board were to assume that NRCM will offer expert or technical witnesses, a hearing still would be unwarranted because not one of NRCM's proffered categories would provide information that would "assist the Department in understanding the evidence" given that the Commissioner issued the Permit Order after six days of hearings at which the parties had ample opportunity to submit evidence and cross-examine testimony, as discussed below. Another hearing would not assist the BEP in understanding the evidence, but rather would be a needless and wasteful repetition of the hearings already held. DEP Regs. Ch. 2 § 7(B).

The purpose of a hearing is to develop the record with additional technical evidence, here on the Site Law and NRPA licensing criteria, without which the Board cannot render a decision on the appeal. Where the Board requires no assistance considering any credible conflicting technical evidence regarding a licensing criterion, it simply reviews the existing record or, if appropriate under the criteria for admitting supplemental evidence, admits into the record supplemental evidence and renders a decision after due consideration of such evidence without the assistance of a hearing.

In its offer of proof regarding its first two categories of evidence, TRI and the 2014 BPL lease, NRCM makes no offer of any technical evidence that it would provide at a hearing. Nor can it, as leaseholds and other evidence of TRI are not section 7(B) "technical information." Furthermore, TRI is not a licensing criterion but rather a Chapter 2, section 11(D) application

submission and processing requirement, and the DEP is not an adjudicatory body that determines ownership rights. *See Southridge Corp. v. Bd. of Env't'l Prot.*, 655 A.2d 345 (Me. 1995); *Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983). Where the evidence offered does not concern any technical evidence or licensing criterion, no hearing is warranted. In any event, NRCM has failed to demonstrate how a hearing on TRI and the 2014 BPL lease will assist the Board in understanding the evidence, and thus a hearing on such evidence is inappropriate. DEP Regs. Ch. 2 § 7(B). NRCM's remaining categories of evidence – Permit Order conditions regarding brook trout habitat and habitat fragmentation, mitigation and compensation, greenhouse gas benefits, and Permit Order conditions generally – purportedly relate to licensing criteria but would not assist the Board in “understanding the evidence.” To the contrary, the record is replete with evidence in each of these categories.²¹³

In short, the conflicting technical evidence already is in the record – NRCM simply disagrees with the Commissioner's findings after consideration of that evidence and wants yet another bite at the apple to try to confuse the well-considered, substantial, and clear-cut evidence that undercuts NRCM's arguments. Additional testimony and evidence on these issues would be duplicative and unnecessary, a waste of the Board's and the parties' resources, and certainly would not assist the Board in understanding the evidence before it.

Because there is an adequate, and indeed abundant, record on which the Board can render its decision on the appeals of the Permit Order, and because neither NRCM nor any of the Appellants can demonstrate that there is sufficient conflicting technical evidence on a licensing criterion to warrant a public hearing to assist the Board in understanding the evidence before it,

²¹³ *Id.*

another hearing before the Board is unwarranted. *Concerned Citizens to Save Roxbury v. BEP*, 2011 ME 39, 15 A.3d 1263; *Martha A. Powers Trust v. BEP*, 2011 ME 40, 15 A.3d 1273.

CONCLUSION

In short, the Permit Order is a thorough document that analyzes and makes reasoned findings and conclusions, based on a robust record, on the issues the Appellants assert in these consolidated appeals. Applying the relevant Site Law and NRPA standards, and DEP rules implementing those standards, DEP staff exhaustively evaluated the Project, soliciting thousands of pages of record evidence, requesting design changes in consultation with its sister agency MDIFW, and crafting conditions based on the record suggestions of parties to the permitting proceeding. The record that the DEP developed over the course of this nearly three years of expert and professional analysis demonstrates that the Project will have no unreasonable adverse impact on the environment. The Board should not indulge Appellants' meritless claims to the contrary. Yes, the Project (like all projects) results in some impact that the Permit Order more than amply mitigates, but the DEP – the agency responsible for protecting Maine's natural resources – sees a far greater threat:

*Climate change, however, is the single greatest threat to Maine's natural environment. It is already negatively affecting brook trout habitat, and those impacts are projected to worsen. It also threatens forest habitat for iconic species such as moose, and for pine marten, an indicator species much discussed in the evidentiary hearing. Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts.*²¹⁴

It is imperative that the Project move forward without further delay. For the foregoing reasons, the Board should decline to hold a hearing on the consolidated Permit Order appeal and deny that appeal.

²¹⁴ DEP Order at 105 (emphasis added).

Dated this 12th day of March, 2021.

A handwritten signature in black ink, appearing to read "Matthew D. Manahan", is written over a horizontal line.

Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for Central Maine Power
Company and NECEC Transmission LLC*

THIS PAGE INTENTIONALLY LEFT BLANK

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development Act
permit and Natural Resources Protection Act
permit for the New England Clean Energy Connect
("NECEC")
L-27625-26- A-N
L-27625-TB-B-N
L-27625-2C-C-N
L-27625-VP-D-N
L-27625-IW-E-N
SITE LAW CERTIFICATION SLC-9

FRIENDS OF THE BOUNDARY
MOUNTAINS

SUBMISSION
IN SUPPORT OF THE CONSOLIDATED
APPEAL OF DEPARTMENT OF
ENVIRONMENTAL PROTECTION's
MAY 11, 2020 ORDER

MARCH 12, 2021

Friends of the Boundary Mountains (FBM) strongly supports the Appeals of the Department of Environmental Protection (DEP) Commissioner's May 11, 2020 NECEC Order, as well as the requests for a new hearing, filed by the Natural Resources Council of Maine (NRCM), the West Forks Intervenor Group, and NextEra Energy Resources, LLC.

In addition, FBM supports NRCM's appeal of and a request for a hearing on the December 4, 2020, Order of the Commissioner (L-27625-26-K-T) conditionally approving the application of CMP and NECEC Transmission LLC to partially transfer to NECEC Transmission LLC the May 11, 2020, NECEC Order (Transfer Order). It is our understanding that all the above appeals are being processed as a Consolidated Appeal by the Board of Environmental Protection (BEP).

Friends of the Boundary Mountains has standing as an aggrieved party and as a party to the DEP proceedings on the Order as an Intervenor. Friends of the Boundary Mountains (FBM) is a 501(c)(3) non-profit grassroots organization formed in 1995. The mission of FBM is to safeguard the Boundary Mountains from development and to conserve the area for traditional uses of recreation, wildlife and forestry.

DEP's May 11 ORDER is Unreasonable, Unjust, And Unlawful

As documented in the submission of the West Forks Group to the Somerset District Court (and subsequently remanded to the Board of Environmental Protection) the DEP's decision to grant permits to NECEC is unreasonable, unjust, and unlawful on the evidence in the record. DEP has made numerous errors in the Order and its Findings and Conclusions are unsupported by substantial evidence.

Throughout the NECEC proceedings there are egregious examples of DEP's abuse of its discretionary authority in order to favor the applicant, CMP. DEP has shirked its responsibility by accepting the conclusions of other agencies without examining the actual evidence in the record or by denying the admission of relevant evidence.

Despite the fact that the stated purpose for a DEP hearing is to bring forth technical information to the attention of decision-makers, the DEP Order again and again ignores the testimonies of Maine natural scientists, ecologists, and land conservation experts regarding the extreme adverse impacts of NECEC on Maine's natural resources and environment. Moreover, Friends of the Boundary Mountains was witness to the stifling of the opposition through an anti-democratic pre-determined bias in favor of the applicant, which appeared in every Procedural Order that DEP issued and in the rulings on motions put forth by the opposition.

Essentially the DEP proceedings were an environmental travesty. The Board of Environmental Protection should conduct a *de novo* review and reverse the DEP May 11 Order. As pointed out by NRCM in its Appeal: "The board is not bound by the commissioner's findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner."

INEFFECTIVE MITIGATION and DEP's ERRORS

The Order imposes conditions that purport to mitigate NECEC's impacts to protected resources and the environment but which fail to meet the standards set for the in NRPA and the Site Law. (NRCM Appeal, p.7).

DEP's May 11 Order acknowledges that CMP's NECEC proposal as submitted and modified violates NRPA and the Site law in many substantial ways. The introduction to the Order itself states, "the project as originally proposed would have had substantial impacts" and continues to state that it is "feasible to avoid or minimize those impacts through a variety of mitigation measures." Order, May 11, 2020, at 1.

So the question becomes— does DEP's mitigation measures overcome NECEC's violations of NRPA and the Site law? The answer is a resounding NO!

Landscape-Scale Ecological Values Of The Region

The Order fails to address the landscape-scale ecological values of the region that will be severely and unreasonably impacted as the CMP corridor crosses Segment 1. DEP in the Order claims that by reducing the width of the corridor to 54' from CMP's proposed 150'. However DEP ignores the overall impacts of fragmentation of the forest landscape that still remains with a 54' wide corridor.

The big picture issue of the cumulative landscape-scale regional impacts of the NECEC project due to landscape fragmentation and the permanent interruption of regional wildlife migratory patterns was thoroughly addressed by Janet McMahon in her sworn testimony at the DEP Hearing. Ms. McMahon is an ecologist who has extensively studied the effects of fragmentation on the Western Maine forest landscape

and has published two papers on this subject, both of which were submitted as exhibits with Ms. McMahon's testimony. Yet the substance of her testimony was ignored by DEP in issuing this Order.

Dr. David Publicover, scientist with the Appalachian Mountain Club, gave extensive expert testimony at the DEP Hearing on the critical adverse impacts of fragmentation that would be generated by the NECEC project. The importance of his testimony on fragmentation has also been largely ignored by DEP, as has other expert testimonies.

The Maine Site Law requires no net loss of function and values. DEP presents no scientific evidence that CMP's proposed NECEC project as modified by the DEP Order meets this requirement. DEP's focus in the Order is on discrete habitat scale impacts and mitigation, rather than landscape-scale impacts and mitigation, which is far more critical to the overall enduring habitat values of the Maine forest. It must be concluded that NECEC habitat fragmentation impacts are unreasonable even considering the Order conditions intended to mitigate impacts: a 54' high energy transmission corridor is nevertheless a permanent fragmentation of the 53 miles of Segment I with lasting impacts (unlike temporary impacts from responsible logging operations).

The Order describes the significant impacts to fisheries and wildlife from the NECEC. This part of Maine's North Woods supports exceptional biodiversity and maintains that biodiversity even as the climate changes. These qualities make the area unique and important wildlife habitat.

The DEP Order acknowledges that the NECEC "could contribute to habitat fragmentation and have unreasonable adverse impacts on wildlife as a result of the effects on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat. Fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches." Order at 75-76.

As pointed out by NRCM (p. 24) stands that provide the greatest connectivity benefit (mature closed canopy stands) would undoubtedly see the greatest level of overstory removal. As a result, achieving the required basal area threshold for interior forest wildlife, such as the pine marten, would largely depend on restoration through future growth. As such, this criterion for avoiding adverse fragmentation effects is likewise unlikely to be met. In short, the Wildlife Areas established in the Order are highly unlikely to provide the characteristics necessary to avoid habitat fragmentation. Further, there is no clarity regarding maximization of the benefits of the Wildlife Areas for mature forest connectivity or if there are alternative which would better mitigate the admittedly unreasonable habitat fragmentation impacts of the NECEC.

Tapering

Because DEP cannot ignore the impacts to this unique region, it sets out a few conditions in an effort to make reasonable the NECEC adverse impacts. However, these measures are inadequate. The NECEC adverse impacts remain unreasonable. The NRCM Appeal, pages 13 – 20, details all the specific reasons why these measures are totally inadequate

in addressing the unreasonable impacts to significant wildlife habitat, freshwater and wetland plant habitat, or threatened or endangered plant habitat.

Tapering is being offered by DEP as a mitigation measure. As pointed out by NRCM there is no evidence that tapering mitigates impacts to wildlife habitat or addresses forest fragmentation. Tapering provides almost no connectivity benefit for mature forest species to offset fragmentation. Even along the edges, where tapering would result in trees that are a maximum of 35-feet high, these trees will be mere saplings in the 3-inch to 5-inch diameter range (excluding damaged or broken trees with larger diameters). Tapering is insufficient to provide adequate connecting habitat for pine marten (a keystone species) or other mature forest species.

Tapering is walking into the unknown and not a viable mitigation measure. How will this tapered condition be established? Does the DEP have sufficient capacity to monitor and enforce this condition for the life of the NECEC? The Order holds that NECEC impacts are unreasonable without tapering. Yet tapering will not present any benefit whatsoever in terms of an offset to habitat fragmentation.

Conservation of Wildlife

The DEP May 11 Order states “Because of the impacts to wildlife, even with on-site mitigation, the Department finds additional, off-site, mitigation in the form of land conservation is required to ensure the applicant has made adequate provision for the protection of wildlife in the region affected by the project.” (p.80).

To claim that off-site mitigation in the form of land conservation can somehow make up for the damage to the Maine forest environment perpetuated by 53 miles of a transmission corridor is ludicrous on its face. This is because the most severe damage that will be done by the corridor is *landscape-scale fragmentation*, as testified to by several experts at the DEP Hearing.

No amount of “conservation” land elsewhere can possibly restore fragmentation, and therefore wildlife habitat and wildlife migratory pathways and connectivity will be lost *forever*. DEP’s misplaced focus is on discrete habitat scale impacts, rather than true landscape-scale impacts, which are far more critical to the overall enduring habitat values of the Maine forest. As stated in the NRCM Appeal “The Order-mandated land conservation does not adequately compensate for the NECEC abnegation of functions and values of significant wildlife habitat.” Off-site land conservation is insufficient and unacceptable as a replacement for the lost functions and values associated with the NECEC impacts.

The Site Law requirement that the project fit harmoniously into the environment cannot be mitigated by offsite measures, easements, or financial contributions to compensation funds. However, DEP is desperately using the false mitigation measure of offsite land conservation, which would be a trivial financial burden to CMP’s foreign corporate masters, as a smokescreen to cover up the obvious fact that CMP’s corridor cannot

possibly fit harmoniously into the environment!

The NRPA and Site Law become twisted and distorted when used to favor a corporate scheme that otherwise should be rejected outright. If a project has unreasonable adverse impacts it should be rejected outright. The developer should not be given the opportunity to avoid responsibility for the impacts with some extraneous financial deal.

Alternatives Analysis

NRCM's Appeal examines the Alternatives Analysis that CMP submitted and finds that CMP failed to perform an adequate alternatives analysis, ignored practicable alternatives, and the NECEC results in unreasonable adverse impacts in contravention of NRPA and the Site Law. The West Forks Appeal points out "The DEP Commissioner's Order discusses the current version of the NECEC project and route in relation to what CMP originally proposed, instead of what could have and should have been required of NECEC to protect the land, resources and people of the State of Maine."

NRCM's Appeal cites the many alternatives that would mitigate the adverse impacts of the project, which CMP totally neglected to include in its proposal or dismissed out-of-hand without doing any analysis. CMP's Alternatives Analysis ignored practicable alternatives that would minimize scenic, wildlife habitat and wetland impacts by following existing roads and leaving full-height vegetation via taller poles. CMP never looked at alternate routes for NECEC along existing disturbed corridors, such as the Spencer Road or Route 201. CMP's alternatives analysis contains no discussion of undergrounding all or any portion of the NECEC, except the after-the-fact addition of burial of the Kennebec Gorge crossing when the immediate threat of permit denial looked probable to CMP (likewise the alteration around Beattie Pond).

CMP also failed to consider any alternative that utilized a combination of mitigation strategies. As the West Forks Appeal states "The Applicant chose not to spend its money on more expensive but far less damaging routes." The DEP Commissioner's decision did not fully discuss these alternatives and instead stated that the currently proposed NECEC route was less damaging than the original route. This is not the standard for considering alternatives. Failing to address alternatives was unreasonable.

Chapters 310 (Wetlands), 315 (Scenic and Aesthetic), and 335 (Wildlife) of the DEP Rules all contain explicit requirements that an applicant conduct an alternatives analysis to determine whether a less harmful alternative exists. Under no circumstances can an application be approved where this analysis is not done or where the project would cause unreasonable harm to a protected resource, even where no practicable alternative exists.

DEP rules require applicants to examine the no build alternative in its alternative analysis. There are several no-build alternatives that could be utilized to provide MA the clean energy it claims it needs (which is the ultimate *purpose* of the entire endeavor), without fragmenting and destroying one of the most important and outstanding natural environments and wildlife habitats in Maine. There is Vermont's already permitted

transmission project that would be underground its entire length. There is the offshore (of MA) Vineyard Wind project, which just received a favorable review from federal Bureau of Ocean Energy Management and will generate 800 megawatts of electricity.

CMP's application dismisses the entire concept of a no-build alternative or a non-CMP option as not meeting "**CMP's needs**", (i.e., to make an enormous profit for its foreign corporate masters). Of course it would not meet CMP's needs! Why does it have to meet CMP "needs"? However, the no-build alternative could very well satisfy the ultimate purpose of generating clean energy to the N.E. grid.

DEP buys into the notion that it must dismiss the no-build (no action) alternative "**because it does not meet this applicant's project needs.**" The Order states, "The Department did not evaluate that approved project as an alternative because it does not meet this applicant's project needs. The Department declines to interpret an alternatives analysis as requiring an assessment of whether third party commercial competitors in other states may be able to fulfill the stated project purpose by some other means. The Department requires applicants to examine the no build alternative, alternative sites, alternative designs, and reductions in the scope of the project in an alternatives analysis and the applicant has done so in this case."

So is the Maine Department of Environmental Protection funded by Maine taxpayers to meet CMP's "needs" or to protect Maine's environment? It obviously cannot do both.

DEP's Abuse of Discretionary Authority

Throughout the NECEC proceedings the DEP used its discretionary powers to deny the consideration of extremely relevant evidence because it would go against the applicant.

(1) Greenhouse Gas Emissions:

On January 24, 2019, Intervenor Group 4 filed a written request to include greenhouse gas emissions as a hearing topic and Intervenor Groups 2 and 10 filed a letter in support of that request. In the February 5, 2019 Third Procedural Order, the (DEP) Presiding Officer determined that greenhouse gas emissions would not be included as a hearing topic.

In its comments to the Department, NRCM noted that the PUC and the Department failed to examine whether the NECEC would simply divert electricity from other markets to supply this contract or whether those other markets would ramp up fossil-fuel-generated electricity to make up for lost supply going through NECEC. ***This is the most important issue in determining whether NECEC would reduce carbon emissions.*** NRCM provided extensive evidence that NECEC would result in this sort of energy "shell game." However, the Department never mentioned NRCM's comments or discussed this issue in any of its decision documents (emphasis added).

This exclusion decision was an egregious abuse of DEP's discretionary authority and enormously prejudiced the NECEC hearing. Purporting to limit greenhouse gas emissions

was the central justification that CMP put forth for NECEC incurring severe adverse impacts to the environment of our Western Maine Mountains and landscape.

Counsel for the Department claimed that this exclusion was the result of a lack of jurisdiction for review of greenhouse gas emissions under NRPA or the Site Law. DEP claimed that they could only consider greenhouse gas emissions in the immediate vicinity of the project. Greenhouse gas emissions are a worldwide atmospheric issue and DEP needs to take off its narrow-minded blinders. Greenhouse gas emissions generated by Hydro-Quebec in building and operating mega dams is extremely relevant to whether NECEC should receive approval.

Even more egregious, as pointed out in NRCM's Appeal, the Order then relied on CMP's assertions of greenhouse gas emissions benefits from NECEC in offsetting NECEC adverse impacts under NRPA. Notwithstanding the Department's obligation to assess greenhouse gas emissions generally, see 38 MRSA §577, the Department **erroneously** excluded evidence on and analysis of the greenhouse gas impacts, and then concluded that the permits could not be granted without counting the unsupported assertions of such benefits by CMP, which the parties were never allowed to address with evidence. Such double talk is impermissible.

(2) Impact of NECEC on Indigenous Populations

The Innu Nation, located in Labrador, has submitted comments to DEP to dispel the multiple and continuing assertions of CMP, and by implication, Hydro-Québec, that the proposed New England Clean Energy Connect is “clean energy generation” or “environmentally friendly.” The Innu—the aboriginal inhabitants of lands and waters indiscriminately destroyed by Hydro-Québec to generate the power that CMP wants to transmit through Maine via NECEC—have shown that nothing could be further from the truth.

The Innu Nation's comments state, “The Project unquestionably proposes, “use” of the Innu's territory, and will exacerbate unreasonable adverse impacts thereon. Neither CMP, nor Hydro-Québec, have sought, nor obtained, the necessary permissions from the Innu Nation for this “use.” Unless or until they do so, under the plain language of Department's own rules, the Department must either deny CMP's application or condition any permit approval on CMP and Hydro-Québec obtaining the necessary permissions from the Innu Nation. In addition to the Department's rules, this result would be required by faithful adherence to the United Nations Declaration on the Rights of Indigenous Peoples, which has been endorsed by the State of Maine, the United States, and the Canadian Government. If CMP and Hydro-Québec fail to satisfy this condition, the stated project purpose of delivering clean energy generation from Québec to the New England Control Area is, by definition, impossible to accomplish.”

Five Indigenous First Nations [Pessamit (Innu), Wemotaci (Atikamekw), Pikogan, Lac Simon and Kitcisakik (Anishnabeg)], have joined together to oppose NECEC. They have pointed out that 36% of the total hydroelectric power installed by Hydro-Quebec has been stolen from them, without prior consultation, without their consent and without compensation. The plights of the indigenous communities have been devastating

due to Hydro-Quebec's damming of rivers, diverting rivers, generating methyl mercury poisoning of the population, erecting power lines, operating reservoirs and hydroelectric plants, all within their ancestral territories.

In their own words:

"Our community is located at the foot of a dam which inundated a large area of our ancestral territory equal in size to the island of Manhattan (59.1 mi). Although surrounded by Hydro-Québec installations, our homes have no electricity or running water and have no wastewater management infrastructure. Our First Nations have enabled Quebec to industrialize and the majority of its citizens to access a better quality of life, but the health and well-being indicators for our communities continue to be comparable to those in third-world countries."

"Hydro-Québec's long-standing contempt toward us forces us to henceforth air its dirty laundry in the United States, where it is counting on selling billions of dollars of electricity," they wrote. "Our ultimate recourse consists of revealing to American society the immoral character of the electricity being offered."

Despite these concerning issues, DEP is silent on the plight of indigenous communities. It is alarming, and disgraceful, that Maine would give a green light to CMP to construct NECEC when so much is at stake for the First Nations. We, as citizens of Maine, cannot let this pass and pretend not to understand the implications for the indigenous communities.

(3) Insufficient right, title or interest

DEP has abused its discretion by ignoring the evidence that CMP **DOES NOT** have proper right, title or interest in that portion of the proposed transmission corridor that would pass through two parcels of Public Reserved Land– the Johnson Mountain and West Forks Plantation Northeast parcels.

Article IX, Section 23 of the Maine Constitution requires that any reduction or substantial alteration of public reserved lands require approval by a 2/3rd vote of the Legislature. These Public Reserved Lands have been set aside for Wildlife, Recreation, and Forestry – not to be fragmented by high voltage infrastructure.

As documented in NRCM's Appeal, the Bureau of Parks and Lands lease of State Public Reserved Land in Johnson Mountain and West Forks Plantation Northeast parcels ("Illegal BPL Lease") was not authorized by a 2/3 vote of the Maine Legislature as prescribed by the Constitution of Maine. Also, The Illegal BPL Lease was issued to a utility (CMP), which had not yet obtained the required CPCN. As a result, the Illegal BPL Lease is void on its face and does not meet the submission requirements for documentation of TRI set forth in Chapter 2 Section 11(D) of the Department's Rules.

(4) Devastating Impacts of Mega-Dams

In deciding whether to grant CMP the permits to build NECEC DEP has completely

failed to consider the adverse environmental impacts of mega-dams, the claimed source of the electricity, which CMP's application proposes to import through Maine.

Stephen M. Kasprzak has submitted well-researched data and analysis to DEP, dated 2/14/2019, documenting and demonstrating the negative environmental impacts caused by Hydro-Quebec's reservoir hydroelectric facilities to the Gulf of Maine's ecosystem, which includes Gulf of St. Lawrence and its Estuary, James Bay and Hudson Bay and Labrador Sea. DEP is mandated by state statute to protect the land, air, and water of the Gulf of Maine's ecosystem even if it lies in Canada.

Mr. Kasprzak's information and conclusions are supported by other scientific studies:

10 Reasons Why Climate Initiatives Should Not Include Large Hydropower Projects

<https://www.internationalrivers.org/news/civil-society-manifesto-10-reasons-why-climate-initiatives-should-not-include-large-hydropower-projects/>

Five ways mega-dams harm the environment

<https://www.dw.com/en/five-ways-mega-dams-harm-the-environment/a-53916579>

Dams Cause Climate Change, They Are Not Clean Energy

<https://www.ecowatch.com/dams-cause-climate-change-they-are-not-clean-energy-1881943019.html>

Conclusion

The evidence in the existing record and DEP's denial of additional relevant evidence for the public hearing overwhelmingly demonstrates that CMP should never have been granted permits for NECEC. DEP's erroneous judgments and abuse of its discretionary authority support the requests in the Consolidated Appeal to overturn these mistakenly granted permits. There will be severe adverse impacts and fragmentation to the environment and habitat of the woods of Western Maine if this project is allowed to move ahead, as well as inflicting terrible harm to the indigenous peoples in the north, while showing no proof of reduction in greenhouse gas emissions.



Robert P. Weingarten
President
Friends of the Boundary Mountains
March 12, 2021

THIS PAGE INTENTIONALLY LEFT BLANK

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
L-27625-26-A-N/L-27625-TG-B-N/)
L-27625-2C-C-N/L-27625-VP-D-N/)
L-27625-IW-E-N and L-27625-26-K-T)

RESPONSE TO THE CONSOLIDATED NECEC BOARD APPEALS BY IECG

Pursuant to Chair Draper’s February 12, 2021 letter ruling on proposed supplemental evidence, and in accordance with Chapter 2, § 24(C)(4), Industrial Energy Consumer Group (IECG) hereby provides comments on the merits of the consolidated appeals of the Department’s May 11, 2020 order conditionally approving NECEC (“Order”¹).²

1. INTRODUCTION

A. Summary of IECG’s Position.

Due to limited time and resources, IECG once again focuses here less on the details and more on the high-level, specifically the nature and consequences of Appellants’ strategy, tactics, and endgame.

IECG strongly opposes reversing or substantially modifying the Department’s comprehensive, fully supported, and well-reasoned Order. The Order imposes on NECEC (or the “Project”) a set of conditions that “provide an unprecedented level of natural resource protection” to ensure, beyond any doubt, that the statutory standards are met. The conditions are in no small

¹ Department of Environmental Protection, Order # L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N (May 11, 2020).

² The consolidated appeals are: (1) Natural Resources Council of Maine’s (NRCM) June 10, 2020 appeal of the Order; (2) NextEra Energy Resources, LLC’s (NextEra) September 25, 2020 appeal of the Order; (3) the West Forks Group’s September 25, 2020 appeal of Order; and (4) NRCM’s January 4, 2021 appeal of the Commissioner’s December 4, 2020 order conditionally approving the partial transfer of the Order.

part the direct result of Appellants' vigorous participation before the Department. The Board has at its disposal an extensive, fully developed, and rigorously tested record on which to make its own findings and draw its own conclusions regarding NECEC. It can and should proceed with deliberate speed, without holding a hearing, to approve NECEC and provide regulatory certainty for the Project, as well as members of IECG and the public who stand to reap substantial energy, environmental, and economic benefits from its construction and operation.

B. IECG Background.

IECG is a non-profit trade association of large Maine energy consumers incorporated in 1985 to participate before state, regional, and federal bodies regarding the supply, reliability, cost, and now climate impact of energy decisions affecting Maine. IECG accepts consensus climate science and advocates for rapid, effective climate mitigation, particularly through beneficial electrification, *i.e.*, decarbonizing the economy by electrifying the transportation and heating sectors with an increasingly renewable electricity supply that remains affordable and reliable.

Why does an energy consumer group, almost always on the opposite side of CMP for the last 35 years, support NECEC? The reason is simple. Even aside from the issue of NECEC's *direct* greenhouse gas benefits,³ IECG supports NECEC because it will provide the foundation for beneficial electrification by reducing wholesale electricity prices and increasing grid reliability in Maine and New England, and by providing direct financial support for heat pumps and electric vehicles in Maine, both being critical to Maine's climate strategy.⁴ Expensive, unreliable

³ IECG vehemently disagrees with NRCM and believes what every agency and court to address the issue has confirmed: NECEC will reduce greenhouse gas emissions in Maine, Massachusetts, and the region.

⁴ See generally, *e.g.*, 38 M.R.S. §576-A (requiring emissions reductions); 38 M.R.S. §577 (creating the Maine Climate Council and requiring DEP to adopt action plan to meet emissions reductions); and Maine Climate Council, *Maine Won't Wait, A Four-Year Plan for Climate Action* (December 2020).

electricity simply will not allow beneficial electrification to occur at the pace or scale necessary to address the climate crisis. NECEC is an enormous step in the right direction.

2. ARGUMENT

A. Appellants' Strategy to Kill NECEC Through Delay Must Be Stopped.

Appellants simply do not like NECEC (for reasons mostly unrelated to environmental protection) and will never agree with approving the Project, regardless of how significant its benefits are to Maine, how those benefits are balanced against the alleged harms, or what new mitigation might be imposed. They quibble about the weight assigned to their evidence but can point to no part of the Order that is not supported by substantial contrary evidence or is clearly wrong or unjustified. That simply doesn't matter because Appellants' mission is not to have the Board correct a mistake, improve a condition, or account for an important new environmental circumstance. If the Board, for example, required greater trout protections and an additional 10,000 acres of conservation, it would not make the slightest difference to Appellants. Their unequivocal strategy is to kill NECEC, and the tactic is death by a thousand paper cuts—a blitzkrieg of baseless motions, letters, supplements, and appeals. Appellants torture any sense of fairness in the hope of creating just enough delay, confusion, and cost to push NECEC beyond the brink of economic viability. The Board should not allow Appellants' to engineer such a result through egregious abuse of process.

While it is the Board's job to consider the record, supplement it as necessary, find its own facts, and make its own determination, the Board should be informed by the long regulatory history of NECEC, including the Department's process and result, as well as the processes and results of Maine sister agencies and courts and the agencies and courts of Massachusetts and the federal government. When viewed through this lens, two things are clear: (1) NECEC has already been

tested beyond how any critical infrastructure project should be tested under an efficient administration of law and within the boundaries of due process, and (2) the pattern of Appellants' shameless efforts to delay must be acknowledged and rejected.

B. The History of NECEC Administrative and Judicial Processes Should Guide the Board.

NECEC is an energy infrastructure project that has undergone a historically rigorous level of regulatory scrutiny commensurate with its size and critical importance to Maine, Massachusetts, the reliability of the regional electric grid, electricity consumers, and the environment. Regulatory processes are designed to produce rational decisions, without undue delay, that can be relied on to take action. The certainty they provide for regulated entities and the public at large is a hallmark of administrative law and essential to the proper and efficient functioning of modern participatory government. IECG members, for example, rely on regulatory processes to make critical energy and capital decisions for their businesses. However, after nearly four years of active support for NECEC in administrative proceedings, and helping to achieve and uphold regulatory approvals from three Maine agencies, IECG remains unable to bank the promise of NECEC's substantial benefits and is increasingly frustrated by a vocal minority's specious use of regulatory processes to thwart what is in the public interest.

It is useful to recount the administrative and judicial processes⁵ that NECEC has endured to both highlight Appellants' pattern of obfuscation and remind the Board that it need not re-do the combined decades of work already done to vet NECEC—and certainly not because Appellants simply disagree, and never will agree, with the Project's approval.

⁵ To provide this history, which is an element of IECG's legal argument, IECG relies on and cites various statutes, administrative agency orders and decisions having the force of law, and court orders and decisions. To the extent necessary, IECG requests that the Board take administrative notice of such materials because they are relevant, reliable, publicly available, and cannot be factually disputed.

a. Massachusetts Proceedings

(i) Massachusetts Department of Public Utilities (MA DPU)

The origins of NECEC lie in a 2016 Massachusetts law enacted to reduce energy costs, increase supply diversity, and reduce greenhouse gas emissions, which required Massachusetts electric utilities to competitively solicit and execute cost-effective long-term contracts for clean energy generation resources.⁶ The Massachusetts Department of Energy Resources and Office of the Attorney General oversaw the solicitation method, which was then approved by the MA DPU.⁷ Fifty-three solicitation responses were reviewed by the Department of Energy Resources, in consultation with the electric utilities and a statutorily required “Independent Evaluator,” in a three-stage evaluation process based on quantitative and qualitative criteria.⁸ NECEC was ultimately selected as the winner, after which it negotiated power purchase agreements with Massachusetts electric utilities. Following an 11-month adjudicatory proceeding, in which NextEra was granted full intervenor status because of its status as both an “intra-industry competitor” and “unsuccessful bidder,”⁹ the MA DPU approved the NECEC power purchase agreements in a 150-page decision on June 25, 2019.¹⁰

(ii) Massachusetts Supreme Judicial Court

NextEra appealed the MA DPU’s approval of the NECEC power purchase agreements to the Massachusetts Supreme Judicial Court on July 12, 2019. The Court “affirm[ed] the department's approvals of the [power purchase agreements] pursuant to Section 83D.”¹¹

⁶ *An Act to Promote Energy Diversity*, St. 2016, c. 188, § 12.

⁷ *Timetable and Method of Solicitation and Execution of Long-Term Contracts Under Section 83D*, D.P.U. 17-32 (2017).

⁸ *Long-Term Contracts for Clean Energy Generation Pursuant to Section 83D*, D.P.U. 18-64; 18-65; 18-66, at 11-22 (2019).

⁹ *Hearing Officer Ruling on Petitions to Intervene*, D.P.U. 18-64; 18-65; 18-66 (2018).

¹⁰ *Long-Term Contracts for Clean Energy Generation Pursuant to Section 83D*, D.P.U. 18-64; 18-65; 18-66, at 151-52 (2019).

¹¹ *NextEra Energy Resources, LLC v. Dept. of Public Utilities*, 485 Mass. 595, 616 (2020).

b. Federal Proceedings

(i) The Federal Energy Regulatory Commission (FERC)

In August of 2018, pursuant to the Federal Power Act, CMP submitted seven bilateral transmission service agreements to the FERC under which CMP agreed to provide firm point-to-point transmission service over NECEC to the Massachusetts electric utilities that had contracted for power. The FERC accepted the transmission service agreements, effective October 18, 2018.¹²

NECEC Transmission LLC and Avangrid, Inc. have subsequently filed a complaint with the FERC, requesting that the FERC stop a group of NextEra companies and affiliates from unlawfully interfering with the interconnection of NECEC, including all attempts by NextEra to block, delay, or unreasonably increase the costs associated with the interconnection of the NECEC.¹³ The complaint remains unresolved.

(ii) The U.S. Army Corps of Engineers (Corps)

In September of 2017, CMP applied to the Corps for a required permit under the Clean Water Act and Rivers & Harbors Act of 1899. After coordinating with several state and federal agencies, including the Department and the U.S. Department of Energy, accepting public comment over a 10-month period, issuing information requests, and holding a public hearing, the Corps issued an Environmental Assessment, which included a Finding of No Significant Impact, on July 7, 2020, with a November 4, 2020 addendum.¹⁴ Ultimately, the Corps issued the permit for NECEC, effective November 6, 2020.¹⁵

¹² *Central Maine Power Company*, 165 FERC ¶ 61,034 (2018).

¹³ *See generally*, FERC docket EL20-6-000.

¹⁴ Department of the Army, *Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application*, CENAE-RDC; NAE-2017-01342 (July 7, 2020); *Environmental Assessment Addendum*; Central Maine Power Company (CMP); New England Clean Energy Connect (NECEC); CENAE-ZC; NAE-2017- 01342 (November 4, 2020).

¹⁵ Department of the Army, *Permit of the Discharge of Fill Material into Waters of the U.S. and Work Under a Navigable Water of the U.S.*, File Number NAE-2017-01342 (November 6, 2020).

A group of NECEC opponents including NRCM (collectively, NRCM) sued on October 27, 2020, alleging the Corps should have done a full-blown Environmental Impact Statement. NRCM amended its complaint to challenge the Corps permit, seeking to enjoin NECEC construction. On December 16, 2020, the United States District Court for the District of Maine denied NRCM's motion for a preliminary injunction.¹⁶ Judge Walker importantly noted: "Given my assessment of the first two preliminary injunction factors, identification of equitable interests on the other side of the balance only serves to undermine further Plaintiff's Motion."¹⁷ Since then, NRCM has appealed to the First Circuit, sought and been denied an emergency injunction from the District Court,¹⁸ and sought and been granted a temporary emergency injunction from the First Circuit.¹⁹ The case remains unresolved.

(iii) *The Department of Energy (DOE)*

In July of 2017, CMP applied to the DOE for a Presidential Permit, necessary for transmission lines that connect at or cross international borders. The DOE issued the Presidential Permit for NECEC,²⁰ along with an Environmental Assessment and Finding of No Significant Impact,²¹ in January of 2021. To date, no one has appealed the DOE's actions.

c. Maine Proceedings

(i) *The Maine Public Utilities Commission (MPUC): NECEC Approval*

The MPUC conducted an adjudicatory proceeding for NECEC that spanned nearly a year and half, involving over 30 parties, including NextEra, NRCM, and members of the West Forks

¹⁶ *Sierra Club v. U.S. Army Corps of Eng'rs*, 2020 WL 7389744 (D. Me. Dec. 16, 2020).

¹⁷ *Id.*, at 48 (emphasis added).

¹⁸ *Sierra Club v. U.S. Army Corps of Eng'rs*, Order on Plaintiffs' Emergency Motion for Injunction Pending Appeal, No. 2:20-cv-00396-LEW (D. Me. Dec. 23, 2020).

¹⁹ *Sierra Club v. U.S. Army Corps of Eng'rs*, Order of Court, No. 20-2195 (1st Cir. Jan. 15, 2021).

²⁰ U.S. DOE, NECEC Transmission LLC, OE Docket No. PP-438, Presidential Permit No. PP-438 (January 14, 2021).

²¹ U.S. DOE, *New England Clean Energy Connect Environmental Assessment*, DOE/EA-2155 (January 2021); *NECEC Environmental Assessment (DOE/EA-2155) Finding of No Significant Impact* (January 14, 2021).

Group, eight rounds of pre-filed testimony, written discovery, technical conferences, six days of evidentiary hearings, and three public witness hearings. In May of 2019 the process culminated in a 100-page order granting to NECEC a certificate of public convenience and necessity and approving an associated 38-page stipulation that was supported by 11 parties.²² The MPUC concluded that NECEC “is in the public interest and, therefore, there is a public need for the Project”²³ because “the benefits ... of the NECEC to Maine ratepayers and citizens significantly outweigh the costs and detriments of the Project.”²⁴ Further the MPUC “conclude[d] that the Stipulation ... provides significant additional benefits to Maine.”²⁵ The stipulated benefits alone exceed \$248 million and include direct rate relief, guaranteed funds for heat pumps, electric vehicles, broadband expansion, renewable energy and decarbonization studies, and education grants.²⁶

(ii) The Law Court: Upholding the MPUC Approval of NECEC

As an owner and developer of generation, including the largest fossil fuel (oil) power plant in Maine, with a vested interest in keeping electricity prices high,²⁷ NextEra appealed the MPUC Order to the Law Court. The Law Court affirmed the MPUC Order, concluding: “The Commission followed the proper procedure and there is sufficient evidence in the record to support the findings it made. In short, the Commission reasonably interpreted and applied the relevant statutory mandates in arriving at its decision to grant CMP a certificate of public convenience and necessity

²² *Central Maine Power Company*, Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston and Related Network Upgrades, Docket No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation (Me. P.U.C. May 3, 2019) (“MPUC Order”).

²³ *Id.*, at 1.

²⁴ *Id.*, at 98.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, at 43 (“[T]he Commission agrees with the IECG that, as a policy matter, it is the interests of customers, not generation competitors, that must be the priority consideration in deciding whether or not to grant a CPCN for the NECEC.”).

for the NECEC project and its decision to approve the stipulation. NextEra has not shown that the Commission's issuance of the CPCN or approval of the stipulation was arbitrary or otherwise an error of law."²⁸

(iii) The Law Court: Finding the First NECEC Referendum Unconstitutional

After twice losing on the merits in Maine, opponents next turned to initiated legislation that would have forced the MPUC to overturn its NECEC approval. After months of ping pong between Maine courts and the Maine Secretary of State, including a Law Court decision affirming only the procedural validation of the initiative,²⁹ the Law Court in August of 2020 ultimately held the initiative itself was unconstitutional and exceeded the people's legislative power.³⁰

(iv) The MPUC: Second NECEC Stipulation Approval

In October of 2020, as part of a follow-on proceeding to transfer NECEC to NECEC Transmission, LLC, the MPUC approved a second NECEC stipulation, which further secures the benefits of the first stipulation, accelerates the provision of benefits, and increases the provision of environmental attributes associated with the Project.³¹ NRCM incredibly opposed the second stipulation, and its *additional* public benefits, for the same reasons it opposed the MPUC's initial approval of NECEC, despite the fact that the second NECEC stipulation did not and could not affect the MPUC's underlying NECEC decision.³²

(v) The Second Anti-NECEC Referendum

NECEC opponents submitted a second petition to the Secretary of State for initiated legislation on January 21, 2021. The legislation, entitled "*An Act To Require Legislative Approval*

²⁸ *NextEra Energy Res., LLC v. Maine Pub. Utilities Comm'n*, 2020 ME 34, ¶43, 227 A.3d 1117.

²⁹ *See generally, Reed v. Secretary of State*, 2020 ME 57, 232 A.3d 202.

³⁰ *See generally, Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, 237 A.3d 882.

³¹ *See generally, Central Maine Power Company*, Request for Approval to Transfer the New England Clean Energy Connect to NECEC Transmission, LLC, Docket No. 2019-00179, Order (Me. P.U.C. October 20, 2020).

³² *Id.*, at 11.

of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region,” is intended, among other things, to retroactively prohibit NECEC based on its location. The Secretary of State validated the second petition on February 22, 2021.³³

(vi) The Department and Land Use Planning Commission (LUPC): NECEC Approval and Appeals

In October of 2017 the Department and the LUPC began coordinated adjudicatory proceedings on NECEC, which included the participation of 39 parties and additional testimony and comments from hundreds of Maine citizens. After over two years of review, including two joint days of evidentiary hearings with testimony and cross-examination by each Appellant, the LUPC on January 8, 2020 issued a 42-page Site Law Certification Decision finding that NECEC complies with the relevant LUPC statutes and rules.³⁴

After a 29-month review, including six days of evidentiary hearings with testimony and cross-examination by each Appellant, the Department on May 11, 2020 issued a 236-page order approving NECEC with conditions that “provide an unprecedented level of natural resource protection for transmission line construction in the State of Maine.”³⁵ In finding NECEC’s “adverse effects to be reasonable in light of the project purpose and its [greenhouse gas] benefits,” the Department noted that “[c]limate change ... is the single greatest threat to Maine’s natural

³³ State of Maine Office of the Secretary of State, *Determination of the Validity of a Petition for Initiated Legislation Entitled: “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region”* (February 22, 2021).

³⁴ LUPC, *Request of Maine Department of Environmental Protection for Site Location of Development Law Certification, Central Maine Power Company, New England Clean Energy Connect, Site Law Certification SLC-9*, at 41 (January 8, 2020).

³⁵ Order at 1.

environment.”³⁶ Its impacts, which are projected to worsen, are already negatively affecting brook trout habitat and threatening forest habitat for moose and pine marten.³⁷ “Failure to take immediate action to mitigate the [greenhouse gas] emissions that are causing climate change will exacerbate these impacts.”³⁸

Since issuance of the Order, the number and nature of the filings made by Appellants to the Department, the Board, and the Superior Courts is nearly impossible to track. Chaos is the purpose, not just the result. The onslaught of mostly off-point and regurgitated arguments has been met with nothing but rejection, as outlined below:

- 1) Chair Draper transferred to the Commissioner NRCM’s stay request of the Board to “conserve resources” and “avoid[] duplicative efforts.”³⁹
- 2) Chair Draper denied NRCM’s appeal of the transfer decision, noting that while NRCM “assumes” its own assertions about Board jurisdiction are correct, the Board “will not presume their validity for procedural purposes while NRCM’s appeal is pending.”⁴⁰
- 3) Consistent with remand from the Superior Court, Chair Draper allowed NextEra and West Forks Group to update their judicial appeals to be considered alongside NRCM’s appeal in a consolidated Board proceeding.⁴¹
- 4) The Commissioner denied NRCM’s and West Forks Group’s request for a stay of the Order, noting that with respect to “the significant portions of West Forks’ and NRCM’s appeals that are challenges to the factual findings ... the likelihood of success with respect to those arguments is low.” The Commissioner concluded that “Petitioners have failed to establish a strong likelihood of success on the merits of their respective appeals, and this criterion alone warrants denial of their stay requests. The grounds for this denial are bolstered when all three of the stay criteria, as discussed above, are considered and weighed together.”⁴²

³⁶ *Id.*, at 105.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Chair Draper letter order transferring NRCM’s stay application to the Commissioner (July 16, 2020).

⁴⁰ Chair Draper letter order denying NRCM’s appeal of the transfer decision (August 4, 2020).

⁴¹ Chair Draper letter order allowing updated appeals (August 26, 2020).

⁴² Commissioner Reid letter order denying stay of NECEC Order (August 26, 2020).

- 5) Chair Draper denied NRCM and West Forks Group's "renewed requests" for a stay, finding "no compelling grounds to revisit and reconsider" the Commissioner's denial and emphasizing the substantial review period of the Department.⁴³
- 6) Chair Draper rejected NRCM's request to consolidate the application to partially transfer the Order with the underlying appeals, finding "no compelling grounds" and noting consolidations would be "procedurally problematic."⁴⁴
- 7) Chair Draper rejected West Fork Group's request to reconsider denial of a stay and for a Board hearing.⁴⁵
- 8) The Acting Commissioner denied NRCM's request that the Commissioner recommend Board jurisdiction over the transfer application, concluding that "none of the four criteria for Board assumption of jurisdiction are met." The Commissioner also rejected NRCM's request for a public hearing because NRCM addressed none of the hearing criteria.⁴⁶
- 9) The Department approved partial transfer of the Order to NECEC Transmission, LLC, rejecting NRCM's and West Fork Group's arguments to withhold a decision.⁴⁷
- 10) Over various objections by NRCM and NextEra, the Department concluded that CMP and NECEC Transmission, LLC have complied with Special Conditions #4 and #12 of the Order.⁴⁸
- 11) The Superior Court denied NRCM's request to stay the Order, which the West Forks Group joined, rejecting each of NRCM's arguments. Regarding Board jurisdiction, the court was "not inclined to endorse such an extended delay in raising the issue, particularly when it would unfairly prejudice CMP, DEP, and the 2-plus-year process engaged in by numerous individuals and entities to reach the ultimate conditional approval." The Court also found NRCM had not demonstrated a likelihood of success regarding insufficiency of title, right and interest. Finally, with respect to sufficiency of evidence, the court found NRCM again failed to demonstrate a likelihood of success because "[m]ovants have not pointed to the absence of competent evidentiary support for the Commissioner's factual findings; instead, they have pointed to evidence in the record that conflicts with the factual findings."⁴⁹

⁴³ Chair Draper letter order denying NRCM and West Forks' appeal of Commissioner's stay order (October 23, 2020).

⁴⁴ Chair Draper letter order denying consolidation of the transfer application with appeal (October 27, 2020).

⁴⁵ Chair Draper letter order denying West Forks' request to reconsider (November 12, 2020)

⁴⁶ Acting Commissioner Loyzim letter order determining Board jurisdiction is not warranted and denying public hearing (November 13, 2020).

⁴⁷ Department of Environmental Protection, Order #L-27625-26-K-T (December 4, 2020).

⁴⁸ Department of Environmental Protection, Order #L-27625-26-L-C, L-27625-TB-M-C, L-27625-2C-N-C, L-27625-VP-O-C, and L-27625-IW-P-C (January 8, 2021).

⁴⁹ *NextEra v. DEP*, et al., KEN-AP-20-27 and SOM-AP-20-04 (Me. Super. Ct., Ken. Cnty., January 11, 2021).

- 12) The Chair denied NRCM's request to stay the transfer order, noting "NRCM's stay request is perfunctorily made and is devoid of any argument as to why the Board should grant a stay of the Transfer Order and addresses none of the three criteria that must be established by NRCM for the Board to grant a stay."⁵⁰
- 13) The Acting Commissioner denied the requests of NRCM and Sierra Club, determining that the Board should not assume jurisdiction over the NECEC minor revision application because two of the four criteria are not satisfied.⁵¹
- 14) In response to proposed supplemental evidence and related argument, Chair Draper rejected NRCM's and West Forks Group's "responses" as procedurally improper, and struck the vast majority of supplemental evidence offered by Appellants for violating simple rules, such as not including the evidence with the appeals, submitting electronic links rather than written transcripts, not showing due diligence or explaining relevance or materiality, and incorporating by reference unredacted versions of redacted testimony.⁵²

If Appellants could lawfully appeal or oppose something in any way, shape, or form, they have done so. And Appellants have certainly stretched the standard of lawfulness, to the extent it has been used at all. Various appeals, requests for considerations, and motions remain pending, and there is no end in sight. By IECG's unofficial count, Appellants' batting average is not only zero, but they are 0 for about 30. This is nonetheless a hall-of-fame performance in terms of time wasted, paper filed, and confusion caused. The pattern is clear: oppose, prolong, do over, then repeat.

IECG summarizes this long history involving the executive and judicial functions of two states and the federal government not to suggest that the Board must defer to any other agency or court, but to remind the Board that regulatory processes are designed to produce reasoned decisions without undue delay, based on fair opportunity to participate, that can be relied and acted on. Appellants are twisting the concept of "fair opportunity" into a one-sided justification for delay, uncertainty, and hopefully inaction. IECG understands that the "administrative machine" moves

⁵⁰ Chair Draper, letter order consolidating appeals and denying NRCM request to stay transfer order (January 19, 2021).

⁵¹ Acting Commissioner, letter order recommending the Board not assume jurisdiction over the minor revision application (February 10, 2021).

⁵² Chair Draper, letter order addressing proposed supplemental evidence (February 12, 2021).

slowly by design, but it must continue to move with purpose and deliberate speed to achieve a result. Endlessly grinding and reversing the machine is as unfair to the sponsors, supporters, and beneficiaries of NECEC as would be outright denying Appellants the right to participate. No plausible argument can be made that Appellants have been denied such right. To the contrary, however, Appellants' pattern of abusing their participatory right poses a serious risk of denying NECEC, and the public, a fair outcome.

There is no need for the Board to re-invent, re-start, reverse, or pause the administrative process with respect to the Order. The fact that the process produced an Order that the Appellants simply do not like is not an indication of failure. To the contrary, in the face Appellants' pattern of obfuscation, the consistent rejection of Appellants' re-packaged and recycled arguments, both before and after the Order issued, is proof that Appellants haven't been able to break the "administrative machine" yet (though it is being severely overtaxed).

The simple fact is that every single expert agency and court has disagreed with Appellants. 0 for at least 30. At this point, given this context, timely administration of justice must trump Appellants' specious push for more process, more time, and more re-dos. When government works in a timely manner it can serve essential purposes, such as quelling a pandemic, reversing a recession, and mitigating the climate crisis. The Board should put an end to Appellants' charades and forcefully dismiss their arguments, again. The unjustified delay Appellants' seek through their tactics does nothing but unnecessarily delay (or deprive) Maine citizens of the timely implementation of the substantial energy, environmental, and economic benefits of NECEC, at a time when decisive government action could not possibly be more important.

C. The Board Should Not Hold Another Hearing.

The Board should not endorse Appellants' delay strategy by holding *yet another* hearing. Beyond the procedural infirmities of Appellants' hearing requests, the requests themselves clearly fit the pattern the Board must break. The Board is unequivocally under no legal obligation to hold a hearing. It may rely on the voluminous and adequately developed Department record. *Concerned Citizens to Save Roxbury v. BEP*, 2011 ME 39, ¶ 23 (“... because the record before the Board was voluminous and included numerous written comments, studies, and information submitted by both [the applicant and opponent], we see no reason to conclude that the Board abused its discretion or otherwise erred in denying [the opponent's] request to conduct a public hearing on the ground that the record was ‘adequately developed’”); *See also, Martha A. Powers Trust v. BEP*, 2011 ME 40. The Board may “engage[] in an independent analysis of the record” to reach its conclusions and is “free to make its own credibility determinations with respect to the conflicting evidence before it.” *Passadumkeag Mountain Friends v. BEP*, 2014 ME 116, ¶ 10, 14.

Even if the Board were to exercise its discretion to allow a public hearing, the endeavor would be futile. As stated above, there is no error the Board could correct or condition it could improve that would appease Appellants, whose only goal is death of NECEC by a thousand paper cuts. The Board should short-circuit Appellants' pattern now and proceed to rendering its decision with deliberate speed.

3. CONCLUSION

The strategy, tactics, and goal of Appellants are clear, as are their mostly non-environmental motivations. The response by regulators and judges alike has been equally clear: Appellants' arguments are meritless. The Board should break Appellants' pattern of delay, rely on the Department's robust record, and affirm the Order's central conclusion to approve NECEC.

Time is of the essence, both because of NECEC's already extensive regulatory and judicial history and because "[f]ailure to take immediate action to mitigate the [greenhouse gas] emissions that are causing climate change will exacerbate these impacts."⁵³ The sponsors and supporters of NECEC, as well as the general public, should not have the benefits of NECEC held hostage by a vocal minority that has been proven wrong too many times to count. Chief among the benefits, NECEC will substantially lower electricity costs and increase grid reliability. These benefits, in turn, will unequivocally provide the affordable and reliable foundation for decarbonizing Maine's economy through beneficial electrification.

DATED: March 12, 2021

Respectfully submitted,



R. Benjamin Borowski, Bar No. 4905

Anthony W. Buxton

Counsel to Industrial Energy Consumer Group

Preti Flaherty Beliveau & Pachios LLP

P.O. Box 1058, 45 Memorial Circle

Augusta, ME 04332

Telephone: 207-623-5300

⁵³ Order at 105 (emphasis added).

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NRCM, WEST FORKS PLANTATION)
ET AL, NEXTERA CONSOLIDATED)
APPEAL OF CENTRAL MAINE)
POWER COMPANY, NECEC)
TRANSMSSION LLC DEPARTMENT)
ORDER for the New England Clean)
Energy Connect (“NECEC”))
L-27625-26- A-N)
L-27625-TB- B-N)
L-27625-2C- C-N)
L-27625-VP- D-N)
L-27625-IW- E-N)

**PETITIONERS WEST FORKS
PLANTATION, et al. RESPONSE TO
NEXTERA ENERGY RESOURCES, LLC
AND NATURAL RESOURCES COUNCIL
OF MAINE’S APPEALS**

**RESPONSE TO NEXTERA AND NATURAL RESOURCE COUNCIL OF MAINE’S
APPEALS OF DEPARTMENT ORDER FOR THE NEW ENGLAND CLEAN ENERGY
CONNECT**

West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Mike Pilsbury, Matt Wagner, Mandy Farrar and Carrie Carpenter (“West Forks”), by and through their undersigned counsel, submit this response to NextEra Energy Resources, LLC (“NextEra”) and Natural Resources Council of Maine’s (“NRCM”) appeals of the Commissioner of the Department of Environmental Protection’s (the “Department”) Order conditionally approving the Central Maine Power Company and NECEC Transmission LLC’s New England Clean Energy Connect (NECEC) transmission line project (the “Conditional Permit”).

The Environmental Board Should Take Original Jurisdiction Over the Underlying Application and the Revised Application to Conduct a Combined Review After First Obtaining New Legal Opinion.

The Board of Environmental Protection (the “Board”) reviews an appeal of a licensing decision by the Commissioner on the record. But in this instance, NRCM’s Appeal contains a legally significant threshold question: Did the Commissioner err in not submitting the original NECEC application to the Board pursuant to 38 M.R.S § 341-D(2)? Additionally, the Board must address the question of whether the Acting Commissioner correctly assessed the original jurisdiction criteria under the same statutory standard with respect to the “Minor Revision Application.” Thus, a legal assessment of the statutorily established jurisdiction of the Board must first be decided before the Board can undertake the on-the-record review of the substance of the Conditional Permit. West Forks questions, however, whether the Board can truly independently review the issue of original jurisdiction under the present circumstances.

The Board is currently being advised by the same Associate Attorney General (“AAG”) who first advised the Department and the Commissioner throughout their review of the underlying application. The same AAG also advised the then Acting Commissioner during her recent review of whether the “Minor Revision Application” was subject to original Board jurisdiction. In fact, it is also very likely that the same AAG drafted, or at least certainly gave legal guidance to inform Commissioner Loyzim’s February 10, 2021 decision that the “Minor Revision Application” was not one of state-wide significance, despite overwhelming evidence to the contrary. Now, the Board is taking up this legal threshold question and being advised by the same AAG. Undoubtedly, the AAG will want to defend the Commissioner’s initial decision to not refer the underlying application to the Board, and will similarly seek to defend and justify the Commissioner’s February 10 Decision.

The AG's office frequently shepherds licensing matters through various administrative processes. However, we already know (having seen the pleadings filed by the same AAG in the Superior Court appeals. *See West Forks Plantation, et al. v. Dept. of Env'tl Prot., et al.*, SOMSC-AP-20-04 and *NextEra Energy Resources, LLC v. Dept. of Env'tl Prot., et al.*, Docket No. KENSC AP-2020-27) that the AAG is protective of the Department's actions and decisions. This is also evident from listening to the guidance offered during the Board meeting on February 18. Additionally, as recently as yesterday in the Chair's letter dated March 11, 2021, the Chair made clear that the Board would be receiving input from the same AAG, "the Board will receive from its staff and counsel additional information about the minor revision application." Clearly the Board will be accepting input from the same AAG on the question of original jurisdiction. When the legal opinion of the attorney for the Department is questioned through an appeal, one must ask how truly independent the Board's assessment can be. For this reason alone, the Board should undertake an independent and fresh look at the question of its original jurisdiction as applied to both the underlying application and the "Minor Revision Application," and if possible, obtain different legal counsel.

Finally, because the "Minor Revision Application" is inextricably tied to the Conditional Permit which will be reviewed and potentially significantly altered in substance after the Board's review, the Board should assert its original jurisdiction and take up the "Minor Revision Application" along with the underlying application for the NECEC.

NECEC Fails to Meet NRPA and Site Law Standards

NextEra and NRCM correctly identify multiple failures in the record where NECEC does not meet either NRPA's or the Site Law standards despite conditions added by the Department to mitigate the environmental impacts this project will cause. For example, NRCM correctly

questions the tapered canopy condition including whether on-the-ground implementation is an enforceable provision, and how it could effectively provide for wildlife habitat protection from the negative impacts of forest fragmentation. *See* NRCM Appeal, June 10, 2020, page 21.

Similarly, NextEra correctly questions the narrowing of the corridor:

the Order effectively amends the NECEC project by narrowing the transmission corridor which directly impacts the pole height and configurations to ensure compliance with federal law. However, there is no evidence in the record establishing the new pole heights, and, thus, no consideration of new pole heights in light of the Department's criteria.

See NextEra Appeal, September 25, 2020, page 9. These are but two examples.

Additionally, both Appeals correctly call out CMP's inadequate alternatives analysis. *See* NRCM Appeal at pages 27-32 and NextEra Appeal at pages 4-6. Moreover, as raised in NRCM's Appeal, the Commissioner's disregard for a public vetting on the project's impact on greenhouse gas emissions should further erode the Board's confidence that the Department and Commissioner performed the necessary rigorous review. Not only did they fail to conduct that review but they failed to hold CMP accountable for delivery of evidence on its unsubstantiated claims – claims it continues to make in all of its public relations materials. The Board has the opportunity now to make CMP show actual evidence of its claims of actual reduction in greenhouse gas emissions.

The Board will obviously read both NextEra's and NRCM's Appeals but it bears noting that the lack of evidence in the record to support the Conditional Permit on these items alone gives the Board reason to want to review this project anew since we firmly believe, after an independent assessment of the statutory criteria, the Board must assert original jurisdiction.

Conclusion

The Board should obtain new legal counsel in reviewing the issue of original jurisdiction. The Board should find that original jurisdiction lies with the Board on both the underlying Application and the “Minor Revision Application.” Once it does so, it should hold a hearing and in doing so, will ultimately find that the NECEC does not meet NRPA and Site Law standards and the Conditional Permit should be voided.

Respectfully Submitted,

West Forks Plantation, Town of Caratunk,
Kennebec River Anglers, Maine Guide Service,
LLC, Hawks Nest Lodge, Ed Buzzell, Kathy
Barkley, Kim Lyman, Noah Hale, Eric Sherman,
Mike Pilsbury, Matt Wagner, Mandy Farrar and
Carrie Carpenter

By their attorneys,



Elizabeth A. Boepple, Esq.
BCM ENVIRONMENTAL & LAND LAW, PLLC
2 Union St., Suite 402
Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com

Dated: March 12, 2021

THIS PAGE INTENTIONALLY LEFT BLANK

VIA EMAIL AND FEDEX

March 12, 2021

Mark C. Draper, Chair
c/o Ruth Ann Burke
Board of Environmental Protection
17 State House Station
Augusta, ME 04333

RE: New England Clean Energy Connect (NECEC) Order L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N, L-27625-VP-D-N, L-27625-IW-E-N and Transfer Order L-27625-26-K-T

Dear Chair Draper:

Enclosed please find the Natural Resources Council of Maine's ("NRCM") Memorandum in Support of Appeals by NextEra and Groups 2 and 10.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

James T. Kilbreth JRF

James T. Kilbreth

cc: Service List (by email only)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean Energy
Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB- B-N
L-27625-2C- C-N
L-27625-VP- D-N
L-27625-IW- E-N

**NRCM’S MEMORANDUM IN
SUPPORT OF APPEALS BY NEXTERA
AND GROUPS 2 AND 10**

The Natural Resources Council of Maine (“NRCM”) respectfully submits this memorandum in support of the appeals of the above-referenced permits by NextEra Energy, Inc. (“NextEra”) and Groups 2 and 10.¹ As outlined in those appeals, the Department’s May 2020 Order² granting permits to Central Maine Power Company (“CMP”)³ failed to comply with the Natural Resources Protection Act at 38 M.R.S. §§ 480-A – 480-JJ (“NRPA”), the Site Location of Development Act at 38 M.R.S. §§ 481 – 490 (“Site Law”), Section 401 of the Federal Water

¹ Groups 2 and 10 include West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Matt Wagner, Tony DiBlasi, Mandy Farrar and Carrie Carpenter, all of whom were Intervenor in the joint proceedings before the Maine Department of Environmental Protection (“DEP” or the “Department”) and the Land Use Planning Commission (“LUPC” or “Commission”).

² NRCM refers herein to the May 2020 Order as the “Permit Order.”

³ The Department also issued an order transferring the permits to NECEC Transmission LLC (“NECEC LLC”) that is also before the Board on appeal.

Pollution Control Act at 33 U.S.C. § 1341 et. seq. (“WQC”), and Chapters 2 and 310 of the Department’s Rules.⁴

As an initial matter, the Board already determined that these appeals will be consolidated with consideration of the appeal of the Department’s approval of the transfer of these permits from CMP to NECEC LLC. *See* January 19, 2021 Letter from Chairman Draper. The administrative record of the transfer order proceedings should therefore be combined with the administrative record of the transfer application. Following issuance of the appealed Department permit, NECEC LLC filed an application which, if it were a freestanding project would itself require NRPA and Site Law review. Yet, NECEC LLC filed this in the form of a request for a minor revision, thereby avoiding the procedural and notice requirements of Chapter 2 of the Department’s Rules. Review of that Project amendment must be undertaken by the Board, both because it requires review of the entirety of the NRPA impacts associated with the Project and cannot be separated from the Project and for efficiency reasons. As the Board is well aware, the Board possesses original jurisdiction over projects of statewide significance. The NECEC is such a project. Even if it were not, here Board review is also simply most efficient. It makes little sense for the Board to review appeals of a permit that is simultaneously being amended by the Commissioner only to potentially result in conflicting decisions that will then come back before the Board or go on to court. The sensible thing to do is also consistent with the statute mandating Board original jurisdiction. The Board should assume jurisdiction over all pending amendments and revisions to the Project permits and hold a *de novo* hearing regarding the Project as required by 38 M.R.S § 341-D.⁵ In any case,

⁴ NRCM also appealed the Permit Order, which should be vacated for all the reasons stated herein and in NRCM’s appeal.

⁵ NECEC clearly meets at least three, if not all four, of the statutory criteria for a project of statewide significance set forth in 38 M.R.S. § 341-D(2):

for the reasons stated in the various appeals, the Board must vacate the Department's Permit Order and deny CMP's permit application.

ARGUMENT

I. The Permit Order Does Not Comply with Maine's Environmental Statutes and Is Not Supported by the Department Record

As outlined in the appeal filed by NextEra, in granting the Permit Order, the Department erred because it failed to require CMP to delineate and assess, as part of its Application or through an amendment to its Application, alternative construction methodologies and routes to avoid NRPA impacts or to reduce Site Law environmental impacts or risks to public health or safety.⁶ NRPA requires CMP to establish that there is no "practicable alternative to the activity that would be less damaging to the environment." 06-096 CMR Ch. 310 (hereinafter "Ch. 310") § 5(A); 38 M.R.S. §§ 480-A *et seq.* To make this showing, "[t]he applicant shall provide an analysis of alternatives . . . to demonstrate that a practicable alternative does not exist." Ch. 310 § 5(A). NRPA defines "practicable" as "[a]vailable and feasible considering cost, existing technology and

-
1. First, the NECEC will have environmental or economic effects across many more than one municipality, territory, or county.
 2. Second, the NECEC involves an activity not previously permitted or licensed in the State. Unlike other transmission line projects contemplated by the Department and the Land Use Planning Commission in the past, NECEC is the first proposed high-impact transmission line that does not meet any reliability need for Maine and that will primarily benefit consumers in other jurisdictions.
 3. Third, the NECEC has undoubtedly come under significant public scrutiny. The sheer number of parties to, and the length of, the underlying Department proceeding evidence the hotly contested nature of the project, as do the number of parties who have submitted comments supporting the appeals over the past several weeks.
 4. Fourth, as described above, the project is located across multiple municipalities and counties. *See* Permit Order at 3.

The NECEC is the very definition of a project of statewide significance and accordingly the Board must assert its original jurisdiction over it.

⁶ In addition, the Department's imposition, as a condition of approval, of a new corridor width and vegetation management conditions (which the Department finds necessary for Site Law and NRPA compliance), without any findings on whether those conditions are consistent with the federally mandated clearance requirements for such corridors was also in error.

logistics⁷ based on the overall purpose of the project.” Ch. 310 § 3(R). Thus, the Department cannot allow impacts to protected natural resources if there are practicable alternatives that meet the project purpose. The NECEC’s project purpose “is to deliver up to 1,200 MW of Clean Energy Generation from Quebec to the New England Control Areal via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers.” CMP Application at 2-1. Because undergrounding would not increase the cost to ratepayers, it should have been, but was not, considered as a technically feasible alternative that meets the project purpose. Permit Order at 72-74.⁸

a. The Failure to Adequately Consider Alternatives Does Not Comply with NRPA or Site Law

As both NextEra (at 5-7) and Groups 2 and 10 (at 5-7 and 9-13) demonstrate, the environmental effects of the NECEC will be unreasonable as compared to practicable alternatives, and the mitigation requirements imposed by the Department are insufficient to address these concerns. The Permit Order describes the significant impacts to natural resources, including: 110 acres of wetlands; 674 river/stream crossings, including 471 with coldwater fisheries and 5 outstanding river segments; 15 acres of Inland Waterfowl and Wading Bird Habitat; 31.5 acres of Significant Vernal Pools; 83.5 acres of Deer Wintering Areas; 13 protected species; and 15 rare plant species. Together, these impacts are referred to here as the “Preferred Route NRPA Impacts.” Permit Order at 61-62. The Permit Order also details careful review by the Maine Department of

⁷ As NextEra explains, undergrounding is technically and logistically feasible, and is actually the norm world-wide (with few to no exceptions) for these types of lines. *See* NextEra Appeal at n.3.

⁸ The Project Purpose should preclude considering the cost to those other than rate payers. But even if such costs were considered, the costs were low enough that undergrounding remained available and feasible. The estimates of these costs in different sections were \$43, \$13, \$28, and \$30 million, *see* Tr. Day 6, 394:10-25, 395:1-4, 395:5-10, which are lower than CMP’s contingency budge of \$150 million, *see* Tr. Day 6, 389:1-2, 15-18. It therefore would not have been unreasonable for the Department to mandate undergrounding portions of the NECEC, yet CMP did not even provide any assessment of the costs that would avoid individual Preferred Route NRPA impacts.

Inland Fisheries and Wildlife, Permit Order at 62-64, and the Maine Natural Areas Program, Permit Order at 64-65, and the avoidance and mitigation measures required by those entities for the rare plants and species flowing from the Preferred Route NRPA Impacts. Yet, the Permit Order and the record are silent regarding any CMP analysis of NRPA practicable alternatives (such as undergrounding) to the Preferred Route NRPA Impacts. Given that CMP performed no analysis of alternatives to the Preferred Route NRPA Impacts and that such analysis is required by NRPA, the Permit Order is inconsistent with the NRPA. Ch. 310 § 5(A).

In addition to NRPA, the Site Law also specifies that “[t]he department shall receive evidence regarding the location, character and impact on the environment of the proposed transmission line or pipeline.” 38 M.R.S. § 487-A(4). “[T]he department... shall consider whether any proposed alternatives to the proposed location and character of the transmission line or pipeline may lessen its impact on the environment or the risks it would engender to the public health or safety, without unreasonably increasing its cost.” *Id.* In this context, “[t]he department may approve or disapprove all or portions of the proposed transmission line or pipeline and shall make such orders regarding its location, character, width and appearance as will lessen its impact on the environment, having regard for any increased costs to the applicant.” *Id.*

The DEP’s Permit Order does not properly address this Site Law standard. Instead it summarily accepted CMP’s conclusory assertions (made, not through testimony subject to cross-examination, but instead in conclusory statements filed in post-hearing briefs), that “[n]o further project modification or conditions regarding the transmission line’s location, character, width, or appearance, beyond what is required by this Permit Order, are warranted, under 38 M.R.S. § 487-A(4) or otherwise, to lessen the transmission line’s impact on the environment or risk to public health or safety.” Permit Order at 108; *compare* CMP Post Hearing Brief at 20-21. This is no

evidentiary record supporting NECEC compliance with this section of the Site Law. Such conclusory allegations are insufficient to comply with the legal requirement that the Permit Order's findings and conclusions be based on substantial evidence. *See* 5 M.R.S. § 11007(4)(C)(5) (providing that a court may reverse an administrative decision if it is “[u]nsupported by substantial evidence on the whole record”); *Lewiston Daily Sun v. Unemployment Ins. Comm’n*, 1999 ME 90, ¶ 7, 733 A.2d 344 (substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support the resultant conclusion”) (internal quotes omitted); *Griswold v. Town of Denmark*, 2007 ME 93, ¶ 9, 927 A.2d 410 (same).

b. The Environmental Effects of the NECEC Are Unreasonable and Do Not Comply with NRPA or Site Law

In addition to the failure to consider alternatives, the impacts that were approved are unreasonable and do not comply with NRPA or Site Law.⁹ Segment 1 of the NECEC slices across one of the State's most important regions, the Western Maine Mountains, with devastating consequences. The Department itself recognized the importance of this region (Permit Order at 75-76), yet nevertheless granted permits that will allow the permanent fragmentation of the largest contiguous forest east of the Mississippi. The Department did this without requiring any documentation of alternatives as required by NRPA and the Site Law. The Department's failure to require such documentation conflicts with NRPA and the Site Law, and they fail to address the unreasonable effects of the NECEC established by testimony that was largely un rebutted and was accepted by the Department as credible. For example:

⁹ Remarkably, as part of its so-called “minor revision” application, CMP and NECEC LLC submitted a “full set of revised natural resource maps,” which is “intended to replace the full set of maps [previously filed with the Department] in its entirety.” *See* CMP Minor Revision Application at 3. The Board may take administrative notice of administrative filings within the Department. *See infra* FN 10. This type of wholesale replacement of NRPA impact maps demonstrates that the record on the original Permit Appeal is insufficient. This would be an independent basis for the Board to reverse the Permit Order, but it also serves as a reason why, procedurally, the Board should assume jurisdiction and hold a hearing on the entire project, including all pending changes thereto.

- The record is replete with testimony about the permanent forest fragmentation that the NECEC will cause, and the devastating effects such fragmentation will have on the wildlife and ecological diversity in this region. *See, e.g.*, Testimony of Janet McMahon, David Publicover, Andy Cutko (on behalf of The Nature Conservancy), and Roger Merchant. The Department acknowledged this testimony and did not discredit it, *see* Permit Order at 68-70, but did not address it or consider mitigation measures sufficient to address the negative effects of this fragmentation. For example, Erin Simons-Legaard testified that pine martens avoid cleared areas where they are vulnerable to predators, yet the Department nevertheless authorized clearing of a swath through the pine marten's territory without implementing sufficient mitigation measures. *See* Permit Order at 77.
- The record further demonstrates that buffering and reduction of the corridor width to 54' of cleared scrub in Segment 1 is insufficient to address the fragmentation the NECEC will cause, because the proposed tapering actually results in a clearing of 150', with 54' of cleared area directly underneath the wires and the remaining 96' on either side remaining in a permanent state of semi-clearing with no trees allowed to grow higher than 35' feet. *See* Permit Order, Appendix C. This state of semi-permanent clearing is insufficient to address the fragmentation concerns raised by appellants and results in an unreasonable impact. These mitigation measures were imposed by the Department after the close of the hearing without an evidentiary record, nor due process to test that record, supporting the conclusion that these measures suffice to make reasonable the suffered impacts.
- The Department similarly erred by agreeing that CMP could destroy the lands affected by the permit if it preserved unidentified lands elsewhere. *See* Permit Order at 80-81. This attempt at mitigation is entirely insufficient, particularly where the record testimony

demonstrates the unique characteristics of the land the NECEC will cross, and the devastating consequences of that crossing if the line is built. Without any evidence about the mitigation parcels, the Department and the parties cannot assess the sufficiency of the mitigation parcels in offsetting the harms of the NECEC. These areas were not included in CMP's application for the NECEC, were not referenced until after the close of the record, and are unsupported by any process or substantial evidence.

- The Permit Order itself establishes the unreasonable impacts the NECEC will have on wildlife habitat, particularly deer. *See* 06-96 C.M.R. ch. 375, § 15 (requiring Department to “protect wildlife and fisheries by maintaining suitable and sufficient habitat and the susceptibility of certain species to disruption and interference of lifecycles by construction activities”). The Department noted the “credible witness testimony from Joseph establish[ing] the recent challenges for the deer population and the habitat value of [Deer Wintering Areas,” Permit Order at 87, yet nevertheless determined that the NECEC “will not unreasonably impact significant wildlife habitat.” *Id.* The basis for this conclusion lacks substantial evidence.
- The Permit Order is similarly replete with findings that demonstrate the unreasonable adverse effect the NECEC will have on the scenic character of the region in violation of the Site Law and NRPA. *See* 06-96 C.M.R. chs. 315, 375; 38 M.R.S. § 484(3); 38 M.R.S. § 480-D(1). The discussion in the Permit Order (at 41-54) delineates the visual impacts and notes the particular concerns about scenic impacts raised by members of the public (Permit Order at 40). For example, numerous intervenors raised concerns about the visual impacts of the NECEC on Coburn Mountain and the Department found “compelling the evidence that the project, as originally proposed, would have an adverse impact,” yet it

nevertheless authorized the NECEC to move forward with a tapered corridor. Permit Order at 43-44. The Department further found that “given the length of the project, it will be visible from multiple viewpoints and multiple scenic resources.” Permit Order at 53-54. The Department failed to find, as required by 38 M.R.S. § 480-D(1), that CMP demonstrated that the NECEC will not unreasonably interfere with scenic or aesthetic uses of protected natural resources. Instead, the Department amended the NECEC by requiring tapering—but these fundamental changes to the NECEC were not part of the application nor reviewed as part of the Department’s public processing of the NECEC application. Instead, these changes were implemented in the Permit Order after the close of the record.

The Department found that the NECEC, as presented by CMP, posed unreasonable adverse impacts under NRPA and the Site Law. The Department then itself amended the Project after the close of the record and without any substantive public process. This is an error of law and it also leaves the Departments findings unsupported by substantial evidence.

c. CMP Does Not Have Sufficient Title, Right, or Interest

CMP does not have sufficient right, title, or interest to proceed with the NECEC for all the reasons outlined in the appeal filed by Groups 2 and 10. DEP rules require that an applicant “maintain sufficient title, right, or interest throughout the entire application process,” and when a lease is relied on, the “lease or easement must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including reclamation, closure and post closure care.” 06-96 CMR ch. 2 § 11(D)(2). CMP based its TRI for the West Forks and Johnson Mountain public reserved lots (the “Public Lots”) on a 2014 lease with the Bureau of Parks and Lands (“BPL” or “Bureau”). The 2014 Lease was void as a matter of law because (i) the State signed it prior to the issuance of a certificate of public

convenience and necessity (“CPCN”), and (ii) it lacked the constitutionally mandated 2/3 vote of approval of the State Legislature. Me. Const. art. IX, § 23; 12 M.R.S. §§ 598-598-A. The Department was required to, but did not, make its own determinations as to whether the 2014 Lease complied with 06-96 CMR ch. 2 § 11(D)(2) and was facially valid and of sufficient term and duration throughout the life of the Permit. Instead, the Department deferred to its sister agency, the BPL. *See* Permit Order at 8. This was clear error, particularly in light of testimony provided by now-BPL Director Andy Cutko and BPL employee David Rodrigues to the Legislature in 2020, which testimony indicated that BPL did not know CMP’s plans to build a high-impact transmission line when it entered the 2014 lease. *See An Act To Require a Lease of Public Land To Be Based on Reasonable Market Value and To Require Approval of Such Leases for Commercial Purposes: Working Session on L.D. 1893, 129th Legis. (2020)* (testimony of Rodrigues) (“Me, when I was working [on the 2014 lease], I believed that it was for renewable energy and possibly windmills to be built in that region.”).¹⁰ BPL has since acknowledged that it entered the 2014 Lease prior to the issuance of a CPCN and without a 2/3 vote of the Legislature, and terminated the 2014 Lease. Consequently, CMP lacked TRI throughout its Department permitting proceedings.

¹⁰ The audio files maintained by the Legislature, are available at the following links:

<http://sg001-harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20200121/-1/13889>;
<http://sg001harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20200218/-1/14054>; and
<http://sg001-harmony.sliq.net/00281/Harmony/en/PowerBrowser/PowerBrowserV2/20200305/-1/14177>.

NRCM asked that these files and the transcribed excerpts that NRCM provided to the Department be included in the record on appeal as supplemental evidence, but the Board Chair denied that request by letter dated February 12, 2021. NRCM appealed that evidentiary determination to the Board by letter dated February 22, 2021. CMP has objected to that appeal. Regardless of whether these statements are included in the record as supplemental evidence, the Board may take administrative notice of these facts. 5 M.R.S. § 9058 (Agencies may “take official notice of any facts of which judicial notice could be taken, and in addition may take official notice of general, technical or scientific matters within their specialized knowledge and of statutes, regulations and nonconfidential agency records.”). *See also Friedman v. Pub. Utilities Comm’n*, 2016 ME 19, ¶ 11, 132 A.3d 183, 187 (PUC “took administrative notice of several documents and exposure regulations in the United States and beyond”); *Middlesex Mut. Assur. Co. v. Maine Superintendent of Ins.*, No. CIV.A. AP-02-80, 2003 WL 22309109, at *1 (Me. Super. Sept. 26, 2003); *Manguriu v. Lynch*, 794 F.3d 119, 121 (1st Cir. 2015) (“We note, moreover, that courts normally can take judicial notice of agency determinations”); *accord Town of Norwood, Mass. v. New England Power Co.*, 202 F.3d 408, 412 n.1 (1st Cir. 2000).

Deferring to BPL was also clear error where the Department's rules require a lease of at least 40 years for this project, while the Bureau's lease is for only 25 years. The useful life of the project is established as at least 40 years. *See* April 1, 2019 DEP Hearing Transcript at 97, 134, 221-224 (Thorn Dickinson, now CEO and President of NECEC Transmission LLC, saying "we're expecting a 40 year life related to this project" and otherwise discussing 40 year expected lifespan).¹¹ This is further evidenced by the findings of the Maine Public Utilities Commission, which explained that three of the seven transmission service agreements are "for years 21-40 of the expected life of the NECEC line" while the fourth "is a 40-year agreement." *See* CPCN Order of the MPUC at 12 (May 3, 2019). And the Department's Permit Order implicitly adopted this same expected life of the NECEC when it adopted findings of the Maine Public Utilities Commission with regard to greenhouse gases, *see* Permit Order at 105, and when it adopted decommissioning requirements based on testimony about the 40 year life, *see* Permit Order at 106, April 1, 2019 DEP Hearing Transcript at 273 (discussing the lack of a decommissioning fund following a 40 year life of the project). Because the Department's own rules require that any "lease or easement" used for TRI "must be of sufficient duration and terms, as determined by the Department, to permit the proposed construction and reasonable use of the property, including" the decommissioning requirements imposed by the Department, 06-96 CMR ch. 2 § 11(D)(2), any lease of the Maine Public Lots used for TRI would require a term of more than 40 years. Of course, BPL has no authority to grant a lease of that term. *See* 12 M.R.S. § 1852(4) ("The bureau may lease the right, for a term not exceeding 25 years, to . . . [s]et and maintain or use poles [and] electric power transmission [facilities]."). Accordingly, the 2014 Lease of the Public Lots cannot

¹¹ The transcript is part of the underlying DEP record and is available on the DEP's website at the following link: <https://www.maine.gov/dep/ftp/projects/necec/hearing/transcripts/2019-04-01%20full%20transcript%20day%201CMP.pdf>.

establish TRI “of sufficient duration and terms” to meet the requirements of 06-96 C.M.R. Ch. 2 § 11(D)(2).¹² This failure of TRI is a failure of administrative standing, which is a jurisdictional failure that bars application review and must void the Permit Order.

CONCLUSION

For the foregoing reasons, NRCM respectfully supports the appeals submitted by NextEra and Groups 2 and 10 and asks that the Board vacate the Permit Order and order CMP to cease all work on the NECEC and dismantle any work that has already been completed.

Dated at Portland, Maine
this 12th day of March 2021

James T. Kilbreth JRF

James T. Kilbreth, Bar No. 2891
David M. Kallin, Bar No. 4558
Elizabeth C. Mooney, Bar No. 6438
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, Maine 04101-2480
Tel: (207) 772-1941
jkilbreth@dwmlaw.com
dkallin@dwmlaw.com
emooney@dwmlaw.com

*Attorneys for Natural Resources
Council of Maine*

¹² This same flaw is fatal to the 2020 Lease on which CMP and NECEC base TRI for their Transfer Application, which appeal has been consolidated before the Board.

THIS PAGE INTENTIONALLY LEFT BLANK

<https://www.maine.gov/dep/ftp/projects/necec/public-interest/>

THIS PAGE INTENTIONALLY LEFT BLANK

From: [Mikki Rice](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [Twithwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Appeals of the NECEC project permit
Date: Friday, February 26, 2021 1:51:56 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection,

I am writing to you today because I support the appeals of the permit and requests for a public hearing on the NECEC corridor that will run through the beautiful Western Mountains region of Maine near where I call home. I support the appeals and hearing requests for the following reasons:

Say No to CMP recently turned in a petition to the Maine Secretary of State's office that states that Mainers want to decide the fate of the corridor. The petition was signed by 100,000 Maine citizens (over 80,000 of which were ultimately accepted). These signatures were collected in less than 3 months, during a pandemic, and during the coldest months of this brutal Maine winter. This proves that the NECEC is definitely a project of statewide significance.

This project is so important to the people of Maine because, this project would

cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region. The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not. CMP will not even conduct an Environmental Impact Survey. Instead they only completed an Environmental Assessment. CMP is doing this so they can deceive Mainers into thinking that the NECEC will not harm our land and will actually help us achieve our climate goals which is a lie. If you allow CMP to ruin our beautiful forest lands and scenic by-ways then you will take the only thing that we have to offer. The only reason that people come to the Western Mountains is for the untouched natural beauty and fishing and hunting. If you take that away to give electricity to Massachusetts you may as well sign our economic death certificate in Western Maine.

The project also will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should not be making decisions of such significance without hearing ALL of the facts. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

Lastly, Even though the project will substantially alter two public reserved lots that it crosses, CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Sincerely,

Mikki Rice

Freeman Twp. Maine, 04983

Ph: 207.578.2341 Email: mikki.rice@maine.edu

From: [penny andrews](mailto:penny.andrews)
To: 1withwhitewaters@gmail.com; ABuxton@preti.com; admin@wiscasset.org; Amorin@mainechamber.org; [Landry, Andrew](mailto:Landry.Andrew@gmail.com); ashli.goodenow@gmail.com; Hobbins, Barry; bettyann.sheats@legislature.maine.gov; Hinkel, Bill; boepple@nhlandlaw.com; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; Bickford, Bruce; Bryan.Emerson; bsmith@smithlawmaine.com; burgess@ibew104.org; caratunkselectmen@myfairpoint.net; Carlene.Tremblay@collins.senate.gov; Carol.Woodcock@collins.senate.gov; Carrie.carpenter@rocketmail.com; Breen, Catherine; ccastonguay@newgloucester.com; Celina.Daniell@stantec.com; Grignon, Chad; chesterville.me@gmail.com; cjohnson@nrcm.org; ckipfer@lincountry.me; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; ddibiasi@SomersetCounty-ME.org; deborah.sanderson@legislature.maine.gov; dhedrick@roadrunner.com; dibiasi.tony@gmail.com; Bradstreet, Dick; dkallin@dwmlaw.com; Dave.PublicCover; dvoorhees@nrcm.org; ebarrett@lewistonmaine.gov; edbuzzel@gmail.com; edonoghue@maineaudubon.org; egreen@clf.org; EHowe@dwmlaw.com; ellie.espling@legislature.maine.gov; Vitelli, Floise; emdben-clerk@roadrunner.com; emooney@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; fbever@mainepublic.org; galley@cumberlandcounty.org; garrett.mason@legislature.maine.gov; gcaruso@myfairpoint.net; Gerry.Mirabile@cmpco.com; Melaragno, Gina; gpetrucci@pmhlegal.com; hawknestlodge@gmail.com; Brooks, Heidi; info@kennebecriverangler.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; [Hanley, Jeffery](mailto>Hanley, Jeffery); jeffrey.pierce@legislature.maine.gov; Jeffrey.Reardon@tu.org; Timberlake, Jeffrey; Vogel, Jim; jkilbreth@dwmlaw.com; jmagoon@franklincountymaine.gov; joffice@jay-maine.org; John.Flumerfelt@calpine.com; jtalbert@preti.com; JTalbert@preti.com; JTouangeau@dwmlaw.com; Kaitlyn.Bernard; Kayla.McMurry@collins.senate.gov; kraft@gmail.com; klyman9672@gmail.com; Puryear, Kristen; lance.harvell@legislature.maine.gov; Laughton@nhlandlaw.com; Parker, Lauren; leadley@myfairpoint.net; Keim, Lisa; lpost@androskoggincountymaine.gov; magoodwin@burnsmcd.com; manfarr1974@yahoo.com; Mark.Winter@collins.senate.gov; Mark.Berry; maureen@lametrochamber.com; [Rideout, Megan M](mailto: Rideout, Megan M); Melissa.Pauley@hq.doe.gov; mmanahan@pierceatwood.com; mmaymcc@yahoo.com; mnovello@wagnerforest.com; moscow@myfairpoint.net; mspils15@hotmail.com; mwagner@insourcerenewables.com; Kirk-Lawlor, Naomi E; nbennett@nrcm.org; DEP, NECEC; Livesay, Nick; office@wiltonmaine.org; oldcanadaroad@myfairpoint.net; paul.chace@legislature.maine.gov; pcrichton@auburnmaine.gov; Bensinger, Peggy; pturner@clf.org; RBorowski@preti.com; Richard.P.Davis; richard@rcmcdonald.com; rileydploch@gmail.com; Stratton, Robert D; robert.wood@tnc.org; rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; Black, Russell; Burke, Ruth A; rwcallon@gmail.com; sandrahowardnh@gmail.com; sara.gideon@legislature.maine.gov; sely@nrcm.org; smahoney@clf.org; srahim@eenews.net; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; Miller, Susanne; thomas.saviello@legislature.maine.gov; Skolfield, Thomas; Corkum, Tina; tina.riley@legislature.maine.gov; tlawrence@dwmlaw.com; tmgreene@fairpoint.net; townclerk@newsharon.maine.gov; townoffice@lfme.org; townofleeds@fairpoint.net; townofstarks@gmail.com; twalkerfilm@gmail.com; Walter.DiCesare@brookfieldrenewable.com; whitefield@roadrunner.com

Subject: CMP Corridor
Date: Friday, February 26, 2021 12:32:15 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to request your support of the Permit Appeals and Requests for a Public Hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project*

would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

Thank you.

Best Regards,

Penelope Z.. Andrews

<http://www.linkedin.com/in/pzandrews>

From: BRIAN CAM
To: [Landry, Andrew](mailto:Landry.Andrew@post.androscoggincountymaine.gov); ipost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins.Barry@bsmith@smithlawmaine.com); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; Hinkel, Bill; oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; Bickford, Bruce; [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie.carpenter@rocketmail.com); Breen, Catherine; cjohnson@nrcm.org; Celina.Daniell@stantec.com; Grignon, Chad; info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; [Dave Publicover](mailto:Dave.Publicover); dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; Bradstreet, Dick; dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; Vitelli, Eloise; egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; Gerry.Mirabile@cmpco.com; Melaragno, Gina; gcaruso@myfairpoint.net; Brooks, Heidi; jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; Jeffrey.Reardon@tu.org; Hanley, Jeffery; jeffrey.pierce@legislature.maine.gov; Timberlake, Jeffrey; Vogel, Jim; JTouangeau@dwmlaw.com; John.Flumerfelt@calpine.com; [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla.McMurry@collins.senate.gov); klyman9672@gmail.com; Puryear, Kristen; lance.harvell@legislature.maine.gov; Parker, Lauren; leadley@myfairpoint.net; ckipfer@lincolnyoume.com; Keim, Lisa; Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; Rideout, Megan; Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; Kirk-Lawlor, Naomi; DEP, NECEC; nbennett@nrcm.org; Livesay, Nick; Twithwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; Bensinger, Peggy; hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; Stratton, Robert; rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; Black, Russell; Burke, Ruth; A; sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; Miller, Susanne; tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; Skolfield, Thomas; burgess@ibew104.org; Corkum, Tina; dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; emdben-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com

Subject: Brian Campbell Supports the appeals of the permit for the CMP Corridor
Date: Friday, February 26, 2021 11:18:40 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the*

project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this. Sincerely,*

Brian D. Campbell Chelmsford Massachusetts

From: Shirley Davis

To: Landry, Andrew; ipost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins_Barry); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel_Bill); oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford_Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie_carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen_Catherine); cjohnson@nrcm.org; [Celina Daniell@stantec.com](mailto:Celina.Daniell@stantec.com); [Grignon, Chad](mailto:Grignon_Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; prichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; [Dave Publicover](mailto:Dave.Publicover); dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; [Bradstreet, Dick](mailto:Bradstreet_Dick); dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; [Vitelli, Eloise](mailto:Vitelli_Eloise); egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; [Gerry Mirabile@cmpco.com](mailto:Gerry.Mirabile@cmpco.com); [Melaragno, Gina](mailto:Melaragno_Gina); gcaruso@myfairpoint.net; [Brooks, Heidi](mailto:Brooks_Heidi); jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; [Jay L. Clement@usace.army.mil](mailto:Jay.L.Clement@usace.army.mil); [Jeffrey Reardon@tu.org](mailto:Jeffrey.Reardon@tu.org); [Hanley, Jeffery](mailto:Hanley_Jeffery); jeffrey.pierce@legislature.maine.gov; [Timberlake, Jeffrey](mailto:Timberlake_Jeffrey); [Vogel, Jim](mailto:Vogel_Jim); JTouangeau@dwmlaw.com; [John Flumerfelt@calpine.com](mailto:John.Flumerfelt@calpine.com); [Kaitlyn Bernard](mailto:Kaitlyn_Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla_McMurry@collins.senate.gov); klyman9672@gmail.com; [Puryear, Kristen](mailto:Puryear_Kristen); lance.harvell@legislature.maine.gov; [Parker, Lauren](mailto:Parker_Lauren); leadley@myfairpoint.net; ckipfer@lincolny.me; [Keim, Lisa](mailto:Keim_Lisa); Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark_Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark_Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; [Rideout, Megan M](mailto:Rideout_Megan); [Melissa Pauley@hq.doe.gov](mailto:Melissa.Pauley@hq.doe.gov); mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; [Kirk-Lawlor, Naomi E](mailto:Kirk-Lawlor_Naomi); [DEP, NECEC](mailto:DEP_NECEC); nbennett@nrcm.org; [Livesay, Nick](mailto:Livesay_Nick); Twithwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; [Bensinger, Peggy](mailto:Bensinger_Peggy); hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard_P_Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; [Stratton, Robert D](mailto:Stratton_Robert); rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; [Black, Russell](mailto:Black_Russell); [Burke, Ruth A](mailto:Burke_Ruth); sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; [Steven Zuretti@brookfieldrenewable.com](mailto:Steven.Zuretti@brookfieldrenewable.com); sely@nrcm.org; [Miller, Susanne](mailto:Miller_Susanne); tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; [Skolfield, Thomas](mailto:Skolfield_Thomas); burgess@ibew104.org; [Corkum, Tina](mailto:Corkum_Tina); dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; emdben-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; [Walter DiCesare@brookfieldrenewable.com](mailto:Walter.DiCesare@brookfieldrenewable.com)

Subject: corridor hearing

Date: Friday, February 26, 2021 10:34:01 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.*
- *The project will substantially alter two public reserved lots that it crosses, even though CMP*

has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this. Sincerely,

--

Shirley L. Davis
Prof. Emerita, University of Maine
Board, Citizens for Global Solutions
sldavis@maine.edu
207 866-4785

From: [Stephen Martin](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [bettlyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [Everett Brownie Carson](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L. Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [Nick Bennett](#); [Livesay, Nick](#); [Twithwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawkstnslodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Support of Appeals of DEP Site Law Permit for CMP corridor
Date: Friday, February 26, 2021 11:26:03 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.
- This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.
- The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.
- The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions

benefits from the CMP corridor and judge this issue for themselves. We are facing a climate crisis. We must encourage the development of carbon neutral energy sources. This project discourages that critical development process.

- The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Thank you for considering my request.

Sincerely,

Stephen S. Martin, MD
28 Hovey Lane
Brunswick, ME 04011-7840

Mobile: [207-227-3270](tel:207-227-3270)
Email: ssmartin10@gmail.com

From: [Marianne McKinney](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [J.Talbert@preti.com](#); [Hanley, Jeffrey](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [J.Tourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawknestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: CMP Corridor
Date: Friday, February 26, 2021 11:23:52 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Please help us prevent the CMP Corridor.

We have been following this project for several years now and in my opinion this project will only destroy miles Maine's forest environment. This of course will reduce our CO2 capture, destroy lives of our native animals and plants, seriously impact on our pristine state recreation areas to name just a few consequences.

The plus of course is it will provide more money to the stake holders. Please also consider any jobs possible from this endeavor are jobs that will fade away once the project is built.

Recently I read that the businesses in the area are looking forward to all the increased business they will have with all the incoming project workers. True, but once it's built those workers will no longer be there and neither will the pristine forest people use to come to visit.

My biggest concern is the destruction to our beautiful, re-replaceable forest environment.

Marianne McKinney
 5 Kerry Gardens
 Belfast, ME 04915

mmckinran@icloud.com

From: SRR@maine.rr.com
To: [Landry, Andrew](mailto:Landry.Andrew@post@androscoggincountymaine.gov); lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins,Barry@bsmith@smithlawmaine.com); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel,Bill@oldcanadaroad@myfairpoint.net); bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford,Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie.carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen,Catherine); cjohnson@nrcm.org; [Celina Daniell@stantec.com](mailto:Celina.Daniell@stantec.com); [Grignon, Chad](mailto:Grignon,Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; [Vitelli, Eloise](mailto:Vitelli,Eloise); egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; [Gerry Mirabile@cmpco.com](mailto:Gerry.Mirabile@cmpco.com); [Melaragno, Gina](mailto:Melaragno,Gina); gcaruso@myfairpoint.net; [Brooks, Heidi](mailto:Brooks,Heidi); jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; [Jay L. Clement@usace.army.mil](mailto:Jay.L.Clement@usace.army.mil); [Jeffrey Reardon@tu.org](mailto:Jeffrey.Reardon@tu.org); [Hanley, Jeffery](mailto:Hanley,Jeffery); jeffrey.pierce@legislature.maine.gov; [Timberlake, Jeffrey](mailto:Timberlake,Jeffrey); [Vogel, Jim](mailto:Vogel,Jim); JTouangeau@dwmlaw.com; John.Flumerfelt@calpine.com; [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla.McMurry@collins.senate.gov); klyman9672@gmail.com; [Puryear, Kristen](mailto:Puryear,Kristen); lance.harvell@legislature.maine.gov; [Parker, Lauren](mailto:Parker,Lauren); leadley@myfairpoint.net; ckipfer@lincounty.me; [Keim, Lisa](mailto:Keim,Lisa); Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; [Rideout, Megan](mailto:Rideout,Megan); Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; [Kirk-Lawlor, Naomi](mailto:Kirk-Lawlor,Naomi); [DEP, NECEC](mailto:DEP,NECEC); nbennett@nrcm.org; [Livesay, Nick](mailto:Livesay,Nick); Twithwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; [Bensinger, Peggy](mailto:Bensinger,Peggy); hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; [Stratton, Robert](mailto:Stratton,Robert); rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; [Black, Russell](mailto:Black,Russell); [Burke, Ruth](mailto:Burke,Ruth); A:sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; [Miller, Susanne](mailto:Miller,Susanne); tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; [Skolfield, Thomas](mailto:Skolfield,Thomas); burgess@ibew104.org; [Corkum, Tina](mailto:Corkum,Tina); dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; embden-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com

Subject: Support for appeals of (DEP) Site Law Permit for CMP corridor
Date: Friday, February 26, 2021 9:52:35 PM

This sender might be impersonating a domain that's associated with your organization. [Learn why](#) [Feedback](#)
[this could be a risk](#)

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

February 26, 2021

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- This is a project of statewide significance, and the Board should have had jurisdiction of the project as required by Maine law. The Maine People should have an opportunity to say no and vote it down!
- This project would cause destructive, permanent and irreparable damage to the Western Mountains region and will cause more habitat fragmentation than any other project in the region.
- The project offers absolutely no benefit to the State, People and Wildlife of Maine! In fact,

it will destroy the ecosystems of at least two pristine ponds, damage many brooks & streams and destroy large portions of the forest canopy. The destruction cannot be undone. Ever.

- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor does not include protection.*
- *Cutting down trees does not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony about the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these "benefits" outweighed the damage the project would cause. Greenhouse gas emissions are not beneficial and cause great damage to Maine's forests, wildlife and contribute to global warming. Also, the project plan substantially alters two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should not have received a permit.*
- *Please do not let Maine be destroyed. Ever.*

Sincerely,

Stephen Randall, MSgt USAF Retired & former Registered Maine Guide

Scarborough, Maine

From: [John Coté](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [JTalbert@preti.com](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark_Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [Sandra Howard](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddiblas@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [diblas.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: DEP permit for the CMP corridor
Date: Saturday, February 27, 2021 9:28:43 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.

This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.

The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.

The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Sincerely,

John Cote

9 Putnam Dr

Farmingdale ME

207-232-8656

From: [Lily Turner](mailto:Lily.Turner@maine.gov)
To: [Landry, Andrew](mailto:Landry.Andrew@post.androscoggincountymaine.gov); lpast@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins,Barry@smithlawmaine.com); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel,Bill@oldcanadaroad@myfairpoint.net); bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford,Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie.carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen,Catherine); cjohnson@nrcm.org; [Celina Daniell@stantec.com](mailto:Celina.Daniell@stantec.com); [Grignon, Chad](mailto:Grignon,Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrihton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; [Dave PublicCover](mailto:Dave.PublicCover); dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; [Bradstreet, Dick](mailto:Bradstreet,Dick); dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; [Vitelli, Eloise](mailto:Vitelli,Eloise); egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; [Gerry Mirabile@cmpco.com](mailto:Gerry.Mirabile@cmpco.com); [Melaragno, Gina](mailto:Melaragno,Gina); gcaruso@myfairpoint.net; [Brooks, Heidi](mailto:Brooks,Heidi); jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; [Jay L. Clement@usace.army.mil](mailto:Jay.L.Clement@usace.army.mil); [Jeffrey Reardon@tu.org](mailto:Jeffrey.Reardon@tu.org); JTalbert@preti.com; [Hanley, Jeffery](mailto:Hanley,Jeffery); jeffrey.pierce@legislature.maine.gov; [Timberlake, Jeffrey](mailto:Timberlake,Jeffrey); [Vogel, Jim](mailto:Vogel,Jim); JTourangeau@dwmlaw.com; [John Flumerfelt@calpine.com](mailto:John.Flumerfelt@calpine.com); [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla.McMurry@collins.senate.gov); klyman9672@gmail.com; [Puryear, Kristen](mailto:Puryear,Kristen); lance.harvell@legislature.maine.gov; [Parker, Lauren](mailto:Parker,Lauren); leadley@myfairpoint.net; ckipfer@lincounty.me; [Keim, Lisa](mailto:Keim,Lisa); Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; [Rideout, Megan M](mailto:Rideout,Megan); [Melissa Pauley@hq.doe.gov](mailto:Melissa.Pauley@hq.doe.gov); mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; [Kirk-Lawlor, Naomi E](mailto:Kirk-Lawlor,Naomi); [DEP, NECEC](mailto:DEP,NECEC); nbennett@nrcm.org; leadley@myfairpoint.net; [Livesay, Nick](mailto:Livesay,Nick); 1withwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; [Bensing, Peggy](mailto:Bensing,PEGGY); hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; [Stratton, Robert D](mailto:Stratton,Robert); rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; [Black, Russell](mailto:Black,Russell); [Burke, Ruth A](mailto:Burke,Ruth); sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@SomersetCounty-ME.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; [Miller, Susanne](mailto:Miller,Susanne); tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; [Skolfield, Thomas](mailto:Skolfield,Thomas); burgess@ibew104.org; [Corkum, Tina](mailto:Corkum,Tina); dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; embden-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com
Subject: CMP Corridor
Date: Saturday, February 27, 2021 3:22:44 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from*

the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

Sincerely,

Lily Turner

Harrison, Me 04040

From: [Anne Winchester](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [Eric Sherman](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L. Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [J.Talbert@preti.com](#); [Hanley, Jeffrey](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [J.Tourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark_Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Appeal of the DEP permit for CMP corridor
Date: Saturday, February 27, 2021 11:15:38 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I'm joining many others to write in support of the appeal of the DEP permit for the CMP corridor. An issue of this magnitude requires public input and full statutory review.

*Maine's natural resources are priceless. The fishing, hiking, camping, canoeing, timbering, hunting, tourism, clean water, healthy wildlife, and scenic beauty of the Western Mountains have always been part of Maine's identity and allure. We depend upon these natural resources for our health and well-being. **Please defend them with all the strength that we, as citizens, do.***

*These resources belong to us, and should NOT be sacrificed in order to satisfy another state's need for electrical power (imported electrical power that has not been verified to reduce overall carbon emissions). Mainers will lose, **permanently**, a vital piece of our heritage and our economic base as consequences of this destructive project. No amount of monetary compensation can make up for this loss. This is*

NOT in our best interest, and it is NOT what we want. Please honor our wishes to protect and defend our rich wilderness. It is an integral part of our way of life.

Thank you for giving Mainers the opportunity to have a say in this critical process.

With respect,

*Anne S. Winchester
Pemaquid, Maine*

From: [Linda Woods](#)
Date: Saturday, February 27, 2021 2:34:25 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

February 27, 2021

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because no independent environmental impact study was ever completed. The Western Mountains region is the heart of the largest intact temperate forest in North America, which is reason enough to leave it untouched.

This designated area is a home to at least 2 species that are listed on the Maine Department of Fish and Wildlife List of endangered species: the roaring brook mayfly (*Epeorus frisoni*) and the Bicknell thrush (*Catharus bicknelli*). Additionally, the brown trout which is a popular quest for anglers depends on the shaded overstory to breed successfully. In my Maine Master Naturalist class, I learned the importance of vernal pools. As a keystone species, amphibians indicate the health of an area. These, too, require a treed overstory to successfully move into the woods after birth in the vernal pool. Since a comprehensive Environmental Impact Study was not performed, no one knows the potential for adverse effects from this cutting.

The project will substantially alter this region, including two public reserved lots that it crosses. CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution; therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.

Sincerely,
Linda Woods

Waterville

If you see what needs to be repaired and how to repair it, you have found a piece of the world that God has left for you to complete. But if you only see what is wrong and what is ugly in the world, it is you yourself that needs repair. Lubavitcher Rebbe (influential Jewish leader of 20th century)

From: [David Miller](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L. Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [Twithwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensing, Peggy](#); [hawkstnslodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Comments to BEP regarding CMP corridor
Date: Sunday, February 28, 2021 4:11:21 PM
Attachments: [Corridor comments.pdf](#)

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

please see attached comments

--

David Miller
dmiller186@gmail.com

February 27, 2021

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

This is a project of statewide significance, and the Board should have taken jurisdiction of the project as required by Maine law.

This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region. The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.

The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

The days of large, isolated power plants requiring thousands of miles of transmission lines are ending. Future energy policy should focus on distributed, localized power production based on solar and wind technology. As we have seen in Maine in recent years, every moderate wind or snow storm brings days of power outages and storm events will only become more frequent and severe. CMP's response is to continue to cut increasing numbers of trees to widen their transmission line corridors and establish new clear-cut corridors. This is not "clean energy".

As a former DEP environmental engineer working with Hydro Licensing, I know that hydro power also is not "clean energy" in terms of environmental impact. The impact of dams on aquatic life and habitat and water quality is devastating. Passage is blocked, natural river flow regimes are altered and rivers are turned into something that is neither river nor lake in terms of habitat.

The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit.

Sincerely,

David Miller
186 W Old County Rd.
Newcastle, ME

From: Kathy Barkley
To: Landry, Andrew; lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashil.goodenow@gmail.com; Hobbins, Barry; bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; Hinkel, Bill; oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; Bickford, Bruce; Bryan Emerson; Carlene_Tremblay@collins.senate.gov; Carol_Woodcock@collins.senate.gov; Carrie_carpenter@rocketmail.com; Breen, Catherine; cjohnson@nrcm.org; Celina.Daniell@stantec.com; Grignon, Chad; info@kennebecriverangler.com; tina.riley@legislature.maine.gov; prichiton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denko@legislature.maine.gov; dana.dow@legislature.maine.gov; Dave Publicover; dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; Bradstreet, Dick; dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; Elizabeth Caruso; Vitelli, Eloise; egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetruccelli@pmhlegal.com; Gerry.Mirabile@cmpco.com; Melaragno, Gina; gcaruso@myfairpoint.net; Brooks, Heidi; jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; Jeffrey.Reardon@tu.org; Hanley, Jeffery; jeffrey.pierce@legislature.maine.gov; Timberlake, Jeffrey; Vogel, Jim; JTourangeau@dwmlaw.com; John.Flumerfelt@calpine.com; Kaitlyn Bernard; Kathy Barkley; Kayla_McMurry@collins.senate.gov; klyman9672@gmail.com; Puryear, Kristen; lance.harvell@legislature.maine.gov; Parker, Lauren; leadley@myfairpoint.net; ckipfer@lincounty.me; Keim, Lisa; Amarin@mainechamber.org; manfarr1974@yahoo.com; Mark Berry; magoodwin@burnsmcd.com; Mark_Winter@collins.senate.gov; mmanahan@pierceanatwood.com; maureen@lametrochamber.com; Rideout, Megan M; Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; msp15@hotmail.com; mwagner@insourcerenewables.com; Kirk-Lawlor, Naomi E; DEP, NECEC; nbennett@nrcm.org; Livesay, Nick; twithwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; Bensinger, Peggy; hawkstneslodge@gmail.com; richard@ermcdonald.com; Richard P. Davis; rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; Stratton, Robert D; rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; Black, Russell; Burke, Ruth A; Sandra Howard; srhim@eeneews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; Miller, Susanne; tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; Skoffield, Thomas; burgess@ibew104.org; Corkum, Tina; dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; embden-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter_DiCesare@brookfieldrenewable.com

Subject: NECEC corridor/appeal
Date: Monday, March 1, 2021 2:16:49 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

February 26, 2021

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- This is a project of statewide significance, and the Board should have had jurisdiction of the project as required by Maine law. The Maine People should have an opportunity to say no and vote it down!
- This project would cause destructive, permanent and irreparable damage to the Western Mountains region and will cause more habitat fragmentation than any other project in the region.
- The project offers absolutely no benefit to the State, People and Wildlife of Maine! In fact, it will destroy the ecosystems of at least two pristine ponds, damage many brooks & streams and destroy large portions of the forest canopy. The destruction cannot be undone. Ever.
- The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor does not include protection.
- Cutting down trees does not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony about the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these "benefits" outweighed the damage the project would cause. Greenhouse gas emissions are not beneficial and cause great damage to Maine's forests, wildlife and contribute to global warming. Also, the project plan substantially alters two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should not have received a permit.
- This is not new power, nor is it from a clean source. Facts that were not heeded by DEP.
- CMP has shown they are not capable of maintaining their current power lines so I question their ability to safely maintain a project of statewide significance such as NECEC.

Please take jurisdiction of this project and grant the appeal.

Thank you,

Kathy Barkley

Caratunk ME



Reply

Reply all

Forward

From: [Dan Beetz](mailto:Dan.Beetz)
To: [Dan Beetz](mailto:Dan.Beetz)
Cc: [Landry, Andrew](mailto:Landry.Andrew); lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins.Barry); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel.Bill); oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford.Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie.carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen.Catherine); cjohnson@nrcm.org; Celina.Daniell@stantec.com; [Grignon, Chad](mailto:Grignon.Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; [Dave Publicover](mailto:Dave.Publicover); dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; [Bradstreet, Dick](mailto:Bradstreet.Dick); dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; [Vitelli, Eloise](mailto:Vitelli.Eloise); egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; Gerry.Mirabile@cmpco.com; [Melaragno, Gina](mailto:Melaragno.Gina); gcaruso@myfairpoint.net; [Brooks, Heidi](mailto:Brooks.Heidi); jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; Jeffrey.Reardon@tu.org; [Hanley, Jeffery](mailto:Hanley.Jeffery); jeffrey.pierce@legislature.maine.gov; [Timberlake, Jeffrey](mailto:Timberlake.Jeffrey); [Vogel, Jim](mailto:Vogel.Jim); JTouangeau@dwmlaw.com; John.Flumerfelt@calpine.com; [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla.McMurry@collins.senate.gov); klyman9672@gmail.com; [Puryear, Kristen](mailto:Puryear.Kristen); lance.harvell@legislature.maine.gov; [Parker, Lauren](mailto:Parker.Lauren); leadley@myfairpoint.net; ckipfer@lincounty.me; [Keim, Lisa](mailto:Keim.Lisa); Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; [Rideout, Megan M](mailto:Rideout.Megan.M); Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; [Kirk-Lawlor, Naomi E](mailto:Kirk-Lawlor.Naomi.E); [DEP, NECEC](mailto:DEP.NECEC); pbennett@nrcm.org; [Livesay, Nick](mailto:Livesay.Nick); 1withwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; [Bensinger, Peggy](mailto:Bensinger.Peggy); hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; [Stratton, Robert D](mailto:Stratton.Robert.D); rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwallon@gmail.com; [Black, Russell](mailto:Black.Russell); [Burke, Ruth A](mailto:Burke.Ruth.A); [Sandra Howard](mailto:Sandra.Howard); srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; [Miller, Susanne](mailto:Miller.Susanne); tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; [Skolfield, Thomas](mailto:Skolfield.Thomas); burgess@ibew104.org; [Corkum, Tina](mailto:Corkum.Tina); dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; embden-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com

Subject: Stop the Corridor
Date: Monday, March 1, 2021 2:02:53 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.

This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.

The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of

songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.

The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Sincerely,

Daniel Beetz

Concerned Citizen

From: forkiks3@aol.com
To: [Landry, Andrew](mailto:Landry.Andrew@post@androscoggincountymaine.gov); ipost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins,Barry@bsmith@smithlawmaine.com); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel,Bill@oldcanadaroad@myfairpoint.net); bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford,Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie.carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen,Catherine); cjohnson@nrcm.org; [Celina Daniell@stantec.com](mailto:Celina.Daniell@stantec.com); [Grignon, Chad](mailto:Grignon,Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; [Vitelli, Eloise](mailto:Vitelli,Eloise); egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmlegal.com; [Gerry Mirabile@cmpco.com](mailto:Gerry.Mirabile@cmpco.com); [Melaragno, Gina](mailto:Melaragno,Gina); gcaruso@myfairpoint.net; [Brooks, Heidi](mailto:Brooks,Heidi); jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; [Jay L. Clement@usace.army.mil](mailto:Jay.L.Clement@usace.army.mil); [Jeffrey Reardon@tu.org](mailto:Jeffrey.Reardon@tu.org); JTalbert@preti.com; [Hanley, Jeffery](mailto:Hanley,Jeffery); jeffrey.pierce@legislature.maine.gov; [Timberlake, Jeffrey](mailto:Timberlake,Jeffrey); [Vogel, Jim](mailto:Vogel,Jim); JTourangeau@dwmlaw.com; [John Flumerfelt@calpine.com](mailto:John.Flumerfelt@calpine.com); [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla.McMurry@collins.senate.gov); klyman9672@gmail.com; [Puryear, Kristen](mailto:Puryear,Kristen); lance.harvell@legislature.maine.gov; [Parker, Lauren](mailto:Parker,Lauren); leadley@myfairpoint.net; ckipfer@lincounty.me; [Keim, Lisa](mailto:Keim,Lisa); Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; [Rideout, Megan M](mailto:Rideout,MeganM); [Melissa Pauley@hq.doe.gov](mailto:Melissa.Pauley@hq.doe.gov); mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; [Kirk-Lawlor, Naomi E](mailto:Kirk-Lawlor,NaomiE); [DEP, NECEC](mailto:DEP,NECEC); nbennett@nrcm.org; leadley@myfairpoint.net; [Livesay, Nick](mailto:Livesay,Nick); 1withwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; [Bensing, Peggy](mailto:Bensing,PEGGY); hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; [Stratton, Robert D](mailto:Stratton,RobertD); rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; [Black, Russell](mailto:Black,Russell); [Burke, Ruth A](mailto:Burke,RuthA); sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@SomersetCounty-ME.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; [Miller, Susanne](mailto:Miller,Susanne); tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; [Skolfield, Thomas](mailto:Skolfield,Thomas); burgess@ibew104.org; [Corkum, Tina](mailto:Corkum,Tina); dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; embden-clerk@roadrunner.com; tmgreen@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com
Subject: Support for the appeal of the Department of Environmental Protection's (DEP) Site Law Permit for the CMP corridor
Date: Monday, March 1, 2021 1:50:20 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. My family and I support the appeals and hearing requests because:

- This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.
- This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.
- The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected

because DEP's permit for the CMP corridor did not.

- The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.
- The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.
- This is also a very bad deal for Maine. We receive a nominal short term injection of funds for providing a corridor that will have negative impacts on the state for decades. I grew up in this area and still love the rural nature and unspoiled sections of wilderness. We've seen other CMP corridors and how they've altered our region. This is yet another, larger project that provides nothing at a great cost.

Sincerely,

Stephen M. Geneseo

Richmond, Maine

From: [Jerry Genesis](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [Twithwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Appeal of the permit for the CMP Corridor
Date: Monday, March 1, 2021 4:35:57 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

Our forebears called the Native Americans uncivilized heathens and savages but we can now say for certain when it comes to humans and their relationship with the Earth, their path would have been the best to follow.

"Only when the last tree has died, and the last river been poisoned, and the last fish been caught, will we realize we cannot eat money." Cree Indian Proverb

"When the blood in your veins returns to the sea, and the Earth in your bones returns to the ground, perhaps then you will remember that this land does not belong to you, it is you who belong to this land." Native American Proverb

"Treat the Earth well. It was not given to you by your parents, it was loaned to you by your children. We do not inherit the Earth from our ancestors, we borrow it from our children." Native American Proverb

"The land is sacred. These words are at the core of your being. The land is our mother, the rivers our blood. Take our land away and we die. That is, the Indian in us dies." Mary Brave Bird

"It cannot be right to manufacture billions of objects that are used for a matter of minutes, and then are with us for centuries." Roz Savage

Jerry Genesisio

314 Hillcrest Avenue

Scarborough, ME 04074

From: [Sandra Howard](#)
To: [Sandra Howard](#)
Cc: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [bettmann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [Bob Haynes](#); [Bob Weingarten](#); [Brian.J.Murphy@nexteraenergy.com](#); [Carson, Brownie](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie Carpenter](#); [Breen, Catherine](#); [Cathy Johnson](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [Kennebec River Angler](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [Ed Barrett](#); [gailey@cumberlandcounty.org](#); [David M. Kallin](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [Dave Hedrick](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [Dylan Voorhees](#); [Elizabeth C. Mooney](#); [Ed Buzzell](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [Elizabeth Boepple](#); [Elizabeth Caruso](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [Eric Sherman](#); [jmagoon@franklincountymaine.gov](#); [Fred Bever](#); [garrett.mason@legislature.maine.gov](#); [gpetrucci@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [Greg Caruso](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [James T. Kilbreth](#); [jared.golden@legislature.maine.gov](#); [Clement, Jay L CIV USARMY CENAE \(US\)](#); [Jeffrey Reardon](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John Flumerfelt](#); [Kaitlyn Bernard](#); [Kathy Barkley](#); [Kayla McMurry@collins.senate.gov](#); [Kim Lyman](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [Mandy](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [Mike Pilsbury](#); [Matt Wagner](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [Nick Bennett](#); [Livesay, Nick](#); [Braddah hale](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [Sarah Dostie](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [Riley Ploch](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Stacy Laughton](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [Sue Ely](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [Taylor Walker](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [TD1150](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [Erin Norton Jenn Hebert](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [Kathleen Onorato](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Say NO to NECEC's support of DEP appeal, hearing request, BEP jurisdiction
Date: Monday, March 1, 2021 9:40:40 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.



March 1, 2021

Dear Commissioner Loyzim and Chairman Draper,

I am writing on behalf of Say NO to NECEC, a grassroots 501c3 non-profit organization, which is an environmental, education and advocacy group opposed to large-scale industrial

development in western Maine. Say NO to NECEC was founded in 2018 and comprises nearly 10,000 members.

We are a non-partisan and member-funded organization opposed to Central Maine Power's (CMP's) New England Clean Energy Connect (NECEC) project to build a 145-mile transmission line from the Québec-Maine border to Lewiston. Some of our members have been engaged as private citizen intervenors at the Maine DEP and LUPC and are participants in the DEP permit appeal. Our organization is in support of the DEP permit appeal and hearing requests, and we urge the BEP to take jurisdiction of the original application.

With regard to the DEP permit appeal, the DEP failed to adequately assess the significant environmental and economic harm this project will cause. When the DEP issued the permit, it included an unknown and unidentified 40,000 acres of conserved lands to mitigate the environmental damage, however this mitigation term is inadequate and would not minimize the harm or forest fragmentation effects caused along the corridor route. In addition, there is no evidence of technical and financial capability of CMP/NECEC Transmission to build a project that can be decommissioned.

Commissioner Loyzim determined that Central Maine Power's recent 700 page "minor revision" to the NECEC permit was not of statewide significance, and therefore doesn't warrant scrutiny by the Board or the people of Maine. This determination was made because NECEC's "minor revision" hasn't come under significant public scrutiny. *But the public was never made aware of the requested amendment and there was no notice for public comment!*

For the last 2 ½ years, the CMP corridor has been the focus of approval agency reviews, legislative bills, two citizen initiative efforts, and the topic has dominated the media. Thousands of Mainers gathered to leverage 25 town votes along the corridor route to rescind support of NECEC.

Thousands of citizens provided public comment at the Maine DEP, PUC, and Army Corps of Engineers. During the 2019 DEP hearing on the original permit, 2,283 Mainers testified in opposition to the project to only 11 in support.

More recently, 100,000 signatures were turned in by Maine voters to trigger a statewide vote on the project. Signatures came from more than 500 Maine communities. For the Commissioner to state that NECEC does not have statewide significance for the largest infrastructure project in Maine since the development of the Maine Turnpike is just ludicrous.

While causing irreparable harm to Maine's undeveloped forest and rural communities, NECEC would also cost Maine's renewable energy industry \$400 million in the first 15 years, threatening the future of locally-generated renewables and the hundreds of jobs this industry sustains, while doing nothing to reduce greenhouse gas emissions. This project is nothing more than a shell game designed to make two foreign corporations billions of dollars while Mainers get pennies, which is why Maine should not be forced to be an extension cord for Massachusetts. Even CMP's lawyer Matthew Manahan, stated that this project was not about addressing climate change, and that it was focused to delivering 1,200 megawatts of hydropower from Quebec to Massachusetts' ratepayers. The BEP must hear testimony on the lack of greenhouse gas emission benefits since the DEP did not allow in-person, expert testimony on this critical topic.

It is certain that there is widespread concern about NECEC's impacts that extend beyond the corridor route. This project is of statewide significance. There is also large concern, and a pending lawsuit, regarding two public land reserved lots that the corridor would cross. CMP obtained this lease in 2014, before permits were issued, and they did so without the required two-thirds Legislative approval. CMP does not have proper title, right, and interest for this segment of the corridor because they failed to obtain a permit under the current statute.

It's important for the BEP to inform the public of an opportunity to comment on CMP's "minor revision" application, which includes an entirely new set of maps with new information about impacts to rare threatened and endangered species and rare plant areas that were not provided during the original hearings. It also proposes a reroute near the Bowman Airfield. Impacts on these lands and wetlands must be assessed according to NRPA, Site Law and the Department's own rules.

Trying to classify such a major change to the permit as "minor" is yet another attempt by CMP to ram this project through behind closed doors and without the input of Mainers. This revision requires a thorough review, an independent peer review, and a period of public comment.

Our members, and the citizens of Maine, deserve to have the BEP take jurisdiction of CMP's original NECEC permit application. We urge the BEP to facilitate a thorough review of the 'minor revision', provide ample opportunity for public comment and hearings, and recognize and act upon the terms of the DEP permit appeal that warrant review.

Sincerely,



Sandra Howard, Ph.D.

Director, Say NO to NECEC

153 Main Street

Caratunk, Maine 04925

stopnecec@gmail.com

From: [Churchill, Julie M](#)
To: [Hinkel, Bill](#); [DEP, NECEC](#)
Subject: FW: CMP transmission Info DEP question/comment
Date: Monday, March 1, 2021 7:26:44 AM

-----Original Message-----

From: ehuntley@maine.rr.com <ehuntley@maine.rr.com>
Sent: Sunday, February 28, 2021 12:09 AM
To: Web DEP Info <infodep@maine.gov>
Subject: Info DEP question/comment

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

To: infodep
From: Elizabeth Huntley
Email: ehuntley@maine.rr.com
Phone:
Other contact info:
Reply requested by: ASAP

Question or Comment

To: Maine Board of Environmental Protection

Dear Board Members,

I write to support the appeals for the permit and requests for a public hearing on the proposed CMP Corridor.

I am opposed to the Corridor for many reasons. I won't elaborate other than to say I do not believe it's good for Maine and our environment. And, I do not believe that CMP/Avangrid and Hydro-Quebec are at all concerned about the damage to Maine. They have lost credibility of Maine towns, communities, environmental groups, and citizens. Their latest surreptitious effort to present "minor" revisions (600+ pages) to their proposal without public input is just another example

Please support the appeals process and public hearing so the people of Maine can at least have a chance to express our concerns. CMP has done everything it can to prevent us from having public input. We are counting on your help to let the people of Maine voice our concerns about these revisions.

Thank you.

Elizabeth Huntley
31 Nevada Avenue
Portland, Maine 04103

From: Sarah Otterson
To: lpast@androscooggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; Hobbins, Barry; bsmith@smithlawmaine.com; bettlynn.sheats@legislature.maine.gov; Hinkel, Bill; oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; Bickford, Bruce; Bryan Emerson; Carlene Tremblay@collins.senate.gov; Carol.Woodcock@collins.senate.gov; Carrie_carpenter@rocketmail.com; Breen, Catherine; cjohnson@nrcm.org; Celina.Daniell@stantec.com; Grignon, Chad; info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; Dave Publicover; dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; Bradstreet, Dick; dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; Vitelli, Eloise; egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; Gerry.Mirabile@cmpco.com; Melaragno, Gina; gcaruso@myfairpoint.net; Brooks, Heidi; jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; Jeffrey.Reardon@tu.org; Hanley, Jeffery; jeffrey.pierce@legislature.maine.gov; Timberlake, Jeffrey; Vogel, Jim; JTourangeau@dwmlaw.com; John.Flumerfelt@calpine.com; Kaitlyn Bernard; kbraft@gmail.com; Kayla_McMurry@collins.senate.gov; klyman9672@gmail.com; Puryear, Kristen; lance.harvell@legislature.maine.gov; Parker, Lauren; leadley@myfairpoint.net; ckipfer@lincolny.me; Keim, Lisa; Amarin@mainechamber.org; manfarr1974@yahoo.com; Mark Berry; magoodwin@burnsmcd.com; Mark Winter@collins.senate.gov; mmanahan@pierceatwood.com; maureen@lametrochamber.com; Rideout, Megan M; Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; Kirk-Lawlor, Naomi E; DEP, NECEC; nbennett@nrcm.org; Livesay, Nick; Twithwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; Bensinger, Peggy; hawksnestlodge@gmail.com; richard@rcmcdonald.com; Richard P. Davis; rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; Stratton, Robert D; rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; Black, Russell; Burke, Ruth A; Sandra Howard; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; Miller, Susanne; tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; Skolfield, Thomas; burgess@ibew104.org; Corkum, Tina; dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; emdben-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com; Sarah Otterson

Subject: Support for the Appeal
Date: Monday, March 1, 2021 10:18:43 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

335 East Oxford Road
 So. Paris, ME 04281
 March 1, 2021

Mark C. Draper, Chair
 Board of Environmental Protection
 % Ruth Ann Burke
 17 State House Station
 Augusta, Me 04333/0017

Dear Chairman Draper and Members of the Board of Environmental Protection,

I am writing about the Central Maine Power NECEC project. Specifically, I would like to see the Board of Environmental Protection take jurisdiction of the original project application as required by Maine law, and would respectfully request that a public

hearing be scheduled so that Mainers who oppose the project could be heard and that their opinions could be put into the public record.

If the Board does take jurisdiction, I would hope that it reviews and takes action on the following:

The Department of Environmental Protection failed to adequately assess the significant environmental and economic harm this project would cause.

The Board needs to ensure the region within the project is protected since DEP's permit for the CMP corridor project did not.

The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The Board should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Thank you.

Sincerely,
Sarah Otterson

From: mary@mainerealestate.me
To: [Landry, Andrew](mailto:Landry.Andrew); lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins,Barry); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel,Bill); oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford,Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie_carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen,Catherine); cjohnson@nrcm.org; [Celina Daniell@stantec.com](mailto:Celina.Daniell@stantec.com); [Grignon, Chad](mailto:Grignon,Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; [Dave Publicover](mailto:Dave.Publicover); dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; [Bradstreet, Dick](mailto:Bradstreet,Dick); dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; [Vitelli, Eloise](mailto:Vitelli,Eloise); egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; [Gerry Mirabile@cmpco.com](mailto:Gerry.Mirabile@cmpco.com); [Melaragno, Gina](mailto:Melaragno,Gina); gcaruso@myfairpoint.net; [Brooks, Heidi](mailto:Brooks,Heidi); jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; [Jay L. Clement@usace.army.mil](mailto:Jay.L.Clement@usace.army.mil); [Jeffrey Reardon@tu.org](mailto:Jeffrey.Reardon@tu.org); JTalbert@preti.com; [Hanley, Jeffrey](mailto:Hanley,Jeffery); jeffrey.pierce@legislature.maine.gov; [Timberlake, Jeffrey](mailto:Timberlake,Jeffrey); [Vogel, Jim](mailto:Vogel,Jim); JTourangeau@dwmlaw.com; [John Flumerfelt@calpine.com](mailto:John.Flumerfelt@calpine.com); [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla.McMurry@collins.senate.gov); klyman9672@gmail.com; [Puryear, Kristen](mailto:Puryear,Kristen); lance.harvell@legislature.maine.gov; [Parker, Lauren](mailto:Parker,Lauren); leadley@myfairpoint.net; ckipfer@lincounty.me; [Keim, Lisa](mailto:Keim,Lisa); Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceatwood.com; maureen@lametrochamber.com; [Rideout, Megan M](mailto:Rideout,MeganM); [Melissa Pauley@hq.doe.gov](mailto:Melissa.Pauley@hq.doe.gov); mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; [Kirk-Lawlor, Naomi E](mailto:Kirk-Lawlor,NaomiE); [DEP, NECEC](mailto:DEP,NECEC); nbennett@nrcm.org; leadley@myfairpoint.net; [Livesay, Nick](mailto:Livesay,Nick); 1withwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; [Bensingher, Peggy](mailto:Bensingher,Peggy); hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; [Stratton, Robert D](mailto:Stratton,RobertD); rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; [Black, Russell](mailto:Black,Russell); [Burke, Ruth A](mailto:Burke,RuthA); sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@SomersetCounty-ME.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; [Miller, Susanne](mailto:Miller,Susanne); tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; [Skolfield, Thomas](mailto:Skolfield,Thomas); burgess@ibew104.org; [Corkum, Tina](mailto:Corkum,Tina); dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; emdben-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com
Subject: RE: CMP Corridor
Date: Monday, March 1, 2021 1:05:10 PM
Attachments: [image001.png](#)

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mary Sohl

162 Ridlonville Rd.

Sweden, ME 04040

March 1, 2021

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.*
- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

Sincerely,

Mary Sohl



Mary Sohl, Associate Broker

Maine Real Estate Choice

2017, 2018 & 2019 Top Producing Agency in the Naples Lakes Region

18 Olde Village West

Naples, ME 04055

207-749-0775 cell

207-693-5200. 207-693-5205

mary@mainerealestatechoice.com

Emails sent or received shall neither constitute acceptance of conducting transactions via electronic means nor shall create a binding contract in the absence of a fully signed written agreement.

WIRE FRAUD: During your representation by Maine Real Estate Choice, you will never be asked, via email, to wire or send funds to anyone, not even a title company. DO NOT COMPLY WITH EMAIL INSTRUCTIONS TO WIRE FUNDS! Contact myself or the title company/attorney you are working with by phone!

From: [Linda](#)
To: [Linda](#)
Cc: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [bettyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailley@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay.L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [JTalbert@preti.com](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddiblasi@SomersetCounty-ME.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [diblasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Appeals of CMP Corridor Permits
Date: Tuesday, March 2, 2021 12:33:52 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing in definite support of the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region.

This IS a project of statewide significance, and I feel that the Board should have taken jurisdiction of the project from the very beginning as required by Maine law.

The DEP did not adequately address the impacts and did this State a great disservice by granting their permit.

This project would significantly alter the Western Mountains and would cause more habitat fragmentation than any other project in this region. These areas, and the people of Maine that want to protect them, deserve to have every possible negative impact explored.

If the project is completed, it will be a scar on the State forever and Iberdrola, Avangrid and CMP,

will have billions of dollars at our expense. I don't believe for a second that they care about anything BUT that. We, on the other hand, will have lost something valuable in ways that don't involve money.

The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other valued Maine species... moose, marten, lynx, loons, and many different songbirds and also other types of wildlife and insects.

I guess we aren't included in the species that would be negatively impacted, but I certainly feel we should be.

I'm not a scientist or an expert, but I do know most of the 53 mile section very well.

It's ludicrous to visit these places and not realize that there will be many negative impacts caused by a giant transmission line cutting through, under and over them, When I see Rock Pond, Moxie Gore, #5 Mountain, Cold Stream, Attean Overlook, Greenlaw Cliffs and many more places listed as areas the corridor would affect, I am outraged and heartbroken.

Many experts in a variety of fields have expressed concerns about the negative impacts. It honestly has felt like they and the people of Maine have been ignored.

CMP has certainly not given us any reason to trust what they say. They have made many promises,,, changed the details of their promises and really have no substantiated evidence to prove much of what they claim.

They are trying to clear the air with smoke screens.

The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause.

CMP hired lobbyists to help defeat Brownie Carson's bill, LD 640 that would have allowed for an independent study be done to determine if in fact it would accomplish this. The BEP should hear testimony and make their own determination.

The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Please don't let these foreign corporations get anything past us.

They certainly don't care about Maine, but thousands of people do.

Thank you.

Linda Lee

Bowdoin

From: nrcm@micstan.us
To: [Hinkel, Bill](#)
Subject: Appeal of the DEP permit for the CMP corridor
Date: Tuesday, March 2, 2021 3:29:56 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

hello Bill Hinkel,

To Chairman Draper, Members of the Board of Environmental Protection and 141 members of the NECEC Service List:

I stand with the Natural Resources Council of Maine on this matter.

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.*
- The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

I oppose this assault on our Maine Woods. Maine has been a net producer of electricity and will likely continue to be so. We do not need to bear the cost and disruption of diverting energy from areas outside our state to other out of state areas. It is shameful that this project also encourages the tremendous environmental and cultural impact to our northern neighbours.

I am also quite disappointed that BEP has made this comment process difficult and overly complicated.

*Sincerely,
Stanley Moody
237 Foreside Rd
Topsham MAINE*

From: [Julie Curry Tibbetts](mailto:Julie.Curry.Tibbetts@riverjules.com)
To: riverjules@juno.com
Cc: [Landry, Andrew](mailto:lpost@androskoggincountymaine.gov); ABuxton@prefi.com; ashli.goodenow@gmail.com;
[Hobbins, Barry](mailto:bsmith@smithlawmaine.com); bettynn.sheats@legislature.maine.gov; Hinkel, Bill
Date: Tuesday, March 2, 2021 2:39:25 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Julie C. Tibbetts
358 Hidden Lake Road
Otisfield, ME 04270

February 27, 2021

Mark C. Draper, Chair
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

To the Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. Eight months ago, the DEP granted permission for the NECEC. However, the DEP did not hear comments from us: the Maine residents who will be most affected by this corridor.

The DEP did not hear from a 6rd generation fisherman who knows we need to protect the strong holds of our native brook trout.

The DEP did not hear from an organic farmer and cheese maker who is concerned about the herbicides CMP will use to keep the vegetation in the corridor in check.

The DEP did not hear from the innkeeper who knows her clients come to Maine to experience the true wilderness that can only be found in a pristine woodland.

The DEP did not hear from the quintessential Maine guide who knows fragmenting the forest leads to loss of biodiversity, increases in invasive plants, and reduction in water quality.

The DEP did not hear from a longtime CMP customer, who has learned to distrust the company and doubts CMP will keep it's promise to mitigate the environmental impact; He knows in his heart that the 40,000 acres of conservation land promised will not equal the task.

CMP acknowledges this corridor will impact riverways, woodlands, wetlands, vegetation and wildlife. Animals including the Roaring Brook Mayfly, the Wood Turtle, the Canadian Lynx and the Northern Spring Salamander will be threatened.

Vegetation such as the rare Black Spruce, the Red-Stemmed Gentian, and the Fall Fimbry may disappear from the region of the corridor. CMP considers these losses acceptable, admitting there will be “unavoidable impacts”.

Our neighbors in New Hampshire wrestled with a similar decision: Eversource Electric Company proposed the “Northern Pass” corridor to bring 1,100 megawatts of power from Quebec to the New England grid. The New Hampshire Supreme Court ultimately rejected the Northern Pass, in part because, “[Northern Pass] did not sufficiently consider the environmental impact and the ultimate public good.” New Hampshire took 10 years to study, and ultimately reject, their proposal. Doesn't Maine deserve at least the same amount of consideration?

Respectfully Submitted,

Julie C. Tibbetts

From: [Antonio Blasi](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [Cathy Johnson](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L. Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [Twithwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawkstnslodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [Sandra Howard](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [sean.mahoney](#); [ddblasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dblasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Fwd: NECEC Hearing
Date: Wednesday, March 3, 2021 5:49:13 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear BEP,

I am writing to support the appeals of the DEP NECEC permit and request a public hearing.

Please hear testimony on the lack of greenhouse gas emissions benefits from the CMP Corridor.

I urge you to take jurisdiction of the NECEC Project. CMP lacks proper title and should have not been given DEP permit as NECEC will substantially alter two public reserve lots that it crosses, even though 2/3 Legislative approval has not been granted.

Sincerely,

Antonio Blasi

--
Ant

From: [Kirk-Lawlor, Naomi E](mailto:Kirk-Lawlor.Naomi.E@maine.gov)
To: nrcm@micstan.us
Cc: [Hinkel, Bill](mailto:Hinkel.Bill@maine.gov)
Subject: RE: Appeal of the DEP permit for the CMP corridor
Date: Wednesday, March 3, 2021 11:39:58 AM

Good Morning,
I think this email was misaddressed to me.

Naomi Kirk-Lawlor
 Senior Planner
 Land Use Planning Commission
 Maine Department of Agriculture, Conservation and Forestry
 18 Elkins Lane/ Harlow Building, 4th Floor
 22 State House Station
 Augusta, ME 04333-0022
 Tel: (207)-287-4936
 FAX: (207)-287-7439
 Email: naomi.e.kirk-lawlor@maine.gov

From: nrcm@micstan.us <nrcm@micstan.us>
Sent: Tuesday, March 02, 2021 3:32 PM
To: Kirk-Lawlor, Naomi E <Naomi.E.Kirk-Lawlor@maine.gov>
Subject: Appeal of the DEP permit for the CMP corridor

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

hello Naomi E Kirk-Lawlor,

To Chairman Draper, Members of the Board of Environmental Protection and 141 members of the NECEC Service List:

I stand with the Natural Resources Council of Maine on this matter.

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused*

to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

I oppose this assault on our Maine Woods. Maine has been a net producer of electricity and will likely continue to be so. We do not need to bear the cost and disruption of diverting energy from areas outside our state to other out of state areas. It is shameful that this project also encourages the tremendous environmental and cultural impact to our northern neighbours.

I am also quite disappointed that BEP has made this comment process difficult and overly complicated.

*Sincerely,
Stanley Moody
237 Foreside Rd
Topsham MAINE*

From: [Debbie May](#)
To: [Debbie May](#)
Cc: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [bettynn.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetruccelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay.L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [JTalbert@preti.com](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [pbennett@nrcm.org](#); [leadley@myfairpoint.net](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@SomersetCounty-ME.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Subject: Necec
Date: Thursday, March 4, 2021 11:26:40 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to request your support in the appeal of the NECEC permit. I feel that this permit was issued in error. From my research, it appears the project meets the criteria to fall under the Boards jurisdiction as opposed to the departments and the permit should never have been issued.

There is no way to deny that this project meets the criteria of the boards review. It is obviously of statewide significance and has already come under significant public scrutiny if 100000 Maine residents signed a petition to vote on this project. It will definitely have an environmental and economic impact in more than one community and it is definitely located in more than one community, territory and county.

In addition, this project is crossing state public land by Cold Stream. This land is owned by the state and it has always been my understanding that everyone in the state is equal and special permission to a wealthy corporation from another country should not be allowed. I strongly feel that NECEC should not have any more right to permanently scar this state land than I have. There is no way I would ever be able to get permission from the state to "cut the trees, open up the Cold Stream to sunlight etc and be able to permanently place a bunch of metal on the ground like they are doing. In addition to that, the continuous noise that comes from a power line will have a negative effect on the enjoyment of the area by any one else. The permanent environmental damage as well as scenic damage this project will cause in the western mountains is unacceptable.

In my opinion, NECEC should have allotted the money they are spending on getting people to support this project and use it to run the line underground along RT 201. However, they did not consider that as an option like they should have. They obviously do not care about the protection of our western mountains.

We count on you to do your best in protecting the natural resources of our state.

Please follow New Hampshire's lead and stop this permanent destruction in our state.

Thank you,

Debra J May

PO BOx 235

261 Tobey Rd

New Gloucester, ME 04260

207-926-3726

From: [ARILDA DENSCH](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailley@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L. Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [JTalbert@preti.com](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark_Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [leadley@myfairpoint.net](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#)

Subject: Support for the appeal of CMP's permit to build a transmission corridor through Maine
Date: Saturday, March 6, 2021 9:44:39 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- This is a project of statewide significance, and the Board should have taken jurisdiction of the project from the beginning, as required by Maine law.
- This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.
- The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.
- The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.
- The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a

two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

- If any jobs are created they would only be temporary.
- "As we develop our 21st century energy infrastructure, we should be using 21st century technology, not carving a huge swath through the heart of the largest undeveloped natural forest in the eastern United States. " Susan Arnold of AMC.

Sincerely,
Arilda Densch

Dear Chairman Draper and Members of the Board of Environmental Protection,

I am writing to you today because I support the appeals of the permit and requests for a public hearing on the NECEC corridor that will run through the beautiful Western Mountains region of Maine near where I call home. I support the appeals and hearing requests for the following reasons:

Say No to CMP recently turned in a petition to the Maine Secretary of State's office that states that Mainers want to decide the fate of the corridor. The petition was signed by 100,000 Maine citizens (over 80,000 of which were ultimately accepted). These signatures were collected in less than 3 months, during a pandemic, and during the coldest months of this brutal Maine winter. This proves that the NECEC is definitely a project of statewide significance.

This project is so important to the people of Maine because, this project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region. The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not. CMP will not even conduct an Environmental Impact Survey Instead they only completed an Environmental Assessment. CMP is doing this so they can deceive Mainers into thinking that the NECEC will not harm our land and will actually help us achieve our climate goals which is a lie. If you allow CMP to ruin our beautiful forest lands and scenic by-ways then you will take the only thing that we have to offer. The only reason that people come to the Western Mountains is for the untouched natural beauty and fishing and hunting. If you take that away to give electricity to Massachusettes you may as well sign our economic death certificate in Western Maine.

The project also will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should not be making decisions of such significance without hearing ALL of the facts. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

Lastly, Even though the project will substantially alter two public reserved lots that it crosses, CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Sincerely,

Mikki Rice

Freeman Twp. Maine, 04983

Ph: 207.578.2341

Email: mikki.rice@maine.edu

From: [Mikki Rice](#)
To: [Mikki Lyn Rice](#)
Cc: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrnm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailley@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrnm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetruccelli@pmhlegal.com](#)
Subject: Appeals to the NECEC project permit - Public comment
Date: Sunday, March 7, 2021 9:52:09 AM
Attachments: [BFP Letter from M. Rice.pdf](#)

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Attached is my letter regarding the NECEC project permit and request for a public hearing.

Thank you,
Mikki Riced

Dear Chairman Draper and Members of the Board of Environmental Protection,

I am writing to you today because I support the appeals of the permit and requests for a public hearing on the NECEC corridor that will run through the beautiful Western Mountains region of Maine near where I call home. I support the appeals and hearing requests for the following reasons:

Say No to CMP recently turned in a petition to the Maine Secretary of State's office that states that Mainers want to decide the fate of the corridor. The petition was signed by 100,000 Maine citizens (over 80,000 of which were ultimately accepted). These signatures were collected in less than 3 months, during a pandemic, and during the coldest months of this brutal Maine winter. This proves that the NECEC is definitely a project of statewide significance.

This project is so important to the people of Maine because, this project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region. The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not. CMP will not even conduct an Environmental Impact Survey Instead they only completed an Environmental Assessment. CMP is doing this so they can deceive Mainers into thinking that the NECEC will not harm our land and will actually help us achieve our climate goals which is a lie. If you allow CMP to ruin our beautiful forest lands and scenic by-ways then you will take the only thing that we have to offer. The only reason that people come to the Western Mountains is for the untouched natural beauty and fishing and hunting. If you take that away to give electricity to Massachusettes you may as well sign our economic death certificate in Western Maine.

The project also will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should not be making decisions of such significance without hearing ALL of the facts. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

Lastly, Even though the project will substantially alter two public reserved lots that it crosses, CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

Sincerely,

Mikki Rice

Freeman Twp. Maine, 04983

Ph: 207.578.2341

Email: mikki.rice@maine.edu

From: [Mark Turek](#)
To: [Burke, Ruth A](#)
Cc: [Landry, Andrew](#); lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](#); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](#); oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](#); [Bryan Emerson](#); Carlene.Tremblay@collins.senate.gov; Carol.Woodcock@collins.senate.gov; Carrie_carpenter@rocketmail.com; [Breen, Catherine](#); cjohnson@nrcm.org
Subject: Request for the BEP to take original jurisdiction of the original NECEC/CMP Corridor application
Date: Sunday, March 7, 2021 11:45:48 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

March 7, 2021

Dear Chairman Draper and Members of the Board of Environmental Protection (BEP):

My name is Mark Turek, and I live on the Kennebec River in Randolph. Although my house is not located within the physical areas being cut and expanded for the proposed CMP Corridor Project with Massachusetts and Hydro-Quebec, the potential damage and destruction of our natural resources will certainly be felt by almost all Mainers and countless visitors to our state. Plus, since I work as a truck driver within the CMP Corridor areas, I'm already dealing with this situation on a daily basis.

As a Maine resident, I fully support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region for the following reasons:

1. This is very clearly a major development of statewide significance, and the BEP should have taken jurisdiction of the project from square one, as required by Maine law. **I request the BEP to fix that mistake by now taking original jurisdiction of the original application.**
2. The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should

never have received a permit because of this. It seems very clear that DEP failed to adequately assess the significant environmental and economic harm this project will cause. The BEP has an opportunity to fix this problem.

3. As mentioned within the "Comments – Environmental Permit Review" dated 3-15-2018 and sent by our experts at Maine Dept. of Inland Fisheries and Wildlife (PDF), this project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region. Sadly, as also mentioned within those comments, this project is also likely to have a negative impact on other areas such as where I live in Randolph next to the Kennebec River. We also need the experts at MDIFW to provide their comments/concerns on the recent 1,100+ page "minor revision" application now under review and updates on past comments made.

4. The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The BEP needs to ensure this region is protected because DEP's permit for the CMP corridor does not do that. However, that mistake can also be fixed by the BEP.

5. No proof has been presented that the project will reduce greenhouse gas emissions as claimed by the developers. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.

6. When the DEP issued the permit, it included an unknown and unidentified 40,000 acres of conserved lands to mitigate the environmental damage. While that might sound good, that actually won't help the forest fragmentation caused by the corridor... plus, there's no specific information of where that 40k acres would be. Mainers deserve to know

exactly where those 40,000 acres would be, and the BEP has an opportunity to also fix this mistake before it's too late.

7. Lastly, there's also no evidence of technical and financial capability of CMP/NECEC Transmission to build a project that can be decommissioned. This is another very important apparent oversight by DEP, but yet another item the DEP could fix before it's too late.

In closing, I request the BEP to fix all of mistakes/oversights with the CMP Corridor Project (aka NECES) by taking original jurisdiction of the original application. Thank you for assisting with this very important issue that will impact every current and future Mainer and countless visitors.

Respectfully,

Mark Turek

Randolph, Maine USA

From: [Elaine D](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrihton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawkstnslodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [Sandra Howard](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#)

Subject: Please Support the Appeals of the NECEC
Date: Monday, March 8, 2021 6:23:03 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions*

benefits from the CMP corridor and judge this issue for themselves.

- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this. Sincerely, Elaine Davidson, Monmouth, Maine*

From: [jeannine dickey](mailto:jeannine.dickey)
To: [Landry, Andrew](mailto:Landry.Andrew); lpast@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins.Barry); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; [Hinkel, Bill](mailto:Hinkel.Bill); oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; [Bickford, Bruce](mailto:Bickford.Bruce); [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); [Carrie carpenter@rocketmail.com](mailto:Carrie.carpenter@rocketmail.com); [Breen, Catherine](mailto:Breen.Catherine); cjohnson@nrcm.org; [Celina Daniell@stantec.com](mailto:Celina.Daniell@stantec.com); [Grignon, Chad](mailto:Grignon.Chad); info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; [Dave Publicover](mailto:Dave.Publicover); dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; [Bradstreet, Dick](mailto:Bradstreet.Dick); dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com
Subject: Dear Folks...
Date: Monday, March 8, 2021 10:32:55 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I absolutely agree with the excellent analyses noted in the letter below. Further, to add, Maine is an environmental treasure and therefore is “ripe” for resource destruction. Please consider the importance of preserving Maine for future generations of all species, because once you “open the door” it is unlikely it can ever be closed.

Thanks much, jeannine dickey

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.*
- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

From: Brent Groce
To: Landry, Andrew; lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; Hobbins, Barry; bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; Hinkel, Bill; oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; Bickford, Bruce; Bryan Emerson; Carlene Tremblay@collins.senate.gov; Carol.Woodcock@collins.senate.gov; Carrie_carpenter@rocketmail.com; Breen, Catherine; cjohnson@nrcm.org; Celina.Daniell@stantec.com; Grignon, Chad; info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrighton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailley@cumberlandcounty.org; dkallin@dwmlaw.com; dale.denno@legislature.maine.gov; dana.dow@legislature.maine.gov; Dave Publicover; dhedrick@roadrunner.com; deborah.sanderson@legislature.maine.gov; Bradstreet, Dick; dvoorhees@nrcm.org; emooney@dwmlaw.com; edbuzzel@gmail.com; ellie.espling@legislature.maine.gov; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; Vitelli, Eloise; egreen@clf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmlegal.com; Gerry.Mirabile@cmpco.com; Melaragno, Gina; gcaruso@myfairpoint.net; Brooks, Heidi; jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; Jeffrey.Reardon@tu.org; J.Talbert@preti.com; Hanley, Jeffery; jeffrey.pierce@legislature.maine.gov; Timberlake, Jeffrey; Vogel, Jim; J.Tourangeau@dwmlaw.com; John.Flumerfelt@calpine.com; Kaitlyn Bernard; kbraft@gmail.com; Kayla_McMurry@collins.senate.gov; klyman9672@gmail.com; Puryear, Kristen; lance.harvell@legislature.maine.gov; Parker, Lauren; leadley@myfairpoint.net; ckipfer@lincounty.me; Keim, Lisa; Amarin@mainechamber.org; manfarr1974@yahoo.com; Mark Berry; magoodwin@burnsmcd.com; Mark_Winter@collins.senate.gov; mmanahan@pierceatwood.com; maureen@lametrochamber.com; Rideout, Megan M; Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; Kirk-Lawlor, Naomi E; DEP, NECEC; nbennett@nrcm.org; leadley@myfairpoint.net; Livesay, Nick; 1withwhitewaters@gmail.com; pturner@clf.org; paul.chace@legislature.maine.gov; Bensinger, Peggy; hawksnestlodge@gmail.com; richard@rcmcdonald.com; Richard P. Davis; rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; Stratton, Robert D; rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; Black, Russell; Burke, Ruth A; sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@clf.org; ddibiasi@somersetcounty-me.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; Miller, Susanne; tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; Skolfield, Thomas; burgess@ibew104.org; Corkum, Tina; dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; embden-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com

Subject: I support the appeals of the permit for the CMP Corridor
Date: Tuesday, March 9, 2021 10:43:25 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. My reasons for supporting these appeals are as follows:

1. We are in an environmental crisis as climate change affects us all. Maine fisherman are dependent on the oceans remaining viable and climate change is changing the viability rapidly. Maine must do its part as do all other states and countries. This project will make matters worse for the climate, not better.
2. With cost reductions in renewable energy, we can accomplish the goals of this project with wind, solar, and batteries deployed in a "distributed generation" mode rather than this large transmission project.
3. This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.
4. This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.
5. The Western Mountains region is the heart of the largest intact temperate forest in North

America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.

6. The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions benefits from the CMP corridor and judge this issue for themselves.
7. The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this. Sincerely,

Thank you for acting in a responsible way to protect Maine's resources.

Brent Groce
Vinalhaven, ME

From: [Roger Merchant](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [bettynn.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [Bob Haynes](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene_Tremblay@collins.senate.gov](#); [Woodcock, Carol \(Collins\)](#); [Carrie Carpenter](#); [Breen, Catherine](#); [Cathy Johnson](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [Kennebec River Angler](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [Elizabeth C. Mooney](#); [ed buzzell](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [Elizabeth Boepple](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [Eric Sherman](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [Greg Caruso](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay.L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [Kathy Barkley](#); [Kayla_McMurry@collins.senate.gov](#); [Kim Lyman](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amarin@mainechamber.org](#); [Mandy](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [Mike Pilsbury](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [Braddah hale](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [Sarah Dostie](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [Sandra Howard](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Stacy Laughton](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [Sue Ely](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [Taylor Walker](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [TD1150](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)

Date: Tuesday, March 9, 2021 11:40:04 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

March 9, 2021

Mark C. Draper, Chair
 Board of Environmental Protection
 c/o Ruth Ann Burke
 17 State House Station
 Augusta, ME 04333-0017

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to the Maine BEP to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

1. I've been working in the Maine Woods in a forestry capacity since 1965. I recall the Dickey-Lincoln Hydroelectric project, authorized by Congress that year. By the 1980's it died from lack of official support and public endorsement. The unique environmental features of the St. John River were noted, and that "Dickey-Lincoln would destroy the wild, whitewater forever." By the same token, the scenic and wild Upper Moose River and Kennebec Basin is of similar major significance in our state.

In my historical view of it, the multiple impacts from NECEC are no less than Dickey-Lincoln. I am encouraged to see the Board of Environmental Protection is engaged with a review of NECEC's major influence in forever altering this special region in our state.

2. The CMP project is of statewide and international significance when you consider the context of this proposed energy system. This includes Hydro Quebec (HQ), with hydropower sources in northern Quebec east of James Bay, CMP the power transportation agent, and Massachusetts - not Maine - customers. A 150 foot-wide power and line corridor through Maine may seem mitigate-able enough at first blush. However, notably absent in the hearing and review process by DEP has been any independent environmental impact and analysis, and subsequent public review on CMP's fifty-four cleared miles across the Upper Moose River Basin.

3. The longer-term context for the initial CMP project easily goes beyond the current permitting scope for NECEC. There is a physical, economic and aspirational context that comes with the CMP corridor. Permitting a 53-foot corridor is but the first step into an easily expandable 150 and 300-foot wide project. For example, HQ recently announced interest in expanding their power distribution grid through the Atlantic Loop, encompassing Labrador, The Maritimes and Maine. That CMP retains ownership of a 300-foot right of way through our remote woods leaves plenty of wiggle room for additional infrastructure in the near or far term. Where is the independent environmental impact and analysis for the larger context of this CMP project? This larger power context is a glaring omission in the public review process for granting, or not, any permit to CMP_NECEC_HQ.

4. The wild, working forest landscape of Upper Moose River Basin in the Western Mountains region of Maine, is the heart of a large temperate and boreal forest in Maine. It is the last stronghold for wild brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. smack dab in the middle of one CMP corridor section is Maine's largest, unique Jack Pine forest. Given the absence of any independent assessment and analysis of the CMP project, I am in hopes that the Board of Environmental Protection will ensure that this in fact occurs, so that the unique resources of this region will be adequately assessed, evaluated and protected.

5. NECEC will cause permanent, irreparable fragmentation to forest and habitat alike, and at a time when the protection and utilization of local and global forested regions are of prime importance in sustaining life. Beyond forest products and recreation, today's forests will have key roles to play in tomorrow's watershed protection, terrestrial and aquatic habitats, as well as optimizing water and oxygen production, along with forest carbon storage in response to our rapidly changing climate and temperatures in Maine and New England.

6. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. I encourage BEP to include and hear testimony on the lack of greenhouse gas emission benefits from the CMP corridor project.

7. The CMP project will substantially fragment and alter two public reserved lots that it will cross, adjacent to the Cold Stream Brook Trout Conservation Area, in effect subdividing these public lands into four parcels. CMP has not sought or obtained approval for this action from the Legislature via a two-thirds vote, as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.

For these reasons I believe that BEP should take original jurisdiction of the *original* application. Like Dickey-Lincoln, there is nothing about the CMP project that is "minor" in scope and impact for the people of the State of Maine. Two petitions drives with 60,000+ signatures each, and 25 towns voting to reject the CMP project is a clear and compelling signal as to how "major" this project is in the public minds-eye.

Best wishes in your work on this major project.

Sincerely,

RM Signature

Roger Merchant
ME_LP Forester #727
NAI: Certified Interpretive Guide
Forest Photographer

Roger Merchant, Place-based Photography
NAI: Certified Interpretive Guide
Forestry Naturalist and Educator - MLPF#727
UMaine Cooperative Extension-Emeritus
1018 Pushaw Road, Glenburn, Maine 04401
207-343-0969 rogmerch@gmail.com
<https://www.rogermerchant.com/>

From: [Craig Woodard](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [betyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [Hanley, Jeffery](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [JTourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensinger, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@somersetcounty-me.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [emdben-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#); [Craig Woodard](#)

Subject: Support the appeals of the permit and requests for a public hearing on the CMP corridor
Date: Wednesday, March 10, 2021 1:14:37 PM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Chairman Draper and Members of the Board of Environmental Protection:

I am writing to support the appeals of the permit and requests for a public hearing on the CMP corridor through the Western Mountains region. I support the appeals and hearing requests because:

- *This is a project of statewide significance, and the Board should have taken jurisdiction of the project from square one, as required by Maine law.*
- *This project would cause irreparable damage to the Western Mountains region and would cause more habitat fragmentation than any other project in this region.*
- *The Western Mountains region is the heart of the largest intact temperate forest in North America. It is the last stronghold for brook trout in the U.S. and provides high-quality habitat for other iconic Maine species, including moose, marten, lynx, loons, and many species of songbirds. The Board needs to ensure this region is protected because DEP's permit for the CMP corridor did not.*
- *The project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor. Nevertheless, DEP claimed these benefits outweighed the damage the project would cause. The BEP should hear testimony on the lack of greenhouse gas emissions*

benefits from the CMP corridor and judge this issue for themselves.

- *The project will substantially alter two public reserved lots that it crosses, even though CMP has not sought or obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. Therefore, CMP lacks proper title, right, and interest for the corridor and should never have received a permit because of this.*

Sincerely,

Craig Woodard

From: [Leslie Hudson](#)
To: [Landry, Andrew](#); [lpost@androscoggincountymaine.gov](#); [ABuxton@preti.com](#); [ashli.goodenow@gmail.com](#); [Hobbins, Barry](#); [bsmith@smithlawmaine.com](#); [bettyann.sheats@legislature.maine.gov](#); [Hinkel, Bill](#); [oldcanadaroad@myfairpoint.net](#); [bpw1@midmaine.com](#); [Brian.J.Murphy@nexteraenergy.com](#); [brownie.carson@legislature.maine.gov](#); [Bickford, Bruce](#); [Bryan Emerson](#); [Carlene Tremblay@collins.senate.gov](#); [Carol Woodcock@collins.senate.gov](#); [Carrie_carpenter@rocketmail.com](#); [Breen, Catherine](#); [cjohnson@nrcm.org](#); [Celina.Daniell@stantec.com](#); [Grignon, Chad](#); [info@kennebecriverangler.com](#); [tina.riley@legislature.maine.gov](#); [pcrichton@auburnmaine.gov](#); [ebarrett@lewistonmaine.gov](#); [gailey@cumberlandcounty.org](#); [dkallin@dwmlaw.com](#); [dale.denno@legislature.maine.gov](#); [dana.dow@legislature.maine.gov](#); [Dave Publicover](#); [dhedrick@roadrunner.com](#); [deborah.sanderson@legislature.maine.gov](#); [Bradstreet, Dick](#); [dvoorhees@nrcm.org](#); [emooney@dwmlaw.com](#); [edbuzzel@gmail.com](#); [ellie.espling@legislature.maine.gov](#); [edonoghue@maineaudubon.org](#); [boepple@nhlandlaw.com](#); [caratunkselectmen@myfairpoint.net](#); [Vitelli, Eloise](#); [egreen@clf.org](#); [EHowe@dwmlaw.com](#); [eric.brakey@legislature.maine.gov](#); [eshermanbpr@gmail.com](#); [jmagoon@franklincountymaine.gov](#); [fbever@mainepublic.org](#); [garrett.mason@legislature.maine.gov](#); [gpetrucelli@pmhlegal.com](#); [Gerry.Mirabile@cmpco.com](#); [Melaragno, Gina](#); [gcaruso@myfairpoint.net](#); [Brooks, Heidi](#); [jtalbert@preti.com](#); [jkilbreth@dwmlaw.com](#); [jared.golden@legislature.maine.gov](#); [Jay L.Clement@usace.army.mil](#); [Jeffrey.Reardon@tu.org](#); [J.Talbert@preti.com](#); [Hanley, Jeffrey](#); [jeffrey.pierce@legislature.maine.gov](#); [Timberlake, Jeffrey](#); [Vogel, Jim](#); [J.Tourangeau@dwmlaw.com](#); [John.Flumerfelt@calpine.com](#); [Kaitlyn Bernard](#); [kbraft@gmail.com](#); [Kayla_McMurry@collins.senate.gov](#); [klyman9672@gmail.com](#); [Puryear, Kristen](#); [lance.harvell@legislature.maine.gov](#); [Parker, Lauren](#); [leadley@myfairpoint.net](#); [ckipfer@lincounty.me](#); [Keim, Lisa](#); [Amorin@mainechamber.org](#); [manfarr1974@yahoo.com](#); [Mark Berry](#); [magoodwin@burnsmcd.com](#); [Mark_Winter@collins.senate.gov](#); [mmanahan@pierceatwood.com](#); [maureen@lametrochamber.com](#); [Rideout, Megan M](#); [Melissa.Pauley@hq.doe.gov](#); [mnovello@wagnerforest.com](#); [mspils15@hotmail.com](#); [mwagner@insourcerenewables.com](#); [Kirk-Lawlor, Naomi E](#); [DEP, NECEC](#); [nbennett@nrcm.org](#); [leadley@myfairpoint.net](#); [Livesay, Nick](#); [1withwhitewaters@gmail.com](#); [pturner@clf.org](#); [paul.chace@legislature.maine.gov](#); [Bensing, Peggy](#); [hawksnestlodge@gmail.com](#); [richard@rcmcdonald.com](#); [Richard P. Davis](#); [rileydploch@gmail.com](#); [robert.wood@tnc.org](#); [RBorowski@preti.com](#); [Stratton, Robert D](#); [rodney.whittemore@legislature.maine.gov](#); [roger.fuller@legislature.maine.gov](#); [rwcallon@gmail.com](#); [Black, Russell](#); [Burke, Ruth A](#); [sandrahowardnh@gmail.com](#); [srahim@eenews.net](#); [sara.gideon@legislature.maine.gov](#); [smahoney@clf.org](#); [ddibiasi@SomersetCounty-ME.org](#); [Laughton@nhlandlaw.com](#); [stephen.wood@legislature.maine.gov](#); [Steven.Zuretti@brookfieldrenewable.com](#); [sely@nrcm.org](#); [Miller, Susanne](#); [tlawrence@dwmlaw.com](#); [twalkerfilm@gmail.com](#); [thomas.saviello@legislature.maine.gov](#); [Skolfield, Thomas](#); [burgess@ibew104.org](#); [Corkum, Tina](#); [dibiasi.tony@gmail.com](#); [mmaymcc@yahoo.com](#); [chesterville.me@gmail.com](#); [embden-clerk@roadrunner.com](#); [tmgreene@fairpoint.net](#); [joffice@jay-maine.org](#); [townofleeds@fairpoint.net](#); [townoffice@lfme.org](#); [moscow@myfairpoint.net](#); [ccastonguay@newgloucester.com](#); [townclerk@newsharon.maine.gov](#); [townofstarks@gmail.com](#); [whitefield@roadrunner.com](#); [office@wiltonmaine.org](#); [admin@wiscasset.org](#); [Walter.DiCesare@brookfieldrenewable.com](#)
Subject: Comments on the CMP corridor permit appeals
Date: Thursday, March 11, 2021 10:30:29 AM

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Mark C. Draper, Chair, and Members of the Maine Board of Environmental Protection
 17 State House Station
 Augusta, ME 04333-0017

Dear Chairman Draper and members of the BEP board:

I strongly support the appeals of the permit and requests for a public hearing on the CMP corridor through Maine's Western Mountains region. The following are my reasons:

As a project of statewide significance, Maine law requires the board to take jurisdiction of the project from the beginning, which did not happen.

The project would cause irreparable damage to the Western Mountains, including more habitat fragmentation than any other project in the region.

The Western Mountains region is the heart of North America's largest intact temperate

forest. It is the last stronghold for brook trout in the U.S., and it provides high-quality habitat for other iconic Maine species, such as moose, marten, lynx, loons, and many songbirds. DEP's permit for the corridor failed to provide protection for this region; therefore, the board must do so instead.

Regretfully, the project will not reduce greenhouse gas emissions. During the hearing process, DEP refused to allow in-person expert testimony on the corridor's lack of greenhouse gas benefits—yet DEP claimed these benefits outweighed the damage the project would cause. The BEP must hear testimony on the lack of greenhouse gas emissions benefits and judge this issue independently.

Finally, the project will cross and substantially alter two public reserved lots, even though CMP has not sought or obtained legislative approval through a two-thirds vote as required by our constitution. As a result, CMP lacks proper title, right, and interest for the corridor and should never have received a permit.

Thank you for considering my concerns. The Western Mountains region is far too valuable for such desecration, and the lack of greenhouse gas emissions benefits is a stunning failure.

Sincerely,

Leslie J. Hudson
70 Forest Avenue
Orono, ME 04473

Janet Lynch
655 Elmwood Rd.
Pownal, Maine 04069
jllynch@gwi.net

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

10 March 2021

Dear Chairman Draper and Members of the Board of Environmental Protection,

I strongly support the appeals of the permit and requests for a public hearing on the proposed CMP "NECEC" corridor project through Maine's Western Mountains region. I am extremely concerned and angered that this enormous proposed project of major environmental, economic and social significance has not been subject to anything approaching adequate environmental review or opportunity for public notice and comment. Rather, project advocates and those charged with regulating projects and protecting Maine's environment appear to have colluded to hastily approve the highly controversial, environmentally destructive project with minimal environmental review and little public discussion or debate.

Instead of responding to legitimate public concerns about the proposed project's negative environmental, climate, economic, and related impacts and to reasonable requests for thorough environmental review, project proponents have instead invested heavily in aggressive advertising campaigns to sell the project to Maine's unwilling public. Proponents have touted the project's purported climate benefits without backing up those claims or adequately addressing legitimate environmental, economic, social, or indeed climate concerns.

At least as concerning, Maine's PUC, DEP, and other regulatory bodies and elected officials seem to have abandoned their responsibility to act in the interests of the Maine's people in favor of the interests of those who stand to benefit financially from this environmentally disastrous project. Regulators have apparently accepted project proponents' claims regarding the project's purported benefits without adequately scrutinizing them, while indefensibly stifling public participation. Reasonable public requests for environmental review have been repeatedly refused and overruled, and efforts to ensure that Mainers are guaranteed a say on this project with far-reaching impacts on this and future generations have been stymied. Rather, Maine people have been repeatedly told that they may not challenge decisions made behind closed doors by a few non-elected members of the PUC about this controversial project of enormous scale and with major long-term impacts on our state and its people.

Scale of Project Compels BEP Jurisdiction; Public Hearings and Appeals Required

Multiple procedural irregularities surrounding the proposed project include DEP Acting Commissioner Loyzim's recent indefensible determination, made without notifying the public or this Board, that a massive 700 page revision by CMP to its NECEC permit was "minor" and

therefore not of statewide significance or worthy of scrutiny by this Board or Maine's people. The cumbersome rules surrounding the instant opportunity to comment on the project's review and appeals process are further evidence of governmental intransigence regarding public participation in the permitting process for this proposed project of major significance to Maine's environment and people. The opaque decision-making process surrounding this enormous and highly controversial proposed project is unacceptable, dangerous, and profoundly undemocratic. Public hearings on the proposed project's environmental, economic, social and climate impacts, and appeals of previous decisions made without adequate opportunity for public notice and comment, are therefore urgently required.

The massive scale of the project, as well as its major impacts on the entire region for years to come, clearly demonstrate that it is unquestionably of statewide significance, and the Board of Environmental Protection should therefore have taken jurisdiction of the project from its inception, as is required by Maine law.

Significant Negative Environmental Impacts Neither Addressed Nor Mitigated

CMP/ Hydro-Quebec's proposed power line project, intended to carry electricity generated in Quebec through Maine's North Woods and on to markets in southern New England, is immense in scale. It would have devastating, irrevocable, negative environmental impacts on Maine's Western Mountains region and would cause more habitat fragmentation than any other project in the region. Despite these facts, project proponents have scarcely attempted to address, let alone mitigate, the project's negative environmental impacts in the limited planning documents the public has been allowed to access.

Maine's Western Mountains region is at the heart of the largest remaining contiguous temperate forest in North America and is the last stronghold for brook trout in the U.S. Yet according to CMP's Section 303 Clean Water Act application to the U.S. Army Corps of Engineers, the company reports that the construction of new transmission lines would impact an estimated 263 wetlands and 115 streams, many of which are critical habitat for brook trout and other vulnerable species. CMP has also made clear that the project would "unavoidably result in permanent and temporary wetland fill." It is also expected that forest in wetlands and vernal pool habitat would be removed, destroying key habitat for several endangered species and adversely affecting recreation and tourism which support local economies.

The region also provides essential habitat for other vulnerable Maine species, including moose, marten, lynx, loons, and many species of songbirds. Not only would the project destroy large areas of these critical habitats outright; it would also generate miles of extremely wide, permanently deforested areas, dangerously fragmenting this unique forest ecosystem, seriously threatening many vulnerable species which require large areas of contiguous forest environments to nest, breed, feed and survive. Other adverse environmental and climate impacts include but are not limited to pollution of soils, wetlands and streams from toxic defoliants, increased turbidity from runoff associated with the project, drying, destruction and erosion of forest soils associated with massive logging, and resultant large-scale release of carbon from forest soils and vegetation, as well as the permanent loss of large areas of forest carbon sinks.

Indeed, when one scrutinizes the proposed project's environmentally devastating route, it is difficult to escape the conclusion that project planners were motivated by nothing beyond cost reduction. The route appears to have been laid out by someone who simply placed a ruler over the map and drew as straight a line as possible, without regard to topography, habitat, or other environmental features. Certainly the proposed route, which includes multiple crossings of streams of significance and other environmentally sensitive areas, demonstrates a flagrant lack of concern bordering on contempt for the environmental integrity of Maine's North Woods and associated riparian and wetland habitats, and for the communities which rely on the environmental health of these areas.

CMP's environmentally reckless proposed project threatens to devastate Maine's Western Mountains region and permanently harm North America's largest contiguous temperate forest and the many species which rely on it, including humans. The Board of Environmental Protection has a solemn duty to ensure that this region of major environmental, economic, and social significance is protected by holding hearings on appeals of the proposed CMP corridor project permit, to remediate DEP's failure to protect Maine's environment in its previous erroneous decision.

Putative Carbon Benefits Not Substantiated, Carbon Emissions Not Addressed, and Testimony Suppressed

Although the project's proponents claim that it would reduce carbon emissions, they have failed to adequately substantiate those claims. In fact, the project would release large amounts of carbon currently sequestered in forest soils and vegetation, and would result, by its very design, in large-scale, permanent loss of large areas of forest carbon sinks. To date, project proponents have failed to address the very significant carbon impacts of the project, while DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor during the hearing process. This is utterly unacceptable on both procedural and substantive grounds, particularly in view of the fact that the major justification for this enormous, environmentally destructive project put forward by its proponents has been its putative carbon benefits.

Significant doubts remain about project proponents' claims regarding its putative carbon benefits. On the other hand, the mass felling of trees and disturbance of soils in mature forests would undoubtedly result in major carbon emissions, as well as permanent loss of carbon sequestration capacity. Other carbon emissions resulting from the project's associated hydro-power generation (not to mention negative environmental and social impacts in Quebec) have been insufficiently studied and scarcely discussed. Nor have the significant impacts of intentional, permanent, deforestation of large tracts of currently functioning carbon sinks on atmospheric carbon been adequately addressed.

Public Reserved Lands Concerns/ Lack of Title

The proposed project would also substantially and illegally alter two public reserved lots that its route crosses, despite the fact that CMP neither sought nor obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. **CMP has no right to these public reserved lands, as it lacks proper title, right, and interest, and it therefore should never have been granted a permit on these grounds.**

Conclusion

Mainers are being asked to accept the devastation of large areas of critical environmental significance, as well as permanent, large-scale destruction of functioning forest carbon sinks and the associated release of large amounts of carbon currently sequestered in those forests, on the basis of unchallenged claims made by the project's proponents. Instead of carrying out its duty to Mainers to protect our state's environment by holding hearings on the proposed project's environmental, economic, social and climate impacts, the DEP instead hastily and illegally issued a permit on the basis of little more than project proponents' claims, without adequate environmental review or scope for public participation, as is required for a proposed project of this magnitude. This is unacceptable, intolerable, and illegal.

The BEP must hear and carefully consider testimony on the negative environmental, economic and social impacts of the proposed CMP corridor, as well as testimony challenging claims by the project's proponents regarding its alleged greenhouse gas emissions benefits, and it must consider appeals of the permit based on previously suppressed testimony. It is the solemn duty of the BEP to protect Maine's environment and people, and to carefully review all evidence available to it regarding proposed projects of major environmental significance, including the proposed CMP corridor project. It is extremely damning that testimony regarding this project's environmental and climate impacts has been suppressed, and permits issued without benefit of such essential testimony cannot stand.

Maine People refuse to stand idly by and see our environment and our rights trampled by those who seek to suppress relevant testimony and public participation in the permitting process for this enormous project with significant far-reaching, long-term environmental, economic, social, and climate impacts on this state and its people. **Hearings must be held and appeals considered on an urgent basis.**

Sincerely,



Janet Lynch

Cc: Maine DEP/ CMP Project Permit Service List

From: jlynch@gwi.net
To: [Landry, Andrew](mailto:Landry.Andrew@post.androscoggincountymaine.gov); lpost@androscoggincountymaine.gov; ABuxton@preti.com; ashli.goodenow@gmail.com; [Hobbins, Barry](mailto:Hobbins.Barry@bsmith@smithlawmaine.com); bsmith@smithlawmaine.com; bettyann.sheats@legislature.maine.gov; Hinkel, Bill; oldcanadaroad@myfairpoint.net; bpw1@midmaine.com; Brian.J.Murphy@nexteraenergy.com; brownie.carson@legislature.maine.gov; Bickford, Bruce; [Bryan Emerson](mailto:Bryan.Emerson); [Carlene Tremblay@collins.senate.gov](mailto:Carlene.Tremblay@collins.senate.gov); [Carol Woodcock@collins.senate.gov](mailto:Carol.Woodcock@collins.senate.gov); Carrie_carpenter@rocketmail.com; Breen, Catherine; cjohnson@nrcm.org; Celina.Daniell@stantec.com; Grignon, Chad; info@kennebecriverangler.com; tina.riley@legislature.maine.gov; pcrichton@auburnmaine.gov; ebarrett@lewistonmaine.gov; gailey@cumberlandcounty.org; edonoghue@maineaudubon.org; boepple@nhlandlaw.com; caratunkselectmen@myfairpoint.net; Vitelli, Eloise; egreen@cf.org; EHowe@dwmlaw.com; eric.brakey@legislature.maine.gov; eshermanbpr@gmail.com; jmagoon@franklincountymaine.gov; fbever@mainepublic.org; garrett.mason@legislature.maine.gov; gpetrucelli@pmhlegal.com; Gerry.Mirabile@cmpco.com; Melaragno, Gina; gcaruso@myfairpoint.net; Brooks, Heidi; jtalbert@preti.com; jkilbreth@dwmlaw.com; jared.golden@legislature.maine.gov; Jay.L.Clement@usace.army.mil; Jeffrey.Reardon@tu.org; JTalbert@preti.com; Hanley, Jeffrey; jeffrey.pierce@legislature.maine.gov; Timberlake, Jeffrey; Vogel, Jim; JTourangeau@dwmlaw.com; John.Flumerfelt@calpine.com; [Kaitlyn Bernard](mailto:Kaitlyn.Bernard); kbraft@gmail.com; [Kayla McMurry@collins.senate.gov](mailto:Kayla_McMurry@collins.senate.gov); klyman9672@gmail.com; Puryear, Kristen; lance.harvell@legislature.maine.gov; Parker, Lauren; leadley@myfairpoint.net; ckipfer@lincounty.me; Keim, Lisa; Amorin@mainechamber.org; manfarr1974@yahoo.com; [Mark Berry](mailto:Mark.Berry); magoodwin@burnsmcd.com; [Mark Winter@collins.senate.gov](mailto:Mark.Winter@collins.senate.gov); mmanahan@pierceanwood.com; maureen@lametrochamber.com; Rideout, Megan M; Melissa.Pauley@hq.doe.gov; mnovello@wagnerforest.com; mspils15@hotmail.com; mwagner@insourcerenewables.com; Kirk-Lawlor, Naomi E; DEP, NECEC; nbennett@nrcm.org; leadley@myfairpoint.net; Livesay, Nick; 1withwhitewaters@gmail.com; pturner@cf.org; paul.chace@legislature.maine.gov; Bensing, Peggy; hawksnestlodge@gmail.com; richard@rcmcdonald.com; [Richard P. Davis](mailto:Richard.P.Davis); rileydploch@gmail.com; robert.wood@tnc.org; RBorowski@preti.com; Stratton, Robert D; rodney.whittemore@legislature.maine.gov; roger.fuller@legislature.maine.gov; rwcallon@gmail.com; Black, Russell; Burke, Ruth A; sandrahowardnh@gmail.com; srahim@eenews.net; sara.gideon@legislature.maine.gov; smahoney@cf.org; ddibiasi@SomersetCounty-ME.org; Laughton@nhlandlaw.com; stephen.wood@legislature.maine.gov; Steven.Zuretti@brookfieldrenewable.com; sely@nrcm.org; Miller, Susanne; tlawrence@dwmlaw.com; twalkerfilm@gmail.com; thomas.saviello@legislature.maine.gov; Skolfield, Thomas; burgess@ibew104.org; Corkum, Tina; dibiasi.tony@gmail.com; mmaymcc@yahoo.com; chesterville.me@gmail.com; emdben-clerk@roadrunner.com; tmgreene@fairpoint.net; joffice@jay-maine.org; townofleeds@fairpoint.net; townoffice@lfme.org; moscow@myfairpoint.net; ccastonguay@newgloucester.com; townclerk@newsharon.maine.gov; townofstarks@gmail.com; whitefield@roadrunner.com; office@wiltonmaine.org; admin@wiscasset.org; Walter.DiCesare@brookfieldrenewable.com
Subject: URGENT: BEP Comments in support of Hearings and Appeals re. CMP corridor
Date: Friday, March 12, 2021 11:44:31 AM
Attachments: Janet Lynch BEP CMP Comments Hearings and Appeals March 2021 signed.pdf
Importance: High

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Dear Members of the Service List,

Please find my urgent comments in support of the appeals of the permit and requests for a public hearing on the proposed CMP "NECEC" corridor project through Maine's Western Mountains region. I believe the comments speak for themselves, but should you have questions, please contact me at this e-mail address.

Sincerely,

Janet Lynch, Pownal

Janet Lynch
 655 Elmwood Rd.
 Pownal, Maine 04069

jllynch@gwi.net

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

10 March 2021

Dear Chairman Draper and Members of the Board of Environmental Protection,

I strongly support the appeals of the permit and requests for a public hearing on the proposed CMP "NECEC" corridor project through Maine's Western Mountains region. I am extremely concerned and angered that this enormous proposed project of major environmental, economic and social significance has not been subject to anything approaching adequate environmental review or opportunity for public notice and comment. Rather, project advocates and those charged with regulating projects and protecting Maine's environment appear to have colluded to hastily approve the highly controversial, environmentally destructive project with minimal environmental review and little public discussion or debate.

Instead of responding to legitimate public concerns about the proposed project's negative environmental, climate, economic, and related impacts and to reasonable requests for thorough environmental review, project proponents have instead invested heavily in aggressive advertising campaigns to sell the project to Maine's unwilling public. Proponents have touted the project's purported climate benefits without backing up those claims or adequately addressing legitimate environmental, economic, social, or indeed climate concerns.

At least as concerning, Maine's PUC, DEP, and other regulatory bodies and elected officials seem to have abandoned their responsibility to act in the interests of the Maine's people in favor of the interests of those who stand to benefit financially from this environmentally disastrous project. Regulators have apparently accepted project proponents' claims regarding the project's purported benefits without adequately scrutinizing them, while indefensibly stifling public participation. Reasonable public requests for environmental review have been repeatedly refused and overruled, and efforts to ensure that Mainers are guaranteed a say on this project with far-reaching impacts on this and future generations have been stymied. Rather, Maine people have been repeatedly told that they may not challenge decisions made behind closed doors by a few non-elected members of the PUC about this controversial project of enormous scale and with major long-term impacts on our state and its people.

Scale of Project Compels BEP Jurisdiction; Public Hearings and Appeals Required

Multiple procedural irregularities surrounding the proposed project include DEP Acting Commissioner Loyzim's recent indefensible determination, made without notifying the public or this Board, that a massive 700 page revision by CMP to its NECEC permit was "minor" and therefore not of statewide significance or worthy of scrutiny by this Board or Maine's people. The cumbersome rules surrounding the instant opportunity to comment on the project's review and appeals process are further evidence of governmental intransigence regarding public participation in the permitting process for this proposed project of major significance to Maine's environment and people. The opaque decision-making process surrounding this enormous and highly controversial proposed project is unacceptable, dangerous, and profoundly undemocratic. Public hearings on the proposed project's environmental, economic, social and climate impacts, and appeals of previous decisions made without adequate opportunity for public notice and comment, are therefore urgently required.

The massive scale of the project, as well as its major impacts on the entire region for years to come, clearly demonstrate that it is unquestionably of statewide significance, and the Board of Environmental Protection should therefore have taken jurisdiction of the project from its inception, as is required by Maine law.

Significant Negative Environmental Impacts Neither Addressed Nor Mitigated

CMP/ Hydro-Quebec's proposed power line project, intended to carry electricity generated in Quebec through Maine's North Woods and on to markets in southern New England, is immense in scale. It would have devastating, irrevocable, negative environmental impacts on Maine's Western Mountains region and would cause more habitat fragmentation than any other project in the region. Despite these facts, project proponents have scarcely attempted to address, let alone mitigate, the project's negative environmental impacts in the limited planning documents the public has been allowed to access.

Maine's Western Mountains region is at the heart of the largest remaining contiguous temperate forest in North America and is the last stronghold for brook trout in the U.S. Yet according to CMP's Section 303 Clean Water Act application to the U.S. Army Corps of Engineers, the company reports that the construction of new transmission lines would impact an estimated 263 wetlands and 115 streams, many of which are critical habitat for brook trout and other vulnerable species. CMP has also made clear that the project would "unavoidably result in permanent and temporary wetland fill." It is also expected that forest in wetlands and vernal pool habitat would be removed, destroying key habitat for several endangered species and adversely affecting recreation and tourism which support local economies.

The region also provides essential habitat for other vulnerable Maine species, including moose, marten, lynx, loons, and many species of songbirds. Not only would the project destroy large areas of these critical habitats outright; it would also generate miles of extremely wide, permanently deforested areas, dangerously fragmenting this unique forest ecosystem, seriously threatening many vulnerable species which require large areas of contiguous forest environments to nest, breed, feed and survive. Other adverse environmental and climate impacts include but are not limited to pollution of soils, wetlands and streams from toxic defoliant, increased turbidity from runoff associated with the

project, drying, destruction and erosion of forest soils associated with massive logging, and resultant large-scale release of carbon from forest soils and vegetation, as well as the permanent loss of large areas of forest carbon sinks.

Indeed, when one scrutinizes the proposed project's environmentally devastating route, it is difficult to escape the conclusion that project planners were motivated by nothing beyond cost reduction. The route appears to have been laid out by someone who simply placed a ruler over the map and drew as straight a line as possible, without regard to topography, habitat, or other environmental features. Certainly the proposed route, which includes multiple crossings of streams of significance and other environmentally sensitive areas, demonstrates a flagrant lack of concern bordering on contempt for the environmental integrity of Maine's North Woods and associated riparian and wetland habitats, and for the communities which rely on the environmental health of these areas.

CMP's environmentally reckless proposed project threatens to devastate Maine's Western Mountains region and permanently harm North America's largest contiguous temperate forest and the many species which rely on it, including humans. The Board of Environmental Protection has a solemn duty to ensure that this region of major environmental, economic, and social significance is protected by holding hearings on appeals of the proposed CMP corridor project permit, to remediate DEP's failure to protect Maine's environment in its previous erroneous decision.

Putative Carbon Benefits Not Substantiated, Carbon Emissions Not Addressed, and Testimony Suppressed

Although the project's proponents claim that it would reduce carbon emissions, they have failed to adequately substantiate those claims. In fact, the project would release large amounts of carbon currently sequestered in forest soils and vegetation, and would result, by its very design, in large-scale, permanent loss of large areas of forest carbon sinks. To date, project proponents have failed to address the very significant carbon impacts of the project, while DEP refused to allow in-person expert testimony on the lack of greenhouse gas benefits from the corridor during the hearing process. This is utterly unacceptable on both procedural and substantive grounds, particularly in view of the fact that the major justification for this enormous, environmentally destructive project put forward by its proponents has been its putative carbon benefits.

Significant doubts remain about project proponents' claims regarding its putative carbon benefits. On the other hand, the mass felling of trees and disturbance of soils in mature forests would undoubtedly result in major carbon emissions, as well as permanent loss of carbon sequestration capacity. Other carbon emissions resulting from the project's associated hydro-power generation (not to mention negative environmental and social impacts in Quebec) have been insufficiently studied and scarcely discussed. Nor have the significant impacts of intentional, permanent, deforestation of large tracts of currently functioning carbon sinks on atmospheric carbon been adequately addressed.

Public Reserved Lands Concerns/ Lack of Title

The proposed project would also substantially and illegally alter two public reserved lots that its route crosses, despite the fact that CMP neither sought nor obtained the approval of the Legislature via a two-thirds vote as required by Maine's Constitution. **CMP has no right to these public reserved lands, as it lacks proper title, right, and interest, and it therefore should never have been granted a permit on these grounds.**

Conclusion

Mainers are being asked to accept the devastation of large areas of critical environmental significance, as well as permanent, large-scale destruction of functioning forest carbon sinks and the associated release of large amounts of carbon currently sequestered in those forests, on the basis of unchallenged claims made by the project's proponents. Instead of carrying out its duty to Mainers to protect our state's environment by holding hearings on the proposed project's environmental, economic, social and climate impacts, the DEP instead hastily and illegally issued a permit on the basis of little more than project proponents' claims, without adequate environmental review or scope for public participation, as is required for a proposed project of this magnitude. This is unacceptable, intolerable, and illegal.

The BEP must hear and carefully consider testimony on the negative environmental, economic and social impacts of the proposed CMP corridor, as well as testimony challenging claims by the project's proponents regarding its alleged greenhouse gas emissions benefits, and it must consider appeals of the permit based on previously suppressed testimony. It is the solemn duty of the BEP to protect Maine's environment and people, and to carefully review all evidence available to it regarding proposed projects of major environmental significance, including the proposed CMP corridor project. It is extremely damning that testimony regarding this project's environmental and climate impacts has been suppressed, and permits issued without benefit of such essential testimony cannot stand.

Maine People refuse to stand idly by and see our environment and our rights trampled by those who seek to suppress relevant testimony and public participation in the permitting process for this enormous project with significant far-reaching, long-term environmental, economic, social, and climate impacts on this state and its people. **Hearings must be held and appeals considered on an urgent basis.**

Sincerely,

Janet Lynch

Cc: Maine DEP/ CMP Project Permit Service List