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GOVERNOR

STATE OF MAINE  
DEPARTMENT OF  
ENVIRONMENTAL PROTECTION



PAUL MERCER  
COMMISSIONER

September 4, 2018

**SENT VIA ELECTRONIC MAIL ONLY**

Gerry Mirabile  
Central Maine Power Company  
83 Edison Drive  
Augusta, ME 04660

**Re: NECEC Project  
Review of CMP’s submissions since July 26, 2018, and identification of  
additional information needs**

Dear Gerry,

This is in response to the materials CMP has submitted to the DEP and LUPC since July 26, 2018, for the 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). Follow up questions and requests for additional information are organized by the date of each submission; however, there is some overlap of topic areas still needing attention. For efficiency, I have consulted with LUPC staff regarding additional needs pertaining to the visual impact assessment (VIA) that both DEP and LUPC need for their respective roles in this matter, and included those items in this letter.

**I. July 26, 2018 Submission**

**A. Cover Letter**

1. Regarding alternatives, your letter makes numerous statements regarding impacts to recreational users of the river. “At the Preferred Alternative location, the river is generally flat water, and is not particularly valued by recreational users . . . This commercial [rafting] and recreational use of this section of the river arguably has more impact on any bucolic nature of the river than does the proposed overhead crossing . . . This existing human-caused visual impact at the Harris Dam put-in is significantly greater than the Preferred Alternative would be (see the discussion below), and affects rafters’ and other boaters’ aesthetic expectations on the river downstream . . . Due to the position, buffering, and limited duration of viewing, the overhead crossing in the proposed location will not diminish the recreational use or scenic character of the outstanding river segment located between the Forks and Indian Pond Dam. Accordingly, the two conductors and two shield wires that would

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cross the river at the Preferred Alternative location, which as described above is not particularly unique or wild, would not adversely affect existing uses of the Kennebec River.” Did CMP draw these conclusions based on user survey data? Can you provide the basis for these statements?

2. In your letter, you state that the underground transmission alternative would require approximately 1,500 feet of open trenching to connect the Cable Termination Stations on each side of the river. I have seen several horizontal directional drilling operations, including the natural gas pipeline which was installed under the Penobscot River in Orrington. These have not required a trench to be dug to complete the drilling operation. Please explain why this trenching is required, how this would impact the buffer, and, if needed, whether these trenches would be temporary and vegetated after construction.
3. Your letter states that CMP continues to gather information to be in a better position to answer questions from the public. What additional information are you gathering, when will it be available, and how will that information inform CMP's decision concerning alternatives to the overhead crossing?
4. Your letter identifies that upgrades on approximately 15 miles of unimproved roads and associated bridges would be required to provide access to the Termination Stations associated with the underground alternative. Improvements to existing roads and water crossings may be beneficial to fisheries and water quality. Is it possible to limit vehicular access (i.e., gates) on improved roads so that any increased use of the Cold Stream Forest conservation area would have minimal or no impact?
5. It is noted that page 3 of the cover letter states that no special exception criteria review is required by the LUPC. This statement conflicts with that provided in Section 25.1 of the pending Site Law application. “The LUPC must certify that the proposed development is an allowed use within all subdistricts within which it is proposed, and that the proposed development meets any LUPC land use standards that are applicable to the Project and that are not considered by the MDEP in its review. 38 M.R.S. § 489-A-1(2)(D)(1-A), (B-1). The MDEP may not issue a permit until the LUPC certifies the Project.” *Id.*

### **B. Attachment III**

6. In response to my question #3 concerning structures within 25 feet of a river, stream or brook, you stated that CMP intends to provide an updated waterbody crossing table and a site-specific erosion plan. I have reviewed the updated waterbody crossing table and note that there are eleven structures within 25 feet of rivers, streams and brooks. When does CMP intend to submit these site-specific erosion control plans?

7. In response to Question 15 concerning the VCP around streams, you state that within the "wire zone" all woody vegetation will be cut. This statement is repeated in the complete revised VCP (August 14 submission Attachment B), but goes on to add that non-capable species would be allowed to remain if they won't pose a hazard. Please provide a list of non-capable species. How are non-capable species identified? Also in regards to the VCP and the VMP both contain your typical diagram of an H-Frame structure which shows the wire zone. However, a majority of the HVDC line will be on single pole structures. Can you please provide a diagram to be included with these vegetation management plans that shows the wire zone for a single pole structure? This detail should be included in the VMP and the VCP.

### **C. Attachment IX Powers Engineering Report on Horizontal Directional Drilling**

8. The Power Engineers, Inc. report (Power's Report) and your cover letter state that a horizontal directional drill would require upgrades to approximately 15 miles of access roads. To construct the overhead crossing it appears that these upgrades are required. Is that correct?
9. The Power's Report also states that the cost of constructing the roads is included in the estimate for the overhead crossing and the Termination Station construction, but not in the underground estimate. Furthermore, an examination of the structure locations for the overhead line and the location of the Termination Stations reveals that the overhead option requires a few hundred feet more road construction. If you have to build a road to the site regardless of what option you ultimately choose to pursue, does the price change significantly? If so, why?
10. The Power's Report, in describing the Termination Stations states, "This is also an opportunity, if needed, to drop off some of the fibers for local distribution connection." Power's Report, page 4 paragraph 3. Media reports have suggested that CMP is willing to provide broadband internet access along the Route 201 corridor, among other places. Wouldn't having fiber optic cable in this location be beneficial to that effort?

## **II. July 31, 2018 Submission**

### **A. Cover Letter**

11. In CMP's response to DEP's additional questions, CMP states that the numerous white pine trees that are in excess of 100 feet tall on either side of the proposed overhead river crossing assist in buffering the transmission lines and poles from the river. It appears that considerable reliance is given to these trees to provide screening. How can CMP assure that these trees will continue to function for this purpose for the 40-year useful life project? Has the age/health of these trees been

evaluated? What is the likelihood that trees in the understory would provide similar screening if the tall pines are destroyed by disease or storms?

### **III. August 14, 2018 Submission**

#### **A. Attachment B Vegetation Clearing Plan and Post-Construction Vegetation Maintenance Plan**

12. Section 2.3 describes how petroleum products and hazardous material will be handled during construction. Subsection (d) states that vehicle and equipment refueling will not take place within 25 feet of certain resources. The list includes area in Maine's biological conservation data system and S1 through S3 rare communities. All of these areas will have been mapped as part of the permitting process. Why not use this project specific data?
13. Section 4.1(f) states no structures will be placed within 25 feet of any stream regardless of classification, however the revised waterbody crossing table (in your cover letter dated, August 13, 2018) indicates at least eleven structures within 25 feet of streams and brooks. Please clarify.
14. In the VMP section that deals with herbicide application your proposal specifically prohibits foliar herbicides within 100 feet of perennial streams and 25 feet of intermittent streams on Segment 1 and 25 feet of any stream on the other segments. You may consider modifying this provision to allow the use of herbicides in those areas for the control of invasive species, in accordance with other State and federal laws.

#### **B. Attachment F Architectural History Report.**

15. The Architectural History Report states that 127 properties have been previously listed or determined to be eligible for listing on the National Register of Historic Places (NRHP) within the project area. In addition, the report states that there are 186 which have been recommended as potentially eligible to be listed on the NRHP. Does CMP intend to provide an analysis for potential impact to these resources, including a visibility analysis? If so, when would CMP expect to have that completed? If CMP intends to prepare an analysis of the impacts to historic properties, it will need to be completed with a reasonable opportunity for other parties to review it prior to the public hearing.

#### **C. Attachment G Archaeological Survey**

16. The Archaeological Survey identifies 26 archaeological sites where avoidance is recommended. Are any structures or construction roads located in these sites? If so,

how does CMP intend to construction the project while maintaining the integrity of these sites?

**D. Attachment K Compensation Plan**

17. The proposed compensation plan includes several proposed conservation parcels, including the Lower Enchanted Tract, the Basin Tract, and the Grand Falls Tract. In my June 1, 2018 email to you in response to your request for feedback on the preservation parcel, I stated that the two parcels (the Grand Falls Lot and the Basin Tract) which have no legal access would not be suitable for any compensation that is required by the Wetlands and Waterbodies Protection Rules. Without legal access, there would be no way for the Department to determine whether any activity on the parcel is in compliance with the terms and conditions in any the easement or deed restriction. The same would hold true for the Lower Enchanted Lot depending on what "Limited legal access on woods roads" means and whether Department staff can access the site. My position on this has not changed. CMP is free to transfer ownership of these lots to some other party, with or without deed restrictions, but the Department cannot have third-party enforcement authority as part of any easement to deed restriction.
18. The Flagstaff Lake Tract appears to have some historic logging impacts. Has CMP considered any restoration efforts on this parcel to enhance the functions and values of the wetlands?
19. In Section 1.2.2.4 of the Revised Compensation Plan, CMP is proposing to implement a "chop and drop" habitat enhancement program in consultation with MDIFW. Please provide more details on this program, including how many streams you intend to treat, how long this program would last, how much money you are willing to spend on this effort and what regions are you expecting to utilize this program. This aspect of the project is of interest to several intervenors, so the plan will need to be developed with ample opportunity for parties to comment on it prior to the public hearing.
20. Also in that section CMP states that it intends to replace existing culverts to improve fish passage and habitat connectivity. Please provide details, like the above information, for this program. This plan needs to be developed with an ample opportunity for the intervenors to review it prior to the public hearing.
21. There is no discussion concerning mitigation for any unavoidable impacts to rare, threatened, or endangered species such as Roaring Brook Mayfly or Spring Salamander. CMP needs to develop a compensation plan for these impacts, in conjunction with the Maine Department of Inland Fisheries and Wildlife. This plan needs to be developed with an ample opportunity for the intervenors to review it prior to the public hearing.

**IV. August 20, 2018 Peer Review of the VIA Submission**

- A. James Palmer submitted *Review of the New England Clean Energy Connect Visual Quality and Scenic Character*, dated August 20, 2018, in response to the visual impact assessment (VIA) prepared by Terrence J. DeWan & Associates (TJD&A). Based on this peer review, several additional questions and information requests have arisen.
22. Section 4 (page 17) of the peer review discusses the data, or lack thereof, concerning the impact of the project on use and viewer expectations of the scenic resources impacted by the project. There are only generalized statements concerning the impact and no user data. CMP needs to provide data to support your assertion that the project will not impact the use, or enjoyment of the scenic resources that have project visibility. There are two locations that come to mind where user data could easily be collect, the end of rafting trips and the Attean Overlook. There are many more locations where this kind of data could be collected and these examples are not meant to limit number or location of the effort.
  23. Section 4.7 (page 20) discusses the evaluation of the scenic impact on public roads. The project will cross approximately 161 public roads according to Mr. Palmer's estimate and except for the Old Canada Road, none of these crossings were evaluated in terms of scenic impact. In reviewing the permit for MPRP, CMP provided, and the Department reviewed, crossings of public roads and in fact required visual screening in some locations. CMP needs to conduct this kind of analysis for the NECEC project as well. CMP also needs to proposes visual screening in areas where it is deemed appropriate.
  24. Section 4.8 (page 20) summarizes Mr. Palmer's review of the completeness of the VIA. In that section, he states that there are a great many places that fit the definition of a scenic resource which were not inventoried. CMP needs to provide a complete inventory of scenic resources potentially impacted by the project, including but not limited to, historic sites, streams and public roads. CMP also needs to separate the 86 conservation areas into scenic resource categories.
  25. Section 5 (starting on page 47) of the peer review discusses the reasonableness of the VIA and whether it is technically correct. In Section 5.2 Mr. Palmer states that the VIA does not appear to consider the 150-foot wide cleared corridor. He goes on to state that the VIA only created photosimulations for the project with leaf on conditions. There are no simulations with leaf off or snow cover conditions. CMP will need to prepare photosimulations from scenic resources that depict snow cover conditions. CMP has identified that the use of self-weathering steel poles for the project assist in minimizing contrast with the

surrounding landscape. However, this appears to only be the case during leaf on conditions and there is no consideration of the contrast of the poles against the white background of snow, which is present for a considerable period of the year. Projects that involve clearing strips of land, they are much more visible in the winter.

26. In his summary of comments (page 54) about the photosimulations, Mr. Palmer writes that, "...it does not appear that an attempt was made to identify and photographically document representative worst-case viewpoints from all of the scenic resources." If worse-case documentation exists, please provide it, if not, CMP will need to prepare and submit that documentation.
27. Mr. Palmer provides bullet points highlighting several other issues with the photosimulations on pages 54 and 55, including, notably, that there is no clear process that guided the selection of key observation points. Please address the summary comments laid out by Mr. Palmer on these two pages.
28. In section 5.6 (page 58), Mr. Palmer notes "There is no indication that visual impacts were considered in the selection of the route for Section 1. There might be an alternative route with lower visual impacts." Please address this comment explaining what consideration was given to the proposed routing of the transmission line in Segments 1 and 2 where a new corridor must be developed.
29. Section 6 (starting on page 62) of Mr. Palmer's review provides his conclusion concerning the VIA, some of which have been discussed above. Please provide a response to the remaining issues which Mr. Palmer identified, which at a minimum must address the following concerns:
  - a. The VIA does not identify and evaluate all the scenic resources.
  - b. The VIA does not use the most accurate available land cover height information.
  - c. The VIA does not provide a procedure to identify key observation points (KOAs).
  - d. The VIA does not evaluate leaf off or snow cover conditions.
  - e. Efforts to interview or conduct surveys at viewpoints with the greatest potential visual impacts, including how user feedback changes through the seasons.
  - f. The VIA does not evaluate cumulative impacts of the project on scenic quality.

I understand that there is still a significant amount of information you need to collect to respond to these questions. However, if you could provide a timeframe for submission prior to the September 7, 2018 Pre-Hearing Conference that would be most useful in determining the timing

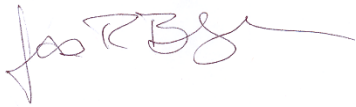
Letter to Gerry Mirabile

September 4, 2018

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of the rest of the hearing process. If you need further clarification on any of these issues, please do not hesitate to contact me either by phone or e-mail.

Sincerely

A handwritten signature in blue ink, appearing to read "James R. Beyer", with a long horizontal flourish extending to the right.

James R. Beyer  
Regional Licensing and Compliance Manager  
Eastern Maine Regional Office  
Department of Environmental Protection

cc via electronic mail:  
Service List