

PETITION

TO: The Maine Department of Environmental Protection for leave to intervene in the matter of Suspension of NECEC Permits

FROM: Friends of the Boundary Mountains (FBM)

Identification of the petitioner:

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. The group formed in 1995 when the protected mountaintops were originally threatened by rezoning for industrial wind power development.

Currently, FBM is an intervenor in the proceedings of the Maine Department of Environmental Protection concerning CMP's application for building a high-voltage transmission line (NECEC) that would bisect one of the last large intact temperate forests remaining east of the Mississippi River, in the western mountains of Maine. Friends of the Boundary Mountains has fully participated in these arduous proceedings since 2018, including providing an expert witness during the hearings to testify on the ecological adverse impacts of NECEC.

Members and supporters of Friends of the Boundary Mountains testified during the public phase of the hearings and sent in comments.

FBM has a long history of working to safeguard the Boundary Mountains from industrial development. FBM was an active participant in the LURC and DEP proceedings regarding Kenetech Corporation's plan to industrialize the Boundary Mountains with windpower development in the 1990s.

In 2007 FBM was granted intervenor status with respect to the LURC proceedings in the matter of Zoning Petition ZP 709, submitted by TransCanada Maine Wind Development, Inc and Plum Creek Maine Timberlands, LLC for the Kibby Wind Power Project in Kibby and Skinner Townships.

In 2010 FBM was granted intervenor status with respect to the LURC proceedings in the matter of Development Permit DP 4860 (Sisk Mountain) located in Kibby Twp. and Chain of Ponds Twp, submitted to the Land Use Regulation Commission (LURC) by TransCanada Maine Wind Development, Inc.

FBM also actively participated in the LURC rulemaking proceedings regarding TransCanada's petition to expand the expedited zone on Sisk Mountain in Chain of Ponds Township.

FBM actively participated in all the above proceedings with LURC.

Effect of the proposed suspension on the petitioner:

Members of Friends of the Boundary Mountains have been gravely wounded by the backroom deals made by BPL and CMP in violation of Maine law and constitutional requirements. Friends of the Boundary Mountains will suffer irreparable injury if CMP is allowed to continue to build a project it cannot complete because it doesn't have TRI over the approved route. FBM and its members will suffer irreparable injury if the severe adverse impacts of NECEC are allowed to continue in Segment 1 when the project itself is illegal.

We demand accountability for BPL's perfidy in giving away our public lands without any regard to legality or overwhelming public interest. DEP is complicit in this perfidy because it was warned at the beginning of the process that the BPL/CMP lease was questionable, but chose to ignore the issue.

The effect of the proposed suspension will be to move one step closer in making our members whole again and in restoring the integrity of governmental stewardship of our public lands. A further step would be to permanently revoke CMP's permits.

The proposed suspension would help restore the sanctity of Maine's public lands. Maine has only a limited amount of public land and every inch is a precious resource and should not be given away to a foreign corporation behind the backs of the public, as BPL has done. Maine is ranked only 41 out of the 50 states in terms of the amount of public land ownership, at 5.7%.

The proposed suspension would help affirm our trust in the integrity of the state government in complying with the Constitution of the State of Maine. The Superior Court found that the constitutional amendment limited the scope of BPL's authority over public reserved lands. BPL did not follow the law which obligated it to determine whether a particular action (including a lease for electric power transmission pursuant to section 1852(4)) reduces or substantially alters the uses of public reserved lands, and, if so, refer the matter to the Legislature. Maine citizens passed a constitutional amendment to protect the wholeness of our public lands by establishing Legislative jurisdiction to prevent executive overreach.

Specific contentions regarding the subject matter of the hearing and the relevant statutory criteria:

Friends of the Boundary Mountains contends that the decision of the Maine Superior Court in *Black v. Cutko*, reversing the Bureau of Parks and Lands grant of a lease to Central Maine Power and NECEC Transmission LLC (together "CMP") over the Johnson Mountain and West Forks Public Reserved Lots for a 300 foot wide transmission corridor, and declaring that the Bureau Director was without authority to enter the 2014 Lease (that served as title, right or interest—TRI—for the original permits) and the 2020 Lease (that served as TRI for the revisions and amendments thereto) makes the permits granted by DEP to CMP completely void and therefore these permits should be suspended or revoked.

We contend that in light of the Superior Court's decision in *Black v. Cutko* CMP has failed to provide the required documentation of TRI as set forth in Chapter 2 Section 11(D) of the Department's Rules, because of its facial noncompliance with Article IX, Section 23 of the Maine Constitution and 12 M.R.S.A. §§ 598 to 598-B. Simply stated, CMP does not meet the requirements of the NRPA and the Site Law.

Given that CMP has *no interest* in a critical portion of property at issue, FBM contends that CMP does not have TRI, which is expressly required by the Department rules: "An applicant must maintain sufficient title, right or interest throughout the entire application processing period." 06-096 CMR Ch. 2, § 11(D). This expressly includes "sufficient title, right or interest *in all of the property that is proposed for development or use.*" (emphasis added). "This rule applies to all license applications accepted as complete, appeals of Commissioner license decisions to the Board, and petitions to modify, revoke or suspend a license filed on or after the effective date of this rule, or any amendments to this rule."

Furthermore, the Maine Law Court recognizes that a judicial declaration invalidating rights in the land subject to a permit means that the permit "might be revoked." *Southridge Corp. v. Bd. of Env't Prot.*, 655 A.2d 345, 348 (Me. 1995)

Topics proposed to be addressed through testimony

- Value and sanctity of Maine's Public Reserved Lands
- Breach of trust in leasing Public Reserved Lands to CMP without Legislative consent

Spokesperson for the petitioner:

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Statement regarding the ability of the petitioner to participate in the proceeding:

Friends of the Boundary Mountains is committed to participate in the NECEC permit suspension proceedings. As previously stated, we have been participating since 2018 in the CMP/ NECEC proceedings. Our ability to participate is also demonstrated by our history as intervenors in 3 previous LURC proceedings involving large-scale industrial windpower projects in the Boundary Mountains, as detailed above. Friends of the Boundary Mountains is committed to protecting these wildlands and intends to oppose CMP's intrusion to the utmost of its ability.

Submitted: September 13, 2021