

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:)
) LICENSE SUSPENSION HEARING
CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
) POST HEARING BRIEF AND
L-27625-26-A-N) PROPOSED FINDINGS OF
L-27625-TB-B-N) WEST FORKS, TOWN OF
L-27625-2C-C-N) CARATUNK, KENNEBEC RIVER
L-27625-VP-D-N) ANGLERS, MAINE GUIDE SERVICE,
L-27625-IW-E-N) LLC, HAWKS NEST LODGE, ED
) BUZZELL, KATHY BARKLEY, KIM
) LYMAN, NOAH HALE, ERIC
) SHERMAN, MATT WAGNER, MIKE
) PILSBURY, MANDY FARRAR AND
) CARRIE CARPENTER

**POST HEARING BRIEF AND PROPOSED FINDINGS OF WEST FORKS, 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, MIKE PILSBURY, MANDY FARRAR
AND CARRIE CARPENTER**

Pursuant to Ch. 3, § 23 of the Maine Department of Environmental Protection’s (“Department”) Rules and the Department’s September 17, 2021 First Procedural 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, Matt Wagner, Mike Pilsbury, Mandy Farrar and Carrie Carpenter (“West Forks Group”), by and through their attorneys, Murray Plumb & Murray, submit this Post Hearing Brief and Proposed Findings to the Department requesting that the Commissioner exercise her authority and revoke, or at a minimum suspend, the above referenced Department Order on approval of the Licenses (the “Order” or “Licenses”) to Central Maine Power/ New England Clean Energy Connect

(“CMP” or “NECEC”) pursuant to 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E). In support of revocation or suspension, West Forks Group submits the following illustrating that CMP does not have a viable re-route to avoid the public lands subject to the Superior Court decision in *Black v. Cutko*, Dkt. No. BCDWB-CV-2020-29.

I. CMP failed to Provide Viable Re-Routing Alternatives to Avoid Public Lands

The re-routing alternatives submitted by CMP are speculative, at best. CMP did not and cannot prove sufficient title, right or interest (“TRI”) in the lands either to the east or west of Route 201. Even if CMP were able to obtain TRI, CMP did not and cannot prove that a re-route would not have significant environmental impacts. The credible evidence submitted by NRCM through the testimony of Jeff Reardon clearly lays out this factual information in the following and through Reardon Exhibits A and B:

If NECEC is going to cross over, under, or near the public lots, then more complete protection adjacent to the Capital Road and the inlets and outlets of Wilson Hill Pond and Little Wilson Hill Pond is necessary. The aquatic resources that will be affected by NECEC crossing over, under, or near the public lots are among and/or belong within the most intact watersheds remaining in the continental United States. Western Maine contains the vast majority of undegraded aquatic habitat in the northeast. The entire Maine/Quebec border falls into this category of very low aquatic habitat degradation as does the entire Cold Stream watershed, including Tomhegan Stream and its tributaries.

All of this informs the feasibility of possible re-routes of the NECEC. As an initial matter, the NECEC cannot be re-routed east of Route 201. As illustrated in the matrix of conservation land on the map attached as Exhibit A, one possible re-route east of Route 201 would require NECEC to cross the Forest Society of Maine’s and the Bureau of Parks and Land’s Moosehead Region Conservation Easement; however, that easement only allows utility transmission structures associated with the local distribution of telecommunication services and does not allow long-distance energy or telecommunications distribution systems such as NECEC. A copy of this conservation easement is attached as Exhibit B. The only other possible re-route east of Route 201 would require NECEC to go south prior to reaching the

public lots and cross two tributaries to Cold Stream and then cross Cold Stream Forest...¹

Further, the Moosehead Region Conservation Easement submitted as Reardon Exhibit B, and submitted by Karin Tilberg, President/CEO of the Forest Society of Maine as the Holder of the Conservation Easement, specifically defines allowable uses for local transmission structures but does not allow for a high voltage transmission line. To wit: “Utility Transmission Structures: means the Structures normally associated with the local distribution of telecommunication or electric power services, including distribution lines, cables, poles and equipment.”² This language is plain and clear. Ms. Tilberg’s testimony unequivocally stated the same.³

Additional credible testimony came in through public comment further showing that CMP’s speculation about being able to cross over other lands with conservation easements was equally far-fetched. As but one example, Brenda Cummings submitted materials including a copy of the Maine Forestry Legacy Program Assessment of Need dated February 2020⁴ which illustrate how incompatible CMP’s corridor would be with the goals of land management and forest protections in the Cold Stream Forest. In short, CMP failed to provide any viable alternative re-routes.

II. The Invalidated Public Lands Lease Coupled with No Clear Alternative Route Requires Revocation or Suspension of the Licenses.

The testimony and evidence show that the Licenses, which remain unresolved on appeal, must be revoked or suspended. The Commissioner must find that the invalidated public land lease⁵ over a portion of the corridor creates “a change in condition or circumstance that requires

¹ October 1, 2021 Pre-filed Direct Test. of Jeffrey Reardon (NRCM) at 3-4.

² October 1, 2021 Pre-Filed Direct Test. of Jeffrey Reardon (NRCM) Exhibit B at 8.

³ October 19, 2021 Public Comment Test. of Karin Tilberg.

⁴ October 19, 2021 Public Comment Test. of Brenda Cummings.

⁵ Black vs. Cutko, Dkt. No. BCDWB-CV-2020-29.

revocation or suspension...” of the Licenses. 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E). It is not “merely” the public lands lease that demands this result but rather the fact that with this segment of the corridor now in doubt, the Department’s underlying determination that the record supporting the issuance of the Licenses over the entirety of the project, is now in doubt. Time is needed, but the protection of the environment while the days go by, must be protected from the seemingly inexorable clearing CMP has embarked upon.

As the Order determined: “the originally proposed project 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.” Order at 1. The Order points to various mitigation measures and conditions that supposedly would alter the severity of the impact. However, NONE of those mitigation measures were tested against the impacts for an *alternative route*. Moreover, since none of the alternative routes CMP proposed during the suspension hearing proceeding were part of the underlying application and therefore never evaluated by the Department, they cannot be considered in a vacuum and must be considered in the context of the whole project. For these reasons, the license should be revoked, or at a minimum, suspended until such time as the project in its totality with the alternative routes can be reviewed. As Mr. Reardon testified in his pre-filed testimony:

While it is theoretically possible for the NECEC to be re-routed west of Route 201 without crossing various areas of conservation land such as the Western Mountain Easement of the Dead River Trail and Conservation Corridor Easement, any such reroute would require the NECEC to cross various waterbodies and eventually the Dead River. It would also require a new crossing of the Kennebec River, another major undertaking that would require close scrutiny. Thus, any such re-route would necessarily be significant and require extensive permitting procedures and a new alternatives analysis of prospective routes and their impacts on fish, wildlife, aquatic and scenic resources in an area that is rich in these. Significantly, the alternatives analysis for the current route has already rejected that route along with other alternatives to Segment 1.⁶

⁶ October 1, 2021 Pre-filed Direct Test. of Jeffrey Reardon (NRCM) at 4.

Further, as Mr. Preisendorfer stated in his pre-filed rebuttal testimony:

[T]hese alternatives would extend the length of the transmission lines and increase associated corridor impacts. Their visibility on the landscape would increase from key recreational resources such as the Dead River and Old Canada Road Scenic Byway.... The nature and extent of the impacts associated with these re-routing alternatives was never analyzed or disclosed to the public. Current permits not associated with the public reserve lands should be suspended while this analysis occurs and permits for the greater project should be revoked and considered for reissuance when an alignment is finalized.⁷

As multiple witnesses testified, but stated succinctly by Mr. Reardon: “Because the permitting procedures of any alternative would be time-consuming and the outcome cannot be predicted in advance, no further construction of NECEC should take place until the alternative has been finally identified and approved in order to avoid unnecessary and highly detrimental impacts to the environment.”⁸

CMP argues in its pre-filed testimony that the Department should let it continue to build. They have the permits (although they make no mention of the fact that these very same permits are on appeal and the permits could be voided or the conditions altered) so why would anyone stand in their way? Mr. Dickinson cites to the miles of corridor already cut, poles installed, materials and transmission line ordered as a reason NOT to stop the construction.⁹ What this should tell the Commissioner is that this Company has no intention of slowing down or stopping and is hell bent on completing the construction in a bid to say it is entitled and you, State of Maine, cannot stop us now!

What the Department and Commissioner should find even more alarming is that not only does CMP insist that it can and *will* continue construction, but the Company has no realistic plans that would adequately restore the environment if this project cannot be completed. The

⁷ October 12, 2021 Pre-filed Rebuttal Test. of Justin Preisendorfer (West Forks, et al.) at 2-readacted.

⁸ October 1, 2021 Pre-filed Direct Test. of Jeffrey Reardon (NRCM) at 4-5.

⁹ October 4, 2021 Pre-filed Direct Test. of Thorn Dickinson (CMP and NECEC) at 6-9.

entirety of the utterly inadequate decommission plan can be found in the pre-file testimony of Mr. Mirabile where he states: “[I]n the... scenario of a permanent cessation and cancellation of the Project... the company would decommission the high voltage current (HVDC) transmission line over the corridor, followed by natural revegetation of the area.”¹⁰ CMP would have everyone believe that because commercial logging has occurred in the area in the past, this clear cut corridor would have the same impact and the forest can and will simply grow back; just let nature take its course. This approach to decommissioning a transmission corridor and restoration of forest habitat is just plain wrong as Mr. Merchant explained in his pre-filed rebuttal testimony:

A transmission line like the NECEC is radically different: it opens up and alters forested landscapes permanently, which leads to disruptions for a variety of wildlife, their habitats and travel behavior... fragmentation—whether permanent or temporary—degrades native terrestrial and aquatic ecosystems and reduces biodiversity and regional connectivity over time and in a number of ways... corridor vegetation management reduces forest age-class and forest cover diversity, which in turn disrupts and impacts associated wildlife habitats and travel, both within the corridor and outside the permanently cleared corridor. There is thus a notable difference between the environmental effects on forests from managed timber harvesting versus a transmission line.¹¹

In sum, as Mr. Merchant, Mr. Preisendorfer, and Mr. Reardon all testified, allowing CMP to continue to clear and build when the route is now uncertain, will have long lasting effects that will take decades to restore. Moreover, CMP’s own testimony illustrates how ill equipped it is to oversee any real decommission and restoration plan.

It was wrong to allow CMP to construct when the Licenses remained on appeal. While West Forks Group recognizes that the appeal is not before the Commissioner in this Suspension proceeding, the Order and License appeal remains a relevant fact that cannot be ignored – just one of the proverbial elephants in the room – especially now when clear evidence shows there has been a change of circumstance. It is wrong to allow CMP to continue doing damage to the

¹⁰ October 4, 2021 Pre-filed Test. of Gerry Mirabile at 247 redacted (NECEC).

¹¹ October 8, 2021 Pre-filed Rebuttal Test. of Roger Merchant w/ Exhibit (West Forks, et al.) at 3 redacted.

environment that cannot easily be undone, but it is even more egregious a wrong when the Company doing that damage has no clear idea how it will right that environmental wrong.

Conclusion

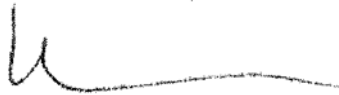
For all of the foregoing reasons, West Forks Group respectfully requests the Commissioner revoke or at least suspend the Licenses until such time as CMP shows sufficient TRI in an alternate route, any alternate route is fully assessed for environmental and aesthetic impacts in Segment 1, and all additional impacts fully reviewed in the context of the entirety of the project's environmental impacts.

Respectfully Submitted,

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Barkley, Kim Lyman, Noah Hale, Eric Sherman,
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