

PUBLIC HEARING TESTIMONY: New England Clean Energy Connect Project License Suspension Proceeding

State of Maine Department of Environmental Protection Submitted by Email to Ruth.A.Burke@maine.gov on 10/16/21

Date: November 22, 2021

To: Members of the Hearing Committee for the Maine Dept. of Environmental Protection

From: Thomas Saviello, Wilton, Maine

Re: CMP corridor project with Hydro-Quebec - License Suspension

Position: Support the immediate revocation or suspension of the permit(s) issued to CMP/NECEC

My name is Thomas Saviello. I live in Wilton, Maine. I am retired after 33 years with the forest products industry. Before retiring I serve in State legislature as both a Representative and as a Senator.

The Department of Environmental Commissioner must meet her statutorily requirements as written in Title 38 by immediately revoking or at minimum suspending the permit for CMP's New England Clean Energy Connect (the Corridor). **Title 38: §341-A clearly gives the Commissioner this authority.**

Title 38: §341-A. Department of Environmental Protection

There is established a Department of Environmental Protection, in this Title called the "department." [PL 1989, c. 890, Pt. A, §13 (NEW); PL 1989, c. 890, Pt. A, §40 (AFF).]

Purpose. The department shall prevent, abate and control the pollution of the air, water and land and preserve, improve and prevent diminution of the natural environment of the State. The department shall protect and enhance the public's right to use and enjoy the State's natural resources and may educate the public on natural resource use, requirements and issues.

The key words are “.... prevent diminution of the natural environment of the State.” There is no doubt in my mind and the minds of over 250,000 Maine voters who said stop the damage this project to develop a high impact electric transmission line, like the Corridor, now and into the future. These voters express their constitutional rights by voting “yes” to stop such development.

Title 38 §342. Commissioner, duties 11-B, gives the Commissioner clear statutory permission to do so.

Title 38 §342. Commissioner, duties 11-B. Revoke or suspend licenses and permits. Notwithstanding Title 5, section 10051, after written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4, the commissioner may revoke or suspend a license whenever the commissioner finds that:

A. The licensee has violated any condition of the license; [PL 2011, c. 304, Pt. H, §17 (NEW).]

B. The licensee has obtained a license by misrepresenting or failing to disclose fully all relevant facts; [PL 2011, c. 304, Pt. H, §17 (NEW).]

C. The licensed discharge or activity poses a threat to human health or the environment; [PL 2011, c. 304, Pt. H, §17 (NEW).]

D. The license fails to include any standard or limitation legally required on the date of issuance; [PL 2011, c. 304, Pt. H, §17 (NEW).]

E. There has been a change in any condition or circumstance that requires revocation or suspension of a license; [PL 2011, c. 304, Pt. H, §17 (NEW).]

F. There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license; [PL 2011, c. 304, Pt. H, §17 (NEW).]

G. The licensee has violated any law administered by the department; or [PL 2011, c. 304, Pt. H, §17 (NEW).]

H. The license fails to include any standard or limitation required pursuant to the federal Clean Air Act Amendments of 1990. [PL 2011, c. 304, Pt. H, §17 (NEW).]

For the purposes of this subsection, "license" includes any license, permit, order, approval or certification issued by the department and "licensee" means the holder of the license.

[PL 2017, c. 137, Pt. A, §4 (AMD).]

I would suggest the licensee, CMP/NECEC LLC, has violated A, C, E, and F.

A. The licensee has violated any condition of the license; [PL 2011, c. 304, PH, §17 (NEW).]

The licensee is not in compliance with section D. Department Analysis, Findings, and Conclusions 3. Conservation of the Site Location Permit dated may 20,2020. (See the latter from The Nature Conservancy and Conservation law Foundation attached

B. The licensed discharge or activity poses a threat to human health or the environment; [PL 2011, c. 304, Pt. H, §17 (NEW).]

The licensee has ignored the will of the Maine people by continuing to cut and destroy segment 1 and 2 of the project. (See picture 1 and 2 of the new NECEC cutting in Segment 1)

E. There has been a change in any condition or circumstance that requires revocation or suspension of a license; [PL 2011, c. 304, Pt. H, §17 (NEW).]

On November 2, 2021 nearly 250,000 Maine voters said yes to stop projects like the Corridor. Fifty nine percent of Maine votes said STOP this work now. This feeling is still true today. (See [ref1121.xlsx \(live.com\)](#) and NRCM poll attached)

F. There has been a change in any condition or circumstance that requires a corrective action or a temporary or permanent modification of the terms of the license; [PL 2011, c. 304, Pt. H, §17 (NEW).]

The tapering condition required in D. Department Analysis, Findings, and Conclusions a. Habitat Fragmentation and Wildlife Travel Corridors 1. Tapering is not possible to be maintained. The protection tapering was designed to protect the environment, wildlife, fisheries and vista cannot be met in the even age parts of the forest the Corridor crosses. (See letters sent to from Senator Rick Bennett, Senator Russ Black, Representative Lori Gramlich and Representative Scott Landry during the summer 2021. These are already on file with DEP. Also see the Johnson Mt. report submitted as part of the written comments for the suspension hearing on 10-18-21.)

Central Maine Power (CMP)/ NECEC, LLC seem to be living in a fantasy world related to the NECEC permit. Perhaps they should consider retaking a Maine civics class. They seem to think a permit to cross the public lands will simply be reissued by the State's Bureau of Parks and Lands. They simply ignore the Maine State Legislature's constitutional and statutory responsibilities to act a Trustee for this precious resource owned by Maine Citizens. I would suggest they read Section IIIIV paragraph 23 of the Maine Constitution and Title 12 598-A for enlightenment. In fact, the 129th legislature and 130 the legislature has already weighed saying this project will be a substantial alteration of the Public Lands. (Attach a summary of legislative actions in the 129th and 130th legislatures.).

Let me address a few other statements made by CMP/NECEC, LLC in their filings.

They keep offering the bogus claims around the **Corridor climate benefits**. Yet, they seem to ignore these benefits are NOT in the Governor's Climate Road map to reduce greenhouse gases ([MaineWontWait December2020.pdf](#).) They ignore the fact that they themselves stated the project was not about Climate change. At the March 12th Wiscasset Select Board meeting, CMP Spokesperson John Carroll responded to a question from the public regarding NECEC's role in reducing climate change.

Mr. Carroll stated, "So, the question about whether, whether this [NECEC] will make a difference in climate change. CMP has no, no doubt that it will - we can't guarantee it. That's not our job, that's not our business."

Mr. Matt Manahan, Attorney for CMP in a letter to DEP stated at least 6 this the Corridor was not about climate change. (See attached letter from Manahan dated January 19, 2019)

Central Maine Power (CMP)/ NECEC, LLC statement about **oil and gas funding** the Yes on One is getting tiresome. Somehow, they forget Avangrid, CMP's State-side keeper, is a gas company and in fact owns Maine Gas! They also ignore the fact that Hydro Quebec, owned by the Province of Quebec, spent 15 million dollars to influence Mainers vote.

Central Maine Power (CMP)/ NECEC, LLC still lacks a **viable alternative route**. One needs to ask why they do not have one permitted and ready to go as they have known there was a problem crossing the public lands on January 21, 2020. **the Joint Standing Committee on Agriculture, Conservation and Forestry conducted a hearing 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 Purpose](#). On August 17, 2020 a resolution rejecting the public lands lease and requiring a 2/3's legislative vote to issue a new lease. In essence, poor planning on CMP's problem is NOT the DEP problem.**

Central Maine Power (CMP)/ NECEC, LLC proposes an **underground conduit** as a possible construction alternative. They have the audacity to suggest this underground alternative is not a "structure". Ask yourself its you neighbor was running an underground conduit on a piece of land you owned would you consider it a "structure". I would.

Finally, On November 5, 2021, the Avangrid chief executive, Dennis Arriola, vowed after the November 2nd election to press ahead with his company's plans to build a nearly 150-mile transmission line through western Maine to deliver power from Quebec to Massachusetts, despite a majority of Mainers voting against the project this week.

He said "The argument that this project is doing really bad things to the forest is totally false," Arriola said during a panel discussion. "The narrative has been manipulated, candidly, by some characters that will be on the losing side of the energy transition."

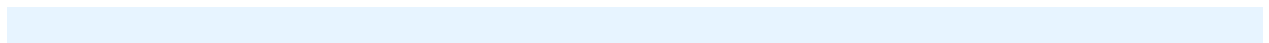
"The people of Maine have been disinformed," Arriola said.

This arrogance is an insult to Mainers.

This statement MUST be considered as part of the permit revocation/ suspension. Maine cannot be bullied by corporate hacks now or in the future.

Commissioner, you must revoke or suspend this permit immediately. If suspension is the choice, it must be until all court appeals are exhausted. This includes the public lands appeal before the Maine Law Court. Any complaints about project delays based on these public lands case is nothing but wining since CMP did not ask for an expedited schedule on this case before the Law Court.

Commissioner, PLEASE listen to the people of Maine.



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January 29, 2019

Susanne Miller, Director
Eastern Maine Regional Office
Maine Department of Environmental Protection
106 Hogan Road, Suite 6, 3rd Floor
Bangor, ME 04401

RE: NECEC – NRCM, AMC, and TU Request to Include Greenhouse Gas Impacts in Public Hearings

Dear Presiding Officer Miller:

This letter responds to the January 24, 2019 letter from the Natural Resources Council of Maine (NRCM), the Appalachian Mountain Club (AMC), and Trout Unlimited (TU) (collectively, Group 4) requesting that you amend the hearing topics identified in your Second Procedural Order, dated October 5, 2018, to add consideration of greenhouse gas impacts. You should reject the Group 4 request, for multiple reasons, discussed below.

First, nothing has changed since the Presiding Officer rejected NRCM's request almost five months ago, at the September 7, 2018 prehearing conference, and you again rejected it in your October 5, 2018 procedural order.¹ This is simply a transparent attempt to re-hash resolved issues and to make the hearing more complicated in the hope that we will not be able to finish the hearing in one week, and thus will need to continue the hearing at a later date, delaying issuance of the permit. Group 4 hopes that if they can delay the permit long enough, it may kill the project. You should not condone such tactics.

Second, Group 4 had the opportunity to appeal your ruling to the Commissioner, as provided in Chapter 3, Section 4(D) ("Pre-hearing rulings . . . are appealable to . . . the Commissioner in Commissioner licensing proceedings where the Commissioner is not the Presiding Officer."). By failing to appeal your prior ruling Group 4 has waived its right to ask you to reconsider it.

¹ Nor has AMC or TU raised this issue until this late hour. In the First Procedural Order, DEP ordered that intervenors must submit by August 27, 2018 "a specification of the statutory and regulatory criteria that they wish to address at the public hearing [and] the specific, significant or contentious topics or subject matters under those criteria relating to the project that they wish to address." First Procedural Order, ¶ 19. NRCM is the only member of Group 4 that raised alteration of climate in its response to the First Procedural Order.

Third, your prior ruling was correct. The only basis Group 4 asserts that impacts on GHG emissions are relevant to DEP's review criteria is Site Law Section 484(3), which provides that DEP "shall approve a development proposal whenever it finds [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 existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities." 38 M.R.S. § 484(3) (emphasis added). This provision, which is aimed at potential nearby impacts ("in the municipality or in neighboring municipalities"), is fleshed out in Chapter 375, sections 1 and 2 of DEP's rules.

Section 1, which addresses "air quality," considers "point source emissions from certain types of commercial and industrial developments and solid waste disposal facilities and non-point source emissions deriving from industrial, commercial, and governmental developments." That section further limits DEP's consideration to "point or non-point sources of chemical pollutants or particulate matter" from the proposed development. The NECEC Project does not include any such sources.

Section 2, which addresses "alteration of climate," 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 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).

Thus, impacts on GHG emissions are not relevant to the DEP's approval criteria under either NRPA or the Site Law. Instead, renewable energy goals such as the State's goals for reduction of greenhouse gas emissions (38 M.R.S. § 576) are explicitly within the purview of the Maine Public Utilities Commission (MPUC), which is statutorily obligated to take into account "state renewable energy generation goals" in determining the public need for a project. 35-A M.R.S. § 3132(6).

The MPUC is in fact considering the GHG emissions impacts expected from the Canadian renewable energy that will be transmitted over the Project as part of the on-going Certificate of Public Convenience and Necessity (CPCN) proceeding for the Project. See MPUC Docket No. 2017-00232. The parties to the MPUC proceeding, including NRCM, offered significant evidence regarding the GHG emissions impacts of the Project in Maine, New England, and across the entire Northeast region of the U.S. and Canada, including modeling from three different consultants experienced in modeling energy markets and resulting GHG emissions. This evidence was the subject of discovery and cross-examination during the MPUC's recent hearings. The MPUC is expected to address the GHG emissions impact of the Project as part of its order on CMP's CPCN petition, which order is expected by the end of March.

Fourth, Group 4 asserts that CMP relies on the Project's GHG 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. In the NRPA application CMP stated, with respect to the Project's purpose and need:

The purpose of the NECEC Project is to deliver up to 1,200 MW of Clean Energy Generation from Québec to the New England Control Area via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers. This Project is proposed in response to the Request for Proposals for Long-Term Contracts for Clean Energy Projects dated March 31, 2017 (RFP) issued by the electric distribution companies of the Commonwealth of Massachusetts and the Massachusetts Department of Energy Resources. However, if the NECEC Project is not awarded through this RFP, the Project will still fulfill the purpose and need of delivering renewable energy from Canada to New England, which has a continuing need for such power.

As is evident, this statement of Project purpose and need does not include GHG reduction benefits, but simply refers to the delivery of renewable energy from Canada to New England, in response to the Massachusetts Clean Energy RFP. Although CMP noted in the applications that the Project would have GHG reduction benefits, those benefits were not included as part of the Project's purpose and need.

Group 4 makes several misstatements on these points.

- Page 1: "CMP has stated that this proposed project is necessary to achieve certain greenhouse gas emissions reduction goals." In fact, CMP has not stated on the record in this proceeding that the Project is "necessary" to achieve GHG emission reduction goals. Rather, as noted above, CMP simply noted that the Project will have GHG emissions reduction benefits. That does not make the Project's impact on such emissions a DEP review criterion.
- Page 2: "CMP is alleging that they need to build this project to achieve greenhouse gas reductions goals and that the purported greenhouse gas emissions reductions in New England will have a benefit in Maine, both climatically and in achieving the state's RGGI goals." As noted above, CMP is not alleging in this proceeding that it "needs" to build the Project to achieve GHG reduction goals. Although that will be a benefit of the Project, that is not part of the Project's purpose and need, as noted above, and it is not a DEP review criterion.
- Page 2: "Because CMP is relying so heavily on these alleged benefits, Intervenor should have the opportunity to present witnesses at the public hearing to rebut these unsupported assertions in CMP's applications." In fact, CMP is not "relying heavily" on GHG reduction benefits, because they are not relevant to DEP's approval criteria. CMP has noted those benefits, but that does not turn them into a DEP review criterion or make them part of the Project's purpose and need.
- Page 3: "the applicant alleges that this project is specifically designed to reduce greenhouse gas emissions." Again, this is false. As noted above, the Project is designed "to deliver up to 1,200 MW of Clean Energy Generation from Québec to the New England Control Area via a High Voltage Direct Current (HVDC) transmission

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line, at the lowest cost to ratepayers." That is the stated Project purpose, nothing else.

- Page 3: "CMP bases the 'need' for this project primarily on climate benefits." Again, as noted above, this is false. That is not the Project purpose or need, though it is a Project benefit.

What CMP has stated outside the agency record in this proceeding has no relevance to DEP's review criteria. Group 4 asserts on page 3 of its letter that "CMP has made numerous disputed and unsubstantiated claims about the emissions benefits of NECEC as a part of its attempts to sell this project to Maine decision makers and citizens. . . . Therefore, climate issues must be a subject for the public hearing." This logic does not flow. Although CMP's statements are substantiated, it is wrong for Group 4 to assert that its disagreement with CMP's public statements somehow turns GHG emission impacts into a DEP review criterion. What CMP has said outside of the DEP record is irrelevant to the DEP's approval criteria.

Although GHG emissions are not a DEP review criterion, and thus should not be considered at the hearing, CMP would not object to allowing submission of written comments addressed solely to CMP's application statements that have noted the Project's GHG reduction benefits, as long as CMP has an opportunity to respond in writing to those comments. This would allow intervenors to address CMP's statements in the record without letting the hearing get bogged down on ancillary issues that are not relevant to DEP's review criteria. If this issue were to be allowed as a hearing topic, the hearing no doubt would spiral out of control and require several additional days to address this issue, which is, of course, the Group 4 strategy. Please reject this strategy.

Thank you for your consideration of this letter. Please let me know if you have questions or need additional information.

Sincerely,



Matthew D. Manahan

cc: Service Lists

Comments on the lack of carbon benefits from the New England Clean Energy Connect

The Natural Resources Council of Maine (NRCM) is submitting these comments on the lack of carbon benefits from the New England Clean Energy Connect (NECEC), instead of as sworn testimony, because the Department of Environmental Protection (Department) denied our request to submit expert testimony and provide a witness on greenhouse gas emissions as part of the hearing process. We believe that the Department must include greenhouse gas emissions as part of its permitting decision because the Site Law requires that this project have no unreasonable impact on climate and because Central Maine Power (CMP) has claimed carbon emissions reductions for the project in both its Site Law and Natural Resources Protection Act (NRPA) applications without providing proof that the reductions are real.

Chapter 375, Section 2(B) of the Department's rules states: "In determining whether the proposed development will cause an unreasonable alteration of climate, the Department shall consider all relevant evidence to that effect."

In Section 1.4 of its Site Law application CMP stated:

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 Section 2-2 of its NRPA application, which incorporates the Site Law application by reference (*see* Section 1.0), CMP states:

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.

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. There is ample evidence from numerous proceedings countering CMP's claims of greenhouse gas benefits associated with NECEC. Section 2(B) of Chapter 375 gives the Department broad authority to consider all relevant evidence regarding climate for a Site Law permit. NRCM asks that the Department consider the following evidence refuting CMP's claims of greenhouse gas benefits.

I. The New Hampshire Site Evaluation Committee (SEC) found no evidence of greenhouse gas benefits from Northern Pass in the absence of new generating facilities. NECEC will result in no new generating facilities.

The SEC faced this same question of whether an HVDC transmission line bringing a similar amount of hydropower from Hydro-Quebec in Canada through New Hampshire to Massachusetts (called "Northern Pass") would reduce greenhouse gas emissions. After years of study and modeling to look at greenhouse gas impacts, 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 clear that Hydro-Quebec will build no new hydropower facilities for generating electricity to send to Massachusetts. Hydro-Quebec stated

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.

the following in its application for a contract with the Massachusetts Department of Public Utilities:

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

Because Hydro-Quebec has stated that it will build no new generation specifically for NECEC, Hydro-Quebec 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 electricity shell game.

II. Testimony and briefs from the Massachusetts Office of the Attorney General (AGO) and other intervenors in Massachusetts rebut the claims of greenhouse gas benefits from NECEC.

The Massachusetts Department of Public Utilities (DPU) has held hearings on the contracts between Hydro-Quebec and the Electric Distribution Companies (EDC)³ that would implement NECEC. A witness for the AGO, Dean M. Murphy of the Brattle Group, submitted testimony 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. 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. Mr. Murphy stated that Hydro-Quebec 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

² HRE Section 83D Request for Proposal Application Form. Pp. 4, 56 (emphasis added). Accessed at <https://www.nrcm.org/wp-content/uploads/2019/01/HRERequestforProposal.pdf>.

³ Electricity Delivery Company or EDC and refers jointly to the three utilities (Eversource, National Grid, and Until) that would contract with Hydro-Quebec and CMP if NECEC is approved.

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.***⁴

The AGO's witness also stated that the process that awarded contracts to CMP and Hydro-Quebec may have been unfair and undermined projects that actually would have meaningfully reduced greenhouse gas emissions. He testified that he was "concerned about the inclusion of bidders' affiliates in the Evaluation Team," stating that "[t]his is generally considered inappropriate because it can bias the evaluation and selection process. Such concerns arose in multiple instances in the 83D⁵ evaluation process and were noted by the Independent Evaluator."⁶

RENEW Northeast Inc. (RENEW)⁷, echoed Witness Murphy's concerns about the unfair bidding process in its brief:

RENEW Northeast, Inc. ("RENEW") submits this Initial Brief to request that the contracts as presented to the Department be rejected because of the severely flawed process of selecting and negotiating them, which resulted in contracts that favored the HQUS [Hydro-Quebec's U.S. affiliate] bids in a manner that is contrary to Section 83D's requirements that the solicitation be conducted in a fair

⁴ Direct Testimony of Dean W. Murphy (Brattle Group), Witness for the Massachusetts Attorney General. DPU 18-64 18-65 18-66, p. 15 of 27 (Dec. 21, 2018) (emphasis added). Direct and Rebuttal Testimony attached as Attachment A.

⁵ 83D is the section of law that requires Massachusetts to solicit bids for clean energy contracts.

⁶ *Ibid.*, p. 4 of 27.

⁷ According to its website, RENEW "is a non-profit association uniting the renewable energy industry and environmental advocates whose mission involves coordinating the ideas and resources of its members with the goal of increasing environmentally sustainable energy generation in the Northeast from the region's abundant, indigenous renewable resource." Accessed at <http://renew-ne.org/>.

and nondiscriminatory manner and in the public interest. RENEW also recommends the Department order the Distribution Utilities to reissue the RFP to comply with Section 83D's objective to secure clean energy generation for the Commonwealth. Given that Section 83D requires procurements be completed by December 31, 2022, ample time exists to conduct one or more additional solicitations.⁸

Other intervenors in the DPU 83(D) contract proceedings have echoed AGO Witness Murphy's concerns about NECEC's failure to provide greenhouse gas benefits. In its surrebuttal testimony to the DPU, Next Era stated:

The EDCs' Joint Testimony...narrowly interprets the 83 D legislation's goals as only pertaining to the Commonwealth, which does not square with the reality of the impact of CO2 regionally and globally. Thus, the EDCs' narrow reading ignores basic scientific facts about carbon and interregional effects and the clear intent of the legislation, which is to use the purchasing power of the Commonwealth's utilities to be a leader in solving global warming—which requires lowering global emissions of CO2. Spending billions of ratepayers' dollars to merely relabel existing power flows as somehow incremental because it is, in part, new to New England does not further the Commonwealth's CO2 reduction goals.

...

Given the structure of the 83 D legislation and how relabeling of existing resources could qualify, under the EDCs' reasoning, overall carbon emissions could change not one bit, and the letter of the law still be satisfied. Extending the EDCs' reasoning even further, ratepayers could incur a large cost for zero benefit, and the goals of the procurement would be satisfied. This is particularly concerning, given that there were many clean energy projects that were passed over in favor of NECEC that would clearly been new and incremental, thus directly contributing to CO2 emissions reductions.⁹

In its initial brief in the Massachusetts DUP proceeding, Sierra Club warned that “Hydro-Québec could continue to deliver amounts of hydroelectric power into New England similar to historic averages without incurring any penalties” and that “because the contracts fail to ensure that the underlying generation is incremental to what Hydro-

⁸ Initial Brief of Renew Northeast, Inc. DPU 18-64 18-65 18-66, p. 1 (Mar. 22, 2019). Accessed at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/10505819>.

⁹ Surrebuttal Testimony of Christopher Russo, Robert Stoddard, and Stephen Whitley. Witnesses for NextEra. DPU 18-64 18-65 18-66, p, 3 of 31 (Feb 15, 2019). Surrebuttal Testimony attached as Attachment B.

Québec's dams are already producing, the contracts fail to guarantee any real world greenhouse gas emissions benefit.¹⁰

III. CMP has provided no credible evidence in Maine proceedings that NECEC will provide additional renewable energy and will not be an energy shell game and has continued to make misleading claims.

CMP has provided no credible evidence in Maine proceedings that NECEC will provide additional renewable energy and will not be an energy shell game. Instead they have made the following false or misleading claims, including in comments they submitted to DEP in these proceedings:

1. CMP repeats a misleading claim in its initial comment filing on greenhouse gas reductions that three studies in the PUC show that NECEC would reduce greenhouse gas emissions in New England by 3.0 million to 3.6 million tons annually.
2. CMP repeats unsupported claims by Hydro-Quebec that the corporation is spilling water due to lack of transmission capacity and that NECEC would improve this situation but has provided no evidence to support this claim.
3. CMP has falsely asserted that power from Hydro-Quebec's 250 MW Romaine 4 Project, which is due to come on line in the near future, along with some possible proposed upgrades, will supply power for NECEC.
4. Contrary to CMP's assertions, the Northbridge Associates paper, "Fully Decarbonizing the New England Electric System: Implications for New Reservoir Hydro," is not relevant to NECEC's greenhouse gas impacts.

We address each of these claims in greater detail below.

¹⁰ Initial brief from Sierra Club, DPU 18-64 18-65 18-66, p, 2 (Mar. 22, 2019). Accessed at: <https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/10503018>.

1. **CMP repeats a misleading claim in its initial comment filing on greenhouse gas reductions that three studies in the PUC show that NECEC would reduce greenhouse gas emissions in New England by 3.0 million to 3.6 million tons annually.**

This may be narrowly true, but it is also irrelevant when considering whether NECEC would provide greenhouse gas reductions that help fight climate change. *Reducing greenhouse gas emissions in New England does nothing 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.* CMP cites the London Economics International Report (LEI) as evidence of greenhouse gas reductions, but LEI admits on page 12 of its report to the PUC that it did not look at the impacts of NECEC on jurisdictions on other than New England: “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.*”¹¹ Similarly, the Daymark Report, which CMP has cited, only looked at New England and assumed that all Hydro-Quebec’s Hydro-power would be new and carbon free.¹² Neither of these assumptions is valid. Hydro-Quebec has stated in the DPU¹³ and PUC¹⁴ records that it will

¹¹ 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 (emphasis added). Accessed at: <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=97967&CaseNumber=2017-00232>.

¹² Daymark Energy Advisors, NECEC TRANSMISSION PROJECT: BENEFITS TO MAINE RATEPAYERS, Exhibit NECEC-5, MPUC Docket No. 2017-000232, p. 21 of 98 (Sept. 27, 2017).

¹³ Again, Hydro-Quebec stated in its response to the Massachusetts 83(d) RFP that: 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.*** HRE Section 83D Request for Proposal Application Form. Pp. 4, 56 (emphasis added). Accessed at <https://www.nrcm.org/wp-content/uploads/2019/01/HRERequestforProposal.pdf>.

¹⁴ In a response to a data request from NRCM during the PUC hearing process, CMP Witness Thorn Dickenson stated: “Hydro-Quebec committed in its NECEC 100% Hydro bid that all deliveries under the NECEC PPAs would come from existing Hydro-Quebec hydropower resource.” MPUC Docket No. 2017-00232, Data Request 002-006 (Jul. 27, 2019). Attachment C.

use only existing resources to supply power for NECEC. Hydro-Quebec's impoundments also emit a great deal of carbon dioxide, comparable to that of a coal plant¹⁵ in early years after development and roughly half of a natural gas plant over the course of 100 years.

CMP also cites testimony of James Speyer of Energyst to the PUC as backing its claims of New England greenhouse gas reductions. CMP appears to deliberately twist this testimony out of context. In fact, Mr. Speyer's testimony states that "[a]lthough there may be a reduction of carbon emissions in Maine and New England, this reduction may come at the expense of increased carbon emissions in other regions. On a net basis, therefore, *total carbon emissions reductions in New England could be offset by increased carbon emissions in other markets.*"¹⁶ Without knowing whether existing Hydro-Quebec customers will need to increase their use of fossil fuels to make up for the lost power NECEC will divert to Massachusetts, there is no way to conclude that NECEC will result in any greenhouse gas emissions at all. In fact, if New Brunswick increases its use of coal to make up for lost Hydro-Quebec electricity, NECEC would likely increase overall greenhouse gas emissions.¹⁷ This is because NECEC would displace natural gas use in Massachusetts, and natural gas has a lower emissions profile than coal.

Therefore, CMP's claims of greenhouse gas emissions from New England are meaningless without precise information on emissions from Hydro-Quebec's other markets that occur as a result of NECEC.

¹⁵ 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/>.

¹⁶ Direct Testimony of James M. Speyer, MPUC Docket 2017-00232, p. 14 (Apr. 30, 2018). Accessed at: <https://mpuc-cms.maine.gov/COM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=97734&CaseNumber=2017-00232>.

¹⁷ According to Canada's National Energy Board, New Brunswick generated 36% of its electricity from coal in 2017. Accessed at: <https://www.neb-one.gc.ca/nrg/ntgrtd/mrkt/nrgsstmprfls/nb-eng.html>.

2. CMP repeats unsupported claims by Hydro-Quebec that the corporation is spilling water due to lack of transmission capacity and that NECEC would improve this situation but has provided no evidence to support this claim.

There is substantial evidence against this claim. 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.¹⁸ 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.¹⁹

Testimony from a former Hydro-Quebec employee, Mr. Gabriel Roumy, in the Maine PUC process also contradicts CMP’s assertions about spillage.²⁰ Gabriel Roumy, appearing on behalf of LEI in the PUC technical conference on December 19, 2018 stated:

And of course, there's no way, considering the future hydrological conditions in Quebec, to predict how much water would be spilled each and every year, which is why I think at this point we're still comfortable with our assumptions that, you know, energy would generally be redirected from other markets to NECEC if it were built.²¹

¹⁸ 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>.

¹⁹ Bradford M. Hager. 2019. *Op cit*.

²⁰ Mr. Roumy worked for Hydro-Quebec for approximately 10 years. *See*, <https://www.linkedin.com/in/jean-gabriel-roumy-164732a8>.

²¹ Transcript. PUC Technical Conference on December 19, 2018. Pp. 72-73. Accessed at <https://mpuc->

CMP and Hydro-Quebec have provided no evidence that links Hydro-Quebec’s spillage to a lack of transmission capacity. Nor have they provided evidence on when spillage occurs and whether or not there would be demand for electricity at that time. Spillage is typically high when spring rains combine with snow melt. This is also a time when electricity demand is low. All dams spill at times when there is too much water to use or store. A simple trip to a dam in Maine right now proves this fact.

3. CMP has falsely asserted that power from Hydro-Quebec’s 250 MW Romaine 4 Project, which is due to come on line in the near future, along with some possible proposed upgrades, will supply power for NECEC.

These claims fundamentally violate the critical renewable energy concept of “additionality”. In testimony to the DPU docket for NECEC, the Massachusetts AGO’s witness, Dean Murphy, 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. It is critical that a renewable energy project provide energy that is additional both to ensure greenhouse gas reductions and because ratepayers should not pay to subsidize a project that is going to happen anyway under business as usual scenarios.

Specifically, the AG’s witness stated:

For the 83D 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”. Importantly, it must involve overall global emissions reductions, not reductions in one region or sector that might be offset by a corresponding increase that is triggered elsewhere, or reductions that would have occurred regardless of the proposed action. For example, a PPA [power purchase agreement] that supports the development of a

cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=100615&CaseNumber=2017-00232.

new wind farm will generally be additional. The new wind farm produces clean energy that would not otherwise be produced, displacing fossil energy and reducing emissions, so the clean energy and the emissions reductions are additional to what would have occurred without the PPA. Clean energy, however, is not always additional in this sense. If an existing wind farm with an expiring PPA signed a renewed PPA with a different buyer, the renewed PPA does not result in additional clean energy. The existing wind farm would have continued to produce clean energy even without the renewed PPA; the output may have been sold to a different buyer or in the spot market. The renewed PPA does not increase the total clean energy produced and consumed or reduce emissions; it just reallocates clean energy that would be produced in any case. It can sometimes be challenging to define and determine additionality in practice, primarily because doing so can require a very precise specification of the alternative “business as usual” circumstance—*i.e.*, additional to what? But for the purposes of the 83D procurement, the important point is that a global perspective is necessary. The RFP requirement that the contract energy be incremental to New England (even if the proposed contracts required full incrementality) does not ensure that it would be additional or necessarily result in corresponding GHG reductions.²²

Construction of the four-dam Romaine complex, which CMP and Hydro-Quebec have said will provide “new” power for NECEC, began in 2009.²³ The Massachusetts law under which CMP and Hydro-Quebec are pursuing a contract, passed in 2016. In no way is the construction of the Romaine dams connected to NECEC. Hydro-Quebec has existing markets for all of the energy the Romaine complex produces and will sell it regardless of the construction of NECEC. NECEC would just allow Hydro-Quebec to make more money because Massachusetts would pay long-term contract rates and Hydro-Quebec would otherwise sell its electricity on the spot market, which is worth less.

In a report commissioned by the Maine Renewable Energy Association, the Natural Resources Council of Maine, and the Sierra Club, Engyst Advisors, an energy consulting firm, concluded that “[A] new intertie merely allows Hydro-Québec to access a higher-priced, long-term contract with Massachusetts instead of selling into competitive spot markets at lower, more

²² Dean M. Murphy, *Op. Cit.*, p. 15 of 27.

²³ Hydro-Quebec web page at <https://www.hydroquebec.com/projects/romaine.html>.

uncertain prices. The NECEC transmission line is not necessary to export additional clean energy from Québec into external markets.”²⁴

The only evidence of possible future upgrades of existing Hydro-Quebec dams appears in a single table in the PUC record.²⁵ This table is 18 pages of various energy projects that Hydro-Quebec has proposed over the past two decades. Simple examination of the table reveals that Hydro-Quebec has withdrawn many of the projects listed in this document. There is no guarantee that it will carry out the upgrades listed in the bottom half of the last page, which CMP claims would provide “new” generation, nor is there any requirement in the Massachusetts draft contracts for NECEC for Hydro-Quebec to do any upgrades at all. There is no evidence to support whether these upgrades would occur as a result of NECEC or even if they would occur at all. They are completely unrelated to NECEC and therefore cannot be considered new or additional energy. The claims about the Romaine dams and future possible upgrades also conflict with the commitment Hydro-Quebec made in its response to the Massachusetts 83(D) RFP that it would use only existing facilities to supply power to NECEC.

4) Contrary to CMP’s assertions, the Northbridge Associates paper, “Fully Decarbonizing the New England Electric System: Implications for New Reservoir Hydro,” is not relevant to NECEC’s greenhouse gas impacts.

Simply put, this paper is nothing more than misleading generalizations, starting with the title. NECEC does not involve any new reservoir hydro-power in New England or in Quebec. Moreover, the New England hydro-power system is old and well-established. All of the good

²⁴ Energyzt Advisors, LLC. 2018. GREENWASHING AND CARBON EMISSIONS: UNDERSTANDING THE TRUE IMPACTS OF NEW ENGLAND CLEAN ENERGY CONNECT. p. ES-2. Attachment D. Accessed at <https://www.nrcm.org/wp-content/uploads/2018/10/ENERGYZTreportNECECImpacts.pdf>.

²⁵ Accessed at <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=100724&CaseNumber=2017-00232>.

sites for large hydro-power facilities have been dammed already and are producing electricity for the grid. Large-scale new hydro-power is not cost competitive with wind and solar, and no company is proposing any large, new facilities in New England or in Quebec. This paper mentions neither Hydro-Quebec nor NECEC even once and contains no specific information relevant to CMP's transmission corridor. DEP should ignore it.

IV. Conclusion

In closing, CMP has provided no evidence that NECEC will be anything other than an energy shell game allowing Hydro-Quebec to shift sales from spot markets to a more lucrative long-term contract with Massachusetts. CMP has provided no evidence that using existing hydro-power resources in Canada that already have markets for their electricity will lower overall greenhouse gas emissions. The studies they cite did not even examine the impacts of Hydro-Quebec shifting electricity sales from existing customers to Massachusetts. In contrast, there is a great deal of credible evidence in the records of the various proceedings concerning NECEC that it will provide no greenhouse gas benefits, and we have discussed some of this evidence in these comments. It also defies common sense that a project can reduce greenhouse gas emissions without either: 1) decreasing the use of fossil fuels through energy efficiency; or 2) displacing fossil fuel use through the creation of new, renewable generation. NECEC would do neither. Maine's North woods should not suffer large-scale destruction to facilitate Hydro-Quebec's and CMP's energy shell game.

Legislative and Court Action related to the public lands

- a. In the 129th legislature **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** was introduced. This bill was amended to directly address significant alteration of the public lands in question. The Agricultural, Conservation and Forestry (ACF) Committee passed it passed unanimously. (This bill was not voted on by the legislature due to a Covid related early adjournment.) [Summary \(maine.gov\)](#)
- b. In the 130th legislature LD 471 **An Act To Require Legislative Approval for Certain Leases of Public Lands was introduced.** This bill directly addresses the significant alteration of public lands in question. The ACF Committee passed it passed on a vote of 12-1. (This bill was considered to be a competing measure for the upcoming November referendum thus was held over) [Summary \(maine.gov\)](#)
- c. In the 130th legislature LD 1075 **An Act To Protect Public Lands was introduced.** This bill directed the Department to do major substantive rulemaking to determine when a parcel of public lands would be substantially altered. Again, this bill indirectly addresses the significant alteration of the public lands in question. The ACF Committee passed it passed on a vote of 12-1. (This bill was considered to be a competing measure for the upcoming November referendum thus was held over.) [Summary \(maine.gov\)](#)
- d. Letters were sent to the Department making clear the ACF committee determined the public lands in question were significantly altered thus requiring a 2/3's affirmative vote by the sitting legislature.
- e. The 130th Maine State Legislature passed **SP 594 JOINT RESOLUTION, EXPRESSING THE SENSE OF THE LEGISLATURE REGARDING THE USE OF PUBLIC LAND LEASED BY THE STATE.** It RESOLVED: That We, the Members of the One Hundred and Thirtieth Legislature now assembled in the First Special Session, on behalf of the people we represent, express our sense in accordance with the Constitution of Maine, that the lease provided to CMP to cross the public reserved lands in West Forks Plantation and in Johnson Mountain Township constitutes a substantial alteration of those lands, requiring a 2/3 vote of all the members elected to each House of the Legislature. It also memorialized all the information previously presented in this letter. This Resolution passed in the Senate 28-6 and in the House 66-52.
- f. Justice Murphy in her August 10, 2021 decision to sign the new lease said the Bureau "*exceeded its authority when it entered into the 2020 lease with CMP, and BPL's decision to do so is reversed.*"

- g. Mr. Andy Cutko, BPL Bureau Chief clearly worked to circumvent the required 2/3 legislative vote. This is from an email “From: Anthony Calcagni Sent: Monday, April 20, 2020 10:01 AM To: William Harwood Subject: RE:CMP lease with BPL Bill, here’s the summary of the substantive revisions in what I just forwarded to Eben Adams: · With input from Andy Cutko, we’ve characterized this as an “Amended and Restated Lease,” and added a provision in Sec. 23 that specifies this Amended and Restated Lease expressly supersedes the 2014 Lease. (As opposed to just signing a new Lease and signing a separate agreement to terminate the 2014 Lease.) Idea is to help show that this 2020 Lease does nothing to “substantially alter” the leased premises now, while still providing a new lease agreement that is being executed after the 2019 CPCN”



FOR IMMEDIATE RELEASE

Please contact: Colin Durrant, (207) 200-4412, colin@nrcm.org

NEW POLL: MAINE VOTERS WANT CMP TO STOP CORRIDOR CUTTING, SUPPORT DEP SUSPENDING PERMIT

November 17, 2021 (Augusta, ME) -- A new public opinion survey completed since Election Day shows that most Maine voters want Central Maine Power (CMP) to stop all clearing of trees in western Maine to honor the will of Maine voters. A strong majority also supports having the Maine Department of Environmental Protection (DEP) order CMP to stop work on the project by suspending its permit.

The survey of 408 Maine people who voted in the November 2nd election was conducted November 11-14, 2021, by Beacon Research. It provides the first post-election insight into why Mainers voted [59% to 41%](#) in support of Question 1. The survey has a +/- 5 percentage point margin of error at the 95% level of confidence.

Poll results show that mistrust of CMP led the reasons why Mainers voted yes on Question 1, followed by concern about how little Maine households would get relative to the billions in profit foreign corporations would receive.

- By 64% to 28%, respondents want CMP to stop work on the corridor, with 8% undecided. Notably, this margin is larger than the final vote results.
- By 61% to 29%, respondents support having the DEP order CMP to stop work on the project by suspending its permit.
- By 62% to 30%, Maine voters oppose a lawsuit filed by CMP's parent company, Avangrid, against the State of Maine and Maine Legislature to block Question 1 from becoming law

The survey also showed that 47% of Maine voters support a proposed ballot measure to replace investor-owned utilities with consumer-owned utilities that are locally controlled and consumer-owned, with 22% opposed and 31% undecided. Forty-six percent of voters say that CMP's continued construction of the corridor despite the outcome of Question 1 make them more supportive of a consumer-owned utility model.

The survey crosstab data reveals by demographic group additional details about why Mainers supported Question 1 and the breadth and depth of opposition to actions by CMP and Avangrid since the election:

- Young voters 18-34 years old are especially opposed to CMP's behavior.
 - 86% think CMP should stop all clearing of trees now in western Maine to honor the will of Maine voters
 - 88% support DEP ordering CMP to stop work by suspending the permit
 - 74% oppose the effort by Avangrid to block Question 1 from becoming law
 - 83% voted yes on Question 1

- Independent voters are firmly opposed to CMP's continued construction and supportive of the DEP suspending the permit.
 - 67% believe CMP should stop clearing trees now to honor the will of Maine voters (compared to 62% of Democrats and 64% of Republicans)
 - 66% support DEP ordering CMP to stop work by suspending the permit (compared with 60% of Democrats and 60% of Republicans)
 - 70% oppose the effort by Avangrid to block Question 1 from becoming law (compared with 60% of Democrats and 61% of Republicans)
 - 68% voted yes on Question 1

- Distrust of CMP is very strong among voters in 8 of Maine's 16 counties along the Midcoast and West Central Maine.
 - 95% in Midcoast Maine (Waldo, Lincoln, Knox, and Sagadahoc Counties) stated that distrust of CMP was a "very high priority" for why they supported Question 1
 - 85% in West Central Maine (Oxford, Franklin, Kennebec, and Androscoggin Counties) stated that distrust of CMP was a "very high priority" for why they supported Question 1
 - 84% in Midcoast Maine said that the concern that foreign corporations will make billions while the average Maine household will get very little was a "very high priority" for why they supported Question 1

To view the Topline poll results [click here](#), PowerPoint slides [click here](#), or to view crosstabs based on a variety of characteristics [click here](#).

For information from Beacon Research, contact Matthew Shelter: (978) 807-4459

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Founded in 1959, the [Natural Resources Council of Maine](#) is our state's leading nonprofit membership organization protecting Maine's land, air, waters, and wildlife. We harness the power of science, the law, and the voices of more than 25,000 supporters from across Maine and beyond to protect the nature of Maine.

November 17, 2021

Mr. James R. Beyer
Director, Eastern Maine Regional Office
Maine Department of Environmental Protection
106 Hogan Road
Bangor, Maine 04401

RE: NECEC LLC Condition Compliance Submission for Condition #39 of Maine Department of Environmental Protection Site Location/NRPA Permit Numbers #L-27625-26- A-N, L-27625-TB-B-N, L-27625-2C-C-N, L-27625-VP-D-N, and L-27625-IW-E-N, for the New England Clean Energy Connect Project

Dear Mr. Beyer:

The Nature Conservancy in Maine (TNC) and Conservation Law Foundation (CLF) appreciate this opportunity to comment on the Conservation Plan submitted by NECEC Transmission LLC (NECEC LLC) to comply with Condition 39 of the final permit order issued on May 11, 2020 (the Order) by the Maine Department of Environmental Protection (the Department) for the New England Clean Energy Connect (NECEC) project.

The Department's Order requires that, "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." (Order p. 81).

This condition is central to the ability of the NECEC project to meet the Department's permitting standards. The Department found that, "as Segment 1 initially was proposed, the applicant had not made adequate provision for the protection of wildlife... Through further modification required as a condition of this Order, adequate provision for the protection of wildlife will be achieved." (Order p. 76). The Order further states that, "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." (Order p. 82). In other words, the Department found that the NECEC project's habitat fragmentation impacts would be unreasonable, if not for the mitigation that must occur through the conservation of 40,000 acres in the vicinity of Segment 1.

As noted in the Order, TNC advocated for this condition as a measure to compensate for the project's habitat fragmentation impacts (Order p. 80). In our post-hearing brief filed prior to the permit order, TNC and CLF (Group 6) stated, "In light of the NECEC's unreasonable impacts

and adverse effects on Maine’s natural resources as the project is proposed, the Department should only issue permits for the NECEC if the project is significantly modified to include a combination of measures that adequately avoids and minimizes the project’s habitat fragmentation impacts in Segment 1 of the proposed corridor, and that adequately compensates for any habitat fragmentation that cannot be avoided or minimized.” (Group 6 post-hearing brief, p. 20). We appreciated that the Department conditioned its approval of the NECEC permit on measures to avoid, minimize, and compensate for the project’s habitat fragmentation impacts, including the permanent conservation of 40,000 acres in the vicinity of Segment 1 to compensate for impacts that the Department found could not be avoided or minimized.

Given the Department’s finding that the NECEC project would have unreasonable impacts if not for significantly modified vegetation management practices and the conservation of 40,000 acres in the vicinity of Segment 1, it is essential that NECEC LLC adhere strictly to these conditions.

Unfortunately, NECEC LLC’s Conservation Plan, submitted on November 12, 2021—on the final day of the 18-month period allowed by the Order—is inadequate. The Conservation Plan fails to meet what we believe is the intent and letter of the Department’s Order.

Identification of conservation areas

The Order requires that the Conservation Plan must:

- “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.” (Order p. 81).

The plain language of the Order—that NECEC LLC must “Identify the area(s)...to be conserved...any conservation area must be at least 5,000 acres”—is clear that the Conservation Plan must identify *specific areas* of at least 5,000 acres to be conserved (or smaller areas if adjacent to existing conserved land or otherwise appropriate). Instead, NECEC LLC has identified an “Area of Interest” (AOI) of nearly 7,000,000 acres. This AOI comprises approximately one-third of the land area of the entire state of Maine.

The Conservation Plan states that, “This AOI, in the vicinity of Segment 1, has been identified to ensure the following *are included*:

- Large habitat blocks of at least 5,000 acres;
- Smaller habitat blocks less than 5,000 acres that are adjacent to existing conserved land or that, based on location and other characteristics, are uniquely appropriate to further the goals of the Conservation Plan.” (emphasis ours)

However, the Department's Order does not require NECEC LLC to identify an AOI in which certain size habitat blocks are included; the Order requires NECEC LLC to "Identify the area(s)...to be conserved..." (emphasis ours).

It is entirely reasonable to expect that within the 18-month window that has elapsed since the issuance of the Order, NECEC LLC could have, at a minimum, identified specific parcels to be conserved and signed option agreements with landowners for acquisitions and/or easements for some, if not all, of the 40,000 acres. The intent, and we believe the letter, of the Order clearly requires NECEC LLC to identify these parcels. It certainly did not envision that the Conservation Plan would identify and focus on a 7,000,000-acre AOI.

Other Conservation Plan requirements

Because NECEC LLC has failed to identify a conservation area(s) in its Conservation Plan, the Plan's compliance with the Order's remaining requirements becomes difficult or impossible to evaluate.

In most cases, NECEC LLC simply restates the requirements of the Order to demonstrate compliance. For example, NECEC LLC states that the primary goal of the Conservation Plan is promoting habitat connectivity and conservation of mature forest areas; that they will ensure the availability of stewardship funding; and that they will ensure third party enforcement rights for the Department. However, there is no clear evidence that these criteria have been or will be met.

The requirement that NECEC LLC must explain the legal interest that will be acquired in each area, the proposed holder of the interest, the qualification of each holder, and preliminary consent from the holder was clearly intended to apply to a specific conservation area(s). However, the Conservation Plan again provides almost no detail, offering only the most general terms.

LandVest's draft forest management plan makes an effort to provide detail, but it is nevertheless difficult to evaluate its merit in the context of a specific conservation area(s), because it applies to such a wide range of potential scenarios spanning 7,000,000 acres.

Conclusion

NECEC LLC's Conservation Plan fails to meet its foundational obligation to "Identify the area(s)...to be conserved..." This failure is especially problematic given that the initial clearing in Segment 1 of the corridor is nearly complete.¹ The habitat fragmentation that the Department found unreasonable without mitigation has already occurred, but there is no meaningful plan in place to compensate for those impacts.

¹ Based on publicly available Sentinel satellite imagery.

TNC and CLF believe that the Department should reject the Conservation Plan as drafted. The Department should find that NECEC LLC is out of compliance with the Order, given its failure to submit a reasonable Conservation Plan.

Thank you again for the opportunity to provide these comments.

Sincerely,



Rob Wood
Director of Government Relations and Climate Policy
The Nature Conservancy in Maine



Phelps Turner
Senior Attorney
Conservation Law Foundation