

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NEW ENGLAND CLEAN ENERGY CONNECT)
L-27625-26-A-N/L-27625-TG-B-N/)
L-27625-2C-C-N/L-27625-VP-D-N/)
L-27625-IW-E-N)

RICHARD BENNETT PRE-FILED TESTIMONY
ON BEHALF OF INTERVENOR NATURAL RESOURCES COUNCIL OF MAINE

I. Background

I, Richard A. Bennett, am a Maine State Senator from Oxford County. I served two terms in the Maine House of Representatives from 1990-1994 and four terms in the Maine Senate from 1996-2004. From 2001-2002, I served as President of the Maine Senate. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. In 2020, I was re-elected to the Maine

Senate, and I currently serve on the Environment and Natural Resources Committee and the

Government Oversight Committee. I am one of the plaintiffs in *Black v. Cutko*.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

III. *Black v. Cutko*

Current Status

On August 13, 2021, Central Maine Power Company and NECEC Transmission LLC (collectively, “CMP”) and the Bureau of Parks and Lands and Director Cutko (collectively, “BPL”) filed an appeal of the Superior Court’s August 10, 2021, decision, as well as prior orders, in *Black v. Cutko*. On August 24, 2021, Plaintiffs filed a motion to lift the automatic stay of the Superior Court’s decision in *Black v. Cutko*, in order to ensure that CMP could not construct on the public lots during the pendency of the appeal. On September 7, 2021, CMP and BPL filed motions in opposition. CMP primarily raised concerns specific to its project, while BPL primarily raised concerns about collateral consequences to its leasing of other public lots for

other purposes. On September 15, 2021, the Law Court entered an Order that prohibits all construction activities, including vegetation removal, on these public lots during the pendency of the appeal. A copy of that order is attached as **Exhibit A**.

On September 20, 2021, the Law Court issued a briefing schedule that contemplates final briefs being filed in late January 2022. A copy of the briefing schedule is attached as **Exhibit B**. It is anticipated that the Law Court will have oral argument within a couple of months thereafter. Accordingly, it is unlikely that the Law Court will issue a decision before late spring or early summer 2022. The plaintiffs in *Black v. Cutko* inquired about expediting the appellate schedule in order to have a decision more quickly but CMP opposed expediting the appeal. Until the Law Court issues a decision, the Superior Court's decision remains the only court decision on this issue, [REDACTED]

Since the outcome of the *Black v. Cutko* appeal will not be known for an extended period of time, it makes no sense to allow CMP to continue construction on the gamble that the Superior Court's decision will be reversed.

Possible Outcomes

Assuming that the Superior Court's decision in *Black v. Cutko* is upheld, CMP will have to undertake a major reroute of the NECEC, requiring an amendment to its existing permit.

First, if the Law Court affirms the Superior Court's decision to vacate CMP's lease for NECEC, the only way CMP can use the public lots that are currently part of its permitted route is if it enters into a new lease [REDACTED]

[REDACTED]

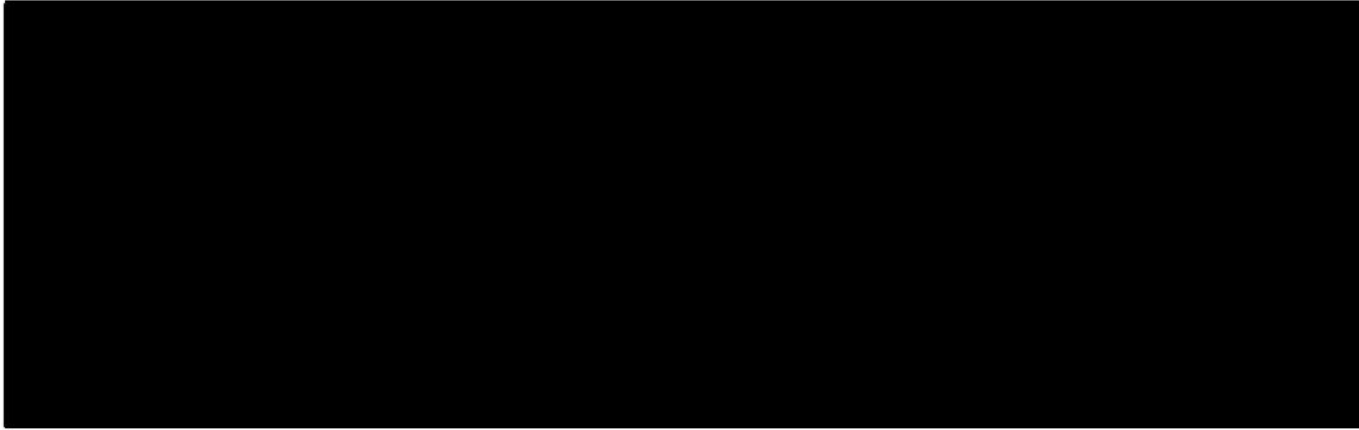
[REDACTED]

[REDACTED]

[REDACTED]

Second, if the Law Court affirms the Superior Court’s decision requiring BPL to have a public process prior to entering into a lease of public lands, then before BPL can even attempt to enter into a new lease with CMP, it will need to develop and adopt such a process. [REDACTED]

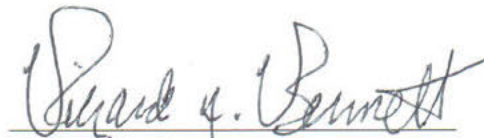
[REDACTED]



In light of [REDACTED] the Superior Court's thorough analysis of these important constitutional issues, CMP is highly likely to need to find a route that avoids West Forks Plantation and Johnson Mountain Township or any public lands. Accordingly, CMP will have to identify and permit a significant re-route that avoids these lands and should not be allowed to continue construction as if it will eventually be able to cross the public lots as that is a highly unlikely eventuality.

I, Richard A. Bennett, affirm that the above statements are true and accurate to the best of my knowledge and belief.

Date: October 4, 2021


Richard A. Bennett

STATE OF MAINE

SUPREME JUDICIAL COURT
Docket No. BCD-21-257

RUSSELL BLACK *et al.*,

Appellees/Cross-Appellants,

v.

BUREAU OF PARKS AND LANDS *et al.*,

Appellants/Cross-Appellees,

**ORDER ON APPELLEES/CROSS-
APPELLANTS' MOTION TO LIFT
AUTOMATIC STAY PENDING
APPEAL**

Upon consideration of appellees/cross-appellants' motion to lift stay and the agreement of all the parties, the Court hereby orders NECEC LLC to refrain from all construction activities, including vegetation removal, on the leased premises in the West Forks Plantation and Johnson Mountain Township public reserved lands during the pendency of this appeal. *See* M.R. Civ. P. 62(g).

Dated: September 15, 2021

For the Court,



Joseph M. Jabar
Associate Justice

MAINE SUPREME JUDICIAL COURT
205 Newbury Street, Portland ME 04101-4125

Sitting as the Law Court
Docket No. BCD-21-257

Russell Black et al.

v.

Bureau of Parks and Lands et al.

BRIEFING SCHEDULE

To: Parties: Appellant: Lauren E. Parker Esq., OFFICE OF THE ATTORNEY GENERAL 6 STATE HOUSE STATION, AUGUSTA, ME 04330
Appellant: Nolan L. Reichl Esq., PIERCE ATWOOD MERRILLS WHARF, PORTLAND ME 04101
Cross-appellant: James T. Kilbreth III Esq., DRUMMOND WOODSUM 84 MARGINAL WAY SUITE 600, PORTLAND ME 04101

This Notice Contains Important Information About Your Appeal. Read It Carefully.

The record in this appeal became complete on September 20, 2021, following (1) the filing of the original record and (2) the filing of transcript of the trial court proceedings if a transcript was ordered and timely paid for, the cancellation of the transcript order, the filing of a statement in lieu of a transcript, or the expiration of the time to file a proposed statement in lieu of a transcript. See M.R. App. 7(a).

This appeal is governed by the restyled Rules of Appellate Procedure, which became effective September 1, 2017. There are some differences between the former rules and the restyled rules. Please ensure that you comply with the new rules.

The parties are *required* to file, *in addition* to the required paper copies, an electronic copy of each brief. Email a single .pdf file to lawcourt.clerk@courts.maine.gov (see M.R. App. P. 7A(i)(2)).

The briefs and appendix are due as follows, M.R. App. P. 7(b):

- The **appellant's brief** must be filed on or before **November 15, 2021**.
- The **appendix** must be filed on or before **November 15, 2021**.
- The **appellee's brief** must be filed on or before **January 3, 2022**.
- The appellant may file a **reply brief**, strictly confined to new matter raised by the appellee's brief, on or before **21 days after the last appellee's brief is filed**.

Because of the extended time for filing briefs and the appendix, **no extensions of time will be granted** except as permitted by M.R. App. P. 7(b)(3).

Enclosed with this notice is a paper highlighting appeal document preparation and filing requirements. Failure to follow those requirements and the requirements of the Maine Rules of Appellate Procedure may result in dismissal of the appeal, return of documents for revision, or another sanction that may adversely affect a party's position on appeal.

Dated: September 20, 2021



Matthew Pollack
Clerk of the Law Court

MAINE SUPREME JUDICIAL COURT SITTING AS THE LAW COURT APPEAL DOCUMENT PREPARATION AND FILING REQUIREMENTS

This appeal is governed by the restyled Maine Rules of Appellate Procedure, which became effective on September 1, 2017. You must ensure that you follow the restyled rules when you file your briefs and the appendix. You can view and print the rules from the Court's website at <https://www.courts.maine.gov/rules>. Scroll down to "Procedural Rules." There you will find the Maine Rules of Appellate Procedure.

This document highlights important aspects of the rules that are the subject of frequent questions and concerns in appeal processing. It is a summary of the most important requirements of the appellate rules. This document is meant to help you, but you must still read and comply with the rules of appellate procedure themselves. The following are important points from the rules:

1. Copies to Every Other Party. One copy of every letter, document, motion, or other item sent to the Law Court must also be sent to every party participating in the appeal. Two copies of each brief filed must be sent to every party participating in the appeal. M.R. App. P. 7A(i)(1).

2. The Brief. A brief is the party's written argument in support of that party's position on the appeal. It must be organized and is subject to page limits as described in Rule 7A of the Maine Rules of Appellate Procedure. The text of the brief must be presented double-spaced on one side of plain white 8½-by-11-inch paper. Printing must be in at least 14-point font. The **appellant's brief** must have a blue cover, organized as required by M.R. App. P. 7A(a). The **appellee's brief** must have a red cover, organized as required by M.R. App. P. 7A(b). If the appellant files a **reply brief** to respond to the appellee's brief, that reply brief must have a gray cover.

Ten paper copies of each brief must be filed with the Clerk of the Law Court, and two paper copies must be sent to every party participating in the appeal. M.R. App. P. 7A(i)(1). You must also file one electronic copy of your brief and serve an electronic copy on each party who has provided you with an email address. M.R. App. P. 7A(i)(2).

Nothing that you have filed so far, including your "notice of appeal," any letters, or any motions, will be considered to be your brief. You must file a brief as required by the rules.

3. The Appendix. The appendix includes the most important documents from the trial court record of the case subject to the appeal. The appendix requirements are addressed in Rule 8 of the Maine Rules of Appellate Procedure. Eight copies of the appendix must be filed with the Clerk of the Law Court, and one copy must be sent to each party. The appellant, after consulting with the appellee, has responsibility for preparing and filing the appendix.

Inclusion of certain documents in the appendix and the order in which those documents must appear is mandatory. The appendix must be printed on both sides of plain white 8½-by-11-inch paper. The pages in the appendix must be consecutively numbered. The appendix must include the following documents in the following order, and these documents must be before all other documents in the appendix:

- (1) a table of contents, listing each document in the appendix and the page on which that document begins;
- (2) a copy of the trial court docket sheet(s);
- (3) a copy of the trial court's final judgment or order, and any other trial court order that is subject to the appeal. (When the trial court judgment or order subject to the appeal was stated on the record in court, and not repeated in a written order, the transcript of the trial court's statement must be included);
- (4) a copy of the complaint, charging document, or other document filed with the trial court that initiated the case subject to the appeal; and
- (5) any pre-judgment or post-judgment motion or petition that is at issue in the appeal. (When the motion or petition was made orally on the record, the transcript of the motion or petition must be included.)

Rule 8(e) of the Maine Rules of Appellate Procedure requires including certain other documents in the appendix for certain types of actions. Rule 8(e) of the Maine Rules of Appellate Procedure should be consulted to determine what mandatory requirements may affect your appeal. Some examples of cases requiring particular documents to be in the appendix include appeals involving (i) a divorce or child custody; (ii) application or interpretation of a local ordinance or state regulation; (iii) a ruling on a motion for summary judgment; (iv) interpretation of a contract; or (v) review of jury instructions or a jury verdict form.

No document may appear in the appendix more than once. The appendix *may not* include any of the following (M.R. App. P. 8(g)):

- (1) documents that are not part of the record on appeal;
- (2) images or videos (A) of persons under 18 years of age; (B) of adults subject to a guardianship; or (C) that depict nudity or sexual or sexualized acts;
- (3) documents made confidential by statute or court order that are not required to be in the appendix; or
- (4) any portion of any transcript except those portions that are required to be included.

4. Consequences of Noncompliance with Rules. A failure to comply with the requirements of the Maine Rules of Appellate Procedure regarding document preparation and filing may result in dismissal of the appeal, return of initially filed documents for preparation in proper form, waiver of one or more issues on appeal, or imposition of costs or another sanction for a material noncompliance with the rules. All parties participating in an appeal should be familiar with the requirements of the Maine Rules of Appellate Procedure. That familiarity may be aided by review of a document entitled "A Guide for Appeals to the Maine Supreme Judicial Court." That document appears on the Court's website.

5. Available free or low-cost legal assistance. If you are not represented by an attorney, you may contact the Clerk for a list of organizations that you may be able to go to for free or low-cost help.

