

**STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
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 and L-27625-26-K-T)

RESPONSE TO THE CONSOLIDATED NECEC BOARD APPEALS BY IECG

Pursuant to Chair Draper’s February 12, 2021 letter ruling on proposed supplemental evidence, and in accordance with Chapter 2, § 24(C)(4), Industrial Energy Consumer Group (IECG) hereby provides comments on the merits of the consolidated appeals of the Department’s May 11, 2020 order conditionally approving NECEC (“Order”¹).²

1. INTRODUCTION

A. Summary of IECG’s Position.

Due to limited time and resources, IECG once again focuses here less on the details and more on the high-level, specifically the nature and consequences of Appellants’ strategy, tactics, and endgame.

IECG strongly opposes reversing or substantially modifying the Department’s comprehensive, fully supported, and well-reasoned Order. The Order imposes on NECEC (or the “Project”) a set of conditions that “provide an unprecedented level of natural resource protection” to ensure, beyond any doubt, that the statutory standards are met. The conditions are in no small

¹ Department of Environmental Protection, Order # L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N (May 11, 2020).

² The consolidated appeals are: (1) Natural Resources Council of Maine’s (NRCM) June 10, 2020 appeal of the Order; (2) NextEra Energy Resources, LLC’s (NextEra) September 25, 2020 appeal of the Order; (3) the West Forks Group’s September 25, 2020 appeal of Order; and (4) NRCM’s January 4, 2021 appeal of the Commissioner’s December 4, 2020 order conditionally approving the partial transfer of the Order.

part the direct result of Appellants' vigorous participation before the Department. The Board has at its disposal an extensive, fully developed, and rigorously tested record on which to make its own findings and draw its own conclusions regarding NECEC. It can and should proceed with deliberate speed, without holding a hearing, to approve NECEC and provide regulatory certainty for the Project, as well as members of IECG and the public who stand to reap substantial energy, environmental, and economic benefits from its construction and operation.

B. IECG Background.

IECG is a non-profit trade association of large Maine energy consumers incorporated in 1985 to participate before state, regional, and federal bodies regarding the supply, reliability, cost, and now climate impact of energy decisions affecting Maine. IECG accepts consensus climate science and advocates for rapid, effective climate mitigation, particularly through beneficial electrification, *i.e.*, decarbonizing the economy by electrifying the transportation and heating sectors with an increasingly renewable electricity supply that remains affordable and reliable.

Why does an energy consumer group, almost always on the opposite side of CMP for the last 35 years, support NECEC? The reason is simple. Even aside from the issue of NECEC's *direct* greenhouse gas benefits,³ IECG supports NECEC because it will provide the foundation for beneficial electrification by reducing wholesale electricity prices and increasing grid reliability in Maine and New England, and by providing direct financial support for heat pumps and electric vehicles in Maine, both being critical to Maine's climate strategy.⁴ Expensive, unreliable

³ IECG vehemently disagrees with NRCM and believes what every agency and court to address the issue has confirmed: NECEC will reduce greenhouse gas emissions in Maine, Massachusetts, and the region.

⁴ See generally, *e.g.*, 38 M.R.S. §576-A (requiring emissions reductions); 38 M.R.S. §577 (creating the Maine Climate Council and requiring DEP to adopt action plan to meet emissions reductions); and Maine Climate Council, *Maine Won't Wait, A Four-Year Plan for Climate Action* (December 2020).

electricity simply will not allow beneficial electrification to occur at the pace or scale necessary to address the climate crisis. NECEC is an enormous step in the right direction.

2. ARGUMENT

A. Appellants' Strategy to Kill NECEC Through Delay Must Be Stopped.

Appellants simply do not like NECEC (for reasons mostly unrelated to environmental protection) and will never agree with approving the Project, regardless of how significant its benefits are to Maine, how those benefits are balanced against the alleged harms, or what new mitigation might be imposed. They quibble about the weight assigned to their evidence but can point to no part of the Order that is not supported by substantial contrary evidence or is clearly wrong or unjustified. That simply doesn't matter because Appellants' mission is not to have the Board correct a mistake, improve a condition, or account for an important new environmental circumstance. If the Board, for example, required greater trout protections and an additional 10,000 acres of conservation, it would not make the slightest difference to Appellants. Their unequivocal strategy is to kill NECEC, and the tactic is death by a thousand paper cuts—a blitzkrieg of baseless motions, letters, supplements, and appeals. Appellants torture any sense of fairness in the hope of creating just enough delay, confusion, and cost to push NECEC beyond the brink of economic viability. The Board should not allow Appellants' to engineer such a result through egregious abuse of process.

While it is the Board's job to consider the record, supplement it as necessary, find its own facts, and make its own determination, the Board should be informed by the long regulatory history of NECEC, including the Department's process and result, as well as the processes and results of Maine sister agencies and courts and the agencies and courts of Massachusetts and the federal government. When viewed through this lens, two things are clear: (1) NECEC has already been

tested beyond how any critical infrastructure project should be tested under an efficient administration of law and within the boundaries of due process, and (2) the pattern of Appellants' shameless efforts to delay must be acknowledged and rejected.

B. The History of NECEC Administrative and Judicial Processes Should Guide the Board.

NECEC is an energy infrastructure project that has undergone a historically rigorous level of regulatory scrutiny commensurate with its size and critical importance to Maine, Massachusetts, the reliability of the regional electric grid, electricity consumers, and the environment. Regulatory processes are designed to produce rational decisions, without undue delay, that can be relied on to take action. The certainty they provide for regulated entities and the public at large is a hallmark of administrative law and essential to the proper and efficient functioning of modern participatory government. IECG members, for example, rely on regulatory processes to make critical energy and capital decisions for their businesses. However, after nearly four years of active support for NECEC in administrative proceedings, and helping to achieve and uphold regulatory approvals from three Maine agencies, IECG remains unable to bank the promise of NECEC's substantial benefits and is increasingly frustrated by a vocal minority's specious use of regulatory processes to thwart what is in the public interest.

It is useful to recount the administrative and judicial processes⁵ that NECEC has endured to both highlight Appellants' pattern of obfuscation and remind the Board that it need not re-do the combined decades of work already done to vet NECEC—and certainly not because Appellants simply disagree, and never will agree, with the Project's approval.

⁵ To provide this history, which is an element of IECG's legal argument, IECG relies on and cites various statutes, administrative agency orders and decisions having the force of law, and court orders and decisions. To the extent necessary, IECG requests that the Board take administrative notice of such materials because they are relevant, reliable, publicly available, and cannot be factually disputed.

a. Massachusetts Proceedings

(i) Massachusetts Department of Public Utilities (MA DPU)

The origins of NECEC lie in a 2016 Massachusetts law enacted to reduce energy costs, increase supply diversity, and reduce greenhouse gas emissions, which required Massachusetts electric utilities to competitively solicit and execute cost-effective long-term contracts for clean energy generation resources.⁶ The Massachusetts Department of Energy Resources and Office of the Attorney General oversaw the solicitation method, which was then approved by the MA DPU.⁷ Fifty-three solicitation responses were reviewed by the Department of Energy Resources, in consultation with the electric utilities and a statutorily required “Independent Evaluator,” in a three-stage evaluation process based on quantitative and qualitative criteria.⁸ NECEC was ultimately selected as the winner, after which it negotiated power purchase agreements with Massachusetts electric utilities. Following an 11-month adjudicatory proceeding, in which NextEra was granted full intervenor status because of its status as both an “intra-industry competitor” and “unsuccessful bidder,”⁹ the MA DPU approved the NECEC power purchase agreements in a 150-page decision on June 25, 2019.¹⁰

(ii) Massachusetts Supreme Judicial Court

NextEra appealed the MA DPU’s approval of the NECEC power purchase agreements to the Massachusetts Supreme Judicial Court on July 12, 2019. The Court “affirm[ed] the department's approvals of the [power purchase agreements] pursuant to Section 83D.”¹¹

⁶ *An Act to Promote Energy Diversity*, St. 2016, c. 188, § 12.

⁷ *Timetable and Method of Solicitation and Execution of Long-Term Contracts Under Section 83D*, D.P.U. 17-32 (2017).

⁸ *Long-Term Contracts for Clean Energy Generation Pursuant to Section 83D*, D.P.U. 18-64; 18-65; 18-66, at 11-22 (2019).

⁹ *Hearing Officer Ruling on Petitions to Intervene*, D.P.U. 18-64; 18-65; 18-66 (2018).

¹⁰ *Long-Term Contracts for Clean Energy Generation Pursuant to Section 83D*, D.P.U. 18-64; 18-65; 18-66, at 151-52 (2019).

¹¹ *NextEra Energy Resources, LLC v. Dept. of Public Utilities*, 485 Mass. 595, 616 (2020).

b. Federal Proceedings

(i) The Federal Energy Regulatory Commission (FERC)

In August of 2018, pursuant to the Federal Power Act, CMP submitted seven bilateral transmission service agreements to the FERC under which CMP agreed to provide firm point-to-point transmission service over NECEC to the Massachusetts electric utilities that had contracted for power. The FERC accepted the transmission service agreements, effective October 18, 2018.¹²

NECEC Transmission LLC and Avangrid, Inc. have subsequently filed a complaint with the FERC, requesting that the FERC stop a group of NextEra companies and affiliates from unlawfully interfering with the interconnection of NECEC, including all attempts by NextEra to block, delay, or unreasonably increase the costs associated with the interconnection of the NECEC.¹³ The complaint remains unresolved.

(ii) The U.S. Army Corps of Engineers (Corps)

In September of 2017, CMP applied to the Corps for a required permit under the Clean Water Act and Rivers & Harbors Act of 1899. After coordinating with several state and federal agencies, including the Department and the U.S. Department of Energy, accepting public comment over a 10-month period, issuing information requests, and holding a public hearing, the Corps issued an Environmental Assessment, which included a Finding of No Significant Impact, on July 7, 2020, with a November 4, 2020 addendum.¹⁴ Ultimately, the Corps issued the permit for NECEC, effective November 6, 2020.¹⁵

¹² *Central Maine Power Company*, 165 FERC ¶ 61,034 (2018).

¹³ *See generally*, FERC docket EL20-6-000.

¹⁴ Department of the Army, *Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application*, CENAE-RDC; NAE-2017-01342 (July 7, 2020); *Environmental Assessment Addendum*; Central Maine Power Company (CMP); New England Clean Energy Connect (NECEC); CENAE-ZC; NAE-2017- 01342 (November 4, 2020).

¹⁵ Department of the Army, *Permit of the Discharge of Fill Material into Waters of the U.S. and Work Under a Navigable Water of the U.S.*, File Number NAE-2017-01342 (November 6, 2020).

A group of NECEC opponents including NRCM (collectively, NRCM) sued on October 27, 2020, alleging the Corps should have done a full-blown Environmental Impact Statement. NRCM amended its complaint to challenge the Corps permit, seeking to enjoin NECEC construction. On December 16, 2020, the United States District Court for the District of Maine denied NRCM's motion for a preliminary injunction.¹⁶ Judge Walker importantly noted: "Given my assessment of the first two preliminary injunction factors, identification of equitable interests on the other side of the balance only serves to undermine further Plaintiff's Motion."¹⁷ Since then, NRCM has appealed to the First Circuit, sought and been denied an emergency injunction from the District Court,¹⁸ and sought and been granted a temporary emergency injunction from the First Circuit.¹⁹ The case remains unresolved.

(iii) *The Department of Energy (DOE)*

In July of 2017, CMP applied to the DOE for a Presidential Permit, necessary for transmission lines that connect at or cross international borders. The DOE issued the Presidential Permit for NECEC,²⁰ along with an Environmental Assessment and Finding of No Significant Impact,²¹ in January of 2021. To date, no one has appealed the DOE's actions.

c. Maine Proceedings

(i) *The Maine Public Utilities Commission (MPUC): NECEC Approval*

The MPUC conducted an adjudicatory proceeding for NECEC that spanned nearly a year and half, involving over 30 parties, including NextEra, NRCM, and members of the West Forks

¹⁶ *Sierra Club v. U.S. Army Corps of Eng'rs*, 2020 WL 7389744 (D. Me. Dec. 16, 2020).

¹⁷ *Id.*, at 48 (emphasis added).

¹⁸ *Sierra Club v. U.S. Army Corps of Eng'rs*, Order on Plaintiffs' Emergency Motion for Injunction Pending Appeal, No. 2:20-cv-00396-LEW (D. Me. Dec. 23, 2020).

¹⁹ *Sierra Club v. U.S. Army Corps of Eng'rs*, Order of Court, No. 20-2195 (1st Cir. Jan. 15, 2021).

²⁰ U.S. DOE, NECEC Transmission LLC, OE Docket No. PP-438, Presidential Permit No. PP-438 (January 14, 2021).

²¹ U.S. DOE, *New England Clean Energy Connect Environmental Assessment*, DOE/EA-2155 (January 2021); *NECEC Environmental Assessment (DOE/EA-2155) Finding of No Significant Impact* (January 14, 2021).

Group, eight rounds of pre-filed testimony, written discovery, technical conferences, six days of evidentiary hearings, and three public witness hearings. In May of 2019 the process culminated in a 100-page order granting to NECEC a certificate of public convenience and necessity and approving an associated 38-page stipulation that was supported by 11 parties.²² The MPUC concluded that NECEC “is in the public interest and, therefore, there is a public need for the Project”²³ because “the benefits ... of the NECEC to Maine ratepayers and citizens significantly outweigh the costs and detriments of the Project.”²⁴ Further the MPUC “conclude[d] that the Stipulation ... provides significant additional benefits to Maine.”²⁵ The stipulated benefits alone exceed \$248 million and include direct rate relief, guaranteed funds for heat pumps, electric vehicles, broadband expansion, renewable energy and decarbonization studies, and education grants.²⁶

(ii) The Law Court: Upholding the MPUC Approval of NECEC

As an owner and developer of generation, including the largest fossil fuel (oil) power plant in Maine, with a vested interest in keeping electricity prices high,²⁷ NextEra appealed the MPUC Order to the Law Court. The Law Court affirmed the MPUC Order, concluding: “The Commission followed the proper procedure and there is sufficient evidence in the record to support the findings it made. In short, the Commission reasonably interpreted and applied the relevant statutory mandates in arriving at its decision to grant CMP a certificate of public convenience and necessity

²² *Central Maine Power Company*, Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston and Related Network Upgrades, Docket No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation (Me. P.U.C. May 3, 2019) (“MPUC Order”).

²³ *Id.*, at 1.

²⁴ *Id.*, at 98.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*, at 43 (“[T]he Commission agrees with the IECG that, as a policy matter, it is the interests of customers, not generation competitors, that must be the priority consideration in deciding whether or not to grant a CPCN for the NECEC.”).

for the NECEC project and its decision to approve the stipulation. NextEra has not shown that the Commission's issuance of the CPCN or approval of the stipulation was arbitrary or otherwise an error of law."²⁸

(iii) The Law Court: Finding the First NECEC Referendum Unconstitutional

After twice losing on the merits in Maine, opponents next turned to initiated legislation that would have forced the MPUC to overturn its NECEC approval. After months of ping pong between Maine courts and the Maine Secretary of State, including a Law Court decision affirming only the procedural validation of the initiative,²⁹ the Law Court in August of 2020 ultimately held the initiative itself was unconstitutional and exceeded the people's legislative power.³⁰

(iv) The MPUC: Second NECEC Stipulation Approval

In October of 2020, as part of a follow-on proceeding to transfer NECEC to NECEC Transmission, LLC, the MPUC approved a second NECEC stipulation, which further secures the benefits of the first stipulation, accelerates the provision of benefits, and increases the provision of environmental attributes associated with the Project.³¹ NRCM incredibly opposed the second stipulation, and its *additional* public benefits, for the same reasons it opposed the MPUC's initial approval of NECEC, despite the fact that the second NECEC stipulation did not and could not affect the MPUC's underlying NECEC decision.³²

(v) The Second Anti-NECEC Referendum

NECEC opponents submitted a second petition to the Secretary of State for initiated legislation on January 21, 2021. The legislation, entitled "*An Act To Require Legislative Approval*

²⁸ *NextEra Energy Res., LLC v. Maine Pub. Utilities Comm'n*, 2020 ME 34, ¶43, 227 A.3d 1117.

²⁹ *See generally, Reed v. Secretary of State*, 2020 ME 57, 232 A.3d. 202.

³⁰ *See generally, Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, 237 A.3d 882.

³¹ *See generally, Central Maine Power Company*, Request for Approval to Transfer the New England Clean Energy Connect to NECEC Transmission, LLC, Docket No. 2019-00179, Order (Me. P.U.C. October 20, 2020).

³² *Id.*, at 11.

of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region,” is intended, among other things, to retroactively prohibit NECEC based on its location. The Secretary of State validated the second petition on February 22, 2021.³³

(vi) *The Department and Land Use Planning Commission (LUPC): NECEC Approval and Appeals*

In October of 2017 the Department and the LUPC began coordinated adjudicatory proceedings on NECEC, which included the participation of 39 parties and additional testimony and comments from hundreds of Maine citizens. After over two years of review, including two joint days of evidentiary hearings with testimony and cross-examination by each Appellant, the LUPC on January 8, 2020 issued a 42-page Site Law Certification Decision finding that NECEC complies with the relevant LUPC statutes and rules.³⁴

After a 29-month review, including six days of evidentiary hearings with testimony and cross-examination by each Appellant, the Department on May 11, 2020 issued a 236-page order approving NECEC with conditions that “provide an unprecedented level of natural resource protection for transmission line construction in the State of Maine.”³⁵ In finding NECEC’s “adverse effects to be reasonable in light of the project purpose and its [greenhouse gas] benefits,” the Department noted that “[c]limate change ... is the single greatest threat to Maine’s natural

³³ State of Maine Office of the Secretary of State, *Determination of the Validity of a Petition for Initiated Legislation Entitled: “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region”* (February 22, 2021).

³⁴ LUPC, *Request of Maine Department of Environmental Protection for Site Location of Development Law Certification, Central Maine Power Company, New England Clean Energy Connect, Site Law Certification SLC-9*, at 41 (January 8, 2020).

³⁵ Order at 1.

environment.”³⁶ Its impacts, which are projected to worsen, are already negatively affecting brook trout habitat and threatening forest habitat for moose and pine marten.³⁷ “Failure to take immediate action to mitigate the [greenhouse gas] emissions that are causing climate change will exacerbate these impacts.”³⁸

Since issuance of the Order, the number and nature of the filings made by Appellants to the Department, the Board, and the Superior Courts is nearly impossible to track. Chaos is the purpose, not just the result. The onslaught of mostly off-point and regurgitated arguments has been met with nothing but rejection, as outlined below:

- 1) Chair Draper transferred to the Commissioner NRCM’s stay request of the Board to “conserve resources” and “avoid[] duplicative efforts.”³⁹
- 2) Chair Draper denied NRCM’s appeal of the transfer decision, noting that while NRCM “assumes” its own assertions about Board jurisdiction are correct, the Board “will not presume their validity for procedural purposes while NRCM’s appeal is pending.”⁴⁰
- 3) Consistent with remand from the Superior Court, Chair Draper allowed NextEra and West Forks Group to update their judicial appeals to be considered alongside NRCM’s appeal in a consolidated Board proceeding.⁴¹
- 4) The Commissioner denied NRCM’s and West Forks Group’s request for a stay of the Order, noting that with respect to “the significant portions of West Forks’ and NRCM’s appeals that are challenges to the factual findings ... the likelihood of success with respect to those arguments is low.” The Commissioner concluded that “Petitioners have failed to establish a strong likelihood of success on the merits of their respective appeals, and this criterion alone warrants denial of their stay requests. The grounds for this denial are bolstered when all three of the stay criteria, as discussed above, are considered and weighed together.”⁴²

³⁶ *Id.*, at 105.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Chair Draper letter order transferring NRCM’s stay application to the Commissioner (July 16, 2020).

⁴⁰ Chair Draper letter order denying NRCM’s appeal of the transfer decision (August 4, 2020).

⁴¹ Chair Draper letter order allowing updated appeals (August 26, 2020).

⁴² Commissioner Reid letter order denying stay of NECEC Order (August 26, 2020).

- 5) Chair Draper denied NRCM and West Forks Group’s “renewed requests” for a stay, finding “no compelling grounds to revisit and reconsider” the Commissioner’s denial and emphasizing the substantial review period of the Department.⁴³
- 6) Chair Draper rejected NRCM’s request to consolidate the application to partially transfer the Order with the underlying appeals, finding “no compelling grounds” and noting consolidations would be “procedurally problematic.”⁴⁴
- 7) Chair Draper rejected West Fork Group’s request to reconsider denial of a stay and for a Board hearing.⁴⁵
- 8) The Acting Commissioner denied NRCM’s request that the Commissioner recommend Board jurisdiction over the transfer application, concluding that “none of the four criteria for Board assumption of jurisdiction are met.” The Commissioner also rejected NRCM’s request for a public hearing because NRCM addressed none of the hearing criteria.⁴⁶
- 9) The Department approved partial transfer of the Order to NECEC Transmission, LLC, rejecting NRCM’s and West Fork Group’s arguments to withhold a decision.⁴⁷
- 10) Over various objections by NRCM and NextEra, the Department concluded that CMP and NECEC Transmission, LLC have complied with Special Conditions #4 and #12 of the Order.⁴⁸
- 11) The Superior Court denied NRCM’s request to stay the Order, which the West Forks Group joined, rejecting each of NRCM’s arguments. Regarding Board jurisdiction, the court was “not inclined to endorse such an extended delay in raising the issue, particularly when it would unfairly prejudice CMP, DEP, and the 2-plus-year process engaged in by numerous individuals and entities to reach the ultimate conditional approval.” The Court also found NRCM had not demonstrated a likelihood of success regarding insufficiency of title, right and interest. Finally, with respect to sufficiency of evidence, the court found NRCM again failed to demonstrate a likelihood of success because “[m]ovants have not pointed to the absence of competent evidentiary support for the Commissioner’s factual findings; instead, they have pointed to evidence in the record that conflicts with the factual findings.”⁴⁹

⁴³ Chair Draper letter order denying NRCM and West Forks’ appeal of Commissioner’s stay order (October 23, 2020).

⁴⁴ Chair Draper letter order denying consolidation of the transfer application with appeal (October 27, 2020).

⁴⁵ Chair Draper letter order denying West Forks’ request to reconsider (November 12, 2020)

⁴⁶ Acting Commissioner Loyzim letter order determining Board jurisdiction is not warranted and denying public hearing (November 13, 2020).

⁴⁷ Department of Environmental Protection, Order #L-27625-26-K-T (December 4, 2020).

⁴⁸ Department of Environmental Protection, Order #L-27625-26-L-C, L-27625-TB-M-C, L-27625-2C-N-C, L-27625-VP-O-C, and L-27625-IW-P-C (January 8, 2021).

⁴⁹ *NextEra v. DEP*, et al., KEN-AP-20-27 and SOM-AP-20-04 (Me. Super. Ct., Ken. Cnty., January 11, 2021).

- 12) The Chair denied NRCM's request to stay the transfer order, noting "NRCM's stay request is perfunctorily made and is devoid of any argument as to why the Board should grant a stay of the Transfer Order and addresses none of the three criteria that must be established by NRCM for the Board to grant a stay."⁵⁰
- 13) The Acting Commissioner denied the requests of NRCM and Sierra Club, determining that the Board should not assume jurisdiction over the NECEC minor revision application because two of the four criteria are not satisfied.⁵¹
- 14) In response to proposed supplemental evidence and related argument, Chair Draper rejected NRCM's and West Forks Group's "responses" as procedurally improper, and struck the vast majority of supplemental evidence offered by Appellants for violating simple rules, such as not including the evidence with the appeals, submitting electronic links rather than written transcripts, not showing due diligence or explaining relevance or materiality, and incorporating by reference unredacted versions of redacted testimony.⁵²

If Appellants could lawfully appeal or oppose something in any way, shape, or form, they have done so. And Appellants have certainly stretched the standard of lawfulness, to the extent it has been used at all. Various appeals, requests for considerations, and motions remain pending, and there is no end in sight. By IECG's unofficial count, Appellants' batting average is not only zero, but they are 0 for about 30. This is nonetheless a hall-of-fame performance in terms of time wasted, paper filed, and confusion caused. The pattern is clear: oppose, prolong, do over, then repeat.

IECG summarizes this long history involving the executive and judicial functions of two states and the federal government not to suggest that the Board must defer to any other agency or court, but to remind the Board that regulatory processes are designed to produce reasoned decisions without undue delay, based on fair opportunity to participate, that can be relied and acted on. Appellants are twisting the concept of "fair opportunity" into a one-sided justification for delay, uncertainty, and hopefully inaction. IECG understands that the "administrative machine" moves

⁵⁰ Chair Draper, letter order consolidating appeals and denying NRCM request to stay transfer order (January 19, 2021).

⁵¹ Acting Commissioner, letter order recommending the Board not assume jurisdiction over the minor revision application (February 10, 2021).

⁵² Chair Draper, letter order addressing proposed supplemental evidence (February 12, 2021).

slowly by design, but it must continue to move with purpose and deliberate speed to achieve a result. Endlessly grinding and reversing the machine is as unfair to the sponsors, supporters, and beneficiaries of NECEC as would be outright denying Appellants the right to participate. No plausible argument can be made that Appellants have been denied such right. To the contrary, however, Appellants' pattern of abusing their participatory right poses a serious risk of denying NECEC, and the public, a fair outcome.

There is no need for the Board to re-invent, re-start, reverse, or pause the administrative process with respect to the Order. The fact that the process produced an Order that the Appellants simply do not like is not an indication of failure. To the contrary, in the face Appellants' pattern of obfuscation, the consistent rejection of Appellants' re-packaged and recycled arguments, both before and after the Order issued, is proof that Appellants haven't been able to break the "administrative machine" yet (though it is being severely overtaxed).

The simple fact is that every single expert agency and court has disagreed with Appellants. 0 for at least 30. At this point, given this context, timely administration of justice must trump Appellants' specious push for more process, more time, and more re-dos. When government works in a timely manner it can serve essential purposes, such as quelling a pandemic, reversing a recession, and mitigating the climate crisis. The Board should put an end to Appellants' charades and forcefully dismiss their arguments, again. The unjustified delay Appellants' seek through their tactics does nothing but unnecessarily delay (or deprive) Maine citizens of the timely implementation of the substantial energy, environmental, and economic benefits of NECEC, at a time when decisive government action could not possibly be more important.

C. The Board Should Not Hold Another Hearing.

The Board should not endorse Appellants' delay strategy by holding *yet another* hearing. Beyond the procedural infirmities of Appellants' hearing requests, the requests themselves clearly fit the pattern the Board must break. The Board is unequivocally under no legal obligation to hold a hearing. It may rely on the voluminous and adequately developed Department record. *Concerned Citizens to Save Roxbury v. BEP*, 2011 ME 39, ¶ 23 (“... because the record before the Board was voluminous and included numerous written comments, studies, and information submitted by both [the applicant and opponent], we see no reason to conclude that the Board abused its discretion or otherwise erred in denying [the opponent's] request to conduct a public hearing on the ground that the record was ‘adequately developed’”); *See also, Martha A. Powers Trust v. BEP*, 2011 ME 40. The Board may “engage[] in an independent analysis of the record” to reach its conclusions and is “free to make its own credibility determinations with respect to the conflicting evidence before it.” *Passadumkeag Mountain Friends v. BEP*, 2014 ME 116, ¶ 10, 14.

Even if the Board were to exercise its discretion to allow a public hearing, the endeavor would be futile. As stated above, there is no error the Board could correct or condition it could improve that would appease Appellants, whose only goal is death of NECEC by a thousand paper cuts. The Board should short-circuit Appellants' pattern now and proceed to rendering its decision with deliberate speed.

3. CONCLUSION

The strategy, tactics, and goal of Appellants are clear, as are their mostly non-environmental motivations. The response by regulators and judges alike has been equally clear: Appellants' arguments are meritless. The Board should break Appellants' pattern of delay, rely on the Department's robust record, and affirm the Order's central conclusion to approve NECEC.

Time is of the essence, both because of NECEC's already extensive regulatory and judicial history and because "[f]ailure to take immediate action to mitigate the [greenhouse gas] emissions that are causing climate change will exacerbate these impacts."⁵³ The sponsors and supporters of NECEC, as well as the general public, should not have the benefits of NECEC held hostage by a vocal minority that has been proven wrong too many times to count. Chief among the benefits, NECEC will substantially lower electricity costs and increase grid reliability. These benefits, in turn, will unequivocally provide the affordable and reliable foundation for decarbonizing Maine's economy through beneficial electrification.

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Respectfully submitted,



R. Benjamin Borowski, Bar No. 4905

Anthony W. Buxton

Counsel to Industrial Energy Consumer Group

Preti Flaherty Beliveau & Pachios LLP

P.O. Box 1058, 45 Memorial Circle

Augusta, ME 04332

Telephone: 207-623-5300

⁵³ Order at 105 (emphasis added).