

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act Permit and Natural Resources Protection
Act Permit for the New England Clean Energy
Connect (NECEC)

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

**NATURAL RESOURCES
COUNCIL OF MAINE'S
COMMENTS ON CMP AND
NECEC LLC CONDITION
COMPLIANCE APPLICATION**

On November 9, 2020, Central Maine Power Company (“CMP”) and NECEC Transmission, LLC¹ (“NECEC LLC”) filed a Condition Compliance Application (“Application”) for Conditions 4 and 12 of the Department of Environmental Protection (“Department”) Order on the New England Clean Energy Connect transmission line (“NECEC Order”).² On November 11, 2020, the Department requested that comments on the Application be filed by November 30, 2020. NRCM timely submits these comments on the Application.

The Department cannot grant the Application because (i) it fails to demonstrate compliance with Condition 4 because it does not show that either CMP or NECEC LLC possess the requisite financial capacity to construct or operate the NECEC, and (ii) the Initial Vegetation Clearing Plan (“VCP”) and Post-Construction Vegetation Maintenance Plan (“VMP”) submitted as

¹ There is no basis for NECEC LLC to submit the Application. NECEC LLC is not a party to the NECEC Order nor has the Department approved the pending partial transfer application seeking to shift certain rights and obligations under the NECEC Order to NECEC LLC. Until the Department acts to make NECEC LLC a party to the NECEC Order, NECEC LLC is without standing to take any action under the NECEC Order, including submission of the Application.

² The NECEC Order, along with its accompanying appendices, is attached as **Exhibit 1**.

documentation of compliance with Condition 12 to the NECEC Order require amendment of the NECEC Order to authorize project changes including additional project impacts including NRPA protected resources which were not considered or authorized by the NECEC Order.³

Comments

I. The Application Fails to Document Compliance with the Financial Capacity Requirements of Condition 4.

The Application does not document compliance with Condition 4, which requires that, “[p]rior to the start of construction, the applicant shall submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 2(B), to the Department for review and approval” (emphasis added). NECEC Order at 109. Condition 4 requires that the applicant demonstrate its financial wherewithal, by means authorized by Chapter 373 of the Department’s Rules, to comply with the extensive financial requirements of the NECEC Order, including (i) the costs “to design, construct, operate, and maintain the proposed development in a manner consistent with state environmental standards and the provisions of Site Law” (NECEC Order at 14), and (ii) “decommissioning costs in the form of a decommissioning bond, irrevocable letter of credit, establishment of an escrow account, or other form of financial assurance accepted by the Department, for the total cost of decommissioning.” NECEC Order at 106. Before the Department can find condition compliance, the Department needs proof (in the forms authorized by Chapter 373) that CMP *has* the money needed to comply with all the requirements of the NECEC Order. The Application includes no such showing.

³ CMP and NECEC LLC also failed to provide parties to the Department’s proceedings on the NECEC with notice of the Application.

First, even if the documentation submitted complied with Condition 4, NECEC LLC is without authority to obtain condition compliance under the current NECEC Order. As noted above in footnote 1, NECEC LLC and CMP submitted a partial transfer application, but the Department has not yet acted on it. Until NECEC LLC is granted rights pursuant to that transfer application, the Department cannot properly find that NECEC LLC complied with Condition 4. When, or if, the Department does act on the transfer application, it will parse the NECEC Order obligations between CMP and NECEC LLC. Compliance with Condition 4 will then change to require that these two entities provide documentation that complies with Chapter 373 and specifies the manner in which they possess or control sufficient funds to meet their respective financial obligations under the NECEC Order.

Second, CMP failed to submit any evidence of its financial capacity as required by Condition 4. The letter CMP submitted is from Avangrid Networks, Inc. and Avangrid, Inc., and it indicates that they have “committed to provide NECEC LLC the funding needed for NECEC LLC to acquire the project from CMP and for construction and operation of the NECEC Project.” Attachment A to Application at 2 (Nov. 4, 2020 Letter from Howard Coon, Vice-President & Treasurer, Avangrid) (hereinafter “Coon Letter”). There is no mention of funding for CMP. Consequently, the Application fails to document compliance with Condition 4.

Third, the Application focuses on the financial capacity of Avangrid Inc. and Avangrid Networks, Inc., and nowhere demonstrates that NECEC LLC has been capitalized with even a single dollar. Instead, it makes vague assertions that “Avangrid and Avangrid Networks have committed to provide NECEC LLC the funding needed for NECEC LLC to acquire the project from CMP and for construction and operation of the NECEC Project as approved.” Coon Letter at 2. But, the commitment must be clearly linked to the applicant and its obligations under the

license to comply with Condition 4, which explicitly refers to the requirements of Department Rules, Chapter 373, § 2(B). And it is the applicant that must be linked to the commitment of financial resources (along with a timeline and specific costs required under the NECEC Order) in order to properly demonstrate financial capacity, not Avangrid or Avangrid Networks.

The Application further alleges that “Avangrid will make equity contributions of up to \$1,000,000,000 to Avangrid Networks to fund the corresponding equity contributions to be made by Avangrid Networks to NECEC LLC. In turn, Avangrid Networks will make such equity contributions to NECEC LLC.” Coon Letter at 2. It does not demonstrate that a single dollar has yet been transferred to NECEC LLC, nor provide any timeline for a minimum capitalization amount. This facially fails to comply with the self-funding requirement in the Department Rules that the applicant demonstrate “that funds have been set aside for the proposed development.” DEP Rule Ch. 373, § 2(B)(3)(b). An “intent to fund” letter is sufficient only “where funding is required but there can be no commitment of money until approvals are received,” *id.* § 2(B)(3)(a), a condition precedent not present here.

Next the Application states, “[i]n addition, Avangrid and NECEC LLC will execute a \$500,000,000 revolving loan agreement, which provides a source of debt financing to NECEC LLC during the construction phase of the NECEC Project.” Coon Letter at 2. This statement fails for the same reasons as the above statement—once permits have been issued, a statement of an “intent to fund” is insufficient, and the application must demonstrate that such a loan agreement was been executed which pairs with cost estimates for the project costs under the NECEC Order and the timeline for those costs.

Finally, the Application states that “Avangrid will provide parent guarantees, letters of credit, or other such instruments or collateral support required by NECEC LLC counter-parties to

support the construction of the NECEC Project.” Coon Letter at 2. But the contractual arrangements that may or may not be required in the future “by NECEC LLC counter-parties” are irrelevant to the Department’s assessment of compliance with Condition 4 pursuant to Chapter 373 because they fail to include the required costs and timeline for establishing financial capacity, other than to suggest that Avangrid expects NECEC LLC to be under-capitalized enough that contracting parties will require parent-guarantees from Avangrid itself.

In short, the Application contains no evidence regarding CMP’s financial capacity. Further, even assuming, *arguendo*, that NECEC LLC were the party required to demonstrate financial capacity—which it is not because it has no rights under the NECEC Order—the Application does not show that NECEC LLC possesses financial capacity to comply with Condition 4.

II. CMP’s Identification of New Project Area, Including Wetlands, is an Amendment to the NECEC Order Not Properly Sought Via a Condition Compliance.

Condition 12 states that “[t]he applicant shall update its VCP and VMP to be consistent with the requirements of this Order, including but not limited to the vegetation management required in Appendix C, and submit the updated plans to the Department for review and approval prior to the start of construction (which includes clearing) within the corridor.” NECEC Order at 110.

As a prerequisite to its ability to comply with Condition 12 of the NECEC Order, and the VCP and VMP more specifically, CMP identified numerous changes to the project area impacted by the NECEC, none of which were included in CMP’s original or numerous application amendments leading to the NECEC Order. Such changes to the NECEC cannot properly be considered via a condition compliance application. Instead, material project changes such as these must be considered as part of an amendment to the NECEC Order. These changes are not

insignificant. For example, Table 1 of the Application indicates that the NECEC will include (i) sixty-two (62) Off Right of Way Access Roads (“ORARs”), including three (3) that require wetland crossings (*see also* Attachment D to the Application), and (ii) additional land for temporary workspaces, including 0.37 acres of wetlands that CMP plans to clear of trees and on which CMP plans to place timber mats (*see also* Attachment F to the Application).

The Application indicates that the “temporary wetland impact” associated with these additional lands “will be accounted for in the compensation update that will be included with a soon to be filed permit minor revision application.” Application at 2. The Department cannot properly decide on the Application—which seeks confirmation that these brand new portions of the NECEC comply with the NECEC Order—before the NECEC Order is amended (as CMP concedes it must be) to determine whether these project changes comply with the Site Law, NRPA and Water Quality Certification. In short, the Application puts the cart before the horse. The Department cannot find that the proposed VMP and VCP meet Condition 12 before it determines whether the amendments to the NECEC Order that are necessary to implement the VMP and VCP submitted with the Application comply with the law. CMP has not, therefore, demonstrated compliance with Condition 12.

III. CMP Did Not Provide Notice of Its Condition Compliance Application.

In addition to the substantive issues identified above, CMP did not comply with Department Rules regarding notice. Chapter 3, Section 30 mandates that “any licensee receiving an approval following a hearing must provide notice to all parties of the filing of any documents with the Department indicating: (A) actions to comply with conditions contained in the license that require Department review and approval ...” Notice is “deemed fulfilled” when it is “mailed to a party to a proceeding.” *Id.* CMP failed to do so. Instead, NECEC Project Manager James Beyer

circulated the Application by email on November 12, 2020 indicating that CMP submitted the Application a full three days prior, on November 9, 2020. Having failed to comply with the Department's notice requirements, the Application should be denied.

Conclusion

The Application fails to document compliance with Conditions 4 or 12 and fails to comply with Department procedural rules. As such, the Department must deny the Application.

Dated: November 30, 2020

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⁴ This electronic signature is authorized by Section G of PMO-SJC-2 (rev. June 5, 2020).