

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:)	
)	
CENTRAL MAINE POWER COMPANY)	APPLICATION FOR SITE LOCATION OF
25 Municipalities, 13 Townships/Plantations,)	DEVELOPMENT ACT PERMIT AND
7 Counties)	NATURAL RESOURCES PROTECTION
)	ACT PERMIT FOR THE NEW ENGLAND
L-27625-26-A-N)	CLEAN ENERGY CONNECT
L-27625-TB-B-N)	
L-27625-2C-C-N)	
L-27625-VP-D-N)	
L-27625-IW-E-N)	
)	
CENTRAL MAINE POWER COMPANY)	
NEW ENGLAND CLEAN ENERGY CONNECT)	
SITE LAW CERTIFICATION SLC-9)	

GROUPS 2 AND 10'S COMMENTS to DRAFT ORDER

Intervenor Group 2 and Intervenor Group 10 (collectively, "Groups 2 and 10") by and through their attorneys, BCM Environmental & Land Law, PLLC submit the following comments to the Department of Environmental Protection's (the "Department") Draft Order granting Site Law Certification to Central Maine Power Company's ("CMP") New England Clean Energy Connect (NECEC):

Groups 2 and 10 continue to request the Department deny approval of the NECEC. Rather than crafting conditions which result in the redesign of a poorly planned and sited project, CMP should be denied Site Certification due to its failure to meet its burden that it would not cause unreasonable adverse impacts on wildlife, not adversely affect scenic character or aesthetic uses, and that sufficient alternatives were explored. Approval even with conditions would allow a massive and permanent scar in Maine's Northwest Mountains: "part of a largely unfragmented

forest block that is more than 500,000 acres,...which itself is part of an even larger area that is one of the world's last remaining contiguous temperate broadleaf-mixed forests.”¹ This statement alone should give the Department pause to consider whether there can be *any* condition that can possibly protect such a significant area of Maine from the permanent environmental damage this strictly for-profit transmission corridor will create; a transmission corridor the purpose of which is to funnel energy from a foreign country (Canada's Hydro-Quebec) to out of state energy consumers (Massachusetts) all to profit shareholders in another foreign company (Spanish owned Avangrid).

How did the Legislative intent and purpose of the Site Certification Law become so lost?

As the Natural Resources Protection Act states and the Department declares on its website:

[T]he State's rivers and streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dune systems are resources of state significance. These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental value of present and future benefit to the citizens of the State and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources, producing significant adverse economic and environmental impacts and threatening the health, safety and general welfare of the citizens of the State.²

Contrary to the explicit intent, the Department, Maine's entrusted watchdog, is expending time and effort in redesigning a project that would otherwise have an unreasonable impact on wildlife habitat.³ The Department allowed CMP to make modifications during the review process.⁴ But even those modifications were not adequate.⁵ Rather than denying the project, we now have

¹ Draft Order at 74 citing testimony from Group 6.

² Natural Resources Protection Act, 38 M.R.S.A.

³ “Where Segment 1 is proposed could contribute to habitat fragmentation and have unreasonable adverse impacts on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat... The Department finds that as Segment 1 initially was proposed, the applicant had not made adequate provision for the protection of wildlife; the proposal's contribution to habitat fragmentation and impact on habitat and habitat connectivity was an unreasonable impact on wildlife habitat.” Draft Order at 75.

⁴ Draft Order at 75.

⁵ Draft Order at 75.

a Draft Order imposing a set of Department crafted conditions. Some of the conditions were explored during the Department's questioning phase of the hearing⁶; others were the result of ongoing Department review.⁷ All conditions would be necessary for the Department to find that the unreasonable impacts to wildlife habitat would be sufficiently reduced. But that does not justify approval of the project. It merely proves that CMP did not meet its burden. It simply is not the Department's job, at the expense of the Maine taxpayer, to redesign a project for a foreign owned Company seeking to exploit Maine's natural resources.

The same is true for overall Scenic Impacts. Only with Department conditions that require a narrower corridor width (no more than 54' in Segment 1), reduced pole heights and tapered vegetation to preserve forest canopy, and a prohibition on the use of herbicide throughout Segment 1⁸ can the visual impacts be reduced – not eliminated. Once again, conditions create a redesign of structures, land clearing, and material choices showing CMP's failure to meet its burden.

With respect to the Alternatives Analysis, here too CMP failed to meet its burden. The Department's misplaced acceptance of CMP's underground review during the hearing process came too little, too late. CMP did not submit an analysis of undergrounding the line as part of its initial application.⁹ Only after the review and hearings began did CMP submit an analysis of an underground option. However, CMP's evidence simply took the existing planned route and showed how it would impact the natural resources in that location – not what an underground alternative in a more reasonable location might look like.¹⁰ Moreover, given that the purpose of this project has *absolutely nothing* to do with providing an energy delivery corridor for Mainers,

⁶ Draft Order at 77.

⁷ Draft Order at 78.

⁸ Draft Order at 1.

⁹ Draft Order at 72.

¹⁰ Draft Order at 70.

the Department's discounting out-of-hand the no build alternative¹¹ erroneously relieved CMP of its burden and is even more a reason why that analysis should have been required. Isn't saying that a no build alternative would not meet CMP's project objectives the same thing as saying CMP cannot meet its *profit* objectives? Since the project objectives have nothing to do with providing an energy corridor of any kind for the benefit of Mainers, then the obvious project objective is to meet CMP and Avangrid's profit motifs. Even if, arguendo, the project were to provide a tangential benefit to Maine in the future¹², assessing whether there is an alternative project¹³ that would provide the same benefit without tearing up Maine's natural resources seems a very small ask of CMP. That has not been done.

Two other conditions warrant specific comment:

- Condition 11. Payment of \$1,234,526.82 to the Maine Natural Areas Conservation Fund for impacts to the Goldie's Wood Fern (a species of special concern) and Jack Pine Forest (a critically imperiled plant community).¹⁴; and
- Condition 40. Within two years CMP must develop a plan to conserve 40,000 acres of land in the vicinity of Segment 1.

The damage to the Goldie's Wood Fern and the Jack Pine will not be mitigated sufficiently by this condition. As the Department correctly found: "The project will result in 9.229 acres of clearing in a Jack Pine Forest located in Bradstreet Township. There is only one other Jack Pine Forest Community known in the State... which is a National Natural Landmark." Simply paying money into a fund is not protection for the loss of irreplaceable imperiled plants.

¹¹ Draft Order at 74.

¹² We do not concede the argument that this project will have a net green-house gas emission reduction.

¹³ Clearly there is at least one other alternative project that is already permitted that would meet the same project objective, i.e., bring Hydro-Quebec power to the Massachusetts market – but of course it would cost more.

¹⁴ Draft Order at 107.

Nor will the conservation of 40,000 acres of land *somewhere* in the Segment 1 area provide sufficient mitigation for permanently fracturing “the world’s last remaining contiguous temperate broadleaf-mixed forest.”¹⁵ Even with oversight and review, assigning to CMP the task of creating a plan to conserve 40,000 acres can *never* bring back that which this project will destroy. *CMP* is tasked with identifying 40,000 acres? *CMP* is charged with determining 40,000 acres of comparable quality? *CMP*, the company that submitted a project that would *damage* the environment is being charged with protecting it? Several phrases come to mind: the fox guarding the hen house, the inmates running the asylum... but none accurately capture what is really going on here: politics usurping the regulatory process. Hydro-Quebec and CMP’s funded (and misleadingly named) political action group, “Clean Energy Matters,” are infusing social media with tweets, stuffing Mainers’ mailboxes with direct mail propaganda, and plastering our local newspapers with full page color ads promoting this project. That influence is clouding what must be done – deny approval. Money can buy many things, but Maine’s natural resources are not among them. The Department should just Say No.

Finally, Groups 2 and 10 respectfully reserve all rights to appeal any and all Findings, Conclusions and Conditions contained in the Draft Order which may ultimately be contained within a Final Order regardless of whether the specifics are identified and commented on herein. Preservation of issues for appeal is acutely felt given the obvious direction the Department is heading with the Draft Order containing a range of conditions that are only now being made available for public comment. Therefore, in order to protect and ensure that everything contained within the Draft Order remains available for appeal, Groups 2 and 10 request that the record be reopened. Reopening the record would allow a more thorough vetting of some of the findings and

¹⁵ Draft Order at 74.

several of the conditions which did not receive sufficient scrutiny before the record was closed. Reopening the record will allow the brighter light of truth to shine on how inadequate these conditions are.

Respectfully Submitted,
Intervenor Group 2 and Intervenor Group 10
By their attorneys,



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