

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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

INTERVENOR GROUP 3 COMMENTS ON DRAFT ORDER

I. INTRODUCTION

Group 3 greatly appreciates the Department of Environmental Protection’s (“DEP”) exhaustive, nearly three-year regulatory review of Central Maine Power Company’s (“CMP”) proposed New England Clean Energy Connect transmission line (“NECEC” or “Project”). The draft order issued on March 13, 2020 (“Draft Order”) is a remarkably thorough and detailed analysis that ultimately reaches the right conclusion to approve NECEC under the Natural Resources Protection Act (“NRPA”) and Site Location of Development Act (“Site Law”). While the DEP’s general reliance on conditions to improve NECEC is an appropriate use of the regulatory process, Group 3 is concerned that the DEP did not appropriately balance and weigh NECEC’s extensive energy and economic benefits. Consequently, the DEP appears to have imposed a set of conditions that is, in general, harsher than necessary to meet the statutory reasonableness standards, especially given the robust mitigation package already agreed-to by CMP.

Consistent with Group 3’s expertise on energy and economic matters, Group 3 will not address individual environmental conditions in detail. Group 3 incorporates by reference its prior submissions in this proceeding that describe NECEC’s significant energy and economic benefits. In these comments, Group 3 will focus on climate change because mitigating climate change is the sole NECEC benefit addressed by the Draft Order and its treatment therein sufficiently illustrates a balancing analysis skewed toward unnecessarily severe conditions.

Group 3’s comments are driven by the sharp juxtaposition between the climate benefit found to be provided by NECEC and the number, nature, and extent of the conditions imposed in the Draft Order. On one hand, the DEP found NECEC to provide a significant climate benefit by mitigating GHG emissions. Approval of NECEC is an “immediate action” to combat “the single greatest threat to Maine’s natural environment.”¹ Any delay in operation of NECEC will “exacerbate” the existing environmental harms being caused by climate change today, including to brook trout and pine marten.² On the other hand, the DEP has imposed “an unprecedented level” of conditions on NECEC.³ The environmental conditions imposed are so extensive that the DEP found it necessary create an additional financial condition to ensure CMP can cover the “significant cost” of anticipated compliance with environmental conditions.⁴ If climate change is, in fact, the biggest threat to Maine’s environment, the DEP should seek to make it easier rather than harder to permit climate solutions by according more weight to climate benefits and more weight to existing harms caused by climate change, especially because those harms will intensify without immediate reductions in greenhouse gas emissions.

¹ Draft Order at 103.

² Id.

³ Id. at 1.

⁴ Id. at 15.

II. SPECIFIC COMMENTS ON DRAFT ORDER

A. Chapter 375, Section 2 Does Not Apply.

The Draft Order properly finds that Chapter 375, Section 2 does not apply to NECEC's global greenhouse gas emissions and resulting climate change impacts. Group 3 seeks to clarify, however, that it did not argue "that the Department's standards for evaluating adverse environmental effects under Site Law, as set forth in Chapter 375, require the Department to undertake an analysis of a proposed project's impact on global climate change," as stated in the Draft Order.⁵ To the contrary, Group 3 argued that Chapter 375, Section 2 cannot be read to apply to climate change in the manner asserted by Group 4, explaining how Group 4's argument fails with respect to each fundamental element the rule, would lead to illogical and absurd results, and would slow or reverse necessary climate progress.⁶

Though Chapter 375, Section 2 does not require consideration of NECEC's global climate impact, NECEC's ability to reduce greenhouse gas emissions is a benefit that the DEP must balance under the NRPA and Site Law reasonableness standards.

B. The DEP Did Not Appropriately Balance NECEC's Climate Benefit, Leading to Overly Strict Conditions.

The Draft Order does not properly account for NECEC's climate benefit under the NRPA and Site Law reasonableness standards. In its discussion of climate change, the DEP narrowly constrains its evaluation of NECEC's climate benefit and reaches an aggregate reasonableness conclusion that appears untethered to the individual conditions imposed.

⁵ Id. at 102.

⁶ Group 3, Response to the Climate Change Comments Filed by Group 4 on May 9, 2019 (May 24, 2019). This document was timely emailed to the service list on May 24, 2019, but Group 3 cannot locate the document on either the DEP's or Land Use Planning Commission's NECEC websites.

The Draft Order correctly finds NECEC will provide a climate benefit by properly deferring the Maine Public Utilities Commission’s conclusion:

that, “the NECEC [project] will result in significant incremental hydroelectric generation from existing and new sources in Quebec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region.”⁷

By deferring to and accepting the findings of its sister agency, the DEP by implication finds NECEC’s climate benefit to be significant—“in the range of approximately 3.0 to 3.6 million metric tons per year, which ... is equivalent to removing approximately 700,000 passenger vehicles from the road.”⁸ The Draft Order also correctly suggests that NECEC’s climate benefit should be given considerable weight by explaining that:

Climate change ... is the single greatest threat to Maine’s natural environment. It is already negatively affecting brook trout habitat, and those impacts are projected to worsen. It also threatens forest habitat for iconic species such as moose, and for pine marten, an indicator species much discussed in the evidentiary hearing. Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts.⁹

These findings support a robust climate change analysis under which NECEC’s climate benefit is accorded significant weight in determining initial impact unreasonableness and the nature of conditions required to ensure impact reasonableness.

Despite these findings, the DEP seemingly limits its weighing of NECEC’s climate benefit to “evaluating whether the totality of its adverse environmental effects is reasonable.”¹⁰ The Draft Order’s conclusion that NECEC’s adverse effects are “reasonable in light of the project purpose and its GHG benefits, provided the project is constructed in accordance with the terms and conditions of this Order,”¹¹ appears to be the end-result of a single, generic balancing across all

⁷ Draft Order at 103 (citation omitted).

⁸ *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 (NECEC) and Related Network Upgrades, No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation, at 72 (Me. P.U.C. May 3, 2019).

⁹ Draft Order at 103.

¹⁰ *Id.*

¹¹ *Id.* (emphasis added).

NRPA and Site Law reasonableness standards that justifies the imposition of each specific condition. If true, Group 3 respectfully suggests that the scale should be re-calibrated because a generic balancing addressing the totality of adverse impacts improperly diminishes NECEC's climate benefit.

Based on the DEP's climate change findings, Group 3 would expect a set of conditions that ensures reasonable environmental impacts but also appreciates the fact that delaying or defeating NECEC will likely exacerbate many, if not most, of the impacts that the conditions are intended to alleviate. That certain Project opponents disagree with NECEC's climate benefit is not a legitimate reason for the DEP to discount the climate benefit that it found NECEC will provide in assessing the reasonableness of NECEC's impacts; neither is it a reason to craft conditions that go beyond ensuring statutory reasonableness. If anything, NECEC's climate benefit (along with its significant energy and economic impacts) should dictate that NECEC's already reasonable environmental impacts, made more reasonable through CMP's agreed-to mitigation, are *even more* reasonable.

Group 3 also notes that while the DEP expressly adopted the Maine Public Utilities Commission's (PUC) conclusion that NECEC will provide a significant climate benefit, it declined to adopt similar conclusions made by the PUC with respect to general energy and economic benefits that were within the PUC's statutory authority. In its order approving NECEC, the PUC corroborated the energy and economic benefit evidence submitted by Group 3. Specifically, for example, the PUC found: (1) combined annual energy and capacity benefits of \$33 to \$63 million annually; (2) extensive reliability and fuel security benefits (quantified solely by Commissioner Williamson at about \$20 million from 2023 to 2025); (3) annual construction-related GDP benefits of \$94 to \$98 million for the first five years of operation; and (4) additional stipulation benefits of

\$250 million over 40 years.¹² The balancing analysis required under the NRPA and Site Law reasonableness standards is not limited to environmental benefits and in fact expressly includes non-environmental benefits.¹³ In light of the DEP not making its own energy and economic benefit findings, it should defer to and consider the PUC's energy and economic benefit findings with respect to NECEC.

C. Miscellaneous Comments.

a. Undergrounding is Not a Practicable Alternative.

The DEP correctly concluded that undergrounding is not a practicable alternative. In addition to being technologically impracticable, undergrounding NECEC in western Maine would cause more environmental harm. The desire for undergrounding was nothing but a ploy to serve certain competitive and personal interests. Though undergrounding ultimately became an issue of concern to the DEP in this proceeding, a project applicant should not have to make a prime facie case analyzing alternatives so obviously impracticable, especially when such alternatives are pushed by competitors without genuine regard for environmental impacts.

b. Reasonable Viewer Expectations Under the Site Law.

The DEP wisely declined to interpret reasonable viewer expectations under the Site Law to include an expectation of certain scenic character when members of the public are, only by permission, on private land. Maine's healthy tradition of allowing public access to private lands would be undermined by such an interpretation.

c. The No Action Alternative.

¹² *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 (NECEC) and Related Network Upgrades, No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation, at 7 (Me. P.U.C. May 3, 2019).

¹³ See, e.g., *Uliano v. Bd. of Env'tl. Prot.*, 2005 ME 88, 876 A.2d. 16, 19; *Uliano v. Bd. of Env'tl. Prot.*, 2009 ME 89, 977 A.2d 400. See also 35-A M.R.S. § 3454 (requiring the DEP to make Site Law findings under Section 484(3) related to "energy and emissions-related benefits" and "other tangible benefits.")

The DEP's decision to not consider an approved Vermont project in its no-action alternative analysis of NECEC was eminently prudent. Considering whether "third party commercial competitors in other states may be able to fulfill the stated project purpose by some other means" would paralyze project development in Maine and set a precedent that could paralyze development region-wide.

d. Additional Conservation.

Given NECEC's significant energy, economic, and climate benefits and its already robust mitigation package, Group 3 is skeptical of the need for any additional conditions. However, the DEP required two especially cumbersome additional conditions. First, the DEP limited the corridor width from 150 feet to just 54 feet, effectively requiring a combination of tapering, 35-foot minimum height vegetation, and full-height vegetation for the entirety of Segment 1. Second, the DEP required additional conservation of 40,000 acres. Each condition is unnecessary in light of NECEC's significant benefits, but the combination is unreasonable and unwarranted. Specifically, the DEP relied on a 5,000-acre baseline to calculate the amount additional conservation required (albeit using the more reasonable 8:1 ratio), but that baseline pre-dated both the shorter Merrill Strip Alternative and the DEP's additional mitigation required for Segment 1, which effectively amounts to conservation of an area approximately 50 miles long and 100 feet wide. In the context of undervaluing NECEC's significant benefits, if the DEP is going to require both conditions, it is appropriate to at least reduce to 5,000-acre baseline commensurate with the effects of using the Merrill Strip Alternative and the additional mitigation required for Segment 1.

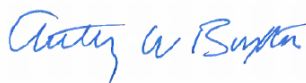
III. CONCLUSION

Group 3 disagrees with the DEP's approach to balancing NECEC's substantial energy, economic, and climate benefits with its impacts, which appears to have resulted in overly strict

conditions. However, the Draft Order reaches the correct conclusion in approving NECEC. Group 3 respectfully requests that the DEP approve NECEC with less extensive conditions that reflect its substantial benefits.

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Respectfully submitted,
Spokesperson for Intervenor Group 3



Anthony W. Buxton
R. Benjamin Borowski
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



Gerald F. Petruccelli
Counsel to the City of Lewiston, the Maine State Chamber
of Commerce and the Lewiston/Auburn Chamber of
Commerce
Petruccelli, Martin & Haddow, LLP
P.O. Box 17555, Two Monument Sq., Suite 900
Portland, ME 04112-8555
Telephone: 207-775-0200



Tim Burgess
IBEW 104 Associate Business Manager
238 Goddard Rd
Lewiston ME 04210
Telephone: 207-241-7691