

**STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:	)	
	)	
CENTRAL MAINE POWER COMPANY	)	SITE LOCATION OF DEVELOPMENT ACT
NEW ENGLAND CLEAN ENERGY CONNECT	)	NATURAL RESOURCES PROTECTION
	)	ACT
L-27625-26-A-N	)	FRESHWATER WETLAND ALTERATION
L-27625-TB-B-N	)	SIGNIFICANT WILDLIFE HABITAT WATER
L-27625-2C-C-N	)	QUALITY CERTIFICATION
L-27625-VP-D-N	)	
L-27625-IW-E-N	)	
	)	
CENTRAL MAINE POWER COMPANY	)	
NEW ENGLAND CLEAN ENERGY CONNECT	)	
SITE LAW CERTIFICATION SLC-9	)	
	)	

**APPLICATION FOR STAY OF AGENCY DECISION**

The Petitioners, West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Matt Wagner, Mike Pilsbury, Mandy Farrar and Carrie Carpenter, all Intervenor in the joint proceedings before the Maine Department of Environmental Protection (“DEP” or the “Department”) and the Land Use Planning Commission (“LUPC” or “Commission”) and combined into Group 2 and Group 10 (“Petitioners”), by and through their attorneys, BCM Environmental & Land Law, PLLC, file this Application for Stay of the DEP Commissioner’s May 11, 2020 Finding of Facts and Order (“Order”) conditionally approving Central Maine Power’s (“CMP”) applications for State land use permits for the New England Clean Energy Connect project (“NECEC”).

## INTRODUCTION

After many months of filings, hearings, amendments to CMP's application, motions, evidence, testimony, public hearings, public comments, and review of a draft order with further public comments, on May 11, 2020, the DEP Commissioner issued the Order conditionally approving CMP's NECEC applications for State land use permits. Throughout the review process, many intervenors including Petitioners presented evidence and witness testimony about the negative impact the NECEC would have on the natural environment especially with respect to the proposed new corridor, identified as Segment 1, of the proposed project. Petitioners argue now, in light of all evidence and testimony in the record, the DEP Commissioner's Order was unreasonable, unlawful, and unjust. For that reason, Petitioners are appealing the Order. Other Intervenors have indicated their intention to appeal as well. We can also reasonably expect to see various other Intervenors join in once appeals have been filed. Moreover, the citizen referendum<sup>1</sup> calling for an amendment to reverse the Public Utility Commission's Order Granting Certificate of Public Convenience and Necessity will be going to the voters in November. Any of the appeals and certainly if the voters agree to amend the PUC's action, could result in a denial of the permits and reversal of PUC approval thus negating the Agency's Order and permit approvals.

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<sup>1</sup> The citizen's petition seeks the following: **Resolved:** That within 30 days of the effective date of this resolve and pursuant to its authority under the Maine Revised Statutes, Title 35-A, section 1321, the Public Utilities Commission shall amend "Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation," entered by the Public Utilities Commission on May 3, 2019 in Docket No. 2017-00232 for the New England Clean Energy Connect transmission project, referred to in this resolve as "the NECEC transmission project." The amended order must find that the construction and operation of the NECEC transmission project are not in the public interest and that there is not a public need for the NECEC transmission project. There not being a public need, the amended order must deny the request for a certificate of public convenience and necessity for the NECEC transmission project.

Accordingly, it is unjust for the Commissioner's Order to remain in effect while any appeal is pending on such a significant and impactful project to Maine's environment. Rather it would be far more prudent to allow the legal appeal process to first be resolved, or to at least stay the issuance until after the voices of Mainers are heard at the ballot box in November. Petitioners respectfully request the Commissioner stay the Order until after resolution of the appeals or until after the referendum vote in November, whichever occurs later.

### **LEGAL STANDARD**

Pursuant to 5 M.R.S.A § 11004 the Department "may issue a stay upon a showing of irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public."

### **ANALYSIS**

Failure to grant a stay will cause irreparable harm to the Petitioners' livelihoods from the irredeemable destruction of the natural environment in Segment 1. Not only will CMP fail to suffer substantial harm from the addition of mere months to the project start time but the public will also suffer no harm *and* will *benefit* from the delay by allowing the appeal to proceed and letting the voters of Maine weigh in with their voices in November.

The decision of the DEP Commissioner's May 11, 2020 Findings of Fact and Order effectively allows CMP to begin construction of its NECEC project. The construction includes, but is not limited to, destruction of pristine forests, disruption of wildlife corridors, impact on cold-water streams and wetlands, and disruption of traffic in the area of construction. In Segment 1, this will involve cutting new corridors for the transmission lines through unfragmented forests

and in other Segments, widening of corridors to accommodate the additional and taller structures.

Allowing CMP to begin cutting trees, removing vegetation, and establishing construction landing areas will cause irreparable injury to the Petitioners by destroying the environment which they rely upon for their livelihoods – a livelihood that already is in jeopardy due to the coronavirus closure of so many businesses reliant on the tourism industry. Any cutting will irreparably damage the existing ecosystem. It is impossible to uncut trees, and un-disturb wetlands. The type of large-scale disturbance caused by allowing CMP to proceed before any appeals are finally resolved is needless and would irreparably harm Petitioners. Once the environment which is the life blood of their businesses is altered, it will be changed forever.

Petitioners are likely to succeed on the merits of their appeal. The evidence in the record does not support the DEP's decision to approve this project. Evidence and witness testimony made it clear that the NECEC would cut through the largest remaining unfragmented forest east of the Mississippi. Forest fragmentation has a dramatic effect on wildlife and ecological communities. While reducing the corridor width and requiring tapering of vegetation will reduce the negative impacts on wildlife habitat, the forest will nevertheless become fragmented. The DEP's decision ignores this fact and relies on the project as amended being *less* impactful and *less* harmful than the project as originally proposed. A less impactful effect does not justify the harm. By this logic, a demonstrably poorly designed project, such as the NECEC, can be reviewed, tweaked by the Department to make it less bad, and then approved because it is not the same original horror show. This is not the standard for approving a project of this impact and scale. Simply because it is not as bad as before does not mean that it now meets the standards for approval. Nor does a condition of setting aside 40,000 acres for conservation somewhere else –

and there is no standard established in the current Order as to where that 40,000 acres will be – mitigate the fragmentation in *this* location.

Further, the DEP Commissioner’s decision does not properly take into account testimony and evidence on the visual impact of the amended proposed project on scenic roads, ponds, trails, and other recreational resources. The economy of the Segment 1 area is heavily dependent on tourism based on the pristine natural sites in this area. Allowing a transmission line to cut through the area will have a negative impact on this economic sector. The DEP Commissioner’s decision that “low” and “moderate” impacts are acceptable from many highly-valued scenic sites is unreasonable and unjust. No impact is acceptable here, and simply because CMP attempted to improve visual impact over its initial proposal does not mean that the amended proposal is approvable.

Staying this decision will not cause substantial harm to CMP or the public. CMP’s investment of dollars and time into the NECEC project, including altering the project along the way as it met with clear evidence of the environmental impacts, would be better protected by the this stay. Not only would waiting a few additional months not cause substantial harm to CMP, it would seem foolhardy and even more expensive for CMP to begin construction until there is certainty of the outcome of the appeals and the referendum vote. Additionally, CMP has not yet obtained two other necessary approvals: a Presidential Permit and the Army Corps of Engineers approval to conduct work in waters of the United States. CMP should not begin work absent those approvals which further illustrates how a stay of the Commissioner’s Order will not cause substantial harm to CMP.

Finally, there is no harm to the general public in delay. To the contrary, the public will only be better served by the stay if the implementation of the decision is delayed until either the

appeals are resolved or the public has its say at the ballot box in November. There simply is no public interest in allowing CMP to begin construction on this project before the full review process is conducted or the public has been allowed their opportunity to speak. It is also worth noting, yet again, that the only “public” which should be considered is the citizenry of Maine. Not the residents of Massachusetts as the intended recipients of the power, nor the shareholders in Avangrid, CMP’s Spanish parent corporation and the citizenry of Quebec, Canada, owners of Hydro-Quebec as the recipients of the revenue from the project.

**CONCLUSION**

For all of the foregoing reasons, Petitioners respectfully request that the Commissioner stay the May 11, 2020 Findings of Fact and Order until all appeals on the Order are resolved, or the citizens of Maine have voted in November.

Respectfully Submitted,

West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Matt Wagner, Mike Pilsbury, Mandy Farrar and Carrie Carpenter

By their attorneys,

BCM Environmental & Land Law, PLLC

Dated: June 5, 2020



Elizabeth A. Boepple, Esq. (Me. Bar No. 004422)  
BCM ENVIRONMENTAL & LAND LAW, PLLC  
2 Union Street, Suite 402  
Portland, ME 04101  
603-369-6305  
[boepple@nhlandlaw.com](mailto:boepple@nhlandlaw.com)