



June 8, 2020

Susan Furbush, Clerk  
Somerset County Superior Court  
41 Court Street  
Skowhegan, Maine 04976

**RE: Petition for Review of Final Agency Decision Pursuant to  
M.R. Civ. P 80C**

Dear Ms. Furbush,

Enclosed for filing please find a Petition for Review of Final Agency Action Pursuant to M.R. Civ. P. 80C petitioning the Maine Department of Environmental Protection's May 11, 2020 May 11, 2020 Finding of Facts conditionally approving Central Maine Power's applications for State land use permits for the New England Clean Energy Connect. Also enclosed is the required Court Summary Sheet together with a check in the amount of \$200.00 for the associated filing fee and surcharge.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

Elizabeth A. Boepple, Esq.  
*Licensed in Maine, New Hampshire & Vermont*  
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[boepple@nhlandlaw.com](mailto:boepple@nhlandlaw.com)  
148 Middle Street, Suite 1D  
Portland ME 04101

Encl. (3)

cc: Peggy Bensinger, Esq., Assistant Attorney General  
Gerald D. Reid, Commissioner, Maine Department of Environmental Protection  
Matthew Manahan, Esq.  
Clients  
Service List

**SUMMARY SHEET**

M.R. Civ. P. 5(h)

This summary sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the Maine Rules of Court or by law. This form is required for the use of the Clerk of Court for the purpose of initiating or updating the civil docket. (SEE ATTACHED INSTRUCTIONS)

**I. County of Filing or District Court Jurisdiction:** Somerset County

**II. CAUSE OF ACTION** (Cite the primary civil statutes under which you are filing, if any.)  
Appeal of Department of Environmental Protection decision, under M.R. Civ. P. 80C

**III. NATURE OF FILING**  
 Initial Complaint  
 Third-Party Complaint  
 Cross-Claim or Counterclaim  
 **If Reinstated or Reopened case, give original Docket Number** \_\_\_\_\_  
(If filing a second or subsequent Money Judgment Disclosure, give docket number of first disclosure)

**IV.**  **TITLE TO REAL ESTATE IS INVOLVED**

**V. MOST DEFINITIVE NATURE OF ACTION.** (Place an X in **one box only**) Check the box that most closely describes your case.

GENERAL CIVIL (CV)

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> <b>Personal Injury Tort</b>     | <input type="checkbox"/> <b>Contract</b>                     | <input type="checkbox"/> Other Forfeitures/Property Liabls |
| <input type="checkbox"/> Property Negligence             | <input type="checkbox"/> Contract                            | <input type="checkbox"/> Land Use Enforcement (80K)        |
| <input type="checkbox"/> Auto Negligence                 | <input type="checkbox"/> <b>Declaratory/Equitable Relief</b> | <input type="checkbox"/> Administrative Warrant            |
| <input type="checkbox"/> Medical Malpractice             | <input type="checkbox"/> General Injunctive Relief           | <input type="checkbox"/> HIV Testing                       |
| <input type="checkbox"/> Product Liability               | <input type="checkbox"/> Declaratory Judgment                | <input type="checkbox"/> Arbitration Awards                |
| <input type="checkbox"/> Assault/Battery                 | <input type="checkbox"/> Other Equitable Relief              | <input type="checkbox"/> Appointment of Receiver           |
| <input type="checkbox"/> Domestic Torts                  | <input type="checkbox"/> <b>Constitutional/Civil Rights</b>  | <input type="checkbox"/> Shareholders' Derivative Actions  |
| <input type="checkbox"/> Other Negligence                | <input type="checkbox"/> Constitutional/Civil Rights         | <input type="checkbox"/> Foreign Deposition                |
| <input type="checkbox"/> Other Personal Injury Tort      | <input type="checkbox"/> <b>Statutory Actions</b>            | <input type="checkbox"/> Pre-action Discovery              |
| <input type="checkbox"/> <b>Non-Personal Injury Tort</b> | <input type="checkbox"/> Unfair Trade Practices              | <input type="checkbox"/> Common Law Habeas Corpus          |
| <input type="checkbox"/> Libel/Defamation                | <input type="checkbox"/> Freedom of Access                   | <input type="checkbox"/> Prisoner Transfers                |
| <input type="checkbox"/> Auto Negligence                 | <input type="checkbox"/> Other Statutory Actions             | <input type="checkbox"/> Foreign Judgments                 |
| <input type="checkbox"/> Other Negligence                | <input type="checkbox"/> <b>Miscellaneous Civil</b>          | <input type="checkbox"/> Minor Settlements                 |
| <input type="checkbox"/> Other Non-Personal Injury Tort  | <input type="checkbox"/> Drug Forfeitures                    | <input type="checkbox"/> Other Civil                       |

CHILD PROTECTIVE CUSTODY (PC)

- Non-DHS Protective Custody

SPECIAL ACTIONS (SA)

- Money Judgment**  
 Money Judgment Request Disclosure

REAL ESTATE (RE)

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> <b>Title Actions</b> | <input type="checkbox"/> <b>Foreclosure</b>               | <input type="checkbox"/> <b>Misc. Real Estate</b> |
| <input type="checkbox"/> Quiet Title          | <input type="checkbox"/> Foreclosure (ADR exempt)         | <input type="checkbox"/> Equitable Remedies       |
| <input type="checkbox"/> Eminent Domain       | <input type="checkbox"/> Foreclosure (Diversion eligible) | <input type="checkbox"/> Mechanics Lien           |
| <input type="checkbox"/> Easements            | <input type="checkbox"/> Foreclosure - Other              | <input type="checkbox"/> Partition                |
| <input type="checkbox"/> Boundaries           |   | <input type="checkbox"/> Adverse Possession       |
|   |   | <input type="checkbox"/> Nuisance                 |
|   |   | <input type="checkbox"/> Abandoned Roads          |
|   |   | <input type="checkbox"/> Trespass                 |
|   |   | <input type="checkbox"/> Other Real Estate        |

APPEALS (AP) (To be filed in Superior Court) (ADR exempt)

- Governmental Body (80B)  Administrative Agency (80C)  Other Appeals

**VI. M.R. Civ. P. 16B Alternative Dispute Resolution (ADR):**

- I certify that pursuant to M.R. Civ. P. 16B(b), this case is exempt from a required ADR process because:
- It falls within an exemption listed above (i.e., an appeal or an action for non-payment of a note in a secured transaction).
  - The plaintiff or defendant is incarcerated in a local, state or federal facility.
  - The parties have participated in a statutory pre-litigation screening process with \_\_\_\_\_
  - The parties have participated in a formal ADR process with \_\_\_\_\_ on \_\_\_\_\_ (date).
- This is an action in which the plaintiff's likely damages will not exceed \$50,000, and the plaintiff requests an exemption from ADR pursuant to M.R. Civ. P. 16C(g).



VII. (a)  PLAINTIFFS (Name & Address including county)  
or  Third-Party,  Counterclaim or Cross-Claim Plaintiffs  
 The plaintiff is a prisoner in a local, state or federal facility.

Please see attached list of Petitioners

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number) **If all counsel listed do NOT represent all plaintiffs, specify who the listed attorney(s) represent.**

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

VIII. (a)  DEFENDANTS (Name & Address including county)  
and/or  Third-Party,  Counterclaim or  Cross-Claim Defendants  
 The defendant is a prisoner in a local, state or federal facility.

State of Maine Department of Environmental Protection  
Gerald D. Reid, Commissioner  
17 State House Station  
Augusta, Maine 04333-0017  
Kennebec County

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)  
(If known)

**If all counsel listed do NOT represent all defendants, specify who the listed attorney(s) represents.**

Peggy Bensinger, Assistant Attorney General (Me. Bar No. 3003)  
Office of the Attorney General  
6 State House Station  
Augusta, ME 04333  
(207) 626-8578  
Peggy.Bensinger@maine.gov

IX. (a)  PARTIES OF INTEREST (Name & Address including county)

Central Maine Power  
83 Edison Drive  
Augusta, ME 04336  
Kennebec County

(b) Attorneys (Name, Bar number, Firm name, Address, Telephone Number)  
(If known)

**If all counsel listed do NOT represent all parties, specify who the listed attorney(s) represents.**

Matthew D. Manahan, Esq. (Me. Bar No. 6857)  
Pierce Atwood - 254 Commercial St. Merrill's Wharf  
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(207) 791-1189  
mmanahan@pierceanwood.com

X. RELATED CASE(S) IF ANY \_\_\_\_\_  
Assigned Judge/Justice \_\_\_\_\_ Docket Number \_\_\_\_\_

Date: 6/8/2020

Elizabeth Boepple, Esq.

Name of Plaintiff or Lead Attorney of Record

Signature of Plaintiff or Attorney

Attachment to Section VII. Name, address and county of Petitioners

West Forks Plantation, Attn: Pete Dostie, 2955 US-201, West Forks, Maine 04985 Somerset County

Town of Caratunk, Attn.: Liz Caruso , PO Box 180, Caratunk, Maine 04925 Somerset County

Kennebec River Anglers, PO Box 59, Caratunk, Maine 04925 Somerset County

Maine Guide Service, LLC, PO Box 81, Caratunk, Maine 04925 Somerset County

Hawks Nest Lodge, 2989 Us Rte 201, West Forks, Maine 04985 Somerset County

Ed Buzzell, 645 Lake Moxie Road, West Forks, Maine 04985 Somerset County

Kathy Barkley, 220 Main Street, Caratunk, Maine 04925 Somerset County

Kim Lyman, 30 River Road, Caratunk, Maine 04925 Somerset County

Noah Hale, 2895 Route 201, West Forks, Maine 04985 Somerset County

Eric Sherman, 23 Birch Point Road, Greenville, Maine 04441 Piscataquis County

Matt Wagner, 29 Kenney Road, Knox, Maine 04986 Waldo County

Mike Pilsbury, 30 River Road, Caratunk, ME 04925 Somerset County

Mandy Farrar, 29 West Road, Solon, Maine 04979 Somerset County

Carrie Carpenter, 336 Beech Hill Road, Norridgewock, Maine 04957 Somerset County

Attachment to Section IX. Name, address and county of Interested Parties with Attorney if represented by counsel.

- Central Maine Power Company, 83 Edison Drive, Augusta, ME 04336, Kennebec County  
Matthew D. Manahan, Esq.  
Pierce Atwood  
Merrill's Wharf  
254 Commercial Street  
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- Maine Wilderness Guides, Attn: Nick Leadley, President, 126 Western Avenue #155, Augusta, Maine 04330, Kennebec County
- Friends of the Boundary Mountains, Attn: Robert P. Weingarten, President, P.O. Box 145, Farmington, Maine 04938, Franklin County
- Old Canada Road National Scenic Byway, Attn: Bob Haynes, P.O. Box 301 Bingham, Maine 04920, Somerset County
- International Energy Consumer Group, P.O. Box 5117, Augusta, Maine 04333, Kennebec County  
Anthony W. Buxton, Esq.  
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- International Brotherhood of Electrical Workers, Local 104, Attn: Tim Burgess, 238 Goddard Road, Lewiston Maine 04210, Androscoggin County
- Maine Chamber of Commerce, 128 State Street, Suite 101, Augusta, Maine 04330-5630  
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- Natural Resources Council of Maine, 3 Wade Street, Augusta, Maine 04330, Kennebec County  
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Jeffrey D. Talbert, Esq. (Bar No. 4358)  
Preti Flaherty Beliveau & Pachios LLP  
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- Conservation Law Foundation, 53 Exchange St., Suite 200, Portland, Maine 04101, Cumberland County  
Phelps Turner, Esq.  
Conservation Law Foundation  
53 Exchange St., Suite 200  
Portland, Maine 04101  
(207) 210-6439
- Wagner Forest Management, Attn: Michael Novello, 150 Orford Road, PO Box 160, Lyme, NH 03768, Grafton County

- Western Mountains and Rivers Corporation, PO Box 92, Kingfield, Maine 04947, Franklin County  
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- Next Era, 26 Katherine Dr, Hallowell, Maine 04347, Kennebec County  
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Hallowell, ME 04347  
(207) 624-3687



STATE OF MAINE  
SOMERSET, ss.

SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. \_\_\_\_\_

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, MIKE PILSBURY, MATT )  
WAGNER, MANDY FARRAR AND )  
CARRIE CARPENTER, )

Petitioners, )

v. )

STATE OF MAINE, DEPARTMENT )  
OF )  
ENVIRONMENTAL PROTECTION )

Respondent )

And )

CENTRAL MAINE POWER )

Party-In-Interest )  
)

**PETITION FOR REVIEW OF  
FINAL AGENCY ACTION PURSUANT  
TO M.R. CIV. P. 80C**

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, consisting of individuals, businesses and towns categorized in the proceedings below as Intervenor Group 2 and Intervenor Group 10 (“Petitioners”), by and through their undersigned counsel, respectfully petition for review of the Maine Department of Environmental Protection’s (“DEP” or the



“Department”) May 11, 2020 Finding of Facts conditionally approving Central Maine Power’s (“CMP”) applications for State land use permits for the New England Clean Energy Connect project (“NECEC”). In support, Petitioners state as follows:

**PARTIES AND NATURE OF THE CASE**

1. This is a petition for judicial review, pursuant to 5 M.R.S.A. § 11001 et seq. and M. R. Civ. P. Rule 80C, of a Decision by the DEP dated May 11, 2020.

2. The DEP Commissioner issued Findings of Facts and Order conditionally approving CMP’s NECEC high-voltage transmission line project.

3. Incorporated within the DEP May 11 Order is the Maine Land Use Planning Commission (“LUPC or Commission”) Site Law Certification to the DEP dated January 8, 2020.

4. The following Petitioners, with the exception of West Forks Plantation which was admitted in the DEP proceedings only, were admitted in both the DEP and LUPC proceedings and are, or will be, particularly impacted by the Commissioner’s Order.:

- West Forks Plantation: A town of 56 residents in Somerset County which voted 45 -7 in September, 2018, not to support the Project and continues to oppose the project through this appeal.
- Town of Caratunk: A town of 68 residents in Somerset County originally supported the Project early on but then retracted its support and actively engaged in opposition to the Project through the PUC proceedings as well as in the DEP and LUPC proceedings.
- Kennebec River Anglers: An outfitting business in Caratunk, Maine, offering guided fishing trips on the Kennebec River including the section crossed by the

proposed Project line which, despite the undergrounding in this short section, will be directly and negatively impacted by the proposed Project.

- Maine Guide Service, LLC: An outdoor guiding business based in Caratunk, Maine that guides clients on the Kennebec River and in the Forks, West Forks, and Caratunk area.
- Hawks Nest Lodge: A lodge located on National Scenic Byway Route 201 in West Forks, Maine that caters to outdoor recreationalists and employs up to 18 local residents.
- Mike Pilsbury, a resident and business owner in Caratunk, Maine and licensed Maine Guide.

5. The following Petitioners were intervenors to the LUPC proceedings, with the exception of Ed Buzzell who was admitted in both the DEP and LUPC proceedings and are, or will be particularly impacted by the Commissioner's Order:

- Ed Buzzell: A resident, Registered Maine Whitewater Guide and former Registered Maine Recreational, Hunting, and Fishing Guide and owner of Kennebec Kayak, Inc., a business in Moxie Gore, an area within Segment 1 of the Project whose hospitality and recreational business and livelihood will be directly and negatively impacted by the Project.
- Kathy Barkley: A resident of Caratunk, recreational user, and worker in the local hiking and whitewater rafting tourism industry in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.
- Kim Lyman: A resident, recreational user, Registered Maine Whitewater Guide, owner of guest rental cabins, and long-time worker in the local tourism industry in

Caratunk in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.

- Noah Hale: A resident of West Forks, recreational user, Registered Maine Whitewater Guide, and worker in the hospitality and tourism industry in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.
- Eric Sherman: A life-long resident, recreational user, classroom teacher in Greenville, Registered Maine Whitewater and Maine Recreational Guide in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.
- Matt Wagner: A seasonal resident, long-time recreational user in the Forks area, a Registered Maine Whitewater Guide, landowner in the Forks, co-owner and Operations Manager of InSource Renewables and previous commercial guide and trip leader in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.
- Taylor Walker: A resident, recreational user, Registered Maine Whitewater Guide, and an outdoor filmmaker in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.
- Mandy Farrar: A resident, recreational user, landowner in Solon, whitewater guide, and forester in the Segment 1 area of the Project who will be directly and negatively impacted by the Project.

- Carrie Carpenter: A resident, recreational user, landowner in East Moxie Township, whitewater guide, and worker in the tourism industry in the Segment 1 area of the Project who will be directly and negatively impacted by the project.

6. Petitioners include individual residents of Segment 1 of the proposed NECEC project, local citizens' groups, local nonprofits, local businesses, and a local township and town.

7. All Petitioners will be specifically negatively impacted by the NECEC cutting through the local landscape because of impact to tourism, local businesses, ecosystem services, and property values.

8. Respondent State of Maine Department of Environmental Protection is a state agency with its primary office in Augusta, County of Kennebec, State of Maine.

### STANDARD OF REVIEW

9. Judicial review of a final agency action under M.R. Civ. P. 80C involves review of the agency decision for abuse of discretion, errors of law, or findings not supported by the evidence. *Centamore v. Dep't of Human Servs.*, 664 A.2d 369, 370 (Me. 1995).

10. Review is limited to "determining whether the agency's conclusions are unreasonable, unjust, or unlawful in light of the record." *Imagineering v. Sup't of Ins.*, 593 A.2d 1050, 1053 (Me. 1991).

11. The Court does not decide if it would have reached the same conclusion as the agency did; instead, the Court decides whether the record contains competent and *substantial evidence* that supports the agency's decision. *See id* (*emphasis added*).



12. On appeal, the burden of proof “rests with the party seeking to overturn the decision of an administrative agency.” *Seven Islands Land Co. v. Me. Land Use Regul’n Comm’n*, 450 A.2d 475, 479 (Me. 1982).

### **FACTUAL BACKGROUND AND ISSUES ON APPEAL**

13. On September 27, 2017, CMP submitted its application to the Department for a Natural Resources Protection Act (NRPA) permit pursuant to 38 M.R.S. §§ 480-A – 480-JJ and a Site Location of Development Law (Site Law) permit pursuant to 38 M.R.S. §§ 481-490 for its proposed NECEC project. CMP’s proposal includes new construction and/or expansion of a 145.4 miles-long, 320 kilovolt (kV) High Voltage Direct Current transmission line in a corridor running from the Canadian border in Beattie Township to a new substation in the Town of Lewiston, with associated substations, poles and other structures.

14. The first portion of the proposed line, Segment 1, would cut a new swath within a 54-foot wide by 53.1 mile corridor through the unfragmented forest region of north western Maine extending from the Quebec, Canada border in Beattie Township to Moxi Gore. Segment 1 is entirely within townships and plantations served by the LUPC.

15. Segment 2 would be approximately 21.9 miles. LUPC jurisdiction extends into this Segment with The Forks Plantation and Bald Mountain Township.

16. On October 13, 2017, the Department accepted CMP’s application as complete for processing and then decided to hold public hearings on a limited number of topics.

17. Over the two years the DEP and LUPC reviewed the project, they held joint public hearings in a mere 6 days before the DEP and only 1 day before the LUPC, decided numerous motions, heard witnesses, and accepted evidence about the NECEC.

18. Before, during, and after the hearings, CMP made changes to the Project without adequate review of the potential environmental and/or visual impact of those changes.

#### Conduct of Hearings

19. During the process, the DEP and LUPC committed procedural errors that prevented adequate and fair presentation of the case against NECEC, including generally conducting the process in such a muddled, confusing, and overly complex way that it became nearly impossible for professionals and members of the public to properly engage with the process.

20. The DEP's and LUPC's grouping of intervenors consisting of individuals, businesses and townships opposing the proposed Project, created unwarranted confusion for all parties. The Groupings led to inequities in time for testimony and evidence. By consolidating their hearings and some evidence but accepting intervenors separately before each administrative reviewing body, confusion prevailed particularly for individuals and businesses unfamiliar with the regulatory process. The confusion included distinctions between the standards of review before the LUPC and those used by the Department.

21. On February 5, 2019, the DEP's Third Procedural Order denied Petitioners categorized as Intervenor Groups 2 and 10's Motion for Reconsideration of the DEP's decision to postpone hearing and pre-hearing filing deadlines due to "challenging scheduling and logistical considerations . . ." This is not sufficient, reasonable, and just reason to deny adequate review and in-depth public process.

22. Numerous procedural orders issued by the DEP, or jointly by the DEP and LUPC, between February 2019 and December 2019 denied motions by Groups 2 and 10 and/or other

intervenor groups. These motions involved requests related to striking pre-filed testimony (e.g. 5<sup>th</sup> and 7<sup>th</sup> orders) and/or additional hearings or changes to the hearing schedule (6<sup>th</sup> and 9<sup>th</sup> order). The DEP and LUPC decisions invariably elevated form over substance and were therefore unreasonable in light of the importance of establishing a complete record.

23. The DEP denied Group 2 and 10's Motion for Additional Public Hearing to allow for additional testimony and cross-examination by technical witnesses, including CMP's engineers. Additional hearings would have allowed a more complete and encompassing process; restricting testimony by denying this motion was unreasonable and unjust.

24. The time allowed for hearings on this application was unreasonably and unjustly restricted for the sake of schedule and efficiency, and deadlines were rigidly enforced to the detriment of otherwise valid and relevant testimony that was stricken from the record. As such, the Department and LUPC failed to provide an opportunity to develop a full and complete review of such a significant environmentally impactful Project.

#### Decision is Unreasonable, Unjust, and Unlawful on the Evidence in the Record

25. Petitioners maintained throughout the agency process that the 145-mile, 150-foot wide transmission corridor should not be permitted.

26. The DEP Commissioner's decision to conditionally grant the permits was unreasonable, unjust, and/or unlawful in light of the evidence in the record.

27. The first 53.1 miles slicing through Maine's western mountains and exceptional brook trout streams and across the Kennebec Gorge will adversely affect Maine's natural resources and wildlife habitat.



28. NECEC will unreasonably and irreparably cause ecological damage to Maine's landscape and environment.

29. Evidence and witness testimony in the record shows that NECEC will fragment the largest contiguous forest east of the Mississippi into smaller pieces with its wide cleared corridor.

30. The record supports that such fragmentation cannot be buffered from the existing recreational uses and natural resources within the P-RR subdistricts.

31. The mitigation conditionally approved by the DEP, including conservation of 40,000 acres of land elsewhere but not in an identified location, tapering the height of vegetation in the corridor, and conservation of some over-brook canopy does not fix the problem.

32. The DEP Commissioner's decision to conditionally approve the NECEC without changing the route to avoid forest fragmentation and visual impact was unreasonable and unjust in the light of the record.

33. NECEC will unreasonably interfere with existing scenic and aesthetic uses.

34. Evidence and witness testimony in the record shows that, especially in Segment 1 of the proposed project, the corridor will impact the Appalachian Trail, several scenic roads, unfragmented forest, ponds and rivers, and local residents.

35. The mitigation conditionally approved by the DEP for visual impact of the corridor also is not reasonable based on the evidence in the record.

36. A tapered canopy in the corridor does not mitigate the visual impact because poles will have to be higher than without the taper in the canopy.



### Title, Right or Interest

37. The Department's failure to adequately and independently assess the validity of CMP's claim to Right, Title or Interest in all of the proposed corridor, was unreasonable and unjust.

38. As reported in the news media, (Portland Press Herald article, *Despite its opponents, CMP corridor project well underway*, dated March 8, 2020) CMP set up an entity called NECEC Transmission, LLC. The reported purpose of the new entity is to act as the developer for the Project but the record is completely devoid of any evidence to support this entity's Right, Title or Interest in *any* of the land in the Project area.

### Alternatives

39. Further, the DEP Commissioner's decision unreasonably and unjustly did not consider alternatives that exist.

40. The Applicant chose not to spend its money on more expensive but far less damaging routes.

41. The DEP Commissioner's decision did not fully discuss these alternatives and instead stated that the currently-proposed NECEC route was less damaging than the original route. This is not the standard for considering alternatives. Failing to address alternatives was unreasonable.

### Incorrect Standard for Determining Reasonableness

42. The DEP Commissioner's Order discusses the current version of the NECEC project and route in relation to what CMP originally proposed, instead of what could have and

should have been required of NECEC to protect the land, resources and people of the State of Maine. *See, e.g.* Order, May 11, 2020, at 9, 41, 43, 60, 76.

43. In fact, the introduction to the Order itself states that “the project as originally proposed would have had substantial impacts” and continues to state that it is “feasible to avoid or minimize those impacts through a variety of mitigation measures.” Order, May 11, 2020, at 1.

44. The Order includes several examples of the DEP comparing compromises by the NECEC with the original proposal and deeming them as “improved” or “improvements.” *See, e.g.* Order, May 11, 2020, at p. 44, 76, 77, 80.

45. While modified and conditioned the Project may be better than that which was originally proposed, but that is not the standard. It is unreasonable, unjust, and unlawful for the DEP Commissioner to determine the NECEC project is now reasonable due to improvements from the poorly designed and planned original proposal. A bad Project made less bad is not the legal standard.

46. The Legislature’s mandate in creating the Department review process was not to empower this or any agency to redesign a bad and flawed Project to make it better, but still end up with a Project that is harmful and damaging to the environment and people of Maine.

### **CONCLUSION**

For all of the above reasons, the DEP Commissioner’s Findings of Fact and Order, dated May 11, 2020, and the resulting decision to conditionally issue a license to CMP for the NECEC project was unreasonable, unjust, and unlawful.

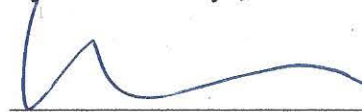
**RELIEF REQUESTED**

**WHEREFORE**, Petitioners respectfully request that the Court grant the following relief:

- A. Order that the Department of Environmental Protection's approval of the application was unlawful or unreasonable;
- B. Issue an order vacating and reversing the DEP NECEC Approval authorizing Central Maine Power Company to proceed with constructing the New England Clean Energy Connect project,
- C. Remand the DEP NECEC Approval for further proceedings, findings of fact or conclusions of law or directing the agency to hold such proceedings or take such action as the Court deems necessary; and
- D. Grant such other relief as the Court deems to be just and proper.

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,



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Dated: June 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that on June 8, 2020, I served a copy of this Petition for Review under M.R. Civ. P. 80C via certified mail, return receipt requested as required by 5 M.R.S.A. § 11003, upon the individuals listed below. I further certify that on this date, the foregoing Petition was made available to all attorneys, spokespersons and representatives of record via electronic mail with a request for waiver of service. If waiver of required service pursuant to 5 M.R.S.A. § 11003 is not waived by any of the parties, the foregoing Petition shall be sent via certified mail, return receipt on the following business day.

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Augusta, ME 04333

Gerald D. Reid, Commissioner  
Maine Department of Environmental Protection  
17 State House Station  
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254 Commercial Street  
Portland, ME 04101

Dated: June 8, 2020



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Elizabeth A. Boepple, Esq.