

By Email (NECEC.DEP@maine.gov)

January 15, 2021

James R. Beyer
Regional Licensing and Compliance Manager
Bureau of Land Resources
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Re: *CMP's Minor Revision Application: Order #L-27625-26-A-N/L-27625-TB-B-N/L-276252C-C-N/L-27625-VP-D-N/L-27625-IW-E-N; USACE Permit NAE-2017-01342*

Mr. Beyer:

I write on behalf of the Natural Resources Council of Maine (“NRCM”) regarding the above-referenced “Minor Revision” Application by Central Maine Power Company and NECEC Transmission, LLC (together herein referred to as “CMP” and the “CMP Application”), to request that (1) the Department process the CMP Application pursuant to Chapter 2 of Department Rules, not as an exempt Minor Revision, and (2) that the Board assume jurisdiction over the Application, which involves a project of statewide significance. Alternatively, given the volume, breadth and technical nature of materials presented in the CMP Application, as well as certain formatting issues making review of those materials difficult, NRCM requests additional time (through February 1, 2021) to review and comment on the submissions.

I. The Application Is Not A Minor Revision

Chapter 2 of the Department’s Rules defines a “Minor Revision as an “application to modify a license previously granted by the Department, where the modification significantly decreases or eliminates an environmental impact, does not significantly expand the project, does not change the nature of the project, or does not modify any Department findings with respect to any licensing criteria.” 06-96 C.M.R. ch. 2 § 1(N). The CMP Application does not meet this definition.

Critically, the CMP Application, if freestanding, is jurisdictional under two separate portions of the Site Location of Development Act, 38 M.R.S. § 482 *et seq.* (“Site Law”). The Site Law applies to a “[d]evelopment of state or regional significance that may substantially affect the environment.” *Id.* The CMP Application is a development of state or regional significance as a hazardous activity (38 M.R.S. § 487-A) and because it “occupies a land or water area in excess of 20 acres” and involves “areas to be stripped or graded and not to be revegetated that cause a total project to occupy a ground area in excess of 3 acres.” 38 M.R.S. § 482(2, 6). First, the hazardous activities of any size subject to Site Law review and approval include transmission lines, which the New England Clean Energy Connect (“NECEC”) is. Second, the additional

parcels of land CMP identified for newly proposed development for this newly proposed portion of the transmission line (including those near the Bowman Airfield, the Section 3007 Widening and the new substation additions) total more than 20 acres. *See* Application at 3-8.

It cannot be the case that project changes that would themselves trigger Site Law review can be completed as a minor revision. To find otherwise would void the Site Law. The Department must exercise its statutory review obligations pursuant to the Site Law by making findings pursuant to Section 484 and 487-A regarding the newly proposed transmission line and Site Law impacts identified in the CMP Application. 38 M.R.S. § 484 (outlining standards of development and required Department findings); 38 M.R.S. § 487-A(4) (The Department “shall make such orders regarding [the transmission line’s] location, character, width and appearance as will lessen its impact on the environment.”). Further, the Department must do so in compliance with all applicable procedural requirements of Chapters 2 and 3 of the Department’s Rules. 06-96 C.M.R. ch. 2-3. Doing otherwise provides an end run around the Department’s public notice and participation provisions and avoids its statutory review authority under the Site Law. By definition, the Department will be required to make findings about the licensing criteria as applied to the new parcels—findings that it did not make as part of the original permit review. As such, consideration of the Application as a minor revision constitutes an error of law. Further, CMP cannot begin construction during the Department’s review. *See* 38 M.R.S. § 486-A(4).

CMP’s Application is likewise problematic pursuant to the Natural Resources Protection Act (“NRPA”). While CMP purports to replace and revise all previously submitted resource maps, it does not provide any alternatives analysis, nor do the newly submitted maps delineate NRPA protected resources as required by Chapter 310 of the Department’s Rules. *See* 06-96 C.M.R. ch. 310. It appears that the maps in the CMP Application merely overlay various publicly available resource maps on the preferred alternative route. As the Department is aware, Chapter 310 requires site specific delineations of protected resources, which delineations must be conducted under specific conditions (such as specific seasonal windows for significant vernal pools) and with specific reference to the NRPA and Chapter 310 requirements. 06-96 C.M.R. ch. 310 § 2, 4(C). For instance, Chapter 310 defines a jurisdictional stream much more broadly than just anything shown as a blue line in Maine’s GIS mapping. 06-96 C.M.R. ch. 310 § 2(A); 38 M.R.S. §480-B. Without a Chapter 310 compliant delineation of protected resources, it is impossible for CMP, or the Department, to proceed with the avoidance, minimization, and compensation analysis necessary to determine whether there is a practicable alternative to the proposed impacts. Preliminary review indicates that the CMP NRPA delineations of protected resources do not meet Chapter 310 requirements or allow for assessment pursuant to NRPA.

Naming an application a “Minor Revision” does not make it so. Independent of any comparison to the major size of CMP’s line, this new submission proposes a statutorily defined hazardous activity of state or regional significance in its own right. By casting its Application as a “Minor Revision,” CMP attempts to sidestep the requirements of Chapter 2 to avoid public process and to obtain an accelerated review process that will bypass the robust procedures the Department has in place to review project changes, like those now before it, that will alter the environmental impacts, expand and change the nature of the project, and modify Department findings.

In addition to the issues identified above, it is improper for the Department to exempt revisions to a Commissioner decision currently on appeal to the Board from the requirements of Chapter 2. 06-96 C.M.R. ch. 2 § 2(A). The Department should reject CMP's characterization of this submission and process these proposed changes to the NECEC pursuant to Chapter 2. *Id.*; see 06-96 C.M.R. ch. 2 § 14(B) ("If a modification application filed as minor revision is determined during processing to constitute an amendment, Notice of Intent to File in accordance with this section must be provided. The Department may not act on the amendment application earlier than 20 days after the public notice is published.").

With respect to the January 18, 2021 deadline to submit comments on the Application, NRCM submits that this is not enough time to review and comment in any technical detail on such a voluminous submission of this breadth and technical complexity. First, the current deadline, January 18, 2021, is a State holiday, and so NRCM understands the actual deadline to be the first subsequent business day, January 19, 2021, pursuant to 06-96 C.M.R. ch. 2 § 3(C). Second, and more importantly, the Department must process these changes in compliance with the deadlines established by Chapter 2 of the Department's Rules. Although CMP filed the Application on December 30, 2020, it was not circulated to the service list until January 4, 2021, and the natural resources maps that are part of the Application were not circulated until January 6, 2021. The deadline of January 18, which allows only ten business days for comments from the date on which NRCM first received the Application (less than the 20 days allotted by the Department to request Board jurisdiction over an application), is simply too short in light of the nature of this submission, which must be noticed and reviewed pursuant to Chapter 2.

II. The Board Must Assume Jurisdiction Over The Application

NRCM requests that the Board assume jurisdiction over the Application and hold a hearing on it pursuant to 06-96 C.M.R. ch. 2 § 17. This request is timely because NRCM is submitting it less than 20 days after filing of the CMP Application. The NECEC is undoubtedly a project of statewide significance. NRCM has so contended in numerous filings before the Department and does not here belabor the point,¹ but the NECEC (1) will have an environmental or economic impact in more than one municipality, territory or county, (2) involves an activity not previously permitted or licensed in the State (a high-impact transmission line that will primarily benefit foreign jurisdictions), (3) has already come under significant public scrutiny and will continue to be the subject of significant public scrutiny, and (4) is located in more than one municipality, territory, or county. See 06-96 C.M.R. ch. 2 § 17(C); 38 M.R.S. § 341(D)(2).

The Commissioner must refer the Application to the Board, and the Board must assume jurisdiction over it because the Board alone has the authority to assess projects of statewide significance. See 38 M.R.S. § 341(D)(2) ("The board *shall* decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance . . .") (emphasis added); 38 M.R.S. § 344(2-A)(A) (the "commissioner *shall* decide as expeditiously as

¹ NRCM incorporates herein by reference its prior Department filings establishing that the NECEC is a project of statewide significance.

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possible if an application meets [the criteria for a project of statewide significance] and shall request that the board assume jurisdiction of that application”) (emphasis added). The Board should also assume jurisdiction over the Application because it seeks to modify permits that are currently before the Board on appeal, and it would be inefficient and illogical to allow the Department, rather than the Board, to assess the Application at this juncture.

Thank you for your attention to this matter.

Sincerely,

/s/ James T. Kilbreth

James T. Kilbreth
Counsel for Natural Resources Council of Maine

cc: Service List (by email only)

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Attachments: [2021-01-15 - JTK to Bever Requesting Extension for Comments on Minor Revision Application.pdf](#)

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Good Afternoon,

Attached please find a letter from the Natural Resources Council of Maine regarding the above referenced Minor Revision Application by Central Maine Power Company and NECEC Transmission, LLC.

Thank you,

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