



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS  
696 VIRGINIA ROAD  
CONCORD, MASSACHUSETTS 01742-2751

Regulatory Division  
CENAE-RDC

February 23, 2018

Mark Goodwin  
Burns & McDonnell  
27 Pearl Street, 2<sup>nd</sup> Floor  
Portland, Maine 04101

Dear Mr. Goodwin:

This concerns your client's application for a Department of the Army permit to place temporary and permanent fill in numerous waterways and wetlands between the Maine – Quebec border and south central Maine in order to construct a new HVDC transmission line, new and rebuilt transmission lines, an associated DC to AC converter station and a STATCOM substation, and other appurtenant work (NECEC Transmission Project). For your continued reference, the application has an assigned file number of NAE-2017-01342.

The Corps is aware of the past decision by the State of Massachusetts that favored the Northern Pass Transmission Project as the winning bid relative to their Section 83D Solicitation Process. We are also aware of the more recent decision by the New Hampshire Site Evaluation Committee to deny that project a Certificate of Site and Facility. The State of Massachusetts will reportedly now open concurrent negotiations with both Northern Pass and the NECEC, to execute long term contracts with the selected bidder by March 27, 2018, and submit them for Massachusetts Department of Public Utilities approval by April 25, 2018, as set forth in the Section 83D RFP schedule. As such, it is our understanding that your client is requesting that the DEP, LUPC, and the Army Corps continue to evaluate Central Maine Power Company's pending applications for the NECEC Transmission Project.

We require additional information to process your application. (See attached sheet for information required.)

This additional information is necessary so that we can properly evaluate your proposed activity and reach a decision on your application. Hence, no further action will be taken until you have complied with our request. Failure to provide this information within thirty days will result in your application being considered withdrawn.

Please do not begin any work in our jurisdiction without the required Corps of Engineers permit. It is illegal to do so, and will only delay your project and may subject you to civil or criminal liability; fines can be as high as \$10,000 or \$25,000 per day of violation respectively.

If a permit is to be issued, a \$100 fee will be required. Do not send the fee at this time. A separate request will be made after we have made our decision.

If you have any questions, please contact me at our Augusta, Maine Project Office at 207-623-8367. Please note that our office has moved. Our new address is: US Army Corps of Engineers, 442 Civic Center Drive, Suite 350, Augusta, Maine 04330.

Sincerely,

A handwritten signature in cursive script that reads "Jay L. Clement". The signature is written in black ink and is positioned above the printed name.

Jay L. Clement  
Senior Project Manager  
Maine Project Office

Copies Furnished:

Melissa Pauley – DOE  
James Beyer – Maine DEP  
Gerry Mirabile – CMP

ADDITIONAL INFORMATION REQUIRED  
FOR DEPARTMENT OF THE ARMY PERMIT  
APPLICATION NO. NAE-2017-01342

Attached is a copy of our application form. We are able to utilize the information contained in your state applications but for a Corps individual permit process it is a requirement that we have our application form filled out and signed. By all means refer to the state application materials in the form's blocks. Please fill out the form and return it to me as soon as possible.

Although a Corps permit application form has not been completed, the Corps has reviewed your applications to the Maine DEP and requires the following additional information (in addition to our application form):

NRPA Application

1. Section 2.2, Purpose & Need. Please verify the project purpose has not changed in view of the various state utility decisions to date. Should Massachusetts ultimately decide to not select the NECEC project you will likely have to revisit this issue. CMP alleges that the project would move forward regardless, but such a decision would not be supported by the project purpose which is currently MA-centric. Similarly, it would be unclear whether a capacity of 1200 MW was necessary or whether a smaller scale project could suffice. And presumably the air benefits that are sited (also MA-centric) may have to be re-addressed.
2. Section 2.3.1, No Action Alternative. The discussion of the no action alternative needs to be clarified. The no action alternative presumably means a) the project is not built and the needs are not met; or b) some other project is built which addresses the needs. The reference to the economic benefits that CMP will lose through a no action alternative is immaterial and has no bearing in this discussion.
3. Section 2.3.2, Alternatives. We suggest that the discussion of alternatives be reworded. Other alternatives may be more environmentally damaging but are they 'impracticable' as you note, probably not. I remind you of the Section 404(b)(1) Guidelines – an alternative is only impracticable if it is unavailable or incapable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. An alternative may also be dismissed if it is more environmentally damaging. If you dismiss an alternative as economically impracticable (too costly), you must put that into context with the overall cost of the project. For example, if burying the line in some segment will be multiple times more expensive than not burying it, how does the overall cost of the project change? The Corps encourages that all alternatives be analyzed and dismissed in accordance with the Section 404(b)(1) Guidelines. With a minimum of additional wording, the language in the guidelines could be added to make the analysis more fully compatible with the requirements of the Corps, the Maine DEP, and the federal resource agencies (US EPA, USFWS, and NMFS).
4. Section 2.3.2.2.1. Why didn't the PUC approve the 1980 project? Please clarify.
5. Section 2.3.3, Merrill Road Converter Station. The narrative boils the discussion down to the preferred alternative and then alternative #1 but then speaks to alternative #2; a typo perhaps?

And the narrative indicates that alternative #2 (#1?) is not practicable but it is, you allege that it's dismissed because it is just more environmentally damaging, correct?

6. Section 2.4.1.1, Beattie Pond. CMP reportedly attempted to negotiate an alternative alignment south of the pond but could not come to mutually acceptable terms with the landowner. Was a reasonable and good faith effort made relative to the value of the gross cost of the project and the anticipated revenue?

7. Section 2.4.1.2, Kennebec River Gorge. Please confirm that the updated crossing designs and photo sims transmitted in your December 12, 2017 email are the most current (in view of our interagency site visit and any subsequent coordination you've had with DEP and LUPC staff). Is there any updated discussion of the directional drill alternative at this location we should be aware of?

8. Section 2.4.1.2.1, Overhead Transmission Alternatives (for river crossing). A table comparing the environmental and other factors for the three options would be helpful here.

9. Section 2.4.1.2.2, Directional Drill Alternative. Please put the noted additional cost of this alternative into perspective with the overall cost of the project.

10. Section 12.1.2.2, Table 12-1. This table shows 4.49 acres of permanent wetland impact for substation development. Please verify that the remaining 0.21 acres of the referenced total project impact encompasses the entire project, Quebec – Southern Maine.

11. Section 13, Mitigation.

a. Please verify that Table 13-1 is reflective of the Corps current mitigation guidance (2016). Refer to our web site at:

[http://www.nae.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016\\_New\\_England\\_Compensatory\\_Mitigation\\_Guidance.pdf](http://www.nae.usace.army.mil/portals/74/docs/regulatory/Mitigation/2016_New_England_Compensatory_Mitigation_Guidance.pdf)

b. The table does not appear to address temporary conversion of wetlands, if any.

c. How long will the temporary fills remain in place? Any temporary fills that remain in place longer than our prescribed time limits in the mitigation guidance may have require compensation.

d. Please verify that the calculations for direct and indirect vernal pool impacts meet current state and federal guidance. For example, indirect impacts (clearing) that result in >25% loss of forested cover within 750' of the pool (250' for the DEP) may require compensation for an assumed full loss of pool productivity. Similarly, fills within 100' of the pool or within the pool itself may require compensation for the same reason.

e. I did not see the calculations in support of your suggested mitigation levels. Again, refer to our current mitigation guidance and capture all of the project's direct and indirect impacts to aquatic resources.

f. Verify that for the 641 vernal pools identified along the existing alignment, that direct and indirect impacts don't rise to the level of requiring compensation.

### Site Law Application

12. Section 1. Please verify that all of the descriptions and plans for other proposed upgrades to stations are up to date and they will not require new impacts to aquatic resources.

13. Section 7.3.7.1, Canada lynx. Please summarize your latest coordination with USFWS.

14. Section 7.3.7.2, Bats. Please update the project's tree clearing limits (total for T-line and any substations). Section 7.4.4.2 notes a 1,809 acres of total conversion but elsewhere in the applications a figure of 124.14 acres is cited. Relative to the standard BMPs to minimize potential impacts to the species, can CMP restrict tree clearing to only the winter months (October 16 to April 19) and/or have no tree cutting between June 1-July 31 of any year?

15. Section 7.5.2.2, Salmon. There will apparently be no direct impacts to salmon streams but we need to quantify any indirect impact from clearing proximate to these resources.

16. Exhibit 7-1, Agency Correspondence. The USFWS Official Species List notes the possible presence of small whorled pogonia. Guidance for field searches was provided by MNAP in June 2017, were plants or habitat found? Was this information coordinated with MNAP?

17. Section 9.1. The narrative indicates that surveys for state listed rare plants are not complete, what is the status of these investigations?

18. Section 10.1, Exhibit 10-1. Table 1 has a list of invasive species. This is a far from comprehensive list compared to those listed in our mitigation guidance. Please clarify.

19. Section 19, Flooding. In the towns where the 30 structures and substations will be placed within or otherwise affect the 100 year flood plain you will be required to obtain a Flood Hazard Prevention Act permit. Any permit from the Corps will be so conditioned as a means of complying with Federal Executive Order 11988. You may wish to pursue these local permits now.

### Site Law Application Attachment Volume I

20. Attachment 1, Plans. Please provide a master plan that shows the whole project route 1) on one sheet relative to the whole state; and b) in a more detailed view. This is for reference purposes in our future public notice.

21. Section maps. Please relabel the section maps with a larger font so that they are more legible.

22. Can the various sections be consolidated to a more limited number of 'typical' sheets for purposes of our future public notice? Can you also provide a generic web link that we

can add to our public notice that would allow the public to view plans specific to their region or location of interest?

23. The Corps requires a more detailed set of plans for the border crossing. This is a requirement for our process, for our combined review with the Dept. of Energy (DOE), and for the review that must be conducted by the International Joint Commission.

24. Please provide a 'typical' plan of a stream crossing using mats as well as a wetland crossing. If culverts or other measures will be used to insure wetland cross drainage or downstream flows, the sections should show that.

### General

25. Upon receipt of the additional information and application form the Corps will author a preliminary jurisdictional determination that will encompass the entire project. It will be necessary for CMP to sign this before we can issue a public notice.

26. In order to initiate Section 7 consultation with USFWS pursuant to the Endangered Species Act, the Corps will need to submit a biological assessment. The consultation process can be streamlined if you assist in the development of the BA. Please indicate your willingness to do so.

27. We are aware that the DEP has determined that a public hearing is a required element of their review. Since such a hearing may obviate the need to have a duplicative hearing by the Corps (and perhaps by DOE), please update us on its proposed schedule. We would attend the hearing and if possible, reference it in our public notice.

28. As you are aware, the Corps and DOE are coordinating our two permit processes in the interest of streamlining and avoiding duplication of effort. In addition to echoing the Corps request for plans for the border crossing, DOE has asked whether there have been any substantive changes to/refinement of the information previously provided to in their Presidential permit application. Please provide the Corps with a copy of their application and any updates.

29. The DEP and by association, IF&W and MHPC have asked for additional information. Please copy the Corps on any response(s) to these requests. Of particular note, IF&W has asked for an updated vernal pool table. The Corps requests that all vernal pools be reflected on such a table, not just the 'significant' and 'natural' pools subject to state regulation. We're also interested in your response to DEP's technical questions on storm water and erosion controls. And on November 28, 2017 MHPC requested additional survey information. That information must be provided in order for the Corps and DOE to continue consultation pursuant to Section 106 of the Historic Preservation Act.

30. We are aware that some of the other state data requests also require additional field work this season. It would be helpful to have a projected task list and timetable for anticipated field work and responses back to the interagency review team. Coupled with

what we understand may be a late summer/early fall public hearing, it may make sense to delay issuance of our public notice and/or further processing. In the short-term, it may also make sense to reconvene the interagency review team for a project update, particularly in light of the confusing (and apparently dynamic) MA and NH regulatory processes.

PCL XL error

Warning: IllegalMediaSource