CENTRAL MAINE POWER COMPANY
Site Location of Development Act // Natural Resources Protection Act
Upgrade of Transmission Corridor – 78 Municipalities

Appeal Documents

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Mary + David Fournier
16 High Meadow Farm Rd.
Eliot, Maine 03903
May 4, 2010

Chair, Board of Environmental Protection
c/o Dept. of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017
Sent via fax to: 207-287-2814

To the Chair of the Board of Environmental Protection,

We are appealing the DEP licensing decision re: CMP's Department's order Permit filed with the Board on April 5, 2010, as it affects our property and the areas near our property.

1. We, as appellants, are particularly injured by the Commissioner's decision, due to the substantial severe impacts to our land, the wildlife that will be affected by the specific orders related to our land and near by land and road view impacts, including our aesthetic impacts, property devaluation and the potential to cause damage to our well water. We, therefore, meet the requirement for an appeal due to our "aggrieved status".

2. Findings, conclusions or conditions that we are filing this appeal to include, but are not limited to the following: Segment 27 of the CMP construction of a 345 kV transmission line, Section 3022, is planned to be constructed

over our land, as is the relocation and reconstruction of CMP's Section 250 to make room in the easement (one of two) area on our land. CMP has, at this time, made no provisions, to our knowledge to protect the well water supply area on our property and adjacent to, where there is an unnamed brook which supplys the water or is in the close proximity to the source of our well water. Construction practices, by CMP's Contractors, in 2009, on our property causes us great concern as CMP lacked in using Construction matts when crossing this area and the wetland area in that vicinity of the land adjacent to or on our property. CMP had failed to use the proper "access roads" (routes) approved by the DEP in CMP's application for that 2009 construction on our land and caused unnessary damage to our land, property and us by crossing our land in as many areas and routes as their contractors, and their heavy construction equipment could. In this DEP order, we appeal the access routes to be used in the application by CMP to modify, so as not to cause damage to our land, water supply and non capable species vegetation for the purpose of not causes the wildlife, in particular the deer.

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186 wild turkeys, fox, and other wildlife that depend on survival by use of the natural resourse on our land and nearby.

CMP, in these conditional orders by the DEP is required to comply with all federal, State and local laws. The structure height limit in Eliot is 35 feet and the definition of "structure" in our ordinance is consistant with the structures planned to be used by CMP in it's construction on our land. The ordinance in Eliot's Section 45-290 Table of Prohibited and Permitted uses, for Public utility facilities, requires SR, Site Review. Another of Eliot's ordinances, which we are concerned about is the ordinance which Specifies that the height limitation of the Structures is limited to 35 feet high. There is also an ordinance requiring buffers and screening, 45-417.

Eliots, Ordinance 45-405, Performance Standards, dimensional standards cites the height of Structure limitation to 35 feet.

We are attaching to this appeal letter the Copies of the above ordinances.

We know of no plans for CMP to apply for any permitting on our land, not to comply with the applicable ordinances, as they have given us, not the Town of Eliot any indication

of planning to do so.

We object to the severe impacts of steel single Pole structures on our land in the open space of our backyard, which will unreasonably cause severe impacts to us, our property and our financial well being, which we have worked very hard for for nearly 34 years of marriage. We are asking that CMP be made to work with us on proper poles / placements affecting our land so they can be somewhat bufferred and located to cause less severe impacts, if they are able to and do apply for a waiver to the Town of Eliot Planning Board. The Planning Board is responsible for "site review" CMP appears to believe that because they are a public utility that they need not comply with Eliot's ordinances. The term "public utility facilities" is well defined by Maine Statute and has an accepted meaning as to include the facilities that comprise transmission lines. CMP has itself used the term in documentation regarding the transmission lines.

We are objection to CMP possible non-mitigation of disturbed areas on our land

1488 which effect the wetland areas on or adjacent to our land, as CMP has not yet restored these areas where they excavated on our land, not even seeded with instruction to do so by the DEP project managers on the CMP application to MDEP to reconstruct their Section 197, 115 kV transmission line on our land.

Our home is located very close to and within view from the Eastern trail, and there are two well traveled roads affected by the planned construction of CMP, for the "MPRP" project, that will be very adversely affected aesthetically to the point that the DOMINION view will become the dark, rusty brown steel structures of Section 3022 and the additional taller structures of the planned reconstruction of Section 250.

There is concern on our part also, if the MDEP orders are not modified that the severity of the impacts to us and nearby, with out Buffers provided by CMP will not be recovered from in our lifetime

Although CMP, has been able to plan for tree buffers for the Woodland Hills Condo Complex, a short distance north of our property, within their application for the Orders, due to the visual impacts, CMP has not planned for any tree buffers in our area, on our land or nearby. The trees that CMP caused to have cut on our property in their 2009 construction on our land were not supposed to be cut according to CMP's NOEP application, conditionally approved by the Commission, based on their Figure 14-23, IF&W (Maine Inland Fisheries and Wildlife) showing no tree clearing, access routes that were not remotely complied with and also CMP's testimonies to the Maine Public Utility Commission in Docket # 2007-591, a ten person Complaint, Fournier, et al, v. CMP. In the Commissioner's Orders (MPUC) CMP was directed to meet with abutters who requested a meeting to give the abutters their pole placement, polespans and height preferences, with out adding unreasonably to the cost. The results of that request of ours to CMP is

190 that we now have an approximately 75 ½ foot tall structure, Pole 104 of the new Section 197 towering over our home and it is now the dominant view from outside of and inside of our home. We had asked that it be built only 35 ~~feet~~ to the ~~north~~ north which would have required a taller pole, but would have been located behind trees that would have buffered it. The new section 197 is located about 30 feet from the former location (the centerline of the H-Frame, 40 ft. Tall structures). The former section 197 was built prior to Eliot's Height limitation of 35 feet for structures being enacted by the Town of Eliot.

The cutting of our trees outside of the easement made room for CMP to relocated Section 197 closer to our home and the language of the easement deed where 197 was and is build does not give CMP that misuse of the easement rights contained therein.

We are concerned that CMP also did 191
not comply with, on over land the MPUC
Orders, Docket # 2007-591, Fournier, et
al. v. CMP, dated August 22, 2008, in
that they were directed to construct
the access routes (roads) in a way to
minimize the damage to the land and
to restore the land after construction.
CMP has still not restored our land and
to the best of our knowledge, including
a response from "Shared Utility Services",
CMP's self insured division, will not.
Obviously, all of these factors concern
our factually based appeal the the
Department modify the "MPRP" orders
to CMP, so that further unnecessary
damage not be done.

CMP had done some visual photographs
within their application (apparently not with
their initial visuals) of our area. These
photos, as we have viewed them at the
MDEP regional office in Portland, Maine
do not show the phones, and other build-
ings nearby, but have been photographed

192 from advantage point(s) to not show the homes, etc. This, in our opinion is a misrepresentation of the quality of and the aesthetics which are now existing and the results of CMPs evaluations for visual impacts to this area of Eliot are that no buffering is needed. Modification of the Department's orders can and should require buffering with proper trees and placement of Structures to be in compliance with the ordinances as previously cited and also in the Sec. 45-413- Preservation of land scape ordinance also attached to this appeal.

Our property stands to be severely devalued by CMPs MPRPC projects, if the Commission allows CMP to ignore our local ordinances (laws).

Another law, which is Maine RSA, Title 12, Chapter 807, § 9333., paragraph 2, Construction. Slash. . . does not allow for the utility company to construct and

leave "slash" in the easement or corridor area of construction. We are appealing the Commission Orders that the Amended VMP (Vegetation Management Practices) for "MPRP" does not specify that CMPs construction of "MPRP" be in compliance with not leaving "slash" on the property where construction occurs.

We have tried to get CMP to clean up the "slash" which was left on our property in their 2009 construction of Section 197 (relocated) by the means of: contacting them directly, requesting it, contacting MDEPs project manager on that project, filing an insurance claim with CMP, including the clean up costs to be paid to a landscaping company, who submitted a proposal, (forwarded with the claim) to us for the clean up, through our code enforcement officer, through the MPUC, by filing Requests, by allowing CMPs project manager for that project, Jim Begin to come to look at the "slash", which is interfering with our use of our land and also creates a safety hazard when walking in the slash

194 areas near the top of the "upland" of wetland area of our land, and by asking the company representatives, third party inspector, Heather Ward, hired by CMP for that project to try to get CMP to clean it up — all to no avail. Therefore, we are fearful that given all of the circumstances involved in the recent construction by CMP, on our land, that we could suffer land damages that we may never recover from, if CMP's Orders to construct "MPRP" are not modified by the appeal to cause safeguards for CMP to comply with the Statute.

We also want to stress to the Board that we live in a rural residential district of Eliot, which has a fundamental purpose of ensuring that there are agricultural needs protected in the district, along with causing there to be a "rural quality" maintained, with low density development.

We have wanted and planned for a vegetable garden on our land but have been unable to do that because of all of CMP's development on our land and the planned

"MPRP" construction for our land, which in CMP's communications with us regarding our being able to have a garden on over our land, can be only under the new conductor area of the newly built Section 197, which does not have the necessary land requirements for us to grow a garden for our vegetable needs. We has thus had to postpone that garden and CMP does not, to the best of our knowledge, plan to stay clear of a garden, even after "MPRP" is built on our land, if for some reason they want to go over it with equipment. The area of our land past section 197 in the easterly direction is the suitable area for our vegetable garden. CMP has easement rights to do certain things on two adjacent easements, each easement granted to CMP in 1949 and 1964 and each was for the construction of two separate 115K lines, 197 + 250. They were (250 is) safely located on the land and did not interfere with our health, safety, aesthetics to any great degree (these were close to 100% buffered prior to the new Section 197); nor did these lines

196 interfere with our reasonable use of our land, not the DWA (deer wintering areas) on and adjacent to our land. In the MDIF+W Figure 14-23 in CMP's DEP Application for Section 197, now constructed, CMP did not construct in a manner on our land to safe guard the wetland impacts as should have been done here and in fact, rather than the proper use of construction matts (they were left in piles, rater than used here) their excavator got stuck in the wetland area adjacent to our land and had to get dug out, as was shown to MDEP's Project Managers, CMP's employees, through our filings of many Photographs, including the heavy equipment in the rutted out mud in that wetland, caused by them. We appeal the Commission's Orders to ask for modification of the Orders to cause more than 4 third party inspectors to be hired by CMP for such a huge set of projects "MPRP", and for there to be a means of stricter compliance with the treatment of wetlands, wildlife areas, etc.

Our land has had beautiful natural and added to by us (landscaping) and the

impacts on our views and of views from nearby could potentially be less severely impacted, as stated before by more strict enforcement of the Orders than we have had the unfortune to experience in the 2009 project by CMP on our land and the lack of enforcement of these Concerns with MDEP conditional orders stated with in this appeal.

We have also the following safety Concerns:

The gas pipeline buried on the Easterly side of the easement for Section 250 - Existing - here was crossed over many times by CMP's heavy contractor vehicles (CMP's subcontractors') and not even one "dig safe" flag was ever up on this land nor nearby for their 2009 Construction. We have photographs of the project that show that. On February 5th, CMP's contractors came on our land to drill or bore a deep hole on our land for a soil sample; much to our dismay the people who came with the machine to do the boreing were joined by someone in a large pick up truck, whom we believe

works for Berns + McDonnell (CMPs Construction Management company for "MPRP") - the man in the pickup truck drove over to pipeline area for the purpose of driving over our "no tresspassing" signs on our land to flatten them and he proceeded to spin his trucks wheels and get out to throw snow balls at the remaining "no tresspassing" signs. That was, we guess for the sheer "bullying" of ourselves and for the delight & entertainment of the other men in our backyard. Any company employees who are meant to handle a construction job with the compacts of an electric transmission line has no business acting in such a way for the apparent purpose of harassing us. The many projects of "MPRP", never before this far out number any of Maine's transmission, substation and other upgrades in the past. We are extremely concerned with the seriousness of these projects and appeal to the Board that

additional safeguard provisions be added to the orders to protect the safety and welfare of the public and that any construction employee who does not treat the massively impacting projects more seriously than what occurred here on February 18, 2010, should be made to answer for such ignorance with a determination by the Commission as to whether or not dismissal is necessary. We, of course, photographed the people and truck on our land and adjacent to it. 199

We also appeal the MDEP Orders approving the "MPRP" easements and land acquisition, real estate information as being not available to the public. In the process of our reviewing the application so far, in Portland, we noticed that a CD was in the inside jacket of one of the books and was marked either confidential or redacted. We people of Maine have the right to know what CMP's easements are and

24 and where their land is, as we have the right to know where any real estate land is, especially land that gets used for the construction of facilities that have such an adverse impact in many ways to landowners abutting and wildlife endangered animal and plant species and the environment in general. We appeal that those real estate records need to be made available to the public,

Lastly, we have not found in the Orders specific information for the use of the concrete foundations for the many Steel, Single Pole Structures being planned by CMP in the areas of 345 kV construction, chosen by CMP in less than desirable widths, so that the taller and much more obnoxious Single poles are planned to squeeze in for a lot less cost to CMP, more structures on less land. The use of these areas are often very close to inhabited homes, where people will likely be adversely affected health wise due to CMP's choosing not to provide for adequate land

for so many structures.

We request a hearing in this informal appeal letter in front of the Board of Environmental Protection to allow us to present our concerns and criteria for them to the Board.

Sincerely,

Mary Fournier

Mary Fournier

David Fournier

David Fournier

Attachments # 1-5.a. & 5b.

Copies to: CMP, MDEP Commissioner and the original to Board by mail

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Maine Revised Statutes

§9333 PDF
§9333 WORD/RTF
STATUTE SEARCH
CH. 807 CONTENTS
TITLE 12 CONTENTS
LIST OF TITLES
DISCLAIMER
MAINE LAW
REVISOR'S OFFICE
MAINE LEGISLATURE

§9332 Title 12: §9334

CONSERVATION
Part 11: FORESTRY
Chapter 807: FOREST FIRE CONTROL
Subchapter 4: REGULATION OF OPEN BURNING
Article 3: DISPOSAL OF SLASH

§9333. Disposal along railroads and utility lines

1. Stumpage owner. A stumpage owner, operator, landowner or agent who cuts or causes or permits to be cut any forest growth on lands that are within or border the right-of-way of a railroad, a pipeline or an electric power, telegraph, telephone or cable line may not place slash or allow it to remain on the ground within the right-of-way or within 25 feet of the nearer side of the right-of-way.

[1999, c. 332, §1 (NEW) .]

2. Construction. Slash accumulated by the construction and maintenance of a railroad, a highway, a pipeline or an electric power, telegraph, telephone or cable line may not be left on the ground but must be hauled away, burned or chipped. Slash may not be left or placed within the right-of-way or within 25 feet of the nearer side of the right-of-way. If a burning permit is denied or revoked under this chapter, the director may allow logs that are too large to be chipped to remain in the right-of-way until the director determines that their removal is economically feasible.

[1999, c. 332, §1 (NEW) .]

3. Utility line maintenance. Slash accumulated by the periodic maintenance of a pipeline or an electric power, telegraph, telephone or cable line may be disposed of in the following manner.

A. Slash with a diameter of 3 inches or less may be left in piles on the ground within the maintained portion of the right-of-way. A pile may not be higher than 18 inches from the ground or longer than 50 feet and must be separated from other piles by a minimum of 25 feet in every direction. A buffer strip with a minimum width of 10% of the total width of the maintained right-of-way must be kept totally free of slash with a diameter of 3 inches or less. [1999, c. 332, §1 (NEW).]

B. Slash with a diameter of more than 3 inches must be removed, chipped or limbed and placed on the ground surface. The pieces must be separated and may not be piled one piece over another. Slash of this size may be left within the maintained buffer strips. [1999, c. 332, §1

Attachment 5a - of Fournier Appeal of MDEP orders

(NEW).]

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C. If a utility line right-of-way is adjacent to a road, slash that is 3 inches or less in diameter must be removed, burned or chipped. Slash with a diameter of more than 3 inches may be left on the ground within the right-of-way and must be limbed and separated and may not be piled one piece over another. Usable timber products generated from the maintenance of a utility right-of-way may be piled within the right-of-way but must be removed within 30 days. [1999, c. 332, §1 (NEW).]

[1999, c. 332, §1 (NEW) .]

SECTION HISTORY
1979, c. 545, §3 (NEW). 1999, c. 332, §1 (RPR).

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If you need legal advice, please consult a qualified attorney.

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Attachment 5b of Fournier Appeal