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November 26, 2019

VIA ELECTRONIC MAIL

Mr. James R. Beyer
Maine Department of Environmental Protection
Division of Land Resources Regulation
106 Hogan Road
Bangor, ME 04401

Mr. Bill Hinkel
Land Use Planning Commission
Department of Agriculture, Conservation and Forestry
18 Elkins Lane
Augusta, ME 04330

RE: NECEC – Objections and Reply of Central Maine Power Company to Public Comments and to Intervenor Comments and Testimony regarding the Merrill Strip Alternative

Dear Jim and Bill:

On behalf of Central Maine Power, please find enclosed CMP's Objections and Reply to Public Comments and to Intervenor Comments and Testimony regarding the Merrill Strip Alternative.

Thank you.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Service Lists

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
#L-27625-26-A-N/#L-27625-TG-B-N/)
#L-27625-2C-C-N/#L-27625-VP-D-N/)
#L-27625-IW-E-N)

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
SITE LAW CERTIFICATION SLC-9)
Beattie Twp, Merrill Strip Twp, Lowelltown Twp,)
Skinner Twp, Appleton Twp, T5 R7 BKP WKR,)
Hobbs town Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

**OBJECTIONS AND REPLY OF CENTRAL MAINE POWER COMPANY
TO PUBLIC COMMENTS AND TO INTERVENOR COMMENTS AND TESTIMONY**

Central Maine Power Company (CMP or Company) hereby objects to certain public and intervenor comments filed in response to CMP's Merrill Strip Alternative supplement, and replies to the November 12, 2019 responses to its Merrill Strip Alternative filed by certain intervenors.

I. Objection to Comments and Testimony That Exceed the Scope of This Limited Record Reopening (Relevant to DEP and LUPC)

A. CMP's Standing Objection to Public Comments

On September 18, 2019 CMP petitioned the Presiding Officers to reopen the record for the limited purpose of accepting evidence relevant to an alternative to the then-existing Project

route that avoids the Recreation Protection (P-RR) subdistrict at Beattie Pond. In their Fifteenth Procedural Order, the Presiding Officers reopened the record for this limited purpose.¹

Subsequently, in their Sixteenth Procedural Order, the Presiding Officers gave the intervenors in this proceeding leave “to submit written responses in the form of evidence and comments” and gave CMP leave “to provide a written reply” relevant and limited to CMP’s Merrill Strip Alternative supplement only.²

Despite this clear directive, the public comments in opposition to the Project, filed to date with the Maine Department of Environmental Protection (DEP) and Land Use Planning Commission (LUPC), are outside the scope of the limited record reopening. Rather than provide the agencies with “additional evidence needed to evaluate the proposed alternative route,”³ these comments exceed the limited scope of the Merrill Strip Alternative and are contradicted by the record (e.g., regarding views from the Attean Overlook, herbicide use, and Stud Mill Road). Because the agencies will receive comments from the public until the deadline for the filing of this pleading, CMP makes a standing objection to admission into the record of any public comments that exceed the limited scope ordered, and asks that such comments be stricken.⁴

B. CMP’s Objection to Groups 2/10 and Group 4 Comments

Similarly, intervenor Groups 2 and 10 and intervenor Group 4 make numerous references to portions of the Project that are not encompassed by this limited reopening of the record. All references to and discussion of the Kennebec River crossing, Appalachian Trail crossing, the

¹ Fifteenth Procedural Order at ¶ 4.

² Sixteenth Procedural Order at ¶¶ 6-7.

³ Fifteenth Procedural Order at ¶ 4.

⁴ In addition to exceeding this limited scope, the November 26, 2019 letter from Catherine Casavant erroneously suggests that CMP did not provide the required public notices of these applications. In fact, CMP mailed the public notices to all abutters, “as determined by local tax records or other reliable means,” as required by DEP Reg. ch. 2.14(A).

January 2019 Beattie Pond structure modification, and stream crossings outside of the Merrill Strip Alternative alignment should be stricken as exceeding the limited scope ordered.⁵

C. CMP's Objection to Group 1 Comments and Exhibits

Pursuant to the Sixteenth Procedural Order, all intervenor comments were due to be filed by 5:00 PM on November 12, 2019.⁶ While Group 1 appears to have emailed its comments to Mr. Beyer of the DEP and Mr. Hinkel of the LUPC at 4:14 PM on November 12, 2019, it failed to serve the service list as required throughout this proceeding by the First Procedural Order.⁷ Consequently, CMP did not receive Group 1's comments until the following day, when Mr. Hinkel forwarded the Group 1 comments to the service list. Service is not deemed complete until filings have been sent to the entire service list.⁸ Group 1's comments therefore were not timely served on the parties and should be stricken.

Alternatively, the exhibit attached to Group 1's comments, which appears to be a Bangor Daily News article concerning the "money at stake" in construction and operation of the Project, is irrelevant to the DEP's Site Location of Development Act (Site Law) and Natural Resources Protection Act (NRPA) review and to the LUPC's Site Law certification review, and in any event is outside the limited scope of this re-opening of the record. Nowhere does the article

⁵ See, e.g., Groups 2 and 10 Reply at 4 (Nov. 12, 2019); Group 4 Comment at 2, 5-10, Publicover Second Supplemental Testimony at 2-3, and Reardon Second Supplemental Testimony at 2 (Nov. 12, 2019).

⁶ Sixteenth Procedural Order at ¶ 6.

⁷ First Procedural Order at ¶ 10 ("All filings related to this matter should be sent to Jim Beyer . . . and the persons on the service list must be copied.").

⁸ DEP First Procedural Order at ¶ 11 ("Once an email communication has been sent to the members on the service list, service is deemed complete"); LUPC Second Procedural Order at ¶ I.C ("All filings in this proceeding must be made by electronic mail (email) to the service list Once an email communication has been sent to the members on the service list, service is deemed complete."). *See also* LUPC First Procedural Order at ¶ E ("All filings related to this matter must be sent to Bill Hinkel . . . the service list must be copied."); DEP Second Procedural Order at ¶ 6 ("The Department and the LUPC will continue with service to the Parties by email since no party has objected to the service of materials by email. . . . The Department will maintain a consolidated list with the LUPC contacts. All filings will go to all Department and LUPC parties in this matter."); DEP Third Procedural Order at ¶ 19 ("Unless otherwise requested and approved all filings must be made electronically in Adobe PDF format by e-mail to the entire service list.").

mention the Merrill Strip Alternative. Indeed, the article was published more than three months before the Merrill Strip Alternative was proposed. Accordingly, it should be stricken.

II. Response to Intervenor Comments (Relevant to DEP and LUPC)

A. The Merrill Strip Alternative Improves the Project By Responding to Concerns and Reducing Impact.

Recognizing that the Merrill Strip Alternative is “a better alternative”⁹ and “avoids Beattie Pond and consequently eliminates the negative impacts on this particular special resource,”¹⁰ Intervenor Groups 1, 2/10, and 4 nevertheless chastise CMP for its efforts to improve the Project in response to regulator and stakeholder concerns.¹¹

Rather than address the substance of the Merrill Strip Alternative, which significantly reduces environmental impacts when compared with the alignment through the Beattie Pond P-RR subdistrict, these intervenor groups instead oppose the Project simply for the sake of opposition. To try to contort an improvement into a problem, they assert a conspiracy theory – that an improvement to the Project must mean that the Project has other unknown problems that also could be identified and fixed. For example, Group 1 alleges that CMP’s ultimate success in obtaining title, right, or interest (TRI) to the Merrill Strip Alternative “causes many questions to be asked about what other financial consideration prevented location of a better environmental route.”¹² Groups 2 and 10 echo this notion, rhetorically asking, “if this Amendment was suddenly viable only after CMP saw the Commission unable to reach the five votes needed for

⁹ Intervenor Group 1 Comments at 1 (Nov. 12, 2019).

¹⁰ Intervenor Groups 2 and 10 Reply at 3 (Nov. 12, 2019).

¹¹ These intervenor groups suggest that the Merrill Strip Alternative supplement is somehow a last-minute response after being “called out” at the LUPC’s September 11, 2019 deliberative session. This is plainly not true, as recognized by the Presiding Officers who reopened the record for good cause shown. As discussed below, CMP pursued the Merrill Strip Alternative *prior to* the LUPC’s September 11, 2019 deliberative session, reengaging in negotiations with the Merrill Strip landowner that culminated in the August 30, 2019 closing on the purchase of an easement and that enabled CMP to gather and analyze information to support a filing with the agencies that shows that this alternative routing is an improvement over the route through the Recreation Protection (P-RR) subdistrict at Beattie Pond.

¹² Intervenor Group 1 Comments at 1 (Nov. 12, 2019).

action, how many other alternatives might also be available if CMP hears similar concerns from the Department or the Commission about other locations?”¹³ Group 4 is more overt in pushing this conspiracy theory, stating, “CMP’s late-in-time adoption of an alternative route that it repeatedly rejected as impracticable and too costly throughout the permitting process adds further evidence that CMP is ignoring viable alternative routes that could reduce the environmental impact of this large and destructive transmission line.”¹⁴

These arguments disregard the actual timeline. As CMP stated in its September 18, 2019 Petition to Reopen Record, CMP pursued the Merrill Strip Alternative well before the LUPC’s September 11, 2019 deliberative session. In light of the questions and concerns expressed by LUPC Commissioners and staff during the hearing this spring,¹⁵ CMP pursued this alternative and was able to re-engage in negotiations with the landowner, closing on the purchase of an easement on August 30, 2019 – nearly two weeks before the September 11, 2019 LUPC deliberative session. CMP filed its Petition at its earliest opportunity, as it needed to work diligently after obtaining TRI to gather and analyze natural and cultural resource data and other information to support a filing with the agencies that demonstrates that routing the Project through Merrill Strip meets the LUPC’s land use standards and the Site Law and NRPA standards. It made its filing on September 18, 2019, the very same date that it received the final Protected Natural Resources and Cultural Resources Survey from TRC, attached to that filing as Exhibit D.

The filing of the Merrill Strip Alternative supplement simply demonstrates that CMP was able to address an issue identified during the hearing in April and May, and does not indicate that

¹³ Intervenor Groups 2 and 10 Reply at 3 (Nov. 12, 2019).

¹⁴ Intervenor Group 4 Comment at 3 (Nov. 12, 2019).

¹⁵ See, e.g., Hearing Day 6 Transcript at 432:14-433:25 (Commissioner Billings); see also Hearing Day 2 Transcript at 140:11-142:10 (Hinkel/Livesay).

CMP is sitting on additional viable alternatives or that there was a failure to conduct a proper alternatives analysis (which is explicitly included in the October 10, 2019 Merrill Strip Alternative filing¹⁶). Indeed, the DEP's rules allow a reopening of the record at multiple stages in a proceeding in an effort to permit the best possible project.¹⁷

These intervenors' complaints about the iterative regulatory process¹⁸ further disregard the reason the Presiding Officers reopened the record. Quite simply, it was reopened "for the purpose of allowing the Applicant to amend the applications and gathering additional evidence needed to evaluate the proposed alternative route."¹⁹ The record was not reopened for further analysis within "the larger context of the entire permit,"²⁰ nor was it reopened to revisit other instances in which CMP has worked collaboratively with regulators and stakeholders to improve the Project.²¹ As permitted under the rules, the Presiding Officers ordered a limited reopening to consider whether the Merrill Strip Alternative meets the LUPC's land use standards and the Site Law and NRPA standards, and whether this alternative is preferable to alignment of the Project through the Beattie Pond P-RR subdistrict. Yet these intervenor groups chose not to focus on the substance of the supplement but instead to criticize the Company, claiming CMP has taken a "piece meal [*sic*] approach"²² to permitting the Project and noting in detail the prior application amendments that are wholly irrelevant to this limited reopening of the record.²³

¹⁶ Supplemental Information for the Merrill Strip Alternative at 9 (Oct. 10, 2019).

¹⁷ See, e.g., DEP Regs. Ch. 3 § 17 (allowing a permit application modification prior to a hearing) and § 24 (allowing a reopening of the record prior to issuing a final decision); see also DEP Regs. Ch. 2 § 21 (allowing amendment applications and requests for minor revisions after issuance of a license).

¹⁸ Intervenor Group 1 Comments at 1 (Nov. 12, 2019); Intervenor Groups 2 and 10 Reply at 3-5 (Nov. 12, 2019); Intervenor Group 4 Comment at 6-10 (Nov. 12, 2019).

¹⁹ Fifteenth Procedural Order at ¶ 4.

²⁰ Intervenor Group 4 Comment at 5-6 (Nov. 12, 2019).

²¹ Intervenor Groups 2 and 10 Reply at 3-4 (Nov. 12, 2019); Intervenor Group 4 Comment at 6-9 (Nov. 12, 2019).

²² Intervenor Groups 2 and 10 Reply at 4 (Nov. 12, 2019).

²³ Intervenor Group 4 Comment at 6-10 (Nov. 12, 2019).

Group 4's few substantive comments find no detriment in the Merrill Strip Alternative when compared with the prior route alignment. For example, complaining that the Merrill Strip Alternative does not address forest fragmentation, Group 4 admits that this alternative does not increase forest fragmentation over the original proposal.²⁴ Similarly, Group 4 can find no detriment to brook trout stream habitat, complaining instead that the alternative does not result in any change in impacts to fisheries resources in Number 1 Brook.²⁵ Nowhere is there any analysis of, or disagreement with, the September 18, 2019 TRC Survey Report, which concludes that there is no significant wildlife habitat (i.e., there are no deer wintering areas, significant vernal pools, bald eagle nest sites or inland waterfowl and wading bird habitat, or suitable habitat for rare, threatened, or endangered (RTE) species) along the Merrill Strip Alternative. Likewise, nowhere is there any analysis of, or disagreement with, the October 23, 2019 DIFW comment letter that supported the TRC report, finding that there are no known occurrences of RTE species or habitats, no known presence of significant wildlife habitats, and no potential significant vernal pools in the Merrill Strip Alternative. Nowhere do these intervenors acknowledge DIFW's finding in that letter that it "has no concerns for impacts to aquatic resources from the proposed alternative segment" and that the "alternative route does not appear to present significant adverse impacts to fisheries and wildlife resources." Finally, nowhere is there comment on or acknowledgment of the 50% reduction in the number of wetlands impacted by the Merrill Strip Alternative, nearly 80% reduction in wetland area impacted, over 60% reduction in forested

²⁴ Intervenor Group 4 Comment at 2 and Publicover Second Supplemental Testimony at 1-2 (Nov. 12, 2019). Dr. Publicover does not acknowledge or address the October 23, 2019 Department of Inland Fisheries & Wildlife (DIFW) comment letter, which contradicts his testimony in its finding that the Merrill Strip Alternative "does not appear to present significant adverse impacts to fisheries and wildlife resources."

²⁵ Intervenor Group 4 Comment at 3 and Reardon Second Supplemental Testimony at 1-2 (Nov. 12, 2019). Mr. Reardon does not acknowledge or address the October 23, 2019 DIFW comment letter, which contradicts his testimony in its finding that "no intermittent or perennial streams will be crossed, nor any riparian buffers impacted by the proposed Merrill Strip alternative route. Based on this, DIFW has no concerns for impacts to aquatic resources from the proposed alternative segment."

wetland conversion, and the complete elimination of temporary wetland fill when compared to the original proposal.

Ignoring the facts of the Merrill Strip Alternative, which demonstrate not only compliance with LUPC's land use standards and the Site Law and NRPA standards but also an improvement to the Project in terms of its impacts, does not render those facts any less pertinent. The evidence demonstrates that this routing of the Project through Merrill Strip meets the LUPC's land use standards and the Site Law and NRPA standards, and is an improvement to the Project.

B. The Merrill Strip Alternative Does Not Have An Unreasonable Adverse Effect on Beattie Pond.

The Site Law requires that the DEP shall approve a development proposal where, among other standards, “[t]he developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.”²⁶ DEP's Chapter 375 regulations, which implement this statutory standard, dictate that the DEP may find “adverse effect” on scenic character,²⁷ and require mitigation, only where such adverse effect is “unreasonable.”²⁸

²⁶ 38 M.R.S. § 484(3). However, Beattie Pond has not been designated and is not considered a significant scenic resource. While the Maine Wildlands Lake Assessment rated Beattie Pond as significant for its fisheries resource, the Assessment did not find that it met the criteria to be designated as either significant or outstanding for its scenic resources. *Maine Wildlands Lake Assessment*, Maine Department of Conservation, Land Use Regulation Commission (June 1, 1987).

²⁷ Because Chapter 375, Section 14 could be interpreted to require evaluation of scenic impacts beyond impacts to “scenic resources,” which are defined in Chapter 315 as public natural resources or public lands, DEP Regs. Ch. 315 §§ 5(H), 10, CMP evaluated impacts of the Merrill Strip Alternative on scenic and aesthetic uses of both public and private lands, as illustrated in Exhibits C-1 and C-2 to CMP's October 10, 2019 Merrill Strip Alternative filing. Nevertheless, CMP is mindful that many private landowners do not wish for the DEP to consider whether this or any other project will have an unreasonable adverse effect on the scenic character of those portions of the surrounding area that are privately held, as noted by Group 5 in its November 12, 2019 written comments. Furthermore, if a landowner does not object to a development's impact on the views from that landowner's property then that visual impact ipso facto cannot be unreasonable. Segal Rebuttal at 4.

²⁸ See, e.g., Ch. 375 §§ 14; 15(B)(2), 15(D). See also *In re Spring Valley Development*, 300 A.2d 736, 751 (Me. 1973) (interpreting the Site Law and finding that “[w]hile most such developments may be expected to ‘affect’ the

Similarly, the Site Law incorporates a reasonableness standard in any alternatives analysis conducted for a proposed transmission line development, providing that the DEP must consider alternatives to the project's proposed location that "may lessen its impact on the environment . . . without unreasonably increasing its cost."²⁹

Any visible change to the landscape will have an effect, but such change does not automatically render such effect adverse or unreasonable.³⁰ If the effect results in contrasts in form, line, color, texture, scale, or dominance, it could be considered to have an adverse effect if it is noticeable by an average viewer.³¹ However, the mere sight of an object in a previously undisturbed landscape does not make the effect unreasonable.³² Photosimulation 60A, included in CMP's October 10, 2019 Merrill Strip Alternative filing, illustrates the effect that the Merrill Strip Alternative will have on Beattie Pond. From the viewpoint in the northern portion of the pond, a few relatively short sections of the conductors and shield wires will be intermittently visible at distances of over 0.8 mile between the boughs of the coniferous (evergreen) trees that surround the pond. Similarly, the tops of two transmission structures are potentially intermittently visible between the trees, and would only be visible where there was space between the tops of trees. Even under these conditions, the self-weathering steel monopoles would be difficult to spot by the average viewer, due to the lack of color contrast and the effect of distance. The dark brown weathered finish on the monopoles has been specifically selected to

environment adversely to the extent that they add to the demands already made upon it, it is the unreasonable effect upon existing uses, scenic character and natural resources which the Legislature seeks to avoid by empowering the Commission to measure the nature and extent of the proposed use against the environment's capacity to tolerate the use.").

²⁹ 38 M.R.S. § 487-A(4).

³⁰ Hearing Day 2 Transcript at 108:19-109:1 (DeWan).

³¹ *Id.* at 108:19-109:19; Segal Direct Testimony at 4-5, 8-10, and 16-19.

³² *See, e.g.*, Segal Direct Testimony at 4-5.

minimize color contrasts with the surrounding dark evergreen trees.³³ The use of self-weathering steel, which minimizes color contrasts, is a common and highly effective mitigation measure used in situations where human-made elements are introduced into a natural environment.³⁴

In order for an element to be considered to have an unreasonable adverse effect, it would have to exhibit a high degree of contrast in form, line, color, texture, scale, or dominance, and would have to draw the immediate attention of the average viewer.³⁵ The Merrill Strip Alternative does not present such conditions at Beattie Pond. An observer would have to actively look for the monopoles to differentiate them against the tapered silhouettes of the trees that surround the shore. The surrounding trees are taller than the proposed structures, which therefore will not appear to break the horizon, unlike in the original Beattie Pond P-RR alignment.

TJD&A describes the transmission line in Merrill Strip as being “slightly visible from only approximately 8% of the Pond.”³⁶ This statement is based on a computer-generated viewshed analysis of the pond, which determines potential visibility of the very top of Structure MS-6 and perhaps MS-5 as well. This is a worst-case description of potential visibility.³⁷ It does not mean that entire structures would be visible from 8% of the pond, but rather is an indication of where a boater might see an insignificant portion of a single structure (MS-6), and might see an even more insignificant portion of Structure MS-5. Such potential visibility is from a very limited portion of the pond, and the view within this very limited area would be constantly

³³ Segal Direct Testimony at 17-18, 23, 26, 31-32; Segal Rebuttal Testimony at 2-3, 5; Day 1 Hearing Testimony at 300:19-301:4 (DeWan); *see also* Day 1 Hearing Transcript at 310:12-14 and 312:14-15 (Segal); Day 2 Hearing Transcript at 23:13-17, 119:1-11 (Segal); Day 2 Hearing Transcript at 111:20-21 (DeWan).

³⁴ Segal Direct Testimony at 17-18, 23, 26, 31-32; Segal Rebuttal Testimony at 2-3, 5.

³⁵ *See* Segal Direct Testimony at 4-5, 16-19, 36.

³⁶ Supplemental Information for the Merrill Strip Alternative at Exhibit C-1 at 5 (Oct. 10, 2019); *see also id.* at 2, Exhibit C-1 at 7-10.

³⁷ *Id.*

changing (i.e., as the boater moves in a southerly direction (toward the transmission line), the trees in the foreground would appear larger, thus making the conductors, shield wires, and transmission structures even more difficult to see).

By asserting that the intermittent visibility of sections of extremely thin shield wires (0.602” diameter) and conductors (1.545” diameter), and the very top of two dark brown steel monopole structures – the vast majority of which will be screened by mature evergreen trees from a distance of nearly one mile – over a very small area of the pond would cause an unreasonable adverse effect, Group 4 is ignoring the reasonableness standard underpinning the Site Law and NRPA. Rather than comment on the Merrill Strip Alternative as it relates to the standards set forth in these statutes and the related DEP regulations, Group 4 instead calls for a standard that would prohibit development if it will have any visual impact at all. If this minor visual effect were considered unreasonable, it would set a precedent that would have far-reaching and adverse consequences for future development in Maine.

Group 4’s call for absolute visual perfection (i.e., non-visibility of the Merrill Strip Alternative from Beattie Pond) is surprising given its recognition that the area in the vicinity of the NECEC is not the pristine wilderness that has been claimed by many of the intervenors:

Given that Beattie Pond is **located in an area intensively managed for commercial timber harvesting**, it is highly likely that the vegetation that may currently shield the line from the users of the pond will be cut down at some point during the next 20 years, exposing users who are expecting a remote recreational experience to more significant view of the transmission line than suggested by the Exhibit C-3.³⁸

Group 4 makes this admission when it yet again asserts a groundless theory entirely at odds with the facts of this case, raising the specter of wholesale clearing on the hillsides surrounding

³⁸ Intervenor Group 4 Comment at 4 (emphasis added).

Beattie Pond, possibly extending down to the pond itself.³⁹ As seen in the photographs taken from Beattie Pond, and in aerial photographs available on Google Earth (an example of which is attached hereto as Exhibit 1), the shoreline around Beattie Pond is surrounded by a band of mature evergreens that has effectively screened recent timber harvests.

Exhibit 1 shows that the hillsides between Beattie Pond and the proposed Merrill Strip Alternative were harvested, but that the trees along the shoreline of the pond were left intact in conformance with Maine Law that limits cutting in the shoreland zone.⁴⁰ Furthermore, because Beattie Pond is a Remote Pond it is subject to a half-mile buffer around it.⁴¹ Given these restrictions, it is highly unlikely that the trees surrounding Beattie Pond that shield users of that pond from views of the Project would be removed in the future. Additionally, Exhibit 1 shows that most recent harvests in this area are done using strip cuts or selective harvesting, and not clear-cutting, which further preserves a significant amount of existing vegetation between Beattie Pond and the Merrill Strip Alternative.

In any event, the DEP and LUPC need not consider future hypothetical actions when determining visual effects of a project, particularly if the future actions are beyond the control of the applicant. The DEP's Site Law permit application form's statements regarding the potential visual effects of wind energy projects, in which DEP determined that cutting operations should be considered as a temporary effect, is informative:

Cutting and removal of trees for commercial logging/forestry management activities where the forest will be allowed to regenerate naturally or by silviculture activities will not be considered to detract from the scenic character of a forest for this evaluation, but

³⁹ *Id.*

⁴⁰ See Day 1 Hearing Transcript at 307:1-7 (Segal). The shoreline of Beattie Pond is designated as a P-GP (Great Pond Protection) district. Timber harvesting operations are regulated by Chapter 21: Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas, available at: https://www.maine.gov/dacf/mfs/publications/rules_and_regs/chap_21_rules_effective_01012016.pdf.

⁴¹ Day 1 Hearing Transcript at 307:1-7 (Segal).

roads or other permanent structures related to such activities may be considered to do so.⁴²

Given that the trees abutting Beattie Pond will not be harvested, and that those on the hillsides surrounding Beattie Pond are strip-cut or selectively cut and will be allowed to regenerate, Group 4's allegation of the likelihood that some of the vegetation shielding the NECEC from Beattie Pond "will be cut down at some point during the next 20 years" is both inaccurate and immaterial.

Similarly, Group 4's criticism of CMP for not providing leaf-off photosimulations is without merit.⁴³ First and foremost, Exhibit C-1 demonstrates that the vast majority of the vegetation along the Beattie Pond shoreline is evergreen, and thus the view during leaf-off conditions would not be appreciably different than the views depicted in the photosimulations. Second, Lowelltown Road and Merrill Strip Road (both private forest roads) leading to the pond are not maintained during winter months, except for those times when there may be active forest management operations in the area, making it unlikely that there would be many, if any, users of Beattie Pond during leaf-off conditions. This is especially true given that ice fishing is not allowed on Beattie Pond and local snowmobile trails are not maintained in this area.

In short, Group 4's allegation that the Merrill Strip Alternative will have an unreasonable adverse effect on Beattie Pond is not supported by evidence in the record and should be disregarded. In fact, the evidence demonstrates that the Merrill Strip Alternative alignment meets the LUPC's land use standards and the Site Law and NRPA standards, and is preferable to alignment of the Project through the Lowelltown P-RR subdistrict.

⁴² Site Location of Development Permit Application (revised Oct. 2015), Section 30 "Generating facility-Visual Quality and Scenic Character," available at: <https://www.maine.gov/dep/land/sitelaw/application-text-2015.pdf>.

⁴³ Intervenor Group 4 Comment at 4.

In sum, the Project as modified by the Merrill Strip Alternative meets all Site Law and NRPA approval standards, and LUPC certification requirements, for the reasons stated above and as previously demonstrated.

Dated this 26th day of November, 2019.



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EXHIBIT 1



 Beattie Pond

38'34.08"

W 70°38'8.16"

W 70°37'42.24"

W 70°37'16.3"

N45°30'1.44"

1180 ft

Google Earth