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November 12, 2019

Via E-mail and First Class 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 – Comments of Western Mountains & Rivers Corporation on Merrill Strip Alternative

Messrs. Beyer and Hinkel:

In keeping with paragraph 6 of the Joint Sixteenth Procedural Order issued on October 7, 2019, enclosed please find Comments of Western Mountains & Rivers Corporation (“WM&RC” or “Group 7”) in response to the September 18, 2019 Motion by Central Maine Power Company (“CMP”) to reopen the record and amend its applications pending before the Department of Environmental Protection (“DEP” or “Department”).

More specifically, WM&RC submits the attached Comments in support of CMP’s proposed findings that use of the recently acquired easement to property located to the south of Beattie Pond, outside of the Beattie Pond P-RR subdistrict (the “Merrill Strip Alternative”), as an alternative to the original proposed route meets applicable statutory criteria in the Site Law, the NRPA, the Commission’s statutes, and the applicable regulations of both agencies.

Four (4) copies and nine (9) copies of the attached Comments have been filed respectively with the DEP and the LUPC.

WM&RC thanks the Department and the Commission for the opportunity to comment on the Merrill Strip Alternative.

Please feel free to call if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ben Smith", with a long horizontal flourish extending to the right.

Benjamin J. Smith, Esq.

BJS/mg

cc : Service List for LUPC and DEP (via email)

Enclosure

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, Lowelltown Twp, Skinner Twp,)
Appleton Twp, T5 R7 BKP WKR,)
Hobbs town Twp, Bradstreet Twp,)
Parlin Pond Twp, West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

**COMMENTS OF WESTERN MOUNTAINS & RIVERS CORPORATION
ON MERRILL STRIP ALTERNATIVE**

I. INTRODUCTION

Western Mountain & Rivers Corporation (“WM&RC” or “Group 7”) submits the following comments in response to the September 18, 2019 Request by CMP to Reopen the Record and amend its applications pending before the Department of Environmental Protection (“DEP”) and the Land Use Planning Commission (“LUPC”) (“September 18 Amendment”). As part of the September 18 Amendment, CMP seeks approval for substituting a new corridor for which it has obtained easement rights to the south of Beattie Pond, outside of the Beattie Pond P-RR subdistrict (the “Merrill Strip Alternative”)

in place of the initially proposed Project route. The DEP and the LUPC should find that this alternative meets applicable statutory criteria for the DEP and the LUPC.

II. THE MERRILL STRIP ALTERNATIVE MEETS APPLICABLE CRITERIA

The sole question before the DEP and LUPC is whether the Merrill Strip Alternative meets Site Law and NRPA requirements.¹ WM&RC refers the DEP and LUPC to its prior arguments with regard to other portions of the Project.² As discussed below, the Merrill Strip Alternative satisfies the statutory criteria for a Natural Resources Protection Act (“NRPA”) permit pursuant to 38 M.R.S. §§ 480-A – 480-JJ and a Site Location of Development Act (“Site Law”) permit pursuant to 38 M.R.S. §§ 481–90.

Under NRPA § 480-D, the DEP “shall grant a permit when it finds . . . the proposed activity meets the standards set forth in subsections 1 to 11.” 38 M.R.S. §§ 480-D. As required by NRPA Chapter 315 regulations and the Site Law Chapter 375.14 standards, visual impacts associated with the proposed Merrill Strip Alternative will not adversely affect scenic character and will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses. The Merrill Strip Alternative shortens the Project by approximately 0.4 miles (1 mile compared to the original 1.4 mile through the Beattie Pond P-RR subdistrict) and have significantly less impact on the scenic character of the surrounding area than the original Project path. As with other portions of the Project, the construction will use self-weathering steel structures with varying heights to accommodate terrain, engineering, and sag requirements, which minimize the

¹ WM&RC hereby relies upon its prior arguments to the DEP and the LUPC as to why other portions of the Project meet Site Law, NRPA and other applicable requirements.

² As used herein, “NECEC” or “Project” refers to the entire project proposed by CMP as part of the New England Clean Energy Connect project, which is the subject of the above proceedings.

visual/aesthetic impacts of the Project. As shown by the various photosimulations provided by CMP, the newly proposed line will run parallel to the Merrill Strip Road, a private forest management road located south of Beattie Pond; the new corridor will also be adjacent to large clearings including timber laydown areas. Exhibit C-2 of the September 18 Amendment (Photosimulations 59, 59A, and 59B).

The DEP should similarly find that the alternative corridor meets Site Law requirements under 38 M.R.S. §§ 481–90. DEP’s Chapter 375 regulations, which implement this statutory standard, requires that the Department may only find an “adverse effect” on scenic character and wildlife habitat and fisheries, and require mitigation, for example, where such adverse effect is “unreasonable.” In reviewing the impact of the Merrill Strip Alternative under requirements under Maine’s Endangered Species Act (12 M.R.S. §12801 *et seq.*) as well as Chapter 375, the Maine Department of Inland Fisheries & Wildlife (“MDIFW”) found “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, provided the project is developed and operated as previously agreed upon.” See October 23, 2019 Letter/Comments of Robert Stratton. The MDIFW’s comments support findings by the DEP that the Project meets applicable Chapter 375 standards and other regulations designed to protect and preserve wildlife species and habitat.

The Site Law also incorporates a “reasonableness” standard in considering alternatives for developments such as the proposed transmission line. As part of this analysis, the DEP must consider proposed alternatives to the Project’s proposed location

that “may lessen its impact on the environment . . . without unreasonably increasing its cost.”

Use of the Merrill Strip Alternative, while significantly more expensive, is advantageous from an environmental standpoint and presents the most appropriate alternative. The environmental impacts of this alternative are significantly less than those associated with the alignment through the Beattie Pond P-RR. September 18 Amendment, Supplemental Attachment 1 at 7. No vernal pools will be impacted. The number of wetlands affected will decrease by half (8 compared to 16). *Id.* The total amount of wetland habitat impacted will be only 20% of the original proposed corridor (31,356 compared to 139,742). *Id.* The alternative will also result in a net reduction of the temporary fill in Palustrine Scrub-Shrub (“PSS”) wetlands by 3,049 square foot (0.07 acre) and a net reduction of 12,286 square foot (0.28 acre) in permanent forested wetlands. Supplement at 9.

The Merrill Strip Alternative is consistent with LUPC criteria. The new route will impact no new abutters, will be invisible from vantage points on Beattie Pond and, in fact, avoids the P-RR District entirely. As with many miles of the Project, the alternative route will also be invisible from publicly owned scenic resources.³ For these reasons, the Merrill Strip Alternative clearly would be preferable to the existing alignment of the Project, while meeting applicable regulatory requirements.

III. CONCLUSION

³ As shown by Exhibit A to Attachment I of CMP’s Amended Application the Merrill Strip Alternative is wholly located within the LUPC General Management Subdistrict (“M-GN subdistrict”). The proposed HVDC transmission line is an allowed use in the M-GN subdistrict.

CMP's Amendment presents a straight-forward alternative warranting consideration and approval by the DEP and LUPC. The Merrill Alternative clearly meets the LUPC's land use standards, the DEP's Site Law and NRPA standards, and is preferable to the originally proposed alignment of the Project in the vicinity of Beattie Pond and through the Beattie Pond P-RR subdistrict. WM&RC requests that the DEP and the LUPC approve the Project as amended by the Merrill Strip Alternative.

Dated: November 12, 2019

Respectfully Submitted,

A handwritten signature in blue ink, appearing to read "Ben Smith", with a long horizontal flourish extending to the right.

Benjamin J. Smith, Esq.
*Attorney for Western Mountains & Rivers
Corporation*

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