

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL
PROTECTION

**Central Maine Power Company and
NECEC Transmission, LLC**

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

PETITION TO INTERVENE OF
INDUSTRIAL ENERGY CONSUMER
GROUP IN NECEC LICENSE
SUSPENSION PROCEEDING

License Suspension Proceeding

I. Introduction.

Pursuant to 5 M.R.S. § 9053 and the Department of Environmental Protection's (Department) *Rules Concerning the Conduct of Licensing Hearings* (Chapter 3) § 11(A), Industrial Energy Consumer Group (IECG) hereby files this petition for leave to intervene in the above-captioned proceeding to determine whether the Superior Court's decision in *Black v. Cutko*, No. BCD-CV-2020-29 (August 10, 2021) represents a change in circumstance that warrants suspension of the license authorizing the construction and operation of the New England Clean Energy Connect Project (NECEC) issued by the Department on May 11, 2020 (DEP Order or License).

This petition demonstrates that IECG and its members: (1) have a direct and substantial interest that may be affected by the proceeding; (2) have reasonably specific contentions regarding the subject matter of the hearing and statutory criteria; and (3) are prepared to participate to support such contentions, as represented by IECG. §11(A)(1). The Department should therefore grant IECG's petition to intervene.

II. Intervention Criteria.

1. Identification of Petitioner IECG

IECG was formed in 1985 as an incorporated association under Maine law to represent Maine industrial energy consumers and consumer-generators before state, federal, and regional regulatory, legislative, and congressional bodies on energy-related issues. Since 1985, IECG has participated in hundreds of regulatory proceedings affecting the price, diversity, origins, reliability, and effects of Maine's energy supplies. The group is a collective voice that actively works to diversify the sources and lower the costs of energy in New England, including electricity, through well designed and monitored competitive energy markets that benefit energy users and the environment. No other similarly experienced or effective consumer energy organization exists in New England. IECG's members have operations in the CMP service territory, many other states, and several countries.

IECG accepts consensus climate science and advocates for rapid, effective climate mitigation, particularly through beneficial electrification, *i.e.*, decarbonizing the economy by electrifying the transportation and heating sectors with an increasingly renewable electricity supply that remains affordable and reliable.

IECG was granted intervenor status in the underlying NECEC permitting proceeding and actively participated therein to provide perspective on the myriad energy and climate benefits of NECEC that must be balanced against any environmental impacts. IECG has also vigorously participated in other proceedings and cases related to NECEC, including but not limited to: (1) the Maine Public Utilities Commission's certificate of public convenience and necessity proceeding, including negotiating a stipulated benefits package for the State Maine worth over \$250 million, and the related Law Court appeal; (2) Superior Court and Board of Environmental requests for

stay and appeals of the DEP Order; (3) Superior Court and Law Court appeals related to the first referendum on NECEC; and (4) a First Circuit request for stay and related appeals.

2. The Effect of Suspending or Not Suspending the License on IECG

IECG has a direct and substantial interest in the efficient permitting and construction of NECEC to ensure that its operation will (1) reduce and stabilize New England's high and volatile electricity prices, (2) displace marginal fossil fuel generation that increase greenhouse gas (GHG) emissions and creates supply-side reliability risks to New England consumers, and, most importantly (3) provide a cost-effective, reliable foundation of electricity supply that is necessary to achieve Maine's climate objectives through beneficial electrification—the strategic decarbonization of Maine's economy by using increasingly renewable electricity to displace fossil fuels used for heating and transportation. Critically, as IECG has argued before the Maine Legislature and Public Utilities Commission, beneficial electrification is necessary to achieve deep reductions in GHG emissions because electricity is the only scalable resource that can efficiently power society through zero-carbon resources like solar and wind. Beneficial electrification will require a massive (up to 3x) expansion of the grid, including new transmission lines, to deliver greater (up to 5x) quantities of electricity. For electrification to be beneficial and in the public interest, however, it is essential to maintain reasonably low prices and high reliability so that the transition from fossil fuels to clean electricity takes place at the scale and pace necessary to address climate change. In addition to direct GHG emissions benefits, as well as \$30 million for heat pumps and electric vehicles, NECEC will most importantly lower electricity prices and increase reliability, giving Mainers a realistic opportunity to permanently swap out fossil fuel tanks for cleaner and more efficient electrons.

IECG has consistently argued against the disingenuous delay tactics of NECEC opponents, mostly borne of either opposition to electric infrastructure in their backyard while enjoying electricity as a public good or a desire to profit off maintaining the status quo of high electric prices. Delaying NECEC means delaying, or perhaps foregoing, lower costs, greater reliability, reduced emissions, and a \$250 million benefits package in the face of a climate emergency. Delay of NECEC jeopardizes using NECEC as the foundation for decarbonizing the economy through beneficial electricity. Delay of NECEC will further entrench fossil fuel interests and infrastructure opponents, making permitting climate solutions even more difficult, if not impossible.

3. Specific Contentions Regarding the Possibility of Suspension and the Relevant Statutory Criteria

The Commissioner's authority to suspend a license is established in 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A). The Commissioner may revoke or suspend a license upon finding that: "There has been a change in any condition or circumstance that requires revocation or suspension of a license." 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E).

As a primary matter, title, right and interest (TRI) is a prudential standard related to standing, relevant only during the application process. NECEC maintained TRI throughout the application process, which is now complete. Further, although a small portion of NECEC's TRI is now questioned by the *Black* decision, that decision is stayed pending its appeal. Essentially, at this point, there has been no "change in any condition or circumstance" and therefore nothing requires suspension.

In the case of NECEC, a massive linear infrastructure solution to climate change, the potential invalidation of a lease covering only a tiny fraction of land necessary to achieve the critical project purpose does not require suspension. To the contrary, it requires an opportunity to remedy whatever title, right and interest (TRI) may later become lacking, coupled with the

operation of a presumption that a TRI deficit will be remedied upon a *prima facie* showing that the deficit can reasonably be eliminated. Reasonable project construction should continue in unaffected areas.

Under § 342(11-B), the Commissioner also has authority to suspend a license if “[t]he licensed discharge or activity poses a threat to human health or the environment.” This ground for suspension gets to the heart of the Department’s mission: to protect human health and the environment. In the case of NECEC, the Department has found that “[c]limate change ... is the single greatest threat to Maine’s natural environment,” already negatively affecting brook trout and forest habitat for moose and pine marten. “Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts.” The Department has further found that NECEC will reduce emissions and create “GHG benefits.” It would be ironic at best if project opponents could thwart a climate solution through delay by License suspension, and thereby exacerbate the single greatest threat to Maine’s environment, based on doubt over a tiny percentage of TRI.

In light climate change, NECEC construction in unaffected areas should continue. If it is later determined that TRI is lacking, CMP should be afforded an opportunity to cure and a beneficial presumption that cure is possible upon a *prima facie* showing. The reality of linear infrastructure is that its construction is not a binary or singular event; it is an ordered and interdependent process that occurs over vast areas and across many years. Linear infrastructure opponents cannot practically be entitled to kill projects by preventing the construction of a single pole in any place at any time, because such an entitlement would making constructing transmission lines impossible from a cost and risk perspective and would make irreversible climate harm a foregone conclusion. Such an entitlement would also ignore that fact that, unlike with other types

of infrastructure constructed in a single place in less time, there may be nearly infinite ways to re-route a linear infrastructure project so that its purpose can still be accomplished.

4. IECG Spokesperson

IECG's spokesperson in this proceeding will be IECG President, Robert Dorko, who may participate by and through his attorneys, Anthony Buxton and Benjamin Borowski.

5. IECG's Ability to Participate in the Proceeding

IECG will be represented by experienced legal counsel, IECG General Counsel Anthony Buxton and his partner Benjamin Borowski, both of the law firm Preti Flaherty and both having participated in the underlying NECEC permitting proceedings, as well as other related NECEC proceedings and cases. IECG has actively participated in the development of large infrastructure projects and is knowledgeable about and capable of participating in all facets of the proceeding, including the hearing, to support its contentions. IECG is therefore prepared for and capable of participating in these proceedings.

6. Topics Proposed to Be Addressed Through Testimony.

- Suspension in the context of linear infrastructure projects.
- Suspension in the context of climate solutions.
- Achievement of State climate mandates and goals.

III. Conclusion.

IECG and its members have a direct and substantial interest to be affected by the potential suspension of the License. IECG has specific contentions regarding the subject matter of the suspension hearing and is prepared for and capable of participation. Therefore, IECG has satisfied the requirements for intervention and respectfully requests that IECG be granted Intervenor status.

DATED: September 13, 2021

Respectfully submitted,

INDUSTRIAL ENERGY CONSUMER GROUP



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