

York, Marylisa

From: Brenda Cummings <bcummings.plt@gmail.com>
Sent: Tuesday, October 19, 2021 6:01 PM
To: DEP, NECEC
Subject: Fwd: Testimony in NECEC Suspension Hearing Charlene Cummings
Attachments: C Cummings testimony Cited Comments April 2020.pdf; C Cummings dephearing 2021.pdf

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I am forwarding this testimony to the correct email to ensure that it is included in the record for the hearing today. Thank you.

----- Forwarded message -----

From: Brenda Cummings <bcummings.plt@gmail.com>
Date: Tue, Oct 19, 2021 at 4:28 PM
Subject: Testimony in NECEC Suspension Hearing Charlene Cummings
To: <ruth.a.burke@maine.gov>

Ms Burke, I've attached an updated version of Charlene Cummings' written testimony. I was able to edit the referenced testimony from April 2020 to just include the specific citations Charlene made. Please replace her earlier submitted testimony with this version.

I will be submitting written testimony shortly. Please let me know if you prefer to have the testimony in something other than PDF format.

Thanks very much,

Brenda Cummings
64 Pearl St, Bath, ME 04530

York, Marylisa

From: Brenda Cummings <bcummings.plt@gmail.com>
Sent: Friday, April 10, 2020 4:57 PM
To: DEP, NECEC
Cc: charlene Anabelle cummings
Subject: Comments on Draft DEP order, NECEC

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Jim Beyer
Maine DEP
17 State House Station
Augusta, ME 04333-0017

Although the Department has limited and constrained CMP's development in Section 1 of the project in useful ways, too much of the Department's approach is focused on mitigation or compensation for the known and acknowledged damage the CMP project will cause in this area, rather than actually protecting the important interests - of habitat protection for crucial species, and protection of the scenic vistas essential to the area's economy, that are your regulatory purview.

As the Department is aware, concerns have been raised by the Maine Legislature about CMP's right, title and interest in a portion of two public reserved lots, Johnson Mountain and West Forks Northeast. Use of these public lots is necessary to complete the CMP transmission line in Section 1 of NECEC. However, CMP's leases, obtained in 2014, were, on their face, illegal, because state law requires that a utility obtain a certificate of need before obtaining a lease or seeking to purchase public lands for a utility corridor. CMP obtained the lease in 2014, and did not obtain a certificate of need until 2019.

This calls into question CMP's ability to complete the terms of the DEP's requirements for construction in both public lots, as they have not followed state law in obtaining lease, and are subject to revocation of said leases by the Maine Bureau of Parks and Lands due to this violation. A resolution requiring the Department to take this action was passed unanimously out of the Legislature's Agriculture, Conservation and Forestry Committee, and action on the resolution was only postponed due to the coronavirus crisis.

It is irresponsible, and perhaps illegal as well, for the Department of Environmental Protection to facilitate an applicant's flouting of the clear language in MRSA Title 35-A, Section 3131, subsection 13, which states "The State, any agency or authority of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land, other than a future interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of this subsection, to any person for the purpose of constructing a transmission line subject to this section, unless the person has received a certificate of public convenience and necessity from the commission pursuant to this section."

CMP's lease from the State of Maine, on land to be used to construct a transmission line, was obtained prior to the Certificate of Need, and was not conditioned on CMP's obtaining a Certificate of Need, and that is a clear violation of the statute governing the development of transmission corridors. Until CMP obtains legal right, title and interest to the public lots in question, the Department should suspend its proceedings.

Keep in mind that, unlike any other part of the proposed corridor, the land in question here is public land - land owned and used by the people of the State of Maine. It is your job, as our Department of Environmental Protection, to protect all Maine lands, but perhaps most especially those lands that are held in public trust.

The proposed order, however much of a well-intentioned, well-reasoned and nuanced effort it is to mitigate the environmental impact of the the NECEC, violates the public's trust. Johnson Mountain and West Forks Northeast are public lands, lands our father worked tirelessly for over ten years to bring to the attention of the people of Maine through his journalism. The legislature has voiced its intention to act to require the state's illegal 2014 lease with CMP to be revoked and renegotiated, and to insist that any new lease creating a substantial change - a transmission corridor - through two public lots managed for forestry and wildlife habitat at present, be presented to legislature to be voted on. The Department of Environmental Protection should, at minimum withhold its consent to the NECEC corridor in Section 1 until CMP's right, title and interest in the Johnson Mountain and West Forks Northeast public reserved lands is established in accordance with Maine law.

Sincerely,
Brenda Cummings
Charli Cummings

Brenda Cummings
64 Pearl St
Bath, ME 04530

Charli Cummings
616 Main Rd
Phippsburg, ME 04562

York, Marylisa

From: Maeghan Maloney <maeghanformaine@gmail.com>
Sent: Friday, April 10, 2020 3:37 PM
To: DEP, NECEC
Subject: Comments re: Draft Order from the Maine DEP for the NECEC

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Maeghan Maloney
4 Drew St.
Augusta, ME 04330

April 10, 2020

James Beyer
Enforcement, Bureau of Land Resources
Maine Department of Environmental Protection
Eastside Campus Ray Building
28 Tyson Drive
17 State House Station
Augusta, Maine 04333-0017

Subject: Comments regarding the Draft Order from the Maine Department of Environmental Protection for the New England Clean Energy Connect (NECEC) project

Dear Mr. Beyer:

I wish to offer my comments on the draft DEP site location permit for Central Maine Powers (CMP) New England Clean Energy Connect (NECEC). My comments are directed to 1. PROJECT DESCRIPTION AND ADMINISTRATIVE BACKGROUND C. Title, Right, or Interest.

CMP does not have Title, Right, and Interest (TRI) and therefore the Maine Department of Environmental Protection draft Site Location and NRPA permit for CENTRAL MAINE POWER COMPANY's (CMP) New England Clean Energy Connect (NECEC) SITE LOCATION OF DEVELOPMENT Act; NATURAL RESOURCES PROTECTION ACT ; WETLAND ALTERATION SIGNIFICANT WILDLIFE HABITAT; WATER QUALITY Certification must be rejected.

CMP does not have Title, Right, and Interest for the NECEC. The proposed NECEC crosses 1 mile (36 acres) of **Public Reserve lands in Somerset County**. Both constitutional and statutory requirements to authorize this lease have not been met. Therefore, the permit cannot be issued until such is obtained.

CMP must comply with the law. Compliance with the law *includes*:

-

- Approval by two-thirds vote
- of both houses of the Legislature; and
-
-
- A Certificate of Public Convenience
- and Necessity be issued *before*
- the lease is signed.
-

- I.
- II. Two-thirds of both houses
- III. of the Legislature did NOT approve.
- IV.

The Maine Constitution Article IX, Section 23, and implementing law, Title 12 MRS §598-A requires a vote of two-thirds of all elected members of the Maine House and Maine Senate to approve a “substantial alteration” in the use of designated public lands.

State park land. State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses **substantially altered except on the vote of 2/3** of all the members elected to each House.
Maine Constitution: Article IX § 23.

(See also, “The following lands are designated lands under the Constitution of Maine, Article IX, Section 23. Designated lands under this section may not be **reduced or substantially altered, except by a 2/3 vote of the Legislature.** It is the intent of the Legislature that individual holdings of land or classes of land may be added to the list of designated lands under this section in the manner normally reserved for amending the public laws of the State. Once so designated, however, it is the intent of the Legislature that designated lands remain subject to the provisions of this section and the Constitution of Maine, Article IX, Section 23 until such time as the designation is repealed or limited by a 2/3 vote of the Legislature.” 12 MRS §598-A.)

It is undisputed that CMP did not receive a 2/3 vote of all the members elected to each house for the NECEC project.

It is equally undisputed that this 2/3 vote was required as construction of 96-foot-tall, 40-inch diameter towers in a mile-long clear cut as wide as a football field is a “substantial alteration” of our public lands.

“Substantially altered” is defined in Maine statutes:

"Substantially altered," in the use of designated lands, means changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which that land is held by the State.... The essential purposes of public reserved and nonreserved lands are the protection, management and improvement of these properties for the multiple use objectives established in section 1847.

The record shows the project as originally proposed would have had **substantial impacts**, particularly in the 53.5-mile portion of the corridor that extends from the Quebec border to The Forks, known as Segment 1. The public lands in question, the Upper Enchanted Tract and the Cold Stream Forest Tract including West Forks and Johnson Mountain in Somerset County, is contained in this segment.

Section D of the draft permit reads:

Department Analysis, Findings, and Conclusions (2) Wildlife, Fisheries, and Other Natural Resources a. Habitat Fragmentation and Wildlife Travel Corridors the dep permit reads: These measures are expected to reduce the impacts of the Segment 1 corridor, but are not sufficient to avoid **substantial and harmful fragmenting of habitat**.

While the draft permit contains conditions to offset these impacts this *proves the point*, rather than ameliorating it. These offsets do not eliminate either the Maine Constitution or statutory requirements: where there is a reduced or substantial alteration in the use of the public reserve lands a $\frac{2}{3}$ vote of the legislature *is required*.

Wherefore, the draft permit itself recognizes the substantial alteration to the land, the Maine Constitution and Maine statute require the legislature be permitted to vote before the project can receive a permit to proceed.

II.

A Certificate of Public Convenience and Necessity must be issued *before* the lease is signed.

Privately, in 2014, CMP entered into a lease with the Bureau of Parks and Lands for a 300-foot-wide swath to build a transmission corridor one mile across the West Forks Plantation and Johnson Mountain Township, which are Maine Public Reserve Lands. In 2020, the Joint Standing Committee on Agriculture, Conservation and Forestry requested information on what, if any, review was conducted before the land was leased to CMP. The Committee was provided a CMP lease summary entitled “Consideration for locating a CMP Right-of-way across BPL lands in the West Forks and Johnson MT PLT and a summary of the package of information.” The CMP lease summary simply describes the statutes that could come into play. The majority of the memo talked about alternative routes. **NOWHERE** in the memo or documents was there any consideration to either the constitutional or statutory requirements. There is absolutely no documentation as to how the Bureau completed its analysis to lease the public reserve land.

This utter lack of consideration and documentation is exactly why the Maine legislature *prohibited* (Public lands. The State, any agency or authority of the State or any political subdivision of the State may not sell, lease or otherwise convey any interest in public land, other than a future interest or option to purchase an interest in land that is conditioned on satisfaction of the terms of this subsection, to any person for the purpose of constructing a transmission line subject to this section, *unless* the person has received a certificate of public convenience and necessity from the commission pursuant to this section. 35-A MRS §3132(13)(emphasis added).) such a lease unless the lessee had received a Certificate of Public Convenience and Necessity from the Public Utilities Commission *before* the lease was executed. CMP did *not* receive such a Certificate before the lease was executed. In fact, very little consideration went into the lease at all. Clearly, the lease is not valid.

This year during the public hearing on LD 1893, Andrew Cutko, the Director for the Bureau of Parks and Land commented that had he been involved in the lease at the time and known CMP's actual plans for the parcel, he would have waited for Public Utilities Commission action before allowing the lease to move forward. "Now that I am aware of the utilities requirement, I would certainly want to follow the law and get that secured prior," Cutko stated on the record.

Although CMP *attempted* to "fix" its invalid lease by getting a Certificate of Public Convenience and Necessity in 2019, this does *not* fix the problem. The law is clear that the Certificate must be in place *before* signing the lease. Accordingly, if CMP wishes to proceed with the project, it must approach the Bureau of Parks and Lands to negotiate a new lease. (Furthermore, the lease was a terrible deal for the State of Maine. The negotiated lease payments were only \$3,600 dollars per year when similar projects would dictate payments more in the area of \$146,000 per year or more.)

Therefore, in accordance with the Maine Constitution and Maine statutes, $\frac{2}{3}$ of the legislature must vote to approve CMP's NECEC lease over public land and a Certificate of Public Convenience and Necessity must be granted before the lease can be entered. The Maine Constitution and Maine Statutes must be respected, no matter the size and power of the parties involved, or one's position on the necessity for this transmission corridor.

With gratitude for your consideration,

/s/ Maeghan Maloney

Maeghan Maloney

Public Testimony
Suspension Hearing, NECEC permit

My name is Charlene Cummings and I reside in Phippsburg Me. I am testifying in support of a suspension of the NECEC permit issued by DEP pending the outcome of the law court's decision in Black v Cutko. I am a party to Black v. Cutko, and my interest in the proper management and uses of Maine's public lands is personal. My father, Robert "Bob" Cummings, longtime environmental reporter for the Portland newspapers, was instrumental in recovering these lands for the people of Maine by keeping these lands in the public's mind while the issue played out in Maine's legislature and courts. After nearly 10 years, the State Supreme Court decided Cushing v. State of Maine in the State's (the people's) favor in 1981.

Maine's public lands have had a long history of commercial exploitation. For over 100 years, paper companies treated our land as their own, though the court found in 1981 they owned only the rights to timber in place at the time of their original leases. In 1993, the Maine people passed a constitutional amendment to require a 2/3rds vote of the legislature to substantially alter Maine's public lands, state parks or other conserved lands.

And yet the exploitation and misuse of our public lands continue at the highest levels. The Department of Environmental Protection has put more weight on the words of CMP/NECEC than the interests of the true owners of these lands, the Maine people. The lease of these public lands both in 2014 and 2020 were unconstitutional, with the 2014 lease also being an illegal violation of Title 35a section 3132(13) which says the state may not convey any interest in public lands until a certificate of public need and necessity has been granted. The Certificate of Public Need was not granted until 2019. We now have a Court ruling that says CMP/NECEC lease of our public lands was not completed legally. NECEC's proposed substantial change in use of our public lands must be resolved in a constitutionally appropriate manner.

The Law Court has issued an order preventing construction on the public lands in question until the Black v. Cutko decision has been made. So right now CMP/NECEC are pressing on with a corridor to nowhere. I am not a lawyer but I believe that since CMP/NECEC does not have clear title, right, and interest in the complete corridor it is the duty of the DEP to stay this permit until one of the conditions mentioned in the commissioner's notice of proceeding are met.

This is crucial not only to protect Maine's environment but to protect the ratepayers of Massachusetts and CMP from spending millions on a project that cannot be completed.

The Department was warned during the public comment for the issuance of the NECEC permit in 2020 that CMP/NECEC right, title and interest in Maine's public lands was disputed by numerous parties, including the Maine Legislature. See, for example, comments submitted by Maeghan Maloney, District Attorney for Kennebec County and by my sister and myself (Brenda and Charli Cummings), both dated April 10, 2020. In these comments, the DEP was told that the Maine Constitution required legislative approval for a substantial change in use of public lands, and was told why Maine statutes make it clear that a transmission corridor is, by definition, a substantial change in use. Yet the Department chose to issue the CMP/NECEC permit.

Now we find ourselves in the position of having CMP contend that they have spent \$350 million and

that thus they are too big to fail. By continuing with construction, CMP is arrogantly assuming that the law court will decide in their favor, or that they can force such a decision by continuing construction. But the truth is neither the DEP, CMP or any of us here today have any insight into what the justices will decide. Pending a decision by the law court, the Department should err on the side of protecting CMP and Massachusetts ratepayers from the costs of a “road (or transmission line) to nowhere.” Most importantly, the DEP should recognize the legal primacy of Maine's constitutional requirements for our public lands, and acknowledge that no title, right or interest in our public lands can be claimed without following the constitutional guidelines.