

public hearing and consider supplemental evidence in reviewing the Order on appeal.¹ In doing so as shown below, the Board will find that the adverse impacts to the environment are unreasonable and therefore do not comply with Natural Resources Protection Act (“NRPA”) or the Site Location of Development Law (“Site Law”). Alternatively, if the Board grants Natural Resources Council of Maine’s (“NRCM”) request to vacate the Order and exercise original jurisdiction over the NECEC application, Petitioners request participation as interested parties.

BACKGROUND

On September 27, 2017, CMP submitted its application to the Department for a NRPA permit pursuant to 38 M.R.S. §§ 480-A – 480-JJ and a Site Law permit pursuant to 38 M.R.S. §§ 481–490 for its proposed NECEC project. CMP’s proposal included new construction and/or expansion of a 145.4 miles-long, 320 kilovolt (kV) High Voltage Direct Current transmission line in a corridor running from the Canadian border in Beattie Township to a new substation in the Town of Lewiston, with associated substations, poles and other structures.

The first portion of the proposed line, Segment 1, would cut a new swath within a 150² foot wide by 53.1 mile corridor through the unfragmented forest region of north western Maine extending from the Quebec, Canada border in Beattie Township to Moxie Gore. Segment 1 is entirely within townships and plantations served by the LUPC. Segment 2 would be approximately 21.9 miles. LUPC jurisdiction extends into this Segment with The Forks Plantation and Bald Mountain Township.

¹ West Forks Plantation, et al. incorporates by reference all of the prefiled direct, rebuttal, surrebuttal, and hearing testimony of and comments on the Draft Department Order—and any attachments or exhibits thereto—by Groups 1, 2, 4, 6, 8, and 10, for review by the Board as part of its appellate review of the Order.

² The Order limited the width of the corridor in Segment 1 to 54 feet. However, the application and design called for a 150 foot wide cleared corridor within a 300 foot wide right of way. Absent further limiting language and constrictions in the Order, CMP is free to seek expansion of that 54 foot width at any time even before beginning construction.

On October 13, 2017, the Department accepted CMP's application as complete for processing and then decided to hold public hearings on a limited number of topics: Scenic Character and Existing Uses, Wildlife Habitat and Fisheries, Alternatives Analysis, and Compensation and Mitigation. Over the two years the DEP and LUPC reviewed the project, they held joint public hearings in a mere six days before the DEP and only one day before the LUPC, decided numerous motions, heard witnesses, and accepted evidence about the NECEC on those limited topics. Before, during, and after the hearings, CMP made changes to the Project without adequate review of the potential environmental and/or visual impact of those changes.

On June 8, 2020, Petitioners initiated a Rule 80C appeal in Somerset Superior Court. On that same day, NextEra Energy Resources, LLC ("NextEra") also filed a Rule 80C appeal in Kennebec Superior Court requesting review of the same final agency action: the Commissioner of the Department of Environmental Protection's ("Respondent" or "DEP") licensing decision granting a permit to construct the NECEC transmission line. On June 10, 2020, Natural Resources Council of Maine ("NRCM") filed an administrative appeal to the Board of Environmental Protection ("BEP" or "the Board"). All three appeals were timely and appropriately filed in each respective venue. All deadlines for filing appeals of this final agency action have now passed.

On August 11, 2020, the Superior Court issued an Order (the "Combined Order") consolidating the two Rule 80C appeals and remanding to the Board for review along with NRCM's appeal. The Superior Court issued a further Order on August 26, 2020 ("Clarifying Order") clarifying that its Combined Order was intended to allow West Forks Plantation, et al. to participate fully in the pending appeal before the Board. Accordingly, this filing supplements

Petitioners' Superior Court filing, requests a hearing and requests that the Board accept additional evidence for all of the reasons set forth below.

DISCUSSION

This appeal follows in six sections. As an initial matter, Petitioners reiterate their standing to participate in this appeal. This Appeal then raises five major issues with the Order issued by the Department on NECEC. First, the forest fragmentation caused by the NECEC is unreasonable, even after considering the mitigation included in the Order by the Department. Second, the Order improperly altered the Project Purpose and therefore failed to consider undergrounding as a viable alternative in light of the original Purpose. Third, the Order fails to consider the significant evidence already in the record on forest fragmentation and wildlife corridors and habitat, the lack of evidence on the visual impact of a tapered corridor, and the insufficiency of evidence supporting mitigation by preservation of other land. Fourth, CMP does not have sufficient right, title, or interest in the NECEC. Finally, approval without evidence supporting a feasible Decommissioning Plan, including evidence that environmental damage can be restored and assurance of CMP's financial capacity to properly decommission, fails to meet NRPA standards.

As an initial matter, Petitioners have standing as an aggrieved party and as a party to Department proceedings on the Order, as affirmed by the clarification of the Superior Court. Petitioners include individual residents of Segment 1 of the proposed NECEC project, local citizens' groups, local nonprofits, local businesses, and a local township and town. All Petitioners will be specifically negatively impacted by the NECEC cutting through the local landscape because of impact to tourism, local businesses, ecosystem services, and property

values. The Petitioners are an aggrieved party with standing to participate in this appeal. See 06-096 CMR Ch. 2 § 24(B)(1). In addition, the Superior Court issued its Clarifying Order making it clear that Petitioners are allowed to participate in NRCM's appeal to the Board.

Each of the Petitioners sought to intervene as a party in the Department and proceedings and were granted intervenor status. Each of their respective interests were sufficiently established and now give them standing to appeal. See attached Appendix WF- B, M.R.C.P. 80C Petition for Review and Petitioners' filings with the DEP seeking status as intervenors.

I. The Forest Fragmentation Caused by NECEC is Unreasonable, Even After Mitigating Conditions.

CMP was required to prove that the NECEC will not result in unreasonable adverse impacts to significant wildlife habitat, freshwater wetland plant habitat, or threatened or endangered plant habitat. 38 M.R.S. § 480-D(3); 38 M.R.S. § 484(3); 06-096 CMR Chs. 310, 335, and 375.

Petitioners have maintained throughout the agency process that the 145-mile, 150-foot wide transmission corridor should not be permitted. The DEP Commissioner's decision to conditionally grant the permits was unreasonable, unjust, and/or unlawful in light of the evidence in the record. The first 53.1 miles slicing through Maine's western mountains, unfragmented forest, and exceptional brook trout streams and across the Kennebec Gorge will adversely affect Maine's natural resources and wildlife habitat. NECEC will unreasonably and irreparably cause ecological damage to Maine's landscape and environment.

As the Order correctly understood from the evidence, Segment 1 is an enormously important area now and even more so with climate change:

[T]his area is part of a largely unfragmented forest block that is more than 500,000 acres, which itself is part of an even larger area that is one of the world's last remaining contiguous temperate broadleaf-mixed forests. The western Maine region supports exceptional biodiversity and is expected to be especially effective

at maintaining biodiversity as the climate changes. These qualities make the area unique and important for wildlife.

Within this area there also is an extensive network of land management roads and some residential camp and other development. Forest management is the predominant activity. Several witnesses testified the existing landscape is a mosaic of various aged forest, ranging from mature forest to recently harvested areas. The mosaic changes over time as harvested areas mature and mature areas are harvested. Although the area is not completely undeveloped and is subject to active timber management, a transmission line corridor in the western Maine area where Segment 1 is proposed could contribute to habitat fragmentation and have unreasonable adverse impacts on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat. Fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches.

Order at 75–76. The Order also points out that even CMP acknowledged in its Application the negative impacts a transmission corridor will have on wildlife habitat and species:

CMP acknowledged in its Site Law permit application: “Transmission line corridors present potential direct impacts, as they may affect species movement, dispersal, density, nesting success and/or survival. . . . For the undeveloped corridor of Segment 1, impact may include fragmentation and creation of new linear edges. . . . Habitat conversion along transmission line corridors results in a loss of habitat types which, in turn, may adversely impact species that are reliant on the original habitat types.”

Order at 76, quoting Site Law Application, pg 7-23.

Evidence and witness testimony in the record shows that NECEC will fragment the largest contiguous forest east of the Mississippi into smaller pieces with its wide cleared corridor. The record supports that such fragmentation cannot be buffered from the existing recreational uses and natural resources within the P-RR subdistricts. There is also no evidence in the record to support the Commissioner’s conclusion that a narrower 54-foot-wide corridor will not create the same undue and unreasonable ecological and environmental impacts created by forest fragmentation that an otherwise 150-foot-wide cleared corridor would create. A narrower footprint may reduce some impacts, but there is no evidence it will effectively do anything to

avoid the permanent and devastating effects on habit of an umbrella species like the Pine Marten. See Appendix WF-C, Simons-Legaard Supplemental Testimony.

The mitigation conditionally approved by the DEP, including conservation of 40,000 acres of land elsewhere (but not in an identified location), tapering the height of vegetation in the corridor, and conservation of some over-brook canopy, does not fix the problem. In essence, the Commissioner's mitigation measures plays whack-a-mole: mitigation of an adverse impact to one environmental effect increases the adverse impact to another environmental impact. Raising the pole height in some areas allows for higher vegetation, ostensibly to protect brook trout habitat, but then taller pole heights increase the visual impact on scenic resources.

The DEP Commissioner's decision to conditionally approve the NECEC without changing the route to avoid forest fragmentation and visual impact was unreasonable and unjust in the light of the record. NECEC will unreasonably interfere with existing scenic and aesthetic uses. Evidence and witness testimony in the record shows that, especially in Segment 1 of the proposed project, the corridor will impact the Appalachian Trail, several scenic roads, unfragmented forest, ponds and rivers, and local residents. The mitigation conditionally approved by the DEP for visual impact of the corridor also is not reasonable based on the evidence in the record.

II. The Order improperly altered the Project Purpose and therefore failed to consider undergrounding as a viable alternative in light of the original Purpose.

The Order misstates the Project Purpose CMP submitted for the NECEC and then wrongly determined undergrounding was not a practicable alternative. The NECEC's Project Purpose "is to deliver up to 1,200 MW of Clean Energy Generation from Quebec to the New England Control Area via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers." CMP Application at 2-1. Notably, the Order deletes the last clause of

CMP's statement of the NECEC's Project Purpose—"at the lowest cost to ratepayers." See Order at 58. This changes the purpose set by the applicant. See Ch. 310 § 9(A). This is a significant error.

The deleted language is directly relevant to the cost criteria of whether an alternative is practicable. The Order concludes that undergrounding the entirety of Segment 1 is not a practicable alternative due, in part, to the additional costs, Order at 73-75, despite CMP testimony that ratepayers will not bear any of the costs of the NECEC. Hearing Transcript Day 1 ("Tr.") 270; 17-22.

Because the NECEC Project Purpose includes "at the lowest cost to ratepayers" and CMP testified that no NECEC costs would be passed to ratepayers, the Order could not properly include other costs in balancing the practicability of alternatives. The assessment of practicable alternatives is limited to those that are "[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project." Ch. 310 § 3(R) (emphasis added). None of the costs cited in the Order are related to the lowest cost to ratepayers and were improperly considered by the Department.

Even if the Order did not inappropriately revise the NECEC Project Purpose in order to consider costs outside the NECEC Project Purpose, the Department record is clear that undergrounding costs are not unreasonable. CMP did not provide any assessment of the costs of undergrounding to avoid any individual Preferred Route NRPA Impacts. Without that evidence, it is impossible to determine the practicability of the undergrounding alternative in compliance with NRPA. Second, CMP testified that its NECEC budget has a contingency of at least 15% of the total project cost (\$150 million). Tr. Day 6, 389:1-2, 15-18. This is significantly more than the estimated cost of significant undergrounding, supported by evidence in the record, as \$43,

\$13, \$28, and \$30 million estimated costs in different sections. See Tr. Day 6, 394: 10-25, 395:1-4, 395: 5-10. The record is clear that undergrounding can be a practicable alternative to individual or aggregate Preferred Route NRPA Impacts. CMP simply declined to comply with NRPA and the Order declined to address that failure. See Order at 2, 74, 83, 107.

Undergrounding is technically and logistically feasible and bears no cost to ratepayers. Thus, it is a practicable alternative to the NECEC and to all Preferred Route NRPA Impacts. Failure to require consideration of this alternative to the Preferred Route NRPA Impacts defies NRPA. For these reasons, the Board must review the NECEC *de novo* and take supplemental evidence at a hearing to address these Order issues on appeal.

III. The Department's Order Disregarded the Clear Testimony and Evidence of NECEC's Impact on the Environment in Violation of NRPA and Site Law and Made Conclusions Unsupported by Any Evidence in the Record

A. NECEC will cause unreasonable environmental and ecological impacts due to forest fragmentation.

The Department's May 11, 2020 Order makes reference to testimony and evidence provided to it by Petitioners and others related to forest fragmentation but reached conclusions contrary to and unsupported by substantial evidence of direct and irreparable ecological harm to wildlife habitat for various species including umbrella species such as the Pine Marten. See WF Ex 1 of Petitioners' Motion for Stay of Agency Decision and Appeal of Commissioner Denial of Application for Stay dated September 25, 2020, Appendix WF-D, David Publicover Testimony and Appendix WF-E, Roger Merchant Response to Dr. Erin Simons-Legaard Testimony. The Order does not meaningfully analyze or discuss the evidence before it. The Order acknowledges that Group 1 witness Janet S. McMahon, Groups 2 & 10 (Petitioners - West Forks Plantation, et al.) witness Roger Merchant, and Group 4 witness David Publicover testified about the importance of unfragmented habitat and the effect of that permanent fragmentation on the

ecological diversity in Maine. See Order, at 69. The Order notes that McMahon and Merchant stated that “[t]he transmission corridor would represent a permanent fragmenting feature in the landscape.” Id. The Order also acknowledges testimony on forest fragmentation by additional witnesses from Intervenor Group 6, including Dr. Malcolm Hunter, Jr., Rob Wood, Andy Cutko, Bryan Emerson, and Dr. Erin Simons-Legaard, including detailed testimony about what mitigation would be necessary to protect the umbrella species, the Pine Marten. See Order, at 70. These witnesses also testified about the insufficiency of the proposed mitigation and compensation to “address the cumulative impacts of the full array of Maine’s wildlife.” Order, at 70.

The Order fails to meaningfully discuss and apply the testimony of witnesses on forest fragmentation. After outlining the testimony provided by these witnesses, the Order fails to sufficiently address “forest fragmentation” or the testimony of these witnesses. For example, when the Order discusses the alternatives, including burying the transmission line that would avoid forest fragmentation to some degree, the DEP concludes that “the selected above ground alternative and associated substation improvements are the least environmentally damaging practicable alternatives” without any discussion about forest fragmentation. Order, at 75. The Order continues, “The Department finds no further project modification or conditions regarding the transmission line’s location, character, width, or appearance, beyond what is required by this Order, are warranted, under 38 M.R.S. § 487-A(4) or otherwise, to lessen the transmission line’s impact” without discussing the witnesses’ testimony on forest fragmentation. Id. This shows that the Order did not sufficiently address the witnesses’ testimony on forest fragmentation because it was not addressed when directly implicated.

B. Proposed conditions on NECEC will not alleviate the permanent and unreasonable negative impacts to wildlife and wildlife habitat.

When the Order does address what it deems to be suitable mitigation of fragmentation to protect wildlife and habitat, it first cites to expert witness testimony but then ignores or mischaracterizes the testimony. For example, the Order described Simons-Legaard's testimony for pine marten habitat as "home ranges typically include areas with less than 30 percent unsuitable habitat." Order, at 77. Despite recognizing that Simons-Legaard testified that pine marten "generally avoid large forest openings where they are vulnerable to predators . . . [and] they do not prefer cleared areas", the Order deems cutting a new corridor through Segment 1 to not be unreasonable. Id. This is in direct contradiction of Simon-Legaard's actual testimony. Similarly, the Order discusses deer habitat and travel corridors, but does not acknowledge that the cutting of the corridor will disrupt smaller species like pine marten, even with vegetative tapering.

The Order arrives at the conclusion that CMP in its initial proposal did not provide for adequate protection for wildlife and that as proposed, habitat fragmentation and impact on habitat connectivity "was an unreasonable impact on wildlife." Order, at 76. The Order then lists mitigation measures including narrowing of the corridor width and tapering of the vegetation. This standard applied in the Order appears to be that the original proposal was unacceptable, but because the proposal has been improved over the original, the slightly-improved wildlife impacts become reasonable by virtue of that slight improvement. The evidence simply does not support the mitigation as being sufficient. At best this would be an experiment to see whether pine marten and other species of animals and plants can survive. At this juncture with climate change impacts escalating worldwide, can we risk running such an experiment in one of the world's last remaining contiguous broadleaf-mixed forests? All for the

benefit of a profit making venture? The answer must be a resounding no and the Department's Order vacated.

C. Tapered vegetation as mitigation of visual impact is not supported by the evidence and does not comply with Site Law.

Moreover, the Order states that the tapering of vegetation is sufficient to minimize adverse impacts to viewsheds including Rock Pond and Coburn Mountain, "making it much less prominent and improving compatibility with the landscape." Order, at 45. But, in requiring tapering, pole heights will be increased. At a minimum, a full VIA with narrowed corridor, tapered vegetation in full leaf-off conditions would begin to show how this approach might impact the scenic resources and should be required as additional evidence. There is scant evidence in the record concerning the impact of the tapered corridor and increased pole heights on the visual impact on nearby scenic resources. It is unreasonable to approve this project without such evidence being entered into the record, analyzed by the Department, and addressed in the Order.

D. Conservation of unidentified lands fails to mitigate the destruction of the largest contiguous broad-leaf forest east of the Mississippi and perhaps in the world.

The Order then discussed mitigation of the impacts on the to-be-fragmented lands by preserving unidentified lands elsewhere. When discussing mitigation through preservation of other lands, the discussion focused on the reasonableness of the ratio of impacted areas to preserved areas elsewhere, and only uses the Department's common practice to justify a low ratio. Order, at 80–81. It does not address the severity of fragmentation or the witness testimony on the actual impacts on wildlife and ecology.

The Department accepted that mitigation in the form of preserving unknown and unidentified forest land elsewhere in Maine was sufficient, without discussing how or why this is

sufficient in the light of the provided evidence and testimony. Again, the Order ignores significant testimony in the record. In fact, the Order recognized that Reardon, a witness who testified on the impact of NECEC on brook trout habitat, stated that certain identified compensation parcels offered to mitigate impacts “do not contain the same quality habitat as the area being impacted by the project.” Order, at 69. The Order issued the permit without identifying the mitigation land. See Order, at 81. The Order states that “Within 18 months of the date of this Order, CMP must develop and submit to the Department for review and approval a plan . . . to permanently conserve 40,000 acres in the vicinity of Segment 1.” Order, at 81. This cannot be sufficient mitigation and does not take into account the specific testimony of the witnesses on forest fragmentation and provides no opportunity for those witnesses (or any others) to provide testimony and evidence on the sufficiency of specific mitigation parcels to mitigate the impact of this project. There is no evidence in the record about the environmental and ecological values of the preserved lands because it is impossible to do so without those lands having been identified. Without identifying the parcels before approval, the Order deprives the public and the intervenors of the opportunity to provide analysis and testimony on the sufficiency of the specific parcels. There is also no evidence in the record that any tract of land of the required size, comparable ecological value, and environmental state even exists and is available for preservation “in the vicinity of Segment 1.”

IV. CMP Does Not Have Sufficient Right, Title, or Interest in the NECEC.

The Department’s failure to adequately and independently assess the validity of CMP’s claim to Right, Title or Interest in all of the proposed corridor, was unreasonable and unjust. Without right, title, and interest at all times, CMP does not have the ability to legally apply for permits from the Department and/or Board. 06-096 CMR Ch. 2 § 11(D). CMP has not legally

possessed sufficient right, title, and interest at all times, due to the transfer of assets to another entity during the proceedings. In addition to having no evidence of the ownership of the NECEC, the Order is based on the false premise that CMP will fund, construct, own, and operate NECEC, which it cannot do.

As noted in comments to the Department on the Draft Order, more than a year before issuance of that draft, CMP entered a Stipulation in Maine PUC Docket No. 2017-00232 (“CMP Stipulation”) agreeing that CMP will not construct, own or operate the NECEC. The CMP Stipulation requires CMP to transfer its interest in the NECEC, including underlying properties, to NECEC Transmission, LLC, which “is not a subsidiary of CMP.” CMP Stipulation at 16.

Chapter 2 of the Department’s Rules defines a transfer of ownership at Section 1(R) as:

a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock (or in the case of a limited liability corporation, of membership interests), or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns or operates the property, facility or structure remains the same.

The CMP Stipulation requirement that construction, operation and ownership of the NECEC will be by NECEC Transmission LLC is a transfer of ownership as defined by Chapter 2.

When there is a transfer of ownership, Section 21(C)(1) of Chapter 2 of the Department’s Rules requires that “written consent [by the Department] must be applied for no later than two weeks after any transfer of ownership of property subject to a license.” Given that CMP must comply with the CMP Stipulation and transfer NECEC to NECEC Transmission, LLC prior to the start of construction, the Order must be amended. See Ch. 2 § 11(D) (requiring that an applicant maintain and update right, title and interest at all times in the Department process).

Under the order of the PUC, CMP was required to transfer the NECEC assets to a newly-created entity, but CMP has never produced sufficient documentation of the creation of that entity and/or transfer of all NECEC assets to that entity. See Cent. Me. Power Co., Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Quebec-Maine Border to Lewiston (NECEC) and Related Network Upgrades, Docket No. 2017-00232, Stipulation at 16 (Me. P.U.C. Feb. 21, 2019). As reported in the news media, (Portland Press Herald article, *Despite its opponents, CMP corridor project well underway*, dated March 8, 2020) CMP set up an entity called NECEC Transmission, LLC. The reported purpose of the new entity is to act as the developer for the Project but the record is completely devoid of any evidence to support this entity's Right, Title or Interest in *any* of the land in the Project area.

The failure to provide documentation of any transfer to a new entity, plus the inability of CMP to construct, own, and operate NECEC itself, invalidates the Department's findings on financial and technical ability. There is no record evidence of NECEC Transmission, LLC's financial and technical qualifications to construct, own, and operate the NECEC. Thus, the Order is flawed and the Board should take supplemental evidence in a hearing in order to address these issues and afford the parties an opportunity to comment on the information provided by the entity that will actually construct, own and operate the NECEC.

V. Approval without evidence supporting a feasible Decommissioning Plan, including evidence that environmental damage can be restored and assurance of CMP's financial capacity to properly decommission, fails to meet NRPA standards.

The Order imposes decommissioning requirements for the Segment 1 portion of the transmission line. Order, at 106. The Order sets out a benchmark trigger for when a decommissioning plan would need to be implemented and certain broad parameters for the scope

of the work. *Id.* However, the plan, including the financial assurance component, is not required before construction begins. The Order states: “The plan must be submitted within one year of the start of commercial operation of the project.” This fails to satisfy the financial capacity standard set forth in Chapter 373.

Under Chapter 373 of the Site Location and Development Act, the applicant must show it has the “financial capacity for *all* aspects of the development” and that “Evidence of financial capacity must be provided *prior* to a decision on an application” Ch. 373, 2 A (emphasis added). While prior proof of financial capacity is the overall standard, the Department may “defer a final finding on financial capacity by placing a condition on a permit that requires the permittee to provide final evidence of financial capacity *before the start of any site alterations.*” Chapter 373, § 2 A (emphasis supplied). Here, the Order would allow CMP to not only begin site alterations, but could conceivably complete the entire construction of the Segment 1 portion without any showing of financial capacity to take it down. The Department simply has no authority under the financial capacity standard to give CMP this kind of latitude.

Nor is there any evidence in the record to suggest that the Department can rely on CMP’s technical capabilities to dismantle the Segment 1 portion of the line, that design alterations may be required to enable deconstruction, or that it will effectively undo the environmental damage the Department seems willing to accept will occur from construction and installation. During the hearings, CMP asserted that this was not a permanent installation. On cross-examination, CMP admitted it did not have and had not submitted a decommissioning plan. See Appendix WF-F Hearing Day 1 Transcript 97, 134-139 and Hearing Day 2 AM 158-159. While the Order requires CMP to put their money where their proverbial mouth is by requiring CMP to eventually submit and eventually implement a decommissioning plan, the condition falls short.

A decommissioning plan requirement that leaves open so many questions must be assessed not after construction begins but before. It is unfair and unreasonable for CMP to effectively be able to construct a project of this size without the public having the opportunity to question it on its ability to fully restore the landscape to its current state (or better) after the project exhausts its usable life.

VI. Request for Additional Witnesses and/or Evidence

Further, for all of the reasons stated above, Petitioners request that CMP be required to produce a full VIA in leaf-off conditions reflecting the entire route with the narrowed corridor, tapered vegetation, and taller pole heights plus any additional evidence and/or testimony. Petitioners request that evidence be taken addressing the inadequacy of the Order's 40,000-acre conservation condition, including the insufficiency of conservation of unidentified land elsewhere. Additional evidence is further required to counter the Department's findings on the sufficiency of tapered vegetation conditions and sufficiency of the narrowing of the width of the corridor. Finally, Petitioners request that additional evidence from CMP be admitted addressing a) a complete decommissioning plan and its cost, b) how a decommissioning plan may alter the design, location, and structure of the transmission line and c) any rebuttal testimony and evidence Petitioners may decide to submit on this issue.

Petitioners also request the opportunity to cross-examine and/or produce rebuttal witnesses to rebut any and all additional testimony or evidence submitted by CMP to this proceeding.

CONCLUSION

The Order granting a permit to NECEC was unreasonable, unjust and unlawful. The conclusions of the Department in the Order show that the Department failed to consider significant evidence in the record about the impacts of forest fragmentation and disruption of wildlife habitats and corridors. It also ignores that there is no evidence that tapering the corridor will sufficiently mitigate environmental impacts of the corridor, no evidence in the record about the visual impacts of a tapered corridor with higher towers, no evidence in the record supporting the preservation of unidentified lands elsewhere is sufficient mitigation (or is possible at all), and no evidence in the record supporting a financially and technically feasible decommissioning plan that will restore the environmental and ecological values of Segment 1. Further, it ignores significant issues with CMP's right, title, and interest in NECEC. Finally, the failure of the Order to require a decommissioning plan before approval and/or construction of NECEC violates Chapter 373 of the Site Law, and deprives the people of Maine with adequate opportunity to examine the ability of CMP to sufficiently decommission NECEC. For all of these reasons, Petitioners request the Board vacate the Department's Order, hold hearings and take additional evidence and ultimately deny NECEC the permits and approvals received through the Order.

WHEREFORE, for all of the foregoing reasons, Petitioners respectfully request the Board hold a hearing, accept additional evidence and vacate the Department's Order.

Respectfully Submitted,

West Forks Plantation, Town of Caratunk,
Kennebec River Anglers, Maine Guide Service,
LLC, Hawks Nest Lodge, Ed Buzzell, Kathy
Barkley, Kim Lyman, Noah Hale, Eric Sherman,
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By their attorneys,



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