

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



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SENT VIA ELECTRONIC MAIL ONLY

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**Re: Central Maine Power Company, New England Clean Energy Connect
Department Order L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N,
L27625-VP-D-N, L-27625-IW-E-N**

**Identification of appellants' proposed supplemental evidence and
deadline for respondents' written comments on the admissibility of that evidence**

Dear Participants:

On June 8, 2020, NextEra Energy Resources, LLC (NextEra) filed with the Kennebec County Superior Court a petition under Rule 80C for judicial review of the May 11, 2020, Order of the Commissioner of the Department of Environmental Protection (Commissioner) conditionally approving the application of Central Maine Power Company (CMP) to construct the New England Clean Energy Connect (NECEC Order). A second petition for judicial review of the NECEC Order was filed on the

same date by West Forks Plantation and others (West Forks Group) in the Somerset County Superior Court.¹

On June 10, 2020, the Natural Resources Council of Maine (NRCM) filed with the Board of Environmental Protection (Board) a timely appeal of the NECEC Order and a request for hearing pursuant to Department rule Chapter 2, § 24, *Rule Concerning the Processing of Applications and Other Administrative Matters*.

On August 11, 2020, the Superior Court granted a motion by the Department to remand the two judicial appeals to the Board to be considered with the NRCM administrative appeal. The Court Order remanding the appeals provided an opportunity for NextEra and West Forks Group to submit to the Board a more detailed written appeal statement of the arguments made in their Rule 80C appeals. On August 26, 2020, I established a filing deadline of September 25, 2020, for NextEra and West Forks Group to submit such filings to the Board.

Receipt and consolidation of appeals

On September 25, 2020, NextEra and the West Forks Group each filed with the Board written appeals of the Commissioner's May 11, 2020 NECEC Order and each requested a Board hearing as part of their appeals. Accordingly, there are now three appeals pending before the Board (by NRCM, NextEra, and the West Forks Group) of the same NECEC Order, which are based on the same record and include overlapping arguments. For administrative economy and consistency, the Board will consolidate and process the three appeals together.

Appellants' proposed supplemental evidence

Department staff has reviewed the appeals by NRCM, NextEra, and the West Forks Group for proposed supplemental evidence and citations to non-record evidence. The following documents and citations are not part of the Department's administrative record in this matter and require a ruling on their admissibility pursuant to Chapter 2, § 24 (D)(2).

NRCM proposed supplemental evidence

- Appendices C through N, as described in Appendix B of the NRCM appeal.²
- Footnote 1 of Appendix B includes electronic links to audio files described as "Recordings of ACF Committee LD 1893 hearing, work sessions, and language review." Citations to legal materials such as public laws, statutes, and officially-maintained legislative history are generally allowed and may be considered by the Board regardless of whether they are included in the Department record. NRCM's citations to the legislative history related to LD 1893 fall

¹ West Forks Group is comprised of persons who intervened in the Department licensing proceeding and who are now represented by Elizabeth A. Boepple, Esq., BCM Environmental & Land Law, PLLC. Appellants in the West Forks Group are: West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Matt Wagner, Mike Pilsbury, Mandy Farrer, and Carrie Carpenter.

² NRCM proffers Appendix C, an article from *Northern Journal of Applied Forestry*, as proposed supplemental evidence. However, the Department staff has confirmed that the proffered article is already in the administrative record.

into this category and, without a ruling on their relevance, completeness, or materiality, will not be struck from the NRCM's appeal. However, the electronic links at footnote 1 of Appendix B will not be accepted pursuant to Chapter 2, § 24(B)(2).

- Footnotes 2, 12, 20, 21, and 22 in the NRCM's appeal contain electronic links that will not be admitted into the record pursuant to Chapter 2, § 24(B)(2).

West Forks Group proposed supplemental evidence

- On page 15, the citation: "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)."
- Appendix A, an index of proposed supplemental evidence, states that the West Forks Group incorporates by reference all prefiled direct, rebuttal, surrebuttal, and hearing testimony of and comments on the draft NECEC Order—and any attachments or exhibits thereto—by Intervenor Groups 1, 2, 4, 6, 8, and 10.³ None of these documents were included with the appeal filing. However, all hearing testimony and exhibits, except what was stricken in that proceeding, and all timely comments on the Commissioner's draft NECEC Order are already in the Department's evidentiary record and need not be offered as proposed supplemental evidence.

NextEra's proposed supplemental evidence

NextEra proffers no supplemental evidence.

When supplemental evidence is submitted by an appellant, a respondent may submit written comment on the admissibility of the proposed supplemental evidence and may offer proposed supplemental evidence in response to the appellant's proposed supplemental evidence and the issues raised on appeal. Ch. 2, § 24(C)(2). Respondents' written comments on the admissibility of appellants' proposed supplemental evidence and any supplemental evidence proposed in response must be filed **by 5:00 p.m. on January 25, 2021**. Filings may be by electronic mail provided the signed original document is received by the Board within three (3) working days of the filing deadline. All filings must be copied to the service list. Filings with the Board must be directed to:

³ See the Department's licensing hearing Second Procedural Order, October 5, 2018, for a complete listing of intervenors and consolidated intervenor groups.

Intervenor Groups 1, 2, 4, 6, 8, and 10 are: Group 1: Friends of Boundary Mountains, Maine Wilderness Guides, Old Canada Road; Group 2: West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Services, Peter Dostie (Hawk's Nest Lodge), and Mike Pilsbury; Group 4: Natural Resources Council of Maine, Appalachian Mountain Club, and Trout Unlimited; Group 6: The Nature Conservancy and Conservation Law Foundation; Group 8: Next Era; Group 10: LUPC Residents and Recreational Users consisting of Carrie Carpenter, Eric Sherman, Kathy Barkley, Kim Lyman, Mandy Farrar, Matt Wagner, Noah Hale, Taylor Walker, and Tony DiBlasi.

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If you have any questions, you may contact Board Executive Analyst William F. Hinkel at bill.hinkel@maine.gov (207) 314-1458 or Assistant Attorney General Peggy Bensinger at peggy.bensinger@maine.gov (207) 626-8578.

Respectfully,



Mark C. Draper, Chair
Board of Environmental Protection

cc (via e-mail only): Service List (rev. October 19, 2020)