

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



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SENT VIA ELECTRONIC MAIL ONLY

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**Re: New England Clean Energy Connect Order (NECEC Order)
Chair ruling regarding Appellees' objection to Party filings**

Dear Participants:

On March 12, 2021, the Board received responses to the merits of the consolidated appeals of the May 11, 2020, NECEC Order and December 4, 2020, Transfer Order from the following: NRCM; NextEra Energy Resources, LLC (NextEra); West Forks Group; Friends of Boundary Mountains (FOBM); Industrial Energy Consumer Group; and, jointly, the Maine State Chamber of Commerce, the Lewiston-Auburn Metro Chamber of Commerce, and the City of Lewiston.

On March 19, 2021, I ruled on Central Maine Power Company (CMP) and NECEC Transmission LLC's (Appellees) March 12, 2021, objection to the filings by NRCM and West Forks Group, finding that while NRCM and West Forks Group may not re-argue or further support their own appeals of the NECEC Order, NRCM and West Forks Group are entitled to provide a written response to the merits of each other's appeals and, in both cases, to the appeal by NextEra.

On April 29, 2021, the Appellees filed an objection to certain statements and materials offered in the March 12, 2021, responses of NRCM, West Forks Group, and FOBM, arguing that these responses contain supplemental evidence, which is untimely and improper.

On April 30, 2021, May 5, 2021, and May 7, 2021, NRCM, West Forks Group, and FOBM, respectively, filed responses to the Appellees' April 29 objection, arguing that their respective March 12 responses were appropriate and did not attempt to introduce new evidence.

CHAIR RULINGS

i. NRCM

The Appellees object to NRCM's March 12, 2021, submission to the extent that it repeats arguments it made in its June 10, 2020, appeal of the NECEC Order.

- The Appellees object to the portion of NRCM's March 12, 2021, statement referencing "the number of parties who have submitted comments supporting the appeals over the past several weeks," contending that that information is not in the record or based on any evidence in the record.

Ruling: NRCM appears to reference written responses to the merits of the appeals filed in accordance with Chapter 2, § 24(C)(4) and the Chair's February 12, 2021, ruling. The Board will only consider written responses that comply with Chapter 2, § 24(C)(4) and that were timely filed with the Board. NRCM's statement is in the nature of an argument and is not adding factual information to the record. It will not be stricken.

- The Appellees object to the following statement from NRCM's March 12, 2021, response, arguing that it is plainly not before the Board, nor relevant to the appeal proceeding, while NRCM argues that the statement is in reference to the procedural posture of various interrelated permit applications, and requested revisions thereto, and is entirely proper.

Remarkably, as part of its so-called 'minor revision' application, CMP and NECEC LLC submitted a 'full set of revised natural resource maps,' which is 'intended to replace the full set of maps [previously filed with the Department] in its entirety.' *See* CMP Minor Revision Application at 3. . . . This type of wholesale replacement of NRPA impact maps demonstrates that the record on the original Permit Appeal is insufficient. This would be an independent basis for the Board to reverse the Permit Order, but it also serves as a reason why, procedurally, the Board should assume jurisdiction and hold a hearing on the entire project, including all pending changes thereto.

Ruling: NRCM's statement is in the nature of an argument directing the Board to consider components of a permit application that is not in the administrative record being considered by the Board for the appeals. While NRCM may cite to agency records that were in the possession of the Department at the time the pertinent decision was made, and the Board may take official notice of relevant records pursuant to 5

M.R.S. § 9058, references to submittals in support of the minor revision permit application are not admissible in this appeal of the underlying NECEC Order and Transfer Order. The issue before the Board is whether the information that was in the record when the Commissioner made the decision on the applications for the underlying NECEC Order and Transfer Order were sufficient to support those decisions. Therefore, the entirety of NRCM's statement cited above is not admitted and is stricken from the March 12, 2021, filing.

- The Appellees object to the electronic links offered by NRCM in its March 12, 2021, memorandum at page 10, footnote 10 are inadmissible and should be stricken pursuant to Chapter 2, § 24(B)(2).

Ruling: The Board may consider legislative history and arguments based on it to the extent relevant to the issues in the appeals, and there is no need to admit these materials as supplemental evidence. In any case, Chapter 2, § 24(B)(2) states that electronic links will not be accepted. The electronic links offered by NRCM in its March 12, 2021, memorandum at page 10, footnote 10 are stricken.

- The Appellees object to NRCM's statement on page 10, that the "[Bureau of Parks and Lands, BPL] has since acknowledged that it entered the 2014 Lease prior to the issuance of a [Certificate of Public Convenience and Necessity] and without a 2/3 vote of the Legislature, and terminated the 2014 Lease" should not be admitted to the record because it was not timely submitted, and NRCM did not make a showing that the statement is relevant and material. NRCM argues that "legislative proceedings and further sister-agency action regarding this lease are the proper subject of administrative notice."

Ruling: While the Board may consider legislative history and arguments to the extent relevant to the issues in the appeals, NRCM's statement above is an assertion of a factual nature and is not in the administrative record. Pursuant to Chapter 2 § 24(B)(3), proposed supplemental evidence must be submitted with the appeal. NRCM's statement above is supplementary in nature, was not timely filed with the Board, and is therefore stricken.

ii. *West Forks Group*

- The Appellees object to factual statements regarding the Licensees' December 30, 2020, minor revision application, specifically those on pages 2-3 of West Forks Group's March 12, 2021, filing, as not being relevant to the consolidated appeals before the Board. West Forks Group argues that its references are to other matters before public bodies that are in the public record to which it may refer in this proceeding.

Ruling: NRCM's appeal of the December 30, 2020, Minor Revision Order will not be joined with the consolidated appeals of the NECEC Order and Transfer Order, and instead will be processed separately, on its own procedural track. West Forks Group's references to the December 30, 2020, Minor Revision Order are therefore stricken.

- The Appellees object to the following italicized portion of West Forks Group's statement, arguing that it refers to materials that are outside of the record and is therefore inadmissible in

this proceeding: “Not only did they fail to conduct that review but they failed to hold CMP accountable for delivery of evidence on its unsubstantiated claims – *claims it continues to make in all of its public relations materials.*”

Ruling: West Forks Group's statement is directing the Board to consider materials that are outside the record. The italicized portion of West Forks Group's statement is stricken.

iii. FOBM

- The Appellees object to certain statements included in FOBM's filing on the basis that they reference materials that are outside the record, are untimely as proposed supplemental evidence, and, even if considered timely, are not relevant and material.

Rulings: The italicized portion of the following FOBM statement to which the Appellants object is in the nature of an argument and is not adding factual information to the record. No portion of the following FOBM statement will be stricken: “This part of Maine's North Woods supports exceptional biodiversity *and maintains that biodiversity even as the climate changes.*”

FOBM's statement “Even along the edges, where tapering would result in trees that are a maximum of 35-feet high, these trees will be mere saplings in the 3-inch to 5-inch diameter range (excluding damaged or broken trees with larger diameters)” is an assertion of a factual nature supported by evidence in the administrative record. Consequently, the statement is not stricken.

FOBM's statement “The developer should not be given the opportunity to avoid responsibility for the impacts with some extraneous financial deal” is ambiguous but appears to be an assertion of a factual nature to materials that are not in the administrative record. Consequently, the statement is stricken.

FOBM's statements regarding the Vineyard Wind Project are assertions of a factual nature and are not in the administrative record. Consequently, the statements are stricken.

FOBM's statement “However, the no-build alternative could very well satisfy the ultimate purpose of generating clean energy to the N.E. grid” is in the nature of an argument and is not adding factual information to the record. The statement will not be stricken.

FOBM's statement “Greenhouse gas emissions generated by Hydro-Quebec in building and operating mega dams is extremely relevant to whether NECEC should receive approval” is in the nature of an argument and is not adding factual information to the record. The statement will not be stricken.

The italicized portion of FOBM's statement: “There will be severe adverse impacts and fragmentation to the environment and habitat of the woods of Western Maine if this

project is allowed to move ahead, *as well as inflicting terrible harm to the indigenous peoples in the north, while showing no proof of reduction in greenhouse gas emissions*” is an assertion of a factual nature to materials that are not in the administrative record. Consequently, the italicized portion of the statement is stricken.

- The Appellees object to the entirety of section 2 of FOBM's response, *Impact of NECEC on Indigenous Populations*, arguing that the Innu Nation neither submitted comments on the application nor testified at the hearing. FOBM responded that the Innu Nation submitted comments to the Department on April 13, 2020. The Department staff has confirmed the date of the Innu Nation submission but at that time the evidentiary record was closed, and the only submissions allowed were comments on the draft NECEC Order.

Ruling: Section 2 of FOBM's response references evidence that is not in the administrative record. At the conclusion of the hearing, no further evidence was allowed into the record. The Innu Nation did not submit comments or testimony during the licensing proceeding, and their comments on the draft NECEC Order included new evidence submitted following the close of the record. The extra-record comments of the Innu Nation were not offered as proposed supplemental evidence in any of the appeal filings and may not now be offered as evidence in FOBM's response to the merits of the appeals. Therefore, the entirety of section 2 of FOBM's response, *Impact of NECEC on Indigenous Populations*, is stricken.

- The Appellees object to the electronic links to documents that are not in the record, offered by FOBM on page 9 of its March 12, 2021, response.

Ruling: Pursuant to Chapter 2 § 24(B)(2), electronic links to documents will not be accepted. The electronic links offered by FOBM are stricken.

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. August 3, 2021)