

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NRCM, WEST FORKS PLANTATION)
ET AL, NEXTERA CONSOLIDATED)
APPEAL OF CENTRAL MAINE)
POWER COMPANY, NECEC)
TRANSMSSION LLC DEPARTMENT)
ORDER for the New England Clean)
Energy Connect (“NECEC”))
L-27625-26- A-N)
L-27625-TB- B-N)
L-27625-2C- C-N)
L-27625-VP- D-N)
L-27625-IW- E-N)

**PETITIONERS WEST FORKS
PLANTATION, et al. RESPONSE TO
NEXTERA ENERGY RESOURCES, LLC
AND NATURAL RESOURCES COUNCIL
OF MAINE’S APPEALS**

**RESPONSE TO NEXTERA AND NATURAL RESOURCE COUNCIL OF MAINE’S
APPEALS OF DEPARTMENT ORDER FOR THE NEW ENGLAND CLEAN ENERGY
CONNECT**

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, Mike Pilsbury, Matt Wagner, Mandy Farrar and Carrie Carpenter (“West Forks”), by and through their undersigned counsel, submit this response to NextEra Energy Resources, LLC (“NextEra”) and Natural Resources Council of Maine’s (“NRCM”) appeals of the Commissioner of the Department of Environmental Protection’s (the “Department”) Order conditionally approving the Central Maine Power Company and NECEC Transmission LLC’s New England Clean Energy Connect (NECEC) transmission line project (the “Conditional Permit”).

The Environmental Board Should Take Original Jurisdiction Over the Underlying Application and the Revised Application to Conduct a Combined Review After First Obtaining New Legal Opinion.

The Board of Environmental Protection (the “Board”) reviews an appeal of a licensing decision by the Commissioner on the record. But in this instance, NRCM’s Appeal contains a legally significant threshold question: Did the Commissioner err in not submitting the original NECEC application to the Board pursuant to 38 M.R.S § 341-D(2)? Additionally, the Board must address the question of whether the Acting Commissioner correctly assessed the original jurisdiction criteria under the same statutory standard with respect to the “Minor Revision Application.” Thus, a legal assessment of the statutorily established jurisdiction of the Board must first be decided before the Board can undertake the on-the-record review of the substance of the Conditional Permit. West Forks questions, however, whether the Board can truly independently review the issue of original jurisdiction under the present circumstances.

The Board is currently being advised by the same Associate Attorney General (“AAG”) who first advised the Department and the Commissioner throughout their review of the underlying application. The same AAG also advised the then Acting Commissioner during her recent review of whether the “Minor Revision Application” was subject to original Board jurisdiction. In fact, it is also very likely that the same AAG drafted, or at least certainly gave legal guidance to inform Commissioner Loyzim’s February 10, 2021 decision that the “Minor Revision Application” was not one of state-wide significance, despite overwhelming evidence to the contrary. Now, the Board is taking up this legal threshold question and being advised by the same AAG. Undoubtedly, the AAG will want to defend the Commissioner’s initial decision to not refer the underlying application to the Board, and will similarly seek to defend and justify the Commissioner’s February 10 Decision.

The AG's office frequently shepherds licensing matters through various administrative processes. However, we already know (having seen the pleadings filed by the same AAG in the Superior Court appeals. *See West Forks Plantation, et al. v. Dept. of Env'tl Prot., et al.*, SOMSC-AP-20-04 and *NextEra Energy Resources, LLC v. v. Dept. of Env'tl Prot., et al.*, Docket No. KENSC AP-2020-27) that the AAG is protective of the Department's actions and decisions. This is also evident from listening to the guidance offered during the Board meeting on February 18. Additionally, as recently as yesterday in the Chair's letter dated March 11, 2021, the Chair made clear that the Board would be receiving input from the same AAG, "the Board will receive from its staff and counsel additional information about the minor revision application." Clearly the Board will be accepting input from the same AAG on the question of original jurisdiction. When the legal opinion of the attorney for the Department is questioned through an appeal, one must ask how truly independent the Board's assessment can be. For this reason alone, the Board should undertake an independent and fresh look at the question of its original jurisdiction as applied to both the underlying application and the "Minor Revision Application," and if possible, obtain different legal counsel.

Finally, because the "Minor Revision Application" is inextricably tied to the Conditional Permit which will be reviewed and potentially significantly altered in substance after the Board's review, the Board should assert its original jurisdiction and take up the "Minor Revision Application" along with the underlying application for the NECEC.

NECEC Fails to Meet NRPA and Site Law Standards

NextEra and NRCM correctly identify multiple failures in the record where NECEC does not meet either NRPA's or the Site Law standards despite conditions added by the Department to mitigate the environmental impacts this project will cause. For example, NRCM correctly

questions the tapered canopy condition including whether on-the-ground implementation is an enforceable provision, and how it could effectively provide for wildlife habitat protection from the negative impacts of forest fragmentation. *See* NRCM Appeal, June 10, 2020, page 21.

Similarly, NextEra correctly questions the narrowing of the corridor:

the Order effectively amends the NECEC project by narrowing the transmission corridor which directly impacts the pole height and configurations to ensure compliance with federal law. However, there is no evidence in the record establishing the new pole heights, and, thus, no consideration of new pole heights in light of the Department's criteria.

See NextEra Appeal, September 25, 2020, page 9. These are but two examples.

Additionally, both Appeals correctly call out CMP's inadequate alternatives analysis. *See* NRCM Appeal at pages 27-32 and NextEra Appeal at pages 4-6. Moreover, as raised in NRCM's Appeal, the Commissioner's disregard for a public vetting on the project's impact on greenhouse gas emissions should further erode the Board's confidence that the Department and Commissioner performed the necessary rigorous review. 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. The Board has the opportunity now to make CMP show actual evidence of its claims of actual reduction in greenhouse gas emissions.

The Board will obviously read both NextEra's and NRCM's Appeals but it bears noting that the lack of evidence in the record to support the Conditional Permit on these items alone gives the Board reason to want to review this project anew since we firmly believe, after an independent assessment of the statutory criteria, the Board must assert original jurisdiction.

Conclusion

The Board should obtain new legal counsel in reviewing the issue of original jurisdiction. The Board should find that original jurisdiction lies with the Board on both the underlying Application and the “Minor Revision Application.” Once it does so, it should hold a hearing and in doing so, will ultimately find that the NECEC does not meet NRPA and Site Law standards and the Conditional Permit should be voided.

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,
Mike Pilsbury, Matt Wagner, Mandy Farrar and
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By their attorneys,



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