

**STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

CENTRAL MAINE POWER COMPANY  
Application for Site Location of Development  
Act Permit and Natural Resources Protection  
Act Permit 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

**NATURAL RESOURCES  
COUNCIL OF MAINE'S  
COMMENTS ON CMP AND  
NECEC LLC CONDITION  
COMPLIANCE APPLICATION**

On December 15, 2020, Central Maine Power Company (“CMP”) and NECEC Transmission, LLC (“NECEC LLC”) filed a Condition Compliance Application (“Application”) seeking approval of a Field Adjustment Request (“FAR”) process to be used for review of purportedly “*de minimis* adjustments” to the plans submitted to and approved by the Department of Environmental Protection (“Department”) in its May 2020 Order on the New England Clean Energy Connect transmission line (“NECEC Order”).<sup>1</sup> On December 15, 2020, the Department requested that comments on the Application be filed by December 22, 2020. NRCM timely submits these comments on the Application.

The Department cannot grant the Application because, as with their condition compliance filing relating to Condition 12, CMP and NECEC LLC improperly attempt to use a condition compliance application to further amend the project impacts to wetlands and other protected natural resources. The Natural Resource Protection Act (“NRPA”) and its implementing

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<sup>1</sup> The NECEC Order, along with its accompanying appendices, is attached as **Exhibit 1**.

Department Rules (Chapter 310) require Department review of project avoidance and minimization of impacts to wetlands, and such evaluation must be done in the context of an application to the Department in advance of an approval. Having failed to properly delineate wetland impacts in its original application, CMP cannot now use a condition compliance application to further obfuscate project NRPA impacts.

### **Comments**

*I. CMP and NECEC LLC Cannot Make Real-Time Changes to Plans That Will Affect Wetlands and Other Protected Areas Via a Condition Compliance Application and FAR Process.*

As they did in their condition compliance application relating to Condition 12 of the NECEC Order, CMP and NECEC LLC identify again here potential changes to the project area impacted by the NECEC, none of which was included in CMP's original or numerous application amendments leading to the NECEC Order. As outlined in NRCM's comments on Condition 12, such changes to the NECEC cannot properly be considered via a condition compliance application. Instead, material project changes such as these must be considered as part of an amendment to the NECEC Order. Here, CMP's original permit applications did not adequately delineate existing wetland impacts, did not minimize or compensate for impacts to protected natural resources, and did not avoid impacts to protected natural resources by demonstrating that no practicable alternatives exist. These errors, among others, are all currently being appealed to the Board. Without an adequate delineation in the first instance, there is no baseline from which CMP's proposed FAR process could rationally be determined as being more or less impactful than what was originally intended.

CMP and NECEC LLC claim that their proposed FAR process will "provide[] a mechanism" by which they can comply with the agency review process of NRPA Standard

Condition #1, Site Location of Development Act (“SLODA”) Standard Condition A, and Stormwater Standard Condition #1. Per the NECEC Order, these conditions are as follows:

- NRPA Standard Condition A<sup>2</sup>

Approval of Variations from Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. NECEC Order at 115.

- SLODA Standard Condition A

Approval of Variations from Plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect. NECEC Order at 114.

- Stormwater Standard Condition #1

Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S.A. § 420-D(8) and is subject to penalties under 38 M.R.S.A. § 349. NECEC Order at 116.

Contrary to CMP’s and NECEC LLC’s claims, the FAR process does not provide a mechanism for compliance with these conditions. Rather, CMP and NECEC LLC seek carte blanche to make real-time adjustments to the NECEC Order outside the bounds of the typical (and mandatory) approval and oversight process, and without having established that there is no practicable alternative to the NRPA impacts in their original permit applications. They admit in the Application that they intend to address through the FAR process “the relocation of waterbody or wetland crossings,” Application at 1, yet their proposed Category 1 approval process is limited

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<sup>2</sup> CMP and NECEC LLC refer in the Application to NRPA Condition #1, but the NRPA Standard Conditions in the NECEC Order are listed alphabetically, not numerically. NRCM assumes they meant to refer to Standard Condition A.

to same-day review by only the MDEP third party inspector and the NECEC environmental inspector, Application at 2. Under NRPA and SLODA, these types of changes cannot be made on the fly with such limited oversight, particularly where, as here, there is no adequate wetland delineation in the original permit to serve as a baseline from which to evaluate the proposed change. CMP's and NECEC LLC's proposed Category 2 process, which includes "adjustments that will be submitted to the MDEP and the United States Army Corps of Engineers (USACE)," is similarly problematic because it does not provide for the full Department review process—including a new application, alternatives analysis, and hearing—that any such "adjustments" would require.

The Department included NRPA Standard Condition A, SLODA Standard Condition A, and Stormwater Standard Condition #1 in the NECEC Order to ensure CMP and NECEC LLC would not implement changes without the necessary review and approvals. Yet, with their proposed FAR process, CMP and NECEC LLC are essentially saying "trust us." NRPA does not allow the Department to turn over this authority to an applicant without any Department review. This is especially true where, as here, doing so would compound the error alleged in the appeals of the NECEC Order currently pending before the Board that CMP failed to appropriately delineate—and the Department failed to appropriately review—wetland impacts in the first instance.

The Department cannot properly decide the Application—which does not state with particularity those lands that may or will be affected by this FAR request—in the context of condition compliance because it must first assess whether the project changes ultimately proposed by CMP and NECEC LLC comply with the Site Law, NRPA, and Water Quality Certification. CMP has not, therefore, demonstrated compliance with the NECEC Order.

## **Conclusion**

The Application fails to document compliance with the NECEC Order and is an attempted end run around Department rules, NRPA, SLODA, and the Standard Conditions imposed by the NECEC Order. As such, the Department must deny the Application.

Dated: December 22, 2020

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