



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
ACTING COMMISSIONER

February 10, 2021

Via E-mail Only

Becky Layton Bartovics
Sierra Club, Maine Chapter
P.O. Box 1374
Yarmouth, ME 04096
bbartovics@gmail.com

James T. Kilbreth
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480
jkilbreth@dwmlaw.com

RE: DEP Project #L-27625-26-L-C/ L-27625-TB-M-C/ L-27625-2C-N-C/ L-27625-VP-O-C/ L-27625-IW-P-C, Minor Revision Application

Dear Ms. Bartovics and Mr. Kilbreth:

The Department is in receipt of Mr. Kilbreth’s letter, dated January 15, 2021, on behalf of the Natural Resources Council of Maine (NRCM), concerning CMP/NECEC Transmission, LLC’s minor revision application to make changes to the Department’s approval of the New England Clean Energy Connect (NECEC) project. In the letter, NRCM requests that the Board assume jurisdiction over the application and hold a public hearing, argues the proposed changes to the NECEC project do not qualify as a minor revision, and asks for additional time to review the application materials.

The Department also is in receipt of Ms. Bartovics’s letter, dated January 18, 2021, on behalf of the Maine Chapter of the Sierra Club (Sierra Club). The Sierra Club similarly requests that the Board assume jurisdiction over the minor revision application and hold a public hearing, argues the changes to the NECEC project do not qualify as a minor revision, and asks for additional time to review the application materials.

I. Request for Board Assumption of Jurisdiction Over an Application

The Department, as established in its Chapter 2 *Rules Concerning the Processing of Applications and Other Administrative Matters*, recognizes multiple different types of license applications, including new license applications, amendment applications, minor revision applications, renewal applications, and transfer applications. *See, e.g.*, Ch. 2, § 1(L) (defining the term license and listing the many types of

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
207-941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

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licenses). When reviewing a minor revision application, the Department evaluates that application. The Department does not re-evaluate the development activity that is the subject of the original order the permittee seeks to modify through minor revision – the presently proposed changes to the previously permitted project are the sole focus of the review.

The Board may assume jurisdiction over applications for projects of statewide significance. The criteria used by the Commissioner when deciding whether to recommend to the Board that it assume jurisdiction, and by the Board when deciding whether to exercise its discretion to assume jurisdiction, are set forth in 38 M.R.S. § 341-D(2) and in Chapter 2, § 17(C). The statute (and similarly the rule) provides:

A project of statewide significance is a project that meets at least 3 of the following 4 criteria:

- (1) Will have an environmental or economic impact in more than one municipality, territory or county;
- (2) Involves an activity not previously permitted or licensed in the State;
- (3) Is likely to come under significant public scrutiny; and
- (4) Is located in more than one municipality, territory or county.

NRCM argues all four of the criteria are satisfied, stating:

The NECEC is undoubtedly a project of statewide significance. NRCM has so contended in numerous filings before the Department and does not here belabor the point, but the NECEC (1) will have an environmental or economic impact in more than one municipality, territory or country, (2) involves an activity not previously permitted or licensed in the State (a high-impact transmission line that will primarily benefit foreign jurisdiction), (3) has already come under significant public scrutiny and will continue to be the subject of significant public scrutiny, and (4) is located in more than one municipality, territory, or country.

(Jan. 15, 2021 NRCM Letter, p. 3.) NRCM also incorporates by reference its prior filings containing argument that the Board should have assumed jurisdiction over initial permitting of the NECEC. Sierra Club states the pending application “meets all four of the criteria pursuant to 06-96 C.M.R. ch. 2 § 17” and that the pending application involves a project of statewide significance, but does not discuss the basis for its conclusion or any of the four criteria.

Title 38, Section 341-D(2) and Chapter 2 provide for Board assumption of jurisdiction over “each application” for approval if, in its judgment, the application represents a project of statewide significance. The Commissioner similarly reviews each application when considering requests for Board jurisdiction pursuant to Chapter 2, § 17. Here the application is for a minor revision. The project before the Department consists of the changes that are sought as part of this application. NRCM’s focus on prior applications and reiteration of its arguments that those applications should have been subject to Board jurisdiction are not directly relevant here.

Focusing on the present application over which NRCM and Sierra Club request Board jurisdiction, CMP/NECEC Transmission, LLC note that Chapter 2 provides that “minor revisions are not subject to this chapter, unless specifically included.” Ch. 2, § 2(B). CMP/NECEC Transmission, LLC argue that

since Chapter 2, § 17 does not expressly provide for Board assumption of jurisdiction over minor revisions the Board lacks authority to do so. Express provision is made, they note, for appeal of minor revisions to the Board. Embedded in CMP/NECEC Transmission, LLC's argument is the position that the general exemption of minor revisions from Chapter 2 reflects a determination by the Board, made as part of the rule adoption process, that minor revisions, by their very nature as defined in Chapter 2, do not involve a project of statewide significance. Therefore, CMP/NECEC Transmission, LLC express the view that there is no basis for NRCM or Sierra Club to request assumption of Board jurisdiction because minor revisions are exempt pursuant to Chapter 2. Because I find, for the reasons discussed below, that the present minor revision application does not meet the criteria for assumption of Board jurisdiction, I find it unnecessary to evaluate whether all minor revisions are exempt from Ch. 2, § 17 and ineligible for assumption of Board jurisdiction.

Three of the four criteria listed above must be satisfied for the present application to represent a project of statewide significance. One criterion is that the project involves an activity not previously permitted or licensed in the State. The Department has considerable experience permitting transmission line projects and other linear infrastructure projects. More significant in the context of the pending minor revision application is the Department's experience reviewing and processing minor revision applications associated with these types of large-scale development projects, including transmission lines. Further, the Department's experience is that due to the complexity of permitting and constructing these types of projects, permittees often need to make adjustments and modification, including through application for minor revisions. A large-scale project that is constructed without modification is the exception, not the norm. The Department has considerable experience in this area.

Another criterion is that the project has come under significant public scrutiny and will continue to be the subject of significant public scrutiny. The minor revision application has not come under significant public scrutiny. For example, the Department has received comments from three groups: NRCM, Sierra Club, and the West Forks Plantation intervenor group. Additionally, although future public interest could be higher than normal with respect to the present application because of the interest in the underlying and previously permitted project, the Department does not anticipate interest in this application for minor revision will rise to the level of significant public scrutiny given the nature of the changes proposed in the application.

With two of the four criteria not satisfied, my determination is that the pending minor revision application does not represent a project of statewide significance. Therefore, the Board should not assume jurisdiction over the application. By copy of this letter, with attached copies of NRCM's January 15, 2021 request and Sierra Club's January 18, 2021 request, I am notifying the Board of my determination.

NRCM and Sierra Club also requests that the Board hold a hearing on the minor revision application. Please note, Chapter 2, § 7(B) provides: "When the Board assumes jurisdiction over an application, it will hold a public hearing unless it votes otherwise at the time it assumes jurisdiction."

II. Argument that the Application is Not a Minor Revision

NRCM and Sierra Club argue that the changes proposed by CMP/NECEC Transmission, LLC do not qualify as a minor revision. The Department's review of the pending application is ongoing and this and other comments on the application will be considered as part of this review.

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III. Request for Additional Time to Review and Comment on the Pending Application

NRCM and Sierra Club also requested additional time to review and comment on the pending minor revision application. The Department extended the comment deadline to 5:00 p.m. on February 1, 2021. This is the date requested by NRCM and Sierra Club, and I understand additional comments were submitted in accordance with the amended deadline by NRCM and that Sierra Club did not comment further.

Sincerely,



Melanie Loyzim, Acting Commissioner
Maine Department of Environmental Protection

Enclosures

cc: Mark Draper, Chair BEP
William Hinkel, Executive Analyst BEP
Scott Boak, AAG
Peggy Bensinger, AAG
Service List