

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

October 12, 2021

VIA ELECTRONIC MAIL

James R. Beyer
Department of Environmental Protection
106 Hogan Road, Suite 6
Bangor, ME 04401

RE: New England Clean Energy Connect, L-27625-26-A-N, L-27625-TG-B-N,
L-27625-2C-C-N, L-27625-VP-D-N, L-27625-IW-E-N
License Suspension Proceeding – Pre-filed Rebuttal Testimony

Dear Mr. Beyer:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC,
pursuant to the First Procedural Order in the License Suspension Proceeding, please find
enclosed Pre-filed Rebuttal Testimony.

Please let me know if you have any questions.

Sincerely,



Matthew D. Manahan

Enclosures

cc (via email only): Service List (updated through 10/6/21)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NEW ENGLAND CLEAN ENERGY CONNECT)
#L-27625-26-A-N/#L-27625-TG-B-N/) LICENSE SUSPENSION
#L-27625-2C-C-N/#L-27625-VP-D-N/) PROCEEDING
#L-27625-IW-E-N)

PRE-FILED REBUTTAL TESTIMONY
of

CENTRAL MAINE POWER COMPANY
AND NECEC TRANSMISSION LLC

OCTOBER 12, 2021

**EXHIBIT LIST FOR PRE-FILED REBUTTAL TESTIMONY
OF CENTRAL MAINE POWER COMPANY AND
NECEC TRANSMISSION LLC**

TAB

Thorn Dickinson	NECEC LLC-1
Options 1 and 2 Map.....	NECEC LLC-1-F
AAG Memorandum	NECEC LLC-1-G
Lauren Johnston	NECEC LLC-3
CV	NECEC LLC-3-A

Thorn Dickinson

**Rebuttal Testimony
NECEC LLC-1**

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NEW ENGLAND CLEAN ENERGY CONNECT)	
#L-27625-26-A-N/#L-27625-TG-B-N/)	LICENSE SUSPENSION
#L-27625-2C-C-N/#L-27625-VP-D-N/)	PROCEEDING
#L-27625-IW-E-N)	

PRE-FILED REBUTTAL TESTIMONY AND EXHIBITS OF
THORN C. DICKINSON

Rebutting

- Richard Bennett Pre-Filed Direct Testimony
- Jeffrey Reardon Pre-Filed Direct Testimony

October 12, 2021

I. Purpose and Scope of Testimony

I present this testimony for the purpose of rebutting certain statements made in the pre-filed testimony of the Natural Resources Council of Maine witnesses Richard Bennett and Jeffrey Reardon.

II. Discussion

A. Rebuttal of Mr. Bennett

In his discussion of the current status of *Black v. Cutko*, Mr. Bennett explains that the Plaintiffs requested that the Law Court lift the automatic stay of the Superior Court’s judgment pending the appeal. Mr. Bennett next states that the Law Court entered an order prohibiting all construction activities on the Bureau of Parks and Lands (BPL) leased land during the pendency of the appeal. Mr. Bennett omits both that the Law Court entered the foregoing order after the

parties negotiated and agreed to it and that the order does not lift the automatic stay of the Superior Court’s judgment. In short, the automatic stay remains in place and the lease Licenses obtained from the BPL remains valid and in force.

B. Rebuttal of Mr. Reardon

Mr. Reardon’s testimony similarly misstates basic facts. Despite his statements to the contrary, there are available alternatives to the permitted New England Clean Energy Connect (NECEC) Project route. *See* Exhibit NECEC LLC-1-F (Options 1 and 2 Map).

Regarding routes west of Route 201, Mr. Reardon agrees that, while there will be certain challenges associated with such a reroute, such a reroute is possible. Reardon Direct at 4. Clearly, a Project route west of Route 201 would need to undergo thorough natural resources and permitting review, but Option 1 nevertheless is a viable alternative.

Mr. Reardon claims, however, that “the NECEC cannot be re-routed east of Route 201.” Reardon Direct at 3. This is not true. In fact, nowhere in the Conservation Easement attached as Exhibit B to Mr. Reardon’s testimony is there a prohibition on a utility project such as the NECEC, which the Maine Public Utilities Commission has determined to be a public need. To the contrary, the Conservation Easement restricts only “Utility Transmission Structures,” which are defined as “the Structures normally associated with the local distribution of telecommunication or electric power services, including distribution lines, cables, poles and related equipment.” As the DEP is well aware, the NECEC is a long-distance line that will efficiently move large amounts of electricity across the State of Maine from the generating source in Canada to the substation being constructed in Lewiston – i.e., it is a transmission line – whereas the distribution lines described in the Conservation Easement carry electricity from a substation to residential and commercial customers.

Indeed, it is clear transmission lines are permitted to cross land protected by the Conservation Easement, as evidenced by the existing Jackman Tie Line. *See* map at Reardon Direct Exhibit B, Exhibit A-2, Bk. 2165 Pg. 103. This map clearly shows the existing transmission line passing for approximately 2.3 miles through Conservation Easement land (longer than the Option 2 alternative NECEC route). Furthermore, the Conservation Easement explicitly allows “Wind Power Associated Activities” in “all other locations on the Protected Property.” Reardon Direct Exhibit B, Section 3.C.5. This provision necessarily allows transmission lines to interconnect Wind Power facilities to the electrical grid. Option 2 therefore is viable.

Furthermore, Mr. Reardon incorrectly claims that the “only other possible re-route east of Route 201” would cross the Cold Stream Forest and therefore would require 2/3 legislative approval. Reardon Direct at 4. This is false. As explained in the attached memorandum concerning the Cold Stream Forest from Assistant Attorney General Lauren Parker, it is possible to route the Project through the Cold Stream Forest. *See* Exhibit NECEC LLC-1-G (July 25, 2018 Memorandum from AAG Lauren Parker concerning Cold Stream Forest) (explaining that if the BPL “determines that a transmission line will not frustrate its management of the property for those resources, and the [Department of Inland Fisheries and Wildlife] agrees that a transmission line is not prohibited by or in conflict with the habitat management agreements, the [BPL] may enter into a valid transmission line lease with CMP without obtaining 2/3 legislative approval”). Mr. Reardon’s statement that “the NECEC cannot be re-routed east of Route 201” is simply not true. In fact, there may be additional routes available beyond Options 1 and 2.

In summary, it is evident that there are potential re-routing alternatives that could be implemented in the event the BPL land becomes unavailable.

Exhibits:

NECEC LLC-1-F: Options 1 and 2 Map

NECEC LLC 1-G: AAG Memorandum

I declare by oath or affirmation that the above testimony is true and accurate to the best of my knowledge and belief.

Dated: October 12, 2021

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thorn C. Dickinson", written over a horizontal line.

Thorn C. Dickinson

Thorn Dickinson

**Exhibit
NECEC LLC-1-F
(Options 1 and 2 Map)**

NECEC Proposed Route

Existing "Jackman Tie Line" Transmission Line (note 3 miles through BPL land, 0.7 miles through Cold Stream Conservation Area)

NECEC Proposed Route (note 0.9 miles through BPL land)

Existing "Jackman Tie Line" Transmission Line (note 2.3 miles in Moosehead Conservation Easement Area)

BPL Land

Moosehead Conservation Easement

201

201

201

201

201

Cold Stream Conservation Area

Alternative Option 2- 3.8 miles (1.6 miles incremental, 1.5 miles in Moosehead Conservation Easement Area)

Alternative Option 1- 14.5 miles (1 mile incremental)

West Forks

NECEC Kennebec River HDD Location

NECEC Proposed Route

Upper Kennebec Area- Potential BPL Reroute Options Map

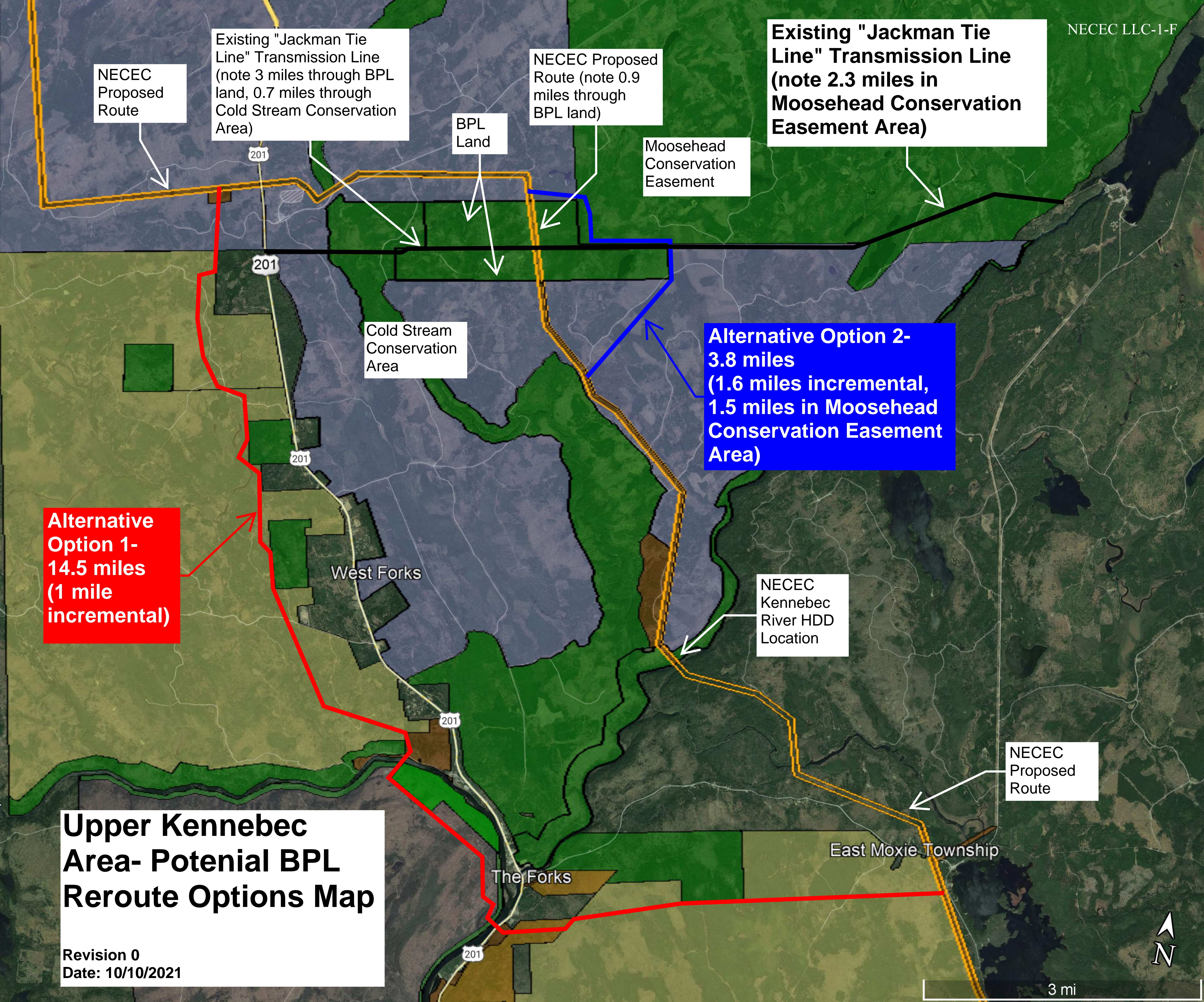
East Moxie Township

The Forks

Revision 0
Date: 10/10/2021



3 mi




Thorn Dickinson

**Exhibit
NECEC LLC-1-G
(AAG Memorandum)**

**OFFICE OF THE
ATTORNEY GENERAL**6 State House Station
Augusta, Maine 04333-0006phone: 626-8878
fax: 626-8812
email: lauren.parker@maine.gov

Memorandum

To: Tom Desjardin, Director, Bureau of Parks and Lands

From: Lauren E. Parker, Assistant Attorney General 

Date: July 25, 2018

Subject: Cold Stream Forest

Introduction

You have asked whether the Bureau of Parks and Lands (the BPL), within the Department of Agriculture, Conservation, and Forestry (the DACF), must obtain 2/3 legislative approval, pursuant to either 12 M.R.S.A. § 598-A (Supp. 2017) or 5 M.R.S.A. § 6209(6) (2013), to lease to Central Maine Power Company (CMP) for a transmission line public reserved lands that were acquired with proceeds from the Land for Maine's Future (LMF) Fund (LMF funds). As explained below, 12 M.R.S.A. § 598-A, not 5 M.R.S.A. § 6209(6), applies to the use of public reserved lands that were acquired with LMF funds. Thus, the Bureau may enter into a valid transmission line lease with CMP if such a lease will not "substantially alter" the public reserved lands at issue.

Background

In an application dated September 27, 2017, Central Maine Power (CMP) applied to the Department of Environmental Protection (the DEP) for a permit, pursuant 38 M.R.S.A. § 483-A(1) (Pamph. 2017) (the Site Law), for a high voltage direct current transmission line that would run from Quebec, through Western Maine, to a conversion station in Lewiston. When a development subject to the Site Law is proposed for the unorganized and deorganized areas, the Land Use Planning Commission certifies to the DEP whether the proposed development is an allowed use within the zoning sub-district(s) where it is proposed. 12 M.R.S.A. § 685-B(1)(B-1) (Supp. 2017); 38 M.R.S.A. § 489-A-1 (Pamph. 2017); *see* 12 M.R.S.A. § 682(1) (Supp. 2017) (defining "unorganized and deorganized areas"). CMP's proposed route would cross through several sub-districts zoned by the LUPC as Recreation Protection (P-RR sub-district). In a P-RR sub-district, utility facilities may be allowed by special exception "provided that the applicant shows by substantial evidence that," among other criteria, "there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant." 01-672 C.M.R. ch. 10, § 10.23(I)(3)(d)(8) (2017). The Bureau has identified a possible alternate route for part of CMP's proposed transmission line, which, I understand, would traverse several miles along the

southeastern boundary of the Cold Stream Forest unit of public reserved lands and not be located in a P-RR sub-district.

The Bureau acquired the Cold Stream Forest unit of public reserved lands (Cold Stream Forest) in 2016 with LMF funds and money from the federal Forest Legacy Program.¹ See 5 M.R.S.A. § 6203 (2013) (establishing the LMF Fund); P.L. 2011, ch. 696 (authorizing a bond issuance for the LMF Fund). Cold Stream Forest is part of the Upper Kennebec Region of public reserved lands. Me. Dep't of Agric., Conservation & Forestry, Draft Upper Kennebec Region Management Plan 2 (May 31, 2018). The Bureau acquired Cold Stream Forest "with the primary goal of protecting wild native brook trout habitat, and deer winter habitat." *Id.* at 44. The Bureau will manage Cold Stream Forest pursuant to two habitat management agreements with the Department of Inland Fisheries and Wildlife (the DIFW), the Bureau's multiple use mandate, and a management plan "for multiple uses including outdoor recreation, wildlife habitat, scenic and natural area protection, water quality protection, and production of forest products." *Id.* at 47, 53, 56-57; Trust for Public Land and Me. Dep't of Agric., Conservation & Forestry, Cold Stream Forest: Proposal to the Land for Maine's Future Board 4 (Mar. 28, 2014); see P.L. 2011, ch. 696, § 5(2) ("Land . . . purchased by the State that contains wildlife or fish habitat must be managed by the Department of Conservation using protocol provided by the Department of Inland Fisheries and Wildlife."); 12 M.R.S.A. § 1847 (Supp. 2017) (establishing a multiple use mandate for public reserved lands and requiring a management plan). Because Cold Stream Forest is public reserved land, and was acquired with LMF funds, the Bureau has asked whether 12 M.R.S.A. § 598-A or 5 M.R.S.A. § 6209(6) requires that the Bureau obtain 2/3 legislative approval to lease part of Cold Stream Forest to CMP for a transmission line.

ANALYSIS

Title 12 M.R.S.A. § 598-A and 5 M.R.S.A. § 6209(6) each require 2/3 legislative approval of certain changes in use and conveyances of specified types of public lands. The plain language of 12 M.R.S.A. § 598-A and 5 M.R.S.A. § 6209(6) suggests that each statute applies to a proposed change in use or conveyance of public reserved lands acquired with LMF funds. To determine which statute applies, or whether both statutes apply, it is necessary to review the Bureau's statutes pertaining to public reserved lands, the LMF statutes, and Maine's designated lands statute.

Statutory Framework

1. The Bureau of Parks and Lands – Public Reserved Lands

The DACF, through the Bureau, is one of the State's land-owning agencies. 12 M.R.S.A. §§ 1802, 1803 (Supp. 2017). The Bureau's lands are classified into different categories—state parks and historic sites, public reserved lands, nonreserved public lands, submerged lands and intertidal lands, the Allagash Wilderness Waterway, and public boating facilities. 12 M.R.S.A. §§ 1803(1), 1804(1), (2) (Supp. 2017). Each category of land is subject to its own management directive. 12 M.R.S.A. § 1804(2). Public reserved lands, which include those lands acquired by

¹ This memorandum is limited to addressing state law. It does not opine as to whether a transmission line lease would be allowed pursuant to the federal Forest Legacy Program.

the State and expressly designated as such by the Bureau, are managed pursuant to a multiple use mandate and a management plan.² 12 M.R.S.A. § 1847; *see* 12 M.R.S.A. §§ 1801(8), 1845(1) (defining, respectively, "public reserved lands" and "multiple use"). Public reserved lands are not held strictly for conservation and recreation purposes. Indeed, 12 M.R.S.A. § 1852(4)-(6) (Supp. 2017) authorizes the Bureau to lease public reserved lands for varying purposes, including for electric power transmission, telecommunications, railroad tracks, warehouses, dam sites, and dump sites.

2. Land for Maine's Future

The LMF program is a public land acquisition program funded by bond sales, the proceeds of which are disbursed by the LMF Board. 12 M.R.S.A. §§ 6203, 6206(1)(C), (D) (2013). The LMF program was created in 1987 to facilitate the acquisition and maintenance of "natural areas for recreation, hunting and fishing, conservation, wildlife habitat, vital ecologic functions and scenic beauty."³ 5 M.R.S.A. § 6200 (2013); P.L. 1987, ch. 506. When deciding whether to award funds to an acquisition proposal, the LMF Board considers, among other things, the land's resources and recreational values, including public access. 5 M.R.S.A. § 6207(2), (3) (2013); P.L. 2011, ch. 696, § 5.

To protect the public's investment, land acquired with LMF funds "may not be sold or used for purposes other than those stated in this chapter, unless approved by a 2/3 majority of the Legislature." 5 M.R.S.A. § 6209(6). Electricity generation and transmission are not among the purposes for which the LMF Board funds land acquisitions. *See* 5 M.R.S.A. §§ 6200 & 6207(2), (3). Thus, if 5 M.R.S. § 6209(6) applies to public reserved lands acquired with LMF funds, the Bureau would need 2/3 legislative approval to lease part of Cold Stream Forest to CMP for a transmission line.

3. Designated Lands Statute

In 1993, Maine's Constitution was amended to require 2/3 legislative approval to convey or substantially alter the uses of public lands held for conservation or recreation purposes. Article IX, section 23 of the Maine Constitution states:

State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all

² The Bureau is in the process of developing its plan for the Upper Kennebec Region, which includes Cold Stream Forest. Prior to adopting a plan, the Bureau must manage Cold Stream Forest in accordance with the Bureau's multiple use mandate. 12 M.R.S.A. § 1847(2); *see also* 12 M.R.S.A. § 1847(3) ("The director may take actions on the public reserved lands consistent with the management plans for those lands and upon any terms and conditions and for any consideration the Director considers reasonable.").

³ Title 5 M.R.S.A. § 6209(2) provides that "[t]itle to all lands acquired pursuant to this chapter must be vested solely in the State." Recent bond authorizations, however, have allowed title to land acquired with LMF funds to be vested in entities that qualify as cooperating entities pursuant to 5 M.R.S.A. § 6201(2) (2013). *E.g.*, P.L. 2011, ch. 696, § 5(1)(B); P.L. 2009, ch. 414, § E-5(2).

members elected to each House. The proceeds from the sale of such land must be used to purchase additional real estate in the same county for the same purposes.

Maine's designated lands statute, 12 M.R.S.A. §§ 598 to 598-B (2005 & Supp. 2017), implements Article IX, section 23 of the Maine Constitution. The designated lands statute provides that designated lands "may not be reduced or substantially altered except by a 2/3 vote of the Legislature." 12 M.R.S.A. § 598-A. Both public reserved lands and lands acquired by the State with LMF funds are designated lands. 12 M.R.S.A. § 598-A(2-A)(D), (6). For purposes of the designated lands statute, "substantially altered" means

changed so as to significantly alter physical characteristics in a way that frustrates the essential purposes for which that land is held by the State. . . . The essential purposes of public reserved . . . lands are the protection, management and improvement of those properties for the multiple use objectives established in section 1847. The essential purposes of lands acquired through the Land for Maine's Future Board *that are not held by the Department of Inland Fisheries and Wildlife or by the Department of Agriculture, Conservation and Forestry* are the protection, management and improvement of those lands for recreation, conservation, farming, open space, plant and animal habitat, scenic values, public access and related purposes.

12 M.R.S.A. § 598(5) (Supp. 2017) (emphasis added).⁴

The designated lands statute defines "substantially altered" in reference to the purposes for which the State holds each type of designated lands. When defining the purposes of LMF-funded lands, the designated lands statute incorporates the purposes of the LMF program, but only for those properties that are held by agencies other than the DIFW or the DACF. If the DIFW or the DACF holds the LMF-funded land, the purposes for which the DIFW or the DACF holds that land are the basis for determining whether a use substantially alters it. A proposed transmission line through Cold Stream Forest is therefore measured against the Bureau's multiple use mandate for public reserved lands and its management objectives for Cold Stream Forest, and not against the purposes of the LMF program. Thus, under the designated lands statute, the Bureau may lease part of Cold Stream Forest to CMP for a transmission line without 2/3 legislative approval if the Bureau finds that a transmission line will not alter the physical characteristics of Cold Stream Forest in a way that frustrates the purposes for which the Bureau holds Cold Stream Forest. 12 M.R.S.A. §§ 598(5), 598-A.

⁴ The designated lands statute defines "reduced" to mean: "[A] reduction in acreage of an individual parcel or lot of designated land under 598-A. 'Reduced' does not mean a reduction in the value of the property . . . [nor] does [it] mean the conveyance of an access right by easement in accordance with section 1814-A." 12 M.R.S.A. § 598-A(4). A transmission line lease will not reduce the acreage of Cold Stream Forest owned by the State and, therefore, is not a reduction requiring 2/3 legislative approval.

**12 M.R.S.A. § 598-A, not 5 M.R.S.A. § 6209(6), Applies to Public Reserved Lands
Acquired with LMF Funds**

Because Cold Stream Forest is public reserved land and because Cold Stream Forest was acquired with LMF funds, both 12 M.R.S.A. § 598-A and 5 M.R.S.A. § 6209(6) purport to apply to a transmission line through Cold Stream Forest. But each statute produces a different result: Whereas 5 M.R.S.A. § 6209(6) requires that the Bureau obtain 2/3 legislative approval to run a transmission line through Cold Stream Forest, 12 M.R.S.A. § 598-A would require 2/3 legislative approval of the same use only if the Bureau determines that the transmission line will not alter the physical characteristics of Cold Stream Forest in a way that frustrates the purposes for which the Bureau holds Cold Stream Forest. Title 5 M.R.S.A. § 6209(6) and 12 M.R.S.A. § 598-A produce different results because their respective standards measure the proposed transmission line against different purposes, one of which—the conservation and recreation purposes of the LMF program—is more restrictive than the other—the multiple use mandate of public reserved lands. Where 5 M.R.S.A. § 6209(6) requires 2/3 legislative approval of a transmission line through Cold Stream Forest, and 12 M.R.S.A. § 598-A may not require 2/3 legislative approval of a transmission line through Cold Stream Forest, 5 M.R.S.A. § 6209(6) and 12 M.R.S.A. § 598-A are in conflict. See *Maine Senate v. Sec'y of State*, 2018 ME 52, ¶ 19, 183 A.3d 749.

"When a more recent amendment to a Maine statute directly conflicts with an older provision, we must, as always determine the intent of the Legislature, and the question becomes whether the older provision has been repealed by implication." *Maine Senate*, 2018 ME 52, ¶ 20, 183 A.3d 749 (quotation marks omitted). This method of statutory construction applies

when a later enactment encompasses the entire subject matter of an earlier act, or when a later statute is inconsistent with or repugnant to an earlier statute. When a later statute does not cover the earlier act in its entirety, but is inconsistent with only some of its provisions, a repeal by implication occurs to the extent of the conflict.

Id. (quotation marks omitted).

At the time the designated lands statute was enacted in 1993, 5 M.R.S.A. § 6209(6) already protected against a sale or change in use of public lands acquired by the State with LMF funds. The more recent designated lands statute protects against the same concerns using different language—"reduced" and "substantially altered"—and covers more types of public lands than does 5 M.R.S.A. § 6209(6).⁵ Although the Legislature could have excluded lands already subject to 5 M.R.S.A. § 6209(6) when enacting the designated lands statute, it chose to include those lands acquired by the State with LMF funds. Additionally, it expressed its intent as to how a proposed change in use of public reserved lands that are acquired with LMF funds and held by the DACF should be evaluated: substantial alteration of those lands is measured against the purposes for which the DACF holds those lands. 12 M.R.S.A. § 598(5). Although the Legislature could have

⁵ The designated lands statute applies only to "real estate held by the State." 12 M.R.S.A. §§ 598(1), (3), 598-A. Title 5 M.R.S.A. § 6209(6) may apply to LMF-funded properties that are not owned by the State. If not, the designated lands statute appears to encompass the entire subject matter of 5 M.R.S.A. § 6209(6).

ascribed the purposes of the LMF program to all lands acquired with LMF funds, including lands held by the DACF, it did not. Instead, it adopted a definition of "substantially altered" that maintains the Bureau's flexibility in managing public reserved lands.⁶ See *An Act to Designate Certain Lands Under the Constitution of the Maine, Article IX, Section 23: Hearing on L.D. 1953 Before the J. Standing Comm. on Energy & Nat. Res.*, 116th Legis. (1994) (testimony of C. Edwin Meadows, Jr., Commissioner of the Department of Conservation). Being the more recent expression of the Legislature as to the use of public reserved lands that were acquired using LMF funds, the designated lands statute "must be deemed a substitute" for 5 M.R.S.A. § 6209(6) when the LMF-funded lands are public reserved lands.⁷ *Maine Senate*, 2018 ME 52, ¶ 23, 183 A.3d 749. Title 5 M.R.S.A. § 6209(6) therefore does not apply to public reserved lands acquired with LMF funds.

Review of Proposed Transmission Line Pursuant to 12 M.R.S.A. § 598-A

The Bureau needs 2/3 legislative approval to lease part of Cold Stream Forest for a transmission line if a transmission line will "substantially alter" Cold Stream Forest. 12 M.R.S.A. § 598-A. A transmission line will "substantially alter" Cold Stream Forest if it "would significantly alter physical characteristics [of Cold Stream Forest] in a way that frustrates . . . the protection, management and improvement of [that] propert[y] for the multiple use objectives" that govern public reserved lands. 12 M.R.S.A. § 598(5). As stated above, the Bureau's multiple use mandate includes the authority to lease public reserved lands for commercial and industrial uses and for the transmission of electricity. 12 M.R.S.A. § 1852(4), (6). That does not mean, however, that a use authorized by 12 M.R.S.A. § 1852 will never "substantially alter" public reserved lands. Rather, such inquiries should be resolved on a case-by-case basis after considering the resources and values of the public reserved lands at issue.

Here, there is no question that a transmission line will alter the physical characteristics of Cold Stream Forest. Such a project entails vegetation removal, surface alteration, and the placement of poles and wires. To determine whether that physical alteration is significant enough to frustrate the purposes for which the Bureau holds Cold Stream Forest, the Bureau must consider the impacts a transmission line will have on wild brook trout habitat, deer wintering habitat, other wildlife and habitat resources, recreational values, and timber harvesting. See *Me. Dep't of Agric., Conservation & Forestry, Cold Stream Forest: Proposal to the Land for Maine's Future Board* (proposing to manage Cold Stream Forest "under the Bureau's multiple use mandate for protection

⁶ In contrast, whether a proposed use of LMF-funded land held by the Department of Marine Resources (the DMR) constitutes a substantial alteration would be measured against the purposes of the LMF program. 12 M.R.S.A. §§ 598(5), 598-A; see 12 M.R.S.A. § 6022(5) (Supp. 2017) (authorizing the DMR to acquire land).

⁷ The Legislature subsequently amended both 12 M.R.S.A. § 598(4)-(5) and 5 M.R.S.A. § 6209(6)-(7) to clarify that the Bureau may grant access rights by easement across a rail trail without obtaining 2/3 legislative approval. P.L. 2011, ch. 278. Those changes, however, do not pertain to public reserved lands. See 12 M.R.S.A. § 1813 (Supp. 2017) (placing rail trails under subchapter 2 of chapter 220, which subchapter pertains to state parks and historic sites and not to public reserved lands).

and enhancement of wildlife habitat, rare or exemplary natural communities, recreation, and timber production"). Additionally, the Bureau and the DIFW must determine whether a transmission line is prohibited by or conflicts with any provision of the Habitat Management Agreements governing the property. P.L. 2011, ch. 696, § 5(2) ("Land . . . purchased by the State that contains wildlife or fish habitat must be managed by the Department of Conservation using protocol provided by the Department of Inland Fisheries and Wildlife."). If, after undertaking that review, the Bureau determines that a transmission line will not frustrate its management of the property for those resources, and the DIFW agrees that a transmission line is not prohibited by or in conflict with the habitat management agreements, the Bureau may enter into a valid transmission line lease with CMP without obtaining 2/3 legislative approval.

Conclusion

Title 12 M.R.S.A. § 598-A, not 5 M.R.S.A. § 6209(6), applies to the Bureau's possible lease of Cold Stream Forest to CMP for a transmission line. If the Bureau determines that a transmission line will not "substantially alter" Cold Stream Forest, it does not need 2/3 legislative approval to enter into a valid transmission line lease with CMP.

Lauren Johnston

**Rebuttal Testimony
NECEC LLC-3**

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NEW ENGLAND CLEAN ENERGY CONNECT)	
#L-27625-26-A-N/#L-27625-TG-B-N/)	LICENSE SUSPENSION
#L-27625-2C-C-N/#L-27625-VP-D-N/)	PROCEEDING
#L-27625-IW-E-N)	

PRE-FILED REBUTTAL TESTIMONY AND EXHIBIT OF
LAUREN JOHNSTON

Rebutting

- Jeffrey Reardon Pre-Filed Direct Testimony

October 12, 2021

I. Qualifications of Witness

My name is Lauren Johnston and I am a Senior Environmental Scientist at Burns & McDonnell Engineering Company, Inc. (Burns & McDonnell). My curriculum vitae is attached hereto as Exhibit NECEC LLC-3-A. I have been working on behalf of Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC LLC) as a Senior Environmental Permitting Specialist and Environmental Manager for the New England Clean Energy Connect (NECEC) Project since April of 2017.

As part of the NECEC Project permitting team, I served a principal role in developing the state and federal permit applications and supplemental applications. On behalf of CMP and NECEC LLC, I interfaced directly with the regulatory agencies as part of the consultation process, application development and supplementation, and post-filing data requests. I am

intimately familiar with the natural resources avoidance and mitigation measures incorporated into NECEC Project design and development. I have also served as a subject matter expert at three public information meetings at various locations in Maine, and as a witness at the Maine DEP hearings in April and May of 2019 concerning the applications for the NECEC Project.

I have been an environmental professional for 15 years, working with a variety of clients in the electrical transmission, solar power, wind power, and telecommunications industries. I obtained a Bachelor of Science in Natural Resource Studies, with minors in Resource Economics and Sociology, from the University of Massachusetts-Amherst in 2005 and became a Certified Professional in Erosion and Sediment Control (CPESC) in 2015. From 2006 to 2011, I was employed by EBI Consulting in Burlington, Massachusetts as an environmental scientist primarily conducting Phase I environmental site assessments, National Environmental Policy Act environmental reviews, and Section 106 of the National Historic Preservation Act consultations for the telecommunications and real estate industries. In 2011, I joined Burns & McDonnell in New Gloucester, Maine where I was an environmental specialist and construction compliance inspector as part of the program management team on CMP's Maine Power Reliability Program (MPRP) transmission line project. Since the completion of MPRP in 2015, a large portion of my project work has been with CMP and NECEC LLC, including permit and construction compliance oversight on CMP's Lewiston Loop Project (2015-2018) as well as state and federal permit application development, submission, and post-filing support for the NECEC Project (2017-present).

II. Purpose and Scope of Testimony

I present this testimony for the purpose of rebutting certain statements made in the pre-filed testimony of Natural Resources Council of Maine witness Jeffrey Reardon.

III. Discussion

A. Reardon Section II: The Cold Stream Watershed and the Location and Feasibility of Alternative Routes for NECEC

Mr. Reardon's statement that "the alternatives analysis for the current route has already rejected that route [west of Route 201] along with other alternatives to Segment 1" is false. Reardon Direct at 4. Mr. Reardon's statement suggests that the alternative routes evaluated in the initial alternatives analysis, conducted in the NECEC licensing proceeding, could not be re-evaluated if the permitted NECEC Project route were no longer viable. Licensees' alternatives analysis selected the permitted Project route as the "preferred alternative" because it was determined to be the least environmentally damaging alternative meeting the project purpose and need. The alternative routes considered were not "rejected." Rather, they were not *selected* as the "preferred alternative." As Mr. Dickinson explains in his Direct Testimony, routing the Project west of Route 201 is more environmentally damaging than the permitted Project route, for many of the same reasons Mr. Reardon raises now. Dickinson Direct at 9; Reardon Direct at 4. Not only is the permitted NECEC route the least environmentally damaging alternative, but the permitted NECEC route also met the definition of "practicable" under Chapter 310 – which is "[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project" – and hence was (and is) the preferred route.

If the BPL lease were no longer valid, and could not be reinstated, then the permitted Project route would no longer be "practicable" because it would not be "available" and therefore could not be the "preferred alternative." This would give rise to a new preferred route that is not only available and feasible but also the least environmentally damaging available and feasible route. Mr. Reardon states the obvious when he testifies that "any such re-route would necessarily be significant and require extensive permitting procedures and a new alternatives

analysis of prospective routes and their impacts on fish, wildlife, aquatic and scenic resources in an area that is rich in these.” Reardon Direct at 4. But there is no reason why a new alternatives analysis could not consider the same alternatives considered in the NECEC licensing proceeding, in addition to any new alternatives that may not have been “available” at the time the NECEC application was being considered, and conclude that another alternative is available and which then is the least environmentally damaging practicable alternative meeting the project purpose and need.

B. Reardon Section III: Practical Requirements of the Measures that Would be Necessary to Protect the Environment if the Permit Were to be Suspended

Mr. Reardon’s concern for the “sensitive landscape between Route 201 and the Kennebec River” ignores the fact that climate change “is the single greatest threat to Maine’s natural environment.” Reardon Direct at 5; DEP Order at 105. As the Commissioner found in the May 11, 2020 Order, climate change “is already negatively affecting brook trout habitat, and those impacts are projected to worsen. It also threatens forest habitat for iconic species such as moose, and for pine marten, an indicator species much discussed in the evidentiary hearing.” DEP Order at 105. In other words, it is not the NECEC Project that is threatening this “sensitive landscape,” but rather the greenhouse gas (GHG) emissions causing climate change, which the Project combats, that is threatening all of Maine’s landscapes and natural environment. Mr. Reardon appears to accept this basic truth – transmission of clean, renewable electric energy is immediately needed to mitigate GHG emissions – when he acknowledges that were the license to be suspended “a whole new fragmenting corridor” would be needed “to replace” the NECEC. Reardon Direct at 5. Suspending the DEP permit and halting the ongoing construction of the NECEC would be a retreat from the “immediate action” the Commissioner recognized is needed to fight climate change.

Furthermore, construction should be allowed to continue now because, in the unlikely scenario of a permanent cessation and cancellation of the Project, NECEC LLC would decommission the high voltage direct current transmission line over the corridor, followed by natural revegetation of the area. This “extensive remediation” that Mr. Reardon posits would require “many years” to effect means that allowing construction to continue now would result in no permanent alterations to the landscape. Reardon Direct at 5. In fact, Mr. Reardon testified in the underlying licensing proceeding that clearing activities do not have a permanent impact: “Of course the impacts of timber harvesting on the stream directly in the sense of clearing, number one, they’re temporary not permanent.” Hearing Day Four Transcript, Reardon 143: 17-20 (Apr. 4, 2019).

Exhibit:

NECEC LLC-3-A: Johnston CV

I declare by oath or affirmation that the above testimony is true and accurate to the best of my knowledge and belief.

Dated: 10/12/2021

Respectfully submitted,



Lauren Johnston

Lauren Johnston

**Exhibit
NECEC LLC-3-A
(CV)**

LAUREN JOHNSTON, CPESC

Senior Environmental Scientist



Lauren serves Burns & McDonnell as a senior environmental scientist in the Environmental Services division. She has more than 15 years of experience specializing in regulatory permitting, reporting and environmental compliance monitoring. Lauren has also completed numerous regulatory site assessments for a wide variety of properties and client types. A summary of her experience is provided below.

New England Clean Energy Connect | Central Maine Power and NECEC Transmission LLC Portland, Maine | April 2017 – Present

Environmental Manager- Lauren served a principal role in the preparation and filing of federal and state environmental permit applications for the New England Clean Energy Connect (NECEC) Project. The NECEC Project includes approximately 146.5 miles of High Voltage Direct Current (HVDC) transmission line and associated substation facilities. Lauren worked closely with Central Maine Power and agency personnel to develop several aspects of the U.S. Department of Energy Presidential Permit for Border Crossings application, U.S. Army Corps of Engineers Individual Permit application, Maine Department of Environmental Protection (MDEP) Site Location of Development (Site Law) permit application, and MDEP Natural Resources Protection Act (NRPA) permit application. Under this effort, Lauren was a subject matter expert in three public information meetings at various locations in Maine. Lauren continues to provide permitting support services, including responses to agency information requests for Central Maine Power and NECEC Transmission LLC.

Bay State Wind Offshore Wind Farm Project | Bay State Wind, LLC Massachusetts, various locations | November 2018 - Present

Senior environmental permitting specialist - Lauren provided review and edits of draft sections of the Construction and Operations Plan, a requirement of the Bureau of Ocean Energy Management (BOEM) as part of the lease awarded to Bay State Wind, LLC. Bay State Wind, LLC is a joint venture between Ørsted and Eversource, which proposes to construct, own, and operate the Bay State Wind Offshore Wind Project within a 14-mile offshore lease area, approximately 12 miles south of Martha's Vineyard, Massachusetts. Onshore components consist of a transmission corridor, interconnection cable corridor, one new onshore substation site, and improvements to an existing National Grid substation, all located in Somerset, Massachusetts. Offshore design is anticipated to be up to 110 wind turbines, two offshore substations, an inter-array cable, and two export cables, located in the BOEM lease area and in state and federal waters. Lauren's review of the Construction and Operations Plan offered expert knowledge of the project design; federal, state and local regulatory requirements; and best management practices.

EDUCATION

- ▶ BS, Natural Resource Management

REGISTRATIONS/CERTIFICATIONS

- ▶ Certified Professional in Erosion and Sediment Control (CPESC)
- ▶ Certification in Erosion and Sedimentation Control Practices- Maine DEP
- ▶ Adult CPR/AED
- ▶ Standard First Aid
- ▶ OSHA 30 hour CS&H

10 YEARS WITH BURNS & MCDONNELL

15 YEARS OF EXPERIENCE



LAUREN JOHNSTON, CPESC

(continued)

Footprint Salem Harbor Power Plant Project | Footprint Power Salem Harbor Development LP

Salem, Massachusetts | October 2018 - Present

Environmental inspection services- Lauren was responsible for monitoring compliance with environmental permits issued by various federal, state, and local regulatory agencies, specifically to actions associated with the EPA Remediation General Permit, Construction General Permit, and associated Stormwater Pollution Prevention Plan (SWPPP) and the Salem Conservation Commission Order of Conditions. The redevelopment plan for the Footprint Power Plant included demolition of the existing coal-fired electric generation facility and construction of a new Combined Cycle Gas (CCG)-fired electric generation facility. The project site consists of approximately 65 acres, with approximately 20 acres being redeveloped as an electric generation facility. Inspections were conducted in accordance with regulatory and reporting requirements. Lauren regularly interfaced with the construction subcontractors to promote and confirm environmental compliance, specifically with remediation, erosion control, and mitigation measures during construction activities.

Jericho Rise Wind Project | EDP Renewables NA Franklin County, New York | February 2017

Environmental compliance services- Lauren developed a construction environmental monitoring manual for the Jericho Rise Wind Project, which included the development of 37 turbines, a new substation, electrical collection lines and associated infrastructure. After a comprehensive review of project documents, permits, and plans, Lauren developed the compliance manual for use by the owner and developed pre-construction and construction compliance checklists. Lauren also assisted with the development of the environmental compliance training program that was presented to the project construction crew prior to the start of construction.

Lewiston Loop Project | Central Maine Power New Gloucester, Maine | 2015 to 2018

Environmental compliance coordinator and inspector- Lauren provided environmental coordination and inspection on this multi-component upgrade to the Lewiston/Auburn area electrical transmission system. The project includes the construction of a new substation, six miles of 115kV overhead transmission lines, one mile of underground 115kV line through an urban area of Lewiston, decommissioning of an existing substation, and various other upgrades to the supporting grid. Lauren interfaced between the owner, contractors, and governmental agencies regarding permitting and environmental needs. Lauren provided weekly environmental inspections during construction of the various project components. In this role, Lauren was also responsible for preparing the MDEP Construction General Permit Notice of Intent and an application for a minor revision to the NRPA permit for the project.

Maine Power Reliability Program | Central Maine Power New Gloucester, Maine | 2011 to 2015

Environmental compliance inspector- Lauren served as an environmental compliance inspector on this \$1.4 billion modernization of Maine's bulk power system. She coordinated preconstruction site walks and attended preconstruction meetings with agency staff, DEP third party inspectors, and involved contractors. The MPRP consisted of nearly 450 miles of linear transmission line construction, so Lauren's work involved variable site conditions and required knowledge of appropriate application of erosion and sediment controls and proper dewatering techniques. The MPRP included the construction of six new substations as well major upgrades to an additional six substations. Lauren provided environmental inspection of the stormwater system construction at many of these substation sites. She also reviewed restoration of the



LAUREN JOHNSTON, CPESC

(continued)

project sites for final stabilization and established re-vegetation. Lauren worked closely with the client, contractors, and DEP third party inspectors to monitor project compliance.

EBI Consulting*

Burlington, Maine | 2006-2011

Staff environmental scientist- Lauren served as a staff environmental scientist, specializing in environmental investigations, site assessments, National Environmental Policy Act (NEPA) environmental reviews, and State Historic Preservation Office (SHPO) evaluation and submittals for the telecommunications industry. She conducted numerous pre-acquisition assessments/due diligence assignments for a wide range of properties throughout the northeast. The assessments were performed to evaluate site conditions, potential off-site liabilities, historic site and vicinity use, and site remediation recommendations to prospective buyers, owners, and operators. She performed sampling of soils, lead paint, and asbestos as part of her onsite field work.

**denotes experience prior to joining Burns & McDonnell*

