

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

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
SITE LAW CERTIFICATION SLC-9

FRIENDS OF THE BOUNDARY
MOUNTAINS [GROUP 1]

COMMENTS ON:

DEPARTMENT OF ENVIRONMENTAL
PROTECTION FINDINGS OF FACT AND
DRAFT ORDER

April 9, 2020

Friends of the Boundary Mountains finds that the Department of Environmental Protection's (DEP's) Draft Order has many significant failings, omissions, and erroneous conclusions. The Draft Order acknowledges "the project as originally proposed would have had substantial impacts, particularly in the 53.5-mile portion of the corridor that extends from the Quebec border to The Forks, known as Segment 1."¹ Although the Draft Order purports "to avoid or minimize those impacts through a variety of mitigation measures,"² it overwhelmingly fails to do so.

Cumulative landscape-scale impacts

DEP claims that the conditions imposed on the transmission line by the Draft Order will provide an unprecedented level of natural resource protection for this transmission line construction that is fully supported by scientific evidence.³ However, the Order fails to address the landscape-scale ecological values of the region that will be severely and unreasonably impacted as the CMP corridor crosses Segment 1.

Segment 1 is a major new and permanent fragmenting feature. Its impacts are cumulative – on top of existing fragmentation impacts associated with forest management in the region. The Order acknowledges that landscape-scale wildlife habitat impacts associated with fragmentation will occur, but states that these will not be unreasonable.⁴

¹ DEP Draft Order, p1

² Ibid, p1

³ Ibid, p1

⁴ Ibid, p67

Is it reasonable for the Order to ignore the cumulative impacts of crossing 292 headwater stream, brooks and rivers that drain into the Kennebec River? The proposed filter areas will not fully protect these critical catchment areas. The Order allows clearing of all woody vegetation in the 54 foot wire zone, which would be maintained as scrub-shrub rather than forest habitat – brook trout streams need a forest canopy for shade and to provide woody material. Filter areas are not the same as stream buffers where a forest canopy is maintained. Because the corridor crosses such a large swath of the Kennebec River headwaters, it is likely that it would have significant watershed-wide impacts.

The Order makes no mention or discussion of the negative edge effects associated with construction and maintenance of the 53 miles of corridor in Segment 1. Many negative edge effects would still exist even with tapering – there would still be a permanent linear edge (perhaps not as hard); the corridor vegetation would be maintained in an early successional condition (even if allowed to grow to 35 feet). Predator species, such as red fox, raccoons, dogs and cats, which thrive in early successional habitat, would have new and easy access to interior forest prey species.

The transmission corridor proposed by CMP would bisect many large habitat blocks, which would then be broken into smaller ones, thereby creating massively more negative edge effects. CMP's application failed to address this major unreasonable adverse impact on the entire landscape and the DEP Draft Order also fails to address this shortcoming. DEP cannot claim, with a straight face, that its failure to address this adverse impact is reasonable.

If a vegetation height of 35 feet can be maintained in some areas, as stated in the Order, a question arises as to why not require it throughout Segment 1?

The Order makes no mention or shows concern with the penetration of invasive species into the interior forest after the opening up of the forest with a transmission corridor and its many access roads. The Order is silent on how invasive species would be monitored and eradicated if and when they move into the Segment 1 corridor (as they undoubtedly will).

The Order does not differentiate between impacts on species that are generalists or thrive in early successional habitats and those that require late successional habitat or forest interior conditions. The species that DEP says will benefit – moose, fox, white-tailed deer, etc. are all habitat generalists. Pine marten is the only forest specialist mentioned in the Order. As Dr. Mac Hunter explains in his expert testimony at the Hearing, there are many such specialists. Dr. Hunter points out, “A highly mobile, generalist species such as a black bear will react to a utility corridor very differently than a smaller species that strongly prefers a shaded forest floor, like a spotted salamander or wood frog.”⁵

⁵ Testimony before the Maine Department of Environmental Protection By Malcolm L. Hunter Jr., PhD. Serving as an Expert Witness for The Nature Conservancy in Maine, dated February 25, 2019

Under the Order CMP would be required to maintain existing occurrences for Goldie's fern, small whorled pogonia and other rare species, but there is no requirement to identify and maintain suitable habitat for these rare species elsewhere in the corridor – rare species are particularly susceptible to climate change and need to be able to migrate as temperatures warm. Moreover, the Order does not address the increased mortality of species associated with the construction, transmission infrastructure, or ongoing maintenance of the corridor.

The big picture issue of the cumulative landscape-scale regional impacts of the NECEC project due to landscape fragmentation and the permanent interruption of regional wildlife migratory patterns was thoroughly addressed by Janet McMahon in her sworn testimony at the DEP Hearing.⁶ Ms. McMahon is an ecologist who has extensively studied the effects of fragmentation on the Western Maine forest landscape and has published two papers on this subject, both of which were submitted as exhibits with Ms. McMahon's testimony.⁷ Yet the substance of her testimony was ignored by DEP in drafting this Order.

Dr. David Publicover, scientist with the Appalachian Mountain Club, gave extensive expert testimony at the DEP Hearing on the critical adverse impacts of fragmentation that would be generated by the NECEC project.⁸ The importance of his testimony on fragmentation has also been largely ignored by DEP, as has other expert testimonies.

The Maine Site Law requires no net loss of function and values. The scientific evidence that CMP's proposed NECEC project as modified by the DEP Draft Order meets this requirement remains weak at best. DEP's focus in this Draft Order is on discrete habitat-scale impacts and mitigation, rather than landscape-scale impacts and mitigation, which is far more critical to the overall enduring habitat values of the Maine forest.

Conservation of Wildlife

On page 79 of the Draft Order the DEP states "Because of the impacts to wildlife, even with on-site mitigation, the Department finds additional, off-site, mitigation in the form of land conservation is required to ensure the applicant has made adequate provision for the protection of wildlife in the region affected by the project." This in itself is overt acknowledgement that wildlife and wildlife habitat will suffer by building this corridor.

⁶ Testimony of Janet S. McMahon, Serving as an Expert Witness for Friends of the Boundary Mountains, dated February 28, 2019

⁷ McMahon, J. 2016. Diversity, Continuity and Resilience: The Ecological Values of the Western Maine Mountains. Occasional Paper No. 1. Maine Mountains Collaborative, Phillips, Maine.
McMahon, J. 2018. The Environmental Consequences of Forest Fragmentation in the Western Maine Mountains. Occasional Paper No. 2. Maine Mountains Collaborative, Phillips, Maine.

⁸ PRE-FILED TESTIMONY OF DR. DAVID PUBLICOVER, APPALACHIAN MOUNTAIN CLUB, ON BEHALF OF INTERVENOR GROUP 4 (APPALACHIAN MOUNTAIN CLUB~ NATURAL RESOURCES COUNCIL OF MAINE AND TROUT UNLIMITED) February 22, 2019

DEP submits absolutely no scientific evidence that the wildlife habitat and the associated wildlife now occupying this corridor in Western Maine and adjacent areas, as well as the extensive migratory corridors that cross the CMP proposed site, can be replaced by some other property God knows where and in what condition.

The fact is that conservationists and natural scientists the world over are desperately working to **preserve** as much wildlife corridor habitat as possible to lessen the impact of the Sixth Great Extinction, yet Maine's DEP goes against this worldwide effort by attempting to placate and bamboozle Maine's citizen by a proposed 40,000 acre tract of supposedly "conserved" land with no specific criteria or parameters.

The Order states, "Within two years of the date of this Order, CMP must develop and submit to the Department for review and approval a plan to permanently conserve 40,000 acres in the vicinity of Segment 1. Allowable conservation may include preservation or working forest conservation easements, requiring sustainable harvesting practices, focused on large habitat blocks. Any plan including the proposed use of a conservation easement must include a proposed holder. Within five years of the date of the Order, the approved conservation plan must be fully implemented."

This so-called conservation condition is as vague and nebulous as it could be. DEP is simply kicking the can down the road by assigning it the most open-ended and general criteria possible. Where will the public oversight and scrutiny be in two years for this CMP orchestrated "plan"?

For land to be truly "conserved" it must be land that would otherwise be developed. The DEP Order is silent on the criteria for designating the 40,000 acres, leaving it up to CMP.

Conserved land should be land that is in jeopardy of being developed now or in the foreseeable future that would negate its value as wildlife habitat (e.g., for housing, second homes, resorts, or industrial usage). **In other words, it must be preserved in its natural wild state.** Preservation is when lands and their natural resources should not be consumed by humans and should instead be maintained in their pristine form.

Otherwise, this condition may end up merely consisting of a transfer of ownership from one large landowner to another large landowner to hold and strip (or build industrial projects upon, such as habitat-destroying windpower) with a pretty "conservation" label hung on its neck, but without meaningful substance. There is no real conservation without strict definitions and specific criteria applied to CMP's plan RIGHT NOW.

The NRPA and Site Law become twisted and distorted when used to favor a corporate scheme that otherwise should be rejected outright. If a project has unreasonable adverse impacts it should be rejected outright. The developer should not be given the opportunity to buy off the impacts with some extraneous deal.

The concept of compensating for the unreasonable adverse impacts of the New England Clean Energy Connect by so-called “conservation” elsewhere on the landscape fails abysmally on three levels:

- 1) It is poor public policy to sacrifice one area of natural resources that should be protected under the Maine NRPA for theoretical conservation of another area that is neither defined nor specified as to its value or character in the Draft Order. In a big picture view this “conservation” boondoggle accomplishes nothing but to make a corporate developer relieved and happy that while their original proposal is fatally flawed, it will still be permitted by the machinations of the permitting agency. It is poor public policy to regard nature and natural areas as pieces on a chess board that can be moved around to compensate for damage and loss.
- 2) It is the fox guarding the chicken coop. The details of this conservation slight-of-hand are neither expressed nor even suggested in the Draft Order. The entire definition and parameters of whatever conservation easement are used, who the holders will be, etc. are being left to CMP to determine **in 2 years time**. Absurd! Any such Plan for conservation of 40,000 acres should be on the table PRIOR to the issuance of permits.
- 3) Despite DEP trying to use this so-called conservation condition to compensate for the unavoidable adverse impacts of the corridor, these impacts are of such a broad landscape scale that the 40, 000 acres, wherever it is located, will in itself be negatively impacted by the fragmentation produced by even a 54’ wide corridor.

Additional questions and concerns left unaddressed by the DEP Draft Order:

Monitoring: A great deal of the success of any conditions or mitigation requirements that DEP places on the NECEC project will depend on the rigorousness and objectivity of a third party monitoring system for the life of the transmission corridor. There are bits and pieces of third-party inspection requirements in the Order, such as for erosion control. However, an overall plan for ecosystems monitoring needs to be finalized and included in any Order.

This plan must specify how impacts on wildlife habitats, such as brook trout streams, vernal pools, deer yards and umbrella species will be monitored and how baseline data will be collected and by whom. All data collections and inspections must be done by third-party independent sources. CMP must be required to set up an escrow account to fund third-party ecosystems monitoring, invasive species removal, etc. Inventory work, such as for inventorying heron rookeries, needs to be completed prior to granting any permits.

Bonding: CMP should be required to post a large enough bond to assure that all conditions and mitigations will be fully executed throughout the life of the transmission corridor.

Alternative Analysis: The Draft Order discusses CMP's alternative analysis and concludes it did a fine job. "The Department begins its evaluation of natural resource impacts of the NECEC project with a review of the applicant's analysis of alternatives. Chapters 310 and 335 require an applicant to submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts.... In sum, the Department finds the factors considered by the applicant in its alternative analysis were appropriate and sufficient in number and scope."⁹

DEP requires applicants to examine the no build alternative in its alternative analysis. In its application CMP states, "No -Action Alternative: Not constructing the NECEC project is the no- action alternative. The no -action alternative, however, would not meet the NECEC Project's purpose of allowing CMP to deliver 1,200 MW of the clean energy generation from Quebec to the New England Control Area at the lowest cost to ratepayers."¹⁰ CMP then goes on to dismiss the entire concept of a no build alternative or a non-CMP option (e.g., Vermont's already permitted project) as not meeting **CMP's needs**.

Of course it would not meet CMP's needs, which are to make a profit, like any other for-profit corporation! However, it could very well meet the true and ultimate purpose of an equivalent energy project– an opportunity to provide an additional 1,200 MW of the clean energy generation to the New England Control Area.

The No Build alternative should be re-considered with a program of energy efficiency and energy conservation to save 1200 Megawatts of electric power for the New England grid. Contrary to CMP portraying the purpose of the NECEC project as transmitting 1200 MWs of "clean" power from Hydro- Quebec to MA, it is far more accurate to describe the purpose of the project as assuring 1200 more MWs of clean power for the grid. CMP's alternatives analysis is deficient by neglecting to consider energy efficiency and conservation as the source of the 1200 additional megawatts.

DEP claims that it has "applied the statutes and regulations it administers in this Order to approve the least environmentally damaging alternative available to achieve that purpose."¹¹ But it has not! It should NOT merely accept **CMP's needs** as the purpose of the project but should look deeper and broader at the true needs of the New England grid before it allows CMP to destroy 53 miles of prime Maine wildlife habitat and fragment one of the last remaining intact regional blocks of interior forestland forever.

CONCLUSION

Maine's Natural Resources Protection Act and Site Location of Development Act are robust legal and regulatory tools used for the fundamental purpose of protecting Maine's

⁹ Order, p. 70

¹⁰ NECEC Natural Resources Protection Act Application page 14: 2.3.1

¹¹ Order, p.2

ecosystems and the species that need these ecosystems for survival. When a developer or utility seeks approval for a project that has so many seriously unreasonable adverse impacts that no amount of mitigation or compensation can cover-up its flaws and failings, it behooves the relevant regulatory agencies to simply reject the project as incompatible with the fundamental principles of these laws, and not attempt to put “lipstick on a pig”.

Maine DEP, which acknowledges in the Draft Order the many adverse impacts of the New England Clean Energy Connect project, as testified to by so many eminent experts and specialists during the 6 days of public hearings, should do the obvious and outright reject this project, as called for by the very purpose of Maine’s Natural Resources Protection Act and Site Location of Development Act, rather than try to contort the laws to satisfy CMP and its Hydro-Quebec partner.

Submitted by:

A handwritten signature in black ink, reading "Robert P. Weingarten", is written over a horizontal line. The signature is cursive and appears to be a scan of a physical document.

Robert P. Weingarten
President, Friends of the Boundary Mountains

April 13, 2020