

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



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GOVERNOR

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October 23, 2020

SENT VIA ELECTRONIC MAIL ONLY

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**Re: Central Maine Power Company, New England Clean Energy Connect
Department Order L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N,
L27625-VP-D-N, L-27625-IW-E-N (“NECEC Order”)
Chair ruling regarding West Forks’ Supplement to Motion for Stay of Agency Decision**

Dear Participants:

On September 25, 2020, appellants Natural Resources Council of Maine (“NRCM”) and West Forks, et al. (“West Forks Group”) filed with the Board of Environmental Protection (“Board”) separate requests for a stay of the May 11, 2020, Order of the Commissioner of the Department of Environmental Protection (“Commissioner”) conditionally approving the application of Central Maine Power Company (“CMP”) to construct the New England Clean Energy Connect (“NECEC Order”). These renewed requests were made after the August 26, 2020, decision by the Commissioner denying NRCM’s and the West Forks Group’s initial requests for a stay of the NECEC Order (“Commissioner’s Stay Decision”).

On October 16, 2020, and by and through their respective attorneys, CMP, Industrial Energy Consumer Group, and, jointly, the Maine State Chamber of Commerce and City of Lewiston, filed responses in opposition to the renewed requests for a stay.

The Maine Administrative Procedure Act (“APA”) provides that an “[a]pplication for a stay of an agency decision shall ordinarily be made first to the agency, which may issue a stay upon a showing of irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public.” 5 M.R.S. § 11004. The Commissioner’s Stay Decision was made on behalf of the agency (the Department) and addresses the APA criteria that must be met for the agency to issue a stay. It summarizes the petitioners’ arguments and provides a thorough discussion of both the applicable stay criteria and why the petitioners failed to make the showings necessary to justify a stay of the NECEC Order.

In considering the renewed requests for a stay of the NECEC Order, I note at the outset that in making his stay decision, the Commissioner had the benefit of his direct knowledge having attended the evidentiary hearing and his review of the underlying agency record in the formulation of his decision. In order to fully assess all of the petitioners’ arguments, in particular to determine whether there is a strong likelihood of success on the merits of various record-based arguments, I would likely need to conduct an independent review of significant portions of the voluminous NECEC record – a record that reflects the 29-month regulatory review, which included six days of evidentiary hearing. The time required for me to undertake such a review would likely be comparable to the thorough assessment required for the Board to decide the entirety of the appeal.

Upon consideration of the NRCM’s and the West Forks Group’s renewed requests for a stay of the NECEC Order, and putting aside any questions raised regarding my authority to consider such requests, I see no compelling grounds to revisit and reconsider the Commissioner’s Stay Decision and decline to do so here.

The NRCM’s and the West Forks Group’s applications for a stay were already made to the agency and the Commissioner’s Stay Decision already addresses those requests on behalf of the Department. No further appeal to the Board of either the Commissioner’s Stay Decision or my decision not to revisit and reconsider that decision is necessary to exhaust administrative remedies for purposes of the APA and 5 M.R.S. § 11004.

If you have any questions, you may contact Board Analyst, William F. Hinkel, at bill.hinkel@maine.gov (207) 314-1458 or Assistant Attorney General, Peggy Bensinger, at peggy.bensinger@maine.gov (207) 626-8578.

Respectfully,



Mark C. Draper, Chair
Board of Environmental Protection

cc (via e-mail only): Service List (rev. October 19, 2020)