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Admitted in: MA, ME, NH

August 27, 2021

VIA ELECTRONIC MAIL

Mr. James R. Beyer
Maine Department of Environmental Protection
Bureau of Land Resources Regulation
106 Hogan Road
Bangor, ME 04401

RE: Central Maine Power Company, NECEC Transmission LLC, 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

Dear Mr. Beyer:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC, please
find enclosed a Response to Initiation of a Suspension Proceeding and Request for a
Hearing.

Please let me know if you have any questions.

Sincerely,



Matthew D. Manahan

Enclosure

cc (via email): BEP Service List (August 3, 3021)
Melanie Loyzim, Commissioner, Maine DEP

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/)
L-27625-2C-C-N/L-27625-VP-D-N/)
L-27625-IW-E-N)

**RESPONSE OF CENTRAL MAINE POWER COMPANY
AND NECEC TRANSMISSION LLC
TO INITIATION OF A SUSPENSION PROCEEDING
AND REQUEST FOR A HEARING**

Central Maine Power Company and NECEC Transmission LLC (collectively, Licensees) file this response to the Commissioner’s August 12, 2021 letter initiating suspension proceedings concerning the Commissioner’s May 11, 2020 Order (DEP Order) permitting the New England Clean Energy Connect Project (NECEC or Project), and request a hearing in that proceeding.

The Commissioner initiated this proceeding on the grounds that the August 10, 2021 Superior Court decision in *Black v. Cutko*, No. BCD-CV-2020-29, “represents a change in circumstance that may warrant a suspension of the NECEC Order” because it “reversed the Director of the Bureau of Parks and Lands’ decision to enter into a lease in 2020 for a portion of the NECEC corridor located in Johnson Mountain Township and West Forks Plantation.” Commissioner’s letter at 1. There has been no change in circumstance, however, because **the BPL lease is still in effect**. Pursuant to Maine Rule of Civil Procedure Rule 62(e), “the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal.” On August 13, 2021 both the BPL and Licensees appealed the Superior Court’s August 10, 2021 decision. That decision therefore is stayed pending resolution of the appeal, the BPL lease is still in effect, and the Project can be built along the route approved by the DEP. The Commissioner’s determination that Licensees “will not have a lease to construct

the approximately 0.9 mile portion of the transmission line approved in this location” is premature, and there can be no change in circumstances that may warrant a license suspension proceeding until the litigation over the BPL lease is final.¹

Nor has there been any change in circumstances that would **require** suspension of the DEP Order, as required by the suspension statute and rule. 38 M.R.S. § 342(11-B)(E); DEP Regs. Ch. 2 § 27(E). As the Department is aware, title, right, or interest (TRI) is a prudential standard relevant only to an applicant’s standing, and applicable during the “application processing period” alone.² DEP Regs. Ch. 2 § 11(D); *see also Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (TRI “is intended to prevent an applicant from wasting an administrative agency’s time by applying for a permit that he would have no legally protected right to use.”).³ There is nothing in statute or the Department’s rules that would require suspension of a license here, particularly given that the outcome of the BPL lease litigation, as well as the potential for subsequent leases issued by BPL, is at this stage still unknown. Suspension of the DEP Order in the present circumstances – where the BPL lease remains in effect and the outcome of litigation over that lease may not be resolved for quite some time – is neither required nor logical.

¹ The Commissioner stated in her letter that if a suspension of the DEP Order is imposed, it would be in effect until, *inter alia*, “(a) the Superior Court’s decision is reversed on appeal and the lease is reinstated.” That flips the judicial proceedings on their head, however, because the appeal of the Superior Court’s decision reinstates the BPL lease. The Superior Court’s decision therefore is effective only if the Law Court *affirms* that decision or appellees take some other action to remove the stay of that decision.

² Licensees made the requisite *prima facie* showing during the application processing period by providing the DEP with the 2014 BPL lease. The 2014 Lease remained in effect throughout the entirety of the DEP application process. Developments after May 11, 2020 – the date of issuance of the permit – are quite simply irrelevant to the validity of the permit.

³ As the Superior Court has already determined on this exact matter, whatever the outcome of the BPL lease litigation, “[t]he fact that an applicant’s TRI is based on a possessory interest that might later be invalidated by a court does not mean the applicant lacked TRI to proceed before the DEP.” Order on NRCM’s Motion to Stay DEP Commissioner’s Order at 8, KEN-AP-20-27, SOM-AP-20-04 (Murphy, J.) (Me. Super. Jan. 11, 2021), citing *Southridge*, 655 A.2d at 348.

Should the Commissioner nevertheless determine, despite the August 13, 2021 appeals of the Superior Court decision that stay that decision, that it is appropriate to continue this proceeding, Licensees request a hearing pursuant to Chapter 2, section 25(D).

Dated this 27th day of August, 2021.



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