

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

November 16, 2021

VIA ELECTRONIC MAIL

Marybeth Richardson, Presiding Officer
Maine Department of Environmental Protection
312 Canco Road
Portland, ME 04103

RE: Central Maine Power Company, 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

Dear Presiding Officer Richardson:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC, pursuant to the Fourth Procedural Order in the reopened License Suspension Proceeding, please find enclosed Licensees' Second Witness List and Proposed Exhibits.

Licensees renew their objection to the rushed schedule in this reopened proceeding, as it denies Licensees due process by compressing the substantive procedure set forth in the DEP's license suspension statute and rules. 38 M.R.S. § 342(11-B); DEP Regs. Ch 2 §§ 25, 27. That procedure grants the licensee an opportunity for a hearing, which, if requested by the licensee, "shall be held within 45 days of the request for hearing unless the Commissioner and the licensee agree to another time." DEP Regs. Ch 2 § 25(C)-(D). It is unfair to force Licensees to prepare for and testify at a hearing only 17 days (and 10 business days) after reopening the suspension hearing to add the Nov. 2 Initiative vote as an additional change in circumstance that may require suspension of the NECEC Order. If the Commissioner believes license suspension may be appropriate, the DEP must initiate a new suspension hearing to address the Initiative, and not try to rush this through by piggybacking it onto the proceeding that was based on the BPL lease litigation.

This unfairness is borne out by the need to ignore the other process requirements in Chapters 2 and 3 that are intended to protect due process rights. At a minimum, Licensees request that the Nov. 22 hearing be postponed to allow for the preparation and submission of prefiled written testimony, as normally allowed by DEP under Chapter 3. To set a license suspension hearing so soon after the decision to reopen the hearing, particularly on issues as complicated as those presented here, is inappropriate.

As previously noted, Licensees also request an opportunity to file a post-hearing brief no sooner than seven days after the close of the hearing. Post-hearing briefs are particularly

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appropriate here because the consideration of whether the Initiative constitutes a change in circumstance justifying a suspension necessarily requires consideration of whether the Initiative may be lawfully and constitutionally applied to the NECEC Project. This legal question, which is already before the Maine Business Court, involves consideration of several constitutional law principles and facts beyond those in the record in this suspension proceeding, as articulated in detail in NECEC LLC's pending motion for preliminary injunction before the Business Court.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Manahan", with a long horizontal flourish extending to the right.

Matthew D. Manahan

Enclosures

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

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

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

**SECOND WITNESS LIST AND PROPOSED EXHIBITS OF
CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION LLC**

Paragraph 10: “Proposed exhibits must be submitted by close of business on November 16, 2021.”

Licensees propose to submit the following exhibits, which are attached hereto:

1. Exhibit NECEC LLC-1-H: 130th Maine Legislature, Legislative Document No. 1295, March 30, 2021, *An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region.*
2. Exhibit NECEC LLC-1-I: Verified Complaint for Declaratory Judgment and Injunctive Relief, *NECEC Transmission LLC, et al. v. Maine Bureau of Parks and Lands, et al.*, Docket No. CV-21-400 (Me. Super. Ct., Nov. 3, 2021).
3. Exhibit NECEC LLC-1-J: Plaintiffs’ Motion for Preliminary Injunction with Incorporated Memorandum of Law, *NECEC Transmission LLC, et al. v. Maine Bureau of Parks and Lands, et al.*, Docket No. CV-21-400 (Me. Super. Ct., Nov. 3, 2021).
4. Exhibit NECEC LLC-1-K: Affidavit of Thorn Dickinson in Support of Motion for Preliminary Injunction, *NECEC Transmission LLC, et al. v. Maine Bureau of Parks and Lands, et al.*, Docket No. CV-21-400 (Me. Super. Ct., Nov. 3, 2021).
5. Exhibit NECEC LLC-1-L: Upper Kennebec Region BPL Land Route Options Map.
6. Exhibit NECEC LLC-1-M: Upper Kennebec Region Option 1/1A Map.
7. Exhibit NECEC LLC-1-N: Maine Bureau of Parks and Lands web page, Upper Kennebec Region - Management Plan.
8. Exhibit NECEC LLC-1-O: Maine Bureau of Parks and Lands, Upper Kennebec Region Management Plan, Part 1, June 2019.
9. Exhibit NECEC LLC-1-P: Updated Construction Status Maps (Segments 1-3).
10. Exhibit NECEC LLC-1-Q: Updated Construction Status Maps (Segments 1-2).

Paragraph 11: “The parties must provide a list of witnesses and topics to be covered by each witness by close of business on November 16, 2021. The list must include an estimate of total time required for direct testimony and identify the estimated time for each witnesses’ direct testimony.”

Thorn Dickinson will testify on the following topics:

Issue 1: *Given the results of the uncertified referendum vote, how L.D. 1295, an Act To Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region, might affect construction of the Project on the permitted route.*

Licenses object to this topic for the following reasons. This topic begs the question of whether L.D. 1295 (i.e., the “Initiative”) may be lawfully and constitutionally applied to the NECEC. NECEC LLC does not believe the Initiative will affect construction of the Project on the permitted route because NECEC LLC believes that the Judicial Branch, starting with the Maine Business Court, which is expected to rule in the first instance by year end, will grant NECEC LLC’s requested injunctive relief and conclude that the Initiative may not be applied to the NECEC, because the retroactive application of the Initiative to the Project is unconstitutional and unlawful for the reasons argued in NECEC’s preliminary injunction motion. If the Commissioner intends to decide the impact of the Initiative on the Project, she would have to decide this fundamental question before deciding whether the Initiative constitutes a change in circumstance justifying a suspension. The process permitted for consideration of the Initiative as a changed circumstance, which does not even include any post hearing briefing on this fundamental legal question, however, is inadequate and will deprive Licenses and other parties of due process. Moreover, and in any event, the Commissioner is not qualified to make this decision, and doing so would interfere with and undermine the jurisdiction and authority of the Judicial Branch.

Notwithstanding this objection, Mr. Dickinson will testify as to the potential effect of the Initiative on construction of the Project on the permitted route, assuming that the Initiative can be applied to the Project.

Issue 2: *The status and briefing schedule of the preliminary injunction and associated complaint in NECEC Transmission LLC and Avangrid Networks, Inc. v. Bureau of Parks and Lands litigation.*

Thorn Dickinson will testify on this topic.

Issue 3: *Potential rerouting options that would not be eliminated by L.D. 1295.*

Thorn Dickinson will testify on this topic.

Issue 4: *Status of the Secretary of State certification and Governor’s proclamation regarding L.D. 1295.*

Thorn Dickinson will testify on this topic.

Issue 5: *Update of the status of construction activities and timetable for work locations going forward.*

Thorn Dickinson will testify on this topic.

The total estimated time for Mr. Dickinson's direct testimony is one hour.

Dated this 16th day of November, 2021.



Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for Licensees Central Maine
Power Company and NECEC Transmission
LLC*

Exhibit NECEC LLC-1-H:

130th Maine Legislature, LD 1295



130th MAINE LEGISLATURE

FIRST REGULAR SESSION-2021

Legislative Document

No. 1295

I.B. 1

House of Representatives, March 30, 2021

An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region

Transmitted to the Clerk of the 130th Maine Legislature by the Secretary of State on March 11, 2021 and ordered printed.

Handwritten signature of Robert B. Hunt in cursive.

ROBERT B. HUNT
Clerk

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 12 MRSA §1852, sub-§4**, as enacted by PL 1997, c. 678, §13 and amended
3 by PL 2013, c. 405, Pt. A, §24, is further amended to read:

4 **4. Lease of public reserved land for utilities and rights-of-way.** The bureau may
5 lease the right, for a term not exceeding 25 years, to:

6 A. Set and maintain or use poles, electric power transmission and telecommunication
7 transmission lines and facilities, roads, bridges and landing strips;

8 B. Lay and maintain or use pipelines and railroad tracks; and

9 C. Establish and maintain or use other rights-of-way.

10 Any such poles, transmission lines and facilities, landing strips, pipelines and railroad
11 tracks under this subsection are deemed to substantially alter the uses of the land within the
12 meaning of the Constitution of Maine, Article IX, Section 23, and a lease or conveyance
13 for the purpose of constructing and operating such poles, transmission lines and facilities,
14 landing strips, pipelines and railroad tracks under this subsection may not be granted
15 without first obtaining the vote of 2/3 of all the members elected to each House of the
16 Legislature.

17 Notwithstanding Title 1, section 302 or any other provision of law to the contrary, this
18 subsection applies retroactively to September 16, 2014.

19 **Sec. 2. 35-A MRSA §3131, sub-§4-A**, as enacted by PL 2009, c. 655, Pt. A, §3, is
20 amended to read:

21 **4-A. High-impact electric transmission line.** "High-impact electric transmission
22 line" means a transmission line greater than 50 miles in length ~~that is not located in a~~
23 ~~statutory corridor, as defined in section 122, subsection 1, paragraph F 4, or a petitioned~~
24 ~~corridor, as defined in section 122, subsection 1, paragraph D 1, and that is:~~

25 A. Constructed to transmit direct current electricity; or

26 B. Capable of operating at 345 kilovolts or more and:

27 (1) Is not a generator interconnection transmission facility as defined in section
28 3132, subsection 1-B; and

29 (2) Is not constructed primarily to provide electric reliability, as determined by the
30 commission.

31 **Sec. 3. 35-A MRSA §3132, sub-§6-A**, as enacted by PL 2009, c. 655, Pt. A, §5, is
32 amended to read:

33 **6-A. High-impact electric transmission line; certificate of public convenience and**
34 **necessity.** The commission shall evaluate and render a decision on any petition for a
35 certificate of public convenience and necessity for a high-impact transmission line ~~in~~
36 ~~accordance with section 122, subsection 1-D.~~

37 **Sec. 4. 35-A MRSA §3132, sub-§6-C** is enacted to read:

38 **6-C. High-impact electric transmission line; legislative approval.** In addition to
39 obtaining a certificate of public convenience and necessity, a high-impact electric
40 transmission line may not be constructed anywhere in the State without first obtaining the

1 approval of the Legislature, except that any high-impact electric transmission line crossing
2 or utilizing public lands designated by the Legislature pursuant to Title 12, section 598-A
3 is deemed to substantially alter the land and must be approved by the vote of 2/3 of all the
4 members elected to each House of the Legislature.

5 **Sec. 5. 35-A MRSA §3132, sub-§6-D** is enacted to read:

6 **6-D. High-impact electric transmission line; geographic prohibition.**
7 Notwithstanding subsection 6-C, a high-impact electric transmission line may not be
8 constructed in the Upper Kennebec Region. For the purpose of this subsection, "Upper
9 Kennebec Region" means the approximately 43,300 acres of land located between the
10 Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the
11 Canadian border, and eastward from the Town of Jackman to encompass Long Pond and
12 westward to the Canadian border, in Somerset County and Franklin County.

13 **Sec. 6. 35-A MRSA §3132, sub-§6-E** is enacted to read:

14 **6-E. Retroactivity.** Notwithstanding Title 1, section 302 or any other provision of
15 law to the contrary, subsections 6-C and 6-D apply retroactively to September 16, 2020 and
16 apply to any high-impact electric transmission line the construction of which had not
17 commenced as of that date.

18 SUMMARY

19 This initiated bill requires the approval of the Legislature for the construction of high-
20 impact electric transmission lines and provides that high-impact electric transmission lines
21 crossing or utilizing public lands must be approved by 2/3 of all the members elected to
22 each House of the Legislature. This initiated bill also prohibits the construction of high-
23 impact electric transmission lines in the Upper Kennebec Region. These provisions apply
24 retroactively to September 16, 2020, the date of filing of this initiative.

25 This initiated bill also requires the approval of 2/3 of all the members elected to each
26 House of the Legislature for any use of public lands for transmission lines and facilities
27 and certain other projects. This provision applies retroactively to September 16, 2014.

Exhibit NECEC LLC-1-I:

**Verified Complaint for Declaratory
Judgment and Injunctive Relief**

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

NECEC TRANSMISSION LLC,

and

AVANGRID NETWORKS, INC.,

Plaintiffs,

v.

BUREAU OF PARKS AND LANDS,
MAINE DEPARTMENT OF
AGRICULTURE, CONSERVATION AND
FORESTRY,

MAINE PUBLIC UTILITIES
COMMISSION,

MAINE SENATE,

and

MAINE HOUSE OF REPRESENTATIVES,

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs NECEC Transmission LLC (“NECEC LLC”) and Avangrid Networks, Inc. (“Avangrid”), and hereby complain against Defendants the Bureau of Parks and Lands, Maine Department of Agriculture, Conservation and Forestry (“BPL”); the Maine Public Utilities Commission (“PUC”); the Maine Senate; and the Maine House of Representatives, and seek declaratory and injunctive relief regarding “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain

Transmission Lines in the Upper Kennebec Region” (hereafter, the “Initiative”), enacted on November 2, 2021, as follows:

1. After years of regulatory proceedings resulting in the issuance of all necessary siting, environmental, and land use permits, NECEC LLC undertook physical construction of the New England Clean Energy Connect transmission line corridor (“NECEC” or “Project”) in January 2021. The NECEC represents a billion dollar investment in the clean energy future of New England. It will reduce greenhouse gas (“GHG”) emissions by the equivalent of removing 700,000 cars from the road each year the Project is in service. To date, NECEC LLC has expended approximately \$449.8 million dollars on the Project, and substantial physical construction has occurred: approximately 124 miles of right-of-way along the corridor for the direct current (“DC”) line has been cut (over 80%); clearing along the corridor for the alternating current (“AC”) is complete; over 120 structures have been erected along the DC, AC, or network upgrade portions of the Project, collectively; over 3 miles of conductor has been strung along the network upgrade line; and site preparation and component construction for a converter station is well advanced. Despite the granting of permits for the Project, the environmental and economic benefits of the Project, and the substantial progress in transmission line construction, opponents of the Project – funded by electric generators in New England who burn fossil fuels – have now successfully pursued passage of legislation via direct initiative specifically targeted at the Project that would, if enforced, retroactively ban the completion and operation of the NECEC.

2. This Initiative represents an extraordinary attempt to deprive a private party of vested rights in the construction and operation of a multi-year development project. “[A] statute which has retrospective application is unconstitutional if it impairs vested rights.” *Fournier v. Fournier*, 376 A.2d 100, 101-02 (Me. 1977). NECEC LLC has commenced significant, physical

construction of the Project in good faith, with the intention to carry it through to completion, pursuant to valid permits. Because NECEC LLC has undertaken good faith construction of the Project, NECEC LLC has a vested right to complete and to operate the Project. Any other conclusion would render any major development project in the State – in fact, any effort by any person or business in the State to build any project, no matter how big or how small – vulnerable to discriminatory and prejudicial efforts to kill the project by after-the-fact changes to the law. Such retroactive deprivation of vested rights is contrary to the fundamental principles of fairness and equity embodied in Maine law.

3. The Initiative also represents a nearly unparalleled violation of separation of powers principles enshrined in the Maine Constitution. The framers adopted a system of separated powers because they were “well acquainted with the danger of subjecting the determination of the rights of one person to the ‘tyranny of shifting majorities.’ . . . It was to prevent the recurrence of such abuses that the Framers vested the executive, legislative, and judicial powers in separate branches.” *I.N.S. v. Chadha*, 462 U.S. 919, 961-62 (1983) (Powell, J., concurring); see THE FEDERALIST NO. 47 (James Madison), 1788 WL 461, at *3. The separation of powers doctrine thus seeks to prevent unfair applications of the law to specific individuals. *Carter v. Lehi City*, 269 P.3d 141, 152 (Utah 2012). This structure is reflected not only in the U.S. Constitution, but also the Maine Constitution. Accordingly, the decisions of state executive agencies and the judiciary applying the law to particular individuals based on specific facts and circumstances cannot be reversed by legislative action. Nevertheless, opponents of the Project have now twice sought to reverse final executive and judicial actions via initiative – first through an initiative, struck down as unconstitutional by the Law Court, that singled out the Project by name, and, now, through an initiative that is designed to accomplish the same end through retroactive application to the Project.

4. The Initiative is also flawed because it would cause the reopening and voiding of a lease with the BPL, contrary to the provisions in the Maine and United States Constitutions protecting the sanctity of contracts. The State cannot unilaterally cancel its lease with NECEC LLC.

5. Because the Initiative violates NECEC LLC's vested rights as well as basic constitutional protections provided by the Maine and United States Constitutions, the Initiative cannot lawfully be applied retroactively to the Project.

PARTIES

6. NECEC Transmission LLC is a Delaware limited liability corporation with a place of business at One City Center, Portland, Cumberland County, Maine. NECEC LLC is a clean energy development company that owns the Project currently under construction.

7. Avangrid Networks, Inc. is a Maine corporation with a place of business at One City Center, Portland, Cumberland County, Maine. Avangrid Networks is the indirect parent company of Central Maine Power Company ("CMP"), an electric transmission and distribution utility that serves more than 620,000 customers in central and southern Maine. Avangrid Networks also wholly owns NECEC LLC.

8. Defendant Bureau of Parks and Lands, Maine Department of Agriculture, Conservation and Forestry, is an agency of the State of Maine with its principal office in Augusta, Kennebec County, Maine.

9. The BPL is the agency responsible to enforce those aspects of the Initiative that modify Title 12 of the Maine Revised Statutes, specifically Section 1.

10. Defendant Maine Public Utilities Commission is an agency of the State of Maine with its principal office in Hallowell, Kennebec County, Maine.

11. The PUC is the agency primarily responsible to enforce those aspects of the Initiative that modify Title 35-A of the Maine Revised Statutes, specifically Sections 4-6.

12. Defendant Maine Senate is a branch of the Maine Legislature, which is located in Augusta, Kennebec County, Maine.

13. Defendant Maine House of Representatives is a branch of the Maine Legislature, which is located in Augusta, Kennebec County, Maine.

14. If valid, Section 4 of the Initiative retroactively imposes a new requirement of affirmative votes by the Senate and the House of Representatives for approval of the Project.

JURISDICTION

15. Jurisdiction is appropriate in this Court pursuant to 4 M.R.S. § 105.

16. Venue is appropriate pursuant to 14 M.R.S. § 505, as NECEC LLC and Avangrid have an established place of business in Cumberland County.

FACTS

17. The NECEC is a clean energy project, already under construction, that will bring 1,200 megawatts of clean hydropower from Québec into Maine and the New England electric grid. The NECEC includes a 145-mile high voltage direct current (“HVDC”) transmission line from the Canadian border to a new converter station located at Merrill Road in Lewiston, Maine and necessary network upgrades, including AC transmission lines, required to interconnect the Project to the New England electric grid (the “Network Upgrades”).

18. The NECEC including the necessary Network Upgrades represents an investment of approximately \$1 billion for new electricity transmission infrastructure in Maine. This investment has produced hundreds of jobs (and will produce thousands of jobs, direct and indirect) in Maine during construction of the Project; funds approximately \$250 million in rate relief,

economic development, carbon reduction, education, and other benefits for Maine; and results in approximately \$18 million in additional property taxes annually for the host communities. Of the approximately \$250 million in benefits to Maine, approximately \$18 million has already been paid out; and approximately \$3.4 million in property taxes have been paid, beginning in September 2021. The NECEC and the clean hydropower it will deliver to Maine also will significantly lower the cost of electricity in Maine and across the New England region, and remove upwards of 3.6 million metric tons of carbon emissions annually from the Earth's atmosphere (the equivalent of removing 700,000 cars from the road) by decreasing New England's reliance on fossil fuels for the region's electricity needs.

19. Based on these numerous benefits, the PUC found the Project to be in the public interest and issued a Certificate of Public Convenience and Necessity ("CPCN"). After rigorous review, the Project also received the necessary permits from the Maine Department of Environmental Protection ("DEP"), the U.S. Army Corps of Engineers ("Corps"), and the United States Department of Energy ("DOE").

20. The permitting process was substantially delayed by opponents of the Project, including electric generators in New England that burn fossil fuels, such as NextEra Energy Resources, LLC ("NextEra"), Calpine Corporation ("Calpine"), and Vistra Energy ("Vistra"). These fossil fuel burning electric generators oppose the NECEC Project because it will significantly lower their revenues and reduce New England's reliance on the more expensive electricity they produce, which electricity adds carbon to the atmosphere and exacerbates climate change.

a. Among others, NextEra, Calpine and Vistra were active intervenors before the PUC opposing the issuance of a CPCN for the NECEC, submitting testimony from

multiple witnesses arguing that the NECEC was not in the public interest and would negatively impact their thermal generation facilities and the regional transmission grid in New England. *See Central Maine Power Company Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Quebec-Maine Border to Lewiston (NECEC) and Related Network Upgrades*, Docket No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation (May 3, 2019). NextEra was the sole intervenor to appeal the PUC's order granting the CPCN. NextEra's appeal was rejected by the Law Court. *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, ¶ 43, 227 A.3d 1117.

b. NextEra was an active intervenor before the Massachusetts Department of Public Utilities ("MA DPU") opposing the MA DPU's approval of the NECEC power purchase agreements and cost recovery for the NECEC transmission services agreements. NextEra submitted testimony from multiple witnesses and argued that the MA DPU should deny the requested approvals on the grounds that the Project and the related agreements did not comply with Massachusetts law. By order dated June 25, 2019, the MA DPU rejected NextEra's arguments and granted the requested approvals. *See Petition of NSTAR Electric Company d/b/a Eversource Energy for approval by the Department of Public Utilities of a long-term contract for procurement of clean energy generation, pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12*, D.P.U. 18-64 (Jun. 25, 2019). NextEra was the sole intervenor to appeal the MA DPU's order to the Massachusetts Supreme Judicial Court. That court rejected

NextEra's appeal in a decision dated September 3, 2020. *NextEra Energy Res., LLC v. Dep't of Pub. Utils.*, 152 N.E.3d 48, 65 (Mass. 2020).

c. NextEra also was an active intervenor in the consolidated proceedings before the Maine Land Use Planning Commission ("LUPC") and the DEP and an active party in the proceedings before the Corps, submitting testimony and numerous motions and other filings opposing the issuance of the requested LUPC certification and DEP and Corps permits for the NECEC. *See Site Location of Development Act Certification*, Docket No. SLC-9, Maine Land Use Planning Comm'n, Dep't of Agric., Conservation & Forestry, Bureau of Parks & Lands (Jan. 8, 2020); *DEP Findings of Fact and Order*, Docket No. L-27625, Maine Dep't of Env't. Prot. (May 11, 2020); U.S. Army Corps of Engineers, New England Dist. Regulatory Division, File No. NAE-2017-01342 (Initial Proffered Permit Aug. 19, 2020).

d. After the LUPC granted the certification for the Project on January 8, 2020 and the DEP issued the requested permits on May 11, 2020, NextEra appealed the DEP order to the Maine Superior Court, Kennebec County. NextEra's appeal and those asserted by other intervenors are consolidated before the Maine Board of Environmental Protection and remain currently pending. *See NextEra Energy Res., LLC v. State of Maine, Dep't. of Env't Prot.*, Docket No. KEN-AP-27 (Kennebec Co. Sup. Ct., June 9, 2020), consolidated with SOM-AP-20-04 and remanded to Bd. of Env't Prot. (Aug. 11, 2020).¹

¹ NextEra has also refused to commit to the timely replacement of a circuit breaker at its Seabrook Nuclear plant in New Hampshire identified by ISO-NE as a necessary Network Upgrade to permit the interconnection of the NECEC. On October 13, 2020, NECEC LLC filed a complaint against NextEra before the Federal Energy Regulatory Commission ("FERC") pursuant to Sections 206, 210 and 306 of the Federal Power Act ("FPA"), alleging that, among other things, NextEra has been unlawfully attempting to delay and unreasonably increase the costs of circuit breaker replacement to impede the NECEC. By an order dated September 7, 2021, FERC established briefing procedures regarding issues concerning NextEra's obligations under Seabrook's Large Generator Interconnection Agreement to replace the circuit

e. Calpine on January 30, 2020 filed a belated Request for Leave to Intervene Out-of-Time and Comments in Opposition to Application before the U.S Department of Energy in Docket No. PP-438 concerning the petition for a Presidential Permit for the NECEC Project. The motion to intervene was ultimately denied.

21. Though delayed by its opponents, NECEC LLC has performed substantial construction on the Project in reliance on its valid permits. By November 2, 2021, approximately \$449.8 million – 43% of the total current project cost estimate – had been spent on the Project. Among other construction activities, approximately 124 miles of corridor had been cut; approximately 70 structures installed on the DC portion of the Project, along with foundations installed for an additional 4 structures; approximately 54 structures installed along the AC and Network Upgrade portions of the Project; over 3 miles of conductor has been strung; and converter station construction is well underway. Hundreds of other custom-designed poles had been delivered to Project lay-down yards, along with millions of feet of DC and AC conductor and fiber, and tens of thousands of insulators required for the Project.

22. Opponents of the Project (primarily the political action committees No CMP Corridor and Mainers for Local Power) have pursued two citizen initiatives to block completion of the Project. Opponents first sought to place an initiative on the ballot in 2020 (the “2020 Initiative”) that purported to reverse the decision of the PUC to issue a CPCN for the Project. The Law Court held that the 2020 Initiative was unconstitutional because it exceeded the scope of the legislative powers reserved by the people. Accordingly, the 2020 Initiative did not appear on the

breaker and instituted a proceeding under FPA Section 206 to determine whether certain provisions in ISO-NE’s Tariff may be unjust and unreasonable because they may not impose any obligation on generators like NextEra to construct upgrades identified as necessary for the interconnection of elective transmission upgrades, such as the NECEC. *See NECEC Transmission LLC v. NextEra Energy Res., LLC*, 176 FERC ¶ 61, 148 (Sept. 7, 2021) (Order Establishing Additional Briefing and Instituting Section 206 Proceeding).

ballot. *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 2, 237 A.3d 882. Only after that unsuccessful effort, opponents then undertook the present Initiative. Because of their prior missteps, however, the opponents could not have the Initiative placed on the ballot until November 2021 – long after NECEC had undertaken physical construction of the Project, in good faith, and in reliance on its valid permits.

23. The political action committees formed by opponents of the Project to advance these initiatives targeting the Project have received approximately \$27 million dollars in support from NextEra, Calpine, and Vistra. These fossil fuel burning electric generators have funded various groups in Maine, including Mainers for Local Power and No CMP Corridor, for the purpose of advocating against and attempting to block the construction of the NECEC.

24. As promoted by the fossil fuel burning electric generators and their funded allies, the Initiative obtained passage at the ballot box on November 2, 2021.

25. The Initiative, if allowed to apply retroactively, would prevent completion of the Project even though NECEC has expended hundreds of millions of dollars lawfully constructing the Project pursuant to validly-issued permits.

The NECEC Project

26. In 2017, Massachusetts electric distribution companies (“EDCs”) issued a request for proposal (“RFP”) for clean energy pursuant to the Commonwealth of Massachusetts’ Green Communities Act, 2008 MASS. ACTS ch. 169, § 83D, as amended by 2016 MASS. ACTS ch. 188.

27. CMP, together with an affiliate of Hydro-Québec, submitted a joint proposal in response to the RFP. This joint proposal called for the construction of a 1,200 MW HVDC transmission line to connect the existing transmission systems in Québec and New England, with the NECEC constituting the U.S. portion of the line. Under the proposal, the NECEC would enable

the delivery of 1,090 MW of clean hydropower from Québec to the New England electric grid, through a corridor consisting largely of land already devoted to power transmission, for at least twenty (20) years upon the Project’s commercial operation date (expected in December 2023).²

28. In early 2018, the CMP/Hydro-Québec proposal was selected the winner of the RFP. CMP, Hydro-Québec (through a U.S. based affiliate, H.Q. Energy Services (U.S.) Inc. (“HQUS”)), and the EDCs then entered into a series of transmission service agreements (“TSAs”) contractually obligating CMP to provide 1,200 MW of transmission service on the NECEC to HQUS and the EDCs for a period of forty years. In turn, HQUS and the EDCs entered three Power Purchase Agreements (“PPAs”) under which HQUS agreed to sell 1,090 MW of energy (equivalent to 9,450 MWh per year) to the EDCs for the first 20 years of the useful life of the NECEC Project. This energy supply will serve a significant portion of Massachusetts’ electric load during the contract term and is intended to assist the Commonwealth achieve its climate change objectives. Hydro-Québec can use the remaining transmission capacity (110 MW in years 1-20 and 1,200 MW in years 21 to 40) to sell additional energy into the New England electricity markets. In fact, on July 9, 2020, HQUS entered an agreement with Governor Janet Mills to sell Maine 500,000 MWh of electricity a year for 20 years using the available excess transmission capacity on the NECEC at a \$4.00/MWh discount to market prices.

² CMP submitted a second proposal in response to the RFP jointly with NextEra and another generation developer. This proposal called for the construction of a 1,200 MW high voltage alternate current (“HVAC”) transmission line to connect new wind and solar generation projects to be developed in Western Maine and Canada, utilizing the same corridor as the one proposed for the NECEC and consisting of an overhead transmission line of almost the same length as the NECEC and interconnecting in Lewiston, Maine. NextEra and the other developer agreed that this overhead line, which had analogous environmental impacts to the NECEC given its size and configuration, was the optimal solution to interconnect their proposed projects and to compete in the RFP.

29. To protect CMP ratepayers from risks associated with the Project, as required by the PUC, on January 4, 2021, CMP transferred the NECEC (including the TSAs) to NECEC LLC. NECEC LLC is constructing the NECEC, and will operate the NECEC.

30. The NECEC consists of a 145-mile long 320 kV HVDC transmission line running from the U.S./Canada border at Beattie Township, Maine to a new DC to AC converter station to be located on Merrill Road in Lewiston, Maine. On its northern end, this HVDC line will interconnect to a new HVDC line to be constructed by Hydro-Québec running from a new AC to DC converter station at the existing Appalaches substation in Thetford Mines, Québec to the border. The Merrill Road converter station in Lewiston will be connected to the existing Larrabee Road Substation in Lewiston by a new 1.2-mile 345 kV high voltage AC transmission line. To permit this interconnection, the Project also requires the construction and operation at NECEC LLC's expense of certain "Network Upgrades" determined by ISO-New England under its Tariff in Maine and New Hampshire, including an additional 345 kV transmission line between Windsor and Wiscasset, certain rebuilt 115 kV AC transmission lines, and other substation equipment. CMP will own and operate the Network Upgrades located in Maine.

31. The Project is depicted on the map included as **Exhibit A**. As shown on the map, the Project is divided into five segments. Segment 1 consists of the portion of the HVDC line running along a new, approximately 53-mile transmission corridor, the vast majority of which runs through privately owned commercial forest land used for growing and harvesting trees; Segment 2 consists of the portion of the HVDC line running along the existing transmission corridor from The Forks Plantation to the existing Wyman Hydropower station in Moscow; Segment 3 consists of the portion of the HVDC line running along the existing transmission corridor from the Wyman Hydropower station to the new Converter Station in Lewiston and other facilities in the Lewiston

area; and Segments 4 and 5 consist of the Network Upgrades located in Maine. Along the DC line, the Project includes installation of 832 structures (some mono-poles and others requiring multiple poles).

32. In the TSAs, the parties agreed that the commercial operation date for the NECEC Project would be December 13, 2022, but such commercial operation date could be extended (i) due to delays in the EDCs receiving necessary Massachusetts approvals, and (ii) up to an additional two years at the request of CMP or HQUS with the posting of additional security. The current project schedule calls for the NECEC to achieve commercial operation on December 13, 2023, with the contractual deadline for commercial operation now August 23, 2024. CMP and HQUS have the right to extend this deadline to August 23, 2025 by posting additional security.

33. CMP had full site control for the Project by July 2017. Most of the corridor consists of land within existing transmission line rights-of-way. NECEC LLC subsequently acquired the necessary property interests from CMP.

Permits and Approvals

34. NECEC LLC and CMP have all state and federal permits and approvals needed for construction of the Project. NECEC LLC and CMP also possess local permits and approvals from 20 of the 24 municipalities in which Project facilities will be constructed, in accordance with the project schedule. NECEC LLC and CMP will obtain the local permits and approvals from the final municipalities at the time contemplated by the project schedule. NECEC LLC is authorized to work in 14 unincorporated townships or plantations through the approval obtained from the LUPC.³

³ Certain of the permits were obtained by CMP and subsequently transferred to NECEC LLC.

Public Utilities Commission

35. On September 27, 2017, CMP filed with the PUC a petition for a CPCN to construct the NECEC. The PUC thereafter engaged in a review lasting over nineteen (19) months. Thirty-one (31) parties participated in the PUC proceeding. There were multiple rounds of pre-filed testimony (which included thousands of pages of testimony and supporting materials), with written discovery and technical conferences held after every phase of testimony. The PUC held six (6) days of evidentiary hearings and three (3) public witness hearings.

36. In a 101-page order (“PUC Order”) dated May 3, 2019, the PUC granted CMP’s petition. *Cent. Me. Power Co., Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston (NECEC) and Related Network Upgrades*, No. 2017-00232, Order (Me. P.U.C. May 3, 2019).⁴ In the PUC Order, the PUC found that the NECEC is in the public interest and that there is a public need for the Project. Accordingly, the PUC issued a CPCN.

37. In the PUC Order, the PUC weighed the benefits and costs of the NECEC to the ratepayers and residents of the State of Maine. As required by 35-A M.R.S. § 3132, these included the effects of the NECEC on economics; reliability; public health and safety; scenic, historic, and recreational values; and state renewable energy goals. Based on its consideration of these factors, the PUC found that the NECEC is in the public interest.

38. Among other things, the PUC Order stated that, “[b]ecause the NECEC-enabled power will be delivered into Maine, . . . significant benefits will accrue to Maine electricity consumers through operation of the regional wholesale market. These benefits are expected to

⁴ The PUC Order, together with its accompanying stipulation and exhibits, is publicly accessible at: <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=102054&CaseNumber=2017-00232>

accrue for a period of at least 20 years.” PUC Order, at 6. Specifically, the PUC concluded that the “NECEC will result in substantial benefits to Maine electricity customers because of the effect it will have on reducing energy and capacity prices in the wholesale market.” *Id.* at 24.

39. The PUC Order further stated that, “[i]n addition to the wholesale electricity price reductions that will result from the NECEC, the Project will also enhance system reliability and fuel security within Maine and the ISO-New England (ISO-NE) region.” PUC Order, at 6. The PUC found that “the system upgrades required by (and provided by) the NECEC will provide extra redundancy and reliability to the Maine system during normal operations modes.” *Id.* at 39.

40. The PUC Order also stated that “the NECEC will provide environmental benefits by displacing fossil fuel generation in the region, and associated greenhouse gas (GHG) production, and will provide substantial benefits to the Maine economy through the more than 1,600 jobs expected to be created during the NECEC construction phase, and on an ongoing basis through property taxes.” PUC Order, at 6. Specifically, the PUC concluded that (1) “the NECEC will result in significant incremental hydroelectric generation from existing and new resources in Québec,” thereby reducing “overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region,” *id.* at 71; (2) the Project would create not only 1,600 jobs during construction, but also approximately 300 additional jobs during operation, and, *id.* at 6, 45-46; and (3) “a \$1 billion investment in a project located entirely in Maine, with the resulting employment and taxes it will produce, would result in substantial macroeconomic benefits to the State,” *id.* at 47.

41. The PUC Order also found that the Project’s adverse effects on scenic and recreational values, and associated impacts on tourism and the economies of communities in

proximity to the Project, were outweighed by “the ratepayer, economic, and environmental benefits of the NECEC.” PUC Order, at 6-7.

42. In sum, the PUC concluded “that the benefits from the development and operation of the NECEC to Maine ratepayers and citizens significantly outweigh the costs and detriments of the Project,” PUC Order, at 98, and, as a result, granted CMP’s requested CPCN, *id.* at 98-99.

43. As part of the PUC Order, the PUC also approved a settlement stipulation, to which 11 parties joined including the Governor’s Energy Office and the Maine Office of Public Advocate, providing certain ratepayer protections against the costs and financial risks associated with NECEC; reimbursement to ratepayers for prior costs associated with the Project; and a package of benefits for Maine totaling approximately \$250 million over 40 years (in addition to those arising from the construction and operation of the NECEC), including support for electric rate relief, low-income customers, the expanded availability of electric vehicles and charging infrastructure, heat pumps and broad band service in Maine, education programs, and economic development. The stipulation also reflects the commitment of NECEC LLC, and its contractors working on the construction of the NECEC, to give preference to hiring Maine workers, all other factors being equal and consistent with applicable law and applicable labor agreements.

44. The following figure reproduced from the PUC Order summarizes the NECEC Project’s impacts and benefits:

Figure I.1

Summary of NECEC Impacts			
Wholesale Market Effects	Description	Value to Maine	
		Nominal	Present Value
Energy Market Prices	Energy price suppression effect	\$14-\$44 million annually	\$122-\$384 million
Capacity Market Effect	Estimated capacity market price reduction	\$19 million annually for first 10 years	\$101 million
Reliability and Fuel Security	Enhancements to transmission reliability and supply reliability and diversity	Not quantified*	Not quantified*
Macroeconomic Effects	Description	Value to Maine	
		GDP is reported in chained 2009 dollars	
During Construction Period	Positive impact on Maine GDP	Annual average 2017-2022	\$94-\$98 million
During Operations	Positive impact on Maine GDP. Includes effect of wholesale energy and capacity market savings.	Annual average 2023-2027	\$25-\$29 million
Regional Environmental and Local Community Impacts	Description	Value	
Effects on Host Communities	Detrimental impact on scenic, historic and recreational values, associated tourism and local economy	Not quantified	
GHG Emissions Reductions	Reduction in regional carbon emissions	3.0 to 3.6 million metric tons/year	
Stipulation Conditions	Description	Value to Maine	
		Nominal	Present Value
Stipulation provisions	Benefits package included in Stipulation	Total \$250 million over 40 years	\$72-\$85 million

*As discussed in the Concurring Opinion of Commissioner Williamson, ISO-NE has provided estimates that suggest that fuel security and reliability benefits could provide value to Maine of approximately \$9.8 million annually for the years 2023-2024 and 2024-2025.

PUC Order, at 7.

45. On May 7, 2019, NextEra, an intervenor in the PUC proceeding and owner of the oil-fired Wyman generation facility in Yarmouth, Maine (among other generation facilities in New England), appealed the PUC Order granting the CPCN to construct the NECEC. In its appeal, NextEra argued, among other things, that the PUC improperly found that the Project was in the public interest and that there is a public need for the NECEC.

46. In an opinion issued March 17, 2020, the Law Court denied NextEra’s appeal and affirmed the grant of the CPCN for the Project. *NextEra Energy Res., LLC*, 2020 ME 34, ¶ 43, 227 A.3d 1117. Specifically, the Law Court concluded that it “discern[ed] no error in the

Commission’s determination that the NECEC project meets the applicable statutory standards for a CPCN.” *Id.* ¶ 1.

47. Among other things, the Law Court concluded that the PUC appropriately found the “public need” requirement to be satisfied. *Id.* ¶¶ 28-38. It noted as follows:

In its comprehensive order, the Commission discussed the factors set out in section 3132(6), including the issues raised by NextEra concerning scenic and recreational values and Maine’s renewable energy generation goals. The Commission found that the value to Maine resulting from the NECEC’s energy price suppression effect would amount to \$14 - \$44 million annually, and capacity market price reduction for Maine residents in the amount of \$19 million annually over the first ten years. It found that there would be enhancements to transmission reliability and supply reliability and diversity. The Commission also found that the project would result in a reduction of greenhouse gas emissions. Further, it found that the project would have a positive impact on Maine’s gross domestic product, averaging \$94-\$98 million during the project’s construction period.

Id. ¶ 30 (footnote omitted). The Law Court went on to hold: “All of these findings are supported by significant record evidence.” *Id.*

48. The Law Court affirmed the PUC’s Order because the PUC “reasonably interpreted and applied the relevant statutory mandates in arriving at its decision to grant CMP a certificate of public convenience and necessity for the NECEC Project.” *Id.* ¶ 43.

Department of Environmental Protection and Land Use Planning Commission

49. On September 27, 2017, CMP submitted applications for the necessary DEP Site Location of Development Law (“Site Law”) and Natural Resources Protection Act (“NRPA”) permits, as well as the LUPC Site Law Certification of Compliance. The LUPC and DEP conducted their proceedings concerning these applications in a coordinated manner, with joint public hearings held before both agencies. Thirty-nine parties, including CMP, participated in the DEP’s and LUPC’s reviews of the Project, filing thousands of pages of sworn testimony from dozens of witnesses, participating in six (6) days of evidentiary hearings which included cross-

examination of those witnesses, and filing thousands of additional pages of evidence and argument concerning issues relevant to the DEP’s review and permitting of the Project and concerning issues relevant to the LUPC’s review and certification of the Project. In addition to those parties, hundreds of Maine citizens testified during two public hearings and submitted written comments.

50. Thereafter, on May 11, 2020, the DEP issued a 236-page Findings of Fact and Order (“DEP Order”) that thoroughly analyzed the environmental impacts of and alternatives to the Project, and granted the requested permits. *In re Cent. Me. Power Co.*, New England Clean Energy Connect, L-27625-26-A-N, Findings of Fact and Order (Me. DEP May 11, 2020).⁵

51. The DEP Order stated as follows:

The applicant’s stated purpose for this project is to provide renewable electricity from Quebec to the New England grid. The Department applied the statutes and regulations it administers in this Order to approve the least environmentally damaging alternative available to achieve that purpose. The Order puts in place a comprehensive set of conditions designed to avoid and minimize the project’s impacts to the extent possible, while also requiring substantial offsite compensation for those impacts that remain. So conditioned, the project fully satisfies the Department’s permitting standards.

DEP Order, at 2.

52. In the DEP Order, which sets forth specific conditions to avoid impacts and to minimize and mitigate unavoidable impacts, the DEP made numerous findings regarding the Project’s effect on the environment, including the following: the Project (1) will not have an unreasonable adverse effect on scenic uses or character of the surrounding area, DEP Order, at 56; (2) will not unreasonably interfere with existing uses, including recreation or navigational uses, *id.* at 58; (3) adequately provides for protection of wildlife and fisheries, unusual natural areas, significant wildlife habitat, and freshwater wetlands, *id.* at 90; (4) will not have an adverse effect

⁵ The DEP Order, together with its attachments, is publicly accessible at: <https://www.maine.gov/dep/ftp/projects/neccec/2020-05-11-final-department-order.pdf>.

on the preservation of any historic sites, *id.* at 94; and (5) otherwise complies with Maine environmental laws, *id.* at 97, 101-04.

53. The DEP also took into consideration the Project’s effect on GHG emissions. The DEP concluded:

Climate change . . . is the single greatest threat to Maine’s natural environment. It 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 Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts.

DEP Order, at 105. The DEP cited the PUC’s finding that “the NECEC [project] will result in significant incremental hydroelectric generation from existing and new sources in Quebec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region.” *Id.* (alteration in original). The DEP accepted this finding and found the adverse effects of the Project reasonable in light of the “project purpose and its GHG benefits, provided the project is constructed in accordance with the terms and conditions of this Order.” *Id.*

54. In addition to its review of the project, the DEP incorporated into its Order, as required by statute, the LUPC’s 42-page Site Law Certification of the portion of the Project located in the unorganized and de-organized areas of the State, issued on January 8, 2020, in which the LUPC found that the NECEC is an allowed use within the sub-districts in which it is proposed and that the Project complies with all of the LUPC’s applicable land use standards not considered in the DEP’s review. DEP Order, at App. H.

55. Thereafter, several parties – including NextEra, the Natural Resources Council of Maine (“NRCM”), and a group of towns and individuals residing in the West Forks area (the “West

Forks Petitioners”) appealed the DEP Order both before the Maine Board of Environmental Protection (“BEP”) and the Maine Superior Court.

56. Around the time of the filing of their appeals, West Forks Petitioners and NRCM moved that the DEP and BEP, respectively, stay the effectiveness of the DEP Order pending their appeals. Those requests were denied.

57. On November 2, 2020, NRCM (later joined by the West Forks Petitioners) moved the Superior Court for a stay of the DEP Order. On January 11, 2021, the Superior Court (Murphy, J.) entered an order denying NRCM’s motion, concluding that the movants had not met their burden to show that they have a substantial likelihood of success on the merits. *See Order on NRCM’s Motion to Stay DEP Commissioner’s Order, NextEra Energy Res., LLC v. Dep’t of Env’t. Prot.*, Dkt Nos. KEN-AP-20-27, SOM-AP-20-04 (Me. Sup. Ct. Jan. 11, 2021).

58. The appeal of the DEP Order to the BEP remains pending.

U.S. Army Corps of Engineers

59. On September 29, 2017, CMP applied for a permit from the Corps under Section 404 of the Clean Water Act; CMP subsequently further sought Corps approval for the Project under Section 10 of the Rivers & Harbors Act. The Corps considered the testimony from hundreds of members of the public, as well as the thousands of pages of sworn pre-filed testimony from dozens of witnesses, presented at the six (6) days of evidentiary hearings conducted by the DEP and LUPC. The Corps also attended the DEP hearings related to the Project, took into consideration testimony and other written submissions to the DEP, issued numerous information requests of CMP, accepted written comments over a 10-month public comment period, held its own public hearing attended by over 300 members of the public, and analyzed the thousands of

pages of evidence and argument concerning issues relevant to its review of the NECEC pursuant to the National Environmental Policy Act (“NEPA”).

60. On July 7, 2020, the Corps completed an Environmental Assessment (“EA”) for the Project.⁶ The EA included a Finding of No Significant Impact (“FONSI”), *i.e.*, that the NECEC will not have a significant impact on the human environment. Specifically, in the EA/FONSI, the Corps found that the Project will be constructed, operated, and maintained so as to meet all safety standards; that the Project does not significantly impact waters of the United States or other unique characteristics; that there is no substantial technical or scientific dispute over the Project’s effects on the human environment; that the Project’s impacts are not uncertain; and that the Project is unlikely to adversely affect listed species or critical habitat. EA/FONSI, at 160-62. The Corps also found that operation of the NECEC “would likely result in a reduction in greenhouse gas (GHG) emissions, specifically carbon dioxide emissions, in New England and neighboring markets.” *Id.* at 122. The Corps completed an addendum to the EA on November 4, 2020.⁷

61. On November 6, 2020, after completing the EA/FONSI and its addendum, the Corps signed a permit for the Project under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

62. On October 27, 2020, Sierra Club, NRCM, and Appalachian Mountain Club (collectively “Sierra Club”) sued the Corps in the U.S. District Court for the District of Maine, alleging, among other things, that the Corps review under NEPA was insufficient and that the Corps should be ordered to complete a full Environmental Impact Statement (“EIS”) for the

⁶ The Corps’ EA is publicly available as a reference document on the website for the DOE’s Office of NEPA Policy and Compliance at: <https://www.energy.gov/sites/default/files/2021/01/f82/usace-ea-2020-07-07.pdf>.

⁷ The addendum to the Corps’ EA is publicly available as a reference document on the website for the DOE’s Office of NEPA Policy and Compliance at: <https://www.energy.gov/sites/default/files/2021/01/f82/usace-ea-addendum-2020-11-04.pdf>.

NECEC, rather than an EA/FONSI. After the issuance of the Corps permit, Sierra Club amended its complaint to add a challenge to the Corps permit, requesting the District Court to vacate the permit and enjoin the Corps from authorizing project construction and operation.

63. On November 11, 2020, Sierra Club moved for a preliminary injunction to bar construction of the NECEC. On December 16, 2020, the District Court (Walker, J.) denied Sierra Club's motion for preliminary injunction in a 49-page order, finding, among other things, that Sierra Club is not likely to prevail on the merits of its claims. *Sierra Club v. U.S. Army Corps of Eng'rs*, No. 2:20-cv-00396-LEW, 2020 WL 7389744 (D. Me. Dec. 16, 2020).

64. After the Sierra Club filed an emergency appeal, the First Circuit issued a partial injunction pending appeal on January 15, 2021, which temporarily prohibited construction activities in Segment 1 of the Project. On May 13, 2021, however, the First Circuit vacated the temporary injunction and affirmed the District Court's order, finding that Sierra Club was not likely to succeed on the merits of its challenges to the Corps EA and permit. *Sierra Club v. U.S. Army Corps of Eng'rs*, 997 F.3d 395 (1st Cir. 2021).

65. The Sierra Club's lawsuit remains pending in the District Court.

Department of Energy

66. On July 27, 2017, CMP applied to the DOE for a Presidential Permit for the NECEC Project. Under Executive Order 10,485, as amended by Executive Order 12,038, a Presidential Permit from the DOE is necessary for the construction, operation, maintenance, or connection of electric transmission facilities at the U.S. international border. In considering this application, DOE developed its own administrative record, in collaboration with the Corps, and prepared its own EA and FONSI for the NECEC.

67. On January 14, 2021, the DOE issued an EA and FONSI for the Project, along with the Presidential Permit. *NECEC Transmission LLC*, OE Docket No. PP-438, Presidential Permit (DOE Jan. 14, 2021); *New England Clean Energy Connect*, DOE/EA-2155, Environmental Assessment (DOE Jan. 14, 2021); *New England Clean Energy Connect*, Finding of No Significant Impact (DOE Jan. 14, 2021).⁸ In the Presidential Permit, DOE stated as follows:

[T]he proposed project has been reviewed and approved by the Maine Public Utilities Commission, Maine Land Use Planning Commission, and Maine Department of Environmental Protection. In addition, the U.S. Army Corps of Engineers (USACE) prepared an EA regarding those portions of the proposed project within its jurisdiction and issued a Finding of No Significant Impact (FONSI). . . . USACE concluded that the proposed project did not pose the potential for significant environmental impacts. . . . DOE issued its NECEC EA . . . for the proposed project on January 14, 2021. . . . DOE determined that issuance of a Presidential permit to the Applicant to construct, connect, operate, and maintain a new electric transmission line at the U.S.-Canada border in Beattie Township, Maine would not have a significant effect on the human environment.

Presidential Permit, at 4.

68. The DOE under President Biden continues to support the completion of the NECEC as it furthers the Biden Administration's clean energy, infrastructure, and climate change policies and objectives.

69. Sierra Club has amended its complaint in *Sierra Club v. United States Army Corps of Engineers* to assert claims relating to DOE's issuance of the Permit, EA, and FONSI. Sierra Club did not seek a preliminary injunction in relation to the DOE's issuance of the Presidential Permit.

⁸ The DOE Permit is publicly accessible at: https://www.energy.gov/sites/prod/files/2021/01/f82/PP-438%20NECEC%20LLC%20_1-14-21-FINAL.pdf. The EA, together with its attachments, is publicly accessible at: <https://www.energy.gov/nepa/downloads/doesa-2155-environmental-assessment>. The FONSI is publicly accessible at: <https://www.energy.gov/sites/default/files/2021/01/f82/fonsi-ea-2155-necec-2021-01-14.pdf>.

Municipal Approvals

70. In addition to the state and federal permits and approvals discussed above, the NECEC requires various local permits and approvals from the municipalities in which the project facilities will be constructed, such as, where applicable, shoreland zoning permits, building permits, flood hazard development permits, conditional use / rezoning approvals, site plan approvals, driveway / entrance permits, demolition permits, and utility location permits. Many of these permits and approvals have a short duration and must be obtained close in time to the commencement of construction activities in the particular municipality, or be renewed prior to their expiration.

71. To date, the NECEC Project has received necessary local permits and approvals from the following municipalities: Starks, Moscow, Farmington, Lewiston, Leeds, Industry, Anson, Windsor, Wilton, Livermore Falls, Embden, New Sharon, Woolwich, Greene, Chesterville, Jay, Whitefield, Wiscasset, Buxton, and Alna. NECEC LLC has already applied for the necessary permits and approvals from Caratunk. CMP will seek permits and approvals from Pownal, Durham, and Auburn – the remaining Maine municipalities that the Project will cross – as needed and in accordance with the project schedule.

72. In the event a municipality denies, fails to timely process an application for, or unreasonably conditions a needed local permit or approval, the PUC, under 30-A M.R.S. § 4352(4), has the authority to exempt in whole or in part real estate to be used by a public utility for a transmission facility from a local ordinance when the PUC determines, after a petition, notice, and public hearing that the exemption is “reasonably necessary for public welfare and convenience.” This statute applies to the NECEC because NECEC LLC is a public utility under Maine law and the PUC has found that a public need exists for the Project through the PUC Order.

73. Under the applicable rule, the PUC must make the following findings with respect to the impact of a municipal ordinance on the NECEC in order to grant an exemption:

- a. The whole or partial exemption of the municipal ordinance is necessary to allow the NECEC to be developed, to render the NECEC Project economic, or to avoid a significant increase in the costs of the project.
- b. The interests of the general body of ratepayers with respect to the NECEC outweigh the interests represented by the municipal ordinance.

65-407 C.M.R. ch. 885, § 5.

74. If necessary, NECEC LLC and CMP would seek exemptions of local land use/permitting ordinances from the PUC for the NECEC.

Bureau of Parks and Lands Lease

75. Approximately 0.9 miles (representing only 0.6%) of the new corridor is on State of Maine public reserved lots in Johnson Mountain Township and West Forks Plantation,⁹ which the BPL leased to CMP pursuant to 12 M.R.S. § 1852, which authorizes the BPL to enter into leases for various purposes, including to “[s]et and maintain or use poles, electric power transmission and telecommunication transmission facilities, roads, bridges and landing strips.” The terms of the lease are described in a June 23, 2020 amended and restated lease (the “BPL Lease”) that CMP assigned to NECEC LLC on January 4, 2021.¹⁰ The BPL Lease is attached hereto as **Exhibit B**.

⁹ Public reserved lots are a specific type of public reserved lands. When Maine separated from the Commonwealth of Massachusetts, Maine took title to lots previously reserved by Massachusetts, which had a long-standing policy of, upon the sale of townships, reserving average quality lots for the support and development of the town. The Articles of Separation, a compact between Maine and Massachusetts setting forth the preconditions to Maine’s statehood, specifically required that Maine continue to use the public reserved lots for beneficial public uses and to continue to make such reservations as land was sold. The Johnson Mountain Township and West Forks Plantation public lots were each reserved by Massachusetts in 1793.

¹⁰ Originally, CMP and BPL entered a lease for this segment of the corridor in 2014, which lease was terminated by the amended and restated lease in 2020.

76. The NECEC passes across the public reserved lands in Johnson Mountain Township and West Forks Plantation because this route is the least environmentally damaging practicable alternative path for the Project to minimize overall impacts, including impacts to scenic, recreational, and natural resources. The primary use of these particular public reserved lands is for timber management, and the lots already contain an existing transmission line. There is no viable, practicable alternative route for the NECEC that is less environmentally damaging than the existing route through the public reserved lands that would allow the Project to be permitted and constructed in accordance with the deadlines and financial terms set forth in the TSAs.

77. On June 26, 2020, opponents of the NECEC sued BPL and CMP challenging the BPL Lease on the grounds that it is *ultra vires* because the Maine Legislature had not approved the lease by a 2/3 vote in accordance with article IX, section 23 of the Maine Constitution, which provides:

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 the 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.

The BPL and NECEC LLC deny that the BPL Lease is unlawful and contend that it does not reduce or substantially alter the uses of the leased public reserved lands, particularly since the construction and operation of transmission facilities have long been among the statutorily permitted uses of public reserved lands under 12 M.R.S. § 1852(4).

78. On August 10, 2021, the Superior Court (Murphy, J.) issued an order reversing the BPL's issuance of the BPL Lease. The BPL and NECEC LLC timely appealed the order on August 13, 2021, thereby automatically staying the Superior Court's judgment pending appeal. M.R. Civ.

P. 62(e). After opponents filed a motion to lift the stay, the Law Court entered an order leaving the stay in place, with NECEC LLC to refrain from construction activities on the leased property during the pendency of the appeal. The appeal is currently pending before the Law Court. This temporary bar to construction activities on the leased property only will not prevent or materially interfere with completion of the Project according to contractual deadlines.

First Citizens' Initiative Targeting the NECEC (2019-2020)

79. While the permitting of the NECEC proceeded, on August 29, 2019, a group of voters led by former state senator Thomas Saviello and Sandra Howard filed an application for a citizens' initiative (the 2020 Initiative) that sought to direct the PUC to reverse its May 3, 2019 CPCN Order to "find that the construction and operation of the NECEC transmission project are not in the public interest and that there is not a public need for the NECEC transmission project," notwithstanding the PUC's Order finding to the contrary based on substantial evidence, and the Law Court's Order affirming that decision, and therefore to deny a CPCN for the Project. A copy of the 2020 Initiative is attached hereto as **Exhibit C**.

80. Mainers for Local Power, a political action committee funded at the time by Calpine and Vistra, two energy companies that operate natural gas fired power plants in Maine and elsewhere in New England, spent in excess of \$600,000 to collect signatures to place the initiative on the November 2020 ballot.

81. On May 12, 2020, after the Secretary of State certified the initiative for inclusion on the November 2020 ballot, Avangrid filed a complaint for declaratory judgment challenging the constitutionality of the 2020 Initiative and seeking an injunction preventing the Secretary of State from including the initiative on the November 2020 ballot. NextEra and Mainers for Local Power intervened to defend the 2020 Initiative.

82. In an August 13, 2020 opinion, the Law Court held “that the initiative fails to meet the constitutional requirements for inclusion on the ballot because it exceeds the scope of the people’s legislative powers conferred by article IV, part 3, section 18 of the Maine Constitution.” *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 2, 237 A.3d 882. As a result, the 2020 Initiative did not appear on the November 2020 ballot.

Second Citizens’ Initiative Targeting the NECEC (2020-2021)

83. On or about September 15, 2020, approximately five weeks after the Law Court’s decision striking down the 2020 Initiative as unconstitutional, a group of voters led again by Thomas Saviello and Sandra Howard, and funded by Mainers for Local Power and NextEra, filed an application for a second citizens’ initiative targeting the NECEC.

84. Rather than specifically call the NECEC out by name again after their failed effort with the 2020 Initiative, the proponents of the new Initiative seek to bar completion of the NECEC by amending retroactively Titles 12 and 35-A of the Maine Revised Statutes in three distinct, substantive respects. A copy of the Initiative is attached hereto as **Exhibit D**.

85. Section 1 of the Initiative amends 12 M.R.S. § 1852(4) to mandate that any lease of public reserved land by the BPL for transmission lines and facilities is automatically deemed to substantially alter the use of the lease land within the meaning of article IX, section 23 of the Maine Constitution and requires approval by a 2/3 vote of all members elected to each House of the Legislature. This requirement applies retroactively to September 16, 2014.

86. Section 4 of the Initiative amends 35-A M.R.S. § 3132 to require legislative approval of the construction of “high impact electric transmission lines,” and that any high impact electric transmission line crossing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land and requires approval by a 2/3 vote of all

members elected to each House of the Legislature. This requirement applies retroactively to September 16, 2020.

87. Section 5 of the Initiative amends 35-A M.R.S. § 3132 to ban the construction of “high impact electric transmission lines” in the “Upper Kennebec Region” as that term is defined in the Initiative, which includes approximately 43,300 acres of land in Somerset County and Franklin County. This requirement applies retroactively to September 16, 2020.

88. By design, each of the changes in the Initiative retroactively applies to the NECEC Project, requiring legislative approval for the BPL Lease and the Project itself, by 2/3 vote of all members elected to each House of the Legislature, and prohibiting the construction of the Project in its current route through the “Upper Kennebec Region,” which as defined may include some portion of Segment 1 of the NECEC.

89. As with the 2020 Initiative, this Initiative through its retroactive application is specifically targeted at the NECEC and intended to block completion of the Project.

90. One of the primary political action committees supporting the Initiative, No CMP Corridor, has repeatedly stated that the purpose of the Initiative is to stop the NECEC. No CMP Corridor has stated the following on its website, nocmpcorridor.com:

HELP US STOP THE CMP CORRIDOR

Mainers don't benefit from CMP's destructive transmission corridor project, and they have made it clear every step of the way that they don't want it, **but their voices haven't been heard by bureaucrats in Augusta**. That's why a group of concerned citizens banded together to form No CMP Corridor. We are a grassroots, volunteer-driven organization with a simple goal: give the people of Maine a voice through a citizens' referendum.

Nobody thought we, everyday citizens, could go toe-to-toe with CMP and their foreign investors. But against all odds (and in the dead of winter), we collected more than enough signatures to bring this issue to a statewide vote in November of 2020.

Then the highest judicial Court of Maine sided with CMP and ruled our 2020 referendum unconstitutional, effectively silencing Mainers' voice in the matter.

While we had lost the battle, we knew the war was far from over. So we filed another referendum and are now gathering signatures to get on the ballot in 2021. Our new referendum is worded in a way that, we are confident, completely constitutional and allow Mainers to express their choice about this project.

To read a short summary about our new initiative, click [HERE](#).

To read the full petition language, click [HERE](#).

We did not and will not stand idly by while a large, untrustworthy corporation degrades our best resources for their exclusive financial gain. **We are more than an extension cord for Massachusetts.**

The bottom line is that CMP has failed to reliably deliver power right here in Maine, and their constant drive to put profits ahead of ratepayers has resulted in poor customer service, multiple state investigations and their dubious reputation as the lowest rated power utility company in the nation.

So while they spend record sums of money on fancy ad campaigns to deceive the voters, we will continue to fight them every step of the way. CMP cannot be trusted, and we will not allow them to permanently alter our way of life to make millions of dollars off the backs of rural Mainers.

This is a bad deal for Maine! We hope you will join us in putting an end to this destructive project once and for all.

- Sandi Howard, No CMP Corridor

91. In a September 16, 2020 press release, No CMP Corridor stated the following:

Opponents of the Central Maine Power's (CMP) proposed corridor filed ballot initiative language today to begin the process of allowing Maine voters an opportunity to weigh in on this incredibly unpopular project. After ballot initiative language is approved by the Maine Secretary of State, Maine registered voters will be collecting the required signatures to place this initiative on the ballot in 2021.

Former State Senator and State Representative Tom Saviello filed the language today with the Secretary of State. He was joined by five other Maine voters who were deeply concerned about the impacts of this project and the inability of all Mainers to have a say when it comes to this for-profit project.

See https://www.nocmpcorridor.com/9_16_20_press_release2.

92. On October 30, 2020, the Secretary of State accepted the application for the Initiative and issued the form petition for it.

93. On that same day, No CMP Corridor issued a press release stating the following:

A new statewide effort to stop Central Maine Power's 145-mile transmission line through Maine began today in Augusta. This new referendum includes a three part question that would restore the voice of the people by:

1. Requiring legislative approval for any high impact electrical transmission line that is more than 50 miles (Retroactive to 9/16/2020)
2. Putting a geographic prohibition on building high impact electrical transmission lines in the Upper Kennebec region (Retroactive to 9/16/2020)
3. Reaffirming the Maine Constitution’s requirement that the Legislature approves leases, like CMP’s, that cross public lands if they significantly alter the use of those lands. (retroactive to 9/16/2014)

Former State Senator and State Representative Tom Saviello filed paperwork in September to begin a new statewide initiative campaign. Today, the Maine Secretary of State provided the paperwork necessary for signature collection to begin.

“As I’ve said from the very beginning, this transmission project is a bad deal for Maine and for Maine people,” Saviello said.

See https://www.nocmpcorridor.com/10_30_20_press_release.

94. No CMP Corridor also stated the following in a newsletter dated November 1, 2020: “Two days ago was the official launch of our new referendum effort to stop CMP’s destructive corridor project” See https://www.nocmpcorridor.com/11_1_newsletter.

95. On January 21, 2021, the proponents of the Initiative submitted petitions to the Secretary of State signed by Maine voters.

96. That same day, No CMP Corridor issued a press release stating the following:

Sandi Howard, the leader of the No CMP Corridor PAC, Thomas Saviello, a former state legislator, and Darryl Wood, an activist from New Sharon today delivered over 100,000 signatures to Secretary of State Shenna Bellows. These signatures reflect a successful citizens’ signature collection effort that overcame challenges posed by winter weather and Covid 19 protocols, ensuring that voters will be able to have the final say on CMP’s unpopular NECEC Corridor later this year.

“An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserve Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region” will be on the ballot this November. If enacted, the new law will be retroactive and therefore effectively will block the project.

See https://www.nocmpcorridor.com/1_21_21_press_release.

97. No CMP Corridor posted the following photograph on its web page when it filed the petitions for the Initiative with the Secretary of State:



98. On February 22, 2021, the Secretary of State certified the Initiative to be submitted to the Maine Legislature in accordance with constitutional and statutory requirements.

99. The Legislature did not enact the Initiative without change prior to adjourning its first regular session *sine die* on March 30, 2021.

100. On April 8, 2021, the Governor issued her proclamation declaring that the Initiative would be placed on the ballot for the November 2021 election.

101. After the Secretary of State issued final wording for the question to be placed on the November 2021 ballot for the Initiative, No CMP Corridor issued a press release stating: “No CMP Corridor would like to thank the Secretary of State for drafting a question that we feel is straightforward and easy to understand. More than 80,000 voters initiated this question, and come

November, the people of Maine will finally have the opportunity to vote on the fate of the destructive CMP Corridor.” See https://www.nocmpcorridor.com/5_24_21_press_release.

102. Throughout the subsequent campaign, proponents of the Initiative continued to make it clear that the Initiative targets the NECEC.

a. In April 2021, No CMP Corridor published a Facebook post authored by Sandi Howard that stated, “we are adjusting our messaging to encourage supporters to share the news that a YES vote on the ballot referendum in November is to REJECT the CMP Corridor.” See <https://www.facebook.com/NoCMPCorridor/posts/485236602917224>.

b. On June 14, 2021, No CMP Corridor posted a “Vote Yes to Reject the CMP Corridor” graphic to its Facebook page:



See <https://www.facebook.com/NoCMPCorridor/posts/532389861535231>.

c. On July 13, 2021 No CMP Corridor released an ad which featured cartoon animals stating, in part “We must reject CMP’s Corridor,” and ending with the statement “vote yes to reject the CMP corridor this fall. It’s a bad deal for Maine.” See <https://youtu.be/zu-5Jl6Ijf8>.

d. On July 15, 2021, Sandi Howard posted images of an anti-NECEC door hanger, paid for by Mainers for Local Power, on the Say No to NECEC Facebook group, asking “Will you vote YES to ban the CMP Corridor on November 2, 2021?”:



See <https://www.facebook.com/groups/SayNOtoNECEC/posts/983110092445327/>.

e. On August 8, 2021, No CMP Corridor published its weekly newsletter, which contained the following statement from Sandi Howard: “We can VOTE YES ON #1 this November to finally put an end to this madness. That’s where you come in. It’s time to spread the word that this November, we need to vote YES on Question 1 to protect the Upper Kennebec region, which includes our public lands, from being exploited by CMP.” Ms. Howard also wrote: “please, channel any frustration you may be feeling into action, because ultimately, Maine votes will have the final say this November, so the time to take action is now. Vote Yes on #1 to reject, ban and stop the CMP Corridor!” See https://www.yestorejectcmpcorridor.com/8_8_21_newsletter.

f. On September 20, 2021, an attorney with the law firm representing the political action committees promoting the Initiative (No CMP Corridor and Mainers for Local Power), as well as NextEra, publicized on a radio show that “the only project that is going to be affected . . . is the CMP corridor project.” *See* <https://www.wvomfm.com/episode/ghrt-rewind-09-20-adam-cote-1315/>.

g. On September 22, 2021, that same attorney publicized on a radio show that “this referendum essentially is aimed to defeat the CMP corridor.” *See* <https://soundcloud.com/newsradio-wgan/adam-cote#t=0:00>.

h. In September 2021, Mainers for Local Power published an ad stating “Make no mistake. Question 1 is about CMP’s corridor and it’s a bad deal for Maine. Vote yes on 1 to ban the corridor. *See* https://www.youtube.com/watch?v=2hq_3CHhibI.

i. In October 2021, Mainers for Local Power paid for an ad featuring Maine Guide Ed Buzzell, wherein Mr. Buzzell states, “there’s a lot of confusion about Question 1, so let’s clear it up. First, politicians didn’t write it. 80,000 Mainers put Question 1 on the ballot, and we did it for one reason: to stop CMP’s corridor.” *See* <https://host2.adimpact.com/admo/viewer/5071026>.

j. In October 2021, Mainers for Local Power sent a mailer urging voters to “Vote Yes on 1 To Ban CMP’s Corridor,” and stating that “Voting Yes on Question 1 gives Maine people the power to ban CMP’s Corridor and reject CMP’s bad deal.”



103. The anti-NECEC campaign has been substantially funded by NextEra, Calpine, and Vistra, all seeking to preclude the introduction of cleaner, less expensive energy into New England.

a. According to filings with the Maine Commission on Governmental Ethics & Election Practices (the “Ethics Commission”), No CMP Corridor has received approximately \$479,193 in cash contributions as of November 1, 2021. The single largest donor to No CMP Corridor has been Mainers for Local Power, which has given \$310,000.

b. According to filings with the Ethics Commission, since its formation in December 2019, Mainers for Local Power has received approximately \$26,814,746 in cash and \$1,451,647 of in-kind contributions as of November 1, 2021. Virtually that entire amount has been contributed by NextEra (\$20,025,000); Vistra (\$2,866,323); and Calpine (\$2,688,823). Thus, the contribution from Mainers for Local Power to No CMP Corridor has come directly from the NECEC’s fossil fuel competitors whose business will be adversely affected by the construction and operation of the Project.

c. In addition to cash contributions it received from Mainers for Local Power, No CMP Corridor also received \$88,000 of in-kind contributions from Clean Energy for ME, LLC, an entity otherwise known as Stop the Corridor. These contributions from Stop the Corridor to No CMP Corridor were made between December 2019 and March 2020

and consisted primarily of staff time for campaign coordination and volunteer recruitment related to the 2020 Initiative targeting the NECEC. Upon information and belief, the majority of funding for Stop the Corridor came from NextEra.¹¹

d. Mainers for Local Power has been the chief organizer and primary funding source for both the 2020 Initiative and the present Initiative targeting the NECEC. Mainers for Local Power hired Revolution Field Strategies to gather the signatures necessary to place the Initiative on the ballot at a cost of more than \$2.1 million. As of November 1, 2021, Mainers for Local Power has spent an additional \$14.3 million on television advertisements, \$3.45 million on social media and online advertisements and \$346,000 on telephonic outreach opposing the NECEC.

104. Following the anti-NECEC campaign funded by fossil fuel burning energy companies, the Initiative was approved by the voters on November 2, 2021.

105. The Initiative will take effect on or about December 12, 2021.

106. After the Initiative takes legal effect, the relevant agencies will likely begin enforcement actions. Proceedings in the PUC will likely begin with issuance of an order to show

¹¹ Given Stop the Corridor's significant contribution of in-kind staff time to No CMP Corridor and its significant expenditures of television and digital advertising when signatures were being collected for the 2020 Initiative targeting the NECEC, and for other reasons, the Ethics Commission voted in March 2020 to investigate whether Stop the Corridor violated Maine Election Law for failing to file as a political action committee or ballot question committee. Filing with the Ethics Commission would require Stop the Corridor to identify the source(s) of its fiscal contributions. Over the course of the Ethics Commission investigation, Stop the Corridor has refused to provide un-redacted documents to the Ethics Commission, challenged the scope of multiple subpoenas issued by the Ethics Commission, and ignored specific requests in those subpoenas asking for documents related to its funding. Stop the Corridor also filed suit claiming that the Ethics Commission did not have the authority to conduct the investigation, a suit that was dismissed in December 2020. The investigation, which is still ongoing, has been drawn-out for more than twenty months. Even if the Ethics Commission determines that Stop the Corridor should have registered as a political action or ballot question committee, Stop the Corridor's delaying tactics ensured that no information about its funding sources was available to Maine voters in advance of Election Day of 2021.

cause why the proceedings relating to the CPCN should not be reopened. The BPL will likely issue a letter regarding potential modification or termination of the BPL Lease.

107. In addition, after the Initiative takes legal effect, NECEC LLC will be required to obtain the approval of the Legislature for the Project, which may not be sufficient if the PUC determines that the Project route goes through the Upper Kennebec Region, where high-impact electric transmission lines are prohibited pursuant to the Initiative.

Construction of the NECEC

108. Construction of a large transmission project like the NECEC is a complex and lengthy process, which involves the work of numerous consultants and specialized contractors, and the procurement of significant quantities of supplies, materials, and equipment, all of which must be planned and managed with a detailed project schedule to track all necessary project tasks in sequence, and a detailed project budget to track expenses. The NECEC project schedule currently contemplates the Project achieving commercial operation on December 13, 2023.

109. The current estimate of the total capital expenditures to complete the Project is approximately \$1.04 billion. Through the end of 2020, approximately \$153.3 million had been expended on the Project. Approximately \$408.8 million had been expended on the Project through September 30, 2021; approximately \$449.8 million is estimated to have been expended on the Project through November 2, 2021. Of the \$449.8 million, as contemplated by the stipulation approved by the PUC as part of the CPCN, NECEC LLC has paid out approximately \$8.5 million in benefits between January 2021 and October 1, 2021. (HQUS has paid an additional \$9.5 million in benefits to Maine). To date, NECEC LLC has paid out approximately \$3.4 million in property taxes related to the Project.

Contractors

110. Construction of the NECEC requires the participation of numerous contractors, each of which are responsible for certain portions of the Project. Burns & McDonnell has been providing permitting management services for the Project since 2017. Black & Veatch Corporation provides project management services, pursuant to a contract dated September 18, 2018. TRC Engineers LLC provides design services, according to a contract dated September 5, 2018.

111. In addition to these management and design services contractors, construction and supply contracts have been entered into for the Project: a contract with Northern Clearing Inc. (“NCI”) was executed on September 15, 2020; an HVDC transmission line construction contract with Irby Construction Inc., to be implemented through a joint venture with Cianbro Corporation, (“Cianbro/Irby”) was executed on October 15, 2020; the AC transmission line construction contract with Sargent Electric Company was executed on February 17, 2021; a contract with The H.D.D. Company, Inc. was executed on February 8, 2021 to drill the segment of the NECEC HVDC line that will run under the Kennebec River; an Engineering, Procurement and Construction (“EPC”) contract with ABB Inc. (now ABB Enterprise Software Inc., doing business as Hitachi ABB Power Grids) (“HAPG”) for the converter station in Lewiston was executed on August 19, 2019; and steel pole supply contracts were executed with TransAmerican Power Products, Inc. (“TAPP”) on September 14, 2020 and New Nello Operating Co., LLC (“Nello”) on April 15, 2020.

112. There are numerous other contracts relating to construction of the Project, including contracts for round wood poles awarded on December 28, 2020 and laminated wood poles on February 19, 2021; several contracts entered in Spring 2020 with Maine sawmills for the manufacture of timber mats to be used to prevent environmental degradation of the transmission

corridor during construction; several contracts with third-party environmental inspectors awarded on January 14, 2021; and a contract for the autotransformer for the Larrabee Road substation.

Construction Progress

113. Construction of a major utility transmission corridor like the NECEC requires substantial construction-related expenditures, including for engineering, permitting, and environmental compliance, and program management, which must begin long before activities in the field may commence and will continue until the Project achieves commercial operation.¹² For the NECEC, these construction-related expenditures proceeded as follows:

a. In 2014, CMP began acquiring the additional real estate interests necessary to construct a transmission corridor along the Project path.

b. Following the acquisition of the bulk of the real estate rights needed for the Project, development efforts were initiated in late 2016, when the Project's transmission planners and engineers established the optimal technical configuration for the NECEC in coordination with Hydro-Québec. This included the confirmation of the proposed route, the selection of the location for the converter station and the preliminary engineering for the main project components. In parallel with this effort, and with support from external consultants, the project team developed a preliminary project schedule that defined the timing for the implementation of the multiple project activities necessary to construct the project, establishing the proposed project in-service date of December 2022.

¹² The costs relating to these activities were approximately \$65.6 million as of February 21, 2021; \$70.9 million as of April 8, 2021; \$92.2 million as of June 30, 2021; \$97.3 million as of September 30, 2021; and \$99.2 million as of November 2, 2021. For purposes of this Verified Complaint, legal fees are not included.

c. In the spring of 2017, the project team added additional resources to support the permitting processes, including natural resource surveying and application development and filing.

d. In the spring of 2018 and upon the selection of the Project in the Massachusetts RFP, the project team added a large number of project management and engineering personnel, both internal and external, to initiate the detailed planning phase of the Project. This included the implementation of all project controls (budget, schedule, and risk management), quality and safety protocols, and the development of project-detailed engineering, for which external consultants were hired.

e. With the permitting processes underway, in late 2018, the project team initiated the procurement of the Project's major material and construction services, launching the RFPs to the market and awarding its key contracts as early as mid-2019, when the approximately \$200 million "Engineering, Procurement and Construction" (EPC) contract for the converter station in Lewiston was awarded to HAPG. The award of this contract was necessary at this time due to the long lead-time to construct the components that make up the converter station, and this contract triggered the mobilization of a large team of project engineers to prepare detailed transmission studies and detailed engineering plans ahead of the manufacturing of the custom converter station components.

f. During 2020, and as earlier described, other multiple large contracts were awarded to different contractors and manufacturers for project components. This included contracts for the main construction contractors and the mobilization and initiation of pole production by the transmission structure manufacturers. In preparation for the start of construction during the second half of 2020, the project team continued to grow with the

gradual addition of construction management, safety, and environmental compliance resources to provide the adequate levels of oversight during construction.

g. All of these engineering, permitting, environmental compliance, and program management- and construction-related activities were necessary to permit the NECEC project team to formally mobilize construction contractors and for construction activities to start in the field.

114. The construction of long, linear transmission projects like the NECEC also requires careful construction sequencing, which takes into account time-of-year restrictions to protect vulnerable wildlife, environmental limitations, weather conditions, access considerations, and the participation of numerous contractors with specialized expertise. The process begins with corridor clearing, followed by the erection of the structures, and the stringing of the electrical conductor. Concurrently, substation work needed to permit the interconnection of the new transmission line to the existing transmission system must be accomplished. For the NECEC, this substation work most notably includes the construction of the converter station in Lewiston whereby the DC power transmitted on the HVDC line is converted to AC for injection into the transmission system. Network Upgrade work also requires detailed outage sequence plans that have additional time-of-year restrictions; for example, certain elements can only be removed from service in a specific 2-week window for the entire year.

115. Pursuant to a notice to proceed issued in November 2020, CMP's clearing contractor NCI was instructed to mobilize its team in order to prepare sufficient corridor beginning in late 2020 or early 2021 for the transmission line contractors (Cianbro/Irby) to begin erecting the HVDC transmission line.

116. Upon the issuance of the notice to proceed, NCI recruited and mobilized its crews to be ready to start work once NECEC LLC approved commencement of construction. During this mobilization phase, NCI performed required site surveys, installed protected/natural resource flagging, prepared lay down areas along Segments 1 and 2 of the project route for supplies and equipment including the timber construction mats and poles, and retained and located necessary equipment.

117. After issuance of the Presidential Permit, the final major permit required for the Project, on Thursday, January 14, 2021, NECEC LLC instructed NCI to commence its clearing and other construction activities on Monday, January 18, 2021.

118. Project plans called for clearing to begin at The Forks Plantation and progress both north into Segment 1 and south into Segments 2 and 3; however, due to the injunction temporarily delaying construction activities in Segment 1 between January 15, 2021, and May 13, 2021, NCI began clearing trees and laying mats on the northern end of Segment 2 on January 18, 2021 (starting at The Forks Plantation and heading south along the Project route). NCI began clearing Segment 1 on May 15, 2021, two days after the First Circuit lifted the injunction on construction activities in that segment of the Project. Subject to restrictions on cutting during the months of June and July under the Corps permit to mitigate impacts on a federally-listed bat species, NCI has continued clearing the corridor (as well as installing construction mats as necessary to conduct the clearing) since January 18, 2021, as contemplated by the project schedule.

119. In 2020, to prepare for structure installation after sufficient clearing had occurred, CMP authorized its steel pole supplier, TAPP, to begin construction of steel poles for the Project. Each steel pole is custom designed and constructed specifically for the Project, according to

engineering design specifications. The first steel poles from TAPP were delivered to lay-down yards by January 18, 2021.

120. On February 1, 2021, Cianbro was given partial authorization to mobilize and begin clearing and site development work at the converter station in Lewiston. Due to delays in a minor revision to the DEP permit, crews were put on standby and ultimately the full authorization to prepare that site for construction was granted on May 28, 2021. Clearing work at the site was finalized on May 31, 2021, to avoid time-of-year clearing constraints in June and July. Initial work completed includes site and road clearing, road and site grubbing, site cut and fill, and erosion control. Additional work partially completed includes drilling, blasting, and rock processing (approximately 86%); access road installation (approximately 80%); and pad subgrade installation (approximately 87%). The overall site preparation is over 72% complete. In addition, HAPG had constructed numerous custom components for the converter station site, including four transformers and valves, to allow the necessary lead time before installation at the converter station. By November 2, 2021, the total amount paid to HAPG for the construction of the Lewiston converter station was approximately \$100 million. Of that \$100 million, approximately \$28 million was paid to HAPG for construction and construction-related work at the converter station site.

121. A true and accurate picture of the converter station site (taken August 26, 2021) is included below:



122. A true and accurate picture of one of the custom-manufactured transformers for the converter station (taken on October 6, 2021) is included below:



123. On February 9, 2021, after NCI had conducted sufficient clearing to permit the process of installing the HVDC line to begin, Cianbro/Irby installed the first structure in Segment 2. Below is a true and accurate picture of the installation of the first structure (Structure 516).



124. By February 22, 2021, the date the Secretary of State certified the signatures for the Initiative, NCI had cut over 10 miles of corridor, laying over 1,000 mats for access, and performed approximately \$8.3 million of clearing and related construction activities. Cianbro/Irby had installed 9 structures on the HVDC line, at a cost of approximately \$15 million. TAPP had delivered 24 poles to lay-down yards at a cost of approximately \$7.4 million (including engineering and raw materials). The total amount capital expenditures on the NECEC from inception to February 22, 2021, inclusive of project management costs, was approximately \$199 million.¹³

125. A true and accurate picture of the base of Structure 372 (taken on February 21, 2021) and Structure 371 (taken on February 15, 2021), both set in February, are included below:

¹³ The February 22, 2021, capital expenditure sum is based on the monthly accruals through the month of February. Accruals consider work executed through the 20th of each month.



126. By March 30, 2021, the end of the first quarter of 2021 and the date the Legislature adjourned *sine die* without adopting the legislation proposed via the Initiative, NCI had cut over 25.5 miles of corridor, laying over 5,727 mats for access, and performed approximately \$13 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures on the HVDC line, at a cost of approximately \$20.6 million. TAPP had delivered 33 poles to lay-down yards at a cost of approximately \$8.4 million. The total capital expenditures on the NECEC from inception to March 30, 2021, inclusive of project management costs, was approximately \$248.5 million.

127. A true and accurate picture of the base of Structure 359 (taken on March 3, 2021) and Structure 360 (taken on March 3, 2021), both set in March, are included below:



128. By April 8, 2021, the date the Governor issued the proclamation declaring that the Initiative would be placed on the November 2021 ballot, NCI had cut approximately 36 miles of corridor, laying over 5,727 mats for access, and performed approximately \$14.3 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures on the HVDC line, at a cost of approximately \$21.2 million.¹⁴ TAPP had delivered 33 poles to lay-down yards at a cost of approximately \$8.4 million. The total capital expenditures on the NECEC from inception to April 8, 2021, inclusive of project management costs, was approximately \$250.2 million.

129. By June 30, 2021, the end of the second quarter of 2021, NCI had cut over 80 miles of corridor, laying over 25,328 mats for access, and performed approximately \$25.6 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures and two additional bases, at a cost of approximately \$27.3 million. TAPP had delivered 116 poles to lay-down yards at a cost of approximately \$9.5 million. Further, beginning in June 2021, work began

¹⁴ Costs related to structure installation increased over March 30, 2021, although no additional structures had been installed because the contractor continued to do additional preparatory work for structure installations (including, for instance, pole assembly and site work).

on the AC portion of the Project, specifically, the Network Upgrade line in Segment 3. By June 30, 2021, 15 structures had been installed and 2 modified along the AC line, at a cost of approximately \$6.6 million. The total capital expenditures on the NECEC from inception to June 30, 2021, inclusive of project management costs, was approximately \$349.6 million.

130. A true and accurate picture of structure 425 (taken on July 29, 2021) and the installation of structure 426 (taken on July 28, 2021), along the DC line, are included below:



131. True and accurate pictures of installation of structures along the AC line (taken on August 4, 2021 and August 16, 2021) are included below:



132. As of November 2, 2021, Election Day, NCI had cut approximately 124 miles (85.5%) of the Project corridor and performed approximately \$43.1 million of clearing and other construction activities. Cianbro/Irby had installed approximately 70 structures, representing approximately 8.4% of the total HVDC transmission line structures, for a total cost of approximately \$38.5 million. In addition, Cianbro/Irby had set bases for 10 more direct imbed structures and installed caisson foundations for 4 more structures. TAPP had delivered 484 poles to lay-down yards for a cost of approximately \$25 million and Nello had delivered an additional 86 poles for a cost of approximately \$13 million.¹⁵ In all, more than 55% of the custom-manufactured steel poles that will be used for the HVDC transmission line had been delivered by the end of September 2021. Along the AC portion of the line, specifically Segment 3 and Segment

¹⁵ In addition, other materials delivered through November 2, 2021 included 344 reels of DC conductor (total length of over 3.1 million feet) at a cost of approximately \$6.7 million; 136 reels of DC fiber (total length of over 1.65 million feet) at a cost of approximately \$1.4 million; 74,100 DC insulators at a cost of approximately \$4.5 million; 109 wood poles for the AC line, at a cost of over \$1.8 million; 169 reels of AC conductor (over 1,420,00 feet) at a cost of approximately \$2.6 million; 28 reels of AC fiber at a cost of approximately \$310,000; 22 reels of AC Shieldwire at a cost of approximately \$45,000; and over 34,000 AC insulators at a cost of approximately \$832,000.

5 (the 26-mile Network Upgrade between Coopers Mills and Maine Yankee), approximately 54 structures had been installed and 2 modified, at a cost of approximately \$18.4 million. In addition, approximately 3 miles of conductor had been strung in Segment 5. The total capital expenditures on the Project from inception through November 2, 2021, inclusive of project management costs, is estimated to be approximately \$449.8 million, which represents 43% of the total project cost estimate.¹⁶

133. True and accurate pictures of installed structures on the DC line (taken on October 8, 2021) are included below:



134. A true and accurate picture of NECEC LLC's contractor Sargent installing new wire at Structure 377 (taken on September 27, 2021) is included below:

¹⁶ The November 2, 2021, capital expenditure sum is based on the monthly accruals through the month of October.



135. As of November 2, 2021, approximately 600 workers are working on the Project (the significant majority of them from Maine).

Construction Scheduling

136. In order to complete construction on the Project in time to achieve timely commercial operation as contractually required, it was necessary for NECEC LLC to begin construction activities in early 2021 and continue thereafter. Based on a commercial operation date of May 31, 2023, project plans called for construction to start during 2020, anticipating construction as soon as the required state and federal approvals were obtained. The delay in obtaining some of these authorizations (due in part to the delays caused by Project opponents) impacted the timing planned for certain construction activities and required the project team to make certain adjustments to the project schedule to maintain the target completion date agreed with Hydro-Québec.¹⁷ Starting construction as soon as the authorizations were received was

¹⁷ Hydro-Québec and NECEC LLC have established a Joint Development Board that governs the joint

critical to maintain the targeted commercial operation date. It is critical that the Project enter commercial operation as soon as is feasible in order to, among other things, (1) realize Project benefits; and (2) ensure financial viability of the Project, which is impacted by incremental investment costs associated with Project extension, such as escalation costs, change orders associated with delays and resequencing, and delays in transmission revenues which do not start until commercial operation is achieved.

137. If construction activities are not allowed to proceed during this legal challenge to the Initiative, the Project likely would not achieve commercial operation before the contractual deadline of August 23, 2024, or even the extended deadline of August 23, 2025. The current project schedule calls for a commercial operation date of December 13, 2023, which allows schedule float of approximately 8 months with respect to the contractual deadline. As of today, the Project has been in construction for nearly 10 months and there are just over two more years of construction and commissioning ahead. If construction is not allowed to continue during the legal challenge, the impact on the commercial operation date will be, at a minimum,¹⁸ one day per each day that construction is on hold. Assuming for instance, a 2-year stoppage, construction would not be allowed to resume until the fall of 2023 and the in-service date would be pushed out to at least the end of 2025, making completion and operation of the Project unlikely.

development of the two transmission projects (NECEC LLC's NECEC Project in the U.S. and Hydro-Québec's Appalaches - Maine Transmission Project in Canada). The parties must agree on and synchronize the project development milestones that are common to each other, such as the interconnection at the Canada-U.S. border, the testing and commissioning, and the commercial operation date.

¹⁸ The actual schedule impact would depend on seasonal constraints (such as winter versus summer construction) as well as the timing necessary for remobilization of the construction crews and transmission outages and commissioning activities as permitted by ISO-NE.

Public Notice of Construction Progress

138. The beginning of construction on the NECEC was publicized by NECEC LLC via a host of platforms, including earned media, social media, interviews, and the *Clearing the Air* podcast. For example, initial construction efforts were publicized in the following:

- a. Clearing the Air, Season 2, Episode 13: Construction Begins [January 29, 2021]:
https://www.youtube.com/watch?v=TEdr_DfzUyE
- b. NECEC Press Release [February 8, 2021]:
<https://www.necleanenergyconnect.org/necec-milestones/2021/2/9/hundreds-of-mainers-go-to-work-as-construction-begins-on-the-new-england-clean-energy-connect>
- c. NECEC Facebook Page [February 9, 2021]:
<https://www.facebook.com/NECleanEnergyConnect/photos/2802844983265937>
- d. News Center Maine [February 9, 2021]:
<https://www.newscentermaine.com/video/news/cmp-begins-work-on-the-transmission-line-tuesday/97-696a3adc-52a8-40b4-9c13-b6797467cd41>
- e. Portland Press Herald [February 9, 2021]:
<https://www.pressherald.com/2021/02/09/poles-go-up-on-disputed-cmp-transmission-corridor/>
- f. WVOM, Interview with Thorn Dickinson [February 10, 2021]:
<https://www.wvomfm.com/episode/ghrt-rewind-02-10-necec-thorn-dickinson-1215/>
- g. NECEC Twitter Account [February 11, 2021]:
https://twitter.com/NECEC_ME/status/1359894402848620549
- h. Morning Sentinel [February 15, 2021]:
<https://www.centralmaine.com/2021/02/15/many-locals-wary-as-cmp-corridor-breaks-ground-near-the-forks/>

139. Media coverage continued throughout the construction effort, describing progress on the Project. For example:

- a. Bangor Daily News [May 17, 2021]:
<https://bangordailynews.com/2021/05/17/business/cmp-project-takes-shape-fast-despite-legal-and-political-risks/>

- b. Bangor Daily News [October 14, 2021]:
<https://bangordailynews.com/2021/10/14/business/75-percent-of-trees-cleared-along-cmp-corridor/>

140. Throughout construction, NECEC LLC continued to provide public updates concerning construction progress by regular updates to the NECEC Project’s webpage, regular social media posts on Facebook, periodic *Clearing the Air* podcasts concerning project status and developments, periodic press releases and press events, political advertisements opposing the Initiative on television and social media, and the electronic distribution of at least monthly progress reports to the Project’s distribution list and republication of the same through social media.

141. From the outset of construction, Project opponents tracked construction progress and regularly posted photos, press reports, and hundreds of other updates on the public “Say No to NECEC” Facebook page and other Facebook pages as reflected in the following links:

- a. Scott Robertson [February 10, 2021]:
<https://www.facebook.com/groups/SayNOtoNECEC/permalink/889714595118211>
- b. Denise Caron-Rancourt [February 8, 2021]:
<https://www.facebook.com/groups/SayNOtoNECEC/permalink/888618368561167>
- c. Todd Burbank [February 12, 2021]:
<https://www.facebook.com/groups/SayNOtoNECEC/permalink/891116364978034>
- d. Susannah Warner [January 28, 2021]:
<https://www.facebook.com/photo?fbid=4112532368776445&set=g.279944929428517>
- e. Mark Turek [January 25, 2021]:
<https://www.facebook.com/photo?fbid=464252898289872&set=g.279944929428517>

142. Based on these and other public updates, construction progress was well publicized from the outset.

COUNT I
(Declaratory Judgments Act – Vested Rights)

143. Plaintiffs repeat and restate the allegations contained in the foregoing Paragraphs as if fully set forth herein.

144. Retroactive application of legislation is unconstitutional if it impairs vested rights. *Merrill v. Eastland Woolen Mills, Inc.*, 430 A.2d 557, 560 n.7 (Me. 1981).

145. Rights to a project vest upon: (1) actual, physical commencement of significant and visible construction, (2) undertaken in good faith, with the intention to continue construction and carry it through to completion, (3) pursuant to a valid permit. *Sahl v. Town of York*, 2000 ME 180, ¶ 12, 760 A.2d 266. Rights to a project may also vest upon a showing of governmental bad faith. *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 25, 856 A.2d 1183.

146. NECEC LLC has undertaken actual, physical commencement of significant and visible construction on the Project, as described above.

147. NECEC LLC has undertaken construction in good faith, with the intention to complete the Project. The Project complies with all state and federal laws in place at the time construction on the NECEC began. NECEC LLC is contractually obligated to complete the Project pursuant to the TSAs entered into with HQUS and the EDCs. The Project was initially planned to achieve commercial operation by December 13, 2022. At the time construction began, the project schedule called for a commercial operation date in May 2023, which has been extended in the last few months. The current project schedule calls for the NECEC Project to achieve commercial operation on December 13, 2023, with the contractual deadline for commercial operation now August 23, 2024. NECEC LLC only has the right to extend this deadline to August 23, 2025 by posting additional security. NECEC LLC needed to promptly begin construction after receiving

all necessary state and federal permits in order to maintain its Project schedule and achieve commercial operation in accord with the TSAs.

148. NECEC LLC has undertaken construction pursuant to valid permits. NECEC has obtained all necessary project-wide state and federal permits, including from the PUC, DEP, Corps, and DOE. The CPCN issued by the PUC has been upheld by the Law Court. The Superior Court has denied a request to stay effectiveness of the DEP permit because opponents of the Project have failed to show substantial likelihood of success on the merits of their challenges to that permit. The U.S. District Court for the District of Maine has likewise denied preliminary injunctive relief in relation to the Corps permit because opponents of the Project have failed to show substantial likelihood of success on the merits of their challenges to the Corps permit, and this ruling was affirmed by the First Circuit.

149. The Initiative directly targets the NECEC, and constitutes an untimely and bad faith effort to bar completion of the Project. The Initiative's proponents began gathering signatures for this referendum only after the Law Court concluded that their 2020 Initiative, which targeted the NECEC by name, was unconstitutional. The Initiative's proponents have stated that the Initiative has the same purpose as the 2020 Initiative, in that it will "stop CMP's destructive corridor project" and "effectively will block the project." The political action committees behind the Initiative are funded by corporate interests that would be adversely affected by the NECEC. The Initiative is specifically designed to retroactively change the law to defeat a particular project, namely, the NECEC.

150. The Initiative unlawfully deprives NECEC LLC of its vested rights in the Project by purporting to prohibit construction of the Project.

151. In addition, existing property interests are protected vested rights. *See Fournier v. Fournier*, 376 A.2d 100, 102 (Me. 1977); *see also Sebasteanski v. Pagurko*, 232 A.2d 524, 525-26 (Me. 1967).

152. NECEC LLC has existing leasehold interests in portions of the Johnson Mountain Township and West Forks Plantation public reserved lots by virtue of the BPL Lease.

153. The Initiative unlawfully deprives NECEC LLC of its vested rights in the BPL Lease by purporting to revoke the BPL Lease and by purporting to prohibit the construction of transmission lines in contravention of the terms of the BPL Lease.

154. An actual justiciable controversy exists between the parties regarding the retroactive application of the Initiative to the Project.

155. An order from this Court declaring that retroactive application of the Initiative to the Project would wrongly deprive NECEC LLC of its vested rights would terminate the uncertainty and controversy giving rise to this proceeding.

156. This Court has authority pursuant to 14 M.R.S. §§ 5951 *et seq.* to declare the rights of NECEC LLC with respect to the Initiative.

COUNT II
(Declaratory Judgments Act – Separation of Powers)

157. Plaintiffs repeat and restate the allegations contained in the foregoing Paragraphs as if fully set forth herein.

158. The retroactive application of legislation is impermissible if it violates constitutional provisions. *MacImage of Me., LLC v. Androscoggin Cty.*, 2012 ME 44, ¶ 23 n.10, 40 A.3d 975.

159. The Maine Constitution provides for strict separation of powers: “No person or persons, belonging to one of [the legislative, executive, or judicial] departments, shall exercise any

of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.” Me. Const. art. III, § 2.

160. Under the Maine Constitution, if a power has been granted to one branch of state government, another branch of state government may not exercise that power. *Bossie v. State*, 488 A.2d 477, 480 (Me. 1985).

161. Under well-established separation of powers principles, the legislative power does not include the power to require reversal of prior agency actions, such as the issuance of a permit following a quasi-judicial administrative process. *Avangrid*, 2020 ME 109, ¶ 35, 237 A.3d 882. Likewise, the legislative power does not extend to the reversal of judicial decisions. *Lewis v. Webb*, 3 Me. 326, 329 (1825).

162. The Initiative violates article III, section 2 of the Maine Constitution because it would usurp judicial and executive power in retroactively targeting the NECEC.

163. Retroactive application of the Initiative to the NECEC would usurp executive powers in violation of article III, section 2 of the Maine Constitution. Retroactive application of Section 1 of the Initiative to the NECEC would usurp executive power by purporting to authorize cancellation of a lease previously granted by the BPL. Retroactive application of Section 4 of the Initiative to the NECEC would usurp executive powers because by purporting to authorize the Legislature to cancel construction of a project already permitted and authorized by the appropriate executive agencies. Retroactive application of Section 5 of the Initiative to the NECEC would likewise usurp executive powers because that section purports to directly prohibit construction of a project already permitted and authorized by the appropriate executive agencies. If retroactively applied, therefore, the Initiative would improperly require executive agencies to revoke

previously-issued valid permits for the Project. Because the Initiative would require executive agencies to vacate and reverse final administrative decisions, the Initiative is unconstitutional.

164. Retroactive application of Sections 4 and 5 of the Initiative to the NECEC would usurp judicial powers in violation of article III, section 2 of the Maine Constitution. The Initiative would effectively reverse a final judgment rendered in a previous action, as to the individual parties to that action, because it would require the PUC to vacate a permit that has been affirmed by the Law Court. In force and effect, therefore, the Initiative would vacate the Law Court’s decision in *NextEra Energy Resources, LLC v. Maine Public Utilities Commission*, 2020 ME 34, 227 A.3d 1117.

165. Section 4 of the Initiative also violates article III, section 2 because it purports to authorize the Legislature to exercise a veto over agency approval of any high-impact electric transmission line project in the State without satisfying the presentment requirement of article IV, part 3, section 2. Such a legislative veto would deprive the executive of powers vested in the office of Governor by the Constitution.

166. Section 1 of the Initiative would also violate article III, section 2 of the Maine Constitution by usurping the executive function of applying the constitutional “substantial alteration” standard to particular circumstances. Section 1 purports to determine that certain specified activities “are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23.” The application of article IX, section 23 to specific circumstances cannot be finally determined by legislation, and, in fact, Sections 1 and 4 are inconsistent with the flexible and fact-specific standard, to be administered by the executive branch, set forth in the Constitution. The determination of whether a particular lease would result

in a “substantial alteration” of the uses of land is constitutionally vested in the executive branch, namely, the BPL.

167. Sections 1 and 4 of the Initiative also violate article III, section 2 of the Maine Constitution by usurping the judicial function of interpreting the constitutional “substantial alteration.” Section 1 purports to determine that certain specified activities “are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23,” while Section 4 purports to determine that “any high-impact electric transmission line crossing or utilizing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land.” The meaning of the Constitution cannot be finally determined by legislation and, in fact, Sections 1 and 4 are inconsistent with the flexible and fact-specific standard set forth in the Constitution. The final determination whether a particular action constitutes a substantial alteration under article IX, section 23, as initially applied by the executive branch, is reserved solely to the judiciary.

168. An actual justiciable controversy exists between the parties regarding the retroactive application of the Initiative to the Project.

169. An order from this Court declaring that retroactive application of the Initiative to the Project would be unconstitutional under Me. Const. art. III, § 2 would terminate the uncertainty and controversy giving rise to this proceeding.

170. This Court has authority pursuant to 14 M.R.S. §§ 5951 *et seq.* to declare the rights of NECEC LLC with respect to the Initiative.

COUNT III
(Declaratory Judgments Act – Contracts Clause)

171. Plaintiffs repeat and restate the allegations contained in the foregoing Paragraphs as if fully set forth herein.

172. The United States Constitution and the Maine Constitution prohibit the impairment of contracts. U.S. Const. art. I, § 10; Me. Const., art. I, § 11.

173. Under the BPL Lease, BPL is contractually obligated to lease property to NECEC LLC for the purpose of constructing a transmission line.

174. Retroactive application of the Initiative would substantially impair the BPL Lease because it purports to authorize cancellation of the BPL Lease on a retroactive basis and because it purports to prohibit the construction of transmission lines in contravention of the terms of the BPL Lease.

175. Retroactive application of the Initiative does not serve a significant and legitimate state purpose and is neither reasonable nor necessary. The purported state interest, namely, ensuring that conveyances of interests in public lands are presented for approval to the Legislature, existed at the time that the contractual obligation was incurred and thus cannot justify retroactive cancellation of that obligation.

176. Moreover, discriminatory targeting of the NECEC via the Initiative's retroactivity provisions is *per se* unreasonable.

177. An actual justiciable controversy exists between the parties regarding the retroactive application of the Initiative to the Project.

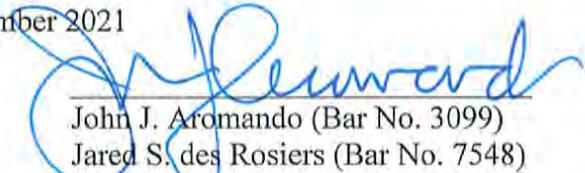
178. An order from this Court declaring that retroactive application of the Initiative to the Project would be unconstitutional under Article 1, § 10 of the United States Constitution and article 1, section 11 of the Maine Constitution would terminate the uncertainty and controversy giving rise to this proceeding.

179. This Court has authority pursuant to 14 M.R.S. §§ 5951 *et seq.* to declare the rights of NECEC LLC with respect to the Initiative.

WHEREFORE, NECEC Transmission LLC prays for the following relief:

- 1) A declaratory judgment that the Initiative unconstitutionally deprives NECEC LLC of its vested right under federal and state permits to construct and operate the Project;
- 2) A declaratory judgment that the Initiative violates article III, section 2 of the Maine Constitution by usurping powers reserved to the executive and judicial branches;
- 3) A declaratory judgment that the Initiative violates Article 1, § 10 of the United States Constitution and article I, section 11 of the Maine Constitution because it substantially impairs the contract between the State and NECEC LLC;
- 4) Injunctive relief preventing retroactive enforcement of the Initiative to the Project as follows: Section 1 by the Bureau of Parks and Lands; Section 4 by the Maine Senate, Maine House of Representatives, and the Public Utilities Commission; and Section 5 by the Public Utilities Commission; and
- 5) All other and further relief as this Court deems just and appropriate.

Dated at Portland, Maine this 3rd day of November 2021



John J. Aromando (Bar No. 3099)
Jared S. des Rosiers (Bar No. 7548)
Joshua D. Dunlap (Bar No. 4477)
Sara A. Murphy (Bar No. 5423)
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for NECEC Transmission LLC,
Inc.*

VERIFICATION

I, Thorn C. Dickinson, as the authorized agent of NECEC Transmission LLC, declare under penalty of perjury that the factual allegations of the foregoing Complaint are true and correct, based on my personal knowledge, except where alleged on information and belief in which case I believe them to be true. Such personal knowledge includes information from records of the regularly conducted activities of Avangrid Networks, Inc., NECEC Transmission LLC, and Central Maine Power Co., made at or near the time of such activities, by or from information transmitted by persons with knowledge, kept in the regular course of such activities, and of which it is the regular practice of Avangrid Networks, NECEC LLC, and CMP to make such records.

Executed on November 3, 2021, at Portland, Maine.

NECEC Transmission LLC.

By: 
Thorn C. Dickinson
President & CEO
As its authorized agent

STATE OF MAINE
Cumberland, ss

Personally appeared before me the above-named Thorn C. Dickinson, as the duly authorized representative of NECEC Transmission LLC, and made oath that the statements made and verified by him herein are true.

DATED: November 3, 2021

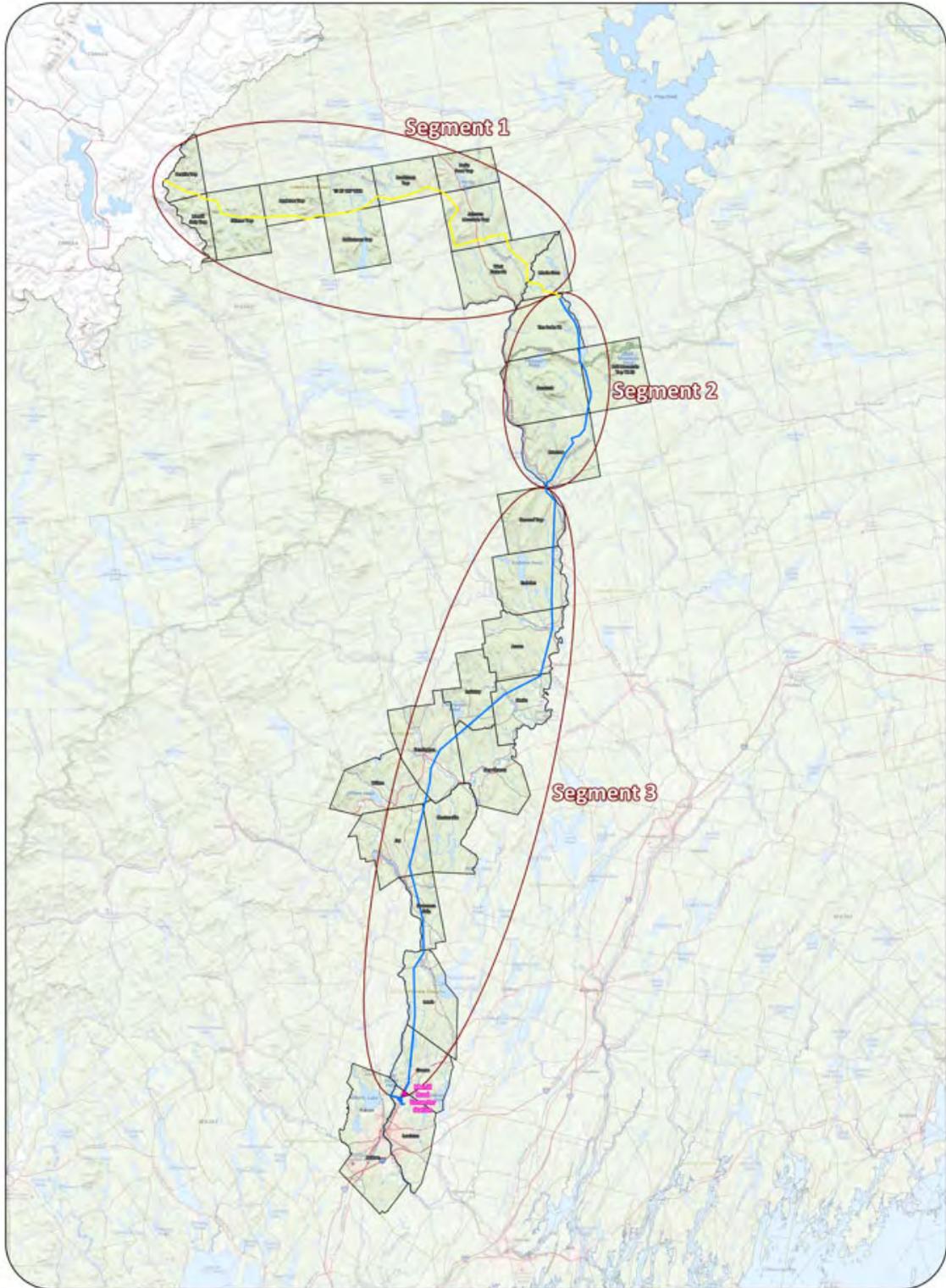

Notary Public
My Commission Expires: _____

HEATHER JAYNE STEVENS
NOTARY PUBLIC - State of Maine
My Commission Expires
October 25, 2023

EXHIBIT A

TO

PLAINTIFFS' VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF



Legend

- ▲ Proposed Substation
- HVDC (New ROW)
- HVDC (Existing ROW)

New England Clean Energy Connect
Overview Map

A north arrow and a scale bar are located below the legend.



EXHIBIT B

TO

PLAINTIFFS' VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

**AMENDED AND RESTATED
TRANSMISSION LINE LEASE**

BETWEEN

**DEPARTMENT OF AGRICULTURE, CONSERVATION AND
FORESTRY
BUREAU OF PARKS AND LANDS**

and CENTRAL MAINE POWER COMPANY

This Amended and Restated Transmission Line Lease (“Lease”) is made by and between the State of Maine, Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands, (the “Lessor”), acting pursuant to 12 M.R.S. § 1852(4), and Central Maine Power Company, a Maine corporation with its principal place of business at 83 Edison Drive, Augusta, Maine (the “Lessee”). For the considerations hereinafter set forth, the Lessor hereby leases to Lessee, and Lessee hereby takes from the Lessor, the non-exclusive use of that portion of the West Forks Plantation and Johnson Mountain Township (T2 R6 BKP WKR) Public Reserved Lands in Somerset County, Maine described in Exhibit “A” and shown on Exhibit “B” attached hereto and incorporated herein, being a three hundred (300) foot wide transmission line corridor containing 32.39 acres and located on a portion of the aforementioned Public Reserved Lands. The described transmission line corridor, together with the improvements now or hereafter to be placed thereon, is referred to as the “Property” or “Premises,” and is subject to the following terms and conditions:

1. Term:

- a. This Lease shall be in effect from the date of execution of this instrument for a term of twenty-five (25) years, which term expires on March 31, 2045.
- b. Lessor reserves the right to terminate this Lease at any time during the term hereof to the extent permitted under the provisions contained in paragraph 13 Default.
- c. Lessee has the right to terminate this Lease upon at least ninety (90) days prior written notice to Lessor, or such lesser notice period as agreed to by Lessor in writing.
- d. Any notice required by this paragraph, whether by Lessee or Lessor, shall be sent postage pre-paid, registered or certified mail, return receipt requested, to the party at the address set forth in paragraph 24.

2. Rent. Lessee shall pay to the Lessor rental as follows:

An annual payment of \$65,000.00. The first payment shall be due on the date of execution of this Lease (the "Initial Payment") and subsequent annual payments shall be made on or before April first of each following year. Lessee shall, within the first twelve months of this Lease, commission an appraisal of the Premises and of the fair market value of the annual rent for the Premises. Both Lessor and Lessee shall agree on the Appraiser to be assigned the appraisal assignment. In the event the appraised fair market value of the annual rent for the Premises is higher than the Initial Payment set forth above, then the parties shall amend this Lease to retroactively increase the Initial Payment due hereunder to the fair market value indicated by the appraisal. Lessee agrees to pay the cost of the appraisal.

The annual payment shall be adjusted each year in accordance with the increase in the Consumer Price Index as published by the Bureau of Labor Statistics, United States Department of Labor over the preceding one year period; provided, however, that in no event shall the annual payment for any given Lease year be less than the annual payment for any previous Lease year. As used herein, the "Consumer Price Index" means the Consumer Price Index for All Urban Consumers (CPI-U), All items in U.S. city average, all urban consumers, not seasonally adjusted, Base Period 1982-84=100. Such Index shall be adjusted as necessary to properly reflect all changes in the Base Period, using such conversion factors as may be available from the United States Government. In the event the Consumer Price Index shall not be published by the United States Government, the successor or substitute index published by the United States Government shall be used for the foregoing computation.

In addition, Lessee shall pay to Lessor the negotiated market price of the timber present on the Premises based on mill scale and stumpage value at time the corridor is harvested for the construction of the utility corridor.

3. Use. The Property shall be used by the Lessee as follows: to erect, construct, reconstruct, replace, remove, maintain, operate, repair, upgrade, and use poles, towers, wires, switches, and other above-ground structures and apparatus used or useful for the above-ground transmission of electricity ("Facilities"), all as the Lessee, its successors and assigns, may from time to time require upon, along, and across said Property; to enter upon the Property at any time with personnel and conveyances and all necessary tools and machinery to maintain the Premises and Facilities; the non-exclusive right of ingress to and egress from the Premises over and across roads and trails crossing the adjacent land of the Lessor, in accordance with paragraphs 5.a and 6.k below; to transmit electricity and communication, as conditioned below, over said wires, cables, or apparatus installed on Lessee's Facilities. All such use by Lessee shall be in compliance with the State of Maine Public Utilities Commission Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation dated May 3, 2019 (Docket No. 2017-00232) (the "CPCN"). Lessee shall own all communication facilities and such facilities shall be for Lessee's use in its business as a public utility and Lessee may also provide communication facilities and services consistent with the Broadband Benefit set forth in the May 3, 2019 Stipulation approved as part of the CPCN. In the event Lessee desires to provide capacity to others on Lessee's communication facilities, Lessee shall first obtain Lessor's written approval, which shall not be unreasonably withheld. Lessor may adjust the rent at such

time as Lessee provides communication capacity to others. The rent adjustment is to be determined by an appraisal paid for by Lessee. Both Lessor and Lessee shall agree on the Appraiser to be assigned the appraisal assignment. Lessee shall engage the agreed upon Appraiser within ninety (90) days of said agreement. Lessee shall ensure that Lessor is provided with a copy of the appraisal within ten (10) days of receiving completed appraisal. Lessee shall not sub-lease or contract the communication facilities for any other commercial use. The Lessor further grants to said Lessee the right to establish any and all safety and reliability regulations applicable to said transmission line corridor which said Lessee deems necessary and proper for the safe and reliable construction and maintenance of said structures, wires, and apparatus and for the transmission of electricity.

4. Quiet Enjoyment. So long as Lessee pays the rent, performs all of its non-monetary obligations, and otherwise complies with the provisions of this Lease, the Lessee's possession of the Premises for its intended use will not be disturbed by the Lessor, its successors and assigns except as otherwise provided under the terms of this Lease. Notwithstanding any provision to the contrary herein, Lessor reserves the right to enter onto the Premises at any time and from time to time to inspect the Premises.

5 Access:

- a. It is agreed by the parties to this Lease that Lessor is under no obligation to construct or maintain access to the Premises, notwithstanding any provisions of any federal, state, and local law to the contrary. However, the Lessee shall be allowed to cross Lessor's abutting land by using Lessor's Forest Management Roads for access to the Premises for construction, maintenance, and repairs, subject to reasonable restrictions and regulations imposed by Lessor, and the rights of others using said roads. Upon reasonable advance notice to Lessee, Lessor reserves the right to close, lock, or otherwise restrict access along or through the Forest Management Roads at any time it appears reasonably necessary to protect the safety of persons or property. Such situations include, but are not limited to, spring mud season or periods of high fire danger. Lessee shall immediately repair to the Lessor's satisfaction any damage to the road caused by Lessee at Lessee's sole cost and expense. Lessor is under no obligation to provide maintenance to the road. If Lessee wishes to undertake performing repairs or upgrades to the Forest Management Roads, Lessee must acquire prior written approval from Lessor. Lessee shall acquire Lessor's prior written approval for the construction or use of any other access location across Lessor's land abutting the Premises.
- b. The Lessor expressly reserves the right for itself or its guests, servants, or agents to pass and repass over the described Premises at any and all times with machinery and equipment necessary for the operation or conduct of Lessor's uses as such uses may from time to time exist, provided that: said uses will comply with the above referenced safety regulations, and will not prohibit the Lessee from complying with the conditions or requirements imposed by permitting agencies; that the Lessor shall provide Lessee with at least three business days prior written notice if Lessor will be on the Premises with construction or logging equipment; and that such use will not unreasonably interfere with the rights of Lessee herein conveyed.

6. Lessee Covenants. The Lessee covenants as follows:
- a. No buildings, either permanent or temporary, may be constructed or placed upon the described Premises, except temporary structures during construction of the Facilities, such as field trailers.
 - b. Crossing mats for stream or wetland crossings shall not be made of ash or hemlock, so as to avoid introduction of invasive pests associated with these species.
 - c. No hazardous or toxic waste substance or material, residual pesticides or fertilizers, other than organic compost, shall be used or kept upon the Premises, nor shall any livestock or poultry be kept temporarily or permanently thereon. Pesticides, herbicides, and chemical defoliant registered for use in Maine may be applied to the Premises only after acquiring prior written approval from Lessor and only by trained applicators working under the supervision of applicators licensed by the State of Maine in formulations and dosages approved by the Environmental Protection Agency and Lessor. One month prior to all pesticide applications, Lessee shall provide information to Lessor, including, but not limited to pesticides, herbicides, and chemical defoliant to be used, dates and methods of application, application locations, and reasons for use.
 - d. There shall be no vegetation removal that would result in less than 50% aerial coverage of woody vegetation and stream shading within 25 feet of a stream.
 - e. There shall be no vegetation maintenance or disturbance within a 50-foot radius around the high water boundary of a significant vernal pool from March 15 – July 15; provided, however, that Lessee may take all appropriate actions with regards to vegetation management to ensure that Lessee is in compliance with all federal and state laws, rules, and regulations imposed upon Lessee as the owner and operator of the Facilities.
 - f. Lessee shall not make any strip or waste of the Premises or of any other lands of Lessor. Vegetation clearing within the Premises for Lessee's Facilities shall be limited to standards approved by the Maine Public Utilities Commission and shall encourage a ground cover of woody species with a maximum mature height approaching but not exceeding 15 feet. Lessee shall make every effort to minimize clearings and cutting of vegetation.
 - g. Lessee acknowledges that lease of the Premises by the Bureau of Parks and Lands, Department of Agriculture, Conservation and Forestry is unique, and that in authorizing the Lease under 12 M.R.S. § 1852(4)(A), Lessor requires that Lessee shall make every reasonable effort within the Premises to be in conformance with the Maine Department of Inland Fisheries and Wildlife "Recommended Performance Standards for Inland Waterfowl and Wadingbird Habitats in Overhead Utility ROW Projects", "Recommended Performance Standards for Maine's Significant Vernal Pools in Overhead Utility ROW Projects", "Recommended Performance Standards for Riparian Buffers in Overhead Utility ROW Projects", and "Recommended Performance Standards for Deer Wintering Areas in Overhead Utility ROW

Projects”, all dated March 26, 2012, copies of which are attached to this Lease, or the publication’s most current version.

- h. Lessee shall not kindle any outside fires on the Premises or any other land of the Lessor. Lessee agrees to assist with any means at Lessee’s disposal in putting out fires occurring on the Premises or adjacent areas, and to report promptly such fires to Lessor or the manager of the Bureau’s Western Public Lands Office and to the appropriate authorities.
- i. Lessee agrees to maintain the Premises in a neat and sanitary manner and so as not to be objectionable or detract from the aesthetic values of the general area. Lessee shall not discharge on the Premises, including into any body of water, wetland, or groundwater, any untreated or partially treated sewage, wash water, black water, gray water, or slop water. No non-forest waste including, but not limited to, broken equipment, spilt fuels, fluids and lubricants, fluid and lubricant containers, equipment parts, tires, debris, garbage, or trash shall be deposited, discharged, dumped, or buried upon the Premises or other property of Lessor. In addition, Lessee covenants that it bears the responsibility for any noncompliance with all federal, state, and local laws and regulations governing septic and other waste disposal resulting from Lessee’s activities and Lessee shall indemnify and hold harmless Lessor from and against any and all actions, suits, damages, and claims by any party by reason of noncompliance by Lessee with such laws and regulations. Such indemnification shall include all Lessor’s costs, including, but not limited to reasonable attorney fees.
- j. Forest woody waste (e.g., wood chips and stumps) may be disposed of on the Premises, but may not be disposed of in piles. Stumps shall be buried in “stump dump” holes, except that small numbers of stumps (four or less) may be left aboveground.
- k. Lessee shall not build permanent roads on the Premises without obtaining prior written approval from the Lessor; provided, however, that Lessee may construct one (1) temporary road to facilitate the construction of the transmission line (tree clearing, pole setting, wiring) substantially in the location depicted in Exhibits “C-1”, “C-2” and “C-3” attached hereto and incorporated herein. At the time construction is completed, the temporary road shall be dismantled and put to bed or converted to permanent access trails. All access trails shall be built to Best Management Practices (BMP) standards as shown in the “Maine Motorized Trail Construction and Maintenance Manual” written by the Bureau of Parks and Lands Off-Road Vehicle Division, dated May 2011 and all roads shall be built pursuant to those Best Management Practices (BMPs) standards pertaining to forest management and road construction practices set forth in the publication entitled, “Best Management Practices for Forestry: Protecting Maine’s Water Quality,” prepared by the Maine Department of Agriculture, Conservation and Forestry, Maine Forest Service, in such publication’s most current version at the time of the grant of this Lease, and as the same may be further amended, supplemented or replaced after the date of the execution of this Lease.

Prior to start of construction, Lessee shall provide an Access and Maintenance Plan to Lessor for review and approval. This plan shall provide details and maps on

proposed roads, permanent and temporary, access points, temporary trails, and maintenance access, and descriptions of any proposed bridges, temporary or permanent.

- l. Natural Plant Community, wetland and Significant Vernal Pool field surveys of the Premises must be conducted by Lessee or Lessee's designee prior to any construction on the Premises. Lessee shall send to Lessor and to the Maine Department of Inland Fisheries and Wildlife a copy of all completed surveys before commencing any construction on the Premises.
- m. Lessee shall be in compliance with all Federal, State and local statutes, ordinances, rules, and regulations, now or hereinafter enacted which may be applicable to Lessee in connection to its use of the Premises. Lessee further shall not construct, alter, or operate the described Premises in any way until all necessary permits and licenses have been obtained for such construction, alteration or operation. Lessee shall provide written confirmation that Lessee has obtained all material permits and licenses to construct and operate the Facilities. Lessee shall furnish Lessor with copies of all such permits and licenses, together with renewals thereof to Lessor upon the written request of Lessor. This Lease shall terminate at the discretion of the Lessor for failure of Lessee to obtain all such required permits. Prior to such termination, however, Lessor shall provide written notice to Lessee of such failure and Lessee shall have 30 days in which to cure such failure.
- n. In the event of the following:
 - a) Lessee constructs an electric transmission line on the Premises; and
 - b) Lessee has determined, in its sole discretion, to rebuild the existing transmission line (the "Jackman Tie Line") located on that part of the existing 100-foot wide utility corridor described in a lease dated July 9, 1963 and recorded in the Somerset County Registry of Deeds, Book 679, Page 37 (the "Jackman Tie Line Lease") that is located westerly of the Premises and easterly of Route 201; and
 - c) Lessee receives all permits and regulatory approvals necessary to rebuild the line in such new location including, but not limited to, approvals of the Maine Public Utilities Commission and the Maine Department of Environmental Protection; then

Lessee agrees to relocate said Jackman Tie Line from the above described portion of the Jackman Tie Line Lease to a location on the Premises and such other corridor as acquired by the Lessee from others. Upon completion of any such relocation of the Jackman Tie Line or its functional replacement pursuant to this section and removal of Lessee's facilities from that portion of the Jackman Tie Line Lease lying westerly of the Premises, Lessor and Lessee agree to amend the Jackman Tie Line Lease to delete from the lease area that portion of the Jackman Tie Line Lease lying westerly of the Premises. All other terms and conditions of the Jackman Tie Line Lease shall remain in full force and effect. The term "rebuild" as used in this paragraph, shall not include routine repair or replacement of poles, crossarms, insulators, braces or conductor.

7. Liability and Insurance.

a. Lessee shall without unreasonable delay inform Lessor of all risks, hazards, and dangerous conditions caused by Lessee which are outside of the normal scope of constructing and operating the Facilities of which Lessee becomes aware with regards to the Premises. Lessee assumes full control of the Premises, except as is reserved by Lessor herein, and is responsible for all risks, hazards, and conditions on the Premises caused by Lessee.

b. Except for the conduct of Lessor and Lessor's guests and agents, Lessor shall not be liable to Lessee for any injury or harm to any person, including Lessee, occurring in or on the Premises or for any injury or damage to the Premises, to any property of the Lessee, or to any property of any third person or entity. Lessee shall indemnify and defend and hold and save Lessor harmless, including, but not limited to costs and attorney fees, from: (a) any and all suits, claims, and demands of any kind or nature, by and on behalf of any person or entity, arising out of or based upon any incident, occurrence, injury, or damage which shall or may happen in or on the Premises that is caused by the Lessee or its Agents; and (b) any matter or thing arising out of the condition, maintenance, repair, alteration, use, occupation, or operation of the Premises, the installation of any property thereon or the removal of any property therefrom that is done by the Lessee or its Agents. Lessee shall further indemnify Lessor against all actions, suits, damages, and claims by whoever brought or made by reason of the nonobservance or nonperformance of Lessee or its Agents of: (a) any obligation under this Lease; or (b) any federal, state, local law or regulation pertaining to Lessee's use of the Premises.

c. The Lessee shall obtain and keep in force, for the duration of this Lease, a liability policy issued by a company fully licensed or designated as an eligible surplus line insurer to do business in this State by the Maine Department of Professional & Financial Regulation, Bureau of Insurance, which policy includes the activity to be covered by this Lease with adequate liability coverage over at least one million dollars for each occurrence and two million dollars in annual aggregate in general commercial liability coverage to protect the Lessee from suits for bodily injury and damage to property. Nothing in this provision, however, is intended to waive the immunity of the Lessor. Upon execution of this Lease, the Lessee shall furnish the Lessor with a certificate of insurance as verification of the existence of such liability insurance policy.

8. Lessee's Liability for Damages. Lessee shall be responsible to Lessor for any damages caused directly or indirectly by Lessee or its guests, servants, or agents, including, but not limited to, interference or meddling with any tools, machinery, equipment, gates, buildings, furniture, provisions, or other property of the Lessor, its agents, employees, or guests on the Premises.

9. Tax Proration. Lessee shall pay when due all taxes levied on the personal property and improvements constructed by Lessee and located on the Premises. Lessor shall have no ownership or other interest in any of the Facilities on the Property.

10. Lease Assignment, Sublease, and Colocation: Lessee shall not assign or sublease in whole or part without prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessor may lease the Premises for other compatible uses and colocation of other utilities so long as such rights do not extend to access to the Facilities, said uses will not prohibit the Lessee from complying with the conditions or requirements imposed by permitting agencies, and such use will not interfere with the rights herein conveyed, including the right to build such additional Facilities as may be accommodated on the Premises using transmission line spacing standards approved by the Maine Public Utilities Commission. Notwithstanding the forgoing, Lessee may assign its interest in this Lease to NECEC Transmission LLC, a Delaware limited liability company ("NECEC") without Lessor consent, so long as Lessee gives written notice of such assignment to Lessor, together with a copy of the executed assignment, and so long as the assignment expressly provides that NECEC has assumed all of the Lessee's obligations under this Lease. Upon delivery of such notice and such executed assignment, Central Maine Power Company shall be released from any obligations under this Lease from and after the effective date of such assignment. NECEC is related to Lessee and under common ownership with Lessee.
11. Lessee's Removal of Structures: Lessee must obtain Lessor's advance written consent, which consent shall not be unreasonably withheld, delayed, or conditioned, to the method and timing of removal before any structures or improvements are removed from the Premises.
12. Surrender. Upon termination of this Lease for any reason, Lessee shall deliver the Premises to Lessor peaceably, without demand, and in reasonably good condition clear of all trash and debris, unusable equipment, unregistered vehicles, and abandoned equipment and structures, located on the Premises. If such trash and debris and other unusable equipment, unregistered vehicles, and abandoned equipment and structures are not removed within one hundred eighty days (180) days of the termination of this Lease, the Lessor shall thereafter have the right to remove it and Lessee shall reimburse Lessor for the costs of such removal and disposal. Any other personal property, fixture, or structure on the Premises belonging to Lessee shall be removed by Lessee, unless Lessor requests in writing, that the other personal property, fixture, or structure may remain and Lessee agrees in writing not to remove it. If the Lessee fails to remove such other personal property, fixture, or structure such items shall be deemed the property of the Lessor two hundred and ten days (210) days after termination of the Lease and the Lessor shall thereafter have the right to remove it and charge the Lessee with the costs of such removal and disposal. In the event that any of this other personal property, fixtures, or structures on the Premises are incapable of being removed within one hundred eighty days (180) days, Lessee may be allotted up to one year to remove the items, with prior written approval from Lessor, which approval shall not be unreasonably, delayed, or conditioned. Any holding over by Lessee without Lessor's prior written consent shall be considered a tenancy at sufferance.
13. Default.
 - a. The following constitutes a default under this Lease: (1) Lessee's failure to perform any of its monetary or nonmonetary obligations under this Lease; (2) the filing of any bankruptcy or insolvency petition by or against Lessee or if Lessee makes a general assignment for the benefit of creditors which is not resolved or withdrawn within 30

days of such petition being filed; (3) an execution, lien, or attachment issued against the Lease, the Premises, or Lessee's property on the Premises, unless Lessee provides Lessor with satisfactory assurances and evidence that such execution, lien, or attachment will be released within a reasonable time not to exceed thirty (30) days, unless a shorter period of time is provided for by any applicable law or proceeding for the removal thereof, in which case the more restrictive time limitation applies; (4) the assignment or sublease of this Lease to any third party other than as permitted pursuant to Section 10 above; or (5) the violation of any state, federal or local law, rule, regulation, or ordinance; or (6) Lessee's abandonment of the Premises.

b. Upon the occurrence of any such event of default and subject to any applicable cure period as defined in paragraph 6(m), above, Lessor may, in addition to (and not instead of) any other remedies available at law or in equity, terminate this Lease with notice or demand to Lessee and enter and take possession of the leased Premises. Lessee shall be liable to Lessor for loss and expense, including reasonable attorney fees, incurred by reason of such default or termination hereof Lessor will provide Lessee with written notice of an event or occurrence of default under paragraph 13(a)(1) and Lessee shall have a reasonable period of time, as determined by Lessor, to cure said default which period shall not exceed thirty (30) days; provided, however, that if Lessee satisfies to Lessor that Lessee has undertaken the appropriate actions to cure said default and such default has not been cured within the said time permitted, the Lessor may exercise its sole discretion to extend the cure period.

14. Statutory Authority Over Public Lands. Lessor shall have the right to request that this Lease be amended from time to time and throughout the term of this Lease if any Lease term is found not to comply with Maine state law regarding public reserved lands. Lessor shall send notice to Lessee of the proposed revision. Upon receipt of such notice, Lessee shall have the option to either terminate the Lease by notifying Lessor in writing within thirty (30) days of receipt of notice or negotiate an amendment to the Lease in order to bring such term in compliance with said state law. Except as provided in this Lease, neither Party shall have the right to terminate this Lease unless the resulting non-compliance constitutes a default under Section 13 hereof, in which case Section 13 shall govern.
15. Mechanics Lien. If any notice is filed at the county registry of deeds of a builder's, supplier's or mechanic's lien on the Premises, arising out of any work performed by or on behalf of Lessee, Lessee shall cause such lien to be discharged or released immediately and shall indemnify Lessor against any such claim or lien, including all costs and attorney fees that Lessor may incur in connection with the same.
16. Succession; No Partnership. This Lease shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors in interest, and assigns of the parties hereto. Nothing in this agreement shall be construed to create an association, joint venture, trust or partnership covenant, obligation, or liability on or with regards to any of the parties to this agreement.
17. Waiver. Any consent, express or implied, by Lessor to any breach by Lessee of any covenant or condition of this Lease shall not constitute a waiver by the Lessor of any prior or succeeding breach by Lessee of the same or any other covenant or condition of this Lease.

Acceptance by Lessor of rent or other payment with knowledge of a breach or default by Lessee under any term on this Lease shall not constitute a waiver by Lessor of such breach or default.

18. Force Majeure. Except as expressly provided herein, there shall be no abatement, diminution, or reduction of the rent or other charges payable by Lessee hereunder, based upon any act of God, any act of the enemy, governmental action, or other casualty, cause, or happening beyond the control of the parties hereto.
19. Eminent Domain. In the event that the Premises or any portion thereof shall be lawfully condemned or taken by any public authority, Lessor may, in its discretion, elect either: (a) to terminate the Lease; or (b) to allow this Lease to continue in effect in accordance with its terms, provided, however, that a portion of the rent shall abate equal to the proportion of the Premises so condemned or taken. All condemnation proceeds shall be Lessor's sole property without any offset for Lessee's interests hereunder.
20. Holding Over. If Lessee holds over after the termination of this Lease, said hold over shall be deemed to be a trespass.
21. Lessor Protection. Lessor expressly retains and nothing contained herein shall be construed as a release or limitation by Lessor of any and all applicable liability protections under Maine law. Lessor specifically retains any and all protections provided under Maine law to owners of land, including but not limited to those provided under the Maine Tort Claims Act, 14 M.R.S. §§ 8101-8118.
22. Cumulative Remedies. The remedies provided Lessor by this Lease are not exclusive of other remedies available by current or later existing laws.
23. Entire Agreement; Supersedes 2014 Lease. This Lease sets forth all of the covenants, promises, agreements, conditions, and understandings between Lessor and Lessee governing the Premises. There are no covenants, promises, agreements, conditions, and understandings, either oral or written, between them other than those herein set forth. Except as herein provided, no subsequent alterations, amendments, changes, or additions to this Lease shall be binding upon the Lessor or Lessee unless and until reduced to writing and signed by both parties. This Lease supersedes the Transmission Line Lease between Lessor and Lessee dated December 15, 2014, as amended by Lease Amendment dated June 22, 2015 (as amended, the "2014 Lease"), and the parties acknowledge that the 2014 Lease is terminated as of the effective date of this Lease.
24. Notices. All notice, demands, and other communications required hereunder shall be in writing and shall be given by first class mail, postage prepaid, registered or certified mail, return receipt requested; if addressed to Lessor, to:

State of Maine, Department of Agriculture, Conservation and Forestry, Bureau of
Parks and Lands,
22 State House Station, Augusta, ME 04333-0022, Attn: Director;

and if to Lessee, to;

Central Maine Power Company, Real Estate Services
83 Edison Drive, Augusta, Maine 04364, Attn. Supervisor, Real Estate

25. General Provisions:

- a. Governing Law. This Lease shall be construed and interpreted in accordance with the laws of the State of Maine.
- b. Savings Clause. The invalidity or unenforceability of any provision of this Lease shall not affect or impair the validity of any other provision. To the extent any provision of this Lease is inconsistent with applicable state statute, the statute is deemed to govern.
- c. Paragraph Headings. The paragraph titles herein are for convenience only and do not define, limit, or construe the contents of such paragraph.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the dates set forth below. For purposes of this Lease, an electronic signature shall be deemed an original.

Lessor:

STATE OF MAINE

Department of Agriculture, Conservation, and Forestry
Bureau of Parks and Lands

By: ANDREW CYTKO

Print: Andrew Cytko

Its: DIRECTOR

Dated: June 23, 2020

Randy Charute
Witness

Lessee:

CENTRAL MAINE POWER COMPANY

By: Douglas A. Herling

Print: Douglas A. Herling

Its: President and CEO

Dated: June 15, 2020

Bhonda C. Bullispie
Witness

EXHIBIT A

Leased Premises
Department of Agriculture, Conservation and Forestry
Bureau of Parks and Lands and
Central Maine Power Company

A non-exclusive lease over a portion of the Lessor's land located in Johnson Mountain Township (T2 R6 BKP WKR), and West Forks Plantation, Somerset County, Maine, more particularly described as follows:

A strip of land 300 feet in width beginning at the southerly line of the Maine Public Reserved Lot located on the northerly line of West Forks Plantation at a ¾" iron rebar that is the northwest corner of an easement conveyed by Weyerhaeuser Company to Central Maine Power Company in a deed dated November 17, 2016 and recorded in the Somerset County Registry of Deeds in Book 5099, Page 247;

thence N 0°17'-05'29" W across the land of the Lessor a distance of 4702.99 feet, more or less, to a ¾" iron rebar on the northerly line of the Maine Public Reserved Lot located in Johnson Mountain Twp., said iron rebar also being the southwest corner of an easement conveyed to Central Maine Power Company by Weyerhaeuser Company in a deed dated November 17, 2016 and recorded in said Registry in Book 5099, Page 237;

thence N 78°-58'-32" E along the north line of said Johnson Mountain Twp. Public Lot a distance of 301.69 feet, more or less, to a ¾" iron rebar at the southeast corner of said easement described in Book 5099, Page 237;

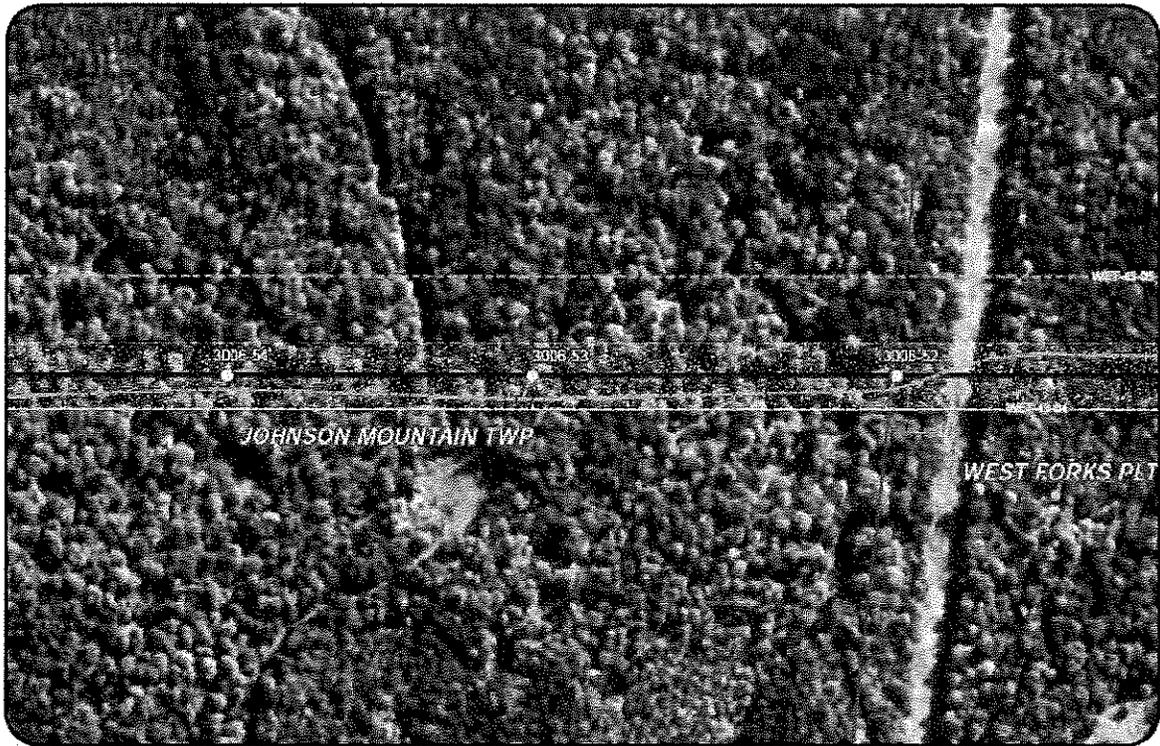
thence S 0°17'-05'29" E across land of the Lessor a distance of 4702.81 feet, more or less, to a ¾" iron rebar at the southerly line of said West Forks Plantation Public Lot and the northeast corner of said easement described in Book 5099, Page 247;

thence S 78°-56'32" W along the southerly line of said West Forks Plantation Public Lot a distance of 301.67 feet, more or less, to the point of beginning, said lease area containing 32.39 acres, more or less.

Bearings are referenced to Grid North, Maine West Zone. For reference, see a survey by Sackett & Brake Survey, Inc. #2020076, dated March 23, 2020, to be recorded in said Registry.

All above referenced iron rebars are capped with a red plastic cap inscribed "S.W. Gould PLS 2318".

EXHIBIT C-2
Temporary Road Location



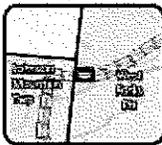
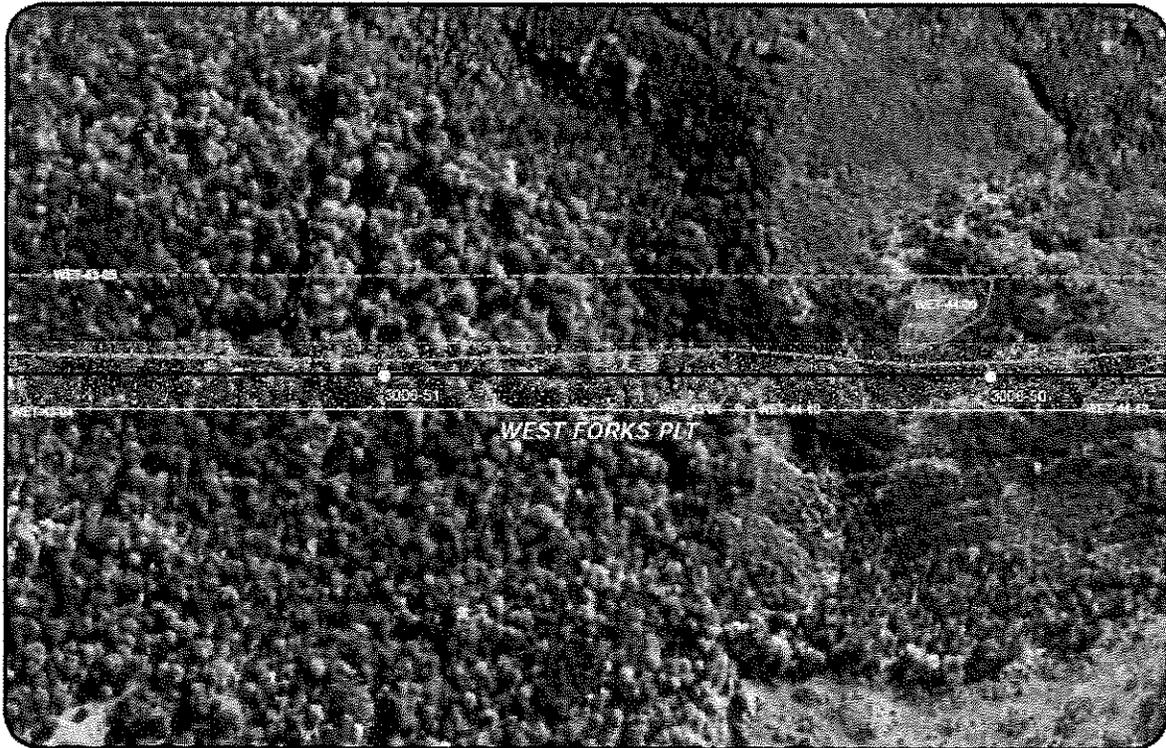
Legend			
○ Clearing Limits	○ Proposed Structure	■ 50% PWS	○ Wetland Working Method (WWM)
○ CMP Database	● Existing Structure	□ ASA	○ 50% PWS Buffer (250)
○ Easement Entry	● Existing Subgrade	□ 40%	— Substation Line of Disturbance
○ 500' Buffer	● Proposed Concrete Marker	○ 100% Stream	
○ Project Boundary	○ Stream	○ 100' Edge of Stream	
○ Existing Transmission Line	○ Wetland	■ 100' Buffering Area (BFA)	
○ Proposed Access Road	○ Base Point	○ Total Wetland Working Buffer (TWB)	

**New England
Clean Energy
Connect**
Natural Resource Maps
Segment 1
2010

CENTRAL MAINE
POWER

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EXHIBIT C-3
Temporary Road Location



Legend			
Clearing Area	Proposed Structure	DEP Forest /	DEP Forest
Equipment Area	Existing Structure	DEP Forest /	DEP Forest
Project Boundary	Existing Substation	DEP Forest /	DEP Forest
Existing Wetland Line	Proposed Commerce Station	DEP Forest /	DEP Forest
Proposed Access Road	Stream	DEP Forest /	DEP Forest
	Wetland	DEP Forest /	DEP Forest
	Road Right	DEP Forest /	DEP Forest
	DEP Forest	DEP Forest /	DEP Forest
	ABA	DEP Forest /	DEP Forest
	NY	DEP Forest /	DEP Forest
	Travel Easement	DEP Forest /	DEP Forest
	Deer Trap Net	DEP Forest /	DEP Forest
	Deer Viewing Area (DMA)	DEP Forest /	DEP Forest
	Trail - Wetland Reading Tree Habitat (TWTH)	DEP Forest /	DEP Forest
	Wetland Widening Buffer (WAWB)	DEP Forest /	DEP Forest
	50' and 100' Buffer (150')	DEP Forest /	DEP Forest
	Underfoot Area of Disturbance	DEP Forest /	DEP Forest

**New England
Clean Energy
Connect**
Natural Resource Maps
Segment 1
210

CENTRAL MAINE
POWER

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ADDITIONAL ATTACHMENTS:

- Recommended Performance Standards for Inland Waterfowl and Wadingbird Habitats in Overhead Utility ROW Projects
- Recommended Performance Standards for Maine's Significant Vernal Pools in Overhead Utility ROW Projects
- Recommended Performance Standards for Riparian Buffers in Overhead Utility ROW Projects
- Recommended Performance Standards for Deer Wintering Areas in Overhead Utility ROW Projects

EXHIBIT C

TO

PLAINTIFFS' VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF



Sec. 1. Amend order. Resolved: That within 30 days of the effective date of this resolve and pursuant to its authority under the Maine Revised Statutes, Title 35-A, section 1321, the Public Utilities Commission shall amend "Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation," entered by the Public Utilities Commission on May 3, 2019 in Docket No. 2017-00232 for the New England Clean Energy Connect transmission project, referred to in this resolve as "the NECEC transmission project." The amended order must find that the construction and operation of the NECEC transmission project are not in the public interest and that there is not a public need for the NECEC transmission project. There not being a public need, the amended order must deny the request for a certificate of public convenience and necessity for the NECEC transmission project.

EXHIBIT D

TO

PLAINTIFFS' VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT AND
INJUNCTIVE RELIEF

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 12 MRSA §1852, sub-§4, as enacted by PL 1997, c. 678, §13 and amended by PL 2013, c. 405, Pt. A, §24, is further amended to read:

4. Lease of public reserved land for utilities and rights-of-way. The bureau may lease the right, for a term not exceeding 25 years, to:

- A. Set and maintain or use poles, electric power transmission and telecommunication transmission lines and facilities, roads, bridges and landing strips;
- B. Lay and maintain or use pipelines and railroad tracks; and
- C. Establish and maintain or use other rights-of-way.

Any such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23, and a lease or conveyance for the purpose of constructing and operating such poles, transmission lines and facilities, landing strips, pipelines and railroad tracks under this subsection may not be granted without first obtaining the vote of 2/3 of all the members elected to each House of the Legislature.

Notwithstanding Title 1, section 302 or any other provision of law to the contrary, this subsection applies retroactively to September 16, 2014.

Sec. 2. 35-A MRSA §3131, sub-§4-A, as enacted by PL 2009, c. 655, Pt. A, §3, is amended to read:

4-A. High-impact electric transmission line. "High-impact electric transmission line" means a transmission line greater than 50 miles in length ~~that is not located in a statutory corridor, as defined in section 122, subsection 1, paragraph F 4, or a petitioned corridor, as defined in section 122, subsection 1, paragraph D 1, and that is:~~

- A. Constructed to transmit direct current electricity; or
- B. Capable of operating at 345 kilovolts or more and:
 - (1) Is not a generator interconnection transmission facility as defined in section 3132, subsection 1-B; and
 - (2) Is not constructed primarily to provide electric reliability, as determined by the commission.

Sec. 3. 35-A MRSA §3132, sub-§6-A, as enacted by PL 2009, c. 655, Pt. A, §5, is amended to read:

6-A. High-impact electric transmission line; certificate of public convenience and necessity. The commission shall evaluate and render a decision on any petition for a certificate of public convenience and necessity for a high-impact transmission line ~~in accordance with section 122, subsection 1-D.~~

Sec. 4. 35-A MRSA §3132, sub-§6-C is enacted to read:

6-C. High-impact electric transmission line; legislative approval. In addition to obtaining a certificate of public convenience and necessity, a high-impact electric transmission line may not be constructed anywhere in the State without first obtaining the

approval of the Legislature, except that any high-impact electric transmission line crossing or utilizing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land and must be approved by the vote of 2/3 of all the members elected to each House of the Legislature.

Sec. 5. 35-A MRSA §3132, sub-§6-D is enacted to read:

6-D. High-impact electric transmission line; geographic prohibition. Notwithstanding subsection 6-C, a high-impact electric transmission line may not be constructed in the Upper Kennebec Region. For the purpose of this subsection, "Upper Kennebec Region" means the approximately 43,300 acres of land located between the Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the Canadian border, and eastward from the Town of Jackman to encompass Long Pond and westward to the Canadian border, in Somerset County and Franklin County.

Sec. 6. 35-A MRSA §3132, sub-§6-E is enacted to read:

6-E. Retroactivity. Notwithstanding Title 1, section 302 or any other provision of law to the contrary, subsections 6-C and 6-D apply retroactively to September 16, 2020 and apply to any high-impact electric transmission line the construction of which had not commenced as of that date.

SUMMARY

This initiated bill requires the approval of the Legislature for the construction of high-impact electric transmission lines and provides that high-impact electric transmission lines crossing or utilizing public lands must be approved by 2/3 of all the members elected to each House of the Legislature. This initiated bill also prohibits the construction of high-impact electric transmission lines in the Upper Kennebec Region. These provisions apply retroactively to September 16, 2020, the date of filing of this initiative.

This initiated bill also requires the approval of 2/3 of all the members elected to each House of the Legislature for any use of public lands for transmission lines and facilities and certain other projects. This provision applies retroactively to September 16, 2014.

**Exhibit NECEC LLC-1-J:
Plaintiffs' Motion for Preliminary Injunction
with Incorporated Memorandum of Law**

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

NECEC TRANSMISSION LLC,

and

AVANGRID NETWORKS, INC.,

Plaintiffs,

v.

BUREAU OF PARKS AND LANDS,
MAINE DEPARTMENT OF
AGRICULTURE, CONSERVATION AND
FORESTRY,

MAINE PUBLIC UTILITIES
COMMISSION,

MAINE SENATE,

and

MAINE HOUSE OF REPRESENTATIVES,

Defendants.

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION
WITH INCORPORATED
MEMORANDUM OF LAW**

Plaintiffs NECEC Transmission LLC (“NECEC LLC”) and Avangrid Networks, Inc. (“Avangrid”), pursuant to M.R. Civ. P. 65(b), hereby move this Court for a preliminary injunction prohibiting retroactive enforcement of the citizen initiative titled “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region” (“Initiative”) against the New England Clean Energy Connect project (“NECEC” or “Project”). The Initiative was designed for one purpose: to kill the NECEC. The NECEC, which will reduce greenhouse gas (“GHG”) emissions by the equivalent of removing 700,000 cars from the road in an effort to combat climate change, represents a billion dollar investment into New England’s clean energy future. Nevertheless, opponents of the Project – funded by competing electric generators in New England which burn fossil fuels – successfully promoted passage of the Initiative to retroactively ban the NECEC, despite completion of substantial construction, in good faith, pursuant to valid permits.

The Initiative is an extraordinary, unlawful attempt to deprive a developer of vested rights in a multi-year project already well underway. NECEC LLC has invested approximately \$450 million dollars in capital expenditures, including physical construction of over 124 miles of right-of-way cut and over 120 structures erected, in a good faith effort to complete the Project in a timely manner under its contract and pursuant to valid permits. To now deprive NECEC LLC of its right to complete the Project, lawful at the time of that massive investment, constitutes an impairment of its vested rights forbidden by Maine law. To permit such a retroactive application of the Initiative would render any development in the State, no matter how big or how small, or how far progressed, vulnerable to discriminatory efforts to kill the project by after-the-fact changes to the law, and inevitably chill future economic development in Maine.

The Initiative is also unconstitutional as applied to the NECEC for other reasons. First, it violates fundamental separation of powers principles enshrined in the Maine Constitution. Opponents of the Project have twice sought to reverse via direct initiative final executive and judicial actions authorizing the Project – through a prior initiative singling out the Project by name that the Law Court struck down as unconstitutional, and, now, through an initiative designed to accomplish the same end via retroactive application. Final decisions of executive agencies and the judiciary applying the law to specific parties cannot be reversed after-the-fact by legislative action. Second, the Initiative unlawfully impairs a pre-existing lease with the State for land used by the Project, contrary to the provisions in the U.S. and Maine Constitutions protecting the sanctity of contracts. The Initiative cannot retroactively bar completion of the Project in this manner.

BACKGROUND¹

The NECEC is a clean energy project that will bring 1,200 megawatts of hydropower into New England. Compl. ¶ 17. The NECEC was originally proposed by Central Maine Power Company (“CMP”) and Hydro-Québec in response to a request for proposal by Massachusetts electric distribution companies (“EDCs”) for clean energy. *Id.* ¶¶ 26-27. After the proposal was selected, CMP, Hydro-Québec (through a U.S. affiliate, H.Q. Energy Services (U.S.) Inc. (“HQUS”)), and the EDCs entered into transmission service agreements (“TSAs”) contractually obligating CMP to provide 1,200 MW of transmission service on the NECEC to HQUS and the EDCs for a period of forty years. *Id.* ¶ 28. CMP subsequently transferred the NECEC (including

¹ The facts stated in this motion are supported by the Verified Complaint (“Compl.”), as well as the affidavits of Thorn Dickinson (“Dickinson Aff.”), Patrick McGeehin (“McGeehin Aff.”), and William Berkowitz (“Berkowitz Aff.”), filed herewith. See *Bangor Historic Track, Inc. v. Dep’t of Agric.*, 2003 ME 140, ¶ 10, 837 A.2d 129. The agency orders and permits related to the Project are incorporated in the Verified Complaint, and are subject to judicial notice. See *Town of Mount Vernon v. Landherr*, 2018 ME 105, ¶ 14, 190 A.3d 249; *Estate of Robbins v. Chebeague & Cumberland Land Tr.*, 2017 ME 17, ¶ 2 n.2, 154 A.3d 1185.

the TSAs) to NECEC LLC, which will construct and operate the Project.² *Id.* ¶ 29. As found by the Public Utilities Commission (“PUC”), this billion-dollar investment will lower the cost of electricity in Maine; reduce GHG emissions by over 3.6 million metric tons annually; fund over \$250 million in rate relief, economic development, education, and other benefits for Maine; and result in approximately \$18 million in property taxes annually. *Id.* ¶¶ 37-44; Dickinson Aff. ¶ 32.

The NECEC is a massive, multi-year project requiring substantial advance planning. The NECEC, which is divided into five segments, primarily consists of (1) a new 145-mile long, 320 kV high-voltage direct current (“HVDC”) transmission line running from the Canadian border to Lewiston; (2) a new converter station; and (3) network upgrades to CMP’s existing infrastructure necessary to support the Project, including an additional 345 kV transmission line and rebuilt 115 kV AC transmission lines. Compl. ¶¶ 30-31. CMP had full site control of the Project corridor, most of which consists of land already devoted to power transmission, by July 2017. *Id.* ¶ 33. Approximately 0.9 miles of the corridor is on public reserved lands; in 2020, the Bureau of Parks and Lands (“BPL”) issued an amended and restated lease (the “BPL Lease”) to CMP, superseding a prior 2014 lease, allowing construction of electric transmission facilities. *Id.* ¶ 75. Permitting began over four years ago, in 2017, with an application to the U.S. Department of Energy (“DOE”). *Id.* ¶ 66. After years of rigorous agency review, CMP obtained all project-wide permits, including a Certificate of Public Convenience and Necessity (“CPCN”) from the PUC, and permits from the Department of Environmental Protection (“DEP”), U.S. Army Corps of Engineers (“Corps”), and DOE. *Id.* ¶¶ 36, 50-54, 60-61, 67. This process was substantially delayed by Project opponents, including electric generators in New England that burn fossil fuels, such as NextEra Energy Resources LLC (“NextEra”), which will lose revenue if the Project is completed. *Id.* ¶ 20.

² CMP and NECEC LLC are both subsidiaries of Avangrid. Compl. ¶ 7.

The NECEC has been twice targeted by direct initiatives – both of which were funded by NextEra and other fossil fuel burning electric generators, who donated approximately \$27 million to political action committees to advocate against the Project. *Id.* ¶¶ 22-23. In 2020, opponents proposed an initiative (the “2020 Initiative”) that purported to direct the PUC to revoke its CPCN for the Project. The Law Court concluded that the 2020 Initiative was unconstitutional. *Id.* ¶¶ 79-82; see *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 2, 237 A.3d 882. After that failed initial effort, the same opponents pursued the present Initiative. Compl. ¶¶ 83-89. The Initiative’s sponsors filed an application for the Initiative on or about September 15, 2020, five weeks after the Law Court’s *Avangrid* decision. *Id.* ¶ 83. Because of the time they wasted pursuing the facially unconstitutional 2020 Initiative, however, the sponsors could not have the new Initiative placed on the ballot until November 2021 – long after NECEC had undertaken physical construction of the Project, in good faith, and in reliance on its valid permits (as described *infra*). The Secretary of State certified the Initiative to be submitted to the Legislature on February 22, 2021; the Legislature adjourned *sine die* without enacting the Initiative on March 30, 2021; and the Governor issued her proclamation placing the Initiative on the November 2021 ballot on April 8, 2021. *Id.* ¶¶ 98-100. The Initiative will take effect on or about December 12, 2021. *Id.* ¶ 105.

Rather than specifically call the NECEC out by name as in the failed 2020 Initiative, the second Initiative seeks to bar completion of the NECEC by retroactively amending Titles 12 and 35-A of the Maine Revised Statutes in three respects. First, Section 1 of the Initiative mandates that any lease of public reserved land by the BPL for transmission lines and facilities is automatically deemed to substantially alter the use of the lease land within the meaning of article IX, section 23 of the Maine Constitution and requires approval by a 2/3 vote of all members elected

to each House of the Legislature. This requirement applies retroactively to September 16, 2014. *Id.* ¶ 85. Second, Section 4 of the Initiative amends 35-A M.R.S. § 3132 to require legislative approval of the construction of “high impact electric transmission lines,” and that any high impact electric transmission line crossing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land and requires approval by a 2/3 vote of all members elected to each House of the Legislature. This requirement applies retroactively to September 16, 2020. *Id.* ¶ 86. Third, Section 5 of the Initiative amends 35-A M.R.S. § 3132 to ban the construction of “high impact electric transmission lines” in the “Upper Kennebec Region” as that term is defined in the Initiative, which includes approximately 43,300 acres of land in Somerset County and Franklin County. This requirement applies retroactively to September 16, 2020. *Id.* ¶ 87. Each of the changes in the Initiative retroactively applies to the NECEC Project, requiring legislative approval for the BPL Lease and the Project itself by 2/3 vote of all members elected to each House of the Legislature, and prohibiting the construction of the Project in its current route through the “Upper Kennebec Region,” which as defined may include some portion or portions of Segment 1 of the NECEC. The Initiative’s retroactive provisions were crafted to specifically reach back in time to target the NECEC. *Id.* ¶¶ 88-89.

The Initiative’s targeting of the NECEC is patent, based on not only the timing of the Initiative, following the sponsors’ failed 2020 Initiative, and its retroactivity, but also the express statements of Initiative proponents. The political action committees supporting the Initiative have repeatedly stated that the purpose of the Initiative is to end the NECEC. The No CMP Corridor website declares its purpose is to “Stop the CMP Corridor.” *Id.* ¶ 90. When the Secretary of State accepted the application for the Initiative, No CMP Corridor issued a press release stating that “[a] new statewide effort to stop Central Maine Power’s 145-mile transmission line through Maine

began today.” *Id.* ¶¶ 92-93. When proponents submitted signatures for the Initiative, No CMP Corridor issued a press release stating that “voters will be able to have the final say on CMP’s unpopular NECEC Corridor” and that, “[i]f enacted, the new law will be retroactive and therefore effectively will block the project.” *Id.* ¶¶ 95-96. The campaign for the Initiative used “Vote Yes to Reject the CMP Corridor” as its theme. *Id.* ¶ 102. Ads, flyers, and other campaign materials urged voters to “reject CMP’s Corridor” and to “ban the CMP Corridor.” *Id.* Even the attorney for the political action committees promoting the Initiative (No CMP Corridor and Mainers for Local Power) stated that “this referendum essentially is aimed to defeat the CMP corridor.” *Id.* ¶ 102(f), (g). This anti-NECEC campaign was funded by energy companies that burn fossil fuels whose business will be adversely affected by the NECEC. *Id.* ¶ 103.

The vote on the Initiative came well after NECEC LLC undertook substantial construction on the NECEC. The current estimate of the total capital expenditures to complete the Project is approximately \$1.04 billion. *Id.* ¶ 109. By November 2, 2021, about \$449.8 million – 43% of the total cost estimate – has been spent on the Project. *Id.*; McGeehin Aff. ¶¶ 10, 16 & Sched. 2. Of the approximately \$250 million in benefits to Maine, about \$18 million has already been paid out (including \$8.5 million by NECEC LLC), and approximately \$3.4 million in property taxes related to the Project has been paid to municipalities. Compl. ¶¶ 43, 109; Dickinson Aff. ¶ 18.

Expenditures on the Project began well before 2021. Acquisition of additional property rights for the transmission corridor began in 2014. Compl. ¶ 113(a). In 2016, the project team established initial technical configurations for the Project, along with a preliminary project schedule with a proposed in-service date of December 2022. *Id.* ¶ 113(b). In 2017, the project team undertook permitting processes, and began using Burns & McDonnell for permitting management services. *Id.* ¶¶ 110, 113(c). In 2018, upon selection of the Project, a large number

of project management and engineering personnel were added to the project team and undertook detailed planning, including, in September 2018, through a project management services contract with Black & Veatch Corporation and a design services contract with TRC Engineers LLC. *Id.* ¶¶ 110, 113(d). Due to the long lead-time to construct converter stations, an engineering, procurement, and construction contract with ABB Inc. (now ABB Enterprise Software Inc., d/b/a Hitachi ABB Power Grids) (“HAPG”) was entered into for the converter station in August 2019; this triggered mobilization of engineers to prepare detailed plans. *Id.* ¶¶ 111, 113(e). Beginning in 2020, numerous construction and supply contracts were executed.³ *Id.* ¶¶ 111-112, 113(f). The project team continued to grow with the addition of construction management, safety, and environmental compliance resources. *Id.* ¶ 113(f). All of these activities were necessary to begin construction. *Id.* ¶ 113(g); Berkowitz Aff. ¶¶ 38-39. Through the end of 2020, approximately \$155 million in capital expenditures had been spent on the Project. Dickinson Aff. ¶ 18.

Physical construction of the NECEC began in early 2021. The timing of construction was driven by contractual deadlines and permitting delays largely caused by Project opponents. Compl. ¶ 20; Berkowitz Aff. ¶¶ 35, 41, 56. Under the TSAs, the parties agreed that the commercial operation date for the NECEC would be December 13, 2022, but allowed for limited extensions of this deadline with posting of additional security. Compl. ¶ 32. Early project plans had called for construction to start during 2019, but delays in the permitting process, including appeals and lawsuits filed by Project opponents, required adjustments to the project schedule. *Id.* ¶¶ 20, 46,

³ These included a contract with Northern Clearing Inc. (“NCI”) for clearing the transmission corridor in September 2020; a contract with Irby Construction Company, to be implemented through a joint venture with Cianbro Corporation, (“Cianbro/Irby”) to construct the HVDC transmission line in October 2020; and a contract with Sargent Electric Company to construct the AC transmission line in February 2021. Compl. ¶ 111. Other contracts include pole manufacturing contracts with TransAmerican Power Products, Inc. (“TAPP”) and New Nello Operating Co., LLC (“Nello”), and contracts for timber mats with Maine-based timber manufacturers. *Id.* ¶¶ 111-112.

55, 62, 77; Berkowitz Aff. ¶¶ 26, 35, 56. In addition, permit requirements and restrictions for construction, court-imposed limitations, weather factors, sequencing with project contractors, and required coordination with various regulators has affected the construction schedule and in-service date. Compl. ¶¶ 114, 118; Berkowitz Aff. ¶¶ 45-46, 49, 52, 57. The current project schedule calls for the NECEC to achieve commercial operation on December 13, 2023, with the contractual deadline for commercial operation now August 23, 2024.⁴ Compl. ¶ 147; Berkowitz Aff. ¶¶ 35, 57. Starting construction as soon as the final permits were received was essential to maintain the targeted commercial operation date. Compl. ¶ 136; Berkowitz Aff. ¶ 59. It is critical that the Project enter commercial operation as soon as is feasible in order to, among other things, (1) realize Project benefits, and (2) ensure financial viability of the Project, which is impacted by incremental investment costs associated with Project extension. Compl. ¶ 136. Accordingly, as soon as DOE issued the final major permit for the Project, NECEC LLC instructed NCI to commence clearing and other construction activities on January 18, 2021.⁵ *Id.* ¶ 117; Berkowitz Aff. ¶¶ 41-43.

The construction of linear transmission projects like the NECEC requires careful sequencing, taking into account time-of-year restrictions to protect wildlife, environmental limitations, weather conditions, access considerations, and the participation of numerous contractors. Compl. ¶ 114. The process begins with clearing, followed by the erection of the structures, and the stringing of electrical conductor. *Id.*; Berkowitz Aff. ¶¶ 17-18. Concurrently, substation work needed to connect the new transmission line to the existing transmission system must be accomplished. Compl. ¶ 114. For the NECEC, this work most notably includes the

⁴ This deadline may be extended up to August 23, 2025, with posting of \$10.9 million in additional security. Dickinson Aff. ¶ 13.

⁵ NCI had previously mobilized pursuant to a notice to proceed. Compl. ¶ 115. Thus, NCI had already performed required site surveys, installed flagging, prepared lay down areas, and retained equipment. *Id.* ¶ 116. Other preparatory work also began before January 18, 2021; for example, TAPP, a pole supplier, had already begun construction of poles, and delivered the first poles by January 18, 2021. *Id.* ¶ 119.

construction of the converter station in Lewiston. *Id.* Network Upgrade work also requires detailed service outage sequence plans that have additional time-of-year restrictions; for example, certain elements can only be removed from service in a specific 2-week window in a year. *Id.*

Construction of the NECEC has reflected this pattern. NCI began clearing trees and laying mats on the northern end of Segment 2 on January 18, 2021 (starting at The Forks Plantation and heading south along the Project route).⁶ *Id.* ¶¶ 117-118. On February 9, 2021, after NCI had conducted sufficient clearing to permit the process of installing the HVDC line to begin, Cianbro/Irby installed the first structure in Segment 2. *Id.* ¶ 123. Meanwhile, on February 1, 2021, Cianbro was given partial authorization to mobilize and begin clearing and site development work at the converter station; full authorization to prepare that site for construction was granted on May 28, 2021, after a minor revision to the DEP permit. *Id.* ¶ 120. Work on the AC portion of the Project, specifically, the Network Upgrade line in Segment 3, began in June 2021. *Id.* ¶ 129.

As of November 2, 2021, Election Day, the total amount of capital expenditures spent on the Project from inception, inclusive of project management costs, is estimated to be approximately \$449.8 million. Compl. ¶ 109; McGeehin Aff. ¶ 10. NCI had cut approximately 124 miles (85.5%) of the Project corridor and performed approximately \$43.1 million of clearing and other construction activities. Compl. ¶ 132. Cianbro/Irby had installed approximately 70 structures, set 10 more direct imbed bases, and installed caisson foundations for four more, for a total cost of approximately \$38.5 million. *Id.* TAPP and Nello had delivered 570 poles to lay-down yards at a cost of approximately \$38 million. *Id.* In all, more than 55% of the custom-manufactured steel

⁶ Other than during June and July, during which clearing was restricted under the Corps permit in order to mitigate impacts on a federally-listed bat species, NCI has continued clearing the corridor (as well as installing construction mats as necessary to conduct the clearing) since that date, as contemplated by the Project schedule. Compl. ¶ 118. NCI began clearing Segment 1 on May 15, 2021, two days after the First Circuit lifted the injunction it had placed on construction activities in that segment of the Project. *Id.*

poles that will be used for the HVDC transmission line had been delivered by the end of September 2021. *Id.* Further, all transmission related material for the construction of the HVDC line, including conductor, insulators, and fiber optic, has been received and is stored at laydown yards along the Project route.⁷ Dickinson Aff. ¶ 17(b). Along the AC portion of the line, including Segment 3 and Segment 5 (the 26-mile Network Upgrade between Coopers Mills and Maine Yankee), approximately 54 structures had been installed and 2 modified, at a cost of approximately \$18.4 million. Compl. ¶ 132. In addition, approximately 3 miles of conductor had been strung in Segment 5. *Id.* Further, more than 72% of the converter station site preparation had been completed, and critical converter station components (including custom-designed transformers) constructed, at a cost of approximately \$100 million. *Id.* ¶ 120. NECEC LLC had also made total future purchase commitments of over \$312 million. McGeehin Aff. ¶ 13 & Sched. 1.

ARGUMENT

I. Plaintiffs' Claims Are Ripe for Adjudication.

This declaratory judgment action challenging the retroactive application of the Initiative is ripe. Ripeness involves a two-part inquiry: “(1) whether the issues are fit for judicial review, and (2) whether hardship to the parties will result if the court withholds review.” *Pilot Point, LLC v. Cape Elizabeth*, 2020 ME 100, ¶ 30, 237 A.3d 200. Here, the issues are fit for judicial review, as “[t]he statute is certain to become effective” and “[i]t is presumed that the [agencies] will take steps to enforce the provisions of the statute.” *Nat’l Hearing Aid Ctrs., Inc. v. Smith*, 376 A.2d 456, 459 (Me. 1977) (declaratory judgment action challenging the validity of a new statute

⁷ Materials delivered through November 2, 2021 included 344 reels of DC conductor (total length of over 3.1 million feet) at a cost of approximately \$6.7 million; 136 reels of DC fiber (total length of over 1.65 million feet) at a cost of approximately \$1.3 million; 74,100 DC insulators at a cost of approximately \$4.5 million; 161 wood poles for the AC, at a cost of over \$750,000; 112 reels of AC conductor (over 977,000 feet) at a cost of approximately \$1.9 million; and 25 reels of AC fiber at a cost of approximately \$273,000. Compl. ¶ 132 n.14.

commenced “before [its] effective date” was “ripe for decision”).⁸ Further, Plaintiffs would be harmed if review is delayed, as they need certainty regarding construction of the Project and further investment. NECEC LLC is expending hundreds of millions of dollars constructing the Project under demanding timelines. Compl. ¶ 137; McGeehin Aff. ¶ 13 & Sched. 1; Dickinson Aff. ¶¶ 19-23. Thus, this action satisfies both ripeness requirements.

II. Plaintiffs Are Entitled to a Preliminary Injunction.

The party seeking a preliminary injunction must demonstrate: (1) it will suffer irreparable injury absent an injunction; (2) such injury would outweigh any harm from an injunction; (3) it has a substantial possibility of success on the merits, and (4) the public interest will not be harmed by an injunction. *Bangor Historic Track, Inc. v. Dep’t of Agric.*, 2003 ME 140, ¶ 9, 837 A.2d 129.

A. Plaintiffs will suffer irreparable injury unless an injunction issues.

An “irreparable injury” is one “for which there is no adequate remedy at law.” *Bar Harbor Banking & Trust Co. v. Alexander*, 411 A.2d 74, 79 (Me. 1980). Because “a prospective violation of a constitutional right constitutes irreparable injury,” *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (quotation marks omitted), courts find irreparable harm if a constitutional violation is threatened, *see Am. Trucking Ass’n v. City of Los Angeles*, 559 F.3d 1046, 1058 (9th Cir. 2009); *Davis v. Dist. of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998); *Condon v. Andino, Inc.*, 961 F. Supp. 323, 331 (D. Me. 1997). Likewise, because real property interests are unique, loss of vested rights results in irreparable harm. *See K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d 907, 915 (1st Cir. 1989) (“Real estate has long been thought unique, and thus, injuries to real estate interest frequently come within the ken of the chancellor.”); *South Lyme Prop. Owners Ass’n v. Town of Old Lyme*, 121 F. Supp. 2d 195, 204-05 (D. Conn. 2000); *Wal-Mart Stores, Inc. v. County of Clark*,

⁸ By contrast, an action brought to *enforce* a statute prior to its effective date is not ripe, given both the presumption that agencies will enforce a statute and the fact that the statute does not yet have legal force.

125 F. Supp. 2d 420, 429 (D. Nev. 1999). As described below, retroactive application of the Initiative to the Project during the duration of this litigation would likely result in cancellation of the Project for failure to comply with the contractual in-service date for the NECEC, depriving Plaintiffs of their vested rights in violation of the Maine Constitution.

Retroactive application of the Initiative to the Project constitutes *per se* irreparable harm. As explained in more detail in the Background section *supra* and Part II.B *infra*, retroactive application of the Initiative to the Project violates the doctrine of vested rights because it would prohibit completion of the Project, even though NECEC LLC has commenced substantial construction, in good faith, with the intention to continue construction and carry it through to completion, pursuant to valid permits; it would also violate the separation of powers doctrine. Absent an injunction, therefore, irreparable injury would occur in the form of deprivation of vested rights and a constitutional violation. *See City of Evanston v. Barr*, 412 F. Supp. 3d 873, 886 (N.D. Ill. 2019) (violation of separation of powers constituted irreparable harm); *Wal-Mart Stores, Inc.*, 125 F. Supp. 2d at 429 (finding irreparable harm from deprivation of vested rights in property use).

The deprivation of the vested property right is particularly severe here because it would likely be permanent; delay in construction would threaten cancellation of the Project altogether, along with the many benefits it will provide to Maine. If construction activities are not allowed to proceed during the legal challenge to the Initiative, the Project likely would not achieve commercial operation before the contractual deadline of August 23, 2024, or even the extended deadline of August 23, 2025. Compl. ¶ 137; Dickinson Aff. ¶¶ 24-31. The current project schedule calls for a commercial operation date of December 13, 2023, which allows schedule float of only 8 months with respect to the contractual deadline. Compl. ¶ 137. As of Election Day, the Project has been in construction for nearly 10 months and there are just over two more years of

construction and commissioning ahead. *Id.* If construction is not allowed to continue during the legal challenge, there will be a corresponding day-for-day delay of completion, if not longer due to the effects of demobilization and the need to re-mobilize. *Id.* ¶ 137; Dickinson Aff. ¶¶ 26-27. Assuming for instance, a 2-year stoppage, construction would not be allowed to resume until the fall of 2023 and the contract deadline for the Project’s in-service date could not be achieved, even if the legal challenge succeeds. Compl. ¶ 137; Dickinson Aff. ¶¶ 30-31; Berkowitz Aff. ¶ 61. Thus, irreparable injury would result absent an injunction.

B. Plaintiffs are likely to succeed on the merits.

1. Retroactive application of the Initiative to the NECEC would deprive Plaintiffs of their vested rights under Maine law to construct the Project.

“The legislature has no constitutional authority to enact retroactive legislation if its implementation impairs vested rights.” *Merrill v. Eastland Woolen Mills, Inc.*, 430 A.2d 557, 560 n.7 (Me. 1981); *see Fournier v. Fournier*, 376 A.2d 100, 101-02 (Me. 1977) (“It is established in this State that a statute which has retrospective application is unconstitutional if it impairs vested rights.”). A vested right is one that “cannot be impaired or taken away without the person’s consent.” *Vested Right*, Black’s Law Dictionary (11th ed. 2019). A right to construct a project vests where there has been (1) actual, physical commencement of significant and visible construction, (2) undertaken in good faith, with the intention to continue construction and carry it through to completion, (3) pursuant to a valid permit. *Sahl v. Town of York*, 2000 ME 180, ¶ 12, 760 A.2d 266 (citing *Town of Sykesville v. West Shore Comm’cns, Inc.*, 677 A.2d 102, 104 (Md. 1996)). A right to construct a project may also vest where the Legislature seeks to prohibit construction in “bad faith” or through “discriminatory enactment.” *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 25, 856 A.2d 1183. Plaintiffs’ right to construct the Project has vested, because NECEC LLC has, with good faith intent to see the Project through to completion,

undertaken significant, visible construction before the Initiative became law. Moreover, the Initiative was undertaken in bad faith, as it specifically targets the Project. Accordingly, retroactive application of the Initiative would deprive Plaintiffs of their vested rights.

- a. NECEC LLC timely commenced construction of the Project in good faith, with intent to continue and complete construction.**
 - i. Project construction has occurred pursuant to a project schedule and contractual obligations.**

NECEC LLC undertook construction “in good faith . . . with the intention to continue with the construction and carry it through to completion.” *Sahl*, 2000 ME 180, ¶ 12, 760 A.2d 266 (quoting *Town of Sykesville*, 677 A.2d at 104). In the context of vested rights, good faith is simply “the absence of proof of bad faith.” *Town of Sykesville*, 677 A.2d at 113.⁹ “Bad faith” manifests itself as a “deliberate false start” – *i.e.*, efforts to make it appear that construction has begun, when in reality it has not. *Id.* at 113-116. Thus, “good faith” focuses on “whether the act of commencing construction is undertaken with the intention of continuing and finishing the job.” *Id.* at 116. The decision to “seize the day” by beginning construction with knowledge of a potential change in law is not “bad faith.” *Id.* at 118-120. NECEC LLC has already completed substantial construction in accord with project schedules and contractual commitments. Compl. ¶ 132; Berkowitz Aff. ¶¶ 43-55, 56-60, 63. It began construction in the field on January 18, 2021, Compl. ¶ 117, and undertook preparatory activities for construction starting much earlier than that, *id.* ¶ 113.

NECEC LLC began construction with the intent to finish it. Efforts to obtain necessary real estate interests started in 2014, initial design in 2016, permitting in 2017, and detailed planning in 2018. *Id.* ¶ 113. Further, NECEC LLC’s commencement of construction in January 2021, as soon as the last required federal permit for the Project was issued, was both contemplated by the

⁹ “Maine law is in accord with” *Town of Sykesville*’s description of the law on vested rights. *Sahl*, 2000 ME 180, ¶ 13, 760 A.2d 266.

construction schedule and necessary to comply with NECEC LLC’s contractual obligations. NECEC LLC began construction in January 2021 in order to achieve timely commercial operation under the TSAs, which include a contractual deadline of August 23, 2024. *Id.* ¶ 136. Based on the extended commercial operation date of May 31, 2023, project plans called for a start date in 2020, anticipating construction as soon as required state and federal permits were obtained; delays in obtaining these permits impacted the timing of construction. *Id.*; Berkowitz Aff. ¶¶ 56-57. Starting construction as soon as all state and federal authorizations were received was critical to maintain the targeted commercial operation date,¹⁰ realize Project benefits, and ensure financial viability of the Project. Compl. ¶ 136. Specifically, it was necessary for NECEC LLC to move forward with construction promptly to meet its contractual commitments given preceding delays in permitting and allowance for future unknown events, such as procurement delays, weather, unforeseen ground conditions, and other events. Berkowitz Aff. ¶¶ 58-59, 63.¹¹ Further, NECEC LLC’s initiation of construction was not a “false start”; rather, construction has continued continuously since then, subject to permit restrictions. Compl. ¶ 118; Berkowitz ¶ 49. This continuous construction has entailed massive investments by NECEC LLC. Not only has it incurred approximately \$450 million in capital expenditures, but it has also made over \$312 million in purchase commitments to comply with the TSAs. McGeehin Aff. ¶ 13 & Sched. 1; Berkowitz Aff. ¶¶ 58-60. NECEC LLC’s efforts to comply with the TSAs by maintaining the Project schedule, and its expenditures in furtherance of that effort, demonstrates its good faith.

¹⁰ As of January 2021, the project schedule called for commercial operation on May 31, 2023. Berkowitz Aff. ¶ 56. The commercial operation date in the baseline schedule was December 13, 2022. *Id.* ¶¶ 9, 56.

¹¹ Construction immediately experienced delays because of an injunction initially entered and then lifted by the U.S. Court of Appeals for the First Circuit. Berkowitz Aff. ¶ 46. NECEC LLC was unable to begin clearing both north along Segment 1 and south along Segment 2, as planned; instead, clearing could only begin in Segment 2, *id.*; Compl. ¶ 118, leading to adjustments to the planned installation of poles, Berkowitz Aff. ¶ 52. The injunction thus led to a further delay of the expected commercial operation date to December 13, 2023. *Id.* ¶ 57. This highlights NECEC LLC’s need to start construction as soon as possible. *Id.* ¶ 59.

ii. Proposal of the Initiative did not vitiate good faith.

NECEC LLC's good faith intent to complete the Project is not undermined by opponents' decision to pursue the Initiative. *Town of Sykesville* provides useful guidance. There, the court found that a developer's right to construct a telecommunications tower had vested where the developer obtained all necessary permits and began construction prior to amendment of the zoning law. 677 A.2d at 105-08, 118-120. The court found that the developer's knowledge of the pending change in law did not mean that the developer commenced construction in bad faith. *Id.* Likewise here, where NECEC LLC possessed all necessary land rights and permits and began construction with the intent to complete it, there is "nothing wrong with acting expeditiously to commence construction knowing" of the possible change in law. *Id.* at 120. Thus, all of NECEC LLC's construction efforts up through adoption of the Initiative were conducted in good faith. Any other conclusion would allow opponents of a project to bring construction to a halt simply by proposing a new law, even though that proposal may never be adopted. Property owners who undertake construction of a permitted project have the right to rely on existing law, and to not be held hostage through mere proposal of a new law. *Id.* at 118 ("there is no absence of good faith in the commencement of construction . . . with full knowledge that legislation was then pending").

Distinguishable from the case at hand are the Law Court's decisions in *Kittery Retail* and *City of Portland v. Fisherman's Wharf Associates II*, where the developer had not yet even obtained a permit or any of the necessary property interests, and no construction had occurred, before learning of the pending changes in law. In *Kittery Retail*, the developer failed to establish vested rights "because it did not begin construction," and also failed to establish vested rights as a result of governmental bad faith in part because the developer knew of the pending change in the law before it obtained a permit and rights to land. 2004 ME 65, ¶¶ 4-6, 9, 856 A.2d 1183.

Likewise, in *Fisherman's Wharf*, vested rights were not established where no construction had occurred, and governmental bad faith could not be shown absent “discriminatory treatment,” where the developer knew of the pending change in the law before it acquired title to property or obtained a permit. *Fisherman's Wharf Assocs. II*, 541 A.2d 160, 161-62, 164 (Me. 1988). Neither of those cases supports the conclusion that mere knowledge of a pending change, proposed after necessary land and permits have been obtained and construction has begun, vitiates good faith.¹²

Although it may be equitable to conclude that rights do not vest where a developer has notice of a pending change to the law prior to obtaining any of the necessary land and permits, and therefore prior to beginning construction, the equities are far different where the developer secures necessary permits and undertakes construction in reliance on existing law before any change in the law is even formally submitted to a legislative body for consideration, much less adopted. This is particularly true for statewide, multi-year developments such as the NECEC, which are more likely to attract opposition and are more vulnerable to threatened legal changes than local projects. It simply is not reasonable to subject major projects to the paralysis that would result if the first sign of opposition operated to deprive the developer of good faith in proceeding with the project.

Here, full site control for the Project had been obtained by July 2017, and all project-wide permits had been obtained between May 3, 2019 and January 14, 2021. Compl. ¶¶ 33-69. Physical construction began by January 18, 2021. *Id.* ¶¶ 117-118. All of these events occurred before the State took any action to place the Initiative on the ballot.¹³ The Initiative was not officially

¹² Significantly, in *Kittery Retail*, the Law Court acknowledged the continuing vitality of its prior decision in *Sahl* by expressly distinguishing that case on the basis that the facts before it in *Kittery Retail* demonstrated that the developer had not begun construction before formal legislative action. 2004 ME 65, ¶ 32, 856 A.2d 1183. *Sahl* therefore remains controlling precedent for projects involving pre-legislative actual construction. 2000 ME 180, ¶¶ 11-14, 760 A.2d 266 (holding that rights had vested because the developers had begun construction prior to the zoning amendment).

¹³ At the very least, all of NECEC's construction efforts prior to completion of the official state actions necessary to place the Initiative on the November 2021 ballot were conducted in good faith. Even if *Kittery*

proposed for consideration by the electorate until the Secretary of State certified petition signatures on February 22, 2021; the Legislature adjourned *sine die* without putting forward a competing measure on March 30, 2021; and the Governor issued the proclamation placing the Initiative on the ballot on April 8, 2021. *Id.* ¶¶ 98-100. Under the *Town of Sykesville* standard endorsed in *Sahl*, all construction prior to Election Day must be considered for purposes of vested rights.

b. NECEC LLC has commenced actual construction on the Project that is visible and significant.

NECEC LLC has undertaken “actual physical commencement of some significant and visible construction” on the Project. *Sahl*, 2000 ME 180, ¶ 12, 760 A.2d 266 (quotation marks omitted). As the Law Court has observed, “a vested right can be acquired when, pursuant to a legally issued permit, the landowner demonstrates a commitment to the purpose for which the permit was granted by effecting substantial changes and incurring substantial expenses to further the development.” *Id.* (quoting *Town of Orangetown v. Magee*, 665 N.E.2d 1061, 1064 (1996)). This “substantial construction” standard is measured in terms of “whether the amount of completed construction is *per se* substantial in amount, value or worth.” *AWL Power, Inc. v. City of Rochester*, 813 A.3d 517, 522 (N.H. 2002); *see Town of Sykesville*, 677 A.2d at 316 (requiring “substantial change of position”); *Tantimonaco v. Zoning Bd. of Review of Town of Johnston*, 232 A.2d 385, 387 (R.I. 1967).¹⁴ Construction on the NECEC easily meets this threshold, at any

Retail and Fisherman’s Wharf stood for the proposition that a pending change in law may vitiate good faith for a permitted project under construction, which they do not, there must at the least be some “official action,” *i.e.*, “actual introduction of a proposal to the appropriate . . . authorities,” that could lead to a change in law before that change becomes concrete enough to be considered in the good faith analysis. *1350 Lake Shore Assocs. v. Healey*, 861 N.E.2d 944, 954 (Ill. 2006) (considering “good faith” in light of pending legal change where no permits had been obtained and no construction had occurred). Any other rule “could lead to manipulation” by those opposing a project, thereby “discourag[ing] property owners from seeking to develop their property.” *Id.* at 953.

¹⁴ A “substantial completion” requirement, as opposed to a “substantial construction” standard, “unfairly burdens developers with large or complex plans”; thus, “where construction expenditures amount to large sums, construction need not be judged by comparison to the ultimate cost of the project.” *AWL Power*, 813 A.2d at 521-22 (internal quotation marks and citations omitted).

relevant date. *See Sahl*, 2000 ME 180, ¶¶ 12, 14, 760 A.2d 266 (rights vested where there were “substantial changes” and “substantial expenses”); *Town of Orangetown*, 665 N.E.2d at 1064-65 (rights vested where, after a permit issued, developer spent over \$4 million on improvements).

By the date the Initiative was adopted, November 2, 2021, NECEC LLC had undertaken substantial construction on the Project. The clearing contractor, NCI, had cut approximately 124 miles (85.5%) of the corridor, at a cost of \$43.1 million; contractors had installed approximately 70 structures along the HVDC line, along with additional bases and foundations, at a cost of \$38.5 million; an additional 54 structures had been installed along the AC line, at a cost of \$18.4 million; 3 miles of conductor had been strung; and contractors had largely completed site preparation for the converter station, along with construction of critical converter station components (such as transformers), at a cost of approximately \$100 million. Compl. ¶¶ 120, 132. In addition, millions of dollars of additional materials had been delivered through Election Day. *Id.* ¶ 132 & n.14. In all, total capital expenditures are estimated to be approximately \$449.8 million – 43% of the total Project cost estimate. *Id.* ¶ 132; *McGeehin Aff.* ¶ 10. NECEC LLC had incurred additional costs of approximately \$39.1 million, including operating expenses and allowance for funds used during construction. *McGeehin Aff.* ¶ 13 & Sched. 1. If this does not constitute substantial construction and substantial expenditures, the vested rights doctrine is meaningless.

Even measured against earlier dates likely to be advocated by the Project’s opponents as a “cutoff” for the construction undertaken by NECEC in good faith, NECEC LLC’s construction efforts and expenditures were still more than sufficiently substantial.

On April 8, 2021, the Governor issued a proclamation placing the Initiative on the ballot, completing the process for presenting an initiative to voters. By that date, capital expenditures on the Project, inclusive of project management costs, totaled approximately \$250.2 million. Compl.

¶ 128. By April 8, NCI had cut approximately 36 miles of corridor, laying over 5,727 mats for access, and performed approximately \$14.3 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures on the HVDC line, at a cost of approximately \$21.2 million. *Id.* TAPP had delivered 33 poles to lay-down yards at a cost of approximately \$8.4 million. *Id.* In addition to capital expenditures, other Project costs as of March 31, 2021, totaled approximately \$18.9 million. McGeehin Aff. ¶ 13 & Sched. 1.

February 22, 2021, the date the Secretary of State certified the petition signatures in support of the Initiative, was the earliest possible date by which NECEC LLC had notice of formal action proposing the Initiative as legislation.¹⁵ Even as far back as that date, the amount of capital expenditures on the Project, inclusive of project management costs, was approximately \$199 million. Compl. ¶ 124. NCI had cut over 10 miles of corridor, laying over 1,000 mats for access, and performed approximately \$8.3 million of clearing and related construction activities. Cianbro/Irby had installed 9 structures on the HVDC line, at a cost of approximately \$15 million. *Id.* TAPP had delivered 24 poles to lay-down yards at a cost of approximately \$7.4 million. *Id.* In addition to capital expenditures, other Project costs as of February 28, 2021, totaled approximately \$16.9 million. McGeehin Aff. ¶ 13 & Sched. 1.

c. NECEC LLC's construction of the Project has been undertaken pursuant to valid permits.

Finally, for rights to vest construction must have been conducted pursuant to valid permits. *Sahl*, 2000 ME 180, ¶ 12, 760 A.2d 266. Construction on the NECEC did not begin until all project-wide permits had been obtained. Compl. ¶ 117. After obtaining the initial permit

¹⁵ Prior to February 22, 2021, it was unknown whether opponents had gathered enough signatures to place the Initiative on the ballot. Under Maine law, any five voters may take out a petition for an initiative, 21-A M.R.S. § 901, but they must obtain signatures totaling no less than 10% of the votes cast in the prior gubernatorial election to place the initiative on the ballot. Me. Const. art. IV, pt. 3, § 17. Until the Secretary certifies that sufficient signatures have been obtained, therefore, the possibility of an initiative is inchoate.

necessary for the Project on May 3, 2019, the final permit necessary to begin construction was obtained on January 14, 2021, and construction began promptly thereafter on January 18, 2021. *Id.* ¶¶ 33-69, 117. Further, local municipal permits have been obtained in a timely manner in accordance with the Project schedule. *Id.* ¶ 71. All of these permits are valid. The Law Court has affirmed the PUC’s grant of the CPCN, *see NextEra Energy Res., LLC v. Me. Pub. Utils. Comm’n*, 2020 ME 34, 227 A.3d 1117; the Superior Court has denied opponents’ motion for stay of the DEP permit, *see NextEra Energy Res., LLC v. Dep’t of Env’t Prot.*, Dkt Nos. KEN-AP-20-27, SOM-AP-20-04 (Me. Sup. Ct. Jan. 11, 2021); and the First Circuit has found that opponents of the Project are not likely to succeed in their challenge to the Corps permit, *Sierra Club v. Army Corps of Eng’rs*, 997 F.3d 395 (1st Cir. 2021). As these decisions show, NECEC LLC was justified in starting construction under the permits lawfully issued for the Project.

d. The Initiative’s proponents targeted the Project in bad faith and a dilatory manner.

NECEC LLC can also demonstrate its vested rights based on governmental bad faith. The Law Court has acknowledged that rights may vest, even absent any construction, if a law is “enacted primarily to thwart the applicant’s plans for development.” *Littlefield v. Inhabitants of Town of Lyman*, 447 A.2d 1231, 1233 (Me. 1982).¹⁶ The question in such cases is whether the law was “directed” or “aimed” at a particular project. *Kittery Retail*, 2004 ME 65, ¶¶ 26, 28, 856 A.2d 1183 (citing *Thomas*, 381 A.2d at 644, 647, and *Commercial Props, Inc. v. Peternel*, 211 A.2d 514, 519 (Pa. 1965)). Here, the Initiative was targeted at a single project, the NECEC. Further, the Project has reached its advanced stage of development prior to adoption of the Initiative because of the opponents’ delay in wasting a year on the 2020 Initiative declared unconstitutional

¹⁶ *See Kittery Retail*, 2004 ME 65, ¶¶ 23, 25, 856 A.2d 1183 (examining whether rights vested based on bad faith, absent construction); *Waste Disposal Inc. v. Town of Porter*, 563 A.2d 779, 782 (Me. 1989) (same); *Thomas v. Zoning Bd. of Appeals of City of Bangor*, 381 A.2d 643, 647 (Me. 1978) (same).

by the Law Court while the Project justifiably and lawfully proceeded through its planning phases into construction. *Avangrid*, 2020 ME 109, ¶ 2, 237 A.3d 882. This dilatory behavior, and the resulting late hour at which the Project opponents have pursued the Initiative’s targeted retroactive agenda, magnify their bad faith and the unfairness of applying the Initiative to the NECEC.

Both the context of and the campaign for the Initiative makes it clear that it targets the NECEC. The Initiative’s sponsors, Thomas Saviello and Sandra Howard, previously pursued the 2020 Initiative that would have revoked the CPCN for the Project. Compl. ¶¶ 79-82. Only after that initiative was struck down did Saviello and Howard begin pursuing the present Initiative – which, because of their decision to pursue the facially unconstitutional 2020 Initiative, could not be enacted or even placed on the ballot before construction began. *Id.* ¶¶ 22, 83. The Initiative is a transparent effort to carry on the 2020 Initiative’s anti-NECEC efforts; indeed, its sponsors admit that the retroactivity provisions are targeted at the NECEC, illustrating that it is simply the 2020 Initiative in new garb. *Id.* ¶¶ 89-97, 101-102. When the petitions for the Initiative were submitted, the political action committee “No CMP Corridor” stated that the law was designed to “be retroactive” so that it would “block the project.” *Id.* ¶¶ 95-96. The Initiative campaign used the slogan “Vote Yes to Reject the CMP Corridor.” *Id.* ¶ 102. Indeed, the attorney representing No CMP Corridor publicly stated that “this referendum essentially is aimed to defeat the CMP Corridor.” *Id.* ¶¶ 102(f), (g). The initiatives were funded with about \$27 million from competing energy companies operating natural gas fired power plants, which would suffer if lower-cost, clean hydropower were introduced into the New England grid. *Id.* ¶ 103. In sum, the campaign for the Initiative made itself clear: its purpose was to “Stop the CMP Corridor.” *Id.* ¶¶ 90, 102.

There can be no clearer example of targeting. Because the Initiative was not timely pursued and was passed to defeat a single development project after a campaign funded by fossil fuel

burning energy companies that would be competitively harmed by that project, NECEC LLC has a vested right to construct the Project.

2. Retroactive application of the Initiative to the NECEC would violate article III, section 2 of the Maine Constitution.

Article III, section 2 of the Maine Constitution states: “No person or persons, belonging to one of [the legislative, executive, or judicial] departments, shall exercise any of the powers belonging to either of the others, except in the cases herein expressly directed or permitted.” Me. Const. art. III, § 2. Maine law thus requires “strict separation of powers between the three branches of government.” *Bossie v. State*, 488 A.2d 477, 480 (Me. 1985).¹⁷ “The more that the ‘independence of each department, within its constitutional limits, can be preserved, the nearer the system will approach the perfection of civil government, and the security of civil liberty.’” *Avangrid*, 2020 ME 109, ¶ 24, 237 A.3d 882 (quoting *Lewis v. Webb*, 3 Me. 326, 329 (1825)).

Under the Maine Constitution, the separation of powers doctrine is “more rigorous” than under the U.S. Constitution. *N.E. Outdoor Ctr. v. Comm’r of Inland Fisheries & Wildlife*, 2000 ME 66, ¶ 9, 748 A.2d 1009 (quoting *State v. Hunter*, 447 A.2d 797, 799 (Me. 1982)). “[S]eparation of powers issues must be dealt with in a formal rather than functional manner.” *Bossie*, 488 A.2d at 480. “The resulting test under the Maine Constitution is a narrow one: ‘has the power in issue been explicitly granted to one branch of state government, and to no other branch? If so, article III, section 2 forbids another branch to exercise that power.’” *Id.* (quoting *Hunter*, 447 A.2d at 800); see *In re Dunleavy*, 2003 ME 124, ¶ 6, 838 A.2d 338. Thus, the Legislature may not exercise powers granted to the executive, including agencies, *N.E. Outdoor Ctr.*, 2000 ME 66, ¶ 10, 748

¹⁷ The framers were “well acquainted with the danger of subjecting the determination of the rights of one person to the ‘tyranny of shifting majorities.’ . . . It was to prevent the recurrence of such abuses that the Framers vested the executive, legislative, and judicial powers in separate branches.” *I.N.S. v. Chadha*, 462 U.S. 919, 961-62 (1983) (Powell, J., concurring).

A.2d 1009, or to the judiciary, *State v. L.V.I. Group*, 1997 ME 25, ¶ 11 n.4, 60 A.3d 960. The Initiative usurps the powers of both the executive and the judiciary.

a. Retroactive application of the Initiative to the Project would usurp executive powers by prohibiting construction of a project already authorized by executive agencies.

The power to execute the law is vested in the Governor. *Opinion of the Justices*, 2015 ME 27, ¶ 5, 112 A.3d 926 (citing Me. Const. art. V, pt. 1, §§ 1, 12). The Initiative usurps this executive power via an attempted end-run around the Law Court’s decision in *Avangrid*, which struck down the 2020 Initiative that would have expressly required the PUC to revoke the CPCN for the Project. The Initiative, although weakly camouflaged with general standards of prospective application, would again reverse final agency action through its attempted retroactive application to NECEC, which – as the Project opponents have boldly acknowledged – is the sole intended purpose of the Initiative. Retroactive application of Section 1 of the Initiative to the NECEC usurps executive power by purporting to authorize cancellation of the BPL Lease, while retroactive application of Section 4 of the Initiative to the NECEC would usurp executive power by purporting to authorize the Legislature to cancel construction of a project already authorized by the appropriate executive agencies; likewise, retroactive application of Section 5 to the NECEC would usurp executive power because that section directly prohibits construction of a project approved by the PUC.

Maine law is clear: legislation may not be used to reverse a final executive agency determination. *Avangrid*, 2020 ME 109, ¶ 36, 237 A.3d 882; *Grubb v. S.D. Warren Co.*, 2003 ME 139, ¶ 11, 837 A.2d 117. In *Avangrid*, the Law Court considered the constitutionality of the 2020 Initiative that would have directed the PUC to reverse its order granting the CPCN for the Project. 2003 ME 139, ¶¶ 1, 5, 237 A.3d 882. The 2020 Initiative was unconstitutional because the PUC is an executive agency with quasi-judicial powers, and the 2020 Initiative would have “dictat[ed] the [PUC]’s exercise of its quasi-judicial executive-agency function in a particular proceeding,”

and would have “interfer[ed] with and vitiat[ed] the [PUC]’s fact-finding and adjudicatory function – an executive power” *Id.* ¶¶ 33, 35. The Law Court held that “the Legislature would exceed its legislative powers if it were to require the [PUC] to vacate and reverse a particular administrative decision the [PUC] had made.” *Id.* ¶ 35. In so holding, the court applied its prior precedent in *Grubb*. In that case, the court considered the retroactive application of a new statutory standard for calculating worker benefits, and held that it could not be applied to a final benefits determination. The court observed that the new statutory standard “d[id] not, nor could it, change the result of a previous decision,” even though it could be applied retroactively to pending benefit applications. *Grubb*, 2003 ME 139, ¶ 11. The court observed that the “Legislature may not disturb a decision rendered in a previous action, as to the parties to that action; to do so would violate the doctrine of separation of powers.” *Id.*¹⁸ Taken together, these cases establish that separation of powers prohibits retroactive application of new legislation to final agency determinations.

Kittery Retail and *Fisherman’s Wharf* are not to the contrary. In both cases, the Law Court upheld municipal initiatives that changed zoning ordinances to bar development projects. *See Fisherman’s Wharf*, 541 A.2d at 165; *Kittery Retail*, 2004 ME 65, ¶¶ 4-6, 856 A.2d 1183. Neither case, however, upheld retroactive reversal of a final agency permit. In *Fisherman’s Wharf*, the building permit was still pending when the initiative was adopted, 541 A.2d at 161-62; likewise, in *Kittery Retail*, the initiative was adopted after the town had accepted a site plan application for review, but the town had not yet approved or denied the application, 2004 ME 65, ¶¶ 4-6, 856 A.2d

¹⁸ In *Morrisette v. Kimberly-Clark Corp.*, 2003 ME 138, 837 A.2d 123, the Law Court concluded – consistent with its prior decisions – that a new legislative standard may be applied retroactively to benefits determinations regarding prior injuries when an agency proceeding is still pending. *Id.* ¶¶ 12-13, 15; *see MacImage of Me., LLC v. Androscoggin Cty.*, 2012 ME 44, ¶ 23, 40 A.3d 975 (a statute may be applied retroactively to “a pending proceeding”); *Bernier v. Data Gen. Corp.*, 2002 ME 2, ¶ 17, 787 A.2d 144 (same). There is no pending proceeding here – the PUC’s determination is final, and has been affirmed by the Law Court. *NextEra*, 2020 ME 34, ¶ 43, 227 A.3d 1117. The BPL’s lease determination is likewise final, though it is currently subject to challenge in the Law Court.

1183. Maine courts have never approved reversal of final agency permits via legislation, and *Avangrid* and *Grubb* foreclose such an outcome.

Applying this well-settled law, retroactive application of Sections 1, 4, and 5 of the Initiative to the Project are unconstitutional. The new prohibition in Section 5 on construction in the Upper Kennebec Region cannot be applied retroactively to the PUC's final decision granting a CPCN for the Project; likewise, the new standard in Section 1 cannot be applied retroactively to the BPL Lease. Further, the requirement in Section 4 that the Legislature must retroactively approve a project previously permitted by the PUC authorizes that which the Law Court held to be unconstitutional in *Avangrid*: direct legislative prohibition of a specific project that has been finally approved by executive agencies. In effect, requiring legislative approval of the BPL Lease and construction of the NECEC – after a completed process in both executive agencies – is the same as directly revoking the CPCN, as the 2020 Initiative, found unconstitutional in *Avangrid*, purported to do. The Legislature cannot constitutionally disapprove prior executive approvals.

b. Retroactive application of Sections 4 and 5 of the Initiative would also usurp judicial powers by reversing the outcome of a final judgment of the Law Court.

All judicial powers are vested in the Supreme Judicial Court and other courts established by the Legislature. Me. Const. art. VI, § 1. The Initiative usurps this power because it would effectively reverse a final judgment rendered in a previous action, as to the individual parties to that action, by requiring the PUC to vacate a CPCN that has been affirmed by the Law Court and permitting the Legislature to veto the project after affirmance of the CPCN. *See NextEra*, 2020 ME 34, ¶ 43, 227 A.3d 1117. In force and effect, the Initiative would vacate *NextEra*.

It is well established under Maine law that it violates the separation of powers for the Legislature to reverse a final judgment as to the parties in that action. *L.V.I. Group*, 1997 ME 25, ¶ 11 n.4, 60 A.3d 960 (“[A] final judgment in a case is a decisive declaration of the rights between

the parties, and the Legislature cannot disturb the decision . . . as to the parties in that action.”); *Lewis*, 3 Me. at 332; see *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219-27 (1995) (citing *Lewis*).¹⁹ In *Lewis*, the Law Court held that the Legislature cannot “set aside a judgment or decree of a Judicial Court, and render it null and void,” even via a law that did not expressly require an outcome different than that reached by the court. 3 Me. at 337. As these cases establish, therefore, legislation may not reopen a proceeding subject to a final judicial decision.

Retroactive application of Sections 4 and 5 to the Project would violate this principle by reversing the outcome of a final judgment from the Law Court that expressly affirms the PUC’s issuance of a CPCN for the NECEC. In *NextEra*, the Law Court concluded that CMP had met the statutory requirements for a CPCN and thus affirmed the grant of the CPCN. 2020 ME 34, ¶ 43, 227 A.3d 1117. Section 5 of the Initiative seeks to unravel that final judgment by requiring the PUC to reopen its proceedings and revisit its previous determination that was affirmed by the Law Court. Indeed, and even more egregiously than in *Lewis*, the Initiative makes it clear that the prior outcome – approval of the Project – must be reversed. Section 4 of the Initiative, moreover, allows the Legislature to disapprove the Project even though the Law Court has affirmed that the Project satisfies the then applicable requirements of Title 35-A. By imposing new requirements *after* the Law Court’s decision, the Initiative renders an essential function of Maine’s judiciary futile.

c. Retroactive application of Section 4 of the Initiative violates separation of powers because it authorizes a legislative veto of executive action, without requiring presentment.

Section 4 of the Initiative also violates separation of powers even as to its prospective application because it purports to authorize the Legislature to exercise a veto over agency approval

¹⁹ The same is true of agency determinations. See *Grubb*, 2003 ME 139, ¶¶ 9, 11, 837 A.2d 117 (noting that final Workers’ Compensation Board decisions are subject to the rules of res judicata, and finding that the Legislature could not disturb such a decision); see also *Quirion v. Pub. Utils. Comm’n*, 684 A.2d 1294, 1296 (Me. 1996) (res judicata applies in the context of a final PUC decision).

of any high-impact electric transmission line project in the State without satisfying the presentment requirement of article IV, part 3, § 2 of the Maine Constitution. Such a legislative veto deprives the Governor of the executive powers vested in the office of Governor by the Maine Constitution.

The Maine Constitution specifically provides that “[e]very bill or resolution, having the force of law, to which the concurrence of both Houses may be necessary, except on questions of adjournment, which shall have passed both Houses, shall be presented to the Governor.” Me. Const. art. IV, pt. 3, § 2. Under the plain language of this provision, any bill or resolution that would have the force of law must be presented to the Governor for consideration and potential veto. *Opinion of the Justices*, 231 A.2d 617, 619 (Me. 1967) (bills with referendum provisions must be presented to the Governor); see *Opinion of the Justices*, 571 A.2d 1169, 1180 (Me. 1989).

Retroactive application of Section 4 runs afoul of this presentment requirement, and is therefore unconstitutional. *Chadha*, 462 U.S. at 951-59.²⁰ There is no serious question that the legislative approval of high-impact electric transmission lines required by Section 4 would have the force of law – if the Legislature withheld approval, the transmission line could not be built. This is the quintessential nature of a law. Cf. *Opinion of Justices*, 261 A.2d 53, 57 (Me. 1970) (a resolution proposing a constitutional amendment is not an exercise of the power to make laws because it has no binding effect). Accordingly, any legislative act approving or withholding approval for a high impact electric transmission line would have to be submitted to the Governor. Section 4, however, does not allow for or contemplate such presentment. Instead, Section 4, retroactively applied, operates as a purely legislative veto of executive agency approvals by the

²⁰ *Blank v. Dep’t of Corrections*, 611 N.W.2d 530, 536-38 (Mich. 2000) (requirement that legislature approve new agency rules “violate[d] the enactment and presentment requirements, usurps the Governor’s role in the legislative process, and violates the separation of powers provision”); *State ex rel. Meadows v. Hechler*, 462 S.E.2d 586, 593 (W. Va. 1995) (legislative veto violated separation of powers requirement because it “encroache[d] upon the executive branch’s obligation to enforce the law”); *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769, 772-73 (Alaska 1980); *Opinion of the Justices*, 83 A.2d 738, 741 (N.H. 1950).

PUC. Retroactive application of Section 4, therefore, would allow the Legislature to interfere with the Governor’s constitutional mandate to faithfully execute the law – all without the participation by the Governor in the legislative process contemplated by the Maine Constitution.²¹

3. Retroactive application of the Initiative to the NECEC would violate article I, section 11 of the Maine Constitution and Article I, § 10 of the United States Constitution.

“Giving statutes retroactive effect may be unconstitutional in a variety of circumstances, including when the legislation would substantially impair a contractual relationship in violation of the Contracts Clause.” *MacImage of Me., LLC*, 2012 ME 44, ¶ 23 n.10, 409 A.3d 975.²² Both the U.S. Constitution and the Maine Constitution prohibit the impairment of contracts. U.S. Const. art. I, § 10; Me. Const., art. I, § 11. Under the Contracts Clause, “[t]he first question ‘is whether the state law has operated as a substantial impairment of a contractual relationship.’” *United Auto., Aerospace, Agr. Implement Workers of Am. Int’l Union v. Fortuno*, 633 F.3d 37, 41 (1st Cir. 2011) (quoting *Energy Res. Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 411 (1983)) (quotation marks and alterations omitted). If there has been a substantial impairment, the second

²¹ The fact that a project could be disapproved simply by legislative *inaction* makes no difference. Legislative veto of executive approval of a project by legislative inaction is the same as legislative veto by legislative action. In both instances, the Legislature has arrogated to itself powers vested in the executive branch, while evading the presentment requirement. *Hechler*, 462 S.E.2d at 590-93 (holding that “outright veto power” on the part of the Legislature to block implementation of proposed agency regulations through the Legislature’s failure to act constitutes an “intrusion into the Executive branch’s ability to effectuate its mandated responsibilities”).

²² In this case, the prohibition on retroactive application of laws that would substantially impair a contract is closely related to the principle that “a law would be unconstitutional if, when applied retrospectively, it would alter or impair the nature of a person’s title in property.” *Fournier*, 376 A.2d at 102. Property rights are “constitutionally protected right[s].” *Id.*; see *Sabasteanski v. Pagurko*, 232 A.2d 524, 525-26 (Me. 1967) (no constitutional power to retrospectively alter vested rights in property). Here, the relevant contract gives NECEC LLC a leasehold interest, *i.e.*, a property right. See *H&B Realty, LLC v. JJ Cars, LLC*, 2021 ME 14, ¶ 13, 246 A.3d 1176 (leases are contracts and property conveyances). Thus, the vested rights principle that a law may not retrospectively impair a person’s title in property is directly at issue, and strengthens NECEC LLC’s interest in the impaired contract. See *Fournier*, 376 A.2d at 102 (citing *Portland Sav. Bank v. Landry*, 372 A.2d 573 (Me. 1977) (prohibiting retroactive application of law shortening the redemption period available to a mortgagor after default, applying Contracts Clause analysis)).

question is whether that impairment was “reasonable and necessary to serve an important government purpose.” *Id.*; see *Kittery Retail*, 2004 ME 65, ¶ 38-41 & n.7, 856 A.2d 1183 (describing Contracts Clause analysis). As other courts have found, voiding a lease on state lands unconstitutionally impairs the contract rights of the leaseholders, here, NECEC LLC. See, e.g., *Lipscomb v. Columbus Mun. Separate Sch. Dist.*, 269 F3d 494, 514 (5th Cir. 2001).²³

First, retroactive application of the Initiative to the Project would substantially impair NECEC LLC’s BPL Lease. NECEC LLC has obtained a lease for approximately 0.9 miles of public reserved lands in Somerset County for 25 years. Compl. ¶ 75. The lease gives NECEC LLC the right to construct poles, towers, wires, switches, and all other structures necessary for the transmission of electricity. *Id.* at Ex. B. Retroactive application of the Initiative would directly affect the lease by authorizing termination of the lease and prohibiting the construction of transmission facilities, completely depriving NECEC LLC of the benefit of the lease. Such an outcome is not contemplated by the terms of the lease, which do not permit the State to unilaterally terminate the lease.²⁴ Thus, the Initiative would substantially impair the BPL Lease by authorizing unilateral termination, contrary to its terms.

Second, retroactive application of the Initiative to the BPL Lease is not reasonable and necessary to serve an important state purpose. Where the State is a contracting party, courts will not defer to legislative judgments regarding whether impairment of a contract is reasonable and

²³ The legality of the lease under Maine law has been challenged. However, at this time, the lease is still in full force and effect pending appeal to the Law Court. Compl. ¶ 78; see M.R. Civ. P. 62(e).

²⁴ The lease expressly provides that the State only “reserves the right to terminate” the lease “to the extent permitted under the provisions contained in paragraph 13 Default.” Compl. Ex. B. Therefore, absent default by NECEC LLC – which has not happened here – the lease does not contemplate termination by the State. The lease instead only allows for “amendment” of the lease if any term of the lease is found not to comply with Maine state law. *Id.* If a term of the lease were found to violate state law, the State only has the right to propose a revision of the lease; NECEC LLC has the power to then either terminate the lease or negotiate an amendment. *Id.*

necessary because the State’s self-interest is implicated. *Fortuno*, 633 F.3d at 41; *Kittery Retail*, 2004 ME 65, ¶ 38, 856 A.2d 1183. Further, courts have held that an impairment is not “reasonable” if the “problem sought to be resolved by [the] impairment of the contract existed at the time the contractual obligation was incurred.” *Univ. of Haw. Prof’l Assembly v. Cayetano*, 183 F.3d 1096, 1107 (9th Cir. 1999) (quoting *Mass. Community Coll. Council. v. Massachusetts*, 659 N.E.2d 708 713 (Mass. 1995)). Here, the purported state interest is ensuring that leases of public lands are approved by the Legislature. This same interest, however, existed when the BPL Lease was entered into no less than it does now. It is *per se* unreasonable to terminate the BPL Lease in service of an interest that existed at the time it was authorized. *See Cayetano*, 183 F.3d at 1107.

C. The balance of harms favors entering an injunction.

The balance of hardships also favors entry of an injunction.²⁵ A constitutional violation, not to mention interference with vested property rights amounting to the outright destruction of those rights, outweighs any injury from temporarily precluding the retroactive application of the Initiative. *See Gordon*, 721 F.3d at 653 (potential deprivation of constitutional right outweighs countervailing interests); *Wal-Mart Stores, Inc.*, 125 F. Supp. 2d at 429 (because county defendant would not incur monetary loss, while failure to enter injunction permitting construction would cause construction delays and increased costs). Plaintiffs face the prospect of the likely cancellation of a billion dollar project if the Initiative is enforced.

At the very least, Plaintiffs would confront substantial delays and massively escalated costs to remedy those delays should construction be halted during this litigation. *Dickinson Aff.* ¶ 28;

²⁵ The severity of the irreparable harm and the substantial likelihood of success in this case lessens the need to demonstrate that the balance of harms supports an injunction. *See Waldron v. George Weston Bakeries, Inc.*, 575 F. Supp. 2d 271, 278 (D. Me. 2008) (“[T]he more likely the plaintiff will succeed on the merits, the less the balance of irreparable harms need favor the plaintiff’s position.” (quoting *Ty, Inc. v. Jones Grp. Inc.*, 237 F.3d 891 (7th Cir. 2001))). Nevertheless, this factor also favors an injunction.

Berkowitz Aff. ¶¶ 61-62. These delays and increased costs would result from NECEC LLC's obligation and commitment to comply with permit requirements and environmental standards, as well as demobilization and remobilization costs and additional project administration costs. Dickinson Aff. ¶¶ 26-27. For example, NCI would need to remove all construction mats, triggering an additional period of restoration on the same land. *Id.* ¶ 26. Moreover, any pause in construction would entail an extensive demobilization and remobilization effort. *Id.* ¶ 27. It is estimated that an 18-month delay in construction would be approximately \$113 million, and the increased costs resulting from a 24-month delay would be \$147 million. *Id.* ¶ 28. This range of delay-driven costs would threaten the financial viability of the Project. *Id.* In addition, because the Project's revenues only begin after it reaches commercial operation, the delay in receipt of revenues would further threaten the financial viability of the Project. *Id.* ¶ 29. On the other hand, the State would not incur any monetary loss or harm by the issuance of an injunction.

Further, no irreparable harm would result from continued construction. Clearing of the corridor is almost complete; over 140 miles of the DC line corridor will be cut by year-end 2021, representing 97% of the entire corridor.²⁶ *Id.* ¶ 20. The minimal clearing that remains is being conducted in accordance with lawful permits issued after the exercise of rigorous governmental oversight and imposition of extensive conditions to safeguard the environment. Compl. ¶¶ 51-52. The primary construction activities that remain involve, among other things, placing structures, stringing conductor, and constructing the converter station on the prepared site. *Id.* ¶ 114; Dickinson Aff. ¶ 20. None of these activities will result in irreversible harm. The balance of harms thus sharply favors NECEC LLC. *See Wal-Mart Stores, Inc.*, 125 F. Supp. 2d at 429.

²⁶ The clearing excludes the land leased from the BPL. Due to the Law Court's order precluding clearing on that section during the pendency of the appeal pertaining to the BPL Lease, clearing on that portion of the corridor will not be completed until after the Law Court's ruling on the validity of the BPL Lease. Compl. ¶ 78.

D. The public interest would be served by an injunction.

The public interest also favors an injunction. “It is hard to conceive of a situation where the public interest would be served by enforcement of an unconstitutional law or regulation.” *Condon*, 961 F. Supp. at 331. To the contrary, it “is clearly in the public’s interest” to enjoin a constitutional violation such as “the separation of powers doctrine.” *City of Evanston*, 412 F. Supp. 3d at 887. It is likewise in the public interest to avoid the loss of property rights. *Abrams v. Blackburne & Sons Realty Cap. Corp.*, 2020 WL 5028877 (C.D. Cal. June 16, 2020) (“the public interest nearly always weighs in favor of protecting property rights”). Thus, an injunction will promote the public good by enforcing the Constitution and protecting property rights.

Moreover, allowing the Project to move forward will, as the PUC and the Law Court have found, benefit Maine through economic investment, energy reliability, and decreased GHG emissions. Compl. ¶¶ 37-48; Dickinson Aff. ¶ 32-34. Specifically, the Project represents a \$1 billion investment that is and will (1) produce 1,600 jobs annually during construction and 300 jobs during operation, (2) enhance transmission and supply reliability and security, (3) lower electricity costs, (4) remove upwards of 3.6 million metric tons of carbon emissions annually from the atmosphere (the equivalent of removing 700,000 cars from the road) in an effort to fight climate change and (5) provide approximately \$250 million in rate relief, economic development, climate supporting and education related benefits to Maine and its residents. Dickinson Aff. ¶¶ 32-33.

The jobs provided by the NECEC have already directly benefited Maine workers, hundreds of whom are currently working on the Project. Compl. ¶ 135. Suspension of the Project would jeopardize the more than 600 direct jobs already created by the Project, the anticipated 300 additional direct jobs to be implemented, and the hundreds of resulting indirect jobs that the Project supports. Dickinson Aff. ¶ 32(a). Protecting and creating new jobs is strongly in the public

interest. *See The Lands Council v. McNair*, 537 F.3d 981, 1005 (9th Cir. 2008) (harm from forced lay-offs of workers weighed against injunction), *overruled in part on other grounds by Winter v. Natural Res. Def. Council*, 555 U.S. 7 (2008); *W. Watersheds Proj. v. Bureau of Land Mgmt.*, 774 F. Supp. 2d 1089, 1003-04 (D. Nev. 2011) (public interest favored allowing project to proceed because it created hundreds of jobs), *aff'd* 443 F. App'x 278 (9th Cir. 2011).

Ensuring reliable electricity supplies is also in the public interest. The NECEC and associated Network Upgrades will increase the reliability of the Maine transmission system by delivering baseload energy to replace retiring baseload resources, as well as other reliability and fuel security benefits. Dickinson Aff. ¶ 32(d). A delay in construction would threaten these improvements. *Id.* ¶ 32. This public interest also supports permitting the Project to proceed. *See Columbia Gas Transmission, LLC v. 1.092 Acres of Land in Tp. of Woolwich*, 2015 WL 389402, at *5 (D.N.J. Jan. 28, 2015) (noting that public interest in “overall reliability of the energy infrastructure” supported allowing project to move forward).

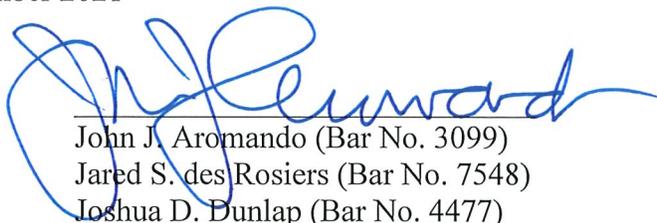
Further, the reduction in GHG emissions will directly benefit Maine. The DEP found that climate change is creating ongoing harm to Maine, including to brook trout habitat and habitat for “iconic species such as moose,” and constitutes “the single greatest threat to Maine’s natural environment.” Compl. ¶ 53. The DEP further concluded that any delay in addressing the issue “will exacerbate” negative environmental impacts. *Id.* This, too, supports the conclusion that the public interest would be promoted by an injunction. *W. Watersheds Proj. v. Salazar*, 692 F.3d 921, 923 (9th Cir. 2012) (“goal of increasing the supply of renewable energy and addressing the threat posed by climate change” was properly weighed in public interest analysis); *W. Watersheds Proj.*, 774 F. Supp. 3d at 1103 (noting public interest in project because it would “decreas[e] green house gas emissions” and thereby promote important “clean energy goals”).

In addition, the stipulation approved by the PUC in conjunction with granting the CPCN provides Maine with a package of benefits totaling approximately \$250 million (in addition to those arising from the construction and operation of the NECEC), including support for electric rate relief, low-income customers, the expanded availability of electric vehicles and charging infrastructure, heat pumps and broad band service in Maine, education programs, and economic development. Compl. ¶¶ 43-44; Dickinson Aff. ¶ 33. These benefits have already begun to be paid out to Maine, along with property taxes. Compl. ¶ 18. Allowing construction to move forward will allow these benefits to continue to flow to Maine. This, too, supports a finding that the public interest is promoted by allowing the project to move forward. *W. Watersheds Proj.*, 774 F. Supp. 3d at 1103 (millions in dollars of taxes supported finding that allowing the project to proceed was in the public interest).

CONCLUSION

The issue in this proceeding is straightforward: is it permissible to legislatively deprive a developer of the right to complete a project, after all federal and state executive agencies have issued final permits (and, in certain instances, affirmed by the Law Court) and after substantial construction has occurred and substantial expenditures have been made? Under Maine law, the answer is “No.” To hold otherwise would be to subject property owners to the whim of targeted, retroactive legislation, regardless of their reliance on existing law as well as executive and judicial approvals. The vested rights and separation of powers doctrines, and the prohibition against impairment of contracts, are all designed to prevent such an inequitable outcome. Because the Initiative contravenes these basic constitutional protections, this Court should grant a preliminary injunction allowing the Project to proceed.

Dated at Portland, Maine this 3rd day of November 2021



John J. Aromando (Bar No. 3099)
Jared S. des Rosiers (Bar No. 7548)
Joshua D. Dunlap (Bar No. 4477)
Sara A. Murphy (Bar No. 5423)
PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for NECEC Transmission LLC and
Avangrid Networks, Inc.*

NOTICE

Matters in opposition to this Motion pursuant to M.R. Civ. P. 7(c) must be filed not later than 21 days after the filing of this motion unless another time is provided by the Maine Rules of Civil Procedure or by the Court. Failure to file timely opposition will be deemed a waiver of all objections to the motion, which may be granted without further notice or hearing.

**Exhibit NECEC LLC-1-K:
Affidavit of Thorn Dickinson in Support
of Motion for Preliminary Injunction**

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

NECEC TRANSMISSION, LLC,

and

AVANGRID NETWORKS, INC.,

Plaintiffs,

v.

BUREAU OF PARKS AND LANDS,
MAINE DEPARTMENT OF
AGRICULTURE, CONSERVATION AND
FORESTRY,

MAINE PUBLIC UTILITIES
COMMISSION,

MAINE SENATE,

and

MAINE HOUSE OF REPRESENTATIVES,

Defendants.

**AFFIDAVIT OF THORN C.
DICKINSON IN SUPPORT OF
PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

I, Thorn C. Dickinson, being over the age of 18 years and duly sworn, state as follows:

1. I am the President and CEO of NECEC Transmission LLC ("NECEC LLC"). In my position, I oversee the planning, scheduling, permitting, and construction of the New England Clean Energy Connect transmission project (the "NECEC Project" or "Project").

2. Avangrid Networks, Inc. ("Avangrid") wholly owns NECEC LLC.

3. I provide this affidavit in support of NECEC LLC and Avangrid's Motion for Preliminary Injunction.

Background

4. NECEC LLC has begun significant, physical construction of the NECEC Project that will bring clean, hydro-generated energy from Québec, Canada into Maine and the New England electric grid. The NECEC Project includes a 145-mile direct current (“DC”) transmission line from the Canadian border to a new converter station located at Merrill Road in Lewiston, Maine, and an alternate current (“AC”) transmission line from the converter station to the point of interconnection of the Project at Central Maine Power Company’s (“CMP”) Larrabee Road substation in Lewiston, Maine, (collectively referred to as “Segments 1, 2 and 3” of the Project). The NECEC Project also includes certain “Network Upgrades” to the existing AC transmission system needed to permit the interconnection of these facilities in accordance with the operative provisions of the ISO-NE Open Access Transmission Tariff that CMP, a subsidiary of Avangrid and an affiliate of NECEC LLC, as the interconnecting transmission owner, is constructing at NECEC LLC’s expense (referred to as “Segments 4 and 5” of the Project).

5. NECEC LLC and CMP as applicable have obtained all state and federal permits and approvals necessary to build the NECEC Project, including approval of the long-term contracts for energy and transmission service over the NECEC Project from the Massachusetts Department of Public Utilities; a Certificate of Public Convenience and Necessity (“CPCN”) from the Maine Public Utilities Commission (“PUC”); a Site Location of Development Law Certification from the Land Use Planning Commission of the Maine Department of Agriculture, Conservation & Forestry (applicable to the 14 townships and plantations within the unorganized and de-organized areas of Maine); in a single order, a Site Location of Development Act permit, Natural Resources Protection Act permit, and Water Quality Certification from the Maine Department of Environmental Protection (“DEP”) (the “DEP Order”); a United States Army Corps of Engineers

(“Corps”) permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, based upon an Environmental Assessment and Finding of No Significant Impact previously issued by the Army Corps; and a Presidential Permit, together with an Environmental Assessment and Finding of No Significant Impact, issued by the United States Department of Energy.

6. Additionally, NECEC LLC and CMP as applicable have obtained local permits and approvals from 20 of the 24 municipalities in which the Project facilities will be constructed, in accordance with the project schedule. They will obtain the local permits and approvals from the final municipalities at the time contemplated by the project schedule, prior to construction in those municipalities.

7. All of the foregoing permits and approvals remain in full force and effect today.

8. NECEC LLC will not own the energy that the NECEC Project ultimately will carry from Canada into the United States. Instead, NECEC LLC has contracted to transmit into the United States energy generated by Hydro-Québec from its portfolio of hydro-power generators in Québec, and seeks to build the NECEC Project to facilitate those transmission obligations. The energy delivered by the NECEC Project will be sold to customers in Massachusetts and Maine to serve the New England region’s electricity needs, and this electricity supply represents an important component of efforts to reduce reliance on fossil fuels and increase reliance on renewable energy resources.

Construction

9. Long linear transmission projects like the NECEC Project require careful, sequential planning and the synchronization of work from a variety of contractors. The construction of the NECEC Project is implemented following the guidelines defined in the

Project's schedule, which establishes the chronological execution of multiple workstreams throughout the Project's lifecycle. The Project's schedule provides for integrated delivery of the planning, permitting, engineering, procurement and construction activities, and factors in seasonal, environmental, and other Project-related constraints that may have an impact on the ability to perform the work.

10. NECEC LLC must coordinate the work of contractors providing services related to the deployment of erosion and sedimentation controls; vegetation removal; the fabrication, transport, and erection of structures; the stringing of the electrical conductor; and the construction of electrical substations. Additionally, work for the Project requires the procurement of significant quantities of custom supplies, materials, and equipment, all of which must be planned and managed with a detailed project schedule. All of this work must proceed in accordance with various legal, regulatory, and practical factors, ranging from permitting requirements to weather conditions.

11. The original project schedule contemplated a commercial operation date for the NECEC Project of December 13, 2022. This date was established in the applicable transmission service agreements ("TSAs") governing NECEC LLC's construction and operation of the NECEC Project.

12. Various permit requirements and restrictions for construction, including increased protection for certain habitats and species; weather factors; court-imposed construction limitations; sequencing with project contractors; and required coordination with federal, state, and local regulators and ISO-NE, the federally regulated operator of the New England Transmission system and wholesale electricity markets, in addition to prolonged, intense opposition for the Project at various permit proceedings and related appeals, impacted the commencement of construction, construction schedule, and the in-service date for the NECEC Project.

13. Pursuant to the TSAs, NECEC LLC must achieve commercial operation of the NECEC Project by August 23, 2024, which date may be extended by up to 12 months (*i.e.*, August 23, 2025) only by NECEC LLC posting up to \$10.9 million in additional security, which funds would be lost in the event the NECEC Project does not achieve commercial operation.

14. The project schedule currently contemplates the NECEC Project achieving commercial operation on December 13, 2023. This date is in advance of the August 23, 2024, contractual deadline, but represents a one-year delay from the original commercial operation date called for in the TSAs.

15. With construction of the NECEC Project underway, NECEC LLC is in the midst of executing a carefully-timed construction schedule that balances all of the foregoing factors to achieve commercial operation by mid-December 2023.

16. In order to complete construction of the Project and achieve timely commercial operation, it was necessary for construction activities to begin in early 2021 and continue in earnest thereafter. Clearing activities for the NECEC Project are restricted during the months of June and July to protect a federally-listed bat species. Additionally, the Section 404 permit requires clearing activities to be conducted between October 16 and April 19th “to the maximum extent practicable.” These restrictions are intended to minimize impacts to wetlands and other environmentally sensitive resources. Therefore, it was necessary for the clearing / access contractor Northern Clearing, Inc. (“NCI”) to work diligently to conduct clearing activities as soon as all project-wide permits were granted, the last being the Presidential Permit issued on January 14, 2021, and before the restrictions on Project clearing activities took effect in June and July, and before April 19 to the maximum extent practicable. Without sufficient clearing activities, the transmission line contractors (Cianbro Corp. and Irby Construction Inc. (“Cianbro/Irby”)) would not have been able

to either start or complete the same amount of construction originally planned during this timeframe as set by the project schedule. Without sufficient work, Cianbro/Irby would have needed to standby, or demobilize and then remobilize. The approximate cost to standby Cianbro/Irby is \$742,000 per week and to demobilize is \$1,542,000. Demobilization would also likely have resulted in layoffs of construction crew members.

17. To date, NECEC LLC has expended hundreds of millions of dollars on construction activities to clear the DC and AC transmission corridors, erect structures, string conductor, and complete the necessary site work at the converter station location in Lewiston. All of this work was done in good faith and with the intent to carry construction through to completion.

a. NECEC LLC began construction of the DC line on January 18, 2021. NECEC LLC started with clearing activities on Segment 2 (starting at The Forks Plantation and heading south along the Project route), followed by structure installation on this same segment shortly after. During the following weeks and months, construction began on the remaining DC transmission line segments. By November 2, 2021, approximately 124 miles of right of way in Segments 1, 2, and 3 of the Project had been cleared and 70 structures had been installed.

b. All transmission related material for the construction of the DC transmission line, including conductor, insulators, and fiber optic, has been received and is stored at multiple laydown yards along the Project route. Additionally, more than 55% of the custom-manufactured steel poles that will be used for the DC transmission line structures have been delivered. The remaining poles continue to be manufactured and will be delivered in accordance with the Project's construction schedule. In the spring of 2021, NECEC LLC started construction at the Merrill Road converter station in Lewiston, Maine,

with work starting on the driveway and the relocation of some roadside distribution facilities. Site grading, drilling, and blasting have progressed in the last few months.

c. Construction of the AC components of the Project, including the Network Upgrades, is likewise underway. Starting in June 2021, work began in Lewiston on certain 115kV and 345kV transmission lines. Work has been completed on CMP's transmission line Sections 268 and 61. CMP's transmission line Section 72 has been relocated to its new alignment and re-energized and the old alignment has been removed. In connection with the new 345kV AC transmission line in Segment 5 between substations in Windsor and Wiscasset, Maine, all necessary clearing activities are complete, approximately 54 structures have been erected and approximately 3 miles of conductor has been strung.

18. The current estimate of the total capital expenditures to complete the project is approximately \$1.04 billion. Through the end of 2020, the total spent for capital expenditures on the Project was approximately \$155 million. Through November 2, 2021, the total spent on capital expenditures was approximately \$449.9 million. In addition, NECEC LLC had paid over \$4 million in operating expenses and \$3.4 million in property taxes for the completed portions of the Project.

Future Construction Plans

19. Construction will continue to ramp up in the upcoming weeks and months, in accordance with the Project's construction sequence and the construction conditions imposed by the DEP and Corps. This will lead to nearly 300 new direct jobs. The Project and the Network Upgrades currently directly employ approximately 600 workers. These numbers do not include the indirect jobs that have been and will be created in connection with the construction of the Project and the Network Upgrades.

20. Clearing, access road construction, and environmental controls installation and maintenance activities will continue in the coming months. NECEC LLC expects that over 140 miles of the DC line corridor will be cut by year-end 2021, representing 97% of the entire corridor.

21. With respect to the construction of the DC transmission line, a second crew of approximately 100 workers will be added at the start of next year to support and increase ongoing structure-erection operations as well as conductor stringing. These efforts will continue throughout 2022, with an anticipated completion of all transmission line construction work by the summer of 2023 before the Project’s testing and commissioning process starts in September 2023.

22. At the Merrill Road converter station in Lewiston, once site development is completed in the next few weeks, foundation work is expected to begin. This will be followed in 2022 by above ground installations, assembly of the converter station buildings and installation of all major components (transformers, valve hall, etc.), which have been manufactured and tested over the last year. Completion of the converter station, including testing and commissioning, is expected in the fall of 2023.

23. The Project will enter the testing and commissioning stage in September 2023 and is expected to achieve commercial operation by mid-December of 2023.

Impacts of Construction Suspension

24. Retroactive application of the citizens’ initiative entitled “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region,” adopted on November 2, 2021 (“Initiative”), to the NECEC Project during this lawsuit—preventing any

further construction—would create grave risks to the continued viability of the Project and the many benefits it will provide Maine and its residents.

25. While execution of the current construction schedule will allow NECEC LLC to complete the NECEC Project by the currently expected commercial operation date of mid-December 2023, any delay in construction, in addition to causing layoffs of hundreds of workers currently constructing the Project, will make it impossible to complete the Project by that date. Any significant delay in construction, in fact, will make it impossible to complete the Project by the current contractual deadline of August 23, 2024 and creates serious doubt as to whether the Project could even be completed by the ultimate contractual deadline of August 23, 2025 (which extended deadline would require NECEC LLC to post an additional \$10.9 million as security).

26. Any pause in project construction would result in a complex demobilization process given NECEC LLC's obligation and commitment to comply with all permit requirements and environmental standards. For example, due to permitting requirements, NCI—the principal contractor responsible for tree clearing, access roads, and environmental controls—would need to remove all currently installed construction mats, triggering an additional period of restoration on the same land.

27. Moreover, resuming construction activities after any material suspension of construction would require several weeks, if not several months, to remobilize all of NECEC LLC's contractors. This remobilization, which could not begin until the issuance of the final court order lifting any suspension, entails, among other activities, reobtaining any expired permits and approvals; re-engaging the applicable contractors; and having the contractors re-hire the construction crews and other necessary employees (which may be particularly challenging given current labor shortages), and contract for and mobilize necessary equipment and materials, to

resume construction activities as soon as possible. Overall, this demobilization and remobilization would result, in many cases, in a complete re-work of construction activities already completed to date.

28. These demobilization and remobilization activities, together with additional project management activities and associated costs, and other fixed costs that the Project would incur before the in-service date, would impose significant additional expenses on NECEC LLC. The NECEC project management team estimates that the increased costs resulting from an 18-month delay in project construction of the NECEC Project, including the necessary Network Upgrades, would be approximately \$113 million and the increased costs resulting from a 24-month delay would be approximately \$137 million. This range of delay-driven costs, which reflects just increased project investment costs, represents an increase in the overall project budget of between 11 and 13%, and threatens the financial viability of the Project.

29. Because the NECEC Project's revenues only begin when the Project achieves commercial operation, any significant delay in the commercial operation date resulting from a construction suspension would also delay the Project's receipt of anticipated revenues by at least the same amount of time. This delay would cause further significant adverse impacts on the financial viability of the Project.

30. The dangers that a suspension in construction poses to the NECEC Project are evident if one considers the following:

- a. Under the current project schedule, as of December 2021, there would remain approximately 24 months of additional activities necessary for the Project to achieve commercial operation (21 months for construction activities and 3 months for commissioning activities).

- b. If construction is barred pending this action in the Superior Court and an ensuing appeal to the Law Court, and one assumes that these court proceedings take just 18 months to complete, and all remobilization activities can be accomplished within just 3 months of the Law Court's final decision, construction activities could only resume in October 2023.
- c. This would mean that that NECEC Project would not achieve commercial operation until September 2025, approximately a month after the extended contract deadline of August 23, 2025, unless the necessary remaining construction and commissioning activities could be accelerated.
- d. Such acceleration would be challenging because the sequence and duration of construction activities are subject to numerous constraints, including weather and seasonal conditions and restrictions (such as mud season and road closures), permit requirements and restrictions, and ISO-NE-imposed restrictions on transmission outages and commissioning activities. In any case, even if feasible, such acceleration would undoubtedly further increase Project costs, and the absence of any remaining "float" in the project schedule would mean the timely completion of the Project would be in serious danger should it suffer any other unexpected delays.
- e. Should this litigation through appeal take 24 months, then there would be no practical way that the NECEC Project could be completed before the extended contractual deadline if construction is barred during that time.

31. Thus, if the Initiative is retroactively applied to the NECEC Project to prevent further construction for any significant period of time, NECEC LLC and Avangrid would face the prospect of the cancellation of the NECEC Project. At the very least, the project delay,

significantly increased project costs, and delayed project revenues would gravely harm NECEC LLC's and Avangrid's billion dollar investment in the Project.

32. Suspension of construction on the Project due to the Initiative would also, at a minimum, delay the realization of the many benefits the Project will provide as found by the PUC in its May 3, 2019 Order granting the CPCN for the Project ("PUC Order"). These benefits would be lost completely in the event the Project must be cancelled should a suspension mean the Project can no longer be timely constructed to achieve commercial operation by the contractual deadline in a financially viable manner. These benefits include:

a. *Job Creation.* Suspension of Project construction will put in jeopardy the more than 600 direct jobs created by the Project to date. Most of the personnel hired to work on the construction of the Project could be impacted by layoffs. Additionally, the anticipated additional 300 direct new jobs to be implemented because of the increase workload scheduled for the coming months would not be realized in the short term. It would also place at risk the hundreds of resulting indirect jobs that the Project supports.

b. *Property Taxes.* Once fully constructed, the Project is expected to provide approximately \$18 million annual incremental municipal tax revenues. During construction, property taxes for specific Project components are being calculated and paid based on the accrued investment. (PUC Order at 45.) As of today, NECEC LLC has paid approximately \$3.4 million in property taxes related to the Project. If construction is suspended, the expected increase in property tax revenues would be, at a minimum, deferred. If the Project does not achieve commercial operation municipalities would lose this incremental property tax revenue. Municipalities that have already projected an increase in property tax revenue from the Project in the coming years would be impacted.

c. *Electricity Price Reduction.* The import of energy at the full 1,200 MW capacity of the NECEC is expected to reduce locational marginal prices in the ISO-NE market on average by \$3.70/MWh. These price reductions are expected to result in savings to Maine electricity customers of between \$14 million to \$44 million per year relative to what customers would have paid but for the NECEC. (PUC Order at 25.) The reduction in energy costs for businesses and consumers is expected to lead to an estimated \$573 million growth in employment and Maine's Gross Domestic Product (\$25 million - \$29 million per year). (PUC Order at 44.) Again, a suspension of construction would, at a minimum, delay the realization of these benefits and, if the Project does not achieve commercial operation, these benefits would not be realized.

d. *Enhanced Reliability.* The NECEC Project and associated Network Upgrades will increase the reliability of the Maine transmission system by delivering baseload energy to replace retiring baseload resources, as well as other reliability and fuel security benefits associated with the NECEC's providing an additional intertie between ISO-NE and Québec and transmission system upgrades that will deliver non-fossil fuel fired generation, especially during winter months when natural gas supplies may be constrained. CMP, as the interconnecting transmission owner, is constructing the Network Upgrades in Maine at the sole cost of NECEC LLC. These Network Upgrades not only permit the interconnection of the NECEC Project, but also provide important reinforcements to the existing transmission system in Maine, which benefit the development of new renewable generation resources in the State. Suspension of construction of the NECEC Project threatens the timely completion of these upgrades. A delay in the construction or the cancellation of the Network Upgrades would negatively

impact the other renewable resources looking to interconnect to the New England region and take advantage of the increase in transfer capacity at the Surowiec-South Interface to no less than 2,600 MW resulting from the NECEC Project and these upgrades.

e. *Greenhouse gas emissions reductions.* In granting the necessary environmental permits to the NECEC Project, the DEP specifically recognized:

Climate change . . . is the single greatest threat to Maine’s natural environment. It 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. Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts. (DEP Order at 105.)

The NECEC Project represents a tremendous, tangible action Maine and the New England region can take to combat climate change. As the PUC found in the PUC Order, once constructed and in service the NECEC will reduce greenhouse gas emissions (GHG) in the region by approximately 3.0 to 3.6 million metric tons per year, which, is equivalent to removing approximately 700,000 passenger vehicles from the road. (PUC Order at 70.) These climate benefits would be delayed by a suspension of construction and would be lost entirely if the Project cannot be completed.

33. In addition to these benefits, the suspension of the NECEC Project would, at a minimum, delay, if not place in permanent jeopardy, the \$250 million of the additional project benefits funded by NECEC LLC and H.Q. Energy Services (U.S.) Inc. (“HQUS”) provided for in the stipulation dated February, 21 2019 and approved by the PUC through the PUC Order (“NECEC I Stipulation”). A summary of these additional benefits and the applicable payment terms are provided in the chart below.

<u>NECEC Benefit Fund</u>	<u>Amounts</u>	<u>Payee</u>
NECEC Low Income Customer Benefits Fund	Starting on January 4, 2021, \$312,500 quarterly payments for 40 years (\$50,000,000 in total)	HQUS
NECEC Rate Relief Fund	Starting on January 4, 2021, \$500,000 quarterly payments for 40 years (\$80,000,000 in total)	HQUS
NECEC Rate Relief Fund	Starting on January 4, 2021, \$375,000 quarterly payments for 40 years (\$60,000,000 in total) as consideration for the transfer of the Project from CMP to NECEC LLC. CMP allocates those funds to the NECEC Rate Relief Fund	NECEC LLC
NECEC Broadband Fund	Starting on January 4, 2021, \$500,000 quarterly payments for 5 years (\$10,000,000 in total)	HQUS
NECEC Heat Pump Fund	HQUS – Starting on January 4, 2021, \$500,000 quarterly payments for 5 years (\$10,000,000 in total) NECEC LLC- Starting after the payments of HQUS conclude, \$500,000 quarterly payments up to a total of \$5,000,000	HQUS NECEC LLC (years 6 through 8)
Dirigo EV Fund	\$5,000,000 contribution	NECEC LLC
Hydro-Québec EV Fund	Starting on January 4, 2021, \$500,000 quarterly payments for 5 years (\$10,000,000 in total)	HQUS
NECEC Franklin County Host Communities Fund	Starting on January 4, 2021, \$125,000 quarterly payments for 10 years (\$5,000,000 in total)	NECEC LLC
NECEC Education Grant Fund	Starting on January 4, 2021, \$125,000 quarterly payments for 10 years (\$5,000,000 in total).	NECEC LLC

HQUS’s payment obligations for these benefits are governed by a PUC-approved support agreement dated December 29, 2020 (the “Support Agreement”). Pursuant to the terms of the stipulation dated July 30, 2020, approved by the PUC on October 22, 2020 in Docket No. 2019-00179 (“NECEC II Stipulation”), NECEC LLC and HQUS agreed to accelerate the performance

of their payment obligations related to these additional benefits so that payments would start during the construction phase of the Project as opposed to after commercial operation. As of October 1, 2021, NECEC LLC and HQUS have made payments of about \$18 million to the different NECEC benefits funds. Suspension of construction of the Project due to the Initiative may lead to the suspension of the benefit funds payments in accordance with the terms of the NECEC II Stipulation and the Support Agreement. Similarly, if the Project is terminated prior to commercial operation, all future payments to the NECEC benefits funds would terminate, thereby denying the State of Maine and its residents these benefits.

34. A suspension of construction of the Project that risks its continued viability would also jeopardize several other Project benefits, including the following:

a. *Fiber Optic Infrastructure.* Pursuant to the NECEC I Stipulation, NECEC LLC has committed that the final design for the NECEC transmission lines will include the necessary facilities and equipment to provide additional fiber optic capacity on, among other, the DC transmission line for the benefit of the State of Maine and to construct the necessary fiber optic infrastructure to provide access to this fiber optic capacity at major road crossings or other appropriate access points along the NECEC Project route. The suspension of the NECEC Project will, at a minimum, delay the implementation of these fiber optic commitments that are intended to benefit communities along the Project route and, if the Project is terminated, the benefits of additional fiber optic capacity to the host communities would be lost.

b. *Conservation of 40,000 Acres of Land.* Pursuant to the DEP Order, NECEC LLC must permanently conserve 40,000 acres of land in the vicinity of Segment 1 of the Project to promote habitat connectivity and conservation of mature forest areas. If the

Project is cancelled because it cannot be timely constructed, the conservation of this very significant area of land would not be realized.

I, Thorn C. Dickinson, as the authorized agent of NECEC Transmission LLC, declare under penalty of perjury that the factual allegations of the foregoing Complaint are true and correct, based on my personal knowledge, except where alleged on information and belief in which case I believe them to be true. Such personal knowledge includes information from records of the regularly conducted activities of Avangrid Networks, Inc., NECEC Transmission LLC, and Central Maine Power Co., made at or near the time of such activities, by or from information transmitted by persons with knowledge, kept in the regular course of such activities, and of which it is the regular practice of Avangrid Networks, NECEC LLC, and CMP to make such records.

Dated this 3rd day of November, 2021



Thorn C. Dickinson

STATE OF MAINE
CUMBERLAND, ss

Personally appeared before me the above-named Thorn C. Dickinson, as the duly authorized representative of NECEC Transmission LLC, and made oath that the statements made and verified by him herein are true.

Before me,

Dated: November 3, 2021



Notary Public
My Commission Expires:

HEATHER JAYNE STEVENS
NOTARY PUBLIC - State of Maine
My Commission Expires
October 25, 2023

**Exhibit NECEC LLC-1-L:
Upper Kennebec Region BPL Land Route Options Map**

NECEC Permitted Route

Chase Stream Twp
Moosehead Conservation Easement

**Option 1-
14.5 Miles**

**Option 1 Partial
(North of Option 1A)-
7.7 miles**

**Option 2-
3.8 miles**

West Forks Plt

Moxie Gore

Pierce Pond Watershed Trust Conservation Easement

Pierce Pond Watershed Trust Fee Ownership (all options avoid this parcel)

Bowtown Twp

Pierce Pond Watershed Trust Conservation Easement

**Option 1A-
24.5 miles**

The Forks Plantation

NECEC Permitted Route

Carrying Place Twp

Caratunk

Upper Kennebec Region BPL Lands

Highland Plt

Upper Kennebec Region BPL Land-Route Options Map

Pleasant Ridge Plt

Moscow

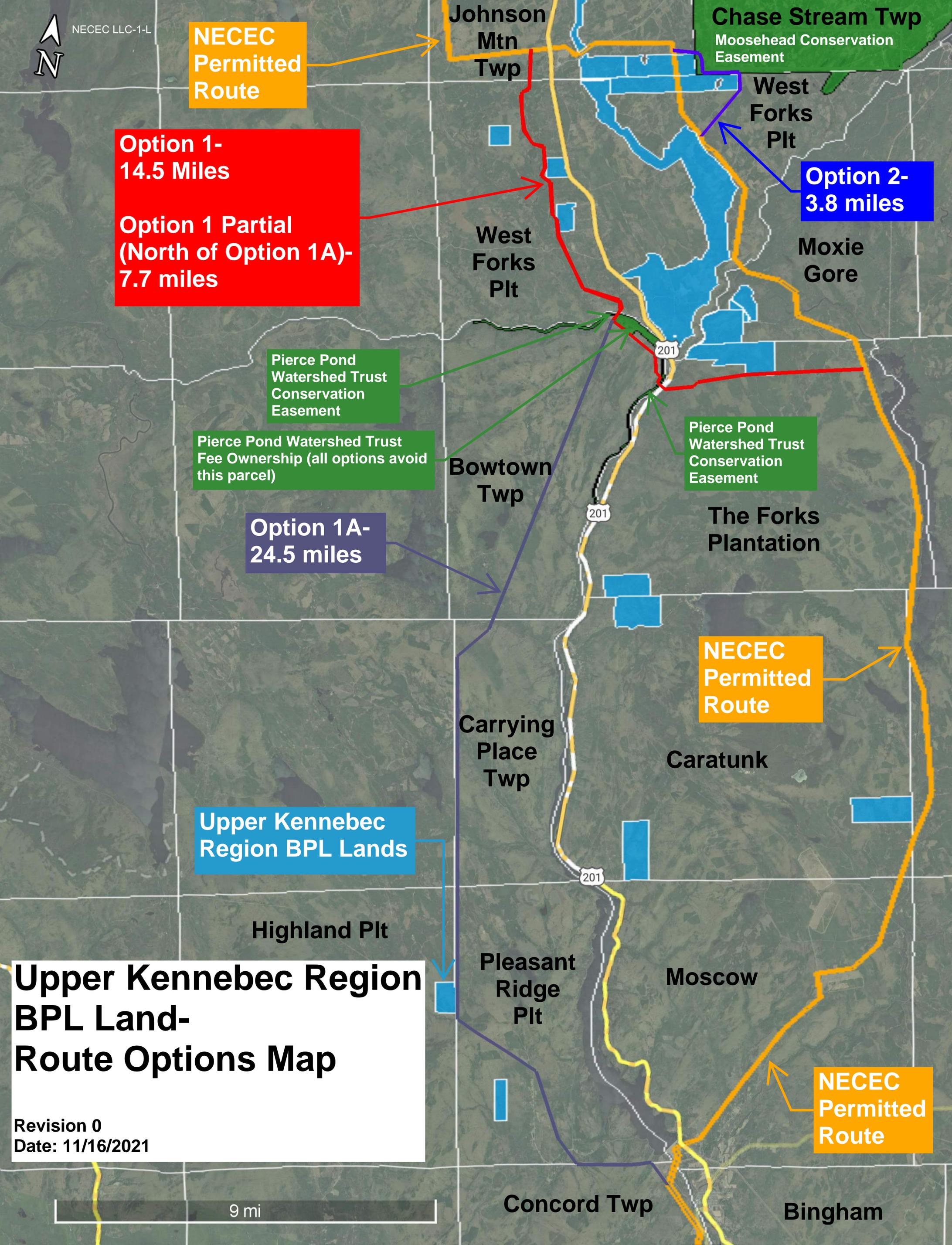
NECEC Permitted Route

Revision 0
Date: 11/16/2021

Concord Twp

Bingham

9 mi



**Exhibit NECEC LLC-1-M:
Upper Kennebec Region Option 1/1A Map**



**Upper Kennebec
Region 43,300
Acres
Potential
Interpretation**

**NECEC
Permitted
Route**

**NECEC
Permitted
Route**

**Option 1 Partial-
7.7 miles**

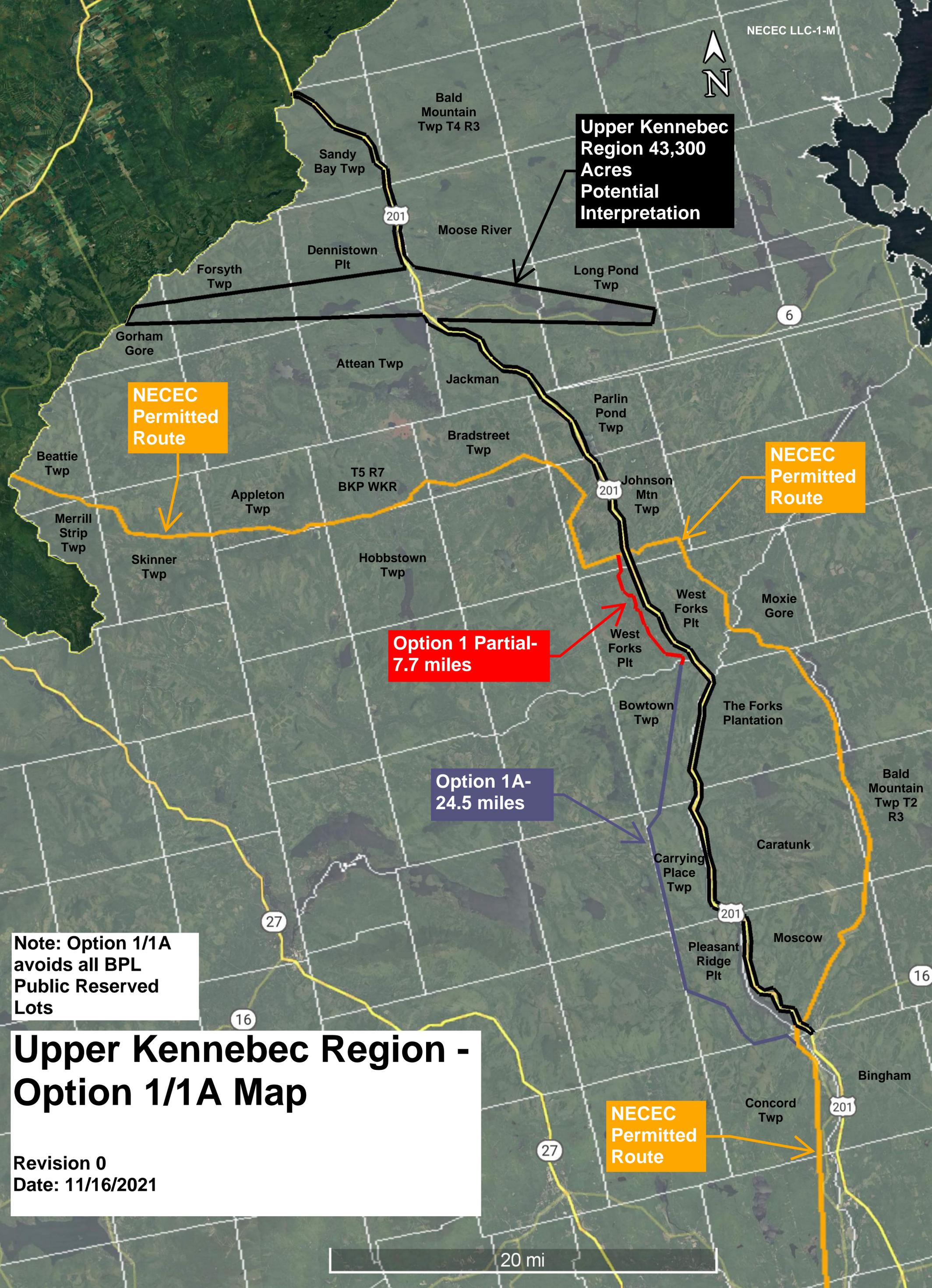
**Option 1A-
24.5 miles**

**Note: Option 1/1A
avoids all BPL
Public Reserved
Lots**

Upper Kennebec Region - Option 1/1A Map

**Revision 0
Date: 11/16/2021**

**NECEC
Permitted
Route**



**Exhibit NECEC LLC-1-N:
Maine Bureau of Parks and Lands web page,
Upper Kennebec Region - Management Plan**

[Maine Department of Agriculture, Conservation & Forestry](#)

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Bureau of Parks and Lands

Upper Kennebec Region - Management Plan

The Maine Bureau of Parks and Lands (BPL) has adopted a 15-year management plan for approximately 43,300 acres of lands known as the Upper Kennebec Region. The region roughly encompasses the area between the town of Bingham and Wyman lake, north along the Old Canada Road (US 201) to the Canadian border, and eastward from Jackman to encompass Long Pond and westward to the Canadian border, in Somerset and Franklin Counties. This plan will guide the Bureau's management of the Holeb, Cold Stream Forest, and Sandy Bay Public Lands, as well as other Bureau fee and easement lands on and to the east and west of the US 201 corridor.

The Upper Kennebec Region Plan is posted below. To read these files, you will need a copy of the [free Adobe Reader software \(http://www.adobe.com/products/acrobat/readstep2.html\)](http://www.adobe.com/products/acrobat/readstep2.html).

The Public Planning Process

A public scoping meeting was held October 19, 2016 in Bingham, where the public had an opportunity to provide input on the region's resources, and on issues and concerns related to management and use of the Public Lands to be addressed in the Plan. The meeting notes and subsequent comments are available below under the Past Meetings & Minutes section.

An Advisory Committee (AC) has been formed and is comprised of individuals who know the resources of the area or can provide specific guidance on the needs and desires of certain user groups. AC meetings were held in November 2016 and June 2018 to further discuss management issues and to review a Plan draft prepared by BPL staff. AC meeting notes and subsequent comments are available below under the Past Meetings & Minutes section.

BPL staff prepared a Final Draft Plan for review, which reflected the contributions of the committee members made at the scoping and AC meetings and in writing, as well as the contributions of a number of specialists and field staff within the Department. A public meeting was held in Bingham on February 7, 2019. At the public meeting, the Bureau discussed the resource allocations and management recommendations contained in the Plan, which provides general management guidance for the Region for the next 15 years. Meeting minutes are available below. Comments were accepted for 3 weeks after the meeting; one written comment was received.

Public Meetings

No meetings currently scheduled.

Date and Time Headline Location Additional Information

Past Public Meetings & Minutes

2-7-19 – An Upper Kennebec Region public meeting was held at the Quimby School Gym, Bingham from 6:00 to 8:00 p.m. [2-7-19 Meeting Notes \(PDF 1.1MB\) \(docs/UpperKennebec02072019_PublicMeeting_Minutes.pdf\)](#)

6-20-18 - An Upper Kennebec Region Advisory Committee meeting was held at the Quimby School Gym, Bingham from 5:30 to 8:00 p.m. [6-20-18 Meeting Notes \(PDF 2MB\)](#) ([docs/Upper_Kennebec_AC_MtngJune-20-2018.pdf](#))

11-17-16 – An Upper Kennebec Region Advisory Committee meeting was held at the Quimby School Gym, Bingham from 5:30 to 8:00 p.m. [11-17-16 Meeting Notes \(PDF 188KB\)](#) ([docs/Upper_Kennebec_Issues_and_Opps-AC_+comments.pdf](#))

10-19-16 – An Upper Kennebec Region public scoping meeting was held at the Quimby School Gym, Bingham from 6:00 to 8:00 p.m. [10-19-16 Meeting Notes and summary of subsequent written comments \(PDF 95KB\)](#) ([docs/Upper_Kennebec_ScopingCommentSummary.pdf](#))

Management Plan Documents

- **Upper Kennebec Region Plan**
 - [Part 1: Final Upper Kennebec Region Plan \(PDF 1.4MB\)](#) ([docs/UpperKennebecMgmtPlan-FINAL-5-21-19-PART1.pdf](#))
 - [Part 2: Final Upper Kennebec Region Plan \(PDF 1.8MB\)](#) ([docs/UpperKennebecMgmtPlan-FINAL-5-21-19-Part2.pdf](#))
 - [Part 3: Final Upper Kennebec Region Plan \(PDF 1.2MB\)](#) ([docs/UpperKennebecMgmtPlan-FINAL-5-21-19-Part3.pdf](#))
 - [Part 4: Final Upper Kennebec Region Plan \(PDF 480KB\)](#) ([docs/UpperKennebecMgmtPlan-FINAL-5-21-19-Part4.pdf](#))
 - [Part 5: Final Upper Kennebec Region Plan \(PDF 2.2MB\)](#) ([docs/UpperKennebecMgmtPlan-FINAL-5-21-19-Part5.pdf](#))
 - [Addendum to Plan – August 12, 2019 \(PDF 16KB\)](#) ([docs/UpperKennebecMgmtPlan-Addendum-8-12-19.pdf](#))
 - **Appendices – Upper Kennebec Region Plan**
 - [Part 1 \(PDF 393KB\)](#) ([docs/UpperKennebecPlanAppendicesFINAL9-3-19-Part1.pdf](#))
 - [Part 2 \(PDF 6.6MB\)](#) ([docs/UpperKennebecPlanAppendicesFINAL-5-1-19-Part2.pdf](#))
 - [Part 3 \(PDF 3MB\)](#) ([docs/UpperKennebecPlan-AppendicesFINAL-8-12-19-Part3.pdf](#))
- **Maps of the Region:**
 - [Upper Kennebec Region, North \(PDF 632KB\)](#) ([docs/UpperKennebecRegion_N.pdf](#))
 - [Upper Kennebec Region, South \(PDF 632KB\)](#) ([docs/UpperKennebecRegion_S.pdf](#))

For more information

[Jim Vogel \(mailto:jim.vogel@maine.gov\)](mailto:jim.vogel@maine.gov)

Senior Planner

Maine Bureau of Parks and Lands

22 State House Station

Augusta, ME 04333

(207) 287-2163

Credits



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Contact Information

Department of Agriculture, Conservation & Forestry

22 State House Station

18 Elkins Lane

Augusta, ME 04333

Phone: (207) 287-3200

Fax: (207) 287-2400

TTY: Maine Relay 711

dacf@maine.gov

[More Contacts](#)

**Exhibit NECEC LLC-1-O:
Maine Bureau of Parks and Lands,
Upper Kennebec Region Management Plan, Part 1**

Upper Kennebec Region Management Plan



View from US 201DOT rest stop toward Attean Pond (center) and No. 5 Bog (center left) with Attean Mountain in the middle background.

**Maine Department of Agriculture, Conservation and Forestry
Bureau of Parks and Lands**



June 2019

I. Introduction

About this Document

This document constitutes a fifteen-year Management Plan (the Plan) for more than 43,000 acres of Public Reserved land in the Upper Kennebec Region, managed by the Maine Bureau of Parks and Lands (the Bureau). This is the first regional management plan addressing this assemblage of Public Reserved Lands management units and lots. It will replace the 1989 Management Plan for the Holeb Public Reserved Lands and the 1978 Management Plans for two smaller units, the Dennistown Plantation and Caratunk Public Reserved Lands. It will also cover the Sandy Bay Public Reserved Land and several additional smaller Public Reserved land units.

The Plan includes background information about the planning process and the regional context of the Plan. The core of the Plan is a description of the character and resources of the units, a Vision for the future of each major unit, and management allocations and recommendations.

One objective of the regional plan is to provide a balanced spectrum of opportunities across the Region, and in keeping with the opportunities and resources available in the broader surrounding Upper Kennebec Region. In developing the management recommendations for the reserved lands and undeveloped park lands, the Bureau has been mindful of this broader perspective.

The Upper Kennebec Region Management Plan is a commitment to the public that the Public Reserved lands in the Region will be managed in accordance with the Bureau's mission and goals, and within prescribed mandates. Revisions to the Plan commitments will occur only after providing opportunities for public comment. The Management Plan will also serve as guidance to the Bureau staff. It will provide clear management objectives, while providing a degree of flexibility in achieving these objectives. It will not, however, be a plan of operations.

An important aspect of the management of public lands is monitoring commitments made in the plans, and evaluating the outcomes of management activities relative to overall objectives. This management plan describes monitoring and evaluation procedures for recreational use, wildlife management, and timber management.

Under current policy, the Bureau's management plans cover a period of 15 years after the date of adoption. A review of current issues and progress on implementing this Plan's recommendations will be undertaken in 2022, as part of the first mandated 5-year review and update of the regional plan.

What is the Upper Kennebec Region?

The Upper Kennebec Region encompasses 35 townships and plantations, four towns, and portions of three additional townships, a total area of over 800,000 acres, extending from the Boundary Mountains along the Canadian border south to Wyman Lake near Bingham. The entire Plan area, apart from five townships west of Holeb, is within Somerset County.

The Upper Kennebec Region is a largely natural landscape that in large part is also a working landscape, where commercial forestry is the predominant land use. A significant portion of the

commercial forestland in the region is managed under conservation easements held by the Bureau and other entities.

The region is crossed by the Moose River, which flows eastward into Moosehead Lake, and the upper Kennebec River, which flows southward from Moosehead Lake. The rugged landscape is highly dissected by small, steep sided streams. Because of the region's comparatively high elevation, it experiences some of the coldest weather and harshest winters in New England. The average daily high January temperature in Jackman is 22°F, and the average daily high temperature in July is 76°F. In an average year there are only 109 frost free days. Average annual precipitation is relatively low (41"), but average annual snowfall is 108", and some mountains receive as much as 200 inches of snow (McMahon 1990).

The region's complex bedrock features some of the oldest rocks in Maine in the Chain Lakes Massif, west of Jackman, where metamorphic rocks date to 1.5 billion years and sedimentary rocks date to 700 million years ago (Cheatham et al. 1989). The region also features a number of plutons (intrusions of harder bedrock) of Devonian origin (~375 million years ago), including the granite that forms Moxie Bald Mountain. The surficial geology of much of the landscape is characterized by glacial till from the last glaciation, roughly 11,000 years ago. Other areas are characterized by peat deposits, bedrock outcrops, and ribbed moraines.

The Lands of the Upper Kennebec Region

The Upper Kennebec Region lands comprise a total of about 43,000 acres designated as Public Reserved Lands. The region contains one of the most extensive public lands units in the State, the Holeb Unit, south and west of the town of Jackman. Other major units include the recently acquired Cold Stream Forest extending northward from The Forks area, where the Dead River joins the Kennebec, and Sandy Bay on US Route 201 and abutting the Canadian border. Together, these three units account for more than 80 percent of the Public Reserved Lands in the region.

Nineteen smaller public lots, most of which are on or near the US 201 corridor which forms the backbone of the region, complete the portfolio of Public Reserved Lands in the region. These lots range in size from about 130 to 1,800 acres, and together comprise about 8,500 acres. The Bureau's Parks division manages the Moxie Falls parcel (not addressed by this Plan), abutting two of the smaller public lots in The Forks area.

The table below summarizes the acreage contained in each property addressed in the Plan. Map Figure 1 on page 5 depicts the Public Reserved Lands of the Upper Kennebec Region as well as other conservation lands, major roads, trail systems and other recreation facilities in the region. (A larger version of the map is available from the Bureau.)

The Public Reserved Lands of the Upper Kennebec Region

Name and Location	Fee Acres
Holeb Unit (<i>Holeb, Attean, T5 R7 BKP WKR and Bradstreet Townships</i>)	23,612
Cold Stream Forest Unit (<i>Parlin Pond & Johnson Mtn. Townships, West Forks Plantation</i>)	8,159
Sandy Bay Unit	2,712
Smaller Lots (<i>listed geographically, generally from north to south</i>)	
Dennistown Plantation Lot	1,000
Moose River North and South Lots	282
Bradstreet Township South Lot	210
Upper Enchanted Township (Coburn Mountain) Lot	320
Johnson Mountain Lot	525
West Forks Plantation Northeast, Northwest, Central and Southwest Lots	1,204
Moxie Gore Lot	480
The Forks Plantation North and South Lots	1,011
Bald Mountain Lot	1,771
Caratunk North, South and East Lots	1,330
Highland Plantation East Lot	200
Pleasant Ridge Plantation Lot	207
Total	43,023

Note: Figures listed are derived from deeded acres or estimated acres for unsurveyed original public lots; acreage as determined by surveys or GIS may differ.

In addition, the Bureau also has responsibility for monitoring compliance within two conservation easements that fall entirely or in part within the Upper Kennebec Region. In total, these easements cover nearly 1,400 acres, over 830 acres of which are within the region. The Moose River easement is adjacent to the No. 5 Bog portion of the Holeb Unit. Both are described in more detail in the Planning Context section (Section III).

Conservation Easements in the Upper Kennebec Region

Easement Name	Townships	Acres	Notes
Indian Pond	Big Moose Twp. Sapling Twp.	721*	Pond shoreline zone, owned by Brookfield Renewables, LLC
Moose River	T5 R7 BKP WKR	111	South shore of Moose River, owned by Riverview Foundation

* 555 additional acres covered by this easement are in Sapling and Big Moose Townships on upper Indian Pond (within the BPL Moosehead Region)

Acquisition History

The majority of the approximately 23,600-acre **Holeb Unit** was acquired from Great Northern Nekoosa Corporation in 1975 and from Coburn Lands Trust in 1982 and 1985. Approximately 1,200 acres on the east shore of Attean Pond and an adjacent portion of Bradstreet Twp. are original public lots. An additional 700 acres of shorelands on the north and south sides of Attean Pond and a buffer strip along 1.5 miles of the Moose River were acquired from Lowell and Company in 1994. Two small outlots on Attean Pond and a lot on Little Big Wood Pond were acquired in 2006-07. The 4,576-acre No. 5 Bog acquisition (including 85 acres along the Moose

River near Holeb Falls) was completed in 2009. Most recently, a one-acre inholding on the Moose River at the margin of the No. 5 Bog parcel was acquired in 2012.

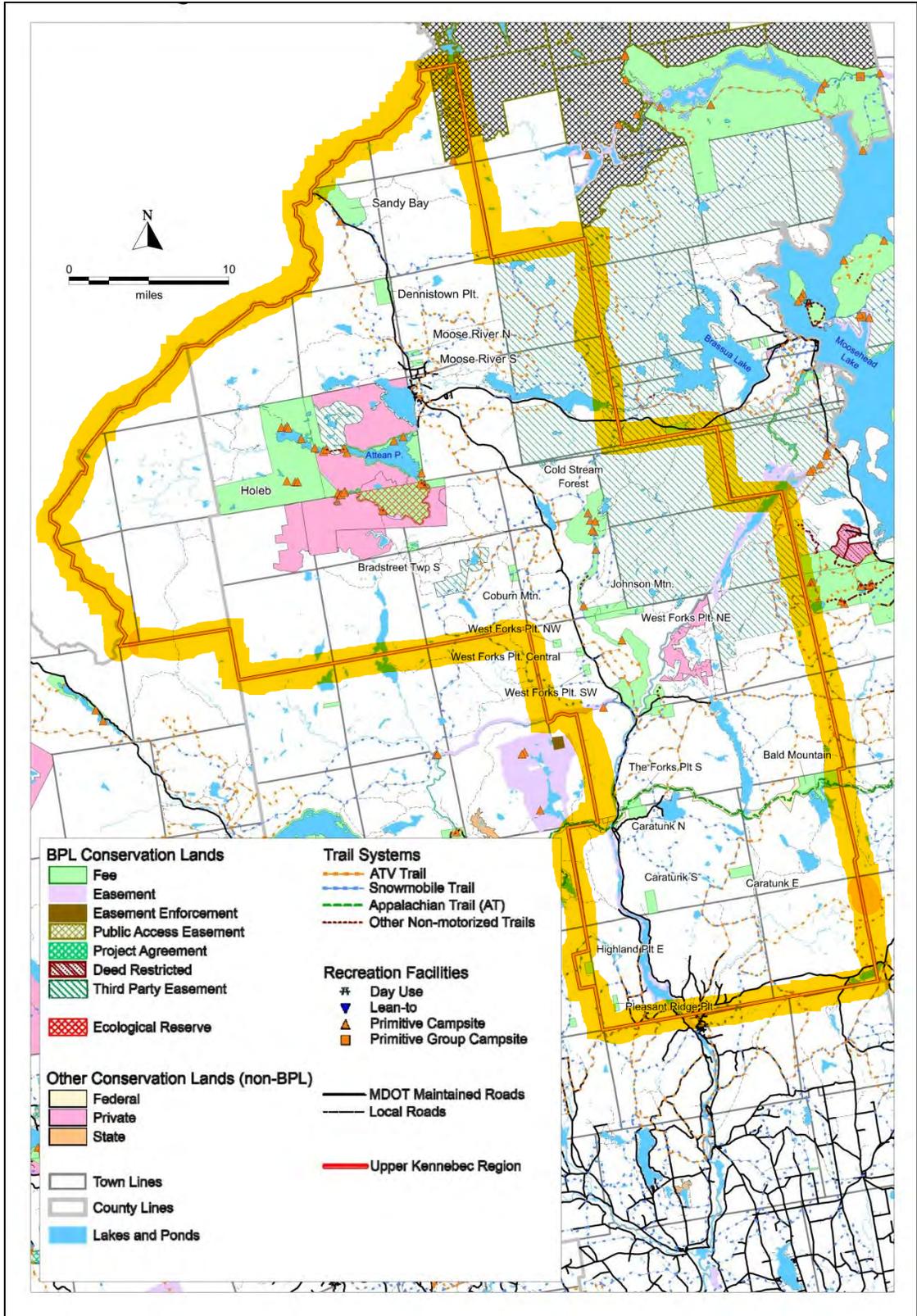
The 8,152 acre **Cold Stream Forest Unit** was acquired in March 2016 from the Weyerhaeuser Company. This acquisition was funded in part through the federal Forest Legacy and state Land for Maine's Future programs, through a partnership with the Trust for Public Land, Trout Unlimited, and Maine Department of Inland Fisheries and Wildlife (MDIF&W).

The 2,721 acres comprising the **Sandy Bay Unit** was acquired in 1985 from Louis O. Hilton in trade for an original public lot and timber and grass rights.

The 1,650 acre **Bald Mountain Lot** is composed of an original Public Lot and two parcels totaling about 780 acres acquired in trade from S.D. Warren in 1990.

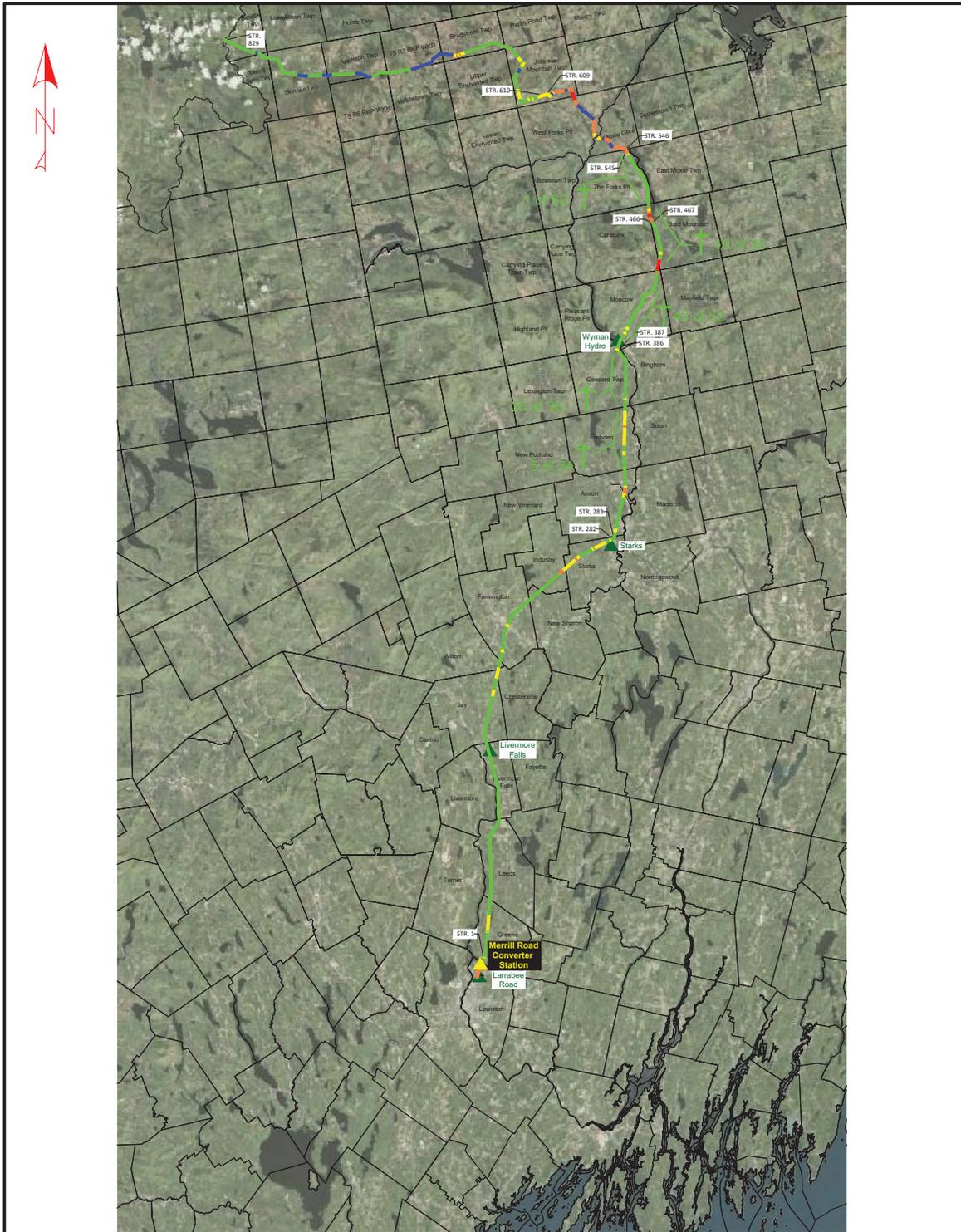
The 312 acre **Moose River Lots** were acquired from Irving Pulp and Paper in 1990 as part of a land trade.

The remaining smaller lots, all situated on or near US 201 – **the Dennistown, Bradstreet Twp., Coburn Mountain, Johnson Mountain, West Forks Plantation, Moxie Gore, The Forks Plantation, Caratunk, Highland Plantation, and Pleasant Ridge Plantation lots** – are Original Public Lots or portions of such lots remaining in State ownership after various land sales and trades.



MAP FIGURE 1: Upper Kennebec Region Public Reserved lands and other conservation lands.

**Exhibit NECEC LLC-1-P:
Updated Construction Status Maps (Segments 1-3)**



- CLEARING COMPLETED
- WILDLIFE AREA- FULL HEIGHT CANOPY
- CLEARING IN PROGRESS (TO BE COMPLETED BY 3RD WEEK OF DECEMBER 2021)
- CLEARING TO BE COMPLETED BY 3RD WEEK OF DECEMBER 2021
- CONSTRUCTION ACTIVITIES STARTED INCLUDING: INITIAL SURVEYING AND FLAGGING, ENVIRONMENTAL WALK THROUGHS, AND OFF ROAD ACCESS IMPROVEMENTS
- + XX of XXX
- POLES INSTALLED OR IN PROGRESS PER TOWN/TERRITORY
- ▲ EXISTING SUBSTATION
- ▲ PROPOSED SUBSTATION IN PROGRESS
- STR_XXX REFERENCE STRUCTURE NUMBERS ALONG ROUTE FOR ORIENTATION ONLY

NEW ENGLAND CLEAN ENERGY CONNECT		PROJECT	DRAWING NUMBER	REV 1
DRAWN JMT	CONSTRUCTION OVERVIEW MAP		CODE	
CHECKED NA	DATE 11/16/2021	AREA		

**Exhibit NECEC LLC-1-Q:
Updated Construction Status Maps (Segments 1-2)**



- CLEARING COMPLETED
- WILDLIFE AREA- FULL HEIGHT CANOPY
- CLEARING IN PROGRESS (TO BE COMPLETED BY 3RD WEEK OF DECEMBER 2021)
- CLEARING TO BE COMPLETED BY 3RD WEEK OF DECEMBER 2021
- CONSTRUCTION ACTIVITIES STARTED INCLUDING: INITIAL SURVEYING AND FLAGGING, ENVIRONMENTAL WALK THROUGHS, AND OFF ROAD ACCESS IMPROVEMENTS

† XX of XXX

POLES INSTALLED OR IN PROGRESS PER TOWN/TERRITORY

STR. XXX
REFERENCE STRUCTURE NUMBERS ALONG ROUTE FOR ORIENTATION ONLY

- ▲ EXISTING SUBSTATION
- ▲ PROPOSED SUBSTATION IN PROGRESS

NEW ENGLAND CLEAN ENERGY CONNECT		PROJECT	DRAWING NUMBER	REV
CONSTRUCTION OVERVIEW MAP- SEGMENTS 1 AND 2		CODE		0
DRAWN	JMT	AREA		
CHECKED	NA	DATE	11/16/2021	