

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

CENTRAL MAINE POWER COMPANY)
Applications Pursuant to SLODA and NRPA 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)
)

**COMMENTS OF
NEXTERA ENERGY
RESOURCES, LLC**

NextEra Energy Resources, LLC (“NextEra”) hereby submits comments on the March 13, 2020 Draft Order issued by the Maine Department of Environmental Protection (“Department”)¹ addressing: (1) the lack of record evidence showing New England Clean Energy Connect Project (“NECEC”) will comply with federally mandated regulations on vegetation management; and (2) the lack of record evidence regarding the financial and technical qualifications of NECEC Transmission, LLC to construct, own, and operate NECEC. The lack of evidence on both of these issues should be addressed by the Department prior to finalizing an order in this proceeding.

1. Vegetation Management Concerns

The Draft Order finds that NECEC will have substantial impacts, including specific and substantial impacts on the 53.5 new corridor that runs from the Maine-Québec border to The Forks (*i.e.*, Segment 1). Draft Order at 1. To address the substantial impacts in Segment 1, the Draft Order conditions approval on, among other things, the following:

1. The width of the cleared corridor in Segment 1 must be reduced from 150 feet to 54 feet at its widest point. (Draft Order at 1, 4, 42-43, Appendix C)
2. The establishment of vegetation within the cleared area that can grow 10 feet.² (Draft Order at 4, 42-43, Appendix C)
3. The establishment of taller vegetation with a 35-foot height outside of the 54-foot cleared area. (Draft Order at 4, 42-43, Appendix C)
4. Full canopies in specified areas. (Appendix C)

The Draft Order is based on the unsupported premise that the NECEC can comply with these conditions, including, among other things, the use of taller poles. *See e.g.*, Draft Order at 76,

¹ Out of an abundance of caution, NextEra through these comments preserves all arguments for appeal by reference to all comments previously made on the record including, but not limited to, right, title, and interest, and other procedural aberrations as well as substantive failures under the entirety of the Site Location of Development Act (“SLODA”), Natural Resources Protection Act (“NRPA”), and the Department’s Rules regarding same, such as, but not limited to, the availability of alternatives, including undergrounding.

² Footnote 4 to the Draft Order states that that 10 feet should not reach the conductor safety zone, however, the Draft Order cites no evidence supporting this conclusion.

80, 88. The Department's conditions operate as an after the fact amendment to CMP's application, because NECEC, as proposed by Central Maine Power Company ("CMP"), did not include the transmission pole and conductor designs necessary to address these newly imposed conditions. Therefore, the record does not contain substantial evidence supporting the conclusion that the NECEC transmission and conductor designs can simultaneously comply with the Department's proposed conditions and federal regulations mandating specific distance-based separations between transmission lines, such as NECEC, and vegetation.

For example, there is no evidence that CMP's NECEC can comply with both the Department's amendments by condition and with the North American Electric Reliability Corporation ("NERC") federally imposed Reliability Standard FAC-003-4 (Attachment A). NERC FAC-003-4, as approved by the Federal Energy Regulatory Commission pursuant to Section 215 of the Federal Power Act, directly regulates the proximity of vegetation to conductors, and warns, in part, that:

Major outages and operational problems have resulted from interference between overgrown vegetation and transmission lines located on many types of lands and ownership situations. Adherence to the standard requirements for applicable lines on any kind of land or easement, whether they are Federal Lands, state or provincial lands, public or private lands, franchises, easements or lands owned in fee, will reduce and manage this risk.

NERC FAC-003-4 goes on to mandate specific distances and separations between transmission lines, such as NECEC, and vegetation. The Department's imposition of narrower corridors, more vegetation under the conductors, and alongside the conductors have been proposed without any evidence showing whether these conditions are consistent with NERC FAC-003-4. It is axiomatic that the Department cannot impose a condition that is inconsistent with federally approved and mandated NERC FAC-003-4.³ Therefore, to address whether the Department's proposed conditions are consistent with NERC FAC-003-4, NextEra respectfully requests that the Department, prior to finalizing the Draft Order, reopen the record to take evidence from CMP on:

- Whether the new pole and conductor designs required to comply with the Draft Order will also comply with NERC FAC-003-4 under all proposed conditions, including (a) the narrowing of the corridor in certain areas to 54 feet and (b) the minimum conductor height (with max sag and blowout) of 60 feet needed for the deer travel corridor management requirements?
- What are the current and proposed tree species present in the areas where the proposed conditions in the Draft Order proposed narrowed corridors, and are their growth rates consistent with the ability to comply with NERC FAC-003-?

³ See, cf. *Hughes v. Talen Energy*, 136 S. Ct. 1288 (2016) (struck down Maryland law because it disregarded FERC's regulation of wholesale rates); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U. S. 354, 365, 370-373, 108 S. Ct. 2428, 101 L. Ed. 2d 322 (1988) (holding that an order regulating wholesale purchases fell within FERC's jurisdiction, and preempted contrary state action, even though it clearly affected retail prices).

- Will LIDAR be employed at any location with a fully maintained canopy to ensure compliance with NERC FAC-003-4? and
- What will be use to accurately measure clearance distance between a conductor and vegetation in order to ensure compliance with NERC FAC-003-4, given the undergrowth conditions, and narrowing of the corridor?

The Department should also afford the parties an opportunity to comment on CMP’s new evidence. Failure to obtain record evidence documenting the feasibility of simultaneous compliance with the conditions in the Draft Order (which the Department finds necessary for SLODA and NRPA compliance) and NERC FAC-003-4, would result in a Draft Order that, if finalized, would not be supported by substantial evidence.

2. Technical and Financial Qualifications of NECEC Transmission, LLC to Construct, Own, and Operate the Transmission Line

In addition, CMP’s right, title, and interest in the NECEC materially changed given execution and approval of the February 21, 2019 Stipulation in the Maine Public Utility Commission Docket No. 2017-00232 (“CMP Stipulation”). The Stipulation requires CMP to transfer its interest in the NECEC, including underlying properties, to NECEC Transmission, LLC, which “is not a subsidiary of CMP.” CMP Stipulation at 16. Chapter 2 of the Department’s Rules defines a transfer of ownership at Section 1(R), which clearly implicates the transfer to NECEC Transmission LLC.⁴ This raises two fundamental issues that can only be resolved by reopening the record and the submission of additional evidence addressing the following:

- How is CMP complying with the Department’s rules that an applicant maintain and update right, title, and interest at all times through the application process (Chapter 2, Section 11), given it has contractually agreed to transfer these interests to NECEC Transmission, LLC? and
- Why has CMP not filed an application with the Department requesting approval to transfer NECEC to NECEC Transmission, LLC consistent with Chapter 2, Section 21 of the Department’s Rules?⁵

⁴ Section 1(R) of Chapter 2 of the Department’s Rules defines “Transfer of Ownership” as a change in the legal entity that owns a property, facility or structure that is the subject of a license issued by the Department. A sale or exchange of stock (or in the case of a limited liability corporation, of membership interests), or a merger, is not a transfer of ownership for the purposes of this rule provided the legal entity that owns or operates the property, facility or structure remains the same.

⁵ Section 21(C)(1) of Chapter 2 of the Department’s Rules requires that “written consent must be applied for no later than two weeks after any transfer of ownership of property subject to a license.” Given that CMP committed, through the CMP Stipulation, to transfer NECEC to NECEC Transmission, LLC prior to the start of construction, coupled with the importance of having all relevant facts provided to the Department for its consideration prior to the issuance of a final order, it is reasonable and appropriate that CMP be directed to submit an application for transfer at this time so it can be considered in the context of a final order in this proceeding.

Without reopening the record to address these issues, a final order would be based on the false premise that CMP will fund, construct, own, and operate NECEC. This false premise, among other things, invalidates the Department's findings on financial and technical ability, because there is no record evidence of NECEC Transmission, LLC's financial and technical qualifications to construct, own, and operate the NECEC. Thus, the Department should reopen the record to address the questions and issues identified herein, and, afford the parties an opportunity to comment on the new information provided by CMP.

In conclusion, NextEra does not support the Draft Order as written, and requests that the Department reopen the record and address the issues identified herein prior finalizing the Department's order.

Date: April 13, 2020



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