

November 13, 2018

Susanne Miller, Presiding Officer
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

RE: NECEC Project
L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/
L-27625-VP-D-N/L-27625-IW-E-N

Dear Presiding Officer Miller:

This letter responds to your letter dated November 6, 2018, which presented questions relating to NextEra Energy Resources, LLC's ("NextEra") concerns regarding Central Maine Power's ("CMP") compliance with the Chapter 2 requirement that CMP present evidence of right, title, or interest to the entirety of the NECEC Project and NextEra's request for an additional procedural meeting in advance of scheduling any hearing on the Project.

- I. First, the Department of Environmental Protection ("Department") asked whether there were specific parcels for which NextEra believes CMP has not met its burden to demonstrate right, title, and interest as required by Chapter 2 of the Department's Rules.

NextEra submits that this question is impossible to answer fully without clarifying information from CMP and that such clarification is necessary to meet its burden under Chapter 2.¹ CMP alleges that its "application materials clearly established CMP's TRI." *November 6, 2018 Letter from Attorney Manahan to Presiding Officer Miller*, at 1. NextEra disagrees.

Section 2.1 of CMP's NECEC Site Location of Development Application states that:

¹ CMP alleges by letter dated November 6, 2018 ("CMP's Letter") that requests for more information regarding right, title, and interest are untimely and that changes to the topics at the public hearing can no longer be made. Chapter 2 is clear that CMP must maintain right, title, and interest for the entire project throughout the permitting process. Further, NextEra expressly reserved its right to raise additional issues as CMP continues to submit additional materials and as NextEra continues its review of CMP's application. CMP's objections regarding timeliness and waiver of objections regarding right, title, and interest are without merit.

Documentation of CMP's title, right, or interest in real estate required for the NECEC Project are contained in Exhibit 2-1 of this section. This Exhibit includes a summary table of real estate interests held by CMP as well as a USB flash drive with electronic copies of all deeds, leases, easements, options.

CMP will utilize existing transmission line corridors to the greatest extent practicable for the NECEC Project. Approximately 73 percent of the NECEC Project has been sited in existing transmission corridors, and CMP already holds title, right or interest to lands within these existing corridors. Regarding Segment 1, the undeveloped corridor between the Canadian border and The Forks Plt, CMP has obtained title, right, or interest on 100 percent of this corridor.

Meanwhile, the Development Description in Section 1 of the NECEC Site Location of Development Application includes discussion of five Segments. Each of these Segment descriptions appear to include new and/or widened transmission line (i.e., it appears that each Segment includes areas *outside* the existing corridor area discussed in Section 2.1) and/or substations. The title, right, and interest narrative in Section 2.1 only discusses Segment 1 and the portion of the Project built within the existing corridor. Thus, it appears possible that right, title, and interest to portions of the Project are not addressed.

Without a map (similar to the map included as Exhibit 1-1 to the NECEC Site Location of Development Application) which shows each parcel of land and a link to CMP's documentation of right, title, and interest, it is impossible to determine whether CMP has met its burden of providing prima facie evidence of right, title and interest. Once that question is answered, the question presented by the Department - which specific pieces of right, title, and interest present sufficiency questions - is more feasible to answer.

That said, even a cursory review of the documentation CMP has presented raises sufficiency questions. For example, the July, 2017 Letter of Intent with the Passamaquoddy does not appear to meet the requirements of Chapter 2 as it does not allow for the Project to proceed, and, by its terms, is not with the owner in trust of the property. Further, it is not clear whether the Project is permissible given the restrictions on impacts to the Appalachian Trail set forth in the 1987 Indenture between CMP and the United States of America. It is also unclear whether the Transmission Line Lease between Department of Agriculture, Conservation and Forestry Bureau of Parks and Lands and Central Maine Power Company dated December, 2014 is statutorily permissible. This list and our review of this issue is, as noted above, ongoing, and these comments are not exhaustive.

Given the complexity and number of right, title, and interest documents it would be helpful to all parties to have a presentation of the Segments and a map

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as discussed above with the ability to present and discuss specific questions in testimony. Of course, right, title, and interest is an issue that can be raised at any time and, if not present for the entirety of the Project, is grounds for return of the application. See *Collins v Maine Dept. of Environmental Protection*, No. AP0415, 2004 WL 6247990, at *2 (Me. Super. Nov. 17, 2004) (citing *Murray v. Inhabitants of the Town of Linconville*, 462 A.2d 40 (Me. 1983)). Given the central importance and complexity of the issue (both on presence and substance) it is worthy of inclusion in discussion at the hearing.

- II. Last, the Department indicated that it and the LUPC were considering NextEra's request for a second procedural meeting following CMP's submission of complete amended applications and prior to issuing a third procedural order with specific dates for submission of documentation necessary for the hearing.

CMP's Letter contends that NextEra's request is a delay tactic and that an additional meeting is unnecessary because CMP submitted its amended application more than 60 days before a hearing and thus there is plenty of time for NextEra and other parties to respond. This objection misses the point.

At the first procedural meeting there seemed to be an expectation that CMP's October 19, 2018 submissions would complete their application materials. Thus, it made sense to move forward with timelines for submissions for the public hearing based on that October 19 submission deadline. However, the barely timely October 19 filing amended the application and, as you note, resulted in yet another request for additional information from the Department. It remains unclear when the application will be complete and how much more information will be submitted. Moving forward without additional discussion of the scope and timing of the hearing even as the application continues to be amended presents a question of fundamental fairness to parties, such as NextEra, if our ability to participate at the public hearing is limited to issues raised prior to application amendments. To the extent this results in a delay in the proceeding, the source of that delay is CMP's own failure to file a complete application.

Thank you for your consideration of these requests.

Sincerely,

A handwritten signature in black ink, appearing to read 'Joanna B. Tourangeau', with a long horizontal line extending to the right.

Joanna B. Tourangeau