

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
DOCKET NO. BCD-21-257

RUSSELL BLACK, et al.

Appellees/Cross-Appellants

v.

BUREAU OF PARKS AND LANDS, et
al.

Appellants/Cross-Appellees

**AFFIDAVIT OF THORN C.
DICKINSON IN SUPPORT OF
NECEC LLC'S OPPOSITION TO
APPELLEES/CROSS-APPELLANTS'
MOTION TO LIFT AUTOMATIC
STAY PENDING APPEAL**

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").

2. I make this affidavit in support of NECEC LLC's Opposition to Appellees/Cross-Appellants' Motion to Lift Automatic Stay Pending Appeal.

3. NECEC LLC has begun construction of the NECEC Project, a 145-mile electricity transmission line that will bring clean, hydro-generated energy from Quebec, Canada into Maine and the New England energy grid.

4. NECEC LLC has obtained all state and federal permits and approvals necessary to build the NECEC Project, including a Certificate of Public Convenience and Necessity from the Maine Public Utilities Commission; approval of the long-term contracts for energy and transmission service over the NECEC Project from the Massachusetts Department of Public Utilities; a Site Location of Development Law Certification from the Land Use Planning Commission of the Maine Department of Agriculture, Conservation & Forestry; 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 (the “DEP Order”); a United States Army Corps of Engineers permit under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act, which relied on an Environmental Assessment and Finding of No Significant Impact previously issued by the Army Corps; and a Presidential Permit and additional Environmental Assessment and Finding of No Significant Impact for the NECEC Project issued by the United States Department of Energy.

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

6. With respect to the aforementioned DEP Order, a true and correct copy of the complete order can be found on DEP’s website at:

<https://www.maine.gov/dep/ftp/projects/necec/2020-05-11-final-department-order.pdf>. True and correct copies of excerpted pages of that order, discussed in the

accompanying Opposition to Appellees/Cross-Appellants' Motion to Lift Automatic Stay Pending Appeal, are attached hereto as Exhibit A.

7. Attached hereto as Exhibit B is a true and correct copy of a January 8, 2011, order issued by DEP approving NECEC LLC's vegetation clearing plan and vegetation management plan for the NECEC Project. True and correct copies of the foregoing plans are attached hereto as Exhibit C.

8. Attached hereto as Exhibit D is a true and correct copy of a letter dated August 11, 2021, sent by counsel for the Natural Resources Council of Maine ("NRCM") to the Maine Department of Environmental Protection and Board of Environmental Protection, requesting an immediate stay of DEP's May 11, 2020, order permitting the NECEC Project. NECEC LLC received a copy of the foregoing letter in the normal course of business.

9. Attached hereto as Exhibit E is a true and correct copy of a letter dated August 20, 2021, sent by DEP Commissioner Melanie Loyzim to counsel for NRCM, denying NRCM's request for a stay of DEP's May 11, 2020, order permitting the NECEC Project. NECEC LLC received a copy of the foregoing letter in the normal course of business.

10. Attached hereto as Exhibit F is a true and correct copy of a letter dated August 12, 2021, sent to me by DEP Commissioner Melanie Loyzim opening proceedings into whether DEP should suspend May 11, 2020, order permitting the

NECEC Project. NECEC LLC received a copy of the foregoing letter in the normal course of business.

11. 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-Quebec from its portfolio of hydro-power generators in Quebec, and seeks to build the NECEC Project to facilitate those transmission obligations. Pursuant to its contractual commitments, NECEC LLC must achieve commercial operation of the NECEC Project by August 23, 2024, which date may be extended by up to 12 months only by NECEC LLC posting up to \$10.9 million in additional security.

12. Long linear transmission projects like the NECEC Project require careful, sequential planning and the synchronization of work from a variety of contractors. For instance, 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 poles, the stringing of the electrical conductor, and the construction of electrical substations. All of that work must proceed in accordance various legal, regulatory and practical factors, ranging from permitting requirements to weather conditions.

13. As construction of the NECEC Project has begun, 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, in

advance of the August 23, 2024, contractual deadline. I understand consideration of an appeal to the Law Court typically takes between 9 to 12 months, but that the Court need not rule by any given date and does not provide the parties with an estimate of the date by which it will rule. While execution of the current construction schedule will allow NECEC LLC to complete the project by the currently expected commercial operation date of mid-December 2023, a delay in all project construction of 9 to 12 months (in addition to causing layoffs of hundreds of workers currently constructing the NECEC Project) will make it impossible to complete the project by that date and may, in fact, make it impossible to put the project into service by the contractual deadline of August 23, 2024.

14. I am cognizant that 9 to 12 months is only an estimate of the time for this appeal, and that, in fact, the appeal will not conclude pursuant to a fixed schedule around which NECEC LLC can plan. This means that, while the appeal may take 9 to 12 months to complete, the delay in construction will take even longer because, after the Court rules, NECEC LLC will require several weeks, if not months, to remobilize its contractors in order to resume construction activities. This remobilization entails, among other activities, reobtaining any expired municipal permits and approvals, re-engaging the applicable contractors, and having the contractors re-hire the construction crews and other necessary employees, and contract for and mobilize necessary equipment and materials, to resume construction activities as soon as possible.

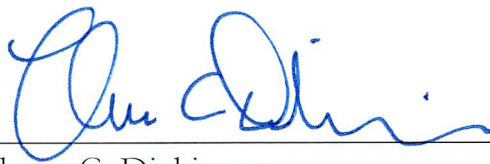
15. A pause in the project construction such as the Plaintiffs seek also would result in a complex demobilization and remobilization process given NECEC LLC's obligation and commitment to comply with all permit requirements and environmental standards. For example, due to permitting requirements, Northern Clearing, Inc.—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. Overall, this demobilization and remobilization would result, in many cases, in a complete re-work of construction activities already completed to date.

16. These 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 the NECEC Project. The NECEC LLC project management team estimates that remobilization costs following a delay in overall project construction of 9-12 months range from \$73 to \$83 million. The foregoing cost estimate is limited to the project investment costs. Additionally, by delaying project construction 9-12 months, the project's commercial operation date, and thus the project's anticipated revenue, would be delayed by at least the same amount of time, resulting in a significant adverse impact on NECEC LLC's substantial investment in the NECEC Project.

17. The current construction schedule for the NECEC Project does not contemplate any construction activities on the public reserved lands subject to the

2020 lease with the Bureau of Parks and Lands until late fall of this year. With some modifications and because the leased land consists of less than one mile of the 145-mile project, the existing NECEC Project construction schedule and sequence would permit NECEC LLC to delay construction activities on that land pending the current appeal without materially impacting the expected commercial operation date for the project. Accordingly, NECEC LLC commits to refrain from any such construction activities on the leased lands during the pendency of this appeal and has so informed the Bureau.

Dated this 7th day of September, 2021



Thorn C. Dickinson

STATE OF MAINE
CUMBERLAND, ss

Personally appeared before me the above-named Thorn C. Dickinson and made oath that the above-stated facts are true based upon his own personal knowledge.

Before me,

Dated September 7, 2021



Notary Public
My Commission Expires:

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

EXHIBIT A



DEPARTMENT ORDER

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY	) SITE LOCATION OF DEVELOPMENT ACT
See Appendix A for Location	) NATURAL RESOURCES PROTECTION ACT
NEW ENGLAND CLEAN	) FRESHWATER WETLAND ALTERATION
ENERGY CONNECT	) SIGNIFICANT WILDLIFE HABITAT
L-27625-26-A-N (approval)	) WATER QUALITY CERTIFICATION
L-27625-TG-B-N (approval))
L-27625-2C-C-N (approval))
L-27625-VP-D-N (approval))
L-27625-IW-E-N (approval)	) FINDINGS OF FACT AND ORDER

OVERVIEW

This Order conditionally approves Central Maine Power Company's applications for State land use permits for the New England Clean Energy Connect project. The record of this proceeding demonstrates that the project will satisfy the Department's permitting standards subject to the conditions in this Order. Issuance of this Order follows a 29-month regulatory review, which included six days of evidentiary hearings and two nights of public testimony. Twenty-two parties, consolidated into ten groups, participated in the evidentiary hearings by helping to shape the administrative review process, providing sworn testimony from dozens of witnesses, cross examining those witnesses, and submitting argument on the interpretation and application of relevant permitting criteria. Hundreds of Maine citizens testified during the public hearings and submitted written comment on the many issues the application presented. The hearing and public comment process provided the Department with critical information and analysis of the applicant's proposal, its impacts, whether and how those impacts can be mitigated, and the availability of alternatives.

The record shows the project as originally proposed would have had substantial impacts, particularly in the 53.1-mile portion of the corridor that extends from the Quebec border to The Forks, known as Segment 1. The record also shows that it is feasible to avoid or minimize those impacts through a variety of mitigation measures. This Order does so by imposing a set of conditions identified and developed through the public process. These conditions provide an unprecedented level of natural resource protection for transmission line construction in the State of Maine. They are also fully supported by the evidence. For example, the hearings highlighted the impacts the proposed project would have on fish and wildlife habitat, scenic character, and recreational uses of the Segment 1 area. The evidence shows that the width of the corridor, and the manner in which vegetation is managed within it, are key factors that drive the severity of those impacts. This Order limits the width of the cleared corridor in Segment 1 – originally proposed to be 150 feet – to 54 feet at its widest point. The Order requires the applicant to use poles in ecologically sensitive areas that are tall enough to preserve forest canopy. It requires that wildlife corridors be preserved in deer wintering area.

Central Maine Power, and dated April 11, 2017, with a last revision date of September 18, 2019. The project site is located in 24 municipalities, 14 townships/plantations, and seven counties. (See Appendix A.)

C. Title, Right, or Interest

Applicants for Site Law and NRPA permits are required by 06-096 C.M.R. Chapter 2, § 11(D) to submit evidence demonstrating that they have sufficient title, right, or interest in all the property proposed for development. This can be in the form of deeds, leases, or easements, among other forms. The applicant submitted deeds or leases for the entire project. Several members of the public and Intervenor Groups 2 and 8 (see discussion of the public hearing below for a list of intervenor groups) contend that CMP does not have sufficient title, right, or interest in one portion of the corridor. Specifically, they question the legality of the lease CMP entered into with the Bureau of Parks and Lands for the corridor across West Forks Plantation and Johnson Mountain Township T2R6 BKP WKR. That lease decision was never appealed and is therefore final. The Department accepts the decision of its sister agency to enter into the leases and the fully executed leases as sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project.

At the time of the initial submission of the application, CMP submitted a Letter of Understanding between CMP and the Passamaquoddy Tribe pertaining to a section of the corridor in Lowelltown Township. That Letter of Understanding stated that parties would negotiate in good faith the terms of a lease. The Letter of Understanding had an expiration date of January 31, 2018. At the request of Department staff, the applicant submitted a signed lease for the property, dated October 23, 2017. The lease term is 25 years and can be renewed. The lease has the signatures of representatives of the Passamaquoddy Tribe and CMP, but the copy submitted does not have a signature for a representative of the Bureau of Indian Affairs. These documents constitute sufficient showing of title, right, or interest in this portion of the proposed corridor for the Department to process the application. The Merrill Strip Alternative, which is described in more detail below, eliminates the portion of the line which was to be located on land owned by the Passamaquoddy Tribe.

D. Public Hearing

The Department accepted CMP's permit application for the NECEC project as complete for processing on October 13, 2017. On November 17, 2017, the Department's Commissioner determined that a public hearing would be held on this project pursuant to the Department's Rule Concerning the Processing of Applications and Other Administrative Matters, 06-096 C.M.R. Chapter 2, § 7(B). The Commissioner delegated the authority to conduct and preside over the hearing to Christina Hodgeman, an employee of the Department. The Presiding Officer's role was to conduct an adjudicatory hearing by administering governing procedural statutes and regulations and develop the administrative record.

The Presiding Officer's delegation did not include the ultimate decision-making authority, which was retained by the Commissioner.

On December 7, 2017, the Land Use Planning Commission (Commission) voted to hold a public hearing on the allowed use portion of the Certification process only, specifically with regard to whether the project is an allowed use within the Commission's Recreation Protection (P-RR) subdistrict. The Commission's role in the Department's proceeding would be to certify to the Department whether the project meets those land use standards administered by the Commission that are not duplicative of Department standards, and whether the project is an allowed use in the zoning subdistricts in which it is proposed. Utility facilities are allowed by special exception in the P-RR subdistrict. As originally proposed, the NECEC project crossed through three separate P-RR subdistricts, one around Beattie Pond, one near the upper Kennebec River crossing, and one near the crossing of the Appalachian Trail (AT). The Merrill Strip Alternative moved that portion of the project originally proposed in the P-RR Subdistrict around Beattie Pond outside of that subdistrict.

On June 27, 2018, the Department's Presiding Officer issued a notice setting July 19, 2018, as the deadline to submit petitions for leave to intervene. The Department received 23 petitions to intervene. On July 24, 2018, the Department requested more information from four of the petitioners and by July 31, 2018, three of those petitioners provided additional information, and one petitioner, the Sierra Club, withdrew its petition. On August 18, 2018, the Presiding Officer issued the First Procedural Order in the matter, and granted intervenor status to 22 parties. The parties granted intervenor status in the Department's proceeding were:

1. Old Canada Road National Scenic Byway (Old Canada Road)
2. Ed Buzzell
3. The City of Lewiston
4. Friends of the Boundary Mountains
5. The Appalachian Mountain Club (AMC)
6. Western Mountains and Rivers Corporation (WM&RC)
7. NextEra Energy Resources, LLC (Nextera)
8. Hawk's Nest Lodge
9. The Industrial Energy Consumer Group (IECG)
10. Natural Resources Council of Maine (NRCM)
11. The Town of Caratunk
12. The Maine State Chamber of Commerce
13. The International Brotherhood of Electrical Workers (IBEW)
14. Ashli Coleman
15. Maine Guide Services (MGS)
16. Brookfield White Pine Hydro, LLC (Brookfield)
17. Trout Unlimited (TU)
18. Chris Russell
19. The Nature Conservancy (TNC)
20. Maine Wilderness Guides Organization (MWGO)

21. The Conservation Law Foundation (CLF)
22. Mike Pilsbury

The first pre-hearing conference was held on September 7, 2018. At the conference the parties were notified that a consolidated hearing would be held by the Department and the Commission to make the two processes more efficient for the agencies, the applicant, the intervenors, and members of the public. In the Second Procedural Order, issued on October 5, 2018, the parties were notified of a new Presiding Officer. Presiding Officer Christina Hodgeman had left her position with the State of Maine and the Commissioner designated Susanne Miller, another employee of the Department, as the Presiding Officer. The Second Procedural Order granted intervenor status to Wagner Forest Management, Ltd. (Wagner), an entity that was not included in the Department's First Procedural Order. The Second Procedural Order also outlined how intervenor groups would be grouped together and consolidated for purposes of making the hearing more efficient.

These groupings are described below:

Group 1: Friends of Boundary Mountains, MWGO, and Old Canada Road. These intervenors were all opposed to the project and were intervenors for the Department proceeding only.

Group 2: West Forks Plantation, Town of Caratunk, Kennebec River Anglers, MGS, Peter Dostie (Hawk's Nest Lodge), and Mike Pilsbury. These intervenors were opposed to the project. With the exception of West Forks Plantation, all of the members of this group were intervenors in both the Department and Commission proceedings. West Forks Plantation was an intervenor in the Department proceeding only.

Group 3: IECG; City of Lewiston; IBEW; Maine Chamber of Commerce; and the Lewiston/Auburn Chamber of Commerce. These intervenors were in support of the project. With the exception of the Lewiston/Auburn Chamber of Commerce, all of the members of this group were intervenors in both the Department and Commission proceedings. The Lewiston/Auburn Chamber of Commerce was an intervenor in the Commission proceeding only.

Group 4: NRCM, AMC, and TU. These intervenors were opposed to the project, and were intervenors in both the Department and Commission proceedings.

Group 5: Brookfield and Wagner Forest Management, Ltd. These intervenors were neither for nor against the project. Both were intervenors in the Department's proceeding, but Wagner was also an intervenor in the Commission's proceeding.

Group 6: TNC and CLF. These intervenors were neither for nor against the project and were Department-only intervenors.

impacts on wildlife as a result of the effects on wildlife travel lanes and lifecycles and accessibility to suitable and sufficient habitat. Fragmentation occurs when contiguous habitat is broken into smaller, more isolated patches. CMP acknowledged in its Site Law permit application: “Transmission line corridors present potential direct impacts, as they may affect species movement, dispersal, density, nesting success and/or survival. . . . For the undeveloped corridor of Segment 1, impact may include fragmentation and creation of new linear edges. . . . Habitat conversion along transmission line corridors results in a loss of habitat types which, in turn, may adversely impact species that are reliant on the original habitat types.” (Site Law Application, pg. 7-23.) Group 4 and Group 6 testimony addresses the negative results associated with fragmentation, such as impacts to wildlife movement, reduction in accessible habitat, an increased in “edge” – the border between forest and an opening – and reduced interior, as well as biodiversity decline.

The Department finds that as Segment 1 initially was proposed, the applicant had not made adequate provision for the protection of wildlife; the proposal’s contribution to habitat fragmentation and impact on habitat and habitat connectivity was an unreasonable impact on wildlife habitat. Through modifications CMP made to its proposal during the permitting process, these potential wildlife impacts have been reduced. Through further modification required as a condition of this Order, adequate provision for the protection of wildlife will be achieved.

The project improvements to which CMP committed through written submissions filed with the Department during the permitting process include:

- Maintaining taller, softwood vegetation in the Upper Kennebec River DWA to provide travel corridors for deer.
- Maintaining full canopy height vegetation at the Gold Brook and Mountain Brook crossings. While the primary purpose of maintaining taller vegetation within the corridor in these locations is the protection of Roaring Brook Mayfly and Northern Spring Salamander habitat, the taller vegetation also helps minimize the fragmenting effect of the corridor.
- Maintaining tapered vegetation in the area visible from Coburn Mountain and another area visible from Rock Pond, for the purpose of minimizing the visual impact. The tapered vegetation in the corridor also benefits wildlife.
- Expanding the riparian filter areas on coldwater fisheries streams to 100 feet, and on all other streams to 75 feet.

These measures are expected to reduce the impacts of the Segment 1 corridor, but are not sufficient to avoid substantial and harmful fragmenting of habitat.

The Department finds that additional mitigation is required to satisfy the Site Law standards discussed above. This finding is supported by testimony from Group 4 and Group 6 intervenors. For example, Hunter states in his February 25, 2019 pre-filed testimony: “CMP has made adjustments to its original compensation plan to accommodate for corridor impacts to white-tailed deer (particularly wintering habitat) and a few selected rare species (Roaring Brook Mayfly and Northern Spring Salamander).

less damaging to the environment. As discussed above, the Department has reviewed project alternatives and finds there is no practicable alternative to the project that would be less damaging to the environment.

Chapter 335 requires that the amount of habitat to be altered and the disturbance of the subject wildlife must be kept to the minimum amount necessary for meeting the overall purpose of the project. The Department finds that within the corridor and at associated substations, the applicant has designed the project to minimize impacts to significant wildlife habitat, for example, through the selection of pole locations and siting of access roads. Also, the applicant's Vegetation Construction Plan (VCP) and Vegetation Management Plan (VMP) establish:

- Protected natural resources³⁶ and their associated buffers will be flagged or located using a Global Positioning System (GPS) prior to all construction and maintenance activities;
- Initial clearing within SVP habitat will take place during frozen ground conditions, if practicable. If not practicable, clearing will be accomplished using hand tools or reach-in techniques. If required to remove vegetation, any travel lanes within the SVP habitat must be approved by the Department;
- During routine maintenance, between April 1 and June 30 in any calendar year, no vegetation will be removed using tracked or wheeled equipment in SVP habitat;
- No mechanized equipment will be used within IWWH between April 15 and July 15 in any calendar year;
- Herbicide will not be applied within 25 feet of any IWWH;³⁷ and
- Provided they do not pose a safety hazard, naturally occurring snags within IWWH will be allowed to remain, at a minimum of two to three snags per acre.

In accordance with Chapter 335, § 3(D)(1), if an impact to significant wildlife habitat will cause habitat functions or values to be lost or degraded, compensation is required to achieve the goal of no net loss of significant wildlife habitat functions and values. The applicant proposes to make a contribution into the In-Lieu Fee (ILF) program of the Maine Natural Resource Conservation Program in the amount of \$623,657.53 to compensate for SVP impacts and \$253,352.53 to compensate for IWWH impacts. Prior to the start of construction, the applicant must submit a payment in the amount of \$877,010.06 payable to "Treasurer, State of Maine", and directed to the attention of the ILF Program Administrator at 17 State House Station, Augusta, Maine 04333. (See Appendix F.)

The Department finds that the applicant has avoided and minimized Significant Wildlife Habitat impacts to the greatest extent practicable, and that, with the compensation that will be achieved through the ILF payment, the proposed project represents the least

³⁶ Protected natural resources include rivers, streams, brooks, SVP, IWWH, coastal wetlands, and habitats for threatened, or endangered species.

³⁷ Within Segment 1, CMP will not use any herbicide at all.

environmentally damaging alternative that meets the overall purpose of the project, provided the applicant:

- Submits an In-Lieu Fee payment to the Department for the Maine Natural Resource Conservation Program in the amount of \$877,010.06 prior to the start of construction (See Appendix F, Table F-1.)

The Department further finds that the activity will not unreasonably harm or disturb any significant vernal pool habitat or other Significant Wildlife Habitat, including high and moderate value waterfowl and wading bird habitat, provided the applicant:

- Marks the location of all natural resource buffers with flagging prior to the start of construction;
- Permanently marks all natural resource buffers upon completion of construction; and
- Marks all natural resource buffers with flagging prior to any maintenance activities.

c. Brook Trout and Coldwater Fisheries

The project corridor crosses 471 rivers, streams, or brooks that contain brook trout habitat, 351 of which will have clearing impacts, and five Outstanding River Segments. Maine is one of the last places where native brook trout habitat is still intact and wild brook trout still thrive. This fishery and the related use of the resource by fishing guides, owners of sporting camps, and Maine residents and tourists are an important use of the resource involving many communities in the area near the project. While Brook trout habitat is not among the habitats protected in NRPA as Significant Wildlife Habitat, the impacts of a proposed project on the functions and values of rivers, streams and brooks, as set forth in Chapter 310, § 5(D)(b), is a factor in the determination of whether the proposal would have an unreasonable impact on the protected resource. Fisheries, aquatic habitat, and wildlife habitat are listed among the functions to be considered. Chapter 310, § 3(J). In addition, impacts to brook trout from activities that may adversely affect fisheries lifecycles and general impacts to waterbodies that serve as brook trout habitat are considered by the Department under Site Law, 38 M.R.S. § 484(3), and Chapter 375 §15. As a result, to obtain approval for a proposed project under NRPA and Site Law an applicant must make adequate provision for the protection of fisheries and avoid, minimize, and compensate for impacts to fish habitat.

As discussed above, the Department has reviewed project alternatives and finds there is no practicable alternative to the project that would be less damaging to the environment. As the project has evolved through the permit review process, the applicant has taken steps to minimize the impact of the project on brook trout and coldwater fisheries. The applicant has committed to:

- Increase the riparian filter areas (buffers) along streams crossed by the project from the 25 feet originally proposed to 100 feet around all perennial streams in

In accordance with Chapter 310, § 5(C), compensation may be required to achieve the goal of no net loss of coastal wetland functions and values. The applicant proposes to preserve 1,022.4 acres of land in three separate parcels (Little Jimmy Pond Tract, Flagstaff Lake Tract, and Pooler Pond Tract), which contain 510.75 acres of wetland. The applicant proposes to use the Department's Declaration of Covenants and Restrictions to preserve these parcels.

The Department finds that the applicant has avoided and minimized freshwater wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project, provided the applicant:

- Preserves the Little Jimmy Pond Tract, the Flagstaff Lake Tract and the Pooler Pond Tract, as described above. (See Appendix F for a list of compensation requirements.)

(3) Unusual Natural Areas

In Chapter 375, § 12, the Department recognizes the importance of protection of unusual natural areas, including rare botanical communities or plants. As noted above, the applicant has identified 15 rare plant occurrences and five unique natural communities in or adjacent to the corridor. The applicant has discussed these occurrences and communities with the MNAP and, among other things, agreed to redesign a section of the proposed transmission line to avoid impacts to nearby whorled pogonia and to maintain a riparian buffer to minimize impacts to Goldie's Wood Fern. The applicant's VCP and VCM also take into account rare plant locations; herbicides will not be used in these areas and, mechanized equipment will only be allowed to cross these locations if the rare plant locations encompass the entire corridor and in such an instance the crossing will only occur during frozen conditions, on existing travel paths, or with the use of mats.⁴¹ The Department finds the applicant has avoided and minimized impacts to these natural areas to the extent practicable. In response to comments from MNAP suggesting compensation for impacts the applicant revised the compensation plan. This revised plan includes a contribution to the Maine Natural Areas Compensation Fund for impacts to Goldie's Wood Fern and the Jack Pine Forest. The compensation plan requires the applicant to make a contribution to this fund in the amount of \$1,234,526.82.

The Department finds that the proposed development will not have an adverse effect on unusual natural areas either on or near the development site, provided the applicant:

- Contributes \$1,234,526.82 to the Maine Natural Areas Compensation Fund prior to the start of construction. (See Appendix F, Table F-2.)

⁴¹ The VCP establishes that prior to construction the applicant will identify any invasive plant species within the corridor and submit to the Department for review and approval, a vegetation monitoring plan. The objective of the plan would be prevention of the introduction or spreading of invasive species as a result of construction.

EXHIBIT B



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

CENTRAL MAINE POWER CO.	) SITE LOCATION OF DEVELOPMENT ACT
NECEC TRANSMISSION, LLC	) NATURAL RESOURCES PROTECTION ACT
See Attached	) FRESHWATER WETLAND ALTERATION
NEW ENGLAND CLEAN	) SIGNIFICANT WILDLIFE HABITAT
ENERGY CONNECT)
L-27625-26-L-C (approval))
L-27625-TB-M-C (approval)	) CONDITION COMPLIANCE
L-27625-2C-N-C (approval)	) CONDITIONS 4 AND 12
L-27625-VP-O-C (approval))
L-27625-IW-P-C (approval))

Pursuant to the provisions of 38 M.R.S. §§ 480-A-480-JJ and §§481–489-E, the Department of Environmental Protection has considered the submission of CENTRAL MAINE POWER COMPANY (CMP or permittee) and NECEC TRANSMISSION, LLC (NECEC, LLC or permittee) (collectively permittees) with the supportive data, public comments, and other related materials on file and finds the following facts:

1. In Department Order # L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, dated May 11, 2020, (Department Order) the Department approved the New England Clean Energy Connect project. The project involves 145 miles of high voltage direct current (HVDC) transmission line from Beattie Township to Lewiston, a converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission line. In Department Order #L-27625-26-K-T, dated December 4, 2020, the Department transferred a portion of the permit for the project from CMP to NECEC, LLC.
2. Special Condition # 4 of the Department Order granting the permit reads as follows:
“Prior to the start of construction, the applicant shall submit evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of financial assurance consistent with Department Rules, Chapter 373, § 2(B), to the Department for review and approval.”
3. In response to Special Condition # 4, CMP and NECEC, LLC filed a condition compliance submission on November 9, 2020. In this submission they stated that they are wholly owned subsidiaries of Avangrid Networks, Inc, which is an indirect wholly owned subsidiary of Avangrid, Inc. CMP and NECEC, LLC submitted a letter from Howard Coon, Vice-President and Treasurer of Avangrid, Inc, stating that Avangrid, Inc. will make equity contributions of up to \$1,000,000,000.00 to Avangrid Networks, which in turn will make these funds available, as needed, to NECEC, LLC. In addition,

Avangrid and NECEC, LLC will execute a \$500,000,000.00 revolving loan agreement to provide a source of debt financing to NECEC, LLC during construction.

Two parties to the original licensing proceeding, the Natural Resources Council of Maine (NRCM) and Nextera, submitted comments on the condition compliance submission. NRCM argues that NECEC, LLC has no standing to obtain a condition compliance determination because the Department had not issued a partial transfer at the time the submission was made. However, the partial transfer application had been filed and it demonstrated that NECEC, LLC had title, right, or interest in a portion of the project. The Department considers that sufficient for NECEC, LLC to be a co-applicant for this submission. NRCM also argues that the condition compliance submission makes no mention of CMP in the information submitted concerning financial capacity. Finally, with respect to the financial capacity submission, NRCM makes many of the same arguments that it did in the partial transfer proceeding, namely that Avangrid, Inc. and Avangrid Networks, LLC have not committed funds or shown they have the funds available to provide to CMP and NECEC, LLC.

4. CMP and NECEC, LLC responded jointly, stating that pursuant to the Public Utilities Commission approved stipulation, NECEC, LLC is required to either pay for or reimburse CMP for the portions of the project not transferred to it. The permittees also argue the commitment letter is not vague and that the parent companies' statement that they will provide funding meets the requirements of the Department's rules.

The Department considers the information the permittees submitted to be commitments by CMP's and NECEC, LLC's parent companies to provide funding for the project as allowed by Chapter 373, § 2(B)(3)(a). That funding is adequate to finance the project and there is a clear connection between the parent companies and CMP and NECEC, LLC.

The Department reviewed the information submitted and based on this review the Department finds that the information submitted satisfactorily addresses the requirements of Special Condition #4.

5. Special Condition # 12 of Department Order reads as follows: "The applicant shall update its VCP and VMP to be consistent with the requirements of this Order, including but not limited to the vegetation management required in Appendix C, and submit the updated plans to the Department for review and approval prior to the start of construction (which includes clearing) within the corridor."
6. In response to Special Condition # 12, CMP and NECEC, LLC submitted an updated Vegetation Clearing Plan (VCP), an updated Vegetation Management Plan (VMP), and a temporary workspace map. The VCP outlines the procedures that will be utilized during construction in compliance with Appendix C of the Order.

Both NRCM and NextEra commented on this portion of the application. NRCM argues that additional work area outlined in the VCP for the horizontal directional drilling operation under the Kennebec River should be reviewed as an amendment rather than a

condition compliance. NextEra argues that the tapering requirements of the Department Order conflict with the safety standards required by the North American Electric Reliability Corporation (NERC) and there is insufficient evidence in the application to demonstrate the project can be constructed in compliance with both requirements.

The permittees responded stating that the additional work area for the horizontal directional drill is necessary in order to maintain the deer travel corridor adjacent to the Kennebec River as required by the Department Order. The permittees also argue that there is no standard in either the Site Location of Development Act or the Natural Resources Protection Act that the Department consider the NERC requirements when reviewing permit applications. The permittees submitted a diagram showing a typical cross-section of the corridor where tapering is required. The diagram depicts the energize wire zone, the NERC safety area around the wire zone, and the different vegetation heights required by the Department Order. CMP and NECEC, LLC represent that they can meet the requirements of the Department Order and NERC.

The Department Order states that the vegetation management required, including as identified in Appendix C, is integral to the Department's decision and necessary to ensure the project does not violate applicable statutory or regulatory standards. There is no standard in either the Site Location of Development Act or the Natural Resources Protection Act that allows the Department to review a project against the requirements of the NERC. The Department has no expertise with these requirements, however, the Department Order at Section 7 (D)(4) (page 82) makes clear that if the permittee(s) cannot meet the vegetation management requirements contained in the Order the project cannot proceed. The vegetation management required in the Department order was integral to the Department's decision and is necessary to ensure the project does not violate applicable regulatory standards. The Department reviewed the submitted VCP and VMP and evaluated whether they satisfy Condition #12. The additional work area around the horizontal directional drill is necessary to meet the vegetation management requirements of the Department Order. The Department Order required full canopy height vegetation between the eastern edge of the clearing for the termination station in West Forks and the western edge of clearing for the termination station in Moxie Gore. This requirement necessitated the temporary additional work area around both termination stations. The additional work areas will be revegetated upon completion of construction and will be allowed to grow back as forest.

The Department reviewed the information submitted and finds that the VCP and the VMP submitted satisfactorily address the requirements of Special Condition #12 of the Department Order.

7. Finally, NRCM commented that the permittees failed to provide notice as required by Chapter 3, § 30 of the Department's rules. Section 30 establishes that a licensee receiving approval following a hearing must provide notice to all parties of the filing with the Department, among other things, of any documents indicating "actions to comply with conditions contained in the license that require Department review and approval." CMP and NECEC, LLC filed their condition compliance submission on November 9,

2020, but did not provide notice to the parties, which includes NRCM and NextEra. However, this deficiency was cured by the Department providing notice to all the parties on November 12, 2020 via email. Email was the same form of communication used to provide notice to parties throughout the hearing process and subsequently. Along with email notice of the filing of the condition compliance submission, the Department included a web link to the actual submission. Parties were given until November 30, 2020 to provide comments on CMP and NECEC, LLC's submission. NRCM and NextEra are among the parties that provided comments. The Department finds that NRCM, NextEra, and the other parties were not prejudiced by the lack of notice at the time of submission and the three-day delay in receiving actual notice of the condition compliance submission.

8. Severability. The invalidity or unenforceability of any provision, or part thereof, of this Condition Compliance approval shall not affect the remainder of the provision or any other provisions. This approval shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

Based on the above, the Department concludes that CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION, LLC have complied with Special Conditions #4 and #12 of Department Order #L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 8TH DAY OF JANUARY, 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: 
For: Melanie Loyzim, Acting Commissioner

PLEASE NOTE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

JB/L27625LCMCNCOCPC/ATS#86778/86779/86780/86781/86782

FILED
January 8, 2021
State of Maine
Board of Environmental Protection

EXHIBIT C

**New England Clean Energy Connect
Plan for Protection of Sensitive Natural Resources
During Initial Vegetation Clearing**

Prepared by:

**Central Maine Power Company
83 Edison Drive
Augusta, Maine 04336**

Revised October 2020



Introduction

This construction Vegetation Clearing Plan (VCP) applies to construction of the new transmission lines associated with Central Maine Power Company's (CMP) New England Clean Energy Connect (NECEC) project. The VCP describes restrictive and protective management practices required for work within and adjacent to protected natural resources during vegetation clearing associated with NECEC project construction. This VCP also incorporates specific vegetation management requirements contained in the Maine Department of Environmental Protection (MDEP) NECEC Site Location/Natural Resources Protection Act permit issued May 11, 2020. The requirements described in this VCP apply to initial project construction and are not intended to apply to planned or emergency maintenance or repair actions.

The goal of the VCP is to provide construction personnel with a cohesive set of vegetation management specifications and performance standards for work within and adjacent to protected natural resources during transmission line construction.

The protected natural resources subject to restrictive vegetation management requirements include:

- Wetlands and streams (intermittent and perennial);
- Perennial streams within the Segment 1 portion of the NECEC project;
- All streams (intermittent and perennial) within the Atlantic salmon Gulf of Maine Distinct Population Segment (GOM DPS), which includes the critical habitat;
- Outstanding river segments, rivers, streams or brooks containing threatened or endangered species (e.g., Atlantic salmon);
- Gold Brook and Mountain Brook containing State Threatened Roaring Brook Mayfly (*Epeorus frisoni*) and / or State Special Concern Northern Spring Salamander (*Gyrinophilus porphyriticus*) species;
- State Special Concern Species Habitat: Rusty Blackbird (*Euphagus carolinus*) and Wood Turtle (*Glyptemys insculpta*);
- Significant Vernal Pools (SVP);
- Inland Waterfowl and Wading Bird Habitat (IWWH);
- Deer Wintering Areas (DWA);
- Potential maternal roosting areas for Northern Long-eared Bat (*Myotis septentrionalis*);
- Rare plant locations;
- Locations over mapped significant sand and gravel aquifers; and,
- Viewpoints from Coburn Mountain and Rock Pond.

In locations where individual restrictions or procedures overlap, or multiple restrictions apply, the more stringent restrictions and all applicable procedures will be followed by construction personnel.

1.0 Right-of-Way Vegetation Clearing Procedures

1.1 Arboricultural Management Practices

Capable vegetation will be removed and controlled within the footprint of the NECEC development, including within the new (Segment 1) and co-located transmission line corridors. Capable vegetation is defined as woody plant species and individual specimens that can grow to a height that would reach the conductor safety zone, as illustrated in Figure 1 attached to this exhibit. Removal of capable species beneath the conductors within transmission line corridors is intended to meet the following goals:

- Facilitate construction;
- Maintain the integrity and functionality of the line;
- Facilitate safe operation of the line;
- Maintain access in case of emergency repairs; and
- Facilitate safety inspections.

Therefore, the objective of this VCP will be to remove woody vegetation capable of encroaching into the conductor safety zone of the new transmission lines to facilitate construction and maintain the integrity and safe operation of the transmission line consistent with the standards of North American Electric Reliability Corporation's (NERC) Transmission Vegetation Management¹ standard. This will be accomplished by practicing an integrated vegetation management strategy using a combination of mechanical cutting, hand-cutting, and herbicide applications². Mechanical mowing may also be used along access roads or in unusual circumstances, should the typical procedures not suffice.

Throughout clearing and construction, shrub and herbaceous vegetation will remain in place to the extent practicable. Capable vegetation, dead trees, "hazard trees" and all vegetation over 10 feet in height will be removed during initial transmission line corridor clearing prior to construction of the new transmission lines, except in areas described in Section 2.0 below. Due to the sag of the electric transmission lines between the structures, which varies with topography, the distance between structures, tension on the wire, electrical load, air temperature and other

¹ North American Electric Reliability Corporation Transmission Vegetation Management, Standard FAC 003 – 3 Technical Reference, July 1, 2014.

² No herbicide will be applied in the Segment 1 corridor, within 100 feet of the one observed small whorled pogonia occurrence in the Town of Greene, or within 100 feet of the 174-acre Casavant tract on the east and west sides of the transmission line corridor in this vicinity in Greene.

variables, the required clearance is typically achieved by removing all capable species from the transmission line corridor. Hazard trees are those trees typically on the edge of the transmission line corridor that pose an imminent threat of violating the minimum separation standard or are at risk of contacting the transmission lines themselves due to disease, configuration or potential instability. Hazard trees are typically removed immediately upon identification.

The following procedures will be implemented during vegetation management activities to protect sensitive natural resources:

- a. Protected natural resources and their associated buffers will be flagged or located with a Global Positioning System (GPS) prior to all construction and clearing activities;
- b. When and if terrain conditions permit (e.g., certain ravines and narrow valleys) capable vegetation will be permitted to grow within and adjacent to protected natural resources or critical habitats where maximum growing height can be expected to remain well below the conductor safety zone. Narrow valleys are those that are spanned by a single section of transmission line, structure-to-structure.
- c. Hand cutting with chainsaws will be the preferred method of vegetation clearing within protected natural resource buffers and sensitive areas, where reasonable and practicable and with the appropriate protective measures. However, mechanized equipment may be used during frozen conditions, or when matted travel lanes and the reach-in technique are implemented;
- d. Equipment access through wetlands or over streams will be avoided as much as practicable by utilizing existing public or private access roads, with landowner approval where required;
- e. Equipment access in upland areas with saturated soils will be minimized to the extent practicable, or these areas will be matted to avoid excessive rutting or other unnecessary ground disturbance;
- f. Disturbance to wetland or stream bank vegetation, if any, will be repaired following completion of clearing activities in the area if exposed soils present a risk of erosion and sedimentation;
- g. Areas of significant soil disturbance will be stabilized and reseeded following completion of clearing activities in the area.
- h. When capable vegetation within and adjacent to a protected natural resource or identified critical habitat will be removed for constructing the development, the natural regeneration of non-capable woody vegetation will be allowed within all protected resources. At a minimum, the natural regeneration of non-capable woody vegetation will be allowed. To facilitate the regeneration of natural vegetation within and adjacent to (generally, within 75 feet of) protected natural resources and special habitats, the contractor will separate the topsoil from the mineral soil when excavating during project construction. The excavated topsoil

will be returned to its original place and position in the landscape and appropriate erosion control methods will be utilized.

- i. Locations within the NECEC that contain any of the invasive plant species listed in Table 1 below will be identified prior to the start of construction of the project or the start of construction on any individual segment of the project. CMP has developed an invasive species control plan and submitted it to the MDEP for review and approval prior to the start of construction of the project. This plan has a stated objective of preventing the introduction and spread of invasive species as a result of construction. Herbicide application is an acceptable method of controlling invasive growth when hand removal or other non-chemical methods will not be effective, including in protected natural resources and other sensitive areas.

Table 1 – Invasive Plant Species

Species	Common Name	Form	Indicator
<i>Acer ginnala</i>	Amur maple*	Tree	NI
<i>Acer platanoides</i>	Norway maple*	Tree	NL (upland)
<i>Actinidia arguta</i>	Hardy kiwi	Vine	NI
<i>Aegopodium podagraria</i>	Goutweed*	Herbaceous	FAC
<i>Ailanthus altissima</i>	Tree of heaven*	Tree	NI
<i>Akebia quinata</i>	Chocolate vine; five leaf-	Vine	NI
<i>Alliaria petiolata</i>	Garlic mustard*	Herbaceous	NL (upland)
<i>Alnus glutinosa</i>	European alder	Tree	NI
<i>Amorpha fruticosa</i>	False indigo*	Herbaceous	FACW
<i>Ampelopsis glandulosa</i>	Porcelainberry*	Herbaceous	NI
<i>Berberis thunbergii</i>	Japanese barberry*	Shrub	FACU
<i>Berberis vulgaris</i>	Common barberry*	Shrub	FACU
<i>Butomus umbellatus</i>	Flowering rush	Shrub	OBL
<i>Cabomba caroliniana</i>	Fanwort**	Herbaceous	NI
<i>Callitriche stagnalis</i>	Starwort	Herbaceous	NI
<i>Cardamine impatiens</i>	Narrowleaf bittercress	Herbaceous	NI
<i>Celastrus orbiculatus</i>	Oriental bittersweet*	Vine	FACU-
<i>Cirsium arvense</i>	Canada thistle	Herbaceous	FACU
<i>Clematis terniflora</i>	Yam-leaved virgin's bower	Vine	UPL
<i>Cynanchum louiseae</i>	Black swallowwort	Vine	NL (upland)
<i>Cynanchum rossicum</i>	Pale swallowwort	Vine	NI
<i>Dioscorea polystachya</i>	Chinese yam	Vine	NI
<i>Egeria densa</i>	Brazilian waterweed**	Herbaceous	OBL
<i>Elaeagnus umbellata</i>	Autumn olive*	Shrub	FACU
<i>Epilobium hirsutum</i>	Hairy willow-herb	Herbaceous	NI
<i>Euonymus alatus</i>	Winged euonymus*	Shrub	NI
<i>Euonymus fortunei</i>	Wintercreeper	Herbaceous	NI
<i>Euphorbia esula</i>	Leafy spurge	Herbaceous	NI
<i>Fallopia japonica</i>	Japanese knotweed*	Herbaceous	FACU

Species	Common Name	Form	Indicator
<i>Fallopia sachalinensis</i>	Giant knotweed	Herbaceous	NI
<i>Fallopia x bohemica</i>	Bohemian knotweed	Herbaceous	NI
<i>Ficaria verna</i>	Lesser celandine	Herbaceous	NI
<i>Frangula alnus</i>	Glossy buckthorn	Shrub	FAC
<i>Glyceria maxima</i>	English water grass	Herbaceous	NI
<i>Heracleum mantegazzianum</i>	Giant hogweed	Herbaceous	NI
<i>Hesperis matronalis</i>	Dame's rocket*	Herbaceous	FACU
<i>Humulus japonicus</i>	Japanese hops	Vine	FACU
<i>Hydrilla verticillata</i>	Hydrilla**	Herbaceous	NI
<i>Hydrocharis morsus-ranae</i>	European frog's bit**	Herbaceous	NI
<i>Impatiens glandulifera</i>	Ornamental jewelweed*	Herbaceous	FAC
<i>Iris pseudacorus</i>	Yellow iris*	Herbaceous	OBL
<i>Lepidium latifolium</i>	Tall pepperwort	Herbaceous	FACU
<i>Ligustrum obtusifolium</i>	Border privet	Shrub	NI
<i>Ligustrum ovalifolium</i>	California privet	Shrub	NI
<i>Ligustrum vulgare</i>	Privet*	Shrub	NI
<i>Lonicera japonica</i>	Japanese honeysuckle*	Shrub	NI
<i>Lonicera maackii</i>	Amur honeysuckle*	Shrub	NI
<i>Lonicera morrowii</i>	Morrow's honeysuckle*	Shrub	FACU
<i>Lonicera tatarica</i>	Tartarian honeysuckle*	Shrub	FACU
<i>Lonicera x bella</i>	Bella honeysuckle*	Shrub	FACU
<i>Lythrum salicaria</i>	Purple loosestrife*	Herbaceous	OBL
<i>Microstegium vimineum</i>	Japanese stilt grass*	Herbaceous	NI
<i>Myosotis scorpioides</i>	Water forget-me-not	Herbaceous	OBL
<i>Myriophyllum aquaticum</i>	Parrot feather**	Herbaceous	OBL
<i>Myriophyllum heterophyllum</i>	Variable milfoil**	Herbaceous	OBL
<i>Myriophyllum spicatum</i>	Eurasian milfoil**	Herbaceous	OBL
<i>Najas minor</i>	Slender-leaved naiad**	Herbaceous	OBL
<i>Nelumbo lutea</i>	American water lotus	Herbaceous	OBL
<i>Nitellopsis obtusa</i>	Starry stonewort	Herbaceous	NI
<i>Nymphoides peltata</i>	Yellow floating heart**	Herbaceous	NI
<i>Oplismenus hirtellus ssp.</i>	Wavyleaf basketgrass	Herbaceous	NI
<i>Persicaria pertoliata</i>	Mile-a-minute vine*	Vine	NI
<i>Phalaris arundinacea</i>	Reed canary grass	Herbaceous	NI
<i>Phellodendron amurense</i>	Amur cork tree*	Tree	NI
<i>Photinia villosa</i>	Oriental photinia	Shrub	NI
<i>Phragmites australis</i>	Common reed	Herbaceous	FACW
<i>Pistia stratiotes</i>	Water lettuce	Herbaceous	OBL
<i>Populus alba</i>	White cottonwood*	Tree	NI
<i>Potamogeton crispus</i>	Curly pondweed**	Herbaceous	OBL
<i>Pueraria lobata</i>	Kudzu	Vine	NI
<i>Pyrus calleryana</i>	Callery ("Bradford") pear	Tree	NI
<i>Ranunculus repens</i>	Creeping buttercup	Herbaceous	FAC

Species	Common Name	Form	Indicator
<i>Rhamnus cathartica</i>	Common buckthorn	Shrub	UPL
<i>Robinia pseudoacacia</i>	Black locust*	Tree	FACU
<i>Rosa multiflora</i>	Multiflora rose*	Shrub	FACU
<i>Rosa rugosa</i>	Rugosa rose	Herbaceous	FACU
<i>Rubus fruticosus</i>	European blackberry	Herbaceous	NI
<i>Rubus phoenicolasias</i>	Wineberry	Herbaceous	NI
<i>Stratiotes aloides</i>	Water soldier	Herbaceous	NI
<i>Thodotipos scandens</i>	Black jetbead	Shrub	NI
<i>Trapa natans</i>	Water chestnut**	Herbaceous	NI
<i>Utricularia inflata</i>	Inflated bladderwort	Herbaceous	OBL

* Plant regulated by the Do Not Sell List, Horticulture Program, Maine Department of Agriculture, Conservation and Forestry.

** Aquatic plant regulated by MDEP.

2.0 Vegetation Clearing and Management Practices – Segment 1 Specific

This section describes the four (4) types of vegetation clearing and management practices required within the Segment 1 corridor, specifically:

- Full canopy height vegetation;
- 35-foot minimum vegetation height;
- Deer travel corridors; and
- Tapered vegetation.

The MDEP Permit designated Wildlife Areas (see Table 2) where specific vegetation clearing and management practices are required and include: full canopy height vegetation, 35-foot minimum vegetation height, or vegetation managed for deer travel (25- to 35-foot softwood species). For all other areas in Segment 1, CMP must implement and manage vegetation in a tapered configuration, described in Section 2.4. Section 5.0 describes the requirements in riparian filter areas adjacent to rivers, streams, and brooks, including those specific to Segment 1.

The NECEC Natural Resource Maps incorporate and depict the vegetation clearing and management practices required by the MDEP Order. On the maps, the transmission centerline line type varies in color according to what vegetation management practice is required.

2.1 Full Canopy Height Vegetation

Full canopy height vegetation is required in three locations within the Segment 1 corridor. These locations, identified more specifically below in Table 2, include the Gold Brook crossing (a portion of Wildlife Area 4), the Mountain Brook crossing (Wildlife Area 6), and the Upper Kennebec River crossing (Wildlife Area 11).

In areas where full canopy height vegetation must be maintained, vegetation will be removed only in areas necessary to access pole locations and install the poles. (There are no pole locations in Wildlife Area 11.) Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line.

2.2 35-Foot Minimum Vegetation Height

In areas where minimum 35-foot tall vegetation must be maintained, only areas necessary to access pole locations or install and maintain poles will be cleared during construction. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. In other areas within the entire width of the corridor only trees taller than 35 feet, or trees that may grow taller than 35 feet prior to the next scheduled maintenance, will be removed during construction. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and may not exceed a three-year cycle within any area within this segment without prior approval from the MDEP.

2.3 Deer Travel Corridors

In consultation with MDIFW, and required by the MDEP Permit, specific areas referred to as deer travel corridors within the Upper Kennebec River DWA (Map ID 060065) must be managed as 25- to 35-foot softwood stands to promote deer movement across the transmission line corridor during the winter months when snow depths have the potential to inhibit deer travel. The NECEC transmission line corridor traverses this DWA from a point in West Forks Plantation to a point in Moxie Gore. The areas identified by the MDEP Permit effectively create ten individual areas, collectively referred to as Wildlife Area 12, to be managed as deer travel corridors.

During the initial vegetation clearing for construction, all capable hardwood species and individual softwood specimens will be cut to heights necessary so that they do not intrude into the conductor safety zone and are not at risk of growing into the conductor safety zone prior to the first scheduled post-construction vegetation maintenance. Softwood specimens that are not intruding into the conductor safety zone and are not at risk of growing into the conductor safety zone prior to the first scheduled post-construction vegetation maintenance cycle will be retained.

Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. The designated deer travel corridors will be flagged prior to construction and identified in a database maintained by CMP, further described in Section 11.0.

Table 2: Wildlife Areas¹

Area Name	From Coordinates (lat, long)	To Coordinates (lat, long)	Location	Min. Veg Height	Notes	Approximate Length (miles)²	Natural Resource Map No.
Wildlife Area 1	45.49628364, -70.65389705	45.49561741, -70.64935131	Beattie Twp	35'	Includes Number One Brook not visible from Beattie Pond	0.22	8, 9
Wildlife Area 2	45.46431117, -70.56925893	45.46291336, -70.54484557	Skinner Twp	35'	Includes crossing of the South Branch of the Moose River (all of TNC 2)	1.19	20, 21, 22, 23
Wildlife Area 3	45.46350041, -70.51607006	45.46481614, -70.49109824	Skinner Twp Appleton Twp	35'	Includes five perennial streams and four intermittent streams	1.25	26, 27, 28
Wildlife Area 4	45.46615984, -70.45270383	45.46311974 -70.40751264	Appleton Twp	35' (except full canopy height at Gold Brook crossing)	Includes Gold Brook crossing (structures 432-746 to 432-741) and Roaring Brook Mayfly habitat adjacent to that crossing where full canopy height vegetation is required, as well as group of 5 unnamed streams; portions adjacent to Leuthold Preserve	2.18	33, 34, 35, 36, 37, 38
Wildlife Area 5	45.47206202, -70.33192742	45.49411339, -70.24441057	Hobbs town Twp T7 BKP WKR Bradstreet Twp	35'	Includes area near Moose Pond and surrounding land owned by BPL, Whipple Brook crossing, areas adjacent to Leuthold Preserve, and unnamed stream crossing where topography may allow crossing without taller poles (structures 432-717 to 432-716)	4.87	46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57
Wildlife Area 6	45.47472852, -70.10099603	45.46991721, -70.10534506	Johnson Mtn Twp	Full canopy height	Mountain Brook crossing, includes Roaring Brook Mayfly habitat	0.38	76, 77
Wildlife Area 7	45.43511224, -70.03821586	45.43757616, -70.03451059	Johnson Mtn Twp	35'	Cold Stream crossing; adjacent to Cold Stream Forest Tract	0.23	91

Area Name	From Coordinates (lat, long)	To Coordinates (lat, long)	Location	Min. Veg Height	Notes	Approximate Length (miles) ²	Natural Resource Map No.
Wildlife Area 8	45.44260293, -70.00541135	45.44315901, -70.00109742	Johnson Mtn Twp	35'	Unnamed stream crossing where 35-foot vegetation likely can be maintained without taller poles	0.21	95
Wildlife Area 9	45.41967147, -69.98245727	45.39922953, -69.94817359	West Forks	35'	Includes Tomhegan Stream crossing and adjacent to Cold Stream Forest Tract	2.21	100, 101, 102, 103, 104, 105
Wildlife Area 10	45.362187, -69.913515	45.359305, -69.912368	Moxie Gore	35'		0.19	113
Wildlife Area 11	45.37492343, -69.94696772	45.37102781, -69.93728547	West Forks Moxie Gore	Full canopy height	Upper Kennebec River crossing, Eastern edge of the clearing for the HDD Termination Station in West Forks to the western edge of the clearing for the HDD Termination Station in Moxie Gore	0.56	108, 109
Wildlife Area 12	45.37065356, -69.93010848	45.37040077, -69.92526549	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA	0.23	110, 111
	45.36623618, -69.91512820	45.36373432, -69.91413169	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA	0.18	112
	45.36277778, 69.91361111	45.362187, -69.913515	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA.	0.09	112, 113
	45.359305, -69.912368	45.3591667, -69.91138889	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA.	0.1	113

¹References to structure numbers have been updated to Lat/Long Coordinates, rather than structure numbers, to maintain consistency with the areas defined by the MDEP permit.

²Total distance along the Segment 1 corridor with taller vegetation is approximately 14.08 miles.

2.4 Tapered Vegetation

Tapering refers to a form of vegetation management along the transmission line corridor where increasingly taller vegetation is allowed to grow as the distance from the wire zone increases (see Figure 2 of this Exhibit.).

Tapered vegetation is required along the entire Segment 1 corridor, except where full canopy height vegetation, vegetation with a minimum height of 35 feet, or taller vegetation managed for deer travel corridors is required. In Wildlife Area 12 taller vegetation is required for deer travel corridors 1 through 8. Within this wildlife area, tapering is required along the transmission line corridor in the sections outside the deer travel corridors.

Along Segment 1 where tapering is required, the transmission line includes two conductors running parallel to each other and separated by 24 feet. A shield wire runs over each conductor. The wire zone is the 54-foot wide area that runs along the center of the 150-foot wide corridor and includes the 24-foot wide area below and between the two conductors, plus 15 feet on each side of the set of conductors (15 ft. + 24 ft. + 15 ft. = 54 ft.).

In tapered corridor areas, within this 54-foot wide wire zone all woody vegetation will be cut to ground level during construction. The result is that within the 54-foot wide wire zone vegetation that is approximately 10 feet tall regenerates so that the wire zone primarily consists of native, scrub-shrub habitat with non-capable species.

In a tapered corridor, the area outside the wire zone will be selectively cut during construction to create a taper with vegetation approximately 15 feet tall near the wire zone and increasing to approximately 35 feet tall near the edge of the 150-foot wide corridor. The first taper includes the areas within 16 feet of each side of the wire zone, within which vegetation 15 feet tall and under, including capable species, will be maintained. To minimize the environmental impact of the corridor to the greatest extent practicable, including reasonable efforts to avoid the growth of even-aged stands within each taper, vegetation in the tapered corridor will be managed as described in the following paragraph.

As vegetation maintenance proceeds through the first several cycles, the 15-foot tall tapered “tier” will become dominated by shrubs, because many shrubs exceed ten feet in height, so maintenance will have an effect similar to the effect in the 54-foot wire zone. The second tapered tier includes the next 16 feet on each side of the corridor, within which taller vegetation up to 25 feet tall will be maintained. The 25-foot tall tier will be dominated by tree species, with a smaller shrub component because most shrubs in the region do not exceed 25 feet at maximum mature height. Following initial vegetation clearing in these zones, there will be variation in species composition similar to the composition prior to construction clearing, but without the taller individuals. In deciduous and mixed-deciduous stands, the early maintenance cycles will favor

establishment of fast-growing deciduous species because not treating them with herbicides will allow rapid regrowth primarily from coppicing (growth of shoots from cut stumps). In addition, increased sunlight will allow regeneration from seed, with the species composition of seedling establishment varying with the amount of soil moisture and mineral soil exposure. The third and final tapered tier includes the next 16 feet on each side of the corridor, within which taller vegetation up to 35 feet tall will be maintained. Similar to the 25-foot zones, the 35-foot vegetation zones will be dominated by tree species, with a smaller shrub component because most shrubs in the region do not exceed 25 feet at maximum mature height. Most of the above description for the 25-foot height zone applies to 35-foot height zones with a few differences.

First, retention of taller individuals will maintain stand compositions more closely matching the original stand for longer throughout the early maintenance cycles because fewer individual trees will be removed. This will inhibit coppicing of deciduous trees, benefitting coniferous individuals in the stand. Second, removing fewer individual trees, and placement of the 35-foot zone alongside the 25-foot zone will result in less sunlight, so there will be less release from suppression as was described above and slower overall growth of the stands in the 35-foot height zone. This higher shade component will also favor regeneration and release of more shade-tolerant coniferous species, primarily spruce and fir. Third, the 35-foot height zone will be more strongly influenced by the forest management that occurs immediately adjacent to the project right-of-way, which is beyond the control of CMP. For example, if adjacent areas are cut more heavily, increased sun exposure will have effects more like those described above for the 25-foot height zone, i.e., faster understory release and greater seedling establishment. Trees within each 16-foot wide “tier” will be selectively cut in a manner that retains those trees that do not exceed their respective tier’s designated height. However, to ensure that no trees intrude into the conductor safety zone, any trees anticipated to exceed their respective tier’s designated height prior to the first scheduled post-construction maintenance cycle will be cut at ground level.

The overall result is that a cross section of a 150-foot wide tapered corridor breaks down into the following components:

16’ 3rd taper + 16’ 2nd taper + 16’ 1st taper + 54’ wire zone + 16’ 1st taper + 16’ 2nd taper + 16’ 3rd taper = 150’ wide corridor. The approximate maximum vegetation height of each taper is:

- 1st taper: 15-feet
- 2nd taper: 25-feet
- 3rd taper: 35-feet

Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. Soil disturbance and grading will be minimized through careful planning of temporary access ways. When the temporary access ways are removed, the disturbed areas will be restored to their pre-construction

grade and allowed to revegetate. Except for the areas immediately around the base of each transmission line structure, the full width and length of the transmission corridor will remain vegetated following construction of the Project.

3.0 Vegetation Clearing and Management Methods – All Transmission Line Corridor Areas

3.1 Mechanical Methods

During construction, vegetative clearing of capable species will be completed primarily with mechanical equipment, including motorized equipment. All capable species and any dead or hazard trees will be cut at ground level except in designated buffer zones, as described below. Large vegetation cut during construction will be handled in accordance with the Maine Slash Law³. Any wood that is chipped and spread on the corridor will be left in layers no more than two inches thick, as measured above the mineral soil surface.

As a conservation effort to protect the Northern Long-eared Bat, CMP will suspend tree clearing activities during the maternity roost season of June 1 to July 31. Additionally, initial clearing activities will be performed during frozen ground conditions, to the extent practicable, and, if not practicable, the recommendations of the environmental inspector will be followed regarding the appropriate techniques to minimize disturbance, such as the use of selectively placed travel lanes.

Access roads and travel lanes will be located to protect sensitive and protected natural resources to the maximum extent practicable and construction matting will be used in accordance with CMP's environmental guidelines and per the timber mat performance standards provided below.

Timber mats or matting used for construction:

- shall not be made from wood from ash trees (*Fraxinus* sp);
- shall be constructed of unfinished timbers free of bark, unless produced by a firm certified by the Maine Forest Service (MFS) for production of mats with incidental bark for this project. Such mats must be marked as outlined in the supplier's agreement. Applicant shall maintain a copy of the MFS compliance agreement including a representation of the accepted mark in the records for agency review, if requested;
- shall be cleaned of soil and vegetative material by pressure washing before entering the State of Maine;
- shall not have been used in, or made from lumber from, Federally Quarantined areas as set out in 7 CFR 301 unless accompanied by the appropriate USDA certificate of treatment required for interstate transport. Said certificates will be

3 12 MRS §§ 9331 et seq.

maintained in a central filing location available for review by appropriate Agency personnel for a period of three (3) years after project completion, as determined by CMP; and

- must have shipping information sufficient to identify the shipper and number and shipping origin of the mats.

The MFS and U. S. Department of Agriculture will be allowed to inspect timber mats and matting material used for the project for compliance with these standards.

3.2 Herbicide Application

Herbicide applications will likely begin after clearing is completed to gain control of vegetation growth (except for areas listed below where no herbicides will be applied). When control is achieved, treatment will typically occur as part of scheduled maintenance on a 4-year cycle or as needed. By using herbicides, desired vegetation along the transmission line corridor will eventually consist of a dense, low-growing plant community that will discourage the establishment of capable tree species. Therefore, fewer capable woody species and specimens will require treatment in future applications.

The following procedures and restrictions will be implemented during herbicide applications:

- a. No herbicides will be used in Segment 1 of the Project.
- b. No herbicides will be used within the full width and length of the transmission line corridor adjacent to the 174-acre parcel near Allen Pond in Greene, i.e., the portion of the corridor between transmission line structures 432-23 and 432-29.1.
- c. Herbicides will be used in strict accordance with the manufacturer's EPA-approved labeling and will not be applied directly to waterbodies or areas where surface water is present;
- d. In the co-located sections outside the GOM DPS, no foliar herbicides will be applied within 75 feet of rivers, streams, brooks, lakes, ponds, or within 25 feet of wetlands that have water present at the surface at the time of the application.
- e. For streams and rivers classified as outstanding river segments, as well as those containing threatened or endangered species (e.g., Atlantic salmon) and coldwater fisheries, and all streams within the GOM DPS that include the critical habitat, no foliar herbicides will be applied within a 100-foot buffer. This requirement extends to all streams, regardless of classification, located immediately west of Moxie Pond.
- f. Herbicides will not be applied to stumps (cut stump treatment) within areas of standing water.
- g. Herbicides will not be mixed, transferred or stored within 100 feet of any wetland or surface water. On public access roads, herbicide mixing, transfer or storage may be done within 100 feet of wetlands or surface waters;
- h. Herbicides will not be mixed, transferred or stored within 100 feet of Significant Vernal Pool depressions. On public access roads, herbicide mixing, transfer or storage may be done within 100 feet of Significant Vernal Pool depressions;
- i. Unless performed on public access roads, herbicides will not be mixed, transferred or stored over mapped significant sand and gravel aquifers;
- j. Herbicides will not be applied, mixed, transferred or stored within 100 feet of any known private well or spring or within 200 feet of any known public water supply well. On public access roads, herbicide mixing, transfer or storage may be done within 200 feet of known public water supply wells;

- k. When herbicide applications are performed in wetlands without standing water, only herbicides approved for use in wetland environments will be used;
- l. Herbicides will not be applied to any area when it is raining or when wind speed exceeds 15 miles per hour as measured on-site at the time of application. When wind speeds are below 3 miles per hour, applicators should be aware of whether a temperature inversion is present, and should consult the herbicide label to determine whether application should proceed under these conditions;
- m. The foreman or licensed applicator on each herbicide application crew will be licensed by the Maine BPC and will remain in eye contact and within earshot of all persons on his/her crew applying herbicides. At least one individual from any company applying herbicides will also hold a Commercial Master Applicator License issued by the BPC. This Master Applicator must have the ability to be on-site to assist persons applying herbicides within six hours driving time. If an out-of-state company is conducting the herbicide application, the company will have a Master Applicator in Maine during any application. Application of herbicides will be in accordance with applicable regulations promulgated under the Maine Pesticides Control Act, including those regulations to minimize drift, to maintain setbacks from sensitive areas during application, and to maintain setbacks from surface waters during the storing/mixing/loading of herbicides; and
- n. Herbicides will typically be mixed in a truck-mounted tank that remains on public access roads. Herbicide application is done by personnel with low-volume, hand-pressurized (manual) backpacks with appropriate nozzles, to minimize drift, who travel along the transmission line corridor by foot or by all-terrain vehicle and spot-treat target species and specimens.

The location of all streams, wetlands, significant vernal pools, rare plant locations, known wells, and mapped significant sand and gravel aquifers crossed by the transmission line corridor will be provided to construction personnel.

3.3 Petroleum Product & Hazardous Materials Management

Any petroleum products or other hazardous material within the transmission line corridor during construction will be managed in accordance with CMP's Environmental Control Requirements for Contractors and Subcontractors – Oil and Hazardous Material Contingency Plan (see Exhibit 15-1 of the NECEC Site Law Application) and will include the following setbacks unless CMP can demonstrate to the MDEP and USACE that, due to special circumstances at specified locations, these setbacks are impractical at those locations.

- (a) No fuel storage, vehicle/equipment parking and maintenance, and refueling activity may occur within 100 feet of a protected wetland or other waterbody, unless no practicable alternative exists and secondary containment with 110% capacity is provided for any fuel storage containers or tanks, or if it occurs on a paved road.

- (b) No fuel storage, vehicle/equipment parking and maintenance, and refueling activity may occur within 200 feet of a known private water supply.
- (c) No fuel storage, vehicle/equipment parking and maintenance, and refueling activity may occur within 400 feet of a known public water supply.
- (d) No fuel storage, vehicle/equipment parking and maintenance and refueling activity may occur within 25 feet minimum of the following:
 - (i) An area listed in Maine’s biological conservation data system, Biotics, of the Maine Natural Areas Program of the Department of Agriculture, Conservation and Forestry (MNAP), including rare natural communities and ecosystems (state rarity rank of S1 through S3 and habitats supporting Endangered or Threatened plant species). Boundaries and locations are as determined by MNAP.
 - (ii) Habitat of any species declared rare, threatened or endangered by the Maine Department of Inland Fisheries and Wildlife (MDIFW), Maine Department of Marine Resources, or the Director of the U.S. Fish and Wildlife Service.

4.0 Vegetation Clearing and Management within Freshwater Wetlands

Transmission line corridor wetlands range in type from small, emergent wetlands formed in ruts from logging equipment to large forested wetland systems.

4.1 Vegetation Clearing Restrictions within and Adjacent to Freshwater Wetlands

The following restrictions apply to vegetation clearing within freshwater wetlands and their buffers:

- a. Unless frozen, heavy equipment travel in wetlands will be performed on construction matting, or other approved alternative protective measures will be implemented.
- b. If initial clearing or other construction activities result in areas of bare soil or minimally vegetated cover, these areas will be allowed to revegetate naturally, where practicable. If areas are sufficiently large to warrant planting, a native seed designed to provide short term cover will be applied, and the area will be allowed to return to non-capable native woody and perennial herbaceous vegetation naturally.
- c. No accumulation of slash will be left within wetlands.

5.0 Vegetation Clearing within Stream Buffers (Riparian Filter Areas)

Stream buffers, as measured horizontally from the top of each stream bank, will be established for vegetation removal along streams within the transmission line corridor. A “stream buffer” is a buffer on a stream, river, or brook. In no case may the stream buffer be reduced to less than 75 feet.

Additional restrictions will be applied within 100 feet of streams meeting certain criteria, as described in Section 5.1 below.

This section describes the additional restrictions related to vegetation removal within these stream buffers. All vegetation clearing procedures and restrictions that apply to vegetation management for transmission line corridor construction also apply within the stream buffers.

5.1 Additional Vegetation Clearing Restrictions within Stream Buffers

The following additional restrictions apply to vegetation clearing within stream buffers:

- a. Unless more restrictive requirements apply⁴, riparian natural buffers (or “stream” buffers) will be retained within 100 feet of all streams (intermittent and perennial) in the GOM DPS, all perennial and coldwater fishery streams within Segment 1 of the Project and all coldwater fisheries in other segments, outstanding river segments, or rivers, streams, or brooks containing Threatened or Endangered species (e.g., Atlantic salmon) unless the MDEP determines that the functions and values of the stream buffer will not be impacted by the removal of vegetation and approves an alternative minimum buffer.
- b. In the area adjacent to Moxie Pond in Segment 2, CMP will construct and maintain the project with a 100-foot riparian filter area identical to the riparian filter areas adjacent to coldwater fishery streams in Segment 1.
- c. For streams in areas where the new transmission line will be co-located within existing rights-of-way, CMP proposes to maintain a 75-foot buffer, unless meeting any of the above criteria, since the existing corridor is currently being maintained in an early successional state according to the guidelines set forth in CMP’s Vegetation Management Plan (Exhibit D), and the effect of the additional clearing (typically less than 75 feet) to accommodate the new line has been minimized.
- d. The boundary of each stream buffer will have unique flagging installed to distinguish between the applicable 75-foot or 100-foot stream buffer prior to clearing. Flagging will be maintained throughout construction.
- e. Foliar herbicides will be prohibited within the stream buffer, and all refueling/maintenance of equipment will be excluded from the buffer unless it occurs on an existing paved road or if secondary containment is used with oversight from an environmental inspector.
- f. All stream crossings by heavy equipment will be performed through the installation of equipment spans with no in-stream disturbances. Streams will not be forded by heavy equipment.

⁴ More restrictive requirements include, but are not limited to, requirements to maintain taller vegetation within the corridor such as provided for in Section 2, Table 2.

- g. Initial tree clearing will be performed during frozen ground conditions whenever practicable, and if not practicable, the recommendations of the environmental inspector will be followed regarding the appropriate techniques to minimize disturbance such as the use of selectively placed travel lanes within the stream buffer. CMP will not place any transmission line structures within the stream buffer, unless specifically authorized by the MDEP and accompanied by a site-specific erosion control plan. No structures will be placed within 25 feet of any stream regardless of its classification.
- h. Within that portion of the stream buffer that is within the wire zone (i.e., within 15 feet, horizontally, of any conductor; see Figure 1), all woody vegetation over 10 feet in height, whether capable or non-capable, will be cut back to ground level and resulting slash will be managed in accordance with Maine's Slash Law. No other vegetation, other than dead or hazard trees, will be removed. Within the stream buffer and outside of the wire zone, non-capable species may be allowed to exceed 10 feet in height unless it is determined that they may encroach into the conductor safety zone prior to the next four year maintenance cycle. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and must not exceed a three-year cycle within any particular area within this segment without prior approval from the MDEP;
- i. Removal of capable species and dead or hazard trees within the stream buffer will typically be accomplished by hand-cutting. Use of mechanized harvesting equipment is allowed if supported by construction matting or during frozen conditions in a manner (i.e., use of travel lanes and reach-in techniques) that preserves non-capable vegetation less than 10 feet in height to the greatest extent practicable. Within the wire zone all woody vegetation may be cut to ground level;
- j. No slash will be left within 50 feet of any stream; and,
- k. Any construction access roads that must cross streams or brooks must be designed, constructed, and maintained to minimize erosion and sedimentation.

Allowing non-capable vegetation to remain as described above within the stream buffer will provide shading and reduce the warming effect of direct sunlight (insolation). Low ground cover vegetation will also remain to filter any sediment in surface runoff. These restrictions will allow the stream buffers to provide functions and values similar to those provided prior to transmission line construction.

5.2 Vegetation Management within the Roaring Brook Mayfly and Northern Spring Salamander Conservation Management Areas of Mountain Brook and Gold Brook

During consultation with MDIFW for the NECEC project, MDIFW identified Gold Brook (PSTR 15-06, PSTR 16-07, PSTR 16-10 and PSTR 16-15) and Mountain Brook (PSTR-33-01, PSTR-EM-34-01, PSTR-EM-34-01) as high priority resources in which full height vegetation should be retained within the 250-foot conservation management areas to protect the habitat of Roaring Brook Mayfly and Northern Spring Salamander. Gold Brook in Appleton Twp contains Roaring Brook Mayfly habitat, while Mountain Brook in Johnson Mountain Twp contains both

Roaring Brook Mayfly and Northern Spring Salamander habitat. These areas are identified in Table 2, as portion of Wildlife Area 4 and the length of Wildlife Area 6 and will be maintained consistent with the requirements of Section 2.1 above.

6.0 Vegetation Clearing within Significant Vernal Pool Habitat (SVPH)

Vegetated buffers of 250 feet, as measured from the edge of the pool depression, will be established for SVPs crossed by the transmission line corridor. The SVP depression and buffer area together comprise the SVPH. Vegetation clearing within the SVPH will be subject to the same procedures and prohibitions, as applicable, that are required in the typical transmission line corridor, as well as to the additional measures below.

6.1 Additional Vegetation Management Restrictions within SVPH

The following additional restrictions apply to vegetation clearing within SVPH:

- a. Mechanized equipment will not be allowed within the vernal pool depression, unless the depression encompasses the entire width of the transmission line corridor. Mechanized equipment will only be allowed to cross the vernal pool depressions during frozen or dry conditions or with the use of mats;
- b. Initial clearing within a SVPH will occur during frozen ground conditions. If not practicable, hand cutting or reach-in techniques will be used. If that is not adequate, travel lanes to accommodate mechanical equipment in the 250-foot buffer may be used with approval of the MDEP.
- c. Between April 1 and June 30 in any calendar year, no vegetation removal using tracked or wheeled equipment will be performed within the 250-foot SVPH ;
- d. No refueling or maintenance of equipment, including chainsaws, will occur within 250 feet of SVP depressions, unless conducted on a public access road;
- e. No herbicide use is permitted within 25 feet of the SVP pool depression; and
- f. No accumulation of slash will be left within 50 feet of the edge of the SVP depression and slash piles will not exceed 18 inches tall.

7.0 Vegetation Clearing within Moderate or High Value Inland Waterfowl and Wading Bird Habitat

Inland Waterfowl and Wading Bird Habitats (IWWH) are habitats mapped by the MDIFW that contain an inland wetland complex used by waterfowl and wading birds, plus a 250-foot nesting habitat area surrounding the wetland. The nesting habitat is part of the mapped IWWH. No additional buffers are proposed for IWWHs beyond this mapped habitat, and as such the vegetation maintenance restrictions apply to the mapped habitat only.

A survey for Great Blue Heron colonies within or immediately adjacent to existing IWWH will be conducted by CMP between April 20 and May 31, and prior to initial transmission line

clearing. If any colonies are identified, CMP will consult with MDIFW and obtain approval from the MDEP prior to construction in the vicinity of any colony.

Vegetation clearing within the IWWH will be subject to the same procedures and prohibitions, as applicable, that are required in the typical transmission line corridor and for stream buffers.

7.1 Additional Vegetation Clearing Restrictions within Inland Waterfowl and Wading Bird Habitat

The following additional restrictions apply to vegetation clearing within mapped IWWH:

- a. If practicable, vegetation clearing will take place during frozen ground conditions. If not practicable, vegetation within IWWH will be removed using hand cutting or reach-in techniques and appropriate techniques to minimize disturbance to the maximum extent practicable, such as the use of travel lanes to accommodate mechanical equipment use in the IWWH.
- b. Between April 15 and July 15, use of motorized vehicles (e.g., all-terrain vehicles) and mechanized equipment (e.g., chainsaws or brush cutters) within IWWH is prohibited. Use of non-mechanized hand tools is allowed during this time period;
- c. No refueling or maintenance of equipment, including chainsaws, will occur within the IWWH, unless done so on a public access road; and
- d. No herbicide use is permitted within 25 feet of any wetland within the mapped IWWH.
- e. Where overhead transmission lines cross an IWWH area, CMP will install bird diverters or aviation marker balls according to the manufacturer's guidelines and applicable transmission line codes unless otherwise determined to be impracticable by the MDEP in consultation with MDIFW.
- f. Provided they do not present a safety hazard and are naturally present, CMP will leave undisturbed a minimum of 2-3 snags per acre to provide nesting habitat for waterfowl. Where appropriate, to mitigate habitat impacts due to the development, and as approved by the MDEP, capable species will be topped, girdled, and/or treated with herbicides (except in areas where herbicides are prohibited per this Plan) to prevent re-growth to create snags. Snags will be 12-16 inch in diameter or the largest size available from the existing stand of vegetation.
- g. No accumulation of slash will be left within the IWWH.
- h. Impacts to scrub-shrub and herbaceous vegetation within the IWWH will be minimized to the maximum extent practicable.

8.0 Vegetation Clearing within Mapped Deer Wintering Areas

Deer Wintering Areas (DWA) provide important refuge for white-tailed deer (*Odocoileus virginianus*) during the winter months in northern climates and are typically characterized by an extensive stand of mature softwood species with a dense forest canopy.

During construction, impacts to scrub-shrub and herbaceous vegetation and other non-capable species will be minimized to the maximum extent practicable. No additional vegetation clearing restrictions are proposed within mapped DWAs in the co-located portions of the Project, as all capable species will be removed from these and other areas within the transmission line corridor to comply with NERC Transmission Vegetation Management standards. Clearing restrictions within the Upper Kennebec DWA are provided below. To enhance wildlife habitat in and adjacent to DWAs, including the Upper Kennebec DWA, disturbed soils in upland areas will be revegetated with a Wildlife Seed Mix, promoted by the Sportsman's Alliance of Maine (SAM) and developed with Maine Seed Company. This wildlife-friendly seed mix will offer nutrition to deer and other wildlife such as moose, rabbits, ruffed grouse, geese, and wild turkeys during late fall and early spring when woods forage is sparse. The tender shoots derived from SAM's seed mix offer forage that is high in calories and protein, and are highly digestible to deer.⁵

9.0 Vegetation Clearing within State-mapped Rusty Blackbird Habitat

In consultation with MDIFW for the NECEC Project, CMP agreed to allow for the retention of 10-foot to 15-foot tall spruce/fir vegetation within the Rusty Blackbird habitat, the extent of which is shown on the Natural Resource Maps (maps 69-70). The additional height will avoid project impacts to habitat of this State Species of Special Concern.

Clearing activity is prohibited in this habitat between April 20 and June 30. During the initial vegetation clearing for construction activities, all capable hardwood species and softwood specimens over 15 feet in height, as well as those anticipated to grow taller than 15 feet in height prior to the next scheduled vegetation maintenance, will be cut at ground level and removed. Spruce/fir vegetation 10-15 feet in height will be retained. The access roads and structure preparation areas within the Rusty Blackbird habitat will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair and/or emergency access during operation of the line. The habitat will be flagged prior to construction and identified in a database maintained by CMP, further described in Section 11.0.

10.0 Wood Turtle Habitat

Clearing activity is prohibited in mapped wood turtle habitat between April 16 and October 14.

11.0 Vegetation Clearing within Rare Plant Locations

Vegetation clearing of the transmission line corridor has the potential to impact rare plants and/or alter their habitat. The following additional vegetative clearing restrictions will minimize such impacts. The additional restrictions will apply only to the demarcated locations of the identified

⁵ Lavigne, G., Experimental Wildlife Seed Mix Available through SAM, Maine Forest Products Council, June 2013.

rare plants. No additional buffers will be established surrounding rare plant locations. These restrictions are intended to maintain existing hydrology and limit soil disturbance within rare plant locations.

11.1 Additional Vegetation Clearing Restrictions within Rare Plant Locations

The following additional restrictions will apply to vegetation clearing for rare plant species in the identified location:

- a. Unless rare plant locations encompass the entire width of the transmission line corridor, mechanized equipment will only be allowed to cross rare plant locations during frozen conditions, on established travel paths/crossings, or with the use of mats.
- b. Initial clearing within rare plant communities will be undertaken during frozen ground conditions whenever practicable, and if not practicable selective mat placement and reach-in techniques will be used to minimize disturbance to the rare plant communities to the maximum extent practicable.
- c. If initial clearing or other construction activities result in areas of bare soil or minimally vegetated cover, where practicable, these areas will be allowed to revegetate naturally. If areas are sufficiently large to warrant planting, a native seed mix designed to provide short term cover will be applied and the area will be allowed to return to native woody and perennial herbaceous vegetation naturally.
- d. Heavy equipment travel within rare plant communities will be minimized to the maximum extent practicable. Hand cutting or reach-in techniques to cut and remove capable tree species and vegetation over 10 feet tall within the wire zone, or other techniques as agreed upon in consultation with the MDEP and MNAP, will be used. When equipment access is necessary, activity will be restricted to a few narrow travel lanes that have been clearly marked prior to clearing activity.
- e. No refueling or maintenance of equipment, including chain saws, will occur within demarcated rare plant locations, unless done on a public access road.
- f. No foliar herbicide use is permitted within the demarcated rare plant locations, however cut surface herbicides may be used on capable species and specimens outside of Segment 1.
- g. No herbicides will be used within the full width and length of the transmission line corridor adjacent to the 174-acre parcel near Allen Pond in Greene, i.e., the portion of the corridor containing transmission line structures 432-23 to 432-29.1.

12.0 Vegetation Clearing Procedures over Mapped Significant Sand and Gravel Aquifers

Transmission lines located over mapped significant sand and gravel aquifers are subject to the typical transmission line corridor clearing procedures, except that no refueling or maintenance of equipment, and no herbicides may be mixed, transferred or stored, over the mapped significant sand and gravel aquifers, unless done so on a public access road.

13.0 Vegetation Clearing Procedures for Tapered Vegetation Management Along the Appalachian Trail

As required by Appendix A of the June 2020 Memorandum of Agreement between the United States Army Corps of Engineers, United States Department of Energy, United States Department of Interior National Park Service, Maine Historic Preservation Commission, and CMP, vegetation tapering is required on both the forested (generally southerly) side of the corridor and the currently cleared (generally northerly) side of the corridor in the vicinity of the Appalachian Trail in Bald Mountain Township. These areas include the following coordinates:

From: 45° 15' 17.849" N, 69° 49' 58.76" W **To:** 45° 14' 40.565" N, 69° 49' 28.577" W

Tapering adjacent to Section 432 will be implemented in a similar fashion as described in Section 2.4, Tapered Vegetation, above. However, scrub shrub vegetation will be maintained in the center of the corridor beginning from the outside edge of the wire zone west of Section 432 to the outside edge of the wire zone east of Section 222. Vegetation on the Section 222 side of the corridor, which is currently cleared of capable vegetation, will be allowed to grow into a tapered configuration over time. The extent of this area is depicted on the Natural Resource Maps (maps 133, 134, 135).

14.0 Locating and Marking Buffers and Habitats

A database will be maintained, including maps and GIS shapefiles, of the buffers, restricted habitats, and sensitive areas and their locations relative to the nearest structure or road location. The distance and direction from the nearest structure to the sensitive area will be included with the name of the area and the structure number. All structures along the transmission line corridor will be numbered at the time of construction.

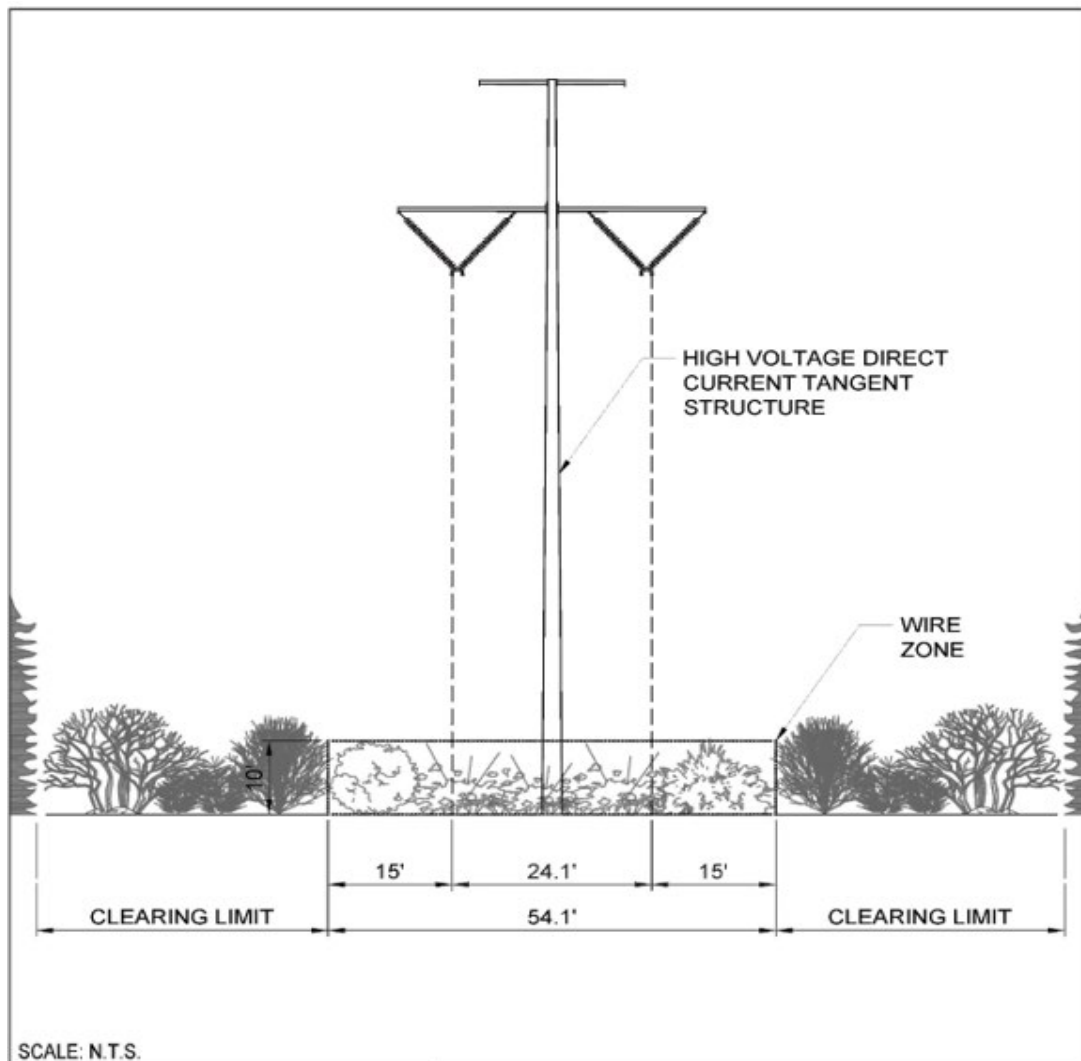
To aid in identifying restricted areas, buffers and restricted habitats will be located and demarcated in the field using brightly colored flagging or signage prior to the initiation of clearing and construction activities along the transmission line corridor. Alternatively, use of GIS data and GPS equipment may be used to provide accurate location of resources and associated buffers. If desired, personnel may permanently demarcate restricted habitats to aid in construction activities. Personnel working on the transmission line corridor will be provided a copy of this VCP. Use of the VCP in conjunction with the natural resource maps and Plan & Profile drawings will enable construction contractors to locate and mark restricted areas in the field.

15.0 Personnel Training

Personnel who will conduct vegetation clearing on the transmission line corridor will receive appropriate environmental training before being allowed access to the transmission line corridor. Construction and clearing personnel will be required to review this VCP prior to the training and before conducting any clearing or construction activities. The level of training will be dependent on the duties of the personnel. The training will be given prior to the start of clearing or construction activities. Replacement or new clearing or construction personnel that did not receive the initial training will receive similar training prior to performing any activities on the transmission line corridor.

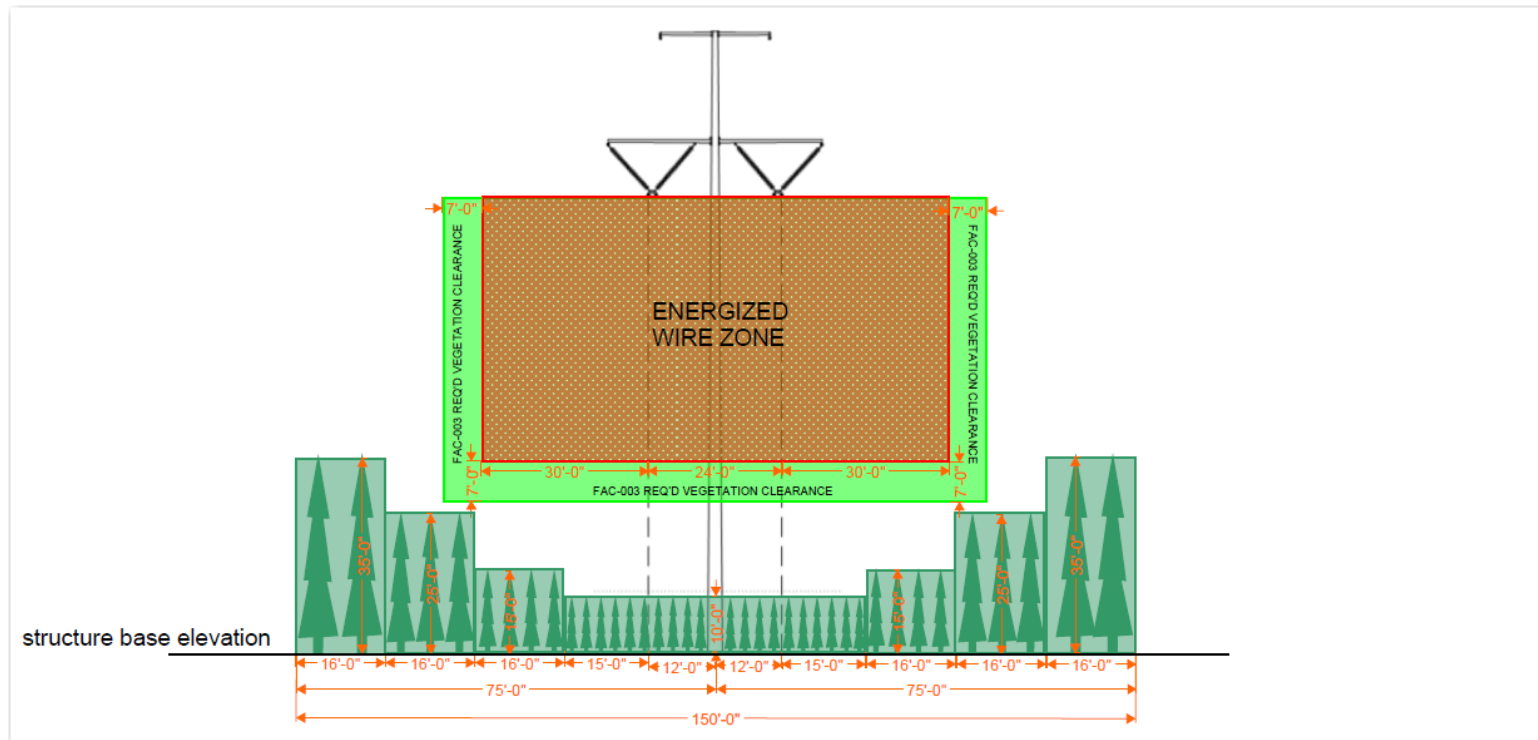
The training session will consist of a review of the buffers and restricted habitats, the respective vegetation clearing requirements and restrictions for each, and a review of how these areas and resources can be located in the field. Training will include familiarization with and use of GIS information and sensitive natural resource identification in conjunction with the contents of this VCP, as well as basic causes, preventive and remedial measures for contamination, and erosion and sedimentation of water resources.

Figure 1: Vegetation Maintenance for the HVDC Transmission Line



1. Except for the vegetation clearing practices described in Section 2.0 (i.e., full height canopy, minimum 35-foot tall trees, and vegetation tapering requirements in Segment 1) capable species, regardless of height, are cut back to ground level or treated with herbicides within the entire length and width of the transmission line corridor during scheduled vegetation maintenance (every 4 years). However, within stream buffers, only capable specimens over 10 feet tall may be cut or treated (specimens at or above this height are likely to grow into the conductor safety zone prior to the next scheduled vegetation maintenance cycle).
2. All woody vegetation over 10 feet in height and inside the wire zone, whether capable or non-capable, is cut back to ground level during scheduled vegetation maintenance.
3. Vegetation maintenance cycle may not exceed 3 years on Segment 1 without prior approval from MDEP.

Figure 2. Tapered Vegetation Maintenance Cross Section



**New England Clean Energy Connect
Post-Construction Vegetation Maintenance Plan**

Prepared by:

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Revised October 2020



Introduction

This post-construction Vegetation Maintenance Plan (VMP) describes the restrictive maintenance requirements for protected natural resources within Central Maine Power Company's (CMP) New England Clean Energy Connect (NECEC) project transmission line corridor. The requirements described in this VMP apply to routine maintenance and are not intended to apply to emergency maintenance and/or repair actions.

The goal of this VMP is to provide maintenance personnel and contractors with a cohesive set of vegetation maintenance specifications for transmission line corridor. This VMP is intended to be used in conjunction with project As-Built Plan & Profile drawings to locate the areas where maintenance restrictions apply.

The protected natural resources and visually sensitive areas subject to restrictive and protective maintenance requirements include:

- Wetlands and streams (intermittent and perennial);
- Perennial streams within Segment 1 of the NECEC project;
- All streams (intermittent and perennial) within the Atlantic salmon Gulf of Maine Distinct Population Segment (GOM DPS), which includes the critical habitat;
- Outstanding river segments, rivers, streams or brooks containing threatened or endangered species (e.g., Atlantic salmon);
- Gold Brook and Mountain Brook containing State Threatened Roaring Brook Mayfly (*Epeorus frisoni*) and/or State Special Concern Northern Spring Salamander (*Gyrinophilus porphyriticus*) species;
- State Special Concern Species Habitat: Rusty Blackbird (*Euphagus carolinus*) and Wood Turtle (*Glyptemys insculpta*);
- Significant Vernal Pools (SVP);
- Inland Waterfowl and Wading Bird Habitat (IWWH);
- Deer Wintering Areas (DWA);
- Potential maternal roosting areas for Northern Long-eared Bat (*Myotis septentrionalis*);
- Rare plant locations;
- Locations over mapped significant sand and gravel aquifers; and
- Viewpoints from Coburn Mountain and Rock Pond.

In locations where individual restrictions or procedures overlap or multiple restrictions apply, the more stringent restrictions and all applicable procedures will be followed by maintenance personnel and contractors.

1.0 Right-of-Way Vegetation Maintenance Procedures

1.1 Typical Maintenance Procedures

Routine vegetation maintenance for transmission line corridors (Figure 1) is intended to meet the following goals:

1. Maintain the integrity and functionality of the line;
2. Facilitate safe operation of the line;
3. Maintain access in case of emergency repairs; and
4. Facilitate safety inspections.

Therefore, the objectives of this VMP will be to control the growth of woody vegetation capable of encroaching into the conductor safety zone of the transmission line to ensure the integrity and safe operation of the transmission line consistent with the standards of North American Electric Reliability Corporation's (NERC) Transmission Vegetation Management.¹ This will be accomplished by practicing an integrated vegetation management strategy using a combination of hand-cutting and selective herbicide applications.² Mechanical mowing may be used in unusual circumstances to regain control of vegetation, should the typical procedures not suffice.

Throughout clearing and construction, shrub and herbaceous vegetation will remain in place to the extent possible. Removing capable vegetation will be done during initial transmission line corridor clearing prior to construction of the new transmission line. Follow-up maintenance activities during operation of the line require the removal of capable species, dead trees, and hazard trees. Capable trees are those plant species and individual specimens that are capable of growing tall enough to violate the required clearance between the conductors and vegetation established by NERC. Due to the sag of the electric transmission lines between the poles, which varies with the distance between poles, topography, tension on the wire, electrical load, air temperature, and other variables, the required clearance is typically achieved by removing all capable species during each maintenance cycle. Removing capable species vegetation allows for the maintenance of 25 feet of separation between vegetation and the lines, thereby adhering to NERC standards. Hazard trees are those trees typically on the edge of the transmission line corridor that pose an imminent threat to violating the minimum separation standard (minimum distance allowed between conductors and adjacent vegetation varies depending on voltage) or are

¹ North American Electric Reliability Corporation Transmission Vegetation Management, Standard FAC 003 – 3 Technical Reference, July 1, 2014.

² No herbicide will be applied in the Segment 1 corridor, within 100 feet of the one observed small whorled pogonia occurrence in the Town of Greene, or within 100 feet of the 174-acre Casavant tract on the east and west sides of the transmission line corridor in this vicinity in Greene.

at risk of contacting the lines themselves. Hazard trees are typically removed immediately upon identification.

More frequent vegetation management may be required within the first 3 to 4 years following construction in order to bring the vegetation under control. After this initial management period, maintenance practices are typically carried out on a 4-year cycle depending on growth, weather, geographic location, and corridor width. Maintenance may be required less frequently in the long-term as vegetation within the corridor becomes dominated by shrub and herbaceous species. Large branches that overhang the transmission line corridor and any hazard trees on the edge of, or outside of, the transmission line corridor that could contact the electrical lines or come within 15 feet of a conductor may be removed as soon as they are identified.

The following procedures will be implemented during vegetation maintenance activities to protect sensitive natural resources:

- Protected resources and their associated buffers will be flagged or located with a Global Positioning System (GPS) prior to all maintenance operations;
- Hand-cutting will be the preferred method of vegetation maintenance within buffers and sensitive areas, where reasonable and practicable;
- Equipment access through wetlands or over streams will be avoided as much as practicable by utilizing existing public or private access roads, with landowner approval where required;
- Equipment access in upland areas with saturated soils will be minimized to the extent practicable to avoid rutting or other ground disturbance;
- Significant damage to wetland or stream bank vegetation, if any, will be repaired following completion of maintenance activities in the area; and
- Areas of significant soil disturbance will be stabilized and reseeded following completion of maintenance activity in the area.

2.0 Vegetation Management – Segment 1 Specific

This section describes the four (4) types of vegetation management required along the Segment 1 corridor, which achieve:

- Full canopy height vegetation;
- Vegetation with a 35-foot minimum height;
- Deer travel corridors; or
- Tapered vegetation.

The May 11, 2020 Order (Order) of the Maine Department of Environmental Protection (MDEP) prescribed the locations, referred to as Wildlife Areas (see Table 1), where full canopy height vegetation, 35-foot minimum vegetation height, or vegetation managed for deer travel (25

to 35-foot-softwood species) must be retained or maintained. Tapered vegetation is required in the remainder of Segment 1. Requirements associated with riparian filter areas, including those that are specific to Segment 1, are described in Section 5.0.

The NECEC Natural Resource Maps incorporate and depict the vegetation clearing and management practices as required by the MDEP Order. On the maps, the transmission line centerline varies its color according to what vegetation management practice is required.

2.1 Full Canopy Height Vegetation

Full canopy height vegetation is required in three locations along the Segment 1 corridor. The locations, identified more specifically below in Table 1, include the Gold Brook crossing (a portion of Wildlife Area 4), the Mountain Brook crossing (Wildlife Area 6), and the Upper Kennebec River crossing (Wildlife Area 11).

In areas where full canopy height vegetation must be maintained, vegetation will be removed only in areas necessary to access pole locations and install and maintain the poles. (There are no pole locations in Wildlife Area 11.) This includes the area within the entire width of the 150-foot wide corridor. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line.

2.2 35-Foot Minimum Vegetation Height

In areas where minimum 35-foot tall vegetation must be maintained (see Table 1), only areas necessary to access pole locations or install and maintain poles will be cleared during construction. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. In other areas within the entire width of the corridor only trees taller than 35 feet, or trees that may grow taller than 35 feet prior to the next scheduled maintenance, will be removed during construction. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and may not exceed a three-year cycle within any area without prior approval from MDEP.

With regard to ongoing vegetation management, trees that exceed 35 feet or are anticipated to exceed this height before the next scheduled maintenance cycle will be cut at ground level and will only be removed if leaving them in place would violate the Maine Slash Law or create a fire or safety hazard.

2.3 Deer Travel Corridors

Eight deer travel corridors must be managed as softwood stands to promote deer movement across the transmission line corridor during the winter months when snow depths have the potential to inhibit deer travel. These travel corridors, identified in Table 1 as Wildlife Area 12, will extend along the corridor, under the conductors, where conductor height allows for taller vegetation within the corridor. These deer travel corridors must be designated and labeled corridors 1 through 8, managed as softwood stands, and must allow for the maximum tree height that can practically be maintained without encroaching into the conductor safety zone (approximately 24 feet of clearance between the lowest conductor at maximum sag conditions and the top of vegetation) or into the necessary cleared area adjacent to each structure. Tree heights will vary based on structure height, conductor sag, and topography, but must generally range from 25 to 35 feet.

Within the eight designated deer travel corridors, during the initial vegetation clearing for construction, all capable hardwood species will be cut and individual softwood specimens will be cut to heights necessary so that they do not intrude into the conductor safety zone and are not at risk of growing into the conductor safety zone prior to the next scheduled vegetation maintenance. On an ongoing basis, softwood specimens that are not intruding into the conductor safety zone and are not at risk of growing into the conductor safety zone prior to the next scheduled vegetation maintenance will be retained. Access roads and structure preparation and installation areas will be cleared of all capable and non-capable species and maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line.

Table 1 Wildlife Areas¹

Area Name	From Coordinates (lat, long)	To Coordinates (lat, long)	Location	Min. Veg Height	Notes	Approximate Length (miles)²	Natural Resource Map No.
Wildlife Area 1	45.49628364, -70.65389705	45.49561741, -70.64935131	Beattie Twp	35'	Includes Number One Brook not visible from Beattie Pond	0.22	8, 9
Wildlife Area 2	45.46431117, -70.56925893	45.46291336, -70.54484557	Skinner Twp	35'	Includes crossing of the South Branch of the Moose River (all of TNC 2)	1.19	20, 21, 22, 23
Wildlife Area 3	45.46350041, -70.51607006	45.46481614, -70.49109824	Skinner Twp Appleton Twp	35'	Includes five perennial streams and four intermittent streams	1.25	26, 27, 28
Wildlife Area 4	45.46615984, -70.45270383	45.46311974, -70.40751264	Appleton Twp	35' (except full canopy height at Gold Brook crossing)	Includes Gold Brook crossing (structures 432-746 to 432-741) and Roaring Brook Mayfly habitat adjacent to that crossing where full canopy height vegetation is required, as well as group of 5 unnamed streams; portions adjacent to Leuthold Preserve	2.18	33, 34, 35, 36, 37, 38
Wildlife Area 5	45.47206202, -70.33192742	45.49411339, -70.24441057	Hobbs town Twp T7 BKP WKR Bradstreet Twp	35'	Includes area near Moose Pond and surrounding land owned by BPL, Whipple Brook crossing, areas adjacent to Leuthold Preserve, and unnamed stream crossing where	4.87	46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57

Area Name	From Coordinates (lat, long)	To Coordinates (lat, long)	Location	Min. Veg Height	Notes	Approximate Length (miles) ²	Natural Resource Map No.
					topography may allow crossing without taller poles (structures 432-717 to 432-716)		
Wildlife Area 6	45.47472852, -70.10099603	45.46991721, -70.10534506	Johnson Mtn Twp	Full canopy height	Mountain Brook crossing, includes Roaring Brook Mayfly habitat	0.38	76, 77
Wildlife Area 7	45.43511224, -70.03821586	45.43757616, -70.03451059	Johnson Mtn Twp	35'	Cold Stream crossing; adjacent to Cold Stream Forest Tract	0.23	91
Wildlife Area 8	45.44260293, -70.00541135	45.44315901, -70.00109742	Johnson Mtn Twp	35'	Unnamed stream crossing where 35-foot vegetation likely can be maintained without taller poles	0.21	95
Wildlife Area 9	45.41967147, -69.98245727	45.39922953, -69.94817359	West Forks	35'	Includes Tomhegan Stream crossing and adjacent to Cold Stream Forest Tract	2.21	100, 101, 102, 103, 104, 105
Wildlife Area 10	45.362187, -69.913515	45.359305, -69.912368	Moxie Gore	35'		0.19	113
Wildlife Area 11	45.37492343, -69.94696772	45.37102781, -69.93728547	West Forks Moxie Gore	Full canopy height	Upper Kennebec River crossing, Eastern edge of the clearing for the HDD Termination Station in West Forks to the western edge of the clearing for the HDD Termination Station in Moxie Gore	0.56	108, 109

Area Name	From Coordinates (lat, long)	To Coordinates (lat, long)	Location	Min. Veg Height	Notes	Approximate Length (miles) ²	Natural Resource Map No.
Wildlife Area 12	45.37065356, -69.93010848	45.37040077 -69.92526549	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA	0.23	110, 111
	45.36623618, -69.91512820	45.36373432 -69.91413169	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA	0.18	112
	45.36277778, 69.91361111	45.362187, -69.913515	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA.	0.09	112, 113
	45.359305, -69.912368	45.3591667, -69.91138889	Moxie Gore	25'-35'	Vegetation managed for deer travel in Upper Kennebec River DWA.	0.1	113

¹: References to structure numbers have been updated to Lat/Long Coordinates, rather than structure numbers, to maintain consistency with the areas defined by the MDEP permit.

²: Total distance along the Segment 1 corridor with taller vegetation is approximately 14.08 miles.

2.4 Tapered Vegetation

Tapered vegetation is required along the entire Segment 1 corridor, except where full canopy height vegetation, vegetation with a minimum height of 35 feet, or taller vegetation managed for deer travel corridors is required. In Wildlife Area 12 taller vegetation is required for the eight deer travel corridors. Within this wildlife area, tapering is required along the transmission line corridor in the sections outside the deer travel corridors.

“Tapering” refers to a form of vegetation management along the transmission line corridor where increasingly taller vegetation is allowed to grow as the distance from the wire zone increases (see Figure 2).

Along Segment 1 where tapering is required, the transmission line includes two conductors running parallel to each other and separated by 24 feet. A shield wire runs over each conductor. The wire zone is the 54-foot wide area that runs along the center of the 150-foot wide corridor and includes the 24-foot wide area below and between the two conductors, plus 15 feet on each side of the set of conductors (15 ft. + 24 ft. + 15 ft. = 54 ft.).

In a tapered corridor, within this 54-foot wide wire zone all woody vegetation will be cut to ground level during construction. During maintenance of this portion of the corridor only non-capable species are allowed to grow (capable species includes woody species and specimens capable of growing tall enough to reach into the conductor safety zone). Within a tapered corridor, the result is that within the 54-foot wide wire zone vegetation that is approximately 10 feet tall regenerates so that the wire zone primarily consists of native, scrub-shrub habitat with non-capable species.

In a tapered corridor, the area outside the wire zone will be selectively cut during construction to create a taper with vegetation approximately 15 feet tall near the wire zone and increasing to approximately 35 feet tall near the edge of the 150-foot wide corridor. To minimize the environmental impact of the corridor to the greatest extent practicable, including reasonable efforts to avoid the growth of even-aged stands within each taper, vegetation in the tapered corridor will be managed as follows.

The first taper includes the areas within 16 feet of each side of the wire zone, within which vegetation up to 15 feet tall, including capable species, will be maintained. As vegetation maintenance proceeds through the first several cycles, the 15-foot tall tapered “tier” will become dominated by shrubs, because many shrubs exceed ten feet in height.

The second tapered tier includes the next 16 feet on each side of the corridor, within which taller vegetation up to 25 feet tall will be maintained. The 25-foot tall tier will be dominated by tree

species, with a smaller shrub component. Following initial vegetation clearing in these zones, there will be variation in species composition similar to the composition prior to construction clearing, but without the taller individuals. In deciduous and mixed-deciduous stands, the early maintenance cycles will favor establishment of fast-growing deciduous species because not treating them with herbicides will allow rapid regrowth primarily from coppicing (growth of shoots from cut stumps). In addition, increased sunlight will allow regeneration from seed, with the species composition of seedling establishment varying with the amount of soil moisture and mineral soil exposure.

The third and final tapered tier includes the outer 16 feet on each side of the corridor, within which taller vegetation up to 35 feet tall will be maintained. Similar to the 25-foot zones, the 35-foot vegetation zones will be dominated by tree species, with a smaller shrub component. Most of the above description for the 25-foot height zone applies to 35-foot height zone with a few differences. First, retention of taller individuals will maintain stand compositions more closely matching the original stand for longer throughout the early maintenance cycles because fewer individual trees will be removed. This will inhibit coppicing of deciduous trees, benefitting coniferous individuals in the stand. Second, removing fewer individual trees, and placement of the 35-foot zone alongside the 25-foot zone will result in less sunlight, so there will be less release from suppression as was described above and slower overall growth of the stands in the 35-foot height zone. This higher shade component will also favor regeneration and release of more shade-tolerant coniferous species, primarily spruce and fir. Third, the 35-foot height zone will be more strongly influenced by the forest management that occurs immediately adjacent to the project right-of-way, which is beyond the control of CMP. For example, if adjacent areas are cut more heavily, increased sun exposure will have effects more like those described above for the 25-foot height zone, i.e., faster understory release and greater seedling establishment.

Trees within each 16-foot wide tier will be selectively cut in a manner that retains those trees that do not exceed their respective tier's designated height. However, in order to ensure that no trees intrude into the conductor safety zone, any trees anticipated to exceed their respective tier's designated height prior to the next scheduled maintenance cycle will be cut at ground level.

As vegetation is maintained within a tapered corridor, any trees that exceed the designated height for the taper they are within, or are anticipated to exceed the height before the next scheduled maintenance cycle, will be cut at ground level. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and may not exceed a three-year cycle within any particular area without prior approval from the Department. Any trees that are cut will only be removed if leaving them in place would violate the Maine Slash Law or create a fire or safety hazard.

The overall result is that a cross section of a 150-foot wide tapered corridor breaks down into the following components:

16' 3rd taper + 16' 2nd taper + 16' 1st taper + 54' wire zone + 16' 1st taper + 16' 2nd taper + 16' 3rd taper = 150' wide corridor. The approximate maximum vegetation height of each taper is:

- 1st taper: 15-feet
- 2nd taper: 25-feet
- 3rd taper: 35-feet

Access roads and structure preparation and installation areas cleared of all capable and non-capable species will be maintained as scrub-shrub habitat to allow for post-construction maintenance, repair, and/or emergency access during operation of the line. Soil disturbance and grading will be minimized through careful planning of temporary access ways. When the temporary access ways are removed, the disturbed areas will be restored to their pre-construction grade and allowed to revegetate. Except for the areas immediately around the base of each transmission line structure, the full width and length of the transmission corridor will be maintained as vegetated following construction of the Project.

3.0 Vegetation Maintenance Methods – All Transmission Line Corridor Areas

3.1 Mechanical Methods

During routine vegetation maintenance after construction, mechanical methods of maintaining the height of vegetation on the transmission line corridor will consist primarily of cutting with hand tools, with occasional use of chainsaws and limited use of motorized equipment in areas directly accessible from public or private access roads.

Maintenance procedures will be to cut all capable species and any dead or hazard trees at ground level except in designated areas, as described below. Large vegetation cut during routine maintenance will be handled in accordance with the Maine Slash Law.³ Any wood that is chipped and spread on the corridor shall be left in layers no more than two inches thick, as measured above the mineral soil surface.

Additionally, as a conservation effort to protect the Northern Long-eared Bat, CMP will suspend vegetation maintenance activities for trees greater than 3 inches diameter at breast height during the maternity roost season of June 1 to July 31.

3.2 Herbicide Application

With the exception of the Segment 1 portion of the Project, and within the full width and length of the corridor containing transmission line structures 432-23 to 432-29.1,⁴ herbicide application

³ 12 M.R.S. §§ 9331 et seq.

⁴ No herbicide will be applied within 100 feet of the one observed small whorled pogonia occurrence in the Town of Greene, or

will be used in conjunction with mechanical methods of vegetation maintenance. The herbicide application program is consistent with most New England utilities and consists of direct application to targeted species and specimens along the transmission line corridor with a low-volume foliar herbicide or application of herbicides to cut stumps and surfaces of larger trees. Direct application to individual plant species, as opposed to a broadcast spray, will target woody vegetation allowing low-growing plant communities (the desired shrub and herbaceous species) to thrive. Herbicides will also be selectively applied to minimize the impacts to non-target species. Aerial application will not be done. Only herbicides which are registered with and approved by the U.S. Environmental Protection Agency (EPA-approved) and registered with the Maine Board of Pesticides Control (BPC) will be used.

Herbicide applications will likely begin the first year after construction is completed to gain control of vegetation growth (with the exception of areas listed below where no herbicides will be applied). When control is achieved, treatment will typically occur on a 4-year cycle or as needed. By using selective herbicides and a variety of application methods, vegetation along the transmission line corridor will eventually consist of a dense, low-growing plant community that will discourage the establishment of tree species. Therefore, fewer woody species will require treatment in future applications.

The following procedures and restrictions will be implemented during herbicide applications:

- No herbicides will be used in Segment 1 of the Project.
- No herbicides will be used within the full width and length of the transmission line corridor adjacent to the 174-acre parcel near Allen Pond in Greene, i.e., the portion of the corridor containing transmission line structures 432-23 to 432-29.1.
- Herbicides will be used in strict accordance with the manufacturer's EPA-approved labeling and will not be applied directly to waterbodies or areas where surface water is present.
- Throughout the Project corridor no foliar herbicides will be applied within a 100-foot buffer of all coldwater fishery⁵ streams, or within a 75-foot buffer of intermittent streams.
- In co-located sections outside the GOM DPS, foliar herbicides will not be applied within 75 feet of rivers, streams, brooks, lakes, ponds, or within 25 feet of wetlands that have water present at the surface at the time of the application.
- For all streams within the GOM DPS which includes the critical habitat, streams and rivers classified as a coldwater fishery, and outstanding river segment or

within 100 feet of the 174-acre Casavant tracts on the east and west sides of the transmission line corridor in this vicinity in Greene.

⁵ The term coldwater fishery, as used in this document, pertains to streams that are known to contain brook trout as designated by the Maine Department of Inland Fisheries and Wildlife (MDIFW).

streams containing threatened or endangered species (e.g., Atlantic salmon), foliar herbicides will not be applied within a 100-foot buffer. This requirement extends to all streams within the Project transmission line corridor, regardless of classification, located immediately west of Moxie Pond;

- Herbicides will not be mixed, transferred or stored within 100 feet of any wetland or surface water, unless done so on a public access road;
- Herbicides will not be mixed, transferred or stored within 100 feet of Significant Vernal Pool depressions, unless done so on a public access road;
- Herbicides will not be mixed, transferred or stored over mapped significant sand and gravel aquifers unless done so on a public access road;
- Herbicides will not be applied, mixed, transferred or stored within 100 feet of any known private well or spring or within 200 feet of any known public water supply well, unless done so on a public access road;
- When herbicide applications are performed in wetlands without standing water, only herbicides approved for use in wetland environments will be used;
- Herbicides will not be applied to any area when it is raining or when wind speed exceeds 15 miles per hour as measured on-site at the time of application. When wind speeds are below 3 miles per hour, applicators should be aware of whether a temperature inversion is present, and should consult the herbicide label to determine whether application should proceed under these conditions;
- The foreman or licensed applicator on each herbicide application crew will be licensed by the Maine BPC and will remain in eye contact and within earshot of all persons on his/her crew applying herbicides. At least one individual from any company applying herbicides must also hold a Commercial Master Applicator License issued by the BPC. This Master Applicator must have the ability to be on-site to assist persons applying herbicides within six hours driving time. If an out-of-state company is conducting the herbicide application, the company must have a Master Applicator in Maine during any application. Application of herbicides will be in accordance with applicable regulations promulgated under the Maine Pesticides Control Act, including those regulations to minimize drift, to maintain setbacks from sensitive areas during application, and to maintain setbacks from surface waters during the storing/mixing/loading of herbicides; and
- Herbicides will typically be mixed in a truck-mounted tank that remains on public access roads. Herbicide application is done by personnel with low-volume, hand-pressurized (manual) backpacks with appropriate nozzles, to minimize drift, who travel along the transmission line corridor by foot or by all-terrain vehicle and spot-treat target species and specimens.

The location of all streams, wetlands, significant vernal pools, rare plant locations, known wells, and mapped significant sand and gravel aquifers crossed by the transmission line corridor will be shown on the As-Built Plan & Profile drawings. GIS shapefiles will also be maintained with the location of these resources and will be provided to maintenance personnel. The presence of surface

water will be determined prior to herbicide use in any wetland or waterbody. Crew leaders will assure that resources and buffers are clearly marked in the field, or that locations of resources and buffers are provided as GIS/GPS data prior to initiation of an herbicide application for clear identification by the applicators.

3.3. Petroleum Products & Hazardous Materials Management

Any petroleum products or other hazardous material within the transmission line corridor during construction will be managed in accordance with CMP's Environmental Control Requirements for Contractors and Subcontractors – Oil and Hazardous Material Contingency Plan (see Exhibit 15-1 of the NECEC Site Law Application) and will include the following setbacks unless CMP can demonstrate that, due to special circumstances at specified locations, these setbacks are impractical at those locations.

- (a) No fuel storage, vehicle/equipment parking and maintenance, and refueling activity may occur within 100 feet of a protected wetland or other waterbody, unless no practicable alternative exists and secondary containment with 110% capacity is provided for any fuel storage containers or tanks, or if it occurs on a paved road.
- (b) No fuel storage, vehicle/equipment parking and maintenance, and refueling activity may occur within 200 feet of a known private water supply.
- (c) No fuel storage, vehicle/equipment parking and maintenance, and refueling activity may occur within 400 feet of a known public water supply.
- (d) No fuel storage, vehicle/equipment parking and maintenance and refueling activity may occur within 25 feet minimum of the following:
 - (i) An area listed in Maine's biological conservation data system, Biotics, of the Maine Natural Areas Program of the Department of Agriculture, Conservation and Forestry (MNAP), including rare natural communities and ecosystems (state rarity rank of S1 through S3 and habitats supporting Endangered or Threatened plant species). Boundaries and locations are as determined by MNAP.
 - (ii) Habitat of any species declared rare, threatened or endangered by MDIFW, Maine Department of Marine Resources, or the Director of the U.S. Fish and Wildlife Service.

4.0 Vegetation Maintenance within Freshwater Wetlands

Transmission line corridor wetlands range in type from small, emergent wetlands formed in ruts from logging equipment to large forested wetland systems. No specific buffers are proposed for the wetlands identified within the transmission line corridor.

4.1 Additional Vegetation Maintenance Restrictions within and Adjacent to Freshwater Wetlands

Vegetation maintenance within, and within 25 feet of, freshwater wetlands with standing water will be conducted only by hand cutting with hand tools or chainsaws. Herbicide use is permitted in wetlands only when no standing water is present in the wetland at the time of the application. Herbicides will not be stored, mixed, transferred between containers, and no refueling of chain saws or other equipment will be allowed, within 100 feet of freshwater wetlands, unless done so on a public access road.

5.0 Vegetation Maintenance within Stream Buffers (Riparian Filter Areas)

A 75-foot buffer, as measured from the top of each stream bank, will be established for vegetation maintenance along perennial and intermittent streams not designated as coldwater fisheries, within the transmission line corridor. Additional restrictions will be applied within 100 feet of streams meeting certain criteria, as described below. Special restrictions will apply within these stream buffers during vegetation maintenance.

This section describes the additional restrictions related to vegetation cutting and maintenance within these stream buffers. All vegetation maintenance procedures and restrictions that apply to typical transmission line corridor maintenance also apply within stream buffers.

5.1 Additional Vegetation Maintenance Restrictions within Stream Buffers

The following additional restrictions apply to vegetation clearing within stream buffers:

- a. Unless more restrictive requirements apply⁶, riparian natural buffers (or “stream” buffers) will be retained within 100 feet of all streams (intermittent and perennial) in the GOM DPS, all perennial and coldwater fishery streams within Segment 1 of the Project and all coldwater fisheries in other segments, outstanding river segments, or rivers, streams, or brooks containing Threatened or Endangered species (e.g., Atlantic salmon) unless the Department determines that the functions and values of the stream buffer will not be impacted by the removal of vegetation and approves an alternative minimum buffer.
- b. In the area adjacent to Moxie Pond in Segment 2, CMP will construct and maintain the project with a 100-foot riparian filter area identical to the riparian filter areas adjacent to coldwater fishery streams in Segment 1.
- c. For streams in areas where the new transmission line will be co-located within existing rights-of-way, CMP proposes to maintain a 75-foot buffer, unless meeting any of the above criteria, since the existing corridor is currently being maintained in an early successional state according to the guidelines set forth in

⁶ More restrictive requirements include, but are not limited to, requirements to maintain taller vegetation within the corridor such as provided for in Section 2, Table 1.

CMP's Vegetation Management Plan (Exhibit D), and the effect of the additional clearing (typically less than 75 feet) to accommodate the new line has been minimized.

- d. The boundary of each stream buffer will have unique flagging installed to distinguish between the applicable 75-foot or 100-foot stream buffer prior to clearing. Flagging will be maintained throughout construction.
- e. Foliar herbicides will be prohibited within the stream buffer, and all refueling/maintenance of equipment will be excluded from the buffer unless it occurs on an existing paved road or if secondary containment is used with oversight from an environmental inspector.
- f. All stream crossings by heavy equipment will be performed through the installation of equipment spans with no in-stream disturbances. Streams will not be forded by heavy equipment.
- g. Initial tree clearing will be performed during frozen ground conditions whenever practicable, and if not practicable, the recommendations of the environmental inspector will be followed regarding the appropriate techniques to minimize disturbance such as the use of selectively placed travel lanes within the stream buffer. CMP will not place any transmission line structures within the stream buffer, unless specifically authorized by the MDEP and accompanied by a site-specific erosion control plan. No structures will be placed within 25 feet of any stream regardless of its classification.
- h. Within that portion of the stream buffer that is within the wire zone (i.e., within 15 feet, horizontally, of any conductor; see Figure 1), all woody vegetation over 10 feet in height, whether capable or non-capable, will be cut back to ground level and resulting slash will be managed in accordance with Maine's Slash Law. No other vegetation, other than dead or hazard trees, will be removed. Within the stream buffer and outside of the wire zone, non-capable species may be allowed to exceed 10 feet in height unless it is determined that they may encroach into the conductor safety zone prior to the next four year maintenance cycle. Vegetation maintenance within Segment 1 will be on a two- to three-year cycle and must not exceed a three-year cycle within any particular area within this segment without prior approval from the Department. ;
- i. Removal of capable species and dead or hazard trees within the appropriate stream buffer will typically be accomplished by hand-cutting. Use of mechanized harvesting equipment is allowed if supported by construction matting or during frozen conditions in a manner (i.e., use of travel lanes and reach-in techniques) that preserves non-capable vegetation less than 10 feet in height to the greatest extent practicable. Within the wire zone all woody vegetation may be cut to ground level;
- j. No slash will be left within 50 feet of any stream; and,
- k. Any construction access roads that must cross streams or brooks must be designed, constructed, and maintained to minimize erosion and sedimentation.

These additional restrictions will allow for taller vegetation within the appropriate stream buffer to provide shading and to reduce the warming effect of direct sunlight (insolation). Low ground cover vegetation will also remain to filter any sediment in surface runoff. The restrictions are

also intended to minimize ground disturbance and prevent or minimize the surface transport of herbicides and petroleum products to streams. These restrictions will allow the stream buffers to provide functions and values similar to those provided prior to transmission line construction.

5.2 Vegetation Maintenance within the Roaring Brook Mayfly and Northern Spring Salamander Conservation Management Areas of Mountain Brook and Gold Brook

During consultation with the MDIFW for the NECEC project, MDIFW identified Gold Brook (PSTR 15-06, PSTR 16-07, PSTR 16-10 and PSTR 16-15) and Mountain Brook (PSTR-33-01, PSTR-EM-34-01, PSTR-EM-34-01) as high priority resources in which full height vegetation should be retained within the 250-foot conservation management areas (CMAs) to protect habitat for Roaring Brook Mayfly and Northern Spring Salamander. Mountain Brook contains both Roaring Brook Mayfly and Northern Spring Salamander habitat, while field survey results concluded that Gold Brook only contains Roaring Brook Mayfly habitat.

Installation of taller structures will facilitate the retention of full height vegetation within these CMAs. Although CMP will retain full height vegetation within these CMAs, CMP will selectively cut at ground level and remove any trees within these CMAs that are intruding into the conductor safety zone or are at risk of growing into the conductor safety zone prior to the next scheduled vegetation maintenance.

Access roads and structure preparation/installation areas within these conservation management areas will be maintained as scrub-shrub habitat to allow for maintenance, repair and/or emergency access.

6.0 Vegetation Maintenance within Significant Vernal Pool Buffers

Vegetated buffers of 100 feet, as measured from the edge of the pool depression, will be established for SVPs crossed by the transmission line corridor. Vegetation maintenance within the SVP buffers will be subject to the same procedures and prohibitions, as applicable, that are required in the typical transmission line corridor, as well as to the additional measures below.

6.1 Additional Vegetation Maintenance Restrictions within Significant Vernal Pool Buffers

The following additional restrictions apply to vegetation maintenance within SVP buffers:

- Mechanized equipment will not be allowed within the vernal pool depression, unless the depression encompasses the entire width of the transmission line corridor. Mechanized equipment will only be allowed to cross the vernal pool depressions during frozen or dry conditions or with the use of mats;
- Between April 1 and June 30 in any calendar year, no vegetation maintenance using tracked or wheeled equipment will be performed within the 100-foot buffer. Maintenance will be performed using only hand tools during this period;

- Between April 1 and June 30 in any calendar year, no vegetation maintenance will occur within 25 feet of the SVP pool depression;
- No refueling or maintenance of equipment, including chainsaws, will occur within 100 feet of SVP pool depression, unless conducted on a public access road; and
- No herbicide use is permitted within 25 feet of the SVP pool depression.

7.0 Vegetation Maintenance within Moderate or High Value Inland Waterfowl and Wading Bird Habitat

Inland Waterfowl and Wading Bird Habitats (IWWH) are habitats mapped by the MDIFW that contain an inland wetland complex used by waterfowl and wading birds, plus a 250-foot nesting habitat area surrounding the wetland. The nesting habitat is considered to be part of the mapped IWWH. No additional buffers are proposed for IWWHs beyond this mapped habitat, and as such the vegetation maintenance restrictions apply to the mapped habitat only.

Vegetation maintenance within the IWWH will be subject to the same procedures and prohibitions, as applicable, that are required in the typical transmission line corridor and for stream buffers.

7.1 Additional Vegetation Maintenance Restrictions within Inland Waterfowl and Wading Bird Habitat

The following additional restrictions apply to vegetation maintenance within mapped IWWH:

- Between April 15 and July 15, use of motorized vehicles (e.g., all-terrain vehicles) and mechanized equipment (e.g., chainsaws or brush cutters) within IWWH is prohibited. Use of non-mechanized hand tools is allowed during this time period;
- No refueling or maintenance of equipment, including chainsaws, will occur within the IWWH, unless done so on a public access road;
- No herbicide use is permitted within 25 feet of any wetland within the mapped IWWH; and
- Provided they do not pose a safety hazard, naturally occurring snags within IWWH will be allowed to remain, at a minimum of two to three snags per acre.

8.0 Vegetation Maintenance within Mapped Deer Wintering Areas

Deer Wintering Areas (DWA) provide important refuge for white-tailed deer (*Odocoileus virginianus*) during the winter months in northern climates and are typically characterized by an extensive stand of mature softwood species with a dense forest canopy.

With the exception of the Upper Kennebec DWA, described in Section 2.3 above, no additional vegetation maintenance restrictions are proposed within mapped DWAs, as all capable species must be removed from these and other areas within the transmission line corridor in order to comply with NERC Transmission Vegetation Management standards.

9.0 Vegetation Maintenance within State mapped Rusty Blackbird Habitat

In consultation with MDIFW for the NECEC project, CMP agreed to allow for the retention of 10-foot to 15-foot tall spruce/fir vegetation within the Rusty Blackbird habitat located on Segment 1. The additional height will avoid project impacts to the habitat of this State Species of Special Concern.

Vegetation clearing activity is prohibited in this habitat between April 20 and June 30. During routine vegetation maintenance, hardwood and softwood specimens that are taller than 15 feet, or are anticipated to grow taller than 15 feet prior to the next scheduled vegetation maintenance, will be cut at ground level. Spruce/fir vegetation 10-15 feet in height will be retained. The access roads and structure preparation areas within the Rusty Blackbird habitat will be maintained as scrub-shrub habitat to allow for maintenance, repair and/or emergency access. The habitat will be flagged prior to construction and identified in a database maintained by CMP, further described below in Section 13, Locating and Marking Buffers and Habitats.

10.0 Vegetation Maintenance within Rare Plant Locations

Vegetation maintenance of the transmission line corridor has the potential to impact rare plants and/or alter their habitat. The following additional vegetative maintenance restrictions will minimize such impacts. The additional restrictions will apply only to the demarcated locations of the identified rare plants. No additional buffers will be established surrounding rare plant locations. These restrictions are intended to maintain existing hydrology and limit soil disturbance within rare plant locations.

10.1 Additional Vegetation Maintenance Restrictions within Rare Plant Locations

The following additional restrictions will apply to vegetation maintenance for the rare plant occurrences in the Project area:

- All capable tree species will be cut by hand (chainsaws, hand saws or axes). No other mechanized cutting equipment shall be used within these habitats;
- Unless rare plant locations encompass the entire width of the transmission line corridor, mechanized equipment will only be allowed to cross rare plant locations during frozen conditions or with the use of mats;
- No refueling or maintenance of equipment, including chainsaws, will occur within demarcated rare plant locations, unless done on a public access road; and

- No foliar herbicide use is permitted within the demarcated rare plant locations, however cut surface herbicides may be used on capable species and specimens outside of Segment 1.
- No herbicides will be used within the full width and length of the transmission line corridor adjacent to the 174-acre Casavant parcel near Allen Pond in Greene, i.e., the portion of the corridor containing transmission line structures 432-23 to 432-29.1;
- Crossing of rare plant locations with mechanized equipment:

All-Terrain Vehicles (ATVs)

- Due to small footprint, relatively light weight, and infrequency of use, ATV impact is minimal, therefore crane mats will not be used.
- If rare plants do not encompass entire ROW width, ATVs will avoid/travel around rare plants.
- If rare plants encompass entire ROW width:
 - ATVs will utilize existing rare plant travel path/crossing if one exists.
 - If no rare plant crossing exists, ATVs will cross at narrowest point of the rare plants and will restrict this crossing to a single travel lane.

Heavy Equipment/Vehicles

- During emergency repair & maintenance work, crane mats will not be used. Heavy equipment/vehicles will utilize existing rare plant crossings if available.
- During planned repair & maintenance work:
 - If rare plants do not encompass entire ROW width, heavy equipment/vehicles will avoid/travel around rare plants. Crane mats will not be used.
 - If rare plants encompass entire ROW width, and there is an established travel path/crossing through the rare plants, heavy equipment/vehicles will utilize this crossing, and crane mats will not be used.
 - If rare plants encompass entire ROW width, but there is no established travel path through the rare plants, heavy equipment/vehicles will cross rare plants using crane mats.

11.0 Maintenance Procedures for Mapped Significant Sand and Gravel Aquifers

Transmission lines located over mapped significant sand and gravel aquifers are subject to the typical transmission line corridor maintenance procedures, except that no refueling or maintenance of equipment, and no herbicides may be mixed, transferred or stored, over the mapped significant sand and gravel aquifers, unless done so on a public access road.

12.0 Tapered Vegetation Maintenance Along the Appalachian Trail

As required by Appendix A of the Memorandum of Agreement among the United States Army Corps of Engineers, United States Department of Energy, United States Department of Interior National Park Service, Maine Historic Preservation Commission, and CMP, vegetation tapering is required on both the forested (generally southerly) side of the corridor and the currently cleared (generally northerly) side of the corridor in the vicinity of the Appalachian Trail in Bald Mountain Township. These areas include the following coordinates:

From: 45° 15' 17.849" N, 69° 49' 58.76" W **To:** 45° 14' 40.565" N, 69° 49' 28.577" W

Tapering adjacent to Section 432 will be maintained in a similar fashion as described in Section 2.4, Tapered Vegetation, above. However, scrub shrub vegetation will be maintained in the center of the corridor beginning from the outside edge of the wire zone west of Section 432 to the outside edge of the wire zone east of Section 222. Vegetation on the Section 222 side of the corridor, which is currently cleared of capable vegetation, will be allowed to grow into a tapered configuration over time.

13.0 Locating and Marking Buffers and Habitats

A database will be maintained, including maps and GIS shapefiles, of the buffers, restricted habitats, and sensitive areas and their locations relative to the nearest structure (pole) or road location. The distance and direction from the nearest structure to the sensitive area will be included with the name of the area and the structure number. All structures along the transmission line corridor will be numbered at the time of construction.

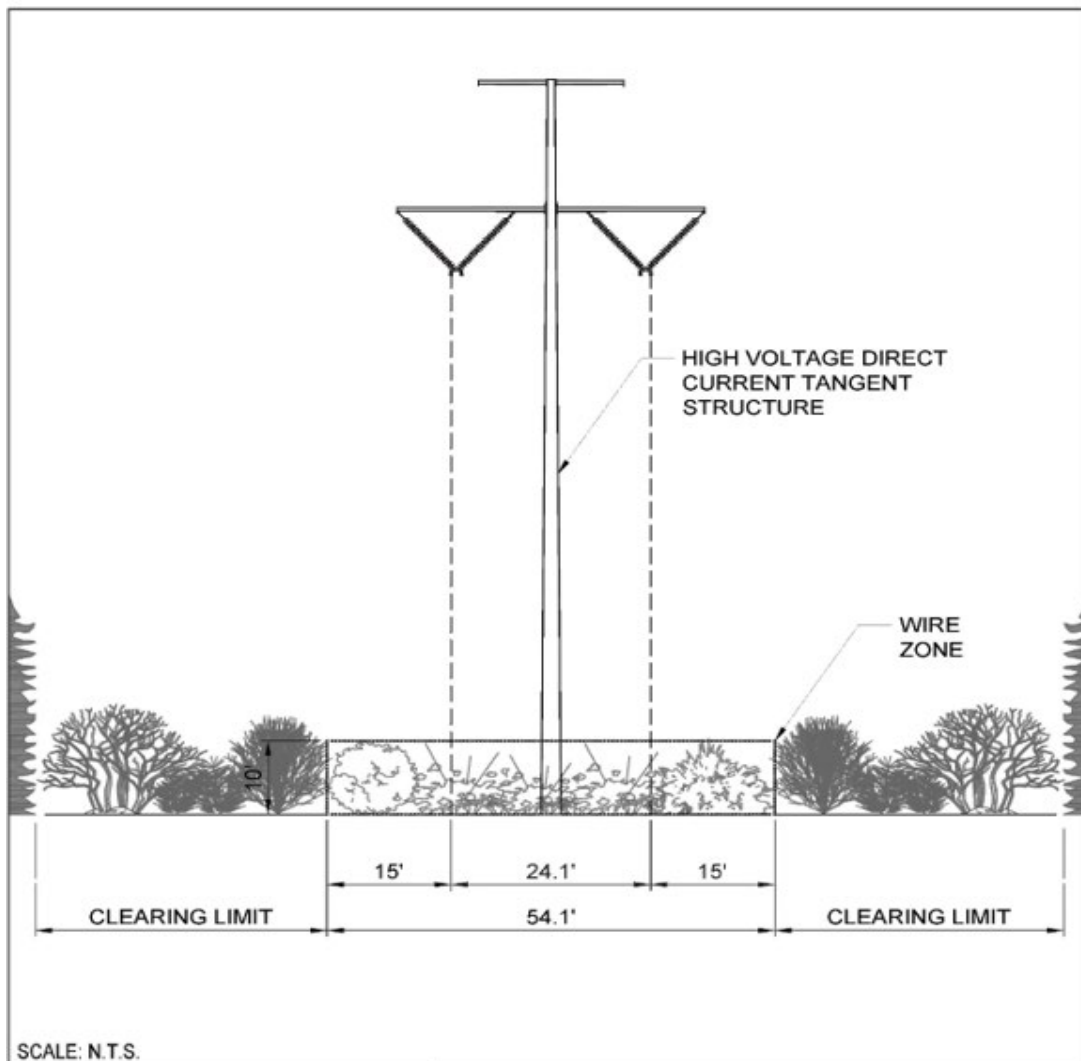
To aid in identifying restricted areas, buffers and restricted habitats may be located and demarcated in the field using brightly colored flagging or signage prior to the initiation of maintenance activities along the transmission line corridor. Alternatively, use of GIS data and GPS equipment may be used to provide accurate location of resources and associated buffers during maintenance activities. If desired, maintenance personnel may permanently demarcate restricted habitats to aid in long-term maintenance activities. Maintenance contractors working on the transmission line corridor will be provided a copy of this VMP. Use of this VMP in conjunction with the As-Built Plan & Profile drawings will enable maintenance contractors to locate and mark restricted areas in the field.

14.0 Maintenance Personnel Training

Personnel who will conduct vegetation maintenance activities on the transmission line corridor will receive appropriate environmental training before being allowed access to the transmission line corridor. Maintenance personnel will be required to review this VMP prior to the training and before conducting any maintenance activities. The level of training will be dependent on the duties of the personnel. The training will be given prior to the start of maintenance activities. Replacement or new maintenance personnel that did not receive the initial training will receive similar training prior to performing any maintenance activities on the transmission line corridor.

The training session will consist of a review of the buffers and restricted habitats, the respective maintenance requirements and restrictions for each, and a review of how these areas and resources can be located in the field. Training will include familiarization with and use of GIS information and sensitive natural resource identification in conjunction with the contents of this VMP, as well as basic causes, preventive and remedial measures for contamination, and erosion and sedimentation of water resources. Training will also include a review of safety and the proper use of appropriate maintenance tools.

Figure 1: Vegetation Maintenance for the HVDC Transmission Line



1. With the exception of the vegetation maintenance practices described in Section 2.0 (i.e., full height canopy, minimum 35-foot tall trees, and vegetation tapering requirements in Segment 1) capable species, regardless of height, are cut back to ground level or treated with herbicides within the entire length and width of the transmission line corridor during scheduled vegetation maintenance (every 4 years). However, within stream buffers, only capable specimens over 10 feet tall may be cut or treated (specimens at or above this height are likely to grow into the conductor safety zone prior to the next scheduled vegetation maintenance cycle).
2. All woody vegetation over 10 feet in height and inside the wire zone, whether capable or non-capable, is cut back to ground level during scheduled vegetation maintenance.
3. Vegetation maintenance cycle may not exceed 3 years on Segment 1 without prior approval from MDEP.

Figure 2. Tapered Vegetation Maintenance Cross Section

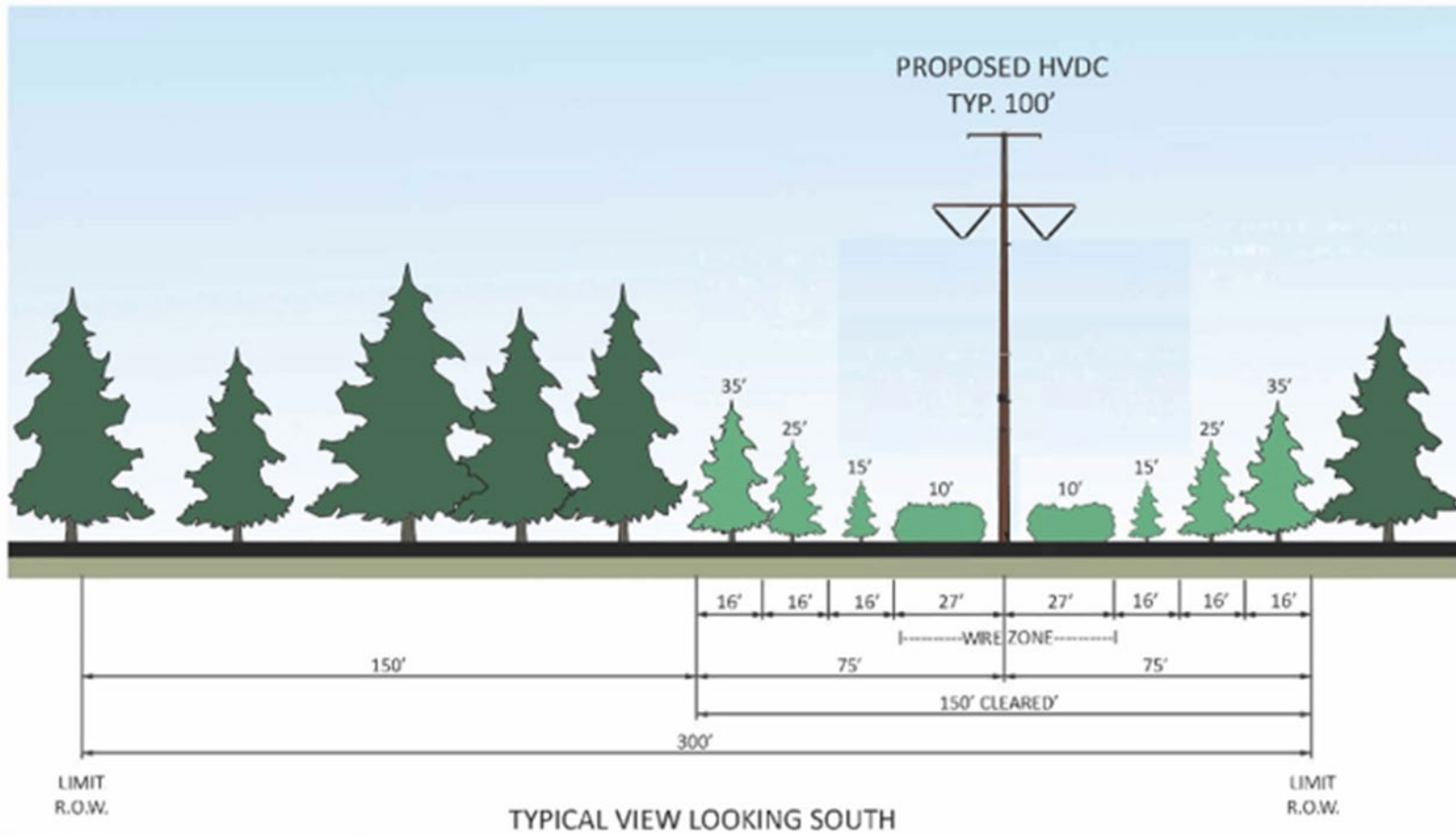


EXHIBIT D

By Email

August 11, 2021

Commissioner Loyzim, Department of Environmental Protection
Chair Draper and Board of Environmental Protection
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

RE: *Request for Stay of Department Order #L-27625-26-A-N/L-27625-TB-B-N/L-276252C-C-N/L-27625-VP-D-N/L-27625-IW-E-N and transfers, amendments and revisions thereto.*

Commissioner Loyzim and Chair Draper:

Enclosed is a decision of the Maine Superior Court reversing the Bureau of Parks and Lands grant of a lease to Central Maine Power and NECEC Transmission LLC (together “CMP”) over the Johnson Mountain and West Forks Public Reserved Lots for a 300 foot wide transmission corridor, and declaring that the Bureau Director was without authority to enter the 2014 Lease (that served as title, right or interest—TRI—for the original permits) and the 2020 Lease (that served as TRI for the revisions and amendments thereto).

In light of this decision, the Natural Resources Council of Maine (“NRCM”) requests that the Department issue a stay halting all new clearing and construction pursuant to the Department’s May 11, 2020 Order (“Department Order”) and its subsequent related decisions transferring, amending and revising the State environmental permits (collectively the “Department Permitting Decisions”) for the New England Clean Energy Connect (“NECEC” or “Corridor”). Because the NECEC cannot be built along the route permitted by the Department, a stay is justified so that the public is not irreparably harmed by the continued clearing and construction along this route.

We respectfully ask that the Department act on this request by Monday, August 16. The Department is familiar with these issues and should be in a position to act expeditiously on this request. If the Department has not taken action on this request by that date, we may seek further judicial recourse on these issues.

1. Procedural Background

On June 10, 2020, NRCM requested that the Board of Environmental Protection (“Board”) issue a stay of the permits, arguing in part that it was likely to prevail before the Board on the issue that CMP failed to show adequate TRI over these two public lots because the 2014 Lease was void under Me. Const. art. IX, § 23, and further alerting the Department that it and others had recently filed a lawsuit seeking a declaration to that effect. NRCM explained that CMP failed to adequately demonstrate there were not available alternatives with lesser adverse impacts to protected natural resources as required by the relevant statutes and rules, and that allowing CMP

to begin construction along the existing route would foreclose NRCM's ability to obtain meaningful review of those alternatives on appeal because the impacts would be a fait accompli. The Board never ruled on NRCM's request, which was instead referred to the Commissioner who issued a decision on August 26, 2020 denying the request (the "Stay Denial"). The grounds for that denial included that the stay was not urgent because CMP still had not obtained all of the necessary permits for the project and therefore there was no imminent irreparable harm (Stay Denial at 4), and that NRCM was unlikely to prevail on the merits of its TRI argument (Stay Denial at 6).

Also on June 10, 2020, NRCM filed its appeal with the Board arguing that the 2014 Lease did not meet the submission requirements for documentation of TRI set forth in Chapter 2 Section 11(D) of the Department's Rules, because of its facial noncompliance with Article IX, Section 23 of the Maine Constitution and 12 M.R.S. §§ 598 to 598-B. NRCM pointed to the Department's troubling disparate treatment of two functionally identical, facially void, leases. With regard to a lease with the Passamaquoddy presented to the Department by CMP, but which was not yet signed by the Bureau of Indian Affairs ("BIA"), the Department's draft Order conditioned approval on CMP obtaining the requisite approval.¹ Logically, this would require the same condition with regard to the lease over Public Reserved Lands: that the permit be conditioned on CMP obtaining the requisite legislative approval. NRCM argued that there is no rational basis for the Department to treat the 2014 Lease any differently than it proposed for the Passamaquoddy lease. NRCM further argued that:

The Board should initiate its review (including a hearing) only after NECEC LLC obtains TRI (including a valid lease from BPL) and submits all necessary information for the Department to determine whether the proposed owner and operator of NECEC can comply with NRPA and the Site Law. At a minimum, however, were the Board to consider the application prior to a Legislative vote, the Board should impose a condition, similar to the condition originally proposed by the Department for the BIA lease, that NECEC LLC obtain the necessary legislative approval pursuant to Me. Const. art. IX, § 23; 12 M.R.S. §§ 598 to 598-B for the BPL lease of State Public Reserved Land in Johnson Mountain and West Forks Plantation Northeast.

NRCM Appeal, filed June 10, 2020. The Board has not yet acted on this request, nor determined whether it will hold a hearing or impose this condition. In addition to, but separate from, this request for the Department to issue a stay, NRCM hereby requests that the attached Superior Court decision be provided to the Board as intervening authority in support of the above requests which remain pending before the Board.

The enclosed decision materially alters each of the factors the Commissioner assessed in issuing the August 2020 Stay Denial—clearing and construction has already begun, and NRCM has now

¹ The Final Order eliminated this proposed condition likely due to NRCM's comments pointing out that the CMP's revisions to the NECEC route meant that the Passamaquoddy land was no longer part of the project, and arguing that the Department's proposed treatment of the 2014 Lease should be no different than its proposed treatment of that lease.

established a high likelihood of success before the Board on the issues of TRI and failure to adequately assess alternatives. Consequently, the Board should stay the NECEC.

2. The Department should issue a stay

The Department—either through the Commissioner or the Board—“may issue a stay upon a showing of irreparable injury to the petitioner, a strong likelihood of success on the merits, and no substantial harm to adverse parties or the general public.” 5 M.R.S.A § 11004; Me. Op. Att’y Gen. No. 80-116 (July 15, 1980) (opining that the Board of Environmental Protection can issue a stay during pendency of appeal). The showing necessary to obtain a stay pending appeal is the same showing that must be made to obtain a preliminary or permanent injunction, and the “most critical” factors are likelihood of success on the merits and a demonstration that irreparable injury will be likely absent a stay. *Nextera Energy Resources LLC, et. al. v. Dept’t of Env’l Prot., et. al.*, Dkt. Nos. KEN-AP-20-27, SOM-AP-20-04 (Me. Sup. Ct., Jan. 11, 2021).

a. Likelihood of success on the merits

The Law Court recognizes that a judicial declaration invalidating rights in the land subject to a permit means that the permit “might be revoked.” *Southridge Corp. v. Bd. of Env’t Prot.*, 655 A.2d 345, 348 (Me. 1995). Furthermore, the Law Court upheld the decision of an appellate administrative tribunal to reverse the decision of the administrative tribunal with original jurisdiction for failure of TRI. *Tomasino v. Town of Casco*, 2020 ME 96, 237 A.3d 175. In *Tomasino*, the Code Enforcement Officer granted a building permit, but the appellate administrative tribunal—the zoning board of appeals—subsequently reversed that decision. *Id.* ¶ 3. In upholding the ZBA’s reversal of the decision of the CEO, the Law Court held that “even assuming that the Tomasinos demonstrated that they had *some* interest in the particular portion of property at issue, they failed to demonstrate that they have the kind of interest that would allow them to cut the trees if they were granted a permit to do so.” *Id.* ¶ 15.

That is even more true where, as here, the Commissioner declined to engage in its own TRI analysis regarding the 2014 Lease and the 2020 Lease, instead stating about the 2014 Lease:

That lease decision was never appealed and is therefore final. The Department accepts the decision of its sister agency to enter into the leases and the fully executed leases as sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project.

May 20, 2020 Commissioner Order at 8. The Superior Court declared this sister agency decision unlawful under Me. Const. art. IX § 23 and thus not final. Consequently, the fundamental factual underpinning of the Commissioner’s original analysis is no longer true and the original decision is not based on substantial evidence.

Given that CMP has *no interest* in a critical portion of property at issue, NRCM is likely to prevail in establishing that CMP does not have TRI. Indeed, such a result is expressly required by the Department rules: “An applicant must maintain sufficient title, right or interest throughout the entire application processing period.” 06-096 CMR Ch. 2, § 11(D). This expressly includes

“sufficient title, right or interest *in all of the property that is proposed for development or use.*” *Id.* (emphasis added). “This rule applies to all license applications accepted as complete, appeals of Commissioner license decisions to the Board, and petitions to modify, revoke or suspend a license filed on or after the effective date of this rule, or any amendments to this rule.” *Id.* § 2(C). Furthermore, regardless of whether the Board assumes original or appellate jurisdiction, “[t]he board is not bound by the commissioner’s findings of fact or conclusions of law but may adopt, modify or reverse findings of fact or conclusions of law established by the commissioner.” 38 M.R.S. § 341-D(4)(A). Despite NRCM filing its appeal to the Board *more than a year ago*, the Department has failed to take any substantive action on that appeal. Yet the rules are plain that while a permit remains before the Department, including “appeals of Commissioner license decisions to the Board,” the license applicant “must maintain” sufficient title, right or interest “in all of the property that is proposed for development or use.” 06-096 CMR Ch. 2, §§ 11(D) & 2(C). The attached Superior Court decision is dispositive. CMP does not have TRI in the entirety of the NECEC project, and NRCM is therefore likely to prevail on the merits of this issue when the Board does finally act.

b. Irreparable injury

NRCM and the public will suffer irreparable injury if CMP is allowed to continue to build a project it can’t complete. The Department Order concedes, as it must that the “record shows the project as originally proposed would have had substantial impacts, particularly in the 53.1-mile portion of the corridor that extends from the Quebec border to The Forks, known as Segment 1.” Department Order at 1. The Department goes on to conclude that those impacts can be minimized “through a variety of mitigation measures” that rely on the alternatives analysis supporting a “stated project purpose is to deliver up to 1,200 MW of Clean Energy Generation from Quebec to the New England Control Area via a HVDC transmission line.” Department Order at 1, 58-61. Although NRCM strongly disagrees with the Department’s conclusions about the availability of alternatives to the impacts associated with the proposed route that forms the basis of the project purpose and the adequacy of its mitigation measures, what is clear now is that the project purpose can no longer be met with the proposed route. Thus, any impacts—even those minimized by the Department’s conditions—are not justified under the applicable environmental statutes, and NRCM and its members will suffer irreparable injury if those impacts are allowed to occur in Segment 1 and elsewhere absent any ability of NECEC Transmission LLC to actually connect “from Quebec to the New England Control Area.”² Thus, the Department should stay the Department Permitting Decisions until the Board takes final action on NRCM’s appeal.

² As you’ve previously been informed, the clearing going on in segment one demonstrates that the Department’s statement that its “Order limits the width of the cleared corridor in Segment 1 – originally proposed to be 150 feet – to 54 feet at its widest point” Department Order, at 1, simply isn’t true. The Department was informed of the fact that the corridor is effectively being cleared to 150 feet, yet issued a determination dated August 2, 2021 that this type of clearing was in full compliance with the Order. Thus, regardless of the adequacy of the conditions to address the regulatory requirements, there are substantial environmental impacts that are simply not justified where, as here, CMP lacks the ability to complete the line on the permitted route.

As further evidence establishing irreparable harm, NRCM expressly incorporates testimony it sponsored during the permitting proceedings. This testimony is not here offered to suggest that Department was compelled to reach a different result on the regulatory requirements when the stated project purpose could be met, but is instead offered to support the claim of irreparable injury if CMP is allowed to continue clearing and construction on additional areas of land when the project purpose cannot be met:

- Such construction will devastate trout streams, wildlife habitats, and the other natural resources that NRCM exists to protect. As Dr. David Publicover, Senior Staff Scientist and Acting Director of Research with the Appalachian Mountain Club (AMC), testified in the underlying proceedings, CMP's proposed Corridor would negatively affect "the heart of a globally significant forest region that is notable for its relatively natural forest composition, lack of permanent development, and high level of ecological connectivity."³ Jeff Reardon, Maine Brook Trout Project Director for Trout Unlimited in Maine, likewise testified about the Corridor's devastating effects, noting that the planned area of construction contains the majority of the remaining un-degraded aquatic habitat in the northeast region, making this project an incredible threat to Maine's brook trout habitat.⁴
- NRCM and its members will also suffer economic harm if the Department does not stay the Department Permitting Decisions. NRCM counts among its members guides who make their living offering guided tours (e.g., fishing and hunting opportunities) on the land that is the subject of this Order. If clearing and construction continues, it will gravely affect the ability of NRCM members to pursue their livelihoods. For example, Todd Towle, NRCM member and owner of Kingfisher River Guides, testified that the Corridor will impact both the health of wild brook trout in the region and his fishing and guiding business. He noted that he is particularly concerned about the effect on: (a) Cold Stream and Tomhegan Stream because of the number of crossings that are likely to affect stream temperatures and be visible to clients; (b) Gold Brook because of the proximity of the NECEC and the number of crossings of the brook and its tributaries; and (c) Horse Brook because it is a coldwater tributary to a stream that gets very warm in the summer, making the cold water tributary very important for brook trout health and because it is close to a family camp.⁵

³ David Publicover Direct Testimony, 3, *available at* <https://www.maine.gov/dep/ftp/projects/necec/hearing/pre-filed-testimony/Intervenor%20Group%204/2019-02-28%203%20-%20Group%204%20D%20Publicover%20Direct%20Testimony%20with%20Exhibits%2014-18.pdf>.

⁴ Jeff Reardon Direct Testimony, 6, *available at* <https://www.maine.gov/dep/ftp/projects/necec/hearing/pre-filed-testimony/Intervenor%20Group%204/2019-02-28%201%20-%20Group%204%20J%20Reardon%20Direct%20Testimony%20with%20Exhibits%201-7.pdf>.

⁵ Todd Towle Direct Testimony, 3-6, *available at* <https://www.maine.gov/dep/ftp/projects/necec/hearing/pre-filed-testimony/Intervenor%20Group%204/2019-02-28%202%20-%20Group%204%20T%20Towle%20Direct%20Testimony%20with%20Exhibits%208-13.pdf>.

- NRCM and its members will suffer the loss of critical wildlife habitat. Ron Joseph, another NRCM member and a retired wildlife biologist for the Maine Department of Inland Fisheries and Wildlife and U.S. Fish and Wildlife Service, testified that the NECEC will cross 22 deer yards and increase fragmentation in 11 deer yards through tree clearing.⁶ He noted that “continued loss of our remaining deer yards has a significant economic impact on traditional Maine sporting lodges and rural communities that depend on income from deer hunters.”⁷ Most importantly, the potential effects to the Upper Kennebec Deer Wintering Area are particularly troubling because this deer yard is in an area of the state already suffering from low deer densities, making it critically important to deer populations as well as recreational hunters and hunting businesses in the region.⁸

Regardless of whether or not the Department was correct that such harm complied with the applicable environmental standards given the stated project purpose and the complete absence of any alternatives analysis supporting that purpose, such harm can no longer be justified where, as here, the project can no longer connect “from Quebec to the New England Control Area.”

c. *Harm to CMP*

Because CMP can no longer demonstrate that it has the rights to complete the project whose stated purposes is to connect “from Quebec to the New England Control Area,” any harm to CMP is caused by that failure, not by any stay of the Department Permitting Decisions. Regardless, the harm to NRCM and the public of allowing CMP to continue to build a project they can’t complete far outweighs any pocketbook harm to CMP.

d. *Public interest.*

The public interest balancing of allowing CMP to continue to build a project they can’t complete weighs strongly in favor of a stay. As the Law Court explains, “[t]here can be little doubt that the Legislature has enunciated a strong public policy in favor of the protection and conservation of the natural resources and scenic beauty of Maine.” *Francis Small Heritage Tr., Inc. v. Town of Limington*, 2014 ME 102, ¶ 20, 98 A.3d 1012, 1020. The interest in requiring compliance with state laws authorizing only that development that meets the project purpose and environmental requirements of the Site Law and the Natural Resource Protection Act has thus been understood to be an issue of public interest, not just one limited to individual litigants. See *Brennan v. Saco Const., Inc.*, 381 A.2d 656, 662 (Me. 1978). Thus, the discussion above with regard to irreparable injury to NRCM and its members establishes that it is in the public interest to prevent harm to the environment, natural resources and scenic beauty by requiring CMP to document rights to complete the project compliant with the project purpose before allowing such consequential adverse impacts to protected natural resources. CMP’s lack of TRI means that they

⁶ Ron Joseph Direct Testimony, 2, available at <https://www.maine.gov/dep/ftp/projects/necec/hearing/pre-filed-testimony/Intervenor%20Group%204/2019-02-28%205%20-%20Group%204%20R%20Joseph%20Direct%20Testimony.pdf>.

⁷ *Id.* at 3.

⁸ *Id.* at 4.

August 11, 2021

Page 7

cannot complete the NECEC as permitted and therefore that there is not a clear justification for the impacts the ongoing construction is wreaking. Accordingly, the public interest weighs in favor of a stay until the Board can take final action on NRCM's appeal.

Sincerely,

A handwritten signature in blue ink, reading "James T. Kilbreth". The signature is fluid and cursive, with the first name "James" written in a large, looping script, followed by "T. Kilbreth" in a more compact, cursive style.

James T. Kilbreth

cc: Service List (by email only)
Bill Hinkel

EXHIBIT E



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

August 20, 2021

James T. Kilbreth
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101

Elizabeth A. Boepple
Murray Plumb & Murray
75 Pearl Street
PO Box 9785
Portland, ME 04104-5085

Re: Natural Resources Council of Maine's and West Forks' Renewed Requests for a Stay

Dear Mr. Kilbreth and Ms. Boepple:

This letter serves as my decision on your clients' renewed requests for a stay of the May 11, 2020, Order conditionally approving the application to construct the New England Clean Energy Connect project (NECEC Order) and additional Orders transferring and amending the NECEC Order.

I. Procedural Background

On June 5, 2020, Intervenor West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guides Service, LLC, Hawkes Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Mike Pillsbury, Matt Wagner, Mandy Farrar, and Carrie Carpenter (collectively West Forks) filed a motion requesting the Commissioner stay the NECEC Order. West Forks filed supplements to its motion on June 15, 2020 and June 25, 2020.

On June 10, 2020, the Natural Resources Council of Maine (NRCM) separately filed a request for a stay of the NECEC Order with the Commissioner.

On August 26, 2020, then Commissioner Gerald Reid issued his decision denying the stay requests filed by West Forks and NRCM. Commissioner Reid determined that West Forks and NRCM had failed to demonstrate that any of the three criteria necessary to obtain a stay had been met.

On November 2, 2020, NRCM filed a motion in Superior Court to stay the NECEC Order. West Forks joined in NRCM's motion.

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On January 8, 2021, following a hearing, the Superior Court denied the NRCM and West Forks stay request.

On May 27, 2021,¹ West Forks filed a renewed request for stay of the NECEC Order with the Commissioner. West Forks filed a supplement to that request on June 17, 2021. By letter dated August 4, 2021, I denied West Forks' May 27, 2021 renewed request for a stay of the NECEC Order and also addressed additional issues.

On August 11, 2021, NRCM filed another renewed request for a stay of the NECEC Order following a Maine Superior Court decision dated August 10, 2021 in the case of *Black v. Cutko*, No. BCD-CV-2020-29. In that decision the Superior Court reversed the decision of the Bureau of Public Lands (BPL) to enter into a lease with Central Maine Power Company (CMP) for public lands in Johnson Mountain Township and West Forks Plantation. The lease covered a stretch of land over which approximately .9 miles of the transmission line would be built.

On August 12, 2021, I notified the licensees and the other parties to the pending Board appeals that I was initiating a proceeding to consider a suspension of the permit issued in the NECEC Order.

On August 18, 2021, West Forks joined in NRCM's August 11, 2021 renewed stay request, raising similar arguments with respect to the Superior Court's August 10, 2021 decision in *Black v. Cutko*. Additional responses to NRCM's August 11, 2021 renewed stay request were filed by the licensees, CMP and NECEC Transmission LLC, and by Trout Unlimited and Friends of the Boundary Mountains.

II. Stay Criteria

The criteria for obtaining a stay of an agency's decision during an appeal are set forth in the Maine Administrative Procedure Act, 5 M.R.S. § 11004. As petitioners seeking a stay, NRCM and West Forks bear the burden of demonstrating that: (1) the failure to obtain a stay would result in irreparable harm to the petitioners, (2) there is a strong likelihood of success on the merits of the petitioners' appeals, and (3) the issuance of a stay would result in no substantial harm to adverse parties or the general public. A petitioner must satisfy all three parts of this test to obtain a stay.

III. Analysis and Conclusion

In this renewed request for a stay, NRCM and West Forks argue that CMP no longer has title, right, or interest (TRI) for all property proposed for development as contemplated by Chapter 2, § 11(D) of the Department's rules and that therefore they have a strong likelihood of success on the merits of their appeals to the Board. NRCM and West Forks base their latest renewed requests for a stay of the NECEC Order on the Maine Superior Court's recent August 10, 2021 decision in *Black v. Cutko*, which NRCM asserts "materially alters" the stay factors that former

¹ West Forks' May 27 filing was mistakenly dated 2020, as opposed to 2021.

Commissioner Reid assessed in issuing his August 2020 stay denial and is “dispositive” with respect to TRI, and which West Forks asserts is “fatal” to CMP’s application and the NECEC Order due to a lack of TRI. (NRCM Aug. 11, 2021 Stay Request, pp. 2, 4; West Forks Aug. 18, 2021 Response, pp. 1 & n.3, 2-5). I disagree.

NRCM contends throughout its request that, as a result of the Superior Court’s August 10, 2021 decision in *Black v. Cutko*, NRCM’s appeal to the Board will ultimately be successful because “the NECEC cannot be built along the route permitted by the Department.” (NRCM Aug. 11, 2021 Stay Request, p. 1); *see also* p. 4 (discussing irreparable injury with reference to a project CMP “can’t complete” and a project purpose that “can no longer be met with the proposed route”) and p. 6 (discussing public interest with respect to a project CMP “can’t complete”). West Forks adopts all of these contentions. (West Forks Aug. 18, 2021 Response, p. 1 n.2). These assertions overstate the Superior Court’s decision, which does not find that CMP cannot obtain a BPL lease or build the NECEC project on the proposed route permitted by the Department. Rather, the Superior Court found that the process used by the BPL in issuing a lease for an approximately 0.9 mile portion of the permitted route was legally insufficient and that the BPL must make certain findings and determinations before issuing such a lease. The Superior Court’s decision has since been appealed to the Maine Law Court by both the BPL and CMP and the ultimate result of that legal challenge to the decision is uncertain. More fundamentally, the Superior Court did not rule on the merits of the BPL’s lease decision with respect to the 0.9 mile portion of the proposed and permitted route, and even if the Law Court were to affirm the Superior Court’s decision, CMP may re-apply for such a lease.²

In any case, NRCM and West Forks have also not demonstrated that they will succeed on the appeal issue of whether CMP’s permit application demonstrated sufficient TRI for purposes of the processing of its application, and maintained TRI throughout the processing period.³ Chapter 2, § 11(D) requires an applicant to maintain sufficient TRI throughout the application processing period. Chapter 2, § 1(Q) defines the processing time as “the time established by the Department to process an application, as published pursuant to 38 M.R.S. § 344-B(1) or otherwise provided by law.” For this Chapter 2 purpose, the Department’s processing time ends upon issuance of the permit or license. In this case, the processing time ended on May 11, 2020, with the issuance of the NECEC Order, and does not extend beyond that date and encompass the period of any appeals of such licensing decision to either the Board of Environmental Protection or courts.

With the BPL lease that had been issued, CMP maintained sufficient TRI throughout the entire Department application processing period. The concept of sufficient TRI pursuant to the Department’s rules is a distinct issue from any judicial resolution of disputes over underlying matters such as the validity of a lease issued by a separate agency. As the Superior Court Justice who issued the August 10, 2021 decision in *Black v. Cutko* stated in her January 8, 2021 decision

² NRCM and West Forks also contend the Department should have conducted its own analysis of whether the BPL process leading up to the lease between the BPL and CMP was proper. (NRCM Aug. 11, 2021 Stay Request, p. 3; West Forks Aug. 18, 2021 Response, pp. 2-3). That adjudicatory function is not part of the Department’s role in reviewing a permit application before it.

³ NRCM Aug. 11, 2021 Stay Request, p. 4; West Forks’ Aug. 18, 2021 Response, pp. 1-3, 4-5.

denying the prior requests by NRCM and West Forks to stay the Department's NECEC Order, "[t]he fact that an applicant's TRI is based on a possessory interest that might later be invalidated by a court does not mean the applicant lacked TRI to proceed before the DEP." *NextEra Energy Resources, LLC v. DEP and West Forks Plantation v. DEP*, Nos. KEN-AP-20-27, SOM-AP-20-04, Superior Court Order, Jan. 8, 2021, at 8.⁴

The reasoning above also applies to arguments on the remaining prongs of the test a petitioner must meet to obtain a stay. The issuance of a stay on the sole basis that the sister agency's procedure was ruled invalid may result in unwarranted harm to the licensees or the public. NRCM and West Forks have not established that a stay based solely on such a procedural violation by BPL, which is subject to further appeal and potential correction before the BPL, would result in no substantial harm to adverse parties or the general public. NRCM's and West Forks' contentions regarding irrevocable harm go to evidence submitted during the licensing hearing, which was not found convincing on the issue of whether the statutory criteria have been met for the issuance of a permit. I concur with Commissioner Reid's prior determination that these arguments do not demonstrate irrevocable harm will occur to NRCM or West Forks members if a stay is not granted.

While I am denying NRCM's and West Forks' renewed requests for a stay because the criteria for a stay have not been met, I recognize that the Superior Court's August 10, 2021 decision in *Black v. Cutko* has created some uncertainty with respect to the affected portion of the project. In response, I have already initiated a proceeding to consider the suspension of the NECEC Order in accordance with 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A) of the Department's rules, as more fully described in my August 12, 2021 letter to representatives of CMP and NECEC Transmission LLC, Mr. Dickinson and Mr. Mirabile. That proceeding, rather than NRCM's and West Forks' renewed requests for a stay of the NECEC Order, is the appropriate Department mechanism to consider the change in circumstance represented by the Superior Court's decision.

Based on all of the above, I am denying NRCM's renewed request for a stay of the NECEC Order dated August 11, 2021, and West Forks joinder of that renewed stay request in its filing dated August 18, 2021.



Melanie Loyzim, Commissioner

cc: Service List

⁴ West Forks' reliance on a prior Department case, *Southridge Corp. v. Bd. of Env'tl. Prot.*, 655 A.2d 345 (Me. 1995), in support of its TRI argument is misplaced. (West Forks' Aug. 18, 2021 Response, p. 2). That decision upheld the Department's processing of a permit application where the applicant did not have deeded ownership of a small portion of the land on which the project was located but was involved in a separate court action to resolve a dispute over the applicant's ownership of that parcel.

EXHIBIT F



JANET T. MILLS
GOVERNOR

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
COMMISSIONER

August 12, 2021

Via E-mail Only

Thorn Dickinson, President & CEO
NECEC Transmission LLC
83 Edison Drive
Augusta, ME 04336

Gerry J. Mirabile, NECEC – Manager Permitting & Compliance
Central Maine Power Company
83 Edison Drive
Augusta, ME 04336

RE: New England Clean Energy Connect (NECEC) Transmission Line Project

Dear Messrs. Dickenson and Mirabile:

In Department Order # L-27625-26-A-N/L-27625-TB-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N, dated May 11, 2020 (the Order), the Department approved the New England Clean Energy Connect (NECEC) project. The project involves 145 miles of high voltage direct current transmission line from Beattie Township to Lewiston, a converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission lines. The stated purpose of the project is to provide renewable electricity from Quebec to the New England grid.

On August 10, 2021, in its decision in *Black v. Cutko*, No. BCD-CV-2020-29, the Superior Court reversed the Director of the Bureau of Parks and Lands' decision to enter into a lease in 2020 for a portion of the NECEC corridor located in Johnson Mountain Township and West Forks Plantation. Pursuant to the Court's judgment, NECEC Transmission LLC and Central Maine Power Company (CMP) will not have a lease to construct the approximately 0.9 mile portion of the transmission line approved in this location. While this portion of the transmission line is only a small part of the overall project, this portion is necessary to the overall project purpose of delivering electricity from Quebec to the New England grid.

Pursuant to 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A) of the Department's rules, the Commissioner may revoke or suspend a license upon making certain findings, including a finding that: "There has been a change in condition or circumstance that requires revocation or suspension of a license." 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E). I have determined that the Court's decision represents a change in circumstance that may warrant a suspension of the NECEC Order and I, therefore, am initiating this proceeding under the above-cited sections of

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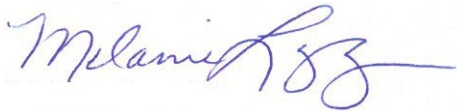
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Letter to Messrs. Dickenson and Mirable
August 12, 2021
Page 2

the law and rule. If a suspension is imposed, it would be in effect until: (a) the Superior Court's decision is reversed on appeal and the lease is reinstated; (b) a new lease is entered into for the portion of the corridor in Johnson Township and West Forks Plantation that is at issue; or (c) the licensees obtain Department approval of an amendment to the Order rerouting this portion of the transmission line.

Chapter 2, § 25(A) & (C) establish that the Commissioner may not revoke or suspend a license without providing the licensee written notice and opportunity for a hearing pursuant to Title 5, chapter 375, subchapter 4. This letter shall serve as the required notice that I have decided to exercise my discretionary authority to initiate proceedings to consider the suspension of the NECEC Order based on the criterion set forth in 38 M.R.S. § 342(11-B) and Chapter 2, § 27(E) in light of the Superior Court's decision regarding NECEC Transmission LLC and CMP's lease for a portion of the project approved in the Order and the licensees' present ability to fulfill the stated project purpose.

Pursuant to Ch. 2, § 25(D), NECEC Transmission LLC and Central Maine Power Company have 15 days from the date of this letter to request a hearing.

A handwritten signature in blue ink, appearing to read "Melanie Loyzim", with a stylized flourish at the end.

Melanie Loyzim, Commissioner