

STATE OF MAINE

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

RUSSELL BLACK <i>et al.</i> ,	)
	)
Appellees/Cross-Appellants,	)
	)
v.	)
	)
BUREAU OF PARKS AND LANDS,	)
<i>et al.</i> ,	)
	)
Appellants/Cross-Appellees.	)

**REQUEST FOR LEAVE TO  
FILE A RESPONSE TO  
APPELLANT’S MOTION TO  
DEFER OR CONSOLIDATE**

Notwithstanding this Court’s order that the issue of mootness be taken up simultaneously with consideration of the case on the merits (*see* Order Enlarging Time to Respond to Motion to Dismiss, December 29, 2021), rather than file responses to Plaintiffs’ arguments about mootness, both the Bureau and CMP chose instead to ask the Court to delay consideration of that issue or alternatively consolidate it with *NECEC Transmission LLC et al. v. Bureau of Parks and Lands, et al.*, BCD-21-416, the case recently reported to the Court by the Business Court. Plaintiffs object to that request and, because it should have been raised by motion rather than in the guise of a purported response to the motion to dismiss as moot, request an opportunity to respond to the limited issue of whether the Court should defer to the *NECEC Transmission* case. The grounds for this request are the following:

1. This case was filed in June of 2020. The full constitutional and statutory history has been developed, as well as the creation and terms of the lease at issue, unlike *NECEC Transmission*. The issues here are fully ripe and, accordingly, this is the appropriate case to address the effect of I.B.1 on the lease, not *NECEC Transmission*. The Court's December 29 order recognized that fact.
2. Appellants' request to defer a decision on that issue severely prejudices Plaintiffs and the public, who are entitled to a final decision on this important question of the management of our public lands without regard to the progress of the other case. The question of the Bureau's leasing authority is distinct from *NECEC Transmission*'s overall challenge to the constitutionality of I.B.1, which involves a challenge primarily on the basis of "vested rights"; resolution of the Bureau's leasing authority here and the issue of a possible impairment of contract based on I.B.1's requirement of 2/3 legislative approval for transmission lines crossing public lands does not need to and should not wait for resolution of *NECEC Transmission*.<sup>1</sup>

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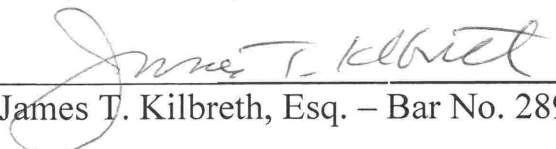
<sup>1</sup> The Bureau is a defendant in *NECEC Transmission* and there argued among other things that unlike on other sections of the permitted transmission line where construction had occurred, there had been no construction on the public reserved land subject to § 1 of I.B. 1, and consequently *NECEC* could not have acquired any "vested rights" against application of § 1 (which is the provision the Plaintiffs here argued moots this case). Similarly, the Bureau there argued that IB.1 does not impair the contractual relationship between the Bureau and *NECEC* and even if it did, I.B. 1 satisfies the legal standard for statutes impairing contracts. There is no reason for the Bureau to defer making these arguments here.

3. Plaintiffs have numerous meritorious arguments against the request to defer, including the likelihood that this Court will discharge some or all of the report without rendering a decision because of a lack of ripeness and justiciability and NECEC Transmission's attempt to enjoin the world, including the Maine House and Senate.

For all these reasons, Plaintiffs respectfully request an opportunity to submit an opposition to the motion to defer within two days of the Court's granting this motion. Alternatively, should the Court reaffirm its order that the issue of mootness will be taken up at argument on the merits and decided in this case, which Plaintiffs hope will be scheduled expeditiously, Plaintiffs would have no need to file a response.

The Bureau's position on this request is: "The Bureau disagrees with your characterization of the oppositions to Senator Black's motion to dismiss all appeals, and objects to your request to reply to the oppositions to the motion to dismiss the appeals." NECEC LLC also opposes the request "because NECEC LLC raised no request for relief to which Plaintiffs are entitled to respond and because there is no basis for a reply memorandum to address routine arguments raised solely in response to Plaintiffs' motion."

Dated at Portland, Maine this 18th day of January, 2022. \

  
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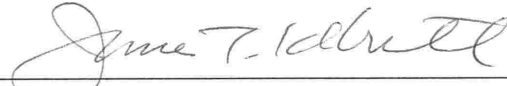
## CERTIFICATE OF SERVICE

I, James T. Kilbreth, attorney for Appellees/Cross-Appellants certify that I have this day caused the foregoing Appellees/Cross-Appellants' Request for Leave to File a Response to Appellant's Motion to Defer or Consolidate to be served on the below by electronic mail and U.S. mail, first class postage prepaid, addressed as follows:

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