STATE OF MAINE
SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

LAW COURT DOCKET NO. BCD-21-416

NECEC TRANSMISSION LLC, et al.,

Plaintiff-Appellants

v.

BUREAU OF PARKS AND LANDS, et al.

Defendant-Appellees

On Report from Business and Consumer Court
Docket No.: BCD-CIV-2021-00058

BRIEF OF PRO SE AMICUS CURIAE

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In Support of Plaintiff-Appellants

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

***Cases and Regulatory Orders*:**

***Constitutional Provisions and Statutes*:**

***Other Authorities*:**

INTRODUCTION

Greenhouse gas emissions (GHG) worsen the greenhouse effect in the atmosphere and cause climate change, among the greatest challenges the world faces. In March 2022, the U.S. EPA reports that Maine's most recent net emissions are equivalent to that of almost two full-time coal-fired power plants, or more than 1.5 million passenger vehicles driven for a year. The vast majority—87.5%—of the state's emissions come from burning fossil fuels for energy. The biggest sources in this category are vehicle fuels and heating-oil used in buildings.[1] Maine people are part of the problem of climate change and must be part of the solution.

Hydro-Quebec is among the largest producers of electricity in North America, with capacity to generate more than 37 gigawatts of clean, baseload electricity[2], the equivalent of 115 million solar panels.[3] For more than 30 years the New England electric grid has imported large volumes of this clean electricity from Hydro-Quebec, and stands ready to increase these imports with up to 1,200 megawatts of energy annually over the New England Clean Energy Connect (NECEC) for 40 years.[4] Quebec's vast water resources power generators that today deliver 11.5% of

[1] U.S. EPA, Inventory of Greenhouse Gas Emissions and Sinks by State, 1990-2019, at www.epa.gov/ghgemissions/state-ghg-emissions-and-removals
[2] https://www.hydroquebec.com/generation/
[3] https://www.energy.gov/eere/articles/how-much-power-1-gigawatt
[4] Imports from Hydro-Quebec comprised 11.5% of New England's load in 2021 (https://www.iso-ne.com/about/key-stats/resource-mix/). The first contract between Hydro-Quebec and Vermont was

New England's electricity, and will supply from existing reservoirs this increased supply for the benefit of Maine and all of New England.

The briefs of the Plaintiffs/Appellants and the Intervenor/Appellants, as well as those of other amicus parties supporting Plaintiffs' complaint for declaratory and injunctive relief, demonstrate why the Court should find the challenged citizens' initiative (the "Initiative") unconstitutional. This brief focuses on economic and environmental facts and the public policies undergirding global warming amelioration—facts and policies that support the conclusion that the Initiative is, in fact, unconstitutional and should not be allowed to bar retroactively the NECEC.

We focus here on the benefits the NECEC will provide to Maine and the harm that upholding the Initiative will inflict upon Maine's public policy addressing climate change and, in turn, upon our common welfare. This harm, in the context of global warming, is greater than any purported public interest in enforcing the unconstitutional Initiative at issue.

On a visit to Maine in late summer 2021, Sophie Brochu, President and Chief Executive Officer of Hydro-Quebec, declared that, "We are not just building a transmission line to Maine; we wish to build *a relationship* with Maine, and with the people of Maine."[5] It will take unprecedented levels of relationship-building to

signed in 1987. In 2010, a second contract was signed to deliver 25% of Vermont's annual electric needs through 2038. *See* https://www.hydroquebec.com/clean-energy-provider/markets/new-england.html.

[5] Remarks at the Cumberland Club, Portland ME, September 16, 2021.

combat global climate change and its devastating effects; and quite literally pulling the plug after-the-fact on a massive, duly-permitted, international clean energy project in Maine is *not* relationship-building.

STATEMENT OF FACTS

The undersigned amici adopt the more detailed Statement of Facts set forth in the brief of Plaintiffs/Appellants NECEC Transmission LLC and Avangrid Networks, Inc, and the brief of H.Q. Energy Services (U.S.) Inc. Amici, with professional backgrounds in government, economics, geology, forestry, policy (including conservation and public lands policy), planning, environmental regulation, and administration, as summarized in the Addendum to this brief, provide the following additional facts pertaining to the legal issues now before the Court.

Global warming is real, perhaps the most consequential challenge facing Maine, the nation, and the community of nations at present. The pace of warming—largely man-made and attributable to fossil-fuel use—is accelerating. The NECEC directly substitutes clean and renewable hydroelectric energy for fossil-fuel-generated energy.

Electrical energy produced by generating facilities is transmitted by interconnected grid systems that stretch across national, state, and municipal boundaries, ultimately reaching its residential, commercial, industrial, and public users. The NECEC, which will be part of this integrated grid system, is already under

construction to receive hydroelectric energy from Hydro-Quebec and physically deliver it to Maine.[6] Two-thirds of the project utilizes existing power-line corridors.[7] The NECEC, representing an investment of approximately a billion dollars in the regional power grid, will provide capacity for 1,200 megawatts of hydropower over a 145-mile transmission line from the Canadian border to Lewiston.[8]

By its nature, grid system infrastructure is not and cannot be bounded by municipal or state jurisdictional lines. We rely on state and federal regulatory bodies to ensure that transmission lines meet reasonable public health, safety, and environmental standards. The NECEC has received all required state and federal permits; construction was justifiably begun, and now is halted.

Opponents' attempts to halt the NECEC stretch back nearly five years:

- Opponents participated fully in every state regulatory hearing process involving the NECEC. After many months of hearings with extensive factual records, opponents did not prevail.[9]
- NextEra Energy Resources of Juno Beach, Florida, a national fossil-fuel and nuclear energy producer, appealed the Maine Public Utility Commission's

[6] *Cent. Me. Power Co.*, Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston (NECEC) and Related Network Upgrades, No. 2017-00232, Order at 6 (Me. P.U.C. May 3, 2019) (hereafter "PUC Order").
[7] PUC Order, p.10.
[8] PUC Order, p.7.
[9] PUC Order, DEP Order, LUPC Certification; *see also* A. 76-79, ¶ 20.

("PUC") issuance of a Certificate of Public Convenience and Necessity ("CPCN"); its appeal failed.[10]

- Funded in largest part[11] by fossil-fuel energy producers[12] Calpine Corporation of Houston, Texas, and Vistra Corporation of Irving, Texas, opponents sought an initiative directing the PUC to overturn its issuance of the CPCN, to be presented to the voters in November 2020. The initiative was challenged by Avangrid, and this Court declared the initiative unconstitutional.[13]
- NextEra, Calpine, and Vistra submitted an amicus brief supporting a lawsuit against the NECEC brought by Sierra Club et al. in federal court, challenging federal agency approvals of the project. The U.S. District Court for the District of Maine denied motions to enjoin construction.[14] The opponents appealed to the U.S. Court of Appeals for the First Circuit, which ultimately affirmed the District Court order.[15]
- Costs related to petition circulation for a subsequent voter initiative aimed at halting the NECEC were funded almost entirely ($2.7 million, 98.7% of

[10] *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm'n*, 2020 ME 34, ¶ 43, 227 A.3d 1117.
[11] Maine Commission on Governmental Ethics and Election Practices, campaign finance disclosures of Mainers for Local Power Political Action Committee.
[12] Greenhouse 100 Polluters Index, Political Economy Research Institute, University of Massachusetts Amherst (2021) [https://peri.umass.edu/greenhouse-100-polluters-index-current] Note: Calpine is listed by the name of its principal owner, Energy Capital Partners.
[13] *Avangrid Networks, Inc. v. Sec'y of State*, 2020 ME 109, ¶ 2, 237 A.3d 882.
[14] *Sierra Club v. U.S. Army Corps of Eng'rs*, No. 2:20-cv-00396-LEW, 2020 WL 7389744 (D. Me. Dec. 16, 2020).
[15] *Sierra Club v. U.S. Army Corps of Eng'rs*, 997 F.3d 395 (1st Cir. 2021).

spending during circulation) by NextEra, Calpine, and Vistra.[16] That Initiative was put to Maine voters on November 2, 2021, following a campaign also funded largely ($24.6 million, or 98.9% of proponents' spending) by the same three companies.[17] The Initiative passed, and all work on the project was halted.

The November 2, 2021, vote on the Initiative came well after Appellants had undertaken substantial construction of the project. By then, almost $450 million of the billion-dollar project investment had been spent[18]; and approximately 124 miles of the corridor had been cleared.[19]

The halting of the NECEC derives from a unique set of facts that we urge this Court to take cognizance of—that is, the roles that business competitors' money and abuse of the Maine initiative process play in retroactively banning infrastructure projects of scale. If the NECEC is halted by the Initiative, the failure of Maine to come to grips with global warming and grid system realities will be dire.

SUMMARY OF ARGUMENT

This case presents an urgent matter that speaks directly to a basic object of Maine government, namely, to "promote our common welfare."[20] Specifically, this

[16] Maine Commission on Governmental Ethics and Election Practices, campaign finance disclosures of committees supporting Question 1 in the November 2021 election.
[17] Ibid.; *see also* A. 107-08, ¶¶ 103-04.
[18] A. 121-22, ¶ 132.
[19] *Id.*
[20] Maine Constitution, Preamble.

Court must decide whether an infrastructure project that is critical to Maine and New England energy and climate policies, and that has been fully permitted under all applicable federal and state laws, may proceed and become operational; or whether opponents with competing business and fossil-fuel related interests will be allowed to override the fact-based findings of state and federal permitting agencies through a lavishly-funded initiative campaign to inflame, misinform, and propagandize mass opinion. It must decide, in effect, whether Maine will reciprocate Ms. Brochu's offer of a relationship, one paid for by the ratepayers of Massachusetts.

By employing the initiative process to bar retroactively the duly permitted transmission of clean, baseload hydropower, the fossil-fuel industry and its local allies have imperiled Maine and New England's ability to reduce carbon emissions in time to prevent catastrophic climate change impacts.

The fossil-fuel industry's defeat-by-delay tactics and misinformation campaign place at risk a fully permitted project that would deliver up to 1,200 megawatts of clean power to the region, the equivalent of NextEra's Seabrook nuclear power plant[21], enough to power one million homes[22], and enough clean power to displace GHG emissions equal to removing 700,000 cars from the road.[23]

[21] https://www.nexteraenergyresources.com/content/dam/neer/us/en/pdf/seabrook.pdf
[22] Maine has some 600,000 homes (US Census Bureau, Quickfacts visited Feb 25, 2022).
[23] PUC Order, p.70.

If this appeal fails, local communities, the state, the New England region, and present and future generations will forego substantial benefits to combat climate change established on their behalf in the permitting process. Further, the message will be sent to private investors everywhere that Maine's well-established, professional, and exhaustive regulatory process is *not* to be trusted, and can be frustrated completely and retroactively if sufficient resources are brought to bear by self-interested competitors.

The Appellants' arguments are supported by sound and effective public policy and law, by the compelling and overwhelming facts of the case, and by the urgent need to reduce GHG emissions to combat climate change, all to promote our common welfare. For Maine and the New England region to achieve our climate objectives, the "beneficial electrification" of Maine's and the region's power supply and its transmission system are necessary. This will allow our transportation, home-heating, and lighting systems to be powered by clean electricity, rather than GHG-emitting fossil fuels that are—as we currently witness—subject to global disruption.

To provide the clean electricity necessary to achieve this transformation, the NECEC and projects like it are essential. They must be allowed to proceed once permits are duly issued and significant construction has begun at great expense.

We submit this brief as a friend of the Court, based on our collective years of experience in Maine (well in excess of a century), participating in the development

and implementation of public policy in the areas of environmental protection and regulation, economic development, energy, land conservation, public lands, public education, and public health to promote our common welfare.

ARGUMENT

A. The NECEC Promotes Sound Public Policy To Reduce Greenhouse Gas Emissions And Combat Climate Change.

At one time, well into the 20th century, the rights to dam Maine's rivers were issued directly by the Maine Legislature.[24] Industrial and municipal waste disposal into our rivers was taken for granted or simply ignored. The results badly served the long-term interest and health of Maine people, and of the rivers, themselves.

To combat these results, Congress and the Maine Legislature created professional regulatory systems and agencies; established detailed, evidence-based project review standards; and insulated regulatory review from the vagaries of politics. Charged with implementing broad policies, these state and federal regulatory agencies carefully examine proposed projects that may impact the environment and our common welfare, and draw upon their specialized expertise to consider all relevant evidence to make permitting determinations consistent with overarching public policy. Their procedures allow proponents and opponents to

[24] *See, e.g.*, P. & S.L. 1875-77, ch. 106 (authorizing company to erect dam across a navigable river to facilitate the floating of logs); P.L. 1878, ch. 64 (an act to incorporate the Presumpscot Water Power Company and authorizing the company to build and extend dams for the use of factories and for the benefit of mill privileges on the Presumpscot River).

introduce evidence and air the views of all citizens, in open and transparent processes. Their decisions are subject to public scrutiny and the right to judicial review by Maine's robust court system.

This careful regulatory scheme is now imperiled, at a critical juncture. We live in a time of historic challenges, the most compelling and urgent of which is the potential cataclysm of human-induced global warming. The just-published 2022 United Nations' Intergovernmental Panel on Climate Change (IPCC) report paints a dire picture of planetary warming, with impacts more swift, widespread, and horrific than previously thought. The report shows that climate change is rapidly reshaping the world, including New England. This region, in fact, is on the front lines of the climate crisis, threatened by rising seas and temperatures. Some of these changes, IPCC asserts, are unleashing cascading effects, imperiling local communities, cultures, and economies.[25]

Life on planet Earth and human civilization now depend on our ability to reduce GHG emissions from our transportation, heating, and lighting systems. In the face of this unprecedented challenge, citizens look to respected and cherished institutions for leadership and implementation of sound public policy equal to the

[25] Intergovernmental Panel on Climate Change*, Climate Change 2022: Impacts, Adaptation, and Vulnerability, Summary for Policymakers*, February 27, 2022. For more, see Sweet, William, lead author, National Ocean Service, NOAA, *2022 Sea Level Rise Technical Report* (from NOAA, NASA, US EPA, USGS, USDoHS, FEMA, US Army Corps, and US DoD), Washington DC, February 2022, 110p. At 2022 Sea Level Rise Technical Report (noaa.gov).

task—including to those agencies charged with enforcing environmental, energy, and climate policy.

In his classic treatise on *Presidential Power,* the late historian Prof. Richard Neustadt of Harvard's Kennedy School of Government argues that, even as they created a constitutional system of *separate powers*, the Founders established a government of *shared power* among its several, separate branches and levels.[26] As a result, policy may be enduring and effective only given a general consensus within and among the branches of government, between levels of government, between culture and government, between leaders and citizens.

It is important in this context to understand "policy" as the legitimate and authoritative "rules of the game" by which we agree personally and through our elected and appointed representatives to live our lives. It is ever present throughout our personal, social, and public spheres, and a critical part of the process whereby we address enduring issues, concerns, and matters. Policy exists for the sake of efficiency, to afford purpose, direction, and continuity in our lives. It engenders expectations and sets priorities for our attention. It is of enduring importance and risk-reducing for resource investment, with consequences for both its observance and non-observance.

[26] Richard Neustadt, *Presidential Power: The Politics of Leadership from FDR to Carter*, Macmillan Publishing Co., New York, 1980, p. 26 ff. The most recent edition extends the analysis through the Reagan Administration; The Free Press, New York, 1990.

Public policy bears the weight of its effect in law, with consequences for all it touches. Scholars of public policy[27] have identified various characteristics of good, or "sound" public policy, including that it be:

- Backed by *sound theoretical understanding* of the issue at hand (as, if you would eliminate poverty, do you understand its root causes?);
- *Fact-based* and responsive to a widely felt public need (as, say, neglected public infrastructure);
- Afforded *clear goals and objectives* (as in the case of clean water standards or land protection goals);
- *Reliable, accessible*, and *long-lasting* within a transparent and respected implementation process (as in the case of Social Security or U.S. Army Corps of Engineers permitting); and
- *Periodically evaluated* for its outcomes and impacts (as with Pre-K education and child nutrition programs).

From his long experience and studies in both the American and British systems, Prof. Neustadt adds that to be "viable," policy must further:

- *Move with the grain of history*, *its direction consonant with coming needs;*
- *Prove Manageable* to those who must administer it, *Acceptable* to its supporters, and *Tolerable* to those who must put up with it; and
- *Enjoy proper Timing*.[28]

This is how reasoned lawmaking and sound policy implementation proceed. Well-established public policy and carefully considered project decisions must not be easily subjected to political popularity contests driven by enormous and ever-increasing budgets, pollsters, slogans, roadside posters, and self-serving propaganda.

[27] See, for example, Grover Starling, *Strategies for Policymaking: A Technical View,* Dorsey Press, Homewood IL, 1988. Debra Stone, *Policy Paradox: The Art of Political Decision Making*, W.W. Norton & Co., New York, 2001.
[28] Neustadt, op. cit., p. 135.

True to the principles of sound policymaking, Maine's Executive and Legislative branches have established sound and forward-looking environmental, conservation, energy, and climate policies for our state.[29] Maine's regulatory agencies have followed all required processes to evaluate the NECEC in the context of these policies. All these "rules of the game" cannot now be retroactively overturned to serve narrow, commercial self-interest. Such a result may only be characterized as unsound public policy, injurious to our common welfare.

B. Established "Maine Won't Wait" Policy Will Be Undermined If This Initiative Is Applied Retroactively To The NECEC.

More than half a century has passed since a presidential commission created by President Lyndon B. Johnson warned that fossil-fuel emissions might well be warming the earth's atmosphere, with uncertain and potentially catastrophic consequences.[30] It has been more than 40 years since the National Academies of Sciences published its landmark study, with similar conclusions.[31]

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[29] See LD 1679, An Act To Promote Clean Energy Jobs and To Establish the Maine Climate Council, 129th Maine Legislature, 2019; Maine Climate Council, *Maine Won't Wait: A Four-Year Plan for Climate Action*, Augusta, 2020, at www.maine.gov/future/sites/maine.gov.future/files/inline-files/MaineWontWait_December2020.pdf;

MaineWontWait_OneYearProgressReport_SinglePgs.pdf, December 2021, including the numerous enactments of the plan by the Legislature; and Homepage | Governor's Energy Office (maine.gov) for related enactments in 2021 respecting energy matters.

[30] *Restoring the Quality of Our Environment,* Report of the Environmental Pollution Panel, President's Science Advisory Committee, the White House, Washington D.C, November 1965. The panel's climate scientists warned President Johnson not just of the dangers associated with human-caused global warming, but also that we might eventually have to consider geo-engineering the climate to offset the risks caused by inadvertently running a dangerous experiment with the Earth's climate.

[31] National Academy of Sciences, *Energy and Climate*, NAS Press Washington, D.C., 1977.

More than three decades ago, National Aeronautics and Space Administration scientist James Hanson testified before Congress that human-caused global warming was not only real but "already happening now."[32] In 2016, the White House issued a detailed outline of the evidence showing an unmistakable need for deep decarbonization of the atmosphere, and a viable policy path to follow.[33] Since then, observable warnings of impending crisis have been ample and clear.[34] The massive forest fires, fatal heat waves, monstrous tornadoes, and epic downpours of 2021 testify to what we have failed to do in all this time.

We stand today at the cusp of too late[35], at an historic inflection point that cries out for attention, leadership, and clear-eyed public policy. Some of our best scientific minds and institutions are at work on the climate challenge. Decisions made today by elected and appointed officials, business leaders, and private citizens will reverberate down the years and centuries. These decisions *must be* fact- and reality-based, rather than fear-based.

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[32] See Excerpt of "Greenhouse Effect and Global Climate Change," June 23, 1988, Hearing before the Committee on Energy and Natural Resources of the United States Senate. https://pulitzercenter.org/sites/default/files/june_23_1988_senate_hearing_1.pdf

[33] The White House, *United States Mid-century Strategy for Deep Decarbonization*, Washington, D.C, November 2016.

[34] See National Assessment Synthesis Team, *Climate Change Impacts on the United States: The Potential Consequences of Climate Variability and Change,* US Global Change Research Program, Washington DC, 2000; and *Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment*, Volume II: Report-in-Brief, U.S. Global Change Research Program, Washington, DC, 2018.

[35] International Panel on Climate Change (IPCC), *Climate Change 2021: The Physical Science Basis: Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change,* "Summary for Policymakers,"2021, Cambridge University Press, in press.

Maine and Massachusetts, the two states directly involved with the NECEC, have faced this reality and today are leaders among the states with statutory commitments to 100% clean energy and net-zero carbon emissions by 2050.[36] In furtherance of its commitment, Massachusetts in 2016 had the foresight to authorize procurement of 9.45 terawatt-hours (TWh) of incremental clean energy to serve the Commonwealth's electric load, the procurement of which funds the NECEC project.

In September 2019, Maine Governor Janet Mills demonstrated Maine's commitment to fight climate change when she stood before the General Assembly of the United Nations and declared, "Maine Won't Wait!... And the course we take will set an example for others to follow." Governor Mills challenged world leaders and decision-makers to take immediate action:

> "Our whole state is experiencing the impacts of climate change — our weather, our iconic lobster industry, our insect populations, the warming, rising, fish-rich seas that bathe our shores…. The State of Maine will do its part… and our efforts today and tomorrow will help create a better future for our children and grandchildren, and help build a stronger, more diverse economy for our state….
>
> "Today I am pledging that Maine will be carbon neutral by 2045…. We have enacted the most significant renewable standards in the country. We are investing in clean energy and conservation, electric vehicles and energy efficiency, community resiliency, sequestering carbon in our soil and forests. We are cutting our appetite for fossil fuels, on which

[36] *See* https://www.cesa.org/projects/100-clean-energy-collaborative/guide/table-of-100-clean-energy-states/.

> we have come to depend too much for heat, electricity, and transportation…. Maine won't wait. Will you?"[37]

The thwarting of the duly permitted NECEC interferes with the duly established climate policy of our state and those of our sister states across the region.[38]

C. The NECEC Is A Critical Step In Advancing "Beneficial Electrification" To Combat Climate Change.

In his *A New Energy Policy Direction for Maine: A Pathway to a Zero-Carbon Economy by 2050*,[39] Maine energy economist Richard Silkman, Ph.D., concludes that, "The speed with which Maine can transform its economy to be carbon-free is critical. As the recently released IPCC[40]report stresses, time is of the essence." For Dr. Silkman, consistent with current climate science, our goal must be to balance by 2050:

- action to prevent the worst effects of global warming, with
- management of the impacts of this transformational change on the economy and society.

The key, Dr. Silkman argues, is "beneficial electrification" based upon:

- conversion to electricity of Maine transportation, space and water heating, and commercial and industrial processes; and

[37] See Speaking Before the United Nations, Governor Mills Announces Maine Will Be Carbon Neutral by 2045 | Office of Governor Janet T. Mills.
[38] Every New England state except New Hampshire has statutory greenhouse gas reduction requirements: https://www.ncsl.org/research/energy/greenhouse-gas-emissions-reduction-targets-and-market-based-policies.aspx
[39] Richard Silkman, PhD, November 2019, at https://www.competitive-energy.com/zero-carbon-maine
[40] International Panel on Climate Change, Reports at Reports — IPCC.

- decarbonizing of the electricity sector through development of renewable generation and battery storage, or "deep decarbonization."[41]

Converting fossil-fuel power to electricity—for example, swapping out an internal combustion vehicle for an electric vehicle (EV), or an oil-fired furnace for a heat pump—yields an immediate environmental dividend in the form of lower GHG and other emissions. As the grid's electricity supply becomes increasingly greener through deep decarbonization, the environmental dividend increases without further investment.[42]

The largest obstacle to beneficial electrification is that of creating the political consensus for large-scale collective action.[43] More immediate is the need to motivate people to buy EVs and install heat pumps. When people bought cars instead of horses, or computers in place of slide-rules, the service they realized was greatly improved; but when people convert from gasoline or heating oil to electricity, the resulting service they get remains the same—a home at 72 degrees, or a car to travel from Presque Isle to Augusta.

Instead, all the decarbonization benefits accrue to the public-at-large rather than to the private individual, in the form of lower GHG emissions, improved air

[41] Silkman, Ibid.
[42] Assuming reasonable rates of conversion of all sectors to renewable, always-available, and lower-cost electricity over the next 30 years, Dr. Silkman argues that Maine can accomplish a 30-year transition to a zero-carbon economy without increasing the total amount it spends on energy each year, compared to the average it has spent annually over the past 20 years.
[43] Silkman, personal email communication, January 14-15, 2021.

quality, and greater public health. These *social* benefits of conversion from fossil-fuel use to renewable and reliable electricity *must* be delivered in time to prevent the worst effects of global warming; and we know-well how difficult it can often be to get individuals to pay for social benefits.

None of what Dr. Silkman advocates will come to pass without civic leadership *and* greatly enhanced transmission capacity in Maine and throughout the Northeast and nation.[44] More renewable generation is needed to achieve beneficial electrification, to displace fossil-fuel generation in the electricity system, and to provide zero-carbon energy for vehicles and buildings, commerce and industry. Such electrification could double or triple Maine's electrical load, with the potential for peak demand to grow as well.[45] Bringing that renewable energy from its source to customers requires new transmission projects.

Transmission of all this electricity is, then, a key driver of renewable, decarbonized energy development. At the same time, findings show that key

[44]See, for example, U.S. Transmission Capacity: Present Status and Future Prospects, Eric Hirst, Bellingham WA. Prepared for Energy Delivery Group, Edison Electric Institute, Washington DC and Office of Electric Transmission and Distribution, U.S. Department of Energy Washington DC, June 2004; Energy+ Environmental Economics and Energy Futures Initiative*, Net-Zero New England: Ensuring Electric Reliability in a Low-carbon Future,* November 2020; and Biden Administration Advances Expansion & Modernization of the Electric Grid, April 27, 2021, at www.whitehouse.gov/briefing-room/statements-releases/2021/04/27/fact-sheet-biden-administration-advances-expansion-modernization-of-the-electric-grid/

[45] Maine Climate Council Energy Working Group, Cover letter on Recommendations, Augusta, June 5, 2020.

transmission pathways in Maine are at present severely congested and constrained.[46] The NECEC, evaluated and permitted under well-established regulatory procedures in Maine, will address this need directly, and ensure that a significant quantity of clean, baseload energy will be deliverable directly into Maine.[47]

D. The Benefits Of The NECEC Are Numerous And Substantial.

The economic and social benefits of the NECEC cannot be overstated. First, the NECEC offers a large and immediate addition to regional non-fossil fueled electric supply. The amount of power to be delivered by the NECEC, 1,200 megawatts[48], is equivalent to that produced at New England's largest nuclear power plant in Seabrook, New Hampshire.[49] The NECEC is already well under way in construction and has a contractual obligation to be operational by August 2024, which deadline the project expected to meet before the initiative-caused halting of work.[50] Considering the urgency of needed decarbonization, the NECEC is fundamental to meeting Maine's and the region's climate goals. To install wind and

[46] See Energy+Environmental Economics and Energy Futures Initiative, *Net-Zero New England: Ensuring Electric Reliability in a Low-Carbon Future,* November 2020, pp. 2-3; and Energy+Environmental Economics and Applied Economics Clinic, *State of Maine Renewable Energy Goals: Market Assessment*, March 2021, p. 2.
[47] Ibid.
[48] PUC Order, p.6.
[49] https://www.nexteraenergyresources.com/content/dam/neer/us/en/pdf/seabrook.pdf
[50] A. 124. ¶ 137.

solar power that would produce similar quantities of electricity will take many years, and those facilities face their own obstacles.[51]

Moreover, the addition of a large supply of incremental baseload hydropower is critical to the deployment of wind and solar at scale. Baseload hydropower will "fill in" the low points in intermittent renewables during those times when seasonal clouds or calm air reduce their production. As a replacement for baseload power currently supplied by fossil-fuel generation, hydropower *complements* the development of wind and solar-based generation.[52] All three must move forward *together*.

Second, NECEC's supply of power will be delivered into Maine and will moderate retail electricity prices in Maine and regionally. Utility regulators have recognized this and, although the precise reductions in electricity prices cannot be calculated due to the multitude of factors that affect energy prices, the PUC identifies a "credible range" from $14 million to $44 million annually.[53]

Today, New England depends heavily on natural gas for electricity generation.[54] There are no significant natural gas deposits in the New England region, and therefore the region must import natural gas across the interstate pipeline

[51] Phillips, Bruce. *Fully Decarbonizing the New England Electric System: Implications for New Reservoir Hydro*, (2019), p.1 at https://bit.ly/3tudYOy
[52] MIT CEEPR paper: https://ceepr.mit.edu/files/papers/2020-003-Brief.pdf
[53] PUC Order, p.30.
[54] New England electricity generation is currently 45% from natural gas and 8% from renewables. https://www.iso-ne.com/ visited Feb 25, 2022.

system or via ship.[55] Gas prices are volatile due to inadequate pipeline capacity during periods of cold weather, to supply natural gas for both heating and electric generating needs.[56] As evidenced by the recent spike in the "standard offer" supply prices in Maine, natural gas price volatility directly impacts the electricity price for ratepayers within the state.[57]

By easing reliance upon natural gas-fired electricity generation, the NECEC will help to moderate both electricity prices[58] and "serve as a hedge against high and volatile natural gas prices."[59] Aggregate savings will be "materially beneficial" for Maine consumers and the Maine economy.[60] The Russian invasion of Ukraine and the resulting spikes in oil and natural gas prices globally only reinforce the importance of reducing our reliance on fossil fuels for electricity generation.

Third and relatedly, additional non-fossil-fuel power supply ensures greater energy security, as the PUC found.[61] Global disruption, such as that unfolding in

[55] https://www.iso-ne.com/about/what-we-do/in-depth/natural-gas-infrastructure-constraints
[56] Ibid.
[57] PUC Press Release, Nov. 17, 2021 (noting 83% increase in electricity supply rates effective January 1, 2022 and stating, "Unfortunately, sharp increases in natural gas prices are resulting in higher electricity supply costs for the upcoming year. This increase is primarily driven by New England's wholesale electricity market prices which have increased dramatically.").
[58] PUC Order, p.30.
[59] Ibid, 24.
[60] Ibid, 30.
[61] See *Central Maine Power Company*, Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Construction of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston (NECEC) and Related Network Upgrades, No. 2017-000232 Order at 39-40 (Me. P.U.C. May 3, 2019) (hereinafter "PUC Order") (concluding "that the addition of [NECEC] interconnection to Québec, and the substantial amounts of baseload hydroelectric energy it will enable, will enhance supply reliability and supply diversity in Maine and the region").

Ukraine, as well as other pressures can threaten supply of oil and natural gas. ISO-New England has warned that rolling blackouts could hit New England due to issues in the energy supply chain, including natural gas pipeline constraints and the global price of oil.[62] ISO-New England has also warned that weather severity, driven by volatility from climate change, could increase reliability risks on the power grid.[63]

Fourth, transformation of our energy economy to renewables of all kinds demands an upgraded and expanded transmission system**.** Every authority that has examined this issue agrees.[64] The NECEC involves a $200 million upgrade to Maine's grid infrastructure[65] that may well lower barriers to other renewable energy projects.[66]

Fifth, by reducing reliance on natural gas electricity generation, the NECEC could yield significant reductions in air pollution.[67] On the Maine coast, summertime air flows bring polluted air into the state and region, affecting the health of coastal

[62] *See* ISO New England, *Harsh Weather Conditions Could Pose Challenges to New England's Power System This Winter*, https://www.iso-ne.com/static-assets/documents/2021/12/20211206_pr_winteroutlook2122.pdf.
[63] *Id.*
[64] See Silkman footnote 40, Obama 2016 Decarbonization Report supra. Maine Council technical reports, and Maine Governor's Energy Office report of 2019, both cited above.
[65] Fred Bever, "CMP Offers Hundreds of Millions in Incentives to Push Transmission Project Through," Maine Public, last modified February 7, 2019, accessed March 18, 2021, https://www.mainepublic.org/business-and-economy/2019-02-07/cmp-offers-hundreds-of-millions-in-incentives-to-push-transmission-project-through
[66] PUC Order, p.74.
[67] U.S. Department of Energy, New England Clean Energy Connect Environmental Assessment, January 2021, p. 120.

communities and visitors supporting Maine's tourist trade. More than half of Maine's population lives on the coast.[68]

Finally, 40,000 acres of land in the vicinity of NECEC Segment 1 (the 53-mile section of new corridor) will be placed in permanent conservation pursuant to Condition #39 of the Maine Department of Environmental Protection (DEP) permit, to mitigate the corridor's effects on wildlife.[69] In collaboration with the Maine Bureau of Parks and Lands and Department of Inland Fisheries and Wildlife, the NECEC has identified specific, priority areas for permanent protection in large blocs; prepared a prototype forest management plan for these priority lands consistent with the DEP's primary goal of mature forest habitat and riparian protection; and is at present in direct negotiation with the owners of these lands to secure them through fee or easement.[70]

While the NECEC will provide numerous other benefits to Maine and the New England region, those discussed above are substantial and demonstrate clearly that the NECEC is vitally important and beneficial to Maine's and the region's climate, energy, economic, environmental, and public health goals and policies.

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[68] https://coast.noaa.gov/states/maine.html.

[69] By comparison, the final cleared acreage of the NECEC new corridor would be less than 1,000 acres, resulting in a greater than 40 to 1 ratio of conservation land to project footprint. (Source: *Final Biological Assessment* (U.S. Army Corps of Engineers, 2020), 43-44.)

[70] Note: Condition #39 of the DEP permit directed the permanent conservation by CMP of 40,000 acres in the vicinity of Section 1 prior to mid-November 2021, two weeks after the referendum vote. At the same time, the Condition provides that the DEP may approve an extension of the deadline through 2024 "upon a showing by the applicant that it has made reasonable, good faith efforts to implement the Conservation Plan." See p. 113.

E. Denying The Appellant's Requested Relief Would Reward The Opponents' Defeat-by-Delay Strategy

For years, two of the world's largest energy companies have been locked in battle over the future of the NECEC and its impact on New England's electric system. The outcome will determine the fate of the region's decarbonization efforts for decades; and Maine and New England's climate efforts may well be the losers in this battle.

It predominantly pits Avangrid against NextEra, owner of numerous fossil- and nuclear-fuel plants in New England and the nation, and one of the nation's 10 worst GHG polluters.[71] The battle was joined after Massachusetts enacted 2016 legislation to advance its net-zero emission goals by 2050.[72] Massachusetts had considered eight energy pathways to its decarbonization goal; and *all eight* cited the need for more transmission lines linking the region to Quebec's network of base-load hydropower facilities.

NextEra became a leading opponent of any hydropower transmission line from Quebec. Strong indication exists that, when Massachusetts chose the Northern Pass corridor through New Hampshire in a competitive bidding process, NextEra mobilized and funded local citizen and organizational support to oppose the

[71] https://peri.umass.edu/greenhouse-100-polluters-index-current
[72] See https://malegislature.gov/Laws/SessionLaws/Acts/2016/Chapter188 and https://www.mass.gov/info-details/massachusetts-clean-energy-and-climate-plan-for-2025-and-2030

project.[73] The line was blocked by New Hampshire regulators, and so the battle moved on to Maine when Massachusetts chose the NECEC proposal to meet its net-zero goal.[74]

Avangrid's NECEC transmission line has the potential to transform the region's electric supply, annually delivering 9.45 TWh of electricity, or about 18% of Massachusetts' power needs, and reducing the region's reliance on natural gas.[75] In Maine, NextEra fought the NECEC before the Land Use Planning Commission, DEP, and PUC, and lost each time; it appealed the PUC's decision to this Court and lost again.[76]

Thwarted in its lobbying[77] and legal efforts by a carefully reasoned, three-year regulatory review in Maine, as a last resort NextEra turned to the ballot box, bankrolled the initiative petition drive, and contributed over $20 million to the ballot initiative seeking to overturn the NECEC permits awarded through the extensive

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[73] See, for example, Swain, Marian, *Managing Stakeholder Conflicts over Energy Infrastructure: Case Studies from New England's Energy Transition*, Master's thesis, Dept. of Urban Studies & Planning, MIT, 2019, p. 53, at https://dspace.mit.edu/bitstream/handle/1721.1/123922/1140072907-MIT.pdf?sequence=1&isAllowed=y

[74] https://macleanenergy.com/83d/

[75] As natural gas is the region's dominant fuel for generating electricity, it tends to set the price paid to all generation fuel sources, including the nuclear energy supplied by NextEra. Source: Maine PUC Order and ISO-New England 2021 Resource Mix.

[76] NextEra petition to intervene before the DEP: https://www.maine.gov/dep/ftp/projects/necec/intervenor-requests/2018-07-18%20NextEra%20Petition%20to%20Intervene.PDF. NextEra petition to intervene before the LUPC (seep.116): https://www.maine.gov/dacf/lupc/projects/site_law_certification/slc9/petitions/SLC9_petitiontointervene.pdf . NextEra petition to intervene before to the PUC, March 8, 2018 (note: filing is password protected by the PUC). NextEra Energy Resources LLC, 2020 ME 34, 227 A.3d 1117.

[77] Through the Mainers for Local Power PAC, of which NextEra is the largest funder. See lobbyist disclosures at Maine Commission on Governmental Ethics and Election Practices: https://lobbyist.mainecampaignfinance.com/.

regulatory review process.[78] Local opponents of the NECEC welcomed the full politicization of Maine's permitting process.

In short, Maine's initiative process was hijacked by a fossil-fuel competitor whose misleading claims (discussed below) aimed directly at the duly permitted NECEC project. Their strategies and tactics are hostile to Maine law, to the Maine regulatory process, to the coordinated efforts of our state and federal governments, to Maine climate policy, and to our common welfare.

If this hijacking of the rule of law is allowed to stand, our entire regulatory regime, respect for finality in executive and judicial decisions, and climate and decarbonization policy goals will be greatly damaged; and the opportunity for Maine to lead in the fight against climate change, irreparably compromised.

Maine has 1,063,383 eligible voters; just 416,055 voted in the November 2, 2021, election, of whom 412,086 chose to vote on Question 1; and just 243,943 voted to halt the NECEC. Only 23% of Maine voters, or just 18% of Maine's population of 1.37 million, may stop a vital decarbonization project approved by every state and federal reviewing agency involved.[79] The successful use of Maine's initiative

[78] Maine Commission on Governmental Ethics and Election Practices, campaign finance disclosures of Mainers for Local Power Political Action Committee.
[79] Maine population estimate as of July, 2021, at census.gov/quickfacts/ME. Total registered and enrolled Maine voters at maine.gov/sos/cec/elec/data/data-pdf/r-e-active-1121pdf. Votes on Question 1 at Maine.gov/sos/news/2021/electionresults11-2-21.

process to halt projects such as the NECEC is the antithesis of sound policymaking to protect our common welfare.

Is the negation of our well-established regulatory system by a vote of just 18% of the Maine population to be taken as the reasoned consent of the governed, the informed will of the people? Is this who we are? Is this who we aspire to be?

F. The Public Initiative To Thwart The NECEC Was Premised Upon Multiple Misrepresentations.

Financed by three fossil-fuel energy companies[80], the public campaign against the NECEC began more than three years before the November 2021 election,[81] with the aim of preventing the NECEC from entering the energy marketplace. Not one of the critiques of the NECEC used by these fossil-fuel companies and their local allies stands up under rigorous, objective scrutiny. Just a few of the many fundamental misrepresentations are corrected below.

[80] Of the nearly $25 million in cash contributions supporting Question 1, $24.6 million (98.9%) came from three energy businesses in competition with the NECEC: NextEra Energy Resources of Juno Beach, Florida (owners and operators of Wyman Station, the oil-fired power plant on Cousins Island in Casco Bay and Seabrook Station, a nuclear power plant in New Hampshire), Calpine Corporation of Houston, Texas (owners and operators of Westbrook Energy Center, a natural-gas fired power plant in Westbrook, Maine) and Vistra Corporation (owners and operators of Maine Independence Station, a natural-gas fired power plant in Veazie, Maine). In other words, nearly the entirety of funding in support of Question 1 came from interests with a commercial stake in its outcome. These same companies, through the PAC they jointly founded and funded, were also the principal funders (98.7%) of the petition circulation effort that qualified Question 1 for the ballot. (Source: 2020-22 PAC filings with the Maine Commission on Governmental Ethics & Election Practices.)

[81] https://www.pressherald.com/2018/09/14/dark-money-and-blurred-alliances-drum-up-resistance-to-cmp-power-line-project/

1. Truth: A Portion Of the Energy To Be Delivered By The NECEC Will Benefit Maine Directly.

Assertions before and during the referendum campaign[82] that the NECEC would benefit only Massachusetts customers are simply false. In its Order granting a CPCN for the NECEC, the PUC explains, "As a contractual matter, NECEC will deliver energy to the MA [electric distribution companies]. As a *physical* matter, however, the beneficial effects of that energy will be realized directly by Maine consumers through lower electricity supply prices."[83] This is an important point: the energy from the NECEC will be physically delivered to Maine. While the region will benefit (hence, Massachusetts' willingness to enter a long-term contract with the NECEC), Maine consumers will benefit directly because some of the energy will be used directly in Maine; and the increased supply in the region will suppress wholesale and retail prices for electricity across New England, including in Maine. Maine electricity consumers will thus benefit from the NECEC without question.

2. Truth: Hydro-Quebec Has The Capacity To Supply The Contracted Power. There Will Be No Backfilling With Fossil-Fuel Sources.

Any assertion that Hydro-Quebec lacks capacity to supply the NECEC and meet its other commitments and would backfill its NECEC obligations with fossil-fuel generated electricity is not true.[84] Nearly 20 years ago, Hydro-Quebec

[82] https://www.youtube.com/watch?v=WL_H11Kdr04
[83] PUC Order, p.24.
[84] https://www.nrcm.org/wp-content/uploads/2020/10/cmp4-pager.pdf

commenced a capacity build-out that is just now reaching completion.[85] It is also upgrading technology at existing facilities that will increase generation capacity; and now has historic volumes of water stored in its reservoirs.[86] The U.S. Department of Energy[87] and the PUC[88] considered and rejected arguments that Hydro-Quebec lacked export capacity and would (or even could) shift its exports and back-fill its hydro-generation with fossil-fuel generation.[89]

3. Truth: There Is No Alternative Transmission Corridor In Vermont.

Assertions have been made throughout the NECEC permitting process that the New England Clean Power Link (NECPL) in Vermont is a fully permitted and viable alternative to the NECEC.[90] This is misleading at best. The NECPL is a proposed 1,000 megawatt transmission line, most of it along the bottom of Lake Champlain. The electricity generation source for this proposal is identical to that of the NECEC, Hydro-Quebec's surplus energy. Development of the NECPL is as yet

[85] See May 21, 2019 letter from Hydro Quebec CEO Eric Martel to Governor Janet Mills and others titled "Hydro Quebec Vision and Supply Outlook." https://bit.ly/3Ck6PEi
[86] Central Maine Power Company Request for Approval of CPCN for the New England Clean Energy Connect, PUC Docket No. 2017-00232, Rebuttal Testimony of Thorn Dickinson, Eric Stinneford and Bernardo Escudero, July 13, 2018, pp.30-32.
[87] Memorandum: Department of the Army Environmental Assessment and Statement of Findings for the Above-Referenced Standard Individual Permit Application, U.S Army Corps of Engineers, 2020, 122-123.
[88] Central Maine Power Company Request for Approval of CPCN for the New England Clean Energy Connect, 72.
[89] PUC Order, p. 72. This concern also rejected by the Massachusetts Department of Public Utilities (DPU), which further rejected the argument that Hydro-Quebec could simply lower its existing imports to New England to shift them to the NECEC. See Docket No. 18-64, Massachusetts DPU, 58-64.
[90] www.pressherald.com/2021/10/10/maine-voices-one-line-heddy-here/

unfunded, however, and would cost 60% more than the NECEC, calling into question whether Massachusetts would select it as an alternative.[91]

In addition, there is broad agreement among energy analysts that achieving regional decarbonization via beneficial electrification by mid-century will require a doubling or more of the regional electricity supply.[92] The NECPL (at 8.3 TWh) *and* the NECEC (at 10.5 TWh) would close the existing supply gap by 4 and 5 percent, respectively. Either project makes meaningful progress but would still leave us well short of the goal.

The sobering truth is that achieving beneficial electrification goals by 2050 means that we need to build projects like the NECEC *and* some version of the NECPL, as well as many others, large and small, wind and solar, energy storage and conservation. And while the NECPL is at an advanced stage of permitting, nothing is to prevent opposition tactics to obstruct and defeat it by delay, were it to be selected for construction. Indeed, should the Initiative be upheld, there would be precedent for banning the NECPL project even after the permitting process is complete and construction begun. There is every reason to believe the same opposition playbook used in New Hampshire and Maine would be used in Vermont.

[91] "New England Clean Power Link: Project Development Portal," TDI New England, accessed March 18, 2022: http://www.necplink.com.
[92] Maine Climate Council, Energy Working Group Co-Chair Cover Letter, 2020.

4. Truth: Hydro-Quebec's Reservoirs Do Not Emit As Much Or More Greenhouse Gas Than Fossil Fuel-Fired Plants.

Supporters of the Initiative argue that Hydro-Quebec's reservoirs emit more GHG than fossil-fuel fired plants.[93] The claim is as patently absurd as it sounds. A recent inquiry by the U.S. International Trade Commission concluded that, "Overall, research suggests that dams in Canada typically have GHG emissions well below those of the average gas-fired plant."[94] In fact, recent peer-reviewed research concludes that GHG emissions from Quebec hydropower are comparable to those of wind and solar generation.[95]

5. Truth: Maine Will Receive Significant Economic Benefit From The NECEC.

Again, any argument that the NECEC will not produce economic benefits for Maine is misleading at best.[96] The review by the PUC[97], the order by the DEP[98], and Governor Janet Mills' electricity discount agreement with Hydro-Quebec[99] all

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[94] Renewable Electricity: Potential Economic Effects of Increased Commitments in Massachusetts, report no. 5154 (U.S. International Trade Commission, 2021), 29.
[95] A. Levasseur et al., "Improving the Accuracy of Electricity Carbon Footprint: Estimation of Hydroelectric Reservoir Greenhouse Gas Emissions," Elsevier 136 (February 2021), accessed August 16, 2021, https://www.sciencedirect.com/science/article/pii/S1364032120307206?via%3Dihub.
[96] https://www.sunjournal.com/2020/05/03/tom-saviello-cmp-project-is-a-very-bad-deal-for-maine/
[97] PUC Order, p.7.
[98] DEP Order, p.113.
[99]https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/HQ%20-%20GEO%20Commitment_0.pdf

demonstrate and affirm the significant economic benefits Maine will realize as a result of the NECEC. The PUC quantified these impacts as follows[100]:

Summary of NECEC Impacts			
Wholesale Market Effects	**Description**	**Value to Maine**	
		Nominal	**Present Value**
Energy Market Prices	Energy price suppression effect	$14-$44 million annually	$122-$384 million
Capacity Market Effect	Estimated capacity market price reduction	$19 million annually for first 10 years	$101 million
Reliability and Fuel Security	Enhancements to transmission reliability and supply reliability and diversity	Not quantified*	Not quantified*
Macroeconomic Effects	**Description**	**Value to Maine**	
		GDP is reported in chained 2009 dollars	
During Construction Period	Positive impact on Maine GDP	Annual average, 2017-2022: $94-$98 million	
During Operations	Positive impact on Maine GDP. Includes effect of wholesale energy and capacity market savings.	Annual average, 2023-2027: $25-$29 million	
Regional Environmental and Local Community Impacts	**Description**	**Value**	
Effect on Hose Communities	Detrimental impact on scenic, historic and recreational values, associated tourism and local economy	Not quantified*	
GHG Emmissions [sic] Reductions	Regional reduction in carbon emissions	3.0 to 3.6 million metric tons/year	
Stipulation Conditions	**Description**	**Value to Maine**	
		Nominal	**Present Value**
Stipulation provisions	Benefits package included in Stipulation	Total $250 million over 40 years	$72-85 million
* As discussed in the Concurring Opinion of Commissioner Williamson, ISO-NE has provided estimates that suggest that fuel security and reliability benefits could provide value to Maine of approximately $9.8 million annually for the years 2023-2024 and 2024-2025.			

Together, the development and construction, operation and maintenance, and PUC settlement benefits cited above are well in excess of a billion dollars. In addition, the 40,000 acres of land to be conserved in western Maine has an estimated value of at least $20 million; Governor Mills' discount agreement with Hydro-Quebec will provide Maine ratepayers $40 million in direct electricity price

[100] PUC Order at 7, Figure I.1; *see also* A. 86-87, ¶ 44.

savings;[101] and the NECEC will contribute $18 million annually in new property taxes to towns along the corridor, reducing the burden on local taxpayers.

To make certain that host communities from the Canadian border to Lewiston receive these promised property tax benefits, NECEC Transmission LLC committed to not seek a first-year valuation less than the values projected by the University of Southern Maine's Maine Center for Business and Economic Research.[102] These commitments are already having an ameliorative effect on local property tax bills in western Maine.[103]

6. Truth: The NECEC <u>Can</u> Be Developed Responsibly To Avoid Unreasonable Harm To Fish And Wildlife Habitat.

During the Initiative process, there were suggestions that the NECEC would cause unreasonable harm to fish and wildlife habitat.[104] Again, this is false. The DEP reviewed the NECEC proposal for 29 months. Its Order finds that project impacts, as mitigated by the Order's conditions, "are reasonable in light of the project purpose and its GHG benefits."[105] Moreover, Maine's Natural Resources Protection Act[106] prevents issuance of a permit unless the applicant can demonstrate that the proposed

[101] See https://www.maine.gov/governor/mills/sites/maine.gov.governor.mills/files/inline-files/HQ%20-%20GEO%20Commitment_0.pdf.
[102] Wallace, R. and C. Colgan, The Economic and Employment Contributions of the New England Clean Energy Connect in Maine, 17. These projections were confirmed for the PUC by London Economics International, op. cit.
[103] https://www.lewistonmaine.gov/ArchiveCenter/ViewFile/Item/4774
[104] https://www.nrcm.org/wp-content/uploads/2021/09/cmp-corridor-facts.pdf
[105] Findings of Fact and Order 54 (State of Maine Department of Environmental Protection, 2020), 105.
[106] NRPA, 38 M.R.S. § 480-D (3)

project will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridors, freshwater, estuarine, or marine fisheries, or other aquatic life. In granting its permit for the NECEC, the DEP found:

> The combination of vegetation management proposed by CMP and the additional requirements imposed as conditions of this Order, which include tapering and maintenance of taller vegetation, will reduce habitat impacts, provide wildlife sufficient ability to move between suitable habitats, regardless of where adjacent to the corridor this habitat changes as forestry patterns shift.[107]

The DEP acted appropriately and responsibly to ensure that the NECEC will be developed subject to conditions amounting to "an unprecedented level of natural resource protection for transmission line construction in the state of Maine."[108] Claims that fish and wildlife habitats will be diminished or destroyed by NECEC are unfounded.

7. Truth: Indigenous Peoples Will <u>Not</u> Be Displaced Or Harmed By The Expansion Of Hydro Generation Capacity To Supply NECEC.

Initiative supporters have wrongly alleged that Indigenous peoples in Quebec would be harmed by the expansion of the hydro-electric generating units in Quebec.[109] Since, as discussed above, Hydro-Quebec has existing capacity with

[107] Findings of Fact and Order 54, *supra,* 82.
[108] Ibid, 1.
[109] Facebook post by No CMP Corridor, 20 August 2021 (https://m.facebook.com/NoCMPCorridor/posts/576084927165724, accessed 2/25/2022).

which to supply the NECEC, no new reservoirs will be constructed and no new territory flooded, NECEC has no net negative impact on Indigenous peoples.

8. Truth: The Upper Kennebec Region Is A Working Industrial Forest.

Initiative supporters have claimed that the forested areas where Segment 1 of the NECEC is being developed are pristine and special forests that would be ruined if the NECEC were allowed to complete construction.[110] In fact, the area traversed by Segment 1 of the NECEC (*i.e.*, the new corridor) is working industrial forest that has been commercially harvested continuously for well in excess of a century.[111] In speaking to Segment 1 impacts, the DEP found, "It is important to emphasize that while remote, the area that Segment 1 would traverse is not untouched wilderness, but instead mostly consists of intensively managed commercial timberland."[112] Again, the DEP discharged its statutory responsibilities and concluded that the NECEC could be responsibly developed along its planned route.

9. Truth: Segment 1 Of The NECEC Will Not Adversely Affect The Region's Scenic Values And Fisheries.

Initiative supporters have claimed that the NECEC would adversely affect the region's scenic values and fisheries.[113] The DEP reached a contrary conclusion. Respecting scenic impacts, the DEP Order imposes conditions specifically designed

[110] https://www.nrcm.org/news/quebec-hydro-project-could-spoil-a-pristine-maine-wilderness/
[111] Calvert, Mary R. (1986). The Kennebec Wilderness Awakens. Lewiston, Maine: Twin City Printery. (See Chapter IV: The Moose River Valley.)
[112] Findings of Fact and Order, 54.
[113] https://nrcmactionfund.org.

to mitigate any "unreasonable adverse effect on scenic uses or character of the surrounding area."[114] Concerning existing recreational uses, the DEP states, recreational activities in the area "include hunting, fishing, and hiking. The project will not impose limitations on these activities."[115] The strict conditions of the DEP Order will in fact *improve* fish habitat and "should therefore enhance fishing opportunities."[116] (The same may be said of snowmobiling opportunities in Segment 1.[117])

We know of no disinterested, independent, authoritative source that has contested or disputed these truths. Multiple state and federal agencies carefully assessed and addressed all the issues above and more, basing their findings, orders, and permits on the evidence presented and subjected to expert administrative scrutiny. This review of the NECEC, conducted within the context of Maine's established climate policy, must not be negated by the co-opting and abuse of Maine's initiative process.

[114] DEP Order, p.56.
[115] Ibid, p.57.
[116] Ibid.
[117] CMP has a long history of opening its transmission corridors for snowmobiling and other recreational uses (see https://bit.ly/3MxvD0g); and, in fact, NECEC LLC and CMP committed in the CPCN Stipulation to "cooperate in good faith to facilitate access to the use of the NECEC transmission corridor for ATV, snowmobile and other recreational uses, consistent with applicable laws, regulations, ordinances, permits and licenses and CMP's generally applicable standards and practices." Stipulation, Section V.B.d.v., p.18. Segment 1 of the NECEC would supply an additional 50 or more miles of new trails for such purposes.

CONCLUSION

The Court must now confront a fraught exercise in governance that challenges the reliability, validity, and trustworthiness of Maine's climate policy, its decarbonization goals, and the reputation and effectiveness of its well-established and highly regarded regulatory and judicial processes.

The strategy of the national oil and gas industry, here as elsewhere, has been *to stall* clean energy development, thereby to *delay* as long as possible the needed shift away from fossil fuels to clean renewables, including baseload hydroelectricity. This deliberate and pernicious strategy succeeded in convincing a majority of Mainers who voted on Question 1 (representing just 23% of eligible voters), to disregard careful and lawful permitting by Maine's professional, well-informed, and impartial regulators.

Imagine if you will that in the 1970s, lawful regulatory decisions to restrict use of pesticides such as DDT[118] in Maine had been challenged and reversed by an initiative campaign funded by the chemical pesticide industry, especially by a vote in which so few Maine people participated. Such weaponization of the initiative process in Maine by GHG polluters unhappy with environmental, health, and public safety decisions by authorized regulatory bodies must not be upheld.

[118] See the Maine Pesticide Control Act of 1975, 7 M.R.S., Pt. 2, c. 103, subs. 2-A.

As with the curtailment of deadly pesticide use, the transition to clean energy sources and needed transmission lines is essential if we are to keep planet Earth healthy and habitable for our children and grandchildren.

Finally, we return to the matter of sound and effective public policy. Among its notable features is that it be based on a firm theoretical understanding of the matter at hand; be fact-based; have clear goals and objectives; and be reliable, accessible, and long-lasting within a transparent and respected implementation process. Maine's established climate policy enjoys each of these.

From the start, the only theoretical content of the NECEC's opponents has been a defeat-by-delay strategy, and the tactics of "hard bargaining."[119] Unable to present credible evidence to stop the project before Maine's expert regulators, fossil-fuel interests and their allies politicized the process. In a campaign of disinformation and base appeals to public anger, fear, and NIMBYism, they contributed millions of dollars to subvert a transparent and respected regulatory process. To allow not one, but *five* legally granted permits to be nullified after-the-fact by a competitor-generated and -funded initiative is a profound abuse of both the Maine public policy *and* initiative processes.

[119] For more on the tactics of "hard bargaining", see Fisher, Roger, and William Ury, *Getting to Yes: Negotiating Agreement Without Giving In*, Houghton Mifflin Company, Boston MA, 1981.

To allow this strategy to succeed will not only cancel a project with important and time-sensitive public benefits; it will give serious pause to any entity, public or private, seeking to make significant investments in Maine and in the well-regulated development of Maine's natural resources and infrastructure. Why spend enormous amounts to meet the strict requirements of professional regulators and defend their final regulatory decisions in the courts when the results may be cancelled through a purely political campaign that misrepresents the facts and misappropriates the initiative process?

Global warming and rising sea levels put the Earth on a path to catastrophe. The DEP in its Order has termed climate change "*the single greatest threat to Maine's natural environment*."[120] Fundamentally, this Court must decide, *Will Maine Wait*, succumbing to fossil fuel industry disinformation and pressure tactics? Or *Will Maine Lead,* and do its part to help keep the Earth habitable for our children and grandchildren?

We stand with Governor Mills and with the LUPC, the DEP, the PUC and the federal regulators who approved the NECEC. We firmly believe Maine must and will lead by basing its judgment on the best science, the best evidence, and the best facts available—all rigorously examined and approved by experts charged with

[120] DEP Order, p.105.

implementing sound public policies and affirmed thereafter by Maine and federal courts.

We accordingly and respectfully urge the Court to grant Appellants' requested relief.

Dated: March 30, 2022

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ADDENDUM

Richard B. Anderson holds a B.S. in Wildlife Conservation from the University of Maine. As an assistant Regional Fisheries Biologist in the Sebago Lake Region, he determined that landlocked salmon (*Salmo salar sebago*) in Sebago Lake had very high levels of DDT, a fact he publicized nationally. This contributed to the ban on the use of DDT in Maine and the U.S. He was a key negotiator in the establishment of the St. Croix International Waterway Commission and an architect of the Land for Maine's Future Program. He has served as Executive Director of the Maine Audubon Society and Commissioner of the Maine Department of Conservation, and on the Maine Board of Pesticides Control, Board of Environmental Protection, Maine Outdoor Heritage Fund and Maine Mining Commission. Together with Richard Barringer (below) and others, Anderson was instrumental in the return of the state's Public Reserved Lands (the "Public Lots") to the people of Maine. For his "outstanding contributions to the health of Maine's environment," he was honored with USM's Distinguished Achievement Award in 2011.

Walter Anderson has three degrees in geological science: B.S., University of Massachusetts; M.S., University of Rochester; and D.Sci., University of Maine. His professional career includes 27 years with the Maine Geological Survey where he served as Director and State Geologist responsible for supervision and administration of environmental and economic programs, identification and mitigation of natural and man-made hazards affecting Maine's physical environment, and professional advisory assistance to the state and the general public. Dr. Anderson has served as faculty member in the University of Maine System, founder and officer of the Geological Society of Maine, member of the Baxter Park Advisory Committee, and board member and geological advisor to the International Appalachian Trail. His professional affiliations include Maine Certified Professional Geologist #4; American Institute of Professional Geologists #2145; American Association of Petroleum Geologists #1091; Fellow, Geological Society of America; and Field Geologist in the National Science Foundation's Climate Research Program in the Royal Society Range, Antarctica.

Richard Barringer is Professor Emeritus in the Edmund S. Muskie School of Public Service at USM. A.B., Harvard College; M.A., U. of Massachusetts; Ph.D., MIT; Ph.D. (Hon.) Unity College. Senior Fellow, Wharton School, U. of Pennsylvania. Lecturer, JFK School of Government, Harvard U. Executive Director, Massachusetts Bicentennial Commission. Director, Maine Bureau of Public Lands. Commissioner, Maine Department of Conservation. Director, Maine State Planning Office. Visiting Professor, University of Maine, Department of Economics.

Founding Director and Professor, Edmund S. Muskie School of Public Service, USM. Member, Board of Directors of the Maine Audubon Society, Western Mountains Alliance, Natural Resources Council of Maine, Allagash Wilderness Waterway Foundation. Chair, New England Governors Association Blue-ribbon Commission on Land Conservation.

Lloyd C. Irland holds a B.S. from Michigan State U, an M.S. from the U. of Arizona, and a Ph.D. in Forestry from Yale U. He is Faculty Associate at the University of Maine School of Forest Resources where he has taught forest policy; and has served on the faculty of the Yale School of Forestry and Environmental Studies where he taught water resources policy, wilderness policy, and forest economics. As part of the Yale delegation, he attended the Global Climate Summits at Copenhagen and Cancun. He is a Fellow of the Society of American Foresters and author of 42 refereed publications and five books on forests, forest and wilderness policy, and professional ethics. He has served as Forest Insect Manager, Maine Forest Service; Director, Maine Bureau of Public Lands; and Maine State Economist; and for 35 years as a consultant to private companies, governments, and NGOs in Maine and the Northeast; and has testified before Congressional committees on professional forestry matters.

Ellen Pope holds a B.A. in Political Science from the University of Maine and has applied her interest in public policy to two key positions affecting land conservation and the environment in Maine and New Hampshire. Over more than three decades her career as an NGO executive included leading a team to secure $50 million from the New Hampshire legislature to conserve 100,000 acres of priority lands and matching that investment with $5 million in private funds to pay for administration of the Trust for New Hampshire Lands (TNHL), analogous to Maine's Land for Maine's Future program. Upon leaving the Society for New Hampshire Forests as its Senior Vice President, Pope joined the Maine Community Foundation where over 17 years she served as a senior manager and notably co-led creation and development of the Environmental Funders Network. Pope was most recently a trustee for the four-state Northern Forest Center, is a current member of the Advisory Council to the Forest Society of Maine, and serves on the Warrant Committee of her town, Southwest Harbor.

Tom Rumpf holds a B.S. in Forest Management from the University of Massachusetts and a Master of Forestry from Yale University. A licensed forester in Maine for more than 40 years, he worked for 20 years for The Nature Conservancy (TNC) in Maine, partnering on over one million acres of forest conservation projects in the North Woods. He served on the Board of the Penobscot River Restoration

Trust, leading TNC's contributions to complete this historic, collaborative project. Mr. Rumpf worked for the Maine Department of Conservation/Forest Service as Director of the Insect & Disease Management Division, Director of the Spruce Budworm Program, and Director of the Forests for the Future Program. He has chaired numerous town and nonprofit organizations, including the Freeport Town Council, Freeport Conservation Trust, and Lift360 (formerly Institute for Civic Leadership), and serves as Treasurer of GrowSmart Maine and on the Brunswick Recycling and Sustainability Committee.

Sam Zaitlin holds a Master's degree in Public Administration from the John F. Kennedy School of Government, Harvard University. Mr. Zaitlin has enjoyed a lifetime career in the private sector, primarily in the recycling field, when he served as chairman of the Maine State Chamber of Commerce. At the same time, public policy has long fascinated and inspired Mr. Zaitlin. He has enjoyed and served with distinction in public service—as Mayor of the City of Saco, in environmental protection as member and Chair of the Maine Board of Environmental Protection, and in transportation and civic infrastructure as member and Chair of the Maine Turnpike Authority. At present he is involved in the complete and complex renovation of a historic mill building in Biddeford, his home.

CERTIFICATE OF SERVICE

I, Richard Barringer, Ph.D., hereby certify that pursuant to agreement of the parties, a copy of this Brief of Pro Se Amicus Curiae was served via e-mail upon the parties through their counsel at the addresses set forth below on March 30, 2022.

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Dated: March 30, 2022

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