

NECEC TRANSMISSION LLC, et al.

Plaintiff-Appellants,

v.

BUREAU OF PARKS AND LANDS, et al.

Defendant-Appellees,

**CONSENTED TO MOTION
TO EXPEDITE BRIEFING
AND ARGUMENT
SCHEDULE AND ENLARGE
PAGE LIMITS**

Plaintiffs NECEC Transmission LLC (“NECEC LLC”) and Avangrid Networks, Inc., with the consent of all other parties, move to expedite the briefing and argument schedule, and enlarge the page limits for the parties’ appellate briefs, pursuant to Maine Rules of Appellate Procedure 10(b), 7(b)(4), and 7A(f)(1). In support of this Motion, Plaintiffs state as follows.

1. This case is the latest dispute related to the construction and operation of the New England Clean Energy Connect Project (“NECEC” or “Project”)—a 145-mile high voltage direct current transmission line that, until recently, was being constructed by NECEC LLC from the Canadian border to a new converter station located at Merrill Road in Lewiston, Maine. The NECEC, if completed, would bring 1,200 megawatts of clean hydropower from Quebec into Maine and the New England electric grid, among other benefits.

2. On November 3, 2021, Plaintiffs filed a Verified Complaint for Declaratory Judgment and Injunctive Relief seeking to prevent the retroactive application of a recently-enacted citizens' initiated referendum (the "Initiative") imposing new requirements for the construction of high-impact electric transmission lines on the NECEC.

3. The same day, Plaintiffs filed a Motion for Preliminary Injunction (the "Motion"), with supporting evidence, asserting that they had demonstrated a substantial possibility of prevailing on the merits of three claims: that retroactive enforcement of the Initiative to the NECEC unconstitutionally deprives Plaintiffs of their constitutionally-protected vested rights because Plaintiffs completed actual, physical construction and made substantial expenditures to construct the NECEC in good faith, in reliance on valid permits; that retroactive enforcement of the Initiative to the NECEC violates the separation of powers doctrine in the Maine Constitution; and that retroactive enforcement of the Initiative impairs Plaintiffs' lease with the Bureau of Public Lands in violation of the Contract Clauses of the Maine and United States Constitutions.

4. After prompt transfer to the Business and Consumer Court, the Parties, including multiple Intervenors both supporting and opposing Plaintiffs' claims, briefed Plaintiffs' Motion on an expedited basis.

5. Defendants filed their Opposition and all Intervenors filed responses to Plaintiffs' Motion on November 24, 2021.

6. Plaintiffs filed their reply memorandum in support of Plaintiffs’ Motion and Defendants filed their reply to the responses of supporting Intervenors on December 8, 2021. No party requested an evidentiary hearing on Plaintiffs’ Motion.

7. The Business and Consumer Court (Duddy, J.) held oral argument via Zoom on December 15, 2021.

8. To reach a decision on Plaintiffs’ Motion before the Initiative’s effective date of December 19, 2021, by Order dated December 16, 2021, the Business Court denied Plaintiffs’ Motion for Preliminary Injunction. The court noted in its decision, however, that “[t]he applicable law . . . is uncertain on many disputed points” and that “this case presents many difficult questions.” Order at 2. The court noted that “the questions of law presented by this case are important and ought to be determined by the Law Court.” *Id.* at 3 (internal quotation marks omitted). The Court acknowledged that “[t]he Law Court may interpret its precedents differently,” *id.*, and further concluded:

If the Law Court determines that allowing the Initiative to become law works a constitutional violation on any basis, that determination would likely change the trajectory of the case. On remand (or directly by the Law Court), the finding of a constitutional violation would likely satisfy the requirement for irreparable harm, supersede the will of the voters, and change the balance of harms in favor of Plaintiffs. Under those circumstances, staying the Initiative would be appropriate.

Id. at 3-4.

9. Consistent with the court’s invitation, and given that a significant delay in construction of the NECEC creates grave risks to the continued viability of the Project,

Plaintiffs filed a Motion to Report Interlocutory Ruling Pursuant to M.R. App. P. 24(c) on December 22, 2021.

10. After a telephone conference with counsel, and over Intervenor NextEra's objection, the court granted Plaintiffs' Motion to Report the case on December 28, 2021.

11. This Court issued its Procedural Order and Briefing Schedule on January 3, 2022, setting forth a briefing schedule pursuant to M.R. App. P. 7(b).

12. For the reasons described herein, and as this case presents compelling and time-sensitive questions of constitutional concern affecting the public, Plaintiffs seek to expedite the briefing schedule on the report in a manner that allows for full and fair consideration of the issues while proceeding as swiftly as possible to resolution. Thus, Plaintiffs propose the following:

- A. Briefs of Appellants and appendix due February 16, 2022;
- B. Briefs of Appellees and amicus curiae due March 30, 2022;
- C. Appellants' replies and responses to amici due April 20, 2022; and
- D. Oral argument to be set by this Court as soon as possible after briefing is complete.

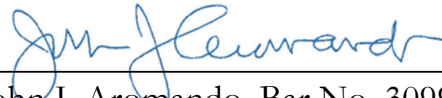
13. Given the complex constitutional questions presented, in addition to the detailed factual background of the NECEC necessary to consider the report, for good cause shown, Plaintiffs further request that this Court enlarge the page limits pursuant to M.R. App. P. 7A(f)(1) as follows:

- A. All principal briefs shall not exceed the greater of 55 pages or 12,500 words;
- B. All reply briefs and responses to amici shall not exceed the greater of 25 pages or 6,000 words.

14. Defendants and all Intervenors consent to Plaintiffs' proposed expedited schedule and enlargement of page limits.

Accordingly, Plaintiffs request that this Court grant Plaintiffs' Motion to Expedite Briefing and Argument Schedule and Enlarge Page Limits.

Dated this 6th day of January, 2022



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CERTIFICATE OF SERVICE

I hereby certify that a copy of Appellants' Motion to Expedite Briefing and Argument Schedule and Enlarge Page Limits, was served upon the parties listed below by email:

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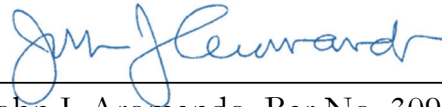
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