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Admitted in: MA, ME, NH

July 20, 2020

VIA OVERNIGHT MAIL

Michele Lumbert, Clerk
Kennebec County Superior Court
1 Court Street, Suite 101
Augusta, ME 04330

Re: *NextEra Energy Resources, LLC v. Maine Department of Environmental Protection*,
Docket No. KEN-AP-20-27

Dear Ms. Lumbert:

On behalf of Party-in-Interest Central Maine Power Company ("CMP"), enclosed please find a Response to Respondent DEP's Motion for Remand, and Motion of CMP to Stay in the Alternative.

Thank you for your attention to this matter.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Joanna Tourangeau, Esq., Drummond Woodsum (attorney for Petitioner NextEra)
Emily Howe, Esq., Drummond Woodsum (attorney for Petitioner NextEra)
David Kallin, Esq., Drummond Woodsum (attorney for Party-in-Interest NRCM)
Elizabeth Mooney, Esq., Drummond Woodsum (attorney for Party-in-Interest NRCM)
James Kilbreth, Esq., Drummond Woodsum (attorney for Party-in-Interest NRCM)
Elizabeth Boepple, Esq. BCM Environmental & Land Law (attorney for Parties-in-Interest West Forks Plantation, et al.)
Benjamin Smith, Esq., Smith Legal LLC (attorney for Party-in-Interest Western Mountains & Rivers Corp.)
Gerald Petruccelli, Esq., Petruccelli, Martin and Haddow (attorney for Parties-in-Interest Maine State Chamber of Commerce, et al.)
Sigmund Schutz, Esq., Preti Flaherty (attorney for Party-in-Interest Industrial Energy Consumer Group)
Anthony Buxton, Esq., Preti Flaherty (attorney for Party-in-Interest Industrial Energy Consumer Group)
Robert Borowski, Esq., Preti Flaherty (attorney for Party-in-Interest Industrial Energy Consumer Group)
Peggy Bensinger, Esq. Assistant Attorney General (attorney for Respondent DEP)
Scott Boak, Esq., Assistant Attorney General (attorney for Respondent DEP)

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. AP-20-27

NEXTERA ENERGY RESOURCES,)
LLC)
)
Petitioner)
)
v.)
)
MAINE DEPARTMENT OF)
ENVIRONMENTAL PROTECTION)
)
Respondent)
)
and)
)
CENTRAL MAINE POWER)
COMPANY)
)
Party-In-Interest)
)

**RESPONSE OF CENTRAL MAINE POWER COMPANY
TO RESPONDENT DEP’S MOTION FOR REMAND,
AND MOTION OF CENTRAL MAINE POWER COMPANY TO STAY IN THE
ALTERNATIVE**

Central Maine Power Company (CMP) responds to the July 2, 2020 Motion for Remand (Motion) of Respondent Maine Department of Environmental Protection (DEP), which requests that this Court remand this Rule 80C appeal to the Maine Board of Environmental Protection (BEP or Board). The DEP’s remand request, which also was made in Somerset County Superior Court, Case No. SOMSC-AP-20-04, in a separate Rule 80C appeal of the same DEP decision, demonstrates the logic of the July 2, 2020 Application for Transfer to Business and Consumer Docket (BCD) of Parties-in-Interest CMP, the Industrial

Energy Consumer Group (IECG), Western Mountains & Rivers Corporation (WMRC), the Maine State Chamber of Commerce (the Maine Chamber), the City of Lewiston (Lewiston), and the Lewiston-Auburn Metropolitan Chamber of Commerce (the LA Metro Chamber).

DEP's Motion summarizes the three appeals of the same DEP decision currently pending in three venues: the instant appeal filed by NextEra Energy Resources LLC (NextEra), an appeal in Somerset County Superior Court filed by a coalition of intervenors in the DEP licensing proceeding (West Forks Petitioners), and an administrative appeal to the BEP filed by the Natural Resources Council of Maine (NRCM). DEP Motion at ¶¶ 3-6. The need to coordinate the instant appeal with the related appeals, and the associated motions to remand and stay, warrants transfer to the BCD. Maine Supreme Judicial Court Administrative Order JB-07-1 (A. 11-08) (A.O. JB-07-1), § V(g). Indeed, it is precisely the interplay between the two simultaneous court appeals of the same DEP order, filed in different counties, as well as the simultaneous administrative appeal to the BEP of that DEP order, that will present novel and complex legal issues requiring "specialized and differentiated judicial management" that support transfer to the BCD. A.O. JB-07-1, § 1(b), § V(h).

Furthermore, appeals of final agency action, and specifically of orders of the DEP and Land Use Planning Commission (and predecessor Land Use Regulation Commission), are routinely transferred to the BCD. *See, e.g., Blanchard v. Town of Bar Harbor*, 2019 ME 168, ¶ 5, 221 A.3d 554, 556–57 (Me. 2019) (discussing transfer to BCD of complaint regarding DEP order approving a town zoning amendment); *Mallinckrodt US LLC v. DEP*, 2014 ME 52, 90 A.3d 428 (Me. 2014) (affirming BCD review of decision of BEP, which modified and affirmed a compliance order issued by the Commissioner of the DEP that required Mallinckrodt to excavate and landfill contaminated material); *Forest Ecology Network v.*

LURC, 2012 ME 36, 39 A.3d 74 (Me. 2012) (affirming in part, vacating in part, and remanding judgment on consolidated Rule 80C appeals entered in the BCD, which vacated the Maine Land Use Regulation Commission’s approval of a rezoning petition and concept plan submitted by Plum Creek Maine Timberlands, LLC, and Plum Creek Land Company for land it owned in the Moosehead Lake region); *Penobscot Energy Recovery Co., LP v. DEP*, No. BCD-AP-16-15, 2017 WL 10991627 (Me. B.C.D. Jan. 6, 2017) (BCD denial of motion to remand appeal of final agency action, concerning a DEP-issued air license, to the DEP to take additional evidence). The BCD was established to hear such cases that involve matters of significance to the operations of business entities like CMP. A.O. JB-07-1, § I(a).

Finally, the DEP has stated that there are “detailed and complex issues” raised in these appeals. DEP Motion at ¶ 12; A.O. JB-07-1, § V(d). The DEP describes in its Motion the “overlapping issues raised in the three appeals” that warrant placement on the BCD. DEP Motion at ¶¶ 7-11. Transfer and consolidation of the two Superior Court appeals will promote an effective and efficient process for resolving these similar disputes. A.O. JB-07-1, § I.

By letter dated July 15, 2020 NextEra stated that it does not oppose consolidation in the BCD of the two court appeals.

MOTION OF CMP TO STAY IN THE ALTERNATIVE

Regardless of whether this appeal is transferred to the BCD, if the Court denies DEP’s Motion for Remand CMP hereby moves in the alternative to stay this proceeding pending the outcome of NRCM’s administrative appeal to the BEP. A similar request was made by the West Forks Petitioners in Case No. SOMSC-AP-20-04. “The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Darling v.*

Am. Graphics Inst., Inc., No. CIV.A. CV-02-602, 2003 WL 22019549, at *2 (Me. Super. Aug. 6, 2003) (grating stay request because “[s]imilar, if not identical, matters are currently being arbitrated pursuant to a court order”) (citing *Cutler Associates, Inc. v. Merrill Trust Co.*, 395 A.2d 453, 456 (Me.1978)).

Should this Court maintain jurisdiction over the instant appeal, CMP requests that it be stayed for the reasons of administrative and judicial economy set forth in DEP’s Motion for Remand, and to avoid potentially inconsistent results from multiple appeals. DEP Motion at ¶¶ 14-16.

WHEREFORE CMP responds that transfer to the BCD is warranted here, and requests that if the Court denies DEP’s Motion to Remand that this proceeding be stayed pending the outcome of NRCM’s appeal to the Board.

Dated: July 20, 2020



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*Attorneys for Party-in-Interest Central Maine
Power Company*

NOTICE PURSUANT TO RULE 7(b)

Pursuant to Maine Rule of Civil Procedure 7(b), any matter in opposition to this Motion pursuant to subdivision (c) of Maine Rule of Civil Procedure 7 must be filed not later than twenty-one (21) days after the filing of this Motion unless another time is provided by the Maine Rules of Civil Procedure or set by the Court. The failure to file timely opposition will be deemed a waiver of all objections to this Motion, which may be granted without further notice or hearing.

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
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ORDER ON MOTION TO STAY CASE

Having come before the Court on Party-In-Interest Central Maine Power Company’s Motion to Stay, it is hereby ORDERED that this matter is stayed pending the decision of the Maine Board of Environmental Protection in the appeal of the Natural Resources Council of Maine regarding the May 11, 2020 decision of Commissioner of the Maine Department of Environmental Protection. The parties are DIRECTED to make a filing within sixty (60) days of the Maine Board of Environmental Protection’s resolution of that appeal, advising this Court of the decision and recommending a briefing schedule.

Date:

Justice, Superior Court