



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF
ENVIRONMENTAL PROTECTION



MELANIE LOYZIM
ACTING COMMISSIONER

SENT VIA EMAIL

November 16, 2018

Joanna Tourangeau
Drummond Woodsum
84 Marginal Way
Portland, ME 04101-2480

RE: Response to your November 2, 2018 Filing in the Application for the New England Clean Energy Connect (NECEC) Project L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N

Dear Ms. Tourangeau,

This letter responds to Nextera Energy Resources, LLC's (Nextera) response to the second procedural order dated November 2, 2018 and letter dated November 13, 2018. Nextera argues that the public hearing should cover the topic of title, right, or interest (TRI) because it is a threshold question and Nextera raises factual questions about some segments of the proposed project. Nextera also requests that the Department of Environmental Protection (Department) and the Land Use Planning Commission (LUPC) hold a second pre-hearing conference.

Regarding the issue of title, right, or interest, Nextera raises several questions that it would like to address during the public hearing. While the Department will not include the topic of title, right, or interest at the public hearing, the parties and members of the public may submit comments and raise questions in writing throughout the application review process. These comments and questions, and any responsive material submitted by Central Maine Power Company (CMP), will be considered by the Department. To assist, at this point I can address some of the issues raised. First, Nextera questions whether CMP has supplied sufficient evidence for the expansions on Segments 3, 4, and 5 stating that the proposal includes widening of the existing corridor, but the narrative in the application only discusses Segment 1. The proposal for Segments 2, 3, 4, and 5 includes a widening of the cleared corridor, however CMP is not proposing to expand the width of their rights-of-way (ROW) to accommodate the widening. Even if CMP had to expand their ROW to facilitate the construction of the NECEC project it would not necessarily need to have all the land under its control in order for the Department to issue a decision on an application. In a provision for applications for a transmission line project, the Site Law, in 38 M.R.S. § 487-A(3), allows a delay in the demonstration of TRI: "In the case of a gas pipeline or a transmission line carrying 100 kilovolts or more, a permit under this chapter may be obtained prior to any acquisition of lands or easements to be acquired by purchase. The permit must be obtained prior to any acquisition of land by eminent domain."

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Second, Nextera questions the validity of the letter of understanding between CMP and the Passamaquoddy Tribe. That letter of understanding contains a date of January 31, 2018 as the date on which the agreement would become null and void unless extended or replaced by a signed lease. On November 14, 2018, the Department requested CMP provide either a signed lease or an updated agreement. On that same day, the Department received a signed lease between CMP and the Passamaquoddy Tribe, which is attached to the email transmitting this letter.

Nextera also questions whether the Indenture between CMP and the Department of Interior allows for a transmission line over the Appalachian Trail. The easement between CMP and the Department of Interior specifically states that it is not to be construed to limit CMP's right to construct a transmission line. The Department believes this is an adequate demonstration of title, right, or interest.

Further, Nextera questions whether the Transmission Line Lease between CMP and the Department of Agriculture, Conservation, and Forestry, Bureau of Public Lands (the Bureau), dated December 15, 2014, is "statutorily permissible." The Bureau entered into that lease with CMP pursuant to 12 M.R.S. § 1852(4), which authorizes the Bureau to "lease the right, for a term not exceeding 25 years, to," among other things, "[s]et and maintain or use poles, electric power transmission and telecommunications facilities." CMP's lease with the Bureau, a copy of which CMP provided to the Department, demonstrates to the Department's satisfaction sufficient title, right, or interest to the lands subject to that lease. 096 C.M.R. ch. 2, § 11(D)(2) (2018). Legal challenges to the Bureau's authority to enter a transmission line lease pursuant to 12 M.R.S. § 1852(4) would be for the courts—not the Department—to adjudicate.

Although TRI will not be one of the topics addressed at the public hearing, as stated above, the parties to this proceeding and members of the public have the opportunity to file written submissions to the Department any time during the application review process, in which they may address the issue of TRI.

Finally, to the question of whether the Department and LUPC intend to hold a second pre-hearing conference. We do intend to hold a second pre-hearing conference before setting deadlines for the submission of pre-filed testimony; however, it has not been scheduled yet and won't be scheduled until such time as CMP provides the remaining items from Jim Beyer's November 5, 2018 letter to

Letter to Ms. Tourangeau
November 19, 2018
Page 3 of 3

Gerry Mirabile, and Department staff, other agency staff, and peer reviewers have had an opportunity to review the information submitted to date.

If you need further assistance please do not hesitate to contact Mr. Jim Beyer, Project Manager at the Department either by phone at (207) 446-9026 or e-mail at NECEC.DEP@maine.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Susanne Miller', with a long horizontal line extending to the right.

Susanne Miller, Presiding Officer

Cc: NECEC Service List

Attachment: Transmission Line Lease between Passamaquoddy Tribe and CMP