STATE OF MAINE
PUBLIC UTILITIES COMMISSION

CENTRAL MAINE POWER COMPANY Request for Approval of CPCN for the New England Clean Energy Connect Consisting of a 1,200 MW HVDC Transmission Line from Québec-Maine Border to Lewiston (NECEC) and Related Network Upgrades	Docket No. 2017-00232

BRIEF OF CONSERVATION LAW FOUNDATION

February 1, 2019

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INTRODUCTION

In the face of the immediate and existential threat posed by climate change to Maine, New England and the world, it is imperative that we accelerate the decarbonization of our energy supply by increasing our reliance on clean and renewable energy resources. Along the path to decarbonization, there will be difficult decisions about the environmental and economic costs and benefits of developing and delivering these resources. The New England Clean Energy Connect (NECEC), presents the relevant permitting authorities, including the Public Utilities Commission (Commission), with such decisions.

The NECEC project proposed by Central Maine Power Company (CMP) is a 145-mile transmission line to deliver hydropower generated in Canada from the Quebec-Maine border to Lewiston, Maine, for ultimate delivery to Massachusetts under a legislatively-mandated clean energy procurement process. In determining whether to issue a Certificate of Public Convenience and Necessity (CPCN) for the NECEC, the Commission must decide whether the project is in the public need. In so doing, the Commission must consider, among other things, economics, reliability, public health and safety, scenic, historic and recreational values and state renewable energy goals. The decision lies with the Commission, but CMP bears the burden of establishing that the NECEC is in the public need.

Because the NECEC is a transmission project that does not confer on Maine some of the more traditional and self-evident benefits of in-state transmission (e.g., enhanced reliability to Maine's electricity grid, transmission of energy produced by Maine power generators), it is incumbent upon CMP to meet the public need standard by presenting a project package that sufficiently incorporates benefits to Maine beyond those shared regionally (e.g., carbon reductions and reduced electric consumer costs). As described in greater detail below,

Conservation Law Foundation (CLF) has a number of ongoing concerns related to the Maine-specific public benefit and impact mitigation of the project, as currently proposed. For this reason, CLF urges that the Commission require CMP to commit to a significantly more robust project benefits package that includes substantial financial, resource and planning commitments that will, among other things, advance Maine's renewable energy goals, Maine's economy and Maine's public health.

BACKGROUND

I. Factual Background

On September 27, 2017, CMP filed a petition for approval of a CPCN for the NECEC. *See* CPCN Petition, Volumes I-II and Exhibits 1-15. In its petition, CMP described the project as a high voltage direct current (HVDC) transmission line capable of delivering 1,200 MW of electricity from Quebec to Lewiston, Maine. *See* CPCN Petition, Volume 1 at 1:13-2:17. Approximately 93 miles of the proposed line will run through existing CMP transmission corridors and most of the remaining 52 miles will run through commercial forestland. *Id.* at 73:3-9. CMP owns or controls all of the land over which the line will run. *Id.* at 38:15-23.

The NECEC was proposed as a part of two bids submitted in response to the Massachusetts Request for Proposals for Long-Term Contracts for Clean Energy Projects (RFP). *Id.* at 1:6-11. The RFP was issued by the Massachusetts Electric Distribution Companies (EDCs) in coordination with the Massachusetts Department of Energy Resources (DOER) and pursuant to Section 83D of Chapter 169 of the Acts of 2008, which required the annual procurement of 9.45 TWh of energy. *Id.* at 1:11, 11:8-11. The first bid proposed that the energy would come from a combination of hydroelectric and wind generation in Quebec, and the second proposed that 100% of the energy would come from hydroelectric generation in Quebec. *Id.* at 11:20-12:6.

Since the CPCN petition was filed, certain aspects of the NECEC proposal have been updated or changed. In particular, the NECEC 100% hydropower bid was ultimately selected as the winning RFP bid, and purchase and transmission agreements with respect to that bid have been executed. *See* CMP Rebuttal Testimony of Dickinson, Stinneford and Escudero at 3:13-4:5, 4:10-5:2. The project has also been modified to include certain benefits. For instance, CMP has decided to underground the transmission line where it crosses the Kennebec River, in order to mitigate the impacts of the NECEC to scenic and recreational values in the area. *See* January 9, 2019 Hearing Transcript at 5:3-6, 119:20-25. CMP has entered into an agreement with Western Mountain & Rivers Corporation, by which CMP will pay between $5.5 and $10.5 million to mitigate the environmental, natural resource and community impacts of the NECEC. *Id.* at 3:13-4:5; *see also* January 9, 2019 Hearing Transcript at 10:19-12:7; CMP Rebuttal Testimony of Dickinson, Stinneford and Escudero at 15:8-17:7; Exhibit NECEC-25. And CMP has also agreed to add fiber optic cable onto the new 345 kV line running through Whitefield, Maine. *See* January 9, 2019 Hearing Transcript at 156:21-25.

II. Procedural Background

On October 3, 2017, the Commission issued a Notice of Proceeding and Opportunity to Intervene, describing the project and requesting that parties wishing to intervene file petitions by October 13, 2017. *See* October 3, 2017 Notice of Proceeding and Opportunity to Intervene. CLF timely filed a petition to intervene on October 13, 2017, and the petition was granted at the initial case conference held on October 19, 2017. *See* October 25, 2017 Procedural Order – Schedule.

The procedural history of this proceeding is lengthy and has included numerous party interventions, several rounds of written and oral testimony and discovery, and hearings held on January 8-11, 2019. The Hearing Examiners issued an order requesting that the parties address a

number of issues in briefs. *See* January 14, 2019 Procedural Order – Briefing Issues. The deadline for parties to submit post-hearing briefs is February 1, 2019. *See* January 19, 2019 Procedural Order Granting Extension Request.

ARGUMENT

I. The Commission Should Require CMP to Commit to a Significantly More Robust Project Benefits Package.

When deciding whether to issue a CPCN for a proposed transmission line, the Commission must make findings with respect to the public need for the line. *See* 35-A M.R.S. § 3132(6). In determining public need, the Commission shall, at a minimum, take into account:

> economics, reliability, public health and safety, scenic, historic and recreational values, state renewable energy generation goals, the proximity of the proposed transmission line to inhabited dwellings and alternatives to construction of the transmission line, including energy conservation, distributed generation or load management.

Id. CMP bears the burden of establishing before this Commission that the NECEC is in the public need. In the course of this proceeding, CMP has presented evidence on the public need for the NECEC and the benefits and costs of the project. That evidence was presented in CMP's CPCN Petition, its written discovery responses and its written and oral testimony, including testimony and reports by its consultants, Daymark Energy Advisors and the Maine Center for Business and Economic Research. Witnesses for RENEW Northeast, Inc., NextEra Energy Resources, LLC and Calpine Corporation, Vistra Energy Corporation and Bucksport Generation, LLC (the Generator Intervenors) also presented written and oral testimony and written discovery responses concerning the impacts of the NECEC, and London Economics International LLC presented written and oral testimony and written discovery responses on behalf of the Commission with respect to project impacts.

Based on the evidence presented in this proceeding, CLF has a number of ongoing concerns with the project, and specifically with CMP's assessment of the project's costs and benefits. These concerns relate particularly to the project's potential negative impacts on existing Maine renewable energy resources, limitations it may place on the ability to locate future renewable energy projects in Maine and implications for future orderly planning around decarbonization of Maine's and the region's energy sector, benefits derived by Maine's electric consumers and especially low-income consumers, public health benefits conferred on the Maine people and the extent of economic benefits committed to Maine.

A. The Project Must Mitigate Potential Impacts on Existing and Future Maine-Based Renewables.

The hydropower-generated electricity proposed to be delivered over the NECEC will cross several key transmission system interfaces, including the Suroweic-South interface in Maine and the Maine-New Hampshire interface on Maine's southern border. *See* CPCN Petition, Exhibit 3 at 57; *see also* July 13, 2018 Daymark Rebuttal Testimony at 16:2-5. The effect of the 1,200 MW NECEC project and the associated energy delivered over these interfaces, will be to impact overall energy flow and capacity deliverability capabilities at these interfaces. If left unresolved, these impacts could have negative consequences for existing and future renewable resource generators in Maine and their ability to participate in ISO's Forward Capacity Market (FCM) and to deliver power onto the electric grid.

The Suroweic-South interface is representative of these concerns. Suroweic-South currently has approximately 200 MW of unused capacity deliverability headroom. *See* April 30, 2018 Testimony of Francis Pullaro at 2. CMP proposes to upgrade the Suroweic-South interface to add an additional 1,000 MW of transfer capability resulting in a total of 1,200 MW of headroom after completion of the project. *Id.* However, if the 1,200-MW NECEC project were to

qualify for and clear the FCM, it would consume all available current capacity headroom at the Suroweic interface, leaving the system without any remaining headroom and resulting in no new capacity qualifications for Maine renewable energy projects north of Surowiec, unless offsetting retirements occurred or additional, and likely costly, upgrades are made to the Surowiec-South interface by subsequent interconnecting projects. *Id.* In this situation, Maine renewable generation will be at a disadvantage in competitive solicitations for renewable energy, compared with new renewables in southern New England that will be able to qualify in the capacity market due to favorable system conditions. *Id.* at 3-4.

The NECEC will also impact energy flows at these key transmission interfaces. Daymark, LEI and the Generator Intervenors performed modeling of expected congestion at interfaces that may be impacted by the NECEC, including the Suroweic-South interface and the Maine-New Hampshire interface. The results of the modeling varied, but did identify the potential for congestion between 1 and 10 percent of total hours. *See* July 13, 2018 Daymark Rebuttal Testimony at 15:7-26:14. If the modeled congestion occurs, it could result in curtailment of existing Maine renewable generation, and consequent impacts on their revenues and commercial viability.

In order to reduce these impacts and advance the state's renewable energy goals, CMP should be required to undertake measures to address congestion and transfer limit related concerns at the Suroweic-South and Maine-New Hampshire interfaces, including by ensuring that the transfer capacity at the Suroweic-South interface with NECEC online is no less than 2,600 MW, by actively seeking interpretations from ISO-New England that maximize the stability rating (and thereby the overall transfer capacity) at the Suroweic-South interface with the NECEC online and by committing financial and planning resources to model and assess

potential solutions to increase transfer capacity assuming NECEC is online, all in order to achieve transfer capacity sufficient to avoid impacts on existing renewable resources.

To enhance the benefit to be derived from these recommended measures designed to improve the electric system and make it more accommodating to carbon-free energy resources, CMP should further be ordered to take measures to better ensure that Maine and the region's efforts to decarbonize the electric sector is undertaken in a planned and orderly manner that ensures economic benefit for the state, while minimizing impacts and conserving resources. To this end, CMP should be required to fund and participate in a stakeholder planning process designed to analyze and develop a roadmap for Maine and the region to decarbonize its economy.

B. The Project Must Provide Enhanced Benefit to Maine's Energy Consumers.

The NECEC project proposal that was submitted in the Massachusetts RFP process included a provision for contributing $50 million over 40 years for the advancement of programs that benefit low-income ratepayers. *See* Response to Data Request IECG-001-034, Attachment 3 at 34-35, 165-172. Part of those contributions will be toward advancing the EDC's low-income energy efficiency programs. *Id.* at 167-68. Typical energy efficiency measures installed through low-income programs include insulating and weatherizing homes, installing more efficient lighting, heating equipment, and controls, and replacing appliances. *Id.*

In light of the fact that the entirety of the NECEC line will run through Maine, and in order to benefit low-income customers in Maine and help Maine achieve its emission reductions goals, CMP should be required to create a fund for low-income energy efficiency programs in Maine, and to make contributions to that fund that are equal to or greater than CMP's contributions to low-income ratepayers in Massachusetts.

C. The Project Must Do More to Improve Maine's Public Health.

CMP must also do more to ensure that the NECEC advances public health in Maine. To meet the public need requirement, CMP should be required to make substantial financial contributions toward the decarbonization and electrification of Maine's transportation and heating sectors, including toward the expansion of electric vehicle and electric heat pump infrastructure, thereby reducing emissions and advancing public health.

D. The Project Must Provide Greater Economic Benefit to Maine.

CMP has identified various economic benefits that the NECEC project provides to Maine, but it must do more. In order to satisfy the public need standard, CMP should be required to make substantial financial contributions toward Maine electric customer benefits and telecommunication upgrades, in particular significantly increasing access to broadband technology in Maine.

For all these reasons, the Commission should require CMP to commit to a significantly more robust project benefits package that includes substantial financial, resource and planning commitments that will, among other things, advance Maine's renewable energy goals, Maine's economy and Maine's public health.

II. CLF's Responses to Questions Posed by the Hearing Examiners.

In their January 14, 2019 Procedural Order – Briefing Issues, the Hearings Examiners requested that the parties address several specific issues in their briefs. CLF addresses each of these issues in the order they were presented in the Procedural Order.

A. How should the "public need" standard pursuant to section 3132(6) be considered and evaluated in the context of the NECEC as opposed to the more typical reliability transmission project?

The term "public need" in 35-A M.R.S. § 3132(6) is not defined. In the absence of a definition, the principles of statutory interpretation typically apply. In construing a statute, courts look to give effect to the legislative intent. *Jordan v. Sears, Roebuck & Co.*, 651 A.2d 358, 360 (Me. 1994). In determining that intent, courts look first to the plain meaning of the statutory language, and consider the "whole statutory scheme of which the section at issue forms a part so that a harmonious result, presumably the intent of the Legislature, may be achieved." *Id.* Because § 3132 pertains to transmission lines proposed to be erected "within this State," 35-A M.R.S. § 3132(2), and because this Commission's jurisdiction lies in Maine, 35-A M.R.S. § 103, one could logically conclude that the Legislature intended the term "public need" to mean the public need in Maine.

However, in the absence of statutory language defining the scope "public need," the term could also be interpreted more broadly to include the public need outside Maine, for instance Massachusetts or New England. As the Hearing Examiners point out, the NECEC is not a typical reliability transmission aimed at serving Maine. Indeed, as the extensive record in this case demonstrates, the NECEC has economic and environmental implications outside Maine, including Massachusetts, New England and the Northeast United States. While the project is sited in Maine, and its impacts in Maine must be evaluated, the ultimate purpose of the project is to satisfy a clean energy procurement process aimed at reducing greenhouse gas emissions not just in Maine but throughout the region. In this case, therefore, the "public need" standard should be considered and evaluated more broadly, including determining whether the NECEC reduces overall greenhouse gas emissions, a measure of the public need of Mainers not only as residents

of Maine, but as citizens of the world facing the immediate and existential threat posed by climate change.

There is precedent for Commission consideration of regional costs and benefits in the context of CPCN petitions seeking to satisfy the public need standard. For example, the Commission considered the regional cost recovery authorized by ISO-New England in approving the "Lewiston Loop" transmission project. *See* August 23, 2013 Order Approving Stipulation, Docket No. 2011-00420, *CMP Request for CPCN for the Construction of 115 kV Transmission Facilities in Lewiston ("Lewiston Loop")*; *see also* June 20, 2010 Order Approving Stipulation, Docket No. 2008-00255, *CMP and Public Service of New Hampshire Request for CPCN for the Maine Power Reliability Program Consisting of the Construction of Approximately 350 Miles of 345 kV and 115 kV Transmission Lines ("MPRP")* (approving project whose $1.3 billion in costs were regionalized). Similarly, the Commission has considered line loss savings associated with a transmission upgrade that may provide benefits to New England consumers as a whole in the reduction in the amount of capacity that is required to be purchased. *See* August 15, 2011 Order Approving Stipulation, Docket No. 2010-00180, *CMP and Public Service of New Hampshire Request for CPCN for the Somerset County Reinforcement Project Consisting of the Construction of Approximately 39 miles of 115 kV Transmission Lines ("Section 241").*

B. Based upon the assumption that the Legislature did not intend that the Commission duplicate the functions of the Department of Environmental Protection (DEP), how should the requirement in section 3132(6) that the Commission consider "public health and safety, scenic, historic and recreational values" be interpreted and applied? Is the interpretation and application of this requirement different in the context of the NECEC as opposed to a reliability transmission project?

There is no administrative or judicial precedent or agency policy addressing the respective roles and functions of the Commission and the DEP in assessing permit applications by utilities for energy-related development projects. In the absence of such guidance, it is

instructive to examine the nature and scope of each agency's jurisdiction to determine their respective functions. As a threshold matter, it is undisputed that both the Commission and the DEP have jurisdiction over energy-related developments, like the NECEC, that will have a physical presence in Maine, and direct impacts on Maine's residents and natural environment.

The legislative and regulatory standards under which each agency evaluates such projects, however, are different. As discussed above, in determining whether to issue a CPCN for a project, the Commission is tasked with making "specific findings with regard to the public need for the proposed transmission line." 35-A M.R.S. § 3132(6). In so doing, the Commission "shall, at a minimum, take into account … public health and safety, scenic, historic and recreational values..." *Id.* These criteria are not defined and, in the absence of such definition, should be interpreted in the context of the statutory framework in which they appear, which sets forth the requirements for determining whether the project is in the public need.

In determining whether to approve the NECEC, the DEP will apply the standards set forth in the Natural Resource Protection Act (NRPA), 38 M.R.S. § 480-D ("Standards"), the Site Location of Development Act (SLDA), 38 M.R.S. § 484 ("Standards for Development") and the related regulations, including 06-096 C.M.R. ch. 310 ("Wetlands and Waterbodies Protection"); 06-096 C.M.R. ch. 315 ("Assessing and Mitigating Impacts to Existing Scenic and Aesthetic Uses"), 06-096 C.M.R. ch. 335 ("Significant Wildlife Habitat"); and 06-096 C.M.R. ch. 375 ("No Adverse Environmental Effect Standards of the Site Location and Development Act"). Under the NRPA and related regulations, the DEP will be evaluating impacts of the NECEC on wetlands, water bodies, soil erosion, wildlife habitat, water flow and existing uses, including scenic, aesthetic, recreational or navigational uses. Under the SLDA and related regulations, the

DEP will be evaluating impacts on the natural environment, including air and water quality, wildlife and fisheries, soils, noise and odors.

The Commission and the DEP are charged with administering different statutes, and each agency is equipped to administer its duties with different standards of review. While there is some linguistic similarity between the Commission's charge of taking account of "scenic, […] and recreational values," and the DEP's assessment of "scenic, […], recreational uses," the standards are not identical and, more importantly, the statutory and regulatory contexts within which they arise are different. The former arises under the Commission's assessment of "public need" for a project, while the latter arises under the DEP's assessment of "natural resources" impacts of the project.

Section 3132 explicitly contemplates a level of interplay between the DEP and the Commission with respect to transmission line approval. *See* 35-A M.R.S. §§ 3132(6), (7), (8).[1] Further, § 3132(6) explicitly recognizes that any order by the Commission is subject to the right of any other agency to approve the transmission line:

[1] These sections provide, in relevant part, that:
(6) …The commission shall, as necessary and in accordance with subsections 7 and 8, consider the findings of the Department of Environmental Protection under Title 38, chapter 3, subchapter 1, article 6, with respect to the proposed transmission line and any modifications ordered by the Department of Environmental Protection to lessen the impact of the proposed transmission line on the environment…
(7) Environmental protection agency modification. If the commission has issued a certificate of public convenience and necessity for a proposed transmission line and the Department of Environmental Protection in an order issued under Title 38, chapter 3, subchapter 1, article 6 makes a modification in the location, size, character or design of the transmission line, the person proposing the transmission line shall: A. Deliver a copy of the order to the commission; and B. State the nature of the modifications and all cost adjustments occasioned by the modifications to the cost of the proposed transmission line relied upon by the commission in issuing its certificate of public convenience and necessity under this section.
(8) Cost adjustments. If the cost adjustments specified in subsection 7 exceed the cost relied upon by the commission in the original proceeding under this section by more than 20% of the original cost, the person may not proceed with any construction of the proposed transmission line, the commission's original certificate of public convenience and necessity notwithstanding. The commission, upon notification of the cost increase, shall:
A. Reopen its original decision concerning the transmission line; B. Make specific findings with regard to the need for the transmission line to the same extent and with the same authority as if the person's petition for approval were before it; and C. Except as modified in this section, retain all authority granted to it under section 1321.

> If the commission orders or allows the erection of the transmission line, the order is subject to all other provisions of law and the right of any other agency to approve the transmission line.

Given that the Legislature created this explicit interplay between the Commission and the DEP, and that it explicitly acknowledged the jurisdiction of other agencies, it is clear the Legislature intended that transmission lines would be subject to review by more than one agency. Indeed, had the Legislature intended to create deference by one agency to another on any issue with respect to approving a transmission line, then it would have done so.

In other New England states, legislatures have decided to vest decision-making authority over the siting of energy facilities, including transmission lines, with a single siting board. In Rhode Island, for instance, an Energy Facility Siting Board (EFSB) was created to avoid the fragmentation of decision-making power, the problems of overlapping jurisdiction and the risk of conflicting permitting decisions concerning energy facilities. *Rhode Island Cogeneration Assocs. v. City of E. Providence*, 728 F.Supp. 828, 832–33 (D.R.I. 1990); *see also* R.I.G.L. c. 42, §§ 98-1 *et seq*. (Rhode Island EFSB); N.H. Rev. Stat. § 162-H *et seq*. (New Hampshire Site Evaluation Committee); M.G.L. c. 164, §§ 69H *et seq.* (Massachusetts Energy Facilities Siting Board). In Maine, where the legislature has not consolidated decision-making authority with respect to energy facilities, the Commission and DEP should be understood to share jurisdiction over the permitting of transmission lines within the statutory framework established for each agency.

That the NECEC is not a reliability transmission project should not affect this interpretation of the requirements in § 3132(6). While the transmission projects to which § 3132 apply are typically reliability transmission projects, there is nothing in § 3132 that prevents the Commission from applying it to projects like the NECEC.

C. How should section 3132(2-D), which states that the Commission shall consider the results of an independent third party investigation of nontransmission alternatives to the proposed transmission project, be considered in the context of the NECEC as opposed to a reliability transmission project?

The requirement set forth in § 3132(2-D) was enacted in 2017, and there is no project or review precedent for how this requirement should be considered or applied, whether in the context of a reliability transmission project or of a project like NECEC. The provision reads:

> In considering whether to approve or disapprove all or portions of a proposed transmission line pursuant to subsection 5, the commission shall consider the results of an investigation by an independent 3rd party, which may be the commission or a contractor selected by the commission, of nontransmission alternatives to construction of the proposed transmission line. The investigation must set forth the total projected costs of the transmission line as well as the total projected costs of the alternatives over the effective life of the proposed transmission line.

A plain reading of this provision indicates that it is intended to apply to reliability projects for which costs will be borne by Maine ratepayers, and thus allow a cost comparison designed to save Maine ratepayers money.

As discussed above, the purpose of the NECEC is to satisfy the clean energy procurement in Massachusetts, which seeks delivery of 1,200 MW of clean energy to the Massachusetts EDCs and, ultimately, to Massachusetts customers. Unlike typical reliability transmission projects, the purpose of the NECEC is not to satisfy load in Maine.

In this case, therefore, non-transmission alternatives (NTAs), which include solutions like demand response, distributed generation and energy efficiency that are designed to meet load by means other than transmission upgrades, could only be effective if they were implemented or located on the Massachusetts side of the North/South interface. As such, any NTA or NTAs for the NECEC is not a choice for Maine, but rather a choice for Massachusetts. Massachusetts did not select NTAs in this solicitation, and Maine has no ability to compel Massachusetts to implement them in lieu of the NECEC. Not only is there no useful NTA to the NECEC that the

Commission could approve in this case, there is no cost to Maine ratepayers for the NECEC with which to compare the cost of the NECEC NTA, as contemplated by § 3132(2-D).

D. How should the requirement in section 3132(6) that the Commission consider "state renewable energy goals" be considered in the context of the NECEC?

Maine's renewable energy goals are a key element of the state's efforts to mitigate the impacts of climate change. For instance, under 35-A M.R.S. § 3404(2), the state has set wind energy development goals of: at least 2,000 megawatts of installed capacity by 2015; at least 3,000 megawatts of installed capacity by 2020, including 300 megawatts or more from generation facilities located in coastal waters or in proximate federal waters; and at least 8,000 megawatts of installed capacity by 2030, including 5,000 megawatts from generation facilities located in coastal waters or in proximate federal waters.

The Canadian hydropower to be delivered over the NECEC will not advance Maine's renewable energy goals. While the evidence presented in this proceeding is conflicting on this point, it indicates some risk that the NECEC could impede Maine's renewable energy goals; that is, the evidence indicates that the operation of the NECEC could limit flows at key interfaces in Maine and thereby hinder the development and delivery of renewable energy resources, including wind and solar power resources. It is for this reason that the NECEC permit must be conditioned on requirements that CMP address the transfer limits and relieve and prevent congestion on the grid.

1. Referring to the definitions of "renewable capacity resource" in section 3210(2)(B-3) and of "renewable resource" in section 3210(2)(C), should the hydroelectric generation to be transmitted over the NECEC be considered "renewable" for purposes of promoting "state renewable energy goals" under Maine law?

As discussed above, the NECEC is designed to deliver 1,200 MW of hydropower from the Quebec-Maine border to Lewiston, Maine. Under the power purchase and transmission

agreements executed in 2018 and submitted for approval to the Massachusetts Department of Public Utilities, the NECEC will deliver 1,090 MW of power. Certain types of hydropower qualify as renewable resources under Maine law. However, because the definition of "renewable capacity resource" in 35-A M.R.S. § 3210(2)(B-3) and the definition of "renewable resource" in 35-A M.R.S. §3210(C) both exclude sources of electrical generation whose total power production capacity exceeds 100 MW, the hydropower to be delivered over the NECEC should not be considered as "renewable" for purposes of promoting "state renewable energy goals" under 35-A M.R.S. § 3132(6).[2]

2. Referring to the "State's goals for reduction of greenhouse gas emissions within the State" contained in Title 38, section 576, is this provision relevant to the consideration of the NECEC proposal and the associated hydroelectric power located in Canada?

Maine's current greenhouse gas reduction goals are set forth in 38 M.R.S. § 576, which provides as follows:

> 1. Reduction by 2010. In the short term, reduction to 1990 levels by January 1, 2010;
>
> 2. Reduction by 2020. In the medium term, reduction to 10% below 1990 levels by January 1, 2020; and
>
> 3. Long-term reduction. In the long term, reduction sufficient to eliminate any dangerous threat to the climate. To accomplish this goal, reduction to 75% to 80% below 2003 levels may be required.

It is clear from the evidence presented in this case that the NECEC will result in greenhouse gas emissions reductions in Maine, estimated at 264,000 metric tons annually. *See* CPCN Petition, Vol. 1 at 50:4-7; CPCN, Exh. NECEC-5 at 15. Therefore, § 576 is relevant to the Commission's consideration of the NECEC proposal.

[2] *See also* July 13, 2018 CMP Rebuttal Testimony of Dickinson, Stinneford and Escudero at 18 :2-4; November 28, 2017 Technical Conference Transcript at 46:8-11 (Mr. Stinneford: "[C]urrently, the hydroelectric energy that would be sourced from Hydro-Quebec system to flow over the project would not meet Maine's [Renewable Portfolio Standard] definitions.")

3. Are there other Maine statutory provisions that are relevant to the Commission's consideration of "state renewable energy goals" in this proceeding?

While there are statutory provisions pertaining to wind and solar energy resource development in Maine, they are not relevant to this proceeding, which concerns the decision by the Massachusetts EDCs and DOER to select hydropower from Canada as the clean energy resource that will satisfy its statutorily-mandated clean energy procurement process.

E. Referring to Title 35-A, section 707 governing affiliate transactions and assuming that the NECEC project is transferred to a special purpose entity (SPE), how should the Commission apply subsection 3(G) that specifies "For any contract or arrangement expected to involve the use by an affiliated interest of utility facilities, services or intangibles, including good will or use of a brand name, the commission shall determine the value of those facilities, services or intangibles." Specifically, how should the Commission determine the value of: (1) utility facilities, including existing corridors and existing transmission infrastructure; (2) services; and (3) intangibles, including good will or use of a brand name, in the context of the NECEC, and how should such values be conveyed from the SPE to Maine (and other regional) ratepayers?

CLF takes no position with respect to this issue.

F. With respect to Chapter 820 of the Commission's rules, is the construction and operation of the NECEC a core utility service pursuant to Chapter 820, section 2(C)?

CLF takes no position with respect to this issue.

G. Regardless of whether the NECEC is a core utility service pursuant to Chapter 820, if the NECEC resides in an SPE, do the provisions of Chapter 820(4) apply and, if so, how should the values set forth in sections (4)(B) through (4)(F) be calculated and conveyed?

CLF takes no position with respect to this issue.

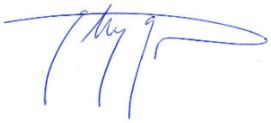
CONCLUSION

For all these reasons, CLF urges that the Commission require CMP to commit to a significantly more robust project benefits package that includes substantial financial, resource

and planning commitments that will, among other things, advance Maine's renewable energy goals, Maine's economy and Maine's public health.

Respectfully submitted,

Phelps Turner



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