

STATE OF MAINE
CUMBERLAND, ss

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. _____

NECEC TRANSMISSION LLC,

and

AVANGRID NETWORKS, INC.,

Plaintiffs,

v.

BUREAU OF PARKS AND LANDS,
MAINE DEPARTMENT OF
AGRICULTURE, CONSERVATION AND
FORESTRY,

MAINE PUBLIC UTILITIES
COMMISSION,

MAINE SENATE,

and

MAINE HOUSE OF REPRESENTATIVES,

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

NOW COME Plaintiffs NECEC Transmission LLC (“NECEC LLC”) and Avangrid Networks, Inc. (“Avangrid”), and hereby complain against Defendants the Bureau of Parks and Lands, Maine Department of Agriculture, Conservation and Forestry (“BPL”); the Maine Public Utilities Commission (“PUC”); the Maine Senate; and the Maine House of Representatives, and seek declaratory and injunctive relief regarding “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain

Transmission Lines in the Upper Kennebec Region” (hereafter, the “Initiative”), enacted on November 2, 2021, as follows:

1. After years of regulatory proceedings resulting in the issuance of all necessary siting, environmental, and land use permits, NECEC LLC undertook physical construction of the New England Clean Energy Connect transmission line corridor (“NECEC” or “Project”) in January 2021. The NECEC represents a billion dollar investment in the clean energy future of New England. It will reduce greenhouse gas (“GHG”) emissions by the equivalent of removing 700,000 cars from the road each year the Project is in service. To date, NECEC LLC has expended approximately \$449.8 million dollars on the Project, and substantial physical construction has occurred: approximately 124 miles of right-of-way along the corridor for the direct current (“DC”) line has been cut (over 80%); clearing along the corridor for the alternating current (“AC”) is complete; over 120 structures have been erected along the DC, AC, or network upgrade portions of the Project, collectively; over 3 miles of conductor has been strung along the network upgrade line; and site preparation and component construction for a converter station is well advanced. Despite the granting of permits for the Project, the environmental and economic benefits of the Project, and the substantial progress in transmission line construction, opponents of the Project – funded by electric generators in New England who burn fossil fuels – have now successfully pursued passage of legislation via direct initiative specifically targeted at the Project that would, if enforced, retroactively ban the completion and operation of the NECEC.

2. This Initiative represents an extraordinary attempt to deprive a private party of vested rights in the construction and operation of a multi-year development project. “[A] statute which has retrospective application is unconstitutional if it impairs vested rights.” *Fournier v. Fournier*, 376 A.2d 100, 101-02 (Me. 1977). NECEC LLC has commenced significant, physical

construction of the Project in good faith, with the intention to carry it through to completion, pursuant to valid permits. Because NECEC LLC has undertaken good faith construction of the Project, NECEC LLC has a vested right to complete and to operate the Project. Any other conclusion would render any major development project in the State – in fact, any effort by any person or business in the State to build any project, no matter how big or how small – vulnerable to discriminatory and prejudicial efforts to kill the project by after-the-fact changes to the law. Such retroactive deprivation of vested rights is contrary to the fundamental principles of fairness and equity embodied in Maine law.

3. The Initiative also represents a nearly unparalleled violation of separation of powers principles enshrined in the Maine Constitution. The framers adopted a system of separated powers because they were “well acquainted with the danger of subjecting the determination of the rights of one person to the ‘tyranny of shifting majorities.’ . . . It was to prevent the recurrence of such abuses that the Framers vested the executive, legislative, and judicial powers in separate branches.” *I.N.S. v. Chadha*, 462 U.S. 919, 961-62 (1983) (Powell, J., concurring); see THE FEDERALIST NO. 47 (James Madison), 1788 WL 461, at *3. The separation of powers doctrine thus seeks to prevent unfair applications of the law to specific individuals. *Carter v. Lehi City*, 269 P.3d 141, 152 (Utah 2012). This structure is reflected not only in the U.S. Constitution, but also the Maine Constitution. Accordingly, the decisions of state executive agencies and the judiciary applying the law to particular individuals based on specific facts and circumstances cannot be reversed by legislative action. Nevertheless, opponents of the Project have now twice sought to reverse final executive and judicial actions via initiative – first through an initiative, struck down as unconstitutional by the Law Court, that singled out the Project by name, and, now, through an initiative that is designed to accomplish the same end through retroactive application to the Project.

4. The Initiative is also flawed because it would cause the reopening and voiding of a lease with the BPL, contrary to the provisions in the Maine and United States Constitutions protecting the sanctity of contracts. The State cannot unilaterally cancel its lease with NECEC LLC.

5. Because the Initiative violates NECEC LLC's vested rights as well as basic constitutional protections provided by the Maine and United States Constitutions, the Initiative cannot lawfully be applied retroactively to the Project.

PARTIES

6. NECEC Transmission LLC is a Delaware limited liability corporation with a place of business at One City Center, Portland, Cumberland County, Maine. NECEC LLC is a clean energy development company that owns the Project currently under construction.

7. Avangrid Networks, Inc. is a Maine corporation with a place of business at One City Center, Portland, Cumberland County, Maine. Avangrid Networks is the indirect parent company of Central Maine Power Company ("CMP"), an electric transmission and distribution utility that serves more than 620,000 customers in central and southern Maine. Avangrid Networks also wholly owns NECEC LLC.

8. Defendant Bureau of Parks and Lands, Maine Department of Agriculture, Conservation and Forestry, is an agency of the State of Maine with its principal office in Augusta, Kennebec County, Maine.

9. The BPL is the agency responsible to enforce those aspects of the Initiative that modify Title 12 of the Maine Revised Statutes, specifically Section 1.

10. Defendant Maine Public Utilities Commission is an agency of the State of Maine with its principal office in Hallowell, Kennebec County, Maine.

11. The PUC is the agency primarily responsible to enforce those aspects of the Initiative that modify Title 35-A of the Maine Revised Statutes, specifically Sections 4-6.

12. Defendant Maine Senate is a branch of the Maine Legislature, which is located in Augusta, Kennebec County, Maine.

13. Defendant Maine House of Representatives is a branch of the Maine Legislature, which is located in Augusta, Kennebec County, Maine.

14. If valid, Section 4 of the Initiative retroactively imposes a new requirement of affirmative votes by the Senate and the House of Representatives for approval of the Project.

JURISDICTION

15. Jurisdiction is appropriate in this Court pursuant to 4 M.R.S. § 105.

16. Venue is appropriate pursuant to 14 M.R.S. § 505, as NECEC LLC and Avangrid have an established place of business in Cumberland County.

FACTS

17. The NECEC is a clean energy project, already under construction, that will bring 1,200 megawatts of clean hydropower from Québec into Maine and the New England electric grid. The NECEC includes a 145-mile high voltage direct current (“HVDC”) transmission line from the Canadian border to a new converter station located at Merrill Road in Lewiston, Maine and necessary network upgrades, including AC transmission lines, required to interconnect the Project to the New England electric grid (the “Network Upgrades”).

18. The NECEC including the necessary Network Upgrades represents an investment of approximately \$1 billion for new electricity transmission infrastructure in Maine. This investment has produced hundreds of jobs (and will produce thousands of jobs, direct and indirect) in Maine during construction of the Project; funds approximately \$250 million in rate relief,

economic development, carbon reduction, education, and other benefits for Maine; and results in approximately \$18 million in additional property taxes annually for the host communities. Of the approximately \$250 million in benefits to Maine, approximately \$18 million has already been paid out; and approximately \$3.4 million in property taxes have been paid, beginning in September 2021. The NECEC and the clean hydropower it will deliver to Maine also will significantly lower the cost of electricity in Maine and across the New England region, and remove upwards of 3.6 million metric tons of carbon emissions annually from the Earth's atmosphere (the equivalent of removing 700,000 cars from the road) by decreasing New England's reliance on fossil fuels for the region's electricity needs.

19. Based on these numerous benefits, the PUC found the Project to be in the public interest and issued a Certificate of Public Convenience and Necessity ("CPCN"). After rigorous review, the Project also received the necessary permits from the Maine Department of Environmental Protection ("DEP"), the U.S. Army Corps of Engineers ("Corps"), and the United States Department of Energy ("DOE").

20. The permitting process was substantially delayed by opponents of the Project, including electric generators in New England that burn fossil fuels, such as NextEra Energy Resources, LLC ("NextEra"), Calpine Corporation ("Calpine"), and Vistra Energy ("Vistra"). These fossil fuel burning electric generators oppose the NECEC Project because it will significantly lower their revenues and reduce New England's reliance on the more expensive electricity they produce, which electricity adds carbon to the atmosphere and exacerbates climate change.

a. Among others, NextEra, Calpine and Vistra were active intervenors before the PUC opposing the issuance of a CPCN for the NECEC, submitting testimony from

multiple witnesses arguing that the NECEC was not in the public interest and would negatively impact their thermal generation facilities and the regional transmission grid in New England. *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 Quebec-Maine Border to Lewiston (NECEC) and Related Network Upgrades*, Docket No. 2017-00232, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation (May 3, 2019). NextEra was the sole intervenor to appeal the PUC’s order granting the CPCN. NextEra’s appeal was rejected by the Law Court. *NextEra Energy Res., LLC v. Me. Pub. Utils. Comm’n*, 2020 ME 34, ¶ 43, 227 A.3d 1117.

b. NextEra was an active intervenor before the Massachusetts Department of Public Utilities (“MA DPU”) opposing the MA DPU’s approval of the NECEC power purchase agreements and cost recovery for the NECEC transmission services agreements. NextEra submitted testimony from multiple witnesses and argued that the MA DPU should deny the requested approvals on the grounds that the Project and the related agreements did not comply with Massachusetts law. By order dated June 25, 2019, the MA DPU rejected NextEra’s arguments and granted the requested approvals. *See Petition of NSTAR Electric Company d/b/a Eversource Energy for approval by the Department of Public Utilities of a long-term contract for procurement of clean energy generation, pursuant to Section 83D of An Act Relative to Green Communities, St. 2008, c. 169, as amended by St. 2016, c. 188, § 12*, D.P.U. 18-64 (Jun. 25, 2019). NextEra was the sole intervenor to appeal the MA DPU’s order to the Massachusetts Supreme Judicial Court. That court rejected

NextEra's appeal in a decision dated September 3, 2020. *NextEra Energy Res., LLC v. Dep't of Pub. Utils.*, 152 N.E.3d 48, 65 (Mass. 2020).

c. NextEra also was an active intervenor in the consolidated proceedings before the Maine Land Use Planning Commission ("LUPC") and the DEP and an active party in the proceedings before the Corps, submitting testimony and numerous motions and other filings opposing the issuance of the requested LUPC certification and DEP and Corps permits for the NECEC. *See Site Location of Development Act Certification*, Docket No. SLC-9, Maine Land Use Planning Comm'n, Dep't of Agric., Conservation & Forestry, Bureau of Parks & Lands (Jan. 8, 2020); *DEP Findings of Fact and Order*, Docket No. L-27625, Maine Dep't of Env't. Prot. (May 11, 2020); U.S. Army Corps of Engineers, New England Dist. Regulatory Division, File No. NAE-2017-01342 (Initial Proffered Permit Aug. 19, 2020).

d. After the LUPC granted the certification for the Project on January 8, 2020 and the DEP issued the requested permits on May 11, 2020, NextEra appealed the DEP order to the Maine Superior Court, Kennebec County. NextEra's appeal and those asserted by other intervenors are consolidated before the Maine Board of Environmental Protection and remain currently pending. *See NextEra Energy Res., LLC v. State of Maine, Dep't. of Env't Prot.*, Docket No. KEN-AP-27 (Kennebec Co. Sup. Ct., June 9, 2020), consolidated with SOM-AP-20-04 and remanded to Bd. of Env't Prot. (Aug. 11, 2020).¹

¹ NextEra has also refused to commit to the timely replacement of a circuit breaker at its Seabrook Nuclear plant in New Hampshire identified by ISO-NE as a necessary Network Upgrade to permit the interconnection of the NECEC. On October 13, 2020, NECEC LLC filed a complaint against NextEra before the Federal Energy Regulatory Commission ("FERC") pursuant to Sections 206, 210 and 306 of the Federal Power Act ("FPA"), alleging that, among other things, NextEra has been unlawfully attempting to delay and unreasonably increase the costs of circuit breaker replacement to impede the NECEC. By an order dated September 7, 2021, FERC established briefing procedures regarding issues concerning NextEra's obligations under Seabrook's Large Generator Interconnection Agreement to replace the circuit

e. Calpine on January 30, 2020 filed a belated Request for Leave to Intervene Out-of-Time and Comments in Opposition to Application before the U.S Department of Energy in Docket No. PP-438 concerning the petition for a Presidential Permit for the NECEC Project. The motion to intervene was ultimately denied.

21. Though delayed by its opponents, NECEC LLC has performed substantial construction on the Project in reliance on its valid permits. By November 2, 2021, approximately \$449.8 million – 43% of the total current project cost estimate – had been spent on the Project. Among other construction activities, approximately 124 miles of corridor had been cut; approximately 70 structures installed on the DC portion of the Project, along with foundations installed for an additional 4 structures; approximately 54 structures installed along the AC and Network Upgrade portions of the Project; over 3 miles of conductor has been strung; and converter station construction is well underway. Hundreds of other custom-designed poles had been delivered to Project lay-down yards, along with millions of feet of DC and AC conductor and fiber, and tens of thousands of insulators required for the Project.

22. Opponents of the Project (primarily the political action committees No CMP Corridor and Mainers for Local Power) have pursued two citizen initiatives to block completion of the Project. Opponents first sought to place an initiative on the ballot in 2020 (the “2020 Initiative”) that purported to reverse the decision of the PUC to issue a CPCN for the Project. The Law Court held that the 2020 Initiative was unconstitutional because it exceeded the scope of the legislative powers reserved by the people. Accordingly, the 2020 Initiative did not appear on the

breaker and instituted a proceeding under FPA Section 206 to determine whether certain provisions in ISO-NE’s Tariff may be unjust and unreasonable because they may not impose any obligation on generators like NextEra to construct upgrades identified as necessary for the interconnection of elective transmission upgrades, such as the NECEC. *See NECEC Transmission LLC v. NextEra Energy Res., LLC*, 176 FERC ¶ 61, 148 (Sept. 7, 2021) (Order Establishing Additional Briefing and Instituting Section 206 Proceeding).

ballot. *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 2, 237 A.3d 882. Only after that unsuccessful effort, opponents then undertook the present Initiative. Because of their prior missteps, however, the opponents could not have the Initiative placed on the ballot until November 2021 – long after NECEC had undertaken physical construction of the Project, in good faith, and in reliance on its valid permits.

23. The political action committees formed by opponents of the Project to advance these initiatives targeting the Project have received approximately \$27 million dollars in support from NextEra, Calpine, and Vistra. These fossil fuel burning electric generators have funded various groups in Maine, including Mainers for Local Power and No CMP Corridor, for the purpose of advocating against and attempting to block the construction of the NECEC.

24. As promoted by the fossil fuel burning electric generators and their funded allies, the Initiative obtained passage at the ballot box on November 2, 2021.

25. The Initiative, if allowed to apply retroactively, would prevent completion of the Project even though NECEC has expended hundreds of millions of dollars lawfully constructing the Project pursuant to validly-issued permits.

The NECEC Project

26. In 2017, Massachusetts electric distribution companies (“EDCs”) issued a request for proposal (“RFP”) for clean energy pursuant to the Commonwealth of Massachusetts’ Green Communities Act, 2008 MASS. ACTS ch. 169, § 83D, as amended by 2016 MASS. ACTS ch. 188.

27. CMP, together with an affiliate of Hydro-Québec, submitted a joint proposal in response to the RFP. This joint proposal called for the construction of a 1,200 MW HVDC transmission line to connect the existing transmission systems in Québec and New England, with the NECEC constituting the U.S. portion of the line. Under the proposal, the NECEC would enable

the delivery of 1,090 MW of clean hydropower from Québec to the New England electric grid, through a corridor consisting largely of land already devoted to power transmission, for at least twenty (20) years upon the Project’s commercial operation date (expected in December 2023).²

28. In early 2018, the CMP/Hydro-Québec proposal was selected the winner of the RFP. CMP, Hydro-Québec (through a U.S. based affiliate, H.Q. Energy Services (U.S.) Inc. (“HQUS”)), and the EDCs then entered into a series of transmission service agreements (“TSAs”) contractually obligating CMP to provide 1,200 MW of transmission service on the NECEC to HQUS and the EDCs for a period of forty years. In turn, HQUS and the EDCs entered three Power Purchase Agreements (“PPAs”) under which HQUS agreed to sell 1,090 MW of energy (equivalent to 9,450 MWh per year) to the EDCs for the first 20 years of the useful life of the NECEC Project. This energy supply will serve a significant portion of Massachusetts’ electric load during the contract term and is intended to assist the Commonwealth achieve its climate change objectives. Hydro-Québec can use the remaining transmission capacity (110 MW in years 1-20 and 1,200 MW in years 21 to 40) to sell additional energy into the New England electricity markets. In fact, on July 9, 2020, HQUS entered an agreement with Governor Janet Mills to sell Maine 500,000 MWh of electricity a year for 20 years using the available excess transmission capacity on the NECEC at a \$4.00/MWh discount to market prices.

² CMP submitted a second proposal in response to the RFP jointly with NextEra and another generation developer. This proposal called for the construction of a 1,200 MW high voltage alternate current (“HVAC”) transmission line to connect new wind and solar generation projects to be developed in Western Maine and Canada, utilizing the same corridor as the one proposed for the NECEC and consisting of an overhead transmission line of almost the same length as the NECEC and interconnecting in Lewiston, Maine. NextEra and the other developer agreed that this overhead line, which had analogous environmental impacts to the NECEC given its size and configuration, was the optimal solution to interconnect their proposed projects and to compete in the RFP.

29. To protect CMP ratepayers from risks associated with the Project, as required by the PUC, on January 4, 2021, CMP transferred the NECEC (including the TSAs) to NECEC LLC. NECEC LLC is constructing the NECEC, and will operate the NECEC.

30. The NECEC consists of a 145-mile long 320 kV HVDC transmission line running from the U.S./Canada border at Beattie Township, Maine to a new DC to AC converter station to be located on Merrill Road in Lewiston, Maine. On its northern end, this HVDC line will interconnect to a new HVDC line to be constructed by Hydro-Québec running from a new AC to DC converter station at the existing Appalaches substation in Thetford Mines, Québec to the border. The Merrill Road converter station in Lewiston will be connected to the existing Larrabee Road Substation in Lewiston by a new 1.2-mile 345 kV high voltage AC transmission line. To permit this interconnection, the Project also requires the construction and operation at NECEC LLC's expense of certain "Network Upgrades" determined by ISO-New England under its Tariff in Maine and New Hampshire, including an additional 345 kV transmission line between Windsor and Wiscasset, certain rebuilt 115 kV AC transmission lines, and other substation equipment. CMP will own and operate the Network Upgrades located in Maine.

31. The Project is depicted on the map included as **Exhibit A**. As shown on the map, the Project is divided into five segments. Segment 1 consists of the portion of the HVDC line running along a new, approximately 53-mile transmission corridor, the vast majority of which runs through privately owned commercial forest land used for growing and harvesting trees; Segment 2 consists of the portion of the HVDC line running along the existing transmission corridor from The Forks Plantation to the existing Wyman Hydropower station in Moscow; Segment 3 consists of the portion of the HVDC line running along the existing transmission corridor from the Wyman Hydropower station to the new Converter Station in Lewiston and other facilities in the Lewiston

area; and Segments 4 and 5 consist of the Network Upgrades located in Maine. Along the DC line, the Project includes installation of 832 structures (some mono-poles and others requiring multiple poles).

32. In the TSAs, the parties agreed that the commercial operation date for the NECEC Project would be December 13, 2022, but such commercial operation date could be extended (i) due to delays in the EDCs receiving necessary Massachusetts approvals, and (ii) up to an additional two years at the request of CMP or HQUS with the posting of additional security. The current project schedule calls for the NECEC to achieve commercial operation on December 13, 2023, with the contractual deadline for commercial operation now August 23, 2024. CMP and HQUS have the right to extend this deadline to August 23, 2025 by posting additional security.

33. CMP had full site control for the Project by July 2017. Most of the corridor consists of land within existing transmission line rights-of-way. NECEC LLC subsequently acquired the necessary property interests from CMP.

Permits and Approvals

34. NECEC LLC and CMP have all state and federal permits and approvals needed for construction of the Project. NECEC LLC and CMP also possess local permits and approvals from 20 of the 24 municipalities in which Project facilities will be constructed, in accordance with the project schedule. NECEC LLC and CMP will obtain the local permits and approvals from the final municipalities at the time contemplated by the project schedule. NECEC LLC is authorized to work in 14 unincorporated townships or plantations through the approval obtained from the LUPC.³

³ Certain of the permits were obtained by CMP and subsequently transferred to NECEC LLC.

Public Utilities Commission

35. On September 27, 2017, CMP filed with the PUC a petition for a CPCN to construct the NECEC. The PUC thereafter engaged in a review lasting over nineteen (19) months. Thirty-one (31) parties participated in the PUC proceeding. There were multiple rounds of pre-filed testimony (which included thousands of pages of testimony and supporting materials), with written discovery and technical conferences held after every phase of testimony. The PUC held six (6) days of evidentiary hearings and three (3) public witness hearings.

36. In a 101-page order (“PUC Order”) dated May 3, 2019, the PUC granted CMP’s petition. *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 (Me. P.U.C. May 3, 2019).⁴ In the PUC Order, the PUC found that the NECEC is in the public interest and that there is a public need for the Project. Accordingly, the PUC issued a CPCN.

37. In the PUC Order, the PUC weighed the benefits and costs of the NECEC to the ratepayers and residents of the State of Maine. As required by 35-A M.R.S. § 3132, these included the effects of the NECEC on economics; reliability; public health and safety; scenic, historic, and recreational values; and state renewable energy goals. Based on its consideration of these factors, the PUC found that the NECEC is in the public interest.

38. Among other things, the PUC Order stated that, “[b]ecause the NECEC-enabled power will be delivered into Maine, . . . significant benefits will accrue to Maine electricity consumers through operation of the regional wholesale market. These benefits are expected to

⁴ The PUC Order, together with its accompanying stipulation and exhibits, is publicly accessible at: <https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=102054&CaseNumber=2017-00232>

accrue for a period of at least 20 years.” PUC Order, at 6. Specifically, the PUC concluded that the “NECEC will result in substantial benefits to Maine electricity customers because of the effect it will have on reducing energy and capacity prices in the wholesale market.” *Id.* at 24.

39. The PUC Order further stated that, “[i]n addition to the wholesale electricity price reductions that will result from the NECEC, the Project will also enhance system reliability and fuel security within Maine and the ISO-New England (ISO-NE) region.” PUC Order, at 6. The PUC found that “the system upgrades required by (and provided by) the NECEC will provide extra redundancy and reliability to the Maine system during normal operations modes.” *Id.* at 39.

40. The PUC Order also stated that “the NECEC will provide environmental benefits by displacing fossil fuel generation in the region, and associated greenhouse gas (GHG) production, and will provide substantial benefits to the Maine economy through the more than 1,600 jobs expected to be created during the NECEC construction phase, and on an ongoing basis through property taxes.” PUC Order, at 6. Specifically, the PUC concluded that (1) “the NECEC will result in significant incremental hydroelectric generation from existing and new resources in Québec,” thereby reducing “overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region,” *id.* at 71; (2) the Project would create not only 1,600 jobs during construction, but also approximately 300 additional jobs during operation, and, *id.* at 6, 45-46; and (3) “a \$1 billion investment in a project located entirely in Maine, with the resulting employment and taxes it will produce, would result in substantial macroeconomic benefits to the State,” *id.* at 47.

41. The PUC Order also found that the Project’s adverse effects on scenic and recreational values, and associated impacts on tourism and the economies of communities in

proximity to the Project, were outweighed by “the ratepayer, economic, and environmental benefits of the NECEC.” PUC Order, at 6-7.

42. In sum, the PUC concluded “that the benefits from the development and operation of the NECEC to Maine ratepayers and citizens significantly outweigh the costs and detriments of the Project,” PUC Order, at 98, and, as a result, granted CMP’s requested CPCN, *id.* at 98-99.

43. As part of the PUC Order, the PUC also approved a settlement stipulation, to which 11 parties joined including the Governor’s Energy Office and the Maine Office of Public Advocate, providing certain ratepayer protections against the costs and financial risks associated with NECEC; reimbursement to ratepayers for prior costs associated with the Project; and a package of benefits for Maine totaling approximately \$250 million over 40 years (in addition to those arising from the construction and operation of the NECEC), including support for electric rate relief, low-income customers, the expanded availability of electric vehicles and charging infrastructure, heat pumps and broad band service in Maine, education programs, and economic development. The stipulation also reflects the commitment of NECEC LLC, and its contractors working on the construction of the NECEC, to give preference to hiring Maine workers, all other factors being equal and consistent with applicable law and applicable labor agreements.

44. The following figure reproduced from the PUC Order summarizes the NECEC Project’s impacts and benefits:

Figure I.1

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	
Effects on Host Communities	Detrimental impact on scenic, historic and recreational values, associated tourism and local economy	Not quantified	
GHG Emissions Reductions	Reduction in regional 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.

PUC Order, at 7.

45. On May 7, 2019, NextEra, an intervenor in the PUC proceeding and owner of the oil-fired Wyman generation facility in Yarmouth, Maine (among other generation facilities in New England), appealed the PUC Order granting the CPCN to construct the NECEC. In its appeal, NextEra argued, among other things, that the PUC improperly found that the Project was in the public interest and that there is a public need for the NECEC.

46. In an opinion issued March 17, 2020, the Law Court denied NextEra’s appeal and affirmed the grant of the CPCN for the Project. *NextEra Energy Res., LLC*, 2020 ME 34, ¶ 43, 227 A.3d 1117. Specifically, the Law Court concluded that it “discern[ed] no error in the

Commission’s determination that the NECEC project meets the applicable statutory standards for a CPCN.” *Id.* ¶ 1.

47. Among other things, the Law Court concluded that the PUC appropriately found the “public need” requirement to be satisfied. *Id.* ¶¶ 28-38. It noted as follows:

In its comprehensive order, the Commission discussed the factors set out in section 3132(6), including the issues raised by NextEra concerning scenic and recreational values and Maine’s renewable energy generation goals. The Commission found that the value to Maine resulting from the NECEC’s energy price suppression effect would amount to \$14 - \$44 million annually, and capacity market price reduction for Maine residents in the amount of \$19 million annually over the first ten years. It found that there would be enhancements to transmission reliability and supply reliability and diversity. The Commission also found that the project would result in a reduction of greenhouse gas emissions. Further, it found that the project would have a positive impact on Maine’s gross domestic product, averaging \$94-\$98 million during the project’s construction period.

Id. ¶ 30 (footnote omitted). The Law Court went on to hold: “All of these findings are supported by significant record evidence.” *Id.*

48. The Law Court affirmed the PUC’s Order because the PUC “reasonably interpreted and applied the relevant statutory mandates in arriving at its decision to grant CMP a certificate of public convenience and necessity for the NECEC Project.” *Id.* ¶ 43.

Department of Environmental Protection and Land Use Planning Commission

49. On September 27, 2017, CMP submitted applications for the necessary DEP Site Location of Development Law (“Site Law”) and Natural Resources Protection Act (“NRPA”) permits, as well as the LUPC Site Law Certification of Compliance. The LUPC and DEP conducted their proceedings concerning these applications in a coordinated manner, with joint public hearings held before both agencies. Thirty-nine parties, including CMP, participated in the DEP’s and LUPC’s reviews of the Project, filing thousands of pages of sworn testimony from dozens of witnesses, participating in six (6) days of evidentiary hearings which included cross-

examination of those witnesses, and filing thousands of additional pages of evidence and argument concerning issues relevant to the DEP’s review and permitting of the Project and concerning issues relevant to the LUPC’s review and certification of the Project. In addition to those parties, hundreds of Maine citizens testified during two public hearings and submitted written comments.

50. Thereafter, on May 11, 2020, the DEP issued a 236-page Findings of Fact and Order (“DEP Order”) that thoroughly analyzed the environmental impacts of and alternatives to the Project, and granted the requested permits. *In re Cent. Me. Power Co.*, New England Clean Energy Connect, L-27625-26-A-N, Findings of Fact and Order (Me. DEP May 11, 2020).⁵

51. The DEP Order stated as follows:

The applicant’s stated purpose for this project is to provide renewable electricity from Quebec to the New England grid. The Department applied the statutes and regulations it administers in this Order to approve the least environmentally damaging alternative available to achieve that purpose. The Order puts in place a comprehensive set of conditions designed to avoid and minimize the project’s impacts to the extent possible, while also requiring substantial offsite compensation for those impacts that remain. So conditioned, the project fully satisfies the Department’s permitting standards.

DEP Order, at 2.

52. In the DEP Order, which sets forth specific conditions to avoid impacts and to minimize and mitigate unavoidable impacts, the DEP made numerous findings regarding the Project’s effect on the environment, including the following: the Project (1) will not have an unreasonable adverse effect on scenic uses or character of the surrounding area, DEP Order, at 56; (2) will not unreasonably interfere with existing uses, including recreation or navigational uses, *id.* at 58; (3) adequately provides for protection of wildlife and fisheries, unusual natural areas, significant wildlife habitat, and freshwater wetlands, *id.* at 90; (4) will not have an adverse effect

⁵ The DEP Order, together with its attachments, is publicly accessible at: <https://www.maine.gov/dep/ftp/projects/neccec/2020-05-11-final-department-order.pdf>.

on the preservation of any historic sites, *id.* at 94; and (5) otherwise complies with Maine environmental laws, *id.* at 97, 101-04.

53. The DEP also took into consideration the Project’s effect on GHG emissions. The DEP concluded:

Climate change . . . is the single greatest threat to Maine’s natural environment. It is already negatively affecting brook trout habitat, and those impacts are projected to worsen. It also threatens forest habitat for iconic species such as moose, and for pine marten, an indicator species Failure to take immediate action to mitigate the GHG emissions that are causing climate change will exacerbate these impacts.

DEP Order, at 105. The DEP cited the PUC’s finding that “the NECEC [project] will result in significant incremental hydroelectric generation from existing and new sources in Quebec and, therefore, will result in reductions in overall GHG emissions through corresponding reductions of fossil fuel generation (primarily natural gas) in the region.” *Id.* (alteration in original). The DEP accepted this finding and found the adverse effects of the Project reasonable in light of the “project purpose and its GHG benefits, provided the project is constructed in accordance with the terms and conditions of this Order.” *Id.*

54. In addition to its review of the project, the DEP incorporated into its Order, as required by statute, the LUPC’s 42-page Site Law Certification of the portion of the Project located in the unorganized and de-organized areas of the State, issued on January 8, 2020, in which the LUPC found that the NECEC is an allowed use within the sub-districts in which it is proposed and that the Project complies with all of the LUPC’s applicable land use standards not considered in the DEP’s review. DEP Order, at App. H.

55. Thereafter, several parties – including NextEra, the Natural Resources Council of Maine (“NRCM”), and a group of towns and individuals residing in the West Forks area (the “West

Forks Petitioners”) appealed the DEP Order both before the Maine Board of Environmental Protection (“BEP”) and the Maine Superior Court.

56. Around the time of the filing of their appeals, West Forks Petitioners and NRCM moved that the DEP and BEP, respectively, stay the effectiveness of the DEP Order pending their appeals. Those requests were denied.

57. On November 2, 2020, NRCM (later joined by the West Forks Petitioners) moved the Superior Court for a stay of the DEP Order. On January 11, 2021, the Superior Court (Murphy, J.) entered an order denying NRCM’s motion, concluding that the movants had not met their burden to show that they have a substantial likelihood of success on the merits. *See Order on NRCM’s Motion to Stay DEP Commissioner’s Order, NextEra Energy Res., LLC v. Dep’t of Env’t. Prot.*, Dkt Nos. KEN-AP-20-27, SOM-AP-20-04 (Me. Sup. Ct. Jan. 11, 2021).

58. The appeal of the DEP Order to the BEP remains pending.

U.S. Army Corps of Engineers

59. On September 29, 2017, CMP applied for a permit from the Corps under Section 404 of the Clean Water Act; CMP subsequently further sought Corps approval for the Project under Section 10 of the Rivers & Harbors Act. The Corps considered the testimony from hundreds of members of the public, as well as the thousands of pages of sworn pre-filed testimony from dozens of witnesses, presented at the six (6) days of evidentiary hearings conducted by the DEP and LUPC. The Corps also attended the DEP hearings related to the Project, took into consideration testimony and other written submissions to the DEP, issued numerous information requests of CMP, accepted written comments over a 10-month public comment period, held its own public hearing attended by over 300 members of the public, and analyzed the thousands of

pages of evidence and argument concerning issues relevant to its review of the NECEC pursuant to the National Environmental Policy Act (“NEPA”).

60. On July 7, 2020, the Corps completed an Environmental Assessment (“EA”) for the Project.⁶ The EA included a Finding of No Significant Impact (“FONSI”), *i.e.*, that the NECEC will not have a significant impact on the human environment. Specifically, in the EA/FONSI, the Corps found that the Project will be constructed, operated, and maintained so as to meet all safety standards; that the Project does not significantly impact waters of the United States or other unique characteristics; that there is no substantial technical or scientific dispute over the Project’s effects on the human environment; that the Project’s impacts are not uncertain; and that the Project is unlikely to adversely affect listed species or critical habitat. EA/FONSI, at 160-62. The Corps also found that operation of the NECEC “would likely result in a reduction in greenhouse gas (GHG) emissions, specifically carbon dioxide emissions, in New England and neighboring markets.” *Id.* at 122. The Corps completed an addendum to the EA on November 4, 2020.⁷

61. On November 6, 2020, after completing the EA/FONSI and its addendum, the Corps signed a permit for the Project under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act.

62. On October 27, 2020, Sierra Club, NRCM, and Appalachian Mountain Club (collectively “Sierra Club”) sued the Corps in the U.S. District Court for the District of Maine, alleging, among other things, that the Corps review under NEPA was insufficient and that the Corps should be ordered to complete a full Environmental Impact Statement (“EIS”) for the

⁶ The Corps’ EA is publicly available as a reference document on the website for the DOE’s Office of NEPA Policy and Compliance at: <https://www.energy.gov/sites/default/files/2021/01/f82/usace-ea-2020-07-07.pdf>.

⁷ The addendum to the Corps’ EA is publicly available as a reference document on the website for the DOE’s Office of NEPA Policy and Compliance at: <https://www.energy.gov/sites/default/files/2021/01/f82/usace-ea-addendum-2020-11-04.pdf>.

NECEC, rather than an EA/FONSI. After the issuance of the Corps permit, Sierra Club amended its complaint to add a challenge to the Corps permit, requesting the District Court to vacate the permit and enjoin the Corps from authorizing project construction and operation.

63. On November 11, 2020, Sierra Club moved for a preliminary injunction to bar construction of the NECEC. On December 16, 2020, the District Court (Walker, J.) denied Sierra Club's motion for preliminary injunction in a 49-page order, finding, among other things, that Sierra Club is not likely to prevail on the merits of its claims. *Sierra Club v. U.S. Army Corps of Eng'rs*, No. 2:20-cv-00396-LEW, 2020 WL 7389744 (D. Me. Dec. 16, 2020).

64. After the Sierra Club filed an emergency appeal, the First Circuit issued a partial injunction pending appeal on January 15, 2021, which temporarily prohibited construction activities in Segment 1 of the Project. On May 13, 2021, however, the First Circuit vacated the temporary injunction and affirmed the District Court's order, finding that Sierra Club was not likely to succeed on the merits of its challenges to the Corps EA and permit. *Sierra Club v. U.S. Army Corps of Eng'rs*, 997 F.3d 395 (1st Cir. 2021).

65. The Sierra Club's lawsuit remains pending in the District Court.

Department of Energy

66. On July 27, 2017, CMP applied to the DOE for a Presidential Permit for the NECEC Project. Under Executive Order 10,485, as amended by Executive Order 12,038, a Presidential Permit from the DOE is necessary for the construction, operation, maintenance, or connection of electric transmission facilities at the U.S. international border. In considering this application, DOE developed its own administrative record, in collaboration with the Corps, and prepared its own EA and FONSI for the NECEC.

67. On January 14, 2021, the DOE issued an EA and FONSI for the Project, along with the Presidential Permit. *NECEC Transmission LLC*, OE Docket No. PP-438, Presidential Permit (DOE Jan. 14, 2021); *New England Clean Energy Connect*, DOE/EA-2155, Environmental Assessment (DOE Jan. 14, 2021); *New England Clean Energy Connect*, Finding of No Significant Impact (DOE Jan. 14, 2021).⁸ In the Presidential Permit, DOE stated as follows:

[T]he proposed project has been reviewed and approved by the Maine Public Utilities Commission, Maine Land Use Planning Commission, and Maine Department of Environmental Protection. In addition, the U.S. Army Corps of Engineers (USACE) prepared an EA regarding those portions of the proposed project within its jurisdiction and issued a Finding of No Significant Impact (FONSI). . . . USACE concluded that the proposed project did not pose the potential for significant environmental impacts. . . . DOE issued its NECEC EA . . . for the proposed project on January 14, 2021. . . . DOE determined that issuance of a Presidential permit to the Applicant to construct, connect, operate, and maintain a new electric transmission line at the U.S.-Canada border in Beattie Township, Maine would not have a significant effect on the human environment.

Presidential Permit, at 4.

68. The DOE under President Biden continues to support the completion of the NECEC as it furthers the Biden Administration's clean energy, infrastructure, and climate change policies and objectives.

69. Sierra Club has amended its complaint in *Sierra Club v. United States Army Corps of Engineers* to assert claims relating to DOE's issuance of the Permit, EA, and FONSI. Sierra Club did not seek a preliminary injunction in relation to the DOE's issuance of the Presidential Permit.

⁸ The DOE Permit is publicly accessible at: https://www.energy.gov/sites/prod/files/2021/01/f82/PP-438%20NECEC%20LLC%20_1-14-21-FINAL.pdf. The EA, together with its attachments, is publicly accessible at: <https://www.energy.gov/nepa/downloads/doesa-2155-environmental-assessment>. The FONSI is publicly accessible at: <https://www.energy.gov/sites/default/files/2021/01/f82/fonsi-ea-2155-necec-2021-01-14.pdf>.

Municipal Approvals

70. In addition to the state and federal permits and approvals discussed above, the NECEC requires various local permits and approvals from the municipalities in which the project facilities will be constructed, such as, where applicable, shoreland zoning permits, building permits, flood hazard development permits, conditional use / rezoning approvals, site plan approvals, driveway / entrance permits, demolition permits, and utility location permits. Many of these permits and approvals have a short duration and must be obtained close in time to the commencement of construction activities in the particular municipality, or be renewed prior to their expiration.

71. To date, the NECEC Project has received necessary local permits and approvals from the following municipalities: Starks, Moscow, Farmington, Lewiston, Leeds, Industry, Anson, Windsor, Wilton, Livermore Falls, Embden, New Sharon, Woolwich, Greene, Chesterville, Jay, Whitefield, Wiscasset, Buxton, and Alna. NECEC LLC has already applied for the necessary permits and approvals from Caratunk. CMP will seek permits and approvals from Pownal, Durham, and Auburn – the remaining Maine municipalities that the Project will cross – as needed and in accordance with the project schedule.

72. In the event a municipality denies, fails to timely process an application for, or unreasonably conditions a needed local permit or approval, the PUC, under 30-A M.R.S. § 4352(4), has the authority to exempt in whole or in part real estate to be used by a public utility for a transmission facility from a local ordinance when the PUC determines, after a petition, notice, and public hearing that the exemption is “reasonably necessary for public welfare and convenience.” This statute applies to the NECEC because NECEC LLC is a public utility under Maine law and the PUC has found that a public need exists for the Project through the PUC Order.

73. Under the applicable rule, the PUC must make the following findings with respect to the impact of a municipal ordinance on the NECEC in order to grant an exemption:

- a. The whole or partial exemption of the municipal ordinance is necessary to allow the NECEC to be developed, to render the NECEC Project economic, or to avoid a significant increase in the costs of the project.
- b. The interests of the general body of ratepayers with respect to the NECEC outweigh the interests represented by the municipal ordinance.

65-407 C.M.R. ch. 885, § 5.

74. If necessary, NECEC LLC and CMP would seek exemptions of local land use/permitting ordinances from the PUC for the NECEC.

Bureau of Parks and Lands Lease

75. Approximately 0.9 miles (representing only 0.6%) of the new corridor is on State of Maine public reserved lots in Johnson Mountain Township and West Forks Plantation,⁹ which the BPL leased to CMP pursuant to 12 M.R.S. § 1852, which authorizes the BPL to enter into leases for various purposes, including to “[s]et and maintain or use poles, electric power transmission and telecommunication transmission facilities, roads, bridges and landing strips.” The terms of the lease are described in a June 23, 2020 amended and restated lease (the “BPL Lease”) that CMP assigned to NECEC LLC on January 4, 2021.¹⁰ The BPL Lease is attached hereto as **Exhibit B**.

⁹ Public reserved lots are a specific type of public reserved lands. When Maine separated from the Commonwealth of Massachusetts, Maine took title to lots previously reserved by Massachusetts, which had a long-standing policy of, upon the sale of townships, reserving average quality lots for the support and development of the town. The Articles of Separation, a compact between Maine and Massachusetts setting forth the preconditions to Maine’s statehood, specifically required that Maine continue to use the public reserved lots for beneficial public uses and to continue to make such reservations as land was sold. The Johnson Mountain Township and West Forks Plantation public lots were each reserved by Massachusetts in 1793.

¹⁰ Originally, CMP and BPL entered a lease for this segment of the corridor in 2014, which lease was terminated by the amended and restated lease in 2020.

76. The NECEC passes across the public reserved lands in Johnson Mountain Township and West Forks Plantation because this route is the least environmentally damaging practicable alternative path for the Project to minimize overall impacts, including impacts to scenic, recreational, and natural resources. The primary use of these particular public reserved lands is for timber management, and the lots already contain an existing transmission line. There is no viable, practicable alternative route for the NECEC that is less environmentally damaging than the existing route through the public reserved lands that would allow the Project to be permitted and constructed in accordance with the deadlines and financial terms set forth in the TSAs.

77. On June 26, 2020, opponents of the NECEC sued BPL and CMP challenging the BPL Lease on the grounds that it is *ultra vires* because the Maine Legislature had not approved the lease by a 2/3 vote in accordance with article IX, section 23 of the Maine Constitution, which provides:

State park land, public lots or other real estate held by the State for conservation or recreation purposes and designated by legislation implementing this section may not be reduced or its uses substantially altered except on the vote of 2/3 of all the members elected to each House. The proceeds from the sale of such land must be used to purchase additional real estate in the same county for the same purposes.

The BPL and NECEC LLC deny that the BPL Lease is unlawful and contend that it does not reduce or substantially alter the uses of the leased public reserved lands, particularly since the construction and operation of transmission facilities have long been among the statutorily permitted uses of public reserved lands under 12 M.R.S. § 1852(4).

78. On August 10, 2021, the Superior Court (Murphy, J.) issued an order reversing the BPL's issuance of the BPL Lease. The BPL and NECEC LLC timely appealed the order on August 13, 2021, thereby automatically staying the Superior Court's judgment pending appeal. M.R. Civ.

P. 62(e). After opponents filed a motion to lift the stay, the Law Court entered an order leaving the stay in place, with NECEC LLC to refrain from construction activities on the leased property during the pendency of the appeal. The appeal is currently pending before the Law Court. This temporary bar to construction activities on the leased property only will not prevent or materially interfere with completion of the Project according to contractual deadlines.

First Citizens' Initiative Targeting the NECEC (2019-2020)

79. While the permitting of the NECEC proceeded, on August 29, 2019, a group of voters led by former state senator Thomas Saviello and Sandra Howard filed an application for a citizens' initiative (the 2020 Initiative) that sought to direct the PUC to reverse its May 3, 2019 CPCN Order to "find that the construction and operation of the NECEC transmission project are not in the public interest and that there is not a public need for the NECEC transmission project," notwithstanding the PUC's Order finding to the contrary based on substantial evidence, and the Law Court's Order affirming that decision, and therefore to deny a CPCN for the Project. A copy of the 2020 Initiative is attached hereto as **Exhibit C**.

80. Mainers for Local Power, a political action committee funded at the time by Calpine and Vistra, two energy companies that operate natural gas fired power plants in Maine and elsewhere in New England, spent in excess of \$600,000 to collect signatures to place the initiative on the November 2020 ballot.

81. On May 12, 2020, after the Secretary of State certified the initiative for inclusion on the November 2020 ballot, Avangrid filed a complaint for declaratory judgment challenging the constitutionality of the 2020 Initiative and seeking an injunction preventing the Secretary of State from including the initiative on the November 2020 ballot. NextEra and Mainers for Local Power intervened to defend the 2020 Initiative.

82. In an August 13, 2020 opinion, the Law Court held “that the initiative fails to meet the constitutional requirements for inclusion on the ballot because it exceeds the scope of the people’s legislative powers conferred by article IV, part 3, section 18 of the Maine Constitution.” *Avangrid Networks, Inc. v. Sec’y of State*, 2020 ME 109, ¶ 2, 237 A.3d 882. As a result, the 2020 Initiative did not appear on the November 2020 ballot.

Second Citizens’ Initiative Targeting the NECEC (2020-2021)

83. On or about September 15, 2020, approximately five weeks after the Law Court’s decision striking down the 2020 Initiative as unconstitutional, a group of voters led again by Thomas Saviello and Sandra Howard, and funded by Mainers for Local Power and NextEra, filed an application for a second citizens’ initiative targeting the NECEC.

84. Rather than specifically call the NECEC out by name again after their failed effort with the 2020 Initiative, the proponents of the new Initiative seek to bar completion of the NECEC by amending retroactively Titles 12 and 35-A of the Maine Revised Statutes in three distinct, substantive respects. A copy of the Initiative is attached hereto as **Exhibit D**.

85. Section 1 of the Initiative amends 12 M.R.S. § 1852(4) to mandate that any lease of public reserved land by the BPL for transmission lines and facilities is automatically deemed to substantially alter the use of the lease land within the meaning of article IX, section 23 of the Maine Constitution and requires approval by a 2/3 vote of all members elected to each House of the Legislature. This requirement applies retroactively to September 16, 2014.

86. Section 4 of the Initiative amends 35-A M.R.S. § 3132 to require legislative approval of the construction of “high impact electric transmission lines,” and that any high impact electric transmission line crossing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land and requires approval by a 2/3 vote of all

members elected to each House of the Legislature. This requirement applies retroactively to September 16, 2020.

87. Section 5 of the Initiative amends 35-A M.R.S. § 3132 to ban the construction of “high impact electric transmission lines” in the “Upper Kennebec Region” as that term is defined in the Initiative, which includes approximately 43,300 acres of land in Somerset County and Franklin County. This requirement applies retroactively to September 16, 2020.

88. By design, each of the changes in the Initiative retroactively applies to the NECEC Project, requiring legislative approval for the BPL Lease and the Project itself, by 2/3 vote of all members elected to each House of the Legislature, and prohibiting the construction of the Project in its current route through the “Upper Kennebec Region,” which as defined may include some portion of Segment 1 of the NECEC.

89. As with the 2020 Initiative, this Initiative through its retroactive application is specifically targeted at the NECEC and intended to block completion of the Project.

90. One of the primary political action committees supporting the Initiative, No CMP Corridor, has repeatedly stated that the purpose of the Initiative is to stop the NECEC. No CMP Corridor has stated the following on its website, nocmpcorridor.com:

HELP US STOP THE CMP CORRIDOR

Mainers don't benefit from CMP's destructive transmission corridor project, and they have made it clear every step of the way that they don't want it, **but their voices haven't been heard by bureaucrats in Augusta**. That's why a group of concerned citizens banded together to form No CMP Corridor. We are a grassroots, volunteer-driven organization with a simple goal: give the people of Maine a voice through a citizens' referendum.

Nobody thought we, everyday citizens, could go toe-to-toe with CMP and their foreign investors. But against all odds (and in the dead of winter), we collected more than enough signatures to bring this issue to a statewide vote in November of 2020.

Then the highest judicial Court of Maine sided with CMP and ruled our 2020 referendum unconstitutional, effectively silencing Mainers' voice in the matter.

While we had lost the battle, we knew the war was far from over. So we filed another referendum and are now gathering signatures to get on the ballot in 2021. Our new referendum is worded in a way that we are confident, completely constitutional and allow Mainers to express their choice about this project.

To read a short summary about our new initiative, click [HERE](#).

To read the full petition language, click [HERE](#).

We did not and will not stand idly by while a large, untrustworthy corporation degrades our best resources for their exclusive financial gain. **We are more than an extension cord for Massachusetts.**

The bottom line is that CMP has failed to reliably deliver power right here in Maine, and their constant drive to put profits ahead of ratepayers has resulted in poor customer service, multiple state investigations and their dubious reputation as the lowest rated power utility company in the nation.

So while they spend record sums of money on fancy ad campaigns to deceive the voters, we will continue to fight them every step of the way. CMP cannot be trusted, and we will not allow them to permanently alter our way of life to make millions of dollars off the backs of rural Mainers.

This is a bad deal for Maine! We hope you will join us in putting an end to this destructive project once and for all.

- Sandi Howard, No CMP Corridor

91. In a September 16, 2020 press release, No CMP Corridor stated the following:

Opponents of the Central Maine Power's (CMP) proposed corridor filed ballot initiative language today to begin the process of allowing Maine voters an opportunity to weigh in on this incredibly unpopular project. After ballot initiative language is approved by the Maine Secretary of State, Maine registered voters will be collecting the required signatures to place this initiative on the ballot in 2021.

Former State Senator and State Representative Tom Saviello filed the language today with the Secretary of State. He was joined by five other Maine voters who were deeply concerned about the impacts of this project and the inability of all Mainers to have a say when it comes to this for-profit project.

See https://www.nocmpcorridor.com/9_16_20_press_release2.

92. On October 30, 2020, the Secretary of State accepted the application for the Initiative and issued the form petition for it.

93. On that same day, No CMP Corridor issued a press release stating the following:

A new statewide effort to stop Central Maine Power's 145-mile transmission line through Maine began today in Augusta. This new referendum includes a three part question that would restore the voice of the people by:

1. Requiring legislative approval for any high impact electrical transmission line that is more than 50 miles (Retroactive to 9/16/2020)
2. Putting a geographic prohibition on building high impact electrical transmission lines in the Upper Kennebec region (Retroactive to 9/16/2020)
3. Reaffirming the Maine Constitution’s requirement that the Legislature approves leases, like CMP’s, that cross public lands if they significantly alter the use of those lands. (retroactive to 9/16/2014)

Former State Senator and State Representative Tom Saviello filed paperwork in September to begin a new statewide initiative campaign. Today, the Maine Secretary of State provided the paperwork necessary for signature collection to begin.

“As I’ve said from the very beginning, this transmission project is a bad deal for Maine and for Maine people,” Saviello said.

See https://www.nocmpcorridor.com/10_30_20_press_release.

94. No CMP Corridor also stated the following in a newsletter dated November 1, 2020: “Two days ago was the official launch of our new referendum effort to stop CMP’s destructive corridor project” See https://www.nocmpcorridor.com/11_1_newsletter.

95. On January 21, 2021, the proponents of the Initiative submitted petitions to the Secretary of State signed by Maine voters.

96. That same day, No CMP Corridor issued a press release stating the following:

Sandi Howard, the leader of the No CMP Corridor PAC, Thomas Saviello, a former state legislator, and Darryl Wood, an activist from New Sharon today delivered over 100,000 signatures to Secretary of State Shenna Bellows. These signatures reflect a successful citizens’ signature collection effort that overcame challenges posed by winter weather and Covid 19 protocols, ensuring that voters will be able to have the final say on CMP’s unpopular NECEC Corridor later this year.

“An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserve Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region” will be on the ballot this November. If enacted, the new law will be retroactive and therefore effectively will block the project.

See https://www.nocmpcorridor.com/1_21_21_press_release.

97. No CMP Corridor posted the following photograph on its web page when it filed the petitions for the Initiative with the Secretary of State:



98. On February 22, 2021, the Secretary of State certified the Initiative to be submitted to the Maine Legislature in accordance with constitutional and statutory requirements.

99. The Legislature did not enact the Initiative without change prior to adjourning its first regular session *sine die* on March 30, 2021.

100. On April 8, 2021, the Governor issued her proclamation declaring that the Initiative would be placed on the ballot for the November 2021 election.

101. After the Secretary of State issued final wording for the question to be placed on the November 2021 ballot for the Initiative, No CMP Corridor issued a press release stating: “No CMP Corridor would like to thank the Secretary of State for drafting a question that we feel is straightforward and easy to understand. More than 80,000 voters initiated this question, and come

November, the people of Maine will finally have the opportunity to vote on the fate of the destructive CMP Corridor.” See https://www.nocmpcorridor.com/5_24_21_press_release.

102. Throughout the subsequent campaign, proponents of the Initiative continued to make it clear that the Initiative targets the NECEC.

a. In April 2021, No CMP Corridor published a Facebook post authored by Sandi Howard that stated, “we are adjusting our messaging to encourage supporters to share the news that a YES vote on the ballot referendum in November is to REJECT the CMP Corridor.” See <https://www.facebook.com/NoCMPCorridor/posts/485236602917224>.

b. On June 14, 2021, No CMP Corridor posted a “Vote Yes to Reject the CMP Corridor” graphic to its Facebook page:



See <https://www.facebook.com/NoCMPCorridor/posts/532389861535231>.

c. On July 13, 2021 No CMP Corridor released an ad which featured cartoon animals stating, in part “We must reject CMP’s Corridor,” and ending with the statement “vote yes to reject the CMP corridor this fall. It’s a bad deal for Maine.” See <https://youtu.be/zu-5Jl6Ijf8>.

d. On July 15, 2021, Sandi Howard posted images of an anti-NECEC door hanger, paid for by Mainers for Local Power, on the Say No to NECEC Facebook group, asking “Will you vote YES to ban the CMP Corridor on November 2, 2021?”:



See <https://www.facebook.com/groups/SayNOtoNECEC/posts/983110092445327/>.

e. On August 8, 2021, No CMP Corridor published its weekly newsletter, which contained the following statement from Sandi Howard: “We can VOTE YES ON #1 this November to finally put an end to this madness. That’s where you come in. It’s time to spread the word that this November, we need to vote YES on Question 1 to protect the Upper Kennebec region, which includes our public lands, from being exploited by CMP.” Ms. Howard also wrote: “please, channel any frustration you may be feeling into action, because ultimately, Maine votes will have the final say this November, so the time to take action is now. Vote Yes on #1 to reject, ban and stop the CMP Corridor!” See https://www.yestorejectcmpcorridor.com/8_8_21_newsletter.

f. On September 20, 2021, an attorney with the law firm representing the political action committees promoting the Initiative (No CMP Corridor and Mainers for Local Power), as well as NextEra, publicized on a radio show that “the only project that is going to be affected . . . is the CMP corridor project.” *See* <https://www.wvomfm.com/episode/ghrt-rewind-09-20-adam-cote-1315/>.

g. On September 22, 2021, that same attorney publicized on a radio show that “this referendum essentially is aimed to defeat the CMP corridor.” *See* <https://soundcloud.com/newsradio-wgan/adam-cote#t=0:00>.

h. In September 2021, Mainers for Local Power published an ad stating “Make no mistake. Question 1 is about CMP’s corridor and it’s a bad deal for Maine. Vote yes on 1 to ban the corridor. *See* https://www.youtube.com/watch?v=2hq_3CHhibI.

i. In October 2021, Mainers for Local Power paid for an ad featuring Maine Guide Ed Buzzell, wherein Mr. Buzzell states, “there’s a lot of confusion about Question 1, so let’s clear it up. First, politicians didn’t write it. 80,000 Mainers put Question 1 on the ballot, and we did it for one reason: to stop CMP’s corridor.” *See* <https://host2.adimpact.com/admo/viewer/5071026>.

j. In October 2021, Mainers for Local Power sent a mailer urging voters to “Vote Yes on 1 To Ban CMP’s Corridor,” and stating that “Voting Yes on Question 1 gives Maine people the power to ban CMP’s Corridor and reject CMP’s bad deal.”



103. The anti-NECEC campaign has been substantially funded by NextEra, Calpine, and Vistra, all seeking to preclude the introduction of cleaner, less expensive energy into New England.

a. According to filings with the Maine Commission on Governmental Ethics & Election Practices (the “Ethics Commission”), No CMP Corridor has received approximately \$479,193 in cash contributions as of November 1, 2021. The single largest donor to No CMP Corridor has been Mainers for Local Power, which has given \$310,000.

b. According to filings with the Ethics Commission, since its formation in December 2019, Mainers for Local Power has received approximately \$26,814,746 in cash and \$1,451,647 of in-kind contributions as of November 1, 2021. Virtually that entire amount has been contributed by NextEra (\$20,025,000); Vistra (\$2,866,323); and Calpine (\$2,688,823). Thus, the contribution from Mainers for Local Power to No CMP Corridor has come directly from the NECEC’s fossil fuel competitors whose business will be adversely affected by the construction and operation of the Project.

c. In addition to cash contributions it received from Mainers for Local Power, No CMP Corridor also received \$88,000 of in-kind contributions from Clean Energy for ME, LLC, an entity otherwise known as Stop the Corridor. These contributions from Stop the Corridor to No CMP Corridor were made between December 2019 and March 2020

and consisted primarily of staff time for campaign coordination and volunteer recruitment related to the 2020 Initiative targeting the NECEC. Upon information and belief, the majority of funding for Stop the Corridor came from NextEra.¹¹

d. Mainers for Local Power has been the chief organizer and primary funding source for both the 2020 Initiative and the present Initiative targeting the NECEC. Mainers for Local Power hired Revolution Field Strategies to gather the signatures necessary to place the Initiative on the ballot at a cost of more than \$2.1 million. As of November 1, 2021, Mainers for Local Power has spent an additional \$14.3 million on television advertisements, \$3.45 million on social media and online advertisements and \$346,000 on telephonic outreach opposing the NECEC.

104. Following the anti-NECEC campaign funded by fossil fuel burning energy companies, the Initiative was approved by the voters on November 2, 2021.

105. The Initiative will take effect on or about December 12, 2021.

106. After the Initiative takes legal effect, the relevant agencies will likely begin enforcement actions. Proceedings in the PUC will likely begin with issuance of an order to show

¹¹ Given Stop the Corridor's significant contribution of in-kind staff time to No CMP Corridor and its significant expenditures of television and digital advertising when signatures were being collected for the 2020 Initiative targeting the NECEC, and for other reasons, the Ethics Commission voted in March 2020 to investigate whether Stop the Corridor violated Maine Election Law for failing to file as a political action committee or ballot question committee. Filing with the Ethics Commission would require Stop the Corridor to identify the source(s) of its fiscal contributions. Over the course of the Ethics Commission investigation, Stop the Corridor has refused to provide un-redacted documents to the Ethics Commission, challenged the scope of multiple subpoenas issued by the Ethics Commission, and ignored specific requests in those subpoenas asking for documents related to its funding. Stop the Corridor also filed suit claiming that the Ethics Commission did not have the authority to conduct the investigation, a suit that was dismissed in December 2020. The investigation, which is still ongoing, has been drawn-out for more than twenty months. Even if the Ethics Commission determines that Stop the Corridor should have registered as a political action or ballot question committee, Stop the Corridor's delaying tactics ensured that no information about its funding sources was available to Maine voters in advance of Election Day of 2021.

cause why the proceedings relating to the CPCN should not be reopened. The BPL will likely issue a letter regarding potential modification or termination of the BPL Lease.

107. In addition, after the Initiative takes legal effect, NECEC LLC will be required to obtain the approval of the Legislature for the Project, which may not be sufficient if the PUC determines that the Project route goes through the Upper Kennebec Region, where high-impact electric transmission lines are prohibited pursuant to the Initiative.

Construction of the NECEC

108. Construction of a large transmission project like the NECEC is a complex and lengthy process, which involves the work of numerous consultants and specialized contractors, and the procurement of significant quantities of supplies, materials, and equipment, all of which must be planned and managed with a detailed project schedule to track all necessary project tasks in sequence, and a detailed project budget to track expenses. The NECEC project schedule currently contemplates the Project achieving commercial operation on December 13, 2023.

109. The current estimate of the total capital expenditures to complete the Project is approximately \$1.04 billion. Through the end of 2020, approximately \$153.3 million had been expended on the Project. Approximately \$408.8 million had been expended on the Project through September 30, 2021; approximately \$449.8 million is estimated to have been expended on the Project through November 2, 2021. Of the \$449.8 million, as contemplated by the stipulation approved by the PUC as part of the CPCN, NECEC LLC has paid out approximately \$8.5 million in benefits between January 2021 and October 1, 2021. (HQUS has paid an additional \$9.5 million in benefits to Maine). To date, NECEC LLC has paid out approximately \$3.4 million in property taxes related to the Project.

Contractors

110. Construction of the NECEC requires the participation of numerous contractors, each of which are responsible for certain portions of the Project. Burns & McDonnell has been providing permitting management services for the Project since 2017. Black & Veatch Corporation provides project management services, pursuant to a contract dated September 18, 2018. TRC Engineers LLC provides design services, according to a contract dated September 5, 2018.

111. In addition to these management and design services contractors, construction and supply contracts have been entered into for the Project: a contract with Northern Clearing Inc. (“NCI”) was executed on September 15, 2020; an HVDC transmission line construction contract with Irby Construction Inc., to be implemented through a joint venture with Cianbro Corporation, (“Cianbro/Irby”) was executed on October 15, 2020; the AC transmission line construction contract with Sargent Electric Company was executed on February 17, 2021; a contract with The H.D.D. Company, Inc. was executed on February 8, 2021 to drill the segment of the NECEC HVDC line that will run under the Kennebec River; an Engineering, Procurement and Construction (“EPC”) contract with ABB Inc. (now ABB Enterprise Software Inc., doing business as Hitachi ABB Power Grids) (“HAPG”) for the converter station in Lewiston was executed on August 19, 2019; and steel pole supply contracts were executed with TransAmerican Power Products, Inc. (“TAPP”) on September 14, 2020 and New Nello Operating Co., LLC (“Nello”) on April 15, 2020.

112. There are numerous other contracts relating to construction of the Project, including contracts for round wood poles awarded on December 28, 2020 and laminated wood poles on February 19, 2021; several contracts entered in Spring 2020 with Maine sawmills for the manufacture of timber mats to be used to prevent environmental degradation of the transmission

corridor during construction; several contracts with third-party environmental inspectors awarded on January 14, 2021; and a contract for the autotransformer for the Larrabee Road substation.

Construction Progress

113. Construction of a major utility transmission corridor like the NECEC requires substantial construction-related expenditures, including for engineering, permitting, and environmental compliance, and program management, which must begin long before activities in the field may commence and will continue until the Project achieves commercial operation.¹² For the NECEC, these construction-related expenditures proceeded as follows:

a. In 2014, CMP began acquiring the additional real estate interests necessary to construct a transmission corridor along the Project path.

b. Following the acquisition of the bulk of the real estate rights needed for the Project, development efforts were initiated in late 2016, when the Project's transmission planners and engineers established the optimal technical configuration for the NECEC in coordination with Hydro-Québec. This included the confirmation of the proposed route, the selection of the location for the converter station and the preliminary engineering for the main project components. In parallel with this effort, and with support from external consultants, the project team developed a preliminary project schedule that defined the timing for the implementation of the multiple project activities necessary to construct the project, establishing the proposed project in-service date of December 2022.

¹² The costs relating to these activities were approximately \$65.6 million as of February 21, 2021; \$70.9 million as of April 8, 2021; \$92.2 million as of June 30, 2021; \$97.3 million as of September 30, 2021; and \$99.2 million as of November 2, 2021. For purposes of this Verified Complaint, legal fees are not included.

c. In the spring of 2017, the project team added additional resources to support the permitting processes, including natural resource surveying and application development and filing.

d. In the spring of 2018 and upon the selection of the Project in the Massachusetts RFP, the project team added a large number of project management and engineering personnel, both internal and external, to initiate the detailed planning phase of the Project. This included the implementation of all project controls (budget, schedule, and risk management), quality and safety protocols, and the development of project-detailed engineering, for which external consultants were hired.

e. With the permitting processes underway, in late 2018, the project team initiated the procurement of the Project's major material and construction services, launching the RFPs to the market and awarding its key contracts as early as mid-2019, when the approximately \$200 million "Engineering, Procurement and Construction" (EPC) contract for the converter station in Lewiston was awarded to HAPG. The award of this contract was necessary at this time due to the long lead-time to construct the components that make up the converter station, and this contract triggered the mobilization of a large team of project engineers to prepare detailed transmission studies and detailed engineering plans ahead of the manufacturing of the custom converter station components.

f. During 2020, and as earlier described, other multiple large contracts were awarded to different contractors and manufacturers for project components. This included contracts for the main construction contractors and the mobilization and initiation of pole production by the transmission structure manufacturers. In preparation for the start of construction during the second half of 2020, the project team continued to grow with the

gradual addition of construction management, safety, and environmental compliance resources to provide the adequate levels of oversight during construction.

g. All of these engineering, permitting, environmental compliance, and program management- and construction-related activities were necessary to permit the NECEC project team to formally mobilize construction contractors and for construction activities to start in the field.

114. The construction of long, linear transmission projects like the NECEC also requires careful construction sequencing, which takes into account time-of-year restrictions to protect vulnerable wildlife, environmental limitations, weather conditions, access considerations, and the participation of numerous contractors with specialized expertise. The process begins with corridor clearing, followed by the erection of the structures, and the stringing of the electrical conductor. Concurrently, substation work needed to permit the interconnection of the new transmission line to the existing transmission system must be accomplished. For the NECEC, this substation work most notably includes the construction of the converter station in Lewiston whereby the DC power transmitted on the HVDC line is converted to AC for injection into the transmission system. Network Upgrade work also requires detailed outage sequence plans that have additional time-of-year restrictions; for example, certain elements can only be removed from service in a specific 2-week window for the entire year.

115. Pursuant to a notice to proceed issued in November 2020, CMP's clearing contractor NCI was instructed to mobilize its team in order to prepare sufficient corridor beginning in late 2020 or early 2021 for the transmission line contractors (Cianbro/Irby) to begin erecting the HVDC transmission line.

116. Upon the issuance of the notice to proceed, NCI recruited and mobilized its crews to be ready to start work once NECEC LLC approved commencement of construction. During this mobilization phase, NCI performed required site surveys, installed protected/natural resource flagging, prepared lay down areas along Segments 1 and 2 of the project route for supplies and equipment including the timber construction mats and poles, and retained and located necessary equipment.

117. After issuance of the Presidential Permit, the final major permit required for the Project, on Thursday, January 14, 2021, NECEC LLC instructed NCI to commence its clearing and other construction activities on Monday, January 18, 2021.

118. Project plans called for clearing to begin at The Forks Plantation and progress both north into Segment 1 and south into Segments 2 and 3; however, due to the injunction temporarily delaying construction activities in Segment 1 between January 15, 2021, and May 13, 2021, NCI began clearing trees and laying mats on the northern end of Segment 2 on January 18, 2021 (starting at The Forks Plantation and heading south along the Project route). NCI began clearing Segment 1 on May 15, 2021, two days after the First Circuit lifted the injunction on construction activities in that segment of the Project. Subject to restrictions on cutting during the months of June and July under the Corps permit to mitigate impacts on a federally-listed bat species, NCI has continued clearing the corridor (as well as installing construction mats as necessary to conduct the clearing) since January 18, 2021, as contemplated by the project schedule.

119. In 2020, to prepare for structure installation after sufficient clearing had occurred, CMP authorized its steel pole supplier, TAPP, to begin construction of steel poles for the Project. Each steel pole is custom designed and constructed specifically for the Project, according to

engineering design specifications. The first steel poles from TAPP were delivered to lay-down yards by January 18, 2021.

120. On February 1, 2021, Cianbro was given partial authorization to mobilize and begin clearing and site development work at the converter station in Lewiston. Due to delays in a minor revision to the DEP permit, crews were put on standby and ultimately the full authorization to prepare that site for construction was granted on May 28, 2021. Clearing work at the site was finalized on May 31, 2021, to avoid time-of-year clearing constraints in June and July. Initial work completed includes site and road clearing, road and site grubbing, site cut and fill, and erosion control. Additional work partially completed includes drilling, blasting, and rock processing (approximately 86%); access road installation (approximately 80%); and pad subgrade installation (approximately 87%). The overall site preparation is over 72% complete. In addition, HAPG had constructed numerous custom components for the converter station site, including four transformers and valves, to allow the necessary lead time before installation at the converter station. By November 2, 2021, the total amount paid to HAPG for the construction of the Lewiston converter station was approximately \$100 million. Of that \$100 million, approximately \$28 million was paid to HAPG for construction and construction-related work at the converter station site.

121. A true and accurate picture of the converter station site (taken August 26, 2021) is included below:



122. A true and accurate picture of one of the custom-manufactured transformers for the converter station (taken on October 6, 2021) is included below:



123. On February 9, 2021, after NCI had conducted sufficient clearing to permit the process of installing the HVDC line to begin, Cianbro/Irby installed the first structure in Segment 2. Below is a true and accurate picture of the installation of the first structure (Structure 516).



124. By February 22, 2021, the date the Secretary of State certified the signatures for the Initiative, NCI had cut over 10 miles of corridor, laying over 1,000 mats for access, and performed approximately \$8.3 million of clearing and related construction activities. Cianbro/Irby had installed 9 structures on the HVDC line, at a cost of approximately \$15 million. TAPP had delivered 24 poles to lay-down yards at a cost of approximately \$7.4 million (including engineering and raw materials). The total amount capital expenditures on the NECEC from inception to February 22, 2021, inclusive of project management costs, was approximately \$199 million.¹³

125. A true and accurate picture of the base of Structure 372 (taken on February 21, 2021) and Structure 371 (taken on February 15, 2021), both set in February, are included below:

¹³ The February 22, 2021, capital expenditure sum is based on the monthly accruals through the month of February. Accruals consider work executed through the 20th of each month.



126. By March 30, 2021, the end of the first quarter of 2021 and the date the Legislature adjourned *sine die* without adopting the legislation proposed via the Initiative, NCI had cut over 25.5 miles of corridor, laying over 5,727 mats for access, and performed approximately \$13 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures on the HVDC line, at a cost of approximately \$20.6 million. TAPP had delivered 33 poles to lay-down yards at a cost of approximately \$8.4 million. The total capital expenditures on the NECEC from inception to March 30, 2021, inclusive of project management costs, was approximately \$248.5 million.

127. A true and accurate picture of the base of Structure 359 (taken on March 3, 2021) and Structure 360 (taken on March 3, 2021), both set in March, are included below:



128. By April 8, 2021, the date the Governor issued the proclamation declaring that the Initiative would be placed on the November 2021 ballot, NCI had cut approximately 36 miles of corridor, laying over 5,727 mats for access, and performed approximately \$14.3 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures on the HVDC line, at a cost of approximately \$21.2 million.¹⁴ TAPP had delivered 33 poles to lay-down yards at a cost of approximately \$8.4 million. The total capital expenditures on the NECEC from inception to April 8, 2021, inclusive of project management costs, was approximately \$250.2 million.

129. By June 30, 2021, the end of the second quarter of 2021, NCI had cut over 80 miles of corridor, laying over 25,328 mats for access, and performed approximately \$25.6 million of clearing and related construction activities. Cianbro/Irby had installed 15 structures and two additional bases, at a cost of approximately \$27.3 million. TAPP had delivered 116 poles to lay-down yards at a cost of approximately \$9.5 million. Further, beginning in June 2021, work began

¹⁴ Costs related to structure installation increased over March 30, 2021, although no additional structures had been installed because the contractor continued to do additional preparatory work for structure installations (including, for instance, pole assembly and site work).

on the AC portion of the Project, specifically, the Network Upgrade line in Segment 3. By June 30, 2021, 15 structures had been installed and 2 modified along the AC line, at a cost of approximately \$6.6 million. The total capital expenditures on the NECEC from inception to June 30, 2021, inclusive of project management costs, was approximately \$349.6 million.

130. A true and accurate picture of structure 425 (taken on July 29, 2021) and the installation of structure 426 (taken on July 28, 2021), along the DC line, are included below:



131. True and accurate pictures of installation of structures along the AC line (taken on August 4, 2021 and August 16, 2021) are included below:



132. As of November 2, 2021, Election Day, NCI had cut approximately 124 miles (85.5%) of the Project corridor and performed approximately \$43.1 million of clearing and other construction activities. Cianbro/Irby had installed approximately 70 structures, representing approximately 8.4% of the total HVDC transmission line structures, for a total cost of approximately \$38.5 million. In addition, Cianbro/Irby had set bases for 10 more direct imbed structures and installed caisson foundations for 4 more structures. TAPP had delivered 484 poles to lay-down yards for a cost of approximately \$25 million and Nello had delivered an additional 86 poles for a cost of approximately \$13 million.¹⁵ In all, more than 55% of the custom-manufactured steel poles that will be used for the HVDC transmission line had been delivered by the end of September 2021. Along the AC portion of the line, specifically Segment 3 and Segment

¹⁵ In addition, other materials delivered through November 2, 2021 included 344 reels of DC conductor (total length of over 3.1 million feet) at a cost of approximately \$6.7 million; 136 reels of DC fiber (total length of over 1.65 million feet) at a cost of approximately \$1.4 million; 74,100 DC insulators at a cost of approximately \$4.5 million; 109 wood poles for the AC line, at a cost of over \$1.8 million; 169 reels of AC conductor (over 1,420,00 feet) at a cost of approximately \$2.6 million; 28 reels of AC fiber at a cost of approximately \$310,000; 22 reels of AC Shieldwire at a cost of approximately \$45,000; and over 34,000 AC insulators at a cost of approximately \$832,000.

5 (the 26-mile Network Upgrade between Coopers Mills and Maine Yankee), approximately 54 structures had been installed and 2 modified, at a cost of approximately \$18.4 million. In addition, approximately 3 miles of conductor had been strung in Segment 5. The total capital expenditures on the Project from inception through November 2, 2021, inclusive of project management costs, is estimated to be approximately \$449.8 million, which represents 43% of the total project cost estimate.¹⁶

133. True and accurate pictures of installed structures on the DC line (taken on October 8, 2021) are included below:



134. A true and accurate picture of NECEC LLC's contractor Sargent installing new wire at Structure 377 (taken on September 27, 2021) is included below:

¹⁶ The November 2, 2021, capital expenditure sum is based on the monthly accruals through the month of October.



135. As of November 2, 2021, approximately 600 workers are working on the Project (the significant majority of them from Maine).

Construction Scheduling

136. In order to complete construction on the Project in time to achieve timely commercial operation as contractually required, it was necessary for NECEC LLC to begin construction activities in early 2021 and continue thereafter. Based on a commercial operation date of May 31, 2023, project plans called for construction to start during 2020, anticipating construction as soon as the required state and federal approvals were obtained. The delay in obtaining some of these authorizations (due in part to the delays caused by Project opponents) impacted the timing planned for certain construction activities and required the project team to make certain adjustments to the project schedule to maintain the target completion date agreed with Hydro-Québec.¹⁷ Starting construction as soon as the authorizations were received was

¹⁷ Hydro-Québec and NECEC LLC have established a Joint Development Board that governs the joint

critical to maintain the targeted commercial operation date. It is critical that the Project enter commercial operation as soon as is feasible in order to, among other things, (1) realize Project benefits; and (2) ensure financial viability of the Project, which is impacted by incremental investment costs associated with Project extension, such as escalation costs, change orders associated with delays and resequencing, and delays in transmission revenues which do not start until commercial operation is achieved.

137. If construction activities are not allowed to proceed during this legal challenge to the Initiative, the Project likely would not achieve commercial operation before the contractual deadline of August 23, 2024, or even the extended deadline of August 23, 2025. The current project schedule calls for a commercial operation date of December 13, 2023, which allows schedule float of approximately 8 months with respect to the contractual deadline. As of today, the Project has been in construction for nearly 10 months and there are just over two more years of construction and commissioning ahead. If construction is not allowed to continue during the legal challenge, the impact on the commercial operation date will be, at a minimum,¹⁸ one day per each day that construction is on hold. Assuming for instance, a 2-year stoppage, construction would not be allowed to resume until the fall of 2023 and the in-service date would be pushed out to at least the end of 2025, making completion and operation of the Project unlikely.

development of the two transmission projects (NECEC LLC's NECEC Project in the U.S. and Hydro-Québec's Appalaches - Maine Transmission Project in Canada). The parties must agree on and synchronize the project development milestones that are common to each other, such as the interconnection at the Canada-U.S. border, the testing and commissioning, and the commercial operation date.

¹⁸ The actual schedule impact would depend on seasonal constraints (such as winter versus summer construction) as well as the timing necessary for remobilization of the construction crews and transmission outages and commissioning activities as permitted by ISO-NE.

Public Notice of Construction Progress

138. The beginning of construction on the NECEC was publicized by NECEC LLC via a host of platforms, including earned media, social media, interviews, and the *Clearing the Air* podcast. For example, initial construction efforts were publicized in the following:

- a. Clearing the Air, Season 2, Episode 13: Construction Begins [January 29, 2021]:
https://www.youtube.com/watch?v=TEdr_DfzUyE
- b. NECEC Press Release [February 8, 2021]:
<https://www.necleanenergyconnect.org/necec-milestones/2021/2/9/hundreds-of-mainers-go-to-work-as-construction-begins-on-the-new-england-clean-energy-connect>
- c. NECEC Facebook Page [February 9, 2021]:
<https://www.facebook.com/NECleanEnergyConnect/photos/2802844983265937>
- d. News Center Maine [February 9, 2021]:
<https://www.newscentermaine.com/video/news/cmp-begins-work-on-the-transmission-line-tuesday/97-696a3adc-52a8-40b4-9c13-b6797467cd41>
- e. Portland Press Herald [February 9, 2021]:
<https://www.pressherald.com/2021/02/09/poles-go-up-on-disputed-cmp-transmission-corridor/>
- f. WVOM, Interview with Thorn Dickinson [February 10, 2021]:
<https://www.wvomfm.com/episode/ghrt-rewind-02-10-necec-thorn-dickinson-1215/>
- g. NECEC Twitter Account [February 11, 2021]:
https://twitter.com/NECEC_ME/status/1359894402848620549
- h. Morning Sentinel [February 15, 2021]:
<https://www.centralmaine.com/2021/02/15/many-locals-wary-as-cmp-corridor-breaks-ground-near-the-forks/>

139. Media coverage continued throughout the construction effort, describing progress on the Project. For example:

- a. Bangor Daily News [May 17, 2021]:
<https://bangordailynews.com/2021/05/17/business/cmp-project-takes-shape-fast-despite-legal-and-political-risks/>

- b. Bangor Daily News [October 14, 2021]:
<https://bangordailynews.com/2021/10/14/business/75-percent-of-trees-cleared-along-cmp-corridor/>

140. Throughout construction, NECEC LLC continued to provide public updates concerning construction progress by regular updates to the NECEC Project’s webpage, regular social media posts on Facebook, periodic *Clearing the Air* podcasts concerning project status and developments, periodic press releases and press events, political advertisements opposing the Initiative on television and social media, and the electronic distribution of at least monthly progress reports to the Project’s distribution list and republication of the same through social media.

141. From the outset of construction, Project opponents tracked construction progress and regularly posted photos, press reports, and hundreds of other updates on the public “Say No to NECEC” Facebook page and other Facebook pages as reflected in the following links:

- a. Scott Robertson [February 10, 2021]:
<https://www.facebook.com/groups/SayNOtoNECEC/permalink/889714595118211>
- b. Denise Caron-Rancourt [February 8, 2021]:
<https://www.facebook.com/groups/SayNOtoNECEC/permalink/888618368561167>
- c. Todd Burbank [February 12, 2021]:
<https://www.facebook.com/groups/SayNOtoNECEC/permalink/891116364978034>
- d. Susannah Warner [January 28, 2021]:
<https://www.facebook.com/photo?fbid=4112532368776445&set=g.279944929428517>
- e. Mark Turek [January 25, 2021]:
<https://www.facebook.com/photo?fbid=464252898289872&set=g.279944929428517>

142. Based on these and other public updates, construction progress was well publicized from the outset.

COUNT I
(Declaratory Judgments Act – Vested Rights)

143. Plaintiffs repeat and restate the allegations contained in the foregoing Paragraphs as if fully set forth herein.

144. Retroactive application of legislation is unconstitutional if it impairs vested rights. *Merrill v. Eastland Woolen Mills, Inc.*, 430 A.2d 557, 560 n.7 (Me. 1981).

145. Rights to a project vest upon: (1) actual, physical commencement of significant and visible construction, (2) undertaken in good faith, with the intention to continue construction and carry it through to completion, (3) pursuant to a valid permit. *Sahl v. Town of York*, 2000 ME 180, ¶ 12, 760 A.2d 266. Rights to a project may also vest upon a showing of governmental bad faith. *Kittery Retail Ventures, LLC v. Town of Kittery*, 2004 ME 65, ¶ 25, 856 A.2d 1183.

146. NECEC LLC has undertaken actual, physical commencement of significant and visible construction on the Project, as described above.

147. NECEC LLC has undertaken construction in good faith, with the intention to complete the Project. The Project complies with all state and federal laws in place at the time construction on the NECEC began. NECEC LLC is contractually obligated to complete the Project pursuant to the TSAs entered into with HQUS and the EDCs. The Project was initially planned to achieve commercial operation by December 13, 2022. At the time construction began, the project schedule called for a commercial operation date in May 2023, which has been extended in the last few months. The current project schedule calls for the NECEC Project to achieve commercial operation on December 13, 2023, with the contractual deadline for commercial operation now August 23, 2024. NECEC LLC only has the right to extend this deadline to August 23, 2025 by posting additional security. NECEC LLC needed to promptly begin construction after receiving

all necessary state and federal permits in order to maintain its Project schedule and achieve commercial operation in accord with the TSAs.

148. NECEC LLC has undertaken construction pursuant to valid permits. NECEC has obtained all necessary project-wide state and federal permits, including from the PUC, DEP, Corps, and DOE. The CPCN issued by the PUC has been upheld by the Law Court. The Superior Court has denied a request to stay effectiveness of the DEP permit because opponents of the Project have failed to show substantial likelihood of success on the merits of their challenges to that permit. The U.S. District Court for the District of Maine has likewise denied preliminary injunctive relief in relation to the Corps permit because opponents of the Project have failed to show substantial likelihood of success on the merits of their challenges to the Corps permit, and this ruling was affirmed by the First Circuit.

149. The Initiative directly targets the NECEC, and constitutes an untimely and bad faith effort to bar completion of the Project. The Initiative's proponents began gathering signatures for this referendum only after the Law Court concluded that their 2020 Initiative, which targeted the NECEC by name, was unconstitutional. The Initiative's proponents have stated that the Initiative has the same purpose as the 2020 Initiative, in that it will "stop CMP's destructive corridor project" and "effectively will block the project." The political action committees behind the Initiative are funded by corporate interests that would be adversely affected by the NECEC. The Initiative is specifically designed to retroactively change the law to defeat a particular project, namely, the NECEC.

150. The Initiative unlawfully deprives NECEC LLC of its vested rights in the Project by purporting to prohibit construction of the Project.

151. In addition, existing property interests are protected vested rights. *See Fournier v. Fournier*, 376 A.2d 100, 102 (Me. 1977); *see also Sebasteanski v. Pagurko*, 232 A.2d 524, 525-26 (Me. 1967).

152. NECEC LLC has existing leasehold interests in portions of the Johnson Mountain Township and West Forks Plantation public reserved lots by virtue of the BPL Lease.

153. The Initiative unlawfully deprives NECEC LLC of its vested rights in the BPL Lease by purporting to revoke the BPL Lease and by purporting to prohibit the construction of transmission lines in contravention of the terms of the BPL Lease.

154. An actual justiciable controversy exists between the parties regarding the retroactive application of the Initiative to the Project.

155. An order from this Court declaring that retroactive application of the Initiative to the Project would wrongly deprive NECEC LLC of its vested rights would terminate the uncertainty and controversy giving rise to this proceeding.

156. This Court has authority pursuant to 14 M.R.S. §§ 5951 *et seq.* to declare the rights of NECEC LLC with respect to the Initiative.

COUNT II
(Declaratory Judgments Act – Separation of Powers)

157. Plaintiffs repeat and restate the allegations contained in the foregoing Paragraphs as if fully set forth herein.

158. The retroactive application of legislation is impermissible if it violates constitutional provisions. *MacImage of Me., LLC v. Androscoggin Cty.*, 2012 ME 44, ¶ 23 n.10, 40 A.3d 975.

159. The Maine Constitution provides for strict separation of powers: “No person or persons, belonging to one of [the legislative, executive, or judicial] departments, shall exercise any

of the powers properly belonging to either of the others, except in the cases herein expressly directed or permitted.” Me. Const. art. III, § 2.

160. Under the Maine Constitution, if a power has been granted to one branch of state government, another branch of state government may not exercise that power. *Bossie v. State*, 488 A.2d 477, 480 (Me. 1985).

161. Under well-established separation of powers principles, the legislative power does not include the power to require reversal of prior agency actions, such as the issuance of a permit following a quasi-judicial administrative process. *Avangrid*, 2020 ME 109, ¶ 35, 237 A.3d 882. Likewise, the legislative power does not extend to the reversal of judicial decisions. *Lewis v. Webb*, 3 Me. 326, 329 (1825).

162. The Initiative violates article III, section 2 of the Maine Constitution because it would usurp judicial and executive power in retroactively targeting the NECEC.

163. Retroactive application of the Initiative to the NECEC would usurp executive powers in violation of article III, section 2 of the Maine Constitution. Retroactive application of Section 1 of the Initiative to the NECEC would usurp executive power by purporting to authorize cancellation of a lease previously granted by the BPL. Retroactive application of Section 4 of the Initiative to the NECEC would usurp executive powers because by purporting to authorize the Legislature to cancel construction of a project already permitted and authorized by the appropriate executive agencies. Retroactive application of Section 5 of the Initiative to the NECEC would likewise usurp executive powers because that section purports to directly prohibit construction of a project already permitted and authorized by the appropriate executive agencies. If retroactively applied, therefore, the Initiative would improperly require executive agencies to revoke

previously-issued valid permits for the Project. Because the Initiative would require executive agencies to vacate and reverse final administrative decisions, the Initiative is unconstitutional.

164. Retroactive application of Sections 4 and 5 of the Initiative to the NECEC would usurp judicial powers in violation of article III, section 2 of the Maine Constitution. The Initiative would effectively reverse a final judgment rendered in a previous action, as to the individual parties to that action, because it would require the PUC to vacate a permit that has been affirmed by the Law Court. In force and effect, therefore, the Initiative would vacate the Law Court’s decision in *NextEra Energy Resources, LLC v. Maine Public Utilities Commission*, 2020 ME 34, 227 A.3d 1117.

165. Section 4 of the Initiative also violates article III, section 2 because it purports to authorize the Legislature to exercise a veto over agency approval of any high-impact electric transmission line project in the State without satisfying the presentment requirement of article IV, part 3, section 2. Such a legislative veto would deprive the executive of powers vested in the office of Governor by the Constitution.

166. Section 1 of the Initiative would also violate article III, section 2 of the Maine Constitution by usurping the executive function of applying the constitutional “substantial alteration” standard to particular circumstances. Section 1 purports to determine that certain specified activities “are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23.” The application of article IX, section 23 to specific circumstances cannot be finally determined by legislation, and, in fact, Sections 1 and 4 are inconsistent with the flexible and fact-specific standard, to be administered by the executive branch, set forth in the Constitution. The determination of whether a particular lease would result

in a “substantial alteration” of the uses of land is constitutionally vested in the executive branch, namely, the BPL.

167. Sections 1 and 4 of the Initiative also violate article III, section 2 of the Maine Constitution by usurping the judicial function of interpreting the constitutional “substantial alteration.” Section 1 purports to determine that certain specified activities “are deemed to substantially alter the uses of the land within the meaning of the Constitution of Maine, Article IX, Section 23,” while Section 4 purports to determine that “any high-impact electric transmission line crossing or utilizing public lands designated by the Legislature pursuant to Title 12, section 598-A is deemed to substantially alter the land.” The meaning of the Constitution cannot be finally determined by legislation and, in fact, Sections 1 and 4 are inconsistent with the flexible and fact-specific standard set forth in the Constitution. The final determination whether a particular action constitutes a substantial alteration under article IX, section 23, as initially applied by the executive branch, is reserved solely to the judiciary.

168. An actual justiciable controversy exists between the parties regarding the retroactive application of the Initiative to the Project.

169. An order from this Court declaring that retroactive application of the Initiative to the Project would be unconstitutional under Me. Const. art. III, § 2 would terminate the uncertainty and controversy giving rise to this proceeding.

170. This Court has authority pursuant to 14 M.R.S. §§ 5951 *et seq.* to declare the rights of NECEC LLC with respect to the Initiative.

COUNT III
(Declaratory Judgments Act – Contracts Clause)

171. Plaintiffs repeat and restate the allegations contained in the foregoing Paragraphs as if fully set forth herein.

172. The United States Constitution and the Maine Constitution prohibit the impairment of contracts. U.S. Const. art. I, § 10; Me. Const., art. I, § 11.

173. Under the BPL Lease, BPL is contractually obligated to lease property to NECEC LLC for the purpose of constructing a transmission line.

174. Retroactive application of the Initiative would substantially impair the BPL Lease because it purports to authorize cancellation of the BPL Lease on a retroactive basis and because it purports to prohibit the construction of transmission lines in contravention of the terms of the BPL Lease.

175. Retroactive application of the Initiative does not serve a significant and legitimate state purpose and is neither reasonable nor necessary. The purported state interest, namely, ensuring that conveyances of interests in public lands are presented for approval to the Legislature, existed at the time that the contractual obligation was incurred and thus cannot justify retroactive cancellation of that obligation.

176. Moreover, discriminatory targeting of the NECEC via the Initiative's retroactivity provisions is *per se* unreasonable.

177. An actual justiciable controversy exists between the parties regarding the retroactive application of the Initiative to the Project.

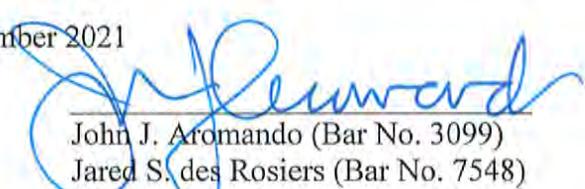
178. An order from this Court declaring that retroactive application of the Initiative to the Project would be unconstitutional under Article 1, § 10 of the United States Constitution and article 1, section 11 of the Maine Constitution would terminate the uncertainty and controversy giving rise to this proceeding.

179. This Court has authority pursuant to 14 M.R.S. §§ 5951 *et seq.* to declare the rights of NECEC LLC with respect to the Initiative.

WHEREFORE, NECEC Transmission LLC prays for the following relief:

- 1) A declaratory judgment that the Initiative unconstitutionally deprives NECEC LLC of its vested right under federal and state permits to construct and operate the Project;
- 2) A declaratory judgment that the Initiative violates article III, section 2 of the Maine Constitution by usurping powers reserved to the executive and judicial branches;
- 3) A declaratory judgment that the Initiative violates Article 1, § 10 of the United States Constitution and article I, section 11 of the Maine Constitution because it substantially impairs the contract between the State and NECEC LLC;
- 4) Injunctive relief preventing retroactive enforcement of the Initiative to the Project as follows: Section 1 by the Bureau of Parks and Lands; Section 4 by the Maine Senate, Maine House of Representatives, and the Public Utilities Commission; and Section 5 by the Public Utilities Commission; and
- 5) All other and further relief as this Court deems just and appropriate.

Dated at Portland, Maine this 3rd day of November 2021



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