

**STATE OF MAINE
PUBLIC UTILITIES COMMISSION**

DOCKET NO. 2017-00232

March 15, 2018

CENTRAL MAINE POWER COMPANY

Request for Approval of Certificate of
Public Convenience and Necessity for the
New England Clean Energy Connect
Transmission Project Consisting of a 1,200
MW HVDC Transmission Line from
Québec-Maine Border to Lewiston (NECEC)
and Related Network Upgrades

**LATE FILED PETITION TO
INTERVENE BY CALPINE
CORPORATION,
DYNEGY INC., AND
BUCKSPORT GENERATION
LLC**

Pursuant to Chapter 110, Section 8(B) of the Rules of Practice of the Maine Public Utilities Commission (“Commission”), Calpine Corporation, Dynegy Inc. and Bucksport Generation LLC hereby respectfully petition for leave to intervene as full parties in the above-captioned proceeding. In support of their petition, Calpine, Dynegy and Bucksport state as follows:

1. Calpine is a Delaware corporation that owns and operates electric generating facilities in 18 states and Canada with an installed capacity of approximately 26,000 MW. In Maine, Calpine owns and operates Westbrook Energy Center, a natural gas-fired power plant in Westbrook. Calpine is also investing significant resources in developing several renewable energy projects across the United States, including early stage wind-farm development projects in Maine.
2. Dynegy is a Delaware corporation that owns and operates electric generating facilities in 12 states with an installed capacity of 28,000 MW. Dynegy is the largest generator of power in New England, where it owns and operates approximately 3,500 MW of installed capacity. In Maine, Dynegy owns and operates the Casco Bay Energy Facility, a natural gas-fired power plant in Veazie.

3. Bucksport Generation LLC is a Delaware limited liability company that owns and operates a tri-fueled (natural gas/diesel/biomass) electric generating facility located in Bucksport, Maine with an installed capacity of 243 MW.
4. Together, Calpine, Dynegy and Bucksport own and operate approximately one-third of the installed electric generating capacity in Maine. Calpine, Dynegy and Bucksport shall be referred to collectively herein as the “Generator Intervenors.”
5. The Generator Intervenors will be substantially and directly affected by this proceeding. If the Commission issues a Certificate of Public Convenience and Necessity (“CPCN”) for the proposed New England Clean Energy Connect Project (“Project”) and the Project moves forward as planned, the continued economic viability of their plants (and other similar generating units in the state and region) as “merchant” power generation facilities that depend exclusively on revenues from the region’s competitive wholesale power market – and the long-term success of the competitive market itself – may be called into question.
6. The Petitioner, Central Maine Power (“CMP”), argues that the Project is anticipated to artificially suppress wholesale energy and capacity prices in the ISO-NE Region generally and in Maine in particular. CMP Pet. vol. I, 50-52. Indeed, from a Maine ratepayer perspective, this artificial price suppression is the primary asserted “benefit” of the Project. (Although CMP asserts some incidental reliability benefits, it makes no argument that the Project is needed to “keep the lights on.”) While the suppression of wholesale prices may sound superficially attractive, the Commission is certainly aware that the operation of regional wholesale power markets is much more complicated; the ultimate impact of the Project will depend upon a complex interaction of market rules and

economic factors. It is abundantly clear that the integration of large-scale, out-of-market (i.e., subsidized) resources within the current ISO-NE market may have profound unintended consequences, which is evidenced by the extensive and challenging stakeholder discussions during the NEPOOL IMAPP debate and subsequent NEPOOL and FERC-related reviews of proposed capacity market reforms. None of these issues are addressed by CMP or the existing parties. In particular:

- a. The Project proponent's energy price estimates are speculative at best. In the recent Northern Pass proceeding before the New Hampshire Site Evaluation Committee, Hydro-Quebec refused to commit to specific energy pricing. While CMP may be able to accurately model the capital costs of the transmission infrastructure, Hydro-Quebec would be expected to price its energy at or just below expected market prices. At a minimum, any forecasts of delivered energy costs associated with the Project are speculative and will vary greatly depending upon whether or not the seller of the energy commits to offering at some specific price.
- b. If the suppression of wholesale prices anticipated by CMP reduces the revenue of the existing plants of Calpine, Dynegy, Bucksport, and other incumbent power producers in Maine, plants could be forced to retire earlier than previously expected, with consequent loss of employment and tax revenue in the affected localities.
- c. The forced premature retirement of any existing fossil fuel plant in Maine would directly impact reliability and reduce the diversity of supply, putting Maine at risk should the proposed Canadian hydropower become unavailable (for example, if

there were a transmission outage or, in the event of shortage, Hydro-Quebec were to favor Quebec over New England). This possibility is not remote. There have in recent years been four electricity shortage events or severe operational issues related to curtailments of power imports from Hydro-Quebec. (See ISO Operations Reports for September 9, 2015, December 4, 2014, December 14, 2013, and July 13, 2013). To the extent that the Project drives earlier retirements, the impact of those retirements could easily offset any energy and capacity benefits of the Project.

- d. Or, the alleged benefits of the Project may be entirely offset if ISO-NE is compelled to maintain operations at affected power plants through the use of Reliability Must Run, or RMR, contracts or other out-of-market mechanisms to ensure power system reliability or for fuel security, as the cost of such contracts will be passed on to customers in the affected load zone – that is, in Maine.
- e. Given that Maine is an export-constrained zone within ISO-NE, it is entirely unclear whether and if so how the Project could qualify as a capacity resource in the ISO-NE Forward Capacity Market. The Project would either: a) have to satisfy the relevant Minimum Offer Price Rule (“MOPR”) threshold (unlikely given the subsidized support from the Massachusetts procurement); or b) have to take advantage of the recently-approved capacity market revisions known as Competitive Auctions with Sponsored Policy Resources (“CASPR”). However, in order to succeed under CASPR, it is likely that the Project would have to pair with an equivalent number of megawatts from a retiring resource located in Maine. This would negate much, if not all, of any local benefit. Even if the

Project were able to pass both the Capacity Deliverability Test, and either the MOPR or CASPR, and the Project were to become a capacity resource, there is a high likelihood that the Maine zone would “separate” and clear at a substantially lower price than in Rest-of-Pool, causing significant economic harm to the more than 3,500 megawatts of existing capacity resources located in Maine and further deterring the development of new renewable energy and other projects. Again, while this type of price suppression may be superficially attractive, it is fraught with unintended consequences that may eliminate any long-term benefits. In any event, promoting a project that enjoys out-of-market support in order to achieve price suppression is inconsistent with, and threatens the long-term viability of, a competitive power market that is already delivering historically low wholesale price prices to consumers. The Commission should be wary of any argument suggesting that a proposal that is likely to result in some of the most expensive delivered energy in the region will lead to lower prices.

- f. It is abundantly clear that the Project has been proposed solely to meet a Massachusetts policy goal; it has nothing to do with meeting the needs of Maine ratepayers, and the primary long-term benefits of the Project will accrue to Hydro-Quebec and CMP shareholders.
- 7. If the Project goes forward, it will impede the development of alternative renewable energy projects in Maine, such as solar and on-shore and offshore wind farms, for the foreseeable future.
 - a. This result would be contrary to Maine’s statutory policy favoring the use of “renewable, efficient, and indigenous resources.” 35-A M.R.S. §3210(1). Indeed,

the proposal may effectively eliminate further development of indigenous resources.

- b. As a party wishing to develop other renewable projects in Maine, Calpine will be adversely affected, as will be numerous other developers.

- 8. As is the case with the alleged price benefits, the Project's environmental benefits are speculative. Hydro-Quebec has acknowledged in its filings with the Massachusetts Department of Public Utilities that the source of the power that it proposes to sell to Massachusetts using the NECEC transmission line will be existing dams, the electricity from which is currently sold to New York and New England to the extent not needed in Quebec. In other words, importing "clean" energy via NECEC may simply result in increased reliance on fossil generation to make up the difference in supply for other markets – and may not reduce overall carbon emissions by a single pound. What is certain, however, is that the Project will prevent or at least delay the development of incremental renewable energy projects in the Maine and adjacent areas of New England that would reduce greenhouse gas emissions. While other parties such as Natural Resources Council of Maine may make this argument as well, Calpine brings added expertise given its extensive participation in the New England power markets and experience with project development.
- 9. If permitted to intervene, the Generator Intervenors will bring to the present proceeding extensive experience in competing in the region's competitive wholesale market. The contentions that the Generator Intervenors wish to make, and the testimony and information that they intend to provide, are necessary for a complete and balanced evaluation of the economic effects of the Project. For example, according to CMP's

petition, the transmission infrastructure investments necessary to complete the Project are expected to support on a regional basis approximately \$564 million in GDP and \$436 million in total compensation over the Project's six-year development and construction period. CMP Pet. vol. I, 59. CMP also asserts that development of the Project will support nearly 1,700 direct, indirect and induced jobs per year in Maine during that same period. *Id.* These assertions, however, are based on untested assumptions that are clearly biased in support of CMP's desired outcome, and CMP's application completely fails to analyze the potential adverse long-term impacts to the region's competitive wholesale power markets that will occur if existing competitive electricity providers, such as the Generator Intervenors, are forced to try to compete with large quantities of state- and provincially-subsidized energy. Moreover, the Commission must also consider the potential jobs and tax base that may be *lost* as a result of the Project, as well as potential ratepayer impacts if the Project leads to premature retirements or uneconomic RMR contracts, or otherwise inhibits the operation of, and efficiencies provided by, the existing competitive market. The petition trumpets the job creation potential of the Project, primarily in the form of temporary construction jobs, but says nothing of adverse effects on existing Maine plants, the associated prospective loss of permanent jobs currently held by Maine residents, and the lost opportunity to develop new plants in Maine as a result of a glut of imported power from Canada.

10. The extensive operational experience of the Generator Intervenors will also help ensure that that the Commission will have the information necessary for a complete and balanced evaluation of the environmental effects of the Project. For example, CMP's petition does not address the adverse impacts of the Project on other renewable energy

projects planned for Maine and the region. As a practical matter, the Project may stifle other planned renewable energy projects in the region that would actually provide incremental environmental benefits, as opposed to shifting environmental benefits across state borders.

11. No currently admitted intervenor is in a position to present testimony on the above consequences of the Project. In fact, to date, no existing intervenor (other than a private citizen, Dot Kelly) has provided any testimony at all. Therefore, if admitted, the Generator Intervenors will contribute significantly to the development of relevant issues in the proceeding. *See* Pub. Utils. Comm. Order, Docket Nos. 1995-092 and 1993-251 at *2 (Oct. 4, 1995) (contribution to development of relevant issues is consideration in whether Commission allows late intervention).
12. The Generator Intervenors acknowledge that they are seeking to intervene several months after the deadline for intervention in this proceeding. However, the Generator Intervenors had good cause for delaying their intervention efforts until now. The Generator Intervenors' interest in this proceeding did not ripen until very recently. The CMP Project was one of more than 40 bids competing to secure a contract under Massachusetts' request for proposals and solicitation process for a clean energy procurement pursuant to Section 83D of the state's Act Relative to Green Communities, as amended by the 2016 Energy Diversity Act. At the time, it was widely believed that Eversource Energy, as a member of the state's evaluation team, would favor its own affiliate's project, Northern Pass Transmission in New Hampshire, as subsequently proved to be the case. The Project's selection as a runner-up to be invited for contract negotiations was made known only on February 16, 2018, after the unexpected denial of

Northern Pass's own certificate application before the New Hampshire Site Evaluation Committee. It would have been highly impractical for the Generator Intervenors to intervene in siting and/or certificate proceedings for every one of the over forty projects involved in the Massachusetts Section 83D bid process and to expend substantial legal resources before learning that the Massachusetts DOER was seriously considering any one particular project, and the Generator Intervenors had no way to determine whether the Project was a serious contender until the February 16 announcement. Since learning of DOER's determination with respect to the Project, the Generator Intervenors have moved expeditiously to protect their interests.

13. The Commission's rules specifically permit untimely intervention, and, indeed, the Commission allowed the Governor's Energy Office to intervene in this proceeding despite its having sought to do so only after the deadline. Section 8(B)(4)(a) of the Commission's Rules of Practice and Procedure states that the Commission "*may* deny or limit intervention of any person filing an untimely petition for mandatory intervention" (emphasis added). The Commission, in fact, regularly allows and is generally flexible with respect to late interventions, particularly if the putative intervenor agrees essentially to take the case as it is. *See, e.g.*, Pub. Utils. Comm. Order, Docket No. 2016-00049 at *10-11 (Dec. 15, 2017) (allowing late intervention and concluding that "intervention may be beneficial and would not result in unfairness or prejudice to the other parties in light of a requirement that [intervenor] must take the case as it finds it"); Pub. Utils. Comm. Order, Docket No. 2008-00255 (Phase II) at *44 (Mar. 22, 2012) (allowing late intervention where new proposed intervenors demonstrated sufficient grounds for mandatory intervention). Indeed, the Commission has previously stated that "[l]ate

intervention may be allowed but is governed by consideration of such factors as the petitioner's likely contribution to the development of relevant issues, the fairness to other parties or disruption to the case, and the nature of the person's interest in the proceeding.” Pub. Utils. Comm. Order, Docket Nos. 1995-00092 and 1993-00251 at *2 (Oct. 4, 1995).

14. The Generator Intervenors acknowledge the existing schedule for the proceeding as reflected in the March 6, 2018 Procedural Order, and believe that they may develop the additional points discussed above (and potentially others) without disrupting the current schedule for hearings on August 6, 7, and 8, 2018, although additional discovery and additional hearing dates may be necessary (which additional dates may be necessary anyway, as the procedural order noted as to a possible rebuttal case). It should be noted that the Project requires numerous other permits that CMP does not anticipate receiving until at least June, 2019, such as the Presidential Permit for the international import of power (see Petition at 22), so the proposed intervention will not delay construction of the Project should it be ultimately approved.
15. If granted leave to intervene, and unlike the existing intervenors, the Generator Intervenors intend to file direct testimony in this proceeding. The Generator Intervenors propose that the parties discuss and the Commission adopt a schedule according to which the Generator Intervenors may present testimony and respond to data requests without requiring any delay in the initial hearings scheduled for August 6, 7, and 8, 2018.
16. The Generator Intervenors will meet and confer with Commission staff, CMP, and the existing and proposed intervenors in order to ensure that their intervention does not unreasonably interfere with the existing proceeding schedule or unduly prejudice the

existing parties to the proceeding. If granted leave to intervene, the Generator Intervenor also intend to participate in all other aspects of the proceeding, including but not limited to participating in discovery hearings and filing briefs and comments, to the extent the Commission deems appropriate.

17. The Generator Intervenor request to receive all filings made in this proceeding subject to the limitations of any protective orders issued. They request to appear through their undersigned counsel, all of whom are in good standing in the states in which they are admitted to practice. Attorney Shope is admitted to practice in Connecticut, Massachusetts and New York. Attorney Bartlett is admitted to practice in Massachusetts. Such counsel should be included on the official service list in this proceeding and all communications concerning this petition should be addressed to:

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WHEREFORE, Calpine Corporation, Dynegy Inc., and Bucksport Generation LLC
petition the Commission to permit them to intervene as full parties to this proceeding.

Respectfully submitted,

CALPINE CORPORATION,
DYNEGY INC., AND
BUCKSPORT GENERATION
LLC,

By their attorneys,

/s/ John A. Shope

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