UNITED STATES OF AMERICA
BEFORE THE
DEPARTMENT OF ENERGY
OFFICE OF ELECTRICITY DELIVERY AND ENERGY DELIVERABILITY

Application for Presidential Permit; Central Maine Power Company	))	OE Docket No. PP-438

REQUEST FOR LEAVE TO INTERVENE OUT-OF-TIME AND COMMENTS IN OPPOSITION TO APPLICATION OF CALPINE CORPORATION

Calpine Corporation ("Calpine") hereby respectfully requests leave to intervene out-of-time in this proceeding and requests that the Department of Energy ("DOE") accept these comments opposing the July 26, 2017 application of Central Maine Power Company ("CMP") for a Presidential Permit authorizing the construction, operation, maintenance, and connection of facilities for the New England Clean Energy Connect ("NECEC"),[1] which will be used for the transmission of electric energy from Canada into the United States.

Executive Order 10485, as amended by Executive Order 12038, authorizes the Secretary of Energy to issue a permit for the transmission of electric energy between the United States and a foreign country "[u]pon finding the issuance of the permit to be consistent with the public interest, and, after obtaining the favorable recommendations of the Secretary of State and the Secretary of Defense thereon . . . ."[2] As explained in detail herein, the Application fails to demonstrate the NECEC to be in the public interest; to the contrary, the NECEC will harm

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[1] Application of Central Maine Power Co. for a Presidential Permit for the New England Clean Energy Connect, Docket No. PP-438 (filed July 26, 2017) (the "Application"), https://www.energy.gov/sites/prod/files/2017/10/f37/2017-7-26%20PRESIDENTIAL%20PERMIT%20APPLICATION%20%28pdf%29%20%28W6274757x7AC2E%29.PDF.

[2] Executive Order 10485, 18 Fed. Reg. 5397, § 1(a)(3) (Sept. 3, 1953).

competitive, wholesale electric markets in New England, to the long-term detriment of consumers and domestic generators. Accordingly, the Application should be denied.

I.

REQUEST FOR LEAVE TO INTERVENE OUT-OF-TIME

Pursuant to Rule 214 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC"),[3] Calpine respectfully requests that it be permitted to intervene out-of-time in this proceeding.[4]

Calpine is a Delaware corporation engaged, through various subsidiaries, in the development, financing, acquisition, ownership, and operation of independent power production facilities and the wholesale marketing of electricity in the United States and Canada. Through its various subsidiaries, Calpine has a fleet of 77 power plants in operation or under construction, representing nearly 26,000 MW of generating capacity. Through wholesale operations and its retail business, Calpine subsidiaries serve customers in 23 states and Canada.

Calpine subsidiaries own generating facilities in Maine and in the ISO New England Inc. ("ISO-NE") region, and are active in ISO-NE's wholesale power markets. Calpine therefore has

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[3] 18 C.F.R. § 385.214 (2019). *See also Application for Presidential Permit; Central Maine Power Company*, 82 Fed. Reg. 45,013 (Sept. 27, 2017) (the "September 27 Notice") (stating that "[a]ny person seeking to become a party to this proceeding must file a motion to intervene at the address provided above in accordance with Rule 214 of FERC's Rules of Practice and Procedure (18 CFR 385.214).").

[4] FERC regularly grants motions to intervene out-of-time in circumstances, like this one, where the intervenor has an interest in the proceeding, the motion is filed prior to the issuance of a substantive FERC order, and the late intervention will not result in undue prejudice or delay. *See, e.g., Cameron Interstate Pipeline, LLC*, 169 FERC ¶ 61,203 at P 4 (2019) (finding that granting motions to intervene out-of-time filed before the issuance of the order would not disrupt the proceeding or place additional burdens on existing parties); *Upper Missouri G&T Elec. Coop., Inc.*, 169 FERC ¶ 61,197 at P 15 (2019) (granting untimely motions to intervene given the movants' "interest in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay"); *ISO New England Inc.*, 169 FERC ¶ 61,195 at P 18 (2019) (same); *PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,209 at P 24 (2019) (explaining that movants bear a heavier burden if they seek to intervene after the issuance of a dispositive order), *reh'g denied*, 168 FERC ¶ 61,104 (2019).

a direct and substantial interest in the outcome of this proceeding. Calpine is not now, and will not be, adequately represented by any other party in this proceeding.

Granting late intervention is appropriate in this instance because, at the time when the Application was filed, it was far from clear whether the NECEC would in fact proceed, and many important details regarding the project were not addressed in the Application or otherwise made publicly available. As discussed in the Application, the NECEC was conceived as part of a proposed project submitted in response to a request for proposals ("RFP") issued by electric distribution companies[5] in Massachusetts and the Massachusetts Department of Energy Resources (the "Massachusetts RFP").[6] The Application itself acknowledges that, at the time it was filed, the NECEC proposal had not even been submitted.[7] There were over forty bidders competing in the Massachusetts RFP,[8] and the NECEC was not initially selected as the winning bidder. Instead, the Northern Pass Transmission project, which was similarly structured to bring energy from Canada into New Hampshire, was initially selected as the winning bid, but "[o]n February 1, 2018, the New Hampshire Site Evaluation Committee (NHSEC) voted unanimously to deny the Northern Pass project a Certificate of Site and Facility."[9] It was only thereafter that the Companies began contract negotiations for the NECEC. And, it was only last year that the Maine Public Utilities

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[5] The electric distribution companies in Massachusetts consist of NSTAR Electric Company d/b/a Eversource Energy, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, and Fitchburg Gas and Electric Light Company d/b/a Unitil (together, the "Companies").

[6] *See* Application at 18.

[7] *See id.* ("On July 27, 2017, CMP ***plans to*** propose the NECEC as part of joint bids . . . ." (emphasis added)).

[8] *See* Massachusetts Clean Energy, 83D Bids, https://macleanenergy.com/83d/83d-bids/.

[9] Massachusetts Clean Energy, 83D, https://macleanenergy.com/83d/.

Commission (the "Maine PUC") granted approval for the project,[10] and that the Massachusetts Department of Public Utilities (the "Mass DPU") approved the contracts for the Companies to purchase power delivered to Maine by the NECEC.[11] Accordingly, the Application was clearly filed prematurely and well before any interested parties were aware of the proposal and potential ramifications. In fact, it was not until the proceedings before the Maine PUC and Mass DPU that many details of the NECEC proposal were disclosed and parties were able to assess the impact of the project on the public interest.

Granting late intervention in this case will not adversely affect these proceedings. Although the Application was admittedly submitted in 2017, there are still a number of approvals that are required, and ongoing proceedings that must be resolved, before the NECEC may proceed, including:

- An appeal of the Maine PUC Order, which is currently pending before the Maine Supreme Judicial Court;
- An appeal of the Mass DPU Order, which is currently pending before the Massachusetts Supreme Judicial Court;
- Authorization from the Maine Department of Environmental Protection;

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[10] *See Central Maine Power Co., Request for Approval of CPCN for the New England Clean Energy Connect Consisting of the Constr. of a 1,200 MW HVDC Transmission Line from the Québec-Maine Border to Lewiston (NECEC) and Related Network Upgrades*, Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation, Maine PUC Docket No. 2017-00232 (May 3, 2019) (the "Maine PUC Order"), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=102054&CaseNumber=2017-00232.

[11] *See Petition of NSTAR Elec. Co. d/b/a Eversource Energy for approval by the Dep't of Pub. Utils. of a long-term contract for procurement of clean energy generation, pursuant to Section 83D of An Act Relative to Green Cmtys., St. 2008, c. 169, as amended by St. 2016, c. 188, § 12*, Mass DPU Docket Nos. 18-64, *et al.* (June 25, 2019) (the "Mass DPU Order"), https://fileservice.eea.comacloud.net/FileService.Api/file/FileRoom/10881348.

- Authorization from the U.S. Army Corps of Engineers (the "Army Corps") pursuant to Section 10 of the Rivers and Harbors Act of 1899, and Section 404 of the Clean Water Act; [12] and

- Concurrences of the Secretary of State and the Secretary of Defense that would be required before DOE may take action on the Application.[13]

The outstanding items identified above demonstrate that permitting late interventions and comments in this proceeding would not substantially delay the development of the NECEC. Indeed, a public hearing regarding the required Army Corps permit was just held in December 2019 (the "Army Corps Public Hearing"),[14] where a large number of interested persons argued that the Environmental Assessment that has been prepared for the NECEC project is insufficient, and requested that the Army Corps conduct a full Environmental Impact Statement analysis.[15] In addition, briefing with respect to the appeal of the Maine PUC Order was only completed last fall,[16] and briefing with respect to the appeal of the Mass DPU Order has not even begun.[17] As a result, there is good cause to give Calpine the opportunity to voice its serious concerns regarding the Application.

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12 *See* Application at 107.

13 *See* September 27 Notice, 82 Fed. Reg. 45,013.

14 *See* US Army Corps of Engineers, *Public hearing scheduled for Dec. 5 in Lewiston: Corps to hold hearing on Central Maine Power's plan to build electrical transmission line from Beattie Township to Lewiston*, https://www.nae.usace.army.mil/Media/News-Releases/Article/2006181/public-hearing-scheduled-for-dec-5-in-lewiston-corps-to-hold-hearing-on-central/ (Nov. 1, 2019) (the "Army Corps Notice").

15 *See, e.g.*, US Army Corps of Engineers, New England District, *Permit Application Public Hearing, Central Maine Power, New England Clean Energy Connect*, Transcript at 23:22-24:3 (Dec. 5, 2019) (the "Army Corps Hearing Transcript"); *id.* at 31:2-8; *id.* at 50:8-11; *id.* at 65:20-66:2; *id.* at 106:20-24; *id.* at 123:3-7; *id.* at 150:10-12. As noted in the Army Corps Notice, the Army Corps Hearing Transcript is available for review at the Army Corps' Maine project office, or may be purchased from the stenographer.

16 *See NextEra Energy Res., LLC v. Public Utils. Comm'n*, Briefing Schedule, Docket No. PUC-19-182 (June 10, 2019), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=102457&CaseNumber=2017-00232.

17 *See NextEra Energy Res., LLC v. Department of Pub. Utils.*, Case Docket SJ-2019-0296, https://www.ma-appellatecourts.org/docket/SJ-2019-0296.

II.

CORRESPONDENCE AND COMMUNICATIONS

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III.

COMMENTS IN OPPOSITION

To approve an application for a Presidential Permit, DOE must find the permit to be "in the public interest."[18] In its review, DOE takes into consideration broad national interests, and not only "considers the environmental impacts of the proposed project," but also "determines the project's impact on electric reliability by ascertaining whether the proposed project would *adversely affect the operation of the U.S. electric power supply system* under normal and contingency conditions, and any other factors that DOE may also consider relevant to the public interest."[19] In this respect, the analysis that DOE must undertake is considerably broader than those conducted by the Mass DPU and Maine PUC, who approved the NECEC under state statutes

[18] September 27 Notice.

[19] *Id.* (emphasis added) (also stating that "DOE must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application").

focusing on local interests and issues.[20] Indeed, the Mass DPU's analysis was primarily focused on whether "the proposed contracts facilitate the financing of an eligible clean energy generating resource,"[21] while its review of whether the CMP/HQUS contracts were in the public interest was based on the pricing terms and local consumer impacts of such contracts.[22] At the same time, the Maine PUC expressly stated that, "[w]ith respect to whether the 'public' includes regions beyond Maine, the Commission interprets the statutory public interest standard to pertain to Maine."[23] By contrast, DOE is uniquely tasked with, and suited to, assess the broader impacts of the project on the *national* interest, including, in particular, on the broader New England region. As explained in detail herein, the Application should be denied because the NECEC will adversely affect the flow of power over the transmission grid in Maine, existing and planned generation facilities in New England, and competitive electric markets in the Northeast.

A. The NECEC Does Not Improve the Reliability of the Transmission Grid

As an initial matter, it is important to note that the Application inflates the importance of the NECEC to the transmission grid, claiming that the NECEC "will improve reliability and stability of the electric grid in the New England Control Area."[24] But CMP has failed to provide support for this claim; to the contrary, and as discussed in Sections III.B and III.C below, the NECEC will in fact adversely affect the grid and electric markets in Maine and elsewhere.

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20 *See* Mass DPU Order at 28 (describing findings required to approve contracts for clean energy generation resources).

21 *Id.* (also listing other determinations that the Mass DPU was required to make).

22 *See id.* at 118.

23 Maine PUC Order at 18-19 (also stating that "the Commission disagrees that every factor identified in the statute for consideration by the Commission must be satisfied or promoted for a 'public need' determination to be made, as long as, on balance, the overall benefits of the Project outweigh the costs").

24 Application at 18.

ISO-NE is the Regional Transmission Organization ("RTO") that has been authorized by FERC to operate the transmission grid in New England. As part of its responsibilities as an RTO, ISO-NE ensures the continued reliability of the transmission grid in New England, pursuant to rules set forth in ISO-NE's Open Access Transmission Tariff (the "ISO-NE OATT").[25] Attachment K of the ISO-NE OATT sets forth a planning process under which ISO-NE performs assessments to identify transmission infrastructure that is needed to —

> (i) account for changes in the [Pool Transmission Facility ("PTF")] system conditions; (ii) ensure reliability of the PTF system; (iii) comply with national and regional planning standards, criteria and procedures; and (iv) account for market performance, economic, environmental and other considerations as may be agreed upon from time to time.[26]

ISO-NE then runs a competitive RFP process to select the most effective solution to address any identified transmission needs.[27] Alternatively, ISO-NE may use a "Solutions Studies" process in situations where there are "reliability criteria violations and system conditions that the region has a time-sensitive need to solve . . . ."[28]

While the Application claims that "[t]he NECEC is expected to provide significant reliability and stability benefits to the New England region,"[29] that *expectation* is the Applicant's alone, and not the position of ISO-NE, the independent grid operator. The NECEC was not the result of any ISO-NE reliability analysis or selection process, nor does it fill any needs that ISO-

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[25] *See* https://www.iso-ne.com/system-planning/transmission-planning/. The ISO-NE OATT is available at https://www.iso-ne.com/participate/rules-procedures/tariff/.

[26] OATT, Attachment K, § 1.

[27] *See* https://www.iso-ne.com/system-planning/transmission-planning/competitive-transmission-projects/about-competitive-transmission-projects. *See also* OATT, Attachment K, § 4.3.

[28] OATT, Attachment K, § 4.1(j)(i).

[29] Application at 39.

NE has identified. Instead, the NECEC is a privately-sponsored, commercial project, which was part of a proposal in response to the Massachusetts RFP.[30] Under the plan approved by the Mass DPU, the Companies will purchase power from H.Q. Energy Services (U.S.) Inc. ("HQUS"), an affiliate of Hydro Québec,[31] and bring it into Maine using the NECEC. As such, the NECEC is not one of the "Pool Transmission Facilities" which are "required to allow energy from significant power sources to move freely on the New England Transmission System."[32] Instead, the NECEC is considered to be an "Elective Transmission Upgrade" by ISO-NE.[33]

As ISO-NE has explained, Elective Transmission Upgrades are "not reliability-driven upgrades," and are instead transmission lines "funded by private parties . . . ."[34] Put another way, this class of upgrades are simply installed by private parties to meet their own needs. In this case, CMP has proposed the line as a way to enhance its own profits through its bid to meet the requirements of the Massachusetts RFP. While ISO-NE has observed that Elective Transmission Upgrades are often for state procurement initiatives, it also warned that "[c]oordination of energy

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30 *See* Application at 18.

31 The Application stated that the hydroelectric power would be provided by Hydro Renewable Energy LLC. *See* Application at 18. However, the Mass DPU order approving the proposal explains that "each [C]ompany seeks Department approval of a power purchase agreement ("PPA") to acquire its apportioned share of an annual aggregate quantity of 9,554,940 MWh of hydroelectric generation and associated environmental attributes from HQUS, an affiliate of Hydro-Québec, to be delivered into New England over new transmission infrastructure, referred to as the [NECEC] transmission line, in accordance with a transmission service agreement ("TSA") between each company and CMP." Mass DPU Order at 5 (footnotes omitted).

32 OATT, § II.49.

33 *See id.*, § II.47.5 (providing that "[a]ny entity may undertake the design, construction and interconnection of an Elective Transmission Upgrade"). *See also id.*, Schedule 25, § 1 (defining an "Elective Transmission Upgrade" as transmission facilities "for which the Interconnection Customer has agreed to pay all of the costs of said Elective Transmission Upgrade and of any additions or modifications to the Administered Transmission System that are required to accommodate the Elective Transmission Upgrade," where "[a]n Elective Transmission Upgrade is not a Generator Interconnection Related Upgrade, a Regional Transmission Upgrade, or a Market Efficiency Transmission Upgrade").

34 ISO-NE, Transmission, https://www.iso-ne.com/about/key-stats/transmission/.

policy among multiple states is challenging, particularly when infrastructure needs to be built across multiple states."[35] NECEC in no way helps, and instead appears to exacerbate this situation. The rules for Elective Transmission Upgrades require only that NECEC construct the minimum set of upgrades that are necessary to prevent the NECEC from causing direct, adverse impacts to the transmission grid, rather than having to actually increase overall transmission capability or reliability.[36] This is particularly important with respect to the NECEC, which, as discussed below, will exacerbate congestion problems and adversely affect existing and planned generation facilities in Maine.

B. The NECEC Will Increase Congestion and Adversely Affect the ISO-NE Market

Contrary to the claims in the Application, the NECEC will adversely affect existing and planned generation facilities in Maine and stifle competition in the ISO-NE energy market, to the long-term detriment of consumers and the public interest. Notably, while the NECEC was conceived as part of the CMP/HQUS proposal in response to the Massachusetts RFP, the NECEC does not deliver any physical energy to Massachusetts. Instead, as described in the Application, "[t]he NECEC is a High Voltage Direct Current (HVDC) transmission solution capable of delivering 1,200 MW of Clean Energy Generation from Québec to the *New England Control Area*,"[37] and is proposed to "facilitate the delivery of an incremental 1,200 MW of electric power *to the New England Transmission System at the Larrabee Road Substation*"[38] in Maine. Accordingly, the Mass DPU Order observes that "HQUS will transfer energy to the Companies

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35 *Id.*

36 *See* OATT, § II.49; *id.*, Schedule 25.

37 Application at 18 (emphasis added).

38 *Id.* at 21 (emphasis added).

through internal bilateral transactions executed through [ISO-NE] and settled at the southern terminus of NECEC in Lewiston, Maine . . . ."[39] That is, CMP and HQUS have not made plans to transmit energy from Maine to Massachusetts, and instead plan on relying on the existing ISO-NE transmission grid.

The problem with this plan is that ISO-NE has found that Maine is an export-constrained zone, meaning that there is more generation than load inside Maine, and the transmission system is incapable of fully exporting the resulting surplus to the broader New England Control Area.[40] Moreover, ISO-NE has already expressed concerns that "economic studies have shown that the large-scale development of wind resources in Maine would require considerable transmission expansion to serve demand in southern New England . . . ."[41] The NECEC will exacerbate these problems because it is only designed to bring power from Canada into Maine, and as explained, under ISO-NE's rules for Elective Transmission Upgrades, there is no requirement that CMP invest in new facilities to correspondingly increase the transmission capability across the border

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[39] Mass DPU Order at 7 (citation omitted).

[40] Specifically, ISO-NE has found that it is necessary to model Maine as an export-constrained zone for the upcoming annual Forward Capacity Auction that will be held in 2020 ("FCA 14"), because "[t]he indicative [Maximum Capacity Limit ("MCL")] for the Maine zone is less than the sum of the Existing Qualified Capacity and the proposed new capacity that could qualify for FCA 14." ISO-NE, *Zonal Modeling For FCA 14*, at 14 (May 30, 2019), https://www.iso-ne.com/static-assets/documents/2019/05/a7_fca14_zone_formation_05302019.pdf.

[41] ISO-NE, *2019 Regional System Plan*, at 2 (Oct. 31, 2019), https://www.iso-ne.com/system-planning/system-plans-studies/rsp/. *See also id.* at 6 ("To date, the ISO completed a cluster study for proposed resources in northern and western Maine. A second cluster study for resources in that same area is underway and anticipated to be completed by the fourth quarter of 2019. Even with the cluster approach, remote resources would require considerable transmission improvements, which may be costly to build, to be well integrated with the demand centers in southern New England."). ISO-NE's previous Regional System Plan expressed similar concerns. *See* ISO-NE, *2017 Regional System Plan*, at 124 (Nov. 2, 2017) ("The northern and western Maine areas of the system are comprised of a transmission network built to serve low levels of area load, and a number of generators are already connected, leaving this part of the transmission system at its performance limit with no remaining margin. Interconnecting the quantity of proposed resources in northern and western Maine requires significant new transmission infrastructure."), https://www.iso-ne.com/static-assets/documents/2017/11/rsp17_final.docx.

from Maine to New Hampshire and the rest of the New England Control Area, and CMP has expressed no intent to do so.

In this respect, the Application serves up a red herring by stating that CMP will "increase the transfer limits at the existing Surowiec South interface."[42] While ISO-NE's rules require CMP to increase the capability at the Surowiec South interface to accommodate the NECEC, that increase *will be used by the NECEC itself*.[43] More importantly, the Surowiec South interface is "a stability limited interface in *central Maine* . . . ."[44] Accordingly, any upgrades to the Surowiec South interface will in no way alleviate the existing transmission congestion at the Maine-New Hampshire border, and CMP has refused to make any transmission upgrades to increase export capability out of Maine. In short, the NECEC will simply bring more power into Maine, without providing any way for such power to get out of Maine. As a result, Maine generators that rely on making sales into the ISO-NE markets will face increased congestion.[45] Moreover, the contracts with the Massachusetts Companies will ensure that the HQUS power may be offered into the ISO-NE market in a way that practically guarantees that the power will be dispatched and get a priority

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[42] Application at 40.

[43] *See* Intervenor Testimony of Francis Pullaro on behalf of RENEW Northeast, Inc. at 3, Maine PUC Docket No. 2017-00232 (Apr. 30, 2018) (the "Pullaro Testimony"), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=97733&CaseNumber=2017-00232. ISO-NE's rules require that CMP upgrade zonal internal interfaces (*i.e.*, the transmission network within Maine) – such as Surowiec South –so that such internal interfaces are no more binding than they were before the NECEC project. CMP therefore plans to upgrade Surowiec South to accommodate additional power from NECEC. However, this only addresses the local problem internal to Maine. CMP has no plans to upgrade the Maine-New Hampshire interface as part of NECEC, and it is this interface that will control and limit transmission from Maine to the broader ISO-NE market.

[44] Application at 40 (emphasis added).

[45] *See* Prepared Direct Testimony of Tanya L. Bodell at 17-21, Maine PUC Docket No. 2017-00232 (Apr. 30, 2018) (the "Bodell Testimony"), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=97736&CaseNumber=2017-00232.

with respect to obtaining limited transmission capacity, while existing Maine generators that previously relied on such transmission will be displaced.[46]

At the same time, the influx of power into Maine will also cause wholesale energy prices in Maine and the broader New England region to fall.[47] Effectively, this means that generators in Maine will not only be deprived of the ability to make sales into the broader New England market because the Maine-New Hampshire interface will become congested, but will also find that local power prices may be too low to support operation. That will affect project economics and could ultimately lead to premature retirements. Indeed, there was substantial evidence adduced in the Maine PUC proceeding demonstrating that existing generators will be forced to retire because of the NECEC.[48] As explained before the Maine PUC—

> NECEC could inject close to 9.5 TWh (9,500 GWh) of energy into Maine, or around 85 percent of existing in-state generation levels. For a location that already is experiencing low prices, the impact of such a large amount of energy creates even greater financial stress that can lead to early retirements. In addition to lower energy prices, some of Maine's largest plants would be displaced by NECEC energy flows, causing significant reductions in operating margins due to both price and quantity.[49]

The NECEC would not only have adverse effects on existing generators, but developers and investors will also be hesitant to construct new generation in Maine knowing that HQUS and

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[46] *See, e.g.*, Maine PUC Order at 28 (noting that NECEC energy would be offered into the ISO-NE market as a price-taking resource).

[47] *See, e.g.*, *id.* at 25 ("The evidence in the record in this proceeding demonstrates that the NECEC will result in a reduction to wholesale energy prices in Maine and across the New England region.").

[48] *See, e.g.*, Reply Brief of Generator Intervenors at 16, Maine PUC Docket No. 2017-00232 (Feb. 13, 2019) (explaining that "it is essentially uncontested that if Hydro-Quebec were to bid incremental capacity across NECEC into New England at anywhere near the level CMP has suggested, Maine would become a separate ISO-NE capacity zone and retirements would happen in Maine only"), https://mpuc-cms.maine.gov/CQM.Public.WebUI/Common/CaseMaster.aspx?CaseNumber=2017-00232.

[49] Bodell Testimony at 17.

CMP are hogging much of the available existing transmission and thereby limiting access to the broader New England markets.[50] It would also make little economic sense for any new generation projects to invest in new transmission to increase the capability across the Maine-New Hampshire border, because such transmission would be very expensive to construct, while the subsidized NECEC energy would also suppress prices in the broader ISO-NE markets.[51]

C. The NECEC Does Not Otherwise Advance the Public Interest

As explained above, the NECEC poses a serious threat to existing and planned generators in Maine and the broader New England region. At the same time, the Application fails to provide evidence of benefits that will offset this harm. In particular, the Application erroneously suggests that the NECEC "is expected to have a positive impact on climate change, *i.e.*, the NECEC will replace electricity-generating sources that contribute to climate change, with renewably-generated electricity the generation of which does not contribute to climate change."[52] But nothing in the Massachusetts RFP nor the contracts with the Massachusetts Companies requires the construction of new hydroelectric facilities. Moreover, Hydro Québec already makes substantial sales of hydroelectric power into the United States,[53] such that the NECEC may not increase the total

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50 *See* Pullaro Testimony at 3-4.

51 FERC has recognized that subsidies distort prices in the wholesale markets and cause long-term harm by eroding market confidence and deterring investment. *See, e.g., ISO New England Inc.*, 162 FERC ¶ 61,205 at P 24 (2018); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 163 FERC ¶ 61,236 (2018) (recognizing that similar problems with subsidies exist in the PJM Interconnection, L.L.C. region), *clarified*, 168 FERC ¶ 61,051 (2019); *Calpine Corp. v. PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 at P 5 (2019) (same).

52 Application at 58-59.

53 *See, e.g.*, Mass DPU Order at 38 (intervenor argued that the contracts would not result in the procurement of incremental hydroelectric power because, among other things, "Hydro-Québec already imports 15.2 TWh of electricity from its hydroelectric resources into the ISO-NE market on an annual basis . . . .").

amount of hydroelectric power that Hydro Québec sells in New England.[54] Indeed, the Massachusetts Attorney General and others warned that—

> Hydro-Quebec already sells significant amounts of electricity into New England through other existing lines. The proposed contracts don't require the energy that Hydro-Quebec sells over the proposed transmission line to be in addition to that total. Instead, the language in the contracts would allow Hydro-Quebec to take the energy it already sells into the shared New England electricity market and redirect it to the proposed line for higher prices . . . .[55]

Éric Martel, the Chief Executive Officer of Hydro Québec has, in fact, confirmed the validity of these concerns. In a recent interview, Mr. Martel conceded that the Massachusetts contracts do not include any mechanism to provide for any increase in green energy.[56] At the same time, Hydro Québec's own consultant acknowledged before the Maine PUC that power would instead be diverted from other markets to satisfy obligations under the Massachusetts contracts:

> MR. SHOPE: …As I understand your report, you state that in order to serve the Massachusetts contract, Hydro Quebec will divert power that it otherwise would have exported to other markets like Ontario or New York. Am I right so far?
>
> MS. FRAYER: Yes.[57]

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54 *See id.* at 58-63.

55 Josh Keefe, *No guarantee $1 billion CMP line will deliver new energy, Massachusetts AG warns* (Bangor Daily News, May 16, 2019), https://bangordailynews.com/2019/05/16/mainefocus/no-guarantee-1-billion-cmp-line-will-deliver-new-energy-massachusetts-ag-warns/.

56 Hydro-Québec: CEO Éric Martel Discusses The Power Company's Priorities and Presence in Maine, Interview discussion starting at 14:50, https://www.mainepublic.org/post/hydro-qu-bec-ceo-ric-martel-discusses-power-companys-priorities-and-presence-maine.

57 Transcript of Technical Conference at 28:3-7, Maine PUC Docket No. 2017-000232 (Sept. 19, 2018) (testimony of Julia Frayer of London Economics, consultant for Hydro Québec), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=99604&CaseNumber=2017-00232.

While the CMP/HQUS joint project does not provide for the addition of new renewable facilities, an environmental advocate also warned that the Mass DPU's decision to accept that proposal

> forecloses on the future of a locally-driven, clean energy economy in the Commonwealth by giving a green light to ship taxpayer money out of the country instead of investing in more affordable, more resilient solar and wind energy right here in the region[.][58]

The Application also fails to demonstrate that the NECEC will provide economic or other benefits to consumers. In fact, under the Massachusetts contracts, "[e]nergy payments begin at $51.51 per MWh in the first year of the PPAs," and payments for transmission "begin[] at $9.16 per kW-month in the first year of the TSAs, and escalat[e] each contract year."[59] By contrast, ISO-NE reported that, in 2018, "[d]ay-ahead and real-time [locational marginal prices] averaged $44.13 and $43.54/MWh, respectively,"[60] without a separate transmission charge.

Over the long-term, and as discussed above, the NECEC may actually increase costs to consumers in New England by forcing the early retirement of existing generation facilities and stifling the development of new generation. Indeed, the NECEC appears designed to funnel economic benefits to generation facilities in Canada, while harming domestic power producers.[61] For the same reason, the Application's claims that energy deliveries over the NECEC will "enhance

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[58] Robert Walton, *Massachusetts regulators approve state's largest clean energy procurement* (Utility Dive, June 27, 2019) (quoting Mark Kresowik, Eastern Region Deputy Director for the Sierra Club), https://www.utilitydive.com/news/massachusetts-regulators-approve-states-largest-clean-energy-procurement/557752/.

[59] Mass DPU Order at 8.

[60] ISO-NE, *2018 Annual Markets Report*, at 4 (May 23, 2019), https://www.iso-ne.com/static-assets/documents/2019/05/2018-annual-markets-report.pdf.

[61] Application at 89 (claiming that the NECEC "will help alleviate the need to build new non-renewable generation plants, and may allow retirement of older, less efficient fossil fueled power plants"). As discussed above, the NECEC would not only discourage the construction of "new non-renewable generation plants," *id.*, but would likely also affect the development of new renewable facilities.

electric reliability, particularly in winter months when natural gas supply and transfer constraints have occurred in recent years,"[62] are exaggerated. As explained above, there is no guarantee that the Massachusetts contracts will in fact result in the provision of any "incremental" power. Equally important, the imported power that would be brought in over the NECEC is, by definition, less reliable than power produced by generators in the ISO-NE region. Unlike domestic generators that are subject to ISO-NE rules and dispatch and scheduling procedures, Hydro Québec is a foreign utility that is subject to its own procedures and obligations to customers. Moreover, evidence was provided in the Maine PUC proceeding showing that Hydro Québec may not have sufficient power in the winter months to reliably serve its own customers as well as to satisfy the obligations under the Massachusetts contracts.[63] Regardless, the NECEC will encourage increased reliance on Hydro Québec power even as it pushes out the domestic generators that actually contribute to the resiliency of the ISO-NE grid.[64]

Finally, although the Application suggests that the NECEC will provide economic benefits to Maine in the form of jobs and taxes,[65] any such gain would likely only be transitory[66] and would be more than offset by the harm to U.S. generators, whose retirement would result in the loss of permanent local jobs and significant tax revenues, as well as other economic harm. Indeed, it was

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62 *Id.*

63 *See* Prepared Surrebuttal Testimony of William S. Fowler and Tanya L. Bodell at 19-29, Maine PUC Docket No. 2017-00232 (Dec. 10, 2018), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=100721&CaseNumber=2017-00232.

64 *See* Confidential Prepared Direct Testimony of William S. Fowler at 19-20, Maine PUC Docket No. 2017-000232 (Apr. 30, 2018) (explaining that the NECEC would push out domestic generation, meaning that "we would be trading in-state resources with stored fuel for a long transmission line to Quebec. I do not see that as helping regional fuel security."), https://mpuc-cms.maine.gov/CQM.Public.WebUI/MatterManagement/MatterFilingItem.aspx?FilingSeq=97735&CaseNumber=2017-00232.

65 Application at 116.

66 *See, e.g., id.* (stating that the NECEC would create "thousands of jobs ***during construction***" (emphasis added)).

pointed out at the Army Corps Public Hearing that 26 towns in Maine have opposed the NECEC project because of its adverse effects on local economies.[67]

At the end of the day, it is clear that the Massachusetts RFP, which was designed to advance the policy goals of a specific state, will result in significant harm to the broader New England region. It is especially troubling that the CMP/HQUS plan will primarily benefit Hydro Québec at the expense of domestic generators. DOE should prevent this result by denying the Application.

IV.

CONCLUSION

WHEREFORE, Calpine respectfully requests that DOE (1) grant Calpine leave to intervene out-of-time in this proceeding; (2) accept these comments; and (3) deny the Application.

Respectfully submitted,

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[67] *See* Army Corps Hearing Transcript at 29:18-30:4.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the following persons:

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