

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2019-00179

October 20, 2020

CENTRAL MAINE POWER COMPANY  
Request for Approval to Transfer the New  
England Clean Energy Connect to NECEC  
Transmission, LLC

ORDER

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BARTLETT, Chairman; WILLIAMSON and DAVIS, Commissioners

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**I. SUMMARY**

Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC LLC) (collectively Petitioners) on behalf of themselves, the Office of the Public Advocate (OPA), the Industrial Energy Consumer Group (IECG), and the Governor's Energy Office (GEO) (collectively Stipulating Parties) seek Commission approval of a stipulation and associated attachments regarding the New England Clean Energy Connect Project (NECEC). For the reasons discussed in this Order, the Commission concludes the applicable regulatory criteria for approving stipulations have been met, and therefore the Commission approves the stipulation and its attachments.

**II. FACTUAL AND PROCEDURAL BACKGROUND**

On May 3, 2019, the Commission issued an order, granting CMP a certificate of public convenience and necessity (CPCN) for the NECEC and approving a stipulation, the NECEC I Stipulation. *Central Maine Power Company, Request for Approval of CPCN for the New England Clean Energy Connect*, Docket No. 2017-00232 (NECEC I Proceeding), Order Granting Certificate of Public Convenience and Necessity and Approving Stipulation (May 3, 2019) (CPCN Order), *aff'd*, *NextEra Energy Resources v. Public Utils. Comm'n*, 2020 ME 34, 227 A.3d. 1117.

In the CPCN Order, the Commission found that, on balance, benefits from the NECEC in the hundreds of millions of dollars will significantly outweigh its adverse impacts. *Id.* at 6-7. The benefits of the NECEC, a project to be constructed at no cost to Maine ratepayers, accrue in terms of lower wholesale electricity rates and enhanced system reliability for Maine's electricity consumers, the creation of jobs and increased property taxes, and substantial environmental benefits through lower fossil fuel generation and associated reductions in greenhouse gas emissions. *Id.* Based upon these findings, the Commission concluded that the NECEC is in Maine's public interest and that therefore there is a public need for the project. *Id.*

Having made such findings and conclusions, the Commission nonetheless contemplated the need for additional review and approval with respect to the NECEC. As stated by the Commission in the CPCN Order, the Commission did "not approve the form of any agreements provided in connection with the [NECEC I] Stipulation," and the Commission indicated it would "conduct proceedings pursuant to Title 35-A, Sections 707

and 708 to approve the creation of NECEC, LLC and all associated affiliated transactions.” *Id.* at 92. The Commission emphasized that, in the anticipated proceeding, the issues determined in the NECEC I Proceeding would not be relitigated. *Id.*

On August 13, 2019, Petitioners filed a petition in the above-captioned docket, seeking the series of approvals contemplated in the CPCN Order and NECEC I Stipulation. Petitioners state the approvals they seek are needed to effectuate the prior approvals set forth in the CPCN Order, namely to transfer the NECEC from CMP to NECEC, LLC prior to construction, to fulfill the benefits commitments set forth in the NECEC I Stipulation, and to otherwise comply with the requirements in the CPCN Order and Maine law. In their petition, Petitioners indicate State law approvals are required pursuant to 35-A M.R.S. §§ 707, 708, 901, 902 and 1101.

Process on the petition followed, starting in late August 2019 and running through late October 2019. On August 28, 2019, Commission Staff issued a Notice of Proceeding and Opportunity to Intervene, and on September 19, 2019 convened an initial case conference. Commission Staff granted the following timely petitions to intervene without objection: Dot Kelly; Natural Resources Council of Maine (NRCM); OPA; Conservation Law Foundation (CLF); IECG; and Old Canada Road National Scenic Byway, Inc. (Old Canada Road). By agreement of the parties, Commission Staff set a discovery schedule. Commission Staff later granted the late petition to intervene of the GEO on the condition that the GEO take the matter as it finds it. Without objection, the Commission Staff suspended and extended applicable review periods as provided by statute. Following discovery, on October 28, 2019, Petitioners filed initial proposed settlement terms.

Process on the proposed settlement terms followed, starting in early November 2019 and running through early August 2020. Commission Staff noticed and convened a series of settlement conferences on November 1, 2019, December 10, 2019, February 12, 2020, April 8, 2020, and July 14, 2020. Petitioners updated and refiled a series of settlement terms. On July 30, 2020, the Stipulating Parties filed a stipulation to resolve all matters in this docket, that is, the NECEC II Stipulation and its associated attachments. On July 30, 2020, Commission Staff provided an opportunity to comment on the NECEC II Stipulation.

In their comments, the parties disagree as to whether the Commission’s regulatory provisions applicable to the review and approval of stipulations have been satisfied. Intervenor Kelly and NRCM filed comments in opposition to the NECEC II Stipulation. Old Canada Road opposes the NECEC II Stipulation but did not file comments in opposition. CLF takes no position. The Stipulating Parties filed reply comments and IECG filed additional comments, all in support of the NECEC II Stipulation, which they reiterate is the mechanism to implement the approvals set forth in the CPCN Order and NECEC I Stipulation.

On September 29, 2020, Commission Staff issued an Examiners’ Report and provided an opportunity for comment and exceptions. The Stipulating Parties filed comments in support of the Examiners’ Report.

### III. STANDARD OF REVIEW FOR STIPULATIONS

In deciding whether a stipulation is reasonable, fair, and consistent with the public interest, the entire stipulation must be considered as a whole. Whether the Commission disagrees with a particular provision of a stipulation or would have come up with a different result were it to decide the case after litigation is not the question. Rather, the Commission examines whether the stipulation is fair, reasonable, and consistent with the public interest. With these principles in mind, the Commission's Rules of Practice and Procedure, Chapter 110, require the Commission to consider the following criteria:

- 1) Whether the parties joining the stipulation represent a sufficiently broad spectrum of interests that the Commission can be sure that there is no appearance or reality of disenfranchisement;
- 2) Whether the process that led to the stipulation was fair to all parties;
- 3) Whether the stipulated result is reasonable and is not contrary to legislative mandate; and
- 4) Whether the overall stipulated result is in the public interest.

MPUC Rules, ch. 110, § 8(D)(7). For the reasons discussed in this Order, the Commission concludes the NECEC II Stipulation satisfies these regulatory criteria.

### IV. STATUTORY PROVISIONS APPLICABLE TO THE PETITION

Generally, Petitioners state Commission approval is required to transfer the NECEC from CMP to NECEC LLC and to construct and operate the project, and Petitioners have identified several statutory provisions with which the NECEC II Stipulation must be consistent. To that end, Petitioners request approval for a reorganization, affiliated transactions, indebtedness, and the transfer and assignment of real estate interests. 35-A M.R.S. §§ 707, 708, 901, 902, 1101. These provisions and their review standards are summarized below.

#### A. Reorganizations

Title 35-A provides that no reorganization may take place without the approval of the Commission. 35-A M.R.S. § 708(2)(A). A reorganization includes the creation, organization, extension, consolidation, merger, transfer of ownership or control, liquidation, dissolution or termination, direct or indirect, in whole or in part, of an affiliated interest of a public utility. *Id.* § 708(1)(A). Petitioners seek approval of NECEC LLC as a public utility and affiliated interest of CMP, constituting a reorganization under 35-A M.R.S. § 708. The Commission may approve a reorganization if it is "consistent with the interests of the utility's ratepayers and investors." *Id.* § 708(2)(A).

B. Affiliated Interests

Title 35-A further provides that a public utility is prohibited from entering into transactions with affiliated interests, including extending or receiving credit or entering into any contract or arrangement, unless the Commission has approved the contemplated transaction, or provided an exemption or waiver for the transaction. 35-A M.R.S. §§ 707(3), (4). Petitioners seeks approval of the affiliated transactions between NECEC LLC and CMP and between NECEC LLC and other affiliates of CMP's parent company, Avangrid, Inc., as set forth in the NECEC II Stipulation. To obtain Commission approval, affiliated transactions must not be adverse to the public interest. *Id.* § 707(3).

C. Issuance of Stocks, Bonds, and Notes

A public utility's issuance of stocks, bonds, notes, or other evidence of indebtedness payable at periods of more than 12 months is subject to Commission approval. 35-A M.R.S. §§ 901, 902. In determining whether to authorize such issuances, the Commission considers whether the issuance is required in good faith for the purposes permitted under Section 901, which include the acquisition of property, the construction of facilities, refinancing, and any other lawful purpose. *Id.* §§ 901, 902. Petitioners seek approval of intercompany and loan agreements as consistent with the purposes of Section 901, including but not limited to the proposed acquisition of property and construction of facilities.

D. Authorization of Sales, Leases, and Mortgages of Property

Pursuant to 35-A M.R.S. §1101(1), a public utility may not sell, lease, assign, mortgage or otherwise dispose of or encumber the whole or part of its property that is necessary or useful in the performance of its duties to the public without Commission approval, except in circumstances where the property does not materially affect the ability of a utility to perform its duties to the public. The Commission applies a no net harm standard to determine whether property will "materially affect" the utility's ability to perform its duties, that is, "whether the contract will neither be adverse to the public interest nor inconsistent with the interests of the Company's ratepayers and investors." *Taylor v. Public Util. Com'n*, 2016 ME 71, ¶¶ 13, 15, 138 A.2d 1220-1221. Under this standard, the Petitioners seek Commission approval of certain affiliated transactions and intercompany agreements, including the assignment of certain leases.

**V. STIPULATING PARTIES' SUMMARY OF THE PETITION AND MAJOR PROVISIONS OF THE NECEC II STIPULATION**

In their July 30, 2020 filing and subsequent comments, the Stipulating Parties explain that this case addresses the approvals that are needed to: create NECEC LLC as a Maine Public Utility; to implement the arrangements between affiliated interests to effectuate the transfer of the NECEC from CMP to NECEC LLC in order to comply with the

requirements in the Commission's NECEC I Order and Maine law; as well as to construct and operate the NECEC and to fulfill the benefits commitments set forth in the approved NECEC I Stipulation. As to the NECEC II Stipulation, they state it is supported by a broad spectrum of interests, that it is reasonable and the product of a fair process, that it is consistent with the applicable statutory provisions, and that it is in the public interest. In their filings, they provide a comprehensive summary of the provisions of the NECEC II Stipulation.

In summary, the Stipulating Parties explain that the NECEC II Stipulation includes negotiated provisions that further secure the benefits to the State of Maine and CMP's customers that arise out of the commitments in the NECEC I Stipulation. These benefits include, for example, accelerating certain benefit payments required by the NECEC I Stipulation, and increasing the provision of environmental attributes required by the NECEC I Stipulation.<sup>1</sup> They indicate CMP and NECEC LLC have also made new commitments in the NECEC II Stipulation to address concerns raised during this proceeding, such as with respect to enforcement of approved terms, regulatory review of books and records, and security for pledged benefits.<sup>2</sup> The Stipulating Parties also explain the NECEC II Stipulation serves as a compliance filing for several provisions of the CPCN Order and NECEC I Stipulation, such as providing required accounting entries, fulfilling financial obligations, and shielding CMP from certain risks and liabilities.<sup>3</sup> Finally, the Stipulating Parties contend the NECEC II Stipulation is reasonable, consistent with the applicable provisions of Title 35-A, and in the public interest in all required ways.

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<sup>1</sup> The Stipulating Parties take the position that, where all payment obligations under the NECEC I Stipulation will continue to be made in the amounts contemplated in the NECEC I Stipulation, approval of provisions that accelerate the receipt of such benefit payments for the earlier benefit of Maine customers does not constitute an amendment to the NECEC I Stipulation. No party disputes this position. Under these facts and circumstances, the Commission agrees.

<sup>2</sup> With regard to security interests, Petitioners take the position that, where the NECEC II Stipulation requires certain payments to be made directly into escrow accounts, and not to NECEC LLC as contemplated by the NECEC I Stipulation, the terms of the NECEC II Stipulation serve as a compliance filing with respect to NECEC LLC's obligation set forth Section V.B.1.d.iv of the NECEC I Stipulation. No party disputes this position. Under the facts and circumstances of this proceeding, the Commission agrees.

<sup>3</sup> The Stipulating Parties take the position that, where the NECEC II Stipulation requires certain accounting entries to remove NECEC-related development expenses from CMP's books and accounts and requires a support agreement among CMP, NECEC LLC and H.Q. Energy Services (U.S.) Inc. (HQUS) to contractually obligate HQUS to provide pledged benefits, the terms of the NECEC II Stipulation serve as a compliance filing with respect to Sections V.B.1.d.iii & V.B.14 of the NECEC I Stipulation. No party disputes this position. Under the facts and circumstances of this proceeding, the Commission agrees.

In this regard, citing 35-A M.R.S. § 708, the Stipulating Parties assert a reorganization creating NECEC LLC as a utility is appropriate because the creation of NECEC LLC will insulate CMP's customers from risk.<sup>4</sup> Additionally, citing 35-A M.R.S. §§ 707, 901, 902, & 1101, they state authorizing the financing and acquisition of property for the NECEC will facilitate the development, construction, and operation and maintenance of the NECEC, which as the Commission concluded in the CPCN Order approving the NECEC I Stipulation is in the public interest. The Stipulating Parties emphasize that the NECEC II Stipulation is in the public interest for the same reasons the NECEC I Stipulation is in the public interest. As contemplated by the NECEC I Stipulation, the NECEC II Stipulation enables the transfer, construction, and operation of the NECEC, and includes measures intended to minimize NECEC-related risks and costs from accruing to CMP's customers. For these reasons, the Stipulating Parties state the NECEC II Stipulation is, reasonable, consistent with Title 35-A, and in the interests of the customers and investors of CMP and NECEC LLC.

Finally, in their July 30, 2020 filing, the Stipulating Parties identify an expedited review process set forth in the NECEC II Stipulation and request the Commission exercise its statutory discretion to modify certain provisions of 35-A M.R.S. §§ 707 and 902 (providing by default generally applicable 60-day review periods). The Stipulating Parties state the NECEC is under active development and thus additional affiliated interest agreements or evidences of indebtedness may be created that require Commission approval. In Section V.H of the NECEC II Stipulation, the Stipulating Parties propose an expedited review process to obtain Commission approval of affiliated interest agreements and arrangements subject to 35-A M.R.S. § 707 and issuances of evidence of indebtedness subject to 35-A M.R.S. § 902. The Stipulating Parties seek the Commission's approval of an expedited review process, which would allow the Commission to satisfy the statutory requirements of Sections 707 and 902 without delaying the construction of the NECEC.<sup>5</sup>

#### **IV. DISCUSSION**

With reference to the regulatory standard of review provisions for stipulations set forth above, the parties make competing arguments as to whether the Commission should

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<sup>4</sup> The Stipulating Parties take the position that, where NECEC LLC will not be authorized to provide direct retail service to customers located within CMP's service territory without the further express consent of the Commission, and because CMP has provided its consent under these facts and circumstances, it is appropriate for the Commission to authorize NECEC LLC to provide service as a second utility within CMP's service territory pursuant to 35-A M.R.S. § 2102. No party disputes this position. Under the facts and circumstances of this proceeding, the Commission agrees.

<sup>5</sup> No party contests the expedited review process in the NECEC II Stipulation or suggests that these provisions are inconsistent with the Commission's discretion under Sections 707 and 902 or inconsistent with due process. Under the facts and circumstances of this proceeding, the Commission agrees.

approve the NECEC II Stipulation. The Stipulating Parties contend all applicable criteria have been met, while Intervenor Kelly and NRCM raise several issues in that regard, all of which are addressed below under each applicable criterion.

A. Whether the Stipulating Parties Represent a Sufficiently Broad Spectrum of Interests

The Commission's Rules require that stipulations be supported by a sufficiently broad spectrum of interests such that an appearance or reality of disenfranchisement is avoided. A "sufficiently broad spectrum of interests" is not defined in the Commission's rules, but the Commission's interpretation, which the Law Court has upheld, is that this provision prohibits stipulations where the signing parties represent only a narrow interest. *NextEra*, 2020 ME 34, ¶¶ 40-41, 227 A.2d at 1128. This criterion does not, therefore, require all parties participating in a case to sign a stipulation for the Commission to approve it, but rather requires that the signing parties represent a sufficient variety of interests.

The Stipulating Parties assert they represent a sufficient variety of interests, as contemplated by the Commission's rules. The Stipulating Parties argue the spectrum of interests supporting the NECEC II Stipulation is not narrow as they include the OPA, who represents the interests of residential and small business ratepayers, the IECG, who represents large industrial customers, and the GEO, who represents the policy interests of Maine citizens through the State's elected Governor.

Intervenor Kelly, however, asserts no Maine-based community or environmental organization has joined in support of the NECEC II Stipulation, thus indicating there is the appearance or reality of disenfranchisement of this interest group. Further, she states approving the NECEC II Stipulation in advance of this November's general election and an anticipated vote on a citizen initiative related to the NECEC would further foster a sense of disenfranchisement.

The Stipulating Parties respond that Intervenor Kelly's rationale is mistaken, and that Commission's rules require a sufficiently broad spectrum of interests and not that all intervenors join in a stipulation. They assert the OPA, IECG, and GEO represent a broad and varied spectrum of interests. Citing the Law Court, they argue the intent of the Commission's standard is to assure that signing parties do not represent only a narrow interest. *NextEra*, 2020 ME 34, ¶ 41, 227 A.3d at 1128. The interests represented here, they state, meet that objective, and are like the interests represented and upheld on appeal with regard to the NECEC I Stipulation. *Id.* Thus, there is no appearance or reality of disenfranchisement.

The Stipulating Parties note that the three parties opposing the NECEC II Stipulation did not actively participate in the proceeding, and they argue the opposition does not undermine the Stipulating Parties' varied obligations, missions, and constituencies. The Stipulating Parties assert the OPA, as the state's appointed representative of residential and small commercial customers, and the GEO, as the

representative of all Maine citizens, adequately protect the perspective of these parties. They conclude that NRCM, Old Canada Road, and Intervenor Kelly do not bring a unique or requisite perspective that is otherwise not adequately represented by the Stipulating Parties with respect to the pending approvals.

As to Intervenor Kelly's argument that approving the NECEC II Stipulation in advance of the upcoming November 2020 citizen initiative related to the NECEC would lead to an appearance or reality of disenfranchisement of Maine citizens, the Stipulating Parties note the citizen initiative will not appear on the ballot, *Avangrid Networks, Inc. v. Dunlap*, 2020 ME 109, ¶¶ 38-39; \_\_\_ A.3d \_\_\_, \_\_\_ (holding citizen initiative did not propose legislation and thus was not within citizens' power under Maine Constitution).

The Commission concludes the Stipulating Parties represent a variety of interests. While it is true that, unlike with respect to the NECEC I Stipulation, no Maine-based community or environmental organization supports the NECEC II Stipulation, such interests are not disenfranchised by the NECEC II Stipulation. The interests represented by the signatories include those of residential and small business ratepayers, large industrial customers, and Maine citizens, generally, through the GEO and the OPA. This satisfies the Commission's first regulatory criterion for approving stipulations because the signing parties represent a sufficiently broad spectrum of interests.

#### B. Whether the Settlement Process was Fair to all Parties

The Commission's Rules require that the process that leads to stipulations be fair to all parties and thus, for example, that parties be provided an opportunity to participate in stipulation discussions. The record shows all parties to this proceeding were provided with notice and opportunity to participate in a series of settlement discussions that led to the NECEC II Stipulation, and to review several draft terms of settlement filed in the docket.

Intervenor Kelly, however, argues that further process is required. She states several confidential attachments associated with the NECEC II Stipulation should be made public to provide for a full and transparent review and to ensure applicable standards have been met. She also requests a hearing on the merits.

The Stipulating Parties respond that these arguments are without merit as the process preceding the filing of the NECEC II Stipulation was thorough and vigorous, and it included extensive negotiations and several settlement conferences. As to the attachments, the Stipulating Parties state Intervenor Kelly has failed to articulate why the attachments filed confidentially should be made public.<sup>6</sup> They state the parties have full

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<sup>6</sup> CMP and NECEC LLC filed Attachment 2 (Joint Development Agreement between CMP and Hydro-Quebec Transénergies), Attachment 3 (Memorandum of Understanding between CMP and HQUS), Attachment 4 (Back-to-Back Agreement between Avangrid, Inc. and Avangrid Networks) and Attachment 16 (Draft form of Avangrid, Inc. Guaranties of NECEC LLC's obligations under the Transmission Service Agreements) pursuant to



access to the filings, and thus there is no prejudice to Intervenor Kelly of any other party resulting from the confidential filings. They further assert she did not object to the applicable protective orders when they were issued, and she identifies no grounds as to why these documents do not fall within the protections of their respective protective orders. For these reasons the Stipulating Parties argue Intervenor Kelly's unsubstantiated requests for public disclosure should be rejected.

In response to Intervenor Kelly's request for a hearing, the Stipulating Parties argue she has failed to provide any grounds justifying the need for a hearing. They state she had an opportunity to raise concerns throughout the proceeding, and she did not. Commission Staff provided an opportunity for written comment on the NECEC II Stipulation, and Intervenor Kelly has not articulated any reason why the process of written comments is insufficient to address any remaining concerns. Further, they state she has not identified how holding a hearing would lead to any additional benefit in the Commission's review of the matter. For these reasons, the Stipulating Parties state the Commission should reject the request for a hearing.

The process that led to the NECEC II Stipulation was fair and open to all parties. Commission Staff noticed and convened multiple settlement conferences that were available all parties. Further, supporting documentation for settlement discussions, including materials filed under protective orders, was also made available to all parties, and all parties were allowed full participation at each discussion. The Commission rejects the request to make the confidential attachments public and the request to convene a hearing. Intervenor Kelly has failed to articulate a basis to warrant removing confidential treatment of the specified attachments or, given the opportunity for written comment, to warrant convening a hearing on the merits. For these reasons, the Commission concludes that the second regulatory criterion for approval of stipulations has been satisfied.

C. Whether the NECEC II Stipulation is Reasonable, Consistent with Legislative Mandate, and in the Public Interest

The Commission's Rules require that stipulations be reasonable, consistent with legislative mandate, and in the public interest. NRCM and Intervenor Kelly cite no specific statutory provisions with which the NECEC II Stipulation is inconsistent but raise several arguments suggesting it would be inappropriate for the Commission to approve the NECEC II Stipulation, and that the NECEC II Stipulation is not in the public interest. As set forth below, the Commission addresses these issues under the final two regulatory criteria for approval of stipulations, and for the reasons discussed concludes the third and fourth regulatory criteria for approval of stipulations have been satisfied.

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Protective Order No. 1, which governs third party agreements containing confidential business information. CMP and NECC LLC also filed Attachment 18 (Updated Accounting Entries containing the amounts paid for the Merrill Strip Transmission Corridor Easement) pursuant to Protective Order No. 2, which governs proprietary business information related to the development of the NECEC.

1. Lease for Public Lands

NRCM argues the Commission should not approve the NECEC II Stipulation because it would authorize CMP to assign a lease to NECEC LLC, and NRCM states CMP does not have the requisite interest in the lease to allow the Commission to authorize CMP to assign it. Although not articulated as such, it appears NRCM asserts the NECEC II Stipulation is unreasonable, perhaps inconsistent with Title 35-A, or otherwise not in the public interest because of the pending legal status of the lease held by CMP.

CMP entered a lease with the State of Maine Bureau of Parks and Lands (BPL) for a parcel of public lands along the NECEC. The lease has been executed, but NRCM states entering the lease was an ultra vires act on the part of BPL and the lease is the subject of ongoing litigation. Citing caselaw on a land use administrative requirement that property owners must demonstrate sufficient right, title, or interest (RTI) in a property prior to agency review of a development permit application, NRCM argues it would be inappropriate for the Commission to authorize CMP to transfer the lease to NECEC LLC while litigation regarding the lease's validity is pending. NRCM states CMP does not have a valid interest to convey to NECEC LLC and therefore the Commission should prohibit CMP from transferring the lease.

The Stipulating Parties respond, stating the litigation does not invalidate the CMP-BPL lease, which by its terms authorizes CMP to assign the lease to NECEC LLC. The Stipulating Parties state that there is no requirement under 35-A M.R.S. § 3132 that petitioners demonstrate RTI in a parcel to obtain a CPCN and that determining interests in real property are beyond the scope of the Commission's authority. The Stipulating Parties conclude real property disputes are matters for the Superior Court, and thus litigation regarding the status of the CMP-BPL lease is not a basis for the Commission to reject the NECEC II Stipulation or to defer consideration of the NECEC II Stipulation pending resolution of the CMP-BPL lease litigation.<sup>7</sup>

While land use administrative proceedings typically require a demonstration of RTI as a means to establish administrative standing to seek development permit review and approval, see, e.g., 06-096 C.M.R. Chapter 2, § 11(D) (requiring demonstration of RTI in Department of Environmental Protection permit proceedings), the Commission is not persuaded that such a requirement is applicable under the facts and circumstances of this proceeding. NRCM has cited no express parallel provision in either Title 35-A or the Commission's Rules, and NRCM has not articulated any basis to conclude the

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<sup>7</sup> While a petition for a CPCN pursuant to 35-A M.R.S. § 3132 is not pending before the Commission in this proceeding, the Commission agrees with the Stipulating Parties in that there does not appear to be a role for the Commission in a CPCN proceeding in examining the legal status of a lease with BPL for public lands. To the contrary, the Legislature provided that a petitioner in a CPCN proceeding need not, and indeed cannot, demonstrate to the Commission an interest in such a lease with BPL as the statute requires a petitioner to first obtain a CPCN from the Commission, and to then execute any required lease with BPL. 35-A M.R.S. § 3132(13).

Commission has such implied authority in this proceeding. To the contrary, legal authority cited by NRCM directly precludes the Commission from examining the legal status of a lease for public lands. See note 7. Moreover, as stated above, the Petitioners seek approval of the assignment of the lease pursuant to 35-A M.R.S. § 1101(1), which plainly requires the Commission to apply a no net harm standard to determine whether assignment of a lease will neither be adverse to the public interest nor inconsistent with the interests of a company's ratepayers and investors. The Commission concludes pending litigation regarding the status of an executed lease for public lands is not a basis to interfere with the Commission's application of Section 1101 and our conclusion that the no net harm standard has been satisfied.

Accordingly, the Commission concludes the pending litigation regarding the CMP-BPL lease does not render the NECEC II Stipulation unreasonable, inconsistent with legislative mandate, or otherwise not in the public interest.

## 2. The Public Interest in Relation to the NECEC I Stipulation

Next, NRCM argues NECEC II Stipulation is not in the public interest because it is an outgrowth of the prior CPCN Order and the NECEC I Stipulation, with which it disagrees. Therefore, NRCM argues for the same reasons it asserted in the NECEC I Proceeding there was no public need for the NECEC, the public need or public interest criterion has not been satisfied with respect to the NECEC II Stipulation.

The Stipulating Parties respond that the Commission addressed whether the NECEC I Stipulation was reasonable, lawful, and in the public interest in the NECEC I Proceeding, that the Commission's decision was upheld on appeal, and that that matter cannot be relitigated. The Commission agrees. The Law Court upheld the CPCN Order approving the NECEC I Stipulation on appeal, including with respect to the Commission's application of the public need and public interest standard, *NextEra*, 2020 ME 34, ¶ 26, 227 A.3d at 1124-1125, and therefore this argument is without merit.

## 3. Public Interest in Relation to Risk to CMP ratepayers

Intervenor Kelly argues the "potential for self-dealing" as between CMP and NECEC LLC has not been fully vetted in this proceeding, and she identifies a series of alleged risks to CMP's ratepayers. Intervenor Kelly references concerns about ratepayer costs related to future transfers of interests in real estate, repair of transmission equipment and facilities, indemnification, and inter-corporate service agreements. She also states it is unfair to allow an affiliate to operate in CMP's service territory with special rights and privileges.

The Stipulating Parties respond that there are sufficient provisions in the NECEC II Stipulation to address Intervenor Kelly's concerns, which have already been vetted in this over one-year-long proceeding and resulted in safeguards to ensure CMP's customers do not bear the costs and liabilities of the NECEC. The Stipulating Parties note the OPA has

joined in the NECEC II Stipulation, which—in addition to the provisions of the NECEC I Stipulation which are protective of CMP's customers—contains provisions to ensure CMP's customers do not pay for expenses, liabilities, or damages related to the NECEC. Furthermore, the Stipulating Parties contend, since CMP's distribution rates are reviewed and approved by the Commission, the Commission has independent authority to disallow any costs associated with the NECEC from being included in the distribution rates paid by CMP's customers.

The Commission finds there are sufficient safeguards in the NECEC II Stipulation, coupled with the provisions of the NECEC I Stipulation and CPCN Order, to conclude the public interest standard has been met with respect to protecting CMP's customers from financial risks associated with the creation of NECEC LLC and the construction and operation of the NECEC. The terms of the NECEC I and NECEC II Stipulations, together with the pending attachments, sufficiently insulate CMP's customers from costs related to future transfers of interests in real estate, repair of transmission equipment and facilities, indemnification, and inter-corporate service agreements. For all of these reasons, the Commission concludes the NECEC II Stipulation is in the public interest.

## **VI. CONCLUSION AND ORDER**

For the foregoing reasons, the Commission concludes the requirements of its rules governing the review and approval of stipulations, MPUC Rules, ch. 110, § 8(D)(7), have been satisfied, and therefore the Commission approves the NECEC II Stipulation together with its attachments 1-18.

Dated at Hallowell, Maine, this 20<sup>th</sup> day of October, 2020.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear  
Harry Lanphear,  
Administrative Director

COMMISSIONERS VOTING FOR:     Bartlett  
   Williamson  
   Davis

### NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.