
United States
Department of Energy

Office of Electricity
OE Docket No. PP-438

NECEC Transmission LLC



Presidential Permit
No. PP-438

January 14, 2021

Presidential Permit

NECEC Transmission LLC Order No. PP-438

I. BACKGROUND

The United States Department of Energy (DOE or the Department) has the responsibility for implementing Executive Order (E.O.) 10,485, as amended by E.O. 12,038, which requires the issuance of a Presidential permit for the construction, operation, maintenance, or connection of electric transmission facilities at the United States (U.S.) international border.¹ DOE may issue such a permit if it determines that issuance of the permit is consistent with the public interest and after obtaining favorable recommendations from the U.S. Departments of State and Defense.²

On July 27, 2017, Central Maine Power Company (CMP) filed an application with the Office of Electricity of DOE for a Presidential permit for the New England Clean Energy Connect (NECEC) project. CMP updated its application via supplemental letters on August 26, 2019, January 3, 2020, July 30, 2020, and December 15, 2020. On January 6, 2021, CMP informed the Department that the project had been transferred and assigned to a special purpose entity, NECEC Transmission LLC (the Applicant), as of January 4, 2021.

The proposed NECEC project is a high voltage direct current (HVDC) transmission line and related facilities capable of delivering up to 1,200 megawatts (MW) of electric power from the Canadian border to the New England Control Area.³ All U.S. facilities described in the Presidential permit application are or would be located in the state of Maine. The project would cross the international border in the northwest corner of Beattie Township, Maine, at Latitude 45° 30' 56.39" N, Longitude 70° 43' 15.48" W. The portion of the NECEC project within the Canadian province of Québec would be constructed, owned, and operated by Hydro-Québec TransÉnergie, Inc. (HQT), an affiliate of Hydro Québec. HQT is not affiliated with CMP or NECEC Transmission LLC.

The facilities proposed to be developed by NECEC Transmission LLC are: (1) the segment from the Québec-Maine border up to and including the first transmission line

¹ The Secretary of Energy delegated the authority to administer the International Electricity Regulatory Program, through the regulation of electricity exports and the issuance of Presidential permits, to the Under Secretary of Energy in paragraph 1.15 D. of Delegation Order No. 00-002.00S, issued on January 15, 2020.

² See E.O. 10,485 (as amended by E.O. 12,038), section 1(a)(3).

³ The New England Control Area includes the transmission system administered by ISO-New England, the regional transmission organization, located in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, but does not include the transmission system in northern Maine (i.e., Aroostook County and parts of Penobscot and Washington counties).

pole in Maine; (2) approximately 145 miles of +/-320 kilovolt (kV), mostly overhead HVDC transmission line from the proposed border crossing to an interconnection point in Lewiston, Maine; (3) a new +/-320-kV direct current (DC) to 345-kV alternating current (AC) 1,200 MW converter station near Merrill Road in Lewiston, Maine (referred to as the Merrill Road Converter Station), which would convert the electrical power from DC to AC; (4) a 1.2-mile, above-ground 345-kV AC transmission line from the proposed Merrill Road Converter Station to the existing Larrabee Road Substation; and (5) a 345-kV line terminal at the Larrabee Road Substation.

DOE published a notice in the *Federal Register* on September 27, 2017 (82 Fed. Reg. 45,013) inviting comments and motions to intervene. DOE received two late-filed sets of comments and one accompanying motion to intervene. These are addressed in subsection II.D below.

II. DISCUSSION

E.O. 10,485, as amended, gives DOE broad discretion in granting permits, requiring only that the Department find that issuing a permit would be “consistent with the public interest.” In making this determination, DOE generally evaluates a proposed project’s impact on reliability of the U.S. electric grid, considers the environmental impacts of the proposed project, and weighs any other factors that DOE may consider relevant to the public interest. When a separate reliability analysis is conducted by an Independent System Operator (ISO)/Regional Transmission Organization (RTO), DOE’s practice has been to review the ISO/RTO’s analysis and determine the project’s impact on reliability.

A. Reliability Analysis

ISO New England Inc. (ISO-NE) commissioned a system impact study (SIS) to assess the impact of the project on the reliability and operating characteristics of the CMP transmission system and that of neighboring systems. The SIS concluded that the NECEC project would not adversely affect the reliability of the ISO-NE, New York ISO, Inc., or PJM Interconnection LLC transmission systems if all the proposed upgrades and the proposed voltage control strategy were implemented.⁴

The SIS noted, however, that there is a risk of torsional interaction between the NECEC project and several nearby generators. The SIS stated that a detailed sub-synchronous torsional interaction study to determine any required mitigation would be needed as part of the detailed design studies for the proposed project. The SIS also noted that the HVDC vendor had proposed to add one high-pass shunt filter on the 345-kV AC bus at the Merrill Road converter station to mitigate potential high frequency oscillations. The SIS added that the viability of this high-pass shunt filter should be further verified in the NECEC project’s design studies.

⁴ QP639 Elective Transmission Upgrade Interconnection System Impact Study for ISO New England, RLC Engineering (May 7, 2020).

Lastly, in a July 30, 2020 letter to the Office of Electricity, CMP clarified that the NECEC project would deliver 1,200 MW at the Larrabee Road Substation in Lewiston, Maine. To account for transmission line losses, the actual amount of power that would be transmitted across the Canadian border would be higher. CMP estimated the amount as approximately 1,250 MW.⁵ Therefore, although the NECEC project is expected to deliver 1,200 MW of electric power into the New England Control Area, the Presidential permit should account for the higher amount that would be transmitted across the border. The SIS tested the delivery of 1,200 MW at the Larrabee Road Substation, which is consistent with the July 30, 2020 letter. Thus, the conclusions of the SIS remain valid.

After reviewing the SIS, the Department has determined that the NECEC project will not have a negative impact on the reliability of the U.S. electric grid if its operation is consistent with North American Electric Reliability Corporation (NERC) policies and standards and other regulatory and statutory requirements, including the requirements of the ISO-NE SIS that are contingent on other study results and design modifications.

B. Environmental Analysis

Because Presidential actions are not subject to National Environmental Policy Act (NEPA) review, the Department could issue a Presidential permit without preparing an environmental assessment (EA) or environmental impact statement, or could conduct an environmental review that does not strictly comply with all of the requirements of NEPA. Notwithstanding this discretion, DOE prepared the NECEC EA (DOE/EA-2155) to inform the Department's public interest determination.

All facilities described in the Presidential permit application are or would be located in Maine. Except for the border crossing, DOE has no authority to approve, deny, or regulate these facilities and no ability to require the avoidance or minimization of related potential environmental impacts. Nonetheless, in the NECEC EA, DOE considered potential environmental effects of the proposed project for the length of the line from the United States–Canada border to the point of first interconnection in Lewiston, Maine.⁶

As described in the NECEC EA, the proposed project has been reviewed and approved by the Maine Public Utilities Commission, Maine Land Use Planning Commission, and Maine Department of Environmental Protection. In addition, the U.S. Army Corps of Engineers (USACE) prepared an EA regarding those portions of the proposed project within its jurisdiction and issued a Finding of No Significant Impact (FONSI). The USACE analysis included consideration of endangered species pursuant to Section 7 of the Endangered Species Act (ESA) (16 U.S.C. § 1536) and historic resources pursuant to Section 106 of the National Historic Preservation Act (NHPA) (54 U.S.C. §

⁵ Pierce Atwood, LLP letter from Randall S. Rich, Attorney for Central Maine Power Company, to Christopher A. Lawrence, Office of Electricity (July 23, 2020).

⁶ The remaining segments of the NECEC project in the United States generally include upgrades to existing transmission lines and facilities that are not part of the Presidential permit application. The need for these upgrades is partly driven by the State of Maine's renewable portfolio standard, which includes increasing retail electricity sales from renewable energy sources to 80% by 2030 and 100% by 2050.

306108). USACE concluded that the proposed project did not pose the potential for significant environmental impacts. USACE subsequently issued a permit for the proposed project under Section 404 of the Clean Water Act (33 U.S.C § 1344) and Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403). DOE participated in the ESA Section 7 and NHPA Section 106 consultations and as a cooperating agency in preparation of the USACE EA.

DOE issued its NECEC EA (DOE/EA-2155) for the proposed project on January 14, 2021. The EA is available via the DOE NEPA website at <https://www.energy.gov/nepa/doe-2155-new-england-clean-energy-connect-maine>.

DOE determined that issuance of a Presidential permit to the Applicant to construct, connect, operate, and maintain a new electric transmission line at the U.S.-Canada border in Beattie Township, Maine would not have a significant effect on the human environment. The preparation of an environmental impact statement, therefore, is not required, and DOE issued a FONSI on January 14, 2021.

C. Concurrences

On December 16, 2020, DOE received a letter from the Department of Defense stating it had no objection to DOE issuing the amended permit to NECEC Transmission LLC. On January 5, 2021, DOE received a favorable recommendation from the Department of State to issue the permit.

D. Public Comments

As noted above, DOE received two comments following its September 27, 2017 notice of application in the *Federal Register*. The first comment was filed more than two years after the close of the comment period, and the second was filed nearly three years after the close of the comment period. Although “late-filed comments [cannot always] be ignored for purposes of [an] administrative record,” they can be declined when unusual and compelling circumstances are not present. *See Ad Hoc Metals Coal. v. Whitman*, 227 F. Supp. 2d 134, 140 (D.D.C. 2002). Neither comment was submitted under unusual and compelling circumstances justifying the delay. DOE therefore declines to consider them.

On January 30, 2020, Calpine Corporation filed a motion to intervene and comments out of time. The comments allege that the proposed project would not improve reliability of the transmission system and is overall not in the public interest. The Applicant filed comments opposing Calpine’s motion to intervene out of time. Because Calpine’s motion to intervene and comments were filed over two years after the deadline, the motion is denied, and the comments will not be considered.

On October 7, 2020, the Pessamit Innu First Nation, Wemotaci Atikamekw First Nation, Pikogan, Lac-Simon and Kitcisakik of the Anishnabeg Nation (the Nations) submitted late-filed comments to DOE focusing on the impacts of the proposed project in Canada. Because the Nations’ comments were filed nearly three years after the deadline, the comments will not be considered. The Department notes, however, that NEPA does

not require an analysis of potential environmental impacts that occur solely within another sovereign nation with its own environmental statutes and regulations that result from actions approved by that sovereign nation. Further details appear in the accompanying EA.

III. FINDINGS AND DECISION

Based on its review of NECEC Transmission LLC’s application, DOE finds that the proposed project will not have a negative impact on the reliability of the U.S. electric grid if operated consistently with NERC policies and standards (as approved by the Federal Energy Regulatory Commission (FERC)), terms and conditions of the Presidential permit, and other regulatory and statutory requirements.

In addition to DOE’s reliability determination, based upon the results of the environmental analysis and concurrences of the Departments of State and Defense, DOE determines that the issuance of a Presidential permit to NECEC Transmission LLC is consistent with the public interest.⁷

IV. DATA COLLECTION AND REPORTING

DOE’s Energy Information Administration (EIA) is responsible for data collection and reporting under Presidential permits authorizing electric transmission facilities at the U.S. international border and orders authorizing electricity exports to a foreign country. NECEC Transmission LLC must submit Form EIA-111 “Quarterly Electricity Imports and Exports Report,” or any successor forms, as specified by the EIA. NECEC Transmission LLC must also follow EIA instructions in utilizing the Data xChange Community Portal. Questions regarding the data collection and reporting requirements can be directed to the EIA by email at EIA4USA@eia.gov or by phone at 1-855-342-4872.

⁷ This Order is consistent with the Department’s practices regarding change in multiple joint ownership adopted in Presidential Permit Orders PP-82-3 (Feb. 7, 2005) and PP-82-4 (May 2, 2016) and deemed appropriate given the unique nature of the Applicant.

V. OPEN ACCESS POLICY

DOE expects owners and operators of border facilities to provide access across the border in accordance with the principles of comparable open access and non-discrimination contained in the Federal Power Act (FPA) and articulated in FERC's Order No. 888, *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities*, as amended.⁸ The actual rates, terms, and conditions of transmission service should be consistent with the non-discrimination principles of the FPA and the transmitting utility's Open-Access Transmission Tariff on file with FERC.

The holder of this Presidential permit is required to conduct operations in accordance with the applicable principles of the FPA and any pertinent rules, regulations, directives, policy statements, and orders adopted or issued thereunder, which include the comparable open access provisions of FERC Order No. 888, as amended. Cross-border electric trade ought to be subject to the same principles of comparable open access and non-discrimination that apply to transmission in interstate commerce. *See Enron Power Mktg., Inc. v. El Paso Elec. Co.*, 77 FERC ¶ 61,013 (1996), *reh'g denied*, 83 FERC ¶ 61,213 (1998)). Thus, DOE expects owners of border facilities to comply with the same principles of comparable open access and non-discrimination that apply to the domestic, interstate transmission of electricity.

VI. ORDER

Pursuant to the provisions of E.O. 10,485, as amended by E.O. 12,038, and the regulations issued thereunder (Title 10, Code of Federal Regulations, Part 205), permission is granted to NECEC Transmission LLC to construct, operate, maintain, and connect electric transmission facilities at the international border of the United States and Canada, as further described in Articles 1 and 2 below, upon the following conditions:

Article 1. The facilities herein described shall be subject to all conditions, provisions, and requirements of this Permit. DOE's geographic jurisdiction comprises the segment of the facilities extending from the Québec-Maine border up to and including the first transmission line pole in Maine. This Permit may be modified or revoked by the President of the United States without notice, or by DOE after public notice, and may be amended by DOE after proper application thereto.

Article 2. The facilities covered by and subject to the conditions of this Permit shall include the facilities and all supporting structures within the right-of-way occupied by such facilities within the segment from the Québec-Maine border up to and including the first transmission line pole in Maine.

⁸ 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000) (*TAPS v. FERC*), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

The project would cross the Québec-Maine border in the northwest corner of Beattie Township at Latitude 45° 30' 56.39" N, Longitude 70° 43' 15.48" W.

The NECEC project facilities are more specifically shown and described in the application filed in this docket, as amended.

Article 3. The facilities shall be designed and operated in accordance with the applicable reliability criteria established by ISO-New England Inc. (ISO-NE) and the North American Electric Reliability Corporation (as approved by the Federal Energy Regulatory Commission) or their successors. The maximum non-simultaneous rate of transmission over the permitted facilities shall not exceed 1,250 MW. The facilities shall also be operated consistently with other regulatory and statutory requirements, as well as the requirements of ISO-NE. The upgrades identified by ISO-NE as necessary for interconnection and operation of the facilities, including requirements that are contingent on other study results and design modifications, must also be completed before the NECEC project is placed into service.

Article 4. NECEC Transmission LLC shall implement the Project-specific Applicant Committed Measures contained in the Final Environmental Assessment for the NECEC Project (DOE/EA-2155), and all requirements set forth in all other necessary federal, state, and local permits, approvals, and consultations.

Article 5. No change shall be made in the facilities covered by this Permit, or in the authorized operation or connection of these facilities, unless such change has been approved by DOE.

Article 6. NECEC Transmission LLC shall at all times maintain the facilities covered by this Permit in a satisfactory condition so that all requirements of the National Electric Safety Code in effect at the time of construction are fully met.

Article 7. The operation and maintenance of the facilities covered by this Permit shall be subject to the inspection and approval of a designated representative of DOE, who shall be an authorized representative of the U.S. for such purposes. NECEC Transmission LLC shall allow officers or employees of the U.S., with written authorization, free and unrestricted access into, through, and across any lands occupied by these facilities in the performance of their duties.

Article 8. NECEC Transmission LLC shall investigate any complaints from nearby residents of radio or television interference identifiably caused by the operation of the facilities covered by this Permit. NECEC Transmission LLC shall take appropriate action as necessary to mitigate such situations. Complaints from individuals residing within one-half mile of the centerline of the transmission line covered by this Permit must be resolved. NECEC Transmission LLC shall maintain written records of all complaints received and of the corrective actions taken.

Article 9. The United States shall not be responsible or liable for damages of any kind that may arise from or be incident to the exercise of the privileges granted herein.

NECEC Transmission LLC shall hold the United States harmless from any and all such claims.

Article 10. NECEC Transmission LLC shall arrange for the installation and maintenance of appropriate metering equipment to record permanently the hourly flow of all electric energy transmitted between Canada and the United States over the facilities authorized herein. NECEC Transmission LLC shall make and preserve full and complete records with respect to the electric energy transactions between the United States and Canada. NECEC Transmission LLC shall collect and submit the data to EIA as required by and in accordance with the procedures of Form EIA-111, “Quarterly Electricity Imports and Exports Report,” or its successor form.

Article 11. Neither this Permit nor the facilities covered by this Permit, or any part thereof, shall be transferable or assignable, unless specifically authorized by DOE in accordance with Title 10, Code of Federal Regulations, Part 205.

Article 12. Upon the termination, revocation, or surrender of this Permit, the permitted facilities that are owned, operated, maintained, and connected by NECEC Transmission LLC, shall be removed and the land restored to its original condition within such time as DOE may specify and at the expense of NECEC Transmission LLC. If NECEC Transmission LLC fails to remove such facilities or any portion thereof authorized by this Permit, DOE may direct that such actions be taken for the removal of the facilities or the restoration of the land associated with the facilities at the expense of NECEC Transmission LLC. NECEC Transmission LLC shall have no claim for damages by reason of such possession, removal, or repair. However, if certain facilities authorized herein are useful for other utility operations within the jurisdiction of the United States, DOE may not require that those facilities be removed and the land restored to its original condition upon termination of the international interconnection.

Article 13. NECEC Transmission LLC has a continuing obligation to give DOE written notification as soon as practicable of any prospective or actual changes of a substantive nature in the circumstances upon which this Order was based, including but not limited to changes in authorized entity contact information.

Signed in Washington, D.C., on January 14, 2021.

Steven Winberg
Acting Under Secretary of Energy
U.S. Department of Energy