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January 29, 2019

Susanne Miller, Director
Eastern Maine Regional Office
Maine Department of Environmental Protection
106 Hogan Road, Suite 6, 3rd Floor
Bangor, ME 04401

RE: NECEC – NRCM, AMC, and TU Request to Include Greenhouse Gas Impacts in Public Hearings

Dear Presiding Officer Miller:

This letter responds to the January 24, 2019 letter from the Natural Resources Council of Maine (NRCM), the Appalachian Mountain Club (AMC), and Trout Unlimited (TU) (collectively, Group 4) requesting that you amend the hearing topics identified in your Second Procedural Order, dated October 5, 2018, to add consideration of greenhouse gas impacts. You should reject the Group 4 request, for multiple reasons, discussed below.

First, nothing has changed since the Presiding Officer rejected NRCM's request almost five months ago, at the September 7, 2018 prehearing conference, and you again rejected it in your October 5, 2018 procedural order.¹ This is simply a transparent attempt to re-hash resolved issues and to make the hearing more complicated in the hope that we will not be able to finish the hearing in one week, and thus will need to continue the hearing at a later date, delaying issuance of the permit. Group 4 hopes that if they can delay the permit long enough, it may kill the project. You should not condone such tactics.

Second, Group 4 had the opportunity to appeal your ruling to the Commissioner, as provided in Chapter 3, Section 4(D) ("Pre-hearing rulings . . . are appealable to . . . the Commissioner in Commissioner licensing proceedings where the Commissioner is not the Presiding Officer."). By failing to appeal your prior ruling Group 4 has waived its right to ask you to reconsider it.

¹ Nor has AMC or TU raised this issue until this late hour. In the First Procedural Order, DEP ordered that intervenors must submit by August 27, 2018 "a specification of the statutory and regulatory criteria that they wish to address at the public hearing [and] the specific, significant or contentious topics or subject matters under those criteria relating to the project that they wish to address." First Procedural Order, ¶ 19. NRCM is the only member of Group 4 that raised alteration of climate in its response to the First Procedural Order.

Third, your prior ruling was correct. The only basis Group 4 asserts that impacts on GHG emissions are relevant to DEP's review criteria is Site Law Section 484(3), which provides that DEP "shall approve a development proposal whenever it finds [that the] developer has made adequate provision for fitting the development harmoniously into the existing natural environment and that the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities." 38 M.R.S. § 484(3) (emphasis added). This provision, which is aimed at potential nearby impacts ("in the municipality or in neighboring municipalities"), is fleshed out in Chapter 375, sections 1 and 2 of DEP's rules.

Section 1, which addresses "air quality," considers "point source emissions from certain types of commercial and industrial developments and solid waste disposal facilities and non-point source emissions deriving from industrial, commercial, and governmental developments." That section further limits DEP's consideration to "point or non-point sources of chemical pollutants or particulate matter" from the proposed development. The NECEC Project does not include any such sources.

Section 2, which addresses "alteration of climate," considers "large-scale, heavy industrial facilities, such as power generating plants," and those facilities' potential "to affect the climate in the vicinity of their location by causing changes in climatic characteristics such as rainfall, fog, and relative humidity patterns." At the September 7, 2018 prehearing conference, Assistant Attorney General Bensinger noted that these provisions are limited to consideration of impacts from the specific development being proposed, and whether it would have climate impacts "in the vicinity of" the development's location. In other words, the rule limits consideration of climate impacts to any such impacts that result from the development itself, in its location – not from distant benefits or impacts attributable to a product that will pass through the development (such as electricity or goods sold at a store).

Thus, impacts on GHG emissions are not relevant to the DEP's approval criteria under either NRPA or the Site Law. Instead, renewable energy goals such as the State's goals for reduction of greenhouse gas emissions (38 M.R.S. § 576) are explicitly within the purview of the Maine Public Utilities Commission (MPUC), which is statutorily obligated to take into account "state renewable energy generation goals" in determining the public need for a project. 35-A M.R.S. § 3132(6).

The MPUC is in fact considering the GHG emissions impacts expected from the Canadian renewable energy that will be transmitted over the Project as part of the on-going Certificate of Public Convenience and Necessity (CPCN) proceeding for the Project. See MPUC Docket No. 2017-00232. The parties to the MPUC proceeding, including NRCM, offered significant evidence regarding the GHG emissions impacts of the Project in Maine, New England, and across the entire Northeast region of the U.S. and Canada, including modeling from three different consultants experienced in modeling energy markets and resulting GHG emissions. This evidence was the subject of discovery and cross-examination during the MPUC's recent hearings. The MPUC is expected to address the GHG emissions impact of the Project as part of its order on CMP's CPCN petition, which order is expected by the end of March.

Fourth, Group 4 asserts that CMP relies on the Project's GHG reduction benefits as the Project's "purpose and need," and thus that the opposition intervenors should be able to rebut at the hearing CMP's statements concerning those benefits. In fact, nowhere has CMP stated that the Project's purpose and need includes GHG emissions reductions. In the NRPA application CMP stated, with respect to the Project's purpose and need:

The purpose of the NECEC Project is to deliver up to 1,200 MW of Clean Energy Generation from Québec to the New England Control Area via a High Voltage Direct Current (HVDC) transmission line, at the lowest cost to ratepayers. This Project is proposed in response to the Request for Proposals for Long-Term Contracts for Clean Energy Projects dated March 31, 2017 (RFP) issued by the electric distribution companies of the Commonwealth of Massachusetts and the Massachusetts Department of Energy Resources. However, if the NECEC Project is not awarded through this RFP, the Project will still fulfill the purpose and need of delivering renewable energy from Canada to New England, which has a continuing need for such power.

As is evident, this statement of Project purpose and need does not include GHG reduction benefits, but simply refers to the delivery of renewable energy from Canada to New England, in response to the Massachusetts Clean Energy RFP. Although CMP noted in the applications that the Project would have GHG reduction benefits, those benefits were not included as part of the Project's purpose and need.

Group 4 makes several misstatements on these points.

- Page 1: "CMP has stated that this proposed project is necessary to achieve certain greenhouse gas emissions reduction goals." In fact, CMP has not stated on the record in this proceeding that the Project is "necessary" to achieve GHG emission reduction goals. Rather, as noted above, CMP simply noted that the Project will have GHG emissions reduction benefits. That does not make the Project's impact on such emissions a DEP review criterion.
- Page 2: "CMP is alleging that they need to build this project to achieve greenhouse gas reductions goals and that the purported greenhouse gas emissions reductions in New England will have a benefit in Maine, both climatically and in achieving the state's RGGI goals." As noted above, CMP is not alleging in this proceeding that it "needs" to build the Project to achieve GHG reduction goals. Although that will be a benefit of the Project, that is not part of the Project's purpose and need, as noted above, and it is not a DEP review criterion.
- Page 2: "Because CMP is relying so heavily on these alleged benefits, Intervenor should have the opportunity to present witnesses at the public hearing to rebut these unsupported assertions in CMP's applications." In fact, CMP is not "relying heavily" on GHG reduction benefits, because they are not relevant to DEP's approval criteria. CMP has noted those benefits, but that does not turn them into a DEP review criterion or make them part of the Project's purpose and need.
- Page 3: "the applicant alleges that this project is specifically designed to reduce greenhouse gas emissions." Again, this is false. As noted above, the Project is designed "to deliver up to 1,200 MW of Clean Energy Generation from Québec to the New England Control Area via a High Voltage Direct Current (HVDC) transmission

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line, at the lowest cost to ratepayers.” That is the stated Project purpose, nothing else.

- Page 3: “CMP bases the ‘need’ for this project primarily on climate benefits.” Again, as noted above, this is false. That is not the Project purpose or need, though it is a Project benefit.

What CMP has stated outside the agency record in this proceeding has no relevance to DEP’s review criteria. Group 4 asserts on page 3 of its letter that “CMP has made numerous disputed and unsubstantiated claims about the emissions benefits of NECEC as a part of its attempts to sell this project to Maine decision makers and citizens. . . . Therefore, climate issues must be a subject for the public hearing.” This logic does not flow. Although CMP’s statements are substantiated, it is wrong for Group 4 to assert that its disagreement with CMP’s public statements somehow turns GHG emission impacts into a DEP review criterion. What CMP has said outside of the DEP record is irrelevant to the DEP’s approval criteria.

Although GHG emissions are not a DEP review criterion, and thus should not be considered at the hearing, CMP would not object to allowing submission of written comments addressed solely to CMP’s application statements that have noted the Project’s GHG reduction benefits, as long as CMP has an opportunity to respond in writing to those comments. This would allow intervenors to address CMP’s statements in the record without letting the hearing get bogged down on ancillary issues that are not relevant to DEP’s review criteria. If this issue were to be allowed as a hearing topic, the hearing no doubt would spiral out of control and require several additional days to address this issue, which is, of course, the Group 4 strategy. Please reject this strategy.

Thank you for your consideration of this letter. Please let me know if you have questions or need additional information.

Sincerely,



Matthew D. Manahan

cc: Service Lists