



POWER ENGINEERS, INC.

105 SECOND STREET

SUITE 1A

HALLOWELL, MAINE 04347

PHONE 207-869-1490

FAX 207-309-3030

July 26, 2023

VIA EMAIL

Jim Amaral, Planning Board Chair
Greg Lumbert, Code Enforcement Officer
Town of Alna
1574 Alna Road
Alna, ME 04535

Re: Central Maine Power Company – Section 3027 Transmission Line Project –
Shoreland Zoning & Floodplain Management Permits

Dear Jim and Greg:

Thank you for speaking with me about Central Maine Power Company's ("CMP's") Shoreland Zoning and Floodplain Management permits to construct the Section 3027 345kV transmission line (the "Project," which is required for interconnection of the New England Clean Energy Connect ("NECEC") to the existing New England Transmission System) that the Planning Board approved on August 3, 2021. As discussed below, the Shoreland Zoning permit remains valid until January 22, 2025 because the Shoreland Zoning Ordinance ("SZO") two-year construction completion deadline was tolled during the time period in which continued construction was an impossibility.

Section 16.E of the SZO allows permittees two years within which to complete a project:

Permits shall expire one year from date of issuance if no substantial start is made in construction or in the use of the property during that period. If a substantial start has been made within one year of issuance of the permit, the applicant shall have one additional year to complete the permit, at which time the permit shall expire.

Section 17 of the SZO defines a "substantial start" as follows:

Substantial start – completion of thirty percent of a permitted structure or use measured as a percentage of estimated total cost.

Because CMP expended approximately 60% (see the table below) of its estimated total Project cost in Alna within the first year of permit issuance, CMP made a “substantial start” in construction and then had an additional year to “complete the permit,” until August 3, 2023.

ALNA - Percentage of Work Complete				
Scope		Estimated	Expended as of 6/2023	
Steel Poles	\$	195,721.00	\$ 195,721.00	100%
Wood Poles	\$	18,354.00	\$ 18,354.00	100%
Conductor	\$	92,539.00	\$ 92,539.00	100%
Construction	\$	423,246.00	\$ 81,572.00	19%
Engineering/Contracted Labor	\$	233,116.80	\$ 194,264.00	83%
Total estimated cost 5/28/2021	\$	962,976.80	\$ 582,450.00	60%

However, construction came to a halt on November 23, 2021 when the Maine Department of Environmental Protection (“DEP”) issued an order suspending its license for the Project on the grounds that on November 2, 2021 Maine voters approved L.D. 1295, “An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region” (the “Referendum”). After the decision in *NECEC Transmission LLC v. Bureau of Parks & Lands*, Docket No. BCD-CIV-2021-00058, Final Judgment (Bus. & Cons. Ct. Apr. 20, 2023) concluding that the Referendum unconstitutionally prohibited construction of the NECEC, the DEP issued a letter (enclosed herein as Attachment I) confirming that its license was no longer suspended and that construction may resume.

While CMP planned to complete the Project in Alna within the two years allowed by the SZO, CMP was prevented from doing so by the DEP’s license suspension based on the unconstitutional Referendum. In fact, during the period of DEP license suspension, which ran from the DEP’s issuance of the license suspension on November 23, 2021 to the DEP’s lifting of the license suspension on May 15, 2023, it was a legal impossibility for CMP to conduct any construction activities in Alna.

As a matter of law, therefore, the deadline within which to complete construction was tolled starting on the date of the DEP suspension order until the time that order was lifted (a period of 538 days). Adding that period of time to the August 3, 2023 permit expiration date results in a new construction deadline of January 22, 2025.

In other words, under SZO Section 16.E CMP has two years to complete the permitted work, but that time can run only during the period in which CMP is able to conduct the work, which was up until the DEP license suspension and again after the DEP license suspension lifted. In Alna, the period in which CMP is permitted to construct runs from August 3, 2021 to November 23, 2021 and from May 15, 2023 to January 22, 2025 (totaling two years).

It would be unfair to read SZO Section 16.E narrowly to require all construction to have been completed in the small windows of time on either end of the DEP license suspension, particularly given the situation here, in which the suspension of construction was out of CMP's control and was, in fact, an unconstitutional infringement on CMP's constitutional rights. The plain language of the SZO allows permittees two years (if "substantial start" has been made within one year of issuance of the permit) to complete a project; it would be contrary to the intent of the ordinance to have this period of time run when construction was an impossibility.

The judicial precedent for this conclusion is directly relevant here, and is set forth in *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48 (Aug. 30, 2022). In that case and the subsequent Superior Court decision noted above the Maine courts ruled that the right to proceed with construction had vested, and thus failure to toll municipal construction deadlines would unconstitutionally apply the Referendum to Project construction. That is, CMP must be put in the same position it would have been in if the Referendum had not been approved and the DEP license suspended in November 2021. Because CMP undertook significant, visible construction in good faith and with the intent to carry construction through to completion as authorized by the final municipal permits – before the law changed – unless the construction deadlines are tolled the municipality would be unconstitutionally impairing CMP's vested rights to complete that construction. The Law Court in its August 2022 decision stated as follows:

Obtaining the CPCN alone was necessary but not sufficient to confer the right to *complete* construction. However, we hold that NECEC could reasonably rely on the CPCN, and our judgment affirming the CPCN, as valid authorization to *begin* construction such that its right to proceed according to the CPCN's terms could vest upon evidence that it undertook significant, visible construction in good faith, according to a schedule that was not created or expedited for the purpose of generating a vested rights claim. [*Id.* at ¶ 50 (emphasis original)].

In other words, failure to toll construction deadlines would continue to impair (unconstitutionally) CMP's vested rights and, in fact, CMP not only had the vested right to begin construction, but actually had the right to complete construction in each municipality.

Note also that nine (9) other municipalities so far have agreed with this conclusion. These include the towns of Caratunk, Chesterville, Embden, Farmington, Industry, Jay, Leeds, Moscow, and New Sharon. As a recent example, see the signed letters of concurrence from the code enforcement officer in the towns of Chesterville Embden and Moscow (enclosed herein as Attachment II).

We request confirmation of the foregoing conclusion, that the Shoreland Zoning permit expiration date was tolled during the time period in which CMP was unconstitutionally prohibited from constructing the Project in Alna, and the new SZO Section 16.E deadline to “complete the permit” is January 22, 2025. Failing your agreement on these points, CMP will need to appeal the decision or re-apply for shoreland zoning approval for the Project, but we believe there is no need for that application, and that it makes more sense not to burden the Planning Board with such unnecessary additional steps.

Although this issue is within the purview of the Code Enforcement Officer, we understand that the Alna Planning Board will consider this issue at its meeting on Wednesday, August 1, 2023; we will plan to attend that meeting to answer any questions you or they may have. Thank you for your consideration of this request.

Best regards,



Gary Emond
Sr. Environmental Project Manager

Enclosures

Attachment I: Maine DEP May 15, 2023 Letter
Attachment II: Municipal Concurrence Letter Example

SEEN AND AGREED TO (signature):
DATE:



POWER ENGINEERS, INC.

105 SECOND STREET

SUITE 1A

HALLOWELL, MAINE 04347

PHONE 207-869-1490

FAX 207-309-3030

Attachment I: Maine DEP May 15, 2023 Letter



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

MELANIE LOYZIM
COMMISSIONER

May 15, 2023

Gerry Mirabile, Director
NECEC Permitting and Compliance
83 Edison Drive
Augusta, ME 04336

VIA Email Only

Re: NECEC License Suspension

Dear Mr. Mirabile,

As you are aware, the legal challenge, *NECEC Transmission, LLC, et al v. Bureau of Parks and Lands*, has been decided in favor of NECEC Transmission LLC and Avangrid Networks, Inc. The period for a possible appeal expired on May 12, 2023, and none of the parties to the case filed an appeal. Therefore, consistent with the terms of the Commissioner’s November 23, 2021 Suspension Order, the Site Location of Development Law and Natural Resources Protection Act license, #L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/L-27625-VP-D-N/L-27625-IW-E-N (License), for the New England Clean Energy Connect Project (the Project) is no longer under suspension.

As required by Section IV (B)(3) of the Suspension Order, the Licensees must provide the Department written notice at least five days prior to the resumption of construction activities. The notice must provide a date and location(s) for the resumption of construction.

The Suspension Order tolled the review of two pending condition compliance applications. Department staff will resume reviewing these applications. One is the condition compliance application for Special Condition #5 (#L-27625-26-AM-C) which required the establishment of a financial guarantee in the amount of \$1,875,000 to fund culvert replacements, and the submission of a plan that establishes the locations of the culverts to be replaced and describes how the funds will be disbursed. Special Condition # 5 required the financial assurance and the plan to be submitted prior to the start of commercial operation. The Department received a condition compliance application on November 16, 2020, along with an Irrevocable Standby Letter of Credit from BNP Paribas Bank. This satisfies the financial guarantee portion of the condition. However, the Department has yet to receive a plan with the locations of culverts to be replaced and a description of how funds will be disbursed. This information must be submitted to the Department for the continuation of the review of the condition compliance application. The final plan must be submitted prior to the start of commercial operation.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

The other condition compliance application (#1-27628-26-AD-C) is for compliance with Special Condition #39 of the License, which required the submission of a Conservation Plan to conserve 40,000 acres of land to mitigate for impacts to wildlife habitat from fragmentation caused by Segment 1. The condition was amended by Special Condition #10 of Board Order #L-27625-26-F-Z/ L-27625-TG-G-Z- L-27625-2C-HZ/ L-27625-VP-I-Z/ L-27625-IW-J-Z/ L-27625-26-AB-Z, which increased the number of acres to be conserved from 40,000 to 50,000. As required by the License, the Conservation Plan must:

- Establish as its primary goal the compensation for the fragmenting effect of the transmission line on habitat in the region of Segment 1 and the related edge effect by promoting habitat connectivity and conservation of mature forest areas;
- Identify the area(s), with a focus on large habitat blocks, to be conserved and explain the conservation value of this land; any conservation area must be at least 5,000 acres unless the area is adjacent to existing conserved land or the Licensees must demonstrate that the conservation of any smaller block, based on its location and other characteristics, is uniquely appropriate to further the goals of the Conservation Plan;
- Include a draft forest management plan establishing how, consistent with the primary goal of the Conservation Plan, the conservation area(s) will be managed, including to provide blocks of habitat for species preferring mature forest habitat and wildlife travel corridors along riparian areas and between mature forest habitat;
- Explain the legal interest, such as fee ownership or a working forest conservation easement, that will be acquired in each area; the proposed owner or holder of this interest; and the qualifications of each proposed owner or holder;
- Include preliminary consent from any proposed owner or holder;
- Explain how the Licensees will ensure the availability of stewardship funding (e.g., funding for monitoring and enforcement) needed to support achievement of the goals of the Conservation Plan; and
- Ensure the Department will have third party enforcement rights.

The information submitted to date only includes a general description of the areas you have been searching for parcels to conserve and a general description of the forest management objectives. It does not include specific parcels to be conserved, the holders of any easement, a forest management plan specific to any parcel, or provisions for a stewardship fund. All of this information must be submitted for the Department's review of the condition compliance application. If the condition compliance application is approved, the plan must be fully implemented prior to the start of commercial operation.

Following the written notice required by the Suspension Order, construction may resume while these condition compliance applications are being reviewed, however both have timeframes for certain milestones to be reached, as described in the License.

Letter to Gerry Mirabile re: NECEC License Suspension
May 15, 2023

If you need further assistance, please contact Jim Beyer either by phone at (207) 446-9029 or by email at jim.r.beyer@maine.gov.

Sincerely,

A handwritten signature in blue ink that reads "Melanie Loyzim". The signature is fluid and cursive, with the first name "Melanie" written in a larger, more prominent script than the last name "Loyzim".

Melanie Loyzim, Commissioner
Maine Department of Environmental Protection

Cc Jim Beyer, DEP
Service List for Suspension



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HALLOWELL, MAINE 04347

PHONE 207-869-1490

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Attachment II: Municipal Concurrence Letter Example



June 16, 2023

VIA EMAIL

John Arnold
Code Enforcement Officer
Town of Chesterville
Town Hall
409 Dutch Gap Road
Chesterville, ME 04938

Re: New England Clean Energy Connect Project – Shoreland Zoning Permit

Dear John:

Thank you for speaking with me about NECEC Transmission LLC's (NECEC LLC's) Shoreland Zoning permit to construct the New England Clean Energy Connect (NECEC or Project) in Chesterville, which the Planning Board issued on May 12, 2021. As I will discuss below, this permit remains valid until November 3, 2024 because the two-year construction deadline set forth in Section 16.F of the Shoreland Zoning Ordinance (SZO) was tolled during the time period in which continued construction was an impossibility.

While NECEC LLC commenced work in Chesterville upon receipt of the required approval, construction came to a halt on November 23, 2021, when the Maine DEP issued its order suspending its license for the Project on the grounds that on November 2, 2021, Maine voters approved L.D. 1295, "An Act To Require Legislative Approval of Certain Transmission Lines, Require Legislative Approval of Certain Transmission Lines and Facilities and Other Projects on Public Reserved Lands and Prohibit the Construction of Certain Transmission Lines in the Upper Kennebec Region" (the Referendum).

As a result of the final judgment entered by the Maine Business Court on April 21, 2023, however, the Project may lawfully resume construction. *NECEC Transmission LLC v. Bureau of Parks & Lands*, Docket No. BCD-CIV-2021-00058, Final Judgment (Bus. & Cons. Ct. Apr. 20, 2023). The courts in that case concluded that the Referendum violated NECEC LLC's constitutional rights and may not be applied to the Project. On May 15, 2023 the Maine DEP issued a letter (enclosed herein as Attachment I) confirming that its license was no longer suspended and that construction may resume.

While NECEC LLC planned to complete the Project in Chesterville within the two years allowed by the SZO, NECEC LLC was prevented from doing so by the unconstitutional Referendum and the DEP's license suspension based on that Referendum. In fact, during the period of DEP license suspension, which ran from the DEP's issuance of the license suspension on November 23, 2021 to the DEP's lifting of the license suspension on May 15, 2023, it was a legal impossibility for NECEC LLC to conduct any construction activities in Chesterville.



As a matter of law, therefore, the deadline within which to complete construction was tolled starting on the date of the DEP suspension order until that order was lifted; tolling the deadline is necessary to avoid further infringement of NECEC LLC's constitutional rights. In other words, under SZO Section 16.F NECEC LLC has two years to complete the permitted work, but that time can run only during the period in which NECEC LLC is able to conduct the work, which was up until the DEP license suspension and again after the DEP license suspension lifted.

Because 6 months and 11 days (of a 30-day month) elapsed between the May 12, 2021 permit issuance date and the November 23, 2021 DEP license suspension date, 17 months and 19 days (of the total 24 months) remain to complete construction in Chesterville. The new Project completion deadline is calculated by adding that remaining time to the May 15, 2023 lifting of the DEP license suspension, at which time construction could resume, resulting in a revised deadline of November 3, 2024.

Put simply, NECEC LLC is permitted two years to construct the Project, which runs from May 12, 2021 to November 23, 2021 (6 months and 11 days) and from May 15, 2023 to November 3, 2024 (17 months and 19 days). It would be unfair to read SZO Section 16.F narrowly to require all construction to have been completed in the 6 months and 11 days NECEC LLC was able to construct, particularly given the situation here, in which the suspension of construction was out of NECEC LLC's control and was, in fact, an unconstitutional infringement on NECEC LLC's constitutional rights. The plain language of the SZO allows permittees two years to complete a project; it would be contrary to the intent of the ordinance to have this period of time run when construction was an impossibility.

The judicial precedent for this conclusion is directly relevant here, and is set forth in *NECEC Transmission LLC v. Bureau of Parks & Lands*, 2022 ME 48 (Aug. 30, 2022). In that case and the subsequent Superior Court decision noted above the Maine courts ruled that NECEC LLC's right to proceed with construction had vested, and thus failure to toll municipal construction deadlines would unconstitutionally apply the Referendum to Project construction. That is, NECEC LLC must be put in the same position it would have been in if the Referendum had not been approved in November 2021. Because NECEC LLC undertook significant, visible construction in good faith and with the intent to carry construction through to completion as authorized by the final municipal permits – before the law changed – unless the construction deadlines are tolled the municipality would be unconstitutionally impairing NECEC LLC's vested rights to complete that construction. The Law Court in its August 2022 decision stated as follows:

Obtaining the CPCN alone was necessary but not sufficient to confer the right to *complete* construction. However, we hold that NECEC could reasonably rely on the CPCN, and our judgment affirming the CPCN, as valid authorization to *begin* construction such that its right to proceed according to the CPCN's terms could vest upon evidence that it undertook significant, visible construction in good faith, according to a schedule that was not created or expedited for the purpose of generating a vested rights claim. [*Id.* at ¶ 50 (emphasis original)].



In other words, failure to toll construction deadlines would continue to impair (unconstitutionally) NECEC LLC's vested rights and, in fact, NECEC LLC not only had the vested right to begin construction, but actually had the right to complete construction in each municipality. Because the courts determined that NECEC LLC proceeded in good faith reliance on the approvals, NECEC LLC's rights vested and it was entitled to be placed in the same position it would have been in had the Referendum not been approved.

Note also that other NECEC municipalities have agreed with this conclusion. For example, see the signed letters of concurrence from the planning boards and code enforcement officers in the towns of Farmington, Industry, Embden, and Moscow (enclosed herein as Attachment II). The Town of Caratunk also has agreed with this conclusion; we have yet to contact several other towns that have similar permit expiration provisions.

Accordingly, the two-year project completion deadline set forth in SZO Section 16.F was tolled during the period that NECEC LLC was unconstitutionally prohibited from constructing the Project. Upon issuance of the court decisions holding that the Referendum violated NECEC LLC's constitutional rights and may not be applied to the Project, followed by the DEP's May 15, 2023 confirmation that construction may resume, this completion deadline was and is running again. The two-year Project completion deadline, therefore, is November 3, 2024.

We request confirmation from you of the foregoing conclusion, that the Shoreland Zoning Permit expiration date was tolled during the time period in which NECEC LLC was unconstitutionally prohibited from constructing the Project in Chesterville. Failing your agreement on these points, NECEC LLC will need to re-apply for shoreland zoning approval for the Project, but we believe there is no need for that application, and that it makes more sense not to burden the Planning Board with taking such unnecessary additional steps.

Thank you for your consideration of this request.

Best regards,

Samuel F. Rice

Enclosures

- Attachment I: Maine DEP May 15, 2023 Letter
- Attachment II: Municipal Concurrence Letters

SEEN AND AGREED TO (signature):

DATE:

6/26/23

C.E.O

Chester ville, ME