



NEW ENGLAND
**CLEAN ENERGY
CONNECT**

October 13, 2023

Mr. George Martikke, Chair
Town of Starks Appeals Board
c/o Jennifer Zweig Hebert, Town of Starks Clerk
57 Anson Road
Starks, ME 04911

RE: New England Clean Energy Connect (NECEC) Project Variance Appeal Application
12 Month Extension of Site Plan and Shoreland Zoning Approvals

Dear Chair Martikke:

Attached is NECEC Transmission LLC's (NECEC LLC's) Application Form for Appeals, requesting extension of the Site Plan and Shoreland Zoning approvals of the New England Clean Energy Connect (NECEC or Project) Project in Starks.

On June 2, 2020, the Planning Board issued its Site Plan and Shoreland Zoning approvals for the NECEC. Pursuant to the Planning Board's extensions of the Site Plan Review Ordinance Section 9.1 "substantially complete" requirement and 2-year construction deadline of Shoreland Zoning Ordinance Section 16(F), the construction deadline for the Project was June 2, 2022.

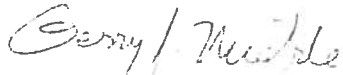
While NECEC LLC planned to complete the Project in Starks by or before this deadline, NECEC LLC was prevented from doing so by the Maine Department of Environmental Protection's (DEP's) suspension of its license for the Project. The DEP's license suspension was based on the November 2, 2021 passage of 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," which was later determined to be unconstitutional as applied to the Project. 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 Starks.

Due to the inability to construct during the period of the DEP's license suspension, on April 12, 2022 we requested a variance from the Appeals Board, which the Appeals Board granted on May 20, 2022, allowing an 18 month extension of the June 2, 2022 construction deadlines until December 2, 2023.

The period of suspension of the DEP license was longer than anticipated when we requested the variance in April 2022, however, as this suspension was not lifted until May 15, 2023. Accordingly, NECEC LLC is requesting an additional variance of 12 months to allow completion of the Project in Starks, with revegetation concluding in 2025. Attached to this letter is a proposed form of decision document for the Board's convenience if it chooses to use this form.

Thank you for your consideration of this request and please call or email me (207-242-1682; gerry.mirabile@cmpco.com) with any questions.

Sincerely,



Gerry J. Mirabile

Director – NECEC Permitting & Compliance

Attachments

- I. Application Form for Appeals
- II. Application Fee
- III. May 25, 2022 Board of Appeals Final Decision Document Granting Permit Extension
- IV. May 15, 2023 DEP Letter Lifting Permit Suspension
- V. Proposed Form of Decision Document

cc: Matt Manahan/Lisa Gilbreath, Pierce Atwood LLP
Ken Lust, Starks Planning Board, Acting Chair for NECEC Project matters

Reasons for Appeal
NECEC Transmission LLC

This is a variance appeal by NECEC Transmission LLC (NECEC LLC) under Section V.A.4 of the Board of Appeals Ordinance. Our request is for a variance to Section 9.1 of the Site Plan Review Ordinance (SPRO) and Section 16(F) of the Shoreland Zoning Ordinance (SZO) to extend the construction deadlines for the NECEC Project. SPRO Section 9.1 requires that construction covered by the Site Plan approval must be substantially completed within 12 months of the approval. It also provides that the Planning Board may grant up to two extensions of the approval for six months each. SZO Section 16(F) provides that shoreland zoning permits expire one year from the date of issuance if a substantial start is not made in construction or in the use of the property during that period, but that if a substantial start is made within one year of the issuance of the permit, the applicant shall have one additional year to complete the project, at which time the permit shall expire.

We received Site Plan and Shoreland Zoning approval for our proposed transmission line on June 2, 2020. The June 2, 2020 approval was revised on April 7, 2021 to address a change in Project ownership required by the Maine Public Utilities Commission and to update technical aspects of the Project's design that had been refined since the Planning Board's initial approval. Construction began shortly after April 7, 2021. A "substantial start" in construction as defined by the SZO had been made by June 2, 2021, but the Project had not been "substantially completed" as defined by the SPRO by June 2, 2021. The Planning Board granted a first extension pursuant to SPRO Section 9.1 until December 2, 2021, and then a second extension until June 2, 2022. Pursuant to the Planning Board's extension of the SPRO Section 9.1 "substantially complete" requirement and 2-year construction deadline of SZO Section 16(F), the construction deadline for the Project was therefore June 2, 2022.

While NECEC LLC intended to complete construction prior to the June 2, 2022 deadline, construction came to a halt on November 23, 2021 when the Maine Department of Environmental Protection (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).

Due to the inability to construct during the period of the DEP's license suspension, on April 12, 2022 NECEC LLC requested a variance from the Appeals Board, which the Appeals Board granted on May 20, 2022, allowing an 18 month extension of the June 2, 2022 construction deadlines until December 2, 2023. At the time of the May 20, 2022 extension of the construction deadlines it was not anticipated that the legal challenges to the Project would remain unresolved for nearly an entire additional year.

It was not until the Maine Business Court issued its judgment on April 21, 2023, confirming that the Referendum violated NECEC LLC's constitutional rights and may not be applied to the Project, and the DEP issued its May 15, 2023 letter (enclosed herein) lifting suspension of its license, that NECEC LLC was able to 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).

During the extensive period of DEP license suspension based on the unconstitutional Referendum, 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 Starks. This delay preventing us from completing construction was completely out of our control, and ran substantially longer than was anticipated one year prior when the Appeals Board granted its first variance regarding the construction deadlines for the Project.

Because the period during which it was a legal impossibility for NECEC to conduct any construction activities in Starks extended for substantially longer than anticipated, NECEC LLC is unable to complete construction prior to December 3, 2023 and therefore is requesting an additional variance of 12 months to allow completion of the Project in Starks. Revegetation from construction activities will extend into the 2025 growing season.

The reason NECEC LLC needs a variance is that the existing expiration would cause undue hardship to NECEC LLC and its property; the expiration of the Site Plan and Shoreland Zoning approvals would prevent NECEC LLC from constructing the approved project. This request is justified by the undue hardship that strict application of the time limits set forth in Section 9.1 of the Site Plan Review Ordinance and Section 16(F) of the Shoreland Zoning Ordinance would cause:

- a. *Unique Circumstances:* The delays caused by the unconstitutional Referendum and the DEP license suspension based on that Referendum are exceptional and unique and do not pertain to other properties in the neighborhood of the subject property. The NECEC Project will be constructed in an existing transmission line right-of-way that is unique in the neighborhood. Not only is the property itself unique to the neighborhood, due to its linear shape and use as a transmission line right-of-way, but the circumstances relative to this property are exceptional and unique, and do not pertain to any other property in the same neighborhood. While construction of the Project substantially commenced upon the Planning Board's April 7, 2021 approval, it was brought to a halt on November 23, 2021 when the DEP suspended its license based on the unconstitutional Referendum. Litigation concerning that Referendum extended well into 2023, and the DEP did not lift its license suspension until May 15, 2023. At the time of the Appeals Board's May 20, 2022 extension of the construction deadlines it was not anticipated that the legal challenges to the Project, and corresponding DEP license suspension, would remain unresolved for nearly an entire additional year. These exceptional circumstances are unique to this property and to the NECEC Project.
- b. *Effect on Neighborhood:* Other properties in the neighborhood will not be adversely affected by granting of the variance. The variance would not affect any use restrictions or dimensional requirements, and would simply allow more time to complete what the permit allows. The Planning Board has already concluded that the NECEC Project meets the requirements for Site Plan and Shoreland Zoning approvals, including no adverse effects as the permit is conditioned.
- c. *Objectives of the Ordinance:* The Planning Board has already concluded that the NECEC Project will comply with the requirements and objectives of the Site Plan and Shoreland Zoning ordinances, so granting of the variance also will not be contrary to the objectives of those ordinances. The variance would help accomplish the objectives of the ordinances by allowing the applicant to implement the approved plan.

- d. *Applicant's Actions*: The hardship is not the result of actions taken by the applicant or the prior owner.

We look forward to explaining the delays in detail and explaining further why we need the variance.