

Harvard Electric Policy Group
Transmission Expansion: The Challenge of Major Changes

NECEC Case Study: *Death by Delay or Vested
Rights Vindication*



NEW ENGLAND
CLEAN ENERGY
CONNECT

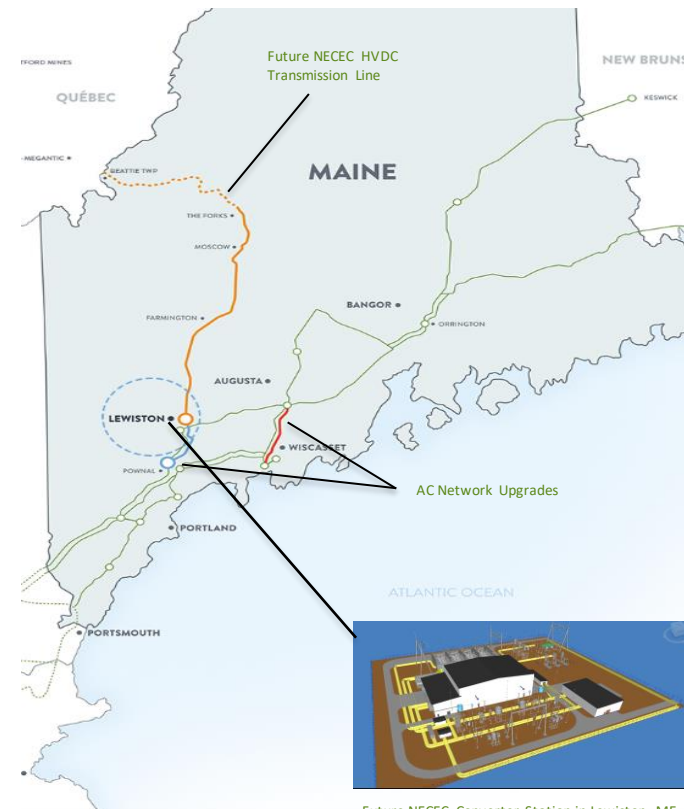
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NECEC Project

1,200 HVDC Transmission Tie between ISO-NE & Québec

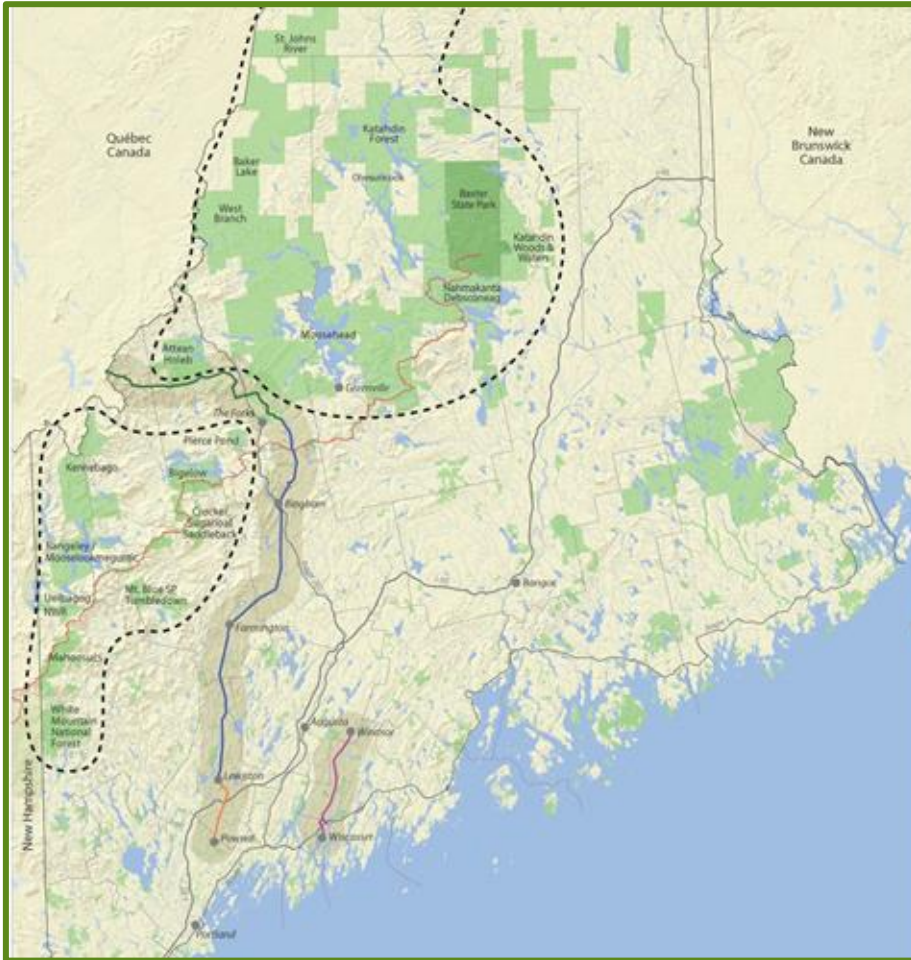
- In 2017, CMP agreed with **Hydro-Quebec** to jointly bid **NECEC** in the Massachusetts 83D RFP
- Bid for 9.5 TWh of clean energy from existing **Hydro-Quebec** hydro facilities over a new HVDC transmission interconnection between Quebec and Maine
- NECEC selected in 2018 after the disqualification of **Northern Pass** project
- Permitting/siting efforts began in 2017
- PPAs and TSAs signed in June 2018
- Original COD December 2022

20-year PPAs for 9.5 TWh with **MA EDCs** and 40-year TSAs for 1,200MW of transmission capacity with **MA EDCs** and **Hydro-Quebec** at fixed rates



Future NECEC Converter Station in Lewiston, ME
(3D Simulation by ABB)

NECEC Project cont.



U.S. Project Summary

- 145-mile Direct Current line with 1,200 MW capacity
- $\approx 10,000$ GWh annually
- Original \$950 million capital budget
- DC/AC Converter Station in Lewiston, ME
- AC network upgrades in ME by CMP (most) and in NH by Eversource and NextEra

Route

- 72% of the route uses existing corridor
- 27+% new corridor through private, working woodlands
- <1% new corridor on Maine public reserved lands

NECEC Project Benefits

Environmental:

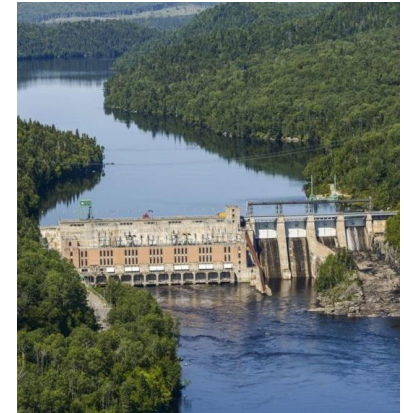
- Advances vital clean energy goals in Massachusetts, Maine & U.S.
- **Reduces regional GHG emissions by 3.0 to 3.6 million metric tons annually**; equivalent to taking 700,000 cars off the road each year
- Reduces dependence on fossil fuels
- Conserves over 50,000 acres of land

Economic & Project Development:

- Reduces wholesale energy prices; total electricity market benefits of \$4,160M to New England (as of 2018 forecasts)
- Creates 1,600 jobs including 600 IBEW jobs,
- Enhances grid reliability and fuel security
- Invests over \$500M in Maine's economy during construction

Community:

- \$3M to the Passamaquoddy Tribe
- \$258M to Maine, including:
 - \$140 million NECEC Rate Relief Fund
 - \$50 million NECEC Low-Income Customer Benefits Fund
 - \$40 million in value for commitment to sell Maine discounted power for 20 years
 - \$35 million in Funds for Heat Pumps, Broadband, EVs



Timeline / Milestones

“Sometimes the hurdles aren’t really hurdles at all. They’re welcome challenges, tests . . . for anyone that wants to build a transmission project”

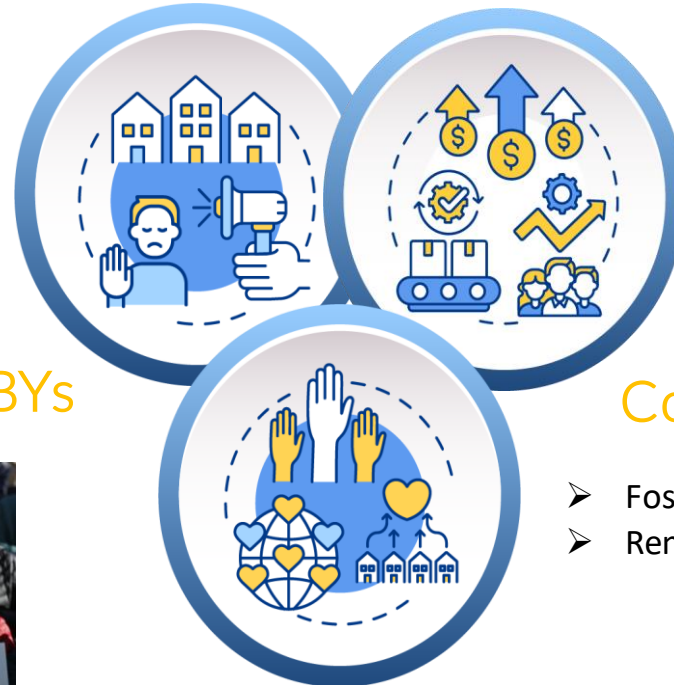
- **2013 to 2017 – Real Estate Acquisitions**
- **2016 to 2021 – Project Development, Environmental Review & Permitting.**
 - **State:**
 - ME PUC Certificate: May 3, 2019
 - MA DPU Approval of Contracts: June 25, 2019
 - ME DEP Order & Permits: May 11, 2020
 - **Federal:**
 - FERC Approval of Transmission Service Agreements: Oct. 8, 2018
 - US Army Corps Engineers CWA & RHA Permit: Nov. 6, 2020
 - DOE Presidential Permit: Jan. 14, 2021
 - **Canadian :**
 - *Régie de l’énergie* – Québec: July 3, 2020
 - Québec Environment Quality Act Certificate: April 7, 2021
 - Canada Energy Regulator: May 20, 2021
 - US International Trade Commission Report: Jan. 2021
- **Jan. 2021 to Nov. 2021 – Construction Starts.** 139 miles (approx. 95%) of the corridor cleared and 78 (approx. 9%) of structures installed for DC line
- **Nov. 2021 to Present – Construction Suspended due to Ballot Initiative.** Enacted Nov. 2; as of suspension approximately \$450M spent; State court challenge ongoing

Opposition

“Politics doesn’t make strange bedfellows – transmission lines do”



NIMBYs



Competitors

- Fossil Fuel generators
- Renewable developers

NGOs

- Environmental Advocacy Groups

Opposition Strategy – death by delay

Challenges

“Yes, Virginia, there is a Santa Clause . . . but you will need good lawyers and persistence to complete a transmission project”

- **Regulatory Challenges and Appeals**

- Maine PUC CPCN and appeal (CPCN Affirmed – *NextEra v. MPUC*, 3/20)
- Mass. DPU PPA/TSA Approval order and appeal (MDPU Order Affirmed – *NextEra v. MDPU*, 10/20)
- Maine DEP permits and appeal (pending) (MDEP order affirmed by MBEP, 7/22; now pending ME. Super. Ct.)
- Federal ACOE and DOE permits and appeal (1st Circuit aff’d PI denial, 5/21, appeal pending US Dist. Ct.)

- **Court Challenges**

- Maine Bureau of Parks and Lands lease challenge (Lease affirmed – *Black v. BPL*, 11/22)

- **ISO-NE Network Upgrade Dispute**

- Competing FERC complaints (Order granting complaint in part, *NECEC v. NextEra*, 2/23)

Challenges, cont.

“If at first you don’t succeed, try, try again, . . . then change the rules”

- **Ballot Initiatives**

- **Initiative I (2020) - Sought to reverse CPCN**

- Declared unconstitutional before Election Day, *Avangrid v. Dunlap*, 8/20

- **Initiative II (2021) – Purports to retroactively change CPCN & State public land lease requirements**

- \$millions spent on campaign on both sides
 - Enacted Election Day 2021
 - Lease related changes declared unconstitutional, *Black v. BPL*, 11/22
 - CPCN related changes will be unconstitutional deprivation of Due Process rights if NECEC establishes vested rights, *NECEC Transmission v. BPL*, 8/22
 - Remand pending in trial court– Jury Trial to be held in 4/23

Challenges, cont.

To determine whether Developer's Vested Rights preclude retroactive application of Initiative II to the NECEC, the Jury will have to decide:

Whether NECEC undertook substantial good-faith expenditures on the transmission project within the scope of the CPCN prior to enactment of the Initiative II, "meaning that the expenditure was made (1) in reliance on the affected permit or grant of authority, (2) before the law changed, and (3) according to a schedule that was not created for the purpose of generating a vested rights claim." (NECEC Transmission v. BPL, 8/22)