

**Office of the Chief and Council**

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**Penobscot Nation**  
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July 22, 2020

Colonel William Conde  
District Engineer Commander  
U.S. Army Corps of Engineers  
New England District  
696 Virginia Rd  
Concord, MA 01742

Dear Colonel Conde,

This letter serves formally to request on behalf of the Penobscot Indian Nation (the Nation”) that the US Army Corps of Engineers prepare an Environmental Impact Statement (EIS) in connection with Central Maine Power’s proposed New England Clean Energy Connect project (“NECEC”). The Nation makes this request for two reasons: (1) NECEC will have substantial impacts on Maine’s environment and (2) NECEC will also have significant impacts on the INNU Nation in Labrador. Only a complete EIS can provide the comprehensive environmental evaluation necessary before any permitting decision can be made. And a failure to prepare an EIS has a high likelihood of being overturned in court, as the Standing Rock Sioux Tribe’s recent victory in the Dakota Access Pipeline case demonstrates.

Since time out of mind the families of the Penobscot Nation have resided in the drainage area of the Penobscot River, with their hunting territory extending almost as far as the Upper St. John River. Their culture and subsistence depend on the natural environment and for millennia the Nation has vigorously defended it. As a riverine tribe with close spiritual and cultural ties to the River, the Nation believes that clean water is of central importance. Most recently the Nation has been extensively involved in efforts, among others, to improve the general water quality of the Penobscot River, clean up mercury and dioxin discharges, and restore shad and Atlantic Salmon in the River through, among other things, the dam removals undertaken by the Penobscot River Restoration project. Several federal agencies, including the Army Corps, have been involved and actively participated in these efforts.

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Given the Nation's concerns with the environment, it is our view that whenever a project is of the magnitude and has the impact of NECEC, and it is the subject of as much controversy as NECEC, the only environmental review appropriate is an EIS. Particularly here where the Kennebec River is a vital resource and substantial efforts have been made over the last years to restore its fishery and improve its water quality, a project that has the potential to affect the watershed must be carefully scrutinized. And it is hard to understand why the Government prepared an EIS for each of the very similar projects in Vermont and New Hampshire and would not do so here.

**1. Maine Impacts**

The proposed corridor would cut a new swath within a 54-foot wide by 53.1-mile corridor through the unfragmented forest region of north western Maine extending from the Quebec, Canada border in Beatie Township to Moxie Gore. With the exception of the crossing of the Kennebec itself, CMP does not appear to have considered burying the proposed line the distance of this stretch of NECEC. The Vermont project actually proposed to underground virtually its entire length; there must be a complete evaluation of this possibility and whether it is an alternative. Similarly, the Vermont project itself, which has been fully permitted, must be evaluated as an alternative to this transnational project.

NECEC's substantial impacts to brook trout habitat, endangered species (Roaring Brook Mayfly and Northern Spring Salamanders) must be thoroughly evaluated as must the consequences of significant habitat fragmentation and the impacts to high value deer wintering yards. The vegetation management plan for riparian filter areas still requires significant clearing within the wire zone (within 15 feet, horizontally, of any conductor). For example, within the wire zone of riparian filter areas, all vegetation taller than 10 feet would be cut to ground level during initial clearing. This does not create a buffer or reduce NECEC adverse impacts to fisheries and other protected resources.

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The impacted streams are mostly cold, high-elevation, headwater streams that are highly productive of wild brook trout. CMP's proposed compensation for the adverse impacts to these resources appears woefully inadequate. The streams "protected" in the compensation parcels are mostly large main stem rivers that warm significantly in the summer, have a recreational fishery at least partially supported by stocking, and have limited or no potential to produce wild brook trout. This defies the purpose of compensation parcels—i.e., replacing the functions and values of the adversely impacted natural resource.

Given these impacts, it simply is not possible for the Corps to issue a Finding of No Significant Impact ("FONSI"). The only way properly to address these environmental impacts and to determine the best course of action to protect the environment is through an Environmental Impact Study (EIS), as was done in both New Hampshire and Vermont.

## ***2. Impacts on the INNU***

The Corps has apparently been treating its review as limited to the part of the proposed transmission line that runs from inside the Canadian border to Lewiston, Maine. The Nation respectfully disagrees with that crabbled approach. The transnational nature of this project requires a Presidential Permit from the Department of Energy and that requires a review of impacts beyond the Maine border.

Section 102(2)(F) of NEPA demands that federal agencies "recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment." 43 U.S.C. § 4332(F). Furthermore, NEPA's legislative history further supports the requirement that agencies take into consideration the environmental impact of a proposed project on other countries. *See, e.g.*, H. Rep. No. 91-378, 91st Cong., 2d Sess. (1969) ("Implicit in [Section 101 of NEPA] is the understanding that the international implications of our current activities will also be considered, inseparable as

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they are from the purely national consequences of our actions”); House Comm. on Merchant Marine and Fisheries, Administration of the National Environmental Policy Act , H.R. Rep. No. 92-316, 92d Cong., 1st Sess. (1971) (“The history of the Act makes it quite clear that the global effects of environmental decisions are inevitably a part of the decision-making process and must be considered in that context.”) *See also Backcountry Against Dumps v. Chu*, 215 F. Supp. 3d 966, 972 (S.D. Cal. 2015).

For these reasons, the Corps in evaluating the impacts of NECEC must consider not only the Maine impacts, but also those in Canada. Of particular concern in that regard are the impacts of Hydro-Quebec’s dams, especially how the enormous dam in Labrador affects the INNU. I attach a copy of the INNU’s submission to the Maine Department of Environmental Protection to make you aware of this issue and urge you to include the impacts on the INNU in the EIS.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Francis".

Chief Kirk Francis

Cc: Jay Clement