New England Clean Energy Connect: Contract deficiencies and litigation issues

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Law360 Canada (October 1, 2026, 11:46 AM EDT) --



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1. Energy-only delivery obligation

The New England Clean Energy Connect (NECEC) contract's central weakness is the absence of a workable structure for an energy-only transaction during system stress. The parties appear not to have established how an energy-only commitment should operate when the seller has inadequate energy, capacity or water reserves to serve all demands.

Comparable hydroelectric agreements frequently address priority of service explicitly. The NECEC agreement does not. As a result, the Massachusetts buyers have a legitimate basis to request an explanation of why their deliveries were interrupted rather than other export sales, domestic loads or lower-priority transactions.



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2. Force majeure language

The contractual *force majeure* provision is unusually difficult to interpret. Section 10.1 attempts to define force majeure through a long, multipart sentence and then supplies a separate lengthy list of exclusions. The drafting uses broad expressions like “such as,” undefined terms and exceptions to exceptions.

The provision excludes normal mechanical or equipment failures, but recognizes that some physical failures may qualify if caused by specified events such as floods, hurricanes, tornadoes, severe blizzards or severe ice storms. This contract leaves critical questions unanswered:

- Whether a sustained cold period qualifies as an abnormal weather event.
- Whether low reservoirs or drought constitute a force majeure event.
- Whether a reliability curtailment based on low reserves may excuse delivery.
- What evidence must establish that performance was directly prevented.
- Whether the conditions relied upon were outside Hydro-Québec’s control and could not reasonably have been avoided.

The relevant subsection numbering begins at “t” and continues through “z,” apparently omitting subsections “a” through “s.” The omission may be a drafting or typographical error, but it is unusual in a high-value long-term power contract and increases interpretive risk.

The agreement also uses language such as “likely” in addressing certain operational determinations. Such terms are especially problematic in electricity transactions, where operating conditions can change in minutes and contracts normally specify clear notice, data and verification obligations.

3. Negative-price curtailment provision

Section 4.2(a) permits the seller to suspend scheduling or transfers if the delivery-point locational marginal price is negative, or if in the seller’s reasonable opinion the price is likely to become negative. The seller must give written notice and subsequently provide curtailment timing and quantity information.

The provision appears to place substantial discretion with the seller. It is not the stated basis for the January-February 2026 curtailments, but it illustrates a broader drafting problem: several important provisions permit the seller to make consequential determinations with limited objective standards and limited real-time transparency.

4. Notice and verification failures

The contract requires prompt communication, but it does not define “prompt.” In electricity operations, a five-minute, one-hour, one-day and one-week notice period have materially different consequences. The parties should have specified notice timing, required content, responsible operating personnel, data access and procedures for challenging curtailments.

The Massachusetts utilities allege delayed communications. NERC’s EOP-004-4 event-reporting framework commonly uses deadlines of 24 hours or the end of the business day, depending on the event. The available account suggests that Hydro-Québec’s communications in January 2026 did not meet a comparably clear and timely standard.

Hydro-Québec’s limited disclosure is consistent with earlier practice. In December 2025, reports indicated that Hydro-Québec had issued two informal level-two emergency declarations on Dec. 3 and Dec. 5; the information became public only after press inquiries. Whether or not that practice violated any specific obligation, it demonstrates why the NECEC contract needed a precise and enforceable disclosure protocol.

This is part three of a four-part series. Part one: Reviewing the New England Clean Energy

Connect litigation filings. Part two: New England Clean Energy Connect: Hydro-Québec's resource position and planning history.

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