



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS  
GOVERNOR

MELANIE LOYZIM  
COMMISSIONER

IN THE MATTER OF

CENTRAL MAINE POWER CO. )  
 NECEC TRANSMISSION, LLC )  
 25 Municipalities, 13 Townships/Plantations, )  
 7 Counties (listed in Appendix A) )  
 L-27625-26- A-N ) LICENSE SUSPENSION PROCEEDING  
 L-27625-TG-B-N ) DECISION AND ORDER  
 L-27625-2C-C-N )  
 L-27625-VP-D-N )  
 L-27625-IW-E-N )

On August 12, 2021, the Commissioner of the Department of Environmental Protection (Department) issued to Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC Transmission) (collectively Licensees) a notice that the Department was initiating a proceeding to consider suspending 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) pursuant to 38 M.R.S. § 342 (11-B) and Chapter 2 §§ 25 and 27 of the Department’s Rules. Based on the record in this proceeding, including the testimony, legal argument, and public comment delivered as part of the public hearing held on October 19, 2021 and continued on November 22, 2021, the Commissioner makes the following findings and conclusions.

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND:**

1. On May 11, 2020, the Department issued the License approving construction of the Project, which includes a 145-mile long, new high voltage direct current transmission line from Beattie Township to Lewiston; a converter station to convert the direct current electricity to alternating current that is then fed into the grid; a new substation in Pownal; and several other substation and transmission line upgrades.
2. On August 10, 2021, the Superior Court issued a decision in *Black v. Cutko*, No. BCD - CV-2020-29 reversing the decision of the Director of the Bureau of Parks and Lands (BPL) to enter into a lease CMP.<sup>1</sup> A 0.9-mile portion of the transmission line authorized in the License crosses the land subject to this lease.
3. On August 12, 2021, the Commissioner notified the Licensees she had determined, pursuant to her authority under 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A), that the

<sup>1</sup> The lease was entered into by CMP and later assigned to NECEC Transmission.

Superior Court's *Black v. Cutko* decision represents a change in circumstance and she was initiating a proceeding to consider the suspension of the License for the Project. The Commissioner designated a Presiding Officer to conduct the hearing.

4. On September 17, 2021, the Presiding Officer issued the First Procedural Order in which she granted intervenor status to Friends of the Boundary Mountains (FOBM), the Natural Resources Council of Maine (NRCM), the Industrial Energy Consumer Group (IECG), and a group of towns, entities, and individuals collectively referred to as West Forks. The Procedural Order identified five topics on which the Department would take evidence and testimony:
  - The status of the *Black v. Cutko* litigation, including the likely timing of any resolution and range of possible outcomes;
  - The status of construction activities being conducted pursuant to the License by the Licensees, including portions completed, current activities, and construction plans for the upcoming months;
  - The potential availability of re-routing alternatives to avoid the public lands in question in *Black v. Cutko*, including the location and feasibility of potential alternatives;
  - The nature of linear project construction and the effect on the Project as a whole when a portion of the Project as proposed is jeopardized or called into question; and
  - The time frame and practical requirements of any measures that would be necessary to protect the environment if the License were to be suspended.
5. On October 19, 2021, the Department held a hearing as part of the suspension proceeding, which included testimony from witnesses for the Licensees, NRCM, and West Forks Group, cross-examination of the witnesses, and oral argument from all the parties to the proceeding. The hearing also included an evening session during which testimony from members of the public was received. After the October 19 hearing the parties were permitted to file written briefs and reply briefs.
6. On November 2, 2021, Maine voters approved, by virtue of a referendum, L.D. 1295 (I.B. 1) (130th Legis. 2021), "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). The Referendum approval results in a combination of amendments to existing statutory sections in Titles 12 and 35-A of Maine law and several new sections in Title 35-A. The law changes approved as a result of the Referendum will affect the Project.
7. On November 3, 2021, NECEC Transmission and Avangrid Networks, Inc. (Avangrid), the indirect parent of CMP, filed a Complaint and a Motion for Preliminary Injunction in Superior Court, challenging the legality of statutory changes approved in the

Referendum and asking the court to allow the Project to proceed while the litigation is pending. *NECEC Transmission LLC, et al. v. Bureau of Parks and Lands, et al.*, Docket No. BCD-CIV-2021-00058.

8. In a letter dated November 5, 2021, the Commissioner notified the Licensees that she had determined, pursuant to her authority under 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A), that the Referendum, if certified such that it will become law, represents a change in circumstance that warrants expanding the scope of the existing proceeding to include consideration of whether the effect of the Referendum result constitutes a change in condition or circumstance that requires suspension of the License.
9. On November 8, 2021, the Presiding Officer issued the Fourth Procedural Order in which she reopened the hearing record for the purpose of gathering evidence related to the Referendum and its impact on the Project, set November 18, 2021, as the date for any additional parties to file petitions to intervene, and set November 22, 2021, as the date for continuation of the hearing regarding the potential suspension of the License. The Licensees object to this re-opening of the hearing and argue that a separate, new proceeding to consider suspension should have been initiated in lieu of expanding the scope of the ongoing proceeding. However, the Department's rules, in Chapter 3, §§ 19(E), 24, and 9, respectively, allow the reopening of a hearing and of a record, and the consolidation of proceedings.

The Presiding Officer identified five topics on which testimony would be received:

- How the statutory changes contained in the Referendum might affect construction of the Project on the permitted route;
  - The status and briefing schedule of the preliminary injunction and associated complaint in the *NECEC Transmission LLC v. Bureau of Parks and Lands* litigation;
  - Potential rerouting options that would not be eliminated by the statutory changes approved in the Referendum;
  - The status of the Secretary of State certification and Governor's proclamation regarding the Referendum; and
  - Update of the status of construction activities and timetable for work locations going forward.
10. By November 18, 2021, the Department had received one additional petition to intervene in the proceeding, filed by the Maine State Chamber of Commerce (the Chamber). On November 19, 2021, the Presiding Officer granted the Chamber's motion to intervene.
  11. On November 22, 2021, the Department heard testimony from the Licensees, NRCM, West Forks, and the Chamber, with cross-examination, on the topics for the re-opened hearing. The Department received testimony from members of the public during an

evening session. At the end of the hearing the parties were allowed oral closing arguments. The Department also received and accepted into the record written comments from members of the public and written legal arguments from the parties to the proceeding who elected to file such legal briefs.

## **II. GOVERNING STATUTES AND RULES:**

12. Pursuant to 38 M.R.S § 342(11-B) and Chapter 2, § 27(E), after written notice and opportunity for a hearing, the Commissioner may revoke or suspend a license if the Commissioner finds that there has been a change in any condition or circumstance that requires suspension of the license.

## **III. DISCUSSION, ANALYSIS AND CONCLUSIONS OF LAW:**

13. The suspension proceeding involved the receipt of testimony, legal argument, and public comment focused on whether the Superior Court's *Black v. Cutko* decision and the people's approval of the Referendum amount to a change in condition or circumstance that requires suspension of the License pursuant to 38 M.R.S § 342(11-B) and Chapter 2, § 27(E). Both are discussed below, beginning with the Referendum.

### **A. The Referendum**

14. As part of the hearing, on November 22, 2021, the Presiding Officer accepted into evidence the Secretary of State's Certification of the election results on Referendum and took Official Notice of the Governor's Proclamation certifying the results, so the topics for the hearing that were the status of those processes are not further addressed here. With respect to the potential impact of the Referendum on the Project, the parties to the proceeding offered testimony and argument, summarized as follows:
  - a. Licensees. The Licensees argued and presented evidence through the testimony of Thorn Dickinson, President and CEO of NECEC Transmission, that for these reasons the approval of the Referendum is not a change in circumstance requiring suspension of the License:
    - The statutory changes approved in the Referendum are not yet in effect and will not be in effect until December 19, 2021;
    - The statutory changes approved in the Referendum will not affect construction on the permitted route because the statutory changes as they might apply to the project are unconstitutional on three different grounds;
    - Even if the statutory changes approved in the Referendum are applied, the Licensees could seek an alternative route around public lands and avoid the need for a 2/3 approval by both houses of the Legislature;

- What constitutes the Upper Kennebec Region as defined in the statutory changes approved in the Referendum is unclear and will be determined by the Public Utilities Commission and, ultimately, the courts; and
  - There is no environmental impact at present because the Licensees have voluntarily agreed to stop construction until the court acts on the pending Motion for Preliminary Injunction.
- b. NRCM. NRCM argued and presented evidence through the testimony of Jeff Reardon of Trout Unlimited that approval of the Referendum is a change in circumstance requiring suspension of the License, including for these reasons:
- The statutory changes approved in the Referendum should be presumed constitutional unless and until a court says otherwise;
  - The area defined as the Upper Kennebec Region is geographically broad and encompasses a considerable portion of the Project;
  - There are no available, alternative routes and, even if there are, they would require extensive permitting and construction should not continue in light of the uncertainty of the permitting outcome; and
  - Continued construction would result in further environmental impact, beyond what has already occurred.
- c. West Forks. West Forks argued and presented evidence through the testimony of Ed Buzzell and Elizabeth Caruso that approval of the Referendum is a change in circumstance requiring suspension of the License, including for these reasons:
- The Referendum was approved by the voters; and
  - Construction has continued after the Referendum vote and the construction activity east of Route 201 would not connect with some of the alternative routes presented by the Licensees.
- d. FOBM. FOBM did not present any witnesses during the November 22 portion of the hearing, but in oral argument contended that, in light of public opposition to the project, revocation, rather than suspension, of the License was necessary in order to honor the Department's mission to protect the environment and preserve the public trust.
- e. Chamber. The Maine State Chamber of Commerce argued and presented evidence through the testimony of Dana Connors, its President, that approval of the Referendum is not a change in circumstance requiring suspension of the License, including for these reasons:
- The appropriate venue for resolution of any issues associated with the Referendum is court; and
  - Suspension is not necessary in light of the Licensees' voluntary pause in construction activity.

15. Members of the public offered testimony concerning the Referendum and the topics of this session of the hearing. The portions of the testimony beyond the scope of the present proceeding and not relevant to the identified hearing topics were not considered.
16. Based on review of the Referendum and the statutory amendments it contains as set forth in L.D. 1295 (I.B. 1), and consideration of the record testimony and argument, I find that, with the statutory changes approved in the Referendum the Project will not be able to be constructed as permitted and a critical portion would have to be re-routed. The law would ban construction of any transmission line defined as a “high-impact transmission line” in the Upper Kennebec Region. Referendum, Sec. 1, enacting 35-A M.R.S. § 3132(6-D). This prohibition would apply retroactively. Referendum, Sec. 6, enacting 35-A M.R.S. § 3132(6-E). The Project includes a transmission line that is captured by the definition of high-impact transmission line, Referendum Sec. 2, amending 35-A M.R.S. § 3131(4-A), as well as by its retroactive provision. Thus, continued construction of the portion of the Project in the Upper Kennebec Region would be banned.

The exact boundary of the area defined as the Upper Kennebec Region is unclear. The Referendum states:

“Upper Kennebec Region” means the approximately 43,300 acres of land located between the Town of Bingham and Wyman Lake, north along the Old Canada Road, Route 201, to the Canadian border, and eastward from the Town of Jackman to encompass Long Pond and westward to the Canadian border, in Somerset County and Franklin County.

Referendum, L.D. 1295 (I.B. 1), Sec. 5, enacting 35-A M.R.S. § 3132(6-D).

This definition contains two components. One is the narrative description of the region, which, as testimony at the hearing demonstrated, cannot be easily translated to a specific area on a map. While a metes and bounds description or list of towns, townships, and plantations included in the Upper Kennebec Region would have eliminated the lack of clarity present in the law’s language, the narrative description of the region appears designed to capture a broad geographic area north, east, and west of Bingham, including north to Jackman and then to the Canadian border and west from Jackman into Franklin County and to the Canadian border. This reading is evident from the language itself, supported by the testimony of Mr. Reardon regarding his general understanding of what constitutes the Upper Kennebec Region, and reinforced by the many promotional materials and political advertisements of backers of the Referendum who expressed the Referendum would ban the Project. These promotional materials and political advertisements are included in NECEC Transmission and Avangrid’s Verified

Complaint for Declaratory Judgment and Injunctive Relief (Verified Complaint), submitted by the Licensees as Exhibit NECEC LLC-1-I in the present proceeding.

The second component of the definition of the Upper Kennebec Region is the statement of the acreage – the region contains “approximately 43,300 acres of land.” This figure adds to the uncertainty about the exact area included in the region as this total would cover only a small fraction of the area the narrative description of the region appears designed to capture, as the Licensees argued at the hearing.<sup>2</sup> While the evidence and argument received in this proceeding are helpful to this analysis, the resolution of the exact boundary of the Upper Kennebec Region is better suited for the courts and the agencies charged with ultimately administering the laws in question.

Putting aside the issue of the exact boundary of the region, Licensees and the Intervenor agree the Project crosses the Upper Kennebec Region. NECEC Transmission and CMP (through CMP’s indirect parent, Avangrid) have acknowledged in the *NECEC Transmission LLC, et al. v. Bureau of Parks and Lands, et al.* litigation, that “opponents of the Project . . . have now successfully pursued passage of legislation via direct initiative specifically targeted at the Project that would, if enforced, retroactively ban the completion and operation of the NECEC.” Exhibit NECEC LLC - 1-I at 2 (quoting the Verified Complaint, ¶ 1). Mr. Dickinson clarified in his testimony on November 22, 2021 that the Licensees’ view is that the ban on the Project referred to in the Verified Complaint is a ban on the Project as permitted.

The approved Referendum contains multiple components, including the requirement of legislative approval of a high-impact transmission line, either by a majority or 2/3 vote, depending on the location. While needing to obtain legislative approval would add a hurdle for the Licensees and perhaps one they would not be able to clear, the need for such approval is not a ban. How the Legislature might vote is speculative. The only ban contained in the Referendum is the ban on the construction of a high-impact electric transmission line in the Upper Kennebec Region. As noted, NECEC Transmission and CMP acknowledge this ban applies to the Project and would stop its completion as presently designed and permitted.

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<sup>2</sup> For example, the area referred to as the Upper Kennebec Region by BPL in its Upper Kennebec Region Management Plan includes approximately 800,000 acres, with approximately 43,000 acres of Public Reserved Lands within this 800,000-acre area. Exhibit NECEC LLC-1-O at 1 (BPL’s Upper Kennebec Region Management Plan, June 2019). Focusing on the acreage figure in the law approved in the Referendum, Mr. Dickinson testified that one reading of the new law is that the Upper Kennebec Region consists of just the multiple, noncontiguous Public Reserved Lands. Under this interpretation, only the 0.9 miles section of the Project that crosses Public Reserved Lands in Johnson Mountain Township and West Forks Plantation would be located in the Upper Kennebec Region. Another interpretation, Mr. Dickinson testified, is depicted in Exhibit NECEC LLC-1-M, and includes just Route 201 from Bingham, north to the Canadian border, with an area shaped like a coat hanger extending east and west from the northern part of Jackman. Under this interpretation of Upper Kennebec Region the Project only crosses this region when it crosses Route 201.

Licensees presented three alternative routes that they view as having the potential to avoid the Upper Kennebec Region and, therefore, would not be subject to the ban. These three routes are depicted on Exhibit NECEC LLC-1-L, labeled “Upper Kennebec Region BPL Land- Route Options Map.” Option 1 runs south from Johnson Mountain Township on the west side of Route 201, crossing the Dead River and Kennebec River and then crossing Route 201 in The Forks Plantation and running east to reconnect with the permitted corridor route. Option 1A starts at the same location as Option 1, running south from Johnson Mountain Township, but instead of crossing the Kennebec River and Route 201 in The Forks, continues south on the west side of Route 201, ultimately reconnecting with the permitted corridor route in Concord Township. Option 2 avoids the existing 0.9 mile stretch of the permitted route that crosses Public Reserved Lands by shifting the corridor route to the east of these lands and through an area subject to the Moosehead Conservation Easement. This map with the three alternative routes reflects one interpretation offered by Licensees that the Upper Kennebec Region consists solely of various, noncontiguous Public Reserved Lands and shows the three alternatives avoiding these lands managed by BPL. On a separate map, Exhibit NECEC LLC-1-M, Licensees presented Option 1A, overlaid on a map reflecting an alternative interpretation of the Upper Kennebec Region. In this interpretation, the Upper Kennebec Region is a contiguous area consisting of Route 201 from Bingham north to the Canadian border, plus an area resembling the shape of a coat hanger extending east and west from the northern part of Jackman. If the Project were rerouted to incorporate Option 1A, an approximately 32-mile alternative, this reconfiguration would avoid the Upper Kennebec Region as depicted on Exhibit NECEC LLC-1-M.

As discussed above, the exact boundary of the Upper Kennebec Region is not clear. As a result, the viability of the alternative routes presented by the Licensees is uncertain. All three alternatives may be located in the region where high-impact transmission lines are banned. Even two of three routes the Licensees depicted in their exhibits would be banned under one of their interpretations of what constitutes the Upper Kennebec Region.

Further, not only is the viability of the alternative routes presented by the Licensees uncertain because of the potential that they are located within the Upper Kennebec Region, but their unviability appears likely. As discussed above, the narrative description of the region appears designed to capture a broad geographic area north, east, and west of Bingham, including north to Jackman and then to the Canadian border and west from Jackman into Franklin County and to the Canadian border. This region appears to capture the alternative routes presented by the Licensees. In addition, the Upper Kennebec Region also appears to capture a significant portion of Segment 1 as permitted – the section of the transmission line that runs from the Wyman Substation in Moscow northwest to Beattie Township where the transmission line crosses the U.S.-Canada border. No alternative routes for the portion of the project northwest of Johnson Mountain Township and extending to the Canadian border have been identified.



Based on the testimony and record information and, for the reasons explained above, I find there are no readily identifiable and potentially viable alternative routes that would allow completion of the Project and delivery of renewable hydropower from Canada to the New England grid given the statutory changes in the approved Referendum. The possibility of an additional alternative route around the entire Upper Kennebec Region remains speculative at this time and, as a result, where an alternative route might cross into Maine, how it would avoid the Upper Kennebec Region, and where it might connect with the existing Project route, if at all, is unknown.

In addition to the retroactive ban on the construction of a high-impact transmission line in the Upper Kennebec Region, the Referendum requires legislative approval of all such lines in the State prior to construction. A high-impact transmission line crossing or utilizing public lands must be approved by a 2/3 vote of both the House and Senate; all other high-impact transmission lines must be approved by a majority vote. Referendum, Sec. 4, enacting 35-A M.R.S. § 3132(6-C). This legislative approval requirement is retroactive. Referendum, Sec. 6, enacting 35-A M.R.S. § 3132(6-E). The Project as permitted crosses public lands and the 2/3 vote requirement applies to the Project retroactively.

While the changes in law approved by the Referendum have not yet gone into effect, the citizens' vote approving the Referendum has been certified by the Secretary of State and the Governor proclaimed the result of the vote on November 19, 2021. Accordingly, pursuant to Article IV, Part Third, Section 19 of Maine's Constitution, L.D. 1295 (I.B. 1) will take effect and become law 30 days following the Governor's proclamation, which is December 19, 2021. As stated by NECEC Transmission and Avangrid in their Motion for Preliminary Injunction in the *NECEC Transmission LLC, et al. v. Bureau of Parks and Lands, et al.* litigation, "the statute is certain to become effective." Exhibit NECEC LLC 1-J at 10 (quotations and citation omitted).

NECEC Transmission and Avangrid filed their Motion for Preliminary Injunction to stop application of the new Referendum law to the Project and allow construction of the Project to proceed. Exhibit NECEC LLC-1-J. When the people of Maine exercise their legislative power through a citizen initiative, there is a general presumption of constitutional validity.<sup>3</sup> Additionally, it is not the role of the Commissioner to assess the legal validity of the Referendum or the law changes it approved. That is the role of the courts. Unless and until an injunction allowing continued construction of the Project is issued by a court – which necessarily would involve a finding by the court that NECEC Transmission and Avangrid have demonstrated a likelihood of success on the merits in their legal challenge to the Referendum and the law it approved – or final disposition of the legal challenge in favor of the NECEC Transmission and Avangrid, I will treat the

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<sup>3</sup> *Portland Reg'l Chamber of Com. v. City of Portland*, 2021 ME 34, ¶ 7, 253 A.3d 586, 590–91; *League of Women Voters v. Sec'y of State*, 683 A.2d 769, 771–72 (Me. 1996).

statutory amendments approved by the Referendum as a valid bar to the Project in the Upper Kennebec Region.

Therefore, the approved Referendum changes the law and directly impacts the Project. I find pursuant to 38 M.R.S. § 342(11-B)(E), that these changes constitute a change in condition and circumstance since the Department's issuance of the License authorizing construction of the Project.

In light of the December 19, 2021 effective date of L.D. 1295 (I.B. 1) approved by the Referendum, and the legal presumption of the validity of that law, along with the lack of readily identifiable, viable alternative transmission line routes around the Upper Kennebec Region, I find the approval of the Referendum by the voters of Maine is a change in situation and circumstance that requires suspension of the License pursuant to 38 M.R.S. § 342(11-B)(E). To not suspend the license would allow: continued construction in the region where such construction will shortly be banned; continued construction of other Project segments without a reasonable expectation that those segments will ever be part of an alternative route and energized to fulfill the original purpose of the Project; and construction of a type of project that shortly will not be authorized for lack of having received 2/3 approval of both houses of the Legislature.

Construction and operation of a transmission line results in environmental impacts. While the Department previously found in the License that the environmental impacts associated with the Project are reasonable under the Site Location of Development Law and the Natural Resources Protection Act if the Project is developed and operated in accordance with the terms and conditions of the License, that determination is predicated on construction resulting in an operating project capable of delivering the renewable power to the New England grid as proposed in the application. The development of the Project without a reasonable expectation of the delivery of power – the Project's very purpose – is not something the Department legally would have approved under the environmental permitting laws in Maine. Further, the importance of the actual delivery of power in evaluating the reasonableness of the Project's impacts is reflected in the decommissioning requirement included in the License. The Department found that to ensure Segment 1 of the Project and associated infrastructure will not adversely affect the scenic character and natural resources of the region, Segment 1 must be decommissioned when this portion of the Project reaches the end of its useful life or the Licensees cease operation of the transmission line. License at 106. In other words, a nonoperating Segment 1, even after successfully delivering power to the New England grid during its useful lifespan, would have an unreasonable adverse effect on scenic character and natural resources. In light of the approval of the Referendum, I find that at this point there is not a reasonable likelihood of the Project being able to deliver power

and any further environmental impacts associated with continued construction at this time are unreasonable, requiring suspension of the License as ordered here.<sup>4</sup>

**B. *Black v. Cutko***

17. In *Black v. Cutko* the Superior Court reversed the decision of the Director of the BPL to enter into a lease with CMP for a portion of the Project corridor located in Johnson Mountain Township and West Forks Plantation. This portion of the corridor is an approximately 0.9 mile stretch on which the License authorizes the construction of five poles. On August 13, 2021, BPL and NECEC Transmission each filed notices of appeal to the Maine Supreme Judicial Court (the Law Court) of the Superior Court's decision and judgment in *Black v. Cutko*. Pursuant to Maine Rule of Civil Procedure 62(e), the taking of these appeals automatically stayed execution of the Superior Court's judgment during the pendency of the appeals. On September 15, 2021, the Law Court issued an agreed-upon order staying all construction activities on the leased premises during the pendency of the appeals.
18. In light of my decision that suspension of the License as a whole for the entire Project is required as a result of the approval of the Referendum, whether the Superior Court's decision in the *Black v. Cutko* case alone requires suspension of some or all of the Project pursuant to 38 M.R.S. § 342(11-B)(E) need not be addressed at this time. Therefore, I defer a decision on whether the *Black v. Cutko* decision by itself is a change in condition or circumstance that requires suspension of all or part of the License. Should the suspension ordered in the present decision end, I will promptly and directly address the issues presented by *Black v. Cutko*.

**IV. ACTION AND ORDER:**

Based on the above findings of facts, analysis and conclusions of law, I, Melanie Loyzim, Commissioner of the Maine Department of Environmental, effective immediately, hereby suspend Department Order #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, dated May 11, 2020, unless and until:

- A. A court grants NECEC Transmission LLC and Avangrid Networks, Inc's. request for a preliminary injunction, and allows continued construction of the Project pending the final outcome of the case of *NECEC Transmission LLC, et al. v. Bureau of Parks and Lands, et al.*; or

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<sup>4</sup> The Licensees contend that a suspension is unnecessary because of the voluntary cessation of work on the Project that is reflected in the letter received from the Licensees dated November 19, 2021. A voluntary suspension of work is not legally binding or enforceable by the Department and, additionally, as explained in this decision and order, I find the Referendum is a change in situation and circumstance that requires suspension of the License.

- B. If the court does not grant an injunction, final disposition of the legal challenge to the approval of the Referendum in favor of the NECEC Transmission LLC and Avangrid Networks, Inc.

So long as the License is suspended, all construction must stop. So long as the License is suspended, the associated processing of any associated condition compliance applications will be tolled.

Additionally, consistent with my authority established in Chapter 2, § 25(E), to ensure the protection of human health and the environment:

- 1) Within 30 days of the date of this Order the following must be completed: all disturbed soils must be stabilized, all piles of wood chips and grindings must be spread such that they are no more than two inches thick, and any off-corridor access roads must be stabilized. Any uncompleted structure foundations or bore holes must be backfilled or otherwise covered.
- 2) Notwithstanding the requirement that all construction must stop:
  - a. Should the completion of an individual task or activity be necessary because it cannot be stopped without risk to the physical safety of the public or individuals actively working on the project, that task or activity may be completed; and
  - b. Should vegetation cut prior to the issuance of this Order remain within the transmission line corridor or Project site, this cut vegetation may be removed or chipped and spread consistent with the terms of the License. No new vegetation may be cut so long as the License is suspended.

Any such activity completed or to be completed pursuant to paragraphs a and b, above, must be identified and described to the Department in writing by December 3, 2021. The date by which the task or activity either was or will be completed must be included in the submission.

- 3) If the suspension ends by the terms described above, the Licensees shall provide the Department written notice of their intent to resume construction a minimum of five business days prior to construction resuming, stating in the notice when and where the construction will restart.



Melanie Loyzim  
Commissioner  
Maine Department of Environmental Protection

**Appendix A**  
**List of Municipal and County Governments**

Town	County
City of Auburn 60 Court Street Auburn, Maine 04210 Phone (207) 333-6600 <a href="mailto:pcrichton@auburnmaine.gov">pcrichton@auburnmaine.gov</a>	<b>Androscoggin County Commissioners' Office</b> 2 Turner Street, Unit 2 Auburn, Maine 04210 Phone (207) 753-2500, Ext 1801 <a href="mailto:ipost@androscoggincountymaine.gov">ipost@androscoggincountymaine.gov</a>
City of Lewiston 27 Pine Street Lewiston, Maine 4240-7204 Phone (207) 513-3000 <a href="mailto:ebarrett@lewistonmaine.gov">ebarrett@lewistonmaine.gov</a>	Lincoln County Commissioners Office 32 High Street, P.O. Box 249 Wiscasset, Maine 04578 Phone (207) 882-6311 <a href="mailto:ckipfer@lincounty.me">ckipfer@lincounty.me</a>
Town of Alna 1568 Alna Rd Alna, Maine 04535 PHONE: (207) 586-5313 <a href="mailto:mmaymcc@yahoo.com">mmaymcc@yahoo.com</a> <a href="mailto:dcbaston@northatlanticenergy.com">dcbaston@northatlanticenergy.com</a>	Somerset County Commissioners Office 41 Court Street Skowhegan, ME 04976 Phone (207) 474-9861 <a href="mailto:ddibiasi@SomersetCounty-ME.org">ddibiasi@SomersetCounty-ME.org</a>
Town of Anson 5 Kennebec Street, PO Box 297 Anson, Maine 04911-0297 Phone (207) 696-3979	Franklin County Commissioner's Office 140 Main Street, Suite 3 Farmington, Maine 04938 Phone (207) 778-6614 <a href="mailto:imagoon@franklincountymaine.gov">imagoon@franklincountymaine.gov</a>
Town of Caratunk Elizabeth Caruso - 1st Select PO Box 180 Caratunk, Maine 04925-0180 OFFICE PHONE: 672-3030	Cumberland County Commissioners Office James Gailey, County Manager 142 Federal Street Portland, ME 04101 Phone (207) 871-8380 <a href="mailto:gailey@cumberlandcounty.org">gailey@cumberlandcounty.org</a>
Town of Chesterville 409 Dutch Gap Road Chesterville, Maine 04938 Phone (207) 778-2433 <a href="mailto:chesterville.me@gmail.com">chesterville.me@gmail.com</a>	Kennebec County Commissioner's Office 125 State Street, 2nd Floor Augusta, Maine 04330 Phone: (207) 622-0971
Town of Cumberland William R. Shane, Town Manager 290 Tuttle Road Cumberland, Maine 04021 Phone (207) 829-5559	Sagadahoc County Commissioner's Office 752 High Street Bath, Maine 04530 Phone (207) 443-8202

Town of Durham 630 Hallowell Road Durham, Maine 04222 Phone (207) 353-2561	
Town of Embden 809 Embden Pond Road Embden, Maine 04958-3521 Phone (207) 566-5551 <a href="mailto:embden-clerk@roadrunner.com">embden-clerk@roadrunner.com</a>	
Town of Farmington 153 Farmington Falls Road Farmington, Maine 04938 Phone (207) 778-5871 <a href="mailto:rdavis@farmington-maine.org">rdavis@farmington-maine.org</a>	
Town of Greene 220 Main St, PO Box 510 Greene, Maine 04236-0510 Phone (207) 946-5146 <a href="mailto:tmgreene@fairpoint.net">tmgreene@fairpoint.net</a>	
Town of Industry 1033 Industry Road Industry, Maine 04938 Phone (207) 778-5050	
Town of Jay 340 Main Street Jay, Maine 04239 Phone (207) 897-6785 <a href="mailto:joffice@jay-maine.org">joffice@jay-maine.org</a>	
Town of Leeds 8 Community Drive Leeds, Maine 04263 Phone (207) 524-5171 <a href="mailto:townofleeds@fairpoint.net">townofleeds@fairpoint.net</a>	
Town of Livermore Falls 2 Main Street Livermore Falls, Maine 04254 Phone (207) 897-3321 <a href="mailto:townoffice@lfme.org">townoffice@lfme.org</a>	

<p>Town of Moscow          110 Canada Road          Moscow, Maine 04920          Phone (207) 672-4834  <a href="mailto:moscow@myfairpoint.net">moscow@myfairpoint.net</a></p>	
<p>Town of New Gloucester          385 Intervale Road          New Gloucester, Maine 04260          Phone (207) 926-4126  <a href="mailto:ccastonguay@newgloucester.com">ccastonguay@newgloucester.com</a></p>	
<p>Town of New Sharon          11 School Lane, PO Box 7          New Sharon, Maine 04955-0007          Phone (207) 778-4046  <a href="mailto:townclerk@newsharon.maine.gov">townclerk@newsharon.maine.gov</a></p>	
<p>Town of Pownal          429 Hallowell Road          Pownal, Maine 04069          Phone (207) 688-4611</p>	
<p>Town of Starks          57 Anson Road          Starks, Maine 04911          Phone (207) 696-8069  <a href="mailto:townofstarks@gmail.com">townofstarks@gmail.com</a></p>	
<p>Town of Whitefield          36 Townhouse Road          Whitefield, Maine 04353          Phone (207) 549-5175  <a href="mailto:whitefield@roadrunner.com">whitefield@roadrunner.com</a></p>	
<p>Town of Wilton          158 Weld Road          Wilton, Maine 04294          Phone (207) 645-4961  <a href="mailto:office@wiltonmaine.org">office@wiltonmaine.org</a></p>	
<p>Town of Windsor          523 Ridge Road, PO Box 179          Windsor, Maine 04363-0179          Phone (207) 445-2998 FAX: 445-3762</p>	
<p>Town of Wiscasset          51 Bath Road          Wiscasset, Maine 04578-4108          Phone (207) 882-8200</p>	

<a href="mailto:admin@wiscasset.org">admin@wiscasset.org</a>	
Town of Woolwich 13 Nequasset Road Woolwich, Maine 04579-9734 PHONE (207) 442-7094	





# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

**Contact: (207) 314-1458**

### SUMMARY

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

#### **REQUIRED APPEAL CONTENTS**

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

#### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

#### **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **II. JUDICIAL APPEALS**

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

#### **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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