

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



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GOVERNOR

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October 27, 2020

SENT VIA ELECTRONIC MAIL ONLY

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**Re: Central Maine Power Company, New England Clean Energy Connect
Department Order L-27625-26-A-N, L-27625-TB-B-N, L-27625-2C-C-N,
L27625-VP-D-N, L-27625-IW-E-N (“NECEC Order”)
Chair ruling regarding consolidation of transfer application with appeal**

Dear Participants:

On October 6, 2020, the Department of Environmental Protection (“Department”) accepted as complete for processing an application of Central Maine Power Company (“CMP”) and NECEC Transmission LLC for partial transfer of the May 11, 2020, Department Order conditionally approving the application of CMP to construct the New England Clean Energy Connect (“NECEC Order”) from CMP to NECEC Transmission LLC (“Transfer Application”).

Three appeals of the NECEC Order are pending before the Board of Environmental Protection (“Board”).

On October 7, 2020, and by and through its attorney, appellant Natural Resources Council of Maine (“NRCM”) requested – to both the Department and the Board – that the Board consolidate and consider together the Transfer Application and the pending appeals of the NECEC Order. NRCM argues that the Transfer Application is a permit amendment and, when filed during the pendency of a Board review of a license, must be considered by the Board. In doing so, NRCM seeks to move consideration of the Transfer Application from the Commissioner to the Board and consolidate two different types of Board proceedings – an application for the transfer of a license and the procedurally distinct appeals to the Board of a final Department licensing decision. CMP’s response opposing NRCM’s request, dated October 27, 2020, has also been received and considered.

Putting aside the question of whether a transfer application should be treated as an amendment of a license, the Board’s rules do not expressly provide for consolidation of these different types of Board proceedings, which are subject to different provisions of Department rule Chapter 2. While there may be administrative economy in consolidating appeals of related agency licensing decisions, consolidating original jurisdiction of this Transfer Application with the pending appeals of the NECEC Order would be procedurally problematic. I see no compelling grounds to consolidate the licensing and appeal processes and decline to do so here.

In addition, Board action with respect to assumption of original jurisdiction over the Transfer Application appears to be premature. Pursuant to Chapter 2, § 17(B), within 45 days after an application has been accepted as complete for processing, the Commissioner must make a preliminary determination as to whether the Board should assume jurisdiction of the application and so notify the Board of the determination. While NRCM’s October 7, 2020, request for consolidation does not expressly request that the Commissioner refer the Transfer Application to the Board for assumption of original jurisdiction, it will be treated as such. Accordingly, the Board will await the Commissioner’s preliminary determination regarding NRCM’s request to the Commissioner to refer the application to the Board. I note it would be unusual for the Board to assume original jurisdiction of an application to transfer a license.

If you have any questions, you may contact Board Analyst, William F. Hinkel, at bill.hinkel@maine.gov (207) 314-1458 or Assistant Attorney General, Peggy Bensinger, at peggy.bensinger@maine.gov (207) 626-8578.

Respectfully,



Mark C. Draper, Chair
Board of Environmental Protection

cc (via e-mail only): Service List (rev. October 19, 2020)