



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mark C. Draper, Chair

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Sent by electronic mail only

July 16, 2020

James T. Kilbreth
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101-2480
jkilbreth@dwmlaw.com

Re: Natural Resources Council of Maine Application for a Stay

Dear Mr. Kilbreth,

On June 10, 2020, the Natural Resources Council of Maine (NRCM) requested that the Board of Environmental Protection (Board) stay the May 11, 2020 Order by the Commissioner of the Department of Environmental Protection (Department) granting permits to Central Maine Power (CMP) for the New England Clean Energy Connect project (Order). At the time this request was made to the Board, the Commissioner had already received a request to stay the Order from West Forks Plantation and others (West Forks) made on June 5, 2020, which was supplemented on June 15 and June 25, 2020. On June 19, 2020, NRCM submitted a filing to the Commissioner supporting the earlier West Forks stay request, which consisted of a copy of NRCM's stay request to the Board with a cover letter stating that the reasons for NRCM's Board request "are equally applicable here." The Commissioner and the Board have also each received multiple, and overlapping, responses to their respective stay requests from CMP and various intervenors in the underlying Department proceeding.¹

On behalf of the Board, I am referring NRCM's stay request to the Commissioner for his consideration and ultimate decision on both that request and West Forks' earlier stay request

¹ Responses to West Forks' stay request made to the Commissioner were filed by CMP and several intervenors, including Old Canada Scenic Byway, Friends of Boundary Mountains, the Industrial Energy Consumer Group, Wagner Forest, and the Western Maine Mountains & Rivers Corp. Responses to NRCM's stay request made to the Board were filed by CMP, Friends of Boundary Mountains, the Industrial Energy Consumer Group, the Western Maine Mountains & Rivers Corp., and Appalachian Mountain Club / Maine Chapter of Trout Unlimited. Old Canada Scenic Byway and Wagner Forest sent a copy to the Board of their filings with the Commissioner. NRCM also filed a reply to CMP's Board response, which is the subject of an objection by CMP. In its opposition to NRCM's stay request to the Board, CMP argues that the Board lacks authority to stay the Commissioner's Order. The Board need not address this CMP argument as I have concluded that referral to the Commissioner is warranted for other practical considerations as outlined herein.

made to the Commissioner on June 5, 2020. For a host of reasons, this is the most efficient and appropriate course of action under the circumstances here and will allow the Commissioner to issue a single consolidated decision on the two pending stay requests on behalf of the Department.

The two stay requests are directed to separate decision-making authorities within the Department but will be considered under the same provision of the Administrative Procedure Act, 5 M.R.S. § 11004. The two requests also involve overlapping arguments regarding stay criteria, and many of the same parties have responded to the two requests. Both requests ask for a stay of the Commissioner's Order on behalf of the Department, and the stay request made to the Commissioner pre-dates the stay request made to the Board.

The most logical and efficient process given the submission of competing stay requests to the two decision-making authorities within the Department is to refer the later NRCM stay request to the Commissioner for his consideration along with the earlier West Forks' request. All responses to NRCM's stay request to the Board will also be referred to the Commissioner to allow for his consideration of all arguments.

This will allow the Department to efficiently speak with a single voice as it addresses the various arguments for a stay in a consolidated fashion, and will conserve resources by avoiding duplicative efforts by the Department and the parties in addressing similar stay requests. This approach will also minimize the risk of inconsistent analysis and results by the Board and Commissioner in response to the competing stay requests.

All filings received by the Board concerning the NRCM's stay request will be transferred to the Commissioner; and the service lists, which are nearly identical, will be combined.

Sincerely,



Mark C. Draper, Chair
Board of Environmental Protection

Cc: Gerald Reid, DEP Commissioner
Service Lists in DEP and LUPC proceedings