



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) LICENSE SUSPENSION PROCEEDING
 25 Municipalities, 13 Townships/Plantations,)
 7 Counties (listed Appendix A))
 L-27625-26- A-N)
 L-27625-TG-B-N) PUBLIC HEARING
 L-27625-2C-C-N) FIRST PROCEDURAL ORDER
 L-27625-VP-D-N)
 L-27625-IW-E-N)

This First Procedural Order sets forth the Presiding Officer’s decisions with respect to Petitions for Leave to Intervene, the grouping of Intervenors, the deadlines for submission of pre-filed direct and pre-filed rebuttal testimony, and the allotment of time for each intervenor group at the public hearing.

1. In 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 (the Order), the Department approved the New England Clean Energy Connect (NECEC) project. The project involves 145 miles of high voltage direct current transmission line from Beattie Township to Lewiston, a converter station in Lewiston, a new substation in Pownal, additions to several other substations, and upgrades to existing transmission lines. In Department Order #L-27625-26-K-T, dated December 4, 2020, the Department transferred a portion of the permit for the project from Central Maine Power Co. (CMP) to NECEC Transmission, LLC (NECEC, LLC).
2. On August 10, 2021, in its decision in *Black v. Cutko*, No. BCD-CV-2020-29, the Superior Court (the Court) reversed the decision of the Director of the Bureau of Parks and Lands to enter into a lease in 2020 for a portion of the NECEC corridor located in Johnson Mountain Township and West Forks Plantation.
3. On August 12, 2021, the Commissioner notified CMP and NECEC, LLC that she had determined that the Court’s decision represents a change in circumstance. Pursuant to her authority under 38 M.R.S. § 342(11-B) and Chapter 2, § 25(A), the Commissioner may revoke or suspend a license upon making certain findings, including a finding that: “There has been a change in condition or circumstance that requires revocation or suspension of a license.” 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E). In her August 12 letter, the Commissioner notified CMP and NECEC, LLC that the court’s decision represents a change in circumstance and that she was initiating a proceeding to evaluate whether to suspend the Order was warranted in light of the *Black v. Cutko* decision and

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

that any request for a hearing by the licensees must be made within 15 days from the date of the letter.

4. On August 27, 2021, CMP and NECEC, LLC timely filed a request for hearing.
5. On September 1, 2020, the Department provided public notice that the hearing would be held on October 19, 2021 via the Zoom Cloud Meetings teleconference platform. The notice set September 13, 2021 as the deadline for submission of petitions for leave to intervene in this license suspension proceeding.
6. The Commissioner has designated Marybeth Richardson, an employee of the Department, as the Presiding Officer for the purpose of carrying out the hearing.

ADMINISTRATIVE PROCEDURE

7. Chapter 2, § 25(D) states that the procedures for hearings on processing to revoke or suspend a license are governed by Chapter 2, § 7(C). Section 7(C) directs that the hearing be held in accordance with the Administrative Procedure Act, 5 M.R.S. §§ 9051-9064, and the Department's rules governing licensing hearings. Chapter 3 contains the Department rules governing licensing hearings and, among other things, allows for variation from any procedure prescribed by the rule or the Maine Administrative Procedure Act, if the parties and the Presiding Officer agree to such variation, or if the variance will achieve greater fairness or economy and no prejudice to any party will result. Ch. 3, § 4(C)(11). Some variation will be necessary given the nature of this hearing.

PETITIONS FOR LEAVE TO INTERVENE

8. The Maine Administrative Procedure Act provides that a petition for leave to intervene will be granted upon demonstration that the petitioner is a person who is or may be substantially and directly affected by the proceeding, or is a member of a class which is or may be substantially and directly affected by the proceeding, or is an agency of federal, state, or local government. 5 M.R.S. § 9054(1). The Department has discretion to allow other petitioners to intervene as a full or limited party to the proceeding. 5 M.R.S. § 9054(2).
9. The Department received four petitions for intervenor status. The following list is a summary of the petitions to intervene received, listed in the order they were received:
 - a. The Friends of Boundary Mountains is a non-profit organization that states that its mission is to safeguard the Boundary Mountains from development and to conserve the area for traditional uses of recreation, wildlife, and forestry. The

organization intervened in and is a party to the licensing proceeding associated with the Order.

- b. The Natural Resources Council of Maine (NRCM) is a non-profit organization that states that it is dedicated to protecting, restoring, and conserving Maine's environment. NRCM intervened in and is a party to the licensing proceeding associated with the Order.
 - c. The Industrial Energy Consumer Group (IECG) is an incorporated association that states that it was formed to represent Maine industrial energy consumers and consumer-generators before state, federal, and regional regulatory, legislative, and congressional bodies on energy-related issues. The group states that it works to diversify the sources and lower the costs of energy in New England. IECG intervened in and is a party to the licensing proceeding associated with the Order.
 - d. West Forks Plantation, the Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Matt Wagner, Mike Pilsbury, Mandy Farrar, and Carrie Carpenter each have expressed their interest in the NECEC project and that they will be affected by the project. Each individually intervened in and is a party to the licensing proceeding associated with the Order. In the underlying licensing proceeding they have participated collectively as a group in that separate licensing proceeding and request to participate similarly, as a group, in the present proceeding. This group is referred to as "West Forks." On September 15, 2021, West Forks submitted an addendum to their petition for leave to intervene, but it will not be considered because it was untimely.
10. The entities or persons listed above have met the requirements for Intervenor status set forth in Chapter 3, § 11(A)(1) and all petitions are approved. A list of Intervenors and contact information can be found in Appendix C.
 11. Pursuant to Chapter 3 § 11A(3), the Licensees shall be granted automatic intervenor status and do not need to file a petition for leave to intervene.
 12. All Parties are expected to comply with deadlines and filing requirements established by the Presiding Officer. Failure to comply may result in appropriate sanctions, including the rejection of argument, evidence, or testimony the party seeks to offer.

PRE-HEARING CONFERENCE

13. A pre-hearing conference will be held, via video conference, on October 14, 2021, at 9:00 a.m. A meeting link will be sent to the parties. All parties must have a representative in attendance at the conference. Any party that is not present waives its

right to object to matters discussed and resolved by way of a procedural order following the conference. The Presiding Officer may limit participation to one representative per party. Members of the public may attend the conference but may not otherwise participate. A meeting link for interested members of the public will be posted on the Department's website and accessible by navigating from the NECEC project webpage: <https://www.maine.gov/dep/ftp/projects/necec/>.

EX PARTE COMMUNICATION

14. No legally interested person or party may communicate directly or indirectly with the Commissioner or Presiding Officer concerning any issue of fact, law, or procedure, except upon notice and opportunity for all parties to participate. This bar on ex parte communications does not prohibit the Commissioner and Presiding Officer from having the aid and advice of counsel and Department staff and does not apply to communications between the Commissioner or Presiding Officer and counsel or Department staff.

ADDITIONAL MATTERS

15. If they have not already, each party must designate one person as the contact person for the purpose of this proceeding. All filings related to this matter should be sent to Jim Beyer (contact information below) and the persons on the service list must be copied. The service list along with contact information can be found in Appendix C.
16. The Presiding Officer provides that any communications in this matter may be filed with the Department by electronic mail (email). Once an email communication has been sent to the members on the service list, service is deemed complete. Any person who does not readily have access to email and wishes to receive documents by U.S. mail in paper form, instead of email, may request that form of service.

HEARING TOPICS

15. In accordance with Chapter 3 § 4(C)(4) and 5 M.R.S. § 9053(4), the Department will only take evidence and testimony on the following topics during the public hearing.
 - a. The status of the *Black v. Cutko* litigation, including the timing of any resolution and range of possible outcomes (note: The Department is not seeking testimony regarding the merits of that case and will not be evaluating the likelihood of any particular outcome in that case on the merits.);
 - b. The status of construction activities being conducted pursuant to the Order by CMP and NECEC, LLC, including portions completed, current activities, and construction plans for the upcoming months;

- c. 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;
- d. 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
- e. The time frame and practical requirements of any measures that would be necessary to protect the environment if the permit were to be suspended.

PRE-FILED TESTIMONY

16. All parties must submit the testimony of their witnesses in writing in advance of the hearing, by the deadlines listed below. This written testimony must be sworn. Written testimony is sworn if the witness declares by oath or affirmation that the testimony is true and correct to the best of the witness's knowledge and belief. Pre-filed rebuttal testimony will be allowed but must be limited to responding to the pre-filed direct testimony of other witnesses. All rebuttal testimony must identify the direct testimony to which it is responding. The pre-filing of testimony allows all parties, the Department staff, counsel for the Department, and the Presiding Officer to review the testimony in advance and come to the public hearing prepared to ask questions in an efficient and focused manner.

WITNESSES

17. All witnesses submitting written, pre-filed testimony must attend the hearing and be available for cross-examination. Witnesses will be sworn prior to giving their testimony at the hearing.
18. It is the responsibility of each party to keep its witnesses informed regarding the public hearing schedule and to ensure that their witnesses maintain maximum flexibility during the hearing as the agenda may change.
19. A witness list must be provided to the Presiding Officer by 5:00 p.m. on September 27, 2021. This list must include the name of the witness, the topic(s) to be covered by the witness, and any special requests concerning the witness's ability to testify, such as any relevant physical disabilities.
20. The deadline for filing written pre-file testimony in this proceeding is 5:00 p.m. on October 4, 2021. Any written objections to pre-filed testimony must be filed by 5:00 p.m. on October 7, 2021.
21. The deadline for filing written rebuttal testimony in this proceeding is 5:00 pm, October 12, 2021. Written objections to rebuttal testimony must be filed by 5:00 p.m. on October 15. All rebuttal testimony must be sworn and notarized.

HEARING AGENDA

22. The hearing will be held on Tuesday, October 19, 2021. It will be conducted via the Zoom platform due to Covid-19 public health concerns. The daytime session of the hearing will begin at 9:00 a.m. This session will be devoted to hearing evidence from the licensees and intervenors and questioning of the parties' witnesses. The parties will each be given five minutes for an opening statement, followed by 30 minutes for a summary of pre-filed direct testimony. Each party will be provided with ten minutes to cross-examine witnesses. No cross-examination will be allowed for witnesses seeking the same result. All parties will be given ten minutes for a closing statement. Interested members of the public will be able to watch this portion of the hearing.

The evening session of the hearing will begin at 5:30 p.m. This session will be devoted to receiving evidence from members of the public. Members of the public wishing to testify are asked to register to speak by contacting Ruth Ann Burke at Ruth.A.Burke@maine.gov by 5:00 p.m. on October 12, 2021. Individuals who do not register in advance to speak will be allowed to testify, time permitting.

A more detailed agenda will be provided to the parties prior to the hearing day.

Pursuant to Chapter 3, § 19(B)(7), the Presiding Officer may set time limits for testimony, cross-examination, or rebuttal, and may adjust time limits during the course of the hearing.

POST HEARING BRIEFS AND CLOSE OF THE RECORD

23. The record will close at the conclusion of the public hearing on October 19, 2021, with the exception of filing of post hearing briefs and reply briefs. The deadline for submission of post hearing briefs for all parties is 5:00 p.m. on November 2, 2021. The deadline for submission of reply briefs for all parties is 5:00 p.m. on November 16, 2021.

SUSPENSION PROCEEDING FILE

24. The full file on this suspension hearing will be maintained at the Department's Eastern Maine Regional Office located at 106 Hogan Road, Bangor, Maine and will be available for public inspection upon request and with reasonable notice. Requests to examine this file may be directed to Jim Beyer at NECEC.DEP@maine.gov or at (207) 446-9026.

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Dated: September 17, 2021

A handwritten signature in blue ink, appearing to read "Marybeth Richardson". The signature is fluid and cursive, with a prominent initial "M" and a long, sweeping tail.

Marybeth Richardson
Presiding Officer

**APPENDIX A: LIST OF MUNICIPALITIES, TERRITORIES
AND COUNTIES IN THE PROJECT AREA**

Municipalities:

Alna
Anson
Auburn
Caratunk
Chesterville
Cumberland
Durham
Embden
Farmington
Greene
Industry
Jay
Leeds
Lewiston
Livermore Falls
Moscow
New Gloucester
New Sharon
Pownal
Starks
Whitefield
Wilton
Windsor
Wiscasset
Woolwich

Townships/Plantations:

Appleton Township
Beattie Township
Bald Mountain Township
Bradstreet Township
Concord Township
Hobbstown Township
Johnson Mountain Township
Lowelltown Township
Parlin Pond Township
Skinner Township
T5 R7 BKP WKR
The Forks Plantation
West Forks Plantation

Counties:

Androscoggin
Cumberland
Franklin
Kennebec
Lincoln
Sagadahoc
Somerset

APPENDIX B: RELEVANT STANDARD

The Administrative Procedure Act and Chapter 2 of the Department's rules provide that the Commissioner may revoke or suspend a license upon finding that: "There has been a change in condition or circumstance that requires revocation or suspension of a license." 38 M.R.S. § 342(11-B)(E); Ch. 2, § 27(E).

APPENDIX C: SERVICE LIST

<u>Organization</u>	<u>Name of Spokesperson</u>	<u>Email address</u>
INTERVENORS		
none	Ed Buzzell*	ebuzzel@hotmail.com
Friends of the Boundary Mountains	Robert Weingarten	bpw1@midmaine.com
Hawk's Nest Lodge	Peter Dostie*	hawksnestlodge@gmail.com
Industrial Energy Consumer Group	Anthony Buxton Benjamin R. Borowski	ABuxton@preti.com rborowski@preti.com
Natural Resources Council of Maine	James T. Kilbreth David M. Kallin	jbilbreth@dwmlaw.com dkallin@dwmlaw.com
Town of Caratunk	Elizabeth Caruso*	caratunkselectmen@myfairpoint.net
West Forks Plantation	Ashli Coleman*	ashli.goodenow@gmail.com
Maine Guide Service, LLC	Greg Caruso*	gcaruso@myfairpoint.net
Kennebec River Angler	Chris Russell*	info@kennebecriverangler.com
Kennebec River Angler	Mike Pilsbury*	mspils15@hotmail.com
none	Kathy Barkley*	kbraft@gmail.com
none	Kim Lyman*	Klyman9672@gmail.com
none	Noah Hale*	lwithwhitewater@gmail.com
none	Eric Sherman*	eshermanbpr@gmail.com
none	Matt Wagner*	mattwagner207@gmail.com
none	Mandy Farrar*	Manfarr1974@yahoo.com
none	Carrie Carpenter*	Carrie_carpenter@rocketmail.com
LICENSEES		
Central Maine Power Company	Gerry Mirabile	Gerry.mirabile@cmpco.com
Central Maine Power Company NECEC Transmission LLC	Matt Manahan Lisa Gilbreath	mmanahan@pierceatwood.com lgilbreath@PierceAtwood.com >
DEPARTMENT STAFF		

Department of Environmental Protection	Marybeth Richardson Presiding Officer	Marybeth.Richardson@maine.gov
Department of Environmental Protection	Jim Beyer Project Manager	NECEC.DEP@maine.gov
Department of Environmental Protection	Nick Livesay Land Bureau Director	Nick.Livesay@maine.gov
ASSISTANT ATTORNEYS GENERAL		
Attorney General's Office	Peggy Bensinger Caleb Elwell	Peggy.Bensinger@maine.gov Caleb.Elwell@maine.gov

* Collectively "West Forks" represented by Elizabeth A. Boepple, Murry Plumb & Murry