

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION



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GOVERNOR

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May 2, 2022

SENT VIA ELECTRONIC MAIL ONLY

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Re: Consolidated appeals of the New England Clean Energy Connect Order and Transfer Order

Dear Participants:

On March 24, 2022, I circulated a letter outlining the procedures the Board will follow during its consideration of the consolidated appeals of the NECEC Order and Transfer Order and enclosing an appeal schedule for the Board meetings to be held on May 17-18, 2022. This letter serves to remind the parties to consult my March 24, 2022 letter to review the procedures and schedule in advance of the upcoming May meetings, and to supplement my prior letter with additional information regarding the scope of what may and may not be appropriately considered by the Board at the meetings.

As previously noted, pending before the Board for consideration at the May 17-18 meetings will be the three appeals of the May 11, 2020 NECEC Order filed by the Natural Resources Council of Maine, NextEra Energy Resources, LLC, and the West Forks Group, and the appeal of the December 4, 2020 Transfer Order filed by the Natural Resources Council of Maine. Those appeals will be considered by the Board in accordance with Chapter 2, section 24 of the Board's rules, *Rule Concerning the Processing of Applications and Other Administrative Matters*. The record on which the Board will

consider those consolidated appeals dates to September 2017, when the applications for the NECEC Order were filed with the Department, and includes all public comments and evidence timely submitted to the Department during the processing of the license applications between 2017 and 2019 and the evidence submitted in conjunction with the hearing in 2019. The record is now closed, and the Board may not receive new argument or evidence from any person. The meetings in May are not public hearings. Oral arguments from the parties at the May meetings must remain within the boundaries of the closed administrative record and the written arguments made to date with respect to these particular consolidated appeals only.

As you know, other administrative and judicial proceedings regarding the NECEC project are ongoing and separate and are not to be comingled with the matters that will be before the Board at the May meeting. Those other proceedings include the NRCM's pending appeal to the Board of a minor revision licensing decision by the Commissioner (Minor Revision Order) that was not consolidated with the appeals to be considered by the Board in May, an Order of the Commissioner that suspended the NECEC Order, and various judicial appeals pending before the Maine Law Court, including *Black, et al. v. Bureau of Parks and Lands, et al.*, No. BCD-21-257 (involving the lease of certain public reserved lands), and *NECEC Transmission LLC, et al. v. Bureau of Parks and Lands, et al.*, No. BCD-21-416 (involving Referendum Question 1 and IB1).

I previously ruled that the Natural Resources Council of Maine's appeal of the Minor Revision Order will not be consolidated with the other pending appeals and instead will be processed separately, on its own procedural track.¹ Similarly, the Commissioner's suspension of the NECEC Order was the result of a separate Department proceeding involving different statutory and rule provisions unrelated to those governing Board appeals of final licensing decisions. The judicial appeals pending before the Maine Law Court are separate matters entirely involving laws administered by other agencies. All such matters are outside of the Board's statutory obligation to process, and do not bear on the outcome of, the appeals of the NECEC Order and Transfer Order pending before the Board. No briefing, argument or evidence concerning these distinct matters may be submitted to the Board for its consideration as part of the appeals of the NECEC Order and Transfer Order.

As a further reminder, the Board meetings on May 17-18, 2022, will be held in-person and members of the public may attend the meetings. In addition, the Board will provide a live video stream of the meetings for those who wish to watch the proceeding from a remote location. Details regarding the video link will be provided, once available, on the meeting agenda and will be posted on the Board's website at <https://www.maine.gov/dep/bep/index.html>. An electronic recording of the meetings will be made and will be available following the meetings.

The Department staff recommendation in the form of a proposed Board Order, which will be available shortly, will be circulated to appeal participants and added to the Board's webpage <https://www.maine.gov/dep/bep/featured.html>.

¹ Board Chair letter, June 10, 2021.

Questions or specific requests for accommodations regarding the meeting location may be directed to Board Clerk Ruth Ann Burke at ruth.a.burke@maine.gov (207) 287-2811. Questions regarding the appeal proceeding may be directed to 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.

Sincerely,



Mark C. Draper, Chair
Board of Environmental Protection

cc (via e-mail only): NECEC service list