



JANET T. MILLS  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF MARINE RESOURCES  
21 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0021

PATRICK C. KELIHER  
COMMISSIONER

September 8, 2020

Randall Dorman, Licensing Manager  
Brookfield Renewable  
Topsham Hydro Partners Limited Partnership  
150 Main Street  
Lewiston, ME 04240

RE: Pejepscot Hydroelectric Project (FERC No. P-4784);  
Application for new license; CZMA

**Transmitted via e-mail**

Dear Mr. Dorman:

I am writing in response to notice of Topsham Hydro Partners Limited Partnership's ("Topsham Hydro") filing with the Federal Energy Regulatory Commission ("Commission") of its application for a new license for the Pejepscot Hydroelectric Project (FERC No. 4784). My office received notice of this filing by e-mail dated August 31, 2020, and copied to you, from your colleague, Mr. Kirk Smith.

As noted in Exhibit E.2.3 of Topsham Hydro's application, the project is located within the state coastal zone as designated by Maine's federally-approved coastal zone management program and Topsham Hydro is required to submit a federal Coastal Zone Management Act ("CZMA") consistency certification to the State and to the Commission as concerns its application to the Commission for a new license for the project. As explained in this same part of the application, Topsham Hydro "will provide ["MDMR" - the Maine Department of Marine Resources] with a request for consistency certification concurrent with the filing of the application for 401 Water Quality Certification with ["MDEP" - the Maine Department of Environmental Protection]."<sup>1</sup> We understand from consultation with MDEP that Topsham Hydro expects to submit its WQC application later in the Commission's review process, following the Commission's issuance of its notice that the project is ready for environmental analysis ("REA"), and that the date on which the Commission may issue that REA cannot be determined at this time.

While MDMR does not object to Topsham Hydro's proposed timing for filing of its consistency certification, please note that the six-month period for CZMA consistency review will not begin until

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<sup>1</sup> Under NOAA's rules regarding the CZMA consistency rules process, the applicant is required to submit a "consistency certification" to the State. In context, it is plain that the "request for consistency certification" which Topsham Hydro has clarified it will provide to the State refers to such a "consistency certification." This letter uses the term "consistency certification" to refer to that applicant filing, which the applicant needs to provide to the Commission as well.

Topsham Hydro has provided MDMR its consistency certification as well as all necessary data and information regarding that consistency certification. At this time, Topsham Hydro has provided neither the requisite consistency certification, as it has noted, nor all the necessary data and information.<sup>2</sup>

For a federal licensing or permitting activity of this kind, DEP's review of pertinent state license and permit application(s) under the select state land use and environmental laws which provide the enforceable policies of the State's coastal zone management program ("core laws") constitutes the state consistency review pursuant to Section 307 of the CZMA; those completed application(s) provide the data and information necessary for that review; and DEP's decision on such application(s), including any conditions of approval, constitutes the basis for and would be incorporated by reference in the state response to the applicant's consistency certification. In this instance, we understand from consultation with MDEP that a completed application for water quality certification pursuant to Section 401 of the Clean Water Act ("WQC application") would provide the necessary data and information to initiate the CZMA consistency review period.

Section 401 of the Clean Water Act provides the State one year to respond to an applicant's request for water quality certification; and Section 307 of the CZMA provides the State six months to respond to an applicant's consistency certification. Since, as noted above, MDEP's decision on the WQC application will constitute the basis for response to Topsham Hydro's consistency certification, we request that Topsham Hydro agree to a stay of the period for CZMA review pursuant to 15 C.F.R. §930.60(b) to better align the WQC and CZMA review periods. We suggest that execution of the stay agreement be deferred until Topsham Hydro has submitted both its WQC application and CZMA consistency certification and would be happy to provide a draft stay agreement for your review at that time.

Please contact Todd Burrowes on my staff ([todd.burrowes@maine.gov](mailto:todd.burrowes@maine.gov)) to confirm your agreement with or to discuss this stay request, or if you have any questions or need additional information.

Thanks for your consideration.

Sincerely,



Kathleen Leyden, Director  
Maine Coastal Program

cc:/  
Ryan Hansen, FERC  
Kathy Howatt, DEP  
Kirk Smith, Gomez and Sullivan

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<sup>2</sup> Mr. Smith's above-noted e-mail provides a link to the application for a new hydropower license under the Federal Power Act which is available in the Commission's e-library. MDMR deems that adequate to serve as a copy of the federal application.