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February 18, 2021

VIA ELECTRONIC MAIL AND U.S. MAIL

Mark C. Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

RE: Central Maine Power Company, New England Clean Energy Connect
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, and L-27625-26-K-T

Dear Chair Draper:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC, please find enclosed a Response to NRCM's Transfer Order Appeal.

Please let me know if you have any questions.

Sincerely,

Matthew D. Manahan

Enclosure
cc (via email only): Service List (rev. October 19, 2020)

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY	)
NEW ENGLAND CLEAN ENERGY CONNECT	)
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 and L-27625-26-K-T	)

CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION LLC'S RESPONSE TO NRCM'S TRANSFER ORDER APPEAL

Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC LLC) (collectively, Licensees) hereby respond to the January 4, 2021 appeal of the Natural Resources Council of Maine (NRCM) of the Commissioner's December 4, 2020 Transfer Order approving the partial transfer to NECEC LLC of the DEP permits for the New England Clean Energy Connect Project (Project).

I. The Board has already addressed and declined NRCM's meritless request that the Board must assume jurisdiction over the Transfer Application.

NRCM has already requested, and the Board has already declined, Board assumption of jurisdiction over the Transfer Application. NRCM Exhibits 3, 6; BEP Meeting Minutes at 2 (Nov. 19, 2020); DEP Regs. Ch. 2 § 17(B). The Board should reject NRCM's effort to reargue this issue now, after it has already been resolved; the DEP's rules do not allow NRCM yet another bite at the apple.[1]

[1] Furthermore, NRCM again disregards the Chapter 2 section 17 procedure for requesting Board jurisdiction (as it previously did on November 6, 2020 when it submitted a second, untimely request for the Board to assume jurisdiction), making its renewed request directly to the Board because both the Commissioner and the Board previously rejected NRCM's request for Board assumption of jurisdiction, as described below. *See* NRCM Exhibit 5; NRCM Exhibit 6 at 1 ("NRCM's November 6, 2020 letter to the Department, also styled as a request for Board jurisdiction with a subject line identical to the prior filing, is untimely and will not be considered by the Commissioner."). The applicable procedure is clear, notwithstanding NRCM's attempts to obfuscate it, and NRCM cannot here prescribe additional procedure simply because its request for Board jurisdiction over the Transfer

On October 7, 2020 NRCM made a sweeping request to the Chair, the Board Members, the BEP Executive Analyst, and the DEP's NECEC Project Manager that the Board assume jurisdiction over the Transfer Application and consolidate that application with the pending appeals of the Permit Order. NRCM Exhibit 3. The Chair ruled that NRCM's request for Board jurisdiction was improper to the extent that it was made to the Board because it was not first made to the Commissioner, and further declined to consolidate the Transfer Application with the pending appeals because doing so made no sense. NRCM Exhibit 4 at 2 (October 27, 2020 Chair Draper Letter). Instead, and following the procedures set forth in Chapter 2 section 17, the Commissioner and the Board addressed NRCM's request for Board jurisdiction as follows.

First, the Commissioner considered NRCM's request, and in no uncertain terms determined that none of the four criteria for Board assumption of jurisdiction set forth in 38 M.R.S. section 341-D(2) and in Chapter 2 section 17(C) is met:

> With regard to the first criterion, the proposed transfer will not have an environmental or economic impact on more than one municipality, territory or county. The result of the transfer, if approved, will be purely administrative. The proposed transfer will not alter the proposed development or the obligations of the permittee. Therefore, the proposed transfer will not have any environmental impact or economic impact.
>
> With regard to the second criterion, the Department has decades of experience reviewing and processing transfer applications. The proposed transfer is not an activity not previously permitted or licensed.
>
> With regard to the third criterion, following public notice of the transfer application no person other than NRCM has requested original Board jurisdiction over, or a public hearing on, the transfer application. The transfer request has not come under significant public scrutiny, to date. The third criterion, however, requires the Department to look ahead and assess whether it is likely the transfer application will come under public scrutiny in the future. The Department's experience is that transfer applications generate little public interest. The single request for a public hearing is further evidence of this. Although future public interest could be higher than normal with respect to the present application because of the interest in the underlying project, the Department does not

Application was declined under the prescribed procedure. In effect, NRCM's present argument for Board jurisdiction is a request for reconsideration of the Board's decision not to assume jurisdiction and to allow the Commissioner to process the Transfer Application. Such a reconsideration request is not allowed by the rules.

> anticipate future interest will rise to the level of significant public scrutiny given the administrative result of the transfer, if approved, and the fact the transfer was required by the Maine Public Utilities Commission and involves a transfer among organizations under the same corporate umbrella.
>
> With regard to the fourth criterion, the proposed transfer is administrative in nature – the transfer itself, if approved, would not authorize any development that has not been previously authorized – therefore, the location of the transfer is the location where the transfer order (whether an approval or denial) is signed. The transfer occurs in one location, which is expected to be the City of Augusta. The transfer application is not located in more than one municipality, territory, or county.

NRCM Exhibit 6 at 3 (November 13, 2020 Commissioner Loyzim Letter to NRCM); DEP Regs. Ch. 2 § 17(B)-(C).

Second, on November 13, 2020 the Commissioner sent her response and NRCM's October 7, 2020 request to Chair Draper and BEP Executive Analyst William Hinkel. NRCM Exhibit 6 at 4; DEP Regs. Ch. 2 § 17(B). On November 13, 2020, Executive Analyst Hinkel forwarded to all Board members NRCM's October 7, 2020 request and the Commissioner's November 13, 2020 response. BEP Meeting Minutes at 2 (Nov. 19, 2020).

Third, the Board considered NRCM's request and the Commissioner's response during the Executive Analyst's Comments at the Board's November 19, 2020 meeting. BEP Meeting Minutes at 2 (Nov. 19, 2020). DEP Regs. Ch. 2 § 17(B). At that meeting, no Board member requested that the Board schedule time at a future Board meeting to discuss the Commissioner's determination or the Board assuming jurisdiction of the Transfer Application, no Board member indicated that any of the four criteria for Board jurisdiction have been met, and the Board did not assume jurisdiction. BEP Meeting Minutes at 2 (Nov. 19, 2020).[2]

[2] The Board has broad discretion to decide whether to consider a request for Board jurisdiction where the Commissioner has not recommended such jurisdiction. DEP Regs. Ch. 2 § 17(B) 9 ("If upon such notification by the Commissioner the Board determines the criteria for Board jurisdiction have been met, the Board may assume jurisdiction over the application."); Order on NRCM's Motion to Stay DEP Commissioner's Order at 6, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.) (interpreting the 38 MRS § 344(2-A)(A) scenario in which an interested person requests that the Commissioner refer an application to the board and the Commissioner determines that the criteria are not met, which the Court found "appears to pair with the sentence in the Board-

Accordingly, the Chapter 2 section 17 process by which the Board may assume jurisdiction over an application was complete and the Commissioner processed the Transfer Application. NRCM's untimely request that the Board now, months after its request for Board jurisdiction was declined and the Commissioner processed the Transfer Application, start the entire process over by considering (again) its request for Board jurisdiction and processing (again) of the Transfer Application is a waste of the Board's time and resources.

Even if the Board were to consider, again, NRCM's request that it assume jurisdiction over the Transfer Application, NRCM's request is without merit, for the reasons set forth in the Commissioner's November 13, 2020 letter.[3] Because a Transfer Application is not a project of statewide significance, NRCM tries to drag in the underlying permit, arguing that "the NECEC is the very definition of a project of statewide significance," the Transfer Application seeks to transfer that project, and therefore it would make sense to treat the Transfer Application as a project of statewide significance and for the Board to assume jurisdiction over the entire matter. NRCM Appeal at 4-5. But not only is a transfer application substantively different than the underlying permit, but the Maine Superior Court has already determined that NRCM waived its

responsibility section that says the Board 'may vote to assume jurisdiction of an application if it finds that at least 3 of the 4 criteria of this subsection have been met.' *Id.* § 341-D(2).").

[3] *See* NRCM Appeal Exhibit 6 at 3 (Commissioner's findings that the Transfer Application meets none of the four statewide significance criteria). Furthermore, NRCM's novel interpretation of 38 M.R.S. § 341-D(2), which requires that the Board "decide each application for approval of permits and licenses that in its judgment represents a project of statewide significance," is not germane to the Transfer Application. Title 38 M.R.S. § 341-D(2) plainly applies only to an "application for approval of permits and licenses," and not to transfers of such approvals. 38 M.R.S. § 341-D(2); *see also* DEP Regs. Ch. 2 § 17(C) ("The Board shall assume jurisdiction over and decide each license application that in its judgment represents a project of statewide significance.") (emphasis added). NRCM does not, and cannot, allege that the Transfer application meets any of the four criteria that could result in Board assumption of jurisdiction, because those criteria apply to the permitting of an underlying project and not to a subsequent transfer of the permits issued for that project. In other words, a Transfer Application itself cannot be "a project" of statewide significance.

argument that the Board should have assumed jurisdiction over the underlying Permit Application, by making that request too late in the process.[4]

Because NRCM waived its argument that the Board should assume jurisdiction over the Permit Application, NRMC cannot seek to use the underlying Permit Application as a way to bootstrap Board jurisdiction over the Transfer Application. And doing so would be illogical because it would merge Board jurisdiction over the Transfer *Application* with the appeals of the Permit *Order*. The Chair has already determined that "consolidating original jurisdiction of this Transfer Application with the pending appeals of the NECEC Order would be procedurally problematic." NRCM Appeal at 4; NRCM Exhibit 4 at 2 (October 27, 2020 Chair Draper Letter). It is far more logical and efficient, as the Board has already determined, to consolidate the appeals of the Permit Order and Transfer Order and consider both in the Board's appellate capacity. Chair Draper Letter at 2 (Jan. 19, 2021).[5]

II. Licensees maintained sufficient title, right or interest (TRI) throughout the entire Transfer Application processing period.

NRCM argues that the 2014 BPL lease (2014 Lease) and the June 23, 2020 BPL lease (2020 Lease) with the Bureau of Parks and Lands (BPL) are both invalid and of insufficient duration, and therefore inadequate proof of TRI. NRCM is wrong on both counts; Licensees made a sufficient *prima facie* showing of TRI required of a licensee.

[4] Order on NRCM's Motion to Stay DEP Commissioner's Order at 6-7, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021) (Murphy, J.) ("Even assuming movants are correct that the Board *should* have been the entity to decide CMP's permit application, any such argument was waived because it was not raised in the several-year process before the Commissioner until after the Commissioner issued the conditional approval of the permits.").

[5] NRCM's request is a conspicuous attempt at delay. The Transfer Application isn't before the Board, but NRCM's appeal of the Transfer Order is. Thus, NRCM's arguments for Board jurisdiction are not about substance – the Board is not bound by the Commissioner's findings of fact or conclusions of law when considering NRCM's appeal of the Transfer Order – but rather are about process, trying to delay the Project by starting the process over. NRCM's obstructionist tactics should be disregarded.

First, NRCM argues that submission with the Transfer Application of the 2020 Lease, which amends and restates the 2014 Lease, is an "end run" around Licensees' showing of TRI during the pendency of the Permit Application, which NRCM argues was deficient because it claims the 2014 Lease was "illegal." NRCM Appeal at 5. But the 2020 Lease has no relevance whatsoever to the sufficiency of TRI during processing of the Permit Application, because the 2020 Lease did not exist until after the Commissioner issued the Permit Order. Instead, the 2014 Lease was sufficient TRI during the pendency of the Permit Application and the 2020 Lease was sufficient TRI during the pendency of the Transfer Application. It is NRCM that here exercises "gamesmanship," muddying this very clear delineation between leases and applications by arguing that the alleged "invalidity" of the 2014 Lease somehow impacts the showing of TRI in the Transfer Application.

Even if the validity of the 2014 Lease were relevant to the 2020 Lease, which it is not, the Superior Court has already rejected NRCM's TRI argument regarding the validity of the 2014 Lease. The Maine Superior Court recently addressed the same contention NRCM makes here – that Licensees did not have TRI because the lease of land from the BPL is "illegal" and is currently being challenged in *Black v. Cutko* – and Justice Murphy (who also presides over the *Black v. Cutko* litigation) affirmed that "The fact that an applicant's TRI is based on a possessory interest that might later be invalidated by a court does not mean the applicant lacked TRI to proceed before the DEP." Order on NRCM's Motion to Stay DEP Commissioner's Order at 8, KEN-AP-20-27, SOM-AP-20-04 (Me. Super. Jan. 11, 2021), citing *Southridge*;[6] NRCM Appeal at 5-6. NRCM's argument that "CMP did not have sufficient TRI during the permitting process"

[6] *Southridge Corp. v. Bd. of Envt'l Prot.*, 655 A.2d 345 (Me. 1995) (holding that a landowner whose property interest was based entirely on an adverse possession claim, on which he may or may not prevail, had sufficient TRI in the disputed land to apply to the DEP for a permit).

because the 2014 Lease was "illegal," and therefore that "a transfer to another entity is inappropriate and should be denied," crumbles under the Superior Court's holding that a challenge to the validity of the 2014 Lease has no bearing on the sufficiency of that lease as evidence of TRI. For the same reason, NRCM's assertion that the 2020 Lease is "unlawful and invalid" is insufficient grounds to overturn the Commissioner's findings on TRI. NRCM Appeal at 6.

Second, NRCM for the first time challenges the duration of the 2020 Lease, and argues without any citation that the Commissioner's acceptance of the decision of BPL to enter into the lease "violates Department rules." NRCM Appeal at 6. NRCM did not make this argument during the processing of Transfer Application and has therefore waived it. In any case, NRCM is again manufacturing facts and obfuscating the DEP's rules. The Commissioner stated that "the Department accepts the decision of its sister agency to enter into the lease" and that "the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project." NRCM Exhibit 7 at 2. These are two separate findings, the first regarding the validity of the 2020 Lease and the second regarding the duration and terms of that lease. DEP Regs. Ch. 2 § 11(D)(2). As described above, the DEP does not determine the BPL's authority to grant the 2020 Lease, and a challenge to the validity of that lease cannot be grounds to overturn the Commissioner's reliance on its sister agency in concluding that the 2020 Lease (like the 2014 Lease) is valid TRI. And NRCM's suggestion that the Commissioner failed to "independently analyze NECEC LLC's TRI" is nothing more than baseless assertion. The Commissioner has no obligation to make explicit findings as to the duration of the 2020 Lease, nor is NRCM correct that the 2020 Lease is *not* of sufficient duration "to permit the proposed construction and reasonable use of the property." DEP Regs. Ch. 2 § 11(D)(2).

NRCM makes much ado of the 25-year term of the 2020 Lease and the 40-year expected life of the Project. Neither is incompatible, and NRCM mischaracterizes both. Notably, nothing prohibits the BPL from renewing the 2020 Lease. *See* 12 M.R.S. § 1852(4). NRCM infers that because there is no express renewal provision in the statute allowing leases for utilities and rights-of-way, no renewal is possible. Such a reading, however, would prohibit the BPL from renewing other leases subject to a 25-year lease period, such as leases to other agencies for purposes of protecting, enhancing, or developing the natural, scenic, or wilderness qualities or recreational, scientific, or educational uses. *See* 12 M.R.S. § 1852(3). That cannot be the intent of the Legislature. The most NRCM possibly could muster is that the statute is ambiguous because it does not affirmatively authorize consecutive leases of the same land, but even if there were such ambiguity here, the BPL's reasonable interpretation of the statute prevails. *See Goodrich v. Maine Pub. Employees Ret. Sys.*, 2012 ME 95, ¶ 6, 48 A.3d 212 ("When a statute administered by an agency is silent or ambiguous on a particular point, we will review whether the agency's interpretation of the statute is reasonable and uphold its interpretation unless the statute plainly compels a contrary result."). The BPL has made clear in the *Black v. Cutko* litigation that it rejects NRCM's reading of the statute and agrees that BPL has the authority to renew leases issued under 12 M.R.S. § 1852(4) following the expiration of their initial term.[7] The BPL's reading of the statute is reasonable, at a minimum, and thus there is no

[7] In its recent brief in the *Black v. Cutko* litigation, the Maine Attorney General in no uncertain terms stated, "The lease terms specified in 12 M.R.S. § 1852 impose a practical limitation on the scope of the use of the leased premises and an opportunity for the Bureau to reconsider at the end of the specified lease term whether to issue a new lease and, if so, whether to impose new or different conditions. . . . Upon expiration or termination of a lease, the Bureau may lease the same property to the same lessee for the same use. And, especially in the case of camplot leases, commercial sporting camps, and other structures on Bureau jurisdiction lands, it often does." Director's and Bureau's Rebuttal: Leases Issued Pursuant to 12 M.R.S. § 1852(4) Are Categorically Exempt from Article IX, Section 23 of the Maine Constitution at 12, *Black v. Cutko*, Docket No. BCD-CV-20-29 (Feb. 5, 2021)

basis for NRCM's argument that the 2020 Lease is of insufficient duration because it cannot be renewed.

Furthermore, as NRCM is aware because it was a party to the Maine Public Utilities Commission (MPUC) NECEC proceeding and attaches the MPUC's CPCN Order to its Transfer Appeal, CMP's Transmission Service Agreements (TSAs) with the Electric Distribution Companies in Massachusetts (MA EDCs) correspond with the *capacity and term* of Hydro-Québec's Power Purchase Agreements (PPAs) with the MA EDCs, all of which extend for a *term* of 20 years. NRCM Exhibit 2 at 12. In other words, CMP is contractually obligated to deliver 1,090 MW of energy through the NECEC Project to the MA EDCs only for 20 years. The four TSAs between CMP and Hydro-Québec are for the available *capacity* on the transmission line, with three TSAs covering 1,090 MW of capacity for years 21-40 and the fourth TSA for the remaining capacity (110 MW) covering years 1-40. *Id.* at 11-12. Thus, even if the 2020 Lease could not be renewed – and the BPL mas made clear that it can be renewed – the 25-year *term* of the 2020 Lease is of more than sufficient duration to accommodate the Project construction and reasonable use of those lands to deliver power purchased by the MA EDCs.[8]

In any event, the DEP's rules require Licensees to submit as TRI a lease of sufficient duration and terms "as determined by the Department" to permit construction of the Project and use of the property. The Commissioner therefore has broad discretion to determine the sufficiency of the duration of a lease, and an applicant need only make a prima facie showing of TRI. *See Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983)

[8] In fact, NRCM has argued in the *Black v. Cutko* litigation that the BPL lease terms are too long, complaining that "the term of the combined leases exceeding 25 years in violation of 12 M.R.S. § 1852(4)." Plaintiffs' Motion Regarding Record and Creation of a Factual Record at 1, *Black v. Cutko*, Docket No. BCD-CV-20-29 (Jan. 7, 2021).

(finding that an applicant need only have a "legally cognizable expectation of having the power to use the site in the ways that would be authorized by the permit or license he seeks."). The DEP's TRI consideration is limited to whether a lease on its face gives the lessee this "legally cognizable expectation" to construct and use the property, which the 2020 Lease plainly does. DEP Regs. Ch. 2 § 11(D)(2). Notably, the BPL has not challenged the scope of the 2014 Lease or the 2020 Lease. It thus is reasonable for the Commissioner to conclude that "the fully executed lease is sufficient title, right, or interest in that portion of the proposed corridor to apply for permits for the project." NRCM Exhibit 7 at 2.

III. NECEC LLC has demonstrated financial capacity and intent to comply with all terms of the Permit Order.

Grasping at straws, NRCM manufactures an obligation not present in any DEP statute, rule, or order, that NECEC LLC must submit to the DEP now, as part of the Transfer Application, evidence of financial ability to decommission Segment 1 at the end of its useful life. That is not what the DEP's rules or the Permit Order require.

The DEP's rules governing license transfers provide as follows:

> The transferee shall demonstrate to the Department's satisfaction the technical and financial capacity and intent to: (a) comply with all terms and conditions of the applicable license, and (b) satisfy all applicable statutory and regulatory criteria.

DEP Regs. Ch. 2 § 21(C)(1) (emphasis added). The terms of the Permit Order are as follows:

> [T]he applicant must demonstrate, in the form of a decommissioning plan, the means by which decommissioning of Segment [1] will be accomplished. The plan must be submitted within one year of the start of commercial operation of the project. The decommissioning plan must include . . . . financial assurance for the decommissioning costs in the form of a decommissioning bond, irrevocable letter of credit, establishment of an escrow account, or other form of financial assurance accepted by the Department, for the total cost of decommissioning.

DEP Permit Order at 106 (May 11, 2020) (emphasis added). CMP, as a permittee, has no obligation to provide financial assurance for decommissioning until one year after the start of

commercial operation of the Project. Accordingly, NECEC LLC, as the transferee, similarly had no obligation to provide in the Transfer Application "sufficient proof that NECEC LLC will in fact have the financial wherewithal to decommission the NECEC in Segment 1."[9] NRCM Appeal at 8-9. Rather, to "comply with all terms and conditions of the applicable license," NECEC LLC must, within one year of the start of commercial operation, provide such financial assurance. NRCM's appeal is "notably silent" on this future deadline, instead again misrepresenting facts in furtherance of its strategy of obfuscation.

Provided that NECEC LLC provides financial assurance for the decommissioning costs in the future as required by DEP Permit Order, the DEP has determined that "the project will be adequately decommissioned at the end of its useful life and will not adversely affect the scenic character and natural resources of the region." DEP Permit Order at 106.

IV. A hearing before the Board is unwarranted.

A hearing on the Transfer Order is unwarranted and would result in the waste of the Board's and parties' resources.

If a hearing is requested, the DEP's rules require that an appellant "provide an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any expert or technical witnesses would testify." DEP Regs. Ch. 2 § 24(B)(4). A hearing, discretionary under the DEP's rules, is appropriate only in those instances where there is (1) credible conflicting technical information, (2) regarding a licensing criterion, and (3) it is likely that a hearing will assist the Department in understanding the

[9] Note, however, that NECEC LLC provided evidence of its financial ability to satisfy the costs of decommissioning. *See* Transfer Application Attachment A (listing decommissioning costs as an included operational expense) and Attachment B (providing proof of availability and commitment of funds "for NECEC LLC to acquire the project from CMP and for construction and operation of the NECEC Project as approved").

evidence. DEP Regs. Ch. 2 § 7(B). NRCM failed to make these required showings, and thus its hearing request should be denied.

NRCM's scant offer of "the testimony of former Maine Senator Thomas Saviello regarding the history and purpose of [statewide significance] legislation" fails to meet the requirements for a hearing. NRCM Appeal at 4. NRCM fails to describe the substance of Mr. Saviello's evidence, let alone the relevance to the BEP of the testimony of a former legislator regarding the DEP's interpretation of its own rules and governing statutes. This offer falls short of the section 24(B)(4) offer of proof requirements. DEP Regs. Ch. 2 § 24(B)(4).

In any case, NRCM does not specify the reasons why a hearing is warranted and makes no showing as to which licensing criterion Mr. Saviello would opine on, because NRCM's arguments on statewide significance implicate no licensing criterion, and certainly do not involve any technical evidence. Nor could NRCM allege any credible conflicting technical information. As NRCM is well aware, because the Commissioner explicitly told it so, a transfer application requires only a showing of the transferee's technical ability and financial capacity, and does not involve the production of technical information relevant to the construction of the project itself:

> Accordingly, when reviewing a transfer application the Department evaluates the technical and financial capacity of the transferee – here NECEC Transmission LLC – and its intent to comply with the license and the licensing criteria. The Department does not re-evaluate the development activity that is the subject of the Order proposed for transfer or re-engage in substantive review of that development activity under the environmental statutes pursuant to which the development originally was permitted (e.g., Site Location of Development Act, Natural Resources Protection Act). In short, the prospective license holder – the transferee – is the focus of a transfer application, not the underlying project that is the subject of the license sought to be transferred.

NRCM Exhibit 6 at 2 (November 13, 2020 Commissioner Loyzim Letter to NRCM). There is no reason, and NRCM states no reason, to further develop the record in the Transfer Appeal by holding a hearing. Accordingly, there is no "credible conflicting technical information regarding

a licensing criterion" and no hearing is warranted here. DEP Regs. Ch. 2 § 7(B). *Concerned Citizens to Save Roxbury v. BEP*, 2011 ME 39, 15 A.3d 1263; *Martha A. Powers Trust v. BEP*, 2011 ME 40, 15 A.3d 1273.

For the foregoing reasons, the Board should decline to hold a hearing on NRCM's appeal of the Transfer Order and deny that appeal.

Dated this 18th day of February, 2021.

Matthew D. Manahan
Lisa A. Gilbreath

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