



STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
STATE HOUSE STATION 17      AUGUSTA, MAINE 04333

DEPARTMENT ORDER

IN THE MATTER OF

RUMFORD FALLS HYDRO LLC	)	WATER QUALITY CERTIFICATION
Rumford, Maine	)	
Oxford County	)	
RUMFORD FALLS HYDRO PROJECT	)	
#L-17643-33-D-T    APPROVAL	)	TRANSFER

Pursuant to the provisions of 38 M.R.S.A. Sections 464 et seq., Section 401 of the Federal Water Pollution Control Act (a.k.a. Clean Water Act), and 06-096 CMR Chapter 2 (“Rules Concerning the Processing of Applications and Other Administrative Matters”), the Department of Environmental Protection has considered the application of RUMFORD FALLS HYDRO LLC with its supportive data and other related materials on file and FINDS THE FOLLOWING FACTS:

1. APPLICATION SUMMARY

- a. Application. Rumford Falls Hydro LLC has submitted an application seeking the transfer from Rumford Falls Power Company to Rumford Falls Hydro LLC of the water quality certification for the Rumford Falls Hydro Project, FERC No. 2333, located on the Androscoggin River in the Town of Rumford, Maine.
- b. Regulatory History. By Order #L-17643-33-A-N dated December 7, 1992, The Department issued water quality certification for the proposed continued operation of the existing Rumford Falls Hydro Project under a new federal license.
- c. Project Facilities and Operation. The existing project consists of two developments. The Upper Station consists of a concrete dam (Upper Dam), a forebay, gatehouse, penstocks and powerhouse, a 419-acre impoundment, and 26.55 MW of installed generating capacity. The Lower Station consists of a rock-filled, timber crib gravity dam that is capped and reinforced with concrete (Middle Dam), a headgate, a canal, gatehouse, penstocks and powerhouse, a 21-acre impoundment, and 12.0 MW of installed generating capacity.

The project operates as a run-of-river facility, with outflow approximately equal to inflow on an instantaneous basis.

- d. Transfer. On January 6, 2006, Brascan Power Inc. (now known as Brookfield Power Inc.) entered into an Asset Purchase Agreement with Rumford Falls Power Company (RFPC, a wholly-owned subsidiary of NewPage Corporation) to acquire the lands, easements rights, structures and other assets owned by RFPC in connection with the

Rumford Falls Hydro Project. Just prior to closing, Brookfield Power Inc. will assign the Asset Purchase Agreement to its subsidiary Rumford Falls Hydro LLC, which then will purchase the project from RFPC. The closing on this transaction is scheduled to take place in May 2006.

## 2. TRANSFER REQUIREMENTS

- a. Title, Right or Interest. RFPC demonstrated title, right or interest in the Rumford Falls Hydro Project at the time of filing its application for water quality certification. In support of the proposed transfer, Rumford Falls Hydro LLC has submitted a copy of an Asset Purchase Agreement with RFPC and has demonstrated that, upon closing the transaction proposed in the Agreement, it will have title, right or interest in the project that is the subject of the transfer application.

This transfer will not become effective until Rumford Falls Hydro LLC provides appropriate documentation that the transaction proposed in the Asset Purchase Agreement has been completed.

- b. Financial Capacity and Intent. In support of the proposed transfer, Rumford Falls Hydro LLC has submitted a financial statement reflecting the anticipated revenues and expenses for the Rumford Falls Hydro Project for the next three years.

The Department finds that Rumford Falls Hydro LLC has demonstrated sufficient financial capacity and intent to assure compliance with the water quality certification for the Rumford Falls Hydro Project.

- c. Technical Capacity and Intent. In support of the proposed transfer, Rumford Falls Hydro LLC has stated that it will enter into a services agreement to use employees of Brookfield Power New England LLC to operate the Rumford Falls Hydro Project. Brookfield Power has extensive experience in the ownership, operation and maintenance of hydroelectric facilities in Maine and elsewhere.

The Department finds that Rumford Falls Power LLC has demonstrated sufficient technical capacity and intent to comply with the water quality certification for the Rumford Falls Hydro Project and any statutory and regulatory criteria applicable to the project.

BASED ON THESE FINDINGS OF FACT, the Department CONCLUDES that Rumford Falls Hydro LLC has demonstrated title, right or interest, technical and financial capacity and intent, and the ability to comply with the terms and conditions of the water quality certification for the Rumford Falls Hydro Project and to satisfy all applicable statutory and regulatory criteria.

THEREFORE, the Department APPROVES the transfer of the water quality certification for the Rumford Falls Hydro Project, FERC No. 2333, from Rumford Falls Power Company to Rumford Falls Hydro LLC, SUBJECT TO THE FOLLOWING CONDITIONS:

1. Rumford Falls Hydro LLC shall abide by the terms and conditions of DEP Order #L-17643-33-A-N dated December 7, 1992, including all condition compliance approvals issued to date, for the Rumford Falls Hydro Project.
2. The transfer of the water quality certification for the Rumford Falls Hydro Project shall not become effective until Rumford Falls Hydro LLC certifies in writing to the Department that Rumford Falls Hydro LLC has completed the purchase of the lands, easements rights, structures and other assets currently owned by Rumford Falls Power Company in connection with the project.
3. In the event that the purchase and sale transaction between Rumford Falls Hydro LLC and Rumford Falls Power Company for the Rumford Falls Hydro Project fails to be completed, Rumford Falls Hydro LLC and Rumford Falls Power Company will so notify the Department.

DONE AND DATED AT AUGUSTA, MAINE, THIS 20<sup>th</sup> DAY OF April, 2006.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

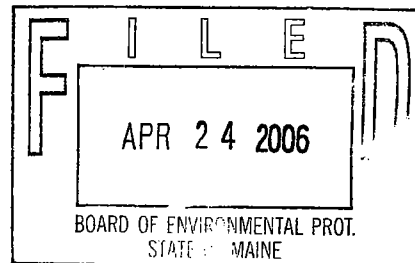
BY: \_\_\_\_\_

David P. Littell, Commissioner

PLEASE SEE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

Date of initial receipt of application: 03/17/2006

Date application accepted for processing: 03/24/2006



Date filed with Board of Environmental Protection: \_\_\_\_\_

This Order prepared by Dana Murch, Bureau of Land and Water Quality.  
#L-17643-33-D-T



# DEP INFORMATION SHEET

## Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

### SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

### I. ADMINISTRATIVE APPEALS TO THE BOARD

#### LEGAL REFERENCES

DEP's *General Laws*, 38 M.R.S.A. § 341-D(4), and its *Rules Concerning the Processing of Applications and Other Administrative Matters* (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

#### HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

#### HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

#### WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B)(5).

#### OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

#### WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

#### II. APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

#### ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

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**Note:** The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

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