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Admitted in: MA, ME, NH

November 2, 2021

VIA ELECTRONIC MAIL

James R. Beyer
Department of Environmental Protection
106 Hogan Road, Suite 6
Bangor, ME 04401

RE: 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
License Suspension Proceeding – Post-hearing Brief

Dear Mr. Beyer:

On behalf of Licensees Central Maine Power Company and NECEC Transmission LLC, pursuant to the First Procedural Order and to the Presiding Officer's October 20, 2021 decision in the License Suspension Proceeding, please find enclosed Licensees' Post-hearing Brief.

Please let me know if you have any questions.

Sincerely,

Matthew D. Manahan

Enclosure
cc (via email only): Service List (updated through 10/6/21)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

NEW ENGLAND CLEAN ENERGY CONNECT	)	
L-27625-26-A-N/L-27625-TG-B-N/	)	LICENSE SUSPENSION
L-27625-2C-C-N/L-27625-VP-D-N/	)	PROCEEDING
L-27625-IW-E-N	)	

POST-HEARING BRIEF OF LICENSEES CENTRAL MAINE POWER COMPANY AND NECEC TRANSMISSION LLC

> *The Clean Energy Connect is the boldest, largest, and fastest step Maine can take toward a decarbonized, electrified future. Shifting our energy supply to renewable resources is the single most important step to reduce the threats of climate change.* [Lloyd Irland (former Director of the BPL), written testimony].

On August 12, 2021 the Commissioner initiated this proceeding upon determining that the August 10, 2021 Kennebec County Superior Court decision in *Black v. Cutko*, No. BCD-CV-2020-29, "represents a change in circumstance that may warrant a suspension" of the May 11, 2020 Order (DEP Order) approving the New England Clean Energy Connect (NECEC) Project because the Superior Court decision "reversed the Director of the Bureau of Parks and Lands' [BPLs'] decision to enter into a lease in 2020 for a portion of the NECEC corridor located in Johnson Mountain Township and West Forks Plantation."[1] The very next day, however, Licensees and the BPL appealed the Superior Court decision, nullifying the "change in circumstance" by restoring the 2020 BPL lease and the status quo.

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[1] Commissioner's letter at 1. The *Black v. Cutko* litigation concerns a lease of a small portion of certain public reserved lands in Johnson Mountain Township and West Forks Plantation. Dickinson Direct at 2. The BPL granted the lease to Central Maine Power Company (CMP) on June 23, 2020; CMP assigned the lease to NECEC Transmission LLC (NECEC LLC) on January 4, 2021 (CMP and NECEC LLC are referred to herein collectively as Licensees). Dickinson Direct at 2-3. The leased land will house five poles associated with the New England Clean Energy Connect (NECEC) Project, consistent with and pursuant to the protective vegetation management requirements imposed in the DEP Order. Dickinson Direct at 3.

Accordingly, there has been no change in title, right, or interest (TRI) in the BPL leased lands because **the BPL lease is still in effect**, and there can be no change in circumstances that may warrant a license suspension proceeding until the litigation over the BPL lease is final.[2]

Suspension of the DEP Order in the present circumstances – where the BPL lease remains in effect and the outcome of litigation over that lease may not be resolved for quite some time – is neither permissible nor logical because there has been no change in TRI.[3] Additionally, there would be no permanent impact to the environment by allowing construction to continue during the pendency of the BPL lease litigation because (a) construction of the Project pursuant to the DEP Order avoids or mitigates impact to the environment, (b) even in the unlikely event that the Project cannot be constructed across the BPL lands at issue in *Black v. Cutko*, there are Project route alternatives that avoid the BPL lands, and (c) even in the unlikely event that the Project cannot move forward because the BPL lands and all alternative routes become unavailable, NECEC LLC has committed to decommission the HVDC transmission line, allowing the Project route to return to its natural state. For these reasons, and as discussed further below, the Commissioner should decline to suspend the DEP Order.[4]

I. There has been no change in title, right, or interest.

Because the appeal of the Superior Court's *Black v. Cutko* decision operates as a stay of that Superior Court decision, there has been no change in TRI and thus no change of circumstance. Under Maine Rule of Civil Procedure 62(e), appealing a Superior Court decision

[2] The Commissioner stated in her letter that if a suspension of the DEP Order is imposed, it would be in effect until, *inter alia*, "(a) the Superior Court's decision is reversed on appeal and the lease is reinstated." That flips the judicial proceedings on their head, however, because the appeal of the Superior Court's decision reinstates the BPL lease. The Superior Court's decision therefore is effective only if the Law Court *affirms* that decision or the Law Court takes some other action to remove the stay of that Superior Court decision.

[3] Licensees expect a decision by the Law Court around June 2022. Dickinson Direct at 4.

[4] On December 4, 2020, the DEP transferred to NECEC LLC that portion of the DEP Order to be owned and constructed by NECEC LLC, including the lands subject to the BPL lease. Accordingly, were the DEP to suspend the DEP Order, such suspension would only apply to the license held by NECEC LLC.

automatically stays the effectiveness of that decision pending review by the Law Court, and that automatic stay remains in place here.[5] What's more, the Law Court will review the Superior Court's decision on a *de novo* basis, with no deference due to the Superior Court's reasoning.

Orlando Delogu, Emeritus Professor of Law at the University of Maine School of Law, explained the significance of the stay of the Superior Court decision and the Law Court's *de novo* review in the context of this license suspension proceeding:

> Maine's Constitution clothes Maine's Law Court with final appellate jurisdiction, see Beckley v. Town of Windham, 683 A2d 774 (Me. 1996). "When the Superior Court acts as an intermediate appellate court and reviews an administrative agency decision, **we [the Law Court] review the agency's decision** directly for abuse of discretion, errors of law, or findings unsupported by substantial evidence in the record." Id. at 775; also, *Jones v. Sec'y of State*, 238 A3d 982 (Me. 2020). **"We [the Law Court] interpret Maine's Constitution and statutes de novo** as questions of law." Id. at 986; and *Avangrid v. Sec'y of State*, 237 A3d 882, 2020 ME 109 ¶ 13: "**This appeal requires us [the Law Court] to construe the Maine Constitution** to determine whether the initiative should be declared invalid.... **We review the legal issues presented on appeal de novo.**"
>
> In short, the Law Court, not the Superior Court, ultimately determines the meaning and scope of provisions in Maine's Constitution and statutes such as those relied upon by the BPL to lease a tract of state owned land to NECEC LLC. This deference to the State's highest court has been in place since statehood. For over 200 years the Law Court has consistently held that its review of lower court holdings is "**de novo**." Deference is even more fully warranted in the present setting where Maine Rules of Civil Procedure hold Superior Court decisions in abeyance when a decision is appealed and pending in the Law Court, and when the issues raised are of first impression, controversial, and of immense economic and public policy importance.
>
> Given these realities, it follows that the status quo, the DEP's approved permit and the disputed lease by BPL to NECEC LLC should remain in place pending the Law Court's disposition of the appeal. **The Law Court (not the Superior Court or the DEP) is the final arbiter of the validity or invalidity of the lease.** [Delogu Written Testimony at 1-2 (Oct. 19, 2021) (emphasis original).]

[5] Maine Rule of Civil Procedure Rule 62(e) provides that "the taking of an appeal from a judgment shall operate as a stay of execution upon the judgment during the pendency of the appeal." *See* Dickinson Direct at 3. As explained in testimony by Orlando Delogu, Emeritus Professor of Law, University of Maine School of Law, pursuant to Rule 62(e) "a lower court's holding is automatically held in abeyance, until the Law Court's review of the underlying issues is decided; exceptions to this rule do not apply here." Delogu Written Testimony at 1 (Oct. 19, 2021).

Intervenors Natural Resources Council of Maine (NRCM), West Forks, et al. (West Forks), and Friends of the Boundary Mountains (FOBM) ignore the present reality, and urge the Commissioner to suspend the DEP Order for reasons wholly irrelevant to the change in circumstances standard that applies here. NRCM's and West Forks' pre-filed testimony[6] focused almost entirely on the environmental impacts of the Project – impacts that were already thoroughly evaluated, litigated, and mitigated in the DEP Order – because they cannot rely on the *Black v. Cutko* decision for a license suspension. Ironically, these intervenors have themselves appealed the Superior Court's *Black v. Cutko* decision,[7] but nonetheless try to exploit that decision here in yet another strategic effort to kill the Project through delay. The simple truth that there has been no change in circumstances here is nevertheless unavoidable.

Even if the Superior Court decision were currently effective, that still would not constitute a change in circumstances that would require suspension of the DEP Order, because TRI is not an approval standard that is relevant after the DEP has issued a license. 38 M.R.S. § 342(11-B)(E); DEP Regs. Ch. 2 § 27(E). As the DEP is aware, TRI is a prudential consideration relevant only to an applicant's standing, and applicable during the "application processing period" alone.[8] DEP Regs. Ch. 2 § 11(D); s*ee also Murray v. Inhabitants of the Town of Lincolnville*, 462 A.2d 40, 43 (Me. 1983) (TRI "is intended to prevent an applicant from wasting an administrative agency's time by applying for a permit that he would have no legally

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[6] FOBM did not proffer any witnesses, file any testimony, or cross-examine any witnesses at the October 19, 2021 hearing, instead making only brief opening and closing statements derogatory of the DEP and BPL.

[7] Dickinson Direct at 4, n1. NRCM, NRCM witness Richard Bennett, and West Forks witness Ed Buzzell are all named Plaintiffs in the *Black v. Cutko* litigation. *See* Bennett Direct at 1; Buzzell Rebuttal at 1.

[8] Licensees made the requisite *prima facie* showing during the application processing period by providing the DEP with the BPL lease, issued in 2014 and amended and restated in June 2020. The 2014 lease remained in effect throughout the entirety of the DEP application process. Developments after May 11, 2020 – the date of issuance of the permit – are irrelevant to the validity of the permit.

protected right to use.").[9] Thus even if the Superior Court decision were effective, there is nothing in statute or DEP rules that would require or allow suspension of a license here, particularly given that the outcome of the BPL lease litigation, as well as the potential for subsequent leases to be issued by BPL, is at this stage still unknown.

In fact, even if TRI were temporarily lost due to affirmation of the Superior Court decision, the BPL could and almost certainly would simply reissue the lease, allowing the Project to continue along the permitted route. Hearing recording at approx. 1:48:34, 1:57:50 (Dickinson). The Superior Court's ruling concerned only BPL procedure and not the merits of the lease itself, holding merely that BPL should have expressly determined that Licensees' proposed use of the land would not substantially alter the use of that land. Under the Superior Court's ruling, if BPL determines that a lease will substantially alter the use of the land, then (and only then) must the Legislature approve the lease by a 2/3 vote. On the other hand, if BPL determines that a given lease will not substantially alter the use of the land, BPL may issue that lease without legislative approval. So, if the Law Court affirms the Superior Court's ruling, Licensees may seek a new lease from BPL and ask BPL to determine that the lease does not substantially alter the use of the land, such that no legislative approval is required. Licensees have every expectation that BPL would make that finding, in part because, in *Black v. Cutko*, BPL itself already has argued that the lease does not give rise to a substantial alteration and does not require legislative approval.[10]

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[9] As the Superior Court has already determined on this exact matter, whatever the outcome of the BPL lease litigation, "[t]he 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 (Murphy, J.) (Me. Super. Jan. 11, 2021), citing *Southridge Corp. v. BEP*, 655 A.2d 345, 348 (Me. 1995).

[10] *See* Respondents Director Cutko's and the Bureau of Parks and Lands' Rule 80C Brief at 1, 10, 12, 14-19, Docket No. BCD-CV-20-29 (July 2, 2021).

II. Allowing construction to continue during the BPL lease litigation will result in no harm to the environment.

A. Construction pursuant to the DEP Order is protective of the environment.

Construction of the Project pursuant to the DEP Order will avoid or mitigate any impacts that the Project otherwise might have had. After years of analysis, the DEP found that "it is feasible to avoid or minimize those impacts through a variety of mitigation measures," and accordingly ordered conditions to the license that were developed through the public process and that "provide an unprecedented level of natural resource protection for transmission line construction in the State of Maine." DEP Order at 2. Ordered mitigation such as reduction of much of the Project clearing to 54 feet and imposition of extensive vegetation management practices in Segment 1 ensure that the Project will not adversely affect any protected natural resources. DEP Order at 75-82. Indeed, the Commissioner found that constructing the Project pursuant to the DEP Order "will result in adequate provision for the protection of wildlife." *Id.* at 82. Accordingly, the DEP has already determined that "the project fully satisfies the Department's permitting standards" and found any "adverse effects to be reasonable in light of the project purpose and its GHG benefits." *Id.* at 2, 105.

B. Alternatives to the permitted route are available.

Even if the BPL lease ultimately cannot be reissued, there are several rerouting options that NECEC LLC could pursue to bypass or locate under the BPL lease lands, allowing the Project to move forward. A full analysis of alternative routes would be time-consuming, but could be conducted in a matter of months if necessary. Hearing recording at approx. 1:58:43 (Johnston). As Licensees' witness Thorn Dickinson explained, there are at least four potential alternatives to the permitted overhead crossing of the BPL lease lands:

Option 1

Option 1 would re-route the Project west of Route 201, crossing the Dead River and the Kennebec River in areas subject to a conservation easement held by Pierce Pond Watershed Trust (PPWT Conservation Easement). Exhibit NECEC LLC-1-F; Hearing recording at approx. 0:31:56 (Dickinson); Dickinson Direct at 9; Pierce Pond Watershed Trust letter to DEP (Oct. 14, 2021) (attaching certain recorded Quitclaim Deeds and related Conversation Easement). This option would require approximately one additional mile of transmission line and associated tree clearing, structure installations, and construction travel lanes compared to the permitted route. Dickinson Direct at 9. Option 1 would also likely require replacement of one or more lower-impact and smaller-footprint inline tangent structures with angle transmission line structures that increase ground and vegetation disturbance. Dickinson Direct at 9-10. While the PPWT Conservation Easement has language restricting above ground structures, there is no language that would restrict routing a transmission line under those lands via horizontal directional drilling (HDD), which is an alternative available at those locations. Hearing recording at approx. 1:48:34 ("In addition, both option one and option two would also have that ability to further modify them to include HDD"), 1:51:57 (Dickinson); PPWT Conservation Easement at Bk. 2607, Pg. 240 (stating that "[n]o additional structures may be located on the Protected Property without the prior written consent of TPL or successor holder of the Conservation Easement") (emphasis added). In fact, neither NRCM's nor West Forks' witnesses were aware of any deed restrictions that would prohibit locating the Project under the Dead River or across any of the other lands traversed by Option 1. Hearing recording at approx. 2:16:40 (Reardon) ("the terms of the conservation easement prohibits structures and commercial development, a transmission line on or above these easement lands would be inconsistent with the conservation easement");

Hearing recording at approx. 3:30:01-3:31:11 (Buzzell) ("I'm not aware of any deed restrictions").

Option 2

Option 2 would re-route the Project east of Route 201, utilizing the permitted Kennebec River and Route 201 crossings but rerouting the Project just east of the BPL leased lands through the Moosehead Conservation Easement. Exhibit NECEC LLC-1-F; Hearing recording at approx. 0:31:56 (Dickinson); Dickinson Direct at 10. Option 2 would require approximately an additional 1.6 miles of transmission line and associated tree clearing, structure installations and construction travel lanes compared to the permitted route. Dickinson Direct at 10. Similar to Option 1, Option 2 would also require replacement of lower-impact and smaller-footprint tangent structures with one or more angle structures. *Id.* While it therefore is more environmentally damaging than the permitted route, Option 2 nevertheless is viable. Contrary to the testimony of NRCM witness Jeff Reardon, there is no prohibition on transmission lines in the Moosehead Conservation Easement, which instead prohibits installation of distribution lines. Reardon Direct Exhibit B, Moosehead Conservation Easement at Bk. 2165, Pg. 8 (defining the utility structures governed by the easement as those "normally associated with the local distribution of telecommunication or electric power services, including distribution lines, cables, poles and related equipment") and Bk. 2165, Pg. 9 (prohibiting "new long-distance energy or telecommunications distribution systems that traverse or transect the Protected Property"); Dickinson Rebuttal at 2-3. In fact, when asked to point to any language prohibiting transmission lines, Karen Tilberg, President and CEO of the Forest Society of Maine (which holds the Moosehead Conservation Easement), was unable to do so. Public Hearing recording at approx. 2:08:52-2:14:50 (Tilberg). And even if an overhead transmission line were prohibited across the Moosehead Conservation Easement land, there is no language in that easement that would

prohibit a transmission line traversing the property underground (i.e., via HDD), which is another alternative available at this location. Hearing recording at approx. 1:48:34, 1:57:50 (Dickinson).

Option 3

Option 3 would re-route the Project east of Route 201 through the Cold Stream Forest. As explained in the Assistant Attorney General's memorandum concerning the Cold Stream Forest, it is possible to route the Project through the Cold Stream Forest. *See* Exhibit NECEC LLC-1-G (July 25, 2018 Memorandum from AAG Lauren Parker concerning Cold Stream Forest) (explaining that if the BPL "determines that a transmission line will not frustrate its management of the property for those resources, and the [Department of Inland Fisheries and Wildlife] agrees that a transmission line is not prohibited by or in conflict with the habitat management agreements, the [BPL] may enter into a valid transmission line lease with CMP without obtaining 2/3 legislative approval"). Not only could the Project cross overhead at this location, but undergrounding a transmission line also is an available option. Hearing recording at approx. 1:48:34 (Dickinson) ("associated with the memo that you refer to, there is ability to demonstrate that the Project could be built either overhead or alternatively, underground through the Cold Stream conservation easement. And that would be by leaving option two and going west through the Cold Stream easement, either overhead or through an HDD and then going north and eventually meeting up with the original corridor path."). Accordingly, as Mr. Reardon admits, there are available options outside of Options 1 and 2. Hearing recording at approx. 2:23:48 (Reardon) ("I concur with Mr. Dickinson's statement in his rebuttal testimony that in fact, there may be additional routes available beyond options one and two.")

Option 4

Option 4 would route the Project along the permitted route, but would be located under the BPL lease lands that are the subject of the *Black v. Cutko* litigation instead of overhead as currently permitted. Hearing recording at approx. 1:57:50 (Dickinson) ("we could use HDD technology to go underneath that BPL land. So it would be a modified lease, potentially with HDD as a technology."); *see also* 1:48:34 (Dickinson). In other words, the use of HDD technology is available to address any specific concerns with easements or public lands. Hearing recording at approx. 1:57:50 (Dickinson).

C. NECEC LLC has committed to decommission the Project in the event the Project cannot move forward.

Even if those four alternative routing options are ultimately unsuccessful and the Project cannot move forward, NECEC LLC is committing in that event to decommission the Project so there are no remaining project structures, thus resulting in no lasting impact on natural resources or the environment. Dickinson Direct at 19. Through decommissioning, all transmission lines and pole structures would be dismantled and removed. *Id.* Subsurface components, including pole and equipment foundations, would be removed. *Id.* No project-related infrastructure would protrude or remain above grade and disturbed areas would be stabilized. *Id.* Trees would be allowed to regenerate naturally and, similar to what occurs after a forestry operation, would be expected to be re-established as a young forest in 10 to 20 years. *Id.* As Licensees' witness Gerry Mirabile explained, no harm and no permanent alterations would result from allowing Project construction to continue while the BPL lease issue is considered and resolved. Mirabile Direct at 6. NECEC LLC would permanently stabilize the Project areas in accordance with CMP's Environmental Guidelines, Section 9.0 Site Restoration Standards. *Id.* at 5. Contours and drainage patterns would be restored, exposed soils would be stabilized with seed and/or mulched as appropriate, and post-construction invasive species surveys and follow-up invasive

species removal treatment, if warranted under the Invasive Species Monitoring Plan approved by the DEP, would be conducted. *Id.* These restoration measures, in fact, exceed those of a forestry operation, which focuses only on tree regrowth. Hearing recording at approx. 3:05:53 (Merchant). And, in any event, NECEC LLC will not construct in the BPL lease lands until the Law Court issues its decision, so there will be no impact on those lands during that time.

III. Suspending the DEP Order would have "tragic" effects.

The record demonstrates the significant costs and harm to the Project's construction schedule that would result from license suspension, jeopardizing Project completion in line with the dilatory strategy of Project opponents. Dickinson Direct at 10-13, 16; Mirabile Direct at 3-4; Hearing recording at approx. 0:31:56 (Dickinson). The salient point, however, is that suspension of the Project would at a minimum delay (if not entirely terminate) the Project's greenhouse gas emission reduction benefits, allowing the devastating effects of climate change to continue to ravage the Maine woods (and elsewhere). Suspension of the Project, which the Commissioner has already determined is essential to fight climate change, would be a tragedy. Hearing recording at approx. 1:14:46 (Dickinson); DEP Order at 105. Indeed, as a member of the public explained at the public hearing,

> Maine is the tailpipe of the Eastern Seaboard and, to a great extent, the Midwest, so my appeal to you is not the well-covered issued of CO2 emissions and global warming, it is the impact of fossil-fuel exhaust from all sources that invade Maine on a daily basis, changing the pH of our waters, affecting our flora, our wildlife, our fisheries, bringing pulmonary diseases and cancers to our people. . . .
>
> We're on the threshold of a great, unique opportunity to help a neighbor achieve a noble and necessary goal. Helping Massachusetts will clearly help Maine by giving us cleaner air, an opportunity to purchase our own renewable electricity, provide the power for heat pumps, electric vehicles of all sorts, and it will give the New England grid region a stay in greenhouse gas production, while scientists and engineers develop long-term solutions, the renewable generation and storage of energy, which is essential for the survival of human civilization around the globe. [Public Hearing recording at approx. 1:35:50 (Bird).]

Mr. Bird has it exactly right. As he explained, "[t]here is no such thing as a Maine electron or a Massachusetts – or Connecticut – electron, we're all on the same grid." *Id.* Maine will reap enormous benefits from the Project, because the Project is a power cord to Lewiston, not to Massachusetts. *Id.* Even if you could direct an electron from Lewiston to Massachusetts once it is on the grid – which you cannot – "[w]e're in New England, we're all in this together, despite the division that opponents of the NECEC try to sow." *Id.* Facing down "the single greatest threat to Maine's natural environment," the Commissioner issued a voluminous, thoughtful, and critical Order that both approves the Project "to mitigate the GHG emissions" and orders the most extensive and innovative protective vegetation management requirements in the state's history to further protect Maine's woods and environment. DEP Order at 105.

It would therefore be "tragic" to allow questions raised by Project opponents – questions still unresolved by Maine's highest court concerning TRI in a mere 0.9 mile (and approximately 0.06%) of the 145 miles of new transmission line – to impair and delay the development of a Project that takes many years to develop and which will significantly mitigate climate change if allowed to move forward. "We face a very daunting challenge as a society to meet climate changes, demands, and we will only do so if we cooperate in the development of the very extensive projects that will meet that challenge." Hearing recording at approx. 0:12:11 (Buxton).

Advancing the "immediate action to mitigate the GHG emissions that are causing climate change," when balanced against the lack of harm if construction is allowed to proceed, further evidences that there is no change in circumstance that requires suspension of the DEP Order. In fact, there is no change in circumstance at all – because TRI remains unchanged – and certainly no change in circumstance that would require license suspension – because TRI is a prudential

consideration relevant only during the "application processing period" that concluded a year and a half ago.[11] Construction of this vital Project must be allowed to continue.

Dated this 2nd day of November, 2021.

Matthew D. Manahan
Lisa A. Gilbreath

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[11] Licensees note that the 38 M.R.S. § 342(11-B)(E) and DEP Regs. Ch. 2 § 27(E) provisions granting the Commissioner the discretionary power ("may revoke or suspend a license") whenever the Commissioner finds that "there has been a change in any condition or circumstance that requires revocation or suspension of a license" is overly subjective and thus void for vagueness. What standards would the Commissioner use in exercising her discretion, and in what instances do changes in circumstance require license suspension? Because these provisions provide no articulable and objective standards, they are unconstitutionally void under the due process clause. *Stone v. Bd. of Registration in Med.*, 503 A.2d 222, 228 (Me. 1986) ("Standards which a statute sets out to guide the determinations of administrative bodies must be sufficiently distinct so that the public may know what conduct is barred or demanded and so that the law will be administered according to the legislative will. The key assumption is that the law must provide reasonable and intelligible standards to guide ... future conduct.") (internal quotations and citations omitted), citing *Shapiro Bros. Shoe Co., Inc. v. Lewiston-Auburn S.P.A.*, 320 A.2d 247, 253 (Me. 1974) and *In re Spring Valley Development*, 300 A.2d 736, 751 (Me. 1973).