

MAINE STATE LEGISLATURE

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AUGUSTA, MAINEOFFICE OF
THE GOVERNORNO. 17FY 84/85
DATE June 27, 1985PROVIDING FOR THE COORDINATION OF A CONSISTENT
STATE POSITION IN FEDERAL HYDROPOWER LICENSING PROCEEDINGS

WHEREAS, interest in developing the hydropower potential of Maine's rivers has increased significantly in recent years; and

WHEREAS, the Legislature, through the 1983 Maine Waterway Development and Conservation Act (38 MRSA §630-636), has declared that "hydropower justifies singular treatment"; and that "it is the policy of the State to support and encourage the development of hydropower projects by simplifying and clarifying requirements for permits, while assuring reasonable protection of natural resources and the public interest in use of the waters of the State"; and

WHEREAS, the Maine Waterway Development and Conservation Act consolidated State regulatory authority for hydropower development into a single permit to be issued by either the Board of Environmental Protection or the Land Use Regulation Commission and action by the Board on water quality certification pursuant to Section 401 of the Federal Clean Water Act; and

WHEREAS, most applicants for hydropower projects to be located in the State must apply to the Federal Energy Regulatory Commission (FERC) for a federal license or exemption; and

WHEREAS, various federal laws and regulations require applicants for FERC preliminary permits, exemptions, and licenses to consult with several State agencies with management responsibilities for natural resources, historic preservation, public safety, and energy policy; and require FERC to request comments on hydropower development applications from these same agencies; and

WHEREAS, the potential exists for conflict between federal licensing decisions and the permitting decisions of the Board of Environmental Protection and the Land Use Regulation Commission; and

WHEREAS, effective State participation in FERC proceedings demands that comments from State agencies be communicated in a clear, consistent and timely fashion, and that the State secure status as an official intervenor in these proceedings; and

WHEREAS, the Land and Water Resources Council, in accordance with Executive Order #11, FY81/82, has established a Standing Committee for coordinating the actions of State agencies and developing a consistent State policy among them;

NOW, THEREFORE, I, Joseph E. Brennan, Governor of the State of Maine, do hereby direct that:

1. A final decision by the Board of Environmental Protection or the Land Use Regulation Commission issued in accordance with the Maine Waterway Development and Conservation Act, combined with action by the Board of Environmental Protection on water quality certification of the project pursuant to Section 401 of the Federal Clean Water Act, shall represent the official position of the State of Maine regarding the subject application;
2. The State's sole, official recommendations for any terms and conditions upon the federal license shall be those contained in the Board of Environmental Protection and the Land Use Regulation Commission decisions, superseding all preliminary recommendations by individual State agencies;
3. All State agency comments submitted subsequent to State action on the subject project shall include a copy of the decisions rendered by the State permitting agencies;
4. All State agency comments submitted prior to action on a State permit shall advise FERC that the official position of the State is that established through the decisions of the Board of Environmental Protection and the Land Use Regulation Commission; and
5. The Department of Environmental Protection and the Land Use Regulation Commission shall have responsibility to intervene, in a timely fashion, on the State's behalf, in all FERC licensing proceedings for projects in Maine, and, as appropriate, in selected FERC preliminary permit and license exemption proceedings; and
6. Pursuant to this policy, the Land and Water Resources Council's Standing Committee on FERC Coordination shall monitor all State agency comments in FERC proceedings, and provide for mediation by the Executive Secretary of any disagreements among State agencies regarding comments submitted to FERC or the applicant.

(This Executive Order supersedes Executive Order #11, FY81/82.)


Joseph E. Brennan
GOVERNOR