

PRIVILEGED AND CONFIDENTIAL - DRAFT



March 31, 2021

VIA ELECTRONIC FILING

Ms. Kimberly Bose  
Secretary, Federal Energy Regulatory Commission  
888 First Street N.W.  
Washington, DC 20426

**Re: Project No. 5362 – Maine  
Lower Mousam Hydroelectric Project  
Kennebunk Light and Power District  
Surrender Application**

Dear Secretary Bose,

The Kennebunk Light and Power District (the District) submits this application to surrender its license (the License) for the Lower Mousam Hydroelectric Project (the Project), a minor existing water power project located on the Mousam River in Kennebunk, Maine, in accordance with the Plan and Schedule accepted by the Federal Energy Regulatory Commission (the Commission).<sup>1</sup>

The District is a small consumer-owned utility, serving approximately 6,979 customers in portions of Kennebunk, Wells, Arundel and Lyman, Maine. The Commission issued the License to the District in 1982, authorizing the District to construct, operate, and maintain the small (600-kilowatt) Project as a “minor water power project” not subject to Sections 14 and 15 of the Federal Power Act.<sup>2</sup> As licensed, the Project includes three developments – Dane Perkins, Twine Mill, and Kesslen – each of which includes a dam, powerhouse, penstock, turbine, generator, transformer, electrical lines, and other project works.

As described in the attached Surrender Application, the District proposes to decommission the project pursuant to the decommissioning plan included in the Surrender

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<sup>1</sup> November 5, 2020 Letter Order.

<sup>2</sup> Minor water power project means any licensed or unlicensed, existing or proposed water power project that would have a total installed generation capacity of 2,000 horsepower (1.5 MW), or less. 18 C.F.R. § 4.30(b)(17).

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Application. The District requests that the Commission approve the Surrender Application including the decommissioning plan.

In accordance with the consultation requirements provided in 18 C.F.R. § 6.1, the District provided a draft Surrender Application for review and comment by state and federal agencies as well as other stakeholders. Comments were received from agencies Maine State Historic Preservation Office, Maine Department of Environmental Protection, National Oceanic and Atmospheric Administration, Maine Department of Marine Resources, and Maine Department of Inland Fisheries and Wildlife, as well as comments from seven individuals and joint comments from non-governmental organizations Mousam and Kennebunk River Alliance and Maine Rivers, and are addressed herein.

The District looks forward to concluding its responsibilities under the License. If you have any questions about the District's proposal to surrender the License or its Surrender Application, please contact District General Manager Todd Shea at 207-985-3311 or [tshea@klpd.org](mailto:tshea@klpd.org).

Very truly yours,

Todd Shea  
General Manager  
Kennebunk Light and Power District

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Distribution List  
Lower Mousam Hydroelectric Project (FERC Project No. 5362)

**Federal Agencies**

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**Tribes**

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**Local Government**

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**Non-Governmental Organizations**

Albert Kolff

**PRIVILEGED AND CONFIDENTIAL - DRAFT**

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**PRIVILEGED AND CONFIDENTIAL - DRAFT**

**BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**APPLICATION FOR SURRENDER OF LICENSE  
for the  
LOWER MOUSAM HYDROELECTRIC PROJECT  
FERC PROJECT NO. 5362**

*Submitted by:*

**Kennebunk Light and Power District  
Kennebunk, Maine**

**March 31, 2021**

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### I. INITIAL STATEMENT

The Kennebunk Light and Power District (the District) submits this application to the Federal Energy Regulatory Commission (the Commission) to surrender its license (the License) for the Lower Mousam Hydroelectric Project (the Project), a small (600-kilowatt) minor existing water power project located on the Mousam River in Kennebunk, Maine, in accordance with the Plan and Schedule which has been accepted by the Commission.<sup>3</sup> This application for license surrender is filed in accordance with § 6.1 of the Commission's regulations governing applications for surrender of a minor project license.<sup>4</sup>

### II. REASON FOR SURRENDER

The License expires on March 31, 2022. The District's Board of Trustees determined not to seek a new license for the Project because the District has ample access to more reliable and more cost-effective sources of electricity, and because the Project is no longer economically efficient for the District to maintain or operate.<sup>5</sup> While the Project's dams and certain other Project features predate the License, the District originally applied for and received the License in the midst of the late-1970s energy crisis; the power produced by the Project is more expensive than comparable amounts of readily-available energy from the ISO-NE wholesale market.

### III. DESCRIPTION OF THE DISTRICT

The District is a small consumer-owned utility, serving approximately 6,979 customers in portions of Kennebunk, Wells, Arundel and Lyman, Maine. The District is a quasi-municipal corporation chartered in 1951 by a Private and Special Act of the Maine State Legislature. It is a not-for-profit entity whose service territory is defined by its charter. Within its service territory, the District distributes power to the consumers and constructs and maintains the distribution system.

The District is the licensee for the hydroelectric project designated as Project No. 5362 in the Commission's records.<sup>6</sup> The Commission issued the License to the District in 1982, authorizing the District to construct, operate, and maintain the Project as a "minor" project.

The exact name, business address, and telephone number of the District are:

Kennebunk Light & Power District  
4 Factory Pasture Lane

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<sup>3</sup> November 5, 2020 Letter Order.

<sup>4</sup> 18 C.F.R. § 6.1.

<sup>5</sup> The District seeks to surrender the License pursuant to the terms of this application for these reasons. The District believes that it could potentially be possible in the future for some other entity to operate a hydropower project in this area of the Mousam River on economically rational terms.

<sup>6</sup> *Kennebunk Light and Power District*, 19 FERC ¶ 62,061 (1982).

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Kennebunk, ME 04043  
(207) 985-3311

The exact name, business address, and telephone number of each person authorized to act as an agent for the District in this application are:

Todd Shea  
General Manager  
Kennebunk Light & Power District  
4 Factory Pasture Lane  
Kennebunk, ME 04043  
(207) 985-3311

**IV. THE LICENSE AND THE PROJECT**

The License covers project works associated with three distinct developments: Dane Perkins, Twine Mill, and Kesslen.

The existing Dane Perkins Development consists of: (1) a 12-foot-high, 83-foot-long concrete gravity dam with a 50-foot-long spillway section that has a crest elevation of 81.8 feet mean seal level (msl) plus 2.5-foot-high flashboards; (2) a 25-acre impoundment with a normal maximum elevation of 84.3 feet msl; (3) a powerhouse containing a single turbine-generator unit rated at 150 kilowatts (kW); (4) a generator lead connecting the turbine-generator unit to the regional grid; and (5) appurtenant facilities.

The Twine Mill Development is located approximately 0.5 mile downstream from the Dane Perkins Development and consists of: (1) an 18-foot-high, 223-foot-long concrete gravity dam with an 81-foot-long spillway section that has a crest elevation of 68.8 feet msl plus 3.0-foot-high flashboards; (2) a 12-acre impoundment with a normal maximum elevation of 71.8 feet msl; (3) a powerhouse containing a single turbine-generator unit rated at 300 kW; (4) a generator lead connecting the turbine-generator unit to the regional grid; and (5) appurtenant facilities.

The Kesslen Development is located approximately 2.5 miles downstream from the Twine Mill Development and consists of: (1) an 18-foot-high, 140-foot-long concrete gravity dam with a 114-foot-long spillway section that has a crest elevation of 42.2 feet msl plus 1.5-foot-high flashboards; (2) a 20-acre impoundment with a normal maximum elevation of 43.7 feet msl; (3) a powerhouse containing a single turbine-generator unit rated at 150 kW; (4) a generator lead connecting the turbine-generator unit to the regional grid; and (5) appurtenant facilities.

The license expires on March 31, 2022. Consistent with the Plan and Schedule accepted by the Commission, the District submits this application to surrender the License, cease generation of electricity, and decommission the project as described herein. The total installed capacity of the Project would be reduced to zero kW. Ownership and associated responsibilities for the property would remain with the District. To ensure that the Project is formally and safely retired, the District has developed a decommissioning plan, provided in this Surrender Application.



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**V. DECOMMISSIONING PLAN**

The District proposes the following decommissioning plan. For each development, the District will remove all flash boards, disconnect all leads from each generator, fence off and ensure the security of each penstock<sup>7</sup>, remove all generation, transformers, and other project electrical equipment, remove all hydraulic fluids and reservoirs, remove all governor fluids and reservoirs, and secure the location with existing fencing. In addition, the District will perform additional development-specific decommissioning activities as summarized below:

***Dane Perkins:***

- Remove flash boards.
- Disconnect leads from generator.
- Remove all generation and electrical equipment. Sell for salvage/reuse.
- Remove step up transformers and store for refurbishment/reuse.
- Remove trash racks.
- Fill bypass gates.
- Remove all hydraulic fluids and reservoirs.
- Remove all governor fluids and reservoirs.
- Secure location with existing fencing.
- Maintain existing fencing around penstocks and, when appropriate enhance penstock fencing.

***Twine Mill:***

- Remove flash boards.
- Disconnect leads from generator.
- Remove all generation and electrical equipment. Sell for salvage/reuse.
- Remove step up transformer and store for refurbishment/reuse.
- Remove trash racks.
- Remove tailrace steel.
- Remove all hydraulic fluids and reservoirs.
- Remove all governor fluids and reservoirs.
- Secure location with existing fencing.
- Maintain existing fencing around penstocks and, when appropriate enhance penstock fencing.

***Kesslen:***

- Remove flash boards.

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<sup>7</sup> The District's consultation draft proposed to close and/or fill each Project penstock as part of Project decommissioning. MDEP requested that the District modify its decommissioning plan, to keep the penstocks open in connection with water quality management. Commenter MKRA/MR disagreed with MDEP's request. The District defers to MDEP's subject-matter expertise that this action may, in fact, contribute to improved water quality conditions.

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- Disconnect leads from generator.
- Disable flood gates in permanently closed position.
- Disable runners/chain in place.
- Dismantle and sell generator for scrap (space restrictions won't allow it to be removed intact).
- Remove all hydraulic fluids and reservoirs.
- Remove all governor fluids and reservoirs.
- Remove and sell all electrical equipment for salvage/reuse.
- Remove trash racks.
- Secure location with existing fencing.
- Maintain existing fencing around penstocks and, when appropriate enhance penstock fencing.

The District proposes to perform these decommissioning activities in two phases:

Phase 1: Permanently cease generation and disconnect all leads from all Project generators and remove flash boards, within 30 days following Commission approval of this Surrender Application.

Phase 2: Complete all other work described in the decommissioning plan above, by March 31, 2024, pursuant to temporary subsequent licenses as necessary to allow the District time to mitigate impacts of decommissioning costs on the rates paid by the District's customers.

All decommissioning work will be done in compliance with applicable safety standards to ensure the safety of all contractors, surrounding inhabitants, and the facilities themselves.

All decommissioning work will be monitored on-site by the District's General Manager and/or Foreman.

## **VI. ENVIRONMENTAL REPORT AND DESCRIPTION OF ENVIRONMENTAL EFFECTS**

Due to the nature of the Project, including pre-existing dams and other facilities which predate the License, surrendering the License pursuant to the decommissioning plan described in this Surrender Application would have no environmental effects.

Overall, the Mousam River is heavily dammed, with approximately 13 dams on the river. 10 of these dams are located upstream of the Project – the closest, the 63-foot-high Old Falls dam, is located immediately upstream just above the Project.<sup>8</sup> None of those upstream dams is regulated by the Commission, and none includes any fish passage features.

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<sup>8</sup> Environmental Assessment at p. 43; Harvey Report at p. 3.

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The environment existing before the License was issued has been described in an Environmental Assessment prepared in connection with License development.<sup>9</sup> As noted in the Environmental Assessment and other reports, dams have existed on the Mousam River for centuries. The Environmental Assessment found: “the whole of the Mousam basin contains numerous dams. In fact, the history of small impoundments on the Mousam goes back to July 12, 1670, when the first dam was completed (Remich, 1911). There have been dams in existence on the Mousam continuously since a few years after this date.”<sup>10</sup>

The Dane Perkins, Twine Mill, and Kesslen dams predate the Project.<sup>11</sup> The Kesslen Dam is located at the site of older dams, themselves built atop a “natural falls” which blocked navigation and fish passage even before the construction of any dam.<sup>12</sup>

The upper dam, built on the first natural falls in the river above the head of tide, is the location of the original mills in the area in the 1670s. A new dam was built at the site with the resumption of economic activity in the area in the 1720s and 1730s. Washed away in the great freshet of 1755, the dam was rebuilt in 1756, with a new sawmill in 1759. This dam was rebuilt in 1825, over two feet taller and with a timber crib structure, which was again replaced in 1873 by another timber crib dam resting on a cement foundation. That later dam was badly damaged in a flood in April 1920, and was replaced with a similar dam, which in turn was rebuilt in 1954 by a dam which eventually took the name of the last factory to draw power from it, the Kesslen Shoe Company.<sup>13</sup>

Despite the long history of these dams, at no point has fish passage been required. For example, in 1954, in connection with the construction of the existing concrete Kesslen dam on pre-existing concrete footings from the prior wooden dam which was then being replaced, Maine Department of Inland Fisheries and Game Commissioner Roland Cobb advised the District that the Department would not require a fishway at that time.

Similar conditions of natural falls and pre-existing dams exist upstream. An 1872 map predating the Project and the License “notes that the Dane-Perkins mill was located at a 14-foot drop in the Mousam River, with a seven-foot drop in the roof [sic] shortly downstream, and an 11-foot fall at the Twine Mill dam.”<sup>14</sup>

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<sup>9</sup> Lower Mousam River Hydroelectric Redevelopment: Environmental Assessment, J.E. Edinger Associates, Inc. (1979).

<sup>10</sup> Environmental Assessment at p. 70.

<sup>11</sup> See Harvey report at p. 2-3.

<sup>12</sup> Harvey report at p. 4.

<sup>13</sup> Harvey report at p. 10.

<sup>14</sup> Harvey report at p. 13.

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These dams predate the Project and the License:

In 1937, the KLPD purchased the two dams at the former Cat Mousam site from the Linen Thread Company: the principal mill site at the Twine Mill dam, and the Dane Perkins dam, used for water control. The KLPD renovated the dams following damages from the flood of 1936. Based on a photograph in the KLPD archives, it appears that the Twine Mill Dam may have been rebuilt at that time, in the identical location. In 1954, the KLPD replaced the former Kesslen Mill dam in Kennebunk with the present concrete dam in the identical location.<sup>15</sup>

As a result of the historic falls, pre-existing dams, and other factors, “the upland portions of the Mousam River, including the section of the river containing the three dams that are operated by the KLPD, was not used for the purpose of navigation.”<sup>16</sup>

These factors, along with input from the public and other stakeholders, collectively informed the District’s development of this Surrender Application. In a non-binding referendum vote in the Kennebunk November 2016 general election, the overwhelming majority of voters – 72 percent – voted in favor of retaining the existing dams and impoundments following the cessation of hydroelectric generation.

Execution of this decommissioning plan would have no effect on the geology and soils of the Project or the immediate vicinity. There would be no ground disturbance associated with the decommissioning and, therefore, no erosion or other effects on geology and soils. The Mousam River in the Project reach flows under several bridges, including Mill Street, Interstate 95 and the Maine Turnpike, and U.S. Route 1 and Maine Route 9A where the Project and river run under Main Street in downtown Kennebunk. None of these bridges or related infrastructure will be affected by the decommissioning activities described in this decommissioning plan. Similarly, these decommissioning activities will not affect the level or quality of water in private or public wells or other water sources located near the Project.

During decommissioning, the Project works being removed will be removed from its current location and placed on temporary supports in the parking area of the facility before shipping off-site. The District does not anticipate any disturbance to soil, riverbed, water quality, or the original dam facilities. Care will be taken throughout the decommissioning process to ensure that no oil, chemical, or other discharges occur. Equipment and supplies will be available to implement best management practices to contain any spills should they occur.

Execution of this decommissioning plan would have no effect on water quality in the area of the Project, or would benefit water quality. According to historic reports, “Water quality problems on the Mousam River have been recognized by the Maine Department of Health and

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<sup>15</sup> Harvey report at p. 19.

<sup>16</sup> Harvey report at p. 21.

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Welfare (DHW) as early as 1950.”<sup>17</sup> These problems are attributed to remote discharges and conditions miles upstream from the Project into headwaters such as Estes Lake as early as 1945, “water quality problems in the Mousam downstream of Sanford” documented in 1973-1974, “significant deterioration in both the upper reaches of the Mousam and in the vicinity of Sanford”, and, “Water quality data clearly show deterioration in the Sanford region and Estes Lake, followed by some downstream improvement.”<sup>18</sup>

Continued water flows should ensure that the current water quality is maintained, including through the penstocks which the District proposes to fence off and secure but leave open to flow water as requested by MDEP. The District will minimize any contact with the Mousam River during decommissioning. As noted above, the District will carefully remove hydraulic fluids and other chemicals without discharging them into the river.

Execution of this decommissioning plan would have no effect on fish and aquatic habitat at the Project. As documented in the reports and documents cited in this Surrender Application, fish habitat in the Project reach is minimal and minimally used. In a list prepared by MDMR and MDEP, prioritizing rivers for restoration efforts, the Mousam was rated as a low priority river due to the small watershed that it drains, the limited amount of habitat available, the large number of dams, and the lack of funding.<sup>19</sup> A letter from the Atlantic Sea Run Salmon Commission’s Program Coordinator similarly stated that, relative to Atlantic salmon, the Mousam is a very low priority for salmon restoration due to the paucity of suitable habitat, the number of passage barriers, and the existence of a brown trout fishery (a competitor of salmon).<sup>20</sup> A 1955 report identified 13 dams on the main Mousam River, none of which had any fishway present.<sup>21</sup> A 2009 study of species present in the Mousam River estuary below Kesslen Dam found 444 invasive crabs but just “a total of 2 blueback herring, 6 alewife, 1 American shad, and 17 American eel were collected. Although these results may be useful for establishing presence or absence of species in the lower estuarine portions of the river, they do not indicate that there are sufficient numbers of diadromous species moving in the Mousam River to warrant the installation of fish passage structures at the dams.”<sup>22</sup> A 2011 study by Alden Laboratory concluded, “the available data on the Mousam River do not indicate that fish passage is necessary.”<sup>23</sup> A 2016 report concluded that “the operation of other dams upstream of the KLPD facilities currently exercise some influence over the hydrology of the river, and can be expected to do so for some time to come.”<sup>24</sup> While comments from state and federal resource agencies addressed in Section VIII of this surrender application indicate resource agency perspectives that certain biological and water quality data may be limited, the information

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<sup>17</sup> Environmental Assessment at p. 44.

<sup>18</sup> *Id.* at pp. 46-47, 51.

<sup>19</sup> *See* Alden report at Section 4.1.

<sup>20</sup> Alden report at Section 4.1.

<sup>21</sup> Environmental Assessment at p. 66.

<sup>22</sup> Alden report at Section 4.1.1.1.

<sup>23</sup> Alden report at Section 4.3.

<sup>24</sup> Wright-Pierce report (rev. 03-22-16), at p. 5 - 5.

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available supports this decommissioning plan as consistent with economic and environmental considerations.

To the extent that fish may currently utilize the Project water, the continuation of flows through the river will maintain current flow conditions, and there is no expected impact to any existing fish or aquatic life use.

Execution of this decommissioning plan would have no effect on terrestrial resources, including wetlands, wildlife and botanical resources, which have been characterized in the Environmental Assessment. There will be no effect on wetlands as there are no wetlands at the Project that would be altered. There would be no ground disturbance associated with the decommissioning, and, therefore no resulting impacts to wildlife or botanical resources.

There are no protected species or designated critical habitat known to occur at the Project.<sup>25</sup> Therefore, the execution of this decommissioning plan will have no effect on protected species or designated critical habitat.

Execution of this decommissioning plan would have no effect on recreation resources or recreation use of the Project, as there would be no change to recreational use. The District proposes to make no change to existing boat launch and river access sites within the Project boundary. As noted, the impoundments behind the existing dams “enhance certain recreational opportunities for water sports such as canoeing and fishing.”<sup>26</sup> The decommissioning plan preserves the existing and substantial recreational facilities located within the Project boundaries. These include a District-maintained public boat launch on District-owned land along the Dane Perkins impoundment, a Town of Kennebunk-maintained public boat launch at Intervale Park, and a boat launch located upstream of the Kesslen dam, at Berry Court.

As confirmed through comments by the Maine State Historic Preservation Office, execution of this decommissioning plan would have no effect on historic resources at the Project. The Kesslen Dam is eligible for listing on the National Register of Historic Places. The dam itself is therefore a cultural and historic resource. There will be no disturbance to the dam as part of the decommissioning work. Following decommissioning, ownership and responsibility for the Project property will remain with the District. Similarly, the decommissioning activities described in this decommissioning plan will not affect historic buildings such as the Kesslen Mill which sits atop the Kesslen turbine and generator equipment.

Execution of this decommissioning plan would also retain other community benefits, including access by the Kennebunk Fire Department to the river to obtain water for firefighting efforts and allowing the continuation of existing recreational activities, which would remain unchanged following surrender pursuant to the decommissioning plan. Moreover, popular sentiment in Kennebunk supports this proposal: as noted above, a non-binding referendum vote

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<sup>25</sup> See Lower Mousam River Hydroelectric Redevelopment: Environmental Assessment, J.E. Edinger Associates, Inc. (1979), at p. 5.

<sup>26</sup> Environmental Assessment at p. 7.

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in the Kennebunk November 2016 general election showed that 72 percent of voters want the impoundments to remain in place “to allow the continuation of existing recreational activities”, enabling these and other values even after the cessation of hydropower generation and the end of the License.

Safety is of paramount importance to the District. Following execution of this decommissioning plan, the District will regularly inspect the dams, will consult with state regulatory authorities overseeing the dams, will make repairs as needed, and will carry appropriate liability insurance.

### **VII. SCHEDULE FOR SURRENDER OF THE PROJECT**

The Project’s license expires on March 31, 2022. As described above, the District proposes a two-phase decommissioning plan on the following schedule:

- Phase 1: Permanently cease generation, disconnect all leads from all Project generators, and remove flashboards within 30 days following Commission approval of this Surrender Application.
- Phase 2: Complete all other work described in the decommissioning plan in Section V above, by March 31, 2024, pursuant to temporary subsequent licenses as necessary to allow the District time to mitigate impacts of decommissioning costs on the rates paid by the District’s customers.

### **VIII. CONSULTATION**

On February 12, 2021, pursuant to the District’s approved Plan and Schedule, the District distributed a draft surrender application to the federal and state resource agencies, as well as other interested entities, listed on Exhibit A. Pursuant to the Plan and Schedule, the District requested responses from these federal and state resource agencies, as well as other entities, by March 15, 2021. A copy of the District’s initial consultation request letter is attached as Exhibit B.

In response to these letters, to date the District has received responses from the following federal and state agencies:

- Maine State Historic Preservation Office
- Maine Department of Environmental Protection (MDEP)
- National Oceanic and Atmospheric Administration (NOAA)
- Maine Department of Marine Resources (MDMR)
- Maine Department of Inland Fisheries and Wildlife (MDIFW)

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The District also received comments from several individuals as well as the Mousam and Kennebunk River Alliance and Maine Rivers, jointly. The comments received from individuals are provided herein as Exhibit C.

Additionally, the District's Board of Trustees held a public meeting on March 2, 2021, at which representatives of MDEP, NOAA, MDMR, MDIFW, and U.S. Fish and Wildlife Service spoke with the Board regarding their priorities and perspectives. A transcript of that meeting is attached as Exhibit D.

The District appreciates the agencies' consideration and commentary shared through the consultation process, and looks forward to continuing to work with applicable regulators and resource managers following the completion of the District's license surrender process before the Commission.

Below, the District summarizes and addresses these comments by subject matter. We have identified the following subject matter areas to address: (1) historic resources; (2) water quality impacts; (3) fisheries impacts; (4) recreational resources; and (5) additional MKRA/MR considerations.

### **1. Historic Resources**

#### **SHPO Comments**

The SHPO commented that the Project's decommissioning activities, as proposed, will not affect historic properties. The SHPO also noted that, if no consulting parties object to this finding, project activities may proceed as proposed unless historic resources are discovered during project implementation.

#### **Response to Comments**

The District appreciates the SHPO's attention to this matter and its finding that the proposed Project decommissioning activities will not affect historic resources. As a result, the District proposes no changes to its draft surrender application with regard to historic resources. As of the date of this filing, no consulting party has provided the District notice of any objection to SHPO's finding.

### **2. Water Quality Impacts**

#### **MDEP Comments**

MDEP offered the following comments with regard to water quality impacts:

- Dam removal or partial dam breach would increase the flow of water through the impoundments and this would correct the water quality impacts to the river and its habitats. However, MDEP also acknowledges that dam removal is unlikely.



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- In the absence of dam removal or breach, removal of the flashboards could improve water quality in the Mousam River. Therefore, MDEP maintains that flashboard removal should be undertaken early in the decommissioning process.
- MDEP recommends that penstocks not be permanently closed to allow water to flow through existing gate and penstock structures during times when water temperatures are high and flows are low. MDEP maintains that this would help aerate the water and improve dissolved oxygen levels, which may have a positive impact on the downstream aquatic habitat and the macroinvertebrate community.

### **MDMR Comments**

MDMR supports MDEP's comments and asserts that the presence of the Dane Perkins and Twine Mill dams cause or contribute to lower water quality, specifically dissolved oxygen and aquatic habitat. MDMR also notes that the Kesslen Dam impoundment likely causes or contributes to lower water quality, but that this cannot be determined conclusively due to a lack of water quality data in the impoundment. Therefore, MDMR recommends that dam removal or partial breach to increase the flow of water through the impoundments would correct the water quality impacts to the river and its habitats.

### **MKRA/MR Comments**

Citing DEP's comments, MKRA/MR assert that the Project dams are responsible for the non-attainment of water quality standards in their impoundments and that the public interest requires that the District's surrender application be amended to require removal of the three Project dams as a condition of the acceptance of the surrender application by the Commission. MKRA/MR also assert that the Commission should require water quality testing at the Kesslen Dam. Lastly, MKRA/MR disagree with MDEP that leaving the penstocks open will improve water quality in the River and MKRA/MR maintain that dams are inherently environmentally negative.

### **Response to Comments**

The District appreciates commenters' concerns with respect to water quality and supports adopting reasonable cost-effective measures that could produce positive impacts on the Mousam River's water quality, while recognizing that the District is a resource-constrained, ratepayer-funded consumer-owned entity. For over six years preceding this license surrender process, the District investigated the feasibility of a variety of approaches to Project decommissioning, including dam removal. Ultimately, the District concluded that the only viable approach to Project surrender is to cease and permanently remove electric generation features and by returning the dams to largely the same condition they were in prior to the Project's development. In reaching this determination, a primary consideration of the District was maintaining reasonable rates for its ratepayers, and dam removal is not an economically viable approach if it must be funded at the expense of the District's ratepayers.

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As described elsewhere in this surrender application, dams have been present on the Mousam River for generations (and in many cases, centuries), and the Project dams predate the Project itself. By surrendering the Project pursuant to the decommissioning plan described in this application, Project surrender, as proposed, will not contribute to any adverse water quality impacts compared with the environmental conditions that existed before Project development. Similarly, the District does not propose to undertake any water quality testing during decommissioning because water quality testing was not a requirement under the Project's license.

While the District cannot support dam removal or breach at the expense of its ratepayers, and has not proposed to decommission the project in that manner, the District has considered DEP's recommendations with respect to: (1) undergoing flashboard removal during Phase I of the decommissioning process; and (2) decommissioning in a manner that would allow the penstocks to remain open. The District has determined that it can adopt these recommendations because of their positive impacts on water quality and at a reasonable cost to the District's ratepayers. With respect to MKRA/MR's assertion that keeping the penstocks open after decommissioning will not improve water quality, the District defers to MDEP's subject-matter expertise that this action may, in fact, contribute to improved water quality conditions. Accordingly, the District has revised this surrender application to incorporate these recommendations.

### **3. Fisheries Impacts**

#### **NOAA Comments**

NOAA comments that recent studies have shown that fish passage improvements, especially with multi-dam systems, are generally needed to improve shad population sizes. NOAA also notes that similar studies indicate that river herring and American eel populations have declined in recent decades and that the presence of dams is a factor in these declines. NOAA maintains that the Kesslen Dam is a barrier to migratory fish and that leaving it in place would continue to limit the returning adult population of alewife, American shad, and sea lamprey and would limit the number of juvenile American eel that are able to reach rearing habitat upstream of the Kesslen Dam.

NOAA also comments that restoring river herring in the Mousam River would benefit fish, birds, and wildlife in the Gulf of Maine because they provide food for cod. In addition, NOAA explains that Maine has a draft fisheries management plan for the Mousam River Drainage that maintains that the Mousam River holds significant restoration potential for diadromous fish and that the District's surrender plan does not appear to support the goals of this fisheries management plan because the Kesslen Dam would remain a barrier to migratory fish. Consequently, NOAA recommends that the District consider a course of action that helps to restore migratory fish to the Mousam River.

#### **MDMR Comments**

MDMR notes the presence of American eel in the watershed above the three dams and the presence of alewife, blueback herring, American shad, rainbow smelt, Atlantic tomcod, striped

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bass, and American eel in the Mousam River downstream of the Kesslen Dam and contends that historic habitat for most of these species, extends past the most upstream Project dam. MDMR comments that the District's proposal to surrender the project will not address the Project dams' blockage to historic habitat for diadromous species. Consequently, MDMR contends that dam removal or partial breach at the three dams would greatly increase the anadromous fish resources in the river, and would also be consistent with the goals of the Shad and River Herring Fishery Management Plan and the American Eel Fishery Management Plan.

### **MDIFW Comments**

MDIFW supports MDMR's request for fish passage because of its potential to restore diadromous fish species to the Mousam River watershed. MDIFW asserts that the District's surrender plan does not adequately address the environmental impacts the dams have had on both riverine and diadromous fish species and on aquatic organism assemblages. MDIFW comments that these impacts include low dissolved oxygen levels in the impoundments, the impoundments' favoring lentic, non-riverine fish species, and a lack of fish passage and connectivity.

### **DEP Comments**

DEP supports the comments of subject matter resource agencies as they relate to fish passage over the Project dams. DEP also notes that fish habitats are a "designated use" in Maine's water quality standards that generally include connecting river segments to allow anadromous fish to access historic freshwater spawning habitat.

### **MKRA/MR Comments**

Relying on historical reports, MKRA/MR disagrees with the District's assertion that the natural falls present at the Kesslen Dam would not necessarily prevent fish passage upstream if the Dam were removed.

### **Response to Comments**

As described above, the District has analyzed the various options available to it with respect to decommissioning and has determined that surrender as described in this application represents the approach to Project decommissioning that best balances all considerations including economic and environmental values. As described in Section VI of this surrender application, the Mousam River has developed a particular ecosystem over the centuries since dams were first constructed that is a stable home to a variety of aquatic resources. Moreover, other possible approaches to Project decommissioning represent an unreasonable financial risk and burden that would be borne by the District's ratepayers. Consistent with its selected approach, the District proposes to cease generation, to disable and remove electrical equipment necessary for generation, and to return the dams largely to the condition they were in prior to Project development activities. Prior to Project development, the Project dams were in place and did not contain fish passage. The District is a small, ratepayer-funded municipal power system that is beholden to its ratepayers. Consequently, the funding of dam removal or of the construction of fish passage is not feasible for the District.

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### **4. Recreational Resources**

#### **MDMR Comments**

MDMR comments that the District's proposal not to change recreational access within the Project area, including existing boat launch and river access sites, will enhance recreational opportunities. MDMR notes that the absence of upstream or downstream fish passages for diadromous and resident fishes has hindered the development of these fish populations and negatively impacted commercial and recreational fishing opportunities.

#### **MDIFW Comments**

MDIFW comments that recreational access for the public is inadequate along the Lower Mousam River and needs to be addressed prior to a surrender. MDIFW maintains that public access to surface waters is an important MDIFW goal because it allows the public an opportunity to participate in activities including fishing, hunting, and recreational boating. MDIFW also notes that maintaining and expanding public access opportunities in southern Maine is particularly important because recreational opportunities are gradually lost due to development, land posting, and other changes in land use.

#### **Response to Comments**

The District agrees with MDMR and MDIFW with respect to the importance of ensuring that the Mousam River remain a source of ample recreational opportunities for the public. In surrendering the Project as described in this application, the District will enable all existing recreational opportunities to remain available to the public as they have been during the Project's operational phase. The District proposes to make no change to existing boat launch and river access sites within the Project boundary, nor to the impoundments behind the existing dams which "enhance certain recreational opportunities for water sports such as canoeing and fishing."<sup>27</sup> The decommissioning plan preserves the existing and substantial recreational facilities located within the Project boundaries – including a District-maintained public boat launch on District-owned land along the Dane Perkins impoundment, a Town of Kennebunk-maintained public boat launch at Intervale Park, and a boat launch located upstream of the Kesslen dam, at Berry Court.

### **5. Additional MKRA/MR Considerations**

MKRA/MR offer comments on certain additional aspects of decommissioning not addressed by other commenting entities. These are addressed below.

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<sup>27</sup> Environmental Assessment at p. 7.

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### Flooding and Climate Change

MKRA/MR assert that removal of the Project dams will help to avoid future flooding during the increasing number of storms events associated with climate change and that this represents another public benefit associated with dam removal.

### Response to Comment

The Project facilities were not designed for flood attenuation, nor have they been operated for that purpose during the term of the License. Moreover, the 30", 36", and 18" of additional "freeboard" created at the Dane Perkins, Twine Mills, and Kesslen impoundments, respectively, will naturally reduce the base elevation. These reductions in base elevations at the impoundments represent flood attenuation measures that mitigate the risks associated with flooding. In addition, the York County, Maine Hazard Mitigation Plan for 2015 ("York County Plan") characterized the Project facilities as low-hazard with respect to the risks associated with flooding.<sup>28</sup> The York County Plan explains that, if low-hazard dams were to breach, damage would be limited to the owner's property.<sup>29</sup> As previously explained, dam removal is not a financially viable option for the District during decommissioning. With respect to risks associated with flooding, the District proposes to permanently keep the Kesslen dam's floodgates closed following decommissioning. At the March 2, 2021 public meeting held by the District to discuss decommissioning, MDEP indicated its approval of this approach to flood hazard mitigation. The District accordingly defers to MDEP's institutional expertise with respect to this subject.

### Economic Feasibility and Public Support

MKRA/MR contend that the District has realized "that the dams are not economic and that there is no viable path for upgrading the infrastructure associated with hydro power operations" and that the District "has profited from use of the dams over the years..." Citing the Commission's Decommissioning Policy Statement, MKRA/MR also assert that "the Commission anticipates that the licensee will be responsible for paying the costs (up to a reasonable level) of the steps needed to decommission the project, *since the license created the project and benefitted from its operations*" (emphasis added).

Unrelatedly, MKRA/MR also maintain that the District's surrender application should include descriptions of the District's exploration of the various sources of federal, state, and private funding that could provide grants for environmental projects, such as removal of the Project dams.

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<sup>28</sup> *York County, Maine Hazard Mitigation Plan for 2015*, prepared by the York County Emergency Management Agency, at 4-12. Available at: <https://www.sacomaine.org/Emergency%20Management/York%20County%20Hazard%20Mitigation%20Plan.pdf>

<sup>29</sup> *Id.* at 4-11.

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MKRA/MR also claim that the District has failed and refused to consult with MKRA/MR and its constituents about decommissioning. In addition, MKRA/MR contend that the January 25, 2021, KLPD public ZOOM meeting shows that the public supports dam removal because 22 of 24 speakers commented in favor of dam removal.

### **Response to Comment**

The District is compelled to respond to certain factual inaccuracies contained in this section of MKRA/MR's comments. First, the District has not determined that the "dams" are not economic, it has determined that the costs associated with the continued operation of the Project so far outweigh the benefits the Project provides to its ratepayers that Project relicensing would impose unreasonable costs on those ratepayers. Second, and as noted elsewhere in this surrender application, the District has never, and, indeed, cannot "profit" from the Project. The District is a municipal power system funded by its ratepayers. Unlike an investor-owned utility, the District has no profit motive because it does not earn profits – when the District's costs are low, its ratepayers have lower rates, and when the District's costs are high, those costs are, accordingly, passed along to ratepayers. The notion that the District is motivated by profit is nonsensical. The District's decision making is informed by considering the effects those decisions will have on the District's ratepayers.

Moreover, MKRA/MR's argument that the District should pay to remove the Project dams is misplaced because MKRA/MR misunderstand the relationship between the dams and the Project. As stated several times in this surrender application, the Project dams predate the Project – they were in place when the District decided to develop the Project 40 years ago. This is key to the District's decommissioning plan, and is also consistent with the Decommissioning Policy Statement passage cited by MKRA/MR because the License did not create the dams, but merely authorized the construction, operation, and maintenance of hydroelectric generating facilities at existing dams.

With respect to MKRA/MR's assertion that the District should seek funding for dam removal and document it as part of its surrender application, such activities exceed the scope of the District's license and of the Commission's surrender application regulations. The District takes its decommissioning obligation seriously, as it does its mandate to protect its ratepayers from unreasonable rates. In both respects, decommissioning the Project as proposed in this application represents the appropriate approach.

With respect to public consultation, this surrender application follows over 6 years of consistent public process and consideration by the District's governing Board of Trustees. In connection with the development of this surrender plan, the District's outreach efforts to the public include the following:

- The District publicly released a draft surrender application in February 2021, substantially similar to the version served to the Consultation Entities in March 2021, and received seven sets of written comments;
- The District held at least 3 public meetings to discuss the development of its surrender application and decommissioning plan, as part of no less than 15 duly-

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noticed public meetings over the past 6 years regarding the License and surrender where comments were received from the public; and

- The District formally provided the draft surrender application to the consultation entities on February 12, 2021, consistent with the District's Commission-approved Plan and Schedule.

Of the seven written comments received, five are supportive of maintaining the dams, while two support dam removal. Moreover, MKRA/MR's description of the January 25, 2021 ZOOM public meeting, that 22 of 24 speakers spoke in favor of dam removal, is inaccurate. In fact, District records confirm that of 40 speakers; 22 were Kennebunk residents who spoke in favor of dam removal, while 8 Kennebunk residents spoke in support of the District's surrender plan, in addition to 4 non-Kennebunk residents and 6 state and federal agency representatives who spoke. The District provides this information to illustrate the absurdity of MRKA/MR's reliance on this erroneous statement.

### **Comprehensiveness of the Decommissioning Plan**

MKRA/MR offer various recommendations regarding the substance of this surrender application. These are summarized below.

- “The decommissioning plan should include a schedule for removal with the surrender being effective on completion of the process. If the time extends beyond the end of the current license term, FERC will issue year to year licenses until the process is complete.”

#### **Response to Comment**

The District has provided a proposed schedule for decommissioning the Project in Section VII, above. The District will pursue decommissioning and surrender consistent with applicable Commission policies and directives.

- “There must be a plan to cope with weather events that have the potential to cause flooding. For [sic] example, there should be constant monitoring of weather forecasts and the assignment of staff to open the dam gates when flooding is predicted. In addition, FERC should condition surrender on the installation of flood gates.”

#### **Response to Comment**

The District has addressed MKRA/MR's concerns with respect to flooding in this surrender application.

- “Pending dam removal, the plan should provide operational plans including periodic opening of the gates in low water periods, operation of the penstocks pending removal, etc.”

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### **Response to Comment**

As explained above, the District will adopt MDEP's recommendation that the penstocks be left open permanently for water quality improvement purposes. Moreover, the plan states that the Kesslen floodgates will be left closed at all times. These items are therefore addressed in this surrender application.

- "Closure of the Penstocks will require a long-term binding maintenance commitment. There is a public safety issue with respect to leaving the penstocks open as there is an impingement hazard. See the following article regarding a drowning at a dam in Massachusetts that has since been removed."

### **Response to Comment**

As the owner of the Project dams, the District will continue to maintain them consistent with its obligations as a dam owner including in connection with Maine's dam safety program pursuant to 37-B M.R.S. Chapter 24.

- "There must be a plan for ongoing maintenance of the structures. MKRA/MR suggest that a condition of surrender be that KLPD must have a long term, nonrevocable bond to cover dam maintenance and the effect of potential catastrophic failure."

### **Response to Comment**

As above, the District will continue to maintain the dams consistent with its obligations. Moreover, the District carries insurance to protect its ratepayers from the liabilities associated with dam ownership.

- "The long term environmental effects of leaving the dams in place. Impoundments have inherent adverse impacts on the environment that are tolerated when the project causing them has a public interest benefit in the form of hydroelectricity. That is not the case here as the generation will be terminated and the impoundments have no use as water sources for firefighting or other proposes [sic]."

### **Response to Comment**

As explained elsewhere in this surrender application, dams have been present on the Mousam River for centuries. As a result, their long-term environmental effects are well-established and are described in Section VI of this surrender application.



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**IX. CONCLUSION**

The District looks forward to concluding its responsibilities under the License, and requests Commission approval of this Surrender Application and decommissioning plan as soon as practicable.

Very truly yours,

Todd Shea  
General Manager  
Kennebunk Light and Power District

Attachments: Exhibits  
Studies and Reports Referenced

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**EXHIBIT A**

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EXHIBIT B

CONSULTATION REQUEST LETTER

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EXHIBIT C

WRITTEN COMMENTS RECEIVED FROM INDIVIDUALS

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EXHIBIT D

TRANSCRIPT OF MARCH 2, 2021 PUBLIC MEETING