

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
#L-27625-26-A-N/#L-27625-TG-B-N/)
#L-27625-2C-C-N/#L-27625-VP-D-N/)
#L-27625-IW-E-N)

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
SITE LAW CERTIFICATION SLC-9)
Beattie Twp, Merrill Strip Twp, Lowelltown Twp,)
Skinner Twp, Appleton Twp, T5 R7 BKP WKR,)
Hobbsdown Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

MOTION TO STRIKE OF
CENTRAL MAINE POWER COMPANY

Central Maine Power Company (CMP) moves to strike the May 17, 2019 maps of Group 6 witness Dr. Simons-Legaard, submitted in response to the Maine Department of Environmental Protection (DEP) request for “existing maps” to be submitted in response to hearing questions from the DEP. The maps that Group 6 filed appear to have been created for the DEP after the close of the hearing, and therefore are beyond the scope of the DEP’s request. Accordingly, they should be stricken.

At the May 9, 2019 hearing, Mr. Bergeron of the DEP and Ms. Bensinger of the Office of the Attorney General asked Dr. Simons-Legaard a series of questions regarding maps of American marten habitat. Dr. Simons-Legaard indicated that she had not seen a map of current

American marten habitat, but did have maps dating from 2010 and earlier that are not species-specific. The DEP requested those existing maps:

MR. BERGERON: Dr. Simonds-Legard [*sic*], you had noted that there -- it's currently known where marten habitat is, has that information been submitted as part of this proceeding?

ERIN SIMONS-LEGARD [*sic*]: No. No, the information that I've provided gives you sort of a, you know, a characterization at the level of the total sort of forest land area within a female marten's home range, but it's not a map. **I haven't seen a map of where the habitat currently is.**

MR. BERGERON: Could you tell us in general if those areas are located in or near one or more of the nine TNC identified areas?

ERIN SIMONS-LEGARD [*sic*]: So I didn't spend a lot of time looking at that specifically. I think there is -- in some cases there is overlap and in many cases there is not. So if there is some optimal way to use sort of those nine priority areas as a focal point for marten it might be possible, but I haven't looked at that specifically.

MR. BERGERON: Okay. Thank you.

MS. BENSINGER: **Are there maps in existence? You seem to be referencing them.**

ERIN SIMONS-LEGARD [*sic*]: **So some of this information has been published, not in the perspective of marten, so I gave you two citations at the bottom of the -- of the -- where the tables and the maps are, so this information has been published in part. It just hasn't been published for marten specifically, so I have these maps that we've generated that are not species specific, but I can use to look specifically at marten habitat and that's what I did to help this process.**

MS. BENSINGER: And the maps show mature forest areas that would be good marten habitat?

ERIN SIMONS-LEGARD [*sic*]: Yes.

MS. BENSINGER: **Is this a series of maps? Can you submit it?**

ERIN SIMONS-LEGARD [*sic*]: So the -- **I could. The one downside is the analysis that I've done to date stopped at 2010, so it doesn't take into consideration the last nine years of harvest, so to be complete I would need to take that step.**

MS. BENSINGER: **Could you submit the maps that are in existence now?**

ERIN SIMONS-LEGARD [*sic*]: **In some form, yes.**

[Transcript at 147-49 (emphasis added).]

MS. MILLER: I have a couple of announcements for clarification. Earlier this morning there were **some questions about some maps that currently exist from Dr. Simons-Legard** [*sic*] and so what we've decided we're going to do is we will allow the record to stay open for one week solely for those documents to come in and then another week for all of the parties to comment on those maps, so that will be just related to those documents.

[Transcript at 178-79 (emphasis added).]

On May 10, 2019, in an email to the service list, the DEP Presiding Officer confirmed that “[t]he record is closed except that three sets of documents and information will be allowed to be submitted by specific parties” including “Existing maps to be submitted by Dr. Simons-Legaard/Intervenor Group 6 in response to questions from the Department.”

Nevertheless, on May 17, 2019, Group 6 submitted a series of five maps that are outside the scope of the DEP’s request because (1) they were created for the DEP after the hearing; (2) they contain new data not present in the existing maps the DEP requested; and (3) they are specific to American marten, despite Dr. Simons-Legaard testifying that no such species-specific maps were in existence at the time of the May 9, 2019 hearing.

First, the maps that Group 6 submitted were not “in existence” at the time of the DEP’s May 9, 2019 request. The maps are dated May 17, 2019 and are labeled as “Prepared for DEP by E. Simons-Legaard.” This is not what the DEP requested – DEP unequivocally asked Dr. Simons-Legaard if she could “submit the maps that are in existence now” and ordered the submittal of “existing maps.” Maps that Dr. Simons-Legaard prepared for the DEP one week after the hearing clearly are outside the scope of the DEP’s request.

Second, while Dr. Simons-Legaard testified that she would like to update currently existing maps, given that the “downside” of the existing maps that is that the analysis “stopped at 2010, so it doesn’t take into consideration the last nine years of harvest,” the DEP was not interested in her doing so. DEP merely wanted Dr. Simons-Legaard to submit “the maps that are in existence now.” Despite this instruction, Dr. Simons-Legaard revised the analysis that she had

“done to date,” which she testified “stopped at 2010,” and submitted maps that illustrate “intact forest ca. 2018.” Maps that contain new data clearly are outside the scope of the DEP’s request.

Third, the maps that Group 6 submitted are not the maps that were discussed at the hearing because they are species-specific. Dr. Simons-Legaard testified on May 9, 2019 that she has not seen a map of where American marten habitat currently is located, and that she derived her conclusions from information that “hasn't been published for marten specifically.” Referencing two citations, presumably those at the bottom of Exhibit Group 6-Simons-Legaard-1, Dr. Simons-Legaard described “maps that we've generated that are not species specific.”¹ It is those maps, “that are in existence now,” that DEP requested. Instead, Dr. Simons-Legaard created after the hearing a series of maps that are specific to “Marten habitat suitability,” that set forth the boundaries of a “Marten buffer,” and that depict areas with varying “habitat suitability for American Marten.” These are not the maps that Dr. Simons-Legaard described during the May 9, 2019 hearing and clearly are outside the scope of the DEP’s request.

For the foregoing reasons, Group 6’s maps “Prepared for DEP by E. Simons-Legaard (5/17/2019)” should be stricken.

Dated this 21st day of May, 2019.



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¹ The citations at the bottom of Exhibit Group 6-Simons-Legaard-1 were published in 2015 and 2013, and are not specific to American marten. To the contrary, the earlier study addressed Canada lynx connectivity.