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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY)
CONNECT) APPLICATION FOR NATURAL
25 Municipalities, 13 Townships/Plantations,) RESOURCES PROTECTION ACT
7 Counties) AND SITE LOCATION OF DEVELOPMENT
L-27625-26- A-N) ACT PERMITS
L-27625-TB-B-N) AND SITE LAW CERTIFICATION SLC-9
L-27625-2C-C-N) PUBLIC HEARING
L-27625-VP-D-N) JOINT ELEVENTH PROCEDURAL ORDER
L-27625-IW-E-N)

This Eleventh Procedural Order (Order) sets forth joint rulings of the Department of Environmental Protection (Department) and Land Use Planning Commission (Commission) on motions to strike rebuttal and sur-rebuttal testimony as well as the motion to reconsider the certain rulings in the Tenth Procedural Order. To maintain consistent numbering with the Department’s procedural orders, the Commission is issuing this order as its “Eleventh Procedural Order”; the Commission has not, and will not, issue a Tenth Procedural Order in this matter.¹

MOTION FOR RECONSIDERATION OF HEARING ON MAY 9, 2019

1. On April 29, 2019, Intervenor Groups 2, 4, and 10 filed a Motion for Reconsideration with the Department. Specifically, the motion requests that:
 - a. The Presiding Officer reconsider the decision set forth in Paragraph 4 of the Tenth Procedural Order that there will not be an opportunity for the parties to submit written rebuttal testimony and evidence after the filing of the supplemental testimony and evidence. The Intervenor Groups argue that only the Applicant is invited to submit additional documents on the questions listed and question whether the Department will be able to adequately assess the supplemental evidence without rebuttal testimony;

¹ The Department’s Tenth Procedural Order and all submissions filed in response to the Tenth Procedural Order are entered in the Commission’s record.

- b. Postpone the deadline for the supplemental testimony set in Paragraph 1 of the Tenth Procedural Order, and set a new hearing date for the continuation of the hearing due to the short timeframe between the issuance of the Tenth Procedural order and the hearing date of May 9th; and
 - c. Allow post-hearing briefs and proposed findings of fact on criteria other than the hearing topics.
2. On April 29, 2019, the Applicant filed a response to this motion requesting that it be denied because:
 - a. The new information request was limited in scope and enough time was available for parties to prepare for the deadlines outlined in the Department's Tenth Procedural Order which was dated and distributed April 19, 2019;
 - b. The information request was in response to evidence presented during the hearing on April 1-5, a process which is allowed pursuant to Chapter 3, § 5(D) of the Department's rules; and
 - c. The information requested does not amount to new hearing topics, and the Applicant is not proposing any changes to its proposed project as a result of the request for more information, so a modification or amendment to the permit application is unnecessary.
3. The motion is granted in part and denied in part as follows:
 - a. The request to allow written rebuttal testimony in response to the supplemental testimony and evidence requested in the Tenth Procedural Order is denied. Oral rebuttal testimony will be allowed at the hearing on May 9th. As stated in Paragraph 4 of the Tenth Procedural Order, "parties may include rebuttal testimony in their oral summary of the supplemental evidence on May 9th..." Parties may offer limited rebuttal exhibits, however they must be strictly responsive to the supplemental testimony or exhibits submitted by the parties on May 1st. Please bring to the May 9th hearing 20 copies of any proposed rebuttal exhibits. Rulings on such proposed rebuttal exhibits will be made on a case by case basis.
 - b. The request to postpone the deadline for the supplemental testimony and set a new date for the continuation of the hearing is denied. The parties have the opportunity to provide oral rebuttal during the hearing, and there is no legal requirement to allow pre-filed written rebuttal testimony. The oral testimony will be captured in writing in the transcript of the proceedings. The Department's request for additional information after the first five days of the hearing is to address questions raised at the hearing thus far and is in furtherance of a full,

open, and thorough analysis of the pending permit applications. This type of request is addressed in, and permitted by, the Department's hearing rules:

“If additional information needs arise during the hearing, the Presiding Officer shall afford the applicant a reasonable opportunity to responds to those information requests prior to the close of the hearing record.”

- c. Because there will be no pre-filed written rebuttal testimony, and because the topics to be addressed are not generally new to the hearing process, but rather are primarily a request for more specific and in-depth information, the date of the continuation of the hearing will not be postponed.
- d. The request to allow the parties to address licensing criteria other than the hearing topics in post-hearing briefs and findings of fact is granted. Parties may provide legal arguments, based on information in the agencies' overall record, on all topics relevant to the Department and Commission's licensing criteria.

MOTION TO STRIKE REBUTTAL TESTIMONY

4. On April 19, 2019, Intervenor Groups 2 and 10 filed a Motion to Strike the testimony of several portions of the rebuttal testimony of Mr. Thorn Dickinson, a witness for the Applicant.
5. On April 23, 2019, the Applicant responded, arguing that the motion was untimely, citing Paragraph 7(b) of the Seventh Procedural Order which set the deadline for motions to strike rebuttal testimony and exhibits for existing witnesses as due March 27, 2019. Mr. Dickinson was an existing witness and not a new rebuttal witness for the Applicant.
6. The Presiding Officers agree that Mr. Dickinson was an existing witness and that the deadline for a Motion to Strike his testimony was filed after the deadline. The motion is denied.

MOTION TO STRIKE SUR-REBUTTAL TESTIMONY

7. On April 25, 2019, the Applicant filed a Motion to Strike all of the Intervenor Group 4 sur-rebuttal testimony, which includes the testimony and exhibits of: Dr. Aram Calhoun, Dr. David Publicover, and Jeffrey Reardon. The Applicant argues that none of the testimony meets the requirements outlined in Paragraph 9(e) of the Seventh Procedural Order, which states that “[T]he Presiding Officers will allow parties to submit sur-rebuttal testimony on the Applicant's rebuttal testimony pertaining to the underground alternative. This testimony must clearly be in rebuttal to what was filed by the Applicant on this topic in its rebuttal testimony.”

8. While the Presiding Officers agree with the Applicant that the sur-rebuttal testimony does not meet the limited scope of sur-rebuttal testimony identified in Paragraph (9)(e) of the Seventh Procedural Order, some of the testimony addresses the request for additional supplemental information described in the Tenth Procedural Order. Therefore, to make a determination, Presiding Officers will also consider Group 4 witnesses testimony against the supplemental information requested in the Tenth Procedural Order.
9. The Tenth Procedural Order, dated April 19, 2019, requested, in Paragraph 2, that parties submit supplemental information and evidence on the following:

“Whether undergrounding, tapering, or taller pole structures in areas identified during the hearing as environmentally sensitive or of special concern (for example, The Nature Conservancy’s nine identified areas, Trout Unlimited’s mention of Tomhegan Stream, and other specific wildlife corridors identified by parties) are technically feasible and economically viable minimization or mitigation measures. Also, whether any of these techniques would satisfy concerns raised at the hearing or be a preferred alternative. Information and evidence on these environmentally sensitive or special concern areas must include specific locations, such as GPS coordinates, latitude/longitude, or locations between existing pole structures to allow all parties and the Department to pinpoint the locations.”
10. Appendix A of the Tenth Procedural Order also identified several additional specific topics on which the Department was seeking more information from the parties.
11. While Mr. Reardon’s testimony is not responsive to the request for sur-rebuttal testimony in the Seventh Procedural Order, it addresses the supplemental information request in the Tenth Procedural Order, and therefore the testimony and exhibits will be allowed. The Motion to Strike the sur-rebuttal testimony of Jeff Reardon is denied
12. The Motion to Strike the sur-rebuttal testimony of Dr. Calhoun is granted. This testimony is not responsive to request for sur-rebuttal testimony in the Seventh Procedural Order, or the supplemental information request in the Tenth Procedural Order.
13. The Motion to Strike the sur-rebuttal testimony of Dr. Publicover is granted. This testimony is not responsive to request for sur-rebuttal testimony in the Seventh Procedural Order, or the supplemental information request in the Tenth Procedural Order.

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Susanne Miller, Presiding Officer
Department of Environmental Protection



Everett Worcester, Chair and Presiding Officer
Land Use Planning Commission