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Admitted in: MA, ME, NH

February 19, 2019

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

Bill Hinkel
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

RE: NECEC – Motion to Strike of Central Maine Power Company

Dear Jim and Bill:

Enclosed is CMP's Motion to Strike with respect to certain intervenor witness designations filed on February 15, 2019.

Sincerely,



Matthew D. Manahan

Enclosure
cc: Service Lists

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, Lowelltown Twp, Skinner Twp,)
Appleton Twp, T5 R7 BKP WKR,)
Hobbs town Twp, Bradstreet Twp,)
Parlin Pond 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 following witnesses whose testimony, according to the witness designations filed on February 15, 2019, would exceed the scope of the hearing as set forth in the Second and Third Procedural Orders of the Maine Department of Environmental Protection (DEP) and the Maine Land Use Planning Commission (LUPC).

Throughout this proceeding, DEP and LUPC have been clear that the hearing and any pre-filed testimony must be narrowly focused on certain specific topics relevant to the applicable review criteria. Indeed, DEP's Presiding Officer instructed "that the limited hearing time should

be devoted to an in-depth examination of the topics most likely to elicit conflicting evidence or technical testimony that warrants a closer examination than could be had on documents alone.” DEP First Procedural Order ¶ 19. *See also* LUPC Second Procedural Order § III.A (describing DEP’s, LUPC’s, and the intervenors’ efforts to identify “key issues” for the hearing).

After consulting with the parties, DEP’s Presiding Officer determined that the hearing would be limited to the following topics:

1. Scenic Character and Existing Uses
 - i. Visual Impact Assessment and Scenic/Aesthetic Uses
 - ii. Buffering for Visual Impacts
 - iii. Recreational and Navigational Uses
2. Wildlife Habitat and Fisheries
 - i. Endangered Species – Roaring Brook Mayfly, Spring Salamanders
 - ii. Brook Trout Habitat
 - iii. Habitat Fragmentation
 - iv. Buffer Strips around Cold Water Fisheries
3. Alternatives Analysis
4. Compensation and Mitigation
 - i. Cold Water Fisheries Habitat
 - ii. Outstanding River Segment
 - iii. Wetlands

DEP Second Procedural Order ¶ 7. DEP’s Presiding Officer reiterated in the Third Procedural Order that “[t]he scope of the pre-filed testimony is limited to the criteria as outlined under “Hearing Topics,” in paragraph 7 of the Department’s Second Procedural Order.” DEP Third Procedural Order ¶ 20.

Similarly, LUPC determined that its portion of the public hearing would be “focused on its allowed use determination and specifically on the topic of whether the proposed Project is an allowed use within the P-RR subdistrict,” and that other topics relevant to its review “will not be topics addressed at the public hearing.” LUPC First Procedural Order ¶ 6. Accordingly, LUPC’s Presiding Officer ordered that the hearing topics are limited to (1) Scenic Character and Existing Uses and (2) Alternatives Analysis. LUPC Second Procedural Order § III.C. LUPC’s

Presiding Officer clarified that “[f]or consideration in certifying to the Department whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed, testimony provided under the Scenic Character and Existing Uses topic area must be relevant to the Commission’s evaluation of whether the ‘use can be buffered from those other uses and resources within the subdistrict with which it is incompatible,’ including buffering for visual impacts and recreational and navigational uses within a P-RR subdistrict. Similarly, testimony provided under the Alternatives Analysis topic area must be relevant to the Commission’s evaluation of whether the applicant has shown by substantial evidence that ‘there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant’ for portions of the Project within a P-RR subdistrict.” LUPC Third Procedural Order § I.A.

Nevertheless, several intervenor groups filed witness lists on Friday, February 15, 2019 that exceed the permissible subject matter of the hearing. According to the witness lists, the following witnesses intend to pre-file testimony and provide testimony at the hearing on the following topics that are outside the hearing scope ordered by the DEP and LUPC presiding officers, as discussed below:

- Robert Haynes (Group 1): “Corridor Value, Scenic Value”
- Mark Falzone (Group 1): “Scenic values and tourist trends Nation wide [*sic*]”
- Todd Towle (Group 4): “impacts on scenic character and existing recreational and commercial uses (DEP and LUPC)”
- Aram Calhoun (Group 4): “impacts of the proposed powerline on vernal pools”
- Ron Joseph (Group 4): “impacts of the proposed powerline on deer yards”

Haynes, Falzone, and Towle: Hearing Topic 1, Scenic Character and Existing Uses, is limited to the three sub-topics identified in the procedural orders: (i) Visual Impact Assessment and Scenic/Aesthetic Uses; (ii) Buffering for Visual Impacts; and (iii) Recreational and Navigational Uses. “Corridor value,” “scenic value,” “tourist trends,” and “commercial uses” are outside the scope of this hearing topic. Accordingly, Mr. Haynes and Mr. Falzone should be stricken as witnesses. Mr. Towle should be stricken to the extent his testimony concerns commercial uses.

Calhoun and Joseph: Hearing Topic 2, Wildlife Habitat and Fisheries, is limited to the four sub-topics identified in the procedural orders: (i) Endangered Species – Roaring Brook Mayfly, Spring Salamanders; (ii) Brook Trout Habitat; (iii) Habitat Fragmentation; and (iv) Buffer Strips around Cold Water Fisheries. Hearing Topic 4, Compensation and Mitigation, is limited to the three sub-topics identified by the DEP: (i) Cold Water Fisheries Habitat; (ii) Outstanding River Segment; and (iii) Wetlands. Ms. Calhoun and Mr. Joseph should be stricken to the extent their vernal pools testimony and deer yard testimony, respectively, goes beyond habitat fragmentation.

Pursuant to DEP’s rules, “[e]vidence will be admitted if it is relevant and material to the subject matter of the hearing and is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence which is irrelevant, immaterial or unduly repetitious will be excluded.” DEP Reg. 3.20(A). Similarly, LUPC’s rules provide that “[e]vidence shall be admissible if it is relevant and material to the subject matter of the hearing and is of a type customarily relied upon by reasonable persons in the conduct of serious affairs. Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.” LUPC Reg 5.11(1).

The witness lists indicate that each of the above-listed witnesses will provide evidence that is not relevant to the subject matter of the hearing, and which therefore is irrelevant and immaterial to the hearing. Their testimony may be appropriate for written comments, to the extent it concerns criteria relevant to DEP's or LUPC's review. *See* DEP First Procedural Order ¶ 18 (the parties have the opportunity to "submit written comments on those criteria that are not the subject of the hearing until the close of the record at the end of the hearing").

Therefore, CMP respectfully requests that the DEP and LUPC presiding officers strike Intervenor Group 1 witnesses Robert Haynes and Mark Falzone, and strike Intervenor Group 4 witnesses Todd Towle, Aram Calhoun, and Ron Joseph to the extent their testimony exceeds the permissible scope of the hearing.

Dated this 19th day of February, 2019.



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Power Company*