STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
IN THE MATTER OF

Central Maine Power Company	)	
New England Clean Energy Connect	)	**APPLICATION FOR NATURAL**
	)	**RESOURCES PROTECTION ACT**
#L-27625-26-A-N	)	**PERMIT AND SITE LOCATION OF**
#L-27625-TG-B-N;	)	**DEVELOPMENT ACT PERMITS**
#L-27625-2C-C-N;	)	
#L-27625-VP-D-N; and	)	
#L-27625-IW-E-N	)	
_____	)	

INTERVENOR GROUP 3 OPPOSITION TO INTERVENOR GROUP 2 AND 10'S MOTION TO STRIKE WITNESSES

Intervenor Group 3[1] opposes Intervenor Group 2 and 10's Motion to Strike for the following reasons.

Intervenor Group 2 and 10's Motion to Strike uses significant space re-stating the Department of Environmental Protection's (Department) Second Procedural Order, as well as the Land Use Planning Commission's (Commission) Second Procedural Order. It is unclear why the Commission's Procedural Order is referenced given that Intervenor Group 3 only seeks to testify at the Department's hearing, as clearly explained in the first sentence of its witness list. Any argument related to the Commission and its hearing should be disregarded.

Intervenor Group 3 took the liberty of providing more information than necessary in its witness list to aid the Department in planning for its hearing. Since a reasonableness analysis pervades both the Natural Resources Protection Act and the Site Location of Development Act, and three of Intervenor Group 3's witnesses seek to testify to general reasonableness (but not

[1] For purposes of the Department's hearing, Intervenor Group 3 consists of: (1) Industrial Energy Consumer Group; (2) City of Lewiston; (3) International Brotherhood of Electrical Workers, Local 104; and (4) Maine Chamber of Commerce.

specific environmental costs), those witnesses could fit in nicely when addressing many of the specific subtopics listed. We provided relatively more information than most parties to help the Department decide on what day or days such witnesses should appear.

The Law Court has interpreted the Natural Resources Protection Act reasonableness standard as follows:

> The specific standard at issue in this case is described in section 480-D(1), which provides that to obtain a permit for a proposed project an applicant must demonstrate that the project "will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses." 38 M.R.S.A. § 480-D(1). Whether a proposed project's interference with existing uses is reasonable depends on a multiplicity of factors, one of which is the existence of a practicable alternative. A balancing analysis inheres in any reasonableness inquiry. See *Grant's Farm Assocs., Inc. v. Town of Kittery*, 554 A.2d 799, 802 (Me.1989). Therefore, the Board's consideration of practicable alternatives to a proposed project is a factor that should be balanced in its section 480-D(1) analysis.
>
> The Board might find, for example, that the existence of a practicable alternative does not justify the denial of a proposed project if the degree of interference the project will cause to existing uses is insubstantial. Conversely, the Board might find that the existence of a practicable alternative supports the denial of a project if it finds that the degree of the project's interference with existing uses will be substantial. In the latter case, the Board may conclude that, on balance, the resulting interference with existing uses would be unreasonable because of the existence of a practicable alternative that, if pursued, would enable the applicant to accomplish the project's objectives through alternate means.

Uliano v. Board of Environmental Protection et al., 876 A.2d. 16, 19-20 (Me. 2005). Thus, the reasonableness standards found in the Natural Resources Protection Act require consideration of a "multiplicity of factors" and a "balancing analysis." A balancing analysis clearly contemplates a weighing of costs and benefits. Few projects, if any, are proposed specifically to create environmental benefits or do, in fact, create environmental benefits. Interpreting reasonableness to exclude non-environmental benefits (such as energy-related benefits) would stop nearly all Maine development in its tracks, an absurd result that is contrary to law. The statutes and judicial decisions interpreting them command that environmental costs be evaluated in a context of reasonably foreseeable benefits and alternatives. It is not the law that only environmental benefits are to be assessed in the balance. Intervenor Group 3 intends to present evidence of non-environmental benefits that must be balanced against environmental costs to determine if the

NECEC's impacts, specific to the subtopics listed, are reasonable or unreasonable. Thus, Intervenors Group 3's proposed testimony fits squarely within the reasonableness standards of the hearing topics it enumerated in its witness list.

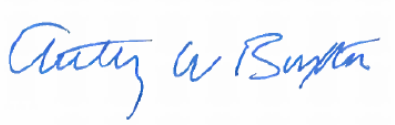
Further, an alternatives analysis starts with the option of doing nothing, which obviously causes no incremental environmental impacts. The Department must determine whether doing nothing is reasonable and would meet the NECEC's stated purpose and need. Intervenor Group 3's witnesses plan to testify to the various costs or harms (e.g., energy and economic) of doing nothing, which will assist the Department in assessing whether doing nothing is, in fact, a practicable alternative under the circumstances.

For the foregoing reasons, and to avoid delay, Intervenor Group 2 and 10's Motion to Strike should be denied.

DATED: February 21, 2019

Respectfully submitted,

Spokesperson for Intervenor Group 3



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