

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

IN THE MATTER OF:)	
)	
CENTRAL MAINE POWER COMPANY)	APPLICATION FOR SITE LOCATION OF
25 Municipalities, 13 Townships/Plantations,)	DEVELOPMENT ACT PERMIT AND
7 Counties)	NATURAL RESOURCES PROTECTION
)	ACT PERMIT FOR THE NEW ENGLAND
L-27625-26-A-N)	CLEAN ENERGY CONNECT FROM
L-27625-TB-B-N)	QUÉBEC-MAINE BORDER TO LEWISTON
L-27625-2C-C-N)	AND RELATED NETWORK UPGRADES
L-27625-VP-D-N)	
L-27625-IW-E-N)	

MOTION TO STRIKE GROUP 3 WITNESSES

Intervenor Group 2 and Intervenor Group 10 (collectively, “Groups 2 and 10”) by and through their attorneys, BCM Environmental & Land Law, PLLC, file this Motion to Strike Intervenor Group 3¹’s Witnesses, Glenn Poole, Dana Connors, and Edward Barrett, and respectfully request that these witnesses be stricken or otherwise prohibited from submitting pre-file testimony on the topics proffered as they are outside the scope of the designated hearing topics. For all of the following reasons, this request should be granted.

DISCUSSION

The Maine Department of Environmental Protection (“DEP”) and the Land Use Planning Commission (“LUPC”) set forth in their respective Second Procedural Orders (LUPC Order dated October 9, 2018, DEP Order dated October 5, 2018) that the hearing topics were

¹ Group 3 is comprised of Industrial Energy Consumer Group, City of Lewiston, International Brotherhood of Electrical Workers Local 104, Maine Chamber of Commerce, and the Lewiston/Auburn Chamber of Commerce (admitted to the LUPC proceeding only).

constrained to “four (4) major topic areas along with several subtopics,” DEP Second Procedural Order ¶ 7.

The DEP’s Second Procedural Order set forth four main topic areas and sub-topics as follows:

- a. Scenic Character and Existing Use – 38 M.R.S. § 480-D(1), 38 M.R.S. § 484(3), DEP Rules Chapters 315 and 375 § 14: The applicant must demonstrate that the proposed activity will not unreasonably interfere with the scenic character, existing uses, aesthetic, recreational or navigational uses and that the development fits harmoniously into the natural environment.
 - i. Visual Impact Assessment and Scenic/Aesthetic Uses
 - ii. Buffering for Visual Impacts
 - iii. Recreational and Navigational Uses
- b. Wildlife Habitat and Fisheries – 38 M.R.S. § 480-D(3), 38 M.R.S. § 484(3), and DEP Rules Chapters 335, and 375 § 15: The applicant must demonstrate that the proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat.
 - i. Endangered Species – Roaring Brook Mayfly, Spring Salamanders
 - ii. Brook Trout Habitat
 - iii. Habitat Fragmentation
 - iv. Buffer Strips around Cold Water Fisheries
- c. Alternatives Analysis – 38 M.R.S. §§ 480-D(1) & (3), 38 M.R.S. § 484(3), DEP Rules Chapters 310, 315, and 335: The applicant must demonstrate that the proposed project would not unreasonably impact ‘protected natural resources,’ as defined by the Natural Resources Protection Act and listed above in light of practicable alternatives to the proposal that would be less damaging to the environment. Topics for the hearing will also include evidence addressing 38 M.R.S. 480-D (8): The applicant must demonstrate that, with regard to the crossing of the outstanding river segment, no reasonable alternative exists which would have less adverse impact upon the recreational and natural features of the river segment.
- d. Compensation and Mitigation – 38 M.R.S. § 480-D, 38 M.R.S. § 484(3), DEP Rules Chapters 310 and 375 § 15. The applicant must demonstrate compensation for unavoidable impacts to certain resources.
 - i. Cold Water Fisheries Habitat
 - ii. Outstanding River Segment
 - iii. Wetlands

DEP Second Procedural Order, October 5, 2018, ¶ 7. The LUPC’s Second Procedural Order also set forth the limitation of the topics for hearing which fall within the LUPC’s area of review:

The Scenic Character and Existing Uses topic area will include information relevant to the Commission's allowed use (*sic*) determination, which involves 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.

The Alternatives Analysis topic area also will include information relevant to the Commission's allowed use determination, which involves 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 the portions of the Project within a P-RR subdistrict.

LUPC Second Procedural Order, October 9, 2019, ¶ C, page 5. Both the DEP and LUPC affirmed the limitation on the hearing topics in their respective Third Procedural Orders. "The hearing topics have been set since October 5, 2018, and the addition of a hearing topic at this time would significantly delay the proceeding," DEP Third Procedural Order, February 5, 2019, p.4. "In its Second Procedural Order, the Commission identified i) Scenic Character and Existing Uses, and ii) Alternatives Analysis as the two hearing topics on which the Commission seeks factual testimony relevant to its review." LUPC Third Procedural Order, February 5, 2019, p. 1. Thus, both the DEP and LUPC have made clear the limitations established for the pre-file testimony and hearing. Anything beyond that is specifically not allowed.

Intervenor Group 3 submitted their witness list and topic areas on February 15 which includes the following:

- Glenn Poole, Consultant to Verso Corporation; Representative to the Industrial Energy Consumer Group, on "energy-related benefits of the NECEC" under the Scenic Character and Existing Uses standard and the Wildlife Habitat and Fisheries standard; and "energy-related harms of not constructing the NECEC," under the Alternatives Analysis standard.
- Dana Connors, President of the Maine State Chamber of Commerce, on the "economic benefits of the NECEC" under the Scenic Character and Existing Uses standard and the Wildlife Habitat and Fisheries standard; and the "economic disadvantages of not constructing the NECEC" under the Alternatives Analysis standard.
- Edward A. Barrett, City Administrator, City of Lewiston, on the "economic benefits of the NECEC," under the Scenic Character and Existing Uses standard and the Wildlife Habitat and Fisheries standard; and the "economic harms of not constructing the NECEC," under the Alternatives Analysis standard.

“Energy related benefits of constructing,” “energy related harms of not constructing,” “economic benefits,” “economic disadvantages of not constructing,” and “economic harms of not constructing” are clearly topics outside the scope of the 4 hearing topic categories and subcategories. As such, the witnesses should be prohibited from submitting testimony on these topics. Energy related benefits/harms and economic related benefits/harm clearly fall well outside the topics of Scenic Character and Existing Uses, Wildlife Habitat and Fisheries, Alternatives Analysis, and Compensation and Mitigation.

As the DEP and LUPC have repeatedly stated, if any party wishes to submit “relevant” information to the standards² the public and interested parties may do so, “Intervenors and any member of the public may 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.” DEP First Procedural Order, August 8, 2018, p. 7 (emphasis added). While Groups 3’s proffered topics are not within the scope of the hearing topics, they also are not relevant to the statutory criteria. That however, presumably does not prevent witnesses, Poole, Connors and Barrett from submitting written comments on topics outside the scope of the statutory criteria and it is of course up the DEP and LUPC to give such statements whatever weight it so chooses to do.

Yesterday, CMP filed a similar Motion for other Intervenor Group witnesses whose proffered topics were in fact related to the hearing topics albeit specifically defined. However, CMP failed to include Intervenor Group 3’s witnesses. This obvious omission appears to be an attempt by the applicant to limit Intervenors who may provide data and testimony of the project’s negative impacts to the environment in subtopic areas, but silently permit testimony that is

² The proffered topics do not even meet the statutory criteria.

clearly outside the scope of the hearing but which it views as beneficial. Another reason for the DEP and LUPC to grant Intervenor Groups 2 and 10 Motion to Strike.

CONCLUSION

For all of the foregoing reasons, Intervenor Groups 2 and 10 respectfully request that the DEP and LUPC grant Intervenor Groups 2 and 10 Motion and strike Group 3 witnesses Poole, Connors, and Barrett.

Respectfully Submitted,
Intervenor Group 2 and Intervenor Group 10
By their attorneys,



Dated: February 20, 2019

Elizabeth A. Boepple, Esq. (Me. Bar No. 004422)
BCM ENVIRONMENTAL & LAND LAW, PLLC
148 Middle Street, Suite 1D Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com