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April 14, 2017

Via Electronic Mail
Marybeth Richardson, Hearing Officer
Maine Department of Environmental Protection
312 Canco Road
Portland, ME 04103

RE: MTA York Tollbooth, L-27241-TG-A-N/L-27275-TP-A-N:
MTA Objections to Pre-Filed Testimony of Intervenors

Dear Ms. Richardson:

Pursuant to the Second Procedural Order dated March 14, 2017, Applicant Maine Turnpike Authority ("MTA") provides herein below its objection to the Pre-Filed Testimony of Intervenor, the Coalition for Responsible Toll Collection ("CRTC"). Specifically, the MTA objects to CRTC's complete exclusion of the alleged "credible conflicting technical information regarding a licensing criterion" that formed the basis for the Department's decision to hold a public hearing pursuant to Chapter 2.[1]

As you know, Chapter 2 of the Maine Department of Environmental Protection ("Department") rules provides that a public hearing on the MTA Natural Resource Protection Act ("NRPA") application is discretionary. MEDEP Rules Chapter 2 §7(B). Chapter 2 specifies that the Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence. *Id.*

On November 29, 2016, counsel to what is now consolidated intervenor CRTC filed with the Department a request for a public hearing averring that:

> A hearing is warranted in this proceeding as there is conflicting technical information regarding a fundamental aspect of the Department's review: specifically, whether there is a practicable alternative to MTA's proposal that will eliminate any impact to protected natural resources. As discussed in greater detail below, there will be conflicting technical testimony regarding whether an "all

[1] While this is an administrative proceeding in which the rules of evidence do not apply, we do wish to have this letter received as a formal objection to the offering by Intervenor of two witnesses, Smith and Jarvis, as experts. Their testimony is clearly heartfelt, but without basis in educational background, technical training or practical experience as will be addressed in our rebuttal.

> Electronic Tolling" ("AET") alternative is feasible in lieu of the "Open Road Tolling" "ORT") facility proposed by MTA.

Letter from Attorney Scott Anderson to Robert L. Green and Michael Mullen dated November 29, 2016 at 2 (emphasis in original). Attorney Anderson goes on to cite extensively to a technical report prepared by the eTrans Group about which he states:

> Both MTA's and the [...Intervenor's...] Consultant have concluded that AET is a practicable alternative. [...] Overall, the eTrans Group concluded that AET was not only a reasonable alternative, but from an engineering and toll collection standpoint, the only reasonable alternative.

Id. at 2-4. In short, the eTrans Report was the sole "credible conflicting technical evidence" cited by Intervenor as requiring additional investigation by the Department such that a public hearing was warranted.

Intervenors, however, have not included the eTrans Report or testimony from any of its authors in their pre-filed testimony. In fact, Intervenor's pre-filed testimony does not even cite to the conclusions of the eTrans Report. Like the Department, the MTA relied on the Intervenors' assertion that eTrans was their credible witness trained inanalysis of the highly technical issues informing discussion of the issues involved in comparing ORT vs. AET. The MTA authorized its independent experts to review and rebut the eTrans Report and pre-filed testimony on that report that will be subject to cross examination at hearing. The Intervenors, on the other hand, side-stepped submission of credible conflicting technical information and instead reiterated public comment already in the record.

Without pre-filed testimony from the eTrans Report author(s), or from other witnesses who meet the Chapter 2 public hearing standard (i.e. can be reasonably considered to create a credible conflict with respect to the technical issue of ORT vs. AET), it is unclear how the public hearing can serve the purpose for which it was called. Accordingly, the MTA respectfully requests that the Department reconsider its conclusion that Intervenor has presented credible conflicting technical evidence on a licensing criterion such that the Department's understanding of that evidence will be assisted by a public hearing within the meaning of Chapter 2 § 7(B)

The MTA will continue to prepare rebuttal testimony and otherwise prepare for the hearing in accordance with the Department's Procedural Orders although it does not seem to be to be a good use of time for all involved, including the Department, to hold a hearing that was called for based upon credible conflicting technical information that does not exist. If that becomes unnecessary, please let us know as soon as convenient.

Sincerely,

Joanna B. Tourangeau