

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
and
LAND USE PLANNING COMMISSION**

IN THE MATTER OF

Central Maine Power Company)	
New England Clean Energy Connect)	
)	APPLICATION FOR NATURAL
#L-27625-26-A-N;#L-27625-TG-B-N;#L-)	RESOURCES PROTECTION ACT
27625-2C-C-N; #L-27625-VP-D-N; and)	PERMIT AND SITE LOCATION OF
#L-27625-IW-E-N)	DEVELOPMENT ACT PERMITS
)	
Site Law Certification SLC-9)	
_____)	

GROUP 3 SUPPORT FOR CMP PETITION TO REOPEN THE RECORD

Pursuant to the invitation of the Presiding Officers for the Department (DEP) and Commission (LUPC), Intervenor Group 3¹ (Group 3) hereby provides its written comments in support of the “Petition of Central Maine Power Company to Reopen Record,” filed on September 18, 2019 in the above-referenced proceedings (Petition). The DEP and LUPC should reopen the proceedings for the limited purpose requested by CMP for the following reasons.

The Presiding Officers have clear authority to reopen the record. Under DEP’s Chapter 3 Rules, “the Presiding Officer may reopen the record for good cause shown.”² Under the LUPC’s Chapter 5 Rules, the Presiding Officer has broad authority, including to: (1) “fix the time for filing of evidence ... and other written submissions,” (2) to take other action “necessary for the efficient and orderly conduct of the hearing,” and (3) “where good cause appears,” to permit deviation from

¹ Lewiston/Auburn Chamber of Commerce is an intervenor in the Commission proceeding only. All other members of Group 3 are intervenors in both the Department’s and Commission’s proceedings.

² Section 24.

procedural rules when the change “does not prejudice any of the parties.”³ In this case, there is “good cause” to reopen the record “for the limited purpose of accepting evidence relevant to an alternative ... that avoids the Recreation Protection (P-RR) subdistrict at Beattie Pond.” Petition, at 1.

There is record evidence that CMP analyzed an alternative route south of Beattie Pond, through Merrill Strip Twp, that would have avoided the P-RR subdistrict (Merrill Strip Alternative). However, CMP was unable to acquire necessary rights because a landowner demanded “almost 50 times market value.”⁴ On the second day of hearings, CMP witnesses testified to the Merrill Strip Alternative not being “reasonably available.”⁵ Mr. Hinkle and Mr. Livesay specifically questioned CMP’s witnesses about the Merrill Strip Alternative.⁶ Later, on the sixth day of hearings, Commissioner Billings inquired again about the Merrill Alternative.⁷ Finally, at the LUPC’s deliberations on September 11, 2019, there was extensive discussion among, and clear disagreement between, the Commissioners about the Beattie Pond P-RR and the reasonable availability of using the Merrill Strip Alternative.

Crossing the Beattie Pond P-RR has been an apparent issue of concern to regulators and parties since the hearings in April and May. It is clear that CMP continued to seek to improve NECEC in response to such concern. After re-engaging land negotiations, CMP was finally able to close on the purchase of an easement, on August 30, 2019, that would allow CMP to propose the Merrill Alternative. In a mere 12 business days since that closing, CMP gathered and analyzed evidence to support and file its Petition.

³ Section 5.06(2)(c), (e), and (f).

⁴ See, e.g., Mirabile, Direct Testimony at 21.

⁵ Tr. Day 2, at 130, 133.

⁶ Tr. Day 2, at 140-142.

⁷ Tr. Day 6, at 432-33.

Based on these facts, CMP has demonstrated “good cause” for the Presiding Officers to exercise their broad discretion to reopen the record. First, amending NECEC to reflect the Merrill Strip Alternative is responsive to issues raised by regulators and parties and is beneficial. The Merrill Strip Alternative should be seen as a good faith effort by CMP to properly improve NECEC. As previously asserted by Group 3, modifications to complex projects like NECEC are both expected and welcome where such modifications are intended to reduce adverse environmental impacts.⁸ Further, “[t]he NRPA and Site Law ... are premised not on perfect projects and a regulatory rejection machine, but an iterative process intended to improve projects using practicable mitigation to ensure no unreasonable impacts.”⁹ In this case, circumstances beyond CMP’s control caused CMP to initially propose routing NECEC through the Beattie Pond P-RR, which was obviously not ideal. As soon as CMP was able to change these circumstances, it proposed a beneficial modification to NECEC.

Second, no parties will be prejudiced, and the public interest will be better served, by consideration of the Merrill Strip Alternative. The parties were made aware of the Merrill Strip Alternative through CMP’s applications for NECEC and had the opportunity to explore its relative costs and benefits, and environmental impacts, throughout the hearings. To Group 3’s knowledge, no party specifically supported the route through the Beattie Pond P-RR or otherwise argued for that route based on opposition to the Merrill Strip Alternative. Given the well-defined, limited nature of CMP’s request, and the parties’ prior awareness of the Merrill Strip Alternative, reopening the record will impose no undue burden on any party.

The fairness of reopening this, or any, proceeding must be assessed independently of whether the probability of approval or denial will be altered as a result. The possibility of the

⁸ Group 3, Post-Hearing Brief, at 8-9.

⁹ Group 3, Reply brief, at 13.

Merrill Strip Alternative improving NECEC, and thus making it more likely that NECEC will be approved, is not a legitimate reason to oppose reopening the record. CMP timely pursued every reasonably available alternative and should not be faulted for a third-party landowner changing positions when it did.

The overriding purpose of this proceeding is to protect the public interest in the environment. At this point, there are four possible ultimate outcomes: (1) approval of NECEC as it stands; (2) approval with the Merrill Strip Alternative; (3) rejection of NECEC as it stands; or (4) rejection even with the Merrill Strip Alternative. Obviously, the public is better served by approval with the amendment than without it, an outcome made possible only by reopening the record. Conversely, if NECEC is to be rejected, the public interest is best served, and fairness to all parties is optimized, by considering the alternate route and not leaving unsettled what might have been. The regulators and the public should not lose an opportunity for a better project by subordinating the merits to an inflexible view of timeliness.

Finally, Group 3 does not believe that reopening the record to consider evidence on the Merrill Strip Alternative will, or should, lead to significant delay. Given the limited nature of the Merrill Strip Alternative, and its responsiveness to concerns already raised, Group 3 respectfully suggests that additional hearings are not necessary. The opportunity to ask CMP factual questions in writing and provide written argument based on the responses is sufficient under the circumstances.

Based on the foregoing, Group 3 supports reopening the record and using the iterative processes of the Natural Resources Protection Act and Site Location of Development Act to improve NECEC through a responsive and beneficial re-routing to the south of the Beattie Pond P-RR using the Merrill Strip Alternative.

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Respectfully submitted,

Spokesperson for Intervenor Group 3



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