

**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)	

GROUPS 2 AND 10’S OBJECTIONS AND MOTION TO STRIKE

Intervenor Group 2 and Intervenor Group 10 (collectively, “Groups 2 and 10”) by and through their attorneys, BCM Environmental & Land Law, PLLC, renew their request to strike Intervenor Group 3¹’s Witnesses, Glenn Poole, Dana Connors, and Edward Barrett for all of the reasons stated in their previous Motion to Strike Group 3 Witnesses dated February 21, 2019 (the “Prior Motion”) and now also move to strike portions of Group 7’s witness testimony and portions of CMP’s witness testimony:

CMP² Witnesses:

- Dickinson - Section III

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).

² CMP’s failure to include line numbering in *any* of its witnesses pre-file testimony makes reference to portions of the witness’ testimony unnecessarily difficult. For that reason, and in the interest of efficiency, we incorporate by reference the citations within Group 4’s Objection and Motions.

- Gerry Mirabile – sections as set forth in Group 4’s Objection and Motions to Strike
- Brian Berube – sections as set forth in Group 4’s Objections and Motions to Strike

Group 7 Witnesses:

- Joseph Christopher – all reference to MOU
- Larry Warren – all reference to MOU

We respectfully request that these witnesses’ pre-file testimony be stricken and that the witnesses be prohibited from testifying at the hearing since the pre-file testimony is outside the scope of the designated hearing topics. For all of the following reasons, this request should be granted.

DISCUSSION

As stated in our Prior Motion, the Maine Department of Environmental Protection (“DEP”) and the Land Use Planning Commission (“LUPC”)³ 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 constrained to “four (4) major topic areas along with several subtopics,” DEP Second Procedural Order ¶ 7.

- a. Scenic Character and Existing Use
- b. Wildlife Habitat and Fisheries
- c. Alternatives Analysis
- d. Compensation and Mitigation

³ Apparently Group 2 and 10’s Prior Motion confused Group 3’s counsel by including reference to the LUPC’s Second Procedural Order. Due to the combined nature of the hearing with the DEP and LUPC, it seemed not only prudent but necessary to suggest that the proffered testimony was not only irrelevant in the DEP proceeding but also in the LUPC proceeding.

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 relevant to the Commission's allowed use (*sic*) determination.

The Alternatives Analysis relevant to the Commission's allowed use determination.

LUPC Second Procedural Order, October 9, 2019, ¶ C, page 5.

Group 3's testimony is neither relevant in substance to the defined topics nor relevant even in their effort to contort the Law Court's logic in a "reasonableness analysis." Arguing, as Mr. Poole does, that the NECEC project may provide an environmental benefit⁴ cannot and should not be juxtaposed with the unreasonable interference with the existing scenic and aesthetic uses. Nor should it be juxtaposed with the impact to the wildlife habitat and fisheries. Group 3's argument in its Reply to Group 2 & 10's prior Motion to Strike, argues that virtually *any* factors should be considered in assessing a project's unreasonable interference with existing scenic and aesthetic uses or in a project's impact on wildlife habitat and fisheries. Such an argument completely undermines the whole purpose of the Natural Resources Protection Act: "[T]he State's rivers, streams, great ponds, fragile mountain areas, freshwater wetlands, significant wildlife habitat, coastal wetlands and coastal sand dunes systems are resources of *state significance*." 38 M.R.S. 480-A (emphasis added). The legislature determined these are of *state significance*, not resources to be balanced against a *potential* economic benefit or unproven *potential* environmental benefit for Massachusetts and *maybe* Maine depending on how you skew the calculations over an ambiguous time period. "These resources have great scenic beauty and unique characteristics, unsurpassed recreational, cultural, historical and environmental *value*

⁴ We do not accept the assumption or "science" that there would be an environmental benefit if the NECEC is approved and built.

of present and future benefit to the citizens of the United States and that uses are causing the rapid degradation and, in some cases, the destruction of these critical resources...” 38 M.R.S. § 480-A.

Nor does the Law Court’s decision in *Uliano v. Board of Environmental Protection*, 977 A. 2d 400 (Me. 2009)⁵ stand for the absurd proposition posited by Group 3 that the reasonableness analysis opens the door for considering, “energy related benefits of the NECEC,” “energy related harms of not constructing the NECEC,” “economic benefits of the NECEC,” “economic disadvantages of not constructing the NECEC.” As the Law Court stated: “It is the unreasonable effect upon existing uses, scenic character and natural resources which the Legislature seeks to avoid by empowering the Commission to *measure the nature and extent of the proposed use against the environment’s capacity to tolerate the use.*” *Uliano v. Board of Environmental Protection*, 977 A.2d 400, 409 (Me. 2005) (citing *In re Spring Valley Dev.*, 300 A.2d at 751) (emphasis added).

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 and cannot be shoe-horned into them through a contorted misreading of the Law Court’s assessment of the reasonableness analysis. As such, witnesses Poole, Connors and Barrett should be prohibited from testifying at the hearing and their testimony should be stricken.

Similarly, CMP’s witnesses who have reached beyond the approved hearing topics should be prohibited from testifying at the hearing and their pre-file testimony stricken. Specifically, in the interest of being efficient and not overly redundant, we point to NRCM’s

⁵ Group 3 cited to the first *Uliani* appeal but in the subsequent appeal, the Law Court’s position on the reasonableness analysis is made clear.

Motion and Objections and join in their specific citations. Additionally, we include Mr. Dickinson's Section III, Conclusion which is not based on any of his proffered testimony, nor has he established any qualifications to make the assertions he does. Witness testimony beyond the scope of the hearing topics should be stricken and the witnesses and their counsel instructed that they may not testify on those unapproved topics at the hearing.

Finally, Group 7's witnesses Christopher and Warren's testimony related to an MOU is also outside the scope of the hearing topics and for all of the same reasons stated above, that testimony should be stricken and the witnesses and their counsel instructed specifically that they are prevented from providing any such testimony at the hearing.

As the DEP and LUPC have repeatedly stated, if any party wishes to submit "relevant" information to the standards⁶ 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). Much of what we are objecting to in Group 3, Group 7 and the specified CMP witnesses is neither within the scope of the hearing topics, nor relevant to the statutory criteria. Whether the Intervenors and their witnesses choose to convert the disallowed testimony into public comment is of course an option and it is then up to the Department and Commission to give such statements whatever weight they so choose. CMP, on the other hand, should know better than to try to submit testimony and evidence beyond the scope of the jurisdiction of the Department and the Commission. For those reasons, CMP should be admonished from any further attempts to subvert these administrative proceedings.

⁶ Group 3's witness topics do not meet the statutory criteria so would be irrelevant even if submitted as public comment.

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, those portions of CMP's witnesses as set forth in Group 4's Motion and Objections, and portions of Group 7 witness' testimony.

Intervenor Group 4 concurs with respect to this request.

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



Dated: March 7, 2019

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