

STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE  
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY )  
NEW ENGLAND CLEAN ENERGY CONNECT )  
#L-27625-26-A-N/#L-27625-TG-B-N/ )  
#L-27625-2C-C-N/#L-27625-VP-D-N/ )  
#L-27625-IW-E-N )

CENTRAL MAINE POWER COMPANY )  
NEW ENGLAND CLEAN ENERGY CONNECT )  
SITE LAW CERTIFICATION SLC-9 )  
Beattie Twp, Lowelltown Twp, Skinner Twp, )  
Appleton Twp, T5 R7 BKP WKR, )  
Hobbs town Twp, Bradstreet Twp, )  
Parlin Pond Twp, West Forks Plt, Moxie Gore, )  
The Forks Plt, Bald Mountain Twp, Concord Twp )

**CENTRAL MAINE POWER COMPANY’S REPLY**  
**IN SUPPORT OF ITS MOTION TO STRIKE**

Group 4’s opposition to CMP’s Motion to Strike is premised on an illogical interpretation of a single sentence in the DEP’s Second Procedural Order, which states:

The Department and LUPC have decided upon the following four (4) major topic areas along with several subtopics as subject matters for the hearing.

DEP Second Procedural Order ¶ 7 (emphasis added). Group 4 emphasizes (in bold and italics) the phrase “along with,” asserting that it must indicate that the subtopics are additive. But Group 4 in fact seeks to re-write this sentence, as follows:

The Department and LUPC have decided upon the following four (4) major topic areas *in addition to* several subtopics as subject matters for the hearing.

This is not what the Presiding Officer wrote, and it's not what the sentence, as written, means.

In fact, "along with" means what it says: the major topic headings must be considered "along with" the specific subtopics, so that they limit each other, taken together. That is, those two words are intended to limit the scope of the subtopics to the approval criteria in the major topic area headings (so testimony does not stray to broader discussions of those subtopics that is not relevant to the approval criteria), and to limit the scope of the topic headings to the listed subtopics. If the subtopics were additive, it would have been pointless even to list the subtopics at all; they would be mere surplusage.

Nor can the hearing possibly cover all the "major topic areas" if not limited to the subtopics, given the time allotted. That is why the DEP Presiding Officer ordered on August 13, 2018 that the intervenors must file (by August 27, 2018) "a specification of the statutory and regulatory criteria that they wish to address at the public hearing [and] the specific, significant or contentious topics or subject matters under those criteria relating to the project that they wish to address." DEP First Procedural Order ¶ 19. The intervenors were required to do so "[t]o begin the process of narrowing the issues that will be addressed at the hearing" and because "the limited hearing time should be devoted to an in-depth examination of the issues most likely to elicit conflicting evidence or technical testimony that warrants a closer examination than could be had on documents alone." *Id.*

Group 4 member Natural Resources Council of Maine (NRCM) listed numerous statutory criteria in its August 27, 2018 Response to the First Procedural Order, but also limited in that filing the topics it intended to address at the hearing to specific subtopics, including construction noise, significant vernal pools, ground water, infrastructure, alteration of climate, natural drainage ways, runoff, and erosion. Similarly, Group 4 member Trout Unlimited (TU) listed

numerous statutory criteria in its August 27, 2018 Response to the First Procedural Order, but also limited the topics it intended to address at the hearing to such specific subtopics as natural drainage ways, water quality, buffer strips, and natural water flow. Finally, Group 4 member Appalachian Mountain Club (AMC) listed numerous statutory criteria in its August 27, 2018 Response to the First Procedural Order, but largely limited in that filing the topics it intended to address at the hearing to the Kennebec Gorge and Appalachian Trail crossings.

The process of narrowing the topics to be addressed at the hearing continued at the September 7, 2018 pre-hearing conference, at which the DEP identified major topic areas for consideration and the intervenors pitched the specific, significant, or contentious topics or subject matters that they wished to address at the hearing. Those included title, right, or interest (NRCM, West Forks Plt, and Caratunk), endangered species (NRCM), climate impact (NRCM), mitigation (AMC, West Forks Plt, and Caratunk), local infrastructure impact (West Forks Plt), economic impact (“LUPC Residents and Recreational Users”), water quality (TU and Caratunk), noise (Friends of Boundary Mountains, Caratunk, and Hawk’s Nest), erosion (Caratunk), and impact to public lands (Caratunk).

On October 5, 2018 the DEP Presiding Officer limited the major topic areas to the subtopics that were discussed in the intervenor filings and at the pre-hearing conference. This months-long process would be for naught if the listing of subtopics was not intended to limit the hearing to those subtopics. Again, if the hearing were to be open to the general topic headings, there would have been no reason to list the subtopics.

As noted previously, limiting the hearing to the subtopics does not limit public input. Rather, broader testimony may be appropriate for written comments, to the extent it concerns criteria relevant to DEP’s or LUPC’s review. See DEP First Procedural Order ¶ 18 (the parties

have the opportunity to “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”).

Dated this 21<sup>st</sup> day of February, 2019.



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