



JANET T. MILLS
GOVERNOR



GERALD D. REID
COMMISSIONER

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION



AMANDA E. BEAL
COMMISSIONER
NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY)
CONNECT) APPLICATION FOR NATURAL
25 Municipalities, 13 Townships/Plantations,) RESOURCES PROTECTION ACT
7 Counties) AND SITE LOCATION OF DEVELOPMENT
L-27625-26- A-N) ACT PERMITS
L-27625-TB-B-N) AND SITE LAW CERTIFICATION SLC-9
L-27625-2C-C-N) PUBLIC HEARING
L-27625-VP-D-N) JOINT FIFTH PROCEDURAL ORDER
L-27625-IW-E-N)

This Fifth Procedural Order (Order) sets forth the decisions of the Department of Environmental Protection (Department) and the Land Use Planning Commission (Commission) on the objections to pre-filed direct testimony and other rulings on admissibility of evidence.

I. PROCEDURAL BACKGROUND REGARDING TESTIMONY AND OBJECTIONS

1. Submission of Pre-filed Testimony and Exhibits. On February 5, 2019, the Presiding Officers for the Department and Commission each issued a Third Procedural Order which required the parties to submit pre-filed direct testimony with any exhibits by February 28, 2019. The following parties submitted pre-filed testimony:

- Applicant: Testimony and Exhibits for Central Maine Power, New England Clean Energy Connect (NECEC) Project
- Group 1: Testimony and Exhibits for Bob Haynes and Janet McMahon
- Group 2: Testimony and Exhibits for Chris Russell, Eric Sherman, Greg Caruso, Elizabeth Caruso (Town of Caratunk), Roger Merchant
- Group 3: Testimony and Exhibits for Glen Poole, Edward Barrett, Robert Meyers, and Dana Connors

- Group 4: Testimony and Exhibits for Jeff Reardon, Todd Towle, David Publicover, Dr. Aram JK Calhoun, and Ron Joseph
 - Group 5: Testimony of Mike Novello
 - Group 6: Testimony and Exhibits for Malcom Hunter and The Nature Conservancy Staff (Rob Wood, Andy Cutko, and Bryan Emerson); letter from Conservation Law Foundation
 - Group 7: Testimony and Exhibits for Joseph Christopher and Larry Warren
 - Group 8: Testimony for Christopher Russo
 - Group 9: No Testimony or Exhibits Submitted
 - Group 10: Testimony and Exhibits for Garnett Robinson, Justin Presiendorfer, Carrie Carpenter, Edwin Buzzell, Kathy Barkley, Kimberly Lyman, Mandy Farrar, Matt Wagner, Noah Hale, and Tony DiBlasi
2. Electronic Pre-filed Testimony and Exhibits. Most of the pre-filed testimony and exhibits were submitted in a timely manner electronically, with some exceptions (which are discussed in section 6 (a) below).
3. Paper Copies of Testimony and Exhibits. Many of the required paper copies were not received in a timely manner by the Presiding Officers, and Department and Commission staff. It is expected moving forward that all filings will be received electronically by 5:00 p.m. on the date due, and all hard copies will arrive within three days of the date due. Paper filings should be bound, stapled or clipped, and collated. For the Commission, an original and nine hard copies are required; for the Department, an original and four hard copies are required. Parties should send or hand-deliver hard copies to each of the agencies at these locations:
- For the Department:
Attn: Mr. Jim Beyer
106 Hogan Road, Suite 6, 3rd Floor
Bangor, Maine 04401
- For the Commission:
Attn: Mr. Bill Hinkel
22 State House Station
18 Elkins Lane
Augusta, ME 04333
4. Premature Objections to Witness Lists. Some objections to the witnesses and expected testimony subject areas listed were filed by parties prior to the submission of pre-filed testimony. Generally, the objections requested that expected witness testimony be struck from the record because it did not fall within the scope of criteria outlined in the Second Procedural Order . On February 21, 2019, the Department sent an e-mail to the Service List stating that these objections were premature and that the Presiding Officers would not rule on objections until after the pre-filed testimony was received and objections to pre-filed testimony were made based on the actual testimony filed.

5. Objections to Pre-filed Testimony. Objections were filed by the Applicant and Intervenor groups 2, 4 and 10. Responses to objections were submitted by the Applicant, Groups 2 and 10, Group 3, Group 4, Group 7, and Group 8.

II. MOTIONS TO STRIKE AND RULINGS

6. Motions were made to strike testimony from the Applicant and Groups 2, 3, 4, and 10. These are addressed below with rulings from the Presiding Officers.

Parties should keep in mind that if their witnesses' testimony or a portion of their witnesses' testimony is stricken because it is not relevant to the topics being addressed at the hearing, if the topic is relevant to the overall statutory and regulatory criteria, that witness may submit a separate document containing written comments into the record on the topic until the record for the parties closes at the conclusion of the hearing.

- a. Timeliness. The Applicant moved to strike several filings that were submitted after the February 28, 2019 pre-filed direct testimony deadline. This Order also addresses other untimely filings.
 - 1) Bob Haynes Testimony and Exhibits. As stated in an earlier e-mail to the Service List, Mr. Haynes' testimony and exhibits were received by counsel to the Department before the February 28, 2019 deadline. Although the e-mailed filing was not received by the Presiding Officer or Department staff, and perhaps other members of the Service List, due to its size, the filing was deemed to have been submitted by the deadline. After a second technological glitch, on March 5, 2019, the entire Service List was successfully provided with a copy of the testimony and exhibits. The motion to strike is denied.
 - 2) Elizabeth Caruso Corrected Exhibit CRTK-3. On March 1, 2019, counsel for Intervenor Group 2 sent an e-mail to the Service List requesting that a corrected CRTK-3 exhibit replace the original CRTK-3 exhibit submitted with the pre-filed testimony and exhibits of Elizabeth Caruso. This corrected submission arrived after the February 28, 2019 deadline, and therefore is stricken from the record.
 - 3) Roger Merchant Supplemental Exhibit 7. Counsel for Intervenor Group 10 sent an e-mail containing an attachment of Exhibit 7 to the Service List on March 7, 2019. The e-mail states "This is a combination of Merchant Exhibits 1 through 6 and portions of his pre-filed testimony combined in to a new exhibit for clarity and ease of reference for all parties. It is not an introduction of new evidence or testimony." Because this was filed after the pre-filed testimony deadline, this supplemental Exhibit 7 is stricken from the record.
 - 4) Groups 2 and 10 Revised Pre-filed Testimony Cover Pages. On March 8, 2019, Groups 2 and 10 submitted new Pre-filed Testimony Cover Pages to replace the

previously filed cover pages. These revised cover sheets are stricken as untimely filed.

- b. Unsworn and Unsigned Testimony. The Applicant moved to strike the testimony of three witnesses for not being properly sworn and signed. The Department's Third Procedural Order dated February 5, 2019, section 17, and the Commission's Order of the same date, section III(A), require all testimony to be sworn. The electronically filed testimony of Greg Caruso was submitted on time, however it did not include a signature page with his signature, nor a date, and it was not notarized. On March 12, 2019, counsel for Group 2 sent an e-mail to the Service List including an attachment with the signature page for Mr. Caruso. Counsel's e-mail stated, "The testimony is the same but we are re-filing because Mr. Caruso's signature page was inadvertently dropped." The subsequent filing of a signed, dated and notarized signature page, on March 12, 2019, was untimely. The Applicant's motion to strike Mr. Caruso's testimony in its entirety is granted.

The Applicant also objected to two other witnesses' testimony for not being properly sworn and signed, including the testimony of Roger Merchant and Garnett Robinson. In these instances, a signature and notarization were provided, but the proper format for the signature page was not provided, or a date was missing. Because the documents included both a signature and a form of notarization, the documents can be clearly identified as something that the witnesses authorized. For this reason, the motion to strike the testimony of Roger Merchant and Garnett Robinson for improper signature, dating and notarization is denied.

- c. Labeling. The Applicant moved to strike testimony that did not clearly delineate whether the testimony was for the Commission, the Department or both. It should first be noted that Groups 1, 6, and 9 requested intervenor status for the Department proceeding only and therefore will participate only in the Department portion of the hearing. Group 10 (with the exception of Ed Buzzell) requested intervenor status for the Commission proceeding only and therefore will only participate in the Commission portion of the hearing. Groups 4, 7, and 8 requested intervenor status for both the Department and Commission and may participate in both portions of the hearing. Groups 2, 3, and 5 are mixed, with some members being LUPC intervenors, some DEP intervenors, and some intervenors in both proceedings.

For the parties participating in both the Department and Commission portions of the hearing, Presiding Officers requested in their respective Third Procedural Orders that testimony state which portion of the testimony relates to Commission topics and which portion relates to Department topics. Moreover, the Presiding Officers stated, "An assumption will be made that if testimony is not specifically identified as Commission testimony, it is submitted for the Department's portion of the hearing." While the intent of this was to streamline and maintain organization for the hearing process, not all parties complied with this request. The Presiding Officers will review the substance of any testimony for the groups that were granted intervenor status to

both proceedings to determine relevance to each proceeding. These witnesses will be permitted to testify at both the Department and the Commission portion of the hearing if their pre-filed testimony addresses both. Any further necessary clarifications about the testimony will be made at the hearing. For the testimony of a party that is an intervenor in only one of the agency's proceedings, that testimony is directed only at that agency's proceeding. The motion to strike testimony for improperly delineating portions to the Commission and Department is denied.

- d. Testimony Stricken. The Applicant and Groups 2, 4, and 10 moved to strike witness testimony on the basis that the testimony is not relevant to the specific criteria to be addressed at the hearing as set forth in the First Procedural Order. The following testimony is stricken:
- 1) Applicant Testimony
 - Thorn Dickinson- top of page 4 “and other environmental attributes to help Massachusetts meet its GHG emission reduction goals.”
 - Thorn Dickinson- page 4, the paragraph starting “Importantly...”
 - Power Point Overview Presentation- page 16, the last paragraph in the Purpose and Need section
 - 2) Group 1 Testimony
 - Bob Haynes- page 2, Project Overview section
 - Bob Haynes- page 3, Certification section
 - Bob Haynes- page 7, item number 1 of the 5th paragraph
 - Janet McMahon- page 19, question #3 and answer
 - 3) Group 2 Testimony
 - Elizabeth Caruso- page 9, starting line 16 “no evidence related to the potential impact on property values, no evidence addressing whether the local communities have sufficient emergency response capabilities, and”
 - Elizabeth Caruso- page 11, line 16 through page 13, line 4.
 - Elizabeth Caruso- page 16, lines 32 – 35
 - Elizabeth Caruso- page 17, lines 1 – 4
 - Elizabeth Caruso- page 21, lines 25 – 27
 - Elizabeth Caruso- page 22, line 12 through page 23, line 17
 - Elizabeth Caruso- page 23, line 24 through end of page 29
 - Elizabeth Caruso- Exhibit 1 is admitted to the extent it addresses relevant hearing topics and to provide context to the quoted excerpts in the testimony
 - Elizabeth Caruso- Exhibits 6 and 7 and Attachments B and C
 - Elizabeth Caruso- Exhibit 13: There was apparently no Exhibit 13 filed with the Department or the Commission.
 - Roger Merchant- page 14, second paragraph, starting “CMP, HQ, Massachusetts...”
 - Roger Merchant- page 14, third paragraph, ending with “...by stepping off the antiquated coal, oil, gas, HQ, CMP grid.”

- Roger Merchant- page 14, paragraph 6, starting with “Our neighbors in New Hampshire...”
 - Justin Presiendorfer- page 11, last sentence in first paragraph, lines 13-15
 - Garnett Robinson- page 3, line 32 through page 6, line 17
 - Garnett Robinson- page 7, line 23, beginning with “Anyone...” through page 8, line 10
 - Garnett Robinson- page 9, line 16 through the word “considered,” in line 18
 - Garnett Robinson- all of page 11
 - Garnett Robinson- Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10
- 4) Group 3 Testimony
- All testimony and exhibits from Glenn Poole, Edward Barrett, and Dana Connors
- 5) Group 4 Testimony
- Dr. Aram JK Calhoun- page 2, starting with the first full paragraph, through the end of page 4
 - Dr. Aram JK Calhoun- pages 7-10, up until header for “Impacts to emigration routes and staging areas (fragmentation).”
 - Dr. Aram JK Calhoun- page 12, starting with header beginning “Please describe your knowledge of the project area” through the paragraph on page 13 ending with “...forested habitat.”
- 6) Group 7 Testimony
- Joseph Christopher- page 4, last sentence of the first paragraph, starting with “The NECEC will likely be much less controversial to these persons...”
- 7) Group 10 Testimony
- Carrie Carpenter - page 3 beginning “Spending...” through page 4 ending with “County.”
 - Eric Sherman - page 3, line 8 beginning “Ironically...” through line 15 “with.”
 - Eric Sherman - page 3, line 16 beginning “The mission...” through page 4, line 8, including footnote #1
 - Eric Sherman - page 9, line 19 through page 11, line 5
 - Eric Sherman- - all “Comments on Non-Hearing Topics” and all exhibits
 - Kimberly Lyman - page 4, line 4 “generation of income”
 - Matt Wagner - page 4, line 1 “In a recent...” through line 7 “project.”
 - Anthony DiBlasi - page 3, line 13 through line 17 ending “NH.”
- e. Any testimony that was the subject of a motion to strike which is not listed as stricken above remains in the record.

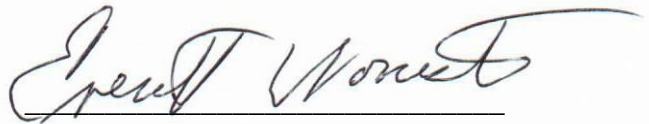
III. RULING APPEALS

7. These rulings upon the admissibility of evidence are appealable to the Commissioner of the Department pursuant to Chapter 3 § 4(D). The public hearing is not stayed by an appeal of a ruling unless the presiding officer deems it necessary. Pursuant to Chapter 3 § 4(D), “[a]n appeal of the Presiding Officer’s ruling is not a necessary prerequisite to preserve a party’s objection for the purpose of judicial appeal.” Any appeal of these rulings to the Department Commissioner must be filed with the Department by Friday, March 15, 2019 at 5:00 p.m.
8. All objections to rulings of the Commission’s Presiding Officer and the grounds therefore must be filed with the Commission by Friday, March 15, 2019 at 5:00 p.m. If, during the course of or after the close of the hearing and during its deliberations, the Commission determines that the ruling of the Presiding Officer was in error, the Commission may reopen the hearing or take such other action as it deems appropriate to correct such error. 01-672 C.M.R. Ch. 5 § 5.11(4).

Dated: March 13, 2019



Susanne Miller, Presiding Officer
Department of Environmental Protection



Everett Worcester, Chair and Presiding Officer
Land Use Planning Commission