



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

IN THE MATTER OF

MAINE TURNPIKE AUTHORITY) APPLICATION FOR NATURAL
YORK TOLL PLAZA) RESOURCES PROTECTION ACT PERMIT
YORK, YORK COUNTY) WATER QUALITY CERTIFICATION
L-27241-TG-A-N) AND NOTICE OF INTENT UNDER THE
L-27275-TP-A-N) SITE LOCATION GENERAL PERMIT
) PUBLIC HEARING
) SECOND PROCEDURAL ORDER

On March 2, 2017, the Maine Department of Environmental Protection (Department) held a pre-hearing conference in the Maine Turnpike Authority licensing proceeding at the Department’s Southern Maine Regional Office in Portland. The purpose of the conference was to review the responsibilities of the parties, the relevant regulatory review criteria, the issues to be addressed at the public hearing, and the procedures of the public hearing. This Second Procedural Order (Order) summarizes the discussions and decisions made at the pre-hearing conference and schedules a potential second pre-hearing conference for May 15, 2017 and the public hearing for Monday, May 22, 2017.

Persons attending the pre-hearing conference on behalf of the parties, the Department, and the Maine Attorney General’s Office:

Department Staff

Marybeth Richardson, Presiding Officer
Mark Bergeron, Director, Bureau of Land Resources
Robert Green, Project Manager
Alison Sirois, Regional Licensing and Compliance Manager

Maine Attorney General’s Office

Peggy Bensinger, Assistant Attorney General
Kate Tierney, Assistant Attorney General

Maine Turnpike Authority (MTA)

Peter Mills, Executive Director
Sara Zografos
Joanna Tourangeau, Attorney

Intervenor Town of York/Think Again

Scott Anderson, Attorney

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AUGUSTA, MAINE 04333-0017
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312 CANCO ROAD
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(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
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I. Role/Responsibilities of the Parties, Interested Persons, and Department Staff

A. Applicant

1. The applicant - Maine Turnpike Authority (MTA) - has the burden of proof in this matter. The applicant's burden is set forth in Chapter 2, § 11(F) of the Department's rules: "An applicant for a license has the burden of proof to affirmatively demonstrate to the Department that each of the licensing criteria in statute or rule has been met. Unless otherwise provided by law, all applications, including renewal, amendment and transfer applications, are subject to the substantive laws and rules in effect on the date the application is accepted as complete for processing."
2. The applicant has the right to present witnesses in support of its application and to cross-examine the witnesses of the other parties.

B. Intervenorors

3. The intervenor has the right to present evidence at the hearing regarding the licensing criteria which are relevant to the proposed project and to cross-examine the witnesses of the other parties. An intervenor may choose not to present witnesses, and simply to cross-examine the witnesses of the applicant.
4. If an intervenor for any reason no longer desires to participate at the level of an intervenor, the intervenor may send an email or letter to the Department's project manager, Robert Green, withdrawing as an intervenor and may then simply participate as a member of the public.
5. At the March 2 Pre-hearing conference, the Presiding Officer consolidated the two intervenors, the Town of York and Think Again. Subsequent to the conference, the attorney for the consolidated intervenors stated that, for ease of reference, the name "Coalition for Responsible Toll Collection" may be used to describe the consolidated intervenors.

C. Interested Persons/Public

6. The entire hearing is open to the public. The applicant and the intervenor will present their witnesses during the daytime portion of the hearing. The Department will receive testimony from the general public during the evening session of the hearing. As with all testimony, public testimony is under oath and the witnesses are subject to cross-examination by the parties, and questions from the Presiding Officer, Department staff and counsel for the Department. Members of the public are not required to file their testimony in writing in advance of the hearing. They may choose to submit a written copy of their testimony at the hearing but are not required to do so.

7. A witness who pre-files testimony relating to any topic on behalf of a party (applicant or intervenor) in this matter will not be permitted to testify at the evening session of the public hearing. Individuals who are affiliated with, but not an officer of, a party in this matter may testify at the evening session of the public hearing in their personal capacity but not as part of the presentation of a party.
8. Members of the public may submit written comments to the Department by mail to Robert Green, Maine Department of Environmental Protection, 312 Canco Road, Portland, Maine 04103; by email to Robert.Green@maine.gov; and by hand delivery to 312 Canco Road, Portland, Maine. The Department will accept written comments from the public during the application review period from now through the date of the hearing.
9. Interested persons are members of the public who have asked to be placed on a list to receive certain information regarding the hearing, including procedural orders and notices. These documents will also be placed on the Department website under "Major Projects before DEP."

D. Department Staff

10. The Presiding Officer will rule upon evidentiary issues, regulate the course of the hearing, rule on procedural issues, establish time deadlines, administer oaths, and take such other action that is necessary for the efficient and orderly conduct of the hearing, consistent with applicable statutes and regulations. Although the Commissioner and not the Presiding Officer is the ultimate decision-maker in this matter, the parties are directed not to communicate with either the Commissioner or the Presiding Officer on any issue of substance or procedure regarding the public hearing or the application, except with notice to all parties and the opportunity for all parties to participate, such as during open sessions of the hearing and any future pre-hearing conferences. Any inquiries should be made to Department staff, specifically Robert Green, or the Assistant Attorney General advising the Department in this matter, Peggy Bensinger.
11. The role of Department staff is to gather facts and assess evidence on behalf of the Commissioner. In a public hearing that fact-gathering and evaluation of evidence may include staff asking questions of witnesses or requesting further information. After the hearing is concluded, the record will close and the Department staff will analyze the evidence in the record. The record will include the hearing transcript, exhibits submitted at the hearing, notes and photographs taken at any Department site visits, and all filings with respect to this application.

E. Responsibilities of all Parties

12. All parties are expected to comply with deadlines and filing requirements established by the Presiding Officer. Failure to comply may result in appropriate sanctions, including the rejection of argument, evidence or testimony the party seeks to offer. The

representatives of the parties are expected to conduct themselves appropriately in their dealings with the Department, with each other, and with the general public throughout the proceedings.

II. Relevant Regulatory Review Criteria

13. The hearing will focus on the Natural Resources Protection Act (NRPA) permit application that was submitted by MTA to the Department. The hearing is not a forum for the discussion of all issues related to the MTA project, but is limited to the licensing criteria which are relevant to the NRPA permit application. Attached to this Order is a document titled “Relevant Regulatory Review Criteria.” Testimony that is not related to the licensing criteria for MTA’s NRPA permit application will not be permitted.

III. Pre-hearing Procedures

14. This Order incorporates by reference the “Preliminary Procedures for Conduct of Public Hearing” that was distributed to the parties at the First Pre-hearing conference. These procedures were discussed at the pre-hearing conference and apply to the public hearing in this matter.

A. Pre-filed Testimony

15. The parties must pre-file in writing the testimony they wish to submit on behalf of any witness by April 7. It is the responsibility of each party to ensure its filings are copied electronically to all names on the public hearing service list, and that one paper copy is sent to each party’s spokesperson as agreed to at the pre-hearing conference.

The service list will be maintained on the Department website under “Major Projects before DEP.” At the pre-hearing conference, the Presiding Officer requested that each party review the service list that was distributed to the parties with the First Procedural Order and confirm their spokesperson. As explained at the pre-hearing conference, if a party changes its spokesperson, the party must notify all persons on the service list. At the March 2 pre-hearing conference, the spokesperson for each party was designated: for the MTA, Joanna Tourangeau; and for the Coalition for Responsible Toll Collection, Scott Anderson. Attached to this Order is a revised service list that specifies which parties are to receive both electronic and printed copies of all filings, and which parties are to receive only electronic copies.

16. Any filing deadline requires receipt by the Department by 5:00 P.M. on the due date (as determined by the received time stamp on the electronic mail), unless otherwise specified by the Presiding Officer.

C. Exhibits

17. Any exhibit that a party wishes to introduce into the hearing record must be attached to the pre-filed testimony of a specific witness. At the hearing, the Presiding Officer may at her discretion allow the introduction of an exhibit that was not pre-filed based on a showing of good cause.

D. Pre-filed Testimony Schedule/Deadlines

18. All pre-filed testimony and exhibits must be filed with the Department by Friday, April 7, 2017 at 5:00 P.M.
19. Any objections to pre-filed testimony must be filed with the Department by Friday, April 14, 2017 at 5:00 P.M.
20. Pre-filed rebuttal testimony must be filed with the Department by Friday, April 28, 2017 at 5:00 P.M.
21. By Friday, May 5, 2017, at 5:00 P.M., each party must state in writing the amount of time in total requested for witnesses to summarize their direct testimony. In doing so, the parties are reminded that the other party and the Department will have received and reviewed the pre-filed testimony before the public hearing. Therefore, direct testimony summary should be brief and tightly focused. Additionally, the parties must submit to the Department in writing: 1) the names of witnesses they intend to cross-examine; and 2) the amount of time requested for cross-examination of each such witness.
22. The Presiding Officer will issue a procedural order on or before Monday, May 15 setting forth the time permitted for each party to summarize direct testimony and for cross-examination.

IV. Order of Presentation of Evidence at the Public Hearing

23. At the hearing, witness testimony, and cross-examination will take place in the following order:
 1. Applicant
 2. Intervenor
 3. State, Municipal, and other governmental agencies, if any
 4. Department staff and counsel
24. The Presiding Officer, Department staff, and the Assistant Attorney General representing the Department may ask questions at any time.

V. Pre-hearing conference, Site Visit, and Public Hearing

Second Procedural Order

Public Hearing on MTA Application (#L-27241-TG-A-N and #L-27275-TP-A-N)

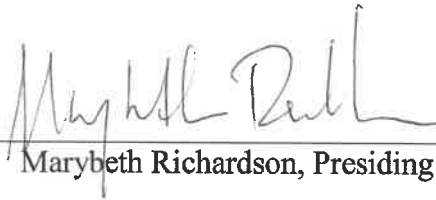
March 14, 2017

Page 6 of 6

25. If necessary, a second pre-hearing conference may be held on Monday, May 15, 2017 at 10:00 A.M. at the Department's Southern Maine Regional Office in Portland. Parties are requested to keep the date open.
26. The hearing will be held on Monday, May 22, 2017 at the Kittery Community Center's Star Theater in Kittery. The public testimony portion of the public hearing will take place the evening of Monday, May 22, 2017. The location and precise time for the public hearing will be set forth in a future notice and procedural order.
27. The site visit will be conducted on Wednesday, April 5, weather permitting, with a snow/rain date of April 6.

Dated: _____

3.14.17



Marybeth Richardson, Presiding Officer

Attachments:

- Relevant Regulatory Review Criteria
- Revised Service List