

Verrill Dana_{LLP}

Attorneys at Law

SCOTT D. ANDERSON
PARTNER
sanderson@verrilldana.com
Direct: 207-253-4540

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

April 14, 2017

VIA ELECTRONIC MAIL

Marybeth Richardson, Presiding Officer
Maine Department of Environmental Protection
Southern Maine Regional Office
312 Canco Rd.
Portland, ME 04103

RE: MTA York Tollbooth, L-27241-TG-A-N/L-27275-TP-A-N

Dear Marybeth:

The following is a response by the Intervenor, the Coalition for Responsible Toll Collection (“CRTC”), to MTA’s Objection to Pre-Filed Testimony of Intervenors. For the following reasons MTA’s objection is without merit, and there is no legal or factual basis for the Department to revisit its decision to hold a public hearing in this permitting proceeding.

MTA does not object to the substance of CRTC’s pre-filed testimony as being outside the scope of the issues the Department agreed would be considered in the public hearing. Instead, MTA suggests that the Department should cancel the public hearing because MTA was expecting CRTC to put forth a different witness. MTA claims that CRTC “side-stepped” its obligations by not submitting testimony from eTrans, a witness already known to MTA.

For obvious reasons it is for CRTC to choose its witnesses and MTA has no say in this matter. CRTC was under no obligation to use a witness already known to MTA, and at no point did CRTC or its counsel ever suggest that the eTrans report was the “sole credible conflicting technical evidence” showing that AET is a practicable upland alternative that meets the MTA’s project purpose. CRCT has submitted pre-filed testimony that challenges MTA’s calculations regarding the financial feasibility of AET, testimony that disputes the MTA’s traffic diversion estimates, and has submitted numerous reports and engineering studies, some authored by MTA’s own consultants, in support of its position that AET is a practicable alternative. The lack

April 14, 2017

Page 2

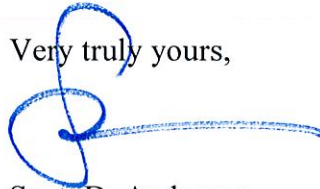
of one report does not negate the fact that there is credible conflicting technical information in the pre-filed testimony regarding whether an AET facility in York is a practicable alternative.¹

Further, in paragraph I(B)(3) of the Second Procedural Order, the Department noted that CRTC “has the right to present evidence at the hearing,” but “may choose not to present witnesses,” and instead may cross examine MTA’s witnesses. Although CRTC has submitted pre-filed testimony and plans on calling three witnesses, even if it had submitted no witnesses, this would not be a basis for cancelling the public hearing.

Finally, MTA argues that because CRTC has not identified the witness MTA was hoping to see, it is “unclear how the public hearing can serve the purpose for which it was called.” The purpose of the May 22nd hearing is the same as it has always been—to assess MTA’s decision that it must harm wetlands to replace the York tollbooth, when MTA’s own engineering documents, national trends in tollbooth design and construction, and recent decisions by the Commonwealth of Massachusetts, the State of New York, and the State of New Hampshire demonstrate otherwise.

Thank you for your consideration of our comments.

Very truly yours,



Scott D. Anderson

SDA/mtt

Enclosure

cc: Service List (via e-mail to entire service list and US Mail to parties, Applicant, DEP Counsel, and DEP Project Manager in Portland)

¹ The conflict in the technical information is not limited to the pre-filed testimony. Gary T. Quinlan, one of MTA’s proposed witnesses, and one of the authors of the April 14, 2014 CDM Smith report on AET, has submitted testimony that AET is not a reasonable alternative, largely due to financial risk and expected losses due to “leakage,” or cash customers that cannot be billed by mail or refuse to pay when billed. This testimony submitted on April 7th directly contradicts Mr. Quinlan’s own conclusion in his 2014 report, when he found that even with CDM Smith’s leakage and traffic diversion estimates, MTA would net an additional \$24 million over the first 10-year period with an AET facility instead of the proposed ORT facility. See MTA Pre-Filed Testimony Ex. B (report pp. 47-48).