



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



JANET T. MILLS
GOVERNOR

GERALD D. REID
COMMISSIONER

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) PUBLIC HEARING
 L-27625-2C-C-N) THIRD PROCEDURAL ORDER
 L-27625-VP-D-N)
 L-27625-IW-E-N)

This Third Procedural Order (Order) sets forth rulings of the Department of Environmental Protection (Department) on matters discussed at the second pre-hearing conference held by the Department and Land Use Planning Commission (Commission) on Thursday, January 17, 2019. The main purposes of the pre-hearing conference were to discuss new information submitted since the first pre-hearing conference; to identify any changes in position of the Intervenor; to announce dates and locations for the hearing; and to set filing deadlines. This Order also sets forth certain procedures related to the hearing.

SERVICE LIST UPDATES

1. Requests for changes to the service list have been made since the Second Procedural Order. These include:
 - a. A request for the addition of Phelps Turner to the service list on behalf of Conservation Law Foundation, dated November 20, 2018,
 - b. A request from Brookfield Renewable to change the contact from Nicolas Bosse to Steven Zuretti, dated January 4, 2019, and one dated January 28, 2019, to add Jeffrey Talbert
 - c. A request to add Elizabeth Boepple to the service list as the attorney representing Intervenor Groups 2 and 10, dated January 11, 2019.¹

¹ On January 11, 2019, Attorney Elizabeth Boepple of BCM Environmental & Land Law, PLLC, filed an entry of appearance on behalf of Intervenor Group 2 and Intervenor Group 10, except for Intervenor Alison Quick and Courtney Fraley. On January 24, 2019, Ms. Fraley notified the Commission staff that she no longer wishes to participate as an intervenor. On January 31, 2019, Ms. Quick notified the Commission that she no longer wishes to participate as an intervenor. Consequently, Ms. Fraley and Ms. Quick have been removed from the intervenor list, and the updated service list.

In recent filings counsel for CMP and counsel for Intervenor Groups 2 and 10 discussed the rules concerning one spokesperson for each party.

AUGUSTA
17 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0017
(207) 287-7688 FAX: (207) 287-7826

BANGOR
106 HOGAN ROAD, SUITE 6
BANGOR, MAINE 04401
(207) 941-4570 FAX: (207) 941-4584

PORTLAND
312 CANCO ROAD
PORTLAND, MAINE 04103
(207) 822-6300 FAX: (207) 822-6303

PRESQUE ISLE
1235 CENTRAL DRIVE, SKYWAY PARK
PRESQUE ISLE, MAINE 04769
(207) 764-0477 FAX: (207) 760-3143

- d. Intervenor Group 8 requested Brian J. Murphy, NextEra's in house legal staff, be added to the Service List.
2. Other updates to the service list include:
 - a. A correction of the listing for Intervenor Mike Pilsbury from the Department only intervenor group to the Department and Commission intervenor group
 - b. A revision of the contacts for the Maine Office of the Attorney General to remove Jerry Reid.
3. The updated service list reflecting the changes outlined above is provided with this procedural order.

SUMMARY AND DISCUSSION OF CHANGES TO PROJECT

4. At the pre-hearing conference Central Maine Power (CMP) provided a brief overview of submittals on the application since the last pre-hearing conference. This was followed by the Department and Commission staff summarizing the additional information that was requested by the agencies, as well as what has been received in response to those requests. Lastly, the Department and Commission staff described the remaining pieces of requested information that are outstanding. Both the Department and the Commission agree that there is sufficient information in the permitting record to move forward with the hearing process.
5. Representatives from Intervenor Groups 1 through 4 and 6 through 10, as identified in paragraph 4 of the Department's Second Procedural Order, were present at the pre-hearing conference. Intervenor Group 5, comprised of Brookfield Energy and Wagner Forest Management, did not have a representative present at the conference. Brookfield Energy and Wagner Forest Management were contacted by counsel for the Department after the pre-hearing conference and were reminded that attendance at pre-hearing conferences is mandatory for intervenors.
6. At the pre-hearing conference, the Presiding Officer for the Department solicited comments from the Intervenor groups regarding any changes in position on the hearing topics or level of participation in the proceeding. Specifically, the Presiding Officer asked if any of the intervenors were interested in relinquishing their party status for that of an interested person. No intervenors made that request.

The Second Procedural Order states, "...each consolidated Intervenor group shall designate one contact person for the purpose of this proceeding.... The designated contact person will be responsible for the proper filing of documents (pre-filed testimony, exhibits, etc.) for the Intervenor group and will be the group's primary spokesperson at hearing proceedings. This does not preclude other Intervenor groups within the group from testifying or conducting cross-examination at the hearing."

7. Intervenor groups brought up the following issues for discussion:
 - a. Request for inclusion of the topic of greenhouse gasses/climate change at the hearing
 - b. Renewal of the request for maps and information more clearly describing CMP's Title, Right, and Interest
 - c. Request for firm dates on when the record officially will close
 - d. Request for more information to be posted on the Department website
 - e. Question as to whether the hearing focuses on the 150-foot corridor or the 300-foot width of corridor in which future expansion may occur for evaluating scenic impacts
 - f. Request that the hearing dates be later, and that the filing deadlines be moved back
8. The Presiding Officer made the following determinations in response to the issues brought forward:

- a. Parties who requested the addition of the topics of potential impacts to greenhouse gasses and climate change to the topics to be addressed at the hearing were provided until January 24, 2019, to submit such a request in writing, with the statutory or regulatory basis for the request. Parties who wished to respond to these requests were given until January 31, 2019 to file a response.

Intervenor Group 4 submitted a timely written request that the issue of potential impacts on greenhouse gas emissions be included in topics to be addressed at the hearing. Group 4 contends that the topic is relevant because CMP must demonstrate that it has met the "no adverse effect on the natural environment" standard of 38 M.R.S. § 484(3). Group 4 notes that Chapter 375 § 2, which elaborates on Section 484(3), directs the Department to consider all relevant evidence in determining whether the proposed project would cause an unreasonable alteration of climate. Group 4 argues that in CMP's application it represents that the proposed project would reduce regional greenhouse gas emissions with a direct benefit to Maine, and because CMP is representing these stated benefits as part of the need for the project the intervenors should be allowed to present evidence on the issue.

While not strictly speaking a response to the request filed by Intervenor Group 4, Intervenor Groups 2 and 10 filed a statement of support to the request that the net greenhouse gas emissions issue be added to the list of topics to be addressed at the hearing.

CMP submitted a timely written response, maintaining that net greenhouse gas emissions should not be considered as one of the hearing topics. CMP contends that

the language in 38 M.R.S. § 484(3) pertaining to adverse effects from a project is aimed at potential impacts nearby, in the municipality in which the project would be located or neighboring municipalities. CMP points to the language in Chapter 375 § 2 which focuses on a project's potential to change climatic characteristics such as rainfall, fog and humidity patterns in the vicinity of the project. CMP argues that Chapter 375 § 1 limits the Department's considerations with respect to air quality issues to a review of point or non-point sources of chemical pollutants or particulate matter from the project.

The Presiding Officer has determined that net greenhouse gas emissions will not be added as a topic to be addressed at the hearing, however the parties may submit written evidence on this issue into the record. The issue can be adequately addressed through written submissions. The topics for the hearing have been set since October 5, 2018, and the addition of a topic at this time would significantly delay the proceeding.

CMP stated in its application that the reduction of greenhouse gas emissions will be a benefit of the project and CMP presents such a reduction as a rationale for the construction of the project. The parties and the general public will be allowed to submit evidence with regard to these statements in the application, which may include, for example, comments, data, and reports, until the close of the record. The Department will determine the relevance of submitted evidence to its review under the Site Location of Development Act, the Natural Resources Protection Act, and the pertinent regulations interpreting those laws, including the No Adverse Environmental Effect Standards rule, Chapter 375, and the Wetlands and Waterbodies Protection rule, Chapter 310 §§ 5(A) & 9(A).

If a party determines it is necessary to respond to evidence submitted near the time the record closes, that party may request that the Presiding Officer exercise her discretion to leave the record open for the limited purpose of the filing of such a response.

- b. The Department has sufficient information regarding Title, Right, and Interest to proceed with the hearing. However, there was a previous request from an Intervenor for more detailed information delineating Title, Right, and Interest and the Intervenor stated it has not yet been provided. CMP stated it would provide the service list with a map outlining its Title, Right and Interest evidence as soon as it can finish putting it in the requested format.
- c. As discussed during the pre-hearing conference the Department and Commission have different regulatory provisions and practices regarding the close of the record. At a minimum, the record will be open through the last day of the hearing. A final decision on the close of the record will be made in a subsequent procedural order.

- d. The Department will continue its efforts to update and add pertinent information to the Department's website regarding the NECEC project. Substantive permitting materials will be included as well as public comments that have not yet made it onto the site. However, the Department will not be putting every email, phone call record, and meeting note onto the website because the Department does not have the resources to complete this work. All public documents in the administrative record can be viewed by members of the public in person by making an appointment to view the printed materials in the Bangor office.
- e. The hearing will be limited to the proposal from the applicant for the current 150-foot wide corridor. Evidence concerning impacts of a potential transmission line using the 300-foot wide corridor will not be admitted as such a project has not been proposed and is not before the Department and the Commission.
- f. The Department and the Commission determined that the hearing should not be postponed. In response to concerns about the timeline of the proposed deadlines for pre-filed testimony the Presiding Officer determined that the deadlines would be pushed back to give the intervenors additional time. The new deadlines are outlined in paragraph 22 of this order. The hearing dates will remain the same, and are described in paragraphs 9,10, and 11 of this order.

ROLE OF DEPARTMENT and COMMISSION

9. The Department and the Commission have separate roles with regard to review of the proposed Project. By holding a joint hearing, both agencies intend to facilitate efficient review and avoid the need for duplicative testimony by the same parties and interested members of the public in different proceedings. In the Second Procedural Order the Department identified the topics that would be covered as part of the Department's portion of the hearing. Separately, in its Second Procedural Order, the Commission identified Scenic Character and Existing Uses, and the Alternatives Analysis, as the two hearing topics for which in the Commission seeks factual testimony relevant to its review. The multi-day hearing will be arranged so that the hearing topics of the Commission are scheduled for the same day. The remainder of the hearing will be to cover the rest of the Department-related topics. A more detailed hearing schedule will be made available in advance of the hearing.

DATES AND LOCATIONS OF THE HEARING

10. The Department's hearing will be held from Monday, April 1 through Friday, April 5, 2019. The purpose of the hearing is for the Department to receive testimony related to certain specified approval criteria and standards relevant to the Natural Resources Protection Act and the Site Location of Development Act. The specific criteria were outlined in paragraph 7 of the Second Procedural Order.

11. The joint portion of the hearing with Commission and Department staff will be held on April 2, 2019. This portion of the hearing will be focused on the Commission's review criteria but because there is overlap with the Department's review criteria the Department will also be participating in this session.
12. There will be two evening sessions for public testimony. These will be held on April 2 and April 4, 2019. The public testimony session on April 2, 2019 will be for testimony related to the Commission's role in certifying whether the proposed Project is an allowed use within the P-RR subdistrict. The public testimony session on April 4, 2019 will be for testimony related to the Department's criteria.
13. The timing of the hearing sessions and an agenda will be provided in a future notification to the parties and in the public hearing notice.
14. The hearing will be held on the University of Maine campus in Farmington, Maine. Different portions of the hearing will take place in different locations on campus due to facility availability. Information regarding the exact location of the meeting rooms for each segment will be provided in advance of the hearing.
15. At the pre-hearing conference, some of the intervenors expressed concern as to whether the number of days scheduled for the hearing would be sufficient for all witnesses' testimony and cross-examination. The Department is in the process of scheduling back-up or overflow days for the hearing in the event time or weather requires additional days. The Presiding Officer requests that parties set aside April 8, 10, and 11 for this purpose, however, the intent is to complete the hearing on April 5.
16. Parties who will require technology or special equipment to be available during the hearing should coordinate their needs by February 28, 2019 with Mr. Jim Beyer at the Department at 207-446-9026 or at NECEC.DEP@maine.gov.

PRE-FILED TESTIMONY

17. All parties must submit the testimony of their witnesses in writing in advance of the hearing, by the deadlines listed below. This written testimony must be sworn. Written testimony is sworn if the witness declares by oath or affirmation that the testimony is true and correct to the best of the witness's knowledge and belief. Pre-filed rebuttal testimony will be allowed but must be limited to responding to the pre-filed direct testimony of other witnesses. All rebuttal testimony must identify the direct testimony to which it is responding. The pre-filing of testimony allows all parties, the Department staff, counsel for the Department, and the Presiding Officer to review the testimony in advance and come to the public hearing prepared to ask questions in an efficient and focused manner.

18. As described in Paragraph 9 of this Order, the Commission will be evaluating a narrower scope of criteria than the Department. It is acceptable to have the pre-filed testimony for a witness participating in both the Department and Commission portions of the hearing contained in one document however the document must clearly state which portion of the pre-filed testimony relates to the Commission topics, preferably by being placed in its own section of the written testimony. 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.
19. Unless otherwise requested and approved all filings must be made electronically in Adobe PDF format by e-mail to the entire service list. In addition, pre-filed testimony to the Department must include an original and four paper copies. The Commission pre-filed testimony requirements are slightly different. Please review the Commission's Third Procedural Order for more details on filing pre-filed testimony with the Commission.
20. The scope of the pre-filed testimony is limited to the criteria as outlined under "Hearing Topics," in paragraph 7 of the Department's Second Procedural Order.
21. Any exhibit that a party wishes to introduce into the administrative record must be attached to pre-filed testimony. The Presiding Officer may allow the introduction of an exhibit at the public hearing that was not pre-filed based on a showing of good cause or if the exhibit is being introduced for impeachment purposes. Reduced versions of oversized exhibits may be pre-filed, with the full-size exhibit presented at the public hearing. It is the responsibility of the parties to label exhibits numerically, starting at 1, in a manner that allows them to be easily identified and referenced. For example, CMP should label its exhibits as "CMP Exhibit _." An Intervenor Group may use its group number or it may use a shorthand name for its group, followed by the exhibit number.
22. Deadlines for pre-filed testimony were discussed at the second pre-hearing conference. At the conference, some intervenors orally requested a postponement of the hearing and the filing deadlines so that the parties would have additional time to formulate their pre-filed testimony. At the pre-hearing conference the Commission and the Department denied the request to postpone the hearing but moved the filing deadlines back to allow the parties additional time. At the conference the Commission and the Department postponed the deadlines to the following dates: February 15th for the list of witnesses and witnesses' topics, February 21 for pre-filed direct testimony, February 28 for any objections to pre-filed direct testimony, and March 21 for pre-filed rebuttal testimony.

On February 1, 2019, Intervenor Groups 2 and 10 submitted to the Department a Motion for Reconsideration of the decisions on the request to postpone the hearing and the deadlines for the pre-hearing filings. The motion requested that the Department postpone the hearing for at least 30 days and provide corresponding postponements of the filing deadlines. On February 4, 2019, the Department received a letter from Intervenor Group 4 supporting the Motion for Reconsideration. Intervenor Group 4 requested a longer time

frame for the filing of pre-filed direct and rebuttal testimony and at least three weeks between the deadline for rebuttal testimony and the commencement of the hearing.

The Department is denying the Motion for Reconsideration insofar as it requests the postponement of the hearing, and in light of the limited changes contained in the recent filings by CMP, and in consideration of the challenging scheduling and logistical considerations associated with scheduling a multi-day hearing. However, the Department is postponing by one-week the deadline for filing written direct testimony and the deadline for filing any objections. The filing deadlines for the list of witnesses and witness topics and the deadline for the submission of written rebuttal testimony remains the same as was stated at the January 17th pre-hearing conference. The additional information filed by CMP subsequent to the January 17th pre-hearing conference is consistent with the information described by the Department and Commission staff at the conference. The quantity of pages in the filing reflects in part that CMP has filed clean versions of the amended documents as requested by the parties, the Commission, and the Department.

The schedule for the Commission will parallel that established by the Department in its Third Procedural Order.

The filing deadlines are now as follows:

1. Witness list and topics to be covered by each witness: **February 15, 2019**
2. Pre-filed direct testimony: **February 28, 2019**
3. Any objections to pre-filed direct testimony: **March 7, 2019**
4. Pre-filed rebuttal testimony: **March 21, 2019**

WITNESSES

23. All witnesses submitting written, pre-filed testimony must attend the hearing and be available for cross-examination. Witnesses will be sworn prior to giving their testimony at the hearing.
24. It is the responsibility of each party to keep its witnesses informed regarding the public hearing schedule and to ensure that their witnesses maintain maximum flexibility during the hearing as the agenda may change.
25. The intervenor groups and CMP provided estimates of the number of witnesses they plan to have testify at the hearing. Intervenor Group 5 was not present at the pre-hearing conference, but subsequently stated that it will have one witness. At this time the total estimated number of witnesses is 62 witnesses.

26. A witness list must be provided to the Presiding Officer by February 15, 2019. This list must include the name of the witness, the topic area(s) to be covered by the witness, and any special requests concerning the witness's ability to testify, such as any relevant physical disabilities. Parties are encouraged to voluntarily provide and suggest witness panels for witnesses that have testimony similar in nature.
27. As a reminder, the purpose of the hearing is to provide information to the Department to inform a decision on the CMP application. To accomplish this in a fair and efficient manner, time allotments will be in place for both direct and cross examination of witnesses." for witnesses who have similar testimony. As stated above, parties are encouraged to voluntarily create witness panels for testimony similar in nature, and the Presiding Officer may require and assign the use of "witness panels" where appropriate. Witnesses will not be permitted to cede time assigned to them to other witnesses. Parties with similar areas of interest may wish to divide topics so that each topic can receive more detailed attention.
28. All witnesses submitting pre-filed testimony will briefly summarize their direct testimony at the hearing. The summary is expected to be succinct and provide context of what is included in the pre-filed direct testimony. It will not be an opportunity to introduce new information or to provide every detail that is included in the pre-filed testimony as all parties, agency staff, and the Presiding Officer will have already read the pre-filed testimony.
29. The summary of direct testimony will be followed by cross-examination by the other parties and questions from Department staff, counsel to the Department, and the Presiding Officer. A limited amount of re-direct and re-cross may be allowed by the Presiding Officer if time permits.
30. During these evening sessions, members of the public may provide oral testimony. Pre-filing of testimony is not required for members of the public. Members of the public wishing to testify will be sworn and are subject to cross examination and questions from parties, Department staff, counsel for the Department, and the Presiding Officer.
31. Officers of any organization or business that is an intervenor may not testify as a member of the public in the evening portion of the hearing. Officers wishing to testify must pre-file their testimony and must testify as part of the daytime portion of the hearing during that intervenor's time allotment. Members of an intervenor organization or business who are not officers may testify during the evening portion of the hearing in their individual capacity.
32. Due to the nature of its organizational structure, Trout Unlimited requested clarification on the issue of officers testifying during the pre-hearing conference. Trout Unlimited followed up with a letter submitted on January 24, 2019 explaining its organizational

structure. In response to Trout Unlimited's questions, the Department has determined that the 33 people who comprise the Maine State Council of Trout Unlimited will not be allowed to testify as part of the general public because they are representative members of the organization having the decision-making capacity to petition for leave to intervene, which they achieved in this proceeding. Additionally, the Maine State Council's Executive Committee of Trout Unlimited and the staff assigned to this matter (Mr. Reardon) will also not be allowed to testify as a member of the general public. Other members may testify during the public testimony portion of the hearing.

EX PARTE COMMUNICATIONS

33. No person may communicate directly or indirectly with the Presiding Officer or the Commissioner concerning any issue of fact, law, or procedure, except upon notice and opportunity for all parties to participate. This ban on ex parte communications does not prohibit the Presiding Officer from having the aid and advice of counsel and Department staff. Any persons seeking information about the hearing process or substance may contact Mr. Jim Beyer at the Department at 207-446-9026 or at NECEC.DEP@maine.gov.

Dated: February 5, 2019



Susanne Miller
Presiding Officer