



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 SIXTH PROCEDURAL ORDER
L-27625-IW-E-N)

This Sixth Procedural Order (Order) sets forth rulings of the Department of Environmental Protection (Department) and the Land Use Planning Commission (Commission) pertaining to the pre-filed direct testimony of Mr. Greg Caruso (Mr. Caruso), a witness for Group 2, submitted February 28, 2019, as well as a response from the Department and the and the Commission to Intervenor Group 4’s Motion to Delay Hearing and Allow Additional Testimony.

I. OBJECTIONS AND RULINGS FOR THE TESTIMONY OF MR. GREG CARUSO

1. On March 13, 2019, the Presiding Officers of the Department and Commission determined that the testimony of Mr. Caruso would be stricken from the record in its entirety due to the testimony not being sworn as required pursuant to Section 17 of the Third Procedural Order from the Department, and Section III(A) of the Third Procedural Order from the Commission, both dated February 5, 2019.
2. An Appeal and Objection was received on March 15, 2019 from Intervenor Groups 2 and 10 stating that the testimony of Mr. Caruso was in fact sworn, but that the signature page was

inadvertently omitted from the filing due to a clerical error. The appeal requested that the testimony be allowed because the error was administrative in nature and striking the testimony in its entirety appeared too harsh a response. As part of its appeal, Intervenor Groups 2 and 10 submitted a signature page for Mr. Caruso that was dated February 21, 2019, and was notarized on February 21, 2019, which was prior to the February 28, 2019 deadline for pre-filed direct testimony.

3. A response to the Appeal and Objection was received from the Applicant later that same day, requesting that the testimony remain stricken from the record because allowing the testimony back in would be prejudicial to the applicant and other parties who were preparing rebuttal testimony.
4. On March 18, 2019, the Department's Commissioner, Gerald D. Reid, ruled on the Appeal and Objection and reversed the ruling of the Presiding Officer for the Department on Mr. Caruso's testimony. Because Mr. Caruso's direct pre-filed testimony is now part of the record, the Presiding Officer for the Department must rule on CMP's motions to strike specific portions of Mr. Caruso's testimony.¹ The basis for these objections was relevance to the hearing criteria outlined by the Department in Section 7 of the Second Procedural Order, dated October 5, 2018.
5. The Presiding Officer for the Department strikes the following testimony of Mr. Caruso as not relevant to the topics being addressed at the hearing:
 - a. Page 4 lines 2 starting at "Nobody can know..." through line 14
 - b. Page 5 line 9 through Page 6 line 13
 - c. Page 6 lines 19 through Page 7 line 7
 - d. Page 9 line 22 through Page 10 line 2
6. Any testimony that was the subject of the motion to strike which is not listed as stricken above remains in the Department record.

¹ In response to the DEP Commissioner's ruling, on March 20, 2019, the Applicant moved to strike portions of Mr. Caruso's testimony based on the objections to his testimony that the Applicant originally submitted March 7, 2019 (and reiterated on March 20, 2019).

7. In light of the above, the Presiding Officer for the Commission has reconsidered his March 13, 2019, ruling in the Fifth Procedural Order to strike the testimony of Mr. Caruso in its entirety. The Presiding Officer for the Commission now admits the testimony subject to the portions identified in paragraph 5 above being stricken from the record. The result is that the appeal and objection received on March 15, 2019, from Intervenor Groups 2 and 10 is moot. Any appeal or objection to the ruling in this Order must be filed in writing by March 25, 2019, at 5:00 p.m. and would be heard by the Commission on April 2, 2019.
8. As a reminder, the portions of Mr. Caruso's testimony that have been stricken from the hearing may be submitted in a separate document as written comments until the official close of the record for the parties which will be at the conclusion of the hearing.

II. RESPONSE TO MOTION TO DELAY HEARING AND ALLOW ADDITIONAL TESTIMONY

9. On March 18, 2019, the Maine Department of Inland Fisheries and Wildlife (MDIFW) submitted information by e-mail to the Applicant and to the Department containing eleven files pertaining to compensation parcels. Later that same day, Mr. Jim Beyer from the Department forwarded this information on to the service list.
10. On March 19, 2019, Intervenor Group 4 filed, with the Department and the Commission, a Motion to Delay Hearing and Allow Additional Testimony based on this submittal of information. Intervenor Group 4 argued that this constitutes a large volume of new material, and there is insufficient time to review the material prior to the hearing. In addition, Intervenor Group 4 expressed concern that the new information might impact direct testimony submitted on February 28, 2019, which would need to be updated.
11. The Applicant filed a response e-mail on March 19, 2019, contending that the information contained in this material is not new, and it is merely a clarification of information already in the record. Moreover, the Applicant contends that the clarifications made by MDIFW were sought by the Applicant in order to rebut the pre-filed testimony of Intervenor Group 4.
12. The Presiding Officers for the Department and the Commission agree with the Applicant's characterization of the material as being a clarification of material already in the record.

With the exception of the MDIFW's two spreadsheets and a word document summary of issues, the remainder of the material provided by MDIFW has been in the Department's record since at least late January. To the extent the parties wish to address the two spreadsheets and summary of issues, they will be given leeway to do so in their summary of testimony or during cross examination of other witnesses.

13. For the reasons outlined above, the Motion to Delay Hearing and Allow Additional Testimony is denied.

III. INTERVENOR GROUP 2 AND 10 WITHDRAWAL OF CERTAIN TESTIMONY

14. On March 20, 2019, Ms. Elizabeth Boepple, Counsel for Intervenor Groups 2 and 10 informed the service list by e-mail that some of the Group 2 and 10 witnesses would not be able to attend the hearing. For that reason, she withdrew the testimony of Chris Russell (Kennebec River Anglers), Carrie Carpenter, Mandy Farrar, and Tony DiBlasi. Ms. Boepple also stated that while their testimony is withdrawn, they still intend to retain intervenor status. The Presiding Officers therefore will strike the testimony of Chris Russell (Kennebec River Anglers), Carrie Carpenter, Mandy Farrar, and Tony DiBlasi in their entirety.

IV. REQUEST TO ORGANIZE THE HEARING BY TOPIC

15. Intervenor Group 1 has requested that the Department reconsider the organization of the hearing schedule and return to an organization by topic instead of the currently proposed schedule, which is organized by Party. After reviewing the pre-filed direct testimony, the Department determined that a schedule with each party presenting all of its witnesses, followed by the cross-examination of those witnesses, would be the most helpful to the decision-makers, and also the most logical and efficient method of organization.

There are several advantages of this method of organization. First, many witnesses submitted testimony covering multiple topics. If the Department organized the hearing by topic, these witnesses would need to be present at the hearing to testify on multiple days, if not the entire week. The Department considered this to be a large burden to place on witnesses that might have other commitments during the week. Second, given the nature of the pre-filed testimony, especially for those witnesses testifying on more than one topic, it would be

difficult to parse the testimony into separate topics for presentation on different days of the hearing. For example, Jeff Reardon's testimony for Group 4 identifies streams that contain valuable brook trout habitat and describes an alternative, moving the location of the line a half mile, to avoid those habitats. This testimony addresses both cold water fish habitat issues and alternatives. Similarly, Janet McMahon's testimony for Group 1 addresses the impact of habitat fragmentation on brook trout habitat. The totality of these arguments may be diminished if they are broken up and heard on different days. By the same token, the other parties' cross-examination of these witnesses might be diminished if their testimony is not presented as a whole. Lastly, the Department believes that, as the decision-maker, it will gain a better understanding of each Intervenor Group's arguments if we hear the entirety of each group's testimony and any related cross-examination in a single time block.

Dated: March 21, 2019



Susanne Miller, Presiding Officer
Department of Environmental Protection



Everett Worcester, Chair and Presiding Officer
Land Use Planning Commission