

Surrebuttal Testimony of Dr. David Publicover

April 15, 2019

(Supplemental Evidence)

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and
STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY
Application for Site Location of Development
Act permit and Natural Resources Protection
Act permit for the New England Clean
Energy Connect (“NECEC”)

L-27625-26- A-N
L-27625-TB-B-N
L-27625-2C-C-N
L-27625-VP-D-N
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

SUR-REBUTTAL TESTIMONY OF
GROUP 4 WITNESS DR. DAVID
PUBLICOVER

April 15, 2019

This testimony is presented in sur-rebuttal to rebuttal testimony presented by CMP witness Kenneth Freye. Specifically, this rebuttal testimony focuses on the issue of the granting of a special exception for the Appalachian Trail P-RR zone. This rebuttal is relevant solely to issues before LUPC.

In response to my testimony that the construction of the new transmission line would have a significant negative effect on the experience of Appalachian Trail hikers, Mr. Freye states (p. 3), “*While Dr. Publicover may believe the Project will degrade the experience of hikers, this opinion is not supported by – and in fact is contradicted by – the visual impact analysis, the Easement, and NPS.*” He also states (p. 2) that my conclusions on the impact of the project on

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AT users are “entirely subjective” and “incorrect”. However, it is Mr. Freye’s arguments that are incorrect.

As described in my pre-filed testimony, the visual impact analysis (Application Chapter 6 Appendix F, Scenic Resources Chart, 1/30/19) rates the visual impact of the project at the Troutdale Road crossing as “Moderate/Strong”, clearly indicating that there will be a negative impact on the scenic quality at this crossing. In addition, the visual impact analysis proposes, and the Applicant has accepted the need for, vegetative screening to mitigate this impact (although I question the effectiveness of this mitigation). Rather than contradicting my conclusion that the project would degrade the experience of AT users as Mr. Freye claims, the visual impact analysis supports it.

Mr. Freye also cites the National Park Service easement, going so far to claim that the impact of the project “cannot be considered unreasonable” because the easement allows for the construction of the proposed transmission line. The primary purpose of the easement was to secure the right of the AT to cross CMP’s property. The easement also recognizes and maintains CMP’s pre-existing rights to construct and maintain transmission lines on their property. The fact that CMP has the legal right to construct the proposed transmission line is relevant to the issue of right, title and interest. However, the fact that CMP has this right does not necessarily mean that this use is consistent with LUPC criteria – that is a separate question. The idea that the fact that the easement allows this use constitutes a determination that LUPC criteria are satisfied is nonsensical and would eliminate the right of LUPC to make this determination on their own.

Mr. Freye also states (p. 3) “*Neither the NPS nor the Appalachian Trail Conservancy (ATC), its agent, has stated that CMP’s proposed use of the Easement area is inconsistent with the purpose of the Easement.*” It would be very difficult for a party to an easement to claim that

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a use which is specifically allowed by an easement was inconsistent with it. However, as I stated above, the fact that the easement allows this use is separate from the question of whether this use is consistent with LUPC criteria.

Finally, Mr. Freye notes the discussions that have been held with MATC and ATC regarding trail relocation and buffering. Mr. Freye states that CMP “would consider” additional plantings “should MATC and ATC so request”. However, an action that *may* be taken if requested by a third party that is not a party to the proceedings cannot be considered mitigation. This vague possibility should be disregarded by LUPC in its determination of whether the impact on the AT has been adequately buffered.

Dated: 4/15/19

by: 
David Publicover

Date: 4/15/19

The above-named David Publicover did personally appear before me and made oath as to the truth of the foregoing sur-rebuttal testimony.



Notary Public

My Commission Expires _____ DENISE M. HORNE

Notary Public - New Hampshire
My Commission Expires April 19, 2022