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Admitted in: MA, ME, NH

April 25, 2019

James R. Beyer
Maine Dept. of Environmental Protection
106 Hogan Road, Suite 6
Bangor, ME 04401

Bill Hinkel
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

RE: NECEC – CMP's Motion to Strike Group 4 Sur-Rebuttal

Dear Jim and Bill:

Enclosed is CMP's Motion to Strike Group 4 Sur-Rebuttal.

Sincerely,



Matthew D. Manahan

Enclosure
cc: Service Lists

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
#L-27625-26-A-N/#L-27625-TG-B-N/)
#L-27625-2C-C-N/#L-27625-VP-D-N/)
#L-27625-IW-E-N)

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY CONNECT)
SITE LAW CERTIFICATION SLC-9)
Beattie Twp, Merrill Strip Twp, Lowelltown Twp,)
Skinner Twp, Appleton Twp, T5 R7 BKP WKR,)
Hobbs town Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

MOTION TO STRIKE OF
CENTRAL MAINE POWER COMPANY

Central Maine Power Company (CMP) moves to strike the sur-rebuttal testimony of the Group 4 witnesses in their entirety, as each witness’s testimony exceeds the scope of the “limited sur-rebuttal testimony” set forth in the Joint Seventh Procedural Order of the Maine Department of Environmental Protection (DEP) and the Maine Land Use Planning Commission (LUPC).

In the Seventh Procedural Order, the Presiding Officers limited the April 19, 2019 sur-rebuttal to testimony directly rebutting Central Maine Power Company’s (CMP’s) rebuttal testimony on the underground alternative:

In order for the Department and Commission to have balanced information for analysis and a decision, and for the parties to have an opportunity to respond on this topic, the Presiding Officers will allow all parties to submit sur-rebuttal testimony on the Applicant's rebuttal testimony pertaining to the underground alternative. This testimony must clearly be in rebuttal to what was filed by the Applicant on this topic in its rebuttal testimony. [Seventh Procedural Order ¶ II.9.e.]

The Presiding Officers further required that "Any other witnesses that submitted rebuttal testimony or that submit sur-rebuttal testimony pertaining to the underground alternative must also be present at the May hearing date for summary of testimony and cross-examination."

Seventh Procedural Order ¶ II.9.g. Group 4's sur-rebuttal concerning vernal pools (Dr. Calhoun), the Appalachian Trail crossings in the P-RR subdistrict (Dr. Publicover), and brook trout habitat (Mr. Reardon) – which does not once mention the underground alternative or CMP's rebuttal testimony on that topic – should be summarily rejected.

Aram Calhoun

Dr. Calhoun's "sur-rebuttal testimony is in response to the rebuttal testimony of Gary Emond." *See* Calhoun Sur-Rebuttal at 1. Mr. Emond's rebuttal testimony concerned only Issue 2: Wildlife Habitat and Fisheries, Habitat Fragmentation. Nowhere does he discuss the underground alternative, nor does Dr. Calhoun's sur-rebuttal. Not once does Dr. Calhoun mention the word "underground." Accordingly, Dr. Calhoun's sur-rebuttal should be stricken in its entirety.

David Publicover

Dr. Publicover's sur-rebuttal testimony is in response to the rebuttal testimony of Kenneth Freye, and "focuses on the issue of the granting of a special exception for the Appalachian Trail P-RR zone." *See* Publicover Sur-Rebuttal at 1. While certain portions of Mr. Freye's rebuttal testimony did concern the underground alternative, that portion was limited to whether routing the Project underground along roadways is a practicable or reasonably available alternative. Mr. Freye's rebuttal testimony concerned Dr. Publicover's allegations in direct

testimony “that CMP could bury the NECEC transmission line along the edge of the Spencer Road to avoid forest fragmentation, and . . . that such burial would have less environmental impact than the proposed corridor.” *See Freye Rebuttal* at 5-6. He also addressed Group 2 witness Elizabeth Caruso’s unfounded statement that the Project could be buried along Route 201. *See Freye Rebuttal* at 7-8.

Dr. Publicover’s sur-rebuttal, on the other hand, does not address Spencer Road or Route 201. It is instead entirely concerned with the visual impact of the Project at the Appalachian Trail crossings in the P-RR subdistrict, and “whether the impact on the AT has been adequately buffered.” *See Publicover Sur-Rebuttal* at 3. Not once does Dr. Publicover mention the word “underground,” as his testimony does not rebut any testimony by Mr. Freye on the underground alternative. Accordingly, Dr. Publicover’s sur-rebuttal should be stricken in its entirety.

Jeff Reardon

Like Dr. Publicover, Mr. Reardon’s sur-rebuttal testimony is in response to the rebuttal testimony of Kenneth Freye. *See Reardon Sur-Rebuttal* at 1. And like Dr. Publicover, Mr. Reardon’s sur-rebuttal in no way addresses Mr. Freye’s limited rebuttal testimony on routing the Project underground along existing roadways. Instead, Mr. Reardon’s sur-rebuttal concerns alternative routing at three stream crossing sites – notably, focusing on taller structures and not once discussing the underground alternative – and CMP’s proposed compensation parcels. Not once does Mr. Reardon mention the word “underground,” as his testimony does not rebut any testimony by Mr. Freye on the underground alternative. Accordingly, Mr. Reardon’s sur-rebuttal should be stricken in its entirety.

Group 4 seized the “limited sur-rebuttal” as an opportunity to file an additional round of testimony not ordered or allowed by the Presiding Officers, as yet another attempt to extend the hearing past May 9. Because Group 4’s witnesses submitted no rebuttal testimony or sur-

rebuttal testimony “pertaining to the underground alternative,” their sur-rebuttal testimony must be stricken and they cannot testify at the May 9, 2019 hearing date.¹ Seventh Procedural Order ¶ II.9.g.

For the foregoing reasons, CMP respectfully requests that the DEP and LUPC presiding officers strike the entirety of the sur-rebuttal testimony of Group 4.

Dated this 25th day of April, 2019.



Matthew D. Manahan
Lisa A. Gilbreath

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*Attorneys for Applicant Central Maine
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¹ With the exception of Dr. Calhoun, who may summarize and be cross-examined at the May 9 hearing date only on those portions of her direct testimony that have not been stricken, given her absence at the April 1-5 hearing but CMP's agreement that she may later appear without having her direct testimony stricken in its entirety. *See* Tenth Procedural Order ¶ 7.b.