



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

This Eighth Procedural Order (Order) sets forth rulings of the Department of Environmental Protection (Department) and the Land Use Planning Commission (Commission) on the Applicant’s Supplemental Motion to Strike certain witnesses’ rebuttal testimony and on the admissibility of that rebuttal testimony.

A. Procedural background

1. At the third pre-hearing conference held on March 26, 2019, the Presiding Officers set the deadline for motions to strike rebuttal testimony and exhibits of existing witnesses<sup>1</sup> as 5:00 p.m. on Wednesday March 27, 2019. That deadline is memorialized in the Seventh Procedural Order issued on March 28, 2019.
2. On March 28, 2019, the Applicant filed with both the Department and the Commission a supplement to its March 26, 2019, motion to strike. In this motion the Applicant seeks to strike the rebuttal testimony of Group 10 witnesses Eric Sherman and Matt Wagner on the basis that Mr. Sherman and Mr. Wagner were granted intervention in the Commission’s proceeding only and also that their testimony is rebutting testimony that was filed with the Department only.

<sup>1</sup> Witnesses who submitted prefiled direct testimony.

3. On March 28, 2019, Intervenor Groups 2 and 10 submitted to the Department and the Commission a response and objection to the Applicant's March 28, 2019, supplement to motion to strike. Intervenor Groups 2 and 10 argue that the Applicant's filing is not timely and should consequently be denied.
4. Also on March 28, 2019, Intervenor Group 3 submitted to the Department and the Commission a response in which it expressed support of the Applicant's supplement to motion to strike and countered Intervenor Groups 2 and 10's response. Intervenor Group 3 argues that Intervenor Groups 2 and 10's failure to properly label exhibits and clearly identify which of its witnesses is associated with which intervenor group precipitated the confusion that resulted in the need for the Applicant to file its supplement.
5. On March 8, 2019, Intervenor Group 3 clarified that its prefiled direct testimony is not relevant to the Commission's proceeding and therefore only filed with the Department. See attached electronic mail from Mr. Buxton to Mr. Hinkel, March 8, 2019.

B. Timeliness of supplement to motion to strike

1. The Presiding Officers find that the Applicant's March 28, 2019, supplement to its motion to strike is not timely and is therefore denied.

C. Presiding Officers' rulings on witness rebuttal testimony

In review of these witnesses' rebuttal testimony, the Presiding Officers of their own accord strike the following rebuttal testimony.

1. Group 10 Witness Eric Sherman

Mr. Sherman's prefiled rebuttal testimony is labeled:

REBUTTAL TESTIMONY OF ERIC J.  
SHERMAN OF PRE-FILE TESTIMONY OF  
MALCOLM L. HUNTER, PHD., ROB WOOD,  
ANDY CUTKO AND BRYAN  
EMERSON (GROUP 6)

The rebuttal testimony of Mr. Sherman, an intervenor in the Commission only proceeding, is entirely directed at the testimony of Group 6 witnesses, a group which is an intervenor only in the Department proceeding. Mr. Sherman's rebuttal testimony exceeds the scope of the Commission's proceeding and is stricken in its entirety.

2. Group 10 Witness Matt Wagner

Mr. Wagner's prefiled rebuttal testimony is labeled:

REBUTTAL TESTIMONY OF MATT WAGNER  
TO PRE-FILE TESTIMONY OF ROBERT  
MEYERS (GROUP 3) AND LARRY WARREN  
AND JOSEPH CHRISTOPHER (GROUP 7)

The rebuttal testimony of Mr. Wagner, an intervenor only in the Commission proceeding, is partially directed at the testimony of Group 3 Witness Meyers, a witness whose testimony was filed exclusively with the Department. Therefore, the portions of Mr. Wagner's rebuttal testimony rebutting Group 3 exceeds the scope of the Commission's proceeding and is stricken as follows.

- a. Page 4, line 21 through page 6, line 10.

The remaining testimony that was the subject of the motion to strike remains in the record.

The presiding officers agree that the failure to label witness testimony properly has caused confusion, and ask that the parties take greater care moving forward in labeling all submissions.

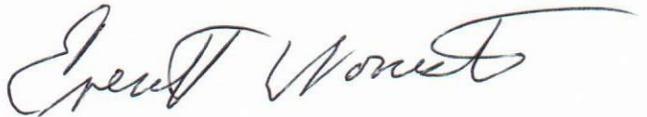
As a reminder, parties are not precluded from submitting to the Department or the Commission, as separate documents in the form of comments, the content of testimony or exhibits stricken because it is not relevant to the hearing topics, as long as the comments pertain to the Department's or the Commission's proceeding. Such separate written comments may be submitted into the record until the close of the hearing.

Dated: March 29, 2019



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Susanne Miller, Presiding Officer  
Department of Environmental Protection



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Everett Worcester, Chair and Presiding Officer  
Land Use Planning Commission