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

This Seventh Procedural Order (Order) sets forth rulings of the Department of Environmental Protection (Department) and the Land Use Planning Commission (Commission) on the continuation of the hearing into May as well as objections to rebuttal testimony.

**I. CONTINUATION OF THE HEARING INTO MAY**

1. Pre-filed rebuttal testimony in this matter was due on March 25, 2019. Several intervenor groups and the Applicant timely submitted rebuttal testimony. The Applicant’s rebuttal testimony was extensive, approximately 469 pages of testimony and exhibits and included five new witnesses.
2. In order to provide adequate time for Department staff, Commission staff, and the other parties to review this testimony and exhibits, and in order to have enough time for cross examination, the hearing will be continued for one additional day in May. The parties and the general public will be notified of the location as soon as it is determined.
3. An agenda for the May date will be provided some time after April 5, 2019.

4. The third pre-hearing conference was conducted by phone on March 26, 2019. During the conference, the possible use of a spillover day for rebuttal testimony and cross was discussed. In that discussion the premise was that this continuation day in May would be utilized solely for the rebuttal testimony and cross-examination of the Applicant's five new witnesses. However, upon further review of the testimony and the objections it was decided that the May hearing date will also be used to hear the testimony and cross-examination of any other witnesses' testimony pertaining to the issue of the underground alternative. Thus, those witnesses with rebuttal testimony pertaining to the underground alternative must be present for summary of their rebuttal and cross-examination in May. All other rebuttal testimony from the existing witnesses will be incorporated into the April hearing dates.
5. The rebuttal testimony from the Applicant's new witnesses which pertains to matters other than the underground option, and the cross-examination of that witness, will also be scheduled for the spillover day in May.
6. The hearing record will remain open for the parties until the end of the final hearing day, which is planned to be May 9, 2019. As set forth in the Fourth Procedural Order, the hearing record will remain open for comments from the general public as follows:
  - a. The record remains open for ten days following the conclusion of the hearing for members of the public only to file written statements to the Department and/or Commission.
  - b. The record will remain open for an additional 7 days after the ten-day comment period for members of the public only to respond to those written statements submitted in the above 10-day window.
  - c. Parties may not submit any evidence or comments after the close of the actual hearing. The parties will have the opportunity to submit post-hearing briefs, proposed findings of fact, and reply briefs in accordance with a schedule which will be set forth by the Department's Presiding Officers at the close of the hearing.

## II. **REBUTTAL TESTIMONY AND MOTIONS TO STRIKE**

### 7. Procedural Background.

- a. In his March 18, 2019 Ruling on the Appeal of the Fifth Procedural Order, Commissioner Gerald D. Reid extended the deadline for Rebuttal Testimony to March 25, 2019<sup>1</sup>. The following is a list of rebuttal testimony received, by party:
  - Applicant: Testimony and Exhibits for Thorne Dickinson, Mark Goodwin, Lauren Johnston, Amy Segal, Peggy Dwyer, Ken Freye, Justin Tribbett, Justin Bardwell, and Edmond Gray; and Testimony only for Gerry Mirabile.
  - Intervenor Group 1: Testimony and an Exhibit for Janet McMahon.
  - Intervenor Group 2: Testimony for Elizabeth Caruso, Greg Caruso, Roger Merchant, and Garnett Robinson; and Exhibits for Garnett Robinson and Roger Merchant.
  - Intervenor Group 3: Testimony for Robert Meyers.
  - Intervenor Group 4: Testimony for Ron Joseph, David Publicover and Jeff Reardon, and Exhibits for Jeff Reardon.
  - Intervenor Group 5: No rebuttal testimony or exhibits submitted.
  - Intervenor Group 6: No rebuttal testimony or exhibits submitted.
  - Intervenor Group 7: Testimony and Exhibits for Larry Warren and Joseph Christopher.
  - Intervenor Group 8: No rebuttal testimony or exhibits submitted.
  - Intervenor Group 9: No rebuttal testimony or exhibits submitted.
  - Intervenor Group 10: Testimony for Ed Buzzell, Justin Preisendorfer, Eric Sherman, and Matt Wagner.
  
- b. At the third pre-hearing conference, Presiding Officer Miller, speaking jointly for the Department and the Commission, stated that there would be a two-tiered deadline for motions to strike rebuttal testimony, based on the continuation of the hearing into May and the distinction between existing and new rebuttal witnesses. The deadline for motions to strike rebuttal testimony and exhibits of existing witnesses was 5:00

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<sup>1</sup> The Commission adopted the same extension to the prefiled rebuttal testimony deadline. See electronic mail from Bill Hinkel to the Service List, dated March 18, 2019.

pm on Wednesday March 27, 2019. The deadline for motions to strike rebuttal testimony and exhibits of new rebuttal witnesses is 5:00 pm on Friday April 19, 2019.

- c. Motions to strike testimony and/or exhibits of existing witnesses were made in a timely manner by the Applicant, Intervenor Groups 2 and 10, Intervenor Group 4, and Intervenor Group 8.

8. Testimony that is not relevant.

The following testimony is stricken because it is not relevant to the criteria outlined for the Department's or Commission's hearing:

- a. Applicant Testimony:
  - Thorne Dickinson – page 11, line 5, starting with “As part of...” through page 13, line 3.
- b. Intervenor Group 1 Testimony:
  - Janet McMahon – end of page 1, under item number 2, “The Western Maine Mountain region is considered highly resilient to the potential impacts of climate change because of its high landscape diversity, elevation gradients, connectivity, and permeability. These qualities allow for range shifts and reorganization of natural communities in response to climate change.”
- c. Intervenor Group 2 Testimony:
  - Elizabeth Caruso – page 4, line 7-8 “poisonous chemicals, inherent mechanical sounds, cancerous electromagnetic frequencies”
  - Roger Merchant – page 6, line 21 through page 7, line 10.
- d. Intervenor Group 10 Testimony:
  - Justin James Preisendorfer – page 3, line 6 through page 5, line 23.
- e. With regard to the “Global Testimony Objections” filed by Group 4:
  - Discussion of the language or intent of the proposed stipulation agreement pertaining to the Public Utilities Commission proceeding will not be allowed at the hearing.

Any testimony that was the subject of a motion to strike which is not listed as stricken above remains in the record.

As a reminder, parties are not precluded from submitting to the Department, 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. This includes comments about Greenhouse Gas (GHG) emissions or climate impact from the project. Because the comments submitted by the Applicant on GHG emissions on March 25, 2019 were received separately from the Applicant's rebuttal testimony, those comments are allowed into the record and the motion by Groups 2 and 10 to strike those comments is denied.

9. Testimony relating to the Underground Alternative Analysis.

- a. Intervenor Groups 2, 4, 8, and 10 moved to strike the Applicant's rebuttal testimony pertaining to the underground alternative in its entirety, arguing that it is an attempt by the Applicant to modify the application regarding the alternatives analysis through rebuttal testimony rather than submitting an amended application. These Intervenor Groups contend that allowing the rebuttal testimony pertaining to the underground alternative does not allow them sufficient time to address it and it allows the Applicant to cure a defect in the application.
- b. Intervenor Group 4 requested that if Mr. Dickinson's testimony relating to the underground alternative remains in the record he be required to appear at the May hearing date for further cross examination.
- c. Intervenor Group 8 requested that the Applicant be required to file the rebuttal testimony as an amendment to the application.
- d. The Presiding Officers agree that the volume of the Applicant's rebuttal testimony pertaining to the underground alternative is sizeable and additional time is warranted for the Department staff, Commission staff and the Intervenor to read and develop questions on it. Therefore, the Presiding Officers have determined that the hearing will be extended into May. However, the Presiding Officers do not agree that the information rises to the level of an amendment to the application. For this reason, the motions to strike the testimony in its entirety are denied, and the motion requiring the Applicant to file its rebuttal testimony as an amendment to the application is also denied.
- e. 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. The deadline for this limited sur-rebuttal testimony will be April 19, 2019 at 5:00 pm. Any objections to the sur-rebuttal testimony will be due April 26, 2019 at 5:00 pm.

- f. The Applicant stated in its March 27, 2019 Response to Motions to Strike that it was amenable to having Mr. Dickinson appear for cross examination at the May hearing date (in addition to the April dates). The Presiding Officers appreciate this flexibility, and Mr. Dickinson will be required to be present in May as well as for his cross-examination on his other testimony during the April hearing dates.
- g. 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.

Dated: March 28, 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