



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION



PAUL R. LEPAGE
GOVERNOR

PAUL MERCER
COMMISSIONER

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY)
NEW ENGLAND CLEAN ENERGY)
CONNECT) APPLICATION FOR NATURAL
25 Municipalities, 13 Townships/Plantations,) RESOURCES PROTECTION ACT PERMIT
7 Counties) AND SITE LOCATION OF DEVELOPMENT
L-27625-26- A-N) ACT PERMITS
L-27625-TB-B-N) PUBLIC HEARING
L-27625-2C-C-N) SECOND PROCEDURAL ORDER
L-27625-VP-D-N)
L-27625-IW-E-N)

This Second Procedural Order (Order) sets forth rulings of the Department of Environmental Protection (Department or DEP) on certain information discussed at the pre-hearing conference held by Department and Land Use Planning Commission (LUPC) on Friday, September 7, 2018. The main purposes of the pre-hearing conference were to discuss the consolidation of the intervenors, the topics for the hearing, and the potential timing and location of the hearing. The Department took into consideration the discussion at the pre-hearing conference as well as appropriate submissions.

SERVICE LIST UPDATES

- 1. Additional Intervenor in the DEP Process. On August 2, 2018, Wagner Forest Management, Ltd., (Wagner) submitted a letter to the LUPC which was dated July 30, 2018 and which was addressed to the DEP requesting leave to intervene. The letter provided information concerning Wagner's direct and substantial interest in the project, specific contentions concerning the project and aspects of the Site Location of Development Act that it intended to address. This letter was apparently not received by the DEP. Wagner also requested and was granted Intervenor Status in the LUPC proceeding. Because Wagner requested Intervenor Status in the DEP process but may have conflated the two processes, its petition for Intervenor Status in the DEP process is granted.
2. Introduction of New Presiding Officer. On September 26, 2018, in accordance with Chapter 3 § 4(B) of the Department's rules, Commissioner Paul Mercer appointed Susanne Miller, Director of the Eastern Maine Regional Office, to be the new Presiding Officer in this matter. Christina Hodgeman is leaving her position with the State of Maine which would disqualify her from serving as the Presiding Officer in this matter. As discussed at the First Pre-Hearing Conference, pursuant to the prohibition on ex parte communication no party may communicate with the Presiding Officer directly or indirectly with regard to this matter except with notice and opportunity for all parties to participate.

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2. Updated Service List. The updated service list is attached to this procedural order reflecting the addition of Wagner as an Intervenor, the entry of appearance by Gerald F. Petruccelli, Esq. on behalf of the Maine State Chamber of Commerce, and the appointment of Susanne Miller as the Presiding Officer.

CONSOLIDATION OF INTERVENORS

3. Chapter 3 § 11 (A)(6) allows the Presiding Officer to consolidate Intervenor. Consolidated Intervenor would combine their presentations of evidence and argument to expedite and simplify the hearing. Due to the complex nature of the project, geographical span of the project, and number of Intervenor between the Department and the LUPC, the Intervenor were asked to submit information on voluntary consolidation or argument as to why they should not be consolidated.
4. During the pre-hearing conference, the Department and LUPC allowed the Intervenor time to orally discuss their positions with regard to consolidation. Any additional information or argument concerning consolidation of Intervenor was due on September 14, 2018. After considering the information received and discussions at the pre-hearing conference, the Department and LUPC have decided upon consolidations that result in a total of ten Intervenor in this matter. The Department and the LUPC took into consideration the topics of concern for each Intervenor, stance on the project, and which proceedings each Intervenor was interested in in making this determination.

Group 1: Friends of Boundary Mountains; Maine Wilderness Guides; Old Canada Road

Group 2: West Forks Plantation; Town of Caratunk; Kennebec River Anglers; Maine Guide Services; Peter Dostie (Hawk's Nest Lodge); Mike Pilsbury

Group 3: International Energy Consumer Group; City of Lewiston, International Brotherhood of Electrical Workers, Local 104; Maine Chamber of Commerce; Lewiston/Auburn Chamber of Commerce*

Group 4: Natural Resources Council of Maine; Appalachian Mountain Club; Trout Unlimited

Group 5: "Neutral Landowners:" Brookfield Energy; Wagner

Group 6: The Nature Conservancy; Conservation Law Foundation

Group 7: Western Mountains and Rivers Corporation

Group 8: Next Era

Group 9: Office of the Public Advocate

Group 10: “LUPC Residents and Recreational Users*.” Edwin Buzzell

The asterisks (*) show Intervenor in only the LUPC process and they will be individually identified in the LUPC’s forthcoming Procedural Order. Others listed are either Intervenor in the DEP process only or both the DEP and LUPC processes.

5. Each individual Intervenor will remain on the service list and will receive all the filings for this proceeding. Each consolidated Intervenor group must designate a point person as the contact person for the purpose of this proceeding **by 5:00 pm on Friday, October 12, 2018**. The point person will be the one filing information (pre-filed testimony, exhibits, etc.) for the Intervenor group and will primarily represent the Intervenor group at the hearing. This does not preclude other Intervenor within the group from providing testimony or information at the hearing. At the hearing, the point person can call on others from the Intervenor group to present certain sections of testimony or do a cross-examination.
6. The Department and the LUPC will continue with service to the Parties by email since no party has objected to the service of materials by email. One objection came from Mr. Wagner when the Department and LUPC suggested combining the Department and LUPC’s service lists into one list. That objection is denied. The Department will maintain a consolidated list with the LUPC contacts. All filings will go to all Department and LUPC parties in this matter.

HEARING TOPICS

7. The statements made at the pre-hearing conference concerning potential hearing topics and written submittals regarding the topics the Parties wish to be addressed at the hearing have been considered. The Department and LUPC have decided upon the following four (4) major topic areas along with several subtopics as subject matters for the hearing. LUPC statutory references and criteria are not reflected here as they will be set forth separately in the LUPC Second Procedural Order.
 - a. Scenic Character and Existing Uses – 38 M.R.S. § 480-D(1), 38 M.R.S. § 484(3), DEP Rules Chapters 315 and 375 § 14: The applicant must demonstrate that the proposed activity will not unreasonably interfere with the scenic character, existing scenic, aesthetic, recreational or navigational uses and that the development fits harmoniously into the natural environment.
 - i. Visual Impact Assessment and Scenic/Aesthetic Uses
 - ii. Buffering for Visual Impacts
 - iii. Recreational and Navigational Uses

- b. Wildlife Habitat and Fisheries – 38 M.R.S. § 480-D(3), 38 M.R.S. § 484(3), and DEP Rules Chapters 335 and 375 § 15: The applicant must demonstrate that the proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat.
- i. Endangered Species – Roaring Brook Mayfly, Spring Salamanders
 - ii. Brook Trout Habitat
 - iii. Habitat Fragmentation
 - iv. Buffer Strips around Cold Water Fisheries

Alternatives Analysis – 38 M.R.S. §§ 480-D (1) & (3), 38 M.R.S. § 484(3), DEP Rules Chapters 310, 315, and 335: The applicant must demonstrate that the proposed project would not unreasonably impact “protected natural resources,” as defined by the Natural Resources Protection Act and listed above, in light of practicable alternatives to the proposal that would be less damaging to the environment. Topics for the hearing will also include evidence addressing 38 M.R.S. § 480-D (8): The applicant must demonstrate that, with regard to the crossing of the outstanding river segment, no reasonable alternative exists which would have less adverse impact upon the recreational and natural features of the river segment.

- c. Compensation and Mitigation – 38 M.R.S. § 480-D, 38 M.R.S. § 484(3), DEP Rules Chapters 310 and- 375 § 15. The applicant must demonstrate compensation for unavoidable impacts to certain resources.
- i. Cold Water Fisheries Habitat
 - ii. Outstanding River Segment
 - iii. Wetlands

ADDITIONAL MATERIAL AND TIMING

8. In a letter to the Applicant dated September 4, 2018, the Department and the LUPC requested certain necessary additional information pertaining to the application. At the pre-hearing conference, CMP stated that the information would be submitted to the by October 19, 2018.
9. The Department will review that information for completeness. Once the Department makes the determination on whether the application materials are complete, a third procedural order will be issued which, if the materials submitted are complete, will include a date by which pre-filed testimony and exhibits, objections to pre-filed testimony and exhibits, and pre-filed rebuttal testimony are due.

Dated: October 5, 2018



Susanne Miller
Presiding Officer