STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:	)	
	)	
CENTRAL MAINE POWER COMPANY	)	APPLICATION FOR SITE LOCATION OF
25 Municipalities, 13 Townships/Plantations,	)	DEVELOPMENT ACT PERMIT AND
7 Counties	)	NATURAL RESOURCES PROTECTION
	)	ACT PERMIT FOR THE NEW ENGLAND
L-27625-26-A-N	)	CLEAN ENERGY CONNECT FROM
L-27625-TB-B-N	)	QUÉBEC-MAINE BORDER TO LEWISTON
L-27625-2C-C-N	)	AND RELATED NETWORK UPGRADES
L-27625-VP-D-N	)	
L-27625-IW-E-N	)	

MOTION FOR RECONSIDERATION

Intervenor Group 2 and Intervenor Group 10 (collectively, "Groups 2 and 10") by and through their attorneys, BCM Environmental & Land Law, PLLC, and Group 4, by and through its attorney, Susan Ely, file this Motion for Reconsideration of the Department of Environmental Protection's (Department) Tenth Procedural Order (Tenth Order) dated April 19, 2019, and request that the Department reconsider the Presiding Officer's decision regarding Hearing Schedule and submitting additional testimony. In support of this Motion, Groups 2, 4 and 10 state as follows:

Contrary to Central Maine Power's ("CMP" or the "Applicant") oft repeated assertion that Intervenors seek *only* to delay these proceedings, we are far more concerned with fairness, adequate hearing time to vet all relevant information, and due process, than simply throwing up time delay road blocks. The Tenth Order requests supplemental information and evidence from the applicant and the parties on:

- Whether undergrounding, tapering, or taller pole structures in areas identified during the hearing as environmentally sensitive or of special concern (for example, The Nature Conservancy's nine identified areas, Trout Unlimited's mention of Tomhegan Stream, and other specific wildlife corridors identified by parties) are technically feasible and economically viable minimization or mitigation measures, and
- Whether any of these techniques would satisfy concerns raised at the hearing or be a preferred alternative.

(Tenth Order at 1). The Tenth Order requires that "[i]nformation and evidence on these environmentally sensitive or special concern areas must include specific locations, such as GPS coordinates, latitude/longitude, or locations between existing pole structures to allow all parties and the Department to pinpoint the locations."

The Tenth Order also gives only the Applicant the opportunity to provide additional documents set forth in Appendix B. These late requests, made on April 19th, just thirteen working days before the May 9 hearing, sets off another frantic scramble to review and respond to information that, yet again, CMP failed to deliver with its application.[1] Moreover, in addition to the supplemental information, evidence and documents, all Parties are expected to address the 26 questions/considerations set forth in Appendix A. However, *none* of the Intervenors are being allowed to put forth "written rebuttal testimony in response to this requested supplemental evidence." Tenth Order at p.2.

The 1) requirement to produce new information by May 1; 2) inability of parties to rebut that new information through written testimony; and 3) short timeframe between the May 1 submission deadline and the May 9 hearing are unfair, burdensome, and a miscarriage of due process. The Tenth Order does not leave sufficient time for parties to respond to these onerous

[1] The Department's request for even more information related to the underground alternative only reinforces and proves the point made in Groups 2 and 10's Motion to Strike dated March 27, 2019: CMP should be ordered to amend its application rather than being allowed to submit *unchallenged* data and information.

information requests, does not leave sufficient time for parties to review the applicant's responses prior to the hearing, and creates a bias in this proceeding in favor of CMP.

First, the May 1 deadline to produce the supplemental information and evidence outlined above does not leave sufficient time for parties to respond to the request. Parties are already preparing for the May 9 hearing and do not have sufficient time or capacity to create an additional filing with the requested detail and information to assist the hearing examiners in their decision-making process. The timeframe is also too short for parties who have not already retained an expert on undergrounding techniques to hire one for this newly introduced hearing topic. An additional complication is that this is mud season in Maine, making it very difficult to access some of the locations at issue in the Tenth Order. Additionally, CMP's failure to provide sufficient information on tapering and undergrounding, makes it difficult to provide the information requested.

Second, given that the Department is holding hearings on the topics covered by the additional evidence to be submitted on May 1, it begs the question as to how the Department can adequately assess the validity and veracity of the new evidence absent the opportunity for Intervenors to submit rebuttal testimony and evidence. As demonstrated during the hearings, cross examination is but one way to do so; rebuttal is another and one which has thus far clearly provided important value for the Department as evidenced by the scope of the requested documents and range of questions set forth in the Tenth Order. Due process considerations alone require a reconsideration of whether that foundational principle is being undermined with the limits set forth in the Tenth Order.

Third, the filings on May 1 are likely to be substantial. With only five working days between the 5pm submission deadline on May 1 and the commencement of the hearing on May

9, parties will have insufficient time to prepare for meaningful cross-examination of witnesses and discussion of the 26 questions/topics outlined in Appendix A.

Instead, the more appropriate approach would be for CMP to modify its pending application to include an undergrounding alternatives analysis pursuant to Chapter 3 §17 of the Department's *Rules Governing the Conduct of Licensing Hearings*. Under those rules, when an applicant modifies a pending license application within sixty days prior to a scheduled hearing, "the Presiding Officer may provide an opportunity to submit written testimony in response to the proposed modification, postpone the hearing, or take any other appropriate action ***to ensure that all parties have a full and fair opportunity to address the modification and prepare for the hearing***." The new information required in the Tenth Order requests that CMP produce the equivalent of a permit modification without the full and fair opportunity for intervenors to address that modification or prepare for the hearing. Either this new information should not be allowed and CMP should have to defend its inadequate application as-is, or parties should be permitted a timely opportunity to 1) review the additional evidence and 2) submit rebuttal testimony and evidence in advance of a hearing on this new information.

Even if this new information is not considered a permit modification, pursuant to Chapter 3 § 8 of the Department's *Rules Governing the Conduct of Licensing Hearings*, "Every party has the right to present evidence and argument on all issues in contention, and at any hearing to call and examine witnesses and to make oral cross-examination." The Tenth Order deviates both from the Rule and the hearing process that has thus far been followed in an orderly manner. The Intervenors should therefore be permitted a timely opportunity to 1) review the additional evidence and 2) submit rebuttal testimony and evidence in advance of a hearing.

With respect to the schedule for May 9, it is unreasonable and unrealistic to expect the Parties and the Department to fully and adequately cover all of the requested additional evidence, cross examine all of the new and recalled CMP witnesses, and cross examine any Intervenor rebuttal witnesses in one day and potentially well into the night. Trying to accomplish a final wrap-up of this hearing in one marathon day defies practicality and reasonableness, not to mention the inherent bias it creates against due process. Therefore, an additional hearing day should be scheduled to review the new information submitted on May 1.

Finally, Intervenors request the Commissioner reconsider the Presiding Officer's verbal indication[2] that only hearing topics may be included in the post hearing briefs. Intervenors respectfully request that the Intervenors be permitted (but not required) to address Department criteria other than those topics included in the hearings. It may be useful, for example, for the Department to review an Intervenor's data submitted as public comment related to green-house gas emissions and then argued in its legal brief, as it relates to No Unreasonable Alteration of Climate. 38 M.R.S. § 484 (3). The authority to permit briefing on additional topics is certainly available pursuant to Chapter 3 § 23 of the Department's *Rules Governing the Conduct of Licensing Hearings* Rule, "All parties have the right to submit briefs and proposed findings of fact in writing after the close of the hearing and the record, within such time as specified by the Presiding Officer." It does not limit the briefs to just the hearing topics.

CONCLUSION

For all of the foregoing reasons, Intervenor Groups 2, 4 and 10 respectfully request that the Department reconsider the prohibition on Intervenors submitting rebuttal testimony and evidence related to the newly requested evidence, set forth new deadlines for such rebuttal

[2] None of the Procedural Orders have directly addressed this question.

including a new hearing date, and allow filing post-hearing briefs and proposed findings on criteria other than the hearing topics.

In the alternative, Groups 2, 4, and 10 request that the Tenth Order be rescinded and CMP not be allowed to supplement its application in this manner. Instead, Groups 2, 4, and 10 would request that CMP be required to submit this information as a modification of its pending application pursuant to Chapter 3 § 17 of the Department's *Rules Governing the Conduct of Licensing Hearings.*

WHEREFORE, Intervenor Groups 2, 4 and 10 respectfully ask that this Motion to Reconsider be GRANTED.

Dated April 29, 2019

Respectfully Submitted,

Intervenor Group 4
By their attorney/Spokesperson,

Susan Ely
Natural Resources Council of Maine
3 Wade Street
August, ME 04330
207-430-0175
sely@nrcm.org

Intervenor Group 2 and Intervenor Group 10
By their attorneys,

Elizabeth A. Boepple, Esq. (Me. Bar No. 004422)
BCM ENVIRONMENTAL & LAND LAW, PLLC
148 Middle Street, Suite 1D
Portland, ME 04101
603-369-6305
boepple@nhlandlaw.com