

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

April 23, 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 Response to Groups 2 and 10's Motion to Strike

Dear Jim and Bill:

Enclosed is CMP's Response to Groups 2 and 10's Motion to Strike.

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)

**RESPONSE OF CENTRAL MAINE POWER COMPANY
TO INTERVENOR GROUPS 2 AND 10'S OBJECTIONS AND MOTION TO STRIKE**

On April 19, 2019 Intervenor Groups 2 and 10 moved to strike portions of the pre-filed rebuttal testimony of Central Maine Power Company (CMP) witness Thorn Dickinson. Their motion should be denied for the following reasons.

First, Intervenor Groups 2 and 10's motion is untimely. As the Presiding Officers noted in their Joint Seventh Procedural Order, the deadline for motions to strike the rebuttal testimony of existing witnesses was 5:00 p.m. on March 27, 2019:

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 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. [Seventh Procedural Order ¶ II.7.b.]

Mr. Dickinson submitted pre-filed direct testimony, and thus is an “existing” witness. *See also* Tenth Procedural Order ¶ 7.c.i. (listing Mr. Freye, Mr. Tribbet, Mr. Bardwell, and Mr. Emond as CMP’s “new witnesses in rebuttal”). Any motions to strike Mr. Dickinson’s rebuttal testimony were due on March 27, 2019, so Intervenor Groups 2 and 10’s April 19 motion is more than three weeks late.

Second, Intervenor Groups 2 and 10 have already moved to strike Mr. Dickinson’s rebuttal testimony, and the Presiding Officers have already denied their motion. Along with Intervenor Group 4 and Intervenor Group 8, Intervenor Groups 2 and 10 timely moved to strike “CMP Witnesses Thorn Dickinson and Gerry Mirabile Rebuttal Testimony and all associated exhibits related to Alternatives Analysis.” *See* Groups 2 and 10’s Objections and Motion to Strike (Mar. 27, 2019) at 3; *see also* Seventh Procedural Order ¶ II.7.c. In that March 27 motion, Groups 2 and 10 spent more than two full pages setting forth their objections to Mr. Dickinson’s rebuttal testimony. The Presiding Officers denied their motion. Seventh Procedural Order ¶ II.8. They should not now be allowed a second, late bite at the apple.

Third, some of the very language that Groups 2 and 10 now move to strike was already stricken based on the timely objection of other intervenor groups. *Compare* Groups 2 and 10’s Objections and Motion to Strike (Apr. 19, 2019) at 3 (requesting that the Presiding Officers strike Mr. Dickinson’s “Page 11 through the end of the first paragraph on page 13, ending with, ‘economic viability of the Project.’”) *with* Seventh Procedural Order ¶ II.8.a. (striking “Thorne [*sic*] Dickinson – page 11, line 5, starting with “As part of...” through page 13, line 3.”).

Perhaps Groups 2 and 10 are unaware of the March 28, 2019 rulings of the Presiding Officers in

their Seventh Procedural Order, but in any event Groups 2 and 10's ignorance does not excuse their duplicative present request.

Finally, and notwithstanding their untimely, duplicative, and dilatory objections, the substance of Groups 2 and 10's present motion is entirely without merit. As noted above, the Presiding Officers have already ruled on similar objections to Mr. Dickinson's rebuttal testimony, finding them without merit. Groups 2 and 10 provide no reason that the Presiding Officers should now reverse course.

Indeed, Mr. Dickinson's rebuttal testimony is directly relevant to the "Alternatives Analysis" hearing topic¹ and directly rebuts the pre-filed direct testimony of the numerous witnesses who unequivocally called for an undergrounding analysis, including Group 2. Chapter 310.9(A) requires that the alternatives analysis must investigate whether there exists "a less environmentally damaging practicable alternative to the proposed alteration, which meets the project purpose." Furthermore, "practicable" alternatives are limited to those that are "available and feasible considering cost, existing technology and logistics based on the overall purpose of the project." Chapter 310.3(R). Mr. Dickinson's rebuttal testimony explains precisely this – why undergrounding is so obviously excessively costly that it would undermine the Project and defeat the Project's purpose – in rebuttal to the cry of Groups 2, 6, and 8 for this futile exercise. CMP offered Mr. Dickinson's information on why undergrounding is so far-fetched only in response to the direct testimony of these groups that alleges, without foundation, that undergrounding is a viable alternative and should have been considered.

¹ Groups 2 and 10 also complain that Mr. Dickinson's reiteration of the applicable review standards somehow amounts to a rendering of a legal opinion. This plainly is not true, and it is entirely appropriate for a witness to restate the review standards that his or her testimony will address.

For the foregoing reasons, the April 19, 2019 Motion to Strike of Groups 2 and 10 should be denied in its entirety.

Dated this 23rd day of April, 2019.



Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for Applicant Central Maine
Power Company*