

charles.soltan@soltanbass.com  
james.bass@soltanbass.com  
benjamin.smith@soltanbass.com

(207) 621-6300 (p)  
(207) 621-9797 (f)  
www.soltanbass.com

March 11, 2019

Bureau of Land Resources  
c/o James Beyer, Regional Licensing and Compliance Manager  
Maine Department of Environmental Protection  
106 Hogan Road Suite 6  
Bangor, Maine 04401

**Re: New England Clean Energy Connect – Western Mountains & Rivers  
Corporation Response and Objection to Motions to Strike of Intervenor  
Groups 2, 4 and 10.**

Dear Mr. Beyer,

Please find enclosed the Response and Objection of Western Mountains & Rivers Corporation ("WM&RC") to the Motions to Strike of Intervenor Groups 2, 4, and 10.

Please let me know if you should need additional information.

Sincerely,

  
Benjamin J. Smith, Esq.

BJS/car  
cc : Service List  
Enclosure

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, Lowelltown Twp, Skinner Twp, )  
Appleton Twp, T5 R7 BKP WKR, )  
Hobbs town Twp, Bradstreet Twp, )  
Parlin Pond Twp, West Forks Plt, Moxie Gore, )  
The Forks Plt, Bald Mountain Twp, Concord Twp )

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**RESPONSE OF WESTERN MOUNTAINS & RIVERS CORPORATION  
TO OBJECTIONS AND MOTIONS TO STRIKE OF GROUPS 2, 4, AND 10**

Groups 2, 4, and 10 have objected to portions of the pre-filed testimony of Joseph Christopher and Larry Warren that include statements relating to a Memorandum of Understanding (“MOU”) between Western Mountains & Rivers Corporation (“WM&RC”)<sup>1</sup> and Central Maine Power Company (“CMP”), as well as various benefits offered under the MOU should the Project be permitted and constructed.

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<sup>1</sup> WM&RC has been identified for purposes of this proceeding as Intervenor Group 7.

They assert that testimony related to potential benefits provided by the MOU is not relevant to the applicable statutory criteria and is outside of the scope of the designated hearing topics. Contrary to these claims, it is entirely appropriate for the DEP to consider non-environmental benefits, including potential benefits that may result under the MOU if the Project is permitted and enters commercial operation. The Law Court has set forth the following interpretation of the reasonableness standard under the Natural Resources Protection Act ("NRPA"):

The specific standard at issue in this case is described in section 480-D(1), which provides that to obtain a permit for a proposed project an applicant must demonstrate that the project "will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses." 38 M.R.S.A. § 480-D(1). Whether a proposed project's interference with existing uses is reasonable depends on a multiplicity of factors, one of which is the existence of a practicable alternative. A balancing analysis inheres in any reasonableness inquiry. See *Grant's Farm Assocs., Inc. v. Town of Kittery*, 554 A.2d 799, 802 (Me.1989).

*Uliano v. Board of Environmental Protection et al.*, 876 A.2d. 16, 19-20 (Me. 2005).

From *Uliano*, it is clear that the reasonableness standard found in the NRPA requires the DEP to consider a "multiplicity of factors" and a "balancing analysis" which necessarily must weigh the costs and benefits of a development. The reasonableness standard applies to all factors listed under the first issue identified for hearing. See 38 M.R.S. §480-D (1) ("The activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses"). Interpreting the reasonableness standard to only allow for consideration of environmental benefits while excluding other benefits such as increased economic development through nature-based tourism and other recreational activities would negate any potential development and would lead to an absurd result. Furthermore, Chapter 315 of the DEP's rules provides that

“[u]nreasonable adverse visual impacts are those that are expected to unreasonably interfere with the general public’s visual enjoyment and appreciation of a scenic resource, or those that otherwise unreasonably impair the character or quality of such a place.” DEP Rule Chapter 315 (4).

From these provisions set forth in statute and rule, it is clear that the impact of the Project upon recreational, scenic, aesthetic, and navigable uses of natural resources affected by the Project must also consider foreseeable benefits from the Project upon such uses. Such potential benefits should include potential benefits under the terms of the MOU such as increased access to navigable waters, increased access to other rivers, streams, land, and other natural resources that can be utilized for various recreational activities and be enjoyed by the general public.

Furthermore, contrary to the assertions of Intervenor Group 4, there is no requirement that the terms of the MOU be part of the compensation or mitigation plan offered by CMP in order to be considered by the Department, and no authority has been cited in support of this finding. Application of the reasonableness standard to the first hearing issue allows the Department to consider not only any potential adverse impacts of the Project but also potential positive impacts upon recreational, scenic, aesthetic, and navigable uses of affected natural resources. The question of whether these benefits are likely to accrue if the project is permitted, the enforceability of the terms of the MOU or any limitations on the enforceability of the MOU given the parties to the MOU, do not affect the admissibility of the MOU although they may go to the weight that the DEP should give such evidence as part of its evaluation of the Project. Thus, while it is appropriate for counsel for Intervenor Groups 2, 4, and 10 to explore

these issues on cross examination, WM&RC should not be prevented from offering evidence relating to benefits under the MOU.

Finally, WM&RC would note that the primary reason that it was given intervenor group status on a separate basis from other consolidated intervenors was its unique position in being able to offer information relating to the MOU and benefits that would accrue to the region under the MOU if the Project was permitted. If the Motion to Strike were granted, the DEP's consideration would be based on a truncated and incomplete record.

For the foregoing reasons, the Presiding Officer should find that the terms of the MOU and the potential benefits provided under the MOU are relevant to the DEP's consideration of the reasonableness standard found in the NRPA and should deny the Motions of Groups 2, 4, and 10 to strike portions of WM&RC's pre-filed direct testimony. Because the deadline for rebuttal testimony is currently set for March 21, WM&RC respectfully requests that the Presiding Officer rule upon this request at her earliest convenience.

Dated: March 11, 2019

Respectfully Submitted,



Benjamin J. Smith, Esq.  
*Attorney for Western Mountains & Rivers Corporation*

Soltan Bass Smith LLC  
P.O. Box 188  
96 State Street, 2<sup>nd</sup> Floor  
Augusta, Maine 04332-0188  
207-621-6300 (p)  
207-621-9797 (f)  
207-415-7774 (c)  
benjamin.smith@soltanbass.com  
www.soltanbass.com