

**STATE OF MAINE  
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

**and**

**STATE OF MAINE  
LAND USE PLANNING COMMISSION**

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
L-27625-TB-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	)	

**GROUPS 2 AND 10'S RESPONSE TO CMP'S  
OBJECTIONS AND MOTION TO STRIKE**

Intervenor Group 2 and Intervenor Group 10 (collectively, "Groups 2 and 10") by and through their attorneys, BCM Environmental & Land Law, PLLC, submit the following in response to CMP's Objections and Motion to Strike.

First, with respect to the captions for Groups 2 and 10 witness testimony, we admit to an error in the captions/cover pages for the witnesses pre-file testimony and have corrected that by filing revised and corrected cover pages for each witness' pre-file testimony. That technical

error, however, does not merit the harsh result CMP seeks to have the LUPC impose on the testimony – striking all of the testimony. To request such a result is clearly elevating form over substance.

Second, Groups 2 and 10’s consolidated efforts have caused some confusion as to which witnesses are appearing on behalf of which Group. Since the creation of the 10 Intervenor Groups was an attempt by the DEP and LUPC to manage the number of Intervenors, the groups designation should not be (and we do not believe the DEP and LUPC intended it that it be) a limitation on sharing witnesses. By statute, the DEP’s and LUPC’s respective jurisdiction is established. That controls how the Department and Commission will be reviewing both the hearing topics as well as the other statutory criteria. Whether a witness is appearing on behalf of Group 2 or Group 10 should be neither relevant nor material to the proceedings. Moreover, Groups 2 and 10 agreement to consolidate their efforts is not meant to confuse but rather to assist in a more manageable proceeding.

Third, CMP argues that the 4 hearing topics<sup>1</sup> are limited to *only* the sub-topics within those four topics. The logic they attempt to parse out of the DEP’s Procedural Order language is, well – illogical. The plain reading states: “The Department and LUPC have decided upon the following four (4) major topic areas *along with* several sub-topics as subject matters for hearing.” DEP, Second Procedural Order, ¶ 7, dated October 5, 2018 (emphasis added). The words “along with” do not mean exclusively. Were that the DEP’s intent, then there would be little reason to continue the joint proceedings and hearing with the LUPC on the *general topics* of Scenic Character and Existing Uses and Alternatives Analysis since the LUPC’s statutory review is not focused exclusively on those subtopics. Rather, the sub-topics were identified in

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<sup>1</sup> Scenic Character and Existing Uses, Wildlife Habitat & Fisheries, Alternative Analysis, Compensation & Mitigation

the course of the proceedings through the various submissions as being of particular, but not exclusive concern. This was reinforced in the Joint Notice of Public Hearing under the bold paragraph caption: **HEARING TOPICS:**

Although the Department and Commission will consider all of their respective review criteria when making a decision on the applications for the Proposed Project, the issues on which testimony and evidence will be received at the hearing is limited to the following: (1) potential impacts to scenic character and existing uses; (2) potential impacts to wildlife habitat and fisheries; (3) the alternatives analysis; and (4) proposed compensation for impacts and mitigation of impacts.

Fourth, the specific objections to the substance of the witnesses' testimony are equally meritless. For example, the testimony of Elizabeth Caruso sets out the Town of Caratunk's general concerns in much the way CMP's testimony provides a project overview and several other intervenors provide general qualifications of who they are and why they are engaged in the proceedings. The overview provides the context for the testimony. The same is true with respect to the testimony of Greg Caruso<sup>2</sup>. Mr. Caruso's testimony is submitted within the general topics and is therefore relevant and admissible.

The defects cited by CMP in the signature pages for Mr. Merchant (missing jurat) and Mr. Robinson (missing date) are technical defects and should not be grounds for throwing out the entirety of their testimony especially since the testimony will be sworn to in person at the hearing. Further with respect to Mr. Merchant's pre-file, his non-hearing topics are captioned as non-hearing topics and are not offered as testimony but as his comments as the DEP specifically allowed. This section is therefore appropriately set apart from his testimony and properly submitted. Similarly, Mr. Robinson's statements and comments under the heading "Criteria Beyond the Scope of Hearing" is not being offered as testimony but are offered for the DEP and LUPC's consideration as is allowed. Otherwise, the objections raised by CMP on the substance

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<sup>2</sup> Mr. Caruso's prefile testimony with his signature page is being re-filed.

of Mr. Merchant's and Mr. Robinson's testimony are premised on the overly restrictive topic limitations discussed above. The testimony of each is responsive to the general topics, i.e., Wildlife Habitat & Fisheries for Mr. Merchant and Scenic Character and Existing Uses and Alternatives Analysis for Mr. Robinson. Their testimony is therefore within the scope of the general topics and therefore permissible.

The individual intervenors in Group 10 are indeed all Intervenors (with the exception of Ed Buzzell) in the LUPC. Once again, the witness's testimony is mischaracterized by CMP. Each individual provided the context for their testimony and framed it within the confines of the general topics. These individuals' voices should not be silenced by the overly restrictive approach CMP urges.

Finally, CMP's overall Objections and Motion are focused exclusively on the Intervenors in Opposition to NECEC and their witnesses who are submitting testimony illustrative of the negative impacts this massive project would wreck on the northern segment of the proposed corridor route and the environment of Maine in general. CMP's selective targeting implies that the hearing topic limitations are only applicable to the opposition Intervenors and not to Intervenor project proponents or to CMP. CMP's submission of witness testimony beyond the scope of the topics, failure to file any objection to Intervenor project proponents with testimony beyond the scope, plus seeking sanctions of exclusion from the proceeding for certain Intervenor Opponents suggests that the DEP and LUPC proceedings be skewed in favor of the project thereby undermining the process and opportunity for Intervenors to present relevant evidence that the hearing was intended to provide. There is no doubt CMP is the Applicant and has the right to present its project but that does not give it license to play by rules different than those which others must follow.

For all of the foregoing reasons, Intervenor Groups 2 and 10 respectfully request that the DEP and LUPC deny CMP's Motion to Strike Groups 2 and 10 witnesses and prefile testimony.

Respectfully Submitted,  
Intervenor Group 2 and Intervenor Group 10  
By their attorneys,



Dated: March 12, 2019

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