

**STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

and

**STATE OF MAINE
LAND USE PLANNING COMMISSION**

IN THE MATTER OF:)	
)	
CENTRAL MAINE POWER COMPANY)	
25 Municipalities, 13 Townships/Plantations,)	
7 Counties)	
L-27625-26-A-N)	APPLICATION FOR SITE LOCATION OF
L-27625-TB-B-N)	DEVELOPMENT ACT PERMIT AND
L-27625-2C-C-N)	NATURAL RESOURCES PROTECTION
L-27625-VP-D-N)	ACT PERMIT FOR THE NEW ENGLAND
L-27625-IW-E-N)	CLEAN ENERGY CONNECT
)	
)	
CENTRAL MAINE POWER COMPANY)	
NEW ENGLAND CLEAN ENERGY CONNECT)	
SITE LAW CERTIFICATION SLC-9)	

**GROUPS 2, 4 AND 10'S APPEAL OF ELEVENTH PROCEDURAL ORDER
PURSUANT TO DEP RULE CHAPTER 3 § 4(D) and
ME LUPC CHAPTER 5 § 5.11(4)**

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, make this expedited appeal to the Commissioner of the Department of Environmental Protection and objection to the Land Use Planning Commission, of certain decisions of the Presiding Officers in the Jointly issued Eleventh Procedural Order dated May 1, 2019 (Joint Order 11) in the above captioned matter.

Groups 2, 4 and 10 appeal and object to the decision denying Intervenors request to submit rebuttal testimony and exhibits to Supplemental Testimony and Evidence and denying additional hearing time.

Background

On April 19, 2019, the Department issued its Tenth Procedural Order (“Tenth Order”) requesting that Central Maine Power Company (“CMP” or “Applicant”) and parties submit supplemental information 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 of the Tenth Order.

On April 29, 2019, Groups 2, 4, and 10, filed a Motion to Reconsider (“Groups 2, 4, and 10 Motion”), “request[ing] 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 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 requested “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*."

On May 1, 2019, the Presiding Officers issued a Jointly issued Eleventh Procedural Order (Joint Order 11) addressing Groups 2, 4, and 10 Motion and other issues. This appeal is only of the Joint Order 11 decisions denying Intervenors request to submit rebuttal testimony and exhibits to Supplemental Testimony and Evidence and denying additional hearing time.

Discussion

Even before addressing the new material submitted on May 1, 2019, the schedule for May 9, 2019, was anticipated to be full. On the agenda for May 9th was testimony from Group 4 witness Calhoun; CMP's rebuttal witnesses Dickinson, Freye, Tribbet, Bardwell, and Emond; and Group 3 witness Paquette. However, as we feared, the Supplemental Testimony proved to be extensive: 277 pages from 11 CMP witnesses including 2 *additional* new witnesses on top of the *four* new witnesses introduced in CMP's Rebuttal Testimony. This voluminous filing, from a soccer team's worth of individuals, is substantive enough to warrant an entire day of testimony and cross examination and certainly should not be added on to an already full day of testimony, cross examination, agency questions, and re-direct/re-cross. Topics covered by the new May 1, 2019 testimony ranges from detailed cost estimates for different mitigation techniques and descriptions of various undergrounding techniques to analysis of the environmental impacts of a multitude of different mitigation techniques throughout nine different areas of concern within the corridor route.

The Department's recently released draft schedule for the May 9, 2019, hearing ("draft schedule") makes it clear that forcing all of the witnesses into one hearing day is untenable and an abuse of due process. The draft schedule contemplates a 12.5 hour-long hearing, where

CMP's witnesses are not examined until late in the day and, even with this extremely long day, does not provide sufficient time for cross examination of all of the witnesses.

According to the draft schedule,

- Each witness only has 5 minutes to present testimony and rebut CMP's May 1 submission;
- Cross-examination is severely limited to between 15-30 minutes for each panel; and
- The Department and Commission only have 10 minutes per panel for agency questions.

Most alarmingly, parties are only allocated a total of 25 minutes to cross examine CMP Panel 1, 30 minutes to cross examine CMP Panel 2, and 30 minutes to cross examine CMP panel 3. Assuming that Group 5 (Wagner Forest) and Group 9 (the Office of the Public Advocate) continue their practice of not conducting cross examination, that leaves 8 intervenor groups potentially wanting to cross examine these panels. Split 8 ways, each group would have only 3 minutes for Panel 1 and 3 minutes and 45 seconds each for Panels 2, and 3. Put another way, each intervenor group would have only 45 seconds to question each witness in Panel 3. This outrageously expedited hearing timeline is not fair and will not help the parties, the Department, or the Commission reach a full and accurate understanding of the proposed mitigation techniques up for discussion. It is also extremely wasteful of the time and energy parties have put into preparing for this upcoming hearing to learn that so little time has been set aside for discussion in oral summary (only 5 minutes per person) and cross examination (just 85 minutes for 8 different parties to cross examine 12 witnesses on 427 pages of material)

In denying Groups 2, 4, and 10's request to allow written rebuttal testimony in response to the supplemental testimony and evidence, the Department noted that "oral rebuttal testimony will be allowed at the hearing." However, nowhere in the draft schedule is there time set aside

for “oral rebuttal testimony.” The only opportunity for parties to speak is during the 5 minutes per person allocated for a “summary of sur-rebuttal testimony.” This is simply not an adequate opportunity to both summarize testimony and rebut 277 pages of testimony supplied by CMP just days before the hearing.

In denying Groups 2, 4, and 10’s request to postpone the deadline for the supplemental testimony and set a new date for the continuation of hearing, the Department again alluded that the “parties have the opportunity to provide oral rebuttal during the hearing.” Not only is there no “opportunity to provide oral rebuttal during the hearing,” but the Department ignored Groups 2, 4, and 10’s concerns that adding this supplemental testimony to an already full hearing day would reduce the ability of the parties, the Department, and the Commission to adequately analyze the information provided.

As we argued in our April 29, 2019, Motion for Reconsideration,

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 1.¹

For all of the foregoing reasons, Groups 2, 4 and 10 request that the portion of the 11th Procedural Order denying the request for additional hearing time be reversed and that additional hearing time be scheduled.

¹ Group 2, 4, 10 Motion for Reconsideration.

WHEREFORE, Intervenor Groups 2, 4 and 10 respectfully ask that this Appeal

be GRANTED.

Dated May 3, 2019

Respectfully Submitted,

Intervenor Group 4
By their attorney/Spokesperson,

Intervenor Group 2 and Intervenor Group 10
By their attorneys,



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

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