

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 Development  
Act permit and Natural Resources Protection  
Act permit for the New England Clean Energy  
Connect (“NECEC”)

L-27625-26- A-N  
L-27625-TB-B-N  
L-27625-2C-C-N  
L-27625-VP-D-N  
L-27625-IW-E-N

SITE LAW CERTIFICATION SLC-9

GROUP 4 (AMC, NRCM, TU) MOTION TO  
STRIKE PRE-FILED REBUTTAL  
TESTIMONY

March 27, 2019

Group 4, consisting of Appalachian Mountain Club (AMC), Natural Resources Council of Maine (NRCM), and the Maine Council of Trout Unlimited (TU), collectively referred to as Group 4, files this Motion to Strike all or a portion of the testimony of the following rebuttal witnesses that filed direct testimony:<sup>1</sup>

- Thorn Dickenson - Motion to Strike all or portions of pre-filed rebuttal testimony
- Larry Warren – Motion to Strike portions of pre-filed testimony

<sup>1</sup> Pursuant to the telephonic pre-hearing conference held on March 26, 2019, Group 4 understands that parties have until 5pm on April 19, 2019, to file any necessary Motions to Strike all or portions of any of CMP’s new witnesses (including Kenneth Freye, Justin Tribbet, Justin Bardwell, and Gary Emond). Therefore, notwithstanding anything in this Motion to Strike, Group 4 reserves the right to object to all or any portions of these new witnesses on or before April 19, 2019.

- Joseph Christopher – Motion to Strike portions of pre-filed testimony
- Global comment about CMP’s testimony

Group 4 also supports Groups 8’s Motion to strike the Central Maine Power Company's (CMP) rebuttal testimony which modifies CMP's application by setting forth an alternative analysis of the undergrounding of the 53 miles of the transmission line's greenfield corridor (Alternative Analysis) or, in the alternative, the Motion to have the Alternative Analysis filed as an amendment to CMP's application. CMP’s rebuttal testimony about its failure to conduct an alternatives analysis of undergrounding the 53 new miles of transmission line is an attempt to amend its application through rebuttal testimony and is fundamentally unfair.

- **Thorn Dickinson - Motion to Strike all or portions of pre-filed rebuttal testimony**

Group 4 objects to the entirety of Thorn Dickinson’s pre-filed rebuttal testimony because, as addressed above in reference to Group 8’s motion, it is an attempt to modify CMP’s application regarding its Alternatives Analysis through rebuttal testimony rather than submitting an amended application.

In the alternative, if Mr. Dickinson’s testimony is not struck in its entirety, Group 4 requests the following sections be struck:

- Pages 1-10, 13-14 and Exhibits CMP 1.1-A and 1.1-B.

Group 4 requests these pages and exhibits be struck from the record because they are a post-hoc rationalization for CMP’s failure to do an Alternative’s Analysis and, therefore, are not relevant to the Department or Commission’s analysis of whether or not CMP did an adequate Alternatives Analysis. Mr. Dickinson himself admitted in a proceeding before the Public Utilities Commission (PUC) that CMP did not evaluate burying the line under the 53 miles of new

corridor.<sup>2</sup> Allowing Mr. Dickinson to submit this rebuttal testimony is an abuse of the process and serves to disadvantage parties attempting to fully participate. Allowing the applicant to supplement the record in this manner creates a perverse incentive for an applicant to wait for intervenor testimony to identify deficiencies in its application and then attempt to fix those deficiencies through rebuttal testimony, thus circumventing the application amendment process.

- Pages 11-12

Group 4 also requests that these pages be struck from the record because they relate to a proposed stipulated settlement (proposed stipulation) at the PUC. This proposed stipulation has not yet been adopted, is not enforceable by either the DEP or LUPC, and is not relevant to DEP or LUPC criteria. Therefore, it is not relevant to this proceeding and should be struck.

In the event that Mr. Dickinson's testimony is not struck in its entirety, Group 4 requests that Mr. Dickinson be made available for additional questioning with the new CMP witnesses at the additional hearing date. This request is reasonable because Mr. Dickinson's testimony is related to the new testimony on CMP's purported alternatives analysis from Mr. Tribbet and Mr. Bardwell.

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<sup>2</sup> Maine Public Utilities Commission, Docket No. 2017-32, January 9, 2019, transcript, pg.89-90.

MR. TANNENBAUM: Can I just follow up quickly? Did -- I wasn't sure I heard this right. Did CMP conduct an analysis of what it would cost to bury the line in the new corridor?

MR. DICKINSON: No.

Maine Public Utilities Commission, Docket No. 2017-232, November 28, 2018, transcript, pg. 37.

MR. MURPHY: This memo focuses on undergrounding under the river, and I'm curious whether there was a similar memo or effort to consider undergrounding in the 57 miles of the green field corridor.

MR. DICKINSON: No, there wasn't.

**Joseph Christopher - Objections to Pre-filed Testimony and Motion to Strike portions of his testimony**

Group 4 objects to the following sections of Mr. Christopher's pre-filed rebuttal testimony:

- Page 2, testimony about structures on the Penobscot River

Group 4 objects to this testimony about structures on the Penobscot River because it is irrelevant to this proceeding.

- Last paragraph on page 2

The last paragraph on page 2 alludes to purported benefits related to a private agreement between CMP and Mr. Christopher's organization (MOU) and the proposed stipulation in the proceeding before the PUC. Neither the MOU nor the proposed stipulation are relevant to this proceeding. They are not part of the compensation and mitigation package that CMP has offered. None of the alleged benefits of either the MOU or Stipulation are included in any part of the compensation and mitigation package. Testimony about private side agreements between parties that is not part of the DEP or LUPC record and is not enforceable by DEP or LUPC is irrelevant. Furthermore, the Stipulation has not been approved by the PUC.

- Exhibits 1-11

Exhibits 1-11 are unlabeled photographs. It is unclear who took the photos, where the photos were taken, or when the photos were taken. Given the lack of authentication and context, these photos should be struck from the record.

For the above reasons, Group 4 objects to these portions of Mr. Christopher's testimony.

## **Larry Warren - Motion to Strike portions of Pre-filed Rebuttal Testimony**

Group 4 requests that the following portions of Mr. Warren's pre-filed rebuttal testimony be struck:

- The last sentence on page 2, beginning with "Recreational developers and users need...",
- The entirety of page 3 through the first two lines of page 4, and
- Exhibits 1 & 2.

These three sections of testimony are not relevant to the hearing topics and should be struck. Mr. Warren's testimony discusses purported benefits related to a private agreement/MOU between CMP and Mr. Warren's organization and a proposed Stipulation in the proceeding before the PUC. Neither the MOU nor the proposed Stipulation are relevant to this proceeding. They are not part of the compensation and mitigation package that CMP has offered. None of the alleged benefits of either the MOU or proposed stipulation are included in any part of the compensation and mitigation package. Testimony about private side agreements between parties that is not part of the DEP or LUPC record and is not enforceable by DEP or LUPC is irrelevant. Furthermore, the Stipulation has not been approved by the PUC.

For the above reasons, Group 4 objects to those portions of Mr. Warren's testimony that relate to the private MOU between Mr. Christopher/WM&RC and CMP and moves to strike them from the pre-filed rebuttal testimony.

### **Global Testimony Objections**

Group 4 also globally objects to all references to and discussions of the proposed stipulation at the PUC proceeding for a Certificate of Public Convenience and Necessity and all

side agreements, like the memorandum of understanding between CMP and the Western Mountains and Rivers Corporation (WMRC), between CMP and private entities. The enticements offered to private parties to obtain support for CMP's proposed transmission line are not relevant to this proceeding and are not enforceable by the DEP or LUPC and therefore should not be allowed in testimony. Furthermore, the proposed Stipulation has not been accepted by the PUC and, thus, is merely speculative at this time. While we believe that we have identified all references to this Stipulation, CMP's recent rebuttal testimony submission was 469 pages long with significant new information and cannot be sure that we have identified all references, whether direct or indirect, to the proposed Stipulation.

### **Summary**

For the abovementioned reasons Group 4 objects to portions of the testimony of Larry Warren and Joe Christopher, and the entirety of the testimony of Thorn Dickinson. Group 4 requests that the testimony outlined above be stricken from the record.

Respectfully submitted,



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On behalf of Group 4 – Appalachian Mountain Club, Natural Resources Council of Maine, and  
the Maine Council of Trout Unlimited  
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