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106 Hogan Road, Suite 6
Bangor, ME 04401

Bill Hinkel
Land Use Planning Commission
22 State House Station
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RE: Group 4 Response to CMP Motion to Strike

Jim and Bill,

Attached is Group 4's response to CMP's Motion to Strike.

Respectfully submitted,



Susan J. Ely
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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, AND TU)
RESPONSE TO CMP MOTION TO STRIKE

March 12, 2019

Intervenor Group 4, consisting of Appalachian Mountain Club (AMC), Natural Resources Council of Maine (NRCM), and Maine Council of Trout Unlimited (TU), collectively referred to in this proceeding as Group 4, respectfully submits the following response to CMP’s March 7, 2019, Motion to Strike.

In its Motion to Strike, CMP asks the Department and/or Commission to exclude all or a portion of the pre-filed testimony submitted by every single witness for Groups 1, 2, 6, 8, and 10, and 4 out of 5 witnesses for Group 4 in an attempt to limit testimony in opposition to CMP’s proposed transmission line. CMP is attempting to limit relevant testimony from some the state’s most established experts on vernal pools, coldwater fisheries, and deer yards. All of these resources are relevant to designated hearing topics and all will be impacted by CMP’s proposed transmission line, the New England Clean Energy Connect (NECEC). CMP is also trying to limit testimony of the citizens most affected by NECEC who have sacrificed their personal time and resources to intervene in a project that directly threatens the places where they live, work and recreate. We strongly object to CMP’s attempts to squelch this relevant testimony.

Specifically, CMP objects to the following testimony from Group 4.

- Witnesses A. Calhoun, R. Joseph, J. Reardon, and T. Towle
 - Witnesses A. Calhoun, R. Joseph, J. Reardon, and T. Towle failed to designate which portion of their testimony are specific to LUPC's review, and witnesses J. Reardon and T. Towle failed to include LUPC in their case caption. Thus the testimony of these witnesses is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A. To the extent these witnesses attempt to provide testimony during LUPC's portion of the hearing, it should be stricken, and none of their pre-filed direct testimony should be considered by LUPC. In addition, the following testimony should be stricken:
- Ron Joseph
 - Pages 3-4 (pdf pages 4-5): Economic impact is not a hearing topic.
- Jeff Reardon
 - Page 5: Atlantic salmon habitat is not a hearing topic.
 - Page 10: Atlantic salmon is not a hearing topic.

First, the case caption for both Mr. Reardon and Mr. Towle's testimony was addressed to the Land Use Regulatory Commission (LURC), the predecessor to the LUPC, and a common naming error since the reorganization. CMP suggests that this drafting error, captioning testimony to DEP and LURC instead of DEP and LUPC, should result in all of Mr. Reardon and Mr. Towle's testimony being prohibited from consideration by the Commission. This would be a silly result. However, overreaction notwithstanding, Group 4 will concede that Mr. Towle's and Ms. Calhoun's testimony are only relevant to the DEP portion of the hearing and can be limited as such.

Second, CMP alleges that Mr. Reardon does not clearly identify portions of his testimony relevant to LUPC. However, Mr. Reardon specifically mentions LUPC criteria on page 7 and discusses Beattie Pond (in the context of other Heritage Brook Trout Ponds) on pages 17 and 18. These sections are relevant to LUPC and should be allowed to be considered by both DEP and LUPC.

CMP also moved to strike Mr. Reardon's testimony on pages 5 and 10 by claiming that Atlantic salmon and its habitat are not hearing topics. This request is unreasonable. Atlantic salmon are coldwater fish, and impacts to the Atlantic salmon and its habitat clearly fit into the general topic "Wildlife Habitat and Fisheries" and the subtopic "Buffer Strips around Cold Water Fisheries." CMP's motion to object to Mr. Reardon's testimony at pages 5 and 10 should be rejected.

Finally, CMP's move to strike Mr. Joseph's testimony on pages 3-4 is unwarranted because Mr. Joseph's testimony in this section is directly relevant to impacts to deer wintering areas. Ecological impacts on deer wintering areas as a result of this project will have an economic consequence, impacting Maine's natural resource-based economy. CMP's attempt to

exclude this information is yet another example of an overly narrow reading of Maine's law to limit testimony against its proposed project and should be rejected.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Susan J. Ely". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Susan J. Ely

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

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