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LAND USE PLANNING COMMISSION
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NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

**Third Procedural Order
In the Matter of
Site Law Certification SLC 9**

**Central Maine Power Company's
New England Clean Energy Connect Project**

February 5, 2019

Commissioner Everett Worcester, Chair and Presiding Officer

This Third Procedural Order (Order) sets forth rulings on certain information discussed at the second pre-hearing conference held by the Land Use Planning Commission (Commission) in accordance with *Rules for the Conduct of Public Hearings*, 01-672 C.M.R. 5 (last amended July 1, 2011), (Chapter 5), section 5.07 on Thursday, January 17, 2019, in the matter of Central Maine Power Company's (CMP) proposed New England Clean Energy Connect Project (Project). The second pre-hearing conference was held jointly with the Maine Department of Environmental Protection (Department) for the purpose of discussing new information submitted since the first pre-hearing conference held on September 17, 2018; to identify any changes in position of the Intervenor; to announce dates and locations for the hearing; and to discuss filing deadlines. This Order also sets forth certain procedural matters related to the hearing.

I. SCHEDULING THE PUBLIC HEARING

A. Joint Hearing Structure

The Commission and the Department have separate roles with regard to review of the Project. By holding a joint hearing, both agencies intend to facilitate efficient review and avoid the need for duplicative testimony by the same parties and interested members of the public in different proceedings. In its Second Procedural Order, the Commission identified i) Scenic Character and Existing Uses, and ii) Alternatives Analysis as the two hearing topics on which the Commission seeks factual testimony relevant to its review. For consideration in certifying to the Department whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed, testimony provided under the Scenic

Character and Existing Uses topic area must be relevant to the Commission's evaluation of whether the "use can be buffered from those other uses and resources within the subdistrict with which it is incompatible," including buffering for visual impacts and recreational and navigational uses within a P-RR subdistrict. Similarly, testimony provided under the Alternatives Analysis topic area must be relevant to the Commission's evaluation of whether the applicant has shown by substantial evidence that "there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant" for portions of the Project within a P-RR subdistrict. The multi-day hearing will be arranged so that these two hearing topics are scheduled for the same day. A more detailed hearing schedule will be made available in advance of the hearing.

B. Location

The hearing will be held on the University of Maine campus in Farmington, Maine. Notice containing information regarding the exact location of the meeting rooms will be provided in advance of the hearing and in accordance with *Rules for the Conduct of Public Hearings*, 01-672 C.M.R. 5 (Chapter 5), section 5.13.

C. Timing

The hearing will be held from Monday, April 1 through Friday, April 5, 2019, with the portion of the hearing focused on the Commission's review criteria related to the Scenic Character and Existing Uses and Alternatives Analysis topics to be held on April 2, 2019. A public comment session, for comments related to the Commission's role in certifying whether the Project is an allowed use within the P-RR subdistrict, will be held during the evening of April 2, 2019. The timing of the hearing and public comment session will be provided in a future notification to the parties and in the notice of the hearing.

Outside of the time to be scheduled on April 2 for testimony related to the Commission's certification review, the remainder of the hearing will be for the Department to receive testimony related to approval criteria and standards relevant to the Natural Resources Protection Act and the Site Location of Development Act. This portion of the hearing will not be held jointly with the Commission.

Parties who will require technology or special equipment to be available during the April 2 hearing should coordinate their needs by **February 28, 2019**, with Bill Hinkel at the Commission at Bill.Hinkel@maine.gov or 207-446-8823.

D. Order of Testimony and Questions

Testimony and questions will be offered in accordance with the order described in Chapter 5, section 5.16. When circumstances warrant, the Presiding Officer may vary the order in which witnesses appear and the order or manner in which testimony is given or witnesses cross-examined. In accordance with the *Maine Administrative Procedure Act*, 5 M.R.S. § 9057(3) and Chapter 5, section 5.08(3), witnesses must be sworn.

E. Copies to Intervenors

Upon request from any Intervenor, or any governmental agency participating in this matter, CMP shall provide an electronic copy of its application and any amendments thereto. Chapter 5, section 5.13(5). Any Intervenor or governmental agency may request that the Presiding Officer order CMP to provide a paper copy of its application and amendments to that party. Any such request must explain why an electronic copy is inadequate. The decision whether to grant a request for a paper copy is committed to the discretion of the Presiding Officer.

F. Participation at the Hearing

A person permitted to intervene shall become a party to the proceeding and shall be permitted to participate in all phases of the hearing, subject, however, to such limitations as the Presiding Officer may direct. Chapter 5, section 5.13(1). Officers of an organization or business that is an Intervenor may not testify as a member of the public. Members of an organization who are not officers or in a decision-making capacity for the organization may testify as a member of the organization, but not on behalf of the organization which is party to the proceeding as an Intervenor. Alternatively, a member of an organization that is an Intervenor may testify as a member of the public.

At the pre-hearing conference and by letter addressed to the Presiding Officers for both the Department and Commission, dated January 24, 2019, Intervenor Trout Unlimited (TU) requested clarification regarding the participation of its members at the hearing. On January 31, 2019, CMP objected to “TU’s proposal, to the extent it would allow members of TU’s Maine Council to speak during the public comment sessions.” The 33 members of TU who comprise TU’s Maine State Council will not be allowed to testify as part of the general public because they are representative members of the organization having the decision-making capacity to petition for leave to intervene, which they achieved in this proceeding. Additionally, TU’s Maine State Council’s Executive Committee and the staff assigned to this matter (Mr. Reardon) may not testify as a member of the general public. Other members may testify as part of the general public.

In recent filings, counsel for CMP and counsel for Intervenor Groups 2 and 10 discussed the rules concerning one spokesperson for each party. The Second Procedural Order states, “...each consolidated Intervenor group shall designate one contact person for the purpose of this proceeding.... The designated contact person will be responsible for the proper filing of documents (pre-filed testimony, exhibits, etc.) for the Intervenor group and will be the group's primary spokesperson at hearing proceedings. This does not preclude other Intervenors within the group from testifying or conducting cross-examination at the hearing.”

II. STATUS OF INTERVENORS

A. Consolidated Intervenorors

In the Second Procedural Order, the Presiding Officers for the Commission and the Department consolidated the Intervenorors into the following ten (10) intervenor groups (the group numbers are of no significance).

- Group 1:** Friends of Boundary Mountains¹; Maine Wilderness Guides¹; Old Canada Road¹
- Group 2:** West Forks Plantation¹; Town of Caratunk²; Kennebec River Anglers²; Maine Guide Services²; Hawk's Nest Lodge²; Mike Pilsbury²
- Group 3:** International Energy Consumer Group²; City of Lewiston², International Brotherhood of Electrical Workers²; Maine Chamber of Commerce²; Lewiston/Auburn Chamber of Commerce³
- Group 4:** Natural Resources Council of Maine²; Appalachian Mountain Club²; Trout Unlimited²
- Group 5:** Brookfield Energy¹; Wagner Forest²
- Group 6:** The Nature Conservancy¹; Conservation Law Foundation¹
- Group 7:** Western Mountains and Rivers Corporation²
- Group 8:** Next Era²
- Group 9:** Office of the Public Advocate¹
- Group 10:** Edwin Buzzell²; Local Residents and Recreational Users³

Note:

Superscript 1: Intervenorors granted by the Department only

Superscript 2: Intervenorors granted by the Department and the Commission

Superscript 3: Intervenorors granted by the Commission only

Local Residents and Recreational Users in Group 10 are: 1) Carrie Carpenter, 2) Eric Sherman, 3) Kathy Barkley, 4) Kim Lyman, 5) Mandy Farrar, 6) Matt Wagner, 7) Noah Hale, 8) Taylor Walker, and 9) Tony DiBlasi.

B. Hearing Topics

Representatives from Intervenor Groups 1 through 4 and 6 through 10 were present at the second pre-hearing conference. Intervenor Group 5, comprised of Brookfield Energy and Wagner Forest Management, did not appear. At the second pre-hearing conference, the Presiding Officer for the Department solicited comments from the Intervenorors regarding any changes in position on the hearing topics or level of participation in the proceeding. As to hearing topics, CMP and Intervenor Groups 2, 4, 6 and 8 raised a question as to whether or not the Alternatives Analysis topic will continue to include testimony related to the proposed crossing of the Kennebec River, despite CMP's application amendment for a horizontal directional drilling method of crossing. Alternatives to the proposed crossing of the Kennebec River, which is within a P-RR subdistrict, regardless of the method by which it is accomplished, remains part of the Commission's evaluation of whether the use is allowed by special exception in the P-RR subdistrict.

Intervenor Groups 1, 4, and 10 requested that a new topic related to the Project's impacts on greenhouse gas levels be included at the hearing. This request does not relate to the Commission's role or review criteria. See the Department's Third Procedural Order for more information regarding this matter.

C. Updated Service List

On January 11, 2019, Attorney Elizabeth Beopple of BCM Environmental & Land Law, PLLC, filed an entry of appearance on behalf of Intervenor Group 2 and Intervenor Group 10, except for Group 10 members Alison Quick and Courtney Fraley. On January 15, 2019, the Commission staff attempted to contact Ms. Quick and Ms. Fraley to determine whether they intend to continue participation in this proceeding. Neither Ms. Quick nor Ms. Fraley appeared at the Conference. On January 24, 2019, Ms. Fraley responded to the Commission staff stating that she no longer wished to participate as an intervenor. Likewise, on January 31, 2019, Ms. Quick responded to the Commission staff stating that she no longer wished to participate as an intervenor. Consequently, Ms. Fraley and Ms. Quick have been eliminated as intervenors, as reflected on the updated service list.

Appended to this Order is a revised Service List, dated February 5, 2019, updated to:

1. Reflect Ms. Beopple's representation discussed above;
2. Eliminate Intervenor Alison Quick and Courtney Fraley;
3. Correct the listing for Intervenor Mike Pilsbury from the Department only intervenor group to the Department and Commission intervenor group;
4. Revise the contacts for the Maine Office of the Attorney General to remove Jerry Reid;
5. Add Phelps Turner on behalf of Conservation Law Foundation, based on a request dated November 20, 2018;
6. Change the Brookfield contact from Nicolas Bosse to Steven Zuretti, based on a request dated January 4, 2019, and a request dated January 28, 2019, to add Jeffrey Talbert; and
7. Add Brian Murphy to the Service List for NextEra, based on a request dated February 4, 2019.

III. PREFILED TESTIMONY

A. Requirements and Procedure

Pursuant to 5 M.R.S. § 9057(4) and Chapter 5, section 5.08(4), the Commission is requiring pre-filing of all direct and rebuttal testimony. In accordance with Chapter 5, section 5.24(2), and as stipulated in Section I.D of the Second Procedural Order, an original and 9 copies of all prefiled testimony must be provided to the Commission.

Prefiled testimony of each witness must be submitted by the deadlines listed below. This written testimony must be sworn. Written testimony is sworn if the witness declares by oath or affirmation that the testimony is true and correct to the best of the witness's knowledge and belief. Prefiled rebuttal testimony must be limited to responding to the prefiled direct testimony of other witnesses. All rebuttal testimony must identify the direct testimony to which it is responding.

It is acceptable to have the prefiled testimony for a witness participating in both the Department and Commission portions of the hearing contained in one document, however the document must clearly state which portion of the prefiled testimony relates to the Commission's topics, preferably by being placed in its own section of the written testimony. An assumption will be made that if testimony is not specifically identified as Commission testimony, it is submitted for the Department's portion of the hearing.

Any exhibit that a party wishes to introduce into the administrative record must be included with its prefiled testimony. The Presiding Officer may allow the introduction of an exhibit at the hearing that was not prefiled based on a showing of good cause or if the exhibit is being introduced for impeachment purposes. Reduced versions of oversized exhibits may be prefiled, with the full-size exhibit presented at the public hearing. It is the responsibility of the parties to label exhibits alphanumerically in a manner that allows exhibits to be easily identified and referenced. For example, CMP should label its exhibits as "CMP Exhibit _." Each Intervenor may use its group number or it may use a shorthand name for its group, followed by the exhibit number, for example "Group 3 Exhibit 4."

B. Filing Deadlines

Deadlines for prefiled testimony were discussed at the second pre-hearing conference. At the conference, some intervenors orally requested a postponement of the hearing and the filing deadlines so that the parties would have additional time to formulate their prefiled testimony. At the pre-hearing conference the Commission and the Department denied the request to postpone the hearing but moved the filing deadlines back to allow the parties additional time. At the conference the Commission and the Department postponed the deadlines to the following dates: February 15th for the list of witnesses and witnesses' topics, February 21 for prefiled direct testimony, February 28 for any objections to prefiled direct testimony, and March 21 for prefiled rebuttal testimony.

On February 1, 2019, Intervenor Groups 2 and 10 submitted to the Department a Motion for Reconsideration of the decisions on the request to postpone the hearing and the deadlines for the pre-hearing filings. The motion requested that the Department postpone the hearing for at least 30 days and provide corresponding postponements of the filing deadlines. On February 4, 2019, the Department received a letter from Intervenor Group 4 supporting the Motion for Reconsideration. Intervenor Group 4 requested a longer time frame for the filing of prefiled direct and rebuttal testimony and at least three weeks between the deadline for rebuttal testimony and the commencement of the hearing. Also on February 4th, CMP submitted a response to the motion asking the Presiding Officer to reject the request of Intervenor Groups 2 and 10.

The Department is denying the Motion for Reconsideration insofar as it requests the postponement of the hearing, and in light of the limited changes contained in the recent filings by CMP and in consideration of the challenging scheduling and logistical considerations associated with scheduling a multi-day hearing. However, the Department is postponing by one-week the deadline for filing written direct testimony and the deadline for

filing any objections. The filing deadlines for the list of witnesses and witness topics and the deadline for the submission of written rebuttal testimony remains the same as was stated at the January 17th pre-hearing conference. The additional information filed by CMP subsequent to the January 17th pre-hearing conference is consistent with the information described by the Department and Commission staff at the second pre-hearing conference. The quantity of pages in the filing reflects in part that CMP has filed clean versions of the amended documents as requested by the parties, the Commission and the Department.

A witness list must be provided to the Presiding Officer by **February 15, 2019**. This list must include the name of the witness, the topic area(s) to be covered by the witness, and any special requests concerning the witness's ability to testify, such as any relevant physical disabilities. Parties are also encouraged to voluntarily provide and suggest witness panels for witnesses that have testimony similar in nature.

The schedule for the Commission will parallel that established by the Department in its Third Procedural Order.

The filing deadlines are now as follows:

1. Prefiled direct testimony: **February 28, 2019**
2. Objections to prefiled direct testimony: **March 7, 2019**
3. Prefiled rebuttal testimony: **March 21, 2019**

IV. EX PARTE COMMUNICATION

No Commission member shall engage in any ex parte communication in connection with any issue of fact, law or procedure which is the subject of the hearing. The Intervenors permitted by this Order are directed to 5 M.R.S. § 9055 and Chapter 5, Section 5.25 for a statement of legal restrictions on contact with Commission members during pending proceedings. The parties are cautioned to avoid any conduct that could give rise even to the appearance of improper contact with Commission members.

V. AUTHORITY AND RESERVATIONS

This Procedural Order is issued by the Presiding Officer pursuant to Chapter 5. All objections to matters contained herein should be timely filed in writing with the Commission staff but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this Order at any time.

DONE AND DATED AT AUGUSTA, MAINE THIS 5th DAY OF FEBRUARY 2019

A handwritten signature in black ink, reading "Everett Worcester", is centered on the page. The signature is written in a cursive style with a long, sweeping flourish at the end.

Everett Worcester, Chair and Presiding Officer

DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
LAND USE PLANNING COMMISSION

SERVICE LIST FOR THE CMP NECEC HEARING
Revised February 5, 2019

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DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
LAND USE PLANNING COMMISSION

SERVICE LIST FOR THE CMP NECEC HEARING
Revised February 5, 2019

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¹ These Intervenor are represented by Elizabeth Beopple, Esq., BCM Environmental & Land Law, PLLC.

² Maine Office of the Public Advocate is not an Intervenor with the LUPC but, as a governmental agency, may still participate in the LUPC's portion of the NECEC hearing in accordance with Chapter 5, section 5.16. The OPA is an Intervenor in the DEP's hearing.