STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

and

STATE OF MAINE
LAND USE PLANNING COMMISSION

IN THE MATTER OF

CENTRAL MAINE POWER COMPANY	)
NEW ENGLAND CLEAN ENERGY CONNECT	)
#L-27625-26-A-N/#L-27625-TG-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	)
Beattie Twp, Lowelltown Twp, Skinner Twp,	)
Appleton Twp, T5 R7 BKP WKR,	)
Hobbstown Twp, Bradstreet Twp,	)
Parlin Pond Twp, West Forks Plt, Moxie Gore,	)
The Forks Plt, Bald Mountain Twp, Concord Twp	)

RESPONSE OF CENTRAL MAINE POWER CO. TO THE MOTION FOR RECONSIDERATION OF GROUPS 2 AND 10

Groups 2 and 10 have requested that the Presiding Officers reconsider the hearing and prehearing schedule announced at the January 17, 2019 prehearing conference. Group 4 filed a letter in support of the Group 2 and 10 motion. The Presiding Officers should reject that request.

Groups 2 and 10 assert (page 2) that "it would be a grave mistake to allow CMP to force this project on a fast tract [*sic*] now." In fact, this application is by no means on a fast track, and CMP is not "rushing to complete this process" (*see* Group 2 and 10 motion, page 4), which has been very deliberative. The first prehearing conference was held in September 2018, and the hearing is scheduled for April 2019, more than six months later. The fact that CMP has

submitted supplemental materials in response to agency requests is standard practice. *See* DEP Reg. 2.11(B) ("A determination that an application is accepted as complete for processing . . . is not a review of the sufficiency of that information and does not preclude the Department from requesting additional information during processing."). The materials CMP filed last week, referenced by Groups 2 and 10 in their motion (*see* page 2, note 3: "CMP uploaded yet another load of information this week.") was discussed at the prehearing conference on January 17, and known at that time. It was not a surprise. In fact, to address that concern, at the January 17 prehearing conference the Presiding Officers gave the parties an additional week to prepare prefiled direct and rebuttal testimony, beyond the deadlines that had been set forth in the prehearing conference agenda.[1]

The parties have had the vast majority of the application materials, including the materials necessary to prepare prefiled testimony, for many months. DEP rules specifically address the situation when an applicant modifies the application close to the hearing date, and provide that such materials may justify an extension of time only if submitted within 60 days before the hearing. *See* DEP Reg. 3.17 ("An applicant who modifies a pending license application within sixty days prior to a scheduled hearing shall notify the Presiding Officer [and] the Presiding Officer may provide an opportunity to submit written testimony in response to the proposed modification, postpone the hearing, or take any other appropriate action to ensure that all parties have a full and fair opportunity to address the modification and prepare for the hearing."). This logic applies with even more force if an applicant does not "modify" the application but merely submits supplemental application materials more than 60 days before the hearing, as here.

[1] The assertion by Group 4 that "the record for the hearing is still incomplete" is not accurate.

Further, the rules provide that the parties merely must have "an opportunity" to review an applicant's responses to additional information requests. *See* DEP Reg. 3.5(D) ("If Department staff or the Presiding Officer request additional information from the applicant pursuant to section 16(A), such requests shall be made sufficiently in advance of the hearing so that the applicant has an opportunity to respond to those requests and all parties have an opportunity to review the applicant's responses."). The parties here clearly have had, and will have, such an opportunity.

Group 4 supports the Group 2 and Group 10 motion in part because on February 4 "DEP submitted additional information concerning stream crossings that is relevant to brook trout impacts."[2] Again, the rules specifically provide for circumstances in which agency comments are submitted prior to the hearing: "Department staff and any outside agency review staff assisting the Department in its review of the application shall submit any review comments on the application sufficiently in advance of the hearing so that the applicant has an opportunity to respond to those comments and all parties have an opportunity to review the applicant's responses." DEP Reg. 3.5(C). Again, the parties here have had and will have such an opportunity.

This motion is yet another attempt to delay the hearing and delay issuance of the permit. Groups 2 and 10, along with the other opposition intervenors, hope that if they delay the permit long enough, it may kill the project. Again, DEP and LUPC should not condone such tactics.

Groups 2 and 10 also ask that the Presiding Officers "include a deadline after the close of the hearing of an additional 30 days, for filing post-hearing briefs and proposed findings." If the Presiding Officers allow post-hearing briefs and proposed findings, the usual one week deadline

[2] Note that the Group 4 support letter was filed by yet another spokesperson for that group (after prior filings by Sue Ely and Jeff Reardon), in contravention of the Presiding Officers' Second Procedural Orders regarding contact persons.

for filing such briefs is more than sufficient. Again, asking for 30 days is a transparent attempt to further delay this proceeding.

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