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DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
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AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

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EXECUTIVE DIRECTOR

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

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

October 9, 2018

Commissioner Everett Worcester, Chair and Presiding Officer

This Second Procedural Order (Order) sets forth rulings on certain information discussed at the pre-hearing conference held by the Land Use Planning Commission (the 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 Friday, September 7, 2018. The pre-hearing conference was held jointly with the Maine Department of Environmental Protection (the Department) for the purpose of discussing consolidation of intervenors, topics for the hearing, and potential timing and location of the public hearing on Central Maine Power Company's (CMP) proposed New England Clean Energy Connect Project (Project). This Order also sets forth certain procedural matters related to the hearing.

I. GENERAL MATTERS

A. Presiding Officer's General Expectations of the Parties

All parties are expected to comply with deadlines and filing requirements established by the Presiding Officer. Failure to comply may result in appropriate sanctions, including the rejection of argument, evidence or testimony the party seeks to offer. All participants in the hearings are expected to conduct themselves professionally, both in their dealings with the Commission and with each other, throughout the proceedings.

B. Copies to Intervenor

Upon request from any Intervenor, or any governmental agency participating in this matter in accordance with Chapter 5, section 5.15, 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 shall 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.

C. Filing Documents

All filings in this proceeding must be made by electronic mail (email) to the service list, as set forth on the service list dated, October 9, 2018, as amended. Once an email communication has been sent to the members on the service list, service is deemed complete. Any person who does not readily have access to email and wishes to receive documents by U.S. mail in paper form, instead of email, may request that the Presiding Officer allow service by U.S. mail.

D. Printed Copies to Commissioners

Upon request made by the Presiding Officer, each party shall provide up to 10 complete printed copies of any filing it has made to the Commission for distribution to the Commissioners.

II. CONSOLIDATION OF INTERVENORS

As discussed in section D.1. of the First Procedural Order issued on August 17, 2018, the Presiding Officer may require Intervenors to consolidate or join their appearances in part or in whole if their interests or contentions are found to be substantially similar and such consolidation would expedite or simplify the hearing without prejudice to the rights of any party. 5 M.R.S. § 9054(4) and Chapter 5, section 5.13(1).

A. Governmental Agencies

The Maine Office of the Public Advocate (OPA) is a governmental agency that has notified the Commission of its participation in the hearing, and, pursuant to Chapter 5, section 5.15, is entitled to all rights of an intervenor. The OPA is included on the service list in this matter.

B. Preliminarily Consolidated Intervenors

The Presiding Officer's rulings regarding petitions for leave to intervene are discussed in section C. of the First Procedural Order. The Presiding Officer preliminarily consolidated the following 12 Intervenors based on their shared substantially similar interest in the Project by virtue of being residents or recreational users of the areas in which the Project is proposed within the Commission's service area: 1) Alison Quick, 2) Carrie Carpenter, 3) Courtney Fraley, 4) Eric Sherman, 5) Kathy Barkley, 6) Kim Lyman, 7) Linda Lee, 8) Mandy Farrar, 9) Matt Wagner, 10) Noah Hale, 11) Taylor Walker, and 12) Tony DiBlasi. On September 4, 2018, the parties were notified that Linda Lee withdrew her status as Intervenor in this

matter. Eleven Intervenors remain in this preliminarily consolidated group and are hereafter referred to as “Local Residents and Recreational Users.”

C. Voluntary Consolidation

On September 6, 2018, the Parties were notified that Kingfisher River Guides withdrew its status as Intervenor in this matter and did not participate in the pre-hearing conference. At the pre-hearing conference, the Commission and Department presented, for purposes of discussion, a slide proposing consolidated intervenor groups. The Presiding Officers provided an opportunity for all Intervenors to comment on and object to the proposed consolidated intervenor groups. Ultimately, the Presiding Officers requested that the Intervenors submit additional comment on voluntary consolidation by Friday, September 14, 2018, at 5:00 PM. Responses from Intervenors were copied to the service list and taken under advisement by the Presiding Officers for the Commission and Department.

D. Decision on Consolidation

After considering all the information received and discussions at and following the pre-hearing conference, the Presiding Officers for the Commission and the Department have consolidated the Intervenors 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: Intervenors granted by the Department only

Superscript 2: Intervenors granted by the Department and the Commission

Superscript 3: Intervenors granted by the Commission only

E. Designating a Contact Person

Each Intervenor will remain on the service list and shall be copied on all filings in this matter. However, each consolidated Intervenor group shall designate one contact person for the purpose of this proceeding. The designated contact person for each group shall notify the Commission of this decision by **Friday, October 12, 2018**. 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.

F. Service List

The Commission and Department discussed at the pre-hearing conference how best to structure the service list. Intervenor Matt Wagner objected to the Commission's and Department's suggestion to combine the two service lists from each agency into a single list. The Presiding Officers for both the Commission and the Department took Mr. Wagner's objection under advisement and, by this Order, deny his objection to consolidating the service lists. The Commission and Department will maintain a single consolidated service list for all filings in this matter. The revised service list is appended hereto.

III. HEARING TOPICS

A. Consideration of Written and Oral Suggestions

The Presiding Officer considered written suggestions for hearing topics submitted prior to the pre-hearing conference as well as suggestions provided orally at the conference. As was discussed at the pre-hearing conference, the scope of what may be discussed at the hearing must be limited to the time available. Thus, the Commission, the Department, and the Intervenors have attempted to identify the key issues for which information presented at the hearing will be of greatest assistance to the Commission in reaching its certification decision.

B. Criteria for Selection of Hearing Topics

The Commission must certify to the Department (a) whether the Project is an allowed use within the subdistricts in which it is proposed and (b) whether the proposed Project meets any land use standards established by the Commission that are not duplicative of those considered by the Department in its review of the Project under the Site Law. 12 M.R.S. § 685-B(1-A)(B-1). Within a Resource Protection (P-RR) subdistrict, a utility facility is allowed by special exception. For the Commission to find a use is allowed by special exception, the Commission must find that an applicant has shown by substantial evidence that (a) there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant; (b) the use can be buffered from those other uses and resources within the subdistrict with which it is incompatible; and (c) such other conditions are met that the Commission may reasonably impose in accordance with the policies of the

Comprehensive Land Use Plan. *Land Use Districts and Standards*, 01-672 C.M.R. 10 (Chapter 10), section 10.23,I,3.d.

C. Selection of Hearing Topics

In its Second Procedural Order issued on October 5, 2018, the Department selected a total of four main topic areas, listed below, for the public hearing. These topic areas are directly tied to specific criteria set forth in the *Natural Resources Protection Act*, 38 M.R.S. §§ 480-A – 480-JJ, and the *Site Location of Development Law*, 38 M.R.S. §§ 481 – 490, administered by the Department, as identified in the Department’s Second Procedural Order.

1. Scenic Character and Existing Uses
2. Wildlife Habitat and Fisheries
3. Alternatives Analysis
4. Compensation and Mitigation

The Commission and the Department have separate roles with regard to review of the Project. However, due to anticipated overlap in factual testimony relevant to the review of both the Commission and the Department, and for the convenience of the applicant, Intervenor, and the public, the Commission’s public hearing – focusing on the Commission’s allowed use determination – will be held jointly with the Department.

The Scenic Character and Existing Uses topic area will include information relevant to the Commission’s allowed use determination, which involves 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.

The Alternatives Analysis topic area also will include information relevant to the Commission’s allowed use determination, which involves 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.

IV. TIMING OF PUBLIC HEARING

A. Supplemental Information Submission

In a letter to CMP, dated September 4, 2018, the Department, in coordination with the Commission, requested additional information from CMP pertaining to its application and amendments. At the pre-hearing conference, CMP stated the information would be submitted to the agencies, with copy to Intervenors, by October 19, 2018.

B. Update on Schedule for Public Hearing

The Commission and the Department will review new information submitted by CMP, as discussed above, to determine whether all additional information requested on September 4, 2018, has been provided. The Commission will make a determination as to whether CMP's application, as amended, provides the information necessary to proceed to scheduling the public hearing for certification of the Project to the Department.

The Presiding Officers discussed potential location(s) for the public hearing and provided an opportunity for Intervenors to make oral statements of suggested locations. Suggestions included a restaurant and event center in Skowhegan; schools in Moscow or Bingham; and unspecified facilities in Augusta and Wiscasset. The Commission and Department have taken these suggestions under advisement.

Notice of the date of public hearing and location(s) will be made pursuant to the Commission's *Rules of Practice*, 01-672 C.M.R. 4 (Chapter 4), section 4.04(6). The Presiding Officer will specify requirements and deadlines for pre-filed testimony, pre-filed exhibits, witness lists, objections to pre-filed testimony, and pre-filed rebuttal testimony in a procedural order.

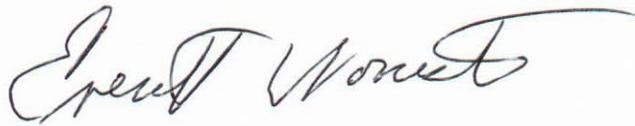
V. EX PARTE COMMUNICION

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.

VI. 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 9th DAY OF OCTOBER 2018

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 underline.

Everett Worcester, Chair and Presiding Officer

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
LAND USE PLANNING COMMISSION
SERVICE LIST FOR THE CMP NECEC HEARING
UPDATED OCTOBER 9, 2018

DEP ONLY INTERVENORS		
Friends of Boundary Mountains	Robert Weingarten	bpwl@midmaine.com
Maine Wilderness Guides	Nick Leadley	leadley@myfairpoint.net
West Forks Plantation	Ashli Coleman	ashli.goodenow@gmail.com
Old Canada Road	Bob Haynes	oldcanadaroad@myfairpoint.net
Brookfield Renewable	Nicolas Bosse	Nicolas.Bosse@brookfieldrenewable.com
The Nature Conservancy	Rob Wood	robert.wood@tnc.org
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DEP AND LUPC INTERVENORS		
Town of Caratunk	Elizabeth Caruso	caratunkselectmen@myfairpoint.net
Kennebec River Anglers	Chris Russell	info@kennebecriverangler.com
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Industrial Energy Consumer Group	Anthony Buxton	ABuxton@preti.com
	Robert Borowski	RBorowski@preti.com
City of Lewiston	Ed Barrett	EBarrett@lewistonmaine.gov
International Brotherhood of Electrical Workers	Anthony Buxton	burgess@ibew104.org
Maine State Chamber of Commerce	Dana Connors	Amorin@mainechamber.org
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Natural Resources Council of Maine	Cathy Johnson	cjohnson@nrcm.org
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Trout Unlimited	Jeffery Reardon	Jeffrey.Reardon@tu.org
	David Hedrick	dhedrick@roadrunner.com
Maine Office of the Public Advocate ¹	Gayle Witham	Gayle.Witham@maine.gov

¹ 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.

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND
 LAND USE PLANNING COMMISSION
 SERVICE LIST FOR THE CMP NECEC HEARING
 UPDATED OCTOBER 9, 2018

LUPC ONLY INTERVENORS		
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	Mark Goodwin	magoodwin@burnsmcd.com
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Maine Natural Areas Program	Kristen Puryear	Kristen.Puryear@maine.gov
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