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Admitted in: MA, ME, NH

April 10, 2019

Susanne Miller, Director  
Eastern Maine Regional Office  
Maine Department of Environmental Protection  
106 Hogan Road, Suite 6, 3<sup>rd</sup> Floor  
Bangor, ME 04401

Everett Worcester, Chair  
Land Use Planning Commission  
Department of Agriculture, Conservation and Forestry  
22 State House Station  
Augusta, ME 04333

RE: NECEC – Response to NextEra Letter Re: Rebuttal Witnesses

Dear Presiding Officers Miller and Worcester:

This letter responds to the April 8, 2019 letter from intervenor Group 8/NextEra Energy Resources, LLC (NextEra), seeking to amend its designation of time for cross-examination on May 9, as well as its list of witnesses. NextEra “clarifies” its designation of time to cross-examine CMP’s witnesses Justin Bardwell and Justin Tribbet, doubling its previously requested time of 30 minutes, for the following ostensible reasons: “the extent of rebuttal testimony filed by Mr. Bardwell and Mr. Tribbet, the number of questions in the public hearing deferred to CMP’s engineer witnesses, and the number of questions asked of NextEra’s witness, which would more appropriately be answered by the Applicant.” NextEra further requests an additional 20 minutes to cross-examine CMP witness Thorn Dickinson, a witness whom NextEra has already had (and taken) the opportunity to cross-examine. You should reject NextEra’s request, for multiple reasons, discussed below.

First, nothing has changed since NextEra made its March 27, 2019 filing (which it incorrectly refers to as its “March 11, 2019 filing” in its April 8 letter), which stated as follows: “In the event CMP’s new witnesses, Justin Bardwell and Justin Tribbet, are put forward at a future hearing date, NextEra respectfully requests thirty (30) minutes to cross examine them.” The “extent” of their rebuttal testimony, filed on March 25, was known to NextEra when it filed its request for 30 total minutes on March 27. NextEra’s “clarification” that it is now asking for twice the time previously requested is no more than an attempt to further extend the hearing.

Second, additional cross-examination time is not warranted merely because questions were asked of CMP’s witness panels that those witnesses were unable to answer. Against its

wishes, CMP was ordered to proffer its rebuttal witnesses on May 9, instead of during the April 1-5 hearing. CMP cannot now be penalized because some intervenors asked questions last week that would better have been asked of the witnesses who will be available at the later hearing date, particularly given that those questions were outside the scope of last week's witnesses' prefiled testimony.

Third, NextEra's assertion that there were a "number of questions asked of NextEra's witness, which would more appropriately be answered by the Applicant" is baffling. NextEra prefiled direct testimony of its witness Christopher Russo, a consultant who advises clients on "strategic issues in the energy industry." Russo Pre-Filed Testimony at 1. Mr. Russo's testimony exclusively and unequivocally concerned "undergrounding the HDVC transmission line." Russo Pre-Filed Testimony at 2. He also offered his opinion on HVDC technologies, as well as transmission line lengths and routing. Russo Pre-Filed Testimony at 2. NextEra's present claim that the DEP's questions of Mr. Russo regarding the logistics and feasibility of burying the Project – which he could not answer – warrant additional time on May 9 is insincere at best. CMP need not remind NextEra that CMP's rebuttal testimony on undergrounding is a response to NextEra's own cry for an undergrounding alternatives analysis. The Presiding Officers, again, should reject NextEra's contorting of CMP's response to NextEra's own direct testimony into an excuse for additional time or delay.

Fourth, NextEra has already had the opportunity to cross-examine Mr. Dickinson on his rebuttal testimony at the April 1 hearing. Nor has anything changed since NextEra requested on March 27 an additional ten minutes "in order to cross-examine the Applicant's witness, Thorn Dickinson, regarding his discussion of undergrounding the HVDC transmission line, including the sections within the Commission's P-RR subdistrict." NextEra took that opportunity on April 1, and does not now need the additional 20 minutes it requests. As the Presiding Officers noted in their Joint Seventh Procedural Order, CMP stated that it is amenable to offering Mr. Dickinson for cross-examination on his rebuttal testimony on the additional hearing day along with Mr. Tribbet and Mr. Bardwell, as Group 4 had proposed. Joint Seventh Procedural Order ¶ II.9.f. CMP did not so offer Mr. Dickinson to allow intervenors a second bite at the apple, and those that chose to cross-examine him on his rebuttal testimony on April 1 should not be granted additional time to cross-examine him again on May 9, let alone for twice as much time as originally requested (and expended).

Finally, CMP notes that in their Joint Seventh Procedural Order the Presiding Officers decided that the "May hearing date will also be used to hear the testimony and cross-examination of any other witnesses' testimony pertaining to the issue of the underground alternative." Joint Seventh Procedural Order ¶ I.4; see also ¶ II.9.g. ("Any other witnesses that submitted rebuttal testimony or that submit sur-rebuttal testimony pertaining to the underground alternative must also be present at the May hearing date for summary of testimony and cross-examination."). While Mr. Russo filed direct testimony on undergrounding (to which CMP responded in its rebuttal testimony), it appears that he is exempt from the May 9 hearing date because he has not filed rebuttal testimony and will not file sur-rebuttal testimony. Because this appears contrary to the Presiding Officer's intent to have all witnesses on undergrounding present on May 9, as well as to the Presiding Officers' instruction to reserve specific spillover dates in May, CMP requests that the Presiding Officers provide specific instruction on which witnesses will be required at the May 9 hearing. For example, it is unclear whether witnesses whose rebuttal testimony discussed

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undergrounding only as it relates to the HDD crossing of the Upper Kennebec River will be required at the hearing.

Thank you for your consideration of this letter. Please let me know if you have questions or need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew D. Manahan", with a long horizontal flourish extending to the right.

Matthew D. Manahan

cc: Service Lists