

MATTHEW D. MANAHAN

Merrill's Wharf
254 Commercial Street
Portland, ME 04101

P 207.791.1189
F 207.791.1350
C 207.807.4653
mmanahan@pierceatwood.com
pierceatwood.com

Admitted in: MA, ME, NH

March 8, 2019

James R. Beyer
Maine Dept. of Environmental Protection
106 Hogan Road, Suite 6
Bangor, ME 04401

Bill Hinkel
Land Use Planning Commission
22 State House Station
Augusta, ME 04333-0022

RE: NECEC – Response of Central Maine Power Company

Dear Jim and Bill:

I am enclosing the Response of Central Maine Power Company to Objections and Motions to Strike of Groups 2, 4, and 10.

Thank you.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Service Lists (via email)

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, Merrill Strip Twp, Lowelltown Twp,)
Skinner Twp, Appleton Twp, T5 R7 BKP WKR,)
Hobbs town Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

**RESPONSE OF CENTRAL MAINE POWER COMPANY
TO OBJECTIONS AND MOTIONS TO STRIKE OF GROUPS 2, 4, AND 10**

Groups 2, 4, and 10 object to the Dickinson, Mirabile, and Berube statements of the Project purpose and need because, they assert, it is “not relevant to the hearing topics set forth in the Second Procedural Orders.” Group 4 Objection at 2, 3. Further, they argue that they were denied “the opportunity to present witnesses and testimony on the issue of whether the energy to be provided would be renewably generated or not and whether or not it would provide greenhouse gas benefits.” *Id.* Thus, they reason that any testimony that references the words “renewable” or “clean” must be off-limits for the hearing. They are wrong for several reasons.

First, the witness statements at issue are made in the context of addressing the Project’s purpose and need, which is a central aspect of consideration of alternatives, which is a specifically listed hearing topic. DEP Chapters 310 and 335 make numerous references to “practicable” alternatives. That term is defined as “[a]vailable and feasible considering cost, existing technology and logistics based on the overall purpose of the project.” DEP Reg. 310.3(R); 335.2(D) (emphasis added). So too do the LUPC’s regulations require substantial evidence that “there is no alternative site which is both suitable to the proposed use and reasonably available to the applicant.” LUPC Reg. 10.23,I(3)(d)(8) (emphasis added). Accordingly, the project purpose is a necessary part of the alternatives analysis.

Second, the witness statements at issue are merely descriptive of the Project’s purpose and need, which is directly related to the Massachusetts Section 83D “Request for Proposals for Long-Term Contracts for Clean Energy Projects” (RFP)¹ that will deliver clean, renewable energy. The Project’s purpose and need do not hinge on whether the Project will reduce GHG emissions. Rather, the Project’s purpose and need hinge on the fact that Massachusetts has determined that the Project meets Massachusetts’ requirements for clean, renewable energy;² that is why the Project was selected in the Massachusetts RFP process. Because Massachusetts has made that determination, the Project purpose and need is, as stated by the witnesses at issue, to deliver this power to Massachusetts. Such statements do not take a substantive position, at least for purposes of this hearing, about the underlying basis of or support for that determination.

¹ The RFP is available here: <https://macleanenergy.files.wordpress.com/2016/12/83d-rfp-and-appendices-final-june-12-2017-conforming-changes-clean.pdf>.

² *Id.* Clean Energy Generation is defined under the Massachusetts RFP as either: (i) firm service hydroelectric generation from hydroelectric generation alone; (ii) new Massachusetts Class I RPS eligible resources that are firm up with firm service hydroelectric generation; or (iii) new Massachusetts Class I RPS eligible resources.

Third, the Third Procedural Orders did not exclude statements of Project purpose and need from the hearing. To the contrary, alternatives are a listed hearing topic. And the Third Procedural Orders did not exclude all references to the words “renewable” or “clean” when describing the energy that will be transported over the proposed transmission line. Rather, the Orders excluded the topic of “net greenhouse gas emissions” from consideration at the hearing.³ The subject testimony merely refers to the Massachusetts GHG emissions reduction goals,⁴ which goals are the basis of the Massachusetts RFP, which in turn is the basis of the Project’s purpose and need. The testimony does not seek to support or otherwise address the Project’s GHG benefits; reference to the clean energy delivered by the Project is distinct from the issue of net GHG emissions.

Fourth, even if the subject statements were not relevant to alternatives, the Project’s underlying purpose and need are important in describing and summarizing the Project itself. Counsel for CMP asked at the January 17, 2019 prehearing conference whether CMP should include a Project summary in its direct testimony, and was specifically requested to do so. The witness statements are integral to an understanding of the Project and its background. CMP was careful, in providing this background, not to stray into excluded hearing topics.

Groups 2 and 10 also object to “Mr. Dickinson’s Section III, Conclusion which is not based on any of his proffered testimony, nor has he established any qualifications to make the assertions he does.” Groups 2 and 10 Motion at 4-5. While it is unclear whether Groups 2 and

³ Contrary to Group 4’s statement that the DEP Presiding Officer denied it “the opportunity to present witnesses and testimony on the issue of whether the energy to be provided would be renewably generated or not and whether or not it would provide greenhouse gas benefits,” what the DEP Presiding Officer in fact ordered was that “net greenhouse gas emissions will not be added as a topic to be addressed at the hearing.” DEP Third Procedural Order ¶ 8.a; see also LUPC Third Procedural Order § II.B.

⁴ See *supra* note 1. The RFP states at page 2, “The fundamental purpose of the RFP is to satisfy the policy directives encompassed within Section 83D and to assist the Commonwealth with meeting its Global Warming Solution Act (“GWSA”) goals.”

10 object to Mr. Dickinson's Section III (Discussion) or Section IV (Conclusion), in either case Mr. Dickinson provided his credentials in Section II and Exhibit CMP-1-A. Furthermore, there is no requirement that a witness's conclusion must be based on "his proffered testimony" or that the witness must "establish any qualifications to make the assertions he does."

Finally, Group 4 objects to Mr. Berube's testimony that there is no evidence that "another project could be built to satisfy the Project's purpose and need, or that another project would be less environmentally damaging," and that "a non-CMP project would have unknown environmental impacts." Group 4 Objection at 4-5. This testimony, however, is a short statement relating, again, to the Project's purpose and need, and to CMP's rejection of the no-action alternative: "Nor is there any evidence that another project could be built to satisfy the Project's purpose and need, or that another project would be less environmentally damaging. Indeed, a non-CMP project would have unknown environmental impacts." Berube Testimony at 4. This testimony is unrelated to net GHG emissions and instead concerns the no-action alternative that is germane to the alternatives analysis, which is based on the Project's purpose and need, which is restated by Mr. Berube: "allowing CMP to deliver 1,200 MW of the clean energy generation from Quebec to New England at the lowest cost to ratepayers." *Id.* Because this is a CMP-proposed project, this purpose and need of course focuses on allowing CMP to deliver the power. An alternative project, whether in Maine or elsewhere, would not meet that purpose, and noting that such an unknown alternative would have unknown environmental impacts is simply recognizing the obvious, and does not open the door to exploration of multiple potential alternatives that would not meet CMP's Project purpose and need.

For the foregoing reasons, the motions of Groups 2, 4, and 10 to strike portions of CMP's pre-filed direct testimony should be denied.

Dated this 8th day of March, 2019.



Matthew D. Manahan
Lisa A. Gilbreath

PIERCE ATWOOD LLP
Merrill's Wharf
254 Commercial Street
Portland, ME 04101
(207) 791-1100

*Attorneys for Applicant Central Maine
Power Company*