

March 27, 2019

Susanne Miller, Presiding Officer
Maine Department of Environmental Protection
17 State House Station
Augusta, ME 04333

Commissioner Everett Worcester, Chair and Presiding Officer
Land Use Planning Commission
22 State House Station
Augusta, Maine 04333

RE: NECEC Project: L-27625-26-A-N/L-27625-TG-B-N/L-27625-2C-C-N/
and L-27625-VP-D-N/L-27625-IW-E-N and Site Law Certification SLC
9: Intervenor Group 8 (NextEra) Motion to Strike and Revised Witness
Exam Times

Dear Presiding Officer Miller and Commissioner Worcester:

Intervenor Group 8/NextEra Energy Resources, LLC (“NextEra”), in accordance with the Maine Department of Environmental Protection (“DEP”) and the Maine Land Use Planning Commission’s (“LUPC”) March 26, 2019 email and conference call regarding the Agenda for the Public Hearing on the NECEC, herein provides its Motion to Strike the Applicant’s modification of its application to include an underground alternative and a list of additional witnesses and time necessary for cross-examination due to the application supplement.

NextEra respectfully requests thirty (30) minutes for cross examination of the Applicant’s existing witnesses. NextEra initially requested thirty minutes and was granted twenty. The additional ten minutes is requested 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. In the event NextEra’s enclosed Motion to Strike is granted, the existing 20 minutes will suffice. In the event NextEra’s alternative request in the Motion is granted, NextEra requests 30 minutes to cross the Applicant’s existing witnesses at a supplemental hearing date in the future.

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.

Sincerely,



Joanna B. Tourangeau

cc: NECEC Service List

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
AND
LAND USE PLANNING COMMISSION

IN THE MATTER OF CENTRAL MAINE)	
POWER COMPANY)	
Application for Site Location of Development Act)	
permit and Natural Resources Protection Act permit)	
for the New England Clean Energy Connect)	
("NECEC"))	GROUP 8/NEXT ERA MOTION
L-27625-26- A-N)	TO STRIKE APPLICANT
L-27625-TB-B-N)	TESTIMONY AND
L-27625-2C-C-N)	WITNESSES
L-27625-VP-D-N)	
L-27625-IW-E-N)	
)	
SITE LAW CERTIFICATION SLC-9)	

INTERVENOR GROUP 8 MOTION TO STRIKE

Intervenor Group 8, which consists of only NextEra Energy Resources, LLC ("NextEra" or "Group 8"), moves to strike the Central Maine Power Company's ("CMP") rebuttal testimony which modifies CMP's application by setting forth an alternative analysis of the undergrounding of the 53 miles of the transmission line's greenfield corridor ("Alternative Analysis"). In the alternative, Group 8 moves to have the Alternative Analysis filed as an amendment to CMP's application. Group 8's motion should be granted for the reasons set forth below:

Under the Natural Resource Protection Act ("NRPA"), the Site Location of Development Act ("SLODA") (specifically 38 M.R.S.A. § 487-A(4)) and the Land Use Planning Commission's ("Commission") Site Law Certification, an Alternative Analysis is to be filed with the application, or, if filed late, as an amendment to the application. CMP did not file the Alternative Analysis with the application and has not sought to amend its application. Instead,

through rebuttal testimony, CMP has attempted to introduce the Alternative Analysis. In fact, the rebuttal testimony of Dickinson, Bardwell, and Tribbets contend they are addressing the Alternative Analysis. Given CMP did not file the Alternative Analysis as an amendment to its application, the testimony on the Analysis should be stricken.

For context, on February 25, 2019, NextEra filed direct testimony of Mr. Christopher Russo. Mr. Russo's testimony pointed out that CMP's analysis of alternatives, as applicable to NRPA, SLODA, and the Commission's Site Law Certification, did not include analysis of an undergrounding for the 53 miles of the green field corridor, and, therefore, was fatally flawed. On March 25, 2019, CMP filed hundreds of pages of rebuttal testimony and documentation from witnesses Thorn Dickinson, Justin Tribbets, and Justin Bardwell, all setting forth new claims that CMP did or has completed an Alternatives Analysis. For example, Mr. Bardwell asserts that:

After a thorough review, CMP determined that undergrounding any additional segments of the NECEC transmission line is not a practicable, or a suitable or reasonably available alternative, due to the extremely high cost, limited environmental benefits, increased risk and impacts during construction, and potential adverse operational impacts. It was so clear that undergrounding would not meet the Project purpose or otherwise be practicable, suitable, or reasonably available, in fact, that CMP did not initially include it as an alternative in the application materials filed with DEP and LUPC.


In other words, according to Mr. Bardwell, CMP performed some level of Alternative Analysis, but decided against including the analysis in its application. For this reason, the CMP rebuttal testimony and exhibits of Dickinson, Bardwell, and Tribbets should be stricken. In the alternative, the cure for withholding this information is the submittal of an amended application and allowing the parties an opportunity to file testimony on the amendment.

Chapter 3 of the Department of Environmental Protection's Rules governs these proceedings.¹ Section 17 of Chapter 3 specifies that:

An applicant who modifies a pending license application within sixty days prior to a scheduled hearing shall notify the Presiding Officer at the time of filing of the modification with the Department. Depending upon the nature of the change to the proposed activity and the amount of time remaining before the hearing, 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. Any Department costs associated with the need to reschedule a hearing as a result of a modification to a pending application will be paid by the applicant.

Given that CMP has failed to file the Alternative Analysis as an amendment, consistent with this provision of Chapter 3 of DEP's rules, NextEra respectfully requests that: (1) all of the rebuttal testimony and exhibits of Dickinson, Bardwell, and Tribbets be stricken or (2) CMP be directed to re-file this testimony and exhibits as an amendment to its application and the parties be provided a minimum of two weeks to file rebuttal testimony.

DATED: March 27, 2019



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¹ Chapter 3 does not on its face govern Commission proceedings but, in the absence of contradictory regulatory proceedings, the Commission has utilized Department procedures for these consolidated proceedings.