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Mark Draper, Chair
Board of Environmental Protection
c/o Ruth Ann Burke
17 State House Station
Augusta, ME 04333-0017

November 6, 2020

**RE: Central Maine Power Company, New England Clean Energy Connect
Appeal of Department Order L-27625-26-A-N, L-27625-TB-B-N, L-
27625-2C-C-N, L27625-VP-D-N, L27625-IW-E-N**

Dear Chair Draper,

On behalf of my clients, West Forks Plantation, Town of Caratunk, Kennebec River Anglers, Maine Guide Service, LLC, Hawks Nest Lodge, Ed Buzzell, Kathy Barkley, Kim Lyman, Noah Hale, Eric Sherman, Mike Pilsbury, Matt Wagner, Mandy Farrar and Carrie Carpenter (“Petitioners” or “West Forks”), we request reconsideration of the Chair’s October 21, 2020 decision striking our entire October 16 filing captioned, Supplement to Motion for Stay of Agency Action and Memorandum in Support of NRCM’s Application for Stay. West Forks’ further request a full Board hearing on its Application to Stay.

As a preliminary procedural point, West Forks understands the Chair’s October 23, 2020 ruling denied both NRCM’s and West Forks’ renewed requests for Stay of the above referenced permits and therefore the relevance of West Forks’ Supplemental filing may now be moot. However, West Forks’ is compelled to submit this request for reconsideration in order to preserve objections to the Chair’s Ruling for any potential appeal. For all of the following reasons, West Forks respectfully requests the Chair, upon reconsideration admit West Forks Supplemental filing into the record and submit the Request for Stay for full Board review.

West Forks objection to the Chair’s decision to strike is based on a lack of any procedural order that would have directed West Forks filing of supplemental information. First, at no time since NRCM filed the initial appeal of the Commissioner’s Order granting CMP’s NECEC permits (the “Order”), and all subsequent filings by all parties including the Department, through the Superior Court’s remand of NextEra and West Forks 80C Appeals to the Board, has the Chair issued any procedural order indicating time frames for when or what any party may submit beyond the basic appeal pleadings, with only two exceptions:

1) After remand of the 80C Appeals, the Chair's letter dated August 26, 2020 afforded West Forks and NextEra until Friday, September 25, 2020 to "file a more detailed statement of the issues described in their judicial appeals..." plus, "[a]ny request for public hearing or inclusion of supplement evidence." See *Chair's Letter dated August 26, 2020*.

2) The Chair's October 7, 2020 letter which declined to consider West Forks and NRCM's separate request for stays as appeals of the Commissioner's denial but instead would consider both as renewed request for Stay.¹ In that Letter the Chair set out the only other procedural deadline he has thus far established: October 16, 2020 at 5:00 p.m. which provided other parties with the opportunity to submit legal arguments in support of or opposition to West Forks and NRCM's request.

Because there have been no other deadlines or time limits established for filing additional requests or supplemental information to any pending request, West Forks reasonably relied on the absence of any procedural directive to file its supplement. It was entirely reasonable for West Forks to assume that a supplement, which contained relevant information in further support of its request could be filed at any time, especially if that information was not available to the petitioner at the time of the original submission. It is fundamentally unfair and unreasonable to strike from the record relevant information that would help inform the Chair in reaching a decision when no deadline was ever established to close the record. There is therefore no reason for this portion of West Forks' submission to be stricken.

Second, West Forks submitted a combined filing: supplement to its request for stay, AND memorandum in support of NRCM's request. West Forks and NRCM are separate parties. West Forks is an "other party" with respect to NRCM's request and was therefore entitled, as were *all other* parties, to submit legal argument in support of NRCM's request. There is therefore no justification and no procedural or legal basis for West Forks' memorandum in support of NRCM's request for stay to be stricken from the record.

West Forks also objects to the Chair's inconsistent actions related to West Forks' Application for Stay. While the October 7 letter stated West Forks' application for Stay would not be reviewed as an appeal of the Commissioner's denial but instead treated as a renewed request, the Chair then issued his October 23 letter in which he averred he would need to go back through the record which would take as much time as that which would be required for the actual appeal. He then stated, "I see no compelling grounds to revisit and reconsider the Commissioner's Stay Decision and decline to do so here." This makes it clear that the Board Chair did not in fact review West Forks request as a renewed application for stay. A full Board review of the Request for Stay now would be an appropriate step to allow West Forks an opportunity to be heard on its Application for Stay.



In sum, West Forks respectfully requests that the Chair reconsider his decision to strike West Forks Supplement to Motion for Stay of Agency Action and Memorandum in Support of NRCM's Application for Stay. West Forks' further requests a full Board hearing on West Forks' Application for Stay.

If you have any questions or concerns, please do not hesitate to contact me.

Very truly yours,

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Encl. (1)

cc: Service list (DRAFT) (ver. 10/7/2020)