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Admitted in: MA, ME, NH

March 7, 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 – Motion to Strike of Central Maine Power Company

Dear Jim and Bill:

Pursuant to the Third Procedural Orders, please find attached Central Maine Power Company's Motion to Strike.

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,)
Hobbsdown Twp, Bradstreet Twp,)
Parlin Pond Twp, Johnson Mountain Twp,)
West Forks Plt, Moxie Gore,)
The Forks Plt, Bald Mountain Twp, Concord Twp)

MOTION TO STRIKE OF
CENTRAL MAINE POWER COMPANY

Central Maine Power Company (CMP) moves to strike the testimony described below that exceeds the scope of the hearing as set forth in the Second and Third Procedural Orders of the Maine Department of Environmental Protection (DEP) and the Maine Land Use Planning Commission (LUPC), and for the other reasons described below. This motion supersedes and replaces CMP’s February 19, 2019 Motion to Strike.

Throughout this proceeding, DEP and LUPC have been clear that the hearing and any pre-filed testimony must be narrowly focused on certain specific topics relevant to the applicable review criteria. Indeed, DEP’s Presiding Officer instructed “that the limited hearing time should be devoted to an in-depth examination of the topics most likely to elicit conflicting evidence or

technical testimony that warrants a closer examination than could be had on documents alone.” DEP First Procedural Order ¶ 19. *See also* LUPC Second Procedural Order § III.A (describing DEP’s, LUPC’s, and the intervenors’ efforts to identify “key issues” for the hearing).

Accordingly, “[t]o begin the process of narrowing the issues that will be addressed at the hearing” the DEP Presiding Officer ordered on August 13, 2018 that the intervenors must file (by August 27, 2018) “a specification of the statutory and regulatory criteria that they wish to address at the public hearing [and] the specific, significant or contentious topics or subject matters under those criteria relating to the project that they wish to address.” DEP First Procedural Order ¶ 19. The process of narrowing the topics to be addressed at the hearing continued at the September 7, 2018 pre-hearing conference, at which DEP identified major topic areas for consideration and the intervenors pitched the specific, significant, or contentious topics or subject matters that they wished to address at the hearing.

On October 5, 2018 the DEP Presiding Officer limited the major topic areas to the subtopics that were discussed in the intervenor filings and at the pre-hearing conference, stating “[t]he Department and LUPC have decided upon the following four (4) major topic areas along with several subtopics as subject matters for the hearing”:

1. Scenic Character and Existing Uses
 - i. Visual Impact Assessment and Scenic/Aesthetic Uses
 - ii. Buffering for Visual Impacts
 - iii. Recreational and Navigational Uses
2. Wildlife Habitat and Fisheries
 - i. Endangered Species – Roaring Brook Mayfly, Spring Salamanders
 - ii. Brook Trout Habitat
 - iii. Habitat Fragmentation
 - iv. Buffer Strips around Cold Water Fisheries
3. Alternatives Analysis
4. Compensation and Mitigation
 - i. Cold Water Fisheries Habitat
 - ii. Outstanding River Segment
 - iii. Wetlands

DEP Second Procedural Order ¶ 7. The phrase “along with” means what it says: the major topic headings must be considered “along with” the specific subtopics, so that they limit each other, taken together. That is, those two words are intended to limit the scope of the subtopics to the approval criteria in the major topic area headings (so testimony does not stray to broader discussions of those subtopics that is not relevant to the approval criteria), and to limit the scope of the topic headings to the listed subtopics.

This months-long “process of narrowing the issues that will be addressed at the hearing” would be for naught if the listing of subtopics was not intended to limit the hearing to those subtopics. Certainly if the hearing were to be open to the general topic headings, there would have been no reason to list the subtopics. In other words, if the subtopics were additive, it would have been pointless even to list the subtopics at all; they would be mere surplusage.

Accordingly, the hearing topics are limited to the subtopics set forth in DEP’s Second Procedural Order. Testimony on topics such as tourism, water quality, and herbicides is not relevant and material to the subject matter of the hearing unless it is explicitly tied to a hearing subtopic, such as “Recreational and Navigational Uses” or “Brook Trout Habitat.” Additional topics that are close to, but not the same as, hearing subtopics must be excluded so that the limited hearing time can be “devoted to an in-depth examination of the issues most likely to elicit conflicting evidence or technical testimony that warrants a closer examination than could be had on documents alone.” DEP First Procedural Order ¶ 19.

For example, “tourism” is not shorthand for scenic or recreational impacts, without making a clear connection; it is beyond the scope of the hearing for a witness to testify that tourism may suffer because an alleged fear of electromagnetic fields from the transmission line may keep tourists away. Nor is “herbicides” shorthand for impacts on brook trout habitat, without making a clear connection; it is beyond the scope of the hearing for a witness to testify

that water quality may suffer because of use of herbicides. So witnesses should not be allowed to include testimony relating to tourism or herbicides, for example, unless they have made an explicit connection to a hearing topic.

Similarly, LUPC ordered that “the scope of what may be discussed at the hearing must be limited to the time available.” LUPC Second Procedural Order § III.A. Thus it determined that its portion of the public hearing would be “focused on its allowed use determination and specifically on the topic of whether the proposed Project is an allowed use within the P-RR subdistrict,” and that other topics relevant to its review “will not be topics addressed at the public hearing.” LUPC First Procedural Order ¶ 6. Accordingly, LUPC’s Presiding Officer ordered that the hearing topics are limited to (1) Scenic Character and Existing Uses and (2) Alternatives Analysis. LUPC Second Procedural Order § III.C.

LUPC’s Presiding Officer clarified that “[f]or consideration in certifying to the Department whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed, testimony provided under the Scenic Character and Existing Uses topic area must be relevant to the Commission’s 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. Similarly, testimony provided under the Alternatives Analysis topic area must be relevant to the Commission’s 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.” LUPC Third Procedural Order § I.A.

Based on the directives of the DEP and LUPC Presiding Officers, and for the other reasons described below, CMP moves to strike the following testimony:

Group 1

- All witnesses (R. Haynes and J. McMahan)
 - All members of Group 1 intervened in the DEP proceeding only. To the extent Group 1 attempts to provide testimony during the LUPC portion of the hearing, it should be stricken, and no Group 1 pre-filed testimony should be considered by LUPC.¹ In addition, the following testimony should be stricken:
- Robert Haynes
 - Mr. Haynes sent his testimony to Assistant Attorney General Peggy Bensinger on Tuesday, March 5, 2019 at 10:52 AM. DEP forwarded Mr. Haynes' testimony to the service list on Tuesday, March 05, 2019 at 2:24 PM. There is no evidence that Mr. Haynes' testimony was timely filed by the February 28, 2019 deadline and there has been no showing of good cause for its apparent late filing. *See* DEP Reg. 2.3(A) (the timeliness of filing is determined "by the received time stamp on the document, telefax or electronic mail"). Accordingly, Mr. Haynes' testimony should be stricken in its entirety. *Id.* ("The risk of material not being received in a timely manner is on the sender, regardless of the method used. Submissions not received by the Department by a prescribed deadline will be deemed untimely and will not be considered by the Department in the absence of good cause shown."). Alternatively, the following testimony should be stricken, at a minimum:
 - Page 2: "Project Overview," as well as the Massachusetts Section 83D Clean Energy request for proposals (RFP), jobs to Massachusetts residents, cost and security, the status of a project in Vermont, settlement funds, market security, and Massachusetts rules on power construction, are not hearing topics.
 - Page 3: "Certification," as well as the Maine Public Utilities Commission Certificate of Public Convenience and Necessity, power contracts, tax revenue, economic impact, community involvement, local Massachusetts power security, "merit to the State of Maine," sources of power, and "ethical disconnect," are not hearing topics.
 - Page 4: Constructability, herbicides, timber growth, and jobs are not hearing topics.
 - Page 5: Tourism, a project in Vermont, and carbon sequester are not hearing topics.
 - Page 6: Hydropower, settlement funds, "merit to the State of Maine," environmental damage abroad, economic impacts, and tourism are not hearing topics.
 - Page 7: Power sources are not hearing topics.
- Janet McMahan
 - Page 19: "3. Would this project have an unreasonable adverse effect on water quality in the townships where it is located or in neighboring townships? If so, please explain. Yes. See page 5, bullet 2." Water quality is not a hearing topic.

¹ In any event, no Group 1 witness designated which portions of the testimony are specific to LUPC's review, and thus all Group 1 testimony is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A.

Group 2

- All witnesses (E. Caruso, G. Caruso, R. Merchant,² J. Presiendorfer,³ G. Robinson,⁴ and C. Russell)
 - All witnesses failed to designate which portions of their testimony are specific to LUPC's review, and no witness included LUPC in the case caption. Thus all Group 2 testimony is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A. To the extent Group 2 attempts to provide testimony during LUPC's portion of the hearing, it should be stricken, and no Group 2 pre-filed direct testimony should be considered by LUPC.
 - Furthermore, the February 15, 2019 witness list filed on behalf of Groups 2 and 10 designates Roger Merchant and Garnett Robinson as Group 2 witnesses only, and Justin Presiendorfer as a Group 10 witness only. These witnesses may testify only on behalf of the group identified in the February 15 filing.
- Elizabeth Caruso
 - Ms. Caruso repeatedly proffers testimony on greenhouse gas (GHG) emissions, a topic the DEP Presiding Officer expressly excluded from consideration at the hearing. DEP Third Procedural Order ¶ 8.a; *see also* LUPC Third Procedural Order § II.B. While at a minimum her testimony on this topic (at pages 22, 24-29, and Attachments B and C) must be stricken, CMP further requests that her testimony in its entirety be stricken as a sanction for willfully and openly ignoring the Presiding Officer's ruling; the Presiding Officer has authority to do so, and should do so, pursuant to DEP Reg. 3.4(C)(12). Alternatively, the following testimony should be stricken, at a minimum:
 - Page 3: Economic impact is not a hearing topic.
 - Page 4: The Town's moratorium is not a hearing topic.
 - Page 4: Economic impact, fire, others are not hearing topics.
 - Page 5: Opposition is not a hearing topic, and not relevant to review standards.
 - Page 7: Herbicides are not a hearing topic.
 - Page 9: Property values, emergency response capabilities, and tourism are not hearing topics.
 - Page 11: To the extent this testimony goes beyond scenic character and recreation (e.g., economic viability and tourism) it goes beyond hearing topics.
 - Page 11: Vernal pool habitat is not a hearing topic.
 - Page 11: Fire and emergency infrastructure, tourism, and lodging are not hearing topics.
 - Pages 13-14: Economic impacts and tourism are not hearing topics.

² Mr. Merchant's testimony indicates that it is filed on behalf of both Group 2 and Group 10.

³ Mr. Presiendorfer's testimony indicates that it is filed on behalf of both Group 2 and Group 10.

⁴ Mr. Robinson's testimony indicates that it is filed on behalf of both Group 2 and Group 10.

- Pages 14-15: Discussion of wildlife and fisheries is broader than the limited hearing topics. Herbicides are not a hearing topic.
- Page 16: Tourism and Maine brand are not hearing topics.
- Page 16: Natural flow of water is not a hearing topic.
- Page 17: Water quality not a hearing topic.
- Pages 19-20: Tourism studies are not a hearing topic.
- Page 20: Economic impacts are not a hearing topic.
- Page 21-22: Livelihood, property values, economic impacts, and project benefits are not hearing topics.
- Page 22: Groundwater is not a hearing topic.
- Page 22: Climate and greenhouse gas are not hearing topics, and have been expressly excluded.
- Page 23: Natural drainage ways are not a hearing topic.
- Page 23: Erosion and sedimentation are not hearing topics.
- Page 23: Water quality is not a hearing topic.
- Page 23: Property values, taxes, corona hum, and EMFs are not hearing topics.
- Page 24-29: As Ms. Caruso admits, her “Comments on Non-Hearing Topics” are not relevant to the hearing, and should therefore be stricken.
- Exhibit 1: This is a huge data dump (220 pages) of irrelevant information that is outside the scope of the hearing topics. It should all be stricken, other than any specific relevant pages.
- Exhibit 2: Tourism is not a hearing topic.
- Exhibit 6: Fire response issues are not hearing topics.
- Exhibit 7 and all attachments (pages 292-374, or 82 pages): EMFs and health impacts of electricity and stray voltage are not hearing topics.
- Exhibit 8: Tourism and economic impact are not hearing topics.
- Exhibit 13: Homeowners association documents are irrelevant to the hearing topics.
- Attachment B (pages 456-497): GHG is not a hearing topic.
- Attachment C: GHG is not a hearing topic.
- Greg Caruso
 - Mr. Caruso’s testimony lacks a signature page, and as such is not sworn testimony as required by DEP’s and LUPC’s Procedural Orders. DEP Third Procedural Order ¶ 17; LUPC Third Procedural Order § III.A. Accordingly, the entirety of his testimony should be stricken. Alternatively, the following testimony should be stricken, at a minimum:
 - Page 4: Tourism is not a hearing topic.
 - Page 5: Noise is not a hearing topic.
 - Page 5: Vernal pools and herbicides are not hearing topics.
 - Page 5: Groundwater is not a hearing topic.
 - Page 6: Drainage ways are not a hearing topic.

- Page 6: Water quality is not a hearing topic.
- Page 6: Noise is not a hearing topic.
- Page 7: Unusual natural areas is not a hearing topic.
- Page 9-10: Personal financial harm is not a hearing topic.
- Roger Merchant (filed on behalf of Groups 2 and 10)
 - Mr. Merchant’s testimony lacks the required jurat in his signature page. His testimony therefore is not sworn testimony as required by DEP’s and LUPC’s Procedural Orders. DEP Third Procedural Order ¶ 17; LUPC Third Procedural Order § III.A. Accordingly, the entirety of his testimony should be stricken.
 - Pages 2-13: Forest fragmentation is not a hearing topic. At pages 12-13 Mr. Merchant admits that he is not a wildlife biologist, and thus cannot speak to habitat fragmentation, just “forest fragmentation.” To the contrary, he merely can “sense and hear” concerns regarding habitat. Because habitat fragmentation, not forest fragmentation, is a hearing topic, Mr. Merchant’s testimony should be stricken in its entirety. Alternatively, the following testimony should be stricken, at a minimum:
 - Pages 13-19: As Mr. Merchant admits, his “Comments on Non-Hearing Topics” are not relevant to the hearing, and therefore should be stricken.
 - Exhibit 7: On March 7, 2019 at 1:42 PM Mr. Merchant submitted a supplemental Exhibit 7, “to elucidate my pre-filed testimony.” This exhibit was filed after the February 28, 2019 deadline and there has been no showing of good cause for its late filing. Accordingly, this exhibit should be stricken in its entirety. *See* DEP Reg. 2.3(A) (“Submissions not received by the Department by a prescribed deadline will be deemed untimely and will not be considered by the Department in the absence of good cause shown.”). Also, this exhibit does not include a signature page or accompanying jurat, which, as noted above, means that it is not sworn testimony and must be stricken for that reason as well.
- Justin James Presiendorfer (filed on behalf of Groups 2 and 10)
 - Pages 5-12: Not specific to LUPC’s P-RR subdistrict.
 - Page 9: Tourism is not a hearing topic.
 - Page 11: Crime rates, education, and health care are not hearing topics.
- Garnett Robinson (filed on behalf of Groups 2 and 10)
 - Mr. Robinson’s testimony lacks the required jurat language in his signature page. Neither his testimony nor his jurat is dated. His testimony therefore is not sworn testimony as required by DEP’s and LUPC’s Procedural Orders. DEP Third Procedural Order ¶ 17; LUPC Third Procedural Order § III.A. Accordingly, the entirety of his testimony should be stricken.
 - The stated purpose of Mr. Robinson’s testimony is “to assess the proposed transmission line project with respect to value considerations (economic impacts and benefits).” Page 2. Neither value considerations nor economic impacts and benefits are hearing topics, so the entirety of Mr. Robinson’s testimony should be

stricken as exceeding the scope of the hearing. Alternatively, the following testimony should be stricken, at a minimum:

- Pages 3-5: Reliability and financial capacity of CMP is not a hearing topic.
- Page 6: Property valuation, stray voltage, EMF, and fire are not hearing topics.
- Page 7: Employment and tourism are not hearing topics.
- Page 7-8: Economic impact and property values are not hearing topics.
- Pages 9-10: Tax issues and legal precedent are not hearing topics, nor are Mr. Robinson's statements a presentation of facts. Rather, this testimony is a legal argument, which is reserved for briefing and is not proper in pre-filed testimony.
- Page 11: As Mr. Robinson admits, his "Criteria Beyond the Scope of the Hearing" are not relevant to the hearing, and should therefore be stricken.
- Exhibit 2: Tax revenue and economic impacts are not hearing topics.
- Exhibit 3: CMP reliability is not a hearing topic.
- Exhibit 4: Property taxes are not a hearing topic.
- Exhibit 5: Property taxes are not a hearing topic.
- Exhibit 6: MPRP and CMP reliability are not hearing topics.
- Exhibit 7: Property taxes are not a hearing topic.
- Exhibit 8: Property taxes are not a hearing topic.
- Exhibit 9: Fire and safety are not hearing topics.
- Exhibit 10: Law Court cases on nonprofit taxation issues are not relevant to any hearing topic. At best this is legal argument, properly reserved for briefing.

Group 4

- Witnesses A. Calhoun, R. Joseph, J. Reardon, and T. Towle
 - Witnesses A. Calhoun, R. Joseph, J. Reardon, and T. Towle failed to designate which portions of their testimony are specific to LUPC's review, and witnesses J. Reardon and T. Towle failed to include LUPC in their case caption. Thus the testimony of these witnesses is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A. To the extent these witnesses attempt to provide testimony during LUPC's portion of the hearing, it should be stricken, and none of their pre-filed direct testimony should be considered by LUPC. In addition, the following testimony should be stricken:
- Ron Joseph
 - Pages 3-4 (pdf pages 4-5): Economic impact is not a hearing topic.
- Jeff Reardon
 - Page 5: Atlantic salmon habitat is not a hearing topic.
 - Page 10: Atlantic salmon is not a hearing topic.

Group 6

- All witnesses (A. Cutco, B. Emerson, M. Hunter, and R. Wood)
 - All members of Group 6 intervened in the DEP proceeding only. To the extent Group 6 attempts to provide testimony during LUPC's portion of the hearing, it should be stricken, and no Group 6 pre-filed testimony should be considered by LUPC.⁵

Group 8

- Chris Russo
 - Mr. Russo failed to designate which portions of his testimony are specific to LUPC's review, and thus his testimony is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A. To the extent Group 8 attempts to provide testimony during LUPC's portion of the hearing, it should be stricken, and no Group 8 pre-filed direct testimony should be considered by LUPC.

Group 10

- All witnesses (K. Barkley, E. Buzzell, C. Carpenter, T. DiBlasi, M. Farrar, N. Hale, K. Lyman, E. Sherman, and M. Wagner)
 - All witnesses failed to designate which portions of their testimony are specific to LUPC's review, and no witness included LUPC in the case caption. Thus all Group 10 testimony is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A. To the extent Group 10 attempts to provide testimony during LUPC's portion of the hearing, it should be stricken, and no Group 10 pre-filed direct testimony should be considered by LUPC.
 - Furthermore, other than Edwin Buzzell, all members of Group 10 have intervened in the LUPC proceeding only. Given that their testimony is captioned for the DEP proceeding, and makes no designation as to which portions LUPC should consider, all "LUPC Residents and Recreational Users" testimony should be stricken. To the extent LUPC considers any testimony from Group 10 (or DEP considers testimony from Edwin Buzzell), the following testimony should be stricken as exceeding the scope of the hearing:

⁵ In any event, no Group 6 witnesses designated which portions of the testimony are specific to LUPC's review, and no witness included LUPC in the case caption. Thus all Group 6 testimony is presumed to be submitted for DEP's portion of the hearing only. DEP Third Procedural Order ¶ 18; LUPC Third Procedural Order § III.A.

- Kathy Barkley
 - Pages 2-3: Ms. Barkely intervened in the LUPC proceeding only, but her testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Pages 2-3: Tourism is not a LUPC hearing topic.
 - Page 3: Herbicides are not a LUPC hearing topic.
- Edwin Buzzell
 - Pages 3-5: To the extent his testimony is intended for LUPC’s consideration it should be stricken as it is not specific to LUPC’s P-RR subdistrict.
 - Page 4: General discussions on wildlife are not relevant to the hearing topics of either DEP or LUPC.
 - Page 5: Property values are not a DEP or LUPC hearing topic.
- Carrie Carpenter
 - Pages 2-5: Ms. Carpenter intervened in the LUPC proceeding only, but her testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Page 3: Local economy is not a LUPC hearing topic.
 - Pages 3-4: Property values, EMFs, noise, light, and stray voltage are not LUPC hearing topics.
 - Page 4: Economic impact is not a LUPC hearing topic.
- Tony DiBlasi
 - Pages 2-3: Mr. DiBlasi intervened in the LUPC proceeding only, but his testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Page 3: Economic impact, wilderness habitat, and lower energy costs are not LUPC hearing topics.
- Mandy Farrar
 - Pages 2-4: Ms. Farrar intervened in the LUPC proceeding only, but her testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is

proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.

- Page 2: Tourism and economic impact are not LUPC hearing topics.
- Page 3: Habitat fragmentation, wildlife and fisheries, brook trout habitat, deer habitat, wetlands, vernal pools, IWWF, and erosion are not LUPC hearing topics.
- Noah Hale
 - Pages 2-3: Mr. Hale intervened in the LUPC proceeding only, but his testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Page 2: General statements regarding waterways, ecosystems, loss of livelihoods, property values, and human health hazards are not LUPC hearing topics.
- Kimberly Lyman
 - Pages 2-4: Ms. Lyman intervened in the LUPC proceeding only, but her testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Pages 3-4: Herbicides, economic impact, and tourism are not LUPC hearing topics.
- Eric Sherman
 - Mr. Sherman proffers testimony on GHG emissions, a topic the DEP Presiding Officer expressly excluded from consideration at the hearing. DEP Third Procedural Order ¶ 8.a; *see also* LUPC Third Procedural Order § II.B. While at a minimum his testimony on this topic (at Attachment A) must be stricken, CMP further requests that his testimony in its entirety be stricken as a sanction for willfully and openly ignoring the Presiding Officer’s ruling; the Presiding Officer has authority to do so, and should do so, pursuant to DEP Reg. 3.4(C)(12). Alternatively, the following testimony should be stricken, at a minimum:
 - Pages 2-11: Mr. Sherman intervened in the LUPC proceeding only, but his testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Pages 2-3: Tourism is not a LUPC hearing topic.
 - Page 3: Public need is not a LUPC hearing topic.

- Pages 3-5: Mission, values, and vision of DEP and LUPC are not LUPC hearing topics.
- Pages 5-6: Natural resources are not a LUPC hearing topic.
- Page 6: Traffic is not a LUPC hearing topic.
- Page 7: Tourism is not a LUPC hearing topic.
- Pages 7-8: Wetlands, streams, IWWH habitat, and impact to water and wildlife are not LUPC hearing topics.
- Page 8: Deer are not a LUPC hearing topic.
- Pages 8-9: Development precedent is not a LUPC hearing topic.
- Page 9: Tourism and economic impact are not LUPC hearing topics.
- Pages 9-10: Regional electricity need is not a LUPC hearing topic.
- Pages 10-11: Economic impact is not a LUPC hearing topic.
- Pages 11-13: As Mr. Sherman admits, his “Comments on Non-Hearing Topics” are not relevant to the hearing, and should therefore be stricken.
- Attachment A: GHG emissions are not a LUPC hearing topic.
- Attachment B: Hydro and silica depletion is not a LUPC hearing topic.
- Attachment C: Hydro and silica depletion is not a LUPC hearing topic.
- Attachment D: Hydro dams and Gulf of Maine are not LUPC hearing topics.
- Matt Wagner
 - Pages 2-5: Mr. Wagner intervened in the LUPC proceeding only, but his testimony is not specific to LUPC’s P-RR subdistrict. LUPC made clear in its procedural orders that it would consider only testimony relevant to “whether the Project is an allowed use within the Recreation Protection (P-RR) subdistricts in which it is proposed.” LUPC First Procedural Order ¶ 6; LUPC Second Procedural Order § III.C; LUPC Third Procedural Order § I.A.
 - Page 2: Proceeding process is not a LUPC hearing topic.
 - Page 3: Forest fragmentation, habitat fragmentation, watershed loss, and setbacks are not LUPC hearing topics.
 - Page 4: Economic impact study, economic costs, ecological concerns, and bald eagles are not LUPC hearing topics.

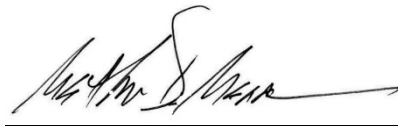
Pursuant to DEP’s rules, “[e]vidence will be admitted if it is relevant and material to the subject matter of the hearing and is of a kind upon which reasonable persons are accustomed to rely in the conduct of serious affairs. Evidence which is irrelevant, immaterial or unduly repetitious will be excluded.” DEP Reg. 3.20(A). Similarly, LUPC’s rules provide that “[e]vidence shall be admissible if it is relevant and material to the subject matter of the hearing and is of a type customarily relied upon by reasonable persons in the conduct of serious affairs.

Evidence which is irrelevant, immaterial, or unduly repetitious shall be excluded.” LUPC Reg 5.11(1).

Each of the above-listed witnesses has offered evidence that is not relevant to the subject matter of the hearing, and which therefore is irrelevant and immaterial to the hearing. While their testimony may be appropriate for written comments, to the extent it concerns criteria relevant to DEP’s or LUPC’s review, it is inappropriate for pre-filed direct testimony or for the hearing. *See* DEP First Procedural Order ¶ 18 (the parties have the opportunity to “submit written comments on those criteria that are not the subject of the hearing until the close of the record at the end of the hearing”).

For all of the foregoing reasons, CMP respectfully requests that the DEP and LUPC presiding officers strike the testimony, or portions thereof, identified above.

Dated this 7th day of March, 2019.



Matthew D. Manahan
Lisa A. Gilbreath

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