

RUSSELL BLACK, et al.

Appellees/Cross-Appellants

v.

BUREAU OF PARKS AND LANDS, et  
al.

Appellants/Cross-Appellees

**MOTION OF  
APPELLANTS/CROSS-APPELLEES  
CMP AND NECEC TRANSMISSION  
LLC TO EXTEND DEADLINE TO  
FILE REPLY BRIEF**

Pursuant to Maine Rule of Appellate Procedure 10, Appellants/Cross-Appellees Central Maine Power Company (“CMP”) and NECEC Transmission LLC (together “NECEC LLC”) move the Court to expressly extend Appellants’<sup>1</sup> deadline to file its reply brief until 21 days after the filing of the last brief of Appellees. Such an enlargement would make clear Appellants may have the same response period that is typically allowed under the Rules of Appellate Procedure, *see* M.R. App. P. 7(b)(2), and as is contemplated by this Court’s scheduling order. NECEC LLC does not seek an enlargement of the page limits applicable for Appellants’ respective replies.

In support of this motion, NECEC LLC states as follows:

1. On September 20, 2021, this Court issued an order setting the following briefing schedule: (a) Appellants’ briefs to be filed on or before November 15, 2021;

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<sup>1</sup> As discussed below, Appellant Bureau of Parks and Lands seeks the same relief.

(b) Appellees' response brief to be filed on or before January 3, 2022; and (c) Appellant's reply briefs to be filed on or before "21 days after the last appellee's brief."

2. On September 30, 2021, this Court granted NECEC LLC's motion to enlarge the page limits for the parties' briefs and permitting any interested person or organization to file a brief as *amicus curiae* without consent of the parties or separate leave of the Court. Pursuant to this order, each brief of Appellants cannot exceed 50 pages; each brief of Appellees cannot exceed 60 pages (including arguments on cross-appeal); and each reply brief of Appellants cannot exceed 35 pages.

3. Two amici supporting Appellants filed briefs on December 14, 2021; two additional amici supporting Appellants filed briefs on December 15, 2021.

4. On December 21, 2021, this Court granted Appellees' motion to enlarge the time to file a separate response to the briefs of the four amici supporting Appellants. Although NECEC LLC had stated its opposition to the requested relief and disagrees that Rule 7A permits Appellees to file a separate brief responding to Appellants' supporting amici, the Court granted the motion before Appellees served the motion on Appellants and enlarged the time for Appellees to file a separate reply to the briefs of the *amicus curiae* through January 17, 2022.

5. Because this Court has now granted Appellees' request for a separate reply brief and enlarged that deadline to file that brief through January 17, 2022, NECEC LLC wishes to eliminate any confusion over the deadline for its reply brief.

Under the scheduling order, Appellants may file a reply brief up until “21 days after the last appellee’s brief” is filed (emphasis added). Appellant NECEC LLC respectfully requests the Court expressly order that this deadline applies to Appellees’ last filed brief, whether that brief be its main Appellees brief due on or by January 3, 2022, or its separate amicus reply brief now due on or by January 17, 2022.

6. Appellees’ filing of an additional brief and the potential for that brief to substantially shorten the typical period to file a reply following Appellee’s final brief provides good cause for an enlargement of time under M.R. App. P. 7(b)(3). Moreover, this case presents multiple significant issues of public concern, and NECEC LLC wishes to ensure it has appropriate time to respond to each of Appellees’ briefs, in addition to any amicus briefs which may be filed in support of Appellees on or by January 3, 2022.

7. Attorney Lauren Parker, representing Appellant Bureau of Parks and Lands, consents to and supports this request for enlargement. Appellant Bureau of Parks and Lands (“BPL”) has authorized undersigned counsel to represent that BPL seeks the same order as NECEC LLC seeks herein.

8. Attorney Jamie Kilbreth, representing Appellees, provided the following response: “Appellees oppose CMP’s motion seeking both a surreply and an enlargement of time for two reasons: first, it is premature since it is unknown whether any amicus briefs will be filed supporting Appellees on or before January 3 and what the content of any such briefs might be; and second, because the scheduling order the

Court issued on 9/20/2021 addressing the Parties' merits briefs says that '[b]ecause of the extended time for filing briefs and the appendix no extensions of time will be granted except as permitted by M. R. App. P. 7 (b)(3)' (emphasis in original). Given that the rules contemplate only replies to amici—not surreplies to those replies by any party or the amici—Appellees' response to amici on or before 1/17/2021 as authorized by the Court cannot possibly rise to M. R. App. P. 7 (b)(3)'s required 'showing of a significant and unanticipated emergency that prevents a timely filing of their reply to Appellees brief; that reply must be filed in compliance with the 9/20/2021 scheduling order. Appellees do not object to providing CMP with an additional week to incorporate in its reply brief a response to any amicus brief supporting Appellees actually filed rather than the two weeks contemplated by the rule. Should the number of amici or the length of their briefs make that burdensome, Appellees are open to considering a further extension of responses to those briefs, but not to any enlargement of the time for CMP to file its reply brief."

9. Attorney Kilbreth's position is not supported by the Appellate Rules and is contrary to the Court's order regarding amicus briefs. The Court's September 20, 2021, scheduling order expressly contemplates that Appellants would have 21 days "after the last appellee's brief" (emphasis added) is filed. Appellees now have until January 17, 2022, to file their last brief. Moreover, Attorney Kilbreth apparently misconstrues NECEC LLC's motion as seeking an additional surreply; to the

contrary, NECEC LLC is not seeking an additional brief and notes that it is already entitled to file a reply following Appellee's reply brief responding to amici curiae.

10. Pursuant to M.R. App. P. 10(a)(2), the party represented by counsel filing the motion has been notified of the filing of the motion.

WHEREFORE, NECEC LLC requests an express enlargement of time for filing Appellants' respective reply briefs until 21 days after the filing of Appellees' last-filed brief. Appellants do not request an enlargement of pages for the respective reply briefs, notwithstanding the Court has authorized Appellees to file an additional brief.

DATED: December 22, 2021



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## CERTIFICATE OF SERVICE

I, Nolan L. Reichl, Esq., hereby certify that a copy of the foregoing Motion of Appellants/Cross-Appellees Central Maine Power Company and NECEC Transmission LLC to Extend Deadline to File Ominbus Reply Brief was served upon counsel at the address set forth below by email and first class mail, postage-prepaid on December 22, 2021:

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