

January 4, 2022

**Via Email: lawcourt.clerk@courts.maine.gov
and Hand Delivery**

Matthew Pollack, Esq.
Supreme Judicial Court
205 Newbury Street, Room 139
Portland, ME 04101-4125

Re: ***Russell Black, et al. v. Andy Cutko, et al.***
Docket No. BCD-21-257

Dear Mr. Pollack:

I am enclosing for filing one original and one copy of Appellees/Cross-Appellants' Russell Black *et al.*'s Opposition to H.Q. Energy Services (U.S.) Inc.'s Motion for Leave to File a Response to Appellees/Cross-Appellants' Motion to Dismiss all Appeals as Moot in the above-referenced matter.

Sincerely,



James T. Kilbreth

JTK/sab
Enclosure

cc: Lauren E. Parker, Esq., AAG (w/enclosure) (Via Email and U.S. Mail)
Nolan L. Reichl, Esq. (w/enclosure) (Via Email and U.S. Mail)
P. Andrew Hamilton, Esq. (w/enclosure) (Via Email and U.S. Mail)
Casey M. Olesen, Esq. (w/enclosure) (Via Email and U.S. Mail)

RECD ME SUPREME JUD CT
JAN 4 '22 PM3:46

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
DOCKET NO. BCD-21-257

RUSSELL BLACK <i>et al.</i> ,)
)
Appellees/Cross-Appellants,)
)
v.)
)
BUREAU OF PARKS AND LANDS,)
<i>et al.</i> ,)
)
Appellants/Cross-Appellees)

**APPELLEES-
CROSS/APPELLANTS'
OPPOSITION TO HQUS'
MOTION FOR LEAVE TO
FILE RESPONSE**

Having already filed an amicus brief in support of Central Maine Power Company (CMP) and NECEC Transmission LLC (NECEC), H.Q. Energy Services Inc. (HQUS) now makes the extraordinary request for leave as amicus to file a response to the motion to dismiss of Appellees/Cross-Appellants Russell Black, *et al.* (Plaintiffs) and essentially intervene in the Law Court proceedings in this case. There is no basis for such action in the Rules of Appellate Procedure. It is a transparent attempt, moreover, to submit an additional 25 pages supporting the arguments of HQUS' joint venture partner NECEC without any showing that NECEC cannot adequately respond on its own behalf. Accordingly, and for the reasons forth in more detail below, Plaintiffs oppose HQUS' request for leave to file yet another brief on behalf of CMP and NECEC.

The history of the filings in the Law Court for this appeal is instructive. First, CMP originally sought 60 pages for its principal appellate brief and 60 pages for the Bureau's principal appellate brief but ultimately moved for leave to file 50 page briefs. Then four amici supporting CMP and NECEC filed briefs totaling over 100 pages, two on December 14th and two on December 15th, even though the filing deadline for amicus briefs was January 3rd. Ironically, had HQUS waited to file its amicus brief until January 3rd as contemplated by M.R. App. P. 7A(e)(1)(B), it would have been able to address any of its concerns about Plaintiffs' motion to dismiss as moot in that filing. *See also* 3A Harvey & Merritt, *Maine Civil Practice* § 7A:4 (3d, 2021-2022) ("The amicus brief should be filed on the date on which the appellee's brief is filed.").

CMP and NECEC then took the position that Plaintiffs should be required to respond to the four amicus briefs, including HQUS', as part of its principal brief responding to NECEC and the Bureau. Not only would that have been burdensome given the briefing schedule and the holidays, but it also would have meant that of the 60 pages allotted to Plaintiffs for their cross-appeal and response to the 100 pages submitted by NECEC and the Bureau, a significant number of pages would have necessarily been diverted to respond to the amici. Plaintiffs filed a motion for an enlargement of time to respond to the amici, which the Court granted over

NECEC's objection. *Order Enlarging Time for Response to Briefs of Amici Curiae*, Docket No. BCD-21-257 (Dec. 21, 2021).

Subsequently, CMP and NECEC tried to find another way to obtain additional pages by arguing that they should get a reply brief to Plaintiffs' responses to the amici as well as any amici who filed in support of Plaintiffs. The Court again rejected that attempt and explained "[c]ontrary to CMP's argument, the Rules of Appellate Procedure do not contemplate that an appellant may respond to an appellee's reply brief filed in response to an amicus brief." *Order on Motion of Appellants to Enlarge Time for Their Reply Briefs* at 1, Docket No. BCD-21-257 (Dec. 27, 2021).

Now history repeats itself. HQUS' request for leave to file a brief of 25 pages in support of CMP and NECEC smacks of simply trying to provide an additional 25 pages for the arguments of NECEC. That request identifies no reason for the Court to invent a rule allowing intervention on appeal by an amicus. *See Hamlin v. Particular Baptist Meeting House*, 103 Me. 343, 69 A. 315, 318–19 (1907) ("The term 'amicus curiae' implies the friendly intervention of counsel to remind the court of some matter of law which might otherwise escape its notice, and in regard to which it might go wrong. Such an intervention is granted, not as a matter of right, but of privilege, and the privilege ends when the suggestion has been made.").

In fact, in the case HQUS refers to challenging the referendum—*NECEC Transmission, et al. v. Bureau of Parks and Lands, et al.* (hereafter, the “Avangrid Case”)—CMP’s parent company Avangrid has raised all of the arguments that HQUS asserts it wants to raise here. Given their joint venture, if HQUS feels a need to have arguments presented, it can do that through CMP and NECEC; if CMP and NECEC choose not to include such arguments, then there is no reason for the Court to entertain such arguments in any case. As this Court explained in *Hamlin*, “[i]t is not the function of an amicus curiae to take upon himself the management of the cause.” 103 Me. 343, 69 A. at 319.

Finally, the extent to which there are overlapping issues in this case and the Avangrid Case mostly results from the bizarre choices made by NECEC and Avangrid in that case. As some of the defendants argued at the trial court’s hearing on NECEC and Avangrid’s motion for a preliminary injunction, NECEC and Avangrid sought to enjoin the world—including the Maine House and Senate—rather than dealing with actual implementation of the referendum in the fora where in fact its arguments would be ripe. That case has now been reported to this Court and will take its normal course; it should in no way delay or become intermingled with this case, which has been fully litigated on the merits, with complete factual development, and is far ahead in terms of its ripeness for decision by this Court.

For all of the foregoing reasons, Plaintiffs respectfully request that this Court deny HQUS' motion for leave to file a response to the pending motion to dismiss.

Dated at Portland, Maine this 4th day of January, 2022.

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CERTIFICATE OF SERVICE


I, James T. Kilbreth, attorney for Appellees/Cross-Appellants certify that I have this day caused the foregoing Appellees/Cross-Appellants' Opposition to HQUS' Motion for Leave to file Response to be served on the below by electronic mail and U.S. mail, first class postage prepaid, addressed as follows:

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Dated at Portland, Maine this 4th day of January, 2022.


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