



PAUL R. LEPAGE
GOVERNOR

STATE OF MAINE
DEPARTMENT OF AGRICULTURE, CONSERVATION & FORESTRY
LAND USE PLANNING COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0022

WALTER E. WHITCOMB
COMMISSIONER

NICHOLAS D. LIVESAY
EXECUTIVE DIRECTOR

COMMISSION MEMO

TO: Commission Members
FROM: Marcia Spencer Famous, Senior Planner
DATE: March 1, 2016
SUBJECT: Amendment A to Development Permit DP 4886 (minor change); Blue Sky East, LLC; T16 MD BPP, Hancock County

Background

On February 24, 2016, Blue Sky East, LLC (BSE) submitted a request for Amendment A to Development Permit DP 4886 for a minor change to the phrasing of Condition #6,E(1). DP 4886 was issued to BSE on October 5, 2011 to construct and operate the Bull Hill Wind Project (BHWP), which is located in T16 MD BPP, Hancock County. Construction of the BHWP was started on February 17, 2012 and commercial operation started on November 12, 2012. Condition #6 of DP 4886 required a plan, budget, and financial assurance for decommissioning of the facility, should it become necessary. The currently approved decommissioning plan and budget were submitted by BSE and assessed during the review of DP 4886. Condition #6,E(1) requires BSE to update the budget starting the third year of operation and every three years thereafter.

Although Condition #6 of DP 4886 requires that BSE be responsible for decommissioning of the BHWP, should it become necessary, Condition #6,C also includes a requirement that BSE secure a financial instrument in favor of the State of Maine Land Use Planning Commission (LUPC) in the amount needed to decommission the project, in the event that the LUPC has to take on that responsibility. A Standby Letter of Credit (LoC) was submitted on December 28, 2012, and is incrementally increased annually until it reaches the total amount required for the decommissioning no later than the 7th year of operation. The amount of the LoC would be adjusted if needed after each time the budget is revised.

Proposal

On January 19, 2016, BSE submitted the first updated decommissioning budget. During review, staff determined that the proposed updated plan budget did not account for future cost increases in the manner stated in the permit condition.



BSE responded that reliably predicting future costs of labor, fuel, scrap/salvage values, etc., is not possible due to market volatility; and noted that the Commission initially required the budget update every three years to accommodate the changes in the market. After discussion, BSE requested a change to the phrasing of Condition #6,E(1) to better account for changes to the decommissioning costs over time, and included an example of how the proposed change would affect the estimated decommissioning budget submitted for review on January 19th.

Once the revised language for Condition #6,E(1) is approved, BSE will submit the final updated decommissioning plan budget and will revise the LoC accordingly, in compliance with the provisions of Condition #6 of DP 4886. The next revision of the budget will be submitted at the end of 2018.

Staff Recommendation

Staff recommends that the Commission approve the proposed changes to Condition #6,E(1) of Development Permit DP 4886. The requirement to update the budget every three years already accounts for increases in costs over time, and the revised condition will provide a more specific and predictable mechanism to factor in unforeseen changes in the cost of the decommissioning by providing for additional funds as a contingency.



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PERMIT

COMMISSION DECISION IN THE MATTER OF

Blue Sky East, LLC
Amendment A to Development Permit DP 4886
Minor Change

Findings of Fact and Decision

The Maine Land Use Planning Commission, at a meeting of the Commission held on March 9, 2016, at Brewer, Maine, after reviewing the application and supporting documents submitted by Blue Sky East, LLC for Amendment A to Development Permit DP 4886, and other related materials on file, pursuant to Titles 12 and 35-A, and the Commission's Standards and Rules, finds the following facts:

1. *Applicant:* Blue Sky East, LLC
129 Middle Street
Portland, ME 04101
2. *Application Accepted as Complete for Processing:* February 24, 2016
3. *Location of Project:* T16 MD BPP, Hancock County
(Map 1, Plan 01, Lot #1)
4. *Current Zoning:* (M-GN) General Management Subdistrict
(P-WL) Wetland Protection Subdistrict
(P-SL2) Shoreland Protection Subdistrict
5. *Parcel Size:* Approximately 10,800 acres (of which approximately 158 acres are the proposed development area)
Owner and Lessor: Lakeville Shores, Inc.



6. *Administrative History.* On October 5, 2011, the Commission granted approval to Blue Sky East, LLC (BSE) for Development Permit DP 4886 to construct and operate the 19 turbine, 34.2 megawatt Bull Hill Wind Project (BHWP). Construction of the BHWP was started on February 17, 2012 and commercial operation started on November 12, 2012. Condition #6 of DP 4886 required a plan, budget, and financial assurance for decommissioning of the facility, should it become necessary. The initial decommissioning plan and budget was submitted by BSE as a part of the application and assessed during the permit review.
7. *Condition #6 to Development Permit DP 4886.* Condition #6 provides the requirements for the scope of work covered by the decommissioning plan, the plan budget and decommissioning fund, and provisions for implementing the plan.
 - A. Condition #6,C includes a requirement that BSE “shall secure a financial instrument such as an irrevocable standby letter of credit, or other similar method of financial assurance, in favor of the State of Maine Land Use [Planning] Commission to fund decommissioning of the project.” For financial assurance, BSE submitted the first Standby Letter of Credit (LoC) on December 28, 2012 in the amount of \$90,833, which was approximately 1/6 of the estimated total decommissioning cost of \$545,000. The LoC is incrementally increased annually until no later than the 7th year, when the total amount of the cost of decommissioning must be reached. For calendar year 2016, the LoC was increased to \$363,333 on January 1, 2016, based on the original budget. The LoC would be adjusted if needed after each time the budget is revised.
 - B. Condition #6,E(1) requires BSE to update the decommissioning plan budget starting the third year of operation and every three years thereafter, as follows:

“(1) The decommissioning plan budget must be updated and submitted to LURC for review and approval every third year (years 3, 6, 9, 12, 15, 18, etc.). The updated budgets must include **projections out to the expected life of the project for any costs or revenues that can reasonably be projected, such as labor.** A final budget update must be included with the final decommissioning plan.” [emphasis added]
8. On January 19, 2016, BSE submitted the first updated decommissioning budget, totaling \$2,013,400 (or \$1,742,100 after the scrap/salvage value is subtracted). During review, staff determined that the proposed revised plan budget did not account for future increases in the manner stated in Condition #6,E(1). BSE responded that “it is not possible to predict future costs of such items as labor, fuel, etc.” or determine future scrap and salvage values due to market volatility. BSE also noted that when DP 4886 was approved, the Commission had required the budget revision every three years to accommodate the changes in the market. After discussion to determine how the intent of Condition #6,E(1) could best and most efficiently be achieved, BSE requested that the language of Condition #6,E(1) be “modified to reflect the difficulty in projecting future costs and to remain consistent with the intent of the Commission’s Permit decision.” After review and minor edits by staff, the following change (in bold-faced type) is proposed for Condition #6,E(1):

“The decommissioning plan budget must be updated and submitted to LURC for review and approval every third year (years 3, 6, 9, 12, 15, 18, etc.). The updated budgets must include

a contingency to reflect uncertainty in future costs during the budget period. The contingency must be based on the increase (or decrease) in costs during the prior three year period as determined by the Historical Cost Indexes prepared by RSMeans (or comparable method of calculating Historical Cost Indexes) and applied to the disassembly and removal costs. A final budget update must be included with the final decommissioning plan.” [emphasis added]

9. By way of example, BSE submitted detail showing how the proposed language change would affect the revised budget estimate of \$2,013,400. The calculated index factor would be 6% (\$120,804) of the estimated cost to be added for contingency, for a final total of \$2,134,204. The 6% index factor was calculated by dividing RSMeans’ 2015 cost index by RSMeans’ 2012 cost index. BSE stated that “RSMeans is a well-known and respected company that provides construction cost data for estimating purposes”. After subtracting the revised estimated salvage value of \$271,300, the final amount for the revised decommissioning budget would be \$1,862,904 (the revised LoC would be based on this amount).
10. After the revised language for Condition #6,E(1) is approved, BSE will submit the final revised decommissioning plan budget and will update the LoC accordingly. The next revision of the budget will be submitted at the end of 2018.
11. The facts are otherwise as represented in the application for Amendment A to Development Permit DP 4886 and supporting documents.

CONCLUSION

Based on the findings set forth above, the Commission concludes that Blue Sky East, LLC has met its burden of demonstrating that the proposed change to Condition #6,E(1) is consistent with the Commission’s intent for the original language in Development Permit DP 4886. Once the final revised decommissioning plan budget is approved, BSE must submit the adjusted LoC to reflect the increased estimated total budget, in accordance with Condition #6,E(2) of Development Permit DP 4886.

CONDITIONS

Therefore, the Commission APPROVES Amendment A to Development Permit DP 4886, submitted by Blue Sky East, LLC for revision of Condition #6,E(1) of DP 4886, as proposed, subject to the findings of fact and conclusion contained herein and the following conditions:

1. Condition #6,E(1) of Development Permit DP 4886 is amended as follows:

The decommissioning plan budget must be updated and submitted to LURC for review and approval every third year (years 3, 6, 9, 12, 15, 18, etc.). The updated budgets must include a contingency to reflect uncertainty in future costs during the budget period. The contingency must be based on the increase (or decrease) in costs during the prior three year period as determined by the Historical Cost Indexes prepared by RSMeans (or comparable method of calculating Historical Cost Indexes) and applied to the disassembly and removal costs. A

final budget update must be included with the final decommissioning plan (*See* Section D(1) of DP 4886).

2. All other conditions of Development Permit DP 4886 shall remain in effect.

DONE AND DATED AT BREWER, MAINE THIS 9th DAY OF MARCH, 2016.

By: _____
Nicholas D. Livesay, Executive Director