



STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

Thirteenth Procedural Order

**In the Matter of
Development Permit DP 4889
Champlain Wind, LLC.
Bowers Wind Project
October 4, 2011**

To: Parties
Neil Kiely (Applicant)
Juliet Brown, Esq. (Counsel for Applicant)
Sean Mahoney, Conservation Law Foundation
Kevin Gurall, PPDLW
David Corrigan
Gordon Mott

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Samantha Horn Olsen, LURC
Frederick Todd, LURC

From: Gwen Hilton, Presiding Officer

Subject: Motion to strike and motion to reopen record

I. Background

Pursuant to the Third and Eighth Procedural Orders, the Public Hearing for Development Permit DP 4889 was held on June 27 and 28, 2011 at the Ella P. Burr Elementary School in Lincoln, Maine, and on July 6, 2011, at the Spectacular Events Center in Bangor, Maine.

The Eighth Procedural Order established Monday, July 18, 2011, as the close of the public comment period and Monday, July 25, 2011, as the deadline for accepting rebuttal comments. The Third Procedural Order established that after the close of the record “no additional evidence or argument will be allowed into the record except by leave of the Presiding Officer.”

Motion to strike:

The Twelfth Procedural reopened the hearing record at the request of the staff to allow for summary tables incorporating the visual assessment findings for Pug Lake prepared by LandWorks and Dr. Palmer to be entered into the record. The additional summary tables regarding Pug Lake prepared by LandWorks and Dr. Palmer will assist the Commission in determining whether the applicant has met its burden of demonstrating that its proposed project will satisfy the applicable scenic standard. Pug Lake (a portion of West Grand Lake) had been overlooked in both LandWorks' and Dr. Palmer's original assessments (see 12th Procedural Order for additional background).

The record remained open until 5:00 p.m. Monday, September 26, 2011 to accept comment on the summary tables incorporating the findings for Pug Lake.

On September 26, 2011, the Partnership for the Preservation of the Downeast Lakes Watershed (PPDLW) filed comments in response to the 12th Procedural Order.

On September 29, 2011, the applicant filed a motion to "strike the majority of PPDLW's September 26 filing on the basis it introduces new evidence that could have and to the extent it was relevant should have been provided prior to the record closing, and additionally because it goes beyond the scope of what is allowed by the 12th Procedural Order."

On September 30, 2011, the PPDLW responded to the motion to strike disagreeing with the assertions made by the applicant regarding PPDLW's comments.

Motion to reopen record:

As explained in a September 29 letter from the applicant, "During the public hearing, the Commission asked about the availability of nighttime lighting mitigation options and the applicant's willingness to consider implementation of mitigation measures when they are approved by the Federal Aviation Authority (FAA)." The applicant has filed a motion to reopen the record to allow an update to be submitted regarding a feasibility review of the Bowers site for use of such mitigation technology and the status of FAA approval of such technology.

Comments by parties on reopening of record:

- Intervenor Gordon Mott submitted an email on October 3, 2011, supporting reopening the record for submittal of the applicant's letters updating the Commission on this matter.
- Intervenor PPDLW submitted an October 4, 2011, filing objecting to reopening the record for this purpose for the principal reason "it provides no new information."

II. Order.

Motion to strike:

The intent of the 12th Procedural Order was to seek comment on the addition of Pug Lake to the summary tables of scenic resources of state or national significance (SRSNS) by LandWorks and Dr. Palmer. The chair finds that the majority of PPDLW comments in response to the 12th Procedural

Order were either (1) beyond the scope of the procedural order; (2) new evidence that will not assist the Commission in determining if the statutory criteria for approval have been met; or (3) not relevant to the statutory review criteria. Therefore, in accordance with the Third and Eighth Procedural Orders, the Commission will disregard any portion of the PPDW comments which does not address the addition of Pug Lake to the list of SRSNS.

Motion to reopen record:

While the chair agrees with the PPDW's assertion that this information still does not reflect the FAA's final determination that the agency approves of this technology, the chair disagrees that it provides no new information. The record shall be reopened and then immediately closed to accept:

- September 29, 2011, letter from Juliet Browne on behalf of the applicant
- September 28, 2011, letter from Neil Kiely, Director, Development – New England
- October 3, 2011, email from intervenor Gordon Mott supporting admitting the applicant's letters into the record.
- October 4, 2011, filing from intervenor PPDW objecting to admitting the applicant's letters into the record

No additional comment or argument will be allowed into the record except by leave of the Presiding Officer.

III. Authority and Reservations

This procedural order is issued by the Presiding Officer pursuant to LURC Chapter 5, *Rules for the Conduct of Public Hearings*. All objections to matters contained herein should be timely filed in writing with the Commission but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this order at any time.

Questions regarding this Order or rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Fred Todd, at the Commission's office in Augusta. No ex parte communication may occur with the Presiding Officer or any other Commission member.

DATED AT AUGUSTA, MAINE THIS 4th DAY OF OCTOBER, 2011



By: _____
Gwen Hilton, Presiding Officer

Attachments:

- September 29, 2011, letter from Juliet Browne on behalf of the applicant
- September 28, 2011, letter from Neil Kiely, Director, Development – New England
- October 3, 2011, email from intervenor Gordon Mott
- October 4, 2011, filing from intervenor PPDW