

Appeal by Friends of Maine's Mountains

FRIENDS

of
Maine's Mountains

Chair Robert Foley
Board of Environmental Protection
17 State House Station
Augusta, ME 04333-0017

October 1, 2014

Dear Chairman Foley:

Please accept the enclosed appeal of the Department of Environmental Protection License Order for the so-called "Bingham Wind Project."

Yours truly,


Rand N. Stowell, President

STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION

In Re:

BLUE SKY WEST, LLC &)	APPEAL OF DEPARTMENT ORDER
BLUE SKY WEST II, LLC)	
Bingham & Mayfield Twp., Somerset County))	by FRIENDS OF MAINE'S MOUNTAINS
Kingsbury Plt., Abbot, &)	
Parkman, Piscataquis County)	
BINGHAM WIND PROJECT)	
L-25973-24-A-N (approval))	
L-25973-TG-B-N (approval))	

Pursuant to 38 M.R.S.A. Sections 344.2-A and 341-D.4 and 06-096 CMR ch. 2 (the "DEP Procedural Rules") Section 24.B(1), Friends of Maine's Mountains ("FMM") appeals to the Board of Environmental Protection (the "Board") from the Order of the Department of Environmental Protection (the "DEP") dated September 8, 2014 (the "DEP Order"), approving the application of Blue Sky West, LLC and Blue Sky West II, LLC (the "Applicant") for the Bingham Wind Project (the "Project"). The Aggrieved Parties request a public hearing on the grounds that there is credible conflicting technical information regarding the licensing criteria and it is likely that a public hearing will assist the Board in understanding the evidence. Section 7.B of the DEP Procedural Rules.

AGGRIEVED PARTY STATUS

FMM is a non-profit 501(c)(3) organization dedicated to protecting the mountain regions of Maine from various threats to their natural and human environments. It finds that one of the most pressing threats to both natural and human values in the area is the inadequately controlled development of wind power plants on mountains, their ridges and in small towns that embody the Quality of Place in rural Maine that the State should protect. The principal activities of FMM

are efforts to educate the public about the high impacts and low benefits of industrial wind power, both environmental and economic, and to support grass roots opposition to wind projects.

FMM objects to the Bingham Wind Project based on inadequacies in the applicant's decommissioning plan. FMM also objects based on the applicant's unlikely ability to show financial capacity. FMM further objects based on the DEP's inadequate accounting of tangible benefits. FMM objects based on dangers to Wildlife & Fisheries, notably bats and eagles. Last, FMM objects based on unreasonable adverse impact to Scenic Resources of State & National Significance (SRSNS).

FMM is supported by concerned individuals statewide who value Maine's overall Quality of Place, as well as by individuals who reside near the proposed Project who will be affected by the Project, including those who come from all over the world to hike and engage in other recreational activities in and around the Project.

FINDINGS AND CONCLUSIONS OBJECTED TO

FMM objects to the DEP Order's Findings and Conclusions on Financial Capacity (Section 3) Scenic Character (Section 6), Wildlife & Fisheries (Section 7), Decommissioning (Section 21), and Tangible Benefits (Section 22). FMM also appeals the findings and conclusions related to these subjects.

BASIS FOR THE APPEAL

A. OBJECTIONS TO THE DEP ORDER AS TO FINANCIAL CAPACITY

The objections of the Aggrieved Party to the licensing of the proposed Project based on inadequate financial capacity are addressed in FMM's comment submission dated September 4,

2014. FMM recognizes that the DEP has required a condition that the applicant show financial commitment, but FMM questions whether there are adequate safeguards in the Order, and, given the nebulous federal safe harbor definitions like “begin construction,” FMM questions whether the applicant should be allowed to commence any site work. A letter of confidence, as DEP apparently realizes, is not a commitment of capital and is not cash. Given the scope and scale of the physical project, and its concomitant environmental impacts, as well as potential financial impacts to the State and to ratepayers, a more exhaustive and rigorous financial capacity test is necessary.

B. OBJECTIONS TO THE DEP ORDER AS TO SCENIC CHARACTER

The objections of the Aggrieved Party to the licensing of the proposed Project based on scenic character are borne of an outdated and inadequate methodology employed by the DEP in assessing scenic impact. DEP Rule 06-096 Ch.372 (Policies and Procedures Under the Site Location Law) in Section I.A specifically requires an analysis of “cumulative impacts of the development on the area likely to be affected by the proposed development.” The Wind Energy Act modified 38 M.R.S.A. §484 standards under the Site Law, but there is no legislative expression that the general policies and procedures under the Site Law, as expressed in Chapter 372, were intended to be removed for wind energy developments. *Also, see*, the DEP “Guidelines for Assessing Cumulative Impacts to Protected Natural Resources under the Natural Resources Protection Act” http://www.maine.gov/dep/blwq/docstand/nrpa_sopcumimpact.pdf

FMM asserts that the scope and scale of the proposed project was not contemplated in the framing of the Wind Energy Act. FMM asserts that with each new project, Maine’s failure to address cumulative impact becomes more acute. FMM asserts that the cumulative impact on the

Appalachian Trail and the other SRSNS in the project area is inadequately accounted, given the specific-point assessment methodology that was used. AT hikers spend much of their time at low levels without vistas, but it is the numerous peaks that provide the highlights. While a hiker's relative time spent on peaks versus low-lying areas is small, it is far more significant to the overall experience than the methodology recognizes. Nearby peaks such as Moxie Bald and Pleasant Pond Mountains are legendary for their first views of the Barren-Whitecap range through to Katahdin while looking back upon the "High Peaks" just traversed. This cumulative viewshed covering most of the Maine AT's 280 miles will be spoiled. Moreover, an AT hiker now sees industrial wind installations (Spruce Mountain, Roxbury, Kibby) for the entire High Peaks section from the New Hampshire border northward to the Bigelow Range. The Bingham Project will double that visual impact all the way from the Kennebec River to the 100 Mile Wilderness, the last stretch of AT before Katahdin. The result will be a degradation of the hiker's longstanding overall experience in Maine as "The AT's Crown Jewel" to Maine as the "AT's Junkyard." The hiker intercept and specific-point methodologies cannot and do not test for this phenomenon.

While the DEP reviewed the Applicant's VIA and intercept surveys, and even visited Bald Mountain Pond's AT lean-to site (which will be dominated by turbines more than 50% the height of the ridge upon which they will sit), these are specific-point assessments and do not contemplate, let alone capture, cumulative impact.

FMM further asserts that the Order's provision for night lighting has no remedial value because its approval and implementation is purely speculative and may take decades, if ever, to be invoked.

C. OBJECTIONS TO THE DEP ORDER AS TO WILDLIFE & FISHERIES

The objections of the Aggrieved Party to the licensing of the proposed Project based on Wildlife and Fisheries will challenge the applicants assertions and the findings regarding eagles and bats. Despite the presupposition, the Order presupposes mortality, yet defers remediation or other action until avian carcasses are counted. This is inadequate and irresponsible protection of the resource. Moreover, modified operations and detection systems, as delineated in the Order, in practice have proven dubious material benefit to avian species. The known presence of bald eagles requires a higher level of safety, as does the anecdotal hiker observations of nesting golden eagles at such nearby mountains as Mosquito and Little Kineo.

D. OBJECTIONS TO THE DEP ORDER AS TO DECOMMISSIONING

The objections of the Aggrieved Party to the licensing of the proposed Project based on Decommissioning are articulated in FMM's comment submission dated September 30, 2013. While the Order properly requires full funding of the Decommissioning Plan, the dollar value of the plan was determined by the applicant. FMM empirically asserts that the dollar value is grossly underestimated, thereby creating grave exposure to the environment, public safety, ratepayers, and state finances. A more objective analysis of decommissioning requirements, including demolition costs and scrap values, will result in a much greater level of protection in a revised Decommissioning plan.

E. OBJECTIONS TO THE DEP ORDER AS TO TANGIBLE BENEFITS

The objections of the Aggrieved Party to the licensing of the proposed Project based on tangible benefits are articulated in FMM's comment submission dated September 30, 2013.

FMM maintains that the DEP inappropriately defers to the applicant's assertions of tangible benefits without regard to tangible impacts, which upon quantitative and qualitative analysis, will likely prove to be net insufficient.

Moreover, the DEP's assessment of tangible benefits fails to take into account outdated presumptions such as the necessity, value, and benefits from wind energy. With several years of experience, having spent approximately one billion dollars for wind infrastructure (not including transmission costs) with negligible material benefit, and with the New England grid now in critical need of dispatchable base load and peak load energy, wind energy's value and necessity as envisioned in the Wind Energy Act are diminished. Likewise, with the prospect of infrastructure improvements to New England's natural gas and hydro transmission systems, the findings of the legislature in the Wind Energy Act are now outdated, necessitating greater discretion by DEP in evaluating tangible benefits.

REQUEST FOR RELIEF

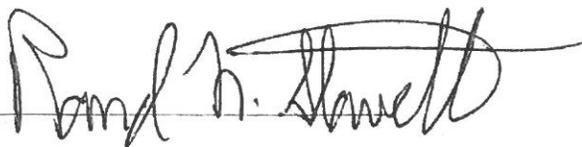
The Aggrieved Party requests that the Board void the DEP Order and order a public hearing on the issues here raised. FMM has demonstrated that there is "credible conflicting technical information regarding licensing criteria" as required by the DEP Procedural Rule, Section 7.B. At a hearing, the Aggrieved Party will present testimony in support of the issues raised above, and will offer rebuttal testimony based on testimony of the Applicant and its experts.

Respectfully submitted,

Friends of Maine's Mountains

Dated:

October 1, 2014

by 

Rand N. Stowell

Its President

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