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GOVERNOR

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

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EXECUTIVE DIRECTOR

December 19, 2017

NextEra Energy Resources, LLC  
c/o Dana Valleau  
TRC  
14 Gabriel Drive  
Augusta, ME 04330

RE: NextEra's Petition to Expand the Expedited Permitting Area for Wind Energy Development; Chain of Ponds Twp., Seven Ponds Twp., Skinner Twp., and T5 R6 BKP WKR

Dear Dana:

TRC, on behalf of NextEra Energy Resources ("NextEra"), submitted a petition (the "Petition") requesting that the Maine Land Use Planning Commission initiate rulemaking to add approximately 24,777 acres to the expedited permitting area for wind energy development (the "Expansion Area"). The proposed Expansion Area is located within four townships – Chain of Ponds, Seven Ponds, Skinner, and T5 R6 BKP WKR – and in proximity to an operating wind energy facility, Kibby Wind (44 turbines, 232 MW), that is located in Kibby and Skinner townships.

As explained in the Petition, the expansion of the expedited area would facilitate development of NextEra's Moose-Alder Stream Wind power generation facility (the "Project"). The total Project would span seven townships. One of these townships, Jim Pond, would contain a generator lead line, but no turbines. Six townships, including the four in the proposed Expansion Area, would have turbines with a generating capacity up to 460 MW. NextEra describes the Project as consisting of two sections:

- Moose Wind – approximately 71 turbines in the area north of Route 27 in Skinner, Kibby, and T5 R6 BKP WKR townships; and
- Alder Stream Wind – approximately 62 turbines in the area south of Route 27 in Chain of Ponds, Seven Ponds, and Alder Stream townships. (Petition at 3.)

The proposed location or distribution of turbines within the Moose Wind and Alder Stream Wind sections is not addressed in the Petition. The Expansion Area, along with the proposed project boundary and location of the existing Kibby Wind project, is shown in Exhibits A and B of the Petition.



Consistent with the Maine Administrative Procedures Act and the Commission’s Chapter 4 *Rules of Practice*, any person may petition the Commission for the adoption or modification of any rule. Within 60 days after receipt of such a rulemaking petition, the Commission shall either:

- (i) Deny the proposed amendment, indicating in writing the reasons for denial; or
- (ii) Initiate rulemaking proceedings on the proposed amendment.

At its December 19, 2017 meeting, the Commission discussed and considered NextEra’s Petition and voted to deny the proposed amendment. This letter provides the reasons for that denial.

### **Statutory Framework for Consideration of the Petition**

The 123rd Legislature enacted, “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development,” Public Law 2007, Ch. 661, that became effective April 18, 2008 (the “Act”). Among the purposes of the Act was to identify areas where permitting for wind power development would be streamlined. To that end, the Task Force recommended, and the Legislature established, the “expedited permitting area.”

The expedited permitting area for wind energy development encompasses all of the organized areas of the State and parts of the unorganized and deorganized areas served by the Commission. As directed in the Act, the Commission adopted the description and map of the expedited permitting area; both are contained in the Commission’s rules as Appendix F to Chapter 10, *Land Use Districts and Standards*. The Act also granted the Commission authority, through rulemaking, to add places to the expedited permitting area. (See 12 M.R.S. § 685-A(13) and 35-A M.R.S. § 3453, both enacted as part of the Act.) To make such a change, the Commission must determine that the proposed addition to the expedited permitting area:

- 1. Geographic extension.** Involves a logical geographic extension of the currently designated expedited permitting area, . . . ;
- 2. Meets state goals.** Is important to meeting the state goals for wind energy development established in section 3404; and
- 3. Consistent with comprehensive land use plan.** Is consistent with the principal values and the goals in the comprehensive land use plan adopted by the [Commission] pursuant to Title 12, section 685-C.

35-A. M.R.S. § 3453.

### **Commission Review of NextEra’s Petition**

The Legislature may draw and redraw the expedited permitting area as it deems appropriate. The Commission does not have the same latitude. The authority granted by the Legislature to the Commission to expand the expedited permitting area is limited. One of the limits placed on the Commission’s ability to expand the expedited permitting area is that any Commission-approved expansion must involve a “logical geographic extension” of the existing expedited area. For an expansion to be a geographic extension the expansion must be contiguous with and geographically connected with the existing expedited area. In evaluating whether such a geographic extension is

logical, the Commission is required to exercise its judgment and does so recognizing the Legislature's intent in creating the expedited permitting area and granting the Commission limited authority to add to this area.

NextEra's proposed Expansion Area is not a logical geographic extension of the currently designated expedited permitting area. For example, in Skinner Township and T5 R6 BKP WKR the Expansion Area includes ridgelines wholly outside the existing expedited permitting area. The Commission recognizes that ridgelines may be prime locations for wind power development and that ridgelines may run across township boundaries, including township boundaries that also serve to delineate the expedited permitting area. Expansion of the expedited permitting area to capture the continuation of ridgelines across the existing expedited area boundary involves a logical geographic extension of the expedited permitting area; expansion of the expedited area to capture entirely new ridgelines does not.

The Expansion Area is located in Maine's Boundary Mountains, an area that runs along the Maine-Quebec border. (Petition at 2.) The potential value of this mountain region as a wind resource is well known. (See, e.g., the Petition, Attachment 2, Wind Resource Mapping, and similar maps in the Task Force report such as Attachment D, Maine Wind Resources Map.) Many ridgelines are within the Boundary Mountains. Some of these ridgelines are within the expedited permitting area; many are not. A proposal to expand the expedited permitting area to include all the Boundary Mountains would not be a logical geographic extension even though the mountains can be fairly described as geographically connected as a result of being part of the same mountain range or region. Such an expansion would be broad in scope and beyond the scale the Legislature intended the Commission to make when it limited Commission additions to those involving a logical geographic extension.

The example in the paragraph above illustrates that the geographic scope of an area proposed to be added to the expedited permitting area matters when evaluating whether the proposed addition is a logical geographic extension. In mountainous regions where wind power projects are sited along ridgelines, extensions of the expedited area to include all of a ridgeline currently bisected by the expedited area boundary are logical geographic extensions. Expansions that add new ridgelines located entirely outside the existing expedited permitting area are not logical geographic extensions under Section 3453. While NextEra does not propose an expansion that includes all the Boundary Mountains, the scope of the Expansion Area – specifically the addition of entirely new ridgelines – exceeds what the Commission may add to the expedited permitting area under Section 3453.

The Commission recognizes that NextEra interprets the logical geographic extension requirement in Section 3453 differently and generally as imposing less of a limit on the Commission's ability to expand the expedited permitting area. For example, NextEra claims expansion of the expedited area to include all of a particular bedrock formation or massif is a logical geographic extension. (Petition at 5.) When looking at the development of wind power in mountain regions, however, the Commission considers location and existence of ridgelines to be the important geologic and geographic characteristic. The exact type of underlying bedrock, or the manner or historical timing of the geological development of a ridgeline or mountain range is not material to the siting of wind power development or to whether expansion of the expedited area is a logical geographic extension.

The Petition also includes, as Attachment 2, a wind resource map for the region.<sup>1</sup> The map shows that across the Boundary Mountains there are many areas highly rated for their wind resource potential. These include areas developed with the Kibby Wind project. NextEra states the proposed Expansion Area represents a logical geographic extension because the expansion captures high-value wind areas (Petition at 6) and because the proposed turbines would follow the same northeast-southwest orientation as the Kibby Wind project and would be located on nearby mountain ridges (Petition at 5).

The Commission anticipates that proposed expansions of the expedited area would capture high-value wind areas; capturing these areas to facilitate the development of wind power projects typically would be the driving purpose of an expansion. If a desirable wind resource were all that were needed to qualify an expansion as a logical geographic extension, the geographic extension limitation contained in Section 3453 would have little practical effect. The Commission does not find such an interpretation reasonable.

Additionally, the Commission does not find the existence of the Kibby Wind project and the fact that the proposed Project would have a similar orientation evidence that the proposed Expansion Area is a logical geographic extension. The area encompassing the Kibby project was rezoned by the Commission to a Planned Development (D-PD) subdistrict for the sole purpose of developing the project. This rezoning occurred prior to the creation of the expedited area. The expedited area was specifically drawn to include the Kibby project, as evidenced by the small inclusion within Skinner Township that mirrors the D-PD subdistrict. Notably, the expedited area was not extended farther into this township.<sup>2</sup> This decision was made by the Legislature after considering the report of the Governor's Task Force on Wind Power Development, which included identification of the Boundary Mountain region as containing valuable wind resources. The existence of one project in the expedited permitting area, such as Kibby, does not automatically mean expansion of this area into the surrounding ridgelines or region would be a logical geographic extension. Such expansions would be broader in scope than intended by the existing statutory language and could facilitate a leapfrogging of projects. While there may be valid public policy reasons for incentivizing the clustering of wind power projects, including through the expansion of the expedited area around projects as they are developed, expansion to facilitate regional clustering is not a policy objective promoted by the existing statutory criteria in Section 3453 that the Commission must apply. Some clustering may occur in conjunction with extensions that fully capture currently bifurcated ridgelines; however, this clustering would occur largely within the existing expedited permitting area.

In sum, the Commission concluded the proposed expansion is not a logical geographic extension of

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<sup>1</sup> The Commission notes the proposed project boundary shown on the wind resource map differs from the proposed project boundary shown on the maps in Exhibits A and B. Additionally, the textual description of the Project location and the Moose Wind and Alder Stream Wind sections (Petition at 3) contains no mention of the Project including turbines in the northeast corner of Chain of Ponds Township. This textual description is similar to what is depicted on the wind resource map, but different from the proposed project boundary in Exhibits A and B. These differences or inconsistencies are not material to the Commission's conclusion.

<sup>2</sup> NextEra states that if its Project had been proposed at the time the Legislature originally drew the expedited permitting area it is reasonable to assume the Project area would have been included in the expedited area. (Petition at 5.) What political outcome might have been achieved under a different set of facts is not material to the Commission's consideration of the Petition under Section 3453.

the current expedited permitting area and decided to deny the Petition and not to initiate the rulemaking process. The Commission recognizes if it initiated rulemaking, which would include receipt of public comments and most likely involve a public hearing, it could complete that process and still reach the same conclusion. Going through the rulemaking process, however, to consider a rulemaking proposal that is statutorily deficient would not be an efficient allocation of Commission resources, especially given competing priorities,<sup>3</sup> and would unnecessarily burden interested members of the public.

## Alternatives

While the proposed expansion of the expedited permitting area does not satisfy Section 3453, there are other options NextEra may pursue to facilitate development of the Project. NextEra could seek to rezone the portions of the project area outside the expedited permitting area to a Planned Development (D-PD) subdistrict. As noted above, the Kibby Wind project is located in a D-PD subdistrict. Another option would be to pursue changes to the expedited permitting area through legislation that would add the four townships in which the Project is proposed.

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Any questions about the Commission decision in this matter should be directed to Stacie R. Beyer, Chief Planner, Land Use Planning Commission. She may be reached during normal business hours at 207-557-2535, or via e-mail at [stacie.r.beyer@maine.gov](mailto:stacie.r.beyer@maine.gov).

Sincerely,



Everett Worcester  
Chair

cc. Matthew D. Manahan, Esq., Pierce Atwood, LLP

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<sup>3</sup> Significant matters that the Commission already has on its agenda include a major policy review of its adjacency principle, a multi-year stakeholder process to revise its subdivision rules, and a review of the second largest development proposal in the Commission's history.