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GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

ELIZA TOWNSEND
COMMISSIONER

Eighth Procedural Order

**In the Matter of
Development Permit DP 4860
TransCanada Maine Wind Development, Inc.
Kibby Expansion Project
September 8, 2010**

To: Juliet Browne, Verrill Dana, counsel for TransCanada (TC or Applicant)
Kelly Boden, Verrill Dana, counsel for TC
Jenn Burns Gray, MAS, for Consolidated Parties (CP)
Cathy Johnson, NRCM (CP)
Dave Publicover, AMC (CP)
Bob Weingarten, Friends of the Boundary Mountains (FBM)
Nancy O'Toole, FBM

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Samantha Horn-Olsen, LURC Planning Division Manager
Marcia Spencer Famous, LURC Senior Planner
Jim Palmer, Scenic Quality Consultants
Warren Brown, EnRad
Steve Timpano, MDIFW
Bob Cordes and Dave Boucher, MDIFW
Philip DeMaynadier, MDIFW
Dave Rocque, State Soil Scientist
Sarah Demers, MNAP
Alan Stearns, BPL
Kirk Mohny and Robin Stancampiano, MHPC
Jay Clement, U.S. Army Corps of Engineers
Mark McCollough and Wende Mahaney, USFWS
Town of Eustis/Stratton
Town of Carrabassett Valley
Franklin County Commissioners

From: Gwen Hilton, Presiding Officer

Subject: Development Permit DP 4860; Eighth Procedural Order – Review process for revised proposal

- I. Background.** On August 4, 2010, the Commission voted to re-open the record for Development Permit DP4860, the so-called proposed Kibby Expansion Project (“Kibby 2”). On August 16, 2010, TransCanada Maine Wind Development (“the Applicant”) submitted a revised proposal for an 11 turbine project, reduced in size from the originally proposed 15 turbine project (“revised proposal”). On August 23, 2010, the Applicant and the Intervening Parties (Consolidated Parties – CP; and Friends of the Boundary Mountains – FBM) submitted comments on the review process they asserted should be followed.¹ On September 1, 2010, the Commission voted to conduct the review of the revised proposal using a public comment period, and delegated to the Presiding Officer, in consultation with staff and the AG’s office, the task of establishing the details of the process.
- II.** The rulings of the Presiding Officer regarding the review of the Applicant’s revised proposal are summarized as follows:
- A. Purpose of the public comment period review process.** The record will open for a 30-day review period and 10-day rebuttal period, as set forth in detail below. The purpose of the public comment period is to provide an opportunity for the Commission to receive comment from state and federal agencies, the Parties, and the public relevant to the Commission’s legal criteria applicable to the Applicant’s request for Development Permit DP 4860 specifically with respect to the revised proposal for the Kibby Expansion Project; and to provide the Applicant and the Intervening Parties an opportunity to address the Commission on relevant issues relating to that proposal. Comments submitted must address the revised proposal. Testimony previously received by the Commission during the review of the original proposal remains in the record and need not be re-submitted except by reference.
- B. Comments by state and federal agencies.** Review comments may be submitted by state and federal agencies during a 30-day review period, which ends October 12, 2010.
- C. Comments by Intervening Parties.** Review comments may be submitted by the Intervening Parties during a 30-day review period, which ends October 12th.
- D. Comments by the public.** Any interested person may submit comments in writing until the end of the 30-day review period, which ends October 12th. All comments should be sent by email to Marcia.spencer-famous@maine.gov, or by U.S. Postal Mail to “LURC, attn. Marcia Spencer Famous, 22 State House Station, Augusta, ME 04333.

¹ On August 23rd, CP also moved to strike Section 3 of the revised proposal, contending that this section introduced irrelevant information regarding the economic viability of the project. For the reasons stated in the Fourth Procedural Order (5/5/2010), the Commission denied the CP’s motion at its September 1, 2010 meeting. The Commission construes TC’s statement not as substantive evidence relating to the issue of economic viability, which all parties appear to agree is not relevant to any governing review criteria, but instead simply as a statement of the Applicant’s position that it does not intend to amend its application to reflect the smaller project the CP has indicated it would accept.

- E. Applicant's response to agencies' and Intervening Parties' comments.** Following the 30-day review period, the Applicant may respond in writing to the agencies' and Intervening Parties' comments during a 10-day rebuttal period, which ends on October 22nd. The Applicant's rebuttal period comments are limited to responding to matters raised during the 30-day review period.
- F. Close of the Record.** The record will close on October 12th, except for the receipt of the Applicant's rebuttal comments until October 22nd, at which time the record will then close and no additional evidence will be allowed into the record. The acceptance of legal briefs for consideration by the Commission is set forth below.
- G. Legal briefs.** Each Party may submit a no more than 30-page post-hearing brief, including all attachments, setting forth legal argument, summarizing the relevant evidence in the record and the applicable criteria's application thereto, no later than November 10th.
- H. Presentation of closing arguments and Commission deliberation.** Each Party may give a brief closing argument no longer than 15 minutes at the Commission's regular monthly business meeting on December 1, 2010. The Commission's deliberation will occur on December 1, 2010. The agenda for that meeting will be distributed in advance of the meeting and posted on LURC's website.

All Parties presenting closing arguments may be subject to questions from the Commission. Each Party is required to present their closing arguments efficiently and to avoid redundancy.

- I. Relevant review criteria.** The following are the legal criteria relevant to the Commission's review of the revised proposal:
- 12 M.R.S., Sections 685-B,2-C, 4, and 4-B of the Commission's statutes;
 - 35-A M.R.S., Ch. 34-A, Sections 3451, 3452, 3454, and 3455
 - Other applicable provisions of the Commission's statute, 12 M.R.S., Sections 681 through 689; and Chapter 10, the Land Use Districts and Standards.
- J. Summary of dates for review process**
- 30-day review period for submittal of comments from reviewing agencies, the Intervening Parties, and the public – September 10th through October 12th
 - 10-day Applicant response period – ends October 22nd
 - Record closes – October 12, 2010 for comment, October 22nd for rebuttal.
 - Applicant and the Intervening Parties submit briefs detailing legal argument based on the record – November 10th
 - Applicant and Intervening Parties present closing arguments, followed by Commission deliberation – December 1, 2010.

X. 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 these rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Marcia Spencer Famous 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 8th DAY OF SEPTEMBER, 2010

A handwritten signature in black ink that reads "Gwen Hilton". The signature is written in a cursive style with a large initial "G".

By: _____
Gwen Hilton, Presiding Officer