



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

JOHN ELIAS BALDACCI
GOVERNOR

ELIZA TOWNSEND
ACTING COMMISSIONER

TO: Commission Members
FROM: Samantha Horn-Olsen, Planning Division Manager
Marcia Spencer-Famous, Senior Planner
DATE: January 25, 2010
SUBJECT: Draft Guidance Document for implementation of the three statutory criteria for expanding the expedited permitting area

I. Background.

- A. On August 5, 2009, the Commission released for rule-making a change to Appendix F of the Commission's Chapter 10 Land Use Districts and Standards, *the Expedited Wind Energy Development Area Designation*, proposed by TransCanada Maine Wind Development, Inc. ("TransCanada") to expand the wind energy development expedited permitting area, pursuant to 12 MRSA, § 685-A(13) [see 35-A MRSA § 3404, and Ch. 34-A § 3453].
- B. On November 4, 2009, the Commission set the dates for a two-part public hearing on TransCanada's rulemaking petition for December 16, 2009 and March 17, 2010. At that time, the Commission also directed staff to prepare a Guidance Document for the implementation of the three statutory criteria for expanding the expedited permitting area. On November 25, 2009 the public comment period started when the Notice of Agency Rule-Making was posted on the Maine Secretary of State's website. The close of the record was set for April 5, 2010.
- C. On December 16, 2009, Part One of the two-part public hearing, testimony was heard on the following:
- What did the Wind Energy Act, which enacted recommendations of the Governor's Task Force on Wind Power Development ("the Task Force"), do, and what did it not do?
 - *What do the § 3453 criteria, which the Commission must use when adding specific areas to the expedited permitting area, mean? (emphasis added)*
 - How was the area designated as the windpower expedited permitting area developed?

II. Draft Guidance Document.

- A. As indicated in the Notice of Agency Rulemaking (The complete Notice is attached for your reference), a schedule was set for the preparation and discussion of, and decision on a Guidance Document for the implementation of the three statutory criteria for the addition of land to the wind energy development expedited permitting area (*see* Title 35, Section 3453):

“The Maine Land Use Regulation Commission may, by rule adopted in accordance with Title 5 Ch. 375, add a specified place in the State’s unorganized or de-organized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Regulation 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 §3404; and
3. **Principal values and goals.** Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Regulation Commission pursuant to Title 12, §685-C.”

B. The Notice of Agency Rule-Making stated:

“Following the close of Part One of the hearing, the Commission will develop a Guidance Document to clarify the meaning of the criteria set forth in 35-A MRS § 3453, according to the following schedule:

- January 25, 2010: Draft Guidance Document available, by contacting Marcia Spencer-Famous or by visiting the Commission’s website at: <http://www.maine.gov/doc/lurc/projects/Transcanada/Transcanada.shtml>, for written public comment.
- February 3, 2010 Commission meeting: Discussion by Commission of draft Guidance Document
- February 10, 2010: End of public written comment period on draft Guidance Document
- March 3, 2010 Commission meeting: Consideration by Commission of Guidance Document”

C. The enclosed draft Guidance Document presented for discussion is based on the public testimony received for Part One of the public hearing, and on the Commission’s deliberations in that regard. As indicated in the Notice, public comment on the draft Guidance Document is being solicited until February 10th. Based on the discussion today and public comments received, a revised draft Guidance Document would be brought back to the Commission for decision at your March 3rd regular monthly business meeting.

The Guidance Document, when finalized, should encapsulate the Commission’s current thinking on interpretation and implementation of the three criteria in statute. The draft document describes the factors that the Commission would consider, and the standards the Commission would apply, when considering a petition for expansion of the expedited area for wind energy development. It also references the Commission’s intent to request expert opinion, particularly from the Public Utilities Commission, to assist in the evaluation of petitions.

We look forward to further guidance on whether the draft document represents all of the factors and standards that should be included.

Enc: Draft Guidance Document
Notice of Agency Rule-Making

xc: TransCanada Petition for Rule-making file
DP 4860 file
ZP 709 and DP 4794 file

cc: Service List of Interested Persons (electronically)

NOTICE OF AGENCY RULE-MAKING

AGENCY: **04-061 - Maine Land Use Regulation Commission**

PROPOSED RULE NUMBERS: **2009-P328** and **P329**

CHAPTER NUMBER AND TITLE: **Ch. 10, Land Use Districts and Standards:
Amendments to Appendix F, Expedited Wind Energy Development Area Designation**

CONTACT PERSON FOR THESE FILINGS: Marcia Spencer Famous, Land Use Regulation Commission, Department of Conservation, 22 State House Station, Augusta, Maine 04333-0022. Telephone: (207) 287-2631. E-mail: Marcia.Spencer-Famous@Maine.gov.

STATUTORY AUTHORITY FOR THIS RULE: 12 MRSA §§ 684; 685-A(7-A), (13); 685-C(5)

SUBSTANTIVE STATE OR FEDERAL LAW BEING IMPLEMENTED: None

CONTACT PERSON FOR SMALL BUSINESS INFORMATION: Same
URL: <http://www.maine.gov/doc/lurc/index.shtml>

OVERALL DEPARTMENT OF CONSERVATION RULE-MAKING LIAISON:
Eliza.Townsend@Maine.gov

2009-P328: TRANSCANADA PETITION

PUBLIC HEARING:

Part I - December 16, 2009, at the Senator Inn, 284 Western Ave., Augusta, ME, starting at 9:00 a.m.

Part II - March 17, 2010, at Sugarloaf Inn, 5092 Sugarloaf Access Rd., Carrabassett Valley, starting at 10:00 am.

COMMENT DEADLINE: Following the close of Part II of the hearing, there will be an additional 10 day period for written comments to be submitted ending on March 29, 2010, followed by a 7 day rebuttal period ending on April 5, 2010, at which time the record for the rulemaking will close.

BRIEF SUMMARY: TransCanada Maine Wind Development, Inc. ("TransCanada") has petitioned the Land Use Regulation Commission (Commission) to expand the expedited wind energy permitting area by adding an approximately 631-acre parcel located in Chain of Ponds Township, Franklin County. In the expedited wind energy permitting area, wind energy development is an allowed use with a permit, and no subdistrict rezoning is required.

A two-part public hearing will be held, and the public is invited to testify at either or both parts of the hearing. The Commission requests, if possible, that those testifying at the hearing bring a written copy of their testimony for filing in the record.

Part I of the public hearing will include a panel discussion, addressing 35-A MRSA §3453, the statutory criteria for expanding the expedited wind energy development area. The panel will begin at 9:30 a.m., and the Commission will hear general public comment on the statutory criteria starting at 11:30 a.m.

Following the close of Part One of the hearing, the Commission will develop a draft Guidance Document to clarify the meaning of the criteria set forth in 35-A MRSA §3453. There will be a written public comment period on the draft Guidance Document from January 25, 2010 to February 10, 2010.

Part II of the public hearing will address the petition filed by TransCanada. Written comments addressing the statutory criteria, the draft Guidance Document, and the petition, including data, views or arguments, may be submitted by US Postal Service Mail to “LURC, 22 State House Station, Augusta, ME 04333” or by e-mail to lurc@maine.gov (include in subject line “TransCanada”) for consideration by the Commission.

Additional information, including a longer, more detailed notice of the rulemaking and the text of the proposed rule, may be obtained by contacting Marcia Spencer-Famous or by visiting the Commission’s web site at:

<http://www.maine.gov/doc/lurc/projects/Transcanada/Transcanada.shtml>.

DETAILED SUMMARY FOR TRANSCANADA PETITION RULE

The 123rd legislature enacted, “An Act to Implement Recommendations of the Governor’s Task Force on Wind Power Development”, Public Law 2007, Ch. 661 as emergency legislation that became effective April 18, 2008. The Act established the expedited permitting area for wind energy development in the jurisdiction of the Land Use Regulation Commission, and subsequently the Commission adopted through rule-making the description and map of the expedited permitting area. The description and map of the expedited permitting area were placed into the Commission’s rules as Appendix F to Ch. 10, Land Use Districts and Standards. 12 MRSA §685-A(13) provides for expansion of the expedited permitting area by the Commission in accordance with 35-A MRSA §3453, which states:

“The Maine Land Use Regulation Commission may, by rule adopted in accordance with Title 5 Ch. 375, add a specified place in the State’s unorganized or de-organized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Regulation 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 §3404; and
3. Principal values and goals. Would not compromise the principal values and the goals identified in the comprehensive land use plan adopted by the Maine Land Use Regulation Commission pursuant to Title 12, §685-C.

Rules adopted by the Maine Land Use Regulation Commission pursuant to this section are routine technical rules as defined in Title 5, Ch. 375, subchapter 2-A.”

Analysis and Expected Operation of the Rule

TransCanada’s proposed rule change would add a 631-acre parcel to the expedited permitting area for wind energy development in Chain of Ponds Township, Franklin County. The purpose of the proposed addition is to provide a future expansion opportunity for the existing Kibby Wind Project, which is currently wholly located within the expedited permitting area in Kibby and Skinner Twps. By adding the parcel to the expedited permitting area, any future wind energy development located within that parcel would be subject to the provisions of PL 2007, Ch. 661. In the expedited permitting area, wind energy development is an allowed use with a permit, and no subdistrict rezoning is required.

Public Hearing

A two-part public hearing will be held, and the public is invited to testify at either or both parts of the hearing. The Commission requests, if possible, that those testifying at the hearing bring a written copy of their testimony for filing in the record.

1. Part One. Part One of the hearing will be held on December 16, 2009, at the Senator Inn, 284 Western Ave., Augusta, ME.

Part One of the hearing will be conducted as follows:

- * 9:00 am - Opening Statement by the Commission Chair
- * 9:30 to 11:30 - The Invited Panel will present testimony addressing the meaning of 35-A MRSA §3453, the statutory criteria enacted by P.L. 2007 c. 661 (“the Wind Energy Act”) for expanding the expedited wind energy development area. The panel will be asked to address the following questions:
 - What did the Wind Energy Act, which enacted recommendations of the Governor’s Task Force on Wind Power Development (“the Task Force”), do, and what did it not do?
 - What do the § 3453 criteria, which the Commission must use when adding specific areas to the expedited permitting area, mean?
 - How was the area designated as the windpower expedited permitting area developed?
- * 11:30 to 12:30 – Public testimony regarding the same questions addressed by the panel.
- * 12:30 to 1:30 - Break for lunch
- * 1:30 - Resume public testimony regarding the same questions addressed by the panel.
- * Deliberation by the Commission
- * Closing Statement by Commission Chair

2. Guidance Document. Following the close of Part One of the hearing, the Commission will develop a Guidance Document to clarify the meaning of the criteria set forth in 35-A MRSA § 3453, according to the following schedule:

- * January 25, 2010: Draft Guidance Document available, by contacting Marcia Spencer-Famous or by visiting the Commission’s website at:
<http://www.maine.gov/doc/lurc/projects/Transcanada/Transcanada.shtml>, for written public comment.

- * February 3, 2010 Commission meeting: Discussion by Commission of draft Guidance Document
 - * February 10, 2010: End of public written comment period on draft Guidance Document
 - * March 3, 2010 Commission meeting: Consideration by Commission of Guidance Document
3. Part Two. Part Two of the hearing will be held on March 17, 2010 at Sugarloaf Inn, 5092 Sugarloaf Access Rd., Carrabassett Valley, starting at 10:00 am. The testimony accepted at Part Two of the hearing will focus on the petition by TransCanada to add a specified parcel in Chain of Ponds Twp., Franklin County, and the applicable statutory criteria set forth at 35-A MRSA § 3453. Additional information on TransCanada's proposal, including the petition submitted by TransCanada, may be found on the Commission's website at: <http://www.maine.gov/doc/lurc/projects/Transcanada/Transcanada.shtml>.

Part Two of the hearing will be conducted as follows:

- * Opening Statement by Commission Chair
- * Summary of proposed expedited area expansion by TransCanada
- * Questions by the Commission
- * Public testimony
- * Rebuttal statements by TransCanada
- * Closing Statement by Commission Chair