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# Memorandum

**To:** Commissioners

**From:** Stacie R. Beyer, Chief Planner

**Date:** December 6, 2017

**Re:** NextEra Petition to Initiate Rulemaking for Expansion of the Expedited Permitting Area Proposed Changes to Chapter 10, *Land Use Districts and Standards*  
Appendix F: Expedited Wind Energy Development Area Designation

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This memorandum discusses NextEra Energy Resources' petition to expand the expedited permitting area for wind energy development and is intended to assist the Commission as it reviews the petition and decides whether to deny the petition or to initiate rulemaking. As explained below, central to the Commission's review as it decides how to proceed is whether the proposed expansion is a "logical geographic extension" of the existing expedited permitting area, as required by 35-A M.R.S. § 3453(1).

## I. BACKGROUND

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. Among the purposes of the Act was to identify areas where permitting for wind power development would be streamlined.<sup>1</sup> To that end, the Task Force recommended, and the Legislature created, the "expedited permitting area." Within the expedited area a modified application process and revised criteria for evaluating the appropriateness of wind energy developments were established.

The Act drew the expedited permitting area for wind energy development to encompass all the organized area of the State and portions of the area served by the Land Use Planning Commission. Consistent with the directive of the Act, the Commission adopted through rule-making the description and map of the expedited permitting area within the unorganized and deorganized parts

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<sup>1</sup> Report of the Governor's Task Force on Wind Power Development (2008) at 14-25. A copy of the Task Force report is included as Attachment 1 to NextEra's Petition.

of Maine. 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*. Title 12, section 685-A(13) provides for expansion of the expedited permitting area by the Commission in accordance with 35-A M.R.S. § 3453. Section 3453 states:

The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5 chapter 375, establish standards for the addition of and add a specified place in the unorganized and deorganized areas to the expedited permitting area. In order to add a specified place to the expedited permitting area, the Maine Land Use Planning 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, except that the addition of a specified place that was previously removed from the expedited permitting area in accordance with section 3453-A, subsection 1 need not satisfy this requirement;
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 Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

If the Commission amends its rules to expand the expedited permitting area, grid-scale wind energy development becomes an allowed use in all the zoning subdistricts within the newly expanded expedited area. The change also influences the application review process and criteria the Department of Environmental Protection (DEP) would apply during permit review, but the expansion rulemaking does not constitute an approval of a particular project. If the Commission does not amend its rules to expand the expedited permitting area, wind energy development still may be proposed. However, the portion of the project outside the existing expedited permitting area would have to be rezoned to a Planned Development (D-PD) subdistrict. If rezoned, the portion of the project within the D-PD subdistrict would be reviewed by DEP under standard Site Location of Development Law criteria, while the portion in the expedited permitting area would be evaluated under the criteria customized for review of expedited wind energy development in the Wind Energy Act.

## II. NEXTERA PETITION

On November 15, 2017, NextEra Energy Resources (“NextEra”), submitted a petition (the “Petition”) requesting that the 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). The Kibby Wind project (commonly referred to as Kibby I), is located in Kibby and Skinner townships in a D-PD subdistrict that was created to accommodate the project. Just after the D-PD was established the expedited permitting area was created and was drawn to include this D-PD.

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 Petition and maps of the Expansion Area are included as Attachments 1 and 2 to this memo.

### **III. DISCUSSION**

The Commission’s task at the December meeting, having received the Petition, is to decide how to proceed. Consistent with the Maine Administrative Procedures Act and the Commission’s Chapter 4 *Rules of Practice*, 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.

In evaluating how to proceed, the central issue for the Commission is whether the proposed Expansion Area is a “logical geographic extension” of the existing expedited permitting area. If the Petition does not satisfy this statutory requirement, the Commission may decide to deny the proposed amendment and not move forward with rulemaking (“Option 1”). If the Commission concludes the Petition satisfies the logical geography extension requirement, staff recommend that the Commission initiate rulemaking (“Option 2”). Through the rulemaking process, interested member of the public would then have the opportunity to provide comments that would assist the Commission with its consideration of the proposed expansion, particularly whether the state energy goals and CLUP consistency standards in Section 3453 are met.

#### **A. Commission Consideration of Expansion Petitions: Historical Perspective**

In March of 2010, the Commission adopted guidelines for reviewing requests to expand the expedited area, *Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Energy Development* (revised April 6, 2011) (the “Guidelines”). Staff provided NextEra a copy of the Guidelines in advance of its filing and the Petition references the guidance document. The Guidelines reflect the Commission’s thinking on expedited area expansions at the time they were developed in 2010 and 2011. The Guidelines are not rules, and therefore should not be viewed as standards for the Commission to apply or standards that NextEra

must meet. The Commission is not bound by the guidance in making a decision on the NextEra petition. Rather, to the extent the Commission continues to find the guidance reflective of its thinking and proper application of the statute, the Commission may find the document helpful during consideration of the Petition. We have provided a copy of the Guidelines as Attachment 3 to this memo.

The Commission has, in the past, reviewed two petitions to expand the expedited permitting area, the petitions for Bowers Wind and Kibby III. In June of 2009, TransCanada Maine Wind Development, Inc. submitted a petition that originally proposed an approximately 630-acre addition to the expedited permitting area for the Kibby III project. TransCanada later reduced the area to be expanded to 156 acres in Chain of Ponds Twp. That petition was withdrawn prior to a final decision. However, Commission staff had reviewed the proposed 156-acre expansion and provided its assessment to the Commission that the proposal met the logical geographic extension criterion because:

- 1) The expansion area was contiguous with the original expedited permitting area,
- 2) The area added was one portion of a geographic feature (a ridge line) that crossed a township boundary such that without expansion part of the feature was inside and part of the feature was outside the existing expedited permitting area, and
- 3) The proposal was part of the larger project located within the existing expedited permitting area.

In May of 2010, Champlain Wind, LLC submitted a petition proposing a 695-acre addition to the expedited permitting area in Kossuth Township for the Bowers Wind project. The proposed expansion area was intended to accommodate approximately 28 percent of the overall project; the remaining 72 percent of the Bowers project was proposed in the existing expedited area. The Commission approved the addition. The same three factual characteristics identified in review of the Kibby III expansion also characterized the Bowers expansion. Comparable findings provided the basis for the Commission's conclusion that the Bowers expansion was a logical geographic extension of the existing expedited permitting area.

These prior instances where the Commission considered expansion petitions in no way obligate the Commission to take any particular action in the present instance. Neither establishes a legal precedent. Both instances, however, involved consideration of the same legal provisions the Commission must consider now. To the extent the Commission finds the prior reasoning remains sound, these prior examples may be helpful to the Commission today.

**B. Option 1: Deny Petition Because it Does Not Involve a Logical Geographic Extension of the Existing Expedited Permitting Area**

As noted above, what constitutes a "logical geographic extension" is something the Commission has previously considered in preparing the Guidelines and reviewing the prior expansion petitions. Also as noted, neither the Guidelines nor prior actions legally bind the Commission today, but if the analytical framework developed and applied then is applied to the Petition, it appears the proposed Expansion Area is too broad in scope to be a logical geographic extension. Staff offer this assessment and the following discussion not as an endorsement of the Commission's historical

interpretation and application of Section 3453, but rather to aid the Commission in its review of the Petition should the Commission continue to apply Section 3453 as it has in the past.

NextEra's proposed Expansion Area, is larger – approximately 24,777 acres – than either expansion previously considered by the Commission. NextEra calculates that this expansion would accommodate 47 percent of the Project, with a majority of the proposed project area – 53 percent – located in the existing permitting area. This calculation appears dependent on narrowly tailoring the Expansion Area in Skinner Township and T5 R6 BKP WKR to include only proposed turbine strings and generator lead lines, while more broadly drawing the proposed project area within the existing expedited permitting area, particularly Alder Stream Township. The project area calculations in the Petition also do not address where turbines will be located.

Putting aside whether the balance of the proposed Project would be within the existing expedited permitting area or within the Expanded Area, the proposed expansion would capture new ridgelines currently located outside the expedited area. This would be the case, for example, with the proposed expansion in Skinner Township and T5 R6 BKP WKR. The Commission has recognized 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 has been found to involve a logical geographic extension of the expedited permitting area. While no expansion has been denied by the Commission because it includes entirely new ridgelines (action has only been taken on a single petition) , such an expansion appears inconsistent with the Commission's consideration and application of the "logical geographic extension" requirement to date.

Should the Commission conclude the proposed Expansion Area is not a logical geographic extension, staff have prepared a draft letter denying the Petition and explaining the basis for such a denial. This draft letter is included as Attachment 4. If the Commission decides not to initiate rulemaking for reasons other than those articulated in the letter, staff will revise the letter accordingly.

This draft letter also may be helpful to the Commission when considering how to interpret and apply Section 3453. The letter reflects staff's application of the logical geographic extension requirement as traditionally interpreted by the Commission. If the Commission does not find the reasoning in the letter compelling, it may decide to reevaluate its legal authority to expand the expedited permitting area under Section 3453.

### **C. Option 2: Initiate Rulemaking**

If the Commission concludes the Petition involves a logical geographic extension of the expedited permitting area, the Commission should initiate rulemaking. The next step would be for NextEra to submit a proposed rule revision (e.g., draft language identifying the proposed Expansion Area that would be inserted into Chapter 10, if adopted) and any other information needed by the Commission to allow meaningful review of the amendment request. Commission review would involve consideration of all three standards contained in Section 3453, not just the logical geographic extension requirement focused on in this memo.

As part of the rulemaking process, the Commission would provide an opportunity for public comment, which likely would include a public hearing. The Commission may elect to hold a public hearing and would be obligated, under the Administrative Procedures Act, to hold one if requested by five or more interested persons. Staff anticipate at least five individuals would request a hearing if the Commission did not opt to hold one on its own accord.

If the Commission votes to initiate rulemaking, staff recommend that the Commission also direct staff to coordinate with NextEra to identify any additional information needed by the Commission as part of its review. This coordination would be similar to how staff worked with petitioners who sought substantive review of petitions to remove places from the expedited permitting area. With complete information in hand, the Commission could schedule a public hearing, if one is to be held, or move forward with review.

Finally, while scheduling a public hearing would be premature at this juncture, if the Commission votes to initiate rulemaking and knows it intends to hold a public hearing, the Commission could vote at the December meeting to hold a hearing, designate the presiding officer (typically the Commission Chair), and leave subsequent scheduling of the hearing to the presiding officer.

\* \* \*

Staff will be prepared at the December meeting to discuss the Petition and assist the Commission in deciding whether to deny the Petition or to initiate rulemaking. NextEra, through its legal counsel, recently submitted a letter for the Commission's consideration, which is included as Attachment 5. Counsel for NextEra, as well as a representative of the Friends of the Boundary Mountains, have requested an opportunity to speak at the Commission meeting.

#### Attachments

1. NextEra Petition w/o exhibits and attachments (full Petition available on the LUPC Website: [http://www.maine.gov/dacf/lupc/projects/moose\\_alder\\_stream/moose\\_alder\\_stream.shtml](http://www.maine.gov/dacf/lupc/projects/moose_alder_stream/moose_alder_stream.shtml))
2. NextEra maps of the proposed expansion area
3. *Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Energy Development*
4. Option 1, draft letter denying the Petition
5. Letter from NextEra Counsel (December 5, 2017)

# Attachment 1

NextEra Rulemaking Petition  
Expansion of the Expedited Permitting Area  
Chain of Ponds, Seven Ponds, Skinner, and T5 R6 BKP WKR

*NextEra Petition w/o Exhibits and Attachments*

**PETITION TO INITIATE COMMISSION RULEMAKING  
TO ADD TO THE WINDPOWER EXPEDITED  
PERMITTING AREA**

**SUBMITTED TO THE  
MAINE LAND USE PLANNING COMMISSION**

**BY**

**NEXTERA ENERGY RESOURCES LLC**

**NOVEMBER, 2017**

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## EXHIBITS

- Exhibit A Proposed Expansion Area
- Exhibit B LUPC Zoning Map for Proposed Expansion Area
- Exhibit C Notice of Filing

## ATTACHMENTS

- Attachment 1 February 2008 Report of the Governor’s Task Force on Wind Power Development
- Attachment 2 Wind Resource Mapping
- Attachment 3 Wind Atlas of Maine
- Attachment 4 Maine Forest Products Council White Paper “Wind Power in Managed Forests”

## INTRODUCTION

On May 8, 2007, the Task Force on Wind Power Development in Maine (the “Task Force”) was established.<sup>1</sup> The Task Force was charged with identifying policy changes that could help achieve three underlying objectives: a) Make Maine a leader in wind power development; b) protect Maine’s quality of place and natural resources; and c) maximize the tangible benefits Maine people receive from wind power development. The Task Force membership included legislators, state employees, non-governmental organizations, and representative of the wind power industry. The recommendations of the Task Force were accepted by all members and subsequently enacted into law pursuant to 2007 Public Law, Chapter 661 (the “Wind Power Act”).

As part of its recommendations, the Task Force identified and the Legislature approved areas where permitting should be expedited for wind power development (the so-called “Expedited Permitting Area”). In addition to Maine’s organized towns, the Expedited Permitting Area included portions of the state where unorganized towns are intermingled with plantations and organized towns<sup>2</sup>. In a footnote, the Task Force specifically stated that the Expedited Permitting Area should only include areas on the fringe of the (then) Maine Land Use Regulation Commission’s jurisdiction that do not encompass concentrations of ecological, recreational, and/or scenic values that are the most significant in the jurisdiction, as well as areas within approximately one township (6 miles) of certain public highways and those areas being considered for wind farm development at that time<sup>3</sup>. The Task Force also recommended and the Legislature approved a process for adding to the expedited permitting area<sup>4</sup>.

In accordance with 35-A M.R.S. § 3453, NextEra Energy Resources LLC (“NextEra”) hereby petitions the Maine Land Use Planning Commission (“LUPC”) to initiate rulemaking to add approximately 24,777 acres (the “Proposed Expansion Area”) to the existing expedited permitting area identified by the Task Force and the Maine Legislature, as depicted in Figure F-1 of LUPC’s Chapter 10 rule (as modified in 2016 pursuant to P.L. 2015, Chapter 265). The Proposed Expansion Area, which is located within the townships of Chain of Ponds, Seven Ponds, Skinner, and T5 R6, is depicted on the map attached as Exhibit A. The proposed expansion is not only consistent with the standards set forth in Section 3453 and the Commission’s “Guidelines for the Review of Petitions for the Addition of Lands to the Expedited Permitting Area for Wind Development” (“Guidelines”) as published on March 3, 2010 and amended April 6, 2011, it is also consistent with the Commission’s prior decision that this region of Maine, which includes the Kibby Wind Power Project (the “Kibby Project”), is an appropriate location for wind power development. As laid out below, the proposed rule change which would make wind power an allowed use within the Proposed Expansion Area would facilitate the development of approximately 460 megawatts (“MW”) of additional clean renewable power in a location appropriate for wind power development without compromising the principle values and goals of the LUPC’s Comprehensive Land Use Plan (“CLUP”), and encouraging a substantial investment in Maine’s economy.

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<sup>1</sup> February 2008 Report of the Governor’s Task Force on Wind Power Development (“Task Force Report”) at 9 and Attachment A, provided as Attachment 1 to this document.

<sup>2</sup> Task Force Report at 18.

<sup>3</sup> *id.*, at 18.

<sup>4</sup> *id.*, at 20. 35-A M.R.S. §3453.

## 1.0 Project Proposal and Supporting Exhibits

### 1.1 Project Purpose

The purpose of this petition is to initiate a rulemaking that would add the Proposed Expansion Area to the Expedited Permitting Area to support the development of NextEra's Moose-Alder Stream Wind power generation facility (the "Project") of up to a total of 460 MW located in seven unorganized territories in northern Franklin and Somerset counties near the Canadian border. A portion of the Project area is currently within the Expedited Permitting Area, and in close proximity to an existing wind project. The proposed Project will help Maine and New England meet mandatory renewable energy goals, as well as provide much needed non-carbon emitting power to the region.

Wind energy provides a clean and economically stable source of electricity for the region. New England's electricity market, including Maine, operates as a single energy market. Generation, energy pricing, and constraints in one part of the market affect the entire New England market. The New England region is expecting to see the retirement of approximately 6,000 MW of older electricity generation facilities in the next few years, leaving the region with a substantial need for new energy generation<sup>5</sup>. The Project will help the region avoid potential reliability risks and suboptimal operating conditions, which would occur if retiring generation facilities are not replaced. Further, currently over 40 percent of the region's energy generation comes from natural gas. During certain times of the year the grid operator is forced to rely on older, more expensive coal and oil fired generation facilities because of constraints on natural gas supplies.

We have sited the Project in close proximity to the existing Kibby Project, which occupies land on the Kibby Range and Kibby Mountain in Kibby and Skinner Townships. As such, the Project is a logical extension of the legislatively-approved wind use in a remote and unpopulated area of the state.

### 1.2 Description of Proposal

NextEra began exploring the potential for this Project in late 2015, reviewing existing meteorological data and previous development activities in this region. In 2016, NextEra initiated its permitting process, which included consultation with state and federal agencies, desktop environmental analysis and field surveys. Specific pre-construction studies underway include eagle surveys, raptor migration surveys, nocturnal radar surveys, and acoustic monitoring surveys. Meteorological ("met") towers have been established and limited public outreach has been conducted. The initial layout for the Project underwent multiple revisions to avoid and/or minimize impacts to sensitive resources pursuant to feedback from resource agencies.

The proposed Project is located in seven townships in the unorganized territories in northern Franklin and Somerset counties. Geologically, this area along the Maine-Quebec border is referred to as the Boundary Mountains. The Project area has no known permanent residents and only a few seasonal cabins in Alder Stream, Seven Ponds, and Chain of Ponds townships. The region is primarily used for commercial timber and is almost entirely privately owned by timber companies. There are numerous

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<sup>5</sup> ISO New England 2016. Regional Energy Outlook. Available online at: [https://www.iso-ne.com/static-assets/documents/2016/03/2016\\_reo.pdf](https://www.iso-ne.com/static-assets/documents/2016/03/2016_reo.pdf). Accessed September 20, 2017.

well maintained private roads in the Project area and the region for large timber operations. Although the area may on occasion be used for recreational purposes by the general public, the Project area is privately owned and public access is not a land management objective.

For purposes of convenience, the Project can be broken into two sections: (1) the area north of Route 27 in Franklin and Somerset counties (“Moose Wind”), which will include approximately 71 turbines in the townships of Skinner, Kibby, and T5 R6 BKP WKR, and (2) the area south of Route 27 within Franklin County (“Alder Stream Wind”), which consists of approximately 62 turbines in Chain of Ponds, Seven Ponds, and Alder Stream townships. The generator lead line for the Alder Stream section of the Project crosses the Jim Pond Township into Kibby Township. Between the two areas is the existing 132 MW, 44 turbine Kibby Project, which was constructed in 2009 and is in the Expedited Permitting Area.

The Project also proposes to have a series of energy storage containers located adjacent to the respective Alder Stream Wind and Moose Wind collection substations. Buildings will be constructed to house the batteries and associated equipment such as controls and HVAC. Both the Alder Stream Wind Battery Storage and Moose Wind Battery Storage are designed to store up to 100 megawatt hours (“MWh”) of energy (4 hours at full 25 MW output capacity). As the battery storage facilities are designed to charge only from their associated wind energy facilities, the ability to fully store up to the full MWh capacity of each Battery Storage facility is generally dependent on the availability of the wind resource during off-peak hours, which is typically when wind is more productive.

The Proposed Expansion Area, as depicted on the map at Exhibit A, encompasses an area of approximately 24,777 acres. Exhibit B shows LUPC’s zoning districts laid over the Proposed Expansion Area.

The Project would be considered a “grid scale wind energy development” and would therefore require a permit under Maine’s Site Location of Development Act (“SLODA”) from the Maine Department of Environmental Protection (“MDEP”). Consistent with the extensive field work and agency and stakeholder consultation that occurred in the nearby Kibby Project and other more recent projects, NextEra will site and design the Project, including its supporting facilities such as roads, generator lead lines, and buildings, in a manner that demonstrates that the Project will have no undue adverse impacts. In particular, the SLODA application will address multiple specific permitting issues, including the following:

1. Visual quality and scenic character effects;
2. Tangible benefits (environmental and economic);
3. Noise and shadow flicker effects;
4. Avian and bat species effects;
5. Public safety, including setbacks; and
6. Decommissioning plans.

As such, this Petition offers a macro-level narrative of how allowing wind power as a permitted use within the Proposed Expansion Area will not compromise the principal values and objectives of the CLUP. A detailed narrative and analysis of potential impacts, as well as avoidance and mitigation measures, will be included in the subsequent development application.

### 1.3 Transmission

The Project will connect to the Gold Brook Substation that is part of Central Maine Power Company's proposed Maine Clean Power Connection Transmission Project ("CMP's MCPC Transmission Project"). The Project connection from the Alder Stream Wind portion will be an approximately 20 mile 345kV transmission line from the proposed Alder Stream Collection Substation to the Gold Brook Substation. The Moose Wind Collector Substation will be located adjacent to CMP's proposed Gold Brook Substation. As part of the development of the Project, NextEra will commission or participate in an interconnection feasibility study and interconnection system impact study, which will identify any upgrades needed to maintain the reliability of the bulk transmission system. NextEra expects these studies will be completed in a timeframe consistent with commencing construction in the fourth quarter of 2020.

### 1.4 Notice of Filing

The Applicant has been told by LUPC staff that additions to the Expedited Permitting Area are treated as routine technical rulemaking and as such there is no requirement for notice of filing of a petition to initiate rulemaking. However, upon advice from LUPC staff, the Applicant prepared notice and distributed it to stakeholders. A copy of this notice and the addresses to which the notice was sent are attached at Exhibit C.

## 2.0 Statutory Criteria for Expansion of Expedited Permitting Area

### 2.1 Logical Geographic Extension

Under the Guidelines, an extension of Expedited Permitting Area is allowable if the portions of the Expedited Permitting area set by townships or other political boundaries cuts across "ridgelines or other naturally occurring geographic features relevant in siting wind power". There is no specific definition in the Guidelines as to what qualifies as a geographic feature, except that the Commission will compare the Project acreage within the originally designated Expedited Permitting Area against that of the proposed expansion. Approximately 53% of the proposed Project area, all associated components (e.g. turbines, roads, substations, maintenance building(s), laydown areas, and generator lead lines) falls within the original Expedited Permitting Area.

Beyond this simple metric there are a number of "geographic features" that demonstrate that the Potential Expansion Area represents a logical geographic extension of the currently designated Expedited Permitting Area. For each of these factors the scale of analysis is at the landscape level, as is appropriate for projects of this magnitude, rather than at the micro-siting level. In addition, the analysis adopts the Guideline's guidance that artificial lines such as township boundaries should not take precedence over natural features when considering a utility-scale wind project, whose success is significantly dependent on those very features. Each of these geographic features is described below.

### Previous Legislative Identification

The Task Force recommended and the Legislature approved the inclusion in the Expedited Permitting Area of Kibby Township and Alder Stream Township. Neither of these areas is on the fringe of the (then) Maine Land Use Regulation Commission's jurisdiction or within approximately one township (6 miles) of certain public highways. As such, the selection of these areas is based on the determination on the part of the Task Force and the Legislature that these areas represent viable locations for the installation of a utility-grade wind energy facility.

The inclusion of both Kibby and Alder Stream townships demonstrates that, at a landscape level, the Legislature considered this region viable for wind power development. Given that the Proposed Expansion Area lies on either side of these townships, it is reasonable to assume that if development activities had been considered in the Proposed Expansion Area at the time that the Wind Power Act was under consideration, then this region would have been included. Moreover, the successful operation of the Kibby Project further demonstrates the viability and suitability of this region for wind power development.

### Geological Formation

The topography of this area indicates that it represents a single geological formation. The Expedited Permitting Area and the Proposed Expansion Area have a continuous mountainous connection, while to the northwest and southeast the topography becomes relatively flat with low hillsides. As such, there is a landscape geographic connection between the mountains in the Proposed Expansion Area and the original Expedited Permitting Area, even if there is not necessarily a micro-level (e.g., hiker) connection.

In the northeast section of the Project area, the Bedrock Geologic Map of Maine<sup>6</sup> depicts the entirety of the Kibby Township, which is in the Expedited Permitting Area, and almost all of the Proposed Expansion Area to the northeast are Chain Lakes Massif, indicating that they are in the same geologic expanse. The Maine Geologic Survey (MGS) describes the Chain Lakes Massif as being Precambrian age (>650 million years old). In the southwest section, the townships within the Expedited Permitting Area, Jim Pond and Alder Stream, exhibit multiple types of bedrock, including Chain Lakes Massif, variations of Jim Pond Formation (CAj), ultramafic rocks, and gabbro/diorite/ultramafic rocks. All of these formations are also within the Proposed Expansion Area. As with the northeast quadrant, all of these bedrock formations are classified as Precambrian age.

### Previous Wind Development

As shown in Exhibit A, the turbines associated with the Kibby Project generally lie in a northeast – southwest orientation. The turbines proposed within the Proposed Expansion Area also follow this same orientation, based on the geography of these interrelated, nearby mountain ridges, supporting the conclusion that the proposed Project is a logical geographic extension of the currently designated Expedited Permitting Area.

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<sup>6</sup> Osberg, Phillip, Arthur Hussey II and Gary Boone. Bedrock Geologic Map of Maine. Maine Geologic Survey. 1985.

## Wind Resource

In investigating the development potential for the Project, NextEra developed wind resource mapping for the region. As show in Attachment 2, the Proposed Expansion Area represents a logical geographic extension of the high-value wind areas within the currently designated Expedited Permitting Area.

## Economic Necessity

One hindrance to the State of Maine achieving its wind development goals has been the inability to locate sites that would allow for installation of large utility-scale wind facilities. The wind resource and remoteness of the proposed Project represent an ideal location, as demonstrated by the acceptance of the Kibby Wind Farm. However, in order to be financially viable, given likely development and transmission costs, the Project layout must include turbines outside of the original Expedited Permitting Area. The Proposed Expansion Area does not represent a broad region but, instead, a discrete area that has been targeted as being suitable for wind turbines and related infrastructure, with a high quality wind resource.

## 2.2 Importance in Meeting State Wind Energy Goals

### Progress Toward State Goals

As established by the Task Force and approved by the Legislature in 35-A M.R.S. § 3404(2), the goals for wind energy development are that there be: a) at least 3,000 MW of wind energy capacity by 2020, including 300 MW of off-shore; and b) at least 8,000 MW by 2030 including 5,000 MW from off-shore wind. The Wind Power Act also provides at § 3404(1) that it is the policy of the State in furtherance of these goals “to encourage the attraction of appropriately sited development related to wind energy . . . consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.” While the Task Force recognized that the State’s wind energy goals were “ambitious,” they also stated that they are “realistic, achievable and necessary.”<sup>7</sup>

According to the American Wind Energy Association, as of the first quarter of 2017 Maine has only 901 megawatts of installed wind capacity. The proposed Project is important in meeting the State’s wind energy development goals because it would move the State more than 50% closer to meeting those goals (about 460 MW more than the current 901 MW), and would bring the State from 45% to about 68% of the State’s 2015 goal.

In addition to its importance in meeting the state’s wind energy development goals, the Project would assist in meeting other policy objectives. The state of Maine’s Renewable Portfolio Standard (RPS) establishes a goal of 40% renewables by 2017. Public Law 403 of 2007 converted this goal into a mandatory standard, which the Maine Public Utilities Commission has since designated the "Class I" standard. Based on the most recent report available, as of 2015 the state of Maine’s electricity suppliers

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<sup>7</sup> Task Force Report at 5.

were in compliance with the State's Class I and Class II portfolio requirements<sup>8</sup>. A report by London Economics International for the Maine Public Utilities Commission concluded that the RPS program, in concert with those of other states, would increase the state's gross domestic product by \$1.1 billion as well as produce over 11,000 jobs<sup>9</sup>. Public interest in low cost renewable energy alternatives has also increased in recent years due to concerns over the environment and national energy security.

### The Project's Potential for Energy Generation

The Project represents an opportunity to move Maine closer to its stated goals in an area contiguous with an existing, viable wind farm in a region specifically identified as suitable for application of an expedited permitting regime. The U.S. Wind Atlas identifies the northwest portion of Maine as Wind Power Class 5, indicating excellent wind resource potential.<sup>10</sup> The addition of the Proposed Expansion Area to the Expedited Permitting Area will facilitate development of approximately 460 MW of additional clean renewable power in a location appropriate for wind power development. The acceptance of this petition will have therefore have a significant impact on the progress toward the state's wind energy goals.

### Viability

The Project is proposed by NextEra, a leading clean energy company which is an indirect subsidiary of NextEra Energy Inc. (NEE). NEE has consolidated revenues of nearly \$16 billion, 45,900 megawatts of generating capacity, and 14,700 employees. NEE is a Fortune 200 company with a market capitalization of approximately \$70 billion as of October 20, 2017.

In 2016 alone, NextEra commissioned 1,400 MW of wind energy and 1,100 MW of solar energy. With more than 14,000 MW of wind and 2,000 MW of solar in operation, NextEra is the world leader in producing electricity from the wind and sun. In fact, NextEra has more wind capacity in its portfolio than all but six countries in the world.

The proposal is not contingent on external financing during development. Financial requirements will be met through capital funding from NextEra's parent. Due to its size, credit standing, and available liquidity, NextEra does not need or envision seeking financing for design, procurement, construction, or placing the Project into service.

NextEra is currently undertaking the detailed environmental and other surveys necessary to support a SLODA application, which is expected to be filed in the 4<sup>th</sup> Quarter of 2018. Construction is scheduled to commence in the 4<sup>th</sup> Quarter of 2020, so that the Project may come on-line in the 4<sup>th</sup> Quarter of 2021.

NextEra has entered into Wind Energy Easement Agreements and/or Option Agreements with the landowners for the wind portions of the Project, including the Penobscot Nation, for a period that meets

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<sup>8</sup> Maine Public Utilities Commission. Annual Report on New Renewable Resource Portfolio Requirement: Report for 2015 Activity. Accessed on October 25, 2017 at: <http://www.maine.gov/tools/whatsnew/attach.php?id=741005&an=1>.

<sup>9</sup> London Economics International. Review of RFP Requirements and Compliance in New England States: Maine RPS Summary. Accessed on October 10, 2017 at: [http://renewablemaine.org/pubs/LEI\\_Study\\_Summary\\_by\\_MREA.pdf](http://renewablemaine.org/pubs/LEI_Study_Summary_by_MREA.pdf).

<sup>10</sup> The Wind Atlas Map for Maine can be found at <http://rredc.nrel.gov/wind/pubs/atlas/maps/chap3/3-22m.html> and is included as Attachment 3 in the accompanying Background Material in Support of this Petition.

or exceeds the expected life of the turbine units. In addition, its affiliate, Blue Heron Land Associates, LLC (“BH”), has entered into easement option agreements to interconnect the Alder Stream Wind portion’s new interconnecting power line (“gen-tie”) to the Gold Brook Substation. (The Moose Wind portion does not require a gen-tie as the proposed collection substation is located adjacent to the Gold Brook Switching Station.)

### Impact to Public Resources and Public Infrastructure

As discussed below, this Project represents an exceptional opportunity for energy generation with only a small impact on public resources based on important natural, recreational, scenic, archaeological and historic resources in the area. The impacts to public infrastructure will be negligible and of short duration.

## 2.3 Consistency with Principal Values and Goals of the CLUP

The CLUP contains four principal values and multiple goals that are intended to help define the character of the areas under the Commission’s jurisdiction. However, as noted in the CLUP, the Commission “recognizes that goals or policies may at times conflict with one another and will, in such cases, balance the various policies so as to best achieve its vision for the jurisdiction.”<sup>11</sup> As a threshold matter, it is important to recognize that this Petition simply seeks to add approximately 24,777 acres to the Expedited Permitting Area, with the net effect that wind power development would be an allowed use in that area. Any actual development of such a facility would require the submission of all required permit applications, with a detailed analysis of, among other things, the specific environmental, recreational, visual, and other potential impacts associated with the proposed Project. As such, the discussion below is intended to provide a general overview of how the addition of the Proposed Expansion Area to the Expedited Permitting Area will be consistent with the principal values and goals of the CLUP at a level of detail sufficient to demonstrate that the criterion set forth in 35-A M.R.S. § 3453(3) has been met.

### 2.3.1 Project Setting

The Project is located in a mountainous region managed for commercial forestry. The site is remote with access largely limited to logging roads and skid trails. There are no year-round use residential buildings located within the Project area, although there are seasonal camps whose land is leased from the timber companies in certain locations. Harvesting and forest management activities dictate the composition of forest communities. The area is not designated for recreational uses, although the land owners allow hiking, snowmobiling, and hunting on their lands.

### 2.3.2 Principal Values

#### 2.3.2.1 Economic value of the jurisdiction derived from working forests and farmlands

The Proposed Expansion Area and the surrounding area are currently managed as a commercial forestry operation. Commercial forestry is a main stay of the State’s economy with an estimated economic

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<sup>11</sup> CLUP at 5.

impact of \$8.5 billion in 2016<sup>12</sup>. Maine has seen a decline in the forest products industry in recent years but wind power and other compatible uses of working forest lands may help to stabilize the industry. The Commission has previously stated that wind power is a use consistent and compatible with commercial forestry.<sup>13</sup> The Maine Forest Products Council (MFPC) wrote a policy paper supporting the integration of wind projects into working forests, noting that “landowners need diverse income streams to balance the cyclical nature of wood pricing and long time frames for returns on investment.” The paper concludes that wind power can be part of a long-term sustainability plan for working forests and is compatible with other forest uses. The MFPC paper is provided as Attachment 4 to this petition.

The addition of the Proposed Expansion Area into the Expedited Permitting Area would have a positive impact by helping to sustain working forests in the region.

### 2.3.2.2 Diverse and abundant recreational opportunities

The Project area is not maintained as a public recreational area and any such opportunities are ancillary and incidental to the primary land use. There are no owner-maintained hiking trails in this area and the only fixed features are three fire towers (Kibby Mountain, Snow Mountain, and Tumbledown Mountain) that are currently in a state of disrepair. Snowmobile and ATV trails are maintained by recreational groups after receiving permission from the land owners. As such, this region should not be considered important for recreational uses as it is not a guaranteed use but a permissive one by the same landowners that have entered into agreements to allow the development of the Project.

As part of the development of the Kibby Project TransCanada conducted a recreational use survey for an area encompassing a fifteen mile radius around that then-proposed project. The majority of recreational users engaged in hunting, snowmobiling, ATV-riding, and fishing. The survey found that the majority of individuals surveyed felt that the proposed Kibby Project would have a “low” or “very low” impact on their recreational experience in the area.<sup>14</sup> Based in part on this evidence, the Commission concluded that the Kibby Project “is consistent with the principal value of maintaining diverse and abundant recreational opportunities....as the Project area has a relatively low level of recreational use and the dominant recreational uses would not be negatively affected by the Project.”<sup>15</sup>

The Proposed Expansion Area is expected, given its proximal and perhaps more remote location, to offer the same or less recreational value as the adjacent Kibby Project. There are no owner-maintained recreational facilities so that, as was identified in the assessment of the Kibby Project, the ease of access and extensive trail network in the Bigelow Range and Rangeley Lake region draw recreational users away from the Project area.

The extension of the Expedited Permitting Area will not reduce existing recreational opportunities, particularly given this value’s focus on large stretches of undeveloped land. In fact, by facilitating the

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<sup>12</sup> Maine Forest Products Council. Maine’s Forest Economy. Accessed online on October 12, 2017 at: <http://maineforest.org/wp-content/uploads/2016/09/Maines-Forest-Economy-10-12-2016.pdf>.

<sup>13</sup> See, e.g., Zoning Petition (ZP) 709 at 57-58; November 2007 Findings of Fact and Decision in ZP 713 at 35-36.

<sup>14</sup> See ZP 709 Application § 9.4.

<sup>15</sup> ZP 709 at 58.

increase in roadways in this area, the inclusion of the Proposed Expansion Area should support this value for the primary users.

### 2.3.2.3 Diverse, abundant and unique high value natural resources and features

#### a) Water Resources

The only named lake within the Proposed Expansion Area is Prick Pond. Waterways within the Proposed Expansion Area include branches of Alder Stream, Little Alder Stream, Gold Brook, Cold Brook, Dud Brook, Hay Bog Brook, Number Six Brook, Smart Brook, the West Branch of Moose River, Spencer Stream, and Caribou Flowage. Under existing regulations, a SLODA development permit will be required to provide a stormwater management narrative that would discuss, among other topics, the pre- and post-development runoff associated with the development, stormwater treatment facilities, and the expected maintenance regime. As such, the protection of water resources can be adequately addressed during the permit review process.

#### b) Fish and Wildlife Resources

The Project Area includes portions of the Moose River, Haybog Brook, Smart Brook, Spencer Stream, and Caribou Flowage, as well as multiple small ponds. Under existing regulations, a SLODA development permit will be required to address the expected impacts on fisheries, if any. Therefore, adding the Proposed Expansion Area to the Expedited Permitting Area will not compromise any values related to fisheries habitat.

Potential species of ecological concern in the area include the Canada lynx, bald and golden eagles, certain bat species, the northern bog lemming, and Bicknell's thrush. Studies would be conducted for these species, in consultation with the Maine Department of Inland Fisheries and Wildlife ("MDIFW"), to determine presence or absence and, as necessary, identify avoidance, minimization, and/or mitigation activities to reduce any impacts. Therefore, adding the Proposed Expansion Area to the Expedited Permitting Area will not compromise any values related to wildlife resources.

#### c) Ecological Values (Plants and Natural Communities)

The Project area is an industrial forest, whose vegetative communities are largely managed in accordance with land owner harvesting goals. Consistent with other wind developments, site specific surveys would be completed in the Project area and potential adverse impacts to ecological resources would be avoided, minimized, and/or mitigated. Conservation and protection of plant, wildlife, and fisheries resources is provided for at the permitting stage. Existing review criteria provide for the protection of these resources, and these criteria are the same whether a place is within or outside of the Expedited Permitting Area.

#### d) Mountain Areas and Other Geologic Resources

The goal of the CLUP with regard to mountain resources is to “[c]onserve and protect the values of high-mountain areas from undue adverse impacts.”<sup>16</sup> The CLUP specifically notes that wind power “is increasingly recognized as the most significant renewable source of electricity that is economically viable at the utility scale,” and observes that “the best wind resources in Maine are located in high-mountain and off-shore coastal areas.”<sup>17</sup> Previous Commission decisions, including for the Kibby Project, have affirmed that wind power developments do not, in and of themselves, constitute an undue adverse impact.

The goal of the CLUP regarding geological resources is to “[c]onserve soil and geological resources by controlling erosion and by protecting areas of significance.”<sup>18</sup> Under existing regulations, a SLODA development permit will be required to provide a soil survey map and report, as well as a discussion of geotechnical issues. Such an application would also be required to include a stormwater management narrative that would discuss, among other topics, the pre- and post-development runoff associated with the development, stormwater treatment facilities, and the expected maintenance regime.

Based on level of detailed review that would be required for any proposed wind power facility, the addition of the Proposed Expansion Area into the Expedited Permitting area would have no impact on soil or geological resources.

#### 2.3.2.4 Natural character

This value refers largely to remoteness and the relative absence of development.<sup>19</sup> While there is little traditional residential or commercial development in proximity to the Proposed Expansion Area, a number of factors contribute to distinguish it from remote areas within the Commission’s jurisdiction. These include: a) proximity to transportation corridors; b) motor vehicle accessibility; c) level of commercial activity; d) proximity to existing development; and e) proximity to existing infrastructure.

##### a) Proximity of Transportation Corridors

The Proposed Expansion Area is located near State Route 27, a heavily-travelled thoroughfare that provides ready access to the U.S. / Canadian border via the Coburn Gore checkpoint. The Gold Brook Road connects to Route 27 and from there to a network of logging roads and skid trails that allow for access to the Project area. A traffic study conducted in conjunction with the Kibby Project indicated that the Gold Brook Road is an established transportation corridor for commercial and passenger vehicles in addition to logging trucks.

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<sup>16</sup> CLUP at 16.

<sup>17</sup> CLUP at 187.

<sup>18</sup> CLUP at 15.

<sup>19</sup> CLUP at 244.

b) Motor Vehicle Accessibility

From the Gold Brook Road and Route 27, the Project area, including the Proposed Expansion Area, is accessible via private roads as well as a timber roads and trails. This road network allows a high degree of access into the area, beyond that which would normally be expected in an isolated and remote region.

c) Level of Commercial Activity

Because the timber operations involve a regular cycle of forest maintenance and logging, there is regular vehicular traffic throughout the region. Field crews conducting studies to support the development of the Project routinely encounter logging trucks throughout the site. As a result, the region does not support a traditional wilderness experience as might be offered by a more remote location.

d) Proximity to Existing Development

The Project site is located approximately six (6) miles from the organized township of Eustis (population ~620) and less than ten (10) miles from the town of Jackman (population ~850). LUPC development districts in Coburn Gore are approximately five (5) miles from the Project site.

e) Proximity to Existing Infrastructure

The Project area is relatively close to existing infrastructure, including roads and transmission lines, compared to other areas under the Commission's jurisdiction. Most significantly, the Project area surrounds the Kibby Project, an existing utility-scale wind farm that has been in full operation since 2010.

In light of the foregoing, the addition of the Proposed Expansion Area to the Expedited Permitting Area will not compromise the CLUP's natural character values, including the value of remoteness and the relative absence of development.

### 2.3.3 Broad Goals

The CLUP states that the Commission will focus on the achievement of the following three broad goals:

1. *Support and promote the management of all the resources, based on the principles of sound planning and multiple use, to enhance the living and working conditions of the people of Maine and property owners and residents of the unorganized and deorganized townships, to ensure the separation of incompatible uses, and to ensure the continued availability of outstanding quality water, air, forest, wildlife and other natural resource values of the jurisdiction.*
2. *Conserve, protect and enhance the natural resources of the jurisdiction primarily for fiber and food production, outdoor recreation and plant and animal habitat.*
3. *Maintain the natural character of certain areas within the jurisdiction having significant natural values and primitive recreational opportunities.*

This Petition seeks to add approximately 24,777 acres to the Expedited Permitting Areas, which would have the immediate effect of making wind power development an allowed use. As previously discussed, wind farms have been established as a compatible use with commercial forest operations and in fact represent a potentially important stable source of income for these property owners. There are no full-time residences within the vicinity of the Proposed Expansion Area. The closest distance from a camp to a turbine is approximately 0.75 miles. The Project would not interfere with fiber or food production in any manner.

A broad discussion of the potential natural resource issues that might arise should the Proposed Expansion Area be added to the Expedited Permitting Area is provided in other sections of this Petition. Any high-value resources identified as a result of studies will be adequately protected in a permit review process, where the SLODA will require a demonstration that there are no undue adverse impacts.

The Project area is managed as a commercial forestry operation, and human disturbance occurs throughout the area on a fairly regular basis. There is no information that suggests that the Project area contains any particularly significant natural resources and, as previously discussed, the extensive forestry use of the area as well as the proximity to transportation networks is detrimental to any primitive camping opportunities.

It is worth noting that the Proposed Expansion Area contains many of the same qualities of character as the Kibby Project, which was determined by the Commission to be consistent with the broad goals of the CLUP. Specifically, the Commission found that the location and design of the Kibby Project would be compatible with traditional land uses, including forestry, agriculture, and recreation, and would maintain the existing natural resource values and character of the area.<sup>20</sup>

## 2.3.4 Specific Goals

### 2.3.4.1 Location of Development

The goal of the CLUP regarding the location of development is to “[g]uide the location of new development in order to protect and conserve forest, recreational, plant or animal habitat and other natural resources, to ensure the compatibility of land uses with one another and to allow for a reasonable range of development opportunities important to the people of Maine, including property owners and residents of the unorganized and deorganized townships.”<sup>21</sup> With regard to wind farm development, the CLUP recognizes that, “the best wind resources in Maine are located in high-mountain and off-shore coastal areas.”<sup>22</sup>

The Commission has previously established the compatibility of wind energy development with the Project area’s primary land use, forest management. Recreational and natural resources are discussed in more detail under the specific goals for those resources. Based on the existing land and the proximity of existing infrastructure, the Proposed Expansion Area is a suitable location for wind energy development

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<sup>20</sup> See ZP 709 at 59-63.

<sup>21</sup> CLUP at 6.

<sup>22</sup> CLUP, 187.

and the type of place that the CLUP envisions that wind energy and related utility facilities should be located.

#### 2.3.4.2 Economic Development

The goal of the CLUP regarding economic development is to “[e]ncourage economic development that is connected to local economies, utilizes services and infrastructure efficiently, is compatible with natural resources and surrounding uses, particularly natural resource-based uses, and does not diminish the jurisdiction’s principal values.”<sup>23</sup> In furtherance of this goal, the CLUP established that the Commission should “[e]ncourage . . . resource-based industries and enterprises which further the jurisdiction’s tradition of multiple use without diminishing its principal values.”<sup>24</sup>

The primary land use in the Project area is forest management, and wind energy development is compatible with that use. The Maine Forest Products Council has previously testified before the Commission that wind energy development can provide an additional source of economic value for forest landowners, helping to preserve the forest economy, especially as the value derived from timber production declines. Specifically, the Project is expected to add over \$3 million annually in direct landowner payments.

Wind power development also brings economic benefits to the region as a whole through tax revenue and direct and indirect spending during construction and the operational life of a project. Under the SLODA, any expedited wind power development must provide a demonstration of significant tangible benefits to the local communities. Maine’s Wind Energy Act requires a minimum tangible benefit package of no less than \$4,000 per wind turbine. This will result in at least \$11 million of direct benefit for the local economy. In addition to this benefit, the Project is expected to generate over \$6.19 million in annual tax revenue for the locations in which the Project will be located. During the construction phase, the Project will generate over \$11 million in direct revenue for 200 full-time-equivalent (FTE) labor and construction jobs, and 37 FTE construction related services jobs, many of which will come from the local area. These people will work, live, eat, and recreate in local communities near the Project (such as the Town of Eustis).

Therefore, the addition of the Proposed Expansion Area to the Expedited Permitting Area would meet the CLUP’s economic development goal.

#### 2.3.4.3 Site Review

The goal of the CLUP regarding site review is to “[a]ssure that development fits harmoniously into the existing communities, neighborhoods and the natural environment.”<sup>25</sup> There are no residential or business districts within the Project area. Any wind project would be compatible with the region’s primary land use, forest management, as well as other forest uses and the natural environment. And specific issues with regard to environmental concerns would be addressed through the application of

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<sup>23</sup> CLUP at 7.

<sup>24</sup> CLUP at 7.

<sup>25</sup> CLUP at 7.

the SLODA permit review standards. The addition of the Proposed Expansion Area to the Expedited Permitting Area would meet the criteria of the site review goal.

#### 2.3.4.4 Infrastructure

The goal of the CLUP regarding infrastructure is to “[e]nsure that infrastructure improvements are well planned and do not have an adverse impact on the jurisdiction’s principal values.”<sup>26</sup> The Project would utilize existing roads and trails to the extent feasible, thereby minimizing the degree of new construction. Collection and transmission lines would be adjacent to roadways as practicable to reduce the encroachment on natural values, although the current allowed land uses already are responsible for significant disturbance. The addition of the Proposed Expansion Area to the Expedited Permitting Area would meet the criteria of the infrastructure goal.

#### 2.3.4.5 Development Rate, Density and Type

The goal of the CLUP regarding development rate, density and type is to “[e]nsure that development is of a rate, density and type conducive to maintaining the jurisdiction’s principal values.”<sup>27</sup> The addition of the Proposed Expansion Area to the Expedited Permitting area would maintain the jurisdiction’s principal values and have no adverse impact on the existing development rate, density, and type in the area.

#### 2.3.4.6 Affordable Housing

The goal of the CLUP regarding affordable housing is to “[f]acilitate the provision of affordable housing in appropriate locations to households with a full range of incomes.”<sup>28</sup> The addition of the Proposed Expansion Area into the Expedited Permitting area by the Commission would have no impact on affordable housing in the region.

#### 2.3.4.7 Land Conservation

The goal of the CLUP regarding land conservation is to “[e]ncourage the long-term conservation of select areas of the jurisdiction that are particularly representative of its cultural and natural values, including working forests, high-value natural resources and recreational resources.”<sup>29</sup> The CLUP established a policy to “encourage conservation of large, landscape-level areas of the jurisdiction, particularly those that allow continued use of the forest for wood products.”<sup>30</sup> A policy paper by the MFPC entitled “Wind Power in Managed Forests” states that wind power can facilitate the continued operation of forest management on land through the creation of a stable and predictable source of revenue.<sup>31</sup> The addition of the Proposed Expansion Area to the Expedited Permitting Area would facilitate land conservation, including preservation of a working forest.

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<sup>26</sup> CLUP at 8.

<sup>27</sup> CLUP at 9.

<sup>28</sup> CLUP at 9.

<sup>29</sup> CLUP at 10.

<sup>30</sup> CLUP at 10.

<sup>31</sup> A copy of this policy paper is included as Attachment 4 in the accompanying Background Material in Support of this Petition.

#### 2.3.4.8 Agricultural Resources

The goal of the CLUP regarding agricultural resources is to “[c]onserve and protect working farms, encourage the development of new farming enterprises, and conserve agricultural soil resources.”<sup>32</sup>

The addition of the Proposed Expansion Area to the Expedited Permitting Area would have no impact on farmlands and the agricultural economy in the region.

#### 2.3.4.9 Air and Climate Resources

The goal of the CLUP regarding air and climate resources is to “[p]rotect and enhance the quality of air and climate resources throughout the jurisdiction.”<sup>33</sup> Policies associated with this goal include encouraging state, federal, and international initiatives directed at reducing emissions of air pollutants. *Id.* The Commission has previously accepted testimony and evidence on wind power’s beneficial effect on air and climate resources through the displacement of fossil fuel-based energy generation, and wind power’s impact on the reduction in greenhouse gas emissions is well known. The CLUP acknowledges those benefits and recognizes wind power as “the most significant renewable source of electricity that is economically viable at the utility scale”<sup>34</sup> The addition of the Proposed Expansion Area to the Expedited Permitting Area would have a positive impact on air and climate resources.

#### 2.3.4.10 Coastal Resources

The goal of the CLUP regarding coastal resources is to “[p]rotect and conserve the special natural and cultural resources of coastal islands and mainland townships, and help sustain the traditional resource-based economies of these areas.”<sup>35</sup> The addition of the Proposed Expansion Area to the Expedited Permitting area would have no impact on coastal resources, except indirectly by reducing the region’s reliance on fossil-fuel-based sources of energy, and thus contributing to cleaner natural resources in the entire State of Maine.

#### 2.3.4.11 Cultural, Archeological, and Historical Resources

The goal of the CLUP regarding cultural, archeological, and historical resources is to “[p]rotect and enhance archaeological and historical resources of cultural significance.”<sup>36</sup> In applications submitted to install met towers in the Project area, a letter was sent to the Maine Historic Preservation Commission on April 2, 2016 “to request a search of the Commission’s existing database for information on any known or potential prehistoric site locations, historic sites and structures, and areas of cultural or historic importance within the vicinity of the proposed met tower location.” On May 13, 2016, Kirk Mohney, Director of the MHPC, responded by stating that “[b]ased on the information submitted, I have concluded that there will be no historic properties affected by this proposed undertaking, as defined by Section 106 of the National Historic Preservation Act.” A similar request for information was sent to Chris Sockalexis, THPO of the Penobscot Indian Nation. Mr. Sockalexis responded as follows: “This

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<sup>32</sup> CLUP at 11.

<sup>33</sup> CLUP at 11.

<sup>34</sup> CLUP at 187.

<sup>35</sup> CLUP at 12.

<sup>36</sup> CLUP at 13.

project appears to have no impact on a structure or site of historic, architectural or archaeological significance to the Penobscot Indian Nation as defined by the National Historic Preservation Act of 1966, as amended.”

A search of the National Register of Historic Places identified 40 registered resources in Franklin County and 51 registered resources in Somerset County. Of these, none is within eight (8) miles of the nearest currently proposed turbine and only three are within fifteen miles. The Arnold Trail, which is listed as a historic district, is approximately two (2) miles from the Project area and parallels Route 27 in a forested setting for much of its length. It is described as follows (NPS 2012b):

*Benedict Arnold's expedition in the autumn of 1775 failed in its objective of seizing Quebec, but it had an important result in forcing the division of Lord Howe's army to provide reinforcements for Quebec. Thus Howe could not subjugate the Middle States in 1776, and the British suffered a major setback trying to reunite Howe's army in 1777. Arnold left Fort Western (now Augusta) on September 24, 1775, moved up the Kennebec River about 70 miles, portaged to the Dead River, followed up it to Chain of Ponds near the present Canadian border, and arrived at Quebec early in November with 600 of the 1,100 men with whom he had started. The route can be determined along rivers with considerable accuracy. The sites of numerous portages and campgrounds need fuller study, however, which has been undertaken by the Maine Division of State Parks.*

Given the Trail’s distance to Route 27, the forest buffer, and the topography of the landscape, it is unlikely that adding the Proposed Expansion Area to the Expedited Permitting Area would negatively impact this cultural resource. However, under the SLODA’s regulatory requirements, a visual impact assessment would be conducted with respect to this resource, as part of any development application. In addition, detailed field investigations would be completed to determine if additional cultural, archeological, and historical resources are located within the Project area, in consultation with the Maine State Historic Preservation Office (“SHPO”). The results of these studies, as well as any findings by the SHPO, would be submitted with any development permit application, and any proposed project will need to minimize adverse impacts on cultural, archeological, and historical resources.

As such, the addition of the Proposed Expansion Area would be consistent with the goals of the CLUP regarding cultural, archeological, and historical resources.

#### 2.3.4.12 Energy Resources

The goal of the CLUP regarding energy resources is to “[p]rovide for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding public values that require protection.”<sup>37</sup> The CLUP seeks to accommodate energy generation installations that are consistent with the State’s energy policies, suitable for the proposed locations, and designed to minimize intrusion on natural and cultural resources and values.<sup>38</sup> Based on the analysis provided herein, there are no overriding public values that require protection, so the addition of the Proposed Expansion Area to the Expedited Permitting Area would encourage the utilization of indigenous wind energy resources, and thus be consistent with this goal.

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<sup>37</sup> CLUP at 13.

<sup>38</sup> CLUP at 13.

#### 2.3.4.13 Forest Resources

The goal of the CLUP regarding forest resources is to “[c]onserve, protect and enhance the forest resource in a way that preserves its important values, including timber and fiber production, ecological diversity, recreational opportunities, as well as the relatively undeveloped remote landscape that it creates.”<sup>39</sup> As discussed earlier, the Commission has previously accepted evidence that indicates that wind energy development can enhance the value of, and help to maintain, the working forest. A policy paper developed by MFPC concludes that wind power can be part of a long-term sustainability plan for working forests and is compatible with other forest uses. MFPC also commented that wind power development represents a small percentage of forest acreage, typically located in areas that are less suitable for growing trees, while providing improved access for landowners, enhanced firefighting capability, and increased access for traditional recreational uses.

Based on this information, the addition of the Proposed Expansion Area to the Expedited Permitting Area would encourage the continued management and preservation of forest resources.

#### 2.3.4.14 Geological Resources

The goal of the CLUP regarding geological resources is to “[c]onserve soil and geological resources by controlling erosion and by protecting areas of significance.”<sup>40</sup> Under existing regulations, a SLODA development permit will be required to provide a soil survey map and report, as well as a discussion of geotechnical issues. Such an application would also be required to include a stormwater management narrative that would discuss, among other topics, the pre- and post-development runoff associated with the development, stormwater treatment facilities, and the expected maintenance regime. Based on the level of detailed review that would be required for any proposed wind power facility, the addition of the Proposed Expansion Area to the Expedited Permitting area would have no impact on soil or geological resources.

#### 2.3.4.15 Plant and Animal Habitat Resources

The goal of the CLUP regarding plant and animal habitat resources is to “[c]onserve and protect the aesthetic, ecological, recreational, scientific, cultural and economic values of wildlife, plant and fisheries resources.”<sup>41</sup> The CLUP establishes policies to, among other things, regulate land use activities to protect sensitive habitats and to protect wildlife habitat in a fashion that is balanced and reasonably considers the management needs and economic constraints of landowners.<sup>42</sup>

##### a) Plant Resources

In conjunction with applications to the Commission for the installation of temporary metrological towers (resulting in permits DP 4915-B and DP 5016), the Maine Natural Areas Program reviewed its Biological and Conservation Data System files. MNAP indicated that, according to its information, there is

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<sup>39</sup> CLUP at 14.

<sup>40</sup> CLUP at 15.

<sup>41</sup> CLUP at 16.

<sup>42</sup> CLUP at 16.

Subalpine Fir Forest on Snow Mountain. Consistent with other wind developments, site specific surveys would be completed in the Project area and potential adverse impacts to ecological resources will be avoided or minimized.

b) Animal Habitat Resources

As discussed in Section 2.3.2.3(b) above, NextEra will undertake detailed field studies within the Project area in consultation with MDIFW. If sensitive species are identified, NextEra will continue to work with MDIFW as part of any application development to ensure wildlife and fisheries habitat are protected in accordance with CLUP's wildlife and fisheries resource goal.

Thus, addition of the Proposed Expansion Area will be consistent with the goal of conserving and protecting the aesthetic, ecological, recreational, scientific, cultural and economic values of wildlife, plant and fisheries resources.

2.3.4.16 Recreational Resources

The goal of the CLUP regarding recreational resources is to “[c]onserve the natural resources that are fundamental to maintaining the recreational environment that enhances diverse, abundant recreational opportunities.”<sup>43</sup> As discussed earlier, the Project area is not managed for recreational use, so any recreational opportunities are incidental to the primary land use. Previous studies related to the Kibby Project indicate that the primary recreational opportunities are traditional activities such as hunting, snowmobiling, ATV riding, and fishing, primarily on private forest lands that are not posted. Wind energy development is compatible with all of these uses, and the development of maintenance roads can enhance some of these experiences.

The Proposed Expansion Area is expected, given its proximal location, to offer the same or less recreational value as the adjacent Kibby Project. There are no owner-maintained hiking trails in this area and the only fixed features are three fire towers (Kibby Mountain, Snow Mountain, and Tumbledown Mountain) that are currently in a state of disrepair. Snowmobile and ATV trails are maintained by recreational groups but the proposed development will not interfere with these uses. As was the case with the Kibby Project, the ease of access and extensive trail network in the nearby Bigelow Range and Rangeley Lake region draw recreational users away from the Proposed Expansion Area. Moreover, there are no unique recreational opportunities in this area.

The addition of the Proposed Expansion Area to the Expedited Permitting Area will not reduce existing recreational opportunities, particularly given the CLUP's focus on large stretches of undeveloped land.

For the nearby Kibby Project, the Commission concluded that the proposed development “is consistent with the principal value of maintaining diverse and abundant recreational opportunities....as the Project area has a relatively low level of recreational use and the dominant recreational uses would not be

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<sup>43</sup> CLUP at 17.

negatively affected by the Project.”<sup>44</sup> The addition of the Proposed Expansion Area to the Expedited Permitting Area will conserve recreational resources.

#### 2.3.4.17 Scenic Resources

The goal of the CLUP regarding scenic resources is to “[p]rotect the high-value scenic resources of the jurisdiction by fitting proposed land uses harmoniously into the natural environment.”<sup>45</sup> A general discussion of potential impacts to nearby scenic resources is provided herein, but a specific evaluation will need to be made as part of the SLODA permitting process, utilizing a specific turbine design and layout as part of development applications.

The most prominent water source in the vicinity of the Project area is Chain of Ponds, which consists of Round, Natanis, Long, Bag, and Lower ponds, connected by short waterways. The chain begins in Chain of Ponds Township and is the headwater of the North Branch of the Dead River. The Maine Wildlife Lake Assessment designates this feature as Management Class 2, meaning an especially high value accessible and undeveloped lake. It further rates Chain of Ponds as having outstanding fisheries, wildlife, scenic, and physical resources as well as significant shoreline and culture resources. State-owned public reserve lands include the shoreline of Round Pond (approximately three miles from the Proposed Expansion Area), almost all of the Natanis Pond shoreline (approximately three miles from the Proposed Expansion Area), and the eastern shorelines of Long and Bag ponds (approximately 2.5 and 2 miles, respectively, from the Proposed Expansion Area).

Chain of Ponds is approximately two miles from the operating Kibby Project and a few of those turbines can be seen from various vantage points. However, this visual impact was identified in a visual assessment submitted with the development application, and the Commission nevertheless concluded that impacts to scenic resources would not be unduly adverse.<sup>46</sup> At its closest point the Proposed Expansion Area is the approximately the same distance from Chain of Ponds as is the Kibby Project.

Other water bodies of potential interest are Jim Pond (approximately nine miles), Spencer Lake (approximately five miles), Tim Pond (approximately five miles), Rock Pond (approximately one mile), Baker Pond (approximately three miles), Big Island Pond (approximately one mile), and Kennebago Lake (approximately five miles). Waterways of potential interest would be Alder Stream, the North Branch of the Dead River, Caribou Flow, and Moose River. As with the Chain of Ponds, it is likely that impacts to these water resources would be limited or non-existent, but this would be confirmed through the completion of a visual impacts analysis.

The Arnold Trail, which is listed as a historic district, is approximately two (2) miles from the Project area and parallels Route 27 for much of its length. Given the Trail’s distance to Route 27, the forest buffer, and the topography of the landscape, it is unlikely that adding the Proposed Expansion Area to the Expedited Permitting Area would negatively impact this cultural resource. However, under the SLODA

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<sup>44</sup> ZP 709 at 58.

<sup>45</sup> CLUP at 18.

<sup>46</sup> See ZP 709 at 44, 60.

regulatory requirements, a visual impact assessment would be conducted with respect to this resource, as part of the development application.

Based on existing regulatory requirements, including the development of a visual impacts assessment study, the addition of the Proposed Expansion Area to the Expedited Permitting Area will not compromise high value scenic resources.

#### 2.3.4.18 Water Resources

The goal of the CLUP regarding water resources is to “[p]reserve, protect and enhance the quality and quantity of surface waters and groundwater.”<sup>47</sup> In furtherance of this goal, the CLUP sets forth the policy that the Commission should “[p]rotect the recreational and aesthetic values associated with water resources.”<sup>48</sup> Within the Proposed Expansion Area there is only one named waterbody (Prick Pond) and multiple waterways (e.g., Moose River, Haybog Brook, Smart Brook, Spencer Stream, and Caribou Flowage). The type of review required for surface waters and groundwater resources as part of SLODA permitting relies on specific site plan details in order to ascertain compliance with state standards for such issues as stormwater and erosion. Visual impacts associated with surface water would also be evaluated in connection with specific development plans. Based on the level of detailed review that would be required for any proposed wind power facility, the addition of the Proposed Expansion Area to the Expedited Permitting Area would have no impact on water resources.

#### 2.3.4.19 Wetland Resources

The goal of the CLUP regarding wetland resources is to “[c]onserve and protect the ecological functions and social and economic values of wetland resources.”<sup>49</sup> There are only limited wetland or shoreland districts located in the Proposed Expansion Area. See Exhibit B. Specifically, there are approximately 877 acres of mapped P-SL2 subdistricts in the Proposed Expansion Area and approximately 283 acres of mapped P-WL in the Proposed Expansion Area. Detailed wetland delineation surveys will be conducted as part of any permit application, as the type of review required for wetland resources relies on specific site plan details, and potential impacts would be fully addressed under the DEP’s rules for evaluating development permits. Based on the level of detailed review that would be required for any proposed wind power facility, the addition of the Proposed Expansion Area into the Expedited Permitting area would have no adverse impact on wetland resources.

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For the foregoing reasons, NextEra respectfully requests that the Commission initiate rulemaking in accordance with 35-A M.R.S. §3453 and 5 M.R.S. Chapter 375 to add the Proposed Expansion Area to the Expedited Permitting Area.

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<sup>47</sup> CLUP at 18.

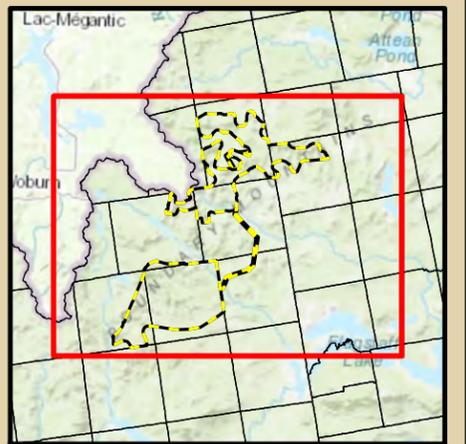
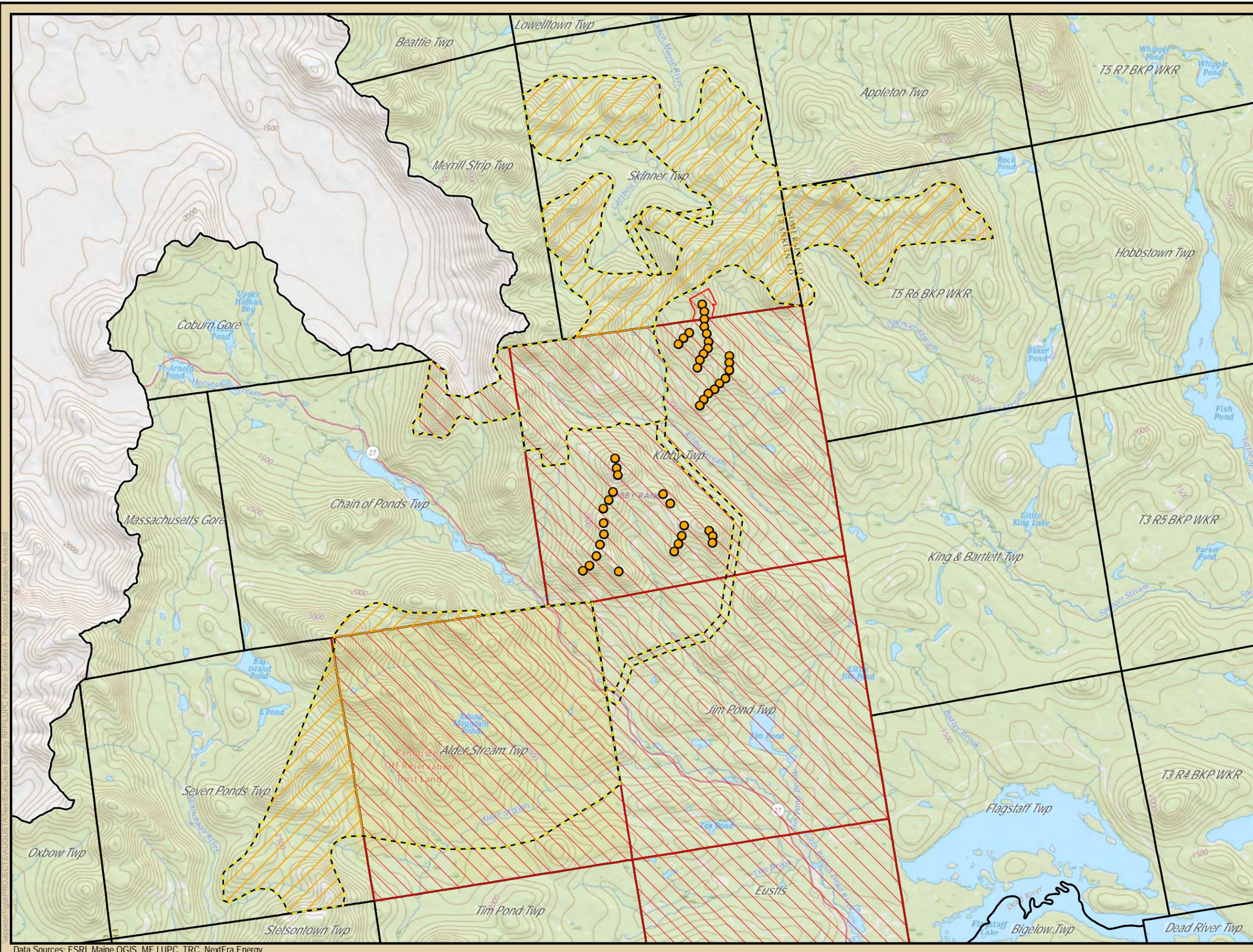
<sup>48</sup> CLUP at 18.

<sup>49</sup> CLUP at 19.

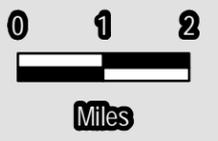
## Attachment 2

NextEra Rulemaking Petition  
Expansion of the Expedited Permitting Area  
Chain of Ponds, Seven Ponds, Skinner, and T5 R6 BKP WKR

*NextEra Maps of the Proposed Expansion Area*



-  Proposed Project Boundary
-  Proposed Expansion to the Expedited Windpower Project Permitting Area
-  Expedited Windpower Project Permitting Area
-  Kibby Wind Power Project Turbine Locations
-  Town Boundary



Alder Stream and  
 Moose Mountain  
 Exhibit A  
 Proposed Expansion Area

\\appesr101s1\PROJECTS\AUGUSTINA\NextEra\Clean Energy RFP\LUPC Petition Exhibit A - Proposed Expansion Area.mxd



# Attachment 3

NextEra Rulemaking Petition  
Expansion of the Expedited Permitting Area  
Chain of Ponds, Seven Ponds, Skinner, and T5 R6 BKP WKR

*Guidelines for the Review of Petitions for the Addition of Lands to the  
Expedited Permitting Area for Wind Energy Development*



Maine Land Use Regulation Commission  
Guidelines for the Review of Petitions for the Addition of Lands to the Expedited  
Permitting Area for Wind Energy Development  
Adopted March 3, 2010. Revised April 6, 2011

## Background

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 purpose of the statutory changes was to expedite wind energy development in places most compatible with existing patterns of development and resource values. To that end, the Task Force recommended and the Legislature adopted a modified application process and revised certain criteria for evaluating the appropriateness of wind energy developments within specific geographic areas that are identified as the “expedited permitting area”.

The Act established the expedited permitting area for wind energy development, encompassing all of the organized area of the State, and, in part, the jurisdiction of the Land Use Regulation Commission. 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 M.R.S.A. § 685-A(13) provides for expansion of the expedited permitting area by the Commission in accordance with 35-A M.R.S.A. § 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.”

Expansion of the expedited permitting area does not constitute an approval of a particular project, rather it changes the application review process and certain criteria for any wind energy development projects proposed in that location. A wind energy development may still be proposed even if the

expedited area is not expanded, although it will be reviewed under different criteria and processes. The Commission does not have the authority to reduce the expedited area through rulemaking.

This document is intended solely for guidance to Commission staff and the public when interpreting the statutory criteria for expanding the expedited area. The document may not be relied upon to create rights, substantive or procedural. The Commission reserves the right to act in accordance with its statute and regulations, including in a manner that may vary from this document. Nothing in this document shall be construed to supersede or replace the statute, rules and Comprehensive Land Use Plan administered by the Commission. The Commission will review petitions for rulemaking to expand the expedited area in accordance with the legislature's direction in 35-A M.R.S.A. § 3453. The Commission will endeavor to render its determination on a petition to expand an expedited area within 240 days after receipt of the petition. In order to clarify the criteria set forth in § 3453, the Commission adopts the following.

### **Interpreting the Statutory Criteria**

The Commission will conduct its analysis of the proposed expansion in the context of the general nature of the proposed project, including consideration of the approximate impact area for turbines and associated facilities. While specific project design and layout is not required for this rulemaking process, generalized information about the impact area of the proposed project will be necessary.

*Criterion 1. Geographic extension. Involves a logical geographic extension of the currently designated expedited permitting area;*

It is not the Commission's intent to use the rulemaking process to add broad areas, such as entire ridgelines, to the expedited area as changes on this scale are properly referred to the legislature for consideration. In addition, the Commission is unlikely to grant petitions that propose a further expansion tacked on to an earlier expansion (a "leapfrog" effect), farther from the original expedited area boundary set by the legislature.

Portions of the expedited area were designated using township or other political boundaries, which may cut across ridgelines or other naturally occurring geographic features relevant in the siting of wind power. Some adjustment to the expedited area boundary may be needed in instances where a potential project falls partially within the expedited area and partially outside of it. The Commission will evaluate the proportion of the project that will fall within the expedited area and any other relevant information. The Commission will require that a majority of a proposed project will lie within the area originally designated as expedited by the Maine Legislature.

*Criterion 2. Meets state goals. Is important to meeting the state goals for wind energy development established in §3404; and*

The Commission interprets the phrase "important to meeting the state goals for wind energy development" to mean that projects that have a limited potential for energy generation and disproportionate impacts on public resources in the state are not important to meeting the state goals for wind energy development. In contrast, projects that have the potential for exceptional power generation may be "important" even though they may have disproportionate impacts on public resources. In evaluating whether a proposed expansion is important to meeting the state goals for wind energy development, the Commission will consider the following factors:

- The primary factor will be the progress the state has made in achieving the goals set forth in § 3404; also
- The entire project's potential for energy generation, including the portion to be constructed in the original expedited area; and
- The viability of the proposed project, including the availability of transmission lines to transfer the generated electricity, the quality of the wind resource, a demonstration of title, right or interest, a demonstration of financial and technical capacity, and other relevant information; and
- The impact to public resources and, if applicable, public infrastructure vs. the energy likely to be generated by the proposed project and the associated public benefits which are assumed in 35-A MRSA §3402<sup>1</sup>. Specific tangible benefits proposed by the developer in accordance with Title 35-A §3454<sup>2</sup> will be evaluated at the Development Permit stage and are not the subject of this criterion. Evaluation of the impact to public resources will include, in part, an identification, at a landscape level, of important natural, recreational, scenic, archaeological and historic resources in the area. Detailed assessments of specific resources are more appropriate at the Development Permit Application stage of review.

The Commission intends to request the expert opinion of the Public Utilities Commission in evaluating this criterion.

*Criterion 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.*

The principal values and the goals contained within the Comprehensive Land Use Plan, taken together and in balance with one another, provide guidance to the Commission. The Commission will request comments from other government agencies and interested persons with expertise in subject areas referenced in the goals. A rulemaking petitioner must submit adequate information and analysis to allow the Commission to determine how the proposed project would generally affect existing uses and resources in the proposed expansion area, and describe how the proposal would or would not compromise the principal values and the goals contained in the CLUP. At a minimum, this should include a general description of the character, resources, and uses of the area. The information submitted should particularly address existing uses and resources that are relevant to the principal values and the goals of the CLUP, including but not limited to location of residential uses, scenic resources, recreational uses and resources, plant and animal resources, and other natural resources. The Commission also wishes to emphasize the following points:

- When a wind energy development permit application is evaluated, the standards for review of natural resource impacts are the same whether a development permit application is being considered in the expedited or the unexpedited areas of the jurisdiction. A detailed evaluation of those impacts is conducted in either case. Therefore the Commission's review of potential impacts on natural resources when considering a change to the expedited area boundary will be at the landscape level, and for the purpose of determining whether there is an overriding issue that would result in compromise of the principal values or goals. To accomplish such a landscape evaluation, a petitioner should include a general description of the natural resources in the area; responses from natural

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<sup>1</sup> 35-A, M.R.S., Chapter 34 "The Maine Wind Energy Act"

<sup>2</sup> 35-A, M.R.S., Chapter 34-A, "Expedited Permitting of Grid-Scale Wind Energy Development"

resource agencies regarding the presence, potential presence, or absence of natural resources of concern; and the results of any subsequent field surveys. The petitioner should provide any mapping data received from natural resource agencies regarding the presence or absence of natural resources in the area but need not undertake time-consuming or costly resource surveys or mapping projects unless warranted by some unique circumstances.

- Because of the differences in scenic resource decision criteria depending on whether a development is proposed in the expedited or unexpedited areas, particular attention should be paid to identifying scenic resources in the area and their uses, even if they would not be considered of “state or national significance” and how the change in designation would affect those resources and uses. However, a detailed scenic review, including visualization of the appearance of a proposed project, and detailed noise and shadow flicker analyses, are more appropriately conducted at the development permit application stage, and are not required for an expansion petition.
- Particular attention should be paid to areas above 2700 feet in elevation because of the emphasis on these areas in the Comprehensive Land Use Plan.

The statutory criteria for adding lands to the expedited area for wind energy development are different from the criteria for rezoning pursuant to 12 M.R.S.A. §685-A (8-A) in a number of ways. Specifically with regard to Criterion #3, in the case of the statutory criteria for adding lands to the expedited area, it is the principal values and the goals that are referenced in the statute. In the case of a rezoning petition, the standard is consistency with the entire CLUP. However, as the entire CLUP provides support and explanation for the values and goals contained within it, the entire document may inform the Commission’s interpretation of the principal values and the goals when reviewing a petition to expand the expedited area.

### **Processing Expansion Petitions and Development Permits**

The commission has considered how best to coordinate the sequence for reviewing development applications in an existing expedited area with a petition for expansion of that expedited area. The commission has concluded it would prefer, and generally will require, that a developer complete the petition process for the expansion of the expedited area prior to applying for a development permit for the wind power project. The commission believes that in most instances this will be the most efficient and clearest process for the commission, the public, and the parties, and that this process will also minimize burdens on developers.

The commission will also permit a developer, at its choosing, to go through the permitting process in the existing expedited area and, at some later time after that permit has been granted, petition the commission for an expansion of the expedited area. The commission does not intend, by allowing this sequencing option, to suggest that a development permit for the existing expedited area is a prior condition for a petition to expand an expedited area.

The commission has also concluded that simultaneous review - processing the expansion proposal and the development review concurrently - is inefficient, a poor use of agency resources, and potentially confusing to the parties, the commission, and the public and therefore will not be considered by the commission.

# Attachment 4

NextEra Rulemaking Petition  
Expansion of the Expedited Permitting Area  
Chain of Ponds, Seven Ponds, Skinner, and T5 R6 BKP WKR

*Option 1, Draft Letter Denying the Petition*



PAUL R. LEPAGE  
GOVERNOR

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

WALTER E. WHITCOMB  
COMMISSIONER

NICHOLAS D. LIVESAY  
EXECUTIVE DIRECTOR

DRAFT

December 13, 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 13, 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 the current expedited permitting area and decided to deny the Petition and not to initiate the

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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.

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.

\* \* \*

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

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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.

# Attachment 5

NextEra Rulemaking Petition  
Expansion of the Expedited Permitting Area  
Chain of Ponds, Seven Ponds, Skinner, and T5 R6 BKP WKR

*Letter from NextEra Counsel  
(December 5, 2017)*

**MATTHEW D. MANAHAN**

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Admitted in: MA, ME, NH

December 4, 2017

Everett Worcester, Chair  
Land Use Planning Commission  
22 State House Station  
Augusta, ME 04333

Re: NextEra Energy Resources LLC / Moose-Alder Stream Windpower Project  
Petition to Initiate Commission Rulemaking to Add to the Windpower Expedited  
Permitting Area

Dear Mr. Worcester:

On behalf of NextEra Energy Resources LLC ("NextEra"), to assist the Commission in considering whether to move forward with rulemaking in response to NextEra's petition filed with the Commission on November 15, 2017, I enclose the Assessment of Proposed Expansion of the Expedited Windpower Project Permitting Area to include the Moose-Alder Stream Windpower Project, prepared by former Maine PUC Chair Thomas Welch. I plan to attend the Commission's December 13 meeting at which you will discuss this petition, and I request the opportunity to provide oral comments to you at that meeting and answer any questions you may have.

Thank you for your consideration.

Sincerely,



Matthew D. Manahan

Enclosure

cc: Stacie R. Beyer, Chief Planner

**Assessment of Proposed Expansion of the  
Expedited Windpower Project Permitting Area  
to Include the Moose-Alder Stream Windpower Project**

December 4, 2017

Thomas Welch, Esq.

My name is Thomas Welch, and I live in Hancock, Maine. I have been asked by NextEra to offer my views concerning whether a proposed expansion of the Expedited Permitting Area near the current wind development at Kibby, Maine would advance Maine's renewable and wind energy goals and would otherwise be consistent with Maine's policy objectives and economic interests.

Based on my experience with Maine's energy markets and renewable energy policies, obtained during my 15 years as chairman of the Maine Public Utilities Commission and several years in private practice, it is my opinion that the proposed expansion, if allowed, would be entirely consistent with Maine's energy, environmental and wind power goals. In fact, in order to take advantage of the current appetite in southern New England for substantial additional renewable electric energy, together with the expressed willingness of an experienced developer to invest in the area of the proposed expansion, the LUPC should move quickly to grant NextEra's request to open a rulemaking and determine, in a transparent manner using its expertise and the authority granted in statute, whether the proposed expansion satisfies the statutory criteria.

Experience and Qualifications

During my tenure on the Maine Public Utilities Commission, I was actively and extensively involved in all facets of Maine's, and New England's, electricity and renewable energy markets. This included review of numerous proposals for contracts for wind energy, the design and implementation of Maine's electricity restructuring law including its renewable energy requirements, and participation in the evolution of New England's electricity market of which Maine is an integral part. In private practice, I had the opportunity to help gain approval for the Maine Power Reliability Program ("MPRP"), a transmission project to strengthen Maine's high voltage system which, now completed, provides opportunities for Maine to increase its participation in the New England renewable energy market.

My experience in both public and private sector activities relating to the electricity market and renewable energy has helped me gain an understanding of some of the challenges and opportunities for wind energy development in Maine. Maine has an excellent wind resource, and the infrastructure (both existing and proposed) to take advantage of that resource. But the ability to bring wind projects to fruition depends on the confluence of available capital, willing buyers of renewable energy, and, not least important, timely regulatory review. I have witnessed major energy projects, which in my view would have provided significant benefits to Maine, founder because the necessary reviews were not accomplished in time to take advantage of favorable market conditions.

### Economic and Market Context

One of the crucial questions for Maine's economy, and the well-being of its citizens, is what Maine has to offer to the market. The Wind Energy Task Force understood the importance of that question by emphasizing the macro-economic value of wind generation in Maine.<sup>1</sup> As the Task Force concluded, and the legislation adopting the Task Force recommendations reflects, Maine's abundant high quality wind resource<sup>2</sup> provides an excellent opportunity for Maine to take advantage of the aggressive renewable energy objectives of our neighbors and enhance the economic well-being of our citizens.

New England states in general, and Massachusetts and Connecticut in particular, at the moment have renewable energy targets that far exceed their individual state capabilities. Massachusetts, for example, requires that 25% of the electric energy used by retail customers must be produced by renewable resources by 2030. Recent solicitations by those states show that they recognize that the development of wind and other renewable resources outside their borders will be essential to meeting those targets.<sup>3</sup> Maine, on the other hand, has already developed renewable resources sufficient to meet its own renewable energy

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<sup>1</sup> See, e.g., Report of the Governor's Task Force on Wind Power Development, Final Report, February 2008 ("TF") at 8.

<sup>2</sup> See TF at 56 *et seq.*

<sup>3</sup> On March 31, 2017, Massachusetts issued an RFP for 9,450,000 MWhs of annual renewable electric energy.

consumption targets<sup>4</sup> but, as the Task Force recognized, is ideally suited to generate a great deal more renewable electric power, and thus to help New England as a whole achieve its collective renewable energy targets. Put another way, Maine has the ability to produce a highly beneficial product – zero carbon, non-emitting electric power – that is currently in high demand.

The current market context is especially propitious for Maine wind development because the willingness of our southern New England neighbors to pay for the wind energy (including all of the infrastructure required to bring that energy to their citizens) means that Maine electricity customers are likely to bear little if any of the cost of the wind generation developed in the proposed expansion area.<sup>5</sup> This is due to two factors. First, the solicitation by which Massachusetts is seeking renewable power clearly anticipates that the electricity customers in those states expect to bear the full cost of the renewable energy projects that are successful respondents to the RFP. Second, because of the structure of the New England regional electricity market, in which the bid price of the “marginal unit” sets the regional price, the addition of wind resources – which bid into the market at zero – will reduce the wholesale energy price throughout New England, including Maine.<sup>6</sup>

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<sup>4</sup> Maine has a Renewable Portfolio Standard requiring that 10% of the electric energy sold in Maine be produced using “new” renewable resources, and an additional 30% using qualifying resources that do not meet the statutory definition of “new.” The Maine Public Utilities Commission reports that, in 2015 (the most recent reporting period), Maine’s requirements were being met, almost entirely with Maine based resources. See Maine Public Utilities Commission, Annual Report on New Renewable Resource Portfolio Requirement, Report for 2015 Activity, Presented to the Joint Standing Committee on Energy, Utilities and Technology, March 31, 2017.

<sup>5</sup> In any case, any purchase of wind energy by Maine customers that resulted in a price increase for those customers would either be voluntary – if customers chose that source of supply – or subject to rigorous review by the Maine Public Utilities Commission. Indeed, the Commission has been reluctant to approve any power purchase unless the long term effect was to reduce prices.

<sup>6</sup> The New England energy market is technically considered a “bid based security constrained clearing price market.” As a practical matter, this means that the price at any given moment is determined by the most expensive unit that is running. When “zero bid” resources such as wind are bidding into the market (i.e., when they are running and injecting energy into the system) they will displace one or more units at the “top” of the bid stack, resulting in a less expensive unit “clearing” the market.

These favorable conditions, however, are unlikely to persist indefinitely. New England is faced with a substantial need for new generation capacity as older plants retire due to economic and environmental considerations; thus new generation will have to be brought on line reasonably soon. In addition, there are other projects that are being considered that could displace some or all of the need for Maine wind generation. The failure to begin the review process now could easily have the effect of putting worthy projects in Maine at a competitive disadvantage.

The development of wind in Maine in general, and especially in the proposed expansion area, would also take advantage of the existing strong transmission infrastructure. The recently completed MPRP provides an excellent backbone to move power into the electricity market, and the additional transmission that would be built (again, under the construct of the current Massachusetts RFP, with funds entirely from customers in southern New England) to serve the expansion area would strengthen the system further. Indeed, there are already utility owned rights of way that could be used to serve new wind in the proposed expansion area, something that would facilitate completion of a cost-effective project.

### Consistency with Task Force Report and Maine Policy and Law

The Wind Energy Task Force, and the legislation confirming the findings of the Task Force as Maine policy, clearly contemplated that the Expedited Permitting Area delineated by the Task Force might need to be expanded. That is shown by the inclusion in the Report, and the legislation, of a process, to be administered by LUPC, to examine whether and under what circumstances to expand that area.<sup>7</sup> This inclusion indicates to me that, when presented with a proposed

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<sup>7</sup> See TF at 20; LUPC Rules, Appendix F: “The Commission may add and remove areas within its jurisdiction to and from the expedited permitting area for wind energy development in accordance with Title 35-A, Section 3453 and Section 3453-A.”

See also: Title 35-A §3453:

#### **Additions to the expedited permitting area**

“The Maine Land Use Planning Commission may, by rule adopted in accordance with Title 5, chapter 375, establish standards for the addition of and add a specified place in the unorganized and deorganized area to the expedited permitting area. In order to add a specified

expansion area that at least plausibly meets the test for expansion, it is the responsibility of the LUPC to use its rulemaking tools and authority to determine whether the request should be granted. One of the principal reasons cited by the Task Force for the creation of the Expedited Permitting Area was to reduce the pernicious effects of regulatory delay and uncertainty.<sup>8</sup> If the project envisioned here is burdened with the additional substantial delays and uncertainties inherent in returning to the legislative process – where, as here, the statute provides a regulatory forum for considering the expansion of the Expedited Permitting Area – the intent of the Task Force, and of the Legislature’s confirmation of its findings, will be frustrated.

While LUPC will have ample opportunity to consider the merits of the proposed expansion in its rulemaking, my review of the Petition and Maine wind energy and economic policies has led me to conclude that the proposed expansion would advance those policies and would, moreover, likely meet the test for expanding the Expedited Permitting Area.

First, as the Petition describes, the proposed expansion area is geographically adjacent, and geologically integral, to areas that are already designated for expedited permitting treatment. That area already hosts wind a major wind energy project (i.e., Kibby). Even a cursory examination of the topography of the area shows that the major ridges within the existing Expedited Permitting Area

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place to the expedited permitting area, the Maine Land Use Planning 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, except that the addition of a specified place that was previously removed from the expedited permitting area in accordance with section 3453-A, subsection 1 need not satisfy this requirement;

**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 Maine Land Use Planning Commission pursuant to Title 12, section 685-C.

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

<sup>8</sup> TF at 15-17.

extend through, and well beyond, the proposed expansion area.<sup>9</sup> While neither the statute nor the Guidelines contain a precise description of the geographic features that would warrant extension of the Expedited Permitting Area, it stands to reason that where, as here, the geographic features that comprise the proposed expansion are adjacent and connected to the existing Expedited Permitting Area, there is sufficient geographic connection to warrant expansion.

Second, as noted above, the project for which the expansion is being sought would bring substantial economic and environmental benefits. As the Petition describes, and my own regulatory experience supports, there are significant direct economic benefits to the immediate area created by the construction and operation of wind generation facilities. Further, the additional wind energy introduced into the New England market will displace, during virtually all the hours of operation, the use of fossil fuels. This is because fossil fuel generation – including generation using oil and coal, especially in winter when natural gas may be in short supply and wind generation is often at its peak – is typically “on the margin” in the New England energy market. For example, one study suggests that if Maine were to achieve 2000 MW of wind capacity, carbon emissions would decrease by over 200,000 tons annually, and the production cost of electricity would decrease by nearly \$40 million annually.<sup>10</sup>

One of the most important benefits of the Expedited Permitting Area is to reduce the delays and uncertainty in the approval process required for wind development; this point was emphasized in Professor Delogu’s report relied upon by the Task Force.<sup>11</sup> Delays and uncertainty will discourage interest and investment. Indeed, extending the time for regulatory review is a favored tactic of

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<sup>9</sup> While the Guidelines caution against using the LUPC expansion process to include “entire ridgelines,” in my view the Proposed Expansion is far more modest and well within the scope that the Legislature contemplated as within LUPC authority. For example, the “entire ridgeline” on which Kibby and the Proposed Expansion are located appears to extend both well to the south and north of the proposed area. In any case, the importance of timely review in this case militates against using the Guidelines as a bar to a prompt substantive assessment by LUPC.

<sup>10</sup> See, e.g., 2015 Economic Study, Strategic Transmission Analysis—Onshore Wind Integration, ISO-NE, September 2, 2016. The exact level of savings would, of course, depend upon a variety of factors including location, hours of production, and transmission availability.

<sup>11</sup> TF Attachment J, “The Benefits, the Quid Pro Quos for Fashioning a Streamlined Approach to Commercially Sized Wind Energy Facility Siting,” Orlando E. Delogu, Emeritus Professor of Law, University of Maine School of Law, January, 2008.

opponents of projects of every kind, because opponents well understand that the ability of investors to tie up capital while enduring over-long review processes is limited. The purpose of the creation of Expedited Permitting Area was to ensure that projects are evaluated on their merits, and are not abandoned simply because investors have taken their capital, and the associated economic and environmental benefits to Maine, elsewhere due to the length and unnecessary complexity of the review process.

Third, the proposed expansion will likely advance Maine’s wind energy goals. The Legislature established goals of 2000 MW of wind generation in Maine by 2015, 3000 MW by 2020, and 8000 by 2030.<sup>12</sup> The first goal has already been missed, and the remaining will be a challenge to achieve. One of the important reasons for Maine’s slow pace of wind development is that Maine’s own consumption of electric energy in general and renewable energy in particular is far too small to support the construction of the amount of wind generation required to meet Maine’s targets. It seems obvious, therefore, that the Task Force and the legislature contemplated that wind generation would be developed in Maine to support the demand for renewable power outside of Maine.

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<sup>12</sup> 35-A M.R.S. §3404, Determination of public policy; state wind energy generation goals:

**“1. Encouragement of wind energy-related development.** It is the policy of the State in furtherance of the goals established in subsection 2, to encourage the attraction of appropriately sited development related to wind energy, including any additional transmission and other energy infrastructure needed to transport additional offshore wind energy to market, consistent with all state environmental standards; the permitting and financing of wind energy projects; and the siting, permitting, financing and construction of wind energy research and manufacturing facilities.

**2. State wind energy generation goals.** The goals for wind energy development in the State are that there be:

- A. At least 2,000 megawatts of installed capacity by 2015;
- B. At least 3,000 megawatts of installed capacity by 2020, including 300 megawatts or more from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters; and
- C. At least 8,000 megawatts of installed capacity by 2030, including 5,000 megawatts from generation facilities located in coastal waters, as defined by Title 12, section 6001, subsection 6, or in proximate federal waters.”

The recent requests for proposals for substantial amounts of renewable energy issued by Maine’s neighbors to the south at last create precisely the opportunity that the Task Force envisioned. Investors in Maine are not alone, however, in trying to take advantage of the economic opportunity presented by those requests, and there is no assurance that the requesting states will wait for any particular project, or repeat their solicitations once the current round is complete. It would be unfortunate if Maine lost this opportunity to advance its wind energy goals, and help its economy, either through process delays (which the Expedited Permitting Area rules are designed to reduce) or a cramped application of the expansion guidelines.<sup>13</sup>

Fourth, the proposed expansion builds on and takes advantage of Maine’s recently enhanced high voltage transmission system. That system was reinforced for reliability reasons, with the result that there is substantial capacity on Maine’s system for the interconnection and delivery into the New England market of energy from major wind projects.<sup>14</sup> While bringing the energy from projects within the proposed expansion area will require additional transmission, the pathways for such transmission are available (using existing utility rights of way), and the costs of that additional transmission will be borne by the purchasers of the energy and not by Maine’s ratepayers.

### Concluding Observations

The confluence of the current renewable energy demand of southern New England, a strong transmission system with available capacity, and investors seeking to bring their capital and expertise to Maine presents an important – but

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<sup>13</sup> The Maine Public Utilities Commission staff has articulated its views concerning some of the issues raised by the Task Force. See TF at 76 *et seq.* Those views confirm that, from the perspective of economic regulation of electricity in Maine, the objectives of the Task Force report are consistent with ratepayer interests. I share those views as they apply to the NextEra Petition, in part because any purchase of wind energy made on behalf of Maine’s electricity consumers (through, for example, any purchase power contract executed by one of Maine’s utilities) must pass rigorous economic review by the MPUC.

<sup>14</sup> In order to meet reliability requirements, transmission systems must be built to meet high load levels that rarely occur. The recent additions to the capacity of the Maine system thus mean that the amount of transmission that would need to be built to introduce substantial amounts of wind energy into the New England system is significantly less than it would have been prior to those enhancements.

perhaps fleeting – opportunity for Maine to move closer to its wind energy goals while providing substantial economic and environmental benefits. Without the proposed expansion, that opportunity may be lost. Expanding the Expedited Permitting Area as contemplated in the Petition would preserve the opportunity for a review of the project itself on the merits, with a robust opportunity for comment and the ability to address particular objections and concerns. At the very least, the LUPC should move forward with a rulemaking to assess whether the proposed expansion is consistent with Maine law and will advance the objectives articulated in the Task Force Report. Thorough, careful and transparent review of wind projects is essential. As the Task Force and Legislature have concluded, however, delays and uncertainty should be minimized. Granting the Petition to open a rulemaking concerning the proposed expansion is, in my view, the most appropriate way forward.