



STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022

PAUL RICHARD LEPAGE
GOVERNOR

WILLIAM H. BEARDSLEY
COMMISSIONER

Ninth Procedural Order

**In the Matter of
Development Permit DP 4889
Champlain Wind, LLC.
Bowers Wind Project
July 14, 2011**

To: Parties
Neil Kiely (Applicant)
Juliet Brown, Esq. (Counsel for Applicant)
Sean Mahoney, Conservation Law Foundation
Kevin Gurall, PPDLW
David Corrigan
Gordon Mott

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Samantha Horn Olsen, LURC
Frederick Todd, LURC
Steve Timpano, Maine Department of Inland Fisheries and Wildlife (MDIFW)
Jim Palmer, LURC scenic consultant

From: Gwen Hilton, Presiding Officer

Subject: Requests for post-hearing submissions, Official notice of agency records, Public hearing testimony

I. Background

A. Post-hearing submissions requested by the Commission

Pursuant to the Third and Eighth Procedural Orders, the Public Hearing for Development Permit DP 4889 was held on June 27 and 28, 2011 at the Ella P. Burr Elementary School in Lincoln, Maine, and on July 6, 2011, at the Spectacular Events Center in Bangor, Maine.

The Third Procedural Order, at the discretion of the Chair, allows for post-hearing submissions from the parties per *Section XIII. Close of hearing, post hearing briefs, closing statements.*

The relevant portion of that section is cited here as ... *'Following the hearing, any additional submissions by the parties that could have been filed at hearing will not be admitted except by leave the Presiding Officer and upon a showing that a submission will assist the Commission in its decision-making and will not prejudice the other parties. Further, at the Presiding Officer's discretion and within a time prescribed by the Presiding Officer, following the hearing the parties may respond in writing to specific questions asked by the*

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Commission or staff. Upon granting leave or soliciting responses, the Presiding Officer will establish a reasonable period within which other parties may submit written comments on the submissions.’ ...

Therefore, set forth below in Section II are questions that follow up on issues that arose at the hearing with respect to the Applicant. These questions being asked by the Presiding Officer are pursuant to LURC Rules, Chapter 5, Sections 6 & 18.

B. Official Notice of agency records

At the Commission’s July 6, 2011 regular business meeting, the Commission’s planning staff brought the Commission a memorandum (dated June 29, 2011) regarding cumulative visual impacts and other issues related to wind power development within the Commission’s jurisdiction. Discussed in the memorandum are cumulative visual impacts and how to review visual impacts, a progress report on statutory goals for wind energy development, an Appalachian Mountain Club report entitled “Ridgeline Windpower Development in Maine: An Analysis of Potential Natural Resource Conflicts” (AMC Technical Report 2011-1), and an anticipated state-wide study to be undertaken on issues arising out of wind energy development. These materials, namely the staff memorandum and AMC report, are attached to this order.

The planning staff brought these materials to the Commission in response to the Commission’s on-going efforts, outside the context of any particular adjudicatory proceeding, to extend principles of sound planning to the Commission’s jurisdiction. The Commission’s decisions regarding individual wind energy developments, however, must be based upon the applicable statutory legal standards and the relevant facts in the administrative record of each proceeding. In that regard, the Commission’s scope of review with regard to scenic impacts is defined by statute. Further, the Commission does not make findings on renewable energy goals in adjudicating wind energy development permits, and the Legislature has not directed the Commission to place a moratorium on wind energy development decisions pending the outcome of any anticipated studies regarding wind energy development.

In sum, while the attached materials provide some substantive information and analysis relevant to the review criteria applicable to wind energy development, they primarily provide background contextual information. To the extent it is helpful to the Commission in reaching a decision on this project, based upon its application of the applicable review criteria to relevant facts in the administrative record, the Commission intends to take official notice of the attached agency records. 5 M.R.S. § 9058.

C. Public Hearing Testimony

During the hearing on June 28, 2011, during the public evening session, Jerold Hamza, a member of PPDLW who pre-filed testimony on behalf of PPDLW, testified. The Applicant objected. The Third Procedural Order provides, in relevant part at section IV(D), “[w]itnesses who pre-file testimony relating to any topic on behalf of a party in this matter will not be permitted to testify at either of the evening public sessions.”

II. Order regarding post-hearing submissions requested by the Commission.

A. The Applicant shall answer the following questions:

1. The Applicant submitted into this record information on how the Applicant will address the issues identified in the following question in regards to the Bull Hill project, DP 4886. Is the Applicant’s answer to the question the same for the Bowers project, DP 4889? If not, how is the answer different?

In the Applicant's proposed operational program, how would bird and bat mortality be monitored throughout the operation of the wind facility and what thresholds would trigger the described curtailment procedures? How would the effectiveness of those procedures with respect to reducing mortality be evaluated and what would trigger a permanent operating standard – with or without curtailments? To what extent would third party mortality monitoring be employed? Describe the reporting process the Applicant will use in reporting to ME IF&W the results of the mortality monitoring.

2. With respect to the decommissioning plan originally submitted in the application as Section 20 with associated Exhibit 20, and as revised by the April 22, 2011, submittal by the Applicant: A 7-year reassessment of the decommissioning plan and escrow calculation was discussed during the public hearing but has not been submitted as a change to the application. What is the revised reassessment schedule that the Applicant is proposing?
3. Beyond the project lighting section of the Visual Impact Assessment (VIA), is there further information about the scenic impacts of the proposed turbine lighting plan? In answering this question, please consider how best to convey this information – a response might include a diagram of which structures will be lighted, a topographic viewshed map of the area in which lights could be seen, a visual simulation, if possible, or other comparable means of providing the information.
4. The Maine Forest Service has provided documentation that it is prepared to deal with forest fires originating from the project area although they are not responsible for addressing a structural fire. Please describe the Applicant's protocol for addressing a turbine or other structural fire.
5. At the June 27 & 28 hearing and in response to staff-generated questions, issues arose with respect to 3 lakes, namely Pug Lake, West Musquash Lake, and Sysladobsis Lake. By two emails and attachments dated July 5, 2011 the Applicant responded to these issues in advance of the continued hearing on July 6th. Thus, the Applicant has already responded to these issues, and the intervenors may submit rebuttal comments on the Applicant's submissions as set forth below.

B. The Commission requires further information from Maine Department of Inland Fisheries as follows:

1. Does the 50/50 operational curtailment program proposed by the Applicant sufficiently reduce the risk of bird and bat mortality? Why or why not? In what way is the Applicant's approach different from that proposed by the agency for the same two-year period to study the effects of operational curtailment on bird and bat mortality?
2. How does IF&W recommend that bird and bat mortality monitoring and oversight be conducted on an ongoing basis throughout operation at the wind power facility? Include a discussion of the thresholds that should trigger specific mitigation procedures, including curtailment, and how the results of those procedures would be evaluated.

C. The Applicant's and IF&W's deadline for responding to the questions in this order is 5:00 PM on Wednesday, July 20, 2011. Responses should be directed to Fred Todd. LURC staff will then distribute the materials to the parties.

D. The intervenors may submit rebuttal comments to the information submitted pursuant to this order. The deadline for such rebuttal comments is Wednesday, July 27 2011.

E. The Applicant may submit rebuttal comments to the agency responses and to the intervenors rebuttal comments. The deadline for the Applicant's rebuttal comments is Wednesday, August 3, 2011.

III. Order regarding notice of agency records.

The Commission takes official notice of the attached agency records. Any party wishing to contest the substance or materiality of the records noted in I.B. above may do so in writing no later than July 20, 2011.

IV. Order regarding public hearing testimony

In accordance with the Third Procedural Order, the Commission will disregard the testimony provided by Jerold Hamza at the June 28, 2011, public evening session of the hearing.

V. Post Hearing Briefs due date rescheduled.

Per the Eighth Procedural Order of June 23, 2011, each party may, but is not required, to submit a no more than 30-page post-hearing brief, including all attachments, summarizing the relevant evidence and the applicable criteria's application thereto, no later than 5:00 pm August 8, 2011. That date is revised by this procedural order to Monday, August 22, 2011.

VI. Authority and Reservations

This procedural order is issued by the Presiding Officer pursuant to LURC Chapter 5, *Rules for the Conduct of Public Hearings*. All objections to matters contained herein should be timely filed in writing with the Commission but are not to be further argued except by leave of the Presiding Officer. All rulings and objections will be noted in the record. The Presiding Officer may amend this order at any time.

Questions regarding this Order or rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Fred Todd, at the Commission's office in Augusta. No ex parte communication may occur with the Presiding Officer or any other Commission member.

DATED AT AUGUSTA, MAINE THIS 14th DAY OF JULY, 2011



By: _____
Gwen Hilton, Presiding Officer