



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

MEMORANDUM

TO: Commission Members
FROM: Frederick W. Todd, Project Planner
DATE: March 29, 2012
SUBJECT: Request to withdraw application
Champlain Wind, LLC 'Bowers Wind Project'
Development Permit DP 4889; Carroll Plt (Penobscot) and Kossuth Twp (Washington)

Project Proposal

On March 14, 2011 staff accepted as complete for processing an application for Development Permit DP 4889, submitted by Champlain Wind, LLC (a subsidiary of First Wind Energy, LLC) for a 69.1 megawatt (MW) wind energy facility to be located on Bowers Mountain, an unnamed ridge to the south (referred to as "South Peak" throughout the application) in Carroll Plantation and Dill Hill in Kossuth Township. The entire proposed project is located within the area designated for expedited permitting.

The proposed \$136 million development project consists of up to 10 Siemens 3.0 MW turbines and up to 17 Siemens 2.3 MW turbines. The project would also include: access to the turbines utilizing new and existing roads; 34.5 kilovolt (kV) collector lines connecting the turbines; an "express collector" line for 5.2 miles to connect to a new substation adjacent to Line 56 -- an existing 115kV transmission line; an operations and maintenance building; and up to four permanent meteorological towers.

Background

Public Hearing: The Commission held a public hearing on this proposal on June 27 and 28, 2011, in Lincoln, Maine, and it was continued on July 6, 2011, in Bangor, Maine. The hearing record closed on July 18, 2011, for public comment.

Deliberations: The Commission deliberated on this project proposal on September 7, October 5 and October 19, 2011. At the conclusion of the October 19th deliberations, staff was directed to prepare a draft denial of this proposal and bring that draft decision for the Commission's consideration at the December 5, 2011, Commission meeting.

According to § 685-B(2-C) of the Commission's statute, the Commission is directed to return a decision within 270 days from the date the application is accepted as complete for processing – in this instance, by December 9, 2011.

Request to withdraw: On November 8, 2011, the applicant, Champlain Wind, LLC, filed a request to withdraw its application, and it agreed to an extension of the Commission's deadline for issuing a final

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decision through January 2012. The Applicant has indicated that, if the Commission grants its request to withdraw, any future application for this project will be substantially different from the one currently pending before the Commission.

December 2011 Action: At the December 7, 2011, Commission meeting, after hearing comment from the Applicant and Intervenors concerning the Applicant's request to withdraw its application, the Commission voted to table the request for withdrawal until the April 6, 2012, Commission meeting. Also at the December meeting, the Applicant agreed to extend the decision deadline, and therefore the deadline for issuing a decision on this application is extended through May 15, 2012. The Commission anticipates taking up the previously requested denial decision document no later than Friday, May 4, 2012, as necessary.

Fifteenth Procedural Order: On December 12, 2011, the Chair issued Procedural Order #15 directing the Applicant to, by Friday, March 9, 2012, submit a written description of its plans for reconfiguring the Bowers Wind Project to address the concerns expressed by the Commission during this proceeding and at the Commission's deliberations on the visual impacts of this Project. The other parties to this proceeding had until March 23, 2012, to submit comments on the Applicant's March 9th filing.

Applicant's March 9th filing: The Applicant's March 9th filing in response to the Fifteenth Procedural Order is attached. In its filing the Applicant states that it "*has made substantial progress in developing options [to reconfigure the Project], but the continued evolution in interpretation of regulatory standards as well as business considerations unrelated to the Commission's work, make it impossible to present a specific project at this time.*" The Applicant concludes by renewing its request to withdraw its pending application for the Bowers Wind Project.

Comments on Applicant's March 9th filing: As stated above, the Parties and the public had until March 23rd to file comments on the Applicant's March 9th filing. The Commission has received comments from Intervenors, interested persons, and members of the public, and copies of those are attached for the Commission's convenience. All of the Party and public comments urge the Commission to deny the request to withdraw and to issue a denial decision as directed by the Commission in October 2011. In advance of the April 6th meeting, Staff anticipates discussing with the Commission Chair whether a procedural order, addressing any housekeeping issues associated with the comments on the Applicant's request to withdraw, is necessary. Staff will work with the Chair to issue any order in advance of the April 6th meeting.

Decision on Applicant's request

The Commission will be asked to make a decision on this request at its April 6, 2012, Commission meeting. As discussed in the Chair's prior procedural order, the Commission may, based upon its Title 12 authority and in keeping with considerations of administrative fair play, grant or deny the request to withdraw.

Staff recommends that, if the Commission decides to deny the request, it state the reasons for doing so at the April 6th meeting, and by motion and vote direct staff to finalize the requested denial decision document for the Commission's consideration and vote no later than the May 2012 meeting. After receipt of the denial decision, Commission Rule 4.07(c) would require that, in order to "*reapply . . . for*

a permit for the same proposed use for the property in question,” the Applicant “demonstrate that there is a significant change in circumstances or substantial new information to be presented to the Commission.”

Staff recommends that, if the Commission decides to grant the request, it state the reasons for doing so, including, for example, any representations made by the Applicant upon which the Commission is relying, and by motion and vote direct the Chair to work with staff to issue a procedural order reflecting the Commission’s decision. Should the Commission grant the request to withdraw, Rule 4.07(c) would not be applicable to a future application.

FWT

Attachments: Commission Chair’s 15th Procedural Order
Applicant’s March 9, 2012, Response to 15th Procedural Order
Party Responses to March 9th Filing
Palmer Response to March 9th Filing
Public Responses to March 9th Filing