

## EXHIBIT 9



STATE OF MAINE  
BOARD OF ENVIRONMENTAL PROTECTION

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January 21, 2010

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RE: Appeal in the Matter of: Record Hill Wind Project, Roxbury, Oxford County  
Department Orders L-2441-24-A-N and L-24441-TF-B-N  
Proposed Supplemental Evidence

Dear Ms. Browne and Mr. Brown:

In my letter of November 25, 2009, the parties were provided with a final opportunity to comment on whether certain documents were part of the Department's record in this matter, as well as a limited opportunity to comment on the admissibility of proposed supplemental evidence.

In a letter dated December 10, 2009, Concerned Citizens to Save Roxbury and other individuals (Concerned Citizens) further argued that some of the documents submitted with its appeal are already part of the Department's licensing record. Concerned Citizens also commented on the Licensee's (Record Hill Wind LLC) submission of October 21, 2009, and offered an additional exhibit consisting of emails between Department staff and Dr. Dora Mills regarding noise. By letter dated December 22, 2009, Record Hill objected to Concerned Citizen's further request to supplement the record. I have reviewed these submissions and again consulted with Department staff regarding the Department's licensing record in this matter. My ruling on the proposed supplemental evidence follows.

**Submissions by Concerned Citizens in its September 21, 2009 Appeal**

With respect to the documents that were submitted by Concerned Citizens on September 21, 2009 that have been determined to be outside the Department's licensing record, my ruling is as follows:

- I. Affidavit of Michael A. Nissenbaum, M.D.  
Exhibit A Nissenbaum CV. The 4 page affidavit and CV are accepted as a summary of proposed testimony offered in support of the request for a public hearing pursuant to the Department's rules (06-096 CMR 2(24)(B)(5)).



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Exhibit B Mars Hill Powerpoint, Presentation to Maine Medical Association (March 2009), with attached news report "Does Wind Turbine Noise Affect Your Sleep or Health?" WLZ Channel 2 (May 14, 2009). Exhibit B is not in the licensing record. While Concerned Citizens' represents that it was included in a list of numbered references (Reference #2) contained in a May 11, 2009 email to Department staff, the Department does not seek out referenced documents and incorporate them into the record nor is it required to do so. The document was not submitted. It could have been provided earlier in the licensing process. It is not admitted to the record.

Exhibit C Wind Turbine Syndrome, Nina Pierpont, 2 page excerpt from March 7, 2009 pre-publication draft titled Wind Turbine Syndrome – A Report on a Natural Experiment. The document is not in the record. It could have been provided earlier in the licensing process. It is not admitted to the record.

Exhibit D Maine Medical Association Resolution Re: Wind Energy and Public Health, (not dated). Concerned Citizen's represents that the resolution was passed on September 12, 2009, after the date the license was issued. While the document apparently could not have been provided earlier in the licensing process, in an appeal the Board is primarily reviewing the administrative record that was before the Department when it made its licensing decision.<sup>1</sup> General non-project specific documents such as the MMA resolution that are related to an evolving area of interest such as noise will likely be generated on a regular basis by various entities. The Board cannot continuously admit such documents into the record of a proceeding. The document is not admitted to the record.

- **J.** Notes of March 5, 2009 Conference Call, etc. As stated in my letter of November 25, 2009, only the handwritten notes are part of the record. The typed version of the notes with comments inserted by an unidentified author is not currently in the record and it is not admitted to the record.
- **K1.** WHO Night Noise Guidelines (NNGL) for Europe, Final Implementation Report (excerpts), 2007. This document is not in the licensing record. Concerned Citizens has requested that the Board take official notice of it. The document could have been presented earlier in the licensing process. It is not admitted to the record.
- **K3.** George W. Kamperman & Richard James, "The 'How To' Guide to Siting Wind Turbines to Prevent Health Risks from Sound", October 28, 2008. Concerned Citizens' represents that the document was listed as Reference #9 in a May 11, 2009 email to Department staff. As stated above, the Department does not seek out referenced documents and incorporate them into the record nor is it required to do so. The document was not submitted. It could have been provided earlier in the licensing process. It is not admitted to the record.

<sup>1</sup> 38 M.R.S.A. §341-D, sub-§4, paragraph D

Concerned Citizens states that the following documents are being offered as “references that are made in filings that are part of the record and possible reference in testimony at the requested public hearing.”

- **K4.** Frank H. Brittain & Marlund E. Hale, “Some Limitations of Ray-Tracing Software for Predicting Community Noise from Industrial Facilities,” NOISE-CON, Dearborn, Michigan (July 28-30, 2008).
- **K5.** Kenneth Kaliski & Edward Duncan, “Propagation Modeling Parameters for Wind Turbines”, NOISE-CON, Reno Nevada (October 22-24, 2007).
- **K6.** Giles, Daigle, “Sound Propagation: Review and Tutorial, [www.inceusa.org](http://www.inceusa.org), [www.noiseneutral.net](http://www.noiseneutral.net), [www.i-ince.org](http://www.i-ince.org) (September 2007).
- **K9.** Matt Abom, “Sound Propagation from Wind Turbine, KTH-The Marcus Wallenberg Laboratory for Sound and Vibration Research (2007).
- **K10.** Duplicate of K3.
- **K11.** Dr. Christopher Hanning, “Sleep Disturbance and Wind Turbine Noise,” June 2009.
- **K13.** C.E. Ebbing, “Applied Acoustics Handbook” (excerpts).

Ruling: Exhibits K4, K5, K6, K9, K10, K11, and K13 are not part of the Department’s licensing record. They could have been submitted earlier in the licensing process. They are not admitted to the record.

**Submission by Concerned Citizens on December 11, 2009**

The appellants’ December 11, 2009 letter contained as Exhibit 4 a series of emails between Department staff and Dr. Dora Mills of the Maine Center for Disease Control (CDC) regarding noise and wind power.

Ruling: While not in the Department’s licensing file for the Record Hill Wind project, the Maine CDC emails were in the Department’s possession and will be considered part of the Department’s record in this matter.

**Submissions by Licensee in Response to the Appeal**

The Licensee’s Exhibits H through L submitted in response to Concerned Citizens’ Exhibit I Affidavit of Nissenbaum (Exh. D Maine Medical Association Resolution):

- Licensee’s Exhibit H. MMA Committee on Public Health Statement of Purpose and Membership List;
- Licensee’s Exhibit I. MMA Public Health Committee Minutes, February 24, 2009;
- Licensee’s Exhibit J. MMA Public Health Committee Minutes, March 24, 2009;
- Licensee’s Exhibit K. MMA Public Health Committee Minutes, May 20, 2009; and
- Licensee’s Exhibit L. MMA Public Health Committee Minutes, August 26, 2009.

Concerned Citizens argues that these exhibits should not be admitted unless Concerned Citizens' email from Dr. Albert Aniel dated October 24, 2009 is also admitted.

Ruling: The Maine Medical Association Resolution was not admitted to the record for the reasons stated above. The licensee's Exhibits H, I, J, K and L responding to the resolution and Concerned Citizen's email from Dr. Albert Aniel are likewise not admitted to the record.

- October 11, 2009 Exhibit G Operations Compliance Sound Level Study for the Stetson Wind Project prepared by Resource Systems Engineering dated July 27, 2009. The licensee states that this report was submitted to the Department on August 10, 2009.

In its December 11, 2009 letter to the Board, Concerned Citizens argues that it asked Department staff in July 2009 if the Stetson Report was part of the licensing record or considered by the staff in its review of the application. If so, Concerned Citizens states that it requested an opportunity to comment on the document prior to issuance of the license. If admitted to the record at this time, Concerned Citizens argues that the Board should accept its "Amended Proposed Testimony of Richard James" which addresses the Stetson Report.

Ruling: Although received by the Department just prior to issuance of the license on August 20, 2009, Department staff states that the Stetson Report was not considered by the Department in its review of the application; therefore, it will not be considered part of the record in this appeal. The "Amended Proposed Testimony of Richard James" responding to the Stetson Report is not accepted.

### **Financial Documents Submitted by Parties and Petition for Stay**

On or about October 1, 2009 Record Hill filed with the Department an August 27, 2009 letter from Northern Trust Company in response to a condition of its license for the project. As stated in my letter of November 25, 2009, the August 27, 2009 letter from Northern Trust Company submitted on behalf of Record Hill Wind LLC pertaining to the licensee's financial capacity is part of the record.

On November 3, 2009 Concerned Citizens submitted "Petition of Aggrieved Parties for a Temporary Restraining Order on the Issue of Financial Capacity Pending Appeal" seeking a stay of construction pending the Board's consideration of the financial capacity issue raised in its appeal. The petition included the following exhibits:

- Exhibit A: October 1, 2009 email from Rob Gardiner to Beth Callahan re: financial capacity.
- Exhibit B: August 27, 2009 letter from Northern Trust to DEP Commissioner David Littell re: Record Hill Wind LLC
- Exhibit C: October 5, 2009 letter to Robert Gardiner from Beth Callahan accepting the Northern Trust letter as evidence of financial capacity.
- Exhibit D: October 8, 2009 letter from Rufus Brown to Margaret Bensinger re: Record Hill Wind Project financial capacity with excerpts from Section 3 Financial Capacity for the Rollins Wind Project and November 2, 2009 "Affidavit of Gary Steinberg in Support of Motion Petition for a Temporary Restraining Order" and accompanying photographs.

By letter dated December 7, 2009<sup>2</sup>, Concerned Citizens withdrew its Request for Stay on the condition that its November 3, 2009 Petition be treated as a timely appeal of the Commissioner's October 5, 2009 acceptance of the Northern Trust letter as a sufficient demonstration of financial capacity and that the Petition be consolidated with Concerned Citizens' pending appeal of the Order approving the Record Hill Wind Project. The letter represents that the licensee (Record Hill) agrees to the consolidation.

Ruling: The Petition, including Petition Exhibits A through D listed above, is consolidated with the pending appeal by Concerned Citizens of the Record Hill Wind Project license.

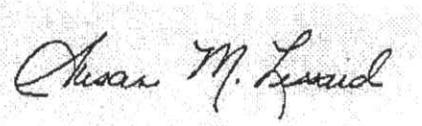
**Next Steps**

This letter contains the Board's ruling on the record in this matter. No further documents may be submitted unless a public hearing is scheduled. The deadline for the licensee to file its response to the substance of the issues raised on appeal and in the petition for stay is February 10, 2010.

This matter is tentatively scheduled for consideration by the Board at its regular meeting on March 18, 2010.

If you have any questions regarding this ruling, you may contact me at (207) 287-2452 or Peggy Bensinger, Assistant Attorney General, at (207) 626-8578.

Sincerely,



Susan M. Lessard, Chair  
Board of Environmental Protection

cc: Service List (attached)



<sup>2</sup> Petitioner's Withdrawal of its Request for Stay in the matter of Record Hill Wind LLC, December 7, 2009.

**Board of Environmental Protection – Service List (10/06/2009)**  
**Record Hill Wind, LLC: L-024441-24-A-N / L-024441-TF-B-N**

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**Interested Person**

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