



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

Fourteenth Procedural Order

**In the Matter of
Development Permit DP 4889
Champlain Wind, LLC.
Bowers Wind Project
November 15, 2011**

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

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Samantha Horn Olsen, LURC
Frederick Todd, LURC

From: Gwen Hilton, Presiding Officer

Subject: Applicant's request to withdraw its application

I. Background

The application for the Bowers Wind Project (Project) by Champlain Wind, LLC (Applicant), was accepted as complete for processing on March 14, 2011. According to 12 M.R.S.A § 685-B(2-C), the Commission must, with respect to wind energy development permit applications that are set for public hearing, return a decision within 270 days from the date the application is accepted as complete for processing – in this instance, by December 9, 2011. At the request of an applicant, however, the Commission may stop the processing time for a period of time agreeable to the Commission and an applicant – thus delaying the deadline for returning a decision for an agreeable period of time.

Pursuant to the Third and Eighth Procedural Orders, the Public Hearing for the Project 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.

CATHERINE M. CARROLL, DIRECTOR

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The Eighth Procedural Order established Monday, July 18, 2011 as the close of the public comment period and Monday, July 25, 2011 as the deadline for accepting rebuttal comments. The Third Procedural Order established that after the close of the record "no additional evidence or argument will be allowed into the record except by leave of the Presiding Officer."

After deliberating on the merits of the visual impact aspects of the Project at its September 7, 2011 and October 5 & 19, 2011 meetings, the Commission directed its staff to prepare a decision document denying the application, and it indicated it would consider and adopt the document by vote at its December 7, 2011 meeting.

On November 8, 2011, the Applicant filed a request to withdraw its application "for the purpose of reconfiguring the Project to address the concerns expressed by the Commission during deliberations and the guidance that has been developed during the pendency of this proceeding." The Applicant stated two reasons to justify this request. First, it asserts that the Commission's application of the visual impact standard has evolved over the course of this proceeding, specifically with respect to how the Commission evaluates impacts to certain ponds that receive a low level of public use, and how it considers intercept surveys regarding the expectations of the typical viewer. Second, it states that recent changes in the makeup of the Commission, in conjunction with voting requirements of 12 M.R.S.A. § 684, required the Commission to reach a unanimous 4-0 decision in order to take any action with respect to this application.

In addition to the request to withdraw, the Applicant agreed to stop the processing time for the application as set by 12 M.R.S.A § 685-B(2-C), thereby extending the deadline for the Commission to issue a final decision on this Project through January 2012, thus allowing the Commission the opportunity to consider and rule on this request at its December meeting in advance of taking final action on a decision document.

Furthermore, the Applicant requests an opportunity to address the Commission orally on this matter at its December 7, 2011 meeting.

On November 9, 2011, Intervenor David Corrigan filed a response to the Applicant's request, arguing that allowing the Applicant to withdraw would be unfair because the parties in opposition to this project have "expended considerable time, effort, and resources on this case." He asserts that, if the Applicant wants to submit a modified application at a later date and go "through this process again," then it is more appropriate at this point in time to deny the project. Mr. Corrigan contends that allowing this withdrawal would undermine the integrity of the public process, and requests that the Commission adopt the requested denial decision at its December 2011 meeting.

On November 11, 2011, Intervenor PPDW filed a response to the Applicant's request, arguing the request to withdraw is more in the nature of legal argument as to why the Commission should approve the proposed project, and that therefore the filing should be stricken as the record is closed. PPDW further asserts that the reasons why the Applicant wants to withdraw its application are irrelevant, and that the Commission ought to take up the denial decision document in December 2011 as scheduled.

Finally, PPDW indicates that it has further argument to make with respect to why the Commission should not grant the Applicant's request.

II. Order.

The Chair acknowledges that the Commission has received requests to proceed with adoption of the denial document at its December 2011 meeting. Under the facts and circumstances of this matter, however, the Applicant's pending request to withdraw is more appropriately addressed by the Commission as a whole, not the Chair and Presiding Officer. To allow time for the Commission as a whole to consider the Applicant's request to withdraw, the request will be considered and decided upon by the Commission at its December 7, 2011 meeting. The Applicant has agreed to extend the decision deadline, and therefore the deadline for issuing a decision on this application is extended through January 2012. The Commission will take up the previously requested denial decision document in January 2012, as necessary.

The Commission has authority, based upon its Title 12 enabling legislation and in keeping with considerations of administrative fair play, to manage and control its adjudicatory proceedings. This authority includes the Commission's ability to control and condition unilateral requests to withdraw applications that have already undergone significant review. While the Chair appreciates, as argued by PPDW, that the arguments now made by the Applicant with respect to withdrawal may have some bearing as to the Applicant's position that the Project should be approved, in order to decide where the equities fall in this matter with respect to a withdrawal, it is incumbent on the Commission to consider the facts and circumstances of this proceeding. Therefore, PPDW's request to strike the Applicant's request to withdraw is denied.

PPDW, or any other Intervenor in this proceeding who wishes to, may submit further argument in writing with respect to the Applicant's request to withdraw no later than Tuesday, November 22, 2011. The Applicant may file argument in response no later than Tuesday, November 29, 2011. The Chair requests that, to the extent reasonably possible, staff bring to the Commission's attention any public comment received in advance of the December 7th meeting regarding the Applicant's request to withdraw.

The Chair grants the Applicant's request to address the Commission orally on this matter at the December 7th meeting for a time period not to exceed 10 minutes. The Applicant may, within the allocated 10 minutes, reserve time for rebuttal. Any other Intervenor in this proceeding may also request, no later than Friday, December 2, 2011, time at the December 7th meeting to address the Commission orally on the Applicant's request to withdraw. The Chair will allocate at her discretion up to 10 minutes to each requesting party.

III. 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 15th DAY OF NOVEMBER, 2011

A handwritten signature in cursive script that reads "Gwen Hilton".

By: _____
Gwen Hilton, Presiding Officer