



STATE OF MAINE
DEPARTMENT OF CONSERVATION
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GOVERNOR

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COMMISSIONER

TO: Commission Members
FROM: Marcia Spencer Famous, Senior Planner
DATE: July 28, 2010
**SUBJECT: TransCanada Maine Wind Development, Inc.; Kibby Expansion Project,
Development Permit DP 4860**

Project description

On December 23, 2009, the Commission accepted for processing the application submitted by TransCanada Maine Wind Development, Inc. for Development Permit DP 4680, for the Kibby Expansion Project (KEP). The proposed KEP is a 45 megawatt grid-scale wind energy development that would be sited within the expedited permitting area for wind energy development. The project would be located in Kibby Twp. and Chain of Ponds Twp., Franklin County, in a P-MA Subdistrict; P-SL2 Subdistricts; P-WL1, 2 and 3 Subdistricts; and an M-GN Subdistrict. The KEP would use the 115 kV generator lead line, O&M building/construction control center, and certain lay-down areas constructed for the existing Kibby Wind Project (KWP - reference Development Permit DP 4794). The 15 proposed turbines would be arranged along the northern portion of a ridgeline associated with Sisk Mountain, in part along the Canada/United States border. The proposed KEP would be located approximately two miles from the closest turbine of Series B of the existing KWP, and four miles from Series A of the KWP.

The proposed KEP would consist of fifteen 3.0 megawatt wind turbines; 3.6 miles of new 34 foot (ft) wide ridgeline road (reduced to 20 ft wide after construction), 1.1 miles of new 20 ft wide access road, 2.2 miles of upgraded existing access roads, 8.9 miles of 34.5 kV collector and communication line, a new substation, and a 325 ft long segment of 115 KV transmission line to connect the new substation to the existing Kibby Substation. The proposed KEP would connect to the New England grid using the existing 115 kV generator lead line that runs between the existing KWP Kibby Substation and the existing Bigelow substation.

Review Criteria (see Appendix A of the staff recommendation for the full text of the review criteria)

1. Because the proposed KEP would be entirely located within the expedited permitting area for wind energy development, it is subject to the provisions of PL 2007, Chapter 661 (the so-called "Wind Energy Act"), as incorporated in LURC's statute and Chapter 10. After the Wind Energy Act became effective on April 18, 2008, (1) certain portions of LURC jurisdiction were designated as "expedited permitting areas", including Kibby Twp. and a

portion of Chain of Ponds Twp.; (2) within the expedited permitting area, wind energy development became a use allowed by permit in all subdistricts; and (3) certain aspects of wind energy development were made subject to the Wind Energy Act's specific provisions. With respect to scenic resources, the Wind Energy Act specifies:

- A. Only "scenic resources of state or national significance" (as defined in 35-A M.R.S., Ch. 34-A, Section 3451(9)) located within 8 miles of a project are subject to review.
 - B. To review the impacts to these scenic resources, the criteria contained in Section 3452, must be used; LURC's statutory criteria with respect to scenic impacts due to wind energy development in the expedited permitting area was changed from "undue adverse effect" to "unreasonable adverse effect", and the "harmonious fit" test was eliminated.
 - C. Several standards were devised to address the particular type of scenic impact likely to occur due to wind turbines. In particular, these standards state: "that a [wind energy] development's generating facilities are a high visible feature in the landscape is not a solely sufficient basis for determination that [the project] has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance."
2. Regarding impacts to natural resources such as the Subalpine Fir Forest and the Bicknell's thrush, although the Wind Energy Act requires an applicant to conduct avian and bat monitoring, it does not provide standards for the review of the potential impacts to either. As such, the review of both the Bicknell's thrush and the Subalpine Fir Forest are subject to the Commission's statutory criteria of "harmonious fit" and "no undue adverse effect" in 12 M.R.S., Section 685-B(4)(C). The Chapter 10 standard for natural features in Section 10.25,E,2(a) does not apply to the S3 rated Subalpine Fir Forest because that rule applies only to S1 and S2 natural communities.

Conclusions

The "scenic resources of state or national significance" located within 8 miles of the KEP that would sustain an unreasonable adverse effect include the Chain of Ponds, the historic Arnold Trail, Arnold Pond, and Kibby Stream. Furthermore, the southernmost seven turbines would cause the majority of the scenic impact. In addition, the southernmost seven turbines would be located within the mapped Subalpine Fir Forest, which is also Bicknell's thrush habitat, and would be responsible for the majority of the impacts to that natural community, and by association to the Bicknell's thrush. The proposed KEP would have an undue adverse effect on the Subalpine Fir Forest and the Bicknell's thrush.

Based on the record and the review criteria applicable to natural resources and to scenic resources, the applicant has not carried its legal burden of proof in showing that the criteria of the Commission's statute, 12 M.R.S., § 685-A(4), or the criteria of 35-A M.R.S., Ch. 34-A, §3452, respectively, have been met. Therefore, the Commission denies the application.

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