



PAUL RICHARD LEPAGE  
GOVERNOR

STATE OF MAINE  
DEPARTMENT OF CONSERVATION  
22 STATE HOUSE STATION  
AUGUSTA, MAINE  
04333-0022

WILLIAM H. BEARDSLEY  
COMMISSIONER

## **First Procedural Order**

**In the Matter of  
Development Permit DP 4889  
Champlain Wind, LLC  
Bowers Wind Project  
March 29, 2011**

**To:** Parties (and potential parties)  
Neil Kiely (Applicant)  
Juliet Brown, Esq. (Counsel for Applicant)  
Sean Mahoney, Conservation Law Foundation  
Dylan Voorhees, Natural Resources Council of Maine  
Interested Persons  
David Corrigan, Fletcher Mountain Outfitters  
Steve Norris, The Pines Lodge  
Kevin Gurall, PPDW  
David R. Darrow  
Pete Borden  
Leonard J. Murphy  
Barbara Moore

**cc:** Commissioners of the Land Use Regulation Commission (LURC)  
Amy B. Mills, AAG  
Catherine M. Carroll, LURC Director  
Samantha Horn-Olsen, LURC Planning Division Manager  
Frederick W. Todd, LURC Project Planner  
Jim Palmer, LURC Scenic Quality Consultant

**From:** Gwen Hilton, Land Use Regulation Commission Chair and Presiding Officer

**Subject:** Determination of scenic effect of associated facilities; Wind Energy Act 35-A M.R.S.  
§ 3452(2)

### **I. Background.**

On March 14, 2011, LURC staff determined the wind energy development application filed by Champlain Wind, LLC (the Applicant) for the Bowers Wind Project was complete for processing. Since accepting this application for processing, the issue of the Commission's review of the scenic effect of the

facilities associated with wind turbines has arisen. This issue has arisen because the Wind Energy Act provides that, under certain circumstances, one scenic standard will be applied to a project's generating facilities and a different scenic standard will be applied to a project's associated facilities. See 35-A M.R.S. § 3452(2).

Under Title 12 (the Commission's general enabling legislation) the Commission may not permit a project unless adequate provision has been made for fitting the project harmoniously into the existing natural environment as a means to ensure there will be no undue adverse effect on scenic character. The Wind Energy Act, however, altered this standard with respect to permitting wind energy development in the expedited permitting area. With respect to those types of projects, the Act directs the Commission to determine whether a project significantly compromises views from a scenic resource of state or national significance such that there is an unreasonable adverse effect on scenic character or existing uses related to scenic character.

As explained below, however, the Act further provided an exception, whereby the traditional Title 12 "no undue adverse impact/harmonious fit" standard would be applied to the scenic impacts of the associated facilities of a wind energy development project.

Specifically, the above-stated provision of the Wind Energy Act reads:

*35-A M.R.S. § 3452(2) – Exception: certain associated facilities. The primary siting authority shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with Title 12, section 685-B, subsection 4, paragraph C or Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development, if the primary siting authority determines that the application of the standard in subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities (emphasis added). An interested party may submit information regarding this determination to the primary siting authority for its consideration. The primary siting authority shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.*

The Wind Energy Act defines "associated facilities" and "generating facilities" as:

*35-A M.R.S. § 3451 (1) – Associated facilities. "Associated facilities" means elements of a wind energy development other than its generating facilities that are necessary to the proper operation and maintenance of the wind energy development, including but not limited to buildings, access roads, generator lead lines and substations.*

*35-A M.R.S. §3541(5) – Generating facilities. "Generating facilities" means wind turbines and tower and transmission lines, not including generator lead lines that are immediately associated with the wind turbines.*

The Wind Energy Act provides that the Commission "shall make a determination [regarding the scenic standard applicable to associated facilities] within 30 days of its acceptance of the application as complete for processing." *Id.*

## II. Order.

Any Intervenor, Interested Person, or other person or organization, other than the Applicant, who wishes to take a position on the issue of the applicable scenic standard, as that issue is set forth in 35-A M.R.S. § 3452(2), shall file relevant pleadings with staff, to the attention of Fred Todd, no later than 5:00 P.M. April 5, 2011.

The Applicant shall file its response on this issue no later than 5:00 P.M. April 12, 2011.


Staff will review the pleadings and prepare a memorandum for the Chair's consideration. Thereafter, the Chair will issue a procedural order on this issue, in advance of the yet-to-be-determined deadline for the pre-filing of direct testimony.

## 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 these rulings of the Presiding Officer should be directed to Catherine Carroll, the Commission's Director, or Frederick 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 29th DAY OF March 2011

By: 

Gwen Hilton, Chair and Presiding Officer