

STATE OF MAINE
LAND USE REGULATION COMMISSION

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| IN THE MATTER OF DEVELOPMENT |) | |
| APPLICATION DP 4889 |) | APPLICANT'S RESPONSE TO THE |
| CHAMPLAIN WIND, LLC |) | FIFTEENTH PROCEDURAL ORDER |
| BOWERS WIND PROJECT |) | |

Champlain Wind, LLC ("Champlain" or "Applicant") hereby responds to the Commission's Fifteenth Procedural Order.

BACKGROUND

The Bowers Wind Project ("Project") consists of 27 turbines located on Bowers Mountain, South Peak and Dill Hill in Carroll Plantation and Kossuth Township. It is located entirely within the expedited wind permitting area and, with an installed capacity of up to 69.1 megawatts (MW), would make a significant contribution to the State's goals for wind energy development. Following a public hearing last summer, the Commission deliberated on the Project and determined that the Project satisfied all but one of the applicable review criteria. With respect to the visual impact standard, several Commissioners expressed concern that the Project would have an unreasonable adverse effect on the scenic character or existing uses related to scenic character of lakes identified as scenic resources of state or national significance.

In November, 2011, Champlain requested that it be allowed to withdraw its application for the purpose of reconfiguring the Project to address the concerns expressed by the Commission on visual impacts. See November 8, 2011 Submission by Champlain. The request was based on two factors. First, there had been an evolution in how the Commission was interpreting and applying the visual impact standard - - an inherently subjective standard - - as well as an increasing reliance on the use of intercept surveys, which had occurred over the course of the proceeding. Second, due to vacancies and a shift in the Commission make-up, the

Commission was placed in the awkward position of needing unanimity to take action. At its December, 2011 meeting, the Commission tabled the request and asked that Champlain submit a written description of its plans for reconfiguring the Project.

Since the December meeting Champlain has been evaluating options for a reconfigured project that reduces visibility on area lakes and is otherwise responsive to the issues identified by the Commission during its deliberations. Based on its work to date, Champlain believes it is possible to modify the Project in ways that will significantly reduce visual impacts on the resources of greatest concern. For example, Champlain is exploring the use of a recently released turbine model that potentially would allow a significantly reduced-sized project to remain economic. For the reasons identified below, however, and despite its best efforts to do so, Champlain is not able to present a particular reconfigured project to the Commission at this time.

PROCESS FOR DEVELOPING A RECONFIGURED PROJECT

A reconfigured project must be responsive to the concerns voiced by the Commission regarding visual impacts and, at the same time, meet the economic objectives and business needs of the Applicant. As a result of its efforts over the last several months, Champlain is confident that there is a project that meets both objectives and had hoped to present the outline of such a project today. Two obstacles remain, however, that prevent Champlain from doing so. First, there is the unresolved yet significant uncertainty on what is required by the Commission to meet the visual impact standard of the Wind Energy Act. Second, there are business considerations related to the PUC's consideration of the Emera joint venture transaction discussed below, which result in a current inability to determine what is feasible. Uncertainty on the regulatory front

leading to business considerations and a desire not to present hypothetical projects prevents Champlain from identifying a specific project at this time.

First, Champlain believes there is continued and significant uncertainty on how LURC and its visual consultant will interpret and apply the visual impact standard. Of most concern to this Project is the role of user intercept surveys and how to assess cumulative visual impacts. Both issues were identified in Champlain's Motion to Withdraw. Since that time, visual experts and LURC staff have worked to identify solutions for addressing these acknowledged challenges. For example, Dr. Palmer, the Commission's visual consultant, recently submitted a paper summarizing many of the intercept surveys that have been conducted for wind power projects in Maine and articulated a framework for evaluating the statistical significance of such surveys. He also sought to establish thresholds for determining compliance with applicable regulatory criteria. See James F. Palmer, *Maine's Experience Evaluating When Scenic Impacts From Wind Energy Development Are Unreasonable Adverse*. In his comments on a wind energy project recently permitted by the Department of Environmental Protection, Dr. Palmer suggested use of the "effect size" as a metric for determining for determining what level of visual impact was acceptable under the Wind Energy Act. See Review of the Pleasant Lake/Mattawamkeag Lake Wind Power Project Intercepts. The statistical analyses methods identified by Dr. Palmer in his most recent work are complex and the steps used to analyze the data and derive impact metrics are not transparent. Moreover, to date, neither LURC nor DEP have opined (to the best of our knowledge) on Dr. Palmer's proposed framework or metrics or identified methodologies to be used for intercept surveys to ensure reliability and to avoid the potential for bias.

Additionally, LURC staff recently presented a draft report on assessment of cumulative visual impacts from wind energy development to the Commission. See Draft Report of OEIS

Assessment of Cumulative Visual Impacts from Wind Energy Development (February 2, 2012). A study group that included several LURC staff, a representative from DEP, and three visual experts evaluated solutions and strategies for addressing cumulative visual impacts. *The study group identified twenty-two options for assessing cumulative visual impacts, but specifically did not make recommendations on which options or strategies were most appropriate.* Cumulative visual impacts were identified by the Commission as a potential concern here (in particular cumulative impact experienced as the user travels across the landscape), yet neither LURC nor DEP have opined (to the best of our knowledge) on how such impacts should be evaluated under existing law.

Second, as the Commission may be aware, Emera, Inc. (“Emera”) and First Wind have proposed a joint venture in which Emera would make a significant investment in First Wind’s Maine, Vermont and New York projects (the “transaction”). This investment will provide significant operating capital to First Wind and facilitate its development of renewable energy projects in Maine. The transaction requires approval by the Maine Public Utilities Commission (“PUC”), however, and although it was initially expected that the PUC would deliberate on the matter in January, 2012, the PUC did not deliberate on the matter until yesterday.¹ Moreover, instead of reaching the merits of the transaction, the PUC postponed making a decision for what appears to be four or more weeks. While the transaction is not critical to the financing of any particular project in Maine, it does affect development decisions within First Wind. Until the PUC reaches a decision on the transaction, First Wind is not in a position to finalize or move

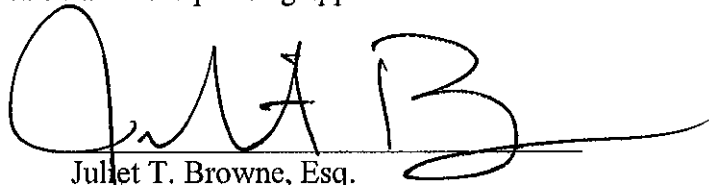
¹ Bangor Hydro Electric Company, Maine Public Service Company and certain affiliates filed a petition with the Maine PUC seeking approval for their ultimate parent company, Emera, Inc. to invest in certain operating and in-construction First Wind projects through formation of a new affiliate, JV Holdco. See Maine PUC Docket No. 2011-170. First Wind is not a party to the proceeding.

forward on any particular reconfigured project. Moreover, Champlain does not believe it would be appropriate to present hypothetical iterations of a project.

In summary, Champlain continues to believe that there are options for a significantly reduced project that is responsive to the concerns voiced by the Commission. Champlain has proceeded in good faith since the December Commission meeting and has made substantial progress in developing options, 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.

Finally, for all of the reasons set forth in its initial motion, Champlain respectfully requests that the Commission allow withdrawal of the pending application.

Dated: March 9, 2012

A handwritten signature in black ink, appearing to read 'JTB', with a long horizontal flourish extending to the right.

Juliet T. Browne, Esq.
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From: [Browne, Juliet](#)
To: ["Kevin and Marie"](#); [Horn-Olsen, Samantha](#); [Todd, Fred](#)
Cc: ["D. Gordon Mott"](#); ["Sean Mahoney"](#); ["David Corrigan"](#); [Mills, Amy](#); ["Neil Kiely"](#); ["joy.prescott@stantec.com"](#); ["Michael Thompson"](#)
Subject: RE: Request / Bowers project
Date: Monday, March 12, 2012 9:23:01 AM
Attachments: [Draft OEIS Assessment.pdf](#)
[2011-12-02 Oakfield Survey Review.pdf](#)
[PALMER 021412.pdf](#)

All,

Attached please find the three referenced documents. Please note that the Applicant has not requested that these materials be made part of the record for purposes of determining the Project's compliance with applicable review criteria. They are referenced in this submission simply because they are relevant to the reasons that the Applicant is not able to identify the specifics of a reconfigured project at this time, as had been requested by the Commission at the December meeting. Additionally, all three are public documents; two of them are authored by the Commission's visual consultant in this proceeding; and, the third document (the Draft OEIS report) was presented to the Commission at its March meeting and is therefore already before the Commission.

Juliet

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From: Kevin and Marie [mailto:mainlymaine@fairpoint.net]
Sent: Saturday, March 10, 2012 12:10 AM
To: Horn-Olsen, Samantha; Todd, Fred
Cc: D. Gordon Mott; Sean Mahoney; Browne, Juliet; David Corrigan
Subject: Fw: Request / Bowers project

In the applicant's submission of 3/9/12 reference was made by Ms. Browne to three bodies of information:

1. James Palmer's "Maine's Experience Evaluating When Scenic Impacts From Wind Energy Development Are Unreasonable (sic) Adverse"
2. "Review of the Pleasant Lake/Mattawamkeag Lake Wind Power Project Intercepts"

3. "Draft Report of OEIS Assessment of Cumulative Visual Impacts from Wind Energy Development (Feb 2, 2012)

PPDLW as intervener to this application would like to formally request that these works not be allowed as part of the applicant's request as we could not find any reference to them in the official record for this application.

We also ask that while a decision on that request is being made, that the applicant provide all intervener parties with copies of those documents so we can review them if needed.

Respectfully,

Kevin Gurall
President
PPDLW

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