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GOVERNOR

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

ELIZA TOWNSEND
COMMISSIONER

Sixth Procedural Order

**In the Matter of
Development Permit DP 4860
TransCanada Maine Wind Development, Inc.
Kibby Expansion Project
May 19, 2010**

To: Juliet Browne, Verrill Dana, counsel for TransCanada (TC)
Jenn Burns, Consolidated Parties (CP)
Bob Weingarten, Friends of the Boundary Mountains (FBM)
Steve Timpano, Maine Department of Inland Fisheries and Wildlife (MDIFW)
Bob Cordes, MDIFW
Dave Rocque, State Soil Scientist

cc: LURC Commissioners
Amy Mills, Maine Assistant AG
Catherine Carroll, LURC Director
Marcia Spencer Famous, LURC
Samantha Horn Olsen, LURC
Molly Docherty, Maine Natural Areas Program (MNAP)
Sarah Demers, MNAP
Don Cameron, MNAP
Jay Clement, U.S. Army Corps of Engineers
Alan Stearns, Bureau of Parks and Lands (BPL)
Jim Palmer
Warren Brown

From: Gwen Hilton, Presiding Officer

Subject: Sixth Procedural Order – post-hearing comment and briefs

I. Subjects of this Order

The public hearing for TransCanada's Development Permit DP 4860 was held on May 11 and 12, 2010. During the evenings of May 11th and 12th the Commission heard testimony from members of the public. During the daytime on May 12th, the Commission heard testimony from TC, CP, FBM, and state and federal agencies.

During the hearing, the Commission heard testimony on several issues upon which it desires clarification. Further, following the hearing, FBM requested that the record be held open until a vernal pool survey

during the spring breeding period can be completed. TC objects to FBM's request. Finally, CP seeks an extension of the June 1, 2010 filing deadline to June 10, 2010 for the submission of post-hearing briefs.

II. Post-hearing comment

As set forth in the Notice of Public Hearing, the record will remain open for the purpose of accepting public comment until May 24, 2010 and rebuttal comments until June 1, 2010. However, additional evidence that the parties could have filed at hearing will not be admitted except upon a showing that a submission will assist the Commission in its decision-making and will not prejudice the other parties.

On behalf of and in order to assist the Commission in its decision-making process, the following questions, except for question 3, are submitted only to the designated state agencies for written comment by May 24, 2010. Any party or person who wishes to submit rebuttal to the agency comments received in response to these questions may do so within the 7 day rebuttal period, that is, by June 1, 2010.

1. For response by Department of Inland Fisheries and Wildlife:
 - a. Are you aware of any peer-reviewed studies that have been conducted to determine whether noise affects the ability of wildlife to function with respect to, for example, hearing and communication, predation, or reproduction? If so, please provide the title and author of the study, a copy of the study if available, and briefly describe its conclusions.
 - b. At hearing, MDIFW referred to a vernal pool field survey protocol. Explain how the protocol is generally applied, and explain why or why not, pursuant to the protocol, a survey of vernal pools in the proposed project area during a spring breeding season is needed. Please submit a copy of MDIFW's protocol/guidance with your written response.
2. For response by State Soil Scientist: Testimony at the public hearing indicated observations of unstable soils in the area of Sisk Mountain and construction associated with Route 27. In your opinion, is the soil assessment conducted by TC adequate to determine the stability of the project area for the purpose of constructing roads and erecting turbines? Are the construction methods proposed appropriate for the site conditions such that the soils can be properly stabilized?
3. For response by TC, CP and FBM: Are you aware of any peer-reviewed studies that have been conducted to determine whether wind turbine projects, similar to the project proposed in this proceeding, impact real estate values? If so, provide the title and author of such studies, a copy of the study if available, and briefly describe its conclusions.

III. Friends of the Boundary Mountains request for enlargement of time with respect to record

Following the hearing, FBM requested an enlargement of time to allow for a vernal pool field survey during the spring/breeding season and additional time in which to file mapping of significant vernal pools on Sisk Mountain. TC objected, asserting that although all vernal pools identified in the proposed project area are man-made and therefore by definition not significant, it is nonetheless treating all vernal pools located in the proposed project area as significant and therefore no further survey is necessary.

FBM's request is DENIED. In accordance with section II above, all parties may submit rebuttal comments by June 1, 2010 to the response from MDIFW regarding vernal pools.

IV. CP request for extension of time in which to file post-hearing briefs

CP's request to extend the June 1st filing deadline to June 10, 2010 for the filing of post-hearing briefs is GRANTED IN PART. The deadline for all parties is extended to June 8, 2010.

V. 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 Marcia Spencer Famous 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 19th DAY OF MAY, 2010



By: _____
Gwen Hilton, Presiding Officer