



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

**Eighth Procedural Order
Public Hearing Schedule**

**In the Matter of
Development Permit DP 4889
Champlain Wind, LLC.
Bowers Wind Project
June 23, 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
Steve Timpano, Maine Department of Inland Fisheries and Wildlife (MDIFW)
Mitchell Tannenbaum, Maine Public Utilities Commission (MPUC)
Jim Palmer, LURC scenic consultant
Warren Brown, LURC sound consultant

From: Gwen Hilton, Presiding Officer

Subject: Public hearing schedule

I. Public hearing

The Third Procedural Order set June 27 and 28, 2011 as the hearing dates for Development Permit DP 4889. It will now be necessary to continue the hearing for a portion of a third day to allow sufficient time for the technical session. The hearing will be continued to July 6, 2011, at the Spectacular Events Center on 395 Griffin Road in Bangor. The following is the schedule for the entire public hearing, which will be held at the Ella P. Burr Elementary School on 23 Ella P. Burr Street in Lincoln, Maine, on June 27 and 28, 2011, and in Bangor (as noted above) on July 6, 2011. This schedule has been established to allow the hearing to be conducted in an orderly fashion.

- A. Public Sessions. The purpose of the sessions scheduled to start at 6:00 pm on June 27th and June 28th is to hear oral testimony from the public, and therefore the time period scheduled for public testimony is

CATHERINE M. CARROLL, DIRECTOR

www.maine.gov/doc/lurc
PHONE: (207) 287-2631
FAX: (207) 287-7439
TTY: (888) 577-6690

not further detailed in this Order. Members of the public will be called to testify in the order in which they sign in on the sheets provided at the public hearing, or as allowed by the Presiding Officer.

- B. Technical Session. The following schedule for the day-time technical session on June 28th details the estimated time allotments for the Parties' presentations summarizing their testimony, questions by the Commission, cross-examination, and redirect. This schedule was prepared based on the cross-examination lists submitted by the Parties on June 17, 2011 as well as subsequent requests by the Parties, and meets the provisions of LURC's Chapter 5, the Rules for the Conduct of Public Hearings. Due to time constraints, the times allotted for each Party have been reduced from what they requested.
- C. Direct Testimony. As required by the Third Procedural Order (April 29, 2011), the Parties pre-filed all direct and rebuttal testimony. Thus, in accordance with Section 5.16(1)(a) of Chapter 5 of the Commission's rules, (unless otherwise determined by the Presiding Officer) the summaries of rebuttal and direct testimony shall be offered in the following order: the applicant and such representatives and witnesses as it selects, and Intervenors. The staff of the Commission and its representatives and consultants may offer testimony at any time.
- D. Cross examination. In accordance with Section 5.16(1)(b) of Chapter 5 of the Commission's rules, (unless otherwise determined by the Presiding Officer) "cross-examination shall be conducted in the following order: the Commissioners, counsel, staff members and consultants may be permitted, by the Presiding Officer, to ask questions at any time; the applicant or petitioner; Intervenors; and Federal, State, and other government representatives."

To present the testimony in a logical order, the cross-examinations of the Commission's consultants, third party scenic peer reviewer Jim Palmer and sound peer reviewer Warren Brown (as necessary), have been scheduled after the Parties presentations and cross-examination, during the same period as the government agencies. Representatives of several state agencies have agreed to be available on Wednesday, July 6th to answer Commission questions and to be cross-examined by the Parties.

Parties are reminded that an examiner's cross-examination of any witness aligned with that examiner's party's point of view is not an opportunity to elaborate or expand on pre-filed testimony, it is not an opportunity to lead a witness through the witness's direct testimony, and it is not an opportunity to rehabilitate the witness. Any so-called "friendly cross" is not helpful to the Commission, will be entitled to considerably less weight than arm's length cross-examination and pre-filed direct testimony, and the Presiding Officer, of course, retains the discretion to end any such practice at hearing.

- E. Redirect. Time has been allotted for the parties' redirect of the pre-filed direct testimony. Any redirect must be helpful to the Commission, and to that end must be in response to issues raised during cross-examination.

II. Schedule

Monday, June 27: Evening session for public testimony [Lincoln]

6:00 pm: *Opening Statement by Presiding Officer, swearing in of those testifying, Staff Statement and Administrative History, and submitting the file to the record (15 min)*

6:15: Brief presentation by applicant summarizing the proposed project (15)

6:30: Public testimony

10 minute breaks for court reporter, as needed

Closing Statement by Presiding Officer

Recess

Tuesday, June 28: Technical session for applicant and intervenors [Lincoln]

8:00--8:15: *Opening Statement by Presiding Officer, swearing in of those testifying, Staff Statement (15 min)*

8:15 - 9:15: Opening Statement and Summary of Testimony by **Champlain Wind, LLC** (60)

9:15 – 10:05 Questions by Commissioners, LURC staff & consultants

10:05 – 10:15: Break for court reporter (10 minutes)

10:15 --10:55 Continue Questions by Commissioners, LURC staff & consultants (1.5hr total)

10:55 – 11:20 Cross-examination by PPDLW (25) [Sewall, Raphael, Kiely/West]

11:20 – 11:45 Cross-examination by Corrigan (25) [Gravel, Knapp, Prescott, Kerns, Kiely/West]

11:45 – 11:55 Redirect by Champlain (10)

11:55 – 12:40: Break for lunch (45 minutes)

12:40 – 1:10 Opening Statement and Summary of Testimony by **CLF** (30)

1:10 – 1:20 Questions by Commission (10)

1:20 – 1:25 Redirect by CLF (5)

1:25 -- 2:10 Opening Statement and Summary of Testimony by **PPDLW** (45)

2:10 – 2:30 Questions by Commission (20)

2:30 – 3:00 Cross-examination by Champlain (30)

3:00 – 3:05 Cross-examination by CLF (5)

3:05 – 3:10 Redirect by CLF (5)

3:10 – 3:20: Break for court reporter (10 minutes)

3:20 – 3:50 Opening Statement and Summary of Testimony by **Mr. Corrigan** (30)

3:50 – 4:10 Questions by Commission (20)

4:10 – 4:30 Cross-examination by Champlain (20)

4:30 – 4:35 Cross-examination by CLF (5)

4:35 – 4:40 Redirect by Mr. Corrigan (5)

4:40 – 4:55 Opening Statement and Summary of Testimony by **Mr. Mott** (15)

4:55 – 5:05 Questions by Commission (10)

5:05 – 5:10 Cross-examination by Champlain (5)

5:10 – 6:00: Dinner (50 minutes)

Tuesday, June 28 Evening session for public testimony [Lincoln]

6:00 pm: *Opening Statement by Presiding Officer, swearing in of those testifying, Staff Statement and Administrative History, and reference to record materials (15 min)*

6:15 – 6:30: Brief presentation by applicant summarizing the proposed project (15)

6:30: Public testimony

10 minute breaks for court reporter, as needed

Closing Statement by Presiding Officer

Adjourn

Wednesday, July 6: Continuation of technical session for agencies/consultants [Bangor]

9:30 – 9:45 am *Opening Statement by Presiding Officer, swearing in of those testifying, Staff Statement and Administrative History, and reference to record materials (15 min)*

9:45 – 12:00 Cross-examination of state agencies and LURC consultants: Jim Palmer, DIFW staff; The Commission may call upon other state agency representatives to be present, including its sound consultant, Warren Brown, and a representative from the Maine Public Utilities Commission, as needed.

Questions by Commission and LURC staff (45)

Cross-examination by Champlain (45)

Cross-examination by CLF (20)

Cross-examination by Corrigan (20)

10 minute breaks for court reporter, as needed

Closing statement by Presiding Officer

Adjourn

III. Modifications to Application Proceedings

The Natural Resources Council of Maine (NRCM) withdrew its Intervenor status for the Bowers Wind Project on June 9, 2011. The Chair accepts this withdrawal. NRCM noted an interest in testifying at the evening public session of the Public Hearing.

IV. Close of Hearing

The Third Procedural Order (April 29, 2011) set the dates for the close of the hearing record. The date set for the close of the public comment period, however, must be extended because the hearing was continued to July 6, 2011. The Commission rules require that there be at least a 10 day period after the close of the hearing to allow for additional comments and at least a 7 day period for rebuttal comments. Therefore the Chair hereby extends the public comment period to Monday, July 18, 2011 and the period for accepting rebuttal comments to Monday, July 25, 2011. The hearing record will then close and no additional evidence or argument will be allowed into the record except by leave of the Presiding Officer. The post- hearing provisions of the Third Procedural Order, of which the parties are in part reminded below, otherwise remain in full force and effect.

V. Hearing Exhibits, Post-hearing Submissions, and Rebuttal

Parties are reminded that, pursuant to the Third Procedural Order (April 29, 2011), any exhibit to be used at the hearing must not introduce new substantive evidence, and thus while any full-size version of exhibits that were pre-filed as a reduced version may be used at hearing, the use of demonstrative exhibits at hearing may be permitted only by leave of the Chair. Any party considering the use of demonstrative material is strongly encouraged to obtain the prior consent of the other parties to avoid objection and delay at hearing. The use of demonstrative material at hearing will not be permitted if it either contains or reflects information not in the record, or if it cannot readily be determined whether it contains or reflects information not in the record. As stated in the Third Procedural Order, exhibits used for impeachment purposes may be admissible on a case-by-case basis.

The parties are also reminded that, pursuant to the Third Procedural Order, the post-hearing comment and rebuttal period is not intended to provide an opportunity for the parties to file submissions that could have been pre-filed or presented at hearing. Other than rebuttal comments regarding public comment, post-hearing submissions from the parties will require leave from the Chair.

In view of the hearing being continued to July 6, 2011 for the state agency/consultant panel, the filing deadline set forth in the Third Procedural Order regarding briefs is modified as stated below. Each party may, but is not required, to submit a no more than 30-page post-hearing brief, including all attachments, summarizing the relevant evidence and the applicable criteria's application thereto, no later than 5:00 pm on August 8, 2011.

Each party will be given an opportunity to present a brief closing statement at the Commission's meeting, to be scheduled at a later date, when it deliberates on this matter.

VI. Ex parte Communications and site visit.

The Parties are directed to 5 M.R.S. § 9055 and chapter 5, section 5.25 of the Commission's rules for a statement of legal restrictions on contact with Commission members during pending proceedings, including the site visit, which in this case will take place on June 27th. The Parties are cautioned to avoid any conduct that could give rise even to the appearance of improper contact with Commission members.

VII. 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 23rd DAY OF JUNE, 2011



By: _____
Gwen Hilton, Presiding Officer