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Via E-mail and U.S. Mail

Marcia Spencer Famous
Maine Land Use Regulation Commission
22 State House Station
Augusta, ME 04333

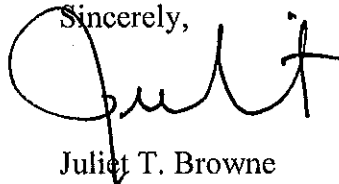
Re: TransCanada Maine Wind Development, Inc.
Kibby Expansion Project - DP 4860 (Amended)

Dear Marcia:

Enclosed please find an original, two copies and two CD's of TransCanada Maine Wind Development, Inc.'s Post-Hearing Brief/Amended Application.

Thank you for consideration of this material, and if you have any questions, please do not hesitate to contact me.

Sincerely,



Juliet T. Browne

JTB/prf
Enclosure

cc: Samantha Horn-Olsen (via e-mail)
Catherine M. Carroll (via e-mail)
Amy Mills (via e-mail)
Bob Weingarten (via e-mail)
Jenn Burns Gray (via e-mail)
Nick Di domenico (via e-mail)
Christine Cinnamon (via e-mail)
Dana Valteau (via e-mail)

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STATE OF MAINE
LAND USE REGULATION COMMISSION

IN THE MATTER OF DEVELOPMENT)	Post-Hearing Brief/Amended Application
APPLICATION DP 4860)	TransCanada Maine Wind
TRANSCANADA MAINE WIND)	Development, Inc.
DEVELOPMENT, INC.)	

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STATE OF MAINE
LAND USE REGULATION COMMISSION

IN THE MATTER OF DEVELOPMENT)	
APPLICATION DP 4860)	Post-Hearing Brief/Amended Application
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INTRODUCTION

The Kibby Expansion Project is in an area that the Commission has recognized (in the rezoning order for the adjacent Kibby Project) as one of the “best reasonably available sites” for wind power, due to its outstanding wind resource, proximity to transmission, compatibility with existing land uses, and given that it was not located in the more remote areas of the jurisdiction.¹ The site’s suitability for wind development is similarly reflected in the work of the Governor’s Task Force on Wind Power Development and the Wind Energy Act, which not only identified the area as appropriate for wind development, but specifically encouraged developers to locate wind power in this area.²

Moreover, TransCanada has responded to comments from state agencies, the public, state environmental groups, and the Commission by altering and reducing the Project footprint to minimize impacts, while still maintaining a Project that will provide significant renewable energy and other economic benefits for Maine. TransCanada has relocated turbines out of more sensitive habitat areas and has recently reduced the number of turbines in a manner that eliminates nearly all of the direct impacts to mapped Bicknell’s thrush habitat and subalpine forest. At these low levels (0.2% of mapped subalpine; 0.006% of Bicknell’s habitat)³ there can

¹ ZP 709 at 63.

² See P.L. 2007, Ch. 661.

³ These calculations are based on the Consolidated Parties’ estimates of total impacts and are discussed in Section III below.

be no dispute that the Project is consistent with what is allowed under LURC's regulations and the Wind Energy Act.

Moreover, the Comprehensive Land Use Plan's (the "CLUP") energy resources goal is to "provide for the environmentally sound and socially beneficial utilization of indigenous energy resources when there are no overriding public values that require protection."⁴ As demonstrated in the application materials and other filings, and at the public hearing, while there are resource and scenic impacts—as there always will be—there are no overriding public values that outweigh the determination that this is an appropriate location for wind power.

The CLUP also recognizes the role of State review agencies, specifically Maine Inland Fisheries and Wildlife ("IF&W") and Maine National Areas Program ("MNAP"), in guiding the Commission's decisionmaking. Specifically, § 5.8.B of the CLUP states:

The Commission relies on [IF&W and MNAP] for surveying and mapping important resources, providing information and reviewing development proposals for potential harm to important habitat . . . They also participate in pre-application conferences for unusually large or significant proposals to ensure that habitat needs are factored into the early planning and design of these parcels.

Here, TransCanada has worked with both IF&W and MNAP from the earliest stage of Project development to map sensitive habitat according to agreed upon protocols, modify Project elements to minimize impacts to habitat, and develop appropriate construction and long-term monitoring protocols to evaluate potential long-term impacts to habitat or species. At each stage of development, the layout has reflected a process that optimizes environmental, engineering and wind resource conditions. For example, and as discussed in greater detail below, based on early comments from IF&W and MNAP, TransCanada moved Turbine 11 away from the higher wind

⁴ CLUP at 13.

resource location to an area west and downslope of its initially proposed location.⁵ Additionally, following the public hearing and Commission deliberations on the 15-turbine Project, TransCanada took the additional step of modifying the Project to eliminate the southern four turbines and associated 1.4 miles of ridge road and 1.5 miles of collector line.⁶

As a result of the substantial modifications, including a reduction in the Project size and shifting of Project elements, TransCanada has minimized impacts to sensitive resources, including the subalpine forest community and Bicknell's thrush habitat that have been the focus of comments by the Consolidated Parties during the public hearing. Importantly, neither IF&W nor MNAP have identified concerns with or objections to the remaining Project impacts. Similarly, the Commission's visual expert has concluded that the Project meets the applicable scenic review criteria. As a result, the Project strikes the appropriate balance between minimizing impacts to sensitive resources, while still allowing a reasonable use of the land that is consistent with more general policy directives reflected in both the Wind Energy Act and the CLUP, and the Commission's charge to provide for multiple uses of the land within the jurisdiction.

I. APPROVAL OF THE KIBBY EXPANSION PROJECT IS CONSISTENT WITH THE COMMISSION'S STATUTORY PURPOSE, THE DIRECTIVES REFLECTED IN ITS COMPREHENSIVE LAND USE PLAN, AND THE LEGISLATURE'S GOALS AND POLICIES UNDER THE WIND ENERGY ACT

The purpose of the Land Use Regulation Commission is to extend principles of sound planning, zoning, and subdivision law in order "to provide for appropriate residential, recreational, commercial and industrial uses," and "to encourage well-planned and well-managed

⁵ See generally April 21, 2010 Pre-Filed Direct Testimony of C. Cinnamon and D. Valleau at 8.

⁶ See August 16, 2010 Amendment to Reduce Project Size from 45 MW to 33 MW By Elimination of Southern Four Turbines and Associated Project Elements ("Amended Project" or "Modified Project").

multiple use of land and resources.”⁷ These core principles inform the Commission’s consideration of every development application it considers, including this one.⁸ To guide the Commission’s actions in carrying out its statutory purpose, the Comprehensive Land Use Plan (“CLUP”) establishes four principal values, and three broad goals and related policies that are directed at one or more of the principal values.⁹ The Commission’s energy policies specifically include the following:

- Support indigenous, renewable energy resources as part of state and national efforts to promote energy independence, diversity and long-term sustainability.
- Accommodate energy generation installations that are consistent with state energy policies, are suitable in proposed location(s), and minimize intrusion on natural and cultural resources and values.
- Recognize that new renewable energy projects displace electrical energy provided by fossil fuels and the associated environmental and energy benefits.¹⁰

The CLUP notes that it’s “goals and policies may at times conflict with one another” and directs the Commission, in such cases, to “balance the various policies so as to best achieve its vision for the jurisdiction.”¹¹ Thus, while intervenors may have a more single-purpose mission such as protection of species or habitat, in the case for example of the Maine Audubon Society, or preservation of the Boundary Mountains, in the case of Friends of the Boundary Mountains, the Commission does not have the luxury of carrying out just one objective. Instead, the Commission must balance various and sometimes competing goals and policies, including development, energy independence and climate change goals, while staying true to its statutory

⁷ 12 M.R.S.A. § 681; see also CLUP at 1.

⁸ The Commission’s enabling statute setting forth these guiding principles is attached as Exhibit A.

⁹ CLUP at 2-20.

¹⁰ CLUP at 13.

¹¹ CLUP at 5.

mandate and maintaining the flexibility necessary to accommodate multiple uses on a large land base.

This Project is an example of how that balance is meant to be applied by allowing an important renewable energy project to be located in an area that from a landscape level, both the Legislature and this Commission have determined is appropriate for wind energy development, without compromising other important values.¹² Indeed, this area hosts a premier wind resource, is proximate to transmission infrastructure, is in an actively managed working forest and is located away from the jurisdiction's remote core yet sufficiently distant from populated areas so as to avoid conflicts with residential uses. Simply put, from a planning perspective, the site represents an optimal location for wind energy development.

Finally, the Wind Energy Act, which necessarily informs the Commission's consideration of this Project and application of its review criteria, similarly supports approval of this Project. The following specific provisions in the Wind Energy Act are of particular relevance:

- Identification of areas within LURC jurisdiction where wind development is "most compatible with existing patterns of development and resource values when considered broadly at a landscape level," and "*encouraging* the siting of wind energy developments" in those areas.¹³ This Project is located entirely within such an area.
- Wind energy resources of the State constitute a valuable indigenous and renewable energy resource and wind energy development makes a significant contribution to the general welfare of the citizens of the State.¹⁴
- A significant increase in wind energy generation in the State over the next decade is a key element of state and regional strategies to increase energy independence and security and reduce greenhouse gas emissions and other air pollution emissions.¹⁵

¹² A discussion of the ways in which the Project is consistent with the principal values and goals of the CLUP is set forth in the April 21, 2010 Pre-Filed Direct Testimony of J. Selser.

¹³ 35-A M.R.S.A. § 3402(2) (emphasis added).

¹⁴ 35-A M.R.S.A. § 3402(1).

¹⁵ P.L. 2007, ch. 661.

- It is the policy of the State that, in furtherance of the [goals for wind energy development] its political subdivision, agencies and public officials take every reasonable action to encourage the attraction of appropriately sited development related to wind energy.¹⁶

In short, the Wind Energy Act provides a clear directive to State agencies, including LURC, to facilitate wind energy development in the expedited permitting area unless there are *overriding* environmental or other public values requiring protection and that otherwise render the site inappropriate for development. This same concept has been adopted by the Commission and is reflected in the CLUP.¹⁷

No development is without impacts. As set forth in Sections III and IV below, however, the impacts here have been minimized and are significantly reduced from the original Project layout, have been found to be acceptable by the State review agencies, and are consistent with what is allowed under applicable law and what has occurred in connection with other permitted activities. In short, there are no overriding values that outweigh the determination that this is not only an appropriate but an excellent site for wind power development.

II. THE KIBBY EXPANSION PROJECT WILL RESULT IN SUBSTANTIAL ENERGY, ENVIRONMENTAL AND ECONOMIC BENEFITS TO THE PEOPLE OF MAINE

It has been determined as a matter of law that there are substantial energy and environmental benefits associated with wind energy development, including this Project.

Specifically, the Wind Energy Act states that:

Wind energy displaces electrical energy provided by other fossil fuel or nuclear fission, thereby avoiding air pollution, waste disposal problems and hazards to human health from emissions, waste and by-products associated with these forms of electrical energy generation.¹⁸

¹⁶ 35-A M.R.S.A. § 3404(1).

¹⁷ See CLUP at 13 (energy resources goals).

¹⁸ 35-A M.R.S.A. § 3402(1).

To avoid the technical and policy debates that plagued prior permitting proceedings, the Wind Energy Act provides that the reviewing agency, here LURC, “shall presume that an expedited wind energy development provides energy and emissions-related benefits” set forth in the Act and noted above.¹⁹ This concept is reflected in the CLUP, which specifically recognizes that “renewable energy displaces fossil fuels and thus carries benefits such as reducing the state’s dependence on imported fuels, improving environmental quality, enhancing state and regional security, and making progress toward meeting the state’s renewable energy and greenhouse gas reduction objectives.” The CLUP goes on to state that “[t]hese policies should help to provide a more predictable framework for evaluating utility-scale renewable energy projects, both within and outside the expedited permitting area.”²⁰ Accordingly, there can be no dispute that the Project will provide energy and environmental benefits.

The Project will also result in substantial economic benefits, which advances the Commission’s broad goal to “enhance the living and working conditions of the people of Maine and property owners and residents of the unorganized and deorganized townships.”²¹ The Project will result in the following economic benefits to the people of Maine, including the property owners and the residents in the areas most proximate to the Project:

- Several hundred construction jobs and the indirect economic benefits associated with such construction activity.
- Property taxes estimated at \$400,000 per year or approximately \$10 million over the life of the Project.
- State income tax revenues of approximately \$13 million over a 25-year period.

¹⁹ 35-A M.R.S.A. § 3454.

²⁰ CLUP at 194.

²¹ CLUP at 5; see also CLUP at 187 (recognizing the economic benefits of wind energy development).

- \$33,000 per year in a community benefits package to the Town of Stratton (\$825,000 over 25 years).
- \$110,000 payment to the Maine Department of Labor to support green job education and training in Franklin County.
- \$110,000 toward land conservation and trail acquisition in Franklin County.
- \$75,000 payment to a fund to be jointly administered by the Maine Historic Preservation Commission and the Arnold Expedition Historical Society to further the preservation and continued public use and awareness of the Arnold Trail.²²

These economic benefits come at a critical time, and the Commission heard directly from the many residents and businesses in the Stratton area who have benefitted from the Kibby Project construction and who pleaded with the Commission to approve this Project so that local economic growth can continue.²³ In contrast, most of the opposition has come from people who live outside the Project area and their testimony was largely ideological and focused on objections to wind power generally, as opposed to concerns with site-specific impacts.

III. THE ENVIRONMENTAL RESOURCE IMPACTS OF THE KIBBY EXPANSION PROJECT HAVE BEEN MINIMIZED, ARE NOT UNDUE, AND ARE ALLOWED UNDER THE COMMISSION'S REGULATIONS AND THE WIND ENERGY ACT

There is not and never has been a requirement that development have no adverse impacts to natural communities such as the Fir-heart-leaved Birch Subalpine Forest (“subalpine community” or “subalpine forest”), or habitat for species of special concern such as the Bicknell’s thrush. To the contrary, and as expressly recognized in the section of the CLUP discussing the Commission’s approach to plant and animal habitat resources, the Commission’s

²² August 16, 2010 Amendment to Reduce Project size from 45 MW to 33 MW (“Amended Application”) at 2.

²³ See Transcript of May 11, 2010 Public Hearing Evening Session at 17-19, 25, 63-67, 71-73; Transcript of May 12, 2010 Public Hearing Evening Session at 41, 43.

standards “are designed to *minimize* the potential adverse impacts of development and other land uses while *allowing a reasonable amount of use.*”²⁴ TransCanada has minimized adverse impacts to both the subalpine forest and the Bicknell’s thrush habitat including, most recently, when it modified the Project to eliminate the southern four turbines and associated elements, including approximately 1.5 miles of ridge road and 1.4 miles of collector line. The remaining impacts are not undue, are acceptable to State review agencies, and are consistent with the Commission’s charge of allowing reasonable use of the resource.

A. The Subalpine Community On The Sisk Ridgeline Will Retain Its Overall Quality And Continue To Be One Of The Larger Documented Examples In The State

The subalpine community on Sisk Mountain is an example of a plant community found in the higher elevations throughout Maine. It is ranked S3 by the Maine Natural Areas Program (MNAP). Such a ranking means that the forest community is rare in Maine (20-100 occurrences), but is in contrast to an S2 ranking (imperiled because of rarity) or an S1 ranking (critically impaired because of extreme rarity). This distinction is important because the Commission does not regulate S3 areas in the same manner as S1 or S2 areas, which are subject to specific standards under Chapter 10.²⁵ Based on the mapping and field work conducted in connection with the Project, the community has been determined to be 358 acres in size and was given an overall quality rank of B (good) by MNAP.²⁶ The 11-turbine layout will leave intact 313 acres of contiguous subalpine community.²⁷ As confirmed by MNAP, the remaining intact

²⁴ CLUP at 235 (emphasis added).

²⁵ See Chapter 10.25, E(2)(a) (if any portion of the development includes S1 or S2 natural communities or plant species, the applicant shall demonstrate that there will be no undue adverse impact on the community). There is no standard calling out similar protection for S3 communities.

²⁶ The ranking is based on an assessment of the quality condition of the community, the size of the community, and the landscape context. See, e.g., October 12, 2010 MNAP Comments.

²⁷ Amendment Application at Section 4 and Exhibits 3 and 4.

community will be the 12th largest documented example of the community in the State and will retain its overall quality rank of B.²⁸

Although slightly reduced from its original size, the remaining community will be more than twice as large as six of the nineteen documented occurrences.²⁹ Importantly, MNAP has not objected to the remaining impacts or requested – as it did previously – that TransCanada modify any Project elements.

There can be no legitimate dispute that TransCanada has met its burden of minimizing impacts to this community. As originally proposed, MNAP estimated that the Project would have impacted approximately 80 acres.³⁰ The ridge road and southern four turbines divided the community into a northern area of 62 contiguous acres and a southern area of 183 contiguous acres. Additionally, MNAP noted that Turbine 11 fragmented the northern area and requested that TransCanada remove it to reduce fragmentation.³¹ TransCanada moved Turbine 11, which reduced direct and indirect impacts, including fragmentation. As a result of that change, the 15-turbine layout had direct and indirect impacts of 102 acres and left intact two large blocks of 183 contiguous acres and 73 contiguous areas.³² Following the public hearing and deliberations by the Commission, TransCanada further modified the Project by eliminating the southern four turbines and associated ridge road and electrical collector line. This resulted in a further reduction of clearing within the subalpine community. Specifically, direct impacts were reduced

²⁸ See November 1, 2010 MNAP Comments.

²⁹ The rankings of subalpine communities (included in the 10th Procedural Order) was included as Attachment A to the April 21, 2010 Pre-Filed Testimony of D. Publicover. That ranking shows that the existing Sisk community, at 358 acres, is the 11th largest community. The next largest example is the community on Black Nubble (deemed appropriate for wind power development by NRCM), which at 316 acres is essentially equivalent in size to the remaining intact community on Sisk.

³⁰ See February 24, 2010 MNAP comments.

³¹ Id.

³² See Amendment Application at section 4.

almost in half from 39 acres to 20 acres, and indirect impacts due to fragmentation and edge impacts were reduced by almost two thirds, from 63 acres to 25 acres. The total impact to the subalpine community, including both direct and indirect impacts, has been reduced to 45 acres.³³

Although the Consolidated Parties argue that the impacts to this community are “undue,” their position is not based on sound science or policy, and is at odds with MNAP’s conclusions and existing Commission precedent. It is undisputed that there are at least 40,000 acres of mapped subalpine forest in the State and substantially more that is not mapped, including at least 3,000 acres in the immediate area of Sisk Mountain.³⁴ Indeed, the entire community on Sisk was not previously documented until it was mapped by TransCanada in connection with this Project.³⁵ The existence of other as yet unmapped communities was confirmed by MNAP’s most recent comments, which reference their mapping of additional larger areas of this forest type.³⁶ The northern eight turbines would impact, by the Consolidated Parties’ own methodology, approximately 15 acres of the subalpine forest community. They concede that this impact is not “undue.” Using the Consolidated Parties’ methodology for determining indirect impacts associated with the edge effect, i.e., utilizing the larger 250-foot buffer, the total impact of the 11-turbine project to the subalpine community is approximately 55 acres. As depicted visually on Exhibit A, this is still less than 0.2% of the mapped subalpine community in the State, and considerably less than 0.2% when the existing unmapped subalpine forests are taken into account.

³³ The amounts reflected in MNAP’s comments differ slightly. Because TransCanada’s calculations are more conservative, they are used here.

²⁸ April 21, 2010 Pre-Filed Testimony of D. Hudson at 2; May 12, 2010 Hearing Transcript at 92; see also April 21, 2010 Pre-Filed Testimony of D. Publicover at 3; February 24, 2010 MNAP Comments at 1.

³⁵ See April 8, 2010 Response by TransCanada to MNAP Comments at 2.

³⁶ See November 1, 2010 MNAP Comments.

What follows are additional specific examples of sound scientific and policy reasons that the minimal subalpine forest community impacts of the Project are both acceptable and consistent with existing precedent.

- The example of the subalpine forest on Sisk is not exemplary.³⁷ Dr. Hudson, who is the person responsible for mapping most of the occurrences of this community in Maine, concluded that the area on Sisk was not a unique, outstanding or rare example of this community.³⁸
- The level of impact associated with the Project will not change the overall quality ranking of the community, has a negligible impact on its size ranking, and will have no measurable effect on its ability to support species dependent on this type of habitat if the impacts of climate change come to fruition (and this project will reduce carbon emissions that contribute to climate change).³⁹
- The State in its Comprehensive Wildlife Conservation Strategy concluded that the subalpine forests in Maine are “relatively stable in overall extent and are extensive on Maine’s higher mountains,” and “recreation and windpower generation could locally degrade other minor sites, but these uses are unlikely to present a significant threat to the integrity of these forests.”⁴⁰
- The Commission has issued many permits for timber harvesting above 2,700 feet, which have resulted in more significant impacts to subalpine forests than are proposed here.⁴¹
- The Maine Bureau of Parks and Lands recently applied for and received a permit for timber harvesting within a mapped subalpine forest community.⁴²

³⁷ April 21, 2010 Pre-Filed Testimony of D. Hudson at 2; October 12, 2010 MNAP Comments at 1.

³⁸ April 21, 2010 Pre-Filed Testimony of D. Hudson at 4-7.

³⁹ Using the 250-foot buffers advocated by the Consolidated Parties still results in only 55 acres of impact to the community, leaving intact over 300 acres of subalpine forest. October 12, 2010 Comments of the Consolidated Parties at 5. Thus, following the Consolidated Parties’ methodology, the community would still retain its overall rank of B and, at 303 acres, would still be the 11th largest documented example of the community in the State.

⁴⁰ TransCanada Hearing Exhibit 5.

⁴¹ May 24, 2010 Post-Hearing Testimony of D. Valleau at Tab C, Exhibit D; Didisheim ZP 702 Testimony at 2; see also May 12, 2010 Public Hearing Transcript at 230 (D. Publicover acknowledging impacts to subalpine forest due to commercial timber harvesting).

⁴² May 24, 2010 Post-Hearing Testimony of D. Valleau at Tab C, Exhibit E.

In summary, the impacts to the existing S3 community on Sisk are not undue because (i) TransCanada has not only implemented the avoidance measures requested by MNAP (i.e., with respect to moving Turbine 11), but has further minimized impacts by reducing the Project from 15 to 11 turbines and eliminating fragmentation, (ii) just over 10% of the community will be impacted, leaving intact 313 contiguous acres of subalpine forest, (iii) the community will retain its overall ranking of good and will be the 12th (but virtually tied for 11th) largest documented community in the State, (iv) MNAP has not objected to the impacts or requested that additional Project elements be eliminated or moved, (v) the ecological function of the community will not be impaired, and (vi) the impacts are in line with other impacts allowed by LURC.

B. The Impacts To Bicknell's Thrush Habitat Have Been Significantly Reduced And Are Not Undue

TransCanada has taken substantial steps to minimize impacts to Bicknell's thrush habitat and, as a result, the Project will impact only 5 acres out of an undisputed 83,000 acres of Bicknell's habitat in Maine, or less than 0.006% of the available breeding habitat in Maine. This does not take into account the additional 90,000 acres of habitat provided by regenerating clear cuts, which National Audubon Society, the applicant's expert Dr. Peter Vickery, and NRCM's previous expert, Dr. Jeff Wells, all agree provides habitat for Bicknell's thrush. *Simply put, impacts to less than 0.006% of the habitat for a species that is neither endangered nor threatened is not undue, as every recognized expert who has commented on the issue in this or other wind power proceedings in Maine has testified.*

While Maine IF&W currently lists 46 species as either threatened or endangered,⁴³ Bicknell's thrush is not included on that list. Indeed, there are no statutory or regulatory provision under Maine or Federal law that provide any protections for Bicknell's thrush. Although Bicknell's thrush is listed as a special of special concern, it is one of 52 bird species in Maine on this list, along with species such as the tree swallow, veery, and American redstart. None of these species are subject to any specific regulatory protection. Moreover, while Maine Audubon testified that inclusion on the list of Species of Special Concern was a "precursor" to inclusion on the threatened or endangered species list,⁴⁴ this assertion is simply untrue. In fact, the record is clear that when IF&W recently reviewed which species should be added to the list of endangered or threatened species in Maine (in 2007), IF&W specifically declined to add Bicknell's thrush to the list.⁴⁵ In addition to IF&W, other experts have concluded that the Bicknell's thrush population is strong (an estimated global population of 95,000 to 126,000 birds) and there is extensive breeding area available in Maine (spread over 83,000-181,000 acres in Maine on more than 60 peaks).⁴⁶

Although Bicknell's is not afforded any special protection in Maine, TransCanada has worked closely with IF&W to properly identify potential habitat and to ensure that the Project impacts were minor. For example, the survey protocols were approved in advance by Maine

⁴³ MDIFW Endangered Species List, http://www.maine.gov/ifw/wildlife/species/endangered_species/state_list.htm

⁴⁴ May 12, 2010 Hearing Transcript at 196.

⁴⁵ When this issue was raised in the Redington proceeding, Maine IF&W noted that Bicknell's thrush "is not being recommended for listing as Endangered or Threatened in Maine during MDIFW's current review largely because of its population size and the large number of sites where it occurs in Maine." Responses of MDIFW Wildlife Biologist Thomas Hodgman (Aug. 14, 2006) (contained in TransCanada Post-Hearing Submission, Testimony of D. Valteau at Tab C, Exhibit C) (emphasis added).

⁴⁶ April 21, 2010 Pre-filed Direct Testimony of P. Vickery at 4; Pre-filed Direct Testimony of Dr. Jeffrey Wells in ZP 702 at 3 (contained in TransCanada Hearing Exhibit 13); Conservation Action Plan For Bicknell's Thrush (attached to Consolidated Parties' October 12, 2010 comments) at 6.

IF&W (and are consistent with the protocols approved by Maine Audubon in the Kibby Project).⁴⁷ The results of the surveys indicate that there is approximately 88 acres of existing Bicknell's habitat in the immediate vicinity of the Sisk ridgeline where the Project will be located.⁴⁸ Based on these results, road alignments and turbine locations were moved out of the habitat to the maximum extent practicable and to the fringes of the habitat where impacts could not be entirely avoided.⁴⁹ This has maintained relatively large, contiguous blocks of unfragmented habitat.

Much of the layout optimization was done in response to feedback from consultation with IF&W. IF&W expressed concern with the original location of Turbine 11 and, as a result, TransCanada moved that turbine to an area acceptable to IF&W.⁵⁰ That modification reduced the direct impacts from 12.4 acres to 8 acres.⁵¹ Following the public hearing and Commission deliberations, TransCanada further modified the Project by eliminating the southern four turbines and associated ridge road and collector line. As a result, the direct impacts were further reduced from 8 acres to 5 acres.⁵² In its comments on the modified layout, IF&W notes that the elimination of the southern four turbines has "significantly reduced" the impacts to breeding Bicknell's thrush habitat and the reduction in the Project footprint "not only reduces habitat loss, but also reduces the fragmentation of habitat currently occupied by Bicknell's thrush, as well as

⁴⁷ April 21, 2010 Pre-filed Direct Testimony of C. Cinnamon and D. Valteau at 22.

⁴⁸ April 21, 2010 Pre-filed Direct Testimony of P. Vickery at Figure 2.

⁴⁹ April 21, 2010 Pre-filed Direct Testimony of C. Cinnamon and D. Valteau at 7, 23.

⁵⁰ April 21, 2010 Pre-filed Direct Testimony of C. Cinnamon and D. Valteau at 23.

⁵¹ April 21, 2010 Pre-field Direct Testimony of P. Vickery at 9.

⁵² Amended Application, Tab 5.

any future habitat that may occur within the Fir-Heart-leaved-birch Subalpine Forest identified on-site.”⁵³

With regard to the amount of available habitat in Maine, it is undisputed that there is, at a minimum, 83,000 acres of breeding habitat for Bicknell’s thrush in Maine and that the habitat is overall well protected.⁵⁴ Moreover, when regenerating clear cuts, ski trails, and other similar areas are considered, the 83,000 acres of Bicknell’s habitat in Maine likely more than doubles to more than 170,000 acres.⁵⁵ While Maine Audubon did not agree that the species uses regenerating clearcuts, their skepticism on this point is refuted by all experts who have actually studied Bicknell’s thrush, including the National Audubon Society, Chris Rimmer, the American Bird Conservancy, and NRCM’s previous Bicknell’s expert, Dr. Jeff Wells, all of whom have concluded that this species breeds both in naturally degraded areas above 2,700 feet AND regenerating clear cuts and other areas disturbed by human activities.⁵⁶ Maine Audubon’s skepticism is also contradicted by the Conservation Action Plan for Bicknell’s Thrush (the

⁵³ October 14, 2010 IF&W Comments at 1.

⁵⁴ Vickery Testimony at 4; This is consistent with recent findings by Dr. Jeff Wells, NRCM’s Bicknell’s expert in the Black Nubble proceeding, that “much of the [Bicknell’s] breeding range in North America is within existing protected areas. . . .” Wells ZP 702 Testimony at 3.

⁵⁵ Wells ZP 702 Testimony at 7-8.

⁵⁶ The National Audubon Society has concluded that “Bicknell’s Thrush has taken advantage of areas disturbed by timber harvesting, ski trail and road construction, and other human activities.” National Audubon Society Bicknell’s Thrush Watchlist at 1 (contained in TransCanada Hearing Exhibit 12). Maine IF&W Wildlife Biologist Tom Hodgman, in the Commission’s proceeding regarding the proposed wind power development on Redington Mountain, noted that “we know this thrush readily uses mountains with intense ski area development.” May 24, 2010 Valteau Post-Hearing Testimony at Tab C, Exhibit C. Jeff Wells, NRCM’s Bicknell’s expert in the Black Nubble proceeding, stated that “[i]n Maine and adjacent Canadian provinces, Bicknell’s Thrush have been found with increasing frequency in regenerating clear cuts typically dominated by balsam fir.” Wells ZP 702 Testimony at 7-8. The Partners in Flight study, also cited by Ms. Gallo, concluded that Bicknell’s thrush use both “dense and stunted conifers at high elevation” and “regenerating industrial forest.” Partners in Flight NA Landbird Conservation Plan at 43 (contained in TransCanada Post-Hearing Submission at Tab E, Exhibit 9).

“IBTCG Report”), upon which they rely.⁵⁷ Specifically, the IBTCG Report expressly states that Bicknell’s thrush occupy regenerating stands and often breeds in such areas.⁵⁸ Indeed, the use of regenerating clear cuts is so extensive that the IBTCG Report notes that the recent reduction in industrial logging (along with recent attempts to suppress forest fires) in Nova Scotia and New Brunswick is to blame for a predicted future reduction in available habitat for Bicknell’s thrush in Eastern Canada.⁵⁹

Finally, Bicknell’s thrush use of regenerating clear cuts for breeding is an established fact in the site area. TransCanada has identified actual breeding Bicknell’s thrush in regenerating clear cuts, below 2,700 feet, during surveys related to the Kibby Wind Power Project.⁶⁰

Although construction of the Project will impact some amount of Bicknell’s thrush habitat, as noted above, TransCanada has taken steps, as recommended by IF&W, to minimize those impacts, and IF&W has not requested additional changes or otherwise objected to the remaining impacts. And while Maine Audubon and TransCanada may disagree on the precise calculation of impacts to Bicknell’s habitat, the evidence demonstrates that irrespective of how the impact is calculated, it is a biologically insignificant impact to the available habitat in Maine.⁶¹

⁵⁷ IBTCG Report (attached to Consolidated Parties’ October 12, 2010 comments).

⁵⁸ IBTCG Report p. 16, Habitat/Breeding Section p. 5 (see also TransCanada October 22, 2010 rebuttal comments at 4-5).

⁵⁹ IBTCG Report at 12.

⁶⁰ May 24, 2010 D. Valleau Post Hearing Testimony at 1-2 and Exhibit B.

⁶¹ Moreover, any notion that the Sisk ridgeline is an “island in the sky” for Bicknell’s thrush is without merit. First, the 83,000 acres of undisputed habitat in Maine is largely all “island in the sky” habitat – above 2,700 feet – and thus there is nothing unique about the Sisk ridgeline. Second, Bicknell’s thrush has been in existence for 750,000 years, and its habitat has been subject to significant alteration through numerous ice ages and times of higher global temperatures, with the species continuing to exist. We are left, therefore, with the simple fact that the Project is only going to impact 0.006% of the undisputed habitat in Maine.

With the exception of Ms. Gallo, who conceded she was not an expert on Bicknell's thrush and that her testimony was based on reviewing the work of others,⁶² every expert is in agreement that the level of impact at issue here, whether 5 acres as determined by TransCanada or 15 acres as calculated by the Consolidated Parties, is not undue. Specifically:

- Tom Hodgman (IF&W Wildlife Biologist)/Redington **300 acres** of direct impacts on Redington: **NO** undue adverse effect⁶³
- Dr. Jeff Wells (NRCM Bicknell's Expert)/Black Nubble **64 acres** of direct impacts on Black Nubble: **NO** undue adverse effect⁶⁴
- Dr. Peter Vickery/Kibby Expansion Project **8 acres** of direct impacts on Sisk: **NO** undue adverse effect⁶⁵

Finally, in considering whether the impact to less than 0.006% of the available habitat in Maine (or less than 0.003% when regenerating clear cuts are taken into account) is "undue," the Commission cannot ignore the fact that the loss of overwintering habitat, not breeding habitat in Maine, is the greatest threat to the species' long-term viability. For example, Chris Rimmer has concluded that,

Because the species' winter habitats are more geographically concentrated and limited in extent than its [northern] breeding habitats, and under more immediate threat of loss or degradation,

⁶² May 12, 2010 Hearing Transcript at 213-214.

⁶³ May 24, 2010 Post-Hearing Testimony of D. Valteau, Tab C (comments of Tom Hodgman).

⁶⁴ TransCanada Hearing Ex. 13. Dr. Well's concluded that the loss of 64 acres not only was not undue, it was "inconsequential" to the species. *Id.* (Wells' Testimony p. 3).

⁶⁵ April 21, 2010 Pre-Filed Direct Testimony of P. Vickery at 8. The evidence in the record overwhelmingly support's Dr. Vickery's conclusions, including evidence submitted by the Consolidated Parties. Dr. Vickery's work spans 30 years of study devoted to Bicknell's Thrush. *Id.* at 2-3 .

the [International Bicknell's Thrush Conservation Group] believes that their conservation is of utmost priority.⁶⁶

As the northern breeding habitat is largely protected, there is no debate among Bicknell's experts that threats to Bicknell thrush's wintering habitat is the primary threat to this species.⁶⁷

In summary, the impacts to Bicknell's habitat are not undue because (i) TransCanada has not only implemented the avoidance measures requested by IF&W (i.e., with respect to moving Turbine 11), but has further reduced impacts by eliminating the southern four turbines and associated ridge road and collector line, (ii) the modified Project impacts less than 0.006% of the undisputed 83,000 acres of habitat available in Maine, most of which is well-protected, (iii) when regenerating clear cuts are taken into consideration, the Project impacts substantially less than 0.006% of the available habitat, (iv) the primary threat to the species is loss of overwintering habitat and not breeding habitat in the northeast, (v) IF&W has not identified any concerns with or raised any objections to remaining impacts to Bicknell's habitat, and (vi) every acknowledged expert is in agreement that the impacts here are not undue.

IV. THE EVIDENCE ESTABLISHES THAT VISUAL IMPACTS OF THE PROJECT ARE NOT UNDUE

The Legislature has found that wind energy development "is unique in its benefits to and impacts on the natural environment [and] makes a significant contribution to the general welfare of the citizens of the State,"⁶⁸ and that, given the realities of constructing grid-scale wind power projects, there are going to be necessary, but acceptable, visual impacts from this type of development. Here, the applicant's visual expert, Jean Vissering, and the Commission's

⁶⁶ Vermont Center for Ecostudies Letter to TransCanada re: Bicknell's Thrush, attached as Tab G, 1 to TransCanada's May 24, 2010 Post-Hearing Submission.

⁶⁷ Wells ZP 702 Testimony at 3, 9; April 21, 2010 Pre-filed Direct Testimony of P. Vickery at 5.

⁶⁸ 35-A M.R.S.A. § 3402 (1).

independent visual expert, Dr. James Palmer, each concluded that the Project complies with the applicable scenic review criteria. There is no expert testimony that contradicts those well-reasoned and supported conclusions. Moreover, neither the Arnold Expedition Historical Society, nor the Maine Historic Preservation Commission, each of which is charged with protecting or advancing interests associated with the Arnold Trail, has objected to the Project. Likewise, the Bureau of Parks and Lands (“BPL”), which owns land around Chain of Ponds, has not objected to the Project or its visual impacts on Chain of Ponds or state lands around Chain of Ponds. To the contrary, BPL commented that, “BPL offers no reason for rejection of the pending revised Kibby II application . . . [and] the scenic and recreational impacts of the revised Kibby II proposal do not jump out as troublesome to BPL.” In short, with the exception of the personal testimony of a few individuals associated with groups opposed to the Project, *all of the record evidence establishes that the Project will not have an unreasonable adverse impact on scenic character or existing uses related to scenic character.*

A. The Wind Energy Act Establishes Specific Scenic Review Standards

The Legislature has established a focused scope of review using a defined methodology that applies to wind energy development proposals in the expedited permitting area. Pursuant to the Wind Energy Act, the scope of review for impacts to scenic character is limited to expressly identified “scenic resources of state or national significance,” and seeks to determine whether a proposed project “significantly compromises views” from these resources “such that the development has an unreasonable adverse effect on scenic character or existing uses related to

scenic character” of these resources.⁶⁹ Unlike scenic impacts analyses for other types of development, the Wind Energy Act provides a specific set of standards for assessing scenic impacts to the identified resources. Those standards require that the Commission consider the significance of the potentially affected scenic resource, the character of the surrounding area, the expectations of the typical viewer, the extent, nature and duration of potentially affected public uses of the scenic resource, and the potential effect of views of the turbines on the public's continued use and enjoyment of the resource.⁷⁰

The Wind Energy Act further mandates that “[a] finding by [the Commission] that the development’s generating facilities are a highly visible feature in the landscape,” is not by itself a “sufficient basis for a determination that the proposed wind development has an unreasonable adverse effect on scenic character or existing uses related to scenic character.”⁷¹ Additionally, there is a presumption that visual impacts to areas farther than three miles from the Project are less significant and do not require a visual impact assessment.⁷²

B. The Modified Project Satisfies the Applicable Review Criteria, and No Expert Has Concluded Otherwise

In his review comments on the 15-turbine Project, Dr. Palmer did not quantify the visual impact of the Project on each of the scenic resources of state or national significance nor provide

⁶⁹ 35-A M.R.S.A. § 3452 (1). This section of the Wind Energy Act further provides that no other determination of harmonious fit regarding scenic character or existing uses related to scenic character is required.

⁷⁰ 35-A M.R.S.A. § 3542 (3).

⁷¹ 35-A M.R.S.A. § 3452 (3).

⁷² On its own initiative, TransCanada submitted a visual impact assessment (Aesthetic Impact Assessment, Kibby Expansion Wind Power Project [hereinafter “AIA”]) that included an analysis of the impacts to all scenic resources of state or national significance within an 8-mile area (the limit for which such an assessment may be required). TransCanada’s application and hearing testimony addressed those resources and the Project’s potential impacts on them. Application Attachment A.1.

an overall opinion as to scenic impact.⁷³ In contrast, in his review of the 11-turbine Project, Dr. Palmer independently evaluated the Project's impact on scenic resources and provided an expert opinion on compliance with the applicable review criteria. For each scenic resource, Dr. Palmer assigned a ranking pursuant to each of the seven review criteria (ranging from a low of zero to a high of three), and an overall assessment of scenic impact (ranging from no impact to high impact).⁷⁴ Long Pond and Bag Pond had an overall impact of medium, which Dr. Palmer describes as adverse, but typical of wind energy development and within the range of impacts contemplated under the Act.⁷⁵ The impacts to the remaining resources ranged from no impact (Round Pond, Lower Pond, Natanis Pond Overlook, and Sarampus Falls Rest Area) to low (the Arnold Trail and the Dead River) or low- medium (Arnold Pond, Crosby Pond, Natanis Pond, and Kibby Stream). No resource had a high overall scenic impact.⁷⁶ Thus, Dr. Palmer concluded that the modified Project meets the scenic review criteria set forth in the Wind Energy Act and that govern this proceeding.

Jean Vissering, the applicant's expert, similarly determined that the Project would not have an unreasonable adverse impact on scenic character or existing uses relating to scenic character and therefore meets the scenic review criteria set forth in the Wind Energy Act.⁷⁷ She prepared an Aesthetic Impact Assessment, which identified and characterized the scenic resources of state or national significance within eight miles of the Project, included viewshed maps and photographs of the existing area, evaluated the scope of Project visibility on scenic

⁷³ See April 16, 2010 Review of the Kibby Expansion Wind Project Aesthetic Impact Assessment, James F. Palmer ("April 16, 2010 Palmer Review Comments").

⁷⁴ October 2, 2010 Palmer Review Comments at 3-7.

⁷⁵ October 2, 2010 Palmer Review Comments at 4 and 7.

⁷⁶ October 2, 2010 Palmer Review Comments at 4 and 7.

⁷⁷ See April 21, 2010 Pre-Filed Testimony of J. Vissering.

resources of state or national significance and included simulations reflective of maximum Project visibility on the resource, and evaluated the Project's compliance with the standards set forth in the Wind Energy Act.⁷⁸ No other visual expert has provided testimony or comments on the Project. Thus, the undisputed expert testimony is that the Project will not have an unreasonable adverse effect on scenic character or existing uses related to scenic character.

For the reasons summarized below, the visual impacts of the Project are reasonable and well within what is contemplated and acceptable under the law.

Arnold Trail.

- Dr. Palmer concluded that overall use of the Arnold Trail was low and that there was no indication that scenic quality plays a significant role in the historical experience of the Arnold Trail. His conclusion is that the overall scenic impact to the Arnold Trail is low.⁷⁹
- Ms. Vissering concluded that the presence of turbines in portions of the Arnold Trail viewshed was unlikely to materially diminish the historical experience along the trail, and that the 15-turbine project would not “have an unreasonable adverse effect on the scenic character of the Arnold Trail.”⁸⁰
- Bureau of Parks and Lands stated its conclusions that views from the water, including the portion of the Arnold Trail that occupies that geography, “are neither unreasonable nor unduly adverse.”⁸¹
- Although the Maine Historic Preservation Commission made a finding of adversity pursuant to **federal law** (which is distinct from LURC's undue adverse standard) they have chosen not to offer any opinion on whether the visual impacts satisfy LURC's review criteria.⁸² Moreover, TransCanada has proposed and MHPC has agreed to a mitigation package pursuant to federal law that includes \$50,000 in seed money for acquisition of land along the Arnold Trail route and an additional \$25,000 in funds for acquisition of historic photographs and development of a website that creates

⁷⁸ See AIA and April 21, 2010 Pre-Filed Testimony of J. Vissering.

⁷⁹ Palmer Comments at 5-7.

⁸⁰ April 21, 2010 Pre-filed Testimony of J. Vissering at 35-37.

⁸¹ BPL Comments at 1.

⁸² See September 27, 2010 Comments from Maine Historic Preservation Commission.

public access to and information about the collection.⁸³

- The Arnold Expedition Historical Society, which is dedicated to the discovery and dissemination of information regarding Arnold's Expedition, does not object to the project.⁸⁴
- No visual expert has testified that the visual impacts of the original 15-turbine layout, let alone the modified 11-turbine layout, on the Arnold Trail are undue or do not meet LURC's review criteria.

Kibby Stream.

- Dr. Palmer concluded that the overall impacts to Kibby Stream are Low-Medium, due principally to potential views of the turbines within one mile, at which distance the turbines would seem dominant, but concluded that even those views are not undue.⁸⁵ To the extent the public has a legal right of access to the entirety of Kibby Stream, the portion of Kibby Stream within the first several miles of the Project is a heavily forested riparian zone and therefore project visibility would be minimal.⁸⁶
- It is undisputed that the principal location along Kibby Stream with Project visibility is an area heavily used for parking and storage of forest management equipment, and is of low scenic quality.⁸⁷ As part of the Kibby Project, TransCanada conducted on-site user surveys of individuals using the project area, including specifically fishermen. The overwhelming majority of recreational users indicated that the proposed Kibby Project would either have a positive impact or no impact on their recreational experience.⁸⁸ The user surveys support Dr. Palmer's and Ms. Vissering's conclusions that the Project will not result in an undue impact on users of Kibby Stream.
- No visual expert has testified that the visual impacts of the 15-turbine project, let alone the 11-turbine project, to Kibby Stream are unreasonable or fail to meet LURC's visual review criteria, and there is no evidence to support a contrary conclusion.

Crosby and Arnold Ponds.

⁸³ See October 12, 2010 Comments from Maine Historic Preservation Commission enclosing Section 106 Mitigation Agreements.

⁸⁴ See October 20, 2010 e-mail from S. Clark to M. Spencer-Famous.

⁸⁵ Palmer Comments at 6-7.

⁸⁶ See TransCanada's October 22, 2010 Rebuttal Comments, Exhibit F (photographs and description of forested riparian zone along Kibby Stream).

⁸⁷ April 21, 2010 Pre-Filed Direct Testimony of J. Vissering at 38.

⁸⁸ See Pre-Filed Testimony of L. Gresock and follow-up information filed in ZP 709 and included as Exhibit G. to TransCanada's October 22, 2010 Rebuttal Comments.

- Views of the modified 11-turbine project are distant, ranging from 6.5-7.5 miles. Dr. Palmer concluded that visual impacts are Low-Medium.⁸⁹
- Views of the Project from Crosby and Arnold Ponds are predominantly of Turbines 1-8, which the Consolidated Parties have concluded are not undue. For example the simulation of views of the original 15-turbine project from Arnold Pond shows up to 10 turbines visible.⁹⁰ The potentially visible turbines are turbines 1-3 and 5-11. The simulation shows turbine 11 in its original location, and since it has been moved downslope, it is no longer visible from Arnold or Crosby ponds. In general, Mount Pisgah blocks views of turbines 9-11. There can be no serious claim that the visual impact of Turbines 1-8 on these two ponds are acceptable, but the visual impact of Turbines 1-11 is unacceptable, nor do the Consolidated Parties press such a claim.
- No visual expert has testified that the visual impacts of the 15-turbine, let alone the 11-turbine project, on Crosby or Arnold ponds are unreasonable or fail to meet LURC's visual review criteria.

Chain of Ponds.

- Chain of Ponds is designated as having outstanding scenic values primarily due to its scenic foreground features, irregular shoreland and excellent water quality rather than for views of distant mountains or other scenery.⁹¹
- Other features contribute to and enhance the overall scenic quality, including Mount Pisgah and the southern peak and flank of Sisk Mountain, both of which are strong focal points that serve to reduce the visual impact of the turbines.⁹²
- There is no visibility of the 11-turbine project on any portion of Round Pond or Lower Pond, and only the tips of the blades from one or two turbines and potentially one turbine hub will be visible from a portion of Natanis Pond some distance from the concentration of public uses near the State-owned campground.⁹³ Thus, it is only limited visibility on the Long Pond and Bag Pond portions of Chain of Ponds that is at issue.

⁸⁹ Palmer Comments at 7; see also April 21, 2010 Pre-filed Direct Testimony of J. Vissering at 32-35.

⁹⁰ See April 21, 2010 Pre-Filed Direct Testimony of J. Vissering, Simulation Viewpoint 8; see also October 12, 2010 Palmer Comments at 2 (showing six and nine turbines visible from Arnold and Crosby ponds); see also May 24, 2010 Post-Hearing Testimony of J. Vissering at 4 (principally the northern turbines visible from Crosby and Arnold Ponds).

⁹¹ Maine State Planning Office Critical Areas program, Maine's Finest Lakes, the Results of the Maine Lake Study (Oct. 1989) at 86.

⁹² April 21, 2010 Pre-filed Testimony of J. Vissering at 9; April 16, 2010 comments of J. Palmer at 18.

⁹³ See Palmer Comments at Table 1; see also April 21, 2010 Pre-filed Testimony of J. Vissering at 25 and Amendment Application at 6.

- Dr. Palmer concluded that the overall scenic impact to Long Pond and Bag Pond portions of Chain of Ponds was medium, that the turbines would not overwhelm the view, and that although there was an adverse impact, it was not undue and was acceptable under the Wind Energy Act.⁹⁴
- Ms. Vissering testified that the visibility from Bag Pond and Long Pond is reduced due to the fact that Mount Pisgah and the southern peak of Sisk Mountain are the more prominent landforms that dominate the view, making turbines along the intervening ridges appear less prominent and lower in elevation.⁹⁵
- No visual expert has testified that the visual impacts of the 15-turbine project, let alone the 11-turbine project, on Chain of Ponds are undue or fail to meet LURC's visual review criteria.

The Consolidated Parties' principal argument is that the visibility of Turbines 9-11 on Chain of Ponds – in particular Long Pond and Bag Pond - are unacceptable. They acknowledge, as they must, that Turbines 1-8 are also visible from these locations. The maximum visibility of the Project on Bag Pond is shown in the visual simulation (Viewpoint 6) included in Ms. Vissering's pre-filed testimony. As shown in that simulation, up to ten turbines are visible, including predominantly Turbines 1-7 and 9. Moreover, removal of the southern four turbines narrows the arc of visibility thereby reducing further the visual impacts. Likewise, the maximum visibility of the project on Long Pond is shown in the visual simulation included in the Amendment Application. The Consolidated Parties acknowledge that the turbines they support will be visible, but that visibility of Turbines 9-11 from Chain of Ponds, transforms the experience from one that meets LURC's visual criteria, to one that does not. They have not, however, provided any evidence – expert or otherwise – to support that improbable conclusion, which on its face stretches credulity and is contradicted by the expert testimony in this proceeding.

⁹⁴ Palmer Comments at 6-8.

⁹⁵ April 21, 2010 Pre-Filed Testimony of J. Vissering at 14, 17, 25.

CONCLUSION

Although there are a number of findings that the Commission must make in this proceeding, the following key findings are supported by substantial evidence and demonstrate that the Project meets all applicable review criteria.

Subalpine Forest

- Using the Consolidated Parties' methodology, the Project will impact less than 0.2% of the mapped subalpine community in the State, and considerably less than 0.2% when the existing unmapped subalpine forests are taken into account.
- TransCanada has altered the Project footprint in response to comments from MNAP, and MNAP is not recommending any further reductions in impacts to the mapped subalpine community.
- The relocation of turbine 11 and the elimination of the southern four turbines has significantly reduced the impact on the subalpine area and eliminated MNAP's prior concern regarding fragmentation.
- The 11-turbine layout will leave intact 313 acres of contiguous subalpine community on the ridgeline and, as confirmed by MNAP, this community will be the 12th largest documented example of the community in the State and will retain its overall quality rank of B.
- The loss of less than 0.2% of this community (a conservative figure) is not be "undue" impact.

Bicknell's Thrush

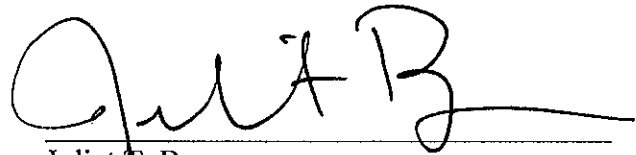
- It is undisputed that there is, at a minimum, 83,000 acres of breeding habitat for Bicknell's thrush in Maine and the Project will impact, at most, 0.006% of this habitat.
- Bicknell's thrush utilize regenerating clear cuts for breeding, and the use of regenerating clear cuts for breeding is an established fact in the Project area; this adds an additional 90,000 acres of habitat in Maine, according to the applicant's expert and NRCM's Bicknell's expert.
- The 83 areas of remaining mapped habitat on the Sisk ridgeline is viable and IF&W has not raised any further concerns about its viability.
- The loss of 0.006% of habitat (0.003% if regenerating clear cuts are included) is not be an "undue" impact.

Visual Impacts

- The Bureau of Parks and Lands (“BPL”) concluded that, “BPL offers no reason for rejection of the pending revised Kibby II application . . . [and] the scenic and recreational impacts of the revised Kibby II proposal do not jump out as troublesome to BPL.”
- Neither the Arnold Expedition Historical Society, nor the Maine Historic Preservation Commission, each of which is charged with protecting or advancing interests associated with the Arnold Trail, has objected to the visual impacts of the Project.
- The Commission’s consultant, Dr. James Palmer, has concluded that the modified Project meets the scenic review criteria set forth in the Wind Energy Act and that govern this proceeding.
- Opponents of the Project have admitted to having no expertise in evaluating the statutory visual impact standards and have offered nothing more than the personal opinions of some staff members—which opinions are directly contradicted by all experts, including the Commission’s consultant.

For the foregoing reasons, TransCanada respectfully requests that the Commission approve the Project.

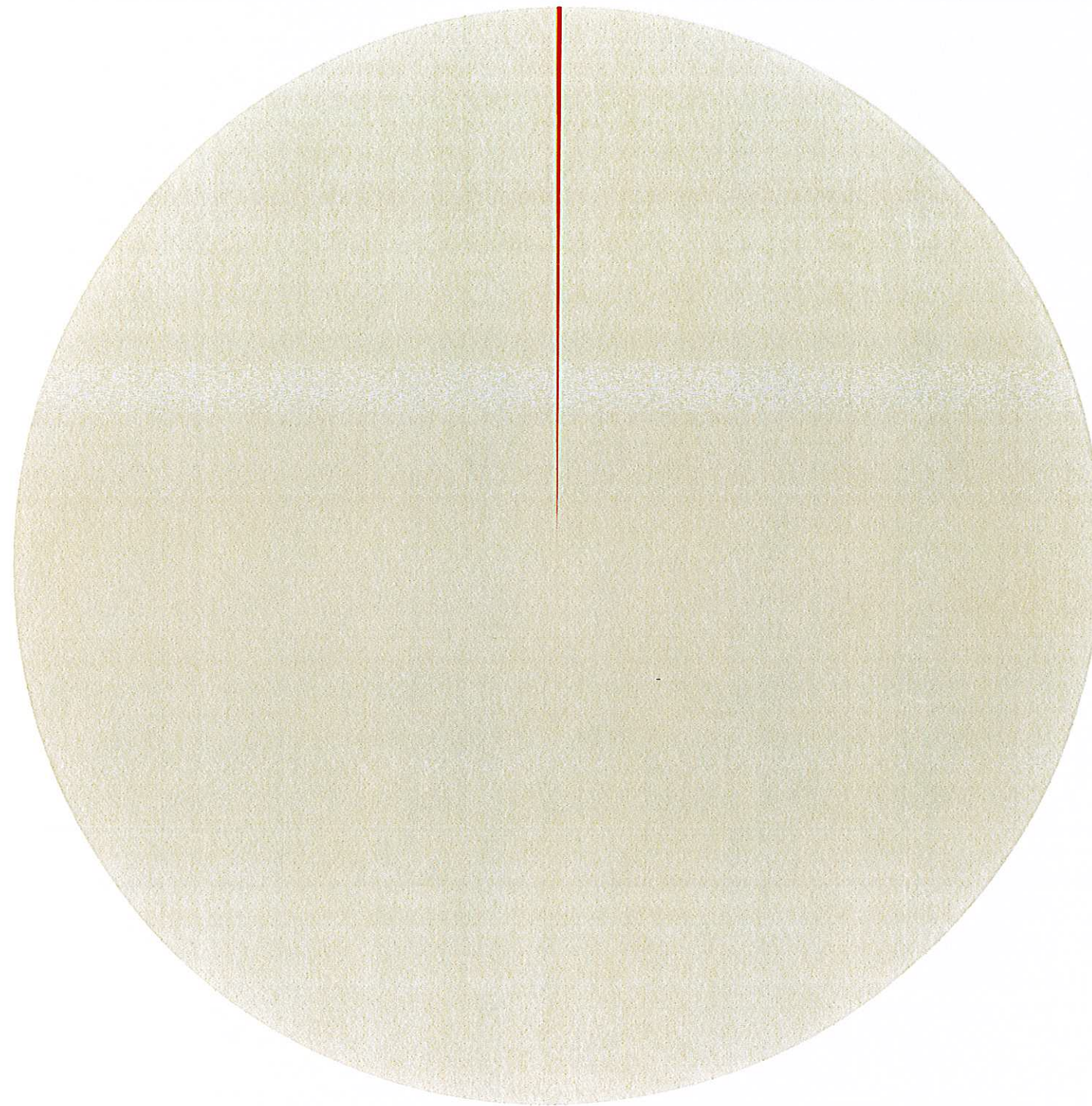
Dated: November 17, 2010



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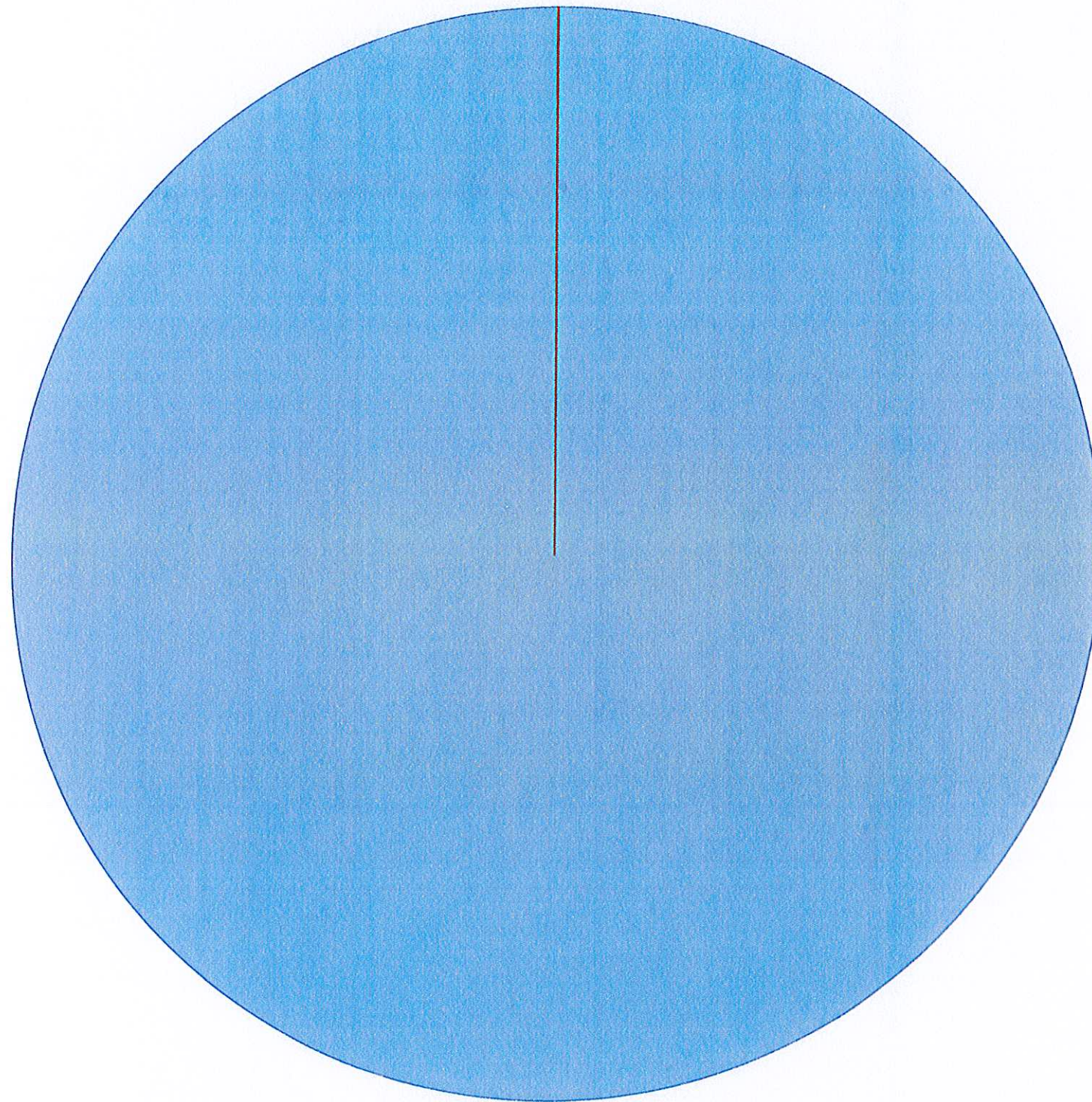
■ Total Acres (40,000)*

■ Consolidated Parties Estimate of Direct and Indirect Impacts (55 Acres)**

*Consolidated Parties Comments October 12, 2010 p. 3

**Consolidated Parties Comments p.5

Bicknells Thrush Habitat in Maine (not including regenerating clear cuts)



■ Total Acres (83,000 acres)*

■ Consolidated Parties Estimate of Direct Acreage Impacts (15 acres)**

*Vickery Pre-Filed Testimony p.4; TransCanada Hearing Ex. 13 (Dr. Wells Testimony p.4)

**Consolidated Parties Comments October 12, 2010 p. 10