



Citizen board reverses DEP rejection of wind power project

By Christopher Cousins | March 21, 2013

AUGUSTA, Maine — A 14-turbine wind project proposed for Passadumkeag Mountain won new life Thursday when the Board of Environmental Protection overturned a state decision to reject the project.

The citizen board, which met Thursday at the Augusta Civic Center, voted 5-1 to reverse a previous decision by the department.

At issue is a November 2012 decision by the Department of Environmental Protection to deny a permit for an industrial 14-turbine wind site atop Passadumkeag Mountain. While the department found that the applicants for the project, Passadumkeag Windpark LLC and landowner, Penobscot Forest LLC, met most of the standards required by the Maine Wind Energy Act, Commissioner Patricia Aho ruled against it because of the visual effect it would have had in the area. Aho said in a press release after Thursday's decision that she is worried about the process as the state considers more applications.

"Our agency is entrusted to review each site on its individual merits within the parameters of the state's standards," said Aho. "Sometimes we need to say no and the board's vote today calls into question whether we can truly do that when it comes to mountaintop wind development. I stand fully behind our licensing staff's decision that this was the wrong project for this special place."

Gov. Paul LePage said in a written statement that he was disappointed with the fact the project will move forward.

"While the initial and largely taxpayer-funded investment in wind power projects may be attractive so some, one-of-a-kind views like the ones from Saponac Pond have great value and are long-term drivers of Maine's tourism and natural resource-based economy," LePage said. "I applaud DEP for subjecting wind power projects to the same robust review as other industrial developments. I am deeply disappointed in the Board of Environmental Protection's decision."

Attorneys for the applicants argued that the Department of Environmental Protection broke from previous precedent and ignored a range of reports and data that determined the area around the proposed development, notably Saponac Pond southeast of the town of Lincoln in Penobscot County, is not of adequate environmental or scenic significance to justify the department's rejection of the wind power application.

P. Andrew Hamilton, an attorney representing Penobscot Forest LLC acknowledged that the 14 proposed wind turbines on Passadumkeag Mountain would have a visual effect, but, he said, so does virtually every wind project.

“Simply because the project is a highly visible feature on the landscape can’t be a sole deciding factor on the application,” said Hamilton. “The ridge lines are where the wind resource is. ... We do not seek special treatment. We do seek fair, consistent and equitable treatment under existing standards.”

Hamilton and others, who presented hours of testimony Thursday, used several other wind farm permits previously granted in Maine as evidence that visual effects alone shouldn’t scuttle projects, especially in areas that are not widely recognized as pristine or iconic.

“It’s possible that you had not heard of Saponac Pond before this proceeding,” said Hamilton. “I live in Penobscot County a few miles from Saponac Pond and I had not heard of it. Saponac Pond is not outstanding or significant.”

The developers contend that the visual effect standard that was the basis for Aho’s decision was flawed and the project’s effect on the pond’s viewshed is overstated.

But DEP staff who testified at Thursday’s hearing said the wind turbines would be visible from 97 percent of the pond and that Passadumkeag Mountain represents the dominant natural feature in the area.

“Passadumkeag Mountain, while not a scenic resource of state or national significance in itself, rises 1,250 feet above Saponac Pond,” said Mark Bergeron, director of the DEP’s Division of Land Resource Regulation, during Thursday’s hearing. “The department concluded that the construction of this project would represent a significant change to the visual character of Saponac Pond.”

Some argued that if the Board of Environmental Protection’s upheld the denial that could set a long-term precedent that would make future wind developments difficult to permit.

Katherine Joyce, an attorney representing Passadumkeag Windpark LLC said the outcome of Thursday’s hearing was of “paramount importance.”

“It would be precedent-setting,” said Joyce. “Today’s decision has the potential to control the future of wind development in Maine. Turbines have the potential to impact every landscape in which they’re built. The impact of the turbine would be adverse, no question. But the question is this: Is the impact unreasonably adverse?”

Joyce said the board’s decision could have a chilling effect on other proposals.

“Stand in the shoes of a developer for a moment,” said Joyce. “No developer sets out to propose a project that does not satisfy the standard. Passadumkeag Windpark LLC was no different.”

Some of the 60 or so people who attended the hearing were clearly angry after the vote. One of them was Brad Blake, co-chairman of the Citizens Task Force on Wind Power, who criticized the Board of Environmental Protection's decision.

"This is yet another chapter in the most uncivil process that I have ever witnessed in my life," Blake said. "Not only do we have a terrible law on the books, but we have a board who is supposed to represent the citizens who very clearly is acting as the prosecutor and judge against the staff of the DEP. This confirms that wind projects in Maine just get a rubber stamp."

Elizabeth Johns of Orono said she owns property on Saponac Pond, which is in Grand Falls Township.

"I'm very disappointed," she said. "I really thought the Department of Environmental Protection made the correct call on this decision."

The board engaged in a lengthy debate about what to do before the vote. Some members favored sending the issue back to the DEP for reconsideration until it became evident that the majority of the board wanted to see the project approved. At least one board member, Tom Eastler of Farmington, said he didn't want to see the review process started over — particularly if it involves public hearings.

"There have already been too many public hearings," said Eastler. "We know what we're going to hear. A bunch of the same old, same old."

Samantha Warren, spokesman for the DEP, said that while there have been public information sessions on this project and others, there has never been a formal public hearing.

BEP member Susan Lessard of Hampden, who cast the lone vote against reversing the decision, said she nonetheless found the DEP's reasons for denying the project in the first place "vague."

"If we sent this back to the department and they come to the same conclusion at the end of the day I would need to see an order that denies this license that is more specific than the one I have right now," she said.

Tom Swank, a representative of Passadumkeag Wind Park LLC, said after the hearing that he and his colleagues were "very pleased."

"We're very pleased with the board's conclusion regarding the project," he said. "We're looking forward to continuing to move the project forward and producing clean, renewable energy in the state of Maine."

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