



July 14, 2006

STATE OF MAINE
LAND USE REGULATION COMMISSION

Application for Development of)
Maine Mountain Power LLC) PRE-FILED TESTIMONY
Redington Wind Farm Application)
Rezoning Application ZP 702)

I. DIGEST

NRCM does not support the project as proposed, but does endorse a scaled-back 54 MW project on Black Nubble, combined with placement of Redington Pond Range in permanent protection. A 54 MW project on Black Nubble would be among the largest wind power projects in New England. It would generate more clean, renewable power annually than all but five of Maine's 102 hydropower facilities. NRCM concludes that a project on Black Nubble could be viable and is consistent with the application review criteria in ways that the full proposal is not. NRCM urges support for a Black Nubble project as a compromise solution that would provide progress in the development of clean energy and also in the protection of Maine's highest value mountain resources.

II. OVERVIEW

This testimony is presented by the Natural Resources Council of Maine (NRCM). NRCM is a private, non-profit, membership organization established in 1959 to advocate for the protection and conservation of Maine's natural resources. NRCM has a strong interest in the development of cleaner forms of electricity generation that will help reduce the environmental and public health harm caused by existing forms of power production. As such, we strongly support wind power development in Maine. We share the view articulated in the Maine Land Use Regulation Commission's (the "Commission") Comprehensive Land Use Plan that "windpower offers an attractive alternative to the burning of fossil fuels."¹

¹ Comprehensive Land Use Plan, p. 40.

NRCM also strongly supports land conservation in Maine’s North Woods, interior mountains, and areas with significant habitat values and remote resource characteristics. The State of Maine is endowed with spectacular mountain resources and large tracts of forested habitat that warrant protection through the policies, regulations and permitting decisions of the Commission. As noted in the Commission’s Comprehensive Land Use Plan, “Mountains and the scenic, natural, recreational, economic and other values they possess are a limited resource in Maine.”² Wind power projects can pose a significant disruption to some of the important values in these regions. For this reason, the Commission has rightly noted that some areas will not be considered suitable for rezoning and development.³

Maine Mountain Power’s application for a 90 Megawatt (MW) wind farm on Redington Pond Range and Black Nubble invokes a sharp conflict between two competing goods: the need for clean power, and the need to protect wild places. Intervenors on both sides of the issue have valid arguments. Our society does face an imperative to reduce its dependence on fossil fuels, and we also have a responsibility to protect parts of the natural world with special values. The application presents the Commission with precisely the type of challenging “balancing act between utilization of the resource and other potentially conflicting public values” anticipated in the Comprehensive Land Use Plan.⁴

NRCM has carefully evaluated the Application to determine whether it is consistent with the Comprehensive Land Use Plan, and the regulatory criteria for approval of a Planned Development Subdistrict (D-PD). From this analysis, we conclude that:

- 1) The Applicant has failed to demonstrate “by substantial evidence” that the proposed project would have no undue adverse impact on existing uses or resources (12 M.R.S.A., section 658-A-(8)); and
- 2) The Applicant has failed to demonstrate that the proposed project utilizes the best reasonably available site for the proposed use.⁵

We do not believe that a credible claim can be made by the Applicant that the project would not have undue adverse impacts, and we do not believe that the project involves the best available site. However, we also have concluded that a scaled back, 54 MW version of the project would meet these criteria and should be supported by the Commission.

NRCM sought to determine whether an alternative configuration of the wind farm, within property for which the Applicant has site control, might better achieve the “balancing

² Comprehensive Land Use Plan, p. 58.

³ “In light of the limited supply of mountain resources and their value, it is unlikely that all such areas will be considered suitable for rezoning and associated development by the Commission.” CLUP, p. 61.

⁴ Comprehensive Land Use Plan, p. 40.

⁵ Chapter 10 of the Commission’s Rules and Standards, G. Planned Development Subdistrict, Approval Criteria 8.b.(3).

act” currently before the Commission. To assist with this purpose, NRCM hired La Capra Associates to model the financial viability of a project consisting exclusively of 18 turbines on Black Nubble, with a projected capacity of 54 MW.

We conclude that a project on Black Nubble is viable, would be a better fit with the requirement that the proposed project utilize the best reasonably available site for the proposed use, and would mitigate adverse impacts on existing uses and resources. Specifically, a Black Nubble-Only project would: 1) reduce habitat fragmentation that would be adverse to the large contiguous area of forestland above 2700’ located on Redington Pond Range; 2) reduce potential impacts on the Bicknell’s Thrush, and 3) reduce visual impacts that would be adverse to recreational users of the Appalachian Scenic Trail Corridor, and others seeking remote resource experiences.

If Redington Pond Range were placed in permanent protection by the Applicant as mitigation for development of wind power on Black Nubble, then the application would conform better with the requirement that the project provide “a substantially equivalent level of environmental and resource protection” as was afforded by the existing zoning subdistrict.⁶ The Commission determined in the Kenetech case that mitigation requirements should be met “on the specific land under consideration for rezoning,” and not off-site.⁷ As such, placement of Redington in permanent protection would be an appropriate mitigation measure for project impacts. Doing so also would support the Commission’s obligation to protect mountain resources with high public values. Redington Pond Range is Maine’s only 4,000’ peak that is not currently protected, other than the top of Sugarloaf ski area.

NRCM believes that a scaled-back, 54MW Black Nubble project would contribute toward these twin goals of meaningful new renewable power and meaningful additional landscape protection. Such a project would generate more renewable power on an annual basis than 95% of Maine’s hydropower facilities, any of Maine’s municipal waste incinerators, and most of the state’s biomass plants.

Although the Applicant contests the economic viability of the 54 MW Black Nubble option, NRCM’s analysis shows that such a project could be viable. Therefore, we urge the Commission, the Applicant, and all of the intervenors to seriously consider supporting a project compromise that would place a 54 MW wind farm on Black Nubble, and Redington Pond Range into permanent protection. NRCM endorses this outcome and would actively support its implementation.

III. BACKGROUND

Over the past 15 years, NRCM has closely followed every proposed wind power project in Maine and we have been actively involved in many of the major land conservation

⁶ Chapter 10, D-PD Approval Criteria 8.b. (2)

⁷ Commission Decision in the Matter of Kenetech Windpower, Inc., Zoning Petition ZP 536 and Preliminary Development Plan for a Wind Energy System, August 17, 1995, p. 27.

projects that have taken place within Maine's interior mountains and remote forestlands. As such, we have a strong interest in this proceeding.

NRCM was part of a settlement agreement for the proposed 210 MW Kenetech Windpower permit application, submitted to LURC in February 1993, and approved by LURC on August 17, 1995. NRCM endorsed the permit application for a 50MW wind power project at Mars Hill, approved by the Department of Environmental Protection (DEP) in June 2004. In February 2004, NRCM announced support for a goal that Maine meet 5% of its electricity needs with indigenous wind power by 2010, and 10% by 2020. Our projections suggest that achieving this goal would require 240MW of installed wind capacity in Maine by 2010, and double that amount by 2020.⁸

We also have monitored wind farms elsewhere in New England. We believe that wind power is the most cost-effective, utility-scale renewable energy technology ready for expanded development in New England. We believe that the environmental benefits from wind power are real and meaningful. Wind power provides a means of reducing our reliance on fossil fuels, reducing carbon emissions, and curbing mercury pollution, thus contributing to a cleaner environment and improved public health. NRCM believes that wind power development is a critical part of our response to the threat of global warming, which also must include increased energy efficiency and further controls on power plant emissions. NRCM has a strong record of advocacy in promoting energy efficiency and tougher air pollution controls.

NRCM's support for clean renewable power does not trump all other environmental considerations. NRCM strongly supports land conservation in Maine's North Woods, interior mountains, and areas with remaining remote resource characteristics. Because of the size of modern wind turbines, a wind farm can pose adverse impacts on remote resource values. If sited above 2,700 ft elevation, wind turbines may also significantly disrupt sensitive alpine forest ecosystems and cause habitat fragmentation in areas that have been a priority for protection by the Commission.⁹

Because of its strong interest in promoting clean renewable energy and also protection of forestlands and interior mountains with high public and ecological values, NRCM weighs each wind power project on a case-by-case basis. For a variety of reasons, we believe that the Redington Wind Farm project poses perhaps the largest potential clash of these values that Maine, and the Commission, is likely to see.

IV. REDINGTON WIND FARM'S ADVERSE IMPACTS ON EXISTING USES

NRCM concludes that the Applicant has not met its legal burden of demonstrating by substantial evidence that the proposed project would have no undue adverse impact on

⁸ Total Maine energy load is close to 12.5billion. The 240MW estimate assumes 30% capacity factor of installed wind power.

⁹ As stated in the Comprehensive Land Use Plan: "To protect the fragile environment and values associated with mountain areas, the Commission has placed lands at elevations above 2,700 feet in the Mountain Area Protection (P-MA) zone." CLUP, P.56.

existing uses or resources (12 M.R.S.A., section 658-A-(8). Of the various project impacts potentially caused by the Redington Wind Farm, NRCM is most concerned with: 1) the project's potential to damage a mountain resource of statewide significance; 2) fragmentation of Bicknell's Thrush habitat; and 3) erosion of the remote resource values within the project area.

A. Undue Adverse Impacts on Mountain Resources of Statewide Significance

NRCM concludes that the application is not consistent with the objectives and policies in the Comprehensive Land Use Plan and 12 M.R.S.A. §206-A with regard to protection of high value mountain resources.

The area surrounding Redington Pond Range is a rare location with features of statewide, if not national, significance. The project area contains seven of the 13 highest mountain peaks in Maine and the largest contiguous area above 2,700 ft. elevation in the state. The section of the Appalachian National Scenic Trail that travels through this area is one of the most rugged and cherished stretches of the entire AT, providing a sense of remoteness and "wilderness" that is increasingly difficult to find East of the Mississippi.¹⁰ We are particularly concerned about the impact of wind farm construction on Redington Pond Range.

Redington is one of only 14 mountains in Maine with elevation above 4000 ft., and it is the only one of these peaks (other than the top of Sugarloaf Ski Area) that is not currently permanently protected (See Table 1). Redington is an ecologically sensitive and significant mountain located in the heart of an area that has been identified by the Northern Forest Alliance, Appalachian Land Trust, and others as a high priority for land conservation. The Maine Natural Areas Program has mapped the presence of an exemplary Subalpine Spruce-fir Forest community on top of Redington Pond Range.

Research by the Appalachian Mountain Club has documented that the high elevation areas stretching from Saddleback Mountain to Redington and Crocker Mountain remain almost totally unfragmented and is one of the largest remaining roadless tracts in the state. AMC notes that this large contiguous unfragmented area stands out for the lack of recent human impact, and that "the development proposed for the Redington Pond Range lies within this area and would nearly completely bisect it. (The proposed development on Black Nubble lies just outside this area.)"¹¹

The Comprehensive Land Use Plan states that one of the policies of LURC is to "Identify and protect high mountain resources with particularly high natural resource values or

¹⁰ Although ski areas, towns, and roads exist within 10 miles of the AT in this section, the configuration and siting of the trail creates a wilderness-like experience that is increasingly rare in the Eastern United States.

¹¹ Redington Windpower Zoning Petition 702, Comments to the Maine Land Use Regulation Commission from the AMC, April 14, 2006, p. 7.

sensitivity which are not appropriate for most development.”¹² NRCM believes that implementation of this policy should lead to identification of Redington Pond Range as a top candidate for permanent protection by LURC, and not be made available for development, as is being petitioned by the Applicant. Roadless areas with unfragmented habitat – such as found in the mountain corridor that includes Redington Pond Range – are a declining resource in Maine, deserving of protection.

Table 1: Maine’s 14 Highest Peaks

Peak	Elevation	Protected	Status
Katahdin, Baxter Peak	5,268	Yes	Baxter State Park
Katahdin, Hamlin Peak	4,756	Yes	Baxter State Park
Sugarloaf	4,250	No	Ski Area
North Crocker	4,228	Yes	Appalachian National Scenic Trail
Old Speck	4,170	Yes	Grafton Notch State Park
North Brother	4,151	Yes	Baxter State Park
Bigelow, West Peak	4,145	Yes	Bigelow Preserve
Saddleback	4,120	Yes	Appalachian National Scenic Trail
Bigelow, Avery Peak	4,090	Yes	Bigelow Preserve
Abraham	4,050	Yes	Appalachian Trail Land Trust
South Crocker	4,050	Yes	Appalachian National Scenic Trail
Saddleback Horn	4,041	Yes	Appalachian National Scenic Trail
Redington Pond Range	4,010	No	Pending Wind Power Development

B. Undue Adverse Impact on Bickell’s Thrush Habitat

NRCM concludes that the application is not consistent with the objectives and policies in the Comprehensive Land Use Plan and 12 M.R.S.A. §206-A in that the project could pose significant adverse impacts on the Bicknell’s Thrush, a rare species that has been given the highest level of conservation priority in the Maine Comprehensive Wildlife Conservation Strategy.¹³ Redington Pond Range lies at the heart of the largest region of habitat suitable to Bicknell’s Thrush in the state, and has been identified as one of the three focus areas in Maine for this species.¹⁴ Because of its lower elevation and the increased level of timber harvesting on its slopes, Black Nubble lies at the edge of this high priority Bicknell’s Thrush habitat.

C. Undue Adverse Impacts on Remote Resource Values

The Land Use Regulation Commission, within its Comprehensive Land Use Plan, identifies the importance of protecting scenic and remote values. With regard to the impact of projects near recreational resources, the Commission has stated that “Potential

¹² CLUP, Policy #14 (page 138)

¹³ See <http://www.state.us/ifw/wildlife/compwildlifestrategy/index.htm>.

¹⁴ Dettmers, Randy. 2003. Blueprint for the Design and Delivery of Bird Conservation in the Atlantic Northern Forest (Draft). U.S. Fish and Wildlife Service Atlantic Coast Joint Venture.

impacts include not only adverse effects on natural resources that provide the recreational opportunity, but diminishment of remote values that enhance the recreational experience.”¹⁵

In its recent decision with regard to the proposed development on Burnt Jacket peninsula (ZP 701), the Commission expressed its strong concerns about development that would degrade “the existing unspoiled nature of the remotest and most visually prominent and naturally pristine part” of the property and the “recreational, scenic, and water uses that historically have occurred both on and around the peninsula.”¹⁶

Both Redington Pond Range and Black Nubble provide landscape features that contribute to the natural character of the project region, and the experience of remoteness felt by travelers of the Appalachian National Scenic Trail. Turbines proposed for Redington Pond Range would be one mile from the Appalachian Trail, at their closest location. All of the turbines proposed for Black Nubble would be at least 3.3 miles from the AT. At this distance, the turbines become significantly less prominent features within the visual landscape.

V. NOT THE BEST REASONABLY AVAILABLE SITE

The Applicant has failed to demonstrate that the proposed project utilizes the best reasonably available site, as required by the Commission’s Approval Criteria. The Applicant provides a cursory and mostly generic explanation for how the project site was selected, with barely two pages of text in its 1,600-page application devoted to this issue.¹⁷

In summary, the Applicant claims that the project site has strong winds, proximity to transmission lines, and good access to roads. The Applicant states that the majority of the state is unsuitable for wind energy production, that lower elevation flat areas are unlikely to have sufficient average wind speeds, and that Redington Pond Range and Black Nubble Mountains are two of the few sites in Maine with extremely energetic winds. The Applicant has not demonstrated that a rigorous alternatives analysis was conducted with a complete set of selection criteria prior to the selection of this location. Indeed, the Application failed to even report that a unit of the National Park System (the AT) is in the immediate viewshed of the project.¹⁸

For perspective, it is instructive to see how this requirement was satisfied in the Kenetech Project proceeding (Zoning Permit ZP536), which stands as the Commission’s single precedent for handling a rezoning petition and development application for a wind power

¹⁵ Comprehensive Land Use Plan, Department of Conservation, Maine Land Use Regulation Commission, March 27, 1997, pg. 68.

¹⁶ Commission Decision in the Matter of Burnt Jacket, LLC. Denial of Zoning Petition ZP 701, June 7, 2006, p. 16.

¹⁷ See Redington Wind Farm, Application for Development, Volume 1.

¹⁸ See comments to the Maine Land Use Regulation Commission from Pamela Underhill, Park Manager, Appalachian National Scenic Trail, U.S. Department of Interior, National Park Service, April 14, 2006.

project. Sensitivity for possible visual impacts from the Appalachian Trail were well considered by the developer, and avoided in the site selection process.

The Kenetech application (also known as the New England Wind Energy Station, or NEWES) included an extensive discussion of a year-long site selection effort that started at the regional level, examining the wind resource across New England, then applying a set of four screening criteria. These criteria were: 1) wind resource, 2) compatibility with existing land uses, 3) sufficient distance from Federal and State public lands that no impact could be claimed, and 4) proximity to utility transmission.¹⁹ As explained in the application, “Some potential windplant areas were quickly excluded from consideration if they impacted viewsheds of known sensitive recreational areas (such as the Appalachian Trail).”²⁰ In direct testimony on behalf of the Applicant, Elizabeth Swain similarly explained:

“When assessing the New England wind resource and selecting potential windpower sites, Kenetech Windpower placed a high priority on finding a site where wind turbine visibility would be low... The NEWES Project features will be well outside of the viewing impact areas of the Appalachian Trail, Sugarloaf USA, and Saddleback Mountain.”²¹

Landscape Architect Terrence DeWan also made a significant point in his direct testimony to the Commission about distance of the Kenetech project site from the Appalachian Trail – 16 miles away at its nearest point in the Bigelow Preserve. “The construction of the NEWES project should have no visual impact on the view from the Appalachian Trail.”²² NRCM does not believe that zero visual impact from the Appalachian Trail is a reasonable standard, but we do believe that the Applicant is obligated to demonstrate that the site selection process took these impacts into account.

NRCM believes that Kenetech’s significant emphasis on avoiding visual impacts on sensitive viewing locations and landscapes, including the Appalachian Trail, contributed to the Commission’s conclusion that “the proposal would not have an undue adverse impact upon scenic resources, since the area is a remote, working forest... and not an area of significant recreational uses or scenic values.”²³ We do not believe that a finding of facts could lead to this same conclusion for the Redington Wind Farm, since the Appalachian National Scenic Trail would be barely one mile from 420-foot-tall turbines

¹⁹ Chris Herter, Kenetech Wind Power Project Developer, Direct Testimony, Hearings held at Sugarloaf Mountain Hotel, Carrabassett Valley, Maine, Tuesday June 21, 1994, transcript by Alley & Morrisette Reporting Service, p 24-25.

²⁰ New England Wind Energy Station, Maine LURC/DEP Permit Application, Volume II (A-Q), February 1993, P. II.D.-8.

²¹ Direct Testimony of Elizabeth Swain, Consultant, Barton, Gingold, Eaton & Anderson, Before the Maine Land Use Regulation Commission, Regarding Project Conformance with the Comprehensive Land Use Plan, on Behalf of Kenetech Windpower, Inc., Submitted June 1, 1994.

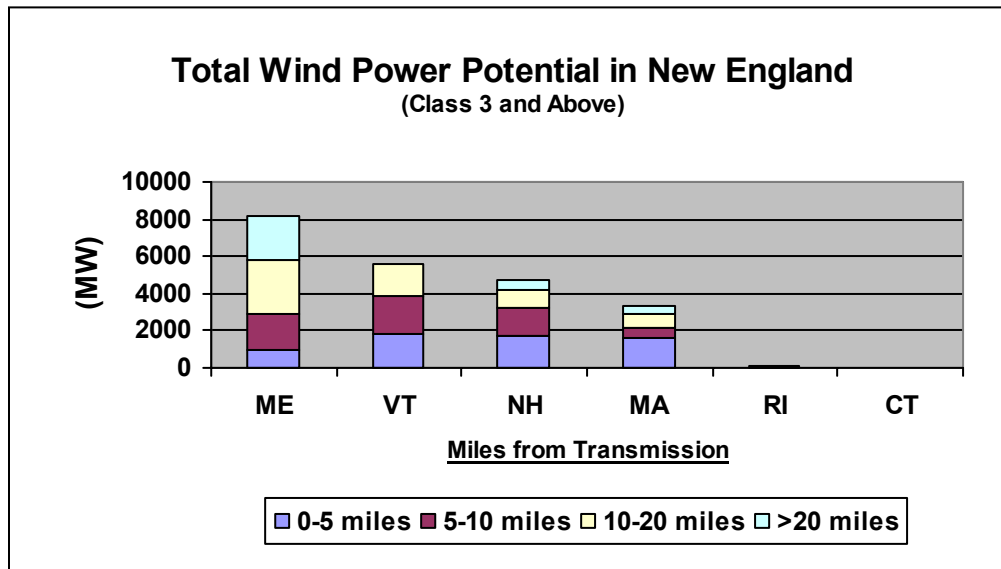
²² Direct Testimony of Terrence DeWan, Landscape Architect, Terrence J. DeWan & Associates, Before the Maine Land Use Regulation Commission, Regarding Existing Resources and Project Adaptation (Visual Resources), on Behalf of Kenetech Windpower, Inc., Submitted June 1, 1994.

²³ Commission Decision in the Matter of Kenetech Windpower, Inc., Zoning Petition ZP 536 and Preliminary Development Plan for a Wind Energy System, August 17, 1995, p. 26.

on Redington Pond Range. Again, turbines on Black Nubble would be further from the AT and would have reduced visual impacts.

The Applicant claims that Redington Pond Range and Black Nubble meet “the best reasonably available site” test because there are so few potentially available wind sites in Maine. The Applicant has significantly minimized the potential of other viable wind power sites in Maine. As evidence, we note that wind projects currently are being explored in at least six other locations in Maine (Exhibit A). Maine’s Public Utilities Commission in January 2005 reported that there exists an estimated 8,000MW of wind power capacity in Maine, 3,000MW of which would be within 10 miles of existing transmission lines – which is comparable to the proposed Redington Wind Farm (see Table 2).²⁴

Table 2: Wind Power Potential in New England



This information supports a conclusion that the proposed project likely is not “the best reasonably available site for the proposed use.” NRCM concludes that there are other sites that would not invoke the level of conflict with other resource values as is presented by this application. In the early 1990s when Endless Energy purchased 517 acres on Redington Pond Range, wind turbine technology was substantially different and the site may have been among a small handful of economically viable project locations at the time. Since then, wind turbines have increased in capacity nearly ten-fold²⁵ – enabling economically viable projects to be located in areas with lower wind speeds (e.g. Mars Hill and Aroostook County).

²⁴ This estimate was developed by the National Renewable Energy Laboratory, utilizing current wind speed data and newly developed Department of Energy exclusions (e.g. eliminating sites based on environmental, geographic, and other constraints. See Maine Public Utilities Commission, Report on the Viability of Wind Power Development in Maine, Presented to the Utilities and Energy Committee, January 27, 2005, p.11.

²⁵ The 1995 Kenetech Project would have involved 639 turbines with 330KW capacity to result in a project with 210MW total capacity. The Redington Wind Farm would utilize 30 turbines rated at 3MW each for a project with 90MW capacity.

Put another way, during the 13 years that it has taken the developer of the Redington Wind Farm to bring the project to the point of submitting a permit application, the advance of technology has opened up other, more suitable sites. But because the developer of the Redington Wind Farm took the unorthodox step of actually purchasing the top of Redington Pond Range, rather than simply leasing the land as most wind developers do, he has not had the flexibility to shift resources to another project site as concerns about the Redington site have escalated.

It is interesting to note that in 1997, Endless Energy Inc. sought to purchase the development rights for the Kenetech project – which was never built because the company went bankrupt. Endless Energy was outbid at the final hour.²⁶ The developer’s interest in the Kenetech site may have indicated its own sense that there existed a better site for wind development in Maine, which was reasonably available, at the time.²⁷

We presume that the Commission’s interpretation of “best reasonably available site for the proposed use” pertains to land for which the Applicant currently has site control. If this is the case, then we would contend that the best reasonably available siting of the project would involve only the 18 turbines proposed for Black Nubble, and not the additional 12 turbines slated for Redington Pond Range. As described below, a scaled back 54 MW Black Nubble project would provide meaningful mitigation of many of the most serious objections that have been raised about the Redington Wind Farm, while also resulting in one of Maine’s largest renewable energy projects.

VI. BLACK NUBBLE PROVIDES BEST AVAILABLE PROJECT SITING

Impacts caused by the proposed project would be substantially mitigated if the project were built only on Black Nubble and if the developer agreed to a significant land conservation strategy in the project area (e.g. placement of the 517-acre ownership atop Redington Pond Range into permanent protection). With an expected capacity of 54MW, a Black Nubble-only project would be larger than almost every single other land-based wind power project currently being pursued in New England (See Exhibit B).

Based on information from the Applicant, a project involving 18 turbines on Black Nubble would produce approximately 145,750 MWh of electricity every year.²⁸ This is more power than is generated annually from all but five of Maine’s 102 hydropower dams (Exhibit C). Thus, a project on Black Nubble would generate more renewable energy than is generated by 95% of Maine’s hydropower dams. A 54 MW Black Nubble project also would generate more electricity than every single Municipal Solid Waste

²⁶ Phyllis Austin, “Windpower Project may be back for another swirl,” Maine Times, June 12, 1997, Maine Times.

²⁷ Endless Energy bid \$100,000 up front, and \$850,000 as the project was built out; Zond Development bid \$137,000 up front, with \$725,000 in increments if the project was built. The \$37,000 up front from Zond apparently decided the winning bid.

²⁸ Total project would produce 265 MWh. The Applicant responded to LURC that expected output would decline by 45% if the project only involved 18 turbines on Black Nubble.

generating facility in Maine, and more than the majority of Maine's biomass plants (Exhibit D).

In sum, a 54 MW Black Nubble project would be a major land-based wind power project, not just for Maine, but for the whole of New England. It would be one of the largest renewable energy projects in the State, and would provide significant clean energy benefits with reduced impacts when compared with the project as proposed.

A. Reduced Adverse Impacts on Mountain Resources with High Public Values

The satellite image in Exhibit E shows that the 12 turbines proposed for Redington would be surrounded by forests, in the heart of a contiguous block of forestland extending in a North-South orientation and clearly visible in dark green. In contrast, the Black Nubble turbines would be located to the west, mostly on a landscape of fragmented forests that is detached from the central roadless corridor in this region.

Allowing turbines to be located only on Black Nubble, and not on Redington, would reduce the adverse impact of forest fragmentation in this sensitive, high elevation region, in a fashion consistent with LURC policies aimed at protecting Maine's mountain resources. As noted above, Redington Pond Range is the only mountain in Maine above 4000' in elevation that is not currently protected from development (other than the Sugarloaf ski area). Were Redington to be protected, then the Application would conform much more closely with the rezoning approval requirement that the project provide "a substantially equivalent level of environmental resource protection" as was afforded by the existing PM-A subdistrict. Reduced resource protection on Black Nubble would be balanced with on-site mitigation consisting of increased protection on Redington Pond Range.

B. Reduced Adverse Impacts on Bicknell's Thrush Habitat

Exhibit F shows that Black Nubble is on the periphery of Bicknell's Thrush habitat in the project region. In contrast, Redington Pond Range is closer to the center of this high-risk species' habitat. The Partners in Flight Landbird Conservation Plan for Eastern-Spruce-Hardwood Forests recommends that all efforts are made to "Ensure the protection of all sites that support populations of Bicknell's Thrush large enough to be considered source populations for other sites, and as many additional high-elevation habitat patches with smaller populations as possible."²⁹ This important objective would be promoted by reducing the risk of adverse impacts on Bicknell's Thrush by not allowing turbine construction in the central part of the habitat in this region.

C. Reduced Adverse Impacts on Remote Resource Values

Exhibits G and H help to show that visual impacts of the project would be reduced if turbines were built only on Black Nubble. Every one of the 12 proposed turbines for

²⁹ Rosenberg, Kenneth V. and Thomas Hodgman. 2000. Partners in Flight Landbird Conservation Plan: Region 28: Eastern Spruce-Hardwood Forest (Draft 1.0). American Bird Conservancy, The Plains, VA.

Redington Pond Range is within two miles of the Appalachian National Scenic Trail, with the closest turbine (Turbine #2) located 1 mile from the AT. In contrast, all of the Black Nubble turbines would be at least 3.23 miles from the AT. We recognize that the Appalachian Trail Conservancy, one of the intervenors opposed to the Redington Wind Farm, is concerned about the precedent that would be set for the entire 2,068 miles of the AT were a wind farm to be located as close as one mile in Maine. The Black Nubble option would lessen the impact of the precedent by established a larger buffer zone.

The Black Nubble turbines also are a further distance from many of the key vistas on the Appalachian Trail, including Crocker Mountain (both North and South peaks), Sugarloaf Mountain, Spaulding Mountain, and Mt. Abraham (see Exhibit H). Although Black Nubble turbines would be closer to the AT than would Redington turbines at four viewshed locations (Poplar Ridge, Saddleback Junior, The Horn, and Saddleback), Poplar Ridge has mostly filtered visibility through trees, and the other locations all would be further than 4 miles from the closest turbines – which places the structures in the background region as defined by the U.S. Forest Service’s Scenery Management System.

Adverse visual impacts would not be eliminated through a Black Nubble only siting configuration, but they would be mitigated in a meaningful and noticeable fashion. NRCM has examined all of the photosimulations provided by the Applicant and believes that elimination of the Redington Pond Range turbines from those images would significantly lessen the visual intrusion of the project on remote resource values. As a result, we believe that a Black Nubble project would provide a better fit with the LURC requirement of the Applicant that “Adequate provision has been made for fitting the proposal harmoniously into the existing natural environment in order to assure that there will be no undue adverse effect on existing uses, scenic character, and natural and historic resources.”(12. M.R.S.A. section 658-B(4)(C)).

VII. VIABILITY OF A BLACK NUBBLE PROJECT

Maine Mountain Power has stated for the record that it does not believe that a 54MW project located on Black Nubble is economically viable. To assess this claim for ourselves, NRCM hired an independent energy consulting firm, La Capra Associates. Using data from the Applicant and their general knowledge of energy markets, project development and finance, La Capra modeled the viability of a project on Black Nubble. As explained in separate direct testimony of Jonathan Winer, the La Capra Associates analysis shows that a 54 MW project at Black Nubble could attract the financing necessary for the project to be built.

Although changing the project configuration at this juncture would not be a simple matter for the Applicant, securing approval of the rezoning application is not simple, nor certain, either. The burden of proof is upon the Applicant to show by substantial evidence that his proposal satisfies the criteria established for the creation of the D-PD subdistrict. Any single failure by the Applicant to carry his legal burden is fatal to the rezoning request. NRCM concludes that the Applicant has failed on at least two criteria: 1) demonstrating no undue adverse impact, and 2) demonstrating that the project utilizes the best available

site. However, we also believe that there is an option available to the Applicant that would satisfy these requirements in a fashion that would provide the best available resolution of the competing interests in this proceeding.

Applicants who have petitioned the Commission have often amended their applications in response to public and intervenor input, so that a proposed development is more consistent with LURC policies and approval criteria, and thus has an improved prospect of receiving a positive decision by the Commission. The options currently before the Commission are “approval” or “denial” of the Redington Wind Farm application, as presented. An amended application for a Black Nubble-Only project would serve as a compromise option. It would be our strong preference that the Applicant petition the Commission to open the record and make such an amendment to the proposed project. If not, then we recommend that the Commission find that the Applicant has failed to meet the approval requirements, deny the application, and provide guidance in the “Commission Decision” document that helps facilitate the Black Nubble option.

Although the developer may claim that any delay will cripple the project, this project has been delayed repeatedly by the developer. Endless Energy has spent more than 13 years preparing this project for application, and it has gone through many reconfigurations. The company announced it was on the verge of submitting a permit application in 1997, and then did so again in 2002. LURC held a pre-application hearing with the developer in January 2002, but no application was filed. The project was initially described as a 20MW project involving 30 towers only on Redington Pond Range. It later was described as a 50MW project involving 15 towers on Redington Pond Range and 14 towers on Black Nubble.³⁰ Now it is presented as a 90MW project.

The financial backer of the project, Edison Mission Energy, has never been involved in a wind power project with the type of significant natural resource and visual impact issues as pertain to this application. Edison Mission Group’s prior wind farms have been on very different landscapes – generally farmland in Iowa, Minnesota, and New Mexico. These areas are nothing like Maine’s interior, high-elevation mountains.

Maine has one opportunity to make its best judgment about whether to allow wind turbines to be built in the project area, and if so, how many, in what locations, and on what terms. NRCM strongly believes that a Black Nubble option is the best compromise, given the competing goals and values raised by the application. We urge the Applicant and other interested parties to seriously consider making the compromises necessary in their established positions in order to support a scaled back project on Black Nubble. NRCM endorses that outcome and would work hard to make it a reality.

³⁰ Notes of LURC Pre-hearing Conference with Endless Energy for Redington Wind Farm, January 17, 2002.