



May 9, 2007

Ms. Catherine Carroll
Director
Maine Land Use Regulation Commission
22 State House Station
Augusta, ME 04333-0022

Re: ZP 702: Request for Limited Reopening of the Record for a Black Nubble Project

Dear Ms. Carroll,

On January 24, 2007, the Land Use Regulation Commission (LURC) considered Maine Mountain Power, LLC's (MMP's) petition to rezone Redington Pond Range and Black Nubble Mountains and to approve MMP's Preliminary Development Plan application for a permit to build a wind farm on both mountains (Redington Wind Farm or RWF). The Commission rejected the staff's recommendation to rezone the RWF project area and approve the preliminary plan, and requested that staff draft a document to deny MMP's application for the full RWF project. In light of the Commission's January 24, 2007, decision, and in response to concerns raised by certain intervenors during the hearing process, MMP is amending its application to propose a wind farm on Black Nubble Mountain only (Black Nubble Project) and to restrict development on Redington, as set forth initially by the Natural Resources Council of Maine (NRCM) in its pre-filed testimony. We believe this amended, smaller project will still provide important environmental, economic, and energy benefits to Maine, while mitigating many of the concerns raised by the Commissioners and opponents to the RWF project.

MMP respectfully submits that this project is exactly the same project that was heard before this Commission in August 2006, except that twelve turbines and the infrastructure associated with those turbines have been subtracted. Extensive evidence about the Black Nubble Project is already in the record, since pre-filed, hearing, and post-hearing testimony by MMP and the intervenors concerned both Redington and Black Nubble. Furthermore, evidence of a Black Nubble-only project has already been introduced into the record through the written and oral testimony submitted by MMP and NRCM. However, to ensure that the Commission, the intervenors, and the public are more fully informed about the merits of the Black Nubble-only project, MMP requests that the Commission reopen the record on a limited basis, to allow MMP to highlight the existing testimony in the record to clarify the Black Nubble Project, and to identify changes relevant to the Commission's decision, such as energy benefits and reduced impacts of a one mountain project. Furthermore, MMP would introduce evidence to clarify the economic viability of a one-mountain project.

Pursuant to LURC Rule 5.18(3), MMP respectfully requests that LURC reopen the record in this proceeding on a limited basis to allow MMP to describe how the amended Black Nubble Project satisfies LURC permitting and rezoning criteria and to provide an opportunity for public comment, as deemed appropriate. MMP also requests that the

Commission table its consideration of the requested denial of the two-mountain wind farm proposal.

I. Regulatory Authority

Pursuant to LURC Rule 5.18(c), the Commission may reopen a hearing and extend the time period for public comment prior to issuance of a final order or decision. LURC rules do not set forth standards or criteria for determining whether to reopen the record, indicating that the decision is left to the discretion of the Commission and LURC staff. MMP understands that the Commission has reopened the record in the past, and hereby submits the following information in support of the Commission reopening the record in this instance.

II. Overview of the Black Nubble Project

The Black Nubble Project will be considerably smaller than the original two-mountain RWF proposal. As proposed in the testimony of NRCM, a Black Nubble-only project would consist of 18 turbines located on Black Nubble mountain and conservation of Redington Pond Range mountain. As shown in the record, Black Nubble is less than 4,000 feet in elevation and the closest turbine on Black Nubble is more than 3 miles from the Appalachian Trail (AT), three times the distance originally proposed between the closest turbine and the AT in the original two-mountain RWF proposal. Evidence comprising the structural elements of the Black Nubble project is already in the record (location of turbines, roads, power lines, natural resources, etc.) and the evidence regarding the methods of constructing the wind farm was previously introduced to the Commission. MMP requests that the Commission reopen the record for the purpose of pulling that evidence into one place so it is accessible to the Commission in a form that will allow them to decide whether the amended proposal satisfies LURC criteria, and to identify and highlight the changes that would result from a scaled-down project.

The key elements of the Black Nubble project are:

- Entire project below 4,000 feet;
- Conservation of Redington mountain resulting in 12 fewer turbines than the original proposal;
- Turbines located a greater distance from the AT;
- Project visible from fewer viewpoints on the AT;
- Less clearing due to fewer roads, power lines, turbine pads, etc;
- Reduced potential impact on wildlife habitat.

III. Substantial information is already in the Record on the Black Nubble Project, but Further, Limited Information on Reduced Impacts Is Needed

As the Commission is aware, MMP presented written and oral testimony concerning a wind farm on both Black Nubble and Redington Pond Range mountains. Therefore, there is substantial evidence in the existing record about no undue adverse impacts to the scenic, mountain, wildlife, wetland, and stream resources of a wind farm project on Black Nubble. Furthermore, NRCM introduced testimony into the record comparing a Black Nubble-only project to the full RWF project in terms of impacts on the surrounding resources. NRCM testified that, compared to the full project, the Black Nubble-only project would reduce visual impacts that would be adverse to recreational users of the Appalachian Trail, and others seeking remote resource experiences, reduce habitat fragmentation, and reduce potential impacts on Bicknell's Thrush habitat. See Pre-Filed Testimony of Pete Didisheim, NRCM, at 3. MMP agrees, and requests that the

Commission reopen the record to allow MMP to highlight the evidence regarding the Black Nubble project already in the record for the purposes of assisting the Commission in its determination, and to introduce limited, additional evidence about the further reduced impacts of the Black Nubble project.

Reduced Visual Impacts to AT: As NRCM testified in its pre-filed direct testimony, the Black Nubble-only project reduces impacts to the scenic vista of the AT. The closest turbine on Black Nubble would be more than 3 miles from the AT, as opposed to the previously proposed distance of 1 mile. See NRCM Pre-Filed Testimony Exhibit G. This is approximately 3 times farther away than the closest view of the Project under the original proposal. See Maine Mountain Power Study Area (Exhibit 3 to Pre-Filed Testimony of Terrance Dewan and Amy Segal), attached hereto (showing location of Black Nubble in relation to the AT). As NRCM testified before this Commission, “[a]t this distance, the turbines become significantly less prominent features within the visual landscape.” See Pre-Filed Testimony of Pete Didisheim, NRCM, at 7. MMP requests that the Commission reopen the record to allow MMP to highlight existing evidence in the record regarding the reduced scenic impact of the Black Nubble project on the AT in order to assist the Commission in its determination of whether the revised proposal meets LURC criteria.

Reduced Habitat Fragmentation: In its pre-filed testimony, NRCM testified that the Black Nubble-only project would reduce habitat fragmentation because preventing development on Redington would preserve one of the “largest remaining roadless tracts in the state.” See Pre-Filed Testimony of Pete Didisheim, NRCM, at 5 (quoting AMC Comments to MMP Zoning Petition 702, p.7). As NRCM and AMC acknowledged in the record, Black Nubble lies outside of this unfragmented area. See Pre-Filed Testimony of Pete Didisheim, NRCM, at 5 (quoting AMC Comments to MMP Zoning Petition 702, p.7) and NRCM Exhibit E (Project Turbines in Relationship to Contiguous Forestland). MMP requests that the Commission reopen the record to allow MMP to highlight existing evidence in the record regarding the greatly reduced impact of the Black Nubble project on the natural wildlife habitat of the area in order to assist the Commission in its determination of whether the revised proposal meets LURC criteria.

Reduced Potential Impacts on Bicknell’s Thrush habitat: NRCM also testified that a Black Nubble-only project would reduce impacts to the Bicknell’s Thrush habitat. NRCM testified that in contrast to Redington, which “lies at the heart of the largest region of habitat suitable to Bicknell’s Thrush in the State,” Black Nubble is lower in elevation than Redington and has more timber harvesting on its slopes, and therefore “lies at the edge” of the Bicknell’s Thrush habitat. See Pre-Filed Testimony of Pete Didisheim, NRCM, at 6 and NRCM Exhibit F (Bicknell’s Thrush Habitat map). MMP requests that the Commission reopen the record to allow MMP to highlight existing evidence in the record regarding the greatly reduced potential impact of the Black Nubble project on the Bicknell’s Thrush habitat in order to assist the Commission in its determination of whether the revised proposal meets LURC criteria.

Reduced Potential Impact on Northern Bog Lemming: An essential element of the Black Nubble project is conservation of Redington. The only documented presence of the Northern Bog Lemming in the original project area was on Redington. Therefore, MMP requests the opportunity to reopen the record to highlight existing evidence in the record establishing how the location of the project on Black Nubble and the restriction of development on Redington reduces any potential impact of the wind farm on the Northern Bog Lemming.

Reduced Clearing: Because the scale of the Black Nubble project is greatly reduced, it would result in significantly less clearing above 2,700 ft. In addition, the scaled back project will eliminate impacts to wetland resources located on Redington. MMP requests that the Commission reopen the record to allow MMP to highlight existing evidence in the record and submit limited, additional evidence regarding limited clearing and wetland impacts associated with the Black Nubble project in order to assist the Commission in its determination of whether the revised proposal meets LURC criteria.

IV. Economic Viability of Black Nubble Project

MMP requests that the Commission reopen the record to allow MMP to submit additional evidence regarding cost-saving and revenue-enhancing measures that MMP would undertake to make the Black Nubble Project economically viable. When NRCM originally proposed this one mountain-only option, MMP calculated that a 35% increase in energy price would be required because certain fixed costs would be allocated over substantially less total generation and Black Nubble has lower winds than Redington. MMP concluded at that time that such a price increase was too much for the market to bear.

MMP respectfully requests that the Commission reopen the record on a limited basis to give MMP the opportunity to introduce evidence on the ways that MMP will reduce capital and operating costs, enhance revenues, and take advantage of changes in the market to increase the economic viability of the Black Nubble Project.

V. Black Nubble Project Benefits to Maine

MMP requests that the Commission reopen the record on a limited basis to afford MMP the opportunity to highlight existing evidence in the record regarding energy and economic benefits that the Black Nubble Project will impart to Maine. MMP also requests the opportunity to submit additional evidence regarding the amount of renewable energy that would be generated by the revised project, the reduction in air pollution and dependence on fossil fuels that would result from a Black Nubble project, and the economic benefits of a Black Nubble project.

VI. Conclusion and Procedural Requests

In closing, for the reasons stated above, MMP requests that the Commission reopen the record on a limited basis to allow MMP to establish, through existing evidence and the introduction of limited additional evidence, how the revised Black Nubble Project satisfies LURC permitting and rezoning criteria. In the event that the Commission decides to grant MMP's request to reopen the record, MMP acknowledges that the Commission may decide to provide an opportunity for comment by the parties and/or the public. MMP requests that the Commission consider the following requests from MMP with respect to process and procedure:

- **Request that the requested draft denial decision be put on hold:** MMP requests that the Commission table its consideration of the denial of the two-mountain wind farm proposal, in light of the fact that MMP seeks to present this amended petition and application for the one-mountain, Black Nubble Project. In light of this modification, denial of the full two-mountain proposal is no longer relevant and might prejudice any evaluation of the Black Nubble project. Further, a denial would force MMP to start its application again (and all of the associated procedural formalities), despite already undergoing a fifteen-month permitting process, including extensive written testimony and a three-day

hearing. Accordingly, MMP respectfully requests that the Commission not rule on the denial decision until MMP has had a full-opportunity to present evidence establishing that the Black Nubble Project satisfies LURC permitting and rezoning criteria and the other parties have had an opportunity to respond.

- **Public comment:** MMP's application has elicited strong interest by many parties and the proposed reduction in size is likely to stimulate additional discussion. LURC rules allow a reopening for comment. If the Commission decides to hold an additional hearing, MMP requests that it be scheduled at the earliest convenience, understanding that the Commission is required to provide notice at least thirty days in advance of a hearing.
- **Intervenor status:** MMP requests that the existing party status be maintained and that new parties not be allowed to intervene. MMP respectfully submits that this project is exactly the same project that was heard before this Commission in August 2006, except that a portion of it has been subtracted. All of the interested parties have had an opportunity to intervene, and many have exercised that opportunity. Therefore, there is no basis for allowing additional parties to join the process. Furthermore, as the Commission is aware, there has been a substantial amount of evidence introduced into the record. If the Commission were to allow new intervenors into the process who have not yet been heard, it would create an unworkable situation in which the new parties would want to comment on issues which have already been addressed, rather than focusing their comment on the specific issues raised by the amended proposal. To the extent that new parties have an interest in participating in this proceeding, they could have the opportunity to do so in the public comment period.

MMP hopes that the Commissioners will grant its request to reopen the record for the purpose of considering the amended Black Nubble Project. We believe that this modified proposal addresses important issues raised during the RWF hearing, both in support of renewable energy and in support of land conservation. MMP would be happy to attend the Commissioners' June 6th meeting to respond to any questions Commissioners may have regarding this request. Thank you very much for your attention to this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "Harley Lee". The signature is fluid and cursive, with the first name "Harley" written in a larger, more prominent script than the last name "Lee".

Harley Lee,
Maine Mountain Power