



Fact Check: Superior Court v. Law Court Review of Wind Projects

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Opponents of Wind Attempt to Delay Appeals Process

Opponents of wind power have worked tirelessly to undercut Maine's commitment to clean renewable energy.

In one of their most recent attacks, they have attempted to argue that the appeals process for wind power decisions is flawed and needs an additional layer of review.

Under Maine's Wind Energy Act, appeals of wind energy permits in expedited areas progress either from the Maine Department of Environmental Protection or the Board of Environmental Protection to the [Maine Supreme Judicial Court](#), also known as the Law Court.

Wind power opponents assert that an interim step in the appeals process should include Maine Superior Court. Adding an unnecessary intermediate step is an attempt to delay and add costs to the development of wind power projects in Maine.

Opponents Wrongly Assert:

- An appeal to Superior Court allows for more thorough development of the factual record.
- The Superior Court will review the facts of the record in a way that the Law Court will not.

The Facts:

- The standard of review for final agency actions is identical whether the appeal is heard in Superior Court or before the Law Court.
- In other types of adjudicatory proceedings, when an appeal goes first to Superior Court and then to the Law Court for consideration, the Law Court directly reviews the agency decision, not the Superior Court decision. The Law Court basically disregards the Superior Court decision and undertakes its own review of agency actions.
- Direct appeal to the Law Court is not unusual, particularly in energy matters. Appeals of the [Maine Public Utilities Commission](#) are sent directly to the Law Court.
- Most wind energy projects approved by the Maine Department of Environmental Protection have been settled by the Law Court.

Legal Context:

- Under other circumstances, there are minor procedural differences between Superior Court and Law Court appeals for agency decisions. Those differences do not apply in the case of wind energy appeals
- Superior Court appeals are brought pursuant to Rule 80C of the Maine Rules of Civil Procedure, which provides in limited circumstances for the taking of additional evidence or supplementing the agency record.
- When the [Legislature authorized the direct appeal of wind energy decisions to the Law Court](#), lawmakers specified that the appeals to the Law Court were to be taken in the manner consistent with [Rule 80C](#). There is an identical opportunity for additional evidence at either the Superior Court or the Law Court.

Conclusion:

Attempts to add an intermediate level of appeal to the Maine Superior Court are seeking to create new delays and add costs to the process for siting of a wind power project.

Evidence indicates that decisions regarding wind power projects are generally appealed to the Law Court. Opponents of wind power argue that the appeal to the Law Court creates an unreasonable hurdle for people opposed to a particular project. So far, the evidence is to the contrary. In fact, if most appeals are heading to the Law Court for final resolution, the process provides the opponents with a less expensive resolution as well.

Claims that an appeal to the Superior Court would add more opportunities for input from opponents are untrue. The opportunities to more fully develop the factual record are identical whether the appeal is pending in Superior Court or in the first instance in the Law Court.

The [Maine Wind Energy Act](#) created the expedited review to be consistent with appeals of the Public Utilities Commission and to increase the predictability and reduce delays in the final disposition of appeals of permits for wind power projects.

In making its decision to unanimously adopt the Maine Wind Energy Act, [the Legislature found](#): “The Legislature finds and declares that the wind energy resources of the State constitute a valuable indigenous and renewable energy resource and that wind energy development, which is unique in its benefits to and impacts on the natural environment, makes a significant contribution to the general welfare of the citizens of the State ...” This finding remains in effect today.

About Wind for Maine:

Wind for Maine is a growing coalition of Maine people, businesses and communities that support the responsible development and growth of wind energy in Maine as a way to strengthen the state’s economy, reduce our dependence of fossil fuel and protect the environment.

For more information, visit: www.windforme.org.