

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7250

Amended Petition of Deerfield Wind, LLC, for a)
certificate of public good authorizing it to construct)
and operate a 17-turbine, 34-35.7 MW wind)
generation facility, and associated transmission and)
interconnection facilities, on approximately 80 acres)
in the Green Mountain National Forest, located in)
Searsburg and Readsboro, Vermont, with 7 turbines)
to be placed on the east side of Route 8 on the same)
ridgeline as the existing GMP Searsburg wind)
facility (Eastern Project Area), and 10 turbines)
along the ridgeline to the west of Route 8 in the)
northwesterly orientation (Western Project Area))

Order entered: 8/25/2008

Order Re Motion to Compel

On July 25, 2008, Duncan Cable TV ("Duncan Cable") filed a motion to compel. On July 7, 2008, Deerfield Wind, LLC ("Deerfield") filed "Motions to Compel and for Leave to File Supplemental Rebuttal Testimony." In this Order I deny Duncan Cable's motion to compel and do not rule on Deerfield's motion to compel which is now moot.

Duncan Cable's Motion

Duncan Cable states that Deerfield has not adequately responded to Duncan Cable's second set of discovery requests. As a result, it now asks that the Public Service Board ("Board") compel Deerfield to respond fully.

On August 7, 2008, Deerfield filed a letter opposing Duncan Cable's motion. Deerfield contends that it filed proper responses to Duncan Cable's discovery requests, "subject to valid relevance and scope objections." Additionally, Deerfield asserts that Duncan Cable's motion was not properly filed, as Duncan Cable did not attempt to work with Deerfield to resolve a discovery

dispute prior to filing the motion, as required by V.R.C.P. 26(h). Finally, Deerfield states that Duncan Cable has not identified specific deficiencies in Deerfield's responses.

On August 19, 2008, Duncan Cable filed a reply to Deerfield's August 7 filing. Duncan Cable states that Mr. Duncan spoke with Deerfield's public relations person, Sam Bittman, on December 12, 2007, and conveyed his concerns regarding the project, but Mr. Bittman did not respond with additional information after that discussion. Additionally, Duncan Cable states that it has requested specific information. Finally, Duncan Cable states that Deerfield is incorrect in its assertion that certain information requested by Duncan Cable is not relevant.

I find that Duncan Cable's motion is inadequate. Pursuant to Vermont Rules of Civil Procedure, a party must make a good faith effort to resolve discovery disputes prior to filing a motion to compel. Here, Duncan Cable did not address the sufficiency of Deerfield's responses with Deerfield or make any attempt to resolve the dispute prior to filing the motion to compel with the Board. Although Duncan Cable is not represented by an attorney, the Board made clear that: "Intervenors have the same obligations, in addition to the same rights, as the other formal parties, including the requirement that parties follow the Board's procedural rules."¹ Even without knowledge of the Rules of Civil Procedure, Duncan Cable should have attempted to resolve this issue informally. Duncan Cable states that it discussed its concerns with Deerfield's public relations person in December of 2007. However, Deerfield responded to Duncan Cable's information requests in March, 2008. There have been five months available for Duncan Cable to attempt to resolve any discovery dispute, and yet, there is no indication that it has made any such attempt.

Duncan Cable's motion to compel is denied.

Deerfield's Motions

Deerfield's motion to compel states that it served its first set of discovery requests on Duncan Cable on April 29, 2008. The deadline for responses was May 13, 2008; Duncan Cable has not responded to any of the discovery requests. Deerfield's motion contains the required

1. Docket 7250, Prehearing Conference Memorandum, issued 9/20/07, at 3-4.

affidavits showing that it has made a good faith effort to resolve the discovery dispute, pursuant to Vermont Rules of Civil Procedure 26(h).

On July 25, 2008, Duncan Cable filed responses to Deerfield's first set of discovery requests.

No other party filed a response to Deerfield's motion.

Given Duncan Cable's responses to Deerfield's discovery requests, there is no need to rule on Deerfield's motion to compel. In addition, Deerfield also requested that it be allowed to file supplemental rebuttal testimony three weeks after Duncan Cable responded to Deerfield's discovery requests. More than three weeks have passed since Duncan Cable filed the responses, and Deerfield has not filed supplemental testimony or indicated that it wishes to do so. Accordingly, I find that Deerfield's motion for leave to file supplemental rebuttal testimony is moot.

SO ORDERED.

Dated at Montpelier, Vermont, this 25th day of August, 2008.

s/Ed McNamara
Edward McNamara, Esq.
Discovery Officer

OFFICE OF THE CLERK

FILED: August 25, 2008

ATTEST: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)