

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: 8/6/2008

ORDER RE MOTION TO STRIKE

On July 7, 2008, Deerfield Wind, LLC ("Deerfield") filed a motion to strike certain testimony of Lisa Linowes filed April 28, 2008, on behalf of the Industrial Wind Action Group ("IWAG"). In this Order we deny Deerfield's motion to strike as untimely.

Positions of the Parties

Deerfield objects to the testimony filed by Ms. Linowes filed on behalf of IWAG. Deerfield contends that the lay witness "has offered testimony in the nature of an expert on a plethora of varied and substantive subject areas in which she possesses no expertise." Deerfield also argues that the testimony and appendices are "rife with impermissible hearsay."

IWAG filed a response to Deerfield's motion on July 22, 2008. IWAG contends that the motion should be denied as untimely because the motion was filed over thirty days from the submission of the testimony and Deerfield did not file a motion for extension. IWAG also argues that Ms. Linowes' background and experience are sufficient to justify her expertise in the areas she has testified about.

Thomas Shea filed a response to Deerfield's motion to strike on July 23, 2008. Mr. Shea contends that Ms. Linowes' testimony falls within the scope of intervention granted by the Public

Service Board ("Board"). Mr Shea also argues that while Ms. Linowes does not possess a degree in "Wind Energy," she would be considered "most knowledgeable" in the field of wind energy development.

The Department of Public Service ("Department") filed a response to Deerfield's motion to strike on July 22, 2008. The Department contends that Ms. Linowes' testimony is consistent with the scope of permissive intervention granted by the Board. The Department argues that "rather than striking the testimony entirely, the Board may easily address this issue through its determination of how much weight to afford this testimony."

On July 25, 2008, Deerfield filed comments in response to IWAG's reply to the motion to strike. Deerfield argues that, while it does not object to Ms. Linowes testifying as a lay witness, Ms. Linowes has "not laid sufficient foundation to submit expert testimony" in the areas described in her testimony. Deerfield reiterates its objection to certain testimony as "inadmissible hearsay statements of other experts."

Discussion

Pursuant to Board Rule 2.216 (C), objections to the admissibility of prefiled testimony must be filed within thirty days of when the testimony was filed. In this case, Deerfield did not file its objection to the testimony filed on April 28, 2008, until July 7, 2008. Deerfield acknowledges that the motion was filed out of time, but states that it "reached an agreement with IWAG" to file its motion at a later time. As IWAG points out in its comments, its agreement does not, however, relieve Deerfield of its duty to comply with Board Rules or to request an extension from the Board. Deerfield does not offer any explanation as to why it did not request such an extension of the filing deadline. Therefore, we deny Deerfield's motion to strike as untimely. However, the Board will, as always, exercise its discretion in deciding how much weight this type of testimony is given.

Conclusion

For the reasons stated above, we deny Deerfield's motion to strike as it relates to the testimony of Ms. Linowes filed on behalf of IWAG.

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of August, 2008.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: August 6, 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)