STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7250

Petition of Deerfield Wind, LLC, for a certificate of public good authorizing it to construct and operate up to a 45 MW wind generation facility, and associated transmission and interconnection facilities, comprised of between 15 and 24 wind turbines on approximately 80 acres in the Green Mountain National Forest, located in Searsburg and Readsboro, Vermont, with turbines to be placed both on the east side of Route 8 on the same ridgeline as the existing GMP Searsburg wind facility (Eastern Project Area), and along the ridgeline to the west of Route 8 in a northwesterly orientation (Western Project Area) –	)

Order entered: 4/9/2008

ORDER RE: SAVE VERMONT RIDGELINES' MOTION TO COMPEL

Introduction

This Order resolves a dispute between Save Vermont Ridgelines ("SVR"), and Deerfield Wind, LLC ("Deerfield") concerning SVR's motion to compel discovery from Deerfield. In this Order, I determine that Deerfield should disclose the requested information.

Background and Positions of the Parties

On March 5, 2008, SVR filed with the Vermont Public Service Board ("Board") a Motion to Compel Discovery from Deerfield related to prefiled testimony and an exhibit of Deerfield witness Ezra Hausman. In its motion, SVR notes that its discovery requests to Deerfield included the following:

> 2. Provide a copy of all documents reviewed, and/or relied [upon], and/or generated by you, or referenced in the answer to interrogatories, in determining the expected capital cost of the proposed project.
>
> 3. Provide a copy of all documents reviewed, and/or relied upon, or referenced in the answer to interrogatories, and/or generated by you, in determining the expected income of the proposed project over its first 20 years of operations including, but not limited to, income from subsidies provided by any public or private source, and the sale of all products generated by the proposed project including "green tags" or other types of renewable energy or pollution credits.[1]

In its motion, SVR claims that "Deerfield has introduced evidence and analyses that rely on the financial information which it now seeks to avoid producing."[2] SVR asserts that:

> The fact that Mr. Hausman's testimony is apparently not based on the actual capital requirements and expected fixed and variable operating costs and financing terms for this project, goes to the credibility of Mr. Hausman's conclusion 'that the Project is financially sound' but does not mean that Deerfield has not put into issue the 'financial viability' of the proposal, a question it asked Mr. Hausman to address.[3]

SVR contends that it is "entitled to test the conclusion offered by Mr. Hausman by obtaining from Deerfield all of the financial data from which a determination can be made about whether the project is or is not 'financially sound.'"[4]

On March 20, 2008, Deerfield filed a memorandum in opposition to SVR's motion to compel. Deerfield asserts that the Board should deny SVR's motion because the information requested is irrelevant under 30 V.S.A. Section 248 and is thus not likely to lead to the discovery of admissible evidence, and because Deerfield did not waive its right to withhold irrelevant project-specific financial data by including general industry figures in Mr. Hausman's prefiled testimony.[5] Moreover, according to Deerfield, the public disclosure of the requested information could "compromise Deerfield's position in negotiations with potential vendors, and would

1. SVR Motion of March 5, 2008, at 1-2.
2. *Id*. at 2.
3. *Id*.
4. *Id*. at 2-3.
5. Deerfield's Opposition to SVR's Motion to Compel, March 20, 2008, at 2.

provide competing developers with detailed knowledge of the operation's financing structure and the financial competitiveness of the company as a whole."[6]

Discussion

For the reasons set out below, I conclude that Deerfield should disclose the requested information to SVR.

V.R.C.P. 26 states that "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . ."[7] It is Deerfield itself that has raised the issue of financial viability in this proceeding, by submitting prefiled testimony and exhibits on that issue. If Deerfield raises an issue in its prefiled testimony and exhibits, it would be fundamentally unfair to not allow other parties to conduct discovery on that issue.

Deerfield's reliance upon a Hearing Officer's Order in Docket 6911 is misplaced. In Docket 6911, the Hearing Officer denied a motion to compel information from a privately-funded wind generation facility.[8] The facts in this case differ from those considered in Docket 6911. In this Docket, Deerfield has proffered testimony on the financial viability of the Deerfield project. In Docket 6911, no such affirmative step was undertaken by the petitioner.[9]

Deerfield further contends that it did not waive its right to withhold irrelevant project-specific financial data by including general industry figures in its witness' prefiled testimony. For the same reasons stated above, this is not so. If Deerfield raises the issue of its project's financial viability, as it has done by offering testimony on that issue, then other parties to this case should have the opportunity to conduct discovery on Deerfield on that very issue.

Deerfield has also argued that the public disclosure of the requested information could "compromise Deerfield's position in negotiations with potential vendors, and would provide competing developers with detailed knowledge of the operation's financing structure and the

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6. *Id*.

7. V.R.C.P. 26(b)(1), which is applicable to Board proceedings pursuant to Board Rule 2.214(A).

8. Docket 6911, Order of July 15, 2005.

9. Consequently, there is no need to revisit that Order in Docket 6911 because the facts in this case are wholly distinguishable.

financial competitiveness of the company as a whole."[10] I explored this issue with Deerfield during the discovery conference. When asked – if the Board were to rule against it on this motion – whether or not the information that might become available through discovery would be subject to a confidentiality agreement and protective order such as those in effect in this case, counsel for Deerfield indicated that it would. Thus the concern over public disclosure of this information is misplaced.

For the foregoing reasons, I grant SVR's March 5 Motion to Compel.

SO ORDERED.

Dated at Montpelier, Vermont, this 9th day of April, 2008.

s/David Farnsworth
David Farnsworth, Esq.
Discovery Officer

OFFICE OF THE CLERK

FILED: April 9, 2008

ATTEST: s/Judith C. Whitney
Deputy 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: Clerk@psb.state.vt.us)

10. Deerfield Opposition at 2.