

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 15-turbine, 30 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 8 turbines along the ridgeline to the west of Route 8 in the northwesterly orientation (Western Project Area)	
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Order entered: 6/9/2017

ORDER RE: MOTION FOR CEASE AND DESIST

I. INTRODUCTION

This case pertains to the amended certificate of public good (“Amended CPG”) issued by the Vermont Public Service Board (“Board”) to Deerfield Wind, LLC (“Deerfield”) on July 17, 2009, for construction and operation of a 30 MW wind electric generation facility located in Searsburg and Readsboro, Vermont (the “Project”).

On May 24, 2017, intervenor Thomas Shea filed a motion requesting that the Board direct Deerfield to cease and desist construction activities until all transportation-related permits are obtained pursuant to condition 36 of Deerfield’s Amended CPG.

On May 25, 2017, the Board directed Deerfield to file a response.

On May 26, 2017, Deerfield filed a response stating that Mr. Shea’s motion was not filed properly and should be considered a public comment, and providing its response to Mr. Shea’s specific allegations about compliance with the Amended CPG.

On May 31, 2017, Mr. Shea filed a reply to Deerfield’s response.

On June 2, 2017, Deerfield filed a reply to Mr. Shea’s reply.

In this Order we deny Mr. Shea's request to order Deerfield to cease and desist construction activities.

II. PROCEDURAL ISSUES RE: MOTION

Mr. Shea filed his motion electronically, with a notation regarding copies furnished below the signature that states: "cc: Parties to Docket 7250." The filing was copied to an extensive e-mail list. Mr. Shea's motion and comments in response to Deerfield's comments on the motion were not properly filed in hard copy with the Board, and did not include a certificate of service confirming that they were served on the appropriate parties. On its own, the improper filing warrants dismissal of Mr. Shea's motion. However, for purposes of judicial economy, given that Mr. Shea could properly refile the motion, and because it is our understanding that all parties received the information, we will address the merits now.

III. PARTIES' POSITIONS

Mr. Shea

Mr. Shea's comments include the following allegations: (a) Deerfield is in violation of condition 36 of its Amended CPG because Project-related construction traffic has been traveling on Vermont Route 8 and according to the Vermont Department of Motor Vehicles, Deerfield has not yet obtained any transportation-related permits; and (b) Project-related construction vehicles have driven onto Mr. Shea's posted property. Mr. Shea provided photographs of a roller truck and a pick-up-sized crane truck traveling on the road as proof of the Project-related construction vehicles he refers to in his motion. Mr. Shea did not provide any documentation that construction vehicles were trespassing on his property. Mr. Shea "requests that the Board issue a cease and desist on all construction activity at the Deerfield Wind project site until Deerfield can demonstrate it has secured the required permits as defined by the Board in the CPG."¹

Mr. Shea argues that "the right of way off of the pavement" constitutes part of his property and that a vehicle used his property "to alleviate the problem of blocking traffic as it

¹ Mr. Shea's motion.

travelled illegally along Route 8.” Mr. Shea also contends that the solid wheel of the roller “puts the vehicle over the 600 psi limit per Vermont statute.”²

Deerfield

Deerfield states that oversized vehicle permits are issued by the Vermont Department of Motor Vehicles (“DMV”) for specific vehicles, and are not issued for the entirety of a project’s construction period. Deerfield contends that all DMV permits have been obtained for all oversized vehicles associated with Project construction, and that Deerfield has not received any citations or other notifications that it has failed to obtain a required permit. Deerfield states that construction vehicles in excess of 80,000 pounds gross vehicle weight require a DMV permit, and the roller truck in the photograph provided by Mr. Shea has a weight of 24,540 pounds and therefore does not require a permit.

Deerfield states that it is now aware of the need for construction vehicles traveling on the road (as opposed to being trailered) to be registered with the DMV. Deerfield’s contractors intend to comply with this requirement as soon as possible for all construction vehicles traveling on the road. Deerfield does not believe that construction vehicles were driven onto Mr. Shea’s property. Deerfield states that the operator of the roller recalls that the roller and the escort vehicle pulled off the pavement onto the gravel shoulder within the public road’s right-of-way to allow another vehicle to pass. Deerfield contends that it is in compliance with its CPG and there is no legal basis to require it to cease construction activities.

IV. DISCUSSION AND CONCLUSION

Condition 3 of the Amended CPG states:

Deerfield shall obtain all necessary permits and approvals for the Project. Construction, operation, and maintenance of the Project shall be in accordance with such permits and approvals.

Condition 36 of the Amended CPG states:

Deerfield must receive the necessary permits from the Vermont Agency of Transportation for oversized vehicles.

² Mr. Shea’s comments of 5/31/2017. The acronym “psi” is generally used for “pounds per square inch.”

Deerfield's responses regarding the need for DMV permits are consistent with information readily available on the internet in the Vermont Agency of Transportation's website and in its publication "The Orange Book," a handbook for local officials,³ as well as 23 V.S.A. §§ 1391 and 1392. Deerfield represents that the roller truck weighs 24,540 pounds and has a width of 7 feet 8 inches. Based on these dimensions, it does not appear possible for the roller truck to generate a weight in excess of 600 pounds per inch of tire width, as specified at 23 V.S.A. § 1391(a).

The status of the registration of a construction vehicle used by a contractor in Project-related construction, while a DMV compliance matter for the contractor, would not reasonably be considered a "necessary permit" for the Project.

In addition, the issue of whether construction vehicles using the road shoulder constitutes trespassing on private property is beyond the scope of Conditions 3 and 36 of Deerfield's Amended CPG.

Because Mr. Shea has not provided compelling evidence that Deerfield is not in compliance with Conditions 3 or 36 of its CPG, we deny Mr. Shea's request to direct Deerfield to cease and desist construction activities.

SO ORDERED.

³ <http://dmv.vermont.gov/commercial-services/permits/single-trip-permit>;
<http://vtrans.vermont.gov/sites/aot/files/operations/TheOrangeBook.pdf>

Dated at Montpelier, Vermont, this 9th day of June, 2017.

<u>s/James Volz</u>	)	
James Volz	)	PUBLIC SERVICE
	)	
	)	
<u>s/Margaret Cheney</u>	)	BOARD
Margaret Cheney	)	
	)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>	)	
Sarah Hofmann	)	

OFFICE OF THE CLERK

Filed: June 9, 2017

Attest: s/Judith C. Whitney
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@vermont.gov)