

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NUMBER 17-4311-INV

INVESTIGATION PURSUANT TO 30 V.S.A. SECTIONS 30
AND 209 INTO WHETHER DEERFIELD WIND, LLC, VIOLATED
CONDITIONS OF ITS CERTIFICATE OF PUBLIC GOOD
PERTAINING TO BLASTING DURING CONSTRUCTION OF
ITS WIND ELECTRIC GENERATION FACILITY IN SEARSBURG
AND READSBORO, VERMONT

November 17, 2017
1 p.m.

112 State Street
Montpelier, Vermont

Prehearing Conference held before the Vermont
Public Utility Commission, at the Susan M. Hudson
Conference Room, People's United Bank Building, 112 State
Street, Montpelier, Vermont, on November 17, 2017,
beginning at 1 p.m.

P R E S E N T

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STAFF: Thomas Knauer
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A P P E A R A N C E S

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1 HEARING OFFICER STILLMAN: Good
2 afternoon everyone. This is a Prehearing Conference
3 in Case Number 17-4311-INV which concerns the
4 complaint filed by Mr. Francis Candiloro that
5 Deerfield Wind, LLC violated conditions of its
6 Certificate of Public Good pertaining to blasting
7 during construction of a wind generation electric
8 facility in Searsburg and Readsboro, Vermont.

9 The purpose of this prehearing
10 conference is to discuss procedural matters and
11 schedule for the remaining steps in this
12 investigation. My name is Monica Stillman and I'm an
13 environmental analyst for the Vermont Public Utility
14 Commission. The Commission has appointed me to be
15 the Hearing Officer for this investigation, and I'm
16 joined by Tom Knauer, a utility analyst for the
17 Commission, and we'll start by taking notices of
18 appearance starting with the Department.

19 MS. ELIAS: Jeanne Elias for the
20 Department of Public Service.

21 MR. CANDILORO: Francis Candiloro
22 complainant.

23 MR. LEWIS: This is Sash Lewis from
24 Dunkiel for the respondent Deerfield Wind LLC. I'm
25 here with Andy Raubvogel.

1 HEARING OFFICER STILLMAN: Thank you and
2 I want to remind Ms. Elias that the Department needs
3 to file a notice of appearance in this investigation.

4 MS. ELIAS: Thank you. Will do.

5 HEARING OFFICER STILLMAN: Thank you.
6 So the purpose of the prehearing conference is to
7 determine how to proceed in this investigation. For
8 Mr. Candiloro's benefit we're not talking about any
9 of the specific facts or details of this case today.
10 We're just talking about procedural steps and the
11 schedule going forward. Have the parties had a
12 chance to discuss the path going forward?

13 MS. ELIAS: On behalf of the Department
14 the answer to that is some of the parties but not all
15 of the parties have had an opportunity to have
16 discussions in that regard. Counsel for Deerfield
17 Wind has proposed a potential schedule which I have
18 provided copies of for Mr. Candiloro and Commission
19 staff, and the schedule does not begin for a certain
20 period of time. So the Department will, if this case
21 proceeds, need to retain a blasting expert in order
22 to assist it in evaluating any evidence and that will
23 take a period of time, and I won't speak for
24 Deerfield, but they also are requiring some time
25 prior to the commencement of official proceedings

1 beyond this prehearing conference, and then proposed
2 in the schedule is initial briefing issues,
3 evidentiary matters, preliminary matters, briefing
4 opportunity.

5 MR. LEWIS: If I can just jump in for a
6 moment, our client Deerfield is interested in using
7 that window of time during which the DPS will be
8 soliciting and retaining an expert witness hopefully
9 to discuss the matter with Mr. Candiloro and reach
10 whatever agreement is possible under the
11 circumstances.

12 HEARING OFFICER STILLMAN: Can you
13 repeat how you see that fitting into the schedule
14 that I have before me?

15 MR. LEWIS: Sure. That would happen in
16 the period between now and February 16th during which
17 DPS would presumably be looking into a blasting
18 expert.

19 HEARING OFFICER STILLMAN: What steps --
20 what does the Department need to do in terms of
21 looking into hiring a blasting expert?

22 MS. ELIAS: It depends. The state
23 contracting process can be somewhat lengthy. The
24 Department does not have experience with blasting
25 experts. We haven't hired them before so we don't

1 have one on retainer. We would have to -- in one
2 instance in another matter we recently issued a RFP
3 for a blasting expert. So we have some leads there,
4 but that was for a different case, another case, and
5 a different kind of case I would suspect in terms of
6 magnitude. So the Department needs -- may need to
7 issue a RFP in order to get a response from potential
8 blasting contractors. It's possible if the
9 information that we can obtain informally on names of
10 potential experts might lead to the possibility of a
11 sole force contract, but that depends on the cost of
12 a blasting expert, and with no familiarity into the
13 rates charged by blasting experts I would not be able
14 to say whether that is possibility here. Also sole
15 force contracting is for a contract that may not
16 exceed \$15,000 -- \$10,000. I have some expertise in
17 the room. So I'm not sure whether we will be able to
18 sole source this if we find an individual. Might be
19 hard to sole source to an individual if we don't have
20 prior experience with that individual. So it may
21 need to go through the RFP process and that is going
22 to take a period of time; and as the Commission is
23 probably aware, the Department does not have deep
24 expertise in blasting so we want to proceed
25 cautiously in this type of hearing because we haven't

1 had experience.

2 So that will take a matter of weeks and
3 we can't predict the amount of process we'll need to
4 engage in, in order to locate this person to do this
5 work, and so in conversations with Deerfield it
6 seemed that that would be a good opportunity for
7 Deerfield to engage in exploring settlement
8 negotiations and issues with Mr. Candiloro.

9 HEARING OFFICER STILLMAN: So when you
10 say a matter of weeks are you able to put a range on
11 it?

12 MS. ELIAS: I have not engaged in
13 designing a RFP or understanding how long we need to
14 give people to respond to it. So I don't know the
15 state contracting process well enough, and again one
16 of the big unknowns for the Department here is, you
17 know, in the world of experts where the Department
18 does have a lot of experience like aesthetics we
19 understand the appropriate wages and nature of the
20 tests involved and so we can better estimate the kind
21 of time it will take to write up a RFP if we need to
22 do one. This is a matter of first impression for me
23 writing up a RFP for a blasting expert. I don't even
24 know the length and I'm going to have to get up to
25 speed on that. Luckily the Department did write a

1 RFP recently for another matter that involves a
2 blasting expert, but my sense is that the fact that
3 needs to be explored in this matter versus that
4 matter may be very different, but again without
5 knowing much about blasting I'm going out on a limb
6 here.

7 HEARING OFFICER STILLMAN: So is that
8 the kind of process the Department would engage in
9 before it knew whether or not it was actually
10 required or if the result of the settlement
11 negotiation is known would you want to have been
12 doing that RFP solicitation beforehand or would you
13 wait and start it when you knew a settlement was not
14 an option?

15 MS. ELIAS: I would not want to defer
16 matters because these are good activities to happen
17 at the same time. The Department would not need to
18 commit resources other than mine and some support
19 staff in order to do the RFP and to review potential
20 bids and then to understand the nature of the cost
21 that we're looking at, and we wouldn't be -- we would
22 not likely be engaging the expert, signing the
23 contract, and saying go until we knew the outcome of
24 potential settlement, but we could do a lot of the
25 groundwork and get the contractor ready to go before

1 engaging, and because I at that point would take a
2 period of weeks I wouldn't want to defer that because
3 the Department can't make much progress in the
4 interim. So it makes sense to do that now.

5 HEARING OFFICER STILLMAN: Okay. So you
6 agree it can begin?

7 MS. ELIAS: Yes.

8 HEARING OFFICER STILLMAN: Mr.
9 Raubvogel, would you explain what the Department has
10 indicated that you have agreed that the time frame
11 between now and February 16th would be worthwhile
12 time spent discussing a settlement with Mr. Candiloro
13 where the schedule on February 16th has filing of
14 briefs or motions?

15 MR. LEWIS: This is Sash Lewis. We're
16 in agreement with that. Our client wants to get on
17 the record that the process for getting us here today
18 has been a bit unusual and we've been a bit baffled
19 by it inasmuch as our understanding is that part of
20 the reason we're in an investigation today is that
21 there was an exchange of information about Mr.
22 Candiloro's CAPI complaint between the Department and
23 the Commission on August 21st which is something that
24 we were not aware of until we got the order opening
25 the investigation.

1 There's certainly information that we
2 are not aware whether the Department provided to the
3 PUC, but that our client provided to the Department
4 that we think would have been very useful for the
5 Commission to have had before opening an
6 investigation and typically that's how we've seen it
7 happen. There's a round of exchange and briefing on
8 the complaint before the Commission makes a decision
9 to open an investigation, and so finding ourselves
10 here I think our position is that that process, which
11 is more typical, would have been a good one to follow
12 here, but in this instance it's useful since we're
13 here today to have some time at the outset to respond
14 to what's going on, including settlement
15 negotiations, and then get around briefing within the
16 four corners of the investigation a little bit later
17 on to try to narrow down the issues and maybe address
18 some of the information that the Commission may or
19 may not have had the chance to review yet.

20 HEARING OFFICER STILLMAN: But if the
21 result of the settlement negotiation is a settlement,
22 then the need for briefs would go away; is that
23 correct?

24 MR. LEWIS: It depends on the scope of
25 whatever settlement is entered into. I think it's a

1 little bit hard to speak to whether there would be no
2 need whatsoever, but I think that's certainly the
3 result everyone would hope for, for the settlement
4 negotiation.

5 MR. RAUBVOGEL: And if I can add -- this
6 is Andy -- if the question was really whether there
7 should be an additional line item or two in the
8 schedule for the filing of stipulations, if any, and
9 that one of those milestones could be at or before
10 the briefing time, we think that could work too. The
11 answer to your question is yes.

12 HEARING OFFICER STILLMAN: Correct. Mr.
13 Candiloro, first I meant to ask you are you planning
14 on representing yourself in this proceeding or will
15 you be hiring an attorney?

16 MR. CANDILORO: I would like you to
17 appoint one for me if that would be possible.

18 HEARING OFFICER STILLMAN: We don't have
19 a provision for appointing an attorney.

20 MR. CANDILORO: Well I can represent
21 myself.

22 HEARING OFFICER STILLMAN: Okay, and
23 have you seen this schedule and just talking about
24 the first time frame having the first milestone here
25 being February 16th.

1 MR. CANDILORO: I'm in agreement with
2 February 16th. My question is are the rest of these
3 in stone or --

4 HEARING OFFICER STILLMAN: No. The
5 purpose of today is to talk about what the next steps
6 will be in all these different deadlines and we
7 haven't agreed upon them. We're having a discussion.
8 I just want to make sure you're happy with realizing
9 the next step in the process may be -- the next
10 milestone is in February next year and you're okay
11 with that?

12 MR. CANDILORO: Yes I am.

13 HEARING OFFICER STILLMAN: Okay. Well I
14 think it seems like a good time to talk about this
15 settlement. I'm glad that there's been at least some
16 consideration at this point of settlement
17 discussions. From the Commission's perspective this
18 seems like a reasonable case for a settlement as an
19 alternative to a formal Commission investigation.
20 One way of putting it is have the parties considered
21 whether their entire resources and money would be
22 better spent reaching a resolution as an alternative
23 to a litigated case and the uncertainties in what the
24 outcome of that might be?

25 Mr. Candiloro, I'm curious if you're

1 familiar with the Commission's process and what I
2 mean by settlement? Do you understand what the
3 settlement means as opposed to going through a
4 contested case proceeding before the Commission?

5 MR. CANDILORO: Could you explain it a
6 little more?

7 HEARING OFFICER STILLMAN: Sure. For a
8 settlement alternative the parties will develop a
9 mutually acceptable agreement to resolve the
10 situation that would be filed with the Commission,
11 and provided the Commission accepts that settlement
12 the parties could file a motion to dismiss the
13 complaint, and if granted by the Commission, it would
14 resolve the matter of the violation in place of the
15 formal Commission investigation, and a formal
16 Commission investigation involves some or all of the
17 steps outlined in Deerfield's proposed schedule that
18 takes us through next summer. So I'm curious if
19 Deerfield has a comment on my statements about the
20 Commission's opinion that this seems like it's a
21 reasonable case for a settlement.

22 MR. LEWIS: I certainly agree with that.
23 It's difficult to size up without some more granular
24 information about the nature of the damages Mr.
25 Candiloro is alleging, and in all candor the

1 settlement discussions will probably go on with our
2 client rather than through us directly, but at first
3 blush based on what we've seen that certainly sounds
4 right to me.

5 MR. RAUBVOGEL: I would simply add for
6 Mr. Candiloro's benefit I know he had prior contact
7 with the blasting contractor and their subcontractor
8 and we're not making any comments about what happened
9 in the past whether it was right or wrong. I think
10 Deerfield has a position about whether it thinks it
11 was in compliance, but Deerfield would almost want to
12 explore the possibility of a mutually acceptable
13 resolution even though one or both parties feel that
14 in a perfect world their position might be somewhat
15 different. So we would enter -- our client would
16 want to enter any kind of discussions in the spirit
17 of seeing whether a resolution could be reached even
18 if one or both parties felt strongly that they had
19 the right position as a start.

20 HEARING OFFICER STILLMAN: Department,
21 do you have a perspective?

22 MS. ELIAS: No. I share the perspective
23 that was articulated by Mr. Raubvogel.

24 MR. KNAUER: Mr. Candiloro.

25 MR. CANDILORO: Basically what I filed

1 this for I just wanted my house repaired. So it's a
2 yes.

3 HEARING OFFICER STILLMAN: So as sort of
4 a followup to that discussion, Mr. Lewis, you
5 mentioned you weren't sure all the information had
6 been exchanged between Mr. Candiloro and the
7 blasting. My understanding is that that information,
8 if it's part of the CAPI file, was provided to the
9 Commission and should now be accessible on ePUC.
10 That information should be there and accessible.

11 MR. LEWIS: What I was referring to
12 earlier was material that Deerfield provided to the
13 Department. In particular, a map showing the half
14 mile radius from the nearest blast area to Mr.
15 Candiloro's house that shows that Mr. Candiloro's
16 house was outside of that radius, and I didn't see
17 that item in particular in the materials on ePUC and
18 it seemed like a very important and material one, but
19 following up on what Andy said I don't know that we
20 need to necessarily fixate on that until the initial
21 briefing given that the goal for the moment is to try
22 to explore settlement, you know, regardless of the
23 parties' positions on liability.

24 HEARING OFFICER STILLMAN: Right. I
25 have seen that map. It's in my folder as a printout

1 and I will double-check and be sure that it is in the
2 material that got scanned. It should be there.

3 MR. LEWIS: I didn't see that in ePUC,
4 but I may be wrong.

5 HEARING OFFICER STILLMAN: Where I was
6 headed with that discussion, that was kind of making
7 sure I answered your earlier comment about the
8 materials, obviously if this does lead to a contested
9 case proceeding before the Commission, for the
10 Commission to make a decision that we have that CAPI
11 file information and it's not part of the evidence in
12 the proceeding at this point, so it's not yet
13 evidence that would be used by the Commission to make
14 a decision, but we have taken a look through it to
15 see what kind of information has been exchanged, and
16 I think it's helpful to state at this point that if
17 the parties were to simply rely on that information
18 in filing evidence, that it may not be enough
19 information for the Commission to make a decision.
20 In other words, there's a lot of complex issues.
21 There's information that is not resolved. There are
22 facts that aren't necessarily resolved in that
23 information, and I guess the point simply is that
24 each side would have more work to do in presenting
25 the evidence and presenting their case in order for

1 the Commission to make a decision, and that's part of
2 the reason, that and the complex nature of some of
3 the issues involved why I was strongly urging the
4 parties to consider a settlement discussion.

5 The other point to that is that the
6 Vermont Legislature through Act 174 Working Group has
7 encouraged the Commission to consider basic mediation
8 as an alternative to contested case proceedings, and
9 so I just want to point that out for the parties in
10 this case so that they are aware of the fact that
11 it's one of the things the Commission can consider as
12 contested cases come up and certainly something that
13 you could be thinking about as an appropriate tool to
14 help reach settlement in a case like this.

15 So with that in mind I think it's fair
16 to say that the parties agree that they will report
17 back to the Commission on the results of the
18 settlement discussion on or before February 16th.
19 Does that sound correct?

20 MR. CANDILORO: That's fine.

21 MS. ELIAS: That's fine.

22 MR. LEWIS: We agree.

23 MR. KNAUER: Something for people to
24 consider is if that's agreed upon whether you would
25 then want to push out the briefing motion date that's

1 been proposed. If a resolution is not reached by
2 February 16th, presumably the parties would want more
3 time to file their official case.

4 MR. LEWIS: Deerfield has no objection
5 to that.

6 HEARING OFFICER STILLMAN: I was just
7 reading through the other proposed schedule items as
8 well so I can be thinking about where that whole
9 schedule is headed. Just give me a minute. So in
10 looking at the schedule after February 16th does two
11 weeks sound reasonable following that for filing any
12 briefs or motions?

13 MS. ELIAS: Yes.

14 MR. LEWIS: Yes.

15 MR. CANDILORO: Yes.

16 HEARING OFFICER STILLMAN: And I think
17 what we're going to propose is that when any briefs
18 or motions are filed that the parties also propose
19 their schedule going forward from that point, and our
20 expectation would be that the schedule from that
21 point would be led by Deerfield's filing direct
22 testimony as the first step in the proceeding and it
23 looks like the discovery would follow after that.
24 Does Deerfield have any objection to that change to
25 this proposed schedule?

1 MR. LEWIS: No, but I have one
2 suggestion. Perhaps you can set initial briefs two
3 weeks after February 16th and just agree now that the
4 responsive briefs should be due 14 days after that
5 which will be the new civil rule in 2018, and then we
6 can set a schedule from there.

7 MS. ELIAS: That would be March 16th.
8 Replies 14 days after the March 2nd date.

9 MR. LEWIS: That's right.

10 HEARING OFFICER STILLMAN: All right.
11 So proposed schedule going forward would be due also
12 on March 16th or after that?

13 MR. LEWIS: Although the only other note
14 I have Deerfield Wind is the respondent. I'm not
15 sure if it makes sense for Deerfield to be the first
16 to file prefiled direct testimony. In our view it's
17 not Deerfield's burden.

18 HEARING OFFICER STILLMAN: You can brief
19 that in your briefs.

20 MR. LEWIS: Okay.

21 HEARING OFFICER STILLMAN: I just want
22 to make sure that I understand then the date for
23 schedules going forward is that also March 16th or is
24 that some time after that?

25 MS. ELIAS: Wouldn't we need to wait

1 until after the Commission rules on the issues raised
2 -- preliminary issues; scoping, whose burden it is to
3 go forward, wouldn't we need to wait for a decision
4 before we go ahead with proposed schedules on that?

5 MR. KNAUER: It seems like the parties
6 could file a proposed sequence as well as intervals,
7 and then the Hearing Officer could establish a
8 schedule based on the proposals.

9 MR. LEWIS: We did agree to that.

10 MS. ELIAS: So would the Department --

11 MR. CANDILORO: I'm in agreement.

12 MS. ELIAS: So that would be on March
13 16th along with the reply briefs deadline?

14 HEARING OFFICER STILLMAN: Correct.

15 MR. LEWIS: That works for us.

16 HEARING OFFICER STILLMAN: Another
17 matter that I wanted to make sure gets addressed is
18 that this case is being managed in the Commission's
19 electronic document management system ePUC. Just
20 want to make sure, Mr. Candiloro, that you are
21 familiar with ePUC?

22 MR. CANDILORO: Yes. I logged into it.

23 HEARING OFFICER STILLMAN: Then you have
24 a login --

25 MR. CANDILORO: Yes I do.

1 HEARING OFFICER STILLMAN: That
2 simplifies things because you will get notifications
3 of filings and you can make all your filings and you
4 don't need to worry about any of the parties needing
5 paper copies. Do the parties have any other issues
6 they think we should discuss today?

7 MR. LEWIS: I probably should have led
8 with this, but I want to say thank you for letting us
9 appear by phone on short notice.

10 HEARING OFFICER STILLMAN: Sure. No
11 trouble. Mr. Candiloro, anything else you want to
12 discuss today?

13 MR. CANDILORO: No. I'm sure we'll be
14 in contact with the parties.

15 HEARING OFFICER STILLMAN: Thank you.
16 Our hearing is adjourned.

17 (Whereupon, the proceeding was
18 adjourned at 1:30 p.m.)
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C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the prehearing conference re: Case Number 17-4311-INV at the Susan M. Hudson Hearing Room of the Public Utility Commission, 112 State Street, Montpelier, Vermont, on November 17, 2017, beginning at 1 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 21 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 20th day of November, 2017.

JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter