

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

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: 11/30/2017

**ORDER RE: BIRD AND BAT MONITORING PLAN, U.S. FOREST SERVICE SPECIAL USE PERMIT,
AND REVEGETATION AND LANDSCAPE PLAN**

I. INTRODUCTION

This case pertains to the amended certificate of public good (“Amended CPG”) issued by the Vermont Public Utility Commission (“Commission”) 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”). The Amended CPG required that, among other things, Deerfield make a number of post-certification compliance filings.

This order addresses three compliance filings, two of which specifically require Commission approval prior to commencement of commercial operation. On October 17, 2017, Deerfield filed the post-construction bird and bat mortality study required by Condition 15 of the Amended CPG (the “Bird and Bat Monitoring Plan”). On November 2, 2017, Deerfield filed a revised version of the Bird and Bat Monitoring Plan and the U.S. Forest Service Operations Phase Special Use Permit required by Condition 23. Also on November 2, 2017, Deerfield filed the post-construction revegetation and landscaping plan required by Condition 34.

For the reasons set forth below, in this Order we determine that Deerfield’s November 2nd version of the Bird and Bat Monitoring Plan fulfills the requirements of Condition 15 of the

Amended CPG. We also determine that the U.S. Forest Service Operations Phase Special Use Permit fulfills Deerfield's outstanding requirement pursuant to Condition 23. Finally, we determine that the revegetation and landscaping plan fulfills the requirement of Condition 34.

II. DISCUSSION

Post-Construction Bird and Bat Mortality Study

Condition 15 of the Amended CPG states:

Deerfield shall submit a post-construction bird and bat mortality study to the Commission for review and approval, and shall obtain such approval prior to commencing commercial operation of the Project. Prior to submission to the Commission, Deerfield shall first submit a draft of the plan to the Vermont Agency of Natural Resources ("ANR") for its review and concurrence. If after good faith discussions, Deerfield is unable to obtain ANR's approval of the plan, it may submit the plan to the Commission for resolution of any outstanding issues and final approval. The bird and bat mortality study plan shall at a minimum include the following elements:

- a) The study will be conducted for up to three years, with a minimum of two years;
- b) The studies will be performed by a qualified third party consultant;
- c) The study periods will cover both spring and fall migration;
- d) Scavenging rates and searcher efficiency controls will be established for each period of study;
- e) Scientifically and statistically valid survey protocols will be employed based on the best available scientific information;
- f) Use of dogs on the project site will be limited to the extent absolutely necessary to design and test valid survey methods;
- g) The methodology will be designed to minimize impacts on other natural resources within the project area including bear and moose habitat; and
- h) The Commission and parties will have the opportunity to review the study results at the end of each study year.

Condition 16 of the Amended CPG states:

Deerfield will engage with ANR in a cooperative, team-based process to review bird and bat mortality data. If post-construction fatality monitoring demonstrates that the Project is having an undue adverse impact, i.e., avian or bat fatality estimates over the [study] period exceed the most current established threshold ranges for mortality at wind projects on northern forested ridges, Deerfield shall submit an adaptive management plan to ANR and the Commission. The adaptive management plan will incorporate reasonable scientifically-proven measures to reduce fatality rates of the affected bird or bat species, and perform monitoring to

evaluate the efficacy of the adaptive management measures. Actual measures to be taken will depend on the type and severity of impacts, cost benefit considerations, likelihood of accomplishing the desired outcome, and practicality. In the event that Deerfield is unable to reach consensus with ANR during this review process, either entity may bring the matter to the Commission for resolution. The Commission shall retain final review and approval authority regarding the implementation of any adaptive management plan, and the need for a third year of mortality studies.

Deerfield's Bird and Bat Monitoring Plan was coordinated with ANR and was filed along with a letter from ANR dated October 16, 2017, supporting the Bird and Bat Monitoring Plan. ANR's letter states that the plan is the result of discussions among representatives of the Project developer, its consultant Stantec, the U.S. Forest Service, and the Vermont Fish and Wildlife Department. ANR states that the plan incorporates the most current methods and protocols to achieve the study objectives.

The Commission requested comments from the parties on the Bird and Bat Monitoring Plan by order dated October 26, 2017. The Vermont Department of Public Service ("Department") filed comments stating that it would support a decision by the Commission to approve the plan. No comments were filed by any other parties.

The Commission directed Deerfield to modify the Bird and Bat Monitoring Plan to clearly state that the studies will be performed by a qualified third-party consultant, as required by Condition 15(b). Deerfield filed a revised plan dated November 2, 2017, that includes this revision.

The Bird and Bat Monitoring Plan is consistent with Condition 16 of the Amended CPG because it acknowledges the potential need for an adaptive management plan.¹ The Bird and Bat Monitoring Plan does not provide the details of such a plan, which would be a separate filing, if required. The Bird and Bat Monitoring Plan states that an adaptive management plan would be "submitted to and reviewed by the Advisory Panel that would be assembled for the Project, pursuant to the [Record of Decision]." ² Our approval of the Bird and Bat Monitoring Plan does

¹ Section 4.2 of the Bird and Bat Monitoring Plan.

² Quoted text is from Section 4.2 of the Bird and Bat Monitoring Plan. The Record of Decision is the U.S. Forest Service's document formally accepting the final environmental impact statement for the Project; a Record of Decision generally describes the agency's decision to approve the project, describes the alternatives considered, and discusses the agency's plans for mitigation and monitoring, if necessary.

not obviate the requirements in Condition 16 of the Amended CPG to include the Commission in the review and approval process for an adaptive management plan, if one is required.

We conclude that Deerfield's revised Bird and Bat Monitoring Plan dated November 2, 2017, meets the requirements of Condition 15 of the Amended CPG.

U.S. Forest Service Special Use Permit

Condition 23 of the Amended CPG states:

Deerfield shall submit to the Commission the United States ("U.S.") Forest Service special use permit and lease covering the federal lands on the site. Parties may file comments on whether the federal permit and lease contain terms that effectively meet the same objectives as detailed in the prior paragraph [i.e., Condition 22].

Condition 22 of the Amended CPG states:

Deerfield shall submit to the Commission, for review and approval, any permits, or executed lease agreements with involved private landowners. Any such lease agreements may be redacted to protect confidential business information. At a minimum, such lease agreements shall contain *provisions which ensure that decommissioning can effectively occur* in the event of Deerfield's insolvency or dissolution, the revocation of any permit issued to Deerfield, Deerfield's breach of any lease, or an order of the Commission requiring decommissioning, and *allow access to the impacted land for purposes of fulfilling any CPG condition*, including access by representatives of the Department of Public Service, the Commission, and ANR. Upon approval by the Commission, a notice of leasehold interest for each lease agreement shall be recorded in the land records of the relevant municipality. Deerfield may not begin significant construction activities prior to Commission approval of any permits and leases, but may perform site preparatory work such as geotechnical investigations, surveys, light construction, and other similar activities.

Deerfield filed the U.S. Forest Service's construction phase Special Use Permit on October 21, 2015. In its order dated February 11, 2016, the Commission approved that filing and directed Deerfield to file the U.S. Forest Service Operations Phase Special Use Permit for the Project prior to commencement of operation.

As discussed in the February 11, 2016, order, the U.S. Forest Service lease terms are included in the Special Use Permit, and therefore, a separate lease document is not necessary to satisfy Condition 23. Additionally, Condition 22 of the Amended CPG reflects that the issues

regarding the U.S. Forest Service lease concern decommissioning and site access (as indicated by italicized text in the condition, above).

The U.S. Forest Service Operations Phase Special Use Permit does not revisit the issue of the Project decommissioning plan, which was addressed in the Construction Phase Special Use Permit. The Operations Phase Special Use Permit states that the permit does not grant Deerfield exclusive use of the site, and that the U.S. Forest Service reserves the right of access and reserves the right to allow others access to the permit area after consultation with all parties involved. The permit requires Deerfield to prepare an annual operating plan that will include, among other things, a safety plan describing access to the permit area.

The U.S. Forest Service Operations Phase Special Use Permit provides evidence of lease and accountability agreements between Deerfield and the U.S. Forest Service for operation of the Project. The Special Use Permit requirements are separate from, and do not appear to conflict with, Commission requirements regarding site access, decommissioning, and other aspects of the CPG for the Project, provided that Deerfield's annual operating plans address the access provisions described above.

Therefore, we have determined that the Operations Phase Special Use Permit completes Deerfield's requirements under Condition 23 of the Amended CPG. In order to be clear that the Special Use Permit does not conflict with Condition 22 of the Amended CPG, Deerfield is directed to ensure that the annual operating plans required by section III(C) of its U.S. Forest Service Operations Phase Special Use Permit do not include any provisions that would bar access to the Project areas for purposes of fulfilling any CPG condition. This could include the need for Project area access by representatives of the Commission, the Department of Public Service, and ANR.

Revegetation and Landscaping Plan

Condition 34 of the Amended CPG states:

Deerfield shall submit a re-vegetation and landscape plan for disturbed area created by the access road, substation, and transmission line infrastructure.

Deerfield's proposed revegetation and landscape plan, dated November 1, 2017, proposes installation of over 100 trees and shrubs at the two locations where the Project access roads

connect with Vermont Route 8. A total of 50 trees and shrubs are proposed to mitigate aesthetic impacts from clearing and installation of stormwater features at the junction of Sleepy Hollow Road and Route 8. Project-related clearing at this location increased views of the existing Green Mountain Power Corporation substation. The proposed plantings will screen views of the substation from Route 8 and Sleepy Hollow Road. The Project also created a short new section of access road to Sleepy Hollow Road with a new curb cut that was necessary for construction. The new road section will be seeded, but will otherwise be retained for possible future Project maintenance needs. Plantings are proposed along the east side of the new access road to soften the visual effect of the new curb cut along Route 8.

A total of 57 trees and shrubs are proposed to mitigate aesthetic impacts from clearing and installation of stormwater features at the junction of Route 8 and Putnam Road. The entrance to Putnam Road was relocated slightly and widened to accommodate construction traffic and a stormwater detention basin. Clearing extended further along Putnam Road for a staging area and a maintenance facility. The portion of the road that was widened for construction purposes will be seeded, but will otherwise be retained for possible future Project maintenance needs. The proposed plantings will help screen views of the detention basin and will soften the views of the areas affected by the Project from Putnam Road and from Route 8.

The aesthetic analysis for the Project includes the finding that “The number of direct views of the proposed site are limited due to the topography and forest cover. Components of the Project other than the turbines would be largely unseen.”³ The revegetation and landscape plan includes an evaluation of whether the interior portions of the access roads are visible from surrounding areas. According to the aesthetics analysis there is very limited visibility of the Project’s ridgeline roads, and no visibility of road-related cut and fill areas, from surrounding roads. Deerfield’s conclusion is that no additional aesthetic mitigation is required for access roads.

Deerfield argues that the upper portions of the substation are minimally visible from a few isolated locations along Route 9, more than 2.5 miles west of the substation. Deerfield concludes that no additional landscape plantings are warranted to mitigate visibility of the substation.

³ Order of 4/16/2009 at finding 212.

Finally, Deerfield argues that the transmission line infrastructure, which consists of an overhead collector line, is sited in locations that do not warrant landscape plantings. Visibility of the collector line from surrounding areas is limited to isolated views of the tops of the poles from several locations along Route 8. The line crosses Route 8 at a location where the terrain and surrounding vegetation limit views when approaching from either direction. Deerfield concludes that no landscape plantings are warranted to mitigate visibility of the collector line.

Condition 34 requires that Deerfield file the revegetation and landscape plan without specifying that parties will have the opportunity to review and comment on the plan. Deerfield provided copies of the plan to the parties and no comments have been filed. Accordingly, we determine that the revegetation and landscape plan is reasonable and fulfills the requirements of Condition 34.

III. CONCLUSION

We conclude that Deerfield's revised Bird and Bat Monitoring Plan dated November 2, 2017, fulfills the requirements of Condition 15 of the Amended CPG.

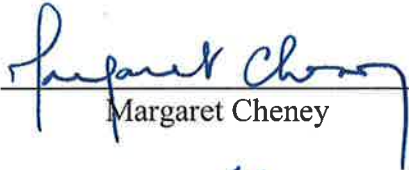
We conclude that the U.S. Forest Service Operations Phase Special Use Permit completes Deerfield's filing requirements under Condition 23 of the Amended CPG. In order to be clear that the Special Use Permit does not conflict with Condition 22 of the Amended CPG, Deerfield is directed to ensure that the annual operating plans required by section III(C) of its U.S. Forest Service Operations Phase Special Use Permit do not include any provisions that would bar access to the Project areas for representatives of the Commission, the Department, and ANR, for purposes of fulfilling any CPG condition.

We determine that the revegetation and landscape plan is reasonable and fulfills the requirements of Condition 34.

SO ORDERED.

SO ORDERED.

Dated at Montpelier, Vermont, this 30th day of November, 2017.

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	)	PUBLIC UTILITY
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	)	
Margaret Cheney	)	COMMISSION
	)	
	)	
Sarah Hofmann	)	OF VERMONT

OFFICE OF THE CLERK

Filed: November 30, 2017

Attest: Judith C. Whitney
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)