

**STATE OF VERMONT  
PUBLIC UTILITIES COMMISSION**

Amended Petition of Deerfield Wind, LLC, for a certificate of public good authorizing the construction and operation of 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 placed on the east side of Route 8 (Eastern Project Area), and 8 turbines along the ridgeline to the west of Route 8 (Western Project Area).

PUC Docket N. 7250

**WINDACTION-SHEA JOINT COMMENTS IN RESPONSE TO  
THE VERMONT PUC ORDER OF APRIL 7, 2020**

The Wind Action Group (“Windaction”) through its representative, Lisa Linowes, and Tom Shea (‘Parties’), intervenors in the above referenced matter, jointly offer these comments in response to the April 7, 2020 order of the Vermont Public Utilities Commission (“Commission” or “PUC”). These comments specifically apply to Mr. Gerald DeGray’s April 2, 2020 letter to the Commission regarding OINR testing at his residence known as Site B.

**I. RELEVANT BACKGROUND**

The *Sound Monitoring Protocol for Deerfield Wind* (“Protocol”) underwent multiple revisions in 2017 before it was finalized on January 16, 2018.<sup>1</sup> The final Protocol proposed three general areas where sound monitoring would occur. Site A would serve as the representative location for homes closest to the turbines that were along Route 9. Sites B and C were intended to represent the closest homes along Route 8. By Commission order, the monitoring locations were to be selected by the sound monitoring consultant, in this case Cross-Spectrum Acoustics (“CSA”), and Deerfield Wind, LLC (“Deerfield” or “Deerfield Wind”) would “file a map with the Commission showing the monitoring, turbine, and met tower locations.”<sup>2</sup> CSA finalized the monitoring locations by October 2018 just prior to the first monitoring period.<sup>3</sup> Sites B and C corresponded to residential properties owned by Gerald DeGray and Tom Shea respectively.

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<sup>1</sup> Other revisions to the Protocol were later approved in response to the fall 2018 monitoring. *Order Granting Motion to Modify Sound Monitoring Protocol & Deferring Decision on Thomas Shea's Request for OINR Testing*, Docket 7250, (Apr 25, 2019).

<sup>2</sup> *Order RE: Sound Monitoring*, Docket 7250, (Dec 14, 2017) at 7.

<sup>3</sup> The Protocol called for two seasonal monitoring periods. The first period occurred in fall 2018 from October 22 to November 26. The second occurred the following spring from May 8 to June 12, 2019.

The Protocol requires Deerfield Wind to offer OINR testing to homeowners who meet one of the two following criteria. The Protocol cites no other conditions (or exceptions) for properties to qualify for (or be disqualified from) OINR testing.

1. Preconstruction sound model shows Project sound levels of 40 dBA or higher at the location; or
2. Sound monitoring (post-construction) shows Project sound levels of 40 dBA(Leq)(1 hr) or higher at that location.

In its response to the Commission's March 9, 2020 order, Deerfield states that Site B meets the eligibility requirements for OINR testing.<sup>4</sup> Deerfield also states that it "discussed the CSA sound monitoring results and OINR testing with the homeowner at Site B in December 2019, and at that time the homeowner stated that he did not intend to request OINR testing."<sup>5</sup>

## **II. GERALD DEGRAY LETTER**

Mr. DeGray's April 2, 2020 letter provides several facts that, if accurate, materially alter our understanding of the testing at Site B.<sup>6</sup> These are as follows:

1. A Good Neighbor Agreement ("GNA") between Deerfield Wind and Mr. DeGray has been in effect since November 10, 2017. Deerfield was aware that Site B was constrained by a GNA before the Protocol was finalized and nearly a year before CSA identified the monitoring locations but kept this fact hidden;
2. Mr. DeGray requested OINR testing be done at Site B in December 2019;
3. Deerfield threatened to pursue legal action against Mr. DeGray to recoup any costs accrued to Deerfield Wind as a result of OINR testing at Site B.

## **III. DISCUSSION**

There should be no question that Deerfield Wind intentionally withheld information about the GNA at Site B from the Commission, the Department of Public Service ("Department") and the Parties. Had the Parties known that Site B (or any site) was encumbered by a GNA, they would have insisted that another representative property be selected for testing. In the alternative, they would have sought agreement from the Commission and Deerfield that the procedures for testing be shielded from the constraints of any such agreement.

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<sup>4</sup> *Deerfield Letter to PUC in Response to PUC Mar 9, 2020 Order re OINR Testing*, (Mar 23, 2020) at 2.

<sup>5</sup> *Id*

<sup>6</sup> *DeGray Letter to PUC re OINR Testing*, (Apr 2, 2020).

With a GNA in place, Deerfield could reasonably expect Mr. DeGray to be restricted from commenting on any testing at Site B, thereby preventing a free and honest outcome. When Mr. DeGray asked about OINR testing, Deerfield aggressively blocked his request and then *misled* the Commission and the Parties into believing it was Mr. DeGray's own idea not to proceed. These actions, if accurate, are untenable and deserve a firm response from the Commission.

Still, the question remains whether OINR testing should be conducted at Site B? According to the Protocol, Sites A, B, and C each represent "unique soundscapes around the Project." While only three physical locations were selected for monitoring, these sites were intended as proxies for other residences located in the same general area. It is clear that without a GNA in place, Mr. DeGray would have requested OINR testing. Instead, due to the actions of Deerfield, residences represented by Site B could be deprived of testing that would otherwise occur. The Parties cannot comment on whether Deerfield's legal threats are valid however, if Mr. DeGray is prohibited from requesting OINR testing, Deerfield is unfairly advantaged after having secured his silence.

#### **IV. CONCLUSION AND RECOMMENDATION**

As the Parties have stated in prior filings, our sole objective is to ensure the sound study produces fair and accurate results and that neighbors to the turbines who ultimately will live with the final decision of the Commission, trust the facility is operating within the limits set in the CPG. We believe Deerfield's actions with regard to Site B raise doubts as to the fairness of the process. In view of the forgoing, the Parties respectfully ask that the Commission order OINR testing to occur at Site B as soon as practicable, but no later than fall of this year. Further we ask that the Commission deliver a firm response to Deerfield for its behavior in this matter.

Dated this day of April 24, 2020



Tom Shea, Searsburg



Lisa Linowes, The Windaction Group

cc: Parties to Docket 7250