

April 27, 2020

By E-Mail and First-Class Mail

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: 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 in Searsburg and Readsboro, Vermont.

Dear Ms. Whitney,

On April 7, 2020, the Public Utility Commission (“Commission” or “PUC”) issued a procedural order in this proceeding requesting that the parties provide reply comments to Gerald DeGray’s letter to the Commission dated April 2, 2020. Petitioner Deerfield Wind, LLC (“Deerfield”) hereby respectfully provides its response.

Mr. DeGray is the homeowner of the property designated as Site B in the 2018-2019 sound monitoring program. In Mr. DeGray’s April 2nd letter to the Commission, he addressed the issue of outdoor-indoor noise reduction (“OINR”) testing at his residence. In doing so, Mr. DeGray informed the Commission that he and Deerfield had previously entered into a Good Neighbor Agreement (“GNA”) dated November 17, 2020.¹ Mr. DeGray stated, in part:

I would be interested in the additional OINR testing at Site B if the PSB concluded in a written binding order that my GNA would in fact not be in default, and I in fact would not be subject to a lawsuit for damages and/or costs sustained by Deerfield Wind as a result of requesting the OINR testing results at Site B as described in the Amended CPG, Final Sound Monitoring Protocol (January 16, 2018).

Mr. DeGray’s request for a PUC ruling regarding the GNA cannot and should not be considered by the Commission. Deerfield notes at the outset that by its very terms the GNA is a confidential private agreement between its signatories and as such Deerfield is not permitted to comment on the GNA’s terms and conditions in this proceeding (nor is Mr. DeGray for that matter). But even if it were not a confidential agreement, the Commission does not have jurisdiction to review private party agreements such as the GNA and Easement. As the Vermont Supreme Court has held, the Commission has a “limited role as a body exercising special and statutory powers not according to

¹ Mr. DeGray also executed an Easement and Release Agreement (the “Easement”) concurrently with the GNA. The Easement and Release Agreement provides, among other things, that Mr. DeGray shall “*not bring or participate in legal action (including without limitation regulatory or administrative proceedings) against [Deerfield] (whether directly or through a regulatory authority) regarding the . . . operations . . . of the Project, including but not limited to claims arising from or related to sound . . . that is generated by normal operation . . . of the Project.*” Easement at Section 3.

the course of the common law, as to which nothing will be presumed in favor of its jurisdiction.”² As a result, “[p]roperty rights issues are beyond the [Commission’s] jurisdiction, and thus the [Commission] is not in a position to advise any of the parties on what course of action to take or what their legal rights are.”³ The Commission has specifically held that it does not have authority to “issue a binding ruling that conclusively determines the respective parties’ property rights; jurisdiction for such determinations rests with the Superior Court.”⁴

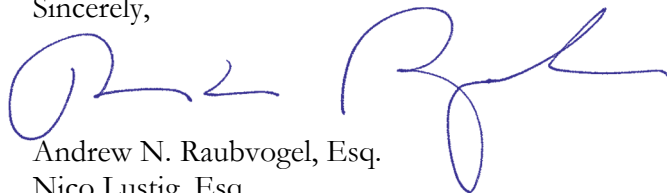
Given the clear legal precedent, the Commission should refrain from opining on the rights and obligations of Mr. DeGray or Deerfield under the GNA. Rather, the parties need to address those matters between themselves.⁵

Turning to whether Mr. DeGray has in fact requested OINR testing at his residence, after discussing the issue with Deerfield in December 2019 Mr. DeGray declined to request testing.⁶ Mr. DeGray acknowledged as much in his April 2nd letter, stating, “I decided [in December 2019] it was in my best interest not to request the OINR testing.” Mr. DeGray nonetheless states in the April 2nd letter that he would be “interested” in OINR testing, only “if the [Commission] concluded in a written binding order that [the] GNA would in fact not be in default.” (emphasis added). Mr. DeGray’s conditional request is far short of an affirmative, unequivocal request for OINR testing. And, as discussed above, the Commission lacks the authority to satisfy Mr. DeGray’s condition, i.e., a written binding order regarding the GNA.

For the reasons discussed herein, the Commission should dismiss Mr. DeGray’s request, and not require OINR testing at his residence.

Deerfield thanks the Commission in advance for its consideration of the above. Please let us know if you have any questions or require further information.

Sincerely,

The block contains two handwritten signatures in blue ink. The first signature, on the left, is for Andrew N. Raubvogel, Esq. and is a stylized, cursive 'AR'. The second signature, on the right, is for Nico Lustig, Esq. and is a stylized, cursive 'NL'.

Andrew N. Raubvogel, Esq.

Nico Lustig, Esq.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

cc: Service List

² In re Vill. of Morrisville Water & Light Dep’t, 958 A.2d 1191, 1192–93 (VT 2008) (quoting *Trybalski v. Bellows Falls Hydro-Electric Corp.*, 112 Vt. 1, 7, 20 A.2d 117, 120 (1941)).

³ Petition of Georgia Mountain Community Wind, LLC, Docket No. 7508, 2012 WL 3264903, at *1, (Aug. 6, 2012).

⁴ Joint Petition of Vermont Elec. Power Co., Inc., Vermont Transco, LLC, & Cent. Vermont Pub. Serv. Corp. for A Certificate of Pub. Good, Pursuant to 30 V.S.A. Section 248, Authorizing the Constr. of the S. Loop Transmission Upgrade Project, No. 7373, 2008 WL 5003093, at n. 2 (Feb. 28, 2008).

⁵ For the record, Deerfield maintains that under the Easement and GNA, Mr. DeGray has waived all rights to request OINR testing or other sound monitoring at his property. Deerfield hereby reserves all of its claims, rights, and remedies under the GNA and Easement.

⁶ See Deerfield’s letter to the Commission dated March 23, 2020.

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Amended Petition of Deerfield Wind, LLC for)
a certificate of public good authorizing it to)
construct and operate 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))

Docket No. 7250

CERTIFICATE OF SERVICE

I, Gillian Bergeron, certify that on April 27, 2020, I forwarded copies of Deerfield Wind, LLC's *Letter to the PUC in Response to PUC 4/7/2020 Order Requesting Additional Comments* to the following service list by the delivery method noted:

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Dated at Burlington, Vermont, this 27th day of April, 2020.

By:



Gillian Bergeron
Paralegal