

May 12, 2020

VIA ELECTRONIC AND FIRST CLASS MAIL

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

RE: Docket 7250 Windaction-Shea Joint Response to Deerfield Wind, LLC Letter of May 6, 2020

Dear Ms. Whitney:

The Windaction Group and Tom Shea ('Parties') carefully reviewed and identified several highly misleading and factually inaccurate assertions in Deerfield Wind LLC's ('Deerfield') May 6, 2020 letter that cannot be left unchallenged. To correct the record, we respectfully submit the following response.

1. *The existence of the Good Neighbor Agreement ("GNA") and Easement impose obvious constraints on the Commission's ability to determine whether Project-related sound levels comply with the Revised Certificate of Public Good ("CPG").*

The purpose of sound monitoring is to assess whether the Deerfield Wind Energy facility ("Project") is operating at or below the maximum exterior and interior sound levels established in the CPG. The Sound Monitoring Protocol ("Protocol") generally defines the process for conducting exterior monitoring. This fact does not negate the requirement that Project-related sound levels must also meet the interior (bedroom) standard. Interior monitoring is prescribed in the Protocol for properties meeting certain conditions.¹

The Protocol proposes three geographic areas where post-construction monitoring may occur. These areas, also referred to as 'noise zones' by Deerfield, are representative of "unique soundscapes around the Project"² but *do not* correspond to the locations where Cross-Spectrum Acoustics ("CSA") conducted its post-construction monitoring. This is particularly true for Sites B and C which were selected consistent with the Protocol.³ Sites B and C are situated at Gerald DeGray's and Tom Shea's properties respectively.

¹ Protocol § 2.5.

² Protocol § 2.3

³ Commons, G. *Amended Petition of Deerfield Wind, LLC Final Sound Monitoring Sites* (October 25, 2018). Also see Protocol § 2.3 stating: "Where monitoring locations are near residential areas, to the extent permission is granted, monitors shall be set near individual homes closest to the Project at these locations."

Sites B and C were not identified until October 2018, nearly a year after the GNA went into effect.⁴ Deerfield's reference to "three distinct noise zones from the pre-CPG study" appears to be a wrongful attempt at claiming Sites A, B, and C were known prior to the CPG being issued.⁵ They were not.

Deerfield's emphasis on exterior sound monitoring and compliance ignores the CPG requirement that *both* exterior and interior sound standards be met. If a homeowner does not accept an offer for outside-inside testing ("OINR"), the Protocol permits the interior sound level to be arithmetically calculated by subtracting a fixed 15 dBA from the exterior sound level. However if OINR testing is conducted, the Commission will determine interior compliance based on actual measurements.

Deerfield's claim that Site B cannot serve as a proxy for other residences with regard to OINR testing is incorrect. First, it is defied by the very wording in the Protocol which states "Sites B and C are *representative* of the closest homes along VT 8."⁶ [emphasis added] Second, and more importantly, the Protocol only establishes the criteria for OINR test *eligibility*. Since OINR testing is predicated on exterior sound levels of 40 dBA and above, Site B and other nearby homes are equally eligible. The GNA prohibits Mr. DeGray from requesting OINR testing, thereby thwarting any opportunity for actual interior compliance testing.

Finally, Deerfield's argument that the sound attenuation properties of Mr. DeGray's home are not transferable to other nearby properties is irrelevant. However, it raises questions regarding the Protocol's handling of interior sound levels. If structures in the area have such widely varying attenuation properties, then reliance on a fixed 15 dBA reduction for computing interior sound levels would be equally wrong.

2. *Deerfield's conduct toward Mr. DeGray is irrelevant to the sound monitoring process and the Commission.*

Deerfield's protestations in its May 6th filing are excessive and inappropriate. Deerfield is well aware that the only information before the Commission and the Parties regarding the GNA are statements provided by Deerfield and Mr. DeGray. The Parties relied on this information in preparing their April 24th filing. It was Mr. DeGray who informed the Commission that Deerfield could "choose to sue me for any costs they procured as a result of the OINR testing at Site B." It was Deerfield who inappropriately signaled legal action against Mr. DeGray via public filings before the Commission.⁷

Deerfield's conduct toward Mr. DeGray is of no interest to the Parties except to the extent the existing GNA and Easement interfere with free and honest sound testing at Site B. Site B is encumbered by a private agreement, the existence of which cannot be revealed to the Commission

⁴ Commons, G. *Amended Petition of Deerfield Wind, LLC Final Sound Monitoring Sites* (October 25, 2018).

⁵ Mr. DeGray built, and has been a permanent resident of the home located at Site B since in the early-1990's, nearly two decades before the CPG was issued. Mr. DeGray's April 2, 2020 letter states that the GNA went into effect on November 10, 2017.

⁶ Protocol § 2.3

⁷ Deerfield response to *Procedural Order Requesting Additional Comment of April 7, 2020* footnotes 1 and 5 (filed April 27, 2020). See also Deerfield letter responding to *Windaction-Shea Joint Comments In Response To The Vermont PUC Order Of April 7, 2020*, footnote 5 (filed May 6, 2020).

or the public, including homeowners represented by Site B.⁸ In effect, the GNA silences one of the property owners where representational sound monitoring was to occur. The Parties are not engaging in “inflammatory rhetoric” by stating this fact.

The Parties wish to thank the Commission for its review of this topic. If you have any questions, please do not hesitate to contact Lisa Linowes by phone at 603-838-6588 or e-mail at llinowes@windaction.org.

Sincerely,

A handwritten signature in black ink, appearing to be 'Lisa Linowes', with a long horizontal flourish extending to the right.

Lisa Linowes
for The Windaction Group

A handwritten signature in black ink, appearing to be 'Tom Shea', with a stylized, cursive script.

Tom Shea, Searsburg

cc: Parties to Docket 7250

⁸ Deerfield letter responding to *Windaction-Shea Joint Comments In Response To The Vermont PUC Order Of April 7, 2020*, footnote 4 (filed May 6, 2020).