

May 6, 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 24, 2020, Wind Action Group and Tom Shea (“Windaction/Shea”) filed joint comments in response to the Public Utility Commission’s (“PUC” or “Commission”) April 7, 2020 Order. CPG Holder Deerfield Wind, LLC (“Deerfield”) hereby feels compelled to briefly reply, given the inappropriate allegations made in that filing, and respectfully requests Commission consideration of this letter. As discussed below, the first-year sound monitoring program was properly conducted at Site B. Deerfield did not mislead the Commission and parties concerning Site B, nor did Deerfield engage in inappropriate conduct towards Mr. DeGray.

1. The existence of a Good Neighbor Agreement (“GNA”) does not constrain, alter, or call into question the First-Year Sound Monitoring Protocol.

The purpose of the first-year sound monitoring was to demonstrate compliance with the Project’s Revised Certificate of Public Good (“CPG”), by performing exterior sound monitoring. Site B was selected for the sound monitoring campaign by the Department of Public Service’s (“DPS”) consultant—Cross Spectrum Acoustics (“CSA”)—based upon a pre-CPG baseline sound study of exterior sound levels and input from all parties to this proceeding. The pre-CPG sound study utilized seven locations, which represented the several discrete noise zones and residences located closest to the proposed project.¹ Sites A, B, and C in the first-year sound monitoring program corresponded to locations in three distinct noise zones from the pre-CPG study.²

CSA advisedly selected Sites A, B, and C to conduct exterior sound monitoring to determine the Project’s exterior sound levels. The fact that a subsequent owner of the property at Site B entered into a confidential GNA with Deerfield after the CPG was issued is irrelevant to the exterior monitoring, and it had no effect on CSA’s ability to collect and assess the exterior sound data. Nor does the GNA affect the Commission’s ability and authority to review the sound monitoring results and determine compliance with the CPG’s exterior noise limits.³ Thus contrary to

¹ See Exhibit DFLD-KK-4 from section 248 proceeding.

² Sites 2, 4, and 5, respectively, from the pre-construction modeling. See Sound Monitoring Protocol for Deerfield Wind, at Section 2.4 (Jan. 16, 2018).

³ PUC Order of 1/9/20 at 8-9 (finding Project in compliance with Amended CPG).

Windaction/Shea's assertions, Deerfield neither intentionally misrepresented nor withheld relevant information about the confidential GNA.⁴

Windaction/Shea also wrongfully claim in their April 24th filing that Site B was intended as a "proxy" for other residences in its noise zone with respect to outside-inside noise reduction ("OINR"), and that the lack of OINR testing at the DeGray residence deprives other residences from necessary information. This is plainly wrong. OINR testing at a given residence only provides relevant information about the sound attenuating properties of that specific structure in its particular location, and provides no relevant information about any other residential structure, even if it were located in the same noise zone. The ability to request OINR testing under the Commission-approved Sound Monitoring Protocol—based upon either sound modeling or sound monitoring—is unique to a given residence and does not extend to others.

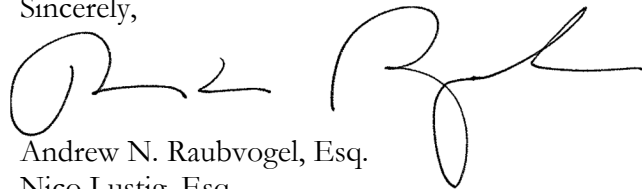
2. Deerfield has not engaged in inappropriate conduct towards Mr. DeGray.

Windaction/Shea accuse Deerfield of "threatening" Mr. DeGray. This false and inflammatory claim has no place in a PUC proceeding. Mr. DeGray stated in his April 2, 2020 letter to the Commission that he eventually decided not to request the OINR testing after Deerfield "informed" him of the legal actions available to Deerfield as a party to the GNA. Deerfield did not engage in inappropriate conduct or "aggressive" tactics concerning OINR testing or the GNA—a private agreement that Mr. DeGray and Deerfield knowingly and willingly entered into.

Deerfield has and will continue to follow the Sound Protocol, so that the Commission may fairly and accurately determine its compliance with the CPG. Windaction/Shea's April 24th filing is inflammatory rhetoric, and provides no relevant information concerning OINR testing at Site B or the results of the 2018/2109 sound monitoring campaign. To date, Mr. DeGray has not presented the Commission with an unconditional request for OINR testing, as Deerfield explained in its April 27th filing. Should the situation change, Deerfield understands that the Commission may exercise its authority to require OINR testing.⁵

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,



Andrew N. Raubvogel, Esq.

Nico Lustig, Esq.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

cc: Service List

⁴ As Deerfield previously noted in its April 27, 2020 filing with the Commission, the GNA is a confidential agreement between private parties, each of whom agreed not to disclose its existence or terms.

⁵ Independent of this Commission proceeding, Deerfield and Mr. DeGray would address any implications that might arise pursuant to their private agreements.

**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 May 6, 2020, I forwarded copies of Deerfield Wind, LLC's *Letter to the PUC in Response to Wind Action Group/Shea Joint Comments on PUC 4-27-20 Order* to the following service list by the delivery method noted:

By Email and First Class Mail:

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

By Email:

Erin Bennett, Esq.
Vermont Dept. of Public Service
112 State Street, Drawer 20
Montpelier, VT 05620-2601
erin.bennett@vermont.gov

Catherine Gjessing, Esq.
John Zaikowski, Esq.
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620-3901
catherine.gjessing@vermont.gov
john.zaikowski@vermont.gov

Kristin Carlson
Green Mountain Power
163 Acorn Lane
Colchester, VT 05446
Kristin.Carlson@greenmountainpower.com

Clifford and Diana Duncan
Duncan Cable TV Services
P.O. Box 685
Wilmington, VT 05363
c.duncan@duncancable.com

Vermont Dept. of Housing & Comm. Affairs
Agency of Commerce and Community Dev.
c/o John Kessler, Esq.
One National Life Drive
Deane C. Davis Building, 6th Floor
Montpelier, VT 05620-0501
john.kessler@vermont.gov

Jamey D. Fidel, Esq.
Vermont Natural Resources Council
9 Bailey Avenue
Montpelier, VT 05602
jfidel@vnrc.org

Owen J. McClain, Esq.
Sheehey Furlong & Behm P.C.
30 Main Street, 6th Floor
P.O. Box 66
Burlington, VT 05402-0066
(For Green Mountain Power)
omcclain@sheeheyvt.com

Chris Campany, Executive Director
John Bennett, Senior Planner
Windham Regional Commission
139 Main Street, Suite 505
Brattleboro, VT 05301
ccampany@windhamregional.org

Nancy S. Malmquist, Esq
Downs Rachlin Martin PLLC
90 Prospect Street
P.O. Box 99
St. Johnsbury, VT 05819-0099
(For National Grid)
nmalmquist@drm.com

Lisa Linowes, Executive Director
Industrial Wind Action Group
286 Parker Hill Road
Lyman, NH 03585
lisa@linowes.com

By First Class Mail:

Ms. Deidre Matthews
National Grid
40 Sylvan Road
Waltham, MA 02451

Thomas Shea
380 Lafayette Road
Unit 11-144
Seabrook, NH 03874
tomshea@alum.mit.edu

Paul Burns, Executive Director
Vermont Public Interest Research Group
141 Main Street, Suite 6
Montpelier, VT 05602
pburns@vpirg.org

Sandra Levine, Senior Attorney
Conservation Law Foundation
15 East State Street, Suite #4
Montpelier, VT 05602
SLevine@clf.org

Gerald DeGray
P.O. Box 1717
Wilmington, VT 05363-1717
gerryd161@aol.com

Robert Batarags
Deerfield Wind, LLC
Avangrid Renewables
1125 NW Couch St., Suite 700
Portland, Oregon 97209
Rob.Batarags@avangrid.com

Dated at Burlington, Vermont, this 6th day of May, 2020.

By:


Gillian Bergeron
Paralegal