

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket 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: 06/26/2020

ORDER REGARDING FALL 2020 SOUND MONITORING

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”) for construction and operation of a 30 MW wind electric generation facility located in Searsburg and Readsboro, Vermont (the “Project”).

In this order, we require an additional round of sound monitoring in the Fall of 2020 to determine whether further outside-to-inside noise reduction (“OINR”) testing at Mr. Tom Shea’s residence is required. We also provide additional guidance for the collection and analysis of the sound monitoring data. To the extent that this order imposes sound measurement requirements that would amend the Final Sound Monitoring Protocol (“Protocol”), those amendments exist for purposes of the Fall 2020 sound monitoring and do not serve as permanent amendments to the Protocol unless otherwise ordered by the Commission.¹

¹ *Corrected Final Sound Monitoring Protocol*, Docket No. 7250, filed January 16, 2018.

II. RELEVANT PROCEDURAL HISTORY

On January 9, 2020, the Commission issued an order finding the Project in compliance with the Amended CPG's sound limits based on sound monitoring reports for Fall 2018 and Spring 2019 filed by the Vermont Department of Public Service ("Department"). The January 9 Order also required Deerfield to select one of two options: (1) submit to an additional round of fall sound monitoring; or (2) conduct outside-to-inside noise reduction ("OINR") testing at Mr. Shea's residence.

On January 31, 2020, Deerfield responded to the January 9 Order and noted that it was electing to submit an additional round of sound monitoring in the Fall of 2020 and was seeking further clarification on how the sound monitoring should be conducted.²

On February 20, 2020, the Department filed comments on Deerfield's request for additional sound monitoring in Fall 2020.³

On March 4, 2020, Windaction Group and Tom Shea ("Windaction/Shea") filed comments.

On March 9, 2020, the hearing officer issued an order requesting comments regarding the sound monitoring results at Site B.

On March 23, 2020, Deerfield filed comments in response to the March 9 Order.

On April 2, 2020, Mr. Gerald DeGray, the Site B resident, filed a comment letter regarding OINR testing at his home.

On April 9, 2020, the hearing officer issued an order requesting comments on Mr. DeGray's filing.

On April 24, 2020, Windaction/Shea filed joint comments responding to Mr. DeGray's letter.

On April 27, 2020, Deerfield and the Department also filed comments replying to Mr. DeGray's letter.

On May 6, 2020, Deerfield filed a reply to the Windaction/Shea April 24 joint comments.

On May 12, 2020, Windaction/Shea filed a joint response to Deerfield's May 6 letter.

No other comments were received.

² Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated January 31, 2020.

³ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020.

III. PARTIES' POSITIONS

Deerfield

In its January 31 submission, Deerfield makes the following requests regarding the collection and analysis of the Fall 2020 sound monitoring data: (1) that the monitoring be limited to the Shea residence only (Site C), (2) that Cross-Spectrum Acoustics (“CSA”), the Department’s sound monitoring consultant, remove from the data any period of microphone-height wind gusts that are greater than 4 to 5 m/s, and (3) that at least one hour of valid data be collected to calculate the one-hour L_{eq} for the purpose of determining whether OINR testing is required.⁴

With regard to OINR testing at Mr. DeGray’s residence (Site B), Deerfield does not contest that Site B is eligible for OINR testing based on the previous sound monitoring results, and Deerfield indicates that such sound monitoring was offered to Mr. DeGray in December 2019. Deerfield also acknowledges that it entered into a Good Neighbor Agreement (“GNA”) and an Easement and Release Agreement (“Easement”) with Mr. DeGray on November 10, 2017, and urges the Commission to “refrain from opining on the rights and obligations of Mr. DeGray or Deerfield under the GNA.”⁵

The Department

In its comments, the Department responds to Deerfield’s requests regarding the collection and analysis of the Fall 2020 sound monitoring data and seeks clarification or provides information on five additional issues. The Department agrees with Deerfield that (1) the monitoring should be limited to the Shea residence only (Site C) and (2) at least one hour of valid data should be collected to calculate the one-hour L_{eq} to determine whether OINR testing is required.⁶ However, the Department does not agree with Deerfield that CSA should remove from the data any period of microphone-height wind gusts that are greater than 4 to 5 m/s.⁷ Citing the Protocol, the Department argues that, consistent with the two previous measurement periods, CSA “excluded data with wind speeds above 5 m/s and reviewed periods with wind

⁴ Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated January 31, 2020, at 1.

⁵ Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated April 27, 2020, at 2.

⁶ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 2-3.

⁷ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 2.

speeds between 4 and 5 m/s.”⁸ The Department urges the Commission to maintain this approach for consistency with the Protocol and among the data sets.⁹

Additionally, the Department requests that the Commission: (1) require that CSA use only the Site C location and not the Site C-Alt location, (2) eliminate the attended monitoring requirement, and (3) allow use of wind speed data from Turbine W-08 only (the closest turbine to Site C). Regarding the applicable sound testing standard in the American National Standards Institute (“ANSI”) S12.9, the Department requests that the Commission permit CSA to report the Fall 2020 results in two ways: “(1) following the procedure used in both the Fall 2018 and Spring 2019 Monitoring Reports (*i.e.*, combining data samples associated with different shut-downs, including over multiple days) and (2) reporting only data samples contained within a single one-hour period before or after each shut-down.”¹⁰ The Department argues that this would satisfy the Commission’s Order requiring that “[t]he results . . . be reported applying the Part 2 Standard and the Part 3 Standard for comparison” without imposing additional requirements contained in ANSI S12.9 Part 2 or Part 3.¹¹ The Department also provides notice that CSA intends to relocate the central weather monitoring station from Site B to Site C for the Fall 2020 measurements.

With regard to OINR testing at Mr. DeGray’s residence (Site B), the Department takes the position that Site B is eligible for OINR testing based on Criterion 2 of the Protocol.¹²

Windaction/Shea

Windaction/Shea filed comments addressing both Deerfield and the Department’s requests and points of clarification regarding the collection and analysis of the Fall 2020 sound monitoring data. Windaction/Shea contend that sound monitoring should still take place at all three sites: Site A, Site B, and Site C.¹³ Windaction/Shea request that “CSA collect and analyze sound emission data based on electric power output in addition to hub-height wind speed and not

⁸ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 2.

⁹ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 2-3.

¹⁰ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 4.

¹¹ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 4.

¹² Department of Public Service Comments, April 27, 2020, at 2.

¹³ Windaction/Shea Joint Comments in Response to Vermont PUC Order of February 12, 2020, March 4, 2020, at 2-4.

rely solely on a 6 m/s wind speed threshold.”¹⁴ Windaction/Shea agree with the Department that (1) Site C-Alt is no longer necessary, (2) “the amount of sound data collected be reduced to one-hour or less,” (3) “attended sound monitoring is unnecessary provided audio recordings of all sounds are made,” and (4) “CSA [may] remove data during any period when wind gusts at the microphone measure between 4 and 5 m/s.”¹⁵ Windaction/Shea reiterate their support for the application of the ANSI S12.9 Part 3 Standard.¹⁶

With regard to OINR testing at Mr. DeGray’s residence (Site B), Windaction/Shea urge “the Commission [to] order OINR testing to occur at Site B as soon as practicable, but no later than fall of this year.”¹⁷ In response to their allegation that Deerfield “intentionally withheld information about the GNA at Site B,” Windaction/Shea further request “that the Commission deliver a firm response to Deerfield for its behavior in this matter.”¹⁸

Finally, Windaction/Shea request that the Commission “[c]onvene a hearing moderated by the Commission with Deerfield, the Department, CSA and [Windaction/Shea] prior to the Fall 2020 testing in order that any remaining open issues be discussed and resolved before testing is initiated.”¹⁹

IV. DISCUSSION & CONCLUSION

Fall 2020 Measurement Locations

Before the filings regarding Site B, both Deerfield and the Department argued that sound monitoring should occur at Site C only for the purpose of determining whether OINR testing has been triggered at Mr. Shea’s residence. Although Windaction/Shea urge sound monitoring at all three sites, they argue that additional sound monitoring at Site A and Site B would be used to demonstrate the Project is not in compliance with the Amended CPG’s sound limits and not to

¹⁴ Windaction/Shea Joint Comments in Response to Vermont PUC Order of February 12, 2020, March 4, 2020, at 4.

¹⁵ Windaction/Shea Joint Comments in Response to Vermont PUC Order of February 12, 2020, March 4, 2020, at 4-5.

¹⁶ Windaction/Shea Joint Comments in Response to Vermont PUC Order of February 12, 2020, March 4, 2020, at 5.

¹⁷ Windaction/Shea Joint Comments in Response to the Vermont PUC Order of April 7, 2020, April 24, 2020, at 3.

¹⁸ Windaction/Shea Joint Comments in Response to the Vermont PUC Order of April 7, 2020, April 24, 2020, at 2-3.

¹⁹ Windaction/Shea Joint Comments in Response to Vermont PUC Order of February 12, 2020, March 4, 2020, at 6.

support OINR testing at Mr. Shea's residence. The Commission's January 9 Order determined that the Project is in compliance with the Amended CPG's sound limits. The purpose of any additional sound monitoring is to determine whether OINR testing at Mr. Shea's residence (Site C) has been triggered. The Commission concludes that the Fall 2020 sound monitoring should be conducted at Site C. CSA does not need to monitor sound at Site C-Alt. Attended sound monitoring is unnecessary provided that audio recordings are made. The Commission also understands that the central weather monitoring station will be moved from Site B to Site C for the Fall 2020 sound monitoring.

As elaborated on below, none of the parties contest that Site B is eligible for OINR testing pursuant to Criterion 2 of the Protocol. The Commission orders testing at Site C per its decision, below.

Collection and Analysis of the Sound Monitoring Data

The Commission addresses four recommendations for collecting and analyzing the Fall 2020 sound monitoring data. First, all parties agree, and the Commission requires, that at least one hour of valid data, including at least 30 minutes associated with a single shutdown, shall be collected to calculate the one-hour L_{eq} to determine whether OINR testing is required.

Second, the Department recommends that CSA exclude data with wind speeds above 5 m/s and review periods with wind speeds between 4 and 5 m/s.²⁰ Deerfield asserts that wind speeds above 4 to 5 m/s should be removed because wind gusts "inaccurately bias[] the measurements high."²¹ The Protocol provides:

Wind speeds (average or gusts) at a monitoring site are above 4 to 5 m/s – Winds above 5 m/s create a large amount of false noise generated from pressure fluctuations around the microphone. Data for wind speeds between 4 and 5 m/s (or below, as needed) should be carefully reviewed to identify any wind contamination that creates pseudo-noise or wind-induced noise that is sufficient to mask wind turbine prior to its inclusion in the filtered data set.²²

The Commission finds that the Protocol took false noise into account when setting the wind speed thresholds for excluding data, and we therefore do not find it appropriate to amend that

²⁰ Protocol § 3.0.

²¹ Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated March 23, 2020, at 3.

²² Protocol § 3.0.

provision. Consistent with the Protocol and the two previous measurement periods, the Commission adopts the Department's recommendation that CSA exclude data with wind speeds above 5 m/s and review periods with wind speeds between 4 and 5 m/s.

Third, the Commission adopts the Department's recommendation that CSA use wind speed data from Turbine W-08 only (the closest turbine to Site C) for the purpose of the Fall 2020 sound monitoring at Site C.²³

Fourth, the Commission declines to amend the Protocol to require that CSA collect and analyze sound emission data based on electric power output in addition to hub-height wind speed. To maintain consistency with the Protocol, which has been used for the other periods of sound measurement, the Commission maintains the requirement that CSA collect and analyze sound emission data based on hub-height wind speed only.

Applicable Sound Monitoring Standard

The Department and Deerfield disagree on the method for calculating the one-hour L_{eq} . Deerfield argues that the applicable sound testing standard is the American National Standards Institute ("ANSI") S12.9 Part 3 ("Part 3 Standard"), which requires that the one-hour L_{eq} be based on at least 30 minutes of data associated with a single shutdown.²⁴ Windaction/Shea concur that the applicable sound testing standard is the Part 3 Standard.²⁵ The Department argues that the applicable sound testing standard is ANSI S12.9 Part 2 ("Part 2 Standard") and that under either standard, minutes from different shutdowns could be combined to form the one-hour L_{eq} .²⁶ The Protocol does not reference the appropriate ANSI S12.9 standard.

In our January 9 Order, we determined that, should Deerfield select additional sound monitoring, the results will be reported applying the Part 2 Standard and the Part 3 Standard for comparison. The Department argues that the Commission's January 9 Order can be satisfied by allowing CSA to report the Fall 2020 results in two ways: (1) "following the procedure utilized in both the Fall 2018 and Spring 2019 Monitoring Reports (*i.e.*, combining data samples

²³ The Commission did not receive any comments responding to the Department's recommendation.

²⁴ Deerfield Wind, LLC Response to Shea Request for OINR Testing, Attachment 1, Apr. 4, 2019 at 1, n.2; ANSI S12.9 Part 3, Short-Term Measurements with an Observer Present (2013).

²⁵ Windaction/Shea Joint Comments on the Deerfield Wind Spring Sound Report and Mr. Shea's Request for OINR Testing, Nov. 15, 2019 at 4.

²⁶ Department of Public Service Response, Apr. 18, 2019 at 2; ANSI S12.9 Part 2, Measurements of Long-Term, Wide-Area Sound (1992) (reaffirmed 2018).

associated with different shut-downs, including over multiple days) and (2) reporting only data samples contained within a single one-hour period before or after each shut-down.”²⁷

Windaction/Shea argue that there is “no justification for applying two standards for comparison,” but nonetheless advise that “both Parts 2 and 3 include ‘uncertainty factors’” that should be applied to the data.²⁸ In later comments, neither Windaction/Shea nor Deerfield directly address the Department’s proposed method for reporting and comparing the Part 2 Standard and the Part 3 Standard.

The Commission adopts the Department’s recommendation for reporting of the Fall 2020 results to achieve a Part 2 Standard and Part 3 Standard comparison. The Department’s reporting should also include an explanation of what uncertainty factor, if any, is applied to the data.

OINR Testing at Site B

All parties agree that OINR testing has been triggered at Site B based on the Protocol, Criterion 2, which states, “a homeowner will be given the option to allow for testing to be conducted to determine the actual [OINR] of the house, if that home meets the following criteri[on]: . . . (2) Sound monitoring (post-construction) shows Deerfield Project sound levels of 40 dBA (L_{eq} 1hr) or higher at that location.” During both the Fall 2018 and the Spring 2019 sound monitoring periods, the measured “turbine-only” sound level at Site B was 40 dBA.

The parties disagree about the effect that Deerfield’s GNA and Easement with Mr. DeGray should have on the OINR testing process outlined in the Protocol. The Protocol provides the following process should post-construction sound monitoring show “Deerfield Project sound levels of 40 dBA (L_{eq})(1 hr) or higher at that location” (Criterion 2):

Deerfield Wind shall offer OINR testing to homeowners who meet . . . Criterion 2 based upon the first year of post-construction monitoring.

* * *

If a homeowner who meets one of these criteria initially declines OINR testing, an attenuation of 15 dBA will be assumed. However, if a homeowner who initially declined OINR testing subsequently files a complaint, that homeowner shall again be offered OINR testing at Deerfield’s expense.²⁹

²⁷ Department of Public Service Comments on Fall 2020 Sound Monitoring, February 20, 2020, at 4.

²⁸ Windaction/Shea Joint Comments in Response to Vermont PUC Order of February 12, 2020, March 4, 2020, at 5.

²⁹ Protocol § 2.5.

Mr. DeGray contends that he “was not offered the OINR sound monitoring” as provided in the Protocol and further states that he contacted Deerfield, indicated an interest in OINR testing at his residence, and inquired about annulling the GNA and Easement so that Deerfield would move forward with OINR testing.³⁰ Mr. DeGray represents that Deerfield informed him that it would seek to enforce the GNA and Easement should he elect to go forward with OINR testing.

Before Mr. DeGray’s filing, Deerfield maintained 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.”³¹

Windaction/Shea characterize Deerfield’s actions as “aggressively block[ing] [Mr. DeGray’s] request” for OINR testing and misleading “the Commission and the Parties into believing it was Mr. DeGray’s own idea not to proceed” with testing.³² Mr. DeGray states that, after Deerfield informed him of the potential consequences of the GNA and Easement, he “decided it was in [his] best interest not to request the OINR testing.”³³ The Department’s comments did not address whether the Protocol has been satisfied based on the facts here or whether OINR testing should take place despite the GNA and Easement.

Mr. DeGray further informs the Commission:

I would be interested in the additional OINR testing at Site B if the [Commission] concluded in a written binding order that [the] 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).³⁴

Deerfield argues that “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.”³⁵ Deerfield goes on to argue that, even if the GNA were not a

³⁰ Letter from Gerald DeGray, to Judith Whitney, Clerk of the Commission, dated April 2, 2020, at 1.

³¹ Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated March 23, 2020y, at 2.

³² Windaction/Shea Joint Comments in Response to the Vermont PUC Order of April 7, 2020, April 24, 2020, at 3.

³³ Letter from Gerald DeGray, to Judith Whitney, Clerk of the Commission, dated April 2, 2020, at 2.

³⁴ Letter from Gerald DeGray, to Judith Whitney, Clerk of the Commission, dated April 2, 2020, at 2.

³⁵ Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated April 27, 2020, at 1.

confidential private agreement, “the Commission does not have jurisdiction to review private party agreements.”³⁶ Deerfield urges the Commission to find that Mr. DeGray has not *requested* OINR testing based on his expressing only *interest* in OINR testing conditioned on the Commission issuing a “written binding order” that Mr. DeGray would not be violating the GNA by requesting OINR.

The Protocol does not contain any qualifying terms defining how an offer of OINR testing must be conducted or what constitutes a homeowner declining such testing. Here, Mr. DeGray knew the sound monitoring results triggered an opportunity under the Protocol for OINR testing at his residence. Based on Mr. DeGray’s letter, he understood that he had a right to request that testing; however, his decision to make such a request appears to be affected by a private agreement that Mr. DeGray entered into with Deerfield. Mr. DeGray indicates in his filing that he did not elect to move forward with a request for OINR testing at the conclusion of his discussions with Deerfield in December 2019. The Commission views Mr. DeGray’s statement as akin to declining OINR testing initially, pursuant to the Protocol.

However, if the Commission then treats Mr. DeGray’s April 4 letter as a “complaint” pursuant to the Protocol, and Mr. DeGray would be entitled to an offer of OINR testing, it seems from Mr. DeGray’s letter that he would only accept the testing if the Commission issued an order determining Mr. DeGray’s rights under the GNA and Easement. The Commission cannot issue such an order, as it is not within our jurisdiction.³⁷ Even if the Commission could issue such an order, it would have no *binding* effect on a civil court’s determination regarding enforcement of the GNA and Easement. The Commission, therefore, does not find that Mr. DeGray has requested OINR testing at his residence because his interest in pursuing OINR testing was conditioned on the Commission issuing such an order.³⁸

³⁶ Letter from Andrew N. Raubvogel, Esq., to Judith Whitney, Clerk of the Commission, dated April 27, 2020, at 1.

³⁷ See *Petition of Ga. Mountain Comm’y Wind, LLC*, Case No. 7508, 2012 WL 3264903, at *3 (Aug. 6, 2012) (“The [Commission] does not have jurisdiction to determine property rights.”); *Joint Petition of Vt. Elec. Power Co., Inc., Vt. Transco, LLC, & Cent. Vt. 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*, Case No. 7373, 2008 WL 5003093, at *2 n. 2 (Feb. 28, 2008) (“We do not, and cannot, issue a binding ruling that conclusively determines the respective parties’ property rights; jurisdiction for such determinations rests with the Superior Court, not this [Commission].”).

³⁸ The Protocol provides an opportunity for a homeowner who has previously declined OINR testing to file a complaint with the Commission. If Mr. DeGray wishes to unequivocally elect OINR testing—understanding that the Commission cannot adjudicate his private contractual rights—he may file such a complaint.

In these circumstances, Windaction/Shea urge the Commission to order OINR testing at Site B, nonetheless. Windaction/Shea assert that if the parties had known that Site B was encumbered by a GNA, they would have insisted on another representative property for sound monitoring and sought procedures to allow for OINR testing despite the GNA. Windaction/Shea further argue that OINR testing should still occur at Site B for “residences represented by Site B” to ensure that Deerfield is not “unfairly advantaged” via the execution of the GNA, which essentially eliminates Site B as a potential OINR testing location.

The Commission certainly can order Deerfield to offer OINR testing to a homeowner. However, the decision to allow the OINR testing rests with the homeowner. The Commission cannot order OINR testing at Mr. DeGray’s residence (Site B) because to do so might put him at jeopardy of violating a private agreement that he entered. The Commission declines to order OINR testing at Site B.

Windaction/Shea’s Request for Response to Deerfield’s Actions

Windaction/Shea further urge the Commission to find that Deerfield’s failure to disclose the GNA and Easement warrants a “firm response.”³⁹ Deerfield executed the GNA and Easement with Mr. DeGray on November 10, 2017. The Protocol was finalized on January 16, 2018. Windaction/Shea conclude that Deerfield deprived the parties and the Commission of information that affects the sound monitoring at Site B.

It is instructive to review the evolution of the sound monitoring protocol. Deerfield filed a proposed sound monitoring plan on May 16, 2017, and a revised sound monitoring plan on June 28, 2017. On December 14, 2017, the Commission issued an order approving portions of the revised plan and directing Deerfield to file an amended plan that complies with changes and additions from the Commission’s December 14 Order. Deerfield filed its amended plan on December 20, 2017, and a correction to the amended plan on January 16, 2018.

All four iterations of the sound monitoring plan indicate Site B as the same location, inside which are potential monitoring sites. Site B is described in all versions of the sound monitoring plan as “located near the transmission line that crosses VT Route 8 approximately 1.3 km (0.8 miles) south of the VT 8/VT 9 intersection in Searsburg and west of VT Route 8, and

³⁹ Windaction/Shea Joint Comments in Response to the Vermont PUC Order of April 7, 2020, April 24, 2020, at 3.

extending north to 149 VT Route 8, just north of the transmission line” and “representative of the closest homes to the east of the project.”⁴⁰ Consistent with the Commission’s December 14 Order, the corrected and amended sound monitoring plan provides that final sound monitoring locations will be selected by the sound monitoring consultant.

There is a cluster of homes near Site B that could have served as the Site B sound monitoring location. Mr. DeGray’s property was selected as the Site B sound monitoring location by the sound monitoring consultant. Mr. DeGray’s property was selected because it is “the first residence south of the transmission line right of way” and it met all other criteria for selecting a monitoring site.⁴¹ The Commission does not know whether the sound monitoring consultant was aware of the GNA and Easement on Mr. DeGray’s property. Nor can we say in hindsight whether knowledge of the GNA and Easement would have changed the consultant’s selection.⁴²

In any event, the existence of the GNA and Easement on Mr. DeGray’s property in no way diminishes the requirements of the CPG, the sound monitoring plan, and the opportunities for OINR testing available to Mr. DeGray and other homeowners whose residences are represented by Site B. Under the sound monitoring plan, homeowners will be given the option to allow for testing to be conducted to determine the actual OINR of a house, if that house meets Criterion 2 of the Protocol. Deerfield was required to offer OINR testing to homeowners who met Criterion 2 based upon the first year of post-construction sound monitoring. The Commission is presented with a situation where one homeowner eligible for OINR testing will not go forward with that testing for the reasons articulated above. Given a different homeowner, not subject to a GNA and Easement, Deerfield would have had to move forward with OINR testing if such testing had been accepted or requested.⁴³

⁴⁰ See Protocol § 2.3, at 4.

⁴¹ Deerfield Wind – Fall 2018 Sound Monitoring Compliance Report, Jan. 7, 2019 (Revised Oct. 11, 2019), § 3.1.2, at 10. See also § 3.1.2, at 5-13 (describing sound monitoring site-selection process).

⁴² For example, this location may still have been the most appropriate location for sound monitoring within Site B based on the factors identified by the sound monitoring consultant for site selection. Deerfield Wind – Fall 2018 Sound Monitoring Compliance Report, Jan. 7, 2019 (Revised Oct. 11, 2019), § 3.1.2, at 5-6.

⁴³ Should a homeowner, arguably located within Site B, file a request for OINR or a complaint, the Commission would entertain a request for the use of the Site B sound monitoring results in substantiating such a request.

The Commission concludes that a homeowner's election of OINR testing is a private decision for the homeowner and not something that the Commission pursues on a homeowner's behalf. The Commission's December 14, 2017, Order regarding the sound monitoring plan contemplated interior sound monitoring "in the event of a complaint at a residence."⁴⁴ The Commission went on to reiterate, "If the offer of OINR testing is rejected by the *complainant*, the [OINR] would be assumed to be 15 dB."⁴⁵ The Protocol procedures provide an avenue for homeowners to access OINR testing without having to bring complaints substantiated by data obtained at their own expense.⁴⁶

Using an OINR attenuation of 15 dBA, the exterior 40 dBA reading at Site B yields an interior sound result within the CPG limits (under 30 dBA). Thus, the Commission does not order additional testing at Site B because the opportunity for OINR testing has already been triggered. However, the Commission points out the importance of transparency in presenting frank and complete information so that the Commission can intervene in matters such as this. The Commission expects that CPG applicants and holders will exercise a duty of candor with the Commission. The duty to disclose relevant information to the Commission extends to confidential documents, which can be presented to the Commission pursuant to a Protective Agreement. Had the sound consultant known that Site B was hindered by a GNA and Easement, an alternative residence for Site B might have been selected in advance of the sound monitoring.

Windaction/Shea's Request for a Hearing

Finally, in response to Windaction/Shea's request, the Commission declines to convene a hearing because it does not find any remaining open issues. The Fall 2020 testing shall be conducted based on the guidance provided in this Order.

Should the Department or its contractor, CSA, encounter problems implementing the sound monitoring due to the COVID-19 pandemic, or for any other reason, the Commission urges the Department to notify the Commission promptly.

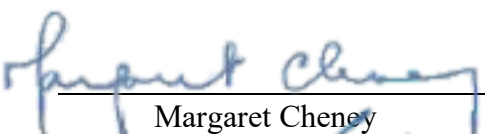
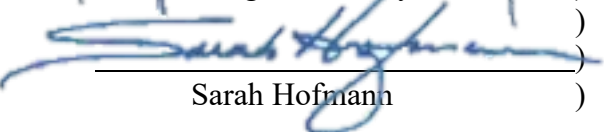
SO ORDERED.

⁴⁴ Docket 7250, Order of 12/14/17, at 9.

⁴⁵ Docket 7250, Order of 12/14/17, at 9 (emphasis added).

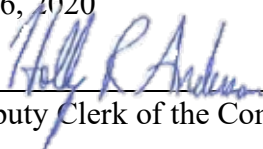
⁴⁶ Contrast the OINR testing procedures with the separate complaint resolution procedure in place for the life of the Project. Protocol § 5.0 ("Deerfield Wind may ask complainants to log sound events to help identify factors that affect the sound.").

Dated at Montpelier, Vermont this 26th day of June, 2020.

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

OFFICE OF THE CLERK

Filed: June 26, 2020

Attest: 
Deputy 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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.