

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7156

Amended Petition of UPC Vermont Wind, LLC, for a)
Certificate of Public Good, pursuant to 30 V.S.A. § 248,)
authorizing the construction and operation of a 40 MW)
wind electric generation facility, consisting of 16 wind)
turbines, and associated transmission and interconnection)
facilities, in Sheffield and Sutton, Vermont, to be known as)
the "Sheffield Wind Project")

Order entered: 3/28/2007

ORDER RE ADMISSION OF USFWS LETTER

At the technical hearing held on March 20, 2007, Universal Health Services, Inc., and UHS of Sutton, Inc. (collectively "UHS"), and Ridge Protectors, Inc. ("RPI") moved the admission of a letter from the U.S. Fish and Wildlife Service ("USFWS"), dated January 3, 2007, and addressed to David Cowan of UPC Vermont Wind, LLC ("UPC"). UHS and RPI claimed that the January 3 letter should have been provided during discovery. Upon objection by UPC, the Public Service Board ("Board") requested that parties prepare written filings addressing this issue. Upon consideration, the Board has determined that it will admit the January 3 USFWS letter, for the reasons explained below.

Positions of Parties

On March 21, 2007, UPC filed a letter contending that the USFWS letter is not responsive to the discovery request cited by UHS and RPI during the March 20 hearing. UPC further states that the USFWS letter is hearsay and therefore inappropriate evidence. UPC contends that the USFWS letter "expresses detailed technical and scientific opinions on complex issues, which if allowed into the record, would not be subject to cross-examination and could not be fully vetted by the Board or the parties." Additionally, UPC contends that the opinions expressed in the USFWS letter "are not based on all of the evidence related to the issue of bird and bat impacts." Finally, UPC states "If, after considering this filing, the Board believes that an

additional hearing on this issue would be helpful, UPC will check with Mr. Cowan and Mr. Roy to determine when they are next available."

On March 22, 2007, UHS and RPI filed a letter providing multiple discovery questions that, they represent, the USFWS letter is responsive to. UHS and RPI note that the Board has previously "admitted other letters from federal agencies, noting that these are precisely the types of documents upon which the Board regularly relies." UHS and RPI contend that additional hearings are not necessary to address the issues raised by the USFWS letter and the parties can address the letter in the briefs.

On March 22, 2007, the Vermont Agency of Natural Resources ("ANR") filed a letter stating that it did not previously bring the USFWS letter to the Board's attention because no ANR witness relied on the USFWS letter and ANR believes that any issues raised by USFWS were addressed by the joint stipulation filed by ANR and UPC. ANR observes that USFWS had the opportunity to petition the Board for party status but it did not do so. Finally, ANR notes that USFWS has independent jurisdiction which imposes certain obligations on UPC; these obligations would stand regardless of any decisions by the Board.

Discussion

Upon reviewing the discovery requests presented in the UHS and RPI March 22 letter, the Board has determined that the USFWS letter appears to be responsive to some of the discovery requests cited and should have been provided.

The USFWS letter does not constitute hearsay as it falls within the public records and reports exception contained in Vermont Rules of Evidence 803(8). However, the fact that no representative from USFWS was presented to testify regarding technical issues addressed in the letter goes to the weight that should be accorded the letter. The Board invites parties to address the issues presented by the letter, including the weight that it should be accorded, in their final briefs.

No party requested additional hearings to address the USFWS letter. Given the amount of testimony on wildlife issues and the opportunity for parties to brief the USFWS letter, the Board concludes that additional hearings are not needed on this issue.

Conclusion

The USFWS letter date January 3, 2007, is admitted as UHS/RPI Cross-23.

SO ORDERED.

Dated at Montpelier, Vermont, this 28th day of March, 2007.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: March 28, 2007

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)