

STATE OF VERMONT
PUBLIC SERVICE BOARD

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,)
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))

Order entered: 5/12/2016

FIFTH ORDER RE: COMPLIANCE FILINGS

I. INTRODUCTION

On April 16, 2009, the Vermont Public Service Board (“Board”) issued an order (“Order”) and certificate of public good (“CPG”) in this docket approving, subject to certain conditions, the construction and operation of a wind electric generating facility (the “Project”). On July 17, 2009, the Board issued an amended CPG (“Amended CPG”), in which several of the conditions contained in the CPG were altered. Among other things, the CPG and Amended CPG required the CPG Holder, Deerfield Wind, LLC (“Deerfield”), to make a number of post-certification compliance filings.

On March 16, 2016, Deerfield submitted compliance filings that included a plan for minimizing indirect impacts on bears required by Condition 13 of the Amended CPG,¹ and two

1. Deerfield filing of 3/15/16, Attachment 2.

memoranda describing measures to minimize construction impacts on breeding birds required by Condition 14 of the Amended CPG.²

In this order we determine that the plan for minimizing indirect impacts on bears fulfills the requirements of Condition 13 of the Amended CPG. We further conclude that the two memoranda describing measures to minimize construction impacts on breeding birds fulfill the requirements of Condition 14 of the Amended CPG and that specified construction activities are allowed during the May-June bird breeding season.

II. INDIRECT IMPACTS ON BEARS

Condition 13 of the Amended CPG states:

Deerfield shall file a detailed proposal describing how it will minimize indirect impacts to bears. Such a proposal shall address, at a minimum, gating the access roads, utilizing remote cameras to deter illegal entry, patrols by law enforcement, limiting activity at the Project during certain time periods, and preserving bear crossing areas along access roads.

The following conditions are also related to indirect impacts on bears.

Condition 6 of the Amended CPG states:

Access roads will be gated and access to facility roads will be limited to authorized personnel only. The east-side access road will be double-gated with the existing gate at the end of the current Green Mountain Power Corporation access road (at the beginning of the Deerfield access road). The west-side access road will be gated at the beginning of the Deerfield access road and again after the transmission corridor. Deerfield will include measures to prohibit and deter illegal ATV access and other unauthorized access.

Condition 7 of the Amended CPG states:

Deerfield will prohibit major scheduled repairs and maintenance activities during fall periods when bears may be using beech trees.

Condition 8 of the Amended CPG states:

Deerfield personnel will be restricted from the site during the nighttime hours and during the crepuscular periods that have been shown to be important periods for bear activity (one hour before and after sunrise and sunset), except in emergency situations and during necessary wildlife study periods not otherwise avoidable.

2. Deerfield filing of 3/15/15, Attachment 3.

Condition 10 of the Amended CPG states:

Deerfield will evaluate each access road after construction to determine whether there are any specific bear crossings, and if identified, will take actions to preserve these crossing areas.

The plan for minimizing indirect impacts on bears filed by Deerfield on March 16, 2016, to comply with Condition 13 of the Amended CPG includes provisions that comply with the requirements of Conditions 6, 7, 8 and 10 of the Amended CPG. The plan describes where existing access roads and trails will be gated to prevent vehicular access, use of signs to deter pedestrian traffic, avoidance of the Project site during certain time periods, and identifying, preserving, and using signs to mark bear crossing locations along Project access roads. The proposal does not include use of remote cameras or special patrols, although it states that such measures would be considered in collaboration with the U.S. Forest Service if monitoring of gated areas and Project grounds indicates that unwanted traffic is occurring in the Project area despite the gates.

We determine that the plan for minimizing indirect impacts on bears fulfills compliance with Condition 13 of the Amended CPG.

III. CONSTRUCTION IMPACTS ON BREEDING BIRDS

Condition 14 of the Amended CPG states:

Deerfield shall not undertake bulldozing, tree cutting, and blasting in areas proximate to breeding bird habitat during May and June to protect breeding birds. If Deerfield anticipates that construction will occur over the course of two seasons, Deerfield may propose that construction be allowed during May and June, but shall demonstrate that such permission will lessen the impact on breeding birds.

In accordance with Condition 14, Deerfield filed a description of how a construction schedule that includes conducting certain activities during the May and June breeding season, to avoid the need for construction spanning two construction seasons, will lessen the impacts of construction on breeding birds. Deerfield's proposal is supported by a memorandum from Stantec Consulting Services, Inc. ("Stantec"), arguing that a single construction season, with limited construction activities allowed during May and June, will have less impacts on breeding birds than

two separate construction seasons with no construction allowed during May and June. Stantec's rationale is that while a May-June construction prohibition avoids the most active bird breeding season, for some species of forest birds in Vermont the breeding season extends into July and August. Restricting construction to a single year will minimize bird breeding impacts by limiting construction disturbance (physical disruption and noise) to a single season.

If work is to be conducted during May and June, Stantec recommends that tree clearing be prohibited, that bulldozing be allowed, and that blasting be allowed only on days when it is not raining and during specified times (between 10 A.M. and 5 P.M., May 1 - May 14; between 11 A.M. and 5 P.M., May 15 - June 14; and between 10 A.M. and 5 P.M., June 15 - June 30).

Deerfield provided two general construction scenarios to compare the effect on construction schedule of allowing limited construction activities to occur during May and June. Both scenarios would involve tree clearing commencing in the fall of 2016, and road work commencing in the winter of 2016-2017. The ability to conduct construction activities in March and April is considered uncertain due to mud season conditions that typically occur in this time-frame. If a May-June prohibition on bulldozing, blasting, and tree clearing is adhered to, construction activities would resume in July of 2017. Deerfield contends that this would not provide sufficient time to complete all the ground preparation work (completion of roads, crane pads, and turbine pads) as well as turbine installation during the optimum time-frame in 2017 (May through September to avoid high winds). Therefore, turbine installation would occur during the summer of a second construction season in 2018.

In the alternative proposal, the activities described by Stantec would be allowed during May and June, which Deerfield contends would advance the site preparation work sufficiently to provide time for all the turbines to be installed during the summer of 2017, avoiding the need to extend construction into 2018.

We determine that Deerfield's proposed construction schedule allowing certain activities during the May and June bird breeding season, resulting in a single construction season rather than two, fulfills compliance with Condition 14 of the Amended CPG.

IV. CONCLUSION

Regarding the compliance materials filed by Deerfield on March 16, 2016, we have determined the following:

We determine that the Plan for Minimizing Indirect Impacts on Bears fulfills compliance with Condition 13 of the Amended CPG.

We determine that the memoranda regarding construction activities to be conducted during May and June fulfill Condition 14 of the Amended CPG, and we impose the May-June construction limitations described by Stantec, specifically, that tree clearing be prohibited, that bulldozing be allowed, and that blasting be allowed only on days when it is not raining and during the following specified times: between 10 A.M. and 5 P.M., May 1 - May 14; between 11 A.M. and 5 P.M., May 15 - June 14; and between 10 A.M. and 5 P.M., June 15 - June 30.³

SO ORDERED.

3. These May and June blasting restrictions supplement but do not otherwise modify the requirements approved in our order of April 29, 2016, pertaining to the revised blasting plan for the Project dated February 8, 2016, which limits blasting to Monday through Friday and prohibits blasting on state or federal holidays.

Dated at Montpelier, Vermont, this 12th day of May, 2016.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/Margaret Cheney</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/Sarah Hofmann</u>	)	

OFFICE OF THE CLERK

FILED: May 12, 2016

ATTEST: s/Judith C. Whitney
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@vermont.gov)

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