

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: 2/11/2016

ORDER RE: FOURTH COMPLIANCE FILING

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 amended the Order (“Amended Order”) and the CPG (“Amended CPG”), in which several of the conditions contained in the CPG were altered. Additionally, on April 7, 2011, the Board issued a subsequent Order amending certain conditions of the CPG related to requirements for a bear study (“Bear Study Order”). Among other things, the CPG and Amended CPG required the Petitioner, Deerfield Wind, LLC (“Deerfield”), to make a number of post-certification compliance filings.

On October 21, 2015, Deerfield submitted a fourth set of compliance filings for party comment and Board review, including the United States Forest Service (“USFS”) Special Use Permit for the construction phase of the Project, a System Impact Study (“SIS”), and a final substation plan.

On October 30, 2015,¹ Wind Action Group (“WAG”) filed comments on the SIS. No other comments were received on the fourth set of compliance filings.

On October 29, 2015, Deerfield filed responses to WAG’s comments.

For the reasons set forth below, in this Order we determine that the USFS Special Use Permit for the construction phase of the Project partially fulfills the requirement of Condition 23 of the Amended CPG. We further determine that the SIS and the final substation plan filed by Deerfield on October 21, 2015, are in compliance with Condition 31 of the Amended CPG. Deerfield is directed to file the USFS Special Use Permit for the operational phase of the Project prior to commencing operation of the Project.

1. USFS Special Use Permit

Condition 23 of the Amended CPG states:

Deerfield shall submit to the Board the United States Forest Service special use permit and lease covering the federal lands on the site. Parties may file comments on whether the federal permit and lease contain terms that effectively meet the same objectives as detailed in the prior paragraph. [Note: “prior paragraph” refers to Condition 22, which contains the objectives identified using italics below.]

Condition 22 of the Amended CPG states:

Deerfield shall submit to the Board, for review and approval, any permits, or executed lease agreements with involved private landowners. Any such lease agreements may be redacted to protect confidential business information. At a minimum, such lease agreements shall contain *provisions which ensure that decommissioning can effectively occur* in the event of Deerfield’s insolvency or dissolution, the revocation of any permit issued to Deerfield, Deerfield’s breach of any lease, or an order of the Board requiring decommissioning, and *allow access to the impacted land for purposes of fulfilling any CPG condition*, including access by representatives of the Department of Public Service, the Board, and ANR. Upon approval by the Board, a notice of leasehold interest for each lease agreement shall be recorded in the land records of the relevant municipality. Deerfield may not begin significant construction activities prior to Board approval of any permits and leases, but may perform site preparatory work such as geotechnical investigations, surveys, light construction, and other similar activities.

1. WAG’s letter was dated October 26, 2015, and was received by the Board on October 30, 2015; therefore, Deerfield’s response to comments, dated October 29, 2015, preceded the Board’s filing date for WAG’s comments by one day.

Deerfield's compliance filing of October 21, 2015, contained the USFS construction phase Special Use Permit, with the USFS authorized approval signature dated July 21, 2015.² The permit authorizes construction commencing no later than January 1, 2017, to be completed by December 31, 2019. The permit also states that the USFS will issue a separate operations phase permit prior to commencement of Project operations and maintenance. Deerfield stated that during the 2009 Board review process, it was anticipated that a single Special Use Permit would be issued by the USFS, but that in fact, as indicated in the construction phase permit, two separate permits are to be issued by USFS.

Condition 23 of the Amended CPG requires Deerfield to file the "USFS special use permit and lease covering federal lands on the site." The construction phase Special Use Permit filed by Deerfield describes the annual land use fee payments to be made by Deerfield to the USFS. Given that the lease terms are included in the Special Use Permit, we conclude that a separate lease document is not necessary to satisfy Condition 23.

Deerfield requested that the Board accept the construction phase permit for compliance with Condition 23 and that the Board require that the operations phase Special Use Permit be submitted prior to commencement of Project operations. The construction phase Special Use Permit also indicates that a separate Special Use Authorization will be granted to Green Mountain Power Corporation ("GMP") for facilities needed to place the power generated by the Project onto the grid.

Condition 22 of the Amended CPG reflects that the issues regarding the USFS lease concern decommissioning and site access. The construction phase permit requires Deerfield to post a construction bond and provide proof of insurance.³ The permit also contains requirements regarding decommissioning, including development of decommissioning costs, establishment of a decommissioning fund, statement of the decommissioning and restoration objectives, and the requirement that decommissioning activities "be in accordance with applicable federal, state, and local permits, including the State CPG decommissioning requirements."⁴ The decommissioning plan in the construction phase Special Use Permit states that decommissioning may be conducted

2. Deerfield filing of 10/21/15, Attachment [USFS Special Use Permit] at 19.

3. Deerfield filing of 10/21/15, Attachment [USFS Special Use Permit] at 9 - 10.

4. Deerfield filing of 10/21/15, Attachment [USFS Special Use Permit] at 202 - 203.

“at the end of [the Project’s] useful efficient life or the loss of permission to maintain the facility from the [USFS].”⁵ The decommissioning plan referred to in the permit is an agreement between Deerfield and the USFS, and the specific language of the plan reflects this arrangement; not all details are the same as those contained in the decommissioning plan submitted for Board review. (For example, the USFS will require a separate letter of credit (“LC”) with the USFS as beneficiary.) However, the permit is clear that decommissioning activities must be in accordance with the requirements of the CPG decommissioning requirements.

In regard to site access, the construction phase Special Use Permit grants the USFS the right to inspect the permit area.⁶ While the permit does not specifically address site access for any other entity, it does not contain any language or requirements that preclude site access by other entities. Therefore, it does not conflict with the intent of Condition 23 and other conditions of the Amended CPG that require site access for monitoring and compliance purposes.

The USFS construction phase Special Use Permit provides evidence of lease and accountability agreements between Deerfield and the USFS for construction activities to be conducted on federal lands. The Special Use Permit requirements are separate from, and do not appear to conflict with, Board requirements regarding site access, decommissioning, and other aspects of the CPG for the Project.

Therefore, we have determined that the construction phase Special Use Permit partially fulfills the requirement of Condition 23 of the Amended CPG. We direct Deerfield to file the operation phase Special Use Permit for Board review and approval when it is received from the USFS, and prior to commencement of Project operations and maintenance.

2. System Impact Study and Final Substation Plan

Condition 31 of the Amended CPG states:

Deerfield shall submit the final System Impact Study (“SIS”) and interconnection and substation plans to the Board, parties, and owners of the facilities to which the Project will interconnect prior to construction. Parties shall have two weeks to file comments on the SIS study. Deerfield shall implement any changes determined

5. Deerfield filing of 10/21/15, Attachment [USFS Special Use Permit] at 201.

6. Deerfield filing of 10/21/15, Attachment [USFS Special Use Permit] at 6 - 7.

necessary by the Board or ISO-New England to ensure system stability and reliability, and shall pay for any costs associated with such measures.

Deerfield provided a revised SIS, which it indicated was designated (in its entirety) by ISO-New England as Critical Energy Infrastructure Information (“CEII”) based on the Federal Energy Regulatory Commission definition of CEII, and a final substation plan. Pursuant to the Board’s Protective Order dated October 2, 2015,⁷ CEII shall not be disclosed to any person who has not agreed to be bound by the Protective Agreement.

WAG commented that the SIS was labeled as a draft and therefore is not appropriate for determining compliance with Condition 31 of the Amended CPG.⁸ WAG also stated that Deerfield was incorrect in referring to the SIS as CEII, and asked the Board to require Deerfield to provide a copy of the SIS to WAG for review.

Deerfield responded to WAG’s comments by letter dated October 29, 2015, stating that ISO-New England made the designation of CEII, that the SIS was a final version, and that Deerfield had received confirmation that WAG had CEII clearance from ISO-New England and would provide a copy of the SIS to WAG for its review.

No other comments were received from any party regarding the SIS and substation plan.

The SIS filed by Deerfield is not labeled “draft,” pertains to fifteen 2 MW turbines (i.e., the final Project design), and has a footer on every page stating, “This document may contain Critical Energy Infrastructure Information - Do Not Release.”⁹

As discussed in the Order approving the Project on April 16, 2009, the initial Project information provided by Deerfield indicated that there would not be an adverse impact on system stability and reliability, and specified that Deerfield would be required to implement and pay for any changes determined necessary to ensure system stability and reliability.¹⁰ Condition 31 required Deerfield to file a final SIS based on final design plans. Deerfield provided a copy of the August 19, 2015, meeting minutes of the ISO-New England Reliability Committee, which state that it is the Committee’s recommendation that “implementation of the Deerfield Wind

7. Procedural Order Re: Second Protective Agreement dated 10/2/2015.

8. WAG filing of 10/30/15 at 1.

9. Deerfield filing of 10/21/15, Attachment [SIS dated 6/16/15].

10. Order of 4/16/2009 at 25 - 26.

Generation and Transmission Project . . . will not have a significant adverse effect on the stability, reliability, or operating characteristics of the transmission facilities of the applicant, the transmission facilities of another Transmission Owner or the system of a Market Participant.”¹¹ Based on this and our review of the SIS, we have determined that the conclusions made in the original Project Order are still valid. There will be no adverse effects from the Project on system stability and reliability provided that Deerfield implements necessary system upgrades. Deerfield is responsible for costs associated with system upgrades required to ensure system stability and reliability.

We have reviewed the final substation plan and determined that there are no outstanding issues or concerns with the plan.

We have also determined that the final SIS and final substation plan are in compliance with Condition 31 of the Amended CPG.

CONCLUSION

Regarding the compliance materials filed by Deerfield on October 21, 2015, we have determined the following:

We find that the USFS Special Use Permit for the construction phase of the Project is in compliance with Condition 23 of the Amended CPG. Deerfield shall file the USFS Special Use Permit for the operational phase of the Project for Board review prior to commencement of operation and maintenance of the Project.

We find that the final SIS and final substation plan for the Project are in compliance with Condition 31 of the Amended CPG.

SO ORDERED.

11. Deerfield filing of 10/29/15, Attachment at 1.

Dated at Montpelier, Vermont, this 11th day of February, 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: February 11, 2016

ATTEST: s/Judith C. Whitney
Acting 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.