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February 20, 2009

Susan M. Hudson, Clerk
Public Service Board
112 State Street
Montpelier, VT 05620-2701

Re: Docket 7250—Deerfield Wind

Dear Mrs. Hudson:

With this letter, the Department includes proposed conditions for a Certificate of Public Good. These conditions are submitted jointly with the Petitioner and address certain concerns the Department initially had with the Petitioner's proposed conditions for all issues except the matter of the Power Purchase Agreement (PPA). It is the Department's position that with these conditions the Project would promote the public good, provided that the Board determines that the concerns raised by the Agency of Natural Resources are adequately addressed.

Therefore, except for the PPA, the Department will not be addressing issues raised by the Petitioner, DCTV, or most other parties in their briefs. The Department will address certain issues raised by Save Vermont Ridgelines, Inc. (SVR) and Industrial Wind Action Group, Inc. (IWAG).

A. Noise

SVR/IWAG suggests that Mr. Kane is not qualified as an expert witness on noise. (SVR/IWAG Brief at 13). This assertion is incorrect. As Mr. Kane points out in his own testimony, the scope of his work in this docket was to review and evaluate the noise analysis work completed on behalf of the Petitioner by Resource Systems Group (RSG). Exh. DPS-MK-1 at 1. Mr. Kane also provided a review of noise standards and guidelines. *Id.* at 20-21. He introduced the draft directive of the US Forest Service into the docket. *Id.* at 19-20. In addition, Mr. Kane recommended a more stringent standard than originally proposed by the Petitioner, coupled with a monitoring plan to assure



compliance with any approved standard. *See Kane* pf. at 11-12. As a professional planner, Mr. Kane is qualified to review noise analyses and evaluate appropriate community standards on which the aesthetic impacts of noise should be evaluated.

SVR/IWAG asserts that Mr. Kane did not know “why there were limitations imposed on the ISO Standard with regard to the height of the noise source and the distance between the receptor and the noise source.” SVR/IWAG Brief at 13. SVR/IWAG goes on to state that these reasons are “fundamental” to understanding noise propagation and modeling difficulty. *Id.*

SVR/IWAG’s assertions in its brief about the relevance and importance of the ISO Standard, however, were associated with an exhibit on cross-examination that was not sponsored by an expert nor supported by any witness in the docket. Exhibit IWA-X-4 was identified by Mr. Kaliski as a part of the ISO-9613-2 standard. Tr. 12/2/08 at 113 (Kaliski). However, the relevance of Exhibit IWA-X-4’s table to the noise modeling for this Project has not established by any witness. Mr. Kaliski testified that the source-receiver combination that he used in his study does not appear in the table. *Id.* at 114. In order to compensate for the fact that the ISO methodology would have under-estimated noise propagation, *id.* at 116, RSG used conservative modeling assumptions. *Id.* at 117.

As Mr. Kane noted in his testimony, the Petitioner’s noise modeling approach has been consistent with, or even superior to, the methodology proposed to the Board in previous wind dockets. Exh. DPS-MK-1 at 22-23. While the noise projection is close to the maximum acceptable level at certain locations, under certain conditions and standards, the data creating the projection were also conservative. *Id.* at 21-22. Moreover, a number of elements in the RSG study allowed its conclusions to have a built-in margin of error, notably the assumption of wind always favoring sound propagation towards receptors and lack of sound attenuation from foliage. *Id.* at 21.

As a practical matter, while the results of noise modeling are important, they are not the ultimate or most significant consideration in determining how to protect the public from excessive noise and ensuring that the project will not have an undue adverse aesthetic impact with regard to noise. Tr. 12/11/08 at 244-45 (Kane). The Board evaluation of a specific noise standard and the means of monitoring compliance with that standard, will ultimately determine whether the Project meets the section 248 noise criteria. The information provided by the Petitioner indicates that there are times and conditions when the Project may approach the upper limit of an acceptable noise level. To protect the environment from excessive noise, the Board should impose the noise standard advocated by the Department in the proposed conditions attached. In addition, as listed in the proposed conditions, the Petitioner should be required to submit a monitoring plan to the Board for its approval. If the monitoring plan is adequate, then the Project will not have an undue adverse impact on aesthetics with regard to noise and will meet the statutory criteria.

B. Economic Benefit/Power Purchase Agreements

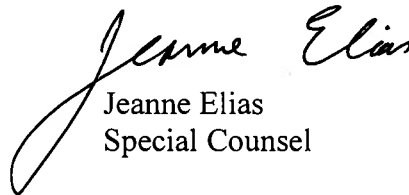
The Department and Deerfield Wind agree on the language of a proposed CPG condition pertaining to the sale of the power output from the facility except for the amount of power Deerfield should have to try to sell to Vermont utilities through stably priced contractual arrangements (also referred to as Power Purchase Agreements or "PPAs".) The Department urges the Board to require Deerfield to try to commit to contracts with Vermont utilities for at least 75% of the power output, while Deerfield proposes that this percentage should be 30%. The Department, mindful of the uncertainties surrounding commercial transactions, has agreed to language that would allow the Board to eliminate or decrease this requirement upon a showing by Deerfield that it made a good faith effort to sell the power to Vermont utilities but did not succeed. The Department's higher proposed percentage is an attempt to ensure that where Vermonters bear the burden of hosting a facility, they are given an adequate opportunity to share in the benefits of that facility. The Department's public engagement process, along with logic and common sense, underscore the fact that Vermonters are more supportive of a wind energy facility if they know that the power it generates is used by Vermonters. For this reason the Department urges the Board to adopt the proposed CPG language with a 75% requirement.

Thank you for your attention to this matter.

Sincerely,



Laura Scanlan Beliveau
Special Counsel



Jeanne Elias
Special Counsel

cc: Service List

PROPOSED CPG CONDITIONS

Decommissioning

Deerfield Wind shall implement the Decommissioning Plan submitted as Exh. DFLD-HGC-2. The decommissioning plan may allow the fund to grow as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure. If actual power production falls below 65% of projected production during any consecutive two-year period, a decommissioning review is initiated; however, if Deerfield Wind can demonstrate that it has entered into stably priced power contracts with Vermont utilities through which a substantial amount of power is to be sold at stable prices, the Board may reduce the decommissioning trigger to as low as 50%.

Prior to commencement of construction, Deerfield Wind shall prepare a revised detailed estimate of the costs of decommissioning, covering all of the activities specified in the Decommissioning Plan. The plan shall certify that the cost estimate has been prepared by a person(s) with appropriate knowledge and experience in wind generation projects and cost estimating. The cost estimate shall be submitted to the Board for review and approval. Parties shall have two weeks to file any comments.

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 the Agency of Natural Resources. 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, but may perform site preparatory work such as geotechnical investigations, surveys, light construction, and other similar activities.

Deerfield shall submit to the Board the USFS 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.

(b)(3) System Stability/Reliability

Prior to construction, Deerfield Wind shall submit the final System Impact Study (SIS) and interconnection and substation plans to the Board, the parties, VELCO, and the

owner of the transmission line at the point of interconnection. The parties, VELCO, and the owner of the transmission line at the point of interconnection shall have two weeks to file any comments on the SIS and plans. Deerfield Wind shall implement, and pay the costs of, any transmission system changes determined necessary by either the Board or ISO New England Inc. to ensure that the Project does not adversely affect system stability and reliability.

(b)(4) Economic Benefit – [DPS Proposal for 75%]

Deerfield Wind shall enter into long-term, stably priced power contract(s) with Vermont utilities for at least 75% of the Project's power output. In addition, Deerfield Wind shall use good faith efforts to enter into such contracts for project output above the 75% level, including but not limited to offering Vermont utilities the right of first refusal on such power contracts. Deerfield Wind shall provide an update of any negotiations with Vermont utilities 90 days after the date of this Order.

Prior to commencement of construction, Deerfield Wind shall file any such contracts entered into with Vermont utilities for Board review to determine if the contracts contain appropriate terms and conditions, including price stability, to promote the general good of the State of Vermont. Along with the contracts, Deerfield Wind must also file an explanation as to how the contracts promote the general good of the state. If, after good-faith efforts on the part of Deerfield Wind and the utilities, Deerfield Wind cannot obtain in-state power contracts as specified above, it shall file a statement explaining why an agreement cannot be reached and why the Board should modify or remove this requirement.

TV Interference

Prior to commencement of construction, Deerfield Wind will conduct a study of reception quality at the Duncan Cable TV Service (DCTV) headend facility in Wilmington, Vermont, and provide a copy of this study to the Board, the Department of Public Service, and DCTV.

- The study will measure and document the signal strength and video quality received off-air at the DCTV headend of analog and digital television stations of sufficient quality for commercial distribution (defined as having at least 20 dB carrier to noise ratio), and the signal strength received at the DCTV headend of each FM radio station DCTV distributes to its subscribers as of the date of the study.
- Signal levels will be measured using a commercially available test antenna with a known gain figure.
- The study will include a one-minute recording of each measured television channel and radio station.
- Measurements and recordings will be conducted no more than 45 days prior to commencement of construction.
- DCTV shall allow Deerfield Wind access to the DCTV headend facility as necessary to conduct the baseline study with at least 7 days advance notice.

DCTV personnel shall be permitted to observe all measurements and recordings taken at the DCTV headend facility.

Deerfield Wind will provide at least seven days notice to DCTV prior to commencement of commercial operation of the turbines. Deerfield Wind will remediate any material interference at the DCTV headend facility that is caused by operation of the Project. Within two weeks of receipt of a complaint, Deerfield Wind will complete an interference measurement study for the DCTV headend facility, and provide a copy of this study to DCTV, the Department of Public Service and the Board. Deerfield Wind may seek an extension of this timeframe for good cause. If the interference measurement study demonstrates that the Project is causing material interference at the DCTV headend facility, Deerfield Wind will at the same time submit a plan and schedule to remediate any material interference to DCTV, the Department of Public Service and the Board. Deerfield Wind shall complete remediation within two weeks of the date it submits any such remediation plan, and shall submit to DCTV, the Department of Public Service and the Board a report demonstrating the elimination of the interference upon completion of the remediation work. Deerfield Wind may seek an extension of this timeframe for good cause.

Deerfield Wind and DCTV shall make good faith efforts to resolve amongst themselves any disputes concerning the methodology for investigating or remediating a complaint, or the timeframe for completion of remediation. Unresolved disputes may be taken to the Board for resolution, and will be processed by the Board in an expedited manner.

During operation of the Project, Deerfield Wind shall investigate complaints of Project-related interference with television broadcast signals received at any residence. Deerfield Wind will use commercially practicable efforts to remediate material interference experienced at any residence affected by the Project. Deerfield Wind and the affected homeowner(s) shall make good faith efforts to resolve amongst themselves any disputes concerning the methodology for investigation or remediating a complaint, or the timeframe for completion of remediation. Unresolved disputes may be taken to the Board for resolution.

Aesthetics (Blasting, Noise)

Blasting shall be minimized to the extent reasonably practicable and shall be performed only during regular business hours. For all blasting work to be performed on the Project, Deerfield shall use only fully certified and licensed blasters. Prior to performing any blasting for the Project, Deerfield's blasting contractor will develop a blasting plan and Deerfield and its blasting contractor will arrange for a public information session with surrounding landowners to respond to any concerns related to blasting for the Project and to explain what should be expected under the blasting plan. In the event any nearby landowners express concern about blasting impacts to structures or water wells on their property, Deerfield shall perform evaluations to determine if any damage has occurred as a result of its blasting activities and, if so, remediate such damage.

All blasting will be performed in accordance with any and all applicable laws and regulations, including but not limited to U.S. Department of Interior Rules 816.61-68 and

817.61-68 and the Blasting Guidance Manual, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of Interior to limit peak particle velocity and ground vibration to safe levels. Noise and air blast effects shall be limited through application of proper techniques and blasting mats will be used where needed to limit the occurrence of flyrock.

Deerfield Wind shall operate the Project so that it emits no prominent discrete tones pursuant to ANSI standards at the receptor locations, and Project-related sound levels at any existing surrounding residences do not exceed 45 dBA (exterior)(Leq)(1hr) or 30 dBA (interior bedrooms)(Leq) (1hr). The noise limit shall apply to areas of frequent human use, including homes, yards, and porches. The noise limit shall not apply to areas that have transient uses such as driveways, trails, and parking areas.

Deerfield Wind shall submit to the Board for review and approval a noise monitoring and response plan. The Plan shall establish a monitoring program, to be conducted during the summer and winter seasons of the first year of operations, to confirm compliance with the maximum allowable sound levels described above. The plan shall also specify the protocols Deerfield Wind will implement in the event complaints are received that the Project is exceeding the noise limit (including, if appropriate, monitoring at the affected locations). All monitoring results shall be provided to the Board.

In the event noise from operation of the Project exceeds the levels permitted under the CPG, Deerfield shall take all remedial steps necessary to bring the project-related sound levels at the receptors into compliance with CPG requirements. In the event Deerfield is unable to correct the problem, the Board may conduct a further review of Project operations.

Aesthetics (Visual)

All turbine towers will be painted white or off-white.

Deerfield shall obtain and submit the final FAA determinations prior to the construction of the turbine towers. No further Board action is necessary unless the contents of the determination are materially different from Deerfield's prior representations.

Deerfield shall submit a re-vegetation and landscape plan for disturbed areas created by the access road, substation, and transmission line infrastructure which may require additional screening.