

**THOMAS SHEA**

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Vermont Public Service Board  
112 State Street  
4<sup>th</sup> Floor  
Montpelier, VT 05620-2701

February 20, 2009

Re: Docket 7250

To the Board:

Please see following rebuttal to Final Briefs in Docket 7250.

By signing this document I am also confirming and certifying that I have personally mailed a copy of this document to the parties listed on the attached service list, with the following exception:

Parties that have consented to receiving electronic copies in lieu of mailed paper copies have been provided only with electronic copy via e-mail.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Shea", with a long horizontal flourish extending to the right.

Tom Shea

**STATE OF VERMONT  
PUBLIC SERVICE BOARD**

Petition of Deerfield Wind, LLC, for a certificate of public good )  
authorizing it to construct and operate a 17-turbine, 34-35.7 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 10 turbines along the ridgeline to the )  
west of Route 8 in a northwesterly orientation (Western Project )  
Area. )

Docket 7250

**REBUTTAL TO FINAL BRIEFS**

There are several items where the final brief of the petitioner provides misleading or false statements. Several regarding the effect on the bear habitat are directly refuted in the final brief by ANR. I concur with the findings of ANR in this regard.

In addition to the above comment, I also offer the following comments in dispute to the findings claimed by the petitioner:

DFLD Proposed Finding item 301: *“Deerfield Wind’s water quality consultants analyzed the potential impact of the former 17-turbine layout on Thomas Shea’s spring-fed water supply. Mr. Shea’s water source is located approximately 2,400 feet from any earth disturbance associated with the nearest turbine (W-8) proposed in the 17-turbine layout. The distance far exceeds the likely groundwater recharge area of the spring. Considering the distance and the protocols outline in Deerfield Wind’s SPCC Plan, the 17-turbine layout would not have any significant or measurable impact on the water quantity or quality of Mr. Shea’s spring. With the removal of the three southernmost western turbines under the Revised 15-turbine layout, no turbines are now proposed upslope of Mr. Shea’s spring, further ameliorating any concerns about impacts to his water source. Nelson/Reinhart reb. at 16-17.”*

- Deerfield does not state that no water supply would be affected, because they cannot. Several dwellings remain immediately down slope of the proposed turbines, such that the danger of contaminating several homeowners’ water supply is still present.

DFLD Proposed Finding item 462: “*Modeling shows that the impact of the existing Searsburg facility at the Thomas Shea residence is 40 dBA, while the proposed Deerfield Wind project alone would be 38 dBA. The combined sound level from both facilities operating would be 42 dBA. Typically, an increase of two dBA would not be perceptible. Tr. 12/2/08 at 70-71 (Kaliski); Kaliski reb. at 7; Exh. DFLD-KK-5 at 26-29 (Figures 22-24).*”

- Deerfield does not state that the duration of noise will not increase, because they cannot. The present situation, by their calculation, produces 35 dBA or higher approximately 40% of total time, where the addition of the proposed project would increase this to a duration of over 70% of total time where the noise exceeds 35 dBA. (KK-74, chart 1, raw data for DFLD-KK-5) This would certainly be perceptible to any person with normal hearing.

DFLD Proposed Finding item 632: “*Additional bear-scared beech trees are present on private land in the area, and as a result, on a regional basis the Project will actually impact even less than the 1.3% of total BSB in the 8+ square mile area. Tr. 12/5/08 at 17 (Hammond).*”

- Deerfield has not proposed any actions regarding beech trees on private land, and as such has no control over private property owners’ use of that property. Implying that private property would be used to mitigate their taking of bear habitat on USFS land amounts to seizure of property, in violation of several state and federal laws as well as amendments 4 and 5 of the United States Constitution. This finding is a canard and should be ignored.

DFLD Proposed Finding item 670: “*Mr. Hammond testified that as few as four vehicle trips per day on the Project access road would displace bears. He did not cite any studies or any other evidence to support the claim that such a low volume of traffic may have an impact on bears. Tr. 12/12/08 at 46-49 (Hammond). That position is inconsistent with all of the published literature as well as the expert opinions of Mr. Wallin, Mr. Parsons, and Dr. Kilpatrick.*”

- Deerfield implies that they have located and reviewed *ALL* published literature on this subject. This is logistically impossible and appears intended to provide reinforcement to the credentials of their experts, who were shown to be less credible than Mr. Hammond as expert witnesses. In addition it appears to be an attempt to discredit Mr. Hammond’s decades of work in the field by the canard of imposing the invalid requirement that Mr. Hammond cite a study with parameters of their choosing. Mr. Hammond is aware of and cited studies where minimal increase in human interaction was detrimental to bears. Dr. Kilpatrick concurred with Mr. Hammond in this respect.

DFLD Proposed Finding item 752: “*Deerfield Wind has taken all feasible and reasonable steps to prevent or lessen Project’s impact on bear habitat. Wallin reb. at 45; Habig Panel reb. at 3, 11-12.*”

- Each party (except the petitioner) that was granted status under this subsection has testified that Deerfield has *not* taken all feasible and reasonable steps to lessen the project’s impact on bear (and other wildlife) habitat.

DFLD Proposed Finding item 875: *“With existing vegetation considered, Deerfield Wind’s modeling shows that there will be no shadow flicker at Thomas Shea’s residence. Even when making the conservative assumption of no shielding from vegetation, the modeling showed only 1-10 hours of potential shadow flicker per year at Thomas Shea’s residence. Zimmerman reb. at 4; Exh. DFLD-JZ-31a-b.”*

- Deerfield has provided multiple assurances that shadow flicker would be minimal. Should the CPG be issued, I respectfully request that the following limitations and conditions be included in the CPG:
  1. *“Flicker (or strobe effect) shall be limited to the amount specified in petitioner’s exhibit DFLD-JZ-31, and shall in no case exceed one half hour at any dwelling in the town of Searsburg over any twenty four hour period. I note that petitioner’s exhibit DFLD-JZ-31 claims a maximum average amount of flicker at any dwelling to be less than four minutes per day.”*
  2. *“If at any time, the facility does not meet the operating criteria of the CPG, or if any individual turbine does not meet the operating criteria of the CPG, the operator shall immediately limit (or cease) operation, such that the facility no longer is in violation of the operating criteria of the CPG. The operator shall shut down, or otherwise cause the non-conforming effects to cease, until remediation has been affected regarding any violation of the operating conditions.”*
- Given the multiple strenuous assurances that the flicker would be minimal, these conditions would require no additional effort or constraint on the petitioner’s part, provided their assurances are justified.

*Conclusion:*

*Conclusion that the CPG should be denied is still valid, for the many reasons outlined in my own testimony and the testimony from the multiple other opposing parties.*

*Petitioner has not provided reasonable arguments to dispute this testimony.*

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