

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Petition of Deerfield Wind, LLC for a Certificate of Public Good)
authorizing it to construct and operate up to a 45 MW wind)
generation facility, and associated transmission and inter-)
connection facilities, comprised of between 15 and 24 wind)
turbines on approximately 80 acres in the Green Mountain)
national Forest, located in Searsburg and Readsboro, Vermont,)
with turbines to be placed both on the east side of Route 8 on the)
same ridgeline as the existing GMP Searsburg wind facility and)
along the ridgeline to the west of Route 8 in a northwesterly)
orientation.)

**EMERGENCY MOTION TO SUSPEND HEARINGS AND MOVE
WITNESSES TO A LATER DATE AND TIME**

The parties to this proceeding, Save Vermont Ridgelines (“SVR”), Industrial Wind Action Group (“IWA”), Thomas Shea (“Shea”), Duncan Cable TV (“DUNTV”) and Clifford and Diana Duncan (“CDUN”), request that the Public Service Board (“Board”) issue an order to immediately suspend the entire week of hearings scheduled to begin September 22 and to move witnesses in that week to a time after the conclusion of the October hearing days.

The basis for this emergency motion is the gross abuse of discovery procedures in producing an enormous overload of documents on the last day before the hearings begin, many of which are more than two months old.

At the end of day on Friday, September 19, attorneys for Deerfield Wind, LLC (“Deerfield”) e-mailed to the parties sixty-one separate electronic files, with numerous documents contained, totaling fifteen megabytes. (See attachments A and B)

In correspondence with Deerfield Attorney Andrew Raubvogel (See attachment C) on Saturday morning, September 20, Attorney Raubvogel justified the enormous dump of documents as follows by

stating “*the discovery rules require a responding party to seasonably supplement their prior discovery responses if new documents become available which are responsive to the original requests.*”

In the short time available since this massive batch of documents has been produced, only a cursory review of the documents has been possible. Yet even a cursory review reveals that a huge number of very important documents are dated back to mid- August with many dated in July and earlier (See attachment B). Several of the documents sent by Deerfield on Friday contained information of significant relevance to the parties that could have been used by our experts in preparing any possible rebuttal testimony and in preparing for cross-examination. For example:

- 1) The proprietary financial information pertaining to the Project included updated information with new assumptions and analyses that go to the heart of the testimony presented by Hewson and Michaels indicating that the project is not financially feasible and that any power purchase agreement would involve payments by Vermont ratepayers far in excess of many alternative ways of meeting the same alleged “need” for this particular renewable source of power.
- 2) A July 9 e-mail between Robert Bayer of the US Forest Service and Deerfield Attorney Brian Dunkiel (Attachment D), in which Bayer inquires about Attorney Dunkiel’s suggestion that the public be charged for hardcopy versions of the Draft Environmental Impact Statement (“DEIS”) prepared by the Forest Service for the Project site. The correspondence between Bayer and Dunkiel, which predates the release of the DEIS by two months, demonstrates a deliberate strategy by Deerfield to limit access of the document to the public. This reflects on the ethical character of the company, the credibility of its witnesses and the appropriateness of allowing them to operate a business in the State of Vermont.

Attorneys for Deerfield Wind LLC are experienced in proceedings before the Public Service Board and understand the intent and spirit of the discovery rules. Deerfield offers no explanation for why the two and three-month old documents were sent a day before the hearings but merely claims adherence to the rules.

It is apparent that this document “dump” is a direct attempt by Deerfield to overwhelm the intervenor parties with information at the last minute. In so doing, Deerfield is obviously seeking to deny the parties a fair chance to challenge this clearly inappropriate Project. But the ramifications of Deerfield’s action reach far beyond the parties. By withholding information as it did, Deerfield has grossly hindered the intent of these proceedings, i.e. to vigorously test the facts of the Project before the Board. If this action is allowed to stand without relief for the parties and consequences to Deerfield, it will be the residents of Vermont who are ultimately harmed since the public cannot be assured that any resulting certification, should the Project be approved, will be based on the best available data. Deerfield’s failure to produce these documents in a timely manner, when the experts on many of the issues are scheduled to appear at the beginning of this coming week – Habig Panel, Hausman, Kavet, Michaels, Hewson, Lamont, etc. – is particularly egregious.

Further, some of the material produced has already been released to the parties, like prefiled testimony, suggesting that Deerfield included documents it knew had already been provided apparently in an attempt to make the “disclosures” as large as possible, thus making it even harder for the parties to sort through all of the information to find what was relevant to the witnesses. These are cheap acts that should not be allowed.

Rather than obeying the spirit and letter of the rules, Deerfield reduced itself to these improper tactics for the sole and obvious reason that they cannot defend the Project on its own merits.

This is a flagrant violation of the due process rights of those opposing the Project and the Board should not countenance such a misuse of their rules done obviously to gain an unfair strategic advantage. We note that the volume of material produced far exceeds the normal supplementation done in the past, further underscoring that this is a deliberate tactic to deprive the parties of their statutory and constitutional rights to be heard and to protect our rights to the peaceful enjoyment of our property and our public lands and to live our lives without illegal intrusions from industrial development.

Such underhanded, illegal tactics deprive the public of a fair chance to oppose the Project and Deerfield knows if there were a fair chance, they would lose. Given the high profile of this Project as the

first wind energy facility proposed for National Forest land, it is vital that the Board act to correct this situation.

Pursuant to Rule 37 of the Vermont Rules of Civil Procedure, Deerfield cannot provide substantial justification for its failure “to supplement responses as required by Rule 26(e)”. Deerfield’s withholding of this information rather than releasing it when it became available was harmful to the parties in this proceeding. It is appropriate for the Board to impose sanctions against Deerfield.

For the reasons cited above, we believe it imperative that the Board act on this motion prior to the proceedings opening on Monday, September 22.

We respectfully ask that this honorable Board:

- A. Suspend the hearings scheduled to begin September 22, 2008.
- B. Move all witnesses for the week of September 22 to a date and time after the conclusion of the October hearing days.
- C. Impose sanctions on Deerfield in accordance with Rule 37 of the Vermont Rules of Civil Procedure.
- D. Grant such further relief as it deems equitable and appropriate.

Respectfully submitted,

Lisa Linowes

On behalf of:

Save Vermont Ridgelines, Inc.
Industrial Wind Action Group, Inc.
Thomas Shea
Duncan Cable TV
Clifford and Diana Duncan

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GEOFFREY H. HAND
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EILEEN I. ELLIOTT
OF COUNSEL

To: Docket 7250 Parties

From: Karen Tyler, Esq. *KT*

Date: September 19, 2008

Re: Docket No. 7250 – Deerfield Wind Project
Deerfield Wind's Supplemental Document Production

Please find enclosed Deerfield Wind, LLC's Supplemental Production of Documents. The enclosed CD contains documents responsive to a number of prior discovery requests, as follows:

Document NH_087 – responsive to SVR 1/Q6, Shea 1/Q23

Documents JN_044, NH_084**, JW_064, JW_065, NH.KG.EC_002 – NH.KG.EC_046 – responsive to SVR 1/Q17, SVR 3/Q2, ANR 3/Q1

Document NH_085** – responsive to SVR 2/Q2

Document NH_088 – responsive to SVR 1/Q8-13, Shea 3/Q7

Documents NH_086** – responsive to SVR 2/Q3.

** - these documents are being produced under the Protective Agreement and Order.

Please do not hesitate to contact me should have any questions.

Enclosures

Cc: Service List

zip file	Title	file save date	Date on actual document (latest)	Delay in Production of Document (days)	Existed prior to 8/19/2008?	comment
SVR_R1Q6 & Q8	Amended Letter of Inten...	9/19/2008	9/19/2008	0		
SVR_R1Q6 & Q8	Deerfield Agreement wit...	9/19/2008	9/19/2008	0		
SVR_R1Q17 - JN & JW	9.19.08 e-mails, Jeff Wa...	9/19/2008	8/26/2008	24		
SVR_R1Q17 - JN & JW	USFS 5+Clusters_JW_065.dwg	9/19/2008	undated	unknown	?	
SVR_R1Q17 - JN & JW	Probasco ltr 091808_JN_0...	9/19/2008	9/18/2008	1		
SVR_R1Q17 - NH.KG.EC_002 to 046	Kaliski prt_NH.KG.EC_03...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Kavet prt_NH.KG.EC_032.pdf	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Krzanowski prt_NH.KG.EC...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Lew-Smith prt_NH.KG.EC_...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Luhman prt_NH.KG.EC_035...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Meg Sections Status Lis...	9/19/2008	8/6/2008	44	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Nelson-Reinhart prt_NH...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Parsons prt_NH.KG.EC_03...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Pelletier prt_NH.KG.EC_...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Polisky prt_NH.KG.EC_04...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Rebuttal Exhibit list-7...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Socio-Econ 3.14 ESS 08 ...	9/19/2008	7/31/2008	50	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	SUMMARY OF SECTIONS BB ...	9/19/2008	8/6/2008	44	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Vissering-Buscher prt_N...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Wallin prt_NH.KG.EC_045...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Zimmerman prt_NH.KG.EC_...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	9.19.08 E-mails, Habig,...	9/19/2008	9/8/2008	11		
SVR_R1Q17 - NH.KG.EC_002 to 046	2008-07-07_Conference C...005	9/19/2008	7/7/2008	74	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	2008-07-07_Conference C...006	9/19/2008	7/7/2008	74	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	2008-07-21_Conference C...	9/19/2008	7/21/2008	60	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	2008-08-18_Conference C...	9/19/2008	8/18/2008	32	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	ATS-Suzlon Site Spec Tr...	9/19/2008	8/28/2008	22		
SVR_R1Q17 - NH.KG.EC_002 to 046	Certificate of Service_...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Cover Letter_NH.KG.EC_0...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Deerfield Interconnect_...	9/19/2008	7/29/2008	52	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Distribute DEIS-paper w...	9/19/2008	7/21/2008	60	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Habig-Goland-Cherian pr...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Hausman prt_NH.KG.EC_01...	9/19/2008	7/3/2008	78	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	INT1 I91.RTE9_NH.KG.EC_...	9/19/2008	11/9/2007	315	Yes	also provided as exhibit intersection 1 on 7/3/2008
SVR_R1Q17 - NH.KG.EC_002 to 046	INT2 RTE8.RTE9_NH.KG.EC...	9/19/2008	11/9/2007	315	Yes	also provided as exhibit intersection 2 on 7/3/2008
SVR_R1Q17 - NH.KG.EC_002 to 046	INT3 rte8.putnam_NH.KG...	9/19/2008	11/9/2007	315	Yes	also provided as exhibit intersection 3 on 7/3/2008
SVR_R1Q17 - NH.KG.EC_002 to 046	INT4 rte8.sleepyhollow_...	9/19/2008	11/9/2007	315	Yes	also provided as exhibit intersection 4 on 7/3/2008
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	HairSnagLayout06_JW_06...	8/15/2008	undated	unknown	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	deerfield_NH.KG.EC_013.dgn	8/14/2008	undated	unknown	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	2006 GMNF Plan Wetlands...	7/7/2008	6/11/2008	100	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	DFLD-JW-9b, BSB transec...	7/7/2008	7/1/2008	80	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	East4milImpact_NH.KG.EC_...	7/7/2008	6/13/2008	98	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	SplmtFig3Rev1.dwg	7/3/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	DirectImpact7'08.dwg	7/2/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	EastBandsBSB.dwg	7/1/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	SplmtFig4.dwg	6/16/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	SplmtFig5.dwg	6/9/2008	undated	unknown	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	ANSI_AVR_NH.KG.EC_009.dgn	6/2/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	SupplementBSB'08east.dwg	4/25/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	SupplementBSB'08west.dwg	4/23/2008	undated	unknown	Yes	
SVR_R1Q17 - 8.18 files for KG_NH.KG.EC_003	Holden Property BSB.dwg	2/8/2008	undated	unknown	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	INT1 I91.RTE9_NH.KG.EC_...	11/9/2007	11/9/2007	315	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	INT2 RTE8.RTE9_NH.KG.EC...	11/9/2007	11/9/2007	315	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	INT4 rte8.sleepyhollow_...	11/9/2007	11/9/2007	315	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	INT3 rte8.putnam_NH.KG...	11/8/2007	11/9/2007	315	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Image002_NH.KG.EC_022.tif	11/7/2007	11/7/2007	317	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Image001_NH.KG.EC_020.tif	11/6/2007	11/6/2007	318	Yes	
SVR_R1Q17 - NH.KG.EC_002 to 046	Image001a_NH.KG.EC_021.tif	11/6/2007	11/6/2007	318	Yes	
Proprietary						
	Document 1	9/19/2008	8/14/2008	36	Yes	
	Document 2	9/19/2008	undated	unknown	?	
	Document 3	9/19/2008	undated	unknown	?	

Motion to Suspend
9-21-2008
Attachment C

From: [Andy Raubvogel](#)

To: '[Lisa Linowes](#)'; '[Christina Nielsen](#)'; '[Benjamin Marks](#)'; '[Brian Dunkiel](#)'; '[Catherine Gjessing](#)'; '[Cliff Duncan](#)'; '[David Englander](#)'; '[Donald Rendall](#)'; '[Gerry DeGray](#)'; '[Jamey Fidel](#)'; '[Jeannie Elias](#)'; '[Jim Matteau](#)'; '[John Kessler](#)'; '[Judith Dillon](#)'; '[Julie Kelliher](#)'; '[Laura Beliveau](#)'; '[Nancy Malmquist](#)'; '[Paul Burns](#)'; '[Peter Zamore](#)'; '[Phoebe Mills](#)'; '[Richard Saudek](#)'; '[Rob MacGregor](#)'; '[Robert Fisher](#)'; '[Sandy Levine](#)'; '[Susan Hudson](#)'; '[Thomas Shea](#)'; '[Anthony Z. Roisman](#)'

Cc: '[Geoffrey Hand](#)'; '[Karen Tyler](#)'

Sent: Saturday, September 20, 2008 8:27 AM

Subject: RE: 3of 3: Deerfield Wind's Supplemental Production of Documents (Docket 7250)

Lisa - the discovery rules require a responding party to seasonably supplement their prior discovery responses if new documents become available which are responsive to the original requests. This would apply to Deerfield Wind as well as any other party in this case. Deerfield Wind has done such supplementation a number of times during the course of these proceedings. Documents are gathered on a periodic basis, which is a reasonable method for supplementation.

Andy

Andrew Raubvogel, Esq.

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From: Lisa Linowes [mailto:lisa@linowes.com]

Sent: Saturday, September 20, 2008 7:39 AM

To: Christina Nielsen; 'Benjamin Marks'; 'Brian Dunkiel'; 'Catherine Gjessing'; 'Cliff Duncan'; 'David Englander'; 'Donald Rendall'; 'Gerry DeGray'; 'Jamey Fidel'; Jeannie Elias; 'Jim Matteau'; 'John Kessler'; 'Judith Dillon'; 'Julie Kelliher'; 'Laura Beliveau'; 'Nancy Malmquist'; 'Paul Burns'; 'Peter Zamore'; 'Phoebe Mills'; 'Richard Saudek'; 'Rob MacGregor'; 'Robert Fisher'; 'Sandy Levine'; 'Susan Hudson'; 'Thomas Shea'; Anthony Z. Roisman

Cc: Andy Raubvogel; Geoffrey Hand; Karen Tyler

Subject: Re: 3of 3: Deerfield Wind's Supplemental Production of Documents (Docket 7250)

Motion to Suspend
9-21-2008
Attachment C

Please explain the intent and purpose of this late filing into the record as soon as possible. If there was intent to get this information into the record, why was it not filed a month or more ago.

Thank you.

----- Original Message -----

From: [Christina Nielsen](#)

To: ['Benjamin Marks'](#); ['Brian Dunkiel'](#); ['Catherine Gjessing'](#); ['Cliff Duncan'](#); ['David Englander'](#); ['Donald Rendall'](#); ['Gerry DeGray'](#); ['Jamey Fidel'](#); [Jeanne.Elias@state.vt.us](#); ['Jim Matteau'](#); ['John Kessler'](#); ['Judith Dillon'](#); ['Julie Kelliher'](#); ['Laura Beliveau'](#); ['Lisa Linowes'](#); ['Nancy Malmquist'](#); ['Paul Burns'](#); ['Peter Zamore'](#); ['Phoebe Mills'](#); ['Richard Saudek'](#); ['Rob MacGregor'](#); ['Robert Fisher'](#); ['Sandy Levine'](#); ['Susan Hudson'](#); ['Thomas Shea'](#)

Cc: [Andy Raubvogel](#); [Geoffrey Hand](#); [Karen Tyler](#)

Sent: Friday, September 19, 2008 4:47 PM

Subject: 3of 3: Deerfield Wind's Supplemental Production of Documents (Docket 7250)

Good afternoon:

On behalf of Karen Tyler, please find attached Deerfield Wind, LLC's Supplemental Production of Documents, filed today in the above-captioned docket. Because of the size of some of the files involved, we are sending them attached to 3 separate emails. This is email 3 of 3. A 4th email containing proprietary documents is also being sent to the parties who have signed the protective agreement.

Thank you,

Christina Nielsen

Administrative Assistant

Christina Nielsen

Shems Dunkiel Kassel & Saunders PLLC

91 College Street

Burlington, VT 05401

(802) 860-1003 ext. 108

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-Original Message-

From: Robert Bayer [mailto:rbayer@fs.fed.us]

Sent: Wednesday, July 09, 2008 9:23 AM

To: bdunkiel@sdkslaw.com

Subject: questions on charging for hardcopy DEIS....

Brian, a couple questions have come up regarding your suggestion on charging for the DEIS in hardcopy. Can you help us further understand this? Heres summary of one response I received....

Are you referring to 40 CFR 1506.6(f)? But note the context of that subsection is FOIA, so the cost recovery limits of that statute would apply.

I am not sure what the FS NEPA procedures say about this issue (if anything). I also am not aware of any instance where the FS has charged for reproducing copies of the DEIS.Or here's another thought: I wonder if the FHA has special cost recovery provisions in their agency NEPA procedures (which are regulations, not Handbook)? This could make a difference re cost recovery for reproducing the DEIS for them.... just speculation on what FHA may be allowed to do.

Brian, let me know your thoughts on these points. As I indicated to my regional counterparts, I'm going to gather feedback and present this all to Meg for her decision. Yes, we will strongly encourage electronic receipt of the documents but beyond that, I'm not sure how this will play out. Look forward to hearing from you. Bob

Bob Bayer, Green Mountain National Forest Deerfield Wind Project Coordinator
2538 Depot Street
Manchester Center, Vt. 05255
802-362-2307 ext. 218 Email: rbayer@fs.fed.us