

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6911

Petition of EMDC, LLC d/b/a East Haven Windfarm)
for a Certificate of Public Good pursuant to)
30 V.S.A. section 248, authorizing it to construct)
a 6 MW wind electric generation facility, and)
associated transmission and interconnection facilities,)
in East Haven, Vermont, and operate the same.)

**Comments of Renewable Energy Vermont (REV) on the Hearing Officer s
Proposal for Decision**

The Hearing Officer s Proposal for Decision (PFD) in this matter, if accepted by the Board, would deal an unprecedented blow to the development of wind energy in this State. The notion that the East Haven project may be the right project, but in the wrong place, PFD at 3, is not only a wrong conclusion, but sets forth a fundamental misconception of what a renewable energy project is or can be. A project is not a series of abstractions drawn on a blank slate in a utopian world; its existence or potential existence is a function of the actual availability of land, of access to that land, of transmission facilities and, not least, of a regulatory path in which careful site selection and responsible mitigation can lead to both approval and financing for a project. REV respectfully submits that the Board should issue a CPG for this project, and impose significantly less burdensome conditions than those

recommended by the hearing officer.

A. The Board Should Reconsider the Viability of the Quechee Test Relative to Renewable Energy Projects

As the hearing officer correctly notes, the Quechee aesthetics test is one which the Board has chosen to use. PFD at 47. The use of that particular test is not compelled by statute or otherwise mandated by law. In a fundamental sense, it incorporates a blend of subjective and localized considerations into an overall task which, under section 248, requires consideration of the general good of the State. See 30 V.S.A. 248(a)(2). Its practical application has resulted in mixed messages in all directions; Board hearing officers have recommended rejection of wind turbines in a house lined street in Charlotte, in the woods in East Middlebury, and now in the midst of 132,000 acres (a size equal to about 14 square miles) of lands used for snowmobiling, logging and other purposes hardly consonant with the notion of virgin wilderness. See *In re Blittersdorf*, CPG NM-11 (May 26, 2000); *In re Halnon*, CPG NM #25, denial affirmed 174 Vt. 514 (2002). That experienced, thorough and conscientious Board hearing officers have reached such conclusions must, at some point, be realistically viewed as a result of the Quechee test itself as it relates to renewable energy projects.

While REV will leave to the applicant the task of detailing the numerous specific areas in which the PFD misses the mark relative to the aesthetics and orderly development issues, it is noted that East Haven witness Peter Marshall Owens offered a constructive critique of the pitfalls of applying at least the first prong of the Quechee test to wind farms in Vermont. Owens prefiled at 3-5. As the record in this case shows, the Vermont landscape is in many if not

most instances a working landscape, reflecting the interaction of human endeavor with natural surroundings. As the Owens testimony notes, fit and sameness do not mean the same thing. *Id.* at 2-3. A wind project, by its nature and needs, requires that it be located at high elevation and be visible to some degree. If those characteristics are sufficient to condemn projects, or create sufficient regulatory uncertainty to preclude their development, the growth of renewable energy in Vermont will be relegated to theoretical discussions in academic settings and coffee shops, especially given the evolution of the power markets into vehicles which, with few exceptions, do not offer the income and financing certainties of a guaranteed revenue stream or even reasonable price predictability.

The prospective replacement of the Quechee test with something that works more effectively and predictably is not a large leap, and not inconsistent with healthy and appropriate respect for local opinion. Many studies and polls consistently show strong support by Vermonters for wind power and in state generation. The Board has already indicated that its consideration of aesthetics issues in section 248 cases is to be significantly informed by the overall societal benefits of the project. See *In re Northern Loop*, docket 6792, Order of 7-17-2003 at 28. Moreover, section 248 expressly incorporates consideration of the recommendations of local and regional bodies. (CITE). In weighing aesthetics considerations under the statute, the Board is not considering whether a shopping center, subdivision or similar project is inconsistent with what is around it to the point that it should not be allowed. Rather, at least in the context of renewable energy projects, the Board is weighing benefits recognized by law since at least the passage of PURPA nearly three decades ago through the SPEED legislation being implemented today, and recognized for decades more in a rural New England culture where

renewable energy sources brought power to factories and villages and farms. A legal test that inherently asks how bad something is, and places a difficult and unpredictable burden on renewable energy proponents, poses the risk of precluding a safe and responsible Vermont energy future in order to preserve misguided memories of a Vermont that never was. As all witnesses in this case, and any responsible renewable energy proponent must acknowledge, not every project is appropriate in every location; the inclusion of aesthetics considerations in section 248 via the incorporation of Act 250 aesthetics criterion reflects a public policy decision that this is the case. There appears to be nothing, however, which precludes the Board from simply asking whether the aesthetic impact of a particular project is undue when considered in light of the strong federal and state policies favoring the development of renewable energy sources, and the environmental detriments associated with prospective alternative sources, and in placing a burden on opponents to produce clear and convincing evidence to overcome a presumption of aesthetic acceptability which would attach once a project establishes that it is willing to undertake the mitigation measures customarily associated with projects of similar size and type. REV strongly urges the Board to consider such an approach.

B. Certain of the Proposed Conditions Set Forth in the PFD are Unnecessary, and May Significantly Deter the Development of Renewable Energy Projects in Vermont

1. **The Decommissioning Amounts are Excessive.** The amount of decommissioning funds which the PFD would require the developer to set aside appears to be unparalleled anywhere in the country, based on REV's research and analysis. The taking down of wind turbines is not complex, and does not result in the creation or transportation of hazardous waste or other harmful

materials. Wind farms typically have significant longevity, they are usually repowered as are hydro sites, and there is usually significant resale value to the equipment when it is taken down, as established by Mr. Rubin's rebuttal testimony in this case. There is thus in reality little risk from which society as a whole needs protection in this realm; one Pennsylvania county's ordinance requires only that an engineer determine the cost of taking the wind turbines down, and that a bond is required to the extent that cost exceeds salvage value. See Somerset County, Pennsylvania Ordinance 1006, effective 1-1-1988. In this case, however, the PFD does not take resale or salvage value into account, requires the fund to be fully created at the outset, and recommends that decommissioning be triggered if the project produces less than 2/3 of its projected output for any two consecutive years. The financial burdens inherent in these unprecedented recommendations are likely to operate as a significant deterrent to wind development in Vermont, with little or no corresponding benefit to anyone, and REV respectfully asserts that the condition should be modified to reflect a more realistic and typical accounting of the realities surrounding wind projects.

C. The Proposed Reopener Condition is Unnecessary and Inappropriate

It is fair to say that Vermont has a rigorous and thorough regulatory process relative to electric generation facility permitting. The petition seeking approval in this case was filed well over two years ago. Broad intervention was allowed under Board Rule 2.209, two site visits were held, the case consumed many days of technical hearings, a public hearing was held, and the Department of Public Service fully participated in the litigation in its role of public advocate. The applicant will have to obtain other permits as detailed in its filings, and those permits will be required to be filed with the Board if a CPG is issued.

The extensive media coverage of wind energy in general, and this project in particular, have resulted in an extraordinary level of public scrutiny and, according to the hearing officer, hundreds of oral, written and electronic comments. PFD at 85.

Under these circumstances, the proposed three year post construction monitoring period relative to bat mortality, with an accompanying potential reopener on that issue, is manifestly inappropriate. As noted earlier, the nature of the current power markets makes the securing of predictably priced long term power contracts extremely difficult, and creates resulting difficulties in project financing. To add to these risks additional ones that project operations may be altered or curtailed introduces significant impediments to project viability and financability, and can only deter development of potential SPEED and other renewable energy resources. This is especially true here, where the overwhelming weight of evidence establishes a bird and bat mortality risk that is very small compared to that posed by cats, vehicles and other presences even in rural life. The suggestion of a reopener condition should thus be rejected.

For these reasons, REV respectfully requests that the Board reject the PFD to the extent that it is inconsistent with these comments, and issue a CPG forthwith..

Dated this 27th day of March, 2006.
RENEWABLE ENERGY VERMONT
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