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August 28, 2009

CERTIFICATE OF THE SECRETARY OF ENERGY AND ENVIRONMENTAL AFFAIRS
ON THE
NOTICE OF PROJECT CHANGE

PROJECT NAME:	Berkshire Wind Power Project
PROJECT MUNICIPALITY:	Hancock and Lanesborough
PROJECT WATERSHED:	Hudson and Housatonic
EEA NUMBER:	12532
PROJECT PROPONENT:	Berkshire Wind Power Cooperative Corporation
DATE NOTICED IN THE MONITOR:	July 22, 2009

Pursuant to the Massachusetts Environmental Policy Act (MEPA) (G.L.c.30, ss. 61-62I) and Section 11.10 of the MEPA regulations (301 CMR 11.00), I have reviewed the Notice of Project Change (NPC) and hereby determine that this project **does not require** the preparation of an Environmental Impact Report (EIR).

Project History

The project has a lengthy MEPA review history, commencing in 2001 with the submission of an Environmental Notification Form (ENF), followed by two separate NPCs filed in February 2004 and October 2004. Additionally, the MEPA office issued an Advisory Opinion on the project in April 2008 in accordance with 301 CMR 11.01(6).

The project originally underwent MEPA review in July 2001, at which time the project consisted of 18 wind turbines and associated infrastructure, including an access road. In a Certificate issued on July 9, 2001, the Secretary did not require the preparation of an EIR for the project. On February 4, 2004 an NPC was submitted. At that time, the project changes in the NPC included a reduction in the number of turbines from 18 to 10; an increase in capacity from 13.5 to 15 megawatts (MW); an increase in the maximum turbine height from 245 feet to

approximately 340 feet; and changes to the bottom portion of the access road necessitated by zoning restrictions in the Town of Lanesborough. Upon completion of the review of this NPC, the Secretary determined that no further review was required. On October 9, 2004 a second NPC (the October 2004 NPC) was filed that involved a decrease in land alteration from 35 acres to 26 acres; a decrease in impacts to Bank from 290 linear feet (lf) to 48 lf; a decrease in impacts to Isolated Vegetated Wetlands (IVW) from 260 square feet (sf) to 0 sf; the elimination of impact to Riverfront Area (a decrease from 13,300 sf); and a reduction in alteration of Bordering Vegetated Wetlands (BVW) from 420 sf to 160 sf. Upon completion of review of this second NPC, the Secretary again determined that no further review was required.

On April 15, 2008 the MEPA office issued an Advisory Opinion responding to the Proponent's inquiry to determine if additional review under MEPA would be required for certain proposed project modifications. In its Request for an Advisory Opinion, the Proponent indicated that approximately 2.1 acres of additional land alteration was anticipated in association with the creation of new or modified roadway sections between turbine sites 5 and 6 and sites 6a and 7. The 2.1 acres of new land alteration was in addition to the 26 acres of total land alteration contemplated in the October 2004 NPC. Furthermore, the maximum turbine height was proposed to be increased from 340 feet to 394 feet. The Request for Advisory Opinion noted that the increase in land alteration was less than 10 percent of the 26 acres described in the October 2004 NPC, changes would not result in increases to wetland impacts, nor would additional MEPA thresholds be met or exceeded by the proposed changes. Based upon the information submitted, the Advisory Opinion indicated that a NPC for these specific project changes was not required.

Between the filing of the October 2004 NPC and the request for Advisory Opinion, the project Proponent also changed. The current project Proponent is the Berkshire Wind Power Cooperative Corporation, an affiliate of the Massachusetts Municipal Wholesale Electric Company (MMWEC).

Description of Project Change

The project continues to consist of 10 turbines with a total capacity of 15MW. The project change described in the current NPC¹ includes an increase in the cumulative land alteration associated with the project by a total of 16.9 acres beyond that approved in the October 2004 NPC, for a project total of 45 acres. The NPC also included the construction of a maintenance building and tower foundations, resulting in a total of 6,524 sf of structure within

¹ The NPC was filed on July 15, 2009, and published in *The Environmental Monitor* on July 22, 2009, commencing the public comment period. On August 7, 2009, in response to a request by certain public commenters and the MEPA Office for more detailed site plans, the Proponent provided supplemental information to the MEPA Office that contained "construction plan sheets" that had not been included in the initial NPC submission. These sheets provided a greater level of detail concerning the project changes that were described in the initial filing. To allow for additional review of the supplemental materials, the public comment period for the project was extended by 10 days, until August 21, 2009. While I acknowledge the comments received from Silverleaf Resorts, Inc. indicating that it believes insufficient time was allowed for review of the supplemental information, I find that the public review period totaling 30 days was sufficient to enable informed public review of the project and to meet the requirements of the MEPA regulations.

the project area. The square footage of these structures directly translates to approximately 0.15 acres of new impervious area on the 2,500-acre project site. All wetland impacts proposed in the October 2004 NPC and subsequently permitted by the Massachusetts Department of Environmental Protection (MassDEP) have occurred to date and mitigation areas have been provided. No new wetland impacts are proposed in association with this current NPC.

I note that the NPC included the 2.1 acres of land alteration and the increase in turbine height from 340 feet to 394 feet that was previously reviewed and approved by the April 2008 Advisory Opinion in the summary of potential environmental impacts for this NPC filing. These impacts were described because they occurred subsequent to the previously reviewed project (October 2004), and the current NPC therefore details the cumulative impacts proposed for the project site.

The original proponent initiated on-site work several years ago in accordance with previously obtained permits (issued subsequent to the prior MEPA reviews). As described in further detail below, the current Proponent has recently also undertaken certain additional land clearing activities in compliance with previously-issued approvals for the project, such as the modified roadway construction approved in the 2008 Advisory Opinion. According to the NPC, general turbine sites have been cleared and the access roadway has been cleared through turbine 5. Upon acquisition of the project by the current Proponent, geotechnical studies, cost analyses, and an evaluation of construction equipment access was conducted. These studies and analyses concluded that the location of tower foundations would need to be shifted, that the transmission lines should be placed overhead, and that the turning radii of the access roadway would need adjustment. To facilitate these changes, additional land clearing was necessary and therefore prompted the filing of this NPC. The Proponent has determined that a total of 16.9 acres of additional land clearing will be required to complete the project. The NPC indicates that no new State Permits will be necessary for these project changes.

According to the NPC, land clearing at each turbine location was determined based on the need for a sufficient laydown area for erection of the turbine tower, as well as a level area within the clearing to allow for placement of a crane during the construction period. Cleared areas at each turbine site are designed to be approximately $\frac{3}{4}$ -acre in area. As part of this NPC, turbine sites that were previously cleared will need to be adjusted to facilitate the laydown of equipment, and upon receipt of definitive geotechnical data, modifications to the placement of the towers' foundation have been proposed. Thus, as indicated on supplemental data and plans provided by the Proponent, additional clearing will occur at each turbine site, as well as a small area for the maintenance building to be located between turbines 2 and 3.

Clearing associated with the ridgeline roadway realignments will occur in several places between turbine sites 3 and 9. As noted above, the roadway clearing depicted in this NPC also includes the clearing previously disclosed in the 2008 Request for Advisory Opinion, and work has already commenced on that portion of the project. This consisted of land clearing between turbines 5 and 6 across the West Property and the access road between turbines 6A and 7. As indicated in past MEPA filings, the Proponent will restore and vegetate previously cleared areas that no longer need to remain open to facilitate operation of the turbines or use of the access roadway.

Finally, approximately 6 acres of the 16.9 acres of new clearing contemplated in this NPC will be associated with the construction of a 30 foot-wide right of way underneath proposed overhead transmission lines and an electrical interconnection structure. The transmission lines generally run adjacent to the access roadway, but due to steep topography, in some instances zig-zag up the mountain face. The Proponent intends to maintain this right of way as a shrub habitat upon installation of the approximately 40-foot tall transmission poles.

Jurisdiction and Permitting

The project has exceeded the review threshold for land alteration specified at 301 CMR 11.03(1)(b)(1), because it has or will alter greater than 25 acres of land. The project has already received Superseding Orders of Conditions (SOOC) from MassDEP for work within jurisdictional wetland resource areas within the Towns of Hancock and Lanesborough. The NPC states that no work proposed within this NPC will occur within jurisdictional wetland resource areas; therefore, no new wetland permitting requirements are necessary. The project has obtained and will continue to operate under a Programmatic General Permit (PGP) issued in accordance with the National Pollutant Discharge Elimination System (NPDES) program administered by the United States Environmental Protection Agency (U.S. EPA).

As specified in the prior Certificates for this project, the project has previously received Financial Assistance from an Agency of the Commonwealth, subjecting the project to broad scope jurisdiction. The Proponent has indicated that it will not be receiving any further State funding for the project.

Review of the NPC

I have received detailed comments from public reviewers (including an abutter, an environmental interest group, and the regional planning agency) regarding this latest change to the proposed project. Commenters have raised several issues concerning the level of information supplied by the Proponent, the project's potential environmental impacts, and general policy concerns regarding the incorporation of wind turbines into the broader environmental landscape. I have carefully reviewed the NPC submittal and the comments received and I find that the NPC has adequately described the potential impacts of the project. The primary purpose of the NPC review is not to revisit the earlier decisions on the project, but to ensure that the proposed changes to the project have been fully reviewed. For projects that did not originally require preparation of an EIR (as with the current project), I must make a determination as to whether the change in impacts now causes the overall impacts of the project to rise to the level where preparation of an EIR is appropriate for the project. Upon review of the NPC, supplemental plans provided by the Proponent, consultation with the Proponent's engineering staff, and review of the comment letters, I have concluded that the additional environmental impacts proposed in this NPC do not warrant the preparation of an EIR.

The NPC and supplemental materials have effectively demonstrated that the anticipated additional land alteration associated with the project changes are in fact relatively minor changes to the project layout from what was previously reviewed. New clearing at the turbine sites is directly adjacent to those areas that have been previously been cleared. No new discrete turbine locations will be cleared. The NPC has also demonstrated that the amount of cumulative land alteration associated with the project remains under the mandatory EIR threshold of 50 acres of land alteration (301 CMR 11.03(1)(a)(1)). Although certain commenters have questioned the Proponent's calculation of acreage to be altered and supplied an alternative calculation, the differences in the two calculations are not significant, and both remain below 50 acres.

Although certain commenters have expressed concern that the project has not sufficiently addressed sedimentation and erosion control, I note that the project has already received two Superseding Orders of Conditions addressing these issues, and that the project has also received a Certificate of Compliance for one of those Orders from MassDEP. As required by the existing Orders, the Proponent should implement erosion and sedimentation controls in accordance with the Stormwater Pollution and Prevention Plan (SWPPP) filed in accordance with the NPDES PGP and SOOC's (if applicable). Comments received from MassDEP on the proposed project changes indicate that no additional MassDEP permits are anticipated. However, as directed by MassDEP, the Proponent should confirm with the local Hancock and Lanesborough Conservation Commissions that none of the work proposed within this NPC will require the filing of additional wetlands-related permitting documents. Previously cleared areas no longer necessary for the project should be reseeded with native species in a timely fashion to reduce erosion and sedimentation potential and provide a benefit to local habitat.

The original project proponent conducted a voluntary Phase I Avian Risk Assessment in 1998 as part of a due diligence process that determined that no significant avian impacts would result from the project. The prior Certificates issued for this project did not require any further study of avian impacts in order for the project to comply with MEPA. The Certificate on the October 2004 NPC did direct the Proponent to review the monitoring program developed during the Hoosac Wind Project (EEA No. 13143) to advance the scientific understanding of the potential issues associated with avian impacts and wind turbines. The Secretary asked the Proponent to consider participation in the development and implementation of the follow-up studies related to the Hoosac Wind Project. I acknowledge that the Hoosac Wind Project has not progressed in advance of this project as originally anticipated, but should that project advance, I continue to ask the Proponent to consider participation in these studies. I acknowledge that the changes to the original project include a substantial increase in the height of the turbines, but I note that there are no state or federal rare species or migratory bird permitting requirements applicable to this project. Finally, while I am not directing the Proponent to conduct pre-construction avian and bat studies, the Proponent is obligated, as a condition of their 2004 SOOC issued by MassDEP, to perform a post-construction bird and bat survey. Copies of the study will be provided to MassDEP and the Division of Fisheries and Wildlife as conditioned in the 2004 SOOC.

The comment letter submitted by Silverleaf Resorts, Inc. (Silverleaf) also identified a concern regarding the potential for "ice throw" from the turbines closest to Silverleaf's property line (turbines 7,8, and 9). Silverleaf has indicated that setback guidelines provided by the

manufacturer of the proposed turbines (General Electric) suggest a setback in excess of that provided for in the NPC to safeguard against potential ice throw impacts. To address any potential impacts that could result from ice throw, the Proponent should assess and implement best management practices for turbine operations.

Lastly, comments received on behalf of Silverleaf assert that the Proponent has commenced certain work that is presently under review as part of the current NPC in violation of MEPA. Upon consultation with the Proponent's engineering staff, and after reviewing the photos submitted by Silverleaf, it appears that the work that has occurred on-site is work associated with the project changes approved by the October 2004 NPC and work associated with project changes approved in the 2008 Advisory Opinion. It is my understanding that the clearing of turbine areas depicted in the aerial photos are within the areas that were originally approved for clearing. Similarly, while the photos demonstrate that relocation of the access roadway between turbines 5 and 6 and turbines 6A and 7 along the ridgeline has already occurred, the Proponent was previously advised in 2008 that no further MEPA review was required to undertake that work. While contemplated in 2008, the clearing of these specific sections of access road only commenced subsequent to the issuance of a recent Order of Taking on the West Property. Thus, while I certainly agree with Silverleaf that Proponents should not circumvent the MEPA review process by undertaking work that has not yet been reviewed and approved by MEPA, it appears that in this case all work undertaken to date was in fact previously approved. The Proponent will be permitted to undertake the additional land alteration described in the NPC upon issuance of this Certificate.

Conclusion

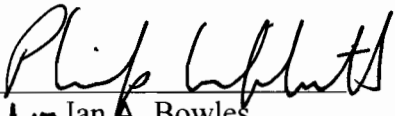
The proposed project changes do not trigger any new MEPA review thresholds, nor do they require any new State Permits or Financial Assistance. The originally designed project and impacts have been fully reviewed under MEPA, and all required State Permits have been issued. In fact, work that was permitted to proceed has already begun. I do not therefore believe that further environmental review of the project based on relatively minor changes is necessary, particularly where there are no remaining Agency Actions (as defined in the MEPA regulations) to be taken on the proposed project.

I acknowledge concerns voiced by certain commenters regarding potential future expansion of the project and the potential for project segmentation. Therefore, I remind the Proponent any potential expansion of the project beyond that reviewed to date by the MEPA office may require the filing of an NPC in accordance with 310 CMR 11.10. Should there be further expansion, identification of increased impacts from what was described in the NPC, or any other changes to the project, the Proponent should consult with the MEPA Office to determine whether an NPC is required.

No further MEPA review is required at this time.

August 28, 2009

Date


for Jan A. Bowles

Comments received:

08/11/2009 Green Berkshires
08/11/2009 Silverleaf Resorts, Inc.
08/19/2009 Massachusetts Department of Environmental Protection – WERO
08/21/2009 Berkshire Regional Planning Agency
08/21/2009 Green Berkshires (2nd comment)
08/21/2009 Silverleaf Resorts, Inc. (2nd comment)
08/21/2009 Berkshire Wind Power Cooperative Corporation

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