

EVERGREEN WIND POWER III, LLC
(Rollins Wind Project L-24402-24-A-N, L-24402-TH-B-N, L-24402-IW-C-N)

Licensee Reply to Petition to Revoke or Suspend

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September 22, 2010

VIA E-MAIL & U.S. MAIL

Board Chair Susan M. Lessard
c/o Terry Hanson
Board of Environmental Protection
#17 State House Station
Augusta, ME 04333-0017

Re: Department Orders L-24402-24-A-N, L-24402-TH-B-N, and
L-24402-IW-C-N
Evergreen Wind Power III, LLC - Rollins Wind Project

Dear Chair Lessard:

Enclosed please find Evergreen Wind Power III's Response to Petition for Revocation.
Thank you for your consideration of these materials.

Sincerely,


Gordon R. Smith

GRS/mtr
Enclosure

cc: James Cassida (w/enc.)
Becky Blais (w/enc.)
Peggy Bensinger, Assistant Attorney General (w/enc.)
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STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF

Evergreen Wind Power III, LLC)	
Lincoln, Lee, Winn, Burlington,)	
Mattawamkeag, Penobscot County)	EVERGREEN WIND POWER III, LLC'S
ROLLINS WIND PROJECT)	RESPONSE TO PETITION FOR
L-24402-24-A-N (approval))	REVOCAION OR SUSPENSION
L-24402-TH-B-N (approval))	OF LICENSE
L-24402-IW-C-N (approval))	

Evergreen Wind Power III, LLC (“Evergreen”) hereby responds to the Petition for Revocation or Temporary Suspension of License (“Petition”) filed by a number of individuals (“Petitioners”) who oppose the Rollins Wind Power Project (the “Project” or the “Rollins Project”) referenced in the above-captioned Order.

INTRODUCTION

Petitioners have not submitted any information that calls into question the Board’s findings regarding the Rollins Project’s compliance with all applicable regulations. As the Board is aware from its prior review of the Rollins Project, potential noise emissions at the Project were vetted and approved during a six-month review process conducted by the Department of Environmental Protection (the “Department”) and its independent acoustical expert Warren Brown of EnRad Consulting. Those findings were upheld on review by the Board. On March 11, 2010, the Maine Supreme Court affirmed the findings of the Department and the Board, specifically with respect to the Project’s noise emissions. The Department and the Board have also subsequently reviewed and approved other large-scale wind power projects that have demonstrated compliance with DEP noise rules based on a sound modeling methodology identical to that used for the Rollins Project. In repeated reviews, the sound model used for the

Rollins Project has been verified by the Department's independent sound consultant, Warren Brown of EnRad, as accurate and appropriate for predicting wind turbine sound emissions. Accordingly, Evergreen's project-specific demonstration of compliance has been reviewed and ratified by three independent tribunals.

On the other hand, Petitioners now seek to present information regarding sound emissions at unrelated wind power facilities that have never been reviewed by the Board and did not use the same sound modeling methodology as that used for the Rollins Project. Petitioners then request that the Board rely on this unrelated information as a basis to hold a public hearing and revoke or suspend the Rollins Project's permit. The sound monitoring results at these other facilities do not undermine or call into question the conclusions reached by the Department, the Board, or the Maine Law Court, and therefore the Board should dismiss the petition.

DISCUSSION

Petitioners' claim is based on information regarding noise emissions at the Beaver Ridge wind power facility in Freedom, Maine and the Fox Islands wind power facility on Vinalhaven Island. As discussed below, this information says nothing about potential noise emissions or the appropriate application of a sound model at the Rollins Project and does not provide a basis for the Board to hold a public hearing to consider the matter further or to take the extraordinary measure of revoking or suspending Evergreen's license.

I. PETITIONERS HAVE FAILED TO MAKE A THRESHHOLD SHOWING THAT WOULD JUSTIFY THE BOARD HOLDING A PUBLIC HEARING OR TAKING THE EXTRAORDINARY STEP OF REVOKING EVERGREEN'S LICENSE.

A petition for revocation, modification or suspension of a license is an extraordinary remedy that requires a petitioner to bring forth new and compelling evidence that necessitates drastic action by the Board. See 38 M.R.S.A. § 341-D(3); 06-096 CMR Ch. 2 § 27. Petitioners

here have not met and have seemingly not even attempted to meet that burden. As the Board is aware, the Rollins Project has been scrutinized for nearly two years during the review of Evergreen's application to the Department and the subsequent appeals of Evergreen's permit. A petition for revocation requires something greater than project opponents' desire to have another day in court or to delay construction of the project through misuse of the administrative process. Petitioners' current request to the Board is unsubstantiated by novel or convincing information that could or should invalidate the numerous layers of review and vetting to which the Rollins Project has been subjected.

II. THE VINALHAVEN PROJECT USED A DIFFERENT AND LESS CONSERVATIVE SOUND MODEL THAN THE ROLLINS PROJECT AND THEREFORE SOUND MONITORING AT VINALHAVEN PROVIDES NO BASIS TO QUESTION THE VALIDITY OF THE ROLLINS SOUND MODEL.

Petitioners' reliance on the monitoring results from the Vinalhaven facility is misplaced. First, it is beyond dispute that sound levels from a wind facility are dependent upon a host of site-specific factors including the number and array of turbines, the turbine make and model, and the terrain, as well as the distances between a receptor and nearby turbines. Thus, by itself, the claim that the Vinalhaven facility is not in compliance with the Department's noise standards is simply irrelevant to and does not inform in any manner what will occur at the Rollins project site. As discussed below, monitoring results may be compared to predicted sound levels to verify the accuracy of the predictive model. Petitioners, however, are not using the monitoring results at Vinalhaven to establish the accuracy of a sound model. Instead they make the unsubstantiated leap that because the Vinalhaven project is not in compliance with the Department's noise standards the Rollins project necessarily will not be in compliance with the Department's noise standards. Neither logic nor the data support such a leap.

Second, even if the Vinalhaven results provided general evidence of wind turbine sound levels at a given distance, they do not undermine the conclusions reached by the Department in the Rollins permit. Importantly, the monitoring data at Vinalhaven indicates that the 45 dBA limit is exceeded at the closest protected location, which is 875 feet from the nearest turbine.¹ In contrast, the closest protected location subject to the 45 dBA limit at the Rollins project is located 2,025 feet from the closest turbine, where predicted sound levels are 44 dBA. RSE Sound Level Assessment, Oct. 30, 2008, Table 3 at p. 9.² Thus, the results at Vinalhaven are consistent with the model predictions at the Rollins site and provide no logical basis for questioning the Rollins Project's sound modeling.

Third, while in theory the monitoring data at Vinalhaven could be used to determine the accuracy of that project's predictive model, doing so would have no relevance to the Rollins project because the modeling methodology used for the Rollins Project is much different from and include substantially more conservative assumptions than those used at Vinalhaven. Whereas the Vinalhaven model assumed a maximum sound power output of 104 dBA, the Rollins model adds an additional 5 dBA (for a total sound power output of 109 dBA) to reflect (i) 2 dBA uncertainty in the GE sound specifications, and (ii) 3 dBA for accuracy of the methodology for calculating outdoor sound propagation. See RSE Sound Level Assessment at 7-9. Thus, the sound data from the Vinalhaven project provides absolutely no basis to question the predictive accuracy of the Rollins model.

Fourth, ironically, Petitioners rely on Warren Brown's conclusion that the Vinalhaven facility is not in compliance with the Department's noise limits yet discount his conclusions

¹ Evergreen has not undertaken a review of the monitoring data from Vinalhaven but is simply taking the reported results – that sound levels at the nearest receptor exceed the 45 dBA limit -- at face value for purposes of responding to this Petition.

² This was included in the Appendix of Exhibits filed previously with the Board in connection with Petitioners' prior appeal of the DEP permit.

regarding the reliability of the Rollins model. Warren Brown has peer reviewed sound model results for the Rollins, Record Hill, Oakfield, Vinalhaven and Spruce Mountain projects, has peer reviewed the post-construction monitoring results at the Mars Hill (four rounds), Stetson (three rounds) and Vinalhaven sites, and has been instrumental in developing the Department's post-construction monitoring compliance protocol. As such, his conclusion that the Rollins model is accurate and conservatively estimates maximum predicted sound emissions from the project is entitled to substantial weight and should not be set aside on the unfounded assertions made by Petitioners here.

In summary, there is nothing in the monitoring results from Vinalhaven that undermines the conclusion by the applicant's expert, the Department's expert, the Board and the Law Court that the Rollins project will comply with the Department's noise standards.

III. THE BEAVER RIDGE PROJECT DID NOT INCLUDE PREDICTIVE SOUND MODELING, WAS NEVER REVIEWED NOR APPROVED PURSUANT TO DEP NOISE RULES, AND DOES NOT PROVIDE A BASIS FOR QUESTIONING THE ACCURACY OF THE ROLLINS SOUND MODEL.

The construction of the Beaver Ridge Wind project in Freedom did not require a Site Law permit from the DEP and therefore is not subject to the Department's Chapter 375 § 10 noise rules. Because the project was not required to demonstrate compliance with DEP noise rules, no predictive sound modeling for the project was submitted to the Department and the Department never reviewed the project's noise impacts. As a result, simply monitoring noise emissions at the Beaver Ridge project does not provide a sound basis for assessing the Rollins Project's compliance with DEP noise limits or the accuracy of the Rollins Project's sound modeling.

Even so, Petitioners claim that "[a] recent analysis by acoustic engineer Robert Rand regarding turbine noise in Freedom found that the noise produced by those turbines is

substantially out of compliance with the state's 45 dBA, even at more than one mile from the turbines." Petition at 1. Petitioners have not included the referenced analysis and there is no basis for Petitioners to supplement their petition with additional information. See 06-096 CMR Ch. 2 § 27 ("The petition, once filed, may not be supplemented, except in a public hearing."). Moreover, the September 7, 2010 Robert Rand study that Petitioners reference, which Evergreen has since obtained, indicates that turbine noise emissions drop below 45 dBA at approximately 1,200 feet, not "at more than one mile" as Petitioners claim. Rand Study Fig. 1; Petition at 1. Petitioners' own submission acknowledges that "[t]he closest home to the Rollins Ridge turbines is just 2000 feet from a turbine." Petition at 1. So even taking the facts alleged by Petitioners as true, the Rand study does not provide a basis to question the Rollins Project's compliance with DEP noise rules, let alone a basis to revoke or suspend the Project's permit. In fact, the sound measurement results at Beaver Ridge appear consistent with the Vinalhaven results and the Rollins model predictions.

Furthermore, The Rand study contains errors in its calculation and application of short duration repetitive sounds (SDRS) and tonal sounds that dramatically and inaccurately overstate the significance of these phenomena to compliance with DEP sound standards. These inaccurate assessments add 10 dBA to the measured sound levels and are relied upon by Petitioners to make the claim that wind turbine sound levels reach 45 dBA at one mile. Specifically, the Rand report does not use the methods for determining SDRS events and tonal sounds and applying the appropriate penalties according to the requirements of the DEP's Chapter 375 §10 noise rules and approved protocols for wind turbine compliance measurements.³

³ For example, the sound level increases depicted in the Rand study figure titled "Short Duration Repetitive Sound Analysis" shown are incorrectly based on the minimum sound level from only the second before the maximum. The correct method, and the method required by the DEP, is to calculate the increase based on the average of the minima both before and after the event. See Stetson II Wind Project Sound Testing Protocol,

As indicated in Warren Brown's review of the sound monitoring at Vinalhaven, the GE 1.5 MW turbines (the same as those to be installed at the Rollins Project) do not produce SDRS events or tonal sounds to any measurable degree that would affect the project's compliance with DEP sound level limits. See E-mail from Warren Brown to Becky Blais, September 8, 2010 ("SDRS during the complaint period occurred infrequently and applied penalties did not result in a significant change in findings. WTG 6.3kHz tonal sounds occurred during 2300-2350hrs. (5-10 minute intervals), but applied penalties did not result in a significant change in findings."). These conclusions at Vinalhaven are consistent with the results of sound monitoring at the Stetson project, which, according to Warren Brown, indicate that SDRS events are of no consequence to overall perceived turbine sound emissions. As stated in the Department's order approving the Oakfield wind power project:

EnRad commented that its experience with the review of the compliance monitoring data from the Stetson Wind Project, a project previously developed by an affiliate of the applicant which is now in operation, was that Short Duration Repetitive Sound was not observed using a rigorous protocol under very favorable geometric and atmospheric conditions.

Oakfield DEP Order at 11. In other words, the measurements at the Stetson facility, which operates the same type of wind turbines that are proposed for the Rollins Project, show that SDRS was not an issue even under worst-case conditions.

Accordingly, Petitioners' proposed information related to sound emissions at the Beaver Ridge facility does not constitute a basis for the Board to hold a public hearing or to revoke or suspend Evergreen's license.

Protocol Details & Calculation Methods, R.S. Bodwell, P.E., September 13, 2010 (as approved by Warren Brown and the Maine Land Use Regulation Commission on September 14, 2010). From the graph provided it is not possible to identify the minima that occurred before and after the event or to determine if the appropriate fast-time weighting was applied. In addition, the Rand report incorrectly adds a full 5 dBA to the measured overall hourly sound level due to the purported occurrence of SDRS events. Per DEP sound rules, the correct method is to add 5 dBA to the sound levels of the individual SDRS events, not to the average hourly sound level as a whole. See 06-096 CMR 375.10(C)(1)(e)(i).

IV. PETITIONERS' CLAIM THAT SOUND MONITORING DATA AT THE VINALHAVEN AND FREEDOM WIND POWER FACILITIES DEMONSTRATES THAT THE ROLLINS MODEL IS INACCURATE HAS NO FACTUAL BASIS AND IS PROVEN FALSE BY THE RESULTS OF THE POST-CONSTRUCTION SOUND MONITORING AT THE STETSON MOUNTAIN WIND PROJECT.

Petitioners make the unsubstantiated leap that sound monitoring at Freedom and Vinalhaven demonstrates that the sound modeling used for the Rollins project does not reliably predict compliance with DEP noise standards. However, as discussed above, the Freedom and Vinalhaven projects did not use the same or even comparable sound modeling as the Rollins project. The Freedom project did not include any predictive sound modeling and the Vinalhaven project used a model without the same conservative assumptions reflected in the Rollins model. Accordingly, noise emissions at Freedom and Vinalhaven – even if there are exceedences – do not undermine the predictive accuracy of the Rollins model. On the contrary, the Rollins model's accuracy has been verified by compliance monitoring data from the Stetson Wind Project, which did use the same model as the Rollins Project. That data is real world verification that the Rollins sound model is appropriate and conservative, and that the Project will comply with DEP noise rules.

The findings of the first two rounds of Stetson testing are contained in the Stetson Wind Project Operations Compliance Sound Level Study ("Stetson Report"), which was submitted to the Board in connection with the Record Hill Wind Project in Roxbury on October 21, 2009 and in connection with the Evergreen II, LLC wind power project in Oakfield on April 2, 2010.

The Stetson Report, using the Rollins Compliance Protocol as a guide, contains sound monitoring data of turbine operations at the Stetson Wind Project under meteorological conditions when turbine noise will be most noticeable. Stetson Report at 13. The report compares the actual turbine sound emissions during operation to the sound levels predicted by

the model, the same model used to predict sound emissions at the Rollins Project. The same conservative modeling assumptions used at the Stetson Wind Project were used to predict sound emissions at the Rollins Project. The Stetson Report demonstrated that the sound model actually over-predicted sound levels by an average of 2-3 dBA. Stetson Report at 30, Table 7-3.

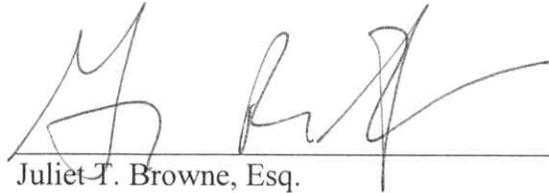
The results of the Stetson Report were thoroughly evaluated and commented on by the Department's independent acoustical experts, Warren Brown. See Oakfield Wind Project Amendment Sound Level Assessment - - Peer Review, December 18, 2009, at 5-6 ("Oakfield EnRad Report").

As Warren Brown stated in his review, "[t]he data was rigorously evaluated using the Rollins Compliance Protocol methodology" to assess the accuracy of the predictive model. Oakfield EnRad Report at 6. Warren Brown determined that the Stetson testing represented the "worst-case" scenario with respect to the shape of the turbine array, distance from turbines, topography, and meteorological conditions for sound propagation. Id. Even under these conditions, actual sound emissions at full power operation of the Stetson Wind Project were below predicted operating levels. Id. Warren Brown concluded that the Stetson Report demonstrates that the model used for the Rollins Project is a "calibrated prediction model" that accurately represents potential wind turbine sound emissions at protected locations. Id.

CONCLUSION

As demonstrated by the foregoing, not only are Petitioners' claims without merit, but the data they rely on is consistent with the determinations made by the Department in the Rollins permit. Accordingly, Evergreen respectfully requests that the Board deny Petitioners' request for a public hearing and dismiss the petition.

Dated: September 22, 2010



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