

**JOHN D. BURKE****DISSENT**

I respectfully dissent from the Board's decision to grant a CPG for the Deerfield Project. I do agree with my colleagues' determinations that the Project will have adverse impacts on black bears and bear habitat, and that as proposed the Project offers insufficient benefits to offset those adverse impacts. Where I depart from the majority is their apparent conclusion that Deerfield can develop a plan that will sufficiently mitigate the impacts to bears and enter into purchase power agreements with Vermont utilities that will provide sufficient economic benefit such that, overall, the Project will promote the general good of the state. As presented, the costs resulting from this project are, in my estimation, dramatic and the benefits are comparatively insignificant.

As I see them, the most salient points are as follows:

First, as the majority acknowledges, at present the Project will provide relatively little public benefit. While the two host towns will receive payments that are, from the perspective of those towns, substantial, the remainder of the state will see minimal economic benefit. For instance, after the project is constructed only 2.5 full-time jobs would be created.

Second, the Project will have severe impacts on the local bear population. Construction of the Project will require cutting down 366 bear-scarred beech trees, directly destroying 35 acres of high-quality, high-elevation black bear habitat along the ridgeline. The majority characterizes as the direct loss of habitat by the relatively small percentage of the total habitat in the area that will be lost, approximately 1.3 percent. That percentage figure fails to capture the essential fact that the destroyed habitat sits at the top of the ridge, and thus comprises a much higher percentage of the critical ridge-top bear habitat. Furthermore, although the majority notes the remote nature of the ridge-top habitat, it does not give sufficient recognition to the extremely high value of this remoteness, especially critical to bear reproduction.

Third, in addition to the direct destruction of habitat, the Project will displace black bears from the ridgeline, forcing them to lower-elevation, lower-quality habitat where they face increased competition from other species. As the bears are driven down the mountain, they will likely come into closer proximity with humans, resulting in more "nuisance" bears with significantly higher mortality than if they had not been displaced from the higher elevations by

the Project. When bears have greater contact with domestic animals and people in residential back yards, their mortality rates skyrocket. The extent to which the Project would force bears down the mountain was disputed among the experts. None, however, disputed that displacement would occur, nor that those bears that do relocate in this manner have a shorter life span. As the majority points out, there is some uncertainty as to where the displaced bears may go. However, I found ANR witness Forrest Hammond to be the most persuasive of the bear experts. Mr. Hammond's testimony convinces me that the Project will result in the extensive downward displacement of bears and, correspondingly, a dramatic increase in the number of nuisance bears and a resulting increase in bear mortality.

Despite these drastic impacts on bear habitat and significant risk to bears, the majority would allow the Project to be constructed on the condition that Deerfield provides adequate mitigation. This I cannot accept for the simple yet profound reason that those impacts cannot be mitigated. While Deerfield might be able to develop a mitigation plan that adequately compensates for the direct loss of habitat, there is no foreseeable scenario in which it could mitigate the indirect impact of displacing bears down to lower elevations.

Even if substantial economic benefits combined with dramatic mitigation steps could shift the balance of costs and benefits, neither exists in this docket at present. No purchase power agreement exists except for an agreement to negotiate with Green Mountain Power Corporation, which is nothing more than a hollow and unenforceable promise.

I might be able to conclude that the Project's impacts on black bear would not be unduly adverse if the Project were accompanied by significant public benefits and sufficient mitigation. But that is not the case, as the majority itself has concluded. The majority decision affords Deerfield an opportunity to bolster the Project's economic benefit to the state through a condition requiring the sale of a substantial share of the power output to Vermont utilities at favorable prices. Inadequate mitigation of the risks to the bear population and the failure of the petitioner to provide adequate economic benefit to the State should have led to a denial rather than an approval with conditions.

Despite my conclusions in this proceeding, I believe that wind power projects on a Vermont ridgeline can be approved. While on the Board I have signed the Order approving such a project in Sheffield (Docket No. 7156), and while I signed the denial of the proposed East

Haven Windfarm (Docket No. 6911), that denial was specifically because of the petitioner's failure to conduct necessary scientific bat and bird studies.

Wind generation in Vermont appears to require ridgeline locations because our prevailing winds are from the west and we have hilly and mountainous terrain, most of which runs north and south. One size does not fit all, however, and the analysis of the costs and the benefits needs to be performed on a case-by-case basis.

In this case, the costs in my opinion clearly outweigh the benefits. I dissent.

Dated at Montpelier, Vermont, this 16th day of April, 2009.

s/John D. Burke

John D. Burke  
Board Member

OFFICE OF THE CLERK

FILED: April 16, 2009

ATTEST: s/Judith C. Whitney

Deputy Clerk of the Board