

# Berkshire Regional Planning Commission Clearinghouse Review Report

August 13, 2009

**SUBJECT:** Berkshire Wind Power Project  
**EOEA#:** 12532  
**LOCATION:** Hancock and Lanesborough  
**ESTIMATED COST:** \$16,000,000 (as originally stated in 2001 ENF)  
**REVIEW TYPE:** NPC  
**PROPONENT:** Berkshire Wind Power Cooperative Corp.  
**COMMENTS DUE:** 8-21-09

**PROJECT DESCRIPTION:**

This NPC is the fifth time that the Berkshire Wind Project has been reviewed by the MEPA office. The ENF was reviewed in 2001, and two subsequent NPCs were filed in 2004. A fourth change was submitted to MEPA in 2008 and was determined by the Secretary to be insignificant, not warranting a public MEPA review. Below is a summary of the major changes that are proposed from the last NPC of 2008.

Environmental Impact	Previously reviewed October 2004	Net change	Currently proposed in the NPC
Acres of land altered	28.1	16.9	45
Gross square footage of structures	0	6,524	6,524
Max. height in ft. of turbines	340 (245' was original turbine height in 2001)	54 (149' from original)	394

The proponent is requesting a finding that the project changes are insignificant. The project changes do not require any new permits and do not trigger new MEPA thresholds.

**RECOMMENDATIONS:** The BRPC requests that the Secretary deny the proponent's request for a finding that the project changes are insignificant, and we further request that the Secretary requires the proponent to prepare an environmental report that is of a level of detail of at least an Expanded Environmental Notification Form. We do not believe that the information presented in the NPC is of sufficient detail to properly determine whether or not the project changes are indeed insignificant. In addition, the proponent has recently filed an eminent domain claim for a privately owned property at the site. Although this claim has not yet been reviewed in the court, it constitutes a land transfer, involves public funds, and thus should have been discussed in the NPC. The site plans provided by the proponent do not show the area of the potential taking.

If at any point in the future an expansion is proposed for this project, a full EIR should be required to analyze the cumulative impacts of the project in its entirety, beginning with any and all clearing of land since the project's inception. This would include all roadways and other clearing, even areas that have been revegetated. We also respectfully request that a new MEPA site visit be conducted for this project as the last one occurred almost a decade ago and many interested parties have not had the opportunity to participate in a site visit.

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

The changes that are listed in the NPC indicate that the land altered has increased 60% and the height of the wind turbines has increased 16% since the last MEPA review. The proponent has not clearly and verifiably demonstrated that total project impacts, including all land disturbances since the inception of the project, does not exceed any new MEPA thresholds. Also, the turbine height and rotor diameters have incrementally increased since the filing of the ENF in 2001, and BRPC is concerned that the total potential avian and bat impacts have not been properly documented and analyzed. An original 1998 Phase I Avian Risk Assessment determined that no significant avian impacts would result from the project. To our knowledge, no additional assessment has been conducted, despite the fact that the turbines are now approaching 400 feet tall, a height increase of 61% over the original design. Due to the increased installation of wind turbines across the U.S and Europe, we would expect that a substantial amount of scientific data has been collected on avian and bat impacts in the past 11 years, thus we believe that an updated Avian Risk Assessment is warranted at this stage of the project. Compounding the need for an updated study is the facts that bat risk was not part of the original Phase I study and that the local bat population has been severely impacted by “white nose” disease and thus, what was only a few years ago a common animal is now much less common.

BRPC is concerned with the lack of continuity, planning and project oversight shown by the project’s two proponents. The project is receiving substantial public funding, thus should be planned and constructed under model conditions. Model conditions are all the more important in light of the fact that this may be the first fully-installed commercial wind energy generating facility in the Commonwealth, and could set a precedent for future facilities. Unfortunately we do not view this project as a model that should be replicated. We consider these circumstances:

- Project proponents have repeatedly requested building permit extensions from the Town of Hancock over the years, and this NPC represents the fourth change since 2001 that is significant enough to warrant MEPA review.
- According to the NPC, the project is currently 40% complete. In 2006 the project was cited by the DEP for failure to properly control runoff, resulting in sedimentation of a stream on the site.
- The BRPC and others have repeatedly asked for clarification on the status of the north access road; specifically we have asked how much of the road was created and/or improved as part of this project, and whether these improvements have been calculated as part of the project’s total land disturbance. To date we have not received any documentation demonstrating that the road is not part of this project.
- In 2006 construction crews mistakenly trespassed onto and cleared trees from an adjacent property, prompting the owners to sue the proponent for the intrusion. This apparent lack of project oversight is a concern, especially given that the project is approaching the 50-acre EIR threshold.
- BRPC is concerned that the proponent is considering expanding the project, adding new turbines at the site, and that these are not being analyzed in this MEPA process.
- The proponent is reluctant to answer our questions regarding the issue of potential project expansion and justification of the eminent domain taking.

To demonstrate that the project changes are indeed insignificant, the proponent should provide, at a minimum, the following information:

- Provide documentation demonstrating that the increased height of the turbines, from the original 245 feet to the proposed 394 feet, does not pose an increase in avian and/or bat impacts.

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

- Clearly and verifiably document total environmental impacts since the inception of the project, including all land disturbances past, present and proposed. These should include any and all clearing that has been done, even areas that had been cleared and revegetated. This should also include any portion of the north road that was constructed or improved so to serve as an access road to the site. It is the proponent's responsibility to demonstrate which portions of the north road existed prior to the inception of the project and what condition those non-project specific sections of that road were in previously. This should also include proposed staging areas, none of which appear on the current plans.
- Clearly demonstrate, through an alternatives analysis, that an eminent domain taking is justified.
- State clearly how project oversight will be conducted to ensure that construction activities will be contained within the developed footprint shown on the site plans. Given the proponent's history of project changes, their past construction mistakes and the fact that the project is quickly approaching the EIR threshold of 50 acres, we believe that this request is reasonable.

If the Secretary agrees with our position that the scope of the project has changed to such a degree that an EENF or EIR is warranted, the BRPC respectfully requests that these items be included in the Secretary's Scope for a future filing:

- The calculations for square feet of impervious surface including the footprints of the 10 wind turbines and any other structures or buildings. If access roads are to be compacted to such an extent that it renders them effectively impervious, the square footage of such roads should be included in these calculations.
- A description of the electrical generating and distribution system, including any new or upgraded transmission lines to connect the facility to the grid system, both on and off the project site.
- A description of total wetland impacts and restoration.
- A description of the transportation routes being considered and an analysis of their impacts on state and local roads.
- The visual impacts of 10 lighted towers along the ridgeline has not been discussed. The proponent should offer photo simulations of the project during the day and at night.
- Also, the proponent has not offered to fly balloons similar to those routinely flown during the permitting of cellular towers. To best illustrate the visual impacts of the project, the proponent should offer to fly a double balloon arrangement for each turbine, where one balloon will be flown at hub height and one balloon will be flown at blade tip height.
- A full disclosure of all public financial assistance received to date for the project.
- Describe how the proponent will work with all affected local Select Boards and DPWs to insure that town-maintained roads are protected from damage during transportation of the turbines and the construction of the project.
- State clearly how project oversight will be conducted to ensure that construction activities will be contained within the developed footprint shown on the site plans. Given the proponent's history of project changes, their past construction mistakes and the fact that the project is quickly approaching the EIR threshold of 50 acres, we believe that our request is reasonable.
- Require the proponent to submit periodic progress reports to MEPA and local and state permitting agencies verifying extent of land disturbance and protection of natural resources prior to delivery and placement of wind energy facility structures. Land disturbance shall include all disturbance at the site since the inception of the project.

## **Berkshire Regional Planning Commission Clearinghouse Review Report**

- Require that the proponent also submit post-construction “as built” plans of the wind project facility, including road system, turbines, maintenance buildings and associated transmission lines.
- We urge the Secretary to restate, as noted in the NPC Certificate of November 2004, that the proponent should conduct a “follow-up monitoring program that [the Secretary] developed during the Hoosac Wind Project review to further the scientific understanding of [avian] issues. The proponent should consider participation in the development and implementation of the follow-up avian studies funded by the Commonwealth related to the Hoosic Wind Project.”
- A contingency plan should be developed in the event that avian and/or bat mortality is found to be significant once the project is fully operational. The contingency plan should be developed in conjunction with Mass. Fisheries and Wildlife, Mass. Audubon, the Mass. Department of Public Utilities, and U.S. Fish and Wildlife Service.
- The Town of New Ashford should be included in the distribution list for all information regarding this project. To date, this has not occurred.
- If any new MEPA threshold is exceeded at any time, the proponent shall prepare and submit an EIR for the project, clearly describing disturbed areas, alternatives considered and proposed mitigation.
- We acknowledge that there are no aesthetic thresholds in 301 CMR 11.00, but because public funding is involved, we believe that efforts to avoid, reduce or mitigate these impacts should be undertaken to fulfill the broader intent of MEPA.

The BRPC urges the Secretary to work with federal, state and local biologists to develop a standard and acceptable Avian and Bat Risk Assessment methodology that can readily and reliably be conducted by wind turbine proponents and the scientific community.

### **CONSIDERATIONS AND POTENTIAL ISSUES:**

- An increase of 17 acres of disturbed land does not trigger any new MEPA review threshold, but it should be noted that it is a 60% increase in project footprint since the previous review.
- The increased land disturbance brings the total disturbance to 45 acres, five short of an EIR threshold.
- The height of the towers has increased from the original 245 feet, to 324 feet to the currently proposed 394 feet. An original 1998 Phase I Avian Risk Assessment determined that no significant avian impacts would result from the project; this was when the turbines were proposed to be 245 feet tall and the rotor diameter was correspondingly smaller.
- The proponent has initiated an eminent domain taking of approximately 60 acres of private land at the site. According to the Order of Taking, the land is needed for “the purpose of accessing, constructing, operating and maintaining the Cooperative wind facility... for the generation of electricity for the citizens of the Commonwealth.” This hostile land transfer was not mentioned in the NPC.
- Green Berkshires, Inc. has provided some documentation that the proponent may consider expanding the project in the future. While there is nothing in the MEPA filing which would indicate that expansion beyond the ten proposed turbines is contemplated, as has been done with previous projects where there was some circumstantial evidence that further expansion might occur (most recently Donnybrook Country Club, MEPA #13093) the Secretary’s certificate should make it absolutely clear that any expansion will trigger a full EIR, showing all cumulative impacts for the project.

Draft comments were submitted to MEPA on August 11, 2009. Final comments were approved as amended by the Berkshire Regional Planning Commission on August 13, 2009.