

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Georgia Mountain Community Wind,)
LLC for a Certificate of Public Good, pursuant)
to 30 V.S.A. Section 248, authorizing the)
construction and operation of a 5-wind turbine)
electric generation facility, with associated) Case No. _____
electric collection and interconnection facilities,)
on Georgia Mountain in the Towns of Milton)
and Georgia, Vermont, to be known as the)
“Georgia Mountain Community Wind Project”)

REQUEST FOR NON-SUBSTANTIAL CHANGE DETERMINATION

NOW COMES Georgia Mountain Community Wind, LLC (“GMCW”) and hereby requests that the Public Utility Commission (“Commission”) determine that certain changes to the conservation easement deed and map approved by the Public Utility Commission (“Commission”) in 2011 in connection with the GMCW wind electric generation facility (the “Project”) do not constitute a substantial change to the approved proposal under Commission Rule 5.408. As explained herein, the changes do not have the potential for significant impact under the relevant statutory criteria as they are limited to clarifying its terms and enhancing the scope of the easement’s protections for natural communities, wetlands, and wildlife habitat at Georgia Mountain. More broadly, the changes to the conservation plan are consistent with the general good of the state under Section 248(a).

In support of this request, GMCW, together with H.W. Ventures, L.C. (“H.W. Ventures”)—the owner of land comprising Georgia Mountain, the former managing member of GMCW, and the ground lessor for the Project—submit the following materials:

- Attachment A: Prefiled testimony of James Harrison explaining the changes to the conservation easement and summarizing the efforts of GMCW, H.W. Ventures and the Agency of Natural Resources (“ANR”) to finalize its terms and secure approval by the Town of Milton Selectboard and Governor Phil Scott.
 - Exhibit GMCW-JH-1: Final Grant of Development Rights to ANR
 - Exhibit GMCW-JH-2: Survey of Protected Property
 - Exhibit GMCW-JH-3: Orthomap Depicting Easement Boundaries
 - Exhibit GMCW-JH-4: Redline Comparing Grant to Draft Easement Deed
 - Exhibit GMCW-JH-5: Parcel Photographs
 - Exhibit GMCW-JH-6: ANR Letter Recommending Approval of Request

- Attachment B: Prefiled testimony of Richard C. Butt on behalf of GMCW, concurring with the testimony of Mr. Harrison and acknowledging the observance of the conservation easement as part of continued operations of the Project by GMCW.

These materials demonstrate that GMCW's and H.W. Ventures' changes to the conservation plan approved by the PUC in 2011 do not constitute a "substantial change" under PUC Rule 5.408. This follows because the updated plan:

- (i) Conveys property to ANR rather than to an undetermined third party designee;
- (ii) Results in 113.79 acres of land on Georgia Mountain being conserved (as opposed to 108 acres) through a combination of a present grant for existing natural areas, and an executory interest to ANR for the wind turbine area once decommissioning is complete;
- (iii) Includes funding for stewardship of the conserved parcel by ANR;
- (iv) Adds easement language imposing greater restrictions on motorized vehicles in the conserved area;
- (v) Contains a much more specific property description in the easement than what was proposed in 2011;
- (vi) Describes current maple sugaring operations on the property with specificity to serve as a benchmark; and
- (vii) Is enhanced by the conserved land's contiguity with an adjacent 800± acres of property separately conveyed by H.W. Ventures to the Vermont Land Trust.

Moreover, to the extent the Commission were to find that the updated plan constitutes a substantial change, the prefiled testimony and accompanying materials submitted with this request provide a sufficient basis for the PUC to amend its order of May 13, 2011 approving the conservation plan, and to approve the current plan.

I. Background.

On June 11, 2010, the Commission issued an Order and Certificate of Public Good in Docket 7508 (“CPG”) approving construction of the Project.¹ Condition 26 required GMCW to “file a proposal, for [Commission] approval, for conserving the Project area as required in the section of th[e] Order addressing rare and irreplaceable natural areas.”² This condition was imposed at the specific (and sole) request of ANR to mitigate the Project’s impacts on Georgia Mountain’s natural environment, pursuant to 30 V.S.A. §248(b)(5).³

Following GMCW’s submission to the Commission of a proposed conservation easement deed and map on March 24, 2011 from H. W. Ventures as landowner,⁴ the Commission approved the plan in an order dated May 13, 2011 (the “Conservation Order”).⁵ The ANR-negotiated conservation easement contemplated that H.W. Ventures would convey its development rights to an unspecified nonprofit or governmental entity to be designated by ANR. The approved draft deed and map attached to the Original Conservation Plan (the “Approved Draft Deed”) provided perpetual conservation restrictions for “approximately 108 acres of land”—which included the approximately 26.6 acres occupied by the Project and its related infrastructure, roads, and ancillary equipment (the “Wind Farm Area”).⁶ The Approved Draft Deed contemplated that a full survey would replace what was essentially a bare bones property description attached as Schedule A to the deed.⁷ The map that was referenced in the Schedule A to the Approved Draft Deed consisted of a satellite photograph with colored lines depicting the approximate location of the easement area, but nowhere indicating the location of the Wind Farm Area in relation to the conserved area.⁸ The Approved Draft Deed limited future uses on the protected parcel to, among others, maple-sugaring operations, forestry, and outdoor recreation.⁹

¹ See Docket No. 7508, Findings and Order of 6/11/10 (“**Final Order**”); Docket 7508, Certificate of Public Good of 6/11/10 (“**CPG**”).

² **CPG** at 5-6.

³ See **Final Order** at 68.

⁴ See Letter dated March 24, 2011 from Petitioner in Docket No. 7508 entitled “Revised Conservation Easement Deed and Map” (“**Original Conservation Plan**”).

⁵ See Docket No. 7508, Order Re: Conservation Easement of 5/13/2011 (the “**Conservation Order**”).

⁶ See Original Conservation Plan, Grant of Development Rights and Conservation Easements and Restrictions at 3, ¶ III(1).

⁷ See **Approved Deed** at 9.

⁸ See **Approved Deed** at 10.

⁹ See **Approved Deed** at 4-5.

ATV and other mechanical vehicle usage was specifically allowed in the conservation easement without restriction, except within a Class 3 vernal pool that the Commission had referenced in its natural communities discussion in the CPG Order.¹⁰ The Conservation Order required clarification in the easement deed that portions of the Project may be abandoned in place only in accordance with the Project's decommissioning plan. No party filed comments on the proposed conservation easement.¹¹

Ever since the Conservation Order was issued, GMCW and H.W. Ventures have worked in earnest with ANR, its contractors, consultants and attorneys to attempt to satisfy Condition 26.¹² Final execution of an appropriate easement was ultimately delayed for several reasons, but primarily due to the inability of GMCW and ANR to identify a suitable third-party designee / grantee for the easement before H.W. Ventures could finalize the conveyance.¹³

GMCW and H.W. Ventures renewed their focus on Condition 26 in 2017 after it was identified as a critical issue in the sale of the GMCW membership interests to Greenbacker Wind, LLC ("Greenbacker"), as well as based on efforts by H.W. Ventures to place several adjacent parcels under a grant of development rights to the Vermont Land Trust ("VLT") for forest management and tax-related purposes.¹⁴ Greenbacker and H. W. Ventures wished to ensure that any open CPG compliance issues were addressed, while H. W. Ventures also sought to complete its conservation-related planning for the area. ANR's plan had always been for the easement to be held by the Vermont Land Trust ("VLT") or a similar organization.¹⁵ Yet efforts to convey the protected property to the Vermont Land Trust were stalled, as the presence of the Wind Farm Area within the conservation easement was inconsistent with the Land Trust's easement-acquisition guidelines and mission statement (due to the commercial nature of the use), and ultimately outside its realm of expertise to manage.¹⁶ ANR also looked for other designees, but was unsuccessful.

¹⁰ See **Conservation Order** at 2; see also **Approved Deed** ¶ III(8).

¹¹ See **Conservation Order** at 2.

¹² Attachment A, Harrison pft. at 11.

¹³ Attachment A, Harrison pft. at 11-12.

¹⁴ Attachment A, Harrison pft. at 12-13.

¹⁵ Attachment A, Harrison pft. at 3-4.

¹⁶ Attachment A, Harrison pft. at 12-13.

By the beginning of 2018, ANR had determined that the best course of action was for H.W. Ventures to grant the easement directly to the State of Vermont, understanding that this would potentially require several months of review based on the State's requirements for direct acquisitions of land.¹⁷ Efforts during the first half of 2018 focused on preparing a survey through a licensed surveyor, resolving certain title issues, photo-documenting the state of the property to satisfy the Agency that Georgia Mountain remained in suitable condition for conservation (including as a result of the maple sugaring operations), and revising language in the easement where necessary to address new concerns.¹⁸ Once negotiations were complete, H.W. Ventures provided assistance while ANR shepherded the approved instrument through the land approval process, ultimately securing approval of the Town of Milton and Governor Scott.¹⁹

II. Current Status of Conservation Deed and Summary of Changes.

On June 13, 2018, H.W. Ventures granted to ANR the conservation easement in substantially the form set forth in GMCW's March 24, 2011 submission approved in the Conservation Order.²⁰ The grant was recorded on June 15, 2018, in the Milton Land Records, which cross-references a final survey plan of the easement prepared by Cross Consulting Engineers, P.C. and recorded in the Milton Land Records on June 1, 2018.²¹ In addition to the deed and survey, H.W. Ventures delivered to ANR a stewardship fee in the amount of ten thousand dollars (\$10,000), as well as an orthophotograph with the survey superimposed, and photographic documentation of current conditions.²²

As explained in the accompanying prefiled testimony of Jim Harrison, the final grant differs from the draft deed approved in the Conservation Order in the following respects: (i) the ANR Department of Fish and Wildlife serves as grantee; (ii) the prior description is replaced by a metes and bounds property description supported by a full survey of the 87.19 acres of protected property and the 26.6 acre Wind Farm Area; (iii) the instrument uses an executory interest clause for ANR to add the Wind Farm Area to the protected property at its option

¹⁷ Attachment A, Harrison pft. at 13.

¹⁸ *Id.*

¹⁹ *Id.*; **exh. GMCW-JH-1** ¶ III(1) (Final Conservation Easement).

²⁰ See **exh. GMCW-JH-1**.

²¹ See **exhs. GMCW-JH-1** and **GMCW-JH-2**.

²² Attachment A, Harrison pft. at 5-6 ; **exhs. GMCW-JH-3** and **GMCW-JH-5**.

following decommissioning of the Project (resulting in a total of 113.79 acres being placed under conservation); (iv) the updated grant contains additional restrictions on uses and activities on the protected property designed to ultimately reduce the risks associated with ATVs and public access on the property, and to prevent significant expansion of maple operations beyond what currently exists; and (v) the easement contains clarifications and corrections designed to ensure clarity with respect to the easement, as well as an amendment clause to address unforeseen circumstances potentially arising in the future.²³

III. Non-Substantial Change Analysis.

Under Commission Rule 5.408, an amendment to a CPG is required “for a substantial change” to an approved project, defined as “a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the State under Section 248(a).” The Commission has authority to determine whether a change is substantial, with the understanding that it does not “wish to discourage petitioners from filing potential improvements to a proposed project for fear that additional procedural steps would significantly delay the proceeding.”²⁴ A determination that a change is substantial is normally considered in the context of the project as a whole.²⁵ In this context, the substantial change focus is properly placed on the plan that the Commission approved in 2011, and whether the updates would either lead to an undue adverse impact on the natural environment, or prove inconsistent with the general good of the state.

As explained in Mr. Harrison’s prefiled testimony, the proposed changes to the Approved Draft Deed do not have the potential for significant impact under any of the relevant section 248 criteria.²⁶ In particular, the changes do not have the potential for significant impact to the natural environment under section 248(b)(5), nor for compromising the general good of the State under section 248(a)(2)(A).²⁷ To the contrary, the conservation easement was required—at the request

²³ Attachment A, Harrison pft. at 6-9.

²⁴ *Amended Petition of UPC Vt. Wind, LLC*, Docket No. 7156, Order of 10/1/07 at 8 n.5.

²⁵ *Petition of Cross Pollination, Inc.*, Docket No. 7645, Order of 10/29/12 at 4 (citing Docket No. 7156, Order of 10/1/07 at 7-8; Docket No. 7827, Order of 6/28/12).

²⁶ Attachment A, Harrison pft. at 6-9.

²⁷ The remaining section 248(b) criteria -- (1) through (4) and (6) through (10) -- are not germane to the changes to the conservation plan, as those criteria relate to the electric grid and transmission system, economic benefit,

of ANR and with the Commission’s concurrence—to mitigate the Project’s impacts on Georgia Mountain’s natural environment pursuant to 30 V.S.A. §248(b)(5).²⁸ The proposed changes to the easement approved in 2011 include modest clarifications and, in some cases, enhanced protections of the Project area, without ever reducing or compromising the core protections afforded for Georgia Mountain in the original plan.²⁹ For example, while the original easement would have allowed use of all-terrain vehicles in certain portions of the protected area,³⁰ the modified easement only authorizes “non-motorized, non-mechanized recreational purposes.”³¹ And in contrast to the incomplete and vague property description in the Approved Draft Deed, the modified easement contains a highly detailed, survey-backed description that leaves no doubt as to the location of the protected property, all consistent with the goal of preserving the natural communities, wetlands, and habitat on Georgia Mountain.³²

These changes have the backing of ANR, and have been approved by the Town of Milton and Governor Scott.³³ They are entirely consistent with advancing the purposes of Condition 26 of the CPG and the discussion contained in the Order approving the Project. ANR, by and through the Department of Fish and Wildlife, has reviewed this Motion, and the accompanying testimony and exhibits, in advance of its submission, and has provided a letter stating its support for a non-substantial change determination by the PUC.³⁴ In addition, the Agency stated its position in the letter that:

[T]he changes enhance the protection and conservation of the property subject to the Grant. The changes in the language of the Grant provide greater clarity and will have no significant impact on the relevant

need, local, regional and state planning, and specific siting considerations that are wholly unrelated by the changes to the conservation easement.

²⁸ A key portion of the PUC’s discussion is as follows: “The existing condition of Georgia Mountain, including the ATV use and the presence of the cell tower, combined with the fact that none of the natural communities identified on the mountain, by themselves, would qualify as rare and irreplaceable, lead us to conclude that Georgia Mountain does not qualify as a rare and irreplaceable natural area [under 10 V.S.A. §6086(a)(8)(A).] However, ... the significant and permanent impacts to the natural communities on Georgia Mountain lead us to conclude that GMCW must mitigate the impacts of the Project on the natural communities in order to avoid an undue adverse impact on the natural environment. ... We require GMCW to file a proposal, for Board approval, for conserving the Project area.” Docket No. 7508, Order at 68.

²⁹ *Accord exh. GMCW-JH-6* (ANR recommendation letter dated 08/13/2018)

³⁰ *See Conservation Order* at 2.

³¹ *See exh. GMCW-JH-1* ¶ III(4) (Final Conservation Easement).

³² Attachment A, Harrison pft. at 9-10.

³³ Attachment A, Harrison pft. at 5-6.

³⁴ *See exh. GMCW-JH-6*.

statutory criteria related to natural communities, wetland, and habitat at Georgia Mountain.³⁵

ANR, GMCW, the Commission, and all parties to this proceeding had fully understood in 2011 that the Project would involve development of a 26.6 acre portion of the summit of Georgia Mountain, and that the impacts would be extensive.³⁶ Logically, the Wind Farm Area could not be conserved and developed simultaneously: it was the anticipated impacts of Project development that prompted ANR's concerns regarding fragmentation of natural communities on Georgia Mountain. Evidently, the existence of the Wind Farm Area led the VLT to conclude it could not serve as ANR's designee for the conservation grant. The use of the executory interest to eventually convey to ANR conservation easement rights as to the Wind Farm Area is consistent with the intent of the easement submitted with the 2011 conservation plan, and does not represent a substantial change to the approved Project. Moreover, when eventually exercised, the protected property will contain 113.79 acres rather than the 108 acres contemplated under the original easement, with the Commission-approved decommissioning plan serving to responsibly ensure that ANR can eventually conserve the 26.6 acre portion in a close-to-natural state.³⁷

Beyond the deed itself, the Commission should consider that from the Conservation Order through the present day, H. W. Ventures has managed the property consistent with the intent of the easement and Condition 26.³⁸ H.W. Ventures has preserved the property in its current state – i.e., forested land with medium-scale maple sugaring operations, as demonstrated in Mr. Harrison's testimony, and as shown on the orthophotograph included as **Exhibit GMCW-JH-3** and the photographs submitted as **Exhibit GMCW-JH-5**. GMCW, in turn, constructed the Project consistent with the terms and conditions of the CPG, and actively and responsibly manages the Wind Farm Area in accordance with the CPG and related permits.³⁹ Moreover, by confining its activities to the 26.6 acre portion, GMCW's actions are consistent with preserving

³⁵ **Exh. GMCW-JH-6** at 1.

³⁶ Attachment A, Harrison pft. at 10; *accord* CPG at 2-5 (imposing multiple conditions relating to construction of the Project within the 26.6 acre portion of the property); *see also* fn. 14, *supra*.

³⁷ *Compare Approved Deed*, Sched. A with *exh. GMCW-JH-1* (Grant Sched. A.)

³⁸ Attachment A, Harrison pft. at 14.

³⁹ Attachment B, Butt pft. at 5-6.

the surrounding protected property.⁴⁰ Greenbacker – as the new owner of GMCW – is cognizant of and committed to maintaining activities exclusively upon the Wind Farm Area.⁴¹ Beyond the protected property itself, adjacent parcels held by Mr. and Mrs. Harrison and a related entity have been placed into protection through the Vermont Land Trust, thereby further enhancing the protected property in the Georgia Mountain area.⁴² These measures—when viewed together—fulfill the intent of the 2011 Commission-approved conservation plan by preserving the integrity of Georgia Mountain’s natural resources in perpetuity.

IV. Conclusion.

GMCW requests that the Commission issue a determination that the changes to the conservation easement and map are consistent with the Conservation Order, and do not constitute substantial changes requiring an amendment to the PUC’s Order approving the prior conservation plan. Should the Commission find that the changes are substantial, GMCW respectfully requests that the Commission approve the updated conservation easement and plan based on the prefiled testimony and supporting exhibits attached hereto without further proceedings or a hearing.

⁴⁰ Attachment A, Harrison pft. at 14.

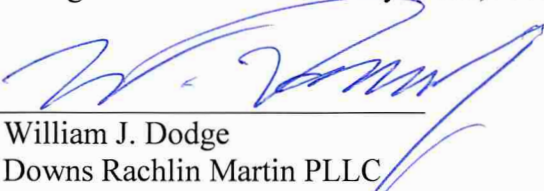
⁴¹ Attachment B, Butt pft. at 6.

⁴² Attachment A, Harrison pft. at 14.

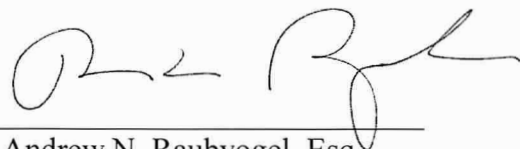
DATED at Burlington, Vermont, this 20th day of August, 2018

Respectfully submitted,

Georgia Mountain Community Wind, LLC

By: 

William J. Dodge
Downs Rachlin Martin PLLC
199 Main Street, P.O. Box 190
Burlington, VT 05402-0190
Tel: (802) 846-8395
Fax: (802) 862-7512
Attorneys for H.W. Ventures, L.C.

By: 

Andrew N. Raubvogel, Esq.
Dunkiel Saunders Elliott Raubvogel & Hand, PLLC
91 College Street, Burlington, VT 05402
Tel: (802) 860-1003
araubvogel@dunkielsaunders.com
Attorneys for Georgia Mountain Community Wind, LLC

18509238.2