

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Compliance filings required by certificate of public good)
issued in Docket 7628, Lowell Mountain 63 MW wind)
electric generation facility) Case No. 20-1400-LCOMP

**GREEN MOUNTAIN POWER’S MOTION FOR NON-SUBSTANTIAL CHANGE
DETERMINATION OR IN THE ALTERNATIVE TO AMEND THE CPG**

Green Mountain Power Corporation (“GMP”) files this motion to seek a determination from the Public Utility Commission (“Commission”) that proposed changes to certain stormwater management features at the Kingdom Community Wind Project (“KCW Project” or the “Project”) are non-substantial changes, or alternatively requests amendment of the CPG to authorize the changes.

As described further below, and in the supporting Affidavits of Jason Lisai and Robert Wildey, GMP is proposing to relocate four level spreaders on the Project site to enable continued monitoring and maintenance of these features going forward. These proposed changes are minor, will require up to four weeks to construct, and will continue the same stormwater treatment practices already authorized under the existing stormwater permits. They do not have the potential for significant impacts under any Section 248 criteria and therefore can be implemented as a non-substantial change. Even if viewed as substantial, the changes do not result in any undue adverse impact under the relevant Section 248 criteria and therefore could, in the alternative, be approved as an amendment to the CPG if required.¹

¹ As noted below, while the stormwater management system was subject to separate ANR approval, the plans for these features were shown on the final plans approved by the PUC in Docket 7628 on July 19, 2011, and therefore GMP is requesting the Commission’s determination on whether the proposed change constitutes a substantial change to these plans, or in the alternative requests an amendment of the CPG, although none of the CPG conditions would require technical amendment to authorize this change.

GMP has consulted with the Agency of Natural Resources (“ANR”) regarding this proposed change, and ANR agrees that the revision does not constitute a material change for purposes of the separate individual operational stormwater discharge permit for the facility, and a construction stormwater permit authorization has been issued for the work. ANR also has confirmed that no wetland permit is required for the proposed changes to the Project, and ANR has not raised any substantive concerns regarding potential natural resource impacts of this limited work adjacent to previously disturbed Project areas. GMP therefore asks the Commission to find these changes are non-substantial, or alternatively authorize amendment to the CPG to allow the proposed project changes to proceed expeditiously. GMP is prepared to commence this work in the next few weeks if the Commission’s review allows, as ANR has requested that any construction activities avoid the September 1 to December 1 time period in order to minimize any potential impact on fall bear feeding in the Project vicinity. GMP would appreciate a determination on this request as promptly as is possible so that the required work, or at least some of it, could be performed during 2020 under appropriate site conditions.

I. Introduction & Background

The Kingdom Community Wind Project is a 63-Megawatt (MW) wind generation facility located in Lowell, Vermont. The facility received a Certificate of Public Good (“CPG”) from the Public Utility Commission in May 2011, and went into operation in December 2012. The facility is owned and operated by GMP on behalf of its customers and produces approximately 186,000 MW-hours of power annually. The Project consists of 21 wind turbines and associated access road, crane path, electrical lines, a substation, and an operations and maintenance building, plus stormwater control measures to manage stormwater from impervious surfaces on the Project site. Docket 7628

Final Order of May 31, 2011 at Section V (Project Description);² Findings 149–156 (describing stormwater management requirements); Lisai Affidavit at ¶4. The PUC approved the final project construction design plans on July 19, 2011 in Docket 7628 pursuant to Condition #2 in the CPG. These plans included the stormwater management features, as required under Condition #16 of the CPG, although separate approval of the final stormwater design was left to ANR as part of its stormwater permit process. *See Order Re First Set Of Compliance Filings*, 7/19/2011, at 10–11.

As part of this request, GMP is seeking approval for a minor change in the existing stormwater management system for the facility, which will aid future monitoring and maintenance of several stormwater features on the site. The stormwater management system on the Project site is designed to ensure appropriate treatment and control of stormwater from the Project’s impervious surfaces, including the Project’s access roads and areas around the turbines and maintenance facilities. GMP obtained an Individual Stormwater Discharge Permit (“INDS”) from the ANR’s Department of Environmental Conservation (“DEC”), which was issued by DEC on August 19, 2011 (Permit #6216-INDS) pursuant to Vermont’s Stormwater Management Rule and Stormwater Management Manual.³ The approved system consists of 16 stormwater ponds, 31 level spreaders, 5 grass channels, and 1 infiltration basin, and was constructed and has been operated in accordance with the terms of the INDS Permit. Lisai Affidavit at ¶7.

The change GMP proposes involves the relocation of four (4) existing stormwater level spreaders to nearby locations on the KCW Project Parcel. Level spreaders are one of the types of stormwater treatment practices authorized in the original INDS Permit. This type of practice was

² The PUC also approved upgrades to associated transmission lines and substations, which are not affected by the changes to the Project proposed here.

³ Both the INDS Permit, as well as the Project’s construction stormwater permit (“INDC Permit”) were also subject to separate appeal before the Commission in Dockets 7628A and 7628C. Both permits were upheld by the Commission, along with related wetlands permits and the State’s water quality certifications. *See* Dockets 7628A-E Final Order, March 20, 2013.

selected in order to minimize the amount of tree clearing, grading, and disturbance required for stormwater treatment and to maintain to the extent practicable existing hydrology on the site. Rather than using more traditional stormwater basins to collect stormwater from large areas of impervious surfaces, level spreaders operate by collecting smaller amounts of stormwater runoff and distributing treatment more evenly across the KCW Project Parcel, using disconnected 150' vegetative buffers to allow for more natural distribution and infiltration of treated stormwater runoff. Lisai Aff. at ¶7; Wildey Aff. at ¶5.

The proposed changes to the Project will use this same approved treatment practice, but will slightly relocate four of these level spreaders to facilitate maintenance of these features in the future. The 27 other level spreaders, 16 stormwater ponds, 5 grass channels, and 1 infiltration basin that comprise the remainder of the stormwater management system for the Project will not be altered in any way. Lisai Aff. at ¶7. The purpose of these revisions is to address the fact that small portions of four of the currently-installed level spreaders intersect with portions of three of the mitigation parcels surrounding the Project, which makes ongoing maintenance of the features more complicated because GMP does not own or control the ability to access and utilize these properties, and because the parcels are intended to remain unaltered. *Id.* at ¶¶ 10–11. Pursuant to Condition 15 of the CPG, and the Memorandum of Understanding GMP and ANR entered into in the CPG proceeding, GMP obtained conservation easements on multiple mitigation parcels surrounding the Project site as part of its comprehensive Project mitigation measures. The mitigation parcels relevant to this request are Mitigation Parcels 2, 3, and 3a, which together total approximately 345 acres.⁴ *Id.* at ¶8. The Project's stormwater system was constructed in accordance with the ANR

⁴ Draft versions of the underlying conservation easements for Mitigation Parcels 2 and 3 were filed with and reviewed by the Commission. *See* Docket 7628 *Order Re Five Sets of Compliance Filings* at 20 (July 27, 2011). Final executed copies of these easements were filed September 20, 2011. Parcel 3a was approved by the Commission on August 31, 2011.

approved plans—however, following construction, as part of the as-built survey work for the Project, it was determined that due to an unintentional mapping discrepancy small portions of these four level spreaders slightly overlapped the adjoining Project mitigation parcels. *Id.* at ¶8. In particular, portions of three level spreaders and their associated drainage infrastructure were located on 0.31 acres of mitigation parcels 2 and 3, and the vegetated buffer areas relating to four level spreaders encompassed another 0.91 acres within mitigation parcels 2, 3, and 3a. *Id.* at ¶8. *See also*, Docket 7628, GMP letter of 12/20/13.

GMP notified ANR, the Department of Public Service (“DPS”), and the Commission promptly in December 2013 after becoming aware of this mapping discrepancy and noted it would coordinate with ANR to address any potential impacts associated with the mitigation parcels. *Lisai Aff.* at ¶9; Docket 7628, GMP letter of 12/20/13. GMP worked with ANR to identify appropriate corrective actions, and as a result, entered into an agreement in which GMP agreed to provide renewable energy mitigation and oversight stewardship funds. This agreement was filed with the Commission on April 2, 2014 and no further action was taken by the Commission. *Lisai Aff.* at ¶9.

Although the 2014 ANR Agreement did not require relocation of the level spreaders, after further consultation with ANR GMP determined that it would be advisable to relocate the stormwater features that intersect the mitigation parcels in order to enable continued monitoring and maintenance of this infrastructure and also to ensure that all stormwater features are fully contained within the KCW Project Parcel controlled by GMP. *Id.* at ¶10. By relocating these features, GMP will avoid entering the mitigation parcels to periodically remove accumulated sediment and recompact crushed stone within the level spreaders, as is necessary at times to maintain their effectiveness. The relocation will ensure all project infrastructure is on land controlled by GMP, and will also address the underlying landowner’s desire that all Project features be located on the KCW Project Parcel for clarity in the future. *Id.* at ¶10. The proposed changes to

the Project result in minimal environmental impacts, and as described below and in the attached affidavits, have been designed with appropriate protective measures already reflected in the existing VT DEC INDS Operational Stormwater Permit and the new Construction Stormwater Permit to ensure that construction does not have the potential for significant impacts under any Section 248 criteria, and will not result in any undue adverse impacts under these criteria.

II. Description of Proposed Changes

The limited changes GMP is proposing to the Project's stormwater system are as follows:

- Existing Level Spreader #8 (LS-A8) will be removed and relocated to a new location approximately 450 feet north from the present location.
- Existing LS-A9 will be removed and replaced with two smaller level spreaders, designated as LS-A9a and LS-A9b. These new level spreaders will be located on the opposite side of the access road and east of the existing location by approximately 200 feet and 400 feet, respectively.
- Existing LS-A24 will be removed and relocated approximately 300 feet to the west.
- Existing LS-C16 will be removed and relocated approximately 20 feet to the west.

These changes are described in more detail in the supporting affidavits of Jason Lisai (GMP) and Robert Wildey (VHB) and are shown on Exh. GMP-RAW-2 (Level Spreader Relocation Plans).

In consultation with ANR, GMP has determined that the proposed changes to these four treatment practices do not constitute a material change to the INDS Permit. The relocated level spreaders will be the same treatment practice already authorized by the INDS Permit, the operation of which has been documented through site-specific monitoring to comply with the requirements of the 2002 Vermont Stormwater Management Manual. Lisai Aff. at ¶13; Wildey Aff. at ¶10.

Relocating the level spreaders to new locations that are within the same subwatersheds therefore will

be consistent with the existing INDS Permit. Wildey Aff. at ¶10. GMP has also confirmed with ANR that the relocation and minor changes will be reflected in the upcoming renewal of the INDS permit. Lisai Aff. at ¶13.

Overall, the Project will result in approximately one-acre of soil disturbance during construction, and GMP has obtained authorization under VT DEC Construction Stormwater General Permit (#3-9020) for this work, which is categorized as low risk. Lisai Aff. at ¶14; Wildey Aff. at ¶14. The area of disturbance includes construction of the new level spreaders, and a minimal amount of disturbance to remove the existing level spreaders and associated ditch turn-outs, in order to restore these areas. The work to be performed will not involve any changes to the vegetated buffers within the mitigation parcels. GMP will implement all appropriate Erosion Prevention and Sediment Control (“EPSC”) practices during the construction of the proposed changes to the Project, as required under this authorization. Lisai Aff. at ¶14; Wildey Aff. at ¶14.

ANR has also reviewed the proposed level spreader relocations and field work conducted by VHB for the proposed locations and has determined that no State wetlands permit is required. Lisai Aff. at ¶14; Wildey Aff. at ¶14. The relocation will impact approximately 2,500 square feet of a newly existent wetland that is associated with a topological depression formed by a former logging road on the KCW Project site. Wildey Aff. at ¶14. Impacts to this wetland have been minimized and will only occur in non-forested areas of the wetland on the old logging road. GMP has obtained approval from the United States Army Corp of Engineers (“USACE”) under Section 404 of the Clean Water Act under General Permit #19 for these limited impacts. Wildey Aff. at ¶14; Exh. GMP-RAW-4.

ANR has also requested that areas disturbed during construction be stabilized and restored to natural conditions as much as possible following construction. Lisai Aff. at ¶15. Once stabilized, the areas may be allowed to passively regenerate, which is expected given the presence of adequate

tree seed sources around these sites to support passive regeneration. *Id.* In addition, ANR has requested that the reclaimed areas and new level spreader locations be monitored for invasive plant species and that invasive species be removed. *Id.* This non-native invasive species monitoring and control should continue for at least five years. GMP has agreed to implement these measures. *Id.*; Wildey Aff. at ¶14.

Construction of the relocation project is anticipated to take 3–4 weeks to complete, and ANR has requested that site work be avoided between September 1 and December 1 in order to minimize impacts to black bear habitat during the fall feeding season. GMP will work with ANR to meet its expectations on construction during the fall feeding season and would prefer to complete the relocation this year if possible, but will complete construction during 2021 in the event there is insufficient time to complete the work after receiving the Commission’s determination on this request. Lisai Aff. at ¶16.

III. Memorandum of Law

Under PUC Rule 5.408, an amendment to a CPG is required for a “substantial change” in a project’s approved proposal, where the change “has the potential for significant impact” with respect to any of the criteria of Section 248(b) or Section 248(a). As indicated below and attested to in the attached affidavits of Jason Lisai and Robert Wildey, the proposed relocation of the level spreaders and associated construction activities do not have the potential to cause significant impacts under any Section 248(b) criteria or the general good of the state under Section 248(a).

Section 248 Criterion	Potential for Significant Impact Assessment
Section 248(b)(1) – Orderly Development	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>
Section 248(b)(2) – Need for the Project	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>

Section 248(b)(3) – System Stability/Reliability	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>
Section 248(b)(4) – Economic Benefits	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>
Section 248(b)(5) – Environmental Considerations:	No potential for significant impact, as follows:
Air Purity, Shorelines, Traffic, Municipal/Educational Services, Historic Sites, Public Investments, Public Health and Safety, Greenhouse Gas	Relocation of four of the existing 31 level spreaders does not have the potential for any impact under any of these criteria. <i>See Lisai Affidavit; Wildey Affidavit.</i>
Headwaters	No potential for significant impact and no undue adverse impact to headwaters. Project changes are located below 2500' elevation and no stream impacts are proposed. <i>See Wildey Affidavit.</i>
Waste Disposal	No potential for significant impacts or undue adverse impacts; only minor amounts of waste are expected to be generated during construction and GMP will follow all required waste disposal requirements. <i>See Wildey Affidavit.</i>
Water Conservation/Use/Supply	No potential for significant impacts or undue adverse impacts. Minor amounts of water may be used for dust control during construction but once constructed, level spreaders do not have any water conservation/use/supply impacts. <i>See Wildey Affidavit.</i>
Floodways	No potential for significant impacts or undue adverse impacts. None of the proposed level spreader relocation work would occur within FEMA designated floodways or river corridors. <i>See Wildey Affidavit.</i>
Rare Irreplaceable Natural Areas	No potential for significant impacts or undue adverse impacts. The KCW Project Parcel does not contain RINA habitat, and impacts to designated uncommon natural communities will be minor, with no further fragmentation to existing forest blocks. <i>See Wildey Affidavit.</i>
Endangered Species	No potential for significant impacts or undue adverse impacts. No Rare, Threatened or Endangered species have been identified within the areas that will be affected by the proposed level spreader relocations. <i>See Wildey Affidavit.</i>
Wetlands	No potential for significant impacts or undue adverse impacts. Impacts to wetlands have been

	minimized and remaining disturbance of Class III wetland associated with former logging road will be minor (2500 sq. feet). No State wetland permit required, and GMP has obtained USACE Section 404 permit authorizing Class III impact. <i>See Wildey Affidavit.</i>
• Streams	No potential for significant impacts or undue adverse impacts; relocation of existing level spreaders will not impact any streams. <i>See Wildey Affidavit.</i>
• Wildlife Habitat	No potential for significant impacts or undue adverse impacts; relocation of existing level spreaders will not impact any necessary wildlife habitat, and GMP will continue its existing non-native invasive species monitoring to include disturbed areas. <i>See Wildey Affidavit.</i>
• Water Purity	No potential for significant impacts or undue adverse impacts; see discussion of other water quality criteria. <i>See Wildey Affidavit.</i>
• Soil Erosion	No potential for significant impacts or undue adverse impacts; GMP has obtained low-risk construction stormwater permit for construction activities and will implement all necessary erosion prevention and sediment control measures. The level spreaders will use the same treatment practices as presently authorized in existing INDS Stormwater Permit. <i>See Wildey Affidavit.</i>
• Natural Resources	No potential for significant impacts or undue adverse impacts; see discussion of all individual natural resource criteria. <i>See Wildey Affidavit.</i>
• Aesthetics	No potential for significant impact; Project already contains like-kind infrastructure. <i>Lisai Affidavit.</i>
• Primary Agricultural Soils	No potential for significant impact; no agricultural soils in area of proposed changes to the Project. <i>See Wildey Affidavit.</i>
Section 248(b)(6) – Integrated Resource Plan	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>
Section 248(b)(7) – Electrical Energy Plan	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>
Section 248(b)(8) - Outstanding Resource Waters	No potential for significant impacts or undue adverse impacts; there are no ORWs present in the KCW Project Parcel. <i>See Wildey Affidavit.</i>
Section 248(b)(9) – Waste-to-Energy Facility	Not applicable.

Section 248(b)(10) – Transmission facilities	No potential for significant impact as the changes do not implicate this criterion in any way. <i>See Lisai Affidavit.</i>
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IV. Conclusion

Based on the above, as confirmed in the attached affidavits, the proposed changes to the Project are minor in nature and do not have the potential to cause significant impacts under any of the criteria of Section 248(b) or the general good of the state under Section 248(a). GMP therefore respectfully requests that the Commission issue a determination as soon as possible that the described changes are not a substantial change to the Project. In the alternative, should the Commission find that these changes have the potential for significant impact and that amendment of the CPG is required, GMP requests that the Commission approve these changes based on the supporting information provided demonstrating that, in light of the mitigation steps GMP will take in accordance with the ANR construction and existing INDS permit, the changes will not result in any undue adverse impacts under any of the relevant Section 248 criteria.

DATED at Burlington, Vermont this 21st day of July, 2020.

BY: GREEN MOUNTAIN POWER CORPORATION



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