

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Green Mountain Power Corporation request for a	)	Case No. 20-1951-PET
non-substantial change determination, or in the	)	
alternative amend the CPG issued to the Lowell	)	
Mountain Kingdom Community Wind Project in	)	
Docket 7628	)	

**VERMONT AGENCY OF NATURAL RESOURCES COMMENTS IN
RESPONSE TO GREEN MOUNTAIN POWER’S PETITION FOR NON-
SUBSTANTIAL CHANGE DETERMINATION**

On July 22, 2020, Green Mountain Power Corporation (“GMP”) filed a petition seeking a non-substantial change determination for changes to its approved plans related to level spreaders which it had constructed at its Lowell Mountain Kingdom Community Wind Project (“Project”).

On that same day, the Vermont Public Utility Commission (“Commission”) issued an order establishing a deadline of July 31, 2020 for comments and recommendations in response to GMP’s petition.

The Vermont Agency of Natural Resources (“Agency”) now provides the following comments in response to GMP’s petition. The Agency’s comments are limited to the potential for the proposed changes to impact the natural environment criteria under Section 248(b)(5). The Agency defers to the Department of Public Service (“Department”) concerning any potential for the changes to impact safety, reliability and all other criteria typically reviewed by the Department.

DISCUSSION

Substantial Change

Commission Rule 5.408 defines a substantial change 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).”¹ GMP now proposes revisions to the Project consisting of relocating four of the “level spreaders” which were constructed as part of the Project’s stormwater treatment system. The Agency has reviewed GMP’s petition and concludes that the proposed changes are substantial changes because they have the potential to have a significant impact on the natural environment criteria of Section 248(b)(5), in particular soil erosion, waste disposal, water quality, natural communities, and forest and ecological integrity. As such, the proposed changes require an amendment to GMP’s certificate of public good (“CPG”). The Agency does not oppose an amendment to GMP’s CPG provided it is conditioned on the recommendations contained in these response comments.

Stormwater

Level spreaders are a stormwater treatment practice which is authorized under GMP’s operational stormwater permit.² Stormwater travels to the level spreaders via ditch turnouts that convey runoff from the Project’s roadside ditches.³ Downgradient vegetative buffers act to filter and disconnect the stormwater from surface waters on the Project site.⁴ Relocating the four level spreaders, as proposed, will result in over an acre of earth disturbance and will require that erosion and sediment control measures be utilized in accordance with a construction stormwater permit which has been issued by

¹ PUC Rule 5.408.

² See, Affidavit of Robert Wildey dated July 21, 2020 at 2.

³ *Id.*

⁴ *Id.*

the Agency.⁵ Earth disturbance and stormwater runoff have the *potential* for significant impact on soil erosion, waste disposal, and water quality.⁶ Therefore, the proposed changes are substantial changes.

Non-Native Invasive Species

Montane Spruce-Fir and Montane Yellow Birch-Red Spruce Forests exist at the Project site.⁷ Impacts to these forests are considered impacts on the natural environment under Section 248(b)(5).⁸ The Agency expressed concern over the risk of the introduction of non-native invasive species (“NNIS”) into the natural communities of the Lowell Mountains during the Commission’s review of the Project.⁹ NNIS are aggressive colonizers of bare soils that have been exposed during construction or erosion.¹⁰ Approval of the Project was conditioned on GMP performing post-construction NNIS monitoring.¹¹ NNIS monitoring conducted during 2019 documented NNIS adjacent to stormwater treatment infrastructure and roadside ditches at the Project site.¹² The Project access road is an area where new occurrences of large NNIS populations have recently increased, including “a substantial increase” along the southern portion of the access

⁵ *Id.*, at 4-5.

⁶ *See, Petition of Green Mountain Power Corporation*, Docket No. 7628, Final Order dated 5/31/2011 at 55.

⁷ *Id.*, Finding 337 at 115. These two natural communities occur beginning at around 2,000 feet at the higher elevations of the Project site (i.e., near and along the ridgeline). At lower elevations, including along the Project’s access road, the natural community type is northern hardwood forest. This northern hardwood forest is part of a large natural community around Lowell Mountain and is likely considered state significant due to its large size.

⁸ *See, Petition of Green Mountain Power Corporation*, Docket No. 7628, Order Re Motions and Requests for Modification, Amendment, Clarification and Correction dated 7/12/2011 at 29-30.

⁹ *Petition of Green Mountain Power Corporation*, Docket No. 7628, Final Order dated 5/31/2011 Finding 347 at 117.

¹⁰ *Id.*, Finding 348 at 117.

¹¹ *Id.*, Finding 367 at 123 (referencing Section 6 of the Natural Resource MOU).

¹² *See, Attachment A to Agency Comments dated 7/31/2020, VHB Year 7 (2019) Non-Native Invasive Species Monitoring Memorandum – Wind Farm*, dated December 30, 2019 at 3-4.

road.¹³ According to the 2019 VHB NNIS Monitoring Report, vehicular use of the

Project's access road appears to be a vector for the spread of NNIS within the Project.

The relative increase in the populations of spotted knapweed and reed canary grass along the South Access Road may be due to the relatively high amount of vehicular activity at this location. Conversely, the occurrences of invasive species along the crane path and turbine pad slopes are declining. These areas experience significantly less vehicular traffic, suggesting that NNIS propagation may be linked in part to vehicular traffic.¹⁴

Two of the level spreaders which are now proposed to be relocated are adjacent to the southern portion of the access road in areas where there are large populations of NNIS.¹⁵ Although not indicated, it is understood that relocation of all four level spreaders will entail the use of vehicles, construction machinery and equipment which will need to access the Project via the Project's access road. Vehicles, construction machinery and equipment have the *potential* to introduce NNIS into the Project area and to transport existing NNIS from one Project area to another Project area. Introduction of new NNIS and transport of existing NNIS would result in a significant impact on forest and ecological integrity and the natural communities within which the Project is located.¹⁶ Therefore, the proposed changes are substantial changes.

GMP proposes that the areas associated with the relocation of the four level spreaders will be included in the annual NNIS monitoring activities presently performed

¹³ *Id.*, at 6. NNIS have increased throughout the Project area. *See*, Attachment A, Figure 1 at 5.

¹⁴ *Id.*, at 7.

¹⁵ *See*, Sheet 6 of 6 in Attachment 1 (electronic .pdf file page 16 of 37) to the 2019 VHB NNIS Monitoring Report (Attachment A to Agency Comments dated 7/31/2020); *see also*, Exhibit GMP-RAW-2, Sheet C-01 (Level Spreader LS-A8) and Sheet C-02 (Level Spreader LS-A9).

¹⁶ Significantly, NNIS may be transported from the lower elevations, and associated level spreader work areas, along the southern access road where the NNIS are abundant to the higher elevations, and associated level spreader work areas, where NNIS are less abundant.

for the Project.¹⁷ However, GMP does not address the need for pro-active measures designed to avoid the introduction of new NNIS into the Project area or prevent the spread of existing NNIS from one area of the Project site to another in connection with the level spreader relocation work.¹⁸ In Addition, GMP has not included a comprehensive NNIS prevention, monitoring and control plan with its change request.

Considering the increase in NNIS from 2013-2019, a comprehensive NNIS prevention, monitoring and control plan is necessary for the proposed changes to avoid resulting in a significant impact on the natural environment, in particular natural communities and forest and ecological integrity. Therefore, the Agency recommends that approval of GMP's proposal to relocate four level spreaders be conditioned on GMP developing a comprehensive NNIS prevention, monitoring and control plan and obtaining written approval of the plan by the Agency prior to conducting any vegetation clearing or earth disturbing activities related to relocation of the level spreaders at the Project site.

CONCLUSION

The Agency concludes that GMP's proposed changes are substantial changes that require an amendment to the Project's existing CPG. The Agency does not object to the Commission's approval of the changes and issuance of an amended CPG provided that such approval is conditioned on compliance with the following provisions:

1. GMP shall comply with the authorization under VT DEC Construction Stormwater General Permit (#3-9020) issued on July 17, 2020;

¹⁷ See, Affidavit of Robert Wildey dated July 21, 2020 at 10.

¹⁸ For example, such measures may include pretreatment of NNIS and removing all visible soil and plant material from construction equipment before it is brought onto the Project site or before moving the equipment from one area of the Project site to another area.

2. Appropriate Erosion Prevention and Sediment Control (“EPSC”) practices shall be followed during the construction of the level spreader relocation project;
3. GMP shall comply with VT DEC Operational Stormwater Discharge Permit #6216-INDS;
4. GMP shall develop a comprehensive NNIS prevention, monitoring and control plan and obtain written approval of the plan by the Agency prior to conducting any vegetation clearing or earth disturbing activities related to relocation of the level spreaders at the Project site; and
5. GMP shall comply with all terms and conditions of its CPG dated May 31, 2011.

Dated July 31, 2020, at Waterbury, Vermont.

Respectfully submitted,
State of Vermont
Agency of Natural Resources



By: _____

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