

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 20-1951-PET

Green Mountain Power Corporation request for a non-substantial change determination, or in the alternative amend the CPG issued to the Lowell Mountain Kingdom Community Wind Project in Docket 7628	
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Order entered: 08/03/2020

ORDER GRANTING REQUEST FOR AMENDMENT TO CERTIFICATE OF PUBLIC GOOD

I. INTRODUCTION

On May 31, 2011, the Vermont Public Utility Commission (“Commission”) issued an order and certificate of public good (“CPG”) to Green Mountain Power Corporation (“GMP”), Vermont Electric Cooperative, Inc. (“VEC”), Vermont Electric Power Company, Inc., and Vermont Transco LLC (together “VELCO”) pursuant to 30 V.S.A. § 248, to construct up to a 63 MW wind electric generation facility on Lowell Mountain in Lowell, Vermont, and for the installation or upgrade of approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield, and Jay, Vermont (the “Project”).¹

On July 22, 2020, GMP filed a petition seeking a non-substantial change determination for certain changes it plans to make to its previously approved stormwater features plan for the Project. In the alternative, GMP seeks an amendment to its CPG.

In today’s Order we determine that the changes proposed by GMP raise the potential for significant impact under several criteria of Section 248 and therefore require an amendment to GMP’s CPG. We also determine that, subject to conditions, the proposed changes will not result in any undue adverse impacts under the applicable criteria and therefore issue an amendment to the existing CPG authorizing the proposed changes.

II. PROCEDURAL HISTORY

On May 31, 2011, the Commission issued the CPG to GMP for the Project.

¹ GMP was largely responsible for the construction of the generation facility and related infrastructure on Lowell Mountain, while VEC and VELCO were largely responsible for the related transmission line and substation upgrades.

Condition 16 of the CPG required GMP to obtain Commission approval of, among other things, a plan for the control of stormwater runoff at the site of the turbines and their associated infrastructure on Lowell Mountain.² The Commission approved the plan by order dated July 19, 2011.³ GMP was also required to obtain an Individual Stormwater Discharge Permit (“INDS”) for the stormwater features plan from ANR.⁴ GMP received that permit on August 19, 2011.⁵ The approved stormwater features plan consisted of 16 stormwater ponds, 31 level spreaders, five grass channels, and one infiltration basin.⁶

On July 22, 2020, GMP filed a petition seeking a non-substantial change determination for certain changes it plans to make to four of the level spreaders contained in its previously approved stormwater features plan. In the alternative, GMP seeks an amendment to its CPG. GMP’s petition was accompanied by two supporting affidavits and four exhibits.

On July 22, 2020, the Commission issued an order seeking comments on GMP’s request.

On July 31, 2020, the Vermont Department of Public Service (“Department” or “DPS”), the Vermont Agency of Natural Resources (“ANR”), and Vermonters for a Clean Environment, Inc. (“VCE”) each filed comments on GMP’s petition.

III. DISCUSSION AND CONCLUSION

Commission Rule 5.408 states:

An amendment to a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal. For the purpose of this subsection, a substantial change is one 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).

Additionally, the Condition 1 of the Project’s CPG requires that:

Construction, operation, and maintenance of the Project shall be in accordance with the with the findings and requirements in today’s Order in this Docket.

² *Joint Petition of Green Mountain Power Corporation, et al.*, Case No. 7628, CPG dated 5/31/11.

³ Case No. 7628, Order of 7/19/11 at 10-11, 20.

⁴ CPG at Condition 29.

⁵ Lisai affidavit at ¶ 6.

⁶ *Id.*

According to GMP, the changes to the four level spreaders proposed by its petition are minor and will continue the same stormwater treatment practices already authorized under the existing stormwater permits. GMP states that it has consulted with ANR regarding the proposed changes. According to GMP, ANR agrees that the revisions do not constitute a material change for purposes of the separate INDS permit for the facility, and a construction stormwater permit authorization has been issued for the new work. GMP states that ANR has also 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 to previously disturbed Project areas.⁷

The changes proposed by GMP consist of:

- Existing Level Spreader #8 (LS-A8) will be removed and relocated to a new location approximately 450 feet north from its 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.⁸
- Other changes such as additional or modified culvert placement or regrading would be included to ensure proper redirection of stormwater runoff to the newly relocated level spreaders.⁹

According to GMP, the changes are needed to correct an unintended mapping discrepancy that resulted in portions of the four level spreaders extending beyond the Project parcel and into surrounding land parcels that were preserved as mitigation for Project impacts.¹⁰

⁷ Petition at 2.

⁸ Lisai affidavit at ¶ 12; Wildey affidavit at ¶ 6; exh. GMP-RAW-2.

⁹ Wildey affidavit at ¶ 6; exh. GMP-RAW-2.

¹⁰ Lisai affidavit at ¶¶ 8-11.

Relocating the four level spreaders will allow GMP to avoid entering the mitigation parcels to perform periodic maintenance that includes removing accumulated sediment and recompacting crushed stone within the level spreaders. The relocation will also ensure that all Project infrastructure is on land controlled by GMP and will address the underlying landowner's desire that all Project features be located on the KCW Project Parcel.¹¹

Relocation of the four level spreaders within the same sub-watershed and treatment of the runoff will be done under the existing INDS. GMP has also confirmed with ANR that the relocations and associated changes will be reflected in the upcoming renewal of the INDS permit.¹²

The proposed changes to the Project will result in approximately one acre of soil disturbance during construction. GMP has obtained authorization under Vermont Department of Environmental Conservation Construction Stormwater General Permit (#3-9020) for the work. The area of disturbance includes construction of the new level spreaders and limited disturbance to remove the existing level spreaders and associated ditch turnouts. There will be no changes to the vegetated buffers within the mitigation parcels. GMP will implement all appropriate Erosion Prevention and Sediment Control practices during construction of the Project changes.¹³

According to GMP, ANR has reviewed the proposed level spreader relocations and has determined that no State wetlands permit is required. GMP has obtained approval from the United States Army Corps of Engineers under Section 404 of the Clean Water Act under General Permit #19 for limited impacts to a small Class III wetland located near one of the proposed new level spreader locations.¹⁴

GMP states that ANR has requested that GMP comply with two conditions in connection with the proposed changes. First, ANR has requested that areas disturbed during construction be stabilized and restored to their natural conditions as much as possible. Once stabilized, the areas may be allowed to passively regenerate. Second, ANR has requested that the reclaimed areas and new level spreader locations be monitored for invasive plant species and that invasive

¹¹ Lisai affidavit at ¶ 11.

¹² Lisai affidavit at ¶ 13.

¹³ Lisai affidavit at ¶ 14; Wildey affidavit at ¶ 14.

¹⁴ Lisai affidavit at ¶ 14.

species be removed for at least five years. GMP represents that it is agreeable to these requested measures.¹⁵

ANR states that the proposed changes have the potential for significant impact under criterion (b)(5) as it relates to soil erosion, waste disposal, water quality, natural communities, and forest and ecological integrity. ANR does not oppose an amendment to the CPG authorizing the relocation of the four level spreaders as long as the following conditions are imposed on the amendment:

- GMP shall comply with the authorization under ANR's Department of Environmental Conservation ("VT DEC") Construction Stormwater General Permit (#3-9020) issued on July 17, 2020;
- GMP shall follow appropriate Erosion Prevention and Sediment Control ("EPSC") practices during the construction of the level spreader relocation project;
- GMP shall comply with VT DEC Operational Stormwater Discharge Permit #6216-INDS;
- GMP shall develop a comprehensive non-native invasive species ("NNIS") prevention, monitoring, and control plan and obtain written approval of the plan from ANR before conducting any vegetation clearing or earth-disturbing activities related to relocation of the level spreaders at the Project site; and
- GMP shall comply with all terms and conditions of its CPG dated May 31, 2011.

The Department states that it does not believe that the proposed changes constitute a substantial change. However, the Department defers to ANR because much of the work associated with the relocation project falls within ANR's expertise.

Vermonters for a Clean Environment states that the proposed changes raise significant issues with respect to headwaters, streams, soil erosion, waste disposal, and invasive species. VCE recommends that the Commission:

¹⁵ Lisai affidavit at ¶ 15.

- Use its billback authority and hire its own independent experts to evaluate the site and the relocation of the four level spreaders and the use of level spreaders generally;
- Require GMP to test and report to the Commission on the contents of sediment removed from the Project's soil spreaders before allowing more sediment to be disposed of on-site;
- Require GMP to conduct invasive species monitoring for the life of the Project, with the removal of invasive species accomplished through hand pulling rather than chemical remediation.

Our review of the petition, supporting affidavits and exhibits, and the comments leads us to conclude that the changes proposed to the four level spreaders have the potential for significant impacts on soil erosion, waste disposal, water quality, natural communities, and forest and ecological integrity under criterion (b)(5) of Section 248.

The extent of the earth disturbance required and the presence of stormwater runoff have the potential for undue impacts related to soil erosion, waste disposal, and water quality if the work is not performed properly. We find that the first, second, and third conditions proposed by ANR, along with the ongoing compliance with other related conditions in the existing CPG, will address these concerns and prevent any undue impacts.

The comments filed by VCE on these topics go beyond the issues raised by GMP's proposed changes and challenge the effectiveness of level spreaders at the Lowell Mountain site generally. Its comments recount many of the concerns that VCE raised regarding the use of level spreaders in a variety of forums dating back to 2011. VCE also asserts that existing problems will be exacerbated by the relocation of level spreader LS-A24 because that level spreader will now discharge water to an even steeper slope than it does from its current location.

The use of level spreaders at the Lowell Mountain site was already heavily litigated and found acceptable under applicable statutes and regulations.¹⁶ GMP's current request is not an opportunity to relitigate these issues that were decided many years ago. Rather, GMP's request

¹⁶ See Case Nos. 7628A-E, Order of 3/20/13; *In re ANR Permits in Lowell Mountain Wind Project*, 196 Vt. 467 (2014).

presents an opportunity to ensure that the relocation of four of the 31 approved level spreaders is done consistent with the requirements and goals of the existing permits. We find that ANR's proposed conditions achieve that end. We therefore decline to adopt any additional recommendations made by VCE.

Both VCE and ANR also express concerns about the potential for the introduction of non-native invasive species ("NNIS") as a result of the proposed changes and the potential for impacts to natural communities and forest and ecological integrity. As a result, ANR has requested that GMP be required to develop a comprehensive NNIS prevention, monitoring, and control plan and to obtain ANR's written approval of that plan before GMP can begin any earth-disturbing activities related to the proposed relocations. We find that the proposed condition is adequate to address VCE's and ANR's concerns. We note that we expect both GMP and ANR to account for their experiences to date with NNIS at the Project site and the effectiveness of the NNIS plan required by the existing CPG when developing, reviewing, and approving the NNIS plan required by the proposed condition.

In today's order we also admit into the evidentiary record of this proceeding GMP's July 22, 2020, petition, the affidavits of Jason Lisai and Robert Wildey, both dated July 21, 2020, and exhibits GMP-RAW 1 through 4.

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission ("Commission") that:

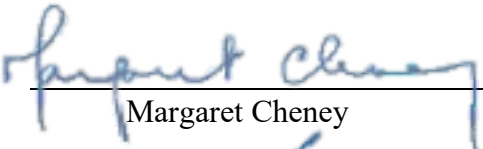
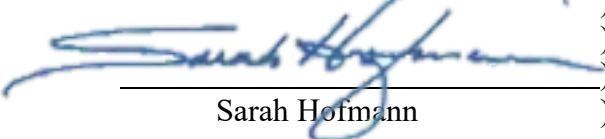
1. The changes to the Lowell Mountain Kingdom Community Wind Project constructed and operated by Green Mountain Power Corporation ("CPG Holder") in the Town of Lowell, Vermont (the "Project"), as described in the evidence submitted in this proceeding, will promote the general good of the State of Vermont pursuant to 30 V.S.A. § 248, and an amendment to the certificate of public good ("CPG") issued in Case No. 7628 on March 31, 2011, to that effect shall be issued in this matter.

2. All future compliance filings related to the Project shall be made in the compliance subcase of this case, Case No. 20-1951-PET, using ePUC.

3. As a condition of this Order, the CPG Holder shall comply with all terms and conditions set out in the certificate of public good issued in Case No. 7628 and the amendments issued in conjunction with this Order.

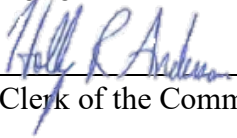
4. The Commission will close Case No. 20-1400-LCOMP.

Dated at Montpelier, Vermont this 3rd day of August, 2020.

	)	
Margaret Cheney	)	PUBLIC UTILITY
	)	
	)	COMMISSION
Sarah Hofmann	)	OF VERMONT

OFFICE OF THE CLERK

Filed: August 3, 2020

Attest: 
Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

PUC Case No. 20-1951-PET - SERVICE LIST

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