

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7156

Petition of UPC Vermont Wind, LLC, for a Certificate of )  
Public Good, pursuant to 30 V.S.A. § 248, authorizing the )  
construction and operation of a 52 MW wind electric )  
generation facility, consisting of 26 wind turbines, and )  
associated transmission and interconnection facilities, in )  
Sheffield and Sutton, Vermont )

Order entered: 6/7/2006

**ORDER RE MOTIONS TO INTERVENE OF THE TOWN OF WESTMORE  
AND CLINT AND MARY GRAY**

Today's Order addresses intervention requests filed with the Public Service Board ("Board") by the Town of Westmore ("Westmore") and Clint and Mary Gray. These intervention requests were filed with the Board on May 8 and May 9, 2006, respectively. However, it did not appear that these motions were filed with the parties as required by the Board rules.

On May 18, 2006, the Board issued a memorandum stating that these motions did not appear to be properly filed and requiring Westmore and the Grays to "file a letter explaining whether they did, in fact, provide copies of their intervention request to parties in this Docket" and to "explain why their motions should be considered at this late date."

On May 24, 2006, the Grays filed a letter with the Board stating that the Clerk's office had informed them that all copies were to be filed with the Board and the Board would then distribute the copies to all parties.<sup>1</sup> The Grays' intervention request lists three issues on which they would like to participate: decommissioning; the potential for oil pollution stemming from the proposed project; and whether an application must be filed separately with each affected town.

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1. We are confident that the Clerk's office would not provide erroneous information regarding the Board's filing requirements. However, we acknowledge that there is always the possibility that the Grays misunderstood the directions from the Clerk's office.

On May 17, 2006, the Department of Public Service ("Department") filed a response to the Grays' motion.<sup>2</sup> The Department states that it has no objection to the participation of the Grays on issues related to the decommissioning fund and the potential impacts of the proposed project on the natural environment. However, the Department asserts that the topic of separate applications for the Towns of Sheffield and Sutton is not "a relevant issue for consideration by the Board and the Grays should therefore not be granted party status to address that issue." Additionally, the Department recommended that the Board remind parties that testimony on technical issues must be presented by qualified witnesses.

On May 31, 2006, UPC Vermont Wind, LLC ("UPC") filed an objection to the Grays' motion. UPC contends that the motion "should be denied because it is both procedurally and substantively defective." UPC asserts that the Grays' explanation as to why the Grays did not file the initial motion with all parties is insufficient, considering that the Board's *Citizen's Guide to Section 248* explicitly states that "the motion to intervene, as well as any other filings in the case, must be filed with the Board and all parties."<sup>3</sup> Additionally, UPC contends that the Grays "have not demonstrated a substantial interest which may be adversely affected by the outcome of the proceeding, have not demonstrated that their concerns are not adequately represented by other parties, or whether alternative means exist to address their concerns." UPC recommends that the Board deny the Grays' motion.

UPC is correct that the Grays have not satisfied the required showing to support the Grays' intervention request. The Grays have not demonstrated that they have a substantial interest that may be adversely affected by the outcome of this Docket. Instead, the Grays raise generalized concerns with the proposed project without demonstrating that they themselves have a substantial interest that may be impacted by the proposed project. The general concerns expressed by the Grays, involving decommissioning and pollution, are concerns that are typically addressed by the Department and the Agency of Natural Resources. For these reasons, we deny

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2. In determining whether the parties had received the initial intervention requests of the Grays and Westmore, the Clerk of the Board contacted the Department regarding the motions and provided copies to the Department upon request.

3. Guide at 7. UPC also notes that the Grays indicated in their filing that they reviewed the Guide.

the Grays' motion. We note that the Grays may provide input into the process through comments filed as members of the public and may receive orders and hearing notices issued by the Board if they choose to be added to the interested persons list.

On May 25, 2006, the Town of Westmore filed a motion to intervene with the Board. The motion did not address whether it had originally filed the intervention requests with the parties or provide a statement as to why the motion should be considered at this late date. Westmore's intervention request states that the town is concerned with the potential impact that the proposed project could have on tourism and the aesthetics of the area.

On May 17, 2006, the Department filed a letter stating that it had no objection to the Board allowing Westmore to intervene on the issues raised in its motion. Additionally, the Department recommended that the Board remind parties that testimony on technical issues must be presented by qualified witnesses.

On May 31, 2006, UPC filed a letter stating that it does not object to Westmore's request.

In its motion to intervene, Westmore has identified a specific, substantial interest that may be adversely affected by the outcome of this Docket; its interest in ensuring that the proposed project would not adversely affect its tourist-based economy. Additionally, the Commission on Wind Energy Regulatory Policy recommended that any town within ten miles of a proposed commercial wind turbine be provided notice of the proposed project. The Board has adopted this recommendation in a draft rule and UPC had provided notice to the Town of Westmore pursuant to the draft rule. The Board's practice has been to allow towns entitled to notice to intervene in Section 248 cases, absent any objection.

We grant Westmore permissive intervention, pursuant to Board Rule 2.209(B). Westmore is allowed to participate on issues related to Section 248(b)(1) orderly development, Section 248(b)(4) economic benefit, and Section 248(b)(5) aesthetics. However, we are concerned that Westmore failed to follow the requirements set forth in our May 18 memorandum. Westmore, as well as all parties, is responsible for following requirements set out by the Board; whether these requirements are in the form of the Board's procedural rules or written instructions conveyed to the parties in the form of a memorandum. If a party cannot

fulfill such requirements, it is opening itself up to sanctions. We also remind Westmore that testimony on technical issues must be presented by qualified witnesses.

SO ORDERED.

Dated at Montpelier, Vermont, this 7<sup>th</sup> day of June, 2006.

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|------------------------|---|----------------|
| <u>s/James Volz</u>    | ) |                |
|                        | ) | PUBLIC SERVICE |
|                        | ) |                |
| <u>s/David C. Coen</u> | ) | BOARD          |
|                        | ) |                |
|                        | ) | OF VERMONT     |
| <u>s/John D. Burke</u> | ) |                |

OFFICE OF THE CLERK

FILED: June 7, 2006

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*