

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: 7/20/2006

ORDER RE MOTION TO COMPEL

I. Introduction

On June 30, 2006, Universal Health Service, Inc., UHS of Sutton, Inc. (collectively "UHS"), and Ridge Protectors, Inc. ("RPI") filed a motion to compel directed to UPC Vermont Wind, LLC ("UPC"). In today's Order, the Public Service Board ("Board") denies in part and grants in part UHS and RPI's motion to compel.

UHS and RPI's motion requested that the Board compel UPC to:

(1) identify and produce allegedly confidential business information responsive to discovery requests, subject to an appropriate Board protective order; (2) put in place a standard form of protective agreement and request a protective order to facilitate the production of confidential business information; and (3) produce a privilege log identifying the documents for which each claim of privilege has been made.

In addition, UHS and RPI's motion requested that the Board assign a discovery officer to convene a discovery conference.

On July 13, 2006, UPC filed a motion for a protective order and requested that the Board approve a protective agreement between UPC and the Department of Public Service ("Department"). The motion for a protective order is addressed in a separate order issued by the Board today.

On July 18, 2006, UPC filed a response to the motion to compel. UPC contends that it "has already produced all relevant, responsive, non-privileged items that are sought by RPI/UHS in their Motion to Compel; consequently, the motion is moot." UPC objects to the production of documents related to the following issues based on the claim that the requested information is not

relevant to these proceedings or reasonably calculated to lead to the discovery of admissible evidence: (1) information redacted from property agreements; (2) documents and information specifically related to the negotiation of property agreements; (3) documents and information specifically related to the negotiations of an agreement with the Town of Sheffield ("Sheffield"); and (4) information related to UPC projects, worldwide, that are in the planning stage.

II. Discussion

To the extent that RPI and UHS seek confidential information from UPC, the issue is moot due to the protective agreement approved by the Board today. If UHS and RPI seek information that is confidential, they may sign the protective agreement that we have approved. The only remaining issue concerns the relevance of the four categories of information, which we address below.

Information redacted from property agreements

UHS and RPI specifically requested:

UHS/RPI:UPC1-6 With respect to the land on which the project will be situated:

- a) Identify all persons from whom UPC or its affiliates has leased land or made other arrangements for the use of land for this project.
- b) Produce all lease agreements and other agreements and arrangements for or concerning the land on which this project will be situated.
- c) State the total amount of land leased.

UPC provided a full response to the part (c) of the question and stated, in response to parts (a) and (b) of the question, that it would be filing copies of the leases in response to a June 7, 2006, memorandum from the Board.

The Board's June 7, 2006, memorandum requested that UPC file copies of the lease agreements between UPC and the property owners. In the memorandum requesting the leases, the Board stated "[i]f it wishes, UPC may redact any financial information contained in the leases prior to submittal." On June 14, 2006, UPC filed redacted copies of the lease agreements.

The names of the property owners is not relevant to the Board's proceedings in this case; nor has UHS and RPI made a showing that such information appears reasonably calculated to

lead to the discovery of admissible evidence. UHS and RPI's motion to compel production of documents related to this information is denied.

Information related to the Negotiation of Property Agreements

UHS and RPI specifically requested that UPC "[p]roduce all correspondence and documents sent or provided by UPC and UPC affiliates to owners and/or managers of land in Sutton, Sheffield, and other Vermont towns." UPC has provided a response to this request but contends that any documents or correspondence related to negotiations with the lessors is irrelevant.

The negotiations that led to the agreement between UPC and the lessors is not relevant to the Board's proceedings in this case; nor has UHS and RPI made a showing that such information appears reasonably calculated to lead to the discovery of admissible evidence. UHS and RPI's motion to compel production of documents related to this information is denied.

Documents and Information Specifically Related to the Negotiation of an Agreement with Sheffield

UHS and RPI specifically requested that UPC "[p]roduce all documents and correspondence sent or provided by UP and UPC affiliates to town representatives, selectboards, commissions, and similar bodies in Sutton, Sheffield, and other Vermont towns." UPC has provided a response to this request but contends that any documents or correspondence related to negotiations between UPC and Sheffield are irrelevant.

UPC asserts that the agreement itself might be relevant to the Section 248 criteria, but the negotiations are not relevant. UPC states that "Section 248 does not ask the Board to determine whether the Town of Sheffield got the best deal possible. Rather it asks only whether the project will, or will not, 'result in an economic benefit to the state and its residents.'"

UPC is correct that Section 248(b)(4) requires only that the Board find that a proposed project would result in an economic benefit. However, the Board is required to make a broader finding that a proposed project promotes the public good. Information that may show that the overall benefits of the project are significantly below the potential benefits may be relevant to

this inquiry. Consequently, the documents sent by UPC to Sheffield could lead to the discovery of admissible information that could be relevant. UHS and RPI's motion to compel documents related to this information is granted. UPC is required to disclose information related to the negotiations between UPC and Sheffield with the exception of documents and correspondence that falls within the bounds of the attorney-client privilege.

In determining that UPC must disclose the information, we are informed by the fact that, notwithstanding our previous admonitions, UPC filed its response to UHS and RPI's motion beyond the deadline for responses.¹ We therefore could have disregarded UPC's filing entirely.

Information related to UPC projects that are in the Planning Stage

UHS and RPI specifically requested that UPC "[p]rovide a complete list of UPC projects worldwide categorized by level of completion (planned, in permitting, in construction, operating) with reference and citation to the regulatory proceeding(s) in which each was approved." UPC provided a partial response to this question but objects that information relating to projects in the planning stage is irrelevant.

Information relating to UPC's plans for future projects is not relevant to the Board's proceedings in this case; nor has UHS and RPI made a showing that such information appears reasonably calculated to lead to the discovery of admissible evidence. UHS and RPI's motion to compel production of documents related to this information is denied.

II. Conclusion

For the reasons stated above, we deny in part, and grant in part, UHS and RPI's motion to compel.

SO ORDERED.

1. We have previously expressed to UPC, in explicit terms, the need to be responsive to deadlines: "The Board is troubled that UPC, for whom several lawyers have filed notices of appearance, filed responses to some intervention requests beyond the deadline for such responses. The Board expects that future submittals in this Docket, by all parties, will be filed in a timely manner." Docket 7156, Order of 4/27/06 at 1.

Dated at Montpelier, Vermont, this 20th day of July, 2006.

<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: July 20, 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)