

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: 8/8/2006

CLARIFICATION OF THE BOARD'S JULY 20, 2006, ORDER RE MOTION TO COMPEL

On July 20, 2006, the Public Service Board ("Board") issued an Order regarding a motion to compel documents in UPC Vermont Wind, LLC's ("UPC") possession. In that Order we ruled that UPC must provide documents to the moving parties regarding the negotiation of an agreement between UPC and the Town of Sheffield. Included in that Order was the following statement:

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. We therefore could have disregarded UPC's filing entirely.¹

The statement included the footnote:

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.

On July 26, 2006, UPC filed a letter with the Board contending that, under the Vermont Rules of Civil Procedure ("VRCP"), UPC's response to the motion to compel was timely filed. Upon review of the Rules of Civil Procedure, we have determined that UPC is correct; its response to the motion to compel was timely filed.

1. Docket 7156, Order of 7/20/06 at 4.

This misunderstanding arose from the general practice before the Board that responses to a motion are filed within 15 days of the time that the motion was filed with the Board, pursuant to VRCP 78. However, this practice does not take into account VRCP 6(e), which adds three days to the prescribed time period. Since the Board has not specifically stated in this Docket that filings must be filed within 15 days after a motion is filed with the Board, the three additional days apply.

Our current conclusion of the timeliness of UPC's response to the motion to compel does not alter the outcome of our July 20 Order. The July 20 Order stated that our decision was informed by the (incorrect) fact that UPC's response was beyond the deadline for responses; however, that factor was not decisive in our conclusion that UPC must provide the requested information to the moving parties. We also note that UPC's July 26 letter does not ask the Board to reconsider the July 20 Order based upon this mistake.

Notwithstanding the error in the July 20 Order regarding the timeliness of UPC's response to the motion to compel, the substance of our July 20 decision remains unchanged.

SO ORDERED.

Dated at Montpelier, Vermont, this 8th day of August, 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: August 8, 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)