STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC, for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, authorizing the construction and operation of a 5-wind turbine electric generation facility, with associated electric and interconnection facilities, on Georgia Mountain in the Towns of Milton and Georgia, Vermont, to be known as the "Georgia Mountain Community Wind Project"	))))))))

Order entered: 12/9/2010

ORDER RE MOTION FOR PROTECTIVE ORDER

On October 21, 2010, Georgia Mountain Community Wind, LLC ("GMCW") filed a redacted version of a power purchase agreement ("PPA") that it has entered into with the City of Burlington Electric Department ("BED") for the sale of 100% of the energy, capacity, renewable energy credits, and ancillary services associated with GMCW's wind generation facility. In the same filing, GMCW also submitted a motion for confidential treatment of information, requesting that the Public Service Board ("Board") issue a protective order keeping confidential the redacted information which GMCW alleges is competitively sensitive. In this Order we deny GMCW's motion.

GMCW's Motion

Attachment 1 to the PPA, which includes pricing terms, is redacted in the copy filed with the Board.[1] GMCW contends that

> public disclosure of Attachment 1 would create a competitive disadvantage and cause cognizable harm to Petitioner and BED when negotiating future power purchase agreements, by revealing proprietary pricing information material to their respective bargaining positions, and would put them at a competitive disadvantage.

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1. Contrary to general Board practice, GMCW did not file an unredacted version of the PPA with the Board with its motion for a protective order, but instead states in the cover letter to its motion that it "will file the Confidential Information upon issuance of a Protective Order."

In addition, GMCW states that Section 14.1 of the PPA obligates the parties to the PPA to maintain the confidentiality of the terms and conditions of Attachment 1.

GMCW's filing also includes an averment addressing several factors, including the extent such allegedly confidential information is available outside the parties to the PPA, the measures taken to guard security, and the fact that GMCW is requesting that the information be kept confidential until the expiration of the PPA.

Comments on GMCW's Motion

On November 12, 2010, the Landowner Intervenors[2] filed a letter objecting to GMCW's motion. The Landowner Intervenors state that

> when Vermonters are being asked to make sacrifices, it is imperative that the state government be accountable, accessible and that there be no closed-door deals that even appear to favor the few. The public interest in being informed of the pricing terms of the power purchase agreement far outweighs the possible harm, if any to the Petitioner and the Burlington Electric Department.

In addition, the Landowner Intervenors state that "the Public Service Board should be mindful of a recent Federal Energy Regulatory Commission (FERC) ruling that feed-in tariffs or utility discretionary purchasing over avoidable costs is in violation of federal law."[3]

No other party filed comments on GMCW's motion.

Discussion and Conclusion

In our June 11 Order approving the wind generation facility, we noted that, pursuant to 30 V.S.A. § 248(a), this Board must "determine whether the Project will promote the general good of the state; in making this determination, we consider whether the benefits of the Project outweigh the impacts."[4] To ensure that the project will provide sufficient benefit to meet this

2. Scott and Melodie McLane, Daniel and Tina FitzGerald, Jane and Heidi FitzGerald, George and Kenneth Wimble, Matt and Kim Parisi, Kevin and Cindy Cook, and Kenneth and Virginia Mongeon.

3. The Board is aware of the FERC decisions referred to by the Landowner Intervenors, however, the decision relates to a specific category of power contracts and is not relevant to the PPA at issue here.

4. Docket 7508, Order of 6/11/10 at 80.

standard, we conditioned approval of the project "on GMCW entering into one or more contracts with a Vermont utility or utilities. We would expect these contracts to have three basic features; they should be stably priced, have prices favorable relative to market purchases, and collectively, comprise a substantial portion of the output of the facility."[5]

As the Landowner Intervenors note, Vermonters are being asked to make sacrifices due to the impacts of this project. While we have determined that the project will not have an undue adverse impact on the substantive criteria of Section 248, we also concluded that the power contracts for the project would be a factor in determining whether these impacts are outweighed by the benefits. The unredacted version of the PPA submitted to the Board and parties states that 100% of the output of the project will be sold to BED. However, without the pricing information, the public is hindered in its ability to understand, and judge for itself, the benefits of the project. Accordingly, GMCW must provide a sufficiently compelling rationale to keep information regarding these benefits confidential.

GMCW argues that the pricing terms of the PPA must be kept confidential to avoid putting both BED and GMCW at a competitive disadvantage. For the reasons stated below, we conclude that the motion does not provide sufficient support for this argument.

We first note that, under the PPA, 100% of the output of the project would be sold. GMCW is constructing the project primarily on private land owned by the Petitioner,[6] and there has been no indication that GMCW intends to construct any future wind generation facilities. GMCW has not explained how the release of the pricing terms can put it at a competitive disadvantage when it has entered into a PPA to sell 100% of the project output.

With respect to the potential harm to BED, we recognize that BED, in order to fulfill its responsibility to meet the needs of its ratepayers, must enter into future power contracts. However, the motion and accompanying averment do not provide sufficient justification for the assertion that BED would be put at a competitive disadvantage by the release of the pricing terms. BED might be put at a competitive disadvantage if the pricing terms that it agreed to in

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5. Docket 7508, Order of 6/11/10 at 82.

6. Docket 7508, Order of 6/11/10 at 11. GMCW is also leasing a portion of adjacent land.

the GMCW contract provided sufficient information to other generation companies of the price that BED is willing to pay for power. However, given the myriad of factors that are involved in negotiating a power contract, it does not appear that the price BED pays in one resource-specific contract would necessarily be relevant to negotiations concerning future power contracts.

Given the volatility in the electricity market, it is difficult to compare the price paid for power at one point in time with the price paid for a similar amount of power a few months later. In addition, there are a variety of generation options available, each with its own characteristics and commanding a different price. For example, intermittent, renewable generation would likely command a different price than baseload, fossil-fuel-fired generation or baseload, renewable generation. Even within the category of intermittent, renewable generation, the price terms would likely be significantly different for a solar project whose output generally coincides with peak demand and a wind project whose output generally coincides with off-peak demand. Further, the location of the generation project with respect to areas identified as congested by the Independent System Operator of New England would also play a factor in determining the appropriate price terms.

Finally, we note that BED is a party to this Docket and did not provide its own averment describing the potential harm that it could incur if the pricing terms of the PPA were made public.

In Docket 7156, the Board granted a motion for protective order keeping confidential the pricing terms of three power contracts that Vermont Wind, LLC had entered into with Vermont utilities. However, there are differences between the circumstances presented in that docket and those before us today. First, Vermont Wind requested that the Board keep the PPAs confidential only until such time that the Board has reviewed and approved all of the PPAs anticipated for the project, stating: "Premature release could affect present or future negotiations between Vermont Wind and other utilities interested in potentially purchasing power from the facility." Neither Vermont Wind nor the electric utilities contended that release of the pricing terms after Board approval would create a competitive disadvantage to the utilities. In contrast, GMCW is requesting that the PPA be kept confidential for the life of the contract.

Second, Vermont Wind provided, under seal, unredacted versions of the PPAs to the Board for review while GMCW has stated that it "will file the Confidential Information upon issuance of a Protective Order." Without the unredacted information, the Board is not in a position to fully evaluate whether the material should be kept confidential.

Third, in Docket 7156, there was no objection to Vermont Wind's motion for a protective order. In this case, the Landowner Intervenors have presented strong arguments that the pricing terms of the PPA should be made public, and neither GMCW nor BED has made any response to Landowner Intervenors' argument.

For the reasons stated above, we conclude that GMCW has not provided a sufficient rationale for keeping the pricing terms of the PPA confidential, and we deny GMCW's motion, without prejudice. In order to comply with the June 11 Order in this Docket, GMCW must file the PPA with the Board; however, the timing of filing the PPA is within the discretion of GMCW.[7] Accordingly, GMCW, or BED, has the option of filing a motion for reconsideration, with sufficient information to address the concerns expressed in this Order.

SO ORDERED.

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7. We note, however, that GMCW cannot commence construction of the project until the Board has reviewed the PPA and determined that it meets the criteria set forth in the June 11 Order.

Dated at Montpelier, Vermont, this 9th day of December, 2010.

s/ James Volz	)	
	)	PUBLIC SERVICE
	)	
s/ David C. Coen	)	BOARD
	)	
	)	OF VERMONT
s/ John D. Burke	)	

OFFICE OF THE CLERK

FILED: December 9, 2010

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: psb.clerk@state.vt.us)