STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7508

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| 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" | ) |

PREFILED TESTIMONY OF
SEAN A. FOLEY

ON BEHALF OF THE
VERMONT DEPARTMENT OF PUBLIC SERVICE

September 18, 2009

Summary: The purpose of Mr. Foley's testimony is to present the Department's overall recommendations with respect to the petitioner's request for a Certificate of Public Good (CPG) under 30 V.S.A. § 248, including specific recommendations on a number of criteria found in 30 V.S.A. § 248(b). In places, he will be incorporating or relying on the work and testimony of other Department witnesses.

# Prefiled Testimony
# of
# Sean Foley

Q. Please state your name and occupation.

A. My name is Sean A. Foley and I am a Utility Economic Analyst for the Vermont Department of Public Service ("Department" or "DPS"). My business address is 112 State Street, Montpelier, Vermont.

Q. Have you ever testified before the Vermont Public Service Board before?

A. Yes, I have testified in Docket Nos. 5270, 5965, 5970, 6018, 6120, 6430, 6495, 6596, 6750, 7032, 7373 and others.

Q. What is the purpose of your testimony?

A. I will present the Department's overall recommendations with respect to the petitioner's request for a Certificate of Public Good (CPG) under 30 V.S.A. § 248, including specific recommendations on a number of criteria found in 30 V.S.A. § 248(b). In places, I will be incorporating or relying on the work and testimony of three additional witnesses for the Department; Bill Jordan, Jean Vissering and Richard Letty. Accordingly, the Department believes that it should be allowed an opportunity to review the other parties' filings before it makes a final recommendation in this proceeding.

Q. Under which § 248 criteria will the Department be submitting recommendations?

A. The Department will be submitting recommendations on the following criteria under 30 V.S.A. § 248(b):

(1) whether the proposed project will unduly interfere with the orderly development of the region with due consideration having been given to the

recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality;

(2) whether the proposed project is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including but not limited to those developed pursuant to the provisions of sections 209(d), 218c, and 218(b) of Title 30;

(3) whether the proposed project will adversely affect system stability and reliability;

(4) whether the proposed project will result in an economic benefit to the state and its residents;

(5) whether the proposed project will have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and (9)(K);[1]

(6) whether the proposed project is consistent with the principles for resource selection expressed in the petitioner's approved least cost integrated plan;

(7) whether the proposed project is in compliance with the electric energy plan approved by the Department under section 202 of Title 30, or that there exists good cause to permit the proposed action; and,

(10) whether the proposed project can be served economically by existing or

[1] At this time, the Department’s comments will be limited to only issues concerning municipal services, aesthetics and public investment. The Department anticipates that the Agency of Natural Resources will present the state’s position on the other natural resource criteria.

planned transmission facilities without undue adverse effect on Vermont utilities or customers.

**30 V.S.A. § 248(b)(1)**

Q. Do you believe the project will unduly interfere with the orderly development of the region?

A. No. Based on GMCW witness Zimmerman's direct testimony, the development of wind energy on Georgia Mountain is both compatible with existing uses and reflects many of the expressed goals of the local community to develop more sustainable, clean, renewable energy resources in the region to serve the electrical needs of this area, it appears to me that this standard has been satisfied.

**30 V.S.A. § 248(b)(2)**

Q. Does the proposed project meet the need for present and future demand for service, which could not otherwise be provided in a more cost effective manner through energy conservation programs and measures and energy-efficiency and load management measures?

A. Yes. Many states, including Vermont and other states in New England, have established various types of programs designed to encourage the development of renewable energy sources through the payment of incentives. These incentives are paid to developers of qualifying renewable energy projects through the sale of Renewable Energy Certificates ("RECs"). It is the belief of policymakers in those states that renewable energy offers benefits which exceed the incentives offered to developers of renewable projects

Entities serving load in these states are required to have a specified portion of their load served with renewable energy. Ownership of RECs is the vehicle to meet that requirement. A qualifying renewable energy facility earns RECs by producing electricity. These RECs are then traded bilaterally or through brokers. Currently, prices for RECs have settled at a moderate level. This indicates to me that there remains a healthy demand for renewable energy. The proposed project would help meet that demand.

In Vermont, the legislature has adopted an analogous standard for the energy from renewable projects known as the "SPEED" Program. Subject to certain conditions, SPEED requires each Vermont retail electric utility to supply an amount of energy equal to its total incremental energy growth between January 1, 2005 and January 1, 2012 through the use of electricity generated by in-state new renewable resources. The Vermont legislature obviously believes that there is value in obtaining power from renewable energy resources in the state and has directed the utilities to do so. A wind project, such as this, could qualify under this program.

**30 V.S.A. § 248(b)(3)**

Q. Will the project have an adverse effect on system stability and reliability?

A. At this time, the Department does not believe the petitioner has submitted sufficient evidence to support a finding by the Board that there will be no such impact. I respectfully refer the Board to the testimony of Mr. Bill Jordan for a full explanation of the DPS' position on this criterion.

**30 V.S.A. § 248(b)(4)**

Q. Have you looked at the developer's testimony regarding economic benefits from the project?

A. Yes. I have reviewed the original pre-filed testimony the accompanying exhibits.

Q. Do you agree with the developer's findings regarding economic benefits from the project?

A. I agree with some of the conclusions, but find others to be tenuous.

Q. Which benefits do you agree with?

A. The project will provide an increased source of property tax revenue and several jobs.

Q. Do you consider these to be major benefits?

A. No. While the Board has recognized new jobs to be an economic benefit, as well as increases in funds available for education or municipal services, these benefits have not been viewed as sufficient in their own right to warrant approval of a project like this. For instance, in the UPC case (Docket 7156), the Board concluded that the project would satisfy the economic benefit standard, but only after imposing a condition requiring the developer to use its best efforts to enter into a stably priced power purchase agreement with Vermont utilities. The fact that the project would produce new jobs and increased tax revenues was acknowledged to be beneficial, but not sufficiently so.

Q. But this project has the potential to offer Vermont significant economic benefits, correct?

A. Potentially, yes, but at the present, this project's ability to deliver those benefits has not been established.

Currently, the developer has not actually entered into any stably priced contracts with any Vermont utility. In fact, at present, GMCW has no power purchase contracts on any terms with a Vermont utility. I therefore cannot say that approval of this project is in the public good.

Q. Could you explain what you mean by the term "stably priced contracts?"

A. Yes. I think of such contracts as having some feature or mechanism that prevents the purchase price from having the same degree of variability as market prices do. In other words, the price is not necessarily fixed for the life of the contract (although it can be) , it can be set to some index, have a collar, or other things of that nature, but at a minimum it provides some smoothing or tempering of the peaks and valleys often associated with market price movements over time. Additionally, this mechanism or feature is in-place for a meaningful period of time—a period of time long enough for the contract to provide stability to the buyer and seller. The intent of stably priced contracts is to provide some degree of price certainty for both the buyer and the seller.

Q. Do you think it is important for GMCW to enter into stably priced contracts with Vermont utilities as part of this project?

A. Yes. Section 248 requires that a project promote the public good of the state in order to receive a CPG. Just because a particular project satisfies all ten criteria under 30 V.S.A. § 248(b) does not necessarily mean that the project would promote the public good. As I understand it, Section 248 was created with an eye toward facilities that would be owned and operated by Vermont's utilities, thus ensuring that the benefits associated with ownership and operation of a facility would be shared with Vermont's ratepayers.

I believe a substantial economic benefit could be present if GMCW shows that it has in fact entered into a stably priced power purchase contract with a Vermont utility. Such a substantial economic benefit is necessary, in my view, because Vermont is bearing the burden of hosting the project. If Vermont is going to allow a merchant generation facility to utilize one of the state's valuable resources, its natural environment, then the state should receive something of comparable value in return, before a project is found to promote the public good.

Q. What are the economic benefits that result from stably priced contracts with Vermont utilities?

A. Those benefits include protection from: high fuel prices, volatile fuel prices and escalating emission costs. Other cited benefits, such as compliance with the SPEED program need to be reconsidered as well.

As a wind project, GMCW would have no fuel costs so essentially, it is a fixed cost resource. Furthermore, without any fuel costs, it is immune to rising and fluctuating fuel prices, especially in regard to fossil fuels. These are benefits that accrue to the owner but can only be shared by Vermont ratepayers if there is some kind of purchase agreement that allows this stability to be passed on to Vermont ratepayers. The alternative is contracts based on market prices. However, these contracts do not transfer the benefits of stability to Vermont. This does not necessarily mean that stably priced contracts will always be the preferred purchase method, but these instruments do offer Vermont an excellent method for capturing the economic benefits of a fixed-cost resource like GMCW. And of course, to the extent GMCW does not contract with Vermont utilities for either energy or potentially RECS, while there may be benefits to the region, there would not be, effectively, any direct benefit to Vermont.

Similarly, protection from escalating emission costs is also dependent on the project having stably priced contracts with Vermont utilities. Without these contracts, there may be benefits to the region but there would not, effectively be any direct benefits to Vermont. Finally, the SPEED program requires Vermont utilities to contract for power with in-state renewable sources. These contracts do not necessarily have to be stably priced to derive the SPEED benefit, but without some kind of contract with Vermont utilities, the project cannot contribute to the SPEED program as intended by the legislature.

**30 V.S.A. § 248(b)(5)**

Q. Will the project have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment and the public health and safety, with due consideration being given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and (9)(K) ?

A. I will address two issues under criterion 5 based on the criteria incorporated from Act 250.

**Scenic or Natural Beauty, Aesthetics, and**
**Rare and Irreplaceable Natural Areas**

[10 V.S.A. § 1424 a (d)(7) through (9) and § 6086(a)(8)]

Q. Do you have any concerns about the project's impact on public investments or impacts on the aesthetics of the surrounding environment?

A. No. Based on the testimony of DPS witness Jean Vissering and Richard Letty, the project will not result in undue adverse impacts on the scenic and natural beauty of the area and while the project may be audible from a few residences in certain atmospheric conditions, noise levels would not exceed standards that have been identified in other cases. Therefore I have no concerns that the project may unreasonably interfere with the public's use and enjoyment of any public investments or will have an unduly adverse impact on the surrounding visual environment.

**30 V.S.A. § 248(b)(6)**

Q. Is the proposed project consistent with the principles for resource selection expressed in the petitioner's approved least cost integrated plan?

A. In this instance, the petitioner is a merchant plant as opposed to a regulated utility providing distribution service. As a result, it is my understanding that GMCW is not required to have an approved least cost integrated resource plan. Accordingly, I do not believe that an affirmative finding is necessary under this criterion.

**30 V.S.A. § 248(b)(7)**

Q. Is the project in compliance with the electric energy plan approved by the Department under section 202 of Title 30, or if not, is there good cause to permit the proposed project anyway?

A. Yes. There are numerous references in the plan citing the benefits and desirability of renewable generation sources. The plan discusses the necessity of looking at the long term benefits derived from renewable energy and not just the short term costs.

**30 V.S.A. § 248(b)(10)**

Q. Can the proposed project be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers?

A. The Department does not believe the petitioner has yet submitted sufficient evidence to support a finding by the Board that there will be no such impact. I respectfully refer the Board to the testimony of Mr. Jordan for a full explanation of the DPS' position on this criterion.

**The Decommissioning Fund**

Q. Are there any other issues that you wish to address at this time?

A. Yes, in the event the Board ultimately decides to grant a CPG to the petitioner, it should impose conditions related to the decommissioning of the project. Specifically, the Board should require GMCW to establish and maintain a decommissioning fund adequate to insure that the site will be returned to its natural state at the time the generation plant ceases to be used for commercial production.

Q. What approach to decommissioning would you recommend?

A. The Department believes that a decommissioning fund should be established prior to the time construction commences, and that the fund should be independently managed and remote from GMCW's creditors to insure that the citizens of Vermont are fully protected at the time decommissioning becomes appropriate.

Q. Are there any other details of your decommissioning recommendation that the Board should adopt?

A. Yes. To assist in the determination of the value of such a fund, I recommend the Board direct the petitioner to provide a detailed study on the costs of removing the turbines, all related infrastructure, and returning the summit area to a more natural condition prior to issuing a CPG.

The petitioners plan on providing a plan for decommissioning the facility in collaboration with the wind turbine supplier and providing that to Board approval prior to beginning construction on this facility (Zimmerman page 36).

Q. How would a decommissioning requirement be triggered?

A. I believe the Board's approach in Dockets 6911 and 7250 was a reasonable one. That is, if the facility's actual output fails to meet a specified percentage of the output projected by GMCW over a certain time period, then a proceeding would be instituted to determine if decommissioning is appropriate.

The Department believes a similar approach in this Docket is advisable. If the project fails to produce at least 65% of the output projected by GMCW in any consecutive two-year period, then a decommissioning review should be instituted. The specifics of this mechanism as well as the fund itself can be part of a post-certification review process.

**Summary of the State's Position**

Q. Does the Department support issuing a Certificate of Public Good for this project under 30 V.S.A. § 248?

A. The Department of Public Service believes that this petition has satisfied some of the criteria ((b)(1), (2), (5) and (7)) for which the Department has offered testimony, and that suitable conditions could be imposed by the Board that would satisfy the remaining criteria ((b)(3), (4) and (10)) and issues for which the Department has offered testimony.

Q. Does that conclude your testimony at this time?

A. Yes, but I would like to emphasize the critical role of contracts in determining economic benefits from this project. Without some form of stably priced contracts with Vermont utilities, the state will not reap the most significant benefits of a fixed cost resource—insulation from volatile fuel prices, escalating fuel prices and emissions costs. Thus, it is the Department's position that without stably priced contracts, the remaining economic benefits provided by this project do not outweigh the burden it places on Vermont.