

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation,)
Vermont Electric Cooperative, Inc., and Vermont)
Electric Power Company, Inc. for a certificate of public)
good, pursuant to 30 V.S.A. Section 248, to construct up)
to a 63 MW wind electric generation facility and)
associated facilities on Lowell Mountain in Lowell,)
Vermont, and the installation or upgrade of)
approximately 16.9 miles of transmission line and)
associated substations in Lowell, Westfield and Jay,)
Vermont)

Order entered: 8/3/2012

**ORDER RE MOTION TO ENFORCE TRANSPORTATION PLAN, ORDER
AND CPG, FOR INJUNCTION AND FOR SANCTIONS**

On July 31, 2012, the towns of Albany and Craftsbury (the "Towns") and Lowell Mountains Group, Inc. ("LMG" and together with the Towns, the "Movants") filed with the Public Service Board ("Board") a Motion to Enforce Transportation Plan, Order and CPG, for Injunction and for Sanctions (the "Motion").¹

In this Order we deny the Motion because the Movants do not have standing to request the relief they seek, and because even if they did have standing, they have failed to meet the applicable standard for the issuance of an injunction.²

1. "On August 2, 2012, Green Mountain Power Corporation ("GMP") filed a letter opposing the Motion. In this Order, we deny the Motion on grounds unrelated to the arguments presented in GMP's opposition. We address the substance of GMP's letter in another Order issued of even date herewith.

2. This is not the first time that the Towns have filed a motion seeking injunctive relief on an issue for which they were without standing. Additionally, that motion, like the instant one, failed to meet the requirements for injunctive relief set forth in PSB Rule 2.406. *See* Docket 7628, Order of 11/14/11 at 10. Parties should keep in mind that Rule 11 of the Vermont Rules of Civil Procedure requires that a litigant have a good faith and reasonably supported belief that a claim has merit. *Chrysler Corp. v. Makovec*, 157 Vt. 84, 90 (1991).

The Movants assert that Green Mountain Power Corporation ("GMP") is violating the terms of its approved Transportation Plan ("Plan") by failing to meet two conditions precedent to the transport of project components along the so-called "northern route" described in GMP's approved Plan. Specifically, the Movants contend that, based on language in a letter filed with the Board by GMP on July 27, 2012, GMP failed to consult with local officials 60 days prior to initiating transport on the northern route, and failed to conduct a survey of road conditions 30 days prior to initiating transport on the northern route.³ The Movants ask the Board to enjoin GMP's use of the northern route until the required 60-day consultations and the required 30-day road survey are completed, and further ask that the Board impose sanctions on GMP for its alleged violation.⁴

We deny the Motion because the Movants do not have standing to seek the relief they have requested, and because they have failed to demonstrate that they are entitled to injunctive relief even if they had such standing.

Albany and Craftsbury were granted permissive intervention on certain matters considered under 30 V.S.A. § 248(b)(5),⁵ but only to the extent impacts were experienced within the Towns' borders.⁶ No portion of the northern route passes through Albany or Craftsbury and therefore its use has no direct impact within the Towns, leaving them without standing to bring the Motion. LMG is without standing because it was not granted intervention on the topics of public safety, municipal services or transportation systems.⁷ Additionally, even if the Movants had standing, their request for injunctive relief fails to even attempt to address the showing required by PSB Rule 2.406.

3. Motion at 2-3.

4. Motion at 3-4.

5. Relevant to this inquiry would be transportation systems, municipal services and public health and safety.

6. Docket 7628, Order of 9/3/10 at 15-16.

7. Docket 7628, Order of 9/3/10 at 12.

CONCLUSION

Because the Movants do not have standing to seek the relief requested in the Motion, nor have they attempted to demonstrate that they are entitled to injunctive relief even if they had standing, the Motion is denied.

SO ORDERED.

Dated at Montpelier, Vermont, this 3rd day of August, 2012.

<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 3, 2012

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)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.