

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: 2/4/2013

ORDER RE SANCTIONS FOR UNAUTHORIZED TRANSPORT ACTIVITIES

I. BACKGROUND

On May 31, 2011, the Public Service Board ("Board") issued an Order (the "Final Order") and Certificate of Public Good ("CPG") in this Docket requiring, among other things, that Green Mountain Power Corporation ("GMP") file a Transportation Plan (the "Transportation Plan") for review and approval by the Board.

In due course, the Board approved a Transportation Plan¹ that required GMP to perform a survey of road conditions along the approved routes, and to conduct certain municipal outreach efforts to the officials of towns along the approved routes, both prior to initiating transport along the routes.²

1. The original Transportation Plan was approved by Order dated 7/27/11. Subsequent revised versions of the Transportation Plan were approved by Orders dated 5/17/12, 7/19/12, and 9/13/12. At issue in today's Order is the version approved on 7/19/12, which approved the use of the so-called "Northern Route" for the transport of Project components to the Project site.

2. Condition 11 of the Final Order and CPG states:

The Petitioners shall conduct a survey to document existing road conditions with VTrans and officials of each affected town prior to transport of project components. Any damage caused by the transport activities will be measured against the pre-transport survey, and GMP shall

(continued...)

In July of 2012, a series of events occurred that raised questions about GMP's compliance with the Transportation Plan. In response, we opened an investigation and convened an evidentiary hearing to determine whether GMP should be fined for violating the Transportation Plan. Thereafter, GMP and the Vermont Department of Public Service (the "Department") reached a settlement (the "Stipulation") in which the parties stipulated to (1) certain facts regarding GMP's non-compliance; and (2) a fine of \$7,500.

In today's Order, we substantially accept the parties' settlement, except that we have determined that a higher penalty is warranted for violating the Transportation Plan. As a result, we have decided to impose a civil penalty on GMP of \$30,000 pursuant to 30 V.S.A. § 30(b).

II. FINDINGS

1. The Transportation Plan provides that GMP will conduct a survey to document existing road conditions with the Vermont Agency of Transportation ("VTrans") and officials of each affected town at least 30 days prior to the initial transport of project components. The Transportation Plan also provides that sixty days prior to the planned start of the transportation of the turbine components, GMP will meet with town officials and local first responders in each of the towns along the route to answer questions and coordinate the transportation to address any issues or concerns that they may have, including the possible staging of emergency vehicles to avoid conflicts with the transport plan (similar to what is done during parades). Stipulation at 1-2.

2. On July 17, 2012, GMP filed a request for expedited approval for use of the Northern Route by oversized trucks carrying Kingdom Community Wind ("KCW") Project components. GMP did not seek a waiver of the 30-day and 60-day advance time periods because the KCW Project manager believed that expedited approval, if granted, would obviate the need to complete the survey and consultation requirements in advance of transport. Stipulation at 2.

3. The Board granted expedited approval on July 19, 2012. Stipulation at 2.

2. (...continued)

be responsible for paying to repair any damage identified.

4. GMP began the consultation requirements of the Transportation Plan on July 26, 2012, and completed these requirements on August 6, 2012. GMP conducted the road survey required under the Transportation Plan between July 30 and August 1, 2012. Stipulation at 2.

5. KCW Project components were transported by oversized trucks over the Northern Route on July 23, 25, 27, 31 and August 2, 2012. Stipulation at 2.

6. On July 27, 2012, GMP filed a notice with the Board that transport had begun without complying with the 30-day and 60-day advance time periods. Although GMP believed it was in substantial compliance with the Transportation Plan, it did not indicate its belief or explain the basis for it in its notice filing. Stipulation at 2.

7. On August 2, 2012, GMP suspended transport and requested a waiver of the advance time periods in the Transportation Plan. Stipulation at 2.

8. On August 15, 2012, the Board issued an Order permitting resumption of transport upon the filing of verification that the consultation and survey requirements had been met. GMP filed the verification on August 17, 2012. Stipulation at 2.

III. DISCUSSION

Based on the Stipulation, it is clear that GMP violated both the terms and conditions of its approved Transportation Plan as well as Condition 11 of the CPG.

In order to calculate an appropriate penalty under 30 V.S.A. § 30, it is first necessary to determine whether each individual truck transportation trip constituted a discrete violation, or whether the trips taken together constituted an ongoing violation, and if so, the period of time that the ongoing violation existed.³ In the Stipulation, GMP and the Department agree that GMP undertook five truck transportation trips, each of which constituted a discrete violation of the Transportation Plan, for a total of five separate violations.⁴ We find this stipulated determination to be reasonable and therefore conclude that each of the five trips constituted a separate violation for a total of five sanctionable violations.

3. See 30 V.S.A. § 30(b).

4. Stipulation at 3.

The Department and GMP propose a total penalty amount of \$7,500, consisting of \$1,500 for each of the five separate violations.⁵ However, we find \$7,500 is too low for a penalty in this case, given that GMP is a large corporation with significant earnings from its regulated activities in Vermont. Instead, we have determined that a penalty of \$30,000 is more appropriate in view of the size of GMP and the scale of its annual revenues and other economic resources to bear the burden of such a fine without interfering with the Company's ability to continue to provide adequate and reliable service to its customers. As we noted in our August 3rd Order, the violations at issue are a serious concern — a fact that is reflected in the magnitude of the fine we have assessed against GMP, who acknowledges that this proceeding "has strongly reiterated the importance of flawless compliance, and GMP will continue to use lessons learned to achieve this goal."⁶

IV. CONCLUSION

For the foregoing reasons, we find that GMP committed five violations of Condition 11 of its CPG and the terms of its approved Transportation Plan. As a result of those violations, we hereby impose a civil penalty on GMP pursuant to 30 V.S.A. § 30(b) in the total amount of \$30,000, which represents \$6,000 for each of the five violations. GMP shall tender payment of the penalty to the Clerk of the Public Service Board within 30 days of the date of this Order.

SO ORDERED.

5. Stipulation at 3.

6. GMP Memorandum dated December 19, 2012, at 6.

Dated at Montpelier, Vermont, this 4th day of February, 2013.

<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: February 4, 2013

ATTEST: s/Judith C. Whitney
Deputy 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.