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: 9/30/2010

ORDER RE: MOTIONS FOR CLARIFICATION AND RECONSIDERATION

In this Order, the Vermont Public Service Board ("Board") addresses motions to clarify and/or reconsider the Board's intervention Order dated September 3, 2010, from Jack Brooks, Lowell Mountains Group, Inc. ("LMG"), and Green Mountain Club ("GMC"). We address each of these motions below.

However, as an initial matter, due to the large number of parties in this proceeding, we again encourage parties with similar interests to work together in the preparation of testimony and discovery and the examination of witnesses. To reduce duplicative testimony and examination, the Board also has the authority to require parties to join with other parties "with respect to appearance by counsel, presentation of evidence or other matters." While we do not impose any such requirements at this time, we may in the future if the "interests of justice and economy of adjudication require."[1]

1. Board Rule 2.209(C).

JACK BROOKS

By e-mail dated September 14, 2010,[2] Mr. Brooks sought a correction to the Board's Order of September 3, 2010, granting him intervention to address potential project impacts to his property adjoining the proposed project site. Mr. Brooks' e-mail states:

> As for the correction; in the "Order Re: Motions to Intervene" dated 9/3/10 it states on page 7 '... or for any other locations on his property or for locations on the private property where the turbines will be located which Mr. Brooks sometimes uses'. Mr Brooks never stated that he accesses private property for any reasons. Mr Brooks owns the ridge line that borders the southern end of the project proposal as noted on the map sent with the request for intervention. All access to the ridge line is entirely on his own property. Also, to make clear, Mr. Brooks and family live on that property and it is located in Eden. The noise would affect our whole property and not just our home, unless you are considering the whole 913.4 acres that we own as our home.

No correction is required to the September 3, 2010, Order on intervention. Mr. Brooks' motion to intervene states, "We access the ridge line to hike camp and ski."[3] The motion does not specify that such access is limited to property owned by Mr. Brooks. Accordingly, the Order granting Mr. Brooks intervention simply made clear that, in the event his motion referred to access to land owned by individuals or entities other than himself, his participation would not extend to potential project impacts to such lands.[4] Further, nothing in the September 3, 2010, order limits Mr. Brooks' participation with respect to noise impacts to the immediate vicinity of his home, and instead states that Mr. Brooks may participate with respect to "impacts of noise and ice throw onto his property."[5]

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2. On at least two occasions prior to Mr. Brooks' e-mail filing, the Board noted the requirement that all parties, including those appearing pro se, are required to abide by applicable procedural rules. *See*, Docket 7628, Order of 7/14/10 at 5 and Order of 9/3/10 at 1-2. Mr. Brooks' e-mail filing fails to adhere to the rules of procedure applicable to Board proceedings because it was not filed in hard-copy and served upon every other party. In the future, failure to abide by applicable rules of filing and service may result in a motion or other request for Board action being disregarded.
3. Brooks' Motion to Intervene dated 8/11/10 at 1.
4. Docket 7628, Order of 9/3/10 at 7.
5. *Id*.

LOWELL MOUNTAINS GROUP

On September 15, 2010, LMG filed a Response Re: Order as to Motion to Intervene and Motion to Clarify/Reconsider. Pursuant to the Board's Order of September 3, 2010, LMG filed notice that Nancy Warner would be acting as the single individual designated to represent LMG in this proceeding. However, in its filing, LMG also requested that the Board clarify whether this designation prevented other members of LMG from participating in discovery questioning.

On September 20, 2010, Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Electric Power Co., Inc., and Vermont Transco LLC (collectively, "Petitioners") filed comments on LMG's request for clarification. The Petitioners are not opposed to LMG's request to the extent that it seeks confirmation that its obligations under Board Rule 2.201(B) do not preclude any LMG member or other individual from participating in the drafting of discovery requests or analysis of responses, provided that it does not modify the obligation that a single person represent LMG in the proceeding.

Neither LMG's nor any Party's participation in the drafting of discovery requests is limited to the Party's identified representative. LMG members may participate in the drafting of discovery questions and in the analysis of discovery responses, and may participate as necessary in LMG's case as this docket proceeds. The designated group representative is, however, solely responsible for all communications to and from the group. For example, LMG members may draft questions for discovery, but those questions must be compiled into a set with all other LMG questions which will then be served on other parties and filed with the Board only by the designated representative. Similarly, while any member of LMG may assist in the analysis of discovery responses, the responding party need only serve the designated representative, who shall be responsible for distributing copies of the responses to the proper individuals for review. By way of further example, if LMG prefiles testimony from witnesses other than Ms. Warner, discovery requests on each witness's testimony need only be served on Ms. Warner, or such successor designated representative as may be in existence at that time, who will need to distribute the requests to the appropriate LMG witness, and coordinate the compilation, service and filing of the responses, so that a complete set is provided from only the designated representative in response to each set of requests received. Lastly, presentation and cross-

examination of witnesses during the technical hearings will only be allowed by a party's duly authorized representative that has filed a notice of appearance with the Board, and only one such representative will be allowed to present or cross-examine a particular witness.

Additionally, on September 17, 2010, LMG filed a Motion for Reconsideration of the Board's September 3, 2010 Order, asking that it be allowed to participate on the issue of public health and safety with respect to the noise impacts of the proposed project. LMG asserts that it should be allowed to participate on the health-related noise impacts of the proposed project because: (1) its statement of purpose specifically mentions health issues; (2) noise impacts affect LMG members in addition to the three adjoining landowners that have been granted individual party status to address noise issues; (3) VPIRG was allowed to intervene on health and safety issues; (4) it has demonstrated a particularized interest because noise-related health impacts will affect LMG members residing near the project; and, (5) there is no basis to conclude the Department of Public Service ("Department" or "DPS") adequately represents the interests of LMG's members.

The Petitioners oppose LMG's request because: (1) they do not believe LMG has demonstrated a substantial interest that may be affected by the outcome of the proceeding due to LMG's failure to describe how the health of any of the group's members, not already granted individual party status, will be impacted by noise from the project; and, (2) LMG has failed to identify any nexus between noise from the project and health impacts.

Upon reconsideration, we have decided to allow LMG to participate on the health-related impacts of noise from the proposed project specific to its members. LMG is not allowed to offer testimony on potential health impacts to the general population, nor is it allowed to rely on or submit testimony on noise issues from any members that have been granted individual party status on noise issues. While we view this as a close question, we conclude that LMG has plausibly described a particularized interest based on the number of members that it has living within one mile of the project site, and the possibility that these members' interests may be sufficiently distinct so that the DPS might not adequately represent them.

In reconsidering our earlier ruling we are not relying solely on the language of LMG's mission statement because demonstrating an interest in and of itself is not sufficient to support

intervention. With respect to topics such as orderly development, aesthetics and economic impacts, our earlier Order did not solely rely on the purpose of the organization, rather it explained why the interests of LMG's members were sufficiently particularized to allow participation on those issues. Additionally, we find LMG's argument with respect to VPIRG's intervention to be without merit. VPIRG's intervention was unopposed and therefore the potential issues related to that group's member interests were not presented for Board resolution.

Lastly, we remind not just LMG, but all parties to this proceeding, that any testimony offering opinions on technical issues such as noise-related health impacts must be presented by qualified expert witnesses capable of responding to discovery requests and cross-examination on their testimony.

GREEN MOUNTAIN CLUB

On September 13, 2010, GMC filed a Motion to Clarify/Reconsider the Board's September 3, 2010, Order denying GMC intervenor status with respect to the topic of the proposed decommissioning plan. GMC stated that it wishes to participate only on the question of whether the aesthetic impacts of the proposed project post-decommissioning will pass the Quechee test. GMC further stated that it is not seeking to participate in any engineering or financial assessment of the proposed decommissioning plan.

On September 20, 2010, the Petitioners filed a response to GMC's motion indicating they had no objection to GMC's limited request because they believe it is already consistent with the Board's grant of intervention on project-related aesthetic impacts.

We agree with Petitioners and clarify that the scope of GMC's intervention with respect to aesthetic impacts includes not only those associated with construction and operation of the project, but also post-operation and post-decommissioning aesthetic impacts. GMC's participation is limited to an aesthetic review only and shall not extend to any engineering or financial review of the proposed decommissioning plan.

SO ORDERED.

Dated at Montpelier, Vermont, this 30th day of September, 2010.

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

OFFICE OF THE CLERK

FILED: September 30, 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)