

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

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	)	Docket No. 7628
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	)	

**GREEN MOUNTAIN POWER CORPORATION POST-HEARING
BRIEF IN SUPPORT OF STIPULATION RE SHOW CAUSE ORDER**

I. INTRODUCTION

This Brief is filed on behalf of Green Mountain Power Corporation (“GMP”) in support of the Stipulation Re Show Cause Order between GMP and the Public Service Department (“PSD”). GMP respectfully submits that the Public Service Board (“Board”) should approve the Stipulation and impose a penalty of \$7500, for the reasons set forth in GMP’s November 15, 2012 Response to Show Cause Order (“GMP Response”), the testimony provided at the November 28, 2012 hearing and the analysis herein. As set forth in the GMP Response and as demonstrated at the hearing, GMP substantially complied with the requirements of the Transportation Plan (“Plan”), and the 30 V.S.A. § 30(c) factors support the stipulated penalty amount.

II. GMP’S CONDUCT DID NOT SIGNIFICANTLY IMPACT SECTION 248 CRITERIA

Mr. Pughe’s testimony demonstrates that the failure to meet the municipal outreach and survey deadlines did not have the potential for, or in fact have, a significant impact on any of the Section 248 criteria.¹ A survey would not have identified the cause of any road damage because larger wind turbine component loads were being transported over the northern route to a New Hampshire project prior to and during the GMP’s transport.² It is also important to note that

¹ The Board has addressed the issue of Section 248 violations by applying the material change analysis, which considers whether a change in an approved project has the potential for a significant impact on any of the Section 248 criteria or the general good of the state. GMP Response at 2-3.

² Pughe pf. at 3-4. Although a survey prior to GMP’s transport would have eliminated GMP as the cause of any pre-existing damage, GMP would likely have received notice of such damage in any event because it was in

none of the intended beneficiaries of the survey – VTrans and the municipal officials – chose to participate in the survey.³ In addition, no damage to the roads was reported by the municipalities, VTrans or the law enforcement authorities, and GMP was not made aware of any damage from any other source.⁴

Similarly, the failure to conduct municipal outreach prior to the Plan deadline did not have the potential for, or in fact have, a significant impact on any of the Section 248 criteria. The transport for the New Hampshire project prior to GMP's use of the northern route did not result in any apparent municipal concerns.⁵ Although GMP's outreach identified a few municipal concerns relating to the need for a town highway permit, and potential impacts relating to a municipal construction project, brick crosswalks and use of engine brakes, no municipality claimed that GMP did not address these concerns in an appropriate manner.⁶

For these reasons, GMP's failure to meet the Plan's survey and outreach deadlines did not have the potential for, or in fact have, a significant impact on any of the Section 248 criteria, and GMP substantially complied with the Plan's requirements.

III. THE SECTION 30(C) FACTORS SUPPORT THE GMP-PSD STIPULATION

The Section 30(c) factors were reviewed in detail in the GMP Response.⁷ They are addressed briefly here in the context of the evidence presented at the November 28 hearing.

1. GMP's conduct did not harm or risk harm to public health, safety or welfare, the environment, the reliability of utility service or the other interests of utility customers. The northern route was being used on a more frequent basis to transport larger loads for a New Hampshire wind project, GMP is unaware of any road or related damage resulting from its use of the northern route, and the few municipal concerns expressed to GMP during its outreach were satisfactorily addressed.⁸

contact with sheriffs' departments providing escorts for the New Hampshire project loads. Tr. 11-28-12 at 48-49 (Pughe). Rather than being "excused from a decision not to meet express requirements due to circumstances beyond [GMP's] control," Tr. 11-28-12 at 70 (Cotter), GMP substantially complied with those requirements because the larger loads essentially eliminated any potential Section 248 impact of GMP's failure to meet the survey deadline.

³ Leriche pf. at 3.

⁴ Pughe pf. at 4; tr. 11-28-12 at 15, 48 (Pughe).

⁵ Pughe pf. at 4. GMP would have heard of any concerns due to its close contacts with the police escorts and VTrans. Tr. 11-28-12 at 50 (Pughe).

⁶ Tr. 11-28-12 at 51-52 (Pughe).

⁷ GMP Response at 3-6.

⁸ GMP Response at 4; Pughe pf. at 4; Leriche pf. at 3-4; tr. 11-28-12 at 15 (Pughe).

2. Any violation of the Plan was not intentional. GMP's KCW Project manager initially concluded – albeit erroneously – that expedited approval of the northern route eliminated the need to complete outreach and survey in advance of transport, and others at GMP thereafter concluded that GMP was in substantial compliance with the Plan.⁹
3. GMP's actions did not, and could not have, resulted in any economic benefit to it, because Vestas was contractually responsible for ensuring timely delivery of KCW Project components.¹⁰ In addition, the benefits of avoiding construction delays flow to GMP's customers.
4. The conduct in issue, involving northern route transport prior to Board waiver of the survey and outreach deadlines, occurred on July 23, 25, 27, 31 and August 2, a period lasting for ten days.¹¹
5. GMP respectfully submits that the stipulated penalty, together with the Board's prior orders and this process, appropriately address the purposes of imposing a penalty for non-compliance.
6. The stipulated penalty will have a significant deterrent impact on GMP. "Any issue that affects the credibility of GMP in how it deals with its regulators ... is very important to it, and [the issue of fines is] almost secondary."¹²
7. GMP's record of compliance has been excellent. GMP has promptly and rapidly addressed the few prior compliance issues that have occurred.¹³
8. GMP disclosed its failure to meet the survey and outreach deadlines in its July 27 filing, and suspended transport on August 2. In its August 3 Order, the Board concluded that transport could resume without complying with the advance 30 and 60 day advance interval requirements.

For these reasons, the stipulated fine is supported by the Section 30(c) criteria.

⁹ Pughe pf. at 4, 6; tr. 11-28-12 at 37 (Pughe).

¹⁰ Pughe pf. at 2; tr. 11-28-12 at 58-59 (Pughe).

¹¹ Pughe pf. at 5.

¹² Tr. 11-28-12 at 74 (Zamore).

¹³ See GMP filing dated July 21, 2011 (disclosing tree cutting and mitigation parcel logging); ANR filing dated October 12, 2011 (disclosing ANR stop work order and GMP's remediation within one week); GMP filing dated May 4, 2012 (disclosing a blast occurring 30 minutes after the daily blasting deadline).

IV. THE STIPULATED PENALTY IS CONSISTENT WITH PENALTIES IMPOSED IN PRIOR CASES

The proposed penalty is consistent with prior Board penalties in Section 248 cases.¹⁴ Cases resulting in fines in excess of the \$7500 stipulated amount generally involved intentional violations, a history of actions creating the need for substantial deterrence, or the potential for or actual significant impacts on Section 248 criteria. For instance, in Docket 6812 the Board stated that Entergy clearly violated Section 248, it knew or should have known of the Section 248 violation, the violation could have resulted in contamination, and substantial deterrence was needed based on prior sanctions and inadequate compliance systems. Docket No. 6812 Order at 10-11, 15 (\$85,000 fine). In Docket 6860, the Board approved a stipulation involving the Agency of Natural Resources and the Vermont Division of Historic Preservation that imposed a \$50,000 fine, and referred to “archeological and wetlands compliance issues” relating to clearing and retaining vegetation that were of a magnitude sufficient to require retention of an “independent compliance monitor” that was “critical to moving forward with confidence” in the project. Docket No. 6860 Order at 1-2. In Docket 5625, the Board found that Citizens deliberately circumvented the statutory requirements and willfully obstructed the Board’s discharge of its duties. Docket No. 5625 Order, 151 PUR 4th at 251. Finally, the Board found in Docket 7526 that the relocation of a met tower resulted in a change in tower height and elevation, required tree clearing in an unapproved area and, as a result, had “the potential for significant impacts to the Section 248(b) criteria, including aesthetic and environmental criteria,” thereby justifying a \$6,000 fine. Docket No. 7526 Order at 9. The Board imposed a much smaller fine, on the other hand, where the violation was unintentional and was promptly reported to the Board. Docket 7635 Order at 3 (\$1,000 fine).

¹⁴ See *Petition of Central Vermont Public Service Corp.*, Docket No. 7635 (Vt. Pub. Serv. Bd. June 18, 2012) (“Docket 7635 Order”) (\$1,000 fine for cutting of several dozen trees); *In re Endless Energy Corp.*, Docket No. 6154 (Vt. Pub. Serv. Bd. Mar. 30, 2006) (\$1,000 fine for failure to file bird and bat studies, failure to remove met tower by Board-imposed deadline); *Petition of Vermont Community Wind Farm, LLC*, Docket No. 7526 (Vt. Pub. Serv. Bd. Jan. 6, 2010) (“Docket No. 7526 Order”) (\$6,000 fine for changing met tower location by 381 feet); *In re Citizens Utilities Co.*, Docket No. 5625, 151 PUR 4th 238 (Vt. Pub. Serv. Bd. Mar. 28, 1994) (“Docket No. 5625 Order”) (maximum \$10,000 fine for upgrading distribution to transmission line without Section 248 approval); *Petition of Vermont Electric Power Co., Inc.*, Docket No. 6860 (Vt. Pub. Serv. Bd. Sept. 29, 2006) (“Docket No. 6860 Order”) (\$50,000 fine for actions resulting in wetlands and archeological impacts); *In re Entergy Nuclear Vermont Yankee, LLC*, Docket No. 6812 (Vt. Pub. Serv. Bd. Feb. 18, 2005) (“Docket No. 6812 Order”) (\$85,000 fine for beginning construction of two buildings without Section 248 approval).

GMP's failure to complete the survey and outreach requirements within the timeframe required by the Plan did not involve an intentional violation, potential or actual Section 248 impacts or a history of noncompliance requiring a fine in an amount sufficient to deter noncompliance in the future, as reflected in the above cases. As indicated above, moreover, GMP submits that it was in substantial compliance with the Plan and therefore no violation occurred. See *Petition of National Mobile Communications, Inc., etc.*, Docket No. 7619 (Vt. Pub. Serv. Bd. Nov. 8, 2012) at 4, 5 (although Sovernet did not comply with its obligations to provide biannual bill stuffer notice of specified programs and to provide annual eligibility certification with detailed information, Sovernet met its substantive obligations and therefore no penalties were imposed).

For these reasons, GMP submits that the stipulated fine is consistent with prior Board orders.

V. GMP ACTED APPROPRIATELY IN ADDRESSING THE ISSUES RAISED BY ITS USE OF THE NORTHERN ROUTE

GMP acknowledges that it did not meet Plan's survey and municipal outreach deadlines, but submits that it addressed this deficiency swiftly and transparently. The KCW Project manager initially determined in good faith that the granting of the requested for expedited approval for use of the northern route obviated the need to complete these activities in advance of transport.¹⁵ Although he intended to complete these activities at the time transport began, he was required first to deal with other priorities, including an overturned truck and damaged turbine component, and immediately thereafter arranged for the required survey and municipal outreach.¹⁶ When others at GMP became aware of its failure to meet the Plan's deadlines, they concluded that GMP was in substantial compliance with the Plan, but GMP promptly notified the Board of GMP's failure to meet the survey and outreach deadlines.¹⁷ Finally, when other parties

¹⁵ Pughe pf. at 4; tr. 11-28-12 at 37 (Pughe). Mr. Pughe believed that the Board's expedited approval confirmed his conclusion that survey and outreach could occur concurrently with initiation of transport, notwithstanding the fact the Board's approval Order required incorporation of the northern route into the Plan. Tr. 11-28-12 at 38-39 (Pughe). In response to Mr. Burke's question, however, Mr. Pughe indicated that if he were faced with a similar situation today, he "would send the truck back to Albany" and submit "a more complete request for modification to our transportation plan." Tr. 11-28-12 at 57 (Pughe).

¹⁶ Pughe pf. at 5-6.

¹⁷ Pughe pf. at 6. As indicated at the hearing, GMP's notice should have described why it believed it was in substantial compliance with the Plan. Tr. 11-28-12 at 63 (Zamore).

asserted that GMP had violated the Plan, GMP reevaluated its actions and, as a result, suspended further transport and sought a waiver.¹⁸

At the hearing, Mr. Pughe was questioned on whether, in GMP's initial request to use the northern route, GMP should have described the type of truck to be used and the impact of Vestas' trucking subcontractor's failure to reserve sufficient 13 axle trucks on the need for the northern route.¹⁹ Yet these types of details were not provided in connection with GMP's original requests for trucking route approval (including the northern route).²⁰ GMP's request was intended to be simple and direct, in order to facilitate expeditious review by the Board, and there has been no suggestion that this additional information would have somehow undermined the basis for GMP's request.²¹

There were also concerns expressed at the hearing that GMP did not assure a sufficient level of communication between GMP and those directly involved in transport, concerning the routes to be used for transport.²² Although Vestas' trucking subcontractor did not notify Vestas of its intention to use the northern route when the first truck left the Port of Albany, the truck was fully-permitted for its travel in New York and GMP's communication protocol required notice to GMP before any overweight truck entered Vermont.²³ This assured that GMP was fully and timely apprised of information bearing on Plan compliance issues.²⁴

Finally, as GMP has stated repeatedly,²⁵ it should have addressed compliance with the Plan's outreach and survey deadlines in filing the July 17 approval request and should have provided a more thorough justification for its actions in the July 27 filing. This proceeding has strongly reiterated the importance of flawless compliance, and GMP will continue to use lessons learned to achieve this goal.

¹⁸ Pughe pf. at 6; tr. 11-28-12 at 45-46 (Zamore).

¹⁹ Tr. 11-28-12 at 18 (Cotter); *id.* at 19 (Coen).

²⁰ Tr. 11-28-12 at 18-20 (Zamore). See P. Zamore corresp. to S. Hudson dated June 17, 2011, attached Transportation Plan. There was also no discussion in the Board's approval order concerning why GMP chose the initial transport routes, other than a description of why GMP rejected an alternative route suggested by PSD. *Order re Five Sets of Compliance Filings* (July 27, 2011) at 8-9.

²¹ Tr. 11-28-12 at 20-21 (Zamore).

²² Tr. 11-28-12 at 21-22 (Cotter).

²³ Pughe pf. at 3; tr. 11-28-12 at 25-26 (Pughe).

²⁴ Even if GMP had been advised of the trucking contractor's intention to use the northern route when the truck left Albany (rather than when it arrived at Rouses Point), see Tr. 11-28-12 at 32, 35 (Cotter), this delay occurred within a single day and therefore would not have meaningfully advanced the timing of the survey and outreach activities.

Notwithstanding assumption of transport responsibility by Vestas and its subcontractors, moreover, the "buck stops" with GMP. Tr. 11-28-12 at 55 (Burke).

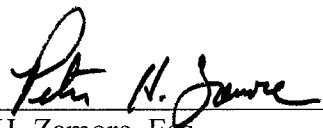
²⁵ Pughe pf. at 5; GMP Response at 6; tr. 11-28-12 at 37-38 (Pughe); tr. 11-28-12 at 63, 68 (Zamore).

VI. CONCLUSION

For all of the above reasons, the Board should impose a fine of \$7500, consistent with the Stipulation.

Dated December 19th, 2012 at Burlington, Vermont.

GREEN MOUNTAIN POWER CORPORATION

By: 
Peter H. Zamore, Esq.
Sheehey Furlong & Behm, P.C.
30 Main Street
P.O. Box 66
Burlington, VT 05402
Tel: (802) 864-9891