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 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	)	Docket No. 7628

GREEN MOUNTAIN POWER CORPORATION POST-HEARING BRIEF CONCERNING SOUND STANDARD SHOW CAUSE HEARING

I. INTRODUCTION

This Brief is filed on behalf of Green Mountain Power Corporation ("GMP") in connection with the sound standard show cause proceeding. As set forth herein, GMP's 99.9% compliance reflects substantial compliance by any measure, and the 4.25 hours of exceedances did not have any material impact as measured by the Section 30 criteria. For these reasons the Public Service Board ("Board") should exercise its discretion and decline to impose a penalty, or at most impose a nominal penalty.

The issue to be determined by the Board in this show cause proceeding is narrow: Whether the Board should impose sanctions pursuant to 30 V.S.A. § 30 for violation of the noise standard set forth in Condition 39 of its Final Order[1] and associated Certificate of Public Good ("CPG").[2] As the Board has concluded, the scope of this proceeding does not include other matters, including microphone placement, hub height wind speed data, and adequacy of low frequency monitoring.[3] Most importantly, the issue does not include the sufficiency of the existing sound standard, which was finally established in the Board's Final Order and CPG[4], or the sound monitoring process, which was established in the Board-approved Final Monitoring Protocol.[5]

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1 Final Order (May 31, 2011) at 165.

2 Order to Show Cause and Notice of Hearing (July 15, 2013) ("July 15 Show Cause Order") at 3.

3 Order re Noise Monitoring Reports (July 15, 2013) ("July 15 Order") at 8-10.

4 *See* July 15 Order at 11-12. The Board also concluded that those parties seeking to change the standard "do not provide a sufficient legal basis to reopen the provisions of a final Board Order issued approximately two years ago." July 15 Order at 11.

5 Order re Noise Monitoring Plan (May 16, 2012).

II. GMP'S COMPLIANCE WITH THE BOARD'S SOUND STANDARD HAS BEEN EXCELLENT AND IT ACTED APPROPRIATELY IN ADDRESSING SOUND ISSUES

GMP's compliance with the Board's sound level standard has been excellent.[6] The rate of compliance has been 99.9%.[7] There were four exceedances of the Board's sound level standard[8] totaling 4.25 hours, which compares with 58 hours (more than 13 times greater) of exceedances due to background noise unrelated to the turbines recorded at just two of the four monitoring stations.[9] The turbine-related noise was .1 dBA (.22% above the standard) during two of the exceedances, .3 dBA (.67%) during the third and 1.3 dBA (2.89%) during the fourth exceedance. The greatest exceedance of 1.3 dBA is well below the level detectable by the human ear.[10]

The sound level exceedances were unintentional and promptly remedied. GMP has demonstrated its focused commitment to operate the Kingdom Community Wind Project ("KCW" or "the Project") within the CPG sound limits. After the Project became operational, GMP discovered that snow accumulation on the turbine blades had an impact on sound. As described in more detail below, GMP immediately took steps to address the problem in the short-term and also committed approximately $100,000 to additional monitoring technology to resolve this issue long-term.

Imposing a penalty on GMP is unnecessary, particularly given the company's existing plan to spend funds on equipment that it believes will directly improve management of turbine sound levels.

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6 No party to the show cause proceeding has claimed that the two discrete tone exceedances caused any adverse impact or created a basis for penalties under the Section 30 criteria. As a result, the Section 30 analysis addressed below focuses exclusively on the sound level exceedances.

7 This is based on a comparison of the 4.25 hours of exceedances with the 5,378 usable (rather than total) recorded hours. See corrected table to GMP's Response to Record Requests, filed August 23, 2013; *see* Kaliski Pf. at 3-4.

8 The Board's standard is exceeded during each separate time period when the average sound level exceeds 45 dBA for at least an hour. There were four such sound level exceedances: January 12 at 1:10-2:20 am, March 2 at 8:10-9:10 am, and two exceedances occurring on March 4 during the period 3:25-5:30 pm. St. Peter Pf. at 2; Kaliski Pf. at 3; Tr. 8/8/13 at 88 (Kaliski).

9 Kaliski Pf. at 4, 6.

10 Mr. St. Peter testified that "changes of less than 3 dBA are not likely to be perceived by the human ear." St. Peter Pf. at 5, citing Federal Transit Administration Noise and Vibration Manual (2006).

III. NO PENALTY IS WARRANTED UNDER SECTION 30

A. THE VIOLATION NEITHER HARMED NOR COULD HAVE HARMED THE PUBLIC HEALTH, SAFETY OR WELFARE, THE ENVIRONMENT, THE RELIABILITY OF UTILITY SERVICE OR THE OTHER INTERESTS OF UTILITY CUSTOMERS

The evidence supports the conclusion that there is no actual or potential health or welfare impact attributable to the sound exceedances.[11] First, none of the expert witnesses testifying at the show cause hearing stated that the exceedances caused or might have caused a public health or welfare impact. Mr. Kaliski, the only acoustic expert testifying at the show cause hearing, rejected any claim that the sound level exceedances created health impacts. He testified that he was "not aware of any general basis for concluding that the sound level exceedances have harmed or might have harmed the public health, safety or welfare."[12] He further stated that the average turbine sound levels at the four monitoring stations over the approximately eight weeks of testing ranged from 31 to 36 dBA, which is well below the 40 dBA annual average contained in the World Health Organization guidelines, which the State's health expert (Dr. Irwin) supported as sufficiently protective of public health.[13] Mr. St. Peter stated only that "the public health and welfare is not well-served by exceedances of the standards."[14] This statement reflects a general policy statement rather than an articulated basis for concluding that the exceedances caused a health impact.

Ms. Nelson claimed that she experienced health impacts related to the turbine operations.[15] Of the 14 health impacts claimed to occur during the three sound monitoring periods, only two related to days when sound exceedances occurred.[16] Because 85% of her claims occurred on days when there were no exceedances, it is clear that her concerns are largely unrelated to the exceedances. Similarly, even on the two days when exceedances occurred, much of her concern relates to periods when there were no exceedances.[17]

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11 No party to the show cause proceeding has alleged, nor have they provided evidence, that the sound level exceedances adversely affected the public safety, the environment, the reliability of utility service or other interests of utility customers. Instead, the claims and evidence are limited to the impact on public health and welfare.

12 Kaliski Pf. at 7.

13 Kaliski Pf. at 6-7; Final Order at 92; Irwin Pf. at 2.

14 St. Peter Pf. at 5.

15 Nelson Pf. at 6.

16 See Attachment A.

17 Nelson Appendix B indicates that her concerns around the time of the first exceedance began the day before the exceedance day (January 12 at 1:10-2:20 a.m.) but continued into the next day. Appendix B at 1-2. Her

Ms. Nelson's personal claims of health impacts should be considered in context. The background sound level at the Nelson residence, as tested in accordance with the Final Monitoring Protocol, exceeded 45 dBA for 30 hours.[18] This is more than 13 times the duration of turbine-related exceedances at the Nelson residence. In addition, the exceedances at the Nelson residence were .3 dBA and .1 dBA over the 45 dBA limit.[19] As Mr. St. Peter testified, "changes of less than 3 dBA [*ie.,* ten times greater than the maximum exceedance] are not likely to be perceived by the human ear."[20] In other words, Ms. Nelson could not detect the times when the standard was exceeded.[21]

GMP does not dispute that Ms. Nelson believes the turbine sound has resulted in head aches, ringing ears and irritability.[22] But almost none of her concerns relate to periods in which the Board has found that violations occurred. Any fair reading of the record leads to the inescapable conclusion that her claimed impacts relate to the general operation of the turbines, during which GMP's compliance rate was 99.9%, rather than to the 2.17 hours of exceedances at her residence. It is evident that Ms. Nelson's real concern is that the Board erred in setting the

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concerns around the time of the second exceedance (March 2 at 8:10-9:10 a.m.) also began the day before and she may have been away from her house when the exceedance occurred (went to ball game some time after 7:45 a.m. and returned some time before noon). Appendix B at 2, 3.

18 Kaliski Pf. at 6.

19 St. Peter Pf. at 2.

It should also be noted that on at least one day (March 1) that Ms. Nelson reported health concerns, the maximum sound level did not exceed 40 dBA, which is very close to the 38 dBA sound level of a library. Exh. Pet.-KHK-9 (Winter Compliance Report) at 3, A1. Similarly, she stated that on May 23 she could hear turbine sounds "over lawn mowing," (Nelson Pf. At 10) even though the turbine-related sound on that day never exceeded 42 dBA on a ten minute basis, which is the level associated with a refrigerator, and during those times the background sound level equaled or exceeded the turbine-related sound. Exh. Pet.-KHK-11 (Spring Compliance Report) at 3, A1.

20 St. Peter Pf. at 5, citing Federal Transit Administration Noise and Vibration Manual (2006).

21 Ms. Nelson's separate claim that the sound levels exceeded the Board's standard in periods not included in the three Sound Monitoring Reports is entitled to no credibility for two reasons. First, her tests (1) did not last for the one-hour minimum duration required by the standard, (2) did not subtract background sounds, and (3) did not subtract extraneous sounds. *E.g.* Nelson Appendix A at 1 (25.4 minute test, no subtraction of background or extraneous sounds); see Nelson Appendices A-E. Her sound meter was not calibrated (in fact the readings were erroneous by 3 dBA). Nelson Pf. at 4 (meter readings "are three dBA off"). There was no evidence that she complied with the Final Monitoring Protocol with respect to microphone placement, quality of sound testing instrumentation or collection of sound over the complete frequency range. Final Monitoring Protocol Section 2.5 (required quality of instrumentation, microphone placement, requirement to collect complete frequency range). Second, she refused to request additional qualified sound testing even though she was entitled to do so under the Section 5 of the Final Monitoring Protocol. She claimed that she has "no confidence" in the existing testing regime, even though it is consistent with the Noise Monitoring Protocol and many aspects were approved by the independent monitor agreed-upon by all parties participating in the selection of the monitor. Nelson Pf. at 5; Order re Noise Monitoring Plan (May 16, 2012) at 2.

22 GMP submits, however, that in evaluating Ms. Nelson's claims, it is important to recognize that annoyance relating to wind turbines is far more related to visibility of the turbines than to sound. Exh. Pet.-Cross-5 (2009 Pederson Study) at 638, Figure D. The Pederson study states that "[o]nly a few respondents who could not see any wind turbines were annoyed by wind noise, even in the higher sound level intervals," which exceeded 45 dBA. *Id.*

noise standard. This is an issue, however, that is beyond the scope of the show cause proceeding. More importantly, the sound level standard was adopted by the Board on the basis of a record and analysis far more substantial than the inconclusive testimony of a single lay witness. The record involved six experts testifying for more than ten hours and 168 pages of briefs filed by 12 parties. The issue was addressed in 13 pages of Board analysis in its Final Order, and was the subject of 36 post-Final Order filings and 16 additional orders. The standard is also the same as, or similar to, the standards applied to other recent wind projects.[23]

For all of the above reasons, the sound level exceedances did not harm, or risk harm to public health, safety or welfare, the environment, reliability of utility service or the other interests of utility customers.

B. GMP DID NOT KNOW OR HAVE REASON TO KNOW THE VIOLATIONS EXISTED AND THE VIOLATION WAS NOT INTENTIONAL

GMP has concluded, after extensive analysis, that the sound exceedances were related to snow accumulation on the turbine blades.[24] The exceedances were not intentional. It was not until GMP began operating the KCW Project during winter weather conditions, for instance, that it learned that snow accumulation on the blades of the turbines could lead to higher than expected sound levels.[25] Vestas did not identify the potential that snow on the turbine blades could impact sound levels during the turbine procurement process.[26] Mr. Kaliski was also not

23 *See Amended Petition of UPC Wind, LLC, etc.*, Docket No. 7156 (Vt. Pub. Serv. Bd. Oct. 1, 2007) at 5-6; *Petition of Georgia Mountain Community Wind, LLC, etc.*, Docket No. 7508 (Vt. Pub. Serv. Bd. June 11, 2010) at 91.

Any attempt to change to the standard applicable to the Project, in this proceeding or otherwise, would also be subject to insurmountable legal challenges (e.g. July 15 Order at 11-12, rejecting attempt to reopen sound standard), and would impose unwarranted and unnecessary costs on GMP and Vermont Electric Cooperative, Inc. customers.

24 Castonguay Pf. at 3-5; Tr. 8/8/13 at 17-18 (Castonguay).

25 Castonguay Pf. at 4-5. Mr. Castonguay testified that GMP discussed cold climate operation with Vestas and procured a winter operating package, but did not discuss snow accumulation with Vestas. Tr. 8/8/13 at 14-15 (Castonguay).

Despite suggestions to the contrary, GMP witness Zimmerman did not testify concerning snow accumulation. Instead he testified on wind resource assessment, shadow flicker, ice throw and the risk to humans from ice falling from turbines, but not the impact on turbine sound from snow accumulation. Zimmerman, Pf. at 3, 13-15.

26 Castonguay Pf. at 3; Tr. 8/8/13 at 16, 24 (Castonguay).

aware of the potential for snow to affect turbine sound until it became an issue in the context of this case.[27]

Immediately after GMP became aware of the potential for snow accumulation to impact turbine sound, it put in place measures to react as quickly as possible. Specifically, GMP visually inspected turbine blades if the weather conditions were conducive to snow buildup, it monitored power output to determine if turbines were performing below expected levels, which could be a potential sign of snow buildup, and at times GMP would pause the turbines when its operational staff had concerns about snow build up.[28] GMP is also installing video surveillance equipment and a weather monitoring station to further aid it in identifying the potential for, and actual, snow accumulation, at a cost of approximately $100,000.

C. GMP COULD NOT HAVE ANTICIPATED AN ECONOMIC BENEFIT FROM AN INTENTIONAL OR KNOWING VIOLATION

The $6,518.00 economic impact during the 4.25 hours of exceedances was negligible, when compared to the overall value of the Project's economic output.[29] The consequences to GMP from the exceedances, including this proceeding, far outweigh that impact. For these reasons, there is no basis for concluding that GMP caused the Project sound levels to exceed the standard in order to derive an economic benefit.

D. THE DURATION OF THE VIOLATIONS WAS MINIMAL

GMP's goal is to operate the KCW Project in compliance with all CPG conditions. It achieved a compliance level of 99.9% during the sound monitoring periods. During the 5,378 hours of usable time recorded during those periods, there were largely minor exceedances of the required dBA levels for only 4.25 hours.[30] Accordingly, by any standard the duration of the violations was *de minimis*.

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27 Tr. 8/8/13 at 128-29 (Kaliski).

28 Castonguay Pf. at 3-5; Tr. 8/8/13 at 20 (Castonguay).

29 Castonguay Pf. at 5; GMP Responses to Record Requests, filed August 19, 2013.

30 See corrected table to GMP's Response to Record Requests, filed August 23, 2013

E. A PENALTY IS NOT NECESSARY TO DETER FUTURE VIOLATIONS

GMP has demonstrated through its actions throughout the period since KCW operations began that GMP, its leadership and its KCW operations staff all take very seriously both the concerns of the Board regarding the sound level exceedances and the complaints communicated to it by those living in proximity to the Project. GMP's goal is to be 100% compliant while providing reliable, environmentally conscious, and cost effective service to its customers.[31] GMP strives for complete Project compliance because it is committed to flawless execution of the KCW Project, rather than based on a concern that penalties may be imposed.[32] As Mr. Castonguay testified, GMP takes its compliance obligations very seriously, irrespective of whether the Board has determined that a violation has occurred in a specific instance.[33]

As evidenced by the measures it has already implemented along with the video surveillance equipment and weather monitoring to be implemented, GMP continues with its considerable efforts to address the sound-related issues that resulted in the 4.25 hours of exceedances. Accordingly, a penalty is not necessary to impose a deterrent effect.

F. GMP'S ECONOMIC RESOURCES

For its fiscal year 2013, GMP's revenues are projected to be approximately $617 million.[34] While GMP has the financial ability to pay a Board-ordered penalty for the exceedances, it respectfully submits that imposing a penalty on it will not ultimately advance the objective of both the Board and GMP to provide renewable energy in Vermont in compliance with the CPG. GMP is already committed to complying with the CPG, and it has already implemented and continues to implement steps to address the potential for future sound violations.

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31 Castonguay Pf. at 5-6; Tr. 8/8/13 at 37-38 (Castonguay).
32 Castonguay Pf. at 6.
33 Tr. 8/8/13 at 36-37 (Castonguay).
34 Castonguay Pf. at 6.

G. GMP HAS AN EXEMPLARY RECORD OF COMPLIANCE

The KCW Project is GMP's largest project in GMP history.[35] GMP has an exemplary record of compliance, particularly given the complexity and size of the KCW Project.[36]

H. THERE ARE OTHER MITIGATING CIRCUMSTANCES

GMP has committed to installing approximately $100,000 of weather monitoring and video surveillance equipment to proactively and more directly address the weather conditions relating to snow accumulation.[37] GMP's 99.9% sound compliance record is exemplary.

It is also important to recognize that GMP has been extremely proactive in addressing noise complaints. Several personnel log in information concerning each complaint, including time, date and details, irrespective of whether the information was received directly or through the Department of Public Service ("PSD").[38] GMP evaluates the weather conditions, often sends technicians to the site to perform a visual inspection and, where warranted, pauses operation of the turbines.[39] GMP has taken these actions, whether within or outside sound monitoring periods.[40]

There is also a detailed formal complaint process established in the Final Monitoring Protocol.[41] This process provides for verification of sound level complaints pursuant to the methodologies required by the Protocol. This process represents the Board's determination of a "fair baseline" on how to fairly allocate the burdens relating to compliance issues.[42] Despite these procedures, complainants often choose to complain only informally, and in certain instances complain only to the Board or PSD, so that GMP is unaware of their concerns, until brought to GMP's attention.

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35 Castonguay Pf. at 6.

36 Castonguay Pf. at 67.

37 Castonguay Pf. at 4, 7-8.

38 Tr. 8/8/13 at 19-20 (Castonguay).

39 Tr. 8/8/13 at 20, 42 (Castonguay).

40 Tr. 8/8/13 at 27 (Castonguay). Although it may not know the contemporaneous sound level where action is taken outside of the monitoring periods, GMP takes action to assure compliance. Tr. 8/8/13 at 32-33 (Castonguay).

41 Tr. 8/8/13 at 46-48 (Castonguay).

42 *See* Tr. 8/8/13 at 50 (Burke).

In order to facilitate resolution of complaints through the Final Monitoring Protocol, GMP has reminded Project neighbors of their ability to request inside-outside monitoring and is undertaking exterior testing for a residence that did not qualify under the protocol. Tr. 8/8/13 at 48 (Castonguay).

Despite suggestions to the contrary, the conditions causing sound exceedances relate to snow accumulation rather than ice or hard rime ice. Ice is caused by very specific temperature and weather conditions (either freezing rain or mist) whereas snow build-up can happen in a wide range of temperatures.[43]

IV. A DETERMINATION TO IMPOSE NO PENALTY OR A NOMINAL PENALTY IS CONSISTENT WITH PENALTIES IMPOSED IN PRIOR CASES

As set forth above, none of the Section 30 factors supports imposing a penalty. The 4.25 hours of sound level exceedances did not harm public health, safety or welfare, the environment, the reliability of utility services, or any other interest of utility customers, or have any significant adverse effect on the other Section 20 criteria.[44] The exceedances were of very short duration, were caused unintentionally by GMP and did not create any economic benefit of significance to GMP.[45] GMP's record of compliance for this Project has been exemplary, particularly given its size and complexity.[46] In addition, GMP has already taken short-term and long-term measures to address the cause of the sound exceedances.[47] For these reasons, no penalty, or at most a nominal penalty, should be imposed.

A Board determination not to impose a penalty, or to impose a nominal penalty, is consistent with prior Board penalties in Section 248 cases.[48] In a case involving a telecommunications carrier, the Board found a violation of a Board requirement, but ordered no penalty because the company quickly remedied its failure and put in place steps to avoid repetition of the same mistake.[49] In another more recent case, the Board imposed a $1,000 penalty for unauthorized tree cutting that the Board found to be "a clear violation of the March 3 Order and CPG."[50] In a third case, the Board imposed a $1,000 penalty for failure to file

43 Tr. 8/8/13 at 22, 62 (Castonguay).

44 30 V.S.A. § 30(c)(1).

45 30 V.S.A. § 30(c)(2)-(4).

46 30 V.S.A. § 30(c)(7).

47 Castonguay Pf. at 3-4.

48 *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).

49 *See Re: MCI Telecommunications Corporation*, Docket No. 6437 (Vt. Pub. Serv. Bd. May 15, 2001) ("Docket 6437 Order") at 7, 12.

50 Docket 7635 Order at 2.

required studies and failure to remove a meteorological tower by the Board-imposed deadline.[51] even though it was "troubled by [the company's] failure to abide by the terms of two Board Orders in the one, limited, docket that [the company] has had in front of the Board. This behavior shows a disregard for the Board's regulatory process."[52]

These cases support a zero or nominal penalty in this case. They involve violations of "bright line" standards, similar to the Board's characterization in this case of the sound level standard, and therefore are appropriate sources of guidance. The third case also involves intentional conduct, unlike here, and the fine was limited to $1,000 despite multiple violations. Although not addressed in those cases, it is also highly unlikely that they involved the type of mitigating factors present in this case, including a 99.9% compliance rate. For these reasons, a zero or nominal penalty is consistent with Board precedent.

The Board has discretion not to impose a penalty under Section 30. Section 30(a)(1) provides that a utility "shall be required to pay a civil penalty as provided in subsection (b)." Subsection (b), however, provides that the Board "may impose a penalty."[53] The reference to "shall" therefore merely directs that the provisions of subsection (b) shall be applicable to the Board's determination, which provisions confer discretion on the Board.

This interpretation is supported by prior Board orders. In a 2001 case, for instance, the Board stated that "[w]e accept the Hearing Officer's Findings and recommendations, including the recommendation that we exercise our discretion and not impose penalties upon [the company] for its failure to comply with" the requirements of a prior order.[54] In a more recent case, the hearing officer stated that "the Board may exercise its discretion and not impose civil penalties under Section 30, notwithstanding a conclusion that a violation of law or Board Orders have occurred."[55]

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51 *In re Endless Energy Corp.,* Docket No. 6154 (Vt. Pub. Serv. Bd. Mar. 30, 2006) ("Docket 6154 Order") ($1,000 fine for failure to file bird and bat studies, failure to remove met tower by Board-imposed deadline). *See also Re Tariff filing of Arlington Water Company*, Docket No. 6597 (Vt. Pub. Serv. Bd. April 1, 2004) (tariff filing late by five months).

52 Docket 6154 Order at 2.

53 The separate provisions of Section 30(a)(2) are based on a similar structure. It first provides that a utility "shall be required to pay a civil penalty", but then provides that the Board "may impose a civil penalty" in amounts that vary depending on review of the Section 30(b) criteria.

54 Docket 6437 Order at 7, 12.

55 *In re Entergy Nuclear Vermont Yankee*, Docket No. 6812 (Vt. Pub. Serv. Bd. Feb. 18, 2005) at 8 n.11. *But see* Docket 7635 Order at 3 (concluding that plain language of Section 30 required imposition of a penalty for a violation, and in the absence of any comments on Section 30 factors 3, 5, 6, 7, or 8, imposing a $1,000 fine.)

This interpretation is also supported by the Board's order requiring a show cause proceeding in this case. In its July 15 Show Cause Order, the Board directed "a hearing at which GMP must show cause, on the record through prefiled testimony subject to cross-examination, why the Board should not impose sanctions, pursuant to 30 V.S.A. § 30, for operation of the Project in violation of the noise standard imposed by Condition 39 of the Order and CPG."[56] It is implicit in this Order that the Board retains discretion under Section 30 not to impose a penalty even where a violation of a Board order is found.

V. CONTINUOUS SOUND MONITORING SHOULD NOT BE REQUIRED

The Department's witness, Mr. St. Peter, has suggested that the penalty could potentially be devoted to a "continuous" sound monitoring program.[57] This proposal should be rejected for a number of reasons.

First, the Final Monitoring Protocol, including testing during eight two-week periods, was approved by the Board after an intensive, litigated proceeding involving several experts representing adverse parties and five Board Orders.[58] The Final Monitoring Protocol approved in the Board's CPG should not be changed based on the record in the show cause proceeding.[59] Similar to the sound standard, revision of the Final Monitoring Protocol is also beyond the scope of this proceeding and has been raised in a procedurally defective manner.[60]

Second, the ability to undertake continuous monitoring is limited by several factors. For instance, the only continuous monitoring of which Mr. Kaliski is aware that produced reliable results was conducted only under very specific meteorological conditions involving very high wind shear.[61] It would also involve continuous audio recording, which raises privacy concerns.[62] Because there is no reliable cellular access at the Project site, telemetry would be unavailable and data would have to be collected instead by means of weekly visits to the collect the data.[63]

Third, continuous monitoring would be unnecessarily expensive. Mr. Kaliski testified that it would cost at least $600,000 for continuous monitoring at the seven current stations for

56 July 15 Show Cause Order at 2.

57 St. Peter Pf. at 8.

58 *See* Board Orders dated May 31, 2011, July 27, 2011, October 20, 2011, April 3, 2012, and May 16, 2012.

59 As an example of the minimal evidence on the issue in this case, Mr. St. Peter stated that he did not have a solution on how to monitor by means of telemetry due to lack of cell coverage in the area. Tr. 8-8-13 at 143-44 (St. Peter).

60 *Cf.* July 15 Order at 11-12.

61 Tr. 8-8-13 at 91-92 (Kaliski).

62 Tr. 8-8-13 at 89 (Kaliski).

63 Tr. 8-8-13 at 89 (Kaliski).

one year.[64] In addition, it would result in more lost production, in order to implement one of the two background sound methodologies to properly differentiate between background or ambient sound and turbine sound.[65] This is far greater than the highest amount of penalties contemplated by its proponent, the Department.[66]

For these reasons, there is no basis in this proceeding for implementing continuous monitoring, whether funded by any penalty or otherwise. It should be rejected.

VI. CONCLUSION

For all of the above reasons, the Board should not impose a penalty or, at most, impose a nominal penalty.

Dated August 28th, 2013 at Burlington, Vermont.

GREEN MOUNTAIN POWER CORPORATION

By: ______________________

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

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64 Tr. 8-8-13 at 89 (Kaliski).

65 Tr. 8/8/13 at 55 (Castonguay).

66 St. Peter Pf. at 8.

Attachment A

Summary of Nelson Claims During Sound Monitoring Periods

Date	Page	Period	Exceedance
Appendix B			
01-11-13	2	Fall	
01-12-13	2	Fall	1:10-2:20 am
03-01-13	3	Winter	
03-02-13	4	Winter	8:10-9:10 am
03-03-13	5	Winter	
03-04-13	5	Winter	
Appendix E			
12-07-12	26	Fall	
01-04-13	26	Fall	
01-07-13	28	Fall	
01-08-13	29	Fall	
02-24-13	31	Winter	
03-24-13	32	Winter	
05-23-13	32	Spring	
05-31-13	33	Spring	