STATE OF VERMONT
PUBLIC SERVICE BOARD

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 REPLY BRIEF CONCERNING SHOW CAUSE HEARING

I. INTRODUCTION

This Reply Brief is filed on behalf of Green Mountain Power Corporation ("GMP") in response to the post-hearing briefs filed by the Department of Public Service ("Department"), the Nelsons, Robbin Clark, and Kevin McGrath. As set forth below, the parties' claims and proposed fines should be rejected.

II. THE DEPARTMENT'S PROPOSED FINE IS NOT SUPPORTED BY CREDIBLE EVIDENCE NOR SUBSTANTIAL ANALYSIS

The Department's request that the Vermont Public Service Board ("Board") impose a $54,000 fine is not supported by credible evidence before the Board on the sound exceedances or the Department's analysis. As explained in more detail below, the Department's analysis (1) ignores the factors required to be considered under 30 V.S.A. § 30(c), (2) improperly suggests GMP should be punished for not investigating an issue unknown to it, or the professionals it relied on during the process of purchasing the turbines, (3) relies on claimed, but not substantiated, health impacts that are unrelated to the violations, and (4) proposes a novel theory that the magnitude of a fine can be based on the size of the "sample" represented by the violations.

Before responding to the Department's claims, it bears emphasizing that the duration of the violations was minimal by any standard.[1] During the 5,378 hours of usable time recorded during the monitored periods, there were largely minor exceedances of the required dBA levels for only 4.25 hours,[2] representing a 99.9% compliance rate.

A. THE DEPARTMENT FAILED TO UNDERTAKE THE ANALYSIS SET FORTH IN SECTION 30

Section 30(c)[3] sets out eight factors relevant to the determination of any penalty. The Board typically analyzes these factors when determining the amount of any fine.[4] Yet the Department does not mention any of the Section 30(c) factors, except in connection with its analysis of impact on public health. It does not consider, for instance, that the violation was not intentional, there was no economic benefit from the violation, and that GMP has an exemplary compliance record. Nor does the Department explain why, contrary to Board precedent, these factors should be ignored in this case. The Department's recommended fine is entitled to little weight in light of its decision not to undertake the analysis provided for under Section 30(c).

B. THE DEPARTMENT'S CLAIM THAT GMP WAS OBLIGATED TO INVESTIGATE THE IMPACT OF SNOW ACCUMULATION ON TURBINE BLADES PROVIDES NO BASIS FOR IMPOSING A FINE

The uncontroverted evidence demonstrates that GMP took all reasonable measures to explore the issue of turbine noise, including reviewing operational issues at the facility location with the turbine manufacturer.[5] The Department concedes that it "is not asserting that the evidence here conclusively shows that GMP's pre-application investigation [of whether snow

---

1 GMP Brief at 6.

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

3 30 V.S.A. § 30(c) ("the board may consider any of the following factors").

4 E.g., *Petition of Central Vermont Public Service Corp.*, Docket No. 7635 (Vt. Pub. Serv. Bd. June 18, 2012) at 3.

5 Mr. Castonguay provided uncontradicted testimony that while snow is not an unexpected occurrence, noise due to snow accumulation on the turbine blades was not a factor or concern identified by the turbine manufacturer. Tr. 8/8/13 at 50-51 (Castonguay). Mr. Kaliski provided unchallenged testimony that he "was aware of the effect of ice on wind turbines, but [he] wasn't aware of the effect of snow until just recently." Tr. 8/8/13 at 129 (Kaliski).

would accumulate on turbine blades] was either adequate or inadequate."[6] There is no basis for a finding that GMP failed to undertake reasonable investigation of sound issues relating to weather at this site. Imposing sanctions as the Department requests, "to underscore" the importance of a duty to investigate,[7] where there is no such evidence, is unnecessary and would be improper.

C. THERE IS NO CREDIBLE EVIDENCE THAT THE SOUND EXCEEDANCES RISKED HARM TO PUBLIC HEALTH

There is no evidence before the Board linking the sound violations to any health impacts. 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. Second, as GMP explained in its Brief, the health effects reported by Shirley Nelson are largely unrelated to the exceedances.[8] In fact, the Department acknowledges the lack of a causal link, stating that while it does not discount Ms. Nelson's complaints, "the record here is not sufficient to link her complaints to the violations at issue."[9] No party offered independent evidence, from a medical expert or otherwise, establishing the cause of the symptoms claimed by Ms. Nelson or verifying the claimed symptoms. The record accordingly contains no evidence to support a finding that any of the exceedances caused, or could reasonably be "inferred" to have caused, any individual or public health impacts.[10] No physician, health care professional or other qualified witness provided any evidence whatsoever drawing such an inference. Ms. Nelson's personal testimony about her individual health issues does not support a finding that such an inference can objectively be drawn. Any such inference is dispelled, by the testimony of Mr. Kaliski 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."[11] Mr. St. Peter, moreover, noted that the scientific literature demonstrates that the exceedances would be themselves imperceptible to the human ear.[12] There is no dispute that Ms. Nelson has suffered annoyance.

---

6 Department Brief at 4.
7 Department Brief at 4.
8 GMP Brief at 3-5.
9 Department Brief at 3.
10 Department Brief at 3.
11 Kaliski Pf. at 7.
12 St. Peter at Pf. 5.

The evidence cannot, however, support a finding that her annoyance is related to any exceedance or permit violation.

D. THE ALLEGED SAMPLE SIZE PROVIDES NO BASIS FOR IMPOSING A FINE

The Department supports the size of its proposed fine, in part, by reference to "the existence of admitted multiple CPG violations during periods representing a small sample of the Project's operational history."[13] The Department's rationale should be rejected. The "sample size" was adequate. The test periods were part of, and consistent with, the Final Monitoring Protocol that was litigated extensively and approved by the Board. As a result, there is no basis for a Board determination, or a penalty against GMP based on a finding, that the sample size was too small or otherwise inadequate. The question before the Board is whether there are documented exceedances, measured in accordance with the approved sound protocol. GMP acknowledges that there were *de minimus* exceedances. The record contains no credible evidence to support a finding that there exists more than a *de minimus* violation.

Finally, there is no basis for concluding that a penalty for a violation should be increased based on the period of time evaluated. Nothing in the Section 30(c) factors nor in prior Board orders suggests such a result.

E. THE REMAINING CLAIMS OF THE DEPARTMENT AND OTHERS RELATING TO PROPOSED FINES SHOULD BE REJECTED

In their Brief, the Nelsons make a number of inaccurate claims about the exceedances and the record evidence related to them. First, contrary to the Nelsons' claim, although GMP was unable to confirm the cause of the January 12 exceedance,[14] it did attribute the exceedances on March 2 and March 4 to snow accumulation.[15]

The Nelsons incorrectly assert that there was no root cause analysis performed by GMP concerning the prominent discrete tones identified during the fall monitoring. The Winter Report

---

13 Department Brief at 3.

14 Tr. 8/8/13 at 17-18 (Castonguay).

15 Tr. 8/8/13 at 17 (Castonguay). The November event was not during a monitoring period, but GMP did observe snow on the blades, and it was that event that led GMP to further analyze the apparent connection between increased turbine sound and snow on the turbine blades. Tr. 8/8/13 at 16, 17 (Castonguay).

contains an analysis of the issue, indicating that it did not recur in the winter period and that the issue would be checked in future periods.[16]

The Nelsons' assertions that the exceedances occurred when not all turbines were operating at full capacity are both incorrect and irrelevant. As Mr. Castonguay explained, the turbines reach maximum sound power when operated at 50% total output and the sound level does not increase thereafter even if the total turbine output increases over 50%.[17] There were, moreover, occasions during the measuring periods when GMP had all turbines running and "right up near nameplate capacity."[18] Finally, whatever the specific operating characteristics of the turbines, the questions before the Board are whether exceedances occurred -- they did on *de minimus* basis, both in time and in sound level -- and whether the scope and scale of the demonstrated exceedances warrant a penalty – they do not because GMP addressed them appropriately and they caused no harm.

The Nelsons' claim that with NRO implemented, the Project is likely to create exceedences at the Nelson property between 5% and 10% of the time during spring, summer and fall[19] is unsupported by any record evidence and could never support a finding by the Board. Moreover, this claim is belied by the monitoring data, which indicates that any exceedences are likely caused by snow accumulation occurring during winter periods. It is also based on an inaccurate description of the underlying data.[20]

---

16 Exh. Pet.-KHK-9 (Winter Compliance Report) at 35.

17 Tr. 8/8/13 at 30-31 (Castonguay).

18 Tr. 8/8/13 at 30 (Castonguay).

19 Nelsons Brief at 2, citing Exh. Pet.-KHK-2 (supp.) at 9. The information referenced by the Nelsons in fact appears on page 10.

The Nelsons also claim that GMP has failed to validate whether the project is operating in compliance with the 30 dBA (interior bedrooms)(Leq)(1 hr). Nelsons Brief at 4-5. GMP is not obligated to validate the interior standard under the Protocol. Instead, GMP is required to respond to requests for inside-to-outside tests. Final Monitoring Protocol Section 5.0. GMP has received no requests for such testing. See Tr. 8/8/13 at 55 (Castonguay). Further, the Nelsons have made it very clear that they would not permit any such testing in their house. Tr. 8/8/13 at 150-151 (Nelson).

Mr. McGrath claims that GMP should do more in terms of gathering information from the public about "noise violations" by reaching out via mailings and local newspapers to encourage more input. McGrath Brief at 1. In fact, GMP did submit letters to neighbors to remind them of the ability to request indoor monitoring. See Tr. 8/8/13 at 48 (Castonguay).

20 Figure 7 represents a visual portrayal of certain information from table 3, which indicates a maximum sound level of 44 dBA. Pet.-KHK-2 (Supp.), at 9, 10.

The Nelsons and Robbin Clark request that the Board make a number of modifications to the Final Monitoring Protocol.[21] Arguments as to the sufficiency of the existing sound standard, which was finally established in the Board's Final Order and CPG[22] or the sound monitoring process, which was established in the Board-approved Final Monitoring Protocol[23] are beyond the scope of this proceeding.

F. ALTHOUGH THERE IS NO RECORD BASIS FOR REQUIRING CONTINUOUS MONITORING, GMP WILL CONTINUE TO EVALUATE THE ISSUE

GMP demonstrated in its Initial Brief that the record did not support a requirement of continuous monitoring.[24] The Department, however, proposes that GMP investigate the cost and feasibility of continuous noise monitoring of the Project, and file a report with the Board and parties describing the results of its investigation.[25] The information reviewed to date by GMP indicates that continuous monitoring would be extremely expensive and would not produce information of sufficient quality to be useful in determining compliance. GMP will continue to diligently investigate this matter with an open mind and review its analysis with the Department. GMP proposes that this effort be undertaken separately from this show cause proceeding and that GMP and the Department make appropriate reports to the Board of their conclusions and recommendations in 90 days.

---

21 These include requests to (1) modify the location of the recording devices in the vicinity of the Nelson residence, Nelsons Brief at 8, (2) add monitoring device locations, including interior monitoring, Nelsons Brief at 8, (3) order that an independent third party be retained to install and operate the new system and that all costs be "billed back" to petitioner GMP, Nelsons Brief at 8, and (4) require a continuous sound monitoring system via automated telemetry. Nelsons Brief at 8. Ms. Clark is Chair of LMG, which did not object to the Final Monitoring Protocol, as approved by the Board.

22 *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.

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

24 GMP Brief at 4.

25 Department Brief at 5. The Department further proposes that the parties should then have an opportunity to file recommendations on the investigation. If such monitoring is judged to be feasible, useful, and not excessively costly, the Department states that it would be willing to make its best efforts to negotiate an agreement with GMP to perform the continuous monitoring. *Id.*

III. CONCLUSION

For all of the above reasons and those stated in its Brief, the Board should not impose a penalty or, at most, impose a nominal penalty.

Dated September 6, 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
pzamore@sheeheyvt.com
dbouffard@sheeheyvt.com