

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Joint Petition of Green Mountain Power Corporation,	)	
Vermont Electric Cooperative, Inc., Vermont Electric	)	June 13, 2011
Power Company, Inc., and Vermont Transco LLC,	)	
for a Certificate of Public Good, pursuant to 30 V.S.A.	)	Docket No. 7628
Section 248, for authority 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.	)	

**LOWELL MOUNTAINS GROUP, INC.'S
MOTION FOR NEW HEARING, MOTION TO ALTER OR AMEND ORDER,
AND MOTION FOR RELIEF FROM JUDGMENT**

NOW COMES the Lowell Mountains Group, Inc. (hereinafter "LMG"), by and through counsel, Brice Simon, Esq. of Breton & Simon, LLC, and, pursuant to P.S.B. Rules of Practice 2.103 and 2.221, and Vermont Rules of Civil Procedure 59 (a) and (e), and 60, hereby moves for a new hearing, to alter or amend and for relief from the Findings and Order, dated May 31, 2011 in the above captioned matter. In support whereof, LMG relies upon and incorporates herein by reference the Motion for Reconsideration of the Towns of Craftsbury and Albany, and further submits the following:

MEMORANDUM

I. Introduction

LMG seeks a new hearing, and amendment of or relief from the Public Service Board's (hereinafter the "Board") Findings and Order dated May 31, 2011 in this Docket 7628 (hereinafter the "Order"), which granted Petitioners a Certificate of Public Good to construct and operate up to a 63 MW wind electric generation facility and associated

facilities on the Lowell Mountain Range in Lowell, Vermont, and to install or upgrade approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield, and Jay, Vermont (the “Project”). The Project consists of either 20 or 21 wind turbines and associated transmission and interconnection facilities. The turbines, chosen by GMP following the Board’s issuance of a CPG, will be 459 feet tall and will be sited along the Lowell Mountain ridgeline in Lowell, Vermont.

LMG respectfully requests that the Board reconsider its findings regarding the following matters, and find that the Project, as proposed and designed, fails to meet the requirements of 30 V.S.A. § 248 and would not be in the public good. In addition, LMG requests a new hearing due to the impact of a Memorandum of Understanding between Petitioners and the Vermont Agency of Natural Resources, on the final days of hearings. Finally, LMG seeks relief from those portions of the Board’s Order that require parties to review, assess and notify the Board within two (2) weeks of objections to changes made to the Project by the Applicants in order to comply with the Board’s Order.

II. A New Hearing Should Be Conducted to Allow the Parties to Develop and Present Evidence Regarding Natural Resources Impacts, Because the Natural Resources MOU Resulted in an Unfair Limitation of Evidence Presented to the Board

On the final day of hearings, Petitioners and the Agency of Natural Resources entered a Memorandum of Understanding (Natural Resources MOU) regarding mitigation of impacts to natural resources. Order at 4. Entry of the MOU essentially removed from the technical hearing issues related to natural resources impacts addressed by the Natural Resources MOU, and the Board has relied upon the Natural Resources MOU to mitigate those natural resources impacts. *Id.*

LMG, only learned of the Natural Resources MOU on what became the final day of technical hearings. Witnesses were presented in an order different from the schedule that had been circulated weeks in advance. Because ANR compromised with Petitioners on various items, and because witnesses were taken out of turn, the issues presented to the Board at the technical hearings were more limited than if the Natural Resources MOU had not been used to cut the presentation of evidence regarding natural resources impacts short. In addition, because the Natural Resources MOU shortened the hearing process by a day, witnesses were taken out of turn to conclude the technical hearings early. This resulted in an incomplete presentation of evidence. In order to permit the parties to present evidence concerning natural resources impacts not adequately addressed in the Natural Resources MOU, but which could not be identified on short notice when the Natural Resources MOU was entered on the penultimate day of hearings, a new hearing should be allowed. Further, a new hearing would permit the parties to present evidence that was not adequately presented when the final witnesses were taken out of turn.

III. The Board Should Alter or Amend the Order and Find that the Record Does Not Establish that the Natural Resources MOU Sufficiently Protects the Natural Environment

The Board's Order relies upon the Natural Resources MOU, "so that environmental impacts from the proposed project that are addressed by the Natural Resources MOU are properly mitigated." Order at 4. However, the Board did not take enough evidence, and the parties did not have sufficient time, to determine whether the Natural Resources MOU indeed adequately mitigates the natural resources impacts of the Project. In order to make such a determination, the Natural Resources MOU should be subjected to critical scrutiny. The only possible means of adequately analyzing the

Natural Resources MOU, such that evidence could be presented and well-supported findings could be made concerning impacts to natural resources, would be to allow the Parties time to have the Natural Resources MOU analyzed by their own experts and conduct hearings specifically on the impacts of the Natural Resources MOU. Without specific evidence regarding the actual effects of the Natural Resources MOU, from parties not advocating acceptance of the MOU, there is an insufficient record upon which to conclude that the Natural Resources MOU adequately mitigates environmental impacts of the Project. Therefore, if a new technical hearing is not convened as requested by LMG above, so that the Board may take additional evidence from the Parties concerning the likely impacts of the Natural Resources MOU on the Project, the Board should alter or amend its Order to find that there is insufficient evidence for the Board to conclude that the Natural Resources MOU adequately mitigates the natural resources impacts of the Project.

IV. The Board Should Conduct a New Hearing, or Amend its Order, to Address the Lack of Evidence Regarding Carbon Emissions Reductions Allegedly Caused by the Project

The Board's Order essentially adopts the Petitioners' position that the Project will constitute a renewable energy supply, thereby reducing carbon emissions. Order at 49, ¶ 131. There is absolutely no evidence in the record, however, substantiating the claim that operation of the Project will actually reduce the net carbon emissions of the ISO-NE electric generators. David Lamont, from the Department of Public Service, testified theoretically regarding how operation of the Project *could* result in reduced carbon emissions by allowing a carbon-producing generator to reduce electricity production. Tr. 2/24/11, pages 106 – 109. Mr. Lamont could not, however, quantify the carbon cost of transporting the turbines to the Project site, and was unable to identify which carbon emitters would reduce

production when the Project is in operation. *Id.* Nor could Mr. Lamont quantify how much carbon reduction could be achieved by any particular power producer if the Project were in operation. *Id.* Accordingly, there is an inadequate record to support the Board's finding that the project will result in reduced carbon emissions, and without that benefit the Board cannot find that the Project is in the public good. The Board should either convene a new technical hearing to determine the actual carbon reductions that will result from the project, if any, or amend its Order to eliminate any finding relying upon the Project resulting in a net reduction in carbon emissions.

V. The Parties Require Additional Time to Respond to Supplemental Filings

For the reasons stated in Section 6 of the Motion for Reconsideration of the Towns of Craftsbury and Albany, LMG moves the Board to amend its Order to provide additional time within which the Parties may respond to the Petitioners' supplemental filings. In addition, LMG seeks an amendment to the Board's Order specifically providing that further technical hearings will be convened to allow testimony on the revised submissions of the Petitioners. LMG submits that the changes to the Project necessitated by the conditions contained in the Board's Order, and the alterations to the Project anticipated by the subsequent filings of Petitioners, will require time and expertise for the Parties to analyze. LMG requests four (4) weeks to respond to supplemental submissions, and asks the Board to amend its Order to require further hearings on the supplemental filings of Petitioners. Only with additional time for review will the parties be able to adequately respond to the Petitioners' supplemental filings. By amending its Order to state that further hearings will be conducted on the issues regarding which supplemental submissions are required, the Board would additionally ensure that the Parties will have an adequate opportunity to present evidence on issues raised by the supplemental filings.

WHEREFORE, for the foregoing reasons, Lowell Mountains Group, Inc. prays the Public Service Board to order new technical hearings to be conducted, to alter or amend its Order as specifically requested herein, to provide relief from the two (2) week deadline for parties to respond to Petitioners' supplemental submissions, and to amend its Order to find that the Project is not in the public good.¹

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¹ LMG reserves its right to challenge submissions made by GMP subsequent to the Board's May 31, 2011 issuance of a CPG.