

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

**BRIEF OF THE PUBLIC SERVICE DEPARTMENT REGARDING VIOLATIONS OF
THE TRANSPORTATION PLAN**

The Public Service Department (PSD or the Department) has entered into a Stipulation with Green Mountain Power Corporation (GMP) in which GMP agrees to pay \$7500 as a civil penalty for violations of its approved Transportation Plan. The PSD believes that the amount agreed to is reasonable, proportionate to the conduct at issue, and appropriate when considered in light of the criteria of 30 V.S.A. § 30(c). In support of the parties' Stipulation the Department submits the following analysis of the § 30 criteria.

Subsection (c) of § 30 sets forth the following factors that the Board "may" consider when imposing penalties:

- (1) the extent that the violation harmed or might have harmed the public health, safety or welfare, the environment, the reliability of utility service or the other interests of utility customers;
- (2) whether the respondent knew or had reason to know the violation existed and whether the violation was intentional;
- (3) the economic benefit, if any, that could have been anticipated from an intentional or knowing violation;
- (4) the length of time that the violation existed;
- (5) the deterrent effect of the penalty;
- (6) the economic resources of the respondent;
- (7) the respondent's record of compliance; and
- (8) any other aggravating or mitigating circumstance.

These factors will be reviewed here in the order listed in statute.

(1) The extent that the violation harmed or might have harmed the public health, safety or welfare, the environment, the reliability of utility service or the other interests of utility customers.

The violations at issue consisted of failures to adhere to advance-notice requirements of the Transportation Plan approved by the Public Service Board in this docket. The evident purpose of these requirements was to provide municipal officials with ample notice of planned transport activities, and with an opportunity to alert GMP to local concerns and to participate in a road survey to create a pre-transport baseline of road conditions.

It is possible that failure to provide the particular amount of advance notice to municipal officials could have presented a potential for harm to public infrastructure or safety. However, as the Board has observed: “What is critical, is that these activities be completed prior to the initiation of transport on a given route, not how long prior to initiation of transport they are completed.” Order of August 3, 2012 at 3. Advance notice was in fact given, and the local concerns raised were addressed by GMP. Thus any potential for harm flowing from the failure to observe the notice periods was minimized or eliminated, and in fact no harm was done.

(2) Whether the respondent knew or had reason to know the violation existed and whether the violation was intentional.

The Department accepts that the violation resulted from a good-faith misunderstanding of the effect of a PSB Order by a non-lawyer. That said, GMP as an entity did have reason to know the violations existed, as subsequent review by others at GMP demonstrated. It appears that when the question was brought to GMP counsel the matter was promptly brought to the attention of regulators. PSD does not believe the violations were intentional.

(3) The economic benefit, if any, that could have been anticipated from an intentional or knowing violation.

Adhering to the project’s schedule was a critical concern for GMP due to the expiration of Production Tax Credits (PTC) at the end of 2012. There was therefore an economic benefit to be obtained (or preserved) by taking shortcuts that risked violating PSB requirements, or by

intentional violation of them. (As noted above, PSD does not believe that the violations were intentional.) While GMP's focus on the PTC deadline may have contributed to the violations, the economic benefit of the PTCs flows primarily to GMP's ratepayers, not to its owner. Failure to obtain the PTCs might well have subjected GMP to a prudence inquiry on that topic, but the likelihood of a resulting disallowance cannot be estimated with any confidence. Overall, while there was an economic benefit at stake, the benefit that could have inured to GMP itself is minimal at best.

(4) The length of time that the violation existed.

The violations occurred over a period of ten days.

(5) The deterrent effect of the penalty.

In the circumstances here, the Department believes that the stipulated penalty is sufficient to deter future violations.

(6) The economic resources of the respondent.

GMP's resources are undoubtedly adequate to pay the stipulated penalty, which is itself intended to be commensurate with the nature of the violations and with GMP's conduct before and after the violations occurred.

(7) The respondent's record of compliance.

GMP has a history of self-reporting compliance issues, and of cooperating with regulatory investigations. In the Department's view the Company's record of compliance is good.

(8) Any other aggravating or mitigating circumstance.

GMP's self-reporting of the violations, while not as detailed as it might have been, is a mitigating circumstance.

CONCLUSION

The Public Service Department believes that the penalty agreed to in the parties' Stipulation is reasonable and appropriate to the conduct at issue. The Department therefore respectfully requests that the Public Service Board approve the Stipulation as filed.

Dated at Montpelier, Vermont, this 19th day of December, 2012.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: _____
Geoffrey Commons
Director for Public Advocacy

cc: Service list