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	)

Order entered: 10/16/2014

ORDER RE NOISE VIOLATIONS

I. INTRODUCTION

On August 8, 2013, the Public Service Board ("Board") conducted a technical hearing to consider the imposition of a civil penalty under 30 V.S.A. § 30 against Green Mountain Power Corporation ("GMP") for violations of the noise standard set for the operation of GMP's wind electric generation facility located in Lowell, Vermont (the "Project"). The violations were identified in GMP's required reports covering sound monitoring that took place during the Fall and early Winter of 2012 and the Winter of 2013.[1] For the reasons discussed below, in today's Order we impose a civil penalty on GMP, the amount of which recognizes GMP's agreement with the proposal filed by the Department of Public Service ("DPS" or "Department") to undertake a one-year period of continuous sound monitoring for the Project.

1. Condition 39 of the Board's Order and Certificate of Public Good approving the Project requires GMP to "construct and operate the proposed project so that the turbines emit no prominent discrete tones pursuant to ANSI standards at the receptor locations, and project-related sound levels at any existing surrounding residences do not exceed 45 dBA(exterior)(Leq)(1 hr) or 30 dBA (interior bedrooms)(Leq)(1 hr)." Docket 7628, Order of 5/31/11 at at 165; CPG dated 5/31/11 at 8.

II. Procedural History

On August 8, 2013, the Board conducted a technical hearing to consider the imposition of a civil penalty under 30 V.S.A. § 30 against GMP for violations of the noise standard set for the operation of the Project.

Following the hearing, briefs were filed by GMP, the Department, and Donald and Shirley Nelson (the "Nelsons"). GMP filed a reply brief. No other party filed a reply brief.[2]

In their briefs, both the Department and the Nelsons discussed the desirability of continuous sound monitoring for the Project. In its reply brief, GMP noted that it was willing to investigate the possibility of continuous monitoring and to review its findings with the Department.

Given the interest expressed by the Department and the Nelsons in the possibility of continuous monitoring, as well as GMP's stated willingness to explore such a possibility, on September 25, 2013, we directed GMP to undertake an investigation into the feasibility of continuous monitoring for the Project and to file a report with the Board reflecting its findings within 90 days.[3]

On December 23, 2013, GMP filed its report with the Board, along with a cover letter describing a program of continuous monitoring that it proposed to undertake.

On January 8, 2014, the Department and the Nelsons each filed responsive comments that were critical of GMP's report and proposal.

On January 21, 2014, we issued an Order in which we determined that GMP's report and proposal for a period of continuous sound monitoring lacked sufficient information for the Board or the parties to determine the feasibility or efficacy of the monitoring GMP had proposed. As a result, we established a schedule that provided for two rounds of written discovery and a date for the parties to file final comments and recommendations on the feasibility of continuous sound monitoring for the Project.[4]

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2. On September 10, 2013, the Nelsons filed a correction to their initial brief.
3. Docket 7628, Order of 9/25/13 at 2.
4. Docket 7628, Order of 1/21/14 at 5-6.

On February 28, 2014, GMP, the Nelsons, and the Department each filed their final comments and recommendations regarding continuous sound monitoring.

On March 31, 2014, we issued an Order in which we outlined for the parties what the Board considered to be the necessary basic characteristics of an acceptable continuous noise monitoring proposal for the purpose of assisting in the resolution of the current investigation, and directed the parties to attempt to reach agreement on a specific proposal for Board consideration. In the event that none of the parties were able to agree on such a proposal, we stated our intent to proceed to determine the amount of a civil penalty to be imposed under 30 V.S.A. § 30 for the violations considered during the August 8, 2013, technical hearing, and would then terminate this investigation into those violations.[5]

On May 5, 2014, Lowell Mountains Group, Inc. ("LMG"), the Town of Albany, and Kevin McGrath (together the "Intervenors") jointly submitted comments which expressed concerns over the consultants retained by the Department in this investigation, requested that the Board use its bill-back authority to hire its own sound consultants to oversee the work being done by the Department, and stated that the worst outcome would be for this investigation to be resolved solely through the imposition of a financial penalty on GMP.[6]

On May 14, 2014, the Department submitted its proposal for a program of continuous monitoring for the Project (the "May 14 proposal"), noting that the parties were unfortunately unable to reach consensus on a proposal.[7]

Also on May 14, 2014, GMP filed a letter with the Board expressing its agreement with the Department's May 14 proposal.[8]

On May 22, 2014, the Intervenors filed comments critical of the Department's May 14 proposal.[9]

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5. Docket 7628, Order of 3/31/14 at 2-3, 4-9.

6. Letter from Robbin Clark, Mike Nelson and Kevin McGrath to Susan M. Hudson, Clerk of the Board, dated April 30, 2014.

7. Letter from Geoffrey Commons, Esq., to Susan M. Hudson, Clerk of the Board, dated May 14, 2014.

8. Letter from Debra L. Bouffard, Esq., to Susan M. Hudson, Clerk of the Board, dated May 14, 2014.

9. Letter from Robbin Clark to Susan M. Hudson, Clerk of the Board, dated May 20, 2014.

On May 23, 2014, the Board issued a procedural Order establishing a date for responses to the comments filed by the Intervenors.[10]

On June 4, 2014, the Department and GMP each filed responses to the Intervenors' comments.

On July 3, 2014, the Department filed a letter with the Board in which it expressed the desire for an opportunity to reach consensus on a monitoring proposal through the collaborative efforts of sound experts selected individually by GMP, the Department and the Intervenors.[11]

On July 7, 2014, the Intervenors filed a letter similar to that filed by the Department on July 3, 2014.[12]

On July 31, 2014, the Department filed a status report on the efforts of the parties to reach consensus on a monitoring proposal. According to the Department, the parties were working to reach contractual arrangements with the consultants selected by the Intervenors, and once contracts were in place, expected work to proceed expeditiously.[13]

On September 30, 2014, the Department filed a second status report in which it informed the Board that the consultants selected by the Intervenors had decided not to participate in the effort to develop a consensus sound monitoring proposal. As a result, the Department "proposes to implement the continuous monitoring proposal we filed on May 14, 2014 unless otherwise directed by the Board."[14]

On October 3, 2014, the Board issued a procedural Order stating its understanding that there was no longer an expectation that the parties would reach consensus on a continuous monitoring proposal, and that it would proceed to issue an order resolving the current investigation based on the previous filings made by the parties.[15]

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10. Docket 7628, Order of 5/23/14.
11. Letter from Geoffrey Commons, Esq., to Susan M. Hudson, Clerk of the Board, dated July 3, 2014.
12. Letter from Robbin Clark, Mike Nelson and Kevin McGrath to Susan M. Hudson, Clerk of the Board, dated July 3, 2014.
13. Letter from Geoffrey Commons, Esq., to Susan M. Hudson, Clerk of the Board, dated July 31, 2014.
14. Letter from Geoffrey Commons, Esq., to Susan M. Hudson, Clerk of the Board, dated September 30, 2014.
15. Docket 7628, Order of 10/3/14 at 2-3.

On October 7, 2014, GMP filed a letter requesting that the Board approve the continuous monitoring proposal filed by the Department on May 14, 2014.[16]

On October 8, 2014, the Town of Albany filed a letter critical of the Department's May 14 proposal, asking the Board to "implement real time data gathering with the continuous noise monitoring plan coupled with an action plan to correct excess hazardous noise levels when they occur in real time."[17]

III. Discussion

Today's Order addresses the amount of the civil penalty to be imposed on GMP for violations of the sound standard applicable to the Project during the sound monitoring periods that took place in the Fall and early Winter of 2012 and the Winter of 2013.

Section 30 of Title 30 requires GMP to pay a civil penalty for the reported violations of the sound standard that is applicable to the Project.[18] The Board may impose a civil penalty for each of the reported violations of not more than $40,000. In the case of a continuing violation, an additional fine of up to $10,000 per day may be imposed, but in no event shall the total fine exceed the larger of $100,000 or one-tenth of one percent of the gross Vermont revenues from GMP's regulated activities in the preceding year.[19]

In determining the amount of a civil penalty, the Board may consider: (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 other interests of utility customers; (2) whether GMP knew or had reason to know the violation existed and whether the violation was intentional; (3) the economic benefit to GMP, 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

16. Letter from Peter H. Zamore, Esq., to Susan M. Hudson, Clerk of the Board, dated October 7, 2014.

17. Letter from Mike Nelson to Susan M. Hudson, Clerk of the Board, dated October 7, 2014. On October 3, 2014, the Clerk of the Board received via email attachment electronically-filed comments from LMG and Kevin McGrath expressing similar concerns to those expressed by Albany in its letter dated October 7, 2014. However, documents are not considered filed with the Board until a hard copy is delivered to the Clerk of the Board. PSB Rule 2.204(C) & (E). The Board has not yet received a hard copy of the comments filed by LMG and Mr. McGrath.

18. 30 V.S.A. § 30(a)(1).

19. 30 V.S.A. § 30(b).

penalty; (6) the economic resources of GMP; (7) GMP's record of compliance; and (8) any other aggravating or mitigating circumstance.[20]

In this investigation, the Board was prepared to impose a significant penalty on GMP for the reported violations. GMP has consistently represented through the course of this docket that the Project would operate within the sound standards that were ultimately imposed by the Board.[21] This turned out not to be the case, with the first two sound monitoring sessions identifying a number of violations of the standard, both for exceeding the maximum allowable decibel level and for operating the turbines in a manner that produced discrete tones.[22] Notably, GMP attributed at least some of the exceedance violations to the presence of snow buildup on turbine blades.[23] This is a serious concern, given that GMP was aware that snow buildup on the blades could result in excessive sound levels as early as November of 2012, prior to the violations reported for the first two monitoring periods.[24]

However, we also must consider mitigating factors in determining an appropriate amount for a civil penalty. In this case, GMP took several steps following the initial violations in an attempt to prevent their recurrence, including installation of video surveillance equipment and a weather monitoring station at the Project site so that GMP can better anticipate and respond to conditions when snow buildup on turbine blades is likely to occur.[25] We note that since the identification of the initial violations, the seasonal sound monitoring that has been conducted pursuant to the requirements of the Project's Certificate of Public Good has not identified any further violations.

Additionally, the Department has proposed, and GMP supports, a one-year program of continuous sound monitoring for the Project. The Department and the Intervenors agree that a program of continuous monitoring is preferable to the Board simply imposing a civil penalty on GMP for the violations. However, the Intervenors remain critical of the Department's May 14

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20. 30 V.S.A. § 30(c).
21. *See e.g.,* tr. 8/8/13 at 28, Joshua Castonguay, GMP ("Castonguay").
22. Castonguay pf. 7/26/13 at 2.
23. Castonguay pf. 7/26/13 at 2; tr. 8/8/13 at 100, Kenneth Kaliski, GMP ("Kaliski").
24. Tr. 8/1/13 at 16-18 (Castonguay).
25. Castonguay pf. 7/26/13 at 4.

proposal. Under these circumstances, the Board must determine whether to treat GMP's support for the Department's proposal as a mitigating factor in determining the amount of the civil penalty to impose on GMP for its violations of the sound standard.

After thorough consideration, the Board concludes that it is appropriate to accept GMP's support for the Department's proposal as a mitigating factor in addressing GMP's past violations. The Intervenors have not shown any reason why the Board should not accept the May 14 proposal as mitigation in determining the amount of a civil penalty to impose in this investigation. The Intervenors' criticisms are primarily directed at the methodology to be used to account for background sound in determining Project compliance with the applicable sound standard, and the lack of real-time access to monitoring data and real-time enforcement actions in response to that data when a violation is indicated. We addressed both of these issues already in our order dated March 31, 2014, and are not persuaded by the Intervenors' more recent comments that our reasoning in that order was unsound.[26]

Further, the Department's May 14 proposal is consistent with the guidelines we set forth in our March 31, 2104, Order, and we therefore conclude that acceptance of the Department's May 14 proposal as mitigation for the civil penalty to be imposed on GMP is a more constructive outcome than simply imposing a monetary penalty on GMP. However, today's Order does not constitute Board approval of the Department's May 14 proposal, nor should it be construed as having precedential value in any future proceeding in which the terms and conditions of a sound monitoring plan are being examined. Rather, consistent with our March 31, 2014, Order, our action today is limited to our acceptance of the plan as a mitigating factor in determining the amount of the civil penalty to impose on GMP for its violations of the sound standard.[27]

Additionally, we realize that implementation of the Department's May 14 proposal will come at a significant cost to GMP. The Department's May 14 proposal is expected to cost approximately $109,000, and potentially more depending on the use of certain options. We expect that the successful implementation of the May 14 proposal will include the Department's exercise of its authority pursuant to 30 V.S.A. § 21 to bill the costs of the May 14 proposal to

26. Docket 7628, Order of 3/31/14 at 7-8.
27. Docket 7628, Order of 3/31/14 at 5, 8-9.

GMP, and to receive prompt reimbursement of those costs from GMP.[28] However, GMP will be incurring that cost solely because the Company failed to meet its obligation to operate the Project in compliance with the Board-imposed sound standard. Absent GMP's support for the May 14 proposal, we would have imposed a significant monetary penalty on GMP for those sound standard violations and are accepting the May 14 proposal in lieu of imposing a larger monetary penalty. Accordingly, GMP shall not recover from ratepayers the costs associated with the penalty we impose today or the implementation of the Department's May 14 proposal for continuous sound monitoring.

In consideration of the facts of this investigation, and the relevant factors under 30 V.S.A. § 30(c), we hereby impose a civil penalty on GMP in the amount of $1,000 for GMP's violations of Condition 39 of the Board's Order and Certificate of Public Good dated May 31, 2011, as reported by GMP for the sound monitoring conducted in the Fall and early Winter of 2012 and the Winter of 2013. The amount of this civil penalty is conditioned upon the successful implementation of the Department's May 14 proposal. In the event that proposal is not successfully implemented, the Board reserves the right to reconsider the amount of the civil penalty being imposed today.

SO ORDERED.

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28. If this is not the case, the Department should inform the Board immediately.

Dated at Montpelier, Vermont, this 16th day of October, 2014.

s/James Volz	)	
	)	PUBLIC SERVICE
	)	
s/Margaret Cheney	)	BOARD
	)	
	)	OF VERMONT
	)	

OFFICE OF THE CLERK

FILED: October 16, 2014

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and Order.

CONCURRING OPINION OF BOARD MEMBER BURKE

The resolution my colleagues set forth in this docket is reasonable and I concur in the Order. I would have preferred a substantial fine be imposed on GMP and would not have ordered the continuous monitoring. While the only winner then would have been the State's general fund, all the parties would begin to realize that working on noise issues is important and that more is gained by working together than by the "my way or the highway" attitude that appears to have prevailed here. No matter what data results from this monitoring, it will likely be criticized by some parties and its ultimate value will in my opinion be diminished.

It was my hope that all parties would endeavor to analyze the issue together and, if indicated by the data, work on solutions together. Having failed to accomplish this, I would have preferred to impose the penalty as provided by statute.

Dated at Montpelier, Vermont, this 16th day of October, 2014.

s/John D. Burke
John D. Burke - Board Member

OFFICE OF THE CLERK

FILED: October 16, 2014

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board