

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: 10/12/2012

ORDER TO SHOW CAUSE
AND NOTICE OF HEARING

On July 19, 2012, the Public Service Board ("Board") issued an Order in this Docket entitled, "Order re: Second Revised Transportation Plan." In that Order, we approved the incorporation of the so-called "northern route" into Green Mountain Power Corporation's ("GMP") previously approved transportation plan (the "Plan") for transporting turbine components to the wind electric generation facility approved in this Docket (the "Project"). As part of that approval, we required GMP to "file a complete second revised transportation plan reflecting the incorporation of the northern route into its currently-approved Plan by close of business, Friday, July 27, 2012."¹ Incorporation of the northern route into the Plan made clear that the use of that route would be subject to all the terms and conditions in the Plan, including the requirements that GMP consult with town officials and local first responders in each town along the route to coordinate transportation and address any issues they might have 60 days prior

1. Docket 7628, Order of 7/19/12 at 3.

to initiating transport, and to conduct a survey of existing road conditions at least 30 days prior to initiating transport.²

On July 27, 2012, GMP filed its Second Revised Transportation Plan incorporating the northern route into the Plan. The cover letter that accompanied the Plan acknowledged the consultation and road survey requirements but stated that, "Although GMP has begun these activities with respect to the northern route, GMP's contractor has begun transport in order to meet the project schedule, and therefore these activities will not be completed within the identified timeframes."³

In response to GMP's July 27 letter, on July 31, 2012, the Towns of Albany and Craftsbury and the Lowell Mountains Group, Inc. filed a motion seeking unspecified sanctions and an injunction against GMP's use of the northern route (the "Motion").⁴

On August 2, 2012, GMP filed a letter in response to the Motion stating that, since filing its letter of July 27, it had "complied with the substance of the Plan's requirements, by documenting road conditions, by offering VTrans and the affected towns an opportunity to participate in the documentation, and by offering to meet with town officials and first responders to answer questions and to coordinate transportation to address any concerns they may have."⁵ GMP also indicated that it had directed its transportation contractor to cease use of the northern route, and requested that the Board waive the 30-day and 60-day advance time periods for the consultation and road survey requirements in the Plan, and allow GMP to resume deliveries using the northern route.⁶

On August 3, 2012, we issued an Order requiring GMP to file an affidavit detailing its use of the northern route as well as what steps it had taken with respect to the consultation and road survey requirements before considering GMP's request to resume use of that route. In that

2. Second Revised Plan at 2.

3. Letter from Peter H. Zamore, Esq., to Susan M. Hudson, Clerk of the Board, dated 7/27/12.

4. By Order dated August 3, 2012, the Board denied the motion.

5. Letter from Peter H. Zamore, Esq., to Susan M. Hudson, Clerk of the Board, dated 8/2/12 at 2 ("8/2/12 letter").

6. 8/2/12 letter at 3.

Order we stated with respect to GMP's unauthorized use of the northern route, "while we commend GMP's self-reporting, we view the violations as a serious concern. Therefore, we are considering the possibility of imposing financial sanctions as a result of GMP's non-compliance."⁷

On August 9, 2012, GMP filed the affidavits of Charles W. Pughe and Lucy Leriche in response to the August 3 Order. According to the Pughe Affidavit, the road survey was completed on July 31 and August 1, 2012.⁸ According to the Leriche affidavit, town officials for all Vermont towns on the northern route were consulted on either July, 26, July 30, or August 6, 2012. In three of the towns, Alburgh, Cambridge and Eden, the consultation was with the Town Clerk.⁹

On August 13, 2012, the Department of Public Service (the "Department" or "DPS") filed comments in response to the affidavits filed by GMP. The Department recommended that GMP be fined a total of \$3,000 for three separate violations (i.e., \$1,000 per violation).¹⁰

As a result of concerns over GMP's contact with only the Town Clerk in three towns, on August 15, 2012, we issued an Order requiring GMP to file an additional affidavit attesting that it had consulted with either the highway foreperson, or the Select Board Chair or Acting Chair in the Towns of Alburgh, Cambridge and Eden, and that these town officials did not raise any concerns or objections to the transport of Project components through their towns. In that Order we stated:

The Board is also considering the imposition of penalties against GMP for its self-reported violations, and has received and reviewed the Department's comments and recommendation. However, we are not acting on that recommendation today. We have concluded that additional information is needed from GMP in order for us to properly assess a penalty amount. Accordingly, we will be issuing a number of information requests to GMP in the coming days, the answers to which we will

7. Docket 7628, Order of 8/3/12 at 3-4.

8. Pughe Affidavit at 2.

9. Leriche affidavit at 2.

10. Letter from Geoffrey Commons, Esq., to Susan M. Hudson, Clerk of the Board, dated 8/13/12.

require be in the form of a sworn affidavit by a company official with personal knowledge of the information responsive to each request.¹¹

On August 23, 2012, the Clerk of the Board issued a memorandum with a number of questions for GMP regarding its use of the northern route prior to receiving waivers of the 30-day and 60-day advance time periods for the consultation and road survey requirements in the Plan.

On August 31, 2012, GMP filed the second affidavit of Charles W. Pughe responding to the Board's August 23, 2012, memorandum.

After having reviewed GMP's responses to the Board's questions, we conclude that the appropriate course is to hold 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 its use of the northern route in violation of the 30-day and 60-day advance time periods for the consultation and road survey requirements in the Plan.

Both GMP and the Department¹² shall prefile testimony setting forth their positions and recommendations in detail no later than close of business on November 15, 2012. In presenting their positions, the Department and GMP shall explain whether they believe sanctionable violations occurred, specifically what those violations consisted of, what the total number of violations is, and whether each violation represents a discrete and individual violation, or an initial violation followed by a number of continuing violations. The prefiled testimony shall also include any recommended fines pursuant to 30 V.S.A. § 30, supported by analysis using the statutory factors enumerated in 30 V.S.A. § 30(c), plus any other considerations the parties deem relevant.

At the hearing, all parties will be given the opportunity to address what, if any, sanctions the Board should impose for these violations. We will convene this hearing on November 28, 2012, at 9:30 A.M. Following the hearing, GMP and the Department will be provided an opportunity to file legal memoranda setting forth their final recommendations and the reasons therefore.

11. Docket 7628, Order of 8/15/12 at 3-4. GMP has since provided the information required by the August 15 Order.

12. The Department is the only non-petitioning party with standing on this issue.

NOTICE OF HEARING

You are hereby notified that the Public Service Board will hold a HEARING, pursuant to 30 V.S.A. §§ 10, and 30, in PSB Docket No. 7628, on Wednesday, November 28, 2012, commencing at 9:30 A.M. The hearing will be held at the Public Service Board Hearing Room, Third Floor, People's United Bank Building, 112 State Street, Montpelier, Vermont. The purpose of the hearing will be for GMP to show cause, on the record through sworn prefiled testimony subject to cross-examination, why the Board should not impose sanctions, pursuant to 30 V.S.A. § 30 for its use of the so-called "northern route" in violation of the 30-day and 60-day advance time periods for the consultation and road survey requirements in GMP's approved transportation plan. At the hearing, GMP and the Department will be given the opportunity to present evidence and argument regarding what, if any, sanctions the Board should impose for these violations.

SO ORDERED.

Dated at Montpelier, Vermont, this 12th day of October, 2012.

<u>s/ James Volz</u>	)	
	)	
	)	
<u>s/ David C. Coen</u>	)	
	)	
	)	
<u>s/ John D. Burke</u>	)	

PUBLIC SERVICE
BOARD
OF VERMONT

OFFICE OF THE CLERK

FILED: October 12, 2012

ATTEST: s/ Susan M. Hudson
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)