

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7508

Petition of Georgia Mountain Community Wind, LLC,)
for a Certificate of Public Good, pursuant to 30 V.S.A.)
Section 248, authorizing the construction and operation)
of a 5-wind turbine electric generation facility, with)
associated electric and interconnection facilities, on)
Georgia Mountain in the Towns of Milton and Georgia,)
Vermont, to be known as the "Georgia Mountain)
Community Wind Project")

Order entered: 8/24/12

ORDER HALTING BLASTING ACTIVITIES
AND NOTICE OF STATUS CONFERENCE

Introduction

On August 6, 2012, the Vermont Public Service Board ("Board") issued an Order regarding the blasting associated with construction of the Georgia Mountain wind generation facility. In the August 6 Order, we determined that there was insufficient information to halt blasting activities by Georgia Mountain Community Wind, LLC ("GMCW"). Subsequent to issuance of the August 6 Order, the Board has received additional information regarding blasting activities. Based upon this additional information, the Board orders GMCW to temporarily halt blasting activities until appropriate actions are taken to ensure that GMCW's blasting activities do not present an unreasonable potential for harm.

Background

Our August 6 Order addressed an allegation that flyrock from blasting has landed upon the FitzGerald property. In response to the allegation, GMCW asserted:

To the extent that any rocks from the Project site were on the FitzGerald property, GMCW was informed by its general contractor that the most likely explanation is that they rolled off the site during road construction and were not thrown from blasting. GMCW manually removed a half-dozen or so project-related rocks found along the property line.

In response to GMCW's representation, we required GMCW to

file an affidavit from a person responsible for removing the rocks that clearly states whether rocks from any GMCW construction activities, including both road building and blasting, were located on the FitzGerald property, along with an explanation of how the rocks ended up on the FitzGerald property and the actions taken by GMCW to reduce the possibility of such occurrence.

On August 23, 2012, GMCW filed an affidavit from the Site Work Superintendent that states:

Based upon all of the information I now have, the vast majority of rocks that were close to or over the property line came from the slope during road construction. Nonetheless, it does appear that some of the rocks were likely flyrock, given their appearance – for example, the absence of weathering and the way the rock was situated on the ground.

We have renewed and repeated our instructions to the blasters and the site workers to take all feasible steps to reduce the possibility of any flyrock (or other rock) ending up on Ms. FitzGerald's property. We are confident that our precautions have been effective and will be even more so going forward so as to avoid the migration of rock from the Project across the FitzGerald property line.

On August 23, 2012, the Vermont Department of Public Service ("Department") filed a letter stating that it had conducted a site visit to the FitzGerald property on August 17, 2012. During the site visit, the landowner was served with a Temporary Restraining Order ("TRO") prohibiting entry on certain portions of the FitzGerald property. The TRO was related to the landowner being present near prepared blasting activities on August 16, 2012. The Department notes that August 16 was a state holiday and the Certificate of Public Good prohibits blasting activities on state holidays. Further, the Department provides the following observation regarding possible flyrock on the FitzGerald property: "Rock was seen up to approximately 300 feet in from the property line, and in some instances it appeared large enough to possibly cause severe injury."

The Department recommends that the Board explore possible sanctions and/or penalties against GMCW to remedy the violation associated with blasting activities on a state holiday and further states that it will provide a recommendation "whether further investigation into fly rock containment is required" in a future filing with the Board.

Discussion

There is substantial evidence that GMCW conducted blasting activities on a state holiday, in direct violation of Condition 13 of its Certificate of Public Good ("CPG"). Further, based upon the Department's August 23 letter, combined with the affidavit contained in GMCW's August 23 filing, there is a strong likelihood that flyrock from blasting activities is landing on the FitzGerald property, with allegations that some of the flyrock may have the potential to cause serious injuries.

Condition 13 of the Certificate of Public Good does not expressly address the issue of flyrock landing on adjoining property. However, the condition does require blasting activities to "meet all local, state, and national regulations and requirements, including those established by the Vermont Department of Public Safety." As discussed in a prior proceeding, Vermont has adopted the National Fire Protection Association's ("NFPA") Uniform Fire Code as part of its Vermont Fire and Building Safety Code, which requires that the use of explosives be governed by NFPA Standard 495. Section 11.3.1 of NFPA Standard 495 states that flyrock shall not be cast beyond the blast site "in an uncontrolled manner that could result in personal injury or property damage."¹ The observations contained in the Department's August 23 letter, that flyrock may have landed 300 feet from the property line and is of sufficient size to potentially cause serious injuries, strongly suggest that the blasting activities may have violated NFPA Standard 495.

Blasting is an inherently dangerous activity that has the potential for serious injury, and CPG Condition 13 is intended to minimize, to the extent possible, potential harm from such activities. The Board has received sufficient evidence of potential violations associated with Condition 13 that it has serious concerns that GMCW's blasting activities are being conducted in a manner that minimizes the potential for harm. Accordingly, we conclude that, in the interests of public safety, GMCW must temporarily halt blasting activities until such time that the Board determines appropriate actions to ensure that GMCW's activities do not present a potential for harm.

1. Docket 7628, Order of 11/14/11 at 2, 8.

The Board will hold a status conference on Wednesday, September 5, 2012, at 11:00 A.M., to discuss the potential violations and the appropriate remedies that GMCW must undertake to ensure compliance with CPG Condition 13. At that status conference, we will also discuss the schedule to determine possible sanctions related to any violations of the CPG, including blasting activities on a state holiday. The status conference will be held at the Public Service Board Hearing Room, People's United Bank Building, 112 State Street, Montpelier, Vermont, pursuant to 30 V.S.A. Sections 10 and 248.

SO ORDERED.

Dated at Montpelier, Vermont, this 24th day of August, 2012.

<u>s/James Volz</u>	)	
	)	
	)	PUBLIC SERVICE
<u>s/David C. Coen</u>	)	
	)	BOARD
	)	
<u>s/John D. Burke</u>	)	OF VERMONT

OFFICE OF THE CLERK

FILED: August 24, 2012

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)