

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: 8/6/2012

ORDER RE: BLASTING COMPLAINTS

Introduction

The Public Service Board ("Board") has received complaints regarding the blasting associated with construction of the Georgia Mountain wind generation facility and requests to alter the requirements associated with the blasting activities. In this Order, the Board concludes that there is insufficient evidence to alter these requirements at this time. In addition, the Board also requires additional information from Georgia Mountain Community Wind, LLC ("GMCW") and requests comments regarding potential violations associated with construction of the project.

Background

On July 5, 2012, a group of landowners filed a letter requesting that the Board take certain actions related to blasting operations being conducted by GMCW. These requested actions include halting blasting activities until all residences within a one-mile radius have the opportunity to have pre-blast surveys conducted, limiting the time period within which GMCW can conduct blasting and require notification closer in time to when the blasting will occur, and prohibiting GMCW from blasting adjacent to neighboring properties. In addition, the landowners request that GMCW be required to provide certain information regarding blasting activities, require seismographs at homes west and east of the blasting site, require monthly water testing of springs and surface waters in the area where blasting is occurring, and enjoin GMCW from trespassing (in the form of flyrock, stormwater runoff, and stormwater features) on

Jane FitzGerald's property. The landowners also request that the Board fine GMCW for violations of its Certificate of Public Good ("CPG"), and also that the Board explain the rights of the landowners as they relate to the landowners' use of their own property.

On July 16, 2012, GMCW filed a response to the comments. GMCW states that the pre-blast surveys and well testing conducted to date are consistent with the blasting order approved by the Board and additional survey requirements are not necessary. With respect to the notification prior to blasting activity and placement of seismographs, GMCW asserts that it has complied with the approved blasting plan and "there is no need or basis to re-open those approvals and require third party seismograph monitoring." Additionally, GMCW filed with the Board and parties the seismograph readings that have been collected to date. GMCW further states that there is no basis to require further information about each blast, as requested by the landowners. GMCW contends that it is conducting blasting within the footprint of the project site and that it is taking appropriate steps to limit rock movement during blasting. GMCW states that it has not violated the CPG conditions, except in two instances where notification of blasting to adjoining landowners was delayed by a few hours. GMCW contends that "[N]o person or party was harmed or prejudiced by the short delay, notice was ultimately given, and GMCW has established a protocol to ensure that timely notice is occurring on a going forward basis." Finally, with respect to the landowners' request that the Board inform them of their property rights, GMCW asserts that "[p]roperty rights issues are beyond the Board's jurisdiction, and thus the Board is not in a position to advise any of the parties on what course of action to take or what their legal rights are."

On July 23, 2012, the Department of Public Service ("Department") filed a letter regarding some of the issues raised by the landowners. With respect to the allegations of flyrock from blasting landing on the FitzGerald property, the Department states that: "There appears to be a factual dispute as to whether flyrock has been propelled beyond the permit boundary. The Department requests that the Board open an investigation into whether this condition of the CPG has been violated." The Department further states that it has no basis to dispute the seismographic report, but that the Board may hire an independent consultant to review it if the

Board believes such an action would be appropriate. In addition, the Department asserts that GMCW is meeting the requirements of the April 11 Order, however:

The Department believes, however, that GMCW should take all reasonable steps to provide affected landowners as much detail as possible regarding the timing and location of blasting, to attempt to alleviate some of the concerns raised regarding this issue. For example, if GMCW knows the location of blasting operations and the approximate time that blasting will occur, it would be appropriate to pass this information along to the abutters when notification is made at the start of the day.

In addition, the Department states "there is a dispute over whether construction started at 6:15 A.M. on June 30, 2012; GMCW responded with a sworn affidavit stating that actual construction activities did not commence at that time. There does not appear to be a basis for an investigation of this incident."

Discussion

On April 11, 2011, the Board issued an Order in this Docket (the "April 11 Order") approving a blasting plan proposed by GMCW. In the April 11 Order, the Board required GMCW to conduct pre-blast surveys for all residences that requested such surveys within a one-half-mile radius of blasting operations. In addition, the Board required that GMCW notify adjoining landowners within a one-half mile radius, as well as parties in this Docket, between 8 a.m. and 9 a.m. on each day when blasting would occur.

The landowners have not sufficiently demonstrated that the blasting plan approved by the Board in this Docket should be modified with respect to providing notice prior to each day's blasting and also with respect to the requirement of pre-blast surveys. The issuance of the CPG and approval of pre-construction conditions created certain rights for GMCW, and there must be sufficient demonstration of good cause to impose additional conditions before additional restrictions can be imposed.

With respect to the landowners' request that the Board require pre-blast surveys and well testing for residents within one mile of blasting operations, the Board concluded in the April 11 Order that "the well monitoring and structure surveys are necessary only within a one-half-mile

radius. This distance is consistent with Board precedent and also with measures related to quarry operations, which can involve significant blasting operations."¹

For these reasons, we have determined that we will not direct GMCW to halt blasting and to conduct additional pre-blast surveys. To the extent that any landowners within a one-half mile radius of blasting operations did not receive the opportunity to have pre-blast surveys conducted, the issue is instead whether any penalties should be assessed against GMCW under 30 V.S.A §§ 30 and 249 for violating the April 11 Order. We require GMCW to file a map of the project site that depicts the location of all past and future blasting activities associated with project construction, including any blasting activities associated with the access road.

With respect to the question of whether GMCW should be required to give notice of blasting closer to the time that blasting will occur, this issue was also addressed in the April 11 Order. Although the landowners have cited to the requirements for blasting at quarries, it is important to note that quarrying operations are ongoing activities that occur for several months of each year, and can continue for years. It is unclear that such restrictions would be appropriate for construction activities that occur over a much shorter time period. Therefore, at this time, we have concluded that it is not appropriate to modify the notice requirement for each day's blasting or to circumscribe the timing of blasting activities. However, the April 11 Order does not bar GMCW from providing additional notice of blasting activities. As the Department noted in its July 23 letter, GMCW could provide more defined information regarding the approximate location and time of blasting activities for any given day.

With respect to the landowners' request that GMCW be required to provide information regarding the maximum explosive weight-per-delay and maximum total explosive weight-per-blast event, as well as public access to the blasting logs, this type of information was not required as part of the blasting plan approved in the April 11 Order. However, such information is relevant to understanding the nature of the blasting activities. Accordingly, we hereby require GMCW to make this information available. Further, we request that the Department work with the Department of Public Safety, which has regulatory oversight over blasting activities in Vermont, to review this information.

1. Docket 7508, Order of 4/11/11 at 5.

With respect to the allegation that flyrock from blasting has landed upon the FitzGerald property, GMCW asserts, in a footnote to its July 16 filing, that:

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.

We hereby require 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. Parties will then have the opportunity to submit comments on that filing. Based upon the information received, the Board will determine whether additional action is warranted.

With respect to the allegation that stormwater features have been constructed on the FitzGerald property, GMCW has denied that any construction activities have occurred on the FitzGerald's property. It is unclear whether this is a dispute regarding the location of the property line or simply a conflict of opinions on the same issue. The Board does not have jurisdiction to decide disputes over property lines. However, if a superior court of competent jurisdiction makes a determination regarding the location of the property line and it becomes clear that GMCW has constructed project components, including the access road or attendant stormwater features, then the Board, after notice and an opportunity for hearing, may determine what penalties, if any, to impose. Such Board action would be in addition to any damages determined by a superior court.

The Board does not have jurisdiction to determine property rights and instead is limited, with respect to Section 248, to determining whether a proposed project promotes the general good of the state of Vermont. When a CPG is granted pursuant to 248 for a proposed project, it governs only the construction and operation of the proposed project. A Section 248 CPG does not regulate or determine any underlying property rights that the project owner might have.

The Board further notes that, although the landowners have rights to enjoyment of their

homes, GMCW also has certain property rights, including the right to construct its project consistent with the conditions imposed in the CPG. While we understand that some landowners are frustrated with the Board's decision to grant GMCW a CPG to construct the project, such approval is consistent with Vermont law. In addition, personal attacks on parties or the Board, as have been received via e-mail comments, are not helpful to the process.

With respect to potential violations of the CPG conditions, we have concluded that there is insufficient information at this time to halt blasting as a remedy for the violations to which GMCW has admitted (concerning notice of each day's blasting) and for other alleged violations. However, GMCW has been directed in this Order to provide us with additional information concerning the rocks on the FitzGerald property and also the amount of blasting material used. Once this material has been submitted, we will determine the appropriate next steps to address alleged violations and the penalties for the violations that GMCW admits have occurred.

SO ORDERED.

Dated at Montpelier, Vermont, this 6th day of August 2012.

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

OFFICE OF THE CLERK

FILED: August 6, 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)