

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628-A

In Re: Lowell Mountain Wind Project)
Stormwater Permit #6216-INDC)
(Appeal of Energize Vermont, Inc., et al))

Docket No. 7628-B

In Re: Lowell Mountain Wind Project)
Stormwater Permit #INDC.1)
(Appeal of Energize Vermont, Inc. et al))

Docket No. 7628-C

In Re: Lowell Mountain Wind Project)
Stormwater Permit #6216-INDS)
(Appeal of Energize Vermont, Inc., et al))

Docket No. 7628-D

In Re: Lowell Mountain Wind Project)
Water Quality Certification)
(Appeal of Energize Vermont, Inc. et al))

and

Docket No. 7628-E

In Re: Lowell Mountain Wind Project)
Wetland Permit #2008-364)
(Appeal of Energize Vermont, Inc., et al))

Order entered: 2/3/2012

ORDER RE SECOND MOTION TO STRIKE

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 19, 2011, Energize Vermont, Inc., Don and Shirley Nelson, Jim Blair, Kevin McGrath, Robbin Clark, Nancy Warner, and Jack Brooks (collectively, the "Appellants")

filed with the Vermont Public Service Board ("Board") appeals of five Vermont Agency of Natural Resources ("ANR") decisions related to the Lowell Mountain Wind Project.

On October 24, 2011, the Appellants filed a Preliminary Statement of Questions on Appeal ("Statement of Questions").

On November 14, 2011, Green Mountain Power Corporation ("GMP") filed a Motion to Strike and to Dismiss Appellants' Statement of Questions ("Motion to Strike").

On November 28, 2011, the Appellants filed a Response to GMP's Motion to Strike ("Appellants' Response") and a Motion to Amend Appellants' Statement of Questions ("Motion to Amend"), including a Revised Preliminary Statement of Questions on Appeal ("Revised Statement").

In an Order issued January 6, 2012, the Board (1) granted in large part GMP's Motion to Strike, (2) granted the Appellants' Motion to Amend with the condition that the Appellants re-submit their Revised Statement in a manner clearly showing all of the amendments, and (3) revised the schedule for these proceedings.

On January 12, 2012, the Appellants filed an "Amended Preliminary Statement of Questions on Appeal" ("Amended Statement") marked to show the changes from the Preliminary Statement of Questions on Appeal that the Appellants had filed on October 24, 2011.

On January 18, 2012, GMP filed a Motion to Strike and to Dismiss Appellants' Amended Preliminary Statement of Questions on Appeal ("Second Motion to Strike").

On January 24, 2012, the Appellant's filed a Response and Objection to the Second Motion to Strike.

In today's Order, we grant in part and deny in part GMP's Second Motion to Strike.

II. POSITIONS OF THE PARTIES

A. GMP

GMP notes that the Amended Statement that the Appellants submitted on January 12 includes "many questions that were not contained in the earlier statements of questions," including the Revised Statement. GMP asks that the Board strike and dismiss six of these new questions. GMP contends that Questions 3 and 14 are not sufficiently specific, and that Questions 6(a), 13, 18(a) and 18(b) are not relevant because they focus on whether GMP's materials satisfy permit application requirements.

B. Appellants

The Appellants agree to strike Questions 3, 13 and 14 because they believe these three questions are subsumed in other questions to which no objections have been filed.

According to the Appellants, Questions 6(a), 18(a) and 18(b) ask whether GMP "has submitted enough information to fully describe its project."¹ The Appellants contend that Questions 6(a) and 18(a) specifically identify the applicable regulatory provisions, and thus are distinguishable from previous versions of the questions which focused on the completeness of the application and which were stricken by the Board's January 6 Order. The Appellants further claim that Question 18(b) is the same as their original Question 13(a)² to which no objection was made.

III. DISCUSSION AND CONCLUSION

The Appellants do not contest GMP's request to strike Questions 3, 13 and 14. Therefore, these three questions shall be stricken.

As the Appellants correctly observe, Question 18(b) is identical to one of their previous, unobjected-to questions (Question 13(b) in their Statement of Questions). Because GMP did not timely object to the identical, previous Question 13(b), we deny GMP's request to strike Question 18(b) in the Amended Statement.

To address GMP's objection to Questions 6(a) and 18(a), it is instructive to compare the language of the new versions of the questions with the previous versions that were stricken by the January 6 Order.

As revised, Question 6(a) reads:

Whether Applicant has submitted a complete application with all required information to enable the Board to make the determinations necessary for the issuance of a permit, as required by Section 13.2(b), including the following: i) a complete and accurate description of the project; ii) proposed site conditions plan with all identified erosion prevention and sediment control features and backup erosion prevention and sediment control features; and iii) construction plans showing full extent of clearing and grading and full detail of individual erosion

1. Appellants' January 24 Response at 2.

2. Although the Appellants refer to their previous Question 13(a), in fact it is their previous Question 13(b) that is the same as the current Question 18(b).

prevention and sediment control features, including sizing calculations for such features ; . . .³

The previous Question 6(a) read: "Whether Applicant has filed complete applications as required by Section 13.2(b); . . ."⁴ Thus, the revised Question 6(a) retains in full the substance of the previous question, and adds (1) "with all required information to enable the Board to make the determinations necessary for the issuance of a permit" and (2) the phrase "including the following" with a list of certain more specific elements. These additions do nothing to limit the breadth of the question, which continues to ask whether GMP has submitted a complete application as required by Section 13.2(b). Thus, revised Question 6(a) is as overly broad as the previous version of the question that was stricken in our January 6 Order, and the revised question shall be stricken for the same reasons as stated in that Order.

Question 18(a) as revised reads:

Whether Applicant has submitted all required information to enable the Board to make the determinations necessary for the issuance of a permit, as required by §18-309(b)(1) and the relevant application form, including the following: i) a complete and accurate description of the project; ii) proposed site conditions plan with all labeled discharge points and locations of Stormwater Treatment Practices ("STPs"); iii) construction detail sheet containing all applicable STPs and demonstrating adherence to the design criteria for each STP; iv) proposed site plan with contours showing all disturbed and graded areas; and v) runoff calculations for each element; . . .⁵

The previous version of this question (at that time enumerated as Question 13(a)) read:

"Whether Applicant has submitted all necessary application materials as required by § 18-309(b)(1); . . ."⁶ Thus, the revised question (1) changes "all necessary application materials as required by § 18-309(b)(1)" to "all required information to enable the Board to make the determinations necessary for the issuance of a permit, as required by §18-309(b)(1) and the relevant application form," and (2) adds the phrase "including the following" with a list of certain more specific elements. The addition of more specific examples in part (2) of the questions does not limit the generality of part (1), as the question is presented. Thus, these revisions do not lessen the scope of the question, which continues to ask whether GMP has submitted the

3. Amended Statement of Questions at 3.

4. Statement of Questions at 3.

5. Amended Statement of Questions at 12.

6. Statement of Questions at 12.

application materials required by Section 18-309(b)(1). Therefore, revised Question 18(a) shall be stricken for the same reasons that the previous version of the question was stricken.

For the reasons stated above, Questions 3, 6(a), 13, 14 and 18(a) of Appellants' January 12 Amended Statement of Questions are hereby stricken.

SO ORDERED.

Dated at Montpelier, Vermont, this 3rd day of February 2012.

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

OFFICE OF THE CLERK

FILED: February 3, 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)