

March 2, 2012

By Hand Delivery

Mrs. Susan Hudson, Clerk
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: Docket No. 7508 – Georgia Mountain Community Wind Farm

Dear Mrs. Hudson:

On behalf of Georgia Mountain Community Wind Farm, LLC (“GMCW”), enclosed please find my substitute Notice of Appearance.

In addition, this letter responds to the Board’s request, in its February 24, 2012 Order, that GMCW “file a letter... setting forth the 1603 requirements, along with an explanation as to how GMCW has met these requirements to date, and what actions GMCW will need to take to continue to meet the requirements.”

As explained below, GMCW’s statements to the Board in November 2011 and January 2012 were not inconsistent. The statements were based upon GMCW attempting to meet the US Treasury Section 1603 Program requirements in two distinct ways. While GMCW certainly wishes it had been clearer in its explanation of the 1603 issues, its statements were not “false and/or misleading” as alleged by the Landowner Intervenor in their letter of February 6, 2012.

US Treasury Section 1603 Program

A project’s ability to qualify for the Section 1603 Grant requires it to demonstrate that construction has begun in 2009, 2010, or 2011 and placed in service prior to January 1, 2013.¹ There are two ways to show that construction has begun. One is to begin “physical

¹ *Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009 Program Guidance* (Rev. April 2011) (“Guidance”), at 5.

www.treasury.gov/initiatives/recovery/Documents/B%20Guidance%203-29-11%20revised%20%282%29%20clean.pdf

work of a significant nature”); the other is to meet the 5% “safe harbor.” The first method, beginning physical work of a significant nature, means any physical work on the specified energy property at the site.² A project is not required to meet any specific thresholds on amounts spent, but construction must be ‘continuous’ once it begins. Treasury has indicated it would ‘closely scrutinize’ any construction activity to make certain that a project’s construction has been continuous.³

The second method is known as the 5% safe harbor.⁴ An applicant may demonstrate that construction has begun when more than 5% of the total cost of the specified energy property has been paid or incurred before the end of 2011. All costs included in the eligible basis of the specified energy property are taken into account in determining if the 5% threshold has been met, including development, planning, engineering, and permitting costs. This does not require that on-site construction has begun.

Whichever method is chosen, the facility must be placed in service by 12/31/2012 to qualify for the 1603 grant, meaning that “the equipment has been installed, tested, and is ready and capable of being used for its intended purpose.”⁵

GMCW’s Actions Regarding the 1603 Program

At the time of GMCW’s November 4, 2011 letter to the Board, the turbine manufacturer had not been selected (and thus no turbine supply agreement executed), and the bid process for selecting a project contractor had not yet been completed. The total cost of the project thus could only be approximated at that time. Looking at the range of potential costs, it appeared to GMCW that the project costs it had incurred to date might not have been sufficient to meet the 5% safe harbor if total project costs turned out to be over \$29 million.⁶ In light of these factors, GMCW concluded in November 2011 that in order for it to safely demonstrate that construction had begun by the end of 2011, it would need to commence *physical work of a significant nature* at the Project site. This was the basis for GMCW’s request to the Board in the November 4th letter that it be permitted to commence construction of the access road prior to the December 31, 2011 deadline and prior to being

² *Id.* at 6. See also *Payments for Specified Energy Property in Lieu of Tax Credits Under the American Recovery and Reinvestment Act of 2009, Frequently Asked Questions and Answers – Begun Construction*. (“Begun Construction Q&A”) www.treasury.gov/initiatives/recovery/Documents/FAQs%20for%20Begun%20Construction%20web4.pdf.

³ Begun Construction Q&A at 2.

⁴ Guidance at 7.

⁵ Guidance at 10.

⁶ “Q21. What happens if the project’s costs are more than expected? Is it sufficient to show that an applicant reasonably expected costs paid or incurred before the end of 2011 to be 5% of the project costs? A21. No. To satisfy the 5% safe harbor applicants must demonstrate that costs paid or incurred before the end of 2011 are equal to or greater than 5% of the actual total costs of the specified energy property.” Begun Construction Q&A at 6.

prevented from doing so by winter weather (the 1603 guidelines provide that weather-related work stoppages are acceptable).⁷

Since the November 4, 2011 letter, GMCW has selected the turbine manufacturer and is in the final stages of selecting the Balance of Plant contractor. As a result, the Project's expected costs can now be estimated with much greater certainty. GMCW has consulted with its tax advisers and concluded that it has met the requirements of the 5% safe harbor test by incurring costs of approximately \$2.5 million out of \$27 million in estimated total project costs. GMCW intends to submit its application for the 1603 grant on that basis. The final determination as to whether this has occurred will only be known when the total costs of the project are tabulated and certified as qualifying costs by an independent Certified Public Accountant, as required under the 1603 program.⁸

As noted above, under either method of demonstrating that construction has begun, the Project must be placed in service by December 31, 2012 to receive a 1603 grant. On a going forward basis, GMCW is seeking to complete construction of the project by the end of 2012, understanding that its contractor estimates that the construction period will be at least seven months. This was the basis for GMCW's January 20, 2012 request to the Board that it be permitted to commence construction of the Project prior to receipt of all Agency of Transportation (AOT) and Department of Motor Vehicles (DMV) permits, other than construction of the public road improvements and transport of the equipment that would be covered by those permits.

In light of the Board's February 24th Order, and in the interests of time, GMCW is presently seeking to clarify whether the necessary permits can be obtained in time to allow for commencement of construction no later than May 1st. GMCW only intends to reopen this issue with the Board, and make a formal request to amend the CPG (supported by any necessary evidence regarding compliance with the 248 criteria), if it finds that there is a fundamental disconnect between the permitting process for the transport permits and the Board's CPG.

GMCW thanks the Board for the opportunity to help clarify the issues surrounding the 1603 Program. Please do not hesitate to contact me should you have any questions.

Sincerely,



Andrew Raubvogel

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND PLLC

cc: Service List

⁷ Begun Construction Q&A. at 2.

⁸ Guidance at 17.