

April 5, 2012

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

Re: Docket No. 7508 – Georgia Mountain Community

Dear Ms. Hudson:

In its February 24, 2012 order, the Board asked Georgia Mountain Community Wind, LLC ("GMCW") to provide a *"summary of the Section 1603 requirements and include in that filing a description of what actions GMCW took in 2011 that allow it to continue to be eligible for federal funding if the project is completed in 2012."*

Upon careful review of Attorney Raubvogel's March 2, 2012 letter, the Landowner Intervenors¹ find that his assertions do not agree with prior statements by GMCW nor is it apparent that GMCW has met the standard for "costs paid and incurred"² necessary to fit the 5% 'safe harbor' rule.

U.S. Treasury Section 1603 Program

In his letter, Attorney Raubvogel correctly explains that a project can qualify for Section 1603 grant funding in two ways. The first method requires that an applicant begin 'physical work of a significant nature'³ prior to December 31, 2011 which GMCW has asserted with affidavits that it has not done (*GMCW letter 1/10/2012*).

The second method, known as the 5% safe harbor, requires the applicant demonstrate that 5% or more of total eligible project costs were paid for or incurred before the end of 2011. In all cases, an energy facility must be placed in service by 12/31/2012 to ultimately qualify for the grant.

GMCW Statements relative to 1603

1. In his March 2 letter, Attorney Raubvogel claims "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."
2. GMCW's letter dated January 20, 2012, GMCW complains that obtaining the necessary transportation permits from the State requires "detailed information from the turbine vendor/transportation contractor, *which vendors have not yet been finalized.*" [*emphasis added*]

¹ I. Daniel and Tina Fitzgerald, Kenneth and Virginia Mongeon, Kevin and Cindy Cook, George A. and Kenneth N. Wimble, Scott and Melodie McLane, Matthew and Kimberly Parisi, and Jane and Heidi FitzGerald (collectively, "Landowner Intervenors").

² Payments for specified energy property in lieu of tax credits under the American Recovery and Reinvestment Act of 2009 ([http://www.treasury.gov/initiatives/recovery/Documents/B%20Guidance%203-29-11%20revised%20\(2\)%20clean.pdf](http://www.treasury.gov/initiatives/recovery/Documents/B%20Guidance%203-29-11%20revised%20(2)%20clean.pdf)) at 7

³ Payments for specified energy property in lieu of tax credits under the American Recovery and Reinvestment Act of 2009 ([http://www.treasury.gov/initiatives/recovery/Documents/B%20Guidance%203-29-11%20revised%20\(2\)%20clean.pdf](http://www.treasury.gov/initiatives/recovery/Documents/B%20Guidance%203-29-11%20revised%20(2)%20clean.pdf)) at 6

It would appear that GMCW had not executed a turbine supply agreement prior to January 20, 2012 and thus could not consider turbine costs in determining costs 'paid or incurred' prior to the end of 2011. With no binding contract in 2011, no such costs could have been incurred in 2011.

3. Attorney Raubvogel claims that the project incurred "costs of approximately \$2.5 million" prior to the end of 2011. It's important to note that incurred costs under 1603 do not count under the program unless a contractor, turbine manufacturer, or other third person made payments to fulfill a project's obligation. As of January 20, 2012, construction had not begun and no turbine vendor or transportation contractor had not been selected. Unless GMCW explicitly paid vendor(s) \$2.5 million prior to end of 2011 or can demonstrate that a vendor or vendors paid this amount on behalf of the project, such incurred costs would not count under Section 1603.

4. Attorney Raubvogel insists that the uncertainty surrounding estimated total project costs (potentially over \$29 million) made it too risky to assume the project would qualify under the 5% rule. If the project legitimately incurred \$2.5 million in costs prior to end of 2011 as he claims, total project costs could be as much as \$55 million (assuming 90% of total project costs are eligible under 1603). It would appear that even a gross estimate of project costs would have been sufficient to evaluate eligibility under the 5% rule.

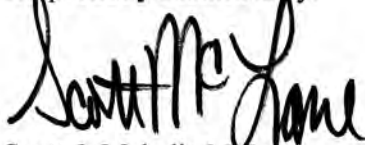
The Board's February 24 ruling asked GMCW to describe "what actions GMCW took in 2011 that allow it to continue to be eligible for federal funding if the project is completed in 2012."

The Landowner Intervenors cannot see where Attorney Raubvogel satisfied the request of the Board. Regretfully, we believe the Board was, instead, further misled by his response. Aside from a few project numbers and a vague assurance that "GMCW has consulted with its tax advisers ...", no substantiation was offered for how the 5% rule under Section 1603 was met.

We do not wish to belabor this point and will certainly understand if the Board takes no further action on this matter. However, in the absence of additional information pertaining to incurred costs, we respectfully ask that the Board not consider any further pleadings by GMCW to accelerate the schedule on the basis of the project earning Section 1603 grant funding.

We wish to thank the Board in advance for considering these comments.

Respectfully submitted by:



Scott & Melodie McLane
for the Landowner Intervenors

cc: Service List

Georgia Mountain Community Wind Project, PSB Docket No. 7508 Service List

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