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State of Vermont
Public Service Board

MEMORANDUM

To: Parties in PSB Docket No. 7508 (Re: Georgia Mountain Wind Project)

From: Susan M. Hudson, Clerk of the Board *SH*

Re: Site preparation and construction

Date: January 5, 2012

On June 11, 2010, the Public Service Board ("Board") issued an Order and Certificate of Public Good ("CPG") approving construction of a wind generation facility on Georgia Mountain by Georgia Mountain Community Wind, LLC ("GMCW"). The CPG contained several conditions that require GMCW to make additional filings for approval by the Board prior to construction.

On December 13, 2011, R.J. Potter of Milton, Vermont, sent an e-mail to the Board regarding work on Ted Road¹ and along the proposed access road, which involved the use of "graders, skidders, tandem trucks with road material, tractor trailers, dual unit flat-bed log trucks loaded with logs" and "blasting to remove stumps." Mr. Potter requested that the Board "order an immediate halt to all activities, until this work can be properly and legally accessed [sic] as to whether GMCW is violating the [Board's] order."

On December 14, 2011, Melodie McLane sent an e-mail to the Board reiterating Mr. Potter's comments regarding the activities on Georgia Mountain and stating that the "access road is being cleared and improved." In addition, Ms. McLane stated that several people reported hearing explosions on Georgia Mountain. Ms. McLane requested that the Board "act on this immediately, requiring the petitioner to stop all construction on all projects on the mountain while it investigates this issue."

On December 14, 2011, GMCW sent an e-mail to the Board stating that "no blasting has occurred on Georgia Mountain" and that GMCW is "not building the wind project road." GMCW stated that "[t]rees are being thinned as part of the sugaring

¹ Under GMCW's proposal, Ted Road would be used to access the site of the wind generation facility and would be widened to accommodate construction vehicles.

operation" and that it had not violated its CPG. GMCW also stated that "if Ms. McLane requests injunctive relief, she should file the proper motion accompanied by supporting evidence as required by the Board rules."

In response to GMCW's December 14 e-mail, Ms. McLane sent another e-mail to the Board on December 14th, questioning where the explosions were coming from, that if GMCW's statements were true.

On December 15, 2011, GMCW sent an e-mail to the Board stating that "blasting is happening on a separate 300 acre parcel located on the Westford Road, approximately 1.5 miles east of Ted Road, in connection with the construction of a deer camp and access roads . . . not related to the wind project."

On December 16, 2011, the Board issued a memorandum requesting that GMCW file additional information, under oath or affirmation, that: (a) clarified whether blasting had occurred on Georgia Mountain; (b) identified the nature of and specific locations where the blasting is occurring relative to the project site; (c) indicated the type, amount, and purpose of equipment using Ted Road; and (d) stated whether any improvements to the access road have been undertaken since the first site visit in 2010. The Board required that the information be filed by December 19, 2011, with responses due on December 20, 2011.

On December 19, 2011, GMCW sent a letter, affidavits, and exhibits via e-mail to the Service List in this Docket in response to the Board's request. On December 20, 2011, GMCW filed a hard copy of the filings with the Board.

On December 20, 2011, Ms. Tina FitzGerald, Ms. McLane, and Mr. Potter filed comments via e-mail regarding GMCW's December 19 filing. Ms. FitzGerald stated that "chippers are going full force on the top of the mountain . . . [not] on the additional 300 acres. (Georgia Mtn. East)."

On December 20, 2011, Mr. Potter filed comments via e-mail requesting that the Board conduct a site visit to "verify the statements submitted under oath from the petitioner" since the non-intervenors or intervenors "have no legal access to the Harrison Ventures properties . . . [and] are at an unfair disadvantage as to how to respond to the Petitioner's affidavit statement." Mr. Potter also stated that he heard blasting from the west side of Arrowhead Lake on the morning of December 19.

On December 20, 2011, Ms. McLane filed comments via e-mail requesting that GMCW "be required to submit plans that are to scale and/or can be read more easily, without the use of a magnifying glass." In addition, Ms. McLane requested that she be given additional time to review the plans and information submitted by GMCW and two or three days to review any revised plans.

On December 20, 2011, the Board extended the deadline for filing comments from December 20 to December 23, 2011.

First, GMCW's December 14 e-mail stated that it "has wasted thousands of dollars defending against similar baseless claims in the past." However, as stated in a memorandum issued by the Board on September 13, 2011, the expenses associated with responding to allegations regarding the commencement of construction of the wind generation facility may have been negated by informing nearby landowners of the current activities on Georgia Mountain before initiating such activity. Therefore, while the Board acknowledges that a petition filed under 30 V.S.A. § 248 does not terminate the ability of the Petitioner to conduct otherwise lawful activities on its land, provided that these activities do not conflict with any requirements contained in a CPG issued by the Board, the Petitioner's decision to move forward with activities on Georgia Mountain that may call into question whether it is in fact violating its CPG, without notifying nearby landowners, is the Petitioner's decision alone.

Second, the Board requested that GMCW indicate the type, amount, and purpose of equipment using Ted Road and state whether any improvements to the access road have been undertaken since the first site visit in 2010. In response, the affidavits of Mr. Scott Moreau and Mr. James Harrison explained that timber harvesting activities, unrelated to the GMCW's wind project, were being conducted within the Conservation Area of the Georgia Mountain Lot.² The respondents indicated that chippers, log-skidders, logging trucks, and tractor-trailers were being used for the logging activities and that the landing along Ted Road was "recently top dressed with gravel to accommodate" such equipment.³ In addition, Mr. Moreau and Mr. Harrison stated that no improvements to the wind project's access road had been undertaken since the Board's 2010 site visit.⁴ As stated above, a petition filed under 30 V.S.A. § 248 does not terminate the ability of the Petitioner to conduct otherwise lawful activities on its land, provided that these activities do not conflict with any requirements contained in a CPG issued by the Board. After reviewing the photographs provided by Mr. Potter and the statements made under oath by Mr. Moreau and Mr. Harrison, the Board concludes that the activities being conducted along Ted Road in association with timber harvesting on the Harrisons' property do not involve the commencement of construction of the wind generation facility and do not conflict with any requirements in the CPG.

Next, the Board requested that GMCW clarify whether blasting had occurred on Georgia Mountain and identify the nature of and specific locations where blasting is

² GMCW and H.W. Ventures, LLC are owned and operated by the Harrison family. H.W. Ventures owns approximately 1,000± acres on Georgia Mountain, located on two separate, but contiguous tracts of land: the Georgia Mountain Lot (a 700±-acre lot, which includes a portion of the site to be used for GMCW's wind project) and the Georgia Mountain East Lot (a 305±-acre lot). Letter of December 20, 2011, from Kane Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A and affidavits of Mr. Scott Moreau and Mr. James Harrison, dated December 19.

³ Letter of December 20, 2011, from Kane Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A and affidavits of Mr. Scott Moreau and Mr. James Harrison, dated December 19.

⁴ Letter of December 20, 2011, from Kane Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board, at exh. A and affidavits of Mr. Scott Moreau and Mr. James Harrison, dated December 19.

occurring relative to the project site. The Board's request was initiated by GMCW's e-mail on December 14, which stated that "no blasting has occurred on Georgia Mountain," and GMCW's subsequent e-mail, which stated that "blasting is happening on a separate 300 acre parcel located on the Westford Road, approximately 1.5 miles east of Ted Road . . . not related to the wind project." GMCW's December 20 filings do not clearly indicate whether or not blasting has occurred on Georgia Mountain. Neither Mr. Moreau's or Mr. Harrison's affidavit includes a clear, affirmative statement that no blasting has occurred on Georgia Mountain. Instead, the affidavits include qualified statements, including Mr. Harrison's statements that: "[n]o blasting has occurred on . . . the Georgia Mountain Lot *in connection with the recent timber harvesting activity*;" and "[n]o blasting *within the last several months* in connection with the maple sugaring operation."⁵ In addition, Mr. Moreau stated that he was "not aware of any *recent* blasting on the 700 acre Georgia Mountain Lot."⁶ These statements seem to imply that, outside of the timber harvesting activities and prior to the last several months, blasting may have occurred on Georgia Mountain. Further, Mr. Moreau's and Mr. Harrison's affidavits state that blasting occurred in the "Current Landing" area of the Georgia Mountain East Lot,⁷ which leads the Board to conclude that blasting has occurred on Georgia Mountain, at a minimum on the Georgia Mountain East Lot.

GMCW could potentially have dissipated any concerns raised by nearby landowners if GMCW had, as indicated in its December 20 letter, depicted the "relative locations of the blasting activity and the wind project" or had made clear, affirmative statements with regard to blasting on Georgia Mountain. However, Exhibit A does not specifically highlight areas where blasting has occurred⁸ and GMCW failed to make clear, affirmative statements regarding blasting in its supporting affidavits.

Even after concluding that blasting has occurred, at a minimum on the Georgia Mountain East Lot, and after inferring that blasting occurred on the Georgia Mountain Lot prior to the last several months, no credible information has been presented that blasting has occurred in relation to GMCW's wind farm project or in violation of its CPG. Further, GMCW's supporting affidavits state that no improvements have been made to the access road for the wind project since the Board's 2010 site visit. Therefore, based on the information that has been submitted to date, the Board is unable to conclude that the blasting activities on the Harrisons' property involve the commencement of construction of the wind generation facility or otherwise conflict with any requirements in the CPG.

⁵ Letter of December 20, 2011, from Kane Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board at affidavit of Mr. James Harrison, dated December 19. (emphasis added)

⁶ Letter of December 20, 2011, from Kane Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board at affidavit of Mr. Scott Moreau, dated December 19. (emphasis added)

⁷ Letter of December 20, 2011, from Kane Smart, Esq., on behalf of GMCW, to Susan Hudson, Clerk of the Board at ex. A and affidavits of Mr. Scott Moreau and Mr. James Harrison, dated December 19.

⁸ It is possible that GMCW only conducted blasting activities within the Current Landing Area of the Georgia Mountain East Lot, which is indicated on Exhibit A, however, this is not clearly indicated on the exhibit.

However, given that GMCW provided unclear information regarding its blasting activities on Georgia Mountain, GMCW must file an exhibit that depicts where blasting has occurred on the Georgia Mountain Lot and on the Georgia Mountain East Lot since the issuance of its CPG. GMCW must file this exhibit no later than January 13, 2012. After receiving the exhibit, the Board reserves the right to take further action as it may deem appropriate.

Finally, the Board denies Ms. McLane's request for GMCW to re-file its site plans and concludes that, at this time, a site visit is unnecessary.