

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: 2/24/2012

ORDER RE: TRANSPORTATION PERMITS

Introduction

On June 11, 2010, the Public Service Board ("Board") issued a Certificate of Public Good ("CPG") authorizing the construction of a wind generation facility by Georgia Mountain Community Wind, LLC ("GMCW"). The CPG included the following conditions:

8. GMCW shall obtain all required highway crossing permits and oversized- and overweight-vehicle permits. GMCW cannot commence construction until it has received the necessary permits.

11. GMCW shall determine whether the Project requires alterations or upgrades to any public roads or other public facilities to accommodate the turbines chosen for the Project. If any improvements are required, GMCW shall obtain all necessary permits prior to construction and pay all costs associated with such improvements. GMCW cannot commence construction until it has made such a determination and received any necessary permits.

On January 20, 2012, GMCW filed a letter requesting that the Public Service Board clarify or amend Conditions 8 and 11.

In this Order the Board denies GMCW's request and further directs GMCW to file information regarding GMCW's eligibility for federal funding.

Positions of the Parties

GMCW's January 20 letter requests that the Board clarify or amend Condition 8 to require the transportation permits to be obtained prior to transporting materials and clarify or amend Condition 11 to require permits to be obtained prior to constructing any necessary road upgrades. GMCW asserts that the permits referenced in conditions 8 and 11 "may require up to four months to obtain and, before they can be submitted as stated in the approved Transportation Plan, will require detailed information from the turbine vendor/transportation contractor, which vendors have not yet been finalized." GMCW further states that a delay of over four months "would severely impact the ability of GMCW from [sic] completing construction and achieving commercial operation by December 31, 2012, the deadline for commercial operation required under Section 1603 of the American Recovery and Reinvestment Act." Additionally, GMCW states that CPGs for other wind projects approved by the Board have not included the requirement that such permits be filed with the Board prior to construction.

On February 7, 2012, the Department of Public Service filed a letter stating that it supports GMCW's request to modify Conditions 8 and 11.

On February 9, 2012, the Landowner Intervenors¹ filed a letter recommending that the Board deny GMCW's request. The Landowner Intervenors state that the request is untimely as it is filed more than 18 months after the issuance of the CPG, which is outside the time period referenced in Vermont Rule of Civil Procedure 59(e). In addition, the Landowner Intervenors assert that the need for relief "is entirely due to a failure of GMCW to fully understand and act on the conditions in its CPG."

The Landowner Intervenors further assert that GMCW has misled the Board and parties regarding eligibility for federal funding pursuant to Section 1603. The Landowner Intervenors cite to a letter from GMCW dated November 4, 2011, which states:

GMCW must commence construction of the access road this month. Under Section 1603, qualified property must be originally placed in service between January 1, 2009, and December 31, 2011 (regardless of when construction begins)

1. The Landowner Intervenors include Scott and Melodie McLane, Daniel and Tina FitzGerald, Jane and Heidi FitzGerald, George and Kenneth Wimble, Matt and Kim Parisi, Kevin and Cindy Cook, and Kenneth and Virginia Mongeon.

or placed in service after 2011 and before the credit termination date if construction of the property begins between January 1, 2009, and December 31, 2011. GMCW requests that the Board authorize GMCW to proceed with commencement of the access road now, before winter weather prohibits commencement of construction activities prior to the December 31, 2011 deadline.

The Landowner Intervenors further cite to a January 10, 2012, letter from GMCW which states that no construction of the wind farm has occurred. The Landowner Intervenors assert that, if GMCW's November 4 and January 10 letters are both accurate, then GMCW has already missed the December 31, 2011, deadline.

The Landowner Intervenors also contend that the form of GMCW's request is inappropriate because a request to change the conditions in the CPG should be made through a motion rather than a more informal letter.

The Landowner Intervenors request that the Board deny GMCW's request; require GMCW to provide proof that it has not misled the Board or parties regarding Section 1603 funding; require GMCW to provide substantiation as to how and why the project can still meet eligibility under Section 1603; and instruct GMCW to follow appropriate procedures for filing motions in the future.

On February 8, 2012, GMCW filed a letter responding to the Landowner Intervenors. GMCW contends that the Landowner Intervenors "have failed to cite to any substantive or procedural basis for denial of Petitioner's request." GMCW states that "the lapse of time since issuance of the CPG does not present a procedural issue if the Board decides to treat this as a request to amend." Additionally, GMCW reiterates its statements that, absent a clarification or amendment to conditions 8 and 11, it will not be eligible for funding under Section 1603, and that such conditions were not included in the CPGs issued to other wind generation facilities. GMCW further cites to Board Rule 2.107, which states that "[i]n order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the Board may waive application of [a] rule upon such conditions as it may require." Finally, GMCW states that, with regard to Section 1603 funding:

Section 1603 includes a grandfathering provision that allows a developer to remain eligible for funding if its project is operational by year-end 2012, provided

that certain spend [sic] limits were achieved by end of 2011. Petitioner met the 2011 spend [sic] requirement.

Discussion

The June 11, 2010, CPG and accompanying Order make clear that, in order to construct the wind generation facility, GMCW must obtain all necessary permits, including any permits for oversized and overweight vehicles, for highway crossings, and for any necessary alterations or upgrades to public roads or public facilities prior to the commencement of construction.

In our Order of March 19, 2010, we addressed GMCW's request to begin construction prior to completion of the system impact study ("SIS"). In that Order, we stated:

The SIS might determine that the project could not be built without adverse impacts on the electric system, or could determine that an alternate configuration of turbines would be required. If the Board allowed construction of the project prior to receiving the results of the SIS, it is possible that the project might be modified or even abandoned as a result of the SIS, but the potentially significant environmental impacts that would result from construction of the project would have already occurred. Accordingly, we deny GMCW's request.

Although the results of an SIS are likely to have a greater potential to impact project design and feasibility than the results of vehicle and road alteration permits, there is still the potential for the transportation permit processes to result in an altered project design. For instance, if GMCW is unable to obtain the permits necessary to modify public roads or other public facilities, it may need to revise the location of the access road that it plans to construct as part of the project. In such an instance, there would be land use impacts associated with construction of that access road that would not have occurred if construction were not started prior to issuance of the permits.

In addition, GMCW's January 20 filing does not address whether the record provides a sufficient basis for the Board to conclude that, without such permits, there will not be an undue adverse impact on transportation systems. It is the petitioner's responsibility, not the Board's, to fully support its request to modify the CPG. Here, that includes an explanation of how the project satisfies the Section 248 criteria in the absence of the permits. Absent a demonstration that the project will not have an undue adverse impact on transportation systems we conclude that we cannot grant GMCW's request to commence construction absent the necessary permits.

The Landowner Intervenor correctly state that a request to modify CPG conditions should be filed in the form of a motion that includes sufficient support for the request. In this instance, GMCW failed to provide sufficient information to demonstrate that the project would satisfy Section 248 requirements in the absence of the transportation permits, prior to construction activities. We expect that any future filings by GMCW will adhere to such requirements.

Finally, the Landowner Intervenor raise a legitimate issue regarding the Section 1603 requirements as they relate to the timing of construction. GMCW provided statements in 2011 regarding the construction requirements to receive federal funding for the project. These statements were accompanied by requests for immediate action by the Board, and, consequently, a request to set short response times for parties. As the Landowner Intervenor point out, these statements appear to be inconsistent. In order to ensure that the Board and parties are fully informed as to the timing requirements associated with federal funding of the project, we direct GMCW to file 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.

Conclusion

For the reasons set forth above, we deny, without prejudice, GMCW's request to modify or clarify Conditions 8 and 11 of the June 11 CPG.

Additionally, we require GMCW to file a letter, by March 9, 2012, setting forth the Section 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.

SO ORDERED.

Dated at Montpelier, Vermont, this 24th day of February 2012.

s/James Volz

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) PUBLIC SERVICE

s/David C. Coen

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) BOARD

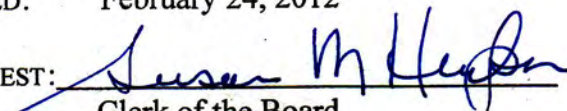
s/John D. Burke

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A TRUE COPY
OFFICE OF THE CLERK

FILED: February 24, 2012

ATTEST:


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)