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: 3/19/2010

ORDER RE NECESSITY FOR POSITIVE FINDINGS PRIOR TO ISSUANCE OF A CPG; ADMISSION OF LATE-FILED TESTIMONY; AND REQUEST TO COMMENCE CONSTRUCTION PRIOR TO COMPLETION OF AN SIS

Introduction

In this Order we conclude that the Public Service Board ("Board") must make positive findings on each of the criteria listed in Section 248(b) prior to issuance of a certificate of public good ("CPG") in this proceeding. Additionally we admit late-filed testimony and exhibits offered by Georgia Mountain Community Wind, LLC ("GMCW"). Finally, we deny GMCW's request to allow construction of the proposed project prior to the completion of a system impact study ("SIS"), if a CPG is issued by the Board.

Necessity for Positive Finding Prior to Issuance of a CPG

During the technical hearings in this Docket, the question was raised as to whether the Board could issue a CPG if there were insufficient information upon which to make positive findings under the criteria listed in Section 248(b). On February 19, 2010, GMCW filed a brief on this issue. The Department of Public Service ("Department") filed a reply brief on February 25, 2010.

Parties' Comments

GMCW contends that Section 248(o), along with Board precedent on post-certification proceedings, allows the Board to issue a CPG "conditioned upon a requirement that Petitioner provide a final system impact study ("SIS") in a post-certification phase of this docket in order to demonstrate compliance with 30 V.S.A. §§ 248(b)(3) and (b)(10)."[1] GMCW argues that Section 248(o) "clearly creates an exception as to the detail required to support a petition for a CPG for a wind generation facility, including a final SIS."[2] GMCW represents that a final SIS cannot be conducted until the specific turbines to be used for the project have been selected, and Section 248(o) allows the selection of these turbines after a CPG has been issued. In addition, GMCW asserts that the Board has broad authority to issue a CPG "with conditions subsequent requiring further, detailed review of design aspects of a proposed project post-CPG"[3] and has approved two wind generation facilities with conditions that an SIS be filed after the CPG was issued.

The Department agrees with GMCW that the Board has the authority to issue a CPG with conditions requiring additional information to be filed post-certification. The Department notes, however, that in the proceedings involving the wind generation facilities cited by GMCW, the Board in fact made positive findings on all of the criteria contained in Section 248(b). The Department further contends that Section 248(o) does not allow a CPG to be issued for a wind generation facility without sufficient testimony regarding Section 248(b)(3) and (b)(10).

Discussion

Section 248(b) states that "[b]efore the public service board issues a certificate of public good as required under subsection (a) of the section, it shall find that the purchase, investment or construction . . . "[4] satisfies the ten criteria listed in the statute, including Sections 248(b)(3) and (10).

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1. GMCW Brief at 1.

2. GMCW Brief at 6.

3. GMCW Brief at 3 (footnotes omitted).

4. Emphasis added.

The plain language of Section 248(b) requires that the Board make positive findings on all ten criteria. As GMCW states in its brief: "Where the meaning of a statute is plain on its face, the statute will be enforced according to its terms, for legislative intent is evidenced by the language of the statute itself."[5]

Section 248(o) does not explicitly create an exemption from this requirement. Section 248(o) provides:

> The board shall not reject as incomplete a petition under this section for a wind generation facility on the grounds that the petition does not specify the exact make or dimensions of the turbines and rotors to be installed at the facility as long as the petition provides the maximum horizontal and vertical dimensions of those turbines and rotors and the maximum decibel level that the turbines will produce as measured at the nearest residential structure over a 12-hour period commencing at 7:00 p.m.

Thus, Section 248(o) requires that petitioners provide the maximum dimensions and noise levels of the turbines, in effect the "worst case scenario," to allow the Board to evaluate aesthetic and noise impacts. The scope of Section 248(o) is limited only to "worst case" aesthetic and noise impacts and creates a mechanism for the Board and parties to evaluate these impacts and, if appropriate, make positive findings on these issues. Although Section 248(o) provides petitioners the opportunity to make decisions regarding final turbine selection later in the Section 248 process, it still requires petitioners to provide detailed information regarding the impact of the project under the "worst case" scenarios with respect to aesthetics and noise at the beginning of the process. Accordingly, Section 248(o) does not provide support for GMCW's claim that the Board does not need to make positive findings on certain criteria prior to issuing a CPG.

GMCW is correct that the Board has issued CPGs to generation projects on the condition that the project cannot be constructed until an SIS has been completed and parties have the opportunity to review and comment upon the study.[6] However, the relevant question is not whether the SIS itself can be submitted as a post-certification filing. Rather, the issue here is

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5. GMCW brief at 6, citing In re Amended Pet. of UPC Vermont Wind, LLC, 185 Vt. 296, 303, 969 A.2d 144,149 (2009); Carter v. Fred's Plumbing & Heating Inc., 174 vi. 572, 574-575, 816 A.2d 490,493 (2002); In re Pet. of Twenty-Four Vt. Utils., 159 Vt. 339, 361, 618 A.2d 1295,1308 (1992).

6. *See* Docket 7156, Petition of UPC Vermont Wind, LLC, Order of 8/8/07 and Docket 7250, Petition of Deerfield Wind, LLC, Order of 4/16/09.

whether the Board can issue a CPG absent positive findings that the project will not adversely affect system stability and reliability (Section 248(b)(3)) and can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers (Section 248(b)(10)).

We recognize that there are valid reasons for allowing the SIS to be conducted after a CPG has been issued for a project, and accordingly the Board allowed that in other wind generation cases. However, as those other cases demonstrate, even without an SIS, a petitioner can still provide sufficient evidence to allow the Board to make positive findings on Sections 248(b)(3) and (10). GMCW cites the Board's review of proposed wind projects in Dockets 7156 and 7250; in both cases, the petitioner provided testimony from a qualified witness supporting findings that the proposed project would satisfy Sections 248(b)(3) and (10). The Board required, as a condition to the CPGs issued in those dockets, that the petitioners provide a completed SIS to parties and the Board; however, the Board found that petitioners had provided sufficient evidence to make positive findings under the relevant criteria, in advance of the SIS.

For the reasons stated above, we conclude that the Board must make positive findings on all of the applicable Section 248(b) criteria before it can issue a CPG. If parties wish to provide limited, supplemental briefing on this issue, they may file such information with the reply briefs due March 29, 2010. Any replies to this supplemental briefing should be filed by April 5, 2010.

Request to Enter Late-Filed Testimony Into the Evidentiary Record

On February 9, 2010, GMCW filed supplemental prefiled rebuttal testimony of John Zimmerman and David Estey, along with exhibits Petitioner-Supp-1 (resume of Mr. Estey) and Petitioner-Supp-2 (Georgia Mountain Wind Farm Feasibility Study conducted by Central Vermont Public Service Corporation ("CVPS")).

No party objected to the admission of the prefiled testimony and exhibits.

We note that it is general practice in Board proceedings to allow late-filed testimony provided no party with standing on the issues contained in the testimony objects and the admission does not prejudice such parties. Given that there were no objections to the admission

of the testimony, we admit the supplemental prefiled rebuttal testimony of Mr. Zimmerman and Mr. Estey, along with exhibits Petitioner-Supp-1 and Supp-2.[7]

Request to Allow Construction of the Project Prior to Completion of the SIS

GMCW further requests that the Board, if it issues a CPG for the project, allow the commencement of construction, but not interconnection to CVPS's system, prior to completion of an SIS. The Department states that is has no objection to this request.

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.

We note that CVPS is not a party to this Docket. Given that the proposed project would interconnect with CVPS's system, if a CPG is issued for the project, we will require Petitioner to provide CVPS with a copy of the SIS and we will accept comments from CVPS on the SIS.

SO ORDERED.

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7. At the technical hearings, the pro se landowners raised the question of why the Board would allow late-filed testimony by the Petitioners when the landowners' request to allow late-filed testimony was denied. It is important to recognize that in Board proceedings parties often are allowed to admit evidence that, on its face, may be objectionable, whether due to lack of timeliness or failure to comport with the Rules of Evidence (e.g., hearsay), or for some other reason. When no party with standing objects, such evidence typically is admitted. This often occurs because all parties recognize that the evidence may be useful to the Board and that no party would be prejudiced. However, when there is an objection by a party with standing on that issue, the Board then rules on the merits of the objection, and if the objection is well-founded, the evidence would be excluded.

Dated at Montpelier, Vermont, this 19th day of March, 2010.

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

OFFICE OF THE CLERK

FILED: March 19, 2010

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)