

July 16, 2012

By Hand Delivery

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

Re: Docket 7508 – Georgia Mountain Community Wind, LLC

Dear Mrs. Hudson,

Please accept this letter on behalf of Georgia Mountain Community Wind, LLC (“GMCW”) in response to the letter dated July 3, 2012 signed by Jane FitzGerald on behalf of a number of landowner-intervenors and other nearby landowners (“July 3rd letter”). The July 3rd letter addresses issues concerning blasting, although it raises a litany of related and unrelated issues concerning stormwater, non-project activities by the landowner, property rights, and CPG violations.

Response to General Comments

Many if not most of the issues raised in the letter revisit existing Board approvals or restate issues addressed in prior filings by the parties (including most recently, GMCW’s June 21, 2012 response to the FitzGerald’s e-mail complaint of June 14, 2012). Unfortunately, the July 3rd letter appears to be the latest in an ongoing effort to re-open prior Board decisions, and thereby to delay or interrupt the Project.

To be absolutely clear, GMCW and its blasting contractor have and will continue to conduct blasting operations at the Project site in a manner that is safe to on-site workers and off-site residents, that does not cause damage to structures or wells located on private property, and that is in compliance with the CPG, the Board-approved final project design plans, and the Board-approved Blasting Plan.¹ Safety and avoidance of damage to property are of paramount importance to GMCW and guide all of the decisions concerning blasting. In that regard, there is no evidence or indication that blasting has been conducted in an unsafe manner or is causing any physical damage that would require remedial action.² While the July 3rd letter appears to attach significance to the fact

¹ GMCW acknowledges, as it did in a previous letter to the Board dated June 21, 2012, that on two occasions the daily phone call notice to landowners was delayed from the established period of 8-9 AM to later in the morning.

² GMCW has received complaints in a few instances claiming potential property damage, and has and continues to investigate those claims to determine if blasting is in fact the cause.

that some blasts can be felt or heard from a distance of a 1/2 or 1 mile away, this is not unexpected, and is simply not the measure of whether the Project has or will cause structural damage. In accordance with the Blasting Plan and standard industry practice, GMCW has used seismographs to determine the effects of the blasts, and the resulting data shows that the blasts are within accepted limits and not at a level that would cause damage (see attached Affidavit of Patricia Billings).

GMCW would also ask the Board to keep in mind that in sharp contrast with the neighbors' characterization of the blasting and its effects, the reality is that there are only 1-2 blasts per day during the work week, and each blast only takes a matter of one-half to two seconds.

The July 3rd letter first makes a number of general claims, including the following: neighbors are not receiving adequate notice; construction work is improperly occurring at or close to the property lines; pre-blast surveys have not been conducted or have been conducted improperly; and blasting has deprived adjoining property owners use of any of their property. These claims are without merit, in that:

- GMCW is conducting work within the site limits shown on the approved design plans (Order dated 12/9/11), including areas at or close to property lines. Contrary to claims in the July 3rd letter, GMCW has not constructed stormwater systems outside those limits on the FitzGerald's property, nor is it GMCW's understanding that blasting has resulted in large flyrock crossing the property line.³
- Pre-blast surveying of properties within 1/2 mile radius of blasting was conducted in accordance with the approved blasting plan for those requesting the service. Water testing was also performed for those within 1/2 mile radius requesting the service as well as for a spring for which use has not been confirmed, and GMCW categorically denies the claim that the first water test on the FitzGerald spring was contaminated due to improper handling by its contractor. In any event, the water test was repeated by the Vermont Health Department as well as a different company.
- All blasting is occurring on property controlled by GMCW. Each blast is preceded by a security check of the affected area and no blast is detonated until the area has been secured and determined to be safe as identified in the Board-approved Blasting Plan. This does not represent a new or changed circumstance, as it was anticipated by both the approved design plans and the Blasting Plan. GMCW's blasting contractor also sounds a series of whistles. There are 1-2 blasts per day, each of which lasts approx. one-half to two seconds; this activity does not deprive adjoining property owners with use of their entire property for the entire day, as alleged.

In addition, provided below are GMCW's specific responses to the July 3rd letter's "Requests for CPG Amendment and PSB Action."

³ To the extent that any rocks from the Project site were on the FitzGerald property, GMCW was informed by its general contractor that the most likely explanation is that they rolled off the site during road construction and were not thrown from blasting. GMCW manually removed a half-dozen or so project-related rocks found along the property line.

1. Pre-blast surveys and well testing

Require pre-blast surveys and well testing for residents within one mile who request it. The surveys and well testing should be done by a third party, independent of GMCW.

Require monthly water testing of springs and surface water in the area where blasting is occurring for chemical contamination and changes in water flows and well yields.

GMCW Response:

These new surveys and tests are not necessary and not consistent with the approved Blasting Plan, as indicated above. GMCW conducted pre-blast surveys of all landowners within ½ mile who requested them. Conducting any new “pre-blast” surveys at this stage is simply not possible as the blasting has already begun and would not provide a proper baseline from which to compare post-blast surveys. They are also not called for beyond the ½ mile zone, given the results of seismograph monitoring (see attached Affidavit of Patricia Billings).

As noted above, GMCW is investigating any claims it receives concerning impacts to wells or structures, but thus far has not found any evidence of blast-related impacts. Thus, blanket ongoing water quality monitoring is not required or called for.

With regard to the FitzGeralds’ spring, GMCW and the FitzGeralds mutually agreed to a process for a second water quality test, and the results were provided to the FitzGeralds, from both the Vermont Department of Health and Endyne Labs. The FitzGeralds were informed that the variation in e-coli results between the multiple tests was consistent with what could be expected from a spring source and very typical in Vermont, due to factors such as weather, proximity of animal droppings, etc.

2. Seismographs

Place seismographs at homes west and east of the blasting site, placed by a third party hired by PSD or ANR, paid for by GMCW, and provide immediate public access to seismograph records after blasts.

GMCW Response:

GMCW has complied with the CPG and the approved Blasting Plan, and there is no need or basis to re-open those approvals and require third party seismograph monitoring. The existing seismograph monitoring at two different locations (the Sabins and FitzGeralds) demonstrates that the blasting is not causing vibrations that would damage off-site structures (see attached Affidavit of Patricia Billings).

3. Additional blasting information, notification, and restrictions

Require notification of blasting much closer to the time of blasting. At a minimum, we request a two hour notice of a blast, rather than the sometimes-eight hour notice that has been the case in recent months.

Require GMCW to add George Wimble (802-893-7998) and Reginald Johnson (802-893- 2601) to the blasting notification call list.

Require disclosure of maximum explosive weight-per-delay, and maximum total explosive weight per blast event.

Provide immediate public access to blasting logs at a location convenient to neighbors where the blast weights and delays and conditions can be viewed in the instance of an unexpectedly strong blast.

Provide all parties copies of all blast logs to date, so we understand the blasting levels that have occurred and can compare them to current blast levels.

Require the disclosure of all blasts and blasting levels used in the Sheffield and Lowell wind projects.

Limit the blasting window to two hours in the morning and afternoon.

GMCW Response:

Again, there is no change in circumstances that would justify imposing new notice, disclosure, or other blasting requirements beyond what is contained in prior Board approvals. See responses above and attached Affidavit of Patricia Billings.

Notice is occurring at the start of the day, as contemplated in the Blasting Plan; thereafter, GMCW's contractors have to undertake numerous steps through the course of the day to prepare for blasting. It is infeasible to anticipate whether a blast will occur in a specific two hour window, and thereby establish a new phone notification procedure.⁴ It would also likely extend the blasting phase over a greater number of days, and thus delay the overall construction schedule, putting the Project at risk of not meeting its December 31, 2012 deadline for commencement of operations in connection with federal 1603 grant requirements.

As GMCW previously informed the Board in its letter of June 21st, it is making the material safety data sheets for the blasting explosives available for inspection at the project construction office during normal business hours (9-5, M-F). Beyond this information, and given the seismograph results, there is no basis to require GMCW to provide more detailed information about each blast, or to limit the blasting window.

Mr. Wimble and Mr. Johnson, along with anyone else who has requested notification (whether within the 1/2 mile distance or not), have been added to the phone notification list.

4. Flyrock, buffer zones

Prohibit GMCW from blasting right up to the property line, effective immediately.

GMCW should be required to maintain a buffer zone from the neighboring property and use blasting mats to keep flyrock from trespassing onto the neighboring properties. If the PSB is going to allow blasting to the property line, please provide case precedent for zero buffer at a blasting site.

Enjoin GMCW from further trespassing (in the form of flyrock, stormwater runoff, and stormwater containment device construction) onto the FitzGerald property. Resolution will require removal of the offending devices and a

⁴ Contrary to a claim in the July 3rd letter, phone notice is not occurring on days where blasting does not take place. While Ms. FitzGerald claims that on 5/24/12 she received a call but no blast occurred, the blasting logs provided by GMCW to the Board by letter dated 6/21/12 show that a blast did in fact take place. She may not have heard or felt it.

review and enforcement of the stormwater permit and EPSC plan by ANR and of the PSB's CPG (Neighbors plan to file a formal complaint with ANR for failure to comply with stormwater permits).

GMCW Response:

GMCW is conducting blasting within the footprint of the Project area per the Board-approved design plans. This work area has thus been approved by the Board and there is no basis to alter that approval. GMCW's understanding from its contractor is that it is very unlikely any large flyrock have been thrown onto the FitzGerald property, although there may be a few rocks that rolled onto their property during construction of the road. Blasting mats are already on site and used if there is any indication that unusual rock movement may occur during the detonation of a blast, and based upon the blasting contractor's expertise and in accordance with good industry practice and federal blasting regulations.

As the Board is aware, private property disputes and enforcement of the state stormwater permits are beyond the Board's jurisdiction. Thus, while GMCW wishes to state for the record that it has never knowingly and intentionally trespassed onto the FitzGerald property by the placement of rocks or other materials, nor has GMCW violated its stormwater permit, these are matters that are to be addressed, if at all, in other forums.

5. **Use of Wimble Meadow**

Prohibit GMCW from blasting during the hours when the Wimbles need to cut hay and pasture animals in their upper meadow.

Absent a PSB Order that protects the Wimbles' rights to use their property, by this letter, GMCW, the PSB and the parties are formally notified that on Thursday, July 5 and for several weeks thereafter, the Wimbles will be cutting hay and pasturing cows on the upper meadow of their property less than 1000 feet from the GMCW wind project site.

GMCW Response:

GMCW and Mr. Wimble are in communication regarding the blasting in the vicinity of Turbine 3 and the safe distance from his field, i.e., there is a safe distance between the two. And, as discussed above, GMCW is conducting all work within the site footprint previously approved in the final design plans. Thus, no further Board action should be required.

6. **CPG Violations; Deception**

GMCW violated the conditions of their CPG by starting construction on Saturday June 30 at 6:15 a.m. "We heard tracked vehicles moving, steel (bucket teeth) scraping on rock, back-up alarms buzzing and rocks falling on steel." This is GMCW's third violation and we urge the Public Service Board to apply appropriate penalties.

Petitioner continues to use his other projects on the mountain to mask blatant violations of the CPG.

GMCW Response:

As GMCW explained to the Board in its letter of July 2, 2012, it did not begin construction prior to 7 AM on June 30, 2012. The July 3rd letter repeats this claim based on sounds apparently heard, but not on actual observations of the site. The attached Affidavit of

Heath Lawson, the supervisor at the site on that day, makes clear that no construction work occurred prior to 7 AM.

In its letter to the Board dated June 21st, GMCW previously explained the two instances where the early AM blasting notice to adjoining landowners was delayed by a few hours. No person or party was harmed or prejudiced by the short delay, notice was ultimately given, and GMCW has established a protocol to ensure that timely notice is occurring on a going forward basis. This protocol includes an automated call at approximately 8AM to all parties requesting to receive notification on a day blast activity is planned. Inclusion on this automated calling list is open to all, whether or not they are located within the 1/2 mile radius. Given the minor nature of this infraction, and GMCW's remedial steps, monetary penalties are not appropriate or necessary in this case.

With respect to the repeated claims concerning other non-Project work occurring on the property, the Board has previously addressed this issue in Memoranda dated May 13, 2011, September 13, 2011, and January 5, 2012. While the landowner may continue to undertake activities in connection with maple sugaring operations, they remain unrelated to this wind project. Raising this issue yet again serves no purpose other than to waste the Board's valuable time and resources.

7. Taking of Private Property, Compensation, Property Rights

We request that someone at the PSB, PSD or the developer will provide us with a clear explanation of the various rights involved. We ask the PSB to please explain to us what our rights are regarding the use of our property. We do not believe it would be appropriate for the PSB to advise us at this point that if we wish to protect our property rights from trespass or nuisance resulting from GMCW's activities, it is up to us to bring a civil suit in Superior Court. The PSB had full jurisdiction over this project and therefore, we believe this is the proper venue in which to plead our case.

GMCW Response:

Property rights issues are beyond the Board's jurisdiction, and thus the Board is not in a position to advise any of the parties on what course of action to take or what their legal rights are. The Board's authority is to implement section 248 and enforce the CPG.

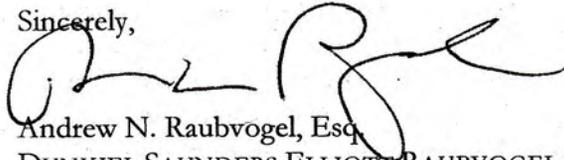
GMCW has and will continue to comply with the CPG and all plans, and will continue to use all appropriate means to maintain worker and public safety, avoid damage to structures, and otherwise respond to neighbor concerns that should be addressed.

Conclusion

For all of the reasons outlined herein, GMCW respectfully submits that there is no basis to amend the CPG or any CPG-related plans, or for the Board to otherwise impose new blasting-related requirements.

Please do not hesitate to contact me should the Board require any additional information or should you have any questions concerning the above.

Sincerely,

A handwritten signature in black ink, appearing to read "Andrew N. Raubvogel". The signature is fluid and cursive, with a large initial "A" and "R".

Andrew N. Raubvogel, Esq.

DUNKIEL SAUNDERS ELLIOTT RAUBVOGEL & HAND, PLLC

Encls.

cc: Service List

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")

CERTIFICATE OF SERVICE

I, Jenna Conklin, certify that on July 16, 2012, on behalf of Georgia Mountain Community Wind, LLC, I forwarded copies of the *Letter Requesting time to Respond* by the method noted to the attached service list:

By Hand Delivery:

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Dated at Burlington, Vermont, this 16th day of July 2012.

by: 
Jenna Conklin