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STATE OF VERMONT  
ENVIRONMENTAL BOARD  
10 V.S.A., Chapter 151

RE: Green Mountain Power Corp. Land Use Permit #5W0794-EB  
c/o Jonathan H. Winer Findings of Fact, Conclusions  
P.O. Box 850 of Law and Order  
So. Burlington, VT 05402

On December 28, 1984 an appeal was filed with the Environmental Board (the "Board") by Green Mountain Power Corporation ("**GMP**") from District #5 Environmental Commission's Findings of Fact, Conclusions of Law and Land Use Permit #5W0794 dated November 28, 1984. This permit specifically authorizes the Permittee to install approximately 3,000 feet of electrical distribution line along Hancock Road in Worcester, Vermont.

With the agreement of the Parties, the Board designated its Chairman to act as hearing officer in this matter, pursuant to Board Rule 41 and 3 V.S.A. § 811. A public hearing was convened on January 28, 1985, in Montpelier, Vermont, with Margaret Garland acting as administrative hearing officer.

The following were present at the hearings:

Permittee/Appellant GMP by Jonathan Winer, Esq.;  
Kayau Shiu by George Rice, Esq.;  
Kenneth Hadd.

The hearing officer granted the requests of both Shiu and Hadd to participate as parties in these proceedings. The hearing was recessed on January 28, pending a site visit by the hearing officer, preparation of this Proposal for Decision, a review of the record, and deliberation by the Board. On March 27, the Board heard oral argument from the parties and the hearing was adjourned. The following findings of fact and conclusions of law are based upon the record developed at the hearing.

I. Issue Raised by the Appeal

**GMP's** application seeks approval for construction of a 3000' distribution line extension to serve property owned by Kenneth G. Hadd. The District #5 Environmental Commission ("the Commission") approved the project but, through Condition 5 of the permit, required relocation of a short segment of the line adjacent to the Shiu property. The Commission determined that the location of the line "is inappropriate as planned and will constitute an undue adverse effect on the aesthetics now enjoyed by Mr. **Shiu.**"

GMP objects to Condition 5 of Land Use Permit #5W0794, which reads as follows:

5. The Permittee shall relocate and install pole 5 at a point on top of the rock outcropping as discussed in our attached Findings of Fact ...

This condition was imposed by the Commission pursuant to  
Criterion 8 of 10 V.S.A. § 6086(a).

GMP argues:

1) Condition 5 exceeds the Commission's jurisdiction. The Condition would require GMP to locate a portion of the line outside of the Town Highway right-of-way, contrary to GMP's rights under 30 V.S.A. § 2502. Condition 7, which places a 20-year initial limit on the Permit, also conflicts with GMP's right to be within the highway right-of-way.

2) Condition 5 will create access problems for installation and maintenance. In addition, the 20' swath across the outcrop directed by the Commission will have a more substantial aesthetic impact than locating the line along the highway.

Mr. Shiu generally supports the Commission decision. He argues that placement of the line within the road right-of-way would adversely affect the unique natural characteristics of the area.

## II. Jurisdictional Issue

GMP argues that Condition 5 exceeds the Commission's jurisdiction, because it requires GMP to locate a portion of the line outside of the highway right-of-way, contrary to GMP's rights under 30 V.S.A. § 2502. GMP also argues that Condition 7 conflicts with GMP's obligation to serve and its corresponding right to be within the highway right-of-way.

30 V.S.A. § 2502 gives GMP the right to construct and maintain electric wires on public highways. When a person objects to the erection of a line in front of his home, jurisdiction to determine whether and in what manner the line will be erected lies with the highway board or the town selectmen. 30 V.S.A. § 2505. However, the District Environmental Commissions and the Environmental Board have concurrent jurisdiction to decide whether and in what manner utility lines will be erected, pursuant to 10 V.S.A., Chapter 151 (Act 250). If construction of a utility line is "development," as defined in Act 250 and the rules promulgated thereunder, the board or district commission is authorized to review it and grant or deny a permit for the construction based on relevant criteria, specified in 10 V.S.A. § 6086(a). A permit may contain conditions which are appropriate with respect to the 10 criteria. 10 V.S.A. § 6086(c). GMP's line extension project falls under Act 250 jurisdiction. Should we determine that preservation of natural and scenic beauty and aesthetics requires relocation of the line outside the right-of-way, a

condition implementing this requirement is authorized by Act 250  
irrespective of 30 V.S.A. § 2502./1/

III. Findings of Fact

1. GMP proposes to construct a 3,000' distribution line extension along Hancock Brook Road, to serve property owned by of Kenneth Hadd. The proposed line would cut through property owned by Kayau Shiu, passing close to the front of his house.
2. Mr. Shiu purchased his property on Hancock Brook Road in 1983. He and his family were attracted to the property because of its natural beauty. Surrounding the small house and lawn is a unique combination of rock formations, stream, waterfalls and different types of trees. Shiu feels that even the house is a visual intrusion on this uncommon natural setting and has acquired more land so that he can move the house away from the stream and rock formations. Hancock Brook Road is very narrow and passes close to the house and stream.
3. GMP has considered three options for the location of the distribution line. The first ("Option A," Exhibit #1) which was proposed in its application, would follow Hancock Brook Road and remain within the highway right-of-way. A pole would be erected in the right-of-way across the road and at an angle from **Shiu's** house. Erection of this pole would entail the cutting of five or six large trees and many small trees. The face of a rock ledge behind the pole site (as seen in Exhibit #2G) would have to be clear cut.
4. Under a second option considered by GMP ("Option B," Exhibit #1), the line would roughly follow Hancock Brook Road, and a pole would be erected near the road on **Shiu's** property. No cutting would be necessary to install the line along this route. This proposal was rejected because Shiu did not grant GMP an easement to install a utility pole guy wire and anchor.

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/1/ GMP stated as a ground of error in its notice of appeal, the conflict between the 20 year permit expiration date imposed by the Commission and **GMP's** "obligation to serve and its corresponding right to be within the highway right-of-way." For the reasons stated above--that Act 250 confers on the Commission and the Board concurrent jurisdiction to regulate the installation and maintenance of the utility line extension--we decline to set aside the expiration date.

5. A third route (\*\*Option C," Exhibit #1) would run from an existing pole behind Shiu's garage over the top of a rock outcropping, on which a new pole would be erected. This alternative would entail the cutting of a substantial number of trees on the outcropping--all those located within 10' of either side of the line plus any "danger trees"/2/. The pole on top of the outcropping will be 35' high. Existing trees on the outcropping are approximately 60' high.
6. GMP's policy on pole location strongly favors, but does not require, highway right-of-way locations. GMP prefers the shortest route available and, in choosing a line route, the company takes into consideration reliability of service, installation costs and Act 250 criteria.
7. Option C would involve installation difficulties, since the new pole would be erected on the rock ledge rather than near the road. GMP's pole-setting trucks would not be able to reach the pole location, so they would have to hire off-road pole-setting equipment. Option C would also involve maintenance difficulties because of the line's inaccessibility to equipment. Option C would entail the cutting of a 20' swath over the top of the rock outcropping. Although this swath would not be visible from the Shiu property, it would be clearly visible to anyone driving along Hancock Brook Road. After the cutting, the wind may blow additional trees down because of the shallow soil on top of the ledge. Mr. Shiu is willing to grant GMP an easement for the installation and maintenance of Option C across his land.
8. A site visit revealed an existing gap in the trees on the rock outcropping, approximately 20 yards from the proposed pole 5C (Exhibit #1). If the line is installed from the "garage pole" (Exhibit #1) up through the existing gap in the trees, GMP would need to cut additional trees on the ledge. However, the impact caused by the cutting would not be as great as the impact caused by cutting a swath through the undisturbed growth to the left of the gap.
9. The area through which the proposed line extension will run is one of uncommon scenic and natural beauty. The intrusion of poles and wire would have an adverse effect on this setting of stream, rock and trees. An alternative route

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/2/ It is GMP's policy to cut all growth within 10' of either side of a distribution line. Any nearby "danger trees" are also cut. "Danger trees" are those trees in the vicinity of the line which are dead, diseased or otherwise prone to falling.

for the line outside the right-of-way may be available, but Option C would appear to intrude unnecessarily on the general landscape.

10. The Board has followed a policy of requiring underground installation of distribution lines whenever feasible. See Board Rule A-4 pertaining to power and communication lines and facilities.

#### IV. Conclusions of Law

Before granting a permit, the board or district commission must find, inter alia, that the proposed project "will not have an undue adverse effect on the scenic or natural beauty of the area, [or] aesthetics ...." 10 V.S.A. § 6086(a)(8). Based upon the foregoing findings of fact, the Environmental Board concludes that the area is one of great natural and scenic beauty by virtue of the stream and rock formations and its remoteness. Options A and B would have an adverse impact as technological intrusions on the area. The Board further concludes that an alternative route apparently exists which would reduce, but not eliminate the aesthetic impact on the area.

Option C is not optimum because it would create a visual mar directly in the line of sight of vehicles travelling west on Hancock Brook Road. However, the Board would like to consider an alternative route over the outcropping: the line would run from the garage pole to a new pole erected in the existing gap in the trees on the ledge. From there the line would run roughly in a straight line over an abandoned gravel pit to pole 7 (Exhibit #3). If necessary, a pole would be erected between pole 7 and the pole on the ledge. The Board would also like to consider the possibility of burying the portion of the line which cuts through Shiu's property. The Board will therefore direct GMP to evaluate the feasibility of both the alternative route and underground installation and report the results of the evaluation to the Board.

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IV. Order

The Permittee shall submit to the Board, within two weeks of the issuance of this decision, a study concerning the feasibility of both the alternative route described above and underground installation of the line through **Shiu's** property.

Dated at Montpelier, Vermont this 3rd day of April, 1985.

VERMONT ENVIRONMENTAL BOARD

By:



Margaret P. Garland  
Ferdinand Bongartz  
Lawrence H. Bruce, Jr.  
Melvin H. Carter  
Warren M. Cone