

**Great Lakes Hydro America, LLC v. City of Berlin
Docket Nos.: 25531-10PT/26219-11PT/26910-12PT**

and

**Great Lakes Hydro America, LLC v. Town of Gorham
Docket Nos.: 25532-10PT/26220-11PT/26900-12PT**

ORDER

This Order responds to the “Joint Motion to Compel, For Expedited Hearing and, If Necessary [sic] to Continue” filed by the “Municipalities” [the City of Berlin (“City”) and Town of Gorham (“Town”)] on March 11, 2013 (the “Joint Motion”). The Municipalities filed the Joint Motion less than three weeks prior to the rescheduled hearing date for these appeals, a date established approximately five months ago (as a result of a last minute discovery motion filed by the same parties). The board reserved a full week on its calendar (March 31 to April 3, 2014) to allow adequate time for these hearings after consulting with the parties’ attorneys regarding convenient dates for them and their experts. (See October 8, 2013 Consolidation and Scheduling Order.)

The relevant history of these proceedings includes the board’s October 8, 2013 Order (the “Prior Discovery Order”) denying the Municipalities’ prior motion to compel additional document discovery in the 2010 and 2011 appeals. The Municipalities filed a reconsideration motion which was denied on November 5, 2013. They then filed an “Interlocutory Appeal” of

that discovery ruling with the supreme court, but that appeal was declined for the reasons stated in the January 27, 2014 order of that court.

The Municipalities then served additional discovery requests on the Taxpayer and subsequently filed the Joint Motion because they are not satisfied with the Taxpayer's responses to these additional discovery requests. The Municipalities request an "expedited hearing," a ruling compelling further discovery and "[i]f necessary" an indefinite continuance of the hearing dates ("to a date when 5 days would be available to try these joint matters before the board").

(See Joint Motion, p. 9.)

The board received the Taxpayer's "Opposition" (via email, with paper copies to follow) on the afternoon of March 19, 2014. The Opposition (pp. 10-11) asserts the Joint Motion should be denied "in all respects" and, alternatively, that the 2012 appeals be 'severed' if necessary to allow the 2010 and 2011 appeals to be heard as scheduled.¹

Based on its own review of the relevant pleadings and proceedings, and for many of the reasons stated in the Opposition, the board finds:

1. The Joint Motion is denied insofar as the Municipalities seek to compel additional discovery, at this late date, with respect to the tax year 2010 and 2011 appeals. The board finds merit in the arguments in the Opposition (pp. 2-7) that these discovery requests are "untimely" and attempt to "relitigate" all or part of the board's rulings on the proper scope of discovery in

¹ On March 20, 2014, the Clerk received an email from one of the City's attorney stating his opposition to the "bifurcation" of the 2012 appeals. The board does not agree.

the Prior Discovery Order.²

2. The Joint Motion is also denied to the extent the Municipalities seek “if necessary” a further continuance of the substantive hearings and the hearings for tax years 2010 and 2011 will proceed as scheduled in the week beginning March 31, 2014.

3. In response to the Municipalities’ discovery requests pertaining to the 2012 appeals, the board finds merit in the Taxpayer’s suggestion and hereby severs the 2012 appeals. Time permitting, “oral argument[s]” on the 2012 discovery issues will be heard by the board at the conclusion of the 2010 and 2011 substantive hearings.

4. The board intends to make no further rulings prior to hearing the merits of the 2010 and 2011 appeals.

5. On Monday, March 31, 2014 at 8:30 a.m., the parties are directed to appear, discuss and exchange any documents they intend to submit as exhibits and the Clerk is responsible for marking exhibits at that time and noting any potential objections for resolution by the board. (No pre-marking of exhibits should be undertaken by the parties.) Testimony in the 2010 and 2011 appeals will begin on Tuesday, April 1, 2014 at 8:30 a.m.

² For example, to the extent the Joint Motion seeks discovery of so-called “Internal Appraisals” of a parent company (Brookfield Asset Management, Inc.) for tax years 2010 and 2011 that may or may not exist, that discovery question has already been decided and is the “law of the case,” as noted in the Opposition (pp. 4-6). [See also the Prior Discovery Order (pp. 6-8), the November 13, 2013 Order denying the Municipalities’ reconsideration motion and the January 27, 2014 order of the supreme court.] As noted by the Taxpayer, the Municipalities have broadened their request to include other years (2006 through 2013), but have no answer as to why the same rulings should not apply.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

CERTIFICATION

I hereby certify copies of the above Order have this date been mailed, postage prepaid, to: William L. Plouffe, Esq., DrummondWoodsum, 84 Marginal Way – Suite 600, Portland, ME 04101, counsel for the Taxpayer; Peter J. Crossett, Esq., Hiscock & Barclay, One Park Place, 300 South State Street, Syracuse, NY 13202, co-counsel for the Taxpayer; Christopher L. Boldt, Esq., Donahue, Tucker & Ciandella, PLLC, PO Box 214, Meredith, NH 03253, counsel for the City of Berlin; Robert Upton, II, Esq., Upton & Hatfield, LLP, 23 Seavey Street, North Conway, NH 03860, counsel for the Town of Gorham; George E. Sansoucy, PE, LLC, 89 Reed Road, Lancaster, NH 03584, Contracted Assessing Firm; Chairman, Board of Assessors, City of Berlin, 168 Main Street, Berlin, NH 03570; and Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581.

Dated: 3/20/14

Anne M. Stelmach, Clerk