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November 1, 2011

Mrs. Susan Hudson, Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, Vermont 05620-2701

VIA EMAIL AND FIRST CLASS MAIL

Re: Docket No. 7628

Dear Mrs. Hudson:

Enclosed please find Don and Shirley Nelson, Craftsbury and Albany's Joint Motion for Emergency Stay of Blasting in the above-referenced matter. The Motion and accompanying affidavits make it clear that the Petitioners have violated, and will continue to violate, the Board's Order and applicable regulations regarding blasting, and therefore we request an immediate ruling by the Board to stay blasting until this issue can be resolved. Please do not hesitate to call me with any questions.

Sincerely,

Jared M. Margolis, Esq.

cc. Service List

STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Electric Power Company, Inc., and Vermont Transco LLC, for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, for authority to construct up to a 63 MW wind electric generation facility and associated facilities on Lowell Mountain in Lowell, Vermont, and the installation or upgrade of approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield and Jay, Vermont.	)	November 1, 2011 Docket No. 7628

CERTIFICATE OF SERVICE

I, Jared M. Margolis, hereby certify that I have provided copies of Don and Shirley Nelson and the Towns' Joint Motion for Emergency Stay of Blasting to the following service list by first class mail:

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Dated at Jericho, VT this 1st day of November, 2011.

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STATE OF VERMONT
PUBLIC SERVICE BOARD

Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Electric Power Company, Inc., and Vermont Transco LLC, for a Certificate of Public Good, pursuant to 30 V.S.A. Section 248, for authority to construct up to a 63 MW wind electric generation facility and associated facilities on Lowell Mountain in Lowell, Vermont, and the installation or upgrade of approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield and Jay, Vermont.	)	November 1, 2011 Docket No. 7628

DON AND SHIRLEY NELSON AND CRAFTSBURY AND ALBANY'S JOINT MOTION FOR EMERGENCY STAY OF BLASTING

NOW COME Don and Shirley Nelson and the Towns of Craftsbury and Albany, Vermont, by and through counsel Jared M. Margolis, and hereby move for the Board to find that the Petitioners have violated their CPG and the May 31, 2011 Order of this Board, and to immediately stay all blasting for the Kingdom Community Wind Project until it can be shown that the blasting can be done consistent with the Order and all applicable laws and regulations. In support thereof, the Nelsons and the Towns provide the following memorandum.

MEMORANDUM

On May 31, 2011, the Public Service Board ("Board") issued an Order (the "Order") and Certificate of Public Good ("CPG") approving, subject to certain conditions, the construction and operation of the Project. One of those conditions was that "all blasting will be performed in accordance with any and all applicable laws and regulations" including the requirements of the Office of Surface Mining Reclamation and Enforcement (OSM) Blasting Performance Standards contained in 30 C.F.R. §§ 816.61-816.68 and 817.61-817.68. Order at 48. The amended Blasting Plan adopted by the Board similarly claims that Maine Drilling and Blasting (the

Petitioners' blasting subcontractor) is "knowledgeable of and will follow all local, state and federal regulations related to transportation and use of explosives." Amended Blasting Plan at 3 (emphasis added). The Order further requires that blasting mats be used to "limit the occurrence of flyrock." *Id.*

It has become clear that the Petitioners have violated the Order. The applicable standards cited by the Board specifically prohibit any blasting that will cause "fly rock" to be cast "beyond the permit boundary" (30 C.F.R. §§ 816.67 (c)(3) and 817.67(c)(3)). Furthermore, Vermont has adopted the National Fire Protection Association (NFPA) Uniform Fire Code (NFPA 1) within the Vermont Fire & Building Safety Code.[1] Pursuant to NFPA 1, the use of explosive material shall comply with NFPA 495 - Explosive Materials Code. *See* NFPA 1-330 § 65.9.1.[2] The Vermont Division of Fire Safety website confirms that "Regulations on the safety, storage and use of explosive materials are contained in the National Fire Protection Association (NFPA) Standard 495, Explosives Material Code, 2006 edition, adopted under the Vermont Fire & Building Safety Code."[3]

Pursuant to NFPA 495, "[f]lyrock shall not be propelled from the blast site onto property not contracted by the blasting operation or onto property for which the owner has not provided a written waiver to the blasting operation." NFPA 495 § 11.3.2 (emphasis added) (attached hereto). *See also* NFPA 495 § 11.3.1 ("flyrock travelling through the air or along the ground shall not be cast from the blast site in an uncontrolled manner that could result in personal injury or property damage."). The "blast site" is further defined as the area within 50 feet of the placement of the charges. *See* NFPA 495 § 3.3.5 . Therefore, the Board's Order, which requires

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[1] Available at: http://firesafety.vermont.gov/sites/firesafety/files/pdf/06FireCodeADOPTEDJune2009CORRECTED2011.pdf

[2] See http://firesafety.vermont.gov/sites/firesafety/files/pdf/Code%20Info%20Sheets/2011_Adoped%20Codes.pdf

[3] See http://firesafety.vermont.gov/safety_issues/fireworks/explosive

blasting to be accomplished in accordance with all state and federal regulations, requires the Petitioner to prevent flyrock from leaving GMP's property (and more than 50 feet away from the location of the blast). These regulations further prevent GMP from using the Nelsons' property as a safety zone for its blasting activities, since the Nelson's have not provided a written waiver to the blasting operation.

As set forth in the attached affidavits of Margot Kempers and Fred Scholz, flyrock and rubber matting from the blasting on the Project site have been propelled onto adjoining property owned by the Nelsons. The Nelsons have not consented to this trespass, and whereas the Petitioners have been granted no authority to allow flyrock to be propelled from the blast site onto the Nelsons' property, Petitioners are in violation of NFPA 495-39 § 11.3.2., and are not in compliance with the Blasting Plan or the Board's Order.

Moreover, GMP has claimed before the Superior Court[4] that it is currently using smaller blasts and larger mats to control flyrock, due to the presence of campers on the Nelsons' land, who are within a 1,000 foot safety zone that the Blaster has stated is necessary for the public safety.[5] The fact that this 1,000 foot safety zone extends onto the Nelsons' property should be seen as an admission that the blasting has not been planned in accordance with the above regulations, since it shows that GMP has not provided sufficient setbacks so as to maintain the

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[4] The transcript of the Court proceedings is not yet available, but the undersigned attorney was present at these proceedings, and can attest to the testimony that was provided by GMP witnesses, who stated that GMP was currently using smaller blasts with larger mats than what was originally planned by the contractor, and that GMP would increase the size of the blasts once the temporary restraining order was enforced.

[5] This 1,000 foot area extends onto lands owned by the Nelsons; however, it is clear from the Amended Blasting Plan adopted by the Board and the record in this Docket that no such blasting zone was ever presented to the Board, and no permission was granted by this Board for GMP to use the Nelsons' property as a blast safety zone. To the contrary, no property lines were included on the map accompanying the blasting plan, and no safety zone is depicted on that plan, or was ever discussed in the testimony. Furthermore, no regulations require such a safety zone. In fact, as set forth above, the regulations, which the Order states GMP must abide by, require all blasting activities, including flyrock, to be contained on the permitted property. NFPA 495 § 11.3.2.

blast area and flyrock on its property. GMP is currently attempting to have the State Police and Sheriff enforce a Temporary Restraining Order against the people on the Nelsons' land, because their presence requires smaller blasts that will take more time, thereby costing GMP more money. Therefore, if GMP is successful in removing those persons from the Nelsons' land, it will pursue a blasting plan that includes even larger blasts, using fewer mats in order to save time and money, presumably resulting in more flyrock landing on the Nelsons' property.

Since even the smaller blasts with large mats have resulted in flyrock leaving the permitted property, causing a trespass against the Nelsons and a clear violation of the applicable state and federal regulations, the larger blasts that GMP will undertake once the people on the Nelsons' property are removed are almost certain to continue to violate these standards and thus the Board's Order. The Board must therefore find that the current and proposed blasting, as planned, does not meet the requirements of the Board's Order. The Board should stay GMP from any further blasting unless and until GMP can show that it is able to blast in accordance with the applicable regulations, and ensure that no flyrock leaves the permit boundaries and enters the Nelsons' property.

WHEREFORE, the movants request that the Board find that the Petitioners have violated the Order, and will continue to violate the Order if blasting continues as planned, and that the Board stay and enjoin the Petitioners from conducting any further blasting on-site, unless and until GMP can show that it is able to blast in accordance with the applicable regulations, and ensure that no flyrock leaves the permit boundaries.

Dated at Jericho, VT this 1st day of November, 2011.

Jared M. Margolis
243 Cilley Hill Rd.
Jericho, VT 05465

NFPA 495

Explosive Materials Code

2006 Edition

NFPA, 1 Batterymarch Park, Quincy, MA 02169-7471
An International Codes and Standards Organization

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Explosive Materials Code

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NOTICE: An asterisk (*) following the number or letter designating a paragraph indicates that explanatory material on the paragraph can be found in Annex A.

A reference in brackets [ ] following a section or paragraph indicates material that has been extracted from another NFPA document. As an aid to the user, the complete title and edition of the source documents for extracts in mandatory sections of the document are given in Chapter 2 and those for extracts in informational sections are given in Annex F. Editorial changes to extracted material consist of revising references to an appropriate division in this document or the inclusion of the document number with the division number when the reference is to the original document. Requests for interpretations or revisions of extracted text shall be sent to the technical committee responsible for the source document.

Information on referenced publications can be found in Chapter 2 and Annex F.

Chapter 1 Administration

1.1 Scope. This code shall apply to the manufacture, transportation, storage, sale, and use of explosive materials.

1.2 Purpose. This code is intended to provide reasonable safety in the manufacture, storage, transportation, and use of explosive materials.

1.3 Application.

1.3.1 This code shall not apply to the transportation of explosive materials where under the jurisdiction of the U.S. Department of Transportation (DOT). It shall apply, however, to state and municipal supervision of compliance with U.S. DOT 49 CFR 100–199.

1.3.2 This code shall not apply to the transportation and use of military explosives by federal or state military agencies, nor shall it apply to the transportation and use of explosive materials by federal, state, or municipal agencies while engaged in normal or emergency performance of duties.

1.3.3 This code shall not apply to the manufacture of explosive materials under the jurisdiction of the U.S. Department of Defense. This code also shall not apply to the distribution or storage of explosive materials by military agencies of the United States, nor shall it apply to arsenals, navy yards, depots, or other establishments owned or operated by, or on behalf of, the United States.

1.3.4 This code shall not apply to pyrotechnics such as flares, fuses, and railway torpedoes. It also shall not apply to fireworks and pyrotechnic special effects as defined in NFPA 1123, *Code for Fireworks Display*; NFPA 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*; and NFPA 1126, *Standard for the Use of Pyrotechnics Before a Proximate Audience.*

1.3.5 This code shall not apply to model and high power rocketry as defined in NFPA 1122, *Code for Model Rocketry*; NFPA 1125, *Code for the Manufacture of Model Rocket and High Power Rocket Motors*; and NFPA 1127, *Code for High Power Rocketry.*

1.3.6 This code shall not apply to the use of explosive materials in medicines and medicinal agents in the forms prescribed by the United States Pharmacopeia or the National Formulary.

1.4 Retroactivity. The provisions in this code reflect a consensus of what is necessary to provide an acceptable degree of protection from the hazards addressed in this code at the time the code was issued.

1.4.1 Unless otherwise specified, the provisions in this code shall not apply to facilities, equipment, structures, or installations that existed or were approved for construction or installation prior to the effective date of the code. Where specified the provisions in this code shall be retroactive.

1.4.2 In those cases where the authority having jurisdiction determines that the existing situation presents an unacceptable degree of risk, the authority having jurisdiction shall be permitted to apply retroactively any portions of this code deemed appropriate.

1.4.3 The retroactive requirements of this code shall be permitted to be modified if their application clearly would be impractical in the judgment of the authority having jurisdiction, and only where it is clearly evident that a reasonable degree of safety is provided.

1.5 Equivalency. Nothing in this code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed by this code.

1.5.1 Technical documentation shall be submitted to the authority having jurisdiction to demonstrate equivalency.

1.5.2 The system, method, or device shall be approved for the intended purpose by the authority having jurisdiction.

1.6 Enforcement. This code shall be administered and enforced by the authority having jurisdiction designated by the governing authority. *(See Annex B for sample wording for enabling legislation.)*

Chapter 2 Referenced Publications

2.1 General. The documents or portions thereof listed in this chapter are referenced within this code and shall be considered part of the requirements of this document.

2.2 NFPA Publications. National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471.

NFPA 1, *Uniform Fire Code™*, 2006 edition.

NFPA 13, *Standard for the Installation of Sprinkler Systems*, 2002 edition.

NFPA 70, *National Electrical Code®*, 2005 edition.

NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives*, 2006 edition.

NFPA 1122, *Code for Model Rocketry*, 2002 edition.

NFPA 1123, *Code for Fireworks Display*, 2006 edition.

NFPA 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*, 2006 edition.

NFPA 1125, *Code for the Manufacture of Model Rocket and High Power Rocket Motors*, 2001 edition.

NFPA 1126, *Standard for the Use of Pyrotechnics Before a Proximate Audience*, 2006 edition.

NFPA 1127, *Code for High Power Rocketry*, 2002 edition.

NFPA 5000®, Building Construction and Safety Code®, 2006 edition.

2.3 Other Publications.

2.3.1 IAPMO Publication. International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761.

Uniform Mechanical Code, 2003.

2.3.2 IME Publication. Institute of Makers of Explosives, 1120 19th St., NW, Suite 310, Washington, DC 20036-3605.

"American Table of Distances for Storage of Explosives," June 1991.

2.3.3 U.S. Government Publications. U.S. Government Printing Office, Washington, DC 20402.

Publication ATF P 5400.7 (9/00), Federal Explosive Law and Regulations, U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Title 18, United States Code, Chapter 40, "Importation, Manufacture, Distribution and Storage of Explosive Materials."

Title 18, United States Code, Chapter 40, "Organized Crime Control Act of 1970."

Title 18, United States Code, Chapter 44, "Gun Control Act of 1968."

Title 27, Code of Federal Regulations, Part 555, "Table of Distances for Low Explosives," U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives.

Title 49, Code of Federal Regulations, Parts 100–199, "Hazardous Materials Regulations," U.S. Department of Transportation.

Title 49, Code of Federal Regulations, Parts 100–179, "Hazardous Materials Regulations."

Title 49, Code of Federal Regulations, Part 172, Subpart F.

Title 49, Code of Federal Regulations, Part 173.171, "Hazardous Materials Regulations."

Title 49, Code of Federal Regulations, Parts 173.56, 173.57, 173.58, Explosive 1.5D.

Title 49, Code of Federal Regulations, Part 177.835(g), U.S. Department of Transportation.

Title 49, Code of Federal Regulations, Part 397, "Federal Motor Carrier Safety Regulations," U.S. Department of Transportation.

2.3.4 Other Publication.

Merriam-Webster's Collegiate Dictionary, 11th edition. Merriam-Webster, Inc., Springfield, MA, 2003.

2.4 References for Extracts in Mandatory Sections.

NFPA 221, *Standard for High Challenge Fire Walls, Fire Walls, and Fire Barrier Walls*, 2006 edition.

NFPA 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*, 2006 edition.

NFPA 5000®, Building Construction and Safety Code®, 2006 edition.

Chapter 3 Definitions

3.1 General. The definitions contained in this chapter shall apply to the terms used in this code. Where terms are not defined in this chapter or within another chapter, they shall be defined using their ordinarily accepted meanings within the context in which they are used. *Merriam-Webster's Collegiate Dictionary*, 11th edition, shall be the source for the ordinarily accepted meaning.

3.2 NFPA Official Definitions.

3.2.1* Approved. Acceptable to the authority having jurisdiction.

3.2.2* Authority Having Jurisdiction (AHJ). An organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.

3.2.3 Labeled. Equipment or materials to which has been attached a label, symbol, or other identifying mark of an organization that is acceptable to the authority having jurisdiction and concerned with product evaluation, that maintains periodic inspection of production of labeled equipment or materials, and by whose labeling the manufacturer indicates compliance with appropriate standards or performance in a specified manner.

3.2.4* Listed. Equipment, materials, or services included in a list published by an organization that is acceptable to the authority having jurisdiction and concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

3.3 General Definitions.

3.3.1 Acceptor. A charge of explosives or blasting agent receiving an impulse from an exploding donor charge.

3.3.2 Ammonium Nitrate. A chemical compound represented by the formula NH_4NO_3.

3.3.3 ANFO (Ammonium Nitrate Fuel Oil Mixture). A blasting agent (Explosive 1.5D) that contains no essential ingredients other than prilled ammonium nitrate and fuel oil.

3.3.4 Blast Area. The area including the blast site and the immediate adjacent area within the influence of flying rock, missiles, and concussion.

3.3.5* Blast Site. The area where explosive material is handled during loading of the blasthole, including 15.2 m (50 ft) in all directions from the perimeter formed by loaded holes.

3.3.6 Blaster. A person qualified to assist in the loading and firing of a blast.

3.3.7 Blaster-in-Charge. A person qualified to be in charge of and responsible for the loading and firing of a blast.

3.3.8* Blasting Agent. A material or mixture intended for blasting that meets the requirements of the DOT "Hazardous

Materials Regulations," as set forth in 49 CFR Parts 173.56, 173.57, and 173.58, Explosive 1.5D.

3.3.9 Building.

3.3.9.1* *Inhabited Building.* Any building or structure regularly used in whole or part as a place of human habitation.

3.3.9.2* *Operating Building.* A building utilized in conjunction with the manufacture, transportation, or use of explosive materials.

3.3.10 Bulk Mix. A mass of explosive material prepared for use in bulk form without packaging.

3.3.10.1 *Bulk Mix Delivery Equipment.* Equipment (usually a motor vehicle with or without a mechanical delivery device) that transports explosive materials in bulk form for mixing or loading directly into boreholes, or both.

3.3.11* Bullet-Resistant Construction. Refers to magazine walls or doors, constructed to resist penetration of a bullet of 150-grain M2 ball ammunition having a nominal muzzle velocity of 824 mps (2700 fps) when fired from a 0.30-caliber rifle from a distance of 30.5 m (100 ft) perpendicular to the wall or door.

3.3.12 Day Box. A Type 3 magazine.

3.3.13 Detonating Cord. A flexible cord containing a center core of high explosive used to detonate other explosives.

3.3.14* Detonator. Any device containing an initiating or primary explosive that is used for initiating detonation.

3.3.14.1 *Electronic Detonator.* A detonator that utilizes stored electrical energy as a means of powering an electronic timing delay element/module and that provides initiation energy for firing the base charge.

3.3.14.2 *No. 8 Test Detonator.* A detonator with 0.40 to 0.45 grams PETN base charge pressed to a specific gravity of 1.4 g/cc and primed with standard weights of primer, depending on manufacturer.

3.3.15 Device.

3.3.15.1* *Explosive-Actuated Device.* Any tool or special mechanized device that is actuated by explosive materials.

3.3.15.2 *Nonelectric Delay Device.* A detonator with an integral delay element used in conjunction with and capable of being initiated by a detonating impulse.

3.3.15.3* *Propellant-Actuated Device.* Any tool or special mechanized device or gas generator system that is actuated by a propellant or that releases or directs work through a propellant charge.

3.3.15.4 *Special Industrial Explosives Device.* Explosive-actuated devices and propellant-actuated devices.

3.3.16 Distance.

3.3.16.1 *Intermagazine Distance (IMD).* The minimum separation distance between magazines.

3.3.16.2 *Intraline Distance (ILD) or Intraplant Distance (IPD).* The distance to be maintained between any two operating buildings on an explosives manufacturing site, at least one of which contains or is designed to contain explosives; the distance between a magazine and an operating building.

3.3.16.3 *Minimum Separation Distance (D_O).* The minimum separation distance between adjacent buildings occupied in conjunction with the manufacture, transportation, storage, or use of explosive materials where one of the buildings contains explosive materials and the other building does not.

3.3.16.4* *Quantity–Distance (Q–D).* The quantity of explosive material and the separation distance relationships providing protection.

3.3.17 Donor. An exploding charge producing an impulse that impinges upon an explosive acceptor charge.

3.3.18* Explosive. Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion.

3.3.18.1 *Binary Explosive.* A blasting explosive formed by mixing or combining two precursor chemicals, for example ammonium nitrate and nitromethane.

3.3.18.2 *Emulsion Explosive.* An explosive material containing substantial amounts of oxidizer dissolved in water droplets surrounded by an immiscible fuel or droplets of an immiscible fuel surrounded by water containing substantial amounts of oxidizer.

3.3.18.3 *Primary Explosive.* A sensitive explosive such as lead azide, which detonates by simple ignition from such means as spark, flame, impact, friction, or other primary heat sources of appropriate magnitude.

3.3.18.4 *Two-Component Explosive.* See 3.3.18.1, Binary Explosive.

3.3.19 Fire Barrier Wall. A wall, other than a fire wall, having a fire resistance rating. [**221**, 2006]

3.3.20* Fire Extinguisher Rating. This rating is identified on an extinguisher by a number (e.g., 5, 20, 70), indicating relative effectiveness, followed by a letter (e.g., A, B, C, or D) indicating the class or classes of fires for which the extinguisher has been found to be effective.

3.3.21* Flash Point. The minimum temperature at which a liquid or a solid emits vapor sufficient to form an ignitable mixture with air near the surface of the liquid or the solid.

3.3.22 Fuel. Any substance that reacts with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

3.3.23 Hardwood. Any close-grained wood such as oak, maple, ash, or hickory that is free from loose knots, wind shakes, or similar defects.

3.3.24 Magazine. A building or structure, other than an explosives manufacturing building, approved for the storage of explosive materials. [**1124**, 2006]

3.3.25 Manufacturing. Mixing, blending, extruding, assembling articles outside the blast site, disassembling, chemical synthesis, and other functions involved in making a product or device that is intended to explode.

3.3.26 Mass Detonate (Mass Explode). Simultaneous detonation or explosion of the total amount or a substantial amount of a quantity of explosive material caused by the explosion of a unit or part of the explosive material.

3.3.27 Material.

3.3.27.1 *Explosive Material.* Any explosive, blasting agent, emulsion explosive, water gel, or detonator.

3.3.27.1.1* *Bullet-Sensitive Explosive Material.* Explosive material that can be detonated by 150-grain M2 ball ammunition having a nominal muzzle velocity of 824 mps (2700 fps) when fired from a 0.30-caliber rifle at a distance of 30.5 m (100 ft), measured perpendicularly.

3.3.27.1.2* *Cap-Sensitive Explosive Material.* Any explosive material that can be detonated by means of a No. 8 blasting cap or its equivalent.

3.3.27.1.3 *High Explosive Material.* Explosive materials that are characterized by a very high rate of reaction, high pressure development, and the presence of a detonation wave.

3.3.27.1.4 *Low Explosive Material.* Explosive material that is characterized by deflagration or a low rate of reaction and the development of low pressure.

3.3.27.1.5* *Special Industrial Explosive Material.* Shaped materials, sheet forms, and various other extrusions, pellets, and packages of high explosives used for high-energy-rate forming, expanding, and shaping in metal fabrication and for dismemberment and reduction of scrap metal.

3.3.27.2 *Hazardous Material.* A chemical or substance that is a physical hazard or health hazard as defined and classified in NFPA 1, *Uniform Fire Code*, whether the material is in usable or waste condition.

3.3.27.2.1 *Health Hazard Material.* A chemical or substance classified as a toxic, highly toxic, or corrosive material in accordance with the definitions set forth in NFPA 1, *Uniform Fire Code.*

3.3.27.2.2* *Incompatible Material(s).* Materials that, when in contact with each other and outside of the condition of intended use, have the potential to react in a manner that generates heat, fumes, gases, or by-products that are hazardous to life and property.

3.3.27.2.3 *Physical Hazard Material.* A chemical or substance classified as a combustible liquid, combustible fiber, explosive, flammable cryogen, flammable gas, flammable liquid, flammable solid, organic peroxide, oxidizer, oxidizing cryogen, pyrophoric, unstable (reactive), or water reactive material, in accordance with the definitions set forth in this code or in NFPA 1, *Uniform Fire Code.*

3.3.27.3* *Oxidizing Material.* Any solid or liquid that readily yields oxygen or other oxidizing gas or that readily reacts to oxidize combustible material.

3.3.28 Misfire. A charge of explosive material that fails to detonate completely after initiation.

3.3.29 Motor Vehicle. Any self-propelled vehicle, truck, tractor, semitrailer, or truck-trailer combination used for the transportation of freight over public highways.

3.3.30 Net Explosive Weight (NEW). The aggregate amount of explosive materials, expressed in pounds, contained within buildings, magazines, structures or portions thereof, used to establish quantity–distance (Q–D) relationships.

3.3.31 Nonsparking Metal. A metal that resists producing a spark when impacted with tools, rock, or hard surfaces.

3.3.32 Operating Line. A group of buildings, facilities, or workstations so arranged as to permit performance of the steps in the manufacture of an explosive or in the loading, assembly, modification, and maintenance of ammunition or devices containing explosive materials.

3.3.33 Person. An individual, firm, partnership, corporation, company, association, or joint-stock association, including any trustee, receiver, assignee, or personal representative thereof. [*5000*, 2006]

3.3.34 Plywood. Exterior grade plywood.

3.3.35 Precursor Chemicals. Two or more unmixed, commercially manufactured prepackaged chemical ingredients (including oxidizers, flammable liquids or solids, or similar ingredients) that are *not* classified as explosives but that, where mixed or combined, form a blasting explosive.

3.3.36 Primer. A unit, package, or cartridge of explosive material used to initiate other explosives or blasting agents and that contains (1) a detonator or (2) a detonating cord to which is attached a detonator designed to initiate the cord.

3.3.36.1 *Small Arms Ammunition Primers.* Small percussion-sensitive explosive charges encased in a cap and used to ignite propellant powder.

3.3.37* Propellant. An explosive that normally functions by deflagration and is used for propulsion purposes.

3.3.37.1 *Composite Propellant.* A mixture consisting of an elastomeric-type fuel and an oxidizer used in gas generators and rocket motors.

3.3.37.2 *Smokeless Propellants.* Solid propellants, commonly referred to as smokeless powders, used in small arms ammunition, cannons, rockets, or propellant-actuated devices.

3.3.38 Public Conveyance. Any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle that carries passengers for hire.

3.3.39* Public Highway. Any road, street, or way, whether on public or private property, open to public travel.

3.3.40 Railway. Any steam, electric, diesel electric, or other railroad or railway that carries passengers for hire on a particular line or branch in the vicinity of an explosives storage or manufacturing facility.

3.3.41 Resistant.

3.3.41.1* *Fire Resistant.* Construction designed to provide reasonable protection against fire.

3.3.41.2 *Theft Resistant.* Construction designed to deter illegal entry into facilities for the storage of explosive material.

3.3.41.3 *Weather Resistant.* Construction designed to offer protection against weather.

3.3.42* Semiconductive Hose. Any hose with an electrical resistance sufficient to limit the flow of stray electric currents to safe levels, yet not high enough to prevent the relaxation of static electric charges to ground.

3.3.43 Sensitivity. A characteristic of an explosive material, classifying its ability to detonate upon receiving an external impulse such as impact shock, flame, or other influence that can cause explosive decomposition.

3.3.44* Shock Tube. A small diameter plastic tube used for initiating detonators.

3.3.45 Slurry. An explosive material containing substantial portions of a liquid, oxidizers and fuel, plus a thickener.

3.3.46* Small Arms Ammunition. Any shotgun, rifle, or pistol cartridge and any cartridge for propellant-actuated devices.

3.3.47 Softwood. Any coarse-grained wood such as fir, hemlock, spruce, or pine that is free from loose knots, wind shakes, or similar defects.

3.3.48* Steel. General purpose, hot- or cold-rolled, low carbon steel.

3.3.49* Water Gel. An explosive material that contains substantial portions of water, oxidizers, and fuel, plus a crosslinking agent.

Chapter 4 Security and Safety of Explosive Materials

4.1 Basic Requirements.

4.1.1 Response to Fires.

4.1.1.1 No attempt shall be made to fight a fire that cannot be contained or controlled before it reaches explosive materials.

4.1.1.2 In such cases, all personnel shall be evacuated immediately to a safe location, and the area shall be guarded from entry by spectators or intruders.

4.1.2 Fire Department Notification.

4.1.2.1 The local fire department and other local emergency response agencies shall be notified of the location of all magazines and of any changes in location.

4.1.2.2 Such notification shall be made verbally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced.

4.1.3 The manufacture of any explosive material, as defined by this code, shall be prohibited unless such manufacture is authorized by federal license and is conducted in accordance with recognized safe practices.

4.1.3.1 The requirement in 4.1.3 shall not apply to hand loading of small arms ammunition prepared for personal use and not for resale.

4.1.4 The manufacture of explosive materials shall be prohibited where such manufacture presents an undue hazard to life or property.

4.1.4.1 Prior to manufacturing or testing of explosives, ammunition, or blasting agents, the authority having jurisdiction shall be furnished with the following information:

(1) The exact location of the place of manufacture or testing
(2) The type and net explosive weight (NEW) of explosives ammunition, blasting agents to be manufactured or tested, and the in-process classification of the materials to be used
(3) A plot plan of the operating premises with the operating buildings indicated in which greater than 0.45 kg (1 lb) of explosives is to be manufactured, used, tested, or stored
(4) The plot plan dimensioned so as to accurately portray the size of each operating building and its location relative to barricades, storage magazines, property lines, inhabited buildings, and public transportation routes
(5) *Information from hazard assessments as required by process safety management (PSM)

4.1.5 The AHJ shall be permitted to restrict the quantity of explosive materials that are handled at any location.

4.1.6 All explosive materials and any newly developed and unclassified explosive materials shall meet the license and permit requirements of this chapter.

4.1.6.1 The requirement in 4.1.6 shall not apply to stocks of small arms ammunition and components thereof, to the extent that they are covered by the provisions of 18 United States Code, Chapter 44.

4.1.7 A person intending to engage in business as an importer, manufacturer, dealer, or user of explosive materials shall obtain a federal license in accordance with 18 United States Code, Chapter 40.

4.1.8 The requirements contained in this chapter are intended to supplement existing federal laws and regulations; therefore, any person who possesses a license or permit under 18 United States Code, Chapter 40, which properly covers the activities of such person shall not be required to obtain a permit under this chapter.

4.1.9 Warning Signs.

4.1.9.1 All normal access roads to explosive storage magazines shall be posted with the following warning sign:

DANGER.

NEVER FIGHT EXPLOSIVE FIRES.

EXPLOSIVES ARE STORED ON THIS SITE.

CALL_____.

4.1.9.2 The sign shall be weather resistant with a reflective surface and lettering at least 50 mm (2 in.) high.

4.1.10 Transportation Placards.

4.1.10.1 Placards required by the U.S. Department of Transportation regulations in 49 CFR 172, Subpart F, for the transportation of blasting agents (Division 1.5 materials) shall be displayed on all Type 5 magazines that contain blasting agents (Division 1.5 materials).

4.1.10.2 Emptied Type 5 magazines (including over-the-road trailers) that have previously contained packaged blasting agents (Division 1.5 materials) shall not be required to display placards.

4.2 Permit Requirements.

4.2.1 No person shall be in possession of explosive materials, or conduct an operation or activity requiring the use of explosive materials, or perform or supervise the loading and firing of explosive materials without first obtaining the correct permit.

4.2.2 Explosive materials shall not be sold, given, delivered, or transferred to any person not possessing a valid permit.

4.2.3 Responsibility.

4.2.3.1 Every person conducting an operation or activity that uses explosive materials shall obtain a permit to use explosive

10.6.2 All personnel shall remain at a safe distance from the disposal area.

10.6.3 All explosive materials that are obviously deteriorated or damaged shall not be used and shall be destroyed in accordance with the requirements of 9.7.17 and 9.7.18.

10.6.4* **Destroying Explosives.**

10.6.4.1 In the event that it becomes necessary to destroy any explosives, because of damage to containers, deterioration, or for any other reason, all handling of explosives shall cease and the manufacturer shall be contacted for assistance immediately.

10.6.4.2 The manufacturers' advice shall be followed without deviation.

Chapter 11 Ground Vibration, Airblast, and Flyrock

11.1 Ground Vibration.

11.1.1 At all blasting operations, the maximum ground vibration at any dwelling, public building, school, church, or commercial or institutional building adjacent to the blasting site shall not exceed the limitations specified in Table 11.1.1, except as otherwise authorized or restricted by the AHJ.

11.1.2 Frequency Versus Particle Velocity Graphs.

11.1.2.1 In lieu of Table 11.1.1, a blasting operation shall have the option to use the graphs shown in either Figure 11.1.2.1(a) or Figure 11.1.2.1(b) to limit peak particle velocity based upon the frequency of the blast vibration.

11.1.2.2 If either graph in Figure 11.1.2.1(a) or Figure 11.1.2.1(b) is used to limit vibration levels, the methods for monitoring vibration and calculating frequency shall be approved by the AHJ.

11.1.3 Scaled Distance Equations. Unless a blasting operation uses a seismograph to monitor a blast to ensure compliance with Table 11.1.1 or Figure 11.1.2.1(a) or Figure 11.1.2.1(b), or has been granted special permission by the AHJ to utilize a modified scaled distance factor, the operation shall comply with the scaled distance equations shown in Table 11.1.3.

Table 11.1.1 Peak Particle Velocity Limits

Distance from Blasting Site		Maximum Allowable Peak Particle Velocity*	
m	ft	mm/sec	in./sec
0–91.4	0–300	31.75	1.25
91.5–1524	301–5000	25.40	1.00
≥1525	≥5001	19.00	0.75

*Peak particle velocity shall be measured in three mutually perpendicular directions, and the maximum allowable limits shall apply to each of these measurements.

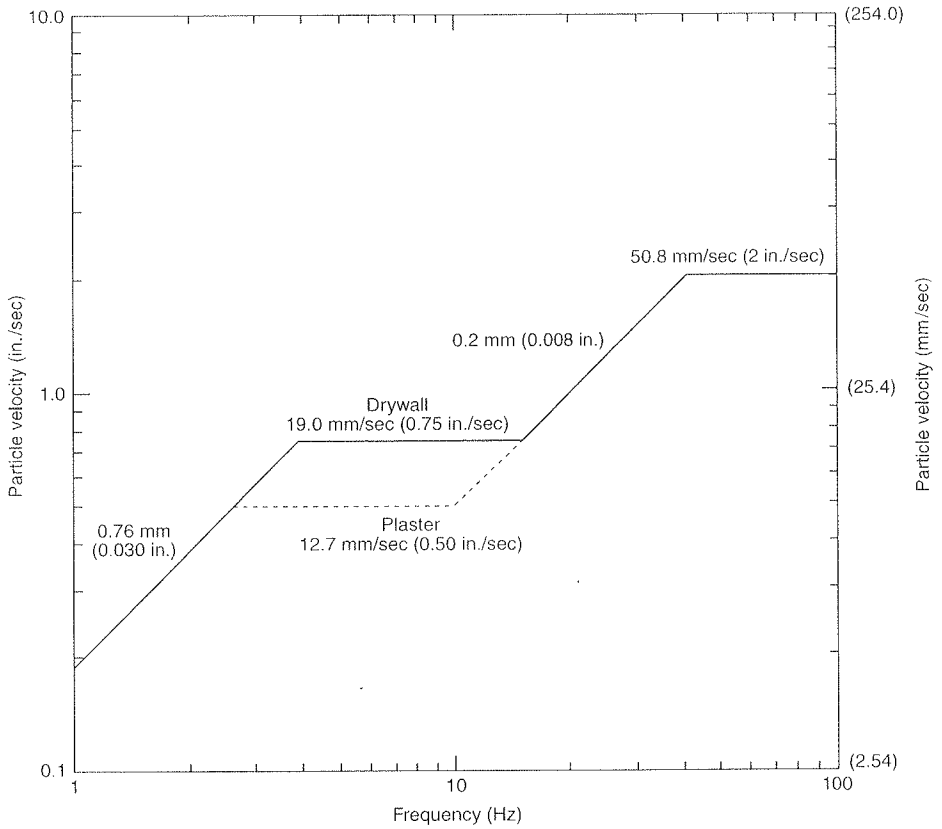

FIGURE 11.1.2.1(a) Frequency vs. Particle Velocity Graph.

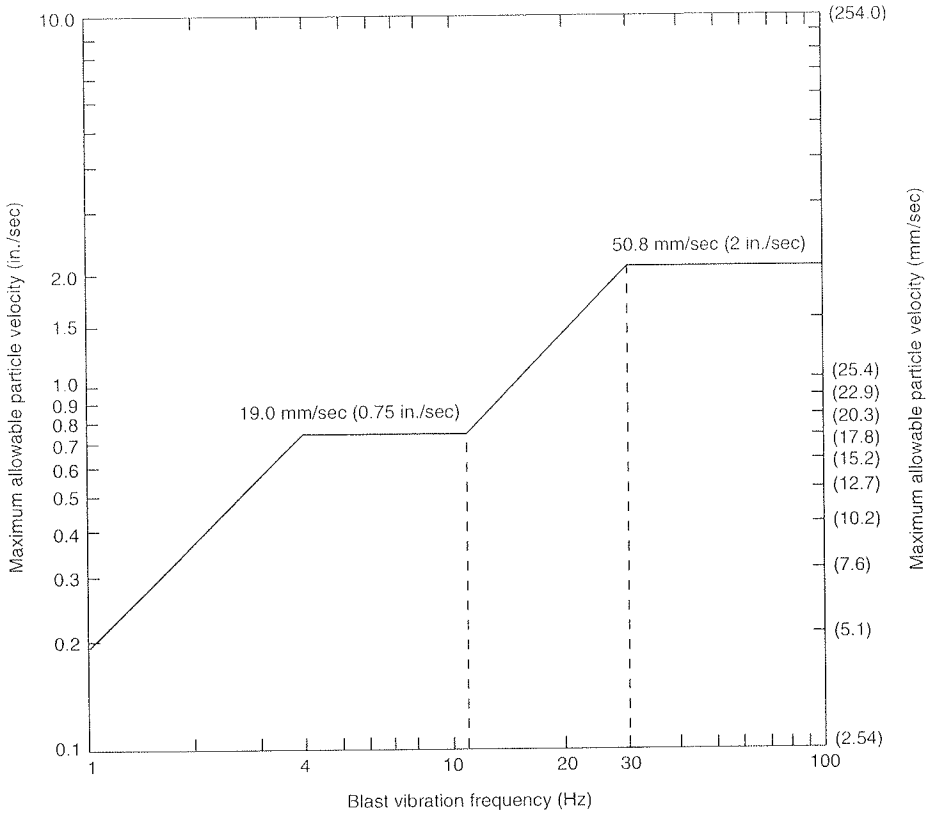

FIGURE 11.1.2.1(b) Maximum Allowable Particle Velocity vs. Blast Vibration Frequency Graph.

Table 11.1.3 Scaled Distance Equations

Distance from Blasting Site		Scaled Distance Equation*	
m	ft	kg	lb
0–91.4	0–300	$W\,(\text{kg}) = [D\,(\text{m})/22.6]^2$	$W\,(\text{lb}) = [D\,(\text{ft})/50]^2$
92–1524	301–5000	$W\,(\text{kg}) = [D\,(\text{m})/24.9]^2$	$W\,(\text{lb}) = [D\,(\text{ft})/55]^2$
≥1525	≥5001	$W\,(\text{kg}) = [D\,(\text{m})/29.4]^2$	$W\,(\text{lb}) = [D\,(\text{ft})/65]^2$

Notes:
(1) W equals the maximum weight of explosives in pounds (or kilograms) that can be detonated per delay interval of 8 milliseconds or longer.
(2) D equals the distance in feet (or meters) from the blast to the nearest dwelling, public building, school, church, or commercial or institutional building not owned, leased, or contracted by the blasting operation, or on property for which the owner has not provided a written waiver to the blasting operation.
*To convert English units of scaled distances (ft/lb^2) to metric units (m/kg^2), divide by a factor of 2.21.

11.1.4 Where the blasting operation considers the scaled distance equations of Table 11.1.3 as being too restrictive, the operation shall have the right to petition the AHJ to use a modified scaled distance equation.

11.1.4.1 Such a petition shall demonstrate that the use of the modified scaled distance equation would not cause predicted ground vibration that exceeds the peak particle velocity limits specified in Table 11.1.1.

11.1.4.2 Any petition for modification of the scaled distance equations of Table 11.1.3 shall be substantiated thoroughly by seismograph recordings to show that the limitations of Table 11.1.1 cannot be exceeded.

11.2 Airblast. Airblast at the location of any dwelling, public building, school, church, or commercial or institutional building that is not owned, leased, or contracted by the blasting operation, or on property for which the owner has not provided a written waiver to the blasting operation, shall not exceed the maximum limits specified in Table 11.2.

11.3 Flyrock.

11.3.1 Flyrock traveling in the air or along the ground shall not be cast from the blast site in an uncontrolled manner that could result in personal injury or property damage.

Table 11.2 Airblast Limits

Lower Frequency of Measuring System [Hz (± 3 dcb)]	Measurement Level (dcb)
0.1 Hz or lower — flat response*	134 peak
2 Hz or lower — flat response	133 peak
6 Hz or lower — flat response	129 peak
C-Weighted — slow response*	105 peak

*Only where approved by the AHJ.

11.3.2 Flyrock shall not be propelled from the blast site onto property not contracted by the blasting operation or onto property for which the owner has not provided a written waiver to the blasting operation.

11.3.3 Where blasting operations do not conform to 11.3.1 and 11.3.2, the AHJ shall require that special precautions be employed to reduce or control flyrock.

Chapter 12 Explosive Materials at Piers and Railway, Truck, and Air Terminals

12.1 Basic Requirements.

12.1.1 Railway Cars.

12.1.1.1 Explosive materials shall not be kept in a railway car unless the car, its contents, and methods of loading comply with the regulations of the U.S. Department of Transportation.

12.1.1.2 The requirement in 12.1.1.1 shall be permitted to be waived in an emergency with the approval of the AHJ.

12.1.2 Explosive materials shall not be delivered to any carrier unless the explosives comply in all respects, including marking and packing, to the regulations of the U.S. Department of Transportation.

12.1.3 Every railway car containing explosive materials that has reached its destination, or has stopped in transit so it no longer is considered in interstate commerce, shall remain placarded in accordance with U.S. Department of Transportation regulations.

12.1.4 Any explosive materials at a railway facility, truck terminal, pier, wharf, harbor facility, or airport terminal, whether for delivery to a consignee or forwarded to some other destination, shall be kept in a safe place and isolated as far as practicable and in such a manner that they can be removed easily and quickly.

12.1.5 Truck terminals for explosives vehicles shall meet the requirements of NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives.*

12.2 Notifications. A consignee, having been notified that a shipment of explosives is in the hands of any carrier, shall remove the explosives within 48 hours, excluding Saturdays, Sundays, and holidays, to a storage area meeting the requirements of this code.

12.3 Facilities for Trailer-on-Flatcar and Container-on-Flatcar. Rail shipments of explosives by trailer-on-flatcar (TOFC) or container-on-flatcar (COFC) shall meet the following requirements:

(1) Shipments by TOFC or COFC shall be unloaded at a nonagency station only where a consignee is present to receive them or where properly locked and secure storage facilities are available.
(2) If delivery cannot be made, the shipment shall be taken to the next or nearest agency station for delivery.
(3) *Carriers shall require the consignee to remove TOFC and COFC shipments from the carrier's property within 48 hours after notice of arrival, excluding Saturdays, Sundays, and holidays.
(4) If the trailers or containers are not so removed, the carrier shall dispose of the shipment immediately by means of storage, disposal, or, where necessary for safety, destruction under the supervision of a competent person.
(5) If storage is required to comply with 12.3(3), it shall be located in an interchange lot meeting the requirements of Chapters 4 and 5 of NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives,* or in a location that provides equivalent safety to the public.
(6) Where local conditions make the acceptance, transportation, or delivery of explosive materials unusually hazardous, applicable local restrictions shall be imposed by the carrier.
(7) All rail carriers shall report complete information on their restrictions regarding the acceptance, delivery, or transportation of explosive materials over any portion of their lines to the Bureau of Explosives of the Association of American Railroads for publication by the Bureau.
(8) Where shipping explosives, regularly scheduled days for receiving trailers and containers for shipment shall be assigned wherever it is practicable to do so.
(9) To enable the carrier to provide suitable flatcars for the shipment of Division 1.1 or Division 1.2 explosives, the shipper shall give the carrier at least 24 hours notice of the shipments and their destinations.
(10) Where a regularly scheduled day has been appointed for receipt of trailers and containers for shipment, the notice required by 12.3(9) shall be permitted to be waived by the carrier, and in such cases, the shipments shall be delivered on the assigned days in time to allow inspection, billing, and loading on that day.
(11) Carriers shall forward shipments promptly within 48 hours after acceptance at the originating point or after receipt at any yard transfer station or interchange point, excluding Saturdays, Sundays, and holidays, except that where biweekly or weekly service is provided, shipments shall be forwarded on the next train.
(12) The Bureau of Explosives of the Association of American Railroads shall be consulted by rail carriers to determine that the storage facility required by 12.3(3) is safe, adequate, and complies with Chapter 4 of NFPA 498, *Standard for Safe Havens and Interchange Lots for Vehicles Transporting Explosives.*
(13) Cars loaded with explosive materials shall be placed so that they are safe from all probable danger from fire — they shall not be placed under bridges or overhead highway crossings, or in or alongside passenger sheds or stations.

12.4 Designation of Facilities. The local AHJ shall have the authority to designate the location for, and limit the quantity of, explosive materials that are loaded, unloaded, reloaded, or temporarily retained at any facility within the jurisdiction.

STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Docket No. _____

GREEN MOUNTAIN POWER CORPORATION,
Plaintiff,

v.

DONALD AND SHIRLEY NELSON,
Defendants.

AFFIDAVIT OF R. FRED SCHOLZ

NOW COMES R. Fred Scholz, upon oath, and deposes and states as follows:

1. I am a part-time resident of Albany, Vermont where my wife and I have a home, and I am a part-time resident of Cambridge, Massachusetts where we also have a home. I am a semi-retired owner of a cleaning business, and my wife is a retired college professor. We built our home in Albany about 12 years ago, but have had associations with the Albany, Vermont area for more than 40 years.

2. On 10/28/11, my wife and I decided to take a first-hand look at the work Green Mountain Power was doing on the mountain and to visit the area where the clearing and blasting was occurring to see for ourselves, up close, the impact on Lowell Mountain. This was our first visit to the area where Green Mountain Power has been clearing an blasting.

3. We had heard that a court had issued an order against the Nelsons, but did not know the details of the order and had not read it ourselves.

4. We are familiar with the Nelson property. We decided that we would not go to

the Nelson property as we were not sure we would be permitted to park at the Nelsons' home and did not want to cause any difficulties for the Nelsons.

5. We drove past the Nelsons' home where there was a field near the Bayley-Hazen Road where people were parking. We parked there as well. The field appeared to allow us access to the mountain.

6. We hiked though the field and through woodlands, finding some trails and doing some bushwacking and then found an old logging road that led us near to the top of the mountain where the clearing and blasting was taking place. The hike took us about 45 minutes.

7. At no point during our walk up the mountain or when on top of the mountain did we see any signs warning us that we were not permitted to walk or stand in any particular area or placing any other restriction on our actions.

8. We never saw an order of the court, and no person read or warned us of the contents of an order of the court.

9. We were generally aware of the issues between the Nelsons and Green Mountain Power, and we had heard that a court had issued an order, but we had also heard that the county sheriff had said the order was not enforceable.

10. We were not aware whether an order was still in effect. We had heard that law enforcement officers had met with the judge to request that a new order be issued or for some form of clarification, but we had not heard any further reports as to whether a new order had been issue or whether the first order remained in effect or was on hold until the judge decided whether to issue a new or modified order.

In any event, we had not read any order and did not know the particulars.

11. We had heard mention of a 1,000 yard area or distance, but did not know the particulars or the significance of that and did not know where it started or ended. We expected that if there was such an area it would be marked when we got to the top of the mountain.

12. We had no desire to violate an order of the court or to enter into a prohibited area. We had no reason to believe that we had done so.

13. As we approached the summit, we could begin seeing through the trees some of the clearing and the results of blasting that had already taken place. There was no person that we saw or could identify as being from law enforcement or from Green Mountain Power in the area where we were standing, and certainly no one told us that we were not permitted to be there or that we should not observe the construction site from that vantage point.

14. I saw a man wearing a hard hat in the area ahead of us where there were tapes and ribbons. I spoke to him and asked him whether we were on the right side of the line. He said we were. I understood this to mean that we were permitted to be and stand in the area where we were standing.

15. As we were standing in an area where we could see through the trees in front of us to an area that appeared to be the area that had been cleared, we could see a line of tape and some signs. We then heard three horn blasts in quick succession. I saw a sign that explained what the horn blasts meant. The three horn blasts meant that a blast was going to take place in about 5 minutes.

16. I told my wife that she should get behind a tree, and I got behind a tree myself.

17. There were no markings that we could see that indicated any area where we were not permitted to be or to cross over except for the tape and signs ahead of us. We did not go past those signs and tape and assumed that they were the demarcation of the 1,000 foot area, if there was one.

18. Shortly thereafter, we heard two horn blasts which we understood to mean that the blast would take place quite soon.

19. Shortly after that, likely about a minute later, a thunderous blast shook the mountain and the ground we were standing on.

20. Very close on the heels of the blast we could hear and feel particles moving through the trees. They were more than dust, but smaller than pea size. I felt some of the particles, which I will refer to as blast debris, in my hair. It sounded like rain as it came through the tree branches.

21. After we heard another horn blast which we understood meant that any danger from the blast was over, we looked around and saw a fragment of blasting mat that looked like part of a rubber tire lying on the ground. My wife also found lying close to where she had been standing several larger chunks of stone that looked like they had been freshly chipped. They were laying on top of the matted leaves and appeared to be fresh cut and not previously exposed to wear or weather.

22. There were other persons in the area, and one or more of them took photographs of the stones and of the rubber tire. Those photos are attached and they accurately

depict the stones and fragment of blast mat that we observed immediately after the blast.

23. I can confirm by what we saw and felt that debris from the blast, including a fragment of a blast mat and small chunks of stone from the blast area as well as smaller particles were projected onto the Nelson property where we were standing when the blast occurred.

R. Fred Scholz

STATE OF Massachusetts
COUNTY OF Middlesex, SS.

At Cambridge, in said County, this 30th day of October, 2011, personally appeared R. Fred Scholz, under oath, and he swore to the truth of the foregoing.

Before me, _____
Notary Public

My Commission Expires: 3/19/2015

STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Docket No. _____

GREEN MOUNTAIN POWER CORPORATION,
Plaintiff,

v.

DONALD AND SHIRLEY NELSON,
Defendants.

AFFIDAVIT OF MARGOT KEMPERS

NOW COMES Margot Kempers, upon oath, and deposes and states as follows:

1. I am a part-time resident of Albany, Vermont and I am a part-time resident of Cambridge, Massachusetts where I live with my husband, Fred Scholz. I am a retired college professor and my husband owns his own business but is no longer working full time.

2. I have read the affidavit of my husband and can hereby affirm that the contents are true and were witnessed and participated in by me, except that I did not hear his discussion with the man in the hard hat as I was standing further away.

3. I did make observations that my husband did not make. In particular, after my husband suggested that I stand behind a tree, I did so. Then, about a minute after hearing the two horn blasts, an enormous explosion went off, shaking the ground I was standing on.

4. As I stood there and closely upon the sound and feel of the explosion, I saw what appeared to be a fragment of a rubber mat land and bounce on the ground with a

distinct thud and come to rest.

5. I also heard something land behind me with a thud.

6. Within seconds of the blast, I could hear the sound of debris falling through the branches of the trees. The bulk of the debris was very fine particles, but I also found several larger chunks of freshly chipped rocks that were lying on top of the leaves and appeared very different from their surroundings.

7. Once I heard the horn blast that I understood to mean that the blasting was over, I turned to look at the area where I had heard the thud. I saw a gray colored chunk of rock that had rough edges and appeared to be freshly created. It was lying on top of the leaves and was the source of the thud sound I had heard immediately after the blast.

8. One of the other persons who were in the area came over and took a photograph of the rock chunk and put some sticks in the ground with a ribbon to mark the rock.

9. I looked further downhill and found a very similar, nearly identical rock chuck having the same features and color of the first chunk. This second chunk was also lying on top of the leaves and had a fresh cut appearance showing no signs of any weather or wear and not fitting with its surroundings.

10. I have looked at the photographs attached and can confirm that these photos depict the rubber mat fragment that I saw coming to rest immediately after the blast and the rock chunks that I have described above. All were located on the Nelsons' side of the tape and signs at the mountain top.

Margot Kempers

Margot Kempers

STATE OF Massachusetts
COUNTY OF Middlesex, SS.

At Cambridge, in said County, this 30th day of October, 2011, personally appeared Margot Kempers, under oath, and she swore to the truth of the foregoing.

Before me, _____
Notary Public

My Commission Expires: 3/19/2015