

STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Docket No. 256-10-11 Osev

GREEN MOUNTAIN POWER)
CORPORATION,)
Plaintiff,)
)
v.)
)
DONALD AND SHIRLEY)
NELSON,)
Defendants.)

AFFIDAVIT OF DONALD NELSON

NOW COMES Donald Nelson, upon oath, and deposes and states as follows:

1. I own with my wife approximately 612 acres in the Towns of Lowell and Albany, Vermont.
2. This property has been owned by my family for generations. I purchased the land from my father in 1968 and later bought additional land that is now a part of the 612 acres that my wife and I own.
3. From 1968 until we finally sold our cattle, my wife and I farmed the property and used it for a wide variety of other activities including forestry, logging, hunting, general recreation and private use and enjoyment.
4. I raised my four children on this property. We took hikes back into the woods and up onto the ridges and engaged in multiple other activities on our land.
5. For more than 40 years, Sterling College has used our property in support of its curriculum, and Sterling College students have engaged in an outdoor program on our property

EXHIBIT 2

during the winter seasons which involves camping and living outdoors on our property for periods of time in the winter. There is no established campsite and the students have access to the entirety of our acreage.

6. We have hiking trails throughout our property. There are snowmobile trails. Hikers and hunters and snowmobilers and cross-country skiers and snowshoers all use our property, as do we, for winter and summer recreational pursuits. A favorite spot where I regularly took my children when they were living with us at home is along the ridge at the top of the mountain along our boundary line where there are various look-out points.

7. Within the past several years, our neighboring landowner has leased his land to Green Mountain Power Company. Green Mountain Power is in the process of constructing 21 wind turbines on the leased land including construction of infrastructure related thereto.

8. Green Mountain's plans and actions to date include significant blasting of high altitude areas to create a roadway for access to the planned sites for the wind turbines. Much of the blasting will occur along the ridge line and will permanently and irreparably alter the ridge line in the area of the blasting.

9. When we learned of Green Mountain's plans and learned where they were planning to do their blasting and create their ridge line road and towers, we were concerned that they appeared to be planning some of the blasting and construction activities on our land.

10. We hired a surveyor to survey the common boundary between our land and the land the neighbor had leased to GMP to confirm the location of the boundary.

11. Our surveyor completed the survey and advised us that our boundary line is where we had believed it to be, and that the line being used by GMP and its lessor is encroaching on our

land by 181 feet at the southerly end of our Lot 8 and by 154 feet at the northerly end of our Lot 8.

12. We have provided information to Green Mountain Power that the property line is in dispute. On March 2, 2010, on the day of our town meeting, I met with GMP's representative, Robert Dostis. At that meeting I specifically advised Dostis that Green Mountain Power had the wrong boundary line and that our boundary extended further to the west than the line that they are relying on. Additionally, in proceedings before the Public Service Board and in pre-filed testimony and in answers to discovery, I further confirmed that we disputed the boundary and that our land extended further to the west than the line being used by Green Mountain Power in connection with their construction and blasting plans.

13. At one of the hearings before the Public Service Board, our challenge to the boundary line being claimed by Green Mountain Power was raised and discussed with the Board. I was present. One of the Board members responded to the issue by stating that the Board was accepting Green Mountain Power's application on its terms which included the boundaries they were claiming for the permit area. The Board member said that disputes regarding the location of the boundary line and whether the project as designed infringed on our rights as property owners would need to be raised and resolved before the superior court because the issue was beyond the jurisdiction of the Board to decide.

14. Since Green Mountain Power obtained its permit for the construction of the wind turbines, it has regularly and flagrantly violated its permit conditions to the point where the State of Vermont was required to issue a stop order to enforce the conditions that had been imposed by the Public Service Board.

15. We have been concerned about the social and corporate responsibility of Green Mountain Power given its conduct to date with respect to this project and with respect to the way it has ignored permit requirements in its rush to complete construction.

16. **Blasting Protocol:** Under the protocol mandated by court order in the TRO, Green Mountain Power is mandated to call my wife and me on the morning of any day they intend to blast to tell us when the blasting will occur and to give us a two hour window for such blasting. This will allow us time to vacate the area and to alert others who may be on the property about the blasting.

17. Green Mountain has stated that the area where the blasting is occurring is a 40-50 minute hike from our house. There is no cell service at the mountaintop, so messages and notices must be hand delivered.

18. On Monday, October 17, we received no call from Green Mountain Power in the morning. At 12:47 in the afternoon, a Green Mountain Power representative called to inform us that Green Mountain was going to begin blasting at 1:15, less than half an hour from the time of the call. The blasting did not actually take place until 1:24.

19. We assumed, when we received no call in the morning, that Green Mountain had changed its plans and was not intending to do any blasting that day. The call from GMP at 12:47 was not in keeping with the court's mandate that Green Mountain notify us in the morning of any blasting plan for the day and violated the terms of the TRO.

20. Then on October 19, GMP called us at 9:00 to say that the blasting would take place between 2 and 4 in the afternoon, but later in the morning, at 10:05, an employee of Maine Drilling and Blasting called to say that they were actually going to blast that very morning at

11:00. The blasts did go off within about three minutes of that time. We assumed that was an override of the notice we received from GMP, but we have now heard from unofficial sources, that further blasting may be planned for today. The conflicting calls have left us without fair warning of the intended blast times.

21. The less than half hour notice we received on October 17 and the less than an hour notice we received on October 19 was wholly inadequate to satisfy the purposes behind the notice and to afford us adequate time to protect ourselves and our property and any persons who might be on our property to give them fair warning of the intended blasting.

22. At some point we became aware that persons concerned about Green Mountain Power's project were interested in monitoring Green Mountain's activities and serving as eyes and ears to ensure that Green Mountain was complying with its permit conditions. We were anxious about Green Mountain's clear cutting and planned blasting because we had warned Green Mountain that the area it planned to blast and clear cut included land that we own and was beyond the limits of Green Mountain's boundary, but Green Mountain gave no indication that it would honor our boundary line or seek a clarification from the court. We were concerned, therefore, that they would trespass on our property and were pleased that there would be some observers at our boundary who would monitor what Green Mountain was doing.

23. Our property has the best lookout point of any abutting property to observe the activities of Green Mountain Power in constructing the turbine towers. Green Mountain's project has generated significant interest and great opposition, among a large number of Vermonters, most of whom we do not know and have never met.

24. At some point we began to have visitors who wanted to enter onto our property

and take up outlook posts near the common boundary we share with GMP so that they could monitor and observe GMP's activities. We were agreeable to these requests because we shared the same concerns about GMP's conduct, and we had the added concern that GMP was planning to trespass on our property.

25. Even though we shared a common concern about irresponsible actions by GMP, we wanted to ensure that any persons using our land to serve as a monitoring post for GMP's actions would scrupulously honor GMP's rights and would not interfere in any way with GMP's activities. To accomplish that, we required all persons who wanted to enter on our land to register with us at our house and to abide by ground rules that we established for their presence on our property. These ground rules that they not enter or trespass onto Green Mountain Power's land from our land and that, while they were on our land, they stay behind our common border with Green Mountain Power. We also made clear to those we spoke to that they should not interfere in any way with Green Mountain's activities on its side of the property line.

26. As far as I am aware, the persons who have asked permission to be on our property and who have registered their presence with us have abided by these ground rules – with one exception of a person who we understand went from our property onto the Green Mountain Power property in connection with a documentary film he was creating. Green Mountain Power removed that person from their property as best I am aware.

27. Several of the persons who have walked up to our common boundary with Green Mountain and several persons who have camped in that area have provided us with photographs of what they could observe and have described the distance from our boundary to the clearing and earth moving activities they have observed. This information is important to us in our effort

to document Green Mountain's trespass on our land.

28. In its pleadings, Green Mountain Power has alleged that my wife and I are involved in a conspiracy with others to prevent Green Mountain Power from completing its project. There is not a shred of truth to the allegation. We are involved in no conspiracy. We are abutting landowners with great concerns about GMP's infringement of our property rights and about Green Mountain Power's roughshod disregard of our boundary line and its refusal to resolve that issue before moving forward with blasting, some of which, as now designed, will be occurring on our property and irreparably damaging and altering our land.

29. We are personally opposed to the turbine project, but we are engaged in no conspiracy to disrupt or interfere with Green Mountain Power's project. To the contrary, we created an express "ground rule" for anyone who wanted to enter our property to monitor GMP's project, that they refrain from any actions that would impede, impair or interfere in any way with Green Mountain Power's project and that they not go from our property onto the Green Mountain property. The suggestion by Green Mountain Power that we are engaged in a conspiracy to obstruct their activities is baseless and shameful.

30. We are aware that under Green Mountain Power's current blasting plans, particularly as they have recently described them to the court, Green Mountain Power anticipates that blast debris from their blasts will be projected onto our property placing anyone in the near vicinity of the blasting site, even though located on our property, at risk of serious bodily injury if not death.

31. We do not believe that Green Mountain Power has the right or the authority to require us to vacate a portion of our property in order to accommodate activities of Green

Mountain Power. GMP has no easement over our property and does not have our agreement to engage in activities that limit or infringe our use of our property.

32. We recognize that the presence of campers on our property and others who are monitoring the activities of Green Mountain Power may place them within the “safety zone” area described by Green Mountain Power in its filings with the court, but that safety zone, so-called, extends across the boundary onto our property. Using the “safety zone” to restrict our use and access to a portion of our property is in derogation of our rights as landowners.

33. It is my understanding that Green Mountain Power’s permit requires it to confine its blasting activities in a way that will ensure that no blast debris will be projected onto our property, and it is my further understanding that Green Mountain Power, as a condition of its permit, is required to use blast mats to protect against debris going beyond the permit boundary.

34. GMP did not inform the court of their permit conditions when it applied for a TRO.

35. We believe Green Mountain Power must be held accountable for the conditions set by the state permitting agency with respect to its development of its wind turbine site and the blasting it intends to undertake on that site.

36. In a recent supplemental filing with the court, Green Mountain Power asserted that our motives were greed and that we were attempting to force a higher offering price from Green Mountain power for our property. Once again, Green Mountain power has distorted the facts and is attempting to mislead the court.

37. We have been in the process of selling our farm in order to establish a fund for our retirement and to pass on to our children. We have listed the farm for sale for \$1.25 million.

It is our preference that the property be sold to a person or entity that shares our values and will be a responsible caretaker for our property.

38. Within the last two weeks, Green Mountain Power's CEO, Mary Powell, approached us about buying our property. She said Green Mountain Power would pay us \$1.25 million.

39. We did not immediately accept because we were concerned about the use that Green Mountain Power intended to make of our property, and we were not inclined to sell to Green Mountain Power, but we made no immediate or final decision.

40. A mere six hours after Ms. Powell offered to buy our property, and after we declined to accept that offer at that time, we received from Green Mountain Power's attorneys a threatening and disturbing letter stating that by using our property and allowing others to use our property in a way that would delay Green Mountain Power's project, we would become liable to GMP for more than a million dollars in damages, and the attorneys said Green Mountain Power will sue us to recover the damages.

41. My wife and I were shocked. We were not used to such hardball tactics of being offered the benefit of a buy out and then threatened with litigation if we continued using our property as our own.

42. Rather than surrender to the threat from Green Mountain's attorneys and accept, under duress, Green Mountain's purchase offer, my wife and I decided to double the amount we would accept from Green Mountain Power so that we could cover both the \$1.25 million dollars we were seeking for our property and an additional like amount to pay for the damages that Green Mountain was now threatening to sue us for.

43. This process is not about our greed. It is about Green Mountain Power's greed and bullying. We are entitled to be treated with honesty and respect. We hope the court will help restore and preserve those values.

To be signed

Donald Nelson

STATE OF VERMONT
COUNTY OF _____, SS.

At _____, in said County, this ____ day of October, 2011, personally appeared Donald Nelson, under oath, and he swore to the truth of the foregoing.

To be signed

Before me, _____

Notary Public

My Commission Expires: 2/10/15