

EXHIBIT D

1 IN THE VERMONT SUPERIOR COURT
2 ORLEANS UNIT CIVIL DIVISION

3 GREEN MOUNTAIN POWER CORP.,) Case No. 256-10-1 OSCV
4 Plaintiff,) Newport, Vermont
5 - against -)
6 DONALD AND SHIRLEY NELSON,) October 25, 2011
7 Defendants.) 10:05 a.m.
8)

8 TRANSCRIPT OF MOTION HEARING

9 BEFORE THE HONORABLE MARTIN A. MALEY,
10 SUPERIOR COURT JUDGE

11 APPEARANCES:

12 R. JEFFREY BEHM, ESQ.
13 DEBRA L. BOUFFARD, ESQ.
14 Attorneys for Plaintiff

15 P. SCOTT MCGEE, ESQ.
16 ANTHONY Z. ROISMAN, ESQ.
17 Attorney for Defendants

18
19
20 Transcription Services:

eScribers
P.O. Box 7533
New York, NY 10116
(973) 406-2250

21
22
23
24 PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING.

25 TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE.

1 Q. And it gave them notice that the court had issued a
2 temporary restraining order?

3 A. Yeah. We put a copy of the restraining order on the
4 notice.

5 Q. Okay.

6 (Pause)

7 MR. MCGEE: Can I have a moment, Your Honor?

8 THE COURT: Yes.

9 Do you need some water, sir, or anything, Mr. Nelson?
10 You all set? Do you need any water?

11 THE WITNESS: No, I'm all set.

12 THE COURT: Okay.

13 THE WITNESS: Thanks.

14 MR. MCGEE: That's all I have. Thank you.

15 THE COURT: Okay. Mr. Behm, any questions for Mr.
16 Nelson?

17 MR. BEHM: I do.

18 CROSS-EXAMINATION

19 BY MR. BEHM:

20 Q. Mr. Nelson, my name is Jeff Behm and I'm representing
21 Green Mountain Power in this case. I'm going to ask you some
22 questions today. And if there's anything I ask you, you want
23 me to repeat it, feel free and I'll do that. Okay?

24 A. Okay.

25 Q. Now, Mr. Nelson, you've participated pretty

1 extensively in the proceedings before the Public Service Board
2 in opposition to this project, did you not?

3 A. Yeah.

4 Q. You submitted testimony, right?

5 A. As much as I could, yeah.

6 Q. And you submitted -- with the help of an attorney, you
7 submitted briefs opposing the project, isn't that right?

8 A. Sometimes we used an attorney, sometimes we didn't.

9 Q. Okay. Now, at the end of the Public Service Board
10 proceedings, they did adopt a blasting plan, isn't that right?

11 A. Yes.

12 Q. Okay. And as part of that blasting plan, they were
13 required to notify all landowners within a half a mile each
14 day when there was going to be a blast, right?

15 A. Right.

16 Q. Okay. So way back in early to the middle of
17 September, Maine Drilling & Blasting was calling you up and
18 telling you there was going to be blasting, even though it was
19 on the other side of the mountain, right?

20 A. Yeah, I would say yeah.

21 Q. And it wasn't -- and they called any time of the day;
22 it wasn't necessarily in the morning, right?

23 A. Right.

24 Q. So -- and even if that blasting was going to occur on
25 the other side of the mountain a mile away, you would get a

1 call they were going to blast, right?

2 A. I think every time. Maybe not, but I think so.

3 Q. Now, when the TRO was issued, it required that Green
4 Mountain call you each morning when they were going to be
5 blasting within 1,000 feet of your -- I'm sorry, up near your
6 property boundary, right?

7 A. Yeah.

8 Q. And you've been getting calls every morning, about 9
9 a.m. --

10 A. No.

11 Q. -- wait -- well --

12 A. 7 a.m.

13 Q. 7 a.m.?

14 A. 7 a.m.

15 Q. What time do you get up in the morning?

16 A. Well, that's a secret, but usually around 5. But I
17 don't want to tell them that because they'd be calling at 5.

18 Q. I don't know about it. Okay, so they're notifying you
19 bright and early when they're going to be blasting up by your
20 property, right?

21 A. Right.

22 Q. Okay. So the day you were talking about -- I guess it
23 was the October 17th -- when you got a call just an hour or so
24 before the blasting, that was from Maine Drilling & Blasting,
25 wasn't it?

1 A. Yeah.

2 Q. And to your knowledge, you're not saying that that
3 blasting occurred on your property line, are you? On that
4 particular day.

5 A. Not that I know of, no.

6 Q. Okay. So you really didn't -- so for a time there,
7 you were getting two sets of calls. One from Maine Drilling &
8 Blasting and one from Green Mountain Power?

9 A. That's where I am now.

10 Q. Okay. And when you get it from Green Mountain Power,
11 you know it's going to be right next to your property or on
12 your property line?

13 A. Within 1,000 feet, I think --

14 Q. Okay.

15 A. -- that's what they're saying.

16 Q. Fair enough. Okay. Now, you were just testifying --
17 I just want to -- I'm going to come back to this later. But
18 you said Trip Wileman came up to see you around 2001, right?

19 A. I'm guessing at that year, but yeah, somewhere around
20 there.

21 Q. And he came -- when he came up, he was complaining
22 that he thought you had clear-cut some old growth trees on his
23 line -- on his property, right?

24 A. He said that that -- that the guy that I had cutting
25 had cut over his line, yeah, a little bit, yeah.

1 Q. Okay. So he was saying that ultimately, he thought
2 you had cut like thirteen acres of his woods, right?

3 A. No, I don't -- he never told me thirteen acres --

4 Q. He didn't give you a specific number?

5 A. No, no, no, no, no.

6 Q. Okay.

7 A. Thirteen acres is a lot of acres.

8 Q. Okay. But that's how the -- that's kind of how the
9 dispute between you and Mr. Wileman got started, was it not,
10 in 2001.

11 A. No, he -- he said something about a cut over line.
12 And I told him to go see the guy who did the cutting. And he
13 came back later and said he never found him. So -- but he --
14 the way he brought it up to me was he was short on land.

15 Q. Okay, so you've always logged that land to some extent
16 up there?

17 A. No, I -- I hadn't logged that ever until the last
18 ten -- about, oh, twelve years ago.

19 Q. Okay. Now, you've had your property on the market
20 for, say, the last ten years or so, haven't you?

21 A. Yeah.

22 Q. And I've seen various prices at various times. At one
23 point it was in the 800,000s. It's been up as high as one-
24 and-a-half million. It's been at one-and-a-quarter million.
25 In January of this year, it was one million-seventy. So

1 you've changed the prices around, right?

2 A. Yes.

3 Q. Okay. And for the last ten years, it was your idea,
4 look, I'm ready to retire and sell the property and I'll have
5 some money to retire on and do what I want and pass it on to
6 the kids or whatever, right?

7 A. Yes.

8 Q. So let me ask you this, Mr. Nelson. In this -- if I
9 understand your attorneys correctly, you're claiming that
10 Green Mountain Power is interfering with your use of your
11 property where your property joins up with GMP's project on
12 top of the Lowell Ridge there, right?

13 A. Yes.

14 Q. Is that what you're claiming?

15 A. Uh-huh.

16 Q. Now, that's about 4,500 feet from your house, right?

17 A. Yes.

18 Q. And sixty-minute hike up a pretty steep hill?

19 A. Doesn't take sixty minutes.

20 Q. Doesn't take you sixty minutes, right? How long does
21 it take you to get up there?

22 A. Varies.

23 Q. Is it pretty steep?

24 A. Depends on what you're doing going up.

25 Q. Pretty -- is it pretty steep?

1 A. Some of it, yeah.

2 Q. Okay. Do you still occasionally hike up there and use
3 it?

4 A. I haven't done much on the last few years, no.

5 Q. When's the last time you hiked up there?

6 A. Maybe two weeks ago.

7 Q. Okay. And why'd you go up there two weeks ago?

8 A. I took a news reporter up.

9 Q. Okay. Had you been up on the trail any time before
10 you took that news reporter up this year?

11 A. Yeah, I went up one other time.

12 Q. And what'd you go up for that time?

13 A. I -- I was looking at all the tape that that -- that
14 they'd strewn out along the ridgeline.

15 Q. And, in fact, you showed some other people on that
16 time where the trail was and how to get up to the ridgeline,
17 right?

18 A. Yeah.

19 Q. And, in fact, the time you showed those people how to
20 get up there, that was some of the people that are your guests
21 at the camp up there, right?

22 A. Yeah, probably.

23 Q. Okay. And, in fact, that time when you went up there,
24 that was just about five days before you took the reporter up
25 there?

1 A. Could be.

2 Q. How old are you now, Mr. Nelson?

3 A. How old?

4 Q. Yeah.

5 A. Sixty-nine.

6 Q. Okay. So that's pretty good for you to get up on top
7 the mountain. Right? I'd say so.

8 A. Whatever.

9 Q. Let me ask you this. Does your wife still go up
10 there?

11 A. She hasn't been up this year.

12 Q. Okay. Part of the blasting plan that was approved in
13 the Public Service Board required Maine Drilling & Blasting to
14 hold some informational meetings in August of this year,
15 right?

16 A. Uh-huh. Yeah.

17 Q. And you went to those informational meetings, right?

18 A. Two of them, yeah.

19 Q. They only had two.

20 A. Uh-huh.

21 Q. And did Mrs. Nelson go with you?

22 A. We both went.

23 Q. Okay. Now, after those informational meetings were
24 over, did Maine Drilling & Blasting come down to your house to
25 do a survey?

1 A. No.

2 Q. Did they -- were you aware that anybody who lived
3 within a half mile could have a survey done to see -- before
4 and after to see if there was any damage to their property?

5 A. Yeah, I was aware.

6 Q. You didn't bother having them come over to look at
7 that?

8 A. No.

9 Q. At the meeting, did they talk about the safety zone?

10 A. They said it's 750 foot.

11 Q. So at the meeting, they told you they would want to
12 keep people 750 feet away from the blast site, right?

13 A. Right.

14 Q. Okay. So at that point in time, you knew where some
15 of this construction was going to be, right?

16 A. What do you mean "destruction"?

17 Q. Construction. You knew that they were going to be
18 pretty close to what they claimed -- what GMP claimed was the
19 property boundary during this project, right?

20 A. Yeah.

21 Q. So you knew that, within the 750-foot safety zone, as
22 you understood it, was going to be some of your property,
23 right?

24 MR. MCGEE: Objection. Mischaracterization of the
25 evidence. He said he knew there was going to be some

1 construction; the 750 zone was from blasting. They're two
2 very different concepts.

3 MR. BEHM: Well, I'm --

4 THE COURT: That's the second question, isn't it? Is
5 that the second question of a two-part question?

6 MR. BEHM: Well, he answered the first one saying he
7 knew where the construction was going to be. And I'm -- it's
8 just cross-examination. I'm asking him -- asking Mr. Nelson
9 if, at that time, in August, when they told him about the 750-
10 foot zone, did he recognize that some of his property would be
11 covered by that zone. It's just simple --

12 THE COURT: Objection's --

13 MR. BEHM: -- just a question.

14 THE COURT: -- overruled.

15 BY MR. BEHM:

16 Q. You -- you remember the question now or do you want me
17 to repeat it?

18 A. Restate it a little different and I might understand
19 it better.

20 Q. Okay. Mr. Nelson, in August, when you heard about
21 this 750-foot safety zone, did it occur to you that your
22 property, some of it, would be within the 750-foot safety zone
23 at given points on their construction site?

24 A. That's what they were telling us.

25 Q. Okay, so you knew that, right?

1 A. That's what -- yeah, they -- they told us.

2 Q. And what did you say to them then?

3 A. I think my wife said, in other words, you are
4 condemning our property. And they said what do you mean.
5 Because they were telling us we couldn't -- we had to get off
6 our property, you know, while that was happening.

7 Q. Right before the blast?

8 A. Yeah.

9 Q. Okay. You had to move back so you would be some
10 distance away from the blast, right?

11 A. Yeah.

12 Q. And that's up on the ridgeline of Lowell Mountain,
13 right?

14 A. Yeah.

15 Q. And that's a place where you've been twice this last
16 year, right?

17 A. Yeah.

18 Q. Place your wife hasn't been at all, right?

19 A. Right.

20 Q. There's no buildings up there.

21 A. No.

22 Q. And there's no neighbors that are up there, are there?
23 Close to your property.

24 A. Quite a few.

25 Q. That live there?

1 A. No.

2 Q. Okay. Generally, that land up there's pretty empty?

3 A. Can be, yes.

4 Q. Now, when did you first have discussions with people
5 who said they wanted to come up and be on your land? By the
6 blasting, I'm sorry.

7 A. Are you pinning me down for a date? I -- I don't have
8 a date. I really don't.

9 Q. Can you give an estimate? I get -- I understand
10 the --

11 A. I don't even know how long it's been since the -- we
12 started this. I mean, I can't even figure now two weeks back.
13 Honest to God, I can't. I mean I don't know if it was two or
14 three weeks we've been on that ridgeline; I don't know. I
15 can't remember anymore. It might be three weeks.

16 Q. Do you remember when Channel 44 came and interviewed
17 you and your wife for the news? Came to your house?

18 A. I think I had three interviews with the TVs that day.
19 And I had probably four radio -- or magazine people.

20 Q. Okay.

21 A. News -- newspapers.

22 Q. If I were to tell you that was on September 28th,
23 would that help set your --

24 A. It probably would, yeah. Yeah.

25 Q. Okay. Now, in FOX -- on the FOX newscast, from when

1 they were at your house on September 28th, they also
2 interviewed a woman there who had a tag that said Catamount.
3 Do you remember that?

4 A. Probably do. I --

5 Q. Okay.

6 A. -- you know, I probably do.

7 Q. Do you remember who that woman was who was in your
8 house, that was also interviewed by FOX that day?

9 A. I know Catamount.

10 Q. Okay. And what's her real name?

11 A. Do I have to tell it?

12 THE COURT: If you know it. If you know it.

13 A. Stacy Burke.

14 Q. Stacey Burke? B-U-R-K-E?

15 A. Probably.

16 Q. Okay.

17 A. Probably there's an E on the end. I don't know.

18 Q. Do you remember her telling the TV news team that day
19 that they were going to camp by the boundary of GMP's site and
20 they were going to stay -- they were going to stay there and
21 they would not move during blasting?

22 A. I don't know what she told them. I really don't.

23 Q. It was in your house, though, right?

24 A. There were probably ten people in the house that day.

25 I don't -- you know --

1 Q. My question is this. Did you know that day that Stacy
2 Burke and the person with her were going to go up there and
3 camp on your boundary line with that GMP project and stay
4 there during blasting?

5 A. Yeah, probably, she did, because I've heard other
6 people say the same thing.

7 Q. But I'm asking, so did you know that on that day?

8 A. I can't say for sure.

9 Q. But you might have?

10 A. I might have.

11 Q. Now, I've seen -- I've heard you say -- at least I've
12 seen it attributed in the press and I've heard your lawyer say
13 that you didn't invite the people there, but you knew they
14 were going up there, right?

15 A. I didn't -- it was brought to my attention that they
16 wanted to do this. And I said -- I said go ahead if you want
17 to do it. If you want to try it, okay. But I just want to
18 know what's going on on the ridgeline.

19 Q. Okay. So you said it was brought to your attention
20 that they wanted to do this. And by "wanted to do this", you
21 mean it was brought to your attention that they wanted to go
22 up and camp on the boundary line within the safety zone in
23 hopes they could halt the blasting?

24 A. They wanted to protest the project.

25 Q. And they wanted to halt the blasting by being in the

1 safety zone?

2 A. I don't know. They could have. I don't know.

3 Q. Mr. Nelson, didn't you know that's why they were going
4 up there and that was the plan? Honestly.

5 A. I don't know if that was their plan or if their plan
6 was to throw a monkey wrench into it or what.

7 Q. You knew they wanted to stop the blasting, right?

8 A. Some of them did, I'm sure of that.

9 Q. And which ones did?

10 A. Like I told you, I know about ten percent of the
11 people that have gone up there.

12 Q. Who were some of the other ones?

13 A. I don't know who the others were.

14 Q. You only know one person, Stacy Burke?

15 A. No, I know -- I know other people that went up there,
16 but I had cars going by every day. I don't even know who they
17 are.

18 Q. Did you know Anne Morse?

19 A. Yes.

20 Q. How long have you known Anne Morse?

21 A. Probably three weeks, maybe even less.

22 Q. Okay, so you met her in connection with the activities
23 up on your ridgeline, right?

24 A. Yeah. Yeah.

25 Q. Okay. And you knew, did you not, that it was her

1 purpose, as stated in the paper, to camp within the safety
2 zone and stop the blasting. Did you not?

3 A. I saw that -- I saw that article, yes.

4 Q. That was on October 5th, right?

5 A. Probably, yeah.

6 Q. And she gave that interview up on top of the mountain
7 when you were there, that appeared in the Barton Chronicle,
8 did she not?

9 A. I wasn't on top of the mountain that day.

10 Q. You weren't on top of the mountain what day?

11 A. That -- the day that she was interviewed. In fact,
12 she wasn't interviewed on top of the mountain that day.

13 Q. I'll back -- I'll show you some things later. We'll
14 come back to that.

15 Did you ever ask any of them, hey, why are you guys
16 all wearing, like, aliases, name tags, like Catamount and
17 Raven and Bumblebee? You saw that, right?

18 A. Sure.

19 Q. Did you ask them why they were doing that?

20 A. They didn't want to give their names.

21 Q. To whom?

22 A. To anybody.

23 Q. To GMP, right?

24 A. Right.

25 Q. That's -- they didn't want GMP to know who they were,

1 right?

2 A. No.

3 Q. Did they want to hide their names from you?

4 A. I think everybody told us their names. But --

5 Q. Their real names, right?

6 A. Well, I don't think they were all real names. That's
7 the trouble.

8 Q. Did you have an alias name?

9 A. I'm Buzzard.

10 Q. I figured you were Buzzard. That'd be a good name for
11 me, too. So I get the -- you're Buzzard.

12 A. I didn't pick it.

13 Q. Who gave it to you, your wife?

14 A. Probably.

15 Q. Who's Raven?

16 A. I don't know.

17 Q. Okay.

18 A. I didn't know we had a Raven.

19 Q. Why -- okay, so while those people were up on the
20 mountain camping in late September, then on into October, they
21 used your house to communicate with the people on the
22 mountain, right?

23 A. They did the first week until we got the TRO.

24 Q. They changed their base camp on October 17th, like the
25 Monday after the TRO, over that weekend?

1 A. Yeah, I'd say so. Yeah.

2 Q. And while they were at your house, how many of them
3 would be there supporting the people on the mountain?

4 A. Usually nobody at the house. I mean people were
5 coming and going. But -- but as far as staying at the house,
6 nobody.

7 Q. And you had a sign-in sheet for them, right?

8 A. We had to figure out how to know -- for safety
9 reasons, how to know who was up and who was down so we
10 wouldn't leave -- so somebody wouldn't get hurt if they were
11 coming down or going up.

12 Q. Did it ever occur to you -- did you ever tell any of
13 them hey, look, move out of the safety zone when they're
14 blasting?

15 A. I've told them quite a few things.

16 Q. Since the TRO?

17 A. I said be legal, be safe. Don't get hurt and don't
18 put yourself in a position of being arrested for this. That's
19 what I've told them, time and time again.

20 Q. Okay. Mr. Nelson, let me ask this question.
21 Specifically, prior to that TRO, did you ever tell any of
22 those people you should leave the safety zone when they're
23 going to blast?

24 A. Leave the safety zone?

25 Q. Stay out of the safety zone. Stay 750 or 1,000 feet,

1 whatever, away from that blast.

2 A. They were -- well, they were at least 1,000 feet away
3 at that time.

4 Q. But my question is this. Specifically, prior to the
5 TRO, did you ever tell any of them comply with the safety zone
6 of those blasters; if they tell you to stay back, stay back?

7 A. No, I don't think I did.

8 Q. Because Mr. Nelson, you wanted them to stop that
9 construction up there, didn't you?

10 A. What?

11 Q. You wanted those campers, your guests, to stop that
12 construction, didn't you?

13 A. I might have wanted them to, but I knew they couldn't.
14 So I never figured it would -- it was worth it.

15 Q. Let me show you what's been marked as Exhibit 4 here.

16 MR. MCGEE: Okay, can I just see which letter?

17 Q. I'm going to show you the September 28th letter.

18 Looks like you and your wife signed this and it's addressed to
19 Mary Powell, who's the president and chief executive officer
20 of Green Mountain Power.

21 A. Yeah, I see that. Yeah.

22 Q. Is that your signature and your wife's signature on
23 the bottom?

24 A. Yes.

25 Q. Okay, so the first -- this says, "Dear Mary Powell,

1 this is to inform you that" our guest -- "our guests will be
2 camping on the ridgeline on the western border of our property
3 that adjoins your leased property", right?

4 A. Right.

5 Q. And it -- that was the area -- you knew that was an
6 area where GMP was going to be blasting pretty close to the
7 border, right?

8 A. Right.

9 Q. And you said they're going to be there for the
10 foreseeable future, right? First sentence in the second
11 paragraph.

12 A. Right.

13 Q. Okay. What did you mean by "foreseeable"?

14 A. I don't know how long they were going to be there.

15 Q. As long as they were blasting in that area, right?

16 A. Well, maybe -- maybe blasting and constructing roads
17 and whatever.

18 Q. As long as they needed to be there to throw a monkey
19 wrench into the construction, right?

20 A. I thought that -- that we had property rights that
21 were equal to the property rights on the other side.

22 Q. I understand -- I understand your position. But my
23 question is factual. And it is you meant they were going to
24 stay there as long as they had to throw a monkey wrench into
25 the blasting, right?

1 A. If they -- yes, I suppose we did.

2 Q. And this safety zone and flyrock, that's what was on
3 your mind when you wrote this letter to Mary Powell, wasn't
4 it?

5 A. Right.

6 Q. Because the last sentence says, "We would appreciate
7 written confirmation that no flyrock from your blasting will
8 trespass or intrude on our property."

9 A. Right.

10 Q. I'm going to hand you a news article here and ask you
11 if you read this. This appeared in a couple of different
12 papers for, you know, but this one says Bloomberg. And I'm
13 going to show this to you. Exhibit 5.

14 This is dated September 29th and it says -- titled
15 "Anti-Wind Occupation begins on Vermont Lowell Mountain" by
16 David Gram. Did you read an article like this?

17 A. I think I've read this, yes.

18 Q. Okay. In the second paragraph, it says, "Don and
19 Shirley Nelson, who own 600 acres in Albany that abut the
20 project, said they had invited campers to pitch tents 100 feet
21 from their property line and well within the safety zone
22 surrounding where some of the blasting will occur." Do you
23 see that?

24 A. Yes.

25 Q. And was that generally true?

1 MR. MCGEE: I'm sorry. True that he said or true
2 that that's what they were doing? Just to clarify.

3 MR. BEHM: The assertion there that -- exactly what
4 it says.

5 BY MR. BEHM:

6 A. Well, yes, I suppose it is, yeah.

7 Q. And then let me direct your attention to that next
8 paragraph. And this is in quotes. And it's quoting your
9 wife, Ms. Nelson. It says, "Friends and neighbors have
10 decided that it's time that somebody just said something. We
11 couldn't think of any other way to do it. We've been ignored
12 through this whole process." Is that the way you felt, that
13 you'd been ignored in the Public Service Board?

14 A. Not so much the Public Service Board, maybe.

15 Q. Okay. By Green Mountain Power?

16 A. Yeah. I thought that we had some problems with
17 property lines that should've been settled a long time ago.

18 Q. Okay. And so given your wife felt like -- and
19 probably -- maybe you, too -- felt like you'd been ignored,
20 this camping was kind of a last resort to stop things. Is
21 that right?

22 A. Yes.

23 Q. Did you know that the campers or the people they're
24 affiliated with have a blog that you can go on the Internet
25 each day and read what they've been doing?

1 A. I've -- I heard something about a blog, but I don't
2 use a computer so I don't have to worry about it.

3 Q. Does your wife use a computer?

4 A. Sometimes.

5 Q. I'm going to mark as Exhibit 7 --

6 I'm going to hand you some excerpts from the blog that
7 we've marked as Exhibit 7. And the staples kind of come out
8 of it a little bit, Mr. Nelson. So they're in order, but
9 they're not stapled well together. I'm going to hand that to
10 you.

11 I want to -- do you see, on this first page, they have
12 an entry for Wednesday, September 28, 2011 at the bottom?

13 A. Yeah.

14 Q. It says, "The Mountain Camp is established by Buzzard,
15 Bald Eagle, Muskrat and one other."

16 MR. MCGEE: I'm just sorry. I don't -- are you
17 reading something that you are alleging he said? Because I
18 don't have that --

19 MR. BEHM: I'm going to ask him if this is true.

20 THE WITNESS: Which page are you on?

21 BY MR. BEHM:

22 Q. Page -- it says 6 -- I'm going to show -- let me just
23 show you, if I may. I'm looking down here. I'm going to go
24 by the dates. There's an entry for September 28.

25 A. Okay.

1 THE WITNESS: I've got muscle cramps in my leg.

2 MR. BEHM: You want to take a -- you have cramps in
3 your leg?

4 THE WITNESS: Yeah.

5 THE COURT: Do you want to take a break, sir?

6 THE WITNESS: I'd like to -- I'd like to walk it off
7 for a second.

8 THE COURT: Yeah, why don't we take a few minutes.
9 And --

10 MR. BEHM: Okay.

11 THE COURT: -- now's a good time.

12 THE CLERK: All rise.

13 (Recess at 2:22 p.m., until 2:33 p.m.)

14 THE COURT: Have a seat, please.

15 All right. Attorney Behm?

16 RESUMED CROSS-EXAMINATION

17 BY MR. BEHM:

18 Q. So Mr. Nelson, before we took that little break, I
19 directed your attention down to -- yeah, right under September
20 28. In particular, under that date it says, "The Mountain
21 Camp is established by Buzzard, Bald Eagle, Muskrat and one
22 other." It then goes on to say, "The trail is marked by
23 Buzzard showing the best way to the top using orange and pink
24 flagging tape on trees. Weather is good. Call comes in to
25 base camp that blasting will take place at 4:15". Do you see

1 that? Did you read that there?

2 A. Yes.

3 Q. So I think this is what you were referring to earlier
4 when you were saying that you showed the best way to the top
5 with --

6 A. I -- yes, I did.

7 Q. Okay. And you helped establish the camp up there?

8 A. No, no. What I did was I went out and I -- they
9 wanted to know the easiest way to get to the top.

10 Q. You went all the way to the top with them?

11 A. So I made up -- marked the line out to where we found
12 where the property line was, stood around there a few minutes
13 and then I went back down and marked it back down to -- so it
14 was double marked to make sure everybody stayed somewhere near
15 on the same trail.

16 Q. Okay. So you knew where they were going to pitch
17 their tents that day?

18 A. Not for sure, no. I --

19 Q. Okay.

20 A. -- it was going to be along the property line.

21 Q. Okay. Now, I'm going to ask you to flip that page to
22 the second page and then go to the third page in that exhibit,
23 where it says October 3rd, Monday. You got that?

24 A. Sure.

25 Q. Okay, so this is about five days later. It says it's

1 a couple -- Squirrel, Rascal, Hawk are going up. And it says,
2 "Raven & Buzzard headed up to the top at 11:45am." Do you see
3 that?

4 A. Yeah. I remember -- remember who Buzzard was.

5 Q. You remember who Raven was?

6 A. I mean -- I mean Raven, yes.

7 Q. Who's that?

8 A. He's a news reporter.

9 Q. Right. Chris Braithwaite, right?

10 A. Could be.

11 Q. Yeah. For the Barton Chronicle?

12 A. Could be.

13 Q. Okay. So then it says -- at the bottom paragraph
14 there, it says, "Raven & Buzzard walked along the top of the
15 mountain taking time to have a smoke and enjoy the scenery",
16 right?

17 A. Right.

18 Q. You smoke a pipe, right? Okay.

19 "Raven was shown the erroneous blaze pin as well as
20 the true pin that marked the property line." You remember
21 showing him these pins that were up there?

22 A. Yes.

23 Q. And one of them was placed by Mr. Hannan, right?

24 A. Right.

25 Q. And one of them was placed by Mr. Blais, maybe?

1 A. I don't think he saw the --

2 Q. Okay.

3 A. -- blaze pin.

4 Q. "The observations made were used for an article in The
5 Barton Chronicle." Did you read that article? You see where
6 it says that?

7 A. Yes, yes I'm -- yes, I'm sure I did.

8 Q. Okay. So that article -- I'm not going to spend much
9 time on this. I just want to show it to you. It's marked.
10 We've marked it as Exhibit 6.

11 This one is entitled "Campers hope to stop Lowell
12 Mountain blasting".

13 MR. MCGEE: Your Honor, just one comment. I -- it
14 seems to be a bit of an awkward way of cross-examining, but
15 I -- everyone has their own style. But I sort of object to
16 reading articles that he, you know, didn't write. Whether he
17 read them or not is sort of irrelevant. What's relevant is
18 what he knows and what he can testify to. And I guess I'm not
19 sure where Mr. Behm's going with this, but I would raise a
20 caution, at least, about just reading wholesale articles.

21 THE COURT: Well, I don't know that they can be
22 offered, necessarily, as exhibits through this witness. But
23 he certainly, to the extent that he has knowledge about
24 comments and information contained, he can be questioned about
25 it.

1 MR. MCGEE: Okay.

2 BY MR. BEHM:

3 Q. Okay. Mr. Nelson, do you see the -- this is entitled
4 "Campers hope to stop Lowell Mountain blasting", right?

5 A. Yeah.

6 Q. Okay.

7 A. Yes.

8 Q. Do you see -- do you see this picture on the front --
9 on the front -- on the first page of a fellow standing there,
10 looking over the camp?

11 A. Yes.

12 Q. Is that you?

13 A. What's that?

14 Q. Is that you?

15 A. Yes. Right here? Yes.

16 Q. So --

17 A. I couldn't see it at first. I'm very plain here.

18 Q. -- this article quotes you as saying, "Mr. Nelson says
19 that high explosives require a 750-foot safety zone, free of
20 people, before they can be set off. The campsite is well
21 within that limit, he says", meaning you, Mr. Nelson. Do you
22 recall saying that to the reporter that day?

23 A. Well, he's -- he's quoted me. It probably is
24 accurate.

25 Q. And you can -- and both of those things -- I mean you

1 knew there was a 750-foot safety zone that day and you knew
2 the campsite was well within it, right?

3 A. Yes.

4 Q. On the second page -- if you could turn to the second
5 page, it's a picture of -- looks like you again. Right?

6 A. Yes.

7 Q. Is that the stake that you were pointing out as your
8 true property line?

9 A. Yes.

10 Q. Okay. I'm going to mark as Exhibit 7A just another
11 few excerpts from this blog.

12 Can you -- oh, sorry, forgot to mark it. Marked what?
13 7A.

14 Okay, this is in reverse chronological order, just to
15 make things more confusing for you. The first entry is
16 October 16th, 2011. And I -- if I could --

17 A. Okay. Got it.

18 Q. -- get you to that. It's towards the end. Got it?

19 A. Yes.

20 Q. Okay. This reports, "GMP has filed a temporary
21 restraining order against Don & Shirley Nelson. Ordering them
22 not to allow anyone to be present within 1000 feet of the
23 northwesterly boundary of their property!" You see that?

24 MR. MCGEE: Yeah, I'm going to object. This is not
25 an exhibit in evidence. And again, counsel is reading from

1 the exhibit. I don't mind him asking a question, but
2 exhibit's not in evidence; I don't think it will be in
3 evidence. And he's getting around that by just reading parts
4 of the exhibit and just saying do you see that, is that what
5 it says.

6 MR. BEHM: I'm asking is -- you know, is that
7 correct. Did you -- I want to ask him if he discussed it with
8 them that day.

9 THE WITNESS: I -- I've never seen this.

10 THE COURT: Hold on, sir. There's a pending
11 objection.

12 MR. MCGEE: So I don't object to him asking if he
13 knows that Green Mountain filed a temporary restraining order
14 or whatever he wants to ask. But I think to read from some
15 article -- I've never seen this before -- and then say do you
16 see that and is that right, that -- it's putting the article
17 in and I --

18 THE COURT: Okay. Well, perhaps, Attorney Behm, you
19 could lay a proper foundation for this question other than
20 just simply reading from it.

21 MR. BEHM: Well, I -- Your Honor, I just -- I'd just
22 like to respond to what Mr. McGee's saying because I do think
23 it's appropriate.

24 I'm showing him things that are written by the group
25 that he took up there and who, up until this day, the 16th, at

1 least, were still using his house. This is kind of their
2 official blog and I'm asking -- now I'm asking him if the
3 statements in there are true and if he knew them. And what he
4 knew is important.

5 THE COURT: You certainly can ask him those
6 questions.

7 MR. BEHM: Okay.

8 THE COURT: I'm just a little concerned about, sort
9 of, the method by which you're doing it.

10 MR. BEHM: Okay.

11 THE COURT: And it's your cross-examination. But I
12 think, perhaps, a little bit of a foundation for Mr. Nelson,
13 and then you can ask him if it's accurate.

14 MR. BEHM: Okay. Thank you, Your Honor. I'll do
15 that.

16 BY MR. BEHM:

17 Q. Did you discuss with some members of the group that
18 were there the fact that you'd gotten a TRO on Friday, October
19 14th?

20 A. Yeah.

21 Q. Who'd you tell that to?

22 A. I don't know. I -- no idea. Everybody that came in
23 the house, I guess.

24 Q. Did --

25 A. But I don't -- you know, I -- I really --

1 Q. Let me ask you this question. Did you tell any of
2 them at that point hey, look, this foolishness, this standing
3 within the safety zone has got to stop?

4 A. I think I went to see a lawyer. And I don't know if
5 there was anybody in the house when I got back that night.

6 Q. Do you remember that weekend, the 14th, being a
7 Friday, 15th, 16th, telling any of the people who were your
8 guests there up at the camp and supporting them that you've
9 got to stop; you've got to clear that safety zone when you're
10 asked?

11 A. I didn't tell them, no. Because I told them that we
12 had a temporary restraining order and I was out of it.

13 Q. Did you go to any -- did you go to any civil
14 disobedience training?

15 A. No.

16 Q. Okay. Did you hear about that?

17 A. I've heard something, yeah.

18 Q. Who'd you hear it from?

19 A. I think my son told me about it.

20 Q. So you knew that they were -- some of these people
21 were planning on getting arrested?

22 A. I don't know anything about it. All I know is -- I
23 read it in the paper. That's where I read it; I read it in
24 the paper.

25 Q. Okay. Now, under the 18th, there's a picture of a

1 notice. I think it may -- I think it has your signature on it
2 right here.

3 A. The 18th?

4 Q. Yeah. You've got to come forward.

5 A. 15th.

6 Q. There it is.

7 A. 18th. Tuesday the 18th.

8 Q. If you flip it over, there's a picture of a notice
9 that has your signature and, I think, your wife's signature on
10 it, right?

11 A. Yes.

12 Q. Okay. Is this the notice -- you say, "Due to threats
13 of legal action against the property owner by Green Mountain
14 Power people are not invited, encouraged or permitted to be
15 present within 1,000 feet of the northwesterly boundary of the
16 property of Don [...] and Shirley Nelson."

17 A. Yes.

18 Q. Okay. You posted this at your house?

19 A. We posted that with a copy of the TRO.

20 Q. Okay. At your house?

21 A. One at the house and one at the gate where they were
22 going in before.

23 Q. Did you think the campers would stop -- did you think
24 the campers, from this point on, would begin to clear the
25 safety zone?

1 A. I didn't know.

2 Q. Did you care?

3 A. No.

4 Q. In fact, you figured they probably would continue,
5 right?

6 A. I didn't have a clue.

7 Q. When the campers would come -- when people came back
8 down to the house after blasting on a particular day, did they
9 tell you what had happened up on top of the mountain that day?

10 A. Yes, they did. When they were -- when they were
11 camping up there and -- and they would come to the house,
12 yeah.

13 Q. Did anybody tell you that on October 19th, that some
14 people from GMP came down before the blasting and read the TRO
15 to the campers and asked them to leave the area?

16 A. The 19th?

17 Q. Yes, sir. That --

18 A. I don't think we had any campers, after the TRO,
19 stopping at the house. I don't think we did.

20 Q. This was -- October 19th would be the day before the
21 last hearing.

22 A. The --

23 Q. So you -- none of the campers came to your house after
24 that?

25 A. I don't know if they did or not. I don't think so.

1 Q. Okay.

2 A. You're talking on the 19th?

3 Q. Yeah.

4 A. Now, what was that? Was that a Tuesday?

5 Q. That was -- that would've been a Wednesday, I believe.

6 And Thursday was the 20.

7 A. Wednesday of last week?

8 Q. Yes, sir.

9 A. No, they weren't -- they were -- they were driving by.

10 Q. You knew they were still going up there?

11 A. Road was real busy -- real busy.

12 Q. Did you call -- when you'd get the message from GMP in
13 the morning that they were going to be blasting near your
14 line, did you call up and tell them that?

15 A. I did one morning, yeah. Because I figured that
16 somebody had to warn them.

17 Q. Because you thought they were in the safety zone and
18 you wanted to warn them, right?

19 A. I wanted them to be aware of blasting, yeah.

20 Q. Okay. And you heard, when you were in here at the
21 hearing, at least, last Thursday, that even after those
22 campers were read the TRO and asked to leave the safety zone,
23 they stayed there, right?

24 A. I've heard that, yeah.

25 Q. Okay. And after you heard that, did you go up to them

1 and tell them hey, you've got to comply with this TRO?

2 A. No, I didn't.

3 Q. Mr. Nelson, if you would go up to those campers, your
4 friends, some of the people who are your friends, who
5 you've -- not all of them; I don't mean to mischaracterize
6 it -- but if you went up to them and told them look, I'm tired
7 of this, I want you to leave, don't you think they'd do it?

8 A. Let me tell you, they know how tired I am.

9 Q. Mr. -- it was --

10 A. And I told them a while ago that -- that we were beat.

11 Q. Mr. Nelson --

12 A. We'd had enough.

13 MR. MCGEE: Let him finish.

14 MR. BEHM: Okay, I'm sorry. I didn't --

15 BY MR. BEHM:

16 Q. Mr. Nelson, here's the question. Why don't you just
17 go up to them, those campers, and say, look, I want you to
18 obey the judge: I want you to leave?

19 A. I'm not a sheriff; I'm not a policeman. And I'm not
20 going to tell these people what to do.

21 Q. It's your land.

22 A. Yeah, it is.

23 Q. It's your liability.

24 A. I don't tell hunters what to do when they come on my
25 land.

1 Q. If you told them, don't you think they would listen to
2 you?

3 A. They probably would.

4 Q. So you could end this -- this delaying of the blasting
5 right now, just by going up and telling them and telling them
6 to stop and leave?

7 A. No, I don't know if I could or not.

8 Q. You haven't tried?

9 A. Nope. No, I haven't.

10 Q. I want to talk to you a little bit about the dispute
11 you had with Trip Wileman. In particular, I want to show you
12 some of your pre-trial -- the pre-filed testimony you filed in
13 the Public Service Board proceedings.

14 (Pause)

15 MR. BEHM: This is marked as Exhibit 18.

16 MR. MCGEE: Exhibit -- did you say 18?

17 MR. BEHM: Yes, I did.

18 MR. MCGEE: Thanks.

19 MR. BEHM: Yeah.

20 I'm going to hand you -- marked as Exhibit 18.

21 THE COURT: That's not the 18 we were discussing this
22 morning, was it?

23 MR. BEHM: Probably not.

24 THE COURT: Isn't there already an 18 that's a
25 survey -- a copy of a survey that we discussed this morning

1 and you were going to put in through the surveyor? Did I get
2 that wrong?

3 UNIDENTIFIED SPEAKER: It's 20, I think.

4 THE COURT: No, but there's an 18. Am I crazy?

5 MR. BEHM: There's 14 that we admitted last time that
6 is a survey.

7 THE COURT: All right. Perhaps the Court's wrong
8 about that. So --

9 MR. BEHM: Okay.

10 THE COURT: Speak up?

11 THE CLERK: Yes.

12 THE COURT: Okay.

13 THE CLERK: Please.

14 THE COURT: I'll try.

15 BY MR. BEHM:

16 Q. Okay, Mr. Nelson, do you recognize this as your pre-
17 filed direct testimony that you --

18 A. Yes.

19 Q. -- filed with Public Service Board? And if you turn
20 to page 10 -- I think it's at the end -- it's signed by --
21 looks like your signature and Ms. Nelson's signature.

22 A. Yes. Yes.

23 Q. Okay. Now, in particular, I want to -- I want to
24 direct your attention to page 5 of your testimony. This
25 testimony's submitted just a year before the hearing last