

STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Docket No. 242-10-11 Oscv

GREEN MOUNTAIN POWER
CORPORATION,
Plaintiff,

v.

DONALD AND SHIRLEY
NELSON
Defendants.

FILED
OCT 20 2011
VERMONT SUPERIOR
COURT
ORLEANS UNIT

PLAINTIFF'S MOTION FOR CIVIL CONTEMPT

Plaintiff, Green Mountain Power Corporation ("GMP"), by and through its attorneys, Sheehey Furlong & Behm P.C., hereby moves pursuant to 12 V.S.A. § 122 for an Order:

- (1) finding Defendants Donald Nelson and Shirley Nelson in Contempt of the Court's Temporary Restraining Order in this action;
- (2) imposing upon Defendants, jointly and severally, a daily fine of \$ 5,000 for each day that they have permitted and continue to permit individuals to occupy their property within 1,000 feet of the northwesterly boundary with GMP's leased land within one hour before and one hour after scheduled blasting;
- (3) authorizing and directing the Orleans County Sherriff's Department to arrest and remove any individuals who refuse to vacate Defendants' property within 1,000 feet of the northwesterly boundary with GMP's leased land within one hour before and one hour after scheduled blasting; and
- (4) awarding GMP its reasonable attorney's fees and other costs associated with this Motion and enforcing compliance with the TRO.

In support hereof, GMP states as follows:

STATEMENT OF FACTS

1. On October 14, 2011, this Court entered a Temporary Restraining Order (“TRO”) in this action, *inter alia*, enjoining Defendants, their “invitees, licensees, permittees and any and all persons acting in concert and/or in participation with” Defendants from “[b]eing present within 1,000 feet of the northwesterly boundary of Defendants Donald and Shirley Nelson’s Lowell, Vermont property and adjoining GMP’s land during and within one hour before and one hour after blasting from the date of this Order, October 17, 2011 through October 26” TRO at p. 2 ¶ 1.
2. The TRO also enjoined Defendants, their “invitees, licensees, permittees and any and all persons acting in concert and/or in participation with” Defendants from “[i]nviting, encouraging or permitting other individuals to be present within 1,000 feet of the northwesterly boundary of Defendants Donald and Shirley Nelson’s Lowell, Vermont property and adjoining GMP’s land during and within one hour before and one hour after blasting from October 17, 2011 through October 26” TRO at p. 3 ¶ 2.
3. On October 14th, copies of the TRO were served upon Defendants by the Orleans County Sheriff’s Department. *See* TRO Returns of Service on Defendants, copies attached hereto as Exhibits 1 and 2.
4. On October 18th, copies of the TRO were posted by GMP at an occupied campsite (“Nelson campsite”) consisting of two or more pitched tents located approximately 20 feet from the northwesterly boundary of Defendants’ Lowell, Vermont property. *See* October 20, 2011 Affidavit of David Coriell ¶ 3 (“Coriell Aff.”), Ex. 3.

5. The TRO was also posted by GMP on the Defendants' property at several points along a footpath on the Nelsons' property leading to the Nelson campsite. *See id.* ¶ 4, Ex. 3.
6. The footpath to the Nelson campsite is believed to originate in a field directly behind the Defendants' home.
7. As quoted and represented in an article published in the October 14th edition of the *Burlington Free Press*, Defendant Donald Nelson said the following with respect to the Nelson campsite and its occupants:

Nelson said he hadn't invited the campers onto his property, but welcomed them. "It was someone else's idea," he said. "I think it's great. The more the merrier. I wish I had electricity and running water up there."

See "Green Mountain Power: Blasting to continue at Lowell wind site," posted on Oct. 14, 2011 and accessed on Oct. 17, 2011 at www.burlingtonfreepress.com, Ex. 4.

8. An article posted on the Vermont Public Radio website on October 14th, along with an accompanying audio recording, indicated that visitors to the Nelson campsite 'check in' with the Nelsons at their home before hiking up to the campsite. The article further indicated that the Defendants maintain a "sign in paper" at their home with the names of those individuals who are present at the Nelson campsite. *See* "GMP Wins Court Order In Wind Battle," posted on Oct. 14, 2011 and accessed on Oct. 17, 2011 at www.vpr.net, Ex. 5.
9. On October 19th, blasting was scheduled to commence on GMP-leased land for the Kingdom Community Wind Project ("Project") at 3:30 p.m. *See* Coriell Aff. ¶ 8, Ex. 3.

10. As of approximately 2:45 p.m. on October 19th, the Nelson campsite was still occupied by approximately 12 unidentified individuals positioned within approximately 20 feet of the northwesterly boundary of Defendants' Lowell, Vermont property. *See id.* ¶ 9, Ex. 3.
11. Despite a GMP employee reading aloud the text of the TRO to these unidentified individuals, they refused to vacate the Nelson campsite and move to a safe position. *See id.* ¶ 11, Ex. 3.
12. As of late afternoon on October 19th, the Nelson campsite was still occupied by approximately 12 individuals positioned within approximately 20 feet of the northwesterly boundary of Defendants' Lowell, Vermont property. *See id.* ¶ 13, Ex. 3.
13. In an article published October 19th on the website www.vtdigger.org, it is reported that Defendants have posted a *pro forma* notice in front of their home disclaiming any intent to invite, encourage or permit others to violate the 1,000 safety zone ordered by the TRO. *See* "Encamped Lowell Mountain protesters await court action, GMP intervention," posted and accessed on Oct. 19, 20011 at www.vtdigger.org, Ex. 6 at p. 3.
14. However, Defendant Donald Nelson clarified in the same article that he has no intention of undertaking any reasonable effort to comply with the TRO and end the Nelson campsite occupation on his property after having encouraged its creation. He is quoted as having said Monday, October 17th: "If they want to police [the TRO], let them police it . . . But don't ask me to police it." *See id.* at p. 3, Ex. 6.
15. In an article published in the October 19th edition of the *Seven Days* newspaper, it is reported that, notwithstanding Defendants' posted disclaimer notice, "a new group of visitors, one of many to come through that day, stops in [to Defendants' home] to say hello, expresses support and asks permission to hike up the mountain behind the house."

See "Occupy Lowell Mountain? Despite Court Order, Opponents Camp Near GMP Blasting Zone," posted and accessed on Oct. 19, 2011 at www.7dvt.com (emphasis added), Ex. 7.

16. The blast locations for the blasting scheduled for October 19th and 20th were and are located approximately ~~1,000~~⁸⁰⁰ feet away from the Nelson campsite. See October 20, 2011 Affidavit of Charles Pughe ¶ 3 ("Pughe Aff."), Ex. 8.

17. Given this distance and the use of smaller than planned explosive charges, GMP's blasting subcontractor for the Project, Maine Drilling & Blasting, Inc. ("MDB") determined that blasting could proceed safely on October 19th and 20th despite the continuing occupation of the Nelson campsite. See *id.* ¶ 4, Ex. 8.

18. However, the planned blast locations beginning on October 21st will be well within 1,000 feet of the Nelson campsite. See *id.* ¶ 5, Ex. 8.

19. Accordingly, all blasting for the Project may likely cease on October 21st if persons continue to occupy the Nelson campsite at that time. See *id.* ¶ 6, Ex. 8.

20. For each day of blasting that must be cancelled, GMP will incur at least \$ 11,400 in additional costs. See *id.* ¶ 7, Ex. 8.

21. These \$ 11,400 in additional costs consist of MDB's daily minimum charges for mobilization of labor and equipment that are due and payable even if no blasting takes place. See *id.* ¶ 8, Ex. 8.

22. If blasting is halted for more than 1 days, GMP will begin to accrue, in addition to MDB's daily minimum charges, additional daily expenses of approximately \$ 24,000 representing the daily minimum charges for mobilization of labor and equipment by

GMP's site work subcontractor, J.A. Macdonald, that are due and payable even if no blasting takes place. *See id.* ¶ 9, Ex. 8.

ARGUMENT

Defendants must be held in contempt for their willful and continuing refusal to comply with the TRO by inviting, encouraging and permitting at least a dozen individuals to occupy their property within close proximity to GMP's lawful blasting activities. Compensatory and coercive fines must be levied against Defendants so that they will no longer flout the authority of this Court and prevent GMP's lawful use of its property to further the public good.

I. Civil Contempt Under Vermont Law

"Violation of any court-ordered injunction can expose a defendant to fines or incarceration for contempt . . ." *Shahi v. Madden*, 2010 VT 56, ¶ 23, 188 Vt. 142, 156, 5 A.3d 869, 878 (2010). "[C]ivil contempt is one which operates mainly to deprive another party to a suit of some right, benefit, or remedy to which he is entitled under an order of court." *In re Morse*, 98 Vt. 85, 90, 126 A. 550, 552 (1924).

"Civil contempt can be found where a party, though able, refuses to comply with a valid, specific court order." *Andrews v. Andrews*, 134 Vt. 47, 49, 349 A.2d 239, 241 (1975); *see also Spabile v Hunt*, 134 Vt. 332, 334, 360 A.2d 51, 52 (1976) (contempt sanctions may be imposed upon "that person who, being able to comply, contumaciously disobeys, or refuses to abide by, the court order.") (citations omitted); 12 V.S.A. § 122 ("[C]ontempt proceedings may be instituted against" a party who "violates an order made against him."). A person with knowledge of the court order may be held in contempt for aiding and abetting others in violating the court order. *See Vermont Women's Health Ctr. v. Operation Rescue*, 159 Vt. 141, 149, 617 A.2d 411, 416 (1992) ("Jurisdictions uniformly hold that those who, with knowledge of a court order, act

in concert to aid and abet others in its violation are subject to being found in contempt of the court.”).

If a defendant charged with civil contempt “alleges that his compliance either with the original order or the purgative conditions is impossible, it is his burden to establish the facts necessary to justify the failure to comply.” *Id.*, 134 Vt. at 334, 360 A.2d at 52. Likewise, a defendant may not answer a contempt charge by claiming an inability to obey the court order “[i]n an absence of a showing of due diligence on the part of the defendant to comply with the order of the court” *Socony Mobil Oil Co. v. Northern Oil Co.*, 126 Vt. 160, 164, 225 A.2d 60, 63 (1966). Finally, a defendant cannot justify his knowing violation of a court order by challenging the grounds for the order because “a contempt proceeding . . . does not open to reconsideration the legal or [f]actual basis of the order” *Id.*

“The power to punish for contempt is discretionary in nature, and so long as a reasonable basis for the discretionary action of the trial court is shown to be present, a reviewing court will not interfere.” *Andrews*, 134 Vt. at 49, 349 A.2d at 241; *see also Vermont Women’s Health Ctr.*, 159 Vt. at 149, 617 A.2d at 416 (“[O]rders of contempt are discretionary and we will not reverse unless the court’s discretion was withheld or exercised in an untenable fashion.”).

“[C]ivil contempt fines may be imposed in an appropriate circumstance either to compensate complainants or as a coercive sanction.” *Id.*, 159 Vt. at 151, 617 A.2d at 417; *see also State v. Pownal Tanning Co.*, 142 Vt. 601, 604, 459 A.2d 989, 991 (1983)

(“[C]ompensatory fines or coercive sanctions may be imposed on a civil cotemnor.”).

“Generally, those who act in concert to violate a court order are jointly and severally liable for resulting damages.” *Vermont Women’s Health Ctr.*, 159 Vt. at 150, 617 A.2d at 416.

Purely prospective fines, “defined as a purgeable penalty imposed on a cotemnor who is currently in compliance with the underlying court order,” *see Pownal Tanning Co.*, 142 Vt. at 606, 459 A.2d at 992, are permitted if (1) the fine is capable of being avoided through adherence to the court’s order and (2) compliance or non-compliance with the order is easy to gauge. *See Vermont Women’s Health Ctr.*, 159 Vt. at 151-52, 617 A.2d at 417; *see also Mann v. Levin*, 2004 VT 261 ¶ 32, 177 Vt. 261, 273, 861 A.2d 1138, 1148-49 (2004) (same). In addition, “[a]ttorney’s fees are ordinarily awarded in contempt actions as part of the compensation due to complainants for defendants’ actions, which have put the complainants in the position of having to seek the assistance of the courts” *Vermont Women’s Health Ctr.*, 159 Vt. at 150, 617 A.2d at 416.¹

II. Defendants Must be Held In Contempt and Fined in Order to Vindicate the Authority of this Court and GMP’s Legal Right to Conduct Blasting

Despite being served with the TRO on October 14th, Defendants have made no effort to comply with this Court’s order by requesting that persons vacate the Nelson campsite. Indeed, the continuing occupation of the Nelson campsite by at least a dozen people five days after entry of the TRO is a clear indication that Defendants are directly and willfully violating the TRO by continuing to invite, encourage or, at the very least, permit the presence of these people on their land.

¹ Compliance with a court order may also be enforced by arrest and/or imprisonment. *See Sheehan v. Ryea*, 171 Vt. 511, 512, 757 A.2d 467, 468 (2000) (“In comparison to criminal contempt, where the court’s purpose is to punish, the court using civil contempt seeks to compel compliance with a court order. Imprisonment of indefinite duration may be the means to compel a party to do some act ordered by the court, and the party must be released on compliance with the order.”); *see also* 12 V.S.A. § 123 (permitting imprisonment for civil contempt).

A Vermont Superior Court judge may enforce compliance with its orders by issuing a mittimus for the incarceration of any individual it has adjudged to be in civil contempt, regardless of whether the individual is a party to the underlying lawsuit. *See Horton v Chamberlain*, 152 Vt. 351, 354, 566 A.2d 953, 954 (1989).

Even if not directly violating the TRO themselves, the Defendants are obviously aiding and abetting the Nelson campsite occupants' unquestionable violation of the TRO. These occupants have been given actual notice that their continuing presence at the Nelson campsite violates the TRO and may therefore be held in contempt. *See Vermont Women's Health Ctr.*, 159 Vt. at 146, 617 A.2d at 414. As aiders and abettors of these occupants, the Defendants are also in contempt of the Court's TRO. *See id.*, 159 Vt. at 149, 617 A.2d at 416.

The Defendants cannot profess ignorance of the persons who continue to occupy their property, or an inability to simply ask them to leave. On the very day that this Court entered the TRO, Defendants indicated to the media that any individuals wishing to occupy their property and place themselves in personal danger for the purpose of thwarting GMP's blasting were "welcome[]" and "the more the merrier." *See Stmt. of Facts ¶ 7 supra* p. 3. The Defendants maintain a "sign in" sheet for the Nelson campsite in their home and a footpath to the illegal campsite literally begins in their backyard. *See Stmt. of Facts ¶ 8 supra* p. 3

Defendant Donald Nelson dismissively stated three days ago that "[i]f they want to police [the TRO], let them police it . . . But don't ask me to police it." *See Stmt. of Facts ¶ 14 supra* p. 4. However, Mr. Nelson is mistaken if he believes that he can enthusiastically encourage the creation of a nuisance on his property and then make no genuine effort to abate that nuisance as required by the TRO. Instead, to avoid a finding of contempt, Defendants must make "a showing of due diligence on the[ir] part . . . to comply with the order of the court" by making reasonable efforts to remove the Nelson campsite occupants. *See Socony Mobil Oil Co.*, 126 Vt. at 164, 225 A.2d at 63. Although a recent news story indicates that the Nelsons have posted a disingenuous notice disclaiming any encouragement or permission to violate the TRO, *see Stmt. of Facts ¶ 13 supra* p. 4, another recent news story indicates that Defendants are still

simultaneously granting permission for persons to hike through their property to reach the illegal Nelson campsite. *See* Stmt. of Facts ¶ 15 *supra* p. 4.

The Defendants are cynically refusing to comply with the TRO and evidently working to undermine its efficacy. Sadly, they are apparently willing to permit others – mostly college students -- to endanger their own lives, not in defense of any principle, but in hopes of extracting a substantially above-market \$2 million asking price for the purchase of their property by GMP.

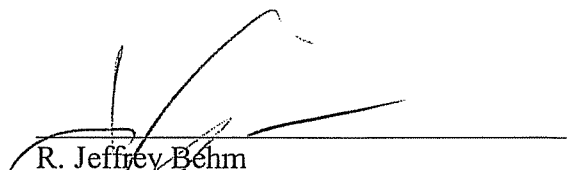
The only way for the Court to end this defiance and evasion of its TRO is to impose a fine of \$ 5000 on Defendants for each day that they fail to seek the removal of the Nelson campsite occupants from their property. This sum represents the low end of the range of additional costs that GMP will begin to accrue as of October 21st. In addition, this Court should authorize and direct the Orleans County Sherriff's Department to arrest and remove any individuals who will not vacate the Nelson campsite or otherwise refuse to comply with the TRO. Finally, this Court should award GMP its reasonable attorney's fees associated with this Motion and its other costs of enforcing compliance with the TRO.

WHEREFORE, Plaintiff Green Mountain Power Corporation respectfully requests that this Court GRANT this Motion, find the Defendants in contempt of the TRO, and enter an Order consistent with the terms proposed herein.

Dated at Burlington, Vermont this 20th day of October 2011.

Green Mountain Power Corporation

By:



R. Jeffrey Behm

Debra L. Bouffard

Jon T. Alexander

SHEEHEY FURLONG & BEHM P.C.

30 Main Street

P.O. Box 66

Burlington, VT 05402

(802) 864-9891

cc: P. Scott McGee, Esq.

EXHIBIT 1



ORLEANS COUNTY SHERIFF'S
255 MAIN ST
NEWPORT, VT 05855

Return of Service

Green Mountain Power
Donald & Shirley Nelson

Docket Number 256-10-11 OSCV

On the 14TH day of OCTOBER, 20 11. I made service of the following document upon DONALD NELSON at

365 BAILEY HAZEN RD ALBANY, VERMONT AT 14:45

- | | |
|--|--|
| <input type="checkbox"/> Summons | <input type="checkbox"/> Interrogatories |
| <input type="checkbox"/> Summons of Trustee | <input type="checkbox"/> Exhibit(s) |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Writ of Possession |
| <input type="checkbox"/> Writ of Attachment | <input type="checkbox"/> Judgment Order |
| <input type="checkbox"/> Final Order | <input type="checkbox"/> Order |
| <input type="checkbox"/> Attorney's Certificate | <input checked="" type="checkbox"/> Notice of <u>Hearing</u> |
| <input type="checkbox"/> Motion(s) | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Petition | <input type="checkbox"/> Subpoena -- Witness Fee |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Subpoena -- duces Tecum |
| <input checked="" type="checkbox"/> <u>Temporary Restraining Order</u> | <input type="checkbox"/> List of Exemptions |
| <input type="checkbox"/> | <input type="checkbox"/> Trustee's Disclosure of Earnings |
| <input type="checkbox"/> | <input type="checkbox"/> Eviction Notice |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

Unable to serve because

by delivering a copy of same to _____ a person of suitable age and discretion and then a resident at the usual place of abode of said Defendant at _____ Vermont, (for each of them) a copy thereof with my return endorsed thereon.

Service	\$	<u>50.00</u>
Miles/Travel	\$	<u>20.40</u>
Copies	\$	<u>.50</u>
Postage	\$	<u>.44</u>
Clerk Fees	\$	
Other	\$	
Total	\$	<u>71.34</u>

Deputy Sheriff

EXHIBIT 2

KIRK J. MARTIN
SHERIFF



TEL: (802) 334-3333
1 800-340-3334
FAX: (802) 334-3307

ORLEANS COUNTY SHERIFF'S
255 MAIN ST
NEWPORT, VT 05855

Return of Service

Green Mountain Power

Docket Number 256-10-1105a

Donald v Shirley Nelson

On the 14th day of October, 20 11, I made service of the following document upon Shirley Nelson

- | | |
|--|--|
| <input type="checkbox"/> Summons | <input type="checkbox"/> Interrogatories |
| <input type="checkbox"/> Summons of Trustee | <input type="checkbox"/> Exhibit(s) |
| <input type="checkbox"/> Affidavit | <input type="checkbox"/> Writ of Possession |
| <input type="checkbox"/> Writ of Attachment | <input type="checkbox"/> Judgment Order |
| <input type="checkbox"/> Final Order | <input type="checkbox"/> Order |
| <input type="checkbox"/> Attorney's Certificate | <input checked="" type="checkbox"/> Notice of <u>Hearing</u> |
| <input type="checkbox"/> Motion(s) | <input type="checkbox"/> Subpoena |
| <input type="checkbox"/> Petition | <input type="checkbox"/> Subpoena - Witness Fec |
| <input type="checkbox"/> Complaint | <input type="checkbox"/> Subpoena - duces Tecum |
| <input checked="" type="checkbox"/> <u>Temporary Restraining Order</u> | <input type="checkbox"/> List of Exemptions |
| <input type="checkbox"/> | <input type="checkbox"/> Trustee's Disclosure of Earnings |
| <input type="checkbox"/> | <input type="checkbox"/> Eviction Notice |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

Unable to serve because

by delivering a copy of same to Donald Nelson a person of suitable age and discretion and then a resident at the usual place of abode of said Defendant at 365 Broadway Plaza Rd, Albany, VT Vermont, (for each of them) a copy thereof with my return endorsed thereon.

Service	\$	_____
Miles/Travel	\$	_____
Copies	\$	_____
Postage	\$	_____
Clerk Fees	\$	_____
Other	\$	_____
Total	\$	_____

Deputy Sheriff

EXHIBIT 3

5. I witnessed GMP employee Robert Keller take photographs of the Nelson campsite at approximately 2 p.m. on October 18th.
6. In the photograph attached hereto as Attachment 1, an unidentified occupant of the Nelson campsite is visible in a green jacket. The boundary with GMP-leased land is demarcated by the red blaze ribbon tied around the tree trunk in the foreground.
7. In the photograph attached hereto as Attachment 2, a copy of the TRO is being posted at the Nelson campsite by Project personnel, including myself, while two unidentified occupants of the Nelson campsite wearing green and red jackets look on in the background.
8. On October 19th, blasting for the Project was scheduled to commence on GMP-leased land at 3:30 p.m.
9. As of approximately 2:45 p.m. on October 19th, the Nelson campsite was occupied by approximately 12 individuals, plus 2 journalists, positioned within approximately 20 feet of the northwesterly boundary of Donald and Shirley Nelson's Lowell, Vermont property.
10. Other than the journalists, the occupants of the Nelson campsite refused to identify themselves.
11. At approximately 3 p.m. on October 19th, I read the text of the TRO in the immediate presence of the Nelson campsite occupants, but they refused to vacate the Nelson campsite and move to a safe position.
12. Following my reading of the TRO, blasting commenced approximately ^{800 yd} 1,000 feet away from the Nelson campsite, but the Nelson campsite occupants refused to vacate the Nelson campsite and move to a safe position.

13. When I left the Project area in the late afternoon of October 19th, the Nelson campsite was still occupied by approximately 12 individuals positioned within approximately 20 feet of the northwesterly boundary of Defendants' Lowell, Vermont property.

FURTHER AFFIANT SAYETH NOT.

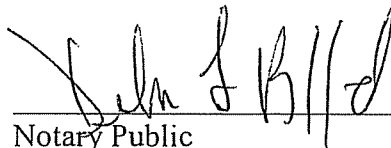
Dated at Newport, Vermont, this 20 day of October, 2011.



DAVID CORIELL

STATE OF VERMONT
COUNTY OF Orleans, SS.

On this 20th day of October, 2011, before me personally appeared DAVID CORIELL, known to me to be the person whose name is subscribed to the within instrument and acknowledged that the within statements made by him are true and accurate to the best of his knowledge and belief.



Notary Public
My Commission Expires: 2/10/15

CORIELL AFFIDAVIT ATTACHMENT 1



CORIELL AFFIDAVIT ATTACHMENT 2



EXHIBIT 4



October 14, 2011

Green Mountain Power: Blasting to continue at Lowell wind site

Dave Gram, Associated Press

MONTPELIER -- The company developing a wind power project in northern Vermont said Thursday that it can safely proceed with blasting even if a neighbor refuses to ask campers who have pitched tents inside a safety zone to leave.

Dorothy Schnure, spokeswoman for Green Mountain Power, said the work would have to go more slowly than the company had planned, adding costs to the project. GMP said it may try to recover the additional costs in a lawsuit against neighbors Don and Shirley Nelson.

The Nelsons, former dairy farmers in their late 60s, have allowed campers to pitch tents on their property, but close enough to its western boundary to cause GMP's blasting contractor to stop work, at least temporarily.

There had been fear that rocks flying from the blasting could hurt people within 1,000 feet, but Schnure said crews can use more "blasting mats" -- blankets of rubber and steel laid on top of the area to be blown up.

She said work would resume today, but any blasting that might occur imminently would be on a part of the mountain away from the campers.

GMP won state approval this year for an estimated \$156 million project to build 21 wind turbines that are more than 400 feet tall and are projected to produce enough power for about 24,000 homes.

GMP this week sought to solve the impasse by offering to buy the Nelsons' 580-acre farm. The couple have been trying to sell the property for years, they said, but when GMP offered them their asking price of \$1.25 million, they raised it to \$2.25 million, saying GMP could have it for \$2 million if it agreed to the purchase by noon Thursday.

"It's high-stakes poker. They blinked Monday," by offering to buy the farm, Nelson said in an interview Thursday.

The full-price offer came in a phone call from GMP CEO Mary Powell on Tuesday morning, Nelson said. That afternoon, a courier delivered a letter from the company threatening to sue and saying the couple could be liable for more than \$1 million.

That's why he raised his asking price, Nelson said.

"If you've got a threat of a lawsuit of a million dollars, you kind of want to add that on just in case," he said.

Nelson said he hadn't invited the campers onto his property, but welcomed them. "It was someone else's idea," he said. "I think it's great. The more the merrier. I wish I had electricity and running water up there."

For its part, GMP said its offer of \$1.25 million was no longer on the table.

"We basically communicated to them that if they returned the property to its original listing price of \$1.25 million, we will consider submitting a new offer," Schnure said.

"It's all in the Nelsons' hands right now," she said. "The easiest way to resolve this right now is they can suggest to their friends that they move back while we're blasting, which is once or twice a day. That would resolve the issue."

EXHIBIT 5

Vermont Public Radio - vpr.net

http://www.vpr.net/news_detail/92263/

VPR News

GMP Wins Court Order In Wind Battle

Friday, 10/14/11 5:58pm

LISTEN (3:52) MP3 | [Download MP3](#)

John Dillon



VPR/John Dillon

The blasting zone in Lowell.

(Host) Green Mountain Power has won a court order that requires opponents of its Lowell Mountain wind project to stay away from its construction zone during blasting periods.

The legal action was the latest development in a showdown between GMP and a group of protesters over the company's construction of 21 turbines.

VPR's John Dillon was in Lowell this week and has this report on the situation.

(Don Nelson) "Come in! We've got a madhouse here."

(Dillon) All day long, visitors stop by Don and Shirley Nelson's farmhouse at the foot of Lowell Mountain. Their dog Barney barks a welcome at each person who checks in.

(Nelson) "You want the sign in paper? You're going up the mountain? Between milking cows?"

(Fromm) "I finished haying yesterday for a couple of days, so I figured I'd head up there."

(Dillon) Shirley Nelson welcomes Neil Fromm, a dairy farmer from East Albany. He's done with morning

chores and wants to check out the construction work on the ridgeline.

It's a muddy, steep hike up Lowell Mountain. I climb up with Ira Powsner, a student at Sterling College, and an organizer with Energize Vermont. The nonprofit group has questioned large-scale wind turbines on Vermont's ridgelines.

(Powsner) "This is the steepest part right here, then we're about 100 yards away from the camp, so we're pretty close to the first tent. And it's a beautiful, chilly fall day. And up we go."

(Dillon) The campsite is spread out along the ridge, near bright orange boundary tape that marks the construction site. There's no work going on today. But one camper says they've felt the ground shake as contractors removed ledge for the wide road to the top.

The protesters number about a dozen at a time. Several have camped over night, and they had planned to occupy the safety zone around the work site so no blasting could take place.

Powsner notes that signs posted on nearby trees warn people to stay away.

(Powsner) "This is a blasting warning on the tree. It says to ensure public safety and to protect sensitive environmental resources, unauthorized entry is strictly prohibited."

(Dillon) Green Mountain Power has fought back against the protesters and the Nelsons - who own the land next to the turbine site. GMP last week offered to buy the Nelson farm for its asking price of \$1.25 million.

Then the company said the retired dairy farmers could be liable for \$1 million in damages if the campers delayed the project. On Friday, the company won an order from Orleans Superior Court that requires the Nelsons to keep people 1,000 feet away from the blasting zone an hour before or after the blasting is to occur.

Dorothy Schnure is a GMP spokeswoman.

(Schnure) "This is all about safety. We need to proceed on schedule to build this wind project. And if there are people purposely standing within the safety zone, we need to have a way to have them moved."

(Dillon) The threat of legal action was the last straw for farmer Neil Fromm. He's the guy who stopped by the Nelson's kitchen earlier, then hiked up to visit the campers.

(Fromm) "That's what got up me up here today, was reading in the paper, it's like Green Mountain Power, we'll buy your property or we'll sue you for a million dollars. That's just ridiculous. It's just to me, it's just the little guy being trampled by the big guy. A lot of people are sick of it, you know."

(Dillon) But Green Mountain Power says the project protects the environment while producing renewable energy. Schnure says the protesters don't speak for the Vermont public at large and that the company has the permits it needs to start construction.

(Schnure) "We know that most Vermonters say they want wind. We know that the people of Lowell have voted in favor of it. We know that the Public Service Board has reviewed it and found it in the public good. And now we have a small group of people who are up there saying they don't want the project and it should stop. It really seems like they're subverting the democratic process."

(Dillon) Meanwhile, the Public Service Board on Friday held the first hearing on several appeals to storm water permits granted for project.

For VPR News, I'm John Dillon.

DISQUS

VPR Discussion & Comment Policy

Tags

green mountain power lowell mountain
wind power environment

VPR News

After Irene, Towns Update Emergency Response Plans
Monday, 10/17/11 7:34am

NPR News

Vaccinations Can Be Money-Losers For Doctors
Monday, 10/17/11 5:05pm

Tropical Storm Irene tested emergency response plans in several Vermont cities and towns. In some cases, those plans proved to be insufficient. Now many Vermont towns, including some that weren't even hit by flooding, are re-crafting their plans.

Shumlin Moves To Ease Taxes In Irene-Damaged Towns

Saturday, 10/15/11 8:30am

Welch Calls For Bank Investigation

Friday, 10/14/11 5:50pm

Temporary Bridges Open

Monday, 10/17/11 6:06am

When office costs are factored in, doctors lose money about half the time on common immunizations, a new analysis finds. Vaccine storage and personnel costs are often overlooked.

Disease Detective Hot On The Trails Of Anthrax And Cholera

Monday, 10/17/11 4:26pm

iPhone 4S Sales Top 4 Million In First Weekend

Monday, 10/17/11 3:51pm

An Adviser To Both Plans Explains The Differences

Monday, 10/17/11 3:15pm

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EXHIBIT 6

- VTDigger - <http://vtdigger.org> -

Encamped Lowell Mountain protesters await court action, GMP intervention

Posted By [VTD Editor](#) On October 19, 2011 @ 2:40 pm In [Recent](#) | [No Comments](#)



[1]

Protesters stand a few yards away from the construction zone — and well within the area they are prohibited from occupying if and when the blasting comes closer to the ridge line — waiting for the sound of high explosives. The names they supplied, all pseudonyms, are Tigdstenpa (left), Mrs. Muskrat, Muskrat, and Fireweed. Photo by Chris Braithwaite.

Editor's note: This article is by Chris Braithwaite, publisher of the Barton Chronicle. It was first published in the Barton Chronicle.

LOWELL — Glancing at their watches, a group of about half a dozen protesters stood in the forest atop Lowell Mountain at 12:30 Tuesday afternoon, waiting for the blast. Green Mountain Power had announced the time about an hour earlier and "Old Crow," who was logging protesters in down on the Bailey Hazen Road, had relayed the news up to "Muskrat" by radio.

When the sound of high explosives rolled over from the west side of the ridgeline a few minutes later, it seemed distant, almost subdued. And it didn't trigger the legal confrontation the protesters had been prepared for when they set out on the steep, wet trail that winds about a mile up the east side of the mountain to their campsite.

That confrontation could come later this week, or it might never come. It depends on what happens in Orleans Superior Court, which last week became the second front in the battle over the industrial wind project that Green Mountain Power (GMP) is building on Lowell Mountain.

The night before, Monday night in Craftsbury Common, some of these protesters said they would be willing to defy a temporary restraining order compelling them to stay 1,000 feet away from the edge of the project when blasting was scheduled — even if that defiance led to their arrest. Others, uneasy about the consequences of an arrest, signed up to be part of the support team for those who broke the law.

The meeting, a workshop on civil disobedience, included a rehearsal of sorts. Casting themselves as police, a few of the 55 people present did their best to intimidate and upset a larger group of resisters. For the most part, they weren't very good at it.

But Anne Morse, who led the session, said it was important for people to know how they might react to such abuse. You need to know how to control those emotions, she said, so you don't slug

somebody.

Awaiting blasting

Nobody at Monday's meeting was sure when the blasting would come close enough to the campsite to trigger a real confrontation.

In court documents, GMP had said it would begin blasting dangerously close to the campsite on Monday, Oct. 17, and the protesters would have to move.

But the protesters were there Monday and Tuesday, and nobody showed up to order them away. They speculated that GMP's blasting contractor is behind schedule, still working on the access road further down the mountain. If the blasting wasn't within 1,000 feet of the campsite, there would be no need to try and move the protesters.

On Tuesday, the contractor didn't move a crew of loggers working just across a wide orange tape that separated them from the protesters. Using grapple skidders, a limber and, reportedly, a feller-buncher, they were clear-cutting a wide path that will be used by the cranes, once they are assembled atop the mountain, to put together the project's 21 459-foot wind turbines.

Taking a break for the blasting or for lunch — it wasn't clear which — the loggers stood casually by their machines until the explosives went off, and then went back to work. According to a claim filed Tuesday in the other battlefield, the county courthouse in Newport, the loggers were trespassing on the farm of Don and Shirley Nelson. That is one of several arguments filed by the Nelsons' attorneys in their first volley in a legal fight that has, so far, gone pretty much GMP's way.

Court filings, counter filings

The Nelsons, determined foes of the wind project whose farm borders it and hosts the protesters' campsite, were sued last week by GMP.

The utility also obtained the temporary restraining order demanding that protesters retreat when blasting is scheduled. Judge Martin Maley issued that order on Oct. 14 on the strength of a motion by GMP's attorney, Jeffrey Behm. The Nelsons did not have an opportunity to be heard on the matter.

The Nelsons, Behm wrote, "having failed in their attempts to stop the project through legal means, are now attempting to destroy the project by improper conduct that violates GMP's legally protected rights, subverts the state's legal processes and creates an imminent risk of irreparable harm to GMP and the public interest.

"Specifically," he continued, "they are inviting and assisting persons to occupy their land adjoining the project to create a safety risk that will halt construction blasting on GMP's land essential to the timely completion of the project."

Behm argues that the Nelsons just don't understand the law.

"The false premise of the defendants' scheme to destroy the project is their assumption they can do whatever they please, no matter how injurious to others, so long as they do it entirely on their own land. That misguided belief is wholly incorrect."

Behm wrote that, if it had to, GMP could blast out the path of the crane road without endangering protesters at the campsite.

However, he said, the contractor would have to use 50 more blasting mats, "and rely on a greater number of blasts with smaller charges." (A blasting mat, he wrote, "is a 288-square-foot rubber and steel mat weighing about 11,000 pounds.)

"There is an estimated 330,000 cubic feet of rock to be removed by blasting located within 1,000 feet from the Nelson boundary," he wrote. That amount of stone would fill more than 780 10-wheel dump trucks.

Such precautionary measures would delay completion of blasting on the crane road by nearly six weeks, Behm wrote, and cost an extra \$1.4 million.

In their response, the Nelsons' attorneys argue that GMP should never have adopted a blasting plan that threatens to hurl debris onto the Nelsons' property.

Such a plan, they wrote, "will, if carried out, be a violation of GMP's permit conditions.

"GMP thus does not come before the court with clean hands and is not entitled to injunctive or other equitable relief," they wrote in an "emergency motion to dissolve the temporary restraining order and request an emergency hearing."

The attorneys, with the firm Hershenson, Carter, Scott & McGee, say that a blast that throws debris onto the neighboring farm "will constitute a trespass and a nuisance under settled principles of Vermont law."

They cite the certificate of public good issued by the state Public Service Board, which ruled that "blasting mats will be used where needed to limit the occurrence of flyrock."

And according to a federal rule, they said, flyrock should not fall beyond the permit boundary.

"Like the child who, after killing his parents, pleads for mercy because he is an orphan, GMP pleads for emergency relief to absolve it of its own negligence in planning this blasting," the attorneys wrote.

Disputed boundaries

In the counterclaim to the GMP suit that was also filed Tuesday, the Nelsons' lawyers said that the utility is building its project "partially on land owned by the Nelsons."

"GMP has already used contractors to clear a swath of land that is located on the Nelsons' property in violation of the Nelsons' property rights," they wrote.

"The Nelsons are entitled to injunctive and declaratory relief establishing their common boundary with the owner of the land now being leased by GMP and prohibiting GMP from trespassing on the Nelsons' land either directly or by casting blast debris upon it."

The Nelsons' attorneys also wrote that "GMP has engaged in a course of conduct designed to threaten and intimidate the Nelsons to coerce them into selling their land to GMP."

Referring back to a 2010 attempt to purchase the Nelson farm, the attorneys wrote of GMP's "deceptive and duplicitous conduct by attempting to use a Vermont non-profit land trust to serve as a front party to acquire the property."

The utility's conduct, they wrote, constitutes "intentional infliction of emotional distress for which GMP is liable for compensatory and punitive damages."

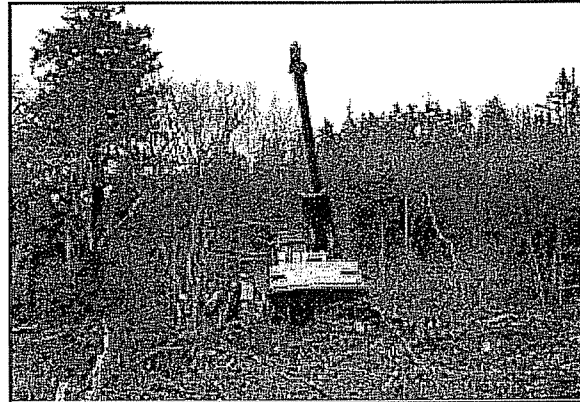
Since they were served with GMP's restraining order last Friday, Oct. 14, the Nelsons no longer keep the log of the protesters as they come and go from the campsite. A notice posted on a tree in front of their farmhouse reads in part:

"Due to threats of legal action against the property owner by Green Mountain Power people are not invited, encouraged or permitted to be present within 1,000 feet of the northwesterly boundary of the property of Donald and Shirley Nelson."

Visitors park a few hundred yards west along the Bailey Hazen Road, and follow a barbed wire fence on a neighbor's property before entering the Nelson farm well up the mountain.

"If they want to police it, let them police it," Mr. Nelson said Monday of the restraining order. "But don't ask me to police it."

The matter is scheduled to go back to Superior Court in Newport on Thursday afternoon, Oct. 20, when GMP will seek to obtain a more permanent preliminary injunction against the Nelsons.



[2]

Loggers wait by a machine called a limber, used to clear trees from the crane path. Photo by Chris Braithwaite.

Article printed from VTDigger: <http://vtdigger.org>

URL to article: <http://vtdigger.org/2011/10/19/encamped-lowell-mountain-protesters-await-court-action-gmp-intervention/>

URLs in this post:

[1] Image: http://vtdigger.org/vtdNewsMachine/wp-content/uploads/2011/10/20111019_lowellProtestors.jpg

[2] Image: http://vtdigger.org/vtdNewsMachine/wp-content/uploads/2011/10/20111019_lowellConstruction.jpg

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EXHIBIT 7

SEVEN DAYS

VERMONT'S INDEPENDENT VOICE

Published on *Seven Days* (<http://7dvt.com>)

Occupy Lowell Mountain? Despite Court Order, Opponents Camp Near GMP Blasting Zone

Local Matters

By Ken Picard [10.19.11]

Don Nelson sits in the kitchen of his home on Lowell Mountain, puffing on a pipe, looking bemused, while his wife, Shirley, answers a phone that seems to ring every two minutes. Outside, their dog, Barney, barks incessantly as a new group of visitors, one of many to come through that day, stops in to say hello, expresses support and asks for permission to hike up the mountain behind the house.

Ordinarily, the Nelsons' life isn't this crowded or chaotic. Over the years, the retired dairy farmers have allowed small groups of hikers, hunters and campers to use their property, a 600-acre spread overlooking a picture-perfect valley in the Northeast Kingdom. But in recent weeks, that trickle of visitors has grown to a steady stream, as more people have learned of the couple's legal standoff with Green Mountain Power.

In May, GMP got permission to start construction on a 21-turbine, 63-megawatt wind farm that will overlook the Nelsons' property. The \$163 million Kingdom Community Wind project, as it's called, received an overwhelming endorsement from three-quarters of Lowell voters. However, many people on the Nelsons' side of the mountain oppose the project, calling it too large, destructive and out of character with Vermont's environmental ethos.

In recent weeks, a group of protesters has maintained a round-the-clock encampment on the Nelsons' land, just a stone's throw from GMP's blasting zone. Its members say they're prepared to stay on the mountain all winter, if necessary, to prevent the project from moving forward.

Early last week, Mary Powell, GMP's president and CEO, and Robert Dostis, GMP's leader of external affairs and customer relations, invited the Nelsons to meet at a Stowe coffee shop to try to resolve their differences. Following the hourlong meeting, GMP offered to buy the Nelsons' farm, which has been on the market for more than a decade, for the asking price of \$1.25 million. Powell says she's sure some Vermont farmers would "embrace" the idea of having wind turbines visible from their land.

But GMP's carrot also came with a stick — a letter from GMP's attorneys warning the couple that if they don't keep campers out of the blasting zone, they could be held liable for as much as \$1 million for "tortious interference" with the project. According to Powell, the Nelsons took GMP's

offer "under advisement" for 24 hours, then counteroffered with an even higher asking price of \$2.25 million.

"If they're gonna sue me for \$1 million, I'm gonna add a million to the price tag," Don Nelson explains. "It's high-stakes poker, and I don't intend to sell out to the enemy if I can help it."

Late last week, GMP obtained a temporary restraining order from an Orleans County Superior Court judge requiring the Nelsons to keep campers at least 1000 feet away from the blasting zone for at least one hour before and after blasting is scheduled to occur. The Nelsons say the blasting constitutes "a trespass and a nuisance" and violates their property rights. They plan to be in court on Thursday to try to get the order revoked.

From Powell's perspective, GMP "isn't trying to be intimidating, but we do have an obligation to our customers and an obligation to state the brutal facts. And these are the brutal facts: We have permission on our project, and we have to make sure the area is safe when we get there."

The strenuous climb up Lowell Mountain is a wet and muddy slog. After skirting the Nelsons' pasture, an old logging road climbs steadily through the woods and becomes narrow, steep and slippery. Cairns and surveyor's tape mark the entire route, as do the ankle-deep footprints of hikers who have come before.

On a recent afternoon, five hikers follow the trail upward to join the protesters at the top. The party includes Adrian Owens and Allison Van Akkeren, both teachers at Sterling College, and their 13-year-old son, Kestrel; Hannah Fleischmann, a 21-year-old senior at Sterling; and Alex Martin, 16, whose family has lived in the area for at least three generations. Everyone but Martin is visiting the encampment for the first time.

For Owens, who teaches outdoor education and leadership classes, this is hardly a first trek up Lowell Mountain. For years, the Nelsons have allowed Sterling College to use their land for winter survival classes.

Van Akkeren, who lives in nearby Craftsbury, says she's not philosophically opposed to wind energy; in fact, her off-the-grid house is powered partly by wind. But she says this kind of ridgeline development doesn't make sense in Vermont. Worse, she says, she's put off by what she considers GMP's heavy-handed approach to the Nelsons.

"For me, coming up here is connected to [Occupy] Wall Street," she says, "the push to buy the Nelsons out, then threatening to sue. We need to stand against that."

Her son, Kestrel, agrees. "It's the big corporation pushing the little guy around."

After a 40-minute climb that includes short hand-over-hand scrambles up muddy sections of slope, the group finally reaches the encampment. It's a modest cluster of tents and tarps, with a small fire smoldering in a pit. The whine of a nearby chainsaw fills the air, not from the construction site but from a cluster of other tents farther uphill, where a trio of campers is building a winter shelter.

A few dozen yards away, a clear-cut swath of mountainside, largely obscured by fog, is marked off with orange construction tape and yellow warning signs. This is the boundary of GMP's construction site. No logging or blasting is under way.

Though the protesters number fewer than a dozen, they claim they've had more than 20 visitors

since morning. Nearly all sport name tags with monikers such as "Meadow Hawk," "Condor" and "Toad."

"Hop Hornbeam," a thirtysomething activist who's been staying on Lowell Mountain for several weeks, says each protester goes by the name of a different species "because the trees and animals can't speak, so we give them a voice."

Hornbeam, who's originally from Illinois and attended Sterling College years ago, says he supports wind power but only in places where it leaves a small environmental footprint, such as on the Great Plains. "[Building on] ridgetops that don't have roads doesn't make any sense," he says. Moreover, he'd prefer to see GMP spend its \$163 million on energy-efficiency projects.

"I want to see our wild places stay wild," he adds. "Just wait and see. When we get power hungry over the next 30 years, the places we're going to turn to are the rural and wild areas."

Steve Wright has been protecting wilderness for most of his 69 years. In the mid '80s, the Macon, Ga., native served as fish and wildlife commissioner under Vermont Gov. Madeleine Kunin; in recent years he's worked for the National Wildlife Federation. These days, physical ailments make it harder for Wright to hike, hunt and fish as much as he once did. Nevertheless, he still sports the grizzled look of a mountain man, with his checkered flannel shirt, disheveled beard and wire-rim glasses. He lives in a log cabin in Craftsbury.

Wright penned a September 29 op-ed in the *New York Times* titled "The Not-So-Green Mountains," which was highly critical of GMP and the Lowell project. Wright's major beef is his claim that, once GMP levels the ridgeline in order to build access roads to the turbine sites, it will fundamentally and irrevocably reorder the mountain's hydrology, creating problems for landowners and municipalities for decades to come.

Currently, he explains, the mountain acts like a "huge sponge" to soak up rainfall and then filter the water through the trees, brush, soil and rock below it. But once GMP cuts its road up the ridgeline, "in places twice as wide as I-89, you're just begging for problems.

"Any natural-resources professional will tell you that the best thing you can do about soil is keep it where it is," Wright adds. "When it starts moving, we have real problems. Just look at central and southern Vermont right now."

GMP's Powell dismisses Wright's concerns as unwarranted and overblown. She describes GMP's environmental plan on this project, which includes conserving more than 2000 acres of wilderness for a 175-acre project, as "paradigm breaking." Moreover, she says, whatever ecological harm occurs during construction will be short term and temporary, and fully remediated by the time the project is complete.

Not so, says Wright, who claims that the consequences of bulldozing the topsoil and blasting out the bedrock will be neither short term nor temporary.

"Trees grow back. Rocks don't. Not in our lifetime," he says. "This is 450 million years of geological movement ... And now we humans, operating under incredible hubris, are going to reorder it for maybe 50 years of [wind-turbine] operation. If there's a crime against the landscape, I would contend this is one."

Back at the Nelsons' house, Shirley Nelson chats with an old friend from the area, who's visited her

land to scout for moose-hunting spots. Nelson says she's seen a few come down off the mountain in recent days — spooked, she theorizes, by GMP's twice-a-day blasting.

Asked if the protesters will make any difference, Nelson just shrugs and smiles.

“The mountains have a mystique all their own,” she says. If GMP goes ahead with what they started, she alleges, “Vermont will never be the same again.”

Source URL: <http://7dvt.com/2011/occupy-lowell-mountain-despite-court-order-opponents-camp-near-gmp-blasting-zone>

EXHIBIT 8

STATE OF VERMONT

SUPERIOR COURT
Orleans Unit

CIVIL DIVISION
Docket No. 242-10-11 Osev

GREEN MOUNTAIN POWER
CORPORATION,
Plaintiff,

v.

DONALD AND SHIRLEY
NELSON
Defendants.

AFFIDAVIT OF CHARLES W. PUGHE


I, Charles W. Pughe, after having been first duly sworn, on oath depose and say as follows:

1. I am personally familiar with the facts set forth in this Affidavit. If called to testify, I could and would testify competently as to the facts set forth herein.
2. I am employed by Green Mountain Power Corporation ("GMP" or "Green Mountain Power") as the Project Manager for the Kingdom Community Wind Project (the "Project"), with responsibility for coordination and execution of all aspects of the project, including design, permitting, construction and operations. My business address is 163 Acorn Lane, Colchester, Vermont 05446.
3. The blast locations for the Project blasting scheduled for October 19th and 20th were and are located approximately ^{800' CEP} 1,000 feet away from an occupied campsite ("Nelson campsite") consisting of two or more pitched tents located approximately 20 feet from the northwesterly boundary of Donald and Shirley Nelson's Lowell, Vermont property.

4. Given this distance and the use of smaller than planned explosive charges, GMP's blasting subcontractor for the Project, Maine Drilling & Blasting, Inc. ("MDB") determined that blasting could proceed safely on October 19th and 20th despite the continuing occupation of the Nelson campsite.
5. However, the planned blast locations beginning on October 21st will be well within 1,000 feet of the Nelson campsite.
6. Accordingly, all blasting for the Project may likely cease on October 21st if persons continue to occupy the Nelson campsite at that time.
7. For each day of blasting that must be cancelled, GMP will incur at least \$11,400 in additional costs.
8. These \$11,400 in additional costs consist of MDB's daily minimum charges for mobilization of labor and equipment that are due and payable even if no blasting takes place.
9. If blasting is halted for more than 1 days, GMP will begin to accrue, in addition to MDB's daily minimum charges, additional daily expenses of approximately \$ 24,000 representing the daily minimum charges for mobilization of labor and equipment by GMP's site work subcontractor, J.A. Macdonald, General Contractor Reed & Reed and the associated management costs due to the delay that are due and payable even if no blasting takes place.

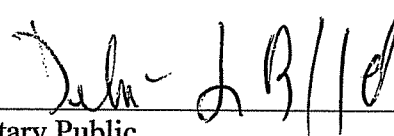
FURTHER AFFIANT SAYETH NOT.

Dated at Newport, Vermont, this 20th day of October, 2011.


CHARLES W. PUGHE

STATE OF VERMONT
COUNTY OF Otsego, SS.

On this 20th day of October, 2011, before me personally appeared CHARLES W. PUGHE, known to me to be the person whose name is subscribed to the within instrument and acknowledged that the within statements made by him are true and accurate to the best of his knowledge and belief.


Notary Public
My Commission Expires: 2/10/15