

STATE OF VERMONT

SUPERIOR COURT  
Orleans Unit

CIVIL DIVISION  
Docket No. 256-10-11 Oscv\_

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

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR CIVIL CONTEMPT**

Defendants oppose plaintiff's motion to hold them in civil contempt and state as follows:

1. The court has now heard testimony regarding the controversy in this case. Up to the point when the court issued its TRO, on December 14, 2011, the presence of campers on the defendants' property was not interfering with the GMP project because no blasting was occurring within 1,000 feet of the property line.

2. The court issued its *ex parte* TRO on Friday, October 14. The next blast was scheduled for Monday, October 17. On that day, GMP did not call the Nelsons, despite the requirement in the TRO that GMP call the Nelsons on the morning of any blasting. Their representative, Mr. Pughe, later testified that GMP didn't call the Nelsons that morning because the blasting that took place was more than 1,000 foot on GMP's side of the boundary line, so the protection afforded by the TRO was not necessary and notice was not required. Whether or not that assertion is correct, Pughe's testimony confirms that the blasting was beyond the 1,000 foot range as of that date, so any persons present on the Nelsons' property could not have interfered

with the blasting and did not occur within 1,000 feet of the blasting.

3. Once the court issued the TRO on December 14, 2011, the Nelsons took immediate and reasonable measures to notify all persons who were on their property that such persons must abide by the TRO and must not violate it in any respect. The Nelsons posted a written notice advising all visitors that a TRO had been issued and that the visitors were required to comply fully with the terms of the TRO. A copy of the TRO was attached to the notice, and the notice was posted in the areas most likely to be seen by persons coming onto the property. In addition, the Nelsons understood and agreed that GMP would inform the campers at or near the mountaintop boundary of the terms of the TRO and that GMP would post notices of the TRO at the boundary so that all persons present on the mountaintop would have actual notice even if they did not pass through the Nelsons' gate as the Nelsons anticipated they would.

4. At the October 20, 2011 hearing on the TRO, GMP requested changes to the TRO language. Those changes were ultimately approved as to form by counsel for both sides and submitted to the court. The court then issued an amended TRO on October 20<sup>th</sup>.

5. At the October 20 hearing, the court made clear to all parties and to counsel that the court did not believe the Nelsons should be charged with the direct enforcement of the court's order. The court was clear that the responsibility for posting notice of the TRO and for making arrangements to have the order enforced and for warning campers present in the 1,000 foot safety zone, so-called, was the responsibility of GMP. The court made clear that GMP was at liberty to make all necessary arrangements for members of the sheriff's department to be present, as necessary, and to have a member of the sheriff's department or other law enforcement officer announce to those on the property the terms of the TRO and the conduct required to comply with

it.

6. The Nelsons at all times have complied with the TRO. In fact, the Nelsons went beyond the requirements of the TRO and posted their own notice advising anyone who came upon their property that they were not allowed, encouraged or permitted to take any action that would violate the terms of the TRO, and the Nelsons attached a copy of the TRO to the posted notice so that all who saw the notice could read the specific terms of the TRO.

7. More is not required. The Nelsons have done all that has been asked of them and more.

8. GMP's filing of a motion for civil contempt is one more instance of using a bully tactic intended to coerce the Nelsons into playing a supporting role for GMP's pursuit of its turbine construction project. The Nelsons will not be bullied.

9. The Nelsons have done no wrong here. The Nelsons and others who have expressed opposition to GMP's project have full right to observe GMP's activities from the Nelsons' land and to monitor the project. They also have the right to protest the project. They have a Vermont and U.S. Constitutional right to assemble and to speak out loudly in opposition to what they see as the desecration of a part of Vermont's heritage being carried out by GMP on Lowell Mountain.

10. The Nelsons and the campers have a right to assemble and to protest and to express loudly by their presence and voices their opposition to the GMP project. They have a right to engage in these constitutionally-protected activities from the private property of the Nelsons. They are exercising their rights under the Vermont and United States Constitutions to assemble and speak freely about matters of great public interest.

11. GMP is not permitted to enlist the authority of the state to suppress citizens' rights to assemble and protest simply because GMP has a turbine project it wants to build. There is no factual or legal basis for GMP's assertion that the Nelsons have violated an order of this court or for GMP's assertion that the Nelsons should be held in contempt of court. GMP is flexing its corporate muscle to intimidate the Nelsons because it knows it has no legal basis to force the Nelsons from their land, even temporarily, or to encroaching on the Nelsons' land at the top of the mountain ridge to use it for a crane path.

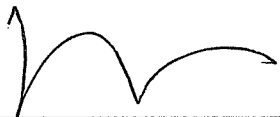
12. The contempt petition is wholly devoid of merit. It should be summarily denied by the court, and the Nelsons should be awarded the attorneys fees they have incurred in opposing it.

WHEREFORE, the defendants request that the court deny the plaintiff's motion to hold the defendants in contempt of court and grant the defendants an award of their attorney's fees.

Dated at Hartford, Vermont this 6<sup>th</sup> day of November, 2011.

DONALD NELSON and SHIRLEY NELSON

By: \_\_\_\_\_

  
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