

MEMORANDUM

To: Parties in PSB Docket No. 7628 (Lowell Mountain Wind Project)

From: Susan M. Hudson, Clerk of the Board

Re: Joint Motion for Emergency Stay of Blasting

Date: November 1, 2011

Today, Donald and Shirley Nelson (the "Nelsons") and the Towns of Albany and Craftsbury (the "Towns") filed a Joint Motion for Emergency Stay of Blasting (the "Motion"). In the Motion, the Nelsons and the Towns ask the Board to "immediately stay all blasting for the Kingdom Community Wind Project until it can be shown that the blasting can be done consistent with the Order and all applicable laws and regulations."¹

The Motion appears to be seeking injunctive relief in the form of either a temporary restraining order or a preliminary injunction. However, the Motion does not specify that such relief is being sought, nor does it comply with the Board's Rules for seeking such relief. Pursuant to Board Rule 2.406(B), "A temporary restraining order may be issued only where it clearly appears from specific facts shown by the affidavits or the verified petition, and by testimony if required by the Board, that substantial immediate and irreparable injury, loss or damage, or danger to health or safety, will result to the petitioner before a hearing can be held upon proper notice." The Motion does not allege the type of harm necessary to support issuance of a temporary restraining order. Additionally, if the Motion is a request for a temporary restraining order, it appears that it was not served in compliance with the requirements of Rule 2.406(B). Further, pursuant to Board Rule 2.406(D), "No preliminary injunction may issue unless the petitioner establishes that the irreparable injury which will be caused to it if a preliminary injunction is denied, discounted by the probability that the respondent will prevail in the proceedings on the permanent injunction, will be greater than any injury which the granting of the

¹Motion at 1.

preliminary injunction will cause to the respondent." The movants have failed to address this required showing.² Lastly, the status of counsel with respect to the Nelsons is unclear. Counsel appears to have filed the Motion on behalf of the Nelsons as well as the Towns. The Nelsons have appeared pro se in this proceeding and the Board has not received a Notice of Appearance on behalf of the Nelsons by attorney Margolis.

Whether the Motion is viewed as seeking relief pursuant to Board Rule 2.406 or not, it does allege serious potential violations of the Certificate of Public Good ("CPG") governing construction and operation of the project. If the Board finds that such violations have in fact occurred, then the petitioners in this proceeding could be subject to a number of sanctions ranging from civil fines to CPG revocation. Accordingly, the Board directs the petitioners and any party with standing on this issue to submit their responses by close of business on Friday, November 4, 2011. After reviewing the responses, the Board will inform the parties whether it intends to conduct additional process or whether it will render its decision on this issue based on the information received.

²Rule 2.406(D) also requires that an application for a preliminary injunction be made by motion in connection with a petition for a permanent injunction. The movants have failed to meet this requirement as well.