SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

JON T. ALEXANDER
CHARLOTTE B. ANCEL
R. JEFFREY BEHM
DEBRA L. BOUFFARD
IAN P. CARLETON
ARLINE P. DUFFY
MICHAEL G. FURLONG
BENJAMIN MARKS
DIANE M. McCARTHY
ERIC S. MILLER
JAMES W. SPINK
PETER H. ZAMORE

PAUL D. SHEEHEY (1919-2004)

GATEWAY SQUARE
30 MAIN STREET
POST OFFICE BOX 66
BURLINGTON, VERMONT 05402
TELEPHONE (802) 864-9891
FACSIMILE (802) 864-6815
www.sheeheyvt.com

VIA HAND DELIVERY

October 19, 2011

Tina de la Bruere, Clerk
Vermont Superior Court
Orleans Civil Division
247 Main Street
Newport, VT 05855

Re: *Green Mountain Power Corporation v. Donald and Shirley Nelson*
Dkt No. 256-10-11 OSCV

Dear Tina:

Enclosed for filing in connection with the above-referenced matter, please find Plaintiff Green Mountain Power Corporation's Opposition To Defendants' Motion To Dissolve The Temporary Restraining Order.

Please bring this to the Court's attention as soon as possible.

If you have any questions, please do not hesitate to contact me.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.

Debra L. Bouffard

DLB/cjo
Enclosure
cc: P. Scott McGee, Esq.
Anthony Z. Roisman, Esq.

H:\G\GMP\Lowell Mtn\Blasting Issues\Correspondence\Orleans Superior Court 11-19-11 re OppDsslv-TRO.doc

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**	)	

PLAINTIFF GREEN MOUNTAIN POWER CORPORATION'S OPPOSITION TO DEFENDANTS' MOTION TO DISSOLVE THE TEMPORARY RESTRAINING ORDER

The Plaintiff, Green Mountain Power Corporation ("GMP"), by and through its attorneys, opposes the Defendants' Motion to Dissolve the TRO ("Motion to Dissolve") issued by this Court on October 14, 2011. The Defendants' Motion to Dissolve comprises a scattershot of arguments unsupported by evidence, law or logic. To restate the Nelsons' position in this case is to underscore its fundamentally unreasonable and illegitimate nature. Specifically, they assert the unqualified right to facilitate an encampment of "human shields" on a remote, uninhabited corner of their land for the sole purpose of creating a safety risk intended to destroy a valuable and needed electric generation Project that will promote the general public good.[1] The Defendants seek to dissolve the TRO so they can continue to pursue their only real interest in using the corner of their property adjacent to the Project – stopping the wind farm from being built by interfering with GMP's legally protected rights.

---

[1] May 31 Order at 139-144 (attached as Exh. 3 to GMP's Motion for a TRO and Preliminary Injunction).

Maine Drilling & Blasting's ("MDB") existing blasting plan will, by using directional blasting, matting, and other techniques, limit the occurrence of flyrock; it presents a strong likelihood that all blasting debris will be confined to GMP's property. But for the Defendants' tortious conduct, MDB's blasting plan would also assure the necessary, extremely high degree of certainty that the blasting will not result in human injury. The Defendants' position that no blasting can occur unless MDB guarantees absolutely and with scientific certainty that not a single fragment of flyrock will fall on their land is not possible and not required by the CPG.[2] Moreover, their position does not justify locating persons on that area of their property during blasting.

As set forth below, many of the issues raised in Defendants' Motion to Dissolve have been decided by the PSB, and Defendants are estopped from relitigating them here. Further, their various arguments rest entirely upon misstatements of the evidence, mischaracterizations of GMP's claims and Public Service Board ("PSB") rulings, faulty legal propositions, and *ad hominem* allegations of bad faith. They are all meritless and should be rejected.

I. Defendants Are Precluded By Principles Of Collateral Estoppel From Relitigating Issues In This Court That Have Already Been Conclusively Decided By The PSB.

The Defendants seek to relitigate issues decided by the PSB in the CPG proceedings that they were parties in. They are collaterally estopped from rehashing those already decided issues and recycling their previously rejected arguments. An administrative order is entitled to collateral estoppel effect when (1) preclusion is asserted against one who was a party in a prior administrative action; (2) the same issue was raised in the prior action and (3) resolved by a final

---

[2] *Cf. Thompson v. Green Mountain Power*, 120 Vt. 478 (1958) (adopting a rule of strict liability for blasting because, although of great social utility, blasting is an ultrahazardous activity with inevitable risks of harm that cannot be entirely eliminated through the exercise of all due care).

A defense to strict liability exists where a person injured by an ultrahazardous activity has assumed its risks by purposely exposing himself to a known risk that he could have avoided. Restatement (Second) Torts §524.

judgment after (4) a full and fair opportunity to litigate the issue; and (5) preclusion is fair. *Trickett v. Ochs*, 2003 VT 91 ¶10. All of those elements are satisfied in this case. In the analogous circumstances of an Act 250 proceeding, the Vermont Supreme Court has ruled that the District Environmental Commission's prior findings in granting approval for the project collaterally estopped the petitioner from relitigating the same issues in the Environmental Court. *In re Hartland Group N. Ave. Permit*, 2008 VT 92 ¶¶7-8.

Here, the PSB's findings made in its May 31 Order granting the CPG should be treated as conclusively established in this proceeding pursuant to *Trickett* and *Hartland Group.* These include the findings that (1) the Project will promote the general good of the public, (2) is necessary to meet present and future demand for electric service, (3) will further the State's goals of increasing power supplies from renewable resources that do not emit greenhouse gases, (4) will add $50 million to the State's economic output in the construction phase alone, (5) will create 700 full time jobs during construction and 30 full time jobs during operation and (6) generate tens of millions of dollars in state tax revenues. (May 31 Order at 3, 26-35, 139-144.) These findings, together with the PSB's conclusion that significant construction delays jeopardize the PTCs and place the economic viability of the Project at risk, show that Defendants' actions to halt/delay construction threaten injury to the public good, which is an irreparable harm. *See e.g.*, *Mississippi Power & Light v. U.S. Gas Pipe Line Co.*, 760 F.2d 618, 613 (5th Cir. 1985) (injury to public may suffice as irreparable harm in private action); *accord Northern Indiana Pub. Serv. Co. v. Carbon County Coal*, 799 F.2d 265, 280 (7th Cir. 1986); *California Indep. Sys. Operators Corp. v. Relant Energy Servs.*, 181 F. Supp. 2d 1111, 1128-29 (E.D. Cal. 2001).

II. The Defendants' Allegations In Section I Of Their Motion That GMP Obtained The TRO By Making False Statements To The Court Are Specious And Irresponsible.

Motion to Dissolve §I.A.1

The Defendants rashly and erroneously allege that GMP, in its Motion for a TRO and Preliminary Injunction ("TRO Motion"), asserted that it has legal authority under the CPG "to conduct blasting on its property even though it creates a substantial risk that rock and debris would land on Defendants property." Motion to Dissolve at 2. The falsity of the Defendants' own allegations is demonstrated by a simple reading of GMP's TRO Motion and supporting Affidavits. They establish that MDB will employ blasting techniques and matting that are fully expected to confine flyrock to the Project property, and that the risk that flyrock will fall on Defendants' property is slight. *See, e.g.*, TRO Motion at 10 and Exhibit 1 (Blaisdell Affidavit at ¶¶ 30-36).

The Defendants also wrongly contend, under a heading ironically labeled "A.2 The Truth," that Condition 36 of the CPG[3] requires compliance with the flyrock standard contained in 30 C.F.R. §816.67(c) (applicable to surface mining) and §817.67(c) (applicable to underground mining), which they also incorrectly interpret as preconditioning blasting upon an absolute guarantee that flyrock will not fall outside a permitted area. Motion to Dissolve at 2-3. First, Condition 36 expressly incorporates the blasting regulations in Sections 816.61-68 in order "to limit peak particle velocity and ground vibration to safe levels." Ground vibrations and "peak particle velocity" (which is a measure of ground vibrations) involve blasting risks completely unrelated to flyrock. The next sentence in Condition 36 applies to flyrock, and states

[3] The CPG is attached as Exhibit 12.

that GMP shall use proper techniques and blasting mats where necessary to limit the occurrence of flyrock.[4]

Moreover, GMP submits that the standards for flyrock contained in Condition 36 and the one set forth in 30 C.F.R.§§816.67(c) require the same thing: that GMP take reasonable steps designed to and which will likely be effective in preventing flyrock from falling outside of the Project boundary. MDB has done this by implementing procedures that should ensure that blasting flyrock will be confined to the Project property.

Motion to Dissolve §I.B.2

Defendants next falsely allege that "GMP misled the Court when it stated that unless the blasting scheduled to begin on October 17, 2011 were allowed to proceed as planned it would miss its December 31, 2012 deadline." Motion to Dissolve at 5. In fact, GMP repeatedly stated in its Motion that the human safety risks that Defendants were creating would delay the Project by nearly 6 weeks and thus create a "threat that the Project would not be operational in 2012, which places the economic viability of the entire Project at risk due to loss of the PTCs." TRO Motion at 3. GMP's argument is consistent with the conclusion the PSB reached in rejecting the same argument Defendants have again made in their Motion to Dissolve. In an October 3, 2011 Order, the PSB stated:

> The economic viability of the project with reference to the PTCs is not discussed in our May 31 Order [granting the CPG]. It is discussed in our July 12 Order. However, nowhere in the July 12 Order does it conclusively state that the PTCs will be lost if construction does not commence by August 1, 2011, or that the project will be uneconomic if the PTCs are lost. Rather, it states that delay results in a potential loss of the PTCs, which would place the economic viability of the project "at risk".

[4] The PSB's July Order approving the blasting plan, along with the pertinent portions of the plan, are attached as Exhibit 13.

PSB Order Re Motion for Reconsideration and Revocation, at 7 (October 3, 2011). In its July 12 Order, the PSB, in considering the consequence of a construction delay resulting from a CPG condition, stated that delay threatened attainment of the PTCs, and the loss of them would place the Project's economic viability at risk. (PSB's Order re Motions for Modification of Conditions, p. 8 (July 12, 2011).)

Motion to Dissolve §I.C.1

Defendants claim, without offering any evidence, that GMP has no present need to blast adjacent to the Defendants' property. As demonstrated by the Affidavits of MDB's Vice President, Stephen Blaisdell, and GMP's Project Manager, Charlie Pughe, the crane path must be built outward from its junction with the access road, and the Nelsons' "guests" are camped in the immediate vicinity of that junction. Although GMP's construction schedule is a dynamic one, the fundamental steps in the construction must be performed in a particular sequence. With respect to blasting, first an access road had to be built from the public road to the ridgeline and, now, the crane path must be constructed in order to proceed to the next stage of constructing the wind farm on the ridge. That requires blasting to begin at the junction of the access road and crane path which is relatively near Defendants' "guest" camp. Defendants have offered no evidence to the contrary.[5]

III. The TRO Was Fully Justified By The Facts And Arguments Set Forth In GMP's Motions And Supporting Affidavits And Exhibits.

A. The Defendants Have Failed To Explain How The TRO Prejudices Any Legitimate Use Of Their Land.

Notwithstanding the vehemence of their accusations, nowhere do the Defendants offer any evidence that the issuance of the TRO has prejudiced them in a legitimate or meaningful

[5] Defendants seek to rely on generalized statements to the media made by GMP's external communications function. The facts set forth in the Pughe and Blaisdell Affidavits accurately portray the existing facts with respect to blasting and construction of the Project.

way. They have no legal right (nor have they explicitly claimed one) to create safety risks on their property solely to interfere with GMP's property and contract rights. Yet, they have offered no evidence to dispute that the presence of their "guests" is not intended to do just that. Even if the Nelsons and their "guests" were genuinely interested in the recreational benefits of camping, as the Nelsons claimed in their September 28, 2011 letter to GMP's CEO (Exh. 4 TRO Motion), they have failed to explain why requiring them to move away from the blasting would interfere with their camping. For that matter, they have not explained why the campers cannot camp elsewhere on Defendants' 600 acres of land. In short, even giving Defendants the complete benefit of the doubt, the TRO imposes at most a *de minimis* inconvenience on the Nelsons for a finite period of time.

B. GMP Provided Defendants With Appropriate Notice And Service.

Defendants contend, without providing any legal support, that the TRO should be dissolved because GMP failed to provide them with pre-filing notice that it would seek injunctive relief. There is no legal support for Defendants' novel argument. It is also completely inconsistent with Defendants' Complaint allegations that GMP's October 11 correspondence notifying them of potential legal action was an outrageous, intentional act which caused the Defendants severe emotional distress.

Moreover, the Defendants' argument misses the point. The need for the TRO resulted from an unavailability of court time until October 20 to hold the necessary hearing on GMP's Motion for a preliminary injunction. Finally, GMP did not decide to seek injunctive relief until after it attempted to avoid this litigation by making a full price offer to purchase Defendants' property on October 11, 2011. Not until the Defendants responded to GMP's good faith offer by escalating the asking price for their property by $1 million did GMP decide to seek injunctive

relief. GMP filed its lawsuit on the afternoon of October 13, the Sheriff's Office served the Defendants with the Complaint and TRO Motion the next morning, and the signed TRO and hearing notice were served at 2:45 p.m. that same day. In short, GMP provided the Defendants with prompt and timely notice in full compliance with the requirements of V.R.C.P. 65.

C. GMP's Blasting Will Comply With The Conditions Of Its CPG And Does Not Create A Likelihood Of Trespass.

The Affidavits filed with GMP's TRO Motion demonstrate that MDB will implement precautions that are fully expected to prevent flyrock from landing on the Defendants' property. However, because there is a small risk of such an occurrence, it is important to ensure that all readily available measures are taken to protect human safety by clearing persons from an area 1,000 feet in distance from the blast. This safety procedure would ordinarily impose no inconvenience to anyone on the uninhabited ridge where the safety zone is to be located.

The Defendants essentially argue, however, that it is their right to be present with their "guests" on their boundary with GMP during the blasting, and clearing them from the safety zone infringes upon their right to delay the Project and impose additional costs on GMP. They therefore insist that MDB adopt additional expensive and time-consuming safety procedures that will reduce (but not entirely eliminate) the risks to their safety while they purposely locate themselves as close as they possibly can to that blasting. At bottom, the interest they seek to protect is entirely illegitimate and the reasoning underlying their legal position borders on the absurd.

In the highly unlikely event that a rock shard from the blasting lands on Defendants' property, GMP will compensate the Nelsons for any property damage it causes.[6]

D. Defendants' Claim That The Project Will Be Partially Located On Their Land Lacks Merit And Is Not Timely.

Defendant also seeks to dissolve the TRO based upon his claim that they are the owners of a portion of the property leased to GMP by Mr. Wileman. This injunction proceeding is not an appropriate time or forum to raise this claim. Although the Defendants raised this claim in the PSB proceedings, the PSB found that the Nelsons had submitted no evidence to substantiate the claim.[7]

GMP leased the now-disputed property from Trip Wileman, the owner of the property. Wileman is an indispensible party to Defendants' counterclaim. A 2002 survey Wileman had recorded in the land records demonstrated that the property Wileman leased to GMP belonged to him. In 2002, Mr. Nelson signed a survey stating that he agreed with the location of the "range line" claimed by Wileman as the boundary between the Nelson property and another parcel then owned by Nelson.[8] Wileman subsequently acquired adjacent property whose boundary with Nelson is formed by the same range line Nelson earlier agreed to, but which Defendants now claim is depicted in the wrong location on the 2002 survey. In his initial testimony to the Board

---

[6] In its Conclusion, Defendants suggest that because blasting is an ultra-hazardous activity, GMP is liable for any injury caused by the blasting. While GMP will approve no blasting that is unsafe to humans, its motivation is concern for the individuals' well-being and not legal liability. In fact, it would not be legally liable for injury to the campers as the law is that persons who "come to the danger" by putting themselves within the blasting safety zone are considered responsible for actively assuming the risk of injury. *See* Restatement (Second) of Torts, § 523, 524; *Handbook of the Law of Torts*, William Prosser, at 523-24 (4th ed. 1971).

To reemphasize, GMP's primary focus has been and continues to be conducting the necessary blasting in a way that best protects the personal safety of individuals, including its employees, within the proximity of the blasting. GMP simply wishes to move forward with its Project safely, and the TRO was intended to and will advance that goal.

[7] May 31 Order (Exhibit 3 to TRO Motion) at 152.

[8] This survey is attached here as Exhibit 14.

in the fall of 2010, Mr. Nelson only testified that the boundary was probably in the wrong place and he would file a lawsuit regarding it in December 2010. He never did. Defendants have never provided GMP with a survey contradicting the recorded survey. Defendants have had ample time to assert their claim, and have previously failed to do so.

Defendants have not offered any evidence to substantiate their boundary claim, which is inconsistent with the recorded deeds and surveys in the Lowell Land Records. Defendants' claim is also inconsistent with the boundary settlement evidenced by a written statement Donald Nelson signed on the Wileman survey and it is not susceptible to resolution in an injunction hearing. It should therefore not be considered at the TRO hearing.

Dated at Burlington, Vermont this 19th 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

Exhibit 12

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., Vermont Electric Power Company, Inc., and Vermont Transco LLC for a certificate of public good, pursuant to 30 V.S.A. Section 248, to construct up to a 63 MW wind electric generation facility and associated facilities on Lowell Mountain in Lowell, Vermont, and the installation or upgrade of approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield and Jay, Vermont

Entered: May 31, 2011

CERTIFICATE OF PUBLIC GOOD ISSUED PURSUANT TO 30 V.S.A. § 248

IT IS HEREBY CERTIFIED that the Public Service Board of the State of Vermont ("Board") this day found and adjudged that the construction of the proposed Kingdom Community Wind project (the "Project") will promote the general good of the State of Vermont, and a Certificate of Public Good ("CPG") is hereby issued to Green Mountain Power Corporation ("GMP"), Vermont Electric Cooperative, Inc., Vermont Electric Power Company, Inc., and Vermont Transco LLC (collectively, the "Petitioners"), subject to the following conditions:

1. Construction, operation and maintenance of the Project shall be in accordance with the findings and requirements set forth in today's Order in this Docket .

2. The Petitioners shall file for Board approval design-detail plans with the parties and the Board for major project components, including access roads, the crane path, collector lines, turbines, the step-up substation, and the various elements of the Transmission Component. Parties will have two weeks, from the date each set of plans is filed with the Board, to comment on the plans. The Petitioners cannot commence construction until the plans are approved.

3. The Petitioners shall obtain all necessary permits and approvals for the project. Construction, operation, and maintenance of the project shall be in accordance with such permits and approvals.

4. The Petitioners shall perform a pre-construction survey to determine the quality of television signal reception in the area surrounding the site of the project, and will address any degradation in signal quality that might result post-construction.

5. The Petitioners shall not sell any renewable energy credits (RECs) or other environmental attributes directly attributable to the project's electrical production to more than one consumer, or make any claims regarding those disaggregated attributes in any marketing or advertising if they have sold those disaggregated attributes.

6. The Petitioners shall file a complete transportation plan for Board review and approval prior to the commencement of construction activities. Parties with standing on this issue will have two weeks to file comments on the plan once it is filed.

7. The Petitioners shall take measures to ensure that disruptions to traffic flows are minimized and will implement appropriate safety measures, as described in today's Order in this docket.

8. The Petitioners must receive the necessary state and local permits for any public road or public facility improvements required by the project, as well as receive the necessary permits from the Vermont Agency of Transportation ("VTrans") for oversized vehicles.

9. The Petitioners shall pay for any costs associated with road improvements or modifications necessary to transport the project components to the site.

10. The Petitioners shall pay to repair any damage to roads caused by construction or other oversized vehicles.

11. The Petitioners shall conduct a survey to document existing road conditions with VTrans and officials of each affected town prior to transport of project components. Any damage caused by the transport activities will be measured against the pre-transport survey, and GMP shall be responsible for paying to repair any damage identified.

12. The Petitioners shall organize and conduct any necessary training for the area's first responders, and shall provide any and all specialized equipment needed for first responders to effectively provide their services prior to the start of ~~any significant construction~~ activities for which specialized equipment is needed.

13. Prior to commencement of construction, GMP shall file a proposed decommissioning plan that incorporates the decommissioning requirements of the Vermont Agency of Natural Resource's ("ANR") Memorandum of Understanding ("MOU") in addition to the details contained in its original proposed plan. The plan shall contain a detailed estimate of the costs of decommissioning, covering all of the activities specified in the decommissioning plan. The plan shall certify that the cost estimate has been prepared by a person(s) with appropriate knowledge and experience in wind generation projects and cost estimating. The decommissioning plan may allow GMP to contribute to the decommissioning fund as the construction process proceeds such that the funding level is commensurate with the costs of removing infrastructure in place. The amount of the fund may not net out the projected salvage value of the infrastructure. GMP may utilize a letter of credit to secure the full amount of the fund, and must demonstrate that the fund will be managed independently and be creditor and bankruptcy remote in the event of GMP's insolvency or business failure. The letter of credit shall be issued by an A-rated financial institution, shall name the Board as the designated beneficiary, and shall be an "irrevocable standby" letter that includes an auto-extension provision (i.e., "evergreen clause"). The decommissioning plan shall also include a decommissioning review trigger whereby if actual production falls below 50% of projected production during any consecutive two-year period, a decommissioning review is initiated. GMP, at its option, may establish a separate fund, which also must be creditor and bankruptcy remote, in which it may place the funds from the accumulated depreciation charges associated with the proposed project. As the amount in this fund grows, GMP may reduce the balance of the letter of credit in like amount such that the letter of credit secures the amount of decommissioning costs that is not secured by the balance in this

fund. Both the letter of credit, and the accumulated depreciation fund, should GMP opt to establish it, shall account for inflation over time. Parties with standing on this issue shall have two weeks from the date GMP files its decommissioning plan to file any comments in response. GMP may not commence construction of the proposed project until it has received Board approval of its decommissioning plan.

14. GMP shall submit to the Board, for review and approval, any executed lease agreements with involved private landowners. Any such lease agreements may be redacted to protect confidential business information. At a minimum, such lease agreements shall contain provisions which ensure that decommissioning can effectively occur in the event of GMP's insolvency or dissolution, the revocation of any permit issued to GMP, GMP's breach of any lease, or an order of the Board requiring decommissioning, and allow access to the impacted land for purposes of fulfilling any CPG condition, including access by representatives of the Vermont Department of Public Service ("Department"), the Board, and ANR. Upon approval by the Board, a notice of leasehold interest for each lease agreement shall be recorded in the land records of the relevant municipality.

15. GMP shall comply with all conditions and requirements set forth in the following agreements:

(a) The Memorandum of Understanding, dated February 24, 2011, between GMP and ANR ("Natural Resource MOU"), subject to the modifications described in today's Order in this docket.

(b) The Memorandum of Understanding, dated October 22, 2010, between GMP and ANR.

(c) The Memorandum of Understanding, dated February 22, 2011, between GMP and the Department, subject to the modifications described in today's Order in this docket.

(d) The Memorandum of Understanding, dated January 14, 2011, between GMP and Central Vermont Public Service Corporation ("CVPS MOU").

16. GMP shall file its site restoration plan, non-native invasive species monitoring plan,

ridgeline restoration monitoring and management plan, site access plan, management plans for Parcels 1, 2, 3 and 4, decommissioning revegetation plan, post-construction revegetation plan, stormwater features plan, and the invasive species management plan for review and approval by the Board. Parties with standing on the relevant issues shall have two weeks from the date GMP files each plan to file any comments in response. GMP may not commence construction until it has received Board approval of these plans.

17. GMP shall secure prudent fragmentation-connectivity easements of adequate size and location, pursuant to the requirements of paragraph 3.2 of the Natural Resource MOU, and file them for Board approval~~, prior to commencing construction.~~ Parties with standing on the issue shall have two weeks to file comments from the time any easements are filed. The easements must be approved, executed, and conveyed by December 31, 2011. GMP shall cease all construction activities until such time as the fragmentation-connectivity easements are approved, executed, and conveyed.

18. GMP shall file the revised management plan for the West Farman Hill Serpentine Outcrop for Board approval prior to commencing construction of the Transmission Component.

19. Prior to construction, the Petitioners shall submit to the Board and parties, ~~the final~~ a draft System Impact Study ("SIS"). Prior to October 1, 2011, the Petitioners shall submit to the Board and parties, the final SIS for a final determination by the Board regarding whether the SIS fully satisfies any remaining issues associated with system stability and reliability. Parties with standing on the issue will have two weeks to comment on the SIS and any required upgrades at that time. GMP, except as identified in the CVPS MOU, shall be responsible for all costs of system upgrades or changes necessary to ensure that the project does not cause adverse impacts to the transmission system. In addition, the Petitioners must obtain Board approval for any necessary upgrades identified in the SIS not already included in the CPG prior to construction of ~~the project~~ such upgrades, including any Section 248 CPGs that may be required for the upgrades.

20. [DELETED] ~~The Petitioners shall implement all network upgrades recommended by the Feasibility Study for the project.~~

21. Any revisions required to Attachment A of the MOU between the Department and GMP shall be filed with the Board and the Department for final determination that the interconnection option for the proposed project remains the least-cost option among alternatives.

22. The construction of the proposed project shall not begin prior to Board issuance of a CPG approving the proposed VELCO Jay Tap Substation and an amended CPG approving the VEC Jay Tap Switching Station.

23. The turbines shall be set back a distance of at least 60 meters from the nearest property line, measured from the base of the wind turbine(s).

24. Signage shall be posted around the wind turbines to alert members of the public who are present in close proximity to the wind turbines to the potential danger from ice during winter operating conditions.

25. Turbines for the proposed project shall meet IEC 61400-1 or IEC WT01:2001 certification requirements, including periodic testing of the turbines and blades.

26. Prior to commencement of construction, Petitioners shall prepare a winter operating protocol, subject to review by the parties and approval by the Board, which shall require that the proposed turbines be placed in pause mode under any of the following circumstances: (a) installed ice monitoring device(s) or heated wind sensors (installation subject to reliability testing) detect if unsafe conditions are present due to icing conditions; (b) ice accretion is recognized by the remote or on-site operator; (c) air temperature, relative humidity and other meteorological conditions at the site are conducive to ice formation; (d) air temperature is several degrees above 0 degrees Celsius after icing conditions; and, (e) any other weather conditions that may result in the unsafe operation of the turbines. The winter operating protocol shall include periodic testing to document protocol performance. Parties with standing on the issue will have two weeks to comment on the winter operating protocol from the time it is filed.

27. GMP shall submit a plan for Board approval prior to commencing turbine installation, that details how GMP will employ best management practices related to the installation, maintenance, and eventual disposal of the SF6-containing circuit breakers in order to avoid or

minimize SF6 emissions.

28. ~~When the~~ Petitioners shall have three weeks from the time that they obtain access to all archaeologically sensitive areas, whether by landowner consent or by condemnation decree, to file for Board approval a ~~file the final design plans for the proposed project, they must~~ demonstratione that remaining archeological studies are completed in accordance with the results of the Phase I studies and any needed Phase II study. No earth disturbing activities may take place in any such area until after the required studies are completed and the demonstration has been filed with and approved by the Board.

29. The Petitioners must obtain the INDC and INDS permits. Petitioners shall file the INDC permit with the Board prior to commencing any earth-disturbing activity, and file the INDS permit prior to creating any impervious surface. If the construction measures and design plans approved in the INDC and INDS permits represent a substantial change from the plans and material representations previously submitted to the Board, parties will be given the opportunity to review the permits, file comments and to request a hearing. If a party requests the opportunity for a hearing, it must demonstrate why a hearing is necessary.

30. The Petitioners shall file the new EPSC and construction-phase stormwater permit prior to commencing the deep-ripping and scarifying phase of decommissioning. Parties with standing on this issue will be provided an opportunity to comment and request a hearing. If a party requests the opportunity for a hearing, it must demonstrate why a hearing is necessary.

31. The Petitioners must provide sufficient mitigation for impacts to high-elevation wetlands. The Petitioners must file their proposed mitigation for impacts to high-elevation wetlands with the Board for approval prior to commencement of construction. Parties with standing will have two weeks, from the time the mitigation proposal is filed, to file comments and request a hearing. If a party requests the opportunity for a hearing, it must demonstrate why a hearing is necessary.

32. The Petitioners must obtain and file with the Board their Army Corps of Engineers Section 404 permit and state Section 401 Water Quality Certification, and the State Conditional Use Determination.

33. The Petitioners shall develop erosion prevention and sediment control plans for the entire proposed project, including the Transmission Component, for approval by ANR and the Board. The plans must include plans specific to any shoreline crossings to ensure that shoreline banks will be stabilized.

34. The Petitioners shall apply for and take all reasonable steps to obtain approval of the Object Collision Avoidance System ("OCAS"), and shall install the OCAS promptly should it obtain approval. If the Petitioners are unable to obtain approval of the OCAS, they shall submit for review by the Department and approval by the Board an alternative Lighting Mitigation Plan, within 3 months of notification of disapproval of the OCAS. Parties with standing on the issue shall have two weeks to file comments from the time any alternative Lighting Mitigation Plan is filed.

35. Blasting associated with construction of the proposed project shall be minimized to the extent practicable and performed only during the hours of 9:00 A.M.-5:00 P.M., Monday-Friday, with the exception of State holidays.

36. All blasting shall be carried out by licensed and certified blasting technicians. All blasting will be performed in accordance with any and all applicable laws and regulations, including, but not limited to, U.S. Department of Interior Rules 816.61-68 and 817.61-68 and the Blasting Guidance Manual, Office of Surface Mining, Reclamation and Enforcement, U.S. Department of Interior to limit peak particle velocity and ground vibration to safe levels. Noise and air blast effects shall be limited through application of proper techniques and blasting mats will be used where needed to limit the occurrence of flyrock.

37. Prior to performing any blasting for the proposed project, the Petitioners shall develop and file for Board approval, a blasting plan that includes a pre-construction survey of any residential or agricultural water sources within one-half mile of any proposed blasting site, and will arrange for a public information session with surrounding landowners to address concerns related to blasting. Parties with standing on this issue will have two weeks, from the date this plan is filed with the Board, to comment on the plan. The Petitioners cannot commence any

blasting activities until the plan is approved.

38. In the event surrounding landowners express concern regarding the impacts of blasting on wells or other structures on their property, the Petitioners shall perform evaluations to determine if any damage has occurred as a result of blasting activities and, if so, remediate any such damage.

39. The Petitioners shall construct and operate the proposed project so that the turbines emit no prominent discrete tones pursuant to ANSI standards at the receptor locations, and project-related sound levels at any existing surrounding residences do not exceed 45 dBA(exterior)(Leq)(1 hr) or 30 dBA (interior bedrooms)(Leq)(1 hr).

40. In the event noise from operation of the proposed project exceeds the maximum allowable levels, the Petitioners shall take all remedial steps necessary to bring the sound levels produced by the turbine(s) into compliance with allowable levels, including modification or cessation of turbine(s) operation.

41. Prior to commencement of construction, Petitioners shall prepare a Noise Monitoring Plan, subject to review by the parties and approval by the Board, which is consistent with the Plan recently approved by the Board in Docket 7156, but which extends from construction through the first two years of operations and includes: (a) monitoring for low frequency sound with the same regularity as monitoring for all frequencies; (b) a monitoring program to confirm under a variety of seasonal and climactic conditions compliance with the maximum allowable sound levels described above; (c) a means for ensuring that noise monitoring events shall be timed to coincide with those time periods when Petitioners' modeling indicates the likelihood that the noise reduced operation ("NRO") mode will be triggered; (d) monitoring reports that document every instance when NRO mode is triggered, with a description of how NRO affected operations; (e) at the request of a homeowner, monitoring to ensure compliance with the interior noise standard; and, (f) a process for complaint resolution shall be established for the entire life of the project.

42. For proposed project substations, new power transformers shall comply with sound emissions at least 5 dBA below NEMA TR-1 standards, unless the Petitioners can demonstrate,

subject to Board review and approval, that these transformers are not cost-effective.

43. GMP shall fulfill its obligations under its agreement with the Town of Lowell.

44. This Certificate of Public Good shall not be transferred without prior approval of the Board.

Dated at Montpelier, Vermont, this 31 day of May ,2011.

s/ James Volz)
) PUBLIC SERVICE
)
s/ David C. Coen) BOARD
) OF VERMONT
)
s/ John D. Burke)

OFFICE OF THE CLERK

FILED: May 31, 2011

ATTEST: s/ Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Exhibit 13

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628

Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Vermont Electric Power Company, Inc. for a certificate of public good, pursuant to 30 V.S.A. Section 248, to construct up to a 63 MW wind electric generation facility and associated facilities on Lowell Mountain in Lowell, Vermont, and the installation or upgrade of approximately 16.9 miles of transmission line and associated substations in Lowell, Westfield and Jay, Vermont	)

Order entered: 7/29/2011

ORDER RE AMENDED BLASTING PLAN

On May 31, 2011, the Public Service Board ("Board") issued an Order (the "Order") and Certificate of Public Good ("CPG") in this docket approving, subject to certain conditions, the construction and operation of the proposed wind electric generating facility. Among other things, the Order required the Petitioners to make a number of post-certification compliance filings. On June 6, 2011, the Petitioners submitted their first set of compliance materials for party comment and Board review. Among the materials filed on June 6, 2011, was the Petitioners' proposed Final Blasting Plan.

On July 19, 2011, the Board issued its Order on the Petitioners' first round of compliance filings, including the proposed Final Blasting Plan. After considering comments on the proposed plan that were filed by the Agency of Natural Resources ("ANR") and Lowell Mountains Group on June 21 and 30, 2011, respectively, as well as a letter from Green Mountain Power Corporation ("GMP") responding to ANR's comments, filed on July 12, 2011, the Board directed the Petitioners to file an amended blasting plan that incorporated a number of specific revisions to address concerns identified by the Board's review of the proposed plan.

On July 27, 2011, GMP filed its proposed Amended Blasting Plan with the Board. We have reviewed the Amended Blasting Plan and conclude that GMP has incorporated all of the amendments required by our July 19, 2011 Order. Accordingly, the Amended Blasting Plan is approved.

SO ORDERED.

Dated at Montpelier, Vermont, this 29th day of July, 2011.

s/James Volz)
)
) PUBLIC SERVICE
)
s/David C. Coen) BOARD
)
) OF VERMONT
s/John D. Burke)

A TRUE COPY
OFFICE OF THE CLERK

FILED: July 29, 2011

ATTEST: _____
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.

Blasting Plan

for

Kingdom Community Wind

Meek Road, Lowell, VT

Date: 20 May 2011

Revised: 26 July 2011

Prepared By: Maine Drilling & Blasting, Inc
Western - VT Division
69 Pitman Road

Websterville, VT 05641
Telephone: 802-479-3341
Fax: 802-479-0165

Daniel M Werner Jr.
Name

Division Manager
Title

Table Of Contents

General

Maine Drilling & Blasting, Inc (" MD & B")considers safety as the priority during all phases of blasting operations. We are knowledgeable of and will follow all local, state and federal regulations related to transportation and use of explosives. The project specifications and conditions have been reviewed. Details of procedures for pre-blast surveys, explosives use, blast security, monitoring and documentation are enclosed.

Public Information Sessions; Pre- and Post-Blast Testing

Green Mountain Power Corporation ("GMP") will arrange for a public information session with surrounding landowners to address concerns related to blasting. In the event surrounding landowners express concern regarding the impacts of blasting on wells or other structures on their property, GMP shall perform evaluations to determine if any damage has occurred as a result of blasting activities and, if so, remediate any such damage.

Pre-Blast Surveys / Notifications

Pre-blast surveys will be offered of property and structures of all property owners within one-half mile radius of the Project site. At a minimum, MD & B and GMP will send a certified letter, return receipt requested to each property owner within one-half mile of the Project that explains why pre- and post-blast surveys and well monitoring are being offered. MD & B will ask all occupants within the one-half mile to describe the location on their property of structures and of water sources, agricultural or residential. The letter will also announce the date and time of a public information session to address the blasting process and answer questions, as well as provide contact information for the MD & B representative who is able to answer questions that property owners may have about either the letter or the surveys. Copies of the letter return receipt will be filed with the Vermont Public Service Board. Appointments will be arranged for those owners who desire a survey, which will be conducted by an MD & B representative. Results of those surveys will be documented through video or still photographs and appropriate narration or written reports.

Blast Monitoring

All blasts will be monitored by a representative of Maine Drilling & Blasting, Inc who has been properly trained in the setup and use of seismic monitoring equipment. At least one seismograph will be in use at all times. Placement of monitoring equipment will be at the nearest structure to the blast site. Maine Drilling & Blasting, Inc monitoring equipment will consist of Instantel type seismographs. Details are enclosed. Results of blast monitoring will typically be available before the next blast, usually immediately following a blast. Results can be reviewed and modifications can be made to the blast design for the next blast if necessary.

Sequence of Blasting

All blasting operations will be strictly coordinated with Green Mountain Power Corp. and General Contractor. Emphasis will be on the safe and efficient removal of the rock existing on this project without impact to surrounding structures. Blasts will be developed so as to create adequate relief which will minimize ground vibrations and offer the greatest protection possible to the surrounding structures.

Blasting Procedures

1. Blasting operations shall commence after 9:00 AM and cease before 5:00 PM, Monday through Friday, with exception of state holidays.

2. Blasting cannot be conducted at times different from those announced in the blasting schedule except in emergency situations, such as electrical storms or public safety required unscheduled detonation.

3. Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted.

4. Access to blasting area shall be regulated to protect the public from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry before each blast and until the perimeter's authorized representative has determined that no unusual circumstances exist after the blast. Access to and travel in or through the area can then safely resume.

5. Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

6. All blasts shall be made in the direction of the stress relieved face previously marked out or previously blasted.

7. All stemming shall be minimum as specified using clean, dry 3/8" crushed stone.

8. Blasting mats shall be used as necessary to cover blasts.

9. The Blasting Contractor shall insure that extra safety and judgment is exercised by his blaster to prevent the simultaneous blasting of numerous holes.

Blasting Mats

Blasting mats and backfill will be used to control excessive amounts of rock movement when blasting in close proximity to structures. Placement and number of mats are typically determined by the blaster. Mats will be placed so as to protect all people and structures on, or surrounding the blast site and property. Rubber tire type blasting mats will be utilized on this project and will be approximately 12' x 12' in size; Rubber mat @ 12' x 12' 38 lbs./s.f. = 5,472 lbs./ea.

Blast Security and Warning Whistles

Each blast will be preceded by a security check of the affected area and then a series of warning whistles. Communications will be made with job site supervisors and local officials as required to ensure the safest possible operation. All personnel in the vicinity closest to the blast area will be warned. The warning whistles will follow the following sequence:

3 Whistles - 5 Minutes to Blast

2 Whistles - 1 Minute to Blast

1 Whistle - All Clear

The blast site will be examined by the blaster prior to the all clear signal to determine that it is safe to resume work. No blast will be fired until the area has been secured and determined safe.

Explosives

All explosives will be stored in approved magazines when not in use. Overnight storage will be in an licensed secure magazine site.

Enclosed are Technical Data and MSDS sheets for the explosive products proposed for use on this project. Any one of, or a combination of these products may be in use at any one time on the site.

Blaster Qualifications

All Maine Drilling & Blasting, Inc blasters on this job will be licensed in the State of Vermont and have received various amounts of training in the safe use and handling of explosives. Additionally, Maine Drilling & Blasting, Inc blasters are familiar with all OSHA Regulations, State Regulations, and Federal Regulations regarding construction site safety, including transportation, use, and handling of explosive materials. Weekly safety meetings are to be held on site by the Maine Drilling & Blasting, Inc job foreman, with a record of that meeting returned to the Maine Drilling & Blasting, Inc office.

Blasting Personnel

All blasting operations shall be conducted by experienced, trained and competent persons who understand the hazards involved. Persons working with explosive materials shall:

1. Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements.

2. Be capable of using mature judgment in all situations.

3. Be of good physical condition and not addicted to intoxicants, narcotics, or other similar type of drugs.

4. The person(s) responsible for the explosives shall possess current knowledge of the local, State and Federal laws and regulations applicable to his work.

5. The person(s) responsible for the explosives shall have obtained a Certificate of Competency or a license as required by State law.

Licenses and Permits

Maine Drilling & Blasting, Inc is fully licensed and insured for the transportation, use, and handling of explosives. Evidence of insurance is available. Blasting permits will be applied for as required from the local authorities by the Maine Drilling & Blasting, Inc Blaster/Foreman when blasting is about to begin.

Blast Vibration

Blast vibration will be monitored at the blast site, typically at the structure(s) closet to the blast site. Vibration limits will closely follow limits described in the project specifications and the State Regulations. Blast designs will be modified as required to stay within the guidelines and meet project schedules as well. Blasting operations will be modified accordingly when approaching buildings and utilities. Enclosed are preliminary vibration calculations based on known distances to the structures of concern and anticipated initial blast designs.

Ground vibration peak particle velocity limits shall not exceed:

* Up to 30 Hertz: 0.5 inches per second
* Thirty-one to 40 hertz: 1.0 inches per second
* More than 40 Hertz: 2.0 inches per second

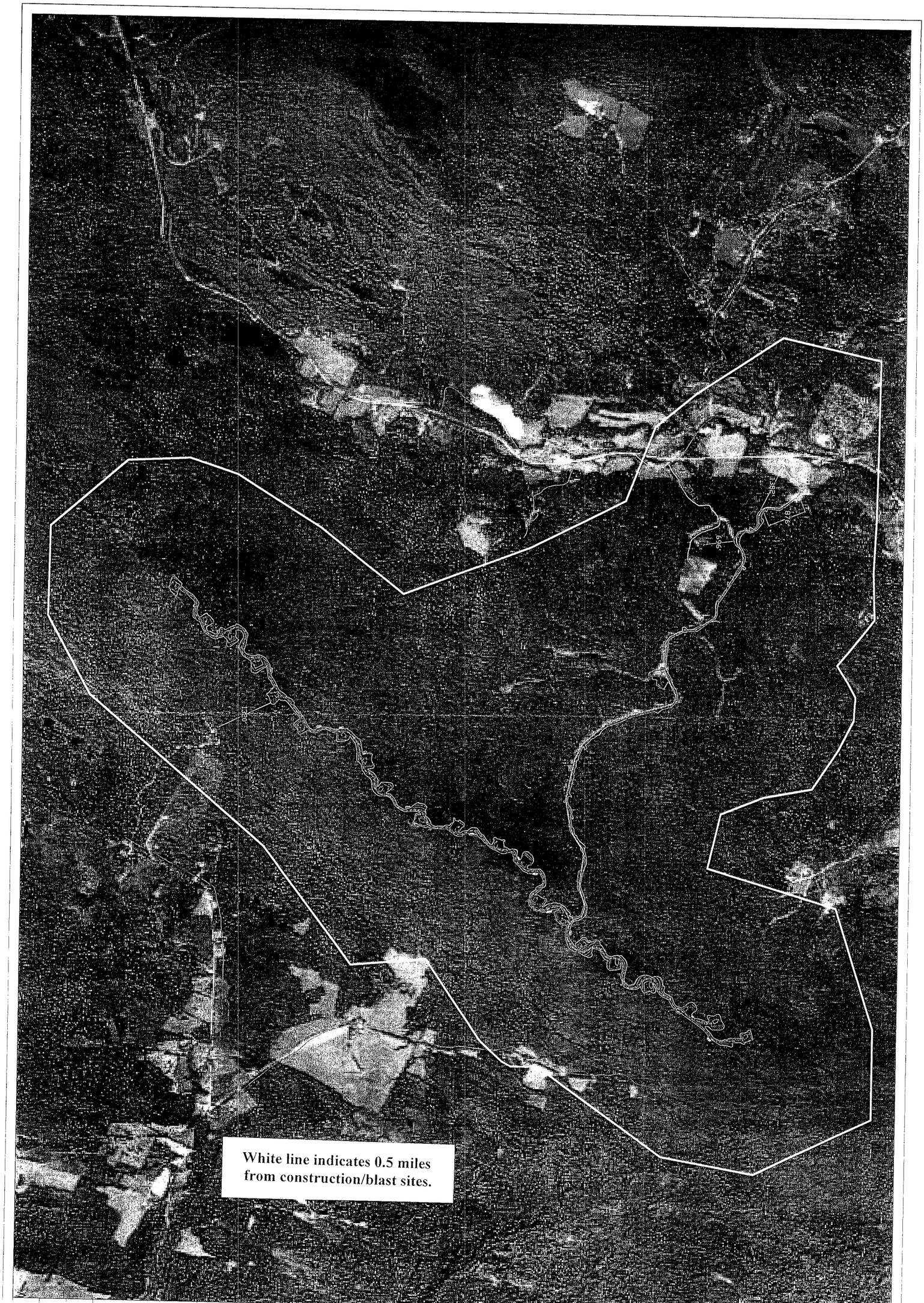
Airblast overpressure level not to exceed 133 peak dB (linear) two Hertz high -pass system.

Blast Reports

Enclosed is a sample of a Maine Drilling & Blasting, Inc Blast Report. This report will be filled out for each blast and copies supplied as needed.

Typical Blast Design

Enclosed are what would be considered typical blast designs for this project. Hole sizes, depths, spacing and loading information is provided. These designs are to be considered a good starting point. Modifications are usually made, if necessary, following the first blasts to meet control and seismic considerations.



KINGDOM COMMUNITY WIND PROJECT

LOWELL, VT

2640' OFFSET TO BLASTING

Maine Drilling & Blasting

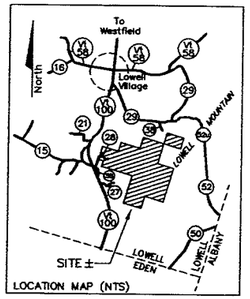
REV	DATE	DESCRIPTION

DRAWN: AHF

DATE: 6/2/2011

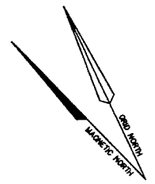
SCALE: 1" = 900'

Exhibit 14



LOCATION MAP (NTS)

TOTAL ACREAGE:	
CONTIGUOUS ACREAGE	= 1321.9 AC.±
LOT 10 / RANGE 3	= 94.0 AC.±
	1415.9 AC.±



– LEGEND –

- ● No. 5 REBAR – FOUND
- ● No. 5 REBAR w/GOVE LD. CAP – FOUND
- ◎ No. 5 REBAR w/R. FREY LD. CAP – FOUND
- ● No. 5 REBAR w/BLAIS LD. CAP – SET
- ▲ UNMONUMENTED POINT ON PROPERTY LINE
- ℄ CENTERLINE
- R/W RIGHT OF WAY
- EXISTING BLAZED LINE
- BLAZED & PAINTED YELLOW (2002)
- WIRE FENCE
- STONE WALL
- BROOK (APPROX. LOCATION)

– NOTES –

(1) DIMENSIONS COMPUTED FROM CLOSED ELECTRONIC TOTAL STATION FIELD MEASUREMENTS WHICH MEET MINIMUM STANDARDS ESTABLISHED FOR RURAL SURVEYS.

(2) BEARINGS REFER TO MAGNETIC NORTH AS DETERMINED BY A COMPASS READING OF THE INITIAL CONTROL TRAVERSE LEG.

(3) THIS PLAN REPRESENTS THE FOUR PARCELS OF LAND CONVEYED TO BEN C. WILEMAN, III FROM GREEN MOUNTAIN COMPANY BY WARRANTY DEED DATED OCTOBER 4, 2001, AND RECORDED IN BK. 41, PGS. 73–76 OF THE TOWN OF LOWELL LAND RECORDS.

(4) THE LOCATION OF A RIGHT OF WAY TO LOT 10 / RANGE 3 (PARCEL II) DESCRIBED IN DEEDS AS RUNNING THROUGH THE PASTURE ON THE SOUTHERLY SIDE OF THE "DOYON" FARM WAS NOT IDENTIFIED. ANY OTHER EXISTING RIGHTS OR EASEMENTS, UNLESS SHOWN ON THE PLAN, WHICH MAY ENCUMBER OR BE APPURTENANT TO THIS LAND, WERE NOT IDENTIFIED AND LOCATED AS A PART OF THIS SURVEY.

(5) BEARINGS AND DISTANCES ARE TIE DIMENSIONS FROM CORNER TO CORNER. ACREAGES ARE TO FENCELINES AND BLAZED LINES AS LOCATED. ACREAGE INCLUDES ANY PORTION OF TOWN ROAD #28 R/W WITHIN THE BOUNDARIES SHOWN.

(6) THE BOUNDARY ESTABLISHED BETWEEN LAND OF WILEMAN AND LAND OF NELSON WAS MARKED AS AGREED UPON BETWEEN BOTH PARTIES. THE LOCATION OF THE LINE BETWEEN RANGE 2 AND RANGE 3 IN THIS AREA WAS UNCERTAIN. (Refer to Notarized Signatures Confirming Agreement)

BEN C. WILEMAN, III Date 5/23/02

DONALD D. NELSON Date

SHIRLEY M. NELSON Date 5-23-02

STATE OF VERMONT
COUNTY OF ORLEANS
At Lowell this 23 day of MAY
personally appeared BEN C. WILEMAN III
who swore to the truth of the foregoing.
Before me, Notary Public
My Commission Expires 2/03

STATE OF VERMONT
COUNTY OF ORLEANS
At Lowell this 23 day of MAY
personally appeared DONALD & SHIRLEY M. NELSON
who swore to the truth of the foregoing.
Before me, Notary Public
My Commission Expires 2/03

(7) MAP No. 195–01

THIS SURVEY WAS BASED ON EXISTING PHYSICAL EVIDENCE OF BOUNDARY LINES AND IS CONSISTENT WITH INFORMATION FOUND ON FILE IN THE TOWN OF LOWELL LAND RECORDS. REFERENCE IS MADE TO SURVEYS OF ADJOINING PROPERTY AS NOTED ON THE PLAN.

STATE OF VERMONT
NORBERT A. BLAIS
No. 409
REGISTERED LAND SURVEYOR

Norbert A. Blais

PLAN of LAND
LOCATED IN
LOWELL, VERMONT
PREPARED FOR
BEN C. WILEMAN, III

SCALE: 1" = 600' SURVEYED: N.B., J.B., D.R., J.D.
DATE: MAY 9, 2002 DRAWN: D.R.

THIS PLAT MEETS THE REQUIREMENTS OF 27 VSA 1403.

Norbert A. Blais

BLAIS SURVEYING COMPANY
NEWPORT, VERMONT

ORIGINAL INK DRAWING ON MYLAR Norbert A. Blais Signature

REDUCED