

STATE OF VERMONT

**SUPERIOR COURT
ORLEANS UNIT**

**CIVIL DIVISION
Docket No. 256-10-11 Osev**

GREEN MOUNTAIN POWER)
CORPORATION,)
Plaintiff,)
)
v.)
)
DONALD AND SHIRLEY)
NELSON,)
Defendants.)
)
v.)
)
MAINE DRILLING & BLASTING,)
INC. and MOOSE MOUNTAIN)
FORESTRY, LLC,)
Counterclaim Defendants.)

STIPULATION TO RESOLVE AND SETTLE PENDING DISPUTES AND CLAIMS

Green Mountain Power Corporation (GMP) and Donald and Shirley Nelson (Nelsons) have agreed to settle and resolve all disputes remaining among the parties and state the terms of their settlement stipulation as follows:

In consideration of the terms and conditions, covenants, commitments and representations set forth below, and for other good and valuable consideration, receipt whereof is hereby acknowledged, GMP and the Nelsons (collectively, the Parties) hereby stipulate and agree as follows:

1. The Parties acknowledge that the exact location of the boundary between the Nelsons' land and the land owned by Moose Mountain Forestry LLC (subject to easements rights in favor of GMP) in Lot 8 along Range Line 2-3 in the Town of Lowell has been the subject of

dispute and litigation between the Parties. Although the Parties have expended significant time and resources in litigating their boundary dispute, it remains uncertain how the courts will resolve the dispute or where the courts will determine the boundary line is located.

2. Similarly, the Parties agree that they will incur additional significant expenses and risk if they continue to litigate their tort claims against each other (nuisance, interference with contract, trespass, and infliction of emotional distress) and at present it remains uncertain how a court will resolve those claims.

3. In order to avoid the cost, effort and uncertainties of further litigation, the Parties have agreed to enter into this Settlement Stipulation. This Stipulation represents a compromise to avoid further litigation. By entering this Settlement Stipulation, neither Party makes any admission concerning the strength or weakness of any of their claims.

4. GMP agrees to pay the Nelsons \$50,000 and in return the Nelsons agree to convey to GMP by quitclaim all and any interests, rights or claims they own or have in all land located between a boundary line determined by surveyor Paul Hannan as reflected on **Exhibit 1** to this Stipulation and a boundary line determined by surveying company Blais – Horizons Surveying in Lot 8 (the “Disputed Land”). Said quitclaim will confirm that the westerly boundary of the Nelsons’ land to be conveyed to GMP in Lots 4 through 8 of Range 2 in the Town of Lowell, Vermont is the boundary line set forth on the survey prepared by Blais - Horizons Surveying recorded at Map Book 2, Page 219 (Slide 138) of the Town of Lowell Land Records.

5. The Nelsons represent and warrant that they have not conveyed or given any rights or interests in the Disputed Land to any other person or entity. GMP shall indemnify and

hold harmless the Nelsons from any liability that otherwise may or could attach to the Nelsons in connection with this quitclaim conveyance.

6. GMP agrees to pay the Nelsons \$1,250,000 to purchase all of the land (excepting the land to be conveyed to GMP by quit claim for \$50,000 as described in paragraph 4 above) the Nelsons now own in the Town of Lowell, Vermont, with improvements thereon and including the Nelsons' home farm residence. The Nelsons shall make the conveyance to GMP described in the foregoing sentence by warranty deed. The Parties contemplate that the quitclaim conveyance described in paragraph 4, and the conveyance with warranties of all other lands of Nelsons located in Lowell, shall be contained in the same deed.

7. Nelsons shall convey good and marketable title to the Lowell property described in paragraph 6 above free from all defects and encumbrances, and in substantially the same condition as now exists. Upon execution of this Stipulation, GMP shall promptly cause title to the property to be examined and shall notify Nelsons in writing of any encumbrances or defects in title, excluding existing utility easements and other pre-existing rights of way now of record, as to the Lowell property and the easements to be conveyed pursuant to paragraph 10 below. Thereafter, Nelsons shall take such actions required to cure the specified defect(s) and remove the encumbrance(s) prior to the closing on the conveyances. Nelsons represent and agree that they have not encumbered the property or conveyed any rights or interests in the property, except such utility easements or pre-existing rights of record now of record, and shall not encumber the property or convey any rights or interests in and to the property prior to closing on the sale of the property to GMP. The Parties agree to execute and deliver documents customary to a sale by Warranty Deed of land with residential building thereon, and easements by warranty, including,

but not necessarily limited to: customary tax proration; Vermont Property Transfer Tax Return; Certificate of Non-Foreign Status; lead-based paint, smoke alarm and carbon monoxide certifications; payoffs (if applicable); affidavits required by any title insurer providing title insurance on the property and easement rights; and a settlement statement. Any real estate agent or broker fees or commission due shall be paid by Nelsons. GMP shall pay the Vermont Property Transfer Tax due to the State of Vermont. The deed and other transfer documents shall be drafted by attorneys for GMP, with cooperation from counsel for Nelsons, and shall be in form acceptable to both Parties. The Nelsons agree to provide through their attorney information in their possession useful in the preparation of these deeds. GMP shall make the payments to the Nelsons specified in paragraphs 4 and 6 of this Stipulation (as may be adjusted for closing items as provided in this paragraph 7 above) at the time of the conveyances described above, which shall be within 30 days of the date of the signing of this Stipulation, unless extended as necessary to obtain receipt of any and all permits and approvals necessary to subdivide the 35 acre parcel to be retained by the Nelsons as described in paragraph 9 of this Stipulation from the remainder of the Nelsons' property to be sold to GMP, and for continued occupancy of the home farm by the Nelsons as described in paragraph 14 below. GMP acknowledges that the Nelsons' have an underground storage tank ("UST") located on the Lowell Property that is currently used for heating the home farm. GMP shall accept the Property with the UST as-is.

8. During any time the Nelsons continue to occupy the house on the Lowell property (as described in paragraph 14 below), the Nelsons and GMP shall abide by the terms and conditions set forth in the Occupancy Agreement attached to this Settlement Stipulation as **Exhibit 2.**

9. The Nelsons shall retain land they presently own located in the Town of Albany conveyed to them under a warranty deed recorded in Book 35 at Page 132, of the Albany Town Records, which consists of a vacant parcel of land of 35 acres, more or less ("Retained Lands"), contiguous to the Nelsons' Lowell land. The warranty deed conveying the Nelsons' Lowell lands to GMP shall provide for a reserved 50 foot wide access easement through a portion of the Lowell land from the Bayley Hazen Road to and for the benefit of said Retained Land, the approximate location of which is designated on the map attached hereto as **Exhibit 3** and described as follows:

Starting on the Bayley Hazen Road, approximately 450 feet North, beyond the point where the said road crosses the Albany/Lowell town line (T/L) and North of the second culvert from said T/L. Thence running in an easterly direction along the North side of the ditch line to the said Albany/ Lowell T/L, thence turning northerly at an angle to the left and running in a Northeasterly direction along the said T/L to approximately the middle of the NW boundary line of the Albany lot so called, thence turning easterly at an angle to the right and running to the T/L which forms the northwesterly boundary of the said Albany lot. The right of way shall be 50 feet wide and shall run parallel to the T/L at a distance of approximately 50 feet from the T/L to keep it out of the woods and in the cleared field to the point where it connects to the Albany lot at approximately the middle of the NW boundary line of the Albany lot so called.

The final location of the right of way shall be as reasonably agreed upon by the Parties. Nelsons shall have the right, but not the obligation, to construct an access road within the 50' wide access easement, and if such a road is constructed by the Nelsons, the Nelsons shall be responsible for its maintenance and repair. GMP shall have the right to use of the lands subject to the access easement provided it does not interfere with Nelsons' access rights, and if GMP uses an access road it shall pay a proportionate share of the costs based on use to repair and maintain the road.

10. The Nelsons shall also grant GMP easement rights over, and impose restrictive covenants and a right of first refusal on, the Retained Lands, in substantially the form of the

document attached hereto as **Exhibit 4**. Such easements, covenants and right of first refusal shall run with the land and shall benefit the property to be conveyed to GMP and GMP's Wind Farm.

11. The Nelsons agree that they shall not raise any future objections, claims or complaints regarding GMP's Kingdom Community Wind Farm ("KCW") or GMP's construction or operation of KCW that is based upon, arises from or is related to the Nelsons' experience or perceptions associated with their ownership or occupancy of their Lowell Farm property or their Albany land, it being understood that, except as provided in the last sentence of this paragraph, the Nelsons are relinquishing their right to assert or comment on any adverse impact from the KCW or GMP's construction or operation of it on their Lowell or Albany land or on themselves or their guests while occupying said land. The Nelsons are, however, permitted to continue to express their personal opposition to wind power developments on Vermont ridgelines or elsewhere. They are barred by this Stipulation, except as provided below, from referring to or referencing in support of any statements they may make or positions they may take their perceptions or experience that are in any way associated with or based on their past, present or future occupancy or ownership of their Lowell and Albany, Vermont properties. Nothing in this provision shall prevent the Nelsons from providing truthful testimony in response to a lawful subpoena issued from a court or governmental agency, board or entity of competent jurisdiction.

12. GMP agrees that it will not oppose a petition for post-conviction relief or for any similar remedy that may be filed on behalf of the six persons whose trespass convictions were affirmed by the Vermont Supreme Court at 2013 VT 108.

13. GMP and its consultant shall return to the Nelsons all copies of the Nelsons' computer hard drive that were made and provided in connection with discovery in the litigation between the parties.

14. Once the Stipulation is signed by all parties and once the above-captioned cause is dismissed, the Nelsons shall be permitted to reside in their former residence for up to two years pursuant to the Occupancy Agreement attached hereto as Exhibit 2. During that same two year period, they shall have the right, at their sole cost and risk, to remove the hunting cabin now located on their Lowell property to be conveyed to GMP.

15. All claims and counterclaims and third-party claims in the above-captioned litigation shall be dismissed with prejudice not later than the closing on the conveyance of the Nelsons' land in Lowell to GMP.

16. The Nelsons shall exchange full general releases with GMP, Maine Drilling & Blasting, Inc., Moose Mountain Forestry LLC and Ben C. Wileman III, in connection with this Settlement Stipulation in the form set forth on **Exhibit 5**, not later than the closing on the conveyance of the Nelsons' land in Lowell to GMP. It shall be the responsibility of GMP to secure the releases from Maine Drilling & Blasting, Inc., Moose Mountain Forestry LLC and Ben C. Wileman III.

17. This Settlement Stipulation constitutes a comprehensive agreement; all prior understandings and discussion are merged into this Stipulation. The Parties shall execute such additional documents as are reasonably requested to implement this Settlement Stipulation.

18. This Settlement Stipulation shall be interpreted under the laws of the State of Vermont. The Parties were represented by counsel in the drafting of this Stipulation, and the

presumption against the drafter shall not apply to the construction of this Stipulation. This Stipulation shall be binding and enforceable against the successors, heirs and assigns of the Parties.

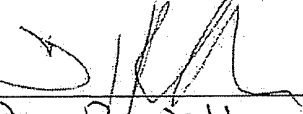
19. This Settlement Stipulation may be signed in two or more counterparts.

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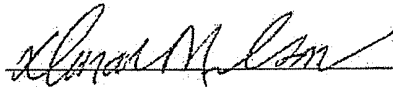
SIGNATURE PAGE FOLLOWS

Date: 4/11/14

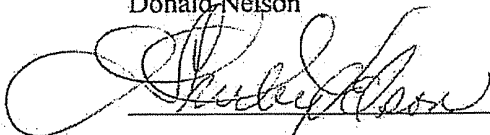
Green Mountain Power Corporation

By 
Don Rendall

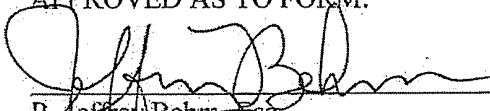
Dated: 4/11/14


Donald Nelson

Date: 4-11-14


Shirley Nelson

APPROVED AS TO FORM:


R. Jeffrey Behar, Esq.,
Attorney for GMP



P. Scott McGee, Esq.,
Attorney for the Nelsons

Exhibit 1 Disputed Boundary Line

Exhibit 2 Form of Occupancy Agreement

Exhibit 3 Approximate Location of Right of Way

Exhibit 4 Form of Deed of Easements and Restrictive Covenants and Grant of Right of First Refusal

Exhibit 5 Form of General Release