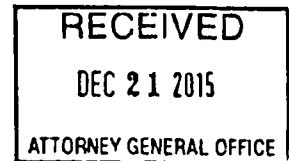


December 17, 2015



William E. Griffin, Esq.
Chief Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Re: Unauthorized Practice of Law by Annette Smith

Dear Bill:

I hope this letter finds you well.

I write to share my concern that Annette Smith, Executive Director of Vermonters for a Clean Environment, has engaged in the unauthorized practice of law in connection with a number of proceedings before the Public Service Board. As explained below, it appears that Ms. Smith's conduct in those matters has crossed the line from pro se advocacy on behalf of her own organization into the realm of rendering legal advice and representation to third parties.

As you know, the Office of the Attorney General is statutorily authorized to enforce the State's laws against the unauthorized practice of a regulated profession. 3 V.S.A. § 127(b), (c). In Vermont, "one is deemed to be practicing law whenever he furnishes to another advice or service under circumstances which imply the possession and use of legal knowledge and skill." *In re Welch*, 185 A.2d 458, 459 (Vt. 1962). This includes "giving of legal advice and counsel, and the preparation of legal instruments and contracts of which legal rights are secured." *Id.*; see also Vt. Bar. Assoc. Advisory Ethics Opinion 88-04 (representation of clients before administrative board by layperson constitutes the unauthorized practice of law); Vt. Bar. Assoc. Advisory Ethics Opinion 03-08 (preparation of filings and affidavits for submission to Family Court constitutes unauthorized practice of law).

Annette Smith is not a licensed attorney in Vermont. Rather, she serves as the Executive Director of Vermonters for a Clean Environment, an organization that advertises itself as "assist[ing] Vermonters with research, strategies, and guidance through the regulatory process on issues impacting Vermont's Communities." See Tab A (VCE web page) at 3. In that capacity, she has regularly been providing legal advice to parties in proceedings before the Public Service Board, as well as helping to draft filings for those parties. I submit that such activities bring her squarely within Vermont's definition of the unauthorized practice of law.

An illustrative example of Ms. Smith's conduct in this regard is her involvement in Public

William E. Griffin, Esq.
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Page 2

Service Board Docket No. CPG NM-1646, a proceeding relating to a net-metered wind turbine developed by Green Mountain Power in Vergennes. There, Ms. Smith provided considerable assistance and counsel to two pro se intervenors, Redacted who claimed that the turbine was having adverse impacts on their health and property. Not only did Ms. Smith aid Redacted in preparing pre-filed testimony, see Tab B at 1 and Tab C at 1, she sought to formally intervene in the proceeding to represent Redacted interests. In a hearing before the Board's hearing officer, Ms. Smith argued that allowing Vermonters for a Clean Environment to intervene and represent Redacted would streamline the hearing process, and noted that Redacted would be relying on her counsel in any event: "[U]nless we are able to represent our members . . . , then there's going to be times when it's going to be very slow because we're going to be advising . . . Redacted questions to ask and things to say." See Tab D (Jan. 14, 2014 Hearing Transcript) at 15:19-24.

Ms. Smith acknowledged at the hearing that she had been assisting Redacted for two years, *id.* at 19:17-22, and Redacted the filings submitted by Redacted in the course of the proceeding identifies Annette Smith as the author. Redacted This is no surprise, as Redacted filings, which include a lengthy post-trial brief, see Tab F (post-hearing brief), plainly lie beyond the ken of individuals Ms. Smith characterized as "hav[ing] absolutely no ability to participate in this process." Tab D at 15:9-11. Ms. Smith stated that her work for Redacted was consistent with "what we often do," namely, "assist people without intervening." *Id.* at 19:21-22.

Indeed, Smith's work for Redacted is part of a pattern of like conduct in other Public Service Board cases. She has performed similar services for other pro se parties, providing counsel and advice, see Tabs G and H (discovery responses in Docket No. 8148), and, it would appear, helping prepare substantive filings on their behalf, Redacted Redacted Redacted

Ms. Smith's services are not limited to individual clients; she has provided services to at least two municipalities. Ms. Smith has identified herself as a "consultant to the [Irasburg] Selectboard" with regard to Public Service Board Docket No. 8585, see Tab L (Oct. 6, 2015 Hearing Transcript) at 14:20-15:1, Redacted

Redacted Ms. Smith has likewise assisted the Town of Morgan in Public Service Board Docket No. CPG NM-6633. The Morgan Selectboard's minutes from September 28, 2015 reflect discussion of "[a]ttorney compensation to Annette Smith," who "helped tremendously on the Town's document that was filed with the PSB . . . in opposition to the Application of Seymour Lake Solar, LLC." Tab N at 2-3. The matter was taken up again at an October 26, 2015 Selectboard meeting, where "[a] motion was made and seconded to approve to pay Ms. Smith \$2,500.00 now and keep the rest for any help needed in case of wind towers coming to town and will send a letter stating that the money is a donation for

Redacted

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services . . .” **Tab O** at 3.¹

In sum, there can be little question that Ms. Smith has been “furnish[ing] . . . advice or service under circumstances which imply the possession and use of legal knowledge and skill,” *Welch*, 185 A.2d at 459, and I hope your office will review the evidence and take appropriate action. I would be happy to meet with you to discuss the matter if I can be of any assistance.

Thank you.

Redacted

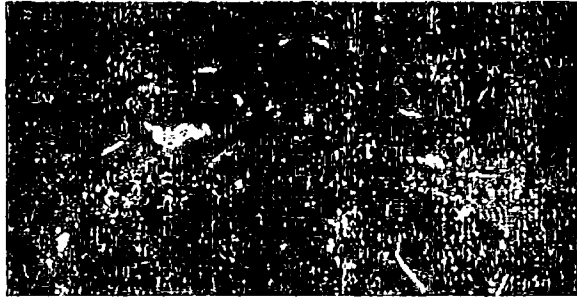
Very truly yours,

Redacted

Enclosures

¹ It appears that the payment has not yet been made. After my office submitted a Public Records Act request to the Town of Morgan, the Town notified us that they had “put a hold” on the payment to Ms. Smith “pending litigation outcome.”

ABOUT VERMONTERS FOR A CLEAN ENVIRONMENT, INC.



Who are we?

Vermonters for a Clean Environment is a statewide non-profit corporation. We believe that Vermont's economic growth depends on its environmental health.

VCE was founded in 1999 by citizens in southwestern Vermont who joined together to deal with an inappropriate industrial development project. VCE's members now come from all over Vermont.

VCE Board of Directors 2014

Kathy Halford, Wallingford
 Steve Halford, Wallingford
 David Wright, Middletown Springs
 Adam Guettel, Tinmouth
 Alex Fauchet, E. Dorset
 Steve Burzon, Danby

This grassroots organization receives the majority of our funding from citizens, with additional foundation support. Over the years we have received grants from New England Grassroots Environment Fund, Lear Family Foundation, Patagonia Foundation, Lintilhac Foundation, Johnson Family Foundation Fund, Ettinger Foundation, Prentice Foundation, Maverick Lloyd Foundation, Kelsey Trust, Vermont Community Foundation's Sustainable Future Fund, and the Park Foundation.

VCE's staff consists of founder and Executive Director Annette Smith ([article in Rutland Herald](#), [AP story](#), [profile in Vermont Farm Women book](#)) who works out of Danby (802) 446-2094, with Assistant Elizabeth Cooper. We hire lawyers, experts and public outreach as necessary to achieve our goals.

What is our mission?

VCE is fighting for the economic well-being of all Vermonters assuring appropriate use of our resources -- our people, our land, our air and our water.

We are united in the belief that Vermont's future lies in conserving its clean, rural, small-town environment. We have joined together to pursue the common goals of encouraging economic development with minimal environmental impacts and preserving Vermont's natural beauty. VCE is committed to providing facts and information so that people can make informed decisions.

Vermont has some of the cleanest air in the nation and large quantities of pure water. We support long-term planning for sustainable economic and energy policies for Vermont that will benefit Vermonters and set standards for other states to follow.

We encourage your participation.

Click [here](#) to join VCE.

Get Involved

Join VCE and support our mission to protect Vermont's environment and economy. Members receive updates on issues, provide feedback, and identify impending projects. Please include your email if you wish to receive up to date news and action alerts.

Name _____

Address _____

City _____ State _____ ZIP _____

Phone _____ email _____

Mail to: VCE, Inc.
789 Baker Brook Road
Danby, VT 05739

Donate on-line:



VCE: Citizen Action Gets Results

Vermonters for a Clean Environment (VCE) was founded in 1999 by citizens in southwestern Vermont who joined together to oppose a billion dollar natural gas power plant and pipeline project proposed for the region.

After more than a year of heated opposition, we won.

In January, 2000 the privately-owned Swiss mining company, OMYA, Inc.

announced intentions to open a new mine in the scenic and remote Danby Four Corners valley, which would also have been impacted by the pipeline route.

In Sept. 2004, OMYA sent a letter to the town of Danby selectboard indicating that the privately-owned Swiss corporation has "closed this project." Because OMYA still owns the land, VCE will remain vigilant into the future.

VCE is now a statewide organization with members throughout Vermont. We assist Vermonters with research, strategies and guidance through the regulatory process on issues impacting Vermont's communities. VCE protects the interests of small businesses that are jeopardized by corporate industrial development. Vermonters guide the work of VCE.

Here are a few of our current activities:

- **Water.** Threats to our aquifers and watersheds are increasing daily. Vermonters have taken this precious resource for granted. We worked with VNRC, Water 1st, DCRG and other citizens in several Vermont communities to increase protection of groundwater, resulting in the public trust doctrine applied to groundwater. We have expanded our work on water to include surface water, and the interconnection between surface water and groundwater. Water is central to every issue VCE works on.
- **Chloramine.** Municipal water systems, especially those that use surface water, are facing an EPA rule that requires the reduction of chlorine's disinfection byproducts. The cheapest way to comply with the rule is to switch from chlorine as a secondary disinfectant to chloramine. The Champlain Water District in Chittenden County, Vermont (but not Burlington) switched to chloramine in April 2006. Citizens immediately began complaining about skin rashes, burning eyes, digestive problems, and breathing problems. VCE has worked with citizens in Vermont, New York, Pennsylvania, California and other states where people are reporting the same problems with their tap water. We are working with developers of new technologies to find solutions to the challenge of drinking water disinfection.
- **Mining.** VCE has provided support to citizens in Clarendon, Chester, Moretown, Rochester, Randolph, East Middlebury, Florence, Bethel, Londonderry and other Vermont communities dealing with resource extraction.
- **Industrial Chemicals and Mining Waste Disposal.** Omya is the largest user of biocides in the state of Vermont. VCE challenged Omya's discharge permit, which allows the use of significant new biocides without prior review and approval by the state of Vermont. Omya's use of chemicals is now a major issue for state regulators and new mining waste regulations have been developed thanks to VCE. Omya has received full certification from the state for its waste dumping site, has installed a dewatering facility and built a lined landfill on top of the old waste. Omya changed its flotation reagent to a less toxic formulation after a legislatively-mandated study identified serious inadequacies in the scientific work being done at Omya's site in Florence. We are grateful to Cambridge Environmental and GeoSyntec for the expertise they

brought to the investigation of Omya's waste handling practices. With GeoSyntec now hired by Omya to do groundwater monitoring, we have much more faith in the scientific work being done at Omya's site in Florence.

- **Energy.** VCE provides support for citizen groups on major energy issues, including Enel, Iberdrola, First Wind, Green Mountain Power and other utility scale wind energy proposals, the deployment of wireless smart meters by CVPS, GMP and BED, VELCO's tower build-out, and Entergy's Vermont Yankee nuclear power plant.
- **Agriculture.** VCE received reports from citizens living near farms and orchards where pesticides are used. VCE's investigation concluded that the Vermont Department (now Agency) of Agriculture has failed to enforce regulations intended to protect the public's health and the environment. VCE played an important role in defeating Vermont's only corporate animal feedlot, Vermont Egg Farms, Inc., from expanding to more than double its current size, and assisted residents of Charlotte in stopping the development of a factory farm in their beautiful valley. VCE worked with neighbors of the South Woodstock water buffalo farm who were successful in creating a community-based cheese-making operation instead of the lamb feedlot that was proposed for the site. VCE assists citizens in addressing the use of agricultural chemicals such as formaldehyde where they impact human health, and are supporting the efforts of Whey to Go as they deal with AgriMark/Cabot's land application of chemically-tainted wastewater.
- **Environmental Enforcement.** Vermonters concerned about the degradation of our environment need to speak up and to get involved. Vermont citizens are protecting our environment one neighborhood at a time.
- **Land use and Permitting.** VCE advises citizens about effective participation in regulatory proceedings, including local zoning, Act 250, and Public Service Board (PSB) cases. We have participated in permit reform discussions every time they come up, and are now the only environmental organization with a historical perspective on the various attempts to redesign the permitting processes. Most recently our work involves more PSB work than Act 250 work, and unlike Act 250, we find the PSB process to be nearly impossible for citizens to participate in effectively, unless they spend tens of thousands of dollars and are represented by legal counsel.

Click [here](#) to join VCE.

updated 5/2/14

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-1646

Application of Green Mountain Power Corporation)
for a Certificate of Public Good for an interconnected)
group net-metered wind turbine.)

RESPONSES TO FIRST SET OF INTERROGATORIES SERVED BY GREEN MOUNTAIN
POWER CORPORATION ON BRENDA MAMMOLITI

November 27, 2013

Q1. Please Identify any individual You consulted with on Your Prefiled Testimony, including, but not limited to those individuals who reviewed, advised on, edited, contributed to, provided materials for, said Prefiled Testimony. With regard to each individual, please Identify the following:

Q.1(a) The individual's name and address:

Response: Annette Smith and Matt Levin of Vermonters for a Clean Environment, 789 Baker Brook Road, Danby VT 05739

Q.1 (b) The individual's profession:

Response: Environmental advocates

Q.1(c) The individual's employer:

Response: Vermonters for a Clean Environment

Q. 1(d) The individual's contribution to Your Prefiled Testimony:

Response: They provided technical assistance is preparing documents and filing procedures, and understanding what prefiled testimony is.

Q.1(e) If applicable, the individual's academic publications, professional activities, and experience in the areas of shadow flicker and glare:

Response: Not Applicable

Q.2. Please provide in detail all of Your education and any and all professional experience related to shadow flicker from a wind turbine or other electric generation source.

Response: Life experience that comes from having lived with the turbine's impacts for all of 2012 and nearly all of 2013.

Q.3. Please provide in detail all of Your education and any and all professional experience in glare issues from a wind turbine or other electric generation source.

Response: Life experience that comes from having lived with the turbine's impacts for all of 2012 and nearly all of 2013.

Q. 4. Please provide in detail all of Your education and any and all professional experience in the areas of aesthetics.

Response: Life experience that comes from having lived with the turbine's impacts for all of 2012 and nearly all of 2013.

STATE OF VERMONT
PUBLIC SERVICE BOARD

CPG #NM-1646

Application of Green Mountain Power Corporation)
for a Certificate of Public Good for an interconnected)
group net-metered wind turbine.)

RESPONSES TO FIRST SET OF INTERROGATORIES SERVED BY GREEN MOUNTAIN
POWER CORPORATION ON MICHAEL MAMMOLITI

November 27, 2013

Q1. Please identify any individual you consulted with on your prefiled testimony, including, but not limited to those individuals who reviewed, advised on, edited, contributed to, provided materials for, said prefiled testimony. With regard to each individual, please identify the following:

Q.1(a) The individual's name and address:

Response: Annette Smith and Matt Levin of Vermonters for a Clean Environment, 789 Baker Brook Road, Danby VT 05739

Q.1 (b) The individual's profession:

Response: Environmental advocates

Q.1(c) The individual's employer:

Response: Vermonters for a Clean Environment

Q. 1(d) The individual's contribution to your prefiled testimony:

Response: They provided technical assistance in preparing documents and filing procedures, and understanding what prefiled testimony is.

Q.1(e) If applicable, the individual's academic publications, professional activities, and experience in the areas of shadow flicker and glare:

Response: Not Applicable

Q.2. You have submitted video(s) documenting the alleged effects of the turbine on your home environment as part of Your Prefiled Testimony. Please Identify the following:

Q.2(a) The equipment used to produce the video(s) including make, model, year of the video camera used to produce the video clips you submitted with Your November 12, 2013 Prefiled Testimony:

Response: JVC Everio, G Series Hard Drive Disc Recorder, Model #GZ-MG360

Q.2(b): The exact location of each video clip you submitted with Your November 12, 2013 Prefiled Testimony:

Response: Locations included: inside house for shadow flicker, inside garage for shadow flicker, outside on back porch and in back yard for shadow flicker, outside in back yard for glare.

Q.2(c) Any person(s) who assisted with or helped in any way with the video recording(s) You submitted with Your November 12, 2013 Prefiled Testimony:

Response: Annette Smith assisted in extracting videos from camera and uploading them to the internet.

Q. 2(d) Whether the video equipment You used to produce the video clips You submitted with Your November 12, 2013 Prefiled Testimony was modified in any way to amplify sound and if so, how:

Response: No sound amplification was used – sound is not relevant to this testimony.

Q.2(e) Whether the video equipment You used to produce the video clips You submitted with Your November 12, 2013 Prefiled Testimony includes the capability to zoom:

Response: Yes

Q.2(f) Each video clip You submitted with Your November 12, 2013 Prefiled Testimony that used the zoom capability identified above:

Response: Referring to the list in the Exhibit I filed with the Board on November 12, 2013, all the videos did include the use of zoom except #9-16, 18-20, 22-27, 29-36, 41-42, 46-50, 54-55, 72-73, and 124. Video #80 shows zoom and unzoomed sections.

Q.2(g) Whether the date and time shown on each video clip is accurate, and whether the camera was properly set to the correct date and time:

Response: No. Subsequent to filing the testimony and Exhibit, my wife and I discovered that the process of converting the videos resulted in making the time an hour off. That meant that if the video was labeled as being made at 6pm, in fact it was made at 5pm. This error is consistent for every video I submitted. The date is accurate.

Q. 2(h) Whether the date and time shown on Your November 12, 2013 Prefiled Testimony for each video clip is accurate:

Response: No – see answer to Q.2(g)

Q.3. Please provide in detail all of Your education and any and all professional experience related to shadow flicker from a wind turbine or other electric generation source.

Response: Life experience that comes from having lived with the turbine's impacts for all of 2012 and nearly all of 2013.

Q.4. Please provide in detail all of Your education and any and all professional experience in glare issues from a wind turbine or other electric generation source.

Response: Life experience that comes from having lived with the turbine's impacts for all of 2012 and nearly all of 2013.

Q. 5. Please provide in detail all of Your education and any and all professional experience in the areas of aesthetics.

Response: Life experience that comes from having lived with the turbine's impacts for all of 2012 and nearly all of 2013.

STATE OF VERMONT
PUBLIC SERVICE BOARD

DOCKET NUMBER CPG #NM-1646

IN RE: APPLICATION OF GREEN MOUNTAIN POWER
CORPORATION FOR A CERTIFICATE OF PUBLIC GOOD
FOR AN INTERCONNECTED GROUP NET-METERED WIND
TURBINE IN VERGENNES, VERMONT.

January 14, 2014
10:30 a.m.

112 State Street
Montpelier, Vermont

Technical Hearing held before the Vermont
Public Service Board's Hearing Officers at the
Third Floor Conference Room, People's United
Bank Building, 112 State Street, Montpelier,
Vermont, on January 14, 2014, beginning at
10:30 a.m.

P R E S E N T

STAFF: Tom Knauer, Utilities Analyst
Jake Marren, Staff Attorney

CAPITOL COURT REPORTERS, INC.
P.O. BOX 329
BURLINGTON, VERMONT 05402-0329
(802) 863-6067
(802) 879-4736 (Fax)
E-MAIL: Info@capitolcourtreporters.com

1 APPEARANCES:

2

3 AARON KISICKI, ESQUIRE
4 Appearing for Vermont Department of Public Service
5 112 State Street
6 Montpelier, Vermont 05620-2601

5

6 MICHAEL & BRENDA MAMMOLITI, PRO SE
7 16 High Street
8 Vergennes, Vermont 05491

7

8 JOSLYN WILSCHEK, ESQUIRE
9 Primmer Piper Eggleston & Cramer, PC
10 Appearing for Green Mountain Power Corporation
11 100 East State Street - P.O. Box 1309
12 Montpelier, Vermont 05601-1309

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1 just to set that foundation for this
2 document, initially.

3 HEARING OFFICER KNAUER: Do the parties
4 have any problem with Ms. Wilschek having a
5 very limited opportunity to -- for direct
6 testimony regarding the potential vegetative
7 screening plan?

8 MR. KISICKI: I have no objection.

9 BRENDA MAMMOLITI: No objection.

10 HEARING OFFICER KNAUER: Okay. Well,
11 I'll allow you to introduce this exhibit and
12 ask a few limited questions.

13 So to recap, Ms. Vissering first, Mr.
14 Giles second, Mr. Slaymaker third and Mr.
15 Lorraine fourth, followed by the Mammolitis.

16 So before we get to the witnesses, I
17 think it is now time to address VCE's motion
18 to intervene.

19 Have all parties received a copy of that
20 motion? Has the Department?

21 MR. KISICKI: I have.

22 HEARING OFFICER KNAUER: Have the
23 Mammolitis?

24 BRENDA MAMMOLITI: Um-hm.

25 HEARING OFFICER KNAUER: And has Green

1 Mountain Power?

2 MS. WILSCHEK: I -- yes, I received it
3 at 5:30 last evening. It came in an e-mail
4 at 4:22.

5 HEARING OFFICER KNAUER: Correct. And
6 have you since received a hard copy of that
7 or have you printed --

8 MS. WILSCHEK: I've printed one, yes.

9 HEARING OFFICER KNAUER: Great.

10 Does any party object to the motion of
11 VCE to intervene?

12 MS. WILSCHEK: GMP objects.

13 HEARING OFFICER KNAUER: On what basis?

14 MS. WILSCHEK: Well, to start, VCE has
15 put GMP in a very difficult position. I have
16 never seen a motion to intervene filed on an
17 eve of trial. Actually, technically, it
18 wasn't filed until -- today, I have not yet
19 received a hard copy but I left the office
20 early.

21 And because of this very untimely
22 motion, it really ties GMP's hands. It's so
23 untimely as the motion acknowledges it's
24 untimely, that I think on that basis alone,
25 the Board should deny it. The Board should

1 not be setting a precedence that on the eve
2 of a contested case, parties can move to
3 intervene.

4 VCE's motion is a complete disregard for
5 Board process. This contested case process
6 has been going on since November of 2012. VCE
7 participated just informally at the
8 prehearing conference. They've known about
9 this. They never contacted me at all about
10 this motion previous to filing it. I have
11 had no time to think about it other than late
12 last night. So, one, because of its
13 untimeliness, I think the Board needs to deny
14 it.

15 Two, the intervention rules, the Board
16 rule 2.209 sets forth very specific criteria
17 that a party needs to address and they didn't
18 address any of them. Their focus is on the
19 Mammolitis interests. It's not on their
20 organization's interest in this particular
21 case. They don't address alternative means
22 by which VCE's interest will be protected.

23 It's incredibly procedurally deficient
24 and I think on that basis, again, the Board
25 needs to deny their participation as a party.

1 It is highly prejudicial to GMP. We have had
2 no time to do discovery on them. I have no
3 idea what their role would be here. I
4 understand that -- I have no idea what their
5 participation would be in this hearing today.
6 It's incredibly last minute.

7 And then, lastly, it's a motion that
8 I've never seen before at the Board, which is
9 a motion by a pro se organization wanting to
10 act as a lawyer for a pro se party. And,
11 again, my hands are tied here. I don't think
12 the Board has discretion -- administrative
13 order number 41 from the Supreme Court dated
14 September 1st, 2012, Section II says that
15 practice of law without a license hereunder
16 is prohibitive and may be punished by
17 contempt. There is a Vermont Supreme court
18 Order in 123 Vermont 180 says, One is deemed
19 to be practicing law whenever he or she
20 furnishes to another advice or service under
21 circumstances which imply the possession of
22 use of knowledge and skill. The practice of
23 law will include all advice to clients and
24 all actions taken for them in matters
25 connected with the law.

1 And there's an ethics opinion I have
2 here that I will circulate to everyone which
3 discusses the same. And I -- and there's a
4 public policy reason for this, that it
5 actually protects the people who think
6 they're relying on legal advice. I don't
7 think the Board needs to go that far because
8 I think it needs to deny this based on
9 untimeliness, but I think the Board should --
10 and I'll pass copies of this out -- at least
11 look at these regulations.

12 HEARING OFFICER KNAUER: Thank you.

13 MS. WILSCHEK: Um-hm.

14 And, again, if this was done earlier and
15 I and GMP had an opportunity to speak with
16 the organization and understand how this
17 would work, our position may be different,
18 but I -- we do have to object based on the
19 untimeliness.

20 For example, I would think that they
21 would be doing some examination of GMP
22 witnesses and objecting and that's -- that's
23 lawyering for somebody else.

24 That's all I have.

25 HEARING OFFICER KNAUER: Thank you.

1 Does the Department have a response to the
2 VCE motion?

3 MR. KISICKI: The Department would echo
4 a lot of GMP's concerns. I think with
5 respect to timeliness, I think Joslyn did a
6 very good job of outlining the Department's
7 concerns. If -- I think the one thing that I
8 would add is, in reading VCE's motion it
9 appears to the Department that VCE's
10 rationale for seeking intervention is to aide
11 the Mammolitis in the technical hearing
12 process. With that being said, the
13 Mammolitis, so far in this proceeding, have
14 provided prefiled testimony, sur-rebuttal
15 testimony and also litigation discovery
16 adequately. I don't know that there's a
17 particular reason why VCE's intervention
18 would be required to aide at this point in
19 the process when they've seem to have done
20 quite well so far.

21 And, again, I think -- I haven't been
22 able to research the aspect,
23 that unauthorized practice of law aspect that
24 Ms. Wilschek has. I think this goes to how
25 the untimeliness of this motion has

1 prejudiced the parties.

2 If the parties were to have the time --
3 if the motion had been made in a timely
4 fashion, the Department has confidence and
5 probably view this much differently. But 14
6 hours simply isn't enough time to fully
7 evaluate the law regarding the intervention
8 motion.

9 HEARING OFFICER KNAUER: And it's my
10 understanding that the Mammolitis support
11 VCE's motion.

12 Is that correct?

13 BRENDA MAMMOLITI: Correct.

14 HEARING OFFICER KNAUER: Okay. And does
15 VCE have any response to the Department or
16 GMP?

17 ANNETTE SMITH: I want to thank you for
18 taking this time -- and I don't want to take
19 much time. It was the Board's sending out
20 request to GMP and -- which seemed untimely
21 to me and outside the prefiled testimony that
22 had already been put into the record. In
23 fact, new evidence has been put into the
24 record today. And it's raised real concerns
25 for us about the ability of the Mammolitis to

1 participate in this process at all.

2 I will tell you that the day the
3 prefiled testimony was due, I called them and
4 said, Are you ready and they said we don't
5 know what to do. So, we've helped them all
6 along the way. There's no secret about that.
7 We've been participating and, you know,
8 there's a whole fleet of lawyers and experts
9 sitting opposite to people who have
10 absolutely no ability to participate in this
11 process.

12 We only learned in August, sitting in
13 this room that corporations can participate
14 pro se. And we acknowledge we're not lawyers
15 and we may not have done this right.
16 Literally, yesterday, I was thinking, how can
17 we assist the Board in this process, because
18 what you've seen so far is how it's going to
19 go today, unless we are able to represent our
20 members, not as lawyers, but just -- they're
21 our members, then there's going to be times
22 where it's going to be very slow because
23 we're going to be advising the -- Brenda
24 questions to ask and things to say.

25 So we thought it would be a more

1 efficient process if we simply -- I could
2 imagine it taking twice as much time if we do
3 it the legal way that you're recommending,
4 that the -- GMP wants. Or, otherwise, it
5 will just be a much slower process.

6 But that -- that, you know, we're not
7 trying to play any games here. The same
8 questions would get asked whether or not it
9 was me asking or Brenda asking. Their
10 ability to represent themselves in this
11 proceeding is, I think, potentially risking
12 their rights.

13 And so, we're just concerned that, you
14 know, if this were Act 250, this is a normal
15 thing in Act 250 that people can designate
16 someone to represent them. The Board does
17 have a process where corporations can have a,
18 you know, person on their staff at the
19 direction of an officer participate in the
20 process. So, we're not trying to play any
21 games, we're simply trying to help this day
22 go a little easier for everyone.

23 MS. WILSCHEK: May I respond?

24 HEARING OFFICER KNAUER: (Indicating.)

25 MS. WILSCHEK: GMP has no objection to

1 you -- to VCE being in the room providing,
2 moral support like you -- like VCE mentioned
3 at the prehearing conference. But VCE is
4 asking to be a party in this case, which is
5 very different than sitting next to someone
6 and helping them out.

7 And the Board rule that she's discussing
8 about corporations being represented by a pro
9 se party, that has nothing to do with a pro
10 se party wanting to represent another pro se
11 party. I think that we're getting into a
12 little trouble.

13 HEARING OFFICER KNAUER: Okay.

14 ANNETTE SMITH: Well, we are a
15 membership organization and they're our
16 members. So that's how we view it, not that
17 we would be representing them, but we would
18 be acting on behalf of our members.

19 MS. WILSCHEK: And that's another reason
20 for objecting. She just articulated they
21 want to intervene as a party. We have had no
22 opportunity to do discovery on this entity.
23 We've been very accommodating to the
24 Mammolitis. We've been fine with three
25 extension requests they have asked for and

1 this is just going over the line.

2 HEARING OFFICER KNAUER: I have several
3 questions. VCE has been aware of this
4 proceeding at least since the date of the
5 prehearing conference, if not before.

6 Can VCE provide any reasoning about why
7 the motion was filed just last night -- or,
8 technically, this morning?

9 ANNETTE SMITH: Well, as I stated, we
10 only learned of this rule about corporations
11 being be able to participate, we only learned
12 about that in August. And, I'm sorry, I'm
13 just a little slow, but I only sort of put it
14 together yesterday that there was a
15 possibility that people would appreciate the
16 ability to have this hearing go more
17 efficiently.

18 And I did not want to find us in the
19 position of you saying to us, well, if you
20 had just filed something, we would have
21 something to look at. So, I was providing
22 you with something to look at and if you
23 don't want to have us assist today, we will
24 assist the Mammolitis in any way we can
25 without saying anything more. That's your

1 call. We're just trying to have an efficient
2 hearing.

3 But if we did it wrong, we would
4 appreciate guidance on how to do it right
5 next time. And I acknowledge the timeliness
6 of it but it literally was a -- you know, was
7 precipitated by the Board bringing -- asking
8 GMP to bring new information that the
9 Mammolitis have not really had any
10 opportunity to respond to. So if there's a
11 fairness issue here, there is that, too.

12 HEARING OFFICER KNAUER: Okay. My
13 understanding of this proceeding, and I'm
14 going to ask VCE to confirm this is that the
15 filing of this motion was the first filing
16 that VCE has made in this proceeding?

17 ANNETTE SMITH: That's correct. We have
18 been working with the Mammolitis since
19 January of 2012. So, we have two years of
20 history. We have gone on every site visit
21 and we have done what we often do, is assist
22 people without intervening. This is the
23 first time we've ever attempted to intervene
24 in the Board process because we didn't even
25 know we could until August.

1 HEARING OFFICER KNAUER: I believe that
2 Ms. Smith has already discussed this, but I
3 just want to make sure that I understand for
4 the record.

5 What would VCE be doing in this
6 proceeding if I were to grant the motion?

7 ANNETTE SMITH: We would be asking
8 questions and we would be asking the same
9 questions the Mammolitis are asking. I think
10 that what we wanted to do in addition is --
11 and I've sat through enough Board hearings to
12 know if something comes up that's not
13 anticipated, the ability to do a follow-up
14 question, you know, and we have to take the
15 time to write them down for Brenda to read.
16 So we'd just be making it go a little faster.

17 She has the same questions in front of
18 her that I do and it -- would be asking the
19 same questions.

20 HEARING OFFICER KNAUER: I think we'll
21 take about a five minute break and I can
22 confer with staff and then we'll reconvene.

23

24 (Whereupon, a short break was taken.)

25

1 HEARING OFFICER KNAUER: Okay. We're
2 back on the record. I considered VCE's
3 motion. I find that VCE has not demonstrated
4 a particularized interest that is not
5 accurately represented by other parties
6 already in the proceeding. In addition, I
7 find the motion to have been filed in an
8 untimely manner. On those grounds alone, I
9 feel like it should be rejected. And so I do
10 deny their motion to intervene.

11 VCE has noted that GMP has a whole team
12 here. And Ms. Wilschek, who's their
13 attorney, I have no doubt will be conferring
14 with them throughout the day. And so the
15 Mammolitis are, likewise, free to consult
16 with VCE throughout the day as consultants.
17 But I want to make clear the limits of that.
18 VCE may not represent the Mammolitis in the
19 proceeding today.

20 And, finally, VCE has the option to file
21 an amicus brief. Do you know what that is,
22 Ms. Smith?

23 ANNETTE SMITH: (Indicating.)

24 HEARING OFFICER KNAUER: So, if VCE
25 chooses, they can file an amicus brief when

1 we set the schedule for briefing.

2 So, having ruled on that, unless I'm
3 missing anything, I think we can get to the
4 witnesses. So, GMP please call your first
5 witness.

6 MS. WILSCHEK: Sure. Just need to
7 recalibrate here. GMP calls Jean Vissering.

8 HEARING OFFICER KNAUER: Ms. Vissering,
9 please raise your right hand.

10 Do you swear or affirm under penalty of
11 perjury that the testimony you are about to
12 give will be the truth, the whole truth and
13 nothing but the truth?

14 THE WITNESS: I do.

15

16 DIRECT EXAMINATION BY ATTORNEY WILSCHEK

17 Q. Good morning.

18 A. Good morning.

19 Q. Can you please state your name for the
20 record?

21 A. Jean Vissering.

22 Q. And for whom do you work for?

23 A. I am self-employed. I have my own
24 business, Jean Vissering Landscape Architecture.

25 Q. Okay. And do you recall drafting your

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

CPG #NM-1646

Application of Green Mountain Power Corporation)
for a Certificate of Public Good for an interconnected)
group net-metered wind turbine.)

**MICHAEL AND BRENDA MAMMOLITI'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

NOW COME Michael and Brenda Mammoliti ("the Mammolitis"), *pro se*, and submit the following brief in the matter referenced above.

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INTRODUCTION

In its Order of November 15, 2012, the Public Service Board (“Board”) established the scope for this evidentiary hearing, stating that,

it would appear that the potential for shadow flicker and glare to have an impact upon the aesthetics and scenic and natural beauty of the area may not have been adequately addressed in GMP's original application. [Order, p. 1]

The facts in this case clearly show that in siting and operating the turbine, Green Mountain Power (GMP) did not take into account the potential for impacts on people whose homes are close by. In its application for a Certificate of Public Good (CPG) and testimony to the Board, GMP minimized the potential impacts. Once the turbine turned out to cause shadow flicker and glare that substantially interfered with the Mammolitis’ ability to peacefully enjoy their home, GMP’s only response to the Mammolitis’ complaints was to install software that was supposed to turn off the turbine for a limited period every day, but never actually worked.

The facts show that the impacts were and are significant, and have not been adequately addressed. The Board must require GMP to take significant steps to mitigate these undue adverse impacts. If GMP chooses not to undertake these steps, the turbine should be removed.

FINDINGS AND DISCUSSION

A. GMP states they sited the turbine in a way to minimize impacts, but in fact did nothing to ensure that would be the case once the turbine was operational.

Findings:

1. GMP claims they sought to minimize disturbances and impacts to neighbors when siting the turbine. [Lorraine prefiled p. 4]
2. GMP did no analysis on potential shadow flicker impacts before the turbine began operating. [Lorraine hearing testimony p. 204]
3. Attached to the original application was a document titled “Frequently Asked Questions, Green Mountain Power and Northern Power Systems Community Wind Program” (“FAQ”). This document was also circulated to the public. [Lorraine hearing testimony p. 207]
4. GMP had no basis for claiming in the FAQ document that the turbine would create “minimal” shadow flicker impacts¹. [Lorraine hearing testimony p. 210]

Discussion:

GMP created this problem by siting the turbine without first evaluating the potential risks to the community and assessing any potential liability they would be creating for themselves. The subsequent complaints, and the Board’s initiation of this proceeding after impacts were witnessed in person by the Board’s Hearing Officer and Department of Public Service staff, indicate that GMP’s assumptions were flawed, inaccurate, and not supported by fact.

¹ The actual language from the document – “The flicker and acoustic impacts of Northern Power 100 turbines have been shown to be minimal.”

B. GMP's assessment that the impacts of shadow flicker would be limited was incorrect, biased to minimize the impacts, and depended on mitigation, which failed.

Findings:

5. The analysis of project impacts performed by GMP's consultant was based not on a comparison to the landscape without any turbine, but rather an analysis of project impacts after the turbine was up and running and an established part of the landscape. [Vissering pre-filed p. 4]

6. GMP's consultant used "the general outlines" of the Quechee Analysis as the basis for their evaluation of the impacts of shadow flicker, a method of analysis that examines the "characteristics of the site and surroundings as they currently exist". [Vissering pre-filed p. 4]

7. The impacts of shadow flicker are predictable and can easily be controlled or corrected by turning off the turbine(s). [Vissering pre-filed p. 6]

8. Despite the fact the mitigation software had already failed and shadow flicker had been occurring when it was not supposed to be occurring, GMP's expert nevertheless testified that mitigation software, designed to turn the turbine off for specific periods during the day, would result in no shadow flicker in the Mammolitis' house or the outdoor areas immediately adjacent to it. [Vissering pre-filed p. 7]²

9. GMP's consultant's conclusion that the impact of the shadow flicker would not be unduly adverse was dependent on the successful installation and operation of mitigation software to shut down the turbine at certain times. [Vissering hearing testimony p. 59 and 60]

² Note that Ms. Vissering's pre-filed testimony is dated 9/20/13, and therefore took place well after GMP had been made aware that the mitigation software was not functioning as intended. See Findings 10 and 11, below.

10. GMP claimed that they had fixed problems with the malfunctioning mitigation software in June 2013. [Brenda Mammoliti pre-filed p. 6]
11. The mitigation software was not fixed as of June 2013 and in fact did not work as promised at all in 2013, due to unresolved programming problems. [Giles hearing testimony p. 154]
12. The turbine was only shut down on two occasions during 2013, for one evening each time. [Brenda Mammoliti pre-filed p.8] [Brenda Mammoliti hearing testimony p. 251]
13. Northern Power Systems (“NPS”) has no established system in place to ensure that the mitigation software works. [Giles hearing testimony p. 165-6]
14. Efforts to correct the mitigation software were prompted by the Mammolitis’ complaints, not by any internal compliance process that GMP or NPS had in place. [Lorraine hearing testimony p. 199-200]
15. The Mammolitis have experienced shadow flicker at the receptors identified by the GMP study at times when the study indicates shadow flicker should not be occurring. [Michael Mammoliti surrebuttal p. 6]

Discussion:

GMP decided to analyze the impacts of the turbine only after it had been operating for many months, after the Mammolitis informed the Board that they were being drastically affected

by the noise, glare, and flicker of the turbine. Since the turbine was therefore at that point an “existing condition” as Ms. Vissering put it [Vissering pre-filed p. 4], the analysis treated shadow flicker and glare as the only additions to the aesthetics that might create adverse impacts.

This construct means that Ms. Vissering apparently considered only the impact of the moving turbine as opposed to a non-moving turbine. This approach is not correct, but rather is biased and fatally flawed.

The Quechee Analysis is used to determine whether a proposed project would have an undue adverse effect on aesthetics. When used after projects have been built, the presumption applied is that the project does not exist. For instance, when a project that needed an Act 250 permit is constructed without first having obtained a permit, it is evaluated as though the project had not yet been constructed. That is, the project itself – even if already in existence – is not considered part of the existing context of the area for the purpose of determining whether the aesthetic impacts of a project would be unduly adverse.³

If the Quechee Analysis is going to be used to determine whether the impacts from the turbine are unacceptable, then the analysis has to compare the landscape without the turbine to the landscape with the addition of the turbine. Thus under the first prong of the Quechee Analysis, a determination of whether the turbine “fits” into the landscape must take into account what the Mammolitis’ experience was before the turbine was installed.

By not considering what the Mammolitis’ experience was without the turbine at all, GMP’s analysis creates an assumption that the turbine is acceptable and not an addition to the landscape. While the Mammolitis understand that this current proceeding focuses on the impacts of shadow flicker and glare, they could not be more clear in their position that it is the turbine

³ Re: Bernard and Suzanne Carrier, #7R0639-EB, Findings of Fact and Conclusions of Law at page 10 (Oct. 5, 1990)

itself, and all of its impacts, which have negatively affected their lives. As is stated later in this brief, for years before the turbine was installed, the Mammolitis enjoyed the full use of their property, including their second floor and back yard.

The testimony provided by all parties clearly indicates that GMP relied upon and promised that the shadow flicker problem would be resolved by the installed mitigation software, but the solution failed. That failure was ignored by GMP's consultant who relied on the software in their declaration that impacts would be minimal and not unduly adverse, and was only recognized because of the Mammolitis' complaints. Unless significant accountability measures are put into place, there is no reason to believe that future attempts at mitigation via software will succeed in addressing shadow flicker on the Mammolitis' property.

C. While there is a disagreement between GMP and the Mammolitis about how to define "exposure", the Mammolitis' definition is reasonable, and is based on real-world observations of when an undue adverse impact is created and should be the basis for determining necessary mitigation.

Findings:

16. GMP's consultants state that there is impact from shadow flicker outside the home only when the shadow flicker falls across specific areas close to the home – the deck and nearby lawn, and the front entry area. [Vissering pre-filed p. 7]

17. GMP's consultants relied on an analysis of events at three locations – inside the Mammolitis' residence on the first floor, the wall of their garage, and their deck – to determine the impact from shadow flicker. They did not consider what could be seen from those points. [Slaymaker pre-filed p. 5, 7]

18. GMP's consultant relied on interior modeling that considered exposure on only the first floor of the Mammolitis' house. [Slaymaker hearing testimony p. 115]

19. GMP's consultant defined negative impacts of flicker as being only felt in connection to "light entering a room". [Slaymaker pre-filed p. 5]

20. GMP's consultants and NPS determined that the shadow flicker mitigation software should be functioning in 2013 only between May 19 and July 22.⁴ [Slaymaker pre-filed p. 9]

21. A determination of whether or not the impacts of shadow flicker are undue is based on how the length of the exposure compares with the "industry standard". [Slaymaker pre-filed p. 8]

22. The industry standards for exposure to shadow flicker are being re-examined and 30 minutes per day is increasingly accepted as the standard. [Slaymaker hearing testimony p. 109]

23. The Mammolitis consider exposure to shadow flicker to be possible any time it is occurring "anywhere on [their] property". [Brenda Mammoliti hearing testimony p. 244]

24. The Mammolitis experience this exposure as early as March and through September, not only during mid-May, June and July. [Brenda Mammoliti pre-filed p. 5, 7] [Michael Mammoliti pre-filed addendum]

⁴ In fact, the modeling submitted by GMP's consultant in their pre-filed testimony indicates that shadow flicker will impact the Mammoliti home one day later, on July 23, and outside areas as early as May 12 and as late as July 30. [Slaymaker pre-filed Exhibit GMP-WS-2, "Wind Farmer" p. 4, 9, 10]

25. Since moving into their home in January 2002 and prior to the turbine installation, the Mammolitis enjoyed living in their home and using the peaceful outside spaces around their home, including the backyard and patio. [Michael Mammoliti pre-filed p. 2] [Brenda Mammoliti pre-filed p. 2]

26. This enjoyment included looking out at their property, observing nature, working in the yard, and watching wildlife. These activities have all been disrupted by shadow flicker occurring at places other than the “receptor” locations identified in the GMP consultant’s study. [Michael Mammoliti sur-rebuttal p. 2, 7] [Brenda Mammoliti pre-filed p. 2, 3]

27. Because of the shadow flicker, the Mammolitis have been unable to use their back yard and porch in the same manner as they did before the turbine was installed. [Michael Mammoliti pre-filed p. 7] [Brenda Mammoliti pre-filed p.7]

28. The shadow flicker makes it hard for the Mammolitis to concentrate or relax, is distracting, disruptive, and annoying, both inside and outside their home. [Brenda Mammoliti prefiled testimony p. 3, 4] [Michael Mammoliti prefiled p. 3, 4]

29. The Mammolitis experience shadow flicker in their second floor bedroom. [Michael Mammoliti hearing testimony p. 281]

30. The Mammolitis experience exposure to shadow flicker for as long as an hour a day. [Brenda Mammoliti hearing testimony p. 245]

31. At no point did any party in this proceeding claim, argue, or testify that the Mammolitis' use of their upstairs or outdoor spaces including but not limited to the "receptor locations" was unusual, occurred outside the normal times of the year when Vermonters normally used outdoor spaces, or was unreasonable or excessive.

Discussion:

The definition of exposure used by GMP and its consultants is overly limited, and does not take into account how the Mammolitis' (or any) property is used. As a static, computer-generated model, it ignores the fact that flicker on other outdoor spaces can be viewed from many areas of the property, including the receptor points used for the model.

Similarly, the GMP analysis of exposure was limited to one location inside the home, despite the fact that shadow flicker was experienced in multiple locations. Both of these limitations are unreasonable and unrealistic, and minimize the real-world impacts created by the presence of shadow flicker as experienced by people exposed to it.

Further, there was no testimony provided to suggest that the Mammolitis' negative reactions to repeatedly seeing and being exposed to shadow flicker on various parts of their property was unreasonable, unusual or extreme.

The Mammolitis' exposure in 2013 lasted for longer than the industry standard would allow. Their exposures occurred as they were undertaking activities that were normal and reasonable, even expected of a Vermont resident. The introduction of the shadow flicker from the wind turbine into the aesthetics of the areas in and around their home has been a substantial change that is clearly unduly adverse.

The Mammolitis' objections to shadow flicker exposure are reasonable and reflect their real-life situation. Any mitigation for shadow flicker must take into account their definition of exposure and the related impacts.

D. A fixed time shut down period for the turbine is not an appropriate or effective remedy for shadow flicker.

Findings:

32. Between May and September, the time of sunset at the Mammolitis' home varies from around 6:45p to around 8:45p. [Brenda Mammoliti surrebuttal p. 4]

33. On August 5, 2013, the Mammolitis and GMP's consultant witnessed shadow flicker on trees on the Mammoliti property between 6:40p and 7:30p, outside the shutdown period used by the mitigation software. [Brenda Mammoliti surrebuttal p.5]

34. GMP's consultants acknowledged that the sun's location in the sky at one specific time is different over the course of the year. [Vissering hearing testimony p. 35] [Slaymaker hearing testimony p. 99-100]

Discussion:

Even if the mitigation software offered by GMP worked, turning the turbine off at the same hour of the day regardless of the location of the sun and the time it creates shadow flicker will fail to eliminate the impacts.

A fixed shut down period for the turbine is scientifically flawed and contradicts common sense, and will continue to result in excessive shadow flicker inside and outside the Mammolitis'

home. If the use of software is pursued, the timing must be adjusted to reflect the changes in time of sunsets over the course of the year.

E. Glare is substantially interfering with the Mammolitis' ability to enjoy their property, and must be addressed by means other than the mitigation software.

Findings:

35. Because of the glare from the turbine blades, the Mammolitis have been unable to use their back yard and porch in the same manner as they did before the turbine was installed. [Michael Mammoliti pre-filed p. 7]

36. At times the glare shines directly in the Mammolitis' eyes, and prevents them from enjoying the view of the mountains or from sitting outside facing the turbine. [Michael Mammoliti surrebuttal p. 2-3] [Brenda Mammoliti pre-filed p. 4] [Brenda Mammoliti surrebuttal p. 2]

37. The Mammolitis have experienced glare on many days of the year, as evidenced by the more than 100 videos submitted, including on days before and after those when the mitigation software was supposed to address shadow flicker issues, and at times of the day when shadow flicker does not occur. [Michael Mammoliti prefiled Addendum]

Discussion:

Glare from the turbine is creating an undue adverse impact, and must be eliminated if the Mammolitis are to be able to use their property in a reasonable and peaceful manner.

Software that automatically turns the turbine off at a fixed time of the day during only several months of the year when shadow flicker will occur will not eliminate the glare that occurs at other times, even if the software were to operate effectively.

F. GMP has provided no explanation for their dismissal of glare impacts, and therefore the dismissal should be ignored.

Findings:

38. GMP's consultant characterized the glare from the turbine as being "of limited area", though that phrase is not defined. [Vissering pre-filed p. 7]

39. GMP's consultant described the turbine as having "a relatively small surface area", though the basis for or importance of that comment is not given. [Vissering pre-filed p.8]

40. GMP's consultant stated that it was unlikely the turbine would create "a large area of bright reflectivity". [Vissering pre-filed p.8]

41. No testimony was submitted by any witness to explain why the size of the glare spot, the turbine, or the area of reflectivity determines whether or not the glare created has an undue adverse impact.

Discussion:

GMP provided no explanation for why their descriptions of the glare and the mechanics behind its creation should be the basis for minimizing and/or dismissing the impact of glare on the Mammolitis. In fact, GMP's consultant indicated that they were aware of the fact that glare

issues are recognized as a problem by the regulatory community. [Vissering hearing testimony p. 74] Germany has acknowledged and solved these problems, sometimes called a “disco effect”, by requiring the use of a matte, non-reflective paint on turbine blades to reduce glare from the blades. [Brenda Mammoliti surrebuttal testimony Appendix 2]

GMP’s efforts to minimize the impacts should be disregarded by the Board, and solutions to glare used elsewhere should be considered.

G. The City of Vergennes treats glare as a regulated (negative) impact in town zoning regulations, demonstrating that glare is recognized to be a serious problem, especially for people living in a residential neighborhood.

Findings:

42. The City of Vergennes’ “Zoning and Subdivision Regulations” (“Zoning Regs”) prohibits any “disturbances”, including glare, that are “uncharacteristic of residential neighborhoods”, such as the one where the Mammolitis’ house is located. [Zoning Regs p. 28]⁵

43. The Zoning Regs indicate that for subdivisions, landscaping may be required to provide screening that will reduce the impacts from glare. [Zoning Regs p. 49]

44. The Zoning Regs prohibit development that produces glare that would constitute a nuisance to other property owners. [Zoning Regs p. 79]

⁵ <http://vergenes.org/wp-content/uploads/2010/08/Zoning-and-Subdivision-Regulations-2012-FINAL.pdf>

Discussion:

Glare is acknowledged to create negative impacts and is regulated by land use regulations in the municipality where the turbine was built. The Board should do the same in its role as the land use regulatory body for electricity generation projects.

H. The mitigation strategy discussed at the evidentiary hearing – planting a series of trees along the property line – is an uncertain, incomplete, and insufficient remedy.

Findings:

45. GMP's consultant testified that the trees described in the proposal discussed at the evidentiary hearing will take "about 30 years ... maybe 40" years to grow to full height, which was testified to be 50-60 feet. [Vissering hearing testimony p. 56]

46. There was no testimony provided at any time during the proceedings regarding how tall or wide the trees would need to be to fully or partially shield the Mammolitis' property from shadow flicker.

47. Due to soil conditions, the ability of the trees to grow at all in the proposed location is uncertain. [Vissering hearing testimony p. 28] [Lorraine hearing testimony p. 212-3]

48. The proposed trees would do little or nothing about glare, especially during the months when foliage was limited or absent. [Vissering hearing testimony p. 30]

Discussion:

The tree planting proposal presented by GMP at the evidentiary hearing is not well thought out. The proposed trees may or may not grow, and there is no information regarding whether they would successfully block either shadow flicker or glare from the Mammolitis' property. Without evidence that trees would accomplish the goal of blocking the glare, there is no basis for this proposal, and it is therefore an insufficient remedy to both the shadow flicker and glare issues. If the proposal were to fail, the trees could become an additional eyesore on an already adversely impacted area.

The Board should not require GMP to plant trees as possible mitigation unless there is credible evidence that they would actually mitigate the shadow flicker and glare.

- I. GMP has made little or no effort to discuss options or implement reasonable solutions to shadow flicker or glare.**

Findings:

49. GMP provided no testimony indicating that it was aware of or considered that there were differing opinions about what areas of the Mammolitis' property impacted by shadow flicker were to be considered for mitigation.

50. GMP provided no testimony showing that it has considered re-programming the mitigation software to shut down the turbine during the times that the sun actually sets, or to mitigate impacts during the times earlier and later in the year when the Mammolitis have experienced shadow flicker.

51. GMP officials discussed the concept of planting screening trees with the Mammolitis in early 2013, and were informed by the Mammolitis at that time that trees would not grow well in the area where tree planting is now proposed. [Lorraine hearing testimony p. 213-4]

52. Neither GMP officials nor GMP's consultant discussed the tree screening proposal introduced at the evidentiary hearing with the Mammolitis. [Lorraine hearing testimony p. 214]
[Brenda Mammoliti hearing testimony p. 251]

Discussion:

The Mammolitis' objections to the operational impacts of the turbine are well-known, and long-standing. GMP has had ample opportunities to try to better understand and address these concerns. The record over the past two years clearly shows that GMP has made little or no effort to devise an operational plan or mitigation that would address the Mammolitis' concerns, which have been demonstrated to be reasonable. As the Board considers how to resolve these issues, the fact that GMP did not do so on its own volition should be taken into account.

CONCLUSION: POSSIBLE REMEDIES, PROPOSED SOLUTION

If GMP is to mitigate the undue adverse shadow flicker and glare problems created by the Vergennes turbine, it must undertake at least two measures. The turbine would have to be turned off for longer periods of the day and of the year, during the spring and summer, when shadow flicker impacts a much larger part of the Mammolitis' property, as opposed to just the three locations identified in its consultant's study. An accountability system to assure the turbine is being shut off as promised would have to be provided.

Second, the turbine blades would need to be painted with a matte finish or replaced with blades with a matte finish.

Implementing these measures would effectively resolve the shadow flicker problems and would reduce the glare but may not eliminate that problem from the turbine.

The Mammolitis recognize that GMP may find these remedies unsatisfactory. However, the choice to site the turbine where it is located was entirely GMP's. The Mammolitis made every effort to alert GMP to the likelihood of problems with the site before the turbine was installed, and have presented ideas for resolving the situation. GMP has almost entirely ignored this input.

Given the facts presented here – GMP's failure to evaluate the potential impacts of the turbine before deciding to install it or keep its promises to curtail the turbine once impacts were evident, the limited options for reasonable mitigation, and the extreme disruption the turbine causes to the Mammolitis' ability to comfortably live in their home or enjoy their back yard – the Board has no choice but to require GMP to paint or replace the blades with a matte finish and implement longer shut-down times, with accountability measures put into place to ensure that they actually work. If GMP chooses not to undertake these steps, the turbine should be removed.

Dated at Vergennes, VT this 14th day of March, 2014.

Brenda Mammoliti

Brenda Mammoliti
16 High Street
Vergennes, VT

STATE OF VERMONT
PUBLIC SERVICE BOARD

DOCKET NUMBER 8585

INVESTIGATION INTO METEOROLOGICAL TOWER AT
700 KIDDER HILL ROAD IN IRASBURG, VERMONT

October 6, 2015
9:30 a.m.

112 State Street
Montpelier, Vermont

Prehearing Conference held before the Vermont
Public Service Board, at the Third Floor Conference Room,
People's United Bank Building, 112 State Street,
Montpelier, Vermont, on October 6, 2015, beginning at 9:30
a.m.

P R E S E N T

HEARING OFFICER: George E. Young
Deputy General Counsel

Monica Stillman
Environmental Analyst

CAPITOL COURT REPORTERS, INC.
P.O. BOX 329
BURLINGTON, VERMONT 05402-0329
(802/800) 863-6067
E-mail: info@capitolcourtreporters.com

A P P E A R A N C E S

GEOFFREY A. COMMONS, ESQUIRE

AARON KISICKI, ESQUIRE

Appearing for the VT Department of Public Service
112 State Street
Montpelier, VT 05620-2601

LESLIE A. CADWELL, LEGAL COUNSELOR AND ADVOCATE, PLC

751 Frisbie Hill Road
Castleton, VT 05735

ROBIN KAY, Chairman of the Selectboard

Irasburg Selectboard
Irasburg, VT

SENATOR ROBERT STARR

1 would be at 2 o'clock in the afternoon. As I said
2 that's tentative. We'll have to wait and see who
3 intervenes, how many parties, as to whether I
4 conclude that makes sense.

5 I think that summarizes what was off the
6 record. Ms. Cadwell, you had a request concerning
7 Ms. Smith.

8 MS. CADWELL: I did and I just want the
9 record to reflect that Annette Smith from Vermonters
10 For a Clean Environment is here, and I had asked Ms.
11 Smith what her role is and I would like to get that
12 on the record.

13 MR. YOUNG: If there's no objection to
14 it, that's fine by me.

15 MS. SMITH: My name is Annette Smith.
16 I'm Executive Director of Vermonters for a Clean
17 Environment and I serve as a consultant to citizens
18 and towns who need help understanding the Public
19 Service Board process.

20 MS. CADWELL: And your role here is as
21 an advisor to the Selectboard?

22 MS. SMITH: I'm a consultant to the
23 Selectboard.

24 MS. CADWELL: On the Public Service
25 Board process in this particular case?

1 MS. SMITH: Yes.

2 MS. CADWELL: Okay. Thank you.

3 MR. YOUNG: So is there anything else we
4 need to do this morning? Hearing nothing, thank you
5 all for your time and we're adjourned.

6 (Whereupon, the proceeding was
7 adjourned at 10:10 a.m.)

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**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 8148

Petition of Barton Solar LLC for a certificate of public
Good, pursuant to 30 V.S.A. 248, authorizing)
Construction and operation of a 1.89 MW AC solar)
Electric generation facility, to be located on Glover)
Road in the town of Barton, Vermont

ANTHONY MENARD'S ADDITIONAL RESPONSES TO BARTON SOLAR, LLC
FIRST ROUND OF DISCOVERY QUESTIONS

Anthony Menard submits these additional responses to Barton Solar's first round of discovery question. These responses replace objections submitted in previous responses.

1. Identify by name, address and telephone number each person who assisted in the preparation of your answers to these interrogatories, requests to produce and requests to admit.

My wife and I were the only parties who provided factual information. Vermonters for a Clean Environment (Annette Smith and Matt Levin) helped us understand the format for the interrogatories. VCE's address is 789 Baker Brook Road, Danby, VT 05739. Its phone number is 802-446-2094.

2. Identify by name, address and telephone number each person that is assisting you with understanding how to participate as a party in this proceeding.

Annette Smith

789 Baker Brook Road

Danby, VT 05739

802-446-2094.

4. What is your educational history, including in your answer the name of the educational institution you attended, dates of attendance, course of study and degree earned?

I have no post-secondary education.

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Docket No. 8148

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Construction and operation of a 1.89 MW AC solar)
Electric generation facility, to be located on Glover)
Road in the town of Barton, Vermont

**MONICA MENARD'S ADDITIONAL RESPONSES TO BARTON SOLAR, LLC
FIRST ROUND OF DISCOVERY QUESTIONS**

Monica Menard submits these additional responses to Barton Solar's first round of discovery question. These responses replace objections submitted in previous responses.

1. Identify by name, address and telephone number each person who assisted in the preparation of your answers to these interrogatories, requests to produce and requests to admit.

The only parties who provided factual information related to this case are myself and my husband, and those who have filed pre-filed testimony. Vermonters for a Clean Environment (Annette Smith and Matt Levin) assisted me in understanding the format, such as the requirement to list one question and answer per page and printing single-sided. VCE's address is 789 Baker Brook Road, Danby, VT 05739. Its phone number is 802-446-2094.

2. Identify by name, address and telephone number each person that is assisting you with understanding how to participate as a party in this proceeding.

Annette Smith

789 Baker Brook Rd.

Danby, VT 05739

802-446-2094