

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7628-A

In Re: Lowell Mountain Wind Project)
Stormwater Permit #6216-INDC)
(Appeal of Energize Vermont, Inc., et al)

Docket No. 7628-B

In Re: Lowell Mountain Wind Project)
Stormwater Permit #INDC.1)
(Appeal of Energize Vermont, Inc. et al))

Docket No. 7628-C

In Re: Lowell Mountain Wind Project)
Stormwater Permit #6216-INDS)
(Appeal of Energize Vermont, Inc., et al)

Docket No. 7628-D

In Re: Lowell Mountain Wind Project)
Water Quality Certification)
(Appeal of Energize Vermont, Inc. et al))

and

Docket No. 7628-E

In Re: Lowell Mountain Wind Project)
Wetland Permit #2008-364)
(Appeal of Energize Vermont, Inc., et al)

Order entered: 1/6/2012

ORDER RE MOTION TO STRIKE AND MOTION TO AMEND

I. INTRODUCTION AND PROCEDURAL HISTORY

On September 19, 2011, Energize Vermont, Inc., Don and Shirley Nelson, Jim Blair, Kevin McGrath, Robbin Clark, Nancy Warner, and Jack Brooks (collectively, the "Appellants")

filed with the Vermont Public Service Board ("Board") appeals of five Vermont Agency of Natural Resources ("ANR") decisions related to the Lowell Mountain Wind Project. In their notices of appeal, the Appellants included lists of issues that they contended were raised by the ANR decisions.

At the prehearing conference on October 14, 2011, and in Orders issued on October 19 and October 27, 2011, the Board established a schedule that required the Appellants to file a more specific statement of issues by October 24, 2011. The schedule also set a deadline of November 14, 2011, for motions on the Appellants' list of issues, with responses to such motions due two weeks later.

On October 24, 2011, the Appellants filed a Preliminary Statement of Questions on Appeal ("Statement of Questions").

On November 14, 2011, Green Mountain Power Corporation ("GMP") filed a Motion to Strike and to Dismiss Appellants' Statement of Questions ("Motion to Strike").

On November 28, 2011, the Appellants filed a Response to GMP's Motion to Strike ("Appellants' Response") and a Motion to Amend Appellants' Statement of Questions ("Motion to Amend"). Also on November 28, 2011, the Vermont Agency of Natural Resources ("ANR") filed a letter supporting GMP's Motion to Strike, and the Towns of Albany and Craftsbury (the "Towns") filed a letter opposing GMP's Motion to Strike.

On December 15, 2011, GMP filed an Opposition to Appellants Motion to Amend ("Opposition") and a Reply to Appellants' Response ("Reply").

In today's Order, the Board grants in large part GMP's Motion to Strike, and conditionally grants the Appellants' Motion to Amend.

II. POSITIONS OF THE PARTIES

A. Motion to Strike

1. GMP

GMP notes that under the statute that governs these appeals, the Board is to hold hearings on "those issues which have been appealed," 10 V.S.A. § 8506(e), and is to "give the same weight and consideration" to Environmental Court precedent as the Board gives its own prior decisions. 10 V.S.A. § 8506(e). GMP contends that under Environmental Court precedent, an appellants' statement of issues "must concisely state the specific components or characteristics of

a project that do not comply with specific statutory or regulatory criteria."¹ According to GMP, this requirement serves two purposes: (1) to restrict the scope of the appeal, which leads to a more efficient proceeding, and (2) to provide notice to appellees of the claims to which they must respond. GMP asserts that it is especially important to adhere to this requirement in the present Board proceeding because, unlike a typical civil case, the staggered prefilings and discovery schedule means that GMP will submit its case first, and thus GMP cannot through discovery better ascertain the issues on appeal prior to submitting its direct testimony. GMP contends that without greater specificity in the statement of issues, it will be faced with a "moving target" as this proceeding progresses. GMP also points to (1) the Board's requirement in the Prehearing Conference Memorandum that the Appellants file a definitive list of issues, and (2) Board Rule 2.212, which provides that a Board proceeding is governed by orders issued subsequent to a prehearing conference.

GMP claims that Questions 1 through 5, 10 through 12, 17 through 20, 30 and 31 in the Appellants' Statement fail to comply with the specificity requirement established by Environmental Court precedent, and thus those issues should be dismissed or stricken. GMP further asserts that those Questions also should be stricken pursuant to Board Rule 2.208 as a substantially defective and insufficient filing. In addition, for the Appellant's remaining Questions, GMP also seeks to strike the phrase "without limitation" wherever it appears.

GMP also moves to dismiss Appellants' Questions 6(a), 7(a), 7(b), 7(e), 7(i), 7(m), 13(a), 17 and 18 on the grounds that they fail to state claims upon which relief may be granted. Questions 6(a) and 13(a) address the completeness of GMP's stormwater permit applications; GMP contends that there are no regulatory requirements dictating what must be included for an application to be complete, and that regardless there would be no legal consequences given the de novo nature of these appeals.

Questions 7(a), 7(b), 7(e), 7(i), and 7(m) concern compliance with Part 3 of the Vermont Standards & Specifications for Erosion Prevention & Sediment Control ("Standards & Specifications"). GMP contends that under both the plain language of the Standards & Specifications and Environmental Court precedent in *In re Sheffield Wind Project*, Docket No. 252-10-08 Vtec, slip op. (Vt. Env'tl. Ct., Aug. 26, 2010) ("*Sheffield Wind*"), individual stormwater permits such as those at issue in these appeals are not required to conform to Part 3.

1. GMP Motion to Strike at 2.

Questions 17 and 18 concern whether the operational stormwater permit complies with federal Clean Water Act requirements. According to GMP, its operational stormwater permit for the Lowell Wind Project does not require a National Pollution Discharge elimination System ("NPDES") permit under the federal Clean Water Act, and instead is entirely a creature of state law.

2. Appellants

The Appellants observe that the Board's Rules, unlike those of the Environmental Court, do not include procedures specifically directed to appeals under 10 V.S.A. § 8506. Thus, while V.R.E.C.P. 5(f) requires appellants to file a statement of issues for their appeals, there is no such explicit requirement for environmental appeals to the Board. The Appellants state that they included statements of issues in their notices of appeal "[i]n the face of this acknowledged procedural void,"² and later filed their Statement on October 24 in response to the Board's direction that they file a more specific statement of issues.

The Appellants assert that the level of specificity required in a statement of questions is similar to that for a complaint: it must be "stated with sufficient clarity to put the other parties on notice of the issues appealed."³ The Appellants maintain that under *Lane v. Town of Grafton*, 166 Vt. 148, 689 A.2d 455 (1997), less specificity is required in modern pleadings due to the availability of discovery practice. The Appellants claim that their Questions 1 through 5, 10 through 12, 17 through 20, 30 and 31 each identifies the statutory or regulatory provision that they allege GMP must satisfy, and that any "nuances" that GMP believes are not sufficiently described "can be fully developed during the discovery phase of this proceeding."⁴

Turning to GMP's attempt to dismiss Questions 6(a) and 13(a), the Appellants claim that they are not alleging a failure to file complete applications with ANR. Instead, the Appellants maintain that these questions seek to probe whether, in this de novo appeal, "GMP has submitted sufficient information to enable the PSB to make the determinations necessary for the issuance of

2. Appellants' Response at 2.

3. Appellants' Response at 4, citing *In re Rivers Dev., LLC*, Nos. 7-1-05 Vtec, 68-3-07 Vtec, slip op. at 14 (Vt. Env'tl. Ct. Jan. 8, 2008); *In re: Unified Buddhist Church, Inc.*, No. 253-10-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct., May 11, 2007); and V.R.C.P. 8(a).

4. Appellants' Response at 6.

a permit."⁵ The Appellants also contend that these two questions would be further clarified if they are modified as proposed in the Appellants' Motion to Amend.

The Appellants assert that their Questions 7(a), 7(b), 7(e), 7(i), and 7(m) should not be dismissed, notwithstanding the Environmental Court's ruling in *Sheffield Wind*, because the Standards & Specifications by their plain language apply to the Lowell Wind stormwater permits, because ANR's responses to public comments support their application, and because GMP seeks to rely on a presumption of compliance with the Vermont Water Quality Standards (which, in turn, rely in part on best management practices ("BMPs")) that include, according to the Appellants, provisions of the Standards & Specifications).

The Appellants concede that their Questions 17 and 18 should be withdrawn.

3. Towns

The Towns concur with the arguments presented by the Appellants. The Towns also contend that a statement of questions need not be as detailed as GMP asserts, which the Towns claim would be inconsistent with the rules, case law, and the concept of notice pleading, and would be "nearly impossible" prior to discovery. The Towns maintain that GMP's claim that it lacks sufficient notice of the issues on appeal is inconsistent with the schedule to which GMP agreed, given that the Board would not be able to rule on GMP's motion prior to the deadline for GMP to prefile its direct case. With respect to the Appellants' questions regarding the sufficiency of GMP's permit applications, the Towns contend that the applications must be provided to the Board so that the Board has all necessary information. The Towns assert that the applicability of Section 3 of the Standards & Specifications is not an appropriate subject for summary judgment because it will be a subject of litigation in these proceedings, and because the Environmental Court's *Sheffield* decision on the issue was one of first impression. The Towns contend that even if the Appellants' Statement of Questions is insufficient, Environmental Court precedent calls for providing the Appellants with an opportunity to correct the deficiencies rather than dismissing the deficient questions.

5. Appellants' Response at 8.

4. ANR

ANR concurs with the arguments presented by GMP, and supports GMP's Motion to Strike.

B. Motion to Amend

1. The Appellants

In their Motion to Amend, the Appellants request permission to file a Revised Preliminary Statement of Questions on Appeal ("Revised Statement"), a copy of which is included with their motion. The Appellants note that the legislature, in transferring to the Board jurisdiction over appeals of environmental permits for renewable generation facilities and telecommunications facilities, did not establish a methodology for identifying the issues on appeal, even though the statute (10 V.S.A. § 8506(e)) calls for the Board to hold a "hearing on those issues which have been appealed." The Appellants now seek permission to revise certain of the Questions that GMP seeks to have dismissed or stricken. According to the Appellants, the Board should allow their Revised Statement pursuant to Board Rule 2.204(G), which allows filings to be amended at any time unless objected to, in which case the amendments are not allowed unless the Board finds "that they will not unreasonably delay any proceeding or unreasonably adversely affect the rights of any party." The Appellants claim that allowing their Revised Statement is unlikely to result in unreasonable delay or unreasonably affect GMP's rights "given the fact that this process is in its initial stages and neither prefiled testimony nor discovery has yet occurred."⁶ The Appellants also rely on Environmental Court precedent, including a procedural order in the *Sheffield Wind* case, for the proposition that amendment of a Statement of Questions should be liberally allowed if there is no prejudice to the other parties.

2. GMP

GMP opposes the Appellants' Motion to Amend. GMP first alleges that the Motion to Amend is misleading in that it only identifies eight questions that the Appellants seek to revise, while in the Revised Statement "Appellants have added no fewer than seventeen entirely new questions, some of which are unrelated to GMP's motion to strike or dismiss and which go far

6. Motion to Amend at 4.

beyond the scope of Appellants' earlier identified issues."⁷ GMP contends that, accordingly, the Appellants' Revised Statement should be rejected in its entirety for failing to clearly identify the proposed changes, in violation of the requirements of Board Rule 2.204(G).

GMP asserts that the Revised Statement should also be rejected because to allow it would prejudice GMP and could delay the proceeding. GMP observes that under the schedule for these appeals, the Appellants filed their Motion to Amend only three days prior to the deadline for GMP to file its direct testimony, leaving no time for a Board ruling on the motion nor for GMP reasonably to tailor its prefiled testimony to the Revised Statement. Thus, GMP claims, to allow the additional questions presented in the Revised Statement would be unfair to GMP, especially because the Revised Statement includes new questions that "raise new issues beyond the scope of this appeal and beyond the scope of the Board's jurisdiction."⁸ GMP contends that to permit the Revised Statement may require GMP to seek schedule modifications to accommodate additional motion practice and supplemental direct testimony.

III. DISCUSSION AND CONCLUSION

In 2010, the legislature added section 8506 to Title 10, transferring jurisdiction over appeals of environmental permits for renewable energy facilities from the Environmental Court to this Board. The appeals before us in this proceeding are not only the first under this new statutory authority, but are also to the best of our knowledge the first appellate proceedings this Board has ever conducted. All other Board proceedings are cases in which the Board has original, not appellate, jurisdiction.

Both the Appellants and GMP recognize that the Board's Rules contain no provisions specifically tailored to appellate proceedings. However, in Section 8506(e) the legislature has provided instruction and guidance to the Board for these appeals:

In an appeal under this section, the public service board, applying the substantive standards that were applicable before the secretary, shall hold a de novo hearing on those issues which have been appealed. In such an appeal, the board shall give the same weight and consideration to prior decisions of the environmental division and of the entities described in subsection 8504(m)(precedent) of this title as the board gives to its prior decisions.

7. GMP Opposition at 2.

8. GMP Opposition at 4.

Thus, by statute these appeals are not to be a comprehensive analysis of every issue that was relevant to the ANR permit proceedings. Instead, the legislature intended, and directed the Board to conduct, proceedings focused "on those issues which have been appealed."

Unlike the Environmental Court, the Board does not have a procedural rule requiring that a statement of issues be included with the notice of appeal. However, the Board's Rules do include Rule 2.212, which provides:

In any proceeding, the Board may, and in any rate case, the Board shall direct the parties to appear before it for a conference to consider the following matters:

- (A) *the simplification of the issues;*
- (B) the necessity or desirability of amendments to any filing;
- (C) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
- (D) the limitation of the number of expert witnesses;
- (E) such other matters may aid in the disposition of the case.

The Board shall make an order which recites the action taken at the conference, including any agreements made by the parties. *When entered, such order controls the subsequent course of the proceeding unless later modified.* (Emphasis added.)

In the present appeals, the Board convened a prehearing conference on October 14, 2011, at which the Appellants agreed to file an amended statement of issues to "provide more clarity,"⁹ and were directed to do so by the Board in the Prehearing Conference Memorandum issued October 19, 2011, which provided that "[t]he Appellants shall file a more specific statement of issues by October 24, 2011."¹⁰ The Appellants were thus under an obligation to specify the issues that they seek to have addressed in these appeals.

To determine the extent to which the Appellants' October 24 Statement of Questions satisfied this obligation, in accordance with our statutory direction we look to Environmental Court precedent, as well as to the purposes behind the statement of questions.

9. Tr. 10/14/11 at 14 (Hershenson).

10. Prehearing Conference Memorandum, 10/14/11 at 2.

A statement of questions is designed to identify the issues to be decided in the appeal, thereby providing the parties with notice of the scope of the appeal. In a decision upon which both the Appellants and GMP rely,¹¹ the Environmental Court has explained:

Although a statement of questions is not a pleading subject to V.R.C.P. 12(e), it establishes the scope of the appeal and in a de novo appeal such as this one, the scope of discovery and preparation for trial. The other parties are entitled to a statement of questions that is not vague or ambiguous, but is sufficiently definite so that they are able to know what issues to prepare for trial. *In particular, as the applicant has the burden of coming forward with evidence to show that the application meets the criteria for approval, the applicant is entitled to understand in what respect an appellant believes that the application fails to meet such criteria.*¹²

In that case, three questions were at issue before the Court. The questions asked, respectively, whether the application complied with: (1) 10 V.S.A. § 1259(e)(4) and 10 V.S.A. § 1263(e); (2) Section 13.5(b) of the Vermont Water Pollution Control Permit Regulations; and (3) the Indirect Discharge Rules.¹³ The Environmental Court's reasoning and conclusion are particularly instructive for our present purposes, and thus merit extended quotation. With respect to the first question, the Court declared:

Section 1263(e) implicates the filing requirements for the renewal application and potentially all of the "determinations and procedures" that were required for the initial permit application. Section 1259(e)(4) potentially implicates all of the Vermont Water Quality Standards. Appellee-Applicant and the other parties are entitled to a more specific statement of which filing requirements, which determinations and procedures, and which Water Quality Standards are alleged by Appellants not to be met by the application at issue in this appeal.¹⁴

On the second question, the Court ruled that "Section 13.5(b) [of the Vermont Water Pollution Control Permit Regulations] has multiple subsections and subparts. Appellee-Applicant and the other parties cannot reasonably prepare for trial without knowing which specific subsections or subparts are implicated by the question."¹⁵ The Court observed that the third question "asks whether the application complies with the Indirect Discharge Rules; those rules are voluminous

11. GMP Motion to Strike at 3–4; Appellants' Response at 4.

12. *In re: Unified Buddhist Church, Inc.*, Docket No. 253-10-06 Vtec, slip op. at 5 (Vt. Env'tl. Ct., May 11, 2007) ("*Unified Buddhist Church*") (emphasis added).

13. *Unified Buddhist Church* at 5–6.

14. *Id.* at 5.

15. *Id.* at 5.

and have many subsections. As with regard to Questions 1 and 2, Question 3 does not provide the other parties with sufficient specificity to prepare their cases."¹⁶

In our present proceeding, the questions that GMP alleges are overly broad – i.e., Questions 1 through 5, 10 through 12, 17 through 20, 30 and 31 – are, with one exception, similar to the three questions that the Environmental Court held insufficient in *Unified Buddhist Church*, in that they ask generally whether the application complies with applicable statutes.¹⁷ The exception is Question 4, which asks "[w]hether stormwater discharges from the Project as proposed will reduce the quality of the receiving waters below the classification established for said waters, pursuant to 10 V.S.A. § 1263(c)." Question 4, while broadly stated, focuses on a specific legal requirement, and thus we conclude that it provides a sufficient degree of specificity. We therefore grant GMP's motion to strike Questions 1, 2, 3, 5, 10, 11, 12, 17, 18, 19, 20, 30 and 31, but not Question 4.¹⁸

We likewise grant GMP's motion to strike the phrase "without limitation," wherever it appears in the Statement of Questions, as overly broad. The phrase "without limitation" defeats the fundamental purpose of the statement of questions: to identify, and therefore *limit*, the issues on appeal.

Appellants' Questions 6(a) and 13(a) ask, respectively, whether GMP "has filed complete applications as required by Section 13.2(b)" and "has submitted all necessary application materials required by § 18-309(b)(1)." The Appellants claim that these questions are not directed to the completeness of GMP's applications before ANR, and instead are intended to ask whether GMP has submitted sufficient information in these de novo appeals. We find this claim unavailing. As GMP notes in its Response,¹⁹ these two Questions are stated in the past tense, indicating that they are not in fact directed to the present appeals in which GMP had not presented its case at the time the Questions were submitted. Even if Questions 6(a) and 13(a) were directed to the information that GMP will be presenting in the present appeals, they would add nothing to the issues to be decided. These cases are limited to the issues presented in the

16. *Id.* at 6.

17. For example, Question 3 asks: "Whether the Projects as proposed meet the requirements of the Vermont Water Pollution Control statute, 10 V.S.A. Chapter 47, including, without limitation, §§ 1258, 1259, 1263 and 1264(e)."

18. The Appellants have not contested GMP's motion to strike on other grounds Questions 17 and 18, and have agreed to withdraw those two questions.

19. GMP Response at 6 n. 1.

appeals, and inherent to those issues that are before us will be the sufficiency of the information GMP presents to demonstrate compliance with the requirements at issue. Thus, we grant GMP's motion to strike Questions 6(a) and 13(a).

We also grant GMP's request to strike Questions 7(a), 7(b), 7(e), 7(i), and 7(m). The applicability of Part 3 of the Standards & Specifications to individual stormwater permits was directly addressed and decided by the Environmental Court in *Sheffield Wind*. In that case the Court held that:

In fact, Part 3 of the Vermont Standards and Specifications simply provides guidance for preparing EPSC plans; § 3.1 characterizes Part 3 as "a recommended approach to EPSC development," except for the minimum requirements in § 3.3. Section 3.3 by its terms is only applicable to those projects that are eligible for coverage under the Construction General Permit. It does not provide requirements applicable to individual construction stormwater permits, as such individual permits must be tailored to the particular site and will be individually reviewed and approved by the ANR.²⁰

We are required to give the same deference to the Environmental Court's precedent as to our own. The Court has held that Part 3 of the Standards & Specifications does not apply to individual stormwater permits, based on the language of the Standards & Specifications. We have considered the Court's opinion and the plain language of the Standards & Specifications, and find no basis for reaching a different conclusion than the Court did.²¹

We now turn to the Appellants' Motion to Amend. Board Rule 2.204(G) provides, in relevant part:

(G) Amendments

(1) In general. Proposed amendments to any filing may be made at any time. If unobjected to by any party within ten days of filing or at the commencement of any hearing in which the amended matter is at issue, whichever is earlier, such amendments shall be deemed effective, except that the Board may at any time dismiss any proposed amendments which it finds to have the effect of unreasonably delaying any proceeding or unreasonably adversely affecting the rights of any party. Where objection is made, amendments shall not be allowed unless the Board finds (a) that they will not unreasonably delay any proceeding or unreasonably adversely affect the rights of any party and (b) that the requirements

20. *Sheffield Wind*, slip op. at 20 n. 13 (Vt. Env'tl. Ct., Aug. 26, 2010).

21. It is also significant that ANR, which is the agency that promulgated the Standards & Specifications, has stated its concurrence with GMP's position. An agency's interpretation of its own regulations is entitled to deference. *Conservation Law Found. v. Burke*, 162 Vt. 115, 121, 645 A.2d 495, 499 (1993).

of subsection (2), if applicable, are satisfied. The Board may condition the acceptance of any amendment as justice may require. An amendment which is allowed over objection shall be deemed effective as of the date it is approved, unless for good cause, the Board orders that it shall be effective as of a different date. Proposed amendments shall be clearly identified as such and shall clearly indicate the changes they effect. In the event an amendment makes a substantial change in a filing, the Board may order such additional notice to other parties and the public as justice may require.

GMP contends that it would be prejudiced if the Board were to grant the Appellants' Motion to Amend because GMP has already filed its direct testimony. GMP further claims that under Environmental Court precedent, parties are not allowed to supplement their statements of questions after trial has commenced, and that trial has commenced in the present appeals given that GMP has submitted its direct testimony.

The current appeals are the first that this Board has heard pursuant to its newly granted authority under 10 V.S.A. § 8506, and there are no other appellate proceedings within the Board's jurisdiction. Thus, there was no Board precedent to guide the Appellants in the preparation of their Statement of Questions, and unlike the Environmental Court, this Board has not promulgated rules of procedure for appellate proceedings. As in our consideration of GMP's Motion to Strike, we again look to Environmental Court precedent for guidance.

When the Environmental Court rejects an overly broad statement of questions, it typically affords the appellant an opportunity to amend its statement to add the required specificity.²² We see no good reason to deny that opportunity to the Appellants here. Although GMP points to other Environmental Court precedent in which amendments were not allowed once trial had commenced, here GMP agreed to a schedule under which GMP would prefile its direct case before the Board could render a decision on GMP's Motion to Strike. Thus, GMP should not be heard to complain when, in accordance with Environmental Court precedent, the Appellants are allowed an opportunity to refine their statement of questions, even if that may require GMP to supplement the evidence that it has prefiled in order to address any newly specified issues.

22. See, e.g., *Appeal of Rivers Development, LLC*, Docket Nos. 7-1-05 Vtec and 68-3-07 Vtec, slip op. at 15 (Vt. Env'tl. Ct. , Jan. 8, 2008); *In re: Chipman Hill Estates PUD*, Docket No. 39-2-06 Vtec, slip op. at 3 (Vt. Env'tl. Ct. , May 15, 2006); *Unified Buddhist Church* at 6.

These considerations lead us to conclude that we should allow the Appellants to amend their Statement of Questions.²³ This will require some extension to the schedule, which we find reasonable and acceptable for the following reasons. First, the extension will allow the Appellants to modify their Statement of Questions, which we find appropriate given the prior lack of specific guidance that was available to them. Second, and relatedly, not to allow the amendment would run the risk of excluding issues of genuine substantive concern, potentially resulting in environmental degradation that could be avoided or mitigated.²⁴ Third, although GMP contends that it would be prejudiced by our granting the Appellants' Motion to Amend, GMP itself initially sought a more leisurely schedule for these appeals. Under GMP's originally proposed schedule, final briefing in these proceedings would not conclude until December 17, 2012, in contrast to the current schedule which calls for briefing to be completed approximately five months earlier. Therefore, we conclude that any delay associated with allowing the Appellants to amend their Statement of Questions would not be prejudicial to GMP. And, while GMP will likely face some increased costs associated with responding to additional issues included in the Appellants' Revised Statement, under the present circumstances such additional costs are not so burdensome that they warrant denial of the Appellants' Motion to Amend.

For these reasons, we grant the Appellants' Motion to Amend, but on the condition that no later than January 10, 2012, the Appellants re-submit their Revised Statement in a manner that clearly shows all of the amendments, as required by Board Rule 2.204(G). We also remind all parties of the requirement we established in the Prehearing Conference Memorandum that they must provide electronic copies of all testimony, motions and responses, and briefs, and that if submitted in .pdf format they must be searchable and extractable.²⁵

To accommodate the Appellants' filing of their Revised Statement, the schedule for these proceedings is modified as follows:

23. However, in future appeals under this statute, we will expect Appellants to heed the guidance that today's Order provides with respect to the specificity with which they must identify the issues appealed, and accordingly we will be less forgiving than we are under the present circumstances.

24. This concern is significantly informed, again, by the lack of guidance available to the Appellants prior to today's Order.

25. Prehearing Conference Memorandum, 10/19/11 at 3.

<u>Event</u>	<u>Date</u>
Appellants to Re-file Revised Statement of Questions	1/12/12
Motions on Revised Statement of Questions	1/18/12
Response to Motions on Revised Statement of Questions	1/24/12
GMP Supplemental Direct Testimony and Exhibits	2/17/12
Discovery Requests Served on GMP	2/27/12
Discovery Responses Due	3/12/12
Appellants/Intervenors/ANR/DPS Direct Testimony and Exhibits	3/26/12
Discovery Requests Served on Appellants/Intervenor/ANR/DPS	4/10/12
Discovery Responses Due	5/8/12
All Parties Rebuttal Testimony and Exhibits	5/25/12
Discovery Requests on Rebuttal	6/4/12
Rebuttal Discovery Responses Due	6/29/12
Technical Hearings	7/10 – 7/13 and 7/16 – 7/18/12
Briefs	3 weeks after completion of hearings
Reply Briefs	2 weeks after briefs

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Service Board of the State of Vermont that:

1. Questions 1, 2, 3, 5, 6(a), 7(a), 7(b), 7(e), 7(i), 7(m), 10, 11, 12, 13(a), 17, 18, 19, 20, 30 and 31 of Appellants' Statement of Questions are stricken.

2. The Motion to Amend Appellants' Statement of Questions is granted, with the condition that no later than January 12, 2012, the Appellants must re-submit their Revised Statement of Questions in a manner that clearly shows all of the amendments, as required by Board Rule 2.204(G).

3. The schedule for these proceedings is modified as set forth above.

Dated at Montpelier, Vermont, this 6th day of January, 2012.

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

OFFICE OF THE CLERK

FILED: January 6, 2012

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)