

State of Vermont
WATER RESOURCES BOARD

In re: Deerfield River Hydroelectric Project
§ 401 Certification
Docket Nos. WQ-95-01 and WQ-95-02 (consolidated)

CHAIR'S EVIDENTIARY RULINGS ON THE OBJECTIONS OF THE PARTIES

In this decision, Chair William Boyd Davies rules on the various objections of the parties to the prefiled testimony in the above-captioned proceeding. The Chair's rulings are final evidentiary rulings subject to the parties' right to seek review by the full Water Resources Board ("Board") pursuant to Board Rule of Procedure 21. Parties must request such review in writing on or before **Tuesday, February 18, 1997 at 4:30 p.m.** and must identify the specific ruling(s) objected to. Any party seeking review by the full Board must specify each objection by using the objection number assigned by the Board under the column heading "Objection" in the log of rulings included in Part II. B of this Order.

I. BACKGROUND

The parties submitted prefiled testimony and exhibits during August, September, October and November, 1996. On December 20, 1996, New England Power Company ("NEP"), Vermont Natural Resources Council ("VNRC"), and the Agency of Natural Resources ("ANR") filed their respective objections to certain prefiled testimony and exhibits.

On January 10, 1997, NEP, VNRC, ANR, the Commonwealth of Massachusetts ("Massachusetts"), and the Conservation Law Foundation ("CLF") each filed responses to the various evidentiary objections. On January 17, 1997, NEP and VNRC requested oral argument on specific evidentiary objections. On January 28, 1997, Chair heard oral argument with respect to the specific objections raised by NEP and VNRC. On January 29, 1997, Chair Davies issued a Memorandum to Parties ("Memorandum") which contained his rulings on NEP's objections to VNRC's surrebuttal filing. The Memorandum is incorporated herein by reference.

II. ORDER

A. General Matters

1. Surrebuttal Ruling

In section I.A of its Objections to Prefiled Testimony and Exhibits, NEP generally objects to VNRC's surrebuttal testimony as violative of the parties' scheduling stipulation. On that basis, NEP requests exclusion of all of VNRC's surrebuttal filing. The scheduling stipulation was filed with the Board on May 21, 1996 by NEP, agreed to by the parties at the Board's regular meeting on May 28, 1996, and adopted by the Board at its May 28, 1996 meeting.

The parties' scheduling stipulation (as set forth in NEP's Objection to Proposed Schedule and Submission of Alternative Proposed Schedule, filed on May 21, 1996) required filings as follows:

August 30, 1996 - NEP to file direct testimony of all witnesses, etc.;

September 27, 1996 - Other parties to file direct and rebuttal testimony, etc.;

October 18, 1996 - NEP to file rebuttal testimony, etc.;

November 8, 1996 - All other parties to file rebuttal testimony, etc.; and

November 27, 1996 - All parties to file surrebuttal, etc.

NEP and VNRC have different interpretations of the scheduling stipulation's surrebuttal filing requirements. NEP argues that VNRC should have responded to NEP's rebuttal by filing surrebuttal on November 8. Conversely, VNRC argues that it was correct in filing its surrebuttal to NEP's rebuttal testimony on November 27. Surrebuttal evidence is in response to rebuttal. All parties were required to file surrebuttal on November 27, 1996. Although VNRC's interpretation of the scheduling stipulation is beyond the intended scope of the scheduling stipulation, VNRC's interpretation is plausible. Accordingly, the Chair cannot conclude that VNRC violated the schedule by filing its surrebuttal evidence on November 27, 1996.

In section I.A of its Objections to Prefiled Testimony and Exhibits, NEP also argues that VNRC's surrebuttal should be excluded pursuant to V.R.E. 403. V.R.E. 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

V.R.E. 403. The Chair concludes that VNRC's surrebuttal evidence is highly probative and that its probative value is not outweighed by the dangers and considerations listed in V.R.E. 403. As stated in the Memorandum, the Chair overrules NEP's general objections to VNRC's surrebuttal filing.

NEP further objects to the following specific portions of VNRC's surrebuttal testimony as beyond the scope of surrebuttal (see sections I.C.2, I.D, I.F, and I.G. of NEP's Objections to Prefiled Testimony and Exhibits, filed with the Board on December 20, 1996) :

VNRC-59-RAD, page 15, line 18 through page 16, line 7;

VNRC-61-LDB, page 4, line 21 through page 5, line 13.

VNRC-60-SLD, page 2, line 13 through page 5, line 26;

VNRC-53-RGW, page 4, line 16 through page 5, line 15;
VNRC-53-RGW, page 10, line 15 through page 12, line 22; and
VNRC-53-RGW, page 13, line 1 through page 14, line 7.

Additionally, NEP objects to all of exhibit VNRC-53-RGW as beyond the scope of surrebuttal (see section I.A. of NEP's Objections to Prefiled Testimony and Exhibits). VNRC-53-RGW contains the testimony of a new witness, Robert G. Wetzel, who widely addresses issues in the case.

As stated in the Memorandum, the Chair overrules NEP's specific objections to the above-mentioned VNRC evidence. Although the Chair concludes that the evidence is beyond the intended scope of surrebuttal in that it is not in response to rebuttal, he overrules NEP's objections to the evidence because it is relevant and probative. However, in order to avoid manifest injustice which might be caused by his ruling, the Chair grants all parties, except for VNRC, permission to file evidence in response to the above-mentioned VNRC evidence¹ on or before **Tuesday, February 18, 1997 at 4:30 p.m.** The parties shall present such responsive evidence only through witnesses who have previously submitted prefiled evidence in this proceeding.

On or before **Tuesday, February 25, 1997 at 4:30 p.m.**, the parties shall file any objections to the responsive evidence filed on February 14, 1997. On or before **Monday, March 3, 1997 at 4:30 p.m.**, any party may make a written request for oral argument before the Chair on the evidentiary objections filed on February 25, 1997. If oral argument is requested by any party, it shall occur during the second prehearing conference on **Wednesday, March 5, 1997** at a time and location to be announced by subsequent notice.

RULING: NEP's objections to VNRC's surrebuttal filing are overruled. All parties, except for VNRC, may respond to the following portions of testimony by prefiled evidence on or before **Tuesday, February 18, 1997 at 4:30 p.m.**: (1) VNRC-59-RAD, page 15, line 18 through page 16, line 7; (2) VNRC-60-SLD, page 2, line 13 through page 5, line 26; and (3) VNRC-53-RGW in its entirety.

2. Agency Documents Ruling

NEP objects to VNRC's submission of the following letters, memoranda, and reports ("Agency Documents") issued by ANR and by the Environmental Protection Agency ("EPA"): VNRC-50-JP; VNRC-51-JP; VNRC-56-JP; VNRC-57-JP; VNRC-37-RAD; VNRC-38-RAD; VNRC-39-RAD; VNRC-40-RAD; VNRC-41-RAD; VNRC-43-RAD; and VNRC-45-RAD. NEP moves for exclusion of the Agency Documents as hearsay pursuant to V.R.E. 802.

¹Parties may respond to all of the evidence contained in VNRC-53-RGW. Parties may not respond to the evidence identified in VNRC-61-LDB because such evidence, although not properly within the scope of surrebuttal, is a repeat of VNRC's direct testimony.

Additionally, NEP states that the Agency Documents are not scientific studies or data collections upon which an expert may rely when offering an opinion under V.R.E. 703. Finally, NEP argues that the Agency Documents have no place in a de novo proceeding and should be excluded pursuant to V.R.E. 403.

VNRC argues that the Agency Documents issued by ANR are not hearsay because: (1) they are admissions by a party opponent pursuant to V.R.E. 801(d)(2) or (2) they fall within the public records and reports exception to the hearsay rule pursuant to V.R.E. 803(8). VNRC further argues that the Agency Documents are of the type reasonably relied upon by experts in the field and are the basis for expert opinions pursuant to V.R.E. 703. Finally, VNRC argues that admission of the Agency Documents is appropriate in a de novo proceeding and that they should not be excluded pursuant to V.R.E. 403.

The Agency Documents are not admissible because they are not relevant in this *de novo* proceeding. V.R.E. 402 states, in part, that “[e]vidence which is not relevant is not admissible.” V.R.E. 402. Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” V.R.E. 401. 10 V.S.A. § 1024(a) provides that an appeal of a § 401 water quality certificate (“§ 401 certificate”) to the Board “shall be *de novo* and shall be conducted as a contested case.” The Vermont Supreme Court has held that “[i]n a *de novo* proceeding, the [reviewing] Board is required to hear the matter as if there had been no prior proceedings.” *In re Killington Ltd.*, 159 Vt. 206, 214 (1992). Therefore, the Board is not reviewing ANR’s prior decision to determine whether ANR properly issued the § 401 certificate to NEP. Rather, the Board is required hear the matter as if there had been no prior proceedings. The Chair sustains NEP’s objection to the Agency Documents because they are not relevant in this *de novo* proceeding.

Additionally, the Chair sustains NEP’s objection to the Agency Documents pursuant to V.R.E. 703. V.R.E. 703 states:

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. If of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence.

V.R.E. 703.

Rule 703 permits otherwise inadmissible evidence to be introduced merely to show the basis of an expert’s opinion and not for the truth of the matter asserted. *State v. Recor*, 150 Vt. 40, 48 (1988). Therefore, the Agency Documents are not admissible for the truth of the matter asserted.

Additionally, the Agency Documents are not admissible to show the bases for VNRC's experts' opinions. "Under Rule 703, if an expert relies on the out-of-court statement of another in forming his or her opinion *and* if such statements are of the type reasonably relied on by experts in the particular field, then the statements - even if not independently admissible for their substance - will be admissible for the limited purpose of demonstrating the basis for the expert's opinion." *Id.* (citing S. Saltzburg & K. Redden, Federal Rules of Evidence Manual 671 ((4th ed. 1986)). First, VNRC's experts do not rely on the Agency Documents in forming their opinions. Rather, VNRC's experts quote the Agency Documents as corroboration for their own opinions, in effect acting as conduits for other experts' opinions. Second, the Agency Documents are not of the type reasonably relied upon by experts because they contain opinions rather than facts or data. Therefore, the Agency Documents are not admissible for the purpose of showing the bases for VNRC's experts' opinions.

Finally, the Chair sustains NEP's objection to the Agency Documents pursuant to V.R.E. 403. V.R.E. 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

V.R.E. 403.

The probative value of the Agency Documents is low because most of the Agency Documents were written before NEP filed its most recent license application. Therefore, the Agency Documents address prior license applications rather than the application presently before the Board. Conversely, the dangers of confusion of the issues and wasting of time are high because extensive cross-examination may be required in order to place the Agency Documents in context. The Chair concludes that the Agency Documents' probative value is substantially outweighed by the dangers of confusion of the issues and wasting of time. Therefore, the Agency Documents are inadmissible pursuant to V.R.E. 403.

As a result of the Agency Documents inadmissibility, those portions of testimony which refer to the Agency Documents or quote the Agency Documents verbatim are struck from the record.

Notwithstanding the foregoing, the Board may allow use of the Agency Documents in cross-examination, for impeachment purposes, during the hearing.

RULING: NEP's objections to the Agency Documents are sustained.

3. Scope of Appeal Ruling

Both NEP and ANR object to VNRC's evidence regarding the flow regime established for the East Branch below Somerset Reservoir as beyond the scope of VNRC's appeal. Rule 18(A)(4) of the Board's Rules of Procedure provides that the notice of appeal must set forth "[a] statement of the issues and a statement of reasons why the petitioner or appellant believes any act or decision appealed from was in error." Rule 18(D) further provides: "The scope of any de novo or appellate proceeding shall be limited to those issues specified in the petition or notice of appeal unless the Board determines that substantial inequity or injustice would result from such limitation."

In its Notice of Appeal, VNRC specifically challenged the flow regime below Searsburg Reservoir and Harriman Reservoir. VNRC did not challenge the flow regime below Somerset Reservoir. Additionally, NEP did not challenge the flow regime below Somerset Reservoir in its Notice of Appeal.

NEP has introduced some evidence regarding the East Branch below Somerset Reservoir. Such evidence is relevant because VNRC has challenged the operating conditions of Somerset Reservoir and Searsburg Reservoir. Because such changes could have an impact on the East Branch below Somerset Reservoir, it is not possible to analyze the operating conditions of Somerset Reservoir and Searsburg Reservoir without examining their effects on the East Branch below Somerset Reservoir.

Because NEP has introduced evidence regarding the East Branch below Somerset Reservoir, the Chair will not exclude VNRC's evidence regarding this same area. However, the Chair admits VNRC's evidence for the limited purpose of examining the system as a whole and not for the purpose of reevaluating the minimum and maximum flows of the East Branch below Somerset Reservoir.

Ruling: NEP's and ANR's objections to VNRC's evidence regarding the flow regime below Somerset Reservoir are overruled. The Chair admits such evidence for the limited purpose of examining the system as a whole and not for the purpose of reevaluating the minimum and maximum flows of the East Branch below Somerset Reservoir.

4. Economics/Social Impacts Ruling

VNRC objects to NEP's direct testimony on the basis that evidence concerning the economics of energy generation and the societal impacts of various energy generation options is both irrelevant (V.R.E. 402) and prejudicial (V.R.E. 403). VNRC also objects to portions of CLF-1 and Whitingham's prefiled testimony, ostensibly for the same reason. VNRC relies on the Board's previous rulings in the Lamoille proceeding to support its argument that certain evidence offered by NEP should be ruled inadmissible. See, In re: Lamoille River Hydroelectric

Project (CVPS), Docket Nos. WQ-94-03 and WQ-94-05, Preliminary Rulings at 1-2 (Aug. 15, 1995); Memorandum of Decision (May 10, 1996); and Findings of Fact, Conclusions of Law, and Order at 51-52 (Nov. 5, 1996).

VNRC reads the Board's rulings in the Lamoille proceeding too broadly. In Lamoille, the Board ruled that it would not admit evidence of economic and social impacts because the applicant asked the Board to balance these impacts against water quality impacts in assessing the project's compliance with the Vermont Water Quality Standards ("VWQS"). However, NEP persuasively argues that such evidence may be relevant if the Board is asked to evaluate one or more proposed operating protocols that arguably would "enhance" or "upgrade" the quality of the waters beyond the threshold of compliance with applicable standards. See NEP Memorandum in Response to Evidentiary Objections filed by VNRC at 4-6 (Jan. 10, 1997). NEP asserts that its certification proposal will exceed compliance with the VWQS for Class B waters and, therefore, the Lamoille ruling should be distinguished in this set of appeals. NEP asks the Board to refrain from ruling definitively with respect to VNRC's objections and wait until the record has been completed to determine what evidence should or should not be relied upon.

Ruling: With the few exceptions so noted in Section II.B. where the Chair has determined that certain proffered evidence is clearly irrelevant, VNRC's Economic and Social Impacts objections are overruled. The Board will consider during deliberations what weight, if any, should be given to any remaining economics and social impacts evidence in light of the totality of the record.

5. Massachusetts Ruling

VNRC argues that the Board has no jurisdiction to consider evidence related to the operation of NEP's facilities in Massachusetts. NEP, Massachusetts, and CLF counter that the operation of Vermont's facilities has a direct impact on the operation of Massachusetts facilities. Therefore, they argue, the Board at least should be cognizant of how the entire hydro system operates and what impacts Vermont operations may have on the management of waters in Massachusetts. Nevertheless, NEP, Massachusetts, and CLF agree that the Board must first and foremost determine that NEP's Vermont facilities will be operated in such a manner so as to meet or exceed the VWQS before inquiring further concerning the impacts on Massachusetts' waters.

Ruling: The Massachusetts evidence will be admitted with the understanding that the Board will determine the weight to be given such evidence in light of the totality of the record. The Board recognizes that it has no jurisdiction to regulate waters in Massachusetts, but there is nothing in Vermont law or the VWQS that precludes the Board from being cognizant of the impacts of its regulatory choices, provided that it assures that operation of hydro-facilities within its borders comply with applicable VWQS.

II.B. Log of Rulings on Individual Objections

Rulings on the NEP and ANR Objections to VNRC's Testimony and Exhibits

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No.</u>	<u>RULING</u>
NEP I.A	VNRC-53-RGW	all	Overruled but parties may respond -- Surrebuttal Ruling
	VNRC-54-RGW	all	Overruled -- Surrebuttal Ruling
	VNRC-55-JP	all	Overruled -- Surrebuttal Ruling
	VNRC-56-JP	all	Overruled -- Surrebuttal Ruling
	VNRC-57-JP	all	Overruled -- Surrebuttal Ruling
	VNRC-58-JP	all	Overruled -- Surrebuttal Ruling
	VNRC-59-RAD	all except p.4, l. 10 - p.5, l. 20	Overruled -- Surrebuttal Ruling
	VNRC-60-SLD	all	Overruled -- Surrebuttal Ruling
ANR 4	VNRC-61-LDB	all except p.1, l. 1 - p.2, l. 14	Overruled -- Surrebuttal Ruling
	VNRC-61-LDB	p.3, l. 6 (row of table labeled "Somerset")	Overruled -- Scope of Appeal Ruling
		p.3, l. 17-22	Overruled -- Scope of Appeal Ruling
		p.4, l. 1-7	Overruled -- Scope of Appeal Ruling
NEP I.A	VNRC-62-LDB	all	Overruled -- Surrebuttal Ruling
	VNRC-63-LDB	all	Overruled -- Surrebuttal Ruling
	VNRC-64-LDB	all	Overruled -- Surrebuttal Ruling
	VNRC-65-LDB	all	Overruled -- Surrebuttal Ruling
	VNRC-65a-LDB	all	Overruled -- Surrebuttal Ruling
	VNRC-65b-LDB	all	Overruled -- Surrebuttal Ruling
	VNRC-66-LDB	all	Overruled -- Surrebuttal Ruling
VNRC-67-LDB	all	Overruled -- Surrebuttal Ruling	

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No.</u>	<u>RULING</u>
NEP I.B.1	VNRC-49-JP	p.2, l. 5-6	Sustained (strike) -- Agency Document Ruling
	VNRC-50-JP	all	Sustained -- Agency Document Ruling
	VNRC-51-JP	all	Sustained -- Agency Document Ruling
NEP I.B.2	VNRC-55-JP	p.1, l. 20 - p.2, l. 7	Sustained (strike) -- Agency Document Ruling
	VNRC-56-JP	all	Sustained -- Agency Document Ruling
	VNRC-55-JP	p.9, l. 3-7	Sustained (strike) -- Agency Document Ruling
	VNRC-57-JP	all	Sustained -- Agency Document Ruling
NEP I.C.1	VNRC-36-RAD	p.4, l. 1 - p.8, l. 26	Sustained (strike) -- Agency Document Ruling
	VNRC-37-RAD	all	Sustained -- Agency Document Ruling
	VNRC-38-RAD	all	Sustained -- Agency Document Ruling
	VNRC-39-RAD	all	Sustained -- Agency Document Ruling
	VNRC-40-RAD	all	Sustained -- Agency Document Ruling
	VNRC-41-RAD	all	Sustained -- Agency Document Ruling
	VNRC-36-RAD	p.11, l. 12-22	Sustained (strike) -- Agency Document Ruling
	VNRC-43-RAD	all	Sustained -- Agency Document Ruling
	VNRC-36-RAD	p.14, l. 10 - p.16, l. 2	Sustained (strike) -- Agency Document Ruling
		p.16, l. 21 - p.18, l. 4	Sustained (strike) -- Agency Document Ruling
		p.20, l. 21 - p.24, l. 14	Sustained (strike) -- Agency Document Ruling
	VNRC-45-RAD	all	Sustained -- Agency Document Ruling
	VNRC-36-RAD	p.25, l. 9 - p.26, l. 7	Sustained (strike) -- Agency Document Ruling

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No.</u>	<u>RULING</u>
NEP I.C.1	VNRC-36-RAD	p.30, middle of l. 7 - p.31, l. 16 p.34, l. 6-12	Sustained (strike) -- Agency Document Ruling Overruled -- Scope of Appeal Ruling
ANR 2	VNRC-36-RAD	p.34, l. 1-12 p.33, l. 2-26	Overruled -- Scope of Appeal Ruling Overruled -- Scope of Appeal Ruling
NEP I.C.1	VNRC-36-RAD	p.35, middle of l. 2 - end of l. 3	Sustained (strike reference to VNRC-37-RAD) -- Agency Document Ruling
NEP I.C.2	VNRC-59-RAD	p.15, l. 18 - p.16, l. 7	Overruled but parties may respond -- Surrebuttal Ruling
NEP I.D ANR 3	VNRC-52-LDB VNRC-52-LDB	p.11, l. 1 p.11, l. 1 (row of table labeled "Somerset") p.8, l. 20-26	Overruled -- Scope of Appeal Ruling Overruled -- Scope of Appeal Ruling Overruled -- Scope of Appeal Ruling
NEP I.D	VNRC-61-LDB	p.4, l. 21 - p.5, l. 13	Overruled -- Surrebuttal Ruling
NEP I.E	VNRC-20-JS VNRC-21-JS VNRC-22-JS VNRC-23-JS	all all all all	Sustained -- Hearsay Sustained -- Hearsay Sustained -- Hearsay Sustained -- Hearsay
NEP I.F	VNRC-60-SLD	p.2, l. 13 - p.5, l. 26	Overruled but parties may respond -- Surrebuttal Ruling
NEP I.G	VNRC-53-RGW	p.4, l. 16 - p.5, l. 15	Overruled but parties may respond -- Surrebuttal Ruling

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No.</u>	<u>RULING</u>
NEP I.G	VNRC-53-RGW	p.10, l. 15 - p.12, l. 22 p.13, l. 1 - p.14, l. 7	Overruled but parties may respond -- Surrebuttal Ruling Overruled but parties may respond -- Surrebuttal Ruling
ANR 1	VNRC-34-RAD	p.30, l. 15 - p.33, l. 19 p.34, l. 6-10 p.35, l. 17-19	Overruled -- Scope of Appeal Ruling Overruled -- Scope of Appeal Ruling Overruled -- Scope of Appeal Ruling

Ruling on NEP's Objection to ANR's Testimony

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No.</u>	<u>RULING</u>
NEP II	ANR-AQ-1	p.4, question & answer 5	Overruled

Rulings on VNRC's Objections to Other Parties' Testimony and Exhibits

VNRC II.a.1	NEP-CPK-1	p.1, l.21 - p.2, l.6	Sustained (strike) -- Irrelevant; except overruled as to "NEP owns and operates hydroelectric facilities []on the Deerfield River in Vermont and Massachusetts."
		p.5, l.1-5	Sustained (strike) -- Irrelevant
		p.5, l.16-23	Overruled -- Bd. to decide evid. weight
		p.7, l.21-24 & p.8, l.1-2	Overruled -- Mass Ruling; Bd to decide evid. weight
		p.10, l.1-13, 14-22; p.11-13, l.17	Overruled -- Mass Ruling; Bd to decide evid. weight & Scope of Appeal
		p.14, l.5	Overruled -- Mass Ruling; Bd. to decide evid. weight & Scope of Appeal

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No.</u>	<u>RULING</u>
VNRC II.a.1	NEP-CPK-1	p.17, l.11-13	Overruled, except sustain as to "clean, reliable" (strike) -- Econ. Ruling
	NEP-CPK-10	p.19, l.13-19 all	Sustained (strike) -- Irrelevant; hearsay Sustained -- Irrelevant; hearsay
VNRC II.a.2	NEP-TJS-1	p.6, l.30 - p.7, l.1 p.9, l.9-10 p.9, l.11-30 & p.8, l.1-12 p.34, l.29-30 & p.35, l.1-24	Overruled -- Econ. Ruling; Bd. to decide evid. weight Overruled -- Econ. Ruling; Bd. to decide evid. weight Overruled -- Mass Ruling; Bd to decide evid. weight Overruled -- Mass Ruling; Bd to decide evid. weight
	NEP-TJS-11	p.2	Overruled -- Bd. to decide evid. weight
VNRC II.a.3	NEP-CFR-1	p.22, l.1-3 p.33, l.20-21 p.33, l.25-30 & p.34, l.1-8 p.34, l.26 - p.35, l.1-4 p.37, l.2-10	Overruled -- Mass Ruling; Bd to decide evid. weight Overruled -- Cross-examine witness Overruled -- Mass Ruling; Bd to decide evid. weight Sustained -- Irrelevant Overruled -- Econ. Ruling; Bd. to decide evid. weight
VNRC II.a.4	NEP-SGM-1	p.18, l.16-17	Sustained -- Strike opinion re flood-control functions
VNRC II.b.1	NEP-TJS-23	p.12, l.2-17 p.21, l.20-22	Overruled -- Incorrect Reference Overruled -- Econ. and Mass Rulings; Bd to decide evid. weight
		p.22, l.13-25 & p.23, l.1-3	Overruled -- Econ. and Mass Rulings; Bd to decide evid. weight
VNRC II.b.2	NEP-APD-1	p.3, l.27-31 - p.4, l.30 p.5, l.15-32 & p.6, l.1-6	Overruled -- Relevant to deciding reservoir level management Overruled -- Relevant to deciding reservoir level management

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No</u>	<u>RULING</u>
VNRC II.b.2	NEP-APD-1	p.6, 1.25-32	Overruled -- Relevant to deciding reservoir level management
		p.7, 1.11-32 & p.8, 1.1-21	Overruled -- Relevant to deciding reservoir level management
		p.8, 1.22-29	Overruled -- Relevant to deciding reservoir level management
VNRC II.b.3	NEP-RAA-10	p.6, 1.12-24	Overruled -- Bd. to decide evid. weight
		p.8, 1.8-10	Overruled -- Incorrect Reference
		p.8, 1.28 - p.9, 1.1-4	Overruled -- Econ. Ruling; Bd. to decide evid. weight
		p.9, 1.7-10	Overruled -- Econ. Ruling; Cross-examine witness
		p.12, 1.19-28 - p.14, 1.1-26	Overruled -- Relevant to deciding reservoir level management
VNRC II.b.4	NEP-CFR-6	p.6, 1.7-9	Sustained -- Hearsay
		p.11, 1.7-9	Sustained -- Argumentative
		p.9, 1.19-23	Overruled -- Cross-examine witness
VNRC II.b.5	NEP-SGM-5	p.10, 1.17-21	Overruled -- Cross-examine witness
VNRC II.c.1	NEP-TJS-25	p.2, 1-2	Overruled -- Bd. to decide evid. weight
		p.13, 1.26-29	Overruled -- Cross-examine witness; Bd. to decide evid. weight
		p.14, 1.7	Overruled -- Cross-examine witness; Bd. to decide evid. weight
		p.15, 1.16-23	Overruled -- Cross-examine witness; Bd. to decide evid. weight

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No</u>	<u>RULING</u>
VNRC II.c.2	NEP-CFR-7	p.1, 1.14-16 p.8, 1.3-5	Sustained (strike) -- Legal conclusion Overruled -- Cross-examine witness; Bd. to decide evid. weight
VNRC II.c.3	NEP-RAA-15	p.1., 1.8-10 p.2, 1.15-17 p.2, 1.18	Sustained (strike) -- Irrelevant Overruled -- Cross-examine witness Overruled -- Cross-examine witness
VNRC II.c.4	NEP-SGM-10	p.2, 1.2-3 p.2, 1.22 p.10, 1.23-28	Overruled -- Cross-examine witness Overruled -- Cross-examine witness Overruled -- Cross-examine witness
VNRC II.d.1	MA-JAO-1A	p.2 p.2-3 p.3 p.3-4 p.3-4 p.4 p.4-5	Overruled -- Mass Ruling; Bd. to decide evid. weight Overruled -- Bd. to decide evid. weight Sustained (strike) -- Irrelevant Overruled -- Bd. to decide evid. weight Sustained (strike) -- Hearsay Sustained (strike) -- Irrelevant; hearsay Overruled -- Bd. to decide evid. weight
	MA-JAO-2	all	Overruled -- Bd. to decide evid. weight
	MA-JAO-3	all	Overruled -- Bd. to decide evid. weight
	MA-JAO-4	all	Overruled -- Bd. to decide evid. weight
VNRC II.e.1	WHT-RT	p.2, 1.2-6 p.2, 1.7-14 p.2, 1.15-23 & p.3, 1.1-5 p.3, 1.6-17	Overruled -- Bd. to decide evid. weight Sustained (strike) -- Irrelevant Overruled -- Bd. to decide evid. weight Overruled -- Bd. to decide evid. weight
VNRC II.f.1	CLF-1	p.5, 1.3-24; p.6-8, 1.1-24 & p.9, 1.1-4	Overruled -- Econ. Ruling; cross-examine witness; Bd. to decide evid. weight

<u>Objection</u>	<u>Exhibit Number(s)</u>	<u>Page(s) and Line No</u>	<u>RULING</u>
VNRC II.f.1	CLF-1	p. 7, l.22-24 p.9, l.5-24; p.10, l.1-23 & p.11, l.1-22 p.11, l.23-24; p.12-13, l.1-24 & p. 14, l.1-4 p.14, l.1-4	Sustained (strike) -- Irrelevant Overruled -- Cross-examine witness; Bd. to decide evid. weight Overruled -- Cross-examine witness; Bd. to decide evid. weight Sustained (strike) -- Irrelevant
VNRC II.f.1	CLF-1	p.18, l.13-19 p.22, l.4-18 p.25, l.10-24 p.26, l.12-24; p.27, l.1-24 & p.28, l.1-2	Overruled -- Mass Ruling; Bd. to decide evid. weight Sustained (strike), except as to ref. to flood control -- Econ. Ruling Overruled -- Mass Ruling; Bd. to decide evid. weight Overruled -- Bd. to decide evid. weight
VNRC II.f.1	CLF-3	all	Overruled -- Bd. to decide evid. weight

The foregoing is hereby ordered.

Dated at Montpelier, Vermont, this 5th day of February, 1997.



William Boyd Davies, Chair
Water Resources Board

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