

Re: Killington Ltd.
Chair's Preliminary Rulings on the Parties' Objections to Prefiled Testimony

Dockets No. MLP-97-09 and WQC-97-10

Section I. Objections made by Killington Ltd.: Farm and Wilderness, and the ANR

(1) Unless indicated by either (ANR) or (F&W), all grounds for objections are those stated by Killington, Ltd.

(2) Under the first column, Objection #, the number, in general, represents a sequential list of Killington's objections. where other parties have objected to the same testimony, additional objection numbers are included followed by the abbreviation of the objecting party. E.g. 5; 1(ANR); 1(F&W) indicates Killington's 5th objection from its May 22, 1998 filing, and both ANR and F&W's first objection.

<u>Objection #</u>	<u>Appellants' Testimony</u>	<u>Exhibit #</u>	<u>Line and page Numbers</u>	<u>Grounds</u>	<u>Ruling</u>
1	J. Parsons	A1	P.5, Lines 8-11	ILC; SP	0; AC&I
2	J. Parsons	A1	P.5, Lines 17-20	SP; NF	0
3	J. Parsons	A1	P.6, Lines 1-20	ILC; ARG; IR; SP	0; AC&I
4	J. Parsons	A1	P.7, Line 1	ARG; NF	0
5	J. Parsons	A1	P.8, Lines 1-2	ILC; ARG; NF	0; AC&I
6	J. Parsons	A1	P.9, Lines 11-17	ILC; ARG Footnote 1	0; AC&I
7: A1 (F&W)	J. Parsons	A1	P.10, Lines 8-12; <i>lines 10-12(F&W)</i>	IR; ARG; NF; IFQ	0
8	J. Parsons	A1	P.11, Line 22 through P.12, Line 18	IR; NF Footnote 2	0
9	J. Parsons	A1	P.12, Line 20 through P.13, Line 17	IR; NF Footnote 2	0
10	J. Parsons	A1	P.13, Line 21 through P.14, Line 5	IR; NF Footnote 2	0
11; A2(F&W)	J. Parsons	A1	P.15, Line 11-18	ARG; SP, NF Footnote 3	0
12	J. Parsons	A1	P.15, Line 20 through P.16, Line 8	IR; NF; ARG	0
13; A3(F&W)	J. Parsons	A1	P.16, Line 13 through P.17, Line 11	IR; NF; ARG	0
A4 (F&W)	J. Parsons	A1	P. 18, lines 3-8	NF	0
14; A5(F&W)	J. Parsons	A1	P.18, Lines 10-20	IR; NF Footnote 2	0
15; A6(F&W)	J. Parsons	A1	P.19, Lines 1-6	IR; NF Footnote 2	0
16; A7(F&W)	J. Parsons	A1	P.19, Lines 8-12	NF; ARG	0
17; A8(F&W)	J. Parsons	A1	P.19, Lines 14-19	NF	0
18; A9(F&W)	J. Parsons	A1	P.20, Line 15 through P.21, Line 3	NF; SP Footnote 2	0
19; A10(F&W)	J. Parsons	A1	P.21, Lines 5-10	IR; NF Footnote 2	0

A11 (F&W)	J. Parsons	A1	P.21, Lines 13-18	IR; NF	O
A12 (F&W)	J. Parsons	A1	P.22, Lines 1-3	IR; NF	O
20; A13(F&W)	J. Parsons	A1	P.22, Lines 5-12	IR; NF Footnote 2	O
21; A14(F&W)	J. Parsons	A1	P.22, Lines 13-17	IR; NF Footnote 2	O
A15(F&W)	J. Parsons	A1	P.24, Line 4-17	IR Footnote 2	O
A16(F&W)	J. Parsons	A1	P.26, Lines 4-17	IR Footnote 2	O
22; A17 (F&W)	J. Parsons	A1	P.26, Line 19 through P.27, Line 13	SP;ARG; IR; NF	O
23; A18(F&W)	J. Parsons	A1	P.28, Lines 7-16	IR; NF	O
A19 (F&W)	J. Parsons	A1	P.28, Line 17 through P.29, line 3	IR; NF Footnote 2	O
A20 (F&W)	J. Parsons	A1	P.29, Lines 6-10	IR; NF Footnote 2	O
24	J. Parsons	A2	Rebuttal P.3, Lines 8-12	NF; IR	O
25; 2(ANR);	Nicholas Lenge	A3	Entire testimony	General Objection	O Footnote 4
26; C1(F&W)	Nicholas Lenge	A3	p2,l.9 through p.3,line 7;p.2,l.13-15	SC; IR	S
27	Nicholas Lenge	A3	p2,l.7-8; p.3,l.16-17	IR; ARG	O Footnote 5
28	Nicholas Lenge	A3	p.3,l.15-17	NF; ARG	O
29	Nicholas Lenge	A3	p.3,l.21 through p.4, l.1	IR; ARG	S
30	Nicholas Lenge	A3	p.4, l.3-14	IR; NF	O Footnote 5
31; C2(F&W)	Nicholas Lenge	A3	p.4, l.17; p.4,l.17 through p.5,l.11	SC; ARG; IR; SP; NF; IF	S
32; C3(F&W)	Nicholas Lenge	A3	p.5, l.13-19	IR; NF; IF; OT	S
33; C4(F&W)	Nicholas Lenge	A3	p.6, l.1-6	NF; OT; IR	S
34; C5-C6(F&W)	Nicholas Lenge	A3	P.6,l.8-14	OT; NF; IR	S
35	Nicholas Lenge	A3	P.6,l.17-18 and 22	IR; IH; NF	O - Board will read as 1st person
36	Nicholas Lenge	A3	P.7,l.4	IR; IH; NF	O - Board will read as 1st person
37	Nicholas Lenge	A3	P.7, Line 5-6	IR; IH; ARG; NF	O
38	Nicholas Lenge	A3	P.7,l.7-8	IR; NF	O Footnote 6
39; C7(F&W)	Nicholas Lenge	A3	P.7, l.9-14	IR; NF; ARG; SP	S
40	Debra Belanger	A4	General Objection	See Killington's Memo, P.12	O Footnote 7
41	Debra Belanger	A4	P.1, line 13 through P.2, line 1	IR; NF; IH	O
43	Debra Belanger	A4	P.2, lines 6-10	IH; SP; ARG	O
44	Debra Belanger	A4	P.2, lines11-12	IR; NF	O
45	Debra Belanger	A4	P.2, line 22	IR; NF; ARG	LO
46	Debra Belanger	A4	P.3, line 5	SP; ARG; NF	LO
47	Debra Belanger	A4	P.3, line11	IR; NF	O
48	Debra Belanger	A4	P.3, lines 15-19	IR; IH; NF	O
49	Debra Belanger	A4	P.3, line 21 through P.4, line 2	IR; NF	O
50	Debra Belanger	A4	P.4, lines 6-7	IR; ARG; NF	O
51	Debra Belanger	A4	P.4, lines 11-14	IH; IR; NF	O
52	Debra Belanger	A4	P.4, line 19	IR; SP	O

53	Debra Belanger	A4	P. 5, lines 2-3	SP; NF; ARG	LO
54	Debra Belanger	A4	P. 5, lines 9-10	IR; ARG	O
55	Debra Belanger	A4	P. 5, line 11	IH; SP; NF	O
56	Debra Belanger	A4	P. 6, line 1	IH; SP; NF	O - Board will read as 1st person
57	Debra Belanger	A4	P. 6, lines 4-5	SP; NF; ARG	LO
58	Debra Belanger	A4	P. 6, lines 7-11	IH; NF; ARG	O
59	Debra Belanger	A4	P. 6, lines 13-14	NF; ARG	LO
60	Debra Belanger	A4	P. 7, line 17	SP; NF; ARG	LO
61	Debra Belanger	A4	P. 7, line 21 through P. 8, line 1	NF; ARG; SP	LO
62	Debra Belanger	A4	P. 9, lines 7-8	IR; ARG	O
63	Debra Belanger	A4	P. 9, line 18	IH; NF	O
64	Debra Belanger	A4	P. 10, lines 8-10	SP; ARG; IR	LO
65	Debra Belanger	A4	P. 10, lines 10-14	IR; SP	O
66	Debra Belanger	A4	P. 10, lines 19-20	IR; NF	O
67	Debra Belanger	A4	P. 10, line 21 through P. 11, line 1	IH; NF; IR	O
68	Debra Belanger	A4	P. 11, line 22 through P. 12, line 1	SP; NF; ARG	O
69	Debra Belanger	A4	P. 12, lines 3-4	ARG; SP	O
70	Debra Belanger	A4	P. 12, lines 9-10	NF	O
71	Debra Belanger	A4	P. 12, lines 11-12	NF; IH; ARG	O
72	Debra Belanger	A4	P. 13, lines 3-4	NF; IH; ARG	O
73	Debra Belanger	A4	P. 13, lines 8-10	NF; IH	O
74	Debra Belanger	A4	P. 13, line 22 through P. 14, line 4	ARG; SP	O
75	Debra Belanger	A4	P. 14, lines 4-6	SP; NF; ARG	LO
76	Debra Belanger	A4	P. 14, lines 6-7	ARG; SP	O
77	Debra Belanger	A4	P. 14, lines 8-10	SP; NF; ARG	O
78	Debra Belanger	A4	P. 14, lines 20-22	SP; NF; ARG	LO
79	Debra Belanger	A4	P. 15, lines 1-3	ARG; SP	O - Board will read as 1st person
80	Debra Belanger	A4	P. 15, line 4	IH; SP; ARG; NF	O
81	Debra Belanger	A4	P. 16, line 20 through P. 18, line 8	UR; IR	O
82	Debra Belanger	A4	P. 17, lines 19-21	IH; SP; ARG; IR	O - Board will read as 1st person
83	Debra Belanger	A4	P. 18, lines 1-8	ARG; IH; NF	O
84	Debra Belanger	A4	P. 19, line 18	ARG; IR	O
85	Debra Belanger	A4	P. 19, lines 8-9	SP; IH; ARG	O - Board will read as 1st person
86	Debra Belanger	A4	P. 20, line 7-9	IR; SP; ARG	O
87	Debra Belanger	A4	P. 20, lines 12-13	IH; SP	O
88	Debra Belanger	A4	P. 20, line 21 through P. 21, line 1	IH; NF; SP; ARG	O
89	Debra Belanger	A4	P. 21, lines 2-3	ARG; SP	O
90	Debra Belanger	A4	P. 21, lines 9-11	NF; SP; ARG	O

Chair's Rulings on Evidentiary Objections
WQC-97-10 and MLP-97-09

91	Debra Belanger	A4	P.21, lines 20-21	SP; ARG; NF	O
92	Debra Belanger	A4	P.22, lines 1-2	SP; NF; IR	O
93	Debra Belanger	A4	P.22, lines 5-7	ARG; IR	O
94	Debra Belanger	A4	P.22, lines 9-10	IR; NF; ARG	S - strike question and answer
95	Debra Belanger	A4	P.22, lines 13-15	SP; NF; ARG	S - strike question and answer
96	Debra Belanger	A4	P.22, lines 15-17	ARG; SP; NF	O - Footnote 8
97	Debra Belanger	A4	P.22, line 20	ARG; SP; NF	O - Footnote 8
98	Debra Belanger	A4	P.22, line 21	IH; ARG; SP	O
99	Debra Belanger	A4	P.22, line 22 through P.23, line 4	SP; NF; ARG	O
100	Debra Belanger	A4	P.23, lines 7-21	NF; SP; IH; ARG	O
101	Debra Belanger	A4	p.24, lines 3-7	NF; IR	O
102	Debra Belanger	A4	P.24, lines 7-9	IR; NF	O
103	Debra Belanger	A4	P.24, line 16 through P.25, line 1	SP; NF; IH	O
104	Debra Belanger	A4	P.25, lines 1-2	Mischaracterization	O
105; D1(F&W)	Michael Girard	A8	General Objection	NoX	LO with respect to ice evidence
D2(F&W)	Michael Girard	A8	P.3, line 11 through P.4, line 8	NF; NoX	LO with respect to ice evidence
106	Michael Girard	A8	p.4, lines 2-4	NF	O
D3(F&W)	Michael Girard	A8	p.4, lines 13-21	NF; NoX	LO with respect to ice evidence
107	Michael Girard	A8	p5, lines 5-10	NF; ARG; SP	O
108; D4(F&W)	Michael Girard	A8	p5, line 14-18	NF; ARG; SP	O
*	attachment entitled Rebuttal: Spangler	A8-?	this was an inadvertently placed duplicate copy	IF	no ruling
109a	attachments to Girard's testimony	A8-?	all other docs b/n tabs A8 & A9	IF	S - Footnote 9
109b	attachment entitled Withdrawal of 350	A8-?	entire document	NF; IF	See Footnote 9
109c	appended to above, ltr. Wilson-Lenge	A8-?	entire document	SC	S in part; strike pgph 2 of letter
110; 1(ANR)	Rebuttal Evidence: Jeff Cueto	A9	Objection to all documents	NSW; IF; NF; IR	S - may be used for impeachment
111; 1(ANR)	Rebuttal Evidence: John Claussen	A7	Objection to all documents	NSW; IF; NF; IR	S - may be used for impeachment
112; 1(ANR)	Rebuttal Evidence: Steve Hanna	A6	Objection to all documents	NSW; IF; NF; IR	S - may be used for impeachment
113; 1(ANR)	Rebuttal Evidence: Carl Spangler	A5	Objection to all documents	NSW; IF; NF; IR	S - may be used for impeachment

Re: Killington, Ltd.

Docket Nos. MLP-97-09 and WQC-97-10

June 1, 1998

Chair's Preliminary Rulings on the Parties' Objections to Prefiled Testimony

Explanatory Memorandum:

The following abbreviations set forth in Section II, below, are to be used in conjunction with the Chair's Preliminary Rulings on the Parties' of Objections to Prefiled Testimony, which are included in pages 1 through 4 in a matrix format. The abbreviations denote either the grounds for the objection or the Chair's Ruling with respect to the objection. Where either the grounds for the objection or the Chair's specific ruling can not be adequately summarized by one of the abbreviations set forth below, a footnote is used in its place or to supplement the general ruling. Where footnotes are used, a detailed explanation of either the grounds for the objection or the ruling is set forth in Section III below after the corresponding number. In some cases both abbreviations and a footnote may be necessary to convey both a specific ruling and any comments that were made in conjunction with that ruling by Chair Davies.

Section II: Abbreviations used in the Log of Objections and Rulings

Grounds for objections

- ARG - argumentative;
- IH - impermissible hearsay (VRE 801);
- IF - improperly files/not in conformance with either prehearing orders or the Water Resources Board Rules of Procedure or both
- IFQ - improper form of question
- ILC - improper legal conclusion (VRE 701);
- IR - irrelevant, immaterial (VRE 401);
- NF - no foundation (VRE 602);
- NoX - not sufficiently qualified as expert (VRE 702 and 701);
- OT - out of time, not filed
- SC - settlement/compromise: the testimony relates to evidence of conduct or statements made in compromise negotiations, including mediation, and is not admissible pursuant to Vermont Rules of Evidence ("VRE.") 408;
- SP - too speculative to have any probative value
- UR - unduly repetitious and therefore should be excluded as irrelevant under (VRE 403 and 401);

Abbreviations for Rulings on objections

- O - overruled
S - sustained
LO - Lay opinion ruling: The witness is limited to testifying as a lay witness and therefore, with respect to the testimony objected to, the testimony will be admitted but will be afforded only such weight as the Board deems appropriate given the lack of specific subject matter expertise.
AC&I - Allowable Conclusions and Interpretation: The witness will be allowed to testify as to his or her interpretation of the regulatory language or those mixed questions of law and fact upon which the witness has some degree (or in certain instances, a significant degree) of specialized knowledge. Obviously, such interpretations may be the subject of cross examination, but it would be improper to exclude the evidence on the basis that it offers an interpretation of regulatory language, the water quality standards or other applicable law.

Section III: Specific Grounds and Rulings Corresponding to Footnotes on the Chair's Preliminary Rulings on the Parties' Objections to Prefiled Testimony

- Footnote 1: Jeff Parsons is familiar with the applicable regulations and will be allowed some latitude in making what Killington claims are improper conclusions as to matters of law; this testimony will be allowed, any argument as to the legitimacy of the witness' claims may be addressed through cross-examination.
- Footnote 2: Jeff Parsons' employs an analysis which, in part, makes use of a reference waterbody, or natural conditions as a basis for comparison with either the existing, or proposed conditions of Woodward Reservoir. The Board extends latitude to witnesses in presenting scientific evaluations and finds admissible the approach offered, and analogies employed by Mr. Parsons.
- Footnote 3: Although speculative, the evidence proffered is within the scientific expertise of the witness and is relevant. It is admissible.
- Footnote 4: The testimony of Nicholas Lenge makes reference in several

Chair's Preliminary Rulings on the Parties' Objections to Prefiled Testimony

instances to documents which have not been offered as exhibits in this matter. Even if they become available prior to the hearing, those documents will not be allowed to be introduced at the hearing, the filing deadlines were established without objection and the documents referred to, but not filed, are out of time and inadmissible. Other parts of Mr. Lenge's testimony make reference to his so-called, "Comprehensive Solutions." Supporting documentation of such solutions has, in many instances, only been alluded to but not provided. The scope of this case is limited as is the Board's role with respect to the issues in controversy. Therefore, while the objection as to these documents is being overruled, Appellants are advised that no matter how comprehensive the potential solutions may be, the scope of this hearing is limited in subject matter. In addition, the Board's jurisdiction does not, in the context of this proceeding, reach as far as all of those potential problems which give rise to the Comprehensive Solutions. Thus, the probative value of Mr. Lenge's evidence is far greater in those areas involving snowmaking issues.

- Footnote 5: The objection is overruled. Although Mr. Lenge refers to the Interconnect, the context in which he does so is in providing a background for his involvement with all of Killington's permitting activity relative to its current construction plans.
- Footnote 6: To the extent that this testimony refers to physical property damage, such evidence may be relevant and germane under the analysis of the public good in respect to MLP-97-09. The Board will not consider the diminution of private property values, and the Board has stated as much on at least two occasions in its earlier rulings.
- Footnote 7: Ms. Belanger is appearing in this context as a witness. That she was denied party standing/party status, is irrelevant. The test of relevancy is not linked to the proponent of the evidence being a party. In terms of the specific objections, it is worth noting that this is an administrative proceeding in which the Rules of Evidence, though applicable, are somewhat relaxed. While the testimony referring to "we" or "our community" etc. will be read as a first person account from Ms. Belanger's standpoint, this does not preclude Ms. Belanger from relating her knowledge of family history or descriptions of how her family has enjoyed the Reservoir

Chair's Preliminary Rulings on the Parties' Objections to Prefiled Testimony

over the years. Such evidence is commonly relied upon, and though technically hearsay, is not impermissible in the context of this proceeding. Technical objections as to rhetorical questions or issues of form, are not persuasive..

Footnote 8: *The testimony referred to in objections 96 and 97 contain some statements which respond to the "ice collar" photographs of Leonard Zabilonsky. Although not specifically identified, the photographs referred to are presumably those photographs within exhibit Killington 42, numbered 6-8; 10-15; and 21 to 23.*

Footnote 9: There are numerous objections to the materials appended to the cover sheets reading, Rebuttal Evidence: Jeff Cueto, John Claussen, Steve Hanna, and Carl Spangler. With respect to all of these documents, they are substantially out of compliance with the Board's prehearing orders and filing instructions in this matter. That deficiency alone is grounds to exclude the testimony. However, the evidence sought to be admitted through these documents is of questionable if any relevance to this *de novo* proceedings. Memoranda, email messages, and various forms of communication between employees of the ANR, and among ANR and participants in this proceeding has no bearing on the issues set forth in the Memoranda of Decision in this matter. All such documents, approximately 120, are inadmissible. The grounds for such exclusion is that the filing of these documents is grossly out of compliance with filing instructions and the Orders which control the course and logistics of this proceeding. For this reason, the Chair declines to rule on the individual grounds for each of the parties' objections. As noted at yesterday's [yes, its still yesterday's] conference, such documentation may be appropriately introduced during cross-examination to attempt to impeach the credibility, establish bias, or for other appropriate purposes. This ruling, does not prejudice such a use of these documents.

Re: Killington, Ltd.
Docket Nos. MLP-97-09 and WQC-97-10
June 1, 1998

9

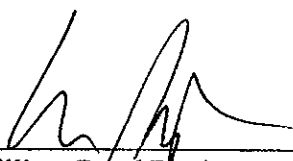
Chair's Preliminary Rulings on the Parties' Objections to Prefiled Testimony

The above rulings on the objections of the parties shall govern the subsequent course of this proceeding. Any party objecting to these rulings shall have an opportunity to do so at the beginning of the June 2, 1998 hearing in this matter. The full Board will review those rulings upon which the party objects. It will deliberate immediately thereafter and the Board will commence with the presentation of evidence and cross-examination.

It is so ordered.

Dated at Montpelier, Vermont on this 1st day of June, 1998.

Vermont Water Resources Board
by its Chair



William Boyd Davies
Chair