

**State of Vermont
WATER RESOURCES BOARD**

**RE: Clyde River Hydroelectric Project
Docket Nos. WQ-02-08(A), (B), and (C) (Consolidated)**

PREHEARING CONFERENCE REPORT AND ORDER

I. PROCEDURAL BACKGROUND

On August 1, 2002, the Secretary of the Agency of Natural Resources (ANR) issued a Water Quality Certificate, pursuant to 10 V.S.A. § 1004 and Section 401 of the Clean Water Act (Act), 33 U.S.C. § 1341, to Citizens Communications Company (Citizens) for the Clyde River Hydroelectric Project located in the Clyde River basin in north-central, Vermont (Project).

On August 15, 2002, the Water Quality Certificate was appealed to the Water Resources Board (Board) by three separate sets of Appellants: the Seymour Lake Association (SLA); the Vermont Natural Resources Council (VNRC) and the Northeast Kingdom Chapter of Trout Unlimited (NEKTU); and Public Employees for Environmental Responsibility (PEER). These appeals were timely filed pursuant to 10 V.S.A. § 1024(a) and docketed. There were no cross-appeals.

On August 23, 2002, the Board's Acting Executive Officer acknowledged receipt of the appeals, but advised the representatives of the three appellants that their Notices of Appeal were substantially incomplete pursuant to Board Procedural Rule 19(A). VNRC/NEKTU supplemented their Notice of Appeal on September 9, 2002; PEER filed supplemental information on September 10, 2002; and SLA made a supplemental filing on September 13, 2002.

On September 13, 2002, Citizens filed a Motion to Deny PEER's Request for Party Status (Motion Seeking Denial of PEER's Party Status) and on September 23, 2002, Citizens filed a Motion to Dismiss the two appeals filed by VNRC/NEKTU and PEER (Motion to Dismiss).

On September 26, 2002, the Acting Executive Officer acknowledged receipt of both the supplemental filings and Citizens' two motions. She advised the appellants and other interested persons that the supplemental filings were sufficient enough to perfect their notices of appeal to allow publication of notice, but that the motions would be referred to the Chair for action at a prehearing conference to be held on October 15, 2002. Also, on September 26, 2002, a Notice of Appeal and Prehearing Conference was issued to persons in interest and published in Newport Daily Express on September 30, 2002, in accordance with Water Resources Board Procedural Rule (Procedural Rule) 22.

On October 7, 2002, VNRC/NEKTU and PEER filed memoranda in response to Citizens'

two pending motions. On October 14, 2002, Citizens filed memoranda in reply, addressing both PEER's party status and the responses to Citizens' Motion to Dismiss.

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Prehearing Conference Report and Order

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The following entered timely notices of appearance in this matter: VNRC/NEKTU on August 15, 2002, by Kelly D.H. Lowry, Esq., VNRC, 9 Bailey Avenue, Montpelier, Vermont 05602; PEER on August 15, 2002, by Daniel P. Meyer, Esq., PEER, 2001 S. Street, N.W. - Suite 570, Washington, D.C. 20009; Citizens on August 28, 2002, by Barbara G. Ripley, Esq., of Wilson & White, P.C., P.O. Box 159, Montpelier, Vermont 05602; SLA on September 13, 2002, by Gregory P. Howe, Esq., 5346 US Route 5, Newport, Vermont 05855; and ANR on October 11, 2002, by Warren Coleman, Esq., and Andrew Raubvogel, ANR, 103 South Main Street, Center Building, Waterbury, VT 05671-0301. On October 7, 2002, Kelly D.H. Lowry, Esq. (address above) entered his appearance for PEER, without indicating whether this was in substitution for attorney Meyer or in addition to Mr. Meyer.

On October 15, 2002, at 9:30 a.m., Chair David J. Blythe, Esq., convened a prehearing conference in the above-captioned matter at the Board's Conference Room in Montpelier, Vermont, pursuant to Procedural Rule 28. The Chair was assisted in the conduct of the prehearing conference by the Board's Associate General Counsel, Kristina L. Bielenberg, Esq. The following persons participated:

Citizens, the Applicant, represented by Barbara G. Ripley, Esq.;

SLA by Gregory P. Howe, Esq.;

VNRC/NEKTU and PEER by Kelly D.H. Lowry, Esq.¹;

ANR by Warren Coleman, Esq., and Andrew Raubvogel, Esq.

Also present were Peter Kupsco, Esq., and Kevin Perry for Citizens; Homer Selby for SLA; and David Englander, Legal Intern with ANR. Present from Board staff were Jon Groveman, Esq., Executive Officer; Dan Dutcher, Associate General Counsel; and Chantal Simonpietri, Legal Intern.

II. INTRODUCTIONS AND DISCLOSURES

Chair Blythe introduced himself and staff to those present at the prehearing conference. He identified other current members of the Board: Lawrence H. Bruce, Jr., Esq.; Jane Potvin,

¹ Attorney Lowry advised the Chair that he was representing PEER *in addition to*, as opposed to in substitution for, Daniel P. Meyer, General Counsel of PEER. The Chair advised attorney Lowry that, if he and Mr. Meyer both intend to represent PEER in this matter, Mr. Meyer will need to file a motion for admission pro hac vice, supported by a Vermont attorney. See Acknowledgment Letter from Executive Officer to attorney Meyer (Aug. 23, 2002).

John D.E. Roberts; and Mardee Sánchez.

The Chair further informed the prehearing conference participants that, in the event that one or more of the Board's current members should subsequently become unavailable or disqualified, he, as Chair, would have the authority to appoint a former Board member to hear and decide any preliminary or other matters in this appeal pursuant to 10 V.S.A. §905(1)(F) and Procedural Rules 3 and 4. Accordingly, he distributed to the prehearing conference participants copies of biographical sketches for each of the current Board members, as well as biographical sketches for former Board members LaPrade and Novick. See attachments.

The Chair asked counsel for the prehearing conference participants whether they had objections to the participation of any of these current or former Board members based on any known conflicts of interest or other disqualifying interests. They indicated that they were not aware of any conflicts of interest or other disqualifying interests but that they would need to confirm this with their clients.

Board counsel advised those present that a deadline would be set for the filing of any requests for Board member disqualification or further disclosures and that this would be included in the schedule of filings to be issued after the prehearing conference.

III. PURPOSE OF PREHEARING CONFERENCE

The Chair explained that the Board is comprised of five citizen members appointed by the Governor and confirmed by the Senate. He further noted that one of the Board's statutory charges is to hear appeals from Water Quality Certificates issues by the Secretary of ANR, pursuant to 10 V.S.A. § 1024(a). As a part of his duties, the Chair noted that he is authorized to convene prehearing conferences to expedite the contested case hearing process. See Procedural Rule 28.

The Chair described the purpose of a prehearing conference. He specifically noted that the purpose of a first prehearing conference, such as this one, is to: (1) identify parties or persons seeking party status; (2) clarify the issues in controversy, including any preliminary issues; (3) see if there is any interest amongst the participants in entering negotiations to narrow or eliminate any issues in controversy; and (4) attempt to establish a schedule for filings leading to a hearing day. Procedural Rule 28(A).

The Chair advised the prehearing conference participants that the outcomes of this prehearing conference would be memorialized in a Prehearing Conference Report and Order (Prehearing Order), sent to all participants and interested persons.

IV. EX PARTE CONTACTS

The Chair cautioned prehearing conference participants against communicating directly with Board members during the pendency of proceedings before the Board. 3 V.S.A. §813. He directed all persons having procedural questions to bring them to the attention of the Board's counsel handling this case, Kristina L. Bielenberg, Esq. (Phone: 828-5443).

V. APPLICABLE RULES

The Chair inquired of the prehearing conference participants whether the applicable regulations in this case are the Board's Vermont Water Quality Standards (VWQS), effective July 2, 2000, and the Board's Rules of Procedure, effective January 1, 2002.

Counsel for all of the prehearing conference participants agreed that the 2000 VWQS and 2002 Rules of Procedure were the applicable Board regulations.

VI. ALTERNATIVE DISPUTE RESOLUTION

The Chair advised the prehearing conference participants that the Board encourages alternative dispute resolution. He invited them to meet after the prehearing conference to discuss whether settlement and the submission to the Board of any stipulated facts or conditions might be feasible. He noted that additional time could be built into the schedule of this proceeding to allow for informal resolution if the parties believe that the issues in this proceeding can be resolved and/or narrowed through negotiation or mediation.

VII. PRELIMINARY ISSUES

The Chair noted that Citizens raised several preliminary issues in its two motions: (1) the Motion Seeking Denial of PEER's Party Status; and (2) the Motion to Dismiss, which seeks dismissal of both VNRC/NEKTU's and PEER's appeals on the basis that their supplemental filings failed to address the deficiencies in their respective Notices of Appeal identified by the Board's Acting Executive Officer in her acknowledgment letters of August 23, 2002.

A. Standing of PEER

In its Notice of Appeal, PEER asked the Board to grant it party status and offered briefing in support thereof.

On September 13, 2002, Citizens responded by filing the Motion Seeking Denial of

PEER's Party Status.

In her memorandum to the appellants and other interested persons sent on September 26, 2002, the Acting Executive Officer advised PEER that it would have until October 7, 2002, in which to file a responsive memorandum and that both Citizens' motion and any written response would be referred to the Board Chair for his consideration at the prehearing conference.

On October 7, 2002, PEER filed a response to Citizen's Motion, and on October 14, 2002, Citizens filed a further reply.

The Chair considered the filings of PEER and Citizens and also heard oral arguments offered by PEER in support of its request for party status and by Citizens in opposition thereto. He took the matter under advisement and now rules on Citizen's Motion. The Chair grants Citizens' request because he concludes that PEER lacks the requisite *standing* to appeal the Water Quality Certificate issued to Citizens pursuant to 10 V.S.A. § 1024(a).

In its last amendments to the Board's Rules of Procedure (eff. Jan. 1, 2002), the Board specifically amended Board Procedural Rules 19 and 25 in order to distinguish between what an appellant must demonstrate in order to show standing from what a person seeking to intervene as a party in another's appeal must demonstrate to establish.² These amendments also require an appellant to state at the outset of the appeal the basis for its assertion of standing.

For the purpose of determining the standing of an appellant, the Board looks first to the statute authorizing appeals to the Board. The Secretary of ANR issued the Water Quality Certificate to Citizens under the authority of 10 V.S.A. Chapter 41, specifically § 1004. The section of Chapter 41 providing for appeals of the Secretary's decisions is 10 V.S.A. § 1024. Title 10 V.S.A. § 1024(a) states in relevant part: "Any person aggrieved by the decision of the secretary under section . . . 1004 of this title may file an appeal within fifteen days of issuance of notice of the secretary's action."

² Board Procedural Rule 19(A) was amended to add a new subsection (7), requiring an appellant to include in his Notice of Appeal the following: "A statement of the reasons why the appellant has standing to appeal the Secretary or Commissioner's act or decision."

Board procedural Rule 25(A) was amended to delete the reference to "appellants" so as to clarify that Rule 25 deals with the party status of those seeking intervention in appeals brought by others. Thus, the annotated text of that rule, showing the deleted clause, reads as follows: "All persons seeking to participate in a contested case or administrative determination, ~~including appellants and petitioners~~, must petition the Board for party status. . . ."

The term “person,” for the purposes of Chapter 41, is defined as “an individual, partnership, corporation, municipality, state agency or other legal entity.” 10 V.S.A. § 1002(9). Thus, a non-profit corporation constitutes “a person” within the meaning of 10 V.S.A. § 1024(a). However, in order to determine whether a non-profit corporation is “aggrieved” by the action of the Secretary of ANR, it is necessary to determine the legally cognizable basis of that aggrievement. In order to make this determination, the Board engages in a two-prong analysis. First, it looks to see whether the organization has the requisite “organizational” standing and, second, whether it has the requisite standing in its so-called “representational” capacity. Re: OMYA, Inc., Docket No. WQ-01-09, Memorandum of Decision at 11-17 (Apr. 2, 2002) (hereinafter, OMYA).

1. Organizational Standing

From its Notice of Appeal and supplemental filing, the Chair assumes that PEER is a validly constituted non-profit corporation under the laws of the District of Columbia and, therefore, qualifies as a “person” within the meaning of 10 V.S.A. 1024(a).³ To assess its aggrievement as an organization, the Board must engage in an analysis similar to the one embodied in the first part of Board Procedural Rule 25(B)(8): Has this organization demonstrated a substantial interest which may be affected (“injured”) if the Secretary’s decision is allowed to stand and therefore a stake in the outcome of de novo review by the Board? This test is analogous to the standing requirements utilized by courts, whereby a court must find that, “on the face of the complaint,” a plaintiff has alleged sufficient facts to show a protected interest, actual injury or the threat of injury to that interest traceable to the defendant’s conduct, and redressability.” OMYA at 8 (citing with favor Parker v. Town of Milton, 169 Vt. 74, 76-78 (1998)).

The “interest” that may be “injured” as a consequence of the Secretary’s action may or may not be a real property interest. The Board, for example, has considered whether the organization itself has an interest in the use and enjoyment of the water resource at issue. OMYA, Chair’s Preliminary Ruling at 14 (Feb. 15, 2002); Re: Husky Injection Molding, Inc., Docket No. MLP-98-06, Chair’s Preliminary Ruling at 6 (Jan. 13, 2002) (hereinafter, Husky). The Board has also considered injury to a corporation’s “purpose.” OMYA, Memorandum of Decision at 12-13 (Apr. 2, 2002). However, that purpose must be germane and specific; it must be concerned, for example, with the protection of water quality, water-dependent wildlife, or other resource values related to water resources management in Vermont. See OMYA, Memorandum of Decision at 13 and Memorandum of Decision at 5 (May 16, 2002), citing Re: Residents of Northeast Kingdom Preservation, Ltd., Docket No. WET-98-03, Dismissal Order at 4 (May 13, 1999).

³ PEER in its Notice of Appeal cited 10 V.S.A. § 1251 as the basis for its qualification as a “person.” The § 1251(8) definition of “person,” however, applies exclusively to 10 V.S.A. Ch. 47.

PEER does not allege that it holds real property or other tangible interests which are or may be affected if the Secretary of ANR's decision is allowed to stand. Rather, PEER alleges that its organizational "interest" is grounded in its organizational purpose.

A review of PEER's Notice of Appeal and its October 7, 2002, filing, reveals that PEER's purpose is to serve and protect public employees who work on environmental issues and promote open, ethical and accountable administration of environmental laws and regulations throughout the United States. Notice of Appeal at 1 (Aug. 15, 2002). Even though PEER's overriding interest may be to protect the environment, by its own admission, it accomplishes this mission "by protecting employees who enforce environmental laws and regulations." Notice of Appeal at 2. It's corporate purpose is "to protect those public employees who speak out for ethical reasons against poor agency judgment." PEER's Response to Citizen's Motion at 3 (Oct. 7, 2002).⁴

Citizens characterizes PEER as a "whistle-blower" organization rather than a non-profit corporation dedicated to environmental protection, and in support of this assertion it points to PEER's organizational objectives.⁵ Citizens' Reply Memorandum at 3 (Oct. 14, 2002). Citizens further asserts, and PEER does not deny, that it is a group aimed at protecting employees from retribution if they speak out against their agency's actions. Citizens' Reply Memorandum at 3 (Oct. 14, 2002); Citizens' Motion Seeking Denial of PEER's Party Status at 8 (Sept. 13, 2002).

In the Chair's opinion, PEER's purpose is to protect public employees who speak out in defense of environment. The issues involved in the present appeal are technical issues related to

⁴ As its mission states, "PEER is a national alliance of local, state, and federal scientists, law enforcement officers, land managers and other professional dedicating [sic] to upholding environmental laws and values and protecting public employees who protect our environment. PEER allows public servants to work as 'anonymous activists,' so that public agencies must confront the message, rather than the messenger." PEER's Response to Citizen's Motion at 3 (Oct. 7, 2002).

⁵ PEER's objectives are listed on page 3 of Citizen's Reply Memorandum (Oct. 14, 2002):

1. Monitor natural resources agencies as a watchdog for the public interest.
2. Inform the administration, Congress, state officials, media and the public about substantive environmental issues of concern to PEER.
3. Organize a broad base of support among employees of local, state and federal resource management agencies.
4. Defend and strengthen the legal rights of public employees who speak out about issues concerning natural resource management and environmental protection.

whether the Project complies with the VWQS. The issues in this appeal are not related to the rights of particular state employees who may object to the Secretary's decision granting the Water Quality Certificate and fear retribution. Because PEER's organizational purpose is related to the protection of public employees, the Chair finds that PEER has not established that it has a sufficient interest to establish organizational standing.

2. Representational Standing

In order to sustain a claim of "representational" standing, PEER must demonstrate that it satisfies all three prongs of the so-called Parker test. OMYA at 9. An organization has standing to bring suit on behalf of its members when (1) its members have standing individually; (2) the interests it asserts are germane to the organization's purpose; and (3) the claim and relief requested do not require the participation of individual members in the action. Parker v. Town of Milton at 78.

Applying the first prong of this test, the Board has looked to see if the members of the corporation make use and enjoyment of the water resource in question. Husky at 6. Leaving aside the question of whether PEER is a "membership" corporation as discussed in OMYA at 13-17,⁶ PEER alleges that it has forty-two (42) members in Vermont. Notice of Appeal at 2. It further alleges that it "has members who use and enjoy the Clyde River for recreational activities such as fishing, boating, and other water-based recreation." Notice of Appeal at 2. PEER asserts: "Their [its members'] use and enjoyment is dependent upon the quality of the resource" and that if the "final water quality certificate is implemented, PEER's members will no longer be able to derive the same use and enjoyment out of the Clyde River." Response to Citizens' Motion at 3 (Oct. 7, 2002) and Notice of Appeal at 2.

PEER has not demonstrated that any of its members have standing individually. Unlike the organizational appellant in OMYA which submitted affidavits from individual "members" to demonstrate their individual use and enjoyment of the water resources at issue, PEER relies on

⁶ In its Motion Seeking Denial of PEER's Party Status (Sept. 13, 2002), Citizens argues that PEER should be denied standing on the basis that it fails to have "voting" members within the meaning of Vermont non-profit corporation law. However, as noted in its Response to Citizens' Motion (Oct. 7, 2002), PEER is incorporated in the District of Columbia and is not subject to the same membership requirements as Vermont incorporated non-profit corporations. As the Board stated in OMYA at 13, what constitutes "membership" may vary, depending on the formality of the organization involved. Likewise, what constitutes "membership" may vary, depending on the requirements of corporate law within the jurisdiction in which the organization in question has been incorporated. Assuming that PEER is correct that it is not required by corporate law in the District of Columbia to have members with "voting" rights in order to qualify as a non-profit membership corporation, it cannot be said that PEER has no members.

its broad assertion that its membership use the Clyde River. It has offered no affidavits or other information from individual members to demonstrate their use of this water resource on a current or on-going basis. Re: Village of Ludlow, Docket No. WQ-01-08, Memorandum of Decision at 11 (Apr. 5, 2002); see also, Re: Dean Leary, Docket No. MLP-94-08, Preliminary Order: Standing and Party Status Issues at 2 (Dec. 28, 1994) (appellant provided specific information to demonstrate “present and historical use” of the water body at issue). Nor have they offered members’ affidavits suggesting how implementation of the Water Quality Certificate may result in an “injury” to or diminishment of their use and enjoyment of the Clyde River. Therefore, PEER has failed to demonstrate that its members have standing individually.

Second, the Board has looked to see whether the members’ use and enjoyment of the water resource in question is germane to the organization’s corporate purpose. Husky at 6. In this regard, PEER merely asserts that its members’ “use and enjoyment of the Clyde River is germane to PEER’s corporate purposes.” Notice of Appeal at 2. PEER does not explain how this is so. Even if, for arguments’ sake, the Board were to assume that individual members of PEER use and enjoy the Clyde River for a number of purposes, PEER has failed to demonstrate how that use and enjoyment is germane to its corporate purpose. As determined above, PEER’s corporate purpose is to protect public employees who speak out in defense of environment. None of the organization’s objectives suggest that it engages directly in administrative litigation to protect the environment -- let alone, protect water quality, water-dependent wildlife or other water-related resources. See fn. 5. Accordingly, it cannot be said that there is a nexus between its members’ use and enjoyment of the Clyde River and the organization’s corporate purpose. Accordingly, PEER fails to meet the second prong of the Parker test.

Having determined that PEER fails to meet two of the three prongs of the Parker test, PEER lacks the requisite representational standing to bring its appeal. Citizens’ Motion Seeking Denial of PEER’s Party Status is granted; by operation of law, PEER’s appeal shall be dismissed for lack of standing.

B. Standing or Party Status of Others

The Chair noted that no written objections to other participants’ standing or party status had been filed with the Board. Counsel at the prehearing conference confirmed orally that there were no objections to the standing of appellants, other than PEER, nor to the party status petitions of others.

Accordingly, the Chair ruled that the following have standing pursuant to 10 V.S.A. § 1024(a) and Board Procedural Rule 19(A)(7): SLA and VNRC/NEKTU.

The Chair ruled that the following have party status as of right: Citizens, the Applicant, pursuant to Board Procedural Rule 25(B)(1); and ANR, pursuant to Procedural Rule 25(B)(5).

C. Motion to Dismiss

In her acknowledgment letter of August 23, 2002, the Board's Acting Executive Officer identified several areas in which the Notices of Appeal filed by VNRC/NEKTU and PEER were deficient pursuant to Board Procedural Rule 19 and therefore required the filing of supplemental information. On September 9 and 10, respectively, VNRC/NEKTU and PEER filed supplemental information with the Board.

On September 23, 2002, Citizens responded by filing a Motion to Dismiss the appeals filed by VNRC/NEKTU and PEER. Citizens did not move to dismiss SLA's appeal. Citizens' principal reason was that VNRC/NEKTU's and PEER's supplemental filings were incomplete and unresponsive to the Acting Executive Officer's request.

In her memorandum to the Appellants and other interested persons sent on September 26, 2002, the Acting Executive Officer advised the Appellants that they would have until October 7, 2002, in which to file responsive memoranda and that both Citizens' Motion to Dismiss and any written responses would be referred to the Board Chair for his consideration at the prehearing conference.

The Chair considered the Appellants' filings and Citizens' Motion to Dismiss and the oral arguments offered by Citizens, VNRC/NEKTU, PEER, and ANR regarding Citizens' Motion.

The Chair indicated to the prehearing conference participants that he would take their arguments under advisement and rule on Citizens' Motion in the Prehearing Order. However, he advised those present that he believed that refining and clarifying the issues on appeal was one of the purposes of a prehearing conference, and that rather than automatically dismiss an appeal, in whole or in part, for lack of specificity, he believed that an appellant should be provided an opportunity to more clearly state the basis of its appeal.⁷

An Applicant for a Water Quality Certificate has the burden of production *and* persuasion to demonstrate that its Project will comply with the Vermont Water Quality Standards (VWQS)

⁷ Board Procedural Rule 19(E) states: "Failure of an appellant to take any step other than the timely filing of a notice of appeal *does not affect the validity* of an appeal, but is grounds only for such action as the Board deems appropriate to prevent unnecessary hardship or delay or to prevent injustice, which *may* include dismissal of the appeal." (Emphasis added.)

A purpose of the initial prehearing conference is to "clarify the issues in controversy." Board Procedural Rule 28(A)(2).

and other appropriate requirements of state law. See Re: Lamoille River Hydroelectric Project (CVPS), Docket Nos. WQ-94-03 and WQ-94-05, Findings of Fact, Conclusions of Law, and Order at 44-48 (Standard of Review and Scope of Review, Burden of Proof, and Compliance with Clean Water Act Section 401) (Nov. 5, 1996). However, in the interest of administrative efficiency, it makes sense to require the appellant to narrow the issues to be litigated on appeal. The Chair noted that in a prior Water Quality Certificate appeal, the appellants, one of whom was VNRC, was required to identify the specific Findings and Conditions that were being challenged. Re: Lamoille River Hydroelectric Project, Docket Nos. WQ-94-03 and WQ-94-05, Prehearing Conference Report and Order at 3 (Sept. 26, 1994). The Chair said that he saw no reason to deviate from this practice, noting that SLA had identified in its Notice of Appeal the specific Findings and Conditions at issue. He further noted that a Water Quality Certificate is merely stayed by the filing of an appeal pursuant to 10 V.S.A. § 1024(a) and the Board has previously interpreted its standard of review such that it only considers de novo the issues raised on appeal, not all matters giving rise to the package of Findings and Conditions comprising the Water Quality Certificate issued by the Secretary of ANR.

In response to the Chair's statements, counsel for VNRC/NEKTU and PEER agreed to identify the specific Findings and Conditions of the Water Quality Certificate to which it objects and to provide this information to the Board no later than 4:30 p.m. on Monday, October 21, 2002. To the extent that VNRC/NEKTU and PEER object to different Findings and/or Conditions, he agreed to so indicate this in his filing.

On October 21, 2002, VNRC/NEKTU and PEER identified the Findings and Conditions in the Water Quality Certificate to which they object. These are listed and discussed in Section VIII.

In light of the timely filings made by VNRC/NEKTU, the Chair denies Citizens' Motion to Dismiss as to VNRC/NEKTU's appeal. Given that the Chair has ruled that PEER's appeal is dismissed for lack of standing, he does not need to reach the question of whether PEER's appeal should be dismissed for lack of specificity. However, should the his preliminary rulings be appealed to the full Board for its review pursuant to Board Procedural Rule 23, and should the Board determine that PEER has standing, it is the Chair's opinion that Citizen's Motion to Dismiss with respect to PEER's appeal should be denied for the same reasons the Chair has denied the Motion to Dismiss as to VNRC/NEKTU – namely, they have refined and clarified their issues as requested and required by Board Procedural Rule 19.

D. Stipulation

Pursuant to 3 V.S.A. § 810(4) and Board practice, the Board may notice permits and other related documents provided that it affords parties an opportunity to contest the material so noticed. It may also "admit" exhibits by stipulation of all parties or persons in interest.

The Chair informed the prehearing conference participants that the Board was inclined to take official notice of the Water Quality Certificate, with the understanding that it has been stayed, for the purpose of facilitating the clarification of the matters at issue, as discussed in Section VII.C. above. He asked the prehearing conference participants whether they would object to the Board taking official notice of this document. They indicated that they would not. Accordingly, the Chair, on behalf of the Board, took judicial notice of the Water Quality Certificate issued to Citizens by the Secretary of ANR on August 1, 2002.

E. Cost of Legal Notice

The Board's counsel noted that, pursuant to Procedural Rule 22(B), appellants are responsible for the cost of publishing the initial notices of appeal. She noted that since there were three sets of Appellants in this matter, the cost of publication of the joint notice of appeal in the Newport Daily Express was divided between the three Appellants and billed out by the Board on October 10, 2002. She further noted that the amount prorated to each set of appellants was \$36.87.

As of the date of the prehearing conference, the Board had not received payments from SLA, VNRC/NEKTU, and PEER for reimbursement of publication costs. Counsel for SLA indicated that it had issued a check in payment; counsel for VNRC/NEKTU and PEER stated that payment would be made shortly. Failure to make timely payment may be grounds for delay or dismissal of the pending appeals.

F. Other Preliminary Issues

The Chair inquired whether there were any other preliminary issues that needed to be addressed. Counsel for the prehearing conference participants indicated that there were no other preliminary issues.

VIII. ISSUES

Based on the Notices of Appeal, filed by the three sets of Appellants and their supplemental filings, the Chair identified the following as the issues on appeal. In response to each, he asked for any suggested refinements from Appellants and any questions or comments from other prehearing conference participants.

Based on its Notice of Appeal, SLA appears to be narrowly focus its appeal on the question: Whether the Water Quality Certificate contains appropriate findings and conditions regarding the Applicant's design and operations of a replacement dam at Seymour Lake. In its Notice of Appeal, SLA identified specific Findings of the Water Quality Certificate with which it objected. These were: Findings 254-256 and Condition H.

The issues identified by VNRC/NEKTU, as modified by their September 9, 2002 filing, were challenged by Citizens in its Motion to Dismiss on the basis that they were overly broad and unresponsive to the Acting Executive Officer's Acknowledgment letter of August 23, 2002. The issues identified by PEER, as modified by its September 10, 2002 filing, were essentially the same as those raised by VNRC/NEKTU in their Notice of Appeal, and were also the subject of Citizens' Motion to Dismissed.

As discussed in more detail in Section VII.C. at page 11, the VNRC/NEKTU offered to identify the specific Findings and Conditions of the Water Quality Certificate to which they object and to provide this information to the Board no later than October 21, 2002. On October 21, 2002, VNRC/NEKTU filed a list which identified the following Findings and Conditions of the Water Quality Certificate at issue: Findings 153, 177, 183, 188, 270, 281, 283-291; Conditions B(as it relates to Newport 1, 2, 3), D, L, and M, as well as any and all tables, charts, or other information contained or referred to therein that are related to the Appellants' issues of concern.

Thus, the issues on appeal by VNRC/NEKTU are those raised by its challenge to these Findings and Conditions.

At the prehearing conference, VNRC/NEKTU confirmed that they withdraw two issues raised in their Notice of Appeal. These were: (1) Whether terms and conditions contained in the Water Quality Certificate are arbitrary, capricious and contrary to sound science; and (5) Whether ANR inappropriately considered economics in making its decision. Notice of Appeal at 2. However, VNRC/NEKTU indicated that they may object to evidence offered by other parties during the Board proceeding designed to introduce economic considerations into the Board's review process.

PEER joined in VNRC/NEKTU's October 21, 2002, filing with respect to the Findings and Conditions at issue. However, PEER did not clarify whether it intends to withdraw the issues it framed regarding whether ANR inappropriately considered the economics of operating the Project in issuing the Water Quality Certificate and whether its decision making was arbitrary and contrary to science. See PEER's Supplemental Filing at 2 (Sept. 10, 2002). If the Chair had not ruled that PEER lacked standing, he would have further ruled that these two issues are outside the Board's authority to consider given the Board's de novo appellate role in reviewing Water Quality Certificate decisions. Should, however, the Board reverse the Chair's preliminary ruling on standing, the Board would agree that those issues to which PEER has joined VNRC/NEKTU are appropriate and appealable issues for consideration by the Board.

IX. CONSOLIDATION

In her memorandum to the Appellants and other interested persons sent on September 26,

2002, the Acting Executive Officer asked that these persons come to the prehearing conference prepared to discuss whether the above-captioned appeals should be “consolidated for hearing and a joint record.”

The Chair noted that consolidation of appeals is provided for in Board Procedural Rule 33(B). The Chair inquired of the prehearing conference participants whether they had a position concerning consolidation of these appeals. Counsel for SLA indicated some hesitancy about consolidating SLA’s appeal with the other two, since he was not certain what issues might be in common and he was concerned about the amount of time and cost that might be incurred by his client if he were required to attend a multi-day hearing. On the other hand, he was not certain whether he might want to cross-examine the experts of other parties if such testimony would be materials to his client’s case. None of the other participants objected to consolidation of the appeals.

The Chair, after taking into consideration SLA’s comments, nonetheless ruled that any appeals that survived preliminary standing and other challenges would be consolidated for hearing. Should his preliminary ruling that PEER’s appeal should be dismissed for lack of standing either become final or be sustained by the full Board after review, Docket Nos. WQ-02-08(A) and (B) would be consolidated. Should his ruling regarding PEER’s standing be reversed, then all three appeals will be consolidated.

Board counsel assured counsel for SLA that the hearing agenda could be structured so as to minimize the time that SLA’s witnesses need be present.

X. WITNESSES, EXHIBITS, AND PREFILING SCHEDULE

Chair Blythe explained to the prehearing conference participants that prefiled testimony and exhibits would be required in this proceeding. He noted that a schedule of deadlines for prefiling would be memorialized in the Prehearing Conference Report and Order.

The Chair then asked the prehearing conference participants to identify their *preliminary* list of witnesses. He noted that a final list of witnesses will be required at the time of the filing of prefiled rebuttal testimony.

SLA, in its supplemental filing of September 13, 2002, identified the following possible witnesses: Kevin Perry, or other technical expert employed by Citizens; James T. McWain, President SLA; SLA members Homer Selby and Ron Kolar; and a Representative of the Town of Morgan. Counsel for SLA indicated at the Prehearing Conference that, depending on the results of a report being prepared by Citizens and expected to be issued around November 22, 2002, it may be the SLA will defer to the expertise of Kevin Perry, as Citizens’ expert witness, rather than compel his testimony by subpoena. They also may call two other expert witnesses.

VNRC/NEKTU identified in their Notice of Appeal that they would rely on “ANR’s files, testimony of ANR staff, testimony of Petitioners’ witnesses, and such exhibits and documentary evidence as necessary in creating and compiling such testimony.” VNRC/NEKTU specifically identified Kim Kendall as their expert witness. At the prehearing conference, VNRC/NEKTU indicated that they would likely call another expert to testify about salmonids and another about water quality issues. They also intend to subpoena certain ANR staff as witnesses, if those persons are not identified by ANR on its witness list. The Chair advised the parties that it was important for them to identify any subpoena disputes early on so that they can be resolved no later than the second prehearing conference to be scheduled in this matter. See Board Procedural Rule 5.

PEER identified no list of preliminary witnesses in its Notice of Appeal and supplemental filing. It merely stated in its Notice of Appeal that it reserved the right to call witnesses and that its “evidence shall include, but not be limited to, ANR documents and ANR correspondence” on the Project, “and expert opinions on water quality issues.” At the prehearing conference, counsel for PEER indicated that if PEER is allowed to participate in this proceeding, its testimony would likely be aligned with that of VNRC/NEKTU and filed jointly.

Citizens provided the following preliminary list of witnesses: Kevin Perry from Citizens’ Jeffrey Nelson, hydrogeologist; John Trube; and a fisheries expert.

ANR indicated that it did not have a preliminary list of witnesses, but that it expected to call at least two persons from its staff, one knowledgeable about water quality matters and the other a fisheries biologist.

The prehearing conference participants estimated that this matter would require at least two long days of hearing time, excluding any time for a site visit. The Chair encouraged the prehearing conference participants to work together to avoid duplication of witness testimony and exhibits and, if possible, to prepare stipulated facts, and identify exhibits to which there are no objections.

The Board’s counsel noted that the Prehearing Conference Report and Order would govern the pre-filing of evidence, unless timely objected to and amended by the Chair or the full Board. Such order would contain specific instructions for the pre-filing of testimony and exhibits.

She advised the prehearing conference participants that the Board’s usual practice is to stagger the filing of prefiled evidence such that the Applicant files first; two or three weeks later, the other parties prefile their direct evidence; and two or three weeks after that, all parties simultaneously prefile rebuttal evidence. A week or so later, all parties may file written evidentiary objections

and, a week after that, responses to evidentiary objections. The Chair rules on evidentiary objections, hearing day scheduling issues, and other matters as necessary at a second prehearing conference held a few days before the Board's hearing. Objections to the Chair's rulings may be preserved for Board review at the beginning of the hearing day. She also noted that the Board generally required prefiled proposed findings of fact, conclusions of law, and orders in the form of proposed Water Quality Certificate Conditions. The Board's counsel reviewed with the participants the deadlines for prefiled evidence and other documents set forth in the Prehearing Order.

As a consequence of the de novo standard applied in this proceeding, the Chair forewarned prehearing conference participants that any evidence that might have been submitted to the ANR in support of or in opposition to the application for the Permit, including the applications, permits, responsiveness summaries, and any ANR regulations or guidance documents used in the review of the Permit, must be resubmitted to the Board in the form of prefiled exhibits.

With respect to all filings, including prefiled testimony and exhibits and various pleadings, the prehearing conference participants were advised that they are required to file an original and six copies with the Board as well as serve persons on the Board's certificate of service, as modified and issued with the Prehearing Order. He noted that "Filing with the Board" means that submissions must be received at the Board's office by the deadline stated in a Prehearing Order or in any subsequent orders of the Board or its Chair. See Procedural Rules 8, 9, and 10.

XI. SITE VISIT

In her memorandum to the Appellants and other interested persons sent on September 26, 2002, the Acting Executive Officer asked prehearing conference participants to be prepared to discuss a date for a proposed site visit. There were three dates proposed in that memorandum. The Chair inquired of the prehearing conference participants when the site visit should be conducted.

Counsel for Citizens reported that only one of the three dates offered would allow the Board to see the hydroelectric facilities in operation, October 29, 2002, as the facilities would be shut down for maintenance during the months of November and December. She also noted that given high water in the spring, it would be difficult to obtain easy access to the facilities in April 2003.

The Chair agreed to reserve October 29, 2002, for a site visit of the Clyde River and Project facilities, with the understanding that the prehearing conference participants would file a joint site visit itinerary on or before 4:30 p.m., Tuesday, October 22, 2002. The Chair suggested that parties identify in the itinerary the specific stations and sequence of stations they wish the

Board to view, and then do a dry run of the site visit to get a better idea of the time involved in conducting the visit.

On October 22, 2002, Citizens filed a site visit itinerary developed in consultation with counsel for the Appellants and ANR. Accordingly, the Board will conduct a Site Visit on October 29, 2002, at 9:30 a.m., starting in the Town of Charleston, Vermont, as indicated in a Notice of Site Visit issued on October 24, 2002.

XII. HEARING DAY SCHEDULE

As noted above, the prehearing conference participants indicated that a hearing in this matter would probably require two full days of hearing time, not including time for a site visit. The Chair indicated that such a hearing, given the Board's current schedule could not be scheduled any earlier than April of 2003. The Chair noted that any merits hearing in this matter would be scheduled at a public facility in close proximity to the hydroelectric facilities, perhaps in the City of Newport, Vermont.

The Board's counsel indicated that a hearing with respect to the pending appeals would be tentatively scheduled for **April 1, 2003**, and another date in close proximity, perhaps March 30 or April 2, 2003. She urged the prehearing conference participants to reserve these dates until further notice and so notify their witnesses. She distributed to the prehearing conference participants a sample hearing day schedule. See attachment.

XIII. TAPED AND STENOGRAPHIC RECORD

The Chair advised the prehearing conference participants that oral arguments before the Board on any preliminary matters would be tape recorded as would the hearing itself. However, given the complexity of the issues involved and the possibility that the Board's decision might be appealed, he determined that a stenographic of the hearing would be warranted. Accordingly, he asked which of the prehearing conference participants would retain a stenographer in accordance with Board Rule of Procedure 32(B), with the understanding that its costs would be reimbursed on a pro-rata basis by any other party requesting a copy of the hearing transcript.

Citizens offered to retain a stenographer for the Board hearing.

XIV. SCHEDULING CONFLICTS

The Board's counsel urged all prehearing conference participants to look at their

calendars and alert her immediately of any major scheduling conflicts between now and the end of April 2003, and report these to her as soon as possible so as not to disrupt the proceeding.

XV. OTHER MATTERS

A. Service List

The Board's counsel advised the prehearing conference participants that they should use the certificate of service accompanying this Prehearing Order to determine who should receive copies of all filings. She noted that the Board's certificate might be revised from time to time, so

parties' representatives should consult with her to be sure that are using the most accurate and recent service list. She noted that parties are not required to serve filings on persons listed under the "For Your Information" section of the certificate of service. She further noted that parties or their representatives are responsible for advising the Board of any changes in addresses, including seasonal changes in residence for any of their clients.

B. Rules on the Board's Web Site

Those intending to participate in this proceeding are advised to obtain copies of the Procedural Rules, effective January 1, 2002, as well as the current Vermont Water Quality Standards to prepare for the hearing in this matter. These rules are available by downloading text from the Board's Web site: <http://www.state.vt.us/wtrboard>

XVI. ORDER

1. Citizens' Motion Seeking Denial of PEER's Party Status is granted; Public Employees for Environmental Responsibility, Inc., lacks the requisite standing and its appeal is dismissed.
2. Citizens' Motion to Dismiss is denied.
3. The following have standing to bring their respective appeals pursuant to 10 V.S.A. § 1024(a): Seymour Lake Association; Vermont Natural Resources Council and Northeast Kingdom of Trout Unlimited.
4. The following are parties of right to this proceeding: Citizens Communications, Inc., pursuant to Board Procedural Rule 25(B)(1); and the Agency of Natural Resources, pursuant to Procedural Rule 25(B)(5).
5. A Site Visit in this matter shall be convened on **Tuesday, October 29, 2002**, at a time

and place to be confirmed by separate notice.

6. Any requests for disqualification of any of the current Board members or former Board members identified in Section II. above, or any requests for further disclosure, shall be filed on or before **4:30 p.m., Wednesday, November 6, 2000**. Any such request for disqualification shall be supported with a statement of alleged facts and a memorandum of law in support of such disqualification. The failure to file a timely request for disqualification or request for further disclosure shall be deemed waiver of any objections to the participation of any current or former Board member identified in Section II. above.
7. On or before **4:30 p.m., Wednesday, November 6, 2002**, any party seeking full Board review of the Chair's preliminary rulings in Items 1-4. above shall file with the Board a motion supported by legal memorandum. Any party objecting to a Chair's preliminary ruling shall also indicate whether it requests oral argument with respect to the issues that it has briefed.
8. On or before **4:30 p.m., Wednesday, November 6, 2002**, any party objecting to the issues as framed in Section VIII. above shall file its objections, supported by legal memorandum. Any memorandum containing citations to case decisions from jurisdictions other than Vermont or referencing regulations not adopted by the Board, shall include as attachments copies of those decisions or regulations. Any party filing an objection shall also indicate whether it requests oral argument with respect to the issues that it has briefed.
9. On or before **4:30 p.m., Wednesday, November 20, 2002**, any party may file a legal memorandum in response to filings made pursuant to Item 7. Any party responding to an objection filed pursuant to Item 7 above shall indicate whether it requests oral argument with respect to the issues that it has briefed in its responsive memorandum.
10. On or before **4:30 p.m., Wednesday, November 20, 2002**, any party or petitioner desiring to respond to any motion filed pursuant to Item 8 above, may file a responsive legal memorandum. Any memorandum containing citations to case decisions from jurisdictions other than Vermont or reference regulations not adopted by the Board, shall include as attachment copies of those decisions or regulations. Any party filing such responsive legal memoranda shall indicate whether it requests oral argument with respect to the issues that it has briefed.
11. Should oral argument be requested with respect to Items 1-4 and 7-10 above, it shall be heard by the Board on **Tuesday, December 10, 2002**, at a time and place to be confirmed

by subsequent notice.

12. On or before **4:30 p.m., Tuesday, January 14, 2003**, Citizens shall file its final list of direct witnesses and exhibits. It also shall file all direct prefiled testimony and exhibits that it intends to present. For each expert witness, it shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion concerning the impacts of the Project shall be filed as prefiled exhibits.

Prefiled direct exhibits which are larger than 8½ by 11 inches must only be identified to the parties, **but one copy of all such exhibits must be filed with the Board** and be made available for inspection and copying at the Board's office by any party prior to the hearing.

13. On or before **4:30 p.m., Tuesday, January 28, 2003**, all parties other than Citizens shall file final lists of direct witnesses and exhibits. They also shall file all direct prefiled testimony and exhibits that they intend to present. For each expert witness, they shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion concerning the impacts of the Project shall be filed as prefiled exhibits.

Prefiled direct exhibits which are larger than 8½ by 11 inches must only be identified to the parties, **but one copy of all such exhibits must be filed with the Board** and be made available for inspection and copying at the Board's office by any party prior to the hearing.

14. On or before **4:30 p.m., Tuesday, February 11, 2003**, all parties shall file final lists of rebuttal witnesses and exhibits and prefiled rebuttal testimony and exhibits that they intend to present. For each expert witness, they shall file a resume or other statement of qualification. All reports and other documents upon which an expert witness relies in making his or her professional opinion concerning the impacts of the Project shall be filed as prefiled exhibits.

Prefiled direct exhibits which are larger than 8½ by 11 inches must only be identified to the parties, **but one copy of all such exhibits must be filed with the Board** and be made available for inspection and copying at the Board's office by any party prior to the hearing.

15. No individual may be called as a witness in this matter if he or she has not filed prefiled testimony or exhibits in compliance with this Order. All reports and other documents that constitute substantive testimony must be filed with the prefiled testimony. If prefiled

testimony has not been submitted by the date specified, the witness may not be permitted to testify.

16. On or before **4:30 p.m., Tuesday, February 25, 2003**, any party may file in writing any evidentiary objections to prefiled testimony and exhibits previously filed. If objections are not timely filed, they shall be deemed waived. Any objections shall be supported by legal memoranda.
17. On or before **4:30 p.m., Thursday, March 6, 2003**, any party may file in writing any responses to evidentiary objections filed in accordance with Item 10 above. If responses are not timely filed, they may be excluded. Any objections shall be supported by legal memoranda.
18. On or before **4:30 p.m., Thursday, March 6, 2003**, all parties shall submit a single, combined list of all prefiled testimony and exhibits.
19. On or before **4:30 p.m., Thursday, March 6, 2003**, all parties shall file in writing any requests for time beyond the time allotments identified in the Proposed Hearing Day Agenda (to be sent after the receipt of all prefiled evidence). The Chair may allow more time if good cause is shown.
20. On or before **4:30 p.m., Thursday, March 6, 2003**, the parties shall file any stipulations. These may be in the form of joint statements of fact or proposed joint decisions.
21. On or before **4:30 p.m., Thursday, March 6, 2003**, the parties shall file any proposed findings of fact, conclusions of law, and orders.
22. The Chair or his designee will conduct a second prehearing conference by telephone on **Tuesday, March 11, 2003, at 1:00 p.m. at the Board's office in Montpelier, Vermont**. The purpose of this prehearing conference is to address any pending evidentiary objections, site visit issues, or other matters requiring rulings preliminary to the hearing in this matter. Any party wishing to participate in this conference by telephone should so advise the Board's Secretary, Karen Dupont (802-828-2870) on or before **12:00 noon on Thursday, March 6, 2003**. The Board's staff will arrange the conference call.
23. The Board will convene a hearing in this matter, around April 1, 2002. The dates, times, and location of this hearing shall be announced in a subsequent notice.
24. The hearing will be recorded electronically by the Board and by a stenographic reporter, provided that Citizens requests the services of a stenographer and so notifies the Board Chair on or before **4:30 p.m., Thursday, March 6, 2003**. One copy of any transcript

made of the proceedings must be filed with the Board at no cost to the Board and any disputes concerning the pro-rata reimbursement of costs must be timely brought to the attention of the Chair for his decision pursuant to Board Procedural Rule 32(B).

25. On or before **4:30 p.m., Tuesday, April 15, 2003**, any party may file any revised or supplemental proposed findings of fact, conclusions of law, and orders, including any proposed CUD conditions.
26. The Board or its Chair may waive any filing requirements upon a showing of good cause, unless such waiver would unfairly prejudice the rights of other parties.
27. Parties shall file an original and **six collated copies** of prefiled testimony, legal memoranda, all prefiled testimony, all prefiled exhibits which are 8½ by 11 inches or smaller, and any other documents filed with the Board, and mail one copy to each of the **parties' representatives** listed on the Board's Certificate of Service, but not to persons listed under "For Your Information." Legal memoranda shall be no more than twenty-five pages and proposed findings of fact and conclusions of law shall be no more than fifty pages. See Procedural Rule 10; also see Procedural Rule 30(D) (prefiled testimony).
28. All parties shall label their own prefiled testimony and exhibits with their name. The labels on the exhibits must contain the words WATER RESOURCES BOARD, Re: Clyde River Hydroelectric Project, Docket Nos. WQ-02-08 (Consolidated), the number of the exhibit, and a space for the Board to mark whether the exhibit has been admitted and to mark the date of admission. **The completed labels must be affixed to all prefiled testimony and exhibits prior to submission to the Board.** Label stickers are available from the Board on request.

With respect to labeling, each party is assigned letters as follows: "CIT" for the Applicant; "SLA" for the Seymour Lake Association; "VNRC" for Vermont Natural Resources Council and Northeast Kingdom of Trout Unlimited; and "ANR" for Agency of Natural Resources. Exhibits shall be assigned consecutive numbers. For example, the Applicant would number its exhibits CIT-1, CIT-2, CIT-3, etc. If an exhibit consists of more than one piece (such as a site plan with multiple sheets), letters will be used for each piece, i.e. CIT-2A, CIT-2B, etc. However, each page of a multi-page exhibit need not be labeled.

Concerning preparation of the combined list of all prefiled testimony and exhibits, the list must state the full name of the party at the top and the Board's case number. There must be three columns, from left to right: NUMBER, DESCRIPTION, and STATUS. The list must include exhibits and prefiled testimony. An example is as follows:

APPLICANT'S LIST OF EXHIBITS

RE: CLYDE RIVER HYDROELECTRIC PROJECT, WQ-02-08 (Consolidated) [?]

<u>Number</u>	<u>Description</u>	<u>Status</u>
CIT-1	Prefiled Direct Testimony of Project Engineer, [Name].	
CIT-2	Application filed with ANR on _____.	
CIT-3A-D	Survey dated _____, sheets 3A through 3D	

The Board will use the "Status" column to mark whether or not the exhibit has been admitted.

Exhibits offered to the ANR for its consideration in evaluating the application for the Water Quality Certificate, if they are to be considered by the Board de novo, must be introduced into the evidentiary record for this proceeding.

29. Pursuant to Procedural Rule 28(B), this Order is binding on all parties who have received notice of the prehearing conference, unless a written objection to the Order, in whole or in part, is filed on or before **4:30 p.m., Friday, November 1, 2002**, or a showing of cause for, or fairness requires, waiver of a requirement of this Order. The filing of an objection shall not automatically toll that portion of the order to which an objection is made.

Dated at Montpelier, Vermont this 25th day of October, 2002.

WATER RESOURCES BOARD
By its Chair

\s\ David J. Blythe

David J. Blythe, Esq.

