

STATE OF VERMONT  
PUBLIC UTILITY COMMISSION

Case No. 8585

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Investigation into Meteorological Tower at 700 Kidder Hill Road in Irasburg, Vermont	
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Order entered: 09/12/2019

**ORDER GRANTING IN PART DEPARTMENT’S MOTION FOR SUMMARY JUDGMENT AND  
DENYING RESPONDENT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

**I. INTRODUCTION**

On September 23, 2015, the Vermont Public Utility Commission opened this proceeding to investigate the factual circumstances and legality of the site preparation, construction, and operation of a meteorological (“MET”) tower located in Irasburg, Vermont, and owned by David Blittersdorf (“respondent” or “Mr. Blittersdorf”).

In today’s order, for the reasons discussed below, I am granting in part a motion for summary judgment filed by the Department of Public Service (“Department”) on July 1, 2016. This order grants the Department’s motion only in part because the motion sought a finding of liability under 30 V.S.A. §§ 246 and 248. For the reasons discussed in this order, the portion of the motion seeking judgment under 30 V.S.A. § 248 is denied. However, this order does find that Mr. Blittersdorf violated the provisions of 30 V.S.A. § 246 by constructing a MET tower without first obtaining a certificate of public good (“CPG”). In today’s order, I also deny a cross-motion for summary judgment filed by Mr. Blittersdorf on July 29, 2016. I reach today’s conclusions based on a reconsideration of the parties’ motions for summary judgement and a careful re-examination of the record in this proceeding; both performed in light of the Vermont Supreme Court’s April 26, 2019, decision in *In re Construction and Operation of a Meteorological Tower*.<sup>1</sup>

Because this order addresses only the question of Mr. Blittersdorf’s liability for constructing a MET tower without a CPG as required by 30 V.S.A. § 246, it is necessary to establish a process and schedule for determining the amount of a civil penalty that should be

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<sup>1</sup> 2019 VT 20 (April 26, 2019).

imposed on Mr. Blittersdorf.<sup>2</sup> As a result, I will be asking the Clerk of the Commission to contact the parties to this matter to schedule a status conference. The parties are directed to begin discussing among themselves mutually agreeable potential dates for the status conference.

## **II. PROCEDURAL HISTORY**

On September 2, 2015, the Clerk of the Vermont Public Utility Commission (“Commission”) received a letter from the members of the Irasburg Selectboard concerning a meteorological tower located at 700 Kidder Hill Road in Irasburg, Vermont. The letter stated that the Selectboard found no evidence that the Commission had issued a CPG authorizing construction of the meteorological tower.

On September 11, 2015, the Department filed comments stating that the respondent did not obtain a CPG from the Commission prior to constructing the tower. The Department recommended that the Commission open an investigation into the matter and provide the respondent “an opportunity to show cause why he should not be subject to penalties under 30 V.S.A. § 30.”

On September 23, 2015, the Commission issued an order initiating this investigation and directing the hearing officer<sup>3</sup> to examine the facts surrounding the construction of the meteorological tower and whether the tower was lawfully constructed, with particular attention to whether the construction of the tower complied with the applicable requirements, if any, of Section 246 of Title 30.<sup>4</sup>

On December 18, 2015, the respondent prefiled testimony and exhibits.

Beginning on January 6, 2016, the parties engaged in various rounds of discovery among themselves.

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<sup>2</sup> At the conclusion of the penalty phase of this investigation, I will issue a proposal for decision that both sets forth a recommended penalty amount and incorporates the findings and conclusions of this order. At that time, the parties will be able to exercise their right to file comments with and seek oral argument before the full Commission on that proposal for decision consistent with 3 V.S.A. § 811.

<sup>3</sup> George Young, Esq. was appointed to serve as hearing officer in this proceeding. However, Mr. Young has since left the Commission and I was assigned to act as hearing officer following his departure.

<sup>4</sup> Case No. 8585, Order of 9/23/15.

On July 1, 2016, the Department filed a motion for partial summary judgment on the question of whether the respondent was liable for erecting the MET tower without first obtaining a CPG.<sup>5</sup>

On July 29, 2016, the respondent filed an opposition to the Department's motion and a cross-motion for summary judgment seeking dismissal of this investigation.

On August 11, 2016, the respondent filed a supplemental memorandum in support of his July 29 filing.

On August 24, 2016, the Department filed a reply to the respondent's July 29 and August 11 filings.

On June 22, 2018, I issued an order denying both the Department's motion for summary judgment and the respondent's cross-motion for summary judgement.

On July 24, 2018, at the request of the parties, I issued an order staying this proceeding pending the decision of the Vermont Supreme Court in Case No. 2018-120, the appeal of Commission Docket 8561.<sup>6</sup>

The Vermont Supreme Court issued its decision in Case No. 2018-120 on April 26, 2019.<sup>7</sup>

On June 25, 2019, I convened a status conference. At the status conference, the parties requested that I reconsider the previous denials of the motion and cross-motion for summary judgment based on the information in the record and the Vermont Supreme Court's April 26, 2019, decision in Case No. 2018-120.

On July 3, 2019, I issued a series of information requests to the respondent. Mr. Blittersdorf filed his responses to those requests on July 19, 2019.

On August 2, 2019, the Department filed comments in reply to Mr. Blittersdorf's July 19 responses.

No additional substantive filings have been received.

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<sup>5</sup> The Department's motion did not seek judgment on the amount of the civil penalty that should be imposed in the event it was successful in obtaining a ruling in its favor on the question of liability.

<sup>6</sup> Docket 8561 also involved the construction of a MET tower without a CPG. This case was stayed because the Vermont Supreme Court's decision in the appeal of Docket 8561 was expected to provide guidance to the parties and the Commission in resolving this matter.

<sup>7</sup> *In re Construction and Operation of a Meteorological Tower*, 2019 VT 20 (April 26, 2019).

### **III. THE LEGAL STANDARD**

Pursuant to Commission Rule 2.219, Vermont Rules of Civil Procedure Rule 56 applies to Commission proceedings.<sup>8</sup> Under Rule 56, the Commission may grant summary judgment if the moving party demonstrates that “there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.”<sup>9</sup> The standard for summary judgment is stringent.<sup>10</sup> When seeking summary judgment, the movant has the burden of proof, and the party opposing the summary judgment motion is to be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue exists.<sup>11</sup> Summary judgment “provides a mechanism for the disposition of issues, claims and defenses which do not merit a full trial.”<sup>12</sup> However, a trial is “absolutely necessary where there is a genuine issue as to any material fact.”<sup>13</sup> A fact is “material” when it affects the outcome of a case.<sup>14</sup>

### **IV. THE VERMONT SUPREME COURT DECISION**

On April 26, 2019, the Vermont Supreme Court issued its decision in *In re Construction and Operation of a Meteorological Tower*.<sup>15</sup> In that case, the Court determined that a meteorological tower falls within the Commission’s Section 246 jurisdiction if it has the following two characteristics: (1) it is temporary, and (2) it is constructed or installed to determine the suitability of a site for a grid-connected wind project.<sup>16</sup> The parties to the case agreed that the tower in question was temporary, leaving the Court to resolve only whether the tower was installed to determine the suitability of the site for a grid-connected wind project.

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<sup>8</sup> *Petition of Department of Public Service to impose penalties and other remedial action upon Vermont Gas Systems, Inc.*, Docket 7513, Order of 10/23/09 at 6.

<sup>9</sup> *Granger v. Town of Woodford*, 167 Vt. 610, 611, 708 A.2d 1345, 1346 (1998) (mem.); *Bacon v. Lascelles*, 165 Vt. 214, 218, 678 A.2d 902, 905 (1996); *Hoeker v. Department of Social and Rehabilitation Service and Sally Lindberg*, 171 Vt. 620, 621 (2000).

<sup>10</sup> *Wesco, Inc. v. Hay-Now, Inc.*, 159 Vt. 23, 26 (1992).

<sup>11</sup> *Price v. Leland*, 149 Vt. 518, 521 (1988).

<sup>12</sup> *Gore v. Green Mountain Lakes*, 140 Vt. 262, 264 (1987).

<sup>13</sup> *Sykas v. Kearns*, 135 Vt. 610, 612 (1978).

<sup>14</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

<sup>15</sup> *In re Construction and Operation of a Meteorological Tower*, 2019 VT 20 (“*Meteorological Tower*”).

<sup>16</sup> *Meteorological Tower* at ¶ 22.

A temporary tower will be found to have been installed for the purpose of determining a site's suitability for a grid-connected wind project if the tower is "reasonably related" to the wind project.<sup>17</sup>

Determining whether a tower is reasonably related to a wind project requires a fact-intensive, objective review on a case-by-case basis. Such a review "may rely on a host of factors, including—but not limited to—the station's size and scope, the project proponent's actions and outward manifestations of intent, the project proponent's statements of subjective intent, the existence of plans for a grid-connected wind turbine, and subsequent development of a grid-connected project."<sup>18</sup> A subsequent plan for or the development of a wind generation project by itself is not determinative of a tower's reasonable relationship to a wind project, but rather is a factor to be considered in the overall analysis.<sup>19</sup>

Additionally, the Court determined that, while a temporary meteorological tower is subject to the Commission's jurisdiction under Section 246, it is not subject to the Commission's jurisdiction under Section 248, largely because Section 248 regulates projects that will be connected to the electric grid, a characteristic not found in meteorological towers.<sup>20</sup>

The Court did acknowledge that prior to the passage of 30 V.S.A. § 246, the Commission reviewed all MET towers under the provisions of 30 V.S.A. § 248. The Court did not expressly determine whether the Commission's past practice was correct or not. The Court also did not address the question of whether, given the passage of Section 246 and its jurisdiction over temporary towers, permanent towers are subject to the Commission's jurisdiction under Section 248.<sup>21</sup> Therefore, it could be argued that the Court's decision compels the somewhat unusual conclusion that the Legislature intended to impose a requirement that a temporary tower undergo review and approval by the Commission while exempting a permanent tower, with its attendant longer-term impacts, from any level of Commission review.

However, the Commission need not resolve that question. As explained below, the facts of this case in light of the Court's reasoning in the *Meteorological Tower* case support the

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<sup>17</sup> *Id.* at ¶ 25.

<sup>18</sup> *Id.* at ¶ 26.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at ¶¶ 14-20.

<sup>21</sup> *Id.* at ¶ 23.

conclusion that Mr. Blittersdorf's MET tower was both temporary in purpose and reasonably related to a wind project, and therefore subject to the requirements of Section 246.

#### V. UNDISPUTED MATERIAL FACTS

1. In October of 2010, Mr. Blittersdorf purchased his property in the Town of Irasburg, Vermont. David Blittersdorf ("Blittersdorf") pf. at 2; Department response to Respondent facts at ¶ 15.

2. When Mr. Blittersdorf purchased his property, he intended to build a cabin that would be powered completely by one or more residential wind turbines. Blittersdorf pf. at 2; Department response to Respondent facts at ¶ 15.

3. Mr. Blittersdorf installed a meteorological station on his property at 700 Kidder Hill Road in Irasburg in November and December of 2010. Respondent facts at ¶ 1; Department response to Respondent facts at ¶ 1.

4. On November 19, 2019, Mr. Blittersdorf transported the components for a 60-meter mast to the high point of his property. Respondent facts at ¶ 1; Blittersdorf pf. at 2; Department response to Respondent facts at ¶ 1.

5. On December 29, 2010, Mr. Blittersdorf raised the mast and completed its installation. Respondent facts at ¶ 1; Blittersdorf pf. at 2; Department response to Respondent facts at ¶ 1.

6. When Mr. Blittersdorf erected the mast, it was equipped with a lightning rod, multiple levels of wind direction vanes, wind speed anemometers, a heated anemometer, a data logger, and a solar panel located near the bottom of the mast. Blittersdorf pf. at 3, 4; Department response to Respondent facts at ¶ 18.

7. Mr. Blittersdorf erected his meteorological station with two purposes in mind. The first was assessing the wind resource on his property for the installation of one or more residential wind turbines to power his cabin via net-metering. The second was to engage in prototype testing in a private setting. Respondent facts at ¶¶ 3, 7; Respondent discovery response A.DPS:Resp.1-1; Department response to Respondent facts at ¶ 3.

8. At the time he installed the meteorological station, Mr. Blittersdorf was considering a residential turbine installation. Respondent facts at ¶ 7; Department response to Respondent facts at ¶ 7.

9. When Mr. Blittersdorf erected the meteorological station, he had no plans to take it down. Respondent facts at ¶ 2; Department response to Respondent facts at ¶ 2.

10. The prototype testing being performed by Mr. Blittersdorf requires the collection of long-term data. Respondent facts at ¶ 3; Department response to Respondent facts at ¶ 3.

11. The mast that Mr. Blittersdorf erected in December of 2010 is still in place and is being used to continue prototype testing. Respondent's answers to hearing officer information requests at 1-3.

12. The data collected from the meteorological tower was helpful to Mr. Blittersdorf in making the financial decision to install his residential wind turbines. Respondent facts at ¶ 10.<sup>22</sup>

13. Mr. Blittersdorf did not obtain a CPG from the Public Utility Commission before installing his meteorological station. Department facts at ¶ 5; Blittersdorf pf. at 4-5.

14. On January 5, 2012, Mr. Blittersdorf was issued CPG #NM-1771, authorizing the installation of two net-metered wind turbines to be interconnected with the Vermont Electric Cooperative, Inc. distribution system. Department facts at ¶ 6;<sup>23</sup> Respondent markup of Department facts at ¶ 6.

15. In 2012, Mr. Blittersdorf installed two net-metered wind turbines at his Irasburg property with a combined capacity of 8.55 kW. Department facts at ¶ 7; Blittersdorf pf. at 9; Respondent markup of Department facts at ¶ 7.

16. Mr. Blittersdorf did not consider his meteorological station to be a part of his residential turbine installation. Respondent facts at ¶ 12; Department response to Respondent facts at ¶ 12.

## **VI. DISCUSSION**

The Vermont Supreme Court's decision in the *Meteorological Tower* case established that a meteorological tower falls within the Commission's Section 246 jurisdiction if it has the following two characteristics: (1) it is temporary, and (2) it is constructed or installed to determine the suitability of a site for a grid-connected wind project.

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<sup>22</sup> The Department asserts that this fact is disputed. *See*, Department response to Respondent facts at ¶ 10. However, the Department's response does not actually dispute the fact that the information gathered at the station was helpful to Mr. Blittersdorf's financial decision to install his turbines. Rather, the Department says the data was also used to assess the suitability of the site for the turbines.

<sup>23</sup> The Department's statement of undisputed material facts incorrectly identifies the issue date of the CPG as January 1, 2012. However, it correctly cites the date of the order approving the CPG as January 5, 2012.

Based on the undisputed material facts in the record of this proceeding and the Court's reasoning in the *Meteorological Tower* case, Mr. Blittersdorf's meteorological station exhibited both of these characteristics and his failure to obtain a CPG from the Commission prior to its installation constituted a violation of Section 246.

A. The Meteorological Station was Temporary

According to the respondent, the Commission lacks jurisdiction under § 246 because the undisputed facts show that the MET tower was intended to be permanent and § 246 only applies to temporary tower installations.<sup>24</sup>

The Department contends that the tower was temporary as a matter of law because 30 V.S.A. § 246(c)(2) restricts the installation of MET towers to a period no longer than five years.<sup>25</sup>

I find that the meteorological station installed by Mr. Blittersdorf was temporary under Section 246 because the station's use for the purpose of determining his property's suitability for the installation of two net-metered residential wind turbines was temporary.

The Vermont Supreme Court has stated that “[a] meteorological tower’s role—gathering data—concludes” before the installation of a grid-connected wind turbine.<sup>26</sup> Thus, Mr. Blittersdorf's meteorological station ceased gathering data for the purpose of assisting his decision to install net-metered wind turbines on his property when he ultimately made the decision to proceed with their installation. This temporary use of the meteorological station is confirmed by Mr. Blittersdorf's sworn statement that he did not consider the meteorological station to be part of his turbine installation.<sup>27</sup> In other words, their wind-resource-assessment purpose terminated with the installation of the turbines.

Mr. Blittersdorf points to his continued usage of the tower as a support structure for testing prototypes of various instruments as evidence that the tower is a permanent structure. I find that his continued usage of the tower for prototype testing is not material to the question of whether the tower was temporarily used as a meteorological station under Section 246. Mr. Blittersdorf himself concedes that it is the prototype testing, and not the wind-resource

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<sup>24</sup> Respondent opposition at 4-5.

<sup>25</sup> Department reply at 4-5.

<sup>26</sup> *In re Construction and Operation of a Meteorological Tower*, 2019 VT 20, ¶ 20, n.5.

<sup>27</sup> Blittersdorf affidavit at ¶ 7 (filed in support of paragraph 12 of the respondent's statement of undisputed facts).

assessment, that required the long-term installation of the tower.<sup>28</sup> It was Mr. Blittersdorf's temporary usage of the tower to assess the wind resource on his property, and thus the viability of locating net-metered wind turbines there, that subjected its installation to the jurisdiction of Section 246. His continued usage of the tower for a different and unrelated purpose does not exempt him from that jurisdiction. Accepting Mr. Blittersdorf's interpretation of Section 246 would yield absurd results contrary to the intent of the Legislature.<sup>29</sup> Such an interpretation would allow a temporary MET tower to escape review by the simple act of an installer later stating that it had an additional permanent purpose, such as flying a flag or pennant.

I also find that the taxing status that the Town of Irasburg has applied to his tower is not material to the temporary use of the tower under Section 246. Mr. Blittersdorf offers several undisputed facts demonstrating that Irasburg taxes his tower as a permanent structure in support of his argument that the meteorological station was not temporary for the purposes of Section 246.<sup>30</sup> This argument is immaterial for two reasons. First, the Town's classification of the tower as permanent for taxation purposes does not alter the fact of the meteorological station's temporary use for assessing the wind resource at Mr. Blittersdorf's property. Second, the Town's classification merely recognizes that the tower continues to exist, albeit for purposes other than assessing the wind resource at the property.

Neither Mr. Blittersdorf's proffered facts nor his arguments give rise to a genuine dispute of any material fact regarding the temporary nature of the meteorological station for the purpose of assessing the wind resource at his property. Therefore, even accepting all of Mr. Blittersdorf's assertions regarding the permanent installation of the tower, and giving him the benefit of all reasonable doubts and inferences, I conclude that the undisputed facts demonstrate that Mr. Blittersdorf installed a meteorological station on his property for the temporary purpose of assessing the wind resource there as described in Section 246.

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<sup>28</sup> Blittersdorf affidavit at ¶ 3 ("Prototype testing on the met tower on my Kidder Hill property is ongoing. I need long-term data, so it is important to keep running the prototype testing long term.")

<sup>29</sup> See, e.g., *Rhodes v. Town of Georgia*, 166 Vt. 153, 157 (1997) ("We have long held that statutes should not be construed to produce absurd or illogical consequences.")

<sup>30</sup> Respondent facts at ¶¶ 4-6; Respondent opposition at 4.

B. The Meteorological Station was Reasonably Related to Grid-Connected Turbines

Mr. Blittersdorf asserts that jurisdiction did not attach under § 246 because there is no evidence that the meteorological station was installed to determine the suitability of the site for the placement of a grid-connected wind turbine.<sup>31</sup> Mr. Blittersdorf further contends that his meteorological station did not meet the definition of “meteorological station” in Section 246 because there is no evidence to support a conclusion that the tower was capable of recording “atmospheric conditions.”

The Department argues that the undisputed facts demonstrate that the meteorological station was installed to determine the suitability of the site for the installation of a net-metered wind turbine and therefore falls within the definition contained in Section 246. The Department further asserts that the instrumentation installed on the tower was used to record “atmospheric conditions.”<sup>32</sup>

Based on the undisputed facts and the Vermont Supreme Court’s reasoning in the *Meteorological Tower* case, I find that Mr. Blittersdorf’s meteorological station was reasonably related to the installation of a grid-connected generation facility because it was used to assess the wind resource on his property in aid of his decision to install two net-metered wind turbines to power his cabin.

Section 246 directed the Commission to “establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title.”<sup>33</sup>

In response to that statutory directive, the Commission issued an order that, in part, defined a temporary meteorological station as “a temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions, constructed or installed in order to determine the suitability of a site for the location of a grid-connected wind turbine.”<sup>34</sup>

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<sup>31</sup> Respondent opposition at 6-7; respondent supp. memo at 4-6.

<sup>32</sup> Department motion at 3-4; Department reply at 5-6.

<sup>33</sup> 30 V.S.A. § 246(b).

<sup>34</sup> *Order establishing standards and procedures for issuance of a certificate of public good for a temporary meteorological station pursuant to 30 V.S.A. § 246*, order issued March 9, 2010 (“*Standards and Procedures Order*”).

In its *Meteorological Tower* decision, the Vermont Supreme Court determined that a temporary tower will be found to have been installed for the purpose of determining a site's suitability for a grid-connected wind project if the tower is "reasonably related" to the wind project.<sup>35</sup>

According to the Court, determining whether a tower is reasonably related to a wind project requires a fact-intensive, objective review on a case-by-case basis. Such a review "may rely on a host of factors, including—but not limited to—the station's size and scope, the project proponent's actions and outward manifestations of intent, the project proponent's statements of subjective intent, the existence of plans for a grid-connected wind turbine, and subsequent development of a grid-connected project." A subsequent plan for or the development of a wind generation project by itself is not determinative of a tower's reasonable relationship to a wind project, but rather is a factor to be considered in the overall analysis.<sup>36</sup>

The undisputed facts show that Mr. Blittersdorf installed the meteorological station for the purpose of assessing the suitability of his property for the installation of two net-metered (i.e. grid-connected) wind turbines. On September 10, 2015, counsel for Mr. Blittersdorf authored a letter that was sent to then-Commissioner of the Department of Public Service, Chris Recchia. In that letter, counsel for Mr. Blittersdorf stated that Mr. Blittersdorf installed his meteorological station to "assess whether there was sufficient wind to install a residential wind turbine to power the log cabin via net metering."<sup>37</sup> The Department asked Mr. Blittersdorf in discovery to admit or deny the representations made in his counsel's September 10, 2015, letter. When presented with this opportunity to provide any corrections or clarifications, Mr. Blittersdorf clarified only that it was his intent to assess the wind resource for the purpose of installing *one or more* net-metered turbines, stating, "It would have been more accurate to say that the purpose of the installation was to assess conditions for ' . . . one or more residential wind turbine(s) to power the log cabin . . . ', and to add, as I do in my testimony, the additional purpose of prototype testing."<sup>38</sup> Mr. Blittersdorf's clarification simply reinforces the fact that one of the purposes of the

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<sup>35</sup> *Meteorological Tower* at ¶ 25.

<sup>36</sup> *Id.* at ¶ 26.

<sup>37</sup> Respondent discovery response A.DPS:Resp.1-1.

<sup>38</sup> *Id.*

meteorological station's installation was to assess the wind resource at his property to determine the suitability of the site for at least one grid-connected wind turbine.<sup>39</sup>

Mr. Blittersdorf's discovery response consists of both an outward manifestation and a subjective statement of his intent to install the meteorological station for the purposes described in Section 246.

Mr. Blittersdorf has also acknowledged his plans to power his cabin using one or more residential wind turbines and subsequently applied for and was granted a CPG to construct and interconnect two net-metered wind turbines on his property for that very purpose. These actions again constitute both an outward manifestation and a subjective statement of his intent to install the meteorological station for the purposes described in Section 246.

While Mr. Blittersdorf's subsequent development of his net-metered, two-turbine project in and of itself is not sufficient to satisfy the reasonably related standard, when this fact is placed in context with his pre-existing plans to power his cabin with net-metered wind turbines and the wind-assessment purpose behind the installation of his meteorological station, I find that the totality of the circumstances meets the reasonably related test described by the Supreme Court in the *Meteorological Tower* decision.

Mr. Blittersdorf offers several facts about meteorological stations in an attempt to divorce the purpose of his installation from the net-metered turbines he subsequently installed. He states that: (1) the station was not a "necessary precursor" to the installation of his residential, net-metered turbines, (2) the data collected was by itself not enough to assess the wind resource for installation of non-residential turbines, (3) Mr. Blittersdorf had no reason to believe at the time he installed the meteorological station that his property had sufficient wind to support a non-residential wind project, (4) many wind turbines have been installed in Vermont without first using a meteorological station to assess the wind resource, (5) met towers and their data are not needed to operate a residential wind turbine, and (6) there are other methods available to evaluate the wind resource at a particular location.<sup>40</sup>

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<sup>39</sup> Mr. Blittersdorf's use of an ellipsis after the word "cabin" indicates that the phrase "via net metering" was retained from the September 10, 2015, letter from his counsel.

<sup>40</sup> Respondent facts at ¶¶ 8-11; respondent supplemental facts at ¶¶ 5-7.

All of these facts and the arguments Mr. Blittersdorf uses them to support are not material to a decision on the pending motions. Those facts and Mr. Blittersdorf's arguments support the propositions that: (1) the meteorological station was not a necessary precursor to the installation of his residential turbines, and (2) the station was not installed to assess the suitability of the site for the installation of non-residential turbines.

These arguments are unavailing for two reasons. First, the applicable standard is not whether the meteorological station was a "necessary precursor" to the installation of his residential turbines, but whether the station was reasonably related to their installation.<sup>41</sup> This decision rests upon the undisputed fact that Mr. Blittersdorf installed the meteorological station to assess the wind resource at his property for the installation of net-metered, residential turbines.<sup>42</sup> The fact that he could have installed his residential turbines without first assessing the wind resource or that he could have assessed the wind resource some other way does not overcome the fact that he installed the meteorological station to assess the suitability of his property for the installation of one or more net-metered, residential wind turbines. Second, this decision in no way rests on any subsequent efforts by Mr. Blittersdorf to develop a non-residential wind generation facility.

Mr. Blittersdorf also argues that his station was exempt from Section 246 because the record is devoid of any evidence that his meteorological station was capable of recording "atmospheric conditions."

Both Section 246 and the Commission's *Standards and Procedures Order* describe a meteorological station as a tower with "attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions."<sup>43</sup> Mr. Blittersdorf has admitted that his tower included attached instrumentation capable of collecting and recording wind direction and wind speed, but contends there is no evidence that it included instrumentation to record atmospheric conditions. Mr. Blittersdorf argues that in the absence of such evidence, Section 246 jurisdiction does not exist. I disagree.

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<sup>41</sup> *Meteorological Tower* at ¶ 25.

<sup>42</sup> Mr. Blittersdorf even admitted that the data collected by his station was helpful in making the financial decision to move ahead with the turbine installation. Respondent facts at ¶ 10.

<sup>43</sup> 30 V.S.A. § 246(a); *Standards and Procedures Order*.

“Atmosphere” is defined as “the gaseous envelope of a celestial body (such as a planet)” and “the whole mass of air surrounding the earth.”<sup>44</sup> “Atmospheric condition” is defined as “the atmospheric conditions that comprise the state of the atmosphere in terms of temperature and wind and clouds and precipitation.”<sup>45</sup> Thus, wind direction and wind speed themselves are atmospheric conditions and Mr. Blittersdorf’s attempt to read them as something separate and apart is unsupported.

Additionally, Mr. Blittersdorf’s interpretation would again lead to absurd results contrary to the intent of the Legislature. Section 246(a) defines a “meteorological station” as “one temporary tower” with the aforementioned attached instrumentation. If Mr. Blittersdorf’s interpretation were given effect, a developer of a temporary meteorological station could avoid Commission review by putting up two towers, one with instrumentation to measure and record wind speed and direction and the other to record “atmospheric conditions.” It is inconceivable that the Legislature intended for the Commission to review the impacts from a single temporary tower while exempting from review the impacts of two or more temporary towers erected for the purpose of assessing the suitability of a site for a grid-connected wind turbine installation.

Neither Mr. Blittersdorf’s proffered facts nor his arguments give rise to a genuine dispute of any material fact regarding the purpose for which he installed his meteorological station—to determine suitability of his property for a residential grid-connected wind project. Therefore, even accepting all of Mr. Blittersdorf’s assertions regarding the necessity and use of meteorological stations generally, and of his in particular, and giving him the benefit of all reasonable doubts and inferences, I conclude that the undisputed facts demonstrate that Mr. Blittersdorf’s meteorological station was reasonably related to a grid-connected wind turbine installation because it was installed to determine suitability of his property for a net-metered residential wind project.

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<sup>44</sup> <https://www.merriam-webster.com/dictionary/atmosphere>.

<sup>45</sup> *See, e.g.* <https://www.vocabulary.com/dictionary/atmospheric%20condition>;  
<https://www.definitions.net/definition/atmospheric+condition>;  
<https://www.wordwebonline.com/en/ATMOSPHERICCONDITION>.

**VII. CONCLUSION**

Based on the undisputed material facts in the record of this proceeding, I find that Mr. Blittersdorf installed a temporary meteorological station on his property to determine the suitability of that location for a grid-connected, residential, net-metered wind generation facility. Therefore, Mr. Blittersdorf's actions were subject to the Commission's jurisdiction pursuant to 30 V.S.A. § 246, and the Department of Public Service is entitled to judgment as a matter of law on the question of Mr. Blittersdorf's liability for his failure to obtain a CPG prior to installing the station. The Department's motion is therefore granted on that basis.

For these same reasons, Mr. Blittersdorf's cross-motion for summary judgment is denied.

The parties are directed to begin discussing among themselves mutually agreeable potential dates for a status conference to determine the next steps for this investigation.

**SO ORDERED.**

Dated at Montpelier, Vermont this 12th day of September, 2019.



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John J. Cotter, Esq.  
Hearing Officer

OFFICE OF THE CLERK

Filed: September 12, 2019

Attest:  \_\_\_\_\_  
Deputy Clerk of the Commission

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PUC Case No. 8585 - SERVICE LIST

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