

ATTACHMENT 3

STATE OF VERMONT PUBLIC UTILITY COMMISSION

Docket No. 8585

Investigation into Meteorological Tower at 700)
Kidder Hill Road in Irasburg, Vermont)

AFFIDAVIT OF COUNSEL PURSUANT TO V.R.C.P. 26(h)

I, Leslie A. Cadwell, counsel for Respondent David Blittersdorf in the above-captioned action, being duly sworn, over 18 years of age, and competent to testify on these matters say:

1. The facts and information about which I testify in this affidavit are based on my personal knowledge and first-hand experience.
2. On June 16, 2016, the Hearing Officer in the above-referenced matter granted the Respondent's request for a 30-day discovery period without limitation as to methods or subject matters relevant to the pending litigation before the Commission.
3. On June 29, 2016, in accordance with V.R.C.P. 30(a), (b)(1) and (b)(6) and the Hearing Officer's June 16, 2016 scheduling order, I served notices of deposition on behalf of Respondent to the Department of Public Service and others. The notice served on the Department pursuant to V.R.C.P. 30(b)(6) requested information on the following topics, among others:

What factors the PSD will recommend that the Public Service Board take into account when assessing whether to impose a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.

What aggravating circumstances the PSD will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.

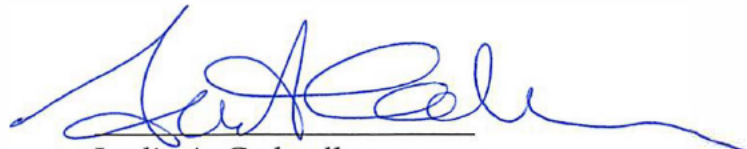
What mitigating circumstances the PSD will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.

Exhibit A.

4. Thereafter the Department, joined by other parties, moved to quash Respondent's deposition notices. Exhibit B. The Hearing Officer denied the motion by order dated August 6, 2016.
5. By affidavit executed on August 9, 2016, Department's counsel stated that the Department "has no designee that is able to testify *at this time* on the following matters," listing the topics quoted in paragraph 3, above. Exhibit C (emphasis added). At that time, the Department had not yet disclosed its position about a penalty to Respondent and other parties.
6. The Department filed a recommendation on a penalty on December 20, 2019.
7. On January 15, 2020, I wrote counsel for the Department (Eric Guzman) seeking a supplement to the August 9, 2016 Rule 30(b)(6) affidavit regarding the designation of a Department representative to testify on the noticed penalty-related topics now that the Department had taken a position on those issues. Exhibit D.
8. On January 15, 16, and 21, 2020, counsel for the Department and I spoke by telephone to resolve the issue of Respondent's right to depose a designee on penalty-related topics identified in the 2016 deposition notice. In addition to myself, the call on January 15, 2020 included attorneys Jim Porter, Eric Guzman, and Dan Burke; the call on January 16 was with Mr. Porter; and the call on January 21 was with Mr. Porter and Mr. Guzman. Mr. Porter offered a compromise to resolve the parties' dispute that would only allow general inquiry

and would not allow inquiry into the specific recommendations made in this case. That compromise was and remains unacceptable to Respondent because it does not address the specifics of this case. Additional communications between counsel to resolve this dispute are attached as Exhibit D.

9. A deposition on the penalty-related topics in Respondent's 2016 deposition notice provides the opportunity to ask follow-up and clarifying questions on the Department's position that written questions do not offer.



Leslie A. Cadwell

STATE OF VERMONT
COUNTY OF RUTLAND, SS.

On this 28th day of January, 2020, personally appeared Leslie A. Cadwell, and she swore to the truth of the foregoing statements.



Before me,



Notary Public

My commission expires: 01/31/21

#157.0004836

EXHIBIT A

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8585

Investigation into Meteorological Tower at 700)
Kidder Hill Road in Irasburg, Vermont)

NOTICE OF DEPOSITION

TO:

Geoffrey Commons, Esq.
Aaron Kisicki, Esq.
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620-2601

Dr. Robert R. Holland
P.O. Box 88
4328 Route 14
Irasburg, VT 05845

Leslie Welts, Esq.
Vermont Agency of Natural Resources
One National Life Drive, Davis 2
Montpelier, VT 05620-3901

Irasburg Select Board
P.O. Box 51
Irasburg, VT 05845

PLEASE TAKE NOTICE that the Respondent in the above-captioned action, by his attorneys, Legal Counselors & Advocates, PLC, will take the deposition *duces tecum* of the Vermont Department of Public Service (PSD), pursuant to Rule 30(b)(6) of the Vermont Rules of Civil Procedure, by the representative(s) authorized to speak on its behalf who is most knowledgeable with respect to the topics enumerated on the List of Topics below, on July 27, 2016, or such other date as is negotiated by the parties,

EXHIBIT A

Notice of Deposition Per V.R.C.P. 30(b)(6): PSD

Docket No. 8585

June 29, 2016

Page 2 of 5

commencing at 9:30am in the Boardroom, Capital Plaza Hotel, 100 State Street, Montpelier, Vermont before a duly authorized court reporter. The PSD is directed, as required by Rule 30(b)(5) of the Vermont Rules of Civil Procedure, to produce for use at the deposition, to the extent not already produced, the documents listed on the List of Documents, below. The deposition may also be videotaped. Oral examination will continue from day to day until completed. You are invited to attend and cross examine.

List of Topics

1. The PSD's involvement and role in administering state and federal grants that helped fund in whole or in part the Vermont Anemometer Loan Program.
2. The PSD's role in planning, proposing, and executing the installation of meteorological towers to assess the suitability of sites for wind electric generation facilities between 2008 and 2012 where Vermont Environmental Research Associates was (1) an adviser; (2) a contractor; (3) a subcontractor; or (4) a grantee, for all or part of the installation.
3. The terms and conditions of all state and federal grants that contributed funding to the Vermont Anemometer Loan program between 2008 and 2013 and were administered by the PSD or the Clean Energy Development Fund, including terms and conditions relating to acquisition of state and local permits for work performed using grant funds, compliance with state and local laws, rules, and

regulations, grant condition compliance certifications, and grant reporting requirements.

4. What factors the PSD will recommend that the Public Service Board take into account when assessing whether to impose a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.
5. What aggravating circumstances the PSD will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.
6. What mitigating circumstances the PSD will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.
7. The contents of documents and photographs produced in response to requests #1 through 7 described in the List of Documents, below.

List of Documents

1. All photographs taken between December 1, 2011 through July 30, 2016 that are in the possession, custody or control of the PSD depicting (1) any portion of David Blittersdorf's real property on Kidder Hill Road in Irasburg, Vermont, and (2) the met tower that is the subject of the investigation in this Docket No. 8585.
2. All communications between the PSD and the Agency of Natural Resources regarding the subject matter of the investigation in this Docket No. 8585.

EXHIBIT A

Notice of Deposition Per V.R.C.P. 30(b)(6): PSD

Docket No. 8585

June 29, 2016


Page 4 of 5

3. All communications between the PSD and the Town of Irasburg, including all Town agents and representatives, regarding the subject matter of the investigation in this Docket No. 8585.
4. All communications between the PSD and one or more members of the Irasburg Ridgeline Alliance regarding the subject matter of the investigation in this Docket No. 8585.
5. All communications between 2008 and 2012 between the PSD and John Kidder regarding (1) meteorological tower installations planned and executed through the Vermont Anemometer Loan Program, and (2) permits and approvals needed to install meteorological towers in Vermont.
6. All communications between PSD staff, officials, agents, or employees and David Blittersdorf about (1) grant funding for the Vermont Anemometer Loan Program; (2) the features of the Vermont Anemometer Loan Program, including the Program's division of responsibility among stakeholders for the planning, permitting, installation, operation, and removing meteorological towers loaned out through the program.
7. All reports and all certifications of compliance with grant conditions submitted by or on behalf of the PSD to any federal agency, department, division regarding

federal funds disbursed in connection with the Vermont Anemometer Loan program.

8. Documents in the possession, custody or control of the Department of Public Service that pertain to David Blittersdorf's compliance with orders, rules, and regulations of (a) the Public Service Board, (b) any Department or Division of the Agency of Natural Resources, (c) the Natural Resources Board, (d) any Vermont municipal zoning authority, and (e) any Act 250 District Environmental Commission.
9. All documents supporting the witness's knowledge of the subject matter of topics #4, 5, and 6 in the List of Topics, above.

Dated at Castleton, Vermont this 29th day of June, 2016.



Leslie A. Cadwell

Alison Milbury Stone

Legal Counselors & Advocates, PLC

P.O. Box 827

751 Frisbie Hill Road

Castleton, VT 05735

lac@lac-lca.com

alison@lac-lca.com

Respondent's Attorneys

EXHIBIT B

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8585

Investigation in to Meteorological Tower at)
700 Kidder Hill Road in Irasburg, Vermont)

July 15, 2016

**THE VERMONT DEPARTMENT OF PUBLIC SERVICE, THE VERMONT
AGENCY OF NATURAL RESOURCES, AND THE TOWN OF IRASBURG'S
MOTION TO QUASH NOTICES OF DEPOSITION AND FOR PROTECTIVE ORDER**

The Vermont Department of Public Service (“Department” or “DPS”), the Vermont Agency of Natural Resources (“ANR”), by and through undersigned counsel, and the Town of Irasburg (“Irasburg”) (together “Non-respondents”), by and through its undersigned designated *pro se* representative, hereby moves the Vermont Public Service Board (“Board” or “PSB”) to quash notices of deposition and depositions *duces tecum* issued by David Blittersdorf on June 29, 2016 (“Notices”), and for protective order in the above-captioned proceeding. The five Notices seek deposition of named and unnamed representatives of each of the Non-respondents. Four of the Notices are styled as deposition *duces tecum* and seek production of certain documents at the associated deposition.

The Non-respondents seek to quash the Notices, as the depositions are overbroad and seek information that is irrelevant to the subject matter involved at this stage of the proceeding, is privileged, and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, the depositions are unduly burdensome at this stage of the proceeding, and the information sought by Mr. Blittersdorf is obtainable from some other source that is more convenient, less burdensome, and less expensive. The Non-respondents also request that the Board or Hearing Officer assigned to the proceeding issue a protective order limiting discovery to issues

EXHIBIT B

Docket No. 8585
Non-Respondent Motion re Quash and Protective Order
July 15, 2016
Page 2 of 4

that are relevant at the time a request is made, making clear that only issues related to whether a violation has taken place are relevant unless and until the Board and/or Hearing Officer determines a violation did, in fact, take place, and limiting the use of depositions only to matters that could not be reasonably explored through the use of interrogatories and requests to produce.

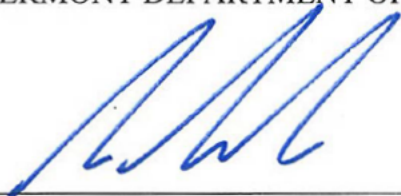
The bases for the relief the Non-respondents seek are presented in the accompanying memorandum in support of this motion.

Dated at Montpelier, Vermont this Fifteenth day of July, 2016.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:



Geoffrey Commons
Director for Public Advocacy
Aaron Kisicki
Special Counsel

EXHIBIT B

Docket No. 8585
Non-Respondent Motion re Quash and Protective Order
July 15, 2016
Page 3 of 4

Dated at Montpelier, Vermont this Fifteenth day of July, 2016.

Respectfully submitted,

VERMONT AGENCY OF NATURAL RESOURCES

By: 

Leslie Welts
Litigation Attorney

EXHIBIT B

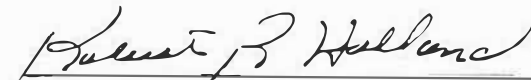
Docket No. 8585
Non-Respondent Motion re Quash and Protective Order
July 15, 2016
Page 4 of 4

Dated at Irasburg, Vermont this Fifteenth day of July, 2016.

Respectfully submitted,

TOWN OF IRASBURG

By:



Dr. Robert Holland
Pro Se Representative

cc: Docket 8585 Service List

EXHIBIT B

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8585

Investigation in to Meteorological Tower at)
700 Kidder Hill Road in Irasburg, Vermont)

July 15, 2016

**THE VERMONT DEPARTMENT OF PUBLIC SERVICE, THE VERMONT
AGENCY OF NATURAL RESOURCES, AND THE TOWN OF IRASBURG'S
MEMORANDUM IN SUPPORT OF MOTION TO
QUASH NOTICES OF DEPOSITION AND FOR PROTECTIVE ORDER**

The Vermont Department of Public Service (“Department” or “DPS”), the Vermont Agency of Natural Resources (“ANR”), by and through undersigned counsel, and the Town of Irasburg (“Irasburg”) (together “Non-respondents”), by and through its undersigned designated *pro se* representative, hereby submit this memorandum in support of their motion to quash notices of deposition and deposition *duces tecum* issued by David Blittersdorf on June 29, 2016 (“Notices”), and for protective order filed in the above-captioned proceeding. The five Notices seek deposition of named and unnamed representatives of each of the Non-respondents. Four of the Notices are styled as deposition *duces tecum* and seek production of certain documents at the associated deposition. The Non-respondents seek to quash the Notices, as the depositions are overbroad and seek information that is irrelevant to the subject matter involved at this stage of the proceeding, is privileged, and is not reasonably calculated to lead to the discovery of admissible evidence. Additionally, the depositions are unduly burdensome at this stage of the proceeding, and the information sought by Mr. Blittersdorf is obtainable from some other source that is more convenient, less burdensome, and less expensive.

I. BACKGROUND

On September 23, 2015, the Vermont Public Service Board (“Board” or “PSB”) issued an order opening an investigation, pursuant to 30 V.S.A. §§ 30, 209, 246, 247, and 248, “into the factual circumstances and legality of the site preparation, construction, and operation of a meteorological tower located in Irasburg, Vermont, and owned by David Blittersdorf.” Docket 8585, Order Opening Investigation and Notice of Hearing, Sept. 23, 2015 at 2. Mr. Blittersdorf submitted prefiled testimony and exhibits on December 18, 2015, and responded to two rounds of discovery requests by the Non-respondents in February and March, 2016. The parties then sought to reach a negotiated resolution to the investigation, but were unable to do so.

The Board’s Hearing Officer assigned to the proceeding held a status conference on June 15, 2016 to consider proposed schedules for the remainder of the proceeding. The Hearing Officer’s Scheduling Order issued the next day set a deadline for Mr. Blittersdorf to file first round discovery requests on Non-respondents and for the Department to file a Motion for Partial Summary Judgment on June 29, 2016. The Scheduling Order also set a July 29 deadline for Mr. Blittersdorf to respond to the Department’s motion, and an August 5 deadline for Non-respondents to file responses to the first round discovery requests.¹

On June 29, Mr. Blittersdorf filed the Notices, which sought taking deposition of Andrew Perchlik of the Department and deposition subpoena *duces tecum* of unknown representative(s) of Irasburg on July 15, 2016, and deposition *duces tecum* of Irasburg’s *pro se* representative, Dr. Holland and unnamed representative(s) of the Department and ANR on July 26, 2016. He then filed interrogatories, requests to admit, and requests to produce on the Department and ANR on

¹ The Hearing Officer later granted a two-day extension of the June 29 and August 5 deadlines to July 1 and August 7, 2016, respectively. *See* Procedural Order Granting Extensions, June 30, 2016.

July 1, 2016. The Department and Irasburg have since agreed to postpone the depositions initially scheduled for July 15 to a later date.

II. LEGAL FRAMEWORK

Vermont Rule of Civil Procedure 26, as applied to Board proceedings under PSB Rule 2.214(A), sets certain limitations on the scope of permissible discovery practice:

(b)(1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

....
The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by a Superior Judge if it is determined that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issue at stake in the litigation. The Superior Judge may act upon the Superior Judge's own initiative after reasonable notice or pursuant to a motion under subdivision (c).

....
(c) Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, any Superior Judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters

The Vermont Rules of Civil Procedure “require that a litigant have a good faith, and reasonably supported, belief that his or her claim has merit and that the requests for discovery are not interposed to harass or to cause unnecessary delay or expense. Thus, the purpose of discovery is *not* to fish through every potential theory of recovery to determine if there is any factual support for the theory. Nor is it the purpose to change the economics of litigation so that the litigant with the deepest pocket or the most perseverance will prevail in the end.” *Chrysler Corp. v. Makovec*, 157 Vt. 84, 90, 596 A.2d 1284, 1288 (1991)(internal citations omitted).

III. ARGUMENT

The Non-respondents respectfully request that the Board quash the Notices, and issue a protective order prescribing the appropriate timeframe to engage in and methodology to use in this type of discovery, and limiting the scope of discovery to only those issues relevant to the focus of the proceeding at this time. The Notices seek irrelevant information that is not reasonably calculated to lead to the discovery of admissible evidence and in a manner that can more easily and reasonably be obtained through other means. Likewise, the Notices seek information that is privileged. Issuance of a protective order is therefore warranted in this instance.

A. The Information Sought in Depositions and Subpoenas Duces Tecum is Not Relevant to the Subject Matter at Issue in the Proceeding at this Time

The Notices’ depositions and accompanying subpoenas *duces tecum* seek information that is irrelevant to the proceeding at this time. The instant investigation is being held pursuant to 30 V.S.A. § 30. As is typical of most § 30 investigations, the proceeding is a bifurcated process. First, a determination must be made regarding whether a violation of a certain Title 30 provision(s) occurred. If the parties agree or the Board determines that a violation occurred, only then the

EXHIBIT B

Docket No. 8585
Non-Respondent Memo re Quash and Protective Order
July 15, 2016
Page 5 of 12

proceeding shifts focus to determine the appropriate penalty to be applied pursuant to § 30. Here, no determination related to a violation has been made. Indeed, the schedule fashioned by the Hearing Officer calls for consideration of a motion for partial summary judgment, and the Department filed such a motion on July 1, focused solely on the issue of whether the factual record in the proceeding supports a finding of violation(s). Responses to and decision on that motion are now pending.

There is no information that may be gleaned through deposition or production of the subpoenaed documents relevant to the only subject matter at issue in the proceeding at this time: whether a violation of Title 30 has occurred. The Non respondents possess no information related to Mr. Blittersdorf's conduct that Mr. Blittersdorf does not already have. Likewise, there is no conceivable claim or defense related to the question of a whether a violation occurred that would necessitate deposition of Non-respondent representatives. For instance, the Notices seek to discover information related to the scope of authority between Irasburg and Dr. Holland, and copies of certain Irasburg Selectboard minutes. Such information is not relevant to the determination of a violation.

Mr. Blittersdorf's attempt to conduct irrelevant discovery through depositions at this time is wasteful and unduly burdensome for all parties. There is no justification for subjecting a number of Non-respondent representatives to unfocused and potentially lengthy depositions when it is not clear that such lines of inquiry will ever be relevant to the proceeding. For example, ANR has concluded that it may be required to make up to ten representatives available for deposition pursuant to the Notices. The significant time, expense, and burden on ANR to prepare for and conduct those depositions would be wasted in the strongest sense of the term if the Board ultimately concludes that a violation did not occur. It may be appropriate to explore such lines of

inquiry later in the proceeding, but they should be allowed to be explored only when it is known that it is appropriate.

Lastly, the Hearing Officer explicitly warned that discovery that Mr. Blittersdorf requested to execute prematurely, would be “pretty much useless” at this stage of the proceeding. Docket 8585, Status Conference, June 15, 2016, tr. at 19. The scope of subject matter and related topics of discovery relevant to the proceeding is narrow at this time. Mr. Blittersdorf’s attempt to gather information to explore issues that are not relevant now, and may never be relevant to the proceeding is unduly burdensome, expensive, and contrary to the limits placed on discovery by V.C.R.P. 26(b)(1).

B. The Depositions and Subpoenas Duces Tecum Seek Information that is Privileged

The Notices explicitly seek information that is privileged and therefore barred from discovery under V.R.C.P. 26(b). The subpoenas *duces tecum* seek, among other things, the production of all communications between the Non-respondents in connection with this investigation. Those communications are protected from discovery for two reasons. First, V.R.C.P. 26(b)(3) makes clear that “a party may obtain discovery of documents . . . prepared in anticipation of litigation or for trial by or for another party or by or for that party’s representative (including the other party’s . . . agent) only upon a showing that the party seeking discovery has substantial need of the materials in preparation of the party’s case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” Here, the communications sought were necessarily made in anticipation of litigation in the proceeding. Likewise, Mr. Blittersdorf has made no showing that he has substantial need for the

EXHIBIT B

Docket No. 8585

Non-Respondent Memo re Quash and Protective Order

July 15, 2016

Page 7 of 12

communications in the preparation of his case, which, again, is limited at this time to whether a violation of Title 30 occurred.

Second, even if Mr. Blittersdorf had made such a showing, the communications sought are privileged as attorney-work-product and are therefore undiscoverable. V.R.C.P. 26(b)(1) excludes privileged material from the permissible scope of discovery, and distills that principle further in 26(b)(3). These communications also contain mental impressions, conclusions, opinions, and/or legal theories that are “absolutely protected from discovery irrespective of any assertion of need, so long as these are part of the trial preparation product.” *Killington, Ltd. v. Lash*, 153 Vt. 628, 647, 572 A.2d 1368, 1380 (1990). *Killington* also established that “where an agency appears as a party in a contested administrative proceeding, the attorney's work-product doctrine should be applied as if the action were in a court.” *Id.* at 647, 1379. The communications between Non-respondents were necessarily drafted to discuss, at a minimum, impressions of the litigation. The privileged nature of the communications should alone justify the issuance of a protective order against disclosure.

Finally, Mr. Blittersdorf has not demonstrated that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means, as required by V.R.C.P. 26(b)(3). The use of the depositions and subpoenas *duces tecum* are also unreasonably cumulative and duplicative of other discovery methods employed by him. The record reveals that Mr. Blittersdorf is, in fact, able to obtain the information sought in the Notices through more reasonable, and substantially duplicative means. He propounded interrogatories, requests to admit, and requests to produce on the Department and ANR two days after serving notices of depositions on Non-respondents, which attempt to secure much of same information sought through the depositions and subpoenas *duces tecum*. See Respondent's Discovery Requests to DPS and ANR, July 1,

EXHIBIT B

Docket No. 8585
Non-Respondent Memo re Quash and Protective Order
July 15, 2016
Page 8 of 12

2016. Mr. Blittersdorf has not and cannot demonstrate that the discovery methods used in the Notices, in lieu of the largely duplicative interrogatories, requests to admit, and requests to produce filed almost contemporaneously with the Notices, are necessary to obtain the information he seeks.

C. The Depositions and Subpoenas Duces Tecum are Unduly Burdensome and Expensive, and the Information Sought can be Obtained by Other, More Appropriate Means

As discussed above, the information sought in the Notices is not relevant to the proceeding. Deposition of Non-respondent representatives would be unduly burdensome and expensive at this time, particularly when taking into account the current needs of the proceeding relative to the importance of the issues Mr. Blittersdorf seeks to explore. Given the limited scope of the issues present in the proceeding at this time, the depositions would serve only to harass and unduly burden the Non-respondents.

Alternatively, the information Mr. Blittersdorf seeks would be more appropriately sought through means other than deposition of potentially a dozen or more Non-respondent representatives when and if the investigation moves into a penalty phase. Issuance of interrogatories and requests to produce are a more efficient, focused, and cost-effective method for conducting discovery in this instance, where there appears to be only a small number of relevant issues to explore in a penalty phase.

The timing of the noticed depositions also places a unique and acute undue burden on the Non-respondents. The Hearing Officer established a schedule that explicitly placed an obligation on Non-respondents to respond to Mr. Blittersdorf's first round discovery requests by August 5 (later extended to August 7). The noticed depositions, including those with companion subpoenas *duces tecum*, have been scheduled in advance of the August 7 Non-respondent response deadline.

EXHIBIT B

Docket No. 8585
Non-Respondent Memo re Quash and Protective Order
July 15, 2016
Page 9 of 12

The Hearing Officer established the sequencing and timing of discovery in this phase of the proceeding in his Scheduling Order, as is allowed pursuant to V.R.C.P. 26(d). The depositions and subpoenas *duces tecum* seek to force Non-respondents to respond to Mr. Blittersdorf's discovery – both in the form of oral deposition and production of documents – in advance of the deadline set in the Hearing Officers schedule. Notwithstanding the fact that the relevant information sought could have been, and largely was, incorporated into interrogatories and requests to produce as part of Mr. Blittersdorf's first round discovery requests, the depositions and subpoenas create an undue burden by subjecting the Non-respondents to respond under an expedited timeline not contemplated by the schedule.

D. Issuance of a Protective Order is Warranted

The Non-respondents seek a protective order from the Board limiting discovery to subject matters that are at issue at the appropriate stage of the proceeding, and that the method of discovery be limited to those that are not unduly burdensome and expensive for all parties, particularly when discovery can be had by more efficient and less burdensome means. Here, a protective order delaying discovery that seeks to address issues beyond the question of whether Mr. Blittersdorf violated Title 30 until after the Board renders a decision on the pending motion for partial judgment is appropriate. Likewise, a protective order prohibiting the use of depositions in lieu of interrogatories and requests to produce, would guard against undue burden and expense on all parties.

The Non-respondents in no way seek to limit Mr. Blittersdorf ability to seek discovery of relevant and non-privileged materials. Rather, they seek to establish an orderly discovery process that places fair limits on the scope, timing, and methods used based on the issues that are actually

live at the time requests are made. These limits guard against wasteful expenditure of time and resources while ensuring that a full exploration of relevant issues is allowed in advance of a potential hearing and/or briefing.

CONCLUSION

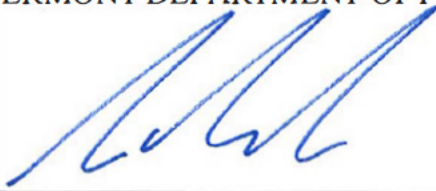
Based on the foregoing, the Vermont Department of Public Service, the Agency of Natural Resources, and the Town of Irasburg respectfully requests that the Public Service Board or the Hearing Officer assigned to the proceeding quash Mr. Blittersdorf's June 29, 2016 notices of deposition and deposition *duces tecum*. The Non-respondents also request that the Board or Hearing Officer issue a protective order limiting discovery to issues that are relevant at the time a request is made, making clear that only issues related to whether a violation has taken place are relevant unless and until the Board and/or Hearing Officer determines a violation did, in fact, take place, and limiting the use of depositions only to matters that could not be reasonably explored through the use of interrogatories and requests to produce.

Dated at Montpelier, Vermont this Fifteenth day of July, 2016.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:



Geoffrey Commons
Director for Public Advocacy
Aaron Kisicki
Special Counsel

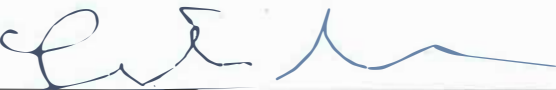
EXHIBIT B

Docket No. 8585
Non-Respondent Memo re Quash and Protective Order
July 15, 2016
Page 11 of 12

Dated at Montpelier, Vermont this Fifteenth day of July, 2016.

Respectfully submitted,

VERMONT AGENCY OF NATURAL RESOURCES

By: 

Leslie Welts
Litigation Attorney


EXHIBIT B

Docket No. 8585
Non-Respondent Memo re Quash and Protective Order
July 15, 2016
Page 12 of 12

Dated at Irasburg, Vermont this Fifteenth day of July, 2016.

Respectfully submitted,

TOWN OF IRASBURG

By: 
Dr. Robert Holland
Pro Se Representative

cc: Docket 8585 Service List

EXHIBIT C

STATE OF VERMONT PUBLIC SERVICE BOARD

Docket No. 8585

Investigation in to Meteorological Tower at)
700 Kidder Hill Road in Irasburg, Vermont)

August 9, 2016

AFFIDAVIT OF AARON KISICKI PURSUANT TO V.R.C.P. 30(b)(6)

1. My name is Aaron J. Kisicki. I am over 18 years of age, and am employed by the Vermont Department of Public Service (“Department”) as Special Counsel in the above-referenced proceeding.
2. On June, 29, 2016, the Department received a Notice of Deposition pursuant to Rule 30(b)(6) of the Vermont Rules of Civil Procedure and accompanying subpoena *duces tecum* from respondent David Blittersdorf in the above-captioned proceeding.
3. The Department designates Andrew Perchlik, Fund Manager as its representative in the following matters and/or topics listed in the Notice of Deposition:
 - a. The Department’s involvement and role in administering state and federal grants that helped fund in whole or in part the Vermont Anemometer Loan Program.
 - b. The Department’s role in planning, proposing, and executing the installation of meteorological towers to assess the suitability of sites for wind electric generation facilities between 2008 and 2012 where Vermont Environmental Research Associates was (1) an advisor; (2) a contractor; (3) a subcontractor; or (4) a grantee, for all or part of the installation.
 - c. The terms and conditions of all state and federal grants that contributed funding to the Vermont Anemometer Loan program between 2008 and 2013 and were administered by the Department or the Clean Energy Development Fund, including terms and conditions relating to acquisition of state and local permits for work performed using grant funds, compliance with state and local laws, rules, and regulations, grant condition compliance certifications, and grant reporting requirements.
 - d. The contents of documents and photographs related to the matters and/or topics identified above and produced in response to the Notice of Deposition’s companion subpoena *duces tecum*.

4. The Department has no designee that is able to testify at this time on the following matters and/or topics listed in the Notice of Deposition:
- a. What factors the Department will recommend that the Public Service Board take into account when assessing whether to impose a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.
 - b. What aggravating circumstances the Department will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.
 - c. What mitigating circumstances the Department will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.
 - d. The contents of documents and photographs related to the matters and/or topics identified above and produced in response to the Notice of Deposition's companion subpoena *duces tecum*.

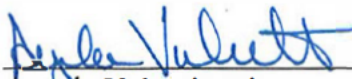


Aaron Kisicki

STATE OF VERMONT
COUNTY OF WASHINGTON, ss:

Aaron J. Kisicki has sworn that the matters stated herein are true to the best of his information, knowledge and belief.

SUBSCRIBED AND SWORN before me this 9th day of August, 2016.



Angela Valentinetti
Notary Public
My commission expires:

From: Leslie Cadwell <lac@lac-lca.com>
To: Eric Guzman <eric.guzman@vermont.gov>
Date: 01/15/2020
Subject: Case 8585 - Supplemental 30(b)(6) response

1 Attachment

8585 - 2016.08.09 - DPS Kisicki 30(b)(6) Aff.pdf

Hi Eric:

There is one additional discovery item that should be updated and that is the identification of a 30(b)(6) witness on issues related to a penalty. See the DPS counsel's affidavit attached, which says DPS did not "at this time" have a witness to speak to the issues in the deposition notice. The DPS has now taken a position in this penalty phase so a witness should be identified so that we can take the deposition. Please call me at your earliest convenience so we can get something scheduled. Once we have a date, time and place, I'll issue a notice as Rule 30 requires.

Thanks very much, Leslie

[cid:image001.jpg@01D3A422.B61A5A20]

Legal Counselors & Advocates, PLC
PO Box 827 | Castleton VT | 05735
Telephone: 802.342.3114

This email may contain confidential and privileged information and is intended only for the use of the person or persons named above. If you are not the intended recipient, your review, duplication, dissemination, or distribution of this email communication is strictly prohibited. Please contact me by reply email and destroy all copies of the original message if you are not the intended recipient.

From: Leslie Cadwell <lac@lac-lca.com>
To: james.porter@vermont.gov <james.porter@vermont.gov>, Eric Guzman <eric.guzman@vermont.gov>
Date: 01/23/2020
Subject: RE: Case No. 8585 - VRCP 26(h) & depo

Hi Jim:

I agree, except that we left it that if the DPS response made us reconsider that approach, I would let you know. It did – it convinced us that a deposition as we noticed in 2016 was necessary to defend the respondent. I appreciate the offer to depose someone on a theoretical basis, but that compromise is unacceptable. If the DPS cannot defend its position with a witness, the Commission should not consider its recommendations.

Again, I'm grateful to consult with you and Eric on a path forward. We'll let the Hearing Officer, and ultimately the Commission, decide the issue.

My best, Leslie

Legal Counselors & Advocates, PLC

PO Box 827 | Castleton VT | 05735

Phone: 802.342.3114

This email may contain confidential and privileged information and is intended only for the use of the person or persons named above. If you are not the intended recipient, your review, duplication, dissemination, or distribution of this email communication is strictly prohibited. Please contact me by reply email and destroy all copies of the original message if you are not the intended recipient.

From: Porter, James <James.Porter@vermont.gov>
Sent: Thursday, January 23, 2020 10:13 AM
To: Leslie Cadwell <lac@lac-lca.com>; Guzman, Eric <Eric.Guzman@vermont.gov>
Subject: RE: Case No. 8585 - VRCP 26(h) & depo

Hi Leslie:

My understanding was that, as to further process, we had agreed to wait until the Hearing Officer had ruled on the pending motion and that our understanding was not predicated upon whether you found the Department filing to be persuasive. In any event, we have offered to provide a witness for deposition speak to “the various factors that the Board must assess in setting a penalty under 30 V.S.A. § 30.” We are happy to schedule a time for that deposition. As the Department has offered no testimony as to the penalty in this particular matter, we have no intention of offering a witness – as no witness exists who could provide testimony as to a penalty in this particular matter. I believe our offer is consistent with the Hearing Officer’s Order of August 4, 2016.

Please let me know if you would like to discuss further or schedule a date for the deposition that we have offered/agreed to.

Jim

Jim Porter

Director for Public Advocacy

Vermont Department of Public Service

112 State Street

Montpelier, VT 05620-2601

Phone: 802-828-4003

Mobile: 802-522-6685

james.porter@vermont.gov <mailto:james.porter@vermont.gov>

From: Leslie Cadwell <lac@lac-lca.com <mailto:lac@lac-lca.com> >

Sent: Thursday, January 23, 2020 8:59 AM

To: Guzman, Eric <Eric.Guzman@vermont.gov <mailto:Eric.Guzman@vermont.gov> >; Porter, James <James.Porter@vermont.gov <mailto:James.Porter@vermont.gov> >

Subject: Case No. 8585 - VRCP 26(h) & depo

EXTERNAL SENDER: Do not open attachments or click on links unless you recognize and trust the sender.

Good morning, counselors:

I left Jim a vm yesterday to let you know that the DPS response to respondent’s objections and motion to strike was not at all persuasive. We’d like to move forward with a deposition under 30(b)(6) as noticed in 2016. If the DPS chooses not to identify a witness to address the penalty issues as stated in the 2016

notice, we will move to compel so we can take the deposition that the hearing officer authorized in denying the DPS's 2016 motion to quash.

So this issue can be dealt with both reasonably and timely, I'd like to work on an agreement for a briefing schedule on the motion and set a date for the depo in the event that the HO rules in respondent's favor. If the DPS is not compelled to produce a witness for the deposition, we can cancel the date. But this way we can all be prepared for the hearing in February that the parties agreed to. I can have a motion and accompanying counsel's affidavit prepared by Monday if this is the route we are going (possibly by tomorrow, but more likely Monday). Please let me know how you'd like to proceed. If I do not hear from you today, I will assume that you are not going to reconsider your position and I will begin drafting the motion to compel. I'm in the office all day today, with a brief excursion about mid-day. I'll be available by phone.

Thanks again for working through this with us. Best, Leslie

Legal Counselors & Advocates, PLC

PO Box 827 | Castleton VT | 05735

Phone: 802.342.3114

This email may contain confidential and privileged information and is intended only for the use of the person or persons named above. If you are not the intended recipient, your review, duplication, dissemination, or distribution of this email communication is strictly prohibited. Please contact me by reply email and destroy all copies of the original message if you are not the intended recipient.