

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 8585

Investigation into Meteorological Tower at 700 Kidder Hill Road in Irasburg, Vermont	
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Order entered: 10/29/2020

PROCEDURAL ORDER RE EVIDENTIARY HEARING

On August 18, 2020, I convened a status conference to discuss moving this case forward to a proposal for decision. The central issue to be resolved was whether or not an evidentiary hearing is needed to examine evidence related to the amount of a possible civil penalty for the construction of a meteorological tower without a certificate of public good by the respondent, David Blittersdorf.

At the status conference, Mr. Blittersdorf renewed his opposition to holding an evidentiary hearing via video conference and requested that any hearing be delayed until after the current state of emergency regarding COVID-19 is lifted by the Governor and an in-person hearing can be conducted.

The Department of Public Service restated its earlier position that an evidentiary hearing can and should be held via video conference absent a compelling reason to the contrary.

During the status conference, I allowed the parties an opportunity to file additional written comments in support of their positions. I also suggested to the parties that they consider whether it was possible to reach agreement on a penalty amount, subject to Mr. Blittersdorf's right to challenge my order of September 12, 2019, that found he had violated 30 V.S.A. § 246 when he constructed his meteorological station without first obtaining a certificate of public good. I made this suggestion because if the parties could reach such an agreement it would potentially eliminate the need for an evidentiary hearing.

On September 8, 2020, Mr. Blittersdorf filed comments that again requested that any evidentiary hearing be delayed until the state of emergency is lifted. Mr. Blittersdorf expressed concerns over the scope of the hearing, in particular whether the hearing would encompass (1) whether the Commission believes it has ongoing jurisdiction over the tower on his property, and (2) whether the Commission believes that Mr. Blittersdorf faces potential liability under 30

V.S.A. § 248. Mr. Blittersdorf also expressed concern over his ability to subpoena non-cooperating witnesses to give testimony at a hearing that is conducted by video conference. Mr. Blittersdorf stated that if an evidentiary hearing is held using video conference technology, that it must be done subject to the requirements of V.R.C.P. 43.1. Lastly, Mr. Blittersdorf noted that he had transmitted a settlement proposal to the other parties but had not received any responses.

Not having heard from the parties on a possible settlement with respect to a penalty amount, I am informing the parties in today's order that it is my intention to schedule and conduct an evidentiary hearing on the amount of a penalty to be imposed in this matter via video conference. That hearing will be conducted subject to the requirements of V.R.C.P. 43.1, Vermont Supreme Court Administrative Order No. 49, and Commission Rule 2.504(A),¹ including the process requirements specified in Rule 43.1(c)(3) and the technical standards for hearings via video conference set forth in the Vermont Supreme Court's Administrative Order No. 47.

I am issuing this order before beginning the process required by V.R.C.P. 43.1(c)(3) to provide the parties an opportunity to work through any potential disagreements they may have regarding the presentation of witnesses; in particular, Mr. Blittersdorf's stated intent to subpoena state agency witnesses to testify at the hearing. If the parties are able to come to an agreement on the need for and production of witnesses for the hearing, they shall file a report to that effect with a list of the witnesses that will be testifying and expected times for examination of each witness. In that event, I will issue an order setting the date for the evidentiary hearing subject to the requirements of V.R.C.P. 43.1(c)(3). The parties' report shall be filed no later than close of business on Monday, November 16, 2020.

In the event the parties are unable to reach agreement on the need for and production of witnesses for the evidentiary hearing, they shall so report, also by the November 16, 2020, deadline. In that event, I will issue an order setting the date for the evidentiary hearing subject to the requirements of V.R.C.P. 43.1(c)(3) and Commission Rule 2.504(A) and will include a date by which witness subpoenas must be issued and any objections and responses filed.

¹ Rule 2.504(A) is part of Commission Rule 2.500, COVID-19 Emergency Procedures and provides for evidentiary hearings via video conference pursuant to V.R.C.P. 43.1(c)(3).

Whether or not the parties are able to agree on the question of witnesses for the hearing, the parties shall seek agreement on which documents that have been previously filed in this proceeding should be admitted into the evidentiary record.² The parties shall include the results of their efforts in their November 16 filing.

With respect to the scope of the hearing, I anticipate that my proposal for decision will contain recommendations on whether the Commission has ongoing jurisdiction over the tower on Mr. Blittersdorf's property and whether Mr. Blittersdorf faces potential liability under 30 V.S.A. § 248. These two questions strike me as largely legal questions, the answers to which are driven by the Vermont Supreme Court's decision in the Belisle MET tower case.³ However, to the extent I am convinced that there is factual information that has not already been filed in this proceeding that is relevant and material to these questions, the parties will be provided an opportunity to present such evidence.

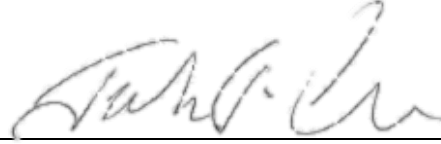
Lastly, if the parties are able to reach an agreement that eliminates the need for an evidentiary hearing on a potential penalty amount, subject to Mr. Blittersdorf's right to challenge my earlier finding of liability, they should inform me as soon as possible so that we can avoid any unnecessary expenditure of time and resources.

SO ORDERED.

² For example, Mr. Blittersdorf prefiled testimony on December 18, 2015, and February 8, 2016, discovery responses were filed by several parties throughout this proceeding, and statements of fact and affidavits were filed along with the motion and cross-motion for summary judgment.

³ *In re Construction and Operation of a Meteorological Tower*, 2019 VT 20 (April 26, 2019).


Dated at Montpelier, Vermont this 29th day of October, 2020.



John J. Cotter, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: October 29, 2020

Attest: 
Deputy Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 8585 - SERVICE LIST

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