

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: 12/14/2020

ORDER RE EVIDENTIARY HEARING AND WITNESSES

On October 29, 2020, I issued a procedural order directing the parties to discuss potential agreements on the need for an evidentiary hearing, the production of witnesses, and a possible stipulation to a penalty amount under 30 V.S.A. § 246, and to submit the results of those discussions by November 16, 2020. Based on a request by the parties, that deadline was extended until November 24, 2020.¹

On November 24, 2020, the Vermont Department of Public Service (“Department”) and the respondent, David Blittersdorf, each filed comments reporting that they were unable to reach agreement on any of the matters covered by the October 29, 2020, order.

In his comments, Mr. Blittersdorf stated that he intends to subpoena Department employee Andrew Perchlik to the evidentiary hearing “to testify on matters relevant to Respondent’s liability under 30 V.S.A. §§ 246, 248 and 30(a)(2) and the penalty factors applicable thereto.”² Mr. Blittersdorf anticipates questioning Mr. Perchlik for approximately 45 minutes to one hour and does not expect to subpoena any other witnesses. Further, Mr. Blittersdorf stated his intent to file the documents he intends to introduce through Mr. Perchlik along with a subpoena for his appearance. Lastly, Mr. Blittersdorf stated that he will not stipulate to the admission of any documents on file with the Commission in advance of the evidentiary hearing.³

The Department stated that it intends to examine Mr. Blittersdorf at the evidentiary hearing for approximately 20 minutes. The Department stated that the examination will be for the limited purpose of identifying and moving for admission into the evidentiary record a list of

¹ See Case No. 8585, Orders of 10/29/20 and 10/17/20.

² Blittersdorf comments at 3. Mr. Blittersdorf stated that he unsuccessfully sought consent from the Department to have Mr. Perchlik appear without the need for a subpoena. *Id.*

³ Blittersdorf comments at 3.

documents that Mr. Blittersdorf has already filed in this proceeding, including prefiled testimony, exhibits, affidavits, and responses to both discovery and hearing officer questions. According to the Department, this is necessary as a result of Mr. Blittersdorf's refusal to stipulate to the admission of the documents in advance of the evidentiary hearing.⁴ The Department also stated that it expects to oppose Mr. Blittersdorf's subpoena of Mr. Perchlik.⁵

1. Evidentiary Hearing by Video Conference

The evidentiary hearing in this matter will be held on March 18, 2021. A separate notice of hearing will be issued by the Clerk of the Commission confirming the date and time of the hearing. The hearing will be conducted by video conference pursuant to the requirements of V.R.C.P. 43.1, Vermont Supreme Court Administrative Order No. 49, and Commission Rule 2.504(A), including the process requirements specified in V.R.C.P. 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. All parties, counsel, and witnesses will be required to appear by video conference pursuant to V.R.C.P. 43.1(c)(3). Therefore, any objections to the evidentiary hearing being conducted remotely and any responses to such objections must be filed as soon as possible.⁶ In ruling on any such objections, I will be guided by the factors set forth in V.R.C.P. 43.1(c)(6).⁷

2. Subpoenas and Objections to Subpoenas

Mr. Blittersdorf has indicated that he intends to subpoena Mr. Perchlik to appear at the evidentiary hearing for the purpose of examination. The Department has indicated its intent to oppose any such subpoena.

To allow for adequate time to resolve any dispute about whether Mr. Perchlik must appear for examination, and if so, what the allowable scope of that examination will be, I am establishing January 15, 2021, as the deadline for Mr. Blittersdorf to serve his subpoena on Mr. Perchlik. Any motion to quash that subpoena must be filed within 14 days of the date the

⁴ Department comments at 1-2.

⁵ Department comments at 1.

⁶ See Vermont Supreme Court Administrative Order No. 49 as amended 4/21/20.

⁷ *Id.*

subpoena is served, with any response to such a motion due 7 days later, and any reply due 7 days after the response. This will allow for me to resolve any dispute in advance of the hearing.

3. **Objections to the Admissibility of Evidence**

Commission Rule 2.216(C) requires that objections to the admissibility of prefiled testimony or exhibits be filed in writing not more than thirty days after prefiling or five days before the date on which the testimony or exhibits are to be offered, whichever is earlier.

Mr. Blittersdorf has refused to stipulate in advance of the hearing to the admission of any of his previously filed testimony, exhibits, affidavits, discovery responses, and responses to hearing officer questions. However, it is not clear from his most recent filing whether Mr. Blittersdorf also intends to object to the admission of any of his previously filed documents at the time they are offered into evidence at the hearing. Therefore, this case presents the unusual circumstance of one party — the Department — seeking the admission of documents prepared and filed by another party — Mr. Blittersdorf — with Mr. Blittersdorf potentially objecting to the admission of those documents.

While Commission Rule 2.216(C) does not precisely address the circumstances that confront us here, it does provide guidance. The rule's requirement that objections to the admissibility of evidence be filed in writing in advance of the hearing at which the evidence is to be offered into the record allows for the resolution of evidentiary disputes in advance of a hearing, which in turn allows for a smoother evidentiary hearing. I intend to follow that guidance.

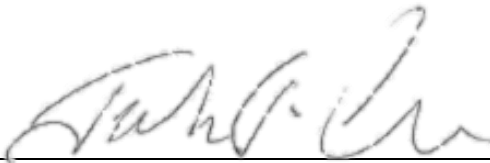
The Department has identified with specificity the documents that it intends to offer into evidence at the evidentiary hearing. If Mr. Blittersdorf intends to object to the admission of any of those documents into the evidentiary record, he must file his objections and the reasons for those objections in writing no later than Monday, February 1, 2021. The Department shall file its responses to those objections 7 days after any objections are filed.

Similarly, Mr. Blittersdorf has stated that when he serves his subpoena on Mr. Perchlik that he will file the documents he intends to introduce through Mr. Perchlik along with the subpoena for his appearance. The Department shall file any objections to the admissibility of the

documents identified by Mr. Blittersdorf for admission through Mr. Perchlik within 14 days of the date the subpoena is served, with any response by Mr. Blittersdorf due 7 days later.

SO ORDERED.

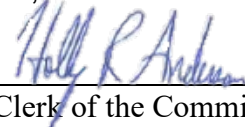
Dated at Montpelier, Vermont this 14th day of December, 2020.



John J. Cotter, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: December 14, 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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