

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 8585

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

Order entered: 02/17/2021

ORDER RE: SUBPOENA DEADLINE

I. INTRODUCTION

On December 14, 2020, I issued a procedural order establishing a process for determining the identity of witnesses to be called at the March 18, 2021, evidentiary hearing and for the filing of evidentiary objections to the admissibility of a list of documents that the Department of Public Service (“Department”) has stated it intends to offer into the evidentiary record of this proceeding. As part of that order, I established January 15, 2021, as the deadline for the respondent, David Blittersdorf, to serve a subpoena on Department employee Andrew Perchlik to appear and testify at the March 18 evidentiary hearing.

On February 1, 2021, Mr. Blittersdorf, filed an objection to the process established for the filing of evidentiary objections in the December 14 order.¹

On February 8, 2021, the Department filed its response to Mr. Blittersdorf’s objection.

On February 10, 2021, the Department made a second filing seeking clarification of Mr. Blittersdorf’s obligations under the December 14 order with respect to serving a subpoena on Mr. Perchlik.

On February 11, 2021, Mr. Blittersdorf filed a response to the Department’s filing of February 10.

In today’s order I establish a new deadline for Mr. Blittersdorf to serve a subpoena on Mr. Perchlik.

¹ I will issue my ruling on Mr. Blittersdorf’s objection in a separate order.

II. DISCUSSION

In comments filed on November 24, 2020, Mr. Blittersdorf stated his intent to subpoena Mr. Perchlik as a witness at the evidentiary hearing. In comments filed the same date, the Department stated its intent to oppose any such subpoena.

In his filing of February 1, 2021, Mr. Blittersdorf made no mention of the status of his intended subpoena for Mr. Perchlik.

As part of its filing of February 8, 2021, the Department noted that Mr. Blittersdorf missed the January 15, 2021, deadline for serving a subpoena on Mr. Perchlik.²

On February 10, 2021, the Department filed additional comments. In that filing, the Department states that:

Respondent's counsel contacted the Department noting that a notice of hearing was not issued in this matter. Respondent's counsel indicated that while a date for the evidentiary hearing was noted in the Order, a notice of hearing was not issued regarding the time and place. Respondent argues that for this reason, Respondent was incapable of meeting the Order's deadline to serve a valid subpoena in accordance with the form requirements under V.R.C.P. 45(a)(1)(C).³

According to the Department, Mr. Blittersdorf "should have made diligent efforts to meet the deadline outlined in the Order, including seeking clarification on the time and place from the Hearing Officer or Clerk of the Commission prior to the deadline or request an extension of the deadline upon discovery of the Respondent's inability to meet V.R.C.P. 45(a)(1)(C)."⁴

In his February 11, 2021, response, Mr. Blittersdorf contends that he had no obligation to contact the Commission to confirm the time and place of the March 18 hearing. According to Mr. Blittersdorf:

[T]he Commission's procedural order established a condition precedent to the issuance of a valid Rule 45 subpoena that only the Commission could satisfy, and the record in this proceeding should include the legal authority supporting the Department's contention that Respondent had a legal duty to manage the Commission's satisfaction of a condition precedent that the Commission had established for itself.⁵

² Department response at 1.

³ Department supplemental response at 1.

⁴ *Id.*

⁵ Blittersdorf response at 2.

I am not persuaded by Mr. Blittersdorf's argument. First, the December 14 order makes clear that the March 18 evidentiary hearing will be conducted via video conference. Therefore, there is no specific place at which Mr. Perchlik must appear. He need only be directed to appear by video conference. Second, counsel for Mr. Blittersdorf is well aware that the majority of hearings scheduled by the Commission start at 9:30 A.M. In fact, the Clerk emailed the parties in this proceeding on December 9, 2020, asking the parties for their availability for an evidentiary hearing. Four potential dates were proposed, including March 18, 2021, all with a start time of 9:30 A.M. In an email to the Clerk dated December 11, 2020, Mr. Blittersdorf agreed to an evidentiary hearing to be held on March 18, 2021, starting at 9:30 A.M. Further, to the extent there was any doubt as to the time of the hearing, confirmation of the time was easily obtainable by contacting the Clerk of the Commission.

Mr. Blittersdorf argues that he was under no obligation to contact the Clerk to confirm the time of the hearing. However, the Vermont Rules of Civil Procedure aim toward "the just, speedy, and inexpensive determination of every action,"⁶ and attorneys have a duty to expedite the litigation process.⁷ Actions that result in delay must also serve a substantial interest other than to simply delay a proceeding.⁸

Mr. Blittersdorf's silence on the topic of the subpoena until well after the January 15 deadline, and the fact that he only made his position known in response to the Department's comments, could have delayed the evidentiary hearing. I find it difficult to see what purpose Mr. Blittersdorf was advancing by potentially delaying the evidentiary hearing at the last moment.

Nonetheless, rather than create a risk of additional delays, I have asked the Clerk to issue the formal notice of hearing, which by statute need not issue until 12 days before the hearing,⁹ and am establishing a new deadline for Mr. Blittersdorf to serve a subpoena on Mr. Perchlik.

If Mr. Blittersdorf intends to subpoena Mr. Perchlik, the subpoena shall be served no later than February 24, 2021, and he shall file a copy of the subpoena with the Commission at the time it is served. Mr. Blittersdorf shall include with his subpoena the documents he intends to

⁶ V.R.C.P. 1.

⁷ Vermont Rule of Professional Conduct 3.2 ("A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.").

⁸ Vermont Rule of Professional Conduct 3.2 at Comment 1 ("The question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay.").

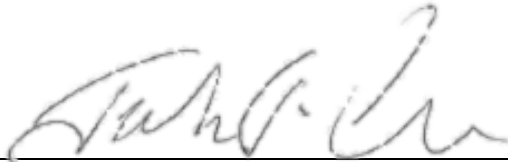
⁹ 30 V.S.A. § 10(b).

introduce into evidence through Mr. Perchlik. If the Department intends to oppose the subpoena, it must file its motion to quash no later than March 3, 2021. Along with any motion to quash, the Department shall also file any evidentiary objections it has to the documents identified by Mr. Blittersdorf.

Mr. Blittersdorf shall file any response to the Department’s motion and objections no later than March 10, 2021.

I will rule on those filings as promptly as possible so that the evidentiary hearing can take place on March 18, 2021, as scheduled.

Dated at Montpelier, Vermont this 17th day of February, 2021.



John J. Cotter, Esq.
Hearing Officer

OFFICE OF THE CLERK

Filed: February 17, 2021

Attest: Holly R. Anderson
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

Parties:

Leslie A. Cadwell, Esq.
Legal Counselors & Advocates, PLC
P.O. Box 827
Castleton, VT 05735
lac@lac-lca.com

(for David Blittersdorf)

Eric B. Guzman
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
eric.guzman@vermont.gov

(for Vermont Department of Public Service)

Dr. Robert R. Holland
Town of Irasburg
PO Box 88
4328 Route 14
Irasburg, VT 05845
kcf.rrh@gmail.com

(for Town of Irasburg)

James Porter, Esq.
Vermont Department of Public Service
112 State St
Montpelier, VT 05620
james.porter@vermont.gov

(for Vermont Department of Public Service)

Kane Smart, Esq.
Vermont Agency of Natural Resources
1 National Life Drive, Davis 2
Montpelier, VT 05620
kane.smart@vermont.gov

(for Vermont Agency of Natural Resources)