

STATE OF VERMONT  
PUBLIC SERVICE BOARD

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Docket No. 8585

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

Order entered:

11/5/2015

**ORDER RE: INTERVENTION**

**I. VERMONT AGENCY OF NATURAL RESOURCES**

On October 19, 2015, the Vermont Agency of Natural Resources ("ANR") filed a Motion to Intervene in this proceeding. ANR requests permissive intervention under Public Service Board ("Board") Rule 2.209(B), stating that it has a substantial interest in the potential natural resource impacts associated with the permitting, siting, and construction of meteorological towers within the state. ANR represents that the Vermont Department of Public Service ("Department") and Mr. Blittersdorf (the owner of the 700 Kidder Hill Road property) do not oppose party status for ANR.

ANR's motion is granted.

**II. TOWN OF IRASBURG INTERVENTION**

At the prehearing conference, representatives for the Town of Irasburg Selectboard stated the Selectboard's intent to intervene in this proceeding. On October 16, 2015, Mr. Blittersdorf stated that he had no objection to the participation of the Town of Irasburg on a permissive basis.

On October 22, 2015, the Town of Irasburg filed the Irasburg Selectboard Authorization appointing Dr. Robert R. Holland to represent the Town and a notice of appearance for Mr. Holland. The Town also states that it "acknowledges and appreciates the agreement of the parties accepting the Town as a party in this case. We therefore are not filing a Motion to Intervene."

On October 28, 2015, Mr. Blittersdorf filed a letter stating that, while it "welcomed" the Town's participation as a party, the Selectboard should be required to demonstrate that its participation was undertaken consistent with state law. These concerns are discussed below.

The Department filed a response on October 30, 2015. The Department asserts that Section 248(a)(4)(F) appears to give Irasburg an unconditional right to party status. However, the Department points out that Irasburg has not actually filed a motion to intervene as required by Board rules. The Department suggests that the Board grant party status under Section 248(a)(4)(F) either by finding that the notice of appearance was sufficient or by providing Irasburg with the opportunity to file a motion to intervene.

The recently adopted Section 248(a)(4)(F) states that the "legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection." This provision would provide the Town of Irasburg the right to intervene in this proceeding. However, it does not make the Town an automatic party.<sup>1</sup> The Town still needs to file a motion to intervene.

Similarly, the agreement of all of the other parties does not make the Town an automatic party. Except where the statute mandates the appearance of a party (*e.g.*, Section 248(a)(4)(E) cited in footnote 1 or Section 2(b) of Title 30 requiring the Department to represent the interests of the people of the state in Board proceedings), a person or entity seeking to participate must file a motion to intervene. The other parties can agree not to oppose intervention of an entity, but it is the Board, not the other parties, that has the right to determine party status.

In reaching this conclusion, I am aware that the Town of Irasburg might not have experience with Board practice and procedure. It also appears that the Town does seek to be a party in this case. Ordinarily, I would treat the Town's letter as a motion to intervene and, as it is unopposed, grant the motion. Here, however, the Town's letter explicitly states that the Town is not filing a motion to intervene, so I cannot in good faith treat the filing as such a motion. Therefore, I conclude that the Town of Irasburg must file a motion to intervene. The Town shall file its request by November 13, 2015.

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1. By comparison, subsection 248(a)(4)(E) mandates the appearance of ANR.

### III. REPRESENTATION OF THE TOWN OF IRASBURG

As noted, Mr. Blittersdorf commented on the nature of the Town's appearance. Specifically, Mr. Blittersdorf asks that the Town be required to explain why it cannot appear through an attorney, a duly elected member of the Selectboard, or the duly elected Town Agent. Mr. Blittersdorf asks that the Town demonstrate that it has the legal authority to appoint a third party such as Dr. Holland as its *pro se* representative in a legal proceeding. Furthermore, Mr. Blittersdorf asks that the Board inquire into whether the Irasburg Selectboard's appointment of Dr. Holland was done in an appropriate manner under state law.

In response, the Department observes that the Board rule that allows for representation by non-lawyers (Rule 2.201(B)) does not specifically address the nature of the relationship that is required for *pro se* representation of a Town. In this case, the Department notes that the Board rule allows a corporation to appear through an officer and states that the same should apply here. The Department comments that Dr. Holland is the Irasburg Moderator, which is a town officer under 17 V.S.A. § 2646(1). The Department also recommends against adopting the condition advocated by Mr. Blittersdorf asking the Town to demonstrate why a different person should not be designated as the Town representative.

Mr. Blittersdorf responded to the Department's comments stating that the Department's analogy to the appearance for a corporation is "inapt." Further, the Department's theory is not supported by law.

The issue raised by Mr. Blittersdorf has been previously addressed by the Board. Specifically, in Docket 7156, *Petition of UPC Vermont Wind, LLC*, the Board considered the same issue in the context of an intervention request from the Town of Sutton and the proposed *pro se* representation of the Town by the Chair of the Planning Commission. The Board stated that:

UPC and the Department have correctly identified a technical problem with Sutton's motion. Board Rule 2.201(B) governs the appearance of *pro se* representatives in cases before the Board. The rule provides:

In its discretion, the Board may permit persons who are not attorneys to appear before it as follows: a partnership may be represented by a partner, and a corporation, cooperative or association may be represented by an officer thereof or by an employee designated in writing by an officer

thereof. . . any individual may be a pro se representative in his or her own cause.

Although the rule does not specifically address municipal governments, the same principle would apply. *If the Sutton Selectboard is a party to this case, only a member of the Selectboard, or a person expressly appointed by the Selectboard, may appear for the Selectboard.*

The motion does not sufficiently explain whether the Chair of the Planning Board is authorized to represent the Selectboard. Sutton must provide a letter from the Selectboard specifying who is authorized to appear for it in these proceedings.<sup>2</sup>

The Board's interpretation of Rule 2.201(B) thus governs this case. The Selectboard may appear through a *pro se* representative if the Town demonstrates that that person was appointed by the Selectboard. I note that the Board did not place a limitation on who could be appointed to perform such representation. In this case, the Selectboard has appointed Dr. Holland, who is a Town Officer, as the Department pointed out. Therefore, his participation as representative of the Town of Irasburg is permitted.

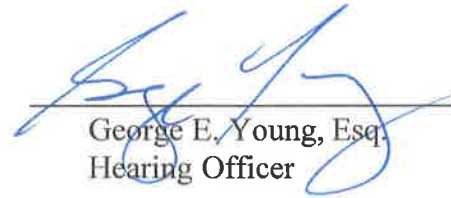
As to Mr. Blittersdorf's request that the Town demonstrate why it should not be represented by an attorney, I deny the request. Board rules authorize *pro se* representation. The Board has permitted *pro se* representation in numerous cases. Mr. Blittersdorf has not shown why it is necessary to make an additional demonstration when the Town is acting in accordance with an option provided by Board rules.

**SO ORDERED.**

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2. Docket 7156, Order of 4/27/06 at 6 (emphasis added).

Dated at Montpelier, Vermont, this 5<sup>th</sup> day of November, 2015.

  
George E. Young, Esq.  
Hearing Officer

OFFICE OF THE CLERK

FILED: November 5, 2015

ATTEST: Judith C. Whitney  
Deputy Clerk of the Board

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

PSB Docket No. 8585 - SERVICE LIST

Sent 11/5/15

Jaw

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#U 11/6/15

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\*\*Dr. Robert R. Holland, Moderator, *pro se*  
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\*Motion to intervene pending.

\*\*Notice of appearance filed without Motion to intervene.

Interested Persons:

George Young, Esq., Hearing Officer

Town of Irasburg Selectboard  
161 Route 58 East, PO Box 51  
Irasburg, VT 05845

Docket	✓
DEBIS	_____
BULK	✓
BINDER	✓
STAFF	✓
COMPUTER	✓
WESTLAW	_____
WEB	✓