

1 STATE OF VERMONT
2 PUBLIC UTILITY COMMISSION

3 CASE NUMBER 8585
4

5 INVESTIGATION INTO METEOROLOGICAL TOWER
6 AT 700 KIDDER HILL ROAD IN IRASBURG, VERMONT
7

8
9 July 20, 2018
10 11:00 a.m.

11 -----
12 112 State Street
13 Montpelier, Vermont

14 Telephone Status Conference held before the
15 Vermont Public Utility Commission at the Susan M.
16 Hudson Conference Room, People's United Bank Building,
17 112 State Street, Montpelier, Vermont on July 20, 2018,
18 beginning at 11:00 a.m.

19 P R E S E N T

20 Hearing Officer: John Cotter, Deputy General Counsel
21
22

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A P P E A R A N C E S

GEOFFREY COMMONS, ESQUIRE
Appearing for the VT Department of Public Service
112 State Street, 3rd Floor
Montpelier, VT 05620-2601

KANE SMART, ESQUIRE
Vermont Agency of Natural Resources
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Montpelier, VT 05620-3901

LESLIE CADWELL LEGAL COUNSELOR & ADVOCATE, PLC
Appearing for David Blittersdorf
751 Frisbie Hill Road, PO Box 827
Castleton, VT 05735

BY: LESLIE A. CADWELL, ESQUIRE

Also Present: Dr. Robert Holland

1 HEARING OFFICER COTTER: Good morning. This
2 is a status conference in Docket 8585, an Investigation
3 into a Meteorological Tower at 700 Kidder Hill Road in
4 Irasburg, Vermont. My name is John Cotter. I am a
5 staff attorney at the Vermont Public Utility
6 Commission, and I've been appointed to take over as
7 Hearing Officer for this proceeding follow the
8 retirement of George Young, our former general counsel.

9 Before we take appearances, I do want to note for
10 the record that this status conference is being
11 conducted by telephone. Therefore, each time you are
12 about to speak, please state your name before you start
13 for the benefit of the court reporter as well as all of
14 us participating today, and it is also more important
15 than usual that we allow each other to finish speaking
16 to avoid unintelligible cross-talk. So courtesy is the
17 word for the day.

18 Let's go ahead and start out by taking
19 appearances, and why don't we go in the following
20 order: The Department, ANR, and Mr. Blittersdorf?

21 MR. COMMONS: This is Geoff Commons for the
22 Public Service Department.

23 MR. SMART: This is Kane Smart for the ANR.

24 MS. CADWELL: Leslie Cadwell Legal Counselor
25 & Advocate, PLC, for David Blittersdorf, the

1 respondent.

2 DR. HOLLAND: And Rob Holland for Irasburg.

3 HEARING OFFICER COTTER: Oh, I'm sorry, Dr.
4 Holland. I didn't include you in my list. My
5 apologies.

6 DR. HOLLAND: No problem.

7 HEARING OFFICER COTTER: The purpose of
8 today's status conference is to discuss where we have
9 gotten to date in this proceeding, perhaps where we
10 have not gotten, and how to move forward to a
11 conclusion. However, before we went on the record,
12 Mr. Commons noted that he had recently circulated a
13 proposal to the parties. I assumed that that would be
14 a settlement proposal. If I'm wrong, of course,
15 Mr. Commons will correct me. But so why don't,
16 Mr. Commons, why don't we go ahead and have you
17 describe the steps that you've taken and what the
18 results have been?

19 MR. COMMONS: Sure. Thank you. This is
20 Geoff Commons. And, when you say settlement proposal,
21 I can say a settlement perhaps on schedule, at least,
22 not on substantive issues. Sorry, wish I could report
23 a settlement of everything, but not today, sorry.

24 We are, we are aware of the, of the, of Docket
25 8561, which concerns the construction of a met tower in

1 Swanton, and that docket is currently on appeal, and,
2 in looking at the issues that have been raised there,
3 there is, I'd say, substantial overlap with some legal
4 issues that would overlap with issues in this case, and
5 I would say that resolution of issues in that appeal
6 could potentially affect or potentially even be
7 dispositive of the docket that we're appearing in now.

8 So the Department's proposal is to put this case
9 on hold pending a decision of that, that appeal, Docket
10 8561, and I'd like to clarify that the intent of my
11 proposal is to maintain the status quo and to leave all
12 parties in the same position that they're in today
13 following resolution of the appeal so that no one, no
14 party is prejudiced by agreeing to this continuance,
15 if, in fact, everyone does agree that there would not
16 be any prejudice. So that's, that's what we're, what
17 the Department is proposing.

18 HEARING OFFICER COTTER: Okay. Why don't we
19 hear from the other parties? And we'll go ahead with
20 ANR and then Mr. Holland and then Ms. Cadwell on behalf
21 of Mr. Blittersdorf.

22 MR. SMART: Yeah, this is Kane Smart from the
23 Agency of Natural Resources. We are in agreement with
24 the Department's proposal as we've previously
25 communicated to, I believe, all of the parties.

1 HEARING OFFICER COTTER: Okay, thank you.

2 DR. HOLLAND: This is Rob Holland, and the
3 Town of Irasburg supports the proposal.

4 HEARING OFFICER COTTER: Thank you. Ms.
5 Cadwell?

6 MS. CADWELL: Yeah, Mr. Blittersdorf supports
7 the proposal. I do want to just make a couple points
8 for the record to make sure that the support is clear
9 for the, the basis for the consent to the delay.
10 First, you know, we would like to make sure that the
11 two years that it took the Commission and any further
12 to decide the summary judgment motion and any
13 continuance doesn't prejudice the Respondent in any way
14 in the proceeding.

15 Mr. Blittersdorf has continued and will continue
16 to use his property to test prototypes of instruments
17 and equipment related to the collection of
18 meteorological data. His use of the property is no
19 different than other companies engaged in similar
20 enterprises like Energy Systems, the company that he
21 founded and now is allowed to compete with, and the PUC
22 doesn't have any jurisdiction over that activity, and
23 that will continue during the continuance, and I want
24 to be clear about that.

25 If further proceedings are ordered, you know,

1 following the continuance, what we understood as sort
2 of the status quo is that the schedule would start with
3 the updating of first, I think, updating of discovery
4 responses and then the prefiling of testimony by the
5 nonresponding parties, the Department, ANR, and the
6 Town of Irasburg on both the issues, so-called
7 liability issue and then the penalty issue, if any.

8 So with that, that's our condition to consent and
9 just sort of information for the record so the Hearing
10 Officer can decide, you know, whether to move forward
11 or allow us to wait until the appeal on the 8561 is
12 decided.

13 HEARING OFFICER COTTER: Okay. Do any of the
14 other parties have concerns related to Ms. Cadwell's
15 comments?

16 MR. COMMONS: This is Geoff Commons. The
17 only, the only thing I would say in response is, I
18 mean, I have not, I'm not pre -- I don't think we
19 should be prejudging exactly what the events are that
20 take place after the appeal. The parties would be in
21 the same position they're in now, and what Ms. Cadwell
22 describes may well be appropriate. I think, at that
23 time, we'll look at what the decision is and what
24 issues are still on the table, if any, and then the
25 decision as to immediate next steps would be made at

1 that time.

2 But, as I say, it may well be that -- I'm not
3 disagreeing necessarily with, with the assessment of
4 where that starting point would be.

5 HEARING OFFICER COTTER: Okay. Mr. Smart?

6 MR. SMART: Nothing for me.

7 HEARING OFFICER COTTER: Okay. Mr. Holland?

8 DR. HOLLAND: Nothing for me.

9 HEARING OFFICER COTTER: Okay. Yeah,
10 Ms. Cadwell, I tend to, well, I tend to agree with both
11 you and Mr. Commons on this. If, indeed, after this
12 decision is issued by the Vermont Supreme Court we find
13 ourselves in the exact position that we're in right
14 now, what you described sounds fairly typical for a
15 Commission proceeding given what's happened to date and
16 has yet to happen, but I also agree with Mr. Commons
17 that, depending upon what the Vermont Supreme Court
18 does, we may find ourselves in a very different place,
19 and we may have to sort of have another status
20 conference and figure out what the correct next step is
21 at that time. Does that cause you any concern?

22 MS. CADWELL: No, not at all. In fact, I
23 completely agree with that. I just wanted to be clear
24 that, if the Supreme Court decision doesn't have a
25 material impact on this that would cause us to do

1 something different, then, you know, my client's
2 already filed testimony and has been subject to two
3 rounds of discovery already. I just don't want to
4 consent to a continuance that then requires us to go
5 back and have him subjected to the same process all
6 over again before we get a position from the other
7 parties on the, on the issues.

8 HEARING OFFICER COTTER: Right.

9 MS. CADWELL: So that's all, but I totally
10 agree. If that decision is dispositive, let's all
11 convene and shake hands and go away.

12 HEARING OFFICER COTTER: Right, okay. Yeah.
13 So, basically, if I, if I understand what you're saying
14 is, if the decision doesn't have an impact on us, we're
15 not going to go back to square one and have a do-over,
16 which I totally agree with. And I should apologize to
17 the parties. Even though it wasn't me, I'm not sure
18 why this, this case and, in particular, the summary
19 judgment motions took so long to deal with, and, as
20 soon as it was assigned to me, I, you know, did my best
21 to resolve those as quickly as possible.

22 So my intent was to say, Let's move this thing
23 forward today, but you folks all brought up a really
24 good point about the appeal in the other docket. So do
25 you want to file a quick, a quick letter with the

1 Commission in writing describing the proposal so I'll
2 just have that as a document in the file, and then I
3 can issue a procedural order?

4 MR. COMMONS: Yeah, it was the Department's
5 proposal. We can do that.

6 MS. CADWELL: I was just going to say I'm so
7 adverse to, like, you know, a lot of extra paperwork,
8 as you know, partly because I'm solo. You know, I have
9 no objection if you want to forward to John the email
10 exchange that we all had, you know, if that's okay with
11 you, John. Because we do have this in writing for you.
12 It's just not superformal. And, that way, poor Geoff,
13 who has a lot to do, doesn't have to write something
14 separate.

15 HEARING OFFICER COTTER: Yes, that's fine by
16 me. I would just like to have something that
17 memorializes it and, of course, the transcript.

18 MS. CADWELL: Right.

19 HEARING OFFICER COTTER: Well, actually, you
20 know, that's a good point. If people are comfortable
21 with me issuing a procedural order based upon our
22 conversation today, it is memorialized in the
23 transcript.

24 MS. CADWELL: No objection on my part.

25 HEARING OFFICER COTTER: If everyone's fine

1 with that --

2 MR. SMART: None from the Agency.

3 DR. HOLLAND: No objection from Irasburg.

4 HEARING OFFICER COTTER: Okay, great.

5 Anything else we need to discuss then?

6 MS. CADWELL: May I just say, Mr. Cotter, I
7 really appreciate your apology. I will pass that along
8 to my client. That actually means a lot to a party who
9 has an enforcement proceeding hanging over their head.
10 You know, he's busy and does a lot of other things, but
11 it is nice to have the delay acknowledged, and I just
12 want to thank you for making a point of doing that
13 before we close.

14 HEARING OFFICER COTTER: Okay, thank you.
15 All righty. If we don't have anything else to discuss
16 then, I want to thank everybody for their time and
17 their cooperation, and we're adjourned. Thank you.

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20 (Whereupon at 11:15 a.m. the hearing was adjourned.)

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