

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8585

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

**DEPARTMENT OF PUBLIC SERVICE'S COMMENTS IN RESPONSE
TO DAVID BLITTSORF'S ANSWERS TO THE HEARING OFFICER'S
INFORMATION REQUESTS DATED JULY 3, 2019**

The Department of Public Service ("Department") submits its Comments in response to *David Blittersdorf's Answers to the Hearing Officer's Information Requests Dated July 3, 2019* and states the following:

On July 3, 2019, the Vermont Public Utility Commission ("Commission") entered a Request for Information pursuant to the Scheduling Conference Order issued in this matter on June 26, 2019. A request was made David Blittersdorf ("Respondent") with concurrence by the Department and the Agency of Natural Resources, for the Commission to reconsider the June 22, 2018 order denying the parties' cross-motions for summary judgment. On July 19, 2019, Respondent submitted his responses to the Commission. Upon review, the Department requests the Commission reconsider its earlier order denying the Department's Motion for Summary Judgment. In the alternative, should the Commission deny the Department's Motion upon reconsideration, the Department recommends the Commission establish a litigation schedule and set this matter for an evidentiary hearing.

I. LEGAL FRAMEWORK

Respondent and his met tower are subject to the jurisdiction of the Commission according to the plain meaning of 30 V.S.A. §§ 246 and 248. Section 246 states, in relevant part:

The Public Utility Commission shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. A meteorological station shall be deemed to promote the public good of the State if it is in compliance with the criteria of this section and the Commission rules or orders.

30 V.S.A. § 246(b). The statute directs the PUC to establish procedures for issuing a CPG for any temporary meteorological tower and the statute intends those procedures to conform with the

CPG procedures of § 248. Section 246 accounts for the fact that entities other than public service companies may seek to install temporary met stations, as the statutes states that the PUC:

May waive the requirements of section 248 of this title that are not applicable to meteorological stations, including criteria that are generally applicable to public service companies as defined in this title. The Commission shall not waive review regarding whether construction will have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety.

30 V.S.A. § 246(c)(3). It is clear the Legislature was concerned with the impact of any and all meteorological stations on “aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety.”¹

The PUC has issued guidance documents interpreting its statutes to apply to met towers such as the one in the present case. To govern the process for reviewing temporary met towers, as required by § 246, the Commission issued *an Order Establishing Standards and Procedures for Issuance of a Certificate of Public Good for a Temporary Meteorological Station Pursuant to 30 V.S.A. § 246*, 2010 WL 2150254 (Vt. PUC Mar. 9 2010) (“Section 246 Standards Order”). This order defines a “temporary meteorological station” as “a temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions, *constructed or installed in order to determine the suitability of a site for the location of a grid-connected wind turbine.*”²

The Commission has noted that when a met tower is “reasonably related” to the potential operation of a wind generation facility, the facility is within the jurisdiction of the PUC and a CPG is required.³ A temporary meteorological tower is within PUC jurisdiction under § 246 if it is “reasonably related” to construction or establishment of a grid-connected wind generation facility.

To establish whether a temporary meteorological tower satisfies the “reasonably related” standard and is within PUC jurisdiction, “an objective review of the circumstances must demonstrate that the tower was constructed or installed to help determine the site’s suitability for

¹ 30 V.S.A. § 246(c)(3).

² *Id.* at 4 (emphasis added).

³ *In re Constr. & Operation of a Meteorological Tower*, 2019 VT 20, ¶ 23 (Vt. Apr. 26, 2019) (citing *UPC Wind Mgmt., LLC*, no 6884 at 6 (adopting “reasonably related” standard articulated in Attorney General’s 1971 advisory opinion, rather than more stringent “directly related” standard).

a grid-connected wind turbine.”⁴ The Supreme Court noted in its *In re Construction & Operation of Meteorological Tower* decision that the PUC “may rely on a host of factors, including – but not limited to – the station’s size and scope, the project proponent’s actions and outward manifestations of intent, the project proponent’s statements of subjective intent, the existence of plans for a grid-connected wind turbine, and subsequent development of a grid-connected project.”⁵

II. ARGUMENT

The Department maintains that Respondent’s statements during the investigation and following the establishment of the meteorological tower, as a matter of law, demonstrate Respondent’s intent to utilize the tower to assess the prospective installation of a wind-generating facility. In response to the Commission’s request for information, Respondent, through his attorney, stated that Respondent “erected a meteorological (“met”) tower on the property to assess whether there was sufficient wind to install a residential wind turbine to power the log cabin via net metering.”⁶ In December of 2010, Respondent erected a meteorological tower. “In November 2011, having concluded from the data obtained from the tower that the wind was adequate for a residential wind installation, David applied for CPG to net-meter two small wind turbines for the log cabin.”⁷ Respondent confirmed this statement in his responses to the Department’s first set of information requests and further elaborated “the purpose of the [tower] installation was to assess conditions for . . . one or more residential wind turbine(s) to power the log cabin. . .”⁸ Respondent constructed two net-metered wind turbines on the Kidder Hill property within two years of erecting the meteorological tower.⁹ Additionally, Respondent utilized data gathered and recorded by the met tower to assess wind resources available at Respondent’s property for a commercial, non-residential wind turbine facility.¹⁰

In light of the Supreme Court’s analysis in *In re Construction & Operation of a Meteorological Tower* (Travis Belisle, Appellant), Docket No. 2018-120, the clear intent of

⁴ *Id.* at ¶ 26.

⁵ *Id.*

⁶ See Blittersdorf Response to PUC Requests, September 10, 2015.

⁷ *Id.*

⁸ See A.DPS:Resp.1-1.

⁹ See Prefiled Testimony of David Blittersdorf, pg. 9; See also Docket No. NM-1771 (November 30, 2011).

¹⁰ *Id.* at 10.

Respondent to develop net-metered wind turbines on his property is sufficient to trigger the Commission's jurisdiction, irrespective of the specificity of his plans for a generation facility at the time the met tower was installed. The record demonstrates that Respondent: (1) constructed a meteorological tower to assess wind resources in order to develop a wind electrical generation project; and (2) did not first obtain a CPG for that tower. Therefore, even in the context of a motion for summary judgment and giving Respondent's statements full credence as the nonmovant, Respondent's arguments do not create an issue of material fact considering the entire context of this case. Drawing all doubts or inferences about Respondent's plans at the time he established the met tower in his favor, Respondent's statements demonstrate that he had plans for a grid-connected wind turbine and was using the met tower to determine whether there were sufficient wind resources.

To the extent that Respondent challenges the Department's findings on the basis of whether he knew or should have known about the requirement to obtain a CPG for his met tower, Respondent makes no plausible arguments that his lack of familiarity with Title 30 absolved him of the requirement to comply with the law.¹¹ Additionally, Respondent argues the designation of the met tower as "permanent" removes him and his tower from PUC jurisdiction. Such an interpretation of the statute reaches an absurd result, as § 246 was enacted to expedite the CPG process for non-utility solar projects, not to remove jurisdiction from the PUC whenever an applicant asserts the tower is intended to remain an indefinite period of time. Under the Respondent's interpretation of §§ 246 and 248, any met tower project being utilized to assess wind resources can circumvent PUC jurisdiction by claiming the tower will remain permanently or for an indefinite period of time and for other non-energy related purposes. An interpretation of these statutes that allows an entity responsible for these facilities to circumvent the Commission's jurisdiction essentially renders the statutes meaningless – a result inconsistent with the long-standing principle that laws should not be interpreted to lead to absurd or illogical consequences.¹² The Commission was correct in its reasoning to deny Respondent's Motion for Summary Judgment. However, should the Commission agree with Respondent and find the met

¹¹ *State v. Woods*, 107 Vt. 354, 356-57, 179 A. 1, 2 (1935) "[I]gnorance of the law is no excuse is 'of unquestioned application in Vermont. . . both in civil and criminal cases.'")

¹² *Dep't of Taxes v. Montani*, 2018 VT 21, ¶ 24, 184 A.3d 723, 729.

tower falls outside the scope of § 246, Respondent would still be subject to all relevant and applicable requirements under § 248.

III. CONCLUSION

In light of the Supreme Court's ruling in *In re Construction & Operation of a Meteorological Tower*, the Department finds the record of material facts in this case demonstrate a sufficient basis of granting the Department's Motion for Summary Judgment. Following the Court's "reasonably related" standard, the Commission's standards and procedures, and given Respondent's admission of his intent to develop a wind generation facility, the Department finds Respondent was subject to the jurisdiction of the Commission and a CPG was required for his meteorological tower. The Department respectfully recommends the Commission reverse its decision on the Department's Motion for Summary Judgment and affirm its decision for Respondent's cross motion.

DATED at Montpelier, Vermont this 2nd day of August 2019.

Respectfully submitted,

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