

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8585

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

DEPARTMENT OF PUBLIC SERVICE'S RECOMMENDATION RE: CIVIL PENALTY

The Department of Public Service ("Department") submits the following recommendation concerning the assessment of a civil penalty on David Blittersdorf ("Respondent") in this matter and states as follows:

On September 12, 2019, the Hearing Officer granted, in part, Department's Motion for Summary Judgment finding Respondent violated the provisions of 30 V.S.A. § 246 by constructing a meteorological tower without first obtaining a Certificate of Public Good ("CPG").

On November 6, 2019, the Public Utility Commission ("Commission") denied Respondent's request for interlocutory review of the Hearing Officer's September 12, 2019 Order.

On November 12, 2019, the Hearing Officer requested the parties propose a schedule for determining the civil penalty amount that should be imposed on Respondent.

Analysis of Criteria Under 30 V.S.A. § 30

The Hearing Officer determined Respondent's construction and operation of the meteorological tower without a CPG was a violation of 30 V.S.A. § 246. The Department has considered the criteria listed under 30 V.S.A. § 30(c) and recommends the Commission impose a civil penalty of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) on Respondent pursuant to 30 V.S.A. § 30(a)(2). Each of the 30 V.S.A. § 30(c) factors are addressed below:

§ 30(c)(1) – the extent that the violation harmed or might have harmed the public health, safety, or welfare, the environment, the reliability of utility service, or other interest of utility consumers;

By failing to obtain a CPG pursuant to 30 V.S.A. § 246, Respondent violated state law and in doing so: (1) deprived any adjoining landowners and the Town of Irasburg of the right to actual notice prior to construction, the right to comment on the meteorological tower prior to construction, and the opportunity to participate in the permitting process, and (2) adversely affected the interests of utility customers by diminishing the credibility of the regulatory oversight process.

The Department finds the Respondent's violation caused harm but did not cause "substantial harm".¹ As such, the maximum civil penalty that may be imposed by the Commission is Ten Thousand and 00/00 Dollars (\$10,000.00), pursuant to 30 V.S.A. § 30(a)(2). Furthermore, the Department finds this factor weighs in favor of a significant penalty.

§ 30(c)(2) – whether the respondent knew or had reason to know the violation existed and whether the violation was intentional

The Department finds the record sufficiently indicates Respondent had reason to know the violation had occurred. Respondent's employment background is replete with experience and expertise in renewable energy technology operation and policy. Respondent is a self-described "inventor of wind assessment technology", founder of NRG Systems, Inc. and AllEarth Renewables, Inc², former member-manager of Georgia Mountain Community Wind, LLC and the Georgia Mountain Community Wind Project³, and current member and former President and Treasurer of Renewable Energy Vermont's Board of Directors.⁴

Additionally, Respondent appeared before the Commission in permitting for small net-metering projects of his own for both wind and solar projects.⁵ Respondent also appeared before the Commission, then Public Service Board, in a matter involving the transfer of a meteorological tower CPG where the Commission dismissed the transfer request unless the installation was "directly related to a grid-connected wind energy project".⁶ Therefore, Respondent was familiar with the potential for regulatory requirements of a meteorological tower in connection with a wind energy project.

Respondent purchased his property with the intended purpose of powering a cabin "completely with one or more small wind turbines."⁷ Respondent installed the meteorological tower on his property with the purpose of measuring the available wind resources for a residential wind turbine to power his cabin.⁸

¹ See Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the construction and operation of a meteorological tower in Swanton, Vermont, Docket No. 8561, Order on Remand Imposing Civil Penalty at 5 (Sept. 11, 2019) (finding Respondent deprived adjacent landowners of the right to comment and participate, diminished the credibility of the oversight process, and caused damage the environment but did not rise to the level of "substantial harm").

² See Prefiled Testimony and Exhibits of David Blittersdorf ("PFT Blittersdorf"), Docket No. 8585 at 1 (Dec. 18, 2015).

³ See Respondent's Supplemental Discovery Response, Docket No. 8585 at 2 (Dec. 6, 2019).

⁴ See DPS - Attachment 1.

⁵ See PFT Blittersdorf at 5.

⁶ *Id.* at 7; See also Docket 6154, Order (Dec. 11, 2008).

⁷ *Id.* at 2.

⁸ *Id.* at 4.

Given the extent of experience and expertise Respondent has in the renewable energy development field, the Department finds Respondent had reason to know a CPG was required for the meteorological tower. Respondent should have learned of this fact given reasonable investigation into basic regulatory requirements. At a minimum, Respondent should have engaged in the appropriate due diligence, on his own or through the consultation of an attorney, as to any relevant regulatory requirements applicable to installing a meteorological tower. The Department finds this factor weighs in favor of a significant penalty.

§ 30(c)(3) – the economic benefit, if any, that could have been anticipated from an intentional or knowing violation

The Department does not find the record demonstrates Respondent obtain an economic benefit from an intentional or knowing violation. The Department finds this factor weighs neither for nor against a significant penalty.

§ 30(c)(4) - the length of time that the violation existed

Respondent began construction of the meteorological tower on November 19, 2010 and installation was completed on December 29, 2010.⁹ In 2012, Respondent installed two net-metered wind turbines.¹⁰ Respondent indicated the meteorological tower was upgraded with an AllEarth Renewables product in May of 2018.¹¹ There is no assertion by Respondent that the meteorological tower has been removed as of December 17, 2019. The Department finds this factor weighs in favor of a significant penalty.

§ 30(c)(5) – the deterrent effect of the penalty

The deterrent effect of the monetary penalty against Respondent will be greatest if the amount of the penalty is significant in relation to the maximum penalty permitted by § 30(c)(2). The Department finds a Two Thousand Five Hundred and 00/100 Dollar (\$2,500.00) civil penalty is sufficient to address Respondent's violation of § 246 and to deter similar violations in the future. Respondent has significant experience in renewable energy development, prior experience before the Commission, and Respondent had substantial opportunity to seek clarification as to the necessary regulatory permitting requirements for a meteorological tower.

⁹ *Id.* at 2.

¹⁰ *Id.* at 9; *See also* CPG # NM-1771 (Jan. 5, 2012).

¹¹ *See Blittersdorf Suppl. Test.* at 3.

The Department finds this amount is necessary to ensure the credibility of the PUC regulatory process with respect to Respondent's future actions and those of other developers. The penalty must ensure Respondent and other similarly situated individuals are responsible for strict compliance with state law and Commission rules.

§ 30(c)(6) – the economic resources of the respondent

While the Commission may consider the economic resources of the Respondent in determining a civil penalty under § 30(c), the Department finds the remaining factors provide appropriate guidance in this matter. The Department finds this factor neither weighs in favor of nor against a significant penalty.

§ 30(c)(7) – the respondent's record of compliance

The Department is not aware of any previous violations committed by Respondent. The Department finds this factor neither weighs in favor of nor against a significant penalty.

§ 30(c)(8) – any other aggravating or mitigation circumstances

The Department is not aware of any aggravating or mitigating circumstances that should impact the Commission's imposition of a penalty.

Conclusion

The Commission's discretion to impose a civil penalty is broad.¹² The civil penalty assessed need only be broadly tailored to address the nature of the violation considering the enumerated statutory criteria. The Department respectfully requests the Commission impose a penalty of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) against Respondent for failure to obtain a CPG prior to erecting a meteorological tower on his property in Irasburg, Vermont.

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¹² See *In re Beliveau NOV*, 2013 VT 41, at ¶ 22 (explaining that a penalty assessed by a tribunal will not be overturned unless there is an abuse of that tribunal's broad discretion).

DATED at Montpelier, Vermont this 17th day of December 2019.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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cc: ePUC Service List