

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 RESPONSE TO RESPONDENT
DAVID BLITTERSDORF'S OBJECTIONS AND MOTION TO STRIKE**

The Department of Public Service ("Department") submits its response to David Blittersdorf's ("Respondent") *Objections to Department of Public Service Recommendation and Motion to Strike* in this matter and states as follows:

On December 6, 2019, the Department submitted supplemental discovery responses, noting the Department's intention to present testimony from Edward McNamara, Director of Energy Policy and Planning, on behalf of the Department as to the penalty criteria under 30 V.S.A. § 30(c).

On December 20, 2019, in correspondence with Respondent, the Department stated it would not utilize a witness in this matter. On January 7, 2019, the Department submitted amended supplemental discovery responses to remove the listed witness.

On December 20, 2019, the Department submitted the *Department of Public Service's Recommendation Re: Civil Penalty* ("Recommendation") to the Public Utility Commission ("Commission"). The Department proposed a Two Thousand Five Hundred and 00/100 Dollar (\$2,500.00) civil penalty under 30 V.S.A. § 30(a)(2), upon consideration of the factors listed in § 30(c).

On January 6, 2019, Respondent submitted an objection to the Department's Recommendation and Motion to Strike, stating the Recommendation cannot be used as a basis for the Commission's findings and conclusions on a penalty.

According to the parties' agreed upon schedule, Respondent correctly notes non-respondent testimony was to be filed by December 20, 2019. However, upon further review of the record in this matter, the Department concluded no additional facts, exhibits, or testimony were necessary. While in some instances it is necessary for the Department to prefile testimony to submit key facts into the record to support the Department's position, all facts and testimony necessary to support the Department's position were present in the Respondent's admissions in the record. As the record is sufficient to determine a penalty amount under the 30 V.S.A. § 30(c), the Department submitted its Recommendation to put forth the Department's position as to the assessment of a civil penalty against Respondent.

Respondent's Motion states the Department's Recommendation as to § 30(c)(1), (2), and (5) requires a qualified expert witness to testify as to the basis of the Department's position. Respondent

incorrectly identifies the Recommendation as containing additional facts and opinions requiring “scientific, technical, or other specialized knowledge [that] will assist the trier of fact to understand the evidence or to determine a fact in issue. . . .”¹ The Department’s Recommendation wholly relies upon facts submitted in the record and undisputed facts adopted by the Hearing Officer in the *Order Granting in Part Department’s Motion for Summary Judgment and Denying Respondent’s Cross-Motion for Summary Judgment* on September 12, 2019. Further, the Department’s Recommendation recites legal conclusions based on the undisputed facts and their applicability to each penalty factor under 30 V.S.A. § 30(c). Requiring expert witness testimony to support the Department’s legal analysis is unnecessary considering all facts relied upon were Respondent’s own admissions.

The Department is not seeking the entry of its Recommendation into evidence. The purpose of the Department’s Recommendation is to clarify the Department’s position, to the benefit of the Respondent, with respect to an appropriate civil penalty in this matter. Finally, in response to Respondent’s Motion to Strike, the Department does not agree with the Respondent that its statement of position and use of a recommendation to be immaterial or unduly prejudicial to the Respondent. As in all proceedings before the Commission, a hearing officer has authority to agree or disagree with the Department’s analysis when forming their proposal for decision. Therefore, no cognizable harm on the Respondent has resulted from the Department’s Recommendation stating its position regarding a penalty assessment.

The Department respectfully requests the Commission deny the Respondent’s Motion to Strike. The Department is authorized to represent the Agency of Natural Resources will file a letter noting support of the Department’s response and position.

DATED at Montpelier, Vermont this 21st day of January 2020.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

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cc: ePUC Service List

¹ V.R.E. Rule 702. Testimony by Experts.