

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8585

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

AFFIDAVIT OF COUNSEL PURSUANT TO V.R.C.P. 26(h)

I, Leslie A. Cadwell, counsel for Respondent David Blittersdorf in the above-captioned action, being duly sworn, over 18 years of age, and competent to testify on these matters say:

1. The facts and information about which I testify in this affidavit are based on my personal knowledge and first-hand experience.
2. On June 16, 2016, the Hearing Officer in the above-referenced matter granted the Respondent's request for a 30-day discovery period without limitation as to methods or subject matters relevant to the pending litigation before the Commission.
3. On June 29, 2016, in accordance with V.R.C.P. 30(a), (b)(1) and (b)(6) and the Hearing Officer's June 16, 2016 scheduling order, I served notices of deposition on behalf of Respondent to the Department of Public Service and others. The notice served on the Department pursuant to V.R.C.P. 30(b)(6) requested information on the following topics, among others:

What factors the PSD will recommend that the Public Service Board take into account when assessing whether to impose a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.

What aggravating circumstances the PSD will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.

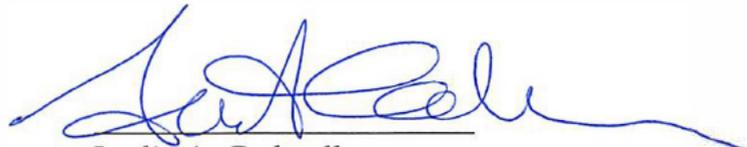
What mitigating circumstances the PSD will recommend that the Public Service Board consider in assessing a penalty if the Board determines in this Docket No. 8585 that the Respondent violated the law.

Exhibit A.

4. Thereafter the Department, joined by other parties, moved to quash Respondent's deposition notices. Exhibit B. The Hearing Officer denied the motion by order dated August 6, 2016.
5. By affidavit executed on August 9, 2016, Department's counsel stated that the Department "has no designee that is able to testify *at this time* on the following matters," listing the topics quoted in paragraph 3, above. Exhibit C (emphasis added). At that time, the Department had not yet disclosed its position about a penalty to Respondent and other parties.
6. The Department filed a recommendation on a penalty on December 20, 2019.
7. On January 15, 2020, I wrote counsel for the Department (Eric Guzman) seeking a supplement to the August 9, 2016 Rule 30(b)(6) affidavit regarding the designation of a Department representative to testify on the noticed penalty-related topics now that the Department had taken a position on those issues. Exhibit D.
8. On January 15, 16, and 21, 2020, counsel for the Department and I spoke by telephone to resolve the issue of Respondent's right to depose a designee on penalty-related topics identified in the 2016 deposition notice. In addition to myself, the call on January 15, 2020 included attorneys Jim Porter, Eric Guzman, and Dan Burke; the call on January 16 was with Mr. Porter; and the call on January 21 was with Mr. Porter and Mr. Guzman. Mr. Porter offered a compromise to resolve the parties' dispute that would only allow general inquiry

and would not allow inquiry into the specific recommendations made in this case. That compromise was and remains unacceptable to Respondent because it does not address the specifics of this case. Additional communications between counsel to resolve this dispute are attached as Exhibit D.

9. A deposition on the penalty-related topics in Respondent's 2016 deposition notice provides the opportunity to ask follow-up and clarifying questions on the Department's position that written questions do not offer.



Leslie A. Cadwell

STATE OF VERMONT
COUNTY OF RUTLAND, SS.

On this 28th day of January, 2020, personally appeared Leslie A. Cadwell, and she swore to the truth of the foregoing statements.



Before me,



Notary Public

My commission expires: 01/31/21

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