

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NUMBER 8585

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

August 18, 2020
2 p.m.

Status Conference held before the Vermont Public
Utility Commission via Go To Meeting on August 19, 2020,
beginning at 2 p.m.

P R E S E N T

HEARING OFFICER: John Cotter, Staff Attorney

CAPITOL COURT REPORTERS, INC.
P.O. BOX 329
BURLINGTON, VERMONT 05402-0329
(802/800) 863-6067
E-mail: info@capitolcourtreporters.com

A P P E A R A N C E S

JAMES PORTER, ESQUIRE

ERIC GUZMAN, ESQUIRE

Appearing for the VT Department of Public Service

112 State Street

Montpelier, VT 05620-2601

James.porter@vermont.gov

Eric.guzman@vermont.gov

LESLIE A. CADWELL, ESQUIRE

Legal Counselors & Advocates, PLC

Appearing for the Respondent

P.O. Box 827

Castleton, Vt 05735

lac@lac-lca.com

KANE SMART, ESQUIRE

Appearing for the VT Agency of Natural Resources

One National Life Drive, Davis 2

Montpelier, VT 05620

Kane.smart@vermont.gov

MICHAEL SANVILLE, PRO SE

1 HEARING OFFICER COTTER: Good afternoon
2 everybody. This is a Status Conference in Case
3 Number or Docket Number 8585 an investigation into a
4 meteorological tower at 700 Kidder Hill Road in
5 Irasburg, Vermont.

6 My name is John Cotter. I'm a Staff
7 Attorney at the Vermont Public Utility Commission and
8 I've been appointed Hearing Officer for this
9 proceeding. Why don't we go ahead and take
10 appearances, and what I'll do is just call you out by
11 name since we don't have the old table to sit around
12 and go around in a circle, and I'm just going to use
13 the order that people are on my screen. So, Mr.
14 Guzman, you first.

15 MR. GUZMAN: Hi, this is Eric Guzman on
16 behalf of the Department of Public Service.

17 HEARING OFFICER COTTER: And so then why
18 don't we jump to Mr. Porter second.

19 MR. PORTER: Jim Porter with the
20 Department of Public Service.

21 HEARING OFFICER COTTER: Ms. Cadwell.

22 MS. CADWELL: Leslie Cadwell, Legal
23 Counselors & Advocates for the respondent David
24 Blittersdorf.

25 HEARING OFFICER COTTER: Mr. Smart.

1 MR. SMART: Kane Smart on behalf of the
2 Agency of Natural Resources.

3 HEARING OFFICER COTTER: Okay, and Mr.
4 Sanville.

5 MR. SANVILLE: Michael Sanville,
6 Irasburg Planning Commission.

7 HEARING OFFICER COTTER: Mr. Sanville, I
8 believe that -- oh my gosh -- Dr. Holland I think was
9 very, very early on the person who was appearing on
10 behalf of the Town. Are you taking his place?

11 MR. SANVILLE: Not officially. I'm not
12 aware that he wasn't going to represent today. I was
13 sitting in as a matter of interest and keeping up
14 with the current status.

15 HEARING OFFICER COTTER: Okay. Okay.
16 That's fine. Then before we get into any kind of
17 substance I just want to go over, you know, we're
18 really sort of developing how these video conferences
19 work. I want to go over a little information on that
20 in the hope that things go smoothly.

21 We are using the web based platform Go
22 To Meeting for today's status conference. Given that
23 it's possible that the conference will go a little
24 more slowly than usual and we may need to stop along
25 the way if any technical issues arise that we need to

1 deal with, hopefully that won't happen, but sometimes
2 it does.

3 We also recognize that we're all in
4 remote locations such as our homes so there may be
5 unexpected interruptions that occur, and obviously
6 we'll deal with them. We have had all kinds.
7 Actually I have a dog at my feet right now, but he's
8 not much of a barker unless a car goes by, but -- so
9 you should keep your cameras on during the entire
10 hearing except during breaks. It's very helpful for
11 us all to be able to see whose speaking to help avoid
12 interrupting each other and it's also very helpful
13 for our court reporter as well.

14 If there are people in attendance who
15 are not parties that are participating in today's
16 conference, my preference is that you leave your
17 cameras off. That way the pictures of the active
18 participants are larger typically. You will still --
19 even with your camera off you will still be able to
20 watch and hear everybody that is a party and that is
21 participating. So it's kind of like you're sitting
22 in the room anyway. I'm not going to mute anyone's
23 microphone, even though I think I have the ability to
24 do that, and that includes parties, members of the
25 public, anybody that's just listening in. That means

1 you should keep your microphone on mute unless you
2 are actively speaking. It also means that you need
3 to remember to take yourself off mute when you do
4 begin speaking and if you forget, I'm sure I'll
5 hopefully remember to interrupt and ask you to turn
6 your microphone on. That way that also minimizes
7 background noises and so forth.

8 If we do take any breaks today, which I
9 think is doubtful, it's just a status conference, but
10 if for some reason we do, it's a good idea to turn
11 off your cameras and put your microphone on mute.
12 That way we don't have any unintended transmissions
13 of video or audio to everybody else who can see and
14 hear those things if you forget to turn your
15 microphone and camera off.

16 Each time you begin talking please
17 identify yourself by name for the court reporter. If
18 your internet connection cuts out, please try to
19 rejoin the meeting by using the link that was sent to
20 you or by calling the phone number that was included
21 in the notice of today's status conference.

22 If the audio or video from the hearing
23 has cut out, and you can't rejoin -- excuse me. If
24 it cuts out and you are able to rejoin, please let us
25 know that you had been offline for a few minutes and

1 what we'll try to do is sort of reset to where you
2 went offline, and if anything happened, if we didn't
3 catch on right away that somebody dropped off, then
4 we can summarize what was said in the interim and
5 then go back and revisit any issues if we need to.

6 If you are unable to either call in
7 using the number or rejoin using Go To Meeting, send
8 me an e-mail, and my e-mail address is like pretty
9 much everybody's that works for the state is my name,
10 so john.cotter@ -- what is that -- vermont.gov.
11 Autofill caught me there. Send that to me or you can
12 send an e-mail to the Clerk's Office right away or
13 even phone the Clerk's Office, and if that happens,
14 we will pause the hearing until the issue is
15 resolved. We'll do our best to figure out what it
16 is, and if we can't figure it out and can't resolve
17 it, we'll just have to reschedule today's hearing.
18 We don't want anybody left out in the cold, and
19 that's about it for the video stuff.

20 As always please let's try to avoid
21 talking over one another and so let's get started.
22 The purpose of today's status conference is honestly
23 to figure out the best way to bring this case to a
24 Proposal for Decision. I went back and I looked at
25 the history of the case the other day and last

1 September, if folks recall, I did grant in part a
2 Department motion on the question of liability. Mr.
3 Blittersdorf sought an immediate review by the
4 Commission of that determination, but the Commission
5 denied that request and basically said let's just
6 take this thing to a full Proposal for Decision, and
7 we can have those -- you know the Commission will
8 entertain those arguments and comments in the
9 Proposal for Decision.

10 There were some motions back and forth
11 on admissibility and requests to strike. There were
12 also -- there was some discovery motion practice, and
13 when those things were resolved or largely resolved
14 we got some substantive recommendations from folks --
15 I suppose they are procedural recommendations --
16 trying to figure out how to move forward, and the
17 Department had suggested a video conference
18 evidentiary hearing, and Mr. Blittersdorf suggested
19 that no hearing should be held until the Governor's
20 state of emergency was lifted.

21 I did actually defer a decision at that
22 time on scheduling because my decision on discovery
23 was under reconsideration at the full Commission, and
24 I thought what's the point in having the evidentiary
25 hearing if the Commission might disagree with me, and

1 then that was resolved and so we're kind of back to
2 needing to figure out how to get to a Proposal for
3 Decision on the entire case, and I'm not sure if the
4 parties have talked to each other at all and come to
5 any kind of consensus or if we're still back where we
6 were when the last round of comments was filed, gosh,
7 I think that was back in April, but let me turn to
8 counsel for the respondent. Ms. Cadwell.

9 MS. CADWELL: I have not heard from
10 anybody since we last filed stuff. So no.

11 HEARING OFFICER COTTER: Okay. Well
12 then I guess if that's accurate, then I guess we need
13 to just start taking recommendations from folks. Why
14 don't you go ahead, Ms. Cadwell.

15 MS. CADWELL: The position remains the
16 same. The state of emergency was just extended so we
17 don't want to do anything until we know that the
18 COVID experience is over. The respondent doesn't
19 want to participate by video conference. So nothing
20 has really -- our position hasn't changed.

21 HEARING OFFICER COTTER: Okay, and
22 Department.

23 MR. GUZMAN: Our position remains the
24 same. I believe the Commission has held evidentiary
25 hearings rather successfully in other cases. So

1 unless there's a compelling reason to not use our
2 current means, we would request that an evidentiary
3 hearing be scheduled. That's where all the parties
4 can attend.

5 HEARING OFFICER COTTER: Okay, and, Mr.
6 Smart.

7 MR. SMART: The Agency doesn't have a
8 strong opinion on the schedule and the process, and
9 we'll defer to the Department and the respondent to
10 the extent that they can agree, and then if not, put
11 it in your hands, Mr. Cotter.

12 HEARING OFFICER COTTER: Okay. Well I
13 think what I am probably going to do is I'm probably
14 going to have a chat with our General Counsel and the
15 Commission about this because, you know, I do
16 understand that it can be a little bit awkward and
17 we're not entirely familiar with how to do these
18 things by video, but Mr. Guzman is correct that there
19 have been evidentiary hearings held. Gosh we might
20 have even had a workshop. In other words, we're
21 getting experience with the technology, and while I
22 have not yet conducted one I have been given a little
23 bit of tutoring on it and, you know, I understand
24 that there are ways where, for example, if somebody
25 is cross examining a witness and they want to use an

1 exhibit to cross examine that witness, then you can
2 be made the presenter on the platform and then do
3 what's called share your screen so everybody sees the
4 exhibit that you're talking about, for example, and
5 some people when they have done that have highlighted
6 the portion of the exhibit that they are going to be
7 asking the witness questions on, and it's worked
8 pretty well. Obviously it's different than what
9 we're all used to.

10 So I think that if the parties want an
11 opportunity to make another filing to help me inform
12 that discussion with the General Counsel and possibly
13 the Commission about whether to go forward with an
14 evidentiary hearing or whether to postpone it, which
15 would be an indefinite postponement at this point, I
16 mean it could be postponed for a year or more, and
17 regrettably this case probably should have been
18 resolved before it was reassigned to me. I've tried
19 to move it along to get it to resolution. Ms.
20 Cadwell, I understand that your client might be a
21 little bit frustrated that it's still out there, and
22 we have had some justified delays since I took the
23 case over, but --

24 MS. CADWELL: Thank you. The last
25 delays were as a result of his counsel, me, and you

1 accommodated me and I very much appreciate that. So
2 I just want to be -- you know, thank you. So he's
3 not frustrated.

4 HEARING OFFICER COTTER: Okay. Well
5 there's no need to say thank you, Ms. Cadwell. It
6 was an obvious yes. I hope things are going okay,
7 but my suspicion is that the Commission or the
8 General Counsel will tell me to go ahead and schedule
9 an evidentiary hearing if the parties still believe
10 one is necessary. So, Ms. Cadwell, in particular, if
11 your client wants an opportunity to explain in more
12 detail why he does not believe that would be
13 appropriate, I would be happy to give him some time
14 to make that filing.

15 MS. CADWELL: I found out this morning
16 that he's away for two weeks. So I guess what I
17 would say is why don't you give me that opportunity
18 and I don't know how -- whether I can reach him, but
19 I think it would be reasonable to say maybe a day
20 after -- because I can prepare something and I know
21 once I give him something to look at I'll get a
22 response right away, and I may be able to get it
23 before two weeks. I just don't know. I was unaware
24 that he's gone away.

25 HEARING OFFICER COTTER: Do you want to

1 give me the outside date for you to file something?

2 MS. CADWELL: Yes. So today is -- hang
3 on a second. Let me pull up a calendar. How about
4 -- is Labor Day the first weekend? So it would be --
5 I understand two weeks. I'm guessing he's coming
6 back that Labor Day. So the 8th.

7 HEARING OFFICER COTTER: The 8th. Okay.
8 That's fine by me.

9 MS. CADWELL: Yes. 8th.

10 HEARING OFFICER COTTER: Okay. Then
11 we'll look for a filing on Mr. Blittersdorf's behalf
12 on the 8th and then we'll -- I'll consult with the
13 powers that be and see about whether or not we're
14 going to have an evidentiary hearing.

15 Is there anything else we need to
16 resolve if we're not resolving the question of an
17 evidentiary hearing today?

18 MS. CADWELL: So I just actually have
19 just -- I want to throw out a couple of issues that I
20 think we need to get resolved as part of the case,
21 and maybe this is part of what you'll talk with
22 General Counsel about and this was raised in some
23 prior filings. So at least right now the finding is
24 that the temporary use of the tower was a violation
25 of 246. 246 only allows the tower that's permissible

1 under there to remain up for five years, and as has
2 been clear Mr. Blittersdorf's tower is not a
3 temporary facility. It's taxed as real property and
4 all that. So what does this finding of temporary use
5 mean in terms of the Commission's jurisdiction over
6 the tower? Does he have to take it down? Like that
7 part is still unresolved, and if this case is partly
8 to provide some guidance, that would be helpful.

9 Then the other issue is the open
10 question of the applicability of Section 248, and I
11 know, Mr. Cotter, you had declined to rule on that in
12 summary judgment, and one of the issues that we
13 brought up it's still an open -- it's still an open
14 issue, and we anticipate because the issue is open
15 we'll have an opportunity to at least present at the
16 hearing evidence to demonstrate why 248 doesn't apply
17 because the Commission may end up deciding it based
18 on inadequate information, and then the only other --
19 the only other thing I would ask is, you know, unless
20 there's consent, what under the Commission's rules
21 allows us to proceed with an evidentiary hearing by
22 Go To Meeting.

23 That's it, and I think -- those I don't
24 think need to be resolved today, but I wanted to at
25 least raise them also with the other parties because

1 I think a hearing -- anyway how to go forward
2 depending on what the scope of the hearing is and
3 that's what we've been trying to understand for some
4 time.

5 HEARING OFFICER COTTER: Right, and
6 obviously the whole Go To Meeting question is
7 something that I'll be bringing up in my discussions
8 with General Counsel, if not the entire Commission,
9 before we make a decision on whether or not to go
10 ahead or wait until the end of this emergency,
11 whenever that might be.

12 Now I am going to throw out a wild idea
13 for the parties to think about, and I understand that
14 Mr. Blittersdorf's concern here is that I have issued
15 a summary judgment decision finding liability on his
16 part. Obviously if he can convince the Commission
17 that I'm wrong about that, then whatever happens with
18 the penalty determination in the Proposal for
19 Decision evaporates.

20 Now the Department has proposed a \$2500
21 penalty which I note is consistent with a previous
22 case that had similar facts, not identical by any
23 means, but similar facts, and I would just say that I
24 would be -- if the parties could agree on that number
25 subject to Mr. Blittersdorf's ability to challenge

1 the question of liability at all, I would be inclined
2 to recommend that number to the Commission. So if
3 the parties want to think about that and take your
4 time, I'll be waiting until the 8th for Ms. Cadwell's
5 filing, think it over. Obviously if the Commission
6 agreed with my summary judgment determination, just
7 because I recommended that number and the parties
8 agreed on it doesn't mean that the Commission would
9 adopt it. So we all know that. We do -- I think
10 we're all familiar with the history of what the
11 Commission does in response to situations like that,
12 but that's really all I could say on that matter.

13 MS. CADWELL: So I really appreciate the
14 Hearing Officer throwing that out and what I will do,
15 in addition to talking to counsel, I will talk to Mr.
16 Blittersdorf about that process as well. I
17 anticipate the liability finding is -- sort of goes
18 to the heart of his contest here. So I don't know
19 how it will turn out, but I appreciate the suggestion
20 and hope to talk to counsel about it.

21 HEARING OFFICER COTTER: Okay. Great.
22 As I said it's a bit of a wild idea, but if it at
23 least helps us get to the point where the parties can
24 make their arguments on the underlying liability
25 question to the Commission, then perhaps it's a

1 helpful way to proceed. Obviously I'll leave that to
2 the parties to decide. Anything else?

3 MS. CADWELL: Yes. Actually one last
4 observation on that. I think the amount is maybe
5 less important than what the findings are to support
6 that. You know under the penalty factors, you know,
7 at least there's an argument out, you know, and
8 that's part of the scope of the hearing. For
9 example, whether he knew or should have known that a
10 CPG was required for a permit like that, and a
11 finding that he knew or should have known would be
12 very problematic in light of the number of facilities
13 that the Department assisted in erecting around the
14 state without CPGs.

15 HEARING OFFICER COTTER: Okay. Well
16 then that's, I guess, more food for thought for the
17 parties to see if there's a way to avoid those kind
18 of potential roadblocks to at least settling part of
19 the case.

20 Anybody else have anything? No. Okay.
21 Well thank you everybody very much for attending
22 today and, Ms. Cadwell, I'll look forward to your
23 filing, and if the parties can resolve the penalty
24 amount subject to Mr. Blittersdorf's right to
25 challenge the underlying liability finding, great.

1 If not, we'll figure out where to go after we get Ms.
2 Cadwell's filing on the 8th. Thank you very much.

3 (Whereupon, the proceeding was
4 adjourned at 2:20 p.m.)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

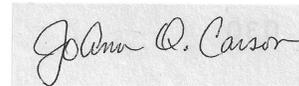
C E R T I F I C A T E

I, JoAnn Q. Carson, do hereby certify that I recorded by stenographic means the status conference re: Case Number 8585 via Go To Meeting on August 18, 2020, beginning at 2 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting, and the foregoing 18 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings, to the best of my ability.

I further certify that I am not related to any of the parties thereto or their Counsel, and I am in no way interested in the outcome of said cause.

Dated at Burlington, Vermont, this 18th day of August, 2020.



JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter