

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Docket No. 8585

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

RESPONDENT'S OBJECTIONS TO THE
HEARING OFFICER'S ORDER REQUIRING OBJECTIONS

In an order dated December 14, 2020, the Hearing Officer in the above-captioned proceeding directed Respondent to file by February 1, 2021 his objections to the admission of evidence that the Department of Public Service has not offered through the prefiled testimony of a competent witness, a procedure required by the Commission's rules and the governing procedural schedule in this case. Characterizing the circumstances in this case as "unusual," the Hearing Officer described the issue confronting the him this way:

Therefore, this case presents the unusual circumstance of one party – the Department – seeking the admission of documents prepared and filed by another party – Mr. Blittersdorf – with Mr. Blittersdorf potentially objecting to the admission of those documents.¹

There is nothing unusual, however, about one party in a Commission proceeding seeking the admission of documents, such as discovery responses or responses to a hearing officer's questions, that are filed by another party. In fact, offering testimony

¹ Order re Evidentiary Hearing and Witnesses, Order of 12/14/2020 at 3.

containing an opposing party's discovery responses or relevant party admissions is a common and long-standing practice at the Commission; it is hard to imagine a contested case without such an evidentiary record to assist the Commission in deciding the matters at issue.

What is unusual is the apparent position taken by the Department and the Commission in the instant case that their enabling legislation, the Commission's procedural rules for hearings, the governing procedural schedule, and the contested case provisions of the Vermont Administrative Procedures Act allow the Department to offer evidence without a competent sponsoring witness in an investigation of conduct that both regulatory bodies assert falls within their jurisdiction.

The Hearing Officer's order turns the governing procedural schedule and the contested case procedures on their head. Excusing the Department from its obligation to prefile evidence in support of its case, the Hearing Officer requires the Respondent to file objections to evidence for which the Department has never made an offer of proof. And beyond stating that the evidence in the documents it seeks to admit amounts to party admissions, the Department has offered no explanation as to why the information in the documents is relevant and has not provided the legal basis for the evidence's admissibility. Shifting the burden onto Respondent to guess as to the basis for the Department's evidentiary offer in this manner is unreasonable, unfair, and incompatible with the procedural schedule developed in accordance with the Commission's rules on prefiling evidence and interposing objections thereto.

The absurdity in this exercise is revealed by some of the "evidence" that the Department wishes to introduce: discovery objections. Other evidence has dubious relevance to the issues in this proceeding. See, for example, the following discovery requests and responses that are included in the documents the Department wishes to offer, again without a sponsoring witness to explain the purpose and relevance of the proffered evidence:

Q.4. How many homes are within ½ mile and 1 mile of your current wind turbines on Kidder Hill? Please supply a map showing the locations of all the structures within ½ and 1 mile of your current wind turbines on Kidder Hill.

A.4. Objection to the request on grounds that this request is misdirected to a different party, "Petitioner Next Generation Solar Farm, LLC" (see Definitions ¶¶ 2, 5).

Further objection on grounds that the number of homes within ½ mile and 1 mile of Respondent's current residential wind turbines is not relevant to or reasonably calculated to lead to the discovery of admissible evidence on whether the Respondent was required to obtain a certificate of public good for the meteorological mast he installed on his property in Irasburg, Vermont.

Further objection on grounds that the request is overly vague and broad because "all the structures" could include such "structures" as utility poles, fencing, deer stands, and lean-tos.

Further objection on grounds that the request asks Respondent to create and produce a document not already in existence and the information the Town of Irasburg seeks is equally available to the Town as it is to Respondent, perhaps more so in light of the Town's legal obligation to keep property and tax records.

Finally, objection on grounds that requiring Respondent to ascertain and supply this information would be unduly burdensome, particularly because the time, effort and expense of collecting such information would be disproportionate to the value (if any) of the information for the resolution of this matter.

Respondent's Answer to Question 4 of the Town of Irasburg's First Set of Discovery Requests, February 5, 2015.

Q.1. Does this picture represent a dwelling (n 44.90891, w 71.9595, elevation 1950 feet) that you own in Morgan, Vermont? If yes, what is the function of the tower located on the rooftop?

A.1. Objection on grounds that the request falls outside the scope of discovery as it is not relevant to, nor is it reasonably calculated to lead to the discovery of admissible evidence in, this proceeding. This investigation concerns whether the Respondent was required to obtain a certificate of public good for a meteorological mast he installed on his property in Irasburg, Vermont. Whether Mr. Blittersdorf owns a particular dwelling in Morgan and the function of equipment on the roof of any such property have no bearing on the issues to be decided by the Public Service Board in this proceeding.

Further objection to the extent that the question contains a false premise by referring to the equipment depicted as a "tower."

Further objection to the extent that Respondent cannot authenticate a photograph provided by the Town of Irasburg that Respondent neither took nor knows the origin of.

Notwithstanding and without waiving the objection the Respondent answers:

The building depicted in the question appears to be one of multiple properties that I own in Morgan. It also appears to have been taken by drone, without my permission.

Respondent's Answer to Question 1 of the Town of Irasburg's Second Set of Information Requests, March 16, 2016.

Q.ANR.DB.1-6. Please describe how the construction of the meteorological tower or any associated construction followed the recommendations of the Vermont Erosion Control Handbook.

A.ANR.DB.1-6. Assuming the request refers to ANR's Low Risk Site Handbook for Erosion Prevention and Sediment Control (August 2006) (available here: http://vtransoperations.vermont.gov/sites/aot_operations/files/documents/techservices/ms4/sw_low_risk_site_handbook.pdf), the question makes an improper assumption that the installation was required to follow recommendations in the Handbook. The met mast installation did not involve excavation, digging, or other similar earth disturbance of an acre of more and did not trigger the need for coverage under General Permit (GP-3-9020) as a "low risk" site. Therefore, the recommendations outlined in the Handbook were inapplicable because the text of the Handbook says that they apply to "construction sites determined to be "Low Risk" under GP-3-9020."

Respondent's Answer to Question 6 of the Agency of Natural Resources 1st of
Information Requests, February 5, 2015.

RTP.ANR.DB.1-3. Please produce all maps in Respondent's possession that show the location of the meteorological tower in relation to floodways, shorelines, streams, wetlands, outstanding resource waters, rare and irreplaceable natural areas, and necessary wildlife habitat.

Response: Objection to the request on grounds that it seeks attorney work product prepared in anticipation of litigation.

Notwithstanding and without waiving the objection, Respondent answers:

See Bates-8585-ANR-001 through Bates-8585-ANR-002.


Respondent's Answer to Request to Produce No 3 of the Agency of Natural Resources
1st Set of Discovery Requests.

What the Hearing Officer is demanding of the Respondent in this instance is unreasonable and not grounded in Rule 2.216(C) or any other Commission rule. To file objections as the Hearing Officer has directed would require Respondent to comb through each statement or fact in each of the documents that the Department wishes to offer into evidence at a hearing without a witness and with no offer of proof as to the purpose, relevance, and admissibility of the statement. Respondent's counsel would have to guess as to the rationale for offering statement or fact at issue.

The procedures being imposed in Respondent in this case are unprecedented and prejudicial. They substantially depart from other investigations and result in disparate treatment of Respondent and his legal interests. The Respondent objects to having to sift

through the facts and statements in the documents that the Department wants the Hearing Officer to admit into the record without having to produce a sponsoring witness to explain the purpose and relevance of the evidentiary offer.

Dated at Castleton, Vermont this 1st day of February, 2021.

By: 
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