



LEGAL COUNSELORS & ADVOCATES PLC
P.O. Box 827 • Castleton, VT • 05735

Leslie A. Cadwell
lac@lac-lca.com
802-342-3114

February 11, 2021

Holly R. Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: Case No. 8585

Dear Ms. Anderson:

Respondent has received the Public Service Department's comments in the above-referenced matter regarding the lack of a hearing notice meeting the requirements of law to allow for the issuance of a valid subpoena pursuant V.R.C.P. 45 by a date set in a procedural order dated December 14, 2020. A notice for an evidentiary hearing must, by law, include the date, time, and place for the hearing. 30 V.S.A. § 809(b)(1). The December 14, 2020 procedural order set a date for hearing, but not the time or place. Instead, the order specifically stated that a hearing notice from the Clerk would be forthcoming separately. As of this writing, no hearing notice has been issued.

The Department's comments contend that "as a matter of practice," Respondent had a duty to remind the Commission to issue the hearing notice that the December 14, 2020 order said would be forthcoming or to seek clarification of the order. Respondent is not the party that recommended a Commission investigation or the party that is seeking relief in the form of a penalty, however; the only relief that Respondent has requested aside from a hearing is dismissal for the reasons set out in numerous submissions made on his behalf since 2015.

Respondent welcomes a supplemental filing from the Department identifying the legal authority that supports its contention that Respondent has a duty to remind the

Commission to fulfill the obligations that it sets for itself in a procedural order. V.R.C.P. 11(b)(2) requires that such contentions be supported by “existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.” Here, the Commission’s procedural order established a condition precedent to the issuance of a valid Rule 45 subpoena that only the Commission could satisfy, and the record in this proceeding should include the legal authority supporting the Department’s contention that Respondent had a legal duty to manage the Commission’s satisfaction of a condition precedent that the Commission had established for itself.

Finally, the procedural posture of this case would be different if the Department had fulfilled its own obligation to the Commission – and the public – by pre-filing testimony from a qualified witness about the relevant issues on December 20, 2019, the date that the Department agreed to and that was set by a November 25, 2019 procedural order for its testimony. Had the Department filed testimony when it was due on December 20, 2019, this docket would more likely than not already be closed.

Very truly yours,



Leslie A. Cadwell

Cc: ePUC

