

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 8585

Investigation pursuant to 30 V.S.A. §§ 30 and 209 )  
regarding the Construction and Operation of a )  
Meteorological Tower located in Irasburg, )  
Vermont )

VERMONT PUBLIC  
SERVICE BOARD  
2015 OCT 19 AM 9 44  
①

MOTION TO INTERVENE

The Agency of Natural Resources (Agency) respectfully moves to intervene by permission pursuant to Rule 2.209(B). David Blittersdorf and the Public Service Department (Department) do not oppose this motion out of time or party status for the Agency. In support of this Motion, the Agency submits the following Memorandum of Law.

MEMORANDUM

The Agency respectfully requests that the Board grant permissive intervention. Where an “applicant demonstrates a substantial interest which may be affected by the outcome of the proceeding,” the Board may grant permissive intervention. Rule 2.209(B). “In exercising its discretion . . . , the Board shall consider (1) whether the applicant’s interest will be adequately protected by other parties; (2) whether alternative means exist by which the applicant’s interest can be protected; and (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.” Id.

The Agency seeks to intervene with respect to the potential impact the siting, construction, and removal of Mr. Blittersdorf’s meteorological tower may have had on natural resources. In order to obtain a certificate of public good pursuant to 30 V.S.A. §§ 246 and 248, an applicant that wishes to construct a temporary meteorological tower must identify whether the

project will be located near floodways, shorelines, streams, wetlands, outstanding resource waters, rare and irreplaceable natural areas, and necessary wildlife habitat and, if so, demonstrate that the project will not have an undue adverse impact on the protected natural resource and what steps the applicant will take to avoid and minimize any impacts. State of Vermont, Public Service Board, Application for a Certificate of Public Good for Temporary Meteorological Stations § 3. The application also states that applicants must demonstrate that the project will not have an undue adverse impact under the air and water purity, the natural environment, and other criteria. Id. Further, as part of an enforcement and penalty proceeding under 30 V.S.A. § 30, the Board considers “the extent that the violation harmed or might have harmed the . . . environment . . . .” 30 V.S.A. § 30(c)(1).

The Agency is the relevant state entity responsible for reviewing matters concerning natural resource impacts under 30 V.S.A. § 248. As a general matter, the Agency has a substantial interest in the potential natural resources impacts associated with the permitting, siting, and construction of meteorological towers in the state of Vermont. In this case, the Agency has a substantial interest in ensuring that (1) applicable rules designed to avoid or minimize natural resources impacts were followed in the permitting, siting, and construction of the meteorological tower at issue and (2) the Board is fully informed as to impacts the tower may have had on Vermont’s natural resources, as well as any remediation or mitigation that may be necessary to address those impacts. The Agency’s staff has particularized knowledge and experience related to the potential natural resource impacts associated with temporary meteorological towers, and the Agency’s expertise and interest differs from that of the Department. Thus, the Agency meets the criteria for permissive intervention: the Agency has demonstrated a substantial interest which may be adversely affected by the proceeding, the

proceeding is the exclusive means by which the Agency may protect its substantial interest, and the Agency's interests are not adequately represented by existing parties.

In addition, the Agency's intervention in this matter will not delay or disrupt the proceedings, the deadline for parties to respond to motions to intervene has not yet passed, no party to the proceeding or the public will be prejudiced by the intervention, and the Agency is willing to accept the record as it stands. Further, Mr. Blittersdorf and the Department do not oppose party status for the Agency.

### CONCLUSION

For all of the foregoing reasons, the Agency respectfully requests that the Board grant the Agency's motion for permissive intervention.

Respectfully Submitted,

Agency of Natural Resources



Leslie Welts, Litigation Attorney  
Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901  
(802) 490-6103  
leslie.welts@vermont.gov

DATED: October 15, 2015