

STATE OF VERMONT  
PUBLIC SERVICE BOARD

VERMONT PUBLIC  
SERVICE BOARD

2015 OCT 30 PM 4 20

Docket No. 8585

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

October 30, 2015

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**RESPONSE OF THE DEPARTMENT OF PUBLIC SERVICE TO THE  
NOTICE OF APPEARANCE OF ROBERT HOLLAND AND  
TOWN OF IRASBURG SELECTBOARD LETTER OF AUTHORIZATION**

The Department of Public Service (“Department” or “DPS”), by and through undersigned counsel, submits the following response to the Notice of Appearance of Robert Holland and companion Letter of Authorization of the Town of Irasburg Select Board (“Irasburg”), dated October 20, 2015, filed in the above-captioned docket proceeding. The Department does not oppose to the intervention of Irasburg, pursuant to 30 V.S.A. § 248(a)(4)(F). We suggest that Dr. Holland’s relationship with Irasburg is sufficiently close to satisfy the *pro se* appearance requirements of Public Service Board (“Board” or “PSB”) Rule 2.201(B).

**Irasburg Intervention**

The Board stated in its September 23, 2015 Order Opening Investigation that it is holding this hearing under 30 V.S.A. § 248, among other Title 30 sections. Section 248(a)(4)(F) appears to give Irasburg the unconditional right to party status in this proceeding, stating, “[t]he legislative body and planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection.” Irasburg has not filed a motion for intervention, pursuant to PSB Rule 2.209, in this proceeding. PSB Rule 2.209(A) makes clear that “[u]pon timely application, a person shall be permitted to intervene in

any proceeding (1) when a statute confers an unconditional right to intervene.” The rule, however, is silent on whether a notice of appearance alone constitutes the necessary application for intervention when a statutory right to intervene is present, or if a motion for intervention is required. Here, the Department suggests that Board grant Irasburg party status under § 248(a)(4)(F) and PSB Rule 2.209(A), either by finding that a notice of appearance is sufficient to trigger intervention as of right under the Board rule; or, alternatively, by providing Irasburg with the opportunity, pursuant to PSB Rule 2.208, to file a motion for intervention.

#### **Irasburg’s *Pro Se* Representative**

PSB Rule 2.201(B) allows for non-lawyer representation of a group under certain circumstances. The rule states that “a partnership may be represented by a partner, and a corporation, cooperative, or association may be represented by an officer thereof or by an employee designated in writing by an officer thereof.” The rule does not speak specifically to kind of relationship between a municipality and an individual that would allow *pro se* representation of a town. The Department analogizes the question of a town/resident relationship here most closely with the corporation/officer or employee relationship contemplated in the rule. Under that lens, the salient question with respect to an individual’s ability to represent a municipality in a *pro se* manner is whether that individual has a relationship with the town that is materially similar to an officer or employment relationship.

Here, Irasburg’s designated representative, Dr. Holland, has an officer relationship with the town, allowing for *pro se* representation of its interests in this proceeding. Dr. Holland is the Irasburg Moderator. 17 V.S.A. § 2646(1) refers to the moderator as a town officer. Dr. Holland is an officer of the town, squarely affording him the ability to represent Irasburg under PSB Rule

2.201(B). The Department therefore recommends that the Board allow Dr. Holland to represent Irasburg in this proceeding.

Lastly, the Department notes that David Bittersdorf's counsel, Leslie Cadwell, has recently filed a request to the Board stating that "[w]hile the respondent welcomes the Town's participation as a party in this proceeding . . . the Board should require the Town to explain why it cannot appear through (1) a licensed attorney; (2) a duly elected member of the Select Board itself; or (3) the duly elected Town Agent per 17 V.S.A. § 2646(11)." Letter from Leslie Cadwell, Esq., on behalf of David Blittersdorf, to Susan Hudson, Clerk of PSB, Oct. 28, 2015. The Department recommends that the Board not impose the requirement advanced by Ms. Cadwell. Ms. Cadwell provides neither a legal basis for limiting *pro se* representation of the town to the three classes of representatives she outlines, nor a basis for imposing the burden on the town of providing such a showing to the Board. Additionally, the Town Agent contemplated in 17 V.S.A. § 2646(11), and cited by Ms. Cadwell, is tasked to "prosecute and defend suits in which the town . . . is interested." Irasburg is seeking to participate as a party in an administrative investigation, opened by the Board and focused on determining whether certain regulatory violations have occurred. The town is not seeking to prosecute a "suit" against Mr. Blittersdorf.

Dated at Montpelier, Vermont this 30th day of October, 2015

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE



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Geoff Commons  
Director for Public Advocacy  
Aaron Kisicki  
Special Counsel

cc: Docket 8585 Service List

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Susan M. Hudson, Clerk  
Vermont Public Service Board  
112 State Street  
Montpelier, VT 05620-2701

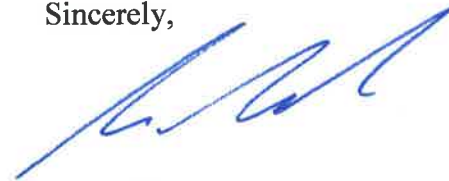
Re: Docket No. 8585 – Kidder Hill MET Tower – DPS Response re Irasburg Intervention

Dear Mrs. Hudson,

Enclosed for filing in the above-referenced Docket, please find the original and three (3) copies of the Response of the Department of Public Service in Response to the Notice of Appearance of Robert Holland and Town of Irasburg Select Board Letter of Authorization.

Thank you for your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely,



Aaron Kisicki  
Special Counsel

cc: Docket 8585 Service List (w/ enclosure)

