

JW
164

State of Vermont
Department of Public Service
112 State Street
Montpelier, VT 05620-2601
<http://publicservice.Vermont.gov>

[phone] 802-828-2811
[fax] 802-828-2342
[tdd] 800-734-8390

VERMONT PUBLIC
SERVICE BOARD

2016 JUL 1 PM 4 02

July 1, 2016

Judith Whitney, Clerk
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701

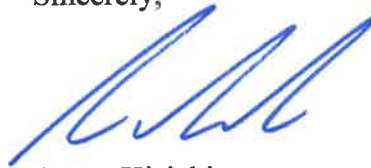
Re: Docket No. 8585 – Kidder Hill/Irasburg MET Tower Investigation

Dear Ms. Whitney,

Enclosed for filing in the above-referenced proceeding, please find the original and three (3) copies of the Motion for Partial Summary Judgment and Statement of Undisputed Material Facts of the Department of Public Service.

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)



STATE OF VERMONT
PUBLIC SERVICE BOARD

VERMONT PUBLIC
SERVICE BOARD

2016 JUL 1 PM 4 02

Docket No. 8585

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

July 1, 2016

**MOTION FOR PARTIAL SUMMARY JUDGMENT OF
THE VERMONT DEPARTMENT OF PUBLIC SERVICE**

The Vermont Department of Public Service (“Department” or “DPS”), by and through undersigned counsel, hereby moves for partial summary judgment pursuant to Vermont Rule of Civil Procedure 56 in the above-captioned proceeding. The Vermont Public Service Board (“Board” or “PSB”) or the Hearing Officer assigned to this proceeding should grant this motion. No genuine issues of material facts are in dispute as to whether respondent David Blittersdorf failed to obtain a certificate of public good (“CPG”) prior to the construction and operation of a meteorological (“MET”) station on his property, in violation of 30 V.S.A. §§ 30, 246, and/or 248.

The Department has also filed a companion Statement of Undisputed Material Facts in support of this motion.

LEGAL FRAMEWORK

“Under V.R.C.P. 56, the Board may grant summary judgment if the moving party demonstrates that ‘there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.’” PSB Docket 8180, *Petition of Vermont Gas Systems, Inc.*, Procedural Order re: Motion for Partial Summary Judgment, July 23, 2014 at 5 (quoting *Granger v. Town of Woodford*, 167 Vt. 610, 611, (1998)). “In moving for summary judgment, [the] movant

has the burden of proof, and the party opposing the summary judgment motion is to be given the benefit of all reasonable doubts and inferences in determining whether a genuine issue exists. Facts asserted by the opposing party, if supported by affidavits or other evidentiary material, are regarded as true." *Cavanaugh v. Abbott Lab.*, 45 Vt. 516, 520 (Vt. 1985).

Pursuant to 30 V.S.A. § 246, the Vermont legislature directed the Board to "establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title." 30 V.S.A. § 246(b). The section defines meteorological station as "one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions." 30 V.S.A. § 246(a). The Board established standards and procedures for issuance of a CPG for a meteorological station pursuant to 30 V.S.A. § 246 by order on March 9, 2010. *See* Sec 246 Standards Order, Mar. 9, 2010.

30 V.S.A. § 30 makes clear that "[a] person, company, or corporation subject to the supervision of the Board or the Department of Public Service . . . who violates a provision of chapter 2, 7, 75, or 89 of this title, or a provision of section 231 or 248 of this title, shall be required to pay a civil penalty . . . after notice and opportunity for hearing. 30 V.S.A. § 30(a)(1). The investigation in this proceeding was opened by the Board pursuant to 30 V.S.A. §§ 30 and 248, among others. Order Opening Investigation and Notice of Hearing, Sept. 23, 2015 at 2.

ARGUMENT

A fair reading of the evidentiary record with all reasonable inferences construed in Mr. Blittersdorf's favor reveals that he installed a MET station at his Kidder Hill, Irasburg property without securing a CPG from the Board as required by 30 V.S.A. §§ 246 and/or 248. As a result, imposition of civil penalty by the Board upon Mr. Blittersdorf is required by and appropriate under 30 V.S.A. § 30. However, the Department seeks only summary judgment related to the issue of whether Mr. Blittersdorf committed a violation of §§ 246 and/or 248 in this motion. It does not seek any judgment related to the appropriateness of a penalty amount if the Board grants this motion. Consideration of the imposition of a penalty amount should properly be considered separately from the relief now sought by the Department.

Mr. Blittersdorf's prefiled testimony and responses to Department discovery requests are replete with admissions of a violation of §§ 246 and/or 248. As noted with specific detail in the Department's companion Statement of Undisputed Material Facts ("SOF"), Mr. Blittersdorf admits – repeatedly in some instances and without qualification – that he installed a MET station, as defined by Vermont law, at his Kidder Hill property in December, 2010 without securing a CPG in advance as required by §§ 246 and/or 248, and the Board's Standards Order. SOF at ¶¶ 2, 3, 5. Mr. Blittersdorf also admits that data recorded by the MET station was used to evaluate the wind resource available at his Kidder Hill property for construction of a net-metered facility consisting of two wind turbines, and for construction of a potential commercial wind facility on the property. SOF at ¶¶ 6, 7, 8.

The Department is entitled to judgment as a matter of law. Mr. Blittersdorf's admission of failure to secure a CPG in advance of installation of the MET station alone is sufficient grounds to determine that a violation of §§ 246 and/or 248, pursuant to § 30, has occurred. 30 V.S.A. § 30

does not require examination of intent or evaluation of any other potentially mitigating circumstances on the part of a respondent in order to make a determination of whether a violation has occurred. Here, Mr. Blitterdorf has admitted that he did not adhere to the requirements of §§ 246 and/or 248, and that alone provides sufficient grounds for granting this motion.

CONCLUSION

Based on the foregoing, the Vermont Department of Public Service respectfully requests that the Public Service Board or the Hearing Officer assigned to the proceeding find that no genuine issues of material fact related to Mr. Blittersdorf's admitted conduct giving rise to a violation of 30 V.S.A. §§ 246 and/or 248, pursuant to 30 V.S.A. § 30, exists, and grant this motion. The Department also requests that the Board or Hearing Officer schedule a status conference as part of its ruling on the motion. Additional process and briefing related to the penalty phase of the proceeding would be appropriate if the Board or Hearing Officer grants this motion,

Dated at Montpelier, Vermont this First day of July, 2016.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE



Aaron Kisicki
Special Counsel

cc: Docket 8585 Service List