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VERMONT PUBLIC
SERVICE BOARD

2016 JUL 21 AM 11 54

July 21, 2016

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

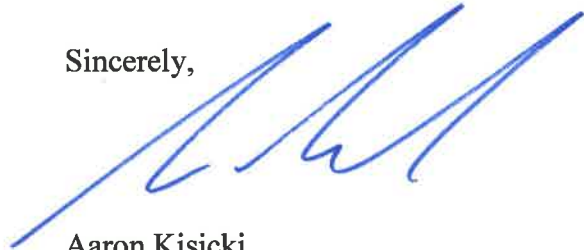
Re: Docket No. 8585 – Kidder Hill/Irasburg MET Tower Investigation

Dear Ms. Whitney,

Enclosed for filing in the above-referenced proceeding, please find the original and three (3) copies of the Request of the Vermont Department of Public Service for Expedited Review of Motion to Quash Notices of Deposition and for Protective Order.

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

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Docket No. 8585

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

July 21, 2016

**REQUEST OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE
FOR EXPEDITED REVIEW OF MOTION TO QUASH NOTICES OF DEPOSITION
AND FOR PROTECTIVE ORDER, OR STAY OF DEPOSITION**

On July 15, 2016, the Vermont Department of Public Service (“Department”), Vermont Agency of Natural Resources (“ANR”), and the Town of Irasburg (“Irasburg”) filed a Motion to Quash Notices of Deposition and for Protective Order (“Motion”) and supporting memorandum in the above-referenced proceeding. The Department, by and through undersigned counsel, respectfully requests that the Hearing Officer assigned to the proceeding expedite review of the Motion, or alternatively order a stay of a deposition that has been noticed for August 5, 2016 until after the Hearing officer has ruled on the Motion.

On June 16, 2016, the Hearing Officer fashioned a schedule in the proceeding that called for respondent David Blittersdorf to issue first round discovery requests on the Department (and other non-respondent parties) by June 29 and for non-respondents to file responses to first round discovery requests by August 5, 2016.¹ On June 29, Mr. Bittersdorf issued notices of deposition and deposition *duces tecum* on all non-respondent parties, including a notice of deposition of the Department’s Andrew Perchlik scheduled for July 15, 2016.

¹ The Hearing Officer issued a procedural order on June 30, 2016, granting requested two-day extensions of the June 29 and August 5 deadlines to July 1 and August 7, 2016, respectively.

The Department issued a letter to Mr. Blittersdorf's counsel on July 11, 2016, informing counsel that it would not make any representative available for deposition until August 5, 2016, consistent with the Hearing Officer's June 16 scheduling order. Counsel for the Department and Mr. Blittersdorf agreed to postpone the July 15 deposition of Mr. Perchlik to August 5. The Department, ANR, and Irasburg then filed the Motion on July 15, 2016 seeking to quash all notices of deposition, including the deposition of Mr. Perchlik. On July 18, 2016, Mr. Blittersdorf issued a notice of deposition for Mr. Perchlik scheduled for August 5, notwithstanding the pending Motion.

The Department continues to oppose the deposition of Mr. Perchlik for the reasons outlined in the Motion and supporting memorandum, and believes that such a deposition on August 5 would be wasteful, unduly burdensome, and duplicative with other methods of discovery already employed by Mr. Blitterdorf. The Department therefore respectfully requests that the Hearing Officer expedite review of the Motion and issue a ruling on the Motion prior to August 5, 2016. Any response to the Motion by Mr. Blitterdorf is due by August 1, 2016, pursuant to V.R.C.P. 78(b)(1). However, the rule also allows for the Hearing Officer to issue an order establishing a response time that deviates from the default 15-day timeframe.

Alternatively, the Department respectfully requests that the Hearing Officer issue an order staying the deposition of Mr. Perchlik, and all other proposed depositions, until after the Hearing Officer has ruled on the Motion. As noted in the Motion's supporting memorandum, the Hearing Officer has not yet made a determination of whether a violation of Title 30 occurred, and the information Mr. Blittersdorf seeks through deposition does not address the question liability that is at issue in the proceeding at this time. As a result, an order to stay the proceeding at this time would not pose any unique harm or prejudice to Mr. Blittersdorf. The appropriate scope, timing,

and methods of discovery will be more clear once the Hearing Officer rules on the Motion and the Department's pending motion for partial summary judgment.

Again, the Department does not seek to deny Mr. Blittersdorf the ability to conduct appropriate discovery related to issues relevant to the proceeding when and if those issues are relevant. The Motion seeks to establish appropriate limits on discovery in order to avoid waste associated with the unduly burdensome, expensive, and duplicative depositions now sought by Mr. Blittersdorf.


Based on the foregoing, the Department reiterates its request for the Hearing Officer to expedite review of the Department, ANR, and Irasburg's Motion to Quash Notices of Deposition and for Protective Order to enable a ruling in advance of August 5, 2016, or, alternatively, to order a stay of the deposition until after the Hearing Officer is able to rule on the Motion.

Dated at Montpelier, Vermont this Twenty-first day of July, 2016.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:



Geoffrey Commons
Director for Public Advocacy
Aaron Kisicki
Special Counsel

cc: Docket 8585 Service List