



VERMONT PUBLIC
SERVICE BOARD

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State of Vermont

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2016 JUL 29 AM 10 50

Agency of Natural Resources

July 29, 2016

By Hand Delivery & E-mail

Ms. Judith C. Whitney, Clerk of the Board
Vermont Public Service Board
112 State Street
Montpelier, VT 05620-2701
PSB.Clerk@vermont.gov

RE: PSB Docket No. 8585; Investigation into Meteorological Tower at 700 Kidder Hill Road in
Irasburg, Vermont

Dear Ms. Whitney:

The Agency of Natural Resources (ANR) and the Department of Public Service (the Department) jointly oppose Respondent's request for extension of the July 29, 2016 deadline for responding to the Department's July 1, 2016 Motion for Partial Summary Judgment in the above-captioned matter.

ANR is writing to clarify that although Respondent has withdrawn his notices of deposition on ANR technical staff members, ANR has not fully abandoned its request for relief in its jointly filed July 15, 2016 Motion to Quash and for Protective Order. In subsequent filings, Respondent has represented that "the Agency's request for relief in the motion is moot,"¹ and that the Agency has "reached an Agreement with the Respondent and therefore its participation in the motion is moot."² ANR partially disagrees with this representation.

Although the issues related to the depositions noticed on ANR are moot as a result of Respondent's withdrawal of his notice of depositions on ANR, ANR still joins in the motion seeking a "protective order limiting discovery to issues that are relevant at the time a request is made, making clear that only

¹ Respondent's *Supplemental Memorandum of Law in Opposition to Motion to Quash and for Protective Order*, Docket No. 8585, in re: Investigation into Meteorological Tower at 700 Kidder Hill Road in Irasburg, Vermont, page 1, FN 1 (filed July 27, 2016).

² Respondent's *Affidavit of Counsel Pursuant to V.R.C.P. 56(d)*, Docket No. 8585, in re: Investigation into Meteorological Tower at 700 Kidder Hill Road in Irasburg, Vermont, page 2, FN 1 (filed July 28, 2016).

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issues related to whether a violation has taken place are relevant unless and until the Board and/or Hearing Officer determines a violation did, in fact, take place.”³

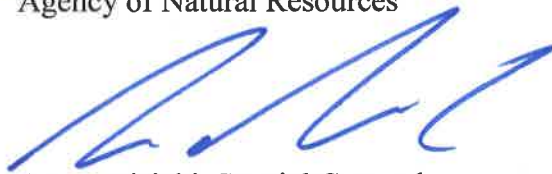
As Respondent notes in his request, the Department also opposes an extension of time. Respondent seeks an extension of time in order to depose Department representatives in advance of filing his response to the Motion for Partial Summary Judgment. The Department has made clear in a number of writings, including a July 11 letter to Respondent and the Motion for Partial Summary Judgment, that such efforts are in contravention of the clear sequencing of deadlines contained in the Hearing Officer’s July 16 and 30 Scheduling Orders. Furthermore, the information Respondent seeks is not relevant to a response to the Motion for Partial Summary Judgment. The Department has no information in its custody or control that would contradict or otherwise undermine Respondent’s own testimony or response to discovery requests, which are the only factual bases of the Motion for Partial Summary Judgment. Additionally, any arguments related to the Board’s jurisdiction in this proceeding or the Department’s alleged role in an anemometer loan program are not relevant to the discrete scope of issues presented in the Motion for Partial Summary Judgment. Deposition of Department representatives is not necessary prior to a response to the Motion, if at all.

ANR and the Department appreciate the Board’s consideration of these comments. Please do not hesitate to contact us with any questions.

Sincerely,



Leslie A. Welts, Litigation Attorney
Agency of Natural Resources



Aaron Kisicki, Special Counsel
Department of Public Service

Cc: Leslie A. Cadwell, Esq.
Alison Millbury Stone, Esq.
Mr. Ron Holland

³ The Vermont Department of Public Service, the Vermont Agency of Natural Resources, and the Town of Irasburg’s *Motion to Quash Notices of Deposition and for Protective Order*, Docket No. 8585, in re: Investigation into Meteorological Tower at 700 Kidder Hill Road in Irasburg, Vermont, pages 1-2 (filed July 15, 2016).