

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 8585

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

Order entered: 8/4/2016

**ORDER RE: MOTION TO QUASH DEPOSITIONS**

On July 15, 2016, the Vermont Department of Public Service (“Department”), Vermont Agency of Natural Resources (“ANR”), and Town of Irasburg (“Irasburg”) (jointly, the “Non-respondents”) filed a motion to quash notices of depositions and depositions *duces tecum* issued by David Blittersdorf. Mr. Blittersdorf objects to the motion. On July 21, 2016, the Department filed a request for expedited review of the motion. In this Order, I deny the Non-respondents’ motion.

**I. The Motion**

The Non-respondents assert that the depositions are overbroad, seek information that is irrelevant to the subject matter at this stage of the proceeding, is privileged, and not reasonably calculated to lead to the discovery of admissible evidence. The Non-respondents argue that, at this time, the only issues pending relate to the question of whether Mr. Blittersdorf violated Section 30 of Title 30, which is the subject of a motion for summary judgment that is now pending. The Non-respondents point to the fact that Mr. Blittersdorf has asked for information related to the scope of Dr. Holland’s authority to act on behalf of Irasburg, which they contend is not relevant to the determination of a violation.

The Non-respondents also contend that the depositions are unduly burdensome at this stage of the proceeding and that Mr. Blittersdorf could obtain the information in a less intrusive manner. They point out that this discovery would be irrelevant if the Public Service Board concluded as a matter of law that no violation had occurred.

As a result, the Non-respondents ask that the Hearing Officer issue a protective order limiting discovery to issues that are relevant at the present time and that could not be explored through interrogatories.

## **II. Mr. Blittersdorf's Response**

Mr. Blittersdorf counters that the Non-respondents seek to bar investigation into legitimate and reasonable information that is relevant to this investigation.<sup>1</sup> Mr. Blittersdorf states that since the outset of the proceeding, he has sought to exercise his right to discovery.<sup>2</sup> Mr. Blittersdorf argues that the Board has long-recognized that the discovery rules should be liberally construed to ensure that parties have knowledge of all relevant facts. Mr. Blittersdorf also notes that unless limited, this means that all acceptable means of discovery are available.

Mr. Blittersdorf also asserts that the Non-respondents have not shown good cause for quashing the notices of deposition. He asserts that there are many issues in this proceeding, not only the question of whether Mr. Blittersdorf violated Sections 246 and 248 by constructing a facility.

## **III. Discussion**

At the status conference on June 15, 2016, and in the scheduling order issued on June 16, 2016, I permitted Mr. Blittersdorf to conduct discovery in advance of the filing of testimony by Non-respondents. This was intended to allow Mr. Blittersdorf to gather some factual information before “memories fade.”<sup>3</sup> It was also intended to allow Mr. Blittersdorf to gather information on the various factors that the Board must assess in setting a penalty under 30 V.S.A. § 30

---

1. Mr. Blittersdorf refers to the Non-respondents as the “Prosecuting Parties.” This is an inaccurate characterization of their status in this investigation and I decline to adopt it. This investigation was opened by the Board to determine whether Mr. Blittersdorf has violated Section 30.

2. I note that until the June 15, 2016, status conference, Mr. Blittersdorf had not requested that the Hearing Officer permit discovery on the Non-respondents. Mr. Blittersdorf’s original proposed schedule (which I did not adopt) allowed him to conduct discovery, but only after the Non-respondents submitted prefiled testimony. Thus, the suggestion that Mr. Blittersdorf has been somehow denied a right to obtain discovery is not valid.

3. Tr. 6/15/16 at 17.

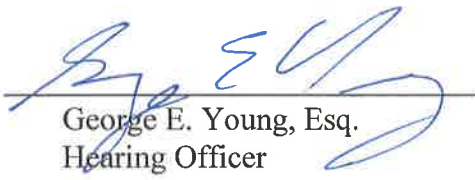
(assuming it is warranted), which was what Mr. Blittersdorf requested.<sup>4</sup> In my ruling, although I was under the impression that the discovery would be in written form as is normal, I did not limit the form of the discovery. Thus, Mr. Blittersdorf's use of depositions is within the scope of the permissible discovery.

I note, however, that I make no ruling as to whether particular inquiries in the depositions are appropriate. The Non-respondents remain free to raise objections over information that is privileged. Also, discovery must, of course, be limited to material that is relevant to the issues in the proceeding. I note that the Non-respondents cited a potential inquiry into the scope of Mr. Holland's authority. It is not clear how this could possibly relate to the Section 30 criteria or the question of whether Sections 246 and/or 248 were violated. However, at this time, I have insufficient information to rule on the reasonableness of any particular inquiry.

In summary, the Non-respondents' motion is denied.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 4th day of August, 2016.

  
George E. Young, Esq.  
Hearing Officer

OFFICE OF THE CLERK

FILED: August 4, 2016

ATTEST: Judith C. Whitney  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@vermont.gov)*

---

4. *Id.* at 6-7.

PSB Docket No. 8585 - SERVICE LIST

*Sent via mail & e-mail 8/4/16*

*jaw*

Parties:

✓ Aaron Kisicki, Esq.  
Vermont Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601

✓ Leslie A. Cadwell, Esq.  
Alison M. Stone, Esq.  
Legal Counselors & Advocates, PLC  
PO Box 827  
Castleton, VT 05735

(For David Blittersdorf)

✓ Leslie Welts, Esq.  
Enforcement and Litigation Section  
Vermont Agency of Natural Resources  
1 National Life Drive, Davis 2  
Montpelier, VT 05620-3901

✓ Dr. Robert R. Holland, Moderator, *pro se*  
Town of Irasburg  
4328 Route 14, PO Box 88  
Irasburg, VT 05845

Interested Persons:

✓ George Young, Esq., Hearing Officer

✓ Town of Irasburg Selectboard  
161 Route 58 East, PO Box 51  
Irasburg, VT 05845

~~JoAnn Q. Carson (Court Reporter)  
11 Northshore Drive  
Burlington, VT 05408~~

~~Kim Sears (Court Reporter)  
18 Paddock Lane  
Williston, VT 05495~~

STATE OF VERMONT  
DEPT OF PUBLIC SERVICE  
MONTPELIER, VT  
05620-2601  
2016 AUG - 5 A 8:08

Docket	✓
TRAINING	✓
WORK	✓
HONORAR	✓
STAFF	✓
COMPUTER	✓
WESTLAW	✓
WEB	✓

## Whitney, Judith

---

**From:** PSB - Clerk  
**Sent:** Thursday, August 04, 2016 3:45 PM  
**To:** Kisicki, Aaron; Leslie Cadwell (lac@lac-ica.com); Alison Milbury Stone; Welts, Leslie; Robert Holland (kcf.rrh@gmail.com)  
**Subject:** PSB Docket No. 8585 - Investigation into Met Tower at 700 Kidder Hill Road in Irasburg, Vermont  
**Attachments:** 8585 Order Re Motion to Quash.pdf; 8585 Order Re Extension.pdf  
**Importance:** High

Dear Parties: Enclosed are two Orders being issued today by Public Service Board Hearing Officer, George Young, in the above-referenced docket. Hard copies of the Orders are also being sent via mail.

Thank you.

Sincerely,

Judith C. Whitney  
Clerk of the Board  
Vermont Public Service Board  
112 State Street  
Montpelier, VT 05620-2701  
802-828-2358  
psb.clerk@vermont.gov