

STATE OF VERMONT  
PUBLIC SERVICE BOARD

VERMONT PUBLIC  
SERVICE BOARD

Docket No. 8585

2016 AUG 11 AM 9 01

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

**RESPONDENT'S SUPPLEMENTAL MEMORANDUM  
ON SUMMARY JUDGMENT**

NOW COMES David Blittersdorf, Respondent in the above-captioned action, by and through his undersigned counsel and pursuant to V.R.C.P. 56(b), to supplement his July 29, 2016 memorandum opposing the motion for partial summary judgment filed by the Vermont Department of Public Service (PSD) on July 1, 2016, and cross-moving for summary judgment in Respondent's favor and dismissal of this investigation with prejudice ("Respondent's Opposition and Cross Motion for Summary Judgment"). This supplement incorporates information obtained by Respondent via discovery requests served upon Non-Respondents in this matter. In support of his opposition and requests for relief, Respondent offers an Affidavit and Attachments of David Blittersdorf and a Supplemented Statement of Undisputed Material Facts ("RSUMF") and Supplemental Citations for Respondent's July 29, 2016 Statement of Undisputed Material Facts. Respondent incorporates herein by reference the facts and arguments made in its July 29, 2016 and offers this Supplemental Memorandum as further support for his position that summary judgment in Respondent's favor is appropriate.

MEMORANDUM OF LAW

**I. Respondent is entitled to judgment as matter of law because Respondent's meteorological mast is not subject to the Board's Section 246 jurisdiction**

As explained in Respondent's Opposition and Cross Motion for Summary Judgment, the Board's jurisdiction under 30 V.S.A. § 246 is limited to the proposed construction or installation of "a *temporary* tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions, constructed or installed in order to determine the suitability of a site for the location of a grid-connected wind turbine."<sup>1</sup> Discovery on Non-Respondents in this matter further supports the conclusion that there are no facts to establish the following essential elements that are required for the Board's Section 246 jurisdiction to attach: (1) the met tower in question is *temporary* and (2) the installation was done in order to determine the suitability of a site for the location of a grid-connected wind turbine.

First, Non-Respondents admit to possessing no evidence that contradicts Respondent's prefiled testimony in any respect, including that his meteorological mast is a permanent installation. See Department of Public Service Response to Respondent's Request to Admit No. 1 ("DPS Response to Respondent's RTA"); Department of Public Service Response to Respondent's Request to Produce Documents Nos. 3, 7 ("DPS Response to Respondent's RTP"); Deposition of Robert Holland, 8/5/2016 at 20:8. See

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<sup>1</sup> See Order Establishing Standards and Procedures for Issuance of a Certificate of Public Good for a Temporary Meteorological Station Pursuant to 30 V.S.A. § 246, March 9, 2010 ("Section 246 Standards Order") at 6 (emphasis added); see also 30 V.S.A. § 246.

also Respondent's Statement of Undisputed Material Facts ("SOUMF") at ¶¶ 2, 4-6.

Second, with respect to the permanency of Respondent's installation, the Town of Irasburg has assessed real property taxes on the met mast because it is a permanent, not temporary, installation on Respondent's property. SOUMF at ¶¶4-5. Accordingly, there is no genuine dispute as to the material fact that Respondent's tower is not a temporary installation, but a permanent one. Inasmuch as Section 246 does not require a certificate of public good for a permanent met mast installation like Respondent's, Respondent is entitled to judgment as a matter of law that he did not violate Section 246 by not obtaining a certificate of public good before he installed the met mast on his property in Irasburg.

The Department and other parties have also failed to produce any evidence to establish an integral element of the Board's definition for a Section 246 "temporary meteorological station," namely that the station is being installed "in order to determine the suitability of a site for the location of a grid-connected wind turbine." *See Section 246 Standards and Procedures Order* at 6 (defining a Section 246 "temporary meteorological station" as one that is installed for the purpose of determining "the suitability of a site for the location of a grid-connected wind turbine").

There is no genuine dispute that Respondent's intent when he installed the met mast was to test prototypes of his inventions, in addition to assessing wind resources on his property. With respect to the latter purpose, Respondent is an inventor who has been studying wind since he was a child and he has been testing wind measuring

devices since he was a teenager. RSUMF at ¶ 2. The record evidence also establishes that when Respondent purchased his Irasburg property in the fall of 2010, he intended to use one or two small wind turbines to power a future log cabin that he was planning to build on the property. RSUMF at ¶ 1. Therefore, at most, the record evidence establishes that Respondent installed the met mast before he installed his two residential net-metered wind turbines, but the wind turbines were planned before any met mast was installed or "suitability" data had been collected. Again, the Department admits to having no evidence to contradict Respondent's testimony, and no other party has produced any contradictory evidence to warrant a hearing. Summary judgment for Respondent is appropriate.

In sum, Respondent is entitled to judgment as a matter of law that Section 246 does not apply to his met mast because there is no evidence on the record to show that it was a temporary structure installed "in order to determine the suitability of a site for the location of a grid-connected wind turbine," and in fact, the evidence shows that Respondent had other purposes in mind for his met mast.

The Board should deny Non-Respondent's motion for summary judgment and enter an order granting Respondent judgment as a matter of law and dismissing this proceeding with prejudice.

**II. Respondent is entitled to judgment as a matter of law because Respondent's met mast is not subject to the Board's Section 248 jurisdiction.**

Respondent's meteorological mast is not subject to the Board's Section 248 jurisdiction because it is not part of a grid-connected electric generation facility, and Non-Respondents have not produced evidence to the contrary. In fact, Non-Respondents' evidence that Respondent's met mast is not needed to operate his residential wind turbines confirms Respondent's affidavit testimony that the met mast is not part of the wind turbine installations. RSUMF at ¶ 6. Furthermore, even if Section 248 applied to "necessary precursors" to site preparation or construction of an electric generation station, it is an undisputed fact that Respondent's met mast is not a necessary precursor to any wind turbine installation and that many residential wind turbines have been installed in Vermont without a met mast having been installed first. RSUMF at ¶¶ 5, 6, 7. Non-Respondents' evidence proves that even if data collected by a met mast's instruments can be helpful to evaluate economic risk before a turbine is installed, there are alternatives to a met mast installation. RSUMF at ¶ 7. Publicly-available data collected on wind resources in the State of Vermont, including mapping of wind resources, could be used to determine the viability of a location for a residential wind installation. *Id.* For other wind turbine installations, data collected from a LIDAR unit, which measures wind speed and wind direction, could be used. *Id.* The availability of alternative sources of pre-installation testing data underscores the undisputed, material fact that, in this case, Respondent's met tower was not necessary for the

installation of any wind electric generating facility subsequently installed on his property.

Respondent's undisputed testimony, combined with Non-Respondents' deposition testimony and written discovery responses provided to date, establish that Respondent's met mast installation is neither a necessary precursor to, nor an actual component of, an electric generation facility subject to the Board's jurisdiction under Section 248, and summary judgment in Respondent's favor is appropriate.

### III. Conclusion

Based on the foregoing, and Respondent's July 29, 2016 Summary Judgment Motion, Respondent respectfully requests that the Board deny summary judgment to the Department and grant judgment for Respondent because there is no genuine factual dispute that Respondent's met mast installation did not trigger the Board's jurisdiction under either Section 246 or Section 248 of Title 30.

Dated at Castleton, Vermont this 10<sup>th</sup> day of August, 2016.



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