

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-1755-PET

Petition of Industrial Tower and Wireless LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, for the installation of wireless telecommunications equipment at 160 Frog Hollow Lane in Westmore, Vermont	
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Order entered: 09/10/2024

PROCEDURAL ORDER RE MOTIONS TO INTERVENE AND REQUESTS FOR HEARING

I. INTRODUCTION

This case involves a petition filed by Industrial Tower and Wireless LLC (“Petitioner”) requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, for authorization to install wireless telecommunications equipment in Westmore, Vermont (the “Project”). In today’s Order, I grant in part and deny in part several motions to intervene and requests for hearing that have been filed in this case.

II. PROCEDURAL HISTORY

On July 9, 2024, Elizabeth Tucker, Donna Dzugas, Andrew Zebrowski, Megan Patton, Elizabeth Vooris, and Robert Fitzpatrick each filed a separate motion to intervene. Elizabeth Tucker and Elizabeth Vooris also filed requests for an evidentiary hearing to be held in this proceeding.¹

On July 10, 2024, Ronald and Kathy Holmes sent an e-mail to the Clerk of the Commission requesting assistance with filing a public comment and motion to intervene in this proceeding. The Holmeses did not attach a motion to the email, and have not, subsequently, filed a motion to intervene in this proceeding.

On July 31, 2024, the Vermont Department of Public Service (“Department”) filed a response to each of the motions to intervene.

¹ The Vooris and Fitzpatrick motions were sent to the Clerk via email on July 9 and were entered into ePUC by the Clerk with July 9, 2024, as the filing date.

On August 29, 2024, the Petitioner filed a response to each of the motions to intervene and requests for hearing.

III. LEGAL STANDARD

Rule 2.209 governs intervention in proceedings before the Commission. Rule 2.209(A) provides that upon timely application a person is entitled to intervene in a proceeding:

- (1) when a statute or Commission rule confers an unconditional right to intervene; or
- (2) when the applicant claims an interest in the matters that must be resolved in the proceeding and the applicant is so situated that the disposition of the proceeding may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

In addition, Rule 2.209(B) reserves to the Commission the power to grant intervenor status on a permissive basis:

- (1) when a statute or Commission rule confers a conditional right to intervene; or
- (2) when an applicant's claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding.

In exercising its discretion under Rule 2.209(B), the Commission must consider whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public.

Rule 2.209(C) further provides that the Commission may impose certain restrictions on an intervenor's participation in a proceeding. Specifically, the Commission may restrict that party's participation, may require that party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, and may otherwise limit that party's participation, all as the interests of justice and economy of adjudication require.²

IV. POSITIONS OF THE PARTIES

Elizabeth Tucker, Donna Dzugas, Andrew Zebrowski, Megan Patton, Elizabeth Vooris, and Robert Fitzpatrick (together, the "Intervenors") all argue that they will be negatively impacted both economically and aesthetically by the installation of the Project because they will be able to view the Project from their respective properties. The Intervenors also contend that

² The Commission may not require a State agency to be represented jointly with any other party to a case.

the Project will conflict with provisions of the Westmore Town Plan and will negatively impact surrounding natural areas. The Intervenor also seek permissive intervention concerning historic sites, the natural environment, public health and safety, primary agricultural soils, and greenhouse gas impacts.

The Petitioner argues that the Fitzpatrick's, Vooris's, and Holmeses' motions were untimely filed after the July 9 filing deadline and should be rejected on this basis. The Petitioner does not object to granting permissive intervention on aesthetic grounds to those intervenors who adjoin the Project parcel. However, the Petitioner objects to granting intervention regarding economic impacts, historic sites, the natural environment, public health and safety, primary agricultural soils, and greenhouse gas impacts issues related to the Project on the basis that these issues are concerns common to the general public and are adequately represented by the Department and other statutory parties. The Petitioner further argues that the requests for hearing by the Intervenor should be denied because they can be resolved based on these written submissions alone.

The Department has no objection to granting the Intervenor intervention with respect to aesthetic impacts and orderly development concerns. The Department recommends that the Intervenor not represented by counsel be required to coordinate their participation in the case.

V. DISCUSSION AND CONCLUSION

I find that the motions to intervene filed by Ms. Vooris and Mr. Fitzpatrick were timely filed. Both intervenors emailed their motions to the Clerk of the Commission on July 9 stating that they were experiencing difficulty uploading their motions into the case via the Commission's electronic document filing system. The Clerk subsequently uploaded the motions on July 10, but dated the motions as if filed on July 9. Therefore, I find these motions to be timely filed.

All Intervenor seek permissive intervention through Commission Rule 2.209(B).

The Intervenor have adequately demonstrated through the visual-aesthetics allegations in their motions to intervene that their claimed interest in the Project's aesthetic impact shares a question of law or fact in common with the applicable criteria included in 30 V.S.A. § 248a(c)(1), which must be resolved in this proceeding. I also find that intervention on the basis

of aesthetics will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. Therefore, I grant the Intervenor's permissive intervention with respect to the Project's aesthetic impact under Section 248a(c)(1), pursuant to Rule 2.209(B)(2).

The Intervenor's also allege that the Project will conflict with the goals of the Westmore Town Plan. Accordingly, I grant the Intervenor's permissive intervention regarding compliance with the municipal plan under Section 248a(c)(2) as well.

The Commission has previously concluded that impacts on individual property rights and property values are outside the scope of the Commission's jurisdiction in Section 248a proceedings.³ Therefore, I deny the Intervenor's motions to the extent the Intervenor's seek to intervene on the basis of the Project's impact on the Intervenor's respective property rights or property values.⁴

I also deny the Intervenor's request for intervention on economic impacts, historic sites, the natural environment, public health and safety, primary agricultural soils, and greenhouse gas impacts. The Intervenor's only raise generalized arguments on these issues.⁵ The Intervenor's have not demonstrated a personal, particular interest with respect to any of these issues, or explained why other parties in the case will not adequately protect these interests. In such a situation, granting intervention risks undue delay of the proceeding. Based on these considerations, I decline to grant permissive intervention to the Intervenor's under Rule 2.209(B) for issues related to economic impacts, historic sites, the natural environment, public health and safety, primary agricultural soils, and greenhouse gas impacts.

³ See, e.g., *Petition of VTel Wireless, Inc.*, Docket No. 8352, Order of 11/24/14 at 7-8 ("The [Commission's] review of petitions filed pursuant to § 248a is required to consider several criteria enumerated in the statute. However, the statute does not require that the Commission consider private property interests of neighboring landowners; see also *Petition of Danyow Road Solar, LLC for a certificate of public good, pursuant to 30 V.S.A. § 248, for a 5 MW ground-mounted solar array located in Sheldon, Vermont*, Case No. 22-3427-PET, Order of 10/3/22 at 3 ("the Commission has long held that concerns over individual property values are not within the scope of a Section 248 proceeding.")).

⁴ To the extent that Intervenor's have stated "economics" as a grounds for intervention, there is nothing distinct and specific they have alleged to support another independent reason apart from individual property rights and property values that would support intervention on this basis.

⁵ Cf. Case No. 18-1633-PET, Order of 9/24/18 at 3 ("In applying Rule 2.209, the Commission has consistently held that an intervenor's interests must be sufficiently 'particularized,' meaning that an intervenor must demonstrate that his or her interest in a proceeding is different from the general interests of other retail ratepayers represented by the Department."); *In re Petition of Green Mountain Power Corporation*, 2018 VT 97, ¶ 16 (holding that a person's "interests as a ratepayer did not constitute a substantial, particularized interest, because [the person's] position was not distinct from that of any other generic, individual ratepayer.").

Therefore, the scope of the Intervenor's intervention in this proceeding is limited to aesthetic issues and compliance with the municipal plan.

With respect to the request for an evidentiary hearing, Section VII of the Commission's Section 248a *Procedures Order* provides that "[i]n order to request an evidentiary hearing, commenters must make a showing that the application raises a significant issue regarding one or more of the substantive criteria applicable to the proposed project."⁶ In this case, the Intervenor's motions contain evidence that suggests that the Project has at least the potential to raise a significant issue with respect to aesthetics and the municipal plan, which are applicable to this case under Sections 248a(c)(1) and (2). Accordingly, the request for an evidentiary hearing is granted.

I also agree with the Department that the Intervenor should coordinate their activities through a single representative for the remainder of this proceeding. Accordingly, the Intervenor is required to coordinate their members' participation in discovery, in the presentation of evidence, in cross-examination, and in briefing.

SO ORDERED.

⁶ *Sixth amended order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Case No. 18-2940-INV, Order of 9/21/18.

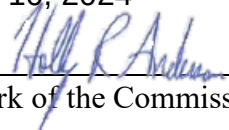
Dated at Montpelier, Vermont, this 10th day of September, 2024.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: September 10, 2024

Attest: 
Clerk of the Commission

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

PUC Case No. 24-1755-PET - SERVICE LIST

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*Notice of appearance to be filed.
^Motion to Intervene pending.