

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:

PROCEDURAL ORDER GRANTING MOTION FOR RECONSIDERATION

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 the motion for reconsideration filed by Ronald and Kathy Holmes.

II. PROCEDURAL HISTORY

On July 9, 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 also included a copy of a motion to intervene in this proceeding in the email. The email was subsequently filed in the case by the Clerk on July 10.

On September 10, 2024, I issued an order denying the motion to intervene because it was late filed after the July 9 deadline for motions to intervene.

On September 13, 2024, the Holmeses filed a motion for reconsideration.

On September 27, 2024, the Petitioner filed a response to the motion.

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.¹

IV. POSITIONS OF THE PARTIES

The Holmeses argue that while they did not formally file their motion to intervene in a timely manner, they did send an email to the Clerk of the Commission on July 9 in which they requested assistance with filing and attached a copy of their motion to intervene to that email. In their motion to intervene the Holmeses contend 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 property. The Holmeses also maintain that the Project will conflict with provisions of the Westmore Town Plan and will negatively impact surrounding natural areas. The Holmeses also seek permissive intervention concerning historic sites, the natural environment, public health and safety, primary agricultural soils, and greenhouse gas impacts.

¹ The Commission may not require a State agency to be represented jointly with any other party to a case.

The Petitioner does not oppose the motion for reconsideration and does not object to granting permissive intervention on aesthetic grounds to the Holmes. 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 of Public Service and other statutory parties.

V. DISCUSSION AND CONCLUSION

Upon reconsideration, I find that the motion to intervene filed by Holmeses was timely filed. While the Holmeses failed to properly file their motion in the case, they did email a copy of the motion to the Clerk of the Commission on July 9 stating that they were experiencing difficulty uploading their motion into the case via the Commission's electronic document filing system. The Clerk subsequently uploaded the motions on July 10. Therefore, upon reconsideration, I find the motion to be timely filed.

The Holmeses seek permissive intervention through Commission Rule 2.209(B).

The Holmeses 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 permissive intervention with respect to the Project's aesthetic impact under Section 248a(c)(1), pursuant to Rule 2.209(B)(2).

The Holmeses also allege that the Project will conflict with the goals of the Westmore Town Plan. Accordingly, I grant 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.² Therefore, I deny the Holmeses' motion to the extent they seek to intervene on the basis of the Project's impact on their property rights or property values.³

I also deny the Holmeses request for intervention on economic impacts, historic sites, the natural environment, public health and safety, primary agricultural soils, and greenhouse gas impacts. The Holmeses only raise generalized arguments on these issues.⁴ They 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 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.

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

SO ORDERED.

² 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.")).

³ To the extent that Holmeses 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.

⁴ 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.").

Dated at Montpelier, Vermont, this _____.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed:

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.