

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: 02/27/2025

PROCEDURAL ORDER DENYING MOTION TO INTERVENE

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 deny the motion to intervene filed by Westmore Planning Commission.

II. PROCEDURAL HISTORY

On June 11, 2024, the Commission issued a notice of complete petition that established the deadline for motions to intervene as July 9, 2024.

On February 3, 2025, the Town of Westmore Planning Commission (“Planning Commission”) filed a motion to intervene in this proceeding.

On February 21, 2025, the Vermont Department of Public Service (Department”) filed a response stating that it does not oppose the motion.

On September 13, 2024, the Petitioner filed a response in opposition 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.

The Commission's Standards and Procedures Implementing 30 V.S.A. § 248a ("Standards and Procedures"),¹ at Section VII states in pertinent part:

If any person wishes to submit comments or motions to intervene to the Commission concerning an application filed pursuant to Section 248a or request a hearing for projects other than de minimis modifications, such correspondence is due at the Commission within 30 calendar days of the date that the application was served on all required recipients. . . . The 30-day comment period begins once the application or notice is served and ends 30 days later. Comments, motions to intervene, and requests for hearing filed outside the 30-day comment period will be considered untimely and will not be considered by the Commission.

30 V.S.A. § 248a(j)(2)(A), provides in relevant part as follows:

... Within two business days following notification from the Commission that the filing is complete, the applicant also shall serve written notice of the proposed certificate on the landowners of record of property adjoining the project site or sites unless the Commission has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the Commission within 30 days following the date of service on the question of whether the application raises a significant issue with respect to the substantive criteria of this section

IV. POSITIONS OF THE PARTIES

The Petitioner argues that the motion was untimely filed after the July 9, 2024, filing deadline and should be rejected on this basis. The Petitioner states that the motion was not filed until seven months after the deadline to file motions to intervene that is set in conjunction with the 30-day statutory comment period established pursuant to 30 V.S.A. § 248a(j)(2)(A). Therefore, the Petitioner contends that the motion should be rejected.

The Department acknowledges that the motion is untimely filed. However, the Department does not oppose the Planning Commission's intervention "as a statutory participant under 30 V.S.A. § 248a(m)."²

¹ *Investigation into revised standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Case No. 22-5122-INV, Order of 1/18/23 at Attachment.

V. DISCUSSION AND CONCLUSION

Commission Rule 2.209(A)(1) provides for intervention as of right for entities when a statute or Commission rule confers an unconditional right to intervene. Pursuant to 30 V.S.A. § 248a(m), “[t]he legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.” Section 248a(m) confers a statutory right to participate for a planning commission or municipal legislative body that triggers the Rule 2.209(A)(1) analysis for intervention.

However, the right to intervene, even if conferred by statute, is not absolute and must still follow relevant procedural requirements, such as timeliness. The Commission’s Standards and Procedures Implementing 30 V.S.A. § 248a state that motions to intervene “filed outside the 30-day comment period will be considered untimely and will not be considered by the Commission.” Absent good cause, the Commission holds all filers to this deadline for intervention. The Commission sets deadlines to ensure the efficient processing of cases and fairness in notice to the parties regarding who is participating as a party.

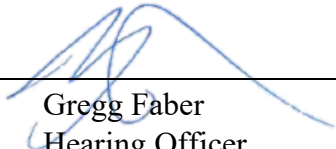
Here, the Planning Commission’s request to be admitted as a party is seven months out of time. The Planning Commission’s filing does not offer any explanation for why the request was filed so late. Accordingly, the Planning Commission will not be admitted as a party.

Nonetheless, under Section 248a(n), “[t]he Commission shall consider the comments and recommendations submitted by the municipal legislative body and planning commission.” Therefore, the comments submitted by the Planning Commission will be treated as a public comment, and the Commission is required to “include a detailed written response to each recommendation of the . . . planning commission” when issuing a decision in this case.

² Department Response at 1.

SO ORDERED.

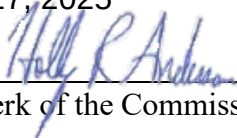
Dated at Montpelier, Vermont, this 27th day of February, 2025.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: February 27, 2025

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.