

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: 04/11/2025

ORDER DENYING MOTION FOR RECONSIDERATION FILED BY THE TOWN OF WESTMORE

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 for reconsideration filed by the Town of Westmore (“Town”).

II. PROCEDURAL HISTORY

On June 6, 2024, the Petitioner filed a petition and prefiled testimony requesting that the Vermont Public Utility Commission (“Commission”) issue a certificate of public good (“CPG”). A copy of the petition was filed with all required State agencies and the host municipality pursuant to § 248a(e). Notice of the filing of the petition was provided to all adjoining landowners of record.

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 February 21, 2025, the Petitioner filed a response in opposition to the motion.

On February 27, 2025, I issued an order denying the Town’s motion.

On March 6, 2025, the Town filed a letter that I am treating as a motion for reconsideration under Commission Rule 2.221.

On March 14, 2025, the Petitioner filed an opposition to the Town's motion for reconsideration.

On March 28, 2025, the intervenor landowners in this case filed a response to the Town's motion supporting the Town's intervention.

III. LEGAL STANDARD

The Commission "reviews motions to reconsider pursuant to Commission Rule 2.221, which incorporates the language of Vermont Rule of Civil Procedure 59 without modification."¹ Reconsideration under Rule 2.221 is appropriate "only to avoid an unjust result due to mistake or inadvertence of the Commission, and not the fault or neglect of a party."² The disposition of a reconsideration motion rests with the discretion of the Commission.³ Granting reconsideration is an extraordinary remedy to be used with great caution.⁴ A motion for reconsideration is not an opportunity to relitigate issues that have been raised previously.⁵

IV. DISCUSSION AND CONCLUSION

The Town's request for reconsideration rests solely on the following statement "Towns are parties by right of statute. The hearing officer's decision sets an unfortunate precedent as it now stands."⁶

As I explained in the order denying the Town's motion, Section 248a(m) states that a municipal planning commission "shall have the right to appear and participate." That statutory provision confers on municipal planning commissions the statutory right to intervene contemplated by Commission Rule 2.209(A)(1). However, granting the right to intervene *at any time* in a proceeding violates the first part of Commission Rule 2.209(A), which requires "timely

¹ *Petition of Otter Creek Solar, LLC*, Case No. 19-0516-PET. Order of 11/1/24.

² *Id.* at 2.

³ *Alden v. Alden*, 2010 VT 3, 187 Vt. 591, 592, 992 A.2d 298 (2010).

⁴ *Petition of Vermont Gas Systems, Inc. for authority to condemn easement rights in property interests of the Town of Hinesburg, Vermont, at Shelburne Falls Road, Hinesburg, Vermont, for the purpose of constructing the pipeline authorized in Docket 7970, Docket 8643*, Order of 11/3/16 at 2.

⁵ *Id.*; see also *Analytical Survs., Inc. v. Tonga Partners, L.P.*, 684 F.3d 36, 52 (2d Cir. 2012) ("Rather, the standard for granting a Rule 59 motion for reconsideration is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked.").

⁶ Letter from Town of Westmore (3/6/25) at 1.

application” for intervention. Both Commission Rule 2.209(A) and the Commission’s Standards and Procedures Implementing 30 V.S.A. § 248a (“Standards and Procedures”) require timely intervention in a Section 248a proceeding. 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.⁷ The Town’s motion to intervene was seven months out of time.

Further, the Town’s motion conflates two concepts: a statutory right to intervene and automatic party status by statute. Where the Legislature intends an entity to be a party automatically in a siting case, it uses the language “shall appear as a party.”⁸ In Section 248a, the Legislature specifically contemplated the creation of a guide for potential participants in Commission proceedings of this type.⁹ The Standards and Procedures, as well as the Commission’s rules of procedure explain to potential parties how they may participate.

The Town’s letter requesting reconsideration does not meet the high standard for granting reconsideration of a Commission order and the request is denied.

Also, in the motion to reconsider letter, the Town requests a public hearing in Westmore, Vermont; an aesthetic expert’s assessment of balloon tests conducted to date; and an additional balloon test. Pursuant to the Commission’s Standards and Procedures, the same deadline that applies to requests to intervene also applies to requests for a hearing. The Town’s request for a public hearing is denied.

The Town’s requests for an aesthetic assessment of balloon tests and another balloon test are unclear. In particular, the filing does not explain who the Town is asking to conduct these tests and analyses. The Department has been conducting an independent aesthetic assessment with an expert and recently filed testimony, an aesthetic assessment, maps, a photographic inventory, simulations, and excerpts from the regional and town plans. Therefore, an

⁷ The landowner intervenors’ response states, “The Planning Commission’s participation will not delay the proceeding. No change in the schedule is requested.” However, the Town’s requests for a public hearing, additional aesthetic assessment, and another balloon test undoubtedly require more time. If anything, the Town’s motion to intervene and motion for reconsideration provide the reasons why early intervention in a case, and certainly within the intervention deadline, is essential.

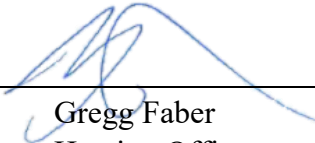
⁸ Compare 30 V.S.A. § 248(a)(4)(E) (“The Agency of Natural Resources shall appear as a party”); 30 V.S.A. § 248(a)(4)(F)(i) (“[T]he Agency [of Agriculture, Food and Markets] shall appear as a party. . . .”), with 30 V.S.A. § 248(a)(4)(G) (“The regional planning commission for the region in which the facility is located shall have the right to appear as a party. . . .”); 30 V.S.A. § 248(a)(4)(H) (“The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party. . . .”).

⁹ 30 V.S.A. § 248a(p) (including municipal governments in potential participants).

independent aesthetic analysis has already been conducted and submitted in this case. The landowner intervenors also filed testimony and exhibits. As I noted in the order denying the Town's intervention, the Commission will consider comments filed by the municipal planning commission, pursuant to Section 248a(n). If the Town is seeking an opportunity to file aesthetic information, the Town may file any documentation or information with its comments as a public comment in the case.

SO ORDERED.

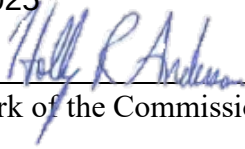
Dated at Montpelier, Vermont, this 11th day of April, 2025.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: April 11, 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 reconsider Motion to Intervene pending.