

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: 04/15/2025

ORDER DENYING MOTION FOR RECONSIDERATION
FILED BY INDUSTRIAL TOWER AND WIRELESS LLC

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, we deny the motion for reconsideration filed by the Petitioner.

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 December 16, 2024, I issued an order setting the litigation schedule in this case. The scheduling order established March 7, 2025, as the deadline for non-Petitioner testimony.

On March 7, 2025, the Vermont Department of Public Service (“Department”) filed a motion to extend the deadline for non-Petitioner testimony by three weeks. The Department asserts that the extension is necessary because its expert witness testimony has been unexpectedly delayed.

On March 14, 2025, I issued an order granting the Department’s motion and extending the deadline to file non-Petitioner testimony to March 28, 2025.

On March 18, 2025, the Petitioner filed a motion for reconsideration. In its motion, the Petitioner argues that the order granting the Department's motion was premature and violated the Petitioner's due process rights because it did not allow the Petitioner 14 days to submit a response to the Department's extension request. The Petitioner also contends that the Department's motion was untimely because it was not filed three days before the March 7 deadline to file testimony. The Petitioner requests that the March 14 order be vacated.

On March 31, 2025, the Department filed testimony and exhibits from its aesthetic consultant.¹

On April 1, 2025, the Department filed a response to the motion for reconsideration urging the hearing officer to leave the March 14 order in place, find that any error is harmless, and determine that there was sufficient information to support the Department's motion.

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."² 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."³ The disposition of a reconsideration motion rests with the discretion of the Commission.⁴ Granting reconsideration is an extraordinary remedy to be used with great caution.⁵ A motion for reconsideration is not an opportunity to relitigate issues that have been raised previously.

IV. DISCUSSION AND CONCLUSION

Commission Rule 2.206(E) provides, "Unless otherwise directed by the Commission, responses to motions are due 14 days after the motion is filed, and replies are due 14 days after

¹ Under Commission Rule 2.207(A), "All filings (including electronic filings) must be submitted by 4:30 P.M. on a date that the Commission is open for business to count as being filed on that date." According to ePUC, the Commission's electronic filing system, two attachments to the Department's testimony were filed after 4:30 P.M. on March 28, 2025. Therefore, according to the Commission's rules, these exhibits are considered filed on March 31, 2025.

² *Petition of Otter Creek Solar, LLC*, Case No. 19-0516-PET, Order of 11/1/24.

³ *Id.* at 2.

⁴ *Alden v. Alden*, 2010 VT 3, 187 Vt. 591, 592, 992 A.2d 298 (2010).

⁵ *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.

responses are filed.” The Petitioner is correct that an order deciding the Department’s motion for an extension was issued before the 14-day response deadline had passed. Without deciding whether this procedural issue affects a substantial right or is inconsistent with substantial justice, I reopen the order granting an extension of time to consider the Petitioner’s arguments against the Department’s motion.

The Petitioner’s contention is that I should have denied the Department’s motion for an extension of time because it was untimely under Commission Rule 2.207(C). Commission Rule 2.207(C) states, “Absent extraordinary circumstances, any motion to extend a deadline must be filed at least 3 days before the deadline and must set forth good cause why the extension should be granted.”

The Commission first analyzes whether the motion was timely filed. The rule requires that “motions to extend must be filed at least 3 days before the deadline” or, in this case, March 4, 2025. The Department’s motion was filed on March 7, 2025, and therefore was not timely filed. In its motion, the Department explained why the extension is necessary but did not provide any justification for the late filing of its motion. In its response to the motion for reconsideration, the Department asserts that the facts underlying the need for the extension should lead the Commission to conclude that there were extraordinary circumstances justifying a late filing.

To grant an extension of time under Commission Rule 2.207(C), a motion must be timely filed *and* the motion “must set forth good cause why the extension should be granted.” The Department’s argument in its motion that the expert needed more time to compile its aesthetics report goes to the question of whether there is good cause to grant an extension, not to substantiating extraordinary circumstances justifying untimeliness. In its response to the motion for reconsideration, the Department contends that counsel had made “attempts to reach its aesthetic expert” but did not hear back about the “state of its expert witness’s report until the afternoon of Thursday, March 6.”⁶

I do not find the Department’s offered explanation “extraordinary.” The Department should have known by March 4, 2025, that counsel needed to file a motion for an extension of

⁶ In the motion for reconsideration, the Petitioner says that the Department engaged in back-and-forth emails and calls with the Petitioner starting late March 6 and continuing on March 7 before filing the extension request with the Commission.

time because counsel (1) did not have an expert report in its possession to file with the Commission and (2) had not received updated correspondence from the expert with reasonable assurances that a report was going to be ready in time.

However, in this case to hold that the deadline to file for an extension was missed would foreclose the Department from filing testimony that is essential to resolving a disputed issue in this case. The Commission has an independent obligation to determine whether the Project is in the general good and satisfies the criteria of Section 248a. In order to make that determination, the Commission relies on the Department's retention of an aesthetic expert, pursuant to 30 V.S.A. § 248a(o), to provide an independent evaluation of the aesthetics criterion.

Although I reopen the Department's motion to consider all the Petitioner's arguments against it and find the motion untimely filed, I nonetheless accept the Department's evidence as necessary for the Commission to resolve the issues in this case. In rendering this decision based on the unique circumstances of this case, I note that the Department's expert report supports the approval of the Project and, therefore, the consideration of the filing does not prejudice the Petitioner.

Having fully considered the arguments advanced by the Petitioner in opposition to the Department's motion for an extension of the schedule in this case, I need not further address the Petitioner's arguments regarding procedural due process. The procedural defect, if any, has been remedied.

SO ORDERED.

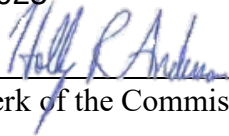
Dated at Montpelier, Vermont, this 15th day of April, 2025.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: April 15, 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.