

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-0257-PET

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| Petition of Rising Tide Towers II, LLC and Wireless Partners FN, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, for the installation of wireless telecommunications equipment at 127 Crow Hill Road in Pownal, Vermont | |
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Order entered: 04/21/2025

PROCEDURAL ORDER GRANTING MOTIONS TO INTERVENE AND REQUESTS FOR HEARING

I. INTRODUCTION

This case involves a petition filed by Rising Tide Towers II, LLC and Wireless Partners FN, LLC (“Petitioners”) with the Vermont Public Utility Commission (“Commission”) requesting a certificate of public good (“CPG”), pursuant to 30 V.S.A. § 248a, for authorization to install wireless telecommunications equipment in Pownal, Vermont (the “Project”). In today’s Order, I grant the motion to intervene and request for hearing filed by Tanya and Jesse Hart in this case.

II. PROCEDURAL HISTORY

On February 3, 2025, the Petitioners filed a petition for the Project with the Commission.

The period for public comments, motions to intervene, and requests for hearing was set to end on March 7, 2025. This deadline was extended to April 4, 2025.¹

On March 5, 2025, the Town of Pownal Selectboard (“Town”) filed a notice of intervention and comments. The Town argues that the Project violates its land use bylaws and recommends that the Commission deny the petition.

On March 7, 2025, Tanya and Jesse Hart filed a motion to intervene and request for a hearing. The Harts’ property abuts the Project parcel, and they seek to intervene based on alleged impacts on aesthetics, public health and safety, and the natural environment as well as violations of municipal bylaws.

¹ See Case No. 25-0257-PET, Order of 3/17/25.

On March 28, 2025, the Petitioners filed a response to the Town's notice of intervention and comments and the Harts motion to intervene and request for hearing. The Petitioners argue that because the Town did not convene a public hearing pursuant to 30 V.S.A. § 248a(e)(2) during the advance notice period or raise its concerns with the Petitioner earlier, the Town's comments should be given no consideration. The Petitioners do not object to granting permissive intervention to the Harts on aesthetic grounds. However, the Petitioners object to granting the Harts intervention regarding public health and safety and environmental issues on the basis that these issues are concerns common to the general public and are adequately represented by the Vermont Agency of Natural Resources and other statutory parties. The Petitioners also state that a "hearing in this case is a foregone conclusion" and request a scheduling conference.²

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.

² Petitioners' Response at 6.

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.³

IV. DISCUSSION AND CONCLUSION

Commission Rule 2.209(A) allows intervention as of right when a statute confers an unconditional right to intervene. Under 30 V.S.A. § 248a(m), “[t]he legislative body . . . for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under [Section 248a] seeking a certificate of public good for the facility.” The Commission allows the use of a “notice of intervention” form for certain specified entities and people to intervene as of right in Section 248a cases. The Town has filed a notice of intervention form during the 30-day period for requesting intervention. The request has been filed in a timely manner. Accordingly, the Town has the right to appear in this case pursuant to 30 V.S.A. § 248a(m).

Regarding the Petitioners' argument that the Town was required to hold a public hearing, 30 V.S.A. § 248a(e)(2) does not require a municipality to convene a public hearing or share its concerns with the Petitioners during the advance notice period. Rather, Section 248a(e)(2) provides a municipal legislative body or the planning commission an opportunity to request a public meeting. Therefore, the Town's comments and recommendations will be considered in accordance with 30 V.S.A. § 248a(n).

The Harts seek permissive intervention through Commission Rule 2.209(B). Commission Rule 2.209(B) gives the Commission discretion to allow intervention when an intervenor's claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding. In a Section 248a case, the Commission must determine that the proposed project “will not have an undue adverse impact on aesthetics, historic sites, air and

³ The Commission may not require a State agency to be represented jointly with any other party to a case.

water purity, the natural environment, and the public health and safety.”⁴ In rendering a decision to grant a CPG, the Commission must also give substantial deference to the relevant municipal and regional plans and recommendations of the municipal legislative body and planning commission. I conclude that the Harts have adequately demonstrated through the allegations in their motions to intervene that their claimed interest in the Project’s aesthetic and safety 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 those bases will not unduly delay the proceeding or prejudice the interests of existing parties or of the public. Therefore, I grant the the Harts permissive intervention with respect to the Project’s aesthetic impact and public health and safety under Section 248a(c)(1), pursuant to Rule 2.209(B)(2).

I deny the Harts request for intervention on the Project’s impact on the natural environment, and its compliance with the Pownal Town Plan. The Harts raise generalized arguments with respect to the Project’s impact on the natural environment.⁵ In addition, the Town is a party to the case and will adequately protect those interests related to the Town Plan and bylaws. The Harts have not demonstrated a personal, particular interest with respect to 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 Harts under Rule 2.209(B) for issues related to the natural environment and the Town Plan and Town bylaws.

Therefore, the scope of the Harts’ intervention in this proceeding is limited to aesthetics and public health and safety issues.

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

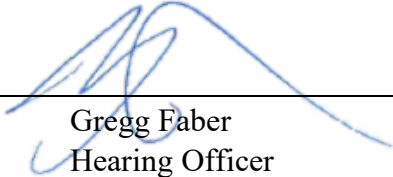
⁴ 30 V.S.A. § 248a(c)(1).

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.”).

more of the substantive criteria applicable to the proposed project.”⁶ In this case, the Harts’ motion contains evidence that suggests that the Project has at least the potential to raise a significant issue with respect to aesthetics and public health and safety, which are applicable to this case under Sections 248a(c)(1). Accordingly, the request for an evidentiary hearing is granted.

SO ORDERED.


Dated at Montpelier, Vermont, this 21st day of April, 2025.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: April 21, 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)

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.

PUC Case No. 25-0257-PET - SERVICE LIST

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