

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 25-0257-PET

Petition of Rising Tide Towers II, LLC pursuant to 30 V.S.A. § 248a requesting a Certificate of Public Good for an installation of a wireless telecommunications facility in Pownal, Vermont	
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PETITIONER’S MOTION FOR LEAVE TO AMEND PETITION

NOW COMES Rising Tide Towers II, LLC (“RTT”), together with Wireless Partners FN, LLC (“WP”, and together with RTT, “Rising Tide” or “Petitioner”), by and through its attorneys at Downs Rachlin Martin PLLC, and moves the Public Utility Commission (“Commission” or “PUC”) pursuant to PUC Rule 2.204(G) for leave to amend its petition for a certificate of public good (“CPG”) in the above-styled case. The purpose of the amendment is to modify the design of Rising Tide’s proposed wireless telecommunications facility located at the same originally proposed location at 127 Crow Hill Road, Pownal, through a reduction in height from 195’ to 120’, by substituting the lattice tower design for a dark brown painted monopole, and painting antennas and tower-mounted equipment to match. These changes are made in response to intervention motions of the Town of Pownal (the “Town”), and Tanya and Jesse Hart (the “Harts”), which the PUC granted on April 21, 2025 (collectively, the “Intervention Motions”), as well as based on public comments received from the Town, the Harts, and Vince Chiorgno (collectively, the “Public Comments”), pertaining to aesthetics and/or public safety. Accompanying this Motion as Attachment 1 are revised site plans dated April 23, 2025, showing the proposed changes to the Project (as described below, the “Modifications”).

Petitioner proposes to file its fully amended petition and accompanying exhibits and testimony incorporating the Modifications by May 14, 2025 (or by no later than ten (10) business days from the date of an order from the Commission granting leave to amend). Granting leave to amend is appropriate in this case given that (1) there is no change to the proposed facility's location on the subject property; (2) the proposed design changes will mitigate the Project's aesthetic and safety impacts without creating the potential for significant impact on any other applicable criteria (i.e., there is no "substantial change")¹; and (3) a schedule has yet to be adopted, so that amendment can be accomplished without any substantial delay or interruption to the process.

In support of this Motion, consistent with PUC Rule 2.206(A), Petitioner provides the following Memorandum of Law.

MEMORANDUM OF LAW
IN SUPPORT OF MOTION FOR LEAVE TO AMEND PETITION

- A. RULE 2.204(G) AUTHORIZES RISING TIDE TO REQUEST LEAVE TO AMEND ITS PETITION PRIOR TO CLOSURE OF THE EVIDENTIARY RECORD.

Petitioner's Motion for Leave to Amend Petition ("Motion") is based upon Commission Rule 2.204(G) (eff. 01/18/2023), which provides as follows:

(G) Amendments in pending proceedings.

(1) In general. Proposed amendments to any filing may be made at any time before the evidentiary record is closed. Unless allowed automatically under an applicable statute or rule, or agreed to by all parties (without the Commission denying the amendment), such

¹ See *Seventh Order Adopting Revised Standards and Procedures Implementing 30 V.S.A. § 248a*, Case No. 22-5122-INV, Order of 01/18/2023 [hereinafter Section 248a Procedures Order] (defining a "substantial change" as "one that has the potential for significant impact with respect to any of the criteria applicable to the project").

amendments require Commission approval. Proposed amendments must be clearly identified and must clearly indicate what changes are being made. In the event an amendment makes a substantial change to a filing, the Commission may order such additional notice to other parties and the public as justice may require.

The term “filing” includes “any petition, application, ... exhibit, report, or any document required or permitted to be filed with the Commission in connection with any proceeding within the Commission’s jurisdiction.” PUC Rule 2.102(D).

Rising Tide’s Petition Is a “Filing.” Petitioner’s application for a CPG filed on February 3, 2025, together with the accompanying prefiled testimony, exhibits, and ancillary documents (collectively, the “Petition”), constitute a “filing” for purposes of Section 2.204(G). Commission staff determined as of February 7, 2025, that the Petition was “administratively complete” for purposes of commencing this proceeding. *See* Case No. 25-0257-PET, Memorandum re: Notice of Complete Petition (2/7/2025) at 1.

The Evidentiary Record Remains Open. Per the Commission’s order granting the Harts’ request for an evidentiary hearing and notice of scheduling conference, the evidentiary record in this case remains open.²

The Project Attributes To Be Amended Are Specified In Attachment 1. As stated, the principal feature of the amended petition will be a revised site plan showing the facility with several Modifications. Rising Tide also intends to submit revised versions of some of its other exhibits, including the structural report, propagation maps, and photo simulations. As described in the petition and accompanying materials, the Project as initially proposed involved the

² *See* Case No. 25-0257-PET, Order of 04/21/2025 (ePUC doc. [759099/203166](#)), and Notice of 04/21/2025 (ePUC doc. [759196/203166](#)).

installation of a new 190' light gray lattice telecommunications tower, topped with a 4' lighting rod (the "Lattice Tower"). Rising Tide proposed to install six (6) panel antennas to be installed on the Lattice Tower at a centerline height of 186', with six (6) remote radio head units ("RRUs"), and four (4) surge arrestors to be installed behind the panel antennas. On the ground, Rising Tide proposed a modular steel equipment platform measuring approximately 6' x 12' to support outdoor equipment cabinets, a 20 kW diesel generator for emergency backup, and a 75' x 75' fenced-in gravel compound (the "Compound"), accessed by a 12' wide gravel access road extending approximately 43' from Crow Hill Road to the Compound (the "Access Road"), with a parking/turnaround area in front of the Compound, and utilities running along new poles to be constructed along the Access Road.

In response to the Public Comments and the Intervention Motions, Rising Tide now proposes to modify the Facility. The key changes featured in the revised site plans included as Attachment 1 include the following (the "Modifications"):

1. Install a new 120' dark brown-painted monopole tower (the "Monopole Tower"), in lieu of the Lattice Tower, at the same location as originally proposed (see esp. Pages C-4A and C-4B of Attachment 1); and
2. Painting of all antennas and tower-mounted equipment to match the tower, so that portions of the Facility visible above the treeline will blend into the surrounding forest.

The net effect of these Modifications will be to significantly reduce the Monopole Tower's visibility. To address public safety concerns, the Monopole Tower will feature an "overdesign", i.e. a breakpoint in order to ensure that the Monopole Tower will topple onto itself during an extreme weather event, which overdesign is in excess of the Vermont Building Code Standards,

and all but eliminating the possibility of any portion of the Tower collapsing onto the Harts' property. Rising Tide's representatives will be discussing these changes with the Pownal Selectboard at its meeting scheduled for April 24, 2025.

The Proposed Redesign Is Not A Substantial Change. Based on the Public Comments and discussion with the Town, Rising Tide developed the Modifications to alleviate aesthetic and safety-based concerns at the exact same location as set forth in the advance notice and the Petition. The Modifications pose no potential to significantly impact any other criteria applicable to the Project, nor could they reasonably be deemed likely to worsen or accentuate the aesthetic and public safety concerns already expressed.

Accordingly, consistent with PUC Rule 2.204(G), Petitioner seeks leave from the Commission to amend its petition, and incorporate the amendment into the to-be-approved scheduling order.

B. COMMISSION PRECEDENTS ESTABLISH THAT LEAVE TO AMEND SHOULD BE GRANTED TO ACCOMMODATE CHANGES DESIGNED TO AVOID OR MITIGATE PROJECT IMPACTS.

PUC precedents regarding the amendment of CPG petitions weigh in favor of granting leave to amend, particularly if the amendment is intended to mitigate or avoid project impacts. Under the Rule 2.204(G), the Commission has broad discretion to grant or deny a motion for leave to amend, whether contested or agreed-upon by the parties. The Rule itself provides no guidance as to the basis for rendering a decision; however, the Commission is neither free to ignore its prior precedents, nor may it abuse its discretion in applying the Rule. *See In re Cady Hill Solar, LLC*, 206 Vt. 430, 437-439 (2018) (noting that the importance of applying regulations

consistency, and finding abuse of discretion where exercised on untenable or unreasonable grounds).

The Commission has previously granted leave to amend a petition for a wireless telecommunications facility where the petitioner proposed to change the support structure's design as a result of discussions with the town. *See Petition of New Cingular Wireless PCS, LLC (Stowe)*, Case No. 22-4883-PET, Order of 10/17/23. In that proceeding, the petitioner's proposed modifications included a change in the number and size of the proposed antennas, additional lighting, a new transformer, and changes to the proposed equipment cabinet and other appurtenances, all to address aesthetic concerns, but without a reduction to the height of the support structure. *Petition of New Cingular Wireless PCS, LLC (Stowe)*, Case No. 22-4883-PET, Motion of 9/29/23. The Commission characterized the changes as "minor design changes" and granted the petitioner's request, noting that it viewed such request as reasonable and one that would not unnecessarily delay the proceeding. *Petition of New Cingular Wireless PCS, LLC (Stowe)*, Case No. 22-4883-PET, Order of 10/17/23.

Likewise, the PUC has granted leave to amend in the transmission line and wind turbine contexts, recognizing that "Section 248 is an analysis of whether a proposed project promotes the public good. Consequently, the Board must weigh any hardship caused by the amendment with the possible benefits that might accrue from the changes to the proposed project." *Amended Petition of UPC Vermont Wind, LLC (Sheffield Wind Project)*, Docket No. 7156, Order of 11/1/06, at 4.³ Commission precedents in the net-metering context have similarly recognized

³ *See also Petitions of Vermont Electric Power Company, Inc. and Green Mountain Power Corporation (Northwest Vermont Reliability Project)*, Docket No. 6860, Order of 3/5/04, at 3 (recognizing "the potential

that allowing petition amendments for “major amendments” (in lieu of requiring the applicant to withdraw and refile the application) is appropriate where the change results from ongoing efforts to resolve matters with other parties to the proceeding.⁴

Based on Commission precedents, and considering that Petitioner's Modifications follow from the Public Comments and the Intervention Motions, the Commission should grant Rising Tide leave to amend its Petition, without any additional notice and comment period beyond incorporation into the overall schedule to be set following the pre-hearing conference of Monday, April 28, 2025.

C. CONCLUSION

For the reasons set forth above, Rising Tide respectfully moves the Commission, through the Hearing Officer, to proceed as follows in the above-styled case:

1. Grant Petitioner leave to amend its CPG Petition, together with accompanying testimony, exhibits, and ancillary documents, by May 14th (or by no later than ten (10) business days from the date of the Commission's order on the instant Motion); and
2. Incorporate the timing of the amendment into the final schedule to be approved at the April 28th status conference.

benefits to the public if VELCO is permitted to amend its petition in ways that may lessen adverse impacts of the proposed project,” and further acknowledging that the Commission did “not wish to preclude such potentially beneficial modifications”).

⁴ *Accord Petition of Andover Weston A Solar LLC (Andover)*, Case No. 21-3095-NMP, Order of 12/8/21 (granting waiver request from rule for net-metering projects requiring new filing for major amendments where prompted by applicant's efforts to resolve all issues with ANR while evidentiary record was still open); *Petition of Andover Weston A Solar LLC (Andover)*, Case No. 22-2957-PET, Order of 8/29/22 (finding good cause to approve proposed amendment and waive major amendment process where proposed changes were requested by host landowner to accommodate existing gravel extraction operation); *Application of Advanced Illumination (Rochester)*, Case No. 19-2424-NM, Order of 11/13/19 (granting waiver request for “major amendment” relocation of project in part based on decrease in total area of disturbance and MOU resolving issues with intervenors); *see also Petition of Acorn Energy Solar 2, LLC (Shoreham)*, Case No. 17-4049-NMP, Order of 7/26/19 (granting waiver over objection of intervenor where prompted by relocation of two mitigation maple trees to avoid affecting farm operations).

DATED at Burlington, Vermont, this 23rd day of April, 2025.

Respectfully submitted,

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