

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: 05/07/2025

ORDER DENYING MOTION FOR RECONSIDERATION AND MOTION TO ALTER

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 alter or amend filed by the Petitioner. I also deny the motion for reconsideration filed by Ronald and Kathy Holmes, Elizabeth Tucker, Donna Dzugas-Smith, Andrew Zebrowski, Megan Patton, and Robert Fitzpatrick (the “Intervenors”).

II. RELEVANT 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 memorandum establishing a deadline of July 9, 2024, for the filing of all comments, motions to intervene, and requests for hearing.

On February 3, 2025, the Westmore Planning Commission filed a motion to intervene.

On February 27, 2025, I issued an order denying the intervention of the Westmore Planning Commission because it was late filed.

On April 7, 2025, the Petitioner filed a motion *in limine* to preclude public comments filed after the July 9, 2024, deadline.

On April 11, 2025, I issued an order denying reconsideration of the February 27 order denying the intervention of the Westmore Planning Commission.

On April 21, 2025, the Petitioner filed a motion to alter or amend the April 11 order to clarify that public comments filed after the July 9 deadline will not be considered.

On April 24, 2025, I issued an order granting the April 7 motion *in limine* to preclude late filed comments.

On May 1, 2025, the Intervenors filed a motion for reconsideration of the April 24 order granting the motion *in limine* and a response to the April 21 motion to alter. In their motion and response, the Intervenors argue that the public comments filed in the case should not be precluded and should be considered in this case.

Because the Petitioner's motion to alter and the Intervenors' motion to reconsider address the same subject matter I address them jointly in this order.

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. It is not a vehicle to introduce new evidence or advance arguments that could have been made previously.⁵ The Commission

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 See, e.g., *In re B.K.*, 2017 VT 105, ¶ 13, 206 Vt. 110, 115, 179 A.3d 758, 762 (2017) ("While the trial court has broad power under Rule 59(e) to reconsider issues previously presented, the rule does not contemplate reopening the evidence or creating a new record.").

also retains “discretion to deny consideration of discrete issues not raised prior to entry of judgment.”⁶

The Commission’s Order Adopting Revised Standards and Procedures Implementing 30 V.S.A. § 248a (“Standards and Procedures Order”), 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.

In addition, 30 V.S.A. § 248a(j)(2)(A) requires applicants to provide notice of the application to all required parties and specifically notify the notice recipients that any comments on the application are due “within 30 days following the date of service . . .”

IV. DISCUSSION AND CONCLUSION

The Petitioner’s Motion to Alter

In the April 11 order denying reconsideration of the order granting intervention to the Westmore Planning Commission, I stated that “the Commission will consider comments filed by the municipal planning commission, pursuant to 248a(n).”⁷ In the April 24 order granting the Petitioner’s motion *in limine* to preclude late filed comments I concluded that comments filed after the July 9 comment deadline “are untimely and will not be considered in this proceeding.”

In its motion to amend or alter the April 11 order, the Petitioner argues that the comments filed after the July 9 deadline should not be considered, including the comments of the Westmore Planning Commission.

⁶ *Everbank v. Marini*, 2015 VT 131, ¶ 34, 200 Vt. 490, 134 A.3d 189 (2015); *see also* 11 C. Wright, Miller & Kane, Federal Practice and Procedure § 2810.1 (3d ed.) (2022 Update) (“The Rule 59(e) motion may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment.”).

⁷ Order of April 11 at 4.

In their response to the Petitioner's motion, the Intervenor contend that public comments filed after the July 9 deadline should be considered as evidence in this case and that the April 11 order should not be amended or altered.

I clarify that the purpose of my April 24 order granting the Petitioner's motion *in limine* was to establish that public comments filed after the July 9, 2024, comment deadline will not be admitted into the evidentiary record for this case. That order was an evidentiary ruling, not a substantive determination regarding any statements or assertions made in the public comments. The same rationale applies to my April 11 order denying reconsideration of the intervention of the Westmore Planning Commission. To be clear, consistent with Commission practice, I will review and consider all public comments filed in this case. Although public comments filed after July 9, 2024, will not be part of the evidentiary record, they can and will inform my review of the evidence that has been filed by the parties and admitted into the evidentiary record in this case.⁸ Accordingly, based on this clarification, I conclude that it is not necessary to alter or amend the April 11 order. Therefore, the Petitioner's motion to alter or amend is denied.⁹

The Intervenor's Motion to Reconsider

The Intervenor raise several arguments in their in their motion for reconsideration of the April 24 order granting the Petitioner's motion *in limine*.¹⁰ First, the Intervenor challenge the

⁸ See, e.g. *Petition of the Vermont Department of Public Service for a proceeding to conduct overall performance assessments for the Energy Efficiency Utilities*, Case No. 21-1500-PET, Order of 5/28/21 at 2 ("While public comments do not become a part of the evidentiary record, such comments may raise new issues that should be considered by the Commission during the proceeding."); and *Petition of Vermont Gas Systems, Inc., pursuant to 30 V.S.A. § 248(i), for approval of an out-of-state renewable gas purchase contract with a term exceeding five years*, Case No. 22-2230-PET, Order of 11/8/22 ("Although these public comments cannot form the basis of my proposal for decision because they are not sworn testimony that has been admitted into the evidentiary record, they have been of considerable help in identifying issues raised throughout this case, including some issues that were not raised by the parties directly.").

⁹ In making this ruling, I note the distinction between substantive comments filed in response to the application within the 30-day comment period and general public comments. The 30-day comment deadline from Section 248a (which is incorporated into the Standards and Procedures Order) serves a specific legal purpose. It exists for the parties to identify issues with respect to applicable Section 248a criteria that may be addressed through testimony and at an evidentiary hearing. General public comments, on the other hand, can be filed with the Commission at any time. The Commission will always accept public comments in cases and all such comments are reviewed by the Commission and hearing officers. As noted above, public comments do not form part of the evidentiary record, but they can help inform the Commission's review of cases and may provide a basis for written information requests or the Commission's own examination of the parties' witnesses and evidence.

¹⁰ Order of April 21 at 3. I note that the Intervenor did not file a response or opposition to the Petitioner's April 7, 2025, motion *in limine*. As noted above, a motion for reconsideration is not an opportunity to present new

legal applicability of the Commission’s Order Adopting Revised Standards and Procedures Implementing 30 V.S.A. § 248a (“Standards and Procedures Order”). The Intervenor argues that the Standards and Procedures Order is only a “guidance” document because it was not adopted through the rulemaking process set out in 3 V.S.A. § 800 *et seq.* Section 248a(1), however, makes clear that the Commission “may issue rules or *orders* implementing and interpreting this section.”¹¹ The Standards and Procedures Order was adopted issued consistent with this statutory mandate. Therefore, its underlying requirements—including the deadline to intervene, file substantive comments, and request an evidentiary hearing—are binding in this case. As noted above, Section VII of the Standards and Procedures Order makes clear that if “any person wishes to submit comments or motions to intervene to the Commission . . . or request a hearing for projects . . . , such correspondence is due at the Commission within 30 calendar days of the date that the application was served on all required recipients.” Thus, any substantive comments received after the July 9, 2024, deadline, even if filed by a party statutorily entitled to participate in this case, are untimely and cannot be relied upon to justify a request for a hearing on a particular Section 248a criterion.

The Intervenor also argues that the Commission’s evidentiary treatment of written comments from a regional planning commission in Case No. 22-2120-PET establishes precedent for relief from the 30-day deadline comment deadline.¹² In Case No. 22-2120-PET, a petitioner proposed to construct a 140-foot communications tower. In response to the petition, before the 30-day comment period tolled, a regional planning commission (“RPC”) filed written comments stating that the project does not “constitute a substantial regional impact” but also that “the project does not conform to the Regional Plan as proposed” because of its proposed height.¹³ The RPC subsequently filed supplemental comments after the conclusion of the 30-day comment deadline that were admitted to the evidentiary record in that case. The RPC’s supplemental comments did not raise new issues or seek a hearing on separate Section 248a criteria. Instead,

arguments that could have been raised previously. On that basis alone the Intervenor’s motion should be denied, however, I also address the merits of the arguments included in their motion.

¹¹ 30 V.S.A. § 248(1) (emphasis added).

¹² *Petition of Industrial Tower and Wireless, LLC requesting a certificate of public good pursuant to 30 V.S.A. § 248a, authorizing the installation of wireless telecommunications equipment off of Bordoville Road in Enosburgh, Vermont*, Case No. 22-2120-PET, Order of 8/3/23.

¹³ Case No. 22-2120-PET, Letter from Emily Klofft to Holly Anderson, Clerk of the Commission, dated July 26, 2022.

the comments were filed only to provide context for and clarification about the RPC's initial recommendation, which remained unchanged throughout the case.

The facts underlying the Commission's determination to admit the RPC's supplemental comments into the evidentiary record Case No. 22-2120-PET are distinguishable from the facts in this case. Unlike the supplemental comments filed by the RPC in Case No. 22-2120-PET, the second round of written comments from the Westmore Planning Commission raise a series of issues and alleged conflicts with the Westmore Town Plan that were not identified in the comments filed before the July 9, 2024, comment deadline. This is not a situation where a commenter seeks to provide clarity and context for its previous comments and recommendations. Instead, the Intervenor, by moving to have the Planning Commission's second round of comments admitted into the evidentiary record, would substantially expand the scope of issues to be addressed at the evidentiary hearing with relatively short notice to the petitioner. Section 248a and the Commission's Standards and Procedures Order establish the 30-day intervention and comment deadline to narrow the scope of issues to be litigated at the outset of a proceeding and avoid precisely this type of situation. Therefore, I decline to reconsider my decision to grant the Petitioner's motion *in limine*. Accordingly, the Intervenor's motion to reconsider is denied.

In conclusion, both the Petitioner's motion to alter and the Intervenor's motion to reconsider are denied. These rulings are made without forming any substantive legal or factual determinations with respect to other documents or evidence that have been filed in this case, including consideration of the Westmore Planning Commission's initial written comments within the context of 30 V.S.A. § 248a(c)(2).

SO ORDERED.

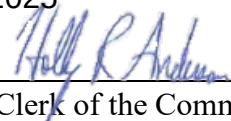
Dated at Montpelier, Vermont, this 7th day of May, 2025.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: May 7, 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.