

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-0257-PET

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: 06/18/2025

ORDER RE: MOTIONS, SUBSTANTIAL CHANGE DETERMINATION, AND STAY OF PROCEDURAL SCHEDULE

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 “Facility”). In today’s Order, I deny intervenors Tanya and Jesse Hart’s motion requesting a balloon float. However, I also conclude that the Petitioners’ proposed revisions to the Facility constitute a substantial change to the Facility. Therefore, the schedule in this case will be stayed until the Petitioner complies with the procedural requirements for a substantial amendment to a Section 248a application.

II. PROCEDURAL HISTORY

On April 23, 2025, the Petitioners filed a motion for leave to amend the petition for the Facility. The motion describes the modifications as a reduction in the height of the monopole tower and painting of all tower-mounted equipment. A site plan attached to the motion shows the Facility in the same location as originally proposed. The motion also states that the Petitioner will file the revised petition and all accompanying testimony and exhibits following approval of the motion.

On April 28, 2025, during a scheduling conference, I granted Petitioners' motion to amend on the grounds that the modifications described in the motion did not constitute a substantial change to the Facility.

On May 22, 2025, the Petitioners filed the revised testimony and exhibits. The revised site plan (Exhibit TR-17) shows that the location of the Facility has been moved from its originally proposed location.

On May 30, 2025, Tanya and Jesse Hart filed a motion requesting that the Petitioner be ordered to conduct a balloon float and a motion requesting that the Petitioner conduct a site visit.

On June 12, 2025, the Petitioners filed a response opposed to the Harts' motions. The Petitioners also filed a further revised site plan (Exhibit TR-17 revised).

On June 13, 2025, the Vermont Department of Public Service ("Department") filed a response opposed to the Harts' motions.

III. DISCUSSION AND CONCLUSION

In support of their motions, the Harts argue that the Petitioners falsely stated in their motion for leave to amend that the location of the Facility would not be changed. Further, the Harts maintain that the new location may increase the aesthetic impact of the Facility and, therefore, require additional process.

The Petitioners concede that the Facility has been shifted approximately 43 feet to the east but maintain that the Facility is "effectively" in the same location.¹ The Petitioners argue that the shift in location is an effort to meet the municipal setback as requested by the Town of Pownal. Accordingly, the Petitioners argue that there is no need for further process and the motions should be denied as untimely and without merit.

The Department argues that while the Facility has been relocated it is "substantially within the initially proposed footprint."² The Department maintains that because the relocation of the Facility is intended to mitigate aesthetic impacts, there is no need to conduct a site visit or balloon float at this time and the Harts' motions should be denied.

¹ Petitioner's Response at 2.

² Department Response at 2. The Department's assessment appears to be based on the site plan filed on May 22. The further revised site plan filed on June 12 shows that the Facility footprint has been changed.

I agree with the Harts that, in their motion for leave to amend, the Petitioners inaccurately claimed that the location of the facility would not be changed. The Petitioners' filings show that the Petitioners are now proposing to relocate the Facility. However, I also agree with both the Petitioners and the Department that a site visit and balloon float would not be useful at this point in the proceeding. The newly proposed location is in the same general location of the originally proposed location and the Petitioners are not proposing any change to the elevation of the tower. The Petitioners have also provided revised photo simulations from viewpoints in the surrounding area, which eliminate the need for a new balloon float for the Facility. Therefore, I see no need for a site visit or balloon float. Accordingly, the Harts' motions are denied.

The filings in this case, however, raise a separate issue as to whether the Petitioners' proposed revisions to the Facility's site plan constitute a "substantial change." Section III of the Commission's *Standards and Procedures Implementing 30 V.S.A. § 248a Order* ("Standards and Procedures Order") provides that:

If the applicant makes a substantial change to the proposed project, the applicant is required to serve notice of this change on all parties and entities already notified, including any newly affected adjoining property owners. Parties and entities will then have 30 days to comment on the revised project. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria applicable to the project.³

In this case, the Petitioners propose to move the facility approximately 20 feet to the south and 43 feet to the east from the originally proposed location. The revised Facility also involves increased earth disturbance and vegetative clearing. Based on these facts, I conclude that the proposed modifications have the potential for significant impact on several applicable sub-criteria under 30 V.S.A. § 248a(c)(1), including aesthetics, the natural environment, and public health and safety. It is important to emphasize that the relevant standard for "substantial change" under the Standards and Procedures Order considers the *potential* for significant impact. Although the proposed changes to the Facility are relatively narrow in scope, it appears that these revisions, particularly the revised location for the tower and the modified plans for earth disturbance and clearing, have the potential for significant impact on aesthetics, natural

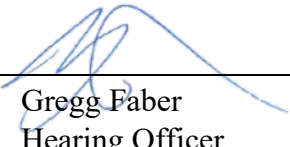
³ *Investigation into revised standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Case No. 22-5122-INV, Order of 1/18/23 at Attachment..

environmental features, and public health and safety. Therefore, I conclude that the Petitioners are proposing a substantial change to the Facility.

The Petitioners' proposed revisions constitute a substantial change to the originally approved Facility. If the Petitioners wish to pursue approval of the revised Facility, they must provide the notice required under Section III of the Standards and Procedures Order. Once the Petitioners have demonstrated compliance with these procedural requirements, all notice recipients, including the Harts and the Town of Pownal, will have thirty days to file any comments, motions to intervene, and requests for hearing on the revised Facility. In the interim, the schedule for this proceeding is stayed.

SO ORDERED.


Dated at Montpelier, Vermont, this 18th day of June, 2025.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: June 18, 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. 25-0257-PET - SERVICE LIST

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*Notice of appearance to be filed.