

**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 SECOND 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 proposed location at 127 Crow Hill Road, Pownal, through an additional reduction in height from 120’ to 93’. The effect will be to bring the Project into compliance with all of the Town’s bylaws, including the height limitation cited by the Town of Pownal Selectboard (the “Town”) in its most recent recommendation.

Petitioner previously requested leave to amend on April 23, 2025, in response to comments received from the Town, Tanya and Jesse Hart (the “Harts”), and Vince Chiorgno, which request the PUC granted on April 28, 2025. Petitioner submitted an amended petition on May 21, 2025, which reduced the height of the tower from 190’ to 120’, substituted the lattice tower design for a dark brown-painted monopole, painted the antennas and tower-mounted equipment to match the tower, and shifted the tower 43’ away from the Harts’ property line. The

additional reduction in height that Petitioner now proposes is made in response to the Town's recommendation dated July 9, 2025 (the "Town Recommendation").¹ Accompanying this Motion as Attachment 1 are revised site plans dated July 21, 2025, showing the proposed changes to the Project (as described below, the "Modification").

Petitioner proposes to file its second amended petition and accompanying exhibit and testimony incorporating the Modifications by August 5, 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) the height reduction is being undertaken to bring the tower into compliance with the Town's bylaws as cited in the Town Recommendation, with no change in location of any elements of the Project on the subject property; (2) the proposed design change will have a minor positive aesthetic impact without any potential impact on other applicable criteria (i.e., there is no "substantial change")²; and (3) the PUC's June 18, 2025 order stayed the schedule adopted on May 9, 2025, so the amendment can be accomplished without any substantial delay or major interruption to the process.

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

¹ The Harts submitted comments and a separate motion to intervene on July 16, 2025, pertaining to aesthetics, public safety, and the 248a(c)(2) criterion.

² *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").

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 Second 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 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 Amended Petition Is a "Filing." Petitioner's petition for a CPG filed on February 3, 2025, together with the accompanying prefiled testimony, exhibits, and ancillary documents (the "Petition"), as amended on May 21, 2025 (as amended, the "Amended Petition"), constitutes 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 staying the schedule, the evidentiary record in this case remains open.³ Petitioner posits that, at this juncture, an appropriate next step in the proceeding following submission of the Second Amended Petition (should leave be granted) would be a status conference with all the parties to reset the remaining schedule for this proceeding, and including closing of the evidentiary record.

The Project Attributes To Be Amended Are Specified In Attachment 1. As stated, the principal feature of Petitioner's Second Amended Petition will be a set of revised site plan showing the facility with the Modification, i.e., a new 93' dark brown-painted monopole tower (the "Monopole Tower"), in lieu of the 120' monopole tower, at the same location as proposed in the Amended Petition (see esp. Pages C-4A and C-4B of Attachment 1). Antennas and tower mounted-equipment are accordingly reduced in height with RAD centers of 89', so as not to extend above the Monopole Tower. A lighting rod of 4' will extend above the Monopole Tower.

As will be elaborated upon in supplemental prefiled testimony, the principal effect of this change will be to bring the Project into compliance with Section 8.12(b) of the Pownal Land Use Bylaws, quoted in the Town Recommendation, to wit:

- (b) Towers shall not exceed the height limitation of the district in which they are located or 20 feet above surrounding structures or trees, whichever is greater;

As shown on Page C-4A, the existing tree canopy was calculated via survey at 73' aboveground level. With the Modification, the Tower itself will comply with Section 8.12(b), and by extension when taking into account the color change and locational shift previously undertaken

³ See Case No. 25-0257-PET, Order of 06/18/2025 (ePUC doc. [766481/203166](#)).

by Rising Tide, compliance with 30 V.S.A. § 248a(b)(2). Petitioner will explain in supplemental prefiled testimony that it agreed to this change following consultation with radiofrequency engineers familiar with AT&T and FirstNet requirements, concluding that the facility will still offer reliable coverage along presently-uncovered portions of U.S. Route 7 in southern Pownal for first responders and customers, albeit without any potential for future antenna collocations below the 89' RAD center.

Petitioner's testimony will explain that the Project is otherwise largely unchanged from the Amended Petition. The location of the Monopole Tower and area of permanent earth disturbance will remain the same as described in the Amended Petition, and the antennas and tower-mounted equipment will still be painted to match the Monopole Tower. The Monopole Tower will feature the same "overdesign" as was described in the Amended Petition, 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 Monopole Tower collapsing onto the Harts' property.

The Proposed Redesign Is Not A Substantial Change. Prompted by the Town Recommendation (which itself followed a Selectboard hearing held during the Amended Petition comment period), Rising Tide developed the Modification to address Section 8.12 of the Pownal Bylaws, as quoted in the Town Recommendation. Petitioner submits that the height change has no significant impact on the Project's overall visual effect (especially given the photographic simulations set forth in the Amended Petition documenting the very low visibility of the 120'

tower, see Exh. RTT-DA-04), but it will be less visible from the Hart's residence. The Modification poses 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 Project as amended into the evidentiary record.

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

As explained in Petitioner's first Motion for Leave to Amend Petition, PUC precedents 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 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.

Based on Commission precedents, and considering that Petitioner’s Modification is designed to address 30 V.S.A. §248a(b)(2) via the specific bylaw provision contained in the Town’s Recommendation, the Commission should grant Rising Tide leave to amend its Amended Petition.

C. CONCLUSION

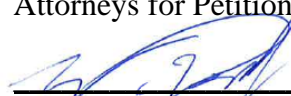
For the reasons set forth above, Rising Tide respectfully moves the Commission, through the Hearing Officer, to proceed as follows in the above-styled case:

1. Grant Petitioner leave to amend the Amended Petition, by August 5 (or by no later than ten (10) business days from the date of the Commission’s order on the instant Motion); and
2. Schedule a prehearing conference at the earliest opportunity following submission of the Second Amended Petition to determine the remaining process required for resolution of the case.

DATED at Burlington, Vermont, this 21st day of July, 2025.

Respectfully submitted,

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