

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: 07/29/2025

ORDER GRANTING MOTION *IN LIMINE* TO PRECLUDE LATE FILED COMMENTS

I. INTRODUCTION AND BACKGROUND

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”).

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 25, 2025, the hearing officer in this case issued a proposal for decision (“PFD”) recommending approval of the Project.

On July 11, 2025, the Petitioner filed a motion *in limine* to preclude the Commission’s consideration of public comments filed after the issuance of the PFD.

On July 21, 2025, the Vermont Department of Public Service (“Department”) and the Intervenor¹ filed responses to the Petitioner’s motion. The Department urges the Commission to maintain the public comments “on the public, electronic record while removing them from the evidentiary record” in response to the motion. The Intervenor support the public comments that have been filed and request a public hearing.

¹ Donna Dzugas, Elizabeth Tucker, Robert Fitzpatrick, Kathy Holmes, Ronald Holmes, Megan Patton, Elizabeth Vooris, and Andrew Zebrowski.

In today's order, we grant the Petitioner's motion to preclude the Commission's consideration of late filed public comments.

II. DISCUSSION AND CONCLUSION

Section 248a of Title 30 of the Vermont Statutes Annotated requires applicants to provide notice of the application to all statutorily required recipients and to notify those recipients that any comments on the application are due "within 30 days following the date of service."²

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 the Commission's general guidance about public participation, we explain that public comments can be provided to the Commission at any time.³ However, deadlines for the submission of public comments exist in specific proceedings.⁴ And even the Commission's general guidance contemplates that public comments will be filed before an evidentiary hearing, or before the evidence is closed, in a case.⁵ In Section 248a cases, in addition to the Standards and Procedures Order quoted above, the Commission's public participation guidance states,

² 30 V.S.A. § 248a(j)(2)(A) (requiring notice to the Department; the Vermont Agency of Natural Resources; the Vermont Division for Historic Preservation; the Land Use Review Board, when applicable; each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities; and the landowners of record of property adjoining the project site or sites, unless waived by the Commission).

³ See, e.g., Public Participation and Intervention in Proceedings Before the Public Utility Commission at 1, available at [public-participation-and-intervention-guide-2025.pdf](https://puc.vermont.gov/sites/psbnew/files/documents/citizens-guide-2025.pdf); A Citizen's Guide to the Public Utility Commission at 5, available at <https://puc.vermont.gov/sites/psbnew/files/documents/citizens-guide-2025.pdf>; Introduction to Participating in Commission Processes, <https://puc.vermont.gov/public-participation/introduction-participating-commission-processes>.

⁴ See, e.g., Siting Cases of Limited Size and Scope (Section 248(j)) at 3, available at <https://puc.vermont.gov/document/section-248j-procedures> (setting 30-day deadline for public comments); Meteorological Towers – 246 Cases at 2, available at <https://puc.vermont.gov/document/meteorological-towers-246-cases-procedures> (setting 30-day deadline for public comments).

⁵ A Citizen's Guide to the Public Utility Commission at 5 ("If an evidentiary hearing is scheduled, public comments received before the hearing may help the Commission ask questions of the parties and their witnesses.").

“Public comments on the application must be filed with the Commission within the 30-day comment period.”⁶ Public comments, while not part of the evidentiary record in a case, inform the Commission’s review of the evidence that has been filed by the parties and admitted into the evidentiary record.⁷ However, once the evidentiary record has been closed and a PFD has been issued, as is the case here, public comments no longer serve that purpose.

The Petitioner argues that these comments are late filed and should, therefore, not be considered by the Commission in its evaluation of the PFD. The Petitioner also contends that, pursuant to the Vermont Administrative Procedures Act (“VAPA”), non-parties are not entitled to comment on the PFD. Section 811 of the VAPA provides:

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision⁸

The VAPA further defines “party” as “each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.”⁹ The people who have filed public comments after the PFD issued in this case are not parties.

In this case, the 30-day deadline for comments was July 9, 2024. The Commission memorandum indicating that the petition was complete also set the July 9 deadline and stated that this was the deadline for public comments.¹⁰ The memorandum accompanying the PFD that issued on June 25 stated that the *parties to the case* had until July 11, 2025, to submit comments on the PFD. As discussed in the PFD, the hearing officer has reviewed all the public comments filed in the case prior to the close of the evidentiary record. Following issuance of the PFD, the Commission has received more than 90 public comments from non-parties in the case. The memorandum accompanying the PFD specifically requested comments from the *parties* to the

⁶ Wireless Communication Facilities – 248a Cases at 5, available at <https://puc.vermont.gov/document/section-248a-procedures>.

⁷ See A Citizen’s Guide to the Public Utility Commission at 5.

⁸ 3 V.S.A. § 811; *see also* Commission Rule 2.215(C) (“After the hearing officer has issued and served a proposal for decision, *a party* may bring those rulings to the Commission for review by requesting, pursuant to 3 V.S.A. § 811, the opportunity to file exceptions and to present briefs and oral argument.” (emphasis added)).

⁹ 3 V.S.A. § 801(b)(5).

¹⁰ Case No. 24-1755-PET, Memorandum re: Notice of Complete Petition of 6/11/24.

case;¹¹ it did not reopen the public comment period or seek non-party comments. Accordingly, the public comments filed after the issuance of the PFD are untimely and those who filed the comments are not parties entitled to comment on the PFD.

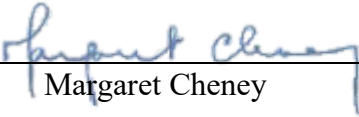
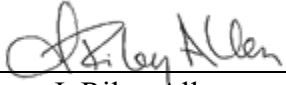
Therefore, we grant the Petitioner's motion and will not consider the public comments filed after the PFD was issued. Further, pursuant to 3 V.S.A. § 811 and Commission Rule 2.215(C), non-parties cannot request an oral argument or other hearing on a PFD. To the extent that any public commenter filed such a request, the request is denied. Finally, to clarify, the Commission's determination to not consider the late-filed public comments does not remove the comments from the Commission's electronic filing system, ePUC. They remain part of the public record. However, as mentioned above, public comments are never evidence in a case.

The Commission will hold an oral argument as requested by the Intervenors. A separate notice for the oral argument will be issued. Only parties to the case will be given an opportunity to present oral argument, pursuant to 3 V.S.A. § 811.

SO ORDERED.

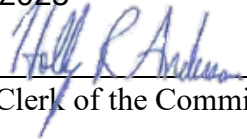
¹¹ The parties to the case are the Petitioner, the Department, the Vermont Agency of Natural Resources, and the Intervenors.

Dated at Montpelier, Vermont, this 29th day of July, 2025.

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Edward McNamara	)	PUBLIC UTILITY
	)	
	)	
Margaret Cheney	)	COMMISSION
	)	
	)	
J. Riley Allen	)	OF VERMONT

OFFICE OF THE CLERK

Filed: July 29, 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.