

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 25-0257-PET

Amended 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 REPLY TO INTERVENORS’
OPPOSITION TO SECOND MOTION FOR LEAVE TO AMEND**

NOW COMES Rising Tide Towers II, LLC (“RTT”), together with Wireless Partners FN, LLC (“WP”, and together with RTT, “Rising Tide” or “Petitioner”), and responds as follows to the document from Tanya and Jesse Hart (collectively, “Intervenors” or the “Harts”) filed on August 8, 2025 entitled “Reply to Petitioner’s Leave to Amend Petition Submitted July 21, 2025” (the “Opposition”). The Opposition pertains to Rising Tide’s proposed telecommunications facility located at 127 Crow Hill Road in Pownal, Vermont (the “Project”), where it seeks to reduce the proposed height from 120’ to 93’ by way of its Second Motion for Leave to Amend Petition dated July 21, 2025 (the “Motion”).

The Opposition requests that the Hearing Officer deny the Motion unless Petitioner undertakes or submits three items in advance, following which the Harts seek an additional opportunity to comment before the Hearing Officer renders a decision. ¹ Each item is addressed on the following pages.

¹ Opp at 2.

A. UPDATED BALLOON TEST OR PHOTOGRAPHIC SIMULATIONS

The Harts' first item is to require Petitioner to provide an updated balloon test and/or photographic simulations of the 93' tower prior to leave being granted.² This item should be rejected. The Hearing Officer denied Intervenors' previous request for a new balloon test when the height of the tower was reduced from 195' to 120', to wit:

Petitioners have ... 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.³

Petitioner posits that there is even less reason to conduct a balloon float in this instance than there was with the previous height reduction, nor grounds to require Petitioner to produce additional photographic simulations. The simulations included with the Amended Petition (specifically Exhibit RTT-DA-04) already demonstrate elimination of any visibility from four locations, and show substantially reduced visibility from the remaining locations originally surveyed as part of the Project.⁴ Given the multiple measures that Petitioner has already taken over the course of this proceeding to reduce visual impacts, there is no reason for the Hearing Officer to impose additional process and requirements at this stage. As Petitioner previously explained, balloon tests are costly, and require careful advance planning by technicians to ensure optimal weather conditions, and avoid inaccuracies in the information being collected or viewed. Given the overall status of the case, there is no need to impose a balloon test / photo simulation requirement in advance of granting the Motion.

² Opp. at 1.

³ Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Order of 06/18/2025 at 3.

⁴ See Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Archambault pft. at 6-7.

B. COVERAGE ANALYSIS

The Harts next ask that leave only be granted conditioned on Petitioner submitting “a new coverage analysis to demonstrate that the reduced-height tower achieves its stated goals without undermining service quality.”⁵ The Hearing Officer should reject this claim because the Harts have not sought, nor have they been granted, intervention on coverage-related matters pursuant to 30 V.S.A. § 248a(a). While true that by Motion to Intervene dated July 16, 2025, the Harts sought to “re-intervene” to assert alternative site recommendations (and claimed that the proposed location was “geographically unsuitable for the target coverage area ...” without any supporting evidence),⁶ the Hearing Officer rejected the Harts’ motion on grounds that intervention had already been granted for aesthetics and public health and safety under 248a(c)(1).⁷ The Hearing Officer thus implicitly rejected coverage issues as a separate ground upon which to hold an evidentiary hearing. The Town never weighed in on coverage issues, providing only comments on town plan and aesthetics.⁸ The Department has already recommended approval of the Project as modified by the Motion, finding that “[b]y improving coverage, the Project will contribute to the public health and safety of the area,” while also “furthering State telecommunications policy and planning goals pursuant to 30 V.S.A. § 202c(b).”⁹ On this basis, Petitioner should not be required to submit additional coverage

⁵ Opp. at 2.

⁶ Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Harts’ Motion to Intervene, July 16, 2025, Supplement at 3.

⁷ Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Order of 07/22/2025 at 1 (“The Harts intervention was previously granted, and the Petitioners’ proposed amendment *does not in any way change the Harts party status*. Therefore, the Harts second motion is moot ...”) (emphasis added).

⁸ Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Town Intervention, 07/09/2025 at 1.

⁹ Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Department Response to Motion, 08/08/2025 at 5.

information as a condition precedent to leave to amend being granted. Rather, it should be up to Petitioner to make any such statements to the extent they pertain at all to aesthetics and/or public health and safety under 30 V.S.A. § 248a(c)(1).

C. ADVERSE AESTHETIC AND PUBLIC SAFETY IMPACTS

Intervenor's third requested item as a condition for granting the Motion is that Petitioner be required to "[a]ddress the adverse impacts on our family and property in a meaningful way, not simply through attempts at procedural compliance," all to be submitted in advance for evaluation prior to allowing amendment.¹⁰ Petitioner vigorously disputes that it has failed to address aesthetics "in a meaningful way," and will be prepared to so demonstrate as much in both the Second Amended Petition, as well as at the evidentiary hearing.¹¹ But it is not necessary for the Commission and the parties to review that submission in advance to allow this proceeding to continue to move forward.

To the extent the Harts bemoan the length of this proceeding, they offer no proof that delays represented a deliberate tactic by Rising Tide. To the contrary, Petitioner is prepared to file its Second Amended Petition in short order, so that the parties can proceed to the next phase expeditiously (and ideally through a status conference). Moreover, Petitioner has already pointed out in this proceeding that the key source of that delay was the Town's failure to convene a hearing during the advance notice period when the various issues could have been aired and addressed (with the Department's presence and participation).¹² While true (as the

¹⁰ Opp. at 2.

¹¹ Accord Department Response, *supra* at 4-5 (opining that the Project complies with the aesthetics and public health / safety criteria of 30 V.S.A. §248a(c)(1).

¹² Petition of Rising Tide Towers II, LLC (Pownal), Case No. 25-0257-PET, Consolidated Response to Public Comments, March 28, 2025 at 2-3.

Hearing Officer pointed out) that the Town cannot be legally compelled to hold meetings with a petitioner during the advance notice stage,¹³ failing to engage pre-petition runs counter to the spirit of those provisions in Section 248a envisioning that a dialogue take place with municipal entities in order to produce a pre-petition recommendation.¹⁴ The result of that failure in this case was that all interactions with the Town took place post-petition, and led to multiple scheduling-driven delays. Rising Tide shares the Harts' aggravation over this case's duration, but no behavior on the part of Petitioner warrants deferring the Hearing Officer's ruling on the Motion until after all the materials are submitted.¹⁵

CONCLUSION

For the foregoing reasons, the Commission should deny the Opposition, and grant the Motion. Petitioner requests seven to ten calendar days to submit its Second Amended Petition, and urges the Hearing Officer to set a date for status conference to determine whether an evidentiary hearing is necessary (and/or a briefing schedule), and to set a date and time for the hearing if warranted.

¹³ See Order of 7/22/2025, *supra*, at 3. Independent of this proceeding, Petitioner urges the Commission to consider holding a workshop on Section 248a with a goal of improved guidance and communications to municipalities on the process, as there have been multiple 248a cases of late where confusion and frustration among all involved parties is manifest.

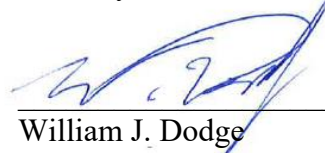
¹⁴ See, e.g., 30 V.S.A. §248a(e)(2), (m) and (n).

¹⁵ Moreover, should leave be granted, the Harts will presumably be granted an opportunity to review and respond to the documents prior to the evidentiary hearing, or to withdraw their request for a hearing as they suggest they might do. Opp. at 3.

DATED at Burlington, Vermont, this 11th day of August, 2025.

Respectfully submitted,

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