

**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 OPPOSITION TO
BROWN / WILKERSON MOTION TO INTERVENE**

NOW COMES Rising Tide Towers II, LLC (“RTT”), together with Wireless Partners FN, LLC (“WP”, and together with RTT, “Rising Tide” or “Petitioner”), and submits its opposition (“Opposition”) to the Motion to Intervene filed by Terry Brown and Jane Wilkerson (“Intervenors”) on Sunday, August 10, 2025 (the “Motion”). For the reasons set forth below, the Motion should be denied because (1) Intervenors’ Motion was not timely submitted; (2) Intervenors’ Motion has failed to state a basis for intervention as required by Public Utility Commission (“PUC”) rules; and (3) Intervenors have provided no proof of their property ownership, and public information regarding the property conflicts with Intervenors’ alleged title to the parcel in question.

BRIEF IN SUPPORT OF OPPOSITION

A. STANDARD OF REVIEW

Commission Rule 2.209 governs intervention in proceedings before the Commission. Rule 2.206(A) states that “[m]otions not made during a hearing must be in writing, filed within a reasonable period of time from when the issue arose or by a deadline established by rule or order.” Without citing the rule, Intervenors appear to be requesting permissive intervention under Rule 2.209(B), which states that “[u]pon *timely* application, a person may be permitted to

intervene in any proceeding.” (Emphasis added.) Rule 2.209(B) requires that prospective intervenors demonstrate “a substantial interest which may be affected by the outcome of the proceeding.” In exercising its discretion under Rule 2.209(B), the Commission has traditionally considered the following three factors:

- (1) whether the [intervenor's] interest will be adequately protected by other parties;
- (2) whether alternative means exist by which the [intervenor's] interest can be protected; and
- (3) whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or the public.¹

Separately, Rule 2.209(D) requires that “[a]n application to intervene must be made by notice (if notice is allowed by statute or Commission rule) or by motion made in accordance with these rules,” submitted by the date set forth in a scheduling order. (Emphasis added.) Rule 2.206(A), (B), and (D), in turn, provide that motions be made in writing, accompanied by a brief or memorandum of law, as well as a request to present evidence and a statement of the evidence a party wishes to offer, all complying with the form filing requirements of Rule 2.204(E)(1). The Commission is authorized under Rule 2.208 to refuse to accept for filing a motion that fails to conform to the requirements of the rules, or is otherwise substantially defective or insufficient.

¹ *Petition of Industrial Tower and Wireless PCS, LLC (Ira)*, Case No. 22-2442-PET, Order of 10/14/2022 at 1. 25100737.1

B. APPLICATION OF LEGAL STANDARDS

1. Untimeliness

As a threshold matter, Intervenors have failed to submit a timely motion. As noted, Rule 2.206(A) states that “[m]otions not made during a hearing must be in writing, filed within a reasonable period of time from when the issue arose or by a deadline established by rule or order.” (Emphasis added.)

Intervenors cannot satisfy the requirements of Rule 2.206(A). As confirmed in the Notice of Complete Petition dated February 7, 2025, the intervention deadline in this case was originally set for March 7, 2025. That deadline was later extended to April 4, 2025. The Commission then scheduled a hearing on April 28, 2025, after which time a scheduling order was granted affording non-petitioners until June 20, 2025 to submit comments regarding the Project. Following the Hearing Officer's substantial change determination, non-petitioners were provided with 30 days from the date of Petitioner's amended petition to file comments. In its most recent order of July 22, 2025, it granted the parties until Friday, August 8, 2025 to submit comments on Petitioner's Motion for Leave to Amend.

When viewed in light of the overall proceeding, Intervenors have not “filed within a reasonable amount of time ...” for purposes of Rule 2.206(A). Intervenors' Motion provides no explanation of when and how they first learned of the petition, thus making it impossible to assess whether the substantial delay from the original March 7 intervention deadline, up through

the most recent delay past the August 8 intervention deadline on Petitioner's second motion for leave, are "reasonable" when viewed applying traditional "excusable neglect" standards.²

2. Absence of Clear Basis for Intervention

In addition to being untimely, Intervenors have failed to submit a motion that conforms to the requirements of Commission Rules 2.209(D), 2.206, and 2.204(E)(1). As set forth in Rule 2.209(D), absent a statute or rule allowing for notice intervention under Section 248a, intervention must be sought in the form of a motion that comports with the Commission's rules.³ Neither a statute nor any Commission Rule provide adjoining landowners a right to notice intervention for a Section 248a proceeding.⁴ The Motion appears to have been submitted via ePUC without using the Commission's "Intervention Motion Form," and more importantly is unaccompanied by any separate filing in the form of a motion or accompanying statement of evidence to be offered, as required under Rules 2.206(A)-(B) and 2.204(E)(1).

² See *In re Central Vermont Public Service Corp.*, Docket No. 7191, Order of 9/13/06 (denying untimely motion to intervene where movant did not provide justification for late request); see also *Ying Ji v. Heide*, 2013 VT 81, ¶ 11 (explaining "excusable neglect" under V.R.C.P. 60 as an equitable determination taking account "all relevant circumstances" surrounding a party's omission, including "the danger of prejudice to the [responding party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.") (internal citations omitted).

³ See [Public Participation and Intervention in Proceedings Before the Public Utility Commission](#), at 3-4 ("In most cases, a motion to intervene must be filed by all others seeking party status in a Commission case – including: ... Section 248a cases relating to the siting of utility infrastructure such as cell towers A motion to intervene **must address certain legal standards, as required by Commission rules**. For example, you must ensure that your motion clearly describes your circumstances and the reasons you meet the standards for intervening. Before filing a motion to intervene, please read Commission Rule 2.209") (emphasis added) (hereinafter "Intervention Guidance"), *ref'd* in Notice of Complete Petition, Case No. 23-4087-PET, 12/04/2023 at 1.

⁴ *Accord In re Petition of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility (Weston)*, 192 Vt. 20, 27 (2012) (finding that adjoining landowners in a Section 248a proceeding "stand in the same shoes as any member of the public with respect to intervention," and lack due process rights).

Irrespective of form, the Motion contains no clear statement of the evidence to be presented in support of a motion for intervention, as required by Rule 2.206(D). Instead, Intervenors claim to be neighboring property owners and ask to be included on future lists in order to file motions. To Petitioners' knowledge, a statement of this kind without threshold allegations or proffer of evidence has never been a basis to grant intervention.

In addition to failing to provide substantive allegations or evidence, Intervenors fail to show that their interest will not be adequately protected by other parties. The Commission has granted permissive intervenor status to the Harts in this proceeding on the basis of aesthetics and public / health and safety. Granting permissive intervention to an additional party at this time—following waiver of discovery, and taking place right before an evidentiary hearing is potentially to be scheduled (or briefing to take place)—will unduly delay this proceeding, prejudicing Petitioner's interests. Timeliness is all the more important given the concerns recently raised in this proceeding regarding delays.⁵ In that sense, this intervention can only serve to unduly prolong this proceeding.

3. Absence of Ownership Evidence

In addition to the failure of Intervenors' Motion to meet the requirements of the Commission's rules, there is conflicting evidence with respect to the Intervenors' stated ownership of the parcel adjacent to where the proposed tower is to be located. Intervenors confusingly state that they "*abide* at 718 Montgomery Road...." (Emphasis added.) It may be

⁵ See Case No. 25-0257-PET, Petitioner's Reply to Hart Opposition to Second Motion for Leave to Amend, 08/8/2025 at 1.

that they were seeking to claim that they "reside" at the address, but the Motion does not contain an address for either Intervenor, nor any other contact information to validate that assumption.

On the [Vermont Parcel Viewer](#), 718 Montgomery Road (SPAN 495-156-10731) is shown as being owned by Genesis Pownal VT LLC, C/O Angi Sheppard, 2812 North Norwalk St, Suite 105, Mesa, AZ, 85215. A review of business entity information from the [VT Secretary of State's website](#) reveals no domestic or foreign-registered limited liability company of that name. While it may be that the property has changed hands since the original petition was filed, Petitioner is entitled to rely on the most up to date Pownal Grand List in submitting its petition, and has made a certification to that effect.⁶ Given Intervenors' failure to clearly state the basis of their property ownership, Petitioner posits these are further grounds not to grant Intervention at this very late stage of the proceeding.

CONCLUSION

For the foregoing reasons, the Commission should deny Intervenors' Motion.

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

Respectfully submitted,

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⁶ See Case No. 25-0257-PET, Petitioner's Certification of Advance Notice, 02/03/2025 at 2.
25100737.1