

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Case No. 25-0257-PET

---

Second 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	
---	--

---

**PETITIONER’S OPPOSITION TO INTERVENORS’ MOTION TO DISMISS**

NOW COMES Rising Tide Towers II, LLC (“RTT”), together with Wireless Partners FN, LLC (“WP”, and together with RTT, “Rising Tide” or “Petitioner”), and files its Opposition to the “Motion to Dismiss Petition for Failure to Provide Required Notice” (“Motion”) filed by Tanya and Jesse Hart (collectively, “Intervenors” or the “Harts”) on August 13, 2025. The Motion pertains to Rising Tide’s proposed telecommunications facility located at 127 Crow Hill Road in Pownal, Vermont (the “Project”).

The Motion requests that the Hearing Officer dismiss the petition for Petitioner’s alleged failure to provide notice to two out of the five adjoining landowners throughout the proceeding. The Motion was filed one day before the Hearing Officer granted leave for Petitioner to file its second amended petition, which Petitioner submitted via ePUC on August 22, 2025. The Motion should be denied because (1) Petitioner made good faith efforts throughout this proceeding to notify all adjoining landowners, relying on the Vermont Parcel Viewer and other indices of record for the prior submissions; and (2) cured any defect with the prior notices through circulation of its most recently-amended petition to all adjoining landowners, as reflected in the certificate of service accompanying the petition. In support of its Opposition, Petitioner submits the following Memorandum of Law.

**MEMORANDUM IN LAW IN SUPPORT OF OPPOSITION TO MOTION TO DISMISS**

A. INTRODUCTION

Throughout this proceeding, Petitioner has made reasonable good faith efforts to provide notices regarding the Project to all adjoining landowners. Contrary to the Harts' allegations, only one of the five adjoiners failed to receive notices of three out of four submissions. As explained below, the inadvertent error was due to information concerning one of the parcels on the Vermont Parcel Viewer (and on the Town's own webpage) that was confusing at best, and not readily ascertainable to Petitioner or its consultants. The adjoiners in question knew about the Project sometime in early-to-mid August, 2025 (as evidenced by their pending motion to intervene), and received notice of Petitioner's most recently filed petition filed on August 22, 2025 (the "Second Amended Petition"). Vermont Public Utility Commission ("PUC" or "Commission") precedent makes clear that the proper cure in such circumstances – to the extent any cure is necessary – is to extend the period for intervention or comments. Dismissal is not an appropriate remedy in an instance such as this one where the non-notified intervenors still have an opportunity to meaningfully participate in the case, and where the Petitioner both exercised good faith in attempting to determine the adjoining property owner information, and also corrected the error expeditiously.

B. PUC PRECEDENTS REGARDING NOTIFICATION

In their Motion, intervenors cite both the Procedures Order and PUC Rule 2.204(G) in support of dismissing the instant petition. Motion at 1-3. Yet Intervenors provide no direct authority, nor any citation to a rule, in support of dismissing a petition for failure to notify one or more adjoining landowners. Commission precedent makes clear that the normal remedy for

delayed notice is to stay or lengthen the proceedings to allow for any defect to be cured, and to allow any unnoticed parties additional time to respond.<sup>1</sup> Moreover, the Commission has broad authority to waive strict application of the notice requirements pursuant to its rules. *See* PUC Rule 2.107 (“In order to prevent unnecessary hardship or delay, in order to prevent injustice, or for other good cause, the [PUC] may waive the application of rule upon such conditions as it may require, unless precluded by the rule, itself, or by statute.”).

A curative approach, in lieu of outright dismissal of an application, is the normal means by which a notice defect is cured in a PUC proceeding. For example, in *Swanton Wind*, the Commission denied a motion to dismiss a petition for a wind facility that was based on, *inter alia*, the petitioner's inadvertent failure to notify two adjoining landowners of a project at the time the application was filed.<sup>2</sup> The Commission held that the applicant “ha[d] *appropriately cured* the lack of notice to the two adjoining fee-simple landowners ... by subsequently providing such notice.”<sup>3</sup> Finding that the applicant had provided advance notice to multiple landowners, and had widely publicized the project locally, it concluded that the two landowners

---

<sup>1</sup> *See, e.g., Application of Seneca Mountain Wind, LLC*, Docket No. 7867, 2012 WL 5872879, at \*6-7 (Vt. P.S.B. Nov. 15, 2012) (denying motion to dismiss based on, *inter alia*, failure to notify three adjoining landowners and instructing the applicant to “immediately provide copies of its application” to the affected landowners); *Petition of Encore Derby Wind, LLC*, Docket No. 7832, 2012 WL 745834, at \*6 (Vt. P.S.B. Mar. 2, 2012) (granting conditional waiver to notice timing requirements where the petitioner failed to notice landowners and governmental entities “because it is apparent . . . that [the petitioner] engaged in extensive public outreach throughout the area surrounding the proposed project” and it is therefore “reasonable to conclude that” affected landowners and entities “are at least aware of the proposed projects”); *see also Petition of Cent. Vt. Pub. Serv. Corp.*, Docket No. 7714, 2011 WL 2602540, at \*1-2 (Vt. P.S.B. June 27, 2011) (waiving notice); *Joint Petition Green Mountain Power Corp.*, Docket No. 7628, 2011 WL 3210820 (Vt. P.S.B. May 31, 2011) (discussing notice waiver in procedural history).

<sup>2</sup> *Petition of Swanton Wind LLC*, Case No. 8816, 2017 WL 1364802, at \*3-4 (Vt. P.S.B. Mar. 2, 2017).

<sup>3</sup> *Id.* at 4 (emphasis added).

in effect had constructive notice at the time the application was submitted.<sup>4</sup> Since the landowners were also given over a month to familiarize themselves with the project before expiration of the intervention deadline in the docket, the Commission concluded it was “unlikely that these two adjoining landowners have suffered any prejudice by receiving late notice,” and declined to dismiss the petition upon motion.<sup>5</sup>

The Commission’s discussion on notice issues regarding Vermont Gas Systems’ (“VGS”) transmission pipeline approved in Docket 7970 is similarly instructive. *Petition of Vt. Gas Sys., Inc.*, Docket 7970, 2014 WL 1409665 (Vt. P.S.B. April 8, 2014). In that case, the Commission articulated a reasonable and practical standard for reviewing defective notice based on the filing requirements for energy transmission and generation projects under 30 V.S.A. § 248. The Commission observed that its rule requires “good faith efforts” to provide notice and does not demand “‘actual’ notice to the adjoining landowners.”<sup>6</sup> The Commission explained that the phrase “‘good faith efforts’ implicitly acknowledges there may be instances where the petitioner tries—in good faith—but nonetheless fails to deliver notice of the proposed project to an adjoining landowner.”<sup>7</sup> The Commission observed that Title 30 does not mandate participation of adjoining landowners, and that PUC rules for transmission / generation projects provide that “[n]o defect in the provision of notice to adjoining property owners under this rule shall invalidate an action by the [PUC] on a petition for a certificate of public good under 30 V.S.A. § 248.”<sup>8</sup> These PUC cases demonstrate that that the normal practice is not to dismiss a case based

---

<sup>4</sup> *Id.*  
<sup>5</sup> *Id.*  
<sup>6</sup> *Id.* at 5.  
<sup>7</sup> *Id.*  
<sup>8</sup> *Id.* (quoting PUC Rule 5.402(B)(3)).

on failure to notify an adjoiner, provided that the applicant demonstrates good faith in attempting to rectify the issue.<sup>9</sup>

To the extent that the Harts also allege 30 V.S.A. §248a(e) as grounds for dismissal under a due process theory, the Supreme Court long ago closed down that line of reasoning.<sup>10</sup>

C. NOTICE PROVIDED TO ADJOINING LANDOWNERS IN CASE 25-0257-PET

In this proceeding, boiled down to its essentials, there have been four separate notifications relative to the Project, defined as follows: (i) the “Advance Notice” dated November 11, 2024; (ii) the “Original Petition” filed February 3, 2025; (iii) the “Amended Petition” filed May 21, 2025; and (iv) the Second Amended Petition filed August 22, 2025. The Harts concede that they, Mr. Pollert, and the Stewarts received proper notice throughout the proceeding, but contest the sufficiency of notice to two adjoiners: Four Directions LLC (“Four Directions”), and landowners Terry Paul Brown, Jane Wilkerson, and David Wilkerson (collectively, “Brown / Wilkerson”). The facts regarding notice to these two adjoiners are described below.

---

<sup>9</sup> *Accord In re Stowe Cady Hill Solar LLC*, 206 Vt. 430, 439 (2018) (warning against inconsistent application of procedural regulations, and requiring the PUC to “treat like cases alike” when it comes to notice / completeness determinations, and reversing dismissal of petition for solar project on account of missed adjoiner notice).

<sup>10</sup> *In re Petition of New Cingular Wireless PCS, LLC d/b/a AT&T Mobility*, 192 Vt. 20 (2012) (holding that owner of adjoining property does not “have a constitutionally protected interest with respect to the erection of telecommunications facilities on adjoining or nearby land” and, thus, does not have procedural due process rights in 248a proceedings); *accord Auclair v. Vermont Elec. Power Co., Inc.*, 133 Vt. 22, 26 (1974) (characterizing a section 248 proceeding as a “legislative, policy-making process” and with adjoining landowners having “rights as members of the general public to participate in public hearings ... regarding the issue of public good,” without a right to individual notice and an adjudicatory hearing).

#### **A. Four Directions LLC**

On November 11, 2024, Petitioner provided the Advance Notice to the Marion Rapoport Revocable Trust (the "Trust"). At that time, the [Vermont Parcel Viewer \("VPV"\)](#), as well as the Town of Pownal (the "Town") Grand List, identified the Trust as the owner of the property now owned by Four Directions LLC (SPAN 495-156-12118).

On November 26, 2024, Ms. Rapoport called Petitioner's counsel via telephone to apprise Petitioner that she had sold the property to Ashley and Kathryn Benson (the "Bensons"), but did not have the Bensons' mailing address. Petitioner promptly attempted to contact the Town to verify the Bensons' ownership but was unable to reach a municipal employee. Neither the Vermont Parcel Viewer nor the Town's GIS website had been updated with sale information. On Wednesday, November 27, rather than waiting until after the Thanksgiving holiday to notify the Bensons of the Advance Notice, Petitioner sent a copy of the filing as a courtesy to the Bensons at what Petitioner identified as the Benson's address at 1020 Simonds Road in Williamstown, MA.

On Monday, December 2, 2024, the Town responded to Petitioner, confirming the transfer of ownership but indicating that the Bensons had taken title under a limited liability company. The Town provided Petitioner with Four Direction's address of 184 East Main Street, PO Box 225 in North Adams, MA. Petitioner verified the address against the Massachusetts Secretary of State's database, which showed the North Adams address as the entity's business address, and with Ashley Benson as the entity's registered agent with the same address as the Bensons' Simonds Road address in Williamstown, MA. Despite having already provided notice

to the entity's registered agent, Petitioner sent the Advance Notice to Four Directions at the North Adams, MA address.

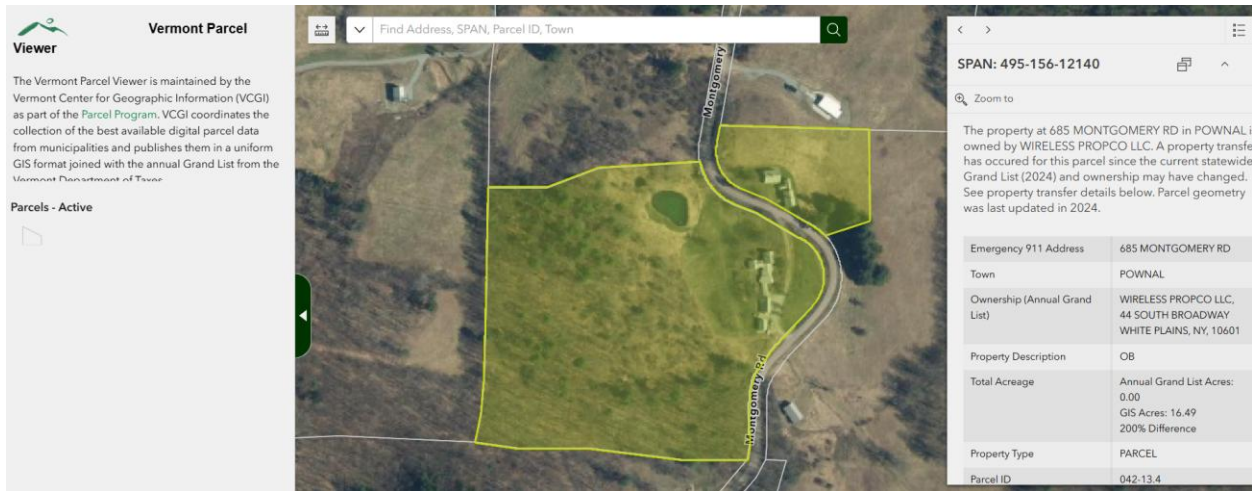
Although Petitioner notified Four Directions in the Petition and Amended Petition, it sent notice to the registered agent's address, rather than the address listed on the Grand List. The Bensons have not raised an issue with respect to the address used for the notices. For the Second Amended Petition, Petitioner sent notice to Four Directions at its North Adams, MA address as set forth in the Grand List.

Based on the foregoing, Petitioner posits that the notices provided to Four Directions LLC and/or the Bensons are more than sufficient to have apprised the property owner as to the nature and content of this proceeding.

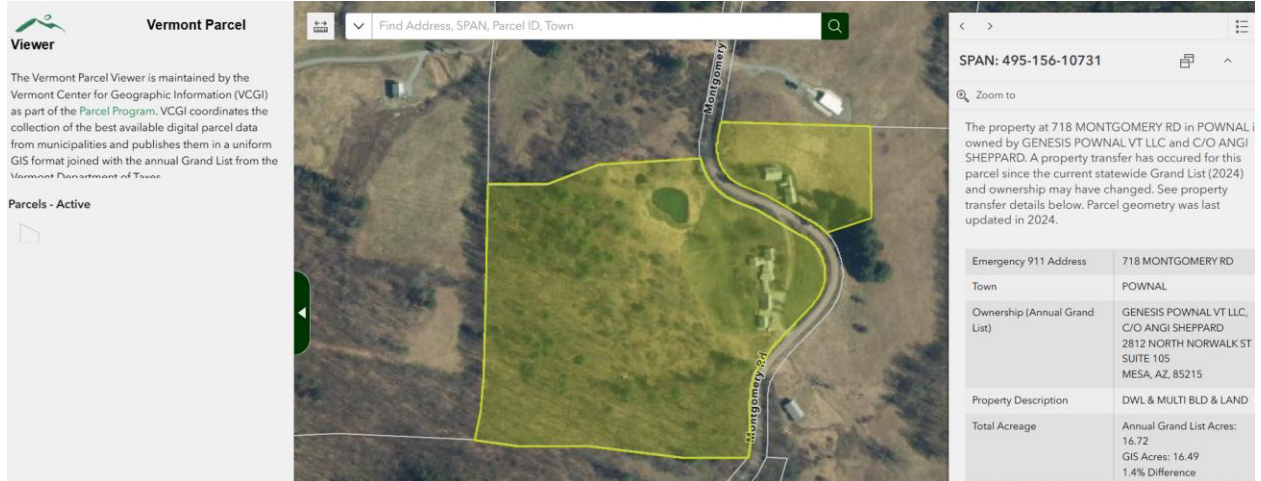
**B. Wilkerson / Brown**

Petitioner concedes that Brown / Wilkerson did not receive the Advance Notice, the Petition, or the Amended Petition for the Project, due to a confusing set of circumstances regarding the VPV, and its inaccurate depiction of multiple owners on the same parcel. At the time the Advance Notice was filed (and extending through to the present day), the property shown as 685 Montgomery Road, SPAN 495-156-12140, is depicted as covering a broad area on the tax map, spanning both sides of Montgomery Road (see green areas in the map on the following page). A prior version of the Grand List had shown Cellco Partnership d/b/a Verizon Wireless as the owner of SPAN 495-156-12140, but the VPV currently shows Wireless Propco, LLC as that parcel's owner. As can be seen, the acreage column states that the grand list acreage was "0.00", but that the GIS acreage is depicted at 16.49 acres. Combined with the visual depiction, it appears at first glance that Wireless Propco, LLC is the owner of the whole parcel.

Rising Tide Towers II, LLC Petition for Certificate of Public Good: Pownal, VT  
Petitioner's Opposition to Motion to Dismiss  
Case No. 25-0257-PET  
August 29, 2025  
Page 8 of 11



What was not apparent to Petitioner or its consultants prior to the Brown / Wilkerson intervention was that the Town assigned a separate ID to the same parcel at a different address—718 Montgomery Road, SPAN 495-156-10731—as depicted below:



Notwithstanding the apparent transfer of SPAN 495-156-10731 to Brown / Wilkerson in 2023, the VPV still shows Genesis Pownal VT, LLC as the parcel's owner, though the VPV now reflects sale information elsewhere in the summary window confirming David Wilkerson's ownership (though referencing neither Terry Brown nor Jane Wilkerson).

Petitioner sent the Advance Notice, Petition, and Amended Petition to Cellco Partnership d/b/a Verizon Wireless at its address in Addison, TX, but was never apprised as to the existence of the overlapping parcel, and thus of the Brown / Wilkerson ownership interest, until Jane Wilkerson and Terry Brown submitted their motion for intervention on August 10, 2025.<sup>11</sup> The motion makes clear that “Verizon Wireless and also T-Mobile operate cell towers *on an easement on our property* and are not owners of the property. . . .” Neither the VPV nor the Town’s GIS system reflect an easement per se. With the benefit of hindsight, it appears that the Town assigned the separate parcel ID to an easement of less than an acre to cover two wireless facilities on the property, separate from the fee ownership. Even so, the nature and extent of each party’s ownership is less than clear given the visual depictions of parcel areas.

Notwithstanding the inadvertent error concerning the overlapping parcel information, Petitioner sent notice of the Second Amended Petition to Brown / Wilkerson at their Nashville, TN address, and to Wireless Propco, LLC (the presumptive current easement holder), at its White Plains, NY address, which are the addresses shown for those landowners on the Grand List issued on August 7, 2025, and verified with the Town clerk.<sup>12</sup>

D. PETITIONER HAS ADEQUATELY CURED ANY NOTICE DEFECTS

Dismissal of the instant proceeding would be an especially drastic measure, unsupported by PUC precedent that favor a curative approach to rectifying any prejudice to an owner who did

---

<sup>11</sup> David Wilkerson did not join in the motion.

<sup>12</sup> By virtue of only holding an easement, Wireless Propco, LLC would not be legally entitled to notice under Commission’s Seventh Order Adopting Revised Standards and Procedures Implementing 30 V.S.A. § 248a, dated January 18, 2023, Section IV(C); however, given the confusion over the separately-assigned parcel id, and the lack of clarity regarding acreage, Petitioner included Wireless Propco, LLC in the certificate of service for the Second Amended Petition out of an abundance of caution.

not receive prior notices. Here, any defect with respect to Brown / Wilkerson arose despite Petitioner's good faith efforts to identify the current owners of each adjoining property between November 2024 and May 2025.<sup>13</sup> As discussed in the foregoing section, Petitioner included notice of the Second Amended Petition to Brown / Wilkerson, and included Four Directions' business address on the notice in lieu of the entity's registered agent address (i.e., the Benson's home address used for the Petition and Amended Petition).

Furthermore, Brown / Wilkerson has had at least constructive notice of the Project, as signified by their August 10, 2025 Motion to Intervene, filed prior to the Second Amended Petition, and considering the multiple Selectboard meetings on the Project held over the course of the summer, together with a balloon test last Fall following the Advance Notice.<sup>14</sup> The Hearing Officer's Order of August 14, 2025, set the deadline for submitting comments and requests for hearing on the Second Amended Petition at September 5, 2025. Brown / Wilkerson will have had 25 days from the filing of their Motion to Intervene until the comment / request deadline, which Petitioner posits is ample time to review and comment on the Project.

In light of the Second Amended Petition and the September 5, 2025 comment deadline, Brown / Wilkerson will not "have suffered any prejudice by receiving late notice and [the Hearing Officer should] decline to dismiss the [P]etition on that basis." *Petition of Swanton Wind*

---

<sup>13</sup> See *Seneca Mountain Wind*, Order of 8/9/13, at \*34 (allowing petitioner opportunity to cure defective notice, rather than dismissing petition, where defect arose as a result of petitioner's incorrect interpretation of rule that was offered in good faith); see also *In re Stowe Cady Hill*, 206 Vt. at 442 (characterizing application as substantially complete despite applicant's failure to provide contemporaneous notice to owners of eight of nine adjoining parcels).

<sup>14</sup> *Accord Swanton Wind LLC, supra*. Petitioner is aware that "Janie" Wilkerson is identified as a member of the Town of Pownal Official Facebook™ page since April 9, 2025, and thus would have received notice of the Selectboard's agenda for its April 24 and June 26 meetings, at which the Harts and Petitioners discussed the project at great lengths.

*LLC*, Case No. 8816, Order of 3/2/17, at \*3. In the alternative, if the Hearing Officer determines that Brown / Wilkerson should be afforded additional time to review and submit comments on the Project, the Hearing Officer should extend the deadline for comments to September 22, 2025, which is the first business day following 30 days from Petitioner's filing of the Second Amended Petition. This would be an appropriate remedy rather than dismissal.

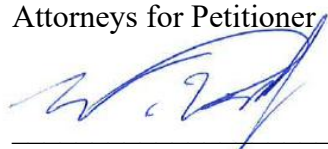
E. CONCLUSION

For the foregoing reasons, the Commission should deny the Motion. Petitioner requests that the deadline for comments and requests for hearing on the Second Amended Petition remains set at September 5, 2025, 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.

DATED at Burlington, Vermont, this 29<sup>th</sup> day of August, 2025.

Respectfully submitted,

DOWNS RACHLIN MARTIN PLLC  
Attorneys for Petitioner



---

William J. Dodge  
Alexis L. Peters  
199 Main Street, P.O. Box 190  
Burlington, VT 05402-0190  
(802) 863-2375  
[wdodge@drm.com](mailto:wdodge@drm.com)  
[apeters@drm.com](mailto:apeters@drm.com)