

**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	
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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 September 29, 2025 (the “Second Motion”) Petitioner’s Second Amended Petition (the “Second Amended Petition”). Intervenors previously submitted a Motion to Intervene on August 11, 2025 (the “Original Motion”), which the Public Utility Commission (the “PUC”) denied on September 12, 2025, for failure to state a basis for intervention.¹ As set forth below, the Second Motion should be denied because the Second Motion also fails to state a basis for intervention as required by PUC rules.

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

¹ See Case No. 25-0257-PET, Order of 9/12/2025 at 3.

under Rule 2.209(B), which states that “[u]pon timely application, a person may be permitted to intervene in any proceeding.” 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.²

Separately, Rule 2.209(D) states 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. 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.

B. APPLICATION OF LEGAL STANDARDS

1. No Clear Basis for Intervention

Similar to the Original Motion, Intervenors' Second Motion fails to state a basis for intervention and contains no new evidence for the Commission to consider. To the extent that

² *Petition of Industrial Tower and Wireless PCS, LLC (Ira)*, Case No. 22-2442-PET, Order of 10/14/2022 at 1. 25238041.2

Intervenors claim that they should be granted intervenor status due to lack of notice, Petitioner has already cured the notice defect.³ Intervenors have had additional time to review and submit comments or motions on the Second Amended Petition, but have failed to show that their interest will not be adequately protected by other parties, and have offered no evidence as to the source of their aggrievement.

Intervenors suggest that they are “being denied any ability to assess the aesthetic and property value impact of this tower on [their] property.” The PUC has previously concluded that “impacts on individual property rights and property values are outside the scope of the [PUC’s] jurisdiction in Section 248a proceedings.”⁴ As such Intervenors should not be granted intervenor status of the basis of potential impacts to property values.

Regarding Intervenors’ position with respect to aesthetics, the Commission has already granted permissive intervenor status to the Harts in this proceeding on the basis of aesthetics and public / health and safety. Moreover, Intervenors have failed to demonstrate that their interest in aesthetics will not be “adequately protected” by the Harts.⁵ Although the Intervenors note the existence of wireless telecommunications equipment within the cupolas of existing barns located on their property, the Town of Pownal Land Use Bylaws (the “Bylaws”) do not require equipment to be placed within a cupola. As discussed throughout this proceeding, Petitioner has amended the project in order to comply with the Bylaws by reducing the tower’s height from 190’ to 93’ and shifting the tower away from the Harts’ property line. The Town of Pownal has

³ See Case No. 25-0257-PET, Order of 9/12/2025 at 4.

⁴ See, e.g., *Petition of New Cingular Wireless PCS, LLC (Granville)*, Case No. 23-4087-PET, Order of 2/23/2024 at 4.

⁵ See *Petition of Industrial Tower and Wireless PCS, LLC (Ira)*, Case No. 22-2442-PET, Order of 10/14/2022 at 1.

provided no comments since Petitioner made these changes, despite several opportunities to do so. Further, the Department of Public Service has recommended that the Commission approve the Project based in large measure on Bylaws-conforming height change.⁶

Granting permissive intervention to an additional party at this time without any clear basis for establishing a protected viewshed or other significant interest—following the previous waiver of discovery of the participating parties—will unduly delay this proceeding, prejudicing Petitioner. Granting intervenor status to Intervenors can only serve to unduly prolong this proceeding.

2. No Benefit from an Additional Balloon Test

Intervenors also request a second balloon test, which request should be denied.⁷ The Petitioner has submitted extensive materials regarding the project's aesthetics, which will provide the Harts with ample opportunity to assess the project's aesthetic impacts. The PUC's Rules contain no specific provision authorizing the Hearing Officer to order such a visual demonstration. 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. As documented in the prefiled testimony of David Archambault, Petitioner was able to use the results of the previous duly-warned balloon test to furnish new simulations of the tower

⁶ See Case No. 25-0257-PET, Order of 8/8/2025 at 5.

⁷ Intervenors submitted three seemingly identical Motions to Intervene, one which was submitted on September 26, 2025, and two submitted on September 29, 2025. One of the September 29 Motions consisted of a Word document that included additional language in white text on a white background, pertaining to Intervenors' request for a balloon test, which language was not reflected in the September 26 Motion. The PUC's September 12, 2025 Order set September 26, 2025, as the deadline to submit motions to intervene. As such, the two latter motions, including the Word document, are untimely and should not be given full consideration.

at the reduced height. As such, there is no pressing evidentiary need for the Hearing Officer to order an additional balloon test.

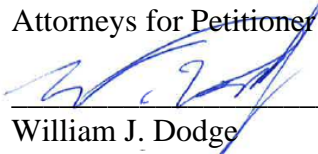
CONCLUSION

For the foregoing reasons, the PUC should deny the Second Motion, including Intervenors' request for a new balloon test.

DATED at Burlington, Vermont, this 13th day of October, 2025.

Respectfully submitted,

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