

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 24-3345-PET

Limited Size and Scope Application)
of Bell Atlantic Mobile Systems, LLC)
d/b/a Verizon Wireless and Vertex Towers, LLC,)
for a Certificate of Public Good,)
pursuant to 30 V.S.A. § 248a, authorizing the construction)
of a telecommunications facility in Manchester, Vermont)

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

NOW COMES Petitioner Vertex Towers, LLC (“Vertex”), Bell Atlantic Mobile Systems, LLC
d/b/a Verizon Wireless (“Verizon;” collectively, “Petitioner”), and pursuant to Rule 2.219 of this
Commission’s Rules of Procedure, and hereby files this Memorandum in Support of Petitioner’s
Motion for Summary Judgment. As stated herein, Petitioner requests that it be granted a
Certificate of Public Good.

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I. Introduction

Petitioner proposes to construct a 130' tall monopine cellular tower and compound with supporting equipment in the town of Manchester, Vermont (generally "the Project). The tower would provide cellular coverage to an area currently without adequate service. This is not disputed. This gap in coverage extends over large portions of central Manchester, Route 7 and other heavily traveled and used areas. Petitioner undertook an extensive analysis to locate a suitable site that could fill this gap in coverage. Petitioner looked at every existing tower within 10 miles and existing "tall structures" to see if any could provide sufficient coverage to the identified gap. It is undisputed that no existing infrastructure can provide coverage.

In addition to reviewing existing infrastructure, Petitioner evaluated a number of different properties. This included a property within the so-called Office/Industrial zoning district.¹ However, that property is an active quarry, and after good faith efforts to secure lease rights, the Petitioner and the landowner could not reach an agreement that was commercially reasonable, and which respected the Petitioner's concerns about locating a tower within an active quarry. As a result, the *sole* property available to the Petitioner that can host a tower and provide coverage to the existing underserved area is the property currently proposed.

This is significant as the Town objects to the Project on the basis that the Project is in the Mixed Use-2 zoning district. Under the Manchester Land Use and Development Ordinance, new cellular communications towers are not permitted or conditionally permitted uses within the MU-2 district. However, it is Petitioner's position that the zoning regulations do not apply, and *even if*

¹ As explained later, the Manchester zoning regulations allow new cellular towers as a conditional use in the OI district.

they did, good cause exists to preempt them. Simply – there is no other viable option to build a facility to fill this coverage gap.

The Town of Manchester (“the Town”) opposes the Project on the basis of the Town Plan, the zoning regulations and a generalized aesthetic concern. The weakness of the Town’s argument is that its town plan contains no specific, regulatory language, nor any clear guidance as concerns cellular towers. In any other context the town plan would have no regulatory effect and little to no legal significance. Nevertheless, the Town believes that it may recommend denial of this Project based on speculation and generalized statements in its town plan. Thus, the Town can convert a legally non-binding and advisory town plan into a binding and specific one as it sees fit and when it sees fit. For example, the Town claims the Project offends scenic protections in the town plan. However, the town plan does not designate the area as scenic, does list any natural resource near the Project site and affords no specific scenic protection to anything within the vicinity of the Project. The town cannot re-word or reinvent its plan just because it does not like the project. If the Town wanted the plan to afford the project site scenic protections, it could have drafted the plan to do just that.

Nor are the Town’s objections rooted in reality. The Project site is next to a quarry, a solar field, and a civic arena. The two parks near the tower site are highly developed. One has a 1000-seat football field with 70-80-foot-tall light towers for nighttime games, a large parking lot, and a swimming pool and pool building. The other park regularly hosts 3-day music festivals with a constructed stage, light towers, speaker arrays, RV camping, and vendors. It is not reasonable to conclude a monopine tower has any significant visual impact on these already developed areas. Certainly, a monopine tower has less visual impact than a fully lit high school football field.

Even under the substantial deference standard, a town cannot convert an otherwise non-regulatory and non-specific town plan into a binding veto. Paying “substantial deference” to the Town, cannot allow this Commission to rewrite the law, nor adopt positions that have clear legal error or are arbitrary. Adopting the Town’s recommendation would be doing just that. As set forth herein, there is good cause in both law and fact to find for Petitioner.

Further, the Petitioner has taken every available step to mitigate the impact. It has lowered the Tower to match the maximum height of 130’ set by the zoning regulations. Its re-designed it as a monopine. It has set it as far back on the property as possible. There are no other mitigating options and no other properties or locations. Thus on a practical level there is good cause to find for Petitioner.

II. Factual Background

The Petitioner incorporates by reference as if fully stated herein the Statement of Material Facts submitted herewith.

III. Legal Standard

Under Rule 2.219 of this Commission’s Rules of Procedure, this Commission may grant Summary Judgment if the movant shows that there is no dispute of material fact and the movant is entitled to judgment as a matter of law. This tracks the standard set under the Vermont Rules of Civil Procedure.

As is relevant to this dispute, under 30 V.S.A. §248a(c)(1), this Commission must find that:

The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or

a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). However, with respect to telecommunications facilities of limited size and scope, the Commission shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D) (floodways) and (a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat).²

In addition, under §248a(c)(2), this Commission must find that unless good cause exists, substantial deference has been given “to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan.” For the purposes of this provision, “good cause” means a showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a substantial shortcoming detrimental to the public good or the State’s interests³....” 30 V.S.A. §248a(b)(3). Those State interests are broadly summarized as ensuring that all Vermonters have access to a robust, modern telecommunications network which includes the provision of universal high-speed data and voice services, modern mobile wireless services along travel corridors and in communities, competitive choice, and improved telecommunications technology serving public services, public safety and the economic development of the State. *See* 30 V.S.A. §202c.

As is further relevant, substantial deference means “this commission assumes that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.” *See* 30 V.S.A §248a(c)(5). To effectuate the deference, “a

² This is a Limited Size and Scope Application. The Hearing Officer’s determination to open an investigation and determination that a significant issue existed did not alter this waiver. It found a significant issue under the town plan and aesthetics.

rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan” *Id.* at (c)(2)

A rebuttable presumption places the burden of going forward with the evidence on the party against whom it operates. *Rocque v. Co-operative Fire Ins. Ass'n of Vt.*, 140 Vt. 321, 325–26, 438 A.2d 383, 386 (1981). A rebuttable presumption is not evidence nor probative. *State v. Giard*, 2005 VT 43, ¶ 9. It is locative and merely shifts the burden to another party at trial. *citing Chittenden v. Waterbury Ctr. Cmty. Church, Inc.*, 168 Vt. 478, 492, 726 A.2d 20, 29 (1998) (*quoting Tyrrell v. Prudential Ins. Co. of Am.*, 109 Vt. 6, 23, 192 A. 184, 192 (1937)); see also *Application of Seneca Mountain Wind, LLC, for Auth., Pursuant to 30 V.S.A. Ss 246 & 248, to Install Four Temp. Meteorological Stations, Two in the Town of Brighton, Vermont & One Each in the Towns of Ferdinand & Newark, Vermont.*, No. 7867 (July 30, 2012)(“In Section 246 cases, the rebuttable presumption is an evidentiary burden-shifting device that does not apply to the Board's initial determination whether a significant issue with regard to aesthetics has been raised in an application or by the comments filed in response to an application.”)⁴ That a municipal recommendation is “presumed” valid under the substantial deference standard and also merely creates a rebuttal presumption logically means that if an applicant can demonstrate that the municipal recommendation is not factually or legally accurate, the presumption is “burst” and of no further force and effect.

⁴ While this is a Section 246 case, both §246 and §248a use the term “rebuttable presumption” and the analysis as to the legal and evidentiary value of a “rebuttable presumption” remains the same under §246 and §248a.

As the Town of Manchester bases its recommendation on the 2017 Town of Manchester Town Plan (“the Town Plan”), the Commission must evaluate the specific language of the Town Plan. Town plans are typically broadly worded policy documents and not controlling regulations. “[B]road policy statements phrased as nonregulatory abstractions are not equivalent to enforceable restrictions.” *In re B & M Realty, LLC*, 2016 VT 114, ¶¶ 33-36, *citing Chaves*, 2014 VT 5, ¶ 38 (quotation omitted). To be enforced as controlling guidance, plans must be “sufficiently clear to give a person of ordinary intelligence a reasonable opportunity to know what is proscribed.” *Brody v. Barasch*, 155 Vt. 103, 110, 582 A.2d 132, 137 (1990). This is a constitutional and due process requirement, and to protect those rights, Vermont law requires that plan provisions be clear and definite to prevent arbitrary application and to provide adequate notice to landowners. *In re JAM Golf, LLC*, 2008 VT 110, ¶¶ 13, 17–19, 185 Vt. 201, 969 A.2d 47, (“We will not uphold a statute that fail[s] to provide adequate guidance, thus leading to unbridled discrimination by the court and the planning board charged with its interpretation.” (quotation omitted)).

When a plan uses non-specific, broad policy language that does not place a party on clear notice of the relevant standards, the Vermont Supreme Court will not enforce the plan. *See e.g. Chaves* at ¶¶ 40–41 (concluding that plan provision stating that mineral extraction “should minimize adverse effects on aesthetics and special community resources (such as historic sites) and should not interfere with or have negative impacts on historic sites” was “broad and nonregulatory, espousing general policies” without any “specific requirements that are legally enforceable”); *see also In re John A. Russell Corp.*, 2003 VT 93, ¶ 19 (mem.) (concluding that plan that “discouraged” certain uses in particular area did not evince sufficiently “specific

policy” against particular kind of development to support finding of nonconformity with town plan); *In re MBL Assocs.*, 166 Vt. 606, 607–08, 693 A.2d 698, 700–01 (1997) (mem.) (concluding that use of word “should” in regional plan did not create mandatory enforceable requirement). Mandatory language includes terms like “must” and “shall” and it sets forth a requirement rather than a recommendation. Thus, provisions that “recommend” or “encourage” certain uses are insufficient to create an enforceable obligation. Rather, Plans must use mandatory language like “shall” and “must.”

This does not mean that “mathematical certainty of language” is required. *In re B & M Realty, LLC* at ¶ 33 (citations omitted). The whole of the plan must be viewed as a whole giving effect the goals that the plan intends to serve. *Id.* at ¶ 36 citing *In re Tyler Self-Storage Unit Permits*, 2011 VT 66, ¶ 13 (explaining that in interpreting zoning ordinances, Court must “examine not only the plain language ... but also the whole of the ordinance in order to try to give effect to every part, and will adopt an interpretation that implements the legislative purpose” (quotations omitted)). Regardless though, that cannot salvage “aspirational goals” that are otherwise not sufficient or clear to meet constitutional standard.

Lastly, to the extent that the Town independently challenged this Project based on “aesthetics” the Commission will be required to determine that the Project does not have an adverse and undue effect on “aesthetics.” This Commission uses the *Quechee* test for aesthetics.

The test first asks whether the project will have an adverse effect on scenic and natural beauty in the area in which it is located.

An adverse impact on scenic and natural beauty is not undue if three conditions are met:

First, the project must not violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area. Second, it must not offend the sensibilities of the average person. Finally, the applicant ... must take

generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.

See e.g. In re Rutland Renewable Energy, LLC, 2016 VT 50, ¶ 14.

This Commission can consider whether there are alternative sites available to meet the coverage objectives in evaluating whether reasonably available mitigating steps have been taken. *Indus. Tower & Wireless, LLC v. Roisman*, No. 2:23-CV-365, 2024 WL 4329935, at *13 (D. Vt. Aug. 19, 2024), *aff'd*, No. 24-2512-CV, 2025 WL 3002379 (2d Cir. Oct. 27, 2025) (“The possibility of alternative sites is relevant to the issues of aesthetics enumerated at 30 V.S.A. § 248a(c)(1) and (3).”) *citing* *Petition of New Cingular Wireless PCS, LLC*, No. 7998, 2013 WL 871477, at *4 (Vt. Pub. Serv. Bd. Mar. 4, 2013) (discussing alternative locations for proposed telecommunications facility as part of aesthetics discussion); *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 56 n.11, (Reiber, C.J., dissenting) (noting that alternative sites are “appropriate for consideration in CPG proceedings”). “Alternative sites could also potentially be relevant if raised as part of the recommendations of a municipal planning commission under 30 V.S.A. § 248a(c)(2).” *Id.*

IV. Argument

A. The Town Plan is not Regulatory; Good Cause exists as a matter of law and Fact to set-aside Town’s recommendation.

i. The Town Plan Contains no Specific Mandatory Language

The Town Plan contains no specific mandatory language as concerns telecommunications towers. The Town Plan starts with Section 1, Economic Development & Housing. Within that provision the Town Plan states that it is a goal and policy of the Town that:

Appropriate infrastructure must be in place to serve the needs of the community and employers. More than just water, sewer, and power, this includes fiber optics,

access to high-speed, wide-bandwidth telecommunications facilities, and other types of technological capacity. Broadband access throughout Manchester is as essential as electricity in allowing citizens, employers, and home businesses to thrive and participate in community and commerce. Section 3 of the plan addresses the provision of public services.

See Town Plan, attached as Exhibit AL-2 at Page 4; Statement of Undisputed Material Fact (“SUMF”) at ¶62.

Quite obviously this does not present a clear mandatory provision prohibiting the Project. It supports the Project as the Project provides essential infrastructure for the provision of telecommunications services which the Town deems as a necessary element for economic development.

The Town Plan also states:

Manchester is a quintessential New England Community with a historic core surrounded by rural pastures and forested mountain backdrops. Situated in the Batten Kill Valley between the Green and Taconic Mountains, Manchester cherishes its natural beauty as the basis of a high quality of life for residents and the foundation of a strong visitor economy.

Id. at Page 1; SUMF at ¶61. The Town relies on this statement to suggest the Project is in violation of the Town Plan.

There is no legal support for that position. This statement presents no mandatory terms, conditions, or standards. It is a broad statement concerning and describing the Town of Manchester. Any application of this language to control the height, location, look, or size of a telecommunication’s tower is purely arbitrary, and the provision cannot pass muster as controlling authority. No reasonable reader could read this provision and understand what is or is not allowed, particularly as it relates to a telecommunications tower.

The Town Plan contains also Section 3.3 which addresses telecommunications facilities. Nothing in this section provides a clear and mandatory provision prohibiting, barring, or even regulating the Project. It is a broadly worded, non-specific platitude. First, Section 3.3 states that the Town recognizes the importance of telecommunications services and “will work with provides to ensure that siting of facilities is accomplished in a manner that protects the scenic, cultural, and natural resources of the Town.” Plan at p. 37. This sentence is the essence of a broad policy statement without regulatory effect. It is a general mission statement *every* town and provider of telecommunication services agrees with.

Then, after a lengthy discussion of how best to locate power lines, the Town Plan in Section 3.3 provides that to:

“enhance the aesthetics and visual character of the downtown area, public utilities (including but not limited to power lines, substations, and telecommunications facilities) should be relocated from public view along main streets wherever possible. This may include behind buildings, away from the street, along streets, or underground. Where this is not possible, these should be screened from adjacent properties with dense coniferous plantings.”

Town Plan at p. 37.

By using the term “should,” this provision in the Town Plan does not create a mandatory and binding requirement. Though even if it did, Petitioner took care to honor this statement. The Petitioner located the facility behind a building and away from any street. SUMF at ¶¶77-78. The Petitioner sited the facility so that it is screened to the greatest extent possible. *Id.* There are dense trees around the proposed compound to the north and west, and the existing solar field and screening block views of the compound from the south and east. *Id.* at ¶108.

Lastly, the Town Plan’s section on telecommunications facilities ends with guidance to the Development Review Board. It states, “that visual impacts, lighting, noise generation, natural

resource impacts, and site screening are all required to be carefully considered by the Development Review Board prior to approval of any new facilities.” Town Plan at p. 38. This sentence is double speak. It merely restates the law of conditional use review which generally requires that a development review board find that a project subject to conditional use review does not have an undue adverse effect on the character of the area, which includes a review of the visual impacts, lighting, noise generation, natural resource impacts, and site screening of a project. *See e.g. In re. Group Five Investments CU Permit*, 2014 VT 14, overruled on other grounds by *In re. Confluence Behavioral Health, LLC Conditional Use Permit*, 2017 VT 112. As such, this sentence does not present any clear mandatory provision regulating the siting, design, or look of telecommunications towers (Though the Petitioner took real care to consider the visual impacts. It lowered the tower and redesigned it as a monopine to blend in with surrounding trees). Beyond the general statement quoted, the Town Plan has no specifics. It has no regulatory guidance that places a party subject to the Town Plan on notice of what is, or is not, allowed.

Thus, in total, the Town Plan has no controlling, binding, or legally regulatory statement. The Town’s recommendation nevertheless relies on the above provisions as if they are clear statements with controlling effect. That is not the case. The law holds that these provisions of the Town Plan are ineffective as a binding regulation and cannot be enforced.

The Town may try to argue that the Town Plan as a whole presents a broad and clear effort to regulate towers or a specific designated scenic resource. That argument would have no merit. Appendix A of the Town Plan provides a list of the scenic and significant natural features of the Town. None of the resources listed are impacted and there is no evidence that the proposed

tower will be visible from any of the sites. Nor do any of the scenic roads listed on Page 30 of the Town Plan appear to be impacted.

As to the cultural resources that the Town suggests protecting, those are listed in Appendix B and appear to be just a list of interesting private businesses and concerts. It is inconceivable how the Project negatively impacts any of these. Further, this Project stands in contrast to other applications in Manchester that were denied because they were impacting *designated* scenic resources. *See e.g., Petition of Mhg Solar LLC for A Certificate of Pub. Good, Pursuant to 30 V.S.A. Ss 8010 & 248, to Install & Operate A 500 Kw Grp. Net-Metered Solar Elec. Generation Facility in Manchester, Vermont., No. 20-1261-NMP, 2021 WL 4295245, at *18 (Sept. 17, 2021) (denying CPG as the proposed solar field would visually impact the foreground of Mount Equinox which “The Town of Manchester Town Plan designates Mount Equinox as a significant natural feature that “provides a breathtaking backdrop to the Manchester valley.” Manchester Town Plan at Appendix A.”) No such risk exists here.*

The Town’s discovery responses also state that the Town believes that the Project violates provisions of the Town Plan identifying “Recreation Pathways as part of a ‘greenway network.’” When asked to identify the provisions and reasons the Town felt the Project did not satisfy the Town Plan, the Town stated:

The Town Plan identifies Recreation Pathways as part of a “greenway network of pedestrian, cross country ski, and bicycle paths that would link the outskirts of town with the downtown,” which include the corridors through the Dana Thompson Memorial Park and on to Riley Rink through Hunter Park, as an important community asset. Town Plan, pp. 30–31. Section 4.1 also recognizes the Dana L. Thompson Memorial Park as a community asset for residents and visitors alike.

Town’s Responses to Interrogatories at p. 4, Exhibit AL-4.

The section referenced by the Town has no bearing on this application. *See* Town Plan at p. 30. It is entitled “Recreation Pathways” and only evidences a desire by the Town to build a greenway network of bike and walking paths around the Town. It discusses one already built stretch in Hunter Park, near Riley Rink, and Dana L. Thompson Park. *Id.* at p. 31. There is no reference to any special scenic protection afforded to these paths, nor any reason to conclude that the location of a tower near, or visible from such a path, would violate the Town Plan. In fact, it seems incongruent to suggest that access to wireless services is not important to a person using a bike or walking path. Access to wireless services is a crucial safety measure for most people using these paths. Few would know what to do other than to call for help on their phone if they crashed their bike or were assaulted on the path.

The Town also suggests that the Tower would be “prominently visible” from the “heart” or Dana L. Thompson Park, Hunter Park, and sections of Bonnet Street and Main Street. As regards the Town Plan, there is nothing in the Plan to suggest that these locations are afforded some scenic protection. Nor is “prominent visibility” a relevant standard in the Town Plan or at law. The standard is set in the *Quechee* test, and the Town offers no evidence to suggest that the Project fails the *Quechee test*.

Thus, there is no basis to conclude that as a matter of law, any provision in the Town Plan presents a legally controlling or even relevant statement in opposition to this Project. In *every* other setting where a town plan is relevant (Act 250 or zoning cases), the Town Plan would not be afforded *any* legal relevance or authority. Nor can it be read here to create a binding standard. It simply has no effective or controlling “land conservation” measures as a matter of law.

- ii. Substantial Deference does not allow the Town of Manchester to salvage a non-regulatory Town Plan; Good Cause exists as a Matter of Law

The Commission is required to find that “substantial deference” has been given to the “recommendations of the municipal legislative bodies...regarding the municipal plans.” Substantial deference is defined to mean that “that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.” 30 V.S.A. §248a(b)(5). This standard of deference is the same as that employed by the Vermont Supreme Court when reviewing state agency actions, including those of this Commission. The concept of deference comes from the idea that the “agency” to which deference is paid has some specialized technical expertise in the underlying subject matter. *In re Acorn Energy Solar 2, LLC*, 2021 VT 3, ¶ 22 (Accordingly, “[w]e employ a deferential standard of review [for] both an agency's interpretation of a statute within its area of expertise ... and an agency's interpretation of its own regulations.”). Deference is *not* a rubber stamp.

Rather, “an agency does not have carte blanche in interpreting a regulation.” *In re Conservation L. Found.*, 2018 VT 42, ¶ 16, citing *In re Wal*Mart Stores, Inc.*, 167 Vt. 75, 80, 702 A.2d 397, 400 (1997) (“Our deferential level of review ... does not equate with mere judicial passivity in determining the propriety of Board ‘interpretations’ of its own rules.” (quotation omitted). Rather, even when paying deference, the reviewing body (i.e. this commission) is *still* required to conduct an independent review. *Id.* It must “overturn an agency's interpretation [if it] shows clear legal error.” *Id.* citing *In re Stowe Cady Hill Solar, LLC*, 2018 VT 3, ¶ 21, *Conservation Law Found. v. Burke*, 162 Vt. 115, 121, 645 A.2d 495, 499 (1993). That “deference” does not hand the underlying agency (or in this case the Town) power to direct the reviewing authority (a court or this commission), underscores the United States Supreme Court’s decision in *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386–87, 144 S. Ct. 2244, 2258, 219

L. Ed. 2d 832 (2024) which eliminated the entire principle of “agency deference” in the federal system. As Justice Roberts explained, the problem with deference is that it prevents a court from exercising its supervisory role. It results in the subjugation of the court to a party before it (an agency) in violation of the concept of judicial review, due process and separation of powers. Thus, deference cannot allow a court to surrender to an incorrect, or objectionable interpretation. *Id.* (Whatever respect an Executive Branch interpretation was due, a judge “certainly would not be bound to adopt the construction given by the head of a department. Otherwise, judicial judgment would not be independent at all. As Justice Story put it, “in cases where [a court's] own judgment ... differ[ed] from that of other high functionaries,” the court was “not at liberty to surrender, or to waive it.”)

Here, deference, cannot allow the Town’s “recommendation” to be sustained. The Town’s recommendation pretends that the Town Plan has controlling land conservation measures regulating the Project. That is not true, and there is no legal basis to conclude as such. The Town Plan provides broadly worded policy objectives and general statements without legal significance. The Town’s recommendation based on the Plan is a subjective and arbitrary position- the epitome of improper governance to which deference cannot be given. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 408, 144 S. Ct. 2244, 2270, 219 L. Ed. 2d 832 (2024)(“ A rule of law that is so wholly “in the eye of the beholder,” invites different results in like cases and is therefore “arbitrary in practice,”)(citations omitted).

To pay the Town’s recommendation deference here would be adopting an arbitrary reading and converting a non-regulatory plan into a regulatory plan. That is plain legal error and beyond the bounds of substantial deference. Accordingly, there is clear and compelling legal

error in the Town's interpretation and thus deference is not appropriate, or good cause exists as a matter of law to set aside the Town's recommendation. *See e.g. Petition of Sba Towers IV, Inc., & Vtel Wireless, Inc., for A Certificate of Pub. Good, Pursuant to 30 V.S.A. 248a, for the Installation of Telecommunications Equip. in Richmond, Vermont.*, No. 8162, 2014 WL 5493886, at *7–8 (Oct. 24, 2014)(where PUC found that substantial deference did not allow Town of Richmond to make a recommendation based a town plan which did not provide regulatory guidance as suggested by Richmond)⁵.

To highlight the principle that deference cannot allow a legally incorrect or unsupported position to control, consider the following examples. Assume a town plan stated that no tower should be taller than 130' but a town made a recommendation based on that plan that a 129' tower violated the town plan. This is clearly wrong and an inaccurate legal position. Affording deference to the recommendation would be improper as there is a clear legal error in the position. Taking this a step further, consider if the same town plan was silent on tower heights and the same town stated that a 129' tower was too tall and violated the plan. Under what basis would deference allow the Commission to adopt this hypothetical town's position when the plan upon which it relies has no regulation addressing the height of a tower? To defer to the town in such a scenario would be adopting a purely arbitrary, "we know it when we see it" determination, and

⁵ "Previously, this Commission and hearing officer have made clear that this is not a zoning proceeding. Richmond argues that the Board should "give substantial deference to the Town's recommendations - not for the purpose of prohibiting wireless communications within the Town boundaries but for the ultimate purpose to site them consistent with the town plan, orderly development of the town and region and written community standards." However, the portions of the town plan that refer to telecommunications facilities do not in any way prohibit these facilities. As noted above, the first provision states that telecommunications facilities are an important part of the town's infrastructure. The second provision simply states a desire to protect scenic views. Richmond has not shown that the Project would be located in a scenic area or disrupt an identified scenic view. Further, the aesthetic analyses submitted by the Petitioners and the Department, respectively, both conclude that the Project will not have an undue adverse affect on the aesthetics of the surrounding area. Accordingly, I recommend the Board conclude that the Project will not violate the land conservation measures in the town plan."

convert a non-regulatory plan into a regulatory one. That's not what deference allows, nor the point of deference.

The State of Vermont desires to provide universal telecommunications services. Cellular communications are ubiquitous and essential to everyday life. They are how we communicate, bank, shop, and entertain ourselves. Cellular services are lifesaving- heart attacks, car accidents, slip-and falls, break-ins, all generate lifesaving calls to 911 from a cellphone. Good or bad, cellular communications are as essential to daily modern life as the provision of gas and electricity was in 1920, or as cable television became in the 1990s. Whether you are 400 feet below ground in the Tokyo subway, or on the summit of Machu Pichu, cellular communications are present. Vermont's stated legislative goal is to keep pace with the modern world and create a place where every Vermonter has access to highspeed and reliable modern communications. To do that, requires cellular towers. To deny a tower when a town arbitrarily decides it does not like a tower and argues that its otherwise non-regulatory town plan is violated, harms the State's policy of universal coverage. Deference is not a veto.

The purpose of §248a, and this Commission, is to regulate the provision of telecommunications services to achieve the State's objective. The entire reason that jurisdiction was given to this Commission to review telecommunications towers to was ensure a universal and impartial review without the individualized "we don't like it," NIMBY reaction that some towns had when a tower was proposed in their limits. When towns' realized their power to say "not in my town" was being eroded, 248a was amended to include the broader substantial deference standard. Yet that inclusion cannot be read to grant a veto to a town as is the essence of

Manchester's request now. Without any evidentiary support, Manchester's position is in effect, "we don't like it, so deny it."

To adopt that position and hand the Town a veto effectively destroys the purpose of giving jurisdiction to this Commission. If these proceedings are simply based on whether a municipality likes, or does not, like a project, then applicants might as well just get local zoning permits and Act 250 permits. At least under Act 250 and zoning, Towns' are not afforded veto power or substantial deference and a town plan like Manchester's would not be given any regulatory weight.

This of course would be an absurd result. Interpreting "substantial deference" or in applying it here, should not result in a decision that converts these proceedings into a zoning proceeding. Nor should it result in a decision that eviscerates the rationale for giving this Commission jurisdiction over a project to begin with.

Accordingly, good cause exists as a matter of law to reject or set aside the Town's recommendation.

iii. Good Cause Exists as a Matter of Fact

Even *if* the Town's arguments and the Town Plan had legal merit, good cause exists to not defer to, and to set-aside, the Town's recommendation. First, the tower's height of 130' is in accordance with the height set in the zoning bylaws (to the extent those are relevant). It is also the lowest height Petitioner can build and still achieve its coverage objectives. SUMF at ¶95. The Town has no evidence to the contrary. *Id.* at ¶39.

Second, there is *nowhere* else the Project could be built. *Id.* at ¶41. There are no existing tall structures, no existing towers, nor other properties available to Petitioner. *Id.* To the extent

that the Town plan advises that a party should evaluate whether such other options exist as a matter of first resort, the Petitioner did just that. *Id.* at ¶25-36.

Further, to the extent that the Town Plan asks that care be taken to consider the visual impacts of a facility, the Petitioner has done that too. It is proposing a tower of limited height and has designed it to blend in. *Id.* at ¶90-93. The trunk will be brown. A canopy of fake branches will be added to the top so that the upper portions, including the antenna, look like the pine tops which abound in the Manchester area. *Id.* at ¶80. Further, the applicant has set the tower site back from the main streets so that it is screened by topography and existing tree cover. *Id.* at ¶77-78. Aside from *not* building the Project, there is nothing else Petitioner can do to mitigate the visual impact while still meeting the coverage objectives. Thus, good cause exists as a matter of fact to set aside or defer from the Town's recommendation.

In similar circumstances this Commission has found good cause exists to set-aside a municipal recommendation. For example in *Petition of New Cingular Wireless Pcs, LLC d/b/a at&t Mobility, & Blue Sky Towers, LLC, for A Certificate of Pub. Good, Pursuant to 30 V.S.A. Section 248a, for the Installation of Telecommunications Equip. in Brattleboro, Vermont*, No. 8607, 2015 WL 7273702, at *4 (Oct. 30, 2015) the Hearing Officer determined that when the applicant took steps including lowering a tower to the minimum height needed to meet the coverage objectives and painting it brown to address a Town's visual concerns, and where a Town Plan was not clear and specific, good cause existed. Explaining his decision, the Hearing Officer wrote:

In this case, the Town has recommended a shorter tower height or relocation of the Project as a means of reducing the visual impact of the Project from nearby scenic areas. In response to the Town's concerns regarding visibility, the Petitioners have attempted to mitigate the visual impact of the Project by lowering

the tower height and painting the tower and antennas. The evidence put forth by the Petitioners in this case demonstrates that further lowering of the tower or relocation of the Project would frustrate the coverage goals of the Project to provide service along Interstate 91 and in portions of Brattleboro. In addition, as noted in the findings above, we conclude that while the Project will be visible from some surrounding areas, it will not have an undue adverse effect on the aesthetics of the area. Therefore, we conclude that good cause exists to not defer to the Town's recommendations. Additionally, the Town has not explained how the Project runs afoul of the section of the Town Plan cited in support of its position. That section requires review of projects to minimize impacts on historic and scenic resources. In response to the Town's concerns, the Petitioners reduced the height of the Project tower by 20' and agreed to paint the tower and antennas a dark brown color in order to reduce the visibility of the Project. The Petitioners have responded to the Town's concerns in positive fashion and have minimized the Project's aesthetic impacts to the extent feasible while still maintaining the Project's coverage goals. We also note that our approval of the Project is consistent with the recommendations of the Windham Regional Planning Commission.

Id. at p. 4.

Without evidence to counter these facts, there is no reason to reach a different conclusion here. Adopting the Town's position would further run afoul of the 47 U.S.C. §332(c)(7)(B)(iii) which requires that denials of telecommunications facilities be based on substantial evidence. Unsupported and conclusory statements have not historically been deemed satisfactory as "substantial evidence." *Up State Tower Co., LLC v. Town of Tonawanda*, No. 1:18-CV-00952 LJV(MJR), 2020 WL 8083693, at *12 (W.D.N.Y. Nov. 18, 2020); *New Cingular Wireless PCS, LLC v. Town of Fenton*, 843 F. Supp. 2d 236, 252 (N.D.N.Y. 2012) ("Although aesthetic impacts may be a reasonable basis for denying an application for a wireless communications facility, such a denial must be based on more than just unsupported opinion.") (citing cases). Here, the Town's position lacks substantial evidence. It is merely arbitrary. Accordingly, as a matter of fact, good cause exists to find for Petitioner.

B. Zoning Bylaws are Preempted; Good Cause Exists to Locate Tower in MU 2 District

Pursuant to § 248a(c)(2), a town may base its recommendation with respect to a petition on its zoning ordinance. However, pursuant to § 248a(h) zoning ordinances are preempted with respect to projects seeking approval under § 248a. Thus, strict compliance with zoning regulations is not this Commission’s standard. *See e.g. Petition of Sba Towers IV, Inc., & Vtel Wireless, Inc., for A Certificate of Pub. Good, Pursuant to 30 V.S.A. 248a, for the Installation of Telecommunications Equip. in Richmond, Vermont.*, No. 8162, 2014 WL 5493886, at *7–8 (Oct. 24, 2014)(declining to follow Town of Richmond’s recommendation that sought strict compliance with zoning regulations which did not allow towers in the applicable zoning district).⁶

In the instant case, the Town also asks this Commission to deny the application because the facility is in the MU 2 district. By strict application of the Manchester zoning ordinance, telecommunication towers are not allowed in the MU 2 district. What is not allowed by the zoning’s table of uses does not control. Nor does deference result in the elimination of §248a(h). That would circumvent the 248a process and convert these proceedings into nothing more than a zoning hearing. Again, that is not the law.

⁶ This Hearing Officer explained that “[w]hile it is not clear, it appears that Richmond is recommending that the Board reject the Project because it does not comply with the zoning ordinance. I find Richmond’s contention that the Board should deny the petition solely on the grounds that it does not comply with the zoning ordinance problematic. First, the zoning ordinance prohibits these types of telecommunications towers in roughly ninety percent of the town. Second, the zoning ordinance is statutorily preempted. Had the town provided a basis for its recommendation based on the zoning ordinance by citing to a specific portion of the zoning ordinance which identified the proposed Project site as a scenic or otherwise sensitive area that should be protected, the town’s recommendation might have been more persuasive.”

Further, there is good cause to not defer to the Town on this point. Namely, there is no other property available. Petitioner conducted an exhaustive search to look for a property that could host a facility meeting its coverage objectives and fill the existing gap in coverage. SUMF at ¶¶25-41. This search evaluated all existing tall structures in the area, and all existing towers within a 10-mile radius of the Project. *Id.* Petitioner’s objective was to honor the desires of the Town and State which are to locate new communications equipment on existing tall structures and towers whenever possible. Unfortunately, co-location, and/or the use of an existing tall structure was not possible here. *Id.*

Petitioner also investigated more than 14 other properties in the region which could have, in theory, hosted the facility while meeting the Petitioner’s coverage needs. *Id.* at ¶¶29-32. Each one of those 14 other sites was either rejected as environmentally unworkable, or the landowner rejected Petitioner. *Id.* at ¶¶31. Petitioner investigated locating the facility at the large quarry just north of the current site. *Id.* at ¶¶47. Ideally, this property would have been available to Petitioner as it is in the “OI” zoning district which allows telecommunications towers. Again, however, the landowner and Petitioner were unable to work out a lease which reflected Petitioner’s deep concerns about locating sensitive telecommunications equipment in active quarry. *Id.*

Thus, after a multi-year search that considered many other properties, every tower in the greater Manchester area, and all “tall structures,” the sole property available to Petitioner which could host a facility meeting the coverage objectives is the subject property. *Id.* at ¶¶41.

Notably, the Town cannot offer evidence that there are other options or properties available to the Petitioner. Its sole witness who could proffer such testimony was withdrawn. Accordingly, suggestion by the Town that there are other properties or options available is

merely a speculative hypothetical and not evidentiary. That is insufficient to prevail in light of evidence to the contrary. *See e.g., Caldwell v. Champlain Coll. Inc.*, 2025 VT 17, ¶ 7, 336 A.3d 423, 426 (Vt. 2025) (“[W]here the jury could only find for the plaintiff by relying on speculation, the defendant is entitled to [summary] judgment.”)

C. Petitioner Satisfies any Aesthetics standards.

This Commission must determine that the Project does not have an undue and adverse impact aesthetics and due consideration has been given to the criteria set forth in 10 V.S.A. §60866(a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). The Commission uses the *Quechee Lakes* test to evaluate this. Under the *Quechee Lakes* test, the first question is whether a visual impact is adverse. This is a low standard and essentially all new visual elements in a landscape create an “adverse” visual impact. The central question is generally whether they are undue.

Adverse impacts are undue if they violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area; offend the sensibilities of the average person; and an applicant fails to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.

There is no clear written community standard here. The Town Plan contains none as detailed above in Section IV(A)(i) of this memorandum. This Commission has also previously agreed that the Town Plan has no clearly written community aesthetic standard. *Petition of Mhg Solar LLC for A Certificate of Pub. Good, Pursuant to 30 V.S.A. Ss 8010 & 248, to Install & Operate A 500 Kw Grp. Net-Metered Solar Elec. Generation Facility in Manchester, Vermont.*,

No. 20-1261-NMP, 2021 WL 4295245, at *20 (Sept. 17, 2021)(“The Manchester Town Plan generally does not present a clear written community standard The Town Plan does not prohibit development on roads with scenic amenities; it only requires that such development must be carefully evaluated, and adverse impacts minimized. This statement is general in nature and does not give the Commission sufficient guidance because it “does not state with specificity what type of development is permitted” or prohibited along Richville Road.”).

Nor would the average person find a 130’ monopine tower “shocking or offensive.” Aside from recognizing that this is 2025, and the modern human relies on their phone to live and expects to see telecommunications towers to achieve that, a 130’ tower disguised as a pine tree in a developed area is not shocking.

To lessen the visual impact the Petitioner has also taken all available mitigating steps. It reduced the height of the Tower to 130’ to respond to initial concerns about height and visibility. Second, it altered the design to propose the “monopine.” While monopine designs are not always better for visual impact, in this case, the monopine design allows the facility to blend into the nearby trees and backstopped hillside. SUMF at ¶93. It will not create any brightly reflective surfaces. In addition, the Tower is set back from roads so that the intervening trees and screening limit views of the Tower.

The Town has raised concerns about the views from several places in the Town. These include Main Street, Thompson Park, and Bonnett Street. The Town’s “concerns” don’t reflect reality, and illustrate why the Project meets the *Quechee Lakes* test.

As to views from Main Street, they are neither shocking nor offensive. Older photo simulations – before the monopine was proposed – show that the tower would not appear taller

than backdropped trees and would blend in with municipal communication antennas that are present in the foreground. From Exhibit AL-5 (tower circled in red).



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
4	Main St	43.18817 -73.0435	0.33 Miles	South-East	299	Year Round

As a monopine, the facility is not visible. (From Exhibit DA-2)



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
4	Main St	43.18816 -73.04353	0.33 Miles	South-East	299	Not Visible

Site: VT-VT-0056C Manchester Center

Photo Simulations are for demonstration purposes only. It should not be used in any other fashion or with any other intent. The accuracy of the resulting data is not guaranteed and is not for redistribution



From Hunter Park, the monopine tower is also not noticeable. (From Exhibit DA-2)



Photo #	Approximate Location	Gps Coordinates		Distance to site	Orientation	Bearing to site	Visibility
2	Pig Pen Rd	43.19311	-73.05114	0.2 Miles	North-West	153	Year Round

Site: VT-VT-0056C Manchester Center

Photo Simulations are for demonstration purposes only. It should not be used in any other fashion or with any other intent. The accuracy of the resulting data is not guaranteed and is not for redistribution



As to the alleged visibility from Thompson Park, that too is hardly offensive or shocking. From a person in the “heart” of Thompson Park looking towards the Tower, the Tower before the monopine update, would have appeared as consistent with, and smaller than the large football field light towers, flag poles, a parking lot, and other built infrastructure in the foreground. From Exhibit AL-5 (Tower circled in red):



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
9	L. Thompson Memorial Park	43.18372 -73.05313	0.51 Miles	South-West	23	Year Round

With the change to a monopine, the Tower is not readily distinguishable.



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
9	Rec Park Rd	43.18308 -73.0531	0.55 Miles	South	21	Year Round

Site: VT-VT-0056C Manchester Center

Photo Simulations are for demonstration purposes only. It should not be used in any other fashion or with any other intent. The accuracy of the resulting data is not guaranteed and is not for redistribution



From Exhibit DA-2 (tower circled in red).

The Town also suggest that the Tower is objectionable because the Tower would be visible from Bonnett Street. This is not legally sufficient as “visibility” is not the standard under *Quechee Lakes*. And while it is true that the Tower would be “visible” from Bonnet Street, invariably, telecommunications towers will be visible from some streets in a town. This cannot be the test. Nor is the view from Bonnet Street offensive or shocking. This is the photo-simulation from before the monopine change (See Exhibit AL-5).



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
6	Bonnet St	43.19522 -73.05356	0.39 Miles	North-West	146	Year Round

This is hardly shocking to one traveling on a public road in 2025. The Tower is mostly screened by intervening trees and does not extend above the peak of the prominent ridgelines behind it. It appears as a low telecommunications towers of the type that one would expect to see in the modern world. With the change to a monopine, again, the tower is barely noticeable at all.



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
6	VT-30	43.19473 -73.05396	0.38 Miles	North-West	141	Year Round

Site: VT-VT-0056C Manchester Center

Photo Simulations are for demonstration purposes only. It should not be used in any other fashion or with any other intent. The accuracy of the resulting data is not guaranteed and is not for redistribution



The most visible site for the Tower is the access road. This is inevitable. The combination of topography and existing development, means that the Tower’s top will be visible when viewed from behind Riley Rink. It will look like an anomalously tall tree. The compound will not be visible and the foreground presents development with a solar field, parking lot and light towers.



Photo #	Approximate Location	Gps Coordinates	Distance to site	Orientation	Bearing to site	Visibility
1	Hunter Park Rd	43.18958 -73.04684	0.14 Miles	South-East	297	Year Round

Site: VT-VT-0056C Manchester Center

Photo Simulations are for demonstration purposes only. It should not be used in any other fashion or with any other intent. The accuracy of the resulting data is not guaranteed and is not for redistribution



Importantly, there are no other properties or locations that would be available to lessen the visual impact. The Petitioner evaluated every existing tower and tall structure to determine whether it could locate a facility on that structure which would meet the coverage objectives. SUMF at ¶27-42. It could not. It also evaluated 14 other properties to see if it could locate a tower on those sites. *Id.* It could not.

The Town cannot offer any evidence to contradict this. It has no aesthetics expert, no photostimulators of its own, and provided no *Quechee Lakes* analysis. It merely stated that it the tower would be “prominently visible.” This is not the standard, nor is it true. At best, the Town’s

position is condensed to “we don’t like it.” A municipal recommendation must be based on more than subjective dislike. It must be based on clear and controlling plans, policies, and regulations. Adopting a recommendation lacking support under the substantial deference standard grants municipalities veto power and control over these proceedings based on personal and subjective reasons. That results in, and is, the definition of arbitrary and capricious action that does not pass constitutional standards. The Project satisfies the relevant aesthetic standard and good cause exists to not follow the Town’s recommendation in this regard.

D. Co-Location is not Possible to Meet Coverage Objectives

Section 248a(c)(3) requires that the Petitioner establish that the proposed facility cannot be located on an existing telecommunications facility. In this case, the Petitioner undertook a review of all existing telecommunications towers within the greater area. SUMF at ¶¶33-36. Based on this review, the Petitioner determined that the coverage that would result from locating antennae on those existing towers would not adequately address the coverage gap. *Id.* at ¶40. The Department of Public Service initially raised concerns that co-location was feasible. It has now concurred that co-location cannot achieve the coverage objectives for the Project. With the withdrawal of the Town’s witness, it is therefore now undisputed that co-location is not feasible and the coverage goals cannot be met from an existing facility. Any co-location standard has therefore been met.

E. The Project is not in any Floodway, does not Impact any Historic Sites, Rare and Irreplaceable Natural Areas or Endangered Species or Necessary Wildlife Habitat as conditioned.

As an application of limited size and scope, this Commission must give due consideration to the criteria set forth in 10 V.S.A. 6086(a)(8) (... historic sites, rare and irreplaceable natural

areas; endangered species; necessary wildlife habitat) and 10 V.S.A. § 6086(a)(1)(D) (floodways).

The Project is not in a floodway and has been designed to limit any erosion. SUMF at ¶¶119-120. It follows the State of Vermont’s Low Risk Site Handbook for Erosion Prevention and Sediment Control. *Id.* Therefore, due consideration has been paid to this criterion.

The Project does not impact any historic resources (*Id.* at ¶123), nor is it in any rare and irreplaceable natural area. *Id.* at ¶121. Thus, due consideration has been given to these criteria.

The Project is in both the summer roosting habitat and winter hibernacula for federally endangered Northern Long Eared and Indiana bats. *Id.* at ¶122. To protect any bats, any clearing associated with the Project will be carried out only from November 1 to March 31 or with prior written approval from the Vermont Department of Fish and Wildlife. *Id.* With such a condition, the Project would have no undue adverse effect on this endangered species. Due consideration has been given and this criterion is satisfied as well.

V. Conclusion

The Petitioner has made *every* effort to ensure that the Project is the least intrusive means to fill the existing and undisputed gap in coverage. It conducted a years’ long search to find a viable property. It examined every existing tower within a 10-mile radius and every “tall structure” to see if it could avoid the cost and burden of building a new tower. After all that, the only option available to the Petitioner was the instant property. After initial concerns were raised, the Petitioner lowered the height of the proposed tower to 130’ as provided for in the zoning regulations and modified the design to be a monopine so that it would blend into the backdrop

forested hillsides and surrounding trees. Despite that, the Town still asks that the Tower be rejected because it arbitrarily does not like the Tower.

The Town tries to rely on its Town Plan, but its Town Plan provides no support for the Town's position. It is a broadly worded, non-specific, policy statement without legal regulatory force and effect. The obligation to give the Town substantial deference cannot convert a non-regulatory and non-specific town plan into a binding obligation. Nor can it allow for legally flawed reading of the Town Plan to control. That results in problematic, arbitrary decision making which harms State policy and the jurisdiction of this Commission. It also offends federal law and due process.

Further, the Town seeks a strict application of its zoning bylaws. Not only is this not the law, but Petitioner has no other property available to it outside of the MU 2 district to meet the coverage objectives.

Overall, the Project meets the statutory standards, has paid due consideration to the Town Plan and should be granted a Certificate of Public Good.

WHEREFORE Petitioner asks that this Court find that the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a and the proposed Project will promote the general good of the State. Accordingly the Petitioner asks that the Commission issue an order that the installation of a wireless telecommunications facility at the location specified, by Vertex Towers, LLC and Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless, in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. §248a(a) and a certificate of public good to that effect shall be issued in this matter.

Dated in Burlington, Vermont this 15th day of December, 2025

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