

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 25-1679-PET

Application of	)
Industrial Tower and Wireless, LLC	)
for a Certificate of Public Good,	)
pursuant to 30 V.S.A. § 248a, authorizing	)
the construction of a wireless telecommunications	)
facility in Tinmouth, Vermont.	)

RESPONSE IN OPPOSITION TO THE TOWN OF TINMOUTH’S “MOTION TO CLARIFY”

NOW COMES Industrial Tower and Wireless, the Petitioner in this docket (“ITW” or “Petitioner”) and responds to the Town of Tinmouth’s “Motion to Clarify” this Commission’s Order dated November 7, 2025. The Town’s motion is untimely and violates the discovery motion rules set by this Commission’s Rules of Procedure. Namely, instead of having a conversation and meeting and conferring as required by rule, or even responding to proposed discovery schedules, the Town made-up a dispute and filed this “Motion to Clarify.” It is wasteful and clearly an attempt to try to unreasonably limit these proceedings.

There is no such thing as a “Motion to Clarify” in this Commission’s Rules of Procedure (Rule 2.100 et seq.). The closest analogous motion is a Motion to Alter or Amend an Order under Rule 2.221. Motions to Alter or Amend must be filed within 28 days of the order they seek to alter or amend. *See* Rule 2.221(a)(2). Thus to the extent the Town’s motion may be classified as a Motion to Alter or Amend an Order, it is untimely. As an untimely motion, the Town’s Motion to Clarify must be denied.

The Town cannot claim that its delay is justified by any recent events. The Order is simple and plain on its face. The Town had four weeks to read one paragraph and determine whether it thought the language was clear or not. That is more than ample time. Secondly, as early as November 10, 2025 the Town was suggesting that it read the Order differently than ITW and/or the Department. A copy of early correspondence between the parties discussing the scope and readings of the Order are attached hereto. Accordingly, the Town had ample notice well

before its 28-day clock ran out that it may want to move to alter or amend the Order. That the Town failed to act promptly should not justify granting the Town's motion now.

Second, the Town's motion violates this Commission's discovery rules. The Town's motion is nothing more than a motion seeking to limit or set the scope of discovery, and thereby the schedule in this case. The Town's concerns should be addressed through debate and discussion with the parties and with either stipulated or proposed schedules submitted to the Hearing Officer under Rules 2.212, 2.214, and 2.230. Yet that did not happen. Instead, the Town filed the instant motion without engaging the parties as required.

Under Rule 2.230(G)(1)-(2) all parties are required to meet and confer before filing any discovery related motions. Rule 2.230(G)(1)-(2)'s meet and confer obligation is analogous to Vermont's Rule 26(h) which uses the exact same language. Under the Vermont Rule, before filing any discovery related motion, parties are required to *talk* with each other in order to satisfy the "meet and confer" obligation. Emails and letters do not suffice – rather they must meet and actually *talk*. See e.g. *Harleysville Worcester Ins. Co. v. Evergreen Roofing, LLC*, No. 43-1-13 CNCV, 2014 WL 6606144, at *1 (Vt.Super. Nov. 07, 2014)(denying discovery motion when the filing party could not certify that they met and *talked* with the opposing parties).

The Town has failed here to take the simple step of talking to the other parties and failed to meet confer in good-faith as it is obligated to do. Since November, counsel for ITW has tried to develop a schedule meeting the parties' needs and concerns. On several occasions the Town has offered varied readings of the Order but failed to offer anything of substance. On December 8th and December 12th counsel for the Town asked that ITW, or the Department of Public Service, prepare a schedule and stated that it would "look at" a proposed schedule. Copies of these emails are also attached.

Yet when counsel for ITW circulated a proposed schedule (following a framework the Department suggested), counsel for the Town failed responded. On December 17th and December 23rd the undersigned attempted to ask the parties for input on a proposed schedule and the Town never answered. It never shared any tangible concerns of feedback. Instead, counsel filed its untimely motion to clarify. By failing to follow the meet and confer obligations, the Town's motion must be denied. See Rule 2.230(G)(2), see also *Harleysville, supra*.

ITW has always been, and remains, amenable to any schedule proposed by the Town that contemplates fair and equitable discovery and the ability to be heard should the matters not

be resolved on Summary Judgment. The Town, however, has never offered any specific concerns nor any constructive suggestions regarding how to proceed. Seemingly it's been wanting to file this "Motion to Clarify" for months and just strung the parties along with offers to look at a schedule.

It appeared, and appears, to ITW that the Town's concern is *discovery* writ large. The Town seems to believe that it may say whatever it wants in these proceedings without being questioned as to the facts, bases, or evidence supporting its positions. This is not how due process works and not the rules for these proceedings. By taking a position in this matter the Town subjected itself to questioning and discovery by ITW. *See e.g.* 2.230(A)(1) (stating that all parties may obtain discovery relevant to any other parties' legal positions). Thus, unless the Town withdraws its position, it will have to undergo discovery.

The Town's Motion to Clarify also fails to contemplate the logical endpoint of its own views. The Town's position appears to be that this Commission's Order does not contemplate a hearing. Rather, the Town seems to believe that the Order just contemplates some sort of summary judgment proceeding under Rule 2.219. That's shortsighted and somewhat irrelevant. First, ITW's proposed schedule included a Rule 2.219 summary judgment filing deadline as directed by the Order (along with all other action items included in the Order). Second, summary judgment doesn't preclude discovery - it follows it. The Vermont Supreme Court has been clear that summary judgment may only be issued after an "adequate time for discovery." *See e.g. Bushey v. Allstate Ins. Co.*, 164 Vt. 399, 405, 670 A.2d 807, 811 (1995). Third, the Town appears to ignore the reality that if summary judgment is not granted -i.e. there is a dispute of material fact - then a hearing is required.

ITW has waited patiently for the Hearing Officer to call for a Conference in the hopes that conference would air out the parties positions or the Hearing Officer would have a clear view of how he desires to proceed. However, that has not yet happened. Thus, ITW asks that in denying the Town's instant motion, the Commission should also direct the Hearing Officer to convene a Rule 2.212 Scheduling Conference so that the parties may properly set a schedule for this matter.

Dated in Burlington, Vermont this 31st day of December, 2025

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