

**STATE OF VERMONT  
PUBLIC UTILITY COMMISSION**

Case No. 25-1679-PET

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| 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 FOR  
INTERLOCUTORY APPEAL**

NOW COMES Industrial Tower and Wireless, the Petitioner in this docket (“ITW” or “Petitioner”) and responds to the Town of Tinmouth’s Motion for Interlocutory Appeal (“the Motion”). There is no basis to grant the motion. First, the underlying Motion to Clarify was untimely. It was an attempt to somehow limit or reverse this Commission’s November 7, 2025 Order rejecting the Hearing Officer’s Proposal for Decision. By rule, such a challenge had to come within either 14 days but not later than 30 days after that decision.<sup>1</sup> The Town failed to do that and therefore can’t challenge the November 7, 2025 decision as it clearly seeks to do now.

Secondly, there is no controlling question of law presented by the Hearing Officers’ decision to deny the Town’s December 26, 2025 “Motion to Clarify” because there was no question of law presented in the Town’s Motion to Clarify in the first instance. That motion lacked any legal argument and consisted of two paragraphs with no specific request. It contained no citation to an applicable law or statute, offered no question of law to be resolved, and offered no compelling legal reason as to why, how, or in what specific manner the underlying November 7, 2025 order rejecting the Hearing Officer’s Proposal for Decision should be “clarified.”

It raised none of the arguments the Town now seeks to take up on appeal. As such there is no basis to find a controlling question of law when the Town offered none in the first place. In addition, the Supreme Court is likely unable to hear any of the Town’s arguments because they

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<sup>1</sup> Depending on whether it was an interlocutory order and the request was for an interlocutory appeal, was challenged under a Motion to Amend with a 28-day timeline or appealed as a final order which has a 30-day appeal period.

were waived. By not being raised in the Motion to Clarify, the Town deprived this Commission of the opportunity to determine any of the questions and did not preserve them for review.

At best the Town's Motion to Clarify was a request to limit the scope of discovery on the Town. This is far from a controlling question of law justifying the extraordinary remedy of an Interlocutory Appeal. In particular, this who question is not ripe. No discovery has been served on the Town and so any concerns are purely hypothetical and not ripe. Moreover, "clarifying" as the Town claims it wants to do does not shorten the case. At best, a remand just limits the scope of discovery and further proceedings on the factual record. This injects a year of delay to result in being back where the parties are now.

Further, all of the Town's concerns, or arguments, which are raised in the Motion for Interlocutory Appeal are best addressed by this Commission through the fact-finding process it is statutorily obligated to perform. For example, to the extent the Town seems to believe that its recommendation alone is satisfactory evidence to deny Petitioner a CPG. Whether that is true is not a question of law, but rather one of fact mixed with law. In this matter, this Commission must determine whether there is "good cause" to not defer to the Town's recommendation. Good cause is largely a question of fact and how those facts are applied to the law and relevant standards. There is no way to determine whether the Town's recommendation is sufficient evidence *without* the good cause fact-finding process. Any interlocutory appeal just delays this necessary process and deprives the reviewing court with any record upon which to make its judgment.

What is obviously happening is that the Town is seeking to appeal this Commissions' November 7, 2025 Order. The Town believes that decision was in error. However, the Town's time to challenge the November 7, 2025 Order by means of an appeal has long since passed.

### **ARGUMENT**

"Interlocutory appeals are an exception to the normal restriction of appellate jurisdiction to the review of final judgments," *In re Pyramid Co. of Burlington*, 141 Vt. 294, 300. Such appeals "require[] [the appellate court] to decide legal questions in a vacuum, without benefit of factual findings. Appellate decision-making suffers from such abstractions." *Id.* Without a factual record, and the actual fact-finding process, the parties have yet to reduce their dispute to discrete issues appropriate for appellate review. *Id.* at 301. As a result, the appellate system is burdened with unnecessary and factually unsupported questions that greatly disadvantage its ability to

provide justice to all litigants. *Id.* As a result, the relief of an interlocutory review is the rare exception to the rule that only final judgments may be appealed. *Id.* They are, as the federal circuit holds in applying same standard, only for “exceptional cases.” *Id.* (citations omitted).

“This Commission looks to [Rule 5.1(b)] of the Vermont Rules of Appellate Procedure for guidance in deciding whether to engage in an interlocutory review of a hearing officer's interim decision.” *Investigation Pursuant to 30 V.S.A. Ss 30 & 209 Regarding the Alleged Failure of Vermont Gas Sys., Inc. to Comply with the Certificate of Pub. Good in Docket 7970 by Burying the Pipeline at Less Than Required Depth in New Haven, Vermont. Notice of Probable Violations of Vermont Gas Sys., Inc. for Certain Aspects of the Constr. of the Addison Nat. Gas Pipeline (“VT Gas Investigation”)* No. 17-3550-INV, 2021 WL 1771953, at \*4 (Apr. 30, 2021). Under Rule 5(b)(1) there are two principal standards that must be met. First, a motion for permission to file an interlocutory appeal should be granted only if there exists a controlling question of law that is ripe for review, substantial grounds for disagreement exist on how to answer that question, and an immediate appeal may materially advance the termination of the litigation. *See also In re. Pyramid of Burlington, supra.* At 301. Under Rule 5(b)(5) all motions for interlocutory appeal must be made within 14 days of the order to appealed from.<sup>2</sup>

“A question of law is one capable of accurate resolution by an appellate court without the benefit of a factual record. If factual distinctions could control the legal result, the issue is not an appropriate subject for interlocutory appeal.” *VT Gas Investigation* at \*5, citing *In re. Pyramid Burlington* at 304. When an order directs a hearing officer to take more evidence, that illustrates that a factual record is required and the question is not purely one of law. *See id.*

To be appropriate for interlocutory appeal, an issue must be a strictly legal question that controls the outcome of the underlying case independent of any further fact-finding. *State v. Dubois*, 150 Vt. 600, 556 A.2d 86 (1988) (dismissing an interlocutory appeal about the trial court’s motion in limine decision because the outcome of the proceeding remained fact reliant). Examples of such determinative questions of law include disputes of the applicability of a statute of limitations, determinations of which state’s laws apply to the case, and whether exceptions to

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<sup>2</sup> This is important as the Town failed to file any request for interlocutory review from the November 7, 2025 decision. Nor did it seek to take an appeal as if the November 7, 2025 decision was a “final” decision and subject to a 30-day appeal period. Thus, having passed both deadlines, the Town cannot seek to challenge any aspect of that decision through this interlocutory appeal as it clearly is trying to do.

procedural requirements apply and allow otherwise tardy appeals to be sustained. *See State v. Atl. Richfield Co.*, 2016 VT 61, 202 Vt. 212, 148 A.3d 559 (interpreting the applicability of an exception to a statute of limitations); *Blake v. Petrie*, 2020 VT 92, 213 Vt. 347, 245 A.3d 768 (interpreting whether the statute of limitations had expired); *In re Ambassador Ins. Co.*, 2022 VT 11, 216 Vt. 255, 275 A.3d 122 (determining which state’s insurance laws apply to the interpretation of the underlying insurance policy); *In re 2078 Jersey St. CU Reconsideration Denial*, 2024 VT 20, 219 Vt. 151, 316 A.3d 248 (determining whether the applicant’s motion to reconsider tolled the appeal period).

Conversely, both Vermont and Federal courts have held that vague questions which may be rendered irrelevant upon further factual determinations are not appropriate for interlocutory appeal. *See State v. McCann*, 149 Vt. 147, 151, 541 A.2d 75, 77 (1987) (“[o]nly those questions should be certified up before judgment which bring with them a framework sufficient to allow this Court to issue a decision which will be pertinent and inevitable in the disposition of the case below”); *State v. Dubois*, 150 Vt. at 604, 556 A.2d at 89 (“The preliminary and discretionary nature of the ruling here makes this an inappropriate case for interlocutory appeal”); This is especially true of questions pertaining to discovery for which both Vermont and Federal have, time and again, denied certification. *See Castle v. Sherburne Corp.*, 141 Vt. 157, 446 A.2d 350 (1982) (holding that a question pertaining to an order to produce medical documents was “collateral to the basic issues of this . . . action” and therefore inappropriate for interlocutory appeal); *Evanson v. Union Oil Co. of California*, 619 F.2d 72 (Temp. Emer. Ct. App. 1980) (holding that questions surrounding the imposition of discovery sanctions were inappropriate for interlocutory appeal); *United States v. Woodbury*, 263 F.2d 784 (9th Cir. 1959) (holding that a dispute over whether to produce allegedly privileged documents “is collateral to the basic issues of this case, and cannot be regarded as presenting a ‘controlling question of law’”).

I. The Town’s Questions and Arguments Have been Waived and Are Untimely; They cannot be Controlling.

The Town raises five questions it seeks to take on appeal. Those five questions were not argued in its Motion to Clarify. The Town’s Motion to Clarify was two paragraphs long. It asked that this hearing officer or commission “clarify” – without direction what that meant – the state that the Hearing Officer “solicit schedule(s) from the parties to litigate the issue presented by the

Town's comments." The Town then asked whether the scope of remand involves a full evidentiary process, or a more limited process involving "litigating" the issues raised in the Town's Comments. Motion at p. 1. What the *difference is* between these two things – an evidentiary process or "litigating" the Town's Comments - was unstated in the Motion to Clarify. Why there should be a distinction drawn was not argued. What the Town's role is, should be, or can be, was not argued or stated in the Motion to Clarify. Nor were the specific questions of (a) whether the Town was required to intervene to participate, (b) whether the Town must submit supplemental evidence to support its recommendation, or (c) whether the Town may be subject to discovery raised in the Motion to Clarify. Within its Motion to Clarify the Town did not argue that Town should be exempt from providing evidence as it argues for the first time on page 5, and then again on pages 6 and 7, or that there is some ad-hoc application of statute as it argues on pages 5 and 6 of the Motion. These are all new arguments. Similarly, any of The Town's arguments that the PUC's procedures are deficient because of a lack of formal rulemaking is new as well.

Thus, whether any of these questions *could* present controlling questions of law is immaterial. They have been waived for appeal. A party may not raise arguments on appeal that were not properly preserved. *Id. citing Jordan v. Nissan N. Am., Inc.*, 2004 VT 27, ¶ 10, 176 Vt. 465, 853 A.2d 40 ("[M]atters not raised at trial may not be raised for the first time on appeal."). "[I]n order to rely upon an argument on appeal, an appellant must properly preserve it by presenting it to the trial court with specificity and clarity." *Id.* The trial court must have a "fair opportunity" to resolve the issue." *State v. Ben-Mont Corp.*, 163 Vt. 53, 61 (1994)("To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it."). By failing to raise or argue any of these five "questions" in its Motion to Clarify, the Town didn't meet its preservation requirements. Therefore, it waived the questions for appeal. With an inability to be reviewed its impossible for them to be considered ripe "controlling questions of law" appropriate for immediate appellate review.

Moreover, the Town's Motion to Clarify was profoundly untimely. The rules require that Motions to Reconsider (the closest analogous motion) must be filed within 28 days of an Order. The Town's Motion to Clarify was filed well outside that deadline. To circumvent that time-bar

by injecting arguments now that were never made in a timely manner should be impermissible and fatal to the Town's request.

II. These are not Controlling Questions of Law; a Factual Record is Required

The Town posits that the following five "issues" are "controlling questions of law":

- (1) The Town is not required to intervene to participate under 30 V.S.A. § 248a, nor is its participation in any way limited under 30 V.S.A. § 248a, and it is entitled to a ruling establishing the scope of the remand order from November 7, 2025.*
- (2) The litigation on remand should be strictly limited to the comments in the Town's recommendation.*
- (3) The Town may, but cannot be required to under § 248a, submit supplemental evidence to support its recommendation.*
- (4) The Town is not subject to discovery where it has filed an un rebutted recommendation that must be accorded "substantial deference."*
- (5) The Town is not subject to the full CPG process in this case.*

The Town presents no controlling questions of law. First, these are not "controlling questions" as the term has been understood. Controlling questions of law are typically outcome determinative like whether there exists a statute of limitations. *State v. Atl. Richfield Co.*, 2016 VT 61, 202 Vt. 212, 148 A.3d 559 (interpreting applicability of an exception to a statute of limitations), *Blake v. Petrie*, 2020 VT 92, 213 Vt. 347, 245 A.3d 768 (dispute over if SOL had run out), *In re 2078 Jersey St. CU Reconsideration Denial*, 2024 VT 20, 219 Vt. 151, 316 A.3d 248 (determining whether applicant's motion to reconsider tolled the appeal period). The questions presented in these cases illustrate that controlling questions of law are typically the type that truly determine the outcome such as whether a case is time-barred. Either there is a statute of limitations, and the case is over, or there is not and the case may proceed. This is a classic controlling question that greatly advances the case and saves resources. No such outcome-determinative singular legal question is presented in the Town's 5 issues. For example, whether the Town is required to submit additional evidence or not is meaningless at this stage. Whether additional evidence is merited, dispositive, meaningful or relevant can only be determined after the development of a factual record. Similarly, whether the Town is subject to

discovery or not is not a controlling question of law. It's a settled question under the rules and requires a factual record to determine if even relevant to the proceedings.

The Town also fails to understand the actual issue with these issues. The law is clear that the Town's recommendation is not the determinative factor. By statute, municipal recommendations only create a rebuttable presumption. 30 V.S.A. 248(a)(c)(2) A rebuttable presumption is *not evidence* nor probative. *State v. Giard*, 2005 VT 43, ¶ 9, 178 Vt. 544, 546, 871 A.2d 976, 978–79 (2005). 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)). Thus, at best the Town's recommendation only serves to shift a burden here, but it doesn't carry a burden on its own. If the Town chooses to rest on its recommendation alone, it may do that, but that recommendation does not come with the veto power the Town believes. Any order of the Supreme Court on appeal cannot touch this issue as it is not challenged.

Further, the Town's recommendation, or role, does not control the outcome here because by law the question before the Commission is one of *good cause*. By statute, the provision providing "substantial deference" starts with the clause "[u]nless there is good cause." 30 V.S.A. §248a(c)(2). Accordingly, the Town's recommendation only controls to the extent there is not good cause. Proving good cause is a factual question resolved through discovery and through either a Rule 2.219 Motion for Summary Judgment or a Merits hearing. Whatever the Town's argument is now, is therefore not the controlling question because the Town's not arguing whether there is, or is not, good cause.

The Town's argument overall that it should get an order limiting the parties' (and this Commission's) right to seek evidence from the Town aims to reduce the CPG process to the following question: "does the town approve." The Town believes that if the answer to that question is "no" then parties have no opportunity to discover the basis of that recommendation; discover facts that challenge the credibility of that recommendation or call into question the legal accuracy of that recommendation. Rather, the Commission must follow that recommendation. The Town aims to convert the CPG process to a town zoning hearing and eliminates the pre-emption granted by the statute and redlines the balance of 30 V.S.A. §248a. While this may be a relevant issue in the case, it also may not be. Only the development of a factual record may illustrate whether it matters. If, for example, the Petitioner can produce no evidence supporting

good cause at a hearing, then whether the value of the recommendation is immaterial as the case fails on good cause. Similarly, if the Commission finds that there is clear evidence of good cause, then the specific evidence supporting the recommendation or the Town's role in discovery is immaterial.

III. Issues of First Impression are not inherently appropriate for

The Town's argument that the issue of "whether the Town has to be subject to a full CPG process" satisfies the second requirement of an interlocutory appeal—that "there exists substantial ground for difference of opinion" on the issue—also fails. The Town contends that, "by its very nature" as a question of first impression, this issue contains the requisite "substantial ground for difference of opinion." Town's Brief at 9.

However, the Town's sole legal citation for this contention, "State v. Haynes, 2019 VT 44, ¶ 7 (citing V.R.A.P. 5(b))", says nothing of the sort. Paragraph 7 of *State v. Haynes* consists entirely of a restatement of V.R.A.P. 5(b)(1), (2) and the *Hayes* Court's summary of the parties' arguments. It does not contain any reference supporting the Town's argument. There is no discussion about issue novelty, let alone a holding that issues of first impression are inherently open to substantial ground for difference of opinion.

What is more, the case that the Town cites in the very next paragraph, *In re Pyramid Co. of Burlington*, 141 Vt. 294, 449 A.2d 915 (Vt. 1982), contains a holding that directly contradicts the Town's assertion. "V.R.A.P. 5(b) does not supersede the trial court's authority and responsibility to decide difficult legal issues. Trial courts should not be bashful about refusing to find substantial reason to question a ruling of law, even in matters of first impression. *Id.*, 141 Vt. at 306, 449 A.2d at 921 (internal quotations omitted) (emphasis added).

Accordingly, not only is the Town's contention legally unsupported, it is actually directly legally contradicted. Rather than being inherently qualified for interlocutory appeals, the Vermont Supreme Court has demanded that lower courts attempt to decide difficult legal questions, including questions of first impression, on their own accord.

IV. There is no "difference" of opinions as to whether the Town must intervene as the Town *did Intervene*, was granted *Intervention*, and did not appeal the grant of *intervention*.

Further, whether the Town *must* intervene into a 248a proceeding is irrelevant in this case and the resolution of that question immaterial to advancing the litigation because the Town *did*

*file to intervene and was granted intervention.* Nor did anybody object to the Town's intervention. Thus, there is no controlling question of law with this issue and no difference of opinions on the topic. Accordingly, resolving this question does not advance the case, is not relevant, has been waived by the Town's actions. Since there is no case and controversy concerning the Town's right to intervene since it *did intervene*, what the Town appears to seek a purely advisory opinion on an issue not relevant to the resolution of this matter.

V. Whether this matter is limited to "litigating" the issues raised in the Town's comments or not is a hypothetical question not ripe for review, not a controlling question of law, and illogical given the scope of the Town's comments.

The Town argues that there is a controlling question of law as to whether this matter is limited to the issues raised in the Town's Comments or the "full CPG" process. The difference between those positions was unexplained in the Motion to Clarify and impossible to understand in light of the Town's Comments. The Town's comments, filed on September 9<sup>th</sup>, raise just about every issue under 30 V.S.A. §248a. The Town challenged the project's compliance with:

- State Telecommunication Policy
- Highways
- Scenic Beauty, Historic Sites and Natural Areas and within that
  - Lack of concern for visitors to historic cemetery
  - Lack of concern for the Tinmouth Channel and Tinmouth Wildlife Management Area – a Class I wetland
  - Lack of concern for Scenic Vistas
- Compliance with the Tinmouth Town Plan
- Compliance with the Regional Plan
- Compliance with the Tinmouth Zoning Bylaws including therein.
  - Whether there is good cause to not comply with any specific provision therein
  - Whether the proposed location is land "not ordinarily suitable for development"
  - Whether the height is acceptable
  - Whether the grey slate lattice is an improper bulk including the potential future co-location of other providers

- Whether co-location is feasible
- Whether the tower is built on speculation
- Whether reasonable mitigation efforts have been taken.
- Whether there is a need for ITW's telecommunications services at all.

See Town of Tinmouth Comments and Recommendation filed on September 9, 2025 at pp. 1-4.

Given this grocery list asserting just about every possible objection the Town could make, limiting the case to just the Town's comments does not limit the case nor shorten it. The Town's argument that the case should be limited to litigating these comments is thus illogical. The Town's argument is akin to asking that the Supreme Court to rule that this matter should be limited to the issues set forth in 30 V.S.A. §248a as the Town's objections don't leave anything of substance out of contention. As such, there is no controlling question of law here.

The Town is also conjuring up a boogeyman in making this argument. Petitioner seeks nothing but a fair hearing process to address the Town's assertions upon which it bases its recommendation for denial. It seeks the rights afforded to it by the Administrative Procedures Act and this Commission to discover the basis and reasoning supporting the Town's positions; inquire and test the credibility of them; and prove through the hearing process after such opportunity that it is entitled to a CPG. The Petitioner has never expressed a desire to take discovery not reasonably related to these aims or not reasonably related to the challenges raised by the Town, *Pro-Se* parties, and Department of Public Service. To call the Petitioner's discovery "onerous" is wild given that *no discovery* has been served. The Town's argument is therefore purely hypothetical and an unreasonable basis to grant interlocutory relief.

Further, this is exactly the type of issue suited for resolution by the lower tribunal during the hearing and discovery process. To the extent the Town feels the Petitioner seeks inappropriate discovery (whenever it serves it) the Town has the right to seek a protective order from the Hearing Officer. This is the Commission's well-tested process for limiting discovery to that which is relevant and a rudimentary aspect of litigation. Thus, this issue is not a controlling question of law determinative of the outcome of the Petitioner's CPG. It is a discovery issue at best for which no interlocutory appeal should be afforded. *Castle v. Sherburne Corp.*, 141 Vt. 157, 446 A.2d 350 (1982) (dismissing an int. appeal of a discovery order and, in reference to federal law stating "The federal circuit courts have determined that [judicial efficiency] is

ordinarily not served by allowing interlocutory appeals from discovery orders of the district courts.”)

Moreover, instead of delaying the matter a year for an appeal, the Town’s concern is easily addressed through the hearing process with basic stipulations. If the Town thinks there is no dispute on a criterion, and does not contend the project violates that criterion, it can stipulate in that regard. Thus, no burden would be placed on any party to prove or contest that issue and no discovery need be taken on the question. For example, the Town does not appear to raise any argument that the Tower would violate 10 V.S.A. §6086(a)(1)(B)(Drinking water supply). Assuming this is true, the parties need not litigate the question and rather may stipulate as such reducing the scope of the matter for the Hearing Officer.

VI. Nothing *mandated or now compels* the Town to Act

The Town’s motion pretends the Town is somehow *compelled* to act and that an order from the Supreme Court on appeal limiting its obligations to act is a controlling question of law. It is not.

No person or entity is required to act in response to a CPG application. The Town had every right in this case to *not* take a position in this matter; to *not* move to intervene; and *not* file a recommendation seeking denial. Countless other towns have made that choice. However, Tinmouth made a different choice. It chose to intervene; it chose to make a recommendation recommending denial; and it chose to take a position. In essence it chose to come to the dance and get on the dance floor. Yet now, it objects to dancing. That’s not rational.

The Town’s position is that it may recommend denial, make factually questionable statements in an unsworn, unsupported recommendation, be excused from having the factual basis and reasoning behind those statements tested through discovery, be exempted from any hearing on the merits with the presentation of evidence, *but yet still* have its recommendation *control* the outcome of this Commission’s CPG determination. That is not the law. This Commission’s rules make clear that a party is subject to discovery by another party. *See* Rule 2.230(A)(1). The Town is a party, and it is therefore subject to discovery. Further, a party has a right to take discovery by way of a subpoena on any non-party should that seek information relevant to the matter. *Id.* Thus, if the Town didn’t want to be subject to discovery, it could have stayed silent and not taken a position on this application. Having chosen not to do that, and having to stake its claim for denial, fairness and due process entitles adverse parties to discover

the bases and reasons behind the position. This is not a controlling “question of law” but rather well settled rules of procedure. Moreover, whether any of this debate matters in the end, or is just a hypothetical worry without support, is only determined after the facts are in and record developed.

Lastly, the Town’s wrong that it still must act in this proceeding following the November 7, 2025 Order. Any party is free to present whatever evidence it likes. If the Town feels that it need not present any further evidence, or take no further role, it can do that. There may be consequences to those actions such as a failure to preserve arguments, offer counterevidence, or otherwise have a say in the matter, but it is nevertheless free to act as it so chooses. This is not a controlling question of law because it has yet to have any determinative effect, a factual record is needed to evaluate whether the Town’s actions matter at all, or whether the Town’s objections and concerns have any merit.

VII. Interlocutory Appeal Does not Materially Advance this Litigation.

An interlocutory appeal does not materially advance the termination of this matter. At best, the Town’s Motion to Clarify argued that proper resolution would be through motion practice limited to the issues raised in the Town’s comments. Given that the Town’s comments raised more than a dozen issues, this would inherently require discovery. A point seemingly reflected in the Town’s Motion to Clarify which did not argue that *no discovery* would be appropriate. Therefore, even *if* the Supreme Court were to take action, at best it would remand the matter *back* to this Commission with an order to allow discovery limited to those issues raised in the Town’s Comments. Under no circumstances could the Court determine the question of “good cause” which by statute is required to be examined by the Commission when giving deference to a municipal recommendation or reach a determination as to the controlling question of the Town’s comments in the absence of a factual record on good cause.

Therefore, even with an order of the Supreme Court favoring Tinmouth, the Commission, and parties, would still be left right where they are today. They would be faced with a need to take discovery and evaluate and prove good cause on the contested criteria. Thus, after a year of Supreme Court motion practice<sup>3</sup>, oral argument and a decision, in the best-case scenario for the

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<sup>3</sup> That the Town has resources for Supreme Court briefing but not resolving this CPG process is confounding.

Town, the case would materially be no better off. All the Town's Motion for Interlocutory Review does is inject a year of delay for no material gain in advancing the case.

WHEREFORE Petitioner asks the Motion for Interlocutory Appeal be denied.

Dated in Burlington, Vermont this 30<sup>st</sup> day of January, 2026

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