

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-1679-PET

Petition of Industrial Tower and Wireless, LLC requesting a certificate of public good, pursuant to 30 V.S.A. § 248a, authorizing the installation of wireless telecommunications equipment in Tinmouth, Vermont	
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Order entered: 02/17/2026

ORDER DENYING MOTION FOR INTERLOCUTORY REVIEW

I. INTRODUCTION

This case concerns a petition filed by Industrial Tower and Wireless, LLC (the “Petitioner”) requesting that the Vermont Public Utility Commission (“Commission”) issue a certificate of public good (“CPG”) authorizing the installation of a wireless telecommunications facility in Tinmouth, Vermont (the proposed “Project”).

The case was remanded to the hearing officer to litigate the legal issue presented by the Town of Tinmouth Select Board and Planning Commission’s (together the “Town”) September 9, 2025, comments. In this order, I deny the Town’s request for interlocutory review by the full Commission of an order I issued on January 7, 2026, denying the Town’s motion to clarify.

II. PROCEDURAL HISTORY

On November 7, 2025, the Commission issued an order remanding this case to the hearing officer for further process. The order also directs the parties to file a proposed schedule for the remainder of the proceeding pursuant to Commission Rule 2.219 under the standard for summary judgment.

On December 26, 2025, the Town of Tinmouth Select Board and Planning Commission (together the “Town”) filed a motion to clarify the scope of the proceeding.

On January 7, 2026, I issued an order denying the Town’s motion to clarify.

On January 20, 2026, the Town filed a motion for interlocutory appeal of the January 7 order.

On January 30, 2026, the Petitioner filed a response in opposition to the motion on the grounds that it is untimely and there is no controlling question of law presented in the January 7 order.

On February 2, 2026, I issued an order approving a schedule for this proceeding that was jointly submitted by the Petitioner, the Town, and the Vermont Department of Public Service.

III. DISCUSSION AND CONCLUSION

The Commission does not have specific rules governing interlocutory appeal when a case is delegated to a hearing officer. Thus, we look to the law applicable to interlocutory appeals of a court or tribunal's determinations that come before the Vermont Supreme Court.¹ The "decision to refuse permission for an interlocutory appeal is one committed to the discretion of the trial court."²

Interlocutory appeals are exceptional departures from the "normal restriction of appellate jurisdiction to the review of final judgements," and piecemeal appellate review has been recognized to cause "unnecessary delay and expense, and wastes scarce judicial resources."³ The Commission is disadvantaged when undertaking interlocutory review because it is forced to "decide legal questions in a vacuum, without benefit of factual findings," and without sufficient narrowing of the issues in the case afforded by a hearing officer's proposal for decision.⁴ The bar to obtaining interlocutory review by the Commission of a hearing officer's procedural rulings is therefore a high one.

To seek interlocutory review under V.R.A.P. 5(b), a party must file a motion "within 14 days after the entry of the order or ruling appealed from." Under V.R.A.P. 5(b)(1), a court "must permit an appeal from an interlocutory order or ruling if the court finds that: (A) the order

¹ See *Investigation pursuant to 30 V.S.A. §§ 30 and 209 regarding the alleged failure of Vermont Gas Systems, Inc. to comply with the certificate of public good in Docket 7970*, Case No. 18-0395-PET, Order of 4/30/21 (denying motion seeking interlocutory review of a liability order issued by the hearing officer for failure to meet legal standards for interlocutory review); *Investigation into New England Telephone and Telegraph Company's tariff filing re: Open Network Architecture*, Docket No. 5713, Order of 6/4/99 (denying request for interlocutory review of the hearing officer's procedural order scheduling further proceedings); *Petition of Portland Street Solar LLC*, Case No. 19-2484-NMP, Order of 8/19/20 (looking to Vermont Rules of Appellate Procedure 5(b) and 5.1(a) when determining whether to conduct interlocutory review and denying request for interlocutory review of the hearing officer's order denying a motion for summary judgment).

² *State v. McCann*, 149 Vt. 147, 151, 541 A.2d 75, 77 (1987).

³ *In re Pyramid Co. of Burlington*, 141 Vt. 294, 300, 449 A.2d 915, 918 (1982).

⁴ *Id.*

or ruling involves a controlling question of law about which there exists substantial ground for difference of opinion; and (B) an immediate appeal may materially advance the termination of the litigation.”⁵ Failure to satisfy any of the criteria precludes interlocutory appellate review.

The Town’s motion is timely in so far as it seeks interlocutory review of the hearing officer’s January 7 order.⁶ By analogy, V.R.A.P. 5(b)(5) requires that a request for interlocutory appeal must be filed within 14 days of the order from which an appeal is sought. The Town filed its motion seeking Commission review of the January 7 order on January 20, 2026, 13 days after the order issued.

The Town raises five questions it seeks to take to the full Commission for review. The Town argues that it is not required to intervene to participate in the case, any litigation on remand should be limited to its recommendation in the case, it is not required to submit supplemental evidence to support its recommendation, it is not subject to discovery, and it is not subject to the “full CPG process.”⁷ The issues presented by the Town in its motion do not represent controlling questions of law.

“[T]he criterion that an order raise a ‘controlling question of law’ would seem, at a minimum, to require that reversal result in an immediate effect on the course of litigation and in some savings of resources either to the court system or to the litigants.”⁸ Typically, a tribunal considering this criterion asks whether substantial litigation time would be saved or issues, claims, or defenses at trial would be significantly narrowed.⁹ Here, answering the Town’s questions would neither save substantial litigation time nor significantly narrow the issues before the Commission in this case. First, the parties have consented to a schedule that was ordered for

⁵ See *id.* at 301-02, 449 A.2d at 918 (“The rule’s criteria do not draw bright lines: the definitions of ‘controlling questions of law,’ ‘substantial grounds for difference of opinion,’ and ‘material advancement of litigation’s termination’ are not self-evident. This vagueness is deliberate as it furthers the goals of the interlocutory appeal mechanism: ‘The statutory purpose to inject an element of flexibility into the technical rules of appellate jurisdiction established for final judgment appeals . . . and for [other] interlocutory appeals . . . , counsels that so long as the [trial] court has made an order, the remaining elements be treated as guiding criteria rather than jurisdictional requisites. The three factors should be viewed together as the statutory language equivalent of a direction to consider the probable gains and losses of immediate appeal.’” (internal citations omitted)).

⁶ I decline to adopt the Petitioner’s position that the motion for interlocutory review is an attempt to challenge the Commission’s remand order. The analysis that follows demonstrates that the motion is treated as purely a request for review of what was decided in the January 7 order.

⁷ Town Motion for Interlocutory Appeal at 2-3.

⁸ *In re Pyramid Co. of Burlington*, 141 Vt. at 303, 449 A.2d at 919 (quotation omitted).

⁹ *Id.* at 303, 449 A.2d at 919-20.

the remainder of the proceeding. Should the Commission rule on any of the Town's questions, the schedule would not change. The questions, at most, would serve to refine or clarify the expectations regarding the Town's participation in this proceeding. There are other parties who would continue to avail themselves of all events in the schedule regardless.

Second, the issue raised by the Town's September 9, 2025, comments remains a central question in the case regardless of whether the Town makes another filing, seeks formal intervention, conducts or responds to discovery, or otherwise participates in this case. In its comments, the Town has essentially argued that the Commission should deny the petition as a matter of law. Section 248(c)(2) provides, "Unless there is good cause to find otherwise, 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." Further, Section 248(b)(5) defines "substantial deference" to mean "that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable." The Petitioner must demonstrate "good cause," or "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 interests in section 202c of this title," to overcome the Town's recommendations.¹⁰

For these reasons, I conclude that the Town has not presented a "controlling question of law" sufficient to justify the exceptional interlocutory review of the hearing officer's order by the Commission.

I further clarify that the Town is not required to formally intervene in this case, nor is it compelled to proffer testimony, seek discovery, brief issues, or file motions. To the extent that the Town has raised issues regarding whether the Town must respond to discovery that has not yet occurred, discovery requests are subject to Commission Rule 2.000, and rulings on discovery issues are fact-specific determinations. These concerns are premature and would require development of a factual record for the Commission to make any particular discovery rulings.¹¹

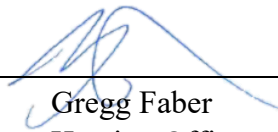
¹⁰ 30 V.S.A. § 248(b)(3).

¹¹ The schedule that has been adopted and was agreed to by the parties and the Town includes an opportunity for the Petitioner to take discovery of non-petitioners.

For the above reasons, the motion for interlocutory review by the full Commission of the hearing officer's January 7 order is denied.

SO ORDERED.

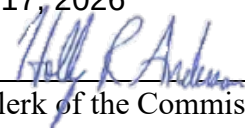
Dated at Montpelier, Vermont, this 17th day of February, 2026.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: February 17, 2026

Attest: 

Clerk of the Commission

PUC Case No. 25-1679-PET - SERVICE LIST

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