

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 25-2931-PET

| | |
|---|--|
| Application of Vertex Towers, LLC and Bell Atlantic Mobile Systems, LLC d/b/a Verizon Wireless, for a Certificate of Public Good, pursuant to 30 V.S.A. § 248a, Authorizing the construction of a Telecommunications Facility in Rochester, Vt. | |
|---|--|

**INTERVENORS' MOTION TO ALTER OR AMEND THE PROCEDURAL ORDER
GRANTING MOTIONS TO INTERVENE AND REQUESTS FOR HEARING**

NOW COME the Intervenors in the above-captioned matter pursuant to PUC Rule 2.221(a) and do hereby Move to Alter or Amend the Procedural Order Granting Motions to Intervene and Requests for Hearing issued 02/17/2026. In support whereof, the Intervenors submit the following memorandum of law.

I. BACKGROUND

Russell Jaquith, Bruce Jones, Alvina Harvey, Richard and Debbie Mathieson, Tara Murray, Deborah Scherrer, and Jacob and Bonnie Wildwood (Intervenors) each filed motions for permissive intervention on January 12, 2026. They sought intervention with respect to the proposed tower's impact on aesthetics, property values, soil degradation, water supply, health and safety, collocation, natural environment and compliance with the Rochester town plan.

The Petitioner opposed intervention altogether, while DPS had no objection to intervention on the basis of aesthetics and orderly development.

On January 30, 2026 Intervenor Tara Murray had a phone conversation with the clerk of the PUC, who stated that the Order on the Intervenors' motions to intervene was already ruled

on, complete and on her desk and would be filed and noticed that day. Tara questioned why this could be decided prior to the deadline for responses to the petitioner. The Clerk stated that she could hold the document and file it after the timeframe of 2-9-26 for responses to the petitioner and she later stated she would have a new document issued. Please see affidavit of Tara Murray attached. The intervenors filed responses on Feb. 6, 2026 and Feb. 9, 2026 accordingly. On February 17, 2026, the Hearing Officer issued a Procedural Order Granting Motions to Intervene and Requests for Hearing. The Order granted each of the Intervenors standing to litigate issues relating to aesthetics, but denied standing as to the remaining issues because the Intervenors' allegations amounted to only generalized grievances, and therefore could not demonstrate that such concerns would not be adequately addressed by the existing parties to the case.

II. LEGAL STANDARD

PUC Rule 2.221(a) provides:

The Commission may on motion grant a new hearing or alter or amend an order on all or part of the issues for any of the reasons for which new hearings have been granted in actions at law or in suits in equity in the courts of this state. On a motion for a new hearing or to alter or amend an order, the Commission may open the proceeding and reconsider a final order if one has been entered, take additional testimony, amend findings of fact and conclusions of law, or make new findings and conclusions of law, or make new findings and conclusions, and may direct the entry of a new judgment.

Rule 2.221(a) is analogous to the Vermont Rule of Civil Procedure 59. Rule 59, in turn, grants Vermont's constitutional courts "with the power to rectify their own mistakes in the period immediately following the entry of judgment." Stowe Aviation LLC v. Vt Agency of Commerce and Community Development, 2024 VT 11 ¶13 (quotation omitted). Such mistakes include "a manifest error of law or fact or...newly discovered evidence." Sutton v. Purzycki, 2022 VT 56, ¶

67. Rule 59 permits constitutional courts the opportunity to “revise its initial judgment if necessary to relief a party against the unjust operation of a record resulting from the mistake or inadvertence of the court and not the fault or neglect of a party.” N. Sec. Ins. Co. v. Mitec Elec., Ltd., 2008 VT 96, ¶ 41 (quotation omitted).

In turn, Rule 2.209(B) governs permissive intervention in § 248a cases. Rule 2.209(B) permits granting a motion to intervene to a party whose “claimed interest shares a question of law or fact in common with the matters that must be resolved in the proceeding.” “In applying Rule 2.209, the Commission has consistently held that an intervenor’s interests must be sufficiently ‘particularized,’ meaning that an intervenor must demonstrate that his or her interest in a proceeding is different from the general interests of other ratepayers represented by the Department.” Case No. 18-1633-PET, Order of 9/24/18 at *3. However, the Commission has granted leave to permissively intervene when the applicants are in a “position to contribute insights over the course of the proceeding that will assist [the Commission] in developing a full record.” Petition of Vermont Gas Systems, Docket 7970, Order of 4/12/2013 at *9. And the Vermont Supreme Court explained, in a case before the adoption of Rule 2.209, that

Whether the private interests of these particular ratepayers conflicts with vague notions of ‘the general good’ or the ‘public interest’ remains to be seen. But it is the cumulation of the private interests of each of Vermont’s citizens which produces the public interest or the general good, and not the other way around. The Legislature has attempted to provide some representation for the citizenry when no private parties come forward to contest the issues involved, or the parties which do come forward do not fairly represent the needs of most Vermonters. That provision, however, does not preclude those who wish to come forward on their own from doing so.

In re Vermont Public Power Supply Auth., 140 Vt. 424, 433 (1981).

In Green Mountain Power, the Court did not “reject [Vermont Public Power Supply’s]

underlying principle.” 2018 VT 97, ¶ 20. Namely, that there is no “per se rule barring a ratepayer or group of ratepayers from articulating a substantial, particularized interests that would set them apart from generic ratepayers to a degree sufficient to allow them to intervene in a CPG proceeding.” *Id.*

III. ANALYSIS

In contrast to the Order, the Intervenors have identified sufficient particularized interests to the project, and will provide valuable insights during the course of the litigation.

A. Town Plan & Zoning Bylaws

Jake and Bonnie Wildwood explained that their interests do not “exactly align” with the town insofar as the Town may agree to terms or compromises that are beyond what we believe are reasonable. They explained that the town plan specifically protects Route 100 and that the project appears to violate the town plan in this respect. They alleged that town plan “is the most important piece of evidence in support for denial of this project,” and that they are “not entirely satisfied that the Town’s interests and arguments are sufficiently strong to protect our interests and the Town Plan’s rules as well.” Tara Murray and Russ Jaquith echoed the Wildwoods and stated that “the Town could negotiate, give up, or otherwise not speak to our interests.” Every single intervenor mentioned the town plan.

Each of these citizens is subject to the town plan, and moreover weighs in and votes on changing the plan from time to time. Laws of general applicability—those applying to “ratepayers” for example—are not like town plans.

B. Public Health & Safety, Water Supply

Jake and Bonnie Wildwood explained that “[t]he potential for washed-out roads and damage to neighbors’ properties do concern us...during Tropical Storm Irene our area was cutoff

from all sides and we became isolated as a town.” They further stated that “[a]ny extra risk from road construction/widening/enlargement on steep grades (which is a must for this project to go forward) must be weighed heavily here.” Russell and Tara Murray raised concerns about the safety of RFR/EMF. Alvina Risinger-Harvey alleged that access to the site crosses damaged culverts and damaged roads, and that blasting in the field to bury underground utilities is an inherently dangerous activity, and questions the paucity of information regarding waste removal from the site. She also stated that the development may damage private wells—including her well—in the neighborhood.

C. Collocation

Jake and Bonnie Wildwood noted that the “proposed Vertex/Verizon tower would mostly replicate the AT&T/et al. coverage already available which is in evidence from their own proposed coverage maps.” They disagreed with the Petitioner that “small cell” units are impractical.

D. Wetlands

Tara Murray and Russell Jaquith raised particularized issues involving the Class III wetland near the project. They noted that the town plan specifically prohibits telecommunication development on or near wetlands. The Wildwoods echo this concern. Alvina Risinger-Harvey noted that the petition materials are replete with misrepresentations and omissions of wetlands.

E. Natural Environment

Many intervenors raised particularized issues with the natural environment. The Wildwoods noted that harm to wildlife and endangered species. Tara Murray and Russell Jaquith raised issues of natural resources relating to their personal property. Alvina Risinger-Harvey raised issues concerning “a large forest block continuum” that includes an “Area used by deer,

bear, bobcat, moose, fox, coyotes, mink, porcupine, opossum, fisher cats, turkeys, various hawks and owls, songbirds, bald eagles, snakes, mice, bats, amphibians, insects and other species.” She continues: “Historically, these woods were managed for habitat improvement, not it’s [sic] destruction.” She noted that multiple forms of recreators use the area to “enjoy the beautiful natural surroundings.”

In sum, the Intervenors have put forward specific, substantial, and particularized interests that no other party will adequately protect, as demonstrated by their comments. For example, with respect to the natural environment, ANR did raise concerns relating to deer wintering areas and Northern long-eared bat habitat. But the comment does not state that Northern long-eared bats are now an endangered species under the Endangered Species Act.¹ And the Intervenors note that the Town’s position appeared to shift somewhat in its supplementary comments filed on March 2, 2026. The Town appeared to concede that the petition would not violate the town plan as to rare, threatened, endangered species and their habitat if petitioner “follows” ANR’s recommendations, and conceded that the “blasting plan consider private wells on the adjacent properties.” Moreover, it conceded that the “existing sites for co-location are not appropriate.”

The Town’s position may change yet again. And this is not a surprising or necessarily unusual development. This is why granting intervention on the requested additional bases is appropriate. It is also appropriate on the basis that such a grant would not unduly delay this case. The parties have engaged in significant motion practice without clear purpose, and there has not yet been a scheduling order. The attorneys in this case are all experienced and are perfectly able to handle *pro se* intervenors. As Bruce Jones perfectly noted in his materials in response to this

1

See, e.g., <https://www.fws.gov/species/northern-long-eared-bat-myotis-septentrionalis>

point, “how much time would each it take for each one of us to speak, 10 or 15 minutes each?

Whereas if the proposed cell tower is installed it will be intervening on my wife and I every day...for the rest of our days on the property where we live.”

F. Consolidating responses

On February 17, 2026, the hearing officer ruled, “... *the Intervenors should coordinate their activities through a single representative for the remainder of this proceeding. Accordingly, the Intervenors are required to coordinate their members’ participation in discovery, in the presentation of evidence, in cross-examination, and in briefing.*”

The Intervenors request recognition of their U.S. Constitutional First Amendment Right To Free Speech. The Vermont Constitution, Chapter 1, Article 13, even more firmly that the U.S. Constitution First Amendment, acknowledges the right of Vermonters to comment on acts of public governance, stating: That people have a right to freedom of speech, and writing and publishing their sentiments, concerning the transactions of government, and therefore the freedom of press ought not to be restrained At Chapter1, Article 6, the Vermont Constitution assures the accountability of government to the state’s residents. That all power being originally inherent in and consequently derived from the people, therefore, all officers of government, whether legislative or executive, are their trustees and servants; and at all times, in a legal way, accountable to them. Therefore, the intervenors request that the ruling be overturned and that they be allowed to remain fully able to represent themselves as the petitioner is allowed as well. Each intervener has a particularized interest and no other intervener can represent those interests.

IV. CONCLUSION

The PUC ought to be more solicitous to Vermonters who wish to be heard in § 248a cases, and to these Intervenors in Rochester who have deep, abiding, and particularized interests

to this project. Indeed, it is “the cumulation of the private interests of each of Vermont’s citizens which produces the public interest or the general good, and not the other way around.” Vermont Public Power Supply Auth., 140 Vt. at 433. The Intervenors in this case attended multiple public meetings that involved discussions of the town plan, property values and property rights, soil erosion, water supply, public health and safety, collocation, wetlands, and the natural environment. They have undergone profound personal sacrifices to put themselves in this position. By definition, the Intervenors have particularized interests over and above the average ratepayer because they are engaged citizens of this municipality who live in close proximity to the project. Intervenors “need not prove [their] case in order to be admitted.” In re Petition of Chelsea Solar LLC, 2021 VT 27, ¶ 49 (quotation omitted).

Intervenors respectfully request that the Hearing Officer alter or amend its Procedural Order Granting Motions to Intervene and Requests for Hearing, and grant intervention on all bases permissible under § 248a with no other restrictions as to party participation. At minimum, the Intervenors hereby reserve their right to obtain standing on the remaining issues in the event the Town changes or otherwise modifies its position during the course of the litigation.

Wherefore, the interveners request that this Honorable Court grant this Motion for Reconsideration.

Respectfully submitted this 17th day of March in Rochester, Vermont by,

/s/Alvina Risinger-Harvey
Alvina Risinger-Harvey
118 Riverbend Road
Rochester, Vermont 05767

/s/ R. Thomas Jaquith
R. Thomas Jaquith
64 State Garage Road
Rochester, Vermont 05767

/s/ Tara Murray
Tara Murray
64 State Garage Road
Rochester, Vermont 05767

/s/ Richard Mathiesen
Richard Mathiesen
6 South Main Street
Rochester, Vermont 05767

/s/ Debbie Mathiesen
Debbie Mathiesen
6 South Main Street
Rochester, Vermont 05767