

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Petition of Industrial Tower and Wireless, LLC Requesting a certificate of public good pursuant to 30 VSA §248a authorizing the installation of wireless telecommunications equipment off of Bordoville Road in Enosburgh, Vermont	Case No. 26-0574-PET
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INTERVENORS' RESPONSE TO MOTION TO DISMISS

NOW COME Intervenor Victor Torrito, Philippa Dorfman and Charles Hungerford Fourie, Derek Jones and Colleen Sheppard, Bordoville SDA Church/Debra Knutson-Bezerra, *pro se*, in support of Chris and Sandra Bruhn's July 24, 2026 Motion to Dismiss.

Intervenor previously intervened and participated in Case No. 22-2120-PET. The PUC denied a Certificate of Public Good on August 3, 2023. Intervenor dedicated extensive time and money to protect their interests in that case, including on the local level, the regional planning commission level, and the Public Utility Commission case. The case consumed more than a year of Intervenor's time, requiring many meetings to coordinate responses and prepare testimony.

Case No. 22-2120-PET Advance Notice 3/4/22. Petition 6/6/22. Denied 8/3/23.

Case No. 26-0574-PET Advance Notice 11/26/25. Petition 3/27/26.

Petitioner spent the two years between the PUC's denial of the CPG in Case NO. 22-2120-PET and the Advance Notice in this Case No. 26-0574-PET litigating in Vermont Federal District Court and the 2nd Circuit Court of Appeals.

Petitioner has returned with the very proposal that the Public Utility Commission suggested in its denial of the CPG that could have met the applicant's needs:

5. The Project is not consistent with goals requiring the least obtrusive type of telecommunication facility contained in the Northwest Regional Plan. The Regional Plan requires that telecommunication facilities be the least obtrusive system possible. The Project tower, because it was designed to include collocation space for potential future telecommunication providers, **is taller and more obtrusive than it needs to be**. NRPC comment dated April 28, 2023. *PUC Order Denying CPG, Aug. 3, 2023, p. 5*

The Petitioner has submitted evidence that lowering the height of the Project tower would compromise potential collocation opportunities.⁶ However, there is no evidence to demonstrate that those collocation opportunities will ever be used or that, even if collocation were to occur, that it would result in benefits to the surrounding community. The Petitioner's testimony at the evidentiary hearing suggests that **a height of 120' could still meet at least some of the Project's goals**.⁷ *PUC Order p. 6*

However, we conclude that these interests could, at least in part, be served with a shorter and less obtrusive tower as recommended by the NRPC. The recommendations of the NRPC are reasonable and specific to this particular tower. **Had the tower been proposed with less height devoted to future collocation space, the recommendation of the NRPC may have been different**. *PUC Order pp. 8-9*

The comments of the Northwest Regional Planning Commission (NRPC) that resulted in the denial of the CPG offered clear direction to the applicant to revise the tower to a lower height.

The PUC cited testimony indicating that a tower height of 120' could have met some of the applicant's goals, and indicated that the applicant could have reduced the tower height to 120'.

The PUC has accepted other applicants' revised projects, even after a Proposal for Decision or Final Order has been issued. In Case No. 16-0442-NMP, after evidentiary hearing, Proposal for Decision, and oral argument, the parties submitted new evidence resulting in the relocation of the project and issuance of a CPG. In Case No. 20-1219-PET, after issuance of a Proposal for Decision to deny the project, the parties engaged in mediation resulting in the issuance of a CPG.

Taller proposed towers have been reduced in height during Advance Notice and Petition cases in several cases, including but not limited to Manchester (Case No. 24-3445-PET), Pownal (Case

No. 25-0257-PET), Tinmouth (Case No. 25-1697-PET), Rochester (Case No. 25-2931-PET), Washington (Case No. 26-0622-AN).

Instead of pursuing the lower tower height of 120' in 2022-2023, Petitioner chose to litigate. Petitioner's failure to pursue a tower 120 feet tall in 2022-2023 and now seeking that tower height in the same location in 2025-2026 is unfairly prejudicial to the parties who previously participated in the original case.

Judicial Economy "is the common-sense principle that courts should manage their resources to resolve legal disputes as efficiently, quickly, and inexpensively as possible, without sacrificing fairness."... "You had your chance. It's over. We are not doing this again." ... These principles "are essential for finality and efficiency.

- **Res Judicata (Claim Preclusion):** This doctrine prevents a party from re-litigating a claim that has already been decided by a court. Once a final **Judgment** is entered, that's the end of the line for that specific claim between those parties.
- **Collateral Estoppel (Issue Preclusion):** This is more specific. It prevents parties from re-litigating a factual issue that was already determined in a prior case, even if the new lawsuit is about a different claim."¹

Petitioner is seeking a do-over, relitigating claims and issues that have already been litigated at great expense of time and money by Intervenors who are now having to devote yet more time and money to address the same issues and claims that have already been decided by the PUC and two Courts.

¹ https://uslawexplained.com/judicial_economy

Petitioner had the opportunity to reduce the tower height and pursue a 120' tower in the same location, chose not to, and should now be enjoined from a second chance. The PUC has a responsibility to assure Judicial Economy and Intervenors have a right to finality.

Intervenors respectfully request that the PUC dismiss the Petition of Industrial Tower & Wireless for a 120' tower in the same location as the previously-decided proposal.

Dated at Enosburgh, Vermont this 7th day of August, 2026.

Respectfully submitted on behalf of Intervenors Victor Torrito, Charles Hungerford Fourie, Derek Jones and Colleen Sheppard, Bordoville SDA Church/Debra Knutson-Bezerra,

By:

/s/ Philippa C. Dorfman

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