

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Case No. 22-2120-PET

Petition 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 Enosburgh, Vermont.)

**OBJECTIONS OF INDUSTRIAL TOWER AND WIRELESS, LLC
TO REVISED PROPOSAL FOR DECISION**

Petitioner, Industrial Tower and Wireless, LLC (“ITW”), by its counsel, MSK Attorneys, submits these Objections in response to the Revised Proposal for Decision (“RPFD”) issued by the Hearing Officer on July 6, 2023.

Earlier in this case, ITW demonstrated the good cause necessary to overcome the substantial deference accorded to the recommendations of regional planning commissions in proceedings under 30 V.S.A. §248a. In particular, as the Hearing Officer found in his original Proposal for Decision (“PFD”) dated February 28, 2023, the co-location of antennas and ancillary equipment serving the St. Albans Police Department (“Police Department”) and the provision for the co-location of similar equipment by multiple commercial telecommunications carriers meet this standard. Inexplicably, the RPFD reverses course on this point despite the fact that the Northwest Regional Planning Commission (“NRPC”) did not submit any new substantive comments. *Compare* NRPC letter of April 28, 2023 with its letter of July 26, 2022; the former is simply a restatement of the latter.¹

¹ The NRPC’s April 28, 2023 letter states, without support, that the project will have “a negative impact on the area’s historic resources, such as the Bordoville Seven [sic] Day Adventist Church.” *Id.* at 2. In fact, the Vermont Division for Historic Preservation concurred with the finding of ITW’s consultant that there are “no Historic Properties in the Area of Potential Effects-Direct Effects” and “no Historic Properties in the Area of Potential Effect-Visual Effects.” Hodgetts Pf. at 8; Exhibit LH-3. Further, as shown below, the aesthetics expert hired by the Department of Public Service found that the Church in question would have no view of the project. Exhibit PSD-GP-2 at 18.

In fact, the NRPC concedes, as it must, that the project “does not constitute a significant regional impact.” July 26, 2022 letter at 2. That obvious point was driven home even more forcefully by the report and testimony of Gordon Perkins, the aesthetics expert retained by the Department of Public Service. Mr. Perkins’ report and testimony went even further in showing how limited the aesthetic impact of this project will be. As he stated:

The results of the DSM viewshed analysis indicate that the tower could be visible from approximately 3.1% of the VSA (**i.e., the tower would be entirely screened from 96.9% percent of the VSA**). Areas where the tower is predicted to be visible occur almost entirely in Rural Valley locations along State Route 108 to the north and east of the tower, with small, scattered areas of visibility indicated in Forest Upland locations.

Aesthetics Analysis and Orderly Development Review (Ex. PSD-GP-2) at 18 (emphasis added).²

Mr. Perkins continued:

It is worth noting that these viewshed results indicate where any portion of the tower may be visible, and it is possible that only a small portion of the tower may be visible from many locations within the tower’s viewshed due to screening provided by intervening vegetation. In order to provide additional information on the amount of tower visibility that is likely to occur, a second DSM-based viewshed analysis based on the tower’s mid-point was conducted. **The results of this viewshed analysis indicate that the upper half of the tower would be visible from 1.4% of VSA (i.e., from roughly half of the areas where visibility is predicted to occur, the bottom half of the tower will be screened by topography, vegetation, and/or structures).**

Id. (emphasis added). Mr. Perkins’ conclusions were not refuted during the evidentiary hearing, in which the neighbor/intervenors called lay witnesses who lacked the training and experience to conduct aesthetic analyses of the type required in a Section 248a proceeding.

² The neighbor/intervenors (including the Seventh Day Adventist Church) reside or are located in areas that will not have any visibility of the project. See Aesthetics and Orderly Development Review at p. 19, Figure 4.1-2.

The state of the determinative evidence at this point is as follows:

- The NRPC has conceded that the project will not have a substantial regional impact;
- The Intervenors will not be able to see the tower portion of the project, or its ground facilities, at all;
- ITW has demonstrated that its chosen 140' tower height is necessary for meaningful co-location of commercial carriers to serve the area in question; and,
- The Police Department has stated its preference to locate its public service antenna at the top of the 140' tower.

CONCLUSION

The RPFD defies common sense and public policy. No party who has intervened in this case has demonstrated that it will suffer any cognizable harm. In fact, they will not even be able to see the project. Conversely, ITW has established that its project will further the public good and the State's interest by allowing ITW to expand its network, by allowing the Police Department to extend the area in which it can communicate reliably, and by providing opportunities for commercial carriers to co-locate, thereby obviating the need for them to construct new towers. Therefore, good cause exists for the PUC to disregard the NRPC's Comments concerning the Tower's height and co-location, because deferring to these Comments would create a substantial shortcoming detrimental to the public good *and* the State's interests. In sum, the RPFD should be rejected and the original PFD adopted in its place.

Signature on following page

Dated: July 21, 2023 at Burlington, Vermont

Respectfully submitted,

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