

**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' REPLY TO ITW'S RESPONSE TO MOTION TO DISMISS

And

MOTION TO STAY

NOW COME Intervenor Victor Torrito, Philippa Dorfman and Charles Hungerford Fourie, Derek Jones and Colleen Sheppard, Bordoville SDA Church/Debra Knutson-Bezerra, *pro se*, and Reply to Industrial Tower & Wireless' August 7, 2026 Response to the Bruhns' Motion to Dismiss.

We agree that collateral estoppel applies to Vermont agency proceedings particularly those conducted in a quasi-judicial capacity like the prior PUC hearings that examined the matter in terms of facts, legal issues, evidence presented, decisions on particular issues to render a final decision on the merits. As elaborated below, the legal and factual issue of a 120' tower was a necessary and essential part of ITW's argument against lowering its 140' tower proposal in the prior proceedings. Before the PUC and federal courts, ITW had full and repeated opportunity to litigate the issue, so it is fair and just to apply issue preclusion to dismiss the case.

In addition, Intervenor Move to Stay the current proceeding on the issues until the Motion to Dismiss is decided.

ITW now attempts to claim that “Whether a 120-foot tower satisfies § 248a was not litigated in the prior proceeding.”

A 120' tower was, in fact, extensively litigated in the prior proceeding. ITW repeatedly and strenuously asserted, hired consultants, presented expert testimony and documentation, and maintained in cross-examination, that a 120' tower would not be effective. For one example out of many other instances where the question of whether a 120' tower would achieve ITW's coverage goals as required by § 248a, at the evidentiary hearing, ITW's Kevin Delaney responds to a specific question about reducing the tower to 120 feet in height:

12 All right. So if you cut this down to 120 and
13 did some reasonable mitigation like that, what does that
14 do to the other carriers? Maybe it bumps one of them off
15 or something; right? But they can still go on because
16 they are above the tree lines; correct?
17 A. No. **I submitted some studies that showed what**
18 **happened at the available heights if we went down to 120**
19 **feet. It would reduce their coverage to a point where it**
20 **would almost be completely useless.**

Evidentiary hearing transcript, p. 4 [emphasis added]

Now, in its current Petition, in March 18, 2026 prefiled testimony, ITW's Kevin Delaney contradicts his prior testimony regarding the co-location potential if the tower is 120 feet tall, stating

“ITW has designed the Tower and Compound to accommodate the equipment of **one** other wireless communications provider.”

Kevin Delaney Prefiled Testimony, March 18, 2026, p.6. [emphasis added]

ITW further contradicts its own current testimony by stating in Petitioner's August 7, 2026 Opposition to Intervenors' Motion to Dismiss on p. 4:

...it eliminates the speculative future-collocation capacity that made the 140-foot tower “taller than it needs to be,” reducing the tower's collocation positions from the five future-carrier mounts depicted in the prior design to **two**. Exh. 2 at Page 13

[emphasis added]

The coverage issue is relevant to aesthetics review in § 248a under the PUC's modified Quechee Analysis that includes “societal benefit”. This issue has been litigated and ITW testified that a 120' tower would not satisfy § 248a.

Intervenors have been through this before. There is nothing new here. No new balloon test. ITW's current testimony is recycled from the prior case.

The only difference is that previously, when asked about a tower at 120', ITW said that it would be “almost completely useless” for colocation. Now, ITW's same witness changes the testimony to claim the 120' tower can accommodate “one other wireless communications provider.” Or is it “two”?

ITW asks for costs and attorney fees against the Bruhns. We oppose any costs being awarded to ITW, in a context where ITW has been litigating this tower through multiple legal proceedings and appeals for the last four years. ITW has seemingly unlimited resources for litigation against a group of concerned citizens with limited resources. Furthermore, its current application contains misleading, contradictory testimony, previously testifying that a 120' tower would be almost completely useless for co-location and now testifying that a 120' tower can accommodate one (or two?) other wireless communications providers. At risk is the integrity and fairness of the legal system.

Intervenors respectfully request that the PUC dismiss this case. ITW proposes to erect a tower it has already litigated, specifically testifying that a 120' tower in the same location on the same property would not meet its goals to satisfy § 248a.

In support of fairness, judicial economy and to assure that Intervenors (and state agencies) are not required to waste substantial amounts of time and resources, the Intervenors Move to Stay further process in this case until the Motion to Dismiss has been decided.

Dated at Enosburgh, Vermont this 14th 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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