

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 26-0574-PET

Petition of Industrial Tower and Wireless, LLC for a Certificate of Public Good, pursuant to 30 V.S.A. § 248a, for approval to install wireless telecommunications equipment in Enosburgh, Vermont	
--	--

Order entered: 08/17/2026

ORDER DENYING MOTION TO DISMISS

I. INTRODUCTION

This case involves a petition filed by Industrial Tower and Wireless, LLC (the “Petitioner”) on March 27, 2026, for a certificate of public good (“CPG”) under 30 V.S.A. § 248a, with the Vermont Public Utility Commission (“Commission”) authorizing the installation of telecommunications equipment in Enosburgh, Vermont (“Project”). In this order, I deny the motion to dismiss the petition filed by Chris and Sandra Bruhn.

II. BACKGROUND

On July 24, 2026, the Bruhns filed a motion to dismiss the petition for failure to state a claim upon which relief can be granted under V.R.C.P. 12(b)(6). The Bruhns argue that the Project is barred from consideration due to the doctrines of *res judicata* and collateral estoppel.¹

On August 7, 2026, the Vermont Department of Public Service (“Department”) filed a response in opposition to the motion.

On August 7, 2026, the Petitioner filed a response in opposition to the motion.

On August 7, 2026, Phillippa Dorfman, Victor Tirrito, the Bordoville SVA Church, Derek Jones, and Colleen Shepard (together, the “Intervenors”) filed a response in support of the motion.

On August 14, 2026, the Bruhns filed a reply to the Petitioner’s response.

¹ Bruhns’ Motion to Dismiss at 1.

On August 14, 2026, the Intervenor filed a reply to the Petitioner's response and a motion to stay the proceeding until the motion to dismiss is decided.²

III. LEGAL STANDARD

A motion to dismiss for failure to state a claim will be granted “only if it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.”³ The Commission “assumes that all allegations pleaded in the complaint are true . . . accept[s] as true all reasonable inferences that may be derived from plaintiff's pleadings[,] and assume[s] that all contravening assertions in defendant's pleadings are false.”⁴

IV. DISCUSSION

The Bruhns argue that the doctrines of collateral estoppel and *res judicata* preclude the Petitioner from bringing the above-captioned petition for a 120' tower, given the Commission's denial of the Petitioner's previous petition for a CPG for a 140' tower in the same location.⁵

Collateral Estoppel

Collateral estoppel, or “issue preclusion,” “bars the subsequent relitigation of an issue which was actually litigated and decided in a prior case between the parties resulting in a final judgment on the merits, where that issue was necessary to the resolution of the action”⁶ Collateral estoppel is designed to “conserve the resources of courts and litigants by protecting them against repetitive litigation, to promote the finality of judgments, to encourage reliance on judicial decisions, and to decrease the chances of inconsistent adjudication.”⁷

² Because the order denying the motion to dismiss has been issued, there is no need to stay the proceeding. Therefore, the motion to stay is denied as moot.

³ *Oblak v. Univ. of Vt. Police Servs.*, 2019 VT 56, ¶ 7, 210 Vt. 550, 217 A.3d 946 (citation omitted).

⁴ *Petition of Dep't of Pub. Serv. to Impose Penalties & Other Remedial Action Upon Vermont Gas Sys., Inc. (VGS), Re: Probable Violations of Vermont L., Pertaining to Gas Safety, Involving 31 Separate Locations Installed, Owned, Operated &/or Maintained by VGS*, Docket No. 7513, Order of 10/23/09 at 14 (citing *Union Mut. Fire Ins. Co. v. Joerg*, 2003 VT 27, ¶ 4, 175 Vt. 196; *Wharton v. Tri-State Drilling & Boring*, 2003 VT 19, ¶ 10, 175 Vt. 494, 824 A.2d 531, 535).

⁵ *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 off of Bordoville in Enosburgh, Vermont*, Case No. 22-2120-PET, Order of 8/03/2023.

⁶ *Stevens v. Stearns*, 2003 VT 74, ¶ 12, 175 Vt. 428, 833 A.2d 835 (citation omitted).

⁷ *In re Apple Hill Solar LLC*, 2019 VT 64, ¶ 22, 211 Vt. 54, 219 A.3d 1295 (“*Apple Hill I*”) (quoting *In re P.J.*, 2009 VT 5, ¶¶ 7-8, 185 Vt. 606, 969 A.2d 133 (internal quotation omitted)).

Collateral estoppel “may apply in administrative proceedings.”⁸ “Collateral estoppel applies to both issues of fact and law.”⁹ Collateral estoppel applies only when:

(1) preclusion is asserted against one who was a party or in privity with a party in the earlier action; (2) the issue was resolved by a final judgment on the merits; (3) the issue is the same as the one raised in the later action; (4) there was a full and fair opportunity to litigate the issue in the earlier action; and (5) applying preclusion in the later action is fair.¹⁰

The fourth and fifth criteria are generally considered together.¹¹

The Bruhns and the Intervenors argue that the Petitioner is barred by the doctrines of both collateral estoppel and *res judicata* from filing a petition for approval of a facility with a 120’ tower because the Petitioner’s previous petition for approval of a facility with a 140’ tower at the same location was denied by the Commission.

The Petitioner and the Department point out that the previous petition, with a 140’ tower, was denied solely on the basis that the project did not comply with the recommendation of the Northwest Regional Planning Commission (“NRPC”) with respect to the project’s compliance with the regional plan pursuant to § 248a(c)(2).¹² The Petitioner and the Department argue that the reduction in height of the tower from 140’ to 120’ represents a significant difference in the Project’s potential to impact compliance with § 248a(c)(2) and is, therefore, not barred by collateral estoppel and *res judicata*. The Petitioner also notes that the NRPC supports the Project as proposed.¹³ The Petitioner also requests attorney’s fees and costs incurred in responding to the motion.

I find that collateral estoppel does not apply here, because, when reading all the pleaded facts and inferences in favor of the Petitioner, the issues raised in this case are not the same as those that were present in the Case No. 22-2120-PET proceeding, the Commission’s final order

⁸ *Apple Hill I*, at ¶ 22.

⁹ *Stevens v. Stearns* at ¶ 12 (citing *Mellin v. Flood Brook Union Sch. Dist.*, 173 Vt. 202, 209, 790 A.2d 408, 416 (2001)).

¹⁰ *Apple Hill I*, ¶ 22 (citing *Trepanier v. Getting Organized, Inc.*, 155 Vt. 259, 265, 583 A.2d 583, 587 (1990)).

¹¹ *Id.* (citing *In re P.J.*, 2009 VT 5, ¶ 13, 185 Vt. 606, 969 A.2d 133).

¹² Case No. 22-2120-PET, Order of 8/03/2023, at 7.

¹³ Petitioner’s response to motion at 1.

in the prior case did not resolve all of the issues present in the instant case, and the parties were not given a full and fair opportunity to litigate the current issues in the past proceeding.

In the instant case, the Petitioner has modified the proposed facility to address the basis of the denial of the previous petition. Specifically, the Petitioner has reduced the facility tower height from 140' to 120' to address the NRPC's recommendation to deny the petition because it asserted that a 140' tower was taller than necessary and, therefore, in violation of the regional plan.¹⁴ The Commission's determination to deny the previous petition was based on a facility with a 140' tower and whether that project was in compliance with the requirements of § 248a.

While the issue of a lower tower height was discussed in the previous proceeding, the Commission did not adjudicate on the impacts of a facility with a 120' tower.¹⁵ The Commission's final order in the case resolved the issue of a project with a 140' tower's impacts on the relevant § 248a criteria; not the impacts of a project with a 120' tower as proposed here. Accordingly, the Petitioner has not been given a full and fair opportunity to present and litigate the Project as now proposed.

Res Judicata

Res judicata, also called “claim preclusion,” “bars litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter, and causes of action are identical or substantially identical.”¹⁶ It “bars parties from litigating claims that were raised in previous adjudicative proceedings and those that the parties could have raised.”¹⁷ For purposes of *res judicata*, a “cause of action is the same if the same evidence will support the action in both instances.”¹⁸ “Whether the same cause of action is present, so as to raise the bar of *res judicata* to subsequent litigation, must be determined on the facts of each case.”¹⁹

Res judicata “applies to administrative decisions when an administrative agency is acting in a judicial capacity and resolves disputed issues of fact properly before it which the parties

¹⁴ *Id.* at 6.

¹⁵ Case No. 22-2120-PET, Order of 8/03/2023, at 7.

¹⁶ *Knapp v. Dasler*, 2024 VT 65, ¶ 25, 331 A.3d 1011, 1022 (Vt. 2024) (citation omitted), reargument denied (Dec. 18, 2024), cert. denied, No. 24-6829, 2025 WL 1496514 (U.S. May 27, 2025),

¹⁷ *Dep't of Taxes v. Murphy*, 2005 VT 84, ¶ 9, 178 Vt. 269, 883 A.2d 779 (citation and internal quotation omitted).

¹⁸ *Hill v. Grandey*, 132 Vt. 460, 463, 321 A.2d 28, 31 (1974).

¹⁹ *Id.* at 464, 321 A.2d at 31.

have had an adequate opportunity to litigate.”²⁰ Only administrative decisions that entail the essential elements of adjudication, as opposed to a legislative or policymaking process, will have *res judicata* effect.²¹

Without reaching the question of whether the Commission’s decision to deny the Petitioner a CPG in Case No. 22-2120-PET was an adjudicative proceeding subject to *res judicata*, I find that, as discussed above, the Petitioner has demonstrated on the standard for a motion to dismiss that the proposed Project is sufficiently different from the project reviewed in the prior case so that the subject matter is not identical or substantially identical to one another.

With respect to award of attorney’s fees, the Commission is vested with “the powers of a court of record in the determination and adjudication of all matters over which it is given jurisdiction.” 30 V.S.A. § 9. That authority includes the power to “to award attorney’s fees in litigation that is properly before us in the same manner as a Vermont court would be authorized to award attorney’s fees.”²² The Commission’s exercise of this authority is tempered by the Commission’s recognition of the American Rule regarding attorney’s fees, which is followed in Vermont. The American Rule holds that attorney’s fees are generally not awarded absent special statutory authority or through a contract agreement.²³

In this case, the Petitioner has not shown any extraordinary circumstance or exception to the American Rule associated with its response to the Bruhns’ motion that would justify the award of attorney’s fees. Therefore, the request for attorney’s fees is denied.

V. CONCLUSION

²⁰ *Lamb v. Geovjian*, 165 Vt. 375, 381, 683 A.2d 731,735 (1996) (quoting *Delozier v. State*, 160 Vt. 426, 429, 631 A.2d 228, 230 (1993) (internal quotation omitted)).

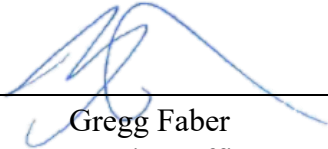
²¹ *Delozier*, 160 Vt. at 429, 631 A.2d, at 230; see also *Apple Hill III*, ¶ 11 (quoting *In re Vt. Elec. Power Co.*, 2006 VT 69, ¶ 6, 179 Vt. 370, 895 A.2d 226) (“In a § 248 proceeding, the [Commission] is engaged in a legislative, policy-making process.”); *In re Petition of Twenty-Four Vermont Utilities*, 159 Vt. 339, 357, 618 A.2d 1295, 1306 (1992) (citing *Auclair v. Vermont Elec. Power Co.*, 133 Vt. 22, 26, 329 A.2d 641, 644 (1974)).

²² *In Re Vermont Elec. Power Co., Inc., and Green Mountain Power Corp. for a certificate of public good authorizing VELCO to construct the Northwest Vermont Reliability Project*, Docket 6860, Order of 9/26/06 at 2.

²³ *In re Gadhue*, 149 Vt. 322, 327 (1987) (citations omitted).

On a motion to dismiss standard, neither collateral estoppel nor *res judicata* apply to this proceeding because the issues presented here are sufficiently different than those raised in Case No. 22-2120-PET. Accordingly, the Bruhns' motion to dismiss is denied.

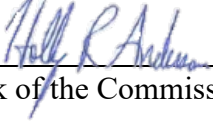
Dated at Montpelier, Vermont, this 17th day of August, 2026.



Gregg Faber
Hearing Officer

OFFICE OF THE CLERK

Filed: August 17, 2026

Attest: 

Clerk of the Commission

PUC Case No. 26-0574-PET - SERVICE LIST

Parties:

Chris Bruhn, *pro se*
16 Greenwoods Road
North Granby, CT 06060
pcbwolfelake@gmail.com

Sandra Bruhn, *pro se*
12 Greenwoods Rd.
North Granby, CT 06060
sandrambruhn@gmail.com

*Catherine Gjessing, General Counsel
Vermont Agency of Natural Resources
anr.notice@vermont.gov

(for Vermont Agency of
Natural Resources)

Caroline Daniels
Vermont Department of Public Service
112 State Street
Montpelier, VT 05620
caroline.daniels@vermont.gov

(for Vermont
Department of Public
Service)

Philippa Dorfman, *pro se*
394 Bordoville Rd.
Enosburg, VT 05450
pippa2526@gmail.com

William Cooper Hayes
MSK Attorneys
275 College Street
Burlington, VT 05401
chayes@mskvt.com

(for Industrial Tower
and Wireless, LLC)

Derek J. Jones, *pro se*
P.O. Box 72
Fairfield, VT 05450
djjmtl@sympatico.ca

Debra Knutson-Bezerra
P.O. Box 1167
Enosburg Falls, VT 05450-1167
DEBAL1001@gmail.com

(for Bordoville SDA
Church)

Colleen Sheppard, *pro se*
P.O. Box 72
Fairfield, VT 05450
djjmtl@sympatico.ca

Victor Tirrito, *pro se* 537
Bordoville Road
Enosburg Falls, VT 05450
vtirrito@comcast.net