8/6/15 Prehrg. Conf. Report transcript

1 45-day notice being a valid 45-day notice?

2 MR. FABER: I just said, the notice and

3 the evidence is -- the required notice and evidence

4 has been filed, and it will just say that. Okay?

5 MS. SHERMAN: Okay.

6 MR. FABER: All right.

7 MR. BURKE: I do have one quick

8 question.

9 MR. FABER: Sure.

10 MR. BURKE: This relates also to the

11 other petitions from VTel that are pending. I was

12 wondering, Mr. Faber, if you intended on doing any

13 site visits.

14 MR. FABER: No. Given the time

15 constraints, we typically don't do those in these

16 cases. Typically they don't result in a lot. These

17 places are usually densely wooded, you cannot see

18 anything from the areas. Yes, you can see the

19 surrounding areas, but I am pretty familiar with this

20 area as well, so I don't intend on doing that.

21 MR. BURKE: Okay.

22 MR. FABER: Anything else?

23 MR. McLEAN: Well I mean this issue of

24 a site visit may be important. And I don't think

25 that -- well we would at least like to be heard on

1 the issue of whether or not there should be a site
2 visit in this case. And I don't think that is
3 appropriate to simply say I'm familiar with the area,
4 and these sites are typically wooded, and leave it at
5 that.
6 MR. FABER: Let me restate it then. We
7 typically do not do site visits in these cases, and I
8 don't intend to do one here.
9 MR. McLEAN: So if there is a motion
10 filed requesting a site visit, you would deny it?
11 MR. FABER: Yes. Anything else?
12 MR. McLEAN: Not at this time.
13 MR. FABER: Okay. All right. Thank
14 you all. We are adjourned.
15 (Whereupon, the proceeding was
16 adjourned at 1:48 p.m.)
17
18
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24
25

See pgs. 2 & 3

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Article published Aug 7, 2015

Cell tower plan soars by challengers

By David Delcore
Staff Writer

MONTPELIER — A controversial plan to construct a telecommunications tower in a quaint corner of Calais survived two separate motions designed to derail the project during a pre-hearing conference on Thursday.

In a dizzying series of matter-of-fact rulings Gregg Faber, hearing officer and utility analyst for the state Public Service Board, abruptly denied motions to dismiss VTel Wireless Inc.'s pending application for the certificate of public good it will need to construct a 140-foot-tall tower on a hillside off Bayne Comolli Road.

One of the newly denied motions was filed on behalf of the Calais Select Board and planning commission, while the other was the work of a grassroots group of neighboring landowners, who refer to themselves as the North Calais Neighborhood Coalition.

Neither made a persuasive case, according to Faber, who told representatives for both the town and the coalition he saw no reason to prematurely pull the plug on an application that he believed met all the minimum requirements.

"The required notice and the evidence has been filed," he said,

"That's all they have to do," he added. "It doesn't mean the evidence is persuasive, it just means they provided the evidence."

Faber said for the purposes of the proceeding the VTel application was complete on May 15 and subsequent modifications, including a proposal to shift the project 430 feet from where it was initially proposed on land owned by Steve Perkins, was being treated as "supplemental information."

Joseph McLean, one of two Burlington attorneys hired by the town, repeatedly asked Faber to put his decision in writing, while the other, Diane Sherman, said she would like to object.

Faber told McLean he would issue a pre-hearing conference memorandum, but the rationale for his decision was "pretty simple" and likely wouldn't go beyond what he'd just finished saying. Meanwhile, he told Sherman she was welcome file a brief outlining her objection as the case progresses to a yet-to-be-

scheduled hearing.

A schedule was the one detail Faber didn't nail down during a conference that lasted barely 20 minutes and left some of the neighbors shaking their heads. It wasn't for lack of trying.

VTel's lawyers submitted a proposed schedule that would have culminated in a one-day technical hearing on Oct. 19 and sought without success to lock down any dates.

Though Faber initially resisted Sherman's repeated request to delay setting a schedule until after she had an opportunity to consult with her clients and questioned how that conversation could effect scheduling, he ultimately relented.

Faber ordered the two sides to submit an agreed upon schedule to the board by Aug. 17, or, in the event they couldn't agree as Sherman assured him they could, separate proposed schedules so that he could choose between them.

Sherman, who was offered the opportunity to consult with Select Board Chairwoman Denise Wheeler in the middle of the conference, said she would prefer to meet with the full board Monday night before making any scheduling commitments.

Faber granted the town's request to intervene in the proceeding under three different criteria, while limiting the neighborhood coalition's participation to the aesthetic effect of constructing a telecommunications tower on a wooded hillside. He denied individual requests to intervene filed by the group's 20 members, noting the coalition could collectively represent their interests. He also denied a Woodbury couple's request to intervene suggesting that, with a little coordination and cooperation, their concerns could be raised by the neighborhood group or the town.

The conference ended with an interesting exchange involving McLean's suggestion that a site visit might be important and the town might request one.

Faber said he was familiar with the area and didn't believe a site visit was necessary, prompting push-back from McLean.

"I don't think it's appropriate to simply say: 'I'm familiar with the area ...' and leave it at that," McLean said.

"Let me restate it then," Faber replied. "We typically do not do site visits in these cases and I don't intend to do one."

McLean pressed the point, asking Faber if he would deny a motion requesting a site visit. Faber indicated that he would and the conference ended.

david.delcore

@timesargus.com

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358

TTY/TDD (VT): 800-253-0191
FAX: 802-828-3351
E-mail: psb.clerk@state.vt.us
Internet: http://psb.vermont.gov

State of Vermont
Public Service Board

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STITZEL, PAGE & FLETCHER, P.C.

MEMORANDUM

To: Parties in PSB Docket No. 8535 (VTel Wireless/Calais)

see pg. 3

From: Susan M. Hudson, Clerk of the Board sh

Re: Correction to Prehearing Conference Memorandum

Date: September 11, 2015

On August 25, 2015, the Hearing Officer issued a Prehearing Conference Memorandum ("Order"). Due to technical errors, the Order contained incorrect information under the Motions to Intervene section (3rd line of first paragraph and on the 4th line of the second paragraph). In addition, language was omitted in the Background section of the Order.

Please replace the enclosed pages 1 and 2 for the ones that were sent to you on August 25, 2015. We apologize for the errors, and any inconvenience that was created. Thank you.

Enclosures (2)

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 8535

Petition of VTel Wireless, Inc., for a certificate of public good, pursuant to 30 V.S.A. § 248a, for the installation of telecommunications equipment in Calais, Vermont)

Order Entered: 8/25/2015

PREHEARING CONFERENCE MEMORANDUM

Background

This case involves a petition ("Petition") filed by VTel Wireless, Inc. ("Petitioner"), for a certificate of public good ("CPG") pursuant to 30 V.S.A. § 248, for the installation of a telecommunications facility in Calais, Vermont. On August 6, 2015, I convened a prehearing conference in this case. William Dodge, Esq., and Elizabeth Kohler, Esq., Downs Rachlin & Martin, PLLC, appeared on behalf of the Petitioner. Joseph McLean, Esq., and Diane Sherman, Esq., Stitzel, Page & Fletcher, appeared on behalf of the Town of Calais ("Calais"). Daniel Burke, Esq., appeared on behalf of the Vermont Department of Public Service ("Department"). Matthew Lutz, a neighboring landowner, appeared *Pro Se* on behalf of the North Calais Neighbor's Coalition ("NCNC").

Scope of Proceeding

At the prehearing conference, I determined that Calais and the Department had shown that the proposed project ("Project") raises significant issues pursuant to §§ 248a(c)(1), 248a(c)(2) with respect to the recommendations of a municipality, and 248a(c)(3) with respect to collocation of the facility. Accordingly, I determined that a technical hearing was necessary to develop an evidentiary record regarding these issues.

Motions to Intervene

On May 8, 2015, Calais filed a motion to intervene as of right in the proceeding pursuant to Vermont Public Service Board ("Board") Rule 2.209. At the prehearing conference I granted the Town intervention with respect to §§ 248a(c)(1), 248a(c)(2) regarding the recommendations of a municipality, and 248a(c)(3) regarding collocation of the facility.

On June 4, 2015, NCNC filed a motion to intervene in this proceeding pursuant to Vermont Public Service Board ("Board") Rule 2.209. The individual members of NCNC also filed separate motions to intervene, which are largely identical in nature, on the same date. At the prehearing conference I granted NCNC intervention under § 248a(c)(1) regarding aesthetics and environmental impacts. I denied the individual NCNC group members' motions on the grounds that their interests were adequately protected by NCNC's intervention in this proceeding on the same issues.

On June 5, 2015, Stephen and Laura Murphy filed a motion to intervene in this proceeding pursuant to Vermont Public Service Board ("Board") Rule 2.209. The Murphys were seeking intervention with respect to § 248a(c)(1). At the prehearing conference I denied the Murphys' motion on the grounds that, to the extent the Murphys' concerns fell within the scope of the issues determined above, the Murphys' interests were adequately protected by Calais' and NCNC's intervention in this proceeding on the same issues.

Motion to Dismiss

On June 5, 2015, Calais filed a motion to dismiss the Petition on the grounds that the petition is incomplete, and that the Petitioner failed to provide the required advance notice of the filing of the Petition to the town. At the prehearing conference I denied Calais' motion to dismiss on the grounds that the Petition contains sufficient factual assertions to show that the Project meets the applicable criteria pursuant to § 248a, and that the Petitioner had provided adequate advance notice of the filing of the Petition.

Site Visit

At the prehearing conference, I indicated that based upon the evidence filed in this proceeding to date and my general familiarity with the area surrounding the proposed site, I did not feel that a site visit was necessary in this particular case. Further, I noted at the prehearing conference that given the expedited decision deadlines set forth in § 248a, the Board does not typically conduct site visits in these cases. However, upon further consideration I have concluded that it would be appropriate to afford any party who so wishes an opportunity to file a motion requesting a site visit and the grounds supporting any such request. Any such motion must be filed within two weeks of the date of this Prehearing Conference Memorandum along with a proposed date that is acceptable to all parties concerned.

EXHIBIT
D

Burke, Dan

From: Porter, James
Sent: Friday, July 03, 2015 1:23 PM
To: Recchia, Chris
Subject: Fwd: Urgent Final Five Update

Ugh. Frankly I'm sorry Calais is dying but I don't think it has a chance.

Sent from my iPhone

Begin forwarded message:

> **From:** Michel Guite <mguite@vermontel.com>
> **Date:** July 3, 2015 at 1:20:26 PM EDT
> **To:** "Recchia, Chris" <Chris.Recchia@state.vt.us>, "Porter, James" <James.Porter@state.vt.us>, "Bourgeois, Kiersten" <Kiersten.Bourgeois@state.vt.us>
> **Cc:** Jeff Monder <jmonder@vermontel.com>, "Springer, Darren" <Darren.Springer@state.vt.us>, Gordon Mathews <gmathews@vermontel.com>
> **Subject: RE: Urgent Final Five Update**
>
> Thanks a million Chris. We and RUS are sort of expecting Calais to go down in flames.
>
> But the loss of Rochester and Cabot would hurt a lot.
>
> RUS is doing its 7/24/365 best to be flexible, and make this Vermont project a model to praise, but they -- my personal opinion - are under weekly pressure from Bernie Sanders, and feel perhaps erroneously that the Governor supports Bernie - to not forgive rural sites unbuilt.
>
> We have tower equipment delivered. We are paying a very high cost to keep Ericsson teams watching movies in local motels to be ready to jump when build permits arrive. We have been turning up sites every few days. End in sight at last.
>
> Is there anything we might together do to advocate to PSB a green light for Rochester and Cabot, perhaps agreeing that VTel will agree to a different plan for Calais? A peculiar fact for Calais is that the farmer whom they want us to deal with was our first contact, who turned us down. He says now he is sorry he said no. It would be costly to switch, but I would do it.
>
> Best, and thanks again for July 4 reply.
>
> Fabulous article about VT energy innovation with GMP and Mary Powell in New Yorker this week.
>
> Best,
>
> Sent via the Samsung Galaxy S® 4 mini ™, an AT&T 4G LTE smartphone

EXHIBIT
E

>> Mobile: 914 572-7664
>> E-Mail: mguite@vermontel.com<mailto:mguite@vermontel.com>
>> Get the latest news and updates on VTel GigE, VTelevision and VTel WOW – Like us on Facebook!
>> From: Recchia, Chris [mailto:Chris.Recchia@state.vt.us]
>> Sent: Wednesday, July 08, 2015 1:06 PM
>> To: Michel Guite
>> Cc: Porter, James; Bourgeois, Kiersten; Jeff Monder; Springer, Darren; Gordon Mathews
>> Subject: Re: Urgent Final Five Update
>>
>> Michel - I cannot do 1pm, but I can do 4pm - would that work for you?
>>
>> Sent from my iPhone
>>
>> On Jul 8, 2015, at 1:03 PM, "Michel Guite" <mguite@vermontel.com<mailto:mguite@vermontel.com>> wrote:
>> Hi and we are at 802-885-7000 if 1 pm call is still on. We can if you prefer meet at 885-7070 on conference bridge any time.
>>
>> Michel Guite
>> President
>> Vermont National Telephone Co, Inc.
>> Phone: 802 885-7000
>> Mobile: 914 572-7664
>> E-Mail: mguite@vermontel.com<mailto:mguite@vermontel.com>
>> Get the latest news and updates on VTel GigE, VTelevision and VTel WOW – Like us on Facebook!
>> From: Recchia, Chris [mailto:Chris.Recchia@state.vt.us]
>> Sent: Tuesday, July 07, 2015 4:41 PM
>> To: Michel Guite
>> Cc: Porter, James; Bourgeois, Kiersten; Jeff Monder; Springer, Darren; Gordon Mathews
>> Subject: Re: Urgent Final Five Update
>>
>> Thanks Michel - is it possible to speak with you about this tomorrow afternoon?
>>
>> Sent from my iPhone
>>
>> On Jul 7, 2015, at 3:00 PM, "Michel Guite" <mguite@vermontel.com<mailto:mguite@vermontel.com>> wrote:
>> Dear Chris,
>>
>> Thank you again very much for your welcome July 4th weekend reply.
>>
>> Burke as you indicated was PSB approved. We are capable of getting a site built within 21 days, after permitting. So the concrete for Burke is being mixed, with the tower en route, and Ericsson teams ready to climb the pole and install the radios. Oddly, the pacing factor is how long it takes concrete to dry, rather than how long it take to install 4G technology.
>>
>> Several other sites are also being completed this week.
>>
>> If there is a possibility DPS and VTel Wireless could somehow publicly and transparently cooperate, in such a way that DPS might, because of RUS time schedule and rural homes to be served, recommend issuance of permits for Rochester and Cabot (also called Peacham), and recommend against Calais until VTel finds a better site?
>>
>> Best,
>>
>> Michel Guite

EXHIBIT
B

KEY

From: Ronnie Jemmott
Sent: Wednesday, April 15, 2015 10:40 AM
To: Gordon Mathews
Subject: RE: Calais-01 RF Comparison for Permitting

I went over the predictions and evaluation last evening and concluded - Overall Calais_01_CA seems to be the better option in the long run. The coverage provided by that site facilitates outdoor solutions at various heights in order to provide customers in the South with coverage. See below rooftop count. Feel free to give me a call if you require further details.

Calais-01_CC	-72.456941	FINAL LOCATION 44.412192	3ft_Outdoor_0dBi	135	621	1,015	46.44
			25ft_Outdoor_14dBi		3,639	12,570	485.97
Calais-01_CA	-72.3937077	44.4411777	3ft_Outdoor_0dBi	100	1,375	3,453	159.78
			25ft_Outdoor_14dBi		7,021	19,719	858.94

Best regards,

Ronnie B. Jemmott
RF Planning & Optimization Engineer
VTel Wireless, Inc.
354 River Street
Springfield, VT 05156
Phone: (802) 885-4444
Mobile: (347) 824-9325
E-Mail: rjemmott@vermontel.com

VTel

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From: Gordon Mathews
Sent: Wednesday, April 15, 2015 10:03 AM
To: Ronnie Jemmott
Subject: RE: Calais-01 RF Comparison for Permitting

Thanks, that's not the conclusion we were hoping for :(.

What about for RUS coverage? I thought yesterday we concluded CC was preferable for covering RUS, particularly to the south.

From: Ronnie Jemmott
Sent: Wednesday, April 15, 2015 9:39 AM
To: Gordon Mathews
Subject: RE: Calais-01 RF Comparison for Permitting

Hi Gordon,

Please find attached coverage prediction for Calais_01 site candidates. After comparing the coverage for both candidates **Calais_01_CA** seems to be the better option since it provides better connectivity with neighboors and better coverage to rooftops and roads.

Best regards,

Ronnie B. Jemmott
RF Planning & Optimization Engineer
VTel Wireless, Inc.
354 River Street