

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-1755-PET

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 at 160 Frog Hollow Lane in Westmore, Vermont	
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INTERVENORS' COMMENTS
on
PROPOSAL FOR DECISION
and
REQUEST FOR ORAL ARGUMENT

Intervenors Ronald and Kathy Holmes, Elizabeth Tucker, Donna Dzugan-Smith, Andrew Zebrowski, Megan Patton, and Robert Fitzpatrick hereby submit these COMMENTS on the Hearing Officer's Proposal for Decision dated June 25, 2025.

The Proposal for Decision ("PfD") is in error, primarily on four material points:

1. The PfD erroneously holds that the proposed tower is consistent with state telecommunications policy and local telecommunications goals, when the tower is for subscriber two-way radio communication only, and does not contribute to public wireless phone service accessibility; and,
2. The PfD disregards the significance of the NNL; and,
3. The PfD errs in holding that the proposed project is consistent with Town and Regional plans, does not afford the recommendation of the Town of Westmore the deference required by statute; and,
4. The PfD ignores the significant number of homes and public vantage points with near views of the proposed tower and its base compound.

By the following statements and arguments, Intervenors are noting key examples of errors in the PfD. These by no means comprise all of the errors and misstatements in the PfD,

and the Intervenors are not waiving the right to argue, at the PUC or on appeal, regarding other portions of the PfD which suggest erroneous holdings or errors in legal analysis and conclusions.

Oral Argument is hereby requested.

I. Telecommunications Policy,

At ¶4, the PfD states in regard to compliance with state telecommunications policy (30 VSA §248 a(a)) that “The Project will provide new wireless service and improve existing service in Westmore and will also provide space for collocation”, citing the prefiled testimony of Delaney at pages 2-3.

Similarly, at ¶24 regarding consistency with the Regional Plan, 10 V.S.A. § 6086(a)(8), 30 V.S.A. § 248a(c)(2), the PfD states,

24. The Project is consistent with the goals regarding improved access to wireless telecommunications services contained in the regional plan. The regional plan contains goals supporting universal access to and improvement of telecommunications facilities. Telecommunications strategies in the plan include assisting municipalities to clarify the location and treatment of natural and scenic resources in the municipal plan. Buscher pf. at 13 and appendix D.

This proposed finding is contrary to the evidence. Mr. Delaney’s testimony indicates that the tower will provide two-way radio service to ITW subscriber and use by the Glover EMS. There is no present contract with a national wireless carrier. *TR* 7. The PfD is accordingly incorrect in stating that the project is consistent with state telecommunications policy, as it does nothing to advance improved access to cell phone service.

As argued at Intervenor’s Post Hearing Brief at pp. 38-39, the proposed 153-foot private radio facility offers no cellular phone service, nor broadband service, beyond noting the allure of such future possibilities. Its two-way radio service is a private venture, with service to a limited

and circumscribed area. It is inconsistent with state telecommunications policy and the telecommunications provisions of the regional plan, and its minimal public benefit does not justify its undue aesthetic impacts and contravention of the municipal plan and recommendations.

II. Impact on National Natural Landmark

At ¶5 of the PfD regarding Aesthetics, Municipal and Regional Plans, Historic Sites, Air and Water Purity, the Natural Environment, and Public Health and Safety [30 V.S.A. § 248a(c)(1) and (2)], the PfD states:

The Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and public health and safety. This finding is supported by the additional findings below.

At ¶21, within the discussion of Aesthetics, Municipal and Regional Plans, Historic Sites, and Rare and Irreplaceable Natural Areas [10 V.S.A. § 6086(a)(8), 30 V.S.A. § 248a(c)(2)], the PfD states:

21. The lattice tower will be 140 feet high and located in a forested area with an average tree height of approximately 72 feet. The Project is located slightly over two-thirds of a mile from the closest portion of Lake Willoughby, a designated National Natural Landmark. Views of the Project from the surrounding area, including Lake Willoughby, will be very limited due to terrain and forest cover. The Project will not be visible from adjacent residences but may be visible from within property boundaries. In areas where portions of the Project may be visible along the east side of Lake Willoughby, the Project will not be detectable based on typical visual acuity. In most other areas of visibility, the Project will be backgrounded by forested terrain. Buscher, Department, pf. ("Buscher pf.") at 10-12 and appendix B.

In discussion in the first paragraph of p.10, the PfD states:

In this case, the Project, while visible from certain viewpoints from Lake Willoughby, will have very limited visibility from those identified scenic areas.

Each of these proposed findings is contrary to the evidence. No simulations whatsoever were presented by the Petitioner, or by Mr. Buscher, regarding views from the Lake Willoughby NNL. The viewshed diagrams submitted by both Petitioner and Mr. Buscher indicate visibility from extensive portions of the Lake Willoughby NNL including on the lake itself as well as its shores. As argued in the Intervenors' Post-Hearing Brief at pp. 17 through 20, the Westmore Town Plan precludes "visual intrusion" on the Lake Willoughby NNL.

The aesthetic importance of the NNL landscape, and the impact of the proposed facility on that landscape, are extensively discussed in Intervenors' Post-Hearing Brief Section IV, beginning on p. 24, regarding aesthetics, and also addressed throughout Intervenor's Reply Brief.

As recounted at p. 36 of Intervenors' Post-Hearing Brief, the National Park Service comment letter specifically requested that "any potential impacts to views along the lake shoreline and from atop Mt. Pisgah, Mt. Hor, and other key viewpoints within the NNL be considered and evaluated." DPS aesthetic witness Buscher stated at p. 12 of this report: "However, Lake Willoughby is a designated National Natural Landmark and therefore additional attention and review is necessary to avoid potential visual impacts." Despite the National Park Service request and Mr. Buscher's statement, neither the Petitioner nor DPS nor the Agency of Natural Resources responsible for the NNL engaged in such evaluation or additional attention.

To find that views from Lake Willoughby or elsewhere in the NNL are "limited" and not "undue" is contrary to the record evidence.

III. Nonconformance with town plan, telecommunications ordinance, and municipal recommendation

At p.2, the PfD states:

On June 18, 2024, the Town of Westmore Planning Commission (“WPC”) filed public comments on the petition.

This statement is incorrect and misleading. Bob Kennedy cc’d the PUC clerk on a June 18, 2024 email to the National Park Service indicating that the Westmore Planning Commission had not held a meeting or voted in regard to the proposed facility. This filing cannot be considered a public comment by the WPC.

The PfD on p. 2 goes on to state:

On July 9, 2024, the WPC filed additional public comments on the petition.

This comment letter, filed by chair Bob Kennedy on behalf of the WPC, is not an “additional” public comment; it is the first comment letter by the WPC.

The PfD introductory timeline does not reflect that the WPC filed, in the public comments portal, a March 6, 2025 letter analyzing the project’s noncompliance with the Town Plan and Telecommunications Ordinance, or that the Town of Westmore Selectboard filed, also via the public comments portal, a March 25, 2025 letter clearly recommending denial of a CPG for the project for the reasons stated in the WPC March 6, 2025 letter. These two letters were both submitted prior to the deadline for non-petitioner filing of evidence.

The PfD at ¶23 states,

23. The Project is consistent with the goals of the Westmore Town Plan and the Northeast Kingdom Regional Plan and does not violate any clearly identified community standards contained in the town or regional plan. While there are several general provisions in the town and regional plan intended to preserve or protect scenic views, they the Project location is not identified as a scenic resource or a protected scenic area. Buscher pf. at 13-14 and appendix B.

This proposed finding is erroneous. Mr. Buscher did not consider the March 6, 2025 analysis of the WPC, the recommendation of the municipal Selectboard, or compliance with the Town Telecommunication Ordinance.

As extensively briefed by Intervenors in *Intervenors' Motion For Reconsideration Of Hearing Officer's April 24, 2025 Order Granting Petitioner's Motion In Limine To Preclude Late Comments* and in *Intervenors' Reply Brief pp. 1-5*, this Commission is mandated by statute to not only consider, but give substantial deference to, the recommendations of host municipalities (including those regarding telecommunications ordinances), and compliance with town plans.

At p.11 ¶3 the PfD states:

This case presents a unique situation for the Commission to resolve. The WPC submitted comments addressing the town plan during the statutory 30-day comment period when substantive comments and requests for an evidentiary hearing could be filed. The WPC's comments raised concerns about the Facility's aesthetic impact, particularly on properties owned by adjoining landowners. However, as highlighted by the excerpts from the WPC's letter quoted in my proposed findings above, the WPC made clear that the Facility is consistent with the town plan. Specifically, the WPC expressly stated that the Facility is "within the confines of the Town Plan."

This paragraph conflates both the request for a hearing – which was timely requested by the WPC in their July 9, 2025 letter – and substantive comments with the concept of a municipal recommendation as anticipated by statute. This error has been extensively briefed by Intervenors in the *Intervenors' Motion For Reconsideration Of Hearing Officer's April 24, 2025 Order Granting Petitioner's Motion In Limine To Preclude Late Comments* and in *Intervenors' Reply Brief*.

The PfD recommends that this Commission ignore the WPC analysis letter and the Westmore Selectboard's recommendation letter, apparently on grounds that they were "late filed" despite there being no statutory or regulatory time limit for the filing of such recommendations, nor any scheduling order setting a time limit for municipal recommendations; or, alternatively, because the later comments differed in part from the earlier comments.

To the extent that the comment letter of the WPC dated March 6, 2025, differs from that of the letter filed July 9, 2024, that difference is obviously attributable to the fact that the initial balloon float conducted by Petitioner upon which the July 9, 2024 comments were based was faulty: the balloons promptly sank, accounting for their lack of visibility from various vantage points over time. To the extent that the July 9, 2024 letter expressed views that the project was “within the confines” of the Town Plan, that was based on erroneous presumption, based on trying to view the faulty balloon float, that the project would not be visible from Lake Willoughby.

Further, the WPC clearly intended their analysis to supplement their prior filing on the basis of new information and considerations. The March 6, 2025 letter states:

This additional information is intended to supplement prior filings from the WPC which is now being submitted as an outcome of a unanimous vote of the Westmore Planning Commission at a March 5th meeting of the Planning Commission.

The March 25, 2025 recommendation letter of the Westmore Selectboard is unequivocal in its recommendation of denying a CPG to the project due to its contravention of the Town Plan and telecommunications ordinance. There is no confusion regarding this whatsoever. There are not multiple recommendation letters.

The Department of Public Service concluded, correctly, that the March 6, 2025 WPC analysis letter and the March 25, 2025 Westmore Selectboard recommendation letter are entitled to substantial deference, though wrongly characterizing them as “late filed”. The PfD p.11 ¶12 states:

¶12. Nonetheless, the Department argues that while the late filed comments of the WPC are entitled to substantial deference, there is good cause to not defer to the recommendations in that the Project will provide telecommunications services to the area.

As set out in the first section of these comments, and as argued in Intervenor's Post-Hearing Brief pp. 38-39, the provision of limited private subscriber two-way service from this town is not a public good that outweighs the contravention of the Town Plan, telecommunications ordinance and municipal recommendation.

The proposed project contravenes the Town Plan, telecommunications ordinance and municipal recommendation, and the PfD proposed findings to the contrary are accordingly violative of statutory mandates regarding substantial deference to the municipal plan and recommendations.

IV. Aesthetics regarding near views

At ¶27 the PfD states:

The Project may appear out of context with its forested setting. However, the Project will not highly contrast with the surrounding landscape character. Photographic simulations of the Project from the surrounding area show that distance significantly decreases the visibility of the Project. Given the Project's limited visibility, it will not reach a level of visual impact such that it could be considered offensive or shocking to the average viewer. Buscher pf. at 14 and appendices A and B.

The PfD at ¶28 states, inter alia, "Most public visibility of the Project is limited to locations over a mile away. Buscher pf. at 14." Similarly, at page 10, 2nd paragraph, the PfD states, "...visibility will be relatively distant and in many locations backgrounded by natural topography and vegetation."

Again, at ¶21, within the discussion of Aesthetics, Municipal and Regional Plans, Historic Sites, and Rare and Irreplaceable Natural Areas [10 V.S.A. § 6086(a)(8), 30 V.S.A. § 248a(c)(2)], the PfD states:

21. ... **The Project will not be visible from adjacent residences but may be visible from within property boundaries.** ... Buscher, Department, pf. ("Buscher pf.") at 10-12 and appendix B.

These proposed findings all erroneously urge an impression that the proposed facility is barely visible, if at all, from near views including nearby residences and public roadways.

As stated in Intervenors' Post Hearing Brief:

054. The location is less than a mile from Willoughby Lake and the North Beach, a half mile away from the Westmore Town Forest, and less than 600 feet away from a recreational trail. *Direct Zebrowski Direct Prefiled Testimony p.3.*

The viewshed diagrams of Mr. Buscher (Appendix A 2) and Petitioner (Ex. Pet LH 06) demonstrate considerable visibility from residences and public roadways well under a mile from the facility. Petitioner did not provide a Quechee analysis, and Mr. Busher did not contact any residents regarding views from private property or public roadways within a mile of the facility; he also did not witness any balloon float.

Among other record evidence, the testimony and exhibits of David Anderson and Megan Patton—individuals with residences within yards of the facility—clearly depict clear near-distance visibility of the tower and its base compound from their property and homes.

At ¶29, the PfD states,

29. The Project will not have an undue adverse impact on known historic sites as there are none in the Project vicinity. Hodgetts pf. at 8-9; exh. LH-5.

This ignores the record evidence regarding the national historic register Fox Hall, less than 1 mile from the proposed facility on Peene Hill Road.

As argued in Intervenors' Post Hearing brief beginning at pp. 33, the Petitioner and the Department, and now the PfD, ignore these near-distance views and the views of immediate neighbors, as well as views from a town trail and public roadways, all less than (some

significantly less than) 1 mile from the proposed tower. Consideration of these views has been erroneously omitted from the Quechee analysis presented by the Department and included in the PfD, skewing the Quechee analysis and the conclusions regarding undue aesthetic impact.

Conclusion

For the foregoing reasons, as well as all the reasons stated in Intervenors' Post Hearing Brief, Intervenors' Reply Brief, *Intervenors' Motion For Reconsideration Of Hearing Officer's April 24, 2025 Order Granting Petitioner's Motion In Limine To Preclude Late Comments*, and Intervenors' testimony and exhibits submitted in this matter, the PfD should be rejected and the CPG for this facility denied. Oral argument is requested.

Dated at Westmore this 11th day of July 2025.

Respectfully submitted on behalf of Intervenors Ronald and Kathy Holmes, Elizabeth Tucker, Donna Dzugas-Smith, Andrew Zebrowski, Megan Patton, and Robert Fitzpatrick by:

/s/ Donna Dzugas-Smith

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Certificate of Service

I, Donna Dzugas-Smith, do hereby certify that on July 11, 2025 the Intervenors' Comments on Hearing Officer's Proposal for Decision was filed in ePUC thus effecting service on all parties of record.

Donna Dzugas-Smith