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	

Order entered: 09/17/2025

FINAL ORDER

I. INTRODUCTION

In this order, the Vermont Public Utility Commission ("Commission") adopts the hearing officer's proposal for decision that is attached below, subject to the following discussion.

II. PROCEDURAL HISTORY POST-PROPOSAL FOR DECISION

On June 25, 2025, the hearing officer in this case issued a proposal for decision ("PFD") recommending that the petition for a certificate of public good ("CPG") be approved by the Commission.

On July 11, 2025, Ronald and Kathy Holmes, Donna Dzugas, Elizabeth Tucker, Andrew Zebrowski, Megan Patton, and Robert Fitzpatrick (together the "Intervenors") filed comments opposing the PFD. The Intervenors also filed a request for oral argument.

On July 14, 2025, the Vermont Department of Public Service ("Department") filed comments recommending that the Commission adopt the findings in the PFD.

On August 7, 2025, the Commission conducted an oral argument in this case. The oral argument was attended by representatives of Industrial Tower and Wireless, LLC ("ITW" or the "Petitioner"), the Department, and the Intervenors.

III. COMMISSION DISCUSSION

In the PFD, the hearing officer concluded that the Project is consistent with State telecommunications policy and the goal of providing improved access to telecommunications services in the regional plan. The hearing officer, accordingly, recommends that we issue a CPG

for the Project. In response to the PFD, the Intervenors argue that the Project is inconsistent with State telecommunications policy and the regional plan because it does not provide cellular phone or wireless broadband service. The Intervenors argue that the hearing officer's proposed findings of fact describing the Project's visibility are inadequate and in conflict with evidence admitted into the record in this case. The Intervenors also contend that a second round of public comments submitted by the Westmore Planning Commission ("WPC") and Westmore Selectboard, which were filed after an applicable 30-day deadline, should have been afforded substantial deference under 30 V.S.A. § 248a(c)(2).

Having reviewed the evidentiary record in this case and considered the parties' respective legal briefings, responses to the PFD, and arguments presented at the oral argument, we have decided to adopt the hearing officer's PFD without modification. We agree with the hearing officer that the Project satisfies the statutory criteria set out in 30 V.S.A. § 248a and is consistent with Vermont's telecommunications policy. Therefore, we will issue a CPG for the Project. Our discussion below addresses the Intervenors' arguments in response to the PFD and provides further context for our final determination.

1. Services to be Provided by the Project and State Policy

The Intervenors first argue that the Project conflicts with telecommunications goals in the regional plan and State telecommunications policy because "the tower is for subscriber two-way radio communication only, and does not contribute to public wireless phone service accessibility."[1] In support of this argument, the Intervenors represent that the Project, as proposed, will only provide service to ITW's own two-way radio subscribers and the Town of Glover's emergency medical services ("EMS") providers and first responders. They also highlight that the Project will not result in new public cellular telephone service or wireless broadband access.

Section 248a(a) authorizes the Commission to issue CPGs for the construction and installation of telecommunications facilities. Section 248a(b)(6) defines the term "telecommunications facility" as:

> a communications facility that transmits and receives signals to and from a . . . network used primarily for two-way communications for commercial, industrial,

[1] Intervenors' 7/11/25 Comments on PFD at 1.

> municipal, county, or State purposes and any associated support structure that is proposed for construction or installation that is primarily for communications purposes and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure.

Section 248a(b)(7) defines "wireless service" as "any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service." Section 248a does not include a requirement that a proposed telecommunications facility provide publicly accessible cellular telecommunications or wireless broadband services to receive a CPG.

As noted by the Intervenors, the Petitioner proposes to offer wireless mobile radio service to first responders in the area and to the Petitioner's own wireless commercial mobile radio service customers. These services are expressly included in the definitions of "telecommunications facility" and "wireless service" quoted above. Although the instant petition does not include a proposal to install equipment from a national wireless telecommunications provider, the new tower will include adequate space for future collocation opportunities.[2] We also recognize that the Department, which is statutorily charged with implementing state telecommunications policy,[3] supports the issuance of a CPG for the Project.[4] Based on these considerations, we agree with the hearing officer's conclusion that the Project will result in improved wireless telecommunications service in the area and is consistent with State telecommunications policy.

2. Aesthetics, Historic Sites, and Natural Resources

The Intervenors argue that the PFD and the hearing officer's proposed findings of fact "disregard the significance" of the Project's impact on Lake Willoughby, which is designated as a National Natural Landmark ("NNL").[5] They also argue that the evidentiary record in this case

[2] Delaney, Petitioner, pf. ("Delaney pf.") at 4-5.

[3] *See* 30 V.S.A. § 202d(a) ("The [Department] shall constitute the responsible planning agency of the State for the purpose of obtaining for all consumers in the State stable and predictable rates and a technologically advanced telecommunications network serving all service areas in the State.").

[4] Department's 7/11/25 Comments on PFD at 1.

[5] Intervenors' 7/11/25 Comments on PFD at 1.

does not include adequate viewshed analyses to evaluate the Project's total aesthetic impact — particularly views that will affect the aesthetic beauty of the NNL.[6]

We determine that the hearing officer's findings accurately describe the visibility of the Project based on the record evidence and conclude that the evidentiary record is sufficient to assess the Project's aesthetic impact. The PFD contains a list of findings describing the Project's visibility and aesthetic impact on the surrounding area. Those findings are based on the testimony and exhibits of an independent aesthetics expert hired by the Department to evaluate the visual impact of the Project on the surrounding area. As established by the evidence in this case, visibility of the Project from Lake Willoughby will be limited with most areas of potential visibility located more than a mile away. We also agree with the hearing officer that the evidentiary record, including the Department's expert witness's testimony and report, is sufficient to conduct a thorough *Quechee* analysis, which is reflected in the hearing officer's PFD.

The Intervenors contend that the sight of a telecommunications tower in this area would be offensive and shocking to the average viewer.[7] We agree with the hearing officer that the Project will not be shocking or offensive to the average person. Under the third prong in the second step of the *Quechee* test, the Commission considers whether the Project would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. For purposes of this analysis, the "average person" is defined as a neutral party viewing the project from both public and private vantage points, and applying an objective rather than a subjective standard.[8] We agree with the hearing officer's conclusion that under this standard the Project will not have an undue adverse effect on aesthetics and we therefore adopt the proposed finding of fact on this point. This finding is adequately supported by the evidentiary record developed throughout this case, including the independent expert report presented by the Department.

3. Municipal Recommendations, the Town Plan, and Substantial Deference

The Intervenors also argue that the hearing officer has not properly applied the "substantial deference" standard that is mandated by 30 V.S.A. § 248(c)(2). Under Section

[6] *Id.* at 4.
[7] Intervenors Brief at 34-35.
[8] *In re Rutland Renewable Energy, LLC*, 2016 VT 50, ¶¶ 21-22, 202 Vt. 59, 147 A.3d 621.

248(c)(2), we are obligated to give "substantial deference . . . to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans . . . ." The phrase "substantial deference" is defined under Section 248a(b)(5) to mean "that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable."

This case raises a unique issue. We are not presented with a situation where we must determine whether the hearing officer's PFD applies the substantial deference standard. Rather, we are confronted with conflicting municipal recommendations and must decide which, if any, of those recommendations is entitled to substantial deference under Section 248(c)(2). This issue arises because the initial comments from the WPC, though expressing some concerns about the Project's impact, concluded that the Project was consistent with the applicable Westmore Town Plan. Comments filed more than seven months later by the WPC and Westmore Selectboard in the case reached an opposite conclusion and expressly opposed the Project.[9]

Central to this issue is the timing by which the WPC's and Selectboard's comments were submitted to the Commission. With respect to the timing of filing substantive comments on a proposed telecommunications facility, Section 248a(j)(2)(A) provides the following direction:

> Within two business days following notification from the Commission that the [application] is complete, the applicant also shall serve written notice of the proposed certificate on the landowners of record of property adjoining the project site or sites unless the Commission has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. *Such notice shall request comment to the Commission within 30 days following the date of service on the question of whether the application raises a significant issue with respect to the substantive criteria of this section.*[10]

Section 248a(l) also establishes that the "Commission may issue rules or orders implementing and interpreting this section." Consistent with this statutory authority, the Commission has issued a Standards and Procedures Order Implementing 30 V.S.A. § 248a ("Standards and

[9] We note that although this is analogous to the "vested rights" doctrine, we are not confronting a situation where the substantive provisions of the town plan were amended during the pendency of this case. Instead, the make-up of the WPC membership — not the town plan document — changed during the pendency of this case, which in turn appears to have resulted in the submission of the second set of comments from the WPC.

[10] 30 V.S.A. § 248a(j)(2)(A) (emphasis added).

Procedures Order").[11] Section VII of the Standards and Procedures Order states in pertinent part:

> If any person wishes to submit comments or motions to intervene to the Commission concerning an application filed pursuant to Section 248a or request a hearing for projects other than *de minimis* modifications, such correspondence is due at the Commission within 30 calendar days of the date that the application was served on all required recipients. . . . The 30-day comment period begins once the application or notice is served and ends 30 days later. Comments, motions to intervene, and requests for hearing filed outside the 30-day comment period will be considered untimely and will not be considered by the Commission.

We agree with the hearing officer's analyses of these provisions, which appeared both in the PFD and in a May 7, 2025, order denying the Intervenors' motion for reconsideration on this very issue.

The plain language of Section 248a(j)(2)(A) establishes that substantive comments on an application must be filed within 30 days. This requirement is buttressed by our Standards and Procedures Order, which sets a firm 30-day deadline for filing substantive comments and motions to intervene. Therefore, in a situation where we are confronted with competing municipal recommendations, one of which was filed within the 30-day period and one that was late-filed, we will apply substantial deference to the timely-filed recommendation. This is particularly necessary when giving substantial deference to both comments is impossible. We cannot give substantial deference to comments that suggest the Project is within the confines of the town plan at the same time that we give substantial deference to comments that suggest the Project does not comply with the town plan.

The 30-day deadline provides clarity and finality in the context of a statutorily prescribed timeline for review.[12] To ignore the deadline would conflict with statute and Commission order.

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[11] *Sixth amended order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order of 9/21/18, available at https://puc.vermont.gov/document/procedures-applicable-request-construction-or-installation-telecommunications-facilities.

[12] We also note that Section 248a includes relatively tight timeframes for final resolution of applications — including a 180-day limit for so-called "full" petitions such as the one filed in this case. *See* 30 V.S.A. § 248a(f) ("If the Commission rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days following its filing."). Although applicants oftentimes waive this time-limit, we are mindful of the statutory directive that we complete these cases in an expeditious manner. Allowing a municipality to fundamentally change the tenor of a case after parties have already filed multiple rounds of testimony and discovery would compromise our ability to complete cases within this timeframe.

It would also introduce uncertainty and unfairness in Section 248a proceedings. Applicants would be prejudiced by confronting moving evidentiary targets, especially because municipal entities are not required to be parties to Section 248 proceedings even when they file written recommendations that are entitled to substantial deference (and therefore are not subject to discovery and cross-examination). It would also limit the parties' ability to address substantive issues through negotiation or informal resolution in a timely manner.

As the hearing officer discussed in the May 7, 2025, order, the 30-day comment deadline serves to identify and limit the scope of issues that will be litigated at an evidentiary hearing. It is also important to emphasize that our Standards and Procedures Order is intended to protect municipalities and other parties from potentially unfair or abusive practices by the applicants. For example, if an applicant makes substantial revisions to a proposed facility that cause the municipality to reconsider its recommendation, the applicant would be required to re-issue notice for the facility and re-start the 30-day comment period.[13] Applicants, accordingly, are likewise precluded from modifying a facility as a case proceeds to an evidentiary hearing.

In addition to the comments on the PFD discussed above, the Intervenors raised concerns during the oral argument regarding the Petitioner's choice to seek approval for the Project through the Section 248a process rather than seeking a zoning permit from the Town. We note that Section 248a is an optional review process developed by the Vermont Legislature that permits applicants to choose either a town-level or a state-level review, pursuant to 30 V.S.A. § 248a and the Standards and Procedures Order. The state-level review process recognizes that the benefits and impacts of wireless facilities often extend beyond municipal borders. However, Section 248a(c)(2) mandates that the Commission give substantial deference to recommendations from the host municipality regarding its town plan and zoning regulations. This provision of the statute gives the host municipality a significant role in the approval of an application before the Commission. While the Section 248a process does not require a zoning permit, it still subjects wireless facilities to municipal review.

[13] *See Standards and Procedures Order* at 3 ("If the applicant makes a substantial change to the proposed project, the applicant is required to serve notice of this change on all parties and entities already notified, including any newly affected adjoining property owners. Parties and entities will then have 30 days to comment on the revised project. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria applicable to the project.").

IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Vermont Public Utility Commission ("Commission") that:

1. The findings, conclusions, and recommendations of the hearing officer are adopted. All other findings proposed by parties, to the extent that they are inconsistent with this order, were considered and not adopted.

2. The installation and operation of a wireless telecommunications facility at the location specified in the above findings, by Industrial Tower and Wireless, LLC ("CPG Holder") in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good ("CPG") to that effect shall be issued in this matter.

3. As a condition of this order, the CPG Holder must comply with all terms and conditions set out in the CPG issued in conjunction with this order.

Dated at Montpelier, Vermont, this 17th day of September, 2025.

Edward McNamara	)	PUBLIC UTILITY
Margaret Cheney	)	COMMISSION
J. Riley Allen	)	OF VERMONT

OFFICE OF THE CLERK

Filed: September 17, 2025

Attest: _____
Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Commission within 30 days. Appeal will not stay the effect of this Order, absent further order by this Commission or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Commission within 28 days of the date of this decision and Order.

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	Remote Hearings Held Via GoToMeeting May 14, 2025

Order entered:

PRESENT: Gregg Faber, Hearing Officer

APPEARANCES: Daniel Seff, Esq.
MSK Attorneys
for Industrial Tower and Wireless, LLC

Matthew Bakerpoole, Esq.
Michael Swain, Esq.
Vermont Department of Public Service

Donna Dzugas, Megan Patton, Robert Fitzpatrick, Ronald and Kathy Holmes, Elizabeth Vooris, Elizabeth Tucker, and Andrew Zebrowski, *Pro Se*

PROPOSAL FOR DECISION

I. INTRODUCTION

In this proposal for decision, I recommend that the Vermont Public Utility Commission ("Commission") approve the application filed by Industrial Tower and Wireless, LLC (the "Petitioner"), pursuant to 30 V.S.A. § 248a and the Commission's Amended Standards and Procedures Order ("Procedures Order"),[1] and grant the Petitioner a certificate of public good

[1] *Sixth amended order implementing standards and procedures for issuance of a certificate of public good for communications facilities pursuant to 30 V.S.A. § 248a*, Order of 9/21/18.

("CPG") authorizing the installation of a wireless telecommunications facility in Westmore, Vermont (the proposed "Project").

II. PROCEDURAL HISTORY

On June 6, 2023, the Petitioner filed a petition and prefiled testimony requesting that the Commission issue a CPG. A copy of the petition was filed with all required State agencies and the host municipality pursuant to § 248a(e). Notice of the filing of the petition was provided to all adjoining landowners of record.

On June 11, 2024, the petition was found to be administratively complete and the deadline for public comments, motions to intervene, and requests for hearing was established as July 9, 2024.

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

On July 9, 2024, Ronald and Kathy Holmes, Donna Dzugas, Elizabeth Tucker, Andrew Zebrowski, Megan Patton, Elizabeth Vooris, and Robert Fitzpatrick (together the "Intervenors" filed separate motions to intervene and requests for an evidentiary hearing.

On July 9, 2024, the Vermont Department of Public Service ("Department") filed Comments on the petition.

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

On September 10 and October 2, 2024, I issued orders granting the Intervenors permissive intervention with respect to the Project's aesthetic impact under Section 248a(c)(1) and compliance with the municipal plan under Section 248a(c)(2).

On November 21, 2024, I conducted a scheduling conference in this matter.

On May 14, 2025, an evidentiary hearing was held in this proceeding.

On June 9, 2025, the Petitoner, the Intervenors, and the Department filed initial legal briefs.

On June 16, 2024, the Petitoner, the Intervenors, and the Department filed reply briefs.

No other comments on the application were received by the Commission.

This case is now ripe for decision.

III. PUBLIC COMMENTS

The Commission has received several public comments in this case. The majority of the commenters oppose the Project on aesthetic grounds. Many of the commenters opposed to the Project were comprised of the Intervenors who were later granted permissive intervention in the case on the topics of aesthetics and compliance with the municipal and regional plans. I address the concerns expressed by the Intervenors and other public commenters regarding the Project's impact on aesthetics and compliance with the town plan in detail under the relevant sections of this proposal for decision below.

IV. FINDINGS

Based on the petition and the accompanying record in this proceeding, I have determined that this matter is ready for decision. Based on the evidence of record, I report the following findings to the Commission in accordance with 30 V.S.A. § 8(c).

1. The Project involves the construction of a telecommunications facility at 160 Frog Hollow Lane in Westmore, Vermont. The objective of the Project is to expand and improve wireless coverage for first responders and the Petitioner's wireless customers in the surrounding area. Delaney, Petitioner, pf. ("Delaney pf.") at 2-3.

2. The Project includes the installation of a 140-foot lattice tower with six whip antennas mounted at the top of the tower and extending to a height of 153 feet. The Project also includes the installation of an equipment cabinets, and ancillary operating equipment within a 50-foot by 50-foot fenced compound to be accessed from Frog Hollow Lane. Hodgetts, Petitioner, pf. ("Hodgetts pf. ") at 2; exh. LH-1.

3. The Project will involve approximately 10,839 square feet of permanent earth disturbance. All Project construction will conform to the *Low Risk Site Handbook for Erosion Prevention and Sediment Control*. Exh. LH-1.

State Telecommunications Policy

[30 V.S.A. § 248a(a)]

4. The Project is consistent with the goal of directing the benefits of improved telecommunications technology to all Vermonters pursuant to 30 V.S.A. § 202c(b). The Project

will provide new wireless service and improve existing service in Westmore and will also provide space for collocation. Delaney pf. at 2-3.

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)]

5. 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.

Public Health and Safety
[30 V.S.A. § 248a(c)(1)]

6. The Project will not have an undue adverse impact on public health and safety because it will be constructed to accommodate additional equipment, and it will comply with Federal Communications Commission standards related to radiofrequency emissions. Delaney pf. at 4-5.

7. Hours of Project construction will be 7:00 a.m. and 5:00 p.m., Monday through Friday, although occasional evening or weekend work may be required. Hodgetts pf. at 4.

Outstanding Resource Waters, Headwaters
[10 V.S.A. §§ 1424a(d), 6086(a)(1)(A)]

8. The Project will have no impact on outstanding resource waters or headwaters because there are none in the Project area. Hodgetts pf. at 4; exh. LH-1.

Water and Air Pollution
[10 V.S.A. § 6086(a)(1)]

9. The Project will not result in undue water or air pollution. This finding is supported by the findings under the criteria of waste disposal through soils, below.

Waste Disposal
[10 V.S.A. § 6086(a)(1)(B)]

10. The Project will not involve the injection of waste materials or any harmful or toxic substances into groundwater or wells. Construction waste generated during Project construction will be removed from the site and recycled or disposed of at approved waste processing facilities. Hodgetts pf. at 4.

Water Conservation, Sufficiency of Water, and Burden on Existing Water Supply
[10 V.S.A. §§ 6086(a)(1)(C), (a)(2) and (3)]

11. The Project will have minimal impact on water conservation measures, as the Project will not require water or sewer facilities. Hodgetts pf at 4.

Floodways
[10 V.S.A. § 6086(a)(1)(D)]

12. The Project is not located within a floodway or floodway fringe and therefore will not restrict or divert the flow of flood waters, significantly increase the peak discharge of a river or stream within or downstream from the Project, or endanger the health, safety, or welfare of the public or of riparian owners during flooding. Hodgetts pf. at 4.

Streams
[10 V.S.A. § 6086(a)(1)(E)]

13. The Project will not have an undue adverse effect on streams. The Project parcel contains a stream. However, there is no construction work proposed proximate to the stream or the riparian buffer. Hodgetts pf. at 4-5; exh. LH-4.

Shorelines
[10 V.S.A. § 6086(a)(1)(F)]

14. The Project will not have an undue adverse effect on any shorelines because the Project is not located on or near a shoreline. Hodgetts pf. at 4-5; exh. LH-4.

Wetlands
[10 V.S.A. § 6086(a)(1)(G)]

15. The Project will not have an undue adverse effect on wetlands. There is a Class II wetland on the subject parcel. However, there is no construction work proposed proximate to the wetland or within the 50-foot wetland buffer. Hodgetts pf. at 5-6; exh. LH-4.

Soil Erosion
[10 V.S.A. § 6086(a)(4)]

16. The Project will not cause undue soil erosion or reduce the capacity of the land to hold water so that a dangerous or unhealthy condition results. All construction work will comply with Vermont standards and specifications for erosion and sediment control. Hodgetts pf. at 6-8.

Transportation Systems
[10 V.S.A. § 6086(a)(5)]

17. The Project will not cause undue congestion or unsafe conditions with respect to use of the highways, waterways, railways, airports, airways, or other means of transportation, whether existing or proposed. Traffic to the unstaffed site will be limited following construction. Hodgetts pf. at 8.

Educational Services
[10 V.S.A. § 6086(a)(6)]

18. The Project will not cause an unreasonable burden on the ability of a municipality to provide educational services. Educational services will not be affected by the Project. Hodgetts pf. at 8.

Municipal Services
[10 V.S.A. § 6806(a)(7)]

19. The Project will not place an unreasonable burden on the ability of the local government to provide municipal or governmental services. The Project will not require any additional municipal or governmental services. Hodgetts pf. at 8.

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)]

20. The Project will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by the additional findings below.

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.

22. Given the industrial appearance of the Project and the lack of other similar facilities in the immediate area, it will not fit within the context of the wooded area. Accordingly, the Project will have an adverse impact on aesthetics. However, based on the findings below, that impact will not be undue. Buscher pf. at 10-12 and appendix B.

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.

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.

25. The town plan states that "development 100 feet or higher that can be viewed from the National Natural Landmark designation area should be considered a development of substantial regional impact." The town plan also states that development on or near ridgelines should employ screening techniques to protect views from the National Natural Landmark area. Buscher pf. at appendix D; exh. MP-3 at 6-7, 24-25.

26. The WPC stated, in its comments, that while the Project was an "affront to the beauty and rural nature" of Westmore it was, nonetheless, "within the confines of the Town Plan." The WPC also stated that the Project site is "acceptable as any" because it "cannot be easily viewed" from Lake Willoughby. WPC comments July 9, 2024, at 1.

27. 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.

28. The Petitioner has taken generally available mitigating steps to improve the harmony of the Project with its surroundings by siting the Project in an area of limited visibility. The Project will not be sited on a ridgeline and will be located in a forested area. Most public visibility of the Project is limited to locations over a mile away. Buscher pf. at 14.

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.

30. The Project will not have an adverse impact on rare and irreplaceable natural areas as there are none in the Project vicinity. Hodgetts pf. at at 9.

31. The Project will not destroy or significantly imperil endangered species or necessary wildlife habitat as there are none in the Project vicinity. Hodgetts pf. at 9.

Discussion

Aesthetics

In determining whether a proposed project satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Commission applies the so-called "Quechee test."

The first step of the two-part test is to determine whether a project would have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space. If the Project does not have an adverse effect on aesthetics because it is in harmony with its surroundings, then the project satisfies the aesthetics criterion.

If a project would have an adverse effect on aesthetics, such adverse impact will be found to be undue if any one of the three following questions is answered affirmatively: (a) Would the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? (b) Would the project offend the sensibilities of the average person? (c) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?[2]

The Intervenors argue that the Project will have an undue adverse effect on aesthetics. While I agree with the Intervenors that the Project will be out of context with its surroundings and thus have an adverse impact on aesthetics, I conclude that, based upon the findings above, the impact will not be undue.

I conclude that the Project does not violate a clear, written community standard. The Intervenors point to language in the town plan that prioritizes the preservation of scenic resources, specifically areas that are visible from Lake Willoughby, as a general goal.[3] The Intervenors maintain that a provision in the plan stating that development over 100 feet in height that can be viewed form the national natural landmark area "should be considered a development of substantial regional impact" and is therefore prohibited.[4] I agree with the intervenors that the Project would be considered a development of substantial regional impact under this provision. However, the town plan does not define "substantial regional impact" or, moreover, state that development that may cause these impacts these impacts are prohibited. Indeed, the town plan does not even state that these impacts are necessarily adverse. Therefore, I do not interpret this

[2] *Amended Petition of UPC Wind*, Case No. 7156, Order of 8/8/07, at 64-65.
[3] Intervenors' Brief at 10.
[4] *Id.*

provision as prohibiting development of this type of development. I do interpret the provision as requiring careful consideration of any development that would cause these impacts. In this case, the Project, while visible from certain viewpoints from Lake Willoughby, will have very limited visibility from those identified scenic areas.

The Intervenors also argue that the town plan prohibits development of this type on ridgelines.[5] I find this argument unpersuasive. The plan states that development on or near ridgelines "should employ landscaping screening techniques" to reduce visibility. In this case, the Project is not located on a ridgeline.[6] The Petitioner has also sited the Project in a forested area that will result in screening of much of the Project and reduce Project visibility. To the extent that the Facility is visible from Lake Willoughby and adjacent public highways, that visibility will be relatively distant and in many locations backgrounded by natural topography and vegetation. Therefore, I do not find that the ridgeline provisions of the town plan preclude the Commission from issuing a CPG for the Facility.

The regional plan identifies scenic landscapes as areas of scenic significance.[7] The regional plan includes general policies to minimize aesthetic impacts and enhance scenic views. The regional plan also includes goals related to the development of telecommunications facilities in the region. However, the regional plan does not contain any specific community standards that apply to the Project.

I also conclude that the Project will not offend the sensibilities of the average person. The Commission considers the perspective of the average person viewing the Project from public and private property in making this determination.[8] The Intervenors contend that the sight of a telecommunications tower in this area would be offensive and shocking to the average viewer.[9] I find this unpersuasive given the tower's limited visibility from the surrounding area and the common appearance of telecommunications facilities throughout the State. The Project will not be a "prominent feature" in the landscape.[10]

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[5] Intervenors Brief at 19-20.
[6] Tr. 5/14/25 at 144.
[7] Exh. DPS-LT-5, Regional Plan Excerpts at PDF page 12.
[8] In re Rutland Renewable Energy, LLC, 2016 VT 50, ¶ 21 ("In determining whether there has been an undue adverse impact, considering the sensibilities of the average person, the Board can and should consider all vantage points, including from private property.")
[9] Iintervenors Brief at 34-35.
[10] Buscher pf. at 14.

I find that the Petitioner has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the Project with its surroundings. The Intervenors, in their brief, maintain that the Petitioners have failed to take any mitigation measures including collocation.[11] However, the Petitioner has sited the Project in a forested area where the terrain will background the Project from most vantage points.[12] I conclude that this type of mitigation is reasonable.

Town and Regional Plans

Pursuant to § 248a(c)(2), the Commission must give substantial deference "to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan." I conclude that the Project is consistent with and will not violate any specific provisions of the town or regional plan.

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."

However, several months following the close of the formal 30-day comment period, the WPC, under a new chair, filed public comments reversing its recommendation regarding the Project's compliance with the town plan.[13] The Westmore Selectboard also filed public comments referencing the WPC's late filed public comments and recommending denial of the petition.[14] The Intervenors and the Department, in their respective briefs, argue that these public comments should be considered pursuant to § 248a(c)(2). Nonetheless, the Department argues that while the late filed comments of the WPC are entitled to substantial deference, there is good

[11] Intervenors' Brief at 35-36.
[12] Buscher pf at 1.
[13] WPC public comments filed March 6, 2025.
[14] Westmore Selectboard comments filed March 25, 2025.

cause to not defer to the recommendations in that the Project will provide telecommunications services to the area.

Section 248a(c)(2) mandates that the Commission give substantial deference to recommendations from the WPC and Westmore Selectboard. In this case, the Commission is confronted with conflicting recommendations from the Town, including wholly opposing recommendations from the WPC. This conflict, in turn creates, creates both a legal and factual ambiguity as to which comments, if any, from the town are entitled to substantial deference. Having considered the parties' arguments on this issue and the plain language of Section 248a and the Procedures Order, I recommend that the Commission give substantial deference to the WPC's initial comments filed on June 18 and July 9, 2024.

Section 248a(j)(2)(A) establishes that any comments raising a significant issue with respect to a proposed telecommunications facility must be filed within 30 days of the date of service of notice of an application. Likewise, Section III of the Procedures order states that:

> If any person wishes to submit comments or motions to intervene to the Commission concerning an application filed pursuant to Section 248a or request a hearing for projects other than *de minimis* modifications, such correspondence is due at the Commission within 30 calendar days of the date that the application was served on all required recipients.[15]

Taken together, these provisions make clear that substantive comments and recommendations on a proposed telecommunications facility must be filed during the 30-day comments period. Although it may be appropriate or necessary for a town or regional planning commission to file supplemental evidence or commentary to clarify its recommendation following the conclusion of the 30-day comment period, which the Commission has previously allowed,[16] substantial deference should attach to the comments filed in the 30-day period. Allowing municipalities to substantially change or wholly reverse their recommendations after the conclusion of the 30-day deadline would inhibit the Commission's ability to resolve applications within the relatively short review periods set out in 30 V.S.A. § 248a(f). It could also unfairly force applicants to confront moving evidentiary targets and undermine their ability to attempt to resolve potentially

[15] Procedures Order at 10.

[16] *See 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 Road in Enosburgh, Vermont*, Case No. 22-2120-PET, Order of 8/3/23.

contentious issues before final applications are filed.[17] Accordingly, I recommend that the Commission give substantial deference to the WPC's initial comments and find that the Project is consistent with the town plan.

Additionally, as I concluded in an earlier order on this issue, the late filed public comments of the WPC and the Selectboard will not be considered part of the evidentiary record in this case, but will inform my review of the evidence.[18] Even if I were to consider the late filed public comments of the WPC and Selectboard as recommendations entitled to substantial deference, which I do not, it is impossible to reconcile these recommendations with the timely comments of the WPC.

As discussed above under aesthetics, the Intervenors argue that the Project will not be consistent with the town and regional plans. The Intervenors cite to provisions of the town plan that discourage development on ridgelines and discourage development over 100 feet in height that will be seen from Lake Willoughby.[19] I find this argument unpersuasive. While the town plan certainly encourages careful consideration of development that has the potential to impact these areas, it does not prohibit development in these areas. Given its limited visibility, the Project will not change the overall rural character of the area or run afoul of the town plan.

Collocation
[30 V.S.A. § 248a(c)(3)]

32. The Project cannot be located on or at an existing telecommunications facility. There are no existing facilities in the area that would allow the Petitioner to satisfy its coverage objectives. Delaney pf. at 4; exh. KD-3.

V. CONCLUSION

Based upon all of the above evidence, I recommend the Commission conclude that the petition does not raise a significant issue with respect to the relevant substantive criteria of 30

[17] There may be instances where it would be appropriate for a municipality to modify its recommendation when an applicant makes revisions to its proposed plans. However, the Procedures Order contemplates this scenario and sets a new 30-day comment period whenever an applicant makes a "substantial change" to a proposed facility. *See* Procedures Order at 3-4.

[18] Order Denying Motion for Reconsideration and Motion to Alter, 05/07/25, at 4.

[19] Intervenors Brief at 10, 19-20.

V.S.A. § 248a, the public interest is satisfied by the procedures authorized in 30 V.S.A. § 248a, and the proposed Project will promote the general good of the State.

This Proposal for Decision has been served on all parties to this proceeding in accordance with 3 V.S.A. § 811.

Date: June 25, 2025

Gregg Faber
Hearing Officer

VI. PROPOSED ORDER

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED by the Public Utility Commission ("Commission") of the State of Vermont that:

1. The findings, conclusions, and recommendations of the Hearing Officer are hereby adopted. All findings proposed by parties that were not adopted in this Order are expressly rejected.

2. The installation and operation of a wireless telecommunications facility at the location specified in the above findings, by Industrial Tower and Wireless, LLC in accordance with the evidence and plans submitted in this proceeding, will promote the general good of the State of Vermont in accordance with 30 V.S.A. § 248a(a), and a certificate of public good to that effect shall be issued in this matter.

3. As a condition of this Order, the Petitioner shall comply with all terms and conditions set out in the CPG issued in conjunction with this Order.

PUC Case No. 24-1755-PET - SERVICE LIST

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*Notice of appearance to be filed.