

STATE OF CONNECTICUT  
CONNECTICUT SITING COUNCIL

IN RE:

APPLICATION OF NEW CINGULAR WIRELESS PCS,  
LLC (AT&T) FOR A CERTIFICATE OF  
ENVIRONMENTAL COMPATIBILITY AND PUBLIC  
NEED FOR THE CONSTRUCTION, MAINTENANCE  
AND OPERATION OF A TELECOMMUNICATIONS  
TOWER FACILITY IN SOUTHBURY, CONNECTICUT

DOCKET NO. 443

December 11, 2013

NEW CINGULAR WIRELESS, PCS LLC (AT&T)  
RESPONSE TO MOTION TO INTERVENE BY PROTECT THE PURCHASE

New Cingular Wireless, PCS, LLC (“AT&T”) by its attorneys, Cuddy & Feder LLP, the applicant ( “Applicant”) in the above captioned Docket, is in receipt of a motion (“Motion”) by Protect the Purchase (“PTP”) to intervene in Docket 443, submitted pursuant to Connecticut General Statute Section 22a-19 and the Council’s rules and regulations regarding intervention. This Motion was made yesterday by an attorney on behalf of an unincorporated group of individuals under an organizational name with which the Applicant is not familiar. Based on the Motion’s contents, PTP appears to be a special purpose entity solely organized with respect to this project and the Siting Council proceedings in Docket 443. It also appears, but cannot be confirmed, that PTP’s members are property owners proximate to the proposed tower facility at 257 Perkins Road proposed in Docket 443. Because the makeup of PTP’s membership has not been disclosed, neither the Council nor the Applicant are able to confirm the organization’s full and complete interest in participating in Docket 443, and that it qualifies as a “person” as defined by statute and the Siting Council’s own rules and regulations. *See* State of Connecticut Regulation of Connecticut Siting Council 16-50j-2a(o).

AT&T has no objection and welcomes further participation by property owners in the vicinity of the project as parties/intervenors in the Council’s proceedings. Indeed, having property owners’

interests addressed through one intervenor, PTP, as apparently desired and set forth in the Motion, would be an orderly and efficient means to further such participation formally in Docket 443. *See generally*, R.C.S.A. § 16-50j-13-17. Nevertheless, without information regarding who the members/property owners of PTP are and where their properties are located, neither the Applicant, nor the Council, will be able to prepare and respond fully to interrogatories and otherwise exercise a right of cross-examination in response to whatever direct case PTP intends to submit to the Council. *See* R.C.S.A. § 16-50j-29.

Indeed, it should be noted that further consultation with the Town of Southbury was sought by the First Selectman after the filing of the Application by AT&T and continues today regarding any potential alternative tower sites. At the Town's request, AT&T recently attended a public meeting hosted by the Town during the week of December 2<sup>nd</sup> which was well attended and included several property owners in the vicinity of the tower project. Given the objectives stated by PTP in its Motion to the Siting Council and the timing of same, we reasonably believe PTP was organized solely as it relates to a tower needed in this part of Southbury and is in fact constituted by members of the public that were present at the public meeting held by the Town a week ago. While AT&T has no objection to PTP participating in Docket 443, it does seek disclosure of PTP's membership and respectfully submits it is important to the orderly furtherance of the proceedings and is in keeping with the Council's own rules barring limited appearance statements or submissions by parties or intervenors. *See*, R.C.S.A. § 16-50j-15b ("No person making a limited appearance shall be a party or intervenor, or shall have the right to cross examine witnesses, parties or intervenors). *See also*, Citizen's Guide to Siting Council

Procedures for Cell Towers<sup>1</sup> (“No person who is a party or intervenor in the proceeding may also make an oral limited appearance statement during the public comment session of the hearing or submit a written limited appearance statement to the Council before, during or after the hearing.”).

Given the foregoing and as counsel for the Applicant, we have corresponded with counsel for PTP seeking its voluntary disclosure of its members through a supplement to its Motion to the Council. This in a procedural effort to avoid any objection by the Applicant that the Council might need to rule on. We have, nevertheless, not heard back from counsel for PTP and, as such, are filing this formal response to the Motion with the Council as we understand the Motion will be considered on the agenda of tomorrow’s Siting Council meeting,

On behalf of AT&T, we request that the Council, in granting PTP intervenor status in Docket 443, specifically condition the group's participation on its counsel providing the Siting Council and Applicant with the list of its individual members and their specific interest in Docket 443. Without same, the Applicant objects to the intervention in the form of an unincorporated entity as filed and submits that the Motion, while containing numerous legal citations, fails to adequately disclose the full and complete interests of PTP in the subject matter of Docket 443 as required by Section 16-50j-14 of the Council’s regulations for permitting intervention in contested cases. Further that, in the absence of such disclosure, we submit that the Motion does not adequately “set forth facts constituting the intervenor’s claim” and which by law may not be a mere recitation of opinions. *Nizzardo v. State Traffic Commission*, 259 Conn. 131, 163 (Conn. 2002). As such, in an effort to avoid more procedural back and forth, we would respectfully

---

<sup>1</sup> Available at: [http://www.ct.gov/csc/lib/csc/guides/guides2012/citizens\\_guide\\_to\\_siting\\_council\\_procedures\\_cell\\_towers.pdf](http://www.ct.gov/csc/lib/csc/guides/guides2012/citizens_guide_to_siting_council_procedures_cell_towers.pdf)

request that counsel for PTP simply supplement its Motion and/or that the Siting Council condition PTP's participation on disclosure of PTP's actual members and their property interests and how they relate to the tower proposed in Docket 443.

CERTIFICATE OF SERVICE

I hereby certify that on this day, an original and fifteen copies of the foregoing was sent electronically and by overnight mail to the Connecticut Siting Council with copy to:

Protect the Purchase  
Keith R. Ainsworth, Esq.  
Evans, Feldman & Ainsworth, LLC  
261 Bradley Street  
New Haven, CT 06510  
krainsworth@snet.net

Dated: December 11, 2013

  
Daniel M. Laub