

Recommendations to Promote Increased Ease of Citizen Participation in PSB Proceedings¹

**Submitted to the House and Senate Committees on Natural Resources and Energy, the
Senate Committee on Finance, and the Joint Energy Committee on December 15, 2016.**

¹ See 2016 Acts and Resolves No. 174, Sec. 15(b).

Introduction

Act 174 (S. 260) of 2016 required the creation of a Working Group to review the current processes for citizen participation in Public Service Board proceedings and to make recommendations to promote increased ease of citizen participation in those proceedings.

In accordance with S. 260 Section 15(b), the Working Group was constituted of the following members:

Senator Virginia Lyons (chair), Joint Energy Committee
Board Member Margaret Cheney, Public Service Board
Representative Tony Klein, Joint Energy Committee
Superior Court Judge Robert Mello
Commissioner Christopher Recchia, Department of Public Service

The Working Group held nine biweekly meetings between August 25 and December 6, 2016, and one evening public hearing on October 11. In addition, members of the public attended each biweekly meeting and were invited to make comments during the final portion of each meeting. One such meeting was dedicated to hearing from a cross-section of participants in past Board proceedings. These comments helped to inform the Working Group's discussions and the final recommendations.

The following recommendations address a wide range of citizen interactions with the Board, from attendance at Board hearings to citizen access to documents and other written information. They suggest ways to make it easier for citizens to participate in different locations in Vermont, to improve the layperson's understanding of Board processes, and to make it easier to participate in all such processes, including contested (quasi-judicial) cases, uncontested cases such as workshops, and rulemaking procedures. In addition, there are recommendations to minimize the widespread confusion about the roles and responsibilities of the Board (PSB) and the Department (PSD), which has affected ease of participation in Board proceedings.

The recommendations are also coded to bring attention to three important categories. Recommendations preceded by *** would require a statutory change. Recommendations in italics are currently being implemented by the Board. Recommendations highlighted in yellow are those that mirror the spirit or the approach of Act 250, which some perceive to be more "user friendly" than the highly technical, quasi-judicial processes of the Board.

Our recommendations also reflect and support changes that the Board has initiated, in a natural evolution as Board membership and administrative staff have changed, the number of Board cases affecting individual Vermonters has grown, and the Board has heard public criticism of

their experiences. For example, in response to public concerns, the Board has been holding more site visits; and the Board drafted its 2017 net-metering rules with an eye to simplifying and clarifying the procedures for citizen and town participation, including the creation of template forms for would-be intervenors. In addition, the Board initiated some recent changes in its processes in response to the reports to the Legislature by the Solar Siting Task Force (January 2016) and the Energy Generation Siting Policy Commission (April 2013). Another important change has been the recent on-line availability of all non-confidential transcripts, which goes beyond what is available to parties in regular court proceedings in Vermont and makes it possible for citizens to prepare cases without traveling to Montpelier. Finally and perhaps most significantly, the creation of “ePSB” has been under way for several years and will be on-line in 2017.

The thread of ePSB’s capabilities and promise is woven throughout these recommendations and cannot be overestimated. Among many benefits, it will provide citizens with a free, searchable database of Board orders and documents, allowing people to do research from home. As citizens obtain Board orders, parties’ filings, and other case information independently and at their convenience, there will no longer be the delays of waiting for a call to be returned or emails to be answered. If ePSB performs as planned, it may obviate the need for additional personnel to help citizens understand, have access to, and navigate Board proceedings.

Finally, accountability is built into these recommendations through the “progress report,” which will analyze whether those steps that are already under way, such as ePSB, and any new undertakings have had their intended effect or whether further recommendations are in order.

Key: *Recommendations in italics are currently being implemented by the Board;*
Recommendations preceded by *** require statutory changes;
Recommendations highlighted in gray
would make the Board’s processes more like those used in Act 250 proceedings

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I. Recommendations to Improve Ease of Participation by Citizens in PSB Hearings

These recommendations make it easier for citizens to participate in all types of PSB hearings. They also change the way the Board provides notice of prehearing conferences and public hearings so that citizens are better informed of upcoming hearings.

- Prehearing conferences
 - To bring the public in at the beginning of the process, send notice of prehearing conference to adjoining landowners (right now they are only sent notice of the public hearing, not of the prehearing conference) and post notice of the prehearing conference on the Board's website
 - Expand opportunities parties to participate in prehearing conferences and status conferences by telephone or other electronic means
- Public hearings
 - Create opportunities for interactive public hearings around Vermont so the public can again participate simultaneously in widespread locations
 - Explore live-streaming or other internet-based system
 - *** Bring back Vermont Interactive Television ("VIT")
 - Expand ways of publicizing public hearings
 - Include in "calendar of events" in newspapers
 - Front Porch Forum
 - Radio public service announcements
 - ***Change 30 V.S.A. § 231(a) to mirror the current language in § 248(4)(D) – change from requiring publishing newspaper notice twice to requiring that notice be posted on the Board's website and published once in a newspaper
 - Before the Board's public hearing to solicit public comments, hold an informational session (hosted by the Department) where the developer can explain/describe the project to the public and answer the public's questions (which will better inform the public's comments to the Board)
 - *Continue to hold at least one public hearing in cases with significant public interest even if not statutorily required, at times and places convenient to the public and at locations relevant to the project*

- *Continue to provide every member of the public who attends the public hearing and is not a party to the case an opportunity to speak at the public hearing; continue to schedule another public hearing if this is not possible due to time constraints*
- Evidentiary hearings
 - *New net-metering rule will make it easier for a citizen to request a hearing*
 - *At the evidentiary hearing, ask questions of parties about concerns raised at the public hearing*
 - *Hold more evidentiary hearings in the area where the project is proposed*
 - Require that parties in any proceeding have adequate opportunities to review any MOU or settlement agreement filed, which at a minimum must include one round of discovery on the MOU before the hearing; parties may request a waiver of this requirement
 - *Continue to open hearings to the public*
- *New PSB website will include information regarding the mechanics of how hearings work (including specific guidance for pro se intervenors, e.g., how to “redirect” oneself)*
- Direct hearing officers to provide more information to *pro se* intervenors at hearings
 - *Present information and invite questions at prehearing conferences and evidentiary hearings about the Board’s rules, information on the Board’s website, and the process to be used in the case or at the hearing*
 - *Have hearing officers and the Board do more to assist pro se litigants from the bench (as judges do)*
- Provide information to the public about parking, including handicapped parking for hearings held in the Board’s hearing room

II. Recommendations to Increase Ease of Citizen Participation in Different Areas of the State

The recommendations in this section will make it easier for citizens who live far from Montpelier to participate in PSB proceedings regarding projects proposed in their communities.

- Create opportunities for interactive public hearings around Vermont so the public can again participate simultaneously in widespread locations
 - Explore live-streaming or other internet-based system
 - *** Bring back Vermont Interactive Television (“VIT”)
- Hold more evidentiary hearings in the area where the project is proposed
- *Continue to make more Board site visits in response to public comments*
- Expand opportunities for parties to participate in prehearing conferences and status conferences by telephone or other electronic means
- Modernize technology in the Board’s hearing room to allow for streaming/distribution of hearings, etc. so the public can watch hearings and workshops live online
- *Continue to make all non-confidential transcripts of hearings and workshops available to the public online so people can easily read the transcript of a hearing they were not able to attend*
- *ePSB¹ will enable citizens to make electronic filings with the Board instantly rather than by mail or messenger service to ensure that paper filings arrive by the deadline*
- ***Change 30 V.S.A. § 248 to mirror the language in 30 V.S.A. §§ 248a(e)(2) and (o) with respect to:
 - Requiring petitioners to attend a public meeting with the municipal legislative body or the planning commission, if asked by one of those entities, within the advance notice period before filing a petition for a certificate of public good with the Board
 - Requiring the Department to attend the public meeting on the request of the municipality, and to consider the comments made and information obtained at the public meeting in making recommendations to the Board on the petition.

¹ ePSB is the Board’s new electronic case management system that will include electronic filing, electronic document management, and access to public information in a case via the Board’s website, without requiring citizens to use any special software. Phase I of ePSB is scheduled to go live in January 2017; Phase 2 is scheduled to go live in June 2017.

III. Recommendations to Improve Instructional Documents for Citizens

The recommendations in this section will result in documents for citizens that are written in “plain English” and that explain Board procedures and how citizens can participate in Board proceedings.

- *Provide templates for citizens to fill in (e.g., to become an intervenor)*
- *Redesign Board’s website by 12/31/16 to include:*
 - *“Plain English” explanations of terminology, access points, and ways to participate in Board proceedings*
 - *Descriptions of processes used in different types of Board cases*
 - *Formatting requirements for prefiled testimony (with examples)*
- *Replace the “Citizens Guide to the Vermont Public Service Board’s Section 248 Process” with a revised, simpler “Citizens Guide to Public Service Board Processes” that includes an explanation of the difference between the Board and the Department and clear guidance on filing requirements (line spacing, single- or double-sided, page numbers, service list requirements, number of copies, deadlines, for all Board processes)*
- *The revised net-metering rule will include a new section for anyone who wants to review an application – a step-by-step description of the review process*

IV. Recommendations to Improve Citizens' Access to Written Information

The recommendations in this section will ease citizens' participation in PSB proceedings by providing them easier access to documents and other information about specific cases as well as guidance documents with information about how they can participate in PSB proceedings.

- *ePSB will:*
 - *Enable citizens to easily access all public documents and information, including case status, schedule, information on parties, and elements of the case*
 - *Enable citizens to search database of Board orders to familiarize themselves with Board precedent*
 - *Include required fields to ensure that filers have provided all necessary information*
- *Continue to implement the plan to digitize and upload all past Board orders into ePSB.*
- *New net-metering rule will require applicants to provide more information up-front so citizens can envision the proposed project*
- *Require petitioners to attach a Board handout regarding intervention instructions to the notices of filings that petitioners send to adjoining landowners*
- *Require petitioners to mail the new, simplified *Citizens Guide to Public Service Board Processes* to the service list with the first notice to potential parties*
- *Provide clear, written information at public hearings about how to become an intervenor and what happens after you are one*
- *Post tutorials on the Board's website to provide procedural information to *pro se* intervenors*
- *Continue to post non-confidential transcripts of hearings and workshops on the Board's website*
- *New PSB website will include Clerk's name, phone number, email address, and mailing address on the bottom of every page*

V. Recommendations to Help Citizens Navigate Board Processes

The recommendations in this section involve changes to the Board's processes, including those related to how Board personnel provide procedural guidance to citizens. These recommendations will help citizens understand how they can participate in Board proceedings.

- *** Change 30 V.S.A. § 248 to mirror language in 30 V.S.A. § 248a(o) with respect to:
 - Authorizing a municipal legislative body or planning commission to request that the Department retain experts to provide information essential to a full consideration of a petition for a certificate of public good and to allocate the expenses incurred in retaining these experts to the petitioner
 - Providing that hiring such experts upon the request of a municipality shall not oblige the Department or the personnel it retains to agree with the position of the municipality
- ***Change 30 V.S.A. § 248(f) so that towns and regional planning commissions are not required to file comments on projects with the Board seven days before petitions are even filed with the Board. Instead have comments submitted within 21 days *after* a petition is determined by the Board to be administratively complete.
- ***Change 30 V.S.A. §§ 246(c)(1), 248(4)(C), 248a(j)(2)(A), and 248a(k) to require copies of petitions and applications to be filed with specified entities and persons within two business days of the Board's determination that the petition or application is administratively complete (instead of at the same time that the petition or application is filed with the Board) so that recipients know that a petition or application is ready for review when they receive it and any deadline for filing comments on the petition or application is clear
- To bring the public in at the beginning of the process, send notice of prehearing conference to adjoining landowners (right now they are only sent notice of the public hearing, not of a prehearing conference) and post notice of the prehearing conference on the Board's website
- Loosen the Board's *ex parte* rule to allow hearing officers to provide procedural guidance to parties in cases
- *Continue to hold workshops to provide procedural information to pro se intervenors in cases with large numbers of such intervenors*

- *Continue to issue decisions on requests for extension of time sooner so citizens know whether to continue to draft a filing or prepare for a hearing*
- Always issue a document stating the deadline for filing a response to a motion (don't just rely on parties to know that the default is 15 calendar days)
- Have Board staff act more often as mediators, for example by conducting a status conference part-way through the case to try to narrow the issues
- Explore developing a pilot program for mandatory mediation in controversial cases
- Find opportunities to move contentious issues out of contested-case procedures to rulemakings where the public can participate more easily and informally
- *ePSB will provide citizens with easy access to information about the status of a case and any applicable comment period*
 - *Cases will be indicated as "Under Review" until deemed administratively complete enough to process; determination will be made within 5 business days for most cases*
 - *If filing is incomplete, petitioner will be notified of specific deficiencies*
 - *When statute allows Board flexibility, comment periods will start after case is deemed administratively complete*
- *ePSB will reduce the need for citizens to make paper filings*
- *New clerk and deputy clerk are revising internal processes for greater efficiency in responding to inquiries*
- Address public concerns in a separate section in the final order so it is clear to citizens what issues were raised in public comments and why the Board reached the decisions it did regarding those issues
- *New net-metering rule will set forth complaint process regarding compliance with CPGs*
- ****Assign responsibility and resources for direct enforcement by the Department (similar to the Department's role in enforcing the DigSafe program) so that the state is investigating citizens' complaints about alleged violations of certificates of public good, instead of expecting the citizens to provide evidence and put on a case before the Board about the alleged violations. Appeals of Department actions would be taken to the Board.*

VI. Recommendations to Help Citizens Distinguish Between the PSB and the PSD

Currently there is widespread confusion among citizens about the difference between the Board (PSB) and the Public Service Department (PSD). This confusion makes it more difficult for citizens to understand the Board's processes and how they can participate in them.

- ***Address the confusion about the difference between the Board (PSB) and the Public Service Department (PSD) by changing the Board's name to the Vermont Public Utility Commission (in step with the rest of the country)

VII. Recommendation for Progress Report

These recommendations will allow for assessment of the Board's progress in improving the ease of citizen participation in PSB proceedings.

- Have the Board file a report with the Legislature in one year on progress made to date, with an updated report annually for the following two years
- Include in the report an assessment of whether a Public Assistance Officer position should be created that is dedicated to answering procedural questions from all parties and facilitating informal discussions about scheduling and other matters, and if so, whether it should be located in the Board or the Department

VIII. Other Recommendations Regarding the Department

Because of the Department of Public Service's role as the public advocate in PSB proceedings, the Department interacts regularly with citizens participating in PSB proceedings. As a result, these recommendations identify steps the Department could take that would improve the ease of citizen participation in PSB proceedings.

- Have the Department respond to all communications from members of the public
- Have the Department include in the filing in which it takes its position in a case about a matter of significant public interest a summary of the public comments it has received in the matter, together with an explanation of why the Department has chosen to advocate for, or not advocate for, the views offered in those public comments