



Permitting of Energy Projects in Vermont

What is Section 248?

- Requires energy, gas, telecom, and water developers to obtain a **Certificate of Public Good (CPG)** from the Public Service Board
- Board considers 10 statutory criteria, including environmental criteria from Act 250 plus issues like need, reliability, economic benefit, and the general public good
- Different pathways for different size and type of projects



What do we mean by "Public Interest" and "Public Good?"

- Balanced good of all consumers in state
- To receive CPG, projects must meet these criteria:
 - **Orderly development** of the region
 - **Demand for service** (present and future)
 - **System stability & reliability**
 - **Economic benefit** to state & residents
 - **No undue adverse effect on aesthetics**, historic sites, air and water purity, the natural environment, and public health and safety

Criterion b(1)

- (b) Before the Public Service Board issues a certificate of public good as required under subsection (a) of this section, it shall find that the purchase, investment, or construction:
 - (1) with respect to an in-state facility, **will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained within the plan of any affected municipality.....**
 - [Compared with Act 250, which requires a District Commission to find the development “is in conformance with any duly adopted local or regional plan...]

Criterion b(5) (in part)

- ...will not have an undue adverse effect on **esthetics**, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K) and greenhouse gas impacts....
- Quechee Analysis
 1. Adverse impact?
 2. Undue adverse impact?
 1. Violate a clear, written community standard?
 2. Failed to take generally available mitigating steps?
 3. Shocking or offensive?

Significantly informed by the overall societal benefits of the project

§248 Process: Step by Step

PRE-
DEVELOPMENT



Notice

Filing

Pre-hearing
conference

Site
visit

Public
Hearing

Discovery

Evidentiary
Hearings

Briefs

Decision

Other PSB Processes

§248(j)

- Expedited review of certain projects of limited size & scope that do not raise significant issues w/r/t criteria
- Board may issue order without holding public or evidentiary hearings, but will first issue proposed CPG to parties including towns, which may file comments w/in 28 days

§246: temporary meteorological towers

- Applicants must provide a 30-day notice to selectboards & PCs (amongst others); comments or requests for hearing due w/in 30 days of filing.

Renewable Energy Procedures

- Net metering: < 15 kW solar
 - Registration form to PSB, PSD, and utility
 - If no concerns, CPG deemed issued on 11th day
- Net metering: facilities < 150 kW
 - Application form and Board Rule 5.100: certain criteria conditionally waived
 - Applicants must certify project complies with land conservation measures of town plan (selectboards and PCs will receive applications for systems not mounted on existing structures)
 - Comments due within 10 or 30 days
- Net metering: facilities 150 kW-500 kW
 - §248 petition and Board Rule 5.100: conditional waivers
 - Applicants must describe how project complies with town plans (selectboards and PCs will receive 45-day and petition
 - Comments due within 21 days

Renewable Energy Procedures (cont.)

- Facilities 150 kW-2.2 MW
 - Generally must proceed through full §248 review, however:
 - Simplified procedures and conditional waiver of certain criteria per V.S.A. § 8007(b)
 - Petitioner may request waiver of certain notice and hearing criteria; must provide justification
- Special net metering projects ≤ 5 MW per Act 99
 - Capped landfill projects with municipal offtakers (Windham County allowed one project w/others)
 - Non-landfill projects (one per utility territory)

ANR Collateral Permits

- Construction Stormwater permit
- Individual Wetlands permit
- T&E Takings permit
- 401 water quality certification
- Others

Provides additional opportunity for public engagement

Pre-development Planning and Engagement

- Clear, unambiguous, and specific land conservation measures and community standards in town plans
- ANR Natural Resources Atlas planning tool:
<http://anrmaps.vermont.gov/websites/anra/>
- VT Renewable Energy Atlas:
www.vtenergyatlas.com
- General technical assistance, process guidance from ANR, PSD, RPCs
- Solar Siting Guidance document forthcoming

PSD Renewables Guidance

- Fencing (§248 (b)5, public health & safety):
 - Per PSB Rules 5.500 and 3.500, must conform with National Electric Code (NEC) and National Electric Safety Code (NESC), as applicable (adequately protect electrical components from being “readily accessible”)
 - considerations: aesthetics and wildlife passage
- Aesthetics:
 - thinning of trees on S. side, mitigation with screening for views and glare are all considerations
 - if going to be in a field, keep low
 - if there will be a shed, use earth tones
 - talk to neighbors
- Decommissioning:
 - in VT, you cannot factor in the salvage value. Need decommissioning fund for >1 MW
 - generally, ~\$100K for a 2.2 MW
 - PSD is asking for more detail around basis for estimate, more of a breakdown, how a project will be decommissioned
 - Board going w/ an irrevocable LOC but lease agreements have also been ok
- -consideration: agricultural use

Summary

1. Participation in the 248 process requires time and effort, whether you are a petitioner or not; there are various degrees of participation – as a party, an interested person, or through public comments. Towns and regions have the ability to provide input through the orderly development and aesthetics criteria, specifically in terms of the town plan.
2. Therefore, planning proactively for energy generation and transmission in your town is vital, so the community is clear where new infrastructure should and should not be sited and the municipality is clear on this before a project is proposed.
3. Having this vision allows the town to plan for its own energy future and to be more prepared to respond to proposals. It also signals to developers where the town prefers to see investment in energy projects.
4. Engagement between state agencies, RPCs, towns, neighbors, and applicants well before a § 248 petition is filed is vital; it is in all parties' interest to identify and resolve issues prior to the formal proceeding if possible.
5. It's never too early to plan!