



**State of Vermont**

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*Agency of Natural Resources*

TO: The Vermont General Assembly

FROM: Billy Coster, ANR Director of Planning

DATE: January 22, 2016

SUBJECT: Annual Report on Section 248/248a Application Fees as Authorized Under 30 V.S.A. § 248b

**Introduction**

Section 17 of Act 57 of 2015 (Act 57) amended Title 30 to establish a new fee to support the Agency of Natural Resources (Agency) review of Certificate of Public Good (CPG) applications for in-state facilities under Sections 248 and 248a of that title. The fee requirement is established in a new provision of law, 30 V.S.A. § 248b. 30 V.S.A. § 248b(f) also directs the Agency to submit a report to the General Assembly on or before the third Tuesday of each annual legislative session, in order to:

1. list the fees collected under the section during the preceding fiscal year;
2. discuss the Agency's performance in exercising its duties under the title during that year;
3. identify areas that hinder the Agency's effective performance of these duties and summarize changes made to improve such performance; and
4. with respect to the Agency's exercise of these duties, discuss the Agency's staffing needs during the coming fiscal year and the future goals and objectives of the Agency.

This report is submitted in satisfaction of the requirements of 30 V.S.A. § 248b(f).

**Overview**

The Agency plays an important role reviewing applications under Section 248 and 248a for natural resource impacts. Indeed, the Agency is a statutory party to the proceedings before the Public Service Board and the Board relies on Agency staff to provide evidence and recommendations necessary for them to make findings under subdivision b(5) of Section 248. Consequently, the Agency works with renewable energy and telecom developers, utilities, municipalities, community members and other interested parties to ensure that projects are well sited with minimal impacts on natural resources. Because of the exponential growth in the renewable energy sector, the Agency has sought additional resources so that we can better serve Vermonters by providing timely, transparent and predictable service to applicants and interested parties, as well as technical assistance, support and guidance to ensure that Vermont achieves our renewable energy, telecom and greenhouse gas reduction goals with well sited projects.

Because this is the first opportunity for the Agency to report on the Section 248/248a fee, we are including this overview in order to provide the larger context for the Agency's Section 248/248a review work and approach to funding that work, before responding to the specific reporting requirements of 30 V.S.A. § 248b(f). It is also important to note that the Agency is half way through the fiscal year, so it is too early to report conclusively on



many of reporting requirements set forth in the statute; the Agency will provide a full accounting of fees received in FY 2016 in subsequent reports.

The Agency comprises four branches: the three Departments – Environmental Conservation; Fish and Wildlife; Forests, Parks and Recreation – and the Agency Central Office, which includes the Secretary’s Office, Office of Planning, Office of General Counsel, Information Technology and Business Office. The planners from the Office of Planning and attorneys from the Office of General Council coordinate the Agency’s Section 248/248a review work and engage with energy and telecom developers, state agencies and interested entities at all stages of the regulatory process: from initial scoping meetings that vet potential sites, to the sharing of technical assistance and siting guidance, the review of CPG applications, participating in Public Service Board hearings, and finally through the review of completed projects for compliance with permit conditions.

Prior to Act 57, these services were funded completely by General Fund dollars. The two primary goals of the Agency’s Section 248/248a fee proposal in the 2015 legislative session were to (1) diversify the sources of funding for the Agency’s Section 248/248a team to a mix of General and Fee based sources in order to better support the long term stability of these critical services, and (2) secure the resources necessary to improve the level of service and range of technical assistance the Agency provides in energy and telecom matters to meet expanded demand and an increased volume of new CPG applications.

One indication of the exponential increase in Agency’s Section 248/248a review workload is the number of CPG applications for solar projects greater than 15kW. Solar projects at that scale are most often located on the ground – not on roofs – and involve some level of natural resource review. The number of CPG applications for solar projects greater than 15kW were 106 in calendar year 2013, 144 in 2014 and 252 in calendar 2015. Given the extension of the federal Investment Tax Credit for renewable generation, the launch of a new net metering rule in 2017 and the requirements for new, distributed generation set forth in the Vermont’s Renewable Energy Standard, the Agency expects a prolonged period of high CPG application volume, even if there are cyclical ups and down.

The services provided by the Central Office’s Section 248/248a review team also rely heavily on the expertise of technical staff across the three Departments. Technical staff work with Central Office planners and attorneys to provide technical assistance and siting guidance, review proposals, identify issues and establish whether a project complies with the Section 248 environmental criteria. Prior to Act 57, the Agency was authorized to bill back Section 248 applicants for the costs and expenses associated with the technical staffs’ review of Section 248 applications. However, in establishing the Section 248/248a application fee, the Agency agreed that its ability to bill back for these costs should be curtailed [30 V.S.A. § 21(a)(2)(B)]. As a result, the Agency must now divert a portion of the Section 248/248a application fee to offset the loss of bill back revenue that the Departments would typically receive for their involvement in large and complex Section 248 project reviews.

Finally, the significant increase in Section 248 applications for renewable generators over the past three years, as well as the anticipated high volume of applications in the years to come, requires that the Agency increase Section 248/248a review staff capacity to ensure timely and high quality review of project proposals and to ensure Agency staff are available to provide technical assistance and information to developers, utilities, municipalities and interested citizens regarding the natural resource costs and benefits associated with future in-state energy and telecom develop. Therefore, in order to maintain a high level of service in FY 2016, a portion of the fee revenue is used to support one additional Section 248/248a attorney FTE in the Office of General Counsel, as described in more detail below.

Given the extension of the Investment Tax Credit and requirements for additional, new renewable electric generation set forth in Vermont’s new Renewable Energy Standard, the Agency is currently exploring whether it will be necessary to add an additional planner in the Office of Planning to provide advanced Section 248/248a project review and site assessment services to developers, municipalities and interested citizens in the future. If



an additional position is determined necessary to meet the future demand for service, that position would likely be funded at least in part by the Section 248/248a fee.

**List the fees collected under the section during the preceding fiscal year.**

Since the fee was not yet authorized in FY 2015, the Agency can only report on the first half of the current fiscal year, FY 2016. From July 1, 2015, through December 31, 2015, the Agency received \$495,282 in fees under 30 V.S.A. § 248b. A complete list of fees collected is attached.

The Agency's existing Central Office Section 248/248a review team – including the newly added attorney position – has a FY 2016 budget of roughly \$600,000. The Agency intends to apply a significant amount of fee revenue to cover the direct costs of this team's Section 248/248a review work; however a portion of the \$600,000 budget is funded through General Fund dollars.

The remainder of the Section 248/248a fee revenue will be passed through to the Departments to cover the work of technical staff in reviewing large, complex Section 248 petitions – replacing the cost recovery for these projects that is no longer available through bill back.

It is still too early in the fiscal year to know whether there will be a balance in Section 248/248a fees after meeting the two above referenced allocations. If it appears the fiscal year will end with surplus in fee revenue, those funds may be saved as a hedge against uncertain fee receipts in future years of this 3-year fee cycle or allocated towards additional staffing or technological capacity necessary to maintain service levels and meet the still high volume of Section 248/248a review work anticipated in the coming years. It also may be necessary to use a portion of any surplus fees to address upward pressure on current staff costs. Finally, because far more CPG applications were filed than anticipated in the first half of FY 2016, we expect that there will be a decrease in new CPG applications in the second half of the fiscal year. We also anticipate that the pace of GPG applications will pick up again in FY 2017 when the Public Service Board's new net metering rule comes online.

**Discuss the Agency's performance.**

The Agency's goal is to provide timely, transparent and predictable service to applicants and interested parties, as well as technical assistance, support and guidance to ensure that Vermont achieves its renewable energy, telecom and greenhouse gas reduction goals with well sited projects. To achieve this goal, the Agency has instituted or initiated the following actions, enabled in part by the new Section 248/248a fee:

- We have made significant changes to Agency staffing and structure to provide more effective and efficient service;
- We have added an additional attorney and have increased the number of technical staff available to review applications;
- We are implementing a new centralized tracking system;
- We are further refining standard CPG conditions for group net metered solar projects;
- We are hosting trainings for energy developers;
- We have increased outreach to telecom providers related to site selection and natural resource screening; and
- We have increased engagement with distribution and transmission utilities to proactively discuss and better prepare for upgrade and expansion projects.

Even in the face of the exponential growth in Section 248 and 248a applications Agency staff have made great headway in ensuring timely and predictable service. The changes to Agency staffing and structure enabled by the Section 248/248a application fee has resulted in markedly improved service to the energy and telecom industries, consistent with the State's policy and goals under sections 202a and 202c and chapter 89 of Title 30. Building on this model and maintaining a high level of service in the Offices of Planning and General Counsel will



be critical as the state moves forward with implementing its renewable energy, telecom and greenhouse gas reduction goals.

The Agency received and reviewed approximately 160 CPG applications and/or petitions that involved a fee between July 1, 2015, and December 31, 2015. This total is higher than those filed in the same period last year and outpaced even the forecast Renewable Energy Vermont (REV) provided to the Agency during the 2015 Legislative Session when the fee was under consideration. It is unclear whether anyone would have been able to predict the spike in group net metered solar projects that occurred during the summer and fall of 2015.

For instance, REV anticipated 40 new group net metered projects at the roughly 150kW scale during FY16; half way through the fiscal year the Agency has already received over 80 applications for projects at this scale. The number of applications for larger solar projects, however, are tracking closer to REV's projections.

Unlike in FY15, when the Agency struggled to keep up with the increasing volume of net metered solar energy applications and often requested extensions of the Public Service Board's 21 or 30-day comment period, so far in FY16 Agency staff have provided commendable customer service by proactively reviewing the vast majority of 45-notices – routinely providing applicants feedback on those notices so that issues can be resolved prior to filing applications with the PSB – and have only requested two comment period extensions based on the need for more review time. While our performance of duties and overall service was solid, it was not perfect and not without great effort. Even with the additional attorney, the high volume of applications overwhelmed our regulatory programs at times and resulted in unsustainable work conditions for certain staff. Those challenges are discussed in more detail below, along with steps the Agency may take to address them.

#### **Changes made to improve performance.**

The Agency implemented several structural changes to the Central Office that improved the services our planners and attorneys provide for the Agency in proceedings before the Public Service Board. The Office of Planning and Legal Affairs was divided into two divisions in the Central Office: the Office of Planning and the Office of General Counsel. In addition, a new Enforcement and Litigation Section staffed with six lawyers and managed by a Senior Attorney was created. The lawyers in the litigation group work closely with the Director of Planning and Regulatory Policy Analysts (planners) in the Office of Planning on Public Service Board proceedings. This change has increased the number of lawyers available to represent the Agency in Public Service Board proceedings from three to six. Although the lawyers in the litigation group also represent the Agency in the Environmental Division of Superior Court in permit appeals and enforcement actions, the new structure provides the Agency with additional lawyers and flexibility to address the increased volume of renewable energy and other projects that require a certificate of public good from the Public Service Board.

The Agency has worked with programs to identify and refine standard CPG conditions for net metered solar projects, which provide consistency, predictability and expedited response to a high percentage of solar project applications. In addition to the standard conditions, the Agency has created a detailed template for comment letters for net metering projects that the planners and attorneys modify based on the specific natural resource concerns related with each net metering project. These templates allow Central Office staff, especial the non-attorney planners, to focus on drafting the substance of comment letters and not spend time explaining the statutory or legal framework each time they write a new letter to the PSB. Given the high volume of group net metered solar comment letters already filed in FY 2016, this small improvement has saved significant processing time.

The Agency has also created a centralized tracking system for all renewable energy and other projects that require a certificate of public good from the Public Service Board. This new tracking system allows the Agency to better manage case assignments, workload, and deadlines related to these projects, as well as to provide information on the status of particular projects to interested citizen – a service the PSB cannot effectively provide until they move to a modernized docketing system. As these changes take hold and the structural and

procedural benefits become clear, the Agency will re-focus our attention on new opportunities to improve service and ways to strengthen our Section 248/248a review process and team.

**Areas that hinder performance.**

One of the biggest challenges for the Agency is providing meaningful comments on natural resource impacts from net metering projects where the application and/or petition does not contain sufficient natural resource information. Given the expedited review process, general lack of a contested process, and limited time to resolve deficiencies in net-metering project applications, it is critical that an applicant provide complete and accurate natural resource information when the application is filed so that the Agency can provide meaningful comments on the Section 248(b)(5) criteria within the 21 or 30-day comment period. The Agency recently provided comments on the Public Service Board's draft net metering rule that urge the Board to provide sufficient guidance on what information must be included in an application and/or petition to facilitate review of natural resource impacts.

Staffing for Section 248/248a review in the Agency Central Office and in the Department of Fish and Wildlife remains an issue and a constraint that hinders performance and the level of service the Agency provides to energy and telecom developers and interested entities. While the Agency performed well under the pressure of unprecedented application numbers, it is becoming clear that in order to maintain a high level of service the Agency may benefit from at least one additional staff person focused on Section 248/248a review in the Office of Planning, at least in the immediate future when the Board's net metering rule comes online.

The Department of Fish and Wildlife recently added a new regulatory review position that will greatly increase that Department's ability to meaningfully engage in energy project review and provide technical services to interested entities. The Department will monitor the impact of that new position to determine if one regulatory review coordinator is sufficient for the state, or if a second may be needed in the future.

**Discuss the Agency's staffing needs during the coming fiscal year and the future goals and objectives of the Agency.**

As discussed above, the volume of work we have experienced in the first half of FY 2016 reflects staffing capacity constraints in the Office of Planning, which currently consists of one director and two planners, who are responsible for both Act 250 and Section 248/248a regulatory review, planning and policy work. This structure is not sustainable even if the volume of future CPG applications drops modestly from current levels. Depending on the final outcome of the Public Service Board's new net metering rule and potential legislative changes to the siting process, the Agency may need to seek approval for one additional limited service position in the Office of Planning to support the review of Section 248/248a applications in order to maintain reasonable levels of service and support for developers, citizens and engaged municipalities.

The Agency's future goals and objectives are to maintain a high level of timely and predictable service and to provide technical assistance, support and guidance for well sited renewable energy projects that help achieve the State's greenhouse gas reduction goals. In doing so the Agency will implement a regulatory review program that moves well sited projects forward in an efficient and transparent manner. Specifically, we look forward to fully implementing our new centralized tracking system; further refinement of standard CPG conditions for group net metered solar projects; hosting at least one day-long training for energy developers; increased outreach to telecom providers related to site selection and natural resource screening; and increased engagement with distribution and transmission utilities to proactively discuss and better prepare for upgrade and expansion projects.



**Agency of Natural Resources Section 248/248a Application Fees**

First half of Fiscal Year 2016 (7.1.15 - 12.31.15)

<b>Deposit Date</b>	<b>Account Descr</b>	<b>Amount</b>
7/14/2015	Section 248 Application Fees	450.00
7/15/2015	Section 248 Application Fees	2,000.00
7/17/2015	Section 248 Application Fees	15,000.00
7/22/2015	Section 248 Application Fees	450.00
7/22/2015	Section 248 Application Fees	450.00
7/22/2015	Section 248 Application Fees	450.00
7/23/2015	Section 248 Application Fees	450.00
7/23/2015	Section 248 Application Fees	450.00
7/23/2015	Section 248 Application Fees	450.00
7/23/2015	Section 248 Application Fees	2,000.00
7/23/2015	Section 248 Application Fees	8,000.00
7/28/2015	Section 248 Application Fees	2,000.00
7/29/2015	Section 248 Application Fees	2,000.00
7/31/2015	Section 248 Application Fees	450.00
7/31/2015	Section 248 Application Fees	2,000.00
8/5/2015	Section 248 Application Fees	1,992.00
8/7/2015	Section 248 Application Fees	432.00
8/7/2015	Section 248 Application Fees	450.00
8/7/2015	Section 248 Application Fees	450.00
8/11/2015	Section 248 Application Fees	450.00
8/11/2015	Section 248 Application Fees	450.00
8/11/2015	Section 248 Application Fees	625.00
8/13/2015	Section 248 Application Fees	450.00
8/13/2015	Section 248 Application Fees	450.00
8/13/2015	Section 248 Application Fees	2,000.00
8/18/2015	Section 248 Application Fees	293.98
8/18/2015	Section 248 Application Fees	450.00
8/18/2015	Section 248 Application Fees	2,000.00
8/18/2015	Section 248 Application Fees	2,000.00
8/19/2015	Section 248 Application Fees	432.00
8/19/2015	Section 248 Application Fees	625.00
8/19/2015	Section 248 Application Fees	15,000.00
8/20/2015	Section 248 Application Fees	1,988.00
8/20/2015	Section 248 Application Fees	2,000.00
8/20/2015	Section 248 Application Fees	12,500.00
8/27/2015	Section 248 Application Fees	450.00
8/27/2015	Section 248 Application Fees	450.00
8/27/2015	Section 248 Application Fees	450.00
8/27/2015	Section 248 Application Fees	450.00
8/28/2015	Section 248 Application Fees	450.00
8/28/2015	Section 248 Application Fees	1,996.00
8/28/2015	Section 248 Application Fees	2,000.00
8/31/2015	Section 248 Application Fees	450.00
9/3/2015	Section 248 Application Fees	435.00

9/3/2015 Section 248 Application Fees	447.00
9/3/2015 Section 248 Application Fees	450.00
9/9/2015 Section 248 Application Fees	444.60
9/9/2015 Section 248 Application Fees	450.00
9/9/2015 Section 248 Application Fees	2,000.00
9/11/2015 Section 248 Application Fees	432.00
9/11/2015 Section 248 Application Fees	450.00
9/11/2015 Section 248 Application Fees	450.00
9/14/2015 Section 248 Application Fees	438.90
9/14/2015 Section 248 Application Fees	56,684.51
9/16/2015 Section 248 Application Fees	637.50
9/24/2015 Section 248 Application Fees	447.00
9/24/2015 Section 248 Application Fees	450.00
9/24/2015 Section 248 Application Fees	1,125.00
9/28/2015 Section 248 Application Fees	441.00
9/28/2015 Section 248 Application Fees	2,000.00
9/30/2015 Section 248 Application Fees	450.00
10/5/2015 Section 248 Application Fees	450.00
10/6/2015 Section 248 Application Fees	100,000.00
10/7/2015 Section 248 Application Fees	450.00
10/7/2015 Section 248 Application Fees	2,000.00
10/9/2015 Section 248 Application Fees	765.00
10/9/2015 Section 248 Application Fees	8,800.00
10/13/2015 Section 248 Application Fees	450.00
10/13/2015 Section 248 Application Fees	450.00
10/14/2015 Section 248 Application Fees	15,000.00
10/19/2015 Section 248 Application Fees	2,500.00
10/20/2015 Section 248 Application Fees	435.00
10/20/2015 Section 248 Application Fees	450.00
10/20/2015 Section 248 Application Fees	450.00
10/21/2015 Section 248 Application Fees	4,000.00
10/21/2015 Section 248 Application Fees	4,000.00
10/23/2015 Section 248 Application Fees	435.00
10/23/2015 Section 248 Application Fees	450.00
10/27/2015 Section 248 Application Fees	450.00
10/28/2015 Section 248 Application Fees	187.50
10/28/2015 Section 248 Application Fees	450.00
10/28/2015 Section 248 Application Fees	450.00
10/28/2015 Section 248 Application Fees	450.00
10/28/2015 Section 248 Application Fees	15,000.00
10/29/2015 Section 248 Application Fees	450.00
10/29/2015 Section 248 Application Fees	450.00
10/29/2015 Section 248 Application Fees	2,000.00
11/3/2015 Section 248 Application Fees	450.00
11/4/2015 Section 248 Application Fees	8,800.00
11/5/2015 Section 248 Application Fees	15,000.00
11/6/2015 Section 248 Application Fees	2,000.00





12/8/2015 Section 248 Application Fees	450.00
12/8/2015 Section 248 Application Fees	450.00
12/10/2015 Section 248 Application Fees	450.00
12/10/2015 Section 248 Application Fees	450.00
12/11/2015 Section 248 Application Fees	450.00
12/18/2015 Section 248 Application Fees	1,260.00
12/18/2015 Section 248 Application Fees	2,000.00
12/18/2015 Section 248 Application Fees	2,000.00
12/18/2015 Section 248 Application Fees	8,520.00
12/21/2015 Section 248 Application Fees	76,295.00
12/28/2015 Section 248 Application Fees	450.00
12/28/2015 Section 248 Application Fees	2,000.00
12/28/2015 Section 248 Application Fees	2,000.00
12/31/2015 Section 248 Application Fees	2,000.00
12/31/2015 Section 248 Application Fees	2,000.00
12/31/2015 Section 248 Application Fees	2,000.00
12/31/2015 Section 248 Application Fees	2,000.00
12/31/2015 Section 248 Application Fees	2,500.00
total	<b>495,281.99</b>