

- *Enables the planning commission to request, once an application for CPG is filed rather than during the 45 day pre-application period, the DPS to retain experts to review the proposed energy project and allocate the costs to the applicant. Limits the project size for this request to greater than 150 kW to ensure economic feasibility is maintained, which is very important for community scale projects.*
- *Maintains planning commissions' authority to provide an applicant / petitioner with feedback on an energy project prior to the applicant filing a CPG.*
- *Proposed minor edits to the enforcement provisions to ensure legal due process and clarity for all parties.*

*** Preapplication Submittals; Energy Facilities ***

Sec. 1. 30 V.S.A. § 248(f) is amended to read:

(f) However, plans for the construction of such a facility within the State must be submitted by the petitioner to the municipal and regional planning commissions no less than 45 days prior to application for a certificate of public good under this section, unless the municipal and regional planning commissions shall waive such requirement.

(1) ~~Such~~ The municipal or regional planning commission may take one or more of the following actions:

~~(A) hold~~ Hold a public hearing on the proposed plans. The planning commission may request that the petitioner or the Department of Public Service, or both, attend the hearing. The petitioner and the Department each shall have an obligation to comply with such a request. The Department shall consider the comments made and information obtained at the hearing in making recommendations to the Board on the application and in determining whether to retain additional personnel under subdivision (1)(B) of this subsection.

~~(B) Request that the Department of Public Service exercise its authority under section 20 of this title to retain experts and other personnel to review the proposed facility. The Department may commence retention of these personnel once the petitioner has submitted proposed plans under this subsection. The Department may allocate the expenses incurred in retaining these personnel to the petitioner in accordance with section 21 of this title. Granting a request by a planning commission pursuant to this subdivision shall not oblige the Department or the personnel it retains to agree with the position of the commission.~~

~~(C) Such commissions shall may~~ make recommendations, **if any,** to the Public Service Board and to the petitioner **at least seven days** prior to filing of the petition with the Public Service Board.

(2) Once the petition is filed with the Public Service Board,

(i) Request that the Department of Public Service exercise its authority under section 20 of this title to retain experts and

Commented [REV1]: Moved to 2(i) below to apply once a petition/application is filed.

other personnel to review proposed facilities greater than 150 kW. The Department may allocate the expenses incurred in retaining these personnel to the petitioner in accordance with section 21 of this title. The Department shall not be obligated to grant such a request by a planning commission pursuant to this subdivision, but in the event it does so, the Department or the personnel it retains shall not be obligated to agree with the position of the commission.

(ii) Make recommendations to the Board by the deadline for submitting comments or testimony set forth in the applicable provision of this section, Board rule, and/or scheduling order issued by the Board.

(2) (3) The petitioner's application shall address the substantive written comments related to the criteria of subsection (b) of this section received by the petitioner within 45 days of the submittal made under this subsection and the substantive oral comments related to those criteria made at a public hearing under subdivision (1) of this subsection. **The Board shall forward to the petitioner any comments filed with the Board during the 45-day notice period so the petitioner may address those comments in its application.**

* * *

Sec. 8. 30 V.S.A. § 30 is amended to read:

§ 30. PENALTIES; AFFIDAVIT OF COMPLIANCE

* * *

(h) In accordance with the process set forth in this subsection, the Department may issue an administrative citation to a person the Department believes **after conducting a fact finding investigation**, violated section 246, 248, 248a, or 8010 of this title, any rule adopted pursuant to those sections, or any certificate of public good issued pursuant to those sections.

(g) An administrative citation, whether draft or final, shall: (A) state each provision of statute and rule and each condition of a certificate of public good alleged to have been violated;

(1) include a concise statement of ~~the facts~~ findings giving rise to the alleged violation and the evidence supporting the existence of those facts;

(2) request that the person take the remedial action specified in the notice or pay a civil penalty of not more than \$5,000.00 for the violation, or both; and

(3) if remedial action is requested, state the reasons for seeking the

action.

(2) **Following a fact finding investigation that leads the Department to believe that a violation has occurred,** ~~t~~The Department shall initiate the process by issuing a **draft notice of alleged violation and** administrative citation to the person and sending a copy to each municipality in which the person's facility is located, each adjoining property owner to the facility, the complainant if any, and, for alleged violations of the facility's certificate of public good, each party to the proceeding in which the certificate was issued.

(A) At the time the ~~draft citation~~ **notice of alleged violation and** is issued, the Department shall file a copy with the Board and post the **draft notice and** citation on its website.

(B) Commencing with the date of issuance, the Department shall provide an opportunity of 30 days for public comment on the draft notice and citation. The Department shall include information on this opportunity in the **notice citation**.

(C) Once the public comment period closes, the Department:

(i) Shall provide the **person and the** Board with a copy of each comment received.

(ii) **May, within 15 days of the close of the comment period, file a revised draft citation based on the public comments received during the comment period** with the Board. The revised draft citation may be accompanied by a stipulation or agreed settlement **between the person and the Department** with a request for Board approval.

(D) The Board may on its own initiative open a proceeding to investigate the violation alleged in the draft citation. The Board shall take any such action **no earlier than within 15 25 days of the close of the public comment period, or the filing of a revised draft citation, whichever is later.** Such a Board proceeding shall supersede the draft citation.

(3) If the Board has not opened a proceeding pursuant to subdivision (2)(D) of this subsection, the Department may issue a final administrative citation to the person. Within 30 days of receipt of a final administrative citation, the person shall respond in one of the following ways:

(h) **Request a hearing before the Board on the existence of the alleged violation, the proposed penalty, and the proposed remedial action.**

(i) **Pay any civil penalty set forth in the notice and agree to undertake such remedial action as is set forth in the notice and submit to the Department for its approval a plan for compliance. In such a case, the final administrative citation shall be enforceable in the same manner as an order of the Board.**

(j) **Decline to contest the existence of the alleged violation and request a hearing on either the proposed penalty or remedial action, or both. When exercising this option, a person may agree to either the proposed penalty or remedial action and seek a hearing only on the penalty or action with which the person disagrees.**

Commented [REV2]: The process should allow time for the DPS to file a revised citation before the PSB opens an investigation. It would be inefficient and duplicative for the PSB to separately initiate an investigation if the DPS issued a notice of violation and administrative citation.

(3) When a person requests a hearing under subdivision (3) of this subsection, the Board shall open a proceeding and conduct a hearing in accordance with the provisions of this section on the alleged violation and such remedial action and penalty as are set forth in the notice. Notwithstanding any contrary provision of this section, a penalty under this subdivision (4) shall not exceed \$5,000.00.

(4) If a person pays the civil penalty set forth in a final administrative citation, then the Department shall be precluded from seeking and the Board from imposing additional civil penalties for the same alleged violation, ~~unless the violation is continuing or is repeated.~~ **In considering, the amount of a penalty for a repeated violation, the Board may consider prior violations of Sections 246, 248, 248a, and 8010 by the person.**

(5) If a person agrees to undertake the remedial action set forth in a final administrative citation, failure to undertake the action or comply with a compliance plan approved by the Department shall constitute a separate violation.

(6) The Board may approve disposition of a final administrative citation by stipulation or agreed settlement submitted before entry of a final order.

(7) Penalties assessed under this subsection shall be deposited in the General Fund.

Commented [REV3]: A prior violation can be used to determine the appropriate penalty for the repeated violation, but the CPG holder should not be charged/penalized more than once for a violation that was already subject to a final order. This section needs to be revised to ensure due process and proper legal procedures.