FINAL PROPOSED RULE # 23-P18

Final Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the "Rule on Rulemaking" adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted at the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of these forms will be used to generate a notice of rulemaking in the portal of "Proposed Rule Postings" online, and the newspapers of record if the rule is marked for publication. Publication of notices will be charged back to the promulgating agency.

PLEASE REMOVE ANY COVERSHEET OR FORM NOT REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

Rule 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

/s/ Anthony Z. Roisman (signature), on 11/1/2023 (date)

Printed Name and Title:
Anthony Z. Roisman
Chair, Vermont Public Utility Commission

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Minutes
- ☐ Copy of Comments
- ☐ Responsiveness Summary

1. TITLE OF RULE FILING:
Rule 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE
23P018

3. ADOPTING AGENCY:
Vermont Public Utility Commission

4. PRIMARY CONTACT PERSON:
(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: John J. Cotter, Esq.

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, 4th Floor, Montpelier, VT 05602

Telephone: 802-461-6364 Fax: 802-828-3352

E-Mail: john.cotter@vermnont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:
https://epuc.vermont.gov/?q=node/64/156798

5. SECONDARY CONTACT PERSON:
(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON).

Name: Elizabeth Schilling, Esq.

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, 4th Floor, Montpelier, VT 05602

Telephone: 802-828-1164 Fax: 802-828-3352

E-Mail: elizabeth.schilling@vermont.gov

6. RECORDS EXEMPTION INCLUDED WITHIN RULE:
(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL; LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND COPYING?) No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

7. LEGAL AUTHORITY / ENABLING LEGISLATION:

(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A SPECIFIC CITATION NOT A CHAPTER CITATION).

30 V.S.A. §§ 2(c), 9, 11(a), and 248.

8. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

30 V.S.A. § 2(c) states that "[t]he Public Utility Commission, with respect to any matter within its jurisdiction, may issue orders on its own motion and may initiate rulemaking proceedings." Title 30 V.S.A. § 11(a) provides that "The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it. The Commission shall adopt rules . . ." 30 V.S.A. §§ 248(a)(2)(A) and (a)(3) prohibit the site preparation for or construction of an electric generation facility, energy storage facility, electric transmission facility, or natural gas facility in Vermont without the developer first obtaining a certificate of public good from the Commission. Section 248 places the review of applications for these projects within the Commission's jurisdiction and Sections 2(c) and 11(a) grant the Commission the authority to promulgate rules by which to conduct those reviews.

9. THE FILING HAS CHANGED SINCE THE FILING OF THE PROPOSED RULE.

10. THE AGENCY HAS INCLUDED WITH THIS FILING A LETTER EXPLAINING IN DETAIL WHAT CHANGES WERE MADE, CITING CHAPTER AND SECTION WHERE APPLICABLE.

11. SUBSTANTIAL ARGUMENTS AND CONSIDERATIONS WERE RAISED FOR OR AGAINST THE ORIGINAL PROPOSAL.

12. THE AGENCY HAS INCLUDED COPIES OF ALL WRITTEN SUBMISSIONS AND SYNOPSES OF ORAL COMMENTS RECEIVED.

13. THE AGENCY HAS INCLUDED A LETTER EXPLAINING IN DETAIL THE REASONS FOR THE AGENCY'S DECISION TO REJECT OR ADOPT THEM.

14. CONCISE SUMMARY (**150 WORDS OR LESS**):

The proposed amendments to Commission Rule 5.400 serve four primary purposes. First, the proposed amendments provide increased clarity on the information that must

be filed for a Section 248 petition to be considered complete. Second, they update the means by which parties can exchange and collect information in response to technology advances and our experience with the COVID-19 pandemic. Third, they provide clarity on the processes that must be followed when petitioners seek to amend projects that are under review, and projects that have been reviewed and approved. Fourth, the amendments simplify the process for certain persons and entities to intervene as parties in Section 248 cases.

15. EXPLANATION OF WHY THE RULE IS NECESSARY:

Rule 5.400 establishes the requirements and procedures for filing petitions for proposed projects that require review and approval under 30 V.S.A. § 248. Although the Commission has made minor changes to Rule 5.400 in recent years, it has been several years since the Commission reviewed the rule in its entirety. Commission practices have changed significantly in those years. The biggest change has been our move to electronic filing and case management through ePUC. Also, consistent with Act 174 of 2016, the Commission constantly seeks to facilitate public participation in all of our proceedings. Lastly, the number of cases filed under Rule 5.400 has increased dramatically in recent years. The Commission proposes a number of amendments to respond to these changes, as well as changes to clarify the requirements of Rule 5.400 so that petitions are both complete and more consistent at the time they are filed.

16. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY:

The proposed changes are based on changes in the manner in which the Commission conducts its statutory obligations under Section 248. They reflect the implementation of electronic filing, the increased use of technology by case participants, and the large percentage increase in Section 248 siting cases that have come before the Commission in recent years. To address that large increase in Section 248 cases the rule amendments provide increased clarity in filing requirements to ensure greater efficiency in the initial processing of petitions, take advantage of changes in how people communicate and exchange

information, and recognize that with an increase in Section 248 siting cases comes a concurrent increase in public interest in participating in those cases.

17. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Any person or entity filing a petition for a certificate of public good for a project under 30 V.S.A. § 248 and anyone participating or wanting to participate in the review of a proposed project. Examples include utility and non-utility petitioners, ratepayers, the Vermont Department of Public Service, the Vermont Agency of Natural resources, the Vermont Division for Historic Preservation, the Vermont Agency of Agriculture, Food & Markets, owners of land that abuts a proposed project, and businesses that may be effected by a proposed project.

18. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

The amendments will require petitioners to expend additional resources in advance of filing a petition under Section 248 as a result of the expanded notice requirements, and in some cases the increased specificity regarding the content of Section 248 petitions. However, any increase in costs in preparing the petition are expected to be offset, at least in part, by greater efficiency in the review process resulting from the reduction or elimination of the need for the Commission to direct petitioners to provide additional information after a petition is filed. A simplified intervention process may also result in additional parties in some cases, potentially increasing litigation costs.

19. A HEARING WAS HELD.

20. HEARING INFORMATION
(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION.

Date: 8/8/2023

Time: 06:30 PM

Street Address:

Zip Code:
URL for Virtual: https://meet.goto.com/787536725

OR call (877) 309-2073 and enter PIN# 787-536-725

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

Date:
Time: AM
Street Address:
Zip Code:
URL for Virtual:

21. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING):
8/15/2023

KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Rule 5.400
30 V.S.A. § 248
contents of petition
substantial change

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358

TTY/TDD (VT: 800-253-0191)
FAX: 802-828-3351
E-mail: puc.clerk@vermont.gov
Internet: http://puc.vermont.gov

State of Vermont
Public Utility Commission

November 1, 2023

To Whom It May Concern,

As explained in detail in the Responsiveness Summary that accompanies this filing, the November 1, 2023, final proposed filing of Public Utility Commission Rule ("Commission") 5.400 contains the following change to the June 22, 2023, proposed filing:

- Section 5.403(A)(14). The Commission has stricken the final sentence of this rule section to eliminate the requirement that a copy of a signed interconnection agreement be included as part of a Section 248 petition.

  (14) Information to document compliance with Commission Rule 5.500 regarding interconnection procedures for electric generation facilities, Rule 5.800 regarding aesthetic mitigation, and Rule 5.900 regarding decommissioning. ~~Documentation of compliance with Rule 5.500 must include a signed copy of the applicable interconnection agreement executed pursuant to that rule.~~

Additionally, the Commission amended its Brief Summary of Economic Impact (paragraph 18 of Final Proposed Filing – Coversheet) and its Economic Impact Analysis to expressly recognize that there will be increased costs associated with the provision of the 45-day advance notice and the notice of petition filing to additional persons and entities than what is required by the current rule and to explain in more detail why those costs will not be material.

Sincerely,

John J. Cotter, Esq.

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:
   Rule 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248
2. ADOPTING AGENCY:
   Vermont Public Utility Commission
3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU BASED ON THE DEFINITIONS PROVIDED BELOW*):
   - **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
   - **NEW RULE** - A rule that did not previously exist even under a different name.
   - **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

   This filing is **AN AMENDMENT OF AN EXISTING RULE** .

4. LAST ADOPTED (*PLEASE PROVIDE THE SOS LOG#, TITLE AND EFFECTIVE DATE OF THE LAST ADOPTION FOR THE EXISTING RULE*):
   #17-049, 30-000-5400, REQUIREMENTS FOR PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES, 9/1/17; December 2017 [agency name change from Public Service Board; rule renumbered from 30 000 056]

State of Vermont
Agency of Administration
109 State Street
Montpelier, VT 05609-0201
www.aoa.vermont.gov

[phone] 802-828-3322

Kristin L. Clouser, Secretary

INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: June 12, 2023, virtually via Microsoft Teams
Members Present: Chair Sean Brown, Brendan Atwood, Jennifer Mojo, Diane Sherman, Michael Obuchowski, Donna Russo-Savage, Nicole Dubuque and Jared Adler
Members Absent: John Kessler
Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the May 8, 2023 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-7 to follow.
  1. Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. §248, Public Utility Commission, page 2
  2. 5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems (the "Net-Metering Rule"), Vermont Public Utility Commission, page 3
  3. Rule 5.500: Interconnection Procedures For Proposed Electric Generation Resources And Energy Storage Devices, Vermont Public Utility Commission, page 4
  4. Education Quality Standards (Rule Series 2000), State Board of Education, page 5
  5. Vermont Use of Public Waters Rules, Agency of Natural Resources, page 6
  6. Medicaid Coverage of Exception Requests, Agency of Human Services, page 7
- Committee discussion postpone to a future meeting date:
  - Potential resources available for proposed rules to be reviewed for copyediting prior to presenting to ICAR.
  - Use of terms 'regulation' and 'promulgation': Administrative Procedure Act rules are adopted. Regulations are not promulgated.
- Other business: Donna Russo-Savage resigned from ICAR effective with her retirement date of June 30, 2023.
- Next scheduled meeting is July 10, 2023 at 2:00 p.m.
- 3:54 p.m. meeting adjourned.

Proposed Rule: Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. §248, Public Utility Commission

Presented By: John Cotter

Motion made to accept the rule by Brendan Atwood, seconded by Nicole Dubuque, and passed unanimously with the following recommendations:

1. Proposed Filing – Coversheet, #8: Begin with the tile of the rule, a description of the general rule and that it lays out the process by which to petition to construct electric and gas facilities.

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn't appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

   Rule 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

2. ADOPTING AGENCY:

   Vermont Public Utility Commission

3. CATEGORY OF AFFECTED PARTIES:

   LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS ANTICIPATED:

   (1) Section 248 petitioners. Costs. Petitioners will see some increase in costs from increased notice requirements and potentially in preparing petitions due to the increased specificity of petition content required by the amendments. Additionally, the amendments simplify the process for intervention in

Section 248 proceedings for some persons and entities, which could increase litigation costs if the number of parties to a case increases as a result. However, the simplified process is available only to persons or entities that the Commission has historically found to meet the requirements for intervention even when their intervention requests are contested by petitioners. Additionally, any cost increases must be viewed in the context of the overall cost of a Section 248 project. In that context, any increases will not be material. Benefits. Increase in the likelihood that petitions will be deemed complete upon the first petition filing. This may result in a decrease in the need for the Commission and other parties to seek additional information not provided in a petition, potentially reducing costs associated with discovery and discovery disputes and yielding greater efficiency overall.

(2) Government agencies. Costs. It is possible that government agencies may see a small increase in costs from the amendments if the amendments result in an increase in the number of parties in more controversial cases. Any such increases are expected to be limited given that state agencies, with the exception of the Department of Public Service, tend to participate on a limited number of issues in most cases. Benefits. State agencies will receive more complete information at the time the initial petition is filed, decreasing the need to expend resources to gather additional information during a case through discovery or other legal processes.

3) Vermont Ratepayers. Costs. To the extent that the amendments result in increased litigation costs to rate-regulated utilities, those utilities will likely seek to recover those costs in rates from Vermont ratepayers. However, any cost increases are expected to be small in the context of a utility's overall cost of service. Additionally, impacts to individual ratepayers are expected to be minimal because those costs would be distributed among all of a utility's ratepayers. Benefits. Increased efficiencies in processing Section 248 petitions leading to more

efficient planning by utilities in serving customers and decreased uncertainties regarding utility services.

(4) Intervenors. Costs. The rule amendments are not expected to increase costs for citizens and entities (such as public interest groups) seeking to participate in contested case proceedings before the Commission. Benefits. The amendments simplify the process of intervention for persons and entities that the Commission has historically found to have sufficient interests in Section 248 proceedings to meet the standard for intervention even when challenged by petitioners. The amendments will also result in more detailed information being provided at the time of the initial petition filing, allowing potential intervenors to better assess whether seeking intervention in a case is necessary at all, and if so, whether their intervention can be limited to discrete issues.

4. IMPACT ON SCHOOLS:
INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The amendments are not expected to have any impact on Vermont schools.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

See response to number 4, above.

6. IMPACT ON SMALL BUSINESSES:
INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The rule amendments are not expected to have any economic impact on small businesses outside of the limited potential costs described above for regulated utilities and project developers, assuming that the smaller regulated utilities and project developers in Vermont fall into this category.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The rule amendments do not create any new compliance obligations for any entity filing a Section 248 petition with the Commission. Rather, they clarify the information that must be included with a Section 248 petition for it to be considered complete at the time it is first filed. Both Section 248 and the current version of Rule 5.400 require a petitioner to submit the information necessary for the Commission to make all findings required under Section 248. Without the additional clarity provided by the amendments there is an increased likelihood that initial petitions will be deemed incomplete and additional effort will need to be expended by petitioners in providing needed information that was not included in their initial petition filing.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The alternative to the rule amendments is leaving the current rule in place. As discussed above, this would result in the continued greater likelihood of Section 248 petitions being found incomplete at the time of initial filing, and therefore in need of supplementation. It would also increase the likelihood of other parties needing to engage in more discovery or other legal processes to obtain information they need to present their positions to the Commission. Assuming that smaller Section 248 developers and Vermont's smaller electric utilities are considered small businesses under this section, there is no mechanism for providing separate requirements for small businesses that by law must seek a Section 248 certificate of public good like all other petitioners, absent some statutory exception allowing for a more simplified process for these entities.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Commission relied on its years of experience reviewing petitions under 30 V.S.A. Section 248 and the feedback it has received from participants on those proceedings, including petitioners, state agencies, and intervenors. While petitioners will experience some increase in costs associated with increased notice requirements, those costs will be *de minimis*, especially when viewed in the context of the overall costs of Section 248 projects. The Commission's experience with interventions in Section 248 cases also leads it to conclude that interventions will not increase in the majority of cases.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify "No impact anticipated" in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

   Rule 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

2. ADOPTING AGENCY:

   Vermont Public Utility Commission

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*
   The amendments are not expected to have any impacts on greenhouse gas emission levels.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*
   The amendments are not expected to have any impacts on the discharge of pollutants into Vermont's waters or to impact water quality in any way.

5. LAND: *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*
   The amendments are not expected to impact land use in any way.

6. RECREATION: *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*
   The amendments are not expected to impact recreation in any way.

7. CLIMATE: *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*
   The amendments are not expected to impact climate in any way.

8. OTHER: *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*
   The amendments are not expected to impact Vermont's environment in any way.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*
   The analysis was conducted by assessing the existing Rule 5.400 against the proposed amendments to Rule 5.400. The amendments provide clarification of the materials required to file a complete Section 248 application and simplify the intervention process for certain persons and entities. They will not result in any increase or decrease in the number of applications or petitions being filed with the Commission under Section 248. Therefore, no increase or decrease in environmental impacts are expected as a result of the amendments.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

   Rule 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

2. ADOPTING AGENCY:

   Vermont Public Utility Commission

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

   The Commission maximized public input on the proposed rule amendments by contacting and engaging as many potentially interested persons, entities, and organizations as possible, both in a pre-rulemaking format to best inform the proposed amendments, and in a formal rulemaking format, through public hearings and written comments before and after the filing of the proposed rule with the Secretary of State.

   The Commission held two workshops and solicited six rounds of comments on the proposed rule amendments from interested persons and entities, as well as a public hearing followed by an additional round of written public comments. The initial notice announcing the Commission's intent to adopt amendments to Rule 5.400 was sent to the Commission's stakeholder email distribution list, which contains approximately 380 recipients consisting of utilities, law firms, public interest groups, state agencies, trade groups, and

others that have either participated in or expressed interest in Commission proceedings.

In response to the initial announcement, the Commission received comments from approximately 20 participants, ranging from attorneys, law firms, utilities, developers, public interest groups, and state agencies. Many of these also participated in the two workshops.

When the proposed rule was filed with the Secretary of State, the Commission again circulated the proposed amendments to the persons and entities that had actively participated in the development of the rule amendments. The Commission then scheduled a remote public hearing and received both oral and written comments from the public.

The Commission also posted notice of the formal rulemaking on its website and distributed a memorandum from the Clerk of the Commission to the Commission's stakeholder email distribution list to again notify the original group of approximately 380 recipients of the start of the formal rulemaking process.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

The following persons and organizations have participated in workshops or provided comments that assisted in developing the proposed rule amendments: the Vermont Department of Public Service; the Vermont Agency of Natural Resources; the Vermont Natural Resources Board; the Vermont Agency of Agriculture, Food and Markets; Green Mountain Power Corporation; All Earth Renewables, Inc.; Downs Rachlin Martin PLLC; Cindy Hill, Esq.; Green Lantern Capital LLC; Sheehey Furlong & Behm; Stackpole & French Law Offices; Vermont Public Power Supply Authority; Vermont Electric Power Company, Inc.; Vermont Transco LLC; Dunkiel Saunders Elliott Raubvogel & Hand, PLLC; Vermont Electric Cooperative, Inc.; Vermont Gas Systems, Inc.; Conservation Law Foundation; Renewable Energy Vermont; Encore Renewable Energy; Ampersand Gilman Site Optimization, LLC; Norwich Solar; and Vermonters for a Clean Environment.

Responsiveness Summary: Explanation of the Vermont Public Utility Commission's reasons for accepting or rejecting requested changes to the proposed rule.[1]

The Vermont Public Utility Commission ("Commission") received oral comments from three entities during the public hearing held on August 8, 2023, and received written comments from nine entities by the August 15, 2023, comment deadline.

Below is an explanation of the Commission's reasons for accepting or rejecting requested changes to the proposed rule contained in those public comments. The explanation discusses the comments generally as well as those filed in response to specific sections of the rule, and explains the Commission's reasons for either accepting or rejecting the comments and any changes made to each section in the proposed rule as a result.

Comments Generally

Comments

Written comments were received from Vermonters for a Clean Environment ("VTCE"), Encore Renewable Energy ("Encore"), Renewable Energy Vermont ("REV"), Norwich Solar ("Norwich"), Vermont Public Power Supply Authority ("VPPSA"), Ampersand Gilman Site Optimization, LLC ("Ampersand"), and Vermont Electric Cooperative, Inc ("VEC").[2] In addition, oral comments were made at the public hearing on August 8, 2023, by VEC, Vermont Electric Power Company, Inc. ("VELCO"), and REV.

VTCE did not request any specific changes to the proposed rule, though it did express disappointment that the amendments did not include a requirement for photographic simulations of proposed projects. Otherwise, VTCE was supportive of the changes generally because they increase opportunities for effective public participation in Section 248 cases.

The remaining comments, both written and oral, expressed an overall concern for any changes to the rule that result in increased burdens in the filing and review of Section 248 petitions. The expressed concerns had to do with costs related to the increase in the number of persons and entities entitled to receive notification materials at least 45 days before a petition is filed, an increase in the number of persons and entities entitled to receive notice that a petition has been filed, and an increase in the number of persons and entities that are entitled to intervene in Section 248 proceedings using a notice process as opposed to a more formal motion process. Some also expressed concerns that the amendments to the rule would both increase the time necessary to obtain a certificate of public good under Section 248 and introduce uncertainty into the process. Most commenters stated that increasing the expense, time, and uncertainty of the Section 248 process would be particularly problematic at a time when the State is seeking to

[1] Per 3 V.S.A. § 841(b).

[2] VEC was joined in its comments by Vermont Electric Power Company, Inc. and Stowe Electric Department. Where appropriate, references in this document to VEC should be understood to include these two additional entities.

increase the amount of renewable energy generation in Vermont to address climate change and to modernize the electric grid to accommodate both renewable energy generation and increased electrification in the transportation and heating sectors.

Some commenters also questioned the Commission's legal authority to increase the number of persons and entities entitled to receive notice in Section 248 proceedings and to simplify the intervention process for some of those same entities and believe that the amendments impermissibly impose Act 250 requirements on Section 248 petitioners.

Lastly, some commenters questioned the sufficiency of the Commission's economic impact analysis provided as part of the Secretary of State rulemaking forms in support of the proposed rule amendments.

Response

The Commission acknowledges that some of the rule amendments will require additional effort by petitioners, such as increasing the number of persons and entities that must be notified both in advance of a petition being filed and at the time the petition is filed. The Commission also acknowledges that the amendments have simplified the process for certain persons and entities to gain party status in Section 248 proceedings. However, the Commission does not expect that these changes will result in material increases in the costs of or time needed to review Section 248 projects, in part because other aspects of the amendments are designed to ensure the filing of complete petitions at the outset of a case, which will increase the efficiency of the process overall.

The Commission's reasoning with respect to each of the commenters' concerns is presented below. This response begins with an analysis of the Commission's authority to adopt the proposed amendments and then discusses the issues raised by the commenters with respect to the amendments to specific sections of the rule. Finally, this response concludes with a discussion of the sufficiency of the Commission's economic impact statement.

I. Commission Authority to Adopt Amendments

Comments

VEC, supported by other commenters, questions the Commission's authority to adopt amendments that increase: (1) the number of recipients of the required 45-day advance notification that a Section 248 petition will be filed, (2) the number of recipients that must be served with either a copy of the petition at the time it is filed and deemed complete or notice that the petition has been filed, and (3) the number of persons and entities that are entitled to intervene by filing a notice of intervention rather than a formal motion to intervene. According to the comments, the rule amendments addressing these areas are substantive in nature and the Commission is without authority to adopt them.

Response

Rule 5.400 is a rule of procedure governing the process for filing petitions under 30 V.S.A. § 248, and the proposed amendments to that rule do not affect the substantive rights of any party. Additionally, the amendments are proposed pursuant to an express statutory grant of authority to the Commission to adopt rules of procedure for contested case proceedings. The cases cited by the commenters all deal with either substantive rules being promulgated without express statutory authority or rules that ran contrary to legislative intent.

The proposed amendments are procedural because they govern the process by which a petitioner proceeds with Section 248 review and do not affect the substance of that review and what a petitioner must substantively demonstrate to obtain a certificate of public good. A proposed rule is considered procedural if it controls the method of obtaining relief or enforcing rights and does not involve the creation of duties, rights, and obligations.[3] A rule is procedural if it governs the manner and means by which a litigant's rights are enforced. It is substantive if it alters the rules of decision by which a court will determine those rights.[4] The proposed amendments prescribe how a petitioner seeks review under Section 248; they do not create any additional substantive burdens or obligations. In other words, they do not create a new standard that petitioners must meet to obtain a certificate of public good. By way of example, if the Commission attempted to create a rule that imposed a minimum amount of economic benefit based on a percentage of project cost that must be demonstrated before a project is found to meet criterion 248(b)(4), the Commission would be imposing a substantive rule because it would be changing the rule of decision created by the statute.[5] The proposed amendments regulate only what procedural steps must be followed to obtain a certificate of public good. They do not create any additional duties, rights, or obligations with respect to what a petitioner must substantively demonstrate to obtain a certificate of public good.

Because the effects of the rule amendments are procedural, not substantive, the Commission has been granted express authority from the Legislature to promulgate the amendments. Section 831(d) of Title 3 of the Vermont Statutes Annotated directs the Commission to adopt rules of procedure for contested cases that are subject to hearings. Section 248 cases fall into this category, and Rule 5.400 is a rule of procedure. Additionally, 30 V.S.A. § 11(a) states that "[t]he forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it," and 30 V.S.A. § 2(c) states that the Commission may initiate rulemaking proceedings on any matter within its jurisdiction.[6]

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[3] *Smiley v. State*, 198 Vt. 529, 538 (2015) (citations omitted).

[4] *Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393, 407 (2010).

[5] 30 V.S.A. § 248(b)(4) requires a Section 248 petitioner to demonstrate that a proposal "[w]ill result in an economic benefit to the State and its residents."

[6] The Commission's exercise of this authority is consistent with the Legislature's directive in Act 174 of the 2016 legislative session where it directed the Commission to explore ways of increasing public access to its proceedings.

II. Comments Related to Specific Rule Sections

5.402 Pre-Filing Advance Submission

Summary

This section of the rule establishes requirements for a petitioner to provide advance notice of the petitioner's intent to file a Section 248 petition to certain individuals and entities. As proposed, this section of the rule expands the list of persons and entities that must receive the advance notification beyond what is required by the existing rule and by Section 248(f).

Comments

Comments on this section of the proposed rule were received from VTCE, Encore, REV, Norwich, Ampersand, and VEC.

VTCE supports this change and states that expansion of the list of persons and entities that are entitled to receive the 45-day notice of an upcoming filing to include adjoining landowners is the most important and needed change proposed to Rule 5.400. VTCE notes that problems have arisen in the past when adjoining landowners did not receive notice of a proposed project until the time a petition was filed. VTCE further notes that the change is consistent with the requirements for net-metering projects.

VEC, REV, Encore, Norwich, and Ampersand all oppose the expansion of persons and entities that would be entitled to receive an advance notice of a petitioner's intent to file a Section 248 petition. The comments focused on three issues related to the expansion of those entitled to receive the advance notice: (1) the loss of ability to obtain waivers of the notice requirement; (2) the increased costs of providing notice to a greater number of persons and entities; and (3) the Commission's authority to expand the list of those entitled to notice beyond those identified in 30 V.S.A. § 248(f). The comments focused largely on the inclusion of adjoining landowners and the Vermont Natural Resources Board to the list of persons and entities entitled to receive notice.

Response

The Commission acknowledges that expanding the list of persons and entities entitled to receive the 45-day pre-petition notice will increase the amount of work required under this rule section. However, the Commission believes that increasing the list of those entitled to receive the notice is good policy for three reasons, and that the benefits realized outweigh any additional resource expenditure. After providing the general reasons it believes support the amendments to this section, the Commission responds below to each of the three topic areas raised by the commenters.

First, the new entities and persons entitled to notice under the amendment are, in the Commission's experience, those most likely to have a potential interest in a Section 248 project. Of those potentially interested persons and entities, the commenters opposed to the amendments

to this section are almost entirely concerned with having to provide pre-filing notice to the Natural Resources Board and adjoining landowners.

Notice to the Natural Resources Board creates no additional effort for or resources expended by Section 248 petitioners. This is because provision of the 45-day notice to the Natural Resources Board can be accomplished electronically using the Commission's electronic filing system, ePUC, per the amendments to Rule 5.402(B). Providing notice to the Natural Resources Board is merely a matter of adding its name to the list of entities receiving notice electronically.

The potential for adjoining landowners to be interested in a Section 248 project proposed to abut their property is self-evident. And, under the current rule a petitioner must already identify all adjoining landowners and provide a notification about a project at the time the petition is filed. Under the rule as amended, a petitioner would need to identify adjoining landowners earlier in the process, providing notice of an intent to file a petition as well as notice at the time the petition is filed. However, the proposed amendments have addressed cost concerns with identifying adjoining landowners by allowing petitioners to identify adjoining landowners using a variety of on-line databases instead of having to review municipal grand lists at municipal offices. Additionally, delivery of the advance notice can now be made via email with the permission of the intended recipient. These two changes to the proposed amendments were made in response to earlier comments received from persons and entities who participated in the development of the amendments currently under review. Lastly, provided a petitioner files its petition within 180 days of the issuance of the advance notice, the petitioner can rely on the list of adjoining landowners it developed for use in providing the advance notice when it provides its notice that the petition was filed. In other words, as long as a petition is filed no more than six months after the advance notice is issued, no additional work is created by this amendment with respect to identifying adjoining landowners.

Second, the provision of the 45-day notice materials provides petitioners with an early opportunity to understand and address the concerns of potentially affected individuals and entities before they file their petitions, potentially saving litigation time and expense.[7] In the Commission's experience, the new persons and entities entitled to receive notice under this section are often those that have potential interests in Section 248 projects, such as adjoining landowners, and engaging them in the process earlier, rather than later and only after a petition has been filed, adds value to the process and can potentially reduce or eliminate issues in contention once a petition is filed.

Third, with respect to adjoining landowners, the Legislature has expressed an interest in increasing public access to Commission proceedings since at least 2016 when it passed Act 174.

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[7] VEC recognized value in this opportunity to address concerns with a project during the advance-notice period in earlier comments when it argued for a longer period of time in which to file petitions once the 45-day notices have been issued. "[For] longer linear projects, the 45-day notice oftentimes is submitted well in advance of a filing so that the utility can reach out from communications from entities that really won't engage you until you send out a 45-day notice." "The reality is, oftentimes the section -- the 45-day notice is what starts a lot of discussions with a variety of stakeholders, and when you have, for example, linear projects, half a year can go by really quickly. And the utility is diligently working on how to work on a variety of issues." Case No. 21-0861-RULE, tr. 9/2/21 at 66, 71.

Act 174 created the Access to Public Service Board Working Group to "review the current processes for citizen participation in PSB proceedings" and "make recommendations to promote increased ease of citizen participation in those proceedings."[8] The amendments to this section are consistent with that legislative directive.

1. Ability to obtain waiver of the 45-day notice requirement.

VEC stated that expanding the list of persons and entities entitled to receive an advance notice of a Section 248 petition will make obtaining a waiver of the 45-day notice requirement time-consuming and burdensome because it will have to seek waivers from a greater number of persons and entities, some of whom may not respond to the waiver request. As a result, VEC states that it will take more time and resources to file Section 248 petitions because petitioners will need to either seek waivers from a greater number of persons and entities or wait 45 days before they can file their petitions. VEC believes many petitioners will be unable to obtain the notice waivers and that this will delay the preparation of petitions because petitioners will need to focus their efforts on preparing 45-day notice materials rather than the petitions themselves. VEC also states that the change effectively takes away its substantive right to obtain the waivers because if it is unable to obtain them from all required recipients, it cannot take advantage of the existing statutory process that requires waiver from only three entities. REV, Encore, Norwich, and Ampersand concurred with VEC's comments.

Response

The Commission acknowledges that the proposed amendment will increase the work necessary to obtain waivers of the 45-day notice requirement because the list of persons and entities entitled to receive that notice is expanded. However, the Commission still believes that expanding the list of those entitled to receive the notice is good policy for four reasons.

First, the statutory default mechanism is the provision of the 45-day notice. The waiver provision is an exception to the default requirement, and obtaining a waiver is not a substantive right as VEC suggests. The statute, as well as the amendments to the rule, allow a Section 248 petitioner to request a waiver, a request that an entitled notice recipient is free to turn down for any reason, or even no reason at all. And, as discussed above, this change is procedural, not substantive. The potential to obtain a waiver of the 45-day notice period is part of the process available to Section 248 petitioners; it is not part of the substance of the review itself. So, while the ease with which a petitioner can seek the waivers may be affected by the proposed amendment, the substantive requirements of Section 248 are unaffected by the rule.

Second, in the Commission's experience, the vast majority of Section 248 cases are filed only after the 45-day notices are issued and the time period has run. It is only on occasion that the Commission sees petitions filed based on waivers of the notice period by regional and local planning commissions and local selectboards.[9] Moreover, larger, more complex cases rarely, if

[8] Act 174, § 15. At that time, the Public Utility Commission was known as the Public Service Board, or "PSB."
[9] In response to VEC's comments, the Commission searched its electronic filing records going back to August 1, 2018, for cases filed by VEC under either Section 248 or 248(j). In that time period the Commission found that VEC was either a petitioner or co-petitioner in a total of five cases, three of which were filed under Section 248(j)

ever, rely on waivers of the 45-day notice. Cases where waivers are obtained tend to be smaller cases. In such cases, the small size of the projects limits the number of adjoining landowners who will need to be provided with notice and from whom waivers may be requested. It is larger projects, such as transmission lines, that implicate higher numbers of adjoining landowners. In the Commission's experience, those types of projects do not rely on 45-day notice waivers.

Third, the Commission does not agree that the provision of 45-day notices causes delay in the filing and review of Section 248 petitions. It is the Commission's opinion that petitioners begin preparing their petitions well in advance of the 45-day notice period so that, while finishing touches may be put in place in the run-up to the filing of a petition, the majority of the work has been done well before the 45-day notices will issue. In fact, much of that work is used to develop the 45-day notice materials. This point is supported by VEC's comments, which strongly suggest that VEC is ready to file its petitions at the time it would otherwise issue a 45-day notice.

Fourth, other amendments to Rule 5.400 will decrease the resources needed to identify and provide notice to the persons and entities identified in the amended rule. Of particular concern to the commenters opposed to the rule amendments are the Natural Resources Board and adjoining landowners. With respect to the Natural Resources Board, Rule 5.402(B) is being amended so that notice is provided electronically using the Commission's electronic filing system, ePUC. With respect to adjoining landowners, as noted above, the Commission has already made changes to the proposed amendments to make it easier for petitioners to identify and provide notice to adjoining landowners in response to concerns expressed by participants earlier in the rule amendment process.

2. The increased costs of providing notice to a greater number of persons and entities.

VEC, REV, Encore, Norwich, and Ampersand all expressed concerns about increased costs resulting from the need to provide 45-day notice to a greater number of persons and entities. These commenters stated that such increased costs will ultimately flow to Vermont's electricity consumers in the form of higher rates based on increased project costs, including increased costs for renewable energy projects.

Response

The Commission again acknowledges that costs will increase as a result of the expanded list of persons and entities entitled to receive 45-day notices under the proposed amendments to this section of Rule 5.400. However, the Commission disagrees that the costs associated with the amendments to this section will be material for three reasons.

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and two of which were filed under Section 248. Of those five cases, four were filed after 45-day notices had been issued and one, a 248(j), was filed based on waivers of the 45-day notice period obtained from the local selectboard and local and regional planning commissions. VEC's role was that of a relatively minor co-petitioner in the one case that relied on the 45-day notice waiver provisions because the case largely focused on transmission facilities owned by Washington Electric Cooperative.

First, as a practical matter, the costs of notifying additional persons or entities are limited because a petitioner is already required to produce the 45-day notices, which for most projects amount to less than 10 pages of material. A petitioner does not need to produce anything new or unique for the new recipients on the list, but only needs to make and mail additional copies in cases where hard copies are needed and the recipient has not consented to receive the material electronically. As proposed, hard copies by first-class mail are required for the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located, adjoining landowners, and the host landowner(s). Petitioners are already required to notify the local and regional planning commissions and local legislative bodies by mail so their presence on the list does not result in any cost increase to petitioners. Additionally, petitioners should not experience any increased costs associated with notifying host landowners because there should already be a pre-existing relationship with the owner of the host parcel. And, while adjoining landowners will still need to be identified and provided notice, the number of adjoining landowners will vary in relation to the size of project (discussed in more detail below) and the Commission has already made changes to the proposed rule to address concerns related to those costs. Specifically, the Commission changed its proposed amendments to allow petitioners to identify adjoining landowners using a variety of on-line databases instead of having to review municipal grand lists at municipal offices. Additionally, delivery of the advance notice can now be made via email with the permission of the intended recipient.

Second, the Commission believes that any cost increase that results from the proposed amendments needs to be viewed in the context of the overall cost of the project that is being reviewed. As discussed above, any true cost increases associated with the amendments to this section are those associated with identifying and notifying adjoining landowners, with those costs tending to be directly proportional to the size of a given project. In the Commission's experience, the costs of Section 248 projects range from hundreds of thousands of dollars to millions of dollars.[10] Thus, the costs of identifying and notifying adjoining landowners that would result from this amendment must be judged against the far more significant costs of an overall project. When viewed in this context, the additional costs are not material and the public good to be realized from early notification of adjoining landowners and the ability to engage them in the process early on outweighs these additional costs.

Third, some commenters have expressed concern over the costs associated with searching for Act 250 permits that might apply to a host parcel for a proposed project. The Commission heard these concerns and modified the proposed amendment so that the 45-day notice must be provided to the Natural Resources Board in all cases, rather than requiring that notice only be provided when an Act 250 permit exists for a host parcel. This change removes the responsibility, and the associated costs, for determining whether a permit applies to a proposed host parcel from the petitioner and places it on the Natural Resources Board. Because service of the 45-day notice on the Natural Resources Board is accomplished using ePUC, this requirement

[10] To obtain a sense of the overall costs of projects under Section 248, the Commission reviewed the project costs for the five VEC cases mentioned in footnote 9, above. In the case in which waivers of the 45-day notice were obtained, and in which VEC played a minor role as co-petitioner, no cost information was submitted by the primary petitioner, Washington Electric Cooperative. Project costs in the other four cases in which VEC was either the petitioner or co-petitioner ranged from a low of approximately $130,000 for a Section 248(j) project to a high of approximately $6.1 million to be shared equally between VEC and Green Mountain Power Corporation. The other two cases involved project costs of approximately $3.1 million and $3.4 million.

creates no additional costs or burdens for petitioners and relieves them of the need to search for and interpret Act 250 permits.

3. The Commission's authority to expand the list of those entitled to notice beyond those identified in 30 V.S.A. § 248(f).

VEC, REV, Encore, Norwich, and Ampersand all contend that the Commission lacks the authority to expand the list of recipients of the 45-day notice beyond the limited entities listed in 30 V.S.A. § 248(f). According to these commenters, the statute establishes limits beyond which the Commission cannot go in requiring the provision of 45-day notices because adding recipients to that list changes the substantive rights of petitioners without any grant of authority for the Commission to do so.

Response

The Commission disagrees with these comments for two reasons. First, Rule 5.400 is a rule of procedure governing the process for filing petitions under 30 V.S.A. § 248. It does not change the substantive rights of any party. Second, the amendments are proposed pursuant to an express statutory grant of authority to the Commission to adopt rules of procedure for contested case proceedings. The cases cited by the commenters all deal with either substantive rules being promulgated without express statutory authority or rules that ran contrary to legislative intent.

As discussed above, the proposed amendments to this section of Rule 5.400 are procedural because they prescribe how a petitioner seeks review under Section 248; they do not create any additional substantive burdens or obligations. The waiver provision in Section 248 does not provide a substantive right to a waiver as the comments suggest. The statute, as well as the amendments to the rule, allow a Section 248 petitioner to request a waiver, a request that an entitled notice recipient is free to turn down for any reason, or even no reason at all. The required provision of the 45-day notice and the opportunity to obtain waivers are part of the process for obtaining Section 248 review; they are not part of the substance of the review itself. None of the substantive criteria of Section 248 is changed in any way. As a result, the proposed amendments regulate only what steps must be followed to obtain a certificate of public good. They do not create any additional duties, rights, or obligations with respect to what a petitioner must substantively demonstrate to obtain a certificate of public good. And, as also discussed above, the procedural amendments are being adopted pursuant to express authority from the Legislature found in 3 V.S.A. § 831(d), 30 V.S.A. § 11(a), and 30 V.S.A. § 2(c).

Further, the Commission believes that these proposed amendments are consistent with the statutory intent of Section 248 and Act 174. Some commenters assert that the Commission cannot expand the list of persons and entities entitled to receive the advance submission beyond the entities listed in Section 248(f), contending that the list found there is exhaustive and exclusive. The Commission disagrees and views the entities listed in Section 248(f) as the starting point of the required notice, to which the Commission can add if the additions are consistent with the goal of Section 248 that projects promote the general good of the State. The Commission views the proposed additions as consistent with reaching a determination on whether a proposed project will promote the general good under Section 248(a). The additional

persons and entities are all likely to have a potential interest in at least some projects to be reviewed under Section 248. Providing them with the advance submission will increase both the possibility that potential issues can be resolved before a petition is filed and the likelihood that the Commission will receive a complete record in support of its decision.

5.403(A)(14) Evidence of Compliance With Interconnection Rule

Summary

Section 5.403(A)(14) in part requires a petitioner to include with a petition a demonstration of compliance with the Commission's rule on interconnection of generation projects to the electric grid. As written, this demonstration must be made through the submission of a copy of a signed interconnection agreement with the interconnecting utility.

Comments

REV is the only commenter on this provision of the amended rule. REV is concerned that the requirement for a signed interconnection agreement will increase the financial risks associated with developing renewable energy projects. REV states that the cost of performing all of the studies needed to obtain an interconnection agreement is significant, and that developers of projects should not have to incur those costs before they obtain a Section 248 certificate of public good.

Response

After consideration of REV's comments, the Commission has stricken the final sentence of the proposed rule section. It should be noted that striking this sentence does not remove the need for a petitioner to provide information that demonstrates compliance with Rule 5.500 and with criterion (b)(3) of Section 248 regarding impacts to electric system stability and reliability. The new edits are shown below in strikeout form:

(14) Information to document compliance with Commission Rule 5.500 regarding interconnection procedures for electric generation facilities, Rule 5.800 regarding aesthetic mitigation, and Rule 5.900 regarding decommissioning. ~~Documentation of compliance with Rule 5.500 must include a signed copy of the applicable interconnection agreement executed pursuant to that rule.~~

5.407 Service and Notice of Petition

Summary

This section of the rule establishes requirements for a petitioner to either serve a complete copy of its petition, or notice of the fact that its petition was filed, on certain individuals and entities. The proposed amendments add to the existing Rule 5.400 the so-called "10-mile towns" to the list of entities entitled to service of a petition for a wind project, and host landowners, the

Natural Resources Board, and interconnecting utilities to the list of those entitled to receive notice that a petition has been filed.

Comments

Comments on this section of the proposed amendments were received from Encore, REV, Norwich, Ampersand, and VEC. These comments generally oppose both the addition of the 10-mile towns to the entities entitled to service of a copy of the petition, and the addition of host landowners, the Natural Resources Board, and interconnecting utilities to the list of those entitled to receive notice that a petition has been filed. VEC and the other commenters are particularly concerned from a policy perspective about the requirement to notify the Natural Resources Board when a complete petition has been filed. According to these commenters, this requirement assumes that the Commission has the authority to adjudicate compliance with existing Act 250 permits applicable to land parcels that are proposed for hosting a Section 248 project. The commenters also point out that Section 248 projects are exempt from Act 250 because they are not included in the definition of "development" under that statute. The commenters also question the Commission's authority to create a requirement for service or notice of a petition beyond the service requirements spelled out in 30 V.S.A. § 248(a)(4)(C), stating that the list is exhaustive and exclusive, leaving no room for the Commission to expand those obligations. The commenters request that the Rule be modified to mirror the requirements of Section 248(a)(4)(C).

Response

The Commission disagrees with these comments and addresses each individually, below.

1. Notice to the Natural Resources Board.

The commenters' policy concerns are based on the mistaken presumption that the Commission intends to adjudicate compliance with existing Act 250 permits when a Section 248 project is proposed to be located on land covered by an existing permit. This is not accurate.

The Commission is not seeking to adjudicate either a proposed Section 248 project's or a host landowner's compliance with an existing Act 250 permit when a Section 248 project is proposed to be located on a land parcel subject to such a permit. Section 248 projects are expressly excluded from the definition of "development" under Act 250 and therefore do not undergo Act 250 review or need to obtain an Act 250 permit.[11] However, when a host parcel is subject to an Act 250 permit, the Commission believes it is sound policy for the Natural Resources Board to be made aware of a Section 248 project proposed for that parcel. If questions arise about the underlying landowner's compliance with a permit from the proposed new use, the Natural Resources Board and the landowner will have an opportunity to work through those issues before that new use is implemented. Additionally, in past cases involving Act 250 permits, the petitioner and the Natural Resources Board have been able to agree on solutions to address any concerns about potential natural resource impacts related to an existing

[11] 10 V.S.A. § 6001(3)(D)(ii).

Act 250 permit. This does not create additional obligations on Section 248 petitioners, nor does it require them to be permittees or co-permittees for any additional Act 250 permit or permit amendment that may be required of the underlying landowner. What it does is create an opportunity to avoid potential future enforcement actions at the Natural Resources Board against the underlying landowner that could indirectly impact the construction and operation of a Section 248 project, an outcome all involved parties should seek to avoid, and provide support for a Commission finding of no undue adverse impacts on natural resources.

On a more specific level, the ultimate standard that must be met in a Section 248 review is that a proposed project promote the general good of the State.[12] That finding can only be made after the Commission finds that a series of substantive criteria set forth in 30 V.S.A. § 248(b) have been met. Many of those criteria have been imported from Act 250 and are intended to protect the natural environment from undue adverse impacts from a proposed project. In cases where an existing Act 250 permit applies to a proposed host parcel, information about what natural resources on that parcel were intended to be protected through a permit issued by another State agency is relevant to the Commission's determination regarding potential impacts to natural resources under several Section 248 criteria. This type of information is, in fact, directly on point given the incorporation of many Act 250 criteria into Section 248 review. And, as discussed above, providing notice to the Natural Resources Board that a Section 248 petition has been filed creates no additional resource expenditure for petitioners because provision of the notice is achieved electronically using ePUC at no additional cost to petitioners. Thus, the benefits of obtaining relevant information for the Commission to make its decision outweigh any perceived burden claimed by the commenters.

2. Expansion of the list of person and entities entitled to service or notice of petitions.

VEC and the other commenters contend that the Commission cannot expand the list of persons or entities entitled to receive service or notice of a Section 248 petition beyond the service requirements set forth in Section 248(a)(4)(C), asserting that the requirements of that section are exclusive and exhaustive. As an initial matter, the Commission notes that the comments appear to conflate the requirement of service of a complete copy of the petition with the requirement of providing a notice that a petition has been filed. Thus, even if the commenters were correct that the list in Section 248(a)(4)(C) is exclusive and exhaustive, that section only addresses who must receive a complete copy of a filed petition. It is silent as to the provision of notice that a petition has been filed. Therefore, even if that list could be read as exclusive and exhaustive, the only change that would need to be made to the proposed amendments is removal of the so-called "10-mile towns" from the list of those who must receive a copy of a petition for a wind generation project.[13] Because the remaining amendments only require notice that a petition has been filed, not service of a complete copy of the petition, they are not subject to the alleged limitations of Section 248(a)(4)(C) urged by the commenters.

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[12] 30 V.S.A. § 248(a)(2).

[13] Even this interpretation would run contrary to legislative intent given that many 10-mile towns would be entitled to automatic party status under 30 V.S.A. § 248a(4)(H). It would be an odd result for the Legislature to create a right to intervene for these towns on the one hand yet prohibit a requirement for service of a petition on those same towns on the other.

As a general matter, the Commission disagrees with the commenters for the same reasons discussed above regarding the Commission's authority to expand the list of persons and entities entitled to receive the 45-day advance submission. This rule amendment is entirely procedural in nature and is therefore expressly authorized by statute and is furthermore consistent with the overall public good intent of Section 248.

Additionally, the commenters fail to address that the current rule already requires notice of a petition to persons and entities not listed in Section 248(a)(4)(C). Specifically, the current rule requires a notice of petition to adjoining landowners[14] and, in the case of wind projects, to the so-called "10-mile towns."[15] These requirements have already been voted upon favorably by the Legislative Committee on Administrative Rules as within the authority of the Commission and consistent with legislative intent. The addition of host landowners and the Natural Resources Board to this already approved list is a further improvement for ensuring that those persons and entities with a potential interest in a given proceeding are informed that a petition has been filed. As noted earlier in this document, notice to the Natural Resources Board imposes no new expenses on a petitioner, and petitioners presumably have preexisting relationships with their host landowners, again ensuring no additional material burden on petitioners.

5.409 Intervention by Certain Persons and Entities

Summary

This section of the amended rule identifies 10 persons or entities that may intervene in a Section 248 proceeding by filing a notice of intervention. They are:

1. The Agency of Agriculture, Food and Markets.
2. The municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located.
3. The regional planning commission of an adjacent region if the distance between the project's nearest component and the boundary of that adjacent region is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater.
4. The legislative body and planning commission of an adjacent municipality if the distance between the project's nearest component and the boundary of that adjacent municipality is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater.
5. The Natural Resources Board if the project site is subject to an Act 250 permit.
6. The Division for Historic Preservation.
7. Any interconnecting utility.
8. Adjoining Landowners.
9. The host landowner(s).
10. In the case of a wind generation project, all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine on one or more of the

[14] Commission Rule 5.402(B).
[15] Commission Rule 5.403(B)(1).

following criteria: (b)(1) orderly development; (b)(4) economic benefit; and (b)(5) aesthetics, transportation, historic sites, and public investments.

Section 5.409 further requires that any person or entity identified in numbers 5 through 10, above, must include in its intervention notice a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition. Lastly, the section expressly provides that interventions made under that section are subject to the provisions of Commission Rule 2.209(C). Commission Rule 2.209(C) allows the Commission to restrict any party's participation, require a party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, and may otherwise limit a party's participation, "all as the interests of justice and economy of adjudication require."

Comments

VTCE supports this section of the amended rule. According to VTCE, allowing the intervention of adjoining landowners through the simplified process of a notice filing is beneficial because it avoids the otherwise cumbersome process of having to file a motion, wait for responses, and then possibly having to file a reply to any responses. VTCE states that the traditional intervention process can result in adjoining landowners not having a seat at the table for scheduling conferences and sometimes missing out on the opportunity to issue early-round discovery requests.

Encore, REV, Norwich, Ampersand, and VEC oppose intervention by notice by the Natural Resources Board and adjoining landowners. According to the commenters, allowing these entities to intervene by notice in Section 248 proceedings will make obtaining a Section 248 certificate of public good more difficult, expensive, time consuming, and unpredictable. The commenters state that all persons and entities should be required to follow a full motion process for intervention in Section 248 proceedings, except those identified in Section 248(1)(4)(E)-(I). Given the extent of the comments, the Commission individually addresses each concern raised for both the Natural Resources Board and adjoining landowners.

1. The Natural Resources Board

VEC and the commenters raise three major points in opposition to the proposed amendment regarding the Natural Resources Board. Each is addressed individually below.

Comments

First, the commenters assert that providing intervention by notice to the Natural Resources Board conflates Act 250 with Section 248 review and creates an additional burden for petitioners because they will need to locate and interpret Act 250 permits. They also assert that intervention by the NRB could lead to parties submitting testimony about Act 250 permits applicable to a host parcel and assert that this is not the best use of resources and that any benefits are outweighed by the resulting burdens.

Response

The proposal to allow the Natural Resources Board to intervene by notice does not conflate Act 250 with Section 248 review, nor does it create any unnecessary burdens on petitioners. As an initial matter, the Commission already responded to earlier comments while developing the proposed amendments by placing the burden for locating applicable Act 250 permits on the Natural Resources Board. Petitioners do not have to search for or interpret any permits. Under the proposed amendments, the Natural Resources Board must locate and determine whether a permit applies to a host parcel before it can use the proposed process. If there is any question about a permit's applicability, the burden is on the Natural Resources Board to demonstrate its applicability. Additionally, even if an existing permit applies to a proposed host parcel, the Commission fully expects that the Natural Resources Board will review the Section 248 petition to determine whether it has any concerns with the proposal at all. The Commission does not anticipate that a state agency will intervene in a process simply because it can, but will do so only when it believes it is necessary.

Further, allowing the Natural Resources Board to intervene by notice when an Act 250 permit applies to a parcel of land that is proposed to host a Section 248 project is expected to reduce the burdens associated with the more formal intervention-by-motion process for both the Natural Resources Board and petitioners. Commission precedent in this area makes two things clear. First, when there is a natural resource that is specifically protected by an existing Act 250 permit that will be impacted by a proposed Section 248 project, the Natural Resources Board has an interest in the Section 248 proceeding that supports intervention on that specific issue. To require formal motions to intervene and their attendant additional process will result in added burdens to all Section 248 parties, not reduced burdens. Second, granting the Natural Resources Board party status does not mean that it will be allowed to use Section 248 review as a tool of Act 250 compliance. What intervention allows is for the Commission to hear relevant evidence on potential impacts on a protected natural resource so that it can make a fully informed decision on whether there will be undue adverse impacts on that resource as it is required to do under Section 248. The Commission disagrees that the benefits realized from presentation and consideration of relevant evidence on impacts on the natural environment are outweighed by the burdens claimed by the commenters.

Comments

The commenters' second objection is based on statute. The commenters assert that because the Natural Resources Board is not granted automatic party status in Section 248, as some other persons and entities are, the Commission is without authority to allow the Natural Resources Board to intervene by notice when an Act 250 permit applies to a proposed host parcel. VEC and the other commenters also state that the Legislature could not have intended for the Natural Resources Board to participate in Section 248 proceedings because it has no billback authority under 30 V.S.A. §§ 20 and 21. Lastly, VEC seems to suggest that the Natural Resources Board should actually be prohibited from participating in Section 248 proceedings because it does not have specific legislative authorization to do so.[16]

[16] "Further, under 30 V.S.A. §§ 20 and 21, the NRB has no bill-back authority for Section 248 proceedings, again demonstrating that the Legislature ***did not intend for the NRB to participate in Section 248 proceedings*** because

Response

These comments assert that the Commission is without authority to allow the National Resources Board intervention by notice because it has not been granted automatic party status by Section 248. This ignores the fact that intervention is a procedural matter, not a substantive matter, and that the Commission has express statutory authority to adopt rules of procedure in contested case matters. The commenters' assertions that intervention is a substantive matter are incorrect. Both the Vermont Rules of Civil Procedure, promulgated by the Vermont Supreme Court, and the Federal Rules of Civil Procedure, promulgated by the United States Supreme Court, treat intervention as a procedural matter.[17] Additionally, while rules of intervention govern who may participate as a party in a proceeding, they do not change the substance of what a petitioner must demonstrate in a proceeding to obtain the relief being sought.[18]

These comments also ignore Vermont Supreme Court precedent that establishes broad discretion for the Commission to determine whom it wishes to hear from in Section 248 cases, beyond that which Vermont courts have in most matters within their jurisdiction. In *In re Petition of Green Mountain Power Corp.*, the Vermont Supreme Court determined that intervention requests in Section 248 cases are examined under the Commission's rules, which the Commission must apply "in pursuit of its mandate under 30 V.S.A. § 248 to ensure that the purchase and construction of new gas and electric facilities serve the general good of the State." In doing so, it is not presiding over a case or controversy but is "engaged in a legislative, policy-making process" that requires it to use its "informed judgment." In performing this task, the Commission therefore has the "flexibility to decide whose presence as a party would productively inform its policy-making."[19] The proposed amendments are consistent with this reasoning because the Commission has determined that it is appropriate for it to hear from the Natural Resources Board in those limited cases where a Section 248 project is proposed to be located on a parcel of land that is subject to an existing Act 250 permit. While the permit is not controlling on the Commission's decision, hearing from the Natural Resources Board about the permit, the resources it was meant to protect, and the potential impacts on those resources from a proposed project will ensure that the Commission is using its "informed judgment" "in pursuit of its mandate under 30 V.S.A. § 248 to ensure that the purchase and construction of new gas and electric facilities serve the general good of the State."

Lastly, on their face these comments appear to suggest that no state agency may participate as a party in a Section 248 proceeding, as either an automatic party or otherwise, unless that agency has been granted billback authority under 30 V.S.A. §§ 20 and 21, has been statutorily granted party status, or otherwise has been specifically granted legislative authority to appear in Section 248 proceedings. If that is the intent of the comments, the Commission disagrees if for no other reason than Section 248(a)(4)(C) requires that all Section 248 petitions

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Act 250 permit compliance has no role in Section 248 proceedings. ***In fact, no statute authorizes the NRB to participate in Section 248 proceedings.***" (emphasis added).

[17] *See* V.R.C.P. 24 and F.R.C.P. 24.

[18] *See Shady Grove Orthopedic Associates, P.A. v. Allstate Insurance Co.*, 559 U.S. 393, 407 (2010) (A rule is procedural if it governs the manner and means by which a litigant's rights are enforced. It is substantive if it alters the rules of decision by which a court will determine those rights.).

[19] *In re Petition of Green Mountain Power Corp.*, 2018 VT 97, ¶ 23.

be served on the Attorney General of the State of Vermont. The Attorney General provides legal representation to many Vermont agencies that do not have specific legislative authority to appear in Section 248 cases, yet Section 248 requires that Section 248 petitions be served on the Attorney General.

Comments

The commenters' third objection presumes that allowing the Natural Resources Board to appear as a party by notice in Section 248 proceedings when a proposed project will be sited on land that is covered by an existing Act 250 permit means that Section 248 proceedings will become an Act 250 enforcement vehicle. According to the commenters, neither the statutes addressing this issue nor Vermont Supreme Court precedent permit such an outcome.

Response

These comments again incorrectly presume that allowing the Natural Resources Board to appear as a party in Section 248 proceedings that implicate existing Act 250 permits means that the Section 248 review would be converted into an Act 250 enforcement action. That is simply not the case. Rather, allowing the Natural Resources Board to appear in such proceedings creates an opportunity for the Commission to hear relevant evidence on potential impacts on natural resources that are to be protected from undue impacts under Section 248 so that the Commission can fulfill its statutory mandate to reach a determination on whether a project promotes the general good. The Commission is well aware that Section 248 projects are not required to obtain Act 250 permits, as they are excluded from the definition of "development" under that statute. However, Section 248 petitioners are required to demonstrate that their proposed projects will not have undue adverse impacts on a variety of natural resources. Understanding a project's potential impacts on resources that have already been identified for protection by another state agency serves the Commission in assessing whether petitioners have met the required showing. If there are compliance concerns between the Natural Resources Board and the owner of host lands subject to an Act 250 permit, the Natural Resources Board already has discretion to seek compliance according to its own procedures outside of the Section 248 process. The Commission would not entertain such an action because it is outside of the Commission's jurisdiction. The appearance of the Natural Resources Board as a party in a Section 248 proceeding does not, and cannot, change this construct.

Additionally, the Vermont Supreme Court case that VEC quotes from extensively in its comments is not in conflict with the proposed amendments. That case addressed two questions: (1) under what circumstances does a utility need to obtain an Act 250 permit for the construction of a distribution line; and (2) whether a utility that is constructing a project on land that is owned by a third party that is subject to an Act 250 permit needs to be a co-permittee for an amendment to that permit if the utility project would constitute a material change to the originally permitted use.

The first question addressed by the Court is not applicable to Rule 5.400 or the proposed amendments to the rule. Electric distribution lines, which were the subject of the case, do not

fall under Section 248 and therefore are not exempt from Act 250.[20] In other words, the basic fact pattern of the case is inapplicable to Section 248, Rule 5.400, and the proposed amendments.

The second question addressed by the Court, whether a utility needs to be a co-permittee for an amendment to an Act 250 permit held by a third party, is also not implicated by the proposed amendments. The Court determined that utilities do not need to be co-permittees to amendments to underlying Act 250 permits held by a third party when a proposed utility project constitutes a material change to the originally permitted use. However, the proposed amendments are consistent with that holding because they do not in any way impose such a responsibility on Section 248 petitioners. All the proposed amendments do is provide a simplified process for the Natural Resources Board to intervene as a party in Section 248 cases where pre-existing Act 250 permits apply to a parcel of land that is proposed to host a Section 248 project. The amendments do not, nor can they be reasonably be read to, conflict with the case cited by VEC in its comments. The existence of the Natural Resources Board as party to Section 248 proceedings quite simply cannot change the substantive law of Act 250.

2. Adjoining Landowners

VEC and the commenters raise two major points in opposition to the proposed amendment regarding notice of intervention by adjoining landowners and make recommendations for modifying the pending amendments. Each of these topics is addressed individually below.

Comments

The commenters' first objection is that the amendment eliminates all intervention thresholds for adjoining landowners, thereby opening the door for adjoining landowners to raise issues outside the scope of Section 248 review, such as real property interests and property values, resulting in delays, disruptions, and increased expense.

Response

The commenters' concerns about the scope of Section 248 proceedings being expanded beyond their statutory boundaries are unfounded and ignore years of Commission precedent specifically addressing the topics of concern raised by the comments. The Commission has consistently held that individual property values are not relevant to Section 248 proceedings and has disallowed their consideration when reviewing project impacts.[21] For the commenters'

[20] Projects that are subject to review under Section 248 are expressly exempt from review under Act 250. Because distribution lines are not subject to review under Section 248, they do not qualify for the statutory exemption from Act 250.

[21] *See, e.g. Petition of ER Danyow Road Solar*, Case No. 22-3427-PET, Order of 10/3/22 at 2 ("[T]he Commission has long held that concerns over individual property values are not within the scope of a Section 248 proceeding."); *Petition of Vermont Real Estate Holdings I*, Case No. 23-1777-PET, Order of 8/25/23 at 7 ("With respect to property values, concerns over individual property values fall outside the scope of a Section 248 proceeding.); *Joint Petition of Green Mountain Power Corporation, Vermont Electric Cooperative, Inc., and Vermont Electric Power Company, Inc.*, Docket 7628, Order of 9/3/10 at 3 ("This proceeding will not address the impact of the proposed project on individual property values.").

concerns to have any basis would require the Commission to ignore years of its own precedent. Nothing in the amendment could support such an outcome, nor do the amendments in any way change the substantive requirements of Section 248, as suggested by the comments.

Comments

The commenters' second objection asserts that the amendment will remove the benefits of the existing intervention process because adjoining landowners will no longer need to identify their interests, requiring petitioners to file requests with the Commission to force adjoining landowners to identify their concerns and explain how they relate to the Section 248 process. According to the commenters, the Commission will need to begin a Section 248 review without knowing whether an adjoining landowner's concerns are even jurisdictional to Section 248. The commenters state that the current intervention process is valuable because it requires adjoining landowners to specifically identify their concerns and can help start a dialogue between petitioners and landowners that may resolve or narrow issues for consideration in the case. Some commenters also believe that the amendment will allow adjoining landowners to intervene on all issues considered under Section 248, instead of just those specific to their interests, resulting in unnecessary delay and expense.

Response

The commenters' concerns overlook the plain language of the amendments to Rule 5.409. While the amendments allow adjoining landowners to obtain party status by filing a notice of intervention, rather than a motion, they also require adjoining landowners to include in their notice of intervention "a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition." This language specifically addresses the commenters' concerns over adjoining landowners attempting to raise issues outside the scope of Section 248 review. It also serves the purpose of putting petitioners on notice of what an adjoining landowner's specific concerns are so that the discussions alluded to in VEC's comments can begin.[22] The amendments to Rule 5.409 also make clear that interventions made using the notice provisions of that rule section are subject to the provisions of Commission Rule 2.209(C), which provides the Commission with the ability to "restrict that party's participation, may require that party to join with other parties with respect to appearance by counsel, presentation of evidence, or other matters, and may otherwise limit that party's participation, all as the interests of justice and economy of adjudication require." If a petitioner, or other party, believes that an adjoining landowner's intervention includes issues for which that person has no legitimate interest, they can ask the Commission to exercise its authority to limit the intervenor's participation under Rule 2.209(C).

[22] The Commission notes that the amendment requiring petitioners to provide adjoining landowners with advance notice of their intent to file a Section 248 petition, a change the commenters oppose, is geared towards having those discussions start at an even earlier opportunity.

Comments

The commenters seek two potential changes to the proposed amendments to Rule 5.409. First the commenters suggest that the amendments be changed to reflect the intervention process and standard embodied under the Commission's former Rule 2.200. The second recommendation is that the Commission adopt the intervention standard used for adjoining landowners in Act 250 proceedings.

Response

Both of the proposed changes would increase the burden for adjoining landowners and the Natural Resources Board to intervene in Section 248 proceedings, creating a higher standard for achieving party status in Section 248 proceedings than in any other Commission proceeding. The Commission's rule on intervention, Rule 2.209, was recently amended with the approval of the Legislative Committee on Administrative Rules. That amendment brought the Commission's intervention standard in line with the intervention standard used in civil cases in the courts of Vermont. The proposals submitted by VEC and supported by the other commenters would effectively reimpose the older, now superseded Rule 2.209 standard specifically for interventions in Section 248 cases. This outcome would be inconsistent with the recently approved amendments to Commission Rule 2.000 and the Legislature's intent expressed in Act 174 to increase public access to Section 248 proceedings. It also runs counter to the Vermont Supreme Court's decision in *In re Petition of Green Mountain Power Corp.* where the Court determined that in Section 248 cases the Commission is not presiding over a case or controversy but is "engaged in a legislative, policy-making process" that requires it to use its "informed judgment." In performing this task, the Commission therefore has the "flexibility to decide whose presence as a party would productively inform its policy-making."[23] In light of the legislative policy to ensure public access to Section 248 proceedings and the legislative, policy-making character of Section 248 proceedings, it would not be appropriate to make intervention in Section 248 proceedings more difficult than not only intervention in other Commission cases, but also intervention in civil cases generally in the courts of Vermont.

Lastly, the comments seem to suggest that reducing the formality-based burdens of intervention for adjoining landowners will result in a sudden and substantial increase in the number of adjoining landowners in Section 248 cases. The Commission disagrees. Over the years the Commission has received comments that participation in Section 248 cases can be difficult and time consuming for adjoining landowners, especially those not represented by counsel. In the Commission's experience, only those landowners with true concerns about proposed projects seek party status in Section 248 proceedings. There is no basis to conclude that allowing intervention by notice will cause landowners to appear as parties who would not otherwise seek to intervene under the current motion-based process. What it will allow is for those adjoining landowners with real concerns about a proposed project to obtain party status through a simpler, less time-consuming process -- one that addresses many of the commenters' concerns as described above by providing appropriate notice of the issues the intervenors have and by placing their interventions within the Commission's supervisory authority in Commission Rule 2.209(C).

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[23] *In re Petition of Green Mountain Power Corp.*, 2018 VT 97, ¶ 23.

III. Adjoining Landowner Identity

REV requested that the Commission exclude from the definition of Adjoining Landowner owners of land adjacent to distribution line upgrades that are required to serve a proposed generation or storage project, but that are outside of the tract of land on which the proposed facility would be located.

The Commission does not believe that the requested exclusion is consistent with the plain language of Section 248. Section 248(a)(4)(J) requires petitioners to include as part of any Section 248 petition "information that delineates . . . the full limits of physical disturbance due to the construction and operation of the facility ***and related infrastructure, including areas disturbed due to the creation or modification of access roads and utility lines*** and the clearing or management of vegetation . . . and . . . all impacts of the facility's construction and operation under subdivision (b)(5) of this section, ***including impacts due to the creation or modification of access roads and utility lines*** and the clearing or management of vegetation." (Emphasis added.).

If the Legislature has deemed the impacts from utility line upgrades or modifications to be significant enough to require information on their impacts for the Commission to make its decision under Section 248, then landowners adjacent to those impacts should be included in the definition of "Adjoining Landowner."

IV. The Commission's Economic Impact Analysis

Comments

REV and VEC each specifically questioned the sufficiency of the Commission's Economic Impact Analysis, asserting that the analysis does not properly recognize material cost increases that would result from the amendments. These commenters cite to the increased number of parties in Section 248 cases, the increased burdens associated with obtaining waivers of the 45-day advance notice requirement, and the increased number of persons and entities entitled to receive that notice, as sources of increased costs not recognized by the economic impact statement. According to VEC, all stakeholder comments support the conclusion that the proposed amendments would increase costs for ratepayers and Section 248 petitioners and delay proceedings, and that the burdens of the proposed amendments do not outweigh the benefits they would provide. The remaining commenters opposed to the amendments all expressed a generalized concern that the amendments would result in increased costs and a less efficient and predictable Section 248 process.

Response

After consideration of these comments, the Commission is amending its Brief Summary of Economic Impact (paragraph 18 of Final Proposed Filing – Coversheet) and its Economic Impact Analysis to recognize that there will be increased costs associated with the provision of the 45-day advance notice and the notice of petition filing to additional persons and entities than what is required by the current rule, and to place those costs into context. However, as discussed

above, any cost increases associated with these requirements – effectively, the increased costs of additional copies and mailing – are not material in the context of developing a Section 248 project, and in the case of utilities, their overall cost of service.

With respect to increased costs associated with the potential inability to obtain waivers of the 45-day notice requirement from the newly identified recipients, the Commission does not believe that those costs will be material, nor does it believe an inability to obtain waivers from each of the new persons or entities entitled to receive the notices will result in any material delays. As noted above, issuing the 45-day pre-filing notice is the default statutory requirement and the waiver process is rarely used. When it is used, it is used only in smaller, non-controversial cases. Those cases, by definition, tend to have fewer adjoining landowners so the costs of seeking a waiver of the notice requirement will not be material. And, if recipients of the waiver request fail to respond, the petitioner need only provide notice to those entitled to receive it and wait 45 days before filing a petition. The Commission does not believe this constitutes a material delay, especially because utilities and developers of Section 248 projects begin the process of planning projects, performing necessary studies, and developing case materials for filing well in advance of an expected petition date.

The Commission also disagrees with comments that assert that the amendments will result in a significant increase in interventions, and therefore costs, in Section 248 cases. This assertion appears to be based on the mistaken premise that a significant number of people who would not seek to intervene under the current rules (governed by the recently relaxed intervention standard of Commission Rule 2.209) will seek to intervene under the notice provisions provided in the amendments. The Commission does not believe that this will occur. Full participation in a Section 248 case by adjoining landowners and others requires a significant commitment of time and resources beyond that which is required to seek intervention. A prospective intervenor, whether it be the Natural Resources Board or an adjoining landowner, will still have to assess the level of their interest in the case against the time and resource commitment required to participate after they have intervened. The Commission believes it is that assessment, along with the level of interest a landowner has in a particular project, that drives decisions on whether to intervene, not the level of formality of the intervention process itself. Adjoining landowners already receive a notice that a Section 248 petition has been filed. They also receive from the Clerk of the Commission a packet of materials informing them of their right to seek intervention, along with how to do so, and to attend the initial scheduling conference. In spite of this, the majority of Section 248 cases do not see any interventions because most cases do not give rise to concerns by adjoining landowners.[24] There is no reason to think that these cases will see an increase in interventions by virtue of a simplified intervention process. Instead, interventions tend to occur in larger, more controversial cases. Given the size and complexity of those types of cases, any increase in costs that might result from any small increase in interventions would not be material relative to the overall cost of the proposed project.

Therefore, the Commission believes that the amendments are consistent with legislative intent as expressed in Act 174, with benefits that will outweigh any cost increases. Additionally,

[24] The Commission again reviewed the five VEC cases mentioned in footnotes 5 and 9, above. No adjoining landowners sought intervention in any of those cases.

as discussed, the notice of intervention process still requires the filing of a completed form that identifies the specific issues that the intervenor wishes to participate in and an explanation of how those interests would be affected by a decision under Section 248. In other words, intervenors will not be permitted to raise issues that exist outside the scope of a Section 248 review as defined by that statute, and the Commission retains its authority to limit intervenor participation to specific issues and require intervenors to coordinate the presentation of their cases to maintain efficiency in Section 248 proceedings.

August 15th, 2023

Ms. Holly Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05602

Re: Comments on Proposed Rule 5.400 (Case No. 21-0861-RULE)

Dear Clerk Anderson,

After reviewing proposed Rule 5.400 issued by the Commission on June 29th, Ampersand Gilman Site Optimization, LLC ("AGSO") is concerned that the changes in the proposed Rule will make Section 248 permitting for renewable energy and energy storage projects substantially more unpredictable and time-consuming. This will make renewable energy more expensive for Vermont utilities and ratepayers and slow the state's efforts to combat the climate crisis.

AGSO shares the concerns raised by Renewable Energy Vermont, Vermont Electric Coop, and the Vermont Electric Power Company during the August 8th public hearing that changes to the notification and intervention requirements will make permitting significantly more expensive without providing a meaningful public benefit. In our experience, the existing process for intervention provides a fair opportunity for adjoining landowners and others to register specific concerns about a proposed project and participate as a party in a proceeding when determined appropriate by the Commission. By granting adjoining landowners party status simply by filing a notice of intervention without any Commission review and without any restrictions, the proposed Rule will inevitably increase the time and cost of the permitting process. The burden of responding to a single landowner raising objections to project aesthetics, for example, is already substantial but the process is also one that we are familiar with and can plan for. Granting landowners the ability to raise objections and undertake discovery on all Section 248 criteria would make the process exponentially less predictable and more expensive.

Additionally, granting the Natural Resources Board the ability to gain party status with a notice of intervention when a project site is subject to an Act 250 permit raises serious concerns about the separation of the Section 248 and Act 250 permitting processes. Section 248 projects are explicitly excluded from the definition of development in 10 V.S.A. § 6001(D)(ii). If projects must adjudicate whether and what Act 250 permits apply to a proposed site, it will seriously undermine the Section 248 process and many projects that would currently be permitted will likely have to be abandoned.

Overall, we believe that these changes will have a significant adverse impact on the economics of renewable energy and energy storage projects subject to Section 248 and we strongly urge the Commission to reconsider these changes.

AGSO owns multiple parcels in Gilman, VT, where renewable energy projects (including solar plus storage projects) can become viable in the near future.

August 15th, 2023

Ms. Holly Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05602

Re: Comments on Proposed Rule 5.400 (Case No. 21-0861-RULE)

Dear Clerk Anderson,

After reviewing proposed Rule 5.400 issued by the Commission on June 29th, Encore Renewable Energy is seriously concerned that the changes in the proposed Rule will make Section 248 permitting for renewable energy and energy storage projects substantially more unpredictable and time-consuming. This will make renewable energy more expensive for Vermont utilities and ratepayers and slow the state's efforts to combat the climate crisis.

Encore Renewable Energy shares the concerns raised by Renewable Energy Vermont, Vermont Electric Coop, and the Vermont Electric Power Company during the August 8th public hearing that changes to the notification and intervention requirements will make permitting significantly more expensive without providing a meaningful public benefit. In our experience, the existing process for intervention provides a fair opportunity for adjoining landowners and others to register specific concerns about a proposed project and participate as a party in a proceeding when determined appropriate by the Commission. By granting adjoining landowners party status simply by filing a notice of intervention without any Commission review and without any restrictions, the proposed Rule will inevitably increase the time and cost of the permitting process. The burden of responding to a single landowner raising objections to project aesthetics, for example, is already substantial but the process is also one that we are familiar with and can plan for. Granting landowners the ability to raise objections and undertake discovery on all Section 248 criteria would make the process exponentially less predictable and more expensive.

Additionally, granting the Natural Resources Board the ability to gain party status with a notice of intervention when a project site is subject to an Act 250 permit raises serious concerns about the separation of the Section 248 and Act 250 permitting processes. Section 248 projects are explicitly excluded from the definition of development in 10 V.S.A. § 6001(D)(ii). If projects must adjudicate whether and what Act 250 permits apply to a proposed site, it will seriously undermine the Section 248 process and many projects that would currently be permitted will likely have to be abandoned.

Overall, we believe that these changes will have a significant adverse impact on the economics of renewable energy and energy storage projects subject to Section 248 and we strongly urge the Commission to reconsider these changes.

Encore Renewable Energy is a Burlington, Vermont-based leader in community and utility-scale renewable energy development with a proven track record in solar development from concept to completion. Since 2007 our team has successfully developed and deployed over 65 MW of solar across the Green Mountain State. Our extensive experience navigating the permitting process for solar and energy storage development underscores our concerns around this proposed rule change and how it will jeopardize the clean energy transition for Vermonters.

Thank you for the opportunity to share our concerns around this proposed rule change.

Sincerely,

Jake Clark
VP of Development
Encore Renewable Energy

Lauren Glickman
VP of Policy and Communications
Encore Renewable Energy

NORWICH SOLAR™

GENERATING A BRIGHTER ENERGY FUTURE

August 15, 2023

Holly R. Anderson, Clerk of the Commission
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05620-2701

Re: Norwich Solar Comments on Proposed Rule 5.400 (Case No. 21-0861-RULE).

Dear Clerk Anderson:

After reviewing the Vermont Public Utility Commission's ("Commission") proposed changes to Rule 5.400 (the "Rule") released on June 29, 2023, Norwich Solar is seriously concerned that the changes in the proposed Rule will make Section 248 permitting for renewable energy and energy storage projects substantially more unpredictable and time-consuming. This will make renewable energy more expensive for Vermont utilities and ratepayers and slow the state's efforts to combat the climate crisis.

Norwich Solar shares the concerns raised by Renewable Energy Vermont, Vermont Electric Coop, and the Vermont Electric Power Company during the August 8, 2023 public hearing, including that changes to the notification and intervention requirements will make permitting significantly more expensive without providing a meaningful public benefit. In our experience, the existing process for intervention provides a fair opportunity for adjoining landowners and others to register specific concerns about a proposed project and participate as a party in a proceeding when determined appropriate by the Commission. By granting adjoining landowners party status simply by filing a notice of intervention without any Commission review and without any restrictions, the proposed Rule will inevitably increase the time and cost of the permitting process. The burden of responding to a single landowner raising objections to project aesthetics, for example, is already substantial but the process is also one that we are familiar with and can plan for. Granting landowners the ability to raise objections and undertake discovery on all Section 248 criteria would make the process exponentially less predictable and more expensive.

Additionally, granting the Natural Resources Board the ability to gain party status with a notice of intervention when a project site is subject to an Act 250 permit raises serious concerns about the separation of the Section 248 and Act 250 permitting processes. Section 248 projects are explicitly excluded from the definition of development in 10 V.S.A. § 6001(D)(ii). If projects must adjudicate whether and what Act 250 permits apply to a proposed site, it will seriously

undermine the Section 248 process and many projects that would currently be permitted will likely have to be abandoned.

Overall, we believe that these changes will have a significant adverse impact on the economics of renewable energy and energy storage projects subject to Section 248 and we strongly urge the Commission to reconsider these changes.

Norwich Solar is a public benefit corporation dedicated to advancing the integration and deployment of affordable solar power for municipalities, community service institutions, schools, businesses, and community solar residential clients in Vermont, New Hampshire, and Maine. As a Vermont-based small business, Norwich Solar and its clients across Vermont will be adversely impacted by the Commission's proposed changes to Rule 5.400. Norwich Solar requests the Commission to leave the current version of the Rule in place.

Respectfully Submitted,

Norwich Solar

15 Railroad Row, White River Junction, VT 05001 | (802) 281-3213 | info@norwichsolar.com

August 15th, 2023

Ms. Holly Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05602

Re: PUC Proposed Rule 5.400 Revisions (Case No. 21-0861-RULE)

Dear Clerk Anderson,

Renewable Energy Vermont (REV) is grateful for the opportunity to provide comments to the Commission regarding the proposed changes to Rule 5.400 released on June 29th, 2023. Renewable generation, storage, transmission, and distribution projects governed by Rule 5.400 are precisely the types of investments that are urgently needed in order to reduce the harm that Vermont residents will suffer as a result of the climate crisis. The projects permitted through Rule 5.400 stand both to reduce our state's emissions of greenhouse gases and to make our state more resilient to the extreme weather events that are becoming increasingly frequent in our warming world. As such it is imperative the changes to Rule 5.400 create a more predictable, timely, and cost-effective, Section 248 permitting process.

Unfortunately, while a subset of the proposed changes to the Rule works in this direction – e.g. by clarifying the requirements for completeness in Section 248 petitions and updating filing mechanisms – on balance REV members believe that the proposed changes will result in a process that is less predictable, slower, and more expensive for all involved.

First, REV is very concerned about the provisions that require a signed Interconnection Agreement as part of the Section 248 petition (5.403(A)(14)). The process of completing all of the studies required to obtain an interconnection agreement can be quite costly. Requiring the petitioner to have expended the money required to obtain an interconnection agreement prior to undertaking the Section 248 permit petition greatly increases the financial risk associated with proposing a renewable energy project. Especially in an environment where renewable development is becoming more controversial and the permitting process less certain, this would inject a level of financial risk that could severely hinder renewable development in Vermont.

Second, REV also sees the expansion of the list of entities that must be notified during the 45-day advanced notice period (5.402) and when Section 248 petition materials are filed (5.407) and as well as that are entitled to party status simply by filing a Notice of Intervention Form (5.409) as major new sources of unpredictability and expense in the permitting process. While the Commission's filing with the Secretary of State expresses that these changes "could increase the number of parties in a case" and does not cite any cost impact related to these changes in its "Brief Summary of Economic Impact," REV members believe that these changes are highly likely to increase the number of parties involved in a case and to potentially grant party status on a wider set of Section 248 criteria, resulting in significant economic impacts on petitioners. The changes also represent deviations from the explicit language in Section 248 setting the entities that must receive notification and are entitled to intervene by notice. REV concurs with Vermont Electric Coop's lengthy analysis that the Commission lacks the authority to make these changes submitted and believes that these changes are contrary to clear legislative intent.

As REV understands it, this language could give adjoining landowners the opportunity to seek party status on all Section 248 criteria. To REV's knowledge, this has never happened before. While it is difficult to predict the cost implications of lowering the threshold for and expanding the scope of adjoining landowners' participation in Section 248 cases, it is very likely that these costs would be considerable.

While REV appreciates that the Commission has added language intended to address this concern by requiring that a *"notice of intervention filed under this section by a person or entity identified in subsections (5) through (10), above, must include a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition,*" party status is no longer contingent on what is included in this list of issues opening the pathway for entities with no particularized interest to be a party to a case.

If the Commission's intent is simply to make the process of applying for party status simpler, we are not sure that this goal is achieved either. The requirements to apply for permissive intervention using Intervention Motion Form differs from the Notice of Intervention Form as currently designed in the by requirements to 1) "describe all the interests you have that you think will be adversely affected by the outcome of the case" and 2) to "state whether there are other ways to protect your interest(s) besides as a party participating in this proceeding." The proposed rule would seem to reinstate the first requirement thus the only "simplification" would be eliminating the requirement to state if there are other ways to protect your interests. Thus the proposed language would seem to provide, at best, limited benefit for landowners seeking to intervene while eliminating a crucial opportunity for the Commission to fulfill its historical role in determining whether or not party status is appropriate.

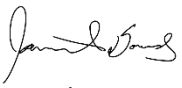
Repeated comments filed during the informal Rulemaking process and during the 8/8/2023 public meeting on this topic clearly show that the concerns are shared by the renewable community as well as many of the state's distribution utilities and Vermont Electric Power Company (VELCO).

Third, REV members are concerned about the potential entanglement of the historically distinct Act 250 and Section 248 processes. The Commission's inclusion of the Natural Resources Board (NRB) as an entity that must receive advance notice and in the newly expanded list of entities entitled to party status through a Notice of Intervention *"if the project site is subject to an Act 250 permit"* implicitly suggests that Commission considers Section 248 projects as subject to the Act 250 process. Once again, REV believes that this is contrary to the clear legislative intent evident in the creation of a separate Section 248 process for energy projects and the explicit exclusion of these projects from the definition of development governing the Act 250 process.

Finally, REV requests that the Commission clarify that in the case of generation and storage projects, landowners that are adjacent to distribution upgrades outside of the tract of land on which the facility is located are *not* considered to be adjoining landowners for the purposes of Section 248 proceeding.

Thank you for the opportunity to comment.

Sincerely,



Jonathan Dowds
Deputy Director

Renewable Energy Vermont ◆ 13 Baldwin St., Montpelier, VT 05601 ◆ 802-229-0099 ◆ info@revermont.org
www.revermont.org

Wilschek Iarrapino LAW OFFICE, PLLC

Joslyn Wilschek*
(802) 249-7663
Anthony Iarrapino**
(802) 522-2802
35 Elm St., Suite 200
Montpelier, VT 05602

August 15, 2023

Holly Anderson, Clerk
Vermont Public Utility Commission
EPUC

RE: Case No. 21-0861: Vermont Electric Cooperative, Inc.'s Comments to Public Utility Commission's Proposed Rule 5.400

Dear Clerk Anderson:

Vermont Electric Cooperative, Inc. (VEC) has reviewed the Commission's June 29, 2023 Order on its proposed Rule 5.400 and greatly appreciates the many changes the Commission has made to the proposed Rule during the informal process. VEC provides these comments as a follow-up to the comments it made at the August 8, 2023 workshop held by Commission hearing officer John Cotter. Consistent with the comments that VEC made during the informal rulemaking, VEC respectfully requests the Commission to modify the proposed changes to proposed Rule 5.402 (pre-filing advance submissions), Rule 5.407 (notice of petition), and Rule 5.409 (intervention) along the lines VEC identifies below. VEC also submits that the Commission's economic impact assessment is incomplete and inaccurate because it does not reflect that the proposed rule will materially increase Section 248 permitting costs and the time it takes to obtain such approvals, and the limited benefits of the proposed changes do not outweigh

*Admitted in Vermont and New Hampshire
**Admitted in Vermont and Massachusetts

the burdens. VEC is authorized to state that Vermont Electric Power Company, Inc. and Stowe Electric Department share the same concerns identified herein and joins in VEC's comment.

Below, VEC first identifies the problematic portions of the Rule and explains why the proposed changes will make it more timely and more expensive to transform and improve the electric grid into a cleaner and more resilient system. VEC then discusses its position that the Commission does not have the authority to alter procedures and/or substantive rights that the Legislature has specifically addressed in statute. Finally, VEC discusses the economic impact sections of the Commission's memo to the Secretary of State.

I. Proposed Rule 5.402: Expanding the list of persons/entities required to receive the 45-day advance notice

Section 248(f) requires petitioners to submit a 45-day notice to only the "municipal and regional planning commissions," and it allows them to forgo providing this notice if only these two entities waive the 45-day notice requirement.

Proposed Rule 5.402 would: (1) add at least 8 entities (because the number of adjoining landowners is unknown) to the list of entities required to receive the 45-day notice; and (2) require VEC to obtain waivers from all of these individuals/entities if it wanted to forgo preparing a 45-day notice:

- all adjoining landowners,
- the host landowner(s),
- the Department of Public Service,
- the Agency of Natural Resources,
- the Natural Resources Board,
- the Division for Historic Preservation,
- the Agency of Agriculture, Food and Markets, and
- for petitioners that are not regulated utilities, the interconnecting utility.

VEC has exercised its right to obtain such waivers under Section 248(f) over the decades to allow it to timely file Section 248 petitions and upgrade its grid. For example, VEC needs to upgrade its transformer at its substation in Eden, Vermont to accommodate increased load from maple sugaring operations. This work will require a Section 248(j) CPG. VEC has recently received waivers from the town planning commission and regional planning commission under Section 248(f). Such waivers will allow VEC to focus its resources on preparing the Section 248(j) filing. VEC has used this simple waiver process in other projects, including the rebuild and relocation of its Cambridge substation and its transformer replacement project at its Island Pond substation.

The Commission's proposed deviation from the statute would remove VEC's ability to obtain waivers because it will be impossible and/or very time consuming for VEC to obtain waivers from all the new entities/individuals identified in the proposed rule. VEC expects that some of these entities/individuals may never respond or not respond in a timely manner. Even reaching out to all these entities to request a waiver would be burdensome and time-consuming. Consequently, it will take more time and financial resources for VEC to ultimately file Section 248 petitions because VEC will need to wait 45 days before it can file its Section 248 petition materials. And it will take VEC longer to prepare the Section 248 materials as it will need to focus its efforts on the 45-day materials. Thus, the Commission will have removed the statutory right to obtain the waivers in a simple and affordable manner as the Legislature has provided for.

VEC recommends that the Commission modify this provision to eliminate all entities that are not identified in Section 248(f) and to have the rule match the language in Section 248(f).

VEC discusses below its position that the Commission has no authority to alter the rights of Section 248 petitioners to the simple 45-day notice and waiver process established in Section 248(f).

II. Rule 5.407(B)- Expanding the list of individuals and entities that a Section 248 petitioner must notify

Section 248(a)(4)(C) identifies the entities to which Section 248 petitioners must provide a copy of the complete petition: "Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health; Agency of Natural Resources; Historic Preservation Division; Agency of Transportation; Agency of Agriculture, Food and Markets; and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located."

Proposed Rule 5.407(B) seeks to expand the list of individuals and entities that a Section 248 petitioner must notify by adding the following persons/entities:

- all adjoining landowners,
- the host landowner,
- and the Natural Resources Board

From a policy perspective, VEC is very concerned regarding the requirement to provide notice to the Natural Resources Board (NRB). This proposed notice requirement assumes that the Commission has jurisdiction to adjudicate compliance with existing Act 250 permits, which it does not as discussed in VEC's comments submitted in the informal rulemaking and discussed

summarily below. Again, this additional layer of regulation will make Section 248 projects more expensive, complicated, and time consuming to get permitted.

VEC recommends that the Commission modify this provision to eliminate all entities that are not identified in Section 248(a)(4)(C) and to have the rule match the language in Section 248(a)(4)(C).

VEC discusses below its position that the Commission has no authority to alter the Section 248(a)(4)(C)'s specific procedures regarding notice of the complete Section 248 petition.

III. Proposed Rule 5.409- Expanding the list of intervention by certain persons and entities

Section 248(a)(4)(E)-(I) establishes which entities have the right to obtain automatic party status, or party status by notice (and section 2 establishes the right of the Department of Public Service):

- ANR must appear as a party in all Section 248 cases,
- Agency of Agriculture, Food and Markets must appear as a party for certain Section 248 projects, and has the right to appear and participate in all other Section 248 projects,
- Regional and local planning commissions and the municipal legislative body where the Project is located have the right to appear as a party if they file a letter with the Commission.

Proposed Rule 5.409 proposes to expand the Section 248 party status designations to include the following entities/persons if they file a notice and no motion to intervene is required:

- Natural Resources Board if the project is subject to an Act 250 permit
- the Division for Historic Preservation,
- adjoining landowners,

- and the host landowner(s).

The proposal to eliminate all intervention thresholds for adjoining landowners and to grant the NRB automatic party status if a project is subject to an Act 250 permit would make obtaining a Section 248 CPG much more difficult, expensive, and time consuming. This proposal also conflicts with the state's goals to transform the electric grid in an affordable and timely manner, will ultimately delay the process of constructing electric infrastructure projects that serve broad public needs, and elevates individual rights over the greater public good.

As explained below, VEC recommends that the Commission modify this provision to eliminate all entities that are not identified in Section 248(a)(4)(E)-(I), and to have the rule match the language in Section 248(a)(4)(E)-(I). Because the statute does not address the intervention standards for persons and entities that do not have automatic party status or status via notice, VEC provides recommendations below.

A. Adjoining landowners[1]

Proposed Rule 5.409 eliminates all intervention thresholds for adjoining landowners as this draft rule would grant party status to adjoining landowners on all Section 248 criteria even though an adjoining landowner may not have particularized interest in and relevant expertise to provide helpful guidance to the Commission on all Section 248 criteria. It also opens the door to allow adjoining landowners to raise issues outside the scope of Section 248 (such as real property interests or property values issues). This sweeping change will cause delays, disrupt

[1] VEC has filed extensive comments requesting the Commission to maintain intervention thresholds for adjoining landowner party status: VEC Comments on Proposed Rule 5.400 (3.8.21) at pages 10-12; VEC Comments on Proposed Rule 5.400 (10.8.21) at pages 10-12.

proceedings, require additional resources (time and money), all of which will result in increased regulatory costs to VEC members and other Vermont ratepayers.

The current practice requires adjoining landowners to identify their specific concerns and impacted Section 248 criteria through a motion to intervene as a prerequisite to obtain party status. This practice tremendously benefits the regulatory process because a landowner's motion to intervene informs the petitioner, Commission, and state parties of such person's concerns. In some cases, adjoining landowners do not respond to a petitioner, and it is not until a motion to intervene that the petitioner understands the concerns. Oftentimes, the motion to intervene helps facilitate meaningful discussions between a petitioner and adjoining landowners and can lead to settlement and/or modifications to a project.

But the proposed rule removes this helpful process because it eliminates the requirement for landowners to file motions to intervene that identify their concerns. It would also place the burden on VEC and all Section 248 petitioners to file a motion requesting the Commission to then require the adjoining landowners to identify their concerns and how they relate to Section 248.

On a practical note, granting adjoining landowners party status before the Commission is certain it has jurisdiction over their concerns will cause unnecessary delay and place additional burdens on petitioners. For example, once an adjoining landowner obtains party status, that person needs to be involved in all scheduling efforts, requests to modify schedules, and review of design changes. The involvement of additional persons is appropriate for adjoining landowners that have relevant Section 248 concerns; but it not appropriate or fair if it turns out that such person's concerns are outside the scope of Section 248, such as property value concerns or

concerns of a general interest that other state agencies can adequately address. Under the proposed rule, the petitioner would have no idea if the concerns of an adjoining landowner are relevant/jurisdictional until it has used its resources to move the Commission to require the landowner to identify its concerns. Again, this added burden to VEC and all Section 248 petitioners will add expense, and unnecessary delay in the proceedings.

The Commission itself has identified the value of the historic intervention thresholds it has applied, which require would-be intervenors, including adjoining landowners, to "articulate a substantial, particularized interest that will be affected by the outcome of [a] proceeding" as the "most fundamental element for intervening."[2] This requirement is important for the reasons set forth above. Also, these are important gate-keeping functions that allow the Commission to exercise its special expertise to balance protections for would-be intervenors who show real interests at stake with the general need to ensure a fair and efficient process for petitioners. The Commission has a responsibility to protect state ratepayers and should preserve its gate-keeping authority without placing the burden on Section 248 petitioners.

VEC recommends that the Commission remove adjoining landowners from the list of entities/people that would receive automatic party status on all Section 248 criteria. VEC also recommends two different approaches for an intervention standard. One recommendation is for the Commission to maintain its historic practice of applying the intervention standard from former Rule 2.200. The Commission has rich case law under this long-standing standard wherein it will almost always grant intervention on some criteria, for example, aesthetics, but will not

[2] This standard is from former Rule 2.200.

grant intervention on issues outside Section 248 jurisdiction (i.e. individual property value disputes), or for generalized concerns regarding wildlife that ANR can adequately address.

The second recommendation is to use the same adjoining landowner intervention standard as the Legislature has set for Act 250 applications under 10 V.S.A. § 6085(c)(1). This statute grants party status to "any adjoining property owner or other person who has a particularized interest protected by this chapter that may be affected by an act or decision by a District Commission." Based on this language, district commissions and (and Vermont courts on appeal) require adjoining landowners to meet a two-part test before intervention can be granted in an Act 250 process. First, "the person asserting party status must first allege an interest protected by Act 250 that is particular to them, rather than a general policy concern shared with the public."[3] The impacts on the would-be party must be "concrete."[4] Second, the adjoining landowner must show a "reasonable possibility that the Commission decision may affect its particularized interest." Adjoining landowners must "demonstrate more than a causal connection" and "unsupported assertions with vaguely defined interests do not suffice" as "an offer of proof must be specific and concrete."[5]

B. NRB

Granting automatic party status to the NRB if the project site is subject to an Act 250 permit and the NRB files a notice inappropriately conflates Section 248 and Act 250 and adds a

[3] *In re Pion Sand and Gravel Pit*, Doc. No. 245-12-09 Vtec, at 7 (Vt. Super. Ct. Envtl. Div. July 2, 2010) (Durkin, J.).
[4] *In re RCC Atlantic, Inc.* Doc. No. 163-7-08, at 9 (Vt. Super. Ct. Envtl. Div. May 8, 2009) (Durkin, J.); *Hinesburg Hannaford Act 250 Permit*, Doc. No. 113-8-14 Vtec at 2-3 (Vt. Super. Ct. Envtl. Div. Feb. 4, 2015) (Walsh, J.).
[5] *In re Bennington Wal-Mart Demolition/Constr. Permit*, Doc. No. 158-10-11 Vtec, at 9-10 (Vt. Super. Ct. Envtl. Div. Apr. 24, 2012) (Walsh, J.).

new regulatory burden to VEC. From a practical perspective, many stakeholders including VEC have informed the Commission of how time consuming and difficult it can be to find Act 250 permits and to determine whether an Act 250 applies to a particular parcel.[6] It seems that the Commission would need to determine whether an Act 250 permit in fact applies to the subject parcel before the NRB can obtain party status and in turn, this will require VEC to use its resources to determine whether an Act 250 permit applies to the Section 248 project parcel. In addition, the proposed Rule contemplates that the NRB and any other party (including adjoining landowners) could file testimony and present evidence relating to the Act 250 permit in a Section 248 proceeding. For all the reasons set forth herein and in VEC's previous comments, this is not the best use of any entities' resources, and the regulatory burdens substantially outweigh any benefits.

With respect to the NRB– the statutory entity that oversees the administration of Act 250 – the Legislature did not provide for the NRB's participation by right in Section 248 matters. The Legislature knows how to expressly grant party status rights to other governmental entities. See e.g., 30 V.S.A. § 248(a)(4)(E) (Agency of Natural Resources "shall appear as a party," and regional planning commissions "shall have the right to appear as a party"). Further, under 30 V.S.A. §§ 20 and 21, the NRB has no bill-back authority for Section 248 proceedings, again demonstrating that the Legislature did not intend for the NRB to participate in Section 248 proceedings because Act 250 permit compliance has no role in Section 248 proceedings. In fact, no statute authorizes the NRB to participate in Section 248 proceedings.

[6] Many stakeholders provided information at the September 2, 2021 workshop and filed comments on this subject, such as VEC's Comments on proposed Rule 5.400 dated 3/8/21 at page 8/9/21 at page 3; VELCO comments on Rule 5.400 dated 3/8/21 at page 2; Dunkiel Saunders comments on Rule 5.400 dated 3/8/21 at pages 3-4; Green Mountain Power comments on Rule 5.400 dated 3/8/21 pages 1-2.

Granting the NRB automatic party status improperly presumes that the Commission has jurisdiction to adjudicate the interpretation of Act 250 permits and their conditions. Section 248's omission with respect to the NRB's participation demonstrates that Section 248 does not require Section 248 petitioners to comply with Act 250 permits. If the Legislature had intended this result, it would have included the NRB as a statutory party and entitled it to notice.

In addition, the Legislature expressly excluded Section 248 projects from complying with Act 250 permits when it excluded Section 248 projects from the Act 250 definition of "development"—Act 250 permits apply only to "development" as defined in 10 V.S.A. § 6001(D)(ii) and Section 248 projects are expressly excluded from the definition of "development."

The Vermont Supreme Court has made clear that Act 250 jurisdiction over utility lines is narrow and exists – even amendment jurisdiction – only if certain thresholds are met such as line length under Act 250 Rule 70. If Act 250 does not have amendment jurisdiction over electric lines unless certain thresholds are met, certainly the Commission has no jurisdiction to force a Section 248 project to comply with an Act 250 permit condition.[7] The Court explained that:

> The rules are specific and comprehensive, and they plainly limit Act 250 jurisdiction to those utility line projects that meet certain threshold requirements, i.e., projects that involve the construction of improvements on easements or rights-of-way of more than one acre in municipalities without both permanent zoning and subdivision bylaws, or more than ten acres in municipalities with both permanent zoning and subdivision bylaws. *The rule does not contemplate that, despite these specific jurisdictional thresholds, utilities would also be required to obtain amendments to any and all existing Act 250 permits held by third parties wherever their projects would constitute a "material change" to the terms of those permits*. This approach would

[7] *In re CVPS/Verizon Act 250 Land Use Permit Nos. 7C1252 and 7C0677-2*, 2009 VT 71, 980 Vt. 256 (VEC, GMP, and the Vermont municipal electric departments successfully participated as amicus curiae) [hereinafter, "*CVPS"*].

> be inconsistent with the spirit and purpose of Rule 70, and it would vastly expand the scope of Act 250 jurisdiction over utilities. It would further expose utilities as copermittees to liabilities and burdens that could arise, even if only to petition a court for relief from suit given the limited scope of their copermittee status. It could also require legal action to impose upon other permit holders from whom the utility obtained an easement the inclusion of the utility on a land use permit. *The mischief that could follow from the Environmental Court's holding is unquantifiable*.[8] (emphasis added).

In sum, the proposed Rule has broad ramifications regarding the ability to permit necessary electric facilities in a timely and cost-effective manner because it would turn affected Section 248 cases into Act 250 compliance cases. VEC recommends removing the NRB from the list of entities entitled to party status and to either apply the same intervention process and standard that it applied under former Rule 2.200 and/or apply the Act 250 party status standard.

IV. The Commission has no authority to alter procedures and/or substantive rights that the Legislature specifically addressed in statute.

As to the proposed rule's new requirements for service of the 45-day notice and complete petition to an expanded list of entities, and its expanded list of automatic party status destinations, the Legislature has not left gaps for the Commission to fill. In fact, as discussed above, Section 248(f) includes a detailed and prescriptive list of 45-day notice requirements and waiver rights; Section 248(a)(4)(C) establishes the Section 248 petition notice requirements; and Section 248(a)(4) establishes party status rights with great specificity. This degree of statutory specificity that establishes procedures and substantive rights prevents the Commission from modifying these statutory provisions through rulemaking.

[8] *Id.* at ⁋ 22.

During the informal rulemaking, the Commission did not address the Vermont Supreme Court case law cited by VEC wherein the Court explains that administrative agencies cannot use their rule-making authority to alter the substantive rights of affected parties, or to alter procedures that are specifically spelled out in a statute.[9] VEC requests that the Commission closely review those cases.

The Commission may promulgate only those rules within the scope of its legislative grant of authority.[10] It cannot use its rule-making authority to expand its own powers or to alter the substantive rights of affected parties in Section 248 litigation. "Certainly it is not fatal for a rule or order to fill in details, regularize procedures and spell out performance in areas where the *statute is indefinite or uncertain* so long as the substantive requirements are not compromised."[11] (Emphasis added).

Expanding the list of entities/persons that can obtain automatic party status is a substantive change that only the Legislature can make under Section 248. The Legislature gave Section 248 petitioners the substantive right to challenge interventions by entities/persons not identified in Section 248 as receiving automatic party status.[12]

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[9] See VEC's Comments of March 8, 2021, at pages 1-3 (discussing *Martin v. State, Agency of Transp. Dep't of Motor Vehicles*, 2003 VT 14, ⁋⁋ 15- 16, 175 Vt. 80, 819 A.2d 742 (challenged regulation extended beyond statutory language); *In re Vermont Verde Antique Intern., Inc.,* 174 Vt. 208, 211, 811 A.2d 181, 183-84 (2002) (environmental board rule exceeds statutory authority); *Petition of Vermont Welfare Rights Organization*, 132 Vt. 622, 627, 326 A.2d 828, 831 (1974) (rejecting PUC's "unduly expansive misconception of its rule-making power" and concluding that a rate-making general order conflicted with statute); *Petition of Allied Power & Light Co.,* 132 Vt. 354, 359, 321 A.2d 7, 11 (1974) (Commission can establish procedures where statute is indefinite or uncertain).

[10] *See Martin v. State, Agency of Transp. Dep't of Motor Vehicles*, 2003 VT 14, ⁋⁋ 15- 16, 175 Vt. 80, 819 A.2d 742 (challenged regulation extended beyond statutory language); *In re Vermont Verde Antique Intern., Inc.,* 174 Vt. 208, 211, 811 A.2d 181, 183-84 (2002) (environmental board rule exceeds statutory authority); *Petition of Dep't of Public Service Respecting Application of General Order 65 and Rule 4.11 to Small Power Projects at 100 KW or Less*, 161 Vt. 97, 101, 632 A.2d 1373, 1376 (1993) (upholding PUC rulemaking when statutes expressly granted authority to make rules for calculating rates); *Petition of Allied Power & Light Co.*, 132 Vt. 354, 362-63, 321 A.2d 7, 11-12 (1974) (PUC cannot alter the substantive rights of parties in rate litigation given by statute).

[11] *Petition of Allied Power & Light Co.*, 132 Vt. 354, 359, 321 A.2d 7, 11 (1974).

[12] See VEC's Comments of March 8, 2021, at pages 1-3, and 10-12.

The Commission's July 12, 2021 order explained its position that its power to go beyond the specific statutory rights and procedures is established in 3 V.S.A. § 831(d), 30 V.S.A. § 2(c), and Section 248's requirement that a proposed project be in the public good. None of these provisions grant the Commission the authority to implement the provisions at issue because Section 248 is definite and certain with respect to the entities that must receive the 45-day notice and the Section 248 petition, and the entities that have the right to automatic party status or party status by virtue of filing a notice.

3 V.S.A. § 831(d) authorizes the Commission to only "adopt rules of procedure in the manner provided in this chapter." The text "this chapter" refers to the Vermont's Administrative Procedures Act (APA), which the Court has explained "by itself, only authorizes the making of specific procedural rules."[13] The APA does not authorize the Commission to issue regulations that conflict with "absolute requirements" of statutes.[14]

30 V.S.A. § 2(c), which includes similar language as 30 V.S.A. § 11, authorizes the Commission to promulgate and adopt rules only procedural in nature; it does not authorize the Commission to change procedures that the Legislature specifically established.[15]

Similarly, Section 248 does not give the Commission authority to usurp specific procedures and rights established by the Legislature. Section 248 petitioners must prove that their projects are in the public good; this substantive burden on petitioners does not, as the

[13] *Petition of Vermont Welfare Rights Organization*, 132 Vt. 622, 627, 326 A.2d 828, 831 (1974) (rejecting PUC's "unduly expansive misconception of its rule-making power" and concluding that a rate-making general order conflicted with statute).
[14] *Id.* (citing and relying on *In re Petition of Allied Power & Light Co*., 321 A.2d 7 (1974)).
[15] *Petition of Vermont Welfare Rights Organization,* 132 Vt. 622, 627, 326 A.2d 828, 831 (1974) ("30 V.S.A. § 11(a) authorizes the Board to promulgate and adopt rules procedural in nature.") Since this decision was issued in 1974, the legislature has modified Section 11, but none of those modifications affect the holding in this case as the statute continues to focus on procedural rules such as ensuring safety at hearings, allowing the public to attend hearings, and ordering scheduling conferences.

Commission appears to contend, grant the Commission authority to modify specific statutory procedures and rights established in Section 248.

VEC recommends that the Commission implement the specific statutory provisions without modification.

V. The Commission's Economic Impact Assessment

Title 3, Section 838(a)(2) requires the Commission to include an "analysis for economic impact" when it files proposed rules with the Secretary of State. The Commission's transmittal of the draft rule to the Secretary of State included an economic impact analysis that does not make clear that the proposed rule provisions at issue will increase costs for ratepayers and Section 248 petitioners, will delay proceedings, and that the burdens of these proposed provisions do not outweigh the lack of benefits they provide. Further, the Commission's analysis is not supported by the stakeholder comments that the Commission received during the informal rulemaking.

The "Brief Summary of Economic Impact" on page 5, Section 12 states in part that it is "*possible* that the amendments will require some petitioners to expend additional resources in advance of filing a petition under Section 248…" Page 4, Section 12 (emphasis added). It also states that "any increase in costs in preparing the petition are expected to be offset, at least in part, by greater efficiency in the review process resulting from the reduction or elimination of the need for the Commission to direct petitioners to provide additional information after a petition is filed." Page 4, Section 12.

The Economic Impact Analysis section on Vermont ratepayers (page 1, section 3) states:

> Vermont Ratepayers. Costs. To the extent that the amendments result in increased litigation costs to rate-regulated utilities, those utilities will likely seek to recover

> those costs in rates from Vermont ratepayers. However, any cost increases are expected to be small and at least in part offset by increased efficiencies in processing Section 248 petitions. Additionally, impacts on individual ratepayers are expected to be minimal because those costs would be distributed among all of a utility's ratepayers. Benefits. Increased efficiency in processing Section 248 petitions leads to more efficient planning by utilities in serving customers and decreased uncertainties regarding utility services.

Most stakeholder comments submitted in the informal rulemaking explained that the proposed rule changes at issue will absolutely increase Section 248 permitting costs, delay proceedings, and that the benefits of these new regulations do not outweigh the burdens. The Commission's use of the word "possible" with respect to whether the proposed rules will require petitioners to expend additional resources is incorrect. Any additional process beyond what is required in Section 248 or the current Rule 5.400 will require VEC to use additional resources. For example, removing the ability to obtain waivers of the 45-day notice requirement, and requiring VEC to notify adjoining landowners when it submits a 45-day notice, will absolutely require VEC to use additional resources to file the Section 248 CPG.

The stakeholder comments also do not support the Commission's assessment that "Increased efficiency in processing Section 248 petitions leads to more efficient planning by utilities in serving customers and decreased uncertainties regarding utility services." The proposed rule changes at issue would make the Section 248 process inefficient. For example, removing the ability to obtain 45-day waivers in a simple, affordable, and timely manner will make the process more expensive and time consuming and requiring notice to landowners at the 45-day notice stage also places a new burden on VEC.

In addition, proposed Rule 5.409 (intervention) would substantially increase Section 248 costs, unduly delay proceedings, and make Section 248 proceeding less efficient. For example,

the rule proposes to grant adjoining landowners party status on all Section 248 criteria, giving them a right to serve discovery, file testimony, issue proposed findings and conclusions of law under all Section 248 criteria, and appeal to the Vermont Supreme Court. A landowner may have helpful knowledge on aesthetics, for example, but could use its full party status to oppose a project on several criteria of which such person/entity has no useful perspective or knowledge. Yet, VEC will need to use its resources to address the adjoining landowner's discovery, testimony and legal arguments, and such process would unduly delay permit issuances for needed public utility infrastructure projects.

VEC believes that if the Commission implements the suggestions it has made herein, the proposed rules will comport with statute, provide the public with meaningful opportunities to participate, and help facilitate a timely and affordable transition to a cleaner and resilient electric grid.

Thank you for the opportunity to comment.

Sincerely,

Joslyn Wilschek, Esq.

VPPSA
Vermont Public Power Supply Authority
Putting the Public in Power.
www.vppsa.com
P.O. Box 126 • 5195 Waterbury-Stowe Rd. • Waterbury Center, VT 05677 • 802.244.7678 • Fax: 802.244.6889

Via ePUC

August 15, 2023

Ms. Holly Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05620-2071

VPPSA Response to Request for Comment
Case No. 21-0861-RULE
Proposed Revisions to Vermont Public Utility Commission Rule 5.400

On June 22, 2023, the Vermont Public Utility Commission ("Commission"), pursuant to 3 V.S.A. § 838, filed proposed rule changes to its proposed Rule 5.400 (Case No. 21-0861-RULE). On June 29, 2023, the Commission issued its Order and invited both verbal comments on the proposed changes in a public hearing which occurred on Tuesday, August 8, 2023 and written comments due August 15, 2023.

The Vermont Public Power Supply Authority (VPPSA) as an instrumentality of the State of Vermont has a mission to support and advance the interests of its municipally owned electric utilities, including the customers and communities they serve[1]. As a quasi-governmental agency representing the interests of locally owned and operated electric utilities, predicated on the principles of local democracy and energy independence, VPPSA is cautious about overly restrictive or overly broad cumbersome modifications to Rule 5.400's requirements, particularly if they have unintended

[1] VPPSA Member Utilities include Barton Village; Village of Enosburg Falls; Hardwick Electric Department; Village of Jacksonville; Village of Johnson; Ludlow Electric Light Department; Lyndonville Electric Department; Morrisville Water & Light; Northfield Electric Department; Village of Orleans; and Swanton Village.

consequences to create upward rate pressure, increased costs, or limit public engagement to define developments. Under that pretense, VPPSA offers partial concurrence in this response as it relates to comments raised by other case parties.

On August 15, 2023, Vermont Electric Cooperative, Inc. (VEC) comments and requested that the Commission modify the proposed changes to proposed Rule 5.402 (pre-filing advance submissions), Rule 4.07 (notice of petition), and Rule 5.409 (intervention) with expanded explanation of the latter in the comments submission.[2] VEC also submitted that the Commission's economic impact assessment is incomplete and inaccurate because it does not reflect that the proposed rule may materially increase Section 248 permitting costs and the time to obtain such approvals. Vermont Electric Power Company, Inc. and Stowe Electric Department share the same concerns identified therein and joined in VEC's comment.

To reiterate, while VPPSA concurs with some elements of the concerns raised, the potential for any proposed changes to delay system developments that are required to meet the State's Renewable Energy Standard requirements should be thoroughly evaluated, particularly as it relates to establishing inherent barriers to access, unreasonable restrictions on development, unnecessary constraints or delays, or changes that drive stakeholder or community costs.

[2] Case No. 21-0861: Vermont Electric Cooperative, Inc.'s Comments to Public Utility Commission's Proposed Rule 5.400

Thank you for the opportunity to comment on the Commission's rule-making procedure and submit VPPSA's response. If you have any questions or seek further clarification, please do not hesitate to contact me.

Respectfully,

/s/
Connor Daley, Manager of Government & Public Affairs
Vermont Public Power Supply Authority
P.O. Box 126, 5195 Waterbury-Stowe Rd., Waterbury Center, VT 05677
(802) 884-4488
cdaley@vppsa.com

Vermonters for a Clean Environment

August 15, 2023

Holly R. Anderson
Clerk of the Commission
112 State Street
Montpelier, VT 05620-2701

Re: Case No. 21-0861-RULE Proposed revisions to Vermont Public Utility Commission Rule 5.400

Dear Ms. Anderson,

Vermonters for a Clean Environment ("VCE") hereby provides comments on proposed revisions to PUC Rule 5.400.

VCE has not participated in this Rule update and therefore do not find it appropriate to suggest any new changes to the work that has been done to date. However we will note that it is disappointing to see that the Rule update did not take the opportunity to require high quality photographic simulations of projects.

VCE's comments follow reviewing the proposed changes, and reading the comments by REV, VELCO and VEC provided to the PUC at the August 8 public hearing.

1. The most important and necessary change to Rule 5.400 is the Advance Notice requirement for notification to adjoiners. This aligns with the net-metering rule and Section 248a requirements and has been a problem with lack of notice to adjoiners until Petitions are filed. Thank you.

2. VCE supports the automatic right to intervene that the Rule update provides to adjoiners. VEC objects to this change as they find the Motion to Intervene requirement valuable to understand adjoiners' issues. VELCO objects, claiming it will add more time and expense to the process.

VCE sees real value in enabling adjoiner participation in Petitions on all substantive criteria. The Motion to Intervene process itself is cumbersome and adds time to the process, often unfairly disadvantaging adjoiners who have to wait for responses and responding to responses, without a seat at the table at scheduling conferences where first round discovery often starts before the PUC has ruled on Motions to Intervene.

The PUC process allows for automatic parties to intervene and participate, or not. After municipalities were given the right to intervene, it is common for towns to file a Notice of Intervention and monitor, but not participate. Participation at the scheduling hearing, in discovery, and filing pre-filed testimony will provide all parties with the information needed to understand the issues of concern to adjoiners who receive automatic party status under this Rule update.

789 Baker Brook Road • Danby • Vermont • 05739 • 802.446.2094

VEC complains that adjoiners often do not respond to outreach and VEC does not understand adjoiners issues that could be addressed does not seem to be sufficient reason to deprive adjoiners of the opportunity to fully participate in the case. *Pro se* participation comes with obligations, and once an adjoiner has intervened either by hiring an attorney or self-representing, all parties are expected to interact with each other outside of the PUC process for a variety of reasons.

The opportunity to bring expert witness testimony to the PUC on issues that are currently restricted to the realm of state agencies is one that can enhance the information on which the PUC bases its decision. Whether it is with a town or a state agency, Petitioners often make deals outside of the public process that have more to do with money or mitigation and deprive the PUC of the opportunity to hear testimony that would be beneficial to consider in the evaluation of the public good.

3. Commenters at the Public Hearing objected to the inclusion of the Natural Resources Board (NRB) as a party. One commenter claimed it is hard to identify parcels with Act 250 permits. With the on-line database sortable by town, VCE has found it to be relatively easy to identify Act 250 permits on parcels subject to PUC jurisdiction. Sometimes documents are not posted but the case numbers make it easy to then get the files from the District Commission. Though the NRB seems to rarely participate in PUC cases, VCE sees no harm, and potentially a benefit especially if the NRB is reconfigured to make it more effective, in requiring it to be a party to Section 248 cases.

While we understand developers and utilities' desire to limit public participation and the evidence available to the PUC, the public interest is best served by opening the door wider to bring the best available information into the record on which the decision is based. VCE appreciates and supports the update to Rule 5.400.

Sincerely,

Annette Smith
Executive Director

Annotated Text

5.400 ~~Requirements for~~ Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. § 248

5.401 Purpose and Applicability

This rule establishes minimum filing requirements for petitions to construct electric generation, energy storage, electric transmission, and natural gas facilities pursuant to 30 V.S.A. § 248. ~~In addition, the rule~~ and clarifies certain ~~facets~~parts of the Section 248 review process. This rule is not intended to ~~supplant~~replace any of the statutory requirements of Section 248. Unless specifically stated, this rule also does not ~~supplant~~replace any requirements of other Public Utility Commission ~~("~~("Commission~~")~~") Rules ~~and~~or Procedures. Unless specifically stated, the requirements of this rule do not apply to petitions filed under subsections 248(~~j~~k) or 248(~~k~~n). The requirements of this rule do not apply to petitions for net-metering systems filed under Commission Rule 5.100.

~~5.402 Pre-Filing Requirements~~

5.402 Advance Submission ~~to Local and Regional Bodies. Prior to~~

No less than 45 days before filing ~~the~~a petition with the Commission, the petitioner ~~shall~~must submit project plans ~~for construction to affected municipal and regional planning commissions, and municipal legislative bodies. This submission shall be made at least 45 days prior to filing the petition with the Commission, except that the submission shall be made at least 21 days prior to such filing if~~as described below. If the proposed project consists solely of the relocation of transmission facilities. ~~This notice shall include a reference to the Commission's "Guide to the Vermont Public Utility Commission's Section 248 Process," available on the Commission's website. At this time, petitioner shall inform the municipal and regional planning commissions of the requirement in Section 248(f) that "Such commissions shall make recommendations, if any, to the Public Utility Commission and to the petitioner at least 7 days prior to filing of the petition with the Public Utility Commission" and of the opportunity for those commissions to provide revised recommendations pursuant to Commission Rule 5.402(A)(1)(b), below. Petitioner must inform the municipal and regional planning commissions of its intended filing date.~~, the submission must be made at least 21 days before such filing. Any of the persons or entities entitled to receive notice under this section may waive the ~~45-day~~ notice requirement.

~~A. In its review of the proposed project under Section 248(b)(1), the Commission will give due consideration to any recommendations filed by municipal and regional planning commissions at least seven days prior to the intended filing date and any revised recommendations filed within 45 days after the date that the petition is filed with the Commission pursuant to Commission Rule 5.402(A)(2) below.~~

~~Affected~~ (A) Recipients Entitled to Advance Submission. The petitioner must serve the following persons with a copy of the advance submission:

(1) the municipal legislative bodies and municipal and regional planning commissions ~~may provide revised recommendations within 45 days of~~ in the communities where the project will be located;
(2) all Adjoining Landowners;
(3) the host landowner(s);
(4) the ~~date on which petitioner has filed a petition with~~Department of Public Service;

(5) the ~~Commission if~~Agency of Natural Resources;

(6) the ~~petition contains new or more detailed information that was not previously included in the petitioner's filing with~~Natural Resources Board;

(7) the Division for Historic Preservation;

(8) the ~~municipal~~Agency of Agriculture, Food and Markets; and ~~regional planning commissions pursuant to Section 248(f).~~

~~B. Recommendations made to the Commission pursuant to Section 248(f), or the lack of such recommendations, shall not preclude municipal and regional planning commissions from presenting evidence during technical hearings if granted party status.~~

~~C. The plans for construction submitted under this subsection must include sufficient information to understand the overall proposed project, including but not limited to: identification and analysis of aesthetic impact; project plans in as~~

~~much detail as the petitioner reasonably can provide (including a schematic); a description of how equipment and materials will be transported to the site; and plans which indicate the approximate location of all proposed new infrastructure (e.g., transmission, substation, roads, etc.)~~ (9) the interconnecting utility.

~~relative to the existing conditions.~~
~~With the construction plans, the petitioner shall include a description of its evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.~~

~~(B) Notice to Adjoining Landowners. Petitioner must provide notice of the proposed project to each adjoining property owner at the time that the petition is filed with the Commission.~~

~~A. This notice shall include, at a minimum, a reference to the Commission's "Guide to the Vermont Public Utility Commission's Section 248 Process," available on the Commission's website, a general description of the type and approximate location of the facilities and upgrades proposed, a statement that a petition for approval is being filed with the Commission, and an identification of the locations at which project plans and the petition can be viewed and the hours during which those documents may be viewed. Such locations shall include at least the offices of the petitioner, the municipal and regional planning commissions, and the Commission.~~

For purposes of this rule, ~~"adjoining property owner"~~"Adjoining "Landowner" means a person who owns land in fee simple, if that land:

(a) With respect to a transmission line, will be crossed by the right-of-way for that line, shares a property boundary with such right-of-way, or would share a boundary with the right-of-way but for the presence of an intervening river, stream, public highway, or railroad line ~~which~~that shares a boundary with the right-of-way; or

(b) With respect to a generation facility, energy storage facility, substation, or other transmission facility not part of a transmission line, shares a property boundary with the tract of land on which that facility or substation is located or is adjacent to that tract of land and the two properties are separated only by a river, stream, railroad line, or public highway.

~~B. Petitioner~~Adjoining Landowners must ~~use good faith efforts to notify adjoining property owners. Unless otherwise shown, good faith efforts shall mean utilizing the~~be identified using the host town's certified grand list as it existed no more than 60 days ~~prior to~~before the date ~~notice is provided to identify adjoining property owners. Petitioner shall include a statement with the petition that it has complied with this provision and include in~~of the advance submission or online through the ~~statement~~Vermont Center for Geographic Information database, municipality-specific databases, the ~~date the~~Vermont Department of Taxes grand ~~list was certified. No defect in the provision of notice to adjoining property owners under this rule shall invalidate an action~~lists, or electronic versions of grand lists maintained by ~~the Commission on a petition for a certificate of public good under 30 V.S.~~municipalities. ~~A. § 248.~~

~~(C) Filing Contents.~~

~~The petition~~ petitioner must ~~include sufficient~~

verify with the relevant municipality that the online database provides accurate and current information regarding parcel ownership within that municipality. Documentation of verification must be signed and attested to by a petitioner.

(B) Method of Service of Advance Submission. The petitioner must serve the advance submission on the entities listed in (A)(1) through (3), above, by first-class mail or its equivalent. The petitioner must cause the advance submission to be transmitted to the entities listed in (A)(4) through (9), above, using the Commission's electronic filing system, unless an applicable exemption exists, in which case service must be by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the advance submission via email.

(C) Contents of advance submissions. Whenever service of the advance submission must be done by mail, the petitioner may elect to serve a document with information and a link that will allow the recipient to access the actual content of the advance submission electronically. The document must also include instructions for the recipient to request a hard copy of the advance submission from the petitioner if they are not able to access it electronically. If a hard copy is requested by the recipient, the petitioner must serve it by first-class mail or its equivalent within 2 business days of the request.

All advance submissions must include:

(1) A reference and a link to the Commission document "Public Participation and Intervention in Proceedings Before the Public Utility Commission," found on the Commission's website at https://puc.vermont.gov/document/public-participation-and-intervention-proceedings-public-utility-commission, and,

(a) If the petition is filed under Section 248, a reference and a link to the Commission's Section 248 procedures document, found on the Commission's website at: https://puc.vermont.gov/document/section-248-procedures; or

(b) If the petition is filed under Section 248(j), a reference and a link to the Commission's Section 248(j) procedures document, found on the Commission's website at https://puc.vermont.gov/document/section-248j-procedures ~~to evaluate the~~.

(2) Sufficient information for a reader to understand the overall proposed project, including but not limited to:

(a) The site location and project boundaries;

(b) A description and site plan of the proposed project in as much detail as the petitioner reasonably can provide that show the approximate location of all proposed new infrastructure (e.g., transmission lines, substation, roads, laydown areas, etc.) relative to the existing conditions. ~~This should~~ The description and site plan must include sufficient detail to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Commission's jurisdiction to address;

(c) A description of how equipment and materials will be transported to the site;

(d) Preliminary identification and analysis of aesthetic impacts and draft of a proposed aesthetic mitigation plan or an explanation why aesthetic mitigation measures are not needed for the proposed project;

(e) For projects proposed by utilities, the petitioner must include~~, as appropriate:~~ an evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.

(3) A notice of each municipal and regional planning commission's right under 30 V.S.A. § 248(f)(1)(A) to convene a public hearing on the proposed petition.

(4) A notice of each planning commission's right under 30 V.S.A. § 248(f)(1)(C) to submit recommendations to the petitioner within 40 days of the petitioner's submittal to the planning commissions.

(5) A notice that the petitioner's application to the Commission must address any written comments provided to the petitioner in response to the 45-day advance submission that are related to the Section 248(b) criteria and any oral comments related to those criteria made at a public hearing conducted pursuant to 30 V.S.A. § 248(f)(1)(A).

(6) A notice of each planning commission's right under 30 V.S.A. § 248(f)(1)(D) to make recommendations to the Commission after a petition is filed. The Commission will give due consideration to any such recommendations. Recommendations made to the Commission pursuant to this subsection, or the lack of such recommendations, shall not preclude municipal and regional planning commissions and municipal legislative bodies from exercising their right to appear as parties pursuant to 30 V.S.A. § 248(a)(4)(G)-(I).

(D) Timing of advance submissions. If, within 365 days of the date of the advance submission, the petitioner has not filed a complete petition for the project that fully complies with the filing requirements of this rule, the submission will be treated as withdrawn without further action required by the Commission. No petition may subsequently be filed for the project without first complying with the pre-filing advance submission requirements of this section. The time period established by this section may be extended for good cause shown by motion filed at least 14 calendar days before the expiration of the 365-day period.

(E) Exemption. The advance submission required by this section need not be served on Adjoining Landowners if the proposed project consists of reconductoring within an existing right-of-way and the height of any new structure required for the reconductoring is not more than 10 feet higher than the structure being replaced. If any pole height increases by more than 10 feet, the requirements of this section shall apply only to landowners whose property adjoins the right-of-way at the immediate location of such pole.

5.403 Contents of Petition

All petitions filed pursuant to Section 248 must be complete at the time they are filed. If a petitioner intends to rely solely on a permit from other regulatory agencies or a study to demonstrate compliance with the requirements of Section 248(b) instead of providing testimony or other evidence to satisfy such criteria, such studies and permits must be included with the petition.

(A) Petition contents. Subject to the exceptions for linear projects set forth in Section 5.404, below, each petition must include all of the following information unless a petitioner demonstrates that a specific piece of information is not applicable to the

petition:

(1) Prefiled evidence (testimony and exhibits) that demonstrates how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b) and promotes the general good of the State in compliance with 30 V.S.A. § 248(a). The testimony and exhibits must contain sufficient facts to support a positive finding by the Commission under each of the applicable Section 248 criteria. To the extent that the proposal will result in an adverse impact affecting any of these criteria, the applicant must describe what measures, if any, will be taken to minimize any such impact.

(2) A certification that all advance submission requirements in section 5.402 have been met.

(3) A summary of all comments received in the 45-day advance notice period as described in section 5.402(C)(4), including written comments and oral comments made at any public hearings and the petitioner's response to any such comments.

(4) A U.S. Geological Survey topographic map showing the location of the proposed project.

(5) An aerial photograph of the proposed project site that clearly marks existing structures and significant natural and ~~man-made~~constructed features when available, or an equivalent computer-generated image that provides similar detail.

~~(a) A site plan that includes:~~

~~(i) proposed improvements;~~

(6) Either the topographic map referenced in subsection (4), above, or the annotated aerial photograph or equivalent computer-generated image must clearly show the project boundaries and enough of the adjacent property to show the project site in relation to surrounding land features and uses (e.g., natural areas, buildings, roads, and other generation, transmission, or storage facilities, etc.).

(7) Site plans or other documentation that include:

(a) legible scale(s) for all views on all sheets, including a legible graphic scale to account for document reductions;

(b) a project overview that shows the setbacks from the project's boundaries to the corner of the nearest project-related structure and approximate distances to any nearby residences, and for projects subject to specific applicable setbacks, the distance from the corner of the nearest project-related structure to the resource from which it must be set back;

(c) all project features and proposed site improvements and their dimensions, including temporary or permanent improvements on the project site or elsewhere that are reasonably related to the project;

(d) existing topography at the site and any proposed ~~changes in~~ grading;

(e) the dimensions, area in square feet, and depth of all proposed soil disturbance;

(f) existing ~~significant~~ natural and ~~man-made~~constructed features (including but not limited to water bodies~~;~~ and wetlands and associated buffer zones, tree lines, primary agricultural soils, buildings, and roads);

~~(ii) a cross-section of the site;~~

~~color~~(g) a depiction of any area(s) where vegetation is to be cleared or altered, including the limits of disturbance and the total acreage of any disturbed area;

(h) locations of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings;

(i) the latitude and longitude coordinates at the center of the proposed project site;

If the information required by subparagraphs (a) through (i) above is not included in a site plan, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(8) Descriptions of any proposed direct or indirect alterations to or impacts on any natural resources protected by 30 V.S.A. § 248(b)(5) including, but not limited to, wetlands, streams, shorelines, floodplains, rare and irreplaceable natural areas, necessary wildlife habitat, and their applicable buffer zones.

(9) Specific descriptions of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings.

(10) A cross-section of the site or other documentation showing existing and proposed conditions and the height of project features in relation to existing buildings and/or vegetation. If the information required by this subparagraph is not included in a cross-section of the site, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(11) The presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the project, the amount of those soils to be disturbed, and any other proposed impacts to those soils.

(12) Color photographs of the project site~~; and~~.

(13) Elevation drawings.

(a) For each proposed ~~measures~~ structure, the petitioner must provide elevation drawings.

(b) The elevation drawings must be to ~~mitigate impacts~~appropriate

scales but no smaller than 1"/20'.

(c) The petitioner must include two elevation drawings of the proposed ~~project.~~structures drawn at right angles to each other, showing the ground profile to at least 100 feet beyond the edge of any proposed clearing, and showing any guy wires or supports.

~~(b) Prefiled evidence (testimony and exhibits) that explains how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b); including the criteria specified in of 10 V.S.A. § 1424a(d) and 10 V.S.A. § 6086(a)(1) through (8) and (9)(K), incorporated through Section 248(b)(5).~~

(d) The elevation drawings must indicate the relative height of the facility to the tops of surrounding trees as they presently exist. The information required by this subsection (d) may be documented outside of a project's elevation drawings. If the information required by this subsection is not included in a project's elevation drawings, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(e) Each plan sheet must be clearly labeled with the project title, date, revision date(s), scale, and name of the person or firm that prepared the plan.

(14) Information to document compliance with Commission Rule 5.500 regarding interconnection procedures for electric generation facilities, Rule 5.800 regarding aesthetic mitigation, and Rule 5.900 regarding decommissioning.

(15) Copies of the relevant sections of any town plan and regional plan in effect in the community in which the proposed project will be located. The petitioner must include testimony describing how the project complies with or is inconsistent with the land conservation measures and specific policies in those plans.

(16) An index, organized according to the criteria of 30 V.S.A. § 248(b), that identifies ~~with specificity~~by witness and page number the prefiled evidence that addresses each criterion, including the incorporated criteria of Section 248(b)(5). A descriptive title must be provided for each exhibit identified in the index.

~~B. [Repealed.]~~

(17) A copy of the Agency of Natural Resources Certificate of Public Good Application Fee Form.

(18) If applicable, a copy of the Public Utility Commission and Department of Public Service Application Fee for In-State Generation Facilities Form.

(19) For renewable generation projects, a description of any other renewable generation projects using the same fuel type that are existing, approved, proposed, or planned and are located on the same parcel of land or any

parcel of land adjoining the parcel on which the petitioner plans to site its project.

(20) A summary of all community outreach efforts undertaken by the petitioner in advance of filing its petition.

(21) For petitions filed under Section 248(j), a proposed certificate of public good and proposed findings of fact.

(B) Attestations. All prefiled testimony and exhibits must be accompanied by a statement from the sponsoring witness attesting to the truth and accuracy of the testimony and exhibits and that they were prepared by or under the direct supervision of the witness. The attestation must include the following statement: "I declare that the testimony and exhibits that I have sponsored are true and accurate to the best of my knowledge and belief and were prepared by me or under my direct supervision. I understand that if the above statement is false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30."

(C) Design level detail required. Petitioners are ~~encouraged~~required to provide ~~plans~~ with ~~the~~their petition either plans at a design level of detail. ~~A petitioner seeking~~ or a request for conceptual approval, followed by post-certification review of final designs, ~~shall include in its petition a~~. A request for ~~such~~conceptual approval ~~and provide supporting~~must be supported by evidence ~~to show~~that shows that the cost ~~of~~to the ~~petitioner's~~petitioner of submitting design details with the petition would outweigh the benefits of such submission,
including but not limited to the evaluation of site-specific impacts, accuracy in the findings to be made by the Commission, and finality of the ~~Commission's~~Commission's decision on the petition. In approving or denying such a request for conceptual approval, the Commission may consider additional factors that it deems relevant.

~~C. Upon filing of any petition under 30 V.S.A. § 248 and before issuing formal notice or otherwise initiating proceedings on such a petition, the Commission may, in its discretion, determine that the petition is not complete or does not sufficiently address the requirements of Section 248 or this rule, including providing information to support positive findings on all of the criteria of Section 248(b). The Commission shall notify the affected petitioner of any such determination and shall include a statement of the deficiencies in such notice. Any petition that is the subject of such a determination shall be deemed not filed, and no proceedings thereon shall be initiated, until the Commission determines that the petitioner has taken sufficient steps to remedy the deficiencies set forth by the Commission.~~

~~(a) Unless the Commission determines otherwise, a petition that is deemed not filed does not invalidate the notice provided under the requirements of 30 V.S.A. § 248 and this Rule.~~

~~(b) The Commission's acceptance of a petition under this provision or initiation of proceedings under 30 V.S.A. § 248 shall not constitute a determination that the petitioner has met its burden of proof or burden of production.~~

~~(D) Related Improvements. The Petition must address and provide sufficient evidence on all improvements, temporary or permanent, that are reasonably related to facilities for which a certificate of public good is required under 30 V.S.A. § 248.~~

(D) Filing ~~Format. In addition to the filing~~ format. Unless an applicable exemption exists, petitions must be filed in ePUC in accordance with the requirements of Commission Rule 2.~~204, the petition and accompanying prefiled testimony and exhibits must be filed with the Commission in an electronic format, suitable for web posting.~~

~~(E) Filings Under Section 248(j).~~

~~A. An application filed pursuant to Section 248(j) must be complete at the time it is filed. If a petitioner intends to rely on a permit from other regulatory agencies or a study to demonstrate compliance with the requirements of Section 248(b), rather than providing evidence to satisfy such criteria, such studies and permits must be included with the petition.~~

~~B. Subsections 5.402(C), with the exception of 5.402(C)(1)(e), 5.402(C)(3), and 5.402(E), shall apply to all petitions filed under Section 248(j).~~

~~C. Petitioners need not provide notice to adjoining property owners. However, petitioners shall include with the petition the names and addresses of all adjoining property owners. Petitioner must use good faith efforts to identify adjoining landowners. Unless otherwise shown, good faith efforts shall mean utilizing the certified grand list as it existed no more than 60 days prior to the date notice is provided to identify adjoining landowners. Petitioner shall include a statement with the petition that it has complied with this provision and include in the statement the date the grand list was certified.~~

~~(a) Petitioners do not need to include the names and addresses of adjoining property owners if the proposed project consists of reconductoring within an existing right-of-way, provided that the height of any new structure required for the reconductoring is not more than 10 feet higher than the structure being replaced. If any pole height increases by more than 10 feet, petitioner shall provide the names and addresses of the property owners who adjoin the right-of-way at the immediate location of such pole.~~

5.404 Petitions for Linear Projects

(A) Definition. For purposes of this section, "linear project" means a project or that portion of a project that is constructed using segmented and repetitive construction processes that is proposed to be sited in a utility easement, right-of-way, roadway, transmission corridor, or other similar construction corridor. Discrete, non-repeating, non-segmented components of a larger otherwise linear project, such as substations or gate stations, are not included within this definition or in the provisions of this rule section.

(B) Requirements. Petitions for linear projects may meet the advance submission and petition content requirements set forth in Sections 5.402(C) and 5.403(A), above, as follows:

(1) 5.403(A)(7)(b): Linear projects do not need to provide the information required by this section.

(2) 5.403(A)(7)(d): For site plan topography for a linear project, representative drawings may be used to show expected topographical variations and proposed

grading. Separate site plan pages must be filed for unique variations from what is shown in the representative drawings.

(3) 5.403(A)(7)(i): Longitude and latitude coordinates must be provided for a linear project's endpoints and mid-point.

(4) 5.403(A)(10): Petitioners may submit plan and profile sheets that include (1) a perpendicular view of the line, and (2) an aerial image of the corridor with the line drawn in.

(5) 5.403(A)(12): For color photographs of the project site for linear projects, representative photographs may be used to show typical conditions. Separate photographs must also be filed for unique variations from what is depicted in the representative photographs.

(6) 5.403(A)(13): In place of elevation drawings, petitioners may submit plan and profile drawings. The drawings must show the location of each component of the linear project and contain depictions of each pole or similar structure, including ground elevation, pole heights, conductor heights, sags between the poles, attachments on the poles, and the distance between the poles.

5.405 Additional Filing Requirements for Petitions to Construct Wind Generation Facilities

(A) Definition. For purposes of this section, "wind generation facility" means a generation facility that ~~utilizes~~uses wind to produce electricity.

(B) Requirements. In addition to the requirements of this rule, petitions to construct wind generation facilities must meet the following requirements:

~~For petitions involving wind generating facilities, notice must be provided to~~(1) The prefiling advance submission required by section 5.402 must be served on all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine.

(2) In addressing the impact of the proposed project on orderly development, the petitioner must include an assessment of the impact on all towns within ~~this~~the ten-mile radius.

(3) The petition must include a ~~view-shed~~viewshed analysis that includes an analysis of aesthetic impacts for a ten-mile radius from the proposed project site.

(4) The petition must include information documenting a project's compliance with Commission Rule 5.700 regarding sound levels.

(C) Non-applicability. ~~This section does not~~ The provisions of subsections (B)(1), (B)(2), and (B)(3), above, do not apply to net-metered wind systems authorized pursuant to 30 V.S.A. § ~~219a~~8010 (regulated under Commission Rule 5.100), or non-net-metered wind ~~measurement~~systems that would otherwise qualify for the net-metering program under 30 V.S.A § 8010 and Rule 5.100. No provisions of this section apply to meteorological towers~~.~~ regulated under 30 V.S.A. § 246.

5.406 Commission Initial Review of Petition

When a petition is filed under 30 V.S.A. § 248, the Commission will review the petition for administrative completeness. If the Commission determines that the petition is not complete, including providing information sufficient to support positive findings under all of the applicable criteria of Section 248(b), the Commission will notify the petitioner that its petition is considered incomplete with a description of the incomplete or missing items. The Commission will not take any further action on an incomplete petition unless and until the petitioner files the missing information and the Commission determines that the petition is administratively complete.

(A) Advance submissions. Unless the Commission determines otherwise, a Commission determination that a petition is incomplete does not invalidate the advance

submission already provided by the petitioner.

(B) Burden of proof. A determination by the Commission that a petition is administratively complete does not constitute a determination that the petitioner has met its burden of proof or burden of production under any or all applicable criteria.

(C) Additional information. The Commission may request additional information from the petitioner at any time in a proceeding.

(D) Notice of completeness. When the Commission has determined that a petition is administratively complete, the Commission will provide written notice of that determination to the petitioner.

5.407 Service and Notice of Petition

Upon receipt of a notice of a complete petition, the petitioner must within two business days:

(A) Serve copies of the complete petition on all agencies and entities required under 30 V.S.A. § 248(a)(4)(C), and for wind generation facilities, the entities identified in section 5.405(B)(1) of this rule. When service cannot be completed using the Commission's electronic filing system, the petitioner may serve by first-class mail or its equivalent a document with information and a link that will allow the recipient to access the complete petition electronically. With permission from the intended recipient, the petitioner may serve a copy of the document and the complete petition via email. The document must also include instructions for the recipient to request a hard copy of the complete petition if they are not able to access it electronically. If a hard copy is requested by the recipient, the petitioner must serve it by first-class mail or its equivalent within 2 business days of the request.

(B) Serve notice of the petition on the individuals and entities listed in sections 5.402(A)(2), (3), (6), and (9) of this rule. If the petition is not filed within 180 days of service of the advance submission required by section 5.402, then the petitioner must update its list of Adjoining Landowners consistent with the requirements of section 5.402(A)(b) before providing notice of the petition. When service cannot be completed using the Commission's electronic filing system, the petitioner must serve the notice by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the notice via email. This notice must include, at a minimum, the case number if the case is filed in ePUC, a reference and link to the required documents as described in section 5.402(C), a general description of the type and approximate location of the facilities and upgrades proposed, a statement that a complete petition has been filed with the Commission and that the case has been opened, and information and a link that will allow the recipient to access the complete petition electronically. The notice must also include instructions on how a recipient can contact the petitioner to obtain a hard copy of the complete project plans and petition if the recipient is not able to access them electronically.

(C) The notice required by section 5.407(B), above, need not be served on Adjoining Landowners if the proposed project meets the exemption contained in section 5.402(E) of this rule.

(D) The petitioner must file a certification that it has complied with the service and notice requirements of this section within five business days of receipt of a notice of a complete petition.

5.408 Additional Requirements Pertaining to Certain Criteria

(A) Section 248(b)(2) (Need). For petitions to construct or modify transmission

facilities in a national interest electric transmission corridor designated by the federal Secretary of Energy under 16 U.S.C. § 824p(a), petitioners must, as part of ~~its~~their demonstration on need, specifically address the interstate benefits expected to be achieved by the proposed project.

(B) Section 248(b)(6) (Integrated Resource Plans~~. Any~~). A petition from an investor-owned utility, municipal electric department, or cooperative electric utility ~~which~~that does not have an approved integrated resource plan pursuant to 30 V.S.A. § 218c must provide evidence that its proposed project complies with principles of integrated resource planning, as defined in 30 V.S.A. § 218c, including consideration of environmental effects.

(C) Section 248(b)(7) (Consistency with Electric Energy Plan~~.~~). Except for petitions concerning natural gas facilities that are not part of or reasonably related to an electric generation facility, the petitioner must provide evidence that specifically demonstrates compliance with the electric energy plan approved by the Department of Public Service under 30 V.S.A. § 202, applying the relevant portions of that plan to the facts of the proposed project. If the petitioner seeks a determination that good cause exists to permit the proposed action ~~notwithstanding~~despite inconsistency with that plan, the petitioner must request such a determination and provide evidence demonstrating the existence of such good cause.

(D)

5.409 Intervention by Certain Persons and Entities

The following entities and persons may obtain party status in a proceeding conducted under Section 248 through the filing of a notice of intervention:

(1) the Agency of Agriculture, Food and Markets;
(2) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
(3) the regional planning commission of an adjacent region if the distance between the project's nearest component and the boundary of that adjacent region is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater;
(4) the legislative body and planning commission of an adjacent municipality if the distance between the project's nearest component and the boundary of that adjacent municipality is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater;
(5) the Natural Resources Board if the project site is subject to an Act 250 permit;
(6) the Division for Historic Preservation;
(7) any interconnecting utility;
(8) Adjoining Landowners;
(9) the host landowner(s); and
(10) in the case of a wind generation project, all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine on one or more of the following criteria: (b)(1) orderly development; (b)(4) economic benefit; and (b)(5) aesthetics, transportation, historic sites, and public investments.

A notice of intervention filed under this section by a person or entity identified in subsections (5) through (10), above, must include a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition.

The provisions of Commission Rule 2.209(C) apply to interventions under this

section.

5.410 Site Visits

~~The~~In its discretion, the Commission may conduct one or more site visits to view the location of the proposed project. The purpose of the site visit ~~shall be~~is to assist the Commission and the parties in understanding the proposed project and the issues that the proposed project may present. The site visit will typically include the following activities: a discussion of the ~~following matters: a description of the~~ proposed project and its location~~(s)~~;; a viewing of the existing conditions at the location~~(s)~~ of the proposed project; and ~~an explanation~~a discussion of how the existing conditions would be altered by the proposed project. The site visit may also include identification of relevant landscape features, discussion of how such landscape features ~~have affected or potentially should~~ affect the project design and location, identification of and visits to potential alternative locations for the proposed project, and consideration of any other relevant matters for which a first-hand viewing of the site~~(s)~~ may assist in understanding the issues before the Commission. Observations and facts from the site visit ~~shall~~will not be considered as evidence unless the Commission~~,~~ on its own motion ~~or on the request of a party,~~ specifically enters them into the evidentiary record.

5.411 Public Hearings

The Commission ~~will typically hold one~~, in response to a request from a party or a member of the public ~~hearing on a petition filed under Section 248, except that it typically will not~~, will

hold a public hearing on a petition ~~processed~~filed under Section 248 or 248(j). If the Commission is requested ~~and there is sufficient reason~~by one or more members of the public or a party, the Commission ~~will~~, in its discretion, may hold one or more additional public hearings. Also, the Commission on its own motion may hold one or more ~~additional~~ public hearings. ~~With respect~~ in response to ~~petitions filed under Section 248(j),~~a petition in the absence of any request from a member of the public or a party.

~~Commission may in its discretion determine to hold one or more public hearings upon request or on its motion.~~

5.412 Substantial Change ~~Prior to~~Before Decision on a Petition

If the petitioner makes a substantial change to ~~the~~a proposed project after the petition has been filed with the Commission but before a decision has been issued, the petitioner ~~is required to provide~~must serve notice of this change ~~to~~on all parties and entities entitled to notice under this ~~Rule~~rule and Section 248, including any newly affected ~~adjoining property owners~~Adjoining Landowners, as defined by this rule. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the ~~state~~State under Section 248(a).

5.413 Amendments to Projects Approved under Section 248

~~An amendment~~ Commission approval is required for any proposed substantial change to a project that has been issued a certificate of public good ~~for construction of generation or transmission facilities, issued~~ under 30 V.S.A. § 248~~, shall be required for a substantial change in the approved proposal~~. For the purpose of this subsection, a substantial change is a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the ~~state~~State under Section 248(a).

(A) If the approved project, or the portion of it that will be subject to the change, has been commissioned at the time the change is proposed, the proposed change must be filed as a petition in a new case consistent with the requirements of this rule. All notice and advance notice requirements must be met and must include notice to all parties in the original case as well as all entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. Notice does not need to be given to previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval. Provided the proposed change can reasonably be characterized as a modification to the previously approved and commissioned project, the fees associated with the proposed change are those established for project modifications under 30 V.S.A. § 248c(d)(B)(3). However, if the proposed change is more accurately characterized as a new project, then the fees associated with a new project will apply under 30 V.S.A. §§ 248b and 248c. Factors that the Commission will consider in making this determination will include the amount of time that has passed since the original project was commissioned, the nature of the proposed change, the identities of the persons or entities involved in the original and modified projects, and any change in capacity to the original project.

(B) If the approved project, or the portion of it that will be subject to the change, has not been commissioned at the time the change is proposed, a request for an amendment to the certificate of public good may be filed in the same case in which the certificate of public good was issued. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties and entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. Notice does not need to be served on previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval. New case procedures, including the provision of a 45-day advance submission, do not apply. The fee due for modifications under 30 V.S.A. § 248c(d)(3)(B) applies to petitions filed under this subsection.

(C) Requests for changes to the certificate of public good for an approved project that are based on non-substantial changes to the project may be made in the same case in which the certificate of public good was issued regardless of whether the project or portion of the project has been commissioned. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties in the case in which the certificate of public good was issued. New case procedures, including the provision of a 45-day advance submission, do not apply.

5.414 Costs of Section 248 Projects

~~Where~~When a Vermont utility is the petitioner, or the costs of a project or a portion thereof are eligible to be recovered from Vermont ratepayers, the petitioner ~~shall~~must regularly monitor and update the estimated capital costs of any project it has proposed ~~for~~ or received approval for under Section 248. ~~When~~At the time a petitioner becomes aware that the estimated capital costs of such a project may increase by 20 percent or more over earlier cost estimates submitted to the Commission by the petitioner, and the increase is at least $25,000, or such other amount as the Commission may order in a given proceeding or prescribe in a ~~Procedure, prior cost estimates submitted by~~procedure, the petitioner ~~to the Commission, the petitioner shall~~must notify the Commission and parties within seven calendar days of the new capital cost estimates for the project and the reasons for the increase. ~~This~~The requirement to monitor, update, and report ~~shall continue~~continues until construction of the project has been completed or final costs are determined, whichever is later.

5.415 Waiver

For good cause, the Commission may waive any of the requirements of this ~~Rule~~rule.

Clean Copy

5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

5.401 Purpose and Applicability

This rule establishes minimum filing requirements for petitions to construct electric generation, energy storage, electric transmission, and natural gas facilities pursuant to 30 V.S.A. § 248 and clarifies certain parts of the Section 248 review process. This rule is not intended to replace any of the statutory requirements of Section 248. Unless specifically stated, this rule also does not replace any requirements of other Public Utility Commission ("Commission") Rules or Procedures. Unless specifically stated, the requirements of this rule do not apply to petitions filed under subsections 248(k) or 248(n). The requirements of this rule do not apply to petitions for net-metering systems filed under Commission Rule 5.100.

5.402 Pre-Filing Advance Submission

No less than 45 days before filing a petition with the Commission, the petitioner must submit project plans as described below. If the proposed project consists solely of the relocation of transmission facilities, the submission must be made at least 21 days before such filing. Any of the persons or entities entitled to receive notice under this section may waive the notice requirement.

(A) Recipients Entitled to Advance Submission. The petitioner must serve the following persons with a copy of the advance submission:

(1) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
(2) all Adjoining Landowners;
(3) the host landowner(s);
(4) the Department of Public Service;
(5) the Agency of Natural Resources;
(6) the Natural Resources Board;
(7) the Division for Historic Preservation;
(8) the Agency of Agriculture, Food and Markets; and
(9) the interconnecting utility.

For purposes of this rule, "Adjoining "Landowner" means a person who owns land in fee simple, if that land:

(a) With respect to a transmission line, will be crossed by the right-of-way for that line, shares a property boundary with such right-of-way, or would share a boundary with the right-of-way but for the presence of an intervening river, stream, public highway, or railroad line that shares a boundary with the right-of-way; or

(b) With respect to a generation facility, energy storage facility, substation, or other transmission facility not part of a transmission line, shares a property boundary with the tract of land on which that facility or substation is located or is adjacent to that tract of land and the two properties are separated only by a river, stream, railroad line, or public highway.

Adjoining Landowners must be identified using the host town's certified grand list as it existed no more than 60 days before the date of the advance submission or online through the Vermont Center for Geographic Information database, municipality-specific databases, the Vermont Department of Taxes grand lists, or electronic versions of grand lists maintained by municipalities. A petitioner must

verify with the relevant municipality that the online database provides accurate and current information regarding parcel ownership within that municipality. Documentation of verification must be signed and attested to by a petitioner.

(B) Method of Service of Advance Submission. The petitioner must serve the advance submission on the entities listed in (A)(1) through (3), above, by first-class mail or its equivalent. The petitioner must cause the advance submission to be transmitted to the entities listed in (A)(4) through (9), above, using the Commission's electronic filing system, unless an applicable exemption exists, in which case service must be by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the advance submission via email.

(C) Contents of advance submissions. Whenever service of the advance submission must be done by mail, the petitioner may elect to serve a document with information and a link that will allow the recipient to access the actual content of the advance submission electronically. The document must also include instructions for the recipient to request a hard copy of the advance submission from the petitioner if they are not able to access it electronically. If a hard copy is requested by the recipient, the petitioner must serve it by first-class mail or its equivalent within 2 business days of the request.

All advance submissions must include:

(1) A reference and a link to the Commission document "Public Participation and Intervention in Proceedings Before the Public Utility Commission," found on the Commission's website at https://puc.vermont.gov/document/public-participation-and-intervention-proceedings-public-utility-commission, and,

(a) If the petition is filed under Section 248, a reference and a link to the Commission's Section 248 procedures document, found on the Commission's website at: https://puc.vermont.gov/document/section-248-procedures; or

(b) If the petition is filed under Section 248(j), a reference and a link to the Commission's Section 248(j) procedures document, found on the Commission's website at https://puc.vermont.gov/document/section-248j-procedures.

(2) Sufficient information for a reader to understand the overall proposed project, including but not limited to:

(a) The site location and project boundaries;

(b) A description and site plan of the proposed project in as much detail as the petitioner reasonably can provide that show the approximate location of all proposed new infrastructure (e.g., transmission lines, substation, roads, laydown areas, etc.) relative to the existing conditions. The description and site plan must include sufficient detail to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Commission's jurisdiction to address;

(c) A description of how equipment and materials will be transported to the site;

(d) Preliminary identification and analysis of aesthetic impacts and draft of a proposed aesthetic mitigation plan or an explanation why aesthetic mitigation measures are not needed for the proposed project;

(e) For projects proposed by utilities, the petitioner must include an evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.

(3) A notice of each municipal and regional planning commission's right under 30 V.S.A. § 248(f)(1)(A) to convene a public hearing on the proposed petition.

(4) A notice of each planning commission's right under 30 V.S.A. § 248(f)(1)(C) to submit recommendations to the petitioner within 40 days of the petitioner's submittal to the planning commissions.

(5) A notice that the petitioner's application to the Commission must address any written comments provided to the petitioner in response to the 45-day advance submission that are related to the Section 248(b) criteria and any oral comments related to those criteria made at a public hearing conducted pursuant to 30 V.S.A. § 248(f)(1)(A).

(6) A notice of each planning commission's right under 30 V.S.A. § 248(f)(1)(D) to make recommendations to the Commission after a petition is filed. The Commission will give due consideration to any such recommendations. Recommendations made to the Commission pursuant to this subsection, or the lack of such recommendations, shall not preclude municipal and regional planning commissions and municipal legislative bodies from exercising their right to appear as parties pursuant to 30 V.S.A. § 248(a)(4)(G)-(I).

(D) Timing of advance submissions. If, within 365 days of the date of the advance submission, the petitioner has not filed a complete petition for the project that fully complies with the filing requirements of this rule, the submission will be treated as withdrawn without further action required by the Commission. No petition may subsequently be filed for the project without first complying with the pre-filing advance submission requirements of this section. The time period established by this section may be extended for good cause shown by motion filed at least 14 calendar days before the expiration of the 365-day period.

(E) Exemption. The advance submission required by this section need not be served on Adjoining Landowners if the proposed project consists of reconductoring within an existing right-of-way and the height of any new structure required for the reconductoring is not more than 10 feet higher than the structure being replaced. If any pole height increases by more than 10 feet, the requirements of this section shall apply only to landowners whose property adjoins the right-of-way at the immediate location of such pole.

5.403 Contents of Petition

All petitions filed pursuant to Section 248 must be complete at the time they are filed. If a petitioner intends to rely solely on a permit from other regulatory agencies or a study to demonstrate compliance with the requirements of Section 248(b) instead of providing testimony or other evidence to satisfy such criteria, such studies and permits must be included with the petition.

(A) Petition contents. Subject to the exceptions for linear projects set forth in Section 5.404, below, each petition must include all of the following information unless a petitioner demonstrates that a specific piece of information is not applicable to the

petition:

(1) Prefiled evidence (testimony and exhibits) that demonstrates how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b) and promotes the general good of the State in compliance with 30 V.S.A. § 248(a). The testimony and exhibits must contain sufficient facts to support a positive finding by the Commission under each of the applicable Section 248 criteria. To the extent that the proposal will result in an adverse impact affecting any of these criteria, the applicant must describe what measures, if any, will be taken to minimize any such impact.

(2) A certification that all advance submission requirements in section 5.402 have been met.

(3) A summary of all comments received in the 45-day advance notice period as described in section 5.402(C)(4), including written comments and oral comments made at any public hearings and the petitioner's response to any such comments.

(4) A U.S. Geological Survey topographic map showing the location of the proposed project.

(5) An aerial photograph of the proposed project site that clearly marks existing structures and significant natural and constructed features when available, or an equivalent computer-generated image that provides similar detail.

(6) Either the topographic map referenced in subsection (4), above, or the annotated aerial photograph or equivalent computer-generated image must clearly show the project boundaries and enough of the adjacent property to show the project site in relation to surrounding land features and uses (e.g., natural areas, buildings, roads, and other generation, transmission, or storage facilities, etc.).

(7) Site plans or other documentation that include:

(a) legible scale(s) for all views on all sheets, including a legible graphic scale to account for document reductions;

(b) a project overview that shows the setbacks from the project's boundaries to the corner of the nearest project-related structure and approximate distances to any nearby residences, and for projects subject to specific applicable setbacks, the distance from the corner of the nearest project-related structure to the resource from which it must be set back;

(c) all project features and proposed site improvements and their dimensions, including temporary or permanent improvements on the project site or elsewhere that are reasonably related to the project;

(d) existing topography at the site and any proposed grading;

(e) the dimensions, area in square feet, and depth of all proposed soil disturbance;

(f) existing natural and constructed features (including but not limited to water bodies and wetlands and associated buffer zones, tree lines, primary agricultural soils, buildings, and roads);

(g) a depiction of any area(s) where vegetation is to be cleared or altered, including the limits of disturbance and the total acreage of any disturbed area;

(h) locations of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings;

(i) the latitude and longitude coordinates at the center of the proposed project site;

If the information required by subparagraphs (a) through (i) above is not included in a site plan, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(8) Descriptions of any proposed direct or indirect alterations to or impacts on any natural resources protected by 30 V.S.A. § 248(b)(5) including, but not limited to, wetlands, streams, shorelines, floodplains, rare and irreplaceable natural areas, necessary wildlife habitat, and their applicable buffer zones.

(9) Specific descriptions of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings.

(10) A cross-section of the site or other documentation showing existing and proposed conditions and the height of project features in relation to existing buildings and/or vegetation. If the information required by this subparagraph is not included in a cross-section of the site, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(11) The presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the project, the amount of those soils to be disturbed, and any other proposed impacts to those soils.

(12) Color photographs of the project site.

(13) Elevation drawings.

(a) For each proposed structure, the petitioner must provide elevation drawings.

(b) The elevation drawings must be to appropriate scales but no smaller than 1"/20'.

(c) The petitioner must include two elevation drawings of the proposed structures drawn at right angles to each other, showing the ground profile to at least 100 feet beyond the edge of any proposed clearing,

and showing any guy wires or supports.

(d) The elevation drawings must indicate the relative height of the facility to the tops of surrounding trees as they presently exist. The information required by this subsection (d) may be documented outside of a project's elevation drawings. If the information required by this subsection is not included in a project's elevation drawings, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(e) Each plan sheet must be clearly labeled with the project title, date, revision date(s), scale, and name of the person or firm that prepared the plan.

(14) Information to document compliance with Commission Rule 5.500 regarding interconnection procedures for electric generation facilities, Rule 5.800 regarding aesthetic mitigation, and Rule 5.900 regarding decommissioning.

(15) Copies of the relevant sections of any town plan and regional plan in effect in the community in which the proposed project will be located. The petitioner must include testimony describing how the project complies with or is inconsistent with the land conservation measures and specific policies in those plans.

(16) An index, organized according to the criteria of 30 V.S.A. § 248(b), that identifies by witness and page number the prefiled evidence that addresses each criterion, including the incorporated criteria of Section 248(b)(5). A descriptive title must be provided for each exhibit identified in the index.

(17) A copy of the Agency of Natural Resources Certificate of Public Good Application Fee Form.

(18) If applicable, a copy of the Public Utility Commission and Department of Public Service Application Fee for In-State Generation Facilities Form.

(19) For renewable generation projects, a description of any other renewable generation projects using the same fuel type that are existing, approved, proposed, or planned and are located on the same parcel of land or any parcel of land adjoining the parcel on which the petitioner plans to site its project.

(20) A summary of all community outreach efforts undertaken by the petitioner in advance of filing its petition.

(21) For petitions filed under Section 248(j), a proposed certificate of public good and proposed findings of fact.

(B) Attestations. All prefiled testimony and exhibits must be accompanied by a statement from the sponsoring witness attesting to the truth and accuracy of the testimony and exhibits and that they were prepared by or under the direct supervision of the witness. The attestation must include the following statement: "I

declare that the testimony and exhibits that I have sponsored are true and accurate to the best of my knowledge and belief and were prepared by me or under my direct supervision. I understand that if the above statement is false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30."

(C) Design level detail required. Petitioners are required to provide with their petition either plans at a design level of detail or a request for conceptual approval followed by post-certification review of final designs. A request for conceptual approval must be supported by evidence that shows that the cost to the petitioner of submitting design details with the petition would outweigh the benefits of such submission, including but not limited to the evaluation of site-specific impacts, accuracy in the findings to be made by the Commission, and finality of the Commission's decision on the petition. In approving or denying such a request for conceptual approval, the Commission may consider additional factors that it deems relevant.

(D) Filing format. Unless an applicable exemption exists, petitions must be filed in ePUC in accordance with the requirements of Commission Rule 2.

5.404 Petitions for Linear Projects

(A) Definition. For purposes of this section, "linear project" means a project or that portion of a project that is constructed using segmented and repetitive construction processes that is proposed to be sited in a utility easement, right-of-way, roadway, transmission corridor, or other similar construction corridor. Discrete, non-repeating, non-segmented components of a larger otherwise linear project, such as substations or gate stations, are not included within this definition or in the provisions of this rule section.

(B) Requirements. Petitions for linear projects may meet the advance submission and petition content requirements set forth in Sections 5.402(C) and 5.403(A), above, as follows:

(1) 5.403(A)(7)(b): Linear projects do not need to provide the information required by this section.
(2) 5.403(A)(7)(d): For site plan topography for a linear project, representative drawings may be used to show expected topographical variations and proposed grading. Separate site plan pages must be filed for unique variations from what is shown in the representative drawings.
(3) 5.403(A)(7)(i): Longitude and latitude coordinates must be provided for a linear project's endpoints and mid-point.
(4) 5.403(A)(10): Petitioners may submit plan and profile sheets that include (1) a perpendicular view of the line, and (2) an aerial image of the corridor with the line drawn in.
(5) 5.403(A)(12): For color photographs of the project site for linear projects, representative photographs may be used to show typical conditions. Separate photographs must also be filed for unique variations from what is depicted in the representative photographs.
(6) 5.403(A)(13): In place of elevation drawings, petitioners may submit plan and profile drawings. The drawings must show the location of each component of the linear project and contain depictions of each pole or similar structure, including ground elevation, pole heights, conductor heights, sags between the poles, attachments on the poles, and the distance between the poles.

5.405 Additional Filing Requirements for Petitions to Construct Wind Generation Facilities

(A) Definition. For purposes of this section, "wind generation facility" means a generation facility that uses wind to produce electricity.

(B) Requirements. In addition to the requirements of this rule, petitions to construct wind generation facilities must meet the following requirements:

(1) The prefiling advance submission required by section 5.402 must be served on all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine.
(2) In addressing the impact of the proposed project on orderly development, the petitioner must include an assessment of the impact on all towns within the ten-mile radius.
(3) The petition must include a viewshed analysis that includes an analysis of aesthetic impacts for a ten-mile radius from the proposed project site.
(4) The petition must include information documenting a project's compliance with Commission Rule 5.700 regarding sound levels.

(C) Non-applicability. The provisions of subsections (B)(1), (B)(2), and (B)(3), above, do not apply to net-metered wind systems authorized pursuant to 30 V.S.A. § 8010 (regulated under Commission Rule 5.100), or non-net-metered wind systems that would otherwise qualify for the net-metering program under 30 V.S.A § 8010 and Rule 5.100. No provisions of this section apply to meteorological towers regulated under 30 V.S.A. § 246.

5.406 Commission Initial Review of Petition

When a petition is filed under 30 V.S.A. § 248, the Commission will review the petition for administrative completeness. If the Commission determines that the petition is not complete, including providing information sufficient to support positive findings under all of the applicable criteria of Section 248(b), the Commission will notify the petitioner that its petition is considered incomplete with a description of the incomplete or missing items. The Commission will not take any further action on an incomplete petition unless and until the petitioner files the missing information and the Commission determines that the petition is administratively complete.

(A) Advance submissions. Unless the Commission determines otherwise, a Commission determination that a petition is incomplete does not invalidate the advance submission already provided by the petitioner.

(B) Burden of proof. A determination by the Commission that a petition is administratively complete does not constitute a determination that the petitioner has met its burden of proof or burden of production under any or all applicable criteria.

(C) Additional information. The Commission may request additional information from the petitioner at any time in a proceeding.

(D) Notice of completeness. When the Commission has determined that a petition is administratively complete, the Commission will provide written notice of that determination to the petitioner.

5.407 Service and Notice of Petition

Upon receipt of a notice of a complete petition, the petitioner must within two business days:

(A) Serve copies of the complete petition on all agencies and entities required under 30 V.S.A. § 248(a)(4)(C), and for wind generation facilities, the entities identified in section 5.405(B)(1) of this rule. When service cannot be completed using the Commission's electronic filing system, the petitioner may serve by first-class mail or its equivalent a document with information and a link that will allow the recipient to access the complete petition electronically. With permission from the intended

recipient, the petitioner may serve a copy of the document and the complete petition via email. The document must also include instructions for the recipient to request a hard copy of the complete petition if they are not able to access it electronically. If a hard copy is requested by the recipient, the petitioner must serve it by first-class mail or its equivalent within 2 business days of the request.

(B) Serve notice of the petition on the individuals and entities listed in sections 5.402(A)(2), (3), (6), and (9) of this rule. If the petition is not filed within 180 days of service of the advance submission required by section 5.402, then the petitioner must update its list of Adjoining Landowners consistent with the requirements of section 5.402(A)(b) before providing notice of the petition. When service cannot be completed using the Commission's electronic filing system, the petitioner must serve the notice by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the notice via email. This notice must include, at a minimum, the case number if the case is filed in ePUC, a reference and link to the required documents as described in section 5.402(C), a general description of the type and approximate location of the facilities and upgrades proposed, a statement that a complete petition has been filed with the Commission and that the case has been opened, and information and a link that will allow the recipient to access the complete petition electronically. The notice must also include instructions on how a recipient can contact the petitioner to obtain a hard copy of the complete project plans and petition if the recipient is not able to access them electronically.

(C) The notice required by section 5.407(B), above, need not be served on Adjoining Landowners if the proposed project meets the exemption contained in section 5.402(E) of this rule.

(D) The petitioner must file a certification that it has complied with the service and notice requirements of this section within five business days of receipt of a notice of a complete petition.

5.408 Additional Requirements Pertaining to Certain Criteria

(A) Section 248(b)(2) (Need). For petitions to construct or modify transmission facilities in a national interest electric transmission corridor designated by the federal Secretary of Energy under 16 U.S.C. § 824p(a), petitioners must, as part of their demonstration on need, specifically address the interstate benefits expected to be achieved by the proposed project.

(B) Section 248(b)(6) (Integrated Resource Plans). A petition from an investor-owned utility, municipal electric department, or cooperative electric utility that does not have an approved integrated resource plan pursuant to 30 V.S.A. § 218c must provide evidence that its proposed project complies with principles of integrated resource planning, as defined in 30 V.S.A. § 218c, including consideration of environmental effects.

(C) Section 248(b)(7) (Consistency with Electric Energy Plan). Except for petitions concerning natural gas facilities that are not part of or reasonably related to an electric generation facility, the petitioner must provide evidence that specifically demonstrates compliance with the electric energy plan approved by the Department of Public Service under 30 V.S.A. § 202, applying the relevant portions of that plan to the facts of the proposed project. If the petitioner seeks a determination that good cause exists to permit the proposed action despite inconsistency with that plan, the petitioner must request such a determination and provide evidence demonstrating the existence of such good cause.

(D)

5.409 Intervention by Certain Persons and Entities

The following entities and persons may obtain party status in a proceeding conducted under Section 248 through the filing of a notice of intervention:

(1) the Agency of Agriculture, Food and Markets;
(2) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
(3) the regional planning commission of an adjacent region if the distance between the project's nearest component and the boundary of that adjacent region is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater;
(4) the legislative body and planning commission of an adjacent municipality if the distance between the project's nearest component and the boundary of that adjacent municipality is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater;
(5) the Natural Resources Board if the project site is subject to an Act 250 permit;
(6) the Division for Historic Preservation;
(7) any interconnecting utility;
(8) Adjoining Landowners;
(9) the host landowner(s); and
(10) in the case of a wind generation project, all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine on one or more of the following criteria: (b)(1) orderly development; (b)(4) economic benefit; and (b)(5) aesthetics, transportation, historic sites, and public investments.

A notice of intervention filed under this section by a person or entity identified in subsections (5) through (10), above, must include a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition.

The provisions of Commission Rule 2.209(C) apply to interventions under this section.

5.410 Site Visits

In its discretion, the Commission may conduct one or more site visits to view the location of the proposed project. The purpose of the site visit is to assist the Commission and the parties in understanding the proposed project and the issues that the proposed project may present. The site visit will typically include the following activities: a discussion of the proposed project and its location; a viewing of the existing conditions at the location of the proposed project; and a discussion of how the existing conditions would be altered by the proposed project. The site visit may also include identification of relevant landscape features, discussion of how such landscape features affect the project design and location, identification of and visits to potential alternative locations for the proposed project, and consideration of any other relevant matters for which a first-hand viewing of the site may assist in understanding the issues before the Commission. Observations and facts from the site visit will not be considered as evidence unless the Commission on its own motion specifically enters them into the evidentiary record.

5.411 Public Hearings

The Commission, in response to a request from a party or a member of the public, will hold a public hearing on a petition filed under Section 248 or 248(j). If the Commission is requested by one or more members of the public or a party, the Commission, in its discretion, may hold one or more additional public hearings. Also, the Commission on its own motion may hold one or more public hearings in response to a petition in the

absence of any request from a member of the public or a party.

5.412 Substantial Change Before Decision on a Petition

If the petitioner makes a substantial change to a proposed project after the petition has been filed with the Commission but before a decision has been issued, the petitioner must serve notice of this change on all parties and entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the State under Section 248(a).

5.413 Amendments to Projects Approved under Section 248

Commission approval is required for any proposed substantial change to a project that has been issued a certificate of public good under 30 V.S.A. § 248. For the purpose of this subsection, a substantial change is a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the State under Section 248(a).

(A) If the approved project, or the portion of it that will be subject to the change, has been commissioned at the time the change is proposed, the proposed change must be filed as a petition in a new case consistent with the requirements of this rule. All notice and advance notice requirements must be met and must include notice to all parties in the original case as well as all entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. Notice does not need to be given to previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval. Provided the proposed change can reasonably be characterized as a modification to the previously approved and commissioned project, the fees associated with the proposed change are those established for project modifications under 30 V.S.A. § 248c(d)(B)(3). However, if the proposed change is more accurately characterized as a new project, then the fees associated with a new project will apply under 30 V.S.A. §§ 248b and 248c. Factors that the Commission will consider in making this determination will include the amount of time that has passed since the original project was commissioned, the nature of the proposed change, the identities of the persons or entities involved in the original and modified projects, and any change in capacity to the original project.

(B) If the approved project, or the portion of it that will be subject to the change, has not been commissioned at the time the change is proposed, a request for an amendment to the certificate of public good may be filed in the same case in which the certificate of public good was issued. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties and entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. Notice does not need to be served on previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval. New case procedures, including the provision of a 45-day advance submission, do not apply. The fee due for modifications under 30 V.S.A. § 248c(d)(3)(B) applies to petitions filed under this subsection.

(C) Requests for changes to the certificate of public good for an approved project that are based on non-substantial changes to the project may be made in the same case in which the certificate of public good was issued regardless of whether the project or portion of the project has been commissioned. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must

contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties in the case in which the certificate of public good was issued. New case procedures, including the provision of a 45-day advance submission, do not apply.

5.414 Costs of Section 248 Projects

When a Vermont utility is the petitioner, or the costs of a project or a portion thereof are eligible to be recovered from Vermont ratepayers, the petitioner must regularly monitor and update the estimated capital costs of any project it has proposed or received approval for under Section 248. At the time a petitioner becomes aware that the estimated capital costs of such a project may increase by 20 percent or more over earlier cost estimates submitted to the Commission by the petitioner, and the increase is at least $25,000, or such other amount as the Commission may order in a given proceeding or prescribe in a procedure, the petitioner must notify the Commission and parties within seven calendar days of the new capital cost estimates for the project and the reasons for the increase. The requirement to monitor, update, and report continues until construction of the project has been completed or final costs are determined, whichever is later.

5.415 Waiver

For good cause, the Commission may waive any of the requirements of this rule.

VERMONT **GENERAL ASSEMBLY**

The Vermont Statutes Online

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Title 30 : Public Service

Chapter 001 : Appointment, General Powers, and Duties

(Cite as: 30 V.S.A. § 2)

§ 2. Department powers

(a) The Department of Public Service shall supervise and direct the execution of all laws relating to public service corporations and firms and individuals engaged in such business, including the:

(1) formation, organization, ownership, and acquisition of facilities of public service corporations under chapter 3 of this title;

(2) participation in planning for proper utility service as provided in section 202 of this title through the Director for Regulated Utility Planning;

(3) supervision and evaluation under chapters 5 and 77 of this title of the quality of service of public utility companies;

(4) interconnection and interchange of facilities of electric companies under sections 210, 213, and 214 of this title;

(5) representation of the State in the negotiations and proceedings for the procurement of electric energy from any source outside this State and from any generation facility inside the State under sections 211 and 212 of this title;

(6) review of proposed changes in rate schedules and petition to the Public Utility Commission, and representation of the interests of the consuming public in proceedings to change rate schedules of public service companies under chapter 5 of this title;

(7) siting of electric generation and transmission facilities under section 248 of this title;

(8) consolidations and mergers of public service corporations under chapter 7 of this title;

(9) supervision and regulation of cable television systems under chapter 13 of this title;

(10) supervision and regulation of telegraph and telephone companies under chapters 71, 73, and 75 of this title;

(11) supervision and regulation of the organization and operation of municipal plants under chapter 79 of this title; and

(12) supervision and regulation of the organization and operation of electric cooperatives under chapter 81 of this title.

(b) In cases requiring hearings by the Commission, the Department, through the Director for Public Advocacy, shall represent the interests of the people of the State, unless otherwise specified by law. In any hearing, the Commission may, if it determines that the public interest would be served, request the Attorney General or a member of the Vermont bar to represent the public or the State. In addition, the Department may intervene, appear, and participate in Federal Energy Regulatory Commission proceedings, Federal Communications Commission proceedings, or other federal administrative proceedings on behalf of the Vermont public.

(c) The Department may bring proceedings on its own motion before the Public Utility Commission, with respect to any matter within the jurisdiction of the Public Utility Commission, and may initiate rulemaking proceedings before that Commission. The Public Utility Commission, with respect to any matter within its jurisdiction, may issue orders on its own motion and may initiate rulemaking proceedings.

(d) In any proceeding where the decommissioning fund for the Vermont Yankee Nuclear Facility is involved, the Department shall represent the consuming public in a manner that acknowledges that the general public interest requires that the consuming public, rather than either the State's future consumers who never obtain benefits from the facility or the State's taxpayers, ought to provide for all costs of decommissioning. The Department shall seek to have the decommissioning fund be based on all reasonably expected costs.

(e) The Commissioner of Public Service (the Commissioner) will work with the Director of the Office of Economic Opportunity (the Director), the Commissioner of Housing and Community Development, the Vermont Housing and Conservation Board (VHCB), the Vermont Housing Finance Agency (VHFA), the Vermont Community Action Partnership, and the efficiency entity or entities appointed under subdivision 209(d)(2) of this title and such other affected persons or entities as the Commissioner considers relevant to improve the energy efficiency of both single- and multi-family affordable housing units, including multi-family housing units previously funded by VHCB and VHFA and subject to the Multifamily Energy Design Standards adopted by the VHCB and VHFA. In consultation with the other entities identified in this subsection, the Commissioner and the Director together shall report twice to the House Committee on Environment and

Energy and the Senate Committee on Natural Resources and Energy, on or before January 31, 2015 and 2017, respectively, on their joint efforts to improve energy savings of affordable housing units and increase the number of units assisted, including their efforts to:

(1) simplify access to funding and other resources for energy efficiency and renewable energy available for single- and multi-family affordable housing. For the purpose of this subsection, "renewable energy" shall have the same meaning as under section 8002 of this title;

(2) ensure the delivery of energy services in a manner that is timely, comprehensive, and cost-effective;

(3) implement the energy efficiency standards applicable to single- and multi-family affordable housing;

(4) measure the results and performance of energy improvements;

(5) develop guidance for the owners and residents of affordable housing to maximize energy savings from improvements; and

(6) determine how to enhance energy efficiency resources for the affordable housing sector in a manner that avoids or reduces the need for assistance under 33 V.S.A. chapter 26 (home heating fuel assistance).

(f) In performing its duties under this section, the Department shall give heightened consideration to the interests of ratepayer classes who are not independently represented parties in proceedings before the Commission, including residential, low-income, and small business consumers, as well as other consumers whose interests might otherwise not be adequately represented but for the Department's advocacy.

(g) In all forums affecting policy and decision making for the New England region's electric system, including matters before the Federal Energy Regulatory Commission and the Independent System Operator of New England, the Department of Public Service shall advance positions that are consistent with the statutory policies and goals set forth in 10 V.S.A. §§ 578, 580, and 581 and sections 202a, 8001, 8004, and 8005 of this title. In those forums, the Department also shall advance positions that avoid or minimize adverse consequences to Vermont and its ratepayers from regional and inter-regional cost allocation for transmission projects. This subsection shall not compel the Department to initiate or participate in litigation and shall not preclude the Department from entering into agreements that represent a reasonable advance to these statutory policies and goals.

(h) The Department shall investigate when it receives a complaint that there has been noncompliance with 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, including a complaint of such noncompliance received pursuant to section 208

of this title or the complaint protocol established under 2016 Acts and Resolves No. 130, Sec. 5c. (Amended 1979, No. 204 (Adj. Sess.), § 2, eff. Feb. 1, 1981; 1989, No. 296 (Adj. Sess.), § 5, eff. June 29, 1990; 2013, No. 89, § 12a; 2013, No. 91 (Adj. Sess.), §§ 1, 5, eff. Feb. 4, 2014; 2013, No. 99 (Adj. Sess.), § 9a, eff. April 1, 2014; 2015, No. 11, § 31; 2015, No. 56, § 22; 2017, No. 53, § 7; 2017, No. 113 (Adj. Sess.), § 173.)

VERMONT **GENERAL ASSEMBLY**

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Title 30 : Public Service

Chapter 001 : Appointment, General Powers, and Duties

(Cite as: 30 V.S.A. § 9)

§ 9. Court of record; seal

The Commission shall have the powers of a court of record in the determination and adjudication of all matters over which it is given jurisdiction. It may render judgments, make orders and decrees, and enforce the same by any suitable process issuable by courts in this State. The Commission shall have an official seal on which shall be the words, "State of Vermont. Public Utility Commission. Official Seal." (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961.)

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Title 30 : Public Service

Chapter 001 : Appointment, General Powers, and Duties

(Cite as: 30 V.S.A. § 11)

§ 11. Pleadings; rules of practice; hearings; findings of fact

(a)(1) The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it.

(2) With regard to the general procedural rules codified in Commission Rule 2.000, notwithstanding the rulemaking provisions of the Vermont Administrative Procedure Act, the Commission is empowered to prescribe and amend from time to time general rules with respect to pleadings, practice, evidence, procedure, and forms for all Commission proceedings.

(3) The rules prescribed or amended shall not abridge, enlarge, or modify any substantive rights of any person provided by law.

(4) The rules, when initially prescribed or any amendments to them, including any repeal, modification, or addition, shall take effect on the date provided by the Commission in its order of promulgation unless objected to by the Legislative Committee on Judicial Rules as provided in 12 V.S.A. chapter 1. If an objection is made by the Legislative Committee on Judicial Rules, the initially prescribed rules in question shall not take effect until they have been reported to the General Assembly by the Chair of the Commission at any regular, adjourned, or special session thereof, and until after the expiration of 45 legislative days of that session, including the date of the filing of the report.

(5) The General Assembly may repeal, revise, or modify any rule or amendment, and its action shall not be abridged, enlarged, or modified by subsequent rule.

(6) The Commission shall adopt rules that include, among other things, provisions that:

(A) A utility whose rates are suspended under the provisions of section 226 of this title shall, within 30 days from the date of the suspension order, file with the Commission all exhibits it intends to use in the hearing thereon together with the names of witnesses it intends to produce in its direct case and a short statement of the purposes of the testimony of each witness. Except in the discretion of the Commission, a utility shall not be permitted to introduce into evidence in its direct case exhibits that are not filed in accordance with this rule.

(B) A scheduling conference shall be ordered in every contested rate case. At such conference the Commission may require the State or any person opposing such rate increase to specify what items shown by the filed exhibits are conceded. Further proof of conceded items shall not be required.

(b) The Commission shall allow all members of the public to attend each of its hearings unless the hearing is for the sole purpose of considering information to be treated as confidential pursuant to a protective order duly adopted by the Commission.

(1) The Commission shall make all reasonable efforts to ensure that the location of each hearing is sufficient to accommodate all members of the public seeking to attend.

(2) The Commission shall ensure that the public may safely attend the hearing, including obtaining such resources as may be necessary to fulfill this obligation.

(c) The Commission shall hear all matters within its jurisdiction and make its findings of fact. It shall state its rulings of law when they are excepted to. Upon appeal to the Supreme Court, its findings of fact shall be accepted unless clearly erroneous. (Amended 1959, No. 329 (Adj. Sess.), § 39(b), eff. March 1, 1961; 1971, No. 185 (Adj. Sess.), § 211, eff. March 29, 1972; 2013, No. 91 (Adj. Sess.), § 3; 2015, No. 23, § 134; 2017, No. 53, § 13a; 2019, No. 31, § 21; 2023, No. 33, § 6, eff. July 1, 2023.)

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Title 30 : Public Service

Chapter 005 : State Policy; Plans; Jurisdiction and Regulatory Authority of Commission and Department

Subchapter 001 : General Powers

(Cite as: 30 V.S.A. § 248)

§ 248. New gas and electric purchases, investments, and facilities; certificate of public good

(a)(1) No company, as defined in section 201 of this title, may:

(A) in any way purchase electric capacity or energy from outside the State:

(i) for a period exceeding five years that represents more than three percent of its historic peak demand, unless the purchase is from a plant as defined in section 8002 of this title that produces electricity from renewable energy as defined under section 8002; or

(ii) for a period exceeding 10 years, that represents more than 10 percent of its historic peak demand, if the purchase is from a plant as defined in section 8002 of this title that produces electricity from renewable energy as defined under section 8002; or

(B) invest in an electric generation facility, energy storage facility, or transmission facility located outside this State unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect.

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation or energy storage facilities that are operated solely for on-site electricity consumption by the owner of those facilities and for hydroelectric generation facilities subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or construction of an electric

generation facility, energy storage facility, or electric transmission facility within the State that is designed for immediate or eventual operation at any voltage; and

(B) no such company may exercise the right of eminent domain in connection with site preparation for or construction of any such transmission facility, energy storage facility, or generation facility, unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect.

(3) No company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin site preparation for or commence construction of any natural gas facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business, unless the Public Utility Commission first finds that the same will promote the general good of the State and issues a certificate to that effect pursuant to this section.

(A) For the purposes of this section, the term "natural gas facility" shall mean any natural gas transmission line, storage facility, manufactured-gas facility, or other structure incident to any such line or facility. For purposes of this section, a "natural gas transmission line" shall include any feeder main or any pipeline facility constructed to deliver natural gas in Vermont directly from a natural gas pipeline facility that has been certified pursuant to the Natural Gas Act, 15 U.S.C. § 717 et seq.

(B) For the purposes of this section, the term "company" shall not include a "natural gas company" (including a "person which will be a natural gas company upon completion of any proposed construction or extension of facilities"), within the meaning of the Natural Gas Act, 15 U.S.C. § 717 et seq.; provided however, that the term "company" shall include any "natural gas company" to the extent it proposes to construct in Vermont a natural gas facility that is not solely subject to federal jurisdiction under the Natural Gas Act.

(C) The Public Utility Commission shall have the authority to, and may in its discretion, conduct a proceeding, as set forth in subsection (h) of this section, with respect to a natural gas facility proposed to be constructed in Vermont by a "natural gas company" for the purpose of developing an opinion in connection with federal certification or other federal approval proceedings.

(4)(A) With respect to a facility located in the State, in response to a request from one or more members of the public or a party, the Public Utility Commission shall hold a nonevidentiary public hearing on a petition for such finding and certificate. The public hearing shall either be remotely accessible or held in at least one county in which any portion of the construction of the facility is proposed to be located, or both. The Commission in its discretion may hold a nonevidentiary public hearing in the absence of any request from a member of the public or a party. From the comments made at a public hearing, the Commission shall derive areas of inquiry that are relevant to the findings to be made under this section and shall address each such area in its decision.

Prior to making findings, if the record does not contain evidence on such an area, the Commission shall direct the parties to provide evidence on the area. This subdivision does not require the Commission to respond to each individual comment.

(B) The Public Utility Commission shall hold evidentiary hearings at locations that it selects in any case conducted under this section in which contested issues remain or when any party to a case requests that an evidentiary hearing be held. In the event a case is fully resolved and no party requests a hearing, the Commission may exercise its discretion and determine that an evidentiary hearing is not necessary to protect the interests of the parties or the public, or for the Commission to reach its decision on the matter.

(C) Within two business days of notification from the Commission that the petition is complete, the petitioner shall serve copies of the complete petition on the Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health; Agency of Natural Resources; Historic Preservation Division; Agency of Transportation; Agency of Agriculture, Food and Markets; and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

(D) Notice of the public hearing shall be published and maintained on the Commission's website for at least 12 days before the day appointed for the hearing. Notice of the public hearing shall be published once in a newspaper of general circulation in the county or counties in which the proposed facility will be located, and the notice shall include an Internet address where more information regarding the proposed facility may be viewed.

(E) The Agency of Natural Resources shall appear as a party in any proceedings held under this subsection, shall provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section, and may provide evidence and recommendations concerning any other matters to be determined by the Commission in such a proceeding.

(F) The following shall apply to the participation of the Agency of Agriculture, Food and Markets in proceedings held under this subsection:

(i) In any proceeding regarding an electric generation facility that will have a capacity greater than 500 kilowatts or an energy storage facility that will have a capacity greater than 1 megawatt and will be sited on a tract containing primary agricultural soils as defined in 10 V.S.A. § 6001, the Agency shall appear as a party and provide evidence and recommendations concerning any findings to be made under subdivision (b)(5) of this section on those soils, and may provide evidence and recommendations concerning any other matters to be determined by the Commission in such a proceeding.

(ii) In a proceeding other than one described in subdivision (i) of this

subdivision (4)(F), the Agency shall have the right to appear and participate.

(G) The regional planning commission for the region in which the facility is located shall have the right to appear as a party in any proceedings held under this subsection. The regional planning commission of an adjacent region shall have the same right if the distance of the facility's nearest component to the boundary of that planning commission is within 500 feet or 10 times the height of the facility's tallest component, whichever is greater.

(H) The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection. The legislative body and planning commission of an adjacent municipality shall have the same right if the distance of the facility's nearest component to the boundary of that adjacent municipality is within 500 feet or 10 times the height of the facility's tallest component, whichever is greater.

(I) When a person has the right to appear as a party in a proceeding before the Commission under this chapter, the person may exercise this right by filing a letter with the Commission stating that the person appears through the person's duly authorized representative, signed by that representative.

(J) This subdivision (J) applies to an application for an electric generation facility with a capacity that is greater than 50 kilowatts and to an application for an energy storage facility that is greater than 1 megawatt, unless the facility is located on a new or existing structure the primary purpose of which is not the generation of electricity. In addition to any other information required by the Commission, the application for such a facility shall include information that delineates:

(i) the full limits of physical disturbance due to the construction and operation of the facility and related infrastructure, including areas disturbed due to the creation or modification of access roads and utility lines and the clearing or management of vegetation;

(ii) the presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the facility, the amount of those soils to be disturbed, and any other proposed impacts to those soils;

(iii) all visible infrastructure associated with the facility; and

(iv) all impacts of the facility's construction and operation under subdivision (b)(5) of this section, including impacts due to the creation or modification of access roads and utility lines and the clearing or management of vegetation.

(5) The Commission shall adopt rules regarding standard conditions on postconstruction inspection and maintenance of aesthetic mitigation and on decommissioning to be included in certificates of public good for in-state facilities

approved under this section. The purpose of these standard conditions shall be to ensure that all required aesthetic mitigation is performed and maintained and that facilities are removed once they are no longer in service.

(6) In any certificate of public good issued under this section for an in-state plant as defined in section 8002 of this title that generates electricity from wind, the Commission shall require the plant to install radar-controlled obstruction lights on all wind turbines for which the Federal Aviation Administration (FAA) requires obstruction lights, if the plant includes four or more wind turbines and the FAA allows the use of radar-controlled lighting technology.

(A) Nothing in this subdivision shall allow the Commission to approve obstruction lights that do not meet FAA standards.

(B) The purpose of this subdivision (6) is to reduce the visual impact of wind turbine obstruction lights on the environment and nearby properties. The General Assembly finds that wind turbine obstruction lights that remain illuminated through the night create light pollution. Radar-controlled obstruction lights are only illuminated when aircraft are detected in the area, and therefore the use of these lights will reduce the negative environmental impacts of obstruction lights.

(7) When a certificate of public good under this section or amendment to such a certificate is issued for an in-state electric generation or energy storage facility with a capacity that is greater than 15 kilowatts, the certificate holder within 45 days shall record a notice of the certificate or amended certificate, on a form prescribed by the Commission, in the land records of each municipality in which a facility subject to the certificate is located and shall submit proof of this recording to the Commission. The recording under this subsection shall be indexed as though the certificate holder were the grantor of a deed. The prescribed form shall not exceed one page and shall require identification of the land on which the facility is to be located by reference to the conveyance to the current landowner, the number of the certificate, and the name of each person to which the certificate was issued and shall include information on how to contact the Commission to view the certificate and supporting documents.

(b) Before the Public Utility Commission 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 in the plan of any affected municipality. However:

(A) With respect to a natural gas transmission line subject to Commission review, the line shall be in conformance with any applicable provisions concerning such lines

contained in the duly adopted regional plan; and, in addition, upon application of any party, the Commission shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located.

(B) With respect to a ground-mounted solar electric generation facility, the facility shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Commission finds that requiring such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

(C) With respect to an in-state electric generation facility, the Commission shall give substantial deference to the land conservation measures and specific policies contained in a duly adopted regional and municipal plan that has received an affirmative determination of energy compliance under 24 V.S.A. § 4352. In this subdivision (C), "substantial deference" means that a land conservation measure or specific policy shall be applied in accordance with its terms unless there is a clear and convincing demonstration that other factors affecting the general good of the State outweigh the application of the measure or policy. The term shall not include consideration of whether the determination of energy compliance should or should not have been affirmative under 24 V.S.A. § 4352.

(2) Is required to meet the need for present and future demand for service that could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title. In determining whether this criterion is met, the Commission shall assess the environmental and economic costs of the purchase, investment, or construction in the manner set out under subdivision 218c(a)(1) (least cost integrated plan) of this title and, as to a generation facility, shall consider whether the facility will avoid, reduce, or defer transmission or distribution system investments.

(3) Will not adversely affect system stability and reliability.

(4) Will result in an economic benefit to the State and its residents.

(5) With respect to an in-state facility, will not have an undue adverse effect on aesthetics, 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), impacts to primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.

(6) With respect to purchases, investments, or construction by a company, is consistent with the principles for resource selection expressed in that company's approved least-cost integrated plan.

(7) Except as to a natural gas facility that is not part of or incidental to an electric generating facility, is in compliance with the electric energy plan approved by the Department under section 202 of this title, or that there exists good cause to permit the proposed action.

(8) Does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Secretary of Natural Resources, except that with respect to a natural gas or electric transmission facility, the facility does not have an undue adverse effect on those outstanding resource waters.

(9) With respect to a waste to energy facility:

(A) is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a, which is consistent with the State Solid Waste Management Plan; and

(B) is included in a solid waste management plan adopted pursuant to 24 V.S.A. § 2202a for the municipality and solid waste district from which 1,000 tons or more per year of the waste is to originate, if that municipality or district owns an operating facility that already beneficially uses a portion of the waste.

(10) Except as to a natural gas facility that is not part of or incidental to an electric generating facility, can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers.

(11) With respect to an in-state generation facility that produces electric energy using woody biomass, will:

(A) comply with the applicable air pollution control requirements under the federal Clean Air Act, 42 U.S.C. § 7401 et seq.;

(B) achieve the highest design system efficiency that is commercially available, feasible, and cost-effective for the type and design of the proposed facility; and

(C) comply with harvesting procedures and procurement standards that ensure long-term forest health and sustainability. These procedures and standards at a minimum shall be consistent with the guidelines and standards developed pursuant to 10 V.S.A. § 2750 (harvesting guidelines and procurement standards) when adopted under that statute.

(c)(1) Except as otherwise provided in subdivision (j)(3) of this section, in the case of a municipal plant or department formed under local charter or chapter 79 of this title or a cooperative formed under chapter 81 of this title, any proposed investment, construction, or contract subject to this section shall be approved by a majority of the voters of a

municipality or the members of a cooperative voting upon the question at a duly warned annual or special meeting to be held for that purpose. However, in the case of a cooperative formed under chapter 81 of this title, an investment in or construction of an in-state electric transmission facility shall not be subject to the requirements of this subsection if the investment or construction is solely for reliability purposes and does not include new construction or upgrades to serve a new generation facility.

(2) The municipal department or cooperative shall provide to the voters or members, as the case may be, written assessment of the risks and benefits of the proposed investment, construction, or contract that were identified by the Public Utility Commission in the certificate issued under this section. The municipal department or cooperative also may provide to the voters an assessment of any other risks and benefits.

(d) Nothing in this section shall be construed to prohibit a company from executing a letter of intent or entering into a contract before the issuance of a certificate of public good under this section, provided that the company's obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(e)(1) Before a certificate of public good is issued for the construction of a nuclear energy generating plant within the State, the Public Utility Commission shall obtain the approval of the General Assembly and the Assembly's determination that the construction of the proposed facility will promote the general welfare. The Public Utility Commission shall advise the General Assembly of any petition submitted under this section for the construction of a nuclear energy generating plant within this State, by written notice delivered to the Speaker of the House of Representatives and to the President of the Senate. The Department of Public Service shall submit recommendations relating to the proposed plant and shall make available to the General Assembly all relevant material. The requirements of this subsection shall be in addition to the findings set forth in subsection (b) of this section.

(2) No nuclear energy generating plant within this State may be operated beyond the date permitted in any certificate of public good granted pursuant to this title, including any certificate in force as of January 1, 2006, unless the General Assembly approves and determines that the operation will promote the general welfare, and until the Public Utility Commission issues a certificate of public good under this section. If the General Assembly has not acted under this subsection by July 1, 2008, the Commission may commence proceedings under this section and under 10 V.S.A. chapter 157, relating to the storage of radioactive material, but may not issue a final order or certificate of public good until the General Assembly determines that operation will promote the general welfare and grants approval for that operation.

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

(A) 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 Commission 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) Make recommendations to the petitioner within 40 days of the petitioner's submittal to the planning commission under this subsection.

(D) Once the petition is filed with the Public Utility Commission, make recommendations to the Commission by the deadline for submitting comments or testimony set forth in the applicable provision of this section, Commission rule, or scheduling order issued by the Commission.

(2) 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.

(g) Notwithstanding the 45 days' notice required by subsection (f) of this section, plans involving the relocation of an existing transmission line within the State must be submitted to the municipal and regional planning commissions no less than 21 days prior to application for a certificate of public good under this section.

(h) The position of the State of Vermont in federal certification or other approval proceedings for natural gas facilities shall be developed in accordance with this subsection.

(1) A natural gas facility requiring federal approval shall apply to the Public Utility Commission for an opinion under this section (on or before the date on which the facility

applies for such federal approval in the case of a facility that has not applied for federal approval before January 16, 1988). Any opinion issued under this subsection shall be developed based upon the criteria established in subsection (b) of this section.

(2) If the Commission conducts proceedings under this subsection, the Department shall give due consideration to the Commission's opinion as to facilities of a natural gas company, and that opinion shall guide the position taken before federal agencies by the State of Vermont, acting through the Department of Public Service under section 215 of this title.

(3) If the Commission conducts proceedings under this subsection, it may consolidate them, solely for purposes of creating a common record, with any related proceedings conducted under subdivision (a)(3) of this section.

(i)(1) No company, as defined in sections 201 and 203 of this title, without approval by the Commission, after giving notice of such investment or filing a copy of that contract with the Commission and the Department at least 30 days prior to the proposed effective date of that contract or investment:

(A) may invest in a gas-production facility located outside this State; or

(B) may execute a contract for the purchase of gas from outside the State, for resale to firm-tariff customers, that:

(i) is for a period exceeding five years; or

(ii) represents more than 10 percent of that company's peak demand for resale to firm-tariff customers.

(2) The Department and the Commission shall consider within 30 days whether to investigate the proposed investment or contract.

(3) The Commission, upon its own motion or upon the recommendation of the Department, may determine to initiate an investigation. If the Commission does not initiate an investigation within such 30-day period, the contract or investment shall be deemed to be approved. If the Commission determines to initiate an investigation, it shall give notice of that decision to the company proposing the investment or contract, the Department, and such other persons as the Commission determines are appropriate. The Commission shall conclude its investigation within 120 days of issuance of its notice of investigation, or within such shorter period as it deems appropriate, unless the company consents to waive the 120-day requirement. Except when the company consents to waive the 120-day requirement, if the Commission fails to issue a decision within that 120-day period, the contract or investment shall be deemed to be approved. The Commission may hold informal, public, or evidentiary hearings on the proposed investment or contract.

(4) Nothing in this subsection shall prohibit a company from negotiating or adjusting

periodically the price of other terms of supply through a supplement to such a contract, provided that the supplement falls within the terms specified in such a contract, as approved. The Commission's authority to investigate such adjustments under other authorities of this title shall not be impaired. Such a company shall file with the Department and the Commission a copy of any such supplement to the contract or other documentation that states any terms that have been renegotiated or adjusted by the company at least 30 days prior to the effective date of the renegotiated or adjusted price or other terms.

(5) Nothing in this subsection shall be construed to prohibit a gas company from executing a development contract, a contract for design and engineering, a contract to seek regulatory approvals for a gas-production facility, or a letter of intent for such purchase of gas that makes the company's obligations under that letter of intent subject to the requirements of this subsection, prior to the filing with the Commission and Department of such notice or proposed contract or pending any investigation under this subsection.

(j)(1) The Commission may, subject to such conditions as it may otherwise lawfully impose, issue a certificate of public good in accordance with the provisions of this subsection and without the notice and hearings otherwise required by this chapter if the Commission finds that:

(A) approval is sought for construction of facilities described in subdivision (a)(2) or (3) of this section;

(B) such facilities will be of limited size and scope;

(C) the petition does not raise a significant issue with respect to the substantive criteria of this section; and

(D) the public interest is satisfied by the procedures authorized by this subsection.

(2) Any party seeking to proceed under the procedures authorized by this subsection shall file a proposed certificate of public good and proposed findings of fact with its petition. Within two business days of notification by the Commission that the filing is complete, the party shall serve copies of the complete filing on the parties specified in subdivision (a)(4)(C) of this section and the party shall give written notice of the proposed certificate and of the Commission's determination that the filing is complete to those parties, to any public interest organization that has in writing requested notice of applications to proceed under this subsection, and to any other person found by the Commission to have a substantial interest in the matter. The notice shall request comment within 30 days of the date of service of the complete filing on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the Commission finds that the petition raises a significant issue with respect to the substantive criteria of this section, the Commission shall hear

evidence on any such issue.

(3) The construction of facilities authorized by a certificate issued under this subsection shall not require the approval of voters of a municipality or the members of a cooperative, as would otherwise be required under subsection (c) of this section.

(k)(1) Notwithstanding any other provisions of this section, the Commission may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, a generation facility, or an energy storage facility as necessary to ensure the stability or reliability of the electric system or a natural gas facility, pending full review under this section.

(2) A person seeking a waiver under this subsection shall file a petition with the Commission and shall provide copies to the Department of Public Service and the Agency of Natural Resources. Upon receiving the petition, the Commission shall conduct an expedited preliminary hearing, upon such notice to the governmental bodies listed in subdivision (a)(4)(C) of this section as the Commission may require.

(3) An order granting a waiver may include terms, conditions, and safeguards, including the posting of a bond or other security, as the Commission deems proper, considering the scope and duration of the requested waiver.

(4) A waiver shall be granted only upon a showing that:

(A) good cause exists because an emergency situation has occurred;

(B) the waiver is necessary to provide adequate and efficient service or to preserve the property of the public service company devoted to public use;

(C) measures will be taken, as the Commission deems appropriate, to minimize significant adverse impacts under the criteria specified in subdivisions (b)(5) and (8) of this section; and

(D) taking into account any terms, conditions, and safeguards that the Commission may require, the waiver will promote the general good of the State.

(5) Upon the expiration of a waiver, if a certificate of public good has not been issued under this section, the Commission shall require the removal, relocation, or alteration of the facilities subject to the waiver, as it finds will best promote the general good of the State.

(l) Notwithstanding other provisions of this section, and without limiting any existing authority of the Governor, and pursuant to 20 V.S.A. § 9(10) and (11), when the Governor has proclaimed a state of emergency pursuant to 20 V.S.A. § 9, the Governor, in consultation with the Chair of the Public Utility Commission and the Commissioner of Public Service or their designees, may waive the prohibitions contained in this section upon site preparation for or construction of an electric transmission facility, a generation facility, or an energy storage facility as necessary to ensure the stability or reliability of

the electric system or a natural gas facility. Waivers issued under this subsection shall be subject to such conditions as are required by the Governor and shall be valid for the duration of the declared emergency plus 180 days or such lesser overall term as determined by the Governor. Upon the expiration of a waiver under this subsection, if a certificate of public good has not been issued under this section, the Commission shall require the removal, relocation, or alteration of the facilities, subject to the waiver, as the Commission finds will best promote the general good of the State.

(m) In any matter with respect to which the Commission considers the operation of a nuclear energy generating plant beyond the date permitted in any certificate of public good granted under this title, including any certificate in effect as of January 1, 2006, the Commission shall evaluate the application under current assumptions and analyses and not an extension of the cost benefit assumptions and analyses forming the basis of the previous certificate of public good for the operation of the facility.

(n)(1) No company as defined in section 201 of this title and no person as defined in 10 V.S.A. § 6001(14) may place or allow the placement of wireless communications facilities on an electric transmission or generation facility located in this State, including a net metering system, without receiving a certificate of public good from the Public Utility Commission pursuant to this subsection. The Public Utility Commission may issue a certificate of public good for the placement of wireless communications facilities on electric transmission and generation facilities if such placement is in compliance with the criteria of this section and Commission rules or orders implementing this section. In developing such rules and orders, the Commission:

(A) may waive the requirements of this section that are not applicable to wireless telecommunication facilities, including criteria that are generally applicable to public service companies as defined in this title;

(B) may modify notice and hearing requirements of this title as it deems appropriate;

(C) shall seek to simplify the application and review process as appropriate; and

(D) shall be aimed at furthering the State's interest in ubiquitous mobile telecommunications and broadband service in the State.

(2) Notwithstanding subdivision (1)(B) of this subsection, if the Commission finds that a petition filed pursuant to this subsection does not raise a significant issue with respect to the criteria enumerated in subdivisions (b)(1), (3), (4), (5), and (8) of this section, the Commission shall issue a certificate of public good without a hearing. If the Commission fails to issue a final decision or identify a significant issue with regard to a completed petition made under this section within 60 days of its filing with the Clerk of the Commission and service to the Director of Public Advocacy for the Department of Public Service, the petition is deemed approved by operation of law. The rules required by this subsection shall be adopted within six months of the effective date of this section, and

rules under this section may be adopted on an emergency basis to comply with the dates required by this section. As used in this subsection, "wireless communication facilities" include antennae, related equipment, and equipment shelter, but do not include equipment used by utilities exclusively for intra- and inter-utility communications.

(o) The Commission shall not reject as incomplete a petition under this section for a wind generation facility on the grounds that the petition does not specify the exact make or dimensions of the turbines and rotors to be installed at the facility as long as the petition provides the maximum horizontal and vertical dimensions of those turbines and rotors and the maximum decibel level that the turbines and rotors will produce as measured at the nearest residential structure over a 12-hour period commencing at 7:00 p.m.

(p) An in-state generation facility receiving a certificate under this section that produces electric energy using woody biomass shall annually disclose to the Commission the amount, type, and source of wood acquired to generate energy.

(q)(1) A certificate under this section shall be required for a plant using methane derived from an agricultural operation as follows:

(A) With respect to a plant that constitutes farming pursuant to 10 V.S.A. § 6001(22)(F), only for the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, and the interconnection to electric and natural gas distribution and transmission systems. The certificate shall not be required for the methane digester, the digester influents and non-gas effluents, the buildings and equipment used to handle such influents and non-gas effluents, or the on-farm use of heat and exhaust produced by the generation of electricity, and these components shall not be subject to jurisdiction under this section.

(B) With respect to a plant that does not constitute farming pursuant to 10 V.S.A. § 6001(22)(F) but that receives feedstock from off-site farms, for all on-site components of the plant, for the transportation of feedstock to the plant from off-site contributing farms, and the transportation of effluent or digestate back to those farms. The certificate shall not regulate any farming activities conducted on the contributing farms that provide feedstock to a plant or use of effluent or digestate returned to the contributing farms from the plant.

(2) Notwithstanding 1 V.S.A. § 214 and Commission Rule 5.408, if the Commission issued a certificate to a plant using methane derived from an agricultural operation prior to July 1, 2013, such certificate shall require an amendment only when there is a substantial change, pursuant to Commission Rule 5.408, to the equipment used to generate electricity from biogas, the equipment used to refine biogas into natural gas, the structures housing such equipment used to generate electricity or refine biogas, or the interconnection to electric and natural gas distribution and transmission systems.

The Commission's jurisdiction in any future proceedings concerning such a certificate shall be limited pursuant to subdivision (1) of this subsection.

(3) This subsection shall not affect the determination, under section 8005a of this title, of the price for a standard offer to a plant using methane derived from an agricultural operation.

(4) As used in this section, "biogas" means a gas resulting from the action of microorganisms on organic material such as manure or food processing waste.

(r) The Commission may provide that, in any proceeding under subdivision (a)(2)(A) of this section for the construction of a renewable energy plant, a demonstration of compliance with subdivision (b)(2) of this section, relating to establishing need for the plant, shall not be required if all or part of the electricity to be generated by the plant is under contract to one or more Vermont electric distribution companies and if no part of the plant is financed directly or indirectly through investments, other than power contracts, backed by Vermont electricity ratepayers. In this subsection, "plant" and "renewable energy" shall be as defined in section 8002 of this title.

(s) This subsection sets minimum setback requirements that shall apply to in-state ground-mounted solar electric generation facilities approved under this section, unless the facility is installed on a canopy constructed on an area primarily used for parking vehicles that is in existence or permitted on the date the application for the facility is filed.

(1) The minimum setbacks shall be:

(A) from a State or municipal highway, measured from the edge of the traveled way:

(i) 100 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 40 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(B) From each property boundary that is not a State or municipal highway:

(i) 50 feet for a facility with a plant capacity exceeding 150 kW; and

(ii) 25 feet for a facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(2) This subsection does not require a setback for a facility with a plant capacity equal to or less than 15 kW.

(3) On review of an application, the Commission may:

(A) require a larger setback than this subsection requires;

(B) approve an agreement to a smaller setback among the applicant, the

municipal legislative body, and each owner of property adjoining the smaller setback; or

(C) require a setback for a facility constructed on an area primarily used for parking vehicles, if the application concerns such a facility.

(4) In this subsection:

(A) "kW" and "plant capacity" shall have the same meaning as in section 8002 of this title.

(B) "Setback" means the shortest distance between the nearest portion of a solar panel or support structure for a solar panel, at its point of attachment to the ground, and a property boundary or the edge of a highway's traveled way.

(t) Notwithstanding any contrary provision of the law, primary agricultural soils as defined in 10 V.S.A. § 6001 located on the site of a solar electric generation facility approved under this section shall remain classified as such soils, and the review of any change in use of the site subsequent to the construction of the facility shall treat the soils as if the facility had never been constructed. Each certificate of public good issued by the Commission for a ground-mounted solar generation facility shall state the contents of this subsection.

(u) For an energy storage facility, a certificate under this section shall only be required for a stationary facility exporting to the grid that has a capacity of 100 kW or greater, unless the Commission establishes a larger threshold by rule. The Commission shall establish a simplified application process for energy storage facilities subject to this section with a capacity of up to 1 MW, unless it establishes a larger threshold by rule. For facilities eligible for this simplified application process, a certificate of public good will be issued by the Commission by the forty-sixth day following filing of a complete application, unless a substantive objection is timely filed with the Commission or the Commission itself raises an issue. The Commission may require facilities eligible for the simplified application process to include a letter from the interconnecting utility indicating the absence or resolution of interconnection issues as part of the application. (Added 1969, No. 69, § 1, eff. April 18, 1969; amended 1969, No. 207 (Adj. Sess.), § 12, eff. March 24, 1970; 1971, No. 208 (Adj. Sess.), eff. March 31, 1972; 1975, No. 23; 1977, No. 11, §§ 1, 2; 1979, No. 204 (Adj. Sess.), § 31, eff. Feb. 1, 1981; 1981, No. 111 (Adj. Sess.); 1983, No. 45; 1985, No. 48, § 1; 1987, No. 65, § 1, eff. May 28, 1987; 1987, No. 67, § 14; 1987, No. 273 (Adj. Sess.) § 1, eff. June 21, 1988; 1989, No. 256 (Adj. Sess.), § 10(a), eff. Jan. 1, 1991; 1991, No. 99, §§ 3, 4; 1991, No. 259 (Adj. Sess.), §§ 6, 7; 1993, No. 21, § 10, eff. May 12, 1993; 1993, No. 159 (Adj. Sess.), § 1a, eff. May 19, 1994; 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 82 (Adj. Sess.), §§ 2, 3; 2005, No. 160 (Adj. Sess.), §§ 2, 3; 2007, No. 79, § 16, eff. June 9, 2007; 2009, No. 6, §§ 1, 2, 3, eff. April 30, 2009; 2009, No. 45, § 7, eff. May 27, 2009; 2009, No. 146 (Adj. Sess.), § F30; 2011, No. 47, § 5; 2011, No. 62, § 26; 2011, No. 138 (Adj. Sess.), § 27, eff. May 14, 2012; 2011, No. 170 (Adj. Sess.), § 12, eff. May 18, 2012; 2013, No. 24, § 4, eff. May 13, 2013; 2013, No. 88, § 1; 2015, No. 23, § 151; 2015, No. 40, §

31; 2015, No. 51, § F.9, eff. June 3, 2015; 2015, No. 56, §§ 19, 20; 2015, No. 56, §§ 26a, 26b, 26c, eff. June 11, 2015; 2015, No. 174 (Adj. Sess.), § 11, eff. June 13, 2016; 2017, No. 53, §§ 1, 3, 4; 2017, No. 74, § 125; 2017, No. 163 (Adj. Sess.), § 1; 2019, No. 31, §§ 17, 25; 2021, No. 42, § 6; 2021, No. 54, § 9, eff. Dec. 31, 2022; 2023, No. 33, § 1, eff. July 1, 2023.)

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Deadline For Public Comment

Deadline: Aug 15, 2023

The deadline for public comment has expired. Contact the agency or primary contact person listed below for assistance.

Rule Details

Rule Number:	23P018
Title:	Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. § 248.
Type:	Standard
Status:	Proposed
Agency:	Vermont Public Utility Commission
Legal Authority:	30 V.S.A. §§ 2(c), 9, 11(a), and 248
Summary:	Section 248 of Title 30 of the Vermont Statues annotated requires persons seeking to build certain electric generation, electric or gas transmission, or energy storage facilities to obtain a certificate of public good from the Commission. Commission

	Rule 5.400 implements the requirements of Section 248. The proposed amendments serve four primary purposes. First, they provide increased clarity on the information that must be filed for a Section 248 petition to be considered complete. Second, they update the means by which parties can exchange and collect information in response to technological advances and our experience with the COVID-19 pandemic. Third, they provide clarity on the processes that must be followed when petitioners seek to amend projects that are under review, or have been reviewed and approved. Fourth, the amendments simplify the process for certain persons and entities to intervene as parties in Section 248 cases.
Persons Affected:	Any person or entity filing a petition for a certificate of public good for a project under 30 V.S.A. § 248 and anyone participating or wanting to participate in the review of a proposed project. Examples include utility and non-utility petitioners, ratepayers, the Vermont Department of Public Service, the Vermont Agency of Natural Resources, the Vermont Division for Historic Preservation, the Vermont Agency of Agriculture, Food & Markets, owners of land that abuts a proposed project, and businesses that may be affected by a proposed project.
Economic Impact:	It is possible that the amendments will require some petitioners to expend additional resources in advance of filing a petition under Section 248 as a result of the expanded specificity regarding the content of Section 248 petitions. However, any increase in costs in preparing the petition are expected to be offset, at least in part, by greater efficiency in the review process resulting from the reduction or elimination of the need for the Commission to direct petitioners to provide additional information after a petition is filed.
Posting date:	Jun 28,2023

Hearing Information

Information for Hearing # 1

Hearing date:	08-08-2023 6:30 PM ADD TO YOUR CALENDAR
Location:	Virtual Hearing via GoToMeeting.
Address:	https://meet.goto.com/787536725

City:	Call in Audio Only (877) 309-2073 and enter PIN# 787-536-725.
State:	VT
Zip:	n/a
Hearing Notes:	

Contact Information

Information for Primary Contact

PRIMARY CONTACT PERSON - A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE.

Level:	Primary
Name:	John J. Cotter, Esq.
Agency:	Vermont Public Utility Commission
Address:	112 State Street, 4th Floor
City:	Montpelier
State:	VT
Zip:	05602
Telephone:	802-461-6364
Fax:	802-828-3352
Email:	john.cotter@vermont.gov SEND A COMMENT
Website Address:	https://epuc.vermont.gov/?qnode/64/156798 VIEW WEBSITE

Information for Secondary Contact

SECONDARY CONTACT PERSON - A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE PRIMARY CONTACT PERSON.

Level:	Secondary
Name:	Elizabeth Schilling, Esq.
Agency:	Vermont Public Utility Commission
Address:	112 State Street, 4th Floor
City:	Montpelier
State:	VT
Zip:	05602
Telephone:	802-828-1164
Fax:	802-828-3352
Email:	elizabeth.schilling@vermont.gov SEND A COMMENT

Keyword Information

Keywords:

Rule 5.400
30 V.S.A. § 248
contents of petition
substantial change

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	The Islander (islander@vermontislander.com)	Tel: 802-372-5600 FAX: 802-372-3025
	Vermont Lawyer (hunter.press.vermont@gmail.com)	Attn: Will Hunter

FROM: APA Coordinator, VSARA **Date of Fax:** June 27, 2023

RE: The "Proposed State Rules " ad copy to run on **July 6, 2023**

PAGES INCLUDING THIS COVER MEMO: **4**

NOTE **8-pt font in body. 12-pt font max. for headings - single space body. Please include dashed lines where they appear in ad copy. Otherwise minimize the use of white space. Exceptions require written approval.**

If you have questions, or if the printing schedule of your paper is disrupted by holiday etc. please contact VSARA at 802-828-3700, or E-Mail sos.statutoryfilings@vermont.gov, Thanks.

PROPOSED STATE RULES

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By law, public notice of proposed rules must be given by publication in newspapers of record. The purpose of these notices is to give the public a chance to respond to the proposals. The public notices for administrative rules are now also available online at https://secure.vermont.gov/SOS/rules/ . The law requires an agency to hold a public hearing on a proposed rule, if requested to do so in writing by 25 persons or an association having at least 25 members.

To make special arrangements for individuals with disabilities or special needs please call or write the contact person listed below as soon as possible.

To obtain further information concerning any scheduled hearing(s), obtain copies of proposed rule(s) or submit comments regarding proposed rule(s), please call or write the contact person listed below. You may also submit comments in writing to the Legislative Committee on Administrative Rules, State House, Montpelier, Vermont 05602 (802-828-2231).

Vermont Use of Public Waters Rules.

Vermont Proposed Rule: 23P017

AGENCY: Agency of Natural Resources

CONCISE SUMMARY: The proposed rule is an amendment to Section 3 and Appendix A of the Vermont Use of Public Waters Rules (UPW), Environmental Protection Rule Chapter 32. The rule proposes to regulate "wakesports" involving a "wakeboat" on certain lakes and ponds in Vermont. The rule would prohibit such wakesports on lakes, ponds, and reservoirs that do not have a minimum of 50 contiguous acres that are both 500 feet from shore on all sides and a minimum of 20 feet deep (eligibility rule). The rule would also limit such wakesports to these defined areas that are 500 feet from shore and 20 feet deep (operating rule). Finally, the rule would require a "wakeboat" to only be used in one lake per summer unless the wakeboat is decontaminated at a certified Dept. of Environmental Conservation (DEC) service provider (home lake rule). This rule is in response to a petition that was submitted to DEC in March 2022, requesting that DEC regulate wakeboats on certain Vermont lakes. A few editorial corrections are also being made.

FOR FURTHER INFORMATION, CONTACT: Oliver Pierson, Agency of Natural Resources, Davis Building, 3rd Floor, 1 National Life Drive, Montpelier, Vermont 05620-3522 Tel: 802-490-6198 Fax: 802-828-1544 Email: oliver.pierson@vermont.gov URL: https://dec.vermont.gov/watershed/lakes-ponds/rulemaking.

FOR COPIES: Katelyn Ellermann, Agency of Natural Resources, Davis Building, 2nd Floor, 1 National Life Drive, Montpelier, Vermont 05620-3901 Tel: 802-522-7125 Fax: 802-828-1544 Email: katelyn.ellerman@vermont.gov.

Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. § 248.

Vermont Proposed Rule: 23P018

AGENCY: Public Utility Commission

CONCISE SUMMARY: Section 248 of Title 30 of the Vermont Statues annotated requires persons seeking to build certain electric generation, electric or gas transmission, or energy storage facilities to obtain a certificate of public good from the Commission. Commission Rule 5.400 implements the requirements of Section 248.

The proposed amendments serve four primary purposes. First, they provide increased clarity on the information that must be filed for a Section 248 petition to be considered complete. Second, they update the means by which parties can exchange and collect information in response to technological advances and our experience with the COVID-19 pandemic. Third, they provide clarity on the processes that must be followed when petitioners seek to amend projects that are under review, or have been reviewed and approved. Fourth, the amendments simplify the process for certain persons and entities to intervene as parties in Section 248 cases.

FOR FURTHER INFORMATION, CONTACT: John J. Cotter, Esq., Vermont Public Utility Commission, 112 State Street, 4th Floor, Montpelier, VT 05602 Tel: 802-461-6364 Fax: 802-828-3352 Email: john.cotter@vermont.gov URL: https://epuc.vermont.gov/?q=node/64/156798.

FOR COPIES: Elizabeth Schilling, Esq., Vermont Public Utility Commission, 112 State Street, 4th Floor, Montpelier, VT 05602 Tel: 802-828-1164 Fax: 802-828-3352 Email: elizabeth.schilling@vermont.gov.

5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems (the "Net-Metering Rule").

Vermont Proposed Rule: 23P019

AGENCY: Public Utility Commission

CONCISE SUMMARY: This rulemaking involves amendments to the Net-Metering Rule, including changes to the definition of the term "preferred site"; limits on the amount of forest clearing associated with projects on "preferred sites"; updates to the registration and application processes for net-metering systems; changes to project amendment processes and requirements; clarifications regarding the rates applicable to expanded net-metering systems; updates to the transfer and extension requirements for net-metering system certificates of public good; the addition of language authorizing utilities to propose tariffs assessing locational adjustor fees for constrained areas of the grid; changes to update the Rule consistent with state statute and other Commission rules, including the Commission's Rules of Practice and Interconnection Rule; changes acknowledging the use of ePUC - the Commission's electronic filing system; and other changes to otherwise improve, clarify, and streamline the Rule.

FOR FURTHER INFORMATION, CONTACT: Jake Marren, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Fax: 802-828-3351 Email: jake.marren@vermont.gov URL: https://puc.vermont.gov/about-us/statutes-and-rules.

FOR COPIES: Elizabeth Schilling, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Email: elizabeth.schilling@vermont.gov.

Rule 5.500: Interconnection Procedures for Proposed Electric Generation Resources and Energy Storage Devices.

Vermont Proposed Rule: 23P020

AGENCY: Public Utility Commission

CONCISE SUMMARY: This rulemaking involves amendments to the interconnection rule, including revising the amount of the application fee; adopting standards for the interconnection of storage facilities; updating the procedures for filing an application with the interconnecting utility; establishing simplified procedures for small projects; revising the screening criteria for projects; updating the technical standards applicable to the review of all projects; and establishing requirements for limited export projects. The Commission has reorganized the structure of the proposed rule to improve readability and reduce repetition compared to the current rule.

FOR FURTHER INFORMATION, CONTACT: Jake Marren, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Fax: 802-828-3351 Email: jake.marren@vermont.gov URL: https://puc.vermont.gov/about-us/statutes-and-rules.

FOR COPIES: Mary Jo Krolewski, Vermont Public Utility Commission, 112 State St. 4th Floor, Montpelier, VT 05602 Tel: 802-828-2358 Fax: Fax: 802-828-3351 Email: Mary-Jo.Krolewski@vermont.gov.

Medicaid Coverage of Exception Requests.

Vermont Proposed Rule: 23P021

AGENCY: Agency of Human Services

CONCISE SUMMARY: This rule sets forth the criteria for Medicaid coverage pursuant to the Exceptions Request process. It amends current Medicaid Services Rule 7104 titled "Requesting Coverage Exceptions." Revisions include: (1)stating that the process only applies to beneficiaries age 21 years old or older, (2) stating that certain criteria are mandatory, (3) clarifying eligibility criteria, (4)changing the frequency that certain approved exception requests are published on the website of the Department of Vermont Health Access, and (5) removing references to the Interpretive Memo process and incorporating related processes into the rule.

FOR FURTHER INFORMATION, CONTACT: Ashley Berliner, Agency of Human Services, 280 State Drive, Waterbury, VT 05671-1000 Tel: 802-578-9305 Fax: 802-241-0450 Email: AHS.MedicaidPolicy@vermont.gov. URL: https://humanservices.vermont.gov/rules-policies/health-care-rules/health-care-administrative-rules-hcar.

FOR COPIES: Linda Narrow McLemore, Agency of Human Services, 280 State Drive, Waterbury, VT 05671-1000 Tel: 802-779-3258 Fax: 802-241-0450 Email: Linda.McLemore@Vermont.gov.
