

Environmental Review of Section 248 Projects

Statutory Context

- Section 248 requires a certificate of public good from the Public Utility Commission prior to construction of transmission and generation facilities.
- Section 248 does not define facility.

What portions of a generation facility are covered by Section 248

- 1971 Attorney General Opinion 715
 - “Facility” should be given a broad interpretation, includes “impoundment, road, rail spur or lagoon”
- 1980 Environmental Board Declaratory Ruling 119
 - Aspects of a project directly related to the construction and operation of a generation facility are covered by Section 248
- 2004 Public Service Board Docket 6884
 - Wind measurement towers are reasonably and directly related to a generation facility
- 2006 PSB Docket 7201
 - “Because the distribution upgrade would be built only because of the proposed Berkshire project [farm methane project], the Board has a responsibility under Section 248(b) to ensure that the proposed Berkshire project, including the necessary distribution upgrade, would not have any undue adverse impacts.”

Reasonably/Directly Related Facilities

- Distribution Lines
- Access Roads
- Fencing
- Construction staging areas
- Road upgrades
- Aesthetic mitigation (plantings)
- Operations facility

PUC Review of Distribution Lines

“The Commission has long held that impacts from electric distribution lines that are constructed for the purpose of serving a facility that is subject to Section 248 jurisdiction are subject to review under that Section even when built and owned by the serving utility and not the Section 248 petitioner.”

- PUC Case No. 19-3236-PET, Order of 2/11/22 at 3.

For generation projects greater 50 kW, the petition shall include “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.”

- 30 V.S.A. § 248(a)(4)(J); See, Case No. 22-3427-PET, Proposal for Decision, 3/14/23 at 23-24.

ANR's Statutory Obligation

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.

- 30 V.S.A. § 248(a)(4)(E)