

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. § 248a)

§ 248a. Certificate of public good for communications facilities

(a) Certificate. Notwithstanding any other provision of law, if the applicant seeks approval for the construction or installation of telecommunications facilities that are to be interconnected with other telecommunications facilities proposed or already in existence, the applicant may obtain a certificate of public good issued by the Public Utility Commission under this section, which the Commission may grant if it finds that the facilities will promote the general good of the State consistent with subsection 202c(b) of this title. A single application may seek approval of one or more telecommunications facilities. An application under this section shall include a copy of each other State ~~and local~~ permit, certificate, or approval that has been issued for the facility ~~under a statute, ordinance, or bylaw~~ pertaining to the environment or land use.

(b) Definitions. As used in this section:

(1) “Ancillary improvements” means telecommunications equipment and site improvements that are primarily intended to serve a telecommunications facility, including wires or cables and associated poles to connect the facility to an electric or communications grid; fencing; equipment cabinets or shelters; emergency backup generators; and access roads.

(2) “Comments” mean comments submitted by intervenors and statutory parties identifying substantive issues under the criteria. Comments must be submitted within 30 days after the petition is deemed complete. Comments must demonstrate that the petition raises substantiative issues under the statutory criteria, requiring an evidentiary hearing.

(3) “De minimis modification” means the addition, modification, or replacement of telecommunications equipment, antennas, or ancillary improvements on a telecommunications facility or existing support structure, whether or not the structure was constructed as a telecommunications facility, or the reconstruction of such a facility or support structure, provided:

(A) the height and width of the facility or support structure, excluding equipment, antennas, or ancillary improvements, are not increased;

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(B) the total amount of impervious surface, including access roads, surrounding the facility or support structure is not increased by more than 300 square feet;

(C) the addition, modification, or replacement of an antenna or any other equipment on a facility or support structure does not extend vertically more than 10 feet above the facility or support structure and does not extend horizontally more than 10 feet from the facility or support structure; and

(D) the additional equipment, antennas, or ancillary improvements on the support structure, excluding cabling, does not increase the aggregate surface area of the faces of the equipment, antennas, or ancillary improvements on the support structure by more than 75 square feet.

(4) “Good cause” means a showing of evidence that the substantial deference required under subdivision (c)(2) of this section would create a substantial shortcoming detrimental to the public good or the State’s interests in section 202c of this title.

(5) “Public comments” mean comments submitted to the PUC to assist the PUC in understanding the issues raised by the application. Public comments may be submitted to the Public Utility Commission by anyone at any time.

(6) “Recommendations” mean comments from municipal legislative bodies, municipal and regional planning commissions that receive substantial deference.

(7) “Small cell antenna” means a compact, low-powered radio node that supplements large cellular networks (macrocells) by providing better coverage and capacity in smaller areas, often mounted on existing infrastructure like streetlights, utility poles, and buildings for 5G and other wireless services, acting like miniature cell towers to handle dense user demand.

~~(4)(A) “Limited size and scope” means:~~

- ~~(i) a new telecommunications facility, including any ancillary improvements, that does not exceed 140 feet in height; or~~
- ~~(ii) an addition, modification, replacement, or removal of telecommunications equipment at a lawfully constructed telecommunications facility or on an existing support structure, and ancillary improvements, that would result in a facility of a total height of less than 200 feet and does not increase the width of the existing support structure by more than 20 feet.~~

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~~(B) For construction described in subdivision (3)(A) of this subsection (b) to be of limited size and scope, it shall not disturb more than 10,000 square feet of earth. As used in this subdivision (B), "disturbed earth" means the exposure of soil to the erosive effects of wind, rain, or runoff.~~

(8) "Substantial deference" means that the plans and recommendations referenced under subdivision (c)(2) of this section are presumed correct, valid, and reasonable.

(9) "Telecommunications facility" means a communications facility that transmits and receives signals to and from a local, State, national, or international network used primarily for two-way communications for commercial, industrial, municipal, county, or State purposes and any associated support structure that is proposed for construction or installation that is primarily for communications purposes and any ancillary improvements that are proposed for construction or installation and are primarily intended to serve the communications facilities or support structure. An applicant may seek approval of construction or installation of a telecommunications facility whether or not the telecommunications facility is attached to an existing structure.

(10) "Wireless service" means any commercial mobile radio service, wireless service, common carrier wireless exchange service, cellular service, personal communications service (PCS), specialized mobile radio service, paging service, wireless data service, or public or private radio dispatch service.

(c) Findings. Before the Public Utility Commission issues a certificate of public good under this section, it shall find that:

(1) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, and the public's use and enjoyment of the I-89 and I-91 scenic corridors or of any highway that has been designated as a scenic road pursuant to 19 V.S.A. § 2501 or a scenic byway pursuant to 23 U.S.C. § 162, with due consideration having been given to the relevant criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K). ~~However, with respect to telecommunications facilities of limited size and scope, the Commission shall waive all criteria of this subdivision other than 10 V.S.A. § 6086(a)(1)(D) (floodways) and (a)(8) (aesthetics, scenic beauty, historic sites, rare and irreplaceable natural areas; endangered species; necessary wildlife habitat). Such waiver shall be on condition that:~~

~~(A) the Commission may determine, pursuant to the procedures described in subdivision (j)(2)(A) of this section, that a petition raises a significant issue with respect to any criterion of this subdivision; and~~

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(B) ~~a telecommunications facility of limited size and scope shall comply, at a minimum, with the requirements of the Low Risk Site Handbook for Erosion Prevention and Sediment Control issued by the Department of Environmental Conservation, regardless of any provisions in that handbook that limit its applicability.~~

Unless there is good cause to find otherwise, substantial deference has been given to the plans of the affected municipalities; to the recommendations of the municipal legislative bodies and the municipal planning commissions regarding the municipal plans; and to the recommendations of the regional planning commission concerning the regional plan. Nothing in this section or other provision of law shall prevent a municipal body from basing its recommendations to which substantial deference is required under this subdivision (2) on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan.

Recommendations of municipal legislative bodies, municipal planning commissions and regional planning commissions shall be submitted within 90 days after the petition is deemed complete. Responses to recommendations shall be filed within 30 days of recommendation submission and must show good cause as to why the recommendation shall not receive rebuttable presumption.

Recommendations to deny or approve a tower shall be determined as to whether good cause has been shown to overrule the rebuttable presumption. Such determination shall occur prior to a scheduling hearing to be held only if further process is necessary.

The PUC shall create a menu item in ePUC for recommendations from municipal legislative bodies, planning commissions and regional planning commissions in Section 248a cases.

The PUC shall create a definition and procedure for the filing of municipal and regional recommendations in Section 248a cases, noting the distinction between "comment", "public comment", and "recommendation."

(2) If the proposed facility relates to the provision of wireless service, the proposed facility reasonably cannot be collocated on or at an existing telecommunications facility, or such collocation would cause an undue adverse effect on aesthetics.

(A) ~~If a proposed new support structure for a new telecommunications facility that provides wireless service will exceed 50~~

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~~feet in height in a cleared area or will exceed 20 feet in height above the average treeline measured within a 100-foot radius from the structure in a wooded area.~~ The application shall identify all existing telecommunications facilities within the area to be served by the proposed structure and, for each such existing facility, shall include a projection of the coverage and an estimate of additional capacity that would be provided if the applicant's proposed telecommunications equipment were located on or at the existing facility. The applicant also shall compare each such projection and estimate to the coverage and capacity that would be provided at the site of the proposed structure.

(B) To obtain a finding that a proposed facility cannot reasonably be colocated on or at an existing telecommunications facility, the applicant must demonstrate that:

- (i) collocating on or at an existing facility will result in a significant reduction of the area to be served or the capacity to be provided by the proposed facility or substantially impede coverage or capacity objectives for the proposed facility that promote the general good of the State under subsection 202c(b) of this title;
- (ii) the proposed antennas and equipment will exceed the structural or spatial capacity of the existing or approved tower or facility, and the existing or approved tower or facility cannot be reinforced, modified, or replaced to accommodate planned or equivalent equipment, at a reasonable cost, to provide coverage and capacity comparable to that of the proposed facility;
- (iii) the owner of the existing facility will not provide space for the applicant's proposed telecommunications equipment on or at that facility on commercially reasonable terms; or
- (iv) the proposed antennas and equipment will cause radio frequency interference that will materially impact the usefulness of other existing or permitted equipment at the existing or approved tower or facility and such interference cannot be mitigated at a reasonable cost.

(d) Existing permits. When issuing a certificate of public good under this section, the Commission shall give due consideration to all conditions in an existing State or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible.

(e) Notice. No less than 60 days prior to filing an application for a certificate of public good under this section, the applicant shall serve written notice of an application to be filed with the Commission pursuant to this section to the legislative bodies and municipal and

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regional planning commissions in the communities in which the applicant proposes to construct or install facilities; the Secretary of Natural Resources; the Secretary of Transportation; the Division for Historic Preservation; the Commissioner of Public Service and its Director for Public Advocacy; the Land Use Review Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151; and the landowners of record of property adjoining the project sites. In addition, at least one copy of each application shall be filed with each of these municipal and regional planning commissions. The notices to the legislative body and planning commission of the municipality shall attach a statement that itemizes the rights and opportunities available to those bodies under subdivisions (c)(2) and (e)(2) of this section and under subsections (m), (n), and (o) of this section and informs them of the guide published under subsection (p) of this section and how to obtain a copy of that guide.

(1) Upon motion or otherwise, the Public Utility Commission shall direct that further public or personal notice be provided if the Commission finds that such further notice will not unduly delay consideration of the merits and that additional notice is necessary for fair consideration of the application.

(2) Within one week of mailing the advance notice, petitioner shall contact the town by telephone and email and schedule a public meeting. The Department of Public Service shall appear at the meeting. DPS shall inform the town that upon request the Department of Public Service may perform a colocation study. Notice of public meeting shall be posted at public buildings and in media outlets. ~~On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning commission, or both, within the 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality.~~ The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Commission on the application and in determining whether to retain additional personnel under subsection (o) of this section.

(3) With the notice required under this subsection, the applicant shall include a written assessment of the colocation requirements of subdivision (c)(3) of this section, as they pertain to the applicant's proposed telecommunications facility. On the request of the municipal legislative body or the planning commission, the Department of Public Service, pursuant to its authority under subsection (o) of this section, shall retain an expert to review the applicant's colocation assessment and to conduct further independent analysis, as necessary. Within 45 days following receiving the applicant's notice and colocation assessment, the Department shall report its own preliminary findings and recommendations regarding colocation to

the applicant and to all persons required to receive notice of an application for a certificate of public good under this subsection (e).

(f) Review period. If the Public Utility Commission determines that an application does not raise a significant issue, the Commission shall issue a final determination on an application filed pursuant to this section within 60 days following its filing or, if the original filing did not substantially comply with the Public Utility Commission's rules, within 60 days following the date on which the Clerk of the Commission notifies the applicant that the filing is complete. If the Commission rules that an application raises a significant issue, it shall issue a final determination on an application filed pursuant to this section within 180 days following its filing or, if the original filing did not substantially comply with the Public Utility Commission's rules, within 180 days following the date on which the Clerk of the Commission notifies the applicant that the filing is complete.

PUC Public Process. If Recommendation does not result in Final Decision.

If the Town or RPC has not filed a recommendation resulting in a rebuttable presumption or good cause has been shown to overcome a recommendation's rebuttable presumption, the PUC shall schedule a site visit, balloon test and public hearing in the town where the tower is proposed, prior to deadlines for motions to intervene.

In lieu of discovery, parties shall exchange: list of witnesses, summary of the testimony to be provided, expert reports.

An evidentiary hearing with direct testimony will be held.

The PUC Hearing Officer may request further information from parties.

Parties submit proposed Findings of Fact and Conclusions of Law, followed by Hearing Officer Proposal for Decision, Comments on Proposal for Decision, Oral Argument, PUC Site Visit and Final Decision.

(g) Letter of intent. Nothing in this section shall be construed to prohibit an applicant 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 obligations under that letter of intent or contract are made subject to compliance with the requirements of this section.

(h) Landowner. The landowner shall be a party to the application. Applicant's contract or lease with landowner must be submitted with the application. Leases must provide the opportunity for landowners to terminate leases without financial penalty.

(i) Exemptions from other law.

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(1) An applicant using the procedures provided in this section shall not be required to obtain a permit or permit amendment or other approval under the provisions of 24 V.S.A. chapter 117 or 10 V.S.A. chapter 151 for the facilities subject to the application or to a certificate of public good issued pursuant to this section. This exemption from obtaining a permit or permit amendment under 24 V.S.A. chapter 117 shall not affect the substantial deference to be given to a plan or recommendation based on a local land use bylaw under subdivision (c)(2) of this section.

(2) An applicant using the procedures provided in this section shall not be required to obtain an approval from the municipality under an ordinance adopted pursuant to 24 V.S.A. § 2291(19) or a municipal charter that would otherwise apply to the construction or installation of facilities subject to this section. This exemption from obtaining an approval under such an ordinance shall not affect the substantial deference to be given to a plan or recommendation based on such an ordinance under subdivision (c)(2) of this section.

(3) Disputes over jurisdiction under this section shall be resolved by the Public Utility Commission, subject to appeal as provided by section 12 of this title. An applicant that has obtained or been denied a permit or permit amendment under the provisions of Title 24 or 10 V.S.A. chapter 151 for the construction of a telecommunications facility may not apply for approval from the Commission for the same or substantially the same facility, except that an applicant may seek approval for a modification to such a facility.

(j) Sunset of Commission authority. Effective on July 1, 2029, no new applications for certificates of public good under this section may be considered by the Commission. ~~(j) Telecommunications facilities of limited size and scope.~~

~~(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 required by any provision other than subdivision (2) of this subsection if the Commission finds that such facilities will be of limited size and scope, and the application does not raise a significant issue with respect to the substantive criteria of this section. The Commission may make findings based on the application and the supporting evidence submitted by the applicant. If an applicant requests approval of multiple telecommunications facilities in a single application under this section, the Commission may issue a certificate of public good in accordance with the provisions of this subsection for all or some of the telecommunications facilities described in the application.~~

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~~(2)(A) Any person seeking to proceed under the procedures authorized by this subsection (j) shall file a proposed certificate of public good and proposed findings of fact with its application. Within two business days following notification from the Commission that the filing is complete, the applicant shall serve notice and a copy of the application, proposed certificate of public good, and proposed findings of fact on the Commissioner of Public Service and its Director for Public Advocacy, the Secretary of Natural Resources, the Division for Historic Preservation, the Land Use Review Board if the application concerns a telecommunications facility for which a permit previously has been issued under 10 V.S.A. chapter 151, and each of the legislative bodies and municipal and regional planning commissions in the communities in which the applicant proposes to construct or install facilities. Within two business days following notification from the Commission that the filing is complete, the applicant also shall serve written notice of the proposed certificate on the landowners of record of property adjoining the project site or sites unless the Commission has previously determined on request of the applicant that good cause exists to waive or modify the notice requirement with respect to such landowners. Such notice shall request comment to the Commission within 30 days following the date of service on the question of whether the application raises a significant issue with respect to the substantive criteria of this section. If the Commission finds that an application raises a significant issue with respect to the substantive criteria of this section, the Commission shall hear evidence on any such issue.~~

~~(B) An applicant seeking a waiver or modification of notice to adjoining landowners under this subsection shall file a request for such a waiver or modification with the Public Utility Commission not later than 30 days prior to serving written notice under subsection (e) of this section, together with a description of the project and its location, the applicant's reasons for seeking a waiver or modification, and the applicant's demonstration that the standard for granting a waiver or modification is met. Any granting of such a waiver or modification shall be based on a determination that the landowners subject to the waiver or modification could not reasonably be affected by one or more of the proposed facilities and that notice to such landowners would constitute a significant administrative burden without corresponding public benefit. The Commission shall rule on a waiver or modification request under this subsection within 21 days following the filing of the request.~~

~~(C) If the Commission accepts a request to consider an application under the procedures of this subsection (j), then unless the Public Utility Commission subsequently determines that an application raises a significant issue, the Commission shall issue a final determination on an application within 60 days following the date on which the Clerk of the Commission notifies the applicant that the filing is complete. If, subsequent to acceptance of an application under this subsection (j), the Commission rules that an application raises a significant~~

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~~issue, it shall issue a final determination on an application filed pursuant to this subsection (j) within 90 days following the date on which the Clerk of the Commission notifies the applicant that the filing is complete.~~

~~(D) If the Commission denies a request to consider an application under the procedures of this subsection (j), a filing made under this subsection that the Commission has found to be complete shall be deemed to satisfy notice requirements of subsection (e) of this section, and the periods stated under subsection (f) of this section shall run from the date of the Commission's denial of such request.~~

(k) De minimis modifications. An applicant intending to make a de minimis modification of a telecommunications facility shall provide written notice of its intent, including a description of the de minimis modification, its plans for the de minimis modification, and its certification that the project constitutes a de minimis modification under this section, to the following: the landowner of record of the property on which the facility is located, the legislative body of the municipality in which the applicant proposes to undertake such limited modifications to the facility, and the Commissioner of Public Service and his or her Director for Public Advocacy. Unless an objection to the classification of a proposed project as a de minimis modification is filed with the Commission within 30 days following this notice, a certificate of public good shall be issued. Objections may be filed only by persons entitled to notice of this proposed project pursuant to this subsection. If an objection of the classification of the proposed project as a de minimis modification is timely filed with the Commission, the Commission may determine whether the intended project meets the definition of de minimis modification established in subdivision (b)(2) of this section.

(l) Rules. The Public Utility Commission may issue rules or orders implementing and interpreting this section. In developing such rules and orders, the Commission shall seek to simplify the application and review process as appropriate. Subject to the provisions of subdivision (c)(1) of this section regarding waiver of the substantive criteria set forth in that subdivision, the Commission may by rule or order waive the requirements of this section that the Commission determines are not applicable to telecommunications facilities of limited size or scope. Determination by the Commission that an application raises a substantial issue with regard to one or more substantive criteria of this section shall not prevent the Commission from waiving other substantive criteria that it has determined are not applicable to such a telecommunications facility.

(m) Municipal bodies; participation. The legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.

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(n) Municipal recommendations. The Commission shall consider the comments and recommendations submitted by the municipal legislative body and planning commission. The Commission's decision to issue or deny a certificate of public good shall include a detailed written response to each recommendation of the municipal legislative body and planning commission.

(o) Retention; experts. The Department of Public Service may retain experts and other personnel as identified in section 20 of this title to provide information essential to a full consideration of an application for a certificate of public good under this section. The Department may allocate the expenses incurred in retaining these personnel to the applicant in accordance with section 21 of this title. The Department may commence retention of these personnel once the applicant has filed the 60-day notice under subsection (e) of this section. A municipal legislative body or planning commission may request that the Department retain these personnel. Granting such a request shall not oblige the Department or the personnel it retains to agree with the position of the municipality.

(p) Review process; guide. The Department of Public Service, in consultation with the Commission, shall create, maintain, and make available to the public a guide to the process of reviewing telecommunications facilities under this section for use by local governments and regional planning commissions and members of the public who seek to participate in the process. On or before September 1, 2026, the Department shall update this guide and make it publicly available.

(q) Permit conditions on a telecommunications facility. When issuing a permit with conditions on a telecommunications facility, including a small cell antenna, the PUC shall include that the facility:

(A) Towers must be at least 1,500 feet from any residence, commercial property, school, playground, public park, swimming pool, public beach, daycare, or hospital.

(B) Small Cells must be at least 750 feet from an existing residence

(C) Have a radiation signal strength metered at the location not to exceed -75 decibel-milliwatts (dBm) for any frequency or channel band specified by a transmitting entity's Federal Communications Commission transmission license; or, the maximum power output limit from all frequencies or antennas from a wireless facility shall not exceed 0.1 watts of effective radiated power (ERP) so as to provide -75 dBm signal strength at one-half mile, or five bars on a cell phone. If signal strength metered by a radio frequency engineer exceeds -75 dBm, the facility operator has 30 days to achieve compliance without disruption to the performance of Vermonters' personal wireless services. Failure to comply with this subdivision (B) shall result in a penalty, as established by the Board in rule. The permit holder shall submit annually a certification to the PUC that the facility is in compliance with this requirement, as certified by a licensed engineer.

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(D) Poles or other structures in public rights-of-way that hold a 5G or similar radio frequency (RF) radiating antenna be labeled indicating RF radiation being emitted above. This label shall be at eye level and legible from nine feet away.

(E) RF emissions are monitored annually for all radiating antennas and components by a qualified, independent RF engineer to be hired by DPS at the permittee's expense. The report containing all test results shall be submitted to DPS within 30 days following completion and not later than the close of the calendar year.

(F) Implement and adhere to RF-radiation safety limits established by the Agency of Natural Resources and determined to be protective of wildlife and flora, including trees, plants, birds, insects, and pollinators.

(r) Emergency waiver.

(1) Notwithstanding any other provisions of this section, when the Governor has declared a state of emergency pursuant to 20 V.S.A. § 9 and for 180 days after the declared state of emergency ends, the Commission may waive, for a specified and limited time, the prohibitions contained in this section upon site preparation for or construction of a temporary telecommunications facility necessary for maintaining or improving access to telecommunications services. Waivers issued under this subsection shall be valid for a period not to exceed the duration of the declared emergency plus 180 days.

(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. The Commission shall require that additional notice be provided to those listed in subsection (e) of this section and any affected communications union districts. Upon receipt of the petition, the Commission shall conduct an expedited preliminary hearing.

(3) An order granting a waiver may include terms, conditions, and safeguards to mitigate significant adverse impacts, including the posting of a bond or other security, as the Commission deems proper, based on the scope and duration of the requested waiver.

(4) A waiver shall be granted only when the Commission finds that:

(A) good cause exists due to an emergency situation;

(B) the waiver is necessary to maintain or provide access to wireless telecommunications services;

(C) procedures will be followed to minimize significant adverse impacts under the criteria specified in subdivision (c)(1) of this section; and

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(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.

(Added 2007, No. 79, § 17, eff. June 9, 2007; amended 2009, No. 54, § 44, eff. June 1, 2009; 2011, No. 53, § 2, eff. May 27, 2011; 2013, No. 167 (Adj. Sess.), § 31; 2013, No. 190 (Adj. Sess.), § 17, eff. June 16, 2014; 2013, No. 199 (Adj. Sess.), § 27; 2015, No. 130 (Adj. Sess.), § 5a, eff. May 25, 2016; 2017, No. 32, § 1; 2017, No. 53, § 5; 2019, No. 125 (Adj. Sess.), § 1; 2023, No. 20, § 1, eff. May 25, 2023; 2023, No. 85 (Adj. Sess.), § 385, eff. July 1, 2024.)