

Overview of the Section 248 Process

What is Section 248?

- Requires energy, gas, telecom, and water developers to obtain a **Certificate of Public Good (CPG)** from the Public Service Board
- Board considers 10 statutory criteria, including environmental criteria from Act 250 plus issues like need, reliability, economic benefit, and the general public good



What do we mean by “Public Interest” and “Public Good?”

- Balanced good of all consumers in state
- To receive CPG, projects must meet these criteria:
 - **Orderly development** of the region
 - **Demand for service** (present and future)
 - **System stability & reliability**
 - **Economic benefit** to state & residents
 - **No undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and public health and safety**

Participating in 248: Formal Parties and Members of the Public

- Formal Party to a Case
 - May provide testimony
 - May participate in hearings
 - Must follow Board rules
 - Subject to discovery and cross-examination
- Members of the Public
 - May speak at public hearings
 - May send the Board written comments
 - May *not* participate in hearings
 - May petition Board to become formal parties

Automatic Formal Party #1: PSD

The Public Service Department = represents the interests of the people of the state as a whole



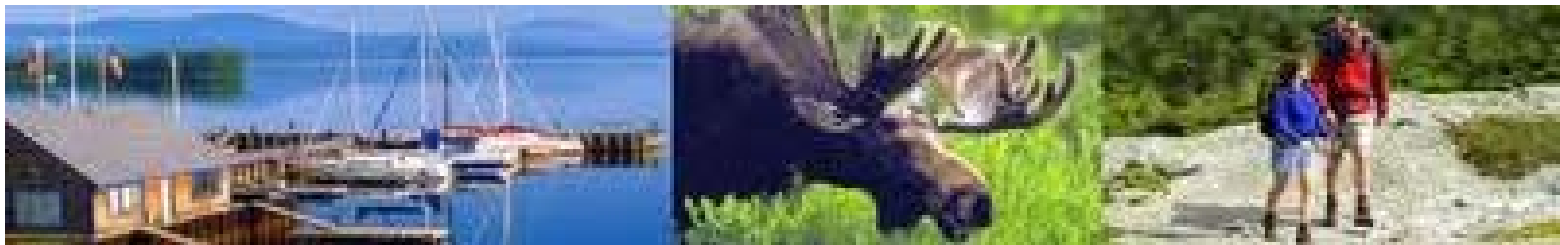
- Represents public interest in utility cases
- Provides long-range planning for the state's energy and telecom needs
- Ensures all Vermonters share in the benefits of modern communications
- Administers federal energy programs
- Resolves utility customer complaints
- Informs public about utility-related matters
- Makes and administers power purchase contracts

<http://publicservice.vermont.gov/>



Automatic Formal Party #2: ANR

Agency of Natural Resources = protects the environment



ANR Mission: To draw from and build upon Vermonters' shared ethic of responsibility for our natural environment, an ethic that encompasses a sense of place, community and quality of life, and understanding that we are an integral part of the environment and that we must all be responsible stewards for this and future generations.

<http://www.anr.state.vt.us/>

Other Formal Parties

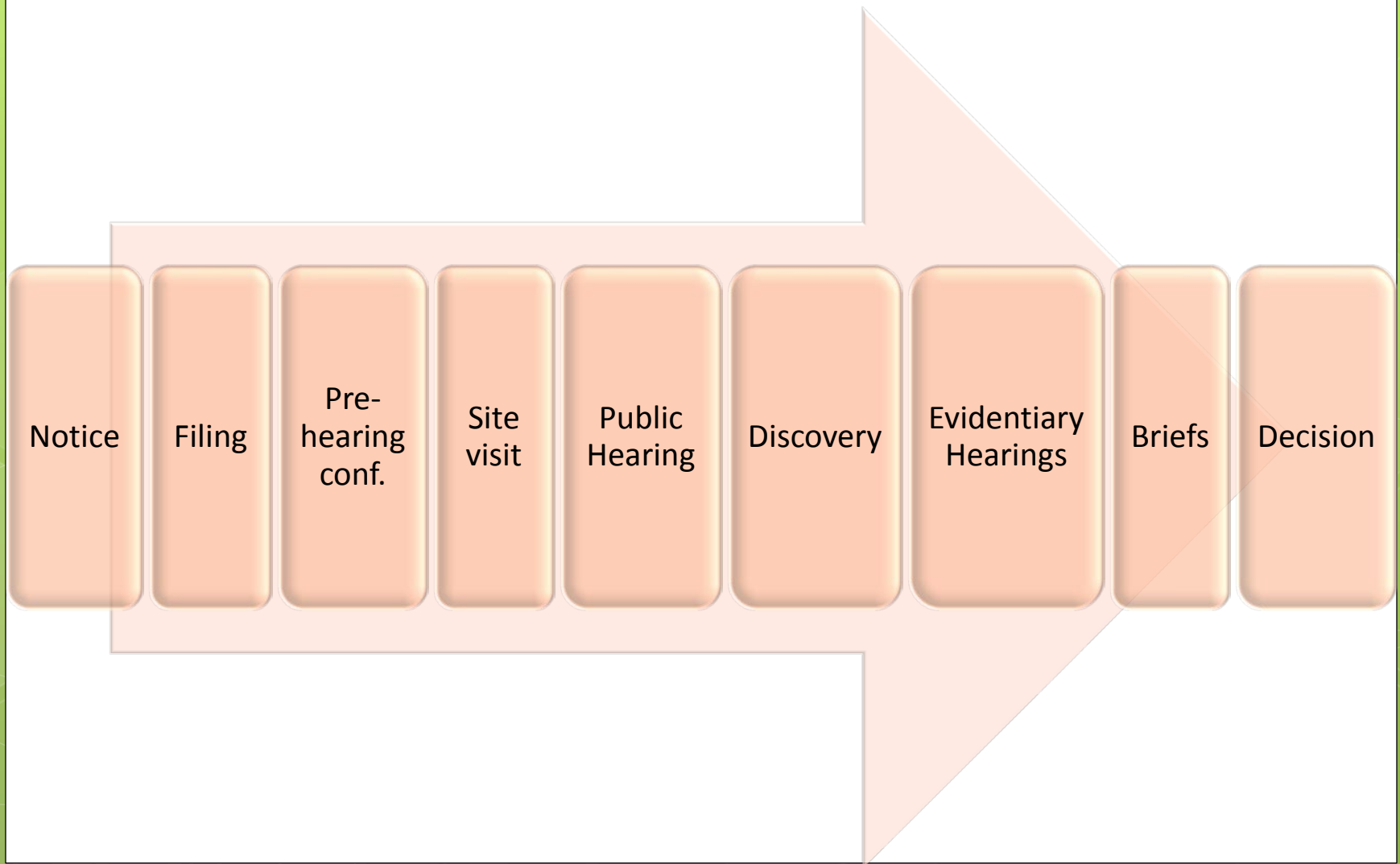
The utilities or project developers = automatic formal parties

Intervenors = must be granted party status by the Board via the formal “intervention” process; e.g. town selectboards and planning commissions, landowners, environmental organizations, public interest groups, business organizations.

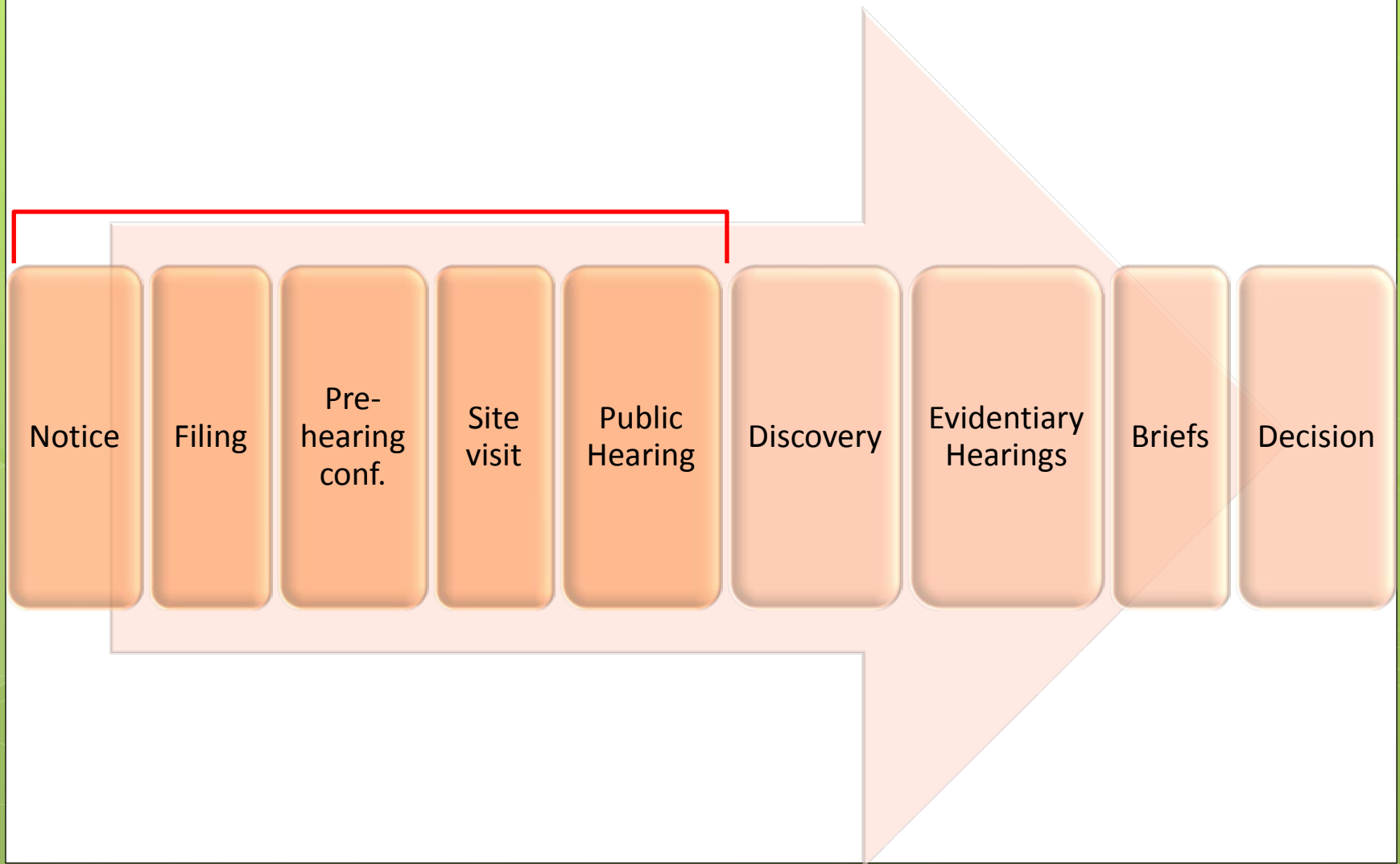
Who Receives Notice & Other Information?

- *Construction plans 45 days prior to petition filing:* **municipal and regional planning commissions**
- *Notice when petition is filed:* Certain **state agencies and affected towns, local and regional planning commissions, adjoining landowners**
- *Notices and orders from Board:* **Individuals and organizations** that have asked to be added to the Board's mailing list as an **"interested person"**
- *Everything:* **Formal parties, including those granted intervenor status**

248 Process: Step by Step



248 Process: Step by Step



248 Process: Notice

- 45-day notice to municipal and regional planning commissions (unless waived)
- Municipality may decide to hold a public hearing
- Must make recommendations to petitioner and PSB by 7 days prior to filing
 - Potentially summarize activities during 45 days
 - Consider stating conclusions, requests, intent to participate as a party, and criteria under which you plan to participate (you must still file to intervene)



November 5, 2012

To those Planning Commissions and Selectboards named on the attached Appendix A

Re: Vermont Gas Systems, Inc.
Addison Natural Gas Project – Section 248 Permit Process
45-Day Advance Notice of Proposed Project

Dear Ladies and Gentlemen:

In response to recent requests from community leaders and a number of Addison and Rutland County businesses, and consistent with the State's energy policy, Vermont Gas is planning to expand natural gas service into Addison. The Addison Natural Gas Project will involve the extension of the Company's existing transmission system further south to Middlebury, the construction of three gate stations to step the pressure down, and the construction of distribution feeder mains to Vergennes and Middlebury. The purpose of this letter is to notify you, in accordance with Section 248 of Title 30, Vermont Statutes Annotated ("Section 248"), that Vermont Gas anticipates filing its petition in mid-December of 2012 with the Public Service Board ("PSB"), and is providing the information in this 45-day advance notice package to the municipal and regional planning commissions and municipal legislative bodies in accordance with PSB Rule 5.402. This letter describes the Project, the expected Project filing date with the PSB, and the rights of the local and regional planning commissions to comment on the Project plans and participate in the PSB Section 248 process.

The Project is estimated to serve approximately 3,000 new residential and business customers in Addison County, mainly in Vergennes and Middlebury, serving large employers such as Cabot Cheese, Middlebury College, and Porter Medical Center, while providing additional reliability of service to customers in Chittenden County. The Project will also allow the Company to advance its longer-term goal to extend service to the Rutland area.

In order to meet customer needs, Vermont Gas will be requesting a timeline and schedule that will result in issuance of a final Section 248 order and Certificate of Public Good ("CPG") by September, 2013.

248 Process: Filing

- Developer files petition, along with supporting testimony and exhibits
- Copies must be sent to municipal and regional planning commissions and municipal legislative body
- Board assigns a docket number, schedules pre-hearing conference

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Petition of Beaver Wood Energy Pownal, LLC) for a Certificate of Public Good, pursuant to 30) V.S.A. § 248, to install and operate a Biomass) Energy Facility and an integrated wood pellet) manufacturing facility located north of the old) Green Mountain Racetrack in Pownal, Vermont,) to be known as the "Pownal Biomass Project")	Docket No. ____
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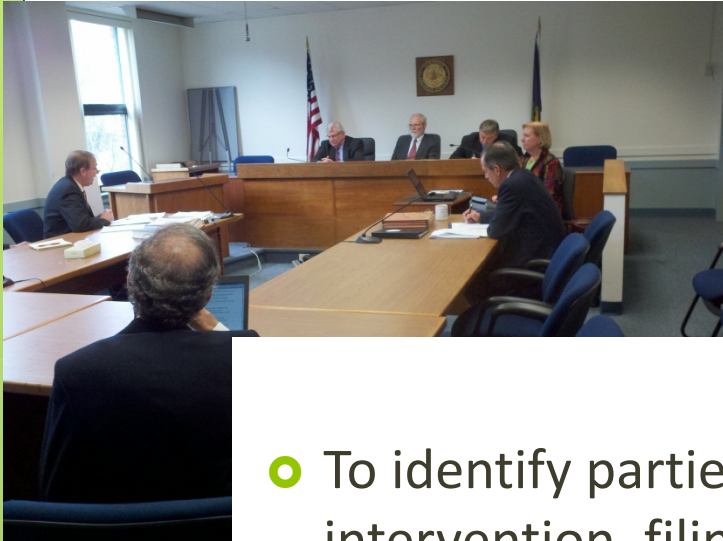
PETITION FOR CERTIFICATE OF PUBLIC GOOD

NOW COMES Beaver Wood Energy Pownal, LLC ("BWE"), and files this Petition, pursuant to 30 V.S.A. § 248 and Public Service Board (the "Board") Rule 5.400, requesting that the Board issue a Certificate of Public Good for the Beaver Wood Energy Pownal Biomass Facility (the "Project") and requests the expedited scheduling of a pre-hearing conference to address BWE's request for permission to initiate certain limited construction activity in December of 2010 as set forth in the Motion for Preliminary Approval filed simultaneously herewith.

By this Petition, BWE represents as follows:

1. BWE is a Delaware limited liability company registered to do business in the State of Vermont with an office located at 230 West Street, Rutland, Vermont 05701. Its members are Thomas Emero, William Bousquet, and Ted Verrill.
2. BWE has developed a project plan to build and operate a 29.5 MW biomass electric generation facility and fully integrated wood pellet manufacturing plant on certain leased premises consisting of 45 acres of land located north of the old Green Mountain Racetrack in Pownal, Vermont.

248 Process: Prehearing Conference



- To identify parties, issues, schedule – including intervention, filing deadlines
- May set date for a public hearing and site visit
- Prudent to participate even if you are not sure about becoming a party – ask questions, understand issues, etc.
- Board issues Prehearing Conference Memorandum addressing issues above and including “service list” of all parties and interested persons.

248 Process: Determining Parties

- Person or organization (such as Selectboard) may file a motion to intervene, “as of right,” based on **substantial individualized interest** which:
 - may be adversely affected
 - is not protected by other parties or alternative means
 - won’t unduly delay proceedings or prejudice parties/public
- Person or organization may also file a motion to intervene “permissively,” within reason

TIP: Read Board Rule 2.209

(http://psb.vermont.gov/sites/psb/files/rules/OfficialAdoptedRules/2000Rules_of_Practice.pdf)

Determining Parties, cont.

- Motion to intervene must be filed with the Board and all parties
- Board will issue order granting or denying motion; may restrict intervenor's participation to particular issues or require party cooperation
- Intervenors often represented by an attorney, though are allowed to represent themselves ("pro se"). Pro se intervenors have both rights and responsibilities of an attorney
- Other options: do nothing; become an interested party and monitor proceedings; contact PSD, ANR, or another party; work with RPC



248 Process: Site Visit

- May include discussion of:
 - Description of project
 - Viewing of existing conditions
 - Explanation of how conditions will be altered
 - Identification of relevant landscape features, discussion of potential effects
 - Identification/visits to potential alternative locations
- Not part of evidentiary record unless Board grants entry of observations or facts into evidentiary hearings



248 Process: Public Hearing

- Allows Board to hear comments and concerns from general public
 - Transcribed by court reporter, becomes part of public file
 - Not part of evidentiary record
 - Raises new issues/perspectives that Board can consider and ask parties to present evidence on
 - Public also encouraged to submit written comments to Board by email or mail



Criterion b(1)

- (b) Before the Public Service Board 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, with respect to a natural gas transmission line subject to Board 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 Board 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;
- [Compared with Act 250, which requires a District Commission to find the development “is in conformance with any duly adopted local or regional plan...]

Additional PSB Processes

§248(j)

- Expedited review of certain projects of limited size & scope that do not raise significant issue w/r/t criteria
- Board may issue order without holding public or evidentiary hearings, but will first issue proposed CPG to parties including towns, which may file comments w/in 28 days

§248(k)

- Allows Board to temporarily waive CPG requirement if certain conditions met – usually emergency situations – but will notice towns

Additional PSB Processes

§248(a): telecommunications facilities

- Except for de minimis projects, applicants must provide 45-day notice to town selectboards & planning commissions, which have 21 days after filing to file comments, motions to intervene, or requests for a hearing (must make a showing of a significant issue under the applicable criteria)
- Substantial deference standard (as opposed to due consideration standard applied in 248 dockets)

§246: temporary meteorological towers

- Applicants must provide a 30-day notice to selectboards & PCs (amongst others); comments or requests for hearing due w/in 30 days of filing.



Recap: Ways to Participate in a § 248 Case

File recommendations with the PSB and petitioner 7 days prior to filing

- Particular attention is given to land conservation measures in town plan

Obtain “party” status by following PSB rule 2.209

- Being a party has rights and responsibilities (you get to cross-examine witnesses; you get all the filings but also have to serve on everyone else; you have to respond to discovery; you can file motions; you have to advocate within the rules)

Become an “interested person”

- You get the major notices and pleadings in the case


Provide public comment

- You appear at a public hearing and voice your questions, concerns, or comments on the project

Resource:

Citizens Guide to the Vermont Public Service Board's Section 248 Process:
<http://psb.vermont.gov/sites/psb/files/publications/Citizens%27%20Guide%20to%20248%20February%2014%202012.pdf>

[Or go to <http://psb.vermont.gov> and search: "citizens' guide"]



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Supplementary Slides

Who is the Public Service Board?

Public Service Board = the judges



PSB Mission: To ensure the provision of high quality public utility services in Vermont at minimum reasonable costs, consistent with the long-term public good of the state....

<http://psb.vermont.gov/>



248 Process: Discovery

- Parties ask petitioner questions about pre-filed testimony, file their own written testimony & exhibits
- Testimony & exhibits admitted into evidentiary record
- Parties ask each other questions about their testimony & exhibits, in order to understand positions, formulate responsive testimony, and prepare cross-examination
- Not automatically part of the evidentiary record

TIP: All testimony should provide facts – i.e., opinions should be accompanied by some basis of fact.

248 Process: Evidentiary Hearings (aka Technical Hearings)

- Like a trial, except testimony prefiled in writing before the hearing
- Prefiled testimony entered into evidentiary record under oath
- Witnesses called to testify under oath and may be cross-examined
- Parties may not provide new testimony unless authorized



248 Process: Briefs



- Filed by parties at close of evidentiary hearings, typically in two rounds – initial and reply
- Not evidence, and no new issues may be raised
- Opportunity for parties to cite facts from the record and applicable statutes, rules, regulations, precedent and explain their position for Board to consider

248 Process: Decision



- Issued by Board after briefs submitted
- Must be based on evidentiary record
- Includes findings of fact from 248 criteria and conclusions of law
- If issued by hearing officer, parties can file written comments on the proposal and ask for oral argument before Board
- Subject to motions for reconsideration
- May be appealed to Vermont Supreme Court

Criteria of §248 (b)(1) – (5)

- (b) Before the public service board 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, with respect to a natural gas transmission line subject to board 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 board 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;
- (2) is required to meet the need for present and future demand for service which 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 but not limited to those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title;
- (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 esthetics, historic sites, air and water purity, the natural environment 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);

Criteria of § 248(b)(6)-(10)

- (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 water resources board, 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, 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
- (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.

Renewable Energy Procedures

- Net metering: < 10 kW solar (soon to be 15)
 - Registration form to PSB, PSD, and utility
 - If no concerns, CPG deemed issued on 11th day
- Net metering: facilities < 150 kW
 - Application form and Board Rule 5.100; certain criteria conditionally waived
 - Applicants must certify project complies with land conservation measures of town plan (selectboards and PCs will receive applications for systems not mounted on existing structures)
 - Comments due within 10 or 30 days
- Facilities 150 kW-2.2 MW
 - Simplified procedures and conditional waiver of certain criteria
 - Petitioner may request waiver of certain notice and hearing criteria, must provide justification