Question and Survey Results for the Utilities Input on the 248a Process: (submitted via email)

Question: How many Section 248a petitions did you submit in so far in 2023?

Comment:

17

Question: How would you rate the effectiveness of the telecommunications siting process under Section 248a?

Comment:

Somewhat effective.

Question: How would you rate the effectiveness of the Section 248a process in encouraging local governments and municipalities to participate in the siting process.

Comment:

Very effective.

Question: How would you rate the Section 248a process in providing opportunities for individuals and the public to participate in the siting process.

Comment:

Very effective.

Question: Would you say that updates to Section 248a are necessary? You may also submit comments to PSD.Telecom@vermont.gov.

Comment:

"Updates to Section 248a are necessary. AT&T has made an unprecedented investment in its Vermont-based network since 2017, including through FirstNet macro sites, small cell deployments in capacity-constrained communities, roaming arrangements with locally-based providers, and collocations of equipment on existing towers and other support structures. AT&T used the Section 248a process almost exclusively during a 5-year period of robust network expansion, rather than navigating the combination of local telecommunications ordinances and Act 250. Despite finding the 248a process effective overall, there are several areas that deserve special attention if Vermont is serious about improving the regulatory climate for wireless broadband expansion:

Redesign 248a Submission Requirements. Several of the submission requirements in the Section 248a procedures order are either obsolete or very unclear (particularly vis-à-vis propagation map and site

plan requirements), whereas there are core items excluded from the procedures order that ought to be required to protect the integrity of the process (e.g., authorization letters from landowners, structural reports). These requirements have not been subject to a workshop in over a decade, and warrant a fresh look.

Ensure Shot Clock Compliance. The 248a process should be expressly tailored to comply with federal regulations concerning the reasonable periods of time to act on siting applications (see 47 C.F.R. 1.6003). Doing so would do much to ensure all parties that an applicant's federal rights are to be respected, while also bringing greater certainty and predictability to the process. Also, the PUC has been sued several times over the past year to comply with the shot clock rules: it is a waste of taxpayer dollars to devote time / energy to enforcing requirements that are plain on their face.

Achieve Section 6409 Parity for Modifications / Collocations. The 248a process should also be re-configured to comply with federal regulations concerning wireless facility modifications and collocations (see 47 C.F.R. 1.6100). The effect of not doing so is to impose a greater level of review on projects that consistently warrant little to no public comment or concern, thereby needlessly delaying network improvements. This creates a disincentive to complete network roll-outs in VT as compared with other jurisdictions. Parity could be achieved by adopting a procedure to review eligible facilities requests under 47 USC 1455(a), since the Vermont General Assembly imbued the PUC with authority to review wireless facility modifications.

Adopt Expedited CPG Transfer Procedure. Unlike CPGs for solar facilities – which can be transferred on an expedited basis using a simple form – the PUC has chosen to require an ill-defined, untimely procedure for transferring CPGs for telecommunications facilities. Experience has shown that there are virtually no instances in which a transfer raises an objection from third parties. The Commission should adopt an expedited transfer process for telecom facility CPGs.

Improve ePUC Capabilities for Advance Notice Period. The PUC claims that the advance notice process is designed to foster dialogue: "The advance notice period is intended to provide an opportunity for parties to discuss and potentially resolve concerns with a project prior to the petition being filed with the Commission in order to avoid unnecessary litigation. If the concerns cannot be addressed during this period or the parties seek additional assurances in the form of conditions included in the CPG, the parties then have the opportunity to file comments on the petition once it is filed with the Commission." Petition of New Cingular Wireless PCS, LLC (Grand Isle), Case No. 20-0685-PET, Order of 07/02/2020 at 2 (avail. at 2020 WL 3868728). At the moment, the ePUC system creates a disincentive to communication, insofar as a petitioner cannot supplement its initial notice with materials in order to distribute to other state agencies, municipalities, regional planning commissions, or interested parties who seek to participate – any follow-ups have to be sent via mail. To better meet the public objectives, the ePUC system should be redesigned to allow for improved communications among all parties during the 60-day advance notice period.

Clarify CPG Amendment Process. The PUC's recent rulings on when a CPG must be amended (versus when a project is "new" and thus requires a new 60-day notice as a jurisdictional matter) have injected confusion into the overall 248a process, and ought to be re-designed. The same concerns that undergirded the PUC's fairly recent decision not to require new 45-day notices for amendments for solar net metering projects should be applied in assessing Section 248a projects, so that there is a sensible process for amending a CPG while giving statutory parties a meaningful opportunity to react and

comment. Otherwise, there is a disincentive to make changes to a project in response to requests of those statutory parties. Accord Proposed revisions to Vermont Public Utility Commission Rule 5.100, Case No. 19-0855-RULE, Order of 04/29/2022 at 3 ("The Commission proposes to eliminate the distinction between major and minor amendments [… in Rule 5.108(A) and (B), because it] creates a strong disincentive for applicants to alter their proposals out of concern that they may be required to file a new application if determined to be a major amendment.")

Expand Hearing Officer Pool. For reasons that are unclear, despite having a robust and diverse group of hearing officers to choose from within the Commission, the PUC has assigned all of its 248a cases to a single hearing officer for over a decade. To ensure a more fair and efficient administration of the process, there should be a larger hearing officer pool selected based upon a random rotation for consideration of future Section 248a cases.

Interplay with Section 106 process. The PUC has never squarely addressed the overlap between Section 106 review under the National Historical Preservation Act with the requirement that a 248a project not have an undue adverse effect on "historic sites," particularly in terms of whether an application must have a SHPO concurrence in order to be considered "complete" under 248a. Some clarity should be given to this process, whereby the Section 106 process can run concurrently with a 248a application, but with a presumption that a SHPO concurrence letter will satisfy the "historic sites" requirement unless challenged, and that it must be provided to the Commission prior to construction.

Address Eminent Domain Authority for CPG Holders. In 2022 the PUC concluded that eminent domain authority could not be used in connection with acquisition of property rights by a registered CMRS provider holding a CPG for a particular project. The PUC's reasoning in its decision failed, among other things, to squarely address how VELCO had been able to use its eminent domain authority based on a Section 248a CPG for its project in Wells. If the State is genuinely serious about wanting to achieve universal coverage, the question of eminent domain authority for CPG Holders (and specifically public companies) ought to be considered and debated as part of the program's consideration and design."