

Existing Tiers of review under Section 248

I. Most stringent level of review - 30 V.S.A. § 248

Section 248 sets forth:

- (1) the jurisdiction trigger (site preparation or construction – Section 248(a)(2)(A));
- (2) the minimum process for hearings and notice (public and technical hearings, notice to state agencies – Section 248(a)(4), and notice to municipal and regional planning commissions – Section 248(f));
- (3) the substantive criteria for review (Section 248(b));
- (4) the process for projects of limited size and scope (Section 248(j));
- (5) minimum filing requirements for petitions involving wind turbines (Section 248(o));
- (6) disclosure requirements for plants utilizing woody biomass (Section 248(p); and
- (7) various provisions related to: required votes for municipal and cooperative utilities (Section 248(c)); nuclear plants (Sections 248(e) and (m)); natural gas facilities (Section 248(h)); review of power purchase agreements (Section 248(i)); emergency waivers of Section 248 requirements (Sections 248(k) and (l)); wireless communications on transmission facilities (Section 248(n)).

In addition, the Board has promulgated a rule relating to filing requirements for petitions filed under Section 248 associated with electric transmission and generation facilities. (Available at: http://psb.vermont.gov/sites/psb/files/rules/OfficialAdoptedRules/5400_248_Requirements.pdf.)

The typical process for review of Section 248 petitions involves:

- (1) At least 45 days before petition is filed with the Board, the Petitioner files plans for the project with affected municipal and regional planning commissions
- (2) Petitioner files application
- (3) Clerk of the Board establishes a date for a prehearing conference, at which parties establish a schedule for the case
- (4) Public hearing (which, pursuant to statute must be noticed on the PSB website at least 12 days before the public hearing, and must be held “in at least one county in which any portion of the construction of the facility is proposed to be located.” Section 248(a)(4).
- (5) Deadline for motions to intervene (although there is not statutory timeframe, the PSB typically sets the intervention deadline for one week after the public hearing to ensure that people are aware of the proceeding and the deadline for intervention)
- (6) Parties file discovery
- (7) Parties file prefiled testimony
- (8) PSB holds a technical hearing
- (9) If Hearing Officer case, the HO issues a proposal for decision; parties typically have ten calendar days to comment on the proposal for decision
- (10) After reviewing proposal for decision and any comments, PSB issues final order.

II. Review process for projects of limited size and scope - 30 V.S.A. § 248(j)

Section 248(j) allows a more streamlined process for projects “of limited size and scope.” The term limited size and scope is not defined in statute and is subject to a PSB determination. A petitioner files under Section 248(j), the Board can deny the request for review under 248(j) and require the project to be reviewed under the full procedures of Section 248. It is typical for Board staff to request further information on the petition. If the petition is accepted under 248(j), the Board issues notice to state, municipal, and regional entities and to adjoining landowners. The notice briefly describes the petition and sets a deadline for anyone to file comments on whether the petition raises a significant issue under the substantive criteria of Section 248(b). If there are no negative comments, the Board will issue a decision based upon the written filings, without any public or technical hearing. If there are negative comments, the Board will make a determination as to whether the comments do actually raise a significant issue; if so, the PSB will set a prehearing conference and may, if it chooses, hold a public hearing and technical hearing. The further process is confined to the criteria that have been identified as having raised a significant issue.

§ 248(j).

(j)(1) The board 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 board 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. The board shall give written notice of the proposed certificate to the parties specified in subdivision (a)(4)(C) of this section, 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 board to have a substantial interest in the matter. Such notice shall be published on the board's website and shall request comment within the board's website and shall request comment within 28 days of the initial publication on the question of whether the petition raises a significant issue with respect to the substantive criteria of this section. If the board finds that the petition raises a significant issue with respect to the substantive criteria of this section, the board 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.

III. Review for renewable projects with a capacity of 2.2 MW or less - 30 V.S.A. § 8007

In 2010, the legislature added a new statute intended to streamline the 248 process for renewable plants with a capacity of 2.2 MW or less. The statute required that projects with a

capacity of 150 kW or less would be processed in the same manner as net-metering systems (the PSB's description of the net metering process can be found at: <http://psb.vermont.gov/utilityindustries/electric/backgroundinfo/netmetering>). For projects with a capacity between 150 kW and 2.2 MW, the legislature directed the PSB to develop standards and procedures; pursuant to statute the standards and procedures: (1) shall waive the requirements of Section 248 that are not applicable to a plant; (2) may modify notice and hearing requirements; and (3) shall simplify the petition and review process as appropriate. The Board order implementing this provision can be found at: http://psb.vermont.gov/sites/psb/files/re_Order_implementing_8007_b_.pdf

§ 8007. Small renewable energy plants; simplified procedures

(a) The same application form, rules, and procedures that the board applies to net metering systems of 150 kilowatts (kW) or less under sections 219a and 248 of this title shall apply to the review under section 248 of this title of any renewable energy plant with a plant capacity of 150 kW or less and to the interconnection of such a plant with the system of a Vermont retail electricity provider. This requirement includes any waivers of criteria under section 248 of this title made pursuant to section 219a of this title.

(b) With respect to renewable energy plants that have a plant capacity that is greater than 150 kW and is 2.2 MW or less, the board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for such a plant under the provisions of section 248 of this title, and the interconnection of such a plant with the system of a Vermont retail electricity provider.

(1) In developing such rules or orders, the board:

(A) Shall waive the requirements of section 248 of this title that are not applicable to such a plant, including, for a plant that is not owned by a Vermont retail electricity provider, criteria that are generally applicable to such a provider.

(B) May modify notice and hearing requirements of this title as it deems appropriate.

(C) Shall simplify the petition and review process as appropriate.

(2) Notwithstanding 1 V.S.A. §§ 213 and 214, a petitioner whose petition under section 248 of this title is pending as of the effective date of a board rule or order under subsection (b) of this section may elect to apply the standards and procedures of such a rule or order to the pending petition if the petition pertains to a renewable energy plant with a plant capacity that is greater than 150 kW and is 2.2 MW or less. (Added 2009, No. 159 (Adj. Sess.), § 6, eff. June 4, 2010..)