

Generation, Transmission, and Distribution Authorization (Siting) Process



NARUC Energy Regulatory Partnership Program

*The Energy Regulatory Commission of the Republic of Macedonia
and
The Vermont Public Service Board*

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Presentation Outline

- ❖ Federal and state agencies involved in the siting process
- ❖ Federal preemption of state authority
- ❖ Regulatory process in Vermont
 - Generation and transmission
 - Distribution



Federal Agencies and Preemption

- ❖ Federal Energy Regulatory Commission (FERC)
 - Hydroelectric projects on navigable waters, and certain other hydroelectric projects
 - Interconnection to the bulk power system
 - Backstop siting authority (new in 2005)
- ❖ Nuclear Regulatory Commission (NRC)
 - Nuclear power plants
 - Preempt state authority on radiation issues
- ❖ U.S. Army Corps of Engineers (USACE)
 - Wetlands and stream alteration
 - Does not preempt state authority, but if USACE denies wetlands permit, project can not be built



State Authority

- ❖ Public Service Board reviews petitions for generation and transmission
- ❖ District Environmental Commissions (with appeal to the Natural Resources Board) review petitions for certain distribution projects.
- ❖ Both the PSB and Environmental Commission processes use many of the same standards to evaluate environmental impacts.



Vermont Public Service Board Authority and Responsibilities

- ❖ VT law gives the PSB “the *powers of a court of record* in the determination and adjudication of all matters over which it is given jurisdiction,” including siting matters.
- ❖ Petitions for the siting of generation or transmission are treated in a contested-case proceeding, which is like a court case. Testimony is given under oath, and witnesses are cross examined by other parties.



30 V.S.A. § 248

“Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation facilities that are operated solely for on-site electricity consumption by the owner of those facilities, . . . no company . . . may begin site preparation for or construction of an electric generation facility or electric transmission facility within the state . . . unless the public service board first finds that the same will promote the general good of the state and issues a certificate to that effect.”



Substantive Criteria of Section 24 (4 slides)

30 V.S.A. § 248(b)(1) through (10) set out criteria which the Board must consider in its determination that a utility project will promote the general good of the state:

- (1) Orderly development of the region
- (2) Need for present and future demand for service
- (3) System stability and reliability



Criteria of § 248(b)(4)&(5)

(4) Economic benefit to the state

(5) Not have “undue adverse affect on aesthetics, historic sites, air and water purity, the natural environment and public health and safety”

- With “due consideration” given to the criteria specified in 10 V.S.A. §§1424a(d) and 6086(a)(1)–(8), and 9(K) – next slide



§ 248(b)(5)'s Reference to Act 250

- Outstanding resource waters
- Air pollution
- Water pollution & supply
 - Headwaters
 - Waste disposal
 - Water conservation
 - Floodways
 - Streams
 - Shorelines
 - Wetlands
 - Sufficiency of water and burden on existing water supply
 - Soil erosion
- Traffic
- Educational and municipal services
- Scenic or natural beauty of the area, aesthetics; rare and irreplaceable natural areas; necessary wildlife endangered species
- Development affecting public investments



Criteria of § 248(b)(6) through (10)

- (6) Consistency with resource selection/
integrated resource plan
- (7) Consistency with Department's 20-Year
Plan
- (8) Outstanding resources waters
- (9) Waste to energy
- (10) Existing transmission facilities



The Section 248 Process

- ❖ The Section 248 process is designed to incorporate competing points of view
- ❖ In determining whether a project will promote the general good of the state, the Board routinely goes through a process similar to the one described on the next several slides



The Section 248 Process (cont.)

Project developer files information in support of its request with the Board and:

- Attorney General
- Department of Public Service
- Department of Health
- Agency of Natural Resources
- Historic Preservation Division
- Scenery Preservation Council
- State Planning Office
- Agency of Transportation
- Department of Agriculture, Food and Markets
- Municipal and regional planning commissions
- Municipal legislative body of each town in which the project would be located



The Section 248 Process (cont.)

❖ Pre-Hearing Conference

- Schedule for investigation established
- Issues and parties identified

❖ Public Notice – after schedule established

- Sent by Clerk
- Published in newspaper of general circulation in the county or counties in which the proposed facility will be located two weeks successively, the last publication to be at least 12 days before the day appointed for the public hearing



Section 248 Process – Participants

- ❖ Petitioner – usually one or more utilities
- ❖ Two statutory parties
 - VT Department of Public Service (represents public interest before the Board – social, economic, engineering issues)
 - VT Agency of Natural Resources (provides testimony on environmental issues)
- ❖ Intervenors
 - Most diverse category of participants
 - Utilities, state agencies, non-profit groups, landowners, etc.



Section 248 Process – Public Hearings

- ❖ Board typically holds one or more public hearings
- ❖ Any member of the public can speak up at one of the Board's public hearings
- ❖ Or write to the Board about a matter of public concern
- ❖ Board listens to such comments and reads such letters and puts them in a public record
- ❖ Board cannot rely on public comments for the evidentiary record, but they inform the decision
- ❖ Department also uses information gathered at public hearings to develop its position



Section 248 Process - Intervention

- ❖ Applicant must demonstrate a substantial interest which may be affected by the outcome of the proceeding
- ❖ In exercising its discretion, the Board must consider:
 - whether the applicant's interest will be adequately protected by other parties
 - whether alternative means exist by which the applicant's interest can be protected
 - whether intervention will unduly delay the proceeding or prejudice the interests of existing parties or of the public
- ❖ Where a party is granted intervention the Board may restrict such party's participation to only those issues in which the party has demonstrated an interest, may require such party to join with other parties with respect to appearance by counsel, and presentation of evidence or other matters



Section 248 Process - Discovery

- ❖ Party's testimony and exhibits are typically required to be prefiled
- ❖ Petitioner files its direct case
- ❖ Department, ANR, and intervenors file their direct testimony
- ❖ Petitioner files rebuttal testimony that responds to the Department, ANR, and intervenors
- ❖ Department, ANR, and intervenors file their own rebuttal testimony
- ❖ Schedule usually allows discovery on each of these filings



Section 248 Process – Technical Hearings and Beyond

- ❖ Parties present their evidence (sworn testimony and exhibits) and cross-examine each other's witnesses during technical hearing(s)
 - Create an evidentiary record
- ❖ After the hearings
 - Parties file briefs and, often, reply briefs.
 - If case heard by a Hearing Officer, the Hearing Officer must produce a proposed decision
 - ◆ Comment period
 - ◆ Oral argument before Board
 - ◆ Board issues its Order
 - If the Board hears case directly, Board issues its decision directly
 - Appeals are directly to Vermont Supreme Court



Section 248(j) – Streamlined Process

- ❖ For smaller projects without the potential for significant impacts
- ❖ Board issues notice of project, and provides a period for written comments
- ❖ If no significant issues are raised within the comment period, Board may approve project without hearings
- ❖ If a significant issue is raised, Board may hold hearings on that issue



Questions?