

5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**5.401 Purpose and Applicability**

This rule establishes minimum filing requirements for petitions to construct electric generation, energy storage, electric transmission, and natural gas facilities pursuant to 30 V.S.A. § 248 and clarifies certain parts of the Section 248 review process. This rule is not intended to replace any of the statutory requirements of Section 248. Unless specifically stated, this rule also does not replace any requirements of other Public Utility Commission (“Commission”) Rules or Procedures. Unless specifically stated, the requirements of this rule do not apply to petitions filed under subsection 248(k). The requirements of this rule do not apply to petitions for net-metering systems filed under Commission Rule 5.100.

5.402 Pre-Filing Advance Submission

No less than 45 days before filing a petition with the Commission, the petitioner shall submit project plans as described below. If the proposed project consists solely of the relocation of transmission facilities, the submission shall be made at least 21 days prior to such filing. Any of the persons or entities entitled to receive notice under this section may waive the notice requirement.

(A) Recipients Entitled to Advance Submission. The petitioner must provide the following persons with a copy of the advance submission:

- (1) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- (2) all Adjoining Landowners;
- (3) the host landowner(s);
- (4) the Department of Public Service;
- (5) the Agency of Natural Resources;
- (6) the Natural Resources Board, if the proposed project is located on a parcel subject to an Act 250 Land Use Permit;
- (7) the Division for Historic Preservation;
- (8) the Agency of Agriculture, Food and Markets; and
- (9) the interconnecting utility.

For purposes of this rule, “Adjoining “Landowner” means a person who owns land in fee simple, if that land:

(a) With respect to a transmission line, will be crossed by the right-of-way for that line, shares a property boundary with such right-of-way, or would share a boundary with the right-of-way but for the presence of an intervening river, stream, public highway, or railroad line that shares a boundary with the right-of-way; or

(b) With respect to a generation facility, energy storage facility, substation, or other transmission facility not part of a transmission line, shares a property boundary with the tract of land on which that facility or substation is located or is adjacent to that tract of land and the two properties are separated only by a river, stream, railroad line, or public highway.

Adjoining Landowners shall be identified utilizing the host town’s certified grand list as it existed no more than 60 days prior to the date of the advance submission.

- (B) Method of Service of Advance Submission. The petitioner must serve the advance submission on the entities listed in (A)(1) through (3), above, by first-class mail or its equivalent. The petitioner must cause the advance submission to be transmitted to the entities listed in (A)(4) through (9), above, using the Commission's electronic filing system, unless an applicable exemption exists, in which case service must be by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the advance submission via electronic mail.
- (C) Contents of advance submissions. Whenever service of the advance submission must be done by mail, the petitioner may elect to serve a document with information and a link that will allow the recipient to access the actual content of the advance submission electronically. The document must also include instructions for the recipient to request a hard copy of the advance submission from the petitioner if they are not able to access it electronically. If a hard copy is requested by the recipient, the petitioner must serve it by first-class mail or its equivalent within 2 business days of the request.

All advance submissions shall include:

- (1) A reference and a link to the Commission document "Public Participation and Intervention in Proceedings Before the Public Utility Commission," found on the Commission's website at <https://puc.vermont.gov/document/public-participation-and-intervention-proceedings-public-utility-commission>, and,
 - (a) If the petition is filed under Section 248, a reference and a link to the Commission's Section 248 procedures document, found on the Commission's website at: <https://puc.vermont.gov/document/section-248-procedures>; or
 - (b) If the petition is filed under Section 248(j), a reference and a link to the Commission's Section 248(j) procedures document, found on the Commission's website at <https://puc.vermont.gov/document/section-248j-procedures>.
- (2) Sufficient information for a reader to understand the overall proposed project, including but not limited to:
 - (a) The site location and property boundaries;
 - (b) A description and site plan of the proposed project in as much detail as the petitioner reasonably can provide that show the approximate location of all proposed new infrastructure (e.g., transmission lines, substation, roads, laydown areas, etc.) relative to the existing conditions. The description and site plan must include sufficient detail to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Commission's jurisdiction to address;
 - (c) A description of how equipment and materials will be transported to the site;
 - (d) The permit number(s) of any Act 250 Land Use Permit applicable to the host parcel;
 - (e) Preliminary identification and analysis of aesthetic impacts and draft of a

proposed aesthetic mitigation plan or an explanation why aesthetic mitigation measures are not needed for the proposed project;

- (f) For projects proposed by utilities, the petitioner shall include an evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.
 - (3) A notice of each municipal and regional planning commission's right under 30 V.S.A. § 248(f)(1)(A) to convene a public hearing on the proposed petition.
 - (4) A notice of each planning commission's right under 30 V.S.A. § 248(f)(1)(C) to submit recommendations to the petitioner within 40 days of the petitioner's submittal to the planning commissions.
 - (5) A notice that the petitioner's application to the Public Utility Commission must address any written comments provided to the petitioner in response to the 45-day advance notice that are related to the Section 248(b) criteria and any oral comments related to those criteria made at a public hearing conducted pursuant to 30 V.S.A. § 248(f)(1)(A).
 - (6) A notice of each planning commission's right under 30 V.S.A. § 248(f)(1)(D) to make recommendations to the Commission after a petition is filed. The Commission will give due consideration to any such recommendations. Recommendations made to the Commission pursuant to this subsection, or the lack of such recommendations, shall not preclude municipal and regional planning commissions and municipal legislative bodies from exercising their right to appear as parties pursuant to 30 V.S.A. § 248(a)(4)(G)-(I).
- (D) Timing of advance submissions. If, within 365 days of the date of the advance submission, the petitioner has not filed a complete petition for the project that fully complies with the filing requirements of this rule, the submission will be treated as withdrawn without further action required by the Commission. No petition may subsequently be filed for the project without first complying with the pre-filing advance submission requirements of this section. The time period established by this section may be extended for good cause shown by motion filed at least 14 calendar days before the expiration of the 365-day period.
- (E) Exemption. The advance submission required by this section need not be provided to Adjoining Landowners if the proposed project consists of reconductoring within an existing right-of-way and the height of any new structure required for the reconductoring is not more than 10 feet higher than the structure being replaced. If any pole height increases by more than 10 feet, the requirements of this section shall apply only to landowners whose property adjoins the right-of-way at the immediate location of such pole.

5.403 Contents of Petition

All petitions filed pursuant to Section 248 must be complete at the time they are filed. If a petitioner intends to rely solely on a permit from other regulatory agencies or a study to demonstrate compliance with the requirements of Section 248(b) instead of providing testimony or other evidence to satisfy such criteria, such studies and permits must be included with the petition.

- (A) Petition contents. The petition must include all of the following information unless a petitioner demonstrates that a specific piece of information is not applicable to the

petition:

- (1) Prefiled evidence (testimony and exhibits) that demonstrates how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b) and promotes the general good of the State in compliance with 30 V.S.A. § 248(a). The testimony and exhibits must contain sufficient facts to support a positive finding by the Commission under each of the applicable Section 248 criteria. To the extent that the proposal will result in an adverse impact affecting any of these criteria, the applicant must describe what measures, if any, will be taken to minimize any such impact.
- (2) A certification that the advance submission requirements in section 5.402 have been met.
- (3) A summary of all comments received in the 45-day advance notice period as described in section 5.402(C)(4), including written comments and oral comments made at any public hearings and the petitioner's response to any such comments.
- (4) A U.S. Geological Survey topographic map showing the location of the proposed project.
- (5) An aerial photograph of the proposed project site that clearly marks existing structures and significant natural and constructed features when available, or an equivalent computer-generated image that provides similar detail.
- (6) Either the topographic map referenced in subsection (4), above, or the annotated aerial photograph or equivalent computer-generated image shall clearly show the property boundaries and enough of the adjacent properties to show the project site in relation to surrounding land features and uses (e.g., natural areas, buildings, roads, etc.).
- (7) Site plans that include:
 - (a) legible scale(s) for all views on all sheets, including a legible graphic scale to account for document reductions;
 - (b) a project overview that shows the setbacks from property boundaries to the corner of the nearest project-related structure and approximate distances to any nearby residences;
 - (c) all project features and proposed site improvements and their dimensions, including temporary or permanent improvements on the project site or elsewhere that are reasonably related to the project;
 - (d) existing topography at the site and proposed changes in grading;
 - (e) the dimensions, area in square feet, and depth of all proposed soil disturbance;
 - (f) existing natural and constructed features (including but not limited to water bodies and wetlands and associated buffer zones, tree lines, primary agricultural soils, buildings, and roads);

- (g) a depiction of any area(s) where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations to or impacts on any natural resources protected by 30 V.S.A. § 248(b)(5) including, but not limited to, wetlands, streams, shorelines, floodplains, rare and irreplaceable natural areas, necessary wildlife habitat, and their applicable buffer zones, including the limits of disturbance and the total acreage of any disturbed area;
 - (h) locations and specific descriptions of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings;
 - (i) a cross-section of the site showing existing and proposed conditions and the height of project features in relation to existing buildings and/or vegetation;
 - (j) the latitude and longitude coordinates at the center of the proposed project site;
 - (k) the presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the project, the amount of those soils to be disturbed, and any other proposed impacts to those soils;
 - (l) the approved site plan from any Act 250 Land Use Permit applicable to the host parcel; and
 - (m) color photographs of the project site.
- (8) Elevation drawings.
- (a) For each proposed structure, the petitioner must provide elevation drawings.
 - (b) The elevation drawings must be to appropriate scales but no smaller than 1"/20'.
 - (c) The petitioner must include two elevation drawings of the proposed structures drawn at right angles to each other, showing the ground profile to at least 100 feet beyond the edge of any proposed clearing, and showing any guy wires or supports.
 - (d) The elevation drawings must indicate the relative height of the facility to the tops of surrounding trees as they presently exist.
 - (e) Each plan sheet must be clearly labeled with the project title, date, revision date(s), scale, and name of the person or firm that prepared the plan.
- (9) Information to document compliance with Commission Rule 5.500 regarding interconnection procedures for electric generation facilities, Rule 5.800 regarding aesthetic mitigation, and Rule 5.900 regarding decommissioning. Documentation of compliance with Rule 5.500 shall include a signed copy of the applicable interconnection agreement executed pursuant to that rule.

- (10) A statement of consistency with any applicable Act 250 land use permit or whether the project construction will interfere with the satisfaction of any applicable Act 250 land use permit condition.
 - (11) Copies of the relevant sections of any town plan and regional plan in effect in the community in which the proposed project will be located. The petitioner must include testimony describing how the project complies with or is inconsistent with the land conservation measures and specific policies in those plans.
 - (12) An index, organized according to the criteria of 30 V.S.A. § 248(b), that identifies by witness and page number the prefiled evidence that addresses each criterion, including the incorporated criteria of Section 248(b)(5). A descriptive title must be provided for each exhibit identified in the index.
 - (13) A copy of the Agency of Natural Resources Certificate of Public Good Application Fee Form.
 - (14) If applicable, a copy of the Public Utility Commission and Department of Public Service Application Fee for In-State Generation Facilities Form.
 - (15) For renewable generation projects, a description of any other renewable generation projects using the same fuel type that are existing, approved, proposed, or planned and are located on the same parcel of land or any parcel of land adjoining the parcel on which the petitioner plans to site its project.
 - (16) A summary of all community outreach efforts undertaken by the petitioner in advance of filing its petition.
 - (17) For petitions filed under Section 248(j), a proposed certificate of public good and proposed findings of fact.
- (B) Attestations. All prefiled testimony and exhibits must be accompanied by a statement from the sponsoring witness attesting to the truth and accuracy of the testimony and exhibits and that they were prepared by or under the direct supervision of the witness. The attestation must include the following statement: “I declare that the testimony and exhibits that I have sponsored are true and accurate to the best of my knowledge and belief and were prepared by me or under my direct supervision. I understand that if the above statement is false, I may be subject to sanctions by the Commission pursuant to 30 V.S.A. § 30.”
- (C) Design level detail required. Petitioners are required to provide with their petition either plans at a design level of detail or a request for conceptual approval followed by post-certification review of final designs. A request for conceptual approval must be supported by evidence that shows that the cost to the petitioner of submitting design details with the petition would outweigh the benefits of such submission, including but not limited to the evaluation of site-specific impacts, accuracy in the findings to be made by the Commission, and finality of the Commission’s decision on the petition. In approving or denying such a request for conceptual approval, the Commission may consider additional factors that it deems relevant.
- (D) Filing format. Unless an applicable exemption exists, petitions shall be filed in ePUC in accordance with the requirements of Commission Rule 2.

5.404 Additional Filing Requirements for Petitions to Construct Wind Generation Facilities

- (A) Definition. For purposes of this section, “wind generation facility” means a generation facility that utilizes wind to produce electricity.
- (B) Requirements. In addition to the requirements of this rule, petitions to construct wind generation facilities must meet the following requirements:
- (1) The prefiling advance submission required by section 5.402 shall be provided to all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine.
 - (2) In addressing the impact of the proposed project on orderly development, the petitioner must include an assessment of the impact on all towns within the ten-mile radius.
 - (3) The petition must include a viewshed analysis that includes an analysis of aesthetic impacts for a ten-mile radius from the proposed project site.
 - (4) The petition must include information documenting a project’s compliance with Commission Rule 5.700 regarding sound levels.
- (C) Non-applicability. The provisions of subsections (B)(1), (B)(2), and (B)(3), above, do not apply to net-metered wind systems authorized pursuant to 30 V.S.A. § 8010 (regulated under Commission Rule 5.100), or non-net-metered wind systems that would otherwise qualify for the net-metering program under 30 V.S.A. § 8010 and Rule 5.100. No provisions of this section apply to meteorological towers regulated under 30 V.S.A. § 246.

5.405 Commission Initial Review of Petition

When a petition is filed under 30 V.S.A. § 248, the Commission will review the petition for administrative completeness. If the Commission determines that the petition is not complete, including providing information sufficient to support positive findings under all of the applicable criteria of Section 248(b), the Commission will notify the petitioner that its petition is considered incomplete with a description of the incomplete or missing items. The Commission will not take any further action on an incomplete petition unless and until the petitioner files the missing information and the Commission determines that the petition is administratively complete.

- (A) Advance submissions. Unless the Commission determines otherwise, a Commission determination that a petition is incomplete does not invalidate the advance submission already provided by the petitioner.
- (B) Burden of proof. A determination by the Commission that a petition is administratively complete shall not constitute a determination that the petitioner has met its burden of proof or burden of production under any or all applicable criteria.
- (C) Additional information. The Commission may request additional information from the petitioner at any time in a proceeding.
- (D) Notice of completeness. When the Commission has determined that a petition is administratively complete, the Commission will provide written notice of that determination to the petitioner.

5.406 Service and Notice of Petition

Upon receipt of a notice of a complete petition, the petitioner shall within two business days:

- (A) Serve copies of the complete petition to all agencies and entities required under 30

V.S.A. § 248(a)(4)(C), and for wind generation facilities, the entities identified in section 5.404(B)(1) of this rule. When service cannot be completed using the Commission's electronic filing system, the petitioner may serve by first-class mail or its equivalent a document with information and a link that will allow the recipient to access the complete petition electronically. The document must also include instructions for the recipient to request a hard copy of the complete petition if they are not able to access it electronically. If a hard copy is requested by the recipient, the petitioner must serve it by first-class mail or its equivalent within 2 business days of the request.

- (B) Provide notice of the petition to the individuals and entities listed in sections 5.402(A)(2), (3), (6), and (9) of this rule. When service cannot be completed using the Commission's electronic filing system, the petitioner shall serve the notice by first-class mail or its equivalent. This notice shall include, at a minimum, the case number if the case is filed in ePUC, a reference and link to the required documents as described in section 5.402(C), a general description of the type and approximate location of the facilities and upgrades proposed, a statement that a complete petition has been filed with the Commission and that the case has been opened, and information and a link that will allow the recipient to access the complete petition electronically. The notice shall also include instructions on how a recipient can contact the petitioner to obtain a hard copy of the complete project plans and petition if the recipient is not able to access them electronically.
- (C) The notice required by section 5.406(B), above, need not be provided to Adjoining Landowners if the proposed project meets the exemption contained in section 5.402(E) of this rule.
- (D) The petitioner shall file a certification that it has complied with the service and notice requirements of this section within five business days of receipt of a notice of a complete petition.

5.407 Additional Requirements Pertaining to Certain Criteria

- (A) Section 248(b)(2) (Need). For petitions to construct or modify transmission facilities in a national interest electric transmission corridor designated by the federal Secretary of Energy under 16 U.S.C. § 824p(a), petitioners must, as part of their demonstration on need, specifically address the interstate benefits expected to be achieved by the proposed project.
- (B) Section 248(b)(6) (Integrated Resource Plans). A petition from an investor-owned utility, municipal electric department, or cooperative electric utility that does not have an approved integrated resource plan pursuant to 30 V.S.A. § 218c must provide evidence that its proposed project complies with principles of integrated resource planning, as defined in 30 V.S.A. § 218c, including consideration of environmental effects.
- (C) Section 248(b)(7) (Consistency with Electric Energy Plan). Except for petitions concerning natural gas facilities that are not part of or reasonably related to an electric generation facility, the petitioner must provide evidence that specifically demonstrates compliance with the electric energy plan approved by the Department of Public Service under 30 V.S.A. § 202, applying the relevant portions of that plan to the facts of the proposed project. If the petitioner seeks a determination that good cause exists to permit the proposed action despite inconsistency with that plan, the petitioner must request such a determination and provide evidence demonstrating the existence of such good cause.

5.408 Intervention by Certain Persons and Entities

The following entities and persons may obtain party status in a proceeding conducted under Section 248 through the filing of a notice of intervention:

- (1) the Natural Resources Board if it is entitled to notice of a petition under this rule;
- (2) the Division for Historic Preservation;
- (3) the Agency of Agriculture, Food and Markets;
- (4) any interconnecting utility;
- (5) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- (6) the regional planning commission of an adjacent region if the distance between the project's nearest component and the boundary of that adjacent region is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater;
- (7) the legislative body and planning commission of an adjacent municipality if the distance between the project's nearest component and the boundary of that adjacent municipality is less than or equal to 500 feet or 10 times the height of the facility's tallest component, whichever is greater;
- (8) Adjoining Landowners;
- (9) the host landowner(s); and
- (10) in the case of a wind generation project, all municipal planning commissions, municipal governments, and regional planning commissions for all towns wholly or partially within a radius of a minimum of ten miles of each proposed turbine on the following criteria: (b)(1) orderly development; (b)(4) economic benefit; and (b)(5) aesthetics, transportation, historic sites, and public investments.

The provisions of Commission Rule 2.209(C) shall apply to interventions under this section.

5.409 Site Visits

In its discretion, the Commission may conduct one or more site visits to view the location of the proposed project. The purpose of the site visit shall be to assist the Commission and the parties in understanding the proposed project and the issues that the proposed project may present. The site visit will typically include the following activities: a discussion of the proposed project and its location; a viewing of the existing conditions at the location of the proposed project; and a discussion of how the existing conditions would be altered by the proposed project. The site visit may also include identification of relevant landscape features, discussion of how such landscape features affect the project design and location, identification of and visits to potential alternative locations for the proposed project, and consideration of any other relevant matters for which a first-hand viewing of the site may assist in understanding the issues before the Commission. Observations and facts from the site visit shall not be considered as evidence unless the Commission on its own motion specifically enters them into the evidentiary record.

5.410 Public Hearings

The Commission, in response to a request from a party or a member of the public, will hold a public hearing on a petition filed under Section 248 or 248(j). If the Commission is requested by one or more members of the public or a party the Commission, in its discretion, may hold one or more additional public hearings. Also, the Commission on its own motion may hold one or more public hearings in response to a petition in the absence of any request from a member of the public or a party.

5.411 Substantial Change Prior to Decision on a Petition

If the petitioner makes a substantial change to the proposed project after the petition has been filed with the Commission, the petitioner shall provide notice of this change to all parties and entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. For the purpose of this subsection, a substantial change is one that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the State under Section 248(a).

5.412 Amendments to Projects Approved under Section 248

Commission approval is required for any proposed substantial change to the plans for a project that has been issued a certificate of public good under 30 V.S.A. § 248. For the purpose of this subsection, a substantial change is a change in the approved proposal that has the potential for significant impact with respect to any of the criteria of Section 248(b) or on the general good of the State under Section 248(a). A request for approval of a substantial change to the plans of an approved project, and any related changes to the certificate of public good, shall be filed as a petition in a new case consistent with the requirements of this rule. All notice and advance notice requirements must be met and shall include notice to all parties in the original case as well as all entities entitled to notice under this rule and Section 248, including any newly affected Adjoining Landowners, as defined by this rule. Notice does not need to be given to previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval.

5.413 Costs of Section 248 Projects

When a Vermont utility is the petitioner, or the costs of a project or a portion thereof are eligible to be recovered from Vermont ratepayers, the petitioner shall regularly monitor and update the estimated capital costs of any project it has proposed or received approval for under Section 248. At the time a petitioner becomes aware that the estimated capital costs of such a project may increase by 20 percent or more over prior cost estimates submitted to the Commission by the petitioner, and the increase is at least \$25,000, or such other amount as the Commission may order in a given proceeding or prescribe in a procedure, the petitioner shall notify the Commission and parties within seven calendar days of the new capital cost estimates for the project and the reasons for the increase. The requirement to monitor, update, and report shall continue until construction of the project has been completed or final costs are determined, whichever is later.

5.414 Waiver

For good cause, the Commission may waive any of the requirements of this rule.