

Proposed Filing - Coversheet

Instructions:

In accordance with Title 3 Chapter 25 of the Vermont Statutes Annotated and the “Rule on Rulemaking” ([CVR 04-000-001](#)) adopted by the Office of the Secretary of State, this filing will be considered complete upon filing and acceptance of these forms and enclosures with the Office of the Secretary of State, and the Legislative Committee on Administrative Rules.

All forms shall be submitted to the Office of the Secretary of State, no later than 3:30 pm on the last scheduled day of the work week.

The data provided in text areas of Proposed Filing Coversheet will be used to generate a notice of rulemaking in the portal of “Proposed Rule Postings” online, and the newspapers of record. Publication of notices will be charged back to the promulgating agency.

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

Certification Statement: As the adopting Authority of this rule (see 3 V.S.A. § 801 (b) (11) for a definition), I approve the contents of this filing entitled:

**Rule 5.400 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS
FACILITIES PURSUANT TO 30 V.S.A. § 248**

_____/s/ Anthony Z. Roisman_____, on 06/22/23
(signature) (date)

Printed Name and Title:

Anthony Z. Roisman
Chair, Vermont Public Utility Commission

RECEIVED BY: _____

- ☐ Coversheet
- ☐ Adopting Page
- ☐ Economic Impact Analysis
- ☐ Environmental Impact Analysis
- ☐ Strategy for Maximizing Public Input
- ☐ Scientific Information Statement (if applicable)
- ☐ Incorporated by Reference Statement (if applicable)
- ☐ Clean text of the rule (Amended text without annotation)
- ☐ Annotated text (Clearly marking changes from previous rule)
- ☐ ICAR Filing Confirmed

1. TITLE OF RULE FILING:

**Rule 5.400 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND
GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. PRIMARY CONTACT PERSON:

(A PERSON WHO IS ABLE TO ANSWER QUESTIONS ABOUT THE CONTENT OF THE RULE).

Name: John J. Cotter, Esq.

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, 4th Floor, Montpelier,
VT 05602

Telephone: 802-461-6364 Fax: 802-828-3352

E-Mail: john.cotter@vermont.gov

Web URL *(WHERE THE RULE WILL BE POSTED)*:

<https://epuc.vermont.gov/?q=node/64/156798>

4. SECONDARY CONTACT PERSON:

*(A SPECIFIC PERSON FROM WHOM COPIES OF FILINGS MAY BE REQUESTED OR WHO MAY
ANSWER QUESTIONS ABOUT FORMS SUBMITTED FOR FILING IF DIFFERENT FROM THE
PRIMARY CONTACT PERSON).*

Name: Elizabeth Schilling, Esq.

Agency: Vermont Public Utility Commission

Mailing Address: 112 State Street, 4th Floor, Montpelier,
VT 05602

Telephone: 802-828-1164 Fax: 802-828-3352

E-Mail: elizabeth.schilling@vermont.gov

5. RECORDS EXEMPTION INCLUDED WITHIN RULE:

*(DOES THE RULE CONTAIN ANY PROVISION DESIGNATING INFORMATION AS CONFIDENTIAL;
LIMITING ITS PUBLIC RELEASE; OR OTHERWISE, EXEMPTING IT FROM INSPECTION AND
COPYING?)* No

IF YES, CITE THE STATUTORY AUTHORITY FOR THE EXEMPTION:

PLEASE SUMMARIZE THE REASON FOR THE EXEMPTION:

6. LEGAL AUTHORITY / ENABLING LEGISLATION:

*(THE SPECIFIC STATUTORY OR LEGAL CITATION FROM SESSION LAW INDICATING WHO THE
ADOPTING ENTITY IS AND THUS WHO THE SIGNATORY SHOULD BE. THIS SHOULD BE A
SPECIFIC CITATION NOT A CHAPTER CITATION).*

30 V.S.A. §§ 2(c), 9, 11(a), and 248.

7. EXPLANATION OF HOW THE RULE IS WITHIN THE AUTHORITY OF THE AGENCY:

Title 30 V.S.A. § 2(c) states that "[t]he Public Utility Commission, with respect to any matter within its jurisdiction, may issue orders on its own motion and may initiate rulemaking proceedings." Title 30 V.S.A. § 11(a) provides that "The forms, pleadings, and rules of practice and procedure before the Commission shall be prescribed by it. The Commission shall adopt rules" Title 30 V.S.A. §§ 248(a)(2)(A) and (a)(3) prohibit the site preparation for or construction of an electric generation facility, energy storage facility, electric transmission facility, or natural gas facility in Vermont without the developer first obtaining a certificate of public good from the Commission. Section 248 places the review of applications for these projects within the Commission's jurisdiction, and Sections 2(c) and 11(a) grant the Commission the authority to promulgate rules by which to conduct those reviews.

8. CONCISE SUMMARY (150 WORDS OR LESS):

Section 248 of Title 30 of the Vermont Statutes annotated requires persons seeking to build certain electric generation, electric or gas transmission, or energy storage facilities to obtain a certificate of public good from the Commission. Commission Rule 5.400 implements the requirements of Section 248. The proposed amendments serve four primary purposes. First, they provide increased clarity on the information that must be filed for a Section 248 petition to be considered complete. Second, they update the means by which parties can exchange and collect information in response to technological advances and our experience with the COVID-19 pandemic. Third, they provide clarity on the processes that must be followed when petitioners seek to amend projects that are under review, or have been reviewed and approved. Fourth, the amendments simplify the process for certain persons and entities to intervene as parties in Section 248 cases.

9. EXPLANATION OF WHY THE RULE IS NECESSARY:

Rule 5.400 establishes the requirements and procedures

for filing petitions for proposed projects that require review and approval under 30 V.S.A. § 248. Although the Commission has a few times made minor changes to Rule 5.400 in recent years, it has been several years since the Commission reviewed the rule in its entirety. Commission practices have changed significantly in those years. The biggest change has been our move to electronic filing and case management through ePUC. Also, consistent with Act 174 of 2016, the Commission constantly seeks to facilitate public participation in all of our proceedings. Lastly, the number of cases filed under Rule 5.400 has increased dramatically in recent years. The Commission proposes a number of amendments to respond to these changes, as well as changes to clarify the requirements of Rule 5.400 so that petitions are both complete and more consistent at the time they are filed.

10. EXPLANATION OF HOW THE RULE IS NOT ARBITRARY AS DEFINED IN 3 V.S.A. § 801(b)(13)(A):

The proposed changes are based on changes in the manner in which the Commission conducts its statutory obligations under Section 248. They reflect the implementation of electronic filing, the increased use of technology by case participants, and the large percentage increase in Section 248 siting cases that have come before the Commission in recent years. To address that large increase in Section 248 cases the rule amendments provide increased clarity in filing requirements to ensure greater efficiency in the initial processing of petitions, take advantage of changes in how people communicate and exchange information, and recognize that with an increase in Section 248 siting cases comes a concurrent increase in public interest in participating in those cases.

11. LIST OF PEOPLE, ENTERPRISES AND GOVERNMENT ENTITIES AFFECTED BY THIS RULE:

Any person or entity filing a petition for a certificate of public good for a project under 30 V.S.A. § 248 and anyone participating or wanting to participate in the review of a proposed project. Examples include utility and non-utility petitioners, ratepayers, the Vermont Department of Public Service, the Vermont Agency of Natural Resources, the Vermont Division for Historic Preservation, the Vermont Agency

of Agriculture, Food & Markets, owners of land that abuts a proposed project, and businesses that may be affected by a proposed project.

12. BRIEF SUMMARY OF ECONOMIC IMPACT (150 WORDS OR LESS):

It is possible that the amendments will require some petitioners to expend additional resources in advance of filing a petition under Section 248 as a result of the expanded specificity regarding the content of Section 248 petitions. However, any increase in costs in preparing the petition are expected to be offset, at least in part, by greater efficiency in the review process resulting from the reduction or elimination of the need for the Commission to direct petitioners to provide additional information after a petition is filed.

13. A HEARING WILL BE SCHEDULED.

IF A HEARING WILL NOT BE SCHEDULED, PLEASE EXPLAIN WHY.

14. HEARING INFORMATION

(THE FIRST HEARING SHALL BE NO SOONER THAN 30 DAYS FOLLOWING THE POSTING OF NOTICES ONLINE).

IF THIS FORM IS INSUFFICIENT TO LIST THE INFORMATION FOR EACH HEARING, PLEASE ATTACH A SEPARATE SHEET TO COMPLETE THE HEARING INFORMATION NEEDED FOR THE NOTICE OF RULEMAKING.

Date: 8/8/23

Time: 6:30 PM

Street Address:

Zip Code:

URL for Virtual: <https://meet.goto.com/787536725>

OR call (877) 309-2073 and enter PIN# 787-536-725

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

Date:

Time: AM

Street Address:

Zip Code:

URL for Virtual:

15. DEADLINE FOR COMMENT (NO EARLIER THAN 7 DAYS FOLLOWING LAST HEARING): August 15, 2023

16. KEYWORDS (PLEASE PROVIDE AT LEAST 3 KEYWORDS OR PHRASES TO AID IN THE SEARCHABILITY OF THE RULE NOTICE ONLINE).

Rule 5.400

30 V.S.A. § 248

contents of petition

substantial change

Adopting Page

Instructions:

This form must accompany each filing made during the rulemaking process:

Note: To satisfy the requirement for an annotated text, an agency must submit the entire rule in annotated form with proposed and final proposed filings. Filing an annotated paragraph or page of a larger rule is not sufficient. Annotation must clearly show the changes to the rule.

When possible, the agency shall file the annotated text, using the appropriate page or pages from the Code of Vermont Rules as a basis for the annotated version. New rules need not be accompanied by an annotated text.

1. TITLE OF RULE FILING:

**Rule 5.400 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND
GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. TYPE OF FILING (*PLEASE CHOOSE THE TYPE OF FILING FROM THE DROPDOWN MENU
BASED ON THE DEFINITIONS PROVIDED BELOW*):

- **AMENDMENT** - Any change to an already existing rule, even if it is a complete rewrite of the rule, it is considered an amendment if the rule is replaced with other text.
- **NEW RULE** - A rule that did not previously exist even under a different name.
- **REPEAL** - The removal of a rule in its entirety, without replacing it with other text.

This filing is **AN AMENDMENT OF AN EXISTING RULE.**

4. LAST ADOPTED (*PLEASE PROVIDE THE SOSLOG#, TITLE AND EFFECTIVE DATE OF
THE LAST ADOPTION FOR THE EXISTING RULE*):

#17-049, 30-000-5400, REQUIREMENTS FOR PETITIONS TO
CONSTRUCT ELECTRIC AND GAS FACILITIES, 9/1/17; December
2017 [agency name change from Public Service Board;
rule renumbered from 30 000 056]

Economic Impact Analysis

Instructions:

In completing the economic impact analysis, an agency analyzes and evaluates the anticipated costs and benefits to be expected from adoption of the rule; estimates the costs and benefits for each category of people enterprises and government entities affected by the rule; compares alternatives to adopting the rule; and explains their analysis concluding that rulemaking is the most appropriate method of achieving the regulatory purpose. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Rules affecting or regulating schools or school districts must include cost implications to local school districts and taxpayers in the impact statement, a clear statement of associated costs, and consideration of alternatives to the rule to reduce or ameliorate costs to local school districts while still achieving the objectives of the rule (see 3 V.S.A. § 832b for details).

Rules affecting small businesses (excluding impacts incidental to the purchase and payment of goods and services by the State or an agency thereof), must include ways that a business can reduce the cost or burden of compliance or an explanation of why the agency determines that such evaluation isn’t appropriate, and an evaluation of creative, innovative or flexible methods of compliance that would not significantly impair the effectiveness of the rule or increase the risk to the health, safety, or welfare of the public or those affected by the rule.

1. TITLE OF RULE FILING:

**Rule 5.400 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND
GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. CATEGORY OF AFFECTED PARTIES:

*LIST CATEGORIES OF PEOPLE, ENTERPRISES, AND GOVERNMENTAL ENTITIES POTENTIALLY
AFFECTED BY THE ADOPTION OF THIS RULE AND THE ESTIMATED COSTS AND BENEFITS
ANTICIPATED:*

(1) Section 248 petitioners: Costs. Section 248 petitioners may experience some increase in the costs of preparing petitions for filing with the Commission due to the increased specificity of petition content requirements imposed by the amendments. Additionally, the amendments simplify the process for intervention in

Section 248 proceedings for some persons and entities, which could increase the number of parties to a case. However, the simplified process is available only to persons or entities that the Commission has historically found to meet the requirements for intervention even when their intervention requests are contested by petitioners. Benefits. Increase in the likelihood that petitions will be deemed complete upon the first petition filing and decrease in the need for the Commission and other parties to seek additional information not provided in a petition, yielding greater efficiency overall.

(2) Government agencies. Costs. It is possible that government agencies may see a small increase in costs from the amendments if the amendments result in an increase in the number of parties in more controversial cases. Any such increases are expected to be limited given that state agencies, with the exception of the Department of Public Service, tend to participate on a limited number of issues in most cases. Benefits. State agencies will receive more complete information at the time the initial petition is filed, decreasing the need to expend resources to gather additional information during a case through discovery or other legal processes.

(3) Vermont Ratepayers. Costs. To the extent that the amendments result in increased litigation costs to rate-regulated utilities, those utilities will likely seek to recover those costs in rates from Vermont ratepayers. However, any cost increases are expected to be small and at least in part offset by increased efficiencies in processing Section 248 petitions. Additionally, impacts on individual ratepayers are expected to be minimal because those costs would be distributed among all of a utility's ratepayers. Benefits. Increased efficiency in processing Section 248 petitions leads to more efficient planning by utilities in serving customers and decreased uncertainties regarding utility services.

(4) Intervenors. Costs. The rule amendments are not expected to increase costs for citizens and entities

(such as public interest groups) seeking to participate in contested case proceedings before the Commission. Benefits. The amendments simplify the process of intervention for persons and entities that the Commission has historically found to have sufficient interests in Section 248 proceedings to meet the standard for intervention even when challenged by petitioners. The amendments will also result in more detailed information being provided at the time of the initial petition filing, allowing potential intervenors to better assess whether seeking intervention in a case is necessary at all, and if so, whether their intervention can be limited to discrete issues.

4. IMPACT ON SCHOOLS:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON PUBLIC EDUCATION, PUBLIC SCHOOLS, LOCAL SCHOOL DISTRICTS AND/OR TAXPAYERS CLEARLY STATING ANY ASSOCIATED COSTS:

The amendments are not expected to have any impact on Vermont schools.

5. ALTERNATIVES: *CONSIDERATION OF ALTERNATIVES TO THE RULE TO REDUCE OR AMELIORATE COSTS TO LOCAL SCHOOL DISTRICTS WHILE STILL ACHIEVING THE OBJECTIVE OF THE RULE.*

See response to number 4, above.

6. IMPACT ON SMALL BUSINESSES:

INDICATE ANY IMPACT THAT THE RULE WILL HAVE ON SMALL BUSINESSES (EXCLUDING IMPACTS INCIDENTAL TO THE PURCHASE AND PAYMENT OF GOODS AND SERVICES BY THE STATE OR AN AGENCY THEREOF):

The rule amendments are not expected to have any economic impact on small businesses outside of the limited potential costs described above for regulated utilities and project developers, assuming that the smaller regulated utilities and project developers in Vermont fall into this category.

7. SMALL BUSINESS COMPLIANCE: *EXPLAIN WAYS A BUSINESS CAN REDUCE THE COST/BURDEN OF COMPLIANCE OR AN EXPLANATION OF WHY THE AGENCY DETERMINES THAT SUCH EVALUATION ISN'T APPROPRIATE.*

The rule amendments do not create any new compliance obligations for any entity filing a Section 248

petition with the Commission. Rather, they clarify the information that must be included with a Section 248 petition for it to be considered complete at the time it is first filed. Both Section 248 and the current version of Rule 5.400 require a petitioner to submit the information necessary for the Commission to make all findings required under Section 248. Without the additional clarity provided by the amendments, there is an increased likelihood that initial petitions will be deemed incomplete and additional effort will need to be expended by petitioners in providing needed information that was not included in their initial petition filing.

8. COMPARISON:

COMPARE THE IMPACT OF THE RULE WITH THE ECONOMIC IMPACT OF OTHER ALTERNATIVES TO THE RULE, INCLUDING NO RULE ON THE SUBJECT OR A RULE HAVING SEPARATE REQUIREMENTS FOR SMALL BUSINESS:

The alternative to the rule amendments is leaving the current rule in place. As discussed above, this would result in the continued greater likelihood of Section 248 petitions being found incomplete at the time of initial filing, and therefore in need of supplementation. It would also increase the likelihood of other parties needing to engage in more discovery or other legal processes to obtain information they need to present their positions to the Commission. Assuming that smaller Section 248 developers and Vermont's smaller electric utilities are considered small businesses under this section, there is no mechanism for providing separate requirements for small businesses that by law must seek a Section 248 certificate of public good like all other petitioners, absent some statutory exception allowing for a more simplified process for these entities. For example, the Legislature has granted statutory authority to the Commission to simplify the certificate of public good processes for net-metering projects, small renewable energy projects, and temporary meteorological tower projects.

9. SUFFICIENCY: *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The Commission relied on its years of experience reviewing petitions under 30 V.S.A. Section 248 and the feedback it has received from participants on those proceedings, including petitioners, state agencies, and intervenors.

Environmental Impact Analysis

Instructions:

In completing the environmental impact analysis, an agency analyzes and evaluates the anticipated environmental impacts (positive or negative) to be expected from adoption of the rule; compares alternatives to adopting the rule; explains the sufficiency of the environmental impact analysis. If no impacts are anticipated, please specify “No impact anticipated” in the field.

Examples of Environmental Impacts include but are not limited to:

- Impacts on the emission of greenhouse gases
- Impacts on the discharge of pollutants to water
- Impacts on the arability of land
- Impacts on the climate
- Impacts on the flow of water
- Impacts on recreation
- Or other environmental impacts

1. TITLE OF RULE FILING:

Rule 5.400 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. GREENHOUSE GAS: *EXPLAIN HOW THE RULE IMPACTS THE EMISSION OF GREENHOUSE GASES (E.G. TRANSPORTATION OF PEOPLE OR GOODS; BUILDING INFRASTRUCTURE; LAND USE AND DEVELOPMENT, WASTE GENERATION, ETC.):*

The amendments are not expected to result in any increase in greenhouse gas emission levels. However, allowing petitioners to complete landowner research online may result in a slight reduction in greenhouse gas emissions.

4. WATER: *EXPLAIN HOW THE RULE IMPACTS WATER (E.G. DISCHARGE / ELIMINATION OF POLLUTION INTO VERMONT WATERS, THE FLOW OF WATER IN THE STATE, WATER QUALITY ETC.):*

The amendments are not expected to have any impacts on the discharge of pollutants into Vermont's waters or to impact water quality in any way.

5. **LAND:** *EXPLAIN HOW THE RULE IMPACTS LAND (E.G. IMPACTS ON FORESTRY, AGRICULTURE ETC.):*

The amendments are not expected to impact land use in any way.

6. **RECREATION:** *EXPLAIN HOW THE RULE IMPACTS RECREATION IN THE STATE:*

The amendments are not expected to impact recreation in any way.

7. **CLIMATE:** *EXPLAIN HOW THE RULE IMPACTS THE CLIMATE IN THE STATE:*

The amendments are not expected to impact climate in any way.

8. **OTHER:** *EXPLAIN HOW THE RULE IMPACT OTHER ASPECTS OF VERMONT'S ENVIRONMENT:*

The amendments are not expected to impact Vermont's environment in any way.

9. **SUFFICIENCY:** *DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.*

The analysis was conducted by assessing the existing Rule 5.400 against the proposed amendments to Rule 5.400. The amendments provide clarification of the materials required to file a complete Section 248 application and simplify the intervention process for certain persons and entities. They will not result in any increase or decrease in the number of applications or petitions being filed with the Commission under Section 248. Therefore, no increase or decrease in environmental impacts are expected as a result of the amendments.

Public Input Maximization Plan

Instructions:

Agencies are encouraged to hold hearings as part of their strategy to maximize the involvement of the public in the development of rules. Please complete the form below by describing the agency's strategy for maximizing public input (what it did do, or will do to maximize the involvement of the public).

This form must accompany each filing made during the rulemaking process:

1. TITLE OF RULE FILING:

**Rule 5.400 5.400 PETITIONS TO CONSTRUCT ELECTRIC AND
GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**

2. ADOPTING AGENCY:

Vermont Public Utility Commission

3. PLEASE DESCRIBE THE AGENCY'S STRATEGY TO MAXIMIZE PUBLIC INVOLVEMENT IN THE DEVELOPMENT OF THE PROPOSED RULE, LISTING THE STEPS THAT HAVE BEEN OR WILL BE TAKEN TO COMPLY WITH THAT STRATEGY:

The Commission has maximized and will continue to maximize public input on the proposed rule amendments by contacting and engaging as many potentially interested persons, entities, and organizations as possible, both in a pre-rulemaking format to best inform the proposed amendments, and in a formal rulemaking format, through public hearings and written comments before and after the filing of the proposed rule with the Secretary of State.

To date, the Commission has held two workshops and solicited six rounds of comments on the proposed rule amendments from interested persons and entities. The initial notice announcing the Commission's intent to adopt amendments to Rule 5.400 was sent to the Commission's stakeholder email distribution list, which contains approximately 380 recipients consisting of utilities, law firms, public interest groups, state agencies, trade groups, and others that have either

Public Input

participated in or expressed interest in Commission proceedings.

In response to the initial announcement, the Commission has received comments from approximately 20 participants, ranging from attorneys, law firms, utilities, developers, public interest groups, and state agencies. Many of these also participated in the two workshops.

Once the proposed rule is filed with the Secretary of State, the Commission intends to circulate the proposed amendments to the persons and entities that have actively participated in the development of the rule amendments so far. The Commission will schedule one or more public hearings as needed and will solicit at least two rounds of comments, one before and one after an initial public hearing.

The Commission will also post notice of the formal rulemaking on its website and will distribute a memorandum from the Clerk of the Commission to the Commission's stakeholder email distribution list to again notify the original group of approximately 380 recipients of the start of the formal rulemaking process.

4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:

To date, the following persons and organizations have participated in workshops or provided comments that assisted in developing the proposed rule amendments: the Vermont Department of Public Service; the Vermont Agency of Natural Resources; the Vermont Natural Resources Board; the Vermont Agency of Agriculture, Food and Markets; Green Mountain Power Corporation; All Earth Renewables, Inc.; Downs Rachlin Martin PLLC; Cindy Hill, Esq.; Green Lantern Capital LLC; Sheehey Furlong & Behm; Stackpole & French Law Offices; Vermont Public Power Supply Authority; Vermont Electric Power Company, Inc.; Vermont Transco LLC; Dunkiel Saunders Elliott Raubvogel & Hand, PLLC; Vermont Electric Cooperative, Inc.; Vermont Gas Systems, Inc.;

Public Input

Conservation Law Foundation; Renewable Energy Vermont;
and Encore Renewable Energy.

The Commission expects these persons and entities to continue to participate during the formal rulemaking process and welcomes participation by any additional interested persons and entities.



INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

Meeting Date/Location: June 12, 2023, virtually via Microsoft Teams
Members Present: Chair Sean Brown, Brendan Atwood, Jennifer Mojo, Diane Sherman, Michael Obuchowski, Donna Russo-Savage, Nicole Dubuque and Jared Adler
Members Absent: John Kessler
Minutes By: Melissa Mazza-Paquette

- 2:00 p.m. meeting called to order, welcome and introductions.
- Review and approval of [minutes](#) from the May 8, 2023 meeting.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-7 to follow.
 1. Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. §248, Public Utility Commission, page 2
 2. 5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems (the "Net-Metering Rule"), Vermont Public Utility Commission, page 3
 3. Rule 5.500: Interconnection Procedures For Proposed Electric Generation Resources And Energy Storage Devices, Vermont Public Utility Commission, page 4
 4. Education Quality Standards (Rule Series 2000), State Board of Education, page 5
 5. Vermont Use of Public Waters Rules, Agency of Natural Resources, page 6
 6. Medicaid Coverage of Exception Requests, Agency of Human Services, page 7
- Committee discussion postpone to a future meeting date:
 - o Potential resources available for proposed rules to be reviewed for copyediting prior to presenting to ICAR.
 - o Use of terms 'regulation' and 'promulgation': Administrative Procedure Act rules are adopted. Regulations are not promulgated.
- Other business: Donna Russo-Savage resigned from ICAR effective with her retirement date of June 30, 2023.
- Next scheduled meeting is July 10, 2023 at 2:00 p.m.
- 3:54 p.m. meeting adjourned.

Proposed Rule: Rule 5.400 5.400 Petitions to Construct Electric and Gas Facilities Pursuant to 30 V.S.A. §248, Public Utility Commission

Presented By: John Cotter

Motion made to accept the rule by Brendan Atwood, seconded by Nicole Dubuque, and passed unanimously with the following recommendations:

1. Proposed Filing – Coversheet, #8: Begin with the title of the rule, a description of the general rule and that it lays out the process by which to petition to construct electric and gas facilities.

DRAFT

Proposed Rule: 5.100 Rule Pertaining to Construction and Operation of Net-Metering Systems (the "Net-Metering Rule"), Vermont Public Utility Commission

Presented By: Jake Marren

Motion made to accept the rule by Mike Obuchowski, seconded by Brendan Atwood, and passed unanimously with the following recommendations:

1. Proposed Filing – Coversheet, #8: Include language from #7 regarding how the statute authorizes the Vermont Public Utility Commission to adopt rules that govern the installation and operation of net metering systems. Add a description of net metering if possible, within the word count limit.
2. Economic Impact Analysis, #3, 2nd paragraph: Clarify “The proposed amendments do not include substantive changes to the compensation framework for net-metering systems or change the rate of compensation that systems receive.”
3. Economic Impact Analysis and Proposed Rule: School district terminology needs to be changed for accuracy. Donna Russo-Savage will work directly with presenters regarding language and non-substantive changes to the proposed rule.

DRAFT

Proposed Rule: Rule 5.500: Interconnection Procedures For Proposed Electric Generation Resources And Energy Storage Devices, Vermont Public Utility Commission

Presented By: Jake Marren

Motion made to accept the rule by Brendan Atwood, seconded by Diane Sherman, and passed unanimously with the following recommendations:

1. Proposed Filing – Coversheet, #8: Include a detailed description of what's been changed - can use language from #9.
2. Adopting Page, #4: Include the effective date of the last adoption for the existing rule.

DRAFT

Proposed Rule: Education Quality Standards (Rule Series 2000), State Board of Education

Presented By: Jennifer Samuelson, Tammy Kolbe, Kimberly Gleason

Motion made to accept the rule by Diane Sherman, seconded by Jen Mojo, and passed unanimously except for Donna Russo-Savage who abstained, with the following recommendations:

1. Proposed Filing – Coversheet, #8: Add a description as to what the rule is and what is being done.
2. Economic Impact Analysis:
 - a. #3: Include cross references to #4.
 - b. #4: Instead of using the reference to 'minimal', describe a category of costs and a range of how those costs might impact different districts depending on where they are.
 - c. #9: Describe 'how' as stated in the description and what data was used.

DRAFT

Proposed Rule: Vermont Use of Public Waters Rules, Agency of Natural Resources

Presented By: Katelyn Ellermann and Oliver Pierson

Motion made to accept the rule by Brendan Atwood, seconded by Nicole Dubuque, and passed unanimously except for Jen Mojo who abstained and Donna Russo-Savage who did not vote due to technical difficulties, with the following recommendations:

1. Scientific Information Statement, #2, top of page 3: Change “maximum depths” to “distance to shore” if applicable.

DRAFT

Proposed Rule: Medicaid Coverage of Exception Requests, Agency of Human Services

Presented By: Linda McLemore

Motion made to accept the rule by Diane Sherman, seconded by Jen Mojo, and passed unanimously except for Brendan Atwood who abstained and Jared Alder who left the meeting early, with the following recommendations:

1. Proposed Rule:
 - a. 4.105.2 (A)(4): Change to begin with a verb to align with 1-3 tenses.
 - b. 4.105.2 (B): Change the period at the end of the sentence to a colon.

DRAFT

**5.400 ~~REQUIREMENTS FOR~~ 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. ~~In addition, the rule and~~ clarifies certain ~~facets~~parts of the Section 248 review process. This rule is not intended to ~~supplant~~replace any of the statutory requirements of Section 248. Unless specifically stated, this rule also does not ~~supplant~~replace any requirements of other Public Utility Commission ("Commission") Rules and/or Procedures. Unless specifically stated, the requirements of this rule do not apply to petitions filed under subsections 248(jk) or 248(kn). 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 to Local and Regional Bodies. Prior to

~~No less than 45 days before~~ filing ~~thea~~ petition with the Commission, the petitioner ~~shall~~must submit project plans ~~for construction to affected municipal and regional planning commissions, and municipal legislative bodies. This submission shall be made at least 45 days prior to filing the petition with the Commission, except that the submission shall be made at least 21 days prior to such filing if as described below. If~~ the proposed project consists solely of the relocation of transmission facilities. ~~This notice shall include a reference to the Commission's "Guide to the Vermont Public Utility Commission's Section 248 Process," available on the Commission's website. At this time, petitioner shall inform the municipal and regional planning commissions of the requirement in Section 248(f) that "Such commissions shall make recommendations, if any, to the Public Utility Commission and to the petitioner at least 7 days prior to filing of the petition with the Public Utility Commission" and of the opportunity for those commissions to provide revised recommendations pursuant to Commission Rule 5.402(A)(1)(b), below. Petitioner must inform the municipal and regional planning commissions of its intended filing date, the submission must be made at least 21 days before such filing. Any of the persons or entities entitled to receive notice under this section may waive the 45-day notice requirement.~~

~~A. In its review of the proposed project under Section 248(b)(1), the Commission will give due consideration to any recommendations filed by municipal and regional planning commissions at least seven days prior to the intended filing date and any revised recommendations filed within 45 days after the date that the petition is filed with the Commission pursuant to Commission Rule 5.402(A)(2) below.~~

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

- (1) the municipal legislative bodies and municipal and regional planning commissions may provide revised recommendations within 45 days of in the communities where the project will be located;
- (2) all Adjoining Landowners;
- (3) the host landowner(s);
- (4) the date on which petitioner has filed a petition with Department of Public Service;
- (5) the Commission if Agency of Natural Resources;
- (6) the petition contains new or more detailed information that was not previously included in the petitioner's filing with Natural Resources Board;
- (7) the Division for Historic Preservation;
- (8) the municipal Agency of Agriculture, Food and Markets; and regional planning

~~commissions pursuant to Section 248(f).~~

~~B.—Recommendations made to the Commission pursuant to Section 248(f), or the lack of such recommendations, shall not preclude municipal and regional planning commissions from presenting evidence during technical hearings if granted party status.~~

~~C.—The plans for construction submitted under this subsection must include sufficient information to understand the overall proposed project, including but not limited to: identification and analysis of aesthetic impact; project plans in as much detail as the petitioner reasonably can provide (including a schematic); a description of how equipment and materials will be transported to the site; and plans which indicate the approximate location of all proposed new infrastructure (e.g., transmission, substation, roads, etc.) (9) the interconnecting utility.~~

~~relative to the existing conditions.~~

~~With the construction plans, the petitioner shall include a description of its evaluation of alternatives to the proposed project and the reasons why those alternatives were rejected.~~

~~(B) Notice to Adjoining Landowners. Petitioner must provide notice of the proposed project to each adjoining property owner at the time that the petition is filed with the Commission.~~

~~A.—This notice shall include, at a minimum, a reference to the Commission's "Guide to the Vermont Public Utility Commission's Section 248 Process," available on the Commission's website, a general description of the type and approximate location of the facilities and upgrades proposed, a statement that a petition for approval is being filed with the Commission, and an identification of the locations at which project plans and the petition can be viewed and the hours during which those documents may be viewed. Such locations shall include at least the offices of the petitioner, the municipal and regional planning commissions, and the Commission.~~

For purposes of this rule, "~~adjoining property owner~~" "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 ~~which~~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.

~~B.—Petitioner~~Adjoining Landowners must use good faith efforts to notify adjoining property owners. Unless otherwise shown, good faith efforts shall mean ~~utilizing the~~ be identified using the host town's certified grand list as it existed no more than 60 days ~~prior to~~before the date notice is provided to identify adjoining property owners. Petitioner shall include a statement with the petition that it has complied with this provision and include ~~in of the advance submission or online through~~ the statement Vermont Center for Geographic Information database, municipality-specific databases, the date the Vermont Department of Taxes grand list was certified. No defect in the provision of notice to adjoining property owners under this rule shall invalidate an ~~action~~lists, or electronic

~~versions of grand lists maintained by the Commission on a petition for a certificate of public good under 30 V.S. municipalities. A- § 248.~~

~~(C) Filing Contents.~~

~~The petition petitioner must include sufficient verify with the relevant municipality that the online database provides accurate and current information regarding parcel ownership within that municipality. Documentation of verification must be signed and attested to by a petitioner.~~

~~(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 email.~~

~~(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 must 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> to evaluate the

(2) Sufficient information for a reader to understand the overall proposed project, including but not limited to:

(a) The site location and project 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) 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;

(e) For projects proposed by utilities, the petitioner must include, as appropriate, 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 Commission must address any written comments provided to the petitioner in response to the 45-day advance submission 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 served on 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. Subject to the exceptions for linear projects set forth in Section 5.404, below, each 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 all 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 ~~man-made~~constructed features when available, or an equivalent computer-generated image that provides similar detail.

~~(a) A site plan that includes:~~

~~(i) proposed improvements;~~

(6) Either the topographic map referenced in subsection (4), above, or the annotated aerial photograph or equivalent computer-generated image must clearly show the project boundaries and enough of the adjacent property to show the project site in relation to surrounding land features and uses (e.g., natural areas, buildings, roads, and other generation, transmission, or storage facilities, etc.).

(7) Site plans or other documentation 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 the project's boundaries to the corner of the nearest project-related structure and approximate distances to any nearby residences, and for projects subject to specific applicable setbacks, the distance from the corner of the nearest project-related structure to the resource from which it must be set back;

(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 ~~any~~ proposed ~~changes in~~ grading;

(e) the dimensions, area in square feet, and depth of all proposed soil disturbance;

(f) existing ~~significant~~ natural and ~~man-made~~ constructed features (including but not limited to water bodies, ~~and~~ wetlands ~~and associated~~ buffer zones, tree lines, primary agricultural soils, buildings, and roads);

~~(ii) a cross-section of the site;~~

~~color~~(g) a depiction of any area(s) where vegetation is to be cleared or altered, including the limits of disturbance and the total acreage of any disturbed area;

(h) locations of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings;

(i) the latitude and longitude coordinates at the center of the proposed project site;

If the information required by subparagraphs (a) through (i) above is not included in a site plan, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(8) Descriptions 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.

(9) Specific descriptions of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings.

(10) A cross-section of the site or other documentation showing existing and proposed conditions and the height of project features in relation to existing buildings and/or vegetation. If the information required by this subparagraph is not included in a cross-section of the site, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(11) 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.

(12) ~~Color~~ photographs of the project site; ~~and~~.

(13) Elevation drawings.

(a) For each proposed ~~measures~~ structure, the petitioner must provide elevation drawings.

(b) The elevation drawings must be to ~~mitigate impacts~~ appropriate scales but no smaller than 1"/20'.

(c) The petitioner must include two elevation drawings of the proposed project 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.

~~(b) Prefiled evidence (testimony and exhibits) that explains how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b); including the criteria specified in of 10 V.S.A. § 1424a(d) and 10 V.S.A. § 6086(a)(1) through (8) and (9)(K), incorporated through Section 248(b)(5).~~

(d) The elevation drawings must indicate the relative height of the facility to the tops of surrounding trees as they presently exist. The information required by this subsection (d) may be documented outside of a project's elevation drawings. If the information required by this subsection is not included in a project's elevation drawings, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(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.

(14) 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 must include a signed copy of the applicable interconnection agreement executed pursuant to that rule.

(15) 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.

(16) An index, organized according to the criteria of 30 V.S.A. § 248(b), that identifies ~~with specificity~~ 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.

~~B.—[Repealed.]~~

(17) A copy of the Agency of Natural Resources Certificate of Public Good Application Fee Form.

(18) If applicable, a copy of the Public Utility Commission and Department

of Public Service Application Fee for In-State Generation Facilities
Form.

(19) 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.

(20) A summary of all community outreach efforts undertaken by the petitioner in advance of filing its petition.

(21) 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 ~~encouraged~~required to provide plans with ~~the~~their petition either plans at a design level of detail. ~~A petitioner seeking or a request for~~ conceptual approval, followed by post-certification review of final designs, ~~shall include in its petition a. A request for such conceptual approval and provide supporting~~ must be supported by evidence ~~to show that shows~~ that the cost ~~of to the petitioner's~~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~~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.

~~C. Upon filing of any petition under 30 V.S.A. § 248 and before issuing formal notice or otherwise initiating proceedings on such a petition, the Commission may, in its discretion, determine that the petition is not complete or does not sufficiently address the requirements of Section 248 or this rule, including providing information to support positive findings on all of the criteria of Section 248(b). The Commission shall notify the affected petitioner of any such determination and shall include a statement of the deficiencies in such notice. Any petition that is the subject of such a determination shall be deemed not filed, and no proceedings thereon shall be initiated, until the Commission determines that the petitioner has taken sufficient steps to remedy the deficiencies set forth by the Commission.~~

~~(a) Unless the Commission determines otherwise, a petition that is deemed not filed does not invalidate the notice provided under the requirements of 30 V.S.A. § 248 and this Rule.~~

~~(b) The Commission's acceptance of a petition under this provision or initiation of proceedings under 30 V.S.A. § 248 shall not constitute a determination that the petitioner has met its burden of proof or burden of production.~~

~~(D) Related Improvements. The Petition must address and provide sufficient evidence on all improvements, temporary or permanent, that are reasonably related to facilities for which a certificate of public good is required under 30 V.S.A. § 248.~~

~~(D) Filing Format. In addition to the filing format. Unless an applicable exemption exists, petitions must be filed in ePUC in accordance with the requirements of Commission Rule 2.204, the petition and accompanying prefiled testimony and exhibits must be filed with the Commission in an electronic format, suitable for web posting.~~

~~(E) Filings Under Section 248(j).~~

~~A. An application filed pursuant to Section 248(j) must be complete at the time it is filed. If a petitioner intends to rely on a permit from other regulatory agencies or a study to demonstrate compliance with the requirements of Section 248(b), rather than providing evidence to satisfy such criteria, such studies and permits must be included with the petition.~~

~~B. Subsections 5.402(C), with the exception of 5.402(C)(1)(e), 5.402(C)(3), and 5.402(E), shall apply to all petitions filed under Section 248(j).~~

~~C. Petitioners need not provide notice to adjoining property owners. However, petitioners shall include with the petition the names and addresses of all adjoining property owners. Petitioner must use good faith efforts to identify adjoining landowners. Unless otherwise shown, good faith efforts shall mean utilizing the certified grand list as it existed no more than 60 days prior to the date notice is provided to identify adjoining landowners. Petitioner shall include a statement with the petition that it has complied with this provision and include in the statement the date the grand list was certified.~~

~~(a) Petitioners do not need to include the names and addresses of adjoining property owners if the proposed project consists of reconductoring within an existing right-of-way, provided that 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, petitioner shall provide the names and addresses of the property owners who adjoin the right-of-way at the immediate location of such pole.~~

5.404 Petitions for Linear Projects

~~(A) Definition. For purposes of this section, “linear project” means a project or that portion of a project that is constructed using segmented and repetitive construction processes that is proposed to be sited in a utility easement, right-of-way, roadway, transmission corridor, or other similar construction corridor. Discrete, non-repeating, non-segmented components of a larger otherwise linear project, such as substations or gate stations, are not included within this definition or in the provisions of this rule section.~~

~~(B) Requirements. Petitions for linear projects may meet the advance submission and petition content requirements set forth in Sections 5.402(C) and 5.403(A), above, as follows:~~

~~(1) 5.403(A)(7)(b): Linear projects do not need to provide the information required by this section.~~

~~(2) 5.403(A)(7)(d): For site plan topography for a linear project, representative drawings may be used to show expected topographical variations and proposed~~

grading. Separate site plan pages must be filed for unique variations from what is shown in the representative drawings.

(3) 5.403(A)(7)(i): Longitude and latitude coordinates must be provided for a linear project's endpoints and mid-point.

(4) 5.403(A)(10): Petitioners may submit plan and profile sheets that include (1) a perpendicular view of the line, and (2) an aerial image of the corridor with the line drawn in.

(5) 5.403(A)(12): For color photographs of the project site for linear projects, representative photographs may be used to show typical conditions. Separate photographs must also be filed for unique variations from what is depicted in the representative photographs.

(6) 5.403(A)(13): In place of elevation drawings, petitioners may submit plan and profile drawings. The drawings must show the location of each component of the linear project and contain depictions of each pole or similar structure, including ground elevation, pole heights, conductor heights, sags between the poles, attachments on the poles, and the distance between the poles.

5.405 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~~uses 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:

~~For petitions involving wind generating facilities, notice must be provided to~~(1) The prefiling advance submission required by section 5.402 must be served on 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 ~~this~~the ten-mile radius.

(3) The petition must include a ~~view-shed~~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. ~~This section does not~~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. § 249a8010 (regulated under Commission Rule 5.100), or non-net-metered wind measurement 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.

5.406 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 does 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.

5.407 Service and Notice of Petition

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

(A) Serve copies of the complete petition on all agencies and entities required under 30 V.S.A. § 248(a)(4)(C), and for wind generation facilities, the entities identified in section 5.405(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. With permission from the intended recipient, the petitioner may serve a copy of the document and the complete petition via email. 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) Serve notice of the petition on the individuals and entities listed in sections 5.402(A)(2), (3), (6), and (9) of this rule. If the petition is not filed within 180 days of service of the advance submission required by section 5.402, then the petitioner must update its list of Adjoining Landowners consistent with the requirements of section 5.402(A)(b) before providing notice of the petition. When service cannot be completed using the Commission's electronic filing system, the petitioner must serve the notice by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the notice via email. This notice must 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 must 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 5.407(B), above, need not be served on Adjoining Landowners if the proposed project meets the exemption contained in section 5.402(E) of this rule.

(D) The petitioner must 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.

5.408 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 ~~its~~~~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-~~Any~~). A petition from an investor-owned utility, municipal electric department, or cooperative electric utility ~~which~~~~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-~~r~~). 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 ~~notwithstanding~~~~despite~~ inconsistency with that plan, the petitioner must request such a determination and provide evidence demonstrating the existence of such good cause.

5.409 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 Agency of Agriculture, Food and Markets;
- (2) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- (3) 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;
- (4) 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;
- (5) the Natural Resources Board if the project site is subject to an Act 250 permit;
- (6) the Division for Historic Preservation;
- (7) any interconnecting utility;
- (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 one or more of the following criteria: (b)(1) orderly development; (b)(4) economic benefit; and (b)(5) aesthetics, transportation, historic sites, and public investments.

A notice of intervention filed under this section by a person or entity identified in subsections (5) through (10), above, must include a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition.

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

5.410 Site Visits

~~The~~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~~is 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 ~~following matters: a description of the~~ proposed project and its location~~(s)~~; a viewing of the existing conditions at the location~~(s)~~ of the proposed project; and an explanation 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 ~~have affected or potentially should~~ 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~~(s)~~ may assist in understanding the issues before the Commission. Observations and facts from the site visit ~~shall will~~ not be considered as evidence unless the Commission, on its own motion ~~or on the request of a party~~, specifically enters them into the evidentiary record.

5.411 Public Hearings

The Commission ~~will typically hold one, in response to a request from a party or a member of the public hearing on a petition filed under Section 248, except that it typically will not, will~~ hold a public hearing on a petition processed filed under Section 248 or 248(j). If the Commission is requested ~~and there is sufficient reason by one or more members of the public or a party~~, the Commission ~~will, in its discretion, may~~ hold one or more additional public hearings. Also, the Commission on its own motion may hold one or more ~~additional public hearings. With respect in response to petitions filed under Section 248(j), a petition in the absence of any request from a member of the public or a party, Commission may in its discretion determine to hold one or more public hearings upon request or on its motion.~~

5.412 Substantial Change ~~Prior to Before~~ Decision on a Petition

If the petitioner makes a substantial change to ~~the~~a proposed project after the petition has been filed with the Commission but before a decision has been issued, the petitioner ~~is required to provide must serve~~ notice of this change ~~to on~~ all parties and entities entitled to notice under this ~~Rule rule~~ and Section 248, including any newly affected ~~adjoining property owners 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~~State under Section 248(a).

5.413 Amendments to Projects Approved under Section 248

~~An amendment Commission approval is required for any proposed substantial change to a project that has been issued a certificate of public good for construction of generation or transmission facilities, issued under 30 V.S.A. § 248, shall be required for a substantial change in the approved proposal.~~ 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~~State under Section 248(a).

(A) If the approved project, or the portion of it that will be subject to the change, has been commissioned at the time the change is proposed, the proposed change must 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 must 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. Provided the proposed change can reasonably be characterized as a modification to the previously approved and commissioned project, the fees associated with the proposed change are those established for project modifications under 30 V.S.A. § 248c(d)(B)(3). However, if the proposed change is more accurately characterized as a new project, then the fees associated with a new project will apply under 30 V.S.A. §§ 248b and 248c. Factors that the Commission will consider in making this determination will include the amount of time that has passed since the original project was commissioned, the nature of the proposed change, the identities of the persons or entities involved in the original and modified projects, and any change in capacity to the original project.

(B) If the approved project, or the portion of it that will be subject to the change, has not been commissioned at the time the change is proposed, a request for an amendment to the certificate of public good may be filed in the same case in which the certificate of public good was issued. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties and 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 served on previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval. New case procedures, including the provision of a 45-day advance submission, do not apply. The fee due for modifications under 30 V.S.A. § 248c(d)(3)(B) applies to petitions filed under this subsection.

(C) Requests for changes to the certificate of public good for an approved project that are based on non-substantial changes to the project may be made in the same case in which the certificate of public good was issued regardless of whether the project or portion of the project has been commissioned. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties in the case in which the certificate of public good was issued. New case procedures, including the provision of a 45-day advance submission, do not apply.

5.414 Costs of Section 248 Projects

~~Where~~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~~must regularly monitor and update the estimated capital costs of any project it has proposed ~~for~~ or received approval for under Section 248. ~~When~~At the time a petitioner becomes aware that the estimated capital costs of such a project may increase by 20 percent or more over earlier 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, prior cost estimates submitted by procedure,~~ the petitioner ~~to the Commission, the petitioner shall~~must notify the Commission and parties within seven calendar days of the new capital cost estimates for the project and the reasons for the increase. ~~This~~The requirement to monitor, update, and report ~~shall continue~~continues until construction of the project has been completed or final costs are determined, whichever is later.

5.415 Waiver

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

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 subsections 248(k) or 248(n). 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 must submit project plans as described below. If the proposed project consists solely of the relocation of transmission facilities, the submission must be made at least 21 days before 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 serve 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;
- (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 must be identified using the host town’s certified grand list as it existed no more than 60 days before the date of the advance submission or online through the Vermont Center for Geographic Information database, municipality-specific databases, the Vermont Department of Taxes grand lists, or electronic versions of grand lists maintained by municipalities. A petitioner must

verify with the relevant municipality that the online database provides accurate and current information regarding parcel ownership within that municipality. Documentation of verification must be signed and attested to by a petitioner.

- (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 email.
- (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 must 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 project 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) 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;
 - (e) For projects proposed by utilities, the petitioner must 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 Commission must address any written comments provided to the petitioner in response to the 45-day advance submission 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 served on 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. Subject to the exceptions for linear projects set forth in Section 5.404, below, each 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 all 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 must clearly show the project boundaries and enough of the adjacent property to show the project site in relation to surrounding land features and uses (e.g., natural areas, buildings, roads, and other generation, transmission, or storage facilities, etc.).
- (7) Site plans or other documentation 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 the project's boundaries to the corner of the nearest project-related structure and approximate distances to any nearby residences, and for projects subject to specific applicable setbacks, the distance from the corner of the nearest project-related structure to the resource from which it must be set back;
 - (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 any proposed 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, including the limits of disturbance and the total acreage of any disturbed area;

(h) locations of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings;

(i) the latitude and longitude coordinates at the center of the proposed project site;

If the information required by subparagraphs (a) through (i) above is not included in a site plan, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

- (8) Descriptions 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.
- (9) Specific descriptions of proposed fencing, exterior lighting, signs, and aesthetic mitigation measures such as berms and landscape plantings.
- (10) A cross-section of the site or other documentation showing existing and proposed conditions and the height of project features in relation to existing buildings and/or vegetation. If the information required by this subparagraph is not included in a cross-section of the site, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.
- (11) 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.
- (12) Color photographs of the project site.
- (13) 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. The information required by this subsection (d) may be documented outside of a project's elevation drawings. If the information required by this subsection is not included in a project's elevation drawings, then the index of evidence required by Section 5.403(A)(16), below, must specifically identify by witness and page number or exhibit and page number the location of the information in the petition and supporting materials.

(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.

- (14) 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 must include a signed copy of the applicable interconnection agreement executed pursuant to that rule.
- (15) 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.
- (16) 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.
- (17) A copy of the Agency of Natural Resources Certificate of Public Good Application Fee Form.
- (18) If applicable, a copy of the Public Utility Commission and Department of Public Service Application Fee for In-State Generation Facilities Form.
- (19) 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.
- (20) A summary of all community outreach efforts undertaken by the petitioner in advance of filing its petition.
- (21) 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 must be filed in ePUC in accordance with the requirements of Commission Rule 2.

5.404 Petitions for Linear Projects

- (A) Definition. For purposes of this section, “linear project” means a project or that portion of a project that is constructed using segmented and repetitive construction processes that is proposed to be sited in a utility easement, right-of-way, roadway, transmission corridor, or other similar construction corridor. Discrete, non-repeating, non-segmented components of a larger otherwise linear project, such as substations or gate stations, are not included within this definition or in the provisions of this rule section.
- (B) Requirements. Petitions for linear projects may meet the advance submission and petition content requirements set forth in Sections 5.402(C) and 5.403(A), above, as follows:
- (1) 5.403(A)(7)(b): Linear projects do not need to provide the information required by this section.
 - (2) 5.403(A)(7)(d): For site plan topography for a linear project, representative drawings may be used to show expected topographical variations and proposed grading. Separate site plan pages must be filed for unique variations from what is shown in the representative drawings.
 - (3) 5.403(A)(7)(i): Longitude and latitude coordinates must be provided for a linear project’s endpoints and mid-point.
 - (4) 5.403(A)(10): Petitioners may submit plan and profile sheets that include (1) a perpendicular view of the line, and (2) an aerial image of the corridor with the line drawn in.
 - (5) 5.403(A)(12): For color photographs of the project site for linear projects, representative photographs may be used to show typical conditions. Separate photographs must also be filed for unique variations from what is depicted in the representative photographs.
 - (6) 5.403(A)(13): In place of elevation drawings, petitioners may submit plan and profile drawings. The drawings must show the location of each component of the linear project and contain depictions of each pole or similar structure, including ground elevation, pole heights, conductor heights, sags between the poles, attachments on the poles, and the distance between the poles.

5.405 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 uses 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 must be served on 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.

5.406 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 does 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.

5.407 Service and Notice of Petition

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

- (A) Serve copies of the complete petition on all agencies and entities required under 30 V.S.A. § 248(a)(4)(C), and for wind generation facilities, the entities identified in section 5.405(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. With permission from the intended recipient, the petitioner may serve a copy of the document and the complete petition via email. 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) Serve notice of the petition on the individuals and entities listed in sections 5.402(A)(2), (3), (6), and (9) of this rule. If the petition is not filed within 180 days of service of the advance submission required by section 5.402, then the petitioner must update its list of Adjoining Landowners consistent with the requirements of section 5.402(A)(b) before providing notice of the petition. When service cannot be completed using the Commission's electronic filing system, the petitioner must serve the notice by first-class mail or its equivalent. With permission from the intended recipient, the petitioner may serve a copy of the notice via email. This notice must 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 must 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 5.407(B), above, need not be served on Adjoining Landowners if the proposed project meets the exemption contained in section 5.402(E) of this rule.
- (D) The petitioner must 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.

5.408 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.

5.409 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 Agency of Agriculture, Food and Markets;
- (2) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- (3) 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;
- (4) 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;
- (5) the Natural Resources Board if the project site is subject to an Act 250 permit;
- (6) the Division for Historic Preservation;
- (7) any interconnecting utility;
- (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 one or more of the following criteria: (b)(1) orderly development; (b)(4) economic benefit; and (b)(5) aesthetics, transportation, historic sites, and public investments.

A notice of intervention filed under this section by a person or entity identified in subsections (5) through (10), above, must include a list of specific issues on which the intervenor is seeking to participate and an explanation of how the intervenor's interests will be affected by a decision on the petition.

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

5.410 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 is 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 will not be considered as evidence unless the Commission on its own motion specifically enters them into the evidentiary record.

5.411 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.

5.412 Substantial Change Before Decision on a Petition

If the petitioner makes a substantial change to a proposed project after the petition has been filed with the Commission but before a decision has been issued, the petitioner must serve notice of this change on 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).

5.413 Amendments to Projects Approved under Section 248

Commission approval is required for any proposed substantial change to 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) If the approved project, or the portion of it that will be subject to the change, has been commissioned at the time the change is proposed, the proposed change must 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 must 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. Provided the proposed change can reasonably be characterized as a modification to the previously approved and commissioned project, the fees associated with the proposed change are those established for project modifications under 30 V.S.A. § 248c(d)(B)(3). However, if the proposed change is more accurately characterized as a new project, then the fees associated with a new project will apply under 30 V.S.A. §§ 248b and 248c. Factors that the Commission will consider in making this determination will include the amount of time that has passed since the original project was commissioned, the nature of the proposed change, the identities of the persons or entities involved in the original and modified projects, and any change in capacity to the original project.
- (B) If the approved project, or the portion of it that will be subject to the change, has not been commissioned at the time the change is proposed, a request for an amendment to the certificate of public good may be filed in the same case in which the certificate of public good was issued. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties and 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 served on previous Adjoining Landowners of adjoining properties who have transferred their interests since the time of the project's approval. New case procedures, including the provision of a 45-day advance submission, do not apply. The fee due for modifications under 30 V.S.A. § 248c(d)(3)(B) applies to petitions filed under this subsection.
- (C) Requests for changes to the certificate of public good for an approved project that are based on non-substantial changes to the project may be made in the same case in which the certificate of public good was issued regardless of whether the project or portion of the project has been commissioned. If the case in which the certificate of public good was issued has been closed, the certificate of public good holder must

contact the Clerk of the Commission before filing. The petitioner must serve notice of the change on all parties in the case in which the certificate of public good was issued. New case procedures, including the provision of a 45-day advance submission, do not apply.

5.414 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 must 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 earlier 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 must 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 continues until construction of the project has been completed or final costs are determined, whichever is later.

5.415 Waiver

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