# Section 248

**Typical Procedural Steps**

45-Day Advance Submission

Application Filed

Scheduling Conference

Site Visit
(if scheduled)

Public Hearing
(if scheduled)

Intervention Deadline

Discovery

Testimony and Exhibits

Stipulation or MOU
(if any)

Evidentiary Hearing

Briefs

Proposal for Decision
(if a hearing officer)

Comments on the Proposal for Decision (if issued)

Oral Argument
(if scheduled)

**Decision**

**Introduction.**

Section 248 is a Vermont law that requires an approval from the Vermont Public Utility Commission before beginning site preparation or construction of:

- electric transmission facilities (e.g., a substation or large utility line),
- electric generation facilities (e.g., a power plant, or a solar or wind facility),
- certain energy storage facilities, and
- certain gas pipelines and associated infrastructure.

Section 248 also requires Commission approval for some long-term contracts for purchasing power from outside Vermont and for some investments in transmission and generation facilities outside Vermont.

This document is a summary of the procedural steps and opportunities for public participation when the Commission reviews a Section 248 case. Underlined text will link you to more information about that step in the glossary or to an external website.

*This document is a general guide for the public. It is not a comprehensive list of all the applicable statutory and regulatory requirements for such projects. Every project is unique, and this general guide cannot anticipate or explain all issues that may arise in a case. For specific guidance, please refer to the applicable statutes, rules, and legal precedent, or seek legal advice. Please feel free to contact the Clerk of the Commission if you have questions about the information in this document.*

*Not all steps in the flow chart will be conducted in every case. The order of steps can vary depending on the specific case.*

**How to Participate.**
There are two ways to participate in the 248 process: as a formal party to a case or as a member of the public.

- Parties may provide testimony and participate in evidentiary hearings. All parties must follow the Commission's procedural rules and are subject to the rules governing discovery (Rules 2.214 and 2.230) and cross-examination (Rule 2.216). Commission proceedings are also governed by the Vermont Rules of Evidence. A member of the public can request to be a party to a case, also referred to as intervention, and may be represented by an attorney or self-represented (also referred to as appearing "*pro se*").
- Members of the public may speak at public hearings and send the Commission written comments. They may attend scheduling conferences and evidentiary hearings to observe, but unless they are parties they may not participate in the proceedings.

**Advance Submission.** At least 45 days before filing a Section 248 petition with the Commission, an applicant must provide an advance submission about the proposed project to the municipal and regional planning commissions and the municipal legislative bodies in the town where the project will be located, to adjoining landowners, to the host landowner, to various State agencies, and to the interconnecting utility. Comments on the project can be submitted to the applicant based on the information provided in the advance submission.

If the proposed project consists of relocating transmission facilities (i.e., power lines), then a 21-day advance submission is required.

**Filing a Petition.** When an applicant files a Section 248 application (also called a "petition") with the Commission, the petition is accompanied by testimony and exhibits. The applicant will be informed by the Commission (or a hearing officer) whether the petition is administratively complete. Within two business days after the petition is determined to be administratively complete, the applicant must send a notice or copy of the petition to everyone who received a copy of the advance submission. The notice will include the case number that should be included in all correspondence and questions regarding the case.

**Scheduling Conference.** The purpose of a scheduling conference is to discuss procedural details and to set the schedule leading to an evidentiary hearing and briefing in the case. Scheduling conferences are open to the public. After the scheduling conference, the Commission (or a hearing officer assigned to the case by the Commission) will issue an order summarizing the results of the scheduling conference, which generally include a schedule for the next steps in the case (scheduling order). Please see Commission Rule 2.225.

**Site Visit.** The Commission (or a hearing officer assigned to the case by the Commission) may conduct one or more visits to the property where the proposed project would be located. Site visits help the Commission and others to better understand the proposed project and the issues that the proposed project may present. Observations and facts from the site visit are not considered as evidence unless the Commission or a party specifically enters them into the evidentiary record.

**Public Comments and Public Hearing.** Members of the public can file comments in Section 248 proceedings before the Commission. Public comments are most useful if they are submitted before the evidentiary hearing so that the Commission, hearing officer, and parties to the case can ask questions about issues raised in the comments. Additionally, if public comments are to be accompanied by a request to be a party to the case (see intervention, below), they must be submitted by the deadline for intervention established in the schedule for the proceeding.

In a Section 248 proceeding, the Commission (or a hearing officer assigned to the case by the Commission) will hold a public hearing if asked to do so by any party or member of the public. The public hearing is typically held in the evening at a location in the town where a project is proposed. Immediately before a public hearing, the Department of Public Service usually holds an information session at which the applicant will explain the project to the public and the public can ask questions.

Comments at a public hearing (or written comments submitted at a different time) can serve to raise issues that the Commission and parties should consider during the case. However, because speakers at a public hearing are not commenting under oath and are not subject to cross-examination or questioning by the parties in the case, their testimony cannot be treated as evidence in the case.

Public hearings for Section 248 cases are announced on the Commission's website and published in local newspapers.

**Intervention.** To become a formal party to a Section 248 case, also referred to as intervention, you must file either a motion to intervene or a notice of intervention with the Commission within the time-frame indicated in the scheduling order that is issued following the scheduling conference. Often, this deadline is after the public hearing to provide an opportunity for a member of the public to learn more about the project at the public hearing before deciding to request intervention. When seeking to intervene, you must follow the standard procedures for filing a motion to intervene or a notice of intervention; for more information about these procedures, please see the explanation under intervention in the glossary and Commission Rules 2.209, 2.407, and 5.409. The Commission has developed a motion to intervene form and a notice of intervention form.

**Discovery.** The discovery process takes place before an evidentiary hearing and allows the parties to the case to exchange information to get a better understanding of what facts they agree or disagree about. Information produced in discovery is not evidence, unless the Commission (or a hearing officer assigned to the case by the Commission) admits it into evidence during the evidentiary hearing. Only the parties to the case are permitted to issue discovery requests.

Parties to a case must follow standard procedures for discovery. For more information on these procedures, please see the explanation under discovery in the glossary and Commission Rules 2.214 and 2.230.

**Testimony and Exhibits.** The parties to a case prepare testimony and exhibits that support their position on whether the proposed project complies with the Section 248 review criteria. The applicant includes pre-filed testimony and exhibits with the application. The applicant may also file supplemental pre-filed testimony to address issues that come up before the evidentiary hearing. Please see Commission Rules 2.204 and 2.213.

Other parties to a case also have the opportunity to file testimony and exhibits before the evidentiary hearing. In filing such documents, a party must provide a copy to all other parties in the case. The deadline for filing testimony and exhibits is usually set in the scheduling order issued after the scheduling conference.

Parties to a case may file an objection to the admissibility of some or all of another party's pre-filed testimony and exhibits. Typically, objections must be filed at least 14 days before the evidentiary hearing. For more information on filing objections, please see Commission Rules 2.216 and 2.217.

**Stipulation or Memorandum of Understanding.** Two or more parties may agree to a settlement, also called a stipulation or memorandum of understanding (MOU), that resolves some or all of the disputed issues in a case. Settlements can be entered into at any point in a case and may be submitted to the Commission before or after the evidentiary hearing.

**Evidentiary Hearing.** An evidentiary hearing will be convened for any Section 248 application about which contested issues remain or at the request of any party. An evidentiary hearing may be conducted by the full Commission, two Commissioners, or a hearing officer.

At an evidentiary hearing, the parties and the Commission will have an opportunity to cross-examine witnesses about their pre-filed testimony and exhibits. While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate. Members of the public can become active parties to a case by intervening following the process described above.

Parties to a case must follow the procedures for evidentiary hearings. For more information about these procedures, please see the explanation under evidentiary hearing in the glossary.

**Briefs and Proposed Findings of Fact.** The parties (and friends-of-the-court) will have an opportunity to file briefs and proposed findings of fact after the evidentiary hearing. A brief is a written document that presents a party's legal and factual arguments for consideration by the Commission. Briefs can include proposed findings of fact, which are statements of facts from the evidentiary record that a party wants the Commission to rely on when making its decision. Please see Commission Rule 2.223.

If you are not a party but would like an opportunity to tell the Commission how you think the evidence and law should be applied in the case, you can make a request to file a friend-of-the-court brief.

**Decision.** Once the evidentiary hearing is done and briefs have been filed, the Commission will issue a decision in the form of a final order. If the evidentiary hearing was held by a hearing officer, he or she will issue a proposal for decision that recommends an outcome to the Commission. The parties to the case will have the opportunity to file written comments on the proposal for decision and ask for oral argument before the Commission.

The Commission will consider the hearing officer's proposal for decision, the parties' comments, and any arguments made at oral argument. The Commission may accept, reject, or modify the proposal for decision. In so doing, the Commission will issue a final order deciding the case. If the decision is to approve the project, the final order will be accompanied by a certificate of public good.

If the evidentiary hearing was held by the Commission itself, no initial proposal for decision will be issued. Instead, the Commission will issue a final order following review of the parties' briefs.

Final Commission orders are subject to motions to alter or amend (also referred to as motions for reconsideration) under Commission Rule 2.221. A motion to alter or amend must be filed within 28 days after a final order is issued. Any final decision by the Commission may be appealed to the Vermont Supreme Court. An appeal must be filed within 30 days after a final order is issued.

Up-to-date information about specific cases and deadlines can be accessed anytime in ePUC .