STATE OF VERMONT
PUBLIC SERVICE BOARD

Section 8007(b) Order

In Re: Simplified Procedures for Renewable Energy)
Plants with a Capacity Between 150 kW and 2.2 MW)

Order entered: 8/31/2010

ORDER RE SIMPLIFIED PROCEDURES FOR RENEWABLE ENERGY PLANTS WITH A CAPACITY BETWEEN 150 KW AND 2.2 KW

I. INTRODUCTION

Pursuant to 30 V.S.A. § 8007(b), the Public Service Board ("Board") is required to implement, by rule or order, procedures governing the application and review of renewable energy projects with a plant capacity that is greater than 150 kW and is 2.2 MW or less. In this Order we establish such procedures.

II. BACKGROUND

On June 4, 2010, Public Act 159 (2010 Vt., Adj. Sess.) was enacted. Section 6 of the act adds Section 8007 to Title 30, and includes the following language in Section 8007(b):

> With respect to renewable energy plants that have a plant capacity that is greater than 150 kW and is 2.2 MW or less, the board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for such a plant under the provisions of section 248 of this title, and the interconnection of such a plant with the system of a Vermont retail electricity provider.
>
> (1) In developing such rules or orders, the board:
> (A) Shall waive the requirements of section 248 of this title that are not applicable to such a plant, including, for a plant that is not owned by a Vermont retail electricity provider, criteria that are generally applicable to such a provider.
> (B) May modify notice and hearing requirements of this title as it deems appropriate.
> (C) Shall simplify the petition and review process as appropriate.

Section 7 of Act 159 directs the Board to develop rules or orders pursuant to Section 8007(b) by September 1, 2010.

On July 13, 2010, the Clerk of the Board issued a memorandum outlining a proposal by Board staff to address this legislative mandate. The memorandum was sent to all participants in Docket 7533, the Board's implementation of the standard-offer program, and included a large number of renewable developers, the electric distribution utilities, and various public interest groups including Renewable Energy Vermont, which represents the renewable industry. Pursuant to Section 8007(b), Board staff recommended conditionally waiving some of the substantive criteria of Section 248(b). Specifically, Board staff recommended that the following criteria of Section 248(b) be conditionally waived for renewable projects with plant capacities that are greater than 150 kW and are 2.2 MW or less:

- 30 V.S.A. § 248(b)(2) — Need for the Project (with the exception of projects developed by utilities);
- The following criteria incorporated through Section 248(b)(5):
  - 10 V.S.A. § 6086(a)(1)(c)— Water Conservation
  - 10 V.S.A. §§ 6086(a)(2) and (3) — Sufficiency of Water and Burden on Existing Water Supply
  - 10 V.S.A. § 6086(a)(6) — Educational Services
- 30 V.S.A. § 248(b)(7) — Compliance with Electric Energy Plan.

In addition, Board staff recommended that the following criteria be conditionally waived solely for standard-offer projects with plant capacities that are greater than 150 kW and are 2.2 MW or less:

- 30 V.S.A. § 248(b)(4) — Economic Benefit to the State
- 30 V.S.A. § 248(b)(6) — Least-Cost Integrated Resource Plan.

Board staff further recommended that any waivers of the Section 248 requirements be conditional only, stating:

> Although the majority of projects will likely be exempt from certain requirements, in the event that an exceptional circumstance makes a particular criterion relevant, the Board would still have the ability to review a project under that criterion. This is consistent with the Board's review of net metering projects pursuant to Board Rule 5.100.

Additionally, Board staff recommended that the Board not issue a blanket modification of the notice and hearing requirements of Section 248, but allow petitioners to request modification

of such requirements on a case-by-case basis, with the petitioner having the burden of demonstrating that the requested modifications are necessary and appropriate. Board staff also proposed to implement the statute's streamlining mandate by use of a draft guide aimed at assisting developers with the Section 248 process. The July 13 memorandum requested comments on these preliminary recommendations.

Comments were submitted by the Department of Public Service ("Department"), Green Mountain Power Corporation ("GMP"), Central Vermont Public Service Corporation ("CVPS"), the Vermont Public Power Supply Authority ("VPPSA") (on behalf of the Group of Municipal Electric Utilities ("GMEU")),[1] and Vermonters for a Clean Environment ("VCE"). No other comments were received.

Department's Comments

The Department supports the recommendations contained in the July 13 memorandum. In particular, the Department agrees that any waivers of Section 248 criteria granted by the Board should be conditional and concurs with the decision not to waive Sections 248(b)(3) and (10).[2] The Department also agrees with the recommendation of Board staff that a blanket modification of the hearing and notice requirements is not necessary or desired, stating: "Although the renewable projects proposed under §8007(b) may be considered desirable, curtailing notice and hearing requirements should only be done on a showing of some exceptional circumstance."

GMP's, CVPS's, and GMEU's (collectively the "Utilities") Comments

GMP's comments, which were subsequently joined by CVPS and GMEU, supported all

1. The Group of Municipal Electric Utilities include: Barton Village Inc. Electric Department; Village of Enosburg Falls Water & Light Department; Town of Hardwick Electric Department; Village of Hyde Park Electric Department; Village of Jacksonville Electric Company; Village of Johnson Water & Light Department; Village of Ludlow Electric Light Department; Village of Lyndonville Electric Department; Village of Morrisville Water & Light Department; Village of Northfield Electric Department; Village of Orleans Electric Department; Town of Readsboro Electric Light Department; and Swanton Village Inc. Electric Department.

2. Section 248(b)(3) requires the Board to find that a proposed project will not adversely affect system stability and reliability. Section 248(b)(10) requires the Board to find that a proposed project "can be served economically by existing or planned transmission facilities without undue adverse effect on Vermont utilities or customers."

of the recommendations for the implementation of Section 8007 proposed by Board staff in the July 13 memorandum. GMP states that, if adopted by the Board, the recommendations "would properly balance the intent of Section 8007(b) with the protections provided to the environment, ratepayers, and the electric system by Section 248." The Utilities emphasized the following two issues in supporting the recommendations set forth by Board staff: (1) the proposal to make any waivers of the Section 248 criteria conditional is important to the process as this would provide parties flexibility in addressing exceptional or unforeseen circumstances; and (2) the Utilities urge that the procedures adopted by the Board not diminish the protections provided by Section 248(b)(3).

VCE's Comments

VCE's comments raised several concerns about simplifying procedures for small renewable projects in general and about the recommendations for implementation of Section 8007(b) proposed by Board staff in the July 13 memorandum. VCE states that the concept of conditionally waiving certain criteria, except in exceptional circumstances, is too vague. VCE recommends "that any projects involving blasting, bulldozing, road building, or clearing of trees should not be eligible for expedited consideration, and should be subject to a full Section 248 review."

In addition, VCE states that it does not support the conditional waiver of 10 V.S.A. §§ 6086(a)(2) & (3) — Sufficiency of Water and Burden on Existing Water Supply because it believes some projects may require blasting and heavy construction that could have serious impacts on groundwater and neighboring water supplies. VCE is also concerned that waiving the Need and Integrated Resource Planning criteria of Section 248 will lead to "helter skelter" development and, without consideration of these criteria, that the Board is "abdicating responsibility for normal planning processes through which rational electricity development can be done in harmony with Vermont's communities."

VCE expressed a concern that developers will try to "game the system" by phasing in multiple small projects, which individually may be below 2.2 MW but collectively exceed that limit, thereby utilizing the Section 8007(b) procedures to circumvent full Section 248 review.

Finally, VCE states that it supports a "robust public process around the siting of small renewables." VCE recommends that the Board utilize the Act 250 public process, which involves sending letters to adjoining property owners and holding a public hearing in the community where a project is proposed.

III. DISCUSSION

Waiver of Section 248 Requirements

No interested party recommended that any additional criteria, beyond those identified by Board staff in the July 13 memorandum, should be waived.

VCE argues that reviewing project impacts only in the event of "exceptional circumstances" does not provide sufficient clarity, particularly with respect to potential environmental impacts. In particular, VCE suggests that any projects involving blasting, bulldozing, road building, or clearing of trees should not be eligible for expedited consideration, and should be subject to a full Section 248 review. VCE also does not support the conditional waiver of 10 V.S.A. §§ 6086(a)(2) & (3) — Sufficiency of Water and Burden on Existing Water Supply because it believes that some projects may require blasting and heavy construction, which could have serious impacts on groundwater and, thus, neighboring water supplies. VCE further contends that waiving the criteria of Section 248(b)(6) (Least-Cost Integrated Resource Plan) and Section 248(b)(2) (Need for the Project) will lead to "helter-skelter" development.

We accept the recommendations contained in the July 13 memorandum regarding the conditional waiver of certain Section 248 criteria, with the following exception. There does not appear to be a sufficient reason, for purposes of review under Section 248(b)(6) — Least-Cost Integrated Resource Plan, to distinguish between projects that are enrolled in the standard-offer program and other non-utility renewable generation projects. The Board has consistently stated that this criterion is not applicable to merchant generation projects, as 30 V.S.A. § 218c requires that only regulated electric companies prepare a least-cost integrated plan. Accordingly, we conclude that Section 248(b)(6) should be conditionally waived for all non-utility projects.

We do not accept the specific recommendations made by VCE, which appear to be based, at least in part, on the scope of the waiver. A conditional waiver of certain criteria does not mean

that interested parties cannot address a criterion in any comments on a proposed project. Rather, it is a recognition that the majority of small renewable projects are not likely to have an impact upon these criteria. If an individual project does involve activities, such as blasting, that could affect the water supply of neighboring residences, then the Board may require that the petitioner provide information on such criteria and consider those potential impacts in its review of the proposed project. Alternatively, parties may present evidence showing that the waiver should not apply.

With respect to VCE's comments on the proposed conditional waivers of Sections 248(b)(2) and (6), it is important to note that there is no statewide "zoning plan" for generation projects. The Board reviews generation projects as they are proposed and reviews the impacts of a proposed project on the orderly development of the host town and region pursuant to Section 248(b)(1). The review of the need for the project under Section 248(b)(2) considers whether the project is needed to meet the demand for service and whether that need can be met more cost-effectively through demand-side measures. The criterion does not encompass land-use issues, and as such, its conditional waiver would not lead to "helter-skelter" development. Finally, the least-cost integrated plan referenced in Section 248(b)(6) is a plan that each electric distribution utility must provide, and is designed to address a utility's resource needs; the plan is not designed to address land-use issues such as those addressed by Section 248. Thus, VCE's objection to its waiver has no basis.

Finally, as Board staff noted in the July 13 memorandum, Section 248(b)(9), addressing waste-to-energy facilities, is inapplicable to renewable projects.[3]

Modification of Notice and Hearing Requirements

The July 13 memorandum recommends that the Board not adopt a blanket modification of the hearing or notice requirements of 30 V.S.A. §§ 10(b)-(e), 248(a)(4),[4] and 248(j), but allow for the normal notice requirements to be modified on a case-by-case basis, with the petitioner

3. *See* 30 V.S.A. § 8002(2)(A).

4. Note that Public Act 146 (2010 Vt., Adj. Sess.) alters the notice requirements of Section 248(a)(4)(D), shortening the required amount of time between notice and the public hearing.

having the burden of showing why modification of these requirements are necessary and appropriate.

We accept the recommendations contained in the July 13 memorandum with respect to modification of notice and hearing requirements. As the Department noted in its comments, it is important that interested parties be given sufficient notice and opportunity to comment on proposed generation projects. No interested party recommended that the notice and hearing requirements for small renewable projects be less stringent. Accordingly, we do not make any blanket modifications to the notice and hearing requirements. Petitioners may propose modifications to these requirements on a case-by-case basis, with the burden on the petitioner to show why the proposed modification of these requirements is necessary and appropriate.

VCE recommends that the Board should utilize the Act 250 public process, which involves sending letters to adjoining landowners and holding a public hearing in the community where the project is proposed. Vermont law specifies that the Board utilize certain notice provisions for petitions filed under Section 248 and these statutorily mandated notice provisions are different from those provided for under Act 250. Nevertheless, we note that the Board's notice processes include individual notification to adjoining landowners and requires a public hearing, which must be held in the county where the project is located, and typically is held in the host municipality, for all projects that are not of a limited size and scope pursuant to 248(j).

Simplify the Petition and Review Process

Board staff have developed a draft *Guide to Filing a Petition Under Section 248* that is intended to help developers identify the types of information that should be included in a petition filed pursuant to Section 248, as well as provide an overview of the Board's process.[5] Board staff recommend that we implement Section 8007(b) (1)(C) with the draft guide and not take additional measures. Board staff state that such a guide, combined with the conditional waiver of certain Section 248 criteria, will simplify the petition and review process and meet the goal of

5. The draft guide is available on the Board's webpage at http://psb.vermont.gov/statutesrulesandguidelines/guidelines/GuidetoFiling248Petition.

Section 8007(b)(1)(C) while ensuring sufficient opportunity for review by interested parties.

No interested party suggested any further actions that the Board should take with respect to simplifying the petition and review process.

We find the recommendations contained in the July 13 memorandum to be reasonable and conclude that they adequately address the requirements of Section 8007(b)(1)(C).

IV. CONCLUSION

Consistent with the determinations described above, we hereby adopt the following procedures.

STANDARDS AND PROCEDURES

Conditional Waiver of Certain Criteria

The following criteria are conditionally waived for renewable projects with plant capacities that are greater than 150 kW and are 2.2 MW or less:

- 30 V.S.A. § 248(b)(2) — Need for the Project (with the exception of projects developed by utilities);
- The following criteria incorporated through Section 248(b)(5):
  - 10 V.S.A. § 6086(a)(1)(c) — Water Conservation
  - 10 V.S.A. §§ 6086(a)(2) and (3) — Sufficiency of Water and Burden on Existing Water Supply
  - 10 V.S.A. § 6086(a)(6) — Educational Services
- 30 V.S.A. § 248(b)(7) — Compliance with Electric Energy Plan
- 30 V.S.A. § 248(b)(6) — Least-Cost Integrated Resource Plan (with the exception of projects developed by utilities).

In addition, the following criteria are conditionally waived solely for standard-offer projects that have capacities that are greater than 150 kW and are 2.2 MW or less:

- 30 V.S.A. § 248(b)(4) — Economic Benefit to the State.

Notice and Hearing Requirements

For renewable projects with plant capacities that are greater than 150 kW and are 2.2 MW or less, petitioners may request that the notice and hearings requirements contained in 30 V.S.A.

§§ 10(b)-(e), 248(a)(4), and 248(j), may be modified, on a case-by-case basis. The petitioner has the burden of demonstrating why modification of these requirements is necessary and appropriate.

Simplify the Petition and Review Process

Board staff are directed to finalize the draft *Guide to Filing a Petition Under Section 248.*

SO ORDERED.

Dated at Montpelier, Vermont, this 31st day of August, 2010.

s/ James Volz)
)
s/ David C. Coen) PUBLIC SERVICE BOARD OF VERMONT
)
s/ John D. Burke)

OFFICE OF THE CLERK

FILED: August 31, 2010

ATTEST: s/ Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.