

STATE OF VERMONT  
PUBLIC SERVICE BOARD

In Re: Procedures governing the placement of )  
wireless communications facilities on electric )  
generation and transmission facilities pursuant )  
to 30 V.S.A. § 248(n) )

Order entered: 9/25/2008

**ORDER AMENDING STANDARDS AND PROCEDURES**

**I. INTRODUCTION**

In order to encourage the deployment of mobile telecommunications and broadband services in the state, the General Assembly enacted into law Act No. 79 (H.248) during the 2007 legislative session. 30 V.S.A. Section 248(n), which was added by Act No. 79, provides that the Public Service Board ("Board"):

may issue a certificate of public good for the placement of wireless communications facilities on electric transmission and generation facilities if such placement is in compliance with the criteria of this section and board rules or orders implementing this section. In developing such rules and orders the board:

(A) may waive the requirements of this section that are not applicable to wireless telecommunications facilities, including but not limited to criteria that are generally applicable to public service companies as defined in this title;

(B) may modify notice and hearing requirements of this title as it deems appropriate;

(C) shall seek to simplify the application and review process as appropriate; and

(D) shall be aimed at furthering the state's interest in ubiquitous mobile telecommunications and broadband service in the state.

In order to implement § 248(n), the Board issued an Order, on September 5, 2007, pursuant to 30 V.S.A. Section 248(n), to facilitate the deployment of mobile telecommunications on electric transmission and generation facilities.<sup>1</sup> The Order sets forth the standards and procedures governing the application and issuance of a certificate of public good under § 248(n).

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1. *In Re: Procedures governing the placement of wireless communications facilities on electric generation and transmission facilities pursuant to 30 V.S.A. § 248(n)*, issued September 5, 2007.

On May 19, 2008, the Board convened a workshop at the behest of Central Vermont Public Service Corporation ("CVPS") to discuss the applicability of the Order to the installation of communications equipment by utilities for utility purposes and the possibility of streamlining the review process for multiple facilities and small facilities of this type. The workshop was attended by representatives from CVPS, the Department of Public Service ("Department"), Vermont Electric Cooperative, Inc. ("VEC"), Vermont Electric Power Company, Inc. ("VELCO"), and Green Mountain Power Corporation ("GMP"). At the workshop, CVPS, the Department and VEC (collectively, the "Proponents") agreed to work together to develop a proposal to streamline the review process for small communications facilities for Board consideration.

On September 4, 2008, the Proponents filed a joint proposal requesting that the Board amend its Order to reduce the review requirements for smaller projects. The Proponents also request further clarification regarding certain aspects of the Board's Order.

## **II. DISCUSSION**

The Proponents request that the Board further streamline the review process for "very small wireless communications facilities that do not involve earth disturbance." Specifically, the Proponents request that the Board define "very small facilities" as those "which have antenna faces of less than eight (8) square feet in the aggregate on their largest faces and antennae and mast supports which do not extend more than twelve (12) feet above the top of the transmission or generation structure." The Proponents contend that because these installations are unlikely to have significant impacts, the Board should conditionally waive review under 10 V.S.A. § 6086(a)(8) (aesthetics, historic sites) for these smaller systems. The Proponents also recommend that the Board waive the requirement for voter approval of investments for municipal or cooperative utilities for these small systems under § 248(c). In addition, the Proponents recommend that the Board amend the notice and application requirements for these systems. Specifically, the Proponents request that the Board: (1) eliminate the requirement to provide notice to adjoining landowners; (2) allow for multiple facility installations on a single application

with less detailed site description; and (3) allow for a "blanket" CPG approval to allow utilities to install small facilities "as needed for operations, reliability or system management."

We conclude that simplifying the § 248(n) review process for small communications facilities is appropriate given the limited impacts of these systems. Therefore, in order to streamline the review of these projects, we conclude that it is appropriate to amend the standards and procedures set forth in our prior Order. The revised standards, set forth below, include a definition of small communications facilities, a conditional waiver of review of these facilities under 10 V.S.A. § 6086(a)(8), modification of the notice requirement for these facilities, and modification of the filing requirements to allow applications for multiple small facilities without the detailed site description required for larger facilities.

We decline to provide for a "blanket" CPG approval. In this Order, the Board has conditionally waived review criteria for certain communications facilities on the grounds that they are unlikely to raise significant issues with respect to the waived criteria. However, the conditional nature of the waiver allows the Board to revoke the waiver should a particular project appear to raise significant issues. Based on the description provided by the Proponents, the issuance of a "blanket" CPG would essentially amount to pre-approval of small facilities by utilities without any information regarding the location of the project, the size of the project, or when it would be installed. The Proponents argue that the Board "would have an opportunity to review the proposed installation." However, the Proponents do not explain how the Board or any other party can conduct a meaningful review of a project without knowing any details of the project prior to issuing a CPG. The simplified procedures for approval set forth herein will allow utilities to gain approval for facilities in a timely manner. Therefore, we conclude that an additional blanket approval mechanism is unnecessary.

The Proponents have also requested a waiver of the voting requirement pursuant to § 248(c). Section 248(n)(1)(C) allows the Board to "modify notice and hearing requirements of this title as it deems appropriate." However, a municipal or cooperative member vote would not appear to be a notice or hearing requirement. In addition, 248(c) specifically states that a vote is required for "any proposed investment, construction or contract" without any distinction

regarding the size of the project or investment. Therefore, we conclude that waiver of this requirement is not consistent with § 248(n) and we decline to waive this statutory requirement.

Finally, the Proponents request the Board clarify that § 248(n) does not apply to replacement facilities that would ordinarily be exempt from review under § 248(a)(2). We clarify that the standards and procedures set forth below are intended to apply to new construction and do not apply to replacement of facilities with equivalent facilities in the usual course of business.

### **III. STANDARDS AND PROCEDURES**

**Purpose and Applicability:** The purpose of these standards and procedures is to implement 30 V.S.A. § 248(n). These standards and procedures are applicable to the proposed placement of wireless communications facilities on an electric transmission or generation facility located in Vermont, including a net metered system. Those projects for which these procedures are applicable are exempt from Board Rule 5.400.

**Definitions:** "Wireless communications facilities" include antennae, related equipment, and equipment shelter.

"Small facilities" means wireless communications facilities that have antenna faces of less than eight (8) square feet in the aggregate on their largest faces and antennae and mast supports which do not extend more than twelve (12) feet above the top of the generation of transmission structure and do not involve earth disturbance.

#### **Filing Requirements:**

**For small facilities:** Any party seeking a certificate of public good pursuant to 30 V.S.A. § 248(n) shall file proposed findings of fact and a proposed certificate of public good with its petition. The petition shall also be accompanied by sworn testimony describing the project and addressing all of the applicable criteria as specified below. The petition may request approval for one or more projects. The project description shall include a physical description (including dimensions) of all of the proposed facilities, the type of generation or transmission facility on which the small facility is to be attached, and identification of the proposed location of the installation (such as map coordinates and/or street address). The petition and all accompanying materials shall be filed in hard copy and in an electronic format that allows text to be copied and searched.

One copy of the petition and accompanying material filed with the Board must also be concurrently filed with the Vermont Department of Public Service, and the owner of the transmission or generation facility.

For all other wireless communications facilities: In addition to the requirement for small facilities, the petition shall include a description of the proposed location of each wireless facility that is the subject of the petition. The petition shall also include a map showing the location of the proposed wireless installation, the structure number or other unique identification of the transmission or generation facility to which the wireless facilities would be attached, a photograph of that transmission or generation facility, and a photograph or other image that is representative of the wireless facilities to be installed.

One copy of the petition and accompanying material filed with the Board must also be concurrently filed with the Vermont Department of Public Service, the owner of the transmission or generation facility, the planning commission and the municipal legislative body for the town in which the system is to be installed, the Vermont Agency of Natural Resources, and the adjoining landowners.

Conditional Waiver of 30 V.S.A. § 248(b) Criteria: Pursuant to 30 V.S.A. § 248(n)(1)(A), which provides that the Board may waive the requirements of 30 V.S.A. § 248(b) that are not applicable to wireless communications systems, the Board conditionally waives the following criteria:

(A) For wireless communications system installations that involve earth disturbance:

(i) All criteria under 30 V.S.A. § 248(b) are waived, with the exception of 30 V.S.A. § 248(b)(1) (orderly development), (3) (system stability and reliability), (4) (economic benefit), (5) (environmental considerations) and (8) (outstanding resource waters).

(ii) With respect to 30 V.S.A. § 248(b)(5), all criteria and subcriteria are waived, except for 10 V.S.A. § 6086(a)1(B)(waste disposal), 1(D)(floodways), 1(E)(streams), 1(F)(shorelines), 1(G)(wetlands), 4(soil erosion), 8(aesthetics, historic sites, natural areas), and 8(A)(necessary wildlife habitat).

(B) For wireless communications system installations that do not involve any earth disturbance (i.e., all wireless facilities would be located on the transmission or generation structure, and no wireless facilities would be located on the ground):

(i) All criteria under 30 V.S.A. § 248(b) are waived, with the exception of 30 V.S.A. § 248(b)(1)(orderly development), (3)(system stability and reliability), (4) (economic benefit), and (5)(environmental considerations).

(ii) With respect to 30 V.S.A. § 248(b)(5), all criteria and subcriteria are waived, except for 10 V.S.A. § 6086(a)8 (aesthetics, historic sites).

(C) For small facilities all criteria under 30 V.S.A. § 248(b) are waived.

Submission of Comments and Requests for Hearing: If any person wishes to submit comments to the Board concerning a petition filed pursuant to 30 V.S.A. § 248(n) or request a hearing, such correspondence is due at the Board within 30 calendar days of the date that the petition was submitted to the Board and all required Parties.

Issuance of Decision: If the Board does not issue a final decision or identify a significant issue with regard to a completed petition within 60 days of its filing pursuant to these procedures, the petition is deemed approved by operation of law. The 60-day period shall start when either a petition is initially filed as complete, or when the Board receives the requested information after notifying the petitioner that the petition was incomplete.

Conformance with National Electrical Safety Code: All installations of wireless communications facilities on transmission or generation structures must be performed in accordance with the most recent version of the National Electrical Safety Code.

SO ORDERED.

DATED at Montpelier, Vermont, this 25th day of September, 2008.

s/James Volz )  
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s/David C. Coen )  
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s/John D. Burke )

PUBLIC SERVICE  
BOARD  
OF VERMONT

OFFICE OF THE CLERK

Filed: September 25, 2008

Attest: s/Judith C. Whitney  
Deputy 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.*