

Siting Cases of Limited Size and Scope (Section 248(j))

This document is a summary of the procedural steps and opportunities for public participation when the Commission reviews certain construction or rehabilitation projects that are determined to be of limited size and scope, which are regulated under [30 V.S.A. § 248\(j\)](#), referred to as "Section 248(j)."

Typical Procedural Steps

Advance Notice

Filing of Application

Public Comments,
Requests to
Intervene, Requests
for Hearing

Not of Limited Size
and Scope and/or
Significant Issue(s)?

No, then



Decision

This document is a general guide for the public. It should not be relied upon for reviewing 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, legal precedent, and legal advice. Please feel free to contact the [Clerk of the Commission](#) if you have questions about the information in this document.

Section 248(j) procedures may be used by the Commission when a Section 248 approval is required and the project is of limited size and scope.

Yes, then



- Scheduling Conference
- Site Visit (if needed)
- Discovery (if needed)
- Testimony & Exhibits
- Evidentiary Hearing
- Stipulation or MOU
- Briefs



Decision

The review of a Section 248(j) project is more streamlined because it is considered a more limited project and therefore does not require the same level of review as a larger project. To qualify for streamlined Section 248(j) review, the project:

- must be of limited size and scope,
- must not raise a significant issue with respect to the [Section 248 criteria](#), and
- the public interest must be satisfied by use of the abbreviated Section 248(j) procedures.

The “limited size and scope” determination is made on a case-by-case basis. The principal factors considered in making this determination are the scale of the proposed construction, whether the project consists of modifications of existing facilities, or, in the case of new facilities, the size and appearance of the project in relation to existing surrounding land uses.

Similarly, whether a project has the potential to raise “significant issues” with respect to the Section 248 criteria is a determination that is made on a case-by-case basis, by considering the nature and extent of potential project impacts.

The streamlined Section 248(j) procedures are:

- the Commission reviews public comments, but there is no requirement to hold a public hearing;
- there is no evidentiary hearing unless the project raises a significant issue with respect to one or more of the Section 248 criteria; and
- if an evidentiary hearing is needed, it generally will be limited to the significant issue that has been identified.

248(j) Process

This document is a summary of the procedural steps for Commission review of Section 248(j) cases. Underlined text will link you to more information about that step in the glossary or to an external website.

Advance Notice. At least 45 days before filing a Section 248(j) petition with the Commission, an applicant must provide [advance notice](#) of the proposed project to the municipal and regional planning commissions and the municipal legislative bodies in the town where the project will be located. Comments on the project can be submitted to the Commission based on the information provided in the advance notice.

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

Filing an Application. When an applicant [files](#) a Section 248(j) application (also called a “petition”) with the Commission, it is reviewed for completeness and assigned a case number. This case number should be included in all correspondence and questions regarding the case. If the application is complete, the Petitioner will send a notice or copy of the application to the following entities:

- the legislative bodies and municipal and regional planning commissions in the communities where the project will be located;
- state agencies: the Attorney General, the Department of Public Service, the Department of Health, the Agency of Natural Resources, the Division for Historic Preservation, the Agency of Transportation, and the Agency of Agriculture, Food and Markets;
- adjoining landowners; and
- any other entity the Commission determines may have an interest in the project.

The notice will include the deadline for submitting public comments, requesting a hearing, and filing a motion to intervene.

Public Comments. Members of the public can [file comments](#) in Section 248(j) proceedings before the Commission. [Public comments](#) must be submitted within the 28-day comment period specified in the Commission's notice. Comments should be about whether the application raises a significant issue with respect to the [Section 248 criteria](#) and whether the project should be considered to be of "limited size and scope."

When submitting comments, a member of the public can request to be a party to the case (also called intervention), and can request an evidentiary hearing on the project, provided that a showing is made that the application raises a significant issue regarding one or more of the [Section 248 criteria](#).

A request for a hearing must be supported by more than general or speculative statements. For example, it is not enough to state only that an application "violates Section 248(b)(5)." Instead, specific information is needed to persuasively show that a hearing should be held. For example: "The application raises an issue under the aesthetics criterion under Section 248(b)(5) because the applicant has not proposed adequate mitigation to screen the western portion of the project from Maple Street."

To participate in an evidentiary hearing, you must be a party to the case (also referred to as [intervention](#)).

Intervention. A request to be a party to a 248(j) case must be filed with the Commission within the 28-day comment period. A request to intervene must comply with standard procedures for filing a motion to intervene; for more information about these procedures, please see the explanation under [intervention](#) in the glossary.

Determination of Appropriate Procedures. If the Commission determines, on its own or based on comments received, that the project is of limited size and scope and that the application does not raise any significant issues, a final [decision](#) will be issued following the 28-day comment period.

If the Commission determines, on its own or based on information received during the 28-day comment period, that the project does not qualify for review under the Section 248(j) procedures, the application will be reviewed under the Section 248 procedures.

If the Commission determines, on its own or based on information received during the 28-day comment period, that the project qualifies for the Section 248(j) review procedures but that the project raises any significant issues with respect to one or more of the Section 248 criteria, the Commission will hold an [evidentiary hearing](#), which includes holding a scheduling conference, possibly scheduling a site visit, and conducting some or all of the steps associated with evidentiary hearings, as summarized below.

Scheduling Conference. The purpose of the [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 will issue an order summarizing the results of the scheduling conference, which generally includes a schedule for the next steps in the case ([scheduling order](#)).

Discovery. The [discovery](#) process may be used if there is to be an evidentiary hearing in a case. Discovery is the process by which the parties to the case exchange information to get a better understanding of what facts they agree on and disagree about. Information produced in discovery is not evidence, unless the Commission admits it into evidence during the evidentiary hearing. Only the parties to the case are permitted to participate in discovery.

Parties to a case must follow standard procedures for discovery; for more information about these procedures, please see the explanation under [discovery](#) in the glossary.

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 prefilled testimony and exhibits with the application. The applicant may also file supplemental prefilled testimony to address issues that come up before the evidentiary hearing.

Other parties to a case have the opportunity to file testimony and exhibits prior to the evidentiary hearing. If filed, a party must provide a copy to all other parties in the case. The deadline for filing testimony and exhibits is usually set in a [scheduling order](#) issued by the Commission after the scheduling conference.

Evidentiary Hearing. An [evidentiary hearing](#) is convened when the Commission has determined that the application raises a significant issue regarding any of the relevant criteria. While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate in the hearing. Members of the public can become parties to a case by intervening following the process described above.

An evidentiary hearing may be conducted by the full Commission, two Commissioners, or a hearing officer.

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.

Stipulation or Memorandum of Understanding. Two or more of the 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.

Briefs. The parties (and friends-of-the-court) will have an opportunity to file [briefs](#) after the evidentiary hearing. A brief is a written document that presents a party's legal and factual arguments for consideration by the Commission.

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. If there are no significant issues raised concerning the application and no evidentiary hearing is held, the Commission will issue a [decision](#) following the 28-day comment period.

If an evidentiary hearing is held by a hearing officer, a [proposal for decision](#) will be issued by the hearing officer 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 an [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 is held by the Commission itself, no 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 for reconsideration](#) under the Rules of Civil Procedure. Any final decision by the Commission may be appealed to the Vermont Supreme Court.

Up-to-date information about specific cases, current deadlines, and more can be accessed anytime on the Commission [website](#).