

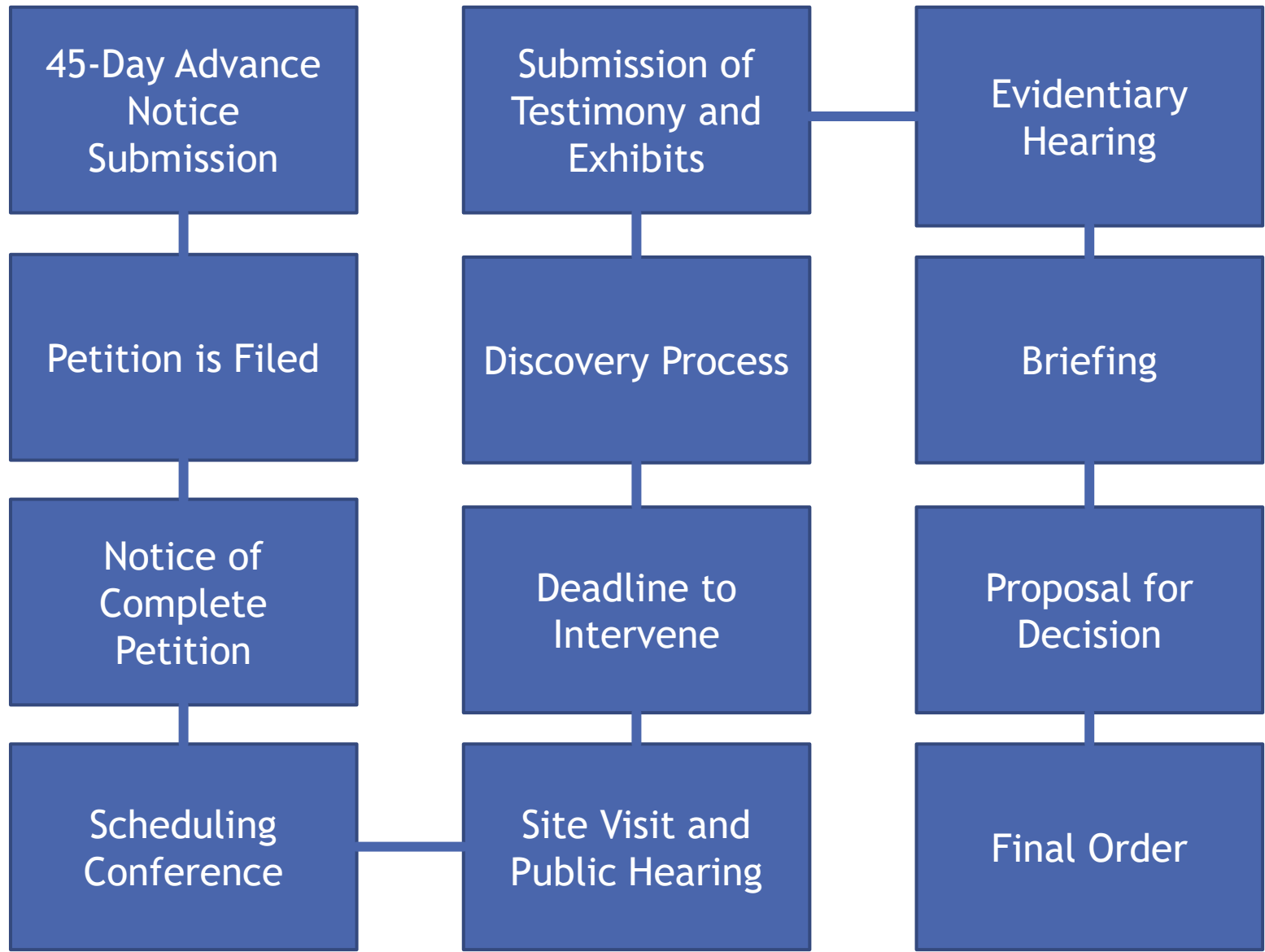
Overview of Section 248 Process

Presentation for Town of Shaftsbury Public Meeting

February 8, 2023

What is Section 248?

- ▶ 30 V.S.A. § 248 is a Vermont law that requires state-level review by the Vermont Public Utility Commission (“PUC”) for approval of the preparation and construction of:
 - ▶ Electric transmission facilities (transmission lines, substations);
 - ▶ Electric generation facilities (solar or wind power projects; power plants);
 - ▶ Gas pipeline and associated infrastructure.
- ▶ PUC is the state regulatory authority; the VT Department of Public Service is a party to all PUC proceedings.
- ▶ Certificate of Public Good (“CPG”) - Will the proposed project promote the general good of the State of Vermont?
 - ▶ Factors include: System Stability and Reliability, Orderly Development of the Region, Need for Present and Future Demand for Service, Economic Benefit to the State, Aesthetic Impact, Historic Site Impact, Use of Natural Resources and the Natural Environment, Public Health and Safety, among others.



Typical Section 248 Process

Section 248 Process: 45-Day Advanced Notice

- ▶ 45-day advanced notice to the affected municipal and regional planning commissions and municipal legislative bodies
- ▶ The municipal and regional commissions may:
 - ▶ Hold and public hearing and request attendance by the VT Department of Public Service;
 - ▶ Request that the Department retain consultants for its review, such as an aesthetics and orderly development consultant;
 - ▶ Make recommendations on the project to the Petitioner and with the PUC during the advanced notice period;
 - ▶ Submit recommendations to the PUC following formal filing of the petition.

Section 248 Process: Petition Filed

- ▶ Once 45-days have lapsed, the petition may be filed with the PUC.
- ▶ The petition, site plan, topographic map, aerial photograph of site, and written testimony explaining the Project's impact Section 248 factors.
- ▶ Notice: Adjoining Landowners, State agencies, and municipal and regional planning commissions and municipal legislative bodies.
- ▶ Notice of Complete Petition and Scheduling Conference date.

Section 248 Process: Scheduling Conference

- ▶ The PUC sets a date for a scheduling conference following submission of petition and issuance of a notice of complete petition.
- ▶ Scheduling conference is to discuss process for proceeding and to set a schedule leading to an evidentiary hearing and briefing in the case.
- ▶ The participating parties to the case will discuss a draft schedule prior to the scheduling conference.
- ▶ The deadlines for intervention, requests for site visit and public hearing, testimony and comments, and briefing are discussed.
- ▶ After the scheduling conference, the hearing officer issues a scheduling order establishing the deadlines for the case.

Section 248 Process: Participation

- ▶ Two ways to participate in a Section 248 proceeding:
 - ▶ Submit Public Comments with the PUC;
 - ▶ Become a formal party to the case.
- ▶ Public Comments
 - ▶ May be filed with the PUC at any time during the case;
 - ▶ Helpful for directing the Department and PUC on particular issues to consider.
 - ▶ Cannot be relied upon as evidence.
- ▶ Formal Party Participation
 - ▶ May submit testimony and exhibits for admission as evidence;
 - ▶ May participate in an evidentiary hearing and the discovery process;
 - ▶ Afforded rights to participate as a party in administrative proceeding.

Section 248 Process: Participation

- ▶ Notice of Intervention (right to intervene)
 - ▶ Planning commissions of the region and municipality that will host the facility;
 - ▶ Legislative body of the municipality that will host the facility;
 - ▶ Planning commissions of any adjacent region and municipality and legislative body of an adjacent municipality, based on proximity.
- ▶ Motion to Intervene
 - ▶ Adjoining landowners or other affected individuals;
 - ▶ Must demonstrate either a substantial interest that may be adversely affected by the outcome of the proceeding or seek permissive intervention at the discretion of the PUC
- ▶ The deadline for intervention notices and motions is proposed at the Scheduling Conference and set by a scheduling order.

Section 248 Process: Participation

- ▶ Public Hearing
 - ▶ Information session - opportunity for members of the public to ask questions about the project;
 - ▶ The PUC may hold a public hearing to receive public comment on the project.
 - ▶ Date for Public Hearing is set by PUC based on availability.
- ▶ Site Visit
 - ▶ The PUC may conduct site visits to the project property;
 - ▶ Assists the PUC and parties in understanding the proposed project;
 - ▶ Date for Site Visit is set by PUC based on availability
- ▶ Deadline for requests for site visit and public hearings is considered at Scheduling Conference

Section 248 Process: Litigation Process

- ▶ Parties to the proceeding engage in several steps leading to an evidentiary hearing.
- ▶ **Discovery** - Opportunity for the parties to engage in the exchanging of information and documentation to understand the project and develop a position.
- ▶ **Submission of Comments, Testimony and Exhibits** - The parties submit their review and conclusions regarding whether the project satisfies the Section 248 factors. Allows an opportunity for the petitioner to respond.
- ▶ **Evidentiary Hearing** - Opportunity for the parties to conduct cross-examination of witnesses about testimony and exhibits.
- ▶ **Briefing** - Parties submit a summary of their arguments regarding approval of the project for the PUC's consideration.
- ▶ **Proposal for Decision** - The PUC's hearing officer issues a proposal for a final decision where the parties have an opportunity to comment.
- ▶ **Final Order** - The PUC issues a final order denying or approving the project

Helpful Links

- ▶ PUC's Section 248 Process Summary: [PowerPoint Presentation \(vermont.gov\)](#)
- ▶ 30 V.S.A. § 248 statute: [Vermont Laws](#)
- ▶ PUC Rules for Section 248 Petitions (Rule 5.400): [Rule 5.400 Amdt Adopted_0.pdf \(vermont.gov\)](#)
- ▶ PUC Rules for General Procedures (Rule 2.200): [2.000-rules-of-practice_0.pdf \(vermont.gov\)](#)
- ▶ Notice of Intervention Form: [notice-of-intervention-form.pdf \(vermont.gov\)](#)
- ▶ Advanced Notice Documents Filed with PUC: [Case Details | Vermont Public Utility Commission](#)