

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: 11/21/2008

**ORDER RE: MOTION TO ALTER OR AMEND**

**I. INTRODUCTION**

In this Order we deny the motion of Vermont Electric Cooperative, Inc. ("VEC") to alter or amend our amended Order governing the placement of wireless communications facilities on electric generation and transmission facilities that was issued September 25, 2008 ("Amended Order").

**II. BACKGROUND**

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 facilities 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).

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.

On September 25, 2008, in response to the joint proposal, the Board issued an Order amending the September 5, 2007, Order.

On October 8, 2008, VEC filed a Motion to Alter or Amend the Amended Order. Comments on the Motion were filed by Washington Electric Cooperative, Inc. ("WEC"), the Vermont Public Power Supply Authority ("VPPSA"), GMP, CVPS, and the Department.

### **III. DISCUSSION**

In its motion, VEC argues that § 248(n) was not intended to apply to the installation by transmission and distribution utilities of wireless communications facilities on their own equipment and for their own use. VEC states that it intends to seek clarification from the legislature regarding this issue in the upcoming session. VEC also contends that the Board's

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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.

orders violate the Vermont Administrative Procedure Act's requirements for formal rulemaking and, therefore, the orders are invalid. VEC argues that the Board should waive the requirement for a municipal or cooperative member vote pursuant to § 248(c) with respect to wireless telecommunications facilities. VEC also argues that the Board should adopt a "blanket" or pre-approved certificate of public good ("CPG") for small wireless telecommunications facilities.

CVPS, WEC, VPPSA, and the Department filed comments generally in support of VEC's motion.

We begin our consideration of VEC's motion with an examination of the statutory language of § 248(n), which specifically describes the entities to which it applies. Section 248 (n)(1) states in pertinent part that:

No company as defined in section 201 of this title and no person as defined in 10 V.S.A. § 6001(14) may place or allow the placement of wireless communications facilities on an electric transmission or generation facility located in this state . . . without receiving a certificate of public good from the public service board . . .

A company is defined under § 201 to include any company, corporation, municipality, or electric cooperative "owning or conducting any public service business or property . . ." Therefore, based on a plain reading of the statutory language, § 248(n) clearly applies to all Vermont electric distribution companies, and we deny VEC's request to exempt these companies from the requirements of the Board's Order implementing the statute.

We also note that the joint proposal for streamlining the review process for utility installations filed by CVPS, VEC and the Department specifically notes that at the workshop the Department "expressed its opinion that electric utility communications facilities were not exempt from Section 248(n)."<sup>2</sup> The proposal then goes on to describe a streamlined review process that applies specifically to utility installations of wireless communications facilities. Nowhere in the joint proposal do the utilities raise an objection regarding the applicability of § 248(n) to utilities. The concerns regarding the applicability of § 248(n) were not raised until after the Board issued its Amended Order which is largely based on the suggestions for streamlining the review process

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2. *Joint Proposal*, September 4, 2008 at 1.

included in the joint proposal. VEC has offered no explanation as to why these concerns were not raised in the joint proposal.

We likewise find no merit in VEC's claim that we did not follow appropriate procedures in promulgating our earlier orders. Section 248(n)(1) requires the Board through "rules or orders" to implement procedures regarding the placement of wireless facilities on transmission and generation facilities. Section 248(n) does not require that the Board provide notice and opportunity for hearing before issuing an order, as is required in a contested case proceeding. In order to implement these procedures in the most expeditious manner and because these procedures have only narrow applicability, the Board chose to issue an order describing these procedures rather than conduct a formal rulemaking. We conclude that the issuance of an order implementing these procedures is consistent with the statutory requirements and appropriate.

In the joint proposal filed by CVPS, VEC and the Department on September 4, 2008, the parties request that the Board amend its Order to streamline the review process for small wireless communications facilities. The proposal included requests for the Board to waive the requirement for a municipal or cooperative member vote pursuant to § 248(c) and to adopt a "blanket" CPG for these installations. The Board, after consideration, declined to include these requests in the revised review procedures. In its comments on the Amended Order, VEC reiterates these requests. The Board has already considered these requests for amendment and decided to reject the requests for the reasons described in the Amended Order. VEC has not presented any persuasive reason to alter that decision. Moreover, with respect to the waiver of the municipal voting requirement, we wish to emphasize that this is a statutory requirement placed upon municipal and cooperative systems, which the Board does not have the authority to waive.

For the foregoing reasons, VEC's motion to alter or amend is denied.

**SO ORDERED.**

DATED at Montpelier, Vermont, this 21<sup>st</sup> day of November, 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: November 21, 2008

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.*