

# Public Access to the Public Service Board

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1<sup>st</sup> meeting of Act 174 Working Group

August 5, 2016

Presentation by Margaret Cheney, PSB member

# Outline of today's presentation

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- Act 174 Working Group: membership, charge
- PSB: history, structure, processes
- Section 248 and other proceedings
- Public access points
- Changes in 15 years
- PSB and DPS
- Concerns we have heard
- Improvements under way

# Act 174 Working Group

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Created pursuant to Act 174 of 2016, Sec. 15, with 5 members:

- Member of PSB, appointed by the PSB Chair
- Commissioner of the Department of Public Service, or designee
- Judicial officer of the State, appointed by the Chief Justice
- House member of Joint Energy Committee, appointed by the Speaker
- Senate member of Joint Energy Committee, appointed by Committee on Committees

# Our charge (Act 174)

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- Review current processes for citizen participation in PSB proceedings
- Make recommendations to promote increased ease of citizen participation in those proceedings
- On or before Dec. 15, 2016, submit written recommendations to Legislature
- Administrative, technical, and legal assistance of PSB staff
- PSB member will call 1<sup>st</sup> meeting, where Working Group will elect chair
- Cease to exist on Feb. 1, 2017

# History of the PSB, part 1

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1855: Public Service Commission (PSC) created

1866: PSC receives powers of a court of record

1906: PSC has direct appellate review to Vermont Supreme Court

1959: PSC renamed Public Service Board

1967: State adopts Administrative Procedures Act

1969-70: Enactment of Act 250 and 30 VSA Section 248

1971: State adopts Vermont Civil Rules of Procedure (+ in 1983, Rules of Evidence)

1981: PSB is split into PSB and Department of Public Service

# History of the PSB, part 2

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1997: State authorizes net-metering (2001, PSB Rule 5.100 – net-metering)

2000: State creates Efficiency Vermont as a regulated utility

2005: State expands net-metering, enacts SPEED program

2006: PSB Rule 5.400 – Section 248

2009: State creates standard-offer program

2014: State expands net-metering and requires new rulemaking for 2017 forward

2015: State enacts Renewable Energy Standard (2016, expected PSB rule for RES)

# PSB structure

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- 3 Board members (1 chair and 2 members) appointed for staggered 6-year terms through Judicial Nominating Board and gubernatorial appointment
- Clerk's office (clerk, assistant clerk, 4 administrative assistants)
- Legal division (6 attorneys)
- Policy division (5 people, including 3 attorneys and 1 engineer)
- Financial analysis division (5 people, including chief economist, 3 utilities analysts, and environmental analyst)
- Funded by gross receipts tax paid by Vermont utilities

# PSB proceedings: wide range

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- Siting and construction of physical facilities – electric generation plants, electric and natural gas transmission, telecommunications
- Policy implementation (e.g., energy efficiency programs, net-metering, standard-offer program, Renewable Energy Standard, etc.)
- Utility rates, mergers and acquisitions, service quality, authorization to provide service, consumer complaints

# Types of Board proceedings

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- Contested cases (formal processes, parties have opportunity for evidentiary hearing)
- Uncontested cases (more informal processes such as workshops and written comments)
- Rulemakings (e.g., interconnection, net-metering, RES, etc.; typically 18-month process with built-in opportunities for public comment and attendance at public hearings)

# What is Section 248?

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- Requires energy, gas, and telecom developers to obtain a Certificate of Public Good (CPG) from the PSB
- Board considers 11 statutory criteria, which incorporate environmental criteria from Act 250, plus issues like orderly development of the region, demand for service, system stability and reliability, economic benefit to the state, and the general public good
- No undue adverse impact on aesthetics, historic sites, environment, health/safety
- Different pathways for different size and type of projects

# “Full” Section 248 proceeding

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- Notice
- Filing
- Pre-hearing conference
- Site visit
- Public hearing
- Discovery
- Evidentiary hearings
- Briefs
- Decision

ANR collateral permits, such as:

- Construction and operational stormwater
- Wetlands
- T&E takings
- 401 water quality

Others (e.g., Army Corps of Engineers, FAA)



Provides additional opportunity for public engagement

# Range of energy siting proceedings

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- “Full” Section 248 proceedings (large projects)
- Streamlined proceedings (projects of “limited size and scope” – Section 248(j), 248(k))
- Modified review that waives certain criteria – Section 8007(a) for renewables 150 kW and smaller; Section 8007(b) for 150 kW to 2.2 MW
- Net-metering rules (in process) provide a range of pathways depending on project size and complexity – simple 10-day “registration,” streamlined “application” process, or more complex “petition” with potential for hearing

# Parties to a case (status and roles)

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- Automatic parties: applicant/petitioner, DPS, ANR (in siting cases), AAFM (in certain siting cases)
- Municipalities and regional planning commissions: receive advance, pre-filing notice of siting projects; statutory right to party status in siting cases; if do not want to be a party, can file public comments
- Adjoining landowners: receive advance, pre-filing notice of certain net-metering projects; receive notice of the filing of a petition for siting projects; can file public comments or motion to intervene to participate as a party
- Members of the public: can file public comments or motion to intervene to participate as a party
- Intervenors: all parties other than automatic parties

# Public access points

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- Party to a contested case (e.g., intervenors such as adjoining landowners or public interest groups)
- Participant in an uncontested case or rulemaking (e.g., attending a workshop, submitting written comments)
- Public commenter in any type of case – presented in person or in writing at a public hearing, or submitted by mail, email, or on PSB website

# Policy directives → change in proceedings

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## In past 15 years:

- Infrastructure siting cases from 10% of Board workload to 60%
- Telecommunications applications – more than 100 per year
- Net-metering applications – 20 in 2001 → 2,278 in FY 2016 alone
- 15 years ago, most citizen participation through public comments and public hearings; complaints very rare except consumer complaints against utilities
- Today, many citizens seek to participate as parties in contested siting cases and file more complaints alleging CPG violations

# What's the difference between PSB and DPS?

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## Public Service Board

- Quasi-judicial body
- Adjudicative: Decision-making authority in utility regulatory cases
- Legislative: Implements new policy when directed by Legislature
- Citizens participate in proceedings before the Board

# Department of Public Service

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- Executive branch agency
- Represents public interest in proceedings before the Board
- Long-term energy and telecommunications planning for the State
- Works with customers to resolve complaints about utilities (Consumer Affairs & Public Information division)

# 2013 Energy Generation Siting Policy Commission

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- Met October 2012 – April 2013
- Summary conclusion: We need ...

A siting process that is more “open, accessible, and inclusive, while also providing greater predictability and efficiency to ensure that the *best*, rather than the *easiest* sites are selected.”

# Concerns ID'd by Siting Commission (2013)

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- Board's processes are a "black box" – insufficient clarity, predictability
- Lack of written information to guide a new party in lay terms
- No staff member to answer simple questions on procedural matters
- Paucity of checklists, standard timelines, performance standards
- Not enough opportunity for public participation
- Website not user-friendly
- Board's processes are lengthy and costly for all parties, including citizens

# Improvements in the works

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- All non-confidential transcripts of hearings and workshops now on website
- New clerk and deputy clerk, revising internal processes for greater efficiency in responding to inquiries
- More Board site visits in response to comments
- New written information for citizens (e.g., in the proposed net-metering rule)
- Templates for citizens to fill in (e.g., to become an intervenor)
- Changes to processes to make it easier for citizens to participate (e.g., net-metering)
- ePSB soon to be on-line
- Redesigning Board website with user input via survey monkey

# Changes in processes – for the public

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Proposed net-metering rule – easier for the public:

- Requires applicants to provide more information up-front so citizens can envision the project
- Makes it easier for a citizen to request a hearing
- Will provide forms for citizens seeking party status (also plan to do so for non-net-metering projects)
- Includes new section for anyone who wants to review an application – step-by-step description of the review process in plain English
- Sets forth complaint process regarding compliance with CPGs

# Changes for towns

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Proposed net-metering rule – for towns

- Monetary incentives for projects to be built in “town designated” sites
- Incentives for projects to be built on customer premises and on the built environment – roofs, quarries, landfills, brownfields, sandpits . . . helping to ensure “that the *best*, rather than the *easiest* sites are selected”
- Expanded requirements for 45-day advance notice to towns of all proposed projects > 15 kW that are not roof-mounted solar or hydroelectric
- Many applications must include a response to any comments provided by towns and adjoining landowners during the advance-notice period

# e-PSB is going live

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- Phase I scheduled for November; Phase II for second quarter 2017
- Goal is to make it easier for regulated companies, parties to proceedings, and members of the public to access information about Board cases
- Electronic filing, document management, case management, and public access features
- Accessible from website; no new software required for non-Board personnel
- Specifically addresses many of the concerns with current processes

# Improvements derived from ePSB

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- Required fields will ensure that filers have provided all necessary information
- Cases will be indicated as “Under Review” until deemed administratively complete enough to process
- Determination will be made within 5 business days for most cases
- If filing is incomplete, petitioner will be notified of specific deficiencies
- When statute allows Board flexibility, comment periods will start after case is deemed administratively complete
- Citizens can easily access all documents and information, including case status, schedule, information on parties, and elements of the case

# New performance standards

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For FY 2017 budget presentation, Board developed three performance standards:

- Percentage of cases resolved within established timeframes
  - Based on measure recommended by National Center for State Courts, used by Vermont judiciary
- Percentage of public inquiries satisfied
- Percentage of complaints about utility service resolved using simple, accessible procedures
- ePSB necessary to track performance

Thank you

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