

Meteorological Towers – 246 Cases

This document is a summary of the procedural steps and opportunities for public participation when the Commission reviews a proposed temporary siting of a meteorological station, which is regulated under [30 V.S.A. § 246](#) (referred to as “Section 246”).

This document is a general guide for the public. It is not a comprehensive list of all 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, and legal precedent, or seek legal advice. Please feel free to contact the [Clerk of the Commission](#) if you have questions about the information in this document.

Typical Procedural Steps

30-Day Advance Submission

Filing of Application

30-Day Period to File Public Comments, Requests to Intervene, and Requests for Hearing

Significant Issue(s)?

No, then

Decision

A meteorological tower, or meteorological station, is generally installed to collect wind data to determine the feasibility of constructing a wind generation facility. It consists of a temporary tower with attached instrumentation to monitor wind speed, wind direction, and atmospheric conditions. There may also be “guy wires” to support the tower. Under Section 246, the Legislature required the Commission to:

- develop simplified review procedures for meteorological stations,
- develop an application form,
- issue a proposal for decision on an application within five months of the date the application was filed or the date the application was determined to be complete, and
- issue approvals that would be valid for no more than five years.

[The Commission Order Establishing Standards and Procedures for Meteorological Towers](#)

Yes, then

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

Decision

246 Process

What follows is a summary of the procedural steps for Commission review of Section 246 cases. Underlined text will link you to more information about that step in the glossary or to an external website.

Advance Submission. At least 30 days before filing a Section 246 application with the Commission, applicants must provide an [advance submission](#) of the proposed project to:

- the legislative bodies and municipal and regional planning commissions in the communities where the project will be located,
- State agencies: the Department of Public Service and the Agency of Natural Resources,
- adjoining landowners, and
- the Commission.

The advance submission must include:

- the location and a description of the project, and
- enough detail about the project for the recipients of the notice to understand the impacts of the project.

Recipients of an advance submission who have concerns about the project are encouraged to contact the applicant during the 30-day period. The purpose of the advance submission is to provide an opportunity for the applicant to resolve such concerns before the application is filed with the Commission.

Filing an Application. Applications are [filed](#) with the Commission using the most current version of the Section 246 application form [in ePUC](#). Please see [Commission Rule 2.204](#).

Applicants are required to provide copies of the application to:

- the legislative bodies and municipal and regional planning commissions in the communities where the project will be located, and
- State agencies: the Department of Public Service and the Agency of Natural Resources.

Applicants are also required to provide notice to adjoining landowners that the application was filed.

The Commission will review the application for completeness. If the application is deemed incomplete, the Commission may require the applicant to provide copies of a revised application to the recipients listed above. The Commission will notify the applicant when the application has been determined to be complete.

Public Comments. Members of the public can [file comments](#) in Section 246 proceedings before the Commission. [Public comments](#) on the application must be filed with the Commission within 30 days of the date the application is filed or determined to be complete by the Commission.

A member of the public can also request to be a party to the case (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 following [Section 248 criteria](#):

- floodways, shorelines, streams, wetlands;
- outstanding resource waters;
- rare and irreplaceable natural areas, necessary wildlife habitat;
- aesthetics;
- historic sites;
- air and water purity;
- the natural environment;
- public health and safety;
- public investments;
- orderly development of the region.

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.”

Request for Intervention. A request to be a party to a 246 case ([intervention](#)) must be filed with the Commission within 30 days of the date the application is filed with the Commission. This 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 and [Commission Rules 2.209 and 2.407](#). [Motion to intervene form](#)

Determination of Significant Issue(s). If the Commission determines that the application does not raise any significant issues, a final [decision](#) will be issued following the 30-day comment period.

If the Commission determines, on its own or based on information filed during the 30-day comment period, that the application raises any significant issues with respect to one or more of the review criteria, the Commission will begin the process for holding an [evidentiary hearing](#), which includes holding a scheduling conference, possibly scheduling a site visit, and generally all of the steps associated with evidentiary hearings, as summarized below.

Scheduling Conference. The purpose of a [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](#)). Please see [Commission Rule 2.225](#).

Discovery. The [discovery](#) process may be used if there will 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 issue discovery requests. 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 and [Commission Rules 2.214 and 2.230](#).

Testimony and Exhibits. The parties to a case prepare [testimony](#) and [exhibits](#) that support their position on whether the proposed project complies with the relevant review criteria. The applicant includes pre-filed testimony and exhibits with the application. The applicant may also file supplemental pre-filed testimony to address issues that come up before the evidentiary hearing. Please see [Commission Rules 2.204 and 2.213](#).

Other parties to a case have the opportunity to file testimony and exhibits before 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.

Parties to a case may file an objection to the admissibility of some or all of another party's pre-filed testimony and exhibits. Typically objections must be filed at least 14 days before the evidentiary hearing. For more information on filing objections, please see [Commission Rules 2.216 and 2.217](#).

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

At an evidentiary hearing, the parties and the Commission will have an opportunity to cross-examine witnesses about their pre-filed testimony and exhibits. While the public is welcome to attend and observe an evidentiary hearing, only the parties are permitted to participate. Members of the public can become parties to a case by intervening following the process described above.

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. Briefs can include proposed findings of fact, which are statements of facts from the evidentiary record that a party wants the Commission to rely on when making its decision. Please see [Commission Rule 2.223](#).

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, the Commission will issue a [decision](#) following the 30-day comment period.

If, instead, a significant issue was raised and an evidentiary hearing is held by a hearing officer, he or she will issue an initial [proposal for decision](#) 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 [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 and 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](#) ("CPG").

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 after reviewing the parties' briefs.

In a Section 246 case the Commission must issue a proposal for decision on an application within five months of its filing or the date the application was determined to be complete. Because Section 246 pertains to temporary structures, a CPG for a Section 246 project is valid for no more than five years.

Final Commission orders are subject to [motions to alter or amend](#) (also referred to as [motions for reconsideration](#)) under [Commission Rule 2.221](#). A motion to alter or amend must be filed within 28 days after a final order is issued. Any final decision by the Commission may be appealed to the Vermont Supreme Court. An appeal must be filed within 30 days after a final order is issued.

Up-to date information about specific cases, current deadlines, and more can be accessed anytime in [ePUC](#).