



November 10, 2015

Chris Recchia, Commissioner
Department of Public Service
112 State Street, Third Floor
Montpelier, VT 05620-2601

Re: Phase II of the 2015 Comprehensive Energy Plan – Public Review Draft

Dear Commissioner Recchia:

I am writing to comment on the 2015 Comprehensive Energy Plan – Public Review Draft.

The 380-page draft plan does an excellent job of meeting its first objective: to inform Vermonters of the many challenges and opportunities we face in maintaining a safe, reliable, affordable, and sustainable energy supply. As well, it meets the plan's second objective by exhaustively examining energy decisions. We continue to be concerned that its recommendations on how the state, region, and nation can move to a sustainable and affordable renewable energy future skirts the issue of what the impacts will be on municipalities – the level of government closest to the people – and how municipalities might influence siting of projects within and adjacent to their boundaries. Instructive is the statement on page 5: “We look to the Vermont statutes as our primary source of goals, but we also look to actions by state groups and groups at the *regional* level as sources of further direction.”

Local governments are working diligently to achieve Vermont's ambitious energy goals in terms of reducing the amount of energy we use, reducing carbon emissions with a particular focus on transportation alternatives, and appropriately locating new renewable energy generation facilities. Many municipalities have sited their own renewable energy facilities in order to meet those goals.

In their zeal to realize the Plan's energy goals, however, the Vermont Legislature, the Public Service Department (PSD), and the Public Service Board (PSB) have given short shrift to the valid concerns of local government officials when proposals for projects are made that will affect municipalities and their citizens.

Regional plans are not substitutes for municipal plans. While we endorse the work being done in Bennington and the Two Rivers-Ottawaquechee and Northwest Regional commissions, we do not anticipate that their efforts will resolve all the issues that siting renewable energy facilities on the landscape creates at the local level. Nor do we believe that the regional plans and maps should be the final word in those siting decisions, even if the PSB takes them into account in the siting process. The Rutland and Addison County regional commissions have developed valuable guidance for municipal planning commissions to help them write clear community standards into their plans, again with the hope that the PSB gives them real consideration. We urge you to include their self-initiated efforts in this Comprehensive Energy Plan.

The plan references the 2013 Energy Siting Commission Report. At the time, we endorsed the Separate Statement of then-PSD Commissioner Louise McCarren and we continue to do so today, as not much has changed. We support the tone of the recommendation in this plan (p. 23) to “[o]ptimize land use choices to minimize local and global environmental impact, including balancing land use among competing needs in the state for energy, non-energy development, housing, transportation, working lands for agriculture and forestry, and other purposes. This includes the siting of energy generation, transmission, and distribution infrastructure, as well as siting of residential, commercial, and industrial development, which will require transportation

energy to serve. Comprehensive state, regional and town land-use plans address multiple goals, including minimizing energy consumption and coordinating energy and non-energy regulations and goals.” However, the recommendation is exceedingly general and provides no guidance to anyone, particularly to the PSB. We believe that the recommendation should provide specific guidance to the PSB.

There is not a balance today between the public good that is renewable energy generation and the public good that is represented by land use and other priorities on the local level. The land conservation measures in municipal plans and recommendations of municipal planning commissions and selectboards are given “due consideration” according to Section 248 that governs the PSB Certificate of Public Good (CPG) permit process. What we hear from our members is that “due consideration” is really *no* consideration. Vermont must re-establish a balance between achieving the goal of 90 percent renewable energy by 2050 and the many other land use goals that multiple state agencies, regions, cities, and towns with volunteer commissions have worked for decades to achieve.

Input from local leaders is essential to developing a sustainable energy future that works for all Vermonters. Municipal officials are in a unique position to explain the impacts of renewable energy projects on their communities and, despite a lot of rhetoric to the contrary, local governments have been addressing energy matters in their municipal comprehensive plans for some time.

To that end, we believe the 2015 Comprehensive Energy Plan needs to include among its priorities, significant attention to municipal and regional plans in the PSB CPG process – though we do not ask for and have never requested a veto at the local level. We urge you to include the following three recommendations in Section 5.5, Siting and Land Use Principles:

- The PSB should give “substantial deference” to municipal concerns and determinations by holding hearings in any municipality potentially affected by a proposed project. Substantial deference is defined in H.377 as it was introduced in 2015.
- The PSD and PSB, if not the legislature, should define “community scale” as it is used with reference to energy facilities. Community scale is defined in H.377 as it was introduced in 2015 ([copy attached](#)).
- The PSB should include all local decisions concerning the project within its docket, formulate areas of inquiry based on concerns raised in the local hearing process, and require any decision to address local concerns raised in local determinations and adopted municipal plans.

Given the way in which Vermont’s energy profile has changed and the number of distributed renewable energy projects consuming the PSB’s attention in the twenty-first century, we believe it is time to revisit the State Energy Policy articulated at 30 V.S.A § 202a. We suggest that policy should state, “(1) to assure, to the greatest extent practicable, when balanced with duly adopted municipal plans and articulated clear community standards, that Vermont can meet its energy service needs in a manner that is adequate, reliable, secure, and sustainable, that assures affordability and encourages the state’s economic vitality, the efficient use of energy resources, and cost effective demand side management, and that is both environmentally sound and complies with the land use purpose and goals at 24 V.S.A. § 4302.”

Thank you for the opportunity to comment.

Sincerely,



Karen B. Horn, Director
Public Policy and Advocacy

1 H.377

2 Introduced by Representatives Lenes of Shelburne, Zagar of Barnard,

3 Browning of Arlington, and Fields of Bennington

4 Referred to Committee on

5 Date:

6 Subject: Energy; land use; public service; facility siting; generation;

7 transmission; telecommunications; weight of municipal and regional

8 plans

9 Statement of purpose of bill as introduced: This bill proposes to ensure that
10 the Public Service Board gives great weight to the plans and recommendations
11 of municipal and regional bodies when reviewing facilities subject to each its
12 jurisdiction. The bill also proposes to ensure that generation facilities are not
13 represented to be “community” unless they meet specified criteria.

14 An act relating to Public Service Board siting review and to “community”
15 generation facilities

16 It is hereby enacted by the General Assembly of the State of Vermont:

17 Sec. 1. PURPOSE

18 (a) The purposes of this act are to ensure that:

19 (1) The Public Service Board, when reviewing the siting of facilities
20 subject to its jurisdiction, gives great weight to the plans and recommendations

1 of municipal and regional bodies. The General Assembly intends that the
2 Board require a high threshold of proof when deference to such a plan or
3 recommendation is challenged.

4 (2) A municipal body may make a recommendation to the Public
5 Service Board based on the municipality's land use bylaws, which the Board
6 shall consider regardless of whether a facility is exempt from those bylaws.

7 (3) A developer of a generation facility does not represent that the
8 facility is "community" or "community-scale" unless it actually is scaled to
9 and available to serve the community and meets the community's siting
10 requirements and recommendations.

11 (b) This act constitutes remedial legislation that shall be liberally construed
12 to achieve its purpose.

13 Sec. 2. 30 V.S.A. § 201 is amended to read:

14 § 201. DEFINITIONS

15 (a) As used in this chapter, ~~the word "company"~~:

16 (1) "Community scale energy generation facility" means a facility for
17 the generation of electricity that:

18 (A) conforms to each of the following:

19 (i) siting criteria established by the municipality in accordance
20 with 24 V.S.A. § 4413; and

1 (ii) a clear written community standard intended to preserve
2 aesthetics or scenic beauty contained in the municipal plan adopted under
3 24 V.S.A. chapter 117;

4 (B) is sited on a tract of land that does not exceed one acre or, if sited
5 on a larger tract, does not consume more than one acre of that tract;

6 (C) does not exceed a height of 100 feet or 20 feet above the adjacent
7 tree canopy, whichever is greater;

8 (D) has a capacity greater than 50 kilowatts and not more than
9 500 kilowatts; and

10 (E) will make the electricity it generates available to serve structures
11 in the surrounding area.

12 (2) “Company” or “companies” means and includes individuals,
13 partnerships, associations, corporations, and municipalities, owning or
14 conducting any public service business or property used in connection
15 therewith and covered by the provisions of this chapter. The term “company”
16 or “companies” also includes electric cooperatives organized and operating
17 under chapter 81 of this title, and the Vermont ~~public power supply authority~~
18 Public Power Supply Authority to the extent not inconsistent with chapter 84
19 of this title, ~~and the Vermont Hydro-electric Power Authority to the extent not~~
20 ~~inconsistent with chapter 90 of this title.~~ In the context of actions requiring
21 prior approval under section 107 of this title, the term “company” shall also

1 mean any individual, partnership, association, corporation, group, syndicate,
2 operating division, joint stock company, trust, other entity, or municipality
3 which would be defined as a company pursuant to this section if such approval
4 were to be granted.

5 ~~(b) As used in this chapter, “energy”~~ (3) “Energy” means not only the
6 traditional scientific characteristic of “ability to do work” but also the
7 substances or processes used to produce heat, light, or motion, including ~~but~~
8 ~~not being limited to:~~ petroleum or other liquid fuels; natural or synthetic fuel
9 gas; solid carbonaceous fuels; solar radiation; geothermal sources; nuclear
10 sources; biomass; organic waste products; wind; or flowing water.

11 (4) “Substantial deference,” when used in relation to a land conservation
12 measure or recommendation of a municipal or regional body, means that the
13 measure or recommendation is presumed valid, correct, and reasonable, and
14 that the burden of proof is on a party that contends that the Board should find
15 good cause not to require a facility to comply with the measure or
16 recommendation. To meet this burden of proof, the party must demonstrate
17 that requiring such compliance would cause a detriment to the general good of
18 the State that a reasonable person would conclude substantially exceeds the
19 public good furthered by the measure or recommendation.

1 Agency of Transportation, Agency of Agriculture, Food and Markets, and
2 to the chairperson or director of the municipal and regional planning
3 commissions and the municipal legislative body for each town and city in
4 which the proposed facility will be located. At the time of filing its application
5 with the Board, the petitioner shall give the Byways Advisory Council notice
6 of the filing.

7 (D) Notice of the public hearing shall be published and maintained
8 on the Board's website for at least ~~12~~ 15 days before the day appointed for the
9 hearing. Notice of the public hearing shall be published once in a newspaper
10 of general circulation in the county or counties in which the proposed facility
11 will be located, and the notice shall include an Internet address where more
12 information regarding the proposed facility may be viewed.

13 (E) The Agency of Natural Resources shall appear as a party in any
14 proceedings held under this subsection, shall provide evidence and
15 recommendations concerning any findings to be made under subdivision (b)(5)
16 of this section, and may provide evidence and recommendations concerning
17 any other matters to be determined by the Board in such a proceeding.

18 The legislative body and the planning commission for the
19 municipality in which a facility is located shall have the right to appear and
20 participate on any application under this section seeking a certificate of public
21 good for the facility.

1 (b) Before the Public Service Board issues a certificate of public good as
2 required under subsection (a) of this section, it shall find that the purchase,
3 investment or construction:

4 (1) with respect to an in-state facility, will not unduly interfere with the
5 orderly development of the region with ~~due consideration~~ substantial deference
6 having been given to the recommendations of the municipal and regional
7 planning commissions, the recommendations of the municipal legislative
8 bodies, and the land conservation measures contained in the plan of any
9 affected municipality.

10 (A) Nothing in this section or other provision of law shall prevent a
11 municipal body from basing its recommendations on a bylaw adopted under
12 24 V.S.A. chapter 117 by the municipality in which the facility is located.

13 (B) A rebuttable presumption respecting compliance with the
14 applicable plan shall be created by a letter from an affected municipal
15 legislative body or municipal planning commission concerning compliance
16 with the municipal plan and by a letter from a regional planning commission
17 concerning compliance with the regional plan.

18 (C) However, with respect to Notwithstanding any contrary
19 requirement of this section, a natural gas transmission line subject to Board
20 review; ~~the line~~ shall be in conformance with any applicable provisions
21 concerning such lines contained in the duly adopted regional plan; and, in

1 addition, upon application of any party, the Board shall condition any
2 certificate of public good for a natural gas transmission line issued under this
3 section so as to prohibit service connections that would not be in conformance
4 with the adopted municipal plan in any municipality in which the line is
5 located;

6 * * *

7 (r) A person shall not represent that a generation facility subject to this
8 section is “community,” “community-scale,” or similar term designed to
9 convey that the facility is proposed by or is to serve a group of persons in a
10 locality, unless the facility constitutes a “community scale energy generation
11 facility” under section 201 of this title.

12 Sec. 4. 24 V.S.A. § 4413 is amended to read:

13 § 4413. LIMITATIONS ON MUNICIPAL BYLAWS

14 (a)(1) The following uses may be regulated only with respect to location,
15 size, height, building bulk, yards, courts, setbacks, density of buildings,
16 off-street parking, loading facilities, traffic, noise, lighting, landscaping, and
17 screening requirements, and only to the extent that regulations do not have the
18 effect of interfering with the intended functional use:

19 (A) State- or community-owned and operated institutions and
20 facilities.

1 (B) Public and private schools and other educational institutions
2 certified by the Agency of Education.

3 (C) Churches and other places of worship, convents, and parish
4 houses.

5 (D) Public and private hospitals.

6 (E) Regional solid waste management facilities certified under
7 10 V.S.A. chapter 159.

8 (F) Hazardous waste management facilities for which a notice of
9 intent to construct has been received under 10 V.S.A. § 6606a.

10 (G) Notwithstanding any contrary provision of Title 30, public
11 utility power generating plants and transmission facilities regulated under
12 30 V.S.A. § 248.

13 (2) Except for State-owned and -operated institutions and facilities, a
14 municipality may regulate each of the land uses listed in subdivision (1) of this
15 subsection for compliance with the National Flood Insurance Program and for
16 compliance with a municipal ordinance or bylaw regulating development in a
17 flood hazard area or river corridor, consistent with the requirements of
18 subdivision 2291(25) and section 4424 of this title. These regulations shall not
19 have the effect of interfering with the intended functional use.

