



## Summary of Testimony on S.112 on Jurisdiction over Electric Distribution Upgrades

For decades, the division of jurisdiction regarding transmission and distribution has been dealt with as the legislature intended, with the NRB having jurisdiction over new distribution under Act 250 and the PUC having jurisdiction over new transmission. For upgrades to existing distribution service, ANR has direct jurisdiction over all natural resource impacts through the various program offices and through agreements with utilities which dictate the level at which impacts associated with upgrades require permitting (e.g., 3 replacements poles in wetlands do not require permit, more than 3 pole replacements in wetlands do require a permit).

However, in recent CPG proceedings for solar projects 2.2MW and above, ANR has established a harmful pattern of demanding new and unnecessary natural resource studies to identify impacts associated with upgrades to existing distribution service necessitated by Section 248 projects.

ANR has been requiring the petitioner to survey the corridor through which the distribution upgrades are planned, and then incorporate natural resource protection measures into the CPG, which are enforceable against the petitioner (holder of the CPG).

These requirements cause problems that add cost, uncertainty and delay to projects including:

**Timing and certainty of impacts:** At the time of the CPG proceeding, neither the petitioner nor the utility know exactly where the distribution upgrades will be located, and what the impacts will be, i.e. which poles will be replaced or which trees might be cut or trimmed. The natural resource protections incorporated into the CPG are therefore hypothetical or undefined.

**Utility not subject to CPG conditions:** While the terms of the CPG are enforceable against the CPG holder (not the utility), the CPG holder has no control over how the utility installs the upgrades. ANR asserts that the CPG holder should assign liability under the CPG to the utility through contractual arrangements but utilities are generally opposed to this assignment of liability.

**Additional cost & delay:** ANR demands the petitioner survey property which is not under their control and to which they do not have a right of entry. The resulting MOU discussions are time consuming and the resulting surveys require field work, desktop mapping, detailed analysis, and they are subject to seasonal constraints. All of this results in significant added cost and delay for CPG petitioners.

**Unnecessary & duplicative regulation:** Natural resources impact analyses performed by the petitioner should be limited to the impacts caused by the project on the project site. Impacts associated with distribution service are assessed when the distribution service is built. Adding a new layer of regulation over distribution upgrades to existing distribution service in CPG proceedings at the PUC is unnecessary and duplicative of existing regulatory authority.

**Control over impacts:** Petitioner has no control over how, or when, or where the distribution upgrades are installed. This is done under the control and at the discretion of the utility.

**Unfair to solar as compared to other types of development:** For any other type of development (outside of PUC jurisdiction) such as a new retail plaza or apartment building which necessitates upgrades to existing distribution service, there is no similar requirement from the ANR to assess upgrades to existing distribution service.

