RECURRENT ENERGY GROUP

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March 15, 2016

Committee on Natural Resources and Energy
Vermont House of Representatives
State of Vermont
115 State Street
Montpelier, VT 05602

Re: Comments pertaining to the Draft S.230 dated 3/11/16

Esteemed Representatives,

Recurrent Energy Group, a group specializing in the redevelopment of hydroelectric sites in New England, herewith submits comments on the S.230 dated 3/11/16. In September of 2015, the Recurrent Group commissioned the Vermont Tissue Plant in Bennington and is now three and a half years into the redevelopment of the Pownal Tannery Plant. Both projects are Group Net Metering projects. The Vermont Tissue has a Certificate of Public Good (CPG) and the Pownal Tannery Plant will apply for a CPG under the new Rule 5.100. As with most recent energy regulations in Vermont, S.230 presents with strong solar regulation that by default has adverse impacts on hydroelectric.

Let us begin by saying that we feel the S.230 draft addresses some very important issues and does so in a comprehensive manner. All in all we find it a necessary piece of legislation; however, as presented it is inconsistent with current law and practice, penalizes hydroelectric projects unjustifiably, grants undue authority to State Agencies and serves to disqualify hydroelectric projects under Group Net Metering in effect undermining existing State Law. Please consider the following:

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Process:

Generally, the document has not addressed the current practice and understanding under Act 248 that the Certificate of Public Good (CPG) process is preempted by a License or Exemption from Licensing by the Federal Energy Regulatory Commission (FERC). Currently an applicant must merely represent that it has acquired such a FERC document and the CPG is issued. Any other practice would in effect grant the State a second, post Licensing review which would serve to undermine the Federal process. Requiring a full CPG application process (which is what the

current language does) would provide the State a second bite at the apple and the option to apply standards contrary to the Federally Licensed standards. The current practice, though redundant, is the correct application of the statute.

Further, the Federal requirements already incorporate the interests and consent of the states as part of the Federal License process, which is why other New England States waive the need for a CPG in these circumstances. Vermont's requirement for a CPG under 248 is unnecessary and should be removed for Federal projects as it inherently provides no value and is an onerous process, effectively having a result limited to delaying project development increasing the costs to produce power in-State while providing no benefit to Vermonters.

Should the Legislature in its wisdom concur and act in response to the previous statements thereby removing the need for a CPG, please disregard the balance of this document.

Should the Legislature in its wisdom disagree with striking the requirement for Federally Licensed projects, then Section 15. 30 VSA, § 8005a, (c), (2), (f) and (f), (B) should be amended to remove reference to "timely development" as the legislature will have directly and unnecessarily lengthened the process. Further, as the Public Service Board prescribes within a CPG, a development timeline of one year is an unquestionably impossible for hydroelectric projects. The term "timely development" should be defined and done so realistically. We recommend the timeline used by FERC which requires the start of construction within 2 years and completion within 5 years. Any shorter timeline is highly impractical and serves to unduly hamper hydroelectric projects as a technology option and to do so at no gain for the State.

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Preferred Siting:

Sec. 13. 30 V.S.A. § 8002(30) is added to read:

(30) "Preferred location" means a site within the State on which a renewable energy plant will be located that is one of the following:

(A) A new or existing structure, including a commercial or residential building, a parking lot, or parking lot canopy, whose primary use is not the generation of electricity or providing support for the placement of equipment that generates electricity.

(B) A tract previously developed for a use other than siting a plant on which a structure or impervious surface was lawfully in existence and use prior to January 1 of the year in which an application for a certificate of public good under section 248 of this title for the plant is filed or in which the plant seeks

an award of a contract under the standard offer program under section 8005a of this title, whichever is earlier. To qualify under this subdivision (B), the limits of disturbance of a proposed renewable energy plant must include either the existing structure or impervious surface and shall not include any headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forestlands, and primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151.

(C) Land certified by the Secretary of Natural Resources to be a brownfield site as defined under 10 V.S.A. § 6642.

(D) A sanitary landfill as defined in 10 V.S.A. § 6602, provided that the Secretary of Natural Resources certifies that the land constitutes such a landfill and is suitable for the development of the plant.

(E) The disturbed portion of a gravel pit, quarry, or similar site for the extraction of a mineral resource, provided that all activities pertaining to site reclamation required by applicable law or permit condition are satisfied prior to the installation of the plant.

(F) A specific location designated in a duly adopted municipal plan under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or specific type or size of renewable energy plant, provided that the plant meets any siting criteria recommended in the plan for the location. On or after January 1, 2019, to qualify under this subdivision (F), the plan must be certified under 24 V.S.A. § 4352.

(G) If the plant constitutes a net metering system, then in addition to subdivisions (A) through (F) of this subdivision (30), a site designated by Board rule as a preferred location.

Sec. 14. 30 V.S.A. § 8004(g) is added to read:

(g) Preferred locations. With respect to a renewable energy plant to be located in the State whose energy or environmental attributes may be used to satisfy the requirements of the RES, the Board shall exercise its authority under this section and sections 8005 and 8006 of this title to promote siting such a plant in a preferred location.

Sec. 17. 30 V.S.A. § 8010 is amended to read:

§ 8010. SELF-GENERATION AND NET METERING[1]

* * *

(c) In accordance with this section, the Board shall adopt and implement rules that govern the installation and operation of net metering systems.

(1) The rules shall establish and maintain a net metering program that:

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[1] Please note in the draft text that this section contains a typo. The sections jump from (c), (1) to (c), (3).

(G) accounts for changes over time in the cost of technology; ~~and~~
(H) allows a customer to retain ownership of the environmental attributes of energy generated by the customer's net metering system and of any associated renewable energy credits or to transfer those attributes and credits to the interconnecting retail provider, and:

(i) if the customer retains the attributes, reduces the value of the credit provided under this section for electricity generated by the customer's net metering system by an appropriate amount; and

(ii) if the customer transfers the attributes to the interconnecting provider, requires the provider to retain them for application toward compliance with sections 8004 and 8005 of this title; and

(I) promotes the siting of net metering systems in preferred locations.

We recommend the definition of 13.C. be expanded to include Superfund or National Priority List (NPL) sites. As is the case with the Pownal Tannery Plant, the impoundment and dam fall within an established Brownfields site; however, the powerhouse falls within a Superfund or NPL site. Placing the viability of the Plant in jeopardy simply because the contamination issues are harder to manage is counter to the intent of the section.

As we are interpreting the language, the qualification as a Preferred Location for hydroelectric projects cannot be established until the CPG process and at the discretion of the Board (13.G.) and only after relinquishing the RECs. Aside from this providing sole discretion to the Board, it makes projects unfinanceable as the revenue cannot be identified until after the Licensing process. As written, hydroelectric projects will have no way of assessing project viability until they are 80% of the way though the redevelopment process. This is entirely impractical. As to relinquishing the value of the RECs, they are a widely recognized, tradeable commodity that is wholly owned by the power producer unless a separate agreement is reached. The requirement by the State for small power producers who are reliant on this income to now forfeit the fair market value of the RECs is an act that is ruinous to the Pownal project and many others. Without these funds, the project is not economically viable. While we agree with the State attempting to keep REC's in Vermont, it should not be done at the expense of Vermont power producers. Thus we propose that the State follow the intent of the Law, past precedent and accepted practice by providing an adder equal to the fair market value in New England for the RECs retained by the Utility.

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Jurisdiction and non-applicable standards:

Sec. 17. 30 V.S.A. § 8010 is amended to read:
§ 8010. SELF-GENERATION AND NET METERING

(E) With respect to a net metering system exceeding 15 kW in plant capacity, the rules shall not waive or include provisions that are less stringent than the following, notwithstanding any contrary provision of law:

(i) the requirement of subdivision 248(a)(4)(C) of this title to provide a copy of the application to the Agencies of Agriculture, Food and Markets and of Natural Resources; the Department of Public Service; the Division for Historic Preservation; the municipal legislative body; and the municipality and regional planning commissions; and

(ii) the requirements of subdivision 248(a)(4)(J) (required information) and subsections 248(f) (preapplication submittal) and (t) (aesthetic mitigation) and, with respect to a net metering system exceeding 150 kW in plant capacity, of subsection (u) (decommissioning) of this title.

Sections 17, 18 and 25 make reference to the Agency of Agriculture, Food and Markets. Hydroelectric projects should be explicitly excluded from being required to copy this Agency or to pay fees to this Agency. Though we see the relevance to this Agency to provide oversight to solar and wind projects, there is no precedent or practical reason to now allow oversight of hydroelectric projects by this Agency or to prescribe fees to be paid to the Agency. The latter constitutes taxation without representation.

Section 22. 248(t) was implemented for solar and has no bearing on hydroelectric projects. Hydroelectric projects should be explicitly excluded from all of these requirements. Requiring aesthetic mitigation for hydro by planting trees is simply not relevant or possible. Remedies already exist under the 401 Clean Water Act to regulate with aesthetic issues for hydroelectric projects and they are managed through the application of a Water Quality Certificate.

Section 22. 248(u) requires a decommissioning plan or bond. This is not relevant for hydroelectric projects, preceded by Federal authority and given the lifespan of hydroelectric plants (greater than 100 years) the costs for bonding are astronomical. Initial bonding estimates exceed a million dollars. It is such an onerous request, provides no value to Vermonters and would serve to bankrupt all hydroelectric projects. Quite frankly, why would one want to decommission one of these sites? This section was written for solar. Hydroelectric must be specifically excluded from the requirement.

Section 23 should provide an exclusion for hydroelectric projects. Hydroelectric projects do not have emissions, do not cause deforestation, etc. Those items that remain would be onerous and provide little value. Run-of river hydroelectric power is unequivocally the most effective of the Vermont renewable portfolio. Requiring that be reestablished by project is impractical and serves to punish one technology for the sins of another.

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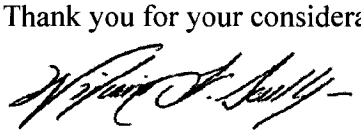
We find it troubling that the Legislators and Regulators continue to draft regulations presumably designed for all technologies, but that ultimately are so solar-centric as to completely disenfranchise hydroelectric projects.

In closing, we ask that the Legislature edit the draft S.230 so as not to eliminate hydroelectric projects just so that solar can be regulated. The requirement of a CPG is redundant to the Federal process and should be eliminated as in neighboring states. In absence of the Legislature's concurrence with this, the current practice of the PSB should at least be preserved in law. If the requirement remains, language defining a realistic meaning for "timely development" must be adopted. Even if the PSB grants extensions to hydroelectric projects, the de facto position of record will be that these projects which are granted extensions are untimely in their development.

Additionally, siting requirements should be amended. The preferred siting standards should be expanded to include Superfund sites (NPL). Also, REC's should not be stripped from developers for below market rates. This unprecedented fealty merely serves to disenfranchise Vermont Power Producers and serves to largely favor foreign power producers who can sell power to Vermont and retain their RECs.

Sections 17, 18, 22, 23 and 25 should have language added that specifically excludes hydroelectric projects from the new language which was added specifically to regulate solar. The new language has no bearing on hydroelectric projects, cannot be implemented and sets up false jurisdiction. In the end, these additions provide no value to Vermonters for hydroelectric projects and serve only to make hydroelectric projects impracticable and financially untenable in Vermont.

Thank you for your consideration,



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Recurrent Energy Group
+ Carbon Zero, LLC
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+ Canton Hydro, LLC
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