



State of Vermont

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Agency of Natural Resources

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MEMORANDUM

To: Rep. Tony Klein, Chair, House Committee on Natural Resources and Energy
From: Billy Coster, ANR Director of Planning
Date: April 6, 2015
Re: Follow up response to ANR committee testimony on energy siting

Thank you again for the opportunity to address the House Committee on Natural Resources and Energy on March 24, 2015 regarding the topic of energy generation siting. At the conclusion of my testimony you requested that ANR provide written suggestions on ways to improve the expedited public service board process for siting large-scale (>150kW nameplate capacity) net metered generation facilities in Vermont. The purpose of this memorandum is to provide that information.

The Agency believes that deployment of well sited renewable electric generation is a critical component of a suite of strategies to help Vermont meet its greenhouse gas reduction targets. Successful deployment is therefore a priority for the Agency of Natural Resources. However, the recent and rapid increase in the number of large-scale net metering facility applications, combined with a new regulatory process, have presented challenges to achieving this objective in an efficient and productive manner.

As I discussed during my testimony, while ANR supports this deployment, we continue to have concerns with the review process established by the Public Service Board (“Board”) for large-scale distributed generation facilities set forth in Board rule 5.110(C). The rule allows only twenty one days to comment on an application for a certificate of public good (“CPG”), once an application is filed with the Board.

During that limited period “any person or other entity” including ANR, abutters and municipalities, are expected to review the application materials, analyze all potential impacts, formulate a position on the types and level of impacts and either submit comments, move to intervene or request a hearing. Per Board rule, anyone requesting a hearing must show in their comments that “the application raises a significant issue regarding one or more of the criteria... Such a showing must go beyond general or speculative claims, and provide specific information regarding potential impacts for the criteria.”

Given the volume and complexity of applications for large-scale net metered facilities and ANR’s existing staffing and review capacity, the Agency finds it difficult to conduct

the necessary level of analysis and adequately assess a facility's potential impact within this 21 day period. This severely undermines the Agency's ability to identify whether projects raise substantive issues under the Section 248 environmental criteria and, if an issue is identified, "provide specific information regarding potential impacts for the criteria". If ANR is unable to effectively comment during the formal period, the Board is often left with only the representations of the applicant upon which to base their decision of whether a project poses an undue adverse impact to the natural environment.

Compounding the challenges of this expedited review process is the fact that many applications for large-scale net metered facilities lack data necessary for the Agency to accurately assess the impacts to natural resources and are effectively incomplete. For instance, applications regularly lack needed data from wetland or rare plant surveys that can only be conducted during specific seasonal periods.

Notwithstanding these challenges, the Agency consistently endeavors to identify substantive issues for applicants and resolve them prior to the end of the comment period. To do so, Agency staff make themselves available to consult with potential applicants to discuss projects during the site-selection and conceptual layout stages of pre-development. Staff also attempt to review all 45 day notices in order to flag issues and share comments with applicants prior to the formal filing (the 45 day notices are required for these facilities). We also provide guidance, technical support and trainings to the energy development community on an ongoing basis. While these efforts have improved ANR's understanding of projects pre-file, improvements with the Board process are still necessary.

Although the expedited review process continues to create challenges, much progress has been made over the past year in the siting of facilities that minimize impacts to natural resources. ANR has engaged extensively with our sister agencies, regional planners and the renewable energy development community, specifically group net metered solar energy developers, to: develop written siting guidance; increase our understanding of net metering project finance and business flow; and share siting strategies that avoid the most obvious natural resource impacts. The solar development community should be commended for their positive response and continued engagement, and while these efforts have improved the overall quality of CPG applications, they have not cured underlying procedural issues that hinder the efficient deployment of well-sited facilities and the Agency's ability to adequately assess the impacts of many proposed facilities. To address this problem, the Agency offers the following recommendations intended to improve the CPG process for large-scale net metered facilities:

- 1. Require that the Board affirmatively make and issue a completeness determination prior to the start of the formal comment period.** The Board should be required to make a completeness determination before the formal comment period commences. As previously indicated, the Agency has seen a number of applications that lack information needed to assess potential impacts;

without this information the applicant cannot demonstrate that the facility meets the substantive criteria required by Section 248. In those instances, it should not be incumbent on the Agency to attempt to obtain this information from the applicant, especially as the clock is ticking on the already truncated review and comment period. Under Section 248, it is the applicant's burden to demonstrate that a facility complies with the substantive criteria. Lack of such information not only raises substantial issues with regard to whether this burden is even met, but effectively shifts the burden to the Agency to raise issues that should have been addressed by the applicant in the first instance.

2. **Require that the Board issue a Notice for Comments which establishes a date certain for submission of comments or request for a hearing.** As stated above, the formal comment period should not commence until the Board has determined that an application is complete and issued a completeness determination or notice. Once such determination has been made, the Board should issue a notice for comments. The notice needs to contain a date certain (no less than 28 days) for when comments, or a request for a hearing, are due. Given the varying dates when the Board, ANR, PSD and other interested persons receive new applications, it is unclear exactly when the comment period starts and ends; noticing a clear comment deadline would resolve this issue.
3. **Provide for a 28 day comment period.** The current 21 day comment period for large-scale net metered facilities is insufficient as explained above. It does not provide persons or entities, including the Agency, enough time to review the application materials, assess the project against the substantive criteria of Section 248, and, if necessary, engage technical experts required to demonstrate that a project raises significant issues regarding one or more of the criteria. ANR recommends the comment period be established at 28 days. We suggest that this extra week be taken from the 45 day pre-file notice period, so that the overall period of review would remain the same – 66 days. The opportunity to review a pre-file notice has value, but since this notice lacks the full suite of information included in the application, the extent of analysis possible during the pre-file period is limited. Therefore we suggest truncating the pre-file notice period to 38 days and extending the formal comment period to 28 days.
4. **Require that the Board develop clear and comprehensive guidance for filing a petition under Section 248/219(a) that establishes a minimum standard for completeness and describes the types of information that must be filed with the Board to demonstrate compliance with the statutory criteria.** Given the expedited review process for large-scale net metered facilities, complete applications that adequately demonstrate compliance with the substantive criteria are necessary for ANR to assess the natural resource impacts of the project and provide meaningful comments during the formal comment period. To date the only guidance offered by the Board for these facilities comes in Board Rule 5.100, which focuses primarily on process and provides little guidance on the type of information necessary to address the substantive criteria. Providing this type

of detailed guidance would inform applicants on how to file good petitions, would help direct the siting of facilities to locations that better address the criteria, and would provide ANR and other interested persons a more robust application to review.

The Board had begun to develop a detailed guidance document, but the document is still in a draft form and does not specifically deal with petitions filed and reviewed under the expedited process for net metered facilities authorized in Title 30 Section 219(a). The draft Board guidance can be accessed here:

<http://psb.vermont.gov/statutesrulesandguidelines/guidelines/GuidetoFiling248Petition>

ANR recommends that the Board be required to work in consultation with the Agency and the Department of Public Service in drafting the detailed guidance, as both agencies have developed their own set of solar siting guidance documents that could inform the Board's product. Greater clarity from the Board on the application process and substance is critical if the current volume of large-scale net metered facility permitting is to be maintained or increased.

- 5. Require that the Board issue a CPG by a date-certain for projects that receive no comments or request for hearings.** In an effort to expedite the permitting of well sited facilities, the Board should issue CPG's for large-scale net metered facilities that raise no significant issues under the criteria by a date-certain, such as 30 days after the end of the comment period if no substantive comments are received (the Board could waive this requirement if they determine an application raises issues under the criteria, even if no comments were received). Predictability around when a CPG would be issued may encourage applicants to identify and resolve issues prior to filing, taking pressure of ANR and other interested persons to address complex issues during the expedited comment period. This practice may also afford the Board and Board staff more time to review and hold hearings for projects that do raise issue and generation comments.