

MEMORANDUM

To: Senator Christopher Bray, Chair, Senate Natural Resources & Energy Committee  
Senator Barbara Snelling, Vice Chair, Senate Natural Resources & Energy Committee  
Senator Brian Campion  
Senator John Rogers  
Senator Mark McDonald

From: John Brabant, Regulatory Affairs Director

Date: 3/8/2016

Re: Amendment language to S. 230

---

In this memo, per the request of the Senate Natural Resources & Energy Committee, Vermonters for a Clean Environment proposes amendments for your consideration to S. 230 regarding the siting and operation of renewable energy facilities. In addition to the requested language below, and where applicable, in lieu of the language changes to statute put provide below, VCE fully supports the bill of amendment to S. 230 introduced by Senator Rogers, which would effectively move the siting evaluation and permitting process from the Public Service Board to the Natural Resources Board.

1. Wind Turbine Noise Standard: the SNR&E Committee has received substantial commentary and concerns from Vermont residents regarding the impacts of industrial wind energy facility siting and operation. As we know, the PSB has issued CPGs to a number of such facilities, conditioned to assure protection of the environment and the health and well-being of the neighboring public which have not either been complied with or are not protective. As such VCE requests the following changes to 30 V.S.A. to address noise concerns for existing and future facilities:

New wind generation facilities:

*Section 248(b)(12) is added to read:*

*(12) With respect to an in-state generation facility that produces electric energy using wind turbine technology driven by wind as its fuel source, will:*

*(A) comply at all times of operation with a 37 dBA\* LMax\*\* noise limit standard attributable to the wind turbine generators at or beyond the plant facility property line and 30 dBA LMax in residence interiors neighboring the plant facility property; and*

*(B) fund the costs of continuous monitoring, data collection and reporting of noise generated by the plant facility at and beyond the property line, to be conducted by an independent third party acoustical expert contracted by the Board with all collected data and records considered as non-exempt public records; and*

(C) assure it has established requirements in the certificate of public good to assure that the plant facility will continuously meet this noise standard through its siting, design or curtailment of operation. The Public Service Board shall diligently and consistently enforce noise standards contained in all issued certificates of public good in a timely manner.

\* *dBA* : A-weighted decibels, abbreviated *dBA*, or *dBa*, or *dB(a)*, are an expression of the relative loudness of sounds in air as perceived by the human ear. In the A-weighted system, the decibel values of sounds at low frequencies are reduced, compared with unweighted decibels, in which no correction is made for audio frequency.

\*\* *Lmax* : Maximum Sound Level : level during a measurement period or a noise event.

## 2. 30 V.S.A. § 246 -248

### § 246. Temporary siting of meteorological stations

(a) As used in this section, a "meteorological station" consists of one temporary tower, which may include guy wires, and attached instrumentation to collect and record wind speed, wind direction, and atmospheric conditions.

(b) The Public Service Board shall establish by rule or order standards and procedures governing application for, and issuance or revocation of, a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title. Temporary meteorological stations shall not be constructed or operated without first receiving a certificate of public good. A meteorological station shall be deemed to promote the public good of the State if it is in compliance with the criteria of this section and the Board rules or orders. An applicant for a certificate of public good for a meteorological station shall be exempt from the requirements of subsection 202(f) of this title.

(c) In developing rules or orders, the Board:

(1) Shall develop a simple application form and shall require that completed applications be filed with the Board, the Department of Public Service, the Agency of Natural Resources, the Agency of Transportation, and the municipality in which the meteorological station is proposed to be located.

(2) Shall require that if no objections are filed within 30 days of the Board's receipt of a complete application and the Board determines that the applicant has met all of the requirements of section 248 of this title, the certificate of public good shall be issued for a period that the Board finds reasonable, but in no event for more than five years. Upon request of an applicant, the Board may renew a certificate of public good. Upon expiration of the certificate, the meteorological station and all associated structures and material shall be removed, and the site shall be restored substantially to its preconstruction condition.

(3) May waive the requirements of section 248 of this title that are not applicable to meteorological stations, including criteria that are generally applicable to public service companies as defined in this title. The Board shall not waive review regarding whether construction will have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, and the public health and safety.

(4) Shall seek to simplify the application and review process, as appropriate, in conformance with this section.

(d) A proposal for decision shall be issued within five months of when the Board receives a completed application for a certificate of public good for the temporary installation of one or more meteorological stations under the provisions of section 248 of this title.

(e) Notwithstanding any contrary provisions of this section, the holder of a certificate of public good for a constructed meteorological station may apply under section 248a of this title or 10 V.S.A. chapter 151 to convert the station to a wireless telecommunications facility, provided the application is filed at least 90 days before the expiration of the certificate for the station. Any such application shall constitute a new application to be reviewed under the facts and circumstances as they exist at the time of the review. (Added 2007, No. 92 (Adj. Sess.), § 17; amended 2011, No. 62, § 35; 2015, No. 41, § 13, eff. June 1, 2015.)

### § 247. Penalty

*In addition to any civil penalty imposed under section 30 and section 230 of this title, any person, partnership, unincorporated association, company or corporation, or the officers of any unincorporated association, company, or corporation who violates section 230 or section 248 of this title shall be fined not more than ~~\$100.00~~ \$10,000 per day of violation or imprisoned not more than 60 days, or both. Where a meteorological station or plant facility is constructed or operated without having received a required certificate of public good, the Public Service Board shall initiate enforcement proceedings to have the station removed and the site restored to its prior condition. Data that may have been collected during the timeframe prior to issuance of a certificate of public good shall not be admissible in any such proceeding. The Board shall issue a stay of the issuance of a certificate of public good for the term of construction and operation of a meteorological station or plant facility prior to certificate of public good issuance. (Amended 1995, No. 99 (Adj. Sess.), § 10.)*

### § 248. New gas and electric purchases, investments, and facilities; certificate of public good

(a)(1) No company, as defined in section 201 of this title, may:

(A) in any way purchase electric capacity or energy from outside the State:

(i) for a period exceeding five years, that represents more than three percent of its historic peak demand, unless the purchase is from a plant as defined in subdivision 8002(14) of this title that produces electricity from renewable energy as defined under subdivision 8002(17); or

(ii) for a period exceeding ten years, that represents more than ten percent of its historic peak demand, if the purchase is from a plant as defined in subdivision 8002(14) of this title that produces electricity from renewable energy as defined under subdivision 8002(17); or

(B) invest in an electric generation or transmission facility located outside this State unless the Public Service Board first finds that the same will promote the general good of the State and issues a certificate to that effect.

(2) Except for the replacement of existing facilities with equivalent facilities in the usual course of business, and except for electric generation facilities that are operated solely for on-site electricity consumption by the owner of those facilities:

(A) no company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may begin site preparation for or construction of an electric generation facility or electric transmission facility within the State which is designed for immediate or eventual operation at any voltage; and

(B) no such company may exercise the right of eminent domain in connection with site preparation for or construction of any such transmission or generation facility, unless the Public Service Board first finds that the same will promote the general good of the State and issues a certificate to that effect.

(3) No company, as defined in section 201 of this title, and no person, as defined in 10 V.S.A. § 6001(14), may in any way begin site preparation for or commence construction of any natural gas facility, except for the replacement of existing facilities with equivalent facilities in the usual course of business, unless the Public Service Board first finds that the same will promote the general good of the State and issues a certificate to that effect pursuant to this section.

(A) For the purposes of this section, the term "natural gas facility" shall mean any natural gas transmission line, storage facility, manufactured-gas facility, or other structure incident to any of the above. For purposes of this section, a "natural gas transmission line" shall include any feeder main or any pipeline facility constructed to deliver natural gas in Vermont directly from a natural gas pipeline facility that has been certified pursuant to the Natural Gas Act, 15 U.S.C. § 717 et seq.

(B) For the purposes of this section, the term "company" shall not include a "natural gas company" (including a "person which will be a natural gas company upon completion of any proposed construction or extension of facilities"), within the meaning of the Natural Gas Act, 15 U.S.C. § 717 et seq.; provided however, that the term

"company" shall include any "natural gas company" to the extent it proposes to construct in Vermont a natural gas facility that is not solely subject to federal jurisdiction under the Natural Gas Act.

(C) The Public Service Board shall have the authority to, and may in its discretion, conduct a proceeding, as set forth in subsection (h) of this section, with respect to a natural gas facility proposed to be constructed in Vermont by a "natural gas company" for the purpose of developing an opinion in connection with federal certification or other federal approval proceedings.

~~(4)(A)~~ Petition applications seeking a certificate of public of public good shall be filed with the Public Service Board in according as required. Where not all under the same ownership and control, applications related to electricity generation plants shall contain the names and addresses of plant facility owners, plant facility operators and plant facility property owner who shall be named as co-applicants and holders of any certificate of public good.

~~(A)~~ ~~(B)~~ With respect to a facility located in the State, the Public Service Board shall hold a pre-application public meeting or meetings on each petition for finding and certificate, with notice provided by applicant to adjoining, affected municipalities and regional planning commissions, the purpose of which shall be for all interested and affected parties to participate in informal discussions to allow an opportunity for those involved to resolve any issues that the proposed plant may present. The Public Service Board shall include an on-site meeting and application overview presentation with all interested public attending. In addition, the Public Service Board shall hold a nontechnical public hearing on each petition for such finding and certificate. Pre-application meetings and nontechnical public hearings shall be conducted in at least one county in which any portion of the construction of the facility is proposed to be located. The Natural Resources Board shall make available staff, coordinators and commissioners upon request to assist the Public Service Board in its pre-application meetings in reaching resolution of issues prior to formal hearings. All parties shall engage and participate in good faith toward reaching resolution of outstanding issues prior to the Public Service Board declaring impasse and initiating formal public hearings.

~~(B)~~ ~~(C)~~ The Public Service Board shall hold technical hearings at locations which it selects, except where a party requests such hearings be held in a location near the proposed facility.

~~(C)~~ ~~(D)~~ At the time of filing its application with the Board, copies shall be given by the petitioner to the Attorney General and the Department of Public Service, and, with respect to facilities within the State, the Department of Health, Agency of Natural Resources, Historic Preservation Division, Agency of Transportation, Agency of Agriculture, Food and Markets, and to the chair or director of the municipal and regional planning commissions and the municipal legislative body for each town and city in which the proposed facility will be located.

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

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

~~(F)~~ ~~(G)~~ The legislative body and the planning commission for the municipality in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection and as a parties of right, shall not be required to file a notice of appearance to participate.

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

(1) With respect to an in-state facility, will not unduly interfere with the orderly development of the region with ~~due consideration~~ substantial deference having been given to the ~~recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality plans and bylaws adopted under 24 V.S.A. chapter 117 of the affected municipalities and the recommendations of the municipal legislative bodies and the municipal and regional planning commissions regarding the municipal and regional plans, respectively. Nothing in this section or other~~

provision of law shall prevent a municipal body from basing its recommendations on an ordinance adopted under 24 V.S.A. § 2291(19) or bylaw adopted under 24 V.S.A. chapter 117 by the municipality in which the facility is located. A rebuttable presumption respecting compliance with the applicable plan shall be created by a letter from an affected municipal legislative body or municipal planning commission concerning compliance with the municipal plan and by a letter from a regional planning commission concerning compliance with the regional plan. When issuing a certificate of public good under this section, the Board shall give substantial deference to all conditions in an existing State or local permit and shall harmonize the conditions in the certificate of public good with the existing permit conditions to the extent feasible. However:

(A) with respect to a natural gas transmission line subject to Board review, the line shall be in conformance with any applicable provisions concerning such lines contained in the duly adopted regional plan; and, in addition, upon application of any party, the Board shall condition any certificate of public good for a natural gas transmission line issued under this section so as to prohibit service connections that would not be in conformance with the adopted municipal plan in any municipality in which the line is located; and

(B) with respect to a ground-mounted solar electric generation facility up to 10 kilowatts in size, shall comply with the screening requirements of a municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance adopted under 24 V.S.A. § 2291(28), and the recommendation of a municipality applying such a bylaw or ordinance, unless the Board finds that requiring such compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.

(2) Is required to meet the need for present and future demand for service which could not otherwise be provided in a more cost-effective manner through energy conservation programs and measures and energy-efficiency and load management measures, including those developed pursuant to the provisions of subsection 209(d), section 218c, and subsection 218(b) of this title. In determining whether this criterion is met, the Board shall assess the environmental and economic costs of the purchase, investment, or construction in the manner set out under subdivision 218c(a)(1) (least cost integrated plan) of this title and, as to a generation facility, shall consider whether the facility will avoid, reduce, or defer transmission or distribution system investments.

(3) Will not adversely affect system stability and reliability.

(4) Will result in an economic benefit to the State and its residents.

(5) The proposed facility will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and due consideration and application of 10 V.S.A. 6086(a)(1) through (8) and (9)(K) and 10, excluding (10)(e) through (f), and greenhouse gas impacts. Deference shall be provided by the Board to established Natural Resources Board precedent and case law under these criteria.

### 3. 24 V.S.A. Chapter 117

#### 24 V.S.A. § 2291. Enumeration of powers

For the purpose of promoting the public health, safety, welfare, and convenience, a town, city, or incorporated village shall have the following powers:

\*\*\*\*

(28) Notwithstanding any contrary provision of sections 2291a and 4413 of this title or 30 V.S.A. chapter 5 or 89, a municipality may adopt an ordinance to establish screening requirements that shall apply to a ground-mounted plant that generates up to 10 kilowatts of electricity from solar energy. In a proceeding under 30 V.S.A. § 248, the municipality may make recommendations to the Public Service Board applying the ordinance to such a plant. The ordinance may designate the municipal body to make this recommendation. Screening requirements and recommendations adopted under this subdivision shall be a condition of a certificate of public good issued for the plant under 30 V.S.A. § 248, provided that they do not prohibit or have the effect of prohibiting the installation of ~~such~~ plants with a generative up to 10 kilowatts and do not have the effect of interfering with its intended functional use.

(A) *Screening requirements under this subdivision shall not be more restrictive than screening requirements applied to commercial development in the municipality under chapter 117 of this title or, if the municipality does not have other bylaws except flood hazard, 10 V.S.A. chapter 151.*

(B) *In this section, "plant" shall have the same meaning as in 30 V.S.A. § 8002 and "screening" means reasonable aesthetic mitigation measures to harmonize a facility with its surroundings and includes landscaping, vegetation, fencing, and topographic features.*

(C) *This subdivision (28) shall not authorize requiring a municipal permit for a solar electric generation plant of a generative capacity of 10 or less kilowatts. Notwithstanding any contrary provision of this title, enforcement of an ordinance adopted under this subdivision shall be pursuant to the provisions of 30 V.S.A. § 30 applicable to violations of 30 V.S.A. § 248. (Added 1969, No. 170 (Adj. Sess.), § 9, eff. March 2, 1970; amended 1977, No. 61, § 2; 1987, No. 70, eff. June 2, 1987; 1991, No. 108, § 1; 1993, No. 211 (Adj. Sess.), § 15, eff. June 17, 1994; 1997, No. 94 (Adj. Sess.), § 2, eff. April 15, 1998; 1999, No. 82 (Adj. Sess.), § 1; 2001, No. 82 (Adj. Sess.), § 1; 2003, No. 42, § 2, eff. May 27, 2003; 2003, No. 63, § 51, eff. June 11, 2003; 2005, No. 173 (Adj. Sess.), § 3, eff. May 22, 2006; 2007, No. 79, § 14, eff. June 9, 2007; 2007, No. 121 (Adj. Sess.), § 19; 2009, No. 45, § 15g; 2009, No. 160 (Adj. Sess.), § 9, eff. June 4, 2010; 2011, No. 53, §§ 14a, 14d(2), eff. May 27, 2011; 2011, No. 138 (Adj. Sess.), § 15, eff. May 14, 2012; 2011, No. 155 (Adj. Sess.), § 8; 2013, No. 16, § 6, eff. May 6, 2013; 2013, No. 122 (Adj. Sess.), § 2; 2013, No. 162 (Adj. Sess.), § 11; 2015, No. 56, § 26e, eff. June 11, 2015.)*

\*\*\*\*

#### **24 V.S.A. § 4413. Limitations on municipal bylaws**

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

- (A) State- or community-owned and operated institutions and facilities.
- (B) Public and private schools and other educational institutions certified by the Agency of Education.
- (C) Churches and other places of worship, convents, and parish houses.
- (D) Public and private hospitals.
- (E) Regional solid waste management facilities certified under 10 V.S.A. chapter 159.

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

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

*(b) A bylaw under this chapter shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248, except that a bylaw may regulate:*

- (1) wind generation facilities 100 kilowatts and larger in size or 80 feet in height;
- (2) the siting and development of renewable energy projects larger than 10 kilowatts, except solar electric plants where greater than 75% of the energy produced on an annual basis will be consumed on-premises.

Thank you for taking time to consider our requested changes and improvements to the Public Service Board process.

Please call 802-498-5661 or email me at [johnb@vce.org](mailto:johnb@vce.org) with any questions you may have.