EnergizeVermont.org

Comments and recommendations on
Draft 4.1 of S.230
March 7, 2016

This document contains Energize Vermont's comments and recommendations on Draft 4.1 of S.230.

Collaboration and Act 250

Energize Vermont supports moving land-use decisions related to energy development from the Public Service Board to Act 250.

Energize Vermont maintains that in order for Vermont to meet its energy goals, energy development must be a collaborative process involving the utilities (who are responsible for meeting the energy goals) and the communities that they serve (whose lands must be used to meet the goals). Only in this way can we ensure that:

- Energy development occurs where it is needed (and not where it is not needed)
- Utility assets are used wisely and efficiently
- Renewable energy for Vermonters is as inexpensive as possible
- Community goals (like conservation, orderly development, and adherence to smart-growth principles) are given their proper weight

For the past forty years, Act 250 has required developers of commercial, industrial, and large residential projects to respect and collaborate with the communities within which their projects lie. During that time, a substantial body of land-use expertise and case law has been developed.

The Public Service Board has neither expertise in land-use regulation nor a sufficient body of relevant case law. The PSB's rulings are so inconsistent that the Board appears to be carrying out a political agenda. This is illustrated by the Board's rulings in Rutland Town (which awarded a CPG to a solar developer) and Bennington (which denied a CPG to a solar developer). The Bennington ruling included a lengthy explanation of the differences between Rutland Town and Bennington. This explanation looks like it was concocted by the Board to justify a decision that many regard as arbitrary and politically motivated.

It is time for land-use associated with energy development to be regulated by Act 250.

Section 248

Draft 4.1 appears to give more weight to regional and municipal plans, but in practice the changes that S.230 would bring about are unlikely to be noticed. The reasons for this are the Public Service Board's contested case process and the squishiness of the terms "due consideration," "substantial deference," and "public good."

Contested Case

"Contested case" is good for wealthy developers and bad for Vermont towns and project neighbors. Towns cannot protect their interests in PSB proceedings without expensive legal representation. The Town of Newark spent well over $100,000 to oppose the construction of a wind measurement tower on the town's most prominent ridgeline. Other towns have spent more—the Senate Committee on Natural Resources and Energy took testimony on the cost to other towns of legal representation in PSB proceedings.

While "contested case" provides the illusion that PSB proceedings are rigorous, the Board's rulings are capricious: the PSB enforces its own rules selectively and can always find a technicality on which to dismiss opposition to a favored project or developer.

In contrast, Act 250 proceedings are less formal, less expensive, more accessible, and more likely to produce good decisions.

Due Consideration, Substantial Deference, and Public Good

The terms "due consideration" and "public good" are meaningless. Draft 4.1 offers a definition of "substantial deference," but the definition is too fuzzy and its application rests upon an undefined notion "public good."

Regional and municipal plans represent the public good at the local level. Overriding a local definition of "public good" ought to be both rare and difficult. That is what "substantial deference" should mean. Any "clear and convincing demonstration" that the local public good ought to be overridden should include:

1. The steps that the Board took to understand the intent and value of the relevant provisions of a duly adopted plan and/or the recommendations of municipal and regional bodies
2. The specific public good that would be achieved by violating the provisions of a duly adopted plan and/or the recommendations of municipal and regional bodies
3. The cost of overriding the public good as defined by municipal and regional planning commissions and a quantification of the benefit of doing so
4. The reasoning that the Board applied in order to conclude that a specific public good is more important than the provisions of a duly adopted plan and/or the recommendations of municipal and regional bodies
5. The other methods of achieving each specific public good that were considered by the Board
6. The reasons that alternative methods of achieving the public good were rejected in favor of a method that violates the provisions of a duly adopted plan and/or the recommendations of municipal and regional bodies

Certification of Regional Plans

Energize Vermont favors transferring energy siting regulation to Act 250, where no special certification of regional plans would be required. Nonetheless we offer these comments on certification.

Subjective certification criterion

S.230 would empower the Commissioner of the Public Service Department to certify regional plans. An uncertified regional plan would receive the meaningless "due consideration" from the Public Service Board. A certified regional plan would receive the poorly-defined "substantial deference." In either case, the plan would be weighed against the undefined "public good."

The sole criterion on which the commissioner would base a decision on certification would be the statutory requirement that regional plans "encourage the efficient use of energy and the development of renewable energy resources."

The right to appeal

We are concerned that the sole criterion for certification is subjective and that the criterion is to be applied by the Commissioner of the Public Service Department—an office that has become too politicized.

We know that regional and municipal planners are required to juggle dozens of statutory requirements which often contradict one another. We worry that an evaluation by a commissioner who is concerned only with electricity may give short shrift to a planning commission's efforts to satisfy the full range of planning goals.

Therefore, a right of appeal is necessary. A regional planning commission should have the right to appeal a denial of certification to a committee made up of representatives of the other regional planning commissions. A successful appeal would result in the certification of the regional plan.

The Blittersdorf Provision

Draft 4.1 includes a provision that would allow an energy operator to build a large generation facility and net meter only a portion of it. The provision would also appear to allow customers from multiple utilities to use the same generation facility for net metering.

If our reading of the bill is correct, then it has the appearance of special interest legislation and Energize Vermont strenuously objects to its inclusion in S.230.

Here is an excerpt from a Caledonian Record story that ran on August 12, 2015. The entire story appears at the end of this document. (We note that a number of statements attributed to David Blittersdorf in the article are demonstrably false.)

> Blittersdorf plans to net-meter 10 percent of the output, which could be sold to Green Mountain Power (GMP) customers at a discount. As of now, only GMP customers could avail themselves of that due to current law. But Blittersdorf is hoping that the law will change so that net metering is allowed across utilities.

We are aware of no provision in current statute that would allow a portion of a generator's output to be net metered. The "Blittersdorf Provision" that appears on pages 33 and 34 of Draft 4.1, allows this as well as net metering across utilities.

We were unable to find an earlier draft of S.230 that contains this provision. We respectfully ask who requested this provision and how the request was transmitted to the Senate Committee on Natural Resources and Energy.

The Blittersdorf Provision gives the impression that in Vermont, well-placed campaign contributions can bring about favorable legislation. Energize Vermont urges that this provision be struck from the bill.

Municipal screening requirements

Page 20 of Draft 4.1 discusses screening requirements described in bylaws and ordinances. The provision should be expanded to explicitly include screening requirements described in municipal plans.

The provision is limited to ground-mounted solar generation facilities. It should be expanded to include any generation facility.

Preferred locations

Encouraging development on preferred locations is a good idea. It is our opinion that identifying preferred locations ought to be the responsibility of communities and the utilities that serve them. It should be the responsibility of communities to determine whether energy development is the best use for brownfields, extraction sites, and former landfills.

We do not see any reason to empower the Public Service Board to designate preferred sites (page 23 of Draft 4.1). We see this only as another means for the PSB to collude with energy developers to thwart Vermont communities.

Adjacent regions and towns

Energize Vermont supports a ban on the siting of industrial wind turbines in Vermont. We note that the provisions on page 39 of Draft 4.1 are inadequate in the case of industrial wind turbines.

On page 39 of Draft 4.1 regions and towns are given the right to party status in energy siting proceedings if facilities are located within 500 feet of their boundary of a proposed facility's site. Adjacent towns and regions should have the right to party status regardless of their distance from a proposed wind project.

Mediation

On page 40 of Draft 4.1, conditions for mediation are described. It is the position of Energize Vermont that while all parties should jointly choose a mediator, the cost of mediation should be borne solely by the party applying for a CPG.

Sale of renewable energy credits

The sale of RECs disadvantages Vermont residents in many ways. S.230 should:

1. End the practice of REC sales on new projects
2. Direct the Public Service Board to develop rules to end the sale of RECs from existing generation facilities within three years.

If Vermonters are to make sacrifices for energy generation, those sacrifices ought to contribute toward Vermont goals. If energy developers are to be given special privileges, those privileges ought to be available only to those who contribute to Vermont goals.

Noise standards and monitoring

Energize Vermont supports a ban on the siting of industrial wind turbines in Vermont. A ban on new projects will not help Vermonters who are suffering negative health impacts due to existing wind plants.

Vermont's energy regulators do not even know whether the quality-of-life impacts of turbine operations are due to the failure of operators to comply with standards or noise standards that are just too lax.

S.230 should require the Public Service Board to strengthen turbine noise standards immediately. They must include standards for both audible noise and infra-sound. These standards must be applied to existing turbines.

In order to ensure compliance with noise standards and safe noise levels at all neighboring properties, S.230 should require the operators of existing wind plants to implement (at their own expense) continuous, transparent noise monitoring by an independent third party. Noise data should be correlated with turbine output and weather data. The correlated data should be uploaded in real time to publicly accessible websites.

S.230 should require operators to respond immediately when noise standards are violated. If the turbines cannot be adjusted to operate within standards, they should be shut down until

conditions change. If it is not possible for turbines to operate safely, then S.230 should require that they be removed.

Caledonian Record

8/12/2015 8:10:00 AM

Blittersdorf Says Irasburg Wind Is A Win-Win Deal

By Jennifer Hersey Cleveland, Staff Writer

+ click to enlarge

IRASBURG - If ice is thrown from blades on two wind turbines David Blittersdorf hopes to build on Kidder Hill, he'll be the first to know.

Blittersdorf cabin is the closest structure to the 499-foot towers he hopes to build there.

The owner of AllEarth Renewables and a leader in renewable energy projects in Vermont said he wants to build the project on Kidder Hill because it is a good site. It has access to roads and powerlines, and Green Mountain Power already planned the transportation route during its Lowell wind project.

Plus, he said, the low elevation - at 1,750 feet - will mean much fewer issues with icing of blades, one of the concerns raised by opponents at Monday night's select board meeting, where Blittersdorf was not permitted to speak most of the time.

But closer to Blittersdorf's heart is the impact that renewable energy developments will have on the Earth.

These kinds of projects, once built, can run forever with new parts and no fuel, Blittersdorf said. They help stabilize long-term energy needs and provide the best long-term prices for energy.

With petroleum-based generation sources, customers are at the whim of the Middle East, he said. And someday in the near future, Blittersdorf sees this country going the way of other places - like Sweden and British Columbia - where hefty taxes are levied against those who pollute the environment with carbon emissions.

"We will hurt our own economy if we don't take care of energy in a clean way," he said. "We

will be at a disadvantage is we don't move to renewables."

Blittersdorf was accused of going about this process in an underhanded and sneaky way, but Blittersdorf says he's given the select board more notice than is required. The select board was given materials a month ago, and Blittersdorf tried to attend a meeting two weeks ago. There was no quorum that night, and the meeting was canceled, but he spoke with Selectman Brian Sanville and assistant town clerk Priscilla Stebenne. Blittersdorf was unaware that the board held a make-up meeting August 3.

About 20 people attended a gathering at Blittersdorf's cabin, where he said about half were against the project and half either for it or at least open-minded about it.

Blittersdorf said any other delay was simply him trying to get his data in line so he had plenty of information before moving into the permitting stage.

Benefits to Irasburg

Irasburg would likely receive about $40,000 a year in tax credits, Blittersdorf said, basing that on the same size projects in Georgia and Milton at the Georgia Mountain project he owns in part.

The development would additionally pay three-tenths of a cent toward school taxes for each kilowatt hour, while using no town services.

Blittersdorf plans to net-meter 10 percent of the output, which could be sold to Green Mountain Power (GMP) customers at a discount. As of now, only GMP customers could avail themselves of that due to current law. But Blittersdorf is hoping that the law will change so that net metering is allowed across utilities.

Irasburg residents are on the Vermont Electric Co-op system now.

Concerns

A few people raised concerns Monday night about people being forced off their land during blasting, excessive noise, wind turbine syndrome, and other issues.

Blittersdorf responded to them by phone Tuesday.

Whenever rock is blasted, a safety zone with a 1,000-foot radius is required, and opponents at Georgia have tried to use that to their advantage, Blittersdorf said.

Annette Smith, executive director of Vermonters for a Clean Environment, was one such opponent. She knew that if she could delay construction, Blittersdorf would miss his deadline to receive federal tax credits, Blittersdorf said.

A family had their kids camp out in a tent inside the blast zone, and Blittersdorf said he had to get a restraining order to keep them safe during blasting.

"They went and put kids in harm's way to try to stop us, which I think is really

irresponsible," he said.

For that issue, Blittersdorf admittedly used a law firm where House Speaker Shap Smith is employed, but Smith had nothing to do with the restraining order.

At the Irasburg meeting, a woman said Blittersdorf was fined at Georgia Mountain for illegal blasting, but Blittersdorf said that's not true. He was fined $10,000, but it was because the contractor's crew was not allowed to work on holidays. They inadvertently worked on Bennington Battle Day, he said.

Irasburg opponents accused the developer of being in bed with Governor Peter Shumlin.

Blittersdorf has contributed to Shumlin's campaign, as he has contributed at the maximum level to Bernie Sanders' campaign. He contributes to both because they believe global warming is real and are committed to doing something about it, Blittersdorf said.

"If $4,000 can buy someone who has a million-dollar campaign, that's pretty sad," he said.

As for wind turbine syndrome, Blittersdorf said, "It's not scientifically valid."

Like the placebo effect can have a good effect on one's health, the "nocebo effect" can be harmful, Blittersdorf said. "If you have it in your head something's going to happen, you can get results," he said.

As for noise, sound has been monitored at the Georgia Mt. site and found to be within acceptable ranges - 45 decibels outside and 30 inside. A library with no one talking produces about 35 decibels, Blittersdorf said, whereas the Irasburg selectmen's meeting Monday night was probably about 70 to 80 decibels.

The main person complaining about noise at the Georgia Mt. site has been found to be dishonest, Blittersdorf said. She has reported noises like jet engines when turbines were not even running, he said.

As for complaints that wind turbines don't work, Blittersdorf wonders how he can be the greedy, rich guy spoken about in Irasburg if his turbines don't operate.

Wind power does contribute to baseload power, despite what opponents said, Blittersdorf said, as will be proven with ISO capacity credits which are only given to baseload sources.

As for Blittersdorf raking in the dough in tax credits, the credits are only for energy produced. The project would be eligible for 2.3 cents in tax credits for each kilowatt generated over ten years, he said.

In contrast, solar projects get up-front credits for building the project, while gasoline is so heavily subsidized and incentivized that customers pay less than $4 a gallon for a product that should cost $10.