Testimony to the Vermont Senate Committee on Natural Resources and Energy regarding S.230, the Energy Development Improvement Act

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Thank you for this opportunity to provide comments to your committee regarding S.230 and solar siting issues. This bill provides an opportunity to assess how solar development has proceeded thus far in Vermont, and to reflect in a meaningful way on goals, means and objectives that can allow or encourage appropriate, truly renewable energy development in ways that do not devalue Vermont's agricultural landscape, natural resources, cultural heritage, and rural economies.

Introduction

S.230 is a bill addressing the siting of energy projects, and related procedures of the Public Service Board. As now delineated, the bill contains the following provisions:

Section 1 designates the act as the Energy Development Improvement Act.

Section 2 relates to proposed changes at the Public Service Board, specifically to create a position of Public Assistance Officer to aid members of the public in meaningful participation before the Board.

Section 3 creates this PAO position.

Section 4 pertains to the use of eminent domain in energy facilities siting.

Section 5 pertains to jurisdiction and rates; the proposed amendment to this provision involves the extension of three-phase lines.

Section 6 pertains to decommissioning.

Section 7 pertains to the Standard Offer Program, and establishes a pilot program for preferred siting.

Section 8 pertains to co-location of net metering facilities.

Section 9 prescribes the effective dates of the legislation.

My comments include general comments on solar photovoltaic electric generation facility siting, and then address each of these sections of S.230.

Qualifications

I am an attorney in private practice under the aegis of Hill Attorney PLLC in Middlebury, Vermont. I am licensed to practice in the state of Vermont, in the federal district courts in Vermont and Massachusetts, in the 1st and 2nd Circuit Courts of Appeal, and in the US Supreme Court. I have been an attorney since 1987. I hold a bachelor's degree in Political Science/American Government with a minor in Environmental Studies from SUNY Stony Brook, and an MSEL and JD from Vermont Law School.

My practice has primarily focused on public interest ligation including the successful representation of nonprofit environmental organizations in cases such as *Dubois and Restore the North Woods v. USDA and Loon Mountain Corporation* regarding snowmaking extractions in the White Mountain National Forest and *Restore the North Woods v. USDA* regarding the Sugarbush land swap. I also represented nonprofit and public interest parties in *Elliott and Preserve Appalachian Wilderness v. US Fish and Wildlife Service* regarding lampricide in Lake Champlain, and represented the National Association of Railroad Passengers in the NEPA and Clean Air Act litigation relative to Boston's Big Dig.

In representing municipalities, I recently won a complex property tax appeal at the Vermont Supreme Court on behalf of the Town of Sudbury. I have tried

significant criminal cases at the state and federal level and engaged often successfully in dozens of criminal appeals. I am also the NRA referral attorney for Vermont, and have represented numerous sportsmen's organizations in their interests in protecting open space and natural resources including wildlife habitat; and I edit UN technical documents and reports on global programs in the areas of women and children's services, the environment including climate change, and energy including global extractive industries reports.

Before working as an attorney, I was the senior land use and natural resources planner at Pioneer Valley Planning Commission in West Springfield, Massachusetts. Here in Vermont I have served as a zoning administrator. I have written many municipal land use bylaws, and worked with many clients, towns, nonprofit and for-profit entities on developing socially- and environmentally-positive development schemes involving limited development paired with land conservation.

In terms of involvement with utility siting issues, I participated personally and as an aid to a Suffolk County legislator and as a staff member of the NY State Legislature Downstate Minority Office in the NRC licensing proceedings for the Shoreham LI Nuclear Power Plant from the 1970s through the final decision not to operate in 1989. I participated personally and on behalf of various environmental organizations in several dozen FERC dam relicensing proceedings throughout New

England and New York, and in several venues in regards to the James Bay HydroQuebec development.

I am presently representing the Town of New Haven, Vermont, in approximately 12 pending solar photovoltaic electric generation facility matters before the Public Service Board, as well as in Docket 8652, which is Green Mountain Power's petition to interconnect net metering above the 15% statutory cap. I also am representing private clients regarding solar photovoltaic electric generation facility siting in other towns. I am also representing New Haven, with Richard Saudek as co-counsel, in the pending Anbaric proposal to site a High Voltage DC line converter station in New Haven.

General Comments on Solar Photovoltaic Electric Generation Facility Siting in Vermont

A. The public knows the difference between "vegetables" and "french fries": Encourage REAL renewable energy.

With the exception of a few outliers, we all know vegetables are good for us and that we should be eating more of them. But the present legislative scheme for renewable energy in Vermont is analogous to this legislature mandating that our school children be fed McDonald's french fries three times a day, with no ability for parents or schools to say no, under the guise that they are "vegetables". The public would be well aware in such a situation that the goal of mandating french fry

consumption had nothing to do with feeding our kids vegetables and everything to do with making the vending corporation money.

This legislature, together with the directives of this governor, has mandated that 'renewable energy' projects go through a streamlined public review process that results in approval in virtually all circumstances. I believe there are about 3 denials of CPGs out of thousands of such applications before the Public Service Board.

But the RECs for the vast majority of these projects -- at least the ones larger than home roof-top size -- are sold to out of state polluting entities. The public is well aware of this. It is one thing to drive by an ugly industrial installation in your beautiful farmland and know as you do so that your community is doing its part to lower carbon emissions and contribute to addressing climate change impacts. It's quite another to drive by the same ugly industrial installation and know that it allowed wealthy out of state or out of country development companies to sell its renewable attributes to a polluter. That combined with the carbon emissions of producing the panels and the as-of-yet unknown decommissioning costs of dealing with panels containing hazardous materials means you have done an end-run around decades of Vermont efforts to protect our farmlands and scenic and natural resources, done an end-run around municipal and state land use review, to create a null or negative climate change impact. Many members of the public in our rural communities are mad as hell about this.

Projects for which the RECs are sold absolutely should not be counted in Vermont's renewable energy portfolio, and absolutely should not be afforded any preferential treatment in siting. Such projects should go through full municipal and/or Act 250 review. Only projects for which the RECS are retired should be eligible for any preferential siting or review procedures.

To this end, it would also behoove this legislature, in consideration of renewable energy facility siting, to create not only incentives for siting in preferable geographical locations, but also incentives to accomplish the State's renewable energy goals. I propose that this legislature work to establish a private nonprofit organization in coordination with the State's utilities, to which renewable energy project developers could donate their RECs, receiving a tax deduction for the donation, at which point the nonprofit organization would then retire the RECs. Such an organization should have a diverse board including utility, public, and state agency members. This Committee should establish such a working group now, directed to explore this with the IRS and Vermont tax department and report back in a few weeks with a recommended structure for forming such an entity.

Such a program, combined with a requirement that all projects for which the RECs are to be sold must go through the same land use review as other commercial projects, will re-set Vermont renewable energy program to engage in real renewable energy development -- vegetables -- instead of corporate

profiteering at the expense of Vermont's farmland, scenic beauty, natural resources, and culture of respect for local control.

B. If you build it, they will come: Don't set up Vermont's most valuable assets for a fall.

One could write an entire book full of phrases designed to warn against rushing in without thinking through the consequences: Haste makes waste, shortcuts make long delays, and never dive into the pool without knowing its depth. The legislature mandated a headlong rush into solar development without thinking through the outcomes; this solar siting bill now presents an opportunity to examine the direction of this development and assess its present and future consequences, and adjust accordingly.

There are a plethora of impacts and unknowns arising as a result of the rush to intensive solar development in Vermont.

Solar photovoltaic electric generation facilities -- or any distributed generation -- makes the most sense when placed near demand for electricity. Rooftop solar on a house, for example, makes sense because most of that energy is used right there in the house, and the equipment on site help protect the electric grid against any negative impacts which may occur from excess power flowing back into the system. On a larger scale, solar development makes the most sense near housing, industry, and other facilities that use electric power. In Vermont that

means in Chittenden County and other areas of intensive land use such as Rutland, St. Johnsbury, Brattleboro, Bennington and Montpelier.

Allowing private commercial developers to choose where they want to put solar electric generation facilities, however, leads to precisely the opposite effect: They will utilize the cheapest land they can find, and thus locate solar development far from demand, in rural, sparsely-populated regions like Addison County.

--***System overload***

The first obvious impact of this is the "red zones" on the GMP Solar Map. These areas indicate distribution lines where distributed generation -- including solar, methane and other distributed energy generation, but in Addison County these are dominantly solar with a little cow power -- is high and demand is low, to the point that there are effects on the utility infrastructure such as reverse power flows through the substations, and exceeding the thermal rating of the substations.

This overload, left as it is, reduces the resiliency of the electricity distribution system in this region, and leaves minimal space for local residents to add home or farm distributed generation facilities to the system. Having allowed commercial out-of-area, out-of-state and out-of-country developers to eat up Addison County farmland for their solar projects, we now face constraints on the ability of local residents to diminish their utility bills.

This overload could be addressed by costly system upgrades charged to the ratepayers -- utterly unnecessarily, as reasonable siting of these distributed generation facilities near electric demand would avoid the need to do so. You would be adding insult to injury by adding more industrial-looking infrastructure -- bigger substations, more lines and poles -- to the rural landscape in order to accommodate more industrial-looking solar development.

--Invitation to industrial development

By allowing private merchant developers to site electric generation facilities on the cheapest land they can find, you have set Addison County and the other "red zones" up for a mighty fall.

The simplest way to turn those GMP Solar Map red zones back to green is for energy-intensive industry to move in and sop up the excess power. If I were looking to site an industrial enterprise right now, these red zones are where I'd put it. You've got energy to spare plus upgraded three-phase lines, and cheap land. Parking energy-intensive industry next to a solar array also ensures that the aesthetic impact argument is null; the industrial development can simply bootstrap on the argument that since the scenery is already industrial due to the solar panels, adding the factory next door will hardly matter.

Adding to this potentiality is the uncertainty about what happens to the area under a CPG, as well as its affiliated underlying parcel, when the 15 year zoning

'grandfathering' period elapses. After 15 years, zoning violations are 'normalized' under Vermont law. It is uncertain how the Vermont Environmental Court and Supreme Court is going to consider parcels of land on which there is solar development contrary to local zoning bylaws. After 15 years, can these parcels be converted to other industrial uses, especially where those uses are designed to utilize the power from the distributed generation facility? Can they be converted to other, more intensive energy uses? Or is local and state land use control over these parcels lost forever once they've fallen under §248 jurisdiction?

What is assured is that "If you build it, they will come." This legislature has ensured that private merchant developers have built ample, even excessive, electrical power generation next to cheap available land. The consequences will be long-term and far-reaching, and antithetical to all the years, hours, dollars and work put into protecting Vermont's rural cultural heritage, agricultural landscape and farm economy. *Planning* is all about looking ahead, thinking through the negative consequences of actions while simultaneously devising ways to encourage desirable outcomes. Letting merchant solar developers -- many of them fly-by-night single-purpose LLCs operating out of Mailbox Etc. addresses -- dictate the future of land development in rural Vermont could not be farther from the notion of responsible planning.

Clarifying and protective legislation is required to ensure that distributed generation development does not spawn unwanted and inappropriately sited industrial development in rural Vermont.

C. The mess in the vault: Impacts on land records, property values and insurance

Solar photovoltaic electric generation facility development as now proceeding in Vermont is wreaking havoc in the vault -- that is, in the land records which are the core legal structure pertaining to real property. The land records are literally 'the law of the land' meaning the legally binding instruments pertaining to the ownership and interest in parcels of real estate.

The Statute of Frauds requires that all dealings regarding real property be in writing. The principle of marketable title relies on those written documents being in the vault -- that is, in the land records. Marketable title as well as other interests such as liability and taxation also depend on those documents being clear and definite, following traditional formats for land transactions such as leases, easements or transfers of ownership interests.

When a utility develops an electric generation facility, it's a fair be that the utility owns the land on which the facility will be sited; that the utility is a stable financial entity (and if it crashes, the public and regulators will know about it); and that any easements across other lands, or agreements with abutters regarding conditions, will be filed in the land records and clearly stated.

Not so with merchant distributed generation facilities. These projects raise a host of land-records and real-property-law problems:

--Merchant distributed generation facilities, particularly net metering facilities in the guise of 'community solar arrays', are developed by newly formed, assetless, single-purpose LLCs on other people's land under agreements that may or may not be easements, leases or vague licenses, and may or may not be filed in the land records. These agreements rarely include the right to engage in mitigation such as landscaping outside the designative project area. The CPGs are not necessarily filed in the land records, and often do not indicate which portion of the property they apply to. The CPGs have no expiration date. Transfers to subsequent CPG holders are similarly not filed in the land records most of the time. How is anyone searching the title supposed to know what property has a CPG on it, whether that CPG applies to the whole or part of a parcel, and whether it is still in effect? ***CPGs should be registered in the land records, with proof of filing placed in the PSB record. CPGs should have expiration dates; the PSB should have a tickler system that notifies the CPG holder at least one year prior to expiration so that either the CPG renewal is sought or decommissioning processes are begun. CPG transfers should also be filed in the land records. Applicants for CPGs should be required to demonstrate legal control over a defined***

area of land to which the CPG will apply. That site plan should be filed in the land records, with proof of recording submitted to the PSB.

--What happens to the CPG, and the land parcel, when the merchant developer LLC dissolves and vanishes? When it goes bankrupt? I am certain this will happen, frequently, before these projects start reaching the decommissioning stage. ***Decommissioning funds should be required in the form of a bond posted upon issuance of a CPG. There should also be established by this legislature a decommissioning fund, funded through filing fees of CPG applicants, to be available to pay decommissioning costs that have not yet come to light -- such as fees for disposing of panels as hazardous waste, or taking them apart for recycling.***

--The landowner's signature is not on the CPG applications -- so how can the Public Service Board bind the land of a person who has not submitted to have their land so bound? How does the Board even know that the landowner wants the CPG or the project, or would agree to mitigation measures like landscaping? This question is even more troubling in the face of the tactic that many merchant solar developers employ of finding landowners who are in arrears on their property taxes and offering to pay the back taxes in exchange for the permission to build the solar array. Add to this situation the fact that merchant solar developers are, as pointed out by the Attorney

General recently, engaged in fraudulent marketing practices that mislead consumers regarding the renewable attributes of their projects. ***The landowner should have to sign as the applicant or co-applicant of all distributed generation development facilities. Issuance of a CPG significantly affects that person's interest in their real property, and should not be done without that property owner's full knowledgeable participation and permission. I have dealt with at least one landowner who refused permission for a solar developer to plant mitigating landscaping outside the project fenceline; and there was a letter in last week's Addison Independent regarding a well-known solar developer who built a 150kW array in the writer's yard then did not do the required mitigation screening, and is now refusing the landowner's calls and emails. The landowner needs to be a party to the CPG proceedings, as well as fully informed of what the CPG will mean regarding their property and what their options are if the developer does not abide by the conditions of the CPG.***

--Applications do not include parcel numbers, and often do not include lawful 9-1-1 street addresses. How is anyone, including Town Selectboard and Planning Commission members supposed to know where the project is located? And without GPS coordinates, when located on a large farm parcel, how is anyone supposed to know where on the parcel the project is

proposed? I have spent a considerable amount of time on behalf of clients trying to figure out where a proposed solar array is intended to be developed. Site plans particularly for net metering arrays up to 150kW are often vague as to their location, and give wrong addresses. It makes it impossible for Town Selectboards and Planning Commissions to comment meaningfully on siting -- or for the PSB to know if the applicant is 'gaming the system' with adjacent 150kW arrays. ***Applications for CPGs should include the parcel number and GPS coordinates, enabling the Board and stakeholders to accurately identify where the project will be located.***

--Applications don't presently require site plans that include wells, septic, and Act 250, wastewater, stormwater, or subdivision information. Project applicants often do not appropriately notify abutters (in my experience, in at least 1/3 of the applications, abutters have not been appropriately notified) or other individuals with legal rights and interests in the real property on which the project is proposed. These projects are being built on lots that are subject to Act 250, on lots that are the subject of wastewater permits, across the lines of subdivided parcels, and on land that other individuals have rights to such as well or septic rights, or rights-of-way. Although CPG project review need not give any credence to existing Act 250, zoning or subdivision conditions on a property, the same is not true in the inverse. A solar array built over the lot designated for septic on an Act 250 subdivision plan now

implicates the marketability of all the other lots -- and raises the simple question of whether the Act 250 and subdivision approvals are now null and void. This in turn implicates the property rights of owners of other parcels of that subdivision. Granting a CPG for a project on a parcel where developing a solar array will effectively negate another persons right to sewer, water or passage constitutes a taking. ***CPG applicants should be required to attest, under pains and penalties of perjury, that they have notified all abutters by certified mail, and to provide certified copies of the tax maps and grand list and their certified mailing receipts as proof of same. In addition to abutters, applicants should be required to disclose, and notify, all other persons with any legal rights in the land parcel included leases, easements and rights-of-way; and to notify all state entities that administer programs or permits which affect the project parcel.***

--The Public Service Board is not requiring proof that the projects are insured, or proof that a homeowner's insurance will continue coverage of the premises with a solar array on it. Solar arrays do create hazards including risk of fire --which in turn creates risk of electrocution for firefighters since the projects can not be shut off. ***Project developers should be required to provide proof of insurance for the projects and the premises including coverage for injury including electrocution; such proof of insurance should be required to remain in effect for the duration of the project.***

There is a growing body of evidence that solar photovoltaic electric generation facilities negatively affect adjoining property values. Evidence to this effect has been presented in testimony in cases such as the *Petition of Next Generation Solar Farm*, Docket 8523. Appraiser Bill Benton has reduced the assessed value of at least one home in Addison County due to the reduction in the value of its view now that it looks out over a solar array, and in the Next Generation case, realtor Diana Berthiaume attested to having lost a house sale in Addison County when the seller disclosed that a solar array was being developed on an adjoining property. Ms. Berthiaume further attested as to the negative impact on saleability and selling price of properties near at least some large solar arrays. This evidence is only beginning to develop because we have not yet had time to have significant real property turn-over, or even tax grievances, next to solar arrays yet. Over the next five years, this evidence will develop and the patterns will become apparent-- as will the fallout effect on town property taxes.

This information is particularly troublesome in light of the highly favorable property tax scheme imposed on these projects. The projects are undervalued and contribute little to municipal property tax coffers, and may be resulting in a net loss to municipalities. ***This Committee should convene an immediate working group, including at the least an appraiser, a town lister, a realtor, a property tax expert and other similar professionals, to assess the present state of information about impact of solar development on adjoining properties and municipal taxes. This***

information is critically necessary to inform this Committee of the economic impacts of solar siting.

D. Public Service Board process is nigh on incomprehensible--and leaves money on the table

I am an attorney who has been in practice in several jurisdictions for going on 30 years, and has been engaged in all manner of complex litigation. I have a high IQ and am the daughter of a rocket scientist, literally. Yet even for me, what goes on at the Public Service Board is frequently incomprehensible.

The PSB rules say that the Rules of Evidence and Rules of Civil Procedure apply -- but they don't, not really. The process feels like it is made up on a rolling basis and participants are pretty much clinging to the side of the raft as each case makes its way through the rapids. Being an attorney almost feels like a disadvantage because I come in expecting the Rule of Law as embodied in the Rules of Civil Procedure and Evidence to be present and utilized -- and when they aren't, I am extremely perplexed.

One major problem is that the Public Service Board is now acting as a quasi-judicial body for thousands of cases -- yet the office is not set up as a clerk's office designed to respond to the public, as it is in every court in the state. The administrative staff who answers the phone and the door have apparently been instructed not to provide anyone with even the most basic information, such as the docket number for a case, whether a case has been filed, and whether deadlines

have been set yet. I've often been filing in a case for months with a blank for the docket number because no one will tell me what the docket number is (and there's no way to determine it in most cases from the website). When I've gone to view files of CPG application cases, instead of being handed the file as I would in any court clerk's office, I've been told that I had to file public records requests. To an attorney, this is baffling; to a non-attorney, it must be nothing short of daunting.

Another problem is that the body of Public Service Board cases is barely accessible and searchable. The PSB website does have a very awkward, antique Boolean search function for PSB cases. But those cases have not been indexed or sorted in any way. Even for someone highly skilled in legal, academic and technical research such as myself, it is extremely difficult to look at PSB cases to determine the Board policies or protocols in any given issue. This leads to unnecessary conflict and exclusion. If, for example, neighbors were able to look up what sorts of things the PSB required for landscaping in the last twenty 150kW solar cases, they would have a sense of what they are likely to receive in negotiation (if there were such a thing) or by opposing the project. Since it is all but impossible to determine such an answer, each case is entered by stakeholders who are effectively flying blind, with no sense of what the norms, standards or processes are for similar cases.

But one of the most egregious problems with the Public Service Board process is that it leaves money and opportunity on the table. By not involving the landowner, and by not engaging a civil litigation pretrial procedure that includes

settlement conferences and alternative dispute resolution involving all stakeholders, the Public Service Board process of approving solar photovoltaic generation facilities misses significant opportunities to reduce conflict (and thus create buy-in), to improve project siting in the small sense (such as figuring out landscaping mitigation or setbacks to ease the concerns of a project neighbor), and to create win-win situations in the larger sense (such as creating opportunities for the landowner to donate a conservation easement on the remainder of their property thus offsetting the income for the lease of land for the development; or shifting the proposed project siting and configuration; or having the developer convey a temporal easement binding the project site to be forever either solar photovoltaic or else open land; or combining a proposed distributed generation facility with other proposed land development to more closely align demand and generation). Bargain-sale and easement donations, and donations of RECs, create opportunities for win-win public benefits that can better protect scenic and natural resources including farmland, while putting more money in the landowner's and developer's pockets for better-configured developments.

The present CPG process provides absolutely zero impetus or even opportunity to have these discussions. Comments and opposition to a CPG application must be made extremely swiftly, and with the assumption that the PSB will rubber-stamp the application, perhaps with some tiny concession to aesthetics, there is absolutely no reason for applicants to negotiate the project. Attempts to

negotiate are further thwarted by the secret, behind-closed-doors MOU process engaged in between project proponents and the Department of Public Service and Agency of Natural Resources. Those agencies cut their deals without consultation with other stakeholders and intervenors -- and project proponents assume, based on past PSB practice, that once agreements are reached with those agencies, the project is a done deal, so intervenors are utterly ignored.

But multi-stakeholder negotiation leads to far better projects, diffuses conflict, and provides space for development of win-win outcomes. The myriad siting problems with these projects -- endangered species habitat, issues regarding traffic during construction, prime ag soils, iconographic viewsheds, impact on adjoining property values, issues regarding property rights or boundary disputes-- are best known by the stakeholders most intimately associated with the project parcel, specifically neighbors and Towns. Excluding their input, or exasperating them with what truly feels like an abusive CPG process, leads to bad results and a very angry populace. Justice is served, and citizens are happy, when they walk out of a hearing room feeling like they've been respectfully heard and their views considered, regardless of whether they won or lost. No one walks out of a PSB hearing with that feeling, except perhaps the project proponent.

The Public Service Board requires an extensive structural overhaul to promote effective agency and judicial administration and render it more efficient and responsive to the public and other stakeholders. The push to drive solar

development has created overwhelming pressure on the Public Service Board which its present structure is ill equipped to handle. The folks working there need help. You can't enact policies like the solar development push, and not anticipate and fund the tidal wave of work that needs doing to reach those ends. Small bandaids won't fix the problem.

The pushback and conflict which necessarily arises under such circumstances costs time and money; as a concerned citizen witness in the Next Generation case testified, it also results in creating enemies where enemies need not be created. Money invested in redesigning the Public Service Board process will result in better projects -- projects that don't throw out assets highly prized by Vermonters -- and a better sense of inclusion and meaningful participation, which in turn will reduce conflict and, over the long run, save money otherwise spent on needless litigation.

E. Municipal review of solar photovoltaic energy generation facility siting would diffuse conflict, ensure that land records issues are addressed, and create a forum for win-win solutions.

All other states that I have looked at, including all our adjoining states, engage municipal land use review processes in solar siting.

Municipal land use review of solar projects would resolve a significant number of the land records issues raised by these projects. Local ZAs and

appropriate municipal panel members, for example, would be familiar with the locus parcel and able to determine if abutters had been appropriately notified.

Municipal land use review processes create a stakeholder forum in which to resolve siting issues, and in which win-win solutions might be devised. It is a far less daunting process for participants than the PSB process. Local land use review entities are far better equipped to suggest project reconfigurations that would resolve aesthetic and natural resource conflicts, given their familiarity with the land and the ability to have all stakeholders including the landowner at the table.

Municipal review would relieve the overwhelming backlog at the Public Service Board without having to restructure the Public Service Board. While it would once again mean more work for municipal boards, that work would be spread across the state and, if your siting incentives work appropriately, should become more focused in more urban areas better equipped to handle the applications.

The concern being publicly voiced about going this route is that Towns could choose to say no to solar development projects. As stated above, for projects where the RECs are being sold, and thus which are not actually renewable energy projects, this is perfectly appropriate -- these should be treated the same as any other commercial development. It is also worth noting that, despite this sky-is-falling

prediction, Towns rarely give a flat NO to any development project that is within a zone where that use is allowable whether by right or conditional use.

For truly renewable projects, another approach to satisfy this aim might be something akin to Vermont's law regarding mobile homes -- this legislature could state that Towns may not preclude truly renewable solar photovoltaic electric generation facilities from the Town, but may limit their placement, size or number or regulate them as to setbacks, natural resource protection, screening and construction impacts. Projects over a certain size should go through Act 250 for siting, as with other commercial development.

The fear that municipalities might actually turn down projects is overstated. More realistic would be the perspective that if municipalities reviewed these projects, the projects might actually have to engage in proper notice, clearly declare the project elements and parameters, have legal control over the property, and meaningfully engage with stakeholders regarding siting, configuration and mitigation. Merchant solar developers, who make millions of dollars on these projects, may be mildly inconvenienced by this process. But getting back to the vegetable analogy, this is akin to saying that we can't possibly allow broccoli or carrots in the school lunch program because they need to be cut up, and therefore french fries are the appropriate vegetable for children.

F. Solar siting includes physical project size, not just kW.

This legislature to date has addressed solar development solely in terms of kW project size. However, kW project size is not the same thing as physical project size in area -- and this legislature has to date not created any incentives for projects to use more efficient, smaller solar panels or to strive to limit the physical size of their arrays. One example is that in New Haven we are facing a proposed 2.2MW standard offer project that will occupy over 20 acres with the panels alone, plus access roads and fencing. Nearly 27 acres will be involved in the project. We have charted all 2.2MW facilities in the state, and they run as small as 9 acres and average more like 11. Siting a 9 acre project has far fewer impacts than a 27 acre project. The electricity produced is not necessarily correlated to this physical size. Higher quality, higher wattage solar panels produce far more energy in far less space -- and these factors are improving every day. Siting incentives must include requirements to engineer projects to minimize size impacts and to look to up to date technology to makes these projects more efficient.

Specific Comments on S.230 as presently drafted

Section 1 designates the act as the Energy Development Improvement Act.

COMMENT: No comment necessary.

Section 2 relates to proposed changes at the Public Service Board, specifically to create a position of Public Assistance Officer to aid members of the public in meaningful participation before the Board.

Section 3 creates this PAO position.

COMMENT: I commend this Committee for acknowledging that the public, including municipalities as well as neighbor-intervenors and citizens organizations, have difficulty participating in Public Service Board processes. This proposed provision recognizes two problems: That the PSB does not function as a citizen-serving court clerks' office or even as a responsive and transparent public agency; and that the Department of Public Service Public Advocacy office, which one would anticipate from its name and function would be fulfilling the role of aiding citizen and municipal intervenors, has become, at the behest of the Governor to whom they report, an active advocate for the merchant developer/nonutility generators, with whom the Town and citizen intervenors are usually in opposition. This has left the municipalities and citizens with nowhere to turn for information and assistance in navigating the Kafka-esque PSB process. It has also, again, created a situation where there is no impetus to improve the outcomes of solar siting, where win-win opportunities are cast by the wayside, and where there is no accountability for merchant energy developers.

That said, this proposed Section 3 barely begins to scratch the service of what is required to render this process functional. I suggest going far deeper in your approach to these endemic dysfunctions as follows:

--Reorganize the Public Service Board so that CPG cases are heard by administrative law judges under the aegis of the Court Administrator's Office and the Vermont Supreme Court, instead of by hearing officers. Have CPG applications be initially assigned to a case manager who is directed to engage in conflict resolution processes in an attempt to reach global settlement amongst all stakeholders. If global settlement can not be reached, the case would be moved over to an ALJ for evidentiary hearing following the Rules of Civil Procedure and Rules of Evidence.

--Form a standing committee to oversee public participation at the PSB and to recommend rules changes regarding PSG procedure, especially regarding public participation.

--Reorganize the PSB offices to function more like court clerks offices, being responsive to the public.

--Create and fund within the Department of Public Service Public Advocacy Division include an Office of Citizen and Municipal Advocacy, to be separated by firewalls from the rest of the department, and whose mission is to aid municipal and citizen intervenors. Such office may be required to publish materials of use to municipal and citizen stakeholders as well as to assist them in understanding and meaningfully participating in the process.

Section 4 pertains to the use of eminent domain in energy facilities siting.

COMMENT: The extension of eminent domain power relevant to energy facilities siting would be an egregious mistake. People are already irate at having these projects shoved down their throats -- especially those projects for which RECs are sold. Instead of diffusing that ire by creating buy-in through inclusionary processes and win-win outcomes, engaging the eminent domain power would ensure that the groundswell of pushback would erupt into heated conflict. It is utterly unnecessary and demonstrates disdain for the people of Vermont and the long-cherished values of Vermonters involving their land and their independence.

Section 5 pertains to jurisdiction and rates; the proposed amendment to this provision involves the extension of three-phase lines.

COMMENT: Encouraging the extension of three-phase lines at ratepayer expense under the guise of better siting for solar is an inappropriate twisting of the issue. It turns the siting issue on its head. Solar should be sited closer to electric usage demand. Encouraging ratepayer funded extension of three-phase lines only encourages greater solar penetration in rural areas where there is minimal load, and where solar should not be sited. It also inappropriately shifts costs for mulit-million dollar private development projects to the ratepayers. Like the expansion of eminent domain, it is precisely the wrong approach.

Section 6 pertains to decommissioning.

COMMENT: I commend the committee on its consideration of decommissioning requirements for all solar electric generation facilities. I suspect

that decommissioning these projects will be harder than anticipated, as solar panels contain hazardous materials that require special handling, and laminated components are hard to dissassemble for recycling. With the vast majority of projects developed by single-purposes, assetless LLCs, it is highly likely that there will be no responsible party left to decommission these developments. Anything that this committee can do to assure that decommissioning happens, safely and promptly, and that landowners and neighbors are not stuck looking at a nonfunctional solar array forever, would be greatly appreciated.

Decommissioning requirements should include restoration of the site. CPG or other legal conditions on such projects should also mandate that the installation of a solar array not be used to bootstrap the parcel to other industrial or energy generation uses. On decommissioning, all legal attributes of the parcel should revert to what it was before.

Section 7 pertains to the Standard Offer Program, and establishes a pilot program for preferred siting.

COMMENT: Win-win pilot projects are an ideal way to generate buy-in and work through unforeseen consequences of new programs. The legislature should encourage additional pilot programs particularly in urban areas.

Section 8 pertains to co-location of net metering facilities.

COMMENT: This approach also turns the issues surrounding correlation of solar development and load on it head. Concentrated solar generation development only makes sense in urban areas with high electric demand. In rural areas, while this idea has been deemed intriguing by some rural towns as a potential defense mechanism against otherwise rampant solar development, it creates a whole host of issues. Whose land would be designated as a solar site -- thus suddenly elevating their land value astronomically? How would it be taxed? Who would be responsible for the maintenance and liability of the site? Who would pay for the utility system upgrades necessary to interconnect a dense solar development? Would towns be able to specify fixed-array only? Who would contribute to the screening for the development? If a town put in one of these sites, would it be guaranteed the ability to refuse all solar development elsewhere in the town forever?

Section 9 prescribes the effective dates of the legislation.

COMMENT: No comment necessary.