

1 TO THE HONORABLE SENATE:

2 The Committee on Natural Resources and Energy to which was referred
3 Senate Bill No. 230 entitled “An act relating to improving the siting of energy
4 projects” respectfully reports that it has considered the same and recommends
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu thereof the following:

7 * * * Designation * * *

8 Sec. 1. DESIGNATION OF ACT

9 This act shall be referred to as the Energy Development Improvement Act.

10 * * * Integration of Energy and Land Use Planning * * *

11 Sec. 2. 24 V.S.A. § 4302 is amended to read:

12 § 4302. PURPOSE; GOALS

13 * * *

14 (c) In addition, this chapter shall be used to further the following specific
15 goals:

16 (1) To plan development so as to maintain the historic settlement pattern
17 of compact village and urban centers separated by rural countryside.

18 (A) Intensive residential development should be encouraged
19 primarily in areas related to community centers, and strip development along
20 highways should be discouraged.

1 (A) significant natural and fragile areas;

2 (B) outstanding water resources, including lakes, rivers, aquifers,
3 shorelands, and wetlands;

4 (C) significant scenic roads, waterways, and views;

5 (D) important historic structures, sites, or districts, archaeological
6 sites, and archaeologically sensitive areas.

7 (6) To maintain and improve the quality of air, water, wildlife, and land
8 resources.

9 (A) Vermont's air, water, wildlife, mineral, and land resources
10 should be planned for use and development according to the principles set
11 forth in 10 V.S.A. § 6086(a).

12 (B) Vermont's water quality should be maintained and improved
13 according to the policies and actions developed in the basin plans established
14 by the Secretary of Natural Resources under 10 V.S.A. § 1253.

15 (7) To encourage the efficient use of energy and the development of
16 renewable energy resources, consistent with the following:

17 (A) Vermont's greenhouse gas reduction goals under 10 V.S.A.
18 § 578(a);

19 (B) Vermont's 25 by 25 goal for renewable energy under 10 V.S.A.
20 § 580;

21 (C) Vermont's building efficiency goals under 10 V.S.A. § 581;

1 Sec. 3. 24 V.S.A. § 4345 is amended to read:

2 § 4345. OPTIONAL POWERS AND DUTIES OF REGIONAL PLANNING

3 COMMISSIONS

4 **Any regional planning commission created under this chapter may:**

5 **(1) Develop an inventory of the region’s fire and safety facilities;**
6 **hospitals, rest homes, or other facilities for aging or disabled persons;**
7 **correctional facilities; and emergency shelters; and work with regulated**
8 **utilities, the Department of Public Service, the Department of Public**
9 **Safety, potential developers of distributed power facilities, adjoining**
10 **regional planning commissions, interested adjoining regional entities from**
11 **adjoining states, and citizens of the region to propose and evaluate**
12 **alternative sites for distributed power facilities that might provide**
13 **uninterrupted local or regional power at least for identified critical service**
14 **providers in time of extended national, statewide, or regional power**
15 **disruption or other emergency.**

16 **(2)-(5) [Repealed.]**

17 **(6) Undertake studies and make recommendations on land**
18 **development, urban renewal, transportation, economic, industrial,**
19 **commercial, and social development, urban beautification and design**
20 **improvements, historic and scenic preservation, ~~the conservation of~~**

1 ~~energy and the development of renewable energy resources, State capital~~
2 ~~investment plans, and wetland protection.~~

3 * * *

4 Sec. 4. 24 V.S.A. § 4345a is amended to read:

5 § 4345a. DUTIES OF REGIONAL PLANNING COMMISSIONS

6 A regional planning commission created under this chapter shall:

7 * * *

8 (14) Appear before the Public Service Board to aid the Board in making
9 determinations under 30 V.S.A. § 248 and shall have the right to appear and
10 participate in proceedings under that statute.

11 * * *

12 (19) Undertake studies and make recommendations on the
13 conservation of energy and the development of renewable energy
14 resources.

15 Sec. 5. CLARIFICATION OF EXISTING LAW

16 Sec. 4 of this act, amending 24 V.S.A. § 4345a(14) (participation in
17 Section 248 proceedings), clarifies existing law.

18 Sec. 6. 24 V.S.A. § 4348a is amended to read:

19 § 4348a. ELEMENTS OF A REGIONAL PLAN

20 (a) A regional plan shall be consistent with the goals established in section
21 4302 of this title and shall include the following:

1 (1) A statement of basic policies of the region to guide the future growth
2 and development of land and of public services and facilities, and to protect the
3 environment.

4 (2) A land use element, which shall consist of a map and statement of
5 present and prospective land uses:

6 (A) indicating those areas proposed for forests, recreation, agriculture
7 (using the agricultural lands identification process established in 6 V.S.A. § 8),
8 residence, commerce, industry, public, and semi-public uses, open spaces, and
9 areas identified by the State, regional planning commissions or municipalities,
10 which require special consideration for aquifer protection, wetland protection,
11 or for other conservation purposes;

12 (B) indicating those areas within the region that are likely candidates
13 for designation under sections 2793 (downtown development districts), 2793a
14 (village centers), 2793b (new town centers), and 2793c (growth centers) of this
15 title;

16 (C) indicating locations proposed for developments with a potential
17 for regional impact, as determined by the regional planning commission,
18 including flood control projects, surface water supply projects, industrial parks,
19 office parks, shopping centers and shopping malls, airports, tourist attractions,
20 recreational facilities, private schools, public or private colleges, and
21 residential developments or subdivisions;

1 (D) setting forth the present and prospective location, amount,
2 intensity, and character of such land uses and the appropriate timing or
3 sequence of land development activities in relation to the provision of
4 necessary community facilities and services;

5 (E) indicating those areas that have the potential to sustain agriculture
6 and recommendations for maintaining them which may include transfer of
7 development rights, acquisition of development rights, or farmer assistance
8 programs.

9 (3) An energy element, which may include ~~an~~ a comprehensive analysis
10 of energy resources, needs, scarcities, costs, and problems within the region;
11 across all energy sectors, including electric, thermal, and transportation; a
12 statement of policy on the conservation and efficient use of energy and the
13 development and siting of distributed and utility-scale renewable energy
14 resources, ~~and~~; a statement of policy on patterns and densities of land use ~~and~~
15 ~~control devices~~ likely to result in conservation of energy; and a statement of
16 policy on and identification of potential areas for the development and siting
17 of renewable energy resources and areas that are inappropriate for siting those
18 resources or particular categories or sizes of those resources.

19 (4) A transportation element, which may consist of a statement of
20 present and prospective transportation and circulation facilities, and a map
21 showing existing and proposed highways, including limited access highways,

1 and streets by type and character of improvement, and where pertinent,
2 anticipated points of congestion, parking facilities, transit routes, terminals,
3 bicycle paths and trails, scenic roads, airports, railroads and port facilities, and
4 other similar facilities or uses, and recommendations to meet future needs for
5 such facilities, with indications of priorities of need, costs, and method of
6 financing.

7 * * *

8 Sec 7. 24 V.S.A. § 4352 is added to read:

9 § 4352. CERTIFICATION OF ENERGY COMPLIANCE; REGIONAL AND
10 MUNICIPAL PLANS

11 (a) **Regional plan certification.** A regional planning commission may
12 submit its adopted regional plan to the Commissioner of Public Service
13 appointed under 30 V.S.A. § 1 for a certification of energy compliance. The
14 Commissioner shall issue such a certification on finding that the regional plan
15 is consistent with the statutes, goals, and policies listed in subdivision
16 4302(c)(7) of this title.

17 (b) **Municipal plan certification.** If the Commissioner of Public Service
18 has certified a regional plan that is in effect, a **municipal legislative body**
19 within the region may submit its adopted municipal plan to the regional
20 planning commission for a certification of energy compliance. Such a
21 submission may be made separately from or at the same time as a request for

1 review and approval of the municipal plan under section 4350 of this title. The
2 regional planning commission shall issue such a certification on finding that
3 the regional plan is consistent with the statutes, goals, and policies listed in
4 subdivision 4302(c)(7) of this title and the portions of the regional plan that
5 implement those statutes, goals, and policies.

6 **(c) Standards. In determining whether to issue a certification of**
7 **energy compliance under this section, the Commissioner or regional**
8 **planning commission shall employ the standards for issuing such a**
9 **certification developed pursuant to 30 V.S.A. §§ 202(b)(6) and 202b(a)(3).**

10 **(d) Process. Review of whether to issue a certification under this**
11 **section shall include a public hearing noticed at least 15 days in advance**
12 **by direct mail to the requesting regional planning commission or**
13 **municipal legislative body, posting on the website of the entity from which**
14 **the certification is requested, and publication in a newspaper of general**
15 **publication in the region or municipality affected. The Commissioner or**
16 **regional planning commission shall grant or deny certification within two**
17 **months of the receipt of a request for certification. If certification is**
18 **denied, the Commissioner or regional planning commission shall state the**
19 **reasons for denial in writing and, if appropriate, suggest acceptable**
20 **modifications. Submissions for certification that follow a denial shall**
21 **receive a grant or denial of certification within 45 days.**

1 Sec. 8. 24 V.S.A. § 4382 is amended to read:

2 § 4382. THE PLAN FOR A MUNICIPALITY

3 (a) A plan for a municipality ~~may~~ shall be consistent with the goals
4 established in section 4302 of this title and compatible with approved plans of
5 other municipalities in the region and with the regional plan and shall include
6 the following:

7 (1) A statement of objectives, policies, and programs of the municipality
8 to guide the future growth and development of land, public services, and
9 facilities, and to protect the environment.

10 (2) A land use plan:

11 (A) consisting of a map and statement of present and prospective
12 land uses, indicating those areas proposed for forests, recreation, agriculture
13 (using the agricultural lands identification process established in 6 V.S.A. § 8),
14 residence, commerce, industry, public, and semi-public uses and open spaces
15 reserved for flood plain, wetland protection, or other conservation purposes;

16 (B) setting forth the present and prospective location, amount,
17 intensity, and character of such land uses and the appropriate timing or
18 sequence of land development activities in relation to the provision of
19 necessary community facilities and service; and

20 (C) identifying those areas, if any, proposed for designation under
21 chapter 76A of this title, together with, for each area proposed for designation,

1 an explanation of how the designation would further the plan’s goals and the
2 goals of section 4302 of this title, and how the area meets the requirements for
3 the type of designation to be sought.

4 (3) A transportation plan, consisting of a map and statement of present
5 and prospective transportation and circulation facilities showing existing and
6 proposed highways and streets by type and character of improvement, and
7 where pertinent, parking facilities, transit routes, terminals, bicycle paths and
8 trails, scenic roads, airports, railroads, and port facilities, and other similar
9 facilities or uses, with indications of priority of need.

10 (4) A utility and facility plan, consisting of a map and statement of
11 present and prospective community facilities and public utilities showing
12 existing and proposed educational, recreational and other public sites,
13 buildings and facilities, including hospitals, libraries, power generating plants
14 and transmission lines, water supply, sewage disposal, refuse disposal, storm
15 drainage, and other similar facilities and activities, and recommendations to
16 meet future needs for community facilities and services, with indications of
17 priority of need, costs and method of financing.

18 (5) A statement of policies on the preservation of rare and irreplaceable
19 natural areas, and scenic and historic features and resources.

20 * * *

1 (b) The Department, through the Director, shall prepare an electrical energy
2 plan for the State. The Plan shall be for a 20-year period and shall serve as a
3 basis for State electrical energy policy. The Electric Energy Plan shall be
4 based on the principles of “least cost integrated planning” set out in and
5 developed under section 218c of this title. The Plan shall include at a
6 minimum:

7 (1) an overview, looking 20 years ahead, of statewide growth and
8 development as they relate to future requirements for electrical energy,
9 including patterns of urban expansion, statewide and service area economic
10 growth, shifts in transportation modes, modifications in housing types, and
11 design, conservation, and other trends and factors which, as determined by the
12 Director, will significantly affect State electrical energy policy and programs;

13 (2) an assessment of all energy resources available to the State for
14 electrical generation or to supply electrical power, including, among others,
15 fossil fuels, nuclear, hydro-electric, biomass, wind, fuel cells, and solar energy
16 and strategies for minimizing the economic and environmental costs of energy
17 supply, including the production of pollutants, by means of efficiency and
18 emission improvements, fuel shifting, and other appropriate means;

19 (3) estimates of the projected level of electrical energy demand;

20 (4) a detailed exposition, including capital requirements and the
21 estimated cost to consumers, of how such demand shall be met based on the

1 assumptions made in subdivision (1) of this subsection and the policies set out
2 in subsection (c) of this section; ~~and~~

3 (5) specific strategies for reducing electric rates to the greatest extent
4 possible in Vermont over the most immediate six-year period, for the next
5 succeeding six-year period, and long-term sustainable strategies for achieving
6 and maintaining the lowest possible electric rates over the full 20-year
7 planning horizon consistent with the goal of maintaining a financially stable
8 electric utility industry in Vermont; and

9 **(6) the following for use as guidance to municipal and regional**
10 **planning commissions in preparing municipal and regional plans under**
11 **24 V.S.A. chapter 117 that are consistent with the statutes listed in**
12 **24 V.S.A. § 4302(c)(7) and with the Plan and in obtaining a certification of**
13 **energy compliance under that chapter:**

14 **(A) specific policies on the conservation and efficient use of**
15 **electric energy and the development and siting of renewable electric**
16 **generation, developed in accordance with 24 V.S.A. § 4302(c)(7); and**

17 **(B) based on 24 V.S.A. § 4302(c)(7) and the policies developed**
18 **under subdivision (6)(A) of this subsection, a list of standards for use in**
19 **determining whether municipal and regional plans should receive a**
20 **certificate of energy compliance under 24 V.S.A. § 4352.**

1 (c) In developing the Plan, the Department shall take into account the
2 protection of public health and safety; preservation of environmental quality;
3 the goals of 24 V.S.A. § 4302; the potential for reduction of rates paid by all
4 retail electricity customers; the potential for reduction of electrical demand
5 through conservation, including alternative utility rate structures; use of load
6 management technologies; efficiency of electrical usage; utilization of waste
7 heat from generation; and utility assistance to consumers in energy
8 conservation.

9 (d) In establishing plans, the Director shall:

10 (1) Consult with:

11 (A) the public;

12 (B) Vermont municipal utilities and planning commissions;

13 (C) Vermont cooperative utilities;

14 (D) Vermont investor-owned utilities;

15 (E) Vermont electric transmission companies;

16 (F) environmental and residential consumer advocacy groups active
17 in electricity issues;

18 (G) industrial customer representatives;

19 (H) commercial customer representatives;

20 (I) the Public Service Board;

1 (J) an entity designated to meet the public’s need for energy
2 efficiency services under subdivision 218c(a)(2) of this title;

3 (K) other interested State agencies; ~~and~~

4 (L) other energy providers; and

5 (M) the regional planning commissions.

6 * * *

7 (h) The Plans adopted under this section shall become the electrical energy
8 portion of the State Energy Plan.

9 * * *

10 Sec. 10. 30 V.S.A. § 202b is amended to read:

11 § 202b. STATE COMPREHENSIVE ENERGY PLAN

12 (a) The Department of Public Service, in conjunction with other State
13 agencies designated by the Governor, shall prepare a State Comprehensive
14 Energy Plan covering at least a 20-year period. The Plan shall seek to
15 implement the State energy policy set forth in section 202a of this title and
16 shall be consistent with the goals of 24 V.S.A. § 4302. The Plan shall include:

17 (1) a comprehensive analysis and projections regarding the use, cost,
18 supply, and environmental effects of all forms of energy resources used within
19 Vermont; ~~and~~

1 (2) recommendations for State implementation actions, regulation,
2 legislation, and other public and private action to carry out the comprehensive
3 energy plan; and

4 **(3) the following for use as guidance to municipal and regional**
5 **planning commissions in preparing municipal and regional plans under**
6 **24 V.S.A. chapter 117 that are consistent with the statutes listed in**
7 **24 V.S.A. § 4302(c)(7) and with the Plan and in obtaining a certification of**
8 **energy compliance under that chapter:**

9 **(A) specific policies on the conservation and efficient use of**
10 **energy and the development and siting of energy facilities, developed in**
11 **accordance with 24 V.S.A. § 4302(c)(7); and**

12 **(B) based on 24 V.S.A. § 4302(c)(7) and the policies developed**
13 **under subdivision (3)(A) of this subsection, a list of standards for use in**
14 **determining whether municipal and regional plans should receive a**
15 **certificate of energy compliance under 24 V.S.A. § 4352.**

16 (b) In developing or updating the Plan's recommendations, the Department
17 of Public Service shall seek public comment by holding public hearings in at
18 least five different geographic regions of the State on at least three different
19 dates, and by providing notice through publication once a week and at least
20 seven days apart for two or more successive weeks in a newspaper or
21 newspapers of general circulation in the regions where the hearings will be

1 held, and by delivering notices to all licensed commercial radio and television
2 stations with transmitting facilities within the State, plus Vermont Public
3 Radio and Vermont Educational Television.

4 (c) The Department shall adopt a State Energy Plan on or before January 1,
5 2016 and shall readopt the Plan by every sixth January 1 thereafter. On
6 adoption or readoption, the Plan shall be submitted to the General Assembly.
7 The provisions of 2 V.S.A. § 20(d)(expiration of required reports) shall not
8 apply to such submission.

9 (1) Upon adoption of the Plan, analytical portions of the Plan may be
10 updated and published biennially.

11 (2) Every fourth year after the adoption or readoption of a Plan under
12 this section, the Department shall publish the manner in which the Department
13 will engage the public in the process of readopting the Plan under this section.

14 (3) The publication requirements of subdivisions (1) and (2) of this
15 subsection may be met by inclusion of the subject matter in the Department's
16 biennial report.

17 (4) The Plan's implementation recommendations shall be updated by the
18 Department no less frequently than every six years. These recommendations
19 shall be updated prior to the expiration of six years if the General Assembly
20 passes a joint resolution making a request to that effect. If the Department
21 proposes or the General Assembly requests the revision of implementation

1 recommendations, the Department shall hold public hearings on the proposed
2 revisions.

3 (d) Distribution of the Plan to members of the General Assembly shall be
4 in accordance with the provisions of 2 V.S.A. § 20(a)-(c).

5 **Sec. 10a. INITIAL IMPLEMENTATION; CERTIFICATION**
6 **STANDARDS**

7 **(a) On or before October 1, 2016, the Department of Public Service**
8 **shall publish specific policies and standards in accordance with 30 V.S.A.**
9 **§§ 202(b)(6) and 202b(a)(3) as enacted by Secs. 8 and 10 of this act. Prior**
10 **to issuing these policies and standards, the Department shall post on its**
11 **website a draft set of initial policies and standards and provide notice and**
12 **an opportunity to comment and request a public hearing to all persons**
13 **listed in 30 V.S.A. § 202(d)(1). The Commissioner may elect to hold one or**
14 **more public hearings on the Commissioner’s own initiative.**

15 **(b) On publication under subsection (a) of this section, the specific**
16 **policies and standards shall be considered an appendix to the currently**
17 **adopted plans under 30 V.S.A. §§ 202 and 202b. After this publication,**
18 **the Department may revise these policies and procedures in accordance**
19 **with the procedures for adopting and revising plans under those statutes.**

1 Sec. 11. 30 V.S.A. § 248(b) is amended to read:

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

5 (1) With respect to an in-state facility, will not unduly interfere with the
6 orderly development of the region with due consideration having been given to
7 the recommendations of the municipal and regional planning commissions, the
8 recommendations of the municipal legislative bodies, and the land
9 conservation measures contained in the plan of any affected municipality.

10 However:

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

19 (B) ~~with~~ With respect to a ground-mounted solar electric generation
20 facility, the facility shall comply with the screening requirements of a
21 municipal bylaw adopted under 24 V.S.A. § 4414(15) or a municipal ordinance

1 adopted under 24 V.S.A. § 2291(28), and the recommendation of a
2 municipality applying such a bylaw or ordinance, unless the Board finds that
3 requiring such compliance would prohibit or have the effect of prohibiting the
4 installation of such a facility or have the effect of interfering with the facility's
5 intended functional use.

6 (C) The Board shall give shall substantial deference to the land
7 conservation measures and specific policies contained in a duly adopted
8 regional and municipal plan that has received a certificate of energy
9 compliance under 24 V.S.A. § 4352.

10 (i) In this subdivision (C), "substantial deference" means that a
11 land conservation measure or specific policy shall be applied in accordance
12 with its terms unless there is a clear and convincing demonstration that other
13 factors affecting the general good of the State outweigh the application of the
14 measure or policy.

15 (ii) This subdivision (C) does not supersede the requirement,
16 under subdivision (1)(A) of this subsection, respecting conformance of a
17 natural gas transmission line with a regional plan.

18 * * *

19 (12) With respect to an in-state facility exceeding 150 kilowatts that
20 generates electricity from renewable energy, will be sited at a preferred
21 location as defined in section 8002 of this title or the applicant demonstrates

1 that the facility's other benefits to the State and its residents outweigh the
2 adverse impacts of the facility, if any, under the other criteria of this
3 subsection (b).

4 * * * Regulatory and Financial Incentives; Preferred Locations * * *

5 Sec. 12. 30 V.S.A. § 8002(30) is added to read:

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

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

12 (B) A tract previously developed for a use other than siting a plant on
13 which a structure or impervious surface was lawfully in existence and use prior
14 to January 1 of the year in which an application for a certificate of public good
15 under section 248 of this title for the plant is filed or in which the plant seeks
16 an award of a contract under the standard offer program under section 8005a of
17 this title, whichever is earlier. To qualify under this subdivision (B), the limits
18 of disturbance of a proposed renewable energy plant must include either the
19 existing structure or impervious surface and shall not include any headwaters,
20 streams, shorelines, floodways, rare and irreplaceable natural areas, necessary

1 wildlife habitat, wetlands, endangered species, productive forestlands, and
2 primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151.

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

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

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

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

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

1 Sec. 13. 30 V.S.A. § 8004(g) is added to read:

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

7 Sec. 14. 30 V.S.A. § 8005a is amended to read:

8 § 8005a. STANDARD OFFER PROGRAM

9 (a) Establishment. A standard offer program is established. To achieve the
10 goals of section 8001 of this title, the Board shall issue standard offers for
11 renewable energy plants that meet the eligibility requirements of this section.
12 The Board shall implement these standard offers by rule, order, or contract and
13 shall appoint a Standard Offer Facilitator to assist in this implementation. For
14 the purpose of this section, the Board and the Standard Offer Facilitator
15 constitute instrumentalities of the State.

16 (b) Eligibility. To be eligible for a standard offer under this section, a plant
17 must constitute a qualifying small power production facility under 16 U.S.C.
18 § 796(17)(C) and 18 C.F.R. part 292, must not be a net metering system under
19 section 219a of this title, and must be a new standard offer plant. In this
20 section, “new standard offer plant” means a renewable energy plant that is

1 located in Vermont, that has a plant capacity of 2.2 MW or less, and that is
2 commissioned on or after September 30, 2009.

3 (c) Cumulative capacity. In accordance with this subsection, the Board
4 shall issue standard offers to new standard offer plants until a cumulative plant
5 capacity amount of 127.5 MW is reached.

6 (1) Pace. Annually commencing April 1, 2013, the Board shall increase
7 the cumulative plant capacity of the standard offer program (the annual
8 increase) until the 127.5-MW cumulative plant capacity of this subsection is
9 reached.

10 (A) Annual amounts. The amount of the annual increase shall be five
11 MW for the three years commencing April 1, 2013, 7.5 MW for the three years
12 commencing April 1, 2016, and 10 MW commencing April 1, 2019.

13 (B) Blocks. Each year, a portion of the annual increase shall be
14 reserved for new standard offer plants proposed by Vermont retail electricity
15 providers (the provider block), and the remainder shall be reserved for new
16 standard offer plants proposed by persons who are not providers (the
17 independent developer block).

18 (i) The portion of the annual increase reserved for the provider
19 block shall be 10 percent for the three years commencing April 1, 2013,
20 15 percent for the three years commencing April 1, 2016, and 20 percent
21 commencing April 1, 2019.

1 (ii) If the provider block for a given year is not fully subscribed,
2 any unsubscribed capacity within that block shall be added to the annual
3 increase for each following year until that capacity is subscribed and shall be
4 made available to new standard offer plants proposed by persons who are not
5 providers.

6 (iii) If the independent developer block for a given year is not
7 fully subscribed, any unsubscribed capacity within that block shall be added
8 to the annual increase for each following year until that capacity is
9 subscribed and:

10 (I) shall be made available to new standard offer plants
11 proposed by persons who are not providers; and

12 (II) may be made available to a provider following a written
13 request and specific proposal submitted to and approved by the Board.

14 (C) Adjustment; greenhouse gas reduction credits. The Board shall
15 adjust the annual increase to account for greenhouse gas reduction credits by
16 multiplying the annual increase by one minus the ratio of the prior year's
17 greenhouse gas reduction credits to that year's statewide retail electric sales.

18 (i) The amount of the prior year's greenhouse gas reduction
19 credits shall be determined in accordance with subdivision 8006a(a) of this
20 title.

1 (f) Price. The categories of renewable energy for which the Board shall set
2 standard offer prices shall include at least each of the categories established
3 pursuant to subdivision (c)(2) of this section. The Board by order shall
4 determine and set the price paid to a plant owner for each kWh generated
5 under a standard offer required by this section, with a goal of ensuring timely
6 development at the lowest feasible cost. The Board shall not be required to
7 make this determination as a contested case under 3 V.S.A. chapter 25.

8 (1) Market-based mechanisms. For new standard offer projects, the
9 Board shall use a market-based mechanism, such as a reverse auction or other
10 procurement tool, to obtain up to the authorized amount of a category of
11 renewable energy, if it first finds that use of the mechanism is consistent with:

12 (A) applicable federal law; and

13 (B) the goal of timely development at the lowest feasible cost.

14 (2) Avoided cost.

15 (A) The price paid for each category of renewable energy shall be the
16 avoided cost of the Vermont composite electric utility system if the Board
17 finds either of the following:

18 (i) Use of the pricing mechanism described in subdivision

19 (1)(market-based mechanisms) of this subsection (f) is inconsistent with

20 applicable federal law.

1 (ii) Use of the pricing mechanism described in subdivision
2 (1)(market-based mechanisms) of this subsection (f) is reasonably likely to
3 result in prices higher than the prices that would apply under this
4 subdivision (2).

5 (B) ~~For the purpose of~~ As used in this subsection (f), the term
6 “avoided cost” means the incremental cost to retail electricity providers of
7 electric energy or capacity or both, which, but for the purchase through the
8 standard offer, such providers would obtain from distributed renewable
9 generation that uses the same generation technology as the category of
10 renewable energy for which the Board is setting the price. ~~For the purpose of~~
11 As used in this subsection (f), the term “avoided cost” also includes the
12 Board’s consideration of each of the following:

13 (i) The relevant cost data of the Vermont composite electric utility
14 system.

15 (ii) The terms of the contract, including the duration of the
16 obligation.

17 (iii) The availability, during the system’s daily and seasonal peak
18 periods, of capacity or energy purchased through the standard offer, and the
19 estimated savings from mitigating peak load.

1 (3) The rules shall establish standards and procedures governing
2 application for and issuance or revocation of a certificate of public good for net
3 metering systems under the provisions of section 248 of this title. In
4 establishing these standards and procedures, ~~the rules~~:

5 (A) The rules may waive the requirements of section 248 of this title
6 that are not applicable to net metering systems, including criteria that are
7 generally applicable to public service companies as defined in this title;

8 (B) The rules may modify notice and hearing requirements of this
9 title as the Board considers appropriate;

10 (C) The rules shall seek to simplify the application and review
11 process as appropriate; ~~and~~.

12 (D) ~~with~~ With respect to net metering systems that exceed 150 kW in
13 plant capacity, shall apply the so-called “Quechee” test for aesthetic impact as
14 described by the Vermont Supreme Court in the case of In re Halnon, 174 Vt.
15 515 (2002) (mem.). The rules and application form shall state the components
16 of this test.

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

20 (i) the requirement of subdivision 248(a)(4)(C) of this title to
21 provide a copy of the application to the Agencies of Agriculture, Food and

1 Markets and of Natural Resources; the Department of Public Service; the
2 Division for Historic Preservation; the municipal legislative body; and the
3 municipality and regional planning commissions; and

4 (ii) the requirements of subdivision 248(a)(4)(J) (required
5 information) and subsections 248(f) (preapplication submittal), (t) (aesthetic
6 mitigation), and (u) (decommissioning) of this title.

7 * * *

8 (e) In accordance with this subsection, the Board may allow the colocation
9 on the same tract of two or more plants under separate ownership that would
10 qualify as net metering systems but for the fact of colocation on that parcel and
11 use of common equipment and infrastructure. In this subsection, “separate
12 ownership” means that each net metering system is owned and controlled by a
13 different person as defined under 10 V.S.A. § 6001.

14 (1) The Board may allow colocation under this subsection only if each
15 of the following applies:

16 (A) The municipality’s duly adopted plan under 24 V.S.A. chapter
17 117 designates a tract of land of not less than 20 acres for the colocation of net
18 metering systems.

19 (B) Each net metering system will be located on this tract.

20 (C) Each net metering system to be located on the tract is approved
21 by the municipality’s legislative body prior to approval by the Board.

1 (2) In a municipality that has designated a tract for colocation of net
2 metering systems pursuant to this subsection, the Board shall reduce, by three
3 cents per kWh, the amount of the bill credit that would otherwise apply to each
4 net metering system that is greater than 15 kW in plant capacity and is to be
5 located outside the designated tract.

6 (f) The Board may allow the net metering of a portion of a renewable
7 energy plant whose plant capacity exceeds 500 kW if each of the following
8 applies:

9 (1) The plant meets the definition of net metering system under section
10 8002 of this title but for its plant capacity.

11 (2) The plant has obtained the consent of the interconnecting retail
12 electricity provider.

13 (3) The amount of plant capacity to be net metered does not exceed
14 500 kW.

15 (4) With respect to the amount of the plant capacity to be net metered:

16 (A) The plant will allocate the bill credits to the host municipality or
17 to customers within a five-mile radius of the facility, or both.

18 (B) The plant will transfer the associated environmental attributes
19 and tradeable renewable energy credits to the interconnecting provider, which
20 shall retire them and apply them toward compliance with the RES.

1 (2) Guidance and information to be provided by the PAO shall include
2 the following:

3 (A) An explanation of the proceeding, including its purpose; its type,
4 such as rulemaking or contested case; and the restrictions or lack of restrictions
5 applicable to the type of proceeding, such as whether ex parte communications
6 are prohibited.

7 (B) Answers to procedural questions and direction to the statutes and
8 rules applicable to the proceeding.

9 (C) How to participate in the proceeding including, if necessary for
10 participation, how to file to a motion to intervene and how to submit prefiled
11 testimony. The Board shall create forms and templates for motions to
12 intervene, prefiled testimony, and other types of documents commonly filed
13 with the Board, which the PAO shall provide to a person on request. The
14 Board shall post these forms and templates on the Board’s website.

15 (D) The responsibilities of intervenors and other parties.

16 (E) The status of the proceeding. Examples of a proceeding’s status
17 include: a petition has been filed; the proceeding awaits scheduling a
18 prehearing conference or hearing; parties are conducting discovery or
19 submitting prefiled testimony; hearings are concluded and parties are preparing
20 briefs; and the proceeding is under submission to the Board and awaits a
21 decision. For each proceeding in which the next action constitutes the issuance

1 of an order, decision, or proposal for decision by the Board or a hearing
2 officer, the Chair or assigned hearing officer shall provide the PAO with an
3 expected date of issuance and the PAO shall provide this expected date to
4 requesting parties or members of the public.

5 (3) For each proceeding within the scope of subdivision (1) of this
6 subsection, the Board shall post, on its website, electronic copies of all filings
7 and submissions to the Board and all orders of the Board.

8 (4) The Board shall adopt rules or procedures to ensure that the
9 communications of the PAO with the Board's members and other employees
10 concerning contested cases do not contravene the requirements of the
11 Administrative Procedure Act applicable to such cases.

12 (5) The PAO shall have a duty to provide requesting parties and
13 members of the public with information that is accurate to the best of the
14 PAO's ability. The Board and its other employees shall have a duty to transmit
15 accurate information to the PAO. However, the Board and any assigned
16 hearing officer shall not be bound by statements of the PAO.

17 (6) The PAO shall not be an advocate for any person and shall not have
18 a duty to assist a person in the actual formation of the person's position or
19 arguments before the Board or the actions necessary to advance the person's
20 position or arguments such as the actual preparation of motions, memoranda,
21 or prefiled testimony.

1 (7) The Board may assign secondary duties to the PAO that do not
2 conflict with the PAO’s execution of his or her duties under this subsection.

3 Sec. 17. POSITION; APPROPRIATION

4 The following classified position is created in the Public Service Board—
5 one permanent, full-time Public Assistance Officer for the purpose of Sec. 2 of
6 this act. There is appropriated to the Public Service Board for fiscal year 2017
7 from the special fund described in 30 V.S.A. § 22 the amount of \$100,000.00
8 for the purpose of this position.

9 Sec. 18. 30 V.S.A. § 248(a)(4) is amended to read:

10 (4)(A) With respect to a facility located in the State, the Public Service
11 Board shall hold a nontechnical public hearing on each petition for such
12 finding and certificate in at least one county in which any portion of the
13 construction of the facility is proposed to be located.

14 (B) The Public Service Board shall hold technical hearings at
15 locations which it selects.

16 (C) At the time of filing its application with the Board, copies shall
17 be given by the petitioner to the Attorney General and the Department of
18 Public Service, and, with respect to facilities within the State, the Department
19 of Health, Agency of Natural Resources, Historic Preservation Division,
20 Agency of Transportation, Agency of Agriculture, Food and Markets, and to
21 the chair or director of the municipal and regional planning commissions and

1 the municipal legislative body for each town and city in which the proposed
2 facility will be located.

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

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

14 (F) The Agency of Agriculture, Food and Markets shall have the
15 right to appear as a party in any proceedings held under this subsection.

16 (G) The regional planning commission for the region in which the
17 facility is located shall have the right to appear as a party in any proceedings
18 held under this subsection. The regional planning commission of an adjacent
19 region shall have the same right if the facility is located within 500 feet of the
20 boundary of that planning commission.

1 (H) The legislative body and the planning commission for the
2 municipality in which a facility is located shall have the right to appear as a
3 party in any proceedings held under this subsection. The legislative body and
4 planning commission of an adjacent municipality shall have the same right if
5 the facility is located within 500 feet of the boundary of that adjacent
6 municipality.

7 (I) When a person has the right to appear and participate in a
8 proceeding before the Board under this chapter, the person may activate this
9 right by filing a letter with the Board stating that the person appears through
10 the person's duly authorized representative, signed by that representative.

11 (J) With respect to an application for an electric generation facility
12 with a capacity that is greater than 15 kilowatts:

13 (i) In addition to any other information required by the Board, the
14 application shall include information that delineates:

15 (I) the full limits of physical disturbance due to the construction
16 and operation of the facility and related infrastructure, including areas
17 disturbed due to the creation or modification of access roads and utility lines
18 and the clearing or management of vegetation;

19 (II) the presence and total acreage of primary agricultural soils
20 as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in

1 connection with the construction and operation of the facility and the amount
2 of those soils to be disturbed;

3 (III) all visible infrastructure associated with the facility; and

4 (IV) all impacts of the facility's construction and operation
5 under subdivision (b)(5) of this section, including impacts due to the creation
6 or modification of access roads and utility lines and the clearing or
7 management of vegetation.

8 (ii) When all parties to an application for an electric generation
9 facility under this section are known but before any technical hearings are held,
10 the Board shall determine whether the proceeding is appropriate for mediation
11 and, if this determination is affirmative, shall direct the parties to engage in
12 mediation. The parties shall jointly choose and shall share the costs of the
13 mediator.

14 Sec. 19. 30 V.S.A. § 248(f) is amended to read:

15 (f) However, plans for the construction of such a facility within the State
16 must be submitted by the petitioner to the municipal and regional planning
17 commissions no less than 45 days prior to application for a certificate of public
18 good under this section, unless the municipal and regional planning
19 commissions shall waive such requirement.

20 (1) Such municipal or regional planning commission may hold a public
21 hearing on the proposed plans. Such commissions shall make

1 recommendations, if any, to the Public Service Board and to the petitioner at
2 least seven days prior to filing of the petition with the Public Service Board.

3 (2) The petitioner’s application shall respond to each comment made at
4 the public hearing or received by the petitioner with respect to the submittal
5 made under this subsection.

6 * * * CPG Conditions: Aesthetics Mitigation and Decommissioning * * *

7 Sec. 20. 30 V.S.A. § 248(t) and (u) are added to read:

8 (t) A certificate under this section for an in-state facility shall require the
9 following with respect to all measures to be undertaken to mitigate the impacts
10 of the facility on aesthetics and scenic beauty:

11 (1) The certificate holder shall obtain a certification from a qualified
12 expert, chosen by the Board, that all required mitigation measures have been
13 undertaken and all required plantings have been installed.

14 (2) The certificate holder shall have site control over all vegetation used
15 to demonstrate that the facility will not have an undue adverse effect on
16 aesthetics and all locations on which mitigation plantings are to be installed.

17 (3) For three years after installation of all required plantings, the
18 certificate holder annually shall submit documentation by a qualified expert,
19 chosen by the Board, that the plantings have been maintained in accordance
20 with the approved plans.

1 (4) The certificate holder shall have an ongoing duty to maintain the
2 plantings in accordance with the approved plans and replace dead or diseased
3 plantings as soon as seasonably possible.

4 (u) A certificate under this section for an in-state electric generation facility
5 with a capacity that is greater than 15 kilowatts shall require the
6 decommissioning or dismantling of the facility and ancillary improvements at
7 the end of the facility's useful life and the posting of a bond or other security
8 acceptable to the Board that is sufficient to finance the decommissioning or
9 dismantling activities in full.

10 * * * Eminent Domain; Nondisclosure Agreements * * *

11 Sec. 21. 30 V.S.A. § 110 is amended to read:

12 § 110. EMINENT DOMAIN; COMPANIES AUTHORIZED

13 When it is necessary for a corporation formed under this chapter or a
14 foreign corporation under the jurisdiction of the ~~public service board~~ Public
15 Service Board to acquire property within this ~~state~~ State, or some easement or
16 other limited right in such property in order that it may render adequate service
17 to the public in the conduct of its business, it may condemn such property or
18 right, as provided in sections 111-124 of this title. All other companies, as
19 defined in sections 201 and 501 of this title, which are within the scope of
20 sections 203 and 501 of this title, shall have the same power of condemnation
21 and be subject to the same procedure as ~~hereinafter~~ provided in sections

1 111–124 for condemnation by corporations subject to the jurisdiction of the
2 ~~public service board~~ Public Service Board. However, a company shall forfeit
3 the right to condemn property in order to construct, reconstruct, or modify a
4 facility in this State if the company has executed an agreement with an owner
5 or former owner of property to be used in connection with the facility or any
6 part of a larger undertaking that includes the facility and the agreement
7 prohibits or has the effect of prohibiting that owner from disclosing payments
8 made or to be made by the company to the owner, other consideration provided
9 or to be provided by the company to the owner, or any other terms or
10 conditions contained in an agreement between the company and the owner.

11 * * * Three-Phase Power; Siting in Less Intrusive Locations * * *

12 Sec. 22. 30 V.S.A. § 218 is amended to read:

13 § 218. JURISDICTION OVER CHARGES AND RATES

14 * * *

15 (f) Regulatory incentives for renewable generation.

16 (1) Notwithstanding any other provision of law, an electric distribution
17 utility subject to rate regulation under this chapter shall be entitled to recover
18 in rates its prudently incurred costs in applying for and seeking any certificate,
19 permit, or other regulatory approval issued or to be issued by federal, State, or
20 local government for the construction of new renewable energy to be sited in

1 Vermont, regardless of whether the certificate, permit, or other regulatory
2 approval ultimately is granted.

3 (2) The Board is authorized to provide to an electric distribution utility
4 subject to rate regulation under this chapter an incentive rate of return on
5 equity or other reasonable incentive on any capital investment made by such
6 utility in a renewable energy generation facility sited in Vermont.

7 (3) To encourage joint efforts on the part of electric distribution utilities
8 to support renewable energy and to secure stable, long-term contracts
9 beneficial to Vermonters, the Board may establish standards for preapproving
10 the recovery of costs incurred on a renewable energy plant that is the subject of
11 that joint effort, if the construction of the plant requires a certificate of public
12 good under section 248 of this title and all or part of the electricity generated
13 by the plant will be under contract to the utilities involved in that joint effort.

14 (4) On petition of a plant owner or electric distribution utility whose
15 interest is affected, the Board shall require an electric distribution utility to
16 provide a three-phase line extension to a plant that constitutes new renewable
17 energy and is approved under section 248 of this title and shall allow the utility
18 to recover its prudently incurred costs of this extension in rates if, after notice
19 and opportunity for hearing, the Board finds each of the following:

20 (A) The plant will be built in a municipality in which one or more
21 other sites exist on which the plant could be built without a three-phase line

1 extension or will be built in a municipality adjacent to the municipality in
2 which such site or sites exist.

3 (B) Without mitigation, constructing the plant on the site or sites that
4 do not require a three-phase line extension would have an undue adverse effect
5 on the aesthetics and scenic beauty of the area.

6 (C) Constructing the plant on a site that requires a three-phase line
7 extension would substantially reduce the visual impact of the plant and, if so
8 constructed, the plant would not have an undue adverse effect on the aesthetics
9 and scenic beauty of the area.

10 (D) The cost of a three-phase line extension to the plant is less than
11 the cost of aesthetic mitigation for the site or sites on which the plant could be
12 built without three-phase power.

13 (5) In this subsection;

14 (A) “plant,” “Plant,” “renewable energy,” and “new renewable
15 energy” shall be as defined have the same meaning as in section 8002 of this
16 title.

17 (B) “Three-phase” means the use of three conductors to carry power
18 from a plant to the transmission or distribution system of a utility.

19 * * *

20 * * * Fees; Agency of Agriculture, Food and Markets * * *

21 Sec. 23. 30 V.S.A. § 248c is added to read:

1 **§ 248c. FEES; AGENCY OF AGRICULTURE, FOOD AND MARKETS;**
2 **PARTICIPATION IN ENERGY SITING PROCEEDINGS**

3 **(a) Establishment. This section establishes fees for the purpose of**
4 **supporting the role of the Agency of Agriculture, Food and Markets (the**
5 **Agency) in reviewing applications for in-state facilities under section 248**
6 **of this title. These fees are in addition to the fees under section 248b of**
7 **this title.**

8 **(b) Payment. The applicant shall pay the fee into the State Treasury at**
9 **the time the application for a certificate of public good under section 248**
10 **of this title is filed with the Public Service Board in an amount determined**
11 **in accordance with this section. The fee shall be credited to a special fund**
12 **that shall be established and managed pursuant to 32 V.S.A. chapter 7,**
13 **subchapter 5, and which shall be available to the Agency to offset the cost**
14 **of participation in proceedings under section 248 of this title.**

15 **(c) Application. The fee established under this section shall apply only**
16 **if any generation equipment, utility lines, roads, or other improvements**
17 **associated with an in-state facility seeking a certificate of public good**
18 **under section 248 of this title will be located on a tract of land that**
19 **contains primary agricultural soils as defined in 10 V.S.A. § 6001.**

20 **(c) Amount. The fee shall be 10 percent of the amount calculated in**
21 **accordance with subsection 248b(d) of this title.**

