



STATE OF VERMONT
HOUSE COMMITTEE ON NATURAL
RESOURCES AND ENERGY

October 12, 2015

James Volz, Chair
Margaret Cheney, Member
Sarah Hofmann, Member

Re: Siting of Net Metering and Other Renewable Energy Systems

Dear Chair Volz and Members Cheney and Hofmann:

This letter concerns the siting issues that have arisen concerning net metering systems greater than 150 through 500 kW in capacity and also larger renewable projects, whether or not eligible for net metering. I write to express my concern about the effect these issues may have on the Public Service Board's (PSB or Board) retention of authority over the siting of these systems and to urge the Board to use the broad authority delegated by the General Assembly constructively to address these issues.

While the PSB often testifies it simply implements legislation, the relevant statutes give the Board broad discretion in proceedings to site electric generation projects. The Supreme Court has ruled that, in siting proceedings under 30 V.S.A. § 248 (Section 248), the Board engages in a "legislative, policy-making process" and exercises its discretion "to weigh alternatives presented to it, utilizing its particular expertise and informed judgment." In re UPC Vermont Wind, LLC, 2009 VT 19, ¶ 2 (citations omitted).

Many of the issues that have arisen in Section 248 proceedings result from how the Board has exercised the discretion delegated by the General Assembly. An example is the amount of weight that the PSB gives municipal recommendations. On these recommendations, the statute simply directs the Board to give "due consideration." 30 V.S.A. § 248(b)(1). This phrase allows the Board to decide how much weight to give a municipal recommendation. The Board therefore could give municipal recommendations much greater weight than its decisions indicate it gives today, and no statute bars the Board from doing so.

Similar statutory language pertains to the Board's consideration of the many criteria incorporated into Section 248 from 10 V.S.A. chapter 151 (Act 250), to which

the statute requires the Board to give “due consideration.” 30 V.S.A. § 248(b)(5). The Board therefore may give great weight to those criteria.

For an in-state facility, Section 248 also gives the Board broad authority to review any issue relating to impacts on the environment, natural resources, and public health and safety. 30 V.S.A. § 248(b)(5). The Board could use this authority to develop and apply standards for Section 248 proceedings on specific issues that have raised concern, such as the increased use of primary agricultural soils for solar electric generation.

Other examples concern the burdens placed on municipalities and Vermont citizens who seek to participate in the Section 248 process. While the Board must conduct the process in accordance with the Administrative Procedure Act (APA), much of the burden placed on municipalities and citizens stems from PSB rule and practice and not the APA. The requirements for a Vermont citizen to establish a right or obtain permission to participate are set by PSB rule and not statute. The use of civil discovery procedures comes from PSB rule. The use of prefiled testimony results from PSB practice. The Board could review its rules and practices for Section 248 proceedings with an eye toward reducing the burdens it places on local governments and Vermont citizens who seek to participate.

The process for review of net metering systems provides further examples. For instance, the Board’s rules for all sizes of net metering systems transfer the burden to a party responding to the applicant to show that a significant issue is raised and to request a hearing, even where the system approaches the 500 kW ceiling for net metering. A 500 kW solar net metering system can occupy three or more acres of land, which is significant in a small state such as Vermont. In addition, there is a 30-day response deadline for all non-solar net metering systems of 150 kW or less, yet that response period drops to 21 days if the net metering system is greater than 150 through 500 kW.

With the exception of solar net metering systems of 15 kW or less, it is the PSB that has established these rules, pursuant to statutes that authorize the Board to waive notice and hearing requirements and simplify the net metering process “as appropriate.” 30 V.S.A. § 219a(c)(2). This legislation is phrased neutrally and does not direct that the simplification benefit one category of party such as the applicant.

The Board has an opportunity to address siting issues related to net metering systems in the rulemaking to be undertaken pursuant to 30 V.S.A. § 8010 and 2014 Acts and Resolves No. 99, Sec. 5. As you know, Section 8010 grants the Board broad authority to determine the specifics of the “new” net metering program to commence on January 1, 2017, within direction provided by the General Assembly. This authority includes the terms under which net metering systems are approved and sited and group net metering systems are allowed.

I urge you to consider exercising this broad authority to address the issues that have arisen concerning net metering systems greater than 150 kW up to the maximum of 500 kW. These issues include not only how these larger net metering systems are sited and designed but also the use of group net metering to support renewable energy generation that is effectively commercial in nature. This use of group net metering has a significant role in the siting process, because it helps to drive the proposal of larger net metering systems.

I also urge you to use your other authority proactively to address the siting issues for all large renewable energy projects, whether or not eligible for net metering. The Board has the authority to investigate any issue within its jurisdiction and to adopt rules and procedures. The Board has authority in individual cases to suggest design changes and impose conditions. The Board has authority to retain its own experts, at the expense of the applicant, to assist it in addressing siting and design issues in Section 248 proceedings. It is important for the Board as an institution affirmatively to respond to the concerns raised by many Vermonters.

Sincerely,



Rep. Tony Klein, Chair

cc: Committee members