



State of Vermont

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Agency of Natural Resources

MEMORANDUM

TO: Act 47 Commission
FROM: Agency of Natural Resources
DATE: December 8, 2017

SUBJECT: Analysis of moving the regulation of wind turbines on ridgelines from the PUC to Act 250

Electric power generation and transmission investment and development is currently regulated by the Vermont Public Utility Commission (PUC) under Title 30 of Vermont statute. Any new, in-state energy generation plant that is tied to the state's electric grid must obtain a Certificate of Public Good (CPG) under 30 V.S.A. Sec. 248, including wind turbines:

<http://legislature.vermont.gov/statutes/section/30/005/00248>

The Agency of Natural Resources (Agency) and the Public Service Department are statutory parties to the Sec. 248 process and provide the PUC with evidence and recommendations on criteria related to natural resource impacts, electric rates, reliability, aesthetics and others. The Agency of Agriculture, Food and Markets is also a required party in Sec. 248 proceedings for larger generation facilities that propose impacts to primary agricultural soils.

Section 248 includes a range of requirements that new generation projects must satisfy to obtain a CPG. Section 248(b)(5) focuses on impacts to natural resources, public health and safety, historic resources and aesthetics, giving due consideration to nearly all of the Act 250's criteria:

(5) With respect to an in-state facility, will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. §§ 1424a(d) and 6086(a)(1) through (8) and (9)(K), impacts to primary agricultural soils as defined in 10 V.S.A. § 6001, and greenhouse gas impacts.

Review of natural resource impacts by the PUC under Sec. 248(b)(5) is broader than review under Act 250. While review of natural resource impacts under Act 250 is limited to enumerated criteria, the PUC is not constrained in this manner. The PUC has recognized this and acknowledged that its review begins, but doesn't end, with the enumerated criteria. This has provided the Agency with the ability to raise, and successfully defend, arguments related to long-term forest health and sustainability, habitat fragmentation, landscape scale connectivity and state significant natural communities (even when the communities do not constitute RINAs). (See, North Springfield Sustainable Energy Project, Docket 7833; Kingdom Community Wind, Docket 7628; Verizon Wireless, Docket 8601; and Georgia Mountain Wind, Docket 7508.) As presently written, Act 250 does not contain provisions to protect these natural resource features. Shifting the review of ridgeline wind to Act 250 under the current Act 250 criteria would constrain the Agency's – and any other party's – ability to raise issues, and present evidence, on the fragmenting impacts of these facilities.

Sec. 248 also requires the PUC to give due consideration to the greenhouse gas impacts of electric generation projects. This has enabled the Agency to obtain, through the Sec. 248 review process, life cycle greenhouse gas analysis for certain projects, which are used to examine the relative GHG costs and benefits associated with the proposed development. This level of GHG emissions analysis would also not be possible through Act 250's current criteria.

Unlike Act 250, the Section 248 process is not simply a siting review; instead the PUC also must examine whether a project is needed, and consider impacts on electric rates and safety and reliability, as well as compliance with the state's comprehensive energy plan and energy policy goals. If the review of wind turbine siting is moved to Act 250, these topics would still need to be addressed. However, Act 250 district commissions are not equipped to deal with these highly specialized issues. As a result, the PUC would still need to analyze a project's impacts on electric rates, reliability, grid stability and compliance with energy policy goals, creating a bifurcated and potentially redundant process. Alternatively, an Act 250 district commission would need to obtain assistance from outside experts, potentially at significant cost.

In 2017 the Vermont General Assembly passed Act 53, which was intended, in part, to improve public participation in and access to the PUC's regulatory process. Changes resulting from Act 53 along with new practices enacted by the new PUC Chair, have increased opportunities for the public to engage in the Sec. 248 process. Additionally, with Act 174 of 2016 the General Assembly obligated regions and created the opportunity for municipalities to develop enhanced energy plans, including maps of potential and inappropriate areas for the siting of different types of energy resources. Once these plans are determined compliant with planning standards, they will enjoy substantial deference in siting matters before the PUC and greatly increase local influence over the siting of energy generation projects, including wind turbines on ridgelines. All of the regional planning commissions in the state are currently in some stage of this planning process, with three having received their affirmative determinations to date. Over half of Vermont's municipalities are currently receiving technical assistance from their regional planning commission to undertake enhanced energy planning, and several are expected to submit their plans for determinations in the near future.

It may be prudent to allow these changes to take root before further exploration of whether the review of ridgeline wind turbine siting should move from the PUC to Act 250.