Hi,

I'm commenting as an individual citizen and not in my role as a member our town's Planning Commission. I have extensive litigation experience in the PUC proceeding process (both as an intervenor and as witness), the Act 250 proceeding process (in a multi-year case appealed to Environmental Court), and as a Planning Commissioner I am the primary author for our town's in progress Act 174 energy plan.

Much of the Act 250 Commission's public online survey questions have focused on the role Act 250 might have in permitting those energy facilities that also interact with land use permitting issues. My comments are mainly directed at this issue.

I am not clear yet what process improvements the State of Vermont could realize by merging the complex PUC and Act 250 processes into a single hybrid within the statutory language. There is no Panacea for this complexity. Regardless of which path one takes, to participate in it competently, an Intervenor must hire an attorney specializing in that quasi-judicial process and its associated case law. One must also hire qualified experts to testify in specialized areas (e.g. aesthetics, vehicle traffic analysis, economics, etc). In my experience, these processes can be both multi-year in duration and they can exceed $100K cost. Few citizens have the means and tenacity to wage this scale of effort in the pursuit of justice against a bad actor developer. This observation highlights the pivotal role of the public advocate's office in creating socially just outcomes. In the opposite direction, I have also witnessed bad actor citizen interventions that incur huge costs for all parties but their claims against the project have dubious merit. Ultimately, what seems true is that the "bad actors" can enter the scene from any direction and the legislation must be written with this in mind.

From what I can tell, the only significant distinction between the PUC and the Act 250/NRB processes seems to be their respective focus is on energy facility permitting versus land use permitting. The PUC has the unique authority to invoke eminent domain to exercise "public good" acquisition of land. The PUC also considers technical areas, such as utility rate making, telecommunications, and grid stability, that are arcane and well outside the competence of most people.

Unfortunately, the PUC appears to be culturally biased towards embracing the economic metrics of a proposed project's merit. The side effect is that it almost never denies a CPG permit on the basis of a project's negative environmental land use impacts. By the nature of its charter, the Act 250 appeal process may be more likely to produce a more environmentally sound permitting decision than the PUC appeal process. However, Act 250 appeals are more arduous (and therefore more expensive) than the PUC: Environmental Commission => NRB => Superior Court Environmental division => VSC.

==> Recommendation: On an experimental trial basis, we could enact legislation (with 5 year Sunset provision) to test whether the Act 250 process can be successfully applied to the narrow jurisdictional scope of the 30 VSA § 248(b)(5) permitting criteria. If decision from that process grants the proposed energy facility an Act 250 land use permit then the remainder of the project's PUC criteria would be evaluated in a conventional PUC proceeding for the remaining 30 VSA § 248(b) permitting criteria. How to manage an appeal of the prerequisite Act 250 permitting decision is an open question.

In my view, both the PUC and the Act 250 process are vulnerable to political influence originating from the Governor's office. The influence is telegraphed to the quasi-judicial body by the position adopted by the public advocate's office of the DPS and NRB respectively. To the extent that these publicly financed "public advocate" attorneys and experts are advocating for the developer/utility, then they bias the quasi-judicial process towards an outcome favorable for those developers who have back channel access to the Governor. This is a systemic and fundamental defect in the management chain of command organizational structure at both the PUC and the NRB public advocate's office.

==> Recommendation: I advocate that both of the NRB and the DPS have their public advocate office moved under the State Attorney General organization. When transfered to a law enforcement organization, the public advocate can operate more independently and at arm's length from political influence. However, such a transition can not succeed unless it is adequately funded to litigate cases on an equal footing as its peer law enforcement agencies. Any legislative proposal from the Act 250 Commission must identify what source provides this funding.

The Act250 process assigns a local Environmental Commission to conduct the first round quasi-judicial hearings near the proposed project site.
This forum enables a boisterous venting of the opinions held by the local concerned citizens, but often those opinions are beliefs, not facts derived from expert testimony. On the positive side, it does enable the Act 250 land use permitting process to scale to the whole State of Vermont. The PUC has no analogous ability to scale to hundreds of permitting cases scattered across the State other than to hire dozens of Hearing Officers. This maybe the main benefit of the hybrid PUC/Act 250 permitting process. However, it should be tested with experience and then evaluated for its effectiveness.

The Act 174 authorized Planning Commissions to develop both a town- specific CEP and also specify for each energy technology its land use zones and applicable regulations. The Planning Commission is the statutory body who represents the Town's interests in the PUC proceeding. Therefore, the 30 VSA § 248(b)(1) orderly development criteria also interacts with the 30 VSA § 248(b)(5) Act 250 land use permit.

==> Recommendation: There needs to be public funding provided to the Planning Commissions to hire an attorney and experts as needed to support the Town's participation in a hybrid PUC/Act 250 (and any conventional Act 250 case). The Planning Commission is recognized in both the PUC and Act 250 venues as the primary source of local land use policy expertise. On a case by case basis, the Planning Commission would need to determine its legal position, based a proposed energy project's alignment with the Town's Act 174 compliant energy plan. The pool of attorneys supporting this activity would reside at the aforementioned Public Advocate offices.

Recommendation: Without adequate funding of their legal activities, the Planning Commission will not be able to deliver its expertise into the evidence record. The Town should not be financially burdened simply because a developer has chosen to propose project in that Town. The Act 250 Commission should identify and advocate a source for this attorney funding beside the Town's general fund. Note this recommendation applies to "vanilla" Act 250 permitting cases as well, not just PUC cases.

Thank you for this opportunity to comment on the Act 250 land use permitting process and to help shape its future evolution.

best regards,

George Gross

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