

Recommendations to Promote Increased Ease of Citizen Participation in PSB Proceedings¹

**Submitted to the House and Senate Committees on Natural Resources and Energy, the
Senate Committee on Finance, and the Joint Energy Committee on December 15, 2016.**

¹ See 2016 Acts and Resolves No. 174, Sec. 15(b).

Introduction

Act 174 (S. 260) of 2016 required the creation of a Working Group to review the current processes for citizen participation in Public Service Board proceedings and to make recommendations to promote increased ease of citizen participation in those proceedings.

In accordance with S. 260 Section 15(b), the Working Group was constituted of the following members:

Senator Virginia Lyons (chair), Joint Energy Committee
Board Member Margaret Cheney, Public Service Board
Representative Tony Klein, Joint Energy Committee
Superior Court Judge Robert Mello
Commissioner Christopher Recchia, Department of Public Service

The Working Group held nine biweekly meetings between August 25 and December 6, 2016, and one evening public hearing on October 11. In addition, members of the public attended each biweekly meeting and were invited to make comments during the final portion of each meeting. One such meeting was dedicated to hearing from a cross-section of participants in past Board proceedings. These comments helped to inform the Working Group's discussions and the final recommendations.

The following recommendations address a wide range of citizen interactions with the Board, from attendance at Board hearings to citizen access to documents and other written information. They suggest ways to make it easier for citizens to participate in different locations in Vermont, to improve the layperson's understanding of Board processes, and to make it easier to participate in all such processes, including contested (quasi-judicial) cases, uncontested cases such as workshops, and rulemaking procedures. In addition, there are recommendations to minimize the widespread confusion about the roles and responsibilities of the Board (PSB) and the Department (PSD), which has affected ease of participation in Board proceedings.

The recommendations are also coded to bring attention to three important categories. Recommendations preceded by *** would require a statutory change. Recommendations in italics are currently being implemented by the Board. Recommendations highlighted in yellow are those that mirror the spirit or the approach of Act 250, which some perceive to be more "user friendly" than the highly technical, quasi-judicial processes of the Board.

Our recommendations also reflect and support changes that the Board has initiated, in a natural evolution as Board membership and administrative staff have changed, the number of Board cases affecting individual Vermonters has grown, and the Board has heard public criticism of

their experiences. For example, in response to public concerns, the Board has been holding more site visits; and the Board drafted its 2017 net-metering rules with an eye to simplifying and clarifying the procedures for citizen and town participation, including the creation of template forms for would-be intervenors. In addition, the Board initiated some recent changes in its processes in response to the reports to the Legislature by the Solar Siting Task Force (January 2016) and the Energy Generation Siting Policy Commission (April 2013). Another important change has been the recent on-line availability of all non-confidential transcripts, which goes beyond what is available to parties in regular court proceedings in Vermont and makes it possible for citizens to prepare cases without traveling to Montpelier. Finally and perhaps most significantly, the creation of “ePSB” has been under way for several years and will be on-line in 2017.

The thread of ePSB’s capabilities and promise is woven throughout these recommendations and cannot be overestimated. Among many benefits, it will provide citizens with a free, searchable database of Board orders and documents, allowing people to do research from home. As citizens obtain Board orders, parties’ filings, and other case information independently and at their convenience, there will no longer be the delays of waiting for a call to be returned or emails to be answered. If ePSB performs as planned, it may obviate the need for additional personnel to help citizens understand, have access to, and navigate Board proceedings.

Finally, accountability is built into these recommendations through the “progress report,” which will analyze whether those steps that are already under way, such as ePSB, and any new undertakings have had their intended effect or whether further recommendations are in order.

Key: *Recommendations in italics are currently being implemented by the Board;*
Recommendations preceded by *** require statutory changes;
Recommendations highlighted in gray
would make the Board’s processes more like those used in Act 250 proceedings

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I. Recommendations to Improve Ease of Participation by Citizens in PSB Hearings

These recommendations make it easier for citizens to participate in all types of PSB hearings. They also change the way the Board provides notice of prehearing conferences and public hearings so that citizens are better informed of upcoming hearings.

- Prehearing conferences
 - To bring the public in at the beginning of the process, send notice of prehearing conference to adjoining landowners (right now they are only sent notice of the public hearing, not of the prehearing conference) and post notice of the prehearing conference on the Board's website
 - Expand opportunities parties to participate in prehearing conferences and status conferences by telephone or other electronic means
- Public hearings
 - Create opportunities for interactive public hearings around Vermont so the public can again participate simultaneously in widespread locations
 - Explore live-streaming or other internet-based system
 - *** Bring back Vermont Interactive Television ("VIT")
 - Expand ways of publicizing public hearings
 - Include in "calendar of events" in newspapers
 - Front Porch Forum
 - Radio public service announcements
 - ***Change 30 V.S.A. § 231(a) to mirror the current language in § 248(4)(D) – change from requiring publishing newspaper notice twice to requiring that notice be posted on the Board's website and published once in a newspaper
 - Before the Board's public hearing to solicit public comments, hold an informational session (hosted by the Department) where the developer can explain/describe the project to the public and answer the public's questions (which will better inform the public's comments to the Board)
 - *Continue to hold at least one public hearing in cases with significant public interest even if not statutorily required, at times and places convenient to the public and at locations relevant to the project*

- *Continue to provide every member of the public who attends the public hearing and is not a party to the case an opportunity to speak at the public hearing; continue to schedule another public hearing if this is not possible due to time constraints*
- Evidentiary hearings
 - *New net-metering rule will make it easier for a citizen to request a hearing*
 - *At the evidentiary hearing, ask questions of parties about concerns raised at the public hearing*
 - *Hold more evidentiary hearings in the area where the project is proposed*
 - Require that parties in any proceeding have adequate opportunities to review any MOU or settlement agreement filed, which at a minimum must include one round of discovery on the MOU before the hearing; parties may request a waiver of this requirement
 - *Continue to open hearings to the public*
- *New PSB website will include information regarding the mechanics of how hearings work (including specific guidance for pro se intervenors, e.g., how to “redirect” oneself)*
- Direct hearing officers to provide more information to *pro se* intervenors at hearings
 - *Present information and invite questions at prehearing conferences and evidentiary hearings about the Board’s rules, information on the Board’s website, and the process to be used in the case or at the hearing*
 - *Have hearing officers and the Board do more to assist pro se litigants from the bench (as judges do)*
- Provide information to the public about parking, including handicapped parking for hearings held in the Board’s hearing room

II. Recommendations to Increase Ease of Citizen Participation in Different Areas of the State

The recommendations in this section will make it easier for citizens who live far from Montpelier to participate in PSB proceedings regarding projects proposed in their communities.

- Create opportunities for interactive public hearings around Vermont so the public can again participate simultaneously in widespread locations
 - Explore live-streaming or other internet-based system
 - *** Bring back Vermont Interactive Television (“VIT”)
- Hold more evidentiary hearings in the area where the project is proposed
- *Continue to make more Board site visits in response to public comments*
- Expand opportunities for parties to participate in prehearing conferences and status conferences by telephone or other electronic means
- Modernize technology in the Board’s hearing room to allow for streaming/distribution of hearings, etc. so the public can watch hearings and workshops live online
- *Continue to make all non-confidential transcripts of hearings and workshops available to the public online so people can easily read the transcript of a hearing they were not able to attend*
- *ePSB¹ will enable citizens to make electronic filings with the Board instantly rather than by mail or messenger service to ensure that paper filings arrive by the deadline*
- ***Change 30 V.S.A. § 248 to mirror the language in 30 V.S.A. §§ 248a(e)(2) and (o) with respect to:
 - Requiring petitioners to attend a public meeting with the municipal legislative body or the planning commission, if asked by one of those entities, within the advance notice period before filing a petition for a certificate of public good with the Board
 - Requiring the Department to attend the public meeting on the request of the municipality, and to consider the comments made and information obtained at the public meeting in making recommendations to the Board on the petition.

¹ ePSB is the Board’s new electronic case management system that will include electronic filing, electronic document management, and access to public information in a case via the Board’s website, without requiring citizens to use any special software. Phase I of ePSB is scheduled to go live in January 2017; Phase 2 is scheduled to go live in June 2017.

III. Recommendations to Improve Instructional Documents for Citizens

The recommendations in this section will result in documents for citizens that are written in “plain English” and that explain Board procedures and how citizens can participate in Board proceedings.

- *Provide templates for citizens to fill in (e.g., to become an intervenor)*
- *Redesign Board’s website by 12/31/16 to include:*
 - *“Plain English” explanations of terminology, access points, and ways to participate in Board proceedings*
 - *Descriptions of processes used in different types of Board cases*
 - *Formatting requirements for prefiled testimony (with examples)*
- *Replace the “Citizens Guide to the Vermont Public Service Board’s Section 248 Process” with a revised, simpler “Citizens Guide to Public Service Board Processes” that includes an explanation of the difference between the Board and the Department and clear guidance on filing requirements (line spacing, single- or double-sided, page numbers, service list requirements, number of copies, deadlines, for all Board processes)*
- *The revised net-metering rule will include a new section for anyone who wants to review an application – a step-by-step description of the review process*

IV. Recommendations to Improve Citizens' Access to Written Information

The recommendations in this section will ease citizens' participation in PSB proceedings by providing them easier access to documents and other information about specific cases as well as guidance documents with information about how they can participate in PSB proceedings.

- *ePSB will:*
 - *Enable citizens to easily access all public documents and information, including case status, schedule, information on parties, and elements of the case*
 - *Enable citizens to search database of Board orders to familiarize themselves with Board precedent*
 - *Include required fields to ensure that filers have provided all necessary information*
- *Continue to implement the plan to digitize and upload all past Board orders into ePSB.*
- *New net-metering rule will require applicants to provide more information up-front so citizens can envision the proposed project*
- *Require petitioners to attach a Board handout regarding intervention instructions to the notices of filings that petitioners send to adjoining landowners*
- *Require petitioners to mail the new, simplified Citizens Guide to Public Service Board Processes to the service list with the first notice to potential parties*
- *Provide clear, written information at public hearings about how to become an intervenor and what happens after you are one*
- *Post tutorials on the Board's website to provide procedural information to pro se intervenors*
- *Continue to post non-confidential transcripts of hearings and workshops on the Board's website*
- *New PSB website will include Clerk's name, phone number, email address, and mailing address on the bottom of every page*

V. Recommendations to Help Citizens Navigate Board Processes

The recommendations in this section involve changes to the Board's processes, including those related to how Board personnel provide procedural guidance to citizens. These recommendations will help citizens understand how they can participate in Board proceedings.

- *** Change 30 V.S.A. § 248 to mirror language in 30 V.S.A. § 248a(o) with respect to:
 - Authorizing a municipal legislative body or planning commission to request that the Department retain experts to provide information essential to a full consideration of a petition for a certificate of public good and to allocate the expenses incurred in retaining these experts to the petitioner
 - Providing that hiring such experts upon the request of a municipality shall not oblige the Department or the personnel it retains to agree with the position of the municipality
- ***Change 30 V.S.A. § 248(f) so that towns and regional planning commissions are not required to file comments on projects with the Board seven days before petitions are even filed with the Board. Instead have comments submitted within 21 days *after* a petition is determined by the Board to be administratively complete.
- ***Change 30 V.S.A. §§ 246(c)(1), 248(4)(C), 248a(j)(2)(A), and 248a(k) to require copies of petitions and applications to be filed with specified entities and persons within two business days of the Board's determination that the petition or application is administratively complete (instead of at the same time that the petition or application is filed with the Board) so that recipients know that a petition or application is ready for review when they receive it and any deadline for filing comments on the petition or application is clear
- To bring the public in at the beginning of the process, send notice of prehearing conference to adjoining landowners (right now they are only sent notice of the public hearing, not of a prehearing conference) and post notice of the prehearing conference on the Board's website
- Loosen the Board's *ex parte* rule to allow hearing officers to provide procedural guidance to parties in cases
- *Continue to hold workshops to provide procedural information to pro se intervenors in cases with large numbers of such intervenors*

- *Continue to issue decisions on requests for extension of time sooner so citizens know whether to continue to draft a filing or prepare for a hearing*
- Always issue a document stating the deadline for filing a response to a motion (don't just rely on parties to know that the default is 15 calendar days)
- Have Board staff act more often as mediators, for example by conducting a status conference part-way through the case to try to narrow the issues
- Explore developing a pilot program for mandatory mediation in controversial cases
- Find opportunities to move contentious issues out of contested-case procedures to rulemakings where the public can participate more easily and informally
- *ePSB will provide citizens with easy access to information about the status of a case and any applicable comment period*
 - *Cases will be indicated as "Under Review" until deemed administratively complete enough to process; determination will be made within 5 business days for most cases*
 - *If filing is incomplete, petitioner will be notified of specific deficiencies*
 - *When statute allows Board flexibility, comment periods will start after case is deemed administratively complete*
- *ePSB will reduce the need for citizens to make paper filings*
- *New clerk and deputy clerk are revising internal processes for greater efficiency in responding to inquiries*
- Address public concerns in a separate section in the final order so it is clear to citizens what issues were raised in public comments and why the Board reached the decisions it did regarding those issues
- *New net-metering rule will set forth complaint process regarding compliance with CPGs*
- ****Assign responsibility and resources for direct enforcement by the Department (similar to the Department's role in enforcing the DigSafe program) so that the state is investigating citizens' complaints about alleged violations of certificates of public good, instead of expecting the citizens to provide evidence and put on a case before the Board about the alleged violations. Appeals of Department actions would be taken to the Board.*

VI. Recommendations to Help Citizens Distinguish Between the PSB and the PSD

Currently there is widespread confusion among citizens about the difference between the Board (PSB) and the Public Service Department (PSD). This confusion makes it more difficult for citizens to understand the Board's processes and how they can participate in them.

- ***Address the confusion about the difference between the Board (PSB) and the Public Service Department (PSD) by changing the Board's name to the Vermont Public Utility Commission (in step with the rest of the country)

VII. Recommendation for Progress Report

These recommendations will allow for assessment of the Board's progress in improving the ease of citizen participation in PSB proceedings.

- Have the Board file a report with the Legislature in one year on progress made to date, with an updated report annually for the following two years
- Include in the report an assessment of whether a Public Assistance Officer position should be created that is dedicated to answering procedural questions from all parties and facilitating informal discussions about scheduling and other matters, and if so, whether it should be located in the Board or the Department

VIII. Other Recommendations Regarding the Department

Because of the Department of Public Service's role as the public advocate in PSB proceedings, the Department interacts regularly with citizens participating in PSB proceedings. As a result, these recommendations identify steps the Department could take that would improve the ease of citizen participation in PSB proceedings.

- Have the Department respond to all communications from members of the public
- Have the Department include in the filing in which it takes its position in a case about a matter of significant public interest a summary of the public comments it has received in the matter, together with an explanation of why the Department has chosen to advocate for, or not advocate for, the views offered in those public comments

XI. List of Appendices

Appendix A: Comments received organized by date submitted

Appendix B: Meeting minutes

Appendix C: PSB presentation made at 8/5/16 meeting

Appendix D: Recordings of meetings and the public hearing are available upon request at the PSB offices

Appendix A:

Comments received organized by date submitted

Submitted
at 8/5/16
Working Group
Meeting

RECOMMENDATIONS FOR ACT 174 WORKING GROUP

Respectfully submitted by
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August 5, 2016

The PSB's Rules of Practice Should Make Clear How Filings Are to be Made in the Section 248 Process

The PSB's Rules of Practice are vague and do not always reflect the PSB's actual practice. For example:

- Rule 2.204(D) generally requires an original and six copies of most documents. In fact, in Docket 8523 we discovered that most of documents we needed to submit required only an original and *three* copies.
- The Rules do not state that two-sided copying is permitted.
- The Rules do not state whether a cover letter should be provided when submitting documents to the PSB. (In fact, in Docket 8523 we were told that a cover letter is necessary to inform the Clerk to file the documents.)
- The Rules do not state which documents need be notarized. Apparently, the only document that needs to be notarized is prefiled testimony, but Rule 2.213(C) does not contain a notarization requirement.
- Examples of common documents (prefiled testimony, discovery, briefs, etc.) should be provided. In particular, a standard form for service on parties should be developed. A standard form cover letter when submitting documents to the PSB would also be helpful.
- Early in the proceedings the parties should advise whether they want service by paper document, electronic document or both. (In Docket 8523, we were told informally that some parties, such as the Addison Regional Planning Commission, needed to be served only electronically, but we had no official word on that, so we continued to serve paper documents on all parties in addition to electronic copies.)

*Intervenor in PSB Docket 8523 (Petition of Next Generation Solar Farm, LLC for Certificate of Public Good, pursuant to 30 VSA §248, authorizing construction of 2.2 MW, 20-acre solar electric generation facility off Field Days Road in New Haven)

- The Citizens' Guide to the Vermont Public Service Board's Section 248 Process should be rewritten to clarify these procedures.

DPS and Other Government Agencies Show a Marked Bias in Favor of Developers, As Reflected in the Seriously-Flawed MOU Process

The stated mission of the Act 174 Working Group is to "make recommendations to promote increased ease of citizen participation in [PSB] proceedings." There is no point in increasing ease of citizen participation if the Department of Public Service and other agencies involved in the process--most notably the Agency of Natural Resources--ignore the citizens who participate.

DPS and ANR demonstrate a marked bias in favor of developers; the public is regarded as a nuisance. Nowhere is this more evident than in the MOU process, as we learned in Docket 8523.

- *MOUs should not be entered into until after all evidence is submitted and the hearing is held.*

In Docket 8523, ANR and DPS entered into critical MOUs with the developer early in the proceeding--well before the final hearing and before much of the evidence had been submitted.

- *DPS and other involved agencies should be required to read and consider all testimony and evidence submitted by Intervenors.*

Again, in Docket 8523, the Intervenors went through considerable time, effort and expense to submit evidence and testimony--all of which was ignored by DPS and ANR.

- *If it is necessary to enter into an MOU before the final hearing, a proposed form of the MOU should be submitted to all Intervenors for their comments and input before the MOU is entered into.*

Negotiations with developers are now cloaked in absolute secrecy, with intervenors and the public deliberately excluded. Intervenors and the public learn of the negotiations only after the MOU has been entered into.

- *MOUs should be signed on behalf of the government agency by the person most familiar with and responsible for the substantive contents of the MOU.*

At present, MOUs are signed on behalf of the government agency by an attorney, who does not necessarily have the expertise to vouch for the substantive

contents of the MOU. In the situation of the ANR MOU in Docket 8523, the MOU was signed by ANR attorney Donald Einhorn. A critical point of the MOU was to allow construction of a 2.2 MW solar project on 20 acres of land that included prime bobolink habitat. The MOU ignored the recommendations of ANR's own biologist, John Gobeille. Further, the MOU absurdly forbid any landscaping around the project on the ground that the landscaping--rather than the 20-acre solar array--would interfere with bobolink habitat. This is undeniable evidence of ANR's bias in favor of the developer: The bobolink issue was manipulated to favor the developer by relieving the developer of any obligation to landscape around the project.

The issue here is no longer about bobolinks, but about government integrity. The ANR MOU is completely lacking in credibility, and probably would never have been entered into if ANR had required that it be signed by Mr. Gobeille or someone having ecological expertise.

Also, the government agencies apparently require MOUs to be signed by its attorneys so that it can claim attorney-client privilege in the event the MOU is challenged by any Intervenor or other parties to the proceedings. This is exactly what happened to us in Docket 8523: DPS entered into a critical MOU with the developer well before the final hearing. When we attempted to inquire whether DPS had read or considered any of the Intervenor's testimony or evidence, DPS vehemently objected and raised attorney-client privilege. This was a disingenuous attempt to maintain unwarranted secrecy over the MOU process.

- *Once an MOU is entered into, the regulatory process is essentially over.*

In testimony submitted April 6, 2016, before the House Fish, Wildlife & Water Resources Committee, John Brabant testified as to other serious shortcomings of MOUs (which he referred to as Stipulated Settlement Agreements). Focusing on MOUs entered into by ANR, Mr. Brabant stated that an MOU gives the developer "ANR's commitment to support the project at the tribunal and defend against any and all parties who might seek greater, more appropriate protections of the resource." He further noted, "Since ANR is now involved in a contractual relationship with the developer, all the attendant obligations between contractual parties apply ahead of ANR's statutory and regulatory obligations to the public. Essentially they become partners in the project under review, losing objectivity and compromising ANR's ability to bring enforcement actions against permit violations after the project is permitted."

Mr. Brabant made many other excellent points regarding MOUs. Please refer to his testimony before the House Fish, Wildlife & Water Resources Committee.

McHugh, Andrea

From: Shanna Ratner <gonuts.ratner2@gmail.com>
Sent: Wednesday, September 07, 2016 6:31 PM
To: McHugh, Andrea
Subject: Act 174 Working Group
Attachments: Revised Principles for Energy Transformation in Vermont.pdf; Vermont's Energy Transformation Plan Description.pdf

Dear Ms. McHugh,

Please accept the attached two documents as input for the Act 174 Working Group. I would be pleased to answer any questions the group may have.

Sincerely,

Shanna Ratner
1694 Barry Road
Fairfield, Vermont



Draft Principles for the Energy Transformation Coalition

We believe Vermonters are capable of working together at the local, regional, and state levels to create a sustainable energy future that provides broad benefits without contributing to environmental destruction, concentration of wealth in the hands of a limited number of developers, and unintended consequences such as loss of human health, property value, and trust among neighbors.

These four principles guide our thinking:

1. Efficiency is the key to energy transformation.

The more we can do to lower peak demand, the less generation will be required. Each region of the state should be called upon to work with localities, utility companies, entrepreneurs, scientists and others to identify and implement pathways to energy efficiency, guided by statewide targets that identify the required regional contribution. Their work will identify the statewide and sub-state policies required to achieve specific targets within specific time frames. Increasing energy efficiency creates many more entrepreneurial opportunities and jobs for Vermonters than any other aspect of energy transformation. Energy efficiency increases the value of our individual and collective assets for current and future generations. Vermont has not yet begun to tackle the challenge of energy efficiency in a comprehensive way or in a way that takes into account distributed energy solutions.

2. Intelligent energy planning matches energy sources to energy uses.

For example, relying on fossil fuels to heat our homes when we have abundant biomass resources that we could use doesn't make sense. Changing the way we heat our homes and fuel our vehicles would reduce greenhouse gas emissions, provide homegrown sustainable livelihoods, and, if properly implemented, improve stewardship of our natural resources that are our inheritance and our gift to future generations. We need to carefully consider the appropriate mix of sources (in-state, out of state), forms (biomass, solar, geothermal, natural gas, wind, etc.) and scales (single home, cluster, community, region, statewide). The first step is to establish and achieve realistic energy efficiency goals. Just as it makes no sense to size a furnace for a home that is not energy efficient; it makes no sense to build out energy generation facilities without regard to peak demand.

3. Transformation requires new institutions that promote civil discourse.

The Public Service Board is a relic of an era in which energy generation was centralized. We now live in an era that must blend independent (off-grid) generation with distributed and centralized solutions. The antiquated quasi-judicial control mechanism that is the Public Service Board is allowing vested interests to railroad the general public, creating victims through poorly regulated experimentation, and generating fear, frustration and discord among Vermonters. Institutional transformation is required to create a system that promotes civil discourse, creativity, and inclusive engagement that will help us find the best way forward. Mature leadership is needed that recognizes the self-interests of participants and effected parties at every level and scale of operation and brings them together to identify shared interests and shared solutions that are mutually beneficial.

4. Transformation can and should benefit all Vermonters, including those people and places that are economically marginalized and having to choose between energy and other necessities of life.

Vermont's energy transformation should be guided by the principles of a wealth creation approach to economic development in which the stocks of all eight forms of community wealth – social, natural, individual (skills and health), intellectual, built, political, cultural, and financial capital – are enhanced and none are undermined. This requires an approach that is inclusive of economically marginalized people and places as well as those with privilege. The approach should empower economically marginalized people and places as co-producers and co-owners of energy, not simply as recipients of subsidy. It requires creativity since our existing systems are based on being able to do harm without acknowledging it (we call these “externalities”). The opportunity presented by the imperative for energy transformation is an opportunity to create a new normal way of doing business that results in a more just and inclusive economy that benefits all Vermonters.

Vermont's Energy Transformation An Alternative Path to Arrive at Vermont's Energy Future

Energy is a complex topic and an alternative energy path will take some time to fully flesh out. This introduction provides the justification for such an undertaking and describes, in broad strokes, the intended outcomes.

Vision

We envision arriving at a future in which Vermont has achieved price stability and a secure supply of energy in ways that actually benefit the environment, the economy, and the culture of Vermont. It is not enough to simply do no harm; we need to work together to find ways to meet this challenge that provide multiple ongoing benefits.

What Isn't Working

The State of Vermont has set a statewide goal of "90% renewable energy by 2050" *without* creating a meaningful role for regions of the state and their municipalities in making progress toward that goal. By adopting a limited statewide focus, there is no opening left for meaningful engagement by Vermont's regions and municipalities to craft solutions appropriate to their context and take responsibility for contributing to the larger goal. The top down approach in place today encourages developers at the expense of citizens and municipalities and is proving to be highly divisive. 83+ towns from throughout the State have signed the Rutland Resolution "calling for their state representatives and senators to develop amendments to the statutes that concern the siting and approval of renewable energy projects and to the procedures of the PSB in order to ensure that Vermont municipalities have a more meaningful role in the CPG process and to require compliance with appropriately-developed municipal siting standards."

The goal of "90% renewable energy by 2050" has been established statewide without providing clarity regarding where that energy should come from. Some are under the impression that we should be generating 90% of our own electricity by 2050; others see this as a counterproductive goal that would undermine our engagement with other states in New England and the Northeast and reduce our energy security and resilience overall. Failure to establish a target for energy generated in-state for use in state and opportunities to import renewable energy undermines the clarity needed for intelligent progress and hides Vermont's comparative advantages and lack thereof in certain types of renewable generation like wind and will result in patterns of relatively inefficient, higher cost investments that drain Vermonters' pocketbooks over time.

Additionally, the State has not presented the goal of "90% renewable energy by 2050" in relation to what should be equally ambitious goals for improving our energy efficiency with respect to electricity, heat, and transportation. Relatively little progress has been made to date on this front and the introduction of smart meters statewide provides one of several new opportunities to make real progress here. Many Vermonters can actively

contribute to the statewide goal through well-designed programs that could be personalized at the municipal and regional levels for greater engagement. The more efficient we can become the less energy we will need to either generate in state or import.

The alternative path we seek to develop goes beyond engaging regions and municipalities in renewable energy siting decisions through region and local “certified” land use plans; it seeks to empower local leaders to engage a full range of partners, including utilities, the State, developers and others to come up with the best place-based solutions to improving efficiency and reducing reliance on fossil fuels across all sectors including heating and cooling, transportation, and electricity.

Misleading Assumptions

The State’s failure to actively engage all Vermont regions and municipalities in both energy planning and implementation is a mistake that seems to be based on a mindset full of untested and perhaps misguided assumptions. The first of these is the notion that “the greater good” outweighs the rights of municipalities and individual citizens to a voice in the process of energy development. This assumption has led to uncompensated injury of Vermonters as a result of poorly sited energy generation facilities for which “certificates of public good” have been issued. Uplifting an imaginary “public” while ignoring the concerns of real people that have been inadvertently harmed by publicly approved development is a recipe for breeding alienation, distrust, and backlash that wastes everyone’s time and resources and distracts us all from addresses the energy challenges at hand.

A second widespread assumption is that the people who oppose the current state-driven process of energy planning and implementation are NIMBY’s and would say “no” to “everything.” While this is an easy way to dismiss alternative points of view, it is not actually valid. Taking the time to speak with individuals that have come to the legislature to testify on this issue and others, it becomes clear that they are, in fact, in favor of energy transformation and willing to do their part as long as their concerns are taken into account and solutions provide real benefits to their towns and regions while acknowledging and mitigating and collateral damages. One of the key concerns raised to date is the lack of transparency not only in negotiations with developers and siting decisions, but with respect to where the energy that is generated goes and who uses it, who is actually investing in projects, who owns the projects, who is receiving financial reward from the projects, and the extent to which those rewards consist of federal and/or state subsidies. These are legitimate concerns that should be addressed by an open government operating for the public good.

A third assumption is that the principle concern of those opposed to particular developments is the appearance of the landscape, “people will just have to get used to seeing their sources of energy.” While this is a concern in some instances, it is founded not only on personal preference but also on potential impacts on real estate value and tourism and the uniquely Vermont mystique of relatively unspoiled vistas (that the State

has invested considerable dollars in protecting for many decades). Trivializing this concern does not do it justice.

Vermonters are concerned about more than just appearances. Issues of environmental protection including water quality, forest and agricultural land productivity, livability, hazardous conditions, impacts on recreational opportunities, and impacts on local economies are all of concern. Again, generalizing and thus trivializing the wide array of concerns on the minds of Vermonters reduces the likelihood of finding best solutions.

We believe that all these assumptions regarding the “public good,” “NIMBYs,” and the nature and extent of Vermonters’ concerns about the current course the state is on to identify and implement energy solutions in statewide framework are largely untrue and are contributing to the divide that has been created between those with the power to make decisions, all of which are concentrated at the State level, and those affected by those decisions that live and own property in Vermont’s regions and municipalities to the detriment of the State as a whole. That is not to say that some of these assumptions may not be true of some people some of the time; however, we do not believe they accurately reflect Vermonters’ attitudes in general. By relaxing these assumptions, and crediting Vermonters with the ability and willingness to craft solutions that contribute to state goals without causing undo collateral damage; the top down divisive path we are currently on could be transformed into a cooperative two way street between the State and its regions and municipalities to the benefit of both.

An Alternative Plan

The key questions that need to be answered by an alternative energy path are: What is the appropriate contribution or fair share for each region of the state with regard to improving energy efficiency; providing renewable electric energy, reducing reliance on fossil fuels for heating and transportation? And how can regions, with input from regional planning commissions, utilities, state agencies, social service agencies, entrepreneurs and others best organize themselves to meet their obligations in ways that benefit all Vermonters, including those with limited financial resources?

The Role of the State

The vision behind this plan is radical; it goes beyond seeking incremental changes in the current siting processes for industrial scale renewables and seeks to provide venues and processes at the regional level for sharing, information gathering and implementation to achieve shared goals.

The primary role for the State in this plan would be to:

1) create incentives (and penalties) for all parties - utilities including Efficiency Vermont, VELCO, banks, community and industrial developers, entrepreneurs, PSB, state agencies and others to plan cooperatively, reduce turf battles, and negotiate in good faith toward solutions that serve the common good;

- 2) clarify the meaning of the “90% renewables by 2050” goal in terms of in state versus imported energy
- 3) continue to maintain the PSB to regulate large utility companies operating in state;
- 4) continue to maintain Act 250 and the Environmental Review Board with oversight for energy developments not owned by utility companies;
- 5) provide support to the regions by taking on an Energy Coordination function that would include, but not necessarily be limited to:
 - a. developing and/or aggregating information required to make good decisions with respect to improving energy efficiency in all sectors and with respect to grid development and siting for energy generation. This might include, but would not be limited to, information on disturbed areas such as rooftops, gravel pits, industrial parks, etc. and information on households currently off the grid so that their experiences can be factored into planning at the regional level.
 - b. assisting regions and municipalities in obtaining information and access to expertise required for informed decision-making
 - c. assisting regions, municipalities, and other partners in negotiating mutually beneficial agreements that adhere to established criteria and forward the goals of regions, municipalities and the State in cases where the State’s involvement can result in improved outcomes through leveraging resources or other means. This might include, but would not necessarily be limited to, negotiating trade-offs between regions or negotiating on behalf of regions with others.

The Role of the Regions

This plan also envisions a shift in the role of Regional Planning Commissions with respect to energy from strictly planning and data collection to facilitation of partners and coordinators of implementation among municipalities and at the regional level. Regional Planning Commissions already work on Transportation and have information and expertise that will be valuable in this process. Several have received funding to begin to collect information relevant to energy planning at the regional level. Additional staff with new skills may be needed to fulfill this new role, since it goes beyond the traditional planning function. In some regions, this role might better be played by economic development agencies such as NVDA in the Northeast Kingdom. Who plays the role could be left to each region to determine.

Sample Criteria for Identifying Regional Energy Solutions

Regional energy solutions could be crafted to meet criteria that might include, but would not necessarily be limited to:

- The proportion of energy generated by new and existing renewable installations that must be used in state versus sold as RECs.
- The proportion of existing and new renewable energy installations by any given entity for which local municipalities and/or residents have shared ownership or influence over investment decisions.

- The likely return on investment over time considering maintenance and decommissioning costs
- The economic impacts of investment and the distribution of those impacts; specifically, the economic benefits to lower income Vermonters
- The environmental impacts, particularly with respect to forests, agricultural lands, water, and high value wildlife habitat
- Relative reliance on taxpayer subsidy at both federal and state levels
- Siting that minimizes the likelihood of adverse impacts of all types on adjoining and affected property owners.
- Monitoring of performance with data reporting requirements for both efficiency improvements and generation

Establishing Regional Targets

A methodology for determining Regional targets would need to be established, but does not need to be overly cumbersome. For example, efficiency targets could be established in each sector – residential, commercial (including non-profit), industrial – for electricity, heat, and transportation based on the amount of energy used currently and the proportion that represents of statewide energy use. Similarly, renewable energy generation targets could be established based on the amount of renewable energy currently generated and used in state in relation to the population base of the region. Some regions are already producing beyond their own needs while others are not. Opportunities for coordination and “trading” between regions could be considered as well such that regions that are overproducing for their own needs and helping to supply the needs of other regions could be compensated for their contributions. This would help spread the wealth related to energy use more evenly throughout the state. Similarly, regions that exceed their efficiency goals could see a reduction in required generation. Targets would be revisited on a regular basis.

Once basic criteria and targets are established, with some flexibility given to the regions to amend and prioritize criteria, each region would be free to figure out how best to meet the challenge given their own natural and built resource endowments, regional priorities and development aspirations. The engagement of all relevant partners in learning together as well as crafting solutions is essential to the success of this approach. Therefore, the state will have a role to play in encouraging flexibility, openmindedness, and engagement on the part of utilities including Efficiency Vermont and potentially other entities over which the state has regulatory authority and/or to which it provides taxpayer assistance.

Conclusion

With clearly established targets, a system of accountability, and genuine partner engagement, we envision creative solutions emerging from all corners of the state that capitalize on the human as well as natural resources with which Vermont is blessed. We

do not downplay the complexity of the topic or the steep learning curve required to craft solutions; however, building the capacity to craft these solutions at the regional and municipal level with oversight from the State will result in more widely shared benefits, more sensitive use of available resources, greater ongoing resilience, and less time and effort wasted in resistance to top-down solutions. Vermonters have shown their capacity to craft solutions to energy challenges. Most recently Stowe and Hyde Park municipal utilities were able to successfully site renewable generation widely viewed as beneficial and not disruptive to their communities. Other municipalities that do not currently have their own municipal utilities could consider some version of that option with the opportunities presented by today's technologies. Locally crafted solutions can be shared in state and beyond, making Vermont a leader in "open source" energy systems transformation.

For more information please contact Shanna Ratner at shanna@yellowwood.org, 802-524-6141.

McHugh, Andrea

From: Cynthia Barber <cbedit@kingcon.com>
Sent: Monday, October 03, 2016 7:35 PM
To: McHugh, Andrea
Cc: vlyons@leg.state.vt.us
Subject: Citizen Participation

To the Citizen Participation ... Working Group, I offer the following comments:

The concept of “citizen participation” in Public Service Board (PSB) proceedings is a joke. Sorry, it’s not a joke. It’s a nonevent. It simply doesn’t happen except for lip service. For more than a dozen years, I have been involved in opposing industrial wind on our ridgelines. I have intervened *pro se* and helped others intervene; I have attended prehearing conferences, technical hearings, ANR’s Wind Power Work Group, two special commissions directly related to wind, and sound standard hearings and workshop; I have traveled all over the state to participate in hearings and workshops. And nothing has been gained, nothing has changed.

The so-called public hearings are a sham. Citizens from all walks of life, many of whom are shy or reticent and have never spoken in public before, come out to give their sincere, heart-felt thoughts in their allotted 2 or 3 minutes, believing that what they say is important and will be listened to. Then, everything that is said is ignored and plays no part in the actual proceedings. It’s a waste of everyone’s time; it’s a waste of taxpayer dollars for PSB board members to travel long distances and spend hours listening to something that really doesn’t matter (they are probably bored to tears). The public is insulted.

Participating *pro se* in dockets is also futile and sad. It is an incredibly time-consuming and all-encompassing experience lasting months by citizens who already lead full, busy lives. Upon entering the hearing room, it is intimidating to see the Good Old Boy network in full bloom. It is difficult to follow the legal jargon. After citizens have raised significant money — out of their own pockets — to hire experts, the experts’ testimony is basically ignored. The final decisions and findings by the PSB rarely give credit or credence to *pro se* or expert testimony; the board always accepts the applicants’ expert testimony as “truth.” So demoralizing.

Accordingly, I will not travel almost 2 hours each way on October 11 for a 2-minute chance to offer my thoughts, which would likely be disregarded anyway.

My recommendation? Seriously consider the recommendations submitted by Vermonters for a Clean Environment. Ms. Smith is extremely knowledgeable and well-versed in PSB proceedings and fully

understands the futility of current participation. I cannot improve on her recommendations or think of anything that she may have missed.

Sincerely,

Cynthia Barber

Newark, VT

McHugh, Andrea

From: Lauren-Glenn Davitian <davitian@cctv.org>
Sent: Wednesday, September 28, 2016 2:55 PM
To: McHugh, Andrea; Virginia Lyons
Subject: Comments for Act 174 Working Group from CCTV

Dear Ginny and Andrea,

Thank you for the opportunity to address how the Public Service Board can promote increased ease of citizen participation in Board proceedings. I am sorry I cannot attend the October meeting in person, but am glad to speak in more detail on the following points at any time that is convenient for you. I am also aware that a member of the Vermont Access Network is planning to attend.

Here are the main areas of concern:

- With VIT gone, we need to come up with an alternative way to make it easy for constituencies to reach the Board from all parts of the state. CCTV and VAN is able and willing to take up this issue with the Committee or Legislative Branch or PSB to determine how we can make this happen in a cost effective manner. Please see paper we worked on related to this. Especially p. 11 -12. (There are attachments in the final version which would be available through Maria Royle at the Legislative Council).
- So much of the Board's judgement rests on the quality of public participation and the interpretation of that data. This is especially evident in the current Comcast renewal case Docket 8301. It would be valuable for the Board to clarify how important this input is in their decision making and how much weight they give the public's view, in the case of cable TV, of community needs and interests.
- The DPS is not adequately experienced in survey design or the publicity and management of focus groups, which feeds directly into the Public Process PSB. Nor is there a DPS public advocate that focuses on telecom issues. This is a connected set of concerns. The entity tasked as the public advocate does not have the tools necessary to do its job. I base this opinion on the design of the survey questions relied upon in Docket 8301, participation in focus groups for both this Docket and the BT Docket 8713.

I hope these are useful. I am happy to discuss this in more detail if that is convenient for you.

My best, Lauren-Glenn

--

Lauren-Glenn Davitian | Executive Director
CCTV Center for Media & Democracy

COMMON GOOD VT | CHANNEL 17/ Town Meeting TV | CCTV PRODUCTIONS
davitian@cctv.org | 802.862.1645 x12
www.cctv.org | www.CommonGoodVT.org

McHugh, Andrea

From: Jane and Nate Palmer <laughingtreefarm@hotmail.com>
Sent: Tuesday, October 11, 2016 3:04 PM
To: McHugh, Andrea; vlyons@leg.state.vt.us
Subject: Comments for Public Service Board Proceedings Working Group
Attachments: workinggroupcomments101116.pdf

Hi,
Please add this comment to the hearing tonight.
Thank you,
Jane Palmer
Monkton, VT

Comments for
Public Service Board Proceedings Working Group

Nathan and Jane Palmer
986 Rotax Road
North Ferrisburgh, VT 05473
laughingtreefarm@hotmail.com

Nate and I testified before the Public Service Board Proceedings Working Group committee on October 6, in Montpelier.

A video clip of our testimony and the questions and reactions from the group can be found here:
<https://youtu.be/bkFkuOm74yQ>

Our testimony relied on our experience with the PSB and DPS during the 248 proceedings in Docket 7970 regarding the gas pipeline Vermont Gas had proposed and is now attempting to finish construction on.

We understand the mission of this working group committee is to “to make recommendations to promote increased ease of citizen participation in those [Vermont Public Service Board]proceedings”.

Our first concern is that this working group does not include any members of the public. Instead, it includes a member of the PSB, the commissioner of the DPS, a senator, a representative, and a superior court judge. None of the above have experienced what it is like to attempt to navigate and argue for their cause before the PSB. Instead, a small handful of select members of the public were invited to speak for approximately 5 minutes (and answer questions for 15) about their experience and suggestions on how to make the process more “user friendly” for regular citizens. Omitting the subject of the mission from the committee makes no sense.

Our main criticism of the PSB 248 process is that it is apparent that decisions are already made before the PSB has a chance to weigh the evidence and release the order and the CPG. Representative Tony Klein made the statement that once a project is applied for, unless there are some extraordinary circumstances that can't be met, the permit is going to be issued. This is in direct conflict to what Chairman Volz of the PSB told us during the first technical hearing on Docket 7970 for the gas pipeline in September of 2013. We asked Eileen Simollardes, VP of VGS if she thought this project was a “done deal”. Under oath, she answered, no. Then Chairman Volz vehemently stated this was NOT a done deal indicating there was a possibility the project would not receive a Certificate of Public Good. Governor Shumlin has assured many Vermonters that the decision to permit the gas pipeline would be a fair decision.

On the other hand, the utility, (in this case, VGS), from the beginning, had always implied the CPG *would* eventually be granted and that any land owner that didn't sign an easement would be subject to condemnation or seizure of the easement using eminent domain once the CPG was granted, and that if the PSB decided the compensation, it would be much much less than the gas company was offering. This is why we asked the question at the technical hearing. If we hadn't been assured it was not a “done deal” by the chairman of the PSB, we probably wouldn't have pursued our attempts to prove the project was NOT in the public good. Because we would have realized our efforts would have been futile.

At the October 6th meeting, Judge Mello asked us if we approached the DPS for help in the process. Contacting the DPS was one of the first things we and many other landowners did. Commissioner Recchia's response was that the DPS is charged with representing the ratepayers. If the ratepayers were to be on the winning end of this transaction, we, the landowners would be on the losing end. Mr Recchia and Louise Porter made several trips to Monkton to "deal" with the landowners and none of us ever felt support from the Department. DPS sided with VGS every step of the way. The scenario was more like the description Nate used at the meeting on October 6. The eminent domain "pistol" was placed on the table before any of the "negotiations" started and we were told the "pistol" would only be used as a last resort. None of us had any delusions that we were going to be able to "negotiate" with that pistol sitting on the table. The outcome of any "negotiation" was already determined.

At the October 6 meeting, Chris Recchia got pretty agitated at the suggestion that the DPS does the governor's bidding. It has been our observation that this is the case...and we have been told that by numerous people in state government including one in the DPS. The DPS has, on a number of occasions, supported VGS in suppression of information available to the public. Mr Recchia stated at the meeting on October 6, "Of course we [DPS] have to take a position BEFORE the Board decides!"

If the DPS takes a position before the Board makes a decision, why do we need a PSB at all? If the parties that submit testimony are heavily weighted in FAVOR of a project, and the DPS spells out the policy decisions based on facts they have gathered to support their foregone conclusion and none from those that may have legitimate reasons to oppose the project.. isn't the Board just a formality?

One of the goals we had as individuals against a large corporation was to illuminate the issues landowners are faced with during the siting and construction of a project. We were partially successful in convincing the PSB that the construction of a pipeline through our farm would damage our soil and change the flow of subsurface water. What was surprising to us, is that these acknowledgments did not translate to OTHER prime farmland that belonged to other land owners who had not intervened in the docket. This is deplorable. To avoid our soil only to damage our neighbors is not justifiable. We naively thought that once knowledge of the amount of destruction these type of projects produce, sensitive siting on other farmland would follow. Not the case. The Department of Agriculture was obviously in support of the project and ignored the detriment to the soil and water flow. This situation only discourages people from trying to influence the PSB decision because they seemingly have to start from zero in their attempts to protect their land.

So the prospect that any project will receive a CPG regardless of what any private citizen does or says, indicates that it really doesn't matter what kind of illusion of participation the public is granted or if it is made more "accessible"...it won't make a lick of difference in the end unless the process is just and fair and the decisions are not based on policy.

Don't be surprised if the number of people who turn out to testify on October 11, 2016 is low. Public hearings are not generally well advertised but those who felt it important that the public weigh in were diligent in getting the word out in order to bolster attendance. Those individuals are no longer of the mind that any public comment will have any effect on the decisions of our government.

McHugh, Andrea

From: PSB - Clerk
Sent: Monday, August 15, 2016 1:38 PM
To: Cheney, Margaret; McHugh, Andrea; Tierney, June; Bishop, Ann
Subject: FW: Act 174 Working Group | Vermont Public Service Board

From: Annette Smith [mailto:vce@vce.org]
Sent: Monday, August 15, 2016 1:20 PM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject: Fwd: Act 174 Working Group | Vermont Public Service Board

Dear PSB Clerk,

I see this page has been set up. I see no contact info or way for the public to engage.
<http://psb.vermont.gov/Act174WorkingGroup>

I would like to request that the following links be added to the informational sections and are reviewed by the PSB Working Group members:

1. Sound Standard Investigation: <http://psb.vermont.gov/docketsandprojects/electric/8167>
2. Temporary Rules for Wind Turbines
<http://psb.vermont.gov/statutesrulesandguidelines/proposedrules/temporaryrulesonwindgenerationsound>
3. Electric Generation Siting Commission <http://sitingcommission.vermont.gov/publications>
4. Solar Siting Task Force <http://solartaskforce.vermont.gov/>,
including <http://solartaskforce.vermont.gov/comments>

All of the above contain public comments about the PSB process, among other things. By simply posting the final reports of the energy siting commission and solar siting task force, it diminishes the materials available to the working group in understanding the way the public interfaces with the PSB. Much good work went into the above on the part of the public. The general feeling is that *all* public input in all the above were ignored. By not posting the public comment in those dockets where the PSB solicited and received substantive public comment, the working group adds to the feeling the public has that their input is not welcome or considered by the PSB.

McHugh, Andrea

From: PSB - Clerk
Sent: Wednesday, October 12, 2016 8:16 AM
To: Cheney, Margaret
Cc: McHugh, Andrea
Subject: FW: Comments for Act 174 Working Group
Attachments: Comments to Act 174 Working Group.pdf

FYI.
-Judy

From: Christine lang [mailto:cmlangvt@gmail.com]
Sent: Tuesday, October 11, 2016 9:37 PM
To: PSB - Clerk <PSB.Clerk@vermont.gov>; andrea.mchugh@vermont.gov; vlyons@leg.state.vt.us
Subject: Comments for Act 174 Working Group

Dear Act 174 Working Group,

Please find attached our comments to the Working Group.

If any more information is needed please feel free to contact us.

Respectfully,

Dustin & Christine Lang
(802) 528-5242

Comments for the Act 174 Working Group

Problems with the Intervenor Process at the PSB:

The Public Service Board is a lawyer's world and there is a lot of communication between lawyers that we the public are not privileged to be a part of.

The pre-hearing conference is a formality for the attorneys. They chat together before the hearing and determine a schedule before they open the formal meeting. The public is just an audience and is given no chance to offer input.

For a quasi-judicial system, it is very judicial and for the public to participate, we need a voice in the procedure so we can be considered participants and not spectators.

During the Met Tower case that we have been involved in, we have been advised multiple times by the Department of Public Service to get a lawyer. Lawyers are expensive and we don't have an unlimited budget to pay for that. The Met Tower case should have been a simple issue of did he or did he not put up the Met Tower without a permit and was the permit required. We gain nothing out of this except for asking the PSB to ensure that rules are followed. But, this case has dragged out for over a year now (we first filed notice that he didn't have a permit in July, 2015). During the last 15 months, we have had to file for intervenorship twice, we were granted partial intervenorship, we have had subpoenas served on us and our partial intervention was taken to the Vermont Supreme Court. The subpoenas were dropped by the Swanton Wind lawyer and the Vermont Supreme Court case was dropped due to lack of show cause.

As a result of this Met Tower case, we feel abused by the system. Each time we speak with the Department of Public Service, they feel sorry for us and what we are being put through, but they can do nothing to help us and they cannot give us legal advice.

The State of Vermont has an obligation to help the citizens of Vermont navigate the PSB process. The only way to do that with the current system is State to provide the citizens with an attorney independent of the Department of Public Service to help them navigate and to protect them from this adversarial and abusive process.

Respectfully Submitted,

Dustin and Christine Lang
21 Rocky Ridge Rd
St. Albans, Vt 05478
(802) 528-5242

McHugh, Andrea

From: PSB - Clerk
Sent: Monday, September 26, 2016 10:41 AM
To: Cheney, Margaret; McHugh, Andrea
Subject: FW: Regulatory Capture
Attachments: 2016-09-26-Captured-Regulators-&-Ruined-Ridges.pdf

From: Greg Pierce [mailto:greg.pierce9@myfairpoint.net]
Sent: Monday, September 26, 2016 9:53 AM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject: Regulatory Capture

Dear Judith Whitney,

At a recent meeting of the Act 174 Working Group, which I attended, I raised the subject of 'Regulatory Capture'. I was unable to provide a good description of the subject I was attempting to raise. Attached is a document that gives excellent background on 'Regulatory Capture'. Would you please be sure each member of the VT-PSB and the Act 174 Working Group receive a copy of this e-mail, including the attachment. Thank you for your assistance.

Greg Pierce
telephone: 802-524-6340
e-mail: greg.pierce9@myfairpoint.net
website: www.gregpiercewriter.com

Captured Regulators and Ruined Ridge Lines

SEPTEMBER 21, 2016 BY TRUENORTH — 13 COMMENTS



Alice Dubenetsky

There is a syndrome behind what is happening to Vermont's farmlands and ridge lines *vis a vis* the approval of industrial scale wind and solar development that is ravaging the state. It's known as Regulatory Capture.

"Regulatory Capture is a form of government failure that occurs when a regulatory agency, created to act in the public interest, instead advances the commercial or political concerns of special interest groups that dominate the industry or sector it is charged with regulating.

When regulatory capture occurs the interests of firms or political groups are prioritized over the interests of the public, leading to a net loss to society as a whole. Government agencies suffering regulatory capture are called "captured agencies".

Vermont's Public Service Board is clearly a captured agency. Our soon-to-be-former Governor Shumlin is the "capturer-in-chief". He is using his office to push for out-of-scale, unwanted and destructive siting of industrial wind turbines regardless of the environmental damage they cause. The Public Service Board has rolled over time and again by approving the installation of massive wind towers and sprawling solar panels "farms". In the case of wind much of the development has been pushed and profited from by wind developer David Blittersdorf, the CEO of AllEarth Renewables. Blittersdorf is a large and consistent donor to Shumlin's political ambitions. Projects have been approved regardless to the outcry of citizens and with complete disregard for regional and local zoning rules. Big Wind, Big Solar and more importantly, Big Money, trump the pesky citizens and the stunning landscape with which we've been blessed in Vermont.

On Monday, Governor Shumlin "broke ground" on the construction of the Deerfield Wind Project, located in the Green Mountain National Forest, a pristine area rich in wildlife, and home to a large population of black bears*. The ceremony celebrated the upcoming installation of 11 turbines, each over 400 feet tall. It was attended by the media and invited guests only, so as not to taint the self-congratulatory event with the complaints of the citizens who will actually be affected by this project. They were forced to express their concerns behind a police barricade, well away from the proceedings.

Shumlin likes to brag that since he took office, Vermont has 11 times the number of solar panels and 22 times the wind-generated power it had before he took office. His goal of getting nearly all of Vermont's energy from "renewable" sources is well underway, regardless of the destruction left in the wake of this reckless endeavor.

The ugly truth is - and Shumlin and the PSB members know this - these big developers, in this case Avangrid Renewables, formerly known as Iberdola, are receiving huge subsidies to build their monstrosities. A 30 percent federal subsidy, accompanied by an 8 percent state subsidy is an appealing incentive for a Spanish company to invade our state and destroy our wilderness. And when the subsidies end? Who is going to repair or remove the rusting hulks that remain, when the subsidies end, and the companies have bled out their profits and declared bankruptcy?

Another thing Shumlin knows is that his plan for a Vermont energy portfolio standard of 90 percent renewables by 2050 is unrealistic - in fact, impossible. A White Paper released by Vermont Watchdog's Vermont's Environmental Movement made the case in two short paragraphs:

"Catherine Dimitruk, executive director of the Northwest Regional Planning Commission, pointed to models showing the state "would need 42 new megawatts of wind, 10 new megawatts of hydro and 174 megawatts of solar" to meet its 90 by 50 goal. "It took our

breath away, quite literally," she said, "because the numbers seem so huge." In her view, the state simply doesn't have enough property for that many projects.

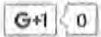
...

An analysis by the Ethan Allen Institute estimated that Vermont will need 100,000 acres of new solar installations alone to meet the 90 percent goal. This level of development was never imagined by Section 248, which provides the process for how the PSB handles energy siting applications.

Regulatory capture is rampant in the Green Mountain State to the detriment of us all. We can only hope a new administration will usher in a new era of ethics and end this terrible rape-for-profit of our beautiful state.

** The Bennington Banner reports that a multi-year black bear study is underway at the Deerfield development site. "The study will proceed throughout construction and for a period of five years post-construction to better understand the impacts, if any, were (sic) to black bear in the project area."*

Is the good news that if the bear study demonstrates a negative impact, the developer will immediately remove the towers from the site and restore the forest to its original pristine condition? Nope. Nothing will happen because, really, they're just bears. They don't line greedy developers and corrupt public servants pockets with cold hard cash.



FILED UNDER: COMMENTARY

Comments



Jim Bulmer says

SEPTEMBER 22, 2016 AT 9:13 AM

Has anybody challenged the fact that these solar and windmill monstrosities are exempt from Act 250????? If these hideous and enviornmentally destructive projects were required to meet Act 250's guidelines, there would be none. They violate about everyone of the criteria set up in the act. Can someone explain this one?????

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:08 PM

Yes, many of us have tried, but under Shumlin the entire conversation has been shut down. Where renewable energy is concerned, our government is a dictatorship, not a democracy. This Deerfield Wind project would never have been approved by Act 250. It was opposed by the Agency of Natural Resources and Vermont Natural Resources Council. The PSB issued a split decision. Board Member Burke's dissent got it right.

Reply



Jim Bulmer says

SEPTEMBER 22, 2016 AT 9:15 AM

Also, how can private corporations use state forest land for economic gain????

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:06 PM

The project was on President Obama's top ten infrastructure projects to fast track.

Reply



Christine says

SEPTEMBER 22, 2016 AT 10:33 AM

Absolute truth in this article!

'Shumlin likes to brag that since he took office, Vermont has 11 times the number of solar panels and 22 times the wind-generated power it had before he took office. His goal of getting nearly all of Vermont's energy from "renewable" sources is well underway, regardless of the destruction left in the wake of this reckless endeavor.'

And, how much of this destruction helps Vermont get to that 90% by 2050? Absolutely NONE of the wind because the RECs are sold out of state. Why are they sold out of state?

According to GMP, they sell them out of state to keep the cost down to the ratepayers of Vermont. So, if we bring those RECs in state to contribute to our renewable energy goals, the Vermont ratepayers are going to be paying a lot more for electricity.

The Public Service Board needs to go and the towns need to be listened to.

Reply



Joe says

SEPTEMBER 22, 2016 AT 11:26 PM

Definitely ugly site with the wind towers in the NEK. I see what people mean when they oppose the wind towers. They definitely take away from the natural landscape beauty.

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:05 PM

If only it was just about the view. There is so much more. Not saving the planet, destroying the very areas necessary to adapt to the changing climate. Dividing communities, corrupting governments, creating victims.

Reply



Judy says

SEPTEMBER 23, 2016 AT 7:55 AM

This is happening worldwide. County by county, state by state, is ridiculous that while we don't want them we have to pay for the tax credits to build them and then the subsidies.

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:04 PM

Here is a recent German TV program <https://youtu.be/LD5Pufk94HM>. As you say it's the same story everywhere, with government corruption and useless power.

Reply



Jose says

SEPTEMBER 23, 2016 AT 7:56 AM

Crony Capitalism in action ...he who has the \$\$\$ gets the gig.

To defile a state and or national forest should be a criminal act – subversion of the very intent to protect and preserve our forested lands.

A disgraceful and negligent decision.

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:04 PM

VCE sued the federal government over this project. It is very strange to see our litigation rarely mentioned in the coverage of this project. It is no small deal to bring a lawsuit in federal court. Our case was based on conflict of interest, degradation of the Aiken Wilderness, and more. You can read the filing here <https://vermontersforacleanenvironment.files.wordpress.com/2012/09/2012-09-26-memorandum-of-law.pdf>.

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:20 PM

After we brought suit 2012, Iberdrola applied to the USFS to change the turbine model, bigger turbines with longer blades. That resulted in a stay of the case, and then we had to incur more expense and file an amended second suit, which is here <https://vermontersforacleanenvironment.files.wordpress.com/2013/11/2013-11-22-amsj-final.pdf>

Reply



Annette Smith says

SEPTEMBER 24, 2016 AT 2:00 PM

The Deerfield Wind project has 15 turbines, not 11.

Reply

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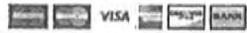
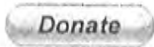
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McHugh, Andrea

From: Christine lang <cmlangvt@gmail.com>
Sent: Tuesday, October 11, 2016 9:48 PM
To: McHugh, Andrea
Subject: Fwd: Comments for Act 174 Working Group
Attachments: Comments to Act 174 Working Group.pdf

Sorry - I had a typo in the first email that I sent.

----- Forwarded message -----

From: **Christine lang** <cmlangvt@gmail.com>
Date: Tue, Oct 11, 2016 at 9:36 PM
Subject: Comments for Act 174 Working Group
To: PSB - Clerk <psb.clerk@vermont.gov>, andrea.mchugh@vermont.gove, vlyons@leg.state.vt.us

Dear Act 174 Working Group,

Please find attached our comments to the Working Group.

If any more information is needed please feel free to contact us.

Respectfully,

Dustin & Christine Lang
(802) 528-5242

Comments for the Act 174 Working Group

Problems with the Intervenor Process at the PSB:

The Public Service Board is a lawyer's world and there is a lot of communication between lawyers that we the public are not privileged to be a part of.

The pre-hearing conference is a formality for the attorneys. They chat together before the hearing and determine a schedule before they open the formal meeting. The public is just an audience and is given no chance to offer input.

For a quasi-judicial system, it is very judicial and for the public to participate, we need a voice in the procedure so we can be considered participants and not spectators.

During the Met Tower case that we have been involved in, we have been advised multiple times by the Department of Public Service to get a lawyer. Lawyers are expensive and we don't have an unlimited budget to pay for that. The Met Tower case should have been a simple issue of did he or did he not put up the Met Tower without a permit and was the permit required. We gain nothing out of this except for asking the PSB to ensure that rules are followed. But, this case has dragged out for over a year now (we first filed notice that he didn't have a permit in July, 2015). During the last 15 months, we have had to file for intervenorship twice, we were granted partial intervenorship, we have had subpoenas served on us and our partial intervention was taken to the Vermont Supreme Court. The subpoenas were dropped by the Swanton Wind lawyer and the Vermont Supreme Court case was dropped due to lack of show cause.

As a result of this Met Tower case, we feel abused by the system. Each time we speak with the Department of Public Service, they feel sorry for us and what we are being put through, but they can do nothing to help us and they cannot give us legal advice.

The State of Vermont has an obligation to help the citizens of Vermont navigate the PSB process. The only way to do that with the current system is State to provide the citizens with an attorney independent of the Department of Public Service to help them navigate and to protect them from this adversarial and abusive process.

Respectfully Submitted,

Dustin and Christine Lang
21 Rocky Ridge Rd
St. Albans, Vt 05478
(802) 528-5242

McHugh, Andrea

From: Stephen Whitaker <whitaker.stephen@gmail.com>
Sent: Sunday, September 18, 2016 7:41 PM
To: McHugh, Andrea
Cc: Virginia Lyons
Subject: Pro Se Handbook
Attachments: Pro Se Handbook.pdf

For consideration as a PSB publication.

The VLS clinic, prior Independent Public Advocates like Richard Saudek and some future DPS may assist.

Can be narrowed in scope to neither the Federal nor State Superior Courts, but only the PSB.

United States District Court Western District of Michigan



FILING YOUR LAWSUIT IN FEDERAL COURT

** This handbook is not for use by prisoners **

Prepared by the Office of the Clerk
United States District Court
110 Michigan St., N.W.
Grand Rapids, MI 49503
616-456-2381
<http://www.miwd.uscourts.gov>

McHugh, Andrea

From: Mary Martin <mary@dewittblake.com>
Sent: Thursday, October 06, 2016 2:24 PM
To: McHugh, Andrea
Cc: vlyons@leg.state.vt.us
Subject: PSB Working Group

I am unable to attend the meeting but I would like to share my experiences with you.

I have learned over the past 3+ years that the PSB represents the Governor not the people. It was explained to me that by representing the Governor, they feel they are representing the citizens. The Governor was elected by the people; therefore it follows, that what the Governor wants, the public wants.

Shumlin did not win by a majority vote, he was appointed to the position. In the PSB's eyes there is no difference. The Governor's wishes equal the citizen's wishes. It is a very flawed way of looking at issues. Then again, if you hold your job because the Governor, appointed you, you would be wise to do his bidding.

Sometimes issues come up after an election and folks disagree with the Governor's position (even if they voted for him). People would like a voice when they feel injustice is being done or their concerns are not being heard. It will never happen with the PSB, which rightfully should be called the GSB - replacing Public with Governor.

I hope I have made this clear but you may contact me if you have any questions .

Thank you,

Mary Martin
1967 Rte. 74
Cornwall, VT
(802) 989-1398

McHugh, Andrea

From: Annette Smith <vce@vce.org>
Sent: Sunday, October 02, 2016 3:20 PM
To: McHugh, Andrea; PSB - Clerk; Virginia Lyons
Subject: Re: Availability for October 6 Meeting of Citizen Participation in Public Service Board (PSB) Proceedings Working Group?
Attachments: VCE_PSBWorkingGroup_ProblemsSolutions_100616.pdf

Andrea, PSB Clerk and Sen. Lyons,

Attached please find VCE's comments to the Act 174 PSB Working Group in advance of Thursday's Oct. 6 meeting where I will be present at 1:25 to answer questions based on the attached.

I will bring some hard copies for the audience. I do not intend to offer testimony during the suggested 5 - 7 minute time frame. Given the extent of these comments, it seems to make sense to get them to the working group members in advance so they can make best use of the time with their questions.

Annette

P.S. My cow is not an issue this week.

Annette Smith
Executive Director
Vermonters for a Clean Environment
789 Baker Brook Road
Danby, VT 05739
(802)446-2094
www.vce.org

On Sep 18, 2016, at 1:50 PM, McHugh, Andrea <andrea.mchugh@vermont.gov> wrote:

Dear Annette Smith,

Greetings, I am writing on behalf of Senator Ginny Lyons, Citizen Participation in Public Service Board (PSB) Proceedings Working Group Chair. There are four additional Working Group members, Rep. Tony Klein, Judge Robert Mello, Margaret Cheney (PSB Board member), and Chris Recchia (Department of Public Service Commissioner).

The Working Group seeks recommendations to promote increased ease of citizen participation in PSB proceedings pursuant to its charge under 2016 Acts and Resolves No. 174, Sec. 15(b). The Group will make recommendations by December 15, 2016, to the House and Senate Committees on Natural Resources and Energy, the Senate Committee on Finance, and the Joint Energy Committee.

The Working Group would like to hear perspectives and recommendations on citizen participation from individuals with direct experience in PSB proceedings. For more information, please see the Working Group's website at <http://psb.vermont.gov/Act174WorkingGroup>.

Would you be available to speak before the Working Group on the afternoon of Thursday, October 6? We would ask that you limit your remarks to 5-7 minutes and be available for questions and discussion. The Working Group will meet at 1pm in the Susan M. Hudson Hearing Room, which is located on the third floor of the People's United Bank Building at 112 State Street, Montpelier.

Please get back to me and Senator Lyons by Thursday, September 22, to let us know if you are able to attend. If you are unable to attend, please let us know if there is anyone else in your organization who is available.

If you have any questions, please don't hesitate to call me or to get in touch with Senator Lyons (copied here). I will be in the office on Monday and Tuesday. However, I will be on vacation from Wednesday, September 21 through Tuesday, September 27 so please be sure to address any emails to Senator Lyons as well or contact her directly in my absence.

Best regards,
Andrea McHugh

~~~~~  
Andrea C. McHugh  
Vermont Public Service Board  
Utilities Analyst/ Hearing Officer  
[andrea.mchugh@vermont.gov](mailto:andrea.mchugh@vermont.gov)  
802-828-2358





## Vermonters <sup>for</sup> a Clean Environment

789 Baker Brook Road, Danby VT 05739  
www.vce.org (802) 446-2094 vce@vce.org

October 2, 2016

Dear Act 174 PSB Working Group,

Thank you for the invitation to provide information to the Act 174 PSB Working Group charged with making recommendations to the legislature for improving public participation at the Public Service Board. I have attended or watched videos<sup>1</sup> of your meetings. This information is offered in advance of the Oct. 6, 2016 meeting to provide time to review materials and prepare questions for the 20 minute time slot you have allotted to VCE beginning at 1:25 p.m.

### **Background on PSB Working Group**

The PSB Working Group was created in legislation the day after I testified to the Vt. Senate Finance Committee on March 22, 2016. I requested time to testify to the committee of jurisdiction over the PSB after Vermont's Attorney General's office brought a criminal investigation of me, alleging I was practicing law without a license by helping members of the public and towns participate at the Public Service Board (PSB). While the investigation had been closed and found to be without merit, the fact that it was brought at all raises significant issues with regard to public participation at the PSB.

Summary of my testimony to the Senate Finance Committee: The AG investigation proved that the PSB is a legal process. People need to be represented by legal counsel in order to participate. There is no public participation component as part of the PSB process. People can attend pre-hearing conferences, site visits and public hearings, but the Board tells the public at those events that what they say is for the benefit of Board members and nothing anyone says is part of the record on which the decision is based. People can move to intervene *pro se*, but they are not participating as a member of the public. They are representing themselves as their own attorney when they intervene at the PSB. Having assisted a number of people with the PSB process on a variety of technologies and sizes, through all the various types of procedures from Pre-hearing Conferences, Site Visits, Public Hearings, Prefiled Testimony, Discovery and responding to Discovery, Technical Hearings, Briefs, Reply Briefs, comments on Proposals for Decision, Motions for Reconsideration and Oral Argument, I have observed that people give up rights<sup>2</sup> the

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<sup>1</sup>#1 [https://youtu.be/hRLVrgYdB\\_k](https://youtu.be/hRLVrgYdB_k)

#1 part 2 <https://youtu.be/fkzuBZapPco>

#2 [https://youtu.be/R0XMfDY\\_N0o](https://youtu.be/R0XMfDY_N0o)

#3 <https://youtu.be/zFnmRAXmmVg>

#4 <https://youtu.be/Qn4XENYNa0A>

<sup>2</sup>When attorneys represent parties, they know, for example, how to protect the rights of their clients by objecting in order to preserve appeal rights, by understanding the rules of evidence and how to introduce exhibits and use cross exhibits, by knowing how to respond to discovery questions and how to serve discovery on other parties. PSB *pro se* parties have to learn all this and more in order to participate effectively.

instant they engage in the process. I do not see how it is possible to teach people how to be a lawyer in order to participate effectively in PSB proceedings. The PSB is a legal process where the public does not have “access to court”.

### **Background on Vermonters for a Clean Environment, Inc.**

Since 1999, I have been executive director of Vermonters for a Clean Environment, Inc., a grassroots organization founded in response to a large energy project that would have gone through the PSB had it moved forward. VCE has assisted members of the public in participation in all types of environmental regulatory proceedings, including Act 250, Agriculture permits, and Agency of Natural Resources permits. When renewable energy siting became active at the PSB, it was a normal part of VCE’s work to assist the public in participation in the process for the siting of energy projects. VCE also has experience with cases that have been litigated in Environmental Court, Superior Court, the Vermont Supreme Court and Federal Court.

VCE has been involved in the many discussions about changing Act 250 – 2001, 2003, 2005, 2007 – and also ANR restructuring. VCE participated in the Electric Generation Siting Commission, where we facilitated the citizen’s presentation.<sup>3</sup> We also gave a presentation<sup>4</sup> that was invited by Department of Public Service (DPS) Commissioner Liz Miller and Dept. Commissioner Sarah Hofmann who asked us to present the process we would like to see. We recorded and I watched all of the Solar Siting Task Force meetings. VCE has recorded many PSB pre-hearing conferences, public hearings, site visits, technical hearings and oral arguments to develop case studies that will serve to assist in improving the process [See Exhibit 1]. I serve on my town’s planning commission and represent my town at the Rutland Regional Planning Commission (RRPC) where I serve on the ad hoc Energy Committee and on the Regional Issues Committee which reviews Act 250 and Section 248 applications.

## **THE PROBLEMS**

1. The PSB is unique in the country in doing **land use siting**. It is my opinion that the PSB is not the appropriate regulatory venue to address the numerous issues associated with the siting of wind turbines, solar panels, and other energy projects that have major land use components that were never envisioned when the PSB was created.
2. There is **no citizen participation component** at the PSB. The PSB process is one of the most legalistic processes in existence, moreso even than courts.
3. **No assistance** is provided to citizens faced with a brand new regulatory process. The PSB Clerk is doing more than in the past, but does not provide the kind of extensive assistance the public needs. It says something that the “Citizens Guide to the PSB Section 248 process”<sup>5</sup> is 24 pages long and written from a legal perspective rather than in layman’s language.

<sup>3</sup><https://vimeo.com/54658854>. Citizens presentation begins at 1 hour 58 minutes.

<sup>4</sup><https://vimeo.com/57294940>

<sup>5</sup><http://psb.vermont.gov/sites/psb/files/publications/Citizens%20Guide%20to%20248%20February%2014%202012.pdf>

4. Vermonters are unfamiliar with the PSB and how it operates. The general public does not understand the **difference between the PSB and DPS**<sup>6</sup> and the different roles they play. The title “Office of Public Advocate” within DPS further confuses the public who thinks that there is an entity that advocates for them.
5. Few **attorneys** are familiar with the PSB’s rules, which are in addition to the Vermont Rules of Civil Procedure. Only a handful of attorneys practice before the Board representing the public. The least expensive hourly rate I have heard of recently is \$175/hour. It is not unusual for attorneys to charge \$250/hour for PSB proceedings. These rates are a major bar to the public’s representation by legal counsel.
6. The **Board has denied** only a few of the thousands of applications that have come before it. The experience of attorneys representing the public and the experience of citizens participating *pro se* is the same: “It’s as though we weren’t even there.” The Board’s track record of approving almost all projects is a disincentive to participation. “Why bother” because “you are going to lose anyway.” Some attorneys refuse to take PSB cases because of the high cost to potential clients who are guaranteed to lose.
7. Examples of **costs to participate** when the public hires attorneys and experts:
  - a. VELCO NRP, total for towns and intervenors, \$900,000+
  - b. Sheffield Vermont Wind, total for town and intervenors, \$700,000
  - c. GMP Lowell Wind, total for towns and intervenors, \$200,000
  - d. Georgia Mountain Wind, setbacks only, \$35,000
  - e. Charlotte Solar, \$30,000
  - f. Cold River Road Solar, total for town and intervenors \$125,000+
  - g. North Springfield Biomass, total for intervenors, \$90,000
8. When members of the public do **participate *pro se***, they have a steep learning curve. This committee is taking months to learn about the PSB process. The public has nowhere near that much time. Citizens have told me they learned more talking to me in an hour than they had in the previous month trying to understand what to do. The public must learn how to file a motion to intervene, notice of appearance, a certificate of service and cover letter according to the Board’s rules and time frames. Solar projects have presented a major challenge for the public, as different size projects have different processes. I was developing a website to help guide the public<sup>7</sup> but was interrupted by the AG investigation and did not finish adding templates and examples of documents. With the new net metering rules, some of the overly-complicated different processes are being eliminated, but the Board will still have different procedures depending on the type and size of project. Access to filings has been a major issue that presumably will be resolved with ePSB.

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<sup>6</sup>Commissioner Miller changed DPS to PSD. VCE strongly advised against the name change, as we noticed the public was already confused by the difference between PSB and DPS, and changing it to PSD would only increase the confusion.

<sup>7</sup><https://vtpsbparticipation.net/>

9. The **legal process** and its complexity are a bar to participation. When members of the public learn what is involved in participating at the PSB, few choose to intervene. The Board should provide the Act 174 Working Group with a list of all solar dockets (excluding net-metered projects < 15 kW) it has reviewed to date and note the ones in which the public has intervened, the extent of the intervention, and the outcome. The PSB Working Group might be surprised by how few Vermonters have chosen to intervene at the PSB over solar projects.
10. **The language of the PSB** is not the language of the public. In one case, members of the public successfully intervened without assistance, but missed their deadline for pre-filed testimony. When asked why they missed the deadline, they said “all the time we were intervenors. On the schedule it said ‘non-petitioning parties’ file pre-filed testimony. We didn’t know that meant us.” In another case, the public was required to file a Notice of Appearance. Several members of the public did not understand the phrase and thought that meant they had to appear in person somewhere.
11. **Understanding how the Board operates** is a challenge even for attorneys. One example is understanding what the process is for responding to **Motions**. Neither the Vermont Rules of Civil Procedure nor the Vermont PSB rules establish a definitive time for filing a response to Motions. There are strict times established for responses to pleadings, and all Motions related to a hearing must be filed a certain number of days prior to that hearing. When there is a scheduling order, the Board sets deadlines. When there is not a scheduling order, traditionally parties respond to Motions within ten days. Otherwise the rules referencing Motions state that the parties shall have a “reasonable time” to respond or present evidence. Sometimes the Board issues an order after receiving a Motion, setting a deadline for response. Sometimes the Board does not issue an order after receiving a Motion, and it is up to the parties to figure out whether they should wait to see if the Board is going to issue an order setting a deadline for responding to a motion, or if they should file a response. The Board has been inconsistent in how it addresses Motions filed when circumstances are not covered by the rules. VCE has found this to be a very confusing aspect of how a party interacts with the Board and other parties.
12. **Deadlines and getting extensions** from deadlines are an ongoing challenges. Often the extension is requested in a timely manner, but the Board does not make a decision until the day before or the day of the deadline. VCE has observed a lot of stress for the public as they struggle to meet deadlines and seek extensions from the Board that are not responded to until the last minute.
13. **Site visits** are for the benefit of the Board and are not part of the record, unlike other regulatory site visits where observations are recorded and made part of the record. VCE has found it challenging to identify when and where site visits are going to occur.
14. **Public hearings** are held for the benefit of the Board. This is a strange concept for Vermonters to absorb. The Board has encountered Select Board members who become angry at public hearings when they are informed that their comments do not become part

of the record of decision. VCE had a disturbing experience with the PSB's treatment of the public during the Docket 8167 Sound Standard Investigation workshop, where the public's presentation was cancelled by the Board a few hours before the public hearing. Instead, the public was required to stand at a microphone and was cut off at three minutes. The hearing was supposed to be a "workshop" to hear from neighbors with issues with noise from energy projects. The Board's choice to cancel the public's presentation and use the typical public hearing format meant that the very people the Board most needed to hear from were diminished in their input, especially in making recommendations for future projects. It also resulted in the recruitment by wind developers of people with an economic interest in wind energy who used up time claiming they heard no noise from wind turbines. We have witnessed legislative hearings about solar siting dominated by employees of the solar industry. DPS public hearings on the energy plan have been dominated by proponents of the carbon tax. VCE will no longer participate in turning out members of the public for a public hearing.

15. **Prefiled testimony** is not a term most Vermonters are familiar with. In one case, the *pro se* parties had done an excellent job of finding half a dozen expert witnesses. The day before the prefiled testimony was due, they sent it to VCE to review. It was entirely in the form of letters. We educated the parties about the rules requiring Q&A with question and answer numbers and line numbers, double spaced, single sided. Somehow they managed to convert it to the proper format and submit it in time.
16. Citizens must respond to **discovery** and serve discovery. Attorneys for developers have abused *pro se* parties by serving excessive numbers of discovery questions. In one case, a couple who lived next to a proposed solar project was served with 290 discovery questions. The Board denied the couple's Motion for Protection from the excessive number of discovery questions. In our experience, many members of the public do not understand the purpose of discovery and do not make good use of the opportunity to serve discovery questions on the applicant. The rules for the format are confusing, as attorneys routinely use one page for each question and answer, however upon inquiry VCE has determined that is not a requirement of the Board and numerous questions and answers per page may be submitted in response.
17. There is no public **parking**. The public is greeted by a sign on the door of the entrance to the PSB hearing room saying if you park in the bank parking lot, your car will be towed.
18. Though the Board says that the hearing room is **handicap accessible**, there is no designated handicapped parking for the PSB. The handicapped driver must risk having their car towed if they park in the bank parking lot.
19. The distance the public must **travel** is a problem and a deterrent to participation. For instance, residents of Bennington must drive six hours for a PSB hearing.
20. Participation in **technical hearings** by *pro se* parties places the public at an automatic disadvantage. A relatively small number of highly skilled and well-paid attorneys represent developers at the PSB. The same attorneys for DPS and the Agency of Natural Resources (ANR) routinely appear before the Board. A Vermont citizen who happens to

live near a proposed energy project enters an intimidating legal process facing experienced attorneys. *Pro se* parties must know how to ask questions that will elicit answers that can be used to support their position in their Brief, when to object, how to respond to objections to their testimony or questions, how to use cross exhibits, when to file post-hearing motions to bring in new information on issues raised at a hearing, and all the rules that apply to being a lawyer in a legal proceeding. VCE has observed few Vermonters who are capable of participating in the PSB's process in a manner consistent with the requirements of *pro se* parties.

21. ***Pro se* participants** have been treated badly in hearings by applicant's counsel and the PSB does not stop it. In one hearing, the attorney for the applicant repeatedly said throughout the proceeding that the neighbors had "no right to be there, they are just here to stop the project." It was not until very late in the day when the hearing officer finally said that the neighbors were granted intervention and they did have a right to be there. In another case, during a break, attorneys for DPS and ANR told the *pro se* party they were amazed by how well the opposing counsel was treating him, as they had seen that attorney be brutal towards *pro se* parties. Although we understand that courts are supposed to be helpful to *pro se* parties, we have seen no special accommodations for members of the public who choose to participate at the PSB. In one enforcement/investigation, a *pro se* intervenor was served with a subpoena and was advised by the PSB Clerk to hire an attorney in response. When that intervenor's party status was appealed to the Vermont Supreme Court, DPS' counsel advised the intervenor three times to hire an attorney (estimated to cost \$10,000). VCE has reported instances where we have observed developer's legal counsel lying to the Board, where developer's legal counsel has inappropriately attacked VCE's director in filings in cases where VCE is not a party, yet we have never seen the Board respond or address or sanction inappropriate behavior by developer's attorneys.
22. **Contested Case.** The PSB process is a litigious process. There is no opportunity for people to sit down and talk. The need to plant trees to screen solar projects starts out with a fight. Given that Vermonters want renewable energy, this is especially unnecessary. For example, there have been two 150 kW solar projects with technical hearings on aesthetics.<sup>8</sup> We estimate the cost of each of those cases to be over \$50,000 – just to decide where to plant trees to screen solar panels. The PSB process is an inefficient and expensive way to site solar panels. We do not understand why the development community and legislators want the siting process to stay at the PSB.
23. ***Pro se* parties** find it is a challenge to hire qualified **experts** to testify before the PSB. Experts can cost thousands of dollars. Experts have been reluctant to be hired by PSB intervenors because of the high likelihood of failure, and therefore experts have shown an unwillingness to take money for what is perceived to be a futile exercise. Developer's attorneys can be aggressive in attacking intervenors' experts and narrowing the areas on which they can speak.

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<sup>8</sup><https://youtu.be/5e9DIj0l6zc> and [https://youtu.be/7jtw6aEW\\_Cc](https://youtu.be/7jtw6aEW_Cc)

24. **Deference to the ANR** has led to a lack of due process on environmental issues. It is rare that environmental issues come before the Board for cross-examination, as it is nearly impossible for the public to get party status on environmental issues. When no permit is required, ANR enters into a Memorandum of Understanding (MOU) and resolves its concerns outside of any public process. When a permit is required, there is no public process at ANR aside from filing written comments which in our experience are almost entirely ignored. Those permits then come to the PSB as a done deal.
25. **DPS enters into MOUs** that subvert the PSB's review when no other parties intervene. For example, one technical hearing for a 2 MW solar project<sup>9</sup> took less than an hour. About 17 minutes into the hearing, the Hearing Officer notes that the MOU has no substance and the applicant/attorney says they had a deadline to meet so they put in boilerplate language and "substantively there's not a lot in there." From the outside looking in, the PSB, DPS and ANR's process becomes more like "Let's Make a Deal" than a legitimate review of the issues by independent regulators.
26. **Enforcement/Investigation** dockets do not lead to resolutions for the public. At best, the Board's enforcement dockets may result in a fine paid to the general fund. Hundreds of complaints about wind turbine noise have resulted in several ongoing investigations at the PSB where lawyers for the developer and the DPS exchange paperwork that take years and will never result in neighbors being able to sleep. An example of one enforcement docket<sup>10</sup> reveals how skilled, well-paid attorneys can drag out the case for more than a year. In another case, a noise complaint filed in Sept. 2015 has seen extensive exchanges of paperwork with no end in sight.
27. The **cost** of participating in an enforcement proceeding where the public is the victim is high, as it requires paper filings with copies to all parties. For just one enforcement hearing<sup>11</sup>, it cost the couple \$300 for the paper filing, plus taking time and gas money to drive to Montpelier. In another enforcement case, the people whose property was damaged would have had to file a motion to intervene and notice of appearance and take time off work to attend the hearing. In their absence, the developer made inappropriate remarks about them which the neighbors were unable to refute.<sup>12</sup>
28. The PSB is, by statute, unable to address **property issues**. Impacts on property values are often the first issue raised by the public and towns. In addition, VCE has seen cases with property issues such as deed restrictions prohibiting commercial development, private roads, water rights, and landowners who feel duped into signing leases. In all cases, the public is advised they must protect their rights through litigation in Superior Court. However, when the PSB does address property rights, it shifts the burden of proof to property owners who must prove the developer's project will trespass on their property, will devalue private property, will affect the property with noise, and neighbors must prove they will be burdened with visual blight and denied the peaceful enjoyment of

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<sup>9</sup><https://youtu.be/xHcmyt67qAk>

<sup>10</sup> <https://swantonwindvt.org/met-tower-psb-process/>

<sup>11</sup> <https://vimeo.com/72081767>

<sup>12</sup> <https://youtu.be/4pe0n60Hozc>

their properties as protected under the U.S. and Vt. Constitutions. The PSB's overall approach to the rights of neighbors' private property rights has been to ignore those rights rather than address and protect them.

29. Compensation for landowners in **eminent domain/condemnation** proceedings and other cases where private property is taken for the "public good" have an unpleasant track record at the PSB. In wind cases, the PSB has allowed noise pollution to trespass onto private property, without compensation, which is a violation of Article Two of the Vermont Constitution. Private property has been taken by Green Mountain Power for Lowell Wind and by David Blittersdorf for Georgia Mountain Wind for blasting zones, without compensation. In gas pipeline cases, Vermont landowners have been subjected to land acquisition agents who took advantage of some members of the public. In a tower case where the PSB found that landowners should be compensated \$25,000, a Superior Court jury found the appropriate amount was \$1 million.
30. The PSB has developed its own interpretation of **Act 250's aesthetics criterion**. Despite correctly utilizing Act 250 precedent in a 2001 case called "Halnon" which included the interests of neighbors and considered zoning for the clear written community standard, and despite decades of legal precedent by the Environmental Board, Environmental Court and Vermont Supreme Court regarding the interpretation of the Quechee Analysis as it relates to neighbors<sup>13</sup> and zoning language the Board has chosen to rely on the opinion of two GMP experts in an uncontested 1996 wind case to discard the interests of neighbors. The Board appears to be correcting this problem with the new net metering rule, but that does not extend to the rest of the Board's dockets.

It is troubling to note that the Board has never denied a solar project using a finding that it would be "shocking and offensive to the average person" or, in the Board's rewrite of that component of the Quechee Analysis, would "offend the sensibilities of the average person." VCE can point to specific solar projects that meet that standard. One example is the 2 MW Sudbury Solar array which was constructed too close to the road in an extremely beautiful setting with open fields and long views of the Green Mountains along scenic Route 30, with no way to screen the project from views from neighboring homes. VCE has received numerous unsolicited complaints about the aesthetic impact of the project. Several homes fairly far away that look out to the west with a view of the Adirondacks now also see what appears at times to be a lake, and one of the homeowners has complained about blinding glare from the solar project in their upstairs bedroom. Another example is the 1.89 MW Barton Solar project built on a Class 2 wetland very close to the road which has generated numerous complaints. The Board's failure to apply this aesthetics standard has, in our opinion, led to some of the worst solar projects that are generating increasing opposition to solar development.

The Board continues to diverge from Act 250 precedent by failing to consider zoning for language that creates a clear written community standard.

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<sup>13</sup>[http://vce.org/NM-1646\\_MammolitiObjtoPFD\\_011615.pdf](http://vce.org/NM-1646_MammolitiObjtoPFD_011615.pdf)



The Board has ignored or failed to apply well-established legal precedent regarding the use of the LMax (a maximum level) for noise as an aesthetic issue,<sup>14</sup> and has substituted its own Leq (averaged over an hour) standard that is impossible to enforce.

**Pro se participation in the PSB process** is an all-consuming, life-absorbing experience that robs Vermonters of time and money that they cannot afford. Because the outcome is largely pre-determined based on the PSB's record of approving almost all projects that come before the Board, the public is left feeling helpless, hopeless and disempowered. Over the years that VCE has been following PSB proceedings, we have observed one citizen, Robbin Clark of Lowell, who has interacted with the Board on three occasions, in 2011, 2013 and 2014. She expresses the frustrations many Vermonters feel about the PSB process.<sup>15</sup>

In response to Robbin Clark, Chair Volz and Board Member Burke advised the public to take their concerns to **the legislature**. Efforts to get the legislature to address siting issues during the past seven years have been met with a steadfast defense of the PSB as the only venue which can address the siting of energy projects. The Shumlin Administration has insisted that there must be a state level process for energy projects, and has assured that the conversation about alternatives does not happen. The legislature has supported the industry's demand that energy developers need one venue to hear their issues. This has not stopped wind developers from twice suing landowners in Superior Court to take private property without compensation for blasting zones rather than using the temporary condemnation powers available to them at the PSB.

The public has been put through two extensive siting commission/task force initiatives, neither of which included a member of the public. The **Electric Generation Siting Policy Commission** was made up of people with no direct experience with the PSB. VCE made every effort to be a constructive contributor to the group's work, but our input was not considered. The commission never talked about the PSB process or what it takes to participate, never considered Act 250 as an alternative, and never looked in detail into the different technologies to determine what might be appropriate.

As a result, we chose to observe the work of the **Solar Siting Task Force** but did not ask to testify or present, nor were we invited. We would have gladly offered testimony had our input been requested. VCE has developed what may be the most extensive set of photographs of solar projects in Vermont which we put into a presentation called "Good and Bad Solar". It is presented without judgment, and gives the audience the opportunity to share their opinions and experiences. Students at Vermont Law School were the first audience for the presentation, and they found it to be very useful in understanding what makes a good solar site and a bad solar site. We regret that the Solar Siting Task Force never took the opportunity to share the experience of actually discussing specific sites in Vermont and the public's reaction to them. VCE has researched how other states site solar projects, a topic the Solar Siting Task Force never discussed until the final meeting when one member noted that they never looked at how other states site solar. VCE did submit comments near the end of Solar Siting Task Force's work, however as with the Electric Generation Siting Policy Commission, the PSB Sound Standard

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<sup>14</sup><http://psb.vermont.gov/sites/psb/files/rules/proposed/temporariesound/July6Comments/Stephanie%20Kaplan%20reply%20comments%20to%20PSB%20on%20noise%20rule.pdf>

<sup>15</sup><https://vimeo.com/85038340>

Investigation, and the PSB's Temporary Rulemaking for Wind Turbine Sound Standards, and legislative testimony in recent years, our input appears to have been a waste of time.

Both the **Solar Siting Task Force** and the **Electric Generation Policy Siting Commission** came up with recommendations to do siting through **planning**. As a member of regional and town planning commissions, I do not support this initiative, as it requires planners to make decisions about private property along the lines of zoning and is antithetical to the traditional role of visionary planning. The assumption that Town and Regional Plans are somehow the problem has sidelined honest discussions about the current process and how it is and is not working, and has assured that alternatives are never discussed.

**Solar development** in Vermont has been especially painful to witness. VCE has recorded public hearings where Vermonters say the same thing: "we want solar, we want to be a part of it, we want it to serve us and our communities, but not this site, not this way." We compiled comments from several public hearings into one video<sup>16</sup> that captures the typical sentiment of Vermonters faced with poorly sited solar projects that provide no community benefits, sell the Renewable Energy Credits out of state, do not count towards the state's energy goals, and cannot legally be called solar power for Vermont.

**Wind development** in Vermont impacts hundreds of people around a project site. The Board's approval of all wind projects except one where the applicant refused to do the ANR-required bird and bat studies, along with the Board's track record of discarding almost all expert witness testimony other than that submitted by the applicant and disregarding neighbors' interests and failing to respond in any meaningful way to noise complaints for existing projects sets a frightening stage for the next participants at the PSB for a wind project.

**Gas pipelines** are long linear projects that disrupt landowners' lives and, as with wind projects, create sacrificial zones where people feel victimized. More than six homeowners along the VGS pipeline have been forced to sell their homes to the gas company. VCE attempted to teach Vermont Gas Systems how to use a community-based stakeholder process for its gas pipeline extension, but VGS chose to ignore our advice.

**Transmission lines** are also long linear projects with major impacts to landowners. VELCO learned from the NRP and created a new engagement process for the Southern Loop, and a Transmission Planning group that meets quarterly. There are better models for developing energy projects than are currently being utilized by renewable and fossil fuel developers.

[See *Exhibit 2* for a Resolution that summarizes the problems with the PSB process].

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<sup>16</sup><https://youtu.be/80934E18Giw>

## I. THE SOLUTION

*"Pursuant to Act 174, the Vermont Legislature has directed the formation of a working group to review the current processes for citizen participation in Vermont Public Service Board proceedings. The mission of the Act 174 Working Group is to make recommendations to promote increased ease of citizen participation in those proceedings."*

### **Recommendations to promote ease of citizen participation in PSB proceedings**

1. Improve public notice and information; mail the new and improved Citizens Guide in hard copy to all parties on Certificate of Service with first notice to potential parties
2. Write Citizens Guide in layman's language, and include text of all Rules that apply at the PSB
3. Explain the difference-between the PSB and DPS in the beginning of the new Citizens Guide
4. Create a searchable database of decisions similar to the Environmental Board's "notes" to enable the public to understand the Board's prior decision-making
5. Provide clear guidance on secretarial requirements, including line spacing, single or double sided, page numbers, service list requirements, number of copies, deadlines, for all the variety of processes, all in one place in the Citizens Guide.
6. Explain all the requirements of *pro se* parties in layman's terms
7. Create clear guidance on Motion practice
8. Create a PSB staff person dedicated to answering questions from all parties and facilitating informal discussions about scheduling and other matters
9. Assure public access to all documents filed in all cases as soon as possible (ePSB is eagerly awaited), while maintaining the ability for Vermonters without computers to access case files
10. Reduce paper filings and track progress of paper reduction
11. Require state agency staff with expertise to attend site visits, not just attorneys
12. Create a method by which oral comments at a hearing and written public comment submitted to the PSB can be considered as part of the decision
13. Hold all hearings in the county in which the project is located
14. Enable remote access to hearings and video and phone testimony
15. Provide information for the public about parking, including handicapped parking, for hearings held in the Susan Hudson hearing room in Montpelier
16. Expand and/or utilize existing authority to hire independent counsel and experts, billed to the applicant
17. Create a Counsel for the Public with the ability to hire experts
18. Work with the Vermont Bar Association to fulfill the *pro bono* donations of time for attorneys practicing in Vermont. Provide citizens with a list of attorneys on the Bar Association's *pro bono* list who will assist in filing motions, responding to discovery, assisting in hearing preparation, and briefs
19. Create a process for Intervenor Funding so citizen participants can hire lawyers and experts<sup>17, 18, 19</sup>

<sup>17</sup>[https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/6fd11ce8db088a2785257c200054a99b/\\$FILE/02420356.pdf/Guide%20to%20Intervenor%20Funding%202-14-13.pdf](https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/6fd11ce8db088a2785257c200054a99b/$FILE/02420356.pdf/Guide%20to%20Intervenor%20Funding%202-14-13.pdf)

20. Seek legislative changes to enable the PSB to address property issues
21. Eliminate the use of MOUs from ANR and DPS or create a public process around the development of MOUs
22. Apply PSB's standards outside of political influence
23. Develop a review system to evaluate whether the Board is operating independently or is operating in a manner that gives the appearance of "regulatory capture"
24. Address the public perception that the Board is approving virtually every project that is applied for, and deny projects that do not meet the substantive criteria
25. Require the Board's decisions on aesthetics (visual and noise) to be consistent with Environmental Board, Environmental Court and Vermont Supreme Court legal precedent
26. Eliminate the use of post-CPG compliance filings and require all permits and conditions to be final prior to issuance of CPG.
27. Create a new division of enforcement and eliminate the use of "investigation" dockets for enforcement purposes.
28. Utilize NOAVs and create the opportunity for "citizens suits".
29. Actively advocate to the legislature to change the model from one that is developer-driven to a model that is community-driven and provides real benefits to Vermonters.
30. Create an option for facilitated community-based stakeholder processes prior to litigated contested cases at the PSB.<sup>20</sup>

## II. THE SOLUTION

1. **Move land use siting to Act 250**, while leaving typical PUC issues such as rates, need, interconnection, etc. with the PSB. Act 250 has many benefits, in addition to being a good land use law, especially for solar siting. Act 250
  - a. is staffed by regional district coordinators trained to be responsive to all parties, a real person to answer questions
  - b. has regional offices accessible to the public, with parking
  - c. has a state level and regional structure that enables state level accountability while respecting the specific characteristics of each region, which are unique
  - d. has excellent public notice practices
  - e. is effective in identifying stakeholders and administering party status
  - f. has the ability to convene informal stakeholder meetings as allowed for in 10 VSA § 6085 (e) where parties can come together to develop solar the right way, rather than starting with a contested case
  - g. is possible for citizens to participate in without attorneys
  - h. has a document and database system that is easy to use and searchable and where all documents are available
  - i. has enforcement
  - j. acts as a clearinghouse for permits and it is a normal course of business to do so. One of the Act 174 Working Group members said that it would be a challenge to

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<sup>18</sup> <http://www.watertowndailytimes.com/news03/additional-intervenor-funding-awarded-to-hounsfield-sackets-harbor-20160829>

<sup>19</sup> <http://www.exec.gov.nl.ca/exec/interfunding/guidelines.intervenorfunding.PDF>

<sup>20</sup> <http://www.cbuiding.org/courses/advanced-land-use-dispute-resolution>

have several different entities. But this is already happening with the PSB, where ANR brings in its permits and MOUs, DPS brings in its MOUs, other entities bring in their approvals such as the utilities, and also other parts of state government bring in theirs, such as Vermont Division of Historic Preservation. Soon the Agency of Agriculture will hopefully begin to participate. This is exactly what Act 250 is already designed to handle. And unlike the PSB, which is issuing CPGs with a lot of unresolved issues, leading to post-CPG compliance filings (that drive attorneys crazy from what they have told me), you do not get your permit from Act 250 until everything else is in order.

- k. has capacity. The PSB is doing too much work of the sort it was never designed to handle. The sheer volume of work being submitted to the PSB is unsustainable, and is not being done well. Based on the cases I am following there appears to be a backlog and the Board has a lot of trouble getting decisions out. I believe that the core work of a traditional Public Utilities Commission is suffering because of the distraction of the land use siting work. I also see this happening with the Department of Public Service, which is incapable of keeping up with the volume of applications being submitted and frequently seeks extensions of deadline, and on which they are supplying aesthetics and other expertise never envisioned or planned for when Section 248 was created.

**What would moving land use siting to Act 250 do?**

- Wetlands, floodways, soil erosion, stormwater permits, impacts to groundwater and surface water, air pollution would be reviewed under Criteria 1 through 4
- Would address traffic and delivery issues, which have been issues with Lowell Wind and Barton Solar with Criterion 5
- Provides the opportunity for discussion about impacts to the municipal grand list fire suppression issues which are addressed in Criterion 7
- The aesthetics analysis used in Criterion 8 would be applied correctly, including using zoning by-laws for the clear written community standard portion of the Quechee Analysis, and considering the interests of neighboring landowners as an “average person”. Mitigation in the form of adequate screening and setbacks from the travelled roadways would be addressed
- Would be more open to local discussions about the wildlife under Criterion 8(A) and likely result in better protections.
- Ag soil impacts would be considered under Criterion 9(B) and would require offsite mitigation
- Town plans would carry full weight under Criterion 10

The NRB’s two-pager that they hand out at hearings is here and details the criteria:  
<http://www.nrb.state.vt.us/lup/publications/nrb1.pdf>

2. It is not possible to talk about the PSB process, public participation, and energy siting generically. **Each technology** has different challenges. Act 250 is the appropriate place for solar siting. Long linear projects like transmission lines and pipelines have different challenges. Wind projects impacting large areas are similarly challenging. In those cases, we recommend adoption of the community-based stakeholder process. In our experience, it is much easier to get the citizens to the table than it is the businesses, but once everyone comes together to address the issues the whole dynamic can change.

3. VCE's **proposal for regulatory reform** can go beyond the PSB process and the problems we see with it. We have listened over the years to the complaints from the business community regarding Act 250 and ANR, we have listened to ANR's complaints, and we are recommending an overhaul of the entire regulatory system to create a land use panel that hears all appeals of all land use permits, so there is one place where land use decisions are being made on a consistent basis. This proposal is based on our years of experience with Vermont's regulatory system. Our proposal is meant to be a starting place, not a fully baked plan, and could be taken a step at a time. [See *Exhibit 3*].

The first step, one that we believe will work and is realistic, is to create a place at the Act 250 District Commissions where people can sit down and talk utilizing a **community-based stakeholder process**. We are not talking about using the existing District Commission process as a starting place, because that is also a contested case. Instead, we suggest using District Coordinators as facilitators, so that when an application comes in, a meeting is called where all parties sit around the table and discuss the issues. If they choose to work together, the land use issues can be resolved. If they choose to fight, then move to the **contested case model with intervenor funding** provided to parties for lawyers and experts.

4. **Planning.** As a planner, I do not see the current initiative passed in Act 174 as a solution. It will require plans to make specific decisions about where and where not to site renewable energy, and what that amounts to is spot zoning. It will pretty quickly degenerate into fights about property rights. The requirement for towns to not exclude any technology is a non-starter for many areas that have become educated about the harm from wind turbine noise. The mapping tools being developed are an important addition for planners to use. Town and regional plans can play an important role in energy siting, but the planning initiative by itself is not a solution. If a town or region will not agree to knowingly causing harm to its citizens by identifying sites for big wind turbines, the plans will not receive certification and will not be accorded Substantial Deference by the Board.
5. The public's response to the **helter skelter development** of renewable energy, coupled with the approval of all but three projects in the last decade (the East Haven Wind project the Bennington Chelsea Solar project and the North Springfield Biomass project) is doing great harm to Vermont. The attitude that we can't give towns veto power or we can't let anyone other than the PSB and the state decide how and where to develop renewable energy is now working against the state's goals. It is a parental, dictatorial, dismissive attitude that Vermonters find insulting.

Thank you for this opportunity to present this information to you based on 17 years' experience working with Vermonters on contentious issues involving the interface of industrial and residential areas. I am available to answer questions.

Sincerely,



Annette Smith, Executive Director

## VIDEOS OF ENERGY AND PSB MEETINGS AND HEARINGS

### **Electric Generation Siting Policy Commission Information Meeting Videos**

Oct. 31, 2012 through Jan. 11, 2013

#1 <https://vimeo.com/52605432>

#2 <https://vimeo.com/53672205>

#3 <https://vimeo.com/54658854>

#4 <https://vimeo.com/55135478>

#5 <https://vimeo.com/56073156>

#6 <https://vimeo.com/57341440> Part 1

<https://vimeo.com/57294940> Part 2

<https://vimeo.com/57299560> Part 3

Public Hearing #1 <https://vimeo.com/58268759>

Public Hearing, Lowell <https://vimeo.com/59684535>

Public Hearing #4 <https://vimeo.com/63448105>

Electric Generation Siting Policy Commission's Publications Page with Transcripts of Deliberative Sessions through April 25, 2013 <http://sitingcommission.vermont.gov/publications>

Joint Legislative Hearing on Siting Commission, Public Comment and Committee Discussion, Sept. 25, 2013 <https://vimeo.com/75956920>

### **Solar Siting Task Force Meeting Videos**

July 28, 2015 through Jan. 21, 2016

#1 <https://youtu.be/FF7Z9-TJRw8>

#2 [https://youtu.be/9\\_r5uI0Wxks](https://youtu.be/9_r5uI0Wxks)

#3 <https://youtu.be/K9RcYzVUxRg>

#4 <https://youtu.be/qXKBhpIsgX8>

#5 <https://youtu.be/7SYAXN3IR2o>

#6 <https://youtu.be/xf4sLmVPUCe>

#7 [https://youtu.be/-\\_GfP5IHISk](https://youtu.be/-_GfP5IHISk)

#8 <https://youtu.be/qgcnYx9YHGU>

#9 <https://youtu.be/0wqeW2teeqY>

#10 <https://youtu.be/25zqetw28p0>

Solar Siting Task Force Website

<http://solartaskforce.vermont.gov/>

### **PSB Pre-Hearing Conferences**

Swanton Met Tower Investigation, Aug. 25, 2015 [https://youtu.be/q1t\\_9GIjri8](https://youtu.be/q1t_9GIjri8)  
Blittersdorf Irasburg Met Tower Investigation, Oct. 7, 2015 <https://youtu.be/jboQWZP1oS8>  
Georgia Mountain Wind Noise Complaint, November 30, 2015 <https://youtu.be/iPZs3eosYjY>  
Green Lantern Solar Cambridge two 500 kW, December 17, 2016  
<https://youtu.be/qOpPLMVlu34>  
Vermont Wind Investigation, January 17, 2016 <https://youtu.be/zvNOoOL71zs>  
AllEarth Ferrisburgh 150 kW, March 24, 2016, [https://youtu.be/yos\\_2vLxOf4](https://youtu.be/yos_2vLxOf4)  
SunCommon Addison 150 kW, April 29, 2016 [https://youtu.be/\\_k\\_iFUT4xAM](https://youtu.be/_k_iFUT4xAM)  
Blittersdorf Irasburg Small Turbine Investigation, July 29, 2016 <https://youtu.be/bn9oGFzLJgI>

### **PSB Site Visits**

VELCO Tower, Wells, Sept. 29, 2011 <https://vimeo.com/29819547>  
North Springfield Biomass, 25-35 MW, Feb. 28, 2012 <https://vimeo.com/37714092>  
VELCO Tower, Wells, Nov. 27, 2012 <https://vimeo.com/54400696>  
groSolar Cold River Road Rutland Town 2.3 MW, April 18, 2014 <https://youtu.be/sl4ei-cwsVc>  
Allco/Ecos Energy Sudbury Solar 2 MW, May 20, 2014 <https://youtu.be/BAKhe2y0S6w>  
groSolar Cold River Road Rutland Town 2.3 MW, Jan. 6, 2015, <https://youtu.be/xHtKXuce190>  
GMP NPS 100 kW Wind Turbine Vergennes, Feb. 24, 2015 <https://youtu.be/9Sjj8ygkdfM>  
Vermont Solar Farmers Bondville 2.2 MW, March 6, 2015 <https://youtu.be/QaTr-YI8Exw>  
Next Generation Solar, New Haven 2.2 MW, July 15, 2015 <https://youtu.be/xKLGtj7dgwc>  
Allco/Ecos Energy Chelsea and Apple Hill Solar, Bennington two 2 MW, Nov. 13, 2015  
<https://youtu.be/luN5PjFq2ow>

### **PSB Public Hearings**

Georgia Mountain Wind 10 MW, Georgia, May 2009 <https://youtu.be/wwrkcOliYlk> (one person speaking, to show the circumstances when a large group attends in a gymnasium with bad acoustics)  
Georgia Mountain Wind 10 MW, Milton, Nov. 10, 2009 <https://youtu.be/SX1L-Dxh3j8> (Part 1, other parts can be found on the same youtube channel)  
North Springfield Biomass, 25-35 MW, Feb. 28, 2012 <https://vimeo.com/37659799>  
Derby Line Wind, March 26, 2012 <https://vimeo.com/39410491>  
Eolian Wind Met Towers Newark, July 17, 2012 <https://vimeo.com/46055717>  
groSolar Cold River Road Rutland Town 2.3 MW, March 26, 2014  
<https://youtu.be/zY0fkoASvh8>  
Charter Hill Solar Rutland City 1 MW, April 3, 2014 <https://youtu.be/nV-7Pb0Enr0>  
NextSun North Main Street Rutland 1.89 MW, April 17, 2014 [https://youtu.be/NIUI\\_9bNuVQ](https://youtu.be/NIUI_9bNuVQ)  
NextSun Park Street Rutland 1.89 MW, April 17, 2014 <https://youtu.be/gkQ8Lxf4Pa0>  
Allco/Ecos Energy Sudbury Solar 2 MW, May 20, 2014 <https://youtu.be/nJQx2eHlhos>  
Allco/Ecos Energy Apple Hill Solar 2 MW, May 7, 2015 <https://youtu.be/gtJEGSRXpuo>  
Next Generation Solar New Haven 2.2 MW, July 15, 2015 [https://youtu.be/ZzRWuu\\_W9G8](https://youtu.be/ZzRWuu_W9G8)  
GMP Richmond Solar 4.99 MW, Sept. 24, 2015 [https://youtu.be/IBxKUu\\_CrZ0](https://youtu.be/IBxKUu_CrZ0)  
Ranger Solar Ludlow 20 MW, March 17, 2016 <https://youtu.be/wjPGzgKHjcY>



### **PSB Status Conferences, Special Hearings**

GMP Lowell Wind Habitat Fragmentation 63 MW, May 1, 2016 <https://vimeo.com/41702819>  
Barton Solar Show Cause, 2 MW, Jan. 29, 2015 <https://youtu.be/4pe0n60Hozc>  
Georgia Mountain Wind Noise Complaint Investigation, Jan. 20, 2016  
[https://youtu.be/pq\\_WQh\\_154](https://youtu.be/pq_WQh_154)  
Deerfield Wind Bear Mitigation, 30 MW, July 6, 2016 <https://youtu.be/IHED6byDgN8>

### **PSB Technical Hearings**

Allco/Ecos Energy Sudbury Solar 2 MW, July 14, 2015 <https://youtu.be/xHcmyt67qAk>  
Allco/Ecos Energy Chelsea Solar Bennington 2 MW, July 16, 2015  
<https://youtu.be/zqD849AykQ>  
Vermont Solar Farmers Bondville 2.2 MW, July 27, 2015 [https://youtu.be/vs61\\_XKOy3o](https://youtu.be/vs61_XKOy3o)  
Allco/Ecos Energy Apple Hill Solar Bennington 2 MW, Aug. 25, 2015  
<https://youtu.be/dDcANd0bQ2Y>  
GMP Hartford Solar 4.99 MW, December 15, 2015 <https://youtu.be/w5DBYuuJZS8>  
GMP Richmond Solar 4.99 MW, January 8, 2016 <https://youtu.be/fiARMfp0Pk4>  
New Haven 350 kW, January 12, 2016 [https://youtu.be/0IYA\\_ZDtBSE](https://youtu.be/0IYA_ZDtBSE) (partial)  
SunCommon New Haven 150 kW, January 14, 2016 <https://youtu.be/5e9DIj0l6zc>  
Green Lantern Solar Cambridge two 500 kW, February 8, 2016 <https://youtu.be/1n-sG5kS6GE>  
(Part 1, other parts can be found on the same youtube channel)  
AllEarth/VERA Charlotte 500 kW, April 1, 2016 <https://youtu.be/0jKLX1r1798>  
South Forty Solar Burlington 2.2 MW, May 26, 2016 <https://youtu.be/tJD3zTFH-yw>, Part 1  
<https://youtu.be/wSt66z1IdFA>, Part 2  
SunCommon Addison 150 kW, July 7, 2016 [https://youtu.be/7jtw6aEW\\_Cc](https://youtu.be/7jtw6aEW_Cc)

### **PSB Oral Arguments**

Seneca Mount Wind Met Towers, May 29, 2013 <https://vimeo.com/67295822>  
groSolar Cold River Road Rutland Town 2.3 MW, Jan. 7, 2015 [https://youtu.be/9VF\\_fCTw6-4](https://youtu.be/9VF_fCTw6-4)  
SunCommon New Haven 150 kW, June 10, 2016 <https://youtu.be/wmikPKuZNhQ>  
NextGen Solar New Haven 2.2 MW, August 17, 2016 <https://youtu.be/ZecVWciO-Bs>

# PROBLEMS WITH THE PSB PROCESS

## RESOLUTION IN SUPPORT OF COMMUNITY INVOLVEMENT IN ENERGY SITING

### Whereas

- The Vermont Public Service Board was created to address issues associated with centralized baseload power plants owned and operated by utilities
- The role of the PSB has changed as technologies, policies and markets are rapidly changing to decentralized power owned and operated by both utilities and merchant generators
- The PSB process is a legal process accessible only to attorneys or people who participate as *pro se* parties representing themselves in a courtroom situation with all the rules and legal requirements of an attorney
- There is no place in the PSB process for parties to sit down and talk
- The PSB process is litigated as a contested case, with lawyers and experts, pre-filed testimony, discovery, technical hearings with cross-examination, and briefs
- Participants in the PSB process must become experts on rules and the laws that govern the proceedings, in addition to the specific issues raised by the proposal
- Participants in the PSB process must spend money on printing and postage, even in enforcement cases where the participant is the complainant
- Costs to participate in some limited cases before the PSB have frequently run \$30,000 to \$50,000
- Costs to participate in larger cases before the PSB have frequently run \$200,000 to \$700,000
- In every instance where opposing parties have participated with lawyers and experts on renewable energy projects, they have come away saying "it is as though we weren't even there." This is true for towns as well as individuals.
- Very few attorneys are willing to take cases from people who want to participate in the PSB process
- Attorneys who will take the cases cost \$175 - \$250 an hour
- The cost of participation in the PSB process is out of range of Vermont's citizens and towns
- Those who do participate in the PSB process cannot recommend to other people that they hire lawyers and experts because no results have been seen
- The PSB has denied only one solar project on the substantive criteria.
- The PSB has failed to respond in a meaningful way to noise complaints from wind projects for four years (Georgia Mountain, Lowell) and five years (Sheffield)
- The PSB is losing credibility with Vermonters who are witnessing what has happened in recent history
- There is no public process as part of the PSB. Site visits, public hearings and public comment are entirely for the benefit of the Board or Hearing Officer to understand the issues better from the local perspective; nothing said or written in public comment is considered as part of the record on which the decision is made

**Resolved**, that the Vermont Public Service Board's functions should continue to be in the areas of typical utility regulation, while the land use siting portions of the Board's current functions move to Act 250, utilizing the District Commission infrastructure and statutory provision Title 10, §6085(e) that grants the authority to "promote expeditious, informal, and nonadversarial resolution of issues, require the timely exchange of information concerning the application, and encourage participants to settle differences," where developers, community members and town governments can work together to develop energy that respects Vermonters and protects the environment & the state's natural beauty.

# A NEW PROCESS FOR ENERGY SITING

VCE is proposing a new process for siting energy projects, one that encourages people to work together rather than fight. The current “contested case” has no place for cooperation and collaboration. VCE proposes to change that. There is no reason why community members, planners, town government, developers, utilities and regulators cannot work together to site the energy that Vermonters consistently say we want. Vermonters want to be a part of the process and we want to see clear benefits.

## Plan A = Collaboration

Using the Act 250 infrastructure, stakeholders meet to discuss whether to work together or fight. If collaboration is chosen, the rules of stakeholder processes come into play, with joint fact finding and mutual gains negotiations.

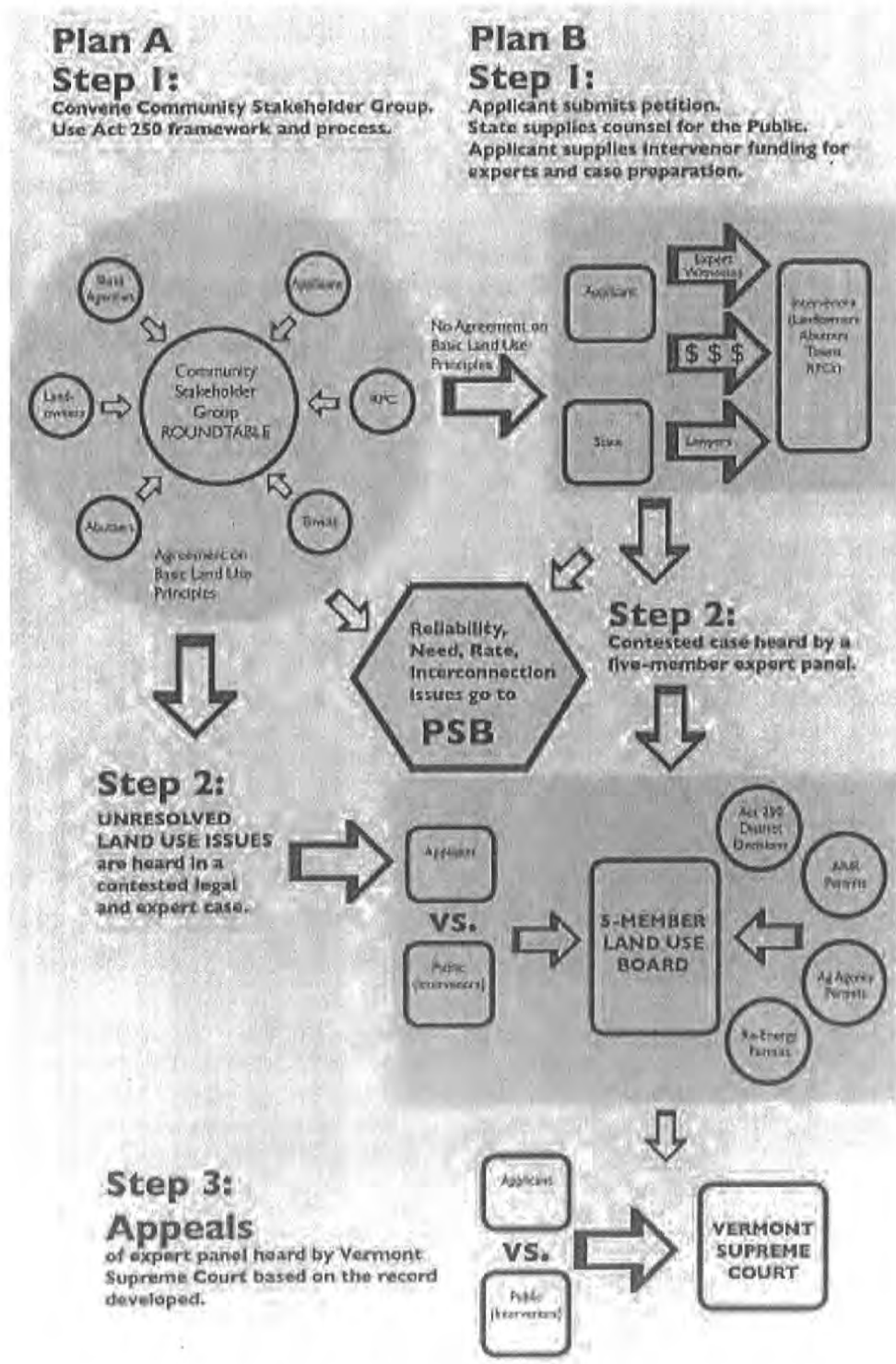
## Plan B = Contested Case

If parties choose to fight, the state and applicants put up Intervenor Funding shared among parties for lawyers and experts.

A new 5 member land use panel is created and hears all contested cases including appeals of ANR, Agriculture, and Act 250 permits. In all cases, the state’s and applicant’s Intervenor Funding assures that the issues receive fair and full consideration.

This “carrot and stick” approach uses Intervenor Funding to encourage developers to come up with good proposals and collaborate on the local and regional level to assure good siting, community benefits, in compliance with the state’s goals.

The Public Service Board retains the duties of utility regulation including rates, interconnection, and need.



There is one de novo contested case, with one on-the-record appeal to the Vermont Supreme Court.

## McHugh, Andrea

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**From:** Barbara Clearbridge <clearbridge@fastmail.com>  
**Sent:** Sunday, October 09, 2016 2:42 PM  
**To:** Virginia Lyons  
**Cc:** Barbara Clearbridge; McHugh, Andrea  
**Subject:** Re: Comment for October 11 Hearing

I'm sure you realize that often external interests govern our elected representatives. Sometimes they need to repay people who have helped them get elected, sometimes they make deals to enable them to get certain legislation passed and these deals require them to vote particular ways in other matters.

There has long been a debate about whether an elected official uses her/his position to express the opinions of her/his constituency, or if they feel that they have been elected because the public supports the official's general outlook and therefore officials may follow their own opinions on various issues.

An obvious conflict in the current Gaz Metro conflict is that the Vermont legislature has voted to ban fracking here, yet the governor has supported a pipeline conveying fracked gas through our state and allowing its sale here, which is a disagreement with that legislation.

Electing Board members would address some of these issues, though it's not possible to entirely avoid the effect of owing election or voting favors.

Regards,  
Barbara Clearbridge  
[www.FeelingMuchBetter.org](http://www.FeelingMuchBetter.org)

On Oct 9, 2016, at 12:32 PM, Virginia Lyons <[VLyons@leg.state.vt.us](mailto:VLyons@leg.state.vt.us)> wrote:

Barbara-

Thank you for the note.

Question: if elected board members best represent the public, how is it that elected representatives to the general assembly do not represent the public?

Best Regards,  
Senator Ginny Lyons

On Oct 9, 2016, at 12:25 PM, Barbara Clearbridge <[clearbridge@feelingmuchbetter.org](mailto:clearbridge@feelingmuchbetter.org)> wrote:

I am unable to attend in person. My concern is not only that it becomes easier for the general public to participate in hearings, but that public opinion is given equal weight with the opinions of legislators, the governor, and the parties directly involved in matters before the Board. There should be no "politics" in PSB decisions, no automatic following of the current administration's desires. The Board should be independent of all such pressures or obligations or expectations.

I want to suggest that the PUBLIC Service Board represent the public, not elected officials. It should be an elected panel, not an appointed panel.

---

Thank you.

Barbara Clearbridge  
[www.FeelingMuchBetter.org](http://www.FeelingMuchBetter.org)

## McHugh, Andrea

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**From:** Richard Spitalny <rspitalny@hotmail.com>  
**Sent:** Wednesday, October 19, 2016 11:55 AM  
**To:** McHugh, Andrea; vlyons@leg.state.vt.us  
**Subject:** Re: Public Comment For Act 174 Working Group's Meeting Tomorrow: Oct. 19, 2016

Excellent!

Thank you very much for your time, the Working Group's time ... everyone's efforts ... on the public's behalf.

Thank you as well for the extremely prompt reply. : - )

Richard

---

**From:** McHugh, Andrea <Andrea.McHugh@vermont.gov>  
**Sent:** Wednesday, October 19, 2016 11:49 AM  
**To:** Richard Spitalny; vlyons@leg.state.vt.us  
**Subject:** RE: Public Comment For Act 174 Working Group's Meeting Tomorrow: Oct. 19, 2016

Thank you for your comments, Mr. Spitalny. I will share them with the full Working Group.

Best regards,  
Andrea

~~~~~  
Andrea C. McHugh
Vermont Public Service Board
Utilities Analyst/ Hearing Officer
andrea.mchugh@vermont.gov
802-828-2358

From: Richard Spitalny [mailto:rspitalny@hotmail.com]
Sent: Wednesday, October 19, 2016 11:42 AM
To: McHugh, Andrea <Andrea.McHugh@vermont.gov>; vlyons@leg.state.vt.us
Subject: Public Comment For Act 174 Working Group's Meeting Tomorrow: Oct. 19, 2016

Dear Ms. McHugh and Senator Lyons,

I was pleased to recently learn about the Act 174 Working Group and its mission to promote increased ease of citizen participation in PSB proceedings pursuant to its charge under 2016 Acts and Resolves No. 174, Sec. 15(b).

As an adjoining landowner, I have intervened in PSB Docket **CPG #16-0042-NMP groSolar/Orchard Road Solar I**. For your convenience, here is a link to Middletown Spring's website where you can find various links to related documents. <http://middletownsprings.vt.gov/town-departments/select-board/>

I ended up sending you this link rather than a link to the docket itself on the PSB's website because, after looking for over 30 minutes, I could not find it. (Though it used to be listed. Perhaps the site has been recently updated/reorganized.)

I'm writing today with the hope that my comments might be helpful to the Working Group in your meeting tomorrow, October 20, 2016.

I have spent, literally, hundreds of hours ever since I opened groSolar's May 30, 2016 documents on April 5th of this year in opposition to a proposed commercial solar installation that would be extremely poorly sited if approved, though I do support appropriate, well-conceived, renewable energy projects.

Without a lawyer and/or organizations such as Vermonters for a Clean Environment (VCE), there simply is 'no way' the average person, on their own, can assert and defend their rights if an ill-conceived wind, solar, gas pipeline, transmission line or other similar project that could radically diminish their quality of life and/or property values and/or enjoyment of their property, neighborhood and community comes before the PSB.

By my own experience I have learned that Town Select Boards either don't have/feel they have the authority; or, don't feel they have a way to learn and thus reflect the will of a majority of the Town's citizens on such matters.

The burden thus thrust upon individuals to find the necessary and extensive amount of time needed to learn what to do next if they can ... after learning they have 45 days to comment ... is unlike anything else I have ever encountered.

One suggestion I would like to make is that Applicants, as well as the PSB, be required to mail a hard copy of the PDF linked to below to any party, the first time they are included on a Certificate Of Service:
<http://psb.vermont.gov/sites/psb/files/publications/Citizens'%20Guide%20to%20248%20February%2014%202012.pdf>

(I think it says something ... quite a bit actually ... that this 'guide' is over 20 pages long!)

In addition, I would suggest that the PSB should be required to provide a phone number as well as an email to the correct person(s) within the PSB who can provide 'technical support' for the public. By that I mean, who can answer questions and provide guidance on the most effective and efficient ways to learn about the process and to secure assistance.

In addition to the above referenced 20+ page guide, I would suggest that the PSB be required to provide contact information for not for profit organizations such as VCE who are knowledgeable and available, pro bono, to provide assistance.

The PSB should likewise also be required to provide a list of lawyers who have provided assistance in opposition to projects similar to the inquiring individual's.

Thank you for taking the time to read my email and for considering my suggestions.

Sincerely,

Richard

Richard M. Spitalny
67 Wescott Road
Middletown Springs, VT 05757
and
24 Tanglewild Road
Chappaqua, NY 10514

McHugh, Andrea

From: Ron Slabaugh <ron.slabaugh@gmail.com>
Sent: Saturday, October 08, 2016 1:26 PM
To: McHugh, Andrea
Cc: vlyons@leg.state.vt.us

Hearing on public participation.

I have tuned into this issue by tracking the gas pipeline controversy. I have attended several hearings and meetings to seek public input. As a member of the public, I feel totally ignored and unrepresented by the PSB. It certainly seems to me that Gov. Shumlin has told PSB and DPS to facilitate the pipeline and all kinds and manner and amount of public impute make no difference at all. With this issue, it feels like citizens vs. our government who has decided to do this project whatever the evidence of the irrationality of building fossil fuel infrastructure to last 50 years while touting renewables.. I am so irritated at VGS and others who continue to tout the relative 'cleanness' of natural gas despite more and more evidence that this is only true if you ignore the drilling and transport and that a life cycle analysis shows it's worse than coal.

As I write, I have that futile feeling that this is just an exercise where again the public will be completely ignored.

--

"Teach only love for that is what you are." A Course in Miracles

"Yours, under the sacred oaks." Druid salutation

Ron Slabaugh, 39 Fairview Circle, Middlebury, VT, 05753, 802.458-7549

McHugh, Andrea

From: Chris Campany <ccampany@windhamregional.org>
Sent: Wednesday, October 05, 2016 6:26 PM
To: McHugh, Andrea; 'Chris Campany'
Cc: 'Virginia Lyons'
Subject: WRC Comments for October 6th meeting of Citizen Participation Committee
Attachments: WRC Comments to PSB Public Participation Committee.pdf

Greetings Andrea and Senator Lyons.

I've attached my comments if you'd like to share them ahead of tomorrow's meeting. I'll bring hard copies.

Chris Campany
Executive Director
Windham Regional Commission
139 Main Street, Suite 505
Brattleboro, VT 05301
www.windhamregional.org
office (802) 257-4547 x106
cell (802) 380-3511



Comments Before the Citizen Participation in Public Service Board Proceedings Working Group

October 6, 2016

My name is Chris Company, and I am the Executive Director of the Windham Regional Commission (WRC). Thank you for the opportunity to share the experience of the WRC's participation in Section 248 dockets. We are an important resource to the 27 towns of the Windham Region in Windham, Windsor, and Bennington counties. Our mission is to assist towns in Southeastern Vermont to provide effective local government and work cooperatively with them to address regional issues.

Our engagement in Section 248 dockets, especially those related to Vermont Yankee, has been substantial and, I believe, well-regarded by the Public Service Board and parties to those dockets. We have found the following to be true:

- We would not be able to engage in dockets as meaningfully as we have without the commitment of our Commissioners, some of whom have volunteered several hundred hours reading through all of the evidence introduced into the docket, engaging fellow Commissioners in discussions about the issues as they relate to our Regional Plan and the interests of the region, assisting with the drafting of briefs, and even assisting with engagement before the Board.
- We have always participated pro se, meaning we represented ourselves without the benefit of legal counsel. We do so because, frankly, we cannot afford to do otherwise. Since 2009 we have spent approximately \$125,000 in staff hours participating in 4 dockets related to Vermont Yankee. The funding source for our engagement is our performance based state contract through the Agency of Commerce and Community Development. There is no other source of funding for engagement in Section 248 proceedings.
- We have asked the Board for reimbursement of our costs by the petitioner three times. Two requests were denied. The one time the request was granted was due to misrepresentation of facts by the petitioner in a docket.
- Not having the benefit of counsel before the Board puts us at a disadvantage when it comes to understanding procedure and the strategies of other parties related to procedure, and knowledge and understanding of Board precedent. Because we lack the resources to

139 Main Street, Suite 505 / Brattleboro, VT 05301 / Phone: 802-257-4547 / Fax 802-254-6383

www.windhamregional.org

support deeper research, we have ostensibly operated without any understanding of precedent with the exception of that cited by other petitioners in their filings.

- We have found the Board to be patient with pro se participants, including the WRC, and that should be valued. Many times, as some Board members themselves have acknowledged, we were the only party that was interested and vested, yet neutral, seeking clarification from all sides on the issues in the dockets.
- We have found the staff of the Public Service Department's Public Advocacy Division to be helpful when we've had questions about docket procedure, but they can only do so much without crossing the line of offering legal advice. It's also important to note that these are the same staff who must necessarily represent the Department before the Board, and we are not always in agreement on given issues.
- Representing ourselves pro se can present some unique problems, such as redirect during cross examination in technical hearings.
- It is hard not to feel "outgunned" when sitting across from the petitioner's legal team – a phalanx of attorneys which at times numbered 15 or more – when one has no legal counsel. And that's just the members of their team in the room. In a major docket such as a CPG the state has the ability to hire its own experts and legal expertise and bill those charges back to the petitioner. This creates a condition of inequitable access to the process and participation therein.
- It is not universally understood that regional planning commissions (RPCs) are political subdivisions of the state,¹ but we are dependent upon the state for our funding to pursue our statutory duties and responsibilities. One of these responsibilities is to appear before the Public Service Board to aid the Board in making determinations under 30 V.S.A. § 248.² Section 248, and now Act 174, establish the process by which we are to implement our regional plan and the policies contained therein. I participated in meetings of the Governor's Energy Generation Siting Policy Commission and raised the funding and related process equity concerns there. I would encourage you to review their recommendations.³

Thank you for this opportunity to present these comments. I may be contacted at (802) 257-4547 or cccompany@windhamregional.org should you have any questions.

¹ Title 24 : Municipal And County Government

Chapter 117 : Municipal And Regional Planning And Development

Subchapter 003 : Regional Planning Commissions

§ 4341 Creation of regional planning commissions

...All municipalities within a designated region shall be considered members of the regional planning commission. For the purpose of a regional planning commission's carrying out its duties and functions under State law, such a designated region shall be considered a political subdivision of the State.

² Title 24, Chapter 117 § 4345a.

³ <http://sitingcommission.vermont.gov/sites/vegspc/files/documents/publications/Final-Report-Energy-Generation-Siting-Policy-Commission.pdf>, p. 52.

McHugh, Andrea

From: PSB - Clerk
Sent: Thursday, October 20, 2016 11:19 AM
To: Cheney, Margaret; McHugh, Andrea
Subject: Re Act 174 Working Group.....
Attachments: 2016-10-20-VT Constitution Democracy Impact 1.docx

FYI.... will also send to Senator Lyons separately....

Andrea - Can you please take care of his request to print out some extra copies to distribute?

Much appreciated.

-Judy

-----Original Message-----

From: Greg Pierce [mailto:greg.pierce9@myfairpoint.net]
Sent: Thursday, October 20, 2016 10:52 AM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject:

Dear Judith Whitney,

Please furnish a copy of the attachment to this e-mail, to each member of the Act 174 Working Group, prior to today's meeting. Would it be possible to print up a few extra copies (they can be printed on both sides of a single sheet of paper) for handout to other interested parties who may be in attendance at today's meeting? Thank you very much for your consideration.

Greg Pierce
telephone: 802-524-6340
e-mail: greg.pierce9@myfairpoint.net
website: www.gregpiercewriter.com

CONSTITUTION OF THE STATE OF VERMONT

AS ESTABLISHED JULY 9, 1793, AND AMENDED THROUGH DECEMBER 14, 2010

CHAPTER I.

A DECLARATION OF THE RIGHTS OF THE INHABITANTS OF THE STATE OF VERMONT

{*** EXCERPTS ***}

Article 1 - ... enjoying and defending life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety...

Article 2 - ... private property ought to be subservient to public uses when necessity requires it...

Article 9 - ... every member of society hath a right to be protected in the enjoyment of life, liberty, and property...

Regarding recent testimony before the Act 174 Working Group (hereinafter 174WG) by Attorney Paul Gillies:

Gillies made a suggestion which was profoundly startling to me. He suggested as part of the 174WG's outreach to gain the support and involvement of ordinary citizens in VT-PSB processes, the Board should consider implementing a 'democratic impact study'... What rights of individual citizens guaranteed under the Vermont Constitution might be trampled upon, by issuance of a VT-PSB Certificate of Public Good (hereinafter CPG)?

I shouldn't have been startled. After all, the most primal instrument of Vermont law, underlying every act of the legislature, the executive branch and the judiciary is our Vermont Constitution. So I went back and examined Chapter I of our Constitution. Following are some thoughts for 174WG's consideration, based on the excerpted passages cited above:

From Article 2 - '... when necessity requires it...' In the case of an industrial wind turbine or solar energy project, a democratic impact study, in order to properly protect individual citizen Constitutional rights needs to delve deeply into the question of 'necessity'. Required is well-thought-out exploration of many relevant issues. Only a few are listed hereinafter:

1.) – Are industrial wind turbine or solar projects essential to provide for existing or projected future electric energy needs of Vermonters? Has the applicant for a CPG documented such necessity?

2.) – Has the applicant demonstrated the need for such systems based on explication of unassailable science or is it based on whimsical self-serving assertions of individuals seeking to enrich themselves at the public's expense (including politicians seeking to expand their political capital as they reach upward for higher office)?

3.) – Would the benefits from issuance of a CPG aid and serve principally Vermonters or principally out-of-state entities?

4.) – Would precious environment be sacrificed when better, less detrimental and more economically viable options are available?

From Article 1 – ‘...pursuing and obtaining happiness and safety...’ In the case of an industrial wind turbine or solar energy project, a democratic impact study, in order to properly protect individual citizen Constitutional rights must delve deeply into the question of ‘happiness and safety’. Required is well-thought-out exploration of many relevant issues. Only a few are listed hereinafter:

1.) – Does glare from a massive installation of solar panels impact happiness and safety of parties who may be effected by the glare... including motorists on highways or pilots in aircraft flying overhead, who may be subject to the glare?

2.) – Does sound and infrasound from industrial wind turbines impact the happiness and safety of parties who are within effective hearing range of the turbines?

3.) – Does turbine blade icing impact parties within the ‘throw’ range of large, heavy, ice projectiles and put their happiness (read: peace of mind) and safety at risk?

From Article 9 – ‘...a right to be protected in the enjoyment of life, liberty, and property...’ In the case of an industrial wind turbine or solar energy project, a democratic impact study, in order to properly protect individual citizen rights under our Constitution needs to delve deeply into the question of ‘protected in the enjoyment of...’ Required is well-thought-out exploration of many relevant issues. Only one is listed hereinafter:

1.) – The VT-PSB, is perceived by many citizens as a protector and enabler of private/corporate energy interests and the faceless masses who represent the ‘so-called’ PUBLIC. Arguably, individual citizens expecting to receive VT constitutional protections receive the least recognition and the least attention to their need for protection. VT-PSB, cognizant of this issue and wishing to draw increasingly disaffected citizens into a fair and even-handed process would do well to exploit the potential of Paul Gillies’ suggestion.

Respectfully submitted,

Greg Pierce, private citizen

McHugh, Andrea

From: PSB - Clerk
Sent: Tuesday, October 25, 2016 8:12 AM
To: Volz, James; Cheney, Margaret; Hofmann, Sarah; Cotter, John; Faber, Gregg; Krolewski, Mary-Jo
Cc: Tierney, June; McHugh, Andrea
Subject: FW: Pre-hearing conference on Swanton wind turbine project, Monday 24 Oct 2016
Attachments: 2016-10-24-Poor job by PSB at pre-hearing conference-second draft.docx

-----Original Message-----

From: Greg Pierce [mailto:greg.pierce9@myfairpoint.net]
Sent: Tuesday, October 25, 2016 6:48 AM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject: Pre-hearing conference on Swanton wind turbine project, Monday 24 Oct 2016

Dear Judith Whitney,

Would you please forward this e-mail and its attachment to each member of the Public Service Board and also to each member of the Act 174 Working Group. Thank you for your consideration.

Greg Pierce
12 Farrar Street
Saint Albans, Vermont 05478
telephone: 802-524-6340
e-mail: greg.pierce9@myfairpoint.net
website: www.gregpiercewriter.com

Poor Performance by PSB at Pre-hearing Conference

Basic Preparations for Conference Ignored by PSB

Monday's pre-hearing conference (24 Oct 2016) regarding a proposed seven industrial wind turbine project to be located atop Rocky Ridge, Swanton, suffered, from the start, from Board negligence regarding physical preparations. Having driven seventy miles to attend, I arrived five minutes before the scheduled start time of the conference. There were no seats available. I stood in the hallway, outside the hearing room, barely able to discern the discussion going on inside the hearing room. Did the Board attempt, beforehand, to contact knowledgeable citizens familiar with issues surrounding the proposed project as to an approximate headcount of people likely to attend? Apparently not. Having failed at an early stage to account for size of attendance, did the Board make any last minute efforts to round up a number of folding chairs and position them around the crowded hearing room so all in attendance could enjoy comfortable participation in a Vermont government process they'd traveled many miles to be a part of? Is that level of thought process and concern for their fellow Vermont citizen's rights asking too much of the Board? Will it be necessary for concerned citizens to suffer similar indignities on the occasions of the actual hearing?

A Fundamental Responsibility of any Vermont Official

Do you Board members recognize a fundamental responsibility you have to ensure protection of the constitutional rights of your fellow Vermonters—who you've chosen to serve—at all times and under all circumstances? At the core of your conference you addressed the applicant and you addressed representatives of Vermont gov't, agencies. You also addressed other, unnamed persons in attendance, but in a different tone—and in an almost demeaning manner. As an unnamed person in attendance I sensed I'd been categorized into a lower caste—standing outside the door, as it were—and with less than full rights under our VT Constitution. Unlike the applicant and the VT agency officials, I wasn't going to be asked to venture a proposal on the calendar timing of principal events in the proceedings. Apparently my citizen rights as a prospective intervenor in the proceedings is of no import to the Board.

Determination of the Right to Participate as an Intervenor

In his opening remarks, your Board Chair, made clear that participation as an intervenor would be limited by the Board to only those citizens with a very

cogent, very direct connection to the project. The particulars of such a connection were only vaguely alluded to. That circumstance gave me pause to wonder. What if a Vermont citizen feels impacted by a particular project? Don't citizen protections of the VT Constitution apply to VT-PSB proceedings? Aren't citizens guaranteed they will enjoy full participation in the process—no tricky, devious or hidden/sticky points to disqualify the interested parties from participation—no "Catch 22's"?

Righting an Early Wrong in the Process

Clearly, at this early juncture, citizen rights have been effectively abrogated by the Board. The gross disparity exhibited by the Board in addressing applicant/gov't. interests, versus citizen interests at the pre-hearing conference needs to be rectified. The Board needs to schedule a phase two pre-hearing conference in which the audience needs to be cautioned by the Board Chair that applicant/gov't officials in attendance may observe but will not be allowed to make comments. Thereafter, the Board needs to inquire of the citizen attendees their input on calendar scheduling of principal events in the proceedings. Equivalent deference accorded applicant/gov't. officials in the first pre-hearing conference needs to be accorded to citizen attendees of the second pre-hearing, particularly as to providing ample research, study and preparation time in a crowded pre-holiday season.

Further, the Board needs to exhibit additional special deference to prospective intervenors. In the brief cautions/warnings given to citizen attendees at the first pre-hearing conference, a State of Vermont, 'Citizen Guide' was briefly mentioned. At the second conference, the Board needs to go over the guide in detail, for the benefit of prospective intervenors, taking pains to explain details and pointing out potential pitfalls.

Since the second pre-hearing conference is likely to be very well received by interested citizens, provision needs to be made for accommodating a substantial attendance. It is quite likely, if approached by the Board, Swanton Town and Village officials would be very receptive to providing suitable physical space for the second conference. This consideration addresses three additional points of importance. First, the Board needs to get out among the citizens it is serving and close to the physical site where the subject project is proposed to be located. Second, a local pre-hearing conference site near the project site lightens the economic burden on citizens who otherwise have to expend personal resource to drive to Montpelier. Third, it would soften a perception among interested citizens that their gov't goes out of its way to

make the process difficult for them to participate in, such as by holding proceedings at remote locations and in physically inadequate spaces.

Explaining the Means Provided for Redress of Citizen Grievance

Presently, even at the earliest stages of a formal proceeding for the subject project, I feel aggrieved at the manner in which my citizen interests have been addressed. Accordingly, under the presumption that the Board will either ignore or refuse to address the complaints I have raised in this correspondence, I'm respectfully requesting technical guidance as to which higher organ of VT gov't. I must further address my complaints to—against the Board.

Respectfully submitted,

Greg Pierce, private citizen and prospective intervenor

McHugh, Andrea

From: Annette Smith <vce@vce.org>
Sent: Thursday, November 03, 2016 5:34 PM
To: McHugh, Andrea; vlyons@leg.state.vt.us
Subject: Intervenor Funding

Dear Act 174 Working Group,

I appreciate that Intervenor Funding is being discussed and recommended to the legislature.

I would like to provide a response to what Commissioner Recchia said about an unnamed case. I am aware of the case of which he spoke and the details of it, and it was not about PSB participation, the cost of it, or Intervenor Funding. It is unfortunate that his opinion of the issue of which he spoke was used to attempt to dissuade the committee from recommending Intervenor Funding.

In my experience with New York's Article X (when it was implemented for a gas power plant proposed for Glenville NY in about 2000), there is a readily available formula by which to establish how Intervenor Funding is raised and distributed among parties.

Perhaps it would be helpful to the Working Group members to look at a real world situation. I have been cleaning out my office and yesterday I found notes taken in 2009 when a landowner and businessman met with the developer of the proposed Ira Wind project. It never filed and is not an active case so I believe it is appropriate to speak about it. This landowner was in the position to actually invest in the project, and met with the developer to discuss the financials. At one point the landowner called me and told me what the developer said, and I took notes.

The Ira wind project (which was called the Vermont Community Wind Farm and impacted seven towns in Rutland County) was proposed to be about a 63 MW project, same as GMP's Lowell Wind project. The developer quoted that annually, the investors would take \$30 million in profits. Landowners, towns, and state taxes would receive \$2.5 million a year.

If you wanted to look at a 30 MW project, cut that in half, where the entire amount of money left in-state would be about \$1.25 million a year and the investors would get \$15 million. For a 20 MW project, take 1/3 and the money distributed in state would be about \$830,000, with investors getting about \$10 million annually.

In that context, let's say for a 20 MW project, wouldn't it be reasonable to set aside \$100,000 (the estimated low-ball cost for PSB participation) for Intervenor? We know that those costs can easily go higher based on experience with solar and wind and biomass cases when towns and neighbors have participated with lawyers and experts.

I believe the NY formula is tied to the cost of the project, and is based on a percentage. When you look at the large profits generated by these projects, doesn't it seem appropriate for developers to do a whole lot more than is being required now? Intervenor funding so communities don't bankrupt themselves participating in the PSB process, compensation for landowners whose property is being impacted, continuous sound monitoring to assure compliance with noise standards are all reasonable costs of doing business.

Commissioner Recchia comment had to do with how it is unfair to ratepayers to burden them with the cost of Intervenor Funding. Externalizing costs while making large profits is a formula that is not working for

Vermonters. I would argue that working collaboratively rather than combatively would reduce the costs for developers while providing greater benefits to Vermont, including ratepayers.

It is notable that in the 7 years and 6 months I have been working on the wind issue, I have never heard the numbers disclosed for any wind or solar project other than what I wrote above. I believe that if the financials of these projects is disclosed, people would be shocked by how much profit is being taken and how little benefits come to Vermont. That was the belief of Dr. Lawrence Susskind which he spoke about in his remarks to the DOE-sponsored workshop for wind developers held at Harvard Law School in 2011. He said he thought the problem with wind development is the wind industry was not making good deals, was taking too much and not giving enough. His term was mutual gains negotiations, and his teaching was that the wind industry needed to leave more benefits to the communities. This is the 10 minute audio of his remarks should you wish to listen http://www.vce.org/4_LS_EffectiveStakeholderEngagement_032311.mp3

Thank you again for keeping Intervenor Funding on the list. Until you have experienced the news that you and your neighbors have to raise \$100,000 or more to deal with an energy project in your community, you may not understand how stressful and overwhelming it is to be faced with a PSB proceeding. Even if someone magically comes along and provides the money, the impacted public must still give up virtually all of their spare time for a year or more to devote to working with the lawyers and experts and the requirements of the case. Stakeholder engagement makes a whole lot more sense and would reduce costs and stress for everyone, as taught by Dr. Susskind.

Sincerely,

Annette Smith
Executive Director
Vermonters for a Clean Environment, Inc.
789 Baker Brook Road
Danby, VT 05739
(802) 446-2094

McHugh, Andrea

From: Charles Storrow <chuck@ksepartners.com>
Sent: Friday, November 04, 2016 1:53 PM
To: McHugh, Andrea
Subject: Act 174 Workgroup/30 VSA sec. 248a

Dear Andrea,

This is to follow up on my suggestion to the Act 174 Workgroup that it consider some of the changes the Legislature made to 30 V.S.A section 248a during the 2014 legislative session as possible bases for one or more of its recommendations to the Legislature. I would also like to share a thought I have about the use of Act 250 style processes by the PSB.

2014 Changes to 30 V.S.A. sec. 248a

Section 248a relates to the permitting of wireless telecommunications facilities (e.g., cell towers) by the Public Service Board. This firm represents AT&T in the legislature and I was involved in the discussions about the subject changes to section 248a.

The changes to section 248a were made in both Section 17 of Act 190 (2013 Adjourned Session) and Section 27 of Act 199 (2013 Adjourned Session). Both Acts made the same changes to section 248a—in essence the changes were “double passed.” That was due to the possibility that towards the end of the 2014 session it was not clear whether one of the underlying bills would make it all the way through the legislative process before adjournment.

30 V.S.A. sec. 248a(e)(2)

The first change to section 248a relates to the fact that before a developer of a cell tower can petition the Public Service Board for a Certificate of Public Good it must first provide the relevant Selectboard and municipal planning commission with a copy of the application (a/k/a petition) the developer intends to file with the Board. 30 V.S.A section 248a(e). At the time the subject change was enacted the copy of the application had to be provided to the Selectboard and Planning Commission at least 45 days in advance of filing the actual application with the Board. In 2016 that period was changed to 60 days.

Acts 190/199 added subdivision (2) to subsection (e) of section 248a. That subdivision provides as follows:

(2) On the request of the municipal legislative body or the planning commission, the applicant shall attend a public meeting with the municipal legislative body or planning

commission, or both, within the 60-day notice period before filing an application for a certificate of public good. The Department of Public Service shall attend the public meeting on the request of the municipality. The Department shall consider the comments made and information obtained at the meeting in making recommendations to the Board on the application and in determining whether to retain additional personnel under subsection (o) of this section.

The idea behind this change was to make sure a Selectboard and/or Planning Commission had an opportunity to gain a better understanding of a cell tower project and/or have a face to face interaction with the developer about any issues associated with the project. Because the Department is charged with representing the public in PSB cases it was thought that its attendance at such a meeting should be mandatory.

I know that in AT&T's case even before this statutory change was enacted it has generally made an effort to have such a meeting and sometimes it has modified a cell tower project as a result of the ensuing discussion.

30 V.S.A. sec. 248a(m)—(o)

Acts 190/199 added subsections (m), (n), (o) and (p) to section 248a.

Subsection (m) provides as follows:

(m) Municipal bodies; participation. The legislative body and the planning commission for the municipality in which a telecommunications facility is located shall have the right to appear and participate on any application under this section seeking a certificate of public good for the facility.

The basis for adding subsection (m) was the fact that in submitting written comments to the Board about a cell tower project some municipalities apparently did not explicitly address the standards for intervening in a PSB case and obtaining status as a party.

Subsection (n) provides as follows:

(n) Municipal recommendations. The Board shall consider the comments and recommendations submitted by the municipal legislative body and planning commission. The Board's decision to issue or deny a certificate of public good shall include a detailed written response to each recommendation of the municipal legislative body and planning commission.

The basis for adding subsection (n) was the fact that some municipalities felt that in rendering its decision concerning a petition for a CPG the Board did not address the particular municipality's recommendations.

Subsection (o) provides as follows:

(o) Retention; experts. The Department of Public Service may retain experts and other personnel as identified in section 20 of this title to provide information essential to a full consideration of an application for a certificate of public good under this section. The Department may allocate the expenses incurred in retaining these personnel to the applicant in accordance with section 21 of this title. The Department may commence retention of these personnel once the applicant has filed the 45-day [should be 60-day] notice under subsection (e) of this section. A municipal legislative body or planning commission may request that the Department retain these personnel. Granting such a request shall not oblige the Department or the personnel it retains to agree with the position of the municipality.

My understanding is that prior to the addition of subsection (o) to section 248a the Department of Public Service could and did retain experts in connection with section 248a petitions. As a result, the real purpose of adding subsection (o) was to give municipal Selectboards and planning commissions the ability to ask the Department to retain an expert in situations where the Department might not otherwise chose to do so. I do know that the Department has honored requests from Selectboards that an independent expert be retained in 248a cases.

Subsection (p) provides as follows:

(p) Review process; guide. The Department of Public Service, in consultation with the Board, shall create, maintain, and make available to the public a guide to the process of reviewing telecommunications facilities under this section for use by local governments and regional planning commissions and members of the public who seek to participate in the process. On or before September 1, 2014, the Department shall complete the creation of this guide and make it publicly available.

This subsection is self-explanatory. The Department has published and posted on its website the required guidebook. See: http://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Legislative_Reports/Public%20Guide%20248a.pdf

The foregoing are the changes to section 248a I had in mind when I mentioned them to the Workgroup. I have no opinion on whether the policy considerations behind those changes are

within the scope of the Workgroup's mission and/or are relevant and appropriate for consideration in connection with non-section 248a cases.

Act 250 Template

I do want to share a thought I had concerning the adoption of Act 250 style processes in PSB cases. More specifically, I want to point out that there are significant differences in the way appeals from PSB decisions and from Act 250 decisions by a District Environmental Commission are handled. Those differences might make it difficult to adopt Act 250 style processes in PSB cases.

In applying for an Act 250 permit an applicant submits a so-called "Schedule B," which is a form developed by the Natural Resources Board that elicits information about a project in relation to the Act 250 criteria. The Schedule B is typically submitted along with reports by the applicant's consultants and other supporting documents such as traffic studies, ANR/DEC permits, etc. Simultaneously with filing the application with the Commission the applicant sends copies of it and all of the supporting materials to the statutory parties (town Selectboard and planning commission, regional planning commission and ANR) and provides notice of the application to abutters.

Once the application is deemed complete the District Commission will then schedule a prehearing conference. At the prehearing conference there is a discussion as to which of the Act 250 criteria are really at issue. Often times there will be agreement that on its face the application satisfies certain criteria and the Commission can make positive findings on those criteria without the need for any further information.

People who want party status are supposed attend the prehearing conference and state their case for being a party. Sometimes they are not in a position to do that and generally they will be given an overview of the showing they need to make and given an opportunity to make a follow up filing stating their case for party status. See 10 V.S.A. sec. 6085.

The Commission will then issue a Prehearing Conference Report and Order that identifies which criteria will be at issue during the hearing and sets forth a schedule for filings concerning party status requests and any other prehearing matters.

At the hearing before the District Environmental Commission, which is invariably preceded by a site visit, the applicant provides a verbal overview of the project and then, using the Schedule B as a guide, verbally summarizes the information in the Schedule B and the applicant's supporting materials. If the other parties have information they want to provide with respect to a particular criterion they are given an opportunity to do so.

As is the case with PSB proceedings information provided to the District Environmental Commission must meet the Vermont Rules of Evidence, except that information not admissible under those rules may nonetheless be admitted into the record “if it of a type commonly relied upon by reasonably prudent [persons] in the conduct of their affairs.” 3 VSA sec. 810. As a matter of general practice District Environmental Commission’s will generally receive any and all information provided by a party at the hearing, subject to later rejecting it as non-admissible evidence in connection with rendering its Findings of Fact and Conclusions of Law. I should add that in my experience it is rare for there to be an evidentiary objection, much less a ruling, in an Act 250 case at the District Environmental Commission level.

In my mind the major difference between an Act 250 hearing and a PSB hearing is that the information provided to the District Environmental Commission is not adduced by calling witnesses one by one and then subjecting them to questioning (direct examination by the party calling the witness and cross examination by the other parties, with the further wrinkle that in PSB cases the direct examination is done in written form by way of “prefiled testimony”). Additionally, unlike PSB cases in Act 250 cases there is no opportunity to conduct “discovery,” i.e., make another party answer written questions (interrogatories) and produce documents (requests to produce), and the ability to question a person, including a non-party, under oath (deposition) in advance of the evidentiary hearing.

The one major issue I see with respect to adopting an Act 250 style approach in PSB cases relates to the matter of appeals. PSB decisions are appealable to the Vermont Supreme Court, which reviews the case and renders a decision based on the record compiled at the PSB. In contrast, District Environmental Commission decisions are appealable to the Environmental Division of the Vermont Superior Court (the so-called “E Court”). The E. Court hears the matter on a de novo basis, i.e., on a clean slate without regard to the record compiled before the District Environmental Commission. The evidentiary hearing conducted by the E. Court is similar to a PSB hearing in that each party calls their respective witnesses to testify, i.e., provide direct testimony, one at a time (the E. Court does not use prefiled testimony—all testimony is “live”), and those witnesses are subject to cross examination by the other parties. In addition, subject to getting the E. Court’s authorization a party an Act 250 appeal can conduct discovery in advance of the evidentiary hearing before the E. Court.

An E. Court decision can then be appealed to the Vermont Supreme Court which renders a decision based on the record compiled before the E. Court.

In sum, the relative informality of Act 250 proceedings before District Environmental Commission’s is counterbalanced by the fact that before an Act 250 case can be heard by the Supreme Court it is first heard on a de novo basis by the E. Court, which conducts a more formal proceeding similar in nature to PSB proceedings. On the other hand, the PSB conducts

a hearing that is more formal than a District Environmental Commission hearing, but the an appeal from the PSB goes straight to the Supreme Court.

I hope the foregoing information is useful.

Sincerely—Chuck Storrow

Charles Storrow, Partner
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Montpelier, VT 05602
(802) 552-4470 (Direct)
(802) 371-7863 (Mobile)
(802) 229-4900 (Office)
chuck@ksepartners.com

McHugh, Andrea

From: PSB - Clerk
Sent: Monday, November 14, 2016 8:35 AM
To: Volz, James; Cheney, Margaret; Hofmann, Sarah; Cotter, John; Faber, Gregg; Krolewski, Mary-Jo; Watts, David
Cc: McHugh, Andrea
Subject: FW: Docket 8816: Getting the Horse Before the Cart
Attachments: 2016-11-13-Dock 8816 PSB has cart before horse-1st draft.docx

-----Original Message-----

From: Greg Pierce [mailto:greg.pierce9@myfairpoint.net]
Sent: Sunday, November 13, 2016 11:20 AM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject: Docket 8816: Getting the Horse Before the Cart

Dear Judith Whitney,

Would you please forward this e-mail and its attachment to each member of the Public Service Board and also to each member of the Act 174 Working Group. Thank you for your consideration.

Greg Pierce
telephone: 802-524-6340
e-mail: greg.pierce9@myfairpoint.net
website: www.gregpiercewriter.com

Docket 8816 – VT-PSB Must Put the Horse Before the Cart

PSB Must First Adequately Penalize Outstanding Violation by Swanton Wind

Swanton Wind (applicant) installed and operated a Met tower without a permit. VT-PSB adjudged this conduct to be in violation of their rules. An appropriate penalty is apparently now under consideration. No invitation for consideration of outsider's opinions in the penalty phase of this matter has presently been made public. Nonetheless, the undersigned private citizen is writing the herein letter to urge the Board to not let the Met tower violation pass without appropriate punishment. Typically a minor financial penalty is ordered. This type of penalty is less than a slap on the wrist. It amounts to an outrageous insult to concerned citizens. A truly appropriate penalty would be a PSB order barring Swanton Wind from further pursuing investigation before the PSB of an application for a certificate of public good (CPG) in Docket 8816. The period of exclusion from further appearances or consideration before the Board should be for a period of not less than three (3) years commencing upon the date the penalty order is assessed against Swanton Wind for the Met tower violation.

Suspension of Application for a CPG is Critical to Protecting the Public Good

One important element of consideration by VT-PSB, in Docket 8816, must be the suitability of petitioner to perform reliably and honorably as a public utility under applicable VT-PSB rules and regulations. Swanton Wind's (applicant's) deliberate circumvention and blatant disregard of VT-PSB rules, pertaining to procurement of a permit to erect a Met tower, is prima facie evidence of applicant's unsuitability as a reliable and honorable permittee under VT-PSB rules and regulations pertaining to a CPG. A minimum three (3) year suspension of Swanton Wind's CPG application process is a perfectly reasonable penalty for a violation that rises substantially above a mere scofflaw act. Three (3) years will impress upon the minds of applicant's leadership group the importance of conformance with established rules intended to protect the safety and welfare of Vermont citizens. An immediate three (3) year suspension will also put the horse back ahead of the cart and hopefully protect the Vermont public from further predations upon the public good by the intended applicant.

Respectfully submitted,

Greg Pierce, private citizen and prospective intervenor

McHugh, Andrea

From: Stephen Whitaker <whitaker.stephen@gmail.com>
Sent: Sunday, November 20, 2016 11:23 AM
To: Cheney, Margaret
Cc: Volz, James; McHugh, Andrea; senatorginnylyons@gmail.com
Subject: PP in PSB workgroup- unlock filmed documents

Dear Board Member Cheney,

I must reiterate my informed opinion that the PSB archives which were destroyed after scanning to microfilm must be reclaimed from film into accessible digital PDF files as soon as possible. VTA2 is but one exemple.

You may be aware that my requests to have a copy made of the microfilm roll(s) at my own expense, such that I could send these to a service bureau for scanning, have been refused by the Board chair.

Public participation by pro se parties relies to an even greater degree on ready access to the historical record than it does for teams of well funded utility lawyers.

Citizens sometimes need to inform their theories and arguments by reviewing pleadings and transcripts of cases where similar issues were raised prior.

It is wise to start now to keep the issue, (temporary loss of access) on the table, and in the budgets such that the State Archivist, the Legislature and the Board continue to develop strategies, seek solutions and allocate funding to recover access to these important records.

I suspect that the Docket Logs would be scanned first, with select documents chosen from those, primarily pleadings, transcripts and exhibits. The Board would need to monitor the process as 'owner' of the film rolls.

An inquiry should also be made of all of the regulated utilities /attorneys who were party to those proceedings as some of these records may still be available in either paper or electronic formats which were not destroyed.

Selectively scanning, as contrasted to complete scanning of every film image may turn out to be most efficient. It does however, require a keen attention to detail to frame, de-skew, focus and set contrast for nearly every page of every document. Maintaining a record of which records have been, and which are yet to be scanned would be a challenge.

Please make an effort to reach agreement among PP in PSB workgroup members to include these recommendations into the final report.

Thank you,
Stephen Whitaker

McHugh, Andrea

From: Annette Smith <vce@vce.org>
Sent: Monday, November 21, 2016 11:03 AM
To: vlyons@leg.state.vt.us
Cc: McHugh, Andrea
Subject: NY Article X Intervenor Funding

For the Act 174 Working Group, here is guidance from NY regarding how they implement Intervenor Funding

[https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/6fd11ce8db088a2785257e200054a99b/\\$FILE/02420356.pdf/Guide to Intervenor Funding 2-14-13.pdf](https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/6fd11ce8db088a2785257e200054a99b/$FILE/02420356.pdf/Guide%20to%20Intervenor%20Funding%202-14-13.pdf)

Annette Smith
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(802)446-2094
www.vce.org

McHugh, Andrea

From: PSB - Clerk
Sent: Monday, November 21, 2016 8:31 AM
To: Volz, James; Cheney, Margaret; Hofmann, Sarah
Cc: McHugh, Andrea; Cotter, John; Knauer, Thomas; Fink, Kevin
Subject: FW: SOUND Rulemaking - Relevant background information
Attachments: 2016-11-20 - NancyTipsFrankSeawright-NOISE.pdf

-----Original Message-----

From: Greg Pierce [mailto:greg.pierce9@myfairpoint.net]
Sent: Sunday, November 20, 2016 8:07 AM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject: SOUND Rulemaking - Relevant background information

Dear Judith Whitney,

Would you please forward this e-mail and its attachment to each member of the Public Service Board and also to each member of the Act 174 Working Group. Thank you for your consideration.

Greg Pierce
telephone: 802-524-6340
e-mail: greg.pierce9@myfairpoint.net
website: www.gregpiercewriter.com

Article published Nov 19, 2016

Noise issue still popping up

Windham and Grafton soundly voted down the industrial wind proposal for our towns. You'd think we could all take a rest. Not so. Wind-industry moles spring up in every corner of the state, begging to be whacked.

The mole of the week: the Vermont Public Service Board's "Proposed Rule on Sound from Wind Generation Facilities."

The gist of this rule-making is: "Help us figure out impossible rules that can't be monitored or enforced, concerning the noise that can be legally inflicted on Vermonters by our friends, the wind developers."

You might feel that such rules mean it's still open season on Vermont's communities, given that unenforceable standards amount to nothing more than a knowing nod to the wind profiteers. If you're right, then let us give this particular mole the whacking it deserves.

First, we might ponder the difference between sound and noise: sound is simply what we hear, becoming noise when we don't want to hear it. Remembering this, let us peruse a few of the comments on the PSB rule that were submitted by developers and wind advocates.

Green Mountain Power, developer-owner of Kingdom Community Wind, intones, "It is valuable to hear the experiences of people who live near the turbines in Lowell," revealing anecdotal comments of 23 Lowell residents along with the distances those 23 live from the nearest turbine. The average distance is 1.9 miles, and the median, two miles. No information is given on how the people were selected, and their responses indicate that the turbines can be heard up to three miles away. An obvious fix, supported by GMP observations, would be to require a minimum setback of something around two miles, in order to ensure that turbine neighbors aren't exposed to "sound," which some would experience as "noise."

We learn that Renewable Energy Vermont has "consulted with its members, acoustical engineers, and wind project developers and operators." This group feels that public health studies don't support the idea that there are direct health effects from turbine noise. Conveniently overlooked is that these oft-cited studies do not reject the idea that such effects exist; in fact, most studies conclude with appeals for more rigorous health studies to create a scientific underpinning for protecting populations. Thus, the existing health-effects literature is hardly the green light seen by REV for the massive turbine-noise exposures of Vermont's population that would occur if these folks were to have their way.

Both REV and Vermont Public Interest Research Group observe that measuring indoor sound is too difficult to do (a point disputed by many noise experts), and therefore should not be done. This is even though indoor sound is what disturbs people's sleep as well as large swaths of their waking lives. Part of the "difficulty" is that enclosed spaces seem to worsen people's experience of the specific sound frequencies generated by wind turbines. In a study

by Australian acoustician Bob Thorne, many turbine neighbors report that turbine noise is noticeably worse inside their homes than outside. Meanwhile, outdoor-sound measurement also has multiple shortcomings and practical difficulties. An obvious fix? Required setbacks of around two miles from property lines, apparently, if unintentionally, supported by both REV and VPIRG.

If the PSB is really listening, they might notice that REV, VPIRG and GMP actually support what many of us in threatened communities are saying: The only rational and helpful rule governing wind turbine noise would be a minimum two-mile setback from people's property lines. Such a setback would be protective, and once enforced, would require no ongoing monitoring.

Frank Seawright is chairman of the Windham Select Board. Nancy Tips is a Windham resident. Both previously worked for the Centers for Disease Control and Prevention.

McHugh, Andrea

From: PSB - Clerk
Sent: Tuesday, November 29, 2016 2:57 PM
To: Volz, James; Cheney, Margaret; Hofmann, Sarah; McHugh, Andrea
Subject: FW: Information pertinent to VT-PSB and Act 174 Working Group activities
Attachments: 2016-11-29-Emerson Lynn editorial, three town selectboards.docx

-----Original Message-----

From: Greg Pierce [mailto:greg.pierce9@myfairpoint.net]
Sent: Tuesday, November 29, 2016 2:26 PM
To: PSB - Clerk <PSB.Clerk@vermont.gov>
Subject: Information pertinent to VT-PSB and Act 174 Working Group activities

Dear Judith Whitney,

Would you please forward this e-mail and it's attachment to each board member of the VT-PSB and to each member of the Act-174 Working Group. Thank you very much for your consideration.

Greg Pierce
telephone: 802-524-6340
e-mail: greg.pierce9@myfairpoint.net
website: www.gregpiercewriter.com

Town selectboards are the voices PSB needs to heed

Saint Albans Messenger newspaper editorial 29 Nov 2016

The St. Albans Town Selectboard last week voted 3-2 to join Swanton and Fairfield in their opposition to Swanton Wind, the proposed seven-turbine project for Rocky Ridge.

That is unusual enough. It's a stretch to remember a time when the town's selectboard joined neighboring communities to oppose any development. But not only did the selectboard go on record in opposition to the project – by a 3-2 vote – it also voted to allocate as much as \$10,000 to help defeat the project.

The Swanton selectboard also voted to spend \$10,000 in opposition and the Fairfield selectboard is considering \$10,000 to \$15,000.

Obviously, the selectboards in those three towns feel strongly enough about the project to allocate between \$30,000 to \$35,000 to defeat it. They also have every confidence that they represent their constituents' interests.

The opposition comes in two forms.

The first is from those who would live closest to the proposed turbines. They are concerned about proximity, noise, environmental impact, safety and the visual interruption posed by seven turbines that would stretch 500-feet into the air.

The second is from those who are concerned about developers being able to push through their projects regardless of what the communities think. They are also questioning why such projects can go through when both Green Mountain Power and Vermont Electric Cooperative say they have no interest in the project and don't want to pay the price that would be required for the energy produced.

If one were a member of the Public Service Board – the group responsible for reviewing the Swanton Wind project – it would be difficult to find anyone other than the developer in favor of the project.

It's largely the same circumstance recently encountered by Iberdrola, the Spanish behemoth that essentially tried bribing the people in Windham and Grafton to allow them to build a 24-turbine industrial wind farm on a ridgeline outside their towns.

The company said it would abide by the results of a Nov. 8 public vote. The people of both towns voted resoundingly to decline the yearly payments; thus, one must assume, the project is dead.

The people of Swanton also voted overwhelmingly against the project, but the project proceeds. This is not how the state's renewable energy policy should be built. Legislators began to sense this last session, which is what prompted them to pass energy siting legislation that gives communities a greater voice in deciding where large-scale renewable energy projects should be built.

Sort of.

The law is a step in the right direction, but communities still have more of an advisory role. The PSB is still the group that has the final say. And it needn't pay heed to what a community thinks. The selectboards of Swanton, St. Albans and Fairfield understand this, which is why they have opted to do what they are doing. If they do nothing, it could be assumed the opposition was weak. By allocating \$30,000 in opposition the message to the board is crystal clear. The opposition is widespread, and deep, and committed.

For the board to completely ignore the communities' wishes it would also, in effect, be ignoring the stated purpose of the Legislature's energy siting bill, which is to give greater voice to the communities involved.

It's an issue that goes beyond the state's laudable renewable energy goals. People are tired of having their voices ignored. They are tired of being at the mercy of the Iberdrola's of the world who profit at the people's expense. People are told they are part of a democratic system, but it doesn't feel so democratic to them when their voices are not heard, when people vote overwhelmingly one

way and still face the prospect that their votes could be rendered void by the Public Service Board, an unelected board of three.

Gov. elect Phil Scott picked up on this as he campaigned against Democrat Sue Minter. Mr. Scott came down on the side of those opposed to large-scale wind projects. Ms. Minter came down on the side of the developers.

Mr. Scott won, and the anti-wind groups were united in their support.

It would be a good time for the public service board to heed the public's will – particularly in the case of Swanton Wind, which may be one of the first projects to be reviewed with a new governor in charge.

The St. Albans Town selectboard picked its battle wisely. Together the three communities should be the voice the Public Service Board hears.

by Emerson Lynn

Appendix B:

Meeting minutes

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

August 5, 2016 at 10:00 A.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Commissioner Chris Recchia; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Board Member Cheney at 10:00 A.M.

Senator Lyons was elected to serve as Chair of the Working Group by voice vote of the five members.

Each Working Group member introduced themselves.

Senator Lyons reviewed the Working Group's charge to review current processes for citizen participation in PSB proceedings and to make recommendations to the Legislature that would promote increase ease of citizen of participation in PSB proceedings by December 15, 2016.

Board Member Cheney made a presentation to the Working Group: Overview of current PSB processes and points of citizen participation. Board Member Cheney, June Tierney, General Counsel for the PSB, and Ann Bishop, Chief Economist for the PSB, responded to questions posed by the Working Group members and other public participants on a variety of topics including ePSB, process for intervention and other participation, and contested vs. uncontested case proceedings.

The Working Group members identified topics for future meetings and discussed meeting logistics including dates and location, as well as public hearing dates. Future meetings will be audio recorded for record-keeping purposes.

The meeting adjourned at approximately 1:00 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

August 25, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Commissioner Chris Recchia; Board Member Margaret Cheney; Judge Robert Mello.

The meeting was called to order by Senator Lyons at 1:00 P.M.

Senator Lyons led a discussion on Working Group goals and a rough timeline.

June Tierney, General Counsel for the PSB, presented to the working group on Past and Current Public participation processes at the PSB. Judge Mello discussed his past experience working for the PSB in the 1970s when the functions of the PSB and Public Service Department were combined in one agency.

June Tierney and Board Member Cheney led a discussion on changes implemented, and other changes in the works, at the PSB to improve public participation.

Future meeting topics were identified.

Upon completion of the agenda topics listed above, Senator Lyons opened the floor to members of the public in attendance:

- Greg Pierce inquired about the procedures for the public hearing scheduled for October 11.
- Melanie Peyser expressed concerns about funding for landowners involved in eminent domain proceedings before the Board and provided recommendations related to perceptions of judicial fairness.
- Steve Whittaker discussed the status of the 10-year telecommunications plan and citizen engagement in the telecommunications sector.
- Austin Davis of 350vt inquired about the definition of public good in Board processes.

The meeting adjourned at approximately 4:15 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

September 8, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Commissioner Chris Recchia; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

Commissioner Recchia presented information on the Public Service Department mission, current processes, and staff roles.

Commissioner Recchia and Geoff Commons, Director of Public Advocacy, shared information on how other states handle the responsibilities for the consumer advocate processes.

Board Member Cheney led a tour of PSB offices for the Working Group and members of the public.

Commissioner Recchia led a tour of PSD offices for the Working Group and members of the public.

The meeting adjourned at approximately 4:30 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

September 22, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons (Chair); Representative Tony Klein; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

Lou Borie, Executive Director of the Natural Resources Board, presented to the working group on the process for citizen participation in Natural Resources Board (Act 250) proceedings.

Aaron Adler, Counsel for the Vermont Legislative Council presented to the working group on elements of Act 174 (2016 Adj. Sess.) relevant to citizen participation in Public Service Board Proceedings.

June Tierney, General Counsel for the Public Service Board, presented to the working group on the recommendations of the Vermont Energy Generation Siting Policy Commission and the Vermont Solar Siting Task Force.

Following the above presentations, Senator Lyons opened the floor to members of the public in attendance:

- Greg Pierce inquired about the procedures for the public hearing scheduled for October 11.
- Melanie Peyser expressed concerns about funding for landowners involved in eminent domain proceedings before the Board and provided recommendations related to perceptions of judicial fairness.
- Steve Whittaker discussed the status of the 10-year telecommunications plan and citizen engagement in the telecommunications sector.
- Austin Davis of 350vt inquired about the definition of public good in Board processes.

The meeting adjourned at approximately 4:15 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

October 6, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Commissioner Chris Recchia; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

The Working Group heard testimony on experience with citizen participation in Public Service Board proceedings by the following individuals:

Nathan and Jane Palmer expressed concern that citizens are unable to utilize State of Vermont employees as professional resources to discuss issues on proposed projects. The Palmers discussed the investment of time and money necessary when citizen intervenors participate in PSB proceedings.

Annette Smith, on behalf of Vermonters for a Clean Environment, provided an extensive list of recommendations to ease participation in PSB proceedings in advance of the meeting. She answered questions and provided clarifications. Ms. Smith encouraged the use of community-based stakeholder processes in siting renewable energy projects.

Steve Whitaker recommended that a *pro se* handbook be developed to assist citizens in participating in PSB proceedings and that technology be more effectively utilized to encourage participation in PSB processes.

Chris Company, on behalf of the Windham Regional Commission, discussed the challenge of participating in PSB proceedings with limited resources on a *pro se* basis. Mr. Company stated that the Commission has found the PSB to be patient with *pro se* intervenors and the PSD to be helpful in understanding processes.

Dick Saudek, Esq., discussed his experiences representing towns in renewable energy project siting matters and identified ways in which the towns are uniquely positioned to determine impacts of such projects on their communities.

Paul Gillies, Esq., a municipal attorney, described his experience participating in PSB proceedings (he stated that he is new to PSB processes over the past 1.5 years).

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Peter Zamore, Esq., discussed his perspective on citizen participation in PSB proceedings. He described the importance of public awareness, the effect of informal involvement such as through public hearings, and the responsibilities of formal intervention.

Rob Chapman discussed his experience participating in PSB processes and suggested that the Vermont Access Network could assist with raising public awareness of PSB proceedings.

The meeting adjourned at approximately 4:15 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

October 20, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

Senator Lyons reminded the Working Group members that the topic of discussion for the meeting would be the recommendations that will improve the ease of public participation in the PSB process.

Board Member Cheney presented suggestions to increase ease of citizen participation in PSB proceedings. Suggestions requiring statutory changes were identified as such. Other suggestions were considered discretionary.

Judge Mello requested additional time to review the suggestions presented by Board Member Cheney and recommended that the Working Group revisit these suggestions, along with the public comments received by the Working Group, at the next meeting. Senator Lyons affirmed that the Working Group members should review the suggestions in advance of the next meeting and be prepared to identify concerns or areas to expand upon.

The meeting adjourned at approximately 2:30 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

November 3, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

Senator Lyons presented a list of categories in order to classify the recommendations identified by the Working Group.

The Working Group members continued discussions on the recommendations previously presented by Board Member Cheney at an earlier meeting.

Judge Mello identified several conceptual recommendations and the Working Group discussed how to incorporate these into the recommendation document.

Senator Lyons suggested adding introductory language to each category of recommendations to provide context and intent.

Board Member Cheney proposed to present a second draft of the recommendations document at the next meeting.

The meeting adjourned at approximately 3:00 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

November 17, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

The Working Group members continued discussions on the draft recommendations.

Board Member Cheney will incorporate proposed changes and share a final draft the next meeting.

The meeting adjourned at approximately 2:30 P.M.

Senator Ginny Lyons, Chair
Margaret Cheney, PSB member
Representative Tony Klein
Judge Robert Mello
Chris Recchia, Commissioner DPS

Citizen Participation in PSB Proceedings Working Group

Minutes

December 6, 2016 at 1:00 P.M.

Susan M. Hudson Hearing Room, Third Floor, 112 State Street, Montpelier, Vermont

In attendance: Senator Ginny Lyons; Representative Tony Klein; Board Member Margaret Cheney; Judge Robert Mello (via phone).

The meeting was called to order by Senator Lyons at 1:00 P.M.

The Working Group members reviewed the final draft recommendations document and agreed on the inclusion of appendices.

The Working Group members voted to approve the final draft recommendations document with minor revisions.

The final recommendations document will be submitted to the designated legislative committees on December 15, 2016, and posted on the PSB website.

The meeting adjourned at approximately 3:15 P.M.

Appendix C:

PSB presentation made at 8/5/16 meeting

Public Access to the Public Service Board

1st meeting of Act 174 Working Group

August 5, 2016

Presentation by Margaret Cheney, PSB member

Outline of today's presentation

- Act 174 Working Group: membership, charge
- PSB: history, structure, processes
- Section 248 and other proceedings
- Public access points
- Changes in 15 years
- PSB and DPS
- Concerns we have heard
- Improvements under way

Act 174 Working Group

Created pursuant to Act 174 of 2016, Sec. 15, with 5 members:

- Member of PSB, appointed by the PSB Chair
- Commissioner of the Department of Public Service, or designee
- Judicial officer of the State, appointed by the Chief Justice
- House member of Joint Energy Committee, appointed by the Speaker
- Senate member of Joint Energy Committee, appointed by Committee on Committees

Our charge (Act 174)

- Review current processes for citizen participation in PSB proceedings
- Make recommendations to promote increased ease of citizen participation in those proceedings
- On or before Dec. 15, 2016, submit written recommendations to Legislature
- Administrative, technical, and legal assistance of PSB staff
- PSB member will call 1st meeting, where Working Group will elect chair
- Cease to exist on Feb. 1, 2017

History of the PSB, part 1

1855: Public Service Commission (PSC) created

1866: PSC receives powers of a court of record

1906: PSC has direct appellate review to Vermont Supreme Court

1959: PSC renamed Public Service Board

1967: State adopts Administrative Procedures Act

1969-70: Enactment of Act 250 and 30 VSA Section 248

1971: State adopts Vermont Civil Rules of Procedure (+ in 1983, Rules of Evidence)

1981: PSB is split into PSB and Department of Public Service

History of the PSB, part 2

1997: State authorizes net-metering (2001, PSB Rule 5.100 – net-metering)

2000: State creates Efficiency Vermont as a regulated utility

2005: State expands net-metering, enacts SPEED program

2006: PSB Rule 5.400 – Section 248

2009: State creates standard-offer program

2014: State expands net-metering and requires new rulemaking for 2017 forward

2015: State enacts Renewable Energy Standard (2016, expected PSB rule for RES)

PSB structure

- 3 Board members (1 chair and 2 members) appointed for staggered 6-year terms through Judicial Nominating Board and gubernatorial appointment
- Clerk's office (clerk, assistant clerk, 4 administrative assistants)
- Legal division (6 attorneys)
- Policy division (5 people, including 3 attorneys and 1 engineer)
- Financial analysis division (5 people, including chief economist, 3 utilities analysts, and environmental analyst)
- Funded by gross receipts tax paid by Vermont utilities

PSB proceedings: wide range

- Siting and construction of physical facilities – electric generation plants, electric and natural gas transmission, telecommunications
- Policy implementation (e.g., energy efficiency programs, net-metering, standard-offer program, Renewable Energy Standard, etc.)
- Utility rates, mergers and acquisitions, service quality, authorization to provide service, consumer complaints

Types of Board proceedings

- Contested cases (formal processes, parties have opportunity for evidentiary hearing)
- Uncontested cases (more informal processes such as workshops and written comments)
- Rulemakings (e.g., interconnection, net-metering, RES, etc.; typically 18-month process with built-in opportunities for public comment and attendance at public hearings)

What is Section 248?

- Requires energy, gas, and telecom developers to obtain a Certificate of Public Good (CPG) from the PSB
- Board considers 11 statutory criteria, which incorporate environmental criteria from Act 250, plus issues like orderly development of the region, demand for service, system stability and reliability, economic benefit to the state, and the general public good
- No undue adverse impact on aesthetics, historic sites, environment, health/safety
- Different pathways for different size and type of projects

“Full” Section 248 proceeding

- Notice
- Filing
- Pre-hearing conference
- Site visit
- Public hearing
- Discovery
- Evidentiary hearings
- Briefs
- Decision

ANR collateral permits, such as:

- Construction and operational stormwater
- Wetlands
- T&E takings
- 401 water quality

Others (e.g., Army Corps of Engineers, FAA)



Provides additional opportunity for public engagement

Range of energy siting proceedings

- “Full” Section 248 proceedings (large projects)
- Streamlined proceedings (projects of “limited size and scope” – Section 248(j), 248(k))
- Modified review that waives certain criteria – Section 8007(a) for renewables 150 kW and smaller; Section 8007(b) for 150 kW to 2.2 MW
- Net-metering rules (in process) provide a range of pathways depending on project size and complexity – simple 10-day “registration,” streamlined “application” process, or more complex “petition” with potential for hearing

Parties to a case (status and roles)

- Automatic parties: applicant/petitioner, DPS, ANR (in siting cases), AAFM (in certain siting cases)
- Municipalities and regional planning commissions: receive advance, pre-filing notice of siting projects; statutory right to party status in siting cases; if do not want to be a party, can file public comments
- Adjoining landowners: receive advance, pre-filing notice of certain net-metering projects; receive notice of the filing of a petition for siting projects; can file public comments or motion to intervene to participate as a party
- Members of the public: can file public comments or motion to intervene to participate as a party
- Intervenors: all parties other than automatic parties

Public access points

- Party to a contested case (e.g., intervenors such as adjoining landowners or public interest groups)
- Participant in an uncontested case or rulemaking (e.g., attending a workshop, submitting written comments)
- Public commenter in any type of case – presented in person or in writing at a public hearing, or submitted by mail, email, or on PSB website

Policy directives → change in proceedings

In past 15 years:

- Infrastructure siting cases from 10% of Board workload to 60%
- Telecommunications applications – more than 100 per year
- Net-metering applications – 20 in 2001 → 2,278 in FY 2016 alone
- 15 years ago, most citizen participation through public comments and public hearings; complaints very rare except consumer complaints against utilities
- Today, many citizens seek to participate as parties in contested siting cases and file more complaints alleging CPG violations

What's the difference between PSB and DPS?

Public Service Board

- Quasi-judicial body
- Adjudicative: Decision-making authority in utility regulatory cases
- Legislative: Implements new policy when directed by Legislature
- Citizens participate in proceedings before the Board

Department of Public Service

- Executive branch agency
- Represents public interest in proceedings before the Board
- Long-term energy and telecommunications planning for the State
- Works with customers to resolve complaints about utilities (Consumer Affairs & Public Information division)

2013 Energy Generation Siting Policy Commission

- Met October 2012 – April 2013
- Summary conclusion: We need ...

A siting process that is more “open, accessible, and inclusive, while also providing greater predictability and efficiency to ensure that the *best*, rather than the *easiest* sites are selected.”

Concerns ID'd by Siting Commission (2013)

- Board's processes are a "black box" – insufficient clarity, predictability
- Lack of written information to guide a new party in lay terms
- No staff member to answer simple questions on procedural matters
- Paucity of checklists, standard timelines, performance standards
- Not enough opportunity for public participation
- Website not user-friendly
- Board's processes are lengthy and costly for all parties, including citizens

Improvements in the works

- All non-confidential transcripts of hearings and workshops now on website
- New clerk and deputy clerk, revising internal processes for greater efficiency in responding to inquiries
- More Board site visits in response to comments
- New written information for citizens (e.g., in the proposed net-metering rule)
- Templates for citizens to fill in (e.g., to become an intervenor)
- Changes to processes to make it easier for citizens to participate (e.g., net-metering)
- ePSB soon to be on-line
- Redesigning Board website with user input via survey monkey

Changes in processes – for the public

Proposed net-metering rule – easier for the public:

- Requires applicants to provide more information up-front so citizens can envision the project
- Makes it easier for a citizen to request a hearing
- Will provide forms for citizens seeking party status (also plan to do so for non-net-metering projects)
- Includes new section for anyone who wants to review an application – step-by-step description of the review process in plain English
- Sets forth complaint process regarding compliance with CPGs

Changes for towns

Proposed net-metering rule – for towns

- Monetary incentives for projects to be built in “town designated” sites
- Incentives for projects to be built on customer premises and on the built environment – roofs, quarries, landfills, brownfields, sandpits . . . helping to ensure “that the *best*, rather than the *easiest* sites are selected”
- Expanded requirements for 45-day advance notice to towns of all proposed projects > 15 kW that are not roof-mounted solar or hydroelectric
- Many applications must include a response to any comments provided by towns and adjoining landowners during the advance-notice period

e-PSB is going live

- Phase I scheduled for November; Phase II for second quarter 2017
- Goal is to make it easier for regulated companies, parties to proceedings, and members of the public to access information about Board cases
- Electronic filing, document management, case management, and public access features
- Accessible from website; no new software required for non-Board personnel
- Specifically addresses many of the concerns with current processes

Improvements derived from ePSB

- Required fields will ensure that filers have provided all necessary information
- Cases will be indicated as “Under Review” until deemed administratively complete enough to process
- Determination will be made within 5 business days for most cases
- If filing is incomplete, petitioner will be notified of specific deficiencies
- When statute allows Board flexibility, comment periods will start after case is deemed administratively complete
- Citizens can easily access all documents and information, including case status, schedule, information on parties, and elements of the case

New performance standards

For FY 2017 budget presentation, Board developed three performance standards:

- Percentage of cases resolved within established timeframes
 - Based on measure recommended by National Center for State Courts, used by Vermont judiciary
- Percentage of public inquiries satisfied
- Percentage of complaints about utility service resolved using simple, accessible procedures
- ePSB necessary to track performance

Thank you

Appendix D:

Recordings of meetings and the public hearing are available upon request at the PSB offices