

My name is Annette Smith. I am Executive Director of Vermonters for a Clean Environment. Thank you for the opportunity to testify on S.236.

I have titled this testimony
Can of worms

One correction to last week's walk-through: This bill is not about appeals.

It is about the fundamental right of Vermonters to participate in energy generation development proposals that affect their particularized interests as neighbors, and it proposes to eliminate aesthetics entirely from review of all types of energy generation development projects.

This legislation is part of a national trend to strip local control for siting wind and solar energy, based on the premise that we must build out as much renewable energy as possible quickly in response to the climate crisis. With state level PUC permitting, Vermont already has state level control. Most states have been siting solar and wind through local zoning.

This legislation presumes that neighbor objections are slowing renewable energy development in Vermont, and that solar panels and wind turbines everywhere are good and necessary and should be accepted regardless of the aesthetic impact.

Because of our terrain and topography and competing land use needs, Vermont has limitations on development. Lots of rock, water, steep slopes, an agricultural economy, forests especially valuable to address climate change, housing development, tourism, commercial and industrial uses compete for limited available buildable land. This is a fact we all need to recognize.

Vermont's aesthetics matter. Vermont's scenic natural beauty is our state's brand, with enormous economic value. Gov. Phil Scott stated on Nov. 28, 2022
<https://governor.vermont.gov/press-release/vermont-communities-receive-significant-funding-bolster-local-economies-through>:

"Vermont's natural beauty combined with outdoor recreation opportunities, are economic engines for our state and a driving force for why people visit and live in Vermont."

I am not going to defend Vermont's process for siting renewable energy. I have consistently recommended to this legislature that we change the process to be more collaborative and less contested, bringing our communities and utilities to the forefront for siting renewable energy, instead of the developer-driven process we have now.

<http://vtce.org/Strategic%20Energy%20Planning%20.pdf>

<http://vtce.org/The%20PUC%20Process.pdf>

Developers choose sites without consulting communities or neighbors who are blindsided when Advance Notices are filed. Neighbors and towns must learn in a short period of time all about the project, the PUC process, and prepare to put on a case with expensive expert witnesses. Most renewable energy projects in Vermont are not opposed. But there are bad projects that are opposed, for good reason.

Vermont's developer-driven siting process has led to haphazard development with big wind projects sited too far from load resulting in grid constraints and additional costs to ratepayers, with solar development in places that do not support the grid. GMP and VELCO have both stated in public that new solar has declining value now. GMP has said they don't want more solar unless it is in the right place.

I have seen no evidence to support the supposition that neighbor intervention is slowing renewable energy development in Vermont. What I see is frequent requests from solar and wind developers for extensions of commissioning deadlines due to workforce and supply chain issues. The cost of capital is also a factor. The PUC is granting the requested extensions. Neighbors, aesthetics and the PUC are not the reasons why renewable energy development may be slowing down in Vermont.

The push to strip regulatory review of renewable energy projects is fueled by anticipated Inflation Reduction Act funding. Yes, Vermont should prepare for an influx of money to support renewable energy development, by assuring energy generation is built in the right places and with respect for our environment and communities. That is not what this bill proposes.

Vermont's Renewable Energy Industry and its promoters have been preparing this attack on neighbors and aesthetics for several years, after the denial of a 500 kW solar project in Manchester in May, 2021.

Bill McKibben rang the alarm on his blog

<https://billmckibben.substack.com/p/a-thing-so-shocking-and-offensive>

erroneously claiming the Manchester parcel could otherwise host dozens of condos or a warehouse, and telling people they must see beauty in silicon panels, even though he admits they are not, in and of themselves, beautiful.

Anthony Pollina joined the fray soon with a commentary

<https://vtdigger.org/2021/10/21/sen-anthony-pollina-we-need-to-be-bold-in-fighting-climate-crisis/>

erroneously claiming the PUC overruled local officials by denying the Manchester solar project.

Peter Sterling of Renewable Energy Vermont also mentions a case in Bradford

<https://vtdigger.org/2022/06/13/peter-sterling-why-is-it-easier-to-build-a-dollar-general-than-a-solar-panel-in-vermont/>

erroneously claiming the PUC denied a Bradford project on aesthetics.

A lot of mythology has been built up around the PUC's decisions. I appreciate the opportunity to provide some facts.

The developer dropped the Bradford case after issuance of the Proposal for Decision which recommended denial on Orderly Development and Aesthetics, but it never went to the full PUC for a final decision. That project was contested not by neighbors but by the Town and Regional Planning Commissions which had been working to focus commercial development into the limited area of town where public investments had been made, and the solar array would have used up some of that precious land.

To the best of my knowledge, out of thousands of Certificates of Public Good issued, the PUC has denied 3 solar projects on Aesthetics:

One in Bennington which also involved finding the project did not promote the Orderly Development of the Region because it did not comply with the Town Plan. The Bennington situation is best described as a nightmare, as the developer is a lawyer who currently has four cases pending against the PUC and one against the town of Bennington in Federal Court.

The PUC denied one solar project in view of Mt. Philo in Charlotte on Public Investment and Aesthetics. It was opposed by the Town and the Agency of Natural Resources.

The Manchester case is the only case denied on aesthetics exclusively but it had another factor that the PUC said would need to be investigated further -- flooding.

The PUC denied one solar project in the grid-constrained SHEI region due to grid constraints. I am not aware of any other PUC denials of solar arrays. I am not aware of any renewable energy project that the PUC has denied on environmental issues.

The Manchester case is relevant to the discussions taking place in the Statehouse this year about housing, resiliency, environmental justice and equity.

In the Manchester case, neighbors intervened, but had no clue how to participate, so they had nothing in the evidentiary record, just public comment that is not considered by the PUC in its decision.

The Town did not participate or file comments.

The site is an open field across from a housing development built for the workers of Manchester – carpet installer, food service worker, fire fighters, water system operators, and people who perform necessary services in Manchester.

http://vtce.org/RichvilleRoadSolar_Manchester.png

Some of the homes look out on the field with spectacular views of Mt. Equinox. The neighbors were concerned about the view, the potential for glare due to the orientation of the panels, and the effect on property values. The solar developer's simulations and testimony indicated the project would not be fully screened for ten or fifteen years.

http://vtce.org/RichvilleRoadSolar_DeveloperSimulations.pdf

Of equal neighbor concern was the flooding. There is a reason it is an open field. It floods all the time. They showed me pictures and videos of floods in winter, spring and summer. The winter flooding resulted in huge blocks of ice intermixed with trees, in the area of the proposed screening trees and fencing.

<http://vtce.org/RichvilleRoadBlocksofIce.jpeg>

The field flooded the week before the PUC site visit, with the remains of sediment still visible.

<http://vtce.org/RichvilleRoadFloodingSediment.jpeg>

The developer's expert submitted this map inaccurately showing the flooding coming from the west/southwest.

<http://vtce.org/RichvilleRoadSolarDeveloperFloodExhibit.pdf>

FEMA's Flood Hazard Layer accurately depicts the flooding which comes from the north and results from the convergence of the Bourn Brook and the Batten Kill.

http://vtce.org/RichvilleRoadSolar_NeighborBrief.pdf

The entire field and neighborhood next to it flood with high velocity waters flowing down Richville Road and surrounding areas. In its decision denying the solar project on aesthetics, the PUC acknowledged the flooding issues and agreed that the information supplied by neighbors would need further investigation if they were not denying the project on aesthetics.

http://vtce.org/RichvilleRoadSolar_PUCDenial.pdf

The PUC has two ways to overrule a finding of undue adverse impact on aesthetics.

1. The PUC has added a third section to the Quechee Analysis developed by Act 250, called Societal Benefits.
2. They can also use the "public good", a/k/a "general good of the state" to overrule aesthetic issues. I researched the history of "societal benefits".

http://vtce.org/2021_SocietalBenefits.pdf

Act 250 has a lot of precedent regarding Aesthetics, including the impact on neighboring landowners. However, between 1996 and 2016, the PUC disregarded Act 250's precedent and did not consider the impact of energy projects on neighboring landowners based on the testimony of two Green Mountain Power experts.

http://vtce.org/GOODandBAD_SOLAR.pdf

In a case called Rutland Renewable Energy, the Vermont Supreme Court corrected the PUC's misapplication of the Aesthetics criterion, stating that "the Board can and should consider all vantage points, including from private property."

<https://www.vermontjudiciary.org/sites/default/files/documents/op15-230.pdf>

In 2016, this legislature passed Act 174 giving towns “more say” in renewable energy siting if they adopted “Enhanced Energy Plans.” Many towns have written or are writing these types of plans, with special emphasis on identifying scenic resources to be protected. This legislation destroys all the work planners have been doing during the last seven years.

<http://vtce.org/Act174EnhancedEnergyPlanning.pdf>

With that background, I offer the following observations about the proposed legislation.

1. Aesthetics is not just about the view of solar projects

Aesthetics requires evaluating many aspects, including open space, character of the area, and noise. Section 248 covers all types of electric generation, including:

Substations

Gas pipeline converter stations

Gas power plants

Biomass power plants

Transmission lines

Wind turbines

Solar generation facilities

This proposed legislation would eliminate the wind sound rule.

Are there aesthetic issues associated with solar arrays? Yes

VCE has fielded glare complaints from

Net-metered residential small solar

500 kW net-metered solar

2.2 MW standard offer solar

100 kW wind turbine

http://vtce.org/BensonGlare_1.jpeg

http://vtce.org/BensonGlare_2.jpeg

https://www.rutlandherald.com/news/town-airs-solar-panel-glare-grievances/article_2c84c345-ddad-527e-a338-1f452711b968.html

http://vtce.org/PUCOrder_Dec2023_glare.pdf

What changes to Section 248 criteria would be beneficial?

Neighbors would like Property Values added to the criteria on which they can present evidence. It is the top topic raised by neighbors who learn about a proposed solar or wind project.

Neighbors would like the PUC empowered to require compensation to neighbors who experience trespass of glare from solar arrays or noise from wind turbines, and provide compensation for property value reduction or unsalability. Some Vermonters have experienced severe (50%) reduction in resale values in some areas due to renewable energy development, with some properties so compromised they sat for years unsold.

<https://www.providencejournal.com/story/news/2020/10/01/study-solar-farms-reduce-home-values/114176156/>

<https://www.telegraph.co.uk/money/property/wind-farms-knock-8pc-house-prices/>

If this bill passes we will see more nuisance lawsuits. Expect backlash.

Vermont Constitution

Article 2. [Private property subject to public use; owner to be paid]

That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.

2. Neighbor Intervention Opportunities Should be Expanded

Neighbors are already limited in what they can intervene on:

Orderly Development & Aesthetics are routinely granted

Environmental Issues are sometimes granted

Economic issues are rarely granted

System Reliability is never granted

Property Values are not considered

To get standing, neighbors must show they have a particularized interest that is different from the interests of the general public.

Neighbors would like to intervene on all the criteria, just as Towns can.

https://puc.vermont.gov/sites/psbnew/files/doc_library/section-248-criteria_0.pdf

Most neighbor testimony is limited due to the expense of experts and attorneys, and it is unlikely that neighbors would be able to present testimony on all the criteria, but they should have the option to present testimony on issues relevant to a specific proposal.

If you choose to open up this can of worms, Vermont citizens who have been affected by energy generation projects have a lot of issues they would like the opportunity to bring to this legislature to address.

Developers are taking advantage of fears about climate change to try to get a blank check for solar and wind development. Please do not let this bill go any further. Vermont has a lot to lose.

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