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MEMORANDUM

To: House Energy & Digital Infrastructure Committee

Re: Amendment to “Plant” in 30 V.S.A. § 8002(18) & Pending Litigation Against VT Public Utility Commission

Date: April 15, 2025

My name is Leslie A. Cadwell, and I am an attorney with substantial experience in the regulation of electric and telecommunications companies in Vermont. My firm is a member of Renewable Energy Vermont. I was made aware that some members of the Committee have concerns about pending litigation involving the Vermont Public Utility Commission and the definition of “plant” in 30 V.S.A. § 8002(18).

The only litigation against the Public Utility Commission relating to its interpretation of “plant” in Section 8002(18) has been brought by one developer in connection with the Standard Offer Program, 30 V.S.A. § 8005a. The proposed amendment to the definition of “plant” under consideration by the Committee¹ excludes projects enrolled or proposed to

¹ I understand that the proposed amendment may be inserted into S.50 and reads as follows:

(18) “Plant” means an independent technical facility that generates electricity from renewable energy. Common usage of utility-owned electric distribution and transmission lines shall not indicate facilities are part of the same plant. Once constructed, a plant shall not be modified to divide it into multiple plants. A plant that is not enrolled or proposed for enrollment in the net-metering program under section 8010 of this title or Standard Offer program under section 8005a of this title shall not affect the eligibility for the net-metering program or Standard Offer Program for any existing plant that is already enrolled in the programs.

(A) A For purposes of the net-metering program and the Standard Offer Program, a group of facilities, such as wind turbines, enrolled or proposed for enrollment in the net-metering program or Standard Offer Program shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads,

be enrolled in the Standard Offer Program. It is my view that the proposed amendment will not affect the Commission’s litigation position for two main reasons.

First, there is no lawsuit against the Commission pending in state or federal court related to the Section 8002(18) definition of “plant.” A lawsuit filed in Federal Court against the Commission that involved the Commission’s “single plant” analysis was dismissed. There are, however, two *appeals* pending from two Public Utility Commission orders issued in a case involving a proposed solar facility that was selected for participation in the Standard Offer Program.

The case involves a project called “Warner Solar” that was proposed for a location in Bennington by Otter Creek Solar, LLC. The Commission denied Otter Creek Solar a certificate of public good (CPG) to construct the Warner Solar Project after determining that the Project met the “single plant” test due to its proximity to another facility also enrolled in the Standard Offer Program that is owned or controlled by the same developer.² Otter Creek Solar asked the Commission to reconsider its denial of a CPG and moved for permission to issue discovery requests on the Commission to determine if each member reviewed the entire case record prior to the Commission’s decision.³ The Commission denied both requests.⁴ Otter Creek Solar appealed the denial of the CPG to the Vermont Supreme Court and appealed the order denying discovery to the Vermont Superior Court. Both courts must make their decisions based on the Commission’s orders that were appealed and the law of “single plant” as it existed at that time the Commission issued those orders. As a prospective change to the law, the proposed amendment to the definition of “plant” cannot impact the pending appeals.

Second, as I mentioned, the proposed amendment excludes projects enrolled or proposed for enrollment in the Standard Offer program from the revised definition of “plant.” Therefore, even if the Supreme Court or Superior Court could look at an amended statute to inform their decisions on the appeals, the revised definition would not be relevant

control facilities, and connections to the electric grid. Common ownership, contiguity in time of construction, and proximity of facilities to each other shall be relevant to determining whether a group of facilities is part of the same project.

(B) For purposes other than the net-metering program or the Standard Offer program, independent technical facilities of not more than 10 MW cumulative capacity that are located on the same or an adjacent parcel shall not be considered a single plant if each facility uses separate generators, inverters, and production meters.

² *In re Otter Creek Solar, LLC*, PUC Case No. 19-0516-PET, Order of 7/11/2024.

³ *In re Otter Creek Solar, LLC*, PUC Case No. 19-0516-PET, Order of 11/1/2024.

⁴ *Id.*



because Standard Offer Projects are excluded and remain subject to the Commission’s “single plant” test.

In short, the proposed amendment to the definition of “plant” in 30 V.S.A. § 8002(18) does not affect projects enrolled or proposed for enrollment in the Standard Offer Program, which is the only type of facility that gave rise to claims/litigation against the Commission.

