

# Permitting of Solar Projects in Vermont



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# PUC Regulation of Solar Projects - Section 248

- PUC issues Certificates of Public Good (CPGs)
- PUC regulation varies by project size and type:
  - Net-metering (500 kW and less). 3 regulatory levels: 15 kW or less, over 50 kW, and 50-500 kW.
  - “Standard Offer” (2.2 MW or less) – set by statute. RFP process to select a few projects/year. Power is sold to all VT utilities.
  - Other utility or developer projects – no size limit.



# *Why isn't there a "Z" in the window?*

- State regulation of energy projects preempts zoning.
- See 24 V.S.A § 4413(b), 30 V.S.A. § 224 and *City of South Burlington v. VELCO*, 133 VT 438 (1975)
- Towns' role limited to:
  - Town Plans/Energy Plans -- § 248(b)(1)(Orderly development of the region) ("substantial deference" given to Town Plans with approved Energy Plans)
  - Municipal screening ordinances – § 248(b)(1)(B)
  - Town Plans and zoning ordinances -- § 248(b)(5)(Aesthetics Quechee Test– "clear written community standards")



# Is municipal subdivision authority also preempted?

- Yes, it should be. 24 V.S.A. § 4413(b) states:

*A **bylaw under this chapter [117]** shall not regulate public utility power generating plants and transmission facilities regulated under 30 V.S.A. § 248.*

- Ch. 117 provides authority for zoning & subdivision.
- *But*, some towns have exercised subdivision authority if a solar project involves leasing a portion of the parcel.
  - It can be easier to get subdivision approval rather than fighting. Even so, the town's review should not touch upon any aspect of the solar project itself.



# What about Act 250?

- Statutory Exemption – 10 V.S.A. § 6001(3)(D):

*The word "development" does not include: . . . (ii) The construction of improvements for an electric generation or transmission facility that requires a certificate of public good under 30 V.S.A. § 248 . . .*

- *In re Glebe Mountain Wind Energy, LLC*, 2006 WL 4087912 (Vt. Env'tl. Ct. May 18, 2006) (if project is subject to PUC jurisdiction, Act 250 permit amendment is not required).

- *However*, net-metered projects have to address existing Act 250 permits, under Rule 5.107(B)(13):

- Applicant must explain whether the project will interfere with satisfaction of any Act 250 permit condition, and/or what steps it will take to address such issues or why it is unable to do so.



# Section 248 Proceedings

- § 248 includes most of Act 250's environmental criteria, aesthetics, historic sites, town plans, and energy/utility-related factors.
- Certain § 248 criteria are waived for NM projects, and for other renewable energy projects of 2.2 MW or less.
  - See Rule 5.111
  - See PUC's *§ 8007(B) Order Re: Simplified Procedures for Renewable Energy Plants . . .* (8/31/2010)
- Statutory setbacks to property lines and public roads – distance (25' – 100') depends on size of project.



## Section 248 (cont'd)

- Pre-application notice (45 day) and notice of application required – to whom depends on type of project (NM vs. non-net-metered)
- Timing of CPG process:
  - Net-metering: 3-6 months (for 500 kW projects)
  - Other: 6-12 months
  - Timing depends on whether any state agency, adjoiner, town, or other entity raises issues.
  - If issues in dispute, formal contested case procedures.





## Section 248 (cont'd)

- Other State agencies also get involved: DPS, ANR, DHP, AAFM
- PUC utilizes an electronic filing system (ePUC)
- Transfer of CPGs – NM projects only require notice to PUC; other projects require approval.



# Other Types of Permits Can Still Apply

- ANR Wetlands, Stormwater, T&E, Subdivision (Wastewater/Water Supply), Multi-Sector General Permit
- Federal – Army Corp wetlands permit
- Section 1111 Highway (curbcut) permits – VTrans or Town, depending on type of road.
- Municipal review needed for portion of any project that falls within NFIP flood maps.





# Net Metering – PUC Rule 5.100

- All systems larger than 150 kW must be located on a “preferred site”
- **Preferred sites** – parking lots, existing structures or impervious surfaces, brownfields, landfills, gravel pits/quarries, CERCLA sites, municipally designated locations, same parcel/adjacent parcel to a customer using >50% of output, etc.



# Net Metering (cont'd)

- **Application process** – different approval process based on size:
  - Registration: Up to 15 kW systems or roof-mounted up to 500 kW
  - Easy(ier) Application: 15–50 kW systems (not rooftop)
  - Full Application: 50 kW to 500 kW systems
- **“Major Amendments”** – essentially requires going back through permit process
  - Increasing nameplate capacity by >5% or reducing by >60%
  - Moving disturbance limits by more than 50 feet
  - Changing fuel source
  - Any change PUC determines is likely to have significant impact under one or more § 248 criteria
- **“Minor Amendments”** – in general only notice and 10 day comment period req'd.
  - additional aesthetic mitigation. or any other change to the physical plans or design of the system that is not a “Major” amendment.
- For amendment process, see PUC Rules 5.103, 5.108, and 5.109.



# Collateral PUC Rules

- Aesthetic Mitigation – PUC Rule 5.800
  - Rules to ensure that mitigation is performed and maintained and that facilities are removed once project ceases to operate.
- Decommissioning – PUC Rule 5.900
  - NM Projects do not require Decom. Funds
  - Projects 1 MW and greater do require funds
  - PUC can require additional initial financial securities on projects less than 1 MW.
- Interconnection Procedures – PUC Rule 5.500



# Municipal Solar Screening Ordinances

- Section 248(B)(1) – requires compliance with duly adopted municipal solar screening requirements.
  - *Unless*, PUC finds that requiring compliance would prohibit or have the effect of prohibiting the installation of such a facility or have the effect of interfering with the facility's intended functional use.
- Allows municipalities to determine what screening, if any, should be required for solar projects of any size.



# Scope of Screening Standards

- 24 V.S.A. §§ 4414(15), 2291(28) – Authority to pass municipal screening bylaws and ordinances for solar projects.
- Screening reqs. and recommendations “**shall become a condition of a certificate of public good**” as long as they don’t prohibit or interfere with facility function.
- Screening defined as “**reasonable** aesthetic mitigation measures **to harmonize a facility with its surroundings** and includes landscaping, vegetation, fencing, and topographic features.”
- Screening requirements cannot be more restrictive for solar projects than commercial development in the municipality.
- Cannot require a municipal permit for solar plants.





# Recording Issues

- Notice of CPG and Notice of Amended CPG
- Notice of other state permits, including:
  - Stormwater
  - Wetlands





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