H.710

Introduced by Representatives Campbell of St. Johnsbury and James of Manchester

Referred to Committee on

Date:

Subject: Public service; utility companies; renewable energy programs; definitions; plant

Statement of purpose of bill as introduced: This bill proposes to amend the definition of "plant" to clarify when the Public Utility Commission would consider multiple energy-generating facilities to be a single facility. This bill would consider a plant with multiple energy-generating facilities to be a single facility if the facilities use the same electricity-generating technology and if the facilities are on the same parcel or contiguous parcels of land, unless an exception applies.

An act relating to defining electricity generating facilities

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(18) "Plant" means an independent technical facility that generates electricity from renewable energy. ~~A group of facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, 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.~~ Multiple electricity-generating facilities, regardless of when each is constructed, shall be considered one plant if the facilities use the same electricity-generating technology and are located on the same parcel or contiguous parcels of land. Such facilities shall only be considered separate plants if they meet one of the following exceptions:

(A) Exception for individual net-metering and self-consumption. Applies if the facilities:

(i) are not located on the same parcel of land;

(ii) are wired to offset consumption on separate billing meters; and

(iii) supply different retail customers.

(B) Exception for multi-owner individual net-metering on the same parcel. Applies if the facilities:

(i) are located on the same parcel of land where a common interest community is located;

(ii) are wired to offset consumption on separate billing meters; and

(iii) supply different retail customers.

(C) Exception for colocation of renewable energy program facilities. More than one facility may be located on the same parcel or contiguous parcels with net-metering, Standard Offer Program facilities, or other Renewable Energy Standard Tier II facilities when:

(i) the facilities have separate points of interconnection; and

(ii) not more than the statutory capacity cap for net-metering or the statutory capacity cap for the Standard Offer Program is sited on the same parcel or contiguous parcels and a net-metering facility and a Standard Offer facility are not sited on the same parcel or contiguous parcels.

* * *

(33) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes on, insurance premiums, maintenance, or improvement of, or services or other expenses related to common elements, other units, or other real estate than that unit described in the declaration.

~~(34) "Contiguous" means sharing a property boundary with another parcel of land or being adjacent to that parcel of land and the two parcels are separated only by a road, recreation path, railway line, stream, or river.~~

~~(35) "Electricity generating technology" means a method or system used to convert energy from one form into electric power, including wind, hydropower or water, solar, or biomass.~~

~~(36) "Point of interconnection" means the point on the interconnecting utility's existing distribution system to which a facility proposes to interconnect.~~

Sec. 2. EFFECTIVE DATE

~~This act shall take effect on July 1, 2026.~~

Sec. 1. 30 V.S.A. § 8002 is amended to read:

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(18) "Plant" means an independent technical facility that generates electricity from renewable energy. ~~A group of facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, 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.*~~ *Multiple electricity-generating facilities, regardless of when each is constructed, shall be considered one plant if the facilities use the same electricity-generating technology and are located on the same parcel or contiguous parcels of land. Such facilities shall only be considered separate plants if they meet one of the following exceptions:*

(A) Exception for individual net-metering and self-consumption. Applies if the facilities:

(i) are not located on the same parcel of land;

(ii) are wired to offset consumption on separate billing meters; and

(iii) supply different retail customers.

(B) Exception for multi-owner individual net-metering on the same parcel. Applies if the facilities:

(i) are located on the same parcel of land where a common interest community is located;

(ii) are wired to offset consumption on separate billing meters; and

(iii) supply different retail customers.

(C) Exception for colocation of facilities other than net-metering program or Standard Offer Program facilities. Applies if the facilities have separate points of interconnection if:

(i) a net-metering facility and a Standard Offer Program facility are not sited on the same parcel or contiguous parcels; and

(ii) the statutory capacity cap for the net-metering program or the Standard Offer Program is not exceeded on the same parcel or contiguous parcels.

* * *

(33) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes on, insurance premiums, maintenance, or improvement of, or services or other expenses related to common elements, other units, or other real estate than that unit described in the declaration.

(34) "Contiguous" means sharing a property boundary with another parcel of land or being adjacent to that parcel of land and the two parcels are separated only by a road, recreation path, railway line, stream, or river.

(35) "Electricity-generating technology" means a method or system used to convert energy from one form into electric power, including wind, hydropower or water, solar, or biomass.

(36) "Point of interconnection" means the point on the interconnecting utility's existing distribution system to which a facility proposes to interconnect.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2026.

Public Utility Commission

Definition of "plant" in 30 V.S.A. § 8002(18)

Prepared for presentation to the Vermont Senate Committee on Natural Resources & Energy

March 19, 2026

1

Act 38 of 2025

- Commission must provide a recommended amended definition of "plant"
- Stakeholder engagement
- Must consider
  - the land use benefits of co-location of energy generation facilities;
  - the ability to ensure comprehensive review of co-located facilities; and
  - the potential impacts to ratepayers associated with co-located facilities.

2

The Commission's Process

- June 30, 2025: Opened a Commission proceeding (25-1253-INV)
  - Commission sought definitions of "plant"
  - Commission put out statutory language and a proposal regarding a decommissioning fund
- Received two rounds of written comments
- Held two workshops (one on each topic)
- Provided for final comment on the Commission's proposed amended definition of "plant"

3

Recommended Amended Definition of "Plant"

New standard

- Same or contiguous parcels
- Same electricity-generating technology

Exceptions

- Individual residential net-metering (neighbors)
- Multi-owner individual residential net-metering (common interest communities)
- More than one renewable-energy-program facility

Definitions

- Common interest community
- Contiguous
- Electricity-generating technology
- Point of interconnection

4

Exception (C)

"Plant" means an independent technical facility that generates electricity from renewable energy. Multiple electricity-generating facilities, regardless of when each is constructed, shall be considered one plant if the facilities use the same electricity-generating technology and are located on the same parcel or contiguous parcels of land.

Such facilities shall only be considered separate plants if they meet one of the following exceptions:

***

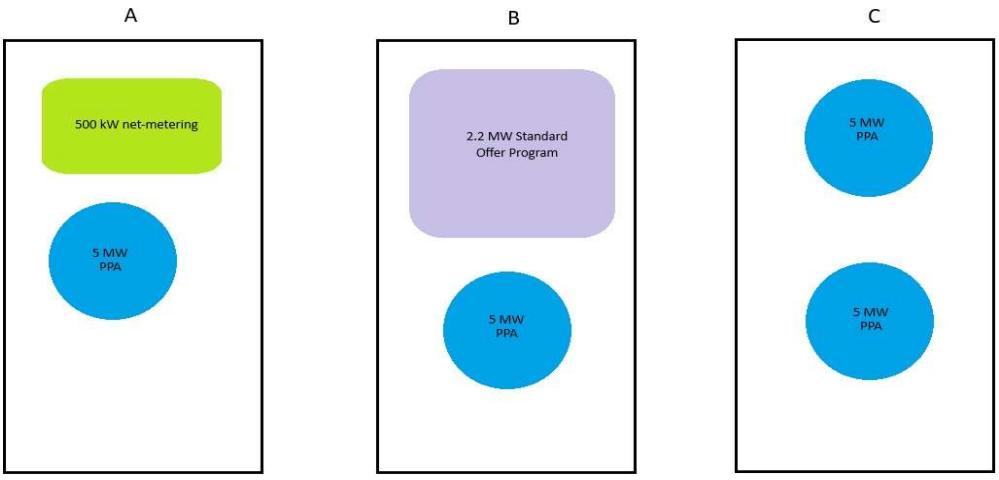
(C) Exception for colocation of facilities other than net-metering program or Standard Offer Program facilities. Applies if the facilities have separate points of interconnection if:

(i) a net-metering facility and a Standard Offer Program facility are not sited on the same parcel or contiguous parcels; and

(ii) the statutory capacity cap for the net-metering program or the Standard Offer Program is not exceeded on the same parcel or contiguous parcels.

5

What can be sited (under the new definition)



6

What can't be sited (under the new definition)

500 kW net-metering

2.2 MW Standard Offer Program

7

8

Public Utility Commission
Recommendation: Definition of "Plant" in 30 V.S.A. § 8002(18)

This document contains the Public Utility Commission's recommended amended definition of "plant" in 30 V.S.A. § 8002(18) as required by Act 38 of 2025.

Submitted To:
Senate Committee on Natural Resources and Energy
House Committee on Energy and Digital Infrastructure

Submitted By:
Vermont Public Utility Commission

Published:
11.12.2025

VERMONT

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Table of Contents

1. Introduction

In 2025, the Vermont General Assembly passed Act 38.[1] Section 5 of Act 38 requires the Vermont Public Utility Commission ("Commission") to provide a recommended amended definition of "plant" in 30 V.S.A. § 8002(18) to the Legislature by November 1, 2025. The legislation reads:

> On or before November 1, 2025, and with input from stakeholders, the Public Utility Commission shall submit a recommended amended definition of "plant" in 30 V.S.A. § 8002(18) and an overview of their process and explanation of the recommendation to the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy. In making its recommendation, the Commission shall consider:
>
> (1) the land use benefits of co-location of energy generation facilities;
>
> (2) the ability to ensure comprehensive review of co-located facilities; and
>
> (3) the potential impacts to ratepayers associated with co-located facilities.[2]

On June 30, 2025, the Commission opened a proceeding to investigate the definition of "plant" in 30 V.S.A. § 8002(18). All submissions and Commission-issued documents on this matter are available in the Commission's electronic filing system, ePUC, in Case No. 25-1253-INV.

This recommendation is organized into sections.

- Section I provides an introduction to the legislative directive regarding the definition of "plant" in 30 V.S.A. § 8002(18).
- Section II identifies the participants and process the Commission conducted, pursuant to Act 38.
- Section III sets out the Commission's recommended amended definition of "plant."
- Section IV explains the Commission's recommendation.
- Section V concludes this report.

[1] Act 38 (https://legislature.vermont.gov/bill/status/2026/S.50).

[2] Use of the terms "collocation" and "collocated" have been changed to the hyphenated terms.

2. Commission's Stakeholder Engagement

Act 38 contemplates that the Commission will develop a recommendation for amending the definition of "plant" in 30 V.S.A. § 8002(18) after stakeholder engagement. The Commission opened a proceeding on June 30, 2025, to provide an opportunity for interested parties to submit comments for the Commission's consideration. The Commission solicited two rounds of comments (including proposed amended definitions), held a workshop, and circulated a proposed definition for final comment.

Participants in this proceeding include: the Vermont Department of Public Service, Renewable Energy Vermont, AllEarth Renewables, Inc., Vermonters for a Clean Environment, Downs Rachlin Martin PLLC, Green Mountain Power Corporation, City of Burlington Electric Department, the Nature Conservancy Vermont Chapter, the Vermont Agency of Natural Resources, the Vermont Agency of Agriculture, Food and Markets, and Allco Renewable Energy Limited. Public comments were also filed jointly by the Vermont Public Interest Research Group, the Vermont Natural Resources Council, Vermont Conservation Voters, the Nature Conservancy Vermont Chapter, and the Conservation Law Foundation.

3. Recommended Amended Definition of "Plant"

After consideration of participants' proposals and comments and the factors identified in the legislation, the following is the Commission's recommendation for amending the definition of "plant" in 30 V.S.A. § 8002(18).

30 V.S.A. § 8002(18) is amended to read:

"Plant" means an independent technical facility that generates electricity from renewable energy. ~~A group of facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, 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.~~Multiple electricity-generating facilities, regardless of when each is constructed, shall be considered one plant if the facilities use the same electricity-generating technology and are located on the same parcel or contiguous parcels of land.

Such facilities shall only be considered separate plants if they meet one of the exceptions below.

(a) *Exception for individual net-metering and self-consumption*. Applies if the facilities:

(1) Are not located on the same parcel of land;

(2) Are wired to offset consumption on separate billing meters; and

(3) Supply different retail customers.

(b) *Exception for multi-owner individual net-metering on the same parcel*. Applies if the facilities:

(1) Are located on the same parcel of land where a common interest community is located;

(2) Are wired to offset consumption on separate billing meters; and

(3) Supply different retail customers.

(c) *Exception for co-location of renewable energy program facilities*. More than one facility may be located on the same parcel or contiguous parcels with net-metering, standard-offer, or other Renewable Energy Standard Tier II facilities when:

(1) The facilities have separate points of interconnection; and

(2) No more than the statutory capacity cap for net-metering or the statutory capacity cap for the Standard Offer Program is sited on the same parcel or contiguous parcels and a net-metering facility and a standard-offer facility are not sited on the same parcel or contiguous parcels.

(d) *Definitions*.

(1) "Common interest community" means real estate described in a declaration with respect to which a person, by virtue of the person's ownership of a unit, is obligated to pay for a share of real estate taxes on, insurance premiums, maintenance, or improvement of, or services or other expenses related to common elements, other units, or other real estate other than that unit described in the declaration.

(2) "Contiguous" means sharing a property boundary with another parcel of land or being adjacent to that parcel of land and the two parcels are separated only by a road, recreation path, railway line, stream, or river.

(3) "Electricity-generating technology" means a method or system used to convert energy from one form into electric power (e.g., wind, hydropower or water, solar, or biomass).

(4) "Point of interconnection" means the point on the interconnecting utility's existing distribution system to which a facility proposes to interconnect.

4. Explanation of Recommendation

The definition of "plant" under 30 V.S.A. § 8002(18) is a statutory screening requirement used to determine whether a facility qualifies for Vermont's renewable energy programs meant to encourage small-scale facilities and for Vermont's Renewable Energy Standard Tier II. Further, the definition serves as a screening tool for applying the correct application procedures and rates and financial adjustors for a renewable energy facility. If co-located facilities constitute a single plant, and if the combined capacity of that single plant exceeds the statutory capacity cap for participation in a specific renewable energy program, for example, then the Commission must prohibit the facility's participation in that renewable energy program. This screening ensures that the facilities meet the statutory goal of distributed, small renewable energy generation as well as other statutory and rule-based requirements tied to a facility's capacity.

Act 38 asks the Commission to work with stakeholders to offer an amended definition of "plant" under 30 V.S.A. § 8002(18). Participants in the Commission's proceeding on the definition of "plant" voiced varying levels of support for increasing the possibility for co-location of renewable energy facilities.

In making our recommendation and in accordance with Act 38, the Commission considered the land-use benefits of co-location of energy generation facilities; the ability to ensure comprehensive review of co-located facilities; and the potential ratepayer impacts associated with co-located facilities. These policy considerations require that we balance competing concerns. Given the expansion of distributed generation requirements under Vermont's Renewable Energy Standard, the need to find suitable sites in Vermont for renewable energy generation may necessarily require co-location at sites where a facility is already sited or where multiple facilities could be proposed.[3] At the same time, some of Vermont's incentive-based renewable energy programs compensate generation at rates that are not intended for larger-scale facilities, and the small facilities receiving these incentives already cause significant ratepayer impacts. Taking into account the various approaches offered in the proceeding, the Commission recommends the above definition of "plant."

The goals informing this definition are:

[3] The Commission uses the same process to review (1) facilities that add to existing facilities (an amendment to an already-built system requires a new petition to be filed with the Commission) and (2) applications for two facilities simultaneously (each requiring a new petition).

- Balance the land use, comprehensive review, and ratepayer impact resulting from co-location of energy generation facilities;
- Reduce regulatory uncertainty;
- Eliminate the need for redundant utility-owned infrastructure; and
- Ensure that the definition of "plant" pertains to all electricity-generating technologies and remains applicable as renewable energy programs evolve.

A. Comparison of Recommendation to Current Definition

Reviewing the proposed definition of "plant" against the current definition helps to illustrate the ambiguities that the proposal resolves. Currently, the definition of "plant" requires the Commission to assess whether two or more facilities (1) are the "same project" and (2) share infrastructure or equipment. The same-project analysis includes (1) proximity, (2) common ownership, and (3) contiguity in time of construction. None of the three concepts is defined in the statute, and therefore the current definition requires the Commission to conduct complex factual and legal analyses.

Instead, the amended definition asks two straightforward questions: (1) whether facilities use the same electricity-generating technology (*e.g.*, wind, solar, hydro, or biomass) and (2) whether facilities are on the same parcel or contiguous parcels of land. All facilities that use the same electricity-generating technology and are on the same parcel or contiguous parcels of land are a single plant under the amended definition.

The second question — same parcel or contiguous parcels of land — supplants the Commission's current proximity analysis. Whether two or more facilities are on the same parcel or contiguous parcels is an unambiguous inquiry, particularly because the proposal includes a definition of "contiguous." Developers will immediately be able to ascertain whether their proposed development plan meets this test.

One principal area of concern in this proceeding for both distribution utilities and developers was the way in which the current definition of "plant" treats developer-financed, but utility-owned infrastructure and equipment. Shared utility-owned infrastructure, rather than duplicate infrastructure, can reduce maintenance costs for utilities and avoid the need for a utility to participate in Section 248 cases where the utility has no concerns about the interconnection of a proposed facility. Certainty about this aspect of the "plant" analysis also benefits developers. The proposed definition of "plant" eliminates the requirement for independent utility-owned infrastructure.

The proposed definition treats all net-metering facilities on the same parcel as one plant. Often at the residential net-metering scale, the definition of "plant" is applied not to determine whether a facility qualifies for the net-metering program, but rather what process and form an applicant must use to obtain a net-metering certificate of public good. Further, the aggregate size of a net-metering facility dictates the rate the facility

receives. When net-metering facilities are separate, they can receive different rates. Under the proposed definition, all net-metering facilities on the same parcel (barring an exception) are one facility.

Under the Commission's net-metering application process, adding capacity to an existing net-metering system is considered an amendment. Under the proposed definition of "plant," if an amendment is filed, the Commission would assess all existing net-metering capacity located on a parcel along with the proposed new capacity to determine the size of the system and therefore the rates.

Based on the current definition of "plant," the Commission has previously determined that some net-metering facilities on the same parcel are "separate," and those "separate" facilities on the same parcel often have different siting and renewable energy credit ("REC") adjustors. If the proposed definition is adopted, those facilities would remain separate unless a net-metering customer applies to increase the net-metering capacity on the parcel because the Commission would not apply the new definition of "plant" retroactively. Thus, net-metering customers could preserve their current rate(s) by not seeking an amendment. However, adding net-metering capacity would trigger the use of the proposed definition of "plant," which would supersede the previous determination that the facilities are "separate" and thus the most recently adopted siting and REC adjustors would apply to the entire output of the amended net-metering system.[4]

The Commission has developed rules for setting net-metering rates. Commission Rule 5.109(D) establishes a threshold that applies to amendments that increase the capacity of an existing system. The rule states:

> Except as provided below, the REC and siting adjustors applicable to an amended net-metering system, if any, will be based on the date that the first, complete application or registration was filed with the Commission and not on the date that the amendment request was filed. An amendment or series of amendments that increase the capacity of a net-metering system by more than 5% or 15 kW, whichever is greater, will trigger the application of the most recently adopted siting and REC adjustors to the entire output of the amended net-metering system.

Commission Rule 5.109(D) explains what rate applies based on how much net-metering capacity is added to an existing net-metering facility. The proposed definition of "plant" would not change the application of the above rule to setting rates for amended net-

[4] Of the more than 27,000 net-metering certificates of public good that have been issued or deemed issued, approximately 100, or 0.37%, involved a determination by the Commission under the definition of "plant."

metering systems, except when there are existing "separate" net-metering facilities on a parcel, as described above.

The proposed definition's treatment of amended net-metering systems strikes a balance between regulatory clarity, fulfilling Vermont's renewable energy goals, and ratepayer impacts.

B. Exceptions

1. Individual Net-Metering and Self-Consumption

Exception (a) in the Commission's recommended language is for individual net-metering and self-consumption. Individual net-metering systems are described in Commission Rule 5.126(A)(2). This exception looks at three factors and applies if the facilities (1) are not located on the same parcel of land, (2) are wired to offset consumption on separate billing meters, and (3) supply different retail customers. These factors are unambiguous inquiries with obvious yes/no answers.

The first factor asks whether the facilities are located on the same parcel of land. This makes it possible for two neighbors to develop individual net-metering systems at their homes. As mentioned above, at the residential scale, the definition of "plant" more often serves to determine what process and form an applicant must use to obtain a certificate of public good. Under the current definition of "plant," applicants must undergo a cumbersome evaluation to determine what rates and application processes apply to multiple facilities located on the same parcel. In contrast, the proposed definition, for example, would treat solar panels on a person's roof and garage and on the ground in the backyard as a single facility. The Commission would then apply the rate and application process for a facility of the total size of all the generating capacity on the same parcel. Only when the total aggregate capacity exceeds the statutory net-metering capacity cap would a facility be denied a net-metering certificate of public good.

Questions two and three ask whether the facilities are separately interconnected, measured as wired to offset consumption on separate billing meters in line with Commission Rule 5.126(A)(2). Again, this does not preclude homeowners from putting solar panels on their roof and garage and on the ground in their backyard. Finally, the third factor looks at who the customers are for a facility. These questions are straightforward inquiries and require little analysis beyond reviewing the answers provided to these questions in an application. This exception provides clarity and avoids complex factual and legal inquiries for homeowners who apply for residential-size solar facilities.

2. Multi-Owner Individual Net-Metering on the Same Parcel

Exception (b) in the recommended language is for individual net-metering systems located on the same parcel when the individual systems supply different retail customers. This exception is meant for residential-sized systems developed in the context of multi-owner housing, such as condominiums. This exception looks at three factors and applies if the facilities (1) are located on the same parcel of land, (2) are wired to offset consumption on separate billing meters, and (3) supply different retail customers. The Commission has defined a "common interest community" in the same way as it is defined in 27A V.S.A. § 1-103(7). Like the above exception, these factors are unambiguous inquiries with obvious yes/no answers.

3. Facilities Co-located with a Net-Metering, Standard-Offer, or Other Renewable Energy Standard Tier II Facility

Exception (c) allows for co-location of additional facilities so long as the statutory capacity cap for net-metering or the Standard Offer Program is not exceeded by facilities sited on the same parcel or contiguous parcels. Put differently, there can be up to 500 kW of generated capacity participating in the net-metering program *or* up to 2.2 MW of generated capacity participating in the Standard Offer Program on the same parcel or contiguous parcels. There cannot be both. Any additional capacity above the net-metering or Standard Offer Program capacity caps cannot participate in one of those renewable energy programs.

This test is, again, a bright-line inquiry: Is there a net-metering facility(ies) or standard-offer facility(ies) on the parcel or a contiguous parcel? Has the statutory capacity cap for net-metering or the Standard Offer Program been reached? If so, then only facilities not participating in one of these electric energy generation programs can be co-located if their combined capacity would exceed the program's statutory cap. This ensures that large projects enrolled in net-metering or holding a standard-offer contract have not been segmented into smaller projects to gain financial benefits under renewable energy programs intended for the benefit of smaller projects, in contravention of State policy.

In another renewable energy program, Vermont's Renewable Energy Standard (RES) Tier II, pursuant to 30 V.S.A. § 8005(a)(2), the definition of "plant" applies to whether a proposed facility(ies) qualifies for Tier II. Section 8005(a)(2) sets a 5 MW capacity cap for Tier II qualification.

RES Tier II provides incentives for distributed renewable generation, but the incentive mechanism is indirect. Unlike in net-metering or the Standard Offer Program, the Commission does not set rates related to Tier II. Rather, Vermont's electric distribution utilities are required to retire renewable energy credits from Tier II facilities and must

demonstrate this compliance annually to the Commission. The utilities meet Tier II requirements in one of three ways: by retiring RECs they received from net-metering facilities or from the Standard Offer Facilitator, by building utility-owned generation, or by contracting with a developer of a qualifying generation facility. RECs for Tier II facilities are worth more than other types of RECs. Thus, the higher-value RECs — in a marketplace that is not regulated by the Commission — serve as a financial incentive.

Finding suitable sites given the expansion of distributed generation requirements under the RES may necessarily require co-location. By allowing for greater co-location for RES Tier II facilities that do not participate in net-metering or the Standard Offer Program, exception (c) addresses the State's evolving renewable energy goals and balances ratepayer and land-use impacts.

The Commission's proposed exception for siting additional renewable energy generation, such as other RES Tier II facilities or facilities contracted under a power purchase agreement, is, again, a bright-line, administratively simple test. The facilities must have different points of interconnection, and the statutory capacity caps for either net-metering or the Standard Offer Program cannot be exceeded on the same parcel or contiguous parcels.

C. Opportunities for Further Development under the Proposed Definition

The proposed amended definition would allow for further renewable energy development on a parcel or contiguous parcel that is prohibited under the current statutory definition of "plant." For example, under the proposed definition, up to 500 kW could be sited on one parcel under Vermont's net-metering program and receive applicable net-metering rates. Additional solar development — for example, receiving compensation under a power purchase agreement — could also then be permitted on the same parcel or a contiguous parcel so long as it was not participating in the net-metering program or the Standard Offer Program. The Commission's proposal also allows for multiple RES Tier II facilities on the same parcel or contiguous parcels, so long as they are separately interconnected and the net-metering or Standard Offer Program capacity cap is not exceeded. In contrast, the current definition counts all proposed solar capacity in close proximity (certainly on the same parcel) to ascertain whether the total capacity exceeds the cap set for the relevant program, thus limiting *all* development (in this example) to 500 kW in a proximate area.

5. Conclusion

The Commission recognizes the need to revisit and revise the definition of "plant" in 30 V.S.A. § 8002(18). This definition plays an important role in administering various statutory requirements that use facility capacity as a bright-line test for determining program eligibility. Our recommended amended definition strikes a balance between

shifts in the policy framework for renewable development and the still existing, and likely future, use of facility capacity as a bright-line test for program eligibility, review processes, rates, and other aspects of renewable energy development.

As long as the Legislature sets caps on renewable energy generation programs meant to encourage small-scale facilities, some screening tool is needed to differentiate between co-located facilities; otherwise, the purpose of those caps can be circumvented. If the Legislature wishes to alter or eliminate programmatic capacity caps, the appropriate place to make any such changes is in the statutes governing those programs.[5]

[5] *See, e.g.,* 30 V.S.A. §§ 8002(16), 8005(a)(2), 8005a.

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State of Vermont
Public Utility Commission

November 12, 2025

Senator Anne Watson, Chair, Senate Committee on Natural Resources and Energy
Senator Ann Cummings, Chair, Senate Committee on Finance
Representative Kathleen James, Chair, House Committee on Energy and Digital Infrastructure
Representative Amy Sheldon, Chair, House Committee on Environment

SENT VIA EMAIL

Re: Electric Generation and Energy Storage Facility Decommissioning Fund

Dear Senators and Representatives:

Section 248(a)(5) of Title 30 of the Vermont Statutes Annotated mandates that electric generation and energy storage facilities be "removed once they are no longer in service," and directs the Vermont Public Utility Commission ("Commission") to draft rules to ensure that facilities are removed. Currently, the Commission requires that certificate of public good ("CPG") holders for generation and storage facilities above a certain size file and regularly update financial instruments, such as letters of credit, escrow agreements, and bonds, with the Commission. These financial assurances are meant to ensure that funding is available to decommission the facility and restore the site once the facility is no longer in service. The administration of the current system of obtaining and maintaining financial assurance instruments requires a substantial amount of administrative work by Commission staff and imposes a lengthy and costly regulatory compliance burden for developers. This letter includes the Commission's proposal to address both of these concerns.

Pursuant to Act 38 of 2025, entitled "An act relating to increasing the size of solar net metering projects that qualify for expedited registration," the Commission opened an investigation into the definition of "plant" and a proposed alternative to the status quo method of providing decommissioning financial assurances. The Commission joined these topics in a single investigation because the interested parties for the definition of "plant" overlap significantly with the interested parties for the decommissioning process.

In this letter, we provide the legislative committees of jurisdiction with (1) background explaining the current approach to decommissioning financial assurances and why a change is needed, (2) an outline of the proposed solution, and (3) draft statutory language.

BACKGROUND SUMMARY

The status quo

- How does decommissioning fit into the Commission's regulation?
    - Unlike in most other states, the siting of electric generation (*e.g.*, solar) and energy storage (*e.g.*, batteries) facilities is regulated at the state level in Vermont. Siting these facilities requires a project developer to obtain a CPG from the Commission under 30 V.S.A. § 248.
    - Section 248(a)(5) requires that the Commission adopt rules and standard conditions to ensure "that facilities are removed once they are no longer in service."
    - The Commission promulgated Rule 5.900 in response to the statutory requirement. Rule 5.900 has two aims: (1) to require CPG holders to establish a plan and commit to decommissioning facilities at the end of their useful life, and (2) to establish sufficient financial assurances to support decommissioning.
    - For the financial component, the Commission accepts letters of credit, escrow agreements, and bonds from third-party financial institutions or financing companies to secure a decommissioning obligation.

- The fundamental problem is that the Commission has been tasked with ensuring decommissioning when we otherwise do not regulate the people performing this work or the tasks that must be completed to successfully decommission a facility. We do not regulate merchant generators in the same way as monopoly utilities. Further, the Commission does not currently have the statutory authorization to meet our obligation in the event of developer noncompliance with decommissioning expectations at the end of a facility's useful life.

Why does Vermont need a change?

- *Impossibility*: If called on, funds from current financial assurances — letters of credit, bonds, escrow agreements with third-party financial institutions or financing companies — cannot be deposited because the Commission does not have statutory authority to place these funds in a protected account solely for decommissioning.

- *Need to protect the State fiscally*: Having a single decommissioning fund would ensure enough available cash to fund decommissioning regardless of the status of the facility owner or third-party financial institution or financing company and to manage unanticipated cost overruns or inadequate initial cost estimates.

- *Simplicity and efficiency for developer and regulator*:
    - Currently, developers must engage frequently with maintaining financial instruments. This is costly, time-consuming regulatory engagement. Costs currently include:
        - Fees paid to third-party financial institutions for financial instruments;
        - Fees paid to lawyers to engage in the Commission's regulatory process for updating or replacing financial instruments on a triennial basis;
        - Fees paid to someone to perform an inflation adjustment to the fund amount;
        - Dedicating — and often freezing — capital with a third-party financial institution to secure the financial instrument; and
        - Staff or attorney time spent on regular compliance with the Commission's current financial instrument process.

- Administration of up-to-date financial instruments involves significant front-office and Commission staff time and is in tension with the Commission's move to an electronic filing system and electronic maintenance of records.

THE PROPOSED SOLUTION: A DECOMMISSIONING FUND

- A decommissioning fund is a pool of up-front contributions collected by the Commission at the time a CPG holder is given a CPG and is preparing a site for construction.
- The Commission, in conjunction with the Vermont Treasurer's Office, maintains the special fund for the purpose of decommissioning sites used for electric generation or energy storage facilities.
- The process:
  - A facility-specific cost estimate for decommissioning is calculated.
  - A CPG holder contributes a portion or all the estimated decommissioning cost into a fund held in escrow by the State.
  - The funds are invested.
  - The facility reaches the end of its useful life. Assuming the site components cannot or will not be repurposed, the site must be decommissioned and returned to the condition it was in before the site was developed.
    - If the facility owner is still actively involved in the operation and management of the facility, the facility owner arranges for site decommissioning. Upon satisfactory completion of site decommissioning, the Commission releases any remaining funds contributed to the decommissioning fund back to the CPG holder.
    - If the facility owner is missing, has filed for bankruptcy or is insolvent, or otherwise will not perform decommissioning, the Commission calls on the fund to pay retained contractors and site remediators to remove the facility components and restore the site.
    - Whether the facility owner is involved or unavailable, the fund can also be called on when costs exceed the initial decommissioning cost estimate (adjusted over the life of the facility for inflation).

Attached is proposed statutory language that would authorize the Commission to take this new approach to financial assurances for decommissioning. The statutory language was provided to the participants in our investigation. The participants were given three opportunities to submit written comments, and the Commission held a workshop to discuss the approach and to answer questions.

We respectfully request that the committees consider this approach.

Sincerely,

Edward McNamara	Margaret Cheney	J. Riley Allen
Chair	Commissioner	Commissioner

30 V.S.A. § 20 is amended as follows:

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(a)(1) The Commission or the Department of Public Service may authorize or retain legal counsel, official stenographers, expert witnesses, advisors and consultants, temporary employees, and other providers of research, scientific, financial, economic, actuarial, accounting, or engineering services:

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(F) To investigate, review, plan, oversee, or carry out the decommissioning and site restoration required by a certificate of public good issued to an electric generation or energy storage facility.

30 V.S.A. is added to read:

§ 248e. Electric Generation and Energy Storage Facility Decommissioning Fund

(a) There is created an Electric Generation and Energy Storage Facility Decommissioning Fund that shall be a special fund created pursuant to 32 V.S.A. chapter 7, subchapter 5, and shall be administered by the Chair of the Public Utility Commission.

(b) Deposits to the Decommissioning Fund shall consist of all decommissioning surety fees collected for electric generation or energy storage facilities that have received a certificate of public good from the Commission. The Commission shall deposit into the Decommissioning Fund each decommissioning surety fee it receives under this subchapter.

(c) Disbursements from the Decommissioning Fund may be made by the Chair of the Commission to undertake actions that the Commission considers necessary to investigate or mitigate, or both, the effects of an abandoned, non-operational, or disclaimed electric generation or energy storage facility. Disbursements under this subsection may be made:

(1) to pay costs to third parties who initiate or complete facility decommissioning and site restoration where the holder of the certificate of public good is unknown, cannot be contacted, is unwilling to take action, is incapable of carrying out decommissioning or site restoration, or does not take timely action as ordered by the Commission;

(2) to investigate ownership of or ascertain the holder of the certificate of public good for an electric generation or energy storage facility;

(3) to take other appropriate remedial action;

(4) to pay costs to persons retained by the Commission or the Department under 30 V.S.A. § 20(a)(1)(F); or

(5) to return portions of the surety fees as determined by a formula established by the Commission to individual CPG holders upon satisfactory completion of decommissioning and Commission approval.

The Chair is prohibited from disbursing funds for a facility that did not contribute to the Fund.

(d) For purposes of this section:

(1) "Chair" means the Chair of the Vermont Public Utility Commission.

(2) "Commission" means the Vermont Public Utility Commission.

(3) "Decommissioning" means to remove a facility safely from service and to restore the site to its condition before the facility was installed consistent with the facility's certificate of public good and Commission rules and orders.

(4) "Decommissioning Fund" means the Electric Generation and Energy Storage Facility Decommissioning Fund.

(5) "Decommissioning surety fee" means the contribution assigned to a facility and determined by a funding formula established by the Commission.

(6) "Department" means the Vermont Department of Public Service.

(e) Balances in the Decommissioning Fund shall be expended only for the purposes authorized in this subchapter and shall not be used for the general obligations of government or for other governmental purposes. All balances in the Decommissioning Fund at the end of any fiscal year shall be carried forward and remain within the Decommissioning Fund. Interest earned by the Decommissioning Fund shall be deposited in the Decommissioning Fund.

(f) The Commission shall have authority to adopt rules or issue orders implementing this subchapter.

(g) The Commission shall provide to the Treasurer of the State of Vermont an annual accounting of each decommissioning fee showing the source and the amount collected and each decommissioning project that was funded or that will be funded with the fee and the amount expended.