

EGSPC 4th Draft Packaging of the Recommendations

(April 16, 2013)

Purpose: Governor Peter Shumlin formed the *Energy Generation Siting Policy Commission* by Executive Order (No. 10-12) on October 2, 2012. The Commission was tasked with providing guidance and recommendations on best practices for the *siting approval of electric generation projects*, and for public participation and representation in the siting process. These recommendations are to be presented to the Governor and the chairs of the legislative committees: House Natural Resources and Energy, Senate Natural Resources, House Commerce, and Senate Finance by April 30, 2013.

Context: The work of the Commission is carried out in the context of the goals and targets contained in the State's Comprehensive Energy Plan (CEP) and related statutes, as well as the impact that these clean energy goals have on the electric generation siting process in Vermont. The 2011 CEP, required by statute, is the state's first energy plan since the late 1990s. A multi-agency initiative, it received input from a broad public engagement process involving over 9000 separate comments, 100+ local energy committees, regional/town planning commissions, dozens of public hearings and open meetings throughout the state. Its goal of setting a path to obtain 90% of the state's energy needs from renewables across all energy sectors by 2050 also includes an aggressive commitment to conservation and efficiency.

Statutory targets: Meeting the 90% goal by 2050 does not mean that all renewables must come from in-state, nor does it mean that they must all be from the electricity sector. With this in mind, the Legislature has adopted several statutes that set specific electric and in-state targets for renewable energy as short and medium-term goals. (See Appendix 1 for details on all renewable targets and current status):

- By 2022: 127.5 MW of new *in-state* renewable *electric* generation contracts provided through Standard Offer (30 V.S.A. 8005a(c))
- By 2025: 25% of all energy from *in-state* renewables (10 V.S.A. 579(a))
- By 2028: 50% reduction in Greenhouse Gas emissions; 75% by 2050 (10 V.S.A. 578(a))
- By 2032: 75% renewables in electric sales (30 V.S.A. 8005(d)(4)(A))

Other contextual factors affecting the electricity sector: There are many other factors that come into play in creating opportunities and challenges for meeting these goals. Currently, nearly half of our electricity supply is from renewable resources, but that is changing quickly. Transitioning our heat and transportation sectors (which make up two-thirds of our total energy use and are nearly all imported fossil fuels) away from fossil fuels will likely increase demand for electricity. With the end of the Vermont Yankee contract with Vermont utilities in 2012, that electric energy was replaced with a mix of new resources that, under new contracts, increase our dependence on imported fossil fuels and raise important transmission issues. Aggressive efficiency measures can address some of these issues by reducing demand for electricity, but likely not all. Questions remain regarding Vermont's current policy of allowing electric generating companies to sell their Renewable Energy Certificates (or RECs) rather than moving to a Renewable Portfolio Standard (RPS) like all other states in New England. An RPS would require utilities to purchase renewable electricity and retire the RECs. These questions, and others, will inform the important policy considerations for electric generation and siting before the Administration and Legislature in the years to come.

Consequences for siting: the number and types of electric generation siting dockets coming before the Public Service Board (PSB) have changed dramatically over the past decade. In contrast to the period from 2000 to 2003, when the PSB reviewed no electric generation siting applications, the past decade has seen consistent growth, reaching an average of 16 dockets per year over the past three years. Many of the new issues associated with these dockets are related to land use, natural resources, and health impacts, requiring different siting guidelines and regulations. The processes presently followed for siting approval (Section 248) and permitting were put in place many years ago, at a time when only a few centralized electric power plants existed in Vermont. The change toward greater use of in-state renewable electric generation over the past decade, combined with an anticipated continuation of this growth as we move towards greater demand for electricity in the future, requires a fresh look at whether the processes we currently employ for review and approval of electric generation projects should be modified and improved.

Rationale for Maintaining Siting with the PSB: The Commission would like to underscore that although important modifications to the siting process are necessary, it also **recommends that electric generation siting approval remain with the PSB using a revised Section 248 process.** The rationale for this is as follows. First, the PSB provides consistency over time with a single quasi-judicial body for decision-making, whose three members are appointed for 6-year terms. Second, these terms are staggered so that if there is a change in the Administration, the Board composition does not change with it all at once. Third, as with other investments related to cross-regional use, such as interstate highways, energy generation and system reliability require consideration of 'public good', which is the sole jurisdiction of a central PSB. Fourth, the Section 248 'contested case' process is both rigorous and inclusive, ensuring that any evidence that is provided can be cross-examined under oath; and providing considerable flexibility in granting approval for requests to intervene in the application process.

Finally, with regard to natural resource impacts, Section 248 provides a broader and more adaptive capacity than Act 250 to address new environmental (health, economic, and other) impacts in the context of siting. Not only does the PSB need to give due consideration to Act 250 criteria, but it can – and does - go much further in considering other natural resources issues such as forest fragmentation, wildlife habitat connectivity, and climate change which are not explicitly considered under the existing Act 250 criteria. Many projects have been modified considerably under Section 248 over the past decade as evidence was provided to argue for either mitigation or elimination of specific negative impacts (See Appendix 7 for examples).

That said, the siting process should be improved. The Commission received considerable testimony, reports and public comment regarding how the process needs to be more open, more efficient, less costly, more predictable and provide greater opportunities for public participation (among other concerns). This report outlines recommendations to address each of these concerns with the goal of strengthening the process. Nonetheless, it remains clear to the Commission that the benefits of electric generation siting staying with the PSB outweigh the other options.

Commission Goals: The Commission understands that to achieve the State's clean energy goals, we must have processes for in-state permitting and approvals that create public trust, and consider the economic and environmental costs and benefits of each project both individually and cumulatively. The Commission believes that Vermont can address potentially competing interests and advance clean energy projects efficiently while also protecting the state's natural resources. An effective and efficient siting process is essential to achieve this. With this in mind, the Commission is particularly focused on recommendations related the following aspects of the siting process:

- ❖ The role of – and opportunities for - public participation and representation.
- ❖ Process uniformity, transparency, and efficiency.
- ❖ Adequate protection from negative environmental, cultural, and health impacts.
- ❖ Ensuring that the *best* rather than *easiest* sites are selected.
- ❖ Encouraging projects that are community-led with the aim of increasing project acceptance and reducing costly contestation of projects for all parties.
- ❖ Avoiding unintended consequences, including keeping the budgetary costs of the recommendations to a minimum (See Appendix 4 for details)

What the Commission heard: Over the course of six months (October 2012-April 2013), the Commission held a series of meetings, site visits, deliberations and public hearings across the state, with the purpose of hearing from the widest possible range of perspectives. In addition, in accordance with its charge, the Commission also invited state electric generation siting entities from all of the New England states and beyond to share their practices. All meetings were held in a public forum, and the Commission heard testimony and received written comments from hundreds of Vermonters. All of the meetings were recorded either through professional transcript or video, and all presentations are posted in their original form online at <http://sitingcommission.vermont.gov>. A separate report summarizing the public comments will accompany the full Vermont Electric Generation Siting Policy Commission Report.

Siting electric generation has become a topic of widespread discussion in recent years, and has been hotly debated in the Legislature in recent months. The range of comments and testimony received by the Commission spanned a broad spectrum of experience and opinion. Nonetheless, there are several common themes that emerged:

- The nature of electric generation technology and siting has changed considerably over time, engendering new questions of land use, environmental, and health impacts that did not exist a decade ago.
- Because of this, new guidelines and procedures need to be developed to address these issues.
- The current siting process, while rigorous, still lacks clarity, transparency, and predictability. Many parties feel that important information is difficult to obtain in a timely fashion and is perceived to fall into a ‘black box’.
- Certain towns, communities and regions feel that under the current process, the public lacks sufficient time, guidance, and resources to adequately plan for or respond to projects proposed for their communities.
- The combination of these concerns has contributed to a process that is both lengthier and more costly than necessary for all parties.
- While generally there is widespread support for moving towards a clean energy future in Vermont, there is a need to understand what that path will look like, while ensuring adequate protection of our natural resources and health.

The Commissioners heard other concerns and suggestions in addition to these common themes, and have attempted to address the majority of them in this report. While many comments concerned large-scale wind energy specifically, it is important to note that the Commission’s charge is to assess the siting process for ALL electric energy sources.

Recommendations: In response to the core concerns outlined above, the Commission proposes the following package of recommendations to improve the siting process for electric generation in Vermont. They should be examined in the context of the overall system of energy generation and transmission infrastructure that is needed to implement the state’s energy and land use policies. The recommendations focus on increasing the opportunities for

public participation early in the planning and project proposal process with the expectation that stronger involvement early in the process will make for better projects being submitted, and a more expedient approval in the end. They also focus on improving the overall transparency, efficiency and predictability of the process itself, ensuring broad access to all key information and more direct assistance from the PSB itself. Finally, they seek to address new environmental, health and other impact concerns that have emerged over the past decade.

The recommendations are presented as a package because they are interlinked, reinforcing one another, such that pursuing some in the longer-term absence of others could lead to unintended consequences. That said, many of the recommendations could be implemented almost immediately, while others will require further refinement, rulemaking or statutory change. Appendix 2 outlines these categories to help establish an expedient timeline for implementation. In those cases where more time is required for rulemaking, statutory change, or budget increases, the Commission advocates that in the interim, the current processes under Section 248 remain in place.

The recommendations fall within five broad themes:

- ***Increase emphasis on planning at State, Regional/Town levels, allowing siting decisions to be in conformance with Regional Planning Commission (RPC) energy plans.*** Central to this is the need to develop a 'roadmap' for how the State will meet its energy goals and accompanying statutory targets, taking into account Vermont's commitments to both a clean energy future and to protecting its natural resources. This will require building different scenarios and working in collaboration with regional and town planning commissions. Careful up-front planning at all levels will help ensure that electric generation projects are sited, whenever possible, in the best places with adequate prior public input.
- ***Adopt a Simplified Tiered approach to siting*** to achieve a quicker, more efficient review of a greater number of small/less controversial projects while focusing the bulk of PSB time and effort on evaluation of larger, more complex projects. The goal is to encourage more community-led projects, as is called for by the CEP, while simultaneously providing greater opportunities for public participation in larger projects. Likewise, it is intended to provide greater clarity and predictability for all parties. The Commission recommends a four-tiered system, where projects are classified by size. The Commission recommends developing an incentive structure within the tiers to encourage community-led projects and those that are designated priorities for towns or regions. (See Appendix 3 for suggested details on the Simplified Tier structure)
- ***Implement specific process modifications to increase the opportunity for Public Participation.*** The Commission acknowledges the need to increase opportunities to both inform and address public aspirations and concerns in the electric generation siting process. The emphasis on energy planning at the regional and Town levels is a key factor to address this. In addition, the Commission recommends several specific process modifications related to the Simplified Tier structure that focus on increasing accessibility to information, guidance and opportunities for participation.
- ***Implement specific process modifications to increase transparency and efficiency and coordination.*** The Commission recognizes that the dramatic increase in the numbers and types of merchant electric generation dockets before the PSB requires important refinements in the current processes to provide greater clarity, accessibility, transparency and predictability in the process to all parties. The Simplified Tier process incorporates a number of detailed recommendations to this effect.
- ***Update environmental, health, and other protection guidelines (on a technology basis, where necessary).*** As a broader range of renewable electric energy technologies are deployed at an increasing rate and related

siting issues evolve, the Commission recognizes the central role of providing clear and accessible guidance wherever possible to ensure that all parties in the siting process are adequately informed. The Commission recommends that specific guidelines and checklists be developed by the relevant agencies - Agency of Natural Resources (ANR), Public Service Department (PSD), Department of Health (DOH), and Agency of Agriculture (VAAF) - to reflect the changing energy landscape. These guidelines must be made publicly available, in clear lay terminology and based on peer-reviewed scientific literature, where possible, on an improved PSD siting website. The categories should include: i) an update of existing agency guidelines; ii) new guidelines that reflect impacts from new types of energy deployment; and iii) identification of areas in which there remains insufficient information to develop guidelines - or that are so site-specific that general guidelines are not applicable - and where the PSD must continue to rely on precedent and/or case-by-case analysis, until which time there is sufficient information to establish guidelines.

Increase Emphasis on Planning

1. **The PSD shall develop a 'roadmap' for meeting State goals and statutory targets through scenario planning**, incorporating many new tools that are currently available to address environmental considerations as well as economic, transmission, and load requirements. This dynamic modeling of different scenarios will enable policy makers to understand a range of potential paths for meeting the state's energy and environmental protection goals, and will include, among others, recommendations on: the mix of in-state and out-of-state energy sources; the anticipated mix of technologies; areas of high and low potential for energy siting; economic and environmental costs and benefits, and the broad parameters for cumulative impact of each scenario. It will also provide Regional Planning Commissions with essential guidance to carry out their own energy planning so as to contribute to overall State energy and natural resource goals.

Process: This planning exercise should be carried out in collaboration with ANR and other relevant agencies, utilities, Regional Planning Commissions, and with ample opportunity for public input. It should also be closely coordinated with the Vermont System Planning Committee (VSPC) and the VELCO transmission planning process to proactively plan for the State's future transmission needs. VSPC and VELCO planning and public outreach strategies have demonstrated effective approaches to collaboration with multiple agencies and utilities, as well as involving the public in decisions about alternative scenario planning that could serve as important models to building a 'roadmap' for energy planning. As is indicated in Recommendation #2, the iterative work with the RPCs will be critical to this process, and will require that energy components of regional plans be developed in a coordinated fashion to enable the PSD to assess whether the plans, taken together, are consistent with the roadmap. Given the rapid pace of technological advancement and energy demand that could have siting implications, these plans will need to be updated on a regular basis.

Tools: Some of the tools that could inform this process include: ANR's newly released 'Biofinder' to identify areas of particular natural resource importance, the Vermont Renewable Energy Atlas, energy scenario planning models developed by the Energy Action Network and the UVM Gund Institute, VELCO transmission maps, VSPC's identified constrained areas on the electric grid, cumulative impact models built by the Wilderness Society (among others), and an new 'Energy Zones Mapping Tool' developed by the Eastern Interconnection States Planning Council. **(ANR added) While these tools will provide significant data and information to the planning exercise, site-specific constraints may exist that limit the generation capacity of a given site; these site specific constraints may not be identified until a project is proposed for a given location.**

2. **Regional Planning Commissions (RPCs) shall develop energy components of regional plans, to identify high potential/low potential areas for electric siting by technology.** This may require amending the statutes governing RPCs and their plans, as well as those governing municipal plans (24 V.S.A. Sections, 4302, 4348(a), 4350, and 4382) to ensure a clear definition of what should be included in an energy component of a municipal and regional plan. The best places for energy development, and the resources to fund their development, are limited. To this end, identification of these places relative to the requirements of the type of energy generation technology in question, and the potential impacts of that technology, are essential for Vermont's energy and land use policies to succeed.

Using many of the tools described above, the PSD/ANR will provide the necessary guidance, training and resources to RPCs to develop energy components of regional plans that reflect their geographic advantages as well as their energy generation, conservation and efficiency priorities. To ensure consistency with the state energy goals established by the PSD, those goals should be included in statute with other state planning goals used in the municipal and regional planning process (24 V.S.A. Section 4302). Once completed, the energy components of all the regional plans will need to be reviewed concurrently by the PSD in order to assess how and if state energy goals are being met.

Examples of **high potential areas** could be where efficiency gains could be made (e.g., **capacity upgrades at existing hydroelectric sites, maximizing the thermal potential** of McNeil Generating Station or new biomass CHP plants), 'low-hanging fruit' (e.g., brownfields, public buildings, new construction, rooftops, land under existing transmission lines, etc.), and specific zones. Examples of **low potential areas** might be those with a particularly high natural resource value, such as rare and irreplaceable natural areas, large habitat blocks or areas that provide an important habitat connectivity function. Generation facilities proposed for sites within designated 'high potential' areas will still need to comply with all environmental regulations and meet the natural resource standards set forth in Section 248 (b)(5).

These high potential/low potential areas may differ significantly by technology, and no RPC or town can say 'no projects' in the region, either directly or in effect. The intent is to provide towns and regions the opportunity to proactively indicate how they can contribute to meeting state goals. If certain towns or regions have a strong resistance to a particular technology, they can propose alternative ways to contribute to regional goals. As with other components of town plans, RPCs will determine whether a town plan's energy section is in conformance with the regional plan. However, no region can ban any specific technology outright.

3. **Initial RPC planning costs must be funded** (est. \$25,000-\$30,000/region, to be allocated by the PSD) in order for meaningful recommendations to be created. Annual updates should be covered by filing fees assessed to applicants (on a per MW basis) and a portion of an annual fee assessed to all (merchant) generators at a rate similar to the gross receipts tax assessed to Vermont utilities. The latter would also be used to cover some of the additional costs related to other recommendations on improving siting process efficiency. See Appendix 4 for potential funding details. **(NOTE: do we need to have a separate recommendation on different funding options? For example: i) implement more fully the existing bill-back authority; ii) establish a filing fee on a per MW basis; iii) assess an annual fee on merchant generators equivalent to the 'gross receipts tax' fee on utilities. Establish a cap, as is the case in other states where fees and intervenor funds are regularly used)**
4. **The RPCs shall have automatic formal party status** once the energy components of their regional plans have been completed, **and their plans shall be given 'substantial consideration'** (i.e. greater weight than currently applied under Section 248).

If the PSB determines that RPCs' plans are consistent with the state energy plan and state statutory targets, then they shall be dispositive in the siting process, meaning that any project appearing before the PSB must be in conformance with the Regional Plan. The PSD is a party to the process and will provide evidence as to whether the regional plans are consistent with the state energy plan, as will the RPC. The intent is to encourage towns and regions to be in conformance with the state energy plan, but to also provide sufficient flexibility for the regions to be both creative and selective about doing their part to implement the state goals.

5. **Municipal energy plans found to be in conformance with the energy component of regional plans shall be given 'substantial consideration' by the PSB.** Currently section 248 requires that the PSB gives 'due consideration' to town plans; this would continue to apply to municipalities that are not in conformance with regional plans. If a particular energy generation project has the full support of a town/region, it will trigger a more expeditious process in the proposed new tiers (see below).

In order to assist towns in developing valid municipal energy plans and related siting policies, Section 248 should include guidelines for what constitutes a valid municipal siting policy. In addition, as mentioned in Recommendation #1, it may be necessary to amend the statutes governing municipal plans, as well as those the RPCs (24 V.S.A. Sections, 4302, 4348(a), 4350, and 4382) to ensure a clear definition of what should be included in an energy component of a municipal and regional plan. Such a policy would represent a comprehensive planning approach in accommodating the energy supply needs associated with the community's long-range development plans. Technical assistance in developing and revising such policies and plans should be made available to municipalities.

Simplify Tier System

Whereas the Commission recognizes that a 'tier' system currently exists for siting electric generation in Vermont, it is a system that was designed and amended across multiple legislative directives, and does not always function the way it was intended. Much of the testimony received by the Commission revealed a process that is lengthy and costly for all participants. Some of this is attributed to a need for greater public participation in the process, particularly for more complex projects. Some is attributed to a need for greater clarity, predictability and efficiency in the process itself. Added to this, the Commission feels that projects will have greater success if they are community driven. For this reason, the Commission recommends that a Simplified Tier system be established that provides both greater emphasis on public participation, more predictable guidelines and timelines, and greater incentives for community driven projects.

6. **The Public Service Board (PSB) shall implement a Simplified Tier process** to achieve a more efficient review of a greater number of small/less complex projects while focusing the bulk of PSB time and effort on evaluation of larger, more complex projects. The four-tiered system would classify projects by size. Each tier would be accompanied by a clear checklist of requirements, available on the improved PSB website, and would have increasing levels of requirement for public participation. See Appendix 3 for indicative details on the proposed set of tiers. In addition, many of the remaining recommendations related to public participation and increased efficiency are directly linked to the Simplified Tier system. The Commission acknowledges that additional work will need to be done by the relevant agencies to finalize the tier structure to achieve the desired objectives.
 - *Tier 1: Application Form Process* (\leq 500kW, or the size of many school, municipal & farm-methane projects)
 - *Tier 2: Simplified Process* (\geq 500kW to \leq 2.2MW, the equivalent of the Standard Offer limit)

➤ *Tier 3: Standard Process (>2.2 MW to <15MW)*

➤ *Tier 4: Larger Scale Process (≥ 15MW)*

7. **Develop an incentive structure within the Tiers.** In order to encourage projects which are community led, and reflect the top priorities of a given town or region, the Commission recommends developing an incentive structure within the tier system to enable these projects to be expedited, or avoid litigation. For example, if the PSB determines that all relevant parties have come to an agreement on a project prior to submitting an application, then it could automatically approve a CPG for the project, thereby avoiding costly and time-consuming litigation. Similarly, if a project is located in a designated 'high priority' area according to a valid municipal or regional energy plan and has met all the tier application criteria, then it would have an expedited CPG approval time frame. This is not an exhaustive list, but rather an indication of the types of incentives that could be developed.

Increase Opportunity for Public Participation

The Commission believes that an increased emphasis on State, regional and town planning, as outlined above, will be a key factor in increasing opportunities for public participation at all levels in deciding where electric generation is best sited. In order to formulate a regional energy plan, it is expected that towns will play a central role in the process. For those regional plans that are determined to be consistent with the State energy plan, they will be considered dispositive. The role of the public will be further strengthened by the following complementary recommendations within the proposed Simplified Tier System:

8. **Establish a 'trigger point' whereby the public is notified of when official discussions have begun regarding a proposed project.** A suggested point for Tier 3 or 4 projects is when the first 'scoping meeting' is held with ANR or PSD, and documents have exchanged hands (an alternative is at the point of lease or purchase option for the project site). Such scoping meetings may not occur for smaller projects. The notification would be placed on the improved PSB website.
9. **Provide earlier notification to the public in both Tier 3 and Tier 4 project applications.** In Tier 3, the notification period should be moved from 45 to 60 days to all affected towns. In Tier 4, the period should be moved from 45 to 90 days (see Appendix 2). The intent is to give more time for affected parties to read and understand the project implications, and prepare responses, if necessary. It is also expected that because municipalities and regions will have already developed energy components of their plans, the proposed projects will be better prepared, as will the local authorities.
10. **Add increasing levels of public engagement requirements to Tier 2, Tier 3 and Tier 4 project applications.** In Tier 2, examples of public engagement in the application include: demonstrated contact with municipal Selectboards, planning commissions, and RPC of affected towns, notification of adjoining property owners, description of public outreach, comments received and explanation of how they were addressed.

In Tiers 3 and 4 (in addition to Tier 2 requirements and longer public notification deadlines), require that the PSB hold public hearings in at least one of the municipalities potentially affected by the projects at issue. Require the PSB to formulate areas of inquiry, among others, based on the principal concerns raised in the local hearing process. Include all recommendations of the municipal and regional planning commissions and the municipal legislative bodies in the PSB's evidentiary record. Ensure that any decision on a given project addresses the principal concerns raised in these recommendations.

In Tier 4, applicants would provide a Public Engagement Plan (PEP) to the PSB 150 days prior to the 90 days public notice. The PEP would be based on guidelines developed by the PSD (using successful public engagement models such as VELCO and NY state). PSD would designate/contract a facilitator to work with each applicant and the relevant public entities to ensure the PEP is implemented effectively. The applicant would be required in their petition for a CPG to identify and respond to issues raised through the PEP process. The new notice periods and PEP process do not replace the need for applicants to conduct the natural resource assessments and wildlife surveys that may be required by ANR (see Appendix 3 for details). The Commission recommends further development by PSD of what constitutes a PEP.

11. **Provide RPC funding support, if requested, on a cost-share basis in the application period, defined as the point at which they receive official notice of the project.** These funds would cover expenses for those RPCs that have completed the planning process and would partially cover costs associated with experts, staff time, attorneys and other related 'party' costs. If a community raises an issue, and the statutory parties (ANR, PSD, etc.) cannot address the issue adequately, then the PSB has the authority to hire an expert to address the concern. Costs would be covered by bill-back, under the following limits.
 - In order for a RPC to be eligible to receive any funding, the PSD must first determine that the energy section of the regional plan is consistent with the State Energy Plan. Under this scenario, the PSD does not have any direct control over the region's plan, but there is an incentive for the RPCs to make the regional plan consistent with the state plan.
 - Once a RPC has been cleared to receive funding, the funding would be limited to arguments of whether or not the project is in conformance with the regional plan. In addition to that limitation, the expense would have to be reasonable and the funding would be provided on a cost-share basis. This share will be determined by the PSB (e.g. 70% state, 30% RPC).

Improve the Siting Process for Increased Transparency and Efficiency

12. **The PSB shall hire a Case Manager/Online Docketing Manager to provide guidance** on all aspects of the siting application process to all parties, particularly as they relate to timing. In addition, the Case Manager would be responsible for ensuring that the improved website remains up to date with appropriate docketing information. The PSB shall also direct Hearing Officers to broaden the current interpretation of 'ex parte' communication, enabling them to have procedural discussions with parties or initiate a call with all parties on a substantive issue (on an as-needed basis) without going through the Clerk. This will also allow them to provide all the necessary information directly to the Case Manager to carry out his/her functions effectively.
13. **Develop specific checklists for each Tier to establish when an application is 'deemed complete'.** These would include the specific maps, studies and assessments required by ANR and any other information required by PSB, and may need to vary by technology.
14. **Require concurrent timing of ANR permit filing and application for a Certificate of Public Good (CPG).** Applicants would be required to have *filed* for the necessary ANR permits (and any associated Federal permits) as part of the CPG application that is 'deemed technically complete'. For Tier 3 and 4 dockets, discovery shall not begin until the associated ANR permit applications are deemed technically complete.
15. **Establish statutory timelines for all involved parties** (applicants, intervenors, ANR, PSB) with consequences if not met. For example, PSB shall hold a pre-hearing conference within 14 days of an application being 'deemed technically complete', ANR shall respond to permit application consistent with ANR's statutory permit

performance standards. Include these timelines in an online docketing system, accessible by all parties. See Appendix 3 for details on proposed statutory timelines within each tier, and Appendix 4 for ANR performance standards. Others may need to be developed.

16. **Establish overall performance standards for PSB decision on a CPG by Tier:** 3 months for Tier 1, 6 months for Tier 2, 9 months for Tier 3, and 12 months for Tier 4, to be modified as necessary if a project undergoes substantial changes (See Appendix 3 for details). For good cause shown, the PSB may extend the deadline for its final determination regarding the project, either at the request of a party or on its own.

The Commission understands that the proposed performance standards are shorter than the current time it takes to be granted a CPG. This is illustrated in the table (below) that places a sample of recent approved projects under the proposed Simplified Tiers for comparison purposes. It should be noted that many of these projects were significantly modified during the application process, thereby contributing to a longer time frame.

The Commission believes that by implementing the recommendations in this report related to investing in more front-end public engagement, as well as increasing transparency and guidance in the overall process, the projects being submitted to the PSB will have fewer concerns once they are deemed complete. Therefore the actual application process should be faster, with a reduced level of litigation. In addition, the PSB and all relevant parties learn about impacts from each approved project. The lessons derived from this will help improve guidelines, standards and the process itself, thereby helping to better shape new projects as they come before the Board. Finally, as per the Commission's charge, it reviewed related siting standards in other New England states, and found that all of them use overall CPG timelines that fall between 6 and 12 months (see Appendix ___ for comparisons). However, the Commission acknowledges that these performance standards may need to be adjusted once they have been put into practice.

Timelines for a Sample of Past CPG Dockets					
Proposed Tier	Docket #	Size, Type and Location of Project	Date Filed to Date CPG Granted*	Total Time	Proposed CPG Performance Standard
≤500Kw	7860	136.2 kw Solar – Chase Mills	3/23/12 – 4/23/12	1 month	30 days to 3 months
	7877	382.8 kw Solar – North Springfield	5/19/12 – 8/22/12	3 months	
	7845	450 kw Methane –Bristol	12/14/11 – 4/9/12	4 months	
>500 kw to ≤2.2 MW	7823	750 kW Biomass – Brattleboro	11/16/11 – 3/21/12	4 months	12 weeks to 6 months
	7871	2.2 MW Solar – St Albans	5/2/12 – 11/2/12	6 months	
	7844	2.2 MW Solar - Charlotte	1/26/12 – 1/22/13	1 year	
>2.2 MW to ≤15MW	5823	6.05 MW Wind - Searsburg	6/06/95 – 4/01/96	10 months	Up to 9 months
	7508	10 MW Wind – Georgia Mountain	3/26/09 – 6/11/10	1 yr, 2.5 mos	
>15MW	7376	40 MW Peaking Unit - Swanton	8/22/07 – 1/21/09	1 yr, 5 months	Up to 12 months
	7250	45 MW Wind - Deerfield	1/8/07 – 4/16/09	1 yr, 3 months	
	7156	52 MW Wind - Sheffield	2/21/06 – 8/8/07	1 yr, 5.5 mos	
	7628	63 MW Wind – Lowell	5/21/10 – 5/31/11	1 yr, 1 week	

* Many of these projects had significant modifications, thereby lengthening the time frame

17. **Use ‘rebuttable presumption’ for ANR permits.** If an applicant obtains a permit from ANR prior to completing the CPG process, the PSB will accept that approval as a rebuttable presumption that a project conforms to the permit and permit conditions and the project will not result in an undue adverse impact to the natural environment specific to the impacts identified and reviewed under that permit program. Broader resource impacts not addressed by a permit will not be subject to the presumption and the PSB may continue to consider broader resource impacts as part of the Section 248 process. Note that this applies only to the PSB in its fact-finder capacity and not on appeal, in which case the review is ‘de novo’ and the permit presumption no longer applies.
18. **Ensure that the improved PSB website design incorporates a ‘one-stop shop’ for all siting information, and includes:** a) accessibility by all parties; b) a Frequently Asked Questions (FAQ) section written in clear layperson terminology; c) required checklists for the Simplified Tiers; d) a docket-management system to signal when new statutory timelines are met (or not); e) all ANR and PSB guidelines and standards by permit, study and by technology (including any necessary links between PSB docket numbers and ANR permit numbers and related website information); and f) access to historical docket records and orders, easily searchable for precedents (and free to the public; note that this may require procedural and statutory changes); g) a section where the ‘trigger’ point for new projects is signaled (see recommendation #8); and h) all project monitoring reports.

Ensure Adequate Environmental, Health, and Other Protection

19. **All relevant agencies - ANR, PSD, VAAFM and DOH - shall, to the extent feasible, update standards and guidelines on a by technology basis.** In making siting decisions, the PSB relies on testimony, facts of the case and Board precedents. However, in the planning stages of a project, developers may benefit from more clear guidance from ANR and PSD, and other related agencies. These guidelines should be made publicly available on an improved PSB one-stop shop siting website, in clear lay terminology and based on peer-reviewed scientific literature, where possible, as well as established land use policies and priorities. Given that there are several new areas of impact resulting from the siting of new electric generation technologies, these agencies shall determine which of these impacts fall within the following categories:
 - a. an update of existing guidelines
 - b. new guidelines that reflect additional impacts from new types of energy deployment
 - c. Case specific or further study: identification of areas of impact for which there remains insufficient information to develop guidelines – or that are so site-specific that general guidelines are not applicable. In these cases, applicants must continue to rely on a case-by-case analysis and direct consultation with relevant agencies until which time there is sufficient information to establish guidelines.

Where precedents have been set on any given project impact, they must be clearly indicated and searchable on the improved PSB website. Certain guidelines on new impacts, such as setbacks and noise, may require the PSB to open a docket to study the issue prior to establishing specific criteria. Appendix 5 provides a summary of the key areas of standards and guidelines.

20. **Section 248 should be modified to include expanded language on considering the costs and benefits of a given project.** In addition to the existing and new guidelines related to natural resource impact (mentioned above), it should include consideration of the benefits of conserved land resulting from the project, the cumulative impact effect of the project within the broader parameters set by the state, the offsetting reduction in

greenhouse gasses (or conversely what happens if the project is NOT approved; will the status quo depend on fossil fuels?), among others.

21. **The VAAFM shall become a statutory party in the siting process** in cases where there is more than a *de minimus* impact on prime agricultural soils, soils of statewide significance or the project takes place on a farm as defined by the Accepted Agricultural Practices (AAPs).
22. **DOH shall review national standards from peer-reviewed scientific literature regarding health impacts and monitoring systems** by technology and provide guidelines, where possible, to be updated annually as science evolves. Applicants will provide public health impact assessments under Tier 2-Tier 4 projects as per 30 V.S.A. 248 (b) (5). DOH shall become a statutory party in the siting process on these issues.
23. **ANR and PSD shall develop guidelines and tools for understanding and measuring cumulative impact** to be used in the planning, application, and monitoring phases of the siting process. From this work, they will provide specific guidelines for project applicants required to provide cumulative impact assessments in Tiers 3 and 4. The PSB shall then consider these assessments when determining whether a project has an undue adverse impact or constitutes a public good.
24. **All parties shall agree on 3rd party monitoring experts to be hired/paid for by the petitioner, and overseen by the appropriate agency (ANR, PSB, DPS, DOH)** under bill-back for pre-construction, construction and post-construction phases of a project. If no agreement is reached, the PSB will order an expert. All quarterly or annual reports required in this process shall be placed on the improved PSB website (one-stop shop for siting). Overall project compliance with monitoring shall be assigned to the PSD, including public complaint responsibility. All monitoring reports and data shall be made available on the improved PSB siting website as they are received.
25. **Should we add a recommendation on 'pay attention to'**

Potential wording: The Commission recommends that PSB pay particular attention to the following issues in the siting process:

1. Site generation with the maximum economic efficiency and the least environmental damage.
 2. Health issues need to be studied and the results considered in siting.
 3. The cumulative aesthetic, grid, economic and health effects studied and incorporated into decision making.
 4. The effect on neighboring property values studied and accommodated.
 5. Sufficient notice and participation for communities within the view shed of a project.
 6. Setbacks to minimize aesthetic, environmental and health concerns.
 7. Duly adopted town plans receive particular attention.
 8. Consistent with Act 250 land above 2,500 feet receive particular attention.
 9. A "case manager" to provide procedural advice and docket management.
 10. A PSB and ultimately a siting website with multiple agencies be implemented.
 11. Issues consistently raised at public hearings be addressed in the formal docket.
 12. Adopt notice and procedural processes (through scheduling orders?) that provide more efficient process for smaller, community sponsored projects.
26. **Should we add a recommendation on 'code of conduct' governing deceptive practice?**

Potential wording: The Attorney General's office should consider whether the establishment of a code of conduct for all developers in the state of Vermont is in the best interest of its citizens

27. **Should we add a recommendation regarding potential funding sources? (billback, annual fee, filing fee, etc)**

Potential wording: PSD shall consider options for funding mechanisms to cover the costs of an improved siting process. This would help address issues of increased demand for services from relevant agencies related to an increasing numbers of electricity generation dockets, as well as costs related to improved efficiency measures, and increased public participation. The recommendations included in this report have attempted to keep additional costs to a minimum. However, there are certain critical components that the Commission feels must be funded if the entire package of recommendations is to succeed (see Appendix 4 for details). Potential funding mechanisms to consider are used in a number of other New England states, including: i) filing fees assessed to applicants (on a per MW basis); ii) annual fees assessed to all (merchant?) generators at a rate similar to the gross receipts tax assessed to Vermont utilities; and iii) bill-back authority, which is currently under statute in Vermont (30 VSA, Sections 20 & 21), but is not used as fully as it could be. Once the mechanisms are established, it would be important to consider an overall cap, as is done in all other NE states, to ensure predictability for applicants.

28. **Should we include the types of updates to Act 250 criteria that VNRC is recommending?**
29. **Should we include increased ANR funding (to meet the significant increase in applications and related permits) anywhere in this section?**
30. **See Tom's suggestion: Should we include a recommendation to educate and enroll the public in the necessity and benefits of the CEP?** A concerted effort on the parts of the DPS and other relevant agencies to explain to Vermonters the necessity of an All-of-the Above technology portfolio while recognizing the changes this will bring to the Vermont landscape would go a long way toward making these broader recommendations work.

Looking Forward

Based on the hundreds of documents, expert testimony and public comments received over the past six months related to Vermont's electric generation siting, the Commission has concluded that there is a need for the Section 248 process to be revised to address a shift in the size, scope and pace of proposed projects over the last decade. In particular, the Commission acknowledges the need to move towards a process that is more open, accessible and inclusive, while also providing greater clarity, predictability and efficiency.

The Commission recognizes that the recommendations contained in this report provide *broad parameters* for more detailed work that will need to be carried out within and among the relevant agencies, the PSB and the Legislature. This is commensurate with its role as a Commission, and the 6-month time frame under which it worked.

In this context, the Commission would like to point out that certain recommendations can begin immediately through administrative action, but may take an extended period to complete (e.g. State scenario planning, regional plan energy components consistent with the State). However, other recommendations could be implemented in the very short term and have immediate beneficial effect (e.g. hiring a Case Manager and implementing an electronic case management system at the PSB). Still others will require medium term action, allowing the implementing agencies to

have time to develop the details, establish rulemaking or pursue statutory changes (e.g. Simplified Tier structure). The Commission has provided a preliminary proposal to help establish a potential timeline for implementation in Appendix __, which will need to be reviewed by the relevant agencies and the Legislature. Once reviewed, the Commission recommends moving quickly on the simpler administrative actions, and keeping the remaining Section 248 processes in place while the medium and longer term recommendations are completed.

Given the intense attention given to siting issues in recent months, and the differing timing requirements for the recommendations, the Commission proposes establishing an implementation committee comprised of key legislative leaders and relevant agency officials to further refine the recommendations and oversee implementation. In this context, the Commission is willing to reconvene or to be available, upon request, to the agencies and the legislature as they work through the process.

Other

RECs/RPS: The Commission recognizes that Vermont's current policy of allowing electric generating companies to sell their Renewable Energy Certificates (or RECs) to other states has both positive and negative effects. It helps utilities keep electric rates to Vermont consumers at a lower level, but it also undermines the right of the renewable generators to claim renewable status. All other states in New England have adopted a renewable portfolio standard (RPS) that requires utilities to purchase renewable energy and retire the RECs. Given that the current set of recommendations centers upon the important role of planning in the context of state energy goals and statutory targets, the Commission acknowledges the importance of addressing this issue.

Agriculture/Energy Links: Because of the large number of Vermont farms interested in pursuing energy generation, and the increasing number of manure digester projects that serve both energy, greenhouse gas, and runoff reduction purposes, the Agency of Agriculture has identified several procedural issues which could provide incentives and improve the efficiency of the siting process to help on-farm energy projects, insofar as they enhance the economic viability of farms (including selling electricity to utilities).

- PSD should explore the possibility of spreading the costs of electrical integration of manure-digester projects among the ratepayer base, given the multiple public benefits of manure management through anaerobic digestion that go beyond simple electric generation. This would provide a significant incentive for further development of on-farm distributed energy generation.
- Renewable energy projects should be allowed on conserved land when: i) the installation does not permanently commit a piece of prime agricultural soil or soils of statewide significance to the energy use either by virtue of costs of reversal or destruction of soil quality; ii) the installation does not severely threaten or eliminate the underlying farm's long term economic and agronomic viability as a farm.
- The PSB should adopt the framework currently under development by the Agency of Agriculture, PSD and ANR to delegate responsibility for manure management systems in electric generation to the relevant state agencies under Sec. 248(b)(5).
- In cases (Tiers 3&4) where there is more than a *de minimus* impact on prime agricultural soils, soils of statewide significance or the project takes place on a farm as defined by the AAPs, the AAFM should become a statutory party.

Intermittency of Renewables and Siting Issues around Stored Energy: *Grid energy storage* is one method that the operator of an electrical power grid can use to adapt energy production to energy consumption. This is done to

increase efficiency and lower the cost of energy production, or to facilitate the use of intermittent energy sources. By doing so, a grid operator can reduce emissions and infrastructure while at the same time actually *increasing* the amount of electricity available to do useful work for consumers and industry. Electricity *storage* will be a key component of any initiative to increase the true energy efficiency of the grid, particularly as we move towards a much greater share of renewables. The Commission recommends that the PSD explore the potential siting implications of storage as the renewable energy portfolio expands across the state.

DRAFT

Appendix 1
State Energy Goals and Statutory Targets for Renewable Sources
(03/28/13)

Comprehensive Energy Plan Goals and statutory targets from renewable sources	Target Date	Current Status (01/13)	Goal or Statute
90% of the state's energy needs – including thermal, transportation and electric by 25% of all energy from <i>in-state</i> , particularly from farms and forests (25 by '25)	2050	-22%	CEP Goal
	2025	-12%	10 V.S.A. 579(a)
75% of annual electric sales for each retail electricity provider in Vermont by 55% of annual electric sales for each retail electricity provider in Vermont by	2032	-50%	30 V.S.A. 8005(d)(4)(A)
	2017		
20% of total statewide electric retail sales in 2017 shall be generated by Sustainably Priced Energy Enterprise Development (SPEED) resources that came online (or were updated) after Dec. 1, 2004. SPEED resources are long-term contracts for energy from generators that produce renewable energy, whether or not RECs are retained.	2017	-16%	30 V.S.A. 8005(d)(2)
127.5 MW of contracts provided through Standard Offer for projects <i>in-state</i> by	2022	~50 MW of contracts awarded	30 V.S.A. 8005a(c)
Reduce greenhouse gas emissions within the state and from outside the state's boundaries caused by the use of energy within the state by 50% by And, if practicable using reasonable efforts, by 75% by	2028	+2%	10 V.S.A. 578(a)
	2050		
Plan to generate 60MW of power <i>in-state</i> by combined heat and power (CHP) facilities powered by renewable fuels.	2028	1.2 MW	30 V.S.A. 202(i)
Source: Vermont Statutes and Department of Public Service.			

Appendix 2
Proposed Timing of EGSPC Recommendations

The table below provides a first cut at assessing which of the Commission's recommendations could be implemented in the short term to begin addressing some of the important concerns raised regarding siting procedures. It also attempts to designate which of the recommendations will likely require funding (either budgetary, or by applicants through bill-back, filing fees or annual fees), rulemaking and legislative change. The PSD and ANR will review this for the final report.

Proposed Timing of EGSPC Recommendations				
Recommendation	Begin Implementati on now	Funding implications	Rulemaking	Legislative Change
1. State Planning and Scenario Modeling	X	X		
2. RPC Planning	X			
3. RPC Planning Costs	X	X		
4. RPC Formal Party Status				X
5. Municipal plans substantial consideration				
6. Simplified Tiers				X
7. Incentives within tiers				X
8. Earlier public notification				X
9. Increase public engagement requirements				X
10. RPC funding support during application period		X		
11. Hire Case Manager in PSB	X	X		
12. Develop checklists for each tier	X			
13. Concurrent timing of ANR permit filing and CPG			X	
14. Statutory timelines & performance standards – all parties			X	X
15. Overall CPG performance standards			X	X?
16. Rebuttable presumption for ANR permits			X	
17. Improve PSB Website	X	X		
18. Update enviro, health and other standards and guidelines	X			
19. Ag Agency become statutory party				X
20. DOH review and guidelines on health impacts	X			
21. ANR and PSD guidelines and tools for cumulative impact	X			
22. All parties agree on 3 rd party monitoring experts and assign agency responsibility for oversight	X	X		X

Appendix 3 Proposed Simplified 4-Tier System (ANR Notes in Red)

The following four-tier system is simply an indicative first draft proposal to outline the broad parameters of a simpler, clearer system that provides:

- greater emphasis on public participation on a graduated basis as the projects become larger and more complex
- more predictable and transparent guidelines and timelines
- greater incentives for community driven projects

The description below is followed by a summary table, illustrating the graduated approach to each of the Tiers. The Commission acknowledges that additional work will need to be done by the relevant agencies to finalize the tier structure, content, guidelines and timelines in order to achieve the desired objectives most effectively.

Tiers

The following proposed Simplified 4-Tier System attempts to address many of the concerns raised over the course of the Commission's findings with respect to public participation, transparency, guidelines, predictability, timelines and incentives for community driven projects. It is understood that this is simply a guideline for the type of tier system to be developed and that further development will require additional input from PSB, PSD and ANR.

Creation of tiers provides more clear guidance for developers and interested parties. The tiers are ranked based on the capacity of the project; however the Commission recommends developing a set of criteria by which a project could get an expedited consideration within each tier, reducing the amount of time and/or litigation required to obtain a CPG. These 'Sliders' would incentivize projects that are either community-led or designated as high priority for a town or region. While the Tiered approach provides a range of procedural pathways, all generation projects must address the review criteria set forth in Section 248 (b)(5).

The petitioner would submit an application to the PSB requesting review under a specific tier. Each Tier would be accompanied by a new, expanded application form that includes a clear checklist of pre-file and filing requirements for that Tier, including any studies or resource assessments required by ANR. The application shall describe the impacts on the natural environment, the land use characteristics of the area surrounding the project site, and the zoning/planning for the project site. The request shall be submitted to the DPS, ANR, town & regional planning commissions, and adjoining landowners at the same time the request is submitted to the PSB. Any comments regarding the request shall be filed with the PSB within 10 days. The PSB shall make a determination within 21 days after receiving the request.

Clarification of the term "contested case": All Section 248, including net metering, applications are contested case proceedings. For legal purposes, contested case means that there is notice and an opportunity for hearing. This standard should not change; however, there should be clarification as to whether the process *requires* a hearing in all, or even most, cases.

Tier 1 – Projects with a capacity of 500 kW or less

Developers are required to submit an application form that includes:

- A description of the size and the location of the project, including any distribution line upgrades necessary to interconnect the project;
- Locator map, site plan and natural resource assessment, which at a minimum may be satisfied by the ANR Natural Resources Atlas.
- Certification that the project avoids any regulated natural resource impacts;
- Certification that applications for all necessary ANR permits have been filled.
- For projects greater than 150 kW, certification that it has completed the necessary steps contained in PSB Rule 5.500 (Interconnection Procedures for Proposed Electric Generation Resources).
- Attestation that project affirmatively meets all of the substantive criteria contained in Section 248(b)

DPS, ANR, Town, Regional Planning Commission, and adjoining landowners have 15 days after an application is deemed complete to file comments as to whether the project raises a significant issue. Within 30 days of receipt of the complete application, the PSB shall determine whether the application raises a significant issue. If the PSB determines that the application does not raise a significant issue than a CPG shall be issued without further process (what is the appeal process for this determination, can any party still request a hearing?). If the PSB determines that a significant issue has been raised it shall hold a prehearing conference within three weeks of the date that it determines whether a significant issue has been raised.

Performance Standard: If no significant issues is raised, the CPG can be issued in as little as 30 days. If a significant issue is raised, the PSB shall make a final determination regarding the project within **three months**.

Note: *A new application form and checklist shall be developed for Tier 1 projects, in conjunction with ANR.

Tier 2 – Projects with a capacity between 500 kW and 2.2 MW

At least 45 days prior to submitting the petition to the PSB, developers must submit notice to all the parties included in Section 248. The notice shall provide preliminary plans showing the location of the project and a brief summary of the impacts of the proposed project.

Developers are required to submit an application form and prefiled testimony that explains how the project affirmatively meets each of the substantive criteria contained in Section 248(b). In addition, the application must describe the outreach efforts undertaken by the developer and include a certification that the developer has made good faith efforts to hold a meeting with the Selectboard and Regional Planning Commission, provided all copies of comments received and a description of how the petition has addressed these comments.

Within 14 days of receiving the petition, the PSB must make a written determination of whether the application is deemed complete. If the written determination is that the application is incomplete, the Board must include a list of the items required to make the application complete. If the filing is deemed complete, the PSB must hold a public hearing within 21 days and set a period of 28 days after the public hearing for comments regarding whether the project raises a significant issue with reference to the 248 criterion. PSB has 21 days to determine if a significant issue is raised. If a significant issue is not raised, by the PSB or ANR, the PSB will issue a CPG without further process. If a significant issue is raised, then the PSB will hold a prehearing conference within 21 days.

Performance Standard: If the PSB determines that no significant issue has been raised, the CPG can be issued in as little as 12 weeks. If a significant issue is raised, the PSB shall make a final determination regarding the project within a **six-month** period that begins to run from the date the PSB deems the application complete. For good cause shown, the PSB may extend the deadline for its final determination regarding the project.

Tier 3 – Projects with a capacity between 2.2 MW and 15 MW

At least 60 days prior to submitting the petition to the PSB, developers must submit notice to all the parties included in Section 248. The notice shall provide preliminary plans showing the location of the project and a brief summary of the impacts of the proposed project.

Developers are required to submit an application form and pre-filed testimony that explains how the project affirmatively meets each of the substantive criteria contained in Section 248(b). In addition, the application must include a certification that the developer has made good faith efforts to hold a meeting with the Selectboard and Regional Planning Commission, has provided all copies of comments received and a description of how the petition has addressed these comments.

Within 21 days of a petitioner filing a 248 petition, the Board shall issue a written determination of whether an application is deemed complete. If the application is deemed complete, the written determination shall set a schedule to include the date for a public hearing to be held within 21 Days, a deadline for motions to intervene set as two week after the public hearing, a deadline for responses to motions to intervene set as one week after the deadline for motions to intervene and a prehearing conference (to prevent confusion, this prehearing conference should be called a scheduling conference) to be held within 30 days after the public hearing.

Performance Standard: The PSB shall make a determination within **nine months** of its determination that the petition is complete that begins to run from the date the PSB deems the application complete. Criteria should be developed for making this period shorter to incentivize community-led projects. For good cause shown, the PSB may extend the deadline for its final determination regarding the project. (ANR to develop additional language regarding this 'safety valve' as the timelines suggested herein may not be acceptable to the ANR in all cases).

Tier 4 – projects greater than 15 MW

At least 90 days prior to submitting the petition to the PSB, **developers must submit notice to all the parties included in Section 248**. The notice shall provide preliminary plans showing the location of the project and a brief summary of the impacts of the proposed project.

Developers are required to submit an application form and pre-filed testimony that explains how the project affirmatively meets each of the substantive criteria contained in Section 248(b). In addition, the application must include a certification that the developer has made good faith efforts to hold a meeting with the Selectboard and Regional Planning Commission, has provided all copies of comments received and a description of how the petition has addressed these comments. In addition, applicants would provide a Public Engagement Plan (PEP) to the PSB at least 150 days prior to the 90 days public notice. The PEP would be based on guidelines developed by DPS (using successful public engagement models such as VELCO and NY state). DPS would designate/contract a facilitator to work with each applicant to ensure the PEP is implemented effectively.

Within 21 days of a petitioner filing a 248 petition, the Board shall issue a written determination of whether an application is deemed complete. If the application is deemed complete, the written determination shall set a schedule to include the date for a public hearing to be held within 21 Days, a deadline for motions to intervene set as two week after the public hearing, a deadline for responses to motions to intervene set as one week after the deadline for motions to intervene and a prehearing conference (to prevent confusion, this prehearing conference should be called a scheduling conference) to be held within 30 days after the public hearing.

Performance Standard: The PSB shall make a determination within **one year** of its determination that the petition is complete that begins to run from the date the PSB deems the application complete. For good cause shown, the PSB may extend the deadline for its final determination regarding the project. (ANR to develop additional language regarding this 'safety valve' as the timelines suggested herein may not be acceptable to the ANR in all cases).

**Proposed Simplified Tier System – Summary Table
(03/28/13)**

Tier	Size	Registration/Permit Process	Public Notice	Statutory Procedural Timelines	CPG Performance Standards
1	<500kw	<p>Application Form* with:</p> <ul style="list-style-type: none"> Description of size & location of project, including any distribution line upgrades necessary to interconnect the project; Completion of the ANR checklist, including a map of the project site from Biofinder and ANR Atlas For projects >150 kW, certification that it completed the necessary steps in PSB Rule 5.500 (Interconnection Procedures for Proposed Electric Generation Resources). Attestation that project affirmatively meets all of the substantive criteria contained in Section 248(b) 	Notice at time of registration	If issue raised, hold pre-hearing conference within 21 days of the date that the PSB determines a significant issue has been raised.	<p>Approved in 30 days, if no issues raised</p> <p>3 months for final CPG determination</p>
2	500kw-2.2MW	<p>Application form* and pre-filed testimony with:</p> <ul style="list-style-type: none"> Explanation of how the project affirmatively meets each of the substantive criteria contained in Section 248(b). Description of the outreach efforts undertaken by the developer Certification that the developer has made good faith efforts to hold a meeting with town Selectboard(s), planning commissions & RPC Copies of all comments received and a description of how the petition has addressed these comments. 	45 days prior to filing, Notice shall provide preliminary plans showing the location of the project and a brief summary of the impacts of the proposed project.	<p>After filing: 14 days for PSB to 'deem complete' If complete, set schedule: + 21 days for public hearings + 28 days to raise issues re 248 criteria + 21 days for PSB to determine if significant issue is raised If no issue, CPG granted If issues, 21 days for prehearing conference</p>	<p>Approved in 12 weeks, if no issues raised</p> <p>6 months for final CPG determination, with extension if due cause is demonstrated</p>
3	>2.2MW -15MW	<p>Application form* and pre-filed testimony with:</p> <ul style="list-style-type: none"> All requirements of Tier 2 Explanation of how the project affirmatively meets each of the substantive criteria contained in Section 248(b). Description of the outreach efforts undertaken by the developer Certification that the developer has made good faith efforts to hold a meeting with town Selectboard(s) planning commissions & RPC Copies of all comments received and a description of how the petition has addressed these comments. 	60 days prior to filing Notice shall provide preliminary plans showing the location of the project and a brief summary of the impacts of the proposed project.	<p>After filing: 21 days for PSB to 'deem complete' If complete, set schedule: + 21 days for public hearings + 14 days for motions to intervene + 7 days for responses to motions and a scheduling conference (+ 30 days after public hearing for scheduling conference)</p>	<p>9 months for final CPG determination, with extension if due cause is demonstrated</p>
4	>15 MW	<p>Application form* and pre-filed testimony with:</p> <ul style="list-style-type: none"> Explanation of how the project affirmatively meets each of the substantive criteria contained in Section 248(b). Description of the outreach efforts undertaken by the developer Certification that the developer has made good faith efforts to hold a meeting with town Selectboard(s) planning commissions & RPC Copies of all comments received and a description of how the petition has addressed these comments. 	<p>150 days prior to notice, applicant provides Public Engagement Plan to PSB, 90 days Notice shall provide preliminary plans showing the location of the project and a brief summary of the impacts of the proposed project.</p>	<p>After filing: 21 days for PSB to 'deem complete' If complete, set schedule: + 21 days for public hearings + 14 days for motions to intervene + 7 days for responses to motions and a scheduling conference (+ 30 days after public hearing for scheduling conference)</p>	<p>12 months for final CPG determination, with extension if due cause is demonstrated</p>

*Application form templates & checklists for each Tier shall be developed by PSB in conjunction with ANR and reference any maps, studies or resource assessments ANR requires for that Tier.

Appendix 4 ANR Performance Standards

An example of the type of statutory performance standards that the Commission is recommending for each agency in the siting process has recently been developed by the ANR. 30 V.S.A. Section 2822(g) requires the Secretary of Natural Resources to provide the General Assembly with an annual summary of activities in the permit programs managed by the Department of Environmental Conservation.

As part of this report, performance standards were established for the timely processing of applications for permits, licenses and registrations issued by the Department. The legislation also established fees for the Department's regulatory programs. The Table below provides a summary of ANR permits for electric generation siting with performance standard days that could be used in establishing certain statutory timelines.

One of the interesting aspects of this annual summary of activities is that they established a goal of having 90% of the permits/licenses issued meet their performance standard. The report identified how many actually met that standard and identified areas that hindered effectiveness. It followed this by delineating changes made to improve the process, indicating the staff and resources needed to make those changes.

Once the statutory timelines are identified for the Siting Process, a similar form of annual reporting should accompany it.

ANR Permit Type:	Performance Standard (days):
Wetland Permit	90
Stream Alteration Permit	40
Direct Discharge: General Permit	30
Direct Discharge: Individual Discharge Permit: New	150
Direct Discharge: Individual Discharge Permit: Renewal	95
Indirect Discharge: General Permit	30
Indirect Discharge: Greater than 10,000 gpd	120
Indirect Discharge: Greater than 10,000 gpd with Hearing	180
Indirect Discharge: Less than or equal to 10,000 gpd	90
Stormwater Individual Discharge Permit: New	90
Stormwater Individual & General Discharge Permits: Renewal	60
Stormwater General Permit: NOI (9003,9010, 9015, 9020)	40
Underground Injection Control Permit	90

Appendix 5 Guidelines Matrix

Guidelines to be updated, developed, and further studied – by Agency			
Existing ANR Guidance Documents to be updated and placed on improved PSB website:	ANR	PSD	DOH
ANR Natural Resources Conservation Procedure	X		
DFW Wildlife Habitat Impact Assessment Procedure	X		
Example language for deed restrictions	X		
Amphibian habitat conservation guidelines	X		
Indiana bat survey procedures and guidelines	X		
Mitigation guidelines for black bear habitat in Vermont	X		
VT ANR Policy to be applied in reviewing personal wireless service tower applications in Act 250	X		
DFW Procedure for Review and mitigation of impacts to wildlife and habitat associated with the development of wireless communication towers in Vermont	X		
Guidelines for the review and mitigation of impacts to white-tailed deer winter habitat in Vermont	X		
DFW procedure for protecting rare & irreplaceable natural areas and endangered species through Act 250	X		
Guidelines for protection and mitigation of impacts to great blue heron rookeries in Vermont	X		
Guidance for ANR Act 250 and Section 248 comments regarding riparian buffers	X		
DFW Wetland Habitat Protection Policy	X		
ANR Guidelines for the review and evaluation of potential natural resources impacts from utility-scale wind energy facilities in Vermont	X		
Guidelines for State-Significant Natural Community Designation	X		
Various DEC Rules: stormwater, wetlands, etc.	X		
New Guidance to be developed over the next 12 - 18 months:			
Solar facility fencing guidance for wildlife	X		
Procedure on Participation in Act 250 and Sec. 248 Regarding the use of Explosives and the Potential Impact on Groundwater	X		
Guidance for identifying and avoiding wetlands impacts from net-metered solar facilities	X		
Procedure for RINA determination	X		
Bird/Bat mortality monitoring procedure (so that we don't have to negotiate on a case-by-case basis?)	X		
Guidelines for controlling the introduction and spread of Invasive Species.	X		
Guidelines for conservation and protection of Rare Species	X		
Blasting safety issues		X	
Setbacks for wind turbines (PSB will open a non-contested docket to study this issue)		X	
Noise Standards (PSB will open a non-contested docket to study this issue)			X
New Guidance that may be useful in the siting of energy generation facilities, but may not be feasible to develop over the next 18 months due to lack of data or other constraints:			
Guidelines for protection and mitigation of impacts to high value forest and habitat blocks (fragmentation)	X		
Guidelines for protection and mitigation of impacts to high value habitat connectivity areas (wildlife corridors)	X		
Construction Standards for forest roads on UVA lands (i.e. max specs by road-use type to prevent over building logging roads that will eventually serve a development infrastructure)	X		
Guidance to minimize the footprint and overall natural resource impact from high elevation energy generation facilities through design and construction best practices	X		
GHG and other air pollutant emissions	X		

Appendix 6
Potential Cost and Funding Categories
Related to EGSPC Recommendations

Potential Cost Categories			
Potential Cost Item	Initial Cost	Recurrent Cost	As Needed
State Planning/Scenario modeling	X		
RPC Plans	X (est. \$300,000)	X (est. \$10,000)	
Website Improvements/On-line Docketing	X		X
Case Manager		X	
ANR Guidelines & Checklists	X		
PSD Facilitator and Compliance Monitoring		X	
RPC Funding Support as Statutory Party (on a cost-share basis)			X
3 rd Party Monitors		X	
Selected studies			X

Potential Funding Categories			
Type of Potential Funding Source	One time	Recurrent	As Needed
Filing Fee (per MW)	X		
Annual fee similar to general receipts tax (merchant generators)		X	
Bill-back authority for agencies			X
Bill-back for RPCs (on cost-share basis)			X

Appendix 7
How Projects are Modified
Under the Current Project Development and Section 248 Process

The following illustrates how, under the current process, a project can be significantly modified from its original conception based on public and expert input both before and during the Section 248 Process.

Case Study #1: Sheffield Wind

The Sheffield Wind Project was originally proposed as twenty-six turbines (52 MW), with nineteen turbines to be located in the Town of Sheffield, and seven turbines in the town of Sutton. The project was located on parcels of land that totaled approximately 3000 acres, consisting primarily of active timberland.

The developer voluntarily revised the project twice during the 248 permitting process to respond to specific issues raised by intervening parties and state agencies. Based on concerns expressed by the Town of Sutton, the developer agreed to remove all seven turbines and associated infrastructure from the Town of Sutton.

In addition, to address concerns raised by ANR and other parties with respect to wildlife and natural resource impacts, the developer agreed to several project revisions. These included

- (1) reducing the total number of turbines to sixteen and eliminating turbines on one ridgeline that was closer to residences;
- (2) relocating infrastructure away from identified sensitive resources including bear habitat and wetlands;
- (3) minimizing the project foot-print through the use of more expensive but less impactful construction techniques; and
- (4) conservation of approximately 2700 acres around the project for the life of the project.

Case Study #2:



Appendix 8 VSPC/VELCO Planning for the Future of Vermont's Electric System

The Vermont System Planning Committee (VSPC) was created by a Vermont Public Service Board order. The Committee and its associated planning process make up a new approach to addressing reliability issues in Vermont's electric transmission system. The process is designed to facilitate full, fair and timely consideration of cost-effective non-transmission alternatives to new transmission projects. The Committee increases collaboration among utilities, lengthens the planning horizon to be sure there is time to fully consider all alternatives, increases transparency of the process, and involves the public in decisions about alternatives.

The members of the VSPC include: representatives of each Vermont electric distribution and transmission utility; and three public member representing the interests of residential consumers, commercial and industrial consumers, and environmental protection respectively. In addition three non-voting members participate in the VSPC, including Vermont's Energy Efficiency Utility, the Sustainably Priced Energy Enterprise Development Facilitator, and the Vermont Department of Public Service.

The VSPC structure and planning process was developed through a settlement among most of the parties in Docket 7081, the Public Service Board's investigation of least-cost integrated resource planning for Vermont Electric Power Company, Inc.



Appendix 9: Comparing Siting Practices with Other New England States

Table __: Siting Electric Generating Facilities – Comparing States

	Vermont	NH	ME	MA	CT	NY	RI
Total MW capacity of existing generation (wind and others)	~1,400 total (111 Wind; 620 nuclear, 358 hydro, 84 biomass, 12 solar) 16 filings in 2012	~4100 total (171 wind) 10 Sites 10 filings since 1998	~3100 total (397 wind; 768 biomass) 153 sites 2-6 filings/year	~13,000 total (46 wind) 100 sites 2-6 filings/year	8,767 total 66 sites ave 9 filings/year	~70,000 total (1,440 Wind, 1000 MW more with permits) ave 8 filings/year	~1,850 (2 wind) No new generation filings in 14 yrs
Renewable Portfolio Standard Target *	No formal RPS 20% by 2017 (SPEED)	12% new by 2020	30% existing, 16% new by 2021 Wind Goal: 3000MW by 2020	15% new by 2020 Wind Goal: 2000MW by 2020	20% new by 2021	30% renewable electricity consumed by NY customers by 2015	16% new by 2021
Threshold for State Level Authority	All electric generation > net metering (>150 Kw non-farm; 250Kw farm)	≥ 30 MW with opt-in for smaller units >5MW	> 100 Kw ≥ 3 acres for wind no opt-ins	≥ 100 MW	≥ 1 MW if co-gen, then >25 MW no opt-ins	> 25 MW w/ opt-in	>40 MW or >10 MW for hydro
State Siting Authority (different from PUC?)	No PSB/PUC (3 independent members) With input from ANR	Yes Site Evaluation Committee (16 members from agencies)	Yes – mostly local DEP coordinates identification of required permits	Yes Energy Facilities Siting Board (6 Agency heads plus 3 public members)	Yes Siting Council DEEP checks congruence w/IRP (9-members; 5 appt by Gov, 1 senate, 1 house, 2 agency)	Yes Permanent Siting Board (5 Agency Chairs) Project Siting Board (1 Perm + 2 Residents)	No PUC Siting Board (3 members: Chair PUC, Dir Dept Enviro Mgmt, Associate Dir Statewide Planning)
Timing of Decision	No regulated timing Varies	9 mo from time application is deemed complete 8 mo for renewable facility*	Varies based on permit(s) requirements	12 mo	6 mo after the filing of an application – may be extended	12 mo from complete application, may be extended w/applicant consent. 6 mo for existing plant add-ons	30 days to accept/reject, Prelim Hearing w/in 60 days, 6 mo for Advisory agencies to submit findings; Final hearings 45 days after advisory; final decision in 120 days

* http://www.iso-ne.com/nwss/grid_mkts/key_facts/final_newengland_profile_2012-13.pdf

Table __ : Siting Electric Generating Facilities – Comparing States (cont'd)

	Vermont	NH	ME	MA	CT	NY	RI
Public Participation (intervenor funding)	45 day notice prior to application. No intervenor funding, but Bill-back authority	No intervenor funding, but public counsel (appointed by AG) can hire consultants at Applicant's expense with SEC approval	Actual DEP costs are paid for by applicant via 'Special Fee' Project billing	Active public participation, but NO financial, legal or technical support.	Applicants submit a municipal participation fee of \$25,000 for distribution by the state Treasurer to participating municipalities to defray expenses, including but not limited to costs of participation	Strong for >25MW Public Involvement Plan required 150 days before Scoping phase. (90 days before application) Applicant pays intervenor funding: Scoping (\$350/MW up to \$200,000); Application (\$1000/MW up to \$400,000)	1 Public Hearing in every community impacted; website; applicant assumes costs of Board. Applicant can be asked to assume Board consulting costs (including construction plant visits up to \$20,000)
Alternative Dispute Resolution	No formal	No formal ADR, but informal agreements reached	No formal ADR Informal discussions w/parties & DEP Project Manager can sometimes resolve issues	No formal ADR, Parties can propose settlements (rare), In practice, facility applicants actively engage host community officials and public to discuss mitigation measures and other agreements that can lead to support or at least lack of opposition. EFSB approval conditions can formalize agreements between parties	No ADR	Yes Hearing officer for pre-application scoping can mediate issues. Settlement procedures can be utilized by agreement of parties, who may request a settlement judge. Intervenor funding available. Pros: can help local parties gain benefits. Cons: often extends review period; difficult to manage concurrent settlement and litigation tracks.	NA
Mandatory Evaluation Criteria	No	Yes	Yes	Yes (plus Model Ordinances to guide Local Govts)	Yes (working on developing new regulations on wind siting & zoning)	Yes	Yes
Voluntary Guidelines	Yes (Wildlife, Birds, Bats)	No	No	No	No	Yes	Yes
Setback & Sound standards published	No	No	Yes (clear procedural steps & explicit standards for determining wind siting & zoning)	Yes (model recommended standards for local govt)	No	Y (Model recommended standards for local govt)	Yes

Cumulative Impact		No formal method of cumulative measurement	No current standards exist, but cumulative scenic impacts are being considered as a review criterion for future wind projects; DEP has some guidelines	EFSB is required to consider 'local and regional cumulative health impacts', which can include multiple generation facilities as well as other contributors.	By statute, Council is required to determine probable environmental impact of project alone & cumulatively with other existing facilities, including specification of every significant adverse environmental effect, electromagnetic fields and conflict with policies of the state	Require cumulative indicators for air and visual impact in rules others should be identified at scoping stage for analysis. Cumulative impact of all project components is considered.	NA
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Sources: Siting Authority self reports, ISO-NE Regional and State Profiles, NRRI 2012 Report on Best Practices for Wind Park Siting and Zoning

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