

VT Energy Generation Siting Process Strengths & Weaknesses

Legal Practitioner's perspective

Presented to:

***VT Energy Generation
Siting Policy Commission
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Siting Approval Practices #1

Strengths

- Independent quasi-judicial board with broad, statewide purpose
- Specialized expertise with authority to hire additional experts when necessary and bill costs back to project proponent
- Public advocate (PSD) with expertise is required to represent “interests of the people of the state” and has authority to hire additional experts and bill costs back to project proponent
- Agency of Natural Resources statutory party on environmental criteria
- Individual members of the public provided opportunity to inform PSD position and to identify issues for PSB inquiry
- General good of the state is paramount

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Weaknesses

- High transaction costs (financial, time, resources) for all
 - Settled cases still required to go through an evidentiary hearing
 - No electronic filing system so thousands of pages of paper and costly reproduction
- No deadline for docketing, scheduling, or concluding a proceeding
 - Filings under expedited (j) procedures can wait more than a month for PSB to take any action and there is no deadline for decision after the end of the statutory comment period
- PSB precedent is necessary to understand process but is difficult to obtain or research without a paid Lexis or Westlaw legal research account
- One-size-fits-all approach can frustrate fulfillment of other state policy goals (e.g., promotion and preservation of agriculture, achieving renewable energy goals)

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Improvements

- Deadlines for PSB action, particularly for low-impact projects that fulfill state policy goals (e.g., renewable energy, reduction in greenhouse gas emissions)
 - Section 248a has worked as intended to further state's wireless and broadband goals and could be used as a model
- More effective and regular PSD outreach and education to general public, particularly in areas of the state that are located a distance from Montpelier
- Narrow continuing PSB authority over farms with anaerobic digester electric generation systems to generation system only
 - Manure and nutrient management is integrated into farm operations and is already regulated by AAFM and ANR, agencies with more direct relevant expertise on those issues

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Substantive Criteria & Standards overview

Strengths:

- Rigorous review process, w/ broad scope (goes beyond just Act 250 criteria);
- Burden of proof on applicant for all criteria (compare w/ Act 250);
- Decisions based on scientific evidence and expert opinion;
- Appropriate balance b/w state-wide priorities and local impacts.

Weaknesses:

- Long, expensive, technical process;
- No specific siting guidelines - could help if developed appropriately.

Appeals process/authority

- Appeal of CPG to Vt Supreme Court is thorough & appropriate; opportunity to request stay provides procedural protection.

Public Participation/Representation mechanism

- Individual members of the public provided opportunity to inform PSD position and to identify issues for PSB inquiry
 - public hearing
 - written comments to PSB
 - complaints/comments to PSD
- PSB regularly uses public comments to question project proponent either in written questions or during evidentiary hearing
 - No expertise, lawyers, or experts necessary for public to comment and raise areas of inquiry for PSB
- Towns and Regional Commissions often participate in the proceeding and their plans are given “due consideration” but do not control “general good of the state”

Adequate protection of lands, environmental & cultural resources

Coordination/timing of all state level/environmental permits

Strengths:

- PSB provides good forum for initial review of project's impacts; opportunity for parties (including various state agencies) to comment on and address broad range of issues.

Weaknesses:

- Significant duplication of effort/resources in multiple collateral reviews
- No timeline for review process for other permits; appeals can be duplicative

Do permits adequately address all environmental concerns? (pros & cons)

- Yes, with appropriate conditions, permits are very protective.

Monitoring Compliance

Strengths:

- Conditions imposed through permitting process are extensive & detailed; Board authority to enforce conditions is robust – can impose penalties/revoke CPG in response to violations.
- Collateral environmental permits also contain extensive conditions; other state agencies, like ANR, have strong compliance/enforcement programs; agencies conduct extensive inspections.

Weaknesses:

- No standard process for making state compliance/inspection/monitoring materials publicly available.
- No clear, standardized process for reviewing, evaluating, and responding to complaints. Can be confusing for public & developers