

VT Energy Generation Siting Process Strengths & Weaknesses Green Mountain Power perspective

Presented to:

***VT Energy Generation
Siting Policy Commission***

Meeting #3 – Learning from Participants in the
Process

(Nov 30, 2012)

Siting Approval Practices #1

Authorizing Agency (PSB)

Strengths

- Single planning and supervisory agency governing generation projects, which involve important statewide policies and interests
- A quasi-judicial, non-partisan board, with decisions based on evidence presented through sworn testimony
- The process and precedent provides a measure of predictability and consistency across the state
- PSB makes special efforts for individual citizens to participate
- The PSB has expert staff to assist in evaluating evidence, scrutinizing issues and evidence
- The PSB has the authority to hire expert consultants when needed

Weaknesses

- The rules and process for presenting cases, including the rules relating to intervention, filing written testimony and making submissions are not easily understood or accessible to those without experience before the PSB

Siting Approval Practices #1

Staffing of siting process

Strengths

- As compared to most administrative or court tribunals, the PSB has a strong team of expert staff

Weaknesses

- The staff may not be sufficient to process all generation applications, including small generation facilities

Coordination of state-level permit issuance with other agencies

Strengths:

- PSB gives deference to the expertise provided by other agencies with jurisdiction, such as, ANR, US Army Corps of Engineers, Division of Historic Preservation, ISO-NE

Weaknesses:

- Lack of consistency on standards and required mitigation. While we acknowledge each case is different, developers cannot predict what the requirements may be based on prior projects or decisions

Siting Approval Practices #1

Timeline for review/deadline or decision

Strengths

- PSB process is disciplined. The prehearing conference sets a known schedule. The PSB is flexible to change schedules for good cause

Weaknesses

- The time for scheduling the prehearing conference and “kicking off” the proceeding is variable

How can the process be improved? Develop a standard timeline between filing a petition and the prehearing conference. Create a higher level of consistency for collateral permit requirements and mitigation standards.

Siting Approval Practices #2

Siting Approval Practice #2

Substantive Criteria & Standards Overview

Strengths

- Section 248 mandates strict standards to ensure protection of natural and cultural resources. Section 248 mandates due consideration of recommendations of municipal and regional planning commissions and municipalities, while maintaining over-arching goal of deciding siting cases based on statewide impacts and interests

Weaknesses

- The number and complexity of the substantive standards makes the process exceedingly technical
- There exist no objective standards to inform developers and communities about appropriate – and inappropriate – areas or locations for siting generation facilities

Appeals process/authority

Strengths

- Parties have the right to appeal to the Vermont Supreme Court, where appeals receive careful consideration by the Court

Weaknesses

- The appeals process can be lengthy and expensive for both developers and opponents
- The “de novo” review of ANR environmental permits is duplicative, expensive and confusing for developers and other parties

Siting Approval Practices #2

How could this be improved?

- Section 248 could include a specific standard requiring the applicant to demonstrate that the project is consistent with state energy policy as enacted by the Vermont Legislature
- The Comprehensive State Energy Plan could identify regions, locations, and/or standards for determining appropriate sites for generation facilities of various types
- Appeals of agency permits could be based on the record, rather than de novo.

Public Participation/Representation mechanism

How public opinion/evidence is part of the deliberative process

Strengths

- The Public Service Department represents the public, by statutory mandate (30 VSA 2(b))
- The PSB is required to hold at least one public hearing in the county where the generation facility is proposed
- The contested case process is administered by the PSB to allow for full participation by individuals and groups representing individuals.
- The position of affected municipalities and regional planning commissions is given due consideration
- The PSB accepts written comments throughout the process

Weaknesses

- Ease of intervention in proceedings turns most high profile cases into complex multi-party litigation, which adds time and expense to all parties and makes the proceedings more difficult to follow and understand.

Public

Participation/Representation mechanism

How financial benefits are allotted to affected communities

Strengths

- Hosting communities have the opportunity to negotiate with developers for the benefit of the community

Weaknesses

- There is no standard for what is appropriate or fair. Non-hosting towns potentially impacted by development may not receive financial benefits. Statewide benefits, which must be established to obtain a CPG, may not be understood or appreciated by impacted communities

Role of Town and Regional Planning Commissions

Strengths

- Section 248 requires the PSB to give local and regional planning commission views due consideration
- Towns and regional planning commissions may (and often do) participate in Section 248 proceedings
- The legislative mandate – upheld by the Vermont Supreme Court in 1975 – that municipalities may not veto generation siting is critical to a reliable electric system and to advancing state energy policy

Weaknesses - n/a

Public

Participation/Representation mechanism

Should there be an alternative dispute mechanism? What kind? No. There is ample opportunity for parties to present ADR agreements to the PSB. A formal ADR program would add time and expense to all parties, without significant benefit

How could this be improved? The standard for intervention in PSB proceedings could be more rigorously applied to require interveners to demonstrate, and the PSB to determine, that an intervener's relevant interests cannot adequately be represented by the Department or other parties. This would make 248 proceedings more efficient, less complex and less expensive for all parties. It would provide an appropriate forum for a formal resolution of claims that the PSD, ANR or other approved parties are not adequately representing the public.

Adequate protection of lands, environmental & cultural resources

Coordination/timing of state level permits

Strengths

- The PSB process effectively allows agencies with jurisdiction over collateral permits to present evidence to support their determinations.

Weaknesses

- State level permits and the process to obtain them can be expensive, time consuming and complicated.

Environmental permits

Strengths

- Environmental permit standards are rigorous and comprehensive in protection of natural and cultural resources.

Weaknesses

- Permitting standards are not consistent from project to project. This creates confusion for developer, communities and the public, potentially undermining confidence in the permitting process.
- The standard for aesthetics – the “Quechee Test” is inherently subjective

Adequate protection of lands, environmental & cultural resources

Do permits adequately address all environmental concerns?

- Yes

How could this be improved?

- Consider making the Department of Health a statutory party with responsibility for presenting evidence on the impacts of projects on the public health (in the same manner as ANR under 248(a)(4)(E))
- More specific, consistent standards for meeting permit conditions such as environmental/habitat mitigation.
- Time limits for agencies to grant or deny permits after applications are complete.

Monitoring Compliance

Monitoring Compliance

System for monitoring compliance with permit conditions

Strengths

- ANR permits and PSB Section 248 CPGs contain intensive compliance conditions and requirements, during construction, operation and eventual decommissioning. ANR has a strong compliance enforcement program, especially for stormwater. The PSB has strong enforcement power, including revocation of a CPG, for non-compliance.

Weaknesses

- The ability to adjust projects, during construction or operation is very limited, and the process for seeking and obtaining changes to CPGs to account for appropriate circumstances can be difficult and expensive.

Summary of Strengths & Weaknesses: Recommendations

If there were anything you would change, what would that be? Replace the Quechee Test for aesthetic review and substitute a more objective standard, tailored for generation projects, that also requires the applicant to demonstrate reasonable mitigation of aesthetic impacts.

Based on experience, key recommendations for Commission?

- Generation siting authority should remain with the Public Service Board, as the single statewide agency with expertise in balancing competing interests and applying statewide standards to ensure an economic, environmentally responsible, and reliable electric system for all Vermonters.
- The Commission should acknowledge and give careful consideration to the intensive scrutiny that generation project undergo. The Commission should acknowledge and give careful consideration to the broad opportunities that citizens, interest groups, towns and regions have to participate actively in the generation siting process.
- Any recommended changes should not add additional time, expense, uncertainty, and risk to the process.
- Significant changes to a well-functioning statewide siting process, that has served Vermont since 1972, should not be made in the context of a single controversial energy source.