

MEMORANDUM

TO: House and Senate Committees on Natural Resources
FROM: Chittenden County Regional Planning Commission
DATE: September 18, 2013
RE: Recommendations on Energy Siting Policy Commission's Recommendations for Siting Electric Generation in Vermont

The Chittenden County Regional Planning Commission (CCRPC) developed recommendations related to the Energy Generation Siting Policy Commission's report on Siting Electric Generation in Vermont. The CCRPC focused its review on recommendations that relate to RPC involvement in developing energy guidelines and policies of the regional plan, funding, and how it interacts with its member municipalities in the preparation of the regional plan and its review of municipal plans.

CCRPC's Recommendations on the Energy Generation Siting Policy Commission's Report

Many of the EGSPC's recommendations put an increased emphasis on planning that strengthens the role of RPC's in the Section 248 process. Generally, CCRPC is in support of the role the EGSPC has recommended for RPCs. However, some issues of concern did arise and are discussed below. The full text of the EGSPC's recommendations is in the next section.

The CCRPC recommends:

1. general support of the EGSPC's recommendation 1 for the Public Service Department (PSD) to provide RPCs with the guidance needed to carry out energy planning that contributes to the state achieving energy goals.
2. the following changes to the EGSPC's recommendation 2:
 - a. Close collaboration with municipalities be emphasized more in updating regional plans to ensure compatibility between municipal and regional plans.
 - b. The regional planning process should also evaluate and address compatibility between municipalities and adjacent regions regarding energy siting planning.
 - c. Clarify that the regional plan only be 'dispositive' under 30 V.S.A § 248 specifically related to criterion 30 V.S.A § 248 (b) (1) and not all criteria. Criterion (b)(1) currently states: "with respect to an in-state facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality;" and,
3. that per recommendation 3, funding be increased for each RPC to take on this expanded work. It should be recognized that this is an expanded set of tasks for the RPCS that will increase their role in the section 248 process and costs to accomplish this work are unknown. It should also be recognized that the work involved for each region will vary depending largely upon population and the number of municipalities. The CCRPC ad hoc Energy Siting Committee recommends that funding be based upon the formula for allocating regional planning funds to the eleven RPCs in the state with regards to population and the number of municipalities.
4. adoption of recommendation 4, but asks that this recommendation include language encouraging municipalities to collaborate in the development of the regional plan and examining compatibility with adjacent municipalities in their municipal plan.
5. implementation of EGSPC's recommendation 10.

6. implementation of EGSPC's recommendation 22 with the elimination of the last sentence.
7. pursue recommendation 28 which states that funding be identified to support the expanded responsibilities of the eleven RPCs in the state.

Full Text of EGSPC's Recommendations Relevant to RPCs

EGSPC's Recommendation 1: The PSD shall develop a state 'roadmap' to meet the CEP and statutory energy targets.

The PSD shall develop a 'roadmap' for meeting Vermont's 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 policymakers 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 RPCs with essential guidance to carry out their own energy planning so as to contribute to overall state energy goals while also meeting and respecting other objectives, such as natural resource goals.

Process: This planning exercise should be carried out by the PSD in collaboration with the Agency of Commerce and Community Development (ACCD), ANR, other relevant state agencies, utilities, and RPCs¹⁴, with ample opportunity for public input. The PSD should facilitate this exercise through technical assistance and administration of funding provided by the legislature. It should also be closely coordinated with the Vermont System Planning Committee (VSPC) to proactively plan for the state's future transmission needs. VSPC and VELCO planning and public outreach strategies have demonstrated effective approaches to collaborating with multiple agencies and utilities, as well as involving the public in decisions about alternative scenario planning that could serve as important models for building a 'roadmap' for energy planning. The Commission recommends that a similar group be formed to aid in the energy planning process.

Outreach: A fundamental element of building a roadmap must include a concerted effort by the PSD and other relevant agencies to explain - and illustrate - to communities across the state what different energy scenarios will entail. This will allow communities to understand that meeting the CEP and statutory goals will not result in covering all ridgelines with turbines or all fields with solar farms, but rather will comprise a mix of many different energy sources at a variety of scales, balancing strengths and weaknesses of each (in terms of output, costs, natural resource impacts, greenhouse gas emissions, etc.) and optimizing conservation and efficiency measures. The Commission recommends that the PSD consider an education outreach effort about how energy works, the challenges to our current energy system, and the basic economic and environmental costs and benefits of our choices. This will also enable communities and municipalities to more effectively participate in their own energy planning exercises to find constructive ways to proactively contribute to state goals.

Tools: Some of the tools that could inform this process include: ANR's newly released 'Biofinder' tool to identify areas of particular natural resource importance; the Vermont Renewable Energy Atlas; energy scenario planning models under development by the University of Vermont's Gund Institute, Energy Action Network (EAN), and others; VELCO transmission maps; VSPC's identified constrained areas on the electric grid; cumulative impact models built by the Wilderness Society (among others); and a new 'Energy Zones Mapping Tool' developed by the Eastern Interconnection States Planning Council. In addition, there are a number of important federal resources, including those of the National Renewable Energy Laboratory, the Department of Energy, and the US Environmental Protection Agency. This state-level planning will provide the fundamental inputs, guidance and tools for effective planning at the regional level. As indicated in Recommendation #2, the iterative work between the PSD and the RPCs will be critical to this process, and will require that energy aspects of regional plans be developed in a coordinated fashion to enable the PSD to assess whether the plans, taken together, are consistent with Vermont energy goals and statutes. 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.

EGSPC's Recommendation 2: RPCs shall develop energy guidelines, policies, and land use suitability maps as part of their regional plans in order to identify high/low potential areas for electric generation siting consistent with legislated energy goals and the CEP.

- *By updating regional plans to include these guidelines, policies, and land-use suitability maps (to be defined in relevant statutes), RPCs shall have formal party status and their plans shall be given **'substantial consideration'** under 30 V.S.A. § 248 in the siting process.*
- *If determined by the PSD to be consistent with legislated energy goals and the CEP, the plans shall be **'dispositive'** under 30 V.S.A. § 248 in the siting process.*

The best places for energy development, and the resources to fund their development, are limited by a number of factors. 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 - is essential for Vermont's energy and land use policies to succeed.

a) The first step is to ensure that the statutes governing RPCs and their plans define the necessary elements to incorporate in a regional plan in order for it to be consistent with legislated energy goals and the CEP. This may require amending statutes, including 24 V.S.A. §§ 4302, 4348(a), 4350, and 4382. Such amendments would provide: i) a clear definition of the energy-related content of those plans, including the aspects necessary for the PSD to make a consistency determination; ii) guidance on energy siting and planning; and iii) timelines for when the energy aspects of regional plans need to be submitted to the PSD, consistent with statutory requirements for updating the CEP.

Using many of the tools described in Recommendation #1, the PSD/ANR will provide the necessary guidance, tools, training, and resources to RPCs which, in their processes, work in collaboration with municipalities to develop the energy aspects of their regional plans that reflect their geographic characteristics as well as their energy generation, conservation and efficiency priorities.

Examples of high potential areas could be: places where efficiency gains might be possible (e.g., capacity upgrades at existing hydroelectric sites, or maximizing the thermal potential of McNeil Generating Station or other 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 30 V.S.A. § 248(b)(5). These high potential/low potential areas may differ significantly by technology.

It is the intent of the Commission to provide regions with the opportunity to proactively indicate how they prefer to contribute to meeting state goals. However, for a region to simply opt-out or construct a blanket prohibition against any particular technology does not constitute adequate planning or meet the intent of this recommendation.

- *By completing and adopting the energy update of a regional plan pursuant to the revised statutes, the RPCs shall have formal party status upon notice to the PSB, and their plans shall be given **'substantial consideration'**¹⁵ (i.e. greater weight than currently applies under 30 V.S.A. § 248).*

b) Once updated, the elements of each regional plan affecting energy will need to be reviewed by the PSD, concurrently with other updated regional plans to determine both individual plan consistency and - in the aggregate - overall statewide consistency with the legislated energy goals and the CEP¹⁶. The intent is to encourage regions to be consistent with the state energy goals, but to also provide sufficient flexibility for the regions to be both creative and selective about doing their part to meet the goals.

- *If the PSD determines overall statewide consistency of RPC plans with legislated energy goals and the CEP, and if it then determines that the elements of a given regional plan affecting energy are also consistent, then the*

regional plan shall be *'dispositive'* in the siting process, meaning that any project appearing before the PSB must be in conformance with the regional plan.

- If the elements of the regional plan affecting energy are not deemed consistent, then the PSD should provide guidance for ways to adjust the plan to bring it into consistency.
- If a region does not adjust its plan in a manner that the PSD determines is consistent with legislated energy goals and the CEP, but its regional plan contains the new energy sections required by statute, then the plan shall receive *'substantial consideration'* in the siting process, but shall not be dispositive.
- If any disagreement about consistency is not resolved between a RPC and the PSD during this planning phase, then the PSB will make a determination of consistency as needed to determine the weight to be given a regional plan in the context of a particular docket. The PSD and the RPC are parties to the process and will provide evidence as to whether a regional plan is consistent with legislated energy goals and the CEP.

EGSPC's Recommendation 3: As a top priority for legislative attention, the RPC planning costs must be adequately funded.

The Commission believes that the foundation of improving the siting process is enhanced planning work at all levels, with particular emphasis on Vermont's 11 regions. For this reason, it recommends as a top priority that the legislature approve adequate resources for this critical planning work (estimated initial cost of \$40,000 per region, to be administered by the PSD). It will be equally important to fund the costs of periodic updates of the regional plans (schedule and amount to be established by the PSD).

The Commission acknowledges that allowing regional plans to become dispositive in the siting process is a substantial increase in leverage accorded to regions, and can only be granted if the plans are developed with the necessary attention to a wide range of complex factors affecting energy in Vermont. However, it also believes that with sufficient resources and training, this planning work will not only engage Vermonters at all levels in understanding the benefits and costs of our energy choices, but also will provide them the opportunity to proactively participate in determining how their regions will help meet state goals. Without adequate funding for this planning process, the recommendations outlined above are meaningless.

EGSPC's Recommendation 4: Once regional plans have been updated as per Recommendation #2, municipal plans in that region shall be reviewed by the RPC for compatibility with the regional plan (in accordance with 24 V.S.A. § 4350). If approved as compatible, then they shall be given 'substantial consideration' by the PSB in the siting process.

It is the intent of the Commission to provide municipalities with the opportunity to proactively indicate how they prefer to contribute to meeting regional goals. However, for a municipality to simply opt-out or construct a blanket prohibition against any particular technology does not constitute adequate planning or meet the intent of this recommendation. Under 24 V.S.A. § 4350, "the RPC shall approve a municipal plan if it finds that the plan: (A) is consistent with the goals established in § 4302 of this title; (B) is compatible with its regional plan; (C) is compatible with approved plans of other municipalities in the region; and (D) contains all the elements included in subdivisions 4382(a)(1)-(10) of this title." If municipal plans are approved by the RPCs under the updated regional plans, the Commission recommends that they be given 'substantial consideration' by the PSB in the Section 248 siting process.

In order to assist towns with the development of compatible municipal plans and related siting policies, guidelines for what constitutes a compatible municipal siting policy should be developed by the RPCs in collaboration with the PSD and ACCD. Technical assistance in developing and revising such policies and plans should be made available to municipalities. If a municipality chooses not to participate, or if its plan is not approved by the RPC, the plan will retain 'due consideration' currently accorded to municipal planning recommendations under 30 V.S.A. § 248(b)(1).

The Commission recommends that the language in 30 V.S.A. § 248(b)(1) be amended to clarify that ‘due consideration’ or ‘substantial consideration’ will be given to municipal or regional ‘plans’ rather than just to the recommendations of commissions or a portion of those plans. Currently the statute requires that the PSB find that the “facility, will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality.”

The Commission also recommends that 30 V.S.A. § 248(b)(7) be amended to have an electric generation facility be in compliance with the CEP rather than the ‘electric energy plan’ in order to address the interrelated issues across the energy subsectors. Currently the statute states that, before the PSB issues a CPG, it shall find that “the purchase, investment or construction...is in compliance with the electric energy plan approved by the department under section 202 of this title, or that there exists good cause to permit the proposed action.”

EGSPC’s Recommendation 10: 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 (in Recommendation #2) and would be applied to expenses associated with experts, staff time, attorneys and other related ‘party’ costs. These costs should be funded under the following limits.

- In order for a RPC to be eligible to receive funding, the PSD must first determine that the energy implications of the regional plan are consistent with the legislated energy goals and the CEP. 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 CEP and legislated energy targets.
- 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 plans. 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).

If a municipality raises an issue, and the statutory parties (ANR, PSD, etc.) cannot resolve the issue, then the PSB has the authority to hire an expert to address the concern.

EGSPC’s Recommendation 22: When determining a project’s impact, the PSB should give ‘substantial consideration’ (i.e. greater weight) to Act 250 criteria as part of the siting process review.

When determining a project’s impact, the PSB should give ‘substantial consideration’ (i.e. greater weight) to Act 250 criteria as part of the siting process review.

These criteria include 10 V.S.A. § 6086(a)(1) through (8) and (9)K. This recommendation is made with the explicit understanding that, consistent with current practice and case precedent, the PSB will, and should, continue to include in its 30 V.S.A. § 248 (b)(5) review, examination of impacts beyond the more narrow 10 V.S.A. § 6086(a)(1) through (8) and (9)K criteria in order to make a broad finding on a project’s effect on esthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and public health criteria. The Commission also recommends that the Natural Resources Board consider reviewing and modernizing all of these same Act 250 criteria (10 V.S.A. § 6086(a)) to reflect new scientific understanding of impacts related to electric generation and global climate change.

EGSPC’s Recommendation 28: The PSD shall make a recommendation to the Legislature regarding funding options to cover the costs of an improved siting process.

The PSD, in cooperation with other relevant agencies, shall consider options for funding mechanisms to cover the costs of an improved siting process for the purposes of making recommendations to the Legislature. This would help address issues of increased demand for services from relevant agencies (ANR, PSD, PSB, and possibly VAAFM and DOH)

related to an increasing number of electricity generation docket, 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 Exhibit 20 for details). It is important to note that some of these costs are one-time initial costs, whereas others will be marginal increases in recurrent costs. Consequently, it will be important to consider funding mechanisms that allow for both.

Potential funding mechanisms to consider are that 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 generators (note: merchant generators are not obligated to pay the gross receipts tax imposed on utilities for the sale of electricity, whereas they impose a burden on the siting process that is not adequately recovered by the present fee structure. In this context, it is important that project related costs not be borne by taxpayers.); and iii) bill-back authority, which is currently available in statute (30 VSA, §§ 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 fairness and predictability for applicants.

Type of Potential Funding Source	One time	Recurrent	As Needed
Filing Fee (per MW)	X		
Annual fee		X	
Bill-back authority for agencies			X
Bill-back for RPCs (on cost-share basis)			X

The Commission is aware that State budgetary resources are constrained in the current economic environment and has made an effort to keep additional costs of the recommendations to a minimum. It has also identified potential sources of funding, where possible, to address both initial ‘investment’ costs, as well as any recurrent costs generated by the approach. It is the Commission’s belief that there are certain key recommendations that are central to the overall success of the proposed approach to revising the siting process. If these recommendations – such as financing the RPC’s planning efforts, hiring a Case Manager and improving the PSB website – are not adequately funded, then it could critically undermine the overall goals.

Exhibit 20 summarize the three types of costs anticipated by the Commission related to the recommendations contained in this report: i) Initial costs: those that require a one time, up-front investment, such as the initial planning costs for RPCs or the website design and installation; ii) recurrent costs: those that will have an annual or otherwise regular recurrence, such as a Case Manager or regular updates of the Regional Plans; and iii) costs that occur on an ‘as needed’ basis: these include costs related to specific studies requested during the contested process, periodic website improvements, or funding for RPCs (on a cost-share basis) to support their work as a statutory party. Exhibit 20 outlines a few of the potential types of fees that could be considered to help meet the anticipated costs resulting from improving the siting process.

Exhibit 20: Potential Cost Categories

Potential Cost Item	Initial Cost	Recurrent Cost	As Needed
State Planning/Scenario modeling	X		
RPC Plans (11 Regions)	X (est. \$440,000)	X (est. \$44,000)	
Website Improvements/On-line Docketing	X		X
Case Manager		X	
State Agency Costs related to the Permitting Process		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