



November 13, 2015

Christopher Recchia, Commissioner  
Public Service Department  
112 State St. Third Floor  
Montpelier VT 05620

Dear Commissioner Recchia,

Below please find our recommendations for inclusion in the solar siting task force report. You have heard these recommendations from us before.

1. The Public Service Board (PSB) should give “substantial deference” to municipal concerns and determinations by holding hearings in any municipality potentially affected by a proposed project. Substantial deference is defined in H. 377 as it was introduced in 2015 to mean:

“Substantial deference, when used in relation to a land conservation measure or recommendation of a municipal or regional body, means that the measure or recommendation is presumed valid, correct, and reasonable, and that the burden of proof is on a party that contends that the Board should find good cause not to require a facility to comply with the measure or recommendation. To meet this burden of proof, the party must demonstrate that requiring such compliance would cause a detriment to the general good of the State that a reasonable person would conclude substantially exceeds the public good furthered by the measure or recommendation.

2. The Public Service Department (PSD) and PSB, if not the legislature, should define “community scale” as it is used with reference to energy facilities. We recommend the definition of community scale in H.377 as it was introduced in 2015 to mean:

“... means a facility for the generation of electricity that:

(A) conforms to each of the following:

(i) siting criteria established by the municipality in accordance with 24 V.S.A. § 4413; and

(ii) a clear community standard intended to preserve aesthetics or scenic beauty contained in the municipal plan adopted under 24 V.S.A. Chapter 117.

(B) is sited on a tract of land that does not exceed one acre or, if sited on a larger tract, does not consume more than one acre of that tract;

(C) does not exceed a height of 100 feet or 20 feet above the adjacent tree canopy, whichever is greater;

(D) has a capacity greater than 50 kilowatts and not more than 500 kilowatts; and

(E) will make the electricity it generates available to serve structures in the surrounding area. “

*Sponsor of:*

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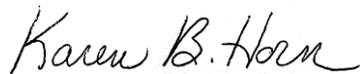
3. The PSB should include all local decisions concerning the project within its docket, formulate areas of inquiry based on concerns raised in the local hearing process, and require any decision to address local concerns raised in local determinations and adopted municipal plans.

4. The Quechee Analysis in Act 250 requires district commissioners to determine if 1) a project will have an adverse aesthetic impact on the area; and if it does, 2) whether the adverse impact would be undue. In order to determine if an impact is undue, district commissioners must examine whether the project violates a clear community standard; whether it offends the sensibilities of the average person, or the applicant has filed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.

The PSB should define “average person”, for purposes of applying the Quechee analysis to projects, to mean the same thing that it means in Act 250 and that it always has meant until the PSB decided to give it a different definition. A person who owns or occupies property next to a proposed site for a renewable energy project does not give up his or her “averageness” merely because he or she owns or occupies adjacent property. (Rutland Renewable Energy Docket 8188 Order denying reconsideration)

5. A municipality should have the right to say at some point that they host a sufficient number of renewable energy projects and more projects would violate their adopted plan or clear community standard. Perhaps that tipping point is when renewable energy projects in a municipality generate enough kilowatts to meet their energy needs.

Sincerely,

A handwritten signature in cursive script that reads "Karen B. Horn".

Karen Horn  
Director, Public Policy & Advocacy