Draft Solar Siting Task Force Recommendations Outline v. Jan. 12~~5~~, 2016[MA1]

For discussion purposes only

Planning

I recommend that the SSTF report introduce these "Planning" recommendations with a narrative that describes generally a SSTF finding action is needed to improve the ability of regional planning commissions and municipalities to contribute to the PSB's decision making on CPG decisions for solar projects. Consider including this "Planning" section in a larger section that also addresses the actions affecting ways the PSB's CPG decision process uses the information that RPC and municipal planning may provide to solar project CPG application review and approval.

This "Planning" section addresses steps designed to strengthen the quality of RPC and municipal planning for solar projects. To be effect the results must be applied effectively in the PSB's Section 248 CPG decision process.

I support the non-legislative proposals offered here for strengthening RPC and municipal planning. They pursue the overarching objectives of strengthening the capacity of regional planning and municipal government to plan for increasing numbers of solar facilities and to contribute information that the PSB can use in their actions on CPG applications for solar generation facilities. I recommend that we place a priority on the non-legislative actions outlined here because they address directly steps that will improve planning practices that affect solar generating siting.

With respect to the "possible legislative suggestions" I suggest we consider specifically whether they will effectively contribute to the overarching objective we out line for RPC and municipal planning. I defer to others with a better understanding than I have of context of regulation and law that these suggestions address.

1. RPC Planning Support
    a. Concern: lack of meaningful energy planning at the regional level.
    b. Solution: expand RPC planning initiative to all regions.
    c. Recommendations:
        i. No explicit legislative language needed, as DPS is prepared to budget for these.
        ii. Statement of support from SSTF in recommendations.
        iii. Potential legislative suggestions:
            1. Making RPCs parties by right, like towns:
            30 V.S.A. § 248(a)(4)(F) is added to read:
            The regional planning commission for the region in which a facility is located shall have the right to appear as a party in any proceedings held under this subsection. [To take effect upon passage]
            2. Making energy planning mandatory rather than optional for RPCs?
            Move from Optional Powers and Duties of RPCs, 24 V.S.A. § 4345(6):

Undertake studies and make recommendations on land development, urban renewal, transportation, economic, industrial, commercial, and social development, urban beautification and design improvements, historic and scenic preservation, the conservation of energy and the development of renewable energy resources, State capital investment plans, and wetland protection.

To Duties of RPCs, 24 V.S.A. § 4345a [potentially with some modification, as these tend to be generic duties and reference specifics in 24 V.S.A. § 4302 (Purpose; goals). May need to instead amend 24 V.S.A. § 4302(c)(7): To encourage the efficient use of energy and the development of renewable energy resources. Perhaps to something like: To provide for the conservation of energy, deployment of energy efficiency, and development of renewable energy resources, including identification of areas suitable for sufficient development of environmentally sound, cost-effective energy resources in alignment with state energy goals.

2. Town Planning Support
    a. Concern: lack of meaningful energy planning at the town level. [Comment: The word "meaningful" is important here and needs further explanation. We are addressing here the dilemma people speaking for local government describe in the PSB's approach to considering local land use concerns, that is the PSB requirement that local guidance be addressed in Comprehensive Plans not land use regulation, when it is common practice to articulate the guidance affecting specific proposals in land use regulation (e.g., zoning ordinances) rather than in comprehensive of plans that focus on broad goals.]
    b. Solution: capitalize on opportunities for regional energy planning to benefit towns. [SMS2][MA3]
    c. Recommendations:
        i. Statement of support for creation of tools for towns related to RPC planning work, starting with RPCs providing towns with individual town map layers from RPC work, and development of standard energy modeling and mapping protocols.
        ii. Statement of support for potential development, should funding be made available, of a model town energy plan and protocols or guidelines to towns for energy planning and meaningful town plan language.
        iii. Potential legislative suggestions:
            1. Same as potential legislative suggestion #2 above,[SMS4] amend 24 V.S.A. § 4302 (Purpose; duties), particularly 24 V.S.A. § 4302(c)(7): To encourage the efficient use of energy and the development of renewable energy resources. Perhaps to something like: To provide for the conservation of energy, deployment of energy efficiency, and development of renewable energy resources, including identification of

areas suitable for sufficient development of environmentally sound, cost-effective energy resources in alignment with state energy goals.

2. Amend 24 V.S.A. § 4382 (The plan for a municipality), particularly (9), perhaps as follows:
   An energy plan, including an analysis of comprehensive energy resources, needs, scarcities, costs and problems within the municipality, a statement of policy on the conservation of energy, including programs, such as thermal integrity standards for buildings, to implement that policy, a statement of policy on the development of renewable energy resources, a statement of policy on patterns and densities of land use likely to result in conservation of energy, and land-use suitability maps identifying areas of high and low potential for the development of renewable energy resources.

Incentives

This is a very important section. I urge the SSTF to address incentives broadly considering not only the financial incentives described in this section but also considering the incentive effects of CPG application and decision process.

The financial incentives addressed here require careful treatment but they relate to other policies and programs. For example, the size of the financial incentive required to achieve an outcome will be affected by the costs imposed on developers and even communities by the CPG decision making process and the scale of the projects that may be developed on desirable sites.

We understand clearly now that solar project developers will select the sites that involve the lowest cost to design, finance, license, and build and accordingly that the current net metering pricing and CPG application process favors larger projects on open fields in rural areas in close proximity to existing three-phase electric grid power lines in electric grid area with surplus capacity.

A starting point for considering incentives is the outcome we want incentives to reward. The PSB's recently proposed new net metering rule specifically identifies preferred locations for solar generation, i.e. projects located

- On a new or existing structure that has a primary purpose other than the generation of electricity
- On a brownfield, as certified by the Agency of Natural Resources
- On a sanitary landfill, as defined in 10 V.S.A. §6602
- Over a parking lot
- In the disturbed portion of a gravel pit
- In close proximity to loads the solar generation can serve

Earlier this week we heard that VT Agency for Agriculture Food and Markets recommends we add to this list steps to avoid siting solar generation on prime agriculture land and on land in active agricultural production.

The SSTF report should observe that net metering and standard offer pricing programs for solar projects generally do not encourage solar generation siting outcomes that serve these objectives.

An important exception is found in the special provisions included in Act 56 for solar projects located on land-fill sites that serving municipal energy customers. Act 56 addressed siting on landfill sites by allowing large (up to 5 MW) projects to qualify for net metering compensation. Significantly increasing project capacity caps for net metering projects and offering simpler licensing requirements that acknowledge resulting benefits, as Section 248j now does for small projects, can lower the cost of achieving siting objectives.

The PSB's draft new net metering takes a step in the right direction by proposing a new 2 cent per kWh price adder and 10 mile radius location requirement for community solar projects that are linked to such objectives. However, the rule does not offer any evidence that these provisions are what is required to achieve these outcomes effectively.

There is no indication in the proposed rule that the PSB rigorously calculated the cost or benefit value of locating solar generation on these sites when it set the 2 cent net metering adder for projects on qualifying sites. Evidence to the contrary may be found in the failure to locate a significant share of solar generation at the target sites under the much more generous existing rule.

Setting the price and associated qualifications for solar generation in terms that promise sought for results is important, is difficult and requires careful analysis. I recommend that the SSTF report identify this as a high priority for additional work by both the Public Service Department and the PSB. Getting the financial incentive right involves both electricity pricing policy for solar purchases from producers and effective incentive design, an important and somewhat complex art. I urge that legislation identify objectives for the PSB and the PSD to implement but not specify specific incentive or price levels.

3. Incentivize Appropriate Siting of Projects (on the built environment, town-identified areas, and some appropriate [AR5][MA6]greenfields)
    a. Concern: in seeking the lowest capital and operational costs, projects are locating in greenfield areas, some of which may be ~~that are~~ valuable to communities for other purposes. Further explain that many of the desirable outcome locations often involve higher project cost per unit of output –examples - locating on landfill sites, on parking lot structures, and on buildings especially in retrofit settings.
    b. Solution: regulatory and/or financial incentives for projects to avoid sensitive environmental, agricultural, and scenic areas.
    c. Recommendations:
        i. Regulatory tool recommendations
            1. S. 230 colocation language, which states colocation may be allowed by the Board when: General Comment – I suggest we frame this recommendation in terms of the outcomes to be achieved by the collocation proposal. Perhaps the SSTF should recommend that this be implemented with a pilot project approach, with some state resource support. Accordingly, this may be most appropriately developed and implemented with broad legislative direction, deferring to program development process the responsibility to design specific rewards or penalties that will empower the collocation. The broad legislative direction may empower the PSB and PSD to apply rate incentives, such

as those suggested in S.230, as needed.~~230 colocation language, which states colocation may be allowed by the Board when:~~

a. Town plan designates a tract of at least 20 acres for such colocation;
b. Each net metering system will be on this tract; and
c. Each system is pre-approved by the Selectboard

If a town designates a tract for colocation, any system > 15 kW located ~~outside~~ within this tract ~~is docked~~gets an adder of $0.03/kWh of bill credit. [MA7]

Potential comments:

- Only makes sense for solar, but language relates to all technologies.
- What criteria does the set-aside need to meet to ensure that the land towns choose is suitable for solar development and not cost prohibitive?
- What criteria applies for selectboard withholding approval?
- Is 20 acres sufficient? Should the docking of incentives for projects outside these areas happen only if a town has designated at least X (50?) acres?
- Towns may have one or more ideal parcels that each are < 20 acres, but in total are ≥ 20 acres
- ~~In lieu of or in addition to docking $0.03/kWh for projects outside of town-designated colocation areas,~~ projects located IN said areas could get a conditional waiver of the (b)(1) [orderly development] and (b)(5) [aesthetics] criteria.
- What about allowing colocation of net-metered solar projects on rooftops and parking structures to ensure that the available space is utilized to its maximum potential?
- My Comments: (1) I suggest we frame comments on this collocation proposal in S.230 in terms of the objective of providing incentives that will encourage the sought for siting outcomes. (2) It will be easier to develop an effective program if legislature focuses on the outcomes it seeks rather than the mechanisms. A focus on specific mechanisms in legislation may result in poor performance or unintended, undesirable outcomes.

~~Utilize solar as a tool to transition former wetlands (drained wetlands) in tilled agricultural production to achieve water quality gains; also utilize solar in agricultural drainage ditch buffers.~~ (see my comment on point 7 addressing recommendations of the Agency of Agriculture, below]

~~[Will need statutory language from ANR/AAFM]~~ [MA8]

2.

Robert Dostis: Towns should be encouraged to designate a tract of land for purposes of solar development for different types of solar projects not solely for the co-location of net metering. Co-location of net metering is a de-facto expansion of the size of net metering systems above the capped size and promotes more of the most expensive forms of solar deployment. (Currently net metering is at .19/.20 cents versus Standard Offer/PPA at .12 +/- cents.) Tracts of land designated for colocation should promote the most economical solar development so utility customers are not paying more than necessary. A tract of land designated for solar development could contain one 150 kW solar system for a community group net metered system, a standard offer project, a system based on a power purchase agreement between developer and utility, a utility built system, or some combination. The added value is that the RECS from the non-net metered projects are controlled by the utility and can be retired in-state to help meet Vermont's renewable goals, unlike RECS from net metering that are owned by the owner/developer.

A recommendation is to charge the Agency of Commerce and Community Development and the Public Service Department with appropriate stakeholder to formulate a proposal for using Economic Solar Zones for promoting economic development and job creation – whereby the solar development gets preferential siting treatment and existing businesses that expand or new businesses that build in the Economic Solar Zones get lower electric rates for some period of time.

ii. Financial tool recommendations

1. Net Metering: draft proposed net metering rule provides a $0.02/kWh incentive for **excess production** for projects located (1) On a new or existing structure that has a primary purpose other than the generation of electricity; (2) On a brownfield, as certified by the Agency of Natural Resources; (3) On a sanitary landfill, as defined in 10 V.S.A. §6602; (4) Over a parking lot; or (5) In the disturbed portion of a gravel pit.
   Comment: In addition to a per kWh price incentive, I suggest that the incentives include allowing larger scale sites to qualify for net metering, especially for landfill, brownfield, and other settings where economies of scale may reduce the per kWh cost of the project. The existing landfill site law allows up to 5 MW but limits it to municipal customers. I suggest at least allowing projects up to 2.2 MW on qualifying sites. I also suggest that the available incentives include some streamlining of the 248 CPG application requirements (i.e., some version of a 248 (J) process) at qualifying sites for appropriate issues, for example the acoustic impact and aesthetic impact analysis requirements. Adding in project size and 248 CPG process incentives may reduce the financial incentives required to achieve significant increases in the capacity located on desired sites.

Potential comments:

- Because the rule only applies the $.02/kwh to net excess production, it may be ineffective; revise to apply to all production.
- Should town-designated areas be added to the list? Or any other "appropriate greenfield areas," such as the drained wetlands in transition and agricultural ditch buffers discussed above?

2. Standard Offer: S. 230 proposes a 3-year pilot project for preferred locations, starting in 2017. 1/3 of annual increase (7.5 MW in 2016, '17, and '18) to be allocated to plants in gravel pits, landfills, quarries, landfills, brownfields, roofs, and parking lots. Applies to both independent developer and provider blocks.

Potential comments:

- DPS comments to Board re: 2016 RFP proposed (for this RFP and beyond) 1/3 of annual allocation go to technologies located on non-greenfield sites, subject to specially calculated price cap. If no bids received, capacity would be reallocated to other categories. Minimal provider (utility) block exempted.
- Could support S. 230 proposal with potential modifications including perennial applicability rather than pilot program, reallocation of capacity to other categories if no bids received, and exemption of provider block. Could support immediate implementation via DPS comments.

4. Incentivize Projects That Directly Benefit Neighbors
   a. Concern: Solar projects that include tangible electric system or rate benefits to host communities are less likely to engender opposition.
   b. Solution: Ensure tangible benefits to project neighbors and host towns.
   c. Recommendations:
      i. Net Metering: draft proposed net metering rule proposes participants of group net metering systems must be located within a 10-mile radius of the system.[AR9][MA10] I recommend we oppose this approach.

Potential comments:

- ~~Is 10 miles appropriate/meaningful? Seems to serve as a proxy for "town."~~the 10 mile distance requirement is arbitrary and poorly related to the sought for objectives. As an alternative consider inviting project developers to qualify the project as a community focused project by defining the community participation in terms that relate to local geography, improvements in local electricity service reliability, and other community benefits.

- The 10 mile distance is likely too great to have any grid benefits (siting generation close to load)
- This would serve to limit some Vermonters [AR11]who live in less densely populated areas from having the opportunity to participate in group net metering.

ii. Non-Net Metering Projects: pathway to enable portions of non-NM projects to be reserved for participants in host town?

Propose statutory language similar to current 30 VSA § 219a(k), to be included at 30 VSA § 8010 [Note, it is difficult to draft exact language without having a finalized net metering rule, all statutory language proposed in this report will likely need to be revised once a final net metering rule is in place to ensure compatibility]: An electric company may contract to purchase all or a portion of the output products from a group net metering system, provided:

a. The group net metering system obtains a certificate of public good in accordance with subsection (c) of this section;

b. The net metering customers must be located within the municipality in which the plant is located.

c. The output capacity of the plant may exceed 500 kW, provided:

(A) The contract assigns the amount of power to be net metered; and

(B) The net metered amount does not exceed 500 kW; and

(C) Only the amount assigned to net metering is assess to the cap provided in the Board's Rules adopted pursuant to subdivision (c) of this section.

~~ii.~~ ~~[Need statutory language. This may already be possible under §219(a)(k), but §219 is repealed in 2017; no apparent equivalent in 30 VSA § 8002 or § 8010, though may be possible for PSB to allow for in rule.]~~

Process, Transparency, and Public Participation[AR12][MA13]

5. Mediation

Comment: This is designed to encourage collaboration and negotiation to improve project applications. As an alternative it may be productive for the PSB to offer projects streamlined CPG decision processes (something like a 248j application process) when the project is supported by the municipality in which the project is located.

~~d.~~a. Concern[AR14]: participation in some aspects of the § 248 process ~~is~~ can be difficult, especially for pro se interveners. A mechanism is needed to facilitate mediation of community concerns with projects, outside of the formal contested case process.

~~e.~~b. Solution: Enable a mediation pathway for resolution of concerns between project developers and host towns/neighbors. [Should there be a size threshold? Projects larger than 150 for example? Should this apply to net metering as well as non-net metering?]

~~f.~~c. Recommendations:

i. Enable PSB ~~hearing officer(s)~~staff (or outside mediators hired by the PSB) to play this role, up until the point a case becomes contested[clarification required – when does the case become contested? When a party formally files for

intervention and is granted party status? When a significant issue is raised (in net metering context) and a hearing is granted on those issues? Can someone who is not a party request mediation?]

[Need to develop statutory language; consider requiring Board to develop a rule as part of its general procedures and as part of the net metering rules]~~is mediation already an option under the VRCP (Title 12 Ch. 194, Uniform Mediation Act)?]~~

ii. Enable PSB to order ~~outside~~ 3d party mediation at the point a case becomes contested

[Need to develop statutory language – consider requiring Board to develop a rule as part of its general procedures and as part of the net metering rules]~~[Need to develop statutory language]~~

iii. Consider using process similar to 18 CFR 385.603 (FERC settlement process). Can appoint a settlement officer; finite period of discussions between developer and person requesting settlement conference; settlement officer makes a recommendation to the Board whether to extend settlement period, accept settlement proposal, or go to hearing.

iv. Mediation process should not be so time-consuming or complicated that it slows down the permitting process or makes it more expensive [consider a cap on mediation period tied to the type of proceeding – i.e. shorter period for net metering applications than for full 248 reviews?]

Proposed statutory language for non-met metered projects:
-add to 30 VSA § 248(a)(4)(B): The Public Service Board shall hold technical hearings at locations which it selects. Mediation may be requested by agreement between all parties to the proceeding or ordered by the Public Service Board on its own motion or on motion of a party to the proceeding. The Public Service Board shall adopt and implement rules that establish the standards and procedures governing mediation.
-add to 30 VSA § 8007(b)(1)((B): … Provided however that the Board may not waive 30 VSA § 248(a)(4)(B) as it relates to mediation.

Proposed statutory language for net-metered projects [if applicable]:
-add to 30 VSA § 8010(c)(3)(B): … Provided however that the Board may not waive 30 VSA § 248(a)(4)(B) as it relates to mediation.

~~5.~~6. § 248 process assistance to developers and the public I like this subsection. I have nothing to add.

a. Concern: § 248 process can be inaccessible for both the public and developers.
b. Solution: Customer assistance for those seeking to participate in the process.
c. Recommendations:
    i. S. 230 would require the Board to employ a "Public Assistance Officer," who would provide guidance and answer questions from parties and members of the public regarding procedural and case status matters.[AR15][MA16]

Potential Comments

- Siting Commission recommendation was for the Board to hire a *Case Manager* to provide guidance on all aspects of the siting application process to all parties, particularly as they relate to timing. The Siting Commission also recommended that the PSB enable Hearing Officers to have procedural discussions with parties or the public.

ii. Statement of support to encourage the electronic filing system initiative underway at the PSB.

~~ii.~~iii. Encourage the PSB to develop and revise the *Citizen's Guide* to include a standard intervention request form.

~~6.~~7. ~~Participation of Agency of Agriculture~~Participation of Agency of Agriculture - OK. The discussion at the the VT Energy Action Network hosted today on *"Seeking a Win-Win-Win: Clean Water, Sustainable Farms, Clean Energy"* may be useful The discussants reached a conclusion that the process of addressing Agency of Agriculture concerns may be best addressed by a pilot application because the issues are complex. The recommendations set forth below respond to the presentation to the SSTF earlier this week. They are an appropriate start but the SSTF report may also observe that there is an opportunity to increase the benefits of a site design for a combination of farmers, developers, and the public interest concern for sustaining a farm economy, protecting wetlands, reducing nutrient loading in Vermont water bodies. Consider including a recommendation for pilot demonstrations supporting these innovations.

a. Concern[AR17]: Agency of Agriculture, Food & Markets (AAFM) is limited in its ~~ability~~ resources to advocate for conservation of primary agricultural soils in the § 248 process.
b. Solution: Provide AAFM with tools to participate more ~~effectively~~ efficiently in the § 248 process.
c. Potential legislative suggestions:
    i. For ground-mounted solar projects that impact agricultural soils, AAFM should become a "party by right" in the section 248 process, and be given the right to intervene under Board Rule 2.209(A), *intervention as of right*.
    30 V.S.A. § 248(a)(4)(F) is added to read:
    The Vermont Agency of Agriculture, Food & Markets shall have the right to appear as a party in any proceedings held under this subsection. For solar projects, participation shall be limited to ground-mounted solar projects that impact agricultural soils. [To take effect upon passage]

ii. AAFM should be given "bill back" authority for its involvement in applications[AR18].
30 V.S.A. § 21 is amended to read:
(a) The Board, the Department, ~~or~~ the Agency of Natural Resources, or the Agency of Agriculture, Food & Markets may allocate the portion of the expense incurred or authorized by it in retaining additional personnel for the particular proceedings authorized in section 20 of this title to the applicant or the public service company or companies involved in those proceedings.

(a)(1)… From time to time during the progress of the work of such additional personnel, the Board, the Department, ~~or~~ the Agency of Natural Resources, or the Agency of Agriculture, Food & Markets shall render to the company details …

(a)(2)[consider whether Agency of Ag should be able to allocate portion of expenses incurred in retaining additional staff]

(b) replace all references to "the Board, the Department, or the Agency of Natural Resources" with " the Board, the Department, the Agency of Natural Resources, or the Agency of Agriculture, Food & Markets."

(d) [Does the Agency of Ag have an equivalent to 3 VSA § 2809(d)(1)(A)?]

[Should Agency of Ag have the same reporting obligations as ANR under (e)?]

~~[Other parts of this section would need to be amended as well]~~

Environment and Aesthetics

~~7.~~8. Notice provisions to adjacent towns

a. Concern: Projects located on town borders are not noticed to adjacent towns, and may affect the scenic resources of those towns.
b. Solution: Require notification of projects to adjacent towns in the same manner they are currently required for host towns if the project is located within 500' of a town boundary.
c. Recommendations:
    i. Net Metering: draft proposed net metering rule proposes pre-application and notice requirements for new proposed categories of systems, including Category II systems (i.e. ground-mounted systems > 15 kW to < 150 kW) and Category III (i.e. ground-mounted systems 150-500kW). Potential revisions to these include
        1. Category II pre-application requirements:
        5.111(D) Applications for Category II Net Metering Systems.
        (1) Pre-Application Information Session and Consultation. Prior to filing an application under this subsection, the applicant shall conduct a public information session in the town where the net metering system would be located. Notice of the time, date, and location of the session shall be provided to the legislative body and planning commission, to the legislative body of the adjacent municipality if the project will be located within 500 feet of that municipality's boundary, and to all adjoining landowners no less than fifteen days before the public information session. The notice shall also state that the applicant intends to file a Section 8010 application, identify the location of the project site, and provide a description of the proposed project that contains sufficient detail about the proposed project to afford the

recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Board's jurisdiction to address. As part of the public information session, the applicant shall solicit recommendations regarding the siting of the net metering system.

2. Category II service requirements:
   5.111(D) Applications for Category II Net Metering Systems.
   (3) Service of Applications. The applicant shall provide by certified mail copies of the completed application form to the following persons and organizations:
   (a) all adjoining landowners; and
   (b) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located, and the municipal legislative body of any town located within 500 feet of the proposed project.
   The applicant shall cause a copy of the completed application form to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail:
   (a) the Department of Public Service;
   (b) the Agency of Natural Resources;
   (c) the Division for Historic Preservation; and
   (d) the electric company.
   With permission of the intended recipient, the applicant may serve a copy of the completed application form via electronic mail. All certified mail shall be postmarked on the same day the application is deemed complete by the Board. The Board shall liberally grant extensions of time for the above-listed entities to file comments when the applicant fails to cause timely service of the application.
3. Category III pre-application requirements:
   5.111(E) Applications for Category III Net Metering Systems.
   (1) Notice Requirements. The applicant must provide written notice by certified mail, at least 45 days in advance of filing a Section 8010 application, to the following entities:
   (a) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located and the legislative body of the adjacent municipality if the project will be located within 500 feet of that municipality's boundary; and
   (b) all adjoining landowners.
   The applicant shall cause a copy of the completed application form to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance

with the Board's rules, in which case service shall be by certified mail:
(a) the Department of Public Service;
(b) the Agency of Natural Resources;
(c) the Division for Historic Preservation; and
(d) the electric company.
With permission from the intended recipient, any applicant may serve a copy of the notice via electronic mail. The notice shall state that the applicant intends to file a Section 8010 application, identify the location of the project site, and provide a description of the proposed project that contains sufficient detail about the proposed project to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Board's jurisdiction to address. The notice shall provide contact information and state that the recipient may file inquiries or comments with the applicant about the project and that the recipient will also have an opportunity to file comments with the Board once the application is filed. If, within 180 days of the date of the advance notice, the applicant has not filed a complete application for the project that fully complies with the filing requirements of this rule, the notice shall be treated as withdrawn without further action required by the Board.
(2) Pre-Application Information Session and Consultation. Prior to filing, the Applicant shall conduct a public information session in the town where the net metering system would be located. Notice of the time, date, and location of the session shall be included in the applicant's 45-day advance notice under (1), above. As part of the public information session, the applicant shall solicit recommendations regarding the siting of the net metering system.

4. Category III service requirements:
(3) Service of Applications.
Upon filing an application with the Board, the applicant shall provide by certified mail copies of the completed application to the municipal legislative bodies and the municipal and regional planning commissions where the net metering system will be located, and the municipal legislative body of any town located within 500 feet of the proposed project. In addition, the applicant shall provide notice by certified mail to all adjoining landowners that the application has been filed with the Board.
The applicant shall cause a copy of the completed application to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail:
(a) the Agency of Natural Resources;

(b) the Department of Public Service;
(c) the Division for Historic Preservation; and
(d) the electric company.
All certified mail shall be postmarked on the same day the application is deemed complete by the Board. With permission from the intended recipient, any applicant may serve a copy of the completed application form via electronic mail, in which case the date the electronic mail is sent shall be the same date the application is filed with the Board. The Board shall liberally grant extensions of time for the above-listed entities to file comments where the applicant fails to cause timely service of the application.

i. Non-net metering: Notice provisions currently exist in rule, not statute. Rule 5.400, which governs non-net metering projects, already directs projects to provide notice to "affected municipal and regional planning commissions, and municipal legislative bodies." PA will need to clarify if adjoining towns routinely receive notice of projects on their borders, which would indicate whether a revision is warranted. An alternative is to make a change to 30 V.S.A. § 8007(b), which gives the Board broad latitude modify notice and hearing requirements as appropriate.

An option s to propose statutory language for 30 VSA § 248(a)(4) and § 2007(b)(1) to require Board to amend Rule 5.400 to clarify that "affected municipal and regional planning commissions, and municipal legislative bodies" includes "the municipal legislative body of any town located within 500 feet of the proposed project."

~~i.~~j.

~~8.~~9. Clarification of Quechee Analysis

a. Concern: It is not clear to project neighbors exactly what their role is in the 248 process, how their views are considered by the Board, and how the process differs from aesthetics review in Act 250. It is also not clear to towns how to write town plans that carry weight in the 248 process.
b. Solution: The Board should provide plain-language guidance on the Quechee analysis to 248 participants, and should strive to address their concerns to the extent practicable.
c. Recommendations:
    i. Provide comparison of Quechee analysis in Act 250 vs. Section 248.

Act 250

In Act 250, a project must comply with Criterion 8, aesthetics (must not have an undue adverse effect on aesthetics). The Commission relies upon a two-part test to determine whether a project satisfies Criterion 8. First, it determines whether the project will have an adverse effect under Criterion 8.

Part One: Adverse Impact? If yes, then,
Part Two: Undue Adverse Impact? Found if any one of the following is true:

a. Does the Project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?

b. Does the Project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?
c. Has the Applicant failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the Project with its surroundings?

Note: [Natural Resources] Board precedent notes that application of Criterion 8 does not guarantee that views of the landscape will not change: *Criterion 8 was not intended to prevent all change to the landscape of Vermont or to guarantee that the view a person sees from his or her property will remain the same forever. Change must and will come, and criterion #8 will not be an impediment. Criterion #8 was intended to insure that as development does occur, reasonable consideration will be given to the visual impacts on neighboring landowners, the local community, and on the specific scenic resources of Vermont.*

From: Act 250 Training Manual, http://www.nrb.state.vt.us/lup/publications/manual/8aestheticsfinal.pdf

Section 248

In Section 248, criterion (b)(5), part of which includes aesthetics, is weighed along with the other criteria in determining whether a project is in the public good. The Public Service Board similarly relies upon the two-part Quechee analysis, and the Environmental Board's methodology for determination of "undue" adverse effects on aesthetics and scenic and natural beauty as outlined in the Quechee Lakes decision. Quechee Lakes Corporation, #3W0411-EB and 3W0439-EB, dated January 13, 1986.

Part One: Adverse Impact? If yes, then,
Part Two: Undue Adverse Impact? Found if any one of the following is true:
a. Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic beauty of the area?
b. Have the applicants failed to take generally available mitigating steps which a reasonable person would take to improve the harmony of the project with its surroundings?
c. Does the project offend the sensibilities of the average person? Is it offensive or shocking because it is out of character with its surroundings or significantly diminishes the scenic qualities of the area?

Note: *In addition to the Quechee analysis, the Board's consideration of aesthetics under Section 248 is "significantly informed by overall societal benefits of the project."*

From: *In Re: Northern Loop Project*, Docket 6792, Order of 7/17/03 at 28

Furthermore, the Legislature in Act 99 directed the Public Service Board to apply the Quechee Test as described in the *case In Re Halnon*, 174 Vt. 515 (2002) (mem.), Quechee Test for net metering systems. Accordingly, the Board has proposed the following in its proposed net metering rule:
In determining whether a net metering system satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Board applies the so-called "Quechee test" as described in the case In Re Halnon*, 174 Vt. 515 (2002) (mem.), quoted below:*

Under this test a determination must first be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. If the answer is in the affirmative the inquiry then advances to the second prong to determine if the adverse impact would be "undue." Under the second prong an adverse impact is undue if any one of three questions is answered in the affirmative: 1) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? 2) Does the project offend the sensibilities of the average person? 3) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings? An affirmative answer to any one of the three inquiries under the second prong of the Quechee test means the project would have an undue adverse impact.

The proposed rule also includes an explicit definition of "adverse aesthetic impact":

(E) <u>Adverse Aesthetic Impact.</u> In order to determine that a project would have an adverse impact on aesthetics and the scenic and natural beauty under subsection (A), above, the Board must find that a project would be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

ii. Request that the Public Service Board develop plain-language guidance on the Quechee Test, specifically w/r/t: private views (particularly neighbors' views) and where and how they are considered in the Quechee Test; and community standards and examples of town plan language that is adequately clear and specific to be meaningful in the 248 process. [Need statutory language]

~~9.~~10. Post-construction aesthetics compliance reporting

a. Concern: Some projects may not be fully compliant with the aesthetics mitigation requirements of their permits.

b. Solution: Require some measure of post-construction compliance reporting as a condition of the Certificate of Public Good.
c. Recommendations:
    i. Net Metering: draft proposed net metering rule includes language related to compliance proceedings that may be sufficient (at least to address projects up to 500 kW), as follows:

5.115 <u>Compliance Proceedings</u> In response to a public complaint or on its own motion, the Board may take any or all of the following steps to ensure that a net metering system is constructed and operated in compliance with the terms and conditions of the CPG issued for that net metering system and any related Board order:

(A) Direct the certificate holder to provide the Board with an affidavit under oath or affirmation attesting that the person, company, or corporation or any facility or plant thereof is in compliance with the terms and conditions of the CPG pursuant to 30 V.S.A. 30(g);

(B) Direct the certificate holder to provide additional information;

(C) After notice and opportunity for hearing, amend or revoke any CPG for a net metering system, impose a penalty under 30 V.S.A. § 30, or order remedial activities for any of the following causes:

(1) the CPG or order approving the CPG was issued based on material information that was false or misleading;

(2) the system was not installed, or is not being operated, in accordance with the National Electric Code or applicable interconnection standards;

(3) the net metering system was not installed or is not being operated in accordance with the plans and evidence submitted in support of the application or registration form;

(4) the holder of the CPG has failed to comply with one or more of the CPG conditions, the order approving a CPG for the net metering system, or this rule; or

(5) other good cause as determined by the Board in its discretion.

If the procedures above remain insufficient, modifications could also be made to the provisions in the proposed rule for standard conditions (text below abbreviated):

5.121 <u>Standard Conditions of Approval Applicable to Net Metering Systems</u>

(A) The following conditions of approval are hereby deemed to be incorporated into any certificate of public good for any net metering system issued or deemed issued pursuant to 30 V.S.A. § 8010. For good cause shown or on the recommendation of the Department of Public Service or the Agency of Natural Resources, the Board may alter or waive these conditions or impose additional conditions to ensure that a net metering system meets the criteria of Section 248 and will promote the general good of the state.

(1) Consistency with Plans and Evidence. [….]

(2) Approvals and Permits. [….]

(3) Existing and Future Statutory Requirements. [….]
(4) Transfers. [….]
(5) Waste Disposal. [….]

(B) In addition to the conditions in (A), above, the following conditions of approval are hereby deemed to be incorporated into any certificate of public good for any ground-mounted net metering system issued or deemed issued pursuant to 30 V.S.A. § 8010. For good cause shown or on the recommendation of the Department of Public Service or the Agency of Natural Resources, the Board may alter or waive these conditions or impose additional conditions to ensure that a net metering system meets the criteria of Section 248 and will promote the general good of the state.
(1) Hours of Construction. [….]
(2) Oil Containment. [….]
(3) Indiana Bat Habitat. [….]
(4) Deer Wintering Areas. [….]
(5) Soil Erosion. [….]
(6) Streams. [….]
(7) Wetlands. [….]
(8) Screening. All screening shall be maintained for the life of the net metering system. All dead or dying vegetation shall be replaced. After construction and by August 31 of each year thereafter for a period of three years, the certificate holder shall submit sufficient documentation, including photographs, for the Board to determine that screening has been installed and maintained according to the approved plans. The initial filing after construction is complete shall be certified by a professional landscape architect.

ii. Non-net metering: Certificate of Public Good conditions are generally determined on a case-by-case basis.[Need statutory language to require post-construction aesthetics compliance certification as a standard condition for all ground-mounted solar projects.]

~~10.~~11. Identification of all equipment and infrastructure in application

a. Concern: Applications – especially for projects 15-150 kW – do not always include identification of all equipment and infrastructure that may have a bearing on aesthetics (e.g., plywood-mounted inverters).
b. Solution: Require detailed information on project equipment on the application form for systems.
c. Recommendations:
    i. The Board should revise its current application form for systems greater than 15 kW and less than 150 kW as follows:
    For all systems with capacities greater than 50 kW, provide a site plan or plans of the Project containing the following information:

        (a) The scale in feet and a representative fraction. The plan must be drawn to scale and submitted on an 11” x 17” sheet.
        (b) A compass orientation, legend, title, and date.

(c) An inset showing the location of the system within the Town.
(d) Proposed facility location(s), all construction features, and dimensions of all proposed improvements.
(e) State and municipal highways and setback distances from those highways to the system.
(f) Property boundaries and setback distances from those boundaries to the system.
(g) The locations of any proposed utility lines.
(h) A description of any areas where vegetation is to be cleared or altered and a description of any proposed direct or indirect alterations or impacts to wetlands and other natural resources protected under 30 V.S.A.§ 248(b)(5), including the limits of earth disturbance and the total acreage disturbed.
(i) Locations and specific descriptions of proposed screening, landscaping, ground cover, fencing, exterior lighting, ~~and~~ signs, and any other visible infrastructure on the project site.
(j) The location of any proposed access driveway, roadway, or parking area.

~~11.~~12. Recovering wetlands through solar transition

a. Concern: There is currently little incentive for a farmer to stop the practice of cropping soils that were formerly wetlands but which were tile-drained and historically exempted from wetlands regulation.
b. Solution: Facilitate recovery of these former wetlands by allowing time-limited solar development to occur at the same time agriculture is permanently ceased.
c. Recommendation: The Agency of Natural Resources and the Agency of Agriculture, Food & Markets are strongly encouraged to develop a proposal for consideration by the Legislature.

~~12.~~13. Act 56 changes

a. Concern: Act 56 provided for statewide setbacks, town screening bylaws, and for towns to be parties by right. On the one hand, these changes may need modification that cannot wait given the pace of development. On the other hand, these changes may sufficiently address the problems they were meant to solve, but we won't know for some time.
b. Solution: No consensus on a solution.
c. Recommendation: The Task Force acknowledges that efforts were made to address siting concerns in Act 56 that have not yet had time to work; however, some have concerns about the direction of the changes and the complications they entail.