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Jan Eastman, Chair
Energy Siting Policy Commission
Department of Public Service
112 State Street
Montpelier VT 05620-2601

Dear Jan:

I found your discussion this morning at the Energy Siting Policy Commission to be most interesting and more than a little disappointing.

Under current law, the Public Service Board (PSB) needs only to give “due consideration” 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. (30 V.S.A. § 248 (b) (1). As well, the PSB needs to find that an in-state facility will not have an undue adverse effect on esthetics, historic sites, air and water purity, the natural environment, the use of natural resources, and the public health and safety, having given “due consideration” to criteria 1 through 9 of Act 250 and greenhouse gas impacts.

Once municipal officials, representing their community’s interests, have experienced the PSB process, we hear from them. Our members find the standard of “due consideration” – or at least the application of this standard – to be wholly inadequate. This is because: (1) the PSB is now considering a far more diverse variety of projects – small and large, with significant land use impacts – than it has ever done before; (2) the impacts on host municipalities are considerably more apparent than they may have been before; (3) the PSB does not necessarily address the issues either municipalities or the public raise; and (4) because “due consideration,” we often hear, means very little. The controversy around the process has not abated at all this year. The extended and heated discussion on the Senate floor on Tuesday clearly demonstrated that reality. We believe the conversation has only begun and that it is long overdue.

In January, the VLCT Board voted to urge the legislature to:

1. require the PSB to give “substantial consideration” to municipalities by at least holding hearings in the municipalities potentially affected by the projects at issue;
2. include all local decisions concerning the project within the PSB docket;
3. require the PSB to formulate areas of inquiry based on concerns raised in the local hearing process; and

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4. require any decision on the project to address local concerns raised in the local decisions.

They reserved the right to re-visit that position as the need arose.

At its March meeting, the VLCT Board voted to support the requirements in S.30 for the PSB to find that an electric generation project of more than 500 kilowatts that is not designed to remediate a constraint in the electric transmission or distribution system complies with the first nine Act 250 criteria, and that it conforms with any duly adopted local or regional plan. S.30 would have also incorporated the case law from Act 250 decisions surrounding those findings. An adopted plan may be entirely consistent with a proposed project – or it may not. The fact is that a municipality has taken the time and not inconsiderable effort to address the issues in a comprehensive and – yes – local manner. Those efforts and determinations need to be respected in the PSB process. We also commend to you the testimony of attorney Dick Saudek on this issue.

Your second “Options Paper” and your discussion this morning outlined a host of issues and possible strategies to address them. I would like to focus on a few of them.

Increase emphasis on planning at state, regional, and town levels, allowing regional plans to carry greater weight in the siting process.

Regional commissions are not towns and cities. In providing more weight to regional plans in the siting process, as is suggested by the language and discussion, you have not automatically incorporated town or city plans. We believe it is imperative to give more weight to municipal plans as well. Where the regional and municipal plans agree, as is frequently the case, the job of the PSB would be made easier. Where the regional and local plans do not agree, the PSB would have a decision to make and that would take some time. And where municipal plans do not address the issue, the regional plan would be the only plan considered. These scenarios have been addressed before in other forums, notably Act 250, and could be accomplished here. As well, the incentive to reach some kind of accord before entering the PSB process would be strong. We oppose the concept of regional plans being dispositive, or given significant weight, to the exclusion of town plans.

If DPS authorizes the Public Service Department to approve energy elements of regional plans, to plan for future renewable energy generation at the state level, and to ensure that the regional plan conforms to the state plan, you will essentially turn the concept of locally based planning, embodied in Act 200, on its head. We urge you to write that authority very narrowly and make clear that a municipal and regional plan might have legitimate reasons for deviating from the state plan. There has been much discussion of the “public good” around the siting of energy generation facilities. Clearly the public good of the state and the planet is not the same as the public good of the municipality in which a facility is sited or of the neighboring municipalities. At the very least, one is general and one is particular. Those differences need to be recognized and addressed in the certificate of public good (CPG) process.

Municipalities are now writing land use plans to incorporate standards for protection from large and sometimes intrusive projects that impose significant costs, both on the host municipality and

its neighbors. They are also incorporating language to support the kinds of projects they would like to encourage within their borders. They are doing so largely with volunteer labor and few resources to write language that meets the PSB standards, to present that language to the PSB, or to press their point at the PSB.

Municipalities and not only regions need to be properly resourced to hire the help needed to conduct each of these tasks. However this planning is not solely the responsibility of the PSB, but rather an unfulfilled obligation of the legislature and executive office. In the fiscal year 2014 budget, allocations from the property transfer tax to the state's 11 regional commissions total \$2,758,884 and to the state's 246 cities and towns total \$449,570 (via a municipal planning grant program).

Implement a simplified tiered approach to siting and modifications to increase the opportunity for public participation.

We endorse the effort to encourage more community and distributed projects. A tiered process that allows for adequate notice to the public and potential host municipalities, public participation and response from the PSB, and even a preference for community sized and based projects would provide that encouragement.

The Options Paper does not in any way mention creating a PSB obligation to respond to issues raised by municipalities or regions in defending their plans or by the public. We refer you back to the January policy adopted by the VLCT Board, noted above. We urge you to include in any recommendations, ***a PSB obligation to address the issues raised and to respond to them in the CPG process.***

Thank you for the opportunity to comment and for your commitment to improving the process for siting electric generation facilities.

Sincerely,



Karen Horn, Director
Public Policy and Advocacy