

112 State Street
4th Floor
Montpelier, VT 05620-2701
TEL: 802-828-2358



TTY/TDD (VT): 800-253-0191
FAX: 802-828-3351
E-mail: psb.clerk@vermont.gov
Internet: <http://psb.vermont.gov>

**State of Vermont
Public Service Board**

NOTICE

To: Net-metering rule e-mail service list; Docket 7873 e-mail service list; Docket 8550 e-mail service list

From: Holly Anderson, Deputy Clerk of the Board ^{HAS}

Re: Request for Proposals and Comments on Proposed Rules on Maintenance of Aesthetic Mitigation Measures and Decommissioning

Date: November 9, 2016

On November 1, 2016, the Vermont Department of Public Service ("Department") filed, pursuant to Section 11(a) of Act 174 (2016 Adj. Sess.) a petition for rulemaking on the issues of postconstruction inspection of aesthetic mitigation and decommissioning. The Department's proposed rules are attached to this memorandum.

Act 174 requires that the Vermont Public Service Board ("Board") file proposed rules on the above subjects with the Office of the Secretary of State by December 15, 2016. This, in turn, requires that the Board submit proposed rules to the Interagency Committee on Administrative Rules by November 30, 2016.

The Board hereby requests comments from any interested persons on the proposed rules filed by the Department. In light of the limited time for the Board to consider such comments and any modifications to the Department's proposal, the Board asks that such comments be submitted no later than **November 18, 2016**.

Comments should be submitted electronically to the Clerk's email address at psb.clerk@vermont.gov. Electronic filings should be submitted in a format that is searchable and extractable.

Individuals and organizations who wish to be included in the e-mail service list for information about the rulemaking on these subjects should provide their e-mail address to the Clerk of the Board at the address listed above.

Enclosures: (1)



State of Vermont
 Department of Public Service
 112 State Street
 Montpelier, VT 05620-2601
<http://publicservice.vermont.gov>

[phone] 802-828-2811
 [fax] 802-828-2342
 [tdd] 800-734-8390

VERMONT PUBLIC
 SERVICE BOARD

2016 NOV 1 PM 4 21

November 1, 2016

Judith Whitney, Clerk
 Vermont Public Service Board
 112 State Street
 Montpelier, VT 05620-2701

Re: Aesthetic Mitigation and Decommissioning Standard Conditions Rulemaking

Dear Ms. Whitney,

Enclosed for filing in the above-referenced proceeding, please find the original and six (6) copies of the Vermont Department of Public Service's ("Department") Petition to Initiate Rulemaking, Order of Notice, and two (2) Proposed Rules. The Department submits these filings pursuant to the requirements of Section 11a(a) of Public Act 174 (2016 Vt., Adj. Sess.).

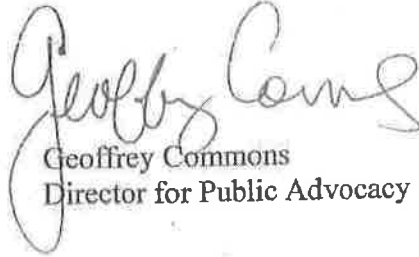
The proposed rule regarding aesthetic mitigation seeks to implement the statutory directive, and is intended to codify and clarify the obligation of CPG holders. New features include requirements for filing a notice of facility completion, an as-built site plan, and confirmation that aesthetic mitigation measures have been completed. The rule also provides timelines for installation of plantings, with directions for situations where planting or other measures cannot be completed within those timelines. The rule also addresses the possibility of conflict between CPG conditions or the rule and any applicable municipal by-laws.

The proposed rule addressing the decommissioning of facilities permitted under 30 V.S.A. § 248 seeks to codify many of obligations that the Board typically imposes on CPG holders related to the decommissioning of non-utility facilities now. The proposed rule does, however, make some noteworthy changes to current practice. First, the proposed rule requires that petitioners include more detail in their decommissioning fund estimates than what is required under Board Rule 5.402(C)(2). Second, the rule allows for the updating of an irrevocable standby letter of credit for a non-utility facility to be updated every three years during the first 15 years of facility operation, as opposed to an annual update that is generally required now. Third, the proposed rule contains a waiver provision that allows a petitioner to potentially secure necessary decommissioning funds through an alternative financial instrument to a letter of credit.



Thank you for your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Geoffrey Commons". The signature is written in dark ink and is positioned above the printed name and title.

Geoffrey Commons
Director for Public Advocacy

STATE OF VERMONT
PUBLIC SERVICE BOARD

VERMONT PUBLIC
SERVICE BOARD

2016 NOV 1 PM 4 23

Petition of the Vermont Department of Public Service
to Initiate Rulemaking for Rules Regarding Postconstruction
Inspection of Aesthetic Mitigation and Decommissioning

PETITION

The Vermont Department of Public Service (Department) respectfully petitions the Vermont Public Service Board (Board) to open a proceeding to promulgate rules implementing recent revisions to 30 V.S.A. § 248(a)(5), regarding post-construction inspection of aesthetic mitigation and facility decommissioning, as required by Public Act No. 174 § 11a(a) (2016 Vt. Adj. Sess.). In support of the request, the Department states as follows:

1. In 2016 the Vermont Legislature enacted Act 174 which directed the Department of Public Service to file a petition for rulemaking with the Public Service Board containing proposed rules to implement 30 V.S.A. § 248(a)(5) regarding postconstruction inspection of aesthetic mitigation and decommissioning of in state facilities approved pursuant to Section 248..
2. Pursuant to 30 V.S.A. § 2(a)(7), the Department has the responsibility to supervise and direct the execution of laws relating to public service corporations and firms and individuals engaged in such business, including the siting of electric generation and transmission and natural gas facilities under 30 V.S.A. § 248.
3. The Public Service Board (Board) has jurisdiction to issue Certificates of Public Good for the construction of electric generation, electric transmission, and natural gas facilities within the state of Vermont pursuant to 30 V.S.A. §248, among other provisions.
4. Pursuant to 30 V.S.A. § 2(c), the Department may initiate rulemaking before the Board on matters within the jurisdiction of the Board.
5. The Draft Rules proposed herein reflect the efforts of the Department of Public Service to effectuate the legislative directive in Act 174, based on experience derived from participation in aesthetics and decommissioning matters in Section 248 proceedings.

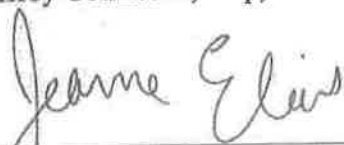
6. The Draft Rules seek to provide clarity regarding the obligations of CPG holders, and to implement the purpose stated in Act 174: to ensure that all required aesthetic mitigation is performed and maintained and that facilities are removed once they are no longer in service. .
7. In accordance with Board Rule 2.404, the Department has included the following documents:
 - a. Draft Rules regarding Post Construction Inspection of Aesthetic Mitigation and Decommissioning
 - b. Proposed Order of Notice.

WHEREFORE, the Department respectfully requests that the Board:

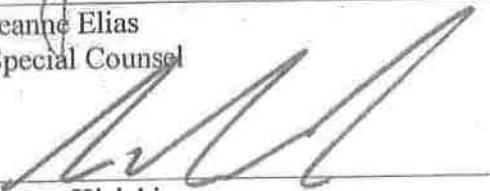
- A. Initiate a rulemaking proceeding to adopt the Draft Rules , consistent with 3 V.S.A. § 806 and Act 174; and
- B. Grant any further relief that the Board deems necessary and proper.

Dated at Montpelier, Vermont, this 1st day of November 2016.

VERMONT PUBLIC SERVICE DEPARTMENT
By Geoffrey Commons, Esq., Director for Public Advocacy

By: 

Jeanne Elias
Special Counsel

By: 

Aaron Kisicki
Special Counsel

STATE OF VERMONT
PUBLIC SERVICE BOARD

ORDER OF NOTICE

**PETITION OF VERMONT DEPARTMENT OF PUBLIC SERVICE
TO AMEND BOARD RULE 5.400: REQUIREMENTS FOR PETITIONS TO
CONSTRUCT ELECTRIC AND GAS FACILITIES PURSUANT TO 30 V.S.A. § 248**

WHEREAS, on November 1, 2016, the Vermont Department of Public Service ("Department") filed a petition to amend Board Rule 5.400: Requirements for Petitions to Construct Electric and Gas Facilities pursuant to 3 V.S.A. § 806 and Board Rule 2.404. Additional information regarding the petition is available on the Public Service Board's website at <http://psb.vermont.gov>.

NOW, THEREFORE, IT IS HEREBY ORDERED, in accordance with 30 V.S.A. Sections 8 and 10 that a PUBLIC HEARING be had upon said petition before a Hearing Officer of the Public Service Board, _____, on _____, commencing at _____, in the Public Service Board Susan M. Hudson Hearing Room located on the 3rd floor at 112 State Street, Montpelier, Vermont.

The above hearing location is handicapped accessible. Any person with a disability who wishes to attend and will need special accommodation should contact the Public Service Board (802-828-2358) by no later than _____, if they will need that accommodation.

IT IS FURTHER ORDERED that notice of said hearing be given by one publication of this Order on _____, in the _____, a daily newspaper published in _____, Vermont.

DATED at Montpelier, Vermont, this _____ day of _____, 2016.

VERMONT PUBLIC SERVICE BOARD

By: _____
Judith Whitney
Clerk of the Board

OFFICE OF THE CLERK

Filed: _____

Attest: _____
Clerk of the Board

PROPOSED RULE

X.X00 STANDARD CONDITIONS FOR POST-CONSTRUCTION AESTHETIC MITIGATION COMPLIANCE

X.X01 Purpose and Scope

The purpose of this Rule is to ensure that all required aesthetic mitigation is performed and maintained for the life of all facilities constructed pursuant to a Certificate of Public Good (CPG) issued under 30 V.S.A. § 248, including net metering facilities permitted under § 8002.

X.X02 Definitions

For the purposes of this rule, the following definitions apply:

- (A) Board: the Vermont Public Service Board.
- (B) CPG: certificate of public good.
- (C) CPG holder: a person or company who has received a CPG pursuant to 30 V.S.A. § 248 to construct and/or operate an electric generation, electric transmission, or natural gas facility.
- (D) Facility: an electric generation, electric transmission, or natural gas facility for which a petition for a CPG pursuant to 30 V.S.A. § 248 or § 8002 is submitted to the Board after implementation of this rule.

X.X03 General Rule

All aesthetic mitigation measures required by the Board must be implemented in accordance with the conditions of the CPG and the approved mitigation plan. All such mitigation measures must be maintained for the life of the project in a condition that fulfills their intended purpose.

X.X04 CPG Holder Post-Construction Requirements

1. Within 60 days following the completion of construction of the facility, the CPG holder or agent thereof shall provide notification to the Board, all parties to the Docket and all entities entitled to notification through Board Rule 5.400 or Rule 5.100, as applicable. This notification shall include the following:
 - a. The date that construction was completed.
 - b. The date the facility was interconnected to the grid.
 - c. The expected completion date for all required aesthetic mitigation as provided within the CPG.
 - d. An as-built site plan supported by an affidavit affirming its accuracy or, if required by the Board, prepared by a Vermont-registered professional engineer or land surveyor, indicating:
 - i. Plan scale and north arrow;
 - ii. The property boundaries for the parcel on which the facility is located, including the limits of the CPG holder's control, if applicable; and

- iii. The location of all physical improvements including the array, interconnection equipment, poles, transformers, fences, access drives and other features.
 - e. A final mitigation plan reflecting any modifications or adjustments needed to address changes in the final design of the facility, the availability of certain plant materials or the consideration of underlying soil or environmental conditions. Any deviations from the approved mitigation plan shall be explicitly identified and justified. The CPG holder shall request advanced permission from the Board for an amendment to the mitigation plan if deviations constitute a substantial change as defined under PSB Rule 5.408.
 - f. Confirmation that all aesthetic mitigation requirements identified in the CPG other than planting (e.g. fencing, berms, and painting) have been completed. If the required measures cannot occur within these timelines, the CPG holder or agent thereof shall so notify the Board and provide an alternative timeline and justification.
2. All landscape mitigation requirements identified in the CPG and as indicated on the Mitigation Plan shall be completed no more than 90 days following the completion of construction, unless such timing would be outside of acceptable plant installation season (April 15th through October 15th). If completion of landscape mitigation cannot occur within the plant installation season, then the CPG holder shall commence installation by April 15th of the following year and have it completed within 60 days. If the installation cannot occur within these timelines, the CPG holder or agent thereof shall notify the Board and provide an alternative timeline and justification. If the justification is based on a municipal solar screening by-law the CPG holder or agent shall provide a copy of the by-law and identify the provisions relied upon. A copy of this filing shall be provided to the municipality at the same time it is filed with the Board. After an opportunity for the municipality to comment, the Board shall resolve any conflict between CPG requirements and the by-law.
3. Within 30 days following the installation of all mitigation requirements, the CPG holder or agent thereof shall file a certification with the Board confirming that landscape mitigation has been performed in accordance with the Mitigation Plan. This certification shall be supported by an affidavit and dated photographs or, at the Board's discretion, shall be prepared by a Vermont-registered landscape architect or forester.
4. At any time, the Board on its own motion, or upon request by a party or affected member of the public or municipality may schedule a site visit or require additional filings to determine compliance. Following any site inspection, the Board may require further process as necessary.

5. For a period of three (3) years, the CPG holder or agent thereof shall conduct an annual inspection of the facility to determine the health, vigor and continued effectiveness of the mitigation. The CPG holder shall file with the Board and parties an annual certification documenting the results of the inspection and any corrective actions taken to address identified issues. Beyond the three-year period, the Board may require an inspection as deemed appropriate.
6. Mitigation shall be maintained for life of the facility as depicted on the Mitigation Plan.

X.X05

Waiver of Rule Requirements

For good cause, which may include the size, length, or unique characteristics of a project or project site, the Board may alter or waive the requirements of this rule.

Date at Montpelier, Vermont this 1st day of November, 2016

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE
Geoffrey Commons
Director for Public Advocacy

By:



Jeanne Elias
Special Counsel

STATE OF VERMONT
PUBLIC SERVICE BOARD

Rulemaking re decommissioning of electric)
Generation, electric transmission, and)
natural gas facilities)

November 1, 2016

PROPOSED RULE OF THE VERMONT DEPARTMENT OF PUBLIC SERVICE

X.X00 DECOMMISSIONING REQUIREMENTS FOR ELECTRIC
GENERATION, ELECTRIC TRANSMISSION, AND NATURAL GAS
FACILITIES CONSTRUCTED AND OPERATED PURSUANT TO 30
V.S.A. § 248

X.X01 Purpose and Scope

This rule establishes the standard conditions for the decommissioning of electric generation, electric transmission and natural gas facilities pursuant to 30 V.S.A. § 248(a)(5). This rule applies to all electric generation, electric transmission and natural gas facilities in Vermont, and to every person, firm, company, corporation, and municipality engaged in the construction or operation of any electric generation, electric transmission or natural gas facility pursuant to 30 V.S.A. § 248 which is or shall become subject to the Vermont Public Service Board.

X.X01 Definitions

For the purposes of this rule, the following definitions apply:

- (A) Board: the Vermont Public Service Board.
- (B) CPG: certificate of public good.
- (C) CPG holder: a person or company who has received a CPG pursuant to 30 V.S.A. § 248 to construct and/or operate an electric generation, electric transmission, or natural gas facility.
- (D) Facility: an electric generation, electric transmission, or natural gas facility for which a petition for a CPG pursuant to 30 V.S.A. § 248 is submitted to the Board after the effective date of this rule.
- (E) Plant capacity: pursuant to 30 V.S.A. § 8002, "plant capacity" means the rated electrical nameplate capacity for an electric or gas generation facility.

X.X02

General Rule

All facilities shall be removed once they are no longer in service. A petitioner seeking to construct and/or operate a facility with a plant capacity greater than 500kW shall include a detailed plan for the decommissioning the facility at the end of its useful life. The decommissioning plan shall include an estimate of anticipated costs associated with full decommissioning and site restoration activities at the facility site. A petitioner seeking to construct and/or operate a facility with a plant capacity equal to or less than 500kW are exempt from this rule's requirements to file a decommissioning plan and/or a draft irrevocable standby letter of credit with the Board, unless otherwise ordered by the Board.

X.X03

Pre-CPG Requirements

- (A) All petitions to construct and/or operate a facility shall include a detailed facility-specific decommissioning cost estimate in present-day dollars, which identifies the costs associated with decommissioning activities including but not limited to:
- (1) Labor, equipment, transportation, and/or disposal costs associated with removal of all facility components from the facility site;
 - (2) All costs associated with full restoration of the facility site,
 - (3) All costs associated with reclamation of any primary agricultural soils at the facility site;
 - (4) All costs associated with obtaining and complying with any federal, state, and local permits that may be required as a result of decommissioning activities;
 - (5) All decommissioning activity management, site supervision, site safety costs; and
 - (6) Any other costs associated with the decommissioning and restoration of the facility site.
- (B) All Decommissioning Costs Included. The decommissioning cost estimate shall include all costs associated with all dismantlement, transportation, disposal, and site restoration activities. Any known or anticipated salvage value for certain project components shall not be subtracted from or otherwise offset any costs included in the decommissioning cost estimate.
- (C) Qualifications of Estimate Preparer. The decommissioning cost estimate shall identify the name, job title, contact information, and qualifications of the individual(s) who prepared the estimate.

(D) Irrevocable Standby Letter of Credit. All petitions to construct and/or operate a non-utility electric generation, electric transmission, or natural gas facility shall include a draft irrevocable standby letter of credit to fund decommissioning and site restoration of the facility site. An executed letter of credit shall be approved by the Public Service Board prior to the commencement of project construction. The letter of credit shall include the following features:

- (1) The Board shall be named the sole beneficiary of the letter of credit;
- (2) Issued by an A-rated financial institution;
- (3) An automatic extension provision (“evergreen clause”); and
- (4) Bankruptcy remote.

X.X04 Utility Facility Post-CPG Requirements

A utility facility’s decommissioning and site restoration costs shall be charged to the facility’s depreciation expense allowed in rates.

X.X05 Non-Utility Facility Post-CPG Requirements

(A) Annual Adjustment and Reporting. A non-utility facility CPG holder shall file an annual report with the Board, the Vermont Department of Public Service, and any other party to the facility siting proceeding upon request no later than February 28 of each year describing any adjustments and changes to the decommissioning fund in the previous year.

(B) Fund Inflation Adjustment. A non-utility facility’s decommissioning fund amount shall be adjusted for inflation annually based upon annual average change in the U.S. Bureau of Labor Statistics’ Northeast Urban Consumer Price Index. The facility decommissioning fund amount shall not be reduced in years when the Northeast Urban Consumer Price Index reports a negative annual average change. Adjustments to the facility decommissioning fund amount shall be included in the project CPG holder’s annual report.

(C) Letter of Credit Adjustment. The non-utility facility CPG holder’s irrevocable standby letter of credit shall be revised no later than February 28 at least every three (3) years through the first 15 years of facility operation, and then each year of operation to reflect any adjustment or change to the decommissioning fund. Any party to the facility siting proceeding may seek a CPG condition and/or Board order requiring more frequent letter of credit adjustments due to facility and/or site conditions. The revised letter of credit shall be included in the project CPG holder’s annual report, if appropriate.

X.X06 Public Service Board Oversight of Non-Utility Facility Decommissioning Fund

(A) Access to Project Decommissioning Fund. The Public Service Board shall have the right to draw upon a non-utility facility's irrevocable standby letter of credit to pay for decommissioning costs in the event that the CPG holder is unable or unwilling to commence decommissioning activities within ninety (90) days of the Board ordering commencement of such activities

(B) Release of Excess Funds Upon Completion of Decommissioning Activities. The non-utility facility CPG holder shall seek a certification from the Board upon full completion of all decommissioning and site restoration activities. Release of any excess decommissioning funds and termination of a non-utility facility's irrevocable standby letter of credit shall occur upon issuance of an Board order certifying that all decommissioning and site restoration activities are complete.

X.X07

Waiver of Rule Requirements

The Board may grant a waiver of any requirement(s) of this rule upon good cause.

Dated at Montpelier, Vermont, this first day of November, 2016.

Respectfully submitted,

VERMONT DEPARTMENT OF PUBLIC SERVICE

By:



Geoffrey Commons
Director for Public Advocacy

Aaron Kisicki
Special Counsel