RECOMMENDATION: DEFINITION OF "PLANT" IN 30 V.S.A. § 8002(18)

Submitted by the Vermont Public Utility Commission to the Senate Committee on Natural Resources and Energy, and the House Committee on Energy and Digital Infrastructure

October 31, 2025

VERMONT

PUBLIC UTILITY COMMISSION

I. Introduction

In 2025, the Vermont General Assembly passed Act 38.[1] Section 5 of Act 38 requires the Vermont Public Utility Commission ("Commission") to provide a recommended amended definition of "plant" in 30 V.S.A. § 8002(18) to the Legislature by November 1, 2025. The legislation reads:

> On or before November 1, 2025, and with input from stakeholders, the Public Utility Commission shall submit a recommended amended definition of "plant" in 30 V.S.A. § 8002(18) and an overview of their process and explanation of the recommendation to the House Committee on Energy and Digital Infrastructure and the Senate Committee on Natural Resources and Energy. In making its recommendation, the Commission shall consider:
>
> (1) the land use benefits of collocation of energy generation facilities;
>
> (2) the ability to ensure comprehensive review of collocated facilities; and
>
> (3) the potential impacts to ratepayers associated with collocated facilities.

On June 30, 2025, the Commission opened a proceeding to investigate the definition of "plant" in 30 V.S.A. § 8002(18). All submissions and Commission-issued documents on this matter are available in the Commission's electronic filing system, ePUC, in Case No. 25-1253-INV.

This recommendation is organized into sections.

- Section I provides an introduction to the legislative directive regarding the definition of "plant" in 30 V.S.A. § 8002(18).
- Section II identifies the participants and process the Commission conducted, pursuant to Act 38.
- Section III sets out the Commission's recommended amended definition of "plant."
- Section IV explains the Commission's recommendation.
- Section V concludes this report.

II. Commission's Stakeholder Engagement

Act 38 contemplates that the Commission will develop a recommendation for amending the definition of "plant" in 30 V.S.A. § 8002(18) after stakeholder engagement. The Commission

[1] The bill as enacted is available at https://legislature.vermont.gov/bill/status/2026/S.50.

opened a proceeding on June 30, 2025, to provide an opportunity for interested parties to submit comments for the Commission's consideration. The Commission solicited two rounds of comments (including proposed amended definitions), held a workshop, and circulated a proposed definition for final comment.

Participants in this proceeding include: the Vermont Department of Public Service, Renewable Energy Vermont, AllEarth Renewables, Inc., Vermonters for a Clean Environment, Downs Rachlin Martin PLLC, Green Mountain Power Corporation, City of Burlington Electric Department, the Nature Conservancy Vermont Chapter, the Vermont Agency of Natural Resources, the Vermont Agency of Agriculture, Food and Markets, and Allco Renewable Energy Limited. Public comments were also filed jointly by the Vermont Public Interest Research Group, the Vermont Natural Resources Council, Vermont Conservation Voters, the Nature Conservancy Vermont Chapter, and the Conservation Law Foundation.

III. Recommended Amended Definition of "Plant"

After consideration of participants' proposals and the factors identified in the legislation, the following is the Commission's recommendation for amending the definition of "plant" in 30 V.S.A. § 8002(18).

30 V.S.A. § 8002(18) is amended to read:

"Plant" means an independent technical facility that generates electricity from renewable energy. ~~A group of facilities, such as wind turbines, shall be considered one plant if the group is part of the same project and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid. Common ownership, contiguity in time of construction, and proximity of facilities to each other shall be relevant to determining whether a group of facilities is part of the same project.~~ Multiple electricity-generating facilities, regardless of when each is constructed, shall be considered one plant if the facilities use the same electricity-generating technology and are located on the same parcel or contiguous parcels of land.

Facilities located on the same parcel or contiguous parcels of land that use the same electricity-generating technology shall be considered separate plants if they meet one of the exceptions below.

(a) *Exception for individual net-metering and self-consumption.* Applies if the facilities:
(1) Are not located on the same parcel of land;
(2) Are interconnected behind separate retail electricity meters; and
(3) Supply different retail customers.

(b) *Exception for additional facilities co-located with a net-metering or standard-offer facility.* Applies when:
(1) The facilities have separate points of interconnection; and

(2) No more than one facility on the same parcel or contiguous parcels participates in net-metering or the Standard Offer Program up to the statutory capacity cap for the applicable program. However, the aggregate capacity of all facilities on a parcel and contiguous parcels will be considered for purposes of determining eligibility under 30 V.S.A. § 8005(a)(2).

(c) *Definitions.*

(1) "Contiguous" means sharing a property boundary with another parcel of land or being adjacent to that parcel of land and the two parcels are separated only by a road, recreation path, railway line, stream, or river.

(2) "Electricity-generating technology" means a method or system used to convert energy from one form into electric power (*e.g.*, wind, hydropower or water, solar, or biomass).

IV. Explanation of Recommendation

The definition of "plant" under 30 V.S.A. § 8002(18) is a statutory screening requirement used to determine whether a facility qualifies for Vermont's renewable energy programs meant to encourage small-scale facilities. If co-located facilities constitute a single plant, and if the combined capacity of that single plant exceeds the statutory capacity cap for participation in a specific renewable energy program, for example, then the Commission must prohibit the facility's participation in that renewable energy program. This screening ensures that the facilities meet the legislative goal of distributed, small renewable energy generation.

Act 38 asks the Commission to work with stakeholders to offer an amended definition of "plant" under 30 V.S.A. § 8002(18). Participants in the Commission's proceeding on the definition of "plant" voiced varying levels of support for increasing the possibility for collocation of renewable energy facilities.

In making our recommendation and in accordance with Act 38, the Commission consider**ed** the land-use benefits of collocation of energy generation facilities; the ability to ensure comprehensive review of collocated facilities; and the potential ratepayer impacts associated with collocated facilities. These policy considerations require that we balance competing concerns. Given the expansion of distributed generation requirements under Vermont's Renewable Energy Standard, the need to find suitable sites in Vermont for renewable energy generation may necessarily require collocation at sites where a facility is already sited or where multiple facilities could be proposed.[2] At the same time, some of Vermont's incentive-based renewable energy

[2] The Commission uses the same process to review (1) facilities that add to existing facilities (an amendment to an already-built system requires a new petition be filed with the Commission) and (2) applications for two facilities simultaneously (each requiring a new petition).

programs compensate generation at rates that are not intended for larger-scale facilities, and the small facilities receiving these incentives already cause significant ratepayer impacts. Taking into account the various approaches offered in the proceeding, the Commission recommends the above definition of "plant."

The goals informing this definition are:

- Balance land use, comprehensive review, and ratepayer impact from collocation of energy generation facilities;
- Reduce regulatory uncertainty;
- Eliminate the need for redundant, utility-owned infrastructure; and
- Ensure that the definition of "plant" pertains to all electricity-generating technologies and remains applicable as renewable energy programs evolve.

a. Comparison of Recommendation to Current Definition

Reviewing the proposed definition of "plant" against the current definition helps illustrate the ambiguities the proposal resolves. Currently, the definition of "plant" requires the Commission to assess whether two or more facilities (1) are the "same project" and (2) share infrastructure or equipment. The same-project analysis includes (1) proximity, (2) common ownership, and (3) contiguity in time of construction. None of the three concepts is defined in the statute, and therefore the current definition requires the Commission to conduct complex factual and legal analyses.

Alternatively, the amended definition asks two straightforward questions: (1) whether facilities use the same electricity-generating technology (*e.g.*, wind, solar, hydro, or biomass) and (2) whether facilities are on the same parcel or contiguous parcels of land. All facilities that use the same electricity-generating technology and are on the same parcel or contiguous parcels of land are a single plant under the amended definition.

The second question — same parcel or contiguous parcels of land — supplants the Commission's current proximity analysis. Whether two or more facilities are on the same parcel or contiguous parcels is an unambiguous inquiry, particularly because the proposal includes a definition of "contiguous." Developers will be immediately able to ascertain whether their proposed development plan meets this test.

One principal area of concern for both distribution utilities and developers was the way in which the current definition of "plant" treats developer-financed, but utility-owned infrastructure and equipment. Shared utility-owned infrastructure, rather than duplicate infrastructure, can reduce maintenance costs for utilities and avoid utility participation in Section 248 cases where the utility has no concerns with interconnecting a proposed facility. Certainty about this aspect of the "plant" analysis also benefits developers. The proposed definition of "plant" eliminates the requirement for independent, utility-owned infrastructure.

b. Exceptions

The proposal provides two exceptions to the bright-line test for whether two or more facilities constitute a single plant.

1. Individual Net-Metering and Self-Consumption

The first exception is for individual net-metering and self-consumption. This exception looks at three factors and applies if the facilities (1) are not located on the same parcel of land; (2) are interconnected behind separate retail electricity meters; and (3) supply different retail customers. These factors are unambiguous inquiries with obvious yes/no answers.

The first factor asks whether the facilities are located on the same parcel of land. This makes it possible for two neighbors to develop individual net-metering systems at their homes. Often at the residential scale, the definition of "plant" is only applied to determine what process and form an applicant must use to obtain a certificate of public good. Thus, even though small net-metering facilities can be built on the same parcel of land, they may need to use a different application process if the total capacity of all facilities on the same parcel exceeds application thresholds. With the proposed exception, only when the total aggregate capacity exceeds the statutory net-metering capacity cap would a facility be denied a certificate of public good.

Questions two and three ask whether the facilities are separately interconnected, measured as behind separate retail electricity meters. Again, this does not preclude a homeowner from putting in more than one facility at their home. Finally, the third factor looks at who the customers are for a facility. These questions are straightforward inquiries and require little analysis beyond reviewing the answers provided to these questions in an application.

2. Additional Facilities Co-Located with a Net-Metering or Standard-Offer Facility

The next exception allows for collocation of additional facilities so long as there is only one facility on a parcel or contiguous parcels that is compensated under net-metering or the Standard Offer Program. This test is, again, a bright-line inquiry: Is there a net-metering facility or standard-offer facility on the parcel or a contiguous parcel? If so, then only facilities not participating in one of these renewable electric energy generation programs can be collocated if their combined capacity would exceed the program's statutory cap. This ensures that large projects have not been segmented into smaller projects to gain financial benefits under renewable energy programs intended for the benefit of smaller projects, in contravention of legislative policy.

Additionally, the total aggregate capacity of the facilities on a parcel and any contiguous parcels will be considered for purposes of determining eligibility in Vermont's Renewable Energy Standard Tier II, pursuant to 30 V.S.A. § 8005(a)(2).

c. Opportunities for Further Development under the Proposed Definition

The proposed definition allows for further renewable energy development on a parcel or contiguous parcel that would be prohibited under the current statutory definition of "plant." For example, under the proposed definition, up to 500 kW could be sited on one parcel under Vermont's net-metering program and receive applicable net-metering rates. Additional solar development – for example, receiving compensation under a power purchase agreement – could also then be permitted on the same parcel or a contiguous parcel so long as it was not participating in the net-metering program. In contrast, the current definition counts all proposed solar capacity in close proximity (certainly on the same parcel) to ascertain whether the total capacity exceeds the cap set for the relevant program, thus limiting all development (in this example) to 500 kW in a proximate area.

V. Conclusion

The Commission recognizes the need to revisit and revise the definition of "plant" in 30 V.S.A. § 8002(18). This definition plays an important role in administering various legislative requirements that use facility capacity as a bright-line test for determining review standards or program eligibility. Our recommended amended definition strikes a balance between shifts in the policy framework for renewable development and the still existing, and likely future, use of facility capacity as a bright-line test for program eligibility, review processes, rates, and other aspects of renewable energy development.

As long as the Legislature sets caps on renewable energy generation programs meant to encourage small-scale facilities, some screening tool is needed to differentiate between collocated facilities; otherwise, the purpose of those caps can be circumvented. If the Legislature wishes to alter or eliminate programmatic capacity caps, the appropriate place to make any such changes is in the statutes governing those programs.[3]

[3] *See, e.g.*, 30 V.S.A. §§ 8002(16), 8005(a)(2), 8005a.