

VERMONT AGENCY OF AGRICULTURE, FOOD AND MARKETS'
COMMENTS ON ENERGY STORAGE RULEMAKING

On January 13 and January 20, 2022, the Commission convened two workshops for stakeholders to discuss simplified siting, aggregation, and existing resources, and set a deadline of February 11, 2022 for postworkshop comments. On February 9, 2022, the Commission issued an order extending the deadline for postworkshop comments to March 11, 2022. On February 16, 2022, the Commission

issued an order requesting responses from stakeholders on specific questions identified in the order, in addition to comments on issues raised in initial comments and within the two workshops. Among other things, the Commission seeks comments on whether and under what circumstances any of the section 248 criteria or other application requirements may be conditionally waived for energy storage facilities under 1 MW, or a higher threshold. The Agency of Agriculture, Food and Markets (“AAFM”), by and through counsel, provides the following comments on this question.

AAFM’s Role in 248 Proceedings

Section 248 requires the Commission, before issuing a certificate of public good (“CPG”), to ensure that construction of any in-state facility “will not have an undue adverse effect on . . . primary agricultural soils as defined in 10 V.S.A. § 6001.” 30 V.S.A. § 248(b)(5). Section 248 provides that AAFM “shall appear as a party” in any proceeding “regarding an electric generation facility that will have a capacity of greater than 500 kilowatts and will be sited on a tract containing primary agricultural soils as defined in 10 V.S.A. § 6001,” id. § 248(a)(4)(F)(i), and “shall have the right to appear” in any other proceeding, id. § 248(a)(4)(F)(ii). Furthermore, as part of the Act 54 amendments, effective December 31, 2022, the Legislature provided that AAFM “shall appear as a party” in any proceeding regarding “an energy storage facility that will have a capacity greater than 1 megawatt and will be sited on a tract containing primary agricultural soils as defined in 10 V.S.A. § 6001.” Id. § 248(a)(4)(F)(i) (eff. Dec. 31, 2022).

Thus, AAFM has a responsibility to participate in section 248 proceedings to protect primary agricultural soils (“PAS”), which it does by making determinations on the proposed project’s impacts to PAS and recommending conditions to be included in the CPG that will minimize those impacts and ensure they are not undue. To facilitate AAFM’s role, the Commission requires applicants for net-metering projects between 15 kW and 50 kW to provide a site plan including “a description of any proposed direct or indirect alterations to or impacts on . . . natural resources protected under 30 V.S.A. § 248(b)(5),” Commission Rule 5.106(D)(5)(d); for net-metering projects over 50 kW to provide a site plan delineating “[t]he presence and total acreage of primary agricultural soils as defined in 10 V.S.A. § 6001 on each tract to be physically disturbed in connection with the construction and operation of the net-metering system, the amount of those soils to be disturbed, and any other proposed impacts to those soils,” Commission Rule 5.107(C)(5)(i); and for other electric and gas facilities to submit prefiled evidence, in the form of testimony and exhibits, “that explains how the proposed project complies with each of the separate criteria of 30 V.S.A. § 248(b),” Commission Rule 5.402(C)(1)(d).

Conditional Waiver of Primary Agricultural Soils

The construction of an energy storage facility may impact PAS through such activities as grading, trenching for installation of electrical conduit or other features, construction of the access road, stump removal, installation of equipment pads, or the use of vehicles or equipment that may cause soil compaction when operating on the

site, among others. In other words, impacts to PAS occur on the ground and may occur beyond the footprint of the facility itself. For example, a facility with a small footprint may require earth disturbance for trenching or access road construction and may require vehicles and equipment to drive over or otherwise operate on the site. This means a storage facility with a small capacity may still significantly impact PAS, even if the facility itself has a relatively small physical footprint. Moreover, even where the impacts to PAS from the energy storage facility are de minimis when considered separately, they may be significant when considered cumulatively with the impacts from any co-located solar or other generation facility. For these same reasons, an energy storage facility located within the footprint of an existing, permitted generation facility may also significantly impact PAS; it may indirectly impact PAS outside the limit of work or have cumulative impacts.

Therefore, AAFM recommends that the Commission not conditionally waive review of PAS for energy storage facilities not located within an existing building, including those located within the footprint of an existing, permitted generation facility. At minimum, the applicant should be required to submit a site plan delineating the presence and total acreage of PAS that will be physically disturbed. AAFM agrees, however, that review of PAS may be conditionally waived for energy storage facilities located within an existing building, to the extent the proposed project will not require construction of access roads, trenching, or other activities that may disturb PAS outside the footprint of the existing building.

Dated at Montpelier, Vermont this 11th day of March 2022.

STATE OF VERMONT
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