

August 15th, 2023

Ms. Holly Anderson, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05602

Re: Comments on Proposed Rule 5.400 (Case No. 21-0861-RULE)

Dear Clerk Anderson,

After reviewing proposed Rule 5.400 issued by the Commission on June 29th, Ampersand Gilman Site Optimization, LLC (“AGSO”) is concerned that the changes in the proposed Rule will make Section 248 permitting for renewable energy and energy storage projects substantially more unpredictable and time-consuming. This will make renewable energy more expensive for Vermont utilities and ratepayers and slow the state’s efforts to combat the climate crisis.

AGSO shares the concerns raised by Renewable Energy Vermont, Vermont Electric Coop, and the Vermont Electric Power Company during the August 8th public hearing that changes to the notification and intervention requirements will make permitting significantly more expensive without providing a meaningful public benefit. In our experience, the existing process for intervention provides a fair opportunity for adjoining landowners and others to register specific concerns about a proposed project and participate as a party in a proceeding when determined appropriate by the Commission. By granting adjoining landowners party status simply by filing a notice of intervention without any Commission review and without any restrictions, the proposed Rule will inevitably increase the time and cost of the permitting process. The burden of responding to a single landowner raising objections to project aesthetics, for example, is already substantial but the process is also one that we are familiar with and can plan for. Granting landowners the ability to raise objections and undertake discovery on all Section 248 criteria would make the process exponentially less predictable and more expensive.

Additionally, granting the Natural Resources Board the ability to gain party status with a notice of intervention when a project site is subject to an Act 250 permit raises serious concerns about the separation of the Section 248 and Act 250 permitting processes. Section 248 projects are explicitly excluded from the definition of development in 10 V.S.A. § 6001(D)(ii). If projects must adjudicate whether and what Act 250 permits apply to a proposed site, it will seriously undermine the Section 248 process and many projects that would currently be permitted will likely have to be abandoned.

Overall, we believe that these changes will have a significant adverse impact on the economics of renewable energy and energy storage projects subject to Section 248 and we strongly urge the Commission to reconsider these changes.

AGSO owns multiple parcels in Gilman, VT, where renewable energy projects (including solar plus storage projects) can become viable in the near future.