

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Proposed Creation of Vermont Public Utility	)	Case No. 21-3883-RULE
Commission Rule Concerning Energy Storage	)	

COMMENTS OF THE VERMONT AGENCY OF NATURAL RESOURCES

The Vermont Agency of Natural Resources (“Agency”) files the following comments in response to the Public Utility Commission (“Commission”) Order Seeking Comments on Rule Draft dated May 21, 2024 (“Order”).

The Order identifies several specific topic areas for which comments are sought, including “definitions” (Rule 9.102). The Agency’s comments are focused on the definition of “earth disturbance” contained in Rule 9.102 and how it applies to energy storage facilities covered by Rules 9.302 and 9.303. Specifically, the Agency suggests that the definition of “earth disturbance” be revised to provide additional clarity as to the meaning of “clearing” in the context of the definition. The Agency recommends that the term “clearing” be revised to “vegetation cutting or clearing.”

The definition, as presently drafted, includes the words “clearing, grading, and excavating.” Based on this, it is not unreasonable to conclude that “clearing” is intended to mean the removal or disturbance of vegetation without soil or ground disturbance since activities such as “grading” and “excavating,” which commonly involve soil disturbance, would result in removal or disturbance of any vegetation. Otherwise, there would be no purpose to differentiate clearing from the other two activities. However, the Agency believes it would be beneficial to modify the definition to provide clarity and ensure that activities which do present the potential for significant impacts to natural resources (such

as vegetation cutting or clearing without soil or ground disturbance) are specifically included.¹

In the Agency's experience, it is not uncommon for a Section 248 energy generation facility to require vegetation cutting or clearing that does not result in soil or ground disturbance. For example, a solar electric generation project may require the cutting or removal of trees (leaving the stumps in place) to prevent shading of the solar array. A generation facility might also necessitate a distribution upgrade that involves the need for tree cutting; as may a storage facility. In both instances, cutting could have the potential to impact natural resources. For example, is the tree cutting (or any vegetation clearing) proposed within a wetland or stream buffer? Are any of the trees potential roost trees for listed bat species or are the trees within or adjacent to other necessary wildlife habitat (e.g., deer wintering area or black bear feeding habitat)? Are there RTE plant species present which might be disturbed by the activities? In all these instances, cutting or clearing have the potential to result in substantial impacts even though there may not be any soil or ground disturbance.

For these reasons, the Agency recommends that Rule 9.000 specifically include vegetation clearing as an activity contemplated by Rules 9.302 and 9.303. This could be accomplished by either amending the existing definition of "earth disturbance" or by adding a separate definition for "vegetation clearing."²

¹ An alternative approach would be to add "vegetation clearing" as a separate definition under the Rule. While this may be more straightforward, it would necessitate including the words "vegetation clearing" to Rule 9.302 to read "...**Without any Earth Disturbance or Vegetation Clearing Required...**" and Rule 9.303 to read "...**Requiring Earth Disturbance or Vegetation Clearing for...**" if the Commission were to adopt the Agency's recommendation.

² "Vegetation clearing" means site preparation or construction activities which include trimming, cutting or removing trees, or other pre-existing vegetation, regardless of whether such activities result in soil or ground disturbance, but does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

Dated July 12, 2024, at Waterbury, Vermont.

Respectfully submitted,

State of Vermont
Agency of Natural Resources



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