

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 24-2874-INV

Public Utility Commission's order establishing noncompliance grace period and providing guidance for meeting compliance filing obligations	
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Order entered: 09/13/2024

**ORDER ESTABLISHING NONCOMPLIANCE GRACE PERIOD AND
PROVIDING COMPLIANCE FILING GUIDANCE**

The Commission has opened this case to establish a grace period for fulfilling overdue compliance filing obligations and to provide guidance to entities with compliance filing obligations. The Commission has conducted a review of all cases with outstanding compliance filing obligations, in both siting and non-siting contexts. The Commission's review revealed several categorical areas where additional guidance regarding when and how to fulfill compliance filing obligations would be helpful.

Many of the Commission's compliance filing obligations are statutory requirements.¹ The underlying intent of these compliance obligations is to protect the interests of the local community and the broader state interest in our natural resources and public viewsheds. An entity's failure to comply with its regulatory obligations therefore constitutes a harm to the integrity and credibility of the regulatory process and the interests of the public.

To encourage entities with overdue compliance filing obligations to come into compliance, the Commission is establishing a six-month grace period during which time the Commission will not issue penalties for failure to make a compliance filing in a timely manner.² The purpose of the grace period is to bring as many entities as possible into compliance, close

¹ See, e.g., 30 V.S.A. § 248(a)(5) ("The Commission shall adopt rules regarding standard conditions on postconstruction inspection and maintenance of aesthetic mitigation and on decommissioning to be included in certificates of public good for in-state facilities approved under this section."); 30 V.S.A. § 248(a)(7) ("When a certificate of public good under this section or amendment to such a certificate is issued for an in-state electric generation or energy storage facility with a capacity that is greater than 15 kilowatts, the certificate holder within 45 days shall record a notice of the certificate or amended certificate, on a form prescribed by the Commission, in the land records of each municipality in which a facility subject to the certificate is located and shall submit proof of this recording to the Commission."); cf. Commission Rules 5.800, 5.900.

² The grace period does not apply to violations of CPG conditions or other 30 V.S.A. § 30 infractions unrelated to compliance filings.

cases where possible, and establish clear compliance-obligation deadlines in as many cases as possible. During the grace period, entities with overdue compliance filing obligations are strongly encouraged to make the necessary filings to come into compliance.

The Commission will send this order and guidance to the Commission's email lists to provide notice of the grace period and available guidance. Installers of net-metering facilities with certificates of public good ("CPG") will receive via email a list of all CPGs with overdue compliance obligations associated with each installer.³

After the grace period ends on March 13, 2025, the Commission will determine the cases where compliance filings are still overdue. At that time, the Commission will establish a compliance page on its website where CPG holders and entities that are out of compliance will be listed by CPG number along with the installer/developer and lawyer⁴ associated with the case, if relevant. Entities will remain on the webpage until they come into compliance. Penalties imposed after the grace period for compliance filing violations can be expected to be significantly higher for compliance filing issues that could have been resolved during the grace period.

The guidance below provides additional information about the following issues in siting cases: filing a municipal notice form as required by 30 V.S.A. § 248(a)(7); decommissioning fund increases and financial securities; pre-site-preparation letters; and aesthetic mitigation. For non-siting cases, we provide guidance for eligible telecommunications carriers.

SO ORDERED.

³ If there is an attorney of record associated with a net-metering registration or application, the attorney will receive the email.

⁴ Attorneys who have entered a notice of appearance in a siting case are not relieved of their representation obligations upon issuance of a CPG. Unless the Commission has granted a request to withdraw and substitute counsel or a representative, the attorney of record remains when the case is in compliance.

Siting Guidance

Municipal Notice Forms

Pursuant to 30 V.S.A. § 248(a)(7):

When a certificate of public good under this section or amendment to such a certificate is issued for an in-state electric generation or energy storage facility with a capacity that is greater than 15 kilowatts, the certificate holder within 45 days shall record a notice of the certificate or amended certificate, on a form prescribed by the Commission, in the land records of each municipality in which a facility subject to the certificate is located and shall submit proof of this recording to the Commission.

This statutory requirement went into effect for generation facilities on June 13, 2017. It went into effect for energy storage facilities on July 1, 2019. Regardless of the language in a certificate of public good (“CPG”) or whether a CPG was issued or deemed issued, the CPG holder — of an original CPG or an amended CPG — has an obligation to complete the municipal notice form, file it in the land records of the relevant municipality, and submit a complete and accepted⁵ municipal notice form in the Commission’s electronic filing system, ePUC, in the net-metering registration case, the compliance subcase for the CPG or amended CPG, or the legacy compliance case.⁶

The obligation to file a municipal notice form applies to electric generation facilities and energy storage facilities with a capacity greater than 15 kW. CPG holders who have not filed a complete and accepted municipal notice form within 45 days of the date the CPG (or amended CPG) was issued or deemed issued are not in compliance with respect to this requirement.

For clarity, the following CPG holders for electric generation facilities and energy storage facilities with a capacity greater than 15 kW must file a municipal notice form:

Electric generation facilities:

- A CPG holder who obtained a CPG on or after June 13, 2017, and has not filed a municipal notice form within 45 days of the date the CPG was issued; and

⁵ An accepted municipal notice form is one that has been annotated (typically on its face) by the municipality where it is filed with the municipality, date, and book and page where it is recorded in the land records.

⁶ For net-metering registration cases, the municipal notice form can be filed even if the case appears closed in ePUC. For legacy cases (filed in paper before ePUC was developed) that do not have legacy compliance cases, the CPG holder can file the municipal notice in paper.

- An amended CPG holder who obtained an amended CPG on or after June 13, 2017, and has not filed a municipal notice form within 45 days of the date the amended CPG was issued.
 - If the original CPG was issued before June 13, 2017, but the amended CPG was issued on or after June 13, 2017, the amended CPG holder only needs to file proof of recording the amended CPG.
 - If the original CPG and the amended CPG were issued on or after June 13, 2017, the amended CPG holder can include both the CPG and the amended CPG on the same municipal notice form, even if the CPG and the amended CPG were issued in separate cases. In this situation, the amended CPG holder must list both dates of issuance and case numbers on the municipal notice form.⁷
 - A municipal notice form is not required for a net-metering notice of minor amendment filed under the former Commission Rule 5.100.

Energy storage facilities:

- A CPG holder who obtained a CPG on or after July 1, 2019, and has not filed a municipal notice form within 45 days of the date the CPG was issued; and
- An amended CPG holder who obtained an amended CPG on or after July 1, 2019, and has not filed a municipal notice form within 45 days of the date the amended CPG was issued.
 - If the original CPG was issued before July 1, 2019, but the amended CPG was issued on or after July 1, 2019, the amended CPG holder only needs to file proof of recording the amended CPG.
 - If the original CPG and the amended CPG were issued on or after July 1, 2019, the amended CPG holder can include both the CPG and the amended CPG on the same municipal notice form, even if the CPG and the amended CPG were issued in separate cases. In this situation, the amended CPG holder

⁷ If there has been more than one amended CPG, the same process can be followed. The amended CPG holder must include the dates of issuance and case numbers for the original CPG and each amendment.

must list both dates of issuance and case numbers on the municipal notice form.⁸

Decommissioning

Commission Rule 5.900 and certain CPG conditions contain an obligation that CPG holders update their decommissioning cost estimate and adjust the dollar amount of their financial security, every year or every three years. CPG holders who have an obligation to update their decommissioning cost estimate and adjust their financial security every year may petition the Commission to change their annual decommissioning requirements to match the three-year cycle required by Rule 5.900.⁹

Pre-Site-Preparation Letters

Many CPGs contain the following condition or something similar: “Before beginning site preparation, the CPG Holder must file with the Commission, the parties, and the Town of [NAME OF TOWN] a letter stating that it has fulfilled all pre-site preparation CPG conditions, and that it intends to begin site preparation for the Facility/Project.” Sometimes, CPG holders have filed a pre-site-preparation letter shortly after filing the initial letter of credit for approval by the Commission. When a pre-site-preparation letter is filed with the Commission before the CPG holder has obtained approval of the letter of credit (or other financial security), the letter must state that “after the initial letter of credit is approved, all pre-site-preparation conditions will have been approved,” or something similar. CPG holders with a decommissioning obligation may not begin site preparation until the initial letter of credit (or other financial security) is approved.

Aesthetic Mitigation

The Commission’s aesthetic mitigation requirements are described in Commission Rule 5.800. These requirements are also listed as conditions in CPGs for facilities requiring aesthetic

⁸ If there has been more than one amended CPG, the same process can be followed. The amended CPG holder must include the dates of issuance and case numbers for the original CPG and each amendment.

⁹ Requests to amend a CPG condition are now filed as a new amendment subcase in the existing CPG or legacy compliance case in ePUC. For examples of such requests, please see Case Nos. 24-0138-PET, 24-0136-PET, 23-1492-PET, 19-3923-PET.

mitigation plans. Commission Rule 5.805 and the standard aesthetic mitigation conditions in a CPG require (1) a certification within 30 days following the full implementation of the final aesthetic mitigation plan, and (2) three annual-inspection filings starting one year from the initial certification. The initial certification must include:¹⁰

- Certification that all aesthetic mitigation work has been fully implemented in a manner consistent with the mitigation plan; or, in the alternative, if construction of the facility components and/or aesthetic mitigation has deviated from the design of the facility as approved, a revised final mitigation plan;
- The date construction was completed;
- The date of interconnection; and
- Dated photographs of the installed mitigation measures.

The annual inspections serve to determine the health, vigor, and continued effectiveness of the aesthetic mitigation. The annual inspection compliance filing must document the results of the inspection and any corrective actions taken.¹¹

All four certifications must be submitted to the Commission as affidavits.

During the grace period, CPG holders may make a single filing to come into compliance with multiple years of aesthetic-mitigation certification. For aesthetic mitigation that has been installed for multiple years, a CPG holder has two options. If the mitigation is healthy, the CPG holder can file a single affidavit that covers as much as the initial certification and three years of annual-inspection certifications, such as in a situation where a CPG holder has an overdue compliance obligation to file all required filings that demonstrate satisfaction of the Rule 5.805 requirements.¹² If the CPG holder has implemented the aesthetic mitigation, at least one year has elapsed, and the CPG holder has not yet performed or certified an annual inspection, then the CPG holder can perform an inspection and submit an affidavit as if there had been an annual inspection each year since the aesthetic mitigation was implemented. Here are some examples to demonstrate the possibilities for the grace-period filings:

¹⁰ Commission Rule 5.805(B).

¹¹ Commission Rule 5.805(D).

¹² The single affidavit can only satisfy the entire aesthetic mitigation requirement if the aesthetic mitigation was implemented three years or more before the filing. Given the term of the grace period, this means that aesthetic mitigation implemented after March 2022 will require at least one additional annual-inspection certification.

- If aesthetic mitigation was implemented in 2019 and the CPG holder has not filed an initial certification or any annual-inspection certifications, the CPG holder may file a single affidavit that provides the information required to satisfy the initial certification and the annual-inspection certifications that were required in 2020, 2021, and 2022. Assuming the certifications are satisfactory, the CPG holder would not have any remaining certification requirements.
- If aesthetic mitigation was implemented in 2022 and the CPG holder has not filed an initial certification or any annual-inspection certifications, the CPG holder may file a single affidavit that provides the information required to satisfy the initial certification and the annual-inspection certifications that were required in 2023 and 2024. Assuming the certifications are satisfactory, the CPG holder would have one remaining annual-inspection certification in 2025.
- If aesthetic mitigation was implemented in 2019 and the CPG holder filed an initial certification but did not file any annual-inspection certifications, the CPG holder may file a single affidavit that provides the information required to satisfy the annual-inspection certifications that were required in 2020, 2021, and 2022. Assuming the certifications are satisfactory, the CPG holder would not have any remaining certification requirements.
- If the CPG holder has skipped the initial certification or interim annual-inspection certifications, the CPG holder can use a single filing during the grace period to demonstrate the current status of the mitigation and three years since implementation to attempt to satisfy some or all aesthetic mitigation certification requirements.

If, on the other hand, the aesthetic mitigation is unhealthy or has required corrective action since it was implemented (*e.g.*, some or all of the plantings have been replaced one or more times), then the CPG holder must file a single affidavit as described above; however, the CPG holder will be required to file at least one additional annual-inspection certification.

During the grace period, if the CPG holder does not have photographs from the date/time when the aesthetic mitigation was implemented, then the CPG holder must include current photos demonstrating the current health, vigor, and continued effectiveness of the aesthetic mitigation.

The Commission has added template affidavits to its website where Rule 5.800 is found.¹³ The template affidavits on the website can be used beyond the grace period for all Rule 5.800 certifications. The template affidavits cover the following situations:

- initial certification when there were no changes or issues with implementation of the approved aesthetic mitigation plan;
- initial certification when there were changes or issues with implementation of the approved aesthetic mitigation plan;¹⁴
- annual-inspection certification when there were no issues with the aesthetic mitigation; and
- annual-inspection certification when there were issues with the aesthetic mitigation and corrective actions were taken.

A sample affidavit for the grace period is also provided to demonstrate how to combine both the initial certification and some or all of the annual-inspection certifications. All template affidavits have been uploaded into this case as Word documents.

Guidance for Eligible Telecommunications Carriers

Most orders designating telecommunications companies as eligible telecommunications carriers (“ETCs”) include two types of annual compliance filing requirements. Because the value of older annual compliance filings is limited, during the overdue compliance filing grace period, if an ETC files the most recent annual compliance filings, the Commission will consider the ETC to have come into compliance.

The first annual compliance filing requirement is a reporting requirement linked to “annual recertification efforts pursuant to 47 C.F.S. § 54.410(f)” or, as it is sometimes described, “any reports” required to be filed with the Commission by Part 54 of Title 47. This compliance filing requirement is satisfied by an ETC filing a copy of the Federal Communications

¹³ Available at <https://puc.vermont.gov/document/commission-rule-5800-requirements-installation-maintenance-aesthetic-mitigation-measures>.

¹⁴ CPG holders are reminded that submission of a revised final mitigation plan, pursuant to Rule 5.805(B), does not relieve a CPG holder from its obligation to request an amendment to the CPG, if an amendment is required.

Commission (“FCC”) Form 555 that the ETC filed with the FCC.¹⁵ This filing must be made in ePUC in the compliance subcase for the ETC’s most recent ETC designation case.

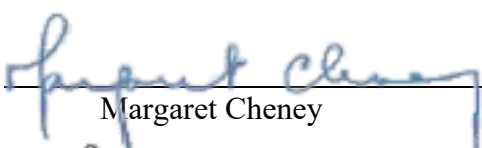
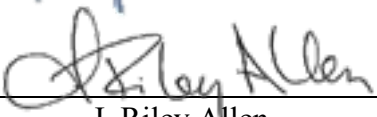
Most Commission orders designating ETCs also require ETCs to file annual certifications describing the marketing and outreach efforts they undertook during the previous year.

Typically, ETC designation orders specify a due date for these annual compliance filings. To come into compliance with this requirement, an ETC must file the report that was due by the most recent due date, unless the due date for the next report falls during the grace period, in which case the ETC may satisfy the requirement by filing the next report. For example, if the report is due every April 15, the ETC must file the report that was due on April 15, 2024. If the report is due every October 1, the ETC may file the report that is due on October 1, 2024.

A few ETCs are required to file copies of deployment milestone reports that are filed with the FCC during the period that the ETC is receiving Rural Development Opportunity Fund support. To come into compliance, these ETCs must file copies of all deployment milestone reports that they have already filed with the FCC.

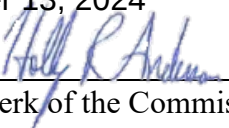
¹⁵ The FCC requires Form 555 to be filed with the FCC by January 31 of each year and requires that a copy be filed with the state regulatory commission.

Dated at Montpelier, Vermont, this 13th day of September, 2024.

 _____	)	
Edward McNamara	)	PUBLIC UTILITY
	)	
 _____	)	COMMISSION
Margaret Cheney	)	
	)	
 _____	)	OF VERMONT
J. Riley Allen	)	

OFFICE OF THE CLERK

Filed: September 13, 2024

Attest: 

Clerk of the Commission

Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)

PUC Case No. 24-2874-INV - SERVICE LIST

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(for Vermont
Department of Public
Service)

Other Entities to Receive Notice Outside ePUC:

PUC large email list