STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 25-1253-INV

Public Utility Commission investigation into the definition of single plant pursuant to Act 38 of 2025 and decommissioning financial assurances	

VERMONT DEPARTMENT OF PUBLIC SERVICE COMMENTS

On May 28, 2025, the Vermont Legislature passed Act 38, "An act relating to increasing the size of solar net-metering projects that qualify for expedited registration" (Act 38). Act 38 required the Vermont Public Utility Commission (Commission) to make a recommendation regarding the amendment of the definition of "plant" within 30 V.S.A. § 8002(18). In response, the Commission opened this investigation docket to gather information. In addition, the Commission is using this docket to solicit comments on changes to the 30 V.S.A. § 248e Electric Generation and Energy Storage Facility Decommissioning Fund.

The Department has been involved in many cases examining the application of "plant" and recognizes the benefits and drawbacks to the current definition and application, many of which served as an impetus to make reforms pursuant to Act 38. It is with those in mind (discussed in greater detail below) that the Department recommends changes to the definition of "plant" that strive to meet the following objectives:

Objectives

1. **Enable co-location of renewable generators where adverse impacts to the 30 V.S.A. § 248(b) criteria can be minimized.** With the expansion of the distributed generation requirement under Act 179 of 2024, there is potential for approximately 500 MW of new, mostly solar generation resources to be sited somewhere in Vermont – a doubling of what

has been installed to date. Many "low-hanging fruit" sites have likely already been taken, and allowing expansion of *some* of those sites is sensible. There are instances where co-location would likely offer more benefits than costs from a land use, grid, and ratepayer perspective. For example: preferred sites such as capped landfills, brownfields, rooftops, parking lots, and other areas identified through municipal and regional planning efforts; areas with existing infrastructure such as roads and electrical infrastructure that can serve additional generation; and areas with sufficient transmission and distribution to accommodate the additional generation.

2. **Reduce costs associated with uncertainty regarding single plant application and redundant infrastructure.** The existing proposals demonstrate shared sentiment among stakeholders that several aspects of the single plant definition and test should be eliminated or curtailed to increase certainty, gain efficiency, and reduce costs. Uncertainty for developers creates risk, and risk is priced into the costs of future renewable energy. The definition of plant should be as clear as possible to decrease uncertainty and reduce administrative burden, leading to reduced costs. Costs can also be reduced through shared utility-owned infrastructure – which should be universally encouraged – while plant proximity may make sense in certain circumstances as discussed in (1) above. To the Department, the role of the single plant test is to eliminate the possibility of developers "gaming" rates through artificial division of what could have been larger facilities at lower cost to ratepayers into multiple, smaller plants receiving incentive rates. A revised definition should both reduce redundant infrastructure and create certainty for developers on how their project will be treated in the regulatory process.

3. **Future-proof single-plant changes to protect ratepayers.** While the current renewable incentive programs may be winding down (Standard Offer) or evolving in ways that begin to mitigate rate impacts (net-metering), new incentive programs (e.g., net-metering 3.0, expansion of Standard Offer) may be introduced at any time. The best way to create a durable definition that is clear to developers and prevents gaming of the system is by having a test that hews closely to the current paradigm, which disallows proximate siting of facilities, but with explicit carveouts that support co-location in certain circumstances in the context of known renewable programs and the ability to thoughtfully and deliberately expand those carveouts if new programs are developed.

Stakeholder Proposals

The Department has reviewed proposals offered by Allco and Renewable Energy Vermont and appreciates their attempts to refine the single plant definition. Aspects of their proposals could be effective. The Department offers its feedback on the Allco and Renewable Energy Vermont proposals below followed by the Department's own proposal that streamlines the single plant definition, allows for some siting expansion that is consistent with land use planning, grid efficiency, and rate impacts, and maintains the integrity of the Standard Offer and net-metering programs.

Allco Proposal

Allco proposes that the use of separate generators, inverters, and production meters should qualify facilities as independent technical facilities, regardless of whether the facilities are on the same or adjacent parcels or whether facilities share utility-owned infrastructure. Allco's suggestion eliminates the remaining "common ownership" factors such as roads, controls facilities, and grid connection as factors that could be used to determine whether a facility is a

single plant. In other words, so long as facilities have separate generators, inverters, and meters, the plants would be considered independent using Allco's proposed definition.

REV Proposal

REV's proposed language is like Allco's, in that use of separate generators, inverters, and production meters would mean facilities are independent technical facilities, regardless of whether the facilities are on the same or adjacent parcels or share utility-owned infrastructure. What distinguished REV's proposal is that it appears to limit the cumulative capacity of the facilities on same or adjacent parcels to 10 MW and would only allow such "co-location" for non-Standard Offer and non-net-metering facilities amongst Standard Offer and net-metering facilities. For more than one Standard Offer or net-metering facilities located on the same or adjacent parcels, REV's proposal appears to retain the Commission's two-part "same project" and "shared infrastructure" tests, keeping most of the language concerning common equipment, infrastructure, and ownership.

Department's response to Allco and REV proposals

Reduce costs associated with uncertainty and redundant infrastructure

The Department's understanding of the single plant test is that it has been applied to enforce the limits the legislature set for renewable energy incentive programs. The Standard Offer program goal was to incentivize the development of renewable generation by giving developers the opportunity to receive contracts for above-market rate generation facilities that are no larger than 2.2 MW. The single plant test has helped to administer this program by preventing developers from dividing renewable energy projects larger than 2.2 MW into clusters of two or more standard-offer projects at a higher cost to ratepayers. Without the single plant test, clustering would have made the legislature's facility cap meaningless, as developers could

otherwise fill any lot with as many 2.2 MW (or smaller) facilities as it could and feasibly build on a site. Similar logic applies to the net-metering program.

The proposals submitted by REV and Allco would effectively increase the cap in Standard Offer and net-metering programs via the single plant rule by increasing the number of separate facilities that can be clustered adjacent to one another under these incentive programs. REV's proposal would cap development at 10 MW of cumulative capacity on the same or adjacent parcels, allowing four or more adjacent 2.2 MW Standard Offer facilities or 20 adjacent 500 kW net-metering facilities, if those facilities could pass the conventional test involving common equipment and infrastructure, common ownership, contiguity in time of construction, and proximity. If there were to be a successor or successors to the Standard Offer or net-metering programs under a different title, the limitations proposed in subsection (a) of REV's proposal would not apply to said successor program(s). Allco's proposal would provide fewer checks on adjacent development, as it would consider facilities separate plants if each facility uses "separate generators, inverters, and production meters," allowing for unlimited adjacent development if redundant infrastructure is used for each additional program capacity multiple.

If the legislature desires to increase the facility size of the Standard Offer or net-metering programs, it could also be accomplished through revisions to 30 V.S.A. 8002(16) and 8005a rather than through redefining 30 V.S.A. § 8002(18).[1] However, taking too strict an approach to the single plant rule would miss an opportunities to promote the co-location of renewable energy

[1] On a similar note, the distributed generation limit of 5MW found in 30 V.S.A. § 8005(a)(2)(B) could be increased in that provision to make it easier to add more distributed generation to meet the Renewable Energy Standard

where impacts can be minimized. That is why the Department's proposal below carves out policy exceptions for co-location on preferred sites that are not constrained by the grid.

Enable co-location where adverse 248(b) impacts can be minimized

Allco's proposal does not address land use, grid, or ratepayer impacts. Allco does assert that Vermont's distributed generation programs (e.g., Standard Offer and net-metering) encourage siting generation close to load, thereby reducing line losses and addressing grid constraints. While this can be the case, many net-metering and Standard Offer projects have historically been located in remote areas far from load or areas with existing grid constraints exacerbated by the addition of the project.[2] This less-than-ideal location of generation facilities has led to recent attempts to better direct renewable generation to areas with grid capacity. For example, utilities have created online maps for developers to obtain information on available interconnection capacity.[3] VELCO's 2024 Long Range Transmission Plan provides an analysis that optimizes solar additions by load zone to avoid transmission and subtransmission upgrades.[4] and Rule 5.100 now provides a mechanism for utilities to file locational adjustor tariffs.[5] The Department recommends that hosting capacity be incorporated into any consideration of allowing additional facilities to be built either on or adjacent to parcels hosting existing solar facilities, in order to avoid exacerbating constraints and associated costs to ratepayers. While this

[2] See e.g.: *In Re Application of Derby Solar, LLC*, 2019 VT 77, 211 Vt. 144, 221 A.3d 777; Docket No. 18-1183-NMP order of 3/18/2022; Docket No. 21-3154-NM order of 3/3/2022; Docket No. 22-3873-NMP order of 11/4/2022; Docket No. 23-2820-NMP order of 2/20/2024.
[3] See for example, https://gmp.maps.arcgis.com/apps/webappviewer/index.html?id=4eaec2b58c4c4820b24c408a95ee8956, https://experience.arcgis.com/experience/94ece61c75c54ad999c0629d80cb7354/, and https://burlingtonvt.maps.arcgis.com/apps/Embed/index.html?webmap=bb1b9156d8294e308ecfe803131e8c00&extent=-73.2731,44.4574,-73.1094,44.5091&zoom=true&scale=true&legend=true&disable_scroll=false
[4] https://www.velco.com/sites/default/files/2024-09/101252_Velco_CC24_singles.pdf
[5] https://puc.vermont.gov/sites/psbnew/files/documents/rule-5.100-clean-final-11-12-2024.pdf, 5.136

could be done on a case-by-case basis, it would be clearer and more efficient to incorporate it into any revisions to the single plant definition.

REV argues that allowing more "co-location" is a type of land use efficiency or "solar smart growth" in keeping with the goals for non-energy development under Act 181. While not described by REV or Allco, the Department is mindful of Act 174 of 2016, which kicked off extensive energy-related land use planning by the state's 11 regional planning commissions (RPCs) and municipalities (at least 120 as of 2/27/25)[6], which are developed in the context of their broader land use planning goals. These plans and maps often inform the comments of RPCs and municipalities in Section 248 proceedings as well as these entities' preferred-site letters in net-metering proceedings, where effective "expansion" (at least from a land use or aesthetics perspective) of a 2.2 MW or a 500 kW project may never have been contemplated by land use planners, neighbors, or other parties. It is important to incorporate years of effort and experience with Act 174 in consideration of an updated single plant definition.

Maximizing development on preferred sites –including sites preferred for development by regions and towns– was a primary objective expressed during discussion of the single plant issue by members of the House Committee on Energy and Digital Infrastructure during deliberation on Act 38 (then S. 50).[7] Given the objectives of the Legislature and the near decade of history with Act 174, the Department recommends that any changes to the definition of "plant" respect the extensive "solar smart growth" planning accomplished over the past decade

[6] https://www.vapda.org/uploads/1/3/1/8/131894470/2-27-2025_determination_of_energy_compliance.pdf
[7] See https://www.youtube.com/watch?v=cItznzYK5Gk. In Vermont's distributed generation program vernacular, these refer to sites listed in Rule 5.100 (revised over time from a list originally developed for a Standard Offer program pilot under 30 V.S.A. § 8005a(c)(1)(D)) including parking lots, gravel pits, brownfields, landfills, gravel pits, and locations specified by municipalities and RPCs).

of Act 174 regional and municipal enhanced energy planning as well as honor the intentions of the legislature to find a way to maximize development specifically on *preferred* sites.

Future-proof single plant changes

REV also asserts that allowing co-location up to 10 MW would lower the cost of Renewable Energy Standard (RES) compliance through economies of scale of site utilization and eliminate redundant infrastructure investments, which would presumably (but not absolutely) pass through to ratepayers. As discussed above, the single plant definition has historically been relied upon to prevent "gaming" of Vermont's renewable energy incentive programs; without the limitation, a developer could artificially break up what could have been a larger, lower-cost facility (e.g., a 2.2 MW Standard Offer facility or 5 MW utility-contracted facility) – into smaller facilities (such as net-metering facilities) to receive higher compensation. The recent Act 179 net-metering reforms, which limit and eventually eliminate offsite group net-metering, plus the effective expiration of the Standard Offer program, help mitigate those concerns for now. However, other renewable generation incentive programs may materialize.[8] As long as incentive rates (i.e., compensation rates required to be paid to renewable generators above avoided costs, or the costs to utilities of procuring comparable renewable generation) – the potential exists for gaming, to the detriment of ratepayers. Thus, any modifications to the single plant definition should be mindful of the advent of new renewable procurement programs.

Department's Proposal

To address the concerns discussed above about orderly development, grid constraints, and ratepayer impacts, and to achieve the objectives of enabling co-location where § 248(b) impacts

[8] See for example, S. 57 and H. 155, an Act Relating to the Standard Offer Program, introduced in 2025: https://legislature.vermont.gov/bill/status/2026/S.57 and https://legislature.vermont.gov/bill/status/2026/H.155

can be minimized, costs associated with redundant infrastructure and uncertainty can be reduced, and future-proofing, the Department offers the following proposal for consideration and further discussion:

"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.~~ A group of electricity generating facilities shall be considered one plant for the purpose of renewable energy program eligibility if the facilities use the same electricity generating technology, such as solar, wind, or biomass, and are located on the same or contiguous parcels of land unless exempted in subsection (a), (b), or (c).

(a) **Exceptions for net-metering and self-consumption.** Facilities located on the same or contiguous parcels of land shall be considered separate plants if they are located behind separate retail electricity meters and at least 50% of the facility's annual generation supplies electricity to meet the load of a retail electricity customer on the same parcel as the facility.

(b) **Exceptions for facilities with different ownership.** Facilities located on the same or contiguous parcels of land that are not owned by the same party or affiliate shall be considered separate plants if:
    (1) The facilities are interconnected behind separate retail electricity meters;
    (2) The facilities participate in different electric generation incentive programs or contractual agreements, such as ownership by or sales to a utility through a power purchase agreement;
    (3) The facilities are located on a preferred site; and
    (4) The facilities are not located in a constrained area of the transmission or distribution system.

(c) **Exceptions for facilities with the same or affiliated ownership**. Facilities located on the same or contiguous parcels of land and owned by the same party or affiliate shall be considered separate plants if:
    (1) The facilities are interconnected behind separate retail electricity meters;
    (2) The facilities are compensated on an avoided-cost basis, as defined in 30 § V.S.A. 8005a(f)(2)(B);
    (3) The facilities are located on a preferred site; and
    (4) The facilities are not located in a constrained area of the transmission or distribution system.

(d) **Affiliates.** In this section "affiliate" means any party that:

(1) Directly or indirectly owns, controls, or holds the power to vote with sufficient voting securities to exert substantial control over another party;
(2) Is directly or indirectly owned, controlled, or held by a party described in (1) through the power to vote with sufficient voting securities to exert substantial control over such party; or
Exercises control by any means over the management, supervision, or operation of another party.

The language in (a) does away with the multifactorial legal test that included shared infrastructure, ownership, contiguity of time, and proximity and replaces it with proximity and technology as the threshold for determining whether a group of facilities is a single plant. The goal is to provide a bright-line rule so applicants can easily determine whether a proposed facility would be considered a single plant.

Then, a set of exceptions would enable co-location (in other words, separate plants in close proximity) in many instances. Exception (b) is for proximate (on the same or contiguous parcels) small facilities serving on-site load regardless of ownership. This would encourage siting of generation in proximity to the load it serves, which helps to reduce adverse § 248(b) impacts and costs associated with any shared infrastructure. Subsection (c) allows co-location of proximate facilities with different owners and interconnections enrolled in different renewable programs, as long as they are on good sites from a land use and grid perspective.[9] This would allow for facilities to co-located in preferred locations with grid capacity, also helping to reduce adverse § 248(b) impacts and costs associated with any shared infrastructure. Lastly, (d) allows

[9] Defining preferred sites, as well as constrained areas of the transmission and distribution system, will require further work. While a definition of preferred sites exists in 30 V.S.A. § 8005a(c)D, it has been further refined in Rule 5.100 over time, and the most recent version of the list should be used. This may entail updating (and potentially moving) the statutory definition. And, as discussed above, grid-constrained areas may be referenced in a piecemeal way from the websites of some utilities; locational adjustor tariffs pursuant to Rule 5.136 would provide more consistency and certainty, but no utility has yet filed such a tariff.

proximate facilities in unconstrained, preferred areas with common ownership that receive avoided-cost-based compensation for their production to prevent gaming of incentive programs. This too would allow for facilities to co-locate in preferred locations with grid capacity, also helping to reduce adverse § 248(b) impacts and costs associated with any shared infrastructure, but doesn't require tests for ownership or program type such as required under subsection (c). Rather, subsection (d) facilities, proximate with common ownership, would only be allowed if built at the lowest possible cost to ratepayers.

The exceptions listed above would allow co-location in many places, allow shared infrastructure where possible, and also contain protections to reduce land use or grid impacts under 248(b). If future renewable incentive programs are developed, legislators can revisit the "Plant" definition to ensure co-location is actively considered and plant size eligibility limits are meaningful. These changes would thereby serve the objectives articulated above: avoiding or mitigating 248(b) impacts, eliminating costs associated with uncertainty and redundant infrastructure, and futureproofing. Future-proofing could be enhanced through the potential addition of language to limit subsection(c) projects to currently available electric generation incentive programs, or to only allow one such contiguous facility to participate in any such program.

Subsection (d) defines "affiliate" to add clarity for the Commission to determine whether parties should be considered the same party for the purpose of the single plant test. When applying the single plant test today, the Commission already looks through corporate entities to evaluate whether multiple proposed facilities are held in common control and interest. This subsection would codify that practice in statute.

Other issues worthy of discussion in this proceeding regarding to co-located facilities, but not addressed in the proposal above, are defining the project boundaries, assessing environmental impacts, and assessing cumulative impacts.

Department's response regarding the decommissioning fund proposal

The Commission proposes to create a pooled decommissioning fund where developers would pay a one-time fee instead of posting bonds or letters of credit. The Commission could then use the fund to deal with abandoned or non-operational facilities and developers could get part of their fee back if they decommission properly. The Department asserts that moving to a pooled decommissioning fund would be a sensible move overall and is easier to manage than the current patchwork. However, more consideration is warranted. The fee structure should be based on the risk of the project, meaning the fee should be tied to factors such as project size, type, and site complexity such that projects that could be more costly to decommission pay a higher fee. Modeling is likely necessary to ensure the fund stays solvent over time. Governance features could also help to improve the program, like independent audits and clear criteria for fee refunds. If there's concern about developers gaming the system, the Commission could look at tiered fees or partial bonding for higher-risk projects. To conclude, the Department believes a decommissioning fund program like the one the Commission proposed in this proceeding is worth pursuing.

[signature on following page]

Dated at Montpelier, Vermont this 12th day of September 2025.

VERMONT DEPARTMENT OF PUBLIC SERVICE

By: */s/ Michael Swain*
Michael Swain, Special Counsel
112 State Street
Montpelier, VT 05620
michael.swain@vermont.gov