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. On Monday, September 22, 2025, the Commission held a workshop for parties to discuss the proposals. On October 2, 2025, the Commission issued a draft recommendation along with a cover letter requesting parties submit any comments on the Commission's draft recommendation by October 16, 2025. The Department offers its comments below on the draft recommendation.

Comments on the Commission's recommendation

Purposes of the "plant" definition

In its explanation of its recommendation, the Commission notes that the definition of "plant" under 30 V.S.A. § 8002(18) is "a statutory screening requirement used to determine whether a facility qualifies for Vermont's renewable energy programs meant to encourage small-scale facilities." The Department agrees that this is a primary function of the "plant" definition, however, it does serve other uses, such as determining project capacity triggers for laws and statutes, such as 30 V.S.A. 8007, and functions serving as a screen for Renewable Energy

Standard Tier II qualification, which the Department understands to be an overarching regulatory requirement, versus a program such as net-metering or Standard Offer that can help fulfil' that requirement. The screening function ensures facilities not only meet the legislative goal of distributed, small renewable energy generation but also other legislative and regulatory requirements tied to facility size. Therefore, the Department recommends that the Commission expand its explanation of the functions served by the single plant definition.

Amended Plant definition – threshold questions

The Commission proposes simplifying the preliminary screening tests that determine whether two or more facilities constitute a single plant down to two straightforward tests: (1) same technology; and (2) same or contiguous parcel. The Department agrees that these tests target the right concern (proximity of like facilities) in a manner that can be determined without ambiguity. The Department also agrees that eliminating the "shared infrastructure" test will help eliminate costly, redundant utility-owned infrastructure that would previously have been necessitated as a workaround to the single-plant test.

Amended Plant definition – exceptions

The Commission then proposes exceptions that would allow certain facilities that fail these threshold tests to be deemed separate plants under one of two scenarios: (a) Individual net-metering and self-consumption; and (b) Additional facilities co-located with a net-metering or Standard Offer facility.

For (a), facilities would not be deemed a single plant if they are: located on separate parcels, are interconnected behind separate retail meters, and supply different retail customers. This would make it possible, as the Commission notes, for "two neighbors to develop individual net-metering systems at their homes" – at least if those neighbors live on separate parcels. The

Department notes that this exception is described as, "**Individual** net-metering and self-consumption," which indicates this exception specifically applies to net-metering facilities wired to offset consumption on the customer's billing meter per Rule 5.126(A)(2). The Department recommends that this be clarified in the prongs of the test, for example, by modifying (a)(2) to reference the description of Individual Net-Metering System Billing in Rule 5.126(A)(2), for instance: "Are ~~interconnected~~ wired to offset consumption on ~~behind~~ separate ~~retail electricity~~ billing meters."

For exemption (b), facilities would not be deemed a single plant if they were built on a parcel or adjacent to a parcel with an existing net-metering or Standard Offer facility as long as the added facility is not itself a net-metering or Standard Offer facility and the statutory cap for either of these incentive programs is not exceeded by the cumulative amount of co-located generation. As the Commission notes, this "ensures that large projects have not been segmented into smaller projects to gain financial benefits under renewable energy programs…." This exception could leave some ambiguity. Exception (b)(2) states, "No more than one facility on the same parcel or contiguous parcels participates in net-metering or the Standard Offer Program up to the statutory capacity for the applicable program." While the Department understands the use of the word "or" between net-metering and Standard Offer in (b)(2) to mean that a facility receiving compensation under a power purchase agreement could be located on the same parcel as net-metering or the Standard Offer Program *or both,* some readers may take the word "or" after net-metering to indicate exclusivity between standard offer and net-metering facilities on such a parcel.[1] The Commission's explanation suggests that it may have the same understanding

[1] and/or, Bryan A. Garner, Garner's Modern English Usage (4th ed. 2016), at p. 50.

as the Department: "Is there a net-metering or standard-offer facility on the parcel? If so, then only facilities not participating in one of these renewable electric energy generation programs can be collocated."[2] However, to eliminate any chance of misunderstanding, Department suggests adding either "or both" or "but not both," depending on the desired outcome, after "Standard Offer Program" in (b)(2) to make the intent as clear as possible.

Additional comments

The Commission was charged under Act 38 to submit a recommended definition of "plant" that considered: the land use benefits of co-location of energy facilities; the ability to ensure comprehensive review of co-located facilities; and the potential impacts to ratepayers associated with co-located facilities. In its September 12, 2025, proposal, the Department recommended the Commission's proposal also seek to:

1. **Enable co-location of renewable generators where adverse impacts to the 30 V.S.A. 248(b) criteria can be minimized.** These criteria encompass land use and ratepayer impacts (also required by the legislature) as well as environmental, economic, and grid impacts – which co-location can also potentially impact. The Department proposed a definition that, while like the Commission's proposal in several ways,[3] sought to enable co-location for facilities participating in different programs *only on preferred sites and unconstrained areas of the transmission or distribution system*. The Department continues to urge the Commission to restrict co-location – which will enable new

[2] Recommendation, p. 5.
[3] Both proposals default to single plant for same-technology facilities on the same or contiguous parcels with exceptions for net-metering/self-consumption and facilities participating in different programs.

opportunities for development on or near existing plants – to areas that meet (vs. thwart) multiple public policy goals. This could be achieved by adding:

> (b) *Exception for additional facilities co-located with a net-metering or standard-offer facility*. Applies when:
>
> (1) The facilities have separate points of interconnection; and
>
> (2) No more than one facility on the same parcel or contiguous parcels participates in net-metering or the Standard Offer Program up to the statutory capacity cap for the applicable program. However, the aggregate capacity of all facilities on a parcel and contiguous parcels will be considered for purposes of determining eligibility under 30 V.S.A. § 8005(a)(2).
>
> (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.

2. **Reduce costs associated with uncertainty regarding single plant application and redundant infrastructure.** The Commission's proposal sufficiently addresses this by eliminating aspects of the definition related to common equipment and infrastructure.
3. **Make single-plant changes more durable to protect ratepayers.** The Department noted that current renewable programs may be winding down or evolving, but that new programs may be introduced at any time. While the Department's proposal included a more expansive and affirmative reference to programs than net-metering or Standard Offer ("different electric generation incentive programs or contractual agreements,"), the Commission's proposed language does appear to offer policy durability by limiting exceptions to existing, mandated distributed renewable generation programs (net-metering and Standard Offer). Under this proposal, for any future, new distributed renewable generation programs to gain an exception, the language in 30 V.S.A. §

8002(18) would have to be modified to incorporate those programs. In that way, ratepayers are adequately protected from the possibility of incentive rate gaming.

Summary of Department recommendations on 30 V.S.A. § 8002(18) language:

Taken together, the Department's recommended modifications to the Commission's proposal – with the Commission's redlines accepted and Department further redlines indicated – are:

> "Plant" means an independent technical facility that generates electricity from renewable energy. Multiple electricity-generating facilities, regardless of when each is constructed, shall be considered one plant if the facilities use the same electricity-generating technology and are located on the same parcel or contiguous parcels of land.
>
> Facilities located on the same parcel or contiguous parcels of land that use the same electricity-generating technology shall be considered separate plants if they meet one of the exceptions below.
>
> (a) *Exception for individual net-metering and self-consumption*. Applies if the facilities:
> (1) Are not located on the same parcel of land
> (2) Are ~~interconnected~~ wired to offset consumption on ~~behind~~ separate ~~retail electricity~~ billing meters; and
> (3) Supply different retail customers.
>
> (b) *Exception for additional facilities co-located with a net-metering, or standard-offer facility*. Applies when:
> (1) The facilities have separate points of interconnection; and
>
> (2) No more than one facility on the same parcel or contiguous parcels participates in net-metering or the-Standard Offer Program up to the statutory capacity cap for the applicable program. However, the aggregate capacity of all facilities on a parcel and contiguous parcels will be considered for purposes of determining eligibility under 30 V.S.A. § 8005(a)(2).
>
> (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.

The Department appreciates the opportunities the Commission has provided for input and comment and looks forward to continuing the discussion this upcoming legislative session.

Dated at Montpelier, Vermont this 16th day of October 2025.

VERMONT DEPARTMENT OF PUBLIC SERVICE

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