From: Springer, Darren [Darren.Springer@vermont.gov]
Sent: Wednesday, June 08, 2016 2:50 PM
To: Klein, Tony (twklein@tonyklein.com)
Subject: FW: S.230

From: Lunderville, Neale [mailto:nlunderville@burlingtonelectric.com]
Sent: Tuesday, May 24, 2016 8:47 AM
To: Springer, Darren <Darren.Springer@vermont.gov>
Cc: Nolan, Ken <knolan@burlingtonelectric.com>; Kanarick, Mike <mkanarick@burlingtonelectric.com>
Subject: S.230

Hi Darren,

BED has been reviewing the provisions of S.230 as passed by the Legislature. We are offering our thoughts below.

Attaching CPG to Property Deed

BED has identified a significant concern with the bill, specifically the new section 248(a)(7) regarding attaching a CPG to a property deed. Under this new provision the holder of a CPG must file a notice of the CPG on the land records of the municipality in which the project is located. The CPG-holder would be listed as the grantor on the land records, and while not clear in the bill, the owner of the land on which the project is located would presumably be listed as the grantee. When a prospective purchaser conducts a title search, they would then be on notice that the land is encumbered or benefitted by the presence of a certificated generating facility (depending upon the purchaser's point of view).

BED's understanding is that the PSB's jurisdiction would only extend to the holder of the CPG, not the underlying property owner. However, it is an open question as to what happens if the CPG holder is not in compliance with the CPG, or abandons a project and walks away.

In the case of a property sale, the title searcher would now need to conduct some due diligence by contacting the PSB or DPS to see if the project is in compliance with the CPG, which could increase the cost of the real estate transaction for the buyer. Further, if the project is not in compliance it could negatively impact what a prospective purchaser would pay for the property. This could also be considered an encumbrance by the title insurance company, which would either be exempted from coverage under the title policy or insured at a higher cost.

BED also reached out to the Vermont Attorneys Title Insurance Company to gain their thoughts. Although they were unaware of the specifics of the bill, when we explained our understanding of what the legislation provided, they indicated that they would probably treat the notice of a CPG as an encumbrance that would be excepted from coverage under the policy. This would put the onus on the property owner to determine what risk they were willing to take with respect to the presence of a certificated generating facility on their property. They also confirmed our belief that in the event a developer walked away from a facility, it would be incumbent upon the property owner to take whatever steps necessary to clear the encumbrance, such as proceeding through the PSB process to have the CPG revoked.

The bottom line: our research on this provision of S.230 indicates that: (i) a property owner with an attached CPG will have more hoops to jump through in order to sell their property; (ii) the cost of property transactions where CPGs are involved will likely increase; and (iii) property owners may have more liability for out of compliance CPGs then they had understood when they signed agreements with developers. (Standard caveat: our findings should be vetted by attorneys with specific expertise in real estate transactions and title searches.)

BED has a strong commitment to seeing solar projects constructed in Burlington and around Vermont, particularly residential scale arrays. BED is concerned that this significant change in the relationship between project developers and project hosts could complicate property transactions in Vermont and act as an anchor on future small scale renewable development. BED believes that this change is not in our customers' best interest.

Use of Emergency Rules

S.230 section 12(b) calls for emergency rulemaking per 3 VSA § 844. In our view, this is a non-standard use of this section of statute as it pertains to energy projects.

Regardless of whether you agree with noise standards or not, emergency rulemaking is designed for *emergencies*, not simply the normal exigence of political or policy decisions. By stating in subsection (b)(1) that the Board's temporary rules "shall be deemed to meet the standards of 3 V.S.A. s844(a)," the Legislature, in effect, has determined that noise from wind generation facilities is "an **imminent peril** to public health, safety and welfare." [Emphasis added.]

Based on our review, this temporary rulemaking would not create an immediate issue for *existing* wind projects. S.230 states that the temporary rules would apply to "applications… filed on or after the effective date of this section," which would be upon passage. By S.230's express terms, the new rules would apply only to applications filed on or after the date of passage. To the extent there are any wind projects presently in the queue, no CPG would be issued for those projects until the temporary rules are in effect.

We hope that these observations are helpful as you review S.230.

Thanks,
Neale

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