



STATE OF VERMONT
GENERAL ASSEMBLY

October 10th, 2023

Necessary Updates to Act 250 Program Study Steering Committee Members
C/O State of Vermont Natural Resources Board
10 Baldwin Street
Montpelier, VT 05633-3201

Dear Steering Committee Members

Thank you for your commitment to the State of Vermont and your work on this important study about the necessary updates to Act 250. I am cognizant of your timeline for reporting on your work to the House Committees on Environment and Energy and Ways and Means and the Senate Committees on Finance and Natural Resources and Energy on these “necessary updates to the Act 250 program,” on or before December 31, 2023.

I’m writing today to share some of what I have learned this summer and fall as I’ve followed up on the statutory language the legislature and governor agreed to in the past session which temporarily exempts¹ the rebuilding of existing electric infrastructure from the Act 250 permitting process. I’ve spent close to 100 hours researching specific permit applications and processes in my region related to this issue since the end of the 2023 session. The reason I decided to do this research is because people in my district and the surrounding area were harmed by the Act 250 permitting process delays for permits to rebuild existing electric infrastructure. I want to share with you some concrete examples of the ways they were harmed:

1. There were 67 outages totaling 21 days during the last five years in parts of my district. Some of those were during the winter and people had no heat.
2. My neighbor slept in the car with their kids when the power went out in winter. My other neighbors stayed cold in their house for days.
3. Other older constituents with some means bought a whole house generator that cost them over \$400 in propane to run during the last winter storm outage.
4. Several hundred dollars' worth of perishable food lost by a working family of five in last winter's storms.

¹ Sec. 19a. 2022 Acts and Resolves No. 182, Sec. 40

Given these examples of harm I was shocked at the amount of opposition there was in the statehouse to the proposed exemption including from House leaders, NRB staff and ANR. Presuming everyone was acting with good intent, it is still clear something went very wrong here. I have seen no evidence to date that preventing or stopping ongoing harm to Vermonters was a priority or even a consideration for the public bodies involved in the permitting of projects to harden the grid.

What happened?

The increasing frequency of extreme weather and escalating damage during weather events has resulted in the regulated electric utility in my region methodically following the regulatory processes necessary to harden the grid. Hardening the grid includes moving lines out of the woods and into the existing right of ways, burying where possible and adding tree wire where it is not possible. This work is necessary to improve reliability, and it is also necessary to manage rising costs of repairing and maintaining the infrastructure with increasingly severe weather – costs that are ultimately born by ratepayers.

In 2019, I helped bring together local leaders to meet with our utility and examine the data from our changing weather patterns. We heard about the utility's plans to harden the infrastructure to keep the power on. This was done in advance of them seeking approval for a climate plan² at the Public Utility Commission. After this 2019 meeting, as my region continued to experience outages that were escalating in frequency and duration, I presumed we just needed to be patient.

It was after our third multi-day outage this past winter that I learned that the grid hardening/climate adaptation projects we had explained to my local selectboard, and community leaders were urgently needed - four years ago - had experienced *extensive and excessive* Act 250 permitting roadblocks. This is when I began working with several other members of the Windham County Delegation and the utility to put in place a temporary Act 250 exemption. Ultimately this was successful, largely due to the Speaker of the House recognizing the urgency of the situation.

As noted above, and despite the Speaker's support, the opposition this temporary exemption encountered shocked me given the level of suffering that my constituents and others in our region had been experiencing. My process of examining what happened is still ongoing despite multiple interviews and information requests of my regional planning commission, the Natural Resources Board, the Agency of Natural Resources, the Department of Public Service and my regions utility. I've also begun comparing notes with other legislators whose constituents were subjected to these delays and with other utilities in other parts of the state to learn how pervasive permitting roadblocks have been in replacing existing critical infrastructure. With the

² <https://greenmountainpower.com/wp-content/uploads/2020/11/GMP-Final-Climate-Plan-As-Approved.pdf>

2024 session quickly approaching and your work underway, I am writing with initial learnings and suggestions on needed improvements.

What I have learned to date:

To further characterize this list of learnings, items 1-5 should not be legal or acceptable in the State of Vermont. We have an obligation to provide an answer to item 12 as part of this year's anticipated legislative process.

1. *After reviewing Act 250 permit application records for electric line rebuilding throughout the entire state, I have learned about 4 projects that took over 1 year for a permit to be issued in my district, District 2. Two of those four took more than 1,000 days to permit.³ 1,000 days is more than three years, more than three building seasons and more than three winters.*
2. *Despite regulated utilities and ANR coming together and working to develop best management practices (BMPs) for Penta Pole placement⁴, despite the need for electric reliability documented repeatedly in the Windham Regional Plan⁵, despite ANR weighing in on how to follow the BMPs and what constituted following the BMPs⁶, despite a favorable jurisdictional project opinion from the court, standoffs between the utility and the environmental and regional district commissions halted issuance of critical permits for over three years.*
3. *State Natural Resources regulator (ANR) developed the BMPs with stakeholders to protect groundwater and to streamline compliance in project process, but District 2 Coordinator went beyond the BMP and beyond the additional processes that ANR and the utility established to verify compliance with the BMPs. This was an overreach, and the RPC supported the coordinator's overreach.*
4. *A total of zero public entities involved or associated raised an alarm about the harm the delay perpetuated or attempted to expedite resolution of the standoff.*
5. *There was no local or regional advocate for the residents, community institutions and local businesses experiencing the impasse on reliability projects.*
6. *Best Management Practices regarding use and placement of Penta Poles do not appear to be treated the same way across Vermont's environmental districts.*

³ <https://laurasibiliavt.files.wordpress.com/2023/10/nrb-utility-projects-2016-2022-revised-08302023.pdf>

⁴ https://puc.vermont.gov/sites/psbnew/files/doc_library/BMPs-For-PCP-Treated-Poles.pdf

⁵ http://windhamregional.org/images/docs/regional-plan/2014_Windham%20Regional%20Plan_complete.pdf

⁶ <https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2W1347>
<https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2S1350>
<https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2W1365>
<https://anrweb.vt.gov/ANR/Act250/Details.aspx?Num=2W1367>

7. I have learned that there is no trigger on excessive timing or public urgency for Act 250 permits, no formal problem-solving process that comes into play.
8. Statewide advocate (DPS) only aware of an issue if there are complaints about reliability (and there were almost none)⁷
9. According to my RPC, RPC engagement in the process is inconsistent across the state.
10. Based on multiple interviews I had, there is a lack of clarity by my RPC on:
 - a. What if any effect they have in the permitting process
 - b. How to include all relevant aspects of the regional plan when weighing in on Act 250 permit applications.
11. Regional Planning Commission review and engagement may be limited to a very small group of town Commissioners and staff. In my region, different staff and different iterations of a 4–6-member project review committee were the only eyes on the question of supporting the applicant or the position of the District-2 environmental commission. The minutes from those meetings do not reflect an awareness of the extent of the reliability issue the projects would resolve.⁸
12. As a legislator I know from multiple other instances with other constituents trying to permit water systems or other infrastructure projects that they are regularly advised not to involve legislators in Act 250 issues when seeking relief in cases with extensive delays. There is a fear of retribution or exacerbation by individual actors at the environmental or regional commission or within ANR who appear to have a lot of unchecked power. **What oversight can we point to that will assure Vermonters that we have systems in place to ensure that is not the case?**

Suggestions:

General:

- Please articulate more specificity about what Act 250 is to accomplish and how it supports **equitable access** to critical infrastructure like electricity and broadband for which there is a state obligation to provide service. The difficulty, cost and likely increasing focus on designation has the potential to exacerbate existing inequities in the ability to navigate this process between those with means and those without.

⁷ Department of Public Service CAPI outage complaints for Windham/Windsor County between 2017 and 2023: CAPI has received 31 outage complaints from Windham/Windsor County between 2017-2023

2017: 1 2018: 20 2019: 5 2020: 0 2021: 1 2022: 0 2023: 4

⁸ <http://windhamregional.org/images/docs/committees/project-review/MIN-2018-07.pdf>
http://windhamregional.org/images/docs/committees/project-review/MIN_2020-09.pdf

Exemptions:

- Exempt PUC regulated activities from Act 250. Permanently.

Factor people into the process:

- Articulate a recommended role for Act 250 to play in protecting and preserving human life by adapting to climate change and ensuring critical infrastructure deployment.

Governance:

- Keep the Court in place – law over ideology, poor communication and lack of information
- Require comprehensive and transparent communications system development that is **in service of project proposers getting an answer as quickly as possible.**
 - Obligated participants in the study: NRB, VAPDA, RDCs, VLCT, ANR, ACCD, DPS
 - Clearly articulate roles, information needs and decision points for each entity including RPCs and the role of the Regional Plan.
- Notice Regional Development Corporations for projects in their region.

Accountability:

- Put triggers on projects that extend past 6 months in statute, with onus and expense on state entities. Some ideas at 6-month mark:
 - Review by different Commission
 - Automatically send to environmental court
 - Require ANR, District Commission, RPC and Project to meet and ¾ sign off on pathway forward or permit is granted
 - After Action Review BY NRB on projects that exceed 6 months.
- Notice all legislators connected to the project's physical location and service area.

Final thoughts:

First, I cannot support the addition of any new requirements or criteria or thresholds until governance and accountability are addressed.

There is a pressing need for Vermont policymakers to focus on **helping all Vermonters adapt** their lives and property to the changing climate.

Vermonters are not going to abandon their histories, homes or businesses.

Climate change adaptation can be difficult or expensive or both and it is also acutely necessary.

Climate change adaptation in rural communities without adequate administrative infrastructure or resources is virtually impossible. Please be clear that that infrastructure does not currently exist for most communities.

Permitting bureaucracy that slows climate change adaptation in Vermont communities without adequate administrative infrastructure or resources must be seen as causing intentional harm going forward.

When we reform Act 250, we need to act with intention to reform it to help and not harm Vermonters as well as protect the Vermont environment.

Sincerely,

Rep. Laura Sibia
Windham-2

Cc: Speaker Jill Krowinski
Rep. Amy Sheldon