

**STATE OF VERMONT
PUBLIC SERVICE DEPARTMENT**

24 V.S.A. § 4352 Determination No. 19

**DETERMINATION OF ENERGY PLANNING COMPLIANCE PURSUANT TO
24 V.S.A. § 4352 FOR BENNINGTON COUNTY REGIONAL COMMISSION'S
REGIONAL PLAN**

I. INTRODUCTION

Today, in my capacity as the Commissioner of the Vermont Department of Public Service (“Department”), I have issued the attached certificate memorializing my affirmative determination pursuant to 24 V.S.A. § 4352(a) that the Bennington County Regional Commission (“BCRC”) Regional Plan (“Plan”) complies with the requirements of 24 V.S.A. § 4352 for enhanced energy planning.¹ This determination is made solely as to whether the Plan complies with the statutory planning requirements of 24 V.S.A. § 4352. This determination does not mean that the Department endorses the substantive policy judgments contemplated or promoted in these plans. Additionally, I hereby record the procedural history leading to the compliance determination, as well as a report of the public comments the Department received.

II. PROCEDURAL HISTORY

On November 25, 2024, the BCRC submitted the Plan for a determination of compliance with the enhanced energy planning standards set forth in 24 V.S.A. § 4352.

On December 2, 2024, the Department solicited recommendations from the Secretaries of the Agencies of: Agriculture, Food, and Markets; Commerce and Community Development;

¹ The Plan was adopted on November 21, 2024, in accordance with 24 V.S.A. § 4348b.

Natural Resources; and Transportation as to whether the Plan should be certified as compliant with the requirements of 24 V.S.A. § 4352.

On November 26, 2024, notice of a public hearing scheduled for December 16, 2024, was emailed directly to the BCRC.

On November 29, 2024, notice of a public hearing scheduled for December 16, 2024, was published in the Bennington Banner.

On December 2, 2024, notice of a public hearing scheduled for December 16, 2024, was posted on the Department's website.

On December 16, 2024, the Department convened a hybrid public hearing at 210 South St, Suite 6, Bennington, VT and via the Microsoft Teams Platform.

III. AGENCY COMMENTS

Agency of Commerce and Community Development

The Agency of Commerce and Community Development did not submit any comments on the Plan.

Agency of Transportation

The Agency of Transportation did not submit any comments on the Plan.

Agency of Natural Resources

The Agency of Natural Resources did not submit any comments on the Plan.

Agency of Agriculture, Food, and Markets

The Agency of Agriculture, Food, and Markets did not submit any comments on the Plan.

IV. PUBLIC COMMENTS

Four members of the public attended the December 16, 2024, public hearing, and one whom offered verbal comments on the plan. These verbal comments summarized written comment also provided to the Department and BCRC on December 16th on behalf of a solar developer who is developing projects within Bennington County. The Department did not receive any additional public comments in writing.

The public comments related to calculations made by BCRC estimating existing electrical generation located in the region and the related renewable energy generation targets established by BCRC for 2025, 2030, and 2050. BCRC used the Generation Scenario Tool to develop these targets, a tool developed by the Department to support regional planning commissions (“RPC”) in this task. The comments argue that the 15% capacity factor for solar used in the Department’s Generation Scenario Tool is overstated, highlighting that the ISO New England 2022 PV forecast, used as one of many inputs to the tool, suggests a capacity factor of 13.6% for solar in New England. As a result, comment suggests the existing amount of distributed generation estimated by BCRC to be in their region is also overstated, resulting in targets for 2025, 2035, and 2050 that are understated. The written comments offer analysis changing BCRC’s estimates of current generation and future targets using the 13.6% capacity factor instead of 15%. The written comments state:

The end result is the non-compliance of the Plan with respect to 24 V.S.A. § 4352(c)(3). Specifically, by understating the targets for renewable energy, the BCRC plan (i) does not call for a sufficient amount of renewable energy generation to meet Vermont’s greenhouse gas reduction goals under 10 V.S.A. § 578(a), (ii) is inconsistent with the State’s energy policy under 30 V.S.A. § 202a(1), (2) and (3) and (iii) is inconsistent with the Renewable Energy Standard under 30 V.S.A. §§ 8004 and 8005.

V. **DEPARTMENT OBSERVATIONS**

General Observations

Act 174 created a new energy planning process in Vermont for RPCs and municipal planning bodies. Pursuant to this process, an RPC has the option of submitting its duly adopted regional plan to the Commissioner of the Department of Public Service for an affirmative determination of energy planning compliance with the statutory standards of 24 V.S.A. § 4352. When a regional plan has received an affirmative determination of energy planning compliance determination under 30 V.S.A. § 4352, the Vermont Public Utility Commission is required to afford substantial deference in 30 V.S.A. § 248 proceedings to the land conservation measures and specific policies contained in such a duly adopted regional plan when reviewing any proposed electric generation facility in the region covered by that plan.

While a regional plan that has received an affirmative determination of energy planning compliance must be given substantial deference by the Public Utility Commission when reviewing the siting impact of a project, such as under the "orderly development" criterion of Section 248(b)(1), that does not mean that the regional plan automatically or ultimately decides whether a project will receive a Section 248 permit. Rather, a regional plan that has been determined to comply with 24 V.S.A. § 4352 will only serve, as warranted, to inform the several statutory criteria the Commission must apply when considering whether a proposed project should receive a Section 248 permit.

Pursuant to 24 V.S.A. § 4348b(a), regional plans expire every eight years, thereby requiring plan amendments or updates and adoption or readoption at that time, although there may be other circumstances that might cause an RPC to update their plan before the end of the eight-year period. Under 24 V.S.A. § 4352(h), an affirmative determination of energy planning

compliance remains in effect until it either expires at the end of the eight-year period or the plan is readopted. Thus, once a plan has expired or been readopted, the RPC must submit their new plan for determination of compliance with 24 V.S.A. § 4352 to maintain its affirmative determination.

The Department views each iteration of the regional plans and their determination of compliance with 24 V.S.A. § 4352 as an important part of the planning process. Each new plan provides an opportunity to review, update, and reflect changes within the community since the adoption of the previous plan and the energy element. As such, the Department asks that RPCs and municipalities take steps to make updates to the extent possible, ensuring the data, goals, and recommendations reflect current reality of the region. Such updates will prove key to effectively taking actions and measuring progress toward reaching the state's clean energy and greenhouse gas reduction targets.

The Department appreciates the pre-filing collaboration with BCRC that occurred while BCRC updated their regional plan and the responsiveness of BCRC staff to Department comments and questions. Pre-determination collaboration is encouraged by the Department, as it offers the Department opportunities to; engage in conversation about issues the region may be facing, offer technical support as needed, and identify and address questions before a plan is adopted. The Department looks forward to continuing such engagement with BCRC in advance of its next plan.

Review of Public Comments & Concern

In reviewing BCRC's request for a determination of energy compliance, the Department reviewed the concerns expressed by the solar developer during the public hearing and in writing. In reviewing a region's request for a determination of energy planning compliance, the

Department is tasked with ensuring that a region’s plan meets the standards issued by the Department.² With regards to renewable generation targets in particular, the Department reviews regional plans for consistency with the following standards:

- **Standard 4D:** “Does the plan establish 2025, 2035, and 2050 targets for electric efficiency improvements and use and renewable energy for electricity... ?”³
- **Standard 9A:** “Does the plan evaluate (estimates of or actual) generation from existing renewable energy generation in the region, and break this information out by municipality?”⁴
- **Standard 9D:** “Does the plan identify sufficient land in the region for renewable energy development to reasonably reach 2050 targets for renewable electric generation... .”⁵

The standards allow for RPCs to establish discretionary targets broadly aligned with state policy and the Generation Scenario Tool. This tool, provided to the RPCs by the Department, allows RPCs to consider various factors to establish these targets. The Department’s review of BCRC’s regional plan finds that the plan meets these standards, because it evaluates and estimates current and future renewable energy generation using the Department-provided tool and identifies sufficient land in the region to accommodate enough generation to achieve the Plan’s 2050 targets.⁶

The Department appreciates the public comment on the appropriateness of using a 15% capacity factor. The Department reviewed the performance of solar projects connected in Vermont in the last several years and found that 15% is an appropriate assumption for future projects. The 13.6% capacity factor identified in public comments for solar assumed by ISO New

² A copy of the Regional Determination Standards are available on the Department’s website: https://publicservice.vermont.gov/sites/dps/files/documents/Pubs_Plans_Reports/Act_174/Final%20Update%20Regional%20Determination%20Standards_%20Form%20Fillable.docx (“Regional Determination Standards”). A copy of the standard’s checklist submitted by BCRC is available on the Department’s website: <https://publicservice.vermont.gov/document/bennington-county-regional-commission-standards-checklist-112024>

³ Regional Determination Standards at 6.

⁴ Regional Determination Standards at 9.

⁵ Regional Determination Standards at 10.

⁶ BCRC regional plan, page 223 Table 13-5 and page 225 Table 13-5.

England includes the full suite of installed solar generation across New England, including older, less efficient generators, and therefore does not reflect the reality of solar development in Vermont at the present. The Department confirms that a 15% capacity factor is appropriate but will continue to periodically review and update the tool given the best available information.

VI. CONCLUSIONS

Based on my review of the Plan, I have determined that it complies with the requirements of 24 V.S.A. § 4352.

Dated at Montpelier, Vermont this 22nd day of January, 2025.

VERMONT PUBLIC SERVICE DEPARTMENT

Signed by:

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Kerrick Johnson
Commissioner
Vermont Department of Public Service