

**5.900 DECOMMISSIONING REQUIREMENTS FOR FACILITIES CONSTRUCTED AND OPERATED PURSUANT TO 30 V.S.A. § 248 .****5.901 Purpose and Applicability**

This rule establishes the standard requirements for the decommissioning of electric generation, electric transmission, and natural gas facilities pursuant to 30 V.S.A. § 248(a)(5). This rule applies to all electric generation, electric transmission, and natural gas facilities that are or become subject to the jurisdiction of the Vermont Public Utility Commission pursuant to 30 V.S.A. § 248. This includes net-metering facilities permitted under the procedures authorized by 30 V.S.A. § 8010. This rule shall apply to all facilities for which a petition or application for a certificate of public good under 30 V.S.A. § 248 is submitted after the effective date of this rule.

**5.902 Definitions**

- (A) Commission: The Vermont Public Utility Commission.
- (B) CPG: certificate of public good.
- (C) CPG holder: a person or company who holds a CPG pursuant to 30 V.S.A. § 248 to construct and operate an electric generation, electric transmission, or natural gas facility.
- (D) Facility: an electric generation, electric transmission, or natural gas facility for which a petition for a CPG pursuant to 30 V.S.A. § 248 is submitted to the Commission after the effective date of this rule.
- (E) Plant capacity: The term plant capacity shall have the same meaning as defined in 30 V.S.A. § 8002.
- (F) Utility: for purposes of this rule, a person or entity engaged in the distribution of electricity or natural gas for retail sale, or the Vermont Electric Power Company, Inc. and Vermont Transco, LLC and any successor thereof.

**5.903 Requirements for Utility-Owned Facilities**

Facilities owned by utilities shall be removed once they are no longer in service. The Commission may require a utility to implement some or all of the requirements applicable to non-utility facilities set forth in Rule 5.904, below, or alternative means to ensure the removal of facilities that are no longer in service. The Commission will incorporate such requirements as conditions of CPGs issued pursuant to Section 248, as applicable.

**5.904 Requirements for Non-Utility-Owned Facilities**

- (A) Requirements for non-utility-owned generation facilities with a plant capacity equal to or greater than 150 kW and less than or equal to 500 kW. Facilities in this category shall be removed once they are no longer in service, and the site shall be restored to its condition prior to installation of the facility to the greatest extent practicable. The Commission will incorporate this requirement as a condition of CPGs issued pursuant to Section 248, as applicable.
- (B) Requirements for facilities with greater than 500 kW plant capacity and non-utility-

owned electric and gas transmission facilities. Facilities in this category shall be removed once they are no longer in service, and the site shall be restored to its condition prior to installation of the facility to the greatest extent practicable. In addition, facilities in this category shall meet the requirements described below. The Commission will incorporate these requirements as conditions of CPGs issued pursuant to Section 248, as applicable.

1. Requirement to submit decommissioning cost estimate. All petitions to construct or operate a facility subject to this subsection shall include a facility-specific decommissioning cost estimate in present-day dollars that identifies the costs associated with decommissioning activities.
  - a) Decommissioning cost estimates shall include all costs associated with the dismantlement and safe disposal of facility components and site restoration activities, including the following elements:
    - i. All labor, equipment, transportation, and disposal costs associated with the removal of all facility components from the facility site;
    - ii. All costs associated with full restoration of the facility site, including removal of non-native soils, fences, and constructed access roads;
    - iii. All costs associated with reclamation of any primary agricultural soils at the facility site to ensure each area of direct impact shall be materially the same as it was before construction;
    - iv. All costs associated with obtaining and complying with any federal, state, or local permits that may be required as a result of decommissioning activities;
    - v. All decommissioning activity management, site supervision, site safety costs; and
    - vi. Any other costs associated with the decommissioning and restoration of the facility site.
  - b) The salvage value of facility components shall not be subtracted from or otherwise offset costs included in the decommissioning cost estimate.
  - c) Decommissioning cost estimates shall identify the name, job title, contact information, and qualifications of the individual who prepared the estimate.
- 2) Irrevocable standby letter of credit. All requests to construct or operate a non-

utility electric generation, electric transmission, or natural gas facility shall include a draft irrevocable standby letter of credit in an amount sufficient to fund the estimated decommissioning and site restoration costs developed pursuant to Paragraph (B)(1), above. Prior to commencing construction of the facility, a CPG holder shall file and receive Commission approval of an executed letter of credit. The letter of credit shall: (1) name the Commission as the sole beneficiary of the letter of credit; (2) be issued by an A-rated financial institution; (3) include an automatic extension provision or “evergreen clause”; and (4) be bankruptcy remote.

- 3) Alternative form of financial security. The Commission may, in its discretion, approve alternative forms of financial security from that required in subparagraph (2), above, if it finds that such alternative forms will provide an assurance of the availability of financial resources for decommissioning that equals or exceeds that provided by the form required by that subparagraph.
- 4) Reporting. Every three years, a non-utility CPG holder shall file a report with the Commission, the Vermont Department of Public Service, and each party to the proceeding in which the facility’s CPG was granted, describing any adjustments and changes to the decommissioning fund in the previous three-year period. This report shall be filed no later than February 28 of the third year following the issuance of the CPG and every subsequent third year.
- 5) Fund inflation adjustment. The value of a non-utility facility’s decommissioning fund shall be adjusted for inflation every three years based upon the net positive change in the annual average of the U.S. Bureau of Labor Statistics’ Northeast Urban Consumer Price Index for the preceding three-year period. The decommissioning fund amount shall not be reduced in periods when the Northeast Urban Consumer Price Index reports a net negative change for the preceding three-year period.
- 6) Letter of credit adjustment. The facility’s standby letter of credit shall be adjusted every three years to reflect changes to the decommissioning fund as provided in subparagraph (5), above. Revisions shall be made no later than February 28 in conjunction with the report required pursuant to subparagraph (4), above. Nothing herein shall preclude the Commission from requiring more frequent adjustments due to facility or site conditions.
- 7) Access to decommissioning fund. The Commission shall have the right to draw upon a non-utility facility’s irrevocable standby letter of credit to pay for decommissioning in the event that the CPG holder has not commenced decommissioning activities within 90 days of a Commission order directing decommissioning.
- 8) Release of excess funds upon completion of decommissioning activities. Upon completion of all decommissioning and site restoration activities, a CPG

holder shall request a determination from the Commission that the CPG holder's decommissioning obligations have been satisfied. Upon the Commission's determination that the decommissioning obligations have been satisfied, the Commission will terminate the facility's letter of credit.

**5.905 Mitigation Plantings**

Nothing in this rule shall require the removal of plantings installed as part of a Commission-approved aesthetic mitigation plan.

**5.906 Exemption for Roof-mounted Facilities and Parking Lot Canopies.**

The following shall be exempt from the requirements of this rule: electric generation facilities located (1) on a new or existing structure whose primary use is not the generation of electricity or providing support for the placement of equipment that generates electricity or (2) on a parking lot canopy over a paved parking lot, provided that the location remains in use as a parking lot.

**5.907 Waiver of Rule Requirements**

The Commission may, for good cause, grant exceptions in particular cases to any provision of this rule.

**5.908 Repeal of Prior Requirements**

Paragraph 5.402(C)(2) of Commission Rule 5.400 related to decommissioning is hereby repealed, except with respect to any proceeding pending on the effective date of this rule.