

**Explanation of the Public Service Board’s reasons for accepting or rejecting changes to the original proposed rule entitled “Rule 5.800: Requirements related to the installation and maintenance of aesthetic mitigation measures.”<sup>1</sup>**

Below is an explanation of the Board’s reasons for accepting or rejecting requested changes to the proposed rule in response to comments received. The explanation proceeds through the rule by section, discussing the comments relevant to each section and explaining the Board’s reasons for either accepting or rejecting those comments and any changes made to each section of the proposed rule as a result thereof. In addition, the Board made several technical or clarifying changes to reflect suggestions from commenters as well as the Board’s ongoing view of the original proposed rule.

The Board received comments from the following entities during the rulemaking process:

- The Vermont Department of Public Service (the “Department”)
- The Two Rivers-Ottawaquechee Regional Planning Commission (“Two-Rivers Ottawaquechee”)
- Renewable Energy Vermont (“REV”)

**Section 5.801 Purpose and Applicability**

*Comment Summary*

In its comments, REV recommended that this section be modified to make clear that the rule applies to petitions or applications for certificates of public good (“CPG”) under 30 V.S.A. § 248 that are submitted after the effective date of this rule. REV also recommended that the word “implemented” be replaced with the phrase “properly installed.”

*Response to Comments*

The Board has adopted REV’s recommendation related to clarifying the effective date of the rule. In regard to REV’s second suggestion, the Board has not adopted the language proposed by REV as it was unclear what distinction this change would create and REV did not state why such a change would be desirable. Additionally, there could be aesthetic mitigation measures for which the term “implemented” is more accurate than “installed.”

**Section 5.802 Definitions**

*Comment Summary*

REV made several clarifying suggestions in this section.

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<sup>1</sup> Per 3 V.S.A. § 841(b).

### *Response to Comments*

The Board adopted many of REV's suggested clarifications.

### **Section 5.803 General Rule**

REV recommended that this section require only "material" accordance with the CPG issued for the facility and a Board-approved aesthetic mitigation plan.

### *Response to Comments*

In light of changes recommended by the Department related to the development of a final, approved aesthetic mitigation plan, the Board decided not to adopt REV's recommended change to this section. As discussed further below, the Board revised the rule to require that a final aesthetic mitigation plan be filed at the conclusion of the CPG process. As such, facility owners will be able to provide a concrete, specific plan that reflects the outcome of the CPG proceeding. In light of this, the Board has concluded that facility owners should be obligated to implement this plan in accordance with its terms, unless subsequently amended, as outlined in the rule.

### **Section 5.804 Submittal of Proposed and Final Aesthetic Mitigation Plan**

#### *Comment Summary*

In its comments, the Department expressed a strong desire to ensure that all Section 248 CPG approvals that contain aesthetic mitigation produce a single, specific plan that documents all aspects of a facility. The Department's concern stems from the fact that revisions to the site layout and aesthetic mitigation elements may be depicted on separate plans or, if in response to a Board decision on the project, may not be fully depicted at all. The Department argues that a single document that details all aspects of the authorized project is needed to effectively assess whether a facility operator has implemented the aesthetic mitigation measures as contemplated in the CPG review process.

REV recommends that the exemption from the requirement to submit a proposed aesthetic mitigation plan provided by Section 5.805(E) of the proposed rule be expanded to facilities eligible for the application process of Rule 5.106 (i.e., net-metering systems with a plant capacity of between 15 and 50 kW that are not located on roofs).

### *Response to Comments*

The Board was persuaded that the rule should contain a requirement for a final aesthetic mitigation plan that reflects the final outcome of the CPG process and has included a requirement to produce such a document in the final proposed rule. The existence of such a plan will enable a straightforward comparison between a facility and what was approved during the

CPG process. This will facilitate compliance and better enable neighbors, intervenors, and other affected parties to understand what actions the facility's developer is required to undertake.

The Board does not agree with REV's recommendation that all facilities eligible for the application process of the Board's net-metering rule be exempt from the requirements of this rule. While the Board recognizes that many facilities eligible for the net-metering application process may not require any aesthetic mitigation, those facilities that do should be required to install it in an expeditious manner and maintain its effectiveness for the life of the facility. We note that the Board's existing net-metering application forms already require that an applicant submit information describing the aesthetic impact of a proposed project and whether any aesthetic mitigation measures are being implemented. For a facility that does not require aesthetic mitigation measures, the only additional requirements of the rule, beyond what is already required in the net-metering application, would be to specifically explain why such measures are not necessary for such a project.

## **Section 5.805 Post-Construction Requirements**

### *Comment Summary*

In this section, the Department recommended that the rule be amended to require a facility owner to provide the date it completed construction of the facility and the date of interconnection, in addition to the date the aesthetic mitigation plan was implemented. The Department also recommends that the language requiring implementation of the plan require that the plan be "fully" implemented.

Two Rivers-Ottawquechee concurred with the Department's recommendations in this section.

REV made a number of recommendations related to this section. These included: (1) using the date of commencement of commercial operation as a triggering date for the deadline to complete the implementation of aesthetic mitigation measures; (2) only requiring that the plan be implemented in a manner "materially" consistent with the plan approved by the Board; and (3) establishing a requirement that site visits may only occur when a specific showing of non-compliance is made by the entity requesting a site visit.

### *Response to Comments*

The Board concurs with Two Rivers-Ottawquechee's and the Department's recommendations to include the dates of completion of construction and interconnection in the certification of completion filing. Given that the rule's compliance framework triggers off these dates, it is important to have these documented.

The Board does not agree with REV's recommendation that the triggering date be modified to be the commencement of commercial operation. In practice, most facilities are likely to be energized shortly after construction is complete in order to start generating revenue. However, if a delay between these events is experienced, the aesthetic impacts of the facility will

be felt by neighbors or other affected parties as soon as construction is complete. Therefore, the Board believes that the construction completion date is an appropriate benchmark after which timely completion of all aesthetic mitigation measures should be required.

The Board also does not concur with REV's recommendation that the plan be only "materially" consistent with the final approved aesthetic mitigation plan. The core purpose of this rulemaking is to provide assurance to affected parties that aesthetic mitigation measures required by the Board are being faithfully implemented; thus, the constructed facility should faithfully reflect the plans approved by the Board. Should modifications to those plans be necessary, the facility operator may submit a revised aesthetic mitigation plan for approval pursuant to Section 5.805(B).

We do not agree with REV's recommendation to impose a specific standard that must be met in order to conduct a site visit to assess compliance with the rule. However, we agree that requests for a site visit should be supported by an explanation why such a visit would be necessary. Accordingly, we have modified the rule to include language to that effect.

#### **5.806 Waiver of Rule Requirements**

The Board received no comments related to this section.