

**STATE OF VERMONT
PUBLIC SERVICE DEPARTMENT**

24 V.S.A. § 4352 Determination No. 4

**DETERMINATION OF ENERGY PLANNING COMPLIANCE PURSUANT TO
24 V.S.A. § 4352 FOR TWO RIVERS-OTTAUQUECHEE REGIONAL COMMISSION'S
REGIONAL PLAN AND ENERGY IMPLEMENTATION PLAN**

I. INTRODUCTION

Today, in my capacity as the Deputy Commissioner of the Vermont Public Service Department (“Department”)¹, I have issued the attached certificate memorializing my affirmative determination pursuant to 24 V.S.A. § 4352(a) that the Two Rivers-Ottauquechee Regional Energy Implementation Plan (“TROREIP”) and the Two Rivers-Ottauquechee Regional Plan (“TRORP”) comply with the requirements of 24 V.S.A. § 4352 for enhanced energy planning.² This determination is made solely as to whether the TROREIP and TRORP comply 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. Finally, some observations are offered that may prove helpful to other regional planning commissions and municipalities that choose to seek an enhanced energy planning compliance determination under 24 V.S.A. § 4352.

¹ Commissioner June. E. Tierney recused herself in order to avoid any appearance of a conflict of interest as she is a resident of the area served by the Two Rivers-Ottauquechee Regional Commission.

² The TRORP and TROREIP were duly adopted on July 26, 2017.

II. PROCEDURAL HISTORY

On July 27, 2017, the Two Rivers-Ottauquechee Regional Commission (“TRORC”) submitted the TROREIP and TRORP (collectively the “Plans”) for a determination of compliance with the enhanced energy planning standards set forth in 24 V.S.A. § 4352.

On August 21, 2017, notice of a public hearing scheduled for September 5, 2017 was posted on the Department’s website.

On August 21, 2017, notice of a public hearing scheduled for September 5, 2017 was mailed directly to the TRORC.

On August 22, 2017, notice of a public hearing scheduled for September 5, 2017 was published in the Valley News.

On August 24, 2017, notice of the September 5, 2017 public hearing was published in the Herald of Randolph and the Vermont Standard.

On July 28, 2017, the Department solicited recommendations from the Secretaries of Agriculture, Food, and Markets; Commerce and Community Development; Natural Resources; and Transportation as to whether TRORC’s Plans should be certified as compliant with the requirements of 24 V.S.A. § 4352. The Department received responses from the Agencies of Agriculture, Food, and Markets (“AAFM”), Natural Resources (“ANR”), and Transportation (“AOT”).

On September 5, 2017, the Department convened a public hearing in the Chase Community Center at Vermont Law School in South Royalton, Vermont.

III. AGENCY COMMENTS

Agency of Transportation

AOT stated that it did not have any recommendations for changes to the plan.

Agency of Natural Resources

ANR stated that it did not object to certification of the plan, and provided several comments regarding mapping, woody biomass, preferred locations, and municipal assistance. ANR noted two differences in the mapping methodology employed by TRORC: 1) areas identified as “unsuitable” by the TRORC were removed from the energy potential maps, and 2) known and possible constraints were combined into a single constraints layer. However, ANR did not object to the mapping methodologies used by the TRORC. ANR stated support for the Plans’ consideration of sustainable woody biomass management in the TRORC region, inclusion of guidance for municipalities, commitment to helping its member municipalities implement Act 174, and its encouragement of municipal identification of preferred locations.

Agency of Agriculture, Food, and Markets

AAFM requested that future plans consider on-farm methane digesters as a potential source of renewable energy. As AAFM provided this recommendation for consideration in a future regional plan it did not form part of the compliance determination that was made today. That said, TRORC is encouraged to coordinate with AAFM regarding this issue in future planning activities.

IV. PUBLIC COMMENTS

I thank the members of the public who took the time to provide me with feedback on the Plans and this review process, whether in writing or by speaking at the September 5th public hearing. It has been both my duty and privilege to listen to and consider these public comments. This determination decision I am statutorily charged with making affects the lives of the citizens of the Two Rivers-Ottauquechee Regional Commission's service area and I have not undertaken it lightly. What follows is a summary description of the comments the Department received:

Members of the public expressed concerns regarding the sale of renewable energy credits, decommissioning projects, whether land in current use can be used to host a solar array, and whether the transportation section of the plan addresses heavy duty vehicles.

While most of these comments were not strictly related to the determination I must make today, they highlight the importance of these issues to the residents of the area served by the TRORC. I appreciate and welcome the engagement in both regional and local energy planning.

IV. DEPARTMENT OBSERVATIONS

Act 174 created a new energy planning process in Vermont for regional planning commissions and municipal planning bodies. Pursuant to this process, a regional planning commission has the option of submitting its duly-adopted regional plan to the Commissioner of the Public Service Department for an affirmative determination of compliance with the statutory standards of 24 V.S.A. § 4352. When a regional plan has received an affirmative compliance determination under Section 4352, the Vermont Public Utility Commission is required to afford substantial deference in Section 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 must be amended or updated and adopted or readopted every 8 years. In turn, every six years, the Department is required to adopt a Vermont Comprehensive Energy Plan (CEP),³ which must include recommendations for regional and municipal energy planning and standards for issuing a determination of energy compliance.⁴ During these intervals of time new statutes, rules, technologies, and policies may be adopted that could substantially affect the standards and the goals in the CEP. The analysis, targets, and goals presented by the TRORC to meet the planning standards developed by the Department pursuant to Section 9 of Act 174 represent one potential path for achieving energy goals; this potential path is not a directive or a prescription for what must be done or where specific resources must be located. The specific targets and measures should be viewed as aspirational and should not be interpreted as mandatory requirements. For example, a specific area that is marked on a regional planning map as “prime solar” does not mean that the entire

³ 30 V.S.A. § 202b(c)

⁴ 24 V.S.A. § 4352(d)(1)

area will be filled in with solar panels; rather it simply indicates an absence of specific restrictions such as vernal pools or agricultural soils. Any proposed solar project will still need to be reviewed by the Public Utility Commission and affected neighbors and communities will still have the opportunity to provide comments on any proposal and to explain why they do or do not support the proposed construction or siting of that particular project.

The TRORC has developed regional and municipal targets for renewable energy generation; these are included in Appendix C of the TROREIP. These regional and municipal targets are not mandatory for the TRORC's member municipalities. In other words, to the extent that individual municipalities wish to develop enhanced energy plans, these targets developed by the TRORC may serve as tools or guides, but they in no way restrict how individual municipalities develop their own targets for energy planning purposes.

The TRORC conducted a campaign to provide the public with notice and an opportunity to participate in the planning activities that produced the Plans. It is very important that the public is afforded ample opportunities to participate in the planning process. A brief overview of their process is included below.

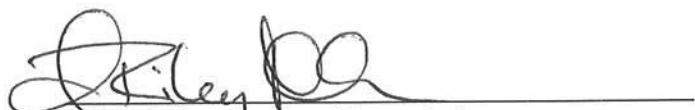
- The TRORC held three public comment forums on September 27, 2016, September 29, 2016, and October 5, 2016.
- The TRORC held two public hearings on April 12, 2017 and April 13, 2017.

Finally, the TRORC included a number of recommended action items directed towards this Department. For example, Action #7 on page 15 of the TROREIP states, "DPS should work with fuel dealers to encourage them to become energy service providers." While it is important for the TRORC to consider action items beyond their direct control as such actions can have an

impact upon planning for their region's energy future, these action items are not binding upon the Department.

Dated at Montpelier, Vermont this 27th day of September 2017.

VERMONT PUBLIC SERVICE DEPARTMENT



Riley Allen, Deputy Commissioner
Vermont Public Service Department

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CERTIFICATE OF ENERGY COMPLIANCE

On this 27th day of September 2017, I affirmatively determined that the Two Rivers-Ottauquechee Regional Plan duly adopted on July 26, 2017, and the Two Rivers-Ottauquechee Regional Energy Implementation Plan duly adopted on July 26, 2017, comply with the energy planning requirements set forth in 24 V.S.A. § 4352.



Riley Allen
Deputy Commissioner
Vermont Public Service Department

Pursuant to 24 V.S.A. § 4352, a regional planning commission aggrieved by an act or decision of the Commissioner of Public Service may appeal to the Natural Resources Board established under 10 V.S.A. chapter 151 within 30 days of the act or decision.