

Act 174 – Frequently Asked Questions

For more information contact your Regional Planning Commission or the Vermont Department of Public Service

1. What will change about the requirements with the new administration of Governor Scott?

Act 174 has been in place for less than a year, but the determination standards are based on energy planning and state policy developed over many years by the legislative and executive branches. At this point, no one knows what, if any, changes will be made by the Governor or Legislature to Act 174 or any of the underlying policies or statutes. Therefore, we are moving forward under the existing framework.

2. Can a municipality's energy plan prohibit a specific type or scale of renewable energy development?

A municipality cannot arbitrarily prohibit a specific type or scale of energy generation in its plan. An analysis of resources, generation potential, and constraints must be completed to justify any policy decisions. Prohibition of certain types or scale of energy development must be compatible with prohibitions on other land uses of similar scope and scale. Municipal plans should also state preferred locations, and preferred scale based on justification and local policies.

- *For municipalities seeking determination of compliance directly with the Department of Public Service (DPS):* There is a requirement in Act 174 (and also in the standards) for regions to allow for the siting of all types of renewable energy generation technologies. Municipal plans, if being submitted to DPS (which is only allowed under Act 174 if the region does not yet have a determination for its plan, and even then, only until July 1, 2018), must meet a similar standard. This is so that municipal limitations on siting do not undermine the region's ability to meet its requirement. If a municipality has no potential for a type of generation (for example, no hydroelectric suitability due to the absence of potential sites), then this needs to be explained in the plan. If the municipality plans to designate specific areas that have potential for energy generation as unsuitable for a type of energy generation, it needs to have a specific reason - such as an irreplaceable resource, which must be articulated in plan policies; and the plan must also similarly exclude other forms of development. The determination standards give additional guidance.
- *For municipalities applying to the regional planning commission for compliance with the determination standards:* A municipality must have a plan that is compatible with the regional plan. Therefore, the municipality must plan for all types of renewable generation consistent with the regional plan targets and maps, or must show that its plan alternatively provides for the ability to generate sufficient types and quality of

energy generation to enable the region and municipality to still meet targets. Municipalities that choose to use the maps provided by the regional planning commission will automatically meet all of the relevant standards for mapping.

3. Can a municipality have a preference for a certain size or scale of generation facility?

Municipalities may state a preference for certain size or scale generation in their municipal plan. Municipalities may also state a preference for a certain type of renewable generation source. Ideally, such preferences will be tied to specific geographic areas.

Inversely, a municipality may choose to state in its plan that a certain size of facility or type of facility should not be located within the municipality. If a municipality makes such a statement, the municipality is required to provide evidence that provides the reasoning for its decision (ex. a natural resources inventory or existence of a state designated village). Also see question 2.

It's important in this context to consider the multiple uses of enhanced energy plans. Preferences will certainly signal to developers the likelihood of a project garnering municipal support. However, the primary use will be by the Public Service Board in understanding a municipality's objectives with respect to land use policy in a specific area, in the context of a project proposal within that area. Regardless of whether a municipality has an enhanced energy element or a determination of energy compliance, it will behoove it to state its intentions with respect to land conservation measures in specific areas in clear, unambiguous, and specific language.

4. Can a municipality just adopt the regional energy plan as its local plan? Will this meet the determination standards?

In accordance with Vermont Statutes (24 V.S.A. 4349) municipalities may adopt all or a portion of their regional plan as part of their municipal plan. If the regional energy plan has been given determination by the Department of Public Service this is an option. However, there are distinct standards for regional and municipal plans that must still be met if this approach is adopted. Depending upon the content of the regional plan additional amendments may still be needed to the municipal plan.

5. Is the general public good of the state defined somewhere?

The "public good" is not defined in state statute. If the Public Service Board finds that a proposed generation facility meets the criteria set out in 30 V.S.A. 248(b) it is found to be in the "public good." Criteria in Section 248 includes: providing an economic benefit to the State and its residences, most of the Act 250 Natural Resources criteria, and not unduly affecting the orderly development of the region.

6. What happens when a municipality meets its generation targets?

Conceivably, a municipality that has met its generation targets could make an argument before the Public Service Board that no further generation facilities should be located in the municipality.

It is important to understand that generation targets may be changed in the future as technology and Vermont's energy needs evolve. Municipal plans are required to be updated every eight years. It is unlikely, though not impossible, that a municipality will meet its current generation targets within the next eight year period. When combined with complex regulatory process, including rules governing the state net-metering program, it may be some time before it is definitively known what will happen when a municipality meets its generation targets.

7. Will Chittenden County be able to meet their generation targets or will other regions have to help meet their target?

Chittenden County certainly faces a tough challenge in terms of meeting its generation targets due to the relative lack of available land, the price of available land, and its higher current and future electricity demand. The county does, however, possess a great deal of rooftop and parking lot area that is well-aligned with the incentive structure in the new net metering (and Standard Offer) programs. Chittenden County RPC will certainly be working towards meeting its generation targets in its regional energy plan, but this issue will need to continue to be monitored over time to better understand if it possible and/or economically feasible.

8. Why aren't there targets for biomass electricity generation?

The Comprehensive Energy Plan identifies limited opportunities for large-scale biomass electricity generation (such as McNeil generating plant in Burlington) in Vermont given the size, health, and composition of our state's forests. What new electric generation there might be should be "heat-led" combined heat and power; to date year-round heat loads appropriate to this use have been relatively few. Given this reality, targets have not been established for biomass electricity generation. However, it should be noted that the use of biomass will continue to be an important, affordable source of thermal energy in Vermont well into the future, and planners are encouraged to identify opportunities for both CHP and district heat using local wood fuel.

9. Where can I find more information about the constraints used in the regional and municipal mapping?

Geographic information ("shapefiles") used to create the regional and municipal energy maps can be found on the Vermont Center for Geographic Information (VCGI) website: <http://vcgi.vermont.gov/opendata/act174>. If you are interested in the specifics of how each "shapefile" was created, please consult the metadata available for each "shapefile." Regional

plans will also contain a written description of the constraints. Constraints are also described in the mapping section of the determination standards.

10. How detailed or specific should the targets for conservation and efficiency be?

The Department of Public Service is still working to provide guidance about how specific the targets for conservation and efficiency need to be in order to ensure that the plan meets the determination standards. The targets should ideally be presented in energy terms (Btus, MW, etc.) and show change over time. Some communities may want to be more specific and provide actual numbers to concretely display the required changes in energy use (ex. number of new electric vehicles by 2050). Municipalities should consult the additional guidance from the Department when it becomes available.

11. How are municipal targets set?

Municipal targets, both in terms of conservation/efficiency and generations, were set through collaboration between the Department of Public Service, Vermont Energy Investment Corporation, the Vermont Center for Geographic Information, and the Regional Planning Commissions. Targets were established by factoring in state energy goals and policies, current and projected energy use, population, and availability of renewable energy resources without known (higher-order, statewide mapped) constraints. RPCs and municipalities are making plan and are not (for the most part) developing renewable energy generation facilities. Therefore, the goal of regional and municipal plans is to provide for - or not preclude- an amount of generation consistent with the targets.

12. Can a municipality receive determination before a RPC?

Yes, if its regional planning commission's plan has not yet received a determination of energy compliance. In this case, a municipality can request a determination before an RPC by applying directly to the Department of Public Service. In this circumstance the municipal plan will need to meet a higher planning standard (see question 2 and the determination standards for more information). This option expires July 1, 2018.

13. Where can I find more resources?

- *Department of Public Service:* <http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>
- *Regional Planning Commissions:* www.vapda.org
- *Energy Action Network, community energy dashboard:* <http://eanvt.org/community-energy-dashboard/>
- *Vermont League of Cities and Towns:* www.vlct.org