

**STATE OF VERMONT  
DEPARTMENT OF PUBLIC SERVICE**

**24 V.S.A. § 4352 Determination No. 2**

**DETERMINATION OF ENERGY PLANNING COMPLIANCE PURSUANT TO  
24 V.S.A. § 4352 FOR THE TOWN OF NEW HAVEN'S MUNICIPAL PLAN**

**I. INTRODUCTION**

On May 18, 2017, the Town of New Haven (“New Haven or the Town”) requested a determination that the New Haven Municipal Plan (“NHMP” or the “Plan”) complies with the energy planning requirements set forth in 24 V.S.A. § 4352.<sup>1</sup> Today, in my capacity as the Commissioner of the Vermont Department of Public Service (“Department”), I have determined pursuant to 24 V.S.A. § 4352(g) that the NHMP does not comply with the requirements of 24 V.S.A. § 4352(c) for enhanced energy planning.<sup>2</sup>

The grounds for my determination are set out in this document, along with the procedural history leading to today’s determination, as well as a report of the public comments the Department received on NHMP’s certification request. Finally, throughout this determination document, I have included suggestions and guidance about how New Haven could revise the

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<sup>1</sup> New Haven’s determination request is referred to in this document as the “Determination Application.” This documents consists of a form-fillable checklist that identifies each planning standard the applicant must meet in order to obtain an affirmative Section 4352 determination of enhanced energy compliance.

<sup>2</sup> As required by law, this determination is made solely as to whether the NHMP complies with the statutory planning requirements of 24 V.S.A. § 4352(c).

NHMP to obtain an affirmative compliance determination under 24 V.S.A. § 4352(g). I emphasize that the Department is fully committed to providing New Haven with expedited support and feedback to help the Town obtain an affirmative determination for a revised plan as soon as New Haven is able to provide it to the Department for review.

## **II. PROCEDURAL HISTORY**

On June 1, 2016, the New Haven Planning Commission held a public hearing to discuss a draft of the NHMP.

On August 20, 2017, the New Haven Selectboard held the first of two workshops regarding the draft NHMP.

October 25, 2017, the New Haven Selectboard held a public hearing to discuss the draft NHMP.

On October 29, 2017, the New Haven Selectboard held the second of two workshops regarding the draft NHMP.

On January 17, 2017, the New Haven Selectboard voted to accept the NHMP with several changes as proposed by a member of the Planning Commission.

On March 7, 2017, the NHMP was adopted by a town-wide vote.

On May 18, 2017, New Haven submitted the NHMP for a determination of energy compliance under 24 V.S.A. § 4352(g).

On May 10, 2017, notice of a public hearing scheduled for July 6, 2017 was posted on the Department's website and mailed directly to the Town. That same day, the Addison County Regional Planning Commission voted to regionally approve and confirm the NHMP.

On June 14, 2017, the Department discussed potential deficiencies of the NHMP with New Haven's attorney, Cindy Hill.

On June 19 and 22, notice of the July 6, 2017 public hearing was also published in the Addison County Independent.

On June 20, 2017, the Department solicited recommendations from the Secretaries of Agriculture, Food and Markets (“AAFM”), Commerce and Community Development (“ACCD”), Natural Resources (“ANR”), and of Transportation (“AOT”) as to whether the NHMP should be certified as compliant with the requirements of 24 V.S.A. § 4352.

The Department received a response from ACCD stating that it had no recommendation regarding the NHMP, while AOT responded that it had no recommendations for changes to the Town Plan.

ANR submitted comments stating that “insufficient information in a few key areas” made it difficult to assess whether the NHMP squarely meets Standards 5.B, 9.A, 12.A, 12.B, 12.C, and 12.E.i.

AAFM observed that “the plan needs further mapping and information on where renewable energy development would be allowed.” AAFM further requested that, in the future, the New Haven plan include measures to mitigate invasive species and additional mapping information regarding where renewable energy development is allowed. AAFM also expressed support for New Haven’s emphasis on maintaining its agricultural soils.

On July 6, 2017, the Department convened a public hearing in the New Haven Town Hall Gymnasium in New Haven, Vermont. The hearing was attended by numerous members of the public, many of whom expressed support for the NHMP.

On July 17, 2017, the Town provided the Department with a letter detailing additional background information for consideration in assessing whether the NHMP should receive an affirmative determination.

### III. REASONS FOR TODAY’S DETERMINATION

In seeking a determination of compliance with the enhanced energy planning requirements set forth in 24 V.S.A. § 4352(c), the law requires New Haven to demonstrate that the NHMP “meets” the planning standards prepared and published by the Department on November 1, 2016 (the “Determination Standards”).<sup>3</sup> What follows is a discussion of the specific Determination Standards that the NHMP does not meet, thus requiring today’s denial of an affirmative Section 4352 determination, as well as specific suggestions for revising the Plan to meet these standards.

#### Standard 5.A

*Standard 5.A asks, “Does the plan estimate current energy use across transportation, heating, and electric sectors?”<sup>4</sup>*

New Haven indicated at page 6 of the Determination Application that the NHMP estimates current energy use across these three sectors. With regard to the electric sector, the NHMP indeed includes an estimate and analysis of energy use; however, the NHMP contains no comparable estimates or analyses with respect to the heating and transportation sectors. Without these estimates, the NHMP is missing crucial data points that are needed for developing interim targets and pathways for progressing toward achieving the energy goals set forth in the plan. Therefore, the NHMP does not meet Standard 5.A.

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<sup>3</sup> See 24 V.S.A. §4352(c)(4); Act 174 Section 9. The Determination Standards can be reviewed by visiting the Department’s website and clicking on the following link: <http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>. Section 9 of Act 174 directed the Department to develop standards for enhanced energy planning, and further directed that these standards “address” several planning elements “in a manner consistent with the State energy plans adopted pursuant to 30 V.S.A. §§ 202 and 202(b). For the convenience of the applicant, the Department has published these planning standards (i.e, the Determination Standards) in the form of a checklist to be completed when seeking a Section 4352 enhanced energy planning determination.

<sup>4</sup> Act 174 directed the Department to develop planning standards that address an “analysis of total current energy use across transportation, heating, and electric sectors.”

The analyses required by Standard 5.A are intended to ensure that municipalities develop a comprehensive overview of their current energy use to facilitate the cross-sector planning envisioned by Section 9(b)(1) of Act 174. Therefore, an estimate of current energy use must include some analysis of amounts of energy consumed across each of the sectors. For example, in the transportation sector, an energy use estimate could consist of calculating the number of gallons of fuel consumed annually across the sector and converting to BTUs.

In turn, knowledge of current energy use is critical to setting planning targets (as required by Standard 5.B) and to understanding the trajectories and pace of change needed to meet the targets. Estimates of current energy use also serve as a baseline for evaluating progress in future plan updates. Finally, both estimates of energy use and targets are necessary for establishing concrete and cost-effective prioritized implementation actions.

Shortly after the Town's adoption of the NHMP in March 2017, the Department published several documents that are designed to assist municipalities in developing the analysis and estimates necessary to meet Standard 5.A. These tools are available for review on the Department's website at: <http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>. Additionally, the data required to meet Standard 5.A has also been provided to the Town as a product of a technical assistance contract between the Department and the Addison County Regional Planning Commission.

## **Standard 5.B**

*Standard 5.B asks, “Does the plan establish 2025, 2035, and 2050 targets for thermal and electric efficiency improvements, and use of renewable energy for transportation, heating, and electricity?”<sup>5</sup>*

Standard 5.B specifically seeks targets for the transportation, heating, and electricity sectors in the years 2025, 2035, and 2050. The NHMP generally recognizes and performs an analysis with respect to several State energy goals. However, the NHMP neither adopts these goals by reference nor sets its own town-level goals. Nor does the NHMP establish any targets for using renewable energy in the transportation sector, notwithstanding that such targets are a required element under Standard 5.B. Rather, at page 6 of the Determination Application, New Haven explains that it “has not set explicit numerical targets in so much as [New Haven] has already met the state targets for electric energy from renewable resources as well as the 25X25 thermal resource goal, yet continues to encourage additional renewable resource development as well as transportation alternatives.”

New Haven reasons that because it is currently generating more electricity than it consumes, the Town automatically meets the state targets for electric energy from renewable resources. This is certainly a noteworthy point. Still, what is missing from the NHMP at this time is a material analysis that looks out into the future and sets targets to ensure that New Haven’s renewable energy resources continue to develop as needed and are used based on projections of future need and use. This type of projection analysis goes to the essence of planning, and, more specifically, to the planning purpose of Standard 5.B. Without the specific target projections required under 5.B., the NHMP provides only a record of today’s prevailing

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<sup>5</sup> Act 174 directed the Department to develop planning standards that address an “establishment of 2025, 2035, and 2050 targets for energy conservation, efficiency, fuel-switching, and use of renewable energy for transportation, heating, and electricity.”

circumstances as to the generation and use of renewable energy in New Haven. The Plan does not provide pathways for using renewable generation in New Haven in the years to come to, for instance, bring about electrification of at least some of the Town's transportation means. Thus, for these reasons, the NHMP does not meet Standard 5.B.

### **Standard 9.B**

*Standard 9.B asks, "Does the plan analyze generation potential, through the mapping exercise, to determine potential from preferred and potentially suitable areas in the municipality?"*<sup>6</sup>

On page 11 of the Town's Determination Application, New Haven reasons that because the local distribution lines are severely constrained and the Town is currently generating more electricity than it consumes, "analyzing potential for energy development is not the focus of the Town's energy planning." Instead, the Town states the need to "balance our renewable energy 'portfolio' by ensuring local residents and businesses, particularly land-based businesses like farming, can avail themselves of renewable energy resources."

The analysis of generation potential from the preferred and potentially suitable areas in the municipality is a critical element of the planning purposes to be served by the Act 174 enhanced energy planning process. Doing such planning requires an inventory of the potential areas for renewable generation and an assessment of how much power could be generated from those areas. This knowledge goes hand in hand with the analysis of current energy use under Standard 5.A and substantively informs the establishment of targets under Standard 5.B.

Without this completed analysis, a municipal plan is not able to serve the purpose of facilitating

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<sup>6</sup> Act 174 directed the Department to develop planning standards that address the "identification of potential areas for the development and siting of renewable energy resources and of the potential electric generation from such resources in the identified areas, taking into account factors including resource availability, environmental constraints, and the location and capacity of electric grid infrastructure."

the evaluation of a municipality's ability to meet either the State goals or its own targets established under Standard 5.B.

The grid capacity constraint issue raised by the Town is another variable that must be considered. I respect New Haven's stated policy that areas of the grid with capacity constraint issues are unsuitable for additional development. Regardless of the generation potential analysis, grid capacity will still represent a constraint within the Town. However, the fact of such a constraint does not nullify the material planning need to analyze the generation potential from preferred and potentially suitable areas. For these reasons, the NHMP does not meet Standard 9.B.

#### **Standard 12.A**

*Standard 12.A asks whether a raw renewable energy potential analysis, using the best available data layers, was included in the plan.<sup>7</sup>*

The Town acknowledges that the NHMP does not include such a raw renewable energy potential analysis. At page 14 of the Determination Application, Town explains that:

This map was not available at the time of publication of the Town Plan. Additionally, it did not seem substantively necessary for this Town energy plan. The Town is encouraging a diversity of renewable energy resources including hydropower (which is limited to its major waterways) and methane digesters (which may be sited on any agricultural land), while the siting of wind and solar other than for on-site use is at present significantly constrained by utility distribution system limitations. The Town will work with Regional Planning to develop a map with these resources suitable for publication in the next Town Plan.

The mapping standards lay out a sequence of steps for planners to examine existing renewable resources and to identify potential, preferred, and unsuitable areas for renewable

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<sup>7</sup> Act 174 directed the Department to develop planning standards that address the "identification of potential areas for the development and siting of renewable energy resources and of the potential electric generation from such resources in the identified areas, taking into account factors including resource availability, environmental constraints, and the location and capacity of electric grid infrastructure."



energy development. The basis of the mapping exercise are the raw energy resource potential map layers. Constraint layers are overlaid onto the resource layers to arrive at an inventory of sites that have the potential to support a certain renewable energy technology. The maps help municipalities visualize and calculate the potential generation from potential areas, which is also required by Standard 9.B, and compare it with the 2025, 2035, and 2050 targets from Standard 5.B to get a sense of the scale and scope of generation that could be produced within the municipality to meet their targets.

The raw renewable energy potential analysis and its related mapping functions are not optional under Standard 12.A. These elements are essential for realizing the planning purposes to be served by Standard 12.A. I appreciate that New Haven has explained why the NHMP does not include these elements. Nonetheless, for the reasons discussed above, I have concluded that the NHMP does not meet Standard 12.A.

The required map has since been made available to the town of New Haven as the product of a technical assistance contract between the Department and the Addison County Regional Commission. I therefore encourage the Town to work with the Addison County Regional Planning Commission to refine the map and to incorporate it into an updated municipal plan for re-submittal to the Department. That said, I would underscore that New Haven is not required to use the map produced by the ACRPC. New Haven is entitled to conduct its own mapping to meet Standard 12.A if it so chooses.

#### **IV. PUBLIC COMMENTS**

The determination decision I am statutorily charged with making affects the lives of the citizens of the Town of New Haven and I have not undertaken it lightly. I thank the members of

the public who took the time to provide the Department with feedback on the Plan and this review process. It has been both my duty and my privilege to listen to and consider these public comments, which reflect the importance of this planning process to the residents of New Haven. What follows is a summary description of the comments the Department received at the July 6 public hearing:

**A. A lot of time and effort went into development of the NHMP and, as such, it should be certified.**

It is evident from the Plan that many people have put a lot of time and effort into energy planning in New Haven. Still, the fact remains that there are material planning gaps in the NHMP that have compelled today's negative determination. By the time a municipal plan is submitted to the Department with a request for a determination of energy compliance, the plan has already undergone both the local adoption processes and the regional planning commission's certification process. Under the statutory scheme set forth in Act 174, upon a request for a compliance determination, the Department may only review the submitted plan for purposes of making either a positive or negative determination pursuant to 24 V.S.A. § 4352(g)(1). Thus, at this stage in the process there is no longer an opportunity for New Haven to obtain feedback from the Department so as to identify and make any needed changes to the Plan in order to secure an affirmative determination for the Plan as filed on May 18, 2017. Rather, that kind of back-and-forth engagement with the Department must occur before the plan is submitted for the compliance determination, and ideally before the plan goes through the municipal and regional approval processes. For this reason, I encourage New Haven and other municipalities undergoing enhanced energy planning to contact the Department as early in the municipal plan drafting process as possible. The planning staff of the Department is available to review drafts

of the plan against the statutory planning requirements of 24 V.S.A. § 4352(c) while there is still time and opportunity to make any changes needed to support an affirmative determination.

**B. New Haven will not be eligible for certain grants without an approved town plan.**

As noted earlier, today's determination is made solely as to whether the NHMP complies with the statutory enhanced energy planning requirements of 24 V.S.A. § 4352(c). To my knowledge, this determination in no way alters the fact that the Town duly adopted the NHMP on March 7, 2017, pursuant to 24 V.S.A. §4385, and that the Addison County Regional Planning Commission approved the NHMP and confirmed New Haven's planning process on May 10, 2017, pursuant to 24 V.S.A. § 4350. Thus, today's determination should not affect New Haven's eligibility for the grant opportunities referred to during the July 6<sup>th</sup> public hearing.

**C. New Haven is a small, impoverished town that needs protection as it has been "overrun" by energy development.**

The force of the comments in this vein lies in the fact that, in addition to hosting one of Vermont's larger transmission substations and related transmission lines, New Haven has seen the deployment of approximately 87 ground and roof mounted solar projects totaling 6.1 MW of capacity, and most of the utility distribution circuits serving the Town have been designated by Green Mountain Power as "poor," meaning, they are at or exceeding capacity.<sup>8</sup> Thus, there is an understandable sense among some citizens of New Haven that the Town is experiencing more than enough renewable energy generation development within its geographical boundaries. In the context of the July 6<sup>th</sup> public hearing, which was occasioned by an energy planning process created by the Vermont Legislature, it was especially disturbing to hear one citizen say "we don't

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<sup>8</sup> NHMP at 49.

trust the State of Vermont anymore.” This sentiment would certainly go a long way toward explaining New Haven’s understandable urgency in filing an energy plan for a Section 4352 compliance determination, even though the plan was missing certain maps and other data needed to meet the Determination Standards and thus to qualify for an affirmative determination. That said, the maps and analyses missing from the NHMP are necessary in order to assess whether the Plan meets the Determination Standards – a required finding for an affirmative determination under 24 V.S.A. § 4352(c). Therefore, I urge New Haven to avail itself of the Department’s full support in revising the NHMP in order to obtain an affirmative compliance determination under 24 V.S.A. § 4352(g) as soon as practicable for the Town.

**D. If the NHMP cannot be certified as compliant with the energy planning requirements set forth in 24 V.S.A. § 4352(c), what plan could be?**

As I noted earlier, and as this comment makes clear, it is readily apparent that a significant amount of time, energy, and resources were invested by the citizens of New Haven in drafting the NHMP. To be sure, it is challenging for a small municipality such as New Haven to engage and meet the requirements outlined in 24 V.S.A. § 4352(c), particularly when these new requirements represent a level of energy planning that municipalities have not had to conduct in the past. For this reason, the Department has made significant efforts to provide technical planning assistance to municipalities. First, the Department has contracted with all eleven regional planning commissions in the state to provide the data and maps required to meet the requirements of 24 V.S.A. § 4352(c). Secondly, should a municipality prefer not to use the data and maps provided by their regional planning commission, the Department has published tools and guidance which are available for review on the Department’s website at:

<http://publicservice.vermont.gov/content/act-174-recommendations-and-determination-standards>. Unfortunately, while these tools and the guidance were published before New Haven

filed the NHMP for an affirmative determination on May 18, 2017, they were not available to New Haven while drafting the NHMP.

**E. Is the Department aware of certain potential legal infirmities in the NHMP and the local planning process that led to the adoption and submittal of the NHMP to the Department for a determination of energy compliance?**

When considering a municipality's request for a determination of energy compliance under 24 V.S.A. § 4352(g), the Department must evaluate whether the plan meets the energy planning requirements of 24 V.S.A. § 4352(c). Beyond confirming that the plan was duly adopted by the Town and has otherwise been confirmed and approved by the appropriate regional planning commission, the details of the local planning process that led to the adoption and submission of the NHMP to the Department for a Section 4352 determination are not within the scope of what Act 174 directs the Department to consider in making a Section 4352 determination.

Similarly, a substantive review of the plan for conformity with legal standards other than the provisions of Act 174 per se is not within the scope of the Commissioner's reviewing authority, which is limited under 24 V.S.A. § 4352(g)(1) to a review "for the purpose only of determining whether a determination of energy compliance should be issued" because the requirements of 24 V.S.A. § 4352(c) are met.

**IV. DEPARTMENT OBSERVATIONS**

New Haven's Determination Application has brought into focus two latent issues with Act 174 that would appear to require a legislative solution in order to be resolved.

First, once a plan is submitted for review, the Department Commissioner must make either a positive or negative compliance determination. Act 174 as presently written does not provide the Commissioner with the flexibility to make a conditional affirmative determination

that would allow a municipality or a regional planning commission to make changes identified during the Section 4352 certification review that are necessary to comply with the statutory requirements for an affirmative determination, and to do so without having to begin anew at the municipal or regional approval level. Today's case is a very good example of why such flexibility in making Section 4352 determinations would be desirable, especially in the case of small towns that are highly dependent on volunteers and civic engagement to craft a town plan that can meet detailed planning standards and complicated statutory requirements in order to qualify for the benefits of a Section 4352 enhanced energy planning determination.

Second, Act 174 provides no waiver mechanism for any of its requirements. However, New Haven has made a compelling point that the planning vision of Act 174 can be an awkward fit for some towns, such as one that generates more electricity than it consumes.

**V. ADDITIONAL INFORMATION FROM THE TOWN**

On July 17, 2017, the Town reiterated in greater detail many of the comments that were heard at the July 6th public hearing and that were described above. The Town also included several policy statements under consideration by the New Haven Selectboard that have been crafted in an effort to close the planning gaps in the NHMP that Department staff discussed with Attorney Cindy Hill on June 14, 2017. I very much appreciated receiving this additional information and the thoughtful work that went into the proposals in the letter. As discussed above, such remedial measures are not within my power to adopt in issuing a conditional affirmative determination of any kind. Rather, the statutory scheme provides that, upon a request for a compliance determination, the Department may only review the duly-adopted and confirmed plan as submitted for purposes of making either a positive or negative determination pursuant to 24 V.S.A. § 4352(g)(1).

The policy statements in the Town's July 17<sup>th</sup> letter related to the solar and wind resource maps as published by the Addison County Regional Planning Commission as well as the estimates of energy consumption, represent the type of changes that could be incorporated into the NHMP in order to secure an affirmative determination. I strongly encourage New Haven to contact the Department as soon as possible to work on making these changes to the Plan.

## **VI. CONCLUSION**

Act 174 created a new energy planning process in Vermont for regional planning commissions and municipal planning bodies. Pursuant to this process, a municipality has the option of submitting its duly adopted municipal plan to the Commissioner of the Department of Public Service for an affirmative determination of compliance with the statutory requirements of 24 V.S.A. § 4352(g). Municipalities may only do so prior to July 1, 2018 and if their Regional Planning Commission has not yet received a determination of energy compliance. When a municipal plan has received an affirmative compliance determination under Section 4352, the Vermont Public Utility Commission ("PUC") is required to afford "substantial deference" in Section 248 proceedings to the land conservation measures and specific policies contained in such a duly-certified municipal plan when reviewing any proposed electric generation facility proposed for siting in the region covered by those plans.

If a municipal plan fails to receive an affirmative determination of energy planning compliance – as has happened today with the NHMP – that does not mean that the plan as a whole has no legal effect at all or that the time and effort that the Town and its citizens invested in crafting and adopting the plan were wasted. Rather, the negative determination means that the enhanced energy planning component of the NHMP has not qualified to receive "substantial deference" before the PUC in Section 248 proceedings, and that instead the land conservation

measures and specific policies in the NHMP will be given “due consideration” by the PUC when reviewing the siting impact of a project under the “orderly development” criterion of Section 248(b)(1).

While I have concluded today that I cannot issue an affirmative determination for the NHMP as presently constituted, I would observe the NHMP articulates very compelling cause for concern about any future proposals for siting additional solar generation facilities in New Haven beyond “distributed generation that serves local residents with on-site electric use.”<sup>9</sup> This is particularly so if any such siting proposal were to be made during the time period between today’s negative determination and such time when New Haven is able to amend and resubmit its plan for an affirmative determination. Accordingly, I assure the citizens of New Haven that, in advocating for the public good in PUC proceedings, the Department will have firmly in mind the concerns detailed in the NHMP, in particular the present distribution system constraints described at p. 49 of the NHMP and the desire at p. 52 of the NHMP to ensure that sufficient capacity remains on the local distribution lines to continue to allow residents of New Haven and businesses to install generation capacity that will strictly be used on-site.

In closing, for the reasons discussed above, I have determined that the NHMP does not qualify for an affirmative determination pursuant to 24 V.S.A. § 4352(g). However, the Department is committed to and stands at the ready to work with the Town to revise the NHMP so that, upon resubmission, the Plan may qualify for an affirmative determination of enhanced energy planning compliance. Upon resubmission, the Department is prepared to conduct an expedited review of the Plan and to issue a determination as quickly as possible.

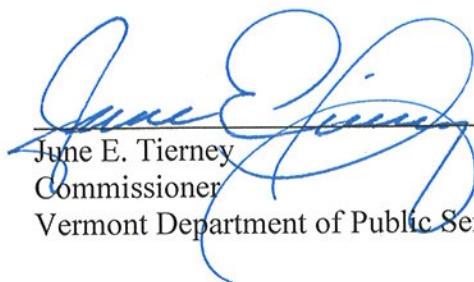
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<sup>9</sup> NHMP at 48.



Dated at Montpelier, Vermont this 18<sup>th</sup> day of July 2017.

VERMONT DEPARTMENT OF PUBLIC SERVICE



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June E. Tierney  
Commissioner  
Vermont Department of Public Service