

5.800 REQUIREMENTS RELATED TO THE INSTALLATION AND MAINTENANCE OF AESTHETIC MITIGATION MEASURES

5.801 Purpose and Applicability

The purpose of this rule is to ensure that all required aesthetic mitigation measures are implemented and maintained for the life of all facilities constructed pursuant to a certificate of public good issued under 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.

5.802 Definitions

- (A) Final aesthetic mitigation plan: a plan submitted by a petitioner and approved by the Commission pursuant to the requirements of this rule.
- (B) Commission: the Vermont Public Utility Commission.
- (C) Completion of construction: Completion of construction shall mean complete installation of all infrastructure necessary to allow for the interconnection and intended generation or transmission use of a facility that is subject to this rule. The completion of aesthetic mitigation measures required for a particular facility is excluded from this definition for the purposes of this rule.
- (D) CPG: a certificate of public good issued by the Commission pursuant to 30 V.S.A. § 248.
- (E) CPG holder: a person or company who holds a CPG pursuant to 30 V.S.A. § 248 to construct and/or operate an electric generation, electric transmission, or natural gas facility.
- (F) Facility: an electric generation, electric transmission, or natural gas facility for which a petition or application for a CPG pursuant to 30 V.S.A. § 248 is submitted to the Commission after the effective date of this rule.
- (G) Petitioner: a person or company seeking a CPG for approval to construct an electric generation, electric transmission, or natural gas facility pursuant to 30 V.S.A. § 248.

5.803 General Rule

All aesthetic mitigation measures required by the Commission under a CPG must be implemented in accordance with the conditions of the CPG and any final aesthetic mitigation plan. All such aesthetic mitigation measures must be maintained for the life of the facility as necessary to fulfill their intended purpose. The Commission will incorporate these requirements as conditions of CPGs issued pursuant to Section 248, as applicable.

5.804 Submittal of Proposed and Final Aesthetic Mitigation Plan

- (A) Contents of aesthetic mitigation plan. A proposed aesthetic mitigation plan shall include any generally available mitigating steps that a petitioner proposes to take to improve the harmony of the proposed facility with its surroundings, consistent with 30 V.S.A. § 248(b)(5).
- (B) Inclusion with advance notice materials. All petitioners required to provide advance notice pursuant to the requirements of Commission Rule 5.100 or 5.400 shall include with the advance notice filing a draft of a proposed aesthetic mitigation plan or an explanation why aesthetic mitigation measures are not needed for the proposed facility.

(C) Inclusion with initial application or petition. A proposed aesthetic mitigation plan shall be included with a petitioner's initial request for a CPG, or the petitioner shall demonstrate why aesthetic mitigation measures are not needed for the proposed facility. For petitioners required to provide advance notice pursuant to the requirements of Commission Rule 5.100 or 5.400, a petitioner's request for a CPG shall address any comments received on the proposed plan, or on the justification for not proposing aesthetic mitigation measures, consistent with the requirements of those rules.

(D) Commission review. The Commission will review aesthetic mitigation plans in a manner consistent with the CPG review process applicable to the facility in question. At its discretion, the Commission may require a petitioner who asserts that aesthetic mitigation measures are unnecessary to submit a proposed aesthetic mitigation plan or may require modifications to a proposed aesthetic mitigation plan submitted by a petitioner.

(E) Final aesthetic mitigation plan. If agreement is reached among the parties during the CPG review process, the petitioner shall file with the Commission a final aesthetic mitigation plan before the Commission completes its review. Otherwise, the petitioner shall file with the Commission and serve on all parties a final aesthetic mitigation plan within 15 days of the issuance of a CPG for a facility. The purpose of this filing is for petitioners to submit a visual representation of the requirements imposed by the Commission's final order approving a facility. Parties to the proceeding in which the facility is under review shall have an opportunity to review and comment on the final aesthetic mitigation plan, and may request a hearing if the plan filed by the petitioner differs from the final decision of the Commission. The final aesthetic mitigation plan shall consist of a site plan that depicts in detail the facility and all aesthetic mitigation as approved by the Commission. The plan shall show all facility components, including but not limited to access roads, infrastructure, transmission or electrical generation equipment, fences, and all landscape mitigation elements. The purpose of this filing is to clearly document the final project elements and aesthetic mitigation features on a single site plan, and to eliminate the need to refer to separate plans for different aspects of the facility.

(F) Exemption for net-metering registration facilities and certain transmission facilities. There shall be a rebuttable presumption that facilities eligible for the registration process of Commission Rule 5.100 and upgrades to electric transmission substations that do not result in an expansion of the footprint of the existing substation do not require aesthetic mitigation and are therefore exempt from the requirement to submit a proposed aesthetic mitigation plan.

5.805 Post-Construction Requirements

(A) Implementation of final aesthetic mitigation plan. The CPG holder shall fully implement the final aesthetic mitigation plan as soon as reasonably possible, and in no case more than 90 days following the completion of construction, unless such timing would require implementation between October 15 and April 15, in which case the plan shall be fully implemented within 30 days of the following April 15.

(B) Certification of completion. Within 30 days following the full implementation of the final aesthetic mitigation plan, the CPG holder shall submit to the Commission and all parties in the proceeding in which the CPG was granted a certification that all work has been fully

implemented in a manner consistent with the approved plan. This certification shall include the completion of construction date as well as the date of interconnection and shall be supported by an affidavit and dated photographs of the installed mitigation measures. If construction of the facility components and/or aesthetic mitigation has deviated from the design of the facility as approved, the CPG holder shall also file for Commission review and approval a revised final mitigation plan. Submission of a revised final mitigation plan shall not relieve a CPG holder from its obligation to request an amendment to the CPG for a substantial change.

(C) Compliance. The Commission may conduct further process as needed to ensure compliance with the final aesthetic mitigation plan or revised final aesthetic mitigation plan. As part of such process, the Commission may, on its own motion or at the request of a party, municipality, or member of the public, conduct a site visit and/or require additional filings to verify compliance. Any request for a site visit must be supported by an explanation of why such a visit is necessary. In addition, the Commission may refer complaints related to compliance with a final aesthetic mitigation plan or a final revised aesthetic mitigation plan to the Department of Public Service for investigation and enforcement pursuant to 30 V.S.A. §§ 2(h) and 30(h).

(D) Inspections by CPG holder. For a period of three years, the CPG holder shall conduct an annual inspection of the facility to determine the health, vigor, and continued effectiveness of the mitigation. The CPG holder shall file with the Commission and parties an annual certification documenting the results of the inspection and any corrective actions taken. Certifications required under this paragraph shall be submitted by the dates one, two, and three years following the submission of the certification of completion required by Paragraph (B) above.

(E) Ongoing maintenance of mitigation measures. The CPG holder shall maintain mitigation measures contained in the final aesthetics mitigation plan or revised final aesthetics mitigation plan for the life of the facility as those measures are depicted on the plan.

(F) The Commission will incorporate the requirements of this Section as conditions of CPGs issued pursuant to Section 248, as applicable.

5.806 Waiver of Rule Requirements

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