



NATURAL RESOURCES BOARD

10 Baldwin Street
Montpelier, Vermont 05633-3201

May 17, 2019

VIA E-PUC

Vermont Public Utility Commission

Attn: Judith C. Whitney

112 State Street

Montpelier, VT 05620-2701

Re: *Proposed Revisions to Public Utility Commission Rule 5.100*, Docket No. 19-0885-Rule.

Ms. Whitney:

In response to the Public Utility Commission's April 16, 2019 Order Opening Rulemaking, the Vermont Natural Resources Board respectfully offers the following comments on the Commission's proposed revisions to Rule 5.100. The Board previously submitted comments on Rule 5.100 in Docket No. 17-5202-PET on December 15, 2017, July 13, 2018, and August 3, 2018. The Commission's proposed revisions to Rule 5.100 address many of these comments. Consequently, this letter only addresses the issues the Board considers outstanding and new issues the Board has identified in the proposed revisions.

1. Sections 5.106(D)(9)(b)(ii) and 5.107(C)(14)(ii) require "documentation from the permitting agency stating that all permit reclamation requirements have been or will be satisfied prior to operation of the plant." With respect to Act 250 permits, this documentation should take the form of a Jurisdictional Opinion from an Act 250 District Coordinator or a Certificate of Compliance from a District Commission issued per Act 250 Rule 37. These are the appropriate mechanisms in 10 V.S.A. Ch. 117 and the Act 250 Rules for confirming whether reclamation has been completely and successfully accomplished. If Rule 5.100 does not expressly require one of these, the Board is concerned developers of net-metered projects will try to satisfy the requirements of Sections 5.106(D)(9)(b)(ii) and 5.107(C)(14)(ii) through less formal means, such as email correspondence with District Coordinators.
2. Section 5.103 requires that "all state and local permit conditions related to reclamation of the site are satisfied prior to the operation of the plant." Similar requirements appear in Sections 5.106(D)(9)(b)(ii) and 5.107(C)(14)(ii). Certificate of Public Good applicants should also have to demonstrate that any other permits required for the operation of the extraction site, including but not limited to any Act 250 permits, were obtained and complied with. This additional requirement addresses situations where a landowner should have obtained a permit that would have contained reclamation conditions, but didn't and then seeks permission to construct a net-metered project claiming preferred site status without first reclaiming the site.
3. As stated above, Section 5.103 requires that "all state and local permit conditions related to reclamation of the site are satisfied prior to the operation of the plan." Section 5.107(C)(12) requires a "decommissioning plan that provides for the removal and safe disposal of project



components and the restoration of any primary agricultural soils.” The proposed revisions to Rule 5.100 do not, however, require applicants to submit a proposed and detailed reclamation plan for the extraction site. Such a requirement would ensure that the site is completely reclaimed even in situations where the Certificate of Public Good applicant failed to obtain a permit from the municipality or another state entity that would have contained reclamation requirements.

4. The Commission should consider further revising the first and second definitions of preferred site to prevent situations where a developer of a net metering project would construct new impervious surface solely to obtain preferred site status.
5. The Commission should also consider further revising the fifth definition of preferred site to specify how much of the proposed plant must be located on the landfill cap. Presently, the definition only requires that “some portion” of the plant be located on the cap. A developer of a net metering project could potentially meet this requirement by placing a nominal portion of the plant on the cap just to meet the definition of preferred site.
6. Regarding the sixth definition of preferred site, the Board questions whether subsection (a) was supposed to read “the site was developed and used as an extraction site for at least three years....” Further, the currently proposed language includes some ambiguity as to when the “three year” period should be measured.
7. The application filing requirements in Section 5.106 and 5.107 should include the docket number from the advanced notice proceeding. This will allow individuals and entities, such as the Board, that review multiple applications to more quickly identify the associated advanced notices.
8. The Board recommends that the Act 250 Consistency Statements required by Sections 5.106 and 5.107 should be standalone documents. Alternatively, applications should include something akin to a table of contents that would identify what portion of the application explains how the proposed net metering project is consistent with the conditions in the applicable Act 250 permit. Requirements such as these will help expedite the review of applications.

The Board thanks the Commission for the time and thought it has spent in both this docket and Docket No. No. 17-5202-PET in considering revisions to Rule 5.100. The currently proposed draft contains several improvements to the rule, which should benefit all participants to Public Utility Commission proceedings. It is the Board’s position that the above additional recommendations will make similarly positive improvements.

Sincerely,



Greg Boulbol
General Counsel

