October 22, 2019

Mrs. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05602

Re: PUC Net Metering Guidance

Dear Commissioners:

I write on behalf of Renewable Energy Vermont ("REV") regarding the Public Utility Commission's Net-Metering Registration Guidance: Amendments and FAQs, adopted April 11, 2019 (hereafter "Guidance"), which the Commission amended on May 22, 2019. The amendment issued on May 22 offered a welcomed clarification of the information on net-metering compensation under the current version of Rule 5.100. REV requests that the Commission further review its Guidance and make additional changes so that it is consistent with Rule 5.100, Section 248, and the Commission's precedent.

REV recognizes that, by law, the Guidance is not a rule adopted per the Administrative Procedures Act and is not enforceable by the Commission.[1] Nevertheless, it represents the Commission's interpretation of Rule 5.100 and its authority thereunder. REV seeks changes to the Guidance because it sets out procedures and concepts that are not grounded in either the text of Rule 5.100 or the Commission's caselaw on solar projects subject to Section 248.

The Guidance conflicts with the text of Rules 5.103 and 5.109 on amendments, in addition to Commission precedent. As discussed in more detail below, the Guidance changes the definition of a "major amendment" to include a change of address, and it includes in the definition of a "minor amendment" any change to the "photovoltaic system information" on the registration form, except for changes in AC capacity that meet the criteria for a "major amendment."

First, a "major amendment" is defined in Rule 5.103 and that definition does not include a "change of address" to a registered net metered facility.[2] Although it is possible that an address change could qualify as a "major amendment" to a registered facility if the

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[1] 3 V.S.A. § 835(b).
[2] Rule 5.103 defines a "major amendment" as a change(s) to the physical plans or design of a net metering system that (a) increases the system's nameplate capacity by more than 5% or decreases it by more than 60%; (b) moves the limits of disturbance by more than 50 feet; (c) changes the system's fuel source; and (d) any other change that the Commission determines is likely to have a significant impact on one or more of the applicable Section 248 criteria. Pub. Util. Comm'n R. 5.103.

change is the result of a relocation of the facility by more than 50 feet, not all address changes meet the criteria for a "major amendment" under Rule 5.103. An address change may happen if a property is subdivided or a municipality updates its addressing for 911 purposes. In such cases, none of the criteria listed for a "major amendment" in Rule 5.103 would apply. In fact, the Guidance acknowledges in a separate section on "de minimis" changes that a net metered facility may experience a change of address resulting from municipal 911-related readdressing.[3] The Guidance on "major amendments" should be updated to align with the text of Rule 5.103.

Second, the Guidance conflicts with Rule 5.109(C) and the Commission's Section 248 precedent by interpreting a "minor amendment" to include "any changes to the information in the 'photovoltaic system information' . . . section[] on the registration form, except for changes to the system capacity (AC) that qualify as major amendments." Significantly, this expansive definition captures physical changes to an existing net-metered solar array that are exempt from Commission jurisdiction altogether under Section 248(a)(2) and the text of Rule 5.109(C).

Section 248(a)(2) excepts from the Commission's jurisdiction the replacement of existing facilities with equivalent facilities in the ordinary course of business.[4] Rule 5.109(C) implements this exception by providing that no prior notice or approval from the Commission is required for the maintenance and repair of a net-metering facility or for the "the replacement of equipment with like equipment."[5] Therefore, replacing solar panels with more efficient or higher DC capacity panels does not require prior notice or Commission approval because such activity is exempt under Section 248(a)(2) and Rule 5.109(C). By directing CPG holders to submit a filing with the Commission in such circumstances, the Guidance reaches beyond the limits and plain language of both Section 248 and Rule 5.109(C).

This conclusion is supported by the Commission's longstanding three-part test that was adopted to implement the so-called maintenance and repair exemption to Section 248.[6] The test asks whether: (1) the change to the facility will take place within the same footprint; (2) the capacity of the facility will change; or (3) the work associated with the change will have a significant impact on the 248(b) criteria or public good. Under this test, no Commission review or approval is necessary to replace panels on an existing

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[3] Guidance at 2.

[4] 30 V.S.A. § 248(a)(2); *Russell Tilly v. Green Mountain Power Corp.*, Docket No. 5514, Order of 7/29/1991, 125 P.U.R.4th 402.

[5] Pub. Util. Comm'n R. 5.109(C).

[6] *Russell Tilly v. Green Mountain Power Corp.*, Docket No. 5514, Order of 7/29/1991, 125 P.U.R.4th 402. *See In re Vermont Marble Power Division of OMYA, Inc.*, Docket No. 7378, Order of 2/20/2008, 2008 Vt. PUC LEXIS 44 (applying three-part test and concluding that replacement of aged turbine and ancillary hydroelectric facilities was exempt from 248 even with small 6% increase in output due to turbine efficiency).

solar array with a different make or model panel, even one with a higher DC capacity, or to swap out an array's inverters without changing the aggregate AC capacity of the facility. The Guidance conflicts with this three-part test, Commission precedent, and the express limits of the Commission's Section 248 authority by requiring a filing with the Commission prior to making these types of changes to an existing net-metered solar array.

The Guidance's definition of a "minor amendment" also captures changes that Commission precedent holds are not "material deviations" from approved plans and do not meet the "substantial change" test applicable to Section 248 projects, such as the installation of a different type of solar panel than the one originally proposed.[7] This precedent is nearly a decade old and has guided solar development since.

In the case of *In re Addison Solar Farm, LLC*, for example, the Commission held that installing a solar panel different from the type included in the approved design plans was not a change requiring Commission approval. The Commission's order explained why its approval was unnecessary:

> The change in panel size will not alter the site plan, electrical specifications, or project footprint, does not have the potential for significant impacts to the Section 248 criteria, and therefore does not rise to the level of material deviation requiring Board approval.

In re Addison Solar Farm, LLC, Docket No. 7594, Order of 10/7/2010 at 2. The Commission subsequently reaffirmed that holding in cases involving solar panels with higher DC capacity and other changes to the layout or design of a solar array. See, e.g., *In re CRL Solar, LLC*, Docket No. 7827, Order of 6/28/2012 (holding that adding 900 panels to solar array and increasing its DC rating are not material deviations or substantial changes to approved plans and Commission approval was not required); *In re Cross Pollination, Inc.*, Docket No. 7645, Order of 10/29/2012, 2012 Vt. PUC LEXIS 483 (concluding that reconfiguration of 2.0 MW solar array with increase in DC capacity was not a substantial change requiring CPG amendment); *see also In re Wilbur Solar 500 LLC*, Case No. 16-0019-NMP, Order of 2/2/2017, 2017 Vt. PUC LEXIS 68 (holding that changes to design of net-metered solar array that do not add to the height of individual panels or footprint of the project are not substantial changes requiring Commission approval); *Application of Butternut Mountain Farms*, Docket No. 7852, Order of 6/7/2016, 2016 Vt. PUC LEXIS 216 (holding that adding solar modules to approved net-metered project is not a "material deviation" of approved plans that requires Commission approval); *In re New England Waste Servs. of Vt.*, Docket No. 7948, Order of 12/16/2013,

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[7] Although Rule 5.408 does not apply to net-metered facilities, its standard is useful to informing the scope of the Commission's Section 248 amendment jurisdiction. *See* Pub. Util. Comm'n R. 5.401 ("The requirements of this rule do not apply to petitions for net metering systems filed under Commission Rule 5.100.").

2013 Vt. PUC LEXIS 574 (concluding that using fewer higher efficiency solar panels and fewer higher capacity inverters with no change in total AC capacity, changing transformers originally proposed, and trucking in more offsite backfill are not “substantial changes” or a “material deviation” from the approved plans and no CPG amendment is required). Requiring solar installers and their customers to re-file registrations in order to update information that the Commission has repeatedly considered not within its Section 248 amendment jurisdiction is unreasonable and burdensome to all parties.

Changing out solar panel models (which most often occurs due to manufacture re-labeling or other manufacturer updates or federal trade tariff impacts entirely out of control of the solar customer and installer) does not change the energy output of the system as that is determined and controlled by the installed inverter. Requiring additional unnecessary and costly amendment filings negatively impacts Vermonters seeking to generate their own renewable energy, increases the cost of local renewable energy, and wastes the Commission’s staff time as well as others involved in the project to no benefit.

As shown above, the Commission’s broad interpretation of “minor amendment” in the Guidance upends nearly a decade of Commission precedent and imposes an unnecessary burden on customers, installers, and regulators. In addition, the Guidance unlawfully expands the Commission’s authority by eviscerating Section 248(a)(2)’s maintenance and repair exemption. Therefore, the Commission should modify the Guidance to incorporate the Commission’s established precedent reflecting the statutory limits of its jurisdiction.

Finally, the Guidance introduces a new concept—a "de minimis change” to a net-metering registration—that does not appear anywhere in Rule 5.100. The Guidance defines a “de minimis change” as “any change that is not a major or minor amendment or transfer.” According to the Guidance, a customer must file a letter with the Commission notifying it of a “de minimis change.” This filing requirement is not set forth anywhere in statute or in Rule 5.100 and it should be removed from the Guidance.[8]

REV appreciates the Commission’s timely attention to and response to these issues.

Sincerely,

Olivia Campbell Andersen
Renewable Energy Vermont, Executive Director

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[8] If an installer relocates or changes its address, the Guidance on “de minimis” changes can be read to require all of the installer’s customers to file notice of the change with the Commission. Unless a customer has an ongoing relationship with the installer, it is not clear how the customer would know when the installer’s information has changed.