



May 27, 2022

Ms. Holly R. Anderson, Clerk of the Commission
Vermont Public Utility Commission
112 State Street
Montpelier, VT 05602-2701

Re: Norwich Solar's Comments on Case Number 19-0855-RULE – Proposed
Changes to Rule 5.100.

Dear Ms. Anderson:

Introduction

Norwich Solar thanks the Vermont Public Utility Commission ("Commission") for the opportunity to provide these comments in response to the Commission's April 29, 2022 Order requesting comments on proposed changes to Rule 5.100, the Commission's net-metering rule.

In addition to supporting the comments submitted by Renewable Energy Vermont ("REV") in this proceeding, Norwich Solar offers the following high-level recommendations for consideration by the Commission. **Norwich Solar recommends the Commission withhold from issuing further changes to Rule 5.100 until the following three areas are addressed:**

- 1. Current and proposed changes to Rule 5.100 conflict with Act 174 of 2016 - Energy Development Improvement Act and 30 V.S.A. § 8010.**
- 2. Greater public and legislative input is needed on several issues, including:**
 - Renewable Energy Credit Adjuster and Siting Adjuster Values in Rule 5.100
 - Proposed changes to Rule 5.100 further reduce the viability of larger systems and effectively make the net-metering program only work for homeowners.
 - Indirect real-life impacts the proposed changes to Rule 5.100 will have on Vermonters wanting to benefit from the net-metering program.
 - Impacts and conflicts the proposed Rule 5.100 will have on Vermont's land-use.
- 3. Rule 5.100 requires sufficient review to ensure clear, efficient, and consistent guidance to all participants.**

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1. Proposed Changes to Rule 5.100 Conflict with Act 174 and 30 V.S.A. § 8010.

Norwich Solar recommends the Commission eliminate its proposed prohibition on tree clearing in Section 5.103 to ensure compliance with the objectives of Act 174 - Energy Development Improvement Act. The proposed change to the definition of “Preferred Site” in Section 5.103 prohibiting tree clearing in excess of one acre conflicts with the legislative intent of Act 174. The Act was initiated by the legislature to “...make efficient use of energy, provide for the development of renewable energy resources, and reduce emissions of greenhouse gases.”¹

Proposed changes to the definition of “Preferred Sites” under Section 5.103 prohibits solar installations in forest blocks that require more than one acre of clearing. This definition change for preferred siting designation would ban Category III net-metering systems (which are required to have preferred siting status) in any area requiring more than one acre of trees to be cut. The proposed one acre limit would apply to any level of forest succession (including pre-existing clear cuts).

This proposed ban on Category III systems based on land use violates the standards municipalities must comply with to achieve an enhanced energy plan designation. Act 174 requires plans to be consistent with:

“(A) Vermont’s greenhouse gas reduction goals under 10 V.S.A. § 578(a); (B) Vermont’s 25 by 25 goal for renewable energy under 10 V.S.A. § 580...(D) State energy policy under 30 V.S.A. § 202a and the recommendations for regional and municipal energy planning pertaining to the efficient use of energy and the siting and development of renewable energy resources...(E) the distributed renewable generation and energy transformation categories of resources to meet the requirements of the Renewable Energy Standard under 30 V.S.A. §§ 8004 and 8005.”²

The Commission’s proposed tree clearing ban will impede municipalities from obtaining enhanced energy plan designation because of ever-increasing renewable energy siting restrictions. Prohibiting tree clearing in excess of one acre will further reduce the amount of viable sites for renewable energy development and restrict the ability of municipalities to achieve enhanced energy plan designation and to comply with state energy goals.

In addition, the proposed prohibition on preferred siting designation (disqualifying Category III / up to 500 kW ground sites) that require more than one acre of clearing would have perverse repercussions by requiring municipalities to prohibit ALL TYPES of DEVELOPMENT to be

¹ Act 174 of 2016, *Energy Development Improvement Act*, at 1.

² *Id.* at 4-5.



consistent with Act 174. According to the Department of Public Service's "Guidance for Regional Enhanced Energy Planning Standards," an approved plan must meet the following requirement:

***If areas are considered unsuitable for energy generation, then the land use policies applicable to other forms of development in this area should similarly prohibit other types of development.*³**

In addition to the prohibition on tree cutting, the preferred siting standards should work to encourage efficient development in these areas from a land use policy perspective. **Norwich Solar recommends reviewing how best to site and efficiently utilize preferred sites** to ensure meeting the policy objectives of Act 174 and better aligning with expectations contained within approved town enhanced energy plans.

Norwich Solar recommends eliminating the prohibition on tree cutting to attain preferred status to comply with Vermont's net-metering statute. Vermont's net-metering statute requires the Commission to adopt and implement rules that "...ensures...all customers who want to participate in net metering have the opportunity to do so."⁴ As demonstrated in Norwich Solar's April 25, 2022 comments in Case Number 22-0334-INV - Biennial Update of the Net-Metering Program, the rate of applications for Category III systems is at an all time low. The exclusion of parcels that would require tree cutting of more than one acre would further suppress Category III customers and landowners from participating. Application data for Certificates of Public Good already demonstrate that it is difficult for non-homeowners to participate.⁵

For context, in 2017 the Vermont Agency of Natural Resources released a "2017 Vermont Forest Action Plan" ("Action Plan"), concluding that Vermont has over 4.5 million acres of forest land, and there is more growth than removal.⁶ The Action Plan confirms an abundance of forested lands within Vermont, and that Vermont's forests are still growing. It is only the rate of that growth that has slowed down, but only slightly.⁷ The Action Plan also reports that the cumulative 69,000-acre loss due to ALL development between 2010 and 2015 is sustainable.⁸ Even if there has been a total cumulative clearing of 280 acres to accommodate solar installations in Vermont, this is only about 0.006% of the 4.5 million acres of Vermont forestland.

³ Vermont Department of Public Service, *Guidance for Regional Enhanced Energy Planning Standards*, March 2, 2017, at 29.

⁴ 30 V.S.A. § 8010(c)(1)(E).

⁵ Comments of Norwich Solar dated April 25, 2022, Case Number 22-0334-INV – Biennial Update of the Net-Metering Program.

⁶ Vermont Agency of Natural Resources, Department of Forests, Parks and Recreation, Division of Forests, *2017 Vermont Forest Action Plan*, at 9.

⁷ *Id.* at 21-22.

⁸ *Id.*



Lastly, Norwich Solar recognizes that the concept of cutting trees seems contrary to claims of reducing GHG emissions. The science (utilizing standard US EPA calculations) is overwhelmingly in identifying an acre of solar offsets more carbon emissions than an acre of forest in Vermont can sequester. Unfortunately, many times solar development triggers a broader conflict between individual property rights and land access by others that this proposed rule change will not fairly resolve.

2. Greater Public and Legislative Policy Considerations are Needed.

A. Renewable Energy Credit Adjuster and Siting Adjuster Values in Rule 5.100 Necessitate Legislative Review and Oversight.

Consistent with recent discussion on the roles of the legislative and the administrative branches of government in Vermont, Norwich Solar believes the fiscal implications of siting adders and renewable energy credit ("REC") values should remain in Rule 5.100. Elimination of specific REC adjuster values in Section 5.127(B)(3) and siting adjusters in Section 5.127(C)(2) precludes review and approval of fiscal matters by the Legislative Committee on Administrative Rules ("LCAR").⁹

Governor Philip B. Scott's May 6, 2022 letter to the Vermont House of Representatives explaining his veto of H.715, *An act relating to the Clean Heat Standard* stated:

"What the Legislature has passed is a bill that includes some policy, with absolutely no details on costs and impacts, and a lot of authority and policy making delegated to the Public Utility Commission (PUC), an unelected board. And regardless of the latest talking points, the bill does not guarantee a full legislative deliberation on the policy, plan and fiscal implications prior to implementation."

Similarly, a full legislative deliberation on the fiscal implications associated with eliminating REC and siting adjuster values in Rule 5.100 must take place before implementing the proposed rule changes. **Norwich Solar recommends keeping the REC adjuster values and siting adjuster values in Rule 5.100 and to have the fiscal implications of the Commission's proposed changes reviewed and approved by LCAR.**

⁹ 3 V.S.A. § 836.



B. The Commission's Proposed Changes to Rule 5.100 Will Create a "Homeowner Only" Net-Metering Program.

As siting adjusters and REC adjusters have declined by nearly 40% over recent years, a **dramatic 99% decline in Category III applications for Certificates of Public Good (measured in kilowatts) has occurred since 2018.**

Under the current net-metering compensation regime starting September 1, 2021 (through May 24, 2022):

- **237 kW of Category III (150 kW to 500 kW)applications have been filed**
- **14,124 kW of Category I (residential) systems have registered**

Additional permitting constraints (ambiguous language or blanket bans on tree clearing) imposed from the proposed changes to Rule 5.100 will ensure this dramatic drop cannot be reversed.

The application data shows Vermont has effectively become a homeowner-only program (i.e. no other category of customer is applying). The effect of this means Vermont businesses, schools, residences with no solar access, farms, municipalities, and non-profits including low-income housing organizations serving thousands of Vermonters will be unable to participate in Vermont's net-metering program.

In 2020, over 50% of Norwich Solar's Category III systems' output supplied net-metering credits and savings to low-income housing organizations. See **Appendix A** for a sample list of customers utilizing Category III systems and correspondingly a composite of customers disenfranchised by further constraints to Category III.

Norwich Solar recommends a thorough review and modeling of siting adjusters, REC values, and permit conditions be conducted to restore the viability of Category III systems to ensure a broad swath of Vermonters can participate in net-metering.

C. The Commission's Proposed Changes to Rule 5.100 Will Have Real Implications on Vermonters.

Norwich Solar would like to take this opportunity to share some real examples of how the Commission's proposed changes will negatively affect Vermonters.

Tree cutting ban for "preferred" status (even if previously clear cut by others).

In the spring of 2021, Norwich Solar helped facilitate the transition of an organic dairy to the Vermont Land Trust and a "next generation" farmer. In this transition, Norwich Solar contributed to the gap between the farm appraised value and the owner's required sell price. This risk was assumed for the opportunity to permit a Category III system on 7 acres of their recently cut land.



The location of the array, on non-prime agricultural land, was important to the farmer in order to maximize the available land uses for the farm.

However, if the proposed changes to Section 5.103 were in place, this transaction would not have occurred as the previously cleared site would be considered a “significant forest clearing,” thereby making it ineligible for preferred siting designation and ineligible to apply for a CPG.

“Significant Forest Clearing” is a new term in the proposed Rule which “*means clearing of more than one acre of a forest block. For purposes of this rule, the term forest block means a contiguous area of forest in any stage of succession and not currently developed for non-forest use.*” With the broad definition including the term “*any stage of succession,*” it would have been deemed too risky to participate.

Norwich Solar recommends a broader outreach to the public to ensure the Commission is informed about potential implications that proposed changes to Rule 5.100 hold for Vermont landowners, first time buyers, low-income customers, and the agricultural community.

From the landowner’s perspective, maintaining open land is an on-going and costly effort. If not continuously maintained, trees will grow and the land will return to woods. Denying owners the ability to use their land as they wish because they either choose to not regularly mow it or can not either afford to do so is concerning. An elderly couple in Windsor, looking to divest themselves of their land holdings in retirement, struggled to sell their land due to its proximity to Interstate 91 and the accompanying Interstate noise. The property was on the market for an extended period of time before Norwich Solar purchased the property at full price to host a solar array. The Town of Windsor, working with Norwich Solar, supported the solar location with the inclusion of future cluster housing development near town infrastructure. While the owners expected the land would be cleared for housing, the owners were very pleased with its use for solar.

3. Rule 5.100 Requires Sufficient Review to Eliminate Uncertainty and Inefficiencies in Rule Compliance.

For the sake of taxpayers, solar installers, and interested parties, changes to Rule 5.100 should strive to promote greater clarity and efficiency. The following changes to Rule 5.100 introduce uncertainty in implementation of the Rule.

The proposed definition of Preferred Site and “Significant Forest Clearing” in Section 5.103 as applied to a preferred site with 50% of the load on the same parcel is another example of how a broad statement banning the cutting of more than one acre of trees could create issues. If the site was developed under Act 250 and trees were cleared, would the site be automatically



preferred? When and how to apply the broad ban is open to interpretation and will needlessly introduce uncertainty.

Another area of uncertainty appears in references to the term “forest block” in the proposed Section 5.107(C)(5)(d). It is not clear what would equate to “more than one acre” when the term forest block also includes “natural features that do not themselves possess tree cover.” Calculating the “total acreage of forest block” will be unclear as now proposed. **Norwich Solar recommends restoring the definition of preferred sites by eliminating the proposed “Significant Forest Clearing” term.**

The definition of “Substantial Change” to a proposed or approved net-metering system in Section 5.103 uses the undefined term “significant impact” on any of the criteria of Section 248(b) or the general good of the State under Section 248(a). This definition is completely open for interpretation. **Norwich Solar recommends more specific language around the criteria of Section 248 to promote consistent application of the Rule and greater efficiency.**

Section 5.108 utilizes the “Substantial Change” definition as a criterion for amending pending registrations and applications. There is little definition for parties to know what qualifies as “the potential for significant impact” and thus triggers an amendment process. Currently, while it could be further clarified, the amendment definitions (major/minor) explicitly identify and provide clear thresholds for what constitutes the need for an amended application.

Section 5.136 is a new proposal to provide mitigation fees for constrained areas of the grid. Inclusion of a statement providing public input and review would create a more robust and open process. **Norwich Solar recommends the Section 5.136 process clearly identify the public review process for any proposed mitigation tariffs imposed.**

Section 5.138 contains a modification to compliance proceedings that allows a side step of the role of the Public Service Department in investigating and making recommendations on matters of compliance. Norwich Solar believes the consistency and experience of having the Public Service Department investigating these matters first is more efficient than the proposed two-path approach which adds an alternative path of direct investigation. **Norwich Solar recommends that Section 5.138 be restored to its original process whereby the Public Service Department reviews potential non-compliance issues.**



Conclusion

Norwich Solar appreciates the opportunity to comment and make recommendations on potential changes to Rule 5.100. The benefits of net-metering are real and provide value to all types of Vermonters. Unfortunately, they are not discussed in the regulatory proceedings surrounding the biennial update of the net-metering program and updates to Rule 5.100. Norwich Solar recommends that a comprehensive review be conducted of how the changes proposed will impact:

- Conflicts with existing statutes
- Conflicts with existing conservation, agricultural and land use policies
- Landowners' property rights to development
- Non-residential customers

Norwich Solar appreciates the opportunity to comment on this proceeding. We thank you for considering our input.



Appendix A

Sample List of Norwich Solar Customers Utilizing Category III Systems

Affordable Housing Providers

Champlain Housing Trust
Springfield Housing Authority
Brattleboro Housing Partnerships
Randolph Area Community Development
Twin Pines
Canal Street Apartments
New Avenues Housing
Terrace's Senior Housing

Schools

St J School District
Caledonia Central Supervisory Union
Oxbow High School
Hartford School District,
Windsor Southeast Supervisory Union

Norwich Community Solar IV and V.

Approximately 40 VT families that wanted solar but couldn't locate panels on their own property.

Nearly 100 Small VT Businesses Including but not Limited to:

King Arthur Flour
Stewart Maple
Jakes Markets
Wayside Restaurant
River Roost Brewery
Morrison's Feed

Mission-Driven Nonprofits

The Upper Valley Haven
Red Apple Health Clinic
Steps To End Domestic Violence
Capstone Community Action