



Vermonters ^{for a} Clean Environment

May 27, 2022

Case No. 19-0855-RULE

Re: Proposed revisions to Vermont Public Utility Commission Rule 5.100

Dear Public Utility Commission,

Vermonters for a Clean Environment offers the following comments on the draft Net-Metering Rule update.

VCE supports the majority of the proposed changes in the draft Rule. Simplifying the registration process, clarifying the amendment process and limiting forest clearing are all beneficial to the development of appropriate net-metered systems.

Preferred Site Letters are Problematic and Should Be Eliminated

The draft rule proposes to add a requirement to the Preferred Site Joint Letters of Support to include a written determination that the plant is consistent with the applicable town or regional plan.

5.103 Definitions Preferred Site

1. (7) A specific location designated in a duly adopted municipal plan under 24 V.S.A. chapter 117 for the siting of a renewable energy plant or specific type or size of renewable energy plant, provided that the plant meets the siting criteria recommended in the plan for the location; or a specific location that is identified in a joint letters of support from the municipal legislative body and municipal and regional planning commissions in the community where the net-metering system will be located. The letters must include a written determination that the plant is consistent with the applicable town or regional plan.

VCE continues to encounter problems with developers' procurement of Preferred Site Letters.

Recommendation

We maintain our objection to the use of Preferred Site Letters and recommend that the option be eliminated entirely.

Who is the Customer?

The majority of Preferred Site Letters are being used for 500 kW “virtual” net-metering projects built far from load, with CPGs issued for projects that do not have any identified customers.

We do not understand why the PUC issues CPGs for projects that do not have customers. The definition of net-metering specifically identifies electricity “supplied to a customer”, “intended primarily to offset the customer’s own electricity requirements.” Yet the PUC issues CPGs for projects without any customers other than the developer’s meter, and without any requirement to show that customers have been signed up to purchase the electricity after the CPG is issued. The promise of group net-metering is not sufficient unless there is a mechanism in place to assure that the electricity generated is being sold to actual customers.

If merchant generators are selling power into the grid, they are benefiting from high net-metering rates. Because the majority of these no-customer projects are 500 kW projects, they are the largest reason that net-metering rates are increasing the rates of other utility customers.

There does not appear to be anything in the Rule or Statute that requires the PUC to issue CPGs for projects without customers identified. We wonder why this practice is allowed.

Recommendation

Require all projects utilizing Preferred Sites to confirm there are actual customers signed up to take the electricity before a CPG is issued.

The Role of Regional Planning Commissions

The primary supporters of the Preferred Site Letter provision are Regional Planning Commissions, which argue that the option of obtaining a Preferred Site Letter provides some flexibility for planners.

In practice, however, Regional Planning Commissions play a rubber stamp role. VCE has witnessed enough of these requests to municipal Planning Commissions, Select Boards, and Regional Planning Commissions to conclude that the decision to approve or deny a Preferred Site Letter is based on the determinations of the municipal Planning Commissions. Select Boards usually defer to the Planning Commissions. Regional Planning Commissions then defer to the towns. We are not aware of any RPC that has denied a Preferred Site Letter issued by a town.

It would be far better for municipal planning commissions to amend their plans to provide specific guidance to developers regarding what types of sites they prefer or do not prefer. The town plan is the appropriate place for this discussion to take place, not in a hastily-obtained letter.

Recommendation

Require Regional Planning Commissions to develop and distribute standards of review for municipal legislative bodies and planning commissions that are consistent throughout the state's RPCs.

Volunteer Town Planners are not Equipped to Determine Consistency

Volunteer municipal planning commissioners do not have the expertise to understand how to evaluate the request for a Preferred Site Letter. Developers routinely present their proposal to the Planning Commission with the assurance that the project complies with the Town Plan (even when it does not). Planning Commissioners then trust the developer and issue the letter based on their assurance.

While the proposed additional requirement to include a written determination that the plant is consistent with the applicable town or regional plan is well-intentioned, it creates additional problems.

In the real world, planners do not know what the PUC requires regarding consistency. VCE makes presentations to Planning Commissions and Energy Committees and provides examples of specific language the PUC is looking for to include in effective Enhanced Energy Plans. It is often beyond the ability of volunteer planners to evaluate a plant and determine consistency with the town plan's language.

Many town plans lack the specificity required by the PUC (as upheld or determined by the Vermont Supreme Court). Some planners do not recognize that a project is inconsistent with their town plan's specific language, especially when a developer assures the Planning Commission that the project meets the requirements of the town plan. In recent cases, the determination about whether a project violates a town plan has been decided by the Vermont Supreme Court. It is not realistic to expect town planners to make that legal determination.

Recommendation

Require municipal planning commissions to use the guidance document created and circulated by Regional Planning Commissions (as recommended above) to create a consistent standard of review throughout the state's municipal planning commissions.

Do Not Create a Rebuttable Presumption

A Municipal Planning Commission, Municipal Legislative Body and Regional Planning Commission's determination of consistency with town and/or regional plans would create a rebuttable presumption at the PUC and prejudice the interests of affected parties.

Recommendation

If the PUC chooses to continue the use of Preferred Site Letters with the requirement that the plant is consistent with the town or regional plan, we recommend that a caveat be added "this does not create a rebuttable presumption regarding Orderly Development."

Notification to Adjoiners is Essential

Subsequent to VCE's initial submitted comments on the Preferred Site Letter topic in this case, we have seen more proposals that received Preferred Site Letters resulting in Applications for 500 kW solar arrays.

Adjoiners with interests affected review the applicant's Advance Notice and Petition submissions and do their own review of town and regional plans. In several cases VCE is aware that adjoiners have identified inconsistencies with town plans, requiring neighbors to intervene specifically because their town Planning Commission, Select Board and Regional Planning Commission made the decision to issue the Preferred Site Letter, with no notice to adjoiners. Had adjoiners been notified at the time the Preferred Site Letter first came to their town Planning Commission, it would have provided the opportunity for a more thorough review of the proposed site as it relates to the town plan.

Recommendation

If the PUC chooses to continue the Preferred Site Letter option,

- 1) The first instance of approach to a town, i.e. the Planning Commission, must be accompanied by notice to adjoiners.
- 2) Adjoiners must be defined in the rule so notification is consistently applied.
- 3) Submission of the Preferred Site Letter with the Petition must be accompanied by a Service List of adjoiners who were notified that a Preferred Site Letter is being requested of a municipal Planning Commission.

Certification of Site Plan Review

Petitions utilizing Preferred Site Letters must include a Certification that the Site Plan reviewed by Planning Commissions, Select Boards and Regional Planning Commissions to obtain the Preferred Site Letter is the same site plan that is contained in the Petition.

Recommendation

- 1) If there have been any changes made to the Site Plan from the time it was reviewed by the Municipal Planning Commission, Select Board, and Regional Planning Commission until a Site Plan is submitted with the Petition, the applicant should be required to identify any changes that were made.
- 2) Petitioners should be required to return to Planning Commissions, Select Boards, and Regional Planning Commissions if substantial changes are made to site plans from the time the Preferred Site Letter was first issued and the filing of the Petition.

Town or Regional Plan

The use of the word "or" may result in some town planners signing a letter saying the project is consistent with the Regional Plan (but by omission not noting an inconsistency with a town plan).

Recommendation

If the PUC keeps this requirement, the “or” should be changed to “and”.

Conclusion

Preferred Site Letters are creating unnecessary problems for residents of communities where the letters are issued without any standards of review¹, without any notice to adjoining, and where relationships between town board members, land owners and developers seem to play a primary role in issuance of the letters.

Failing to notify adjoining when the letter is first requested is resulting in expensive and unnecessary litigation over issues that could and should have been addressed at the Planning Commission level.

The additional requirement to assure consistency with town plans sounds good in theory, but in practice will more likely add to the burdens faced by people whose interests are affected, if Planning Commissioners trust developers’ assurances that the plant complies with the town plan, and without notice to adjoining that the discussion is taking place at the town level.

Preferred Sites should be required to confirm that the plan has customers signed up to take the electricity, before the issuance of the CPG.

VCE respectfully requests that the Preferred Site Letter be discontinued, or the process for obtaining the joint letter be enhanced as recommended above.

Sincerely,

/as/Annette Smith

Annette Smith
Executive Director

¹ The public comment filed by the member of the Brattleboro Conservation Commission provides a good example of the challenges these Preferred Site Letters are causing for numerous community boards and commissions.