STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-0855-RULE

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| Proposed revisions to Vermont Public Utility Commission Rule 5.100 | |

Order entered: 12/02/2022

# ORDER REGARDING FURTHER PROPOSED REVISIONS TO COMMISSION RULE 5.100 AND REQUEST FOR COMMENTS

## I. INTRODUCTION

On April 11, 2022, the Vermont Public Utility Commission ("Commission") issued an order announcing a draft of proposed changes to Commission Rule 5.100, the Net-Metering Rule, and set a deadline for comments.

Today's Order responds to the comments that participants filed on May 27, 2022, and June 24, 2022. Comments were filed by the Vermont Department of Public Service ("Department"); the Vermont Agency of Natural Resources ("ANR"); the Vermont Association of Planning and Development Agencies ("VAPDA"); Green Mountain Power Corporation ("GMP"); the City of Burlington Electric Department ("BED"); Vermont Electric Cooperative ("VEC"); the Vermont Public Power Supply Authority ("VPPSA"); the Town of Stowe Electric Department ("Stowe Electric"); Renewable Energy Vermont ("REV"); AllEarth Renewables Inc. ("AllEarth"); Norwich Solar; Advanced Energy Economy ("AEE"); Vanasse, Hangen, Brustlin, Inc. ("VHB"); Vermonters for a Clean Environment ("VCE"); Evernorth; HB Logging LLC; Charles Van Winkle; Thomas Weiss; Justin Will; Jennifer Martin; Tom Mosakowski; David Martin; Jennifer and Daniel Goulet; Art Miess; Stephen Bushman; and Christopher Katucki. In response to the comments the Commission has modified its proposal in several significant ways. For example, the Commission proposes to allow registrations and interconnection applications for net-metering systems with a capacity of up to 15 kW to be filed simultaneously. Further descriptions of the significant changes proposed by the Commission are contained in the body of this Order.

We are setting a deadline of January 13, 2023, for participants to file comments on the draft changes accompanying today's Order. After we review those comments, we will determine whether additional steps are necessary before we begin the formal rulemaking process.

## II. DISCUSSION

In this Order, the Commission responds to certain comments received on specific parts of the proposed amended Rule 5.100 and makes changes in response to those comments where the Commission deems them appropriate. This discussion section is arranged by topic areas, below.

### 1. General Definitions (Section 5.103)

*"Amendment"*

The Department commented that the term "amendment" is still used in the rule and has not been entirely supplanted by the concept of a "substantial change," and therefore recommends that the Commission include a brief definition of "amendment." The reason the term "amendment" has not been supplanted by the concept of a "substantial change" is because they are different things. An "amendment" is a request for approval of a modification to a proposal that is either under review or has been approved by the Commission. Amendments also include requests to change the terms of a CPG issued by the Commission. A "substantial change" is the standard the Commission uses to determine whether an applicant or a CPG holder has a legal obligation to seek Commission approval (i.e., file an "amendment") before implementing a modification to a pending or approved net-metering facility.

The Commission proposes the following definition of "amendment" in Section 5.103 in response to this comment: "'Amendment' means a request for approval of a modification to a proposal that is either under review or has been approved by the Commission. Amendments also include requests to change the terms of a CPG issued by the Commission." Amendments are treated as "modifications" for purposes of fees assessed under 30 V.S.A. § 248c.

*"Interconnection Facilities"*

The Department recommends defining the term "interconnection equipment" used in the "preferred site" definition. The Commission has included the definition of "interconnection facilities" from Commission Rule 5.500 and uses that term in the "preferred site" definition.

*"Net-Metering" and "Group Net-Metering System"*

GMP recommends revisions to the definitions of "net-metering" and "group net-metering system." These definitions both come directly from state statute, 30 V.S.A. § 8002(10) and (15). Therefore, the Commission is not adopting GMP's proposed revisions.

*"Project Limits" and "Earth Disturbance"*

The Commission has changed the definition of "limits of disturbance" to "project limits," and has included a definition of "earth disturbance" in response to comments filed by ANR requesting that the definitions be amended to align with the definitions used for purposes of stormwater permitting.

*"Substantial Change"*

BED and Norwich Solar recommend adding more specificity to the proposed definition of "substantial change." The Commission is keeping the language as proposed to align with the definition in Commission Rule 5.400.

*Miscellaneous Definition Comments*

One commenter stated that the current definition of "blended residential rate" treats net-metering customers unequally because customers are compensated at different rates depending on their utility. The Commission is not proposing any changes to the definition. Utility rates vary, and therefore, retail compensation also varies. Additionally, the Commission has not proposed any changes to net-metering compensation in this rulemaking. The Commission is continuing to evaluate whether changes to net-metering compensation are appropriate and would likely pursue any such changes separately from rule changes addressed in this proceeding.

Another commenter stated that "customer charge" should be defined in the rule. Customer charges are determined in rate-design cases, not in this rule. Therefore, the Commission is not including a definition of "customer charge" in this rule.

### 2. Forest Clearing (Sections 5.103, 5.106, and 5.107)

ANR, VCE, and several private individuals generally support the definition of "significant forest clearing" proposed in the April 11 Draft. REV, Norwich Solar, VAPDA, VHB, HB Logging, and Mr. Van Winkle either fully object to or have concerns with the definition. Commenters in opposition to the definition argue that the definition singles out solar

net-metering from other types of development, does not support the State's climate goals, will do little to support conservation or stop overall deforestation, and is too broad and unclear and would thereby lead to confusion. Additionally, they contend the amount of clearing for solar development is small in comparison to other types of development. In response to the comments claiming that the definition was too broad and unclear, ANR filed a revised definition on June 24, 2022, and then filed further proposed revisions on August 26, 2022. The Commission has incorporated ANR's proposed revisions into the proposed rule.

ANR's proposed definition of "significant forest clearing" clarifies what activity would and would not count towards the one-acre limit on "significant forest clearing." The definition defines "forest" based on the percentage of canopy cover, states how the area must be measured, and requires that for an area to be considered "forest" it must be at least one acre in size and 120 feet wide. Clearing of small areas of trees that are not contiguous to larger forested areas (i.e., at least one acre in size and 120 feet wide) would not count towards the one-acre limit on "significant forest clearing." Additionally, tree clearing in areas identified for development (e.g., state-designated Village Centers, Downtowns, New Town Centers, Neighborhood Development Areas, and Growth Centers) would not count as "significant forest clearing."

This definition strikes a reasonable balance whereby project developers may not clear more than one acre in large forested areas, but are not entirely prohibited from clearing trees. The definition of "significant forest clearing" applies to net-metering projects on preferred sites only (Category II and III net-metering systems). Projects on preferred sites receive rate incentives from ratepayers. The Commission believes that under a preferred-site approach, ratepayers should not pay rate incentives for projects that clear large areas of forest, and it is appropriate to steer projects away from forested sites and areas that would require significant forest clearing. This recognizes that forests play an important role as carbon sinks and habitat. Further, because the majority of net-metering systems previously approved by the Commission comply with the "significant forest clearing" definition, the Commission does not believe this provision will materially affect the pace of net-metering development.

### 3. Preferred Sites Definitions and Documentation (Sections 5.103, 5.106, and 5.107)

*(1) New or Existing Structures*

In subdivision (1) of the definition of "preferred site" regarding new or existing structures, the Commission has reinserted the words "constructed impervious surface or." This phrase was included in the Commission's 2019 rule draft and was inadvertently omitted from the April 11 Draft. This phrase helps distinguish between human-constructed impervious surfaces and naturally occurring impervious surfaces, such as rock outcrops.

*(2) Parking Lot Canopies*

In subdivision (2) of the definition of "preferred site" regarding parking lot canopies, the Commission has struck the word "paved." This change was originally included in the Commission's 2019 rule draft and was inadvertently omitted from the April 11 Draft. This change helps to promote siting on parking lots by expanding the parking lots that qualify as preferred sites from paved parking lots only to parking lots that are constructed with an impervious or engineered pervious surface.

REV recommends that the definition include unpaved parking lots and that the Commission adopt a separate siting adjustor for this class of preferred site to encourage development and recognize additional construction costs. VEC supports REV's suggestion for a separate siting adjustor. However, without a definition of unpaved parking lot, what might qualify as an unpaved parking lot is potentially expansive (e.g., fields used for parking for fairs and festivals), and therefore, the Commission believes the current definition is appropriate. As to the separate siting adjustor, the Commission has decided not to propose changes to net-metering compensation in this current rulemaking proceeding. Further, no participants in this rulemaking have provided any data to justify a separate siting adjustor.

*(3) Previously Developed Sites*

In subdivision (3) of the definition of "preferred site" regarding previously developed sites, the Commission has added the word "constructed" before the word "impervious" to distinguish between human-constructed impervious surfaces and naturally occurring impervious surfaces, such as rock outcrops, as recommended by ANR.

The subdivision now also includes the terms "project limits" and "interconnection facilities," discussed above in the General Definitions section of this Order.

*(5) Landfills*

REV opposes the criteria required for landfills to be considered "preferred sites," and argues that the development of net-metering facilities can be an opportunity to bring landfills into compliance with state requirements. Subdivision (5) is intended to give preferential rates to projects on landfills that comply with state requirements. It is unclear to the Commission how allowing projects on landfills that are not in compliance with state requirements would bring those sites into compliance. Further, ANR asserts that these are requirements ANR has sought through the CPG process and that past net-metering projects on landfills have all complied.

*(6) Extraction Sites*

ANR raised concerns about ambiguity in subdivision (6)(a) of the definition of "preferred site" regarding extraction sites. The Commission has removed the previously proposed subdivision (6)(a), which attempted to set an amount of time that an extraction site had been in existence before a CPG for this type of preferred site could be filed under the rule. The Commission agrees that the language is ambiguous. Additionally, the Commission does not believe the language is necessary. If the energy generation component of a plant is located entirely within the disturbed portion of an extraction site and all reclamation requirements are satisfied before operation of the plant, the Commission believes the site should qualify as a preferred site.

REV argues that the rule should set a percentage of a project that must be within the disturbed portion of an extraction site, rather than requiring the energy generation component of a plant to be located entirely within the disturbed portion of an extraction site. The Commission's intent with the preferred-site section is to use rate incentives to encourage development of disturbed sites, not to encourage development of undisturbed areas. Further, the provision allows for interconnection facilities to extend beyond the disturbed portion of an extraction site, which the Commission believes strikes a reasonable balance.

*(7) Letter Option*

In response to the many suggestions to clarify and improve subdivision (7) regarding "joint letters of support," the Commission has reworked the language to ensure:

- it is clear that a letter is for a location, not a specific project,
- the governing municipal legislative body and the municipal and regional planning commissions have received the 45-day advance notice for a project before their review of the site,
- the municipal legislative body and the municipal and regional planning commissions review the development proposed for the site for consistency with the applicable policies in their *respective* plans,
- the municipal legislative body and the municipal or regional planning commissions may submit separate letters and the letters must identify the specific location at issue, and
- because a letter is for a site, not a project, a letter shall in no way limit the ability of a municipality or regional planning commission to participate in the Commission's review of a project.

VCE maintains that the Commission should eliminate these letters entirely and that instead, regional planning commissions should be required to develop and distribute standards of review for municipal legislative bodies and planning commissions to apply. However, directing the regional planning commissions to take such action is beyond the Commission's authority. Such a requirement would require legislative action.

VCE requests that if preferred-site letters are maintained, a caveat be added to findings of consistency with town and regional plans that "this does not create a rebuttable presumption regarding Orderly Development." Such a caveat is not necessary. The Commission's orderly development analyses are already guided by the *Apple Hill* and *Acorn Energy* Vermont Supreme Court decisions.[1]

Next, VCE and other commenters recommend that if the Commission keeps preferred-site letters: (1) notice to the town must be accompanied by notice to adjoiners, (2) adjoiners must be defined in the rule so notification is consistently applied, and (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. The

[1] *In re Petition of Apple Hill Solar LLC*, 2021 VT 69; *In re Petition of Acorn Energy Solar 2, LLC*, 21 VT 3.

Commission's proposal to require that the municipal legislative body and the municipal and regional planning commissions receive the 45-day advance notice for a project before reviewing a site for preferred-site status would ensure that adjoining landowners are aware of projects. Additionally, "adjoining landowner" is already defined in the rule.

Finally, VCE also suggests that if substantial changes are made to a project after review by local and regional bodies, petitioners should have to go back to those bodies. However, preferred-site letters are for the site, not the project. Therefore, this step should not be necessary.

*Miscellaneous Preferred Site Comments*

ANR observes that some applicants are using the joint letter option when subdivisions (4) (brownfields) or (6) (extraction sites) could have been used, possibly to circumvent the requirements of (4) and (6), and ANR recommends that this be corrected. The Commission has amended 5.106(D)(8) and 5.107(C)(14) to require projects on brownfields and extraction sites, whether seeking preferred-site status under the brownfields, extraction sites, *or* joint letter option, to submit the information required by 5.106(D)(8) and 5.107(C)(14). This will ensure that adequate information is filed concerning these types of sites, which may require more scrutiny. Some commenters expressed concerns that requiring this additional information will discourage systems on these types of sites. However, applicants claiming preferred-site status are already required to demonstrate that they qualify for the status they claim. Therefore, requiring this documentation upfront as part of the application, rather than requesting it after an application is filed, will provide clarity to applicants about the documentation the Commission needs and will help lead to a smoother review process.

Some commenters recommended that sites with any of the following within their limits of disturbance be ineligible to be preferred sites: headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forest soils, or primary agricultural soils. The Commission believes that such a prohibition would be overly broad. The CPG approval process is intended to ensure that projects will not have undue adverse impacts on protected resources.

VCE recommends that all projects on preferred sites should have to confirm that there are actual customers signed up to take the electricity before the Commission issues a CPG. Because membership in group net-metering systems can change at any time, the Commission sees no

benefit to requiring this information, except for those systems that seek preferred-site designation because they are close to load, and those projects are already required to provide customer information to support this designation. Therefore, the Commission has not adopted the proposed change.

Evernorth requested that the definition of "preferred site" be modified to include projects that will have affordable rental housing as the customer, noting that such projects often must be located off-site from the rental housing because the roof space is not large enough to accommodate the system. The "preferred site" definition is focused on steering projects towards appropriate *sites*, rather than promoting a particular type of net-metering participant. The Commission considered similar issues in the most recent biennial update proceeding when a stakeholder requested increased net-metering compensation for projects serving low- and middle-income customers. The Commission held that "[a]n increase in compensation for net-metering customers, without any other changes, would largely recreate the same incentive structure" that has caused inequities between customers.[2] Therefore, the Commission declines to adopt Evernorth's proposal.

### 4. Interconnection Process (Sections 5.105, 5.106, 5.107, and 5.131)

In the April 11 Draft, the Commission proposed to require all applicants to receive interconnection approval before submitting a CPG registration or application. Several commenters raised concerns that requiring small net-metering systems to obtain interconnection approval from the utility before filing a CPG registration would increase review times and costs. These comments argue that the proposal is also unnecessary because small net-metering systems do not raise significant interconnection issues.

GMP raised concerns about how utilities would manage their interconnection queues if a system approved for interconnection does not file a CPG application. According to GMP, these projects could delay the review of later-filed projects and unnecessarily increase interconnection costs. Therefore, GMP recommended that the Commission keep the current simultaneous timing for filing requests for interconnection and a CPG. To address the Commission's administrative efficiency goal, GMP recommended that the Commission condition CPGs deemed issued upon

[2] *In re: Biennial Update of the Net-Metering Program*, Case No. 22-0334-INV, Order of 6/17 /22 at 41.

the applicant satisfying all interconnection requirements before a project is energized. To the extent that a customer has a disagreement about interconnection, they may seek dispute resolution using the procedures in Rule 5.500. BED also raised concerns about duplicative filings at the Commission and the utility.

The Commission continues to believe that it is important to recognize that the Commission's CPG review, which is governed by Rule 5.100, is distinct in function and procedure from the utility's interconnection review, which is governed by Rule 5.500. In response to the concerns raised by stakeholders, the Commission proposes to adopt GMP's recommendation that the CPG registration form and interconnection form for systems with a capacity of up to 15 kW be filed at the same time. The Commission proposes that filers submitting a CPG registration form will upload the standard Rule 5.500 application form in the registration case.[3] Systems that are greater than 15 kW will be required to attach proof that they have received utility approval to interconnect the proposed net-metering system when they file the CPG registration form.

All systems eligible to register for a CPG pursuant to Section 5.105 will be deemed issued a CPG on the 15th day following submission of a complete registration form, unless otherwise ordered by the Commission.[4] The utility will process an interconnection application received with a CPG registration using the standards and procedures contained in Rule 5.500. The Commission envisions that the Rule 5.500 interconnection process for systems up to 15 kW will include an initial utility review period that will also be 15 days. Therefore, in most cases, the CPG review process and interconnection review process would coincide. However, it is possible that a CPG will be deemed issued before the utility has concluded its interconnection review in cases where the interconnection review process takes more than 15 days. As recommended by GMP, all CPGs deemed issued will be conditioned on the CPG holder complying with the utility's interconnection requirements and Rule 5.500. If a CPG holder wishes to dispute a utility interconnection requirement, they may petition the Commission for

[3] In Case No. 19-0856-RULE, the Commission is developing streamlined procedures for the utility review of small, distributed energy systems, including net-metering systems. The Commission has also received proposed interconnection application forms in that proceeding. Participants interested in the standards and procedures applicable to the review of interconnection applications should submit comments in Case No. 19-0856-RULE.

[4] The 15-day CPG review period is for the Commission and parties to assess whether a proposed net-metering system complies with the requirements of Rule 5.100 and 30 V.S.A. §§ 248 and 8010.

dispute resolution pursuant to the procedures contained in Rule 5.500. Accordingly, the Commission does not expect to receive filings from utilities or registrants regarding interconnection issues in a CPG registration case.

### 5. Registration Process for Hydroelectric Facilities (Section 5.105)

ANR requested that the net-metering registration form require applicants to list all associated FERC authorization numbers (licenses, exemptions, permits) and dates. The Commission is making the requested change to the current Net-Metering Registration Form.

### 6. Single Plant Information (Sections 5.106 and 5.107)

The Commission has proposed to require applicants to provide information about known existing or proposed facilities on the same parcel or a parcel adjacent to a proposed net-metering system. REV argues that providing this information is impractical and raises privacy concerns for adjacent landowners. REV also argues that this information may not be available to the developer. The proposed rule requires applicants to disclose "*known* existing or planned generation facilities." Therefore, the Commission does not find persuasive REV's argument that it would be impractical to provide this information because the rule only requires an applicant to provide information it already has. The Commission has added language to the proposal to give examples of situations where the Commission expects applicants to disclose existing or proposed generation resources:

> The applicant must identify any known (e.g., visible from the project site, or developed by the same applicant, developer, installer, or an affiliated entity) existing or planned generation facilities on the same or an adjacent parcel as the proposed net-metering system.

As to REV's comments about the privacy concerns of adjacent landowners, REV has not explained what those concerns are or why they would weigh against requiring the disclosure of the existence of a net-metering system. Host landowners cannot expect that information about the existence and location of a net-metering system on their land would be private information because a net-metering system requires regulatory approval from the Commission before it is constructed.

The Department supports the Commission's proposal and asked that applicants be required to provide a diagram or comparative site plans in addition to written descriptions of the facilities. The Commission agrees with this comment and has revised its proposal to require a site plan showing both facilities. This information will help the Commission assess the physical proximity of the facilities and therefore is needed for determining whether adjacent facilities are part of the same plant.

### 7. Application Form and Application Process Generally (Sections 5.106 and 5.107)

*Applicability of Section 5.106 to Photovoltaic Systems Mounted on the Ground and a Roof*

In the April 11 Draft, the Commission proposed revisions to Section 5.106(A) that would allow systems mounted both on the ground and on a roof to file an application under Section 5.106, provided that the capacity of the ground-mounted portion does not exceed 50 kW. REV requested that this section be revised to make clear that mixed-mounted systems with 15 kW or less of capacity mounted on the ground would still be eligible to register under Section 5.105. The Commission agrees with this comment and has revised Section 5.106 to make clear that the section does not apply to mixed-mounted systems with 15 kW or less capacity mounted on the ground. Systems with 15 kW or less capacity mounted on the ground may file a registration under Section 5.105.

*Section 5.107 Generally*

In the April 11 Draft, the Commission proposed to eliminate the requirement for Section 5.107 applications to include prefiled testimony and instead use an application form. This proposed change was supported by the Department and ANR. The Department requested that applicants be required to submit a project narrative. The Commission agrees with this comment and has included a project narrative as an application requirement.

VCE expressed concern about eliminating prefiled testimony, particularly in contested cases. The Commission does not find this comment persuasive. The proposed rule will still require a witness to sponsor all evidence submitted and swear to the truthfulness of the information provided. If a case becomes contested, parties will have an opportunity to conduct

discovery and present testimony. Additionally, the Commission can request testimony if such testimony is needed to ensure an adequate evidentiary record. However, the Commission believes that prefiled testimony is an unnecessary formality in the majority of cases that are uncontested.

The Commission believes that the rule can be greatly streamlined by combining the provisions of Section 5.106 and 5.107. The timelines and steps of the application procedure contained in both sections are the same: (1) the filing of an advance notice, (2) the filing of an application (both of which will be accomplished by submitting a form), (3) a comment period, and (4) an opportunity for hearing if requested. The same persons and entities receive notice of applications filed under Sections 5.106 and 5.107. Therefore, the Commission proposes to delete Section 5.107 in its entirety and amend Section 5.106 to reflect that the systems that were subject to Section 5.107 will be covered by Section 5.106, using a separate form. Section 5.106 is also revised to reflect the information requirements that are specific to larger systems. This proposed change will reduce the length of the rule and eliminate unnecessary repetition.

*Service of Municipal Legislative Bodies and Planning Commissions, and Regional Planning Commissions*

Applicants are required to provide municipal legislative bodies and planning commissions and regional planning commissions with advance notice of an application and notice when the application if filed. VAPDA requested that instances in the rule requiring notice to an "affected municipal body" be clarified to ensure that municipal legislative bodies and planning commissions each receive a separate notice. The Commission has made this change, which can be found in Section 5.106(G)(2)(a).

VAPDA also requested that regional planning commissions receive advance filings and notices of application via ePUC, as opposed to first-class mail. The Commission will make this change to the rule. The regional planning commissions will be responsible for providing the Commission with a valid email to ensure that the regional planning commissions receive notice of advance filings and notices of application through ePUC.

*Service of Notice of Applications*

In Section 5.106(F) of the previous draft, the Commission revised the time for applicants to provide service of notice of applications to four days as part of the Commission's general shift to measuring time periods in calendar days as opposed to business days. However, the Commission has restored the 2-business day period contained in the rule to be consistent with the time period specified in 30 V.S.A. § 248(a)(4)(C). While notice requirements of Section 248 can be modified in net-metering cases, the Commission will maintain consistent timeframes in Section 248 cases and net-metering cases unless there is a specific need for different timeframes.

## 8. Amendments (Sections 5.103, 5.108, 5.109, 5.125)

*Substantial Change Test*

REV and Norwich Solar raised concerns about the Commission's proposal to use the "substantial change test" in place of the current rule's definition of Major and Minor Amendments. According to these commenters, the term substantial change is vague and there is little in the definition of the term substantial change for parties to know what qualifies as a potential for significant impact. The Commission has considered these comments and disagrees with the commenters' assertion that the substantial change test is vague. The Commission has applied the substantial change test for many years in Section 248 cases. Also, the substantial change test was applied in net-metering cases before the adoption of the current rule in 2017.[5] Based on this experience, the Commission believes that developers have adequate guidance to decide whether a change has the potential for significant impact under the Section 248 criteria and, therefore, is a "substantial" change.

The Commission also notes that proposed revisions greatly simplify the process for amending pending applications and approved projects. For example, under the current rules an applicant must withdraw their application and refile to make a Major Amendment to a pending application. The proposed rule would allow an applicant to make this change by motion.

[5] *Petition of Sideline Solar I, LLC, for a certificate of public good, pursuant to 30 V.S.A. ss 248 and 219a, authorizing the installation and operation of a 500 kW solar group net-metered electric generation facility to be located in Williston, Vermont*, Case No. NMP-3644, Order of 2/4/2015.

The Department was generally supportive of using the substantial change test but noted that the current rule was intended to encourage the filing of thoroughly developed applications. The Department recommended considering other incentives/disincentives to ensure thoroughly developed applications. The Commission agrees with the Department and believes that the proposed rule encourages thoroughly developed applications. For example, the proposed requirement to obtain interconnection approval from the utility before applying for a CPG will reduce the need to revise a CPG application due to interconnection issues. To the extent the Department (or any other participant) believes that additional incentives for thorough applications are needed, the Commission invites participants to include specific proposals in their comments on the draft attached to this order.

*The Effect of Amendments on Net-Metering Compensation*

In the April 11 Draft, the Commission proposed new language in Sections 5.108 and 5.109 clarifying what compensation would apply to an amended net-metering system. After further consideration of this issue, the Commission is proposing additional revisions to address concerns raised by the Department and GMP about legacy net-metering systems that are amended to substantially increase their capacity. The Commission proposes a standard that would make systems subject to the current rules for net-metering systems, including the most recent adjustor values and non-bypassable charges, if they increase their capacity by more than 5% or 10 kW, whichever is greater. The purpose of this proposal is to clarify the rate applicable to amended systems.

*Section 5.109 Evidentiary Standard*

The Department commented that Section 5.109 still requires the prefiling of testimony, which, as discussed above, would not be a requirement for applications. The Department recommended that a consistent evidentiary standard apply to applications and amendments. The Commission agrees and has revised Section 5.109 to eliminate the need to prefile testimony with requests to amend approved net-metering systems. As in application cases, evidence must be sworn to and sponsored by a witness, and the Commission may request testimony if necessary to complete the evidentiary record.

## 9. Transfer and Abandonment of CPGs (Section 5.110)

*Transferring a CPG*

GMP and the Department raised concerns about the Commission's proposal to eliminate Section 5.110(A)'s requirement that homeowners owning a net-metering system file a transfer form when they sell their home, instead allowing homeowners to provide written notice only to their utility. GMP stated that it is concerned that the Commission's records would no longer match the utility's records and that it would be difficult for the utilities to maintain accurate information. The Department stated that it is "concerned that the revision eliminating the need for customers to file CPG transfer forms with the Commission when a property is sold will lead to legal issues."

The Department has not identified with specificity what legal issues could arise if the Commission no longer receives notice when residential net-metering systems change ownership. The Commission requests that the Department provide more detail about its concerns. With respect to GMP's comment that the Commission's and the utilities' records would not match, the Commission does not receive notice of all transfers of ownership now despite the requirement contained in our rule. The Commission becomes aware of these cases when the Clerk receives inquiries from homeowners seeking information about their net-metering systems or when a subsequent purchaser files a notice of a transfer of ownership. Therefore, the Commission's records of who has applied for a CPG and the utilities' records of customers using net-metering systems already are not identical. The Commission is not persuaded that the benefits of maintaining records of transfers justifies the administrative burden on the Commission and homeowners.

*Abandonment of CPGs*

GMP expressed concern about the Commission's proposal to increase the time to commission a net-metering system from one year to two years. GMP stated that it is difficult to manage its interconnection queue when projects do not move forward in a timely fashion. GMP recommended that the Commission adopt a temporary extension allowing two years for commissioning, with a specific sunset. In response to GMP's feedback, the Commission has modified its proposal. The draft attached to this order provides that a CPG holder may obtain an

automatic one-year extension of time by providing written notice to the Commission and the electric company. Such notice must be provided before the one-year anniversary of CPG issuance; otherwise, the CPG will be deemed revoked.

The Commission believes this proposal will balance the need to keep projects moving towards commissioning in a timely manner and the need for an administratively simple way to give projects an extension of time if they are still moving towards commissioning.

### 10. Public Comments (Section 5.116 and 5.118)

Throughout the rule, the Commission had proposed to revise timeframes to be consistent with the "day is a day" rule used in the Vermont Rules of Civil Procedure – meaning that instead of counting business days, the rule counts calendar days. As a result, the time for filing comments on applications was shortened slightly from 30 days to 28 days. The Department and VCE opposed this change. The Commission has restored the 30-day comment period in response to these concerns.

### 11. Energy Measurement (Section 5.126)

*Production Meters*

REV and AllEarth recommended that the Commission remove the requirement that net-metering customers install a production meter. This change could result in increasing the cost of net-metered power because customers would avoid any negative adjustors applying to their total production. This would also decrease the rule's incentives for the beneficial siting of net-metering systems. Therefore, the Commission has not adopted this proposal.

*Energy Efficiency Charge*

REV argued that the Energy Efficiency Charge should be based on a customer's net consumption. This issue is outside the scope of this rulemaking. The manner of calculating the Energy Efficiency Charge is set forth in Commission Rule 5.300. The Commission most recently revised that rule in Case No. 19-0053-RULE. REV raised similar concerns in that rulemaking, and the Commission considered REV's arguments and did not revise the rule in the manner requested by REV.

*Group Net-Metering System Billing for Systems Directly Interconnected*

For clarity and ease of reading, the Commission has made minor changes to section 5.126(A)(4) to explicitly refer to the definition of "excess generation" and the requirements of that definition. These changes are consistent with the Commission's ruling in *Washington Electric Cooperative, Inc.'s request for declaratory ruling regarding methodology for group net-metering system billing for systems directly interconnected*, Case No. 21-1816-PET, Order of 2/23/2022.

## 12. Adjustor Values (Section 5.127)

Justin Will commented that customers do not grasp the significance of the decision to transfer or retain renewable energy credits ("RECs"). Mr. Will also stated that the market value of RECs can fluctuate over time. Therefore, Mr. Will requested that the Commission allow customers to change their election to retain or transfer RECs once every three years.

The rule is designed to encourage customers to transfer the ownership of RECs to the utilities so that net-metering systems can contribute to meeting Vermont's Renewable Energy Standard. The electric distribution utilities must make long-term decisions about how to procure sufficient RECs to meet their requirements under the Renewable Energy Standard. Therefore, the Commission has designed the rule to ensure that utilities can rely on RECs obtained from net-metering systems to meet their obligations.

A few comments suggested that the Commission should increase the value of adjustors to promote the expansion of net-metering. The Commission has not adopted these recommendations because increasing value of adjustors will increase the cost shift between customers who net-meter and those who do not. Additionally, the Commission will be evaluating net-metering compensation generally in a separate proceeding from this rulemaking.

## 13. Biennial Update Process (Section 5.128)

*Biennial Update Process Generally*

Norwich Solar argues that the adjustor values that are set in the biennial update process should be deliberated by the Legislative Committee on Administrative Rules. The amount of net-metering compensation is a policy question that is outside the scope of the review conducted

by the Legislative Committee on Administrative Rules.[6] The Legislature has delegated to the Commission the policy determination of how to balance the costs and benefits of net-metering.[7] The Commission cannot direct the Legislative Committee on Administrative Rules to conduct a policy inquiry on the Commission's behalf. Therefore, this recommendation was not adopted.

VAPDA recommends that the geographic location of potential facilities in relation to existing electric load be added to the list of considerations the Commission must consider when updating the siting adjustor under Section 5.128. It is unlikely that the Commission would be able to obtain useful data about the location of potential facilities over the relevant two-year period because the time from conception to construction for many net-metering systems is less than two years. Therefore, the Commission has not adopted this proposal.

*Reporting of Data*

Several commenters, including the Department and AllEarth, recommended that the Commission require a standard template for the reporting of data in biennial update proceedings. The template would be issued by the Commission as part of the order opening the biennial update proceeding. The Commission has previously directed the utilities to use a standard reporting template for biennial update proceedings. The Commission has added language to Section 5.128 to codify this requirement.

### 14. Billing Standards and Procedures and Group System Requirements (Sections 5.129 and 5.130)

*Utility Billing Generally*

AllEarth argues that the rule should create a greater nexus between net-metering rates and customer bills and require more consistent presentation of information on customer bills. Specifically, AllEarth recommended that the rule should "(1) [require] notice to all parties to any generic proceeding about an individual company compliance tariff, (2) ensure reasonable

[6] *See* 30 V.S.A. §§ 817 and 842 (describing powers of the committee and stating grounds upon which the Committee can object to rules).

[7] 30 V.S.A. § 8010.

consistency in the forms of the tariffs, and (3) require that tariffs contain clear standards and procedures for how net-metering information is displayed on the bills."

A utility is required by law to provide notice of proposed tariff changes to the Department and "to parties affected by such schedules as the Commission shall direct."[8] AllEarth has not identified which parties should receive notice of these proceedings and, therefore, the Commission cannot make any changes to its proposal in response to this comment. However, the Commission notes that the timing of the filing of compliance tariffs in biennial update proceedings is announced in Section 5.128 and, therefore, the public is generally on notice that a compliance tariff will be filed by June 15 of every even-numbered year. Tariff cases can be found in ePUC. In the case where an off-cycle biennial update occurs, the Commission has made a regular habit of providing notice to REV to ensure that developers are aware that the proceeding is occurring. The dates of any compliance tariffs would be announced in scheduling orders in that proceeding.

*Customer Cumulative Capacity Limit*

AllEarth and the Department recommended changing Section 5.129(D) to reflect that under Act 81 of 2019, school districts may have up to 1 MW of net-metering capacity. The Commission agrees with these comments and has made this change.

AllEarth also recommended removing Section 5.129(D)'s general limit of 500 kW per customer. The Commission believes that the 500-kW customer limit is still necessary because net-metering in its current form still has the potential to shift costs from participating customers to non-participating customers. Therefore, the customer limit serves as a guardrail to ensure that large customers do not reap outsized benefits at the expense of other customers.

*Group System Requirements*

VAPDA requested that the Commission eliminate the requirement that all members of a net-metering group be located in the same utility service territory. VAPDA argued that the requirement needlessly restricts group systems for small communities. This proposal raises

[8] 30 V.S.A. § 225(a).

significant practical and legal issues. Allowing customers of different utilities to participate in a common net-metering group would require a level of coordination and communication between different utilities' billing departments that has not been shown to be feasible. These transactions would also complicate the determination of the sales volumes and revenues used by the Commission to calculate the respective utilities' rates. Even if such coordination were practicable, the transfer of electricity and monetary credits from one utility to another would call into question whether the transaction is a wholesale sale of electricity that is outside the Commission's jurisdiction.[9] The proposal implicates the applicability of transmission charges to wheel the power from one service territory to another. For these reasons the Commission has not adopted VAPDA's proposal.

### 15. Electric Company Requirements (Section 5.133)

Stephen Bushman commented that Section 5.133 "opens a loophole" for utilities to extract extra costs from net-metering customers. Mr. Bushman also asked that the term "reasonable fee" be defined. The Commission disagrees with Mr. Bushman's characterization of this section as a loophole. The purpose of this section is to allow utilities to recover costs that are specific to net-metering customers. These fees are subject to review by the Commission and the Department to ensure that they are just and reasonable and not unduly discriminatory.[10] Therefore, the Commission has not made any changes to the proposal in response to Mr. Bushman's comment.

### 16. Wholesale Market Participation (Section 5.135)

REV, AllEarth, AEE, and Mr. Bushman oppose the Commission's proposal to prohibit net-metering systems from participating in wholesale markets. They argued that the proposal created a barrier for distributed electric resources and that in certain situations a generator should be compensated for services it is providing.

These comments conflate net-metering systems and distributed energy resources generally. The proposal does not categorically prohibit all distributed energy resources from participating in wholesale markets. Instead, the proposal narrowly prohibits a specific class of

[9] *See* 16 U.S.C. § 824(d) (defining a wholesale transaction as a "sale for resale.").
[10] 30 V.S.A. § 225.

distributed energy resources – retail net-metered generators – from receiving double compensation by participating in wholesale markets. Customers are free to install a distributed energy resource such as a solar array or storage system and participate in wholesale markets; they just cannot receive retail net-metering credits at the same time without approval from the Commission.

VPPSA requested clarification about the criteria the Commission would use to authorize a net-metering system to participate in a wholesale market. The Commission has revised Section 5.135 to reflect that the Commission would approve such participation if the Commission found that the participation in a wholesale market would not harm the interests of Vermont ratepayers and was in the public good.

### 17. Locational Adjustors (Section 5.136)

The Department and GMP support new language addressing constraints that include areas of the grid with limited headroom for new generation. The Commission has included this language in Section 5.136 of the draft of the rule attached to this Order. The Commission has also added an additional sentence to Section 5.136 clarifying that tariffs adopted under this section may apply to new generation other than net-metering systems.

BED requested clarification about whether a mitigation fee would be assessed based on a plant's AC or DC capacity. The capacity of a net-metering system is determined by the AC capacity of its inverters. The Commission proposes that the fee would be assessed on a plant's AC capacity.

VPPSA requested clarification of the intent with respect to using an additional tariff mechanism and/or fees for constrained areas of the grid. Specifically, VPPSA asked who would pay the mitigation fee, how the fee would be calculated, and how the fee would be allocated among the affected utilities. Mitigation fees would be paid by the applicant who is approved to build a net-metering system in the constrained area. The amount of the fee would be based on "the incremental economic harm caused by constructing additional generation in the constrained area or the incremental cost to ratepayers of expanding the available grid capacity in the area." The exact amount of the fee and how fee revenues would be allocated among utilities will

depend on the magnitude of the economic harm caused and which utilities are affected by the constraint. These issues would be decided in the tariff proceeding before the tariff is approved.

Stowe Electric inquired whether Section 5.136 is intended to address only the constraint discussed in Case No. 20-3344-PET or whether utilities could propose tariffs to address constraints solely in their territory. The provision is intended to address any identified constraint, but Commission approval is required before a tariff may take effect.

Thomas Weiss, Stephen Bushman, and AllEarth requested that systems with a capacity of less than 50 kW be exempt from mitigation fees under Section 5.136. The applicability of a fee will depend on the terms proposed by the utility and approved by the Commission.

Norwich Solar recommended that there be a clearly identified public process for reviewing any proposed mitigation tariffs. The process for reviewing proposed tariffs is set forth in 30 V.S.A. § 225, which includes 45-days' advance notice and notice to affected parties as determined necessary by the Commission. Additionally, all proposed tariffs related to net-metering can be found in ePUC by using the "All Cases" search, selecting "Tariff" as the Subcase Type, and typing "Locational Adjustors" (without the quotation marks) in the Case Name field.

### 18. Storage (Sections 5.103 and 5.137)

The Department requested that the phrase "net-metering credits" be changed to "net-metering compensation" to ensure that no aspect of net-metering compensation is applied to storage exports. The Department also requested that the Commission define net-metering compensation.

The Commission has made the requested change to Section 5.137. In addition, the Commission has proposed the following definition in Section 5.103: "'Net-Metering Compensation' means any monetary credits, adjustors, or rates applied to a customer's bill as a result of net-metering."

Thomas Weiss recommended that there be an exemption for battery storage devices that are only used as backup when the grid goes down. According to Mr. Weiss, batteries do not produce any energy and, therefore, only affect the timing and not the volume of a customer's total consumption. Stephen Bushman recommended that owners of residential-sized battery

storage systems that are connected to solar panels be allowed to maximize self-consumption of generated and stored power "to opt out of net-metering to avoid charges imposed by the net metering rules and utilities."

The intent of this section is to prevent customers from charging a battery from the grid (at the retail rate) and then discharging that battery and receiving net-metering compensation (which can be greater than the retail rate). The proposal does not prohibit net-metering customers from using storage systems as back up, nor does the proposal prohibit those back-up storage systems from being charged with grid power. What the proposal does prohibit is storage systems being wired in a manner that causes the utility to confuse grid power with power generated by a net-metering system. System power and renewable power generated by a net-metering system have different attributes that need to be accounted for separately.

### 19. Compliance Proceedings (Section 5.138)

Norwich Solar argued that it is more efficient to have the Department investigate compliance matters before the Commission opens a compliance case. Therefore, Norwich Solar recommended that the Commission remove the portion of the Section 5.138 that would allow the Commission to open a compliance case on its own motion. The Commission disagrees with Norwich Solar. There are many cases where violations are self-reported or the evidence of a violation presented to the Commission in a complaint is so compelling that it is unnecessary to ask the Department to conduct an investigation before deciding whether to open a compliance proceeding.

### 20. General Comments

The Commission received a number of comments addressing the necessity of developing more renewable energy in Vermont to meet Vermont's obligations under the Global Warming Solutions Act and the Renewable Energy Standard. Other comments raised issues about net-metering compensation generally, arguing that compensation should be either increased to encourage net-metering or decreased to prevent cost shifts.

The state statute authorizing net-metering requires the Commission to consider Vermont's obligation to reduce greenhouse gas emissions while also avoiding cost-shifts

between customers who net-meter and those who do not. The Commission is still evaluating the information provided in this proceeding and plans to address this issue in the future. However, this stage of the rulemaking process is focused on streamlining and improving the Commission's standards and procedures for reviewing net-metering CPG applications. As discussed above, the Commission believes that the changes under consideration will simplify the permitting process and also improve the siting of net-metering systems to reduce their environmental impact.

## III. DEADLINE FOR COMMENTS

Participants are requested to file comments on the attached revised draft rule no later than close of business on January 13, 2023. The Commission will review those comments and determine whether additional steps are necessary before beginning the formal rulemaking process.

**SO ORDERED.**

Dated at Montpelier, Vermont, this 2nd day of December, 2022.

| | | |
|---|---|---|
| Anthony Z. Roisman | ) | PUBLIC UTILITY |
| | ) | |
| | ) | |
| Margaret Cheney | ) | COMMISSION |
| | ) | |
| | ) | OF VERMONT |
| J. Riley Allen | ) | |

OFFICE OF THE CLERK

Filed: December 2, 2022

Attest: _____
Clerk of the Commission

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Commission (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: puc.clerk@vermont.gov)*

PUC Case No. 19-0855-RULE - SERVICE LIST

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