STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-0855-RULE	
Proposed revisions to Vermont Public Utility Commission Rule 5.100	

VERMONT DEPARTMENT OF PUBLIC SERVICE COMMENTS

On December 7, 2022, the Vermont Public Utility Commission ("Commission") issued further redlined proposed revisions to Rule 5.100 along with an order summarizing the changes and requesting comments by January 13, 2023.

The Vermont Department of Public Service ("Department") has reviewed the Commission's proposed changes and hereby submits the following response.

General Definitions (Section 5.103)

The Department is generally supportive of the Commission's proposed changes to the Rule's definitions.

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

Under the "letter(s)" option of Preferred Site definition (7), the Commission has made a number of modifications intended to ensure that:

- 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.

The Department is supportive of these changes, which are aligned with many of its recommendations during this rulemaking relating to this category of preferred site. It appears the Commission has removed the language relating to specific locations identified in municipal plans and instead opted for locations identified via letter(s) only. This is understandable given the lack of specificity in the mapping of preferred locations by municipalities in their energy plans to date. The proposed change still ultimately relies on plans and requires continued close attention by municipalities and regions to aligning their land use maps, plans, and policy language to both guide development to the best sites and enable them to efficiently assess whether a location is consistent with their plan policies.[1]

Additionally, the Department recommends a slight modification to the

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[1] The enhanced energy planning standards require policy language to support siting maps, so enhanced energy plans should contain applicable policies that regions and towns can cite in their preferred site letters. *See* STATE OF VERMONT DEPARTMENT OF PUBLIC SERVICE, *Act 174 Recommendations and Determination Standards*, (Jan. 13, 2023) a*vailable at* https://publicservice.vermont.gov/about-us/publications-and-resources/energy-resources/act-174-recommendations-and-determination (the standards were last updated in January 2022 and can be accessed via various links and documents available on this web page).

following wording, regarding preferred sites identified via letter by the municipality and regional planning commission, because those policies are likely to be in place prior to the municipality and region receiving the 45-day notices:

> "A specific location determined by the governing municipal legislative body and the municipal and regional planning commissions~~, after receipt of the 45-day advance notice for a project,~~ as suitable for the development of a net-metering system consistent with applicable policies in their respective plans. The specific location must be identified in a letter or letters from the municipal legislative body and the municipal or regional planning commissions based upon their evaluation after having received the 45-day notice for the project. Such letters shall in no way limit the ability of municipalities and regional planning commissions to participate in the Commission's review of the net-metering system proposed to be constructed on the location identified in the letter."

Interconnection Process (Sections 5.105, 5.106, 5.107, and 5.131)

The Department agrees that it is reasonable to use a single form for both Certificate of Public Good ("CPG") and interconnection applications for net-metering systems up to 15 kW in capacity (though this form should request the necessary information), and that it is reasonable to expect review of such interconnection applications to take place within 15 days. Additionally, the Department agrees with the structure proposed by the Commission wherein a project larger than 15 kW must first receive interconnection approval from the interconnecting utility before applying for a CPG.

Registration Process for Hydroelectric Facilities (Section 5.105)

The Department supports the request of the Vermont Agency of Natural Resources, and the Commission's decision toward that end, of ensuring that FERC authorization numbers be provided with the registration. In a similar vein, the Department recommends that Hydroelectric Facilities be asked to verify compliance with the proposed section 5.135 upon the registration.

Single Plant Information (Sections 5.106 and 5.107)

The Department is generally supportive of the Commission's proposed filing requirements regarding adjacent facilities.

Application Form and Application Process Generally (Sections 5.106 and 5.107)

While the Commission's order of December 7, 2022, states that the Commission adopts the Department's recommendation for an explanatory and organizational project narrative for ground mounted facilities with capacities above 50 kW, the Department notes that it is not expressly required under the proposed Section 5.106 red line. As such, the Department recommends that a project narrative be added as a filing requirement for projects exceeding 50 kW in capacity.

Moreover, 30 V.S.A. § 8010(c)(3)(D) expressly requires the use of the "Quechee" test for assessing the aesthetic impacts of net-metered systems exceeding 150 kW in capacity, and for the rules and application form to state the components of the test. While Rule 5.112 describes the "Quechee" test, it does not clarify its applicability nor require a petitioner to provide evidence or analysis under the

"Quechee" test for applicable facilities. Rule 5.106(D)(5), requires site plans to demonstrate any aesthetic mitigation but it does not require the provision of, or analysis regarding, any other "Quechee" test factors. Therefore, the Department recommends that a "Quechee" analysis and related evidence be expressly included as a filing requirement for relevant project types, perhaps part of a project narrative, under 5.106(D)(12).

Amendments (Sections 5.103, 5.108, 5.109, 5.125)

The Department strongly supports the Commission's revisions to address concerns about the rate treatment for large amendments to legacy net-metering systems. The implementation of a threshold above which systems would be compensated pursuant to the current rates and adjustors (proposed at more than 5% or 10 kW, whichever is greater) strikes a reasonable balance that still enables modest increases to small systems to promote electrification but also protects ratepayers from over-subsidizing large systems.

However, this language leaves some questions of implementation unclear. The Department recommends clarifying that the amended portion alone – not the entire system as amended – is subject to the application of the most recent REC and siting adjustors, if the legacy system retains RECs but the amendment seeks to assign them to the interconnecting utility. The 10 year original rate period for pre-existing systems under Rule 5.125, or the 10 year applicability of adjustors under Rule 5.127, should be similarly bifurcated between the original and amended portions of a system. The Department also recommends that any exemption to non-bypassable charges afforded under by Rule 5.125 (D) not apply to the amended portion. In other words, incentives should not be merged or restarted whenever an applicable capacity amendment is made.

Moreover, the Department notes that the proposed Rule 5.108 and Rule 5.109 rely on the term "material modification" as defined in Commission Rule 5.500 regarding the interconnection of amendments. While Rule 5.500 as proposed and pending in Case No. 19-0856-RULE defines this term, the Department observes that the currently applicable version of Rule 5.500 does not define "material modification" (though this phrase is used). If these rules are adopted at different times or are altered as to be inconsistent during the formal rulemaking process, conflicts between the two rules may emerge. As such, the Department recommends that both the pending Rule 5.100 and Rule 5.500 undergo the formal rulemaking process as concurrently as possible, and that extra care be taken to ensure mutual consistency.

Finally, the Department recommends a requirement for a narrative description of an amendment resulting in a combined capacity above 50 kW, especially relative to the original proposal, as it would be useful to the public, parties, and regulators – as well as consistent with the Department's request for a project narrative to be included with the initial application for projects of this size.

Transfer and Abandonment of CPGs (Section 5.110)

As to tracking transfers in residential system ownership, the Department acknowledges the statement in the Commission's order that it does not receive all notices of transfers of ownership as the rule currently exists. Because of this, an easy remedy to any potential legal issues arising from uncertainty regarding system ownership if the utility's records are incomplete or contested may not be practicable. The Department's chief concerns regarding potential legal issues stem from possible inconsistencies within, or disagreement regarding, utility records of ownership. Factual disputes between the utility and customer, or between customers, as to the identity or timing of ownership could be more difficult to resolve without tracking this information separately from the utility.

In the event of such a factual dispute, the lack of Commission registry of system ownership could be problematic in the event of a billing dispute between the utility and/or its customer(s) or if the system had safety issues or disrupted grid operation and the identity of the responsible party was disputed. For example, ambiguity could arise regarding who is entitled to net-metering credits or is the appropriate customer for correction of prior billing mistakes. Similarly, it is useful for both safety and system stability and reliability reasons to keep an accurate record of who is accountable for the system. Resolving disputes in ownership and accountability for the system, and perhaps when ownership changes, could also be a factual dispute in civil claims outside the Commission's jurisdiction.

Finally, the Department recommends that automatic extensions to CPGs upon a timely filed CPG extension request within the first year should be filed with the Commission to afford initial case parties an opportunity to comment, in addition to the interconnecting electric company.

The Department's Comments on General Procedure (Sections 5.114 – 5.124)

The Department has noted several procedural aspects of the rules which it disagrees with, many of which have not been applied under the current rule in the Department's experience, and therefore recommends that they be amended.

First, the Department recommends that the words "or a hearing thereon" be stricken from Rule 5.115 – specifically as applied to Rule 2.207(time), 2.213(prefiled testimony), 2.214(discovery), and 2.216(evidence). This is because in the event of a hearing, the case is contested, and a litigation schedule is typically set. In such relatively infrequent instances, those Rules should apply to ensure that a case is processed efficiently, predictably, and without possible dispute regarding the applicable process. Accordingly, the Department observes that these Rule 2.200 sections typically are applied in practice whenever a net-metering case is litigated. This observation is supported by the provisions of Sections 5.119, 5.120, 5.121, 5.122, 5.123, etc. which are partially inconsistent with Rule 5.115.

The Department also recommends that Section 5.117 intervenors, especially when not parties as of right, be asked (though perhaps not required when a party as of right) to articulate its grounds/concerns when moving for, or noticing, intervention. This is because, in the Department's experience, would be parties are sometimes unclear as to when or how they may articulate their concerns or issues, especially when they are self-represented and/or unfamiliar with Commission process. This would help all parties understand possible issues and resolve them more quickly.

Because concerns with net-metering applications are typically resolved or investigated via rounds of comments, such that the need for a hearing is sometimes identified only after an exchange of comments, the Department recommends that Section 5.118 be modified to for allow subsequent, timely, requests for hearings provided they regard concerns initially identified in comments made within 30 days, but which are not resolved by reply comments.

Finally, the Department strongly recommends striking the cumulative limit of 20 discovery questions, which is inclusive of subparts, in Rule 5.121. In practice, the Department observes that this cumulative cap is routinely exceeded in contested cases without requesting Commission approval as required by this Rule, and reasonably so when a case has sufficient complexity and multiple issues. Moreover, this provision could be interpreted as imposing limits on statutory parties and their statutory directives. As it is, this provision invites dispute. In the Department's experience, excessive or unreasonable discovery is comparatively rare in net-metering cases even when the limit imposed by this Rule is disregarded. As such, excessive discovery could be adequately checked on a case-by-case basis by the provisions of the Vermont Rules of Civil Procedure, Commission Rule 2.200, and the Commission's discretion and decision-making authority.

Energy Measurement (Section 5.126)

The Department agrees with this change because it is consistent with the decision in Case No. 21-1816-PET.

Biennial Update Process (Section 5.128)

The Department supports the Commission's language codifying use of a common reporting template and looks forward to working with the Commission and the electric companies in the coming year to develop a template that includes all the necessary information, in a usable form that does not require adaptation for use by each company. This will allow for straightforward aggregation, analysis, and summarization of the data for the benefit of all stakeholders.

Moreover, the Department renews its request (*See, e.g.*, Department comments during the past biennial update and the review of the corresponding tariff changes) that utilities be required to submit sample bills reflecting the various net-metering system types (e.g. residential, group, directly or indirectly interconnected, etc.). This would help stakeholders understand and assess billing standards, Rule and tariff implementation, etc.

Wholesale Market Participation (Section 5.135)

The Department agrees with this Section and its provisions.

Locational Adjustors (Section 5.136)

The Department appreciates the consideration to which the Commission has given this item, and generally agrees with the modified language of section 5.136 to implement a system of tariff-based adjustors, rather than bilateral, one-off agreements. The Department also appreciates that the terms of these tariffs should be inclusive of either, or both, economic harm and grid upgrade costs. However, in response to Commission comments regarding the use of AC or DC capacity in assessing adjustor fees, it should be noted that the use of DC capacity and/or a representative output curve would be necessary, in addition to AC capacity, to ascertain potential economic harm of additional generation interconnected in a constrained area, or to assess temporally dependent grid upgrades or non-transmission alternatives.

Storage (Sections 5.103 and 5.137)

The Department supports the addition of a definition and the intent of this Section. The Department has no objection to the phrasing of the definition.

Compliance Proceedings (Section 5.138)

The Department supports the revisions expressly enabling the Commission to open a compliance proceeding without necessarily requiring the Department to conduct an investigation first.

General Comments

The Department supports the retention of a 30-day comment period. Concurrently, the Department observes that several other process timelines are still changed to 28 days instead of the 30 days allowed under the current rule (e.g. Sections 5.130(B) and Section 5.132(E)). While the Department does not object to 28 days in these other instances, it is unsure whether this was deliberate.

Finally, the Department has advocated for revisions to the net-metering compensation structure during this proceeding, including in its October 15, 2021, comments, recommending that the Commission stay its consideration of the compensation framework until the California Public Utilities Commission ("CPUC") issues an order regarding that state's net-metering compensation framework. The Department notes that the CPUC issued a decision on December 15, 2022, that transitions that state to a net-billing successor tariff framework around April 2023.[2] The Commission notes in its December 7, 2022, order that it will be evaluating net-metering compensation in a separate proceeding. The Department looks forward to continued discussions regarding revisions to the net-metering compensation framework to minimize cost-shifts from participants to non-participants in the anticipated separate proceeding, including discussion of how the newly adopted

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[2] *See*, CALIFORNIA PUBLIC UTILITIES COMMISSION, *Order Instituting Rulemaking to Revisit Net Energy Metering Tariffs Pursuant to Decision 16-01-044, and to Address Other Issues Related to Net Energy Meeting*, Rulemaking 20-08-020, Decision 22-12-056 (Dec. 15, 2022) issued 12/19/2022, *available at* https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M500/K043/500043682.PDF.

framework in California could potentially be translated to Vermont, given the similarities in the issues under consideration in both states. The Department also anticipates its expansive stakeholder engagement around Vermont's renewable procurement policies and programs will yield useful insights for the proceeding.[3]

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[3] *See*, *e.g.*, VERMONT DEPARTMENT OF PUBLIC SERVICE, *Electricity Policies and Programs Review: Proposed Public Engagement Plan* (Nov. 29, 2022), *available at* http://publicservice.vermont.gov/sites/dps/files/documents/Final%20RES%20Public%20Engagement%20Plan_11-29-22.pdf.