

STATE OF VERMONT
PUBLIC UTILITY COMMISSION

CASE NO. 19-0855-RULE

PROPOSED REVISIONS TO VERMONT PUBLIC
UTILITY COMMISSION RULE 5.100

August 10, 2023
1 p.m.

Via videoconference

Public Hearing held before the Vermont
Public Utility Commission, via GoToMeeting, on August 10,
2023, beginning at 1 p.m.

P R E S E N T

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1 MR. MARREN: Good afternoon everyone.
2 And thank you for being here. This is Vermont Public
3 Utility Commission public hearing in Case No.
4 19-0855-RULE, regarding proposed revisions to Vermont
5 Public Utility Commission 5.100, the net-metering
6 rule.

7 My name is Jake Marren. I'm a Deputy
8 General Counsel and hearing officer at the Vermont
9 Public Utility Commission. With me today is
10 Elizabeth Schilling also a Deputy General Counsel and
11 hearing officer, as well as Rowan Cornell-Brown who
12 is the net-metering program manager at the Vermont
13 Public Utility Commission.

14 The purpose of today's hearing is to
15 provide an opportunity to hear input from the public
16 regarding this rulemaking. The comments received at
17 this hearing will become part of the public record in
18 this case. You can also provide written comments
19 using the commission's online document management
20 system ePUC or by direct mail or email to the clerk
21 of the commission. You can comment in ePUC without
22 establishing a log-in.

23 Please file all comments by the
24 deadline of August 17, 2023. Contact information is
25 provided on the commission's website [www](http://www.vermontpublicutility.com).

1 puc.vermont.gov. You can also subscribe to this case
2 in ePUC which means you will receive an email
3 notification of any commission-issued document or any
4 filing made by a participant in this case. More
5 information about how to participate in commission
6 proceedings is available in the public participation
7 section of the commission's website.

8 Today's hearing will be transcribed by
9 a court reporter. This transcript, along with all
10 other comments received by the commission, will
11 become part of the case's public file so that the
12 commission members, staff and participants in this
13 case can consider the comments. The transcript will
14 be available in ePUC which is accessible directly
15 online at <https://ePUC.Vermont.gov> or from links on
16 the commission's website.

17 If a participant or member of the
18 public intends to record this public hearing via
19 video or audio, please indicate this when you provide
20 your name for the court reporter. Public comments
21 can be helpful in raising new issues or perspectives
22 that the commission should consider, so we look
23 forward to hearing your input today.

24 Today's public hearing is being
25 conducted remotely. We are using a web-based

1 platform called GoToMeeting. Anyone who participates
2 -- anyone who anticipates speaking during the public
3 hearing should keep their camera on until they have
4 provided their public comment. It is very helpful to
5 see you, particularly when you're speaking. If you
6 do not plan on speaking in today's public hearing,
7 please keep your camera off, that way I'll know who
8 is still waiting to speak.

9 I will not mute anyone's microphone
10 during this hearing. This means you should keep
11 yourself on mute unless you are speaking. That way
12 we can minimize background noises which can be
13 disruptive. I will ask each member of the public
14 whose camera is on at the time if they would like to
15 speak. I will also ask whether anyone participating
16 by phone wishes to speak.

17 It is very important that we avoid
18 talking over one another, so please wait to be called
19 on to begin your comments. Each time you begin
20 speaking, please identify yourself by your name for
21 the court reporter, and spell your name. If your
22 internet connection cuts out, please try to rejoin
23 GoToMeeting or call into the public hearing using the
24 GoToMeeting telephone number that was provided in the
25 public hearing notice.

1 If at any point any of you becomes
2 aware that another participant or member of the
3 public is having trouble accessing the video or audio
4 feeds of this remote public hearing, please let us
5 know immediately. We will pause the public hearing
6 and try to resolve the issue.

7 Does anyone have any questions or
8 concerns before we begin the substantive portion of
9 today's hearing?

10 (No response)

11 MR. MARREN: All right. With that
12 covered, I'll begin calling on participants who have
13 their cameras on so that we can start taking public
14 comments. I'll start with Tom Mosakowski.

15 MR. MOSAKOWSKI: Okay. Thank you. I
16 believe I have to spell my name. T-O-M, space, M-O-S
17 -A-K-O-W-S-K-I. I'm hoping I can ask a question and
18 get an answer. Is that an option?

19 MR. MARREN: Depends on how complicated
20 and substantive it is. We really are here to take
21 public comments.

22 MR. MOSAKOWSKI: Right.

23 MR. MARREN: I'm also available -- this
24 is not a contested case, so you're free to call us
25 outside of this. So if it's a really complicated

1 question, I may try to direct that to an off line
2 conversation. But shoot, and we will see what we can
3 do.

4 MR. MOSAKOWSKI: Great. Yeah. I don't
5 think it is. And regardless of if I can get an
6 answer or not, I have a comment to follow up. My
7 question is for the preferred site definition and the
8 proposed inclusion of an exclusion for significant
9 forest clearing, with a three-acre maximum limit,
10 does that three acres only consider the footprint of
11 the array? Or the surface area of access and
12 driveway and anything else related to the owner's
13 work and project?

14 MR. MARREN: My understanding it is
15 within the limits of disturbance of the project. So
16 it would include any disturbance related to the
17 project including the access or anything like that.
18 If any of my teammates disagree with my answer to the
19 question, please jump in though.

20 MR. MOSAKOWSKI: That's fantastic. And
21 I would like to hear if there are any different
22 interpretations.

23 MS. SCHILLING: I agree with Jake's
24 interpretation.

25 MR. MOSAKOWSKI: Okay. Well in that

1 respect, I was going to say if it didn't, I feel like
2 the three acres isn't too substantive because I think
3 I have heard of a couple 500-kilowatt developments
4 where it's standard or easy for it to come in around
5 two or two and-a-half acres. But then when you add
6 the access and the driveway is when it's getting to
7 be, you know, 6, 7, 8, 9, 10 acres.

8 And anyway, I just commend the
9 commission for adding this provision to -- or
10 exclusion to the preferred site definition, because
11 it's really clear to me that the preferred site
12 program should incentivize just solar that's on
13 already disturbed and developed sites. And it seems
14 to me like, you know, I think it's important to give
15 municipalities some independence of decision making,
16 but that provision in there that allows for them to
17 decide what is a preferred site just -- I've seen a
18 bunch of examples, but that just opens it up to doing
19 exactly the opposite of what I believe the preferred
20 site program is and should be. You know, as far as
21 putting it on forest land and prime agriculture land.
22 That's another one that I would like to bring
23 attention to.

24 Yeah. So I commend you guys for adding
25 that, and I would encourage you to make it even

1 stricter. Thank you.

2 MR. MARREN: Jonathan Dowds, I believe,
3 is next.

4 MR. DOWDS: Thank you. Can you hear me
5 okay?

6 THE COURT REPORTER: Yes.

7 MR. DOWDS: Okay. Jonathan Dowds.
8 D-O-W-D-S. With Renewable Energy Vermont. I would
9 like to thank the commission for doing a significant
10 amount of cleanup in this rulemaking process. I
11 think it is much easier to follow than the previous
12 version was. That consolidation is really helpful
13 including moving the interconnection language to the
14 interconnection rule. I think a lot of yeoman's work
15 there, and all, will make the process smoother in
16 general.

17 With that said, Renewable Energy
18 Vermont continues to have concerns with several of
19 the provisions in the proposed rule, one of them
20 being the significant forest clearing definition.
21 Another being in 5.108 and elsewhere the effects of
22 amendments on applicable rates, what happens when you
23 stay in the system.

24 And the third being the language in
25 5.135 in the participation of wholesale markets. And

1 the forest clearing is probably where I have the most
2 extensive comments. I'll speak briefly on the other
3 two before moving back to that.

4 On 5.108 which would, as currently
5 written, means that somebody expanded a system by 10
6 kilowatts and 5 percent, the entire system would get
7 the new adjustors. We are very concerned that this
8 will make it economically infeasible for early
9 adopters of solar to expand their systems as they
10 electrify. Electric vehicles and heat pumps they
11 will not be able to meet that load with new solar
12 power because the economic hit on the existing system
13 will be so severe it would make no sense to do that,
14 too severe for homeowners and others to expand their
15 system in a way that makes any kind of financial
16 sense.

17 And I want to say I think the
18 Department proposal, probably the most -- was the
19 most logical solution, that the existing system would
20 receive its existing rates and the new system would
21 get the new rates. My understanding -- the primary
22 concern raised by the distribution utilities in this
23 regards from a pragmatic perspective is that it is
24 difficult to apply multiple rates to the same system.
25 You know, this was something that Stowe Electric

1 raised.

2 I think mathematically we can get
3 around this pretty easily if instead of trying to
4 apply two rates in different parts of the system we
5 apply a single weighted-average to the existing and
6 expanded system. So providing mathematically a
7 simple example. If a homeowner had a 10-kilowatt
8 system that got a positive one cent REC adjustor and
9 they added an additional kilowatt, that would be due
10 a negative one cent adjustor. Rather than giving the
11 entire system a negative one cent REC adjustor, those
12 would average to a zero REC adjustor. So it's just
13 one adjustment that the utility has to be making,
14 very similar to what is being done now.

15 REV has started reaching out to and
16 will continue to reach out to the utilities to get a
17 sense of how viable this is with their billing
18 systems. It's a mathematical solution that gets to
19 the Department's fundamental proposal about what is a
20 fair and just thing to do without imposing undue
21 burden on the utilities to achieve that end.

22 On 5.135 the participation wholesale
23 market, we would continue to push for a better
24 understanding of the commission's concern about
25 net-metered systems participating in wholesale

1 markets. We would like to see a process for
2 addressing them. As the language is written right
3 now, we are quite worried that companies that are
4 looking for opportunities to do aggregation and
5 multiply the benefits of distributed energy resources
6 will simply steer clear of Vermont; that individual
7 system owners will miss out on those benefits, and
8 that Vermonsters, as a whole, will miss out on the
9 system benefits there. So we would like to see a
10 clear articulation of what the concerns are there and
11 how an aggregator could address them with some
12 assurance.

13 Finally, on 5.103 the significant
14 forest clearing definition, we continue to be
15 concerned that the three-acre limit acreage threshold
16 is relatively arbitrary and doesn't get into the
17 science of either -- of either carbon or habitat,
18 which are the two issues that the commission cites in
19 this rule.

20 It's very clear that habitat value is
21 quite site-specific. It depends on the type of
22 forest, how much of that we have in Vermont, how
23 connected it is to other forest areas. The Vermont
24 conservation design effort to identify high priority
25 blocks speaks to this explicitly, but this blanket

1 three-acre requirement really doesn't speak to
2 habitat importance at all.

3 On the carbon issue, while it is true
4 that forest can be carbon sink, again the level of
5 carbon that is taken up by a forest is also very
6 site-specific. It depends on the age of the trees,
7 the size of the trees, et cetera. All of the science
8 that I have been able to find points to the fact that
9 with the grid that we have today, clearing trees for
10 -- for installation of solar arrays is a net carbon
11 benefit, and we need as many of those as we can get
12 at this point in time.

13 Again, I would encourage the commission
14 to find a way to link this to the carbon science
15 rather than just a nod to the fact that forest has
16 carbon sinks in general.

17 I wanted to follow up briefly on
18 information that the Agency of Natural Resources
19 provided that the Department cites specifically that
20 from 2017 to 2021 the majority of net-metering
21 projects did not impact forest clearing. While this
22 is true, I think it's more helpful to look at this in
23 terms of proposed capacity than the number of
24 projects that are involved here. And so in the ANR's
25 -- the data that ANR shared it's approximately 22

1 percent of the proposed capacity, and the 5.106 and
2 5.107 applications that would have been impacted by
3 this rule. So that's more than the round number of
4 projects. And from our estimate from August of 2021
5 to July of 2022, excuse me, just a moment there.

6 (Noise interruption).

7 Sorry about that. That would be 28 percent of
8 the proposed project in that 5.106 and 5.107 tranche
9 that would be impacted by this rule. Due to
10 increasing concerns about how the aesthetics process
11 is managed, we think this number is likely to
12 increase.

13 I also want to mention that these
14 projects are typically built on the periphery of
15 forested areas, near roads and existing power lines,
16 so this is generally not encroaching on continuous
17 forest block.

18 And finally, highlight that the number
19 of applications for 5.106 and 5.107 projects has
20 decreased significantly from the period that the
21 Agency of Natural Resources provided data for over
22 the last two years.

23 In terms of total capacity the total
24 capacity in the four-year period that the Agency of
25 Natural Resources cited was 65 megawatts while in

1 the last two years it's been just over 12 megawatts.
2 So we are talking about applications dropping from
3 approximately 50 megawatts a year to -- to less than
4 half of that.

5 So this speaks, I think, to the
6 commission's assertion that this limitation will not
7 materially affect the pace of net-metering
8 development. I think we are really seeing the impact
9 of this rule would have an increasing effect over
10 time at the same time that the rate of installations
11 are already decreasing.

12 So again, we urge the commission to
13 revisit this forest clearing definition and more
14 tightly link it to the science of carbon
15 sequestration and how to attack value rather than
16 using a blanket acreage threshold as is currently the
17 case.

18 We are in the process of talking with
19 some of the other environmental groups in the state
20 and hope to have a more specific recommendation of
21 what we think might work in this section in our
22 written comments next week.

23 Thank you for the opportunity to
24 provide comments today. I believe that wraps up the
25 issues that I wanted to speak to.

1 MR. MARREN: Thank you, Mr. Dowds. All
2 right. Annette Smith.

3 MS. SMITH: Thank you. My name is
4 Annette Smith. A-N-N-E-T-T-E, S-M-I-T-H. I'm with
5 Vermonters for a Clean Environment. I would like to
6 speak in support of two changes. One is the --
7 related to preferred site letters. And the other is
8 to the significant forest clearing.

9 Very few net-metering projects come to
10 Vermonters for a Clean Environment from citizens.
11 But I think in almost every recent case, the reason
12 that Vermonters contact us is -- has to do with the
13 process for issuing preferred site letters. And in
14 particular, the lack of notice to anyone when a
15 company comes to the planning commission or select
16 board to get that preferred site letter.

17 So with the change in this rule that
18 requires the preferred site letter to be gotten after
19 the advance notice is sent out, that will assure that
20 adjainers are notified, and I believe that solves a
21 very big problem. And I thank you for that.

22 The other issue that people come to us
23 with is the significant forest clearing. And I think
24 I understand where the three acres come from. I know
25 that initially this was considered to be a one-acre

1 limitation. But empirically based on what I've seen
2 with 500-kilowatt projects, you can do 500 kilowatts
3 on about 2.2 acres. So I am guessing that the PUC
4 looked at what it takes to put a 500-kilowatt project
5 in and gave a little extra to make it the three
6 acres. It makes sense to me to limit it to three
7 acres.

8 Otherwise, I've seen projects that are
9 500 kilowatts that are proposing to clear eight to
10 nine acres which -- on which you can put a two-
11 megawatt project. So the environmental effects of
12 putting -- of clearing a forest for a 500-kilowatt
13 project are numerous. I mean I've seen impacts to
14 wetlands where once you clear the forest, then you're
15 exposing more of the wetland to more daylight even if
16 you do have the minimum buffer.

17 The wildlife habitat assessment and the
18 standard of necessary wildlife habitat is so high
19 that you really, you know, even deer wintering areas
20 don't seem to qualify anymore. It's very hard to
21 protect wildlife, and many of these sites that I have
22 had to review involve bear habitat, deer wintering
23 areas, all kinds of fur bearers using the habitat.
24 Yet none of them really seem to matter in the
25 approval process.

1 And so there are also lower priority
2 forests, urban forests, that really matter for
3 wildlife and are especially important. Yet trying to
4 protect those in any way through the criteria on
5 wildlife is almost impossible. And so limiting the
6 amount of clearing for these 500-kilowatt projects,
7 which also, for the most part, are virtual net
8 metering and are not really serving local load, they
9 are essentially getting net-metering prices for
10 putting the electricity up on the grid. They are not
11 reducing transmission costs. There are all kinds of
12 problems with these 500-kilowatt projects. And they
13 are not doing what I think was the intention of the
14 preferred sites which is, as Tom Mosakowski said, to
15 put them on the landscape.

16 What I keep hearing people saying, and
17 what I hope we may see in the net-metering rate
18 cases, is an incentive to construct solar on parking
19 lots. Everybody I talk to that's one of the issues
20 they raise first; why aren't we doing this on parking
21 lots? And there is so much capacity in Vermont in
22 the built landscape, and if it costs more then --
23 this was a topic as part of this rule update, you
24 know, what does it cost? And I don't think the
25 developers submitted any information.

1 But I would really like to see the
2 priorities put in place that are what I hear
3 Vermonters saying and that is: Stop destroying the
4 planet to save it, and please use the built landscape
5 that we have.

6 There are other changes that I could
7 recommend making to this rule, but overall I'm very
8 pleased with the outcomes that I've -- that I'm
9 supporting. And I hope that this rule goes through,
10 and that we can see some improvements in the siting
11 of net-metered solar. Thank you.

12 MR. MARREN: Thank you, Ms. Smith. Are
13 there any other participants who would like to give a
14 comment today? I don't see any other cameras turned
15 on.

16 We had several callers, so I will turn
17 to the callers. There is a caller number 1. You
18 probably don't know which one you are, but if you're
19 on the telephone right now and would like to speak,
20 please state your name and we will take your comment
21 now.

22 (No response)

23 MR. MARREN: I'm not hearing from any
24 of the telephone participants right now, but I do see
25 that Mr. Binder has turned on his camera and may wish

1 to give a public comment.

2 Mr. Binder, I don't mean to single you
3 out, but I do know that you are a party in a pending
4 proceeding before the commission, and I just will
5 remind you that this rulemaking is for discussing the
6 rule. And we can't discuss any of the facts of the
7 case pending before the commission.

8 So please keep your comments focused on
9 the rule and not any case you may be participating
10 in. Thank you.

11 MR. BINDER: Just to support the
12 changes for significant deforestation, I think that's
13 very important, and I would also have a question
14 about in the order that the PUC put out back in May
15 indicating that these revisions would be sent to the
16 Secretary of State, they talk about substantial --
17 that you got rid of major and minor amendments, and
18 we talk about substantial changes. And under the
19 definition for substantial change, they refer to
20 having a potential for significant impact, but they
21 don't define what significant impact is. Who decides
22 whether an amendment has potential for a significant
23 impact? Is that up to the applicant or will the PUC
24 make that determination? And, you know, therefore
25 notify abutters and such?

1 MR. MARREN: The PUC is responsible for
2 determining whether an amendment is necessary and
3 what constitutes a substantial change. The term of
4 art "substantial change" has been in use in PUC cases
5 for several decades actually in other contexts, and
6 so while there is not a definition included in the
7 rule's substantial change, there is a significant
8 body of case law that demonstrates what facts give
9 rise to substantial change and what facts may not.

10 So you know, that is one place you can
11 look to for guidance on that.

12 MR. BINDER: If I may continue. The
13 next question is in that same order. It says that
14 commenters also raised concerns that the definition
15 does not define -- of significant deforestation --
16 does not define how far in the past the commission
17 may consider historical evidence of a forest on-site.
18 Definition does not require an extensive review of
19 historic land use. The commission's assessment of
20 forest clearing is based on the conditions present at
21 the time an application is being developed. So no
22 history whatsoever. A landowner clears the land and
23 then sells it to a solar developer, then there is no
24 deforestation? Is that what I understand in the
25 rules here?

1 MR. MARREN: I don't know if I can give
2 you a definite answer to your question. I will note
3 that state law Section 248 of Title 30 prohibits any
4 person from beginning site preparation or
5 construction of an electric generation facility
6 without receiving a CPG.

7 So hypothetically speaking, if a person
8 cleared their land with the intent of preparing it
9 for a site -- for a solar array, that may violate
10 state law.

11 MR. BINDER: I see. My experience,
12 working as a land surveyor, is that many, many sites
13 that I've gone to to survey them, either for sale or
14 for subdivision, have been preceded by the landowner
15 liquidating the forest on the property. That's the
16 first thing when they run out of the money. And the
17 next thing they put it on the market.

18 So something that's just been cleared a
19 year or two earlier is now to be purchased by a solar
20 developer and would not have any issue with
21 deforestation. Is that my understanding?

22 MR. MARREN: Again, unfortunately, I
23 don't know if I can give you a definite answer to
24 that. This is sort of a fact specific kind of issue
25 that you're raising here is whether someone is, you

1 know, beginning site preparation for the construction
2 of an electric facility, or whether they are engaging
3 in some other lawful activity. So I don't know if I
4 can give you a yes or no definite answer based on the
5 situation you described.

6 MR. BINDER: And my last comment is
7 that I was disappointed that there is nothing in the
8 new rules about slope. And I would just like to
9 finish and make one comment.

10 Looking at the Pennsylvania rules for
11 solar development, they make a statement that solar
12 panel farm projects completed on slopes exceeding 15
13 percent can be permitted. However, that would be
14 pushing the threshold of current constructability.
15 And then they go on with quite a bit of rules about
16 the engineering required and so forth to approach
17 those limits.

18 I think given the slopes we have in
19 Vermont, that should be something considered in any
20 rule change. And that's my final comment. Thank
21 you. My first name is Michael.

22 MR. MARREN: All right. Thank you.
23 Are there any other participants who would like to
24 give a public comment today? I'll put one more call
25 out to the callers participating by telephone since I

1 know you can't see what's going on the screen right
2 now. But this is your chance.

3 (No response)

4 MR. MARREN: Okay. Well if no one else
5 has any other additional comments, thank you to
6 everyone who participated today. We appreciate your
7 comments and concerns.

8 As a reminder, the deadline for filing
9 public comments in this matter is August 17, 2023.
10 I'll turn to my teammates right now and ask is there
11 anything else that you would like to cover?

12 MS. SCHILLING: Nothing here.

13 MR. MARREN: Okay. Then we are
14 adjourned. Thank you.

15 (Whereupon, the proceeding was
16 adjourned at 1:35 p.m.)
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C E R T I F I C A T E

I, Kim U. Sears, do hereby certify that I recorded by stenographic means the Public Hearing re: Case No. 19-0855-RULE, via videoconference, on August 10, 2023, beginning at 1 p.m.

I further certify that the foregoing testimony was taken by me stenographically and thereafter reduced to typewriting and the foregoing 24 pages are a transcript of the stenograph notes taken by me of the evidence and the proceedings to the best of my ability.

I further certify that I am not related to any of the parties thereto or their counsel, and I am in no way interested in the outcome of said cause.

Dated at Williston, Vermont, this 11th day of August, 2023.

A rectangular box containing a handwritten signature in cursive script that reads "Kim U. Sears". The signature is written in dark ink on a light-colored background.

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