STATE OF VERMONT
PUBLIC UTILITY COMMISSION

Case No. 19-0855-RULE

Proposed revisions to Vermont Public Utility Commission Rule 5.100	

Order entered: 05/17/2023

ORDER RESPONDING TO PARTICIPANT COMMENTS

I. INTRODUCTION

In today's Order, the Vermont Public Utility Commission ("Commission") responds to comments received during the final stages of the informal rulemaking process for amendments to Commission Rule 5.100, the Net-Metering Rule, and notifies the participants that it will begin the formal rulemaking process by filing a draft proposed rule with the Vermont Interagency Committee on Administrative Rules and the Vermont Secretary of State. Attached to this Order are clean and redline copies of the proposed Net-Metering Rule that include changes previously discussed in this rulemaking and incorporate other changes discussed below.

II. BACKGROUND

On April 16, 2019, the Commission issued an order opening a rulemaking to begin a review of Commission Rule 5.100, the Commission rule that governs the construction and operation of net-metering systems in Vermont. The Commission opened the rulemaking in response to a request for guidance regarding the definition of "preferred site" filed by the Vermont Department of Public Service ("Department"), the Vermont Agency of Natural Resources ("ANR"), and the Natural Resources Board ("NRB").[1] In opening up the rule for changes, the Commission and stakeholders also identified other sections of the rule to amend, many of which have been raised as practical issues by State agencies and other participants since 2017, when the current net-metering rule was implemented in Vermont.

During the course of this rulemaking proceeding, the Commission has circulated three proposed drafts of amendments to Rule 5.100, conducted three workshops, and solicited rounds

[1] *Rule 5.103 Preferred Site Workshop Request*, Case No. 17-5202-PET. In the preferred site proceeding, the Commission solicited two rounds of written comments and conducted a workshop, which resulted in the initial set of changes proposed to the "preferred site" definition in this rulemaking proceeding.

of written comments on each rule draft and after the workshops.[2] At the workshops, the Commission heard from stakeholders on net-metering application and administrative processes and issues, tree clearing related to net-metering projects, how to address net-metering in the Sheffield-Highgate Export Interface and future constrained areas in Vermont, and net-metering compensation.[3] Participants in this process have included:

- Aegis Renewable Energy, Inc.
- Agency of Agriculture, Food and Markets
- Agency of Natural Resources
- AllEarth Renewables, Inc.
- Associated Industries of Vermont
- Chittenden County Regional Planning Commission
- Conservation Law Foundation
- Department of Public Service
- Encore Renewable Energy
- Energy Clinic at Vermont Law School
- Green Lantern Development, LLC
- MHG Solar, LLC
- Natural Resources Board
- Northwest Regional Planning Commission
- Norwich Solar Technologies
- private individuals
- Regulatory Assistance Project
- Renewable Energy Vermont ("REV")
- Sharon Energy Committee
- Solaflect
- Springfield Energy Committee

[2] Several sets of written comments were filed outside of the formal comment solicitations. The Commission received and reviewed all these comments as well.

[3] After the workshop on net-metering compensation, the Commission determined it would address net-metering compensation in a future separate proceeding.

- Sunrun, Inc.
- Town of Colchester
- Triland Partners LP
- Two Rivers-Ottauquechee Regional Commission
- VHB
- Vermont Association of Planning and Development Agencies ("VAPDA")
- the Vermont electric distribution utilities;
- Vermont Electric Power Company, Inc. ("VELCO")
- Vermont Public Power Supply Authority ("VPPSA")
- Vermonters for a Clean Environment
- Vote Solar

The draft amendments to Rule 5.100 attached to this order represent the Commission's consideration of all comments made in this proceeding. The Commission intends to begin the formal rulemaking process by filing a draft proposed rule with the Interagency Committee on Administrative Rules and the Secretary of State. The Commission will conduct the formal rulemaking using ePUC, with the same case number that has been used in this informal process (Case No. 19-0855-RULE). Therefore, any person or entity that is a participant in this case will continue to receive notices of all documents issued by the Commission or filed by participants throughout this process.

III. DISCUSSION

The Commission thanks all the participants for their thoughtful comments and insights throughout the informal portion of this rule amendment process. Below, we address the comments that were filed in response to the most recent draft rule that the Commission issued on December 2, 2022.[4]

A. 5.103, "Preferred Site" Definition – "Significant Forest Clearing"

In recent years, the Commission has been concerned about the amount of forest that has been cleared to make space for certain large net-metering projects on "preferred sites." When it

[4] The Commission also issued a response to comments on December 2, 2022, regarding comments that were filed on the version of the draft rule that the Commission issued on April 29, 2022.

originally adopted the "preferred site" incentive framework, the Commission intended to ensure that the very largest ground-mounted net-metering systems – between 150 kW and 500 kW – were sited so as to have minimal environmental impacts.[5] However, because the "preferred site" definition lacked a standard addressing forest clearing, projects involving as many as nine acres of forest clearing have received certificates of public good and the attendant "preferred site" financial subsidies.

Vermont ratepayers pay above-market rates for power generated by net-metering systems. Because ratepayers provide a subsidy for the development of these smaller in-state renewable energy projects, the Commission believes it is essential that these projects limit their impacts on forests, which play a vital role as carbon sinks and provide important habitat. Vermonters should not have to choose between protecting forests and supporting renewable energy development.

During the course of this rulemaking, the Commission has been working to develop a clear and implementable definition of "significant forest clearing" to limit the amount of forest clearing allowed for net-metering projects on "preferred sites." The Commission has heard from numerous stakeholders on all sides of this issue and aims to strike a reasonable balance that protects Vermont's forest resources while not negatively affecting net-metering development. The current proposed definition of "significant forest clearing" includes some amendments and clarifying changes to the definition that was proposed in the December 2022 draft rule.

First, the Commission understands that some forest clearing may be needed around the edges of a site and in order to interconnect a project with the grid. While the Commission was initially considering limiting forest clearing to no more than one acre, after further consideration and review of the data, the Commission believes it is appropriate to allow up to three acres of tree clearing. In an August 2021 presentation to the Commission, ANR provided data that between 2017 and 2021, the vast majority of net-metering projects – that is, 86% of projects – involved either no forest clearing or less than three acres of forest clearing.[6] This demonstrates

[5] *In Re: Revised net-metering program pursuant to Act 99 of 2014*, Case No. 16P010, Order of 8/29/2016 at 14-15.

[6] This figure only considers applications filed pursuant to Rules 5.106 and 5.107. It does not include registrations filed under Rule 5.105. If those facilities are considered, the proposed three-acre limit would have affected only 29 out of several thousand facilities. "Forest Conversion for Net-Metering: Trends & Options to

that most net-metering projects can be developed with limited forest clearing, and therefore the Commission believes this limitation will not materially affect the pace of net-metering development.

Next, after further consideration, the Commission has removed the draft provision that would have exempted "significant forest clearing" in State-designated Village Centers, Downtowns, New Town Centers, Neighborhood Development Areas, and Growth Centers. While these are areas identified for development, they are largely identified for the development of homes and businesses.[7] The Commission would not want its definition of "significant forest clearing" to have the unintended consequence of pushing a disproportionate number of large net-metering projects into areas meant to invite compact development and walkable communities.[8]

Additionally, the Commission has made a few changes to address commenters' concerns that using 10 percent canopy cover to define "forest" is too low and that clearing a few mature shade trees in an agricultural field would amount to "significant forest clearing." First, the Commission notes that 10 percent canopy cover is the threshold recommended by ANR and comes from the definition of forest used by the U.S. Forest Service.[9] To address this concern the Commission has added language to clarify that "'forest' means land that has at least 10 percent canopy cover by live trees of any size *and associated naturally occurring vegetation*." This means an area with at least 10 percent canopy cover will not trigger application of this rule unless the area includes the naturally occurring vegetation that is associated with forested areas.

Finally, the Commission has added a sentence at the end of the definition stating, "Clearing of individual trees that are not part of a forest will not count toward the three-acre limit on significant forest clearing." The Commission does not intend to prevent the clearing of a smattering of trees in an agricultural field or count that tree clearing toward a project's forest clearing.

Reduce" PowerPoint presentation, Vermont Agency of Natural Resources, Case No. 19-0855-RULE, 8/24/2021 at slide 3.

[7] 24 V.S.A. § 2790.

[8] The Commission's rules separately provide specific incentives for locating net-metering systems on roofs.

[9] The definition of a forest as having at least 10% canopy cover and being at least one acre in size and 120 feet wide comes from the Forest Inventory and Analysis Program of the U.S. Forest Service. *See e.g.*, Vermont Forests Report 2017, United States Department of Agriculture, p. 7, available at: https://fpr.vermont.gov/forest-inventory-and-analysis-fia.

Commenters also raised concerns that the definition does not define how far in the past the Commission may consider historical evidence of a forest on-site. The definition does not require an extensive review of historic land use. The Commission's assessment of forest clearing is based on the conditions present at the time an application is being developed.

Some commenters have suggested that any limitation on "significant forest clearing" should be addressed legislatively and apply to all types of development equally. The Commission does not have jurisdiction over all types of development; rather, the Commission is seeking to ensure that net-metering projects, which receive above-market rates, have minimal environmental impacts, as was intended when the Commission first adopted the "preferred site" framework.

Next, commenters have suggested that the forest-clearing limitation will conflict with towns that have already designated certain forested areas as suitable for renewable energy projects and will hamper local and regional planning entities designating preferred sites. The Commission disagrees. Forested areas may continue to be identified as areas where renewable energy projects could be sited and specifically as preferred sites; however, project proponents must ensure their net-metering projects don't involve more than three acres of tree clearing within those designated areas.

Commenters have also argued that solar is more effective at reducing atmospheric carbon dioxide concentrations than forests and that the standard is flawed because it treats all forests equally. These comments present a false choice between developing solar projects and protecting the vital role that forests serve as carbon sinks. The Commission maintains that greater carbon reductions are achieved by developing solar projects with minimal forest clearing, and that it is counter-productive to clear a forested area to build a solar project. There is significant environmental and carbon-sequestration value in protecting all Vermont forests from significant tree clearing.

Finally, commenters contend that this limit will push development to open sites and create conflict in areas of Vermont with limited open space or with agricultural and other land-use interests. The Commission's intent with this limit is to direct project development to non-forested sites. Solar can be sited on rooftops, parking lots, other impervious surfaces, brownfields, old landfills, old extraction sites, Superfund sites, and farm fields that can be

restored to their prior agricultural use after project decommissioning. The Commission believes all these sites are preferable to siting projects on forest lands, and the rule provides financial incentives to direct projects to these other sites.

The Commission has revised the definition of "significant forest clearing" (proposed in the December 2, 2022, rule draft) as follows:

> "Significant Forest Clearing" means clearing more than ~~one-acre~~ three acres of forest ~~not in a state-designated Village Center, Downtown, New Town Center, Neighborhood Development Area, or Growth Center~~. For purposes of this Rule, the word forest means land that has at least 10 percent canopy cover by live trees of any size and associated naturally occurring vegetation or has had at least 10 percent canopy cover of live trees and associated naturally occurring vegetation in the past and has stumps, snags, or other evidence indicating that it has not been converted to a non-forest use at the time of a CPG application filing. To qualify as forest, ~~the~~ an area must be at least one acre in size and 120 feet wide. In determining whether an area is at least one acre in size or 120 feet wide, any portion of a group or contiguous area of trees that extends beyond the project or parcel boundaries shall be counted. Canopy cover shall be measured from the outermost edge of tree crowns across a group or contiguous area of trees. The ~~one-acre~~ three-acre limit on significant forest clearing is cumulative and includes each discrete area of any forest proposed for clearing. Clearing of individual trees that are not part of a forest will not count toward the three-acre limit on significant forest clearing.

B. 5.103, "Preferred Site" Definition – Subsection (2), Parking Lot Canopies

REV suggested including unpaved parking lots in subsection (2) of the "preferred site" definition regarding parking lots. While the Commission has previously had concerns that a broad definition of parking lot could lead to applicants seeking preferred-site status for areas that are used only intermittently for parking, such as a field used for parking at a fair, the Commission now believes the likelihood of that is extremely low because of the added expense associated with building parking lot canopies for solar panels sited on parking lots. Therefore, to further encourage the siting of solar projects on parking lots, the Commission has expanded the definition of parking lot within the preferred-site definition.

REV also suggested allowing for a specific siting adjustor for parking lot canopies because of the higher cost associated with such projects. The Commission previously determined that it would consider issues related to compensation in a future separate proceeding. Therefore, the Commission declines to incorporate this suggested change.

C. 5.103, "Preferred Site" Definition – Subsections (3) and (6), Previously Developed Tracts and Extraction Sites

REV suggested removing the requirement in subsections (3) and (6) of the latest draft of the "preferred site" definition that the energy generation component of a plant be located entirely within the previously disturbed area. Subsection (3) of the "preferred site" definition includes the requirements for previously developed tracts, and subsection (6) includes the requirements for extraction sites. As the rule currently exists, the limits of disturbance of the net-metering system must include the previously disturbed site. To encourage the use of previously disturbed sites while providing some flexibility, the Commission has proposed requiring that at least 51% of the energy generation component of the plant be located within the previously disturbed area.

D. 5.103, "Preferred Site" Definition – Subsection (7), Joint Letters

The Department recommended a clarifying change to the proposed language in subsection (7) of the "preferred site" definition regarding sites identified in letters of support. The Department recommended moving the clause regarding the 45-day advance notice for a project to ensure it is clear that the letters of support from the municipal legislative body and the municipal and regional planning commissions must be based on evaluations made after those entities have received the 45-day notice for the project. The Commission has incorporated this clarifying change.

The requirement that letters of support may only be issued after the municipal legislative body and the municipal and regional planning commissions have evaluated the 45-day notice for a project also addresses a concern raised in comments that entities seeking preferred-site letters are not required to notify adjacent landowners. Applicants are required to provide adjoining landowners with the same 45-day notice that is provided to the municipal legislative body and the municipal and regional planning commissions.

E. 5.103, "Preferred Site" Definition – Other

VAPDA recommended extending the definition of "preferred site" to include net-metering facilities located on-site at a perpetually affordable housing development. This change is not necessary. As long as the affordable housing development is allocated more than 50% of the net-metering system's electrical output, such a site is already included in subsection (9) of the preferred-site definition.

F. 5.103, Definitions – Other Comments

Thomas Weiss recommended that the Commission add a definition of the term "system owner" and that the registration form or application form should identify the applicant, certificate holder, host landowner, and system owner. Rule 5.103 defines the role of an "applicant" (e.g., the entity seeking authority to construct a net-metering system) and "CPG holder" (e.g., the entity that holds a CPG and has legal control of the system"). These parties may be, but are not always, the owner of the system. Mr. Weiss has not identified a regulatory need for the Commission to identify the owner of a system where the owner is distinct from the entity that is an applicant or a certificate holder.

Mr. Weiss also commented that the words "vegetation clearing" used in the definition of "project limits" are superfluous because the definition includes the words "earth disturbance," which itself is a defined term and includes "clearing." The Commission agrees that including "vegetation clearing" in the definition of "project limits" results in some redundancy because "clearing" is included in the definition of "earth disturbance." However, the Commission prefers to leave the language as is for ease of reading.

G. 5.105, Registration Process for Hydroelectric Facilities

The Department recommended that hydroelectric facilities be asked to verify compliance with the proposed Section 5.135 upon registration, which states that "[n]o net-metering system may participate in a wholesale market unless the Commission finds that such participation will not harm the interests of Vermont ratepayers and will be in the public good." Once the new Net-Metering Rule is in effect, the Commission will revise the net-metering registration form to require all registrants to certify compliance with this requirement. This change does not require any modifications to the text of the rule.

H. 5.106, Applications for Ground-Mounted Photovoltaic Net-Metering Systems Greater than 15 kW and up to and including 50 kW and for Facilities using Other Technologies up to and including 50 kW

In our order of December 2, 2022, the Commission stated that it would adopt the Department's recommendation to require an explanatory and organizational project narrative for ground-mounted facilities with capacities above 50 kW. The Department noted that this revision

was not contained in the draft of Section 5.106 accompanying the order. The Commission has amended Section 5.106 to address this oversight.

The Department also commented that 30 V.S.A. § 8010(c)(3)(D) requires the use of the "Quechee" test to assess the aesthetic impacts of net-metered systems. The Department recommended that a Quechee analysis and related evidence be expressly included as a filing requirement for relevant project types. The Commission has not adopted this recommendation. Section 5.106(D)(11) states that "the applicant must provide evidence demonstrating that the proposed net-metering system will meet the criteria applicable to the system under Section 5.111 of this Rule." Section 5.111 identifies Section 248(b)(5) as an applicable criterion, and Section 5.112 identifies the Quechee test as the applicable standard for evaluating projects under Section 248(b)(5). The application form that the Commission will develop for applications submitted under Section 5.106 will include sections devoted to each of the applicable Section 248 criteria, which will ensure that applicants include all necessary information with an application.

REV objected to a recommendation made by the Department for "comparative site plans" showing any nearby planned or existing energy facilities. The Commission's proposed rule does not require "comparative site plans" but does require a site plan showing the location of any such facilities. The purpose of this requirement is so the Commission can understand the distance and relationship of two facilities that would be near each other, which is necessary information to apply to the statutory definition of a single plant.

REV commented that Section 5.106 (D)(12)(e) would add a new decommissioning requirement for systems equal to or greater than 150 kW. According to REV, this standard is inconsistent with the size thresholds used throughout the rule, which otherwise divide plants with a capacity less than or equal to 150 kW from those that are greater than 150 kW. REV argued that using differing size thresholds creates unnecessary confusion and that it is unclear what value is achieved by adding a decommissioning requirement for systems that are exactly 150 kW. As the Commission has previously explained, Section 5.106(D)(12)(e) is consistent with the Commission's rules on decommissioning energy facilities, which apply to all generation systems equal to or greater than 150kW. The requirement to submit a decommissioning plan is not particularly burdensome and is necessary to demonstrate that proposed facilities can comply with their obligation to decommission their facility under Commission Rule 5.900.

I. 5.108, 5.109, 5.125, and 5.103, Amendments

Effect of Amendments on Applicable Rates

The December 2022 draft rule included provisions addressing the rates applicable to net-metering systems that request a CPG amendment to increase their capacity. The draft rule stated that systems that increase their capacity by 5% or 10 kW, whichever is greater, will be subject to the most recently adopted rates and adjustors.

The Department supported the Commission's revisions to address concerns about the rate treatment for large amendments to legacy net-metering systems. The Department recommended clarifying that only the new portion of an expanded net-metering system – not the entire system – is subject to the application of the most recent REC and siting adjustors. The Department proposed that the 10-year 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 recommended that any exemption for non-bypassable charges afforded by Rule 5.125(D) not apply to the amended portion. The Department stated that incentives should not be merged or restarted whenever an applicable capacity amendment is made.

In contrast, the Town of Stowe Electric Department ("Stowe Electric Department") and Green Mountain Power Corporation ("GMP") recommended that the entire amended project receive treatment under the rules in effect at the time the increased capacity is installed. Stowe Electric Department stated that it does not have a billing system that can easily apply different adjustors and charges to systems based on a pre-existing capacity and the expanded capacity. According to Stowe Electric Department, having multiple adjustors and charges for a single net-metering customer will also complicate reporting and administrative tracking of data.

The Commission agrees with Stowe Electric Department and GMP that bifurcating the rate treatment of the original and expanded portions of a net-metering system will unduly complicate the billing and tracking of amended net-metering systems. The Commission's proposed amendment to Sections 5.108(C) and 5.109(D) means that a request to increase a system's capacity beyond the thresholds stated in the rule will trigger application of the most recently adopted rates and adjustors:

> An amendment or series of amendments that increase the capacity of a net-metering system by more than 5% or 10 kW, whichever is greater, will trigger the application of the most recently adopted siting and REC adjustors to the entire output of the amended net-metering system.

REV argued that this proposal will discourage expansion of net-metering systems at the same time Vermonters need to increase their level of electrification. Therefore, REV argued that the proposal is inconsistent with the State's climate goals and the intent of the net-metering program. REV also argued that the thresholds (5% or 10 kW) would have a disparate effect on residential customers, who would be able to expand their system by as much as 66% if they had a 15 kW system, and commercial customers, who would be limited to a 5% system expansion. REV recommended that an expansion should only trigger this rule if it resulted in a system crossing a Category threshold.

Similarly, AllEarth Renewables argued that the threshold is unduly small and likely to discourage the land-use efficiencies and other benefits inherent in the expansion of existing net-metering systems. AllEarth Renewables argued that if a threshold is used, it should be "much higher."

The purpose of this rule change is to ensure that significant expansions to net-metering systems receive the same financial incentives that are available to new net-metering systems. The Commission has found that the very high incentives that old systems receive are no longer necessary to encourage the development of net-metering systems, and that they result in a disproportionate cost shift between customers who net-meter and those who do not.[10] For example, a 150 kW photovoltaic system constructed in 2016 in GMP's service territory currently receives a credit of $0.2265 for each kWh produced, which is the sum of the residential rate ($0.1835) and a solar adder of ($0.043). It would be inconsistent to allow this existing system to add up to 350 kW of new capacity and receive rates that greatly exceed the compensation available to a new system. A new 350 kW system would receive credits worth $0.12141, which is the blended residential rate ($0.17141) less the applicable siting adjustor (-$0.05).[11]

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[10] "Accordingly, it is appropriate to reduce compensation for new net-metering systems to ensure that the program does not cause an undue cost-shift between customers who net-meter and those who do not." *In re: biennial update of the net-metering program*, Case No. 22-0334-INV, order of 6/17/2022 at 43.

[11] A copy of GMP's net-metering tariff can be viewed at: https://greenmountainpower.com/wp-content/uploads/2022/09/Self-Generation-and-Net-Metering-10-1-2022.pdf.

The proposal will still allow customers to increase their net-metering capacity by 10 kW or 5% of their existing capacity, whichever is greater. This will help customers electrify their heating or transportation by maintaining the rates they relied on to install their existing system. This will result in some additional cost to all ratepayers for these smaller expansions, but the Commission believes this additional cost is warranted to support customers as they transition to electrifying their heating and transportation. However, as more Vermonters make these transitions, it is also vital that overall electric rates remain as low as possible. Therefore, it is appropriate to compensate very large expansions of existing net-metering systems at the same rate that a new system would receive to avoid even greater additional costs to ratepayers.

Material Modifications

The Department commented that Rule 5.108 and Rule 5.109 use the term "material modification" as defined in Commission Rule 5.500 regarding the interconnection of amendments. The Department noted that Rule 5.500 as proposed and pending in Case No. 19-0856-RULE defines this term, but the currently adopted version of Rule 5.500 does not define "material modification." Therefore, 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.

The Commission agrees with this comment. By separate order in Case No. 19-0856, the Commission is initiating the formal rulemaking process to adopt changes to Rule 5.500. The Commission intends to have both revised rules take effect at the same time.

J. 5.110, Transfers

The Department recommended that the Commission retain the requirement for filing notice of transfers of residential systems with the Commission. Stowe Electric Department, on the other hand, supports the Commission's proposal to eliminate the requirement to file notice of transfers with the Commission.

The Commission is retaining the language as drafted in the December 2022 draft rule. Under the Net-Metering Rule currently in effect, a certificate of public good for a net-metering system is deemed to be automatically transferred when the property hosting a net-metering system is sold or legal title is otherwise conveyed to a new owner, yet the new owner may not continue operating the system unless they file a transfer form with the Commission, the

Department, and the electric company. As noted by Stowe Electric Department, this requirement can be confusing and burdensome for customers. Because new property owners must contact their utility to set up billing, it is a simple requirement just to provide written notice of the transfer to the electric company, as the rule now proposes.

The Department raised concerns that billing disputes and disputes as to the identity or timing of ownership could be more difficult to resolve without the Commission and Department separately tracking this information. The Commission does not share this concern. The rule as proposed does not change the fact that a certificate of public good for a net-metering system is deemed automatically transferred when the property hosting the system is sold or legal title is otherwise conveyed to a new owner. If disputes arise, the Commission can request that utility companies produce the transfer information in their records.

K. 5.110, Extensions

The Department recommended that automatic extensions to certificates of public good upon a timely filed 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 Commission has not altered the December 2022 draft rule requirement that notice of an automatic one-year extension be filed with the Commission and the electric company.

L. 5.115, Rule 2.200 Applicability

The Department recommended 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). The Department stated that in the event of a hearing, the case is by definition contested, and a litigation schedule is typically set. According to the Department, the sections of Rule 2.200 identified in Section 5.115 are typically applied whenever a net-metering case is litigated, notwithstanding the rule. The Department also stated that Rule 5.115 is partially inconsistent with the provisions of Sections 5.119, 5.120, 5.121, 5.122, 5.123.

The Commission agrees with this comment. Rule 5.115 was written at a time when the Commission's rules of practice had not been updated for several decades. The old Rule 2.200 contained many references to paper filing practices (for example, requiring certain documents to be filed in triplicate) that had become outdated when Rule 5.115 took effect. Therefore, it was

necessary to make certain portions of Rule 2.200 not apply in net-metering cases. The Commission recently revised Rule 2.200, and therefore we are now comfortable allowing the provisions of Rule 2.200 to generally govern net-metering cases, except where Rule 5.100 creates specific procedures. The new Rule 2.200 also includes important procedures for remote hearings that should apply in net-metering cases.

Therefore, the Commission has revised Rule 5.115 in the following manner:

> The purpose of this Rule is to simplify the process of participating in the review of applications for net-metering CPGs. In keeping with this purpose, the process for reviewing CPG applications is described in Sections 5.116 through 5.124, below. ~~The following provisions of the Commission's general rules of practice, Commission Rule 2.200 (Procedures Generally Applicable), do not apply in the review of a net-metering application or a hearing thereon: Commission Rules 2.202 (initiation of proceedings), 2.204(A) (G) (filing and service requirements), 2.205 (notice), 2.207 (time), 2.213 (prefiled testimony), 2.214 (A)(discovery), and 2.216(A) (C) (evidence).~~ Any procedure not described in this Rule is governed by the provisions of Rule 2.200. Where there is a conflict between the procedures described in this Rule and any other Commission rule, the provisions of this Rule govern.

The Commission also agrees that the computation of time in net-metering proceedings should be the same as in other proceedings. Therefore, in addition to eliminating the reference to Rule 2.207 in Rule 5.115, we have deleted Section 5.102 from this rule. The manner of computing time described in Rule 2.207 will apply in net-metering proceedings.

M. 5.117, Grounds for Intervention

The Department recommended that Section 5.117 intervenors—particularly those who are not a party as of right—be asked, or in some cases be required, to articulate the concerns that led to their motion or notice of intervention. The Department stated that its experience is that intervenors are sometimes unclear as to when or how they should articulate their concerns, and asking or requiring them to provide this information upfront would help parties understand what is at issue and resolve issues more quickly.

The Commission's intervention form requires intervenors requesting permissive intervention to articulate the grounds for intervention, including their interests in a proposed net-metering system.[12] Similarly, the hearing request form requires a party requesting a hearing to

[12] https://puc.vermont.gov/document/motion-intervene-form.

articulate the issues that they would like to address in a hearing.[13] Once an intervenor has been granted party status and a hearing, Rule 5.120 describes how the scheduling conference is an appropriate venue for the parties to identify the issues and concerns that will need to be addressed in an evidentiary hearing.[14] Requiring or requesting additional upfront information from a party seeking intervenor status could constitute a real or perceived barrier to participation and could suggest limitations to the scope of the intervenor's participation that the Commission does not wish to imply.

N. 5.118, Requests for Hearing

The Department recommended that the section regarding requests for hearings be amended to allow for such requests after the 30-day period for comments and requests for hearing has concluded, provided they regard concerns initially identified in comments made during the 30-day period. The Commission does not think such a change is necessary. Parties may always request reasonable extensions of the comment and request for hearing period on a case-by-case basis.

O. 5.121, Discovery

The Department recommended striking the cumulative limit of 20 discovery questions, inclusive of subparts, in Rule 5.121. The Department stated that parties routinely exceed the cap in contested cases without requesting Commission approval, as required by this rule, and this invites dispute. Additionally, the Department noted that excessive discovery, which is relatively rare in net-metering cases, could be adequately checked on a case-by-case basis by the provisions of Commission Rule 2.200 and the Commission's discretion and decision-making authority. The Commission agrees with the Department's recommendation and has deleted Section 5.121 in its entirety. Rule 2.200 contains comprehensive discovery rules, and those will apply in Commission proceedings. Section 5.115 has also been revised to reflect this change.

P. 5.126, Energy Measurement for Net-Metering Systems

Thomas Weiss recommended that the Commission "[r]ewrite 5.126(A)(2)(a)(iii) and (iv), 5.126(A)(3)(a)(iii) and (iv), and 5.126(A)(4)(a) and (b)." Mr. Weiss did not explain the basis for

[13] https://puc.vermont.gov/document/hearing-request-form.

[14] Rule 5.120 "The following topics may be addressed at a scheduling or status conference:
(a) clarifying the issues to be addressed at the hearing and, if possible, narrowing them."

his recommendation or state how these rules should be rewritten. Therefore, the Commission has not made any changes in response to Mr. Weiss's comment.

Q. 5.127 Determination of Applicable Rates and Adjustors

This section, among other topics, establishes the method and timing of calculating the "blended residential rate." Electric companies are directed to calculate their blended residential rate and file tariffs implementing any changes as part of the biennial process. The rule also calls for an electric company to reassess its blended residential rate outside of the biennial update process if the company uses inclining block rates and requests a general rate increase of more than 5%. The current rule requires the electric company to file a revised net-metering tariff "within 15 days of the effective date of a new tariff for general residential service that includes a change in rates of more than 5%." This requirement has led to confusion about the correct procedure for filing revised net-metering tariffs because the timing of "within 15 days of the effective date of a new tariff" does not align well with the procedure for the review and approval of utility tariffs.[15]

The Commission proposes to revise this requirement so that the utility must file a revised net-metering tariff at the same time that the company files for a general rate increase. The revised net-metering tariff would be filed in a separate tariff case. This would align the timeframes for reviewing.

The Commission invites comment from stakeholders during the formal rulemaking process about whether the Commission should consider different procedures for updating an electric company's blended residential rate as a result of a general rate case. The Commission proposes to revise Section 5.127(b)(2) in the following manner:

> For electric companies whose general residential service tariff includes inclining block rates, a blend of those rates determined by adding together all of the revenues to the company during the most recent calendar year from kWh sold under those block rates and dividing the sum by the total kWh sold by the company at those rates during the same year. Each electric company whose general residential service tariff includes inclining block rates must perform this calculation (1) by May 15 of

[15] This issue only affects companies that: (1) use inclining block rates, (2) request a general rate increase of more than 5%, and (3) whose blended residential rate is less that the statewide average. A company with a blended residential rate that is greater than the statewide average blended residential rate would use the statewide rate as the applicable blended residential rate in their net-metering tariff. The statewide average is updated biennially. Rule 5.127(A).

each even-numbered year and (2) ~~within 15 days of the effective date of a new~~ when the electric company requests approval of a tariff for general residential service that includes a change in rates of more than 5%. To the extent the calculation shows that there has been a change from the rate then in effect, the electric company must file by that same date a revision to its net-metering tariff to reflect the change. Any change to the blended residential rate calculated pursuant to (1) of this subsection may be included in a tariff compliance filing made pursuant to Section 5.128(H) of this Rule. Any change to the blended residential rate calculated pursuant to (2) of this subsection must be filed as a separate tariff case at the same time the electric company files proposed revisions to its general residential service rates; or

. . .

R. 5.128, Biennial Update

Utility Bills

The Department requested that utilities be required to submit sample utility bills reflecting the various ways they bill net-metering system types (e.g., residential, group, directly or indirectly interconnected, etc.). The Department stated that this requirement would help stakeholders understand and assess different utilities' billing standards and implementation of various rules and tariffs.

Similarly, AllEarth Renewables recommended that the Commission adopt clear standards and procedures as to how net-metering information is reflected on customer bills.

The Commission does not necessarily disagree with the Department and AllEarth Renewables that it would be appropriate to review utilities' net-metering billing practices. However, it would not be appropriate to conduct such a review as part of the biennial update. The schedule of the biennial update is too compressed to conduct such a detailed proceeding involving all the distribution utilities.

It is also not clear from the comments of the Department and AllEarth Renewables that such an investigation would need to occur every two years. Therefore, it does not make sense to include this requirement in Section 5.128. If the Department believes that a general investigation into net-metering billing practices or an investigation into a specific company's practices is warranted, the Department may petition the Commission to open a proceeding outside this rulemaking. As discussed further below, the Commission will conduct a separate rulemaking to

investigate whether the compensation of net-metering systems should be reformed generally. That proceeding may offer an opportunity to address standards for utility billing practices.

Locational Adjustors

VAPDA recommended setting siting adjustors based on the most accurate available data regarding existing electric load and grid constraints. VAPDA argued that it makes sense to locate future net-metering facilities in areas with high existing electric load. VAPDA stated that locational adjustors could reduce the need to charge a locational adjustor fee in grid-constrained areas.

The Commission agrees with the sentiment of VAPDA's comment, which is that pricing signals could steer development to areas of the grid where distributed energy resources can provide more value to the system. The Commission previously investigated this topic in the context of the Standard Offer Program and reviewed a proposal to evaluate the locational value of new generation.[16] In addition to a facility's location, the time of day that energy is delivered to the system also can affect its value.

VAPDA has not described how the Commission should value net-metering systems that avoid grid constraints or how to value net-metering systems located near existing load. This topic is complex and does not lend itself to the notice and comment procedures used in the biennial update process. Under the Commission's proposed rule, utilities will be able to propose mitigation fees that reflect the actual cost of grid constraints. These fees would be developed in a tariff proceeding, which provides a better process for investigating this issue. Therefore, we have not revised the Section 5.128 in response to VAPDA's comment.

Data Reporting Templates

The Department has provided Vermont's electric companies with a data submission template, but in its comments the Department observed that utilities' use of the template varies widely. REV recommended that the rule require electric companies to submit that template without modification. The Commission has revised Rule 5.128(D) to refer to the reporting tool as a "form" rather than a "template" to make clear that utilities must use the reporting tool approved by the Commission.

[16] *In re: review of the standard-offer program*, Case No. 17-5257-INV, Order of 1/15/2019 at 1-3.

Compliance Tariffs

AllEarth Renewables recommended that the Commission require that net-metering compliance tariffs be served on the participants in the biennial update proceeding that led to the need to file those tariffs. The Commission considered similar comments from AllEarth Renewables and rejected them in our December 2, 2022, Order. For the same reasons stated in that order, the Commission declines to make any revisions in response to AllEarth's reiteration of its comments.

S. 5.130, Group System Requirements

VAPDA recommends striking the phrase "which must be located within the same electric service territory" from Rule 5.130(A)(1), so that net-metering groups would not be prohibited from including meters that are located in different utility territories. VAPDA acknowledges that such an arrangement might not be technically feasible today but recommends that the Commission not disallow it in case distribution utilities are able to solve the technical obstacles to such an arrangement in the future. In our December 2, 2022, Order, the Commission described the significant legal and accounting issues that VAPDA's proposal created, in addition to the technical implementation issues for electric company billing systems. VAPDA's latest comments do not address these significant issues, and therefore we have not made any changes to the rule in response to VAPDA's comments.

T. 5.136, Locational Adjustor Fee

In our December 2, 2022, Order, the Commission proposed that any locational adjustor fee would be assessed on a per-kW basis as determined by a system's AC capacity. The Department responded 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."

The Commission agrees that more factors than just a facility's AC capacity may be used to determine "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 intent behind the Commission's proposal was to ensure that a customer can determine the amount of the applicable fee before they apply to interconnect their net-metering

system. The Commission now understands that there may be other ways to assess a fee, in addition to using a project's AC capacity, that would still be transparent so that a customer could determine the amount of any fee they would have to pay before they submit an application.

Thomas Weiss recommended that Category I systems should be exempt from mitigation fees for constrained areas of the grid. All systems contribute to grid constraints. Any fee approved by the Commission will be based on a system's proportional impact. Therefore, while Category I systems may be subject to a fee, they would not pay as large a fee as a larger system. The Commission has not made any changes to the rule in response to this comment.

U. 5.137, Energy Storage Systems

In a response to a previous round of comments, the Commission wrote that part of 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). Thomas Weiss requested that the Commission explain how net-metering compensation could be higher than the retail rate. Net-metering compensation is established through this rule and is adjusted during the biennial update process, and the Commission has the discretion to establish net-metering compensation that is higher than or lower than the retail rate. Many customers are currently receiving net-metering compensation that is higher than the retail rate based on a combination of the residential rate and positive adders or adjustors applied to their net-metering generation. Furthermore, some customer classes have per-kWh-rates that are less than the blended residential rate. Without the rule, these customers would be billed at a lower rate when charging and would receive net-metering credits valued at the higher blended residential rate.

V. Comment Periods

The Department supported retaining a 30-day period for the public to comment on net-metering CPG applications. However, the Department noted that several process timelines have been 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)). The Department stated that it has no objection to 28 days in these other instances, but was unsure whether this inconsistency was deliberate. In response to this comment, the Commission has restored the original language of Sections 5.130(B) and 5.132(E), which used 30-day periods.

W. Compensation

AllEarth Renewables commented that the next iteration of Rule 5.100 "should offer a simplified 'behind the meter' option that would have the effect of equalizing net-metering credits with residential rates on an individual utility basis." AllEarth Renewables argued that the case for such an approach is even stronger now because of inflation, supply issues, power supply costs, and other factors resulting in significant utility rate increase requests in recent months. According to AllEarth Renewables, there is an increasing financial disconnect between net-metering compensation and more rapidly rising electric rates, and that disconnect is exacerbated by the application of negative adjustors under a complex and unpredictable system. AllEarth Renewables recommended addressing this issue in a timely fashion.

In response to AllEarth Renewables' comments regarding inflation and other economic factors, we note that the pace of net-metering development continues to be robust despite the economic challenges experienced over the past several years. The Commission is continuing to evaluate the appropriate manner of compensating net-metering customers. For example, California recently implemented significant changes to its net-metering compensation. It will take more time to receive input from stakeholders about what lessons from California's reforms, if any, are applicable to Vermont.

Meanwhile, many other revisions to the net-metering rule have been thoroughly considered in this proceeding, and these aspects of the net-metering rule are ready to move toward adoption through the formal rulemaking process. The Department commented that it looks forward to continued discussions regarding revisions to the net-metering compensation framework in a separate proceeding. We agree. By separate order, the Commission will open a new proceeding to continue our evaluation of net-metering compensation and potential rule amendments to address that issue.

IV. CONCLUSION

Further comments and participation in the amendment of Rule 5.100 will follow the formal rulemaking procedures described in the Vermont Administrative Procedure Act. As noted above, the Commission will process the rulemaking in ePUC and will retain the same case

number (19-0855-RULE). By separate order, the Commission will initiate a new proceeding to address net-metering compensation separately from this rulemaking.

SO ORDERED.

Dated at Montpelier, Vermont, this 17th day of May, 2023.

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

OFFICE OF THE CLERK

Filed: May 17, 2023

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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