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May 27, 2022

Holly Anderson, Clerk
Public Utility Commission
112 State Street, 4th Floor
Montpelier, VT 05620

Re: 19-0855-RULE – Response to Order Requesting Comments on Draft Rule, 04/29/2022

To Whom It May Concern:

The Vermont Association of Planning and Development Agencies (VAPDA) appreciates the opportunity to submit the following comments regarding proposed changes to net metering Rule 5.100:

Section 5.103 – Definitions

"Preferred Site" Definition – Parking Lot Canopy
VAPDA does not understand the proposed change to the added language about "impervious or engineered pervious surfaces" to the "parking lot canopy preferred site" definition. The proposed language does not provide any additional clarity to the definition. VAPDA stresses the importance of this definition continuing to apply to all existing impervious parking lots in the State. There are some communities that are discussing adoption of local zoning requirements to make some impervious parking lots "solar ready." Those local decisions only make sense if the landowner is able to develop a "preferred site" solar net-metered project on those impervious parking lots.

"Preferred Site" Definition –Joint Letter
VAPDA appreciates the proposed change to the problematic "joint letter" requirement. Having municipalities and RPCs submit separate letters makes sense and codifies existing practice.

"Significant Forest Clearing" Definition
In our letter dated November 5, 2021, VAPDA noted that stopping unnecessary forest conversion in Vermont remains a bigger public policy issue than how it is proposed to be addressed in the net-metering rule. As a likely climate mitigation strategy, we anticipate that this topic will be the discussion of future legislative discussions

In response to ANR's proposed options to prevent excessive forest conversion by net-metering facilities, VAPDA supported the following option because it is most consistent with the Public Service Department's regional and municipal energy planning standards, established in accordance with 24

President: Tasha Wallis, LCPC
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V.S.A. 4352, and the requirements of a Regional Plan established in 24 V.S.A. 4348a. Here is the definition included in our November 5, 2021 letter:

> *Excessive forest conversion means forest clearing outside of a state-designated village center, downtown, new town center, neighborhood development area, or growth center. Outside of these areas, excessive forest conversion is any forest clearing in an amount greater than 0.2 acre per 100 kW (or 1 acre per 500kW) generation capacity of the proposed facility, and; any clearing in a future land use area in any municipal or regional plan that has a policy prohibiting development in forested areas.*

The proposed net-metering rule would instead create a definition for "Significant Forest Clearing." This definition would prevent significant clearing of *any* forest block greater than one acre in size, regardless of geographic location, of a forest block "in any stage of succession" that is not currently "developed for non-forest use." VAPDA finds that the proposed definition could be improved from a policy perspective, if the PUC is willing to reconsider policy, and a technical perspective if the PUC decides to move forward with the proposed policy:

Policy:

- The proposed definition of "Significant Forest Block" interprets the term "forest block" differently, and much more broadly, than the requirements of a Regional Plan established in 24 V.S.A. 4348a and the Regional and Municipal Enhanced Energy Planning Standards developed by the Department of Public Service per 24 V.S.A. 4352. This will lead to confusion with RPC, municipalities, and applicants during the review of a net-metering project. Keeping definitions consistent throughout both the planning process and the regulatory process provides transparency, builds public trust, and leads to predictable and easily understood quasi-judicial decisions.

- As cited in our original comments in the autumn of 2021, VAPDA understands that ANR is specifically targeting net-metered solar facilities since the developers are being provided a financial incentive. That is true, but it is also true that net-metered solar facilities have provided with an incentive for a reason: they are useful and important projects that benefit the public through assisting in the transition away from non-renewable electricity sources and combating climate change. Receiving a financial incentive should not necessarily be held against solar net-metering projects as opposed to other types of development that do not necessarily provide any public benefit. As we have stated before, the proposed piecemeal approach will do little to stop deforestation compared to traditional development and non-net metered renewable energy development which is responsible for the majority of deforestation in the State.

Technical:

- If the definition of "Significant Forest Clearing" is interpreted literally then "any stage of succession" could refer to a vacant field. The definition needs to better differentiate between fallow/vacant fields that have been unused for a season or two and the true beginning of forest "succession." Experts at the Agency of Agriculture, Farms and Markets, and the Agency of Natural Resources, should be consulted in clarifying this differentiation.

- The term “and not currently developed for non-forest use” is confusing. Replace this with “which is not being used for any other land use besides outdoor recreation (e.g. recreational trails).”

- The forestry loophole still exists. A savvy renewable energy developer can simply purchase land for the purpose of forestry, harvesting trees on-site, and later convert the land use to a renewable energy project. Merely citing that “uses exempt from regulation under subsection 4413(d) of Title 24,” like forestry, may be included in a “forest block” does not seem to be a strong enough protection to thwart this loophole.

Section 5.106 and Section 5.107 – Method of Service

The “method of service” subsections in both of these sections discuss service to the “affected municipal body,” but do not differentiate between the municipal legislative body and the municipal planning commission. Both municipal bodies are entitled to a separate service of the application by the applicant. Each subsection should be amended to clarify that each municipal board should be serviced via first class mail separately.

Neither of these subsections directly address the method of service to regional planning commissions. It is recommended that regional planning commissions would be serviced via the Commission’s electronic filing system, just like is currently proposed for State agencies and electric utilities, instead of by first-class mail.

Section 5.130 - Group System Requirements

This section is not proposed to be changed under the proposed rule changes. However, Section 5.130(A) is problematic from an equity perspective.

The current rule requires group net-metered systems to be located in the utility service area. This rule needlessly restricts group net metering systems for communities with small municipal utilities that serve relatively urban areas where the built form (e.g. small lots, taller structures) may prevent an individual property owner from developing their own net-metering facility on their own lot. Further, the municipal utility may not be able to develop a group net-metering facility within their boundaries because of the limited availability of land within their service territory and/or the expense of land in their service territory. Allowing limited development of group net-metering facilities outside the service territories of municipal utilities, including Burlington Electric Department, would expand access to net-metering to a greater number of Vermonters.

Section 5.127 Determination of Applicable Rates and Adjusters, Section 5.128(C) – Biennial Update Proceedings and Section 5.136 – Mitigation Fee for Constrained Areas of the Grid

The proposed draft rule removes the pre-set value of site adjustors from Section 5.127 and instead requires the PUC to biennially review and set a new “site adjuster” per Section 5.128(C). VAPDA recommends that the geographic location of potential facilities to existing electric load be added to the list considerations in Section 5.128(C). Adding this language would explicitly require the PUC to assess geographically based siting adjustors.

VAPDA believes that incentivizing the location of new net-metering facilities in geographic areas with high existing electric load makes sense from a grid management perspective. VAPDA further finds that incentivizing rooftop solar facilities, a popular policy in some regional and municipal enhanced energy

plans, makes a lot of sense from a land use perspective (especially in terms of eliminating the need to cut down trees).

The addition of this recommended language, plus the proposed recommendations in Section 5.136 requiring the payment of fees for installing net-metering facilities in constrained areas of the grid, should send price signals to merchant utilities and help optimize the locations of future net-metering development.
These comments are based on information currently available; VAPDA may have additional comments as the process continues. Please feel free to contact me should you have any questions. Thank you for your consideration

Sincerely,

Charles Baker
CCRPC Executive Director
VAPDA Natural Resources Committee Chair