



January 6, 2016

Susan M. Hudson, Clerk
Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: Draft Rule 5.100, Regulations Pertaining to Construction and Operation of Net Metering Systems

Dear Ms. Hudson:

I am writing on behalf of the 246 member cities and towns of the Vermont League of Cities and Towns to comment on the draft rule regarding construction and operation of net metering systems. We have several recommendations for the draft rule 5.100, Regulations Pertaining to Construction and Operation of Net Metering Systems that would help the Public Service Board (PSB) address significant issues of the siting of renewable energy systems. We strongly endorse the Vermont Law School Energy Clinic's June 2015 recommendation that Vermont be known for doing solar thoughtfully, and not simply for doing solar fast.

We also think that it would be exceedingly helpful if new language were underlined in the draft rule and deleted language were crossed through, as is the standard in proposed legislation. It is difficult to determine what is new and what already exists in this draft.

In the definitions, section 5.102, we have several recommendations:

- (1) Include a definition of "screening" that includes compliance with a locally adopted bylaw or ordinance addressing screening and reference that definition in section 5.109 (B).
- (2) Include a definition of "average person" for purposes of the Quechee Test that defines adjoining property owners as average persons.
- (3) The definition of a "Conditional Waiver of a Criterion of 30 V.S.A. § 248" should specify that requirements of presentation of evidence, specific review of the project, and development of specific findings of fact are not waived for criteria on which issues are raised or recommendations made by a host or affected municipality.
- (4) In the interest of fairness, the definition of "environmental attribute" should include not only benefits, but also costs of a plant to the environment, such as trees cut or habitat damaged. Alternatively, the rule could include a definition of "environmental cost."
- (5) The definition of a "major amendment" should also include switching physical infrastructure of the net metering system to technology that is newer, more efficient, uses a smaller footprint, or is less costly.
- (6) The definition of "party" should include the host or an affected municipality. Pursuant to Act 56, the host municipality is an automatic party.
- (7) A definition for "clear community standard" in an adopted municipal plan that will meet PSB standards should be discussed and added. At this time, municipalities are left to guess what that standard might be since little if any guidance is provided by the PSB.

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We support the incentives proposed in Section 5.105 (D) for placing net metered solar systems on rooftops, brownfields, and sanitary landfills, over parking lots, or in the disturbed portion of a gravel pit, if the plan for the gravel pit includes eventual rehabilitation of the site.

At section 5.108 (B) (all other net metering systems), we believe that the board should not waive criteria addressing 30 V.S.A. § 248 (b) (2) need, (4) economic benefit, (5) municipal services (such as fire protection), and public investment, (7) compliance with energy plan – or energy elements of the municipal plan.

At section 5.109 (D) Lot Coverage, the coverage limitations should take into consideration setbacks, any municipally-recommended screening requirements, local land conservation measures in the adopted municipal plan, and any clear community standard in the adopted plan.

Section 5.209 (E) would establish a standard for adverse aesthetic impact. Twenty-four V.S.A. § 4414 (3) already includes the nature of the projects surroundings and adjacent uses and the capacity of existing or planned facilities and we refer you to that section.

Section 5.111, Certificates of Public Good, would establish requirements for Category II and Category III Net Metering Systems. There are serious problems with the notice provided to municipalities regarding applications for net metered systems. It is common for boards in smaller communities to meet only once every two weeks or even just once a month. Oftentimes, it is these communities that have been targeted for net metered systems. In Section 5.111 (D) (1), we urge you to increase the time for notice of a pre-application information session to 30 days for Category II net metering systems. Upon service of applications, the PSB should absolutely (not liberally) grant extensions of time to statutory parties when the applicant fails to cause timely service of the application. This would be an added incentive for the applicant to get his or her act together. If the pre-application information session was noticed 30 days in advance, a requirement to file a request for hearing on a Category II application might be sufficient. We also urge you to include the host customer as part of the “detail to afford the recipient reasonable notice of the nature of the project.”

Subsection (D) (6) would establish the requirements for a request for hearing for a Category II system. A request for a hearing from a host municipality should not require a motion to intervene as it is a statutory party. The request for a hearing should serve as sufficient notice that the municipality will be involved in the proceedings.

Subsection (D) (7) requires the PSB to convene a hearing prior to issuing a final decision on the application. This section should require the hearing be held in the municipality that is host to the facility. Subsection (D) (8) should also require the PSB – in the Certificate of Public Good – to respond directly to each land conservation provision in the adopted municipal plan, any recommendation from the planning commission or local legislative body, and any clear community standard enunciated in the adopted plan or presented to the PSB by the planning commission or local legislative body. The PSB responses should explain the reasoning used in either agreeing to or overriding those land conservation provisions, recommendations, or clear community standards. In this way, a record of how municipal officials should present their concerns in the Certificate of Public Good process will be developed over time.

These comments regarding Sections 5.111 (D) (1) through (8) above apply to Category III applications as well. Most importantly, we believe the PSB should be obligated to respond to each issue raised by a host or affected municipality in the Certificate of Public Good decision. The PSB process is generally regarded as quite legalistic and, therefore, very difficult for participants unless they have legal counsel. Subsection (4) (g) includes several components that lend credence to this belief. We suggest that a witness sponsoring an exhibit or testimony file a sworn statement instead of a notarized affidavit, thus removing at least one person from the process. The draft rule states that a witness must further attest “to having personal knowledge to be able to testify as to the validity of the information contained in the exhibit or testimony.” What is “personal knowledge”? Does experience qualify as “personal knowledge”? Do familiarity with municipal plans and character of a neighborhood qualify? The draft rule needs to explain that term in detail either in this section or in the Definitions section.

At Subsection (4) (h), Local and Regional Plans, we suggest the language be amended to read, “The applicant shall provide copies of the relevant sections of the Town Plans and Regional Plans in effect in the communities in which the proposed facilities will be located. The applicant shall include testimony describing how in its estimation the project complies with or is inconsistent with the land conservation measures and any clear community standards in those plans.”

We strongly support the requirement at 5.120 for decommissioning and demonstrating sufficient financial resources to decommission the net metering system.

We strongly support the June 2015 recommendation of the Vermont Law School Energy Clinic that contract agreements with customers and hosts be explained in clear language, particularly as they relate to the disposition and ownership of renewable energy credits (RECS). There is much confusion about what RECS mean and to whom they accrue when net metering contracts are being discussed.

Thank you for the opportunity to comment on this draft rule. We look forward to working with the PSB on it.

Sincerely,

A handwritten signature in cursive script that reads "Karen B. Horn".

Karen B. Horn, Director
Public Policy and Advocacy