LEGAL COUNSELORS & ADVOCATES PLC
P.O. Box 194 • Burlington, VT • 05402

Alison Milbury Stone
alison@lac-lca.com
802•343•8853 (m)
802-232-4591 (o)

January 13, 2016

Judith Whitney, Acting Clerk
Vermont Public Service Board
112 State Street, 4th Floor
Montpelier, VT 05620-2701

Re: AllEarth Renewables and Sun Common Comments on Draft Rule 5.100

Dear Ms. Whitney:

Please find enclosed an original and six copies of comments that are being submitted jointly by Sun Common and AllEarth Renewables on the draft net-metering rule ("Draft Rule 5.100") that the Public Service Board circulated for comment on December 8, 2015. Also enclosed is a marked-up version of the Draft Rule 5.100 that reflects both the changes outlined in the comments and additional revisions that did not require further discussion.

Please don't hesitate to let us know should you have any questions.

Respectfully submitted,

Sun Common & AllEarth Renewables
By Their Attorneys

Legal Counselors & Advocates, PLC
Alison Milbury Stone
Bridgette Remington
Leslie A. Cadwell

Enclosures
Cc: Department of Public Service
Renewable Energy Vermont

Comments on PSB Proposed Draft Rule 5.100
Effective January 1, 2017

I. Introduction

We applaud the Public Service Board's decision, in its Draft Rule 5.100, to retain many of the tenets of the existing, successful net metering program. The ingenuity in the current program lies in its simplicity and stability—for the customer, regulators, utilities, installers, and financial institutions. By carrying over the retail rate as the foundation for customer credit in the proposed draft rule, the Board has begun to create a post-2016 net metering program that is customer-focused, honors the usage offset principle, and provides the stability and predictability needed for a successful customer-oriented program. After all, net metering is the primary, and virtually sole, means that lay customers can use to engage in our state's electric sector and meaningfully contribute to our state's energy goals.

Some adjustments to the proposed draft rule are critical for the net metering program to continue to serve the interests of customers, utilities, and the state after the current program terminates on December 31, 2016. The adjustments discussed in these comments are essential to prevent undesirable volatility in the net metering market.

Just as Vermont state policy has long encouraged utilities to secure long-term, stably priced contracts for energy and capacity for their territory-wide load, the net metering program should provide long-term and stable rates, credits, and fees to customers. State policy directs support of Vermont-based distributed renewable energy resources. In addition, Act 56 was enacted in 2015 with utility-specific goals that call out the net metering program specifically, as must take, for Tier II compliance by utilities.[1] To support the desired development, as is the case with most renewable energy resources, net metered projects require a significant level of long-term certainty to encourage a homeowner, school, business or third party investor to make the required upfront investment.

To assist the Board in the next revision to the draft rule, these comments are accompanied by a markup of the Board's Draft Rule 5.100 that shows the textual changes we suggest to improve the Board's final proposal. The suggested changes align the new rule more closely with the state's interest in continuing a robust, customer-focused net metering program that can continue to benefit the wider Vermont economy, as it has for the last 16 years, while working to maintain the draft structure developed by the Board.[2]

[1] Act 56, Section 11 (requiring all utilities to take all RECs produced by net metering customers).
[2] 30 V.S.A. § 8010 (effective January 1, 2017).

The principle changes suggested in these comments[3] and the accompanying draft markup address the following issues:

- Program Structure and Credits
  - Incentive credits for siting and credit for relinquishing RECs should apply to the total production of a net metering system, rather than be applied only to customers' excess generation to prevent absurd results that compensate larger systems more than smaller systems and REC compensation by utilities on only a fraction of surrendered REC value;
  - No "grid" fees should be added to the net metering program because they are unduly discriminatory and act as a barrier to customer participation in the program, particularly residential customers; and
  - Customers should be allowed to rollover credits for up to 24 months to provide incentive for systems that maximize available space in anticipation of increased electric load due to customer conversion from fossil fuels.
- Ensuring Customers are "Grandfathered" From Policy Changes
  - Grandfather current customers who made long-term financial decisions based on past statute, which included residential rates as a base and for solar customers a 10 year solar adder. Further, ensure customers installing systems under the new program have predictability and are grandfathered from substantial future economic/program changes.
- Eliminate the Net Metering Cap
  - Instead of a cap based on net metering system capacity, the rule should provide for an energy-based (kWh) trigger for Board and stakeholder review of net metering deployment, costs and benefits, and pace without market disruption. The present program cap has given rise to significant market uncertainty when a utility abruptly ends its net metering program upon reaching the cap.
- Maintain Group Net Metering
  - The draft rule should eliminate the proposed 10-mile restriction on customers who may participate in a community or group net metering

[3] These comments focus on changes that are critical to the overall net metering program structure to ensure that net metering remains an important component of achieving a fully distributed grid to secure Vermont's energy independence. The markup contains additional suggestions that improve the rule and its practical implementation.

arrangement because it is arbitrary and contrary to Act 99's state goal of establishing a program that allows all customers who want to participate in net metering to do so; and

- The draft rule should restore the existing right of group net metering customers to locate their systems on the premise of a third-party host because not all customers have sufficient property interests or suitable locations to host a net metering system.

II. Program Structure and Credits

Retail plus rate design

The Board should receive widespread support for its proposal to continue using the retail plus rate design model. This structure is one that customers understand and that is familiar to the other suite of stakeholders involved in making net metering happen: service providers, installers, banks and other financers, like Vermont Economic Development Authority (VEDA), Vermont's electric utilities, and regulators. Retail rates are a logical, appropriate foundation for a net metering rate structure because they are highly regulated and provide a simple, stable framework for customers and regulators alike. Further, while retail rates are insulated from volatile energy markets, they are set in a manner that allows the utility to recoup its costs to provide service, plus earn a reasonable rate of return.

With the expiration of the solar adder, retaining a retail plus rate design with ALL production getting REC credits, will take the effective rate for a 500 kW project from the current .24-.25 per kWh (assuming the RECs are sold out of state, as most are (.19 per kWh plus .05/.06 REC value per kWh)) to approximately .177 per kWh (assuming the project gives the RECs to the utility and instead takes the credits (.147 per kWh retail rate plus .03 REC credit per kWh, with the RECs now counted toward state goals). This rate reduction will have a significant impact on reducing deployment pace and also brings RECs "home" toward local goals. Smaller projects and those receiving the sitting adder under the proposed rule would receive the additional credit in recognition of both their additional grid benefits and development hurdles.

Retail Plus Structure for Municipal-Owned and Cooperative-Owned Utilities

Vermont's current net metering program allows for some variation. We would support an alternative to a purely utility-based retail rate plus model for the smaller municipal-owned and cooperative-owned utilities. We think that using the weighted statewide average for the base residential retail rate is reasonable for some such utilities, perhaps looking at Act 56 categories for guidance. Although using the weighted statewide average would reduce the total rate for net metering customers in certain territories, it seems reasonable given the rate differentials in such territories.

RECs and Incentive Credits for Siting Should Apply to All kWh

The proposed siting credit, valued at .02, and the REC credit, valued at .03 should apply to *all* kWh of energy production from a customer's net metering system rather than be limited to only excess production, as currently proposed.[4] The Board should be mindful that net metering systems are generally sized to meet customer load and do not offer substantial excess generation. Therefore, credits for renewable energy attributes or RECs, as well as those for siting, must apply to all kWh of energy production to provide the intended incentives.

Crediting RECs for all production will provide residential net metering customers the *quid pro quo* for the RECs the utility is permitted to claim in its power supply portfolio. Further, credits for all kWh produced, not just excess generation, will better induce owners of larger systems *not* to sell their RECs into the open market and instead allow their interconnecting utility to claim the REC benefits. Further, we believe it is only fair for RECs counted by a utility to meet regulatory compliance goals to be compensated fairly.

Similarly, a siting incentive should apply to all kWh produced because the incentive is for the entire *facility*, not just a portion of it. The unintended consequence of limiting the siting incentive to excess generation is that it provides no incentive at all. Applying the credit to all generation will actually encourage development in "preferred" locations.

Under the Board's current draft proposal, the effect of providing REC and incentive credits for excess generation only, is that 500 kW projects will earn approximately .177 to .197 per kWh because larger projects will more likely than not retain the RECs for all production and sell them out of state. Residential customers will earn just .149 per kWh because, lacking access to the regional REC markets, they will have to take the 3 cent credit on only excess generation.[5]

No Grid Fees

Grid fess applicable to net metering customers only are unduly discriminatory, act as a barrier to customer participation in the program, particularly residential customers, and fail to acknowledge the benefits of Distributed Generation for all utility customers.

"Distributed Generation" means generation that is spread throughout the distribution grid, and is a fundamental shift away from large, central power plants. We point out that this does *not* mean generation close to the demand by the customer on paper, but rather

[4] We understand that other stakeholders may propose to moderate the net metering pace by allowing the 3 cent REC credit to adjust up or down based on the pace of deployment in meeting state Renewable Energy Standard goals and are amenable to such an adjustment.

[5] This modelling was undertaken using general annual generation estimates and financing costs available to residential and group systems.

generation close to consumption. DG of the 21st Century does not tie load to customers, but rather provides diverse, distributed renewable energy systems throughout the grid.

Net metering customers use their own financial resources to help create the "distributed grid" that the State and its electric utilities desire, often financing distribution line upgrades, while also helping Vermont reach its renewable energy goals. Therefore, the next revision to the rule should eliminate the section that allows utilities to treat net metering customers as a separate customer class with responsibility for paying higher charges than other customers who use the same utility infrastructure.

The Board has an example of the adverse consequences when utilities are allowed to impose grid fees only on net metering customers. The grid access fee Washington Electric Cooperative was authorized to impose has resulted in a net metering program that results in **long term net financial losses and or financial uncertainty** for participating customers when financing and development costs are considered. WEC's grid fees have significantly stalled net metering installations, grinding third party investment in larger systems to a halt. While in every other territory, net metering has experienced historic growth.

Extend Credit Rollover to 24 Months

The draft rule should extend the credit rollover period from 12 months to 24 months, allowing customers to install systems that maximize available space in anticipation of increased electric consumption when converting from fossil fuels. The credit rollover extension will complement utility programs focused on Act 56 Tier III compliance through in-home technology installations such as cold climate heat pumps and electric vehicle deployment. Just as the utilities are authorized to "bank" RECs for multiple years to ensure their financial security under Act 56 – the Renewable Energy Standard – so too should consumers have the right to retain bill credits for a more reasonable period of time than the present program allows.

III. Ensuring Current Customers Are Grandfathered from Policy Change

Draft Rule 5.103(B) should be revised to maintain the stability and predictability for customer compensation that the current rule provides and restore confidence in the future program. The up-front investments required to install net metering systems are long-term investments, and few systems are self-financed due to their high up-front costs. The draft rule should be revised as proposed in the markup to restore the predictability and stability instituted under the current program design.

Presently, net metering customers are credited at the residential rate or the highest inclining block rate, if applicable, for the first ten years and receive credit at the blended retail rate thereafter. These rates have a long and reasonably stable history allowing for a

reasonable level of investment certainty. Solar net metering customers have an additional benefit in the form of an "adder" to the residential rate. Under current law, the dollar amount of the adder is fixed for a period of ten years from the date the system is commissioned.

The draft rule proposes to change that expectation for customers who have already commissioned their systems, and financed them based on existing law, by fixing compensation at the rates in the utility's tariff on December 31, 2016, including the amount of the adder on *that* date, not the date the system was commissioned. Most homeowners and other customers who go solar take out long-term loans to do so, with 20-year amortization not uncommon. In fact, not only have schools and businesses signed 20-year net metering contracts, but so has the State of Vermont. These 20-year net metering contracts are often made possible by financing backed by long-term debt from VEDA or other Vermont banks. At their heart, these are long-term assets that require significant upfront capital, with the expectation of a long-term reasonable payback.

Further, customers who commission their systems after the new rule goes into effect, are offered *no protection* against future changes in the utility's net metering tariff (both rate and fees and terms and conditions of service) following commissioning. The draft rule creates too much uncertainty for homeowners, businesses, banks and other financial institutions to be able to provide financing for systems commissioned after December 31, 2016.[6] *The basic net metering program structure ought to be generally predictable for a customer to be able to make reasonable assumptions about their investment.*

This is key. By eliminating predictability, and in turn, reasonably priced third-party and homeowner financing, the draft rule will stop most investment in net metering systems at all scales. We must provide financial institutions and customers with surety that rates, credits, and associated fees will be secured for at least a 10-year period and, thereafter, guarantee that customers will be credited at the residential rate and will not be exposed to new fees that could undermine the capital investment.[7]

[6] The current net metering program is set out in statute, with the Board authorized to implement the statute via a rule. 30 V.S.A. § 219a. In contrast, after December 31, 2016, the net metering program is governed by the Board's new rule and the broader guiding principles in 30 V.S.A. § 8010. Therefore, to ensure the same measure of predictability that the current program provides, the Board's Draft Rule must specify the general rates, terms, and conditions of net metering service for all electric companies for the duration of the program. The future of net metering should not be left to the whims of the state's electric companies.

[7] We also highlight that the Draft Rule's amendment language would have devastating results with regard to grandfathering. In its current form, projects that changed ownership and, thus required an amendment, would no longer received the guarantees afforded by grandfathering and would put financing such systems in jeopardy.

IV. Eliminate the Net Metering Program Cap

The cap on net metering deployment should be eliminated. In recent months we have all experienced the chaos, costs, and unnecessary complication of the existing cap and how to implement it when there is unsatisfied demand. This difficult period is creating a significant loss of confidence and disruption in the market, it is stranding costs, delaying projects, and causing utilities, developers, towns, and the state to spend significant time and money. Removing the cap will avoid such resource waste and confusion in the future.

We appreciate that the Board left open whether or not to include a cap in its draft rule. We suggest that rather than instituting a new cap, that the Board and stakeholders review the net metering program once net metering generation equals 6 percent of an electric company's annual kWh sales over a consecutive 12-month period and every two percent thereafter with a review process that ensures no market disruption. The Board's review will be focused on whether all utility customers have had the opportunity to net meter, regardless of where they live or whether they have the resources to invest in a system, and if not, whether to adjust the program to realize that goal. Using the cumulative *energy-output* rather than cumulative *capacity* to assess the program more accurately reflects the impacts of net metering systems within electric company territories and is much easier for the public to understand. The current use of peak capacity has led to confusion in the press, in the legislature and in the public regarding the role of net metering in meeting our state energy goals.

V. Maintain Group Net Metering

Remove Location Limitations the Conflict with Group Net Metering

The Draft Rule, if adopted without any change to certain sections, will all but halt the installation of group net metering systems, which allow customers without adequate roofs, land, or investment capital to participate in the net metering program. We request that the Board remove the provision that requires group systems to be located on a group member's property and the provision that limits groups to within 10 miles. The restrictions would inadvertently prevent many of the installations meant to be encouraged by the proposed siting incentive credit and are counter to the direction many other states around the country are heading by establishing virtual net metering policies, especially for solar installations.

The 10-mile limitation would prevent, for example, the owner of a large commercial building from installing a net metering system on the roof of the building if tenants leasing the building did not want to participate in net metering or the owner did not have an electric meter within ten miles of the building. The onsite-host requirement could also

prevent siting a system on a brownfield or landfill that does not have any onsite electric load.

Further, the 10-mile limitation for group systems makes community systems more burdensome to develop and impossible to finance because the limitation restricts the ability of the group to bring account meters in and out of the system as a result of either an in-state or out-of-state move or even bankruptcy (e.g. a system in a rural area could be stranded or have very limited customer off-taker options should the original customer leave the 10 mile radius or go bankrupt).

Maintain 500 kW Maximum Project Size

Within the Act 99 workshop process, some stakeholders have advocated expanding the definition of a net metering system to allow for projects up to 1 MW or higher, consistent with other states, while others have mentioned a desire to reduce the current 500 kW maximum project size. We note here that 30 V.S.A. § 8002(16)(1) statutorily mandates the 500 kW maximum project size. However, we also hope that, in order to take advantage of the very few very large roofs and or parking lots where solar carports might be viable for Category I, the Board allow projects to collocate.

VI. Conclusion

We would like to thank the Vermont Public Service Board for tackling the important and pertinent issues necessary to move Vermont's net metering program forward to serve the public interest and meet state energy goals, in the near and long term.

We believe that maintaining the retail plus structure proposed by the Board, while incorporating the changes including in our comments and accompanying marked-up draft will allow Vermont to continue its commitment to providing a stable, customer-oriented net metering program for the future. We believe that with a final rule incorporating our comments and suggested changes, will appropriately addresses the pace of net metering deployment by reducing the total compensation structure for all projects and significantly reducing the compensation for larger projects, while allowing the net metering program to meet state goals by providing the basis for Act 56 compliance and ensuring that all customers that want to participate will have the opportunity to do so. Finding this right balance is consistent with Act 99's intent and one we know the Board takes seriously.

DRAFT

5.100 REGULATIONS PERTAINING TO CONSTRUCTION AND OPERATION OF NET METERING SYSTEMS

5.101 Purpose and Scope

(A) This rule governs the application for, and issuance, amendment, transfer, or revocation of, a certificate of public good for net metering systems under the provisions of 30 V.S.A §§ 248, 8002, and 8010. In addition, this rule governs the terms upon which any electric company shall offer net metering service within its service territory.

(B) This rule applies to all net metered installations in Vermont and applies to every person, firm, company, corporation, and municipality engaged in the site preparation, construction, ownership, or operation of any net metering system that is subject to the jurisdiction of this Board.

5.102 Definitions

For the purposes of this rule, the following definitions apply:

"Account" means a unique identifier assigned by the electric company to a customer for billing purposes. A customer account may include one or more meters.

"Adjoining Landowner" means a person who owns land in fee simple that:

(1) shares a property boundary with the tract of land on which a net metering system is located; or

(2) is adjacent to that tract of land and the two properties are separated only by a river, stream, railroad line, or public highway.

"Applicant" means the entity that is seeking authorization to construct and operate a net metering system. The Applicant shall have legal control of the net metering system.

Commented [C31]: This is excellent to clarify that there may be a difference between a customer and the person/entity that owns the net metering system. With this definition, there is no need to amend the definition of "Customer" to capture special purpose entities (SPEs).

"Billing Meter" means an electric meter that measures the consumption of electricity by a customer.

"Board" means the Public Service Board of the State of Vermont.

"Capacity" means the rated electrical nameplate for a plant, except that, in the case of a solar energy plant, the term shall mean the aggregate AC nameplate capacity of all inverters used

to convert the plant's output to AC power.

"Category I Net Metering System" means:

(1) a net metering system installed on a carport or a new or existing structure where the primary purpose of such structure is not the generation of electricity; or

(2) a net metering system with a capacity of 15 kW or less installed as a new, stand-alone structure(s).

"Category II Net Metering System" means a net metering system with a capacity of more than 15 kW and not greater~~less~~ than 150 kW installed as a new, stand-alone structure(s).

"Category III Net Metering System" means a net metering system with a capacity of 150 kW and up to 500 kW installed as a new, stand-alone structure(s).

"Certificate Holder" means one who holds a CPG issued pursuant to 30 V.S.A. §§ 248 and 8010. The certificate holder shall be the owner of the net metering system.

"Conditional Waiver of a Criterion of 30 V.S.A. § 248" means that the requirements for the presentation of evidence under the criterion, a specific review of the project by the Board under the criterion, and the development of specific findings of facts for the criterion by the Board is waived unless the Board finds that the application raises a significant issue under the criterion.

"Commissioned" or "Commissioning" means the first time a plant is put into operation following initial construction of the plant.

"CPG" means a certificate of public good issued by the Board pursuant to 30 V.S.A. §§ 248 and 8010.

"Customer" means a retail electric consumer. For the purposes of this rule, an entity whose primary purpose is the generation of electricity is not a customer if the entity does not have a billing account with the interconnection utility~~.~~.

"Department" means the Department of Public Service of the State of Vermont, unless the context clearly indicates otherwise.

"Electric Company" means the utility company serving the net metering customer or the company that would serve an applicant seeking authorization to construct and operate a net metering system, as context indicates.

Commented [C32]: This was added to ensure that carports are considered structures whose primary purpose is not the generation of electricity and to preclude them from being considered simply as a form of racking.

Commented [C33]: The rule should take into consideration that some SPEs may have a billing account for station service. In those cases, the SPE is, in fact, a retail customer of the utility.

"Environmental Attributes" means the characteristics of a plant that enable the energy it produces to qualify as renewable energy and include any and all benefits of the plant to the environment such as avoided emissions or other impacts on air, water, or soil that may occur through the plant's displacement of a non-renewable energy source.

"Excess Generation" means the number of kWh produced by a customer's net metering system in excess of the kWh delivered by the electric company to the customer during a billing period. Excess generation also means the kWh allocated to a member of a net metering group that exceed that group member's individual kWh consumption for that billing period.

"File" means the submission of documents, exhibits, plans, information, or other materials to the Board through the Board's electronic filing system or otherwise in accordance with the Board's rules of practice in effect at the time of the filing.

"Group Net Metering" means a group of customers, or a single customer with multiple electric meters, located within the same electric company service territory ~~and within 10 miles of the net-metering system~~, where the customer or customers have elected to combine meters in order to offset that billing against a net-metered system.

"Group Net Metering Host" means a landowner that hosts a group net metering system.

"kW" means kilowatt or kilowatts (AC).

"kWh" means kilowatt hours.

"Major Amendment" means one or more of the following changes to the physical plans or design of a net metering system:

(1) Increasing the nameplate capacity of the net metering system by more than 5%;
(2) Moving the boundary or location of the net metering system by more than 50 feet;
(3) Changing the fuel source of the net metering system;
(4) Any other change that the Board, in its discretion, determines is likely to have a significant impact under one or more of the criteria of Section 248 applicable to the net metering system.

"Minor Amendment" means one or more of the following changes to the physical plans or design of a net metering system:

(1) Replacement of system components with like or equivalent components;
(2) Reducing the capacity of the generator;

Commented [C34]: Harmful and arbitrary restriction that will have the effect of preventing community systems.

Commented [C35]: It is important to allow landowners to use SPEs for property on which a net metering system is installed. This allows siting and financing flexibility that is not possible if the land or property has to have the same owner as one of the members of a group.

(3) Reducing the height, length, or area of the net metering system;
(4) Changing the net metering system's status as an individual or group system;
(5) Any other change to the physical plans or design of the system that is not a major amendment.

"Net Metering" means the process of measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system(s) during the customer's billing period:

(1) using a single, non-demand meter or such other meter that would otherwise be applicable to a customer's usage but for the use of net metering; or
(2) if the system serves more than one customer, using multiple meters. The calculation shall be made by converting all meters to a non-demand, non-time-of-day meter, and equalizing them to the tariffed kWh rate.

"Net Metering System" means a plant, as defined in this Rule, that is:

(1) no more than 500 kW capacity; operates in parallel with facilities of the electric distribution system, is intended primarily to offset part or all of a net metering customer's or group's own electricity consumption, is located on a net metering customer's or Group Net Metering Host's premises, and employs a renewable energy source produced using a technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate pursuant to 30 V.S.A. § 8002(2); or
(2) is a qualified micro-combined heat and power system of 20 kW or less that meets the definition of combined heat and power in 30 V.S.A. § 8015(b) and uses any fuel source that meets air quality standards.

Commented [C36]: Some may propose that projects above 150 kW should not be allowed, but Act 99 specifically contemplates net metering systems up to 500 kW. See the definition of "Net metering system" in 30 V.S.A. 8002(16)(1) (effective January 1, 2017).

Commented [C37]: See definition and note above, earlier in the Definitions section.

"Party" means the applicant, the Department of Public Service, the Agency of Natural Resources, and any person who has obtained permission from the Board to intervene in the review of an application under Section 5.116 of this rule.

"Plant" means an independent technical facility that generates electricity from renewable energy. A group of facilities, such as wind turbines, shall be considered one plant if the group uses the same renewable fuel source, is part of the same project, and uses common equipment and infrastructure such as roads, control facilities, and connections to the electric grid. Common ownership, control, contiguity in time of construction, and proximity of facilities to each other shall be relevant to determining whether a group of facilities are part of the same project. Nothing in this definition is intended to prohibit the Board from approving multiple net metering

systems sited in close proximity, including on the same parcel of land, where the cumulative capacity of the net metering systems exceeds 500 kW, provided that the Board finds that siting multiple net metering systems in close proximity promotes the general good.

"Production Meter" means an electric meter that measures the amount of kWh produced by a net-metering system.

"Time-of-Use Meter" means an electric meter that measures the consumption of electricity at the time it is consumed.

"TOU" means time-of-use.

"Tradeable Renewable Energy Credit" means all of the environmental attributes associated with a single unit of energy generated by a renewable energy source where:

(1) those attributes are transferred or recorded separately from that unit of energy;
(2) the party claiming ownership of the tradeable renewable energy credits has acquired the exclusive legal ownership of all, and not less than all, the environmental attributes associated with that unit of energy; and
(3) exclusive legal ownership can be verified through an auditable contract path or pursuant to the system established or authorized by the Board or any program for tracking and verification of the ownership of environmental attributes of energy legally recognized in any state and approved by the Board.

5.103 Electric Company Tariffs

(A) Tariffs. Pursuant to 30 V.S.A. § 225, an electric company shall propose to the Board a rate schedule to implement a net metering program in its service territory pursuant to this Rule to take effect on January 1, 2017.

(B) Grandfathering of ~~Existing~~ Net Metering Customers. Customers who commission(ed) their net metering systems prior to or after January 1, 2017, shall, for a period of 10 years from the date of commissioning, continue to take service pursuant to the terms of the electric company's approved net metering tariff on file with the Board at the time the project was commissioned~~on December 31, 2016~~. After such 10-year period runs, such customers shall take service pursuant to the electric company tariff on file with the Board at that time, but at no less than the residential retail rate or weighted average statewide residential rate~~, as it applies based on Subsection xx of this Rule time~~. Any fees and incentive credits shall be fixed for a 10-year

Commented [C38]: The "close proximity" rule promotes inefficient land use. A brownfield site might be able to serve as host to multiple net metering systems to allow a whole community to net meter. A farm may want to carve out two areas suitable for larger community arrays to preserve for future farming use for members of the family while earning income through lease payments earned from hosting two 500 kW community arrays (or several 150s). If we can't get rid of the 500 kW cap, there should be room in the rule to allow the PSB to approve multiple systems that are in fact separate even if sited on the same parcel or in close proximity.

Commented [C39]: It is terrific that the drafters saw the need to create some certainty for installations pre- and post- 2017. The present program's tie to retail rates allows for predictability necessary for financing. Although electric rates change over time, rates changes have been modeled and analyzed by experts using publicly available data for decades. It is a familiar risk that customer financing already takes into account. The basic rate structure in this proposed rule reflects this important point.

However, the proposed language in this section requires some changes to ensure that existing *and* future net metering customers get the benefit of the same predictability that is baked into existing law. This predictability is vital to attract capital investment in net metering systems.

Commented [C310]: See our comments accompanying this draft rule mark-up at page 3-4, Section II, in the subsection entitled "Retail plus structure for Municipal-owned and Cooperative-owned Utilities."

period from the date of the issuance of a CPG for a net metering system. ~~Customers shall not be grandfathered under this subsection if they use a net metering system that was commissioned or amended after January 1, 2017.~~

~~Customers who begin net metering after the January 1, 2017, shall not be grandfathered under this subsection.~~

5.104 Energy Measurement for Net Metering Systems

Electric energy measurement for net metering systems shall be calculated in the following manner:

(1) The electric company that serves the customer or group shall measure the net electricity produced or consumed during a billing period, in accordance with normal metering practices.

(2) If, at the end of a billing period, the electricity supplied by the electric company exceeds the electricity generated and fed back to the electric distribution system during the billing period, the customer or group shall be billed for the net electricity supplied by the electric company, net of any credit accumulated in the preceding 24~~12~~ months, in accordance with normal metering practices.

(3) If, at the end of a billing period, the electricity generated by a net metering system exceeds the electricity supplied by the electric company, the electric company shall calculate a bill credit to the customer pursuant to the billing procedures set forth in Section 5.105.

(4) Any accumulated bill credit shall be used within 24~~12~~ months from the month it is earned, or it shall revert to the electric company without any compensation to the net metering system customer.

(5) For net metering systems using time-of-day, demand, or other types of metering, the customer shall install a production meter at their own expense. All kWh produced by the net metering system during the applicable billing period shall be credited to the customer's account at the blended residential retail rate.

Commented [C311]: Alternative:
Grandfathering of Net Metering Customers. Customers who commissioned their net metering systems using photovoltaic technology prior to January 1, 2017 shall continue to receive the solar adder authorized by 30 V.S.A. § 219a(h)(1)(k) for the remainder of the ten-year term that commenced on the date their systems were commissioned. Beginning on January 1, 2017, all net metering customers shall be entitled to take service pursuant to the terms of the electric company's approved net metering tariff on file with the Board at the time the net metering system is commissioned for a period of 10 years. After such 10-year period runs, customers shall take service pursuant to the electric company tariff on file with the Board at that time, but the rate for all energy production shall not be less than the electric company's residential retail rate, or blended rate for companies with inclining block or time-of-use residential rates.

Commented [C312]: This language ensures that special fees for net metering customers, which are now prohibited by law (§ 219a(b) & Rule 5.103), do not eat away at the credits that motivate customers to net meter and form the basis for net metering system financing.

A~~The calculation of a~~ny ~~credits for excess generation,~~ siting incentive credits~~,~~ or tradeable renewable energy credits under Section 5.105 shall be calculated on all kWh produced by the net metering system during the applicable billing period~~made by netting the customer's production and consumption during the applicable billing period, and, in the case of credits for excess generation, using the residential retail rate.~~

Commented [C313]: Suggest moving this to the next section since the next section deals with other forms of net metering credits.

5.105 Billing Standards and Procedures

(A) Customer Billing Requirements. The bill of a net metering customer shall include the dollar amount of any credits carried forward from the previous months, the dollar amount of credits that have expired in the current month, the dollar amount of credits generated in the current month, the dollar amount of credits remaining, the total kWh generated by the net metering system (if separately metered), and the total kWh allocated to a group net metering customer (if applicable).

(B) Membership in Multiple Net Metering Groups. Individual customer accounts may be enrolled in only one net metering group at one time. Customers with multiple accounts may enroll each account in a separate net metering group. In addition, more than one net metering system may be attributed to one group. A net metering group may increase the capacity of existing generation attributed to the group, and may merge with other groups.

Commented [C314]: Excellent provision that improves existing rule.

(C) Group Member Allocations. Where the customer has, at their own expense, provided a separate meter for measuring production, the kWh produced by a net metering system may be allocated on a percentage basis to the accounts of a single customer or the accounts of group members, or the kWh may be allocated in order of priority for offsetting the bills of accounts belonging to a single customer or the accounts of members of a group. Each customer is credited at the utility's blended residential rate. Where there is no separate production meter, the excess generation may be allocated in order of priority for offsetting the bills of

Commented [C315]: Necessary to clarify the rate at which the customer will receive credits.

accounts belonging to a single customer or the accounts of members of a group and credited at the utility's blended residential rate.

(D) Siting Incentive Credits. A net metering customer shall receive a siting incentive credit of $.02 for each kWh ~~of excess generation~~ produced by the net metering system if that system is ~~sited~~:

(1) ~~On a~~A Category I Net Metering System ~~new or existing structure that has a primary purpose other than the generation of electricity~~;

(2) Sited on ~~On~~ a brownfield. For purposes of this subsection, "brownfield" means real property, the expansion, redevelopment, or reuse of which may be complicated by the release or threatened release of a hazardous material. Applicants seeking to receive this credit must file as part of their application for authorization to construct the net metering system a letter from the Agency of Natural Resources confirming that the net metering system is located on a brownfield;

(3) On a sanitary landfill, as defined in 10 V.S.A. §6602;

(4) Over a parking lot; or

(5) In the disturbed portion of a gravel pit.

(E) Tradeable Renewable Energy Credits. All tradeable renewable energy credits shall be transferred to the electric company unless the customer elects to retain ownership of such credits. An applicant must make this election at the time an application for authorization to construct the net metering system is filed with the Board.

(F) Credits for Excess Generation. In addition to other incentive credits available under this Rule, ~~W~~where the electricity generated by a customer's net metering system exceeds the electricity supplied by the electric company, the electric company shall calculate a bill credit equal to the ~~customer's applicable~~utility's blended residential retail rate.

~~(F)~~(G) ~~Credits~~Incentive for Tradeable Renewable Energy Credits. If the customer

Commented [C316]: The incentive to site on a brownfield should apply to all kWh both as a policy matter to discourage installing systems for the purpose of generating excess energy and to offset the additional costs to develop these sites as a result of legal, environmental, insurance, and regulatory needs associated with such sites.

~~gives~~transfers to ~~-~~the electric company ownership of~~s~~ renewable energy credits generated by a net metering system, the customer shall receive a credit equal to ~~the customer's applicable retail rate plus~~ $.03 per kWh produced by the net metering system during the applicable billing period ~~of excess generation~~. ~~If the customer retains ownership of the tradeable renewable energy credits, the customer shall receive a credit equal to the retail rate per kWh of excess generation.~~

Commented [C317]: Changes to clarify that all kWh of production are entitled to REC credit if the utility gets the RECs. Reflects the fact that all Kwh of production, not just excess, have REC value.

5.106 Group System Requirements

(A) In addition to any other requirements, 30 V.S.A. §§ 248, 8010, and any applicable Board rules, before a group system may be ~~formed~~ commissioned and served by an electric company, the group shall file the following information with the electric company:

(1) The meters to be included in the group system~~, which~~ shall be located within the same electric company service territory ~~and located no more than 10 miles from the net metering system~~;

(2) A process for adding and removing meters in the group and an allocation that shall be used by the electric company to allocate any credits among the members of the group. This allocation arrangement may be changed only on written notice to the electric company by the person designated under 5.106(A)(3), and any such change may only apply on a prospective basis;

(3) The name and contact information for a designated person who shall be responsible for all communications from the group system to the serving electric company, except for communications related to billing, payment, and disconnection; and

(4) A binding process for resolving any disputes among the members of a group relating to the net metering system. This dispute resolution process shall not in any way require the involvement of the electric company, the Board, or the

Department. This process does not apply to disputes between the electric company and individual group members regarding billing, payment, or disconnection.

(B) The electric company shall implement appropriate changes to a net metering group within 30 days after receiving written notification of such changes from the person designated under subsection 5.106(A)(3). Written notification of a change in the person designated under subsection 5.106(A)(3) shall be effective upon receipt by the electric company. The electric company shall not be liable for the consequences from action based on such notification.

(C) For each group member's customer account, the electric company shall bill that group member directly and send directly to that group member all communications related to billing, payment, and disconnection of that group member's customer account. Any volumetric charges for any account so billed shall be based on the individual meter for the account.

5.107 Electric Company Requirements

(A) Generally. Electric companies:

(1) Unless ordered by the Board pursuant to Section (D), below, shall make net metering available to any customer ~~using a net metering system or group net metering system on a first-come, first-served basis until the cumulative output capacity of net metering systems equals [intentionally blank] percent of the distribution company's peak demand during 1996, or the peak demand during the most recent full calendar year, whichever is greater~~;

(2) Shall allow net metering systems to be interconnected using a kWh meter capable of registering the flow of electricity in two directions or such other meter of comparable functionality that would otherwise be applicable to the customer's usage but for the use of net metering;

(3) May, with the written consent of the customer and at the customer's

expense, install one or more additional meters to monitor the flow of electricity in each direction;

(4) Shall not apply any bill credits toward the customer's energy efficiency charge or energy assistance program fee;

(5) May charge Category II and III Net Metering Systems a reasonable fee for interconnection, establishment, special meter reading, accounting, account correction, and account maintenance for a net metering system;

~~(6) May require a customer charge or other charges to capture the fixed costs necessary to support the electric company's infrastructure and the administrative costs associated with net metering. The electric company may choose whether a customer may apply any earned bill credits toward these charges;~~

(7) May, prior to interconnection, charge net metering systems with a capacity greater than 15 kW, a reasonable fee to cover 50% the cost of electric company distribution system improvements necessary to safely and reliably serve the net metering customer;

(8) May require that all meters included within a group system be read on the same billing cycle.

(B) Tariff. All such requirements shall be governed by and administered pursuant to a tariff approved by the Board and any applicable Board rule or order.

(C) Contracts. Notwithstanding the provisions of Section 5.104, an electric company may contract to purchase all or a portion of the output products from a net metering system pursuant to the provisions of Rule 4.100.

(D) ~~Altering the~~ Net Metering ~~Cap~~Program ~~Progress~~ Milestones. After ~~After~~ reaching net metering generation equal to 7 percent of ~~the [intentionally blank] percent cap under Section (A) above,~~ an electric company's annual kWh sales for a consecutive 12-month period, an electric company shall file a written notice of the milestone with the Board. Thereafter, upon due notice to the electric company,

Commented [C318]: Changes protect small residential customers from fees that that would defeat the benefit of installing the systems and recognize that small systems under 15 kW generally do not require system improvements.

Splitting cost of system improvements recognizes that improvements benefit all ratepayers.

affected customers, and the Department of Public Service, the Board may order the company to modify its tariff in a manner that ensures that each electric customer has the opportunity to net meter if the customer so chooses. Neither achieving the milestone nor filing the notice ~~of it~~ required by this Rule ~~with the Board~~ excuses the electric company from ~~'s obligation to continue~~ accept~~ing~~ing ~~net metering applications~~ applications under this Rule ~~and~~ or the company's approved tariff.

Commented [C319]: A more detailed proposal to follow up on the general proposal in REV's comments of July 10, 2015. Rather than cap, a trigger for review that is based on energy production, not capacity, is appropriate.

~~t continue to accept net metering systems of 15 kW or less unless otherwise ordered by the Board. For net metering systems greater than 15 kW, the Board may alter the~~ and the ~~[intentionally blank] percent cap~~net metering Rule on its own motion or on petition from an electric company or the Department of Public Service, after an opportunity for hearing. In determining whether to order a modification to an electric company's tariff in accordance with this Rule, ~~alter the~~ Rule ~~to slow or speed up deployment~~cap, the Board shall consider the following:

(1) the costs and benefits of net metering systems already connected to the system;

(2) the potential costs and benefits of proceeding with deployment of net metering systems~~exceeding the cap~~, including potential short- and long-term impacts on rates, distribution system costs and benefits, reliability, and diversification costs and benefits;

(3) the economic impact of the development, financing, future energy price and source risk-mitigation, and installation of net metering systems; and

(4~~3~~) the environmental benefits and costs of altering deployment~~the cap~~.

5.108 Conditional Waiver of 30 V.S.A § 248(b) Criteria

Pursuant to 30 V.S.A. § 8010, which provides that the Board may waive the requirements of 30 V.S.A. § 248(b) that are not applicable to net metering systems, the Board conditionally

waives the following criteria:

(A) For ~~net metering systems that are installed on or in a new or existing structure that has a primary purpose other than the generation of electricity~~Category I Net Metering Systems, all criteria under 30 V.S.A. § 248(b), with the exception of 30 V.S.A. § 248(b)(3) (stability and reliability).

(B) For all other net metering systems: 30 V.S.A. § 248(b)(2) (need), (4) (economic benefit), (5) (greenhouse gases, air and water pollution, water conservation, water sufficiency and water supply, transportation, educational services, municipal services, and public investments), (6) (consistency with least-cost plan); (7) (compliance with energy plan); ~~and~~ (9) (waste-to-energy facility); and ~~,~~(10) (transmission facilities).

Commented [C320]: The edits to this section are intended to make the waiver consistent with the current rule that experience has shown has worked. The current rule and waiver of § 248(b) criteria went into effect on January 1, 2014 after workshops, public comments, and vetting at the Legislative Committee on Administrative Rules. Unless there has been a convincing showing that most net metering projects since 1/1/2014 were so impactful as to trigger review of the conditionally waived criteria, there's no good rationale for changing the list of criteria that are conditionally waived for Category II and III systems.

5.109 Aesthetic Evaluation of Net-Metered Projects

(A) Quechee Test. In determining whether a net metering system satisfies the aesthetics criterion contained in 30 V.S.A. § 248(b)(5), the Board applies the so-called "Quechee test" as described in the case *In Re Halnon*, 174 Vt. 515 (2002) (mem.), quoted below:

> Under this test a determination must first be made as to whether a project will have an adverse impact on aesthetics and the scenic and natural beauty of an area because it would not be in harmony with its surroundings. If the answer is in the affirmative the inquiry then advances to the second prong to determine if the adverse impact would be "undue." Under the second prong an adverse impact is undue if any one of three questions is answered in the affirmative: 1) Does the project violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area? 2) Does the project offend the sensibilities of the average person? 3) Have the applicants failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings? An affirmative answer to any one of the three inquiries under the second prong of the Quechee test means the project would have an undue adverse impact. Analysis of whether a particular project will have an "undue" adverse effect on aesthetics and scenic or natural beauty is also significantly informed by the overall societal benefits of the project.

Commented [C321]: This language comes from *In re: Northwest Vt. Reliability Project*, Docket No. 6860, Order of 11/28/05 at 79-80 and is in the current rule. There is no good rationale for removing it.

(B) Screening. An applicant seeking authorization to construct a ground-mounted solar net metering system with a capacity of more than 99 kW shall, when applying the second prong of the Quechee test, evaluate whether screening is appropriate as a generally available mitigating step that a reasonable person would take to improve the harmony of the proposed project with its surroundings ~~include in any application a proposal for aesthetic mitigation that may include screening to harmonize the facility with its surroundings.~~ Screening includes new and existing landscaping, vegetation, fencing, structures, and topographic features. Screening does not have to hide a net metering system completely from view. An applicant may rely upon existing features that provide screening but are outside the applicant's ownership or control ~~in order to satisfy the requirements of this subsection.~~

(C) Setbacks. Applicants seeking authorization to construct a ground-mounted net metering system shall comply with the following minimum setback requirements:

(1) From a state or municipal highway, measured from the edge of the traveled way:

(a) 100 feet for a solar facility with a plant capacity exceeding 150 kW; and

(b) 40 feet for a solar facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(2) From each non-host property boundary that is not a state or municipal highway:

(a) 50 feet for a solar facility with a plant capacity exceeding 150 kW; and

(b) 25 feet for a solar facility with a plant capacity less than or equal to 150 kW but greater than 15 kW.

(3) This subsection does not require a setback for a solar facility with a plant capacity equal to or less than 15 kW.

Commented [C322]: This is more stringent than the Quechee test, which (for the third prong of the undue adversity test) asks whether the applicant has "failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings." *In Re Halnon*, 174 Vt. 515 (2002). The addition of this new section is unnecessary, and will create confusion. Mitigation is considered in the *Quechee* test already articulated in 5.109(A) of the draft rule. Mitigation can be in the context of screening, but also through measures such as setbacks, specific infrastructure placement, colors used, etc. Some locations cannot be screened and not all mitigation will harmonize a project with its surroundings. The law requires only that generally available mitigation that a reasonable person would use be employed. The courts have held that: "a generally available mitigating step is one that is reasonably feasible and does not frustrate the project's purpose or [legislative] goals." *In re Stokes Communications Corp.*, 164 Vt. 30, 39, 664 A.2d 712 (1995) (emphasis added). This issue is under review at the Vermont Supreme Court in the groSolar Cold River Project appeal. There, the Board concluded that the imposition of setbacks proposed by the town of Rutland would frustrate the project's purpose because there would not be sufficient developable space left on the site to develop the full project. The developer should retain the flexibility to employ mitigation under 248 using this broader standard, which is consistent with the Act 250 standard applied to other commercial development.

Commented [C323]: This provision is necessary to put to rest claims that existing features that offer screening for a proposed net metering system but that are outside the Applicant's control, like hedgerows, buildings, fencing, tree stands/forests that the Applicant does not own, lease or control through an easement, have to remain in place throughout the life of the project. It follows naturally from the prior sentence that clarifies that it is not necessary to hide net metering systems from view.

Commented [C324]: Suggest that this provision be taken out altogether since the Quechee test is sufficient as-is (and for the reasons articulated in the following comment), but have proposed alternative language in case the Board ultimately decides to include a screening provision.

(4) In the case of a net metered wind turbine, the facility shall be set back from all non-host property boundaries and public rights-of-way by a distance equal to at least twice the height of the turbine, as measured from the tip of the blade.

(5) On review of an application, the Board may either require a larger setback than this subsection requires; or approve an agreement to a smaller setback among the applicant, the municipal legislative body, and each owner of property adjoining the smaller setback.

~~(D) Lot Coverage. Solar net metering systems shall be subject to the following lot coverage limitations: 30% in rural, residential, and agricultural zones and 75% in industrial and commercial zones. The Board may approve a net metering system that does not conform with this requirement for good cause shown by the applicant or where the host municipality has consented to the nonconforming net metering system.~~

Commented [C325]: This provision will increase land acquisition costs with no discernable customer or public benefits.

(E) Adverse Aesthetic Impact. In order to determine that a project would have an adverse impact on aesthetics and the scenic and natural beauty under subsection (A), above, the Board must find that a project would be out of character with its surroundings. Specific factors used in making this evaluation include the nature of the project's surroundings, the compatibility of the project's design with those surroundings, the suitability of the project's colors and materials with the immediate environment, the visibility of the project, and the impact of the project on open space.

(F) Wind Turbines. With respect to the Board's review of an application for a single wind turbine under 150 feet in height, there shall be a rebuttable presumption that the wind turbine does not have an undue adverse aesthetic impact.

5.110 Computation of Time

(A) Computation. In computing any period of time prescribed or allowed by this rule,

by order of the Board, or by any applicable statute, the day from which the designated period of time begins to run shall not be counted. The last day of the period shall be counted, unless it is a Saturday, a Sunday, or a state or federal legal holiday, or a day on which weather or other conditions have made the Board's office or the Board's electronic filing system is unavailable, in which event the period runs until the end of the next day that is not one of the aforementioned days. Intermediate Saturdays, Sundays, and legal holidays shall not be counted when the period of time prescribed or allowed is less than 11 days.

(B) Enlargement. The Board for cause shown may at any time in its discretion:

(1) grant an extension of time if it is requested before the expiration of the period originally prescribed, or

(2) upon request made after the expiration of the specified period grant an extension where the failure to act was the result of excusable neglect.

5.111 Certificates of Public Good

(A) No person shall commence site preparation for or construction of a net metering system or convert an existing plant into a net metering system without first obtaining a CPG under this rule.

(B) Procedures Applicable to the Review of Net Metering Applications. The following provisions of Board Rule 2.200 (Procedures Generally Applicable) shall not apply to the review of a net metering application or a hearing thereon: Board Rules 2.202, 2.204(D)-(G), 2.205, 2.213, 2.214, 2.216(A)-(C).

A hearing held under Section 5.111 shall be conducted pursuant to the provisions of 3 V.S.A §§ 809 and 810. The hearing shall include an opportunity for all parties to present evidence and argument on all issues involved. Parties may present live testimony during the hearing and may present such exhibits as are relevant and helpful to the Board in understanding that party's position.

Parties are strongly encouraged to prefile testimony or exhibits in writing at least 48 hours prior to the hearing, and to provide copies of such filings to the applicant and other parties. The hearing shall be transcribed and a transcript shall be made available to the public by the Board.

(C) Registration of Category I Net Metering Systems.

(1) Form and Content. A net metering system under this subsection shall be registered with the Board in accordance with the filing procedures and registration form prescribed by the Board and shall contain all of the information required by the instructions for completing that form.

(2) Timeframes. Unless a letter raising interconnection issues is timely filed with the Board by the interconnecting utility, a CPG shall be deemed issued by the Board without further proceedings, findings of fact, or conclusions of law, and the applicant may commence construction of the system according to the following timeframes:

(a) in the case of a Category I net metering system with a capacity of less than 100 kW, the eleventh business day following the filing of the form; and

(b) in the case of a Category I net metering system with a capacity of 100 kW or more, the thirty-first day following the filing of the form.

(3) Service. Upon filing the net metering registration form with the Board, the applicant must also cause a copy of the form to be sent to the serving electric company and the Department via the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules or practice, in which case service shall be made by certified mail. The applicant shall ensure that the form is complete and includes all required information.

(4) Incomplete Registration Forms. If the form is found to be incomplete, the Clerk of the Board will inform the applicant of the deficiencies within five business days, and the applicant will be required to resubmit a complete form. ~~A registration form that has been submitted to the Board shall not be deemed to be~~

Commented [C326]: A time frame is necessary for staff review for completeness if there is no automated process that prevents incomplete applications from being submitted.

~~filed until that form has been determined to be complete.~~

(5) Interconnection. If the interconnecting electric company believes that the interconnection of the net metering system raises concerns, the electric company must convey these concerns in writing to the applicant and the Board within ten days of receiving a complete form, except that in the case of Category I net metering systems with capacities of greater than 100 kW, the electric company shall have 30 days to make this filing with the Board. The electric company's filing must include a recommendation as to how the interconnection issues could be resolved by the applicant. The company must also convey a copy of the letter to the installer of the system named on the form. If an objection to the interconnection has been timely filed by the interconnecting electric company, the applicant shall not commence construction of the project until the interconnection issues have been resolved.

(D) Applications for Category II Net Metering Systems.

(1) Pre-Application Information Session and Consultation. Prior to filing an application under this subsection, the applicant shall conduct a public information session in the town where the net metering system would be located. Notice of the time, date, and location of the session shall be provided to the municipal legislative body and planning commission and to all adjoining landowners no less than fifteen days before the public information session. The notice shall also state that the applicant intends to file a Section 8010 application, identify the location of the project site, and provide a description of the proposed project that contains sufficient detail about the proposed project to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Board's jurisdiction to address.

~~As part of the public information session, the applicant shall solicit~~

Commented [C327]: The deleted sentence makes the timelines in (2) above illusory without a complementary provision that requires the Board to issue a completeness determination. However, adding that step to assure the (2) timelines is unnecessary. Instead, we can achieve the same result by including a timeframe for notice of *incomplete* registrations as suggested in the previous comment. By adding a timeframe for notice of incomplete registrations, we prevent incomplete registrations from moving ahead through the process, but allow complete registrations to move forward without need for further Board action.

Commented [C328]: Does this tie in with the proposed revisions to the interconnection rules?

~~recommendations regarding the siting of the net metering system.~~

(2) Form and Content. An application for a CPG under this subsection shall be filed with the Board in accordance with the Board's current filing procedures, using the application form prescribed by the Board, and shall contain all of the information required by the instructions for that form.

(3) Service of Applications. The applicant shall provide by certified mail copies of the completed application form to the following persons and organizations:

(a) all adjoining landowners; and

(b) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located.

The applicant shall cause a copy of the completed application form to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail:

(a) the Department of Public Service;

(b) the Agency of Natural Resources;

(c) the Division for Historic Preservation; and

(d) the electric company.

With permission of the intended recipient, the applicant may serve a copy of the completed application form via electronic mail. ~~All certified mail shall be postmarked on the same day the application is deemed complete by the Board.~~ The Board shall liberally grant extensions of time for the above-listed entities to file comments when the applicant fails to cause timely service of the application.

(4) Incomplete Application Forms. If the form is found to be incomplete, the Clerk of the Board will inform the applicant of the deficiencies within 7 business days of submission, and the applicant will be given an opportunity to cure the deficiency. An application form that has been submitted to the Board shall not be deemed to be filed until that form has been determined to be complete. If a

Commented [C329]: This is both too prescriptive and too broad. It will invite recommendations to site a net metering system on property not owned or controlled by the customer or the applicant or that cannot be developed for other reasons (e.g. presence of significant wetlands). The public information session should be an opportunity for the applicant to answer questions and get feedback on the proposed project plans just like any other development proposed for private property.

Commented [C330]: This requirement increases the cost of applications. Regular rules of service should apply, including personal service or service by first class mail.

Commented [C331]: This is not practical. It assumes that the Board will issue a completeness determination that the applicant will receive on a day that the post office is open and in sufficient time before closing for the applicant to get to the post office to mail the copies via certified mail the same day.

deficiency is material to the Board's review under the applicable Section 248 criteria, then the applicant shall be required to serve a complete application on all recipients entitled to notice of the application.

(5) Submission of Comments. All comments concerning an application must be filed with the Board, with a copy to the applicant, within 30 days from the date the application was deemed complete. The applicant shall file a response to all timely filed comments within 21~~15~~ calendar days of the close of the 30-day comment period.

(6) ~~Requests for~~ Hearings. A request for a hearing must be filed within 30 days from the date the application was deemed complete. The request shall raise a significant issue with regard to the applicable substantive criterion and be accompanied by affidavits.~~identify the issues to be resolved through the hearing.~~ Unless the request is made by the Department of Public Service, the Agency of Natural Resources, or the applicant, a request for a hearing must be accompanied by a motion to intervene made pursuant to Board Rule 5.116. -

~~(7) Hearings. In cases where a hearing is requested by a party, the Board shall convene a hearing prior to issuing a final decision on the application.~~ Unless the Board determines otherwise, the scope of any such hearing shall by limited to the issues that were described in the hearing request. To participate in a hearing, a participant must be a party to the proceeding.

(8) Approval. In cases where there are no objections or requests for hearing and the Board determines that the application does not raise a significant issue, the Board will issue a certificate of public good without further proceedings, findings of fact, or conclusions of law, within ten business days following the 30-day comment period.

(E) Applications for Category III Net Metering Systems.

(1) Notice Requirements. The applicant must provide written notice by certified mail, at least 45 days in advance of filing a Section 8010 application, to the

Commented [C332]: The standard for a hearing on net metering applications should be the same as the standard for projects that qualify for summary procedures under Section 248(j). The bar is not high, but it is sufficiently rigorous to prevent the waste of scarce administrative resources. If the Board were to adopt a hearing process similar to the Vermont Supreme Court's rocket docket where decisions were issued the day after the hearing, then a low bar would not present the same burden on the agencies and the Board that the present proposal imposes.

Requiring an affidavit to support a claim that a net metering installation raises a significant issue under the review criteria is not a significant burden on the party making the assertion and ensures that the party is proceeding in good faith based on facts that warrant more development through a hearing and is not using the claim to delay a decision or increase costs for the applicant.

Commented [C333]: See comment above.

Commented [C334]: A predictable schedule for issuing orders in uncontested cases will benefit all involved in the process. This timeline is achievable with an established process and automation.

following entities:

(a) the municipal legislative bodies and municipal and regional planning commissions in the communities where the project will be located; and

(b) all adjoining landowners.

The applicant shall cause a copy of the completed application form to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail:

(a) the Department of Public Service;

(b) the Agency of Natural Resources;

(c) the Division for Historic Preservation; and

(d) the electric company.

With permission from the intended recipient, any applicant may serve a copy of the notice via electronic mail. The notice shall state that the applicant intends to file a Section 8010 application and will hold a public informational session as described in (E)(2) below, identify the location of the project site, and provide a description of the proposed project that contains sufficient detail about the proposed project to afford the recipient reasonable notice of the nature of the project so that the recipient is able to make an informed judgment as to any potential impact the construction or operation of the project may have on any interest of the recipient that is within the Board's jurisdiction to address. The notice shall provide contact information and state that the recipient may file inquiries or comments with the applicant about the project and that the recipient will also have an opportunity to file comments with the Board once the application is filed. If, within 180 days of the date of the advance notice, the applicant has not filed a complete application for the project that fully complies with the filing requirements of this rule, the notice shall be treated as withdrawn without further action required by the Board.

Commented [C335]: This was included to ensure that the notice of the session required in the next subsection is included in the list of notice contents. A bit of boots and suspenders, but helpful for customers and developers who want to limit legal costs and issue the 45-day notice themselves.

(2) Pre-Application Information Session and Consultation. Prior to filing the application, the Applicant shall conduct a public information session in the town where the net metering system would be located. Notice of the time, date, and location of the session shall be included in the applicant's 45-day advance notice under (1), above. ~~As part of the public information session, the applicant shall solicit recommendations regarding the siting of the net metering system.~~

(3) Service of Applications. Upon filing an application with the Board, the applicant shall provide by certified mail copies of the completed application to the municipal legislative bodies and the municipal and regional planning commissions where the net metering system will be located. In addition, the applicant shall provide notice by certified mail to all adjoining landowners that the application has been filed with the Board.

The applicant shall cause a copy of the completed application to be transmitted to the following entities using the Board's electronic filing system, unless the applicant is making a paper filing in accordance with the Board's rules, in which case service shall be by certified mail:

(a) the Agency of Natural Resources;

(b) the Department of Public Service;

(c) the Division for Historic Preservation; and

(d) the electric company.

~~All certified mail shall be postmarked on the same day the application is deemed complete by the Board.~~ With permission from the intended recipient, any applicant may serve a copy of the completed application form via electronic mail, in which case the date the electronic mail is sent shall be the same date the application is filed with the Board. The Board shall liberally grant extensions of time for the above-listed entities to file comments where the applicant fails to cause timely service of the application.

(4) Filing Requirements. Category III applications shall contain the following

Commented [C336]: For clarity that it is before the filing and not before the prefiling notice.

Commented [C337]: This is both too prescriptive and too broad. It will invite recommendations to site a net metering system on property not owned or controlled by the customer or the applicant or that cannot be developed for other reasons (e.g. presence of significant wetlands). The public information session should be an opportunity for the applicant to answer questions and get feedback on the proposed project plans just like any other development proposed for private property.

Commented [C338]: See comments above on same provision for Category II systems.

information. Failure to provide any required information will result in the application being deemed incomplete:

(a) Applicant name. The application shall include the name, contact information, business registration number (if applicable), and a description of the entity~~company~~ or person making the application. For example:

ABC Solar, LLC, a Vermont Corporation
Headquarters at 123 Maple Lane, Anytown VT 05600
Service Agent: Jane Doe, Esq.
VT Business ID#: 12345

(b) Host ~~customer~~. The application shall include the name and address of the Host landowner ~~customer on whose~~ premises where the proposed net metering system would be built.

(c) Adjoining landowners. The application shall include the names and addresses of all adjoining landowners. This information shall be obtained from the most recent version of the town's grand list. The applicant may update the mailing address for an adjoining landowner in cases where the grand list mailing address is known to be out of date.

Commented [C339]: This provision helps to ensure that the notices will get to the intended recipients because grand lists often contain errors or outdated information that has not been added to the most recently certified grand list.

(d) Certification that notice requirements have been met. The applicant shall certify that it has complied with the advance notice requirements listed above.

(e) Site plans. The applicant shall provide a site plan for each project. A site plan shall include:

(i) Proposed facility locations and any incidental project features;

(ii) Approximate property boundaries and setback distances from those boundaries ~~to the nearest corners of each related structure~~, approximate distances to the closest~~any nearby~~ residence~~s~~, and dimensions of all ~~proposed~~ primary improvements;

(iii) Proposed utilities, including approximate distance from

source of power, sizes of service available and required, and approximate locations of any proposed utility or communication lines;

(iv) A description of any areas where vegetation is to be cleared or ~~altered~~ cut and a description of any proposed direct or indirect alterations to or impact on wetlands or other natural resources protected under 30 V.S.A. § 248(b)(5), including the limits of earth disturbance and the total acreage of any disturbed area;

Commented [C340]: Not a term typically used to describe site preparation. "Cleared" or "cut" are clearer, more commonly used terms. The addition of landscaping is covered in (vi) below.

(v) Detailed plans for any drainage of surface and/or sub-surface water and plans to control erosion and sedimentation both during construction and as a permanent measure;

(vi) Locations and specific descriptions of proposed screening, landscaping, groundcover, fencing, exterior lighting, and signs;

(vii) Plans of any proposed access driveway, roadway, or parking area at the project site, including grading, drainage, and traveled width, as well as~~s well as a cross-section of the access drive~~ indicating the ~~width,~~ depth of gravel, paving, or surface materials; and

(viii) The latitude and longitude coordinates for each proposed project.

(f) Elevation drawings

(i) For each proposed structure, the applicant shall provide elevation drawings for structures higher than 30 feet.

(ii) The elevation drawings shall be to appropriate scales but no smaller than 1"/3~~2~~0'.

Commented [C341]: Typical elevation drawings are at a 1"/30' scale. A 1"/20' scale is not workable and should be checked with a civil engineer and against the drawings that are currently being filed.

(iii) The applicant shall include two elevation drawings of the proposed structures drawn at right angles to each other, showing the ground profile to at least 100 feet beyond the edge of any proposed clearing, and showing any guy wires or supports. The elevation drawing shall show height of the structure above grade at the base, and describe the

Commented [C342]: This is not always feasible, i.e. if clearing goes to the property line such that 100 feet out would be on a neighboring property to which the developer does not have access.

proposed finish of the structure.

(iv) The elevation drawing shall indicate the relative height of the facility to the tops of surrounding trees as they presently exist.

(v) Each plan sheet shall be clearly labeled with the project title, date, revision date(s), scale, and name of the person or firm that prepared the plan.

(g) Testimony, exhibits, proposed findings, and proposed CPG . The applicant shall address each of the applicable Section 248 criteria through testimony ~~and~~ or exhibits. To the extent that the proposal will result in an adverse impact affecting any of these criteria, the applicant shall describe what measures, if any, will be taken to minimize any such impact.

All exhibits shall be sponsored by a witness. Any witness sponsoring an exhibit or testimony must file a notarized affidavit stating that the witness has personal knowledge to be able to testify as to the validity of the information contained in the exhibit or testimony and that the information provided is accurate to the best of the witness's knowledge. ~~All exhibits shall be sponsored by a witness. The 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.~~ The applicant shall file proposed findings of fact and a proposed CPG with the application.

(h) Local and regional plans. The applicant shall provide copies of the ~~relevant~~ sections discussing land conservation measures in ~~of~~ the Town Plans and Regional Plans in effect in the communities in which the proposed facilities will be located. The applica~~t~~tion shall include ~~testimony~~ a descriptio~~bing~~ of how the project complies with or is inconsistent with those land conservation measures ~~in those plans~~.

(i) Wetland delineation. The applicant shall provide either a wetland

Commented [C343]: Conflicts with earlier provision, 5.111(B) exempting from the prefiled testimony rule (2.213) and allowing a hearing without prefiled evidence.

An affidavit is testimony so the requirement for prefiled testimony and an affidavit in support is overkill. This requires too much duplication and paper, adding time and hard costs without advancing policy goals efficiently.

Commented [C344]: Reorganized and aligned with changes above eliminating prefiled testimony requirement.

Commented [C345]: Edits intended to clarify what sections of the plans are "relevant." They also adjust the requirement to align with the elimination of prefiled testimony while still providing the narrative the subsection requires.

delineation prepared by a qualified professional or a letter from the district wetland ecologist stating that no delineation is necessary because the net metering system will not be ~~proximate to~~located within a ~~any~~ significant wetland~~s~~ or wetland buffer.

(j) Interconnection. The applicant shall file as part of the application a letter from the electric company stating that the proposed net metering system may be safely interconnected with the company's distribution grid without having an impact on system stability or reliability. The letter shall also describe ~~all~~ improvements to the grid necessary to interconnect the net metering system.

(k) Response to recommendations of municipalities and adjoining landowners. The application shall ~~file a document~~ summariz~~e~~ing the comments and recommendations received in response to the 45-day notice and those received at the public information session, and ~~. The document~~ shall provide a narrative that responds to the issues raised in those comments and recommendations, including ~~and shall state~~ what steps the applicant has taken to address those issues or why the applicant is unable to do so.

(5) Incomplete Applications. If the application is found to be incomplete, the Clerk of the Board will inform the applicant of the deficiencies within 10 business days of submission, and the applicant will be provided an opportunity to cure the deficiency. An application that has been submitted to the Board shall not be deemed to be filed until that application has been determined to be complete. If a deficiency is material to the Board's review under the applicable Section 248 criteria, then the applicant shall be required to serve a complete application on all recipients entitled to receive notice of the application.

Commented [C346]: See comment on this for Category II projects.

(6) Submission of Comments. All comments concerning an application must be filed with the Board within 30 days from the date the application is deemed

complete.

(7) Requests for Hearing. A request for a hearing must be filed within 30 days from the date the application was deemed complete. The request shall identify the issues to be resolved through the hearing. Unless the request is made by the Department of Public Service, the Agency of Natural Resources, or the applicant, a request for a hearing must be accompanied by a motion to intervene made pursuant to Board Rule 5.116.

(8) Hearings. In cases where a hearing is requested by a party, the Board shall convene a hearing prior to issuing a final decision on the application. Unless the Board determines otherwise, the scope of any such hearing shall by limited to the issues that were described in the hearing request. To participate in a hearing, a participant must be a party to the proceeding.

Commented [C347]: See above

Commented [C348]: Please see comments on the hearing provisions for Category II projects.

5.112 Amendments to Pending Applications

(A) Minor Amendment. Applicants shall provide notice of all minor amendments to the Board, the Department of Public Service, the Agency of Natural Resources, and the electric company. The notice shall provide sufficient information so that the Board can understand the nature of the proposed change and its impact, if any, on any of the Section 248 criteria. The filing of a minor amendment shall not extend the applicable comment period for the application unless the Board determines that the proposed change constitutes a major amendment. The Board may request additional information from the Applicant regarding a proposed minor amendment at any time during the review of a net metering system.

(B) Major Amendment. Applicants seeking a major amendment shall refile the amended application in accordance with Rule 5.111, which governs the procedures for the applicable category of net metering system.

5.113 Amendments to Approved Net Metering Systems

(A) Minor Amendments. A certificate holder shall provide notice of all minor amendments to the Board, the Department of Public Service, the Agency of Natural Resources, and any party to the proceeding in which the net metering system was granted a CPG. The notice shall provide sufficient information so that the Board can understand the nature of the proposed minor amendment and its impact, if any, on any of the Section 248 criteria. ~~The certificate holder may implement the proposed minor amendments without further action by the Board unless a written objection is filed with the Board within 10 business days after the minor amendment notice. If an objection is filed by any of the entities specified in this subsection, the certificate holder shall not implement the proposed minor amendment until the objection has been withdrawn or resolved by the Board.~~

(B) Major Amendments. The procedure for obtaining authorization to implement a major amendment shall be the same as the application procedure for the category of net metering system applicable to the amended net metering system.

Commented [C349]: The definition of a minor amendment is narrow enough to allow the amendment to move forward without more process. For example, reducing the size of the generator or replacing one inverter manufacturer for another are not matters that any party could have a reasonable objection to that would warrant further review or affirmative action by the Board before the change could be made. Notice here should be for the purpose of updating the plans on file with the Board.

5.114 Transfer and Abandonment of CPGs

(A) Transfer. Where the Applicant and the owner of the property hosting a net metering system are the same, ~~A~~the CPG for ~~a~~ the 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. The new owner may continue operating the net metering system provided that:

Commented [C350]: The owner/operator of the system is the CPG holder and may not be the same person or entity as the host landowner.

(1) the new owner agrees to operate and maintain the net metering system according to all terms and conditions of the CPG and complies with this Rule 5.100; and

(2) within 30 days after acquiring ownership of the system, the new owner completes and files an official Transfer Form with the Board, the Department of Public Service, the Agency of Natural Resources, and the electric company.

(B) Abandonment. Failure to commission a net metering system within two years of ~~Non-use of a CPG for a period of two years following~~ the date the certificate is issued

shall constitute an abandonment of the net metering system, and the CPG shall be considered revoked. ~~For the purpose of this section, for a CPG to be considered used, the net metering system must be commissioned.~~ An extension of the time for using a CPG shall only be granted for good cause shown. A certificate holder may abandon a CPG at any time upon written notice thereof to the Board, the Department, the Agency of Natural Resources, and the electric company.

Commented [C351]: Edits intended to simplify the wording.

5.115 Compliance Proceedings

In response to a public complaint or on its own motion, the Board may take any or all of the following steps to ensure that a net metering system is constructed and operated in compliance with the terms and conditions of the CPG issued for that net metering system and any related Board order:

(A) Direct the certificate holder to provide the Board with an affidavit under oath or affirmation attesting that the person, company, or corporation or any facility or plant thereof is in compliance with the terms and conditions of the CPG pursuant to 30 V.S.A. 30(g);

Commented [C352]: Excellent. This provision is a low-cost regulatory tool that has heretofore been rarely used.

(B) Direct the certificate holder to provide additional information;

(C) After notice and opportunity for hearing, amend or revoke any CPG for a net metering system, impose a penalty under 30 V.S.A. § 30, or order remedial activities for any of the following causes:

(1) the CPG or order approving the CPG was issued based on material information that was false or misleading;

(2) the system was not installed, or is not being operated, in accordance with the National Electric Code or applicable interconnection standards;

(3) the net metering system was not installed or is not being operated in accordance with the plans and evidence submitted in support of the application or registration form;

(4) the holder of the CPG has failed to comply with one or more of the CPG

conditions, the order approving a CPG for the net metering system, or this rule; or

(5) other good cause as determined by the Board in its discretion.

5.116 Party Status in Net Metering Proceedings

Any person seeking to participate in a net metering proceeding as a party must file a motion to intervene either in accordance with Board Rule 2.209 or by filing a form developed by the Board for use under this rule. Any person who files a motion to intervene and is granted party status by the Board acquires all of the legal rights and obligations of a party in a Board proceeding. The filing of comments on an application and the consideration of such comments by the Board do not confer party status. Party status is conferred only upon issuance of an order from the Board granting a duly filed motion to intervene.

Commented [C353]: This is an excellent advancement. Too often proposed intervenors are given two chances to intervene because they need help understanding the information the Board is looking for in determining whether they meet the standards in the rule. By providing a form that teases the information out, the Board will make the process more fair and efficient.

5.117 Interconnection Requirements

The interconnection of all net metering systems shall be governed by Board Rule 5.500. The applicant shall bear the costs of all equipment necessary to interconnect the net metering system to the distribution grid and any distribution system upgrades necessary to ensure system stability and reliability.

Commented [C354]: This is still under consideration. To the extent that there are additional costs to implement net metering in that rule that are not reflected here, those costs are an additional reason for the proposed changes to the net metering credit provisions in this draft rule.

5.118 Disconnection of a Net-Metered System

The following procedures shall govern disconnection of a net-metering system from the electrical system. These procedures apply to net metering customers only and do not supplant Board Rules 3.300 and 3.400 relating to company disconnection in general.

(A) A customer who initiates a permanent disconnection of a net metering system shall notify the electric company. The electric company shall notify the Board and the Department of the disconnection.

(B) In the event the electric company must perform an emergency disconnection of a net metering system, the electric company must notify the customer within 24

hours after the disconnection. For the purpose of this section, the term "emergency" shall mean a situation in which continued interconnection of the net metering system is imminently likely to result in significant disruption of service or endanger life or property.

(1) If the emergency is not caused by the operation of the net metering system, the company shall reconnect the net metering system upon cessation of the emergency.

(2) If the emergency is caused by the operation of the net metering system, the electric company must communicate the nature of the problem to the customer within 5 days, and attempt to resolve the problem. If the problem has not been resolved within 30 days of an emergency disconnection, the electric company shall file a disconnection petition with the Board.

(C) Non-emergency disconnections shall follow the same procedure as emergency disconnections in subsection B above, except that the electric company shall give written notice of the disconnection no earlier than 10 days and no later than 3 working days prior to the first date on which the disconnection of the net metering system is scheduled to occur. Such notice shall communicate to the customer the reason for disconnection and the expected duration of the disconnection. With written consent from the customer, an electric company may arrange to provide the customer with notice of non-emergency disconnections on terms other than those set forth in this rule, provided that the electric company first informs the customer of the provisions of this rule and that the customer may contact the Consumer Affairs and Public Information Division of the Vermont Department of Public Service. For group systems, such consent may be obtained from the person designated under Section 5.105(B).

(D) A customer who is involuntarily disconnected may file a written complaint with the Board at any time following disconnection. The customer shall provide a copy of the complaint to the electric company and the Department. Within 30

days of the date the complaint is filed, the Board may hold a hearing to investigate the complaint. In the event of the filing of such a complaint, the electric company shall carry the burden of proof to demonstrate the reasonableness of disconnection.

5.119 Tracking of Net-Metered Systems

Each electric company with net-metered customers shall maintain current records of the cumulative capacity of net-metered generation installed within its service territory and the cumulative total kWh produced by such generation. Each electric company shall also keep current records regarding the number and capacity of installed net-metered systems and the number of disconnections of net-metered systems in its service territory.

Commented [C355]: To align with the proposed ("cap"-substitute) trigger based on energy, not capacity.

5.120 Decommissioning

Except for Category I net metering systems, all net metering systems shall be decommissioned within one year of ceasing operation. All applications for net metering systems with capacities greater than 150 kW shall demonstrate that the applicant possesses sufficient financial resources to decommission the net metering system.

Commented [C356]: Propose deleting this. Not clear why it is required. If its required, the Letter of Credit fully funding the decommissioning costs will likely be expected and this is a material expense.

Commented [C357]: This provision unfairly burdens net metering customers because the same requirement does not apply to generation systems of similar size that are not net metered. It further leaves open the question of what it means to "have sufficient financial resources." Furthermore, it is questionable that the Board has authority to require a net metering customer to disclose his or her books as federal law protects QFs from this type of financial regulation.

5.121 ~~Standard Conditions of Approval Applicable to Net Metering Systems~~Miscellaneous General Requirements

(A) ~~The following conditions of approval are hereby deemed to be incorporated into any certificate of public good for any net metering system issued or deemed issued pursuant to 30 V.S.A. § 8010. For good cause shown or on the recommendation of the Department of Public Service or the Agency of Natural Resources, the Board may alter or waive these conditions or impose additional conditions to ensure that a net metering system meets the criteria of Section 248 and will promote the general good of the state.~~

~~(1) Consistency with Plans and Evidence. The operation and maintenance of a net metering system shall be in accordance with the plans and evidence submitted to the Board and~~

Commented [C358]: It is an excellent idea to adopt some standard conditions, so long as they are justified by existing law and proven science. Because those things can and do change over time or based on particular site-specific circumstances, the standard conditions to be included in CPGs should be done outside of the Rule. Just like the net metering application form was kept outside the rule to allow the Board flexibility, the standard conditions should be dealt with via a PSB practice or general order that can be modified without resort to rulemaking procedures.

The edits here reframe this section as general requirements, so whether they are included in a CPG or not, they apply to every system unless waived by the Board under its already existing waiver authority.

~~upon which the Board relied in authorizing the issuance of the CPG for the net metering system. Any material deviation from the plans and evidence or any substantial change in the net metering system is prohibited without prior Board approval. Failure to obtain advance approval from the Board for a material deviation from the approved plans and evidence or a substantial change to the net metering system may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.~~

~~(2)~~ (1) Approvals and Permits. The certificate holder shall obtain all necessary permits and approvals prior to commencing site preparation and construction of a net metering system. The issuance of a CPG does not relieve an applicant of the duty to investigate the applicability of and to comply with all other applicable laws.

~~(3) Existing and Future Statutory Requirements. The certificate holder shall comply with applicable existing and future statutory requirements and Board rules and orders.~~

(~~4~~2) Transfers. A CPG shall only be transferred in accordance with the procedures set forth in this rule.

(~~5~~3) Waste Disposal. The certificate holder shall dispose of all waste resulting from the construction of the net metering system in accordance with all applicable Department of Environmental Conservation regulations.

~~(B) In addition to the conditions in (A), above, the following conditions of approval are hereby deemed to be incorporated into any certificate of public good for any ground-mounted net metering system issued or deemed issued pursuant to 30 V.S.A. § 8010. For good cause shown or on the recommendation of the Department of Public Service or the Agency of Natural Resources, the Board may alter or waive these conditions or impose additional conditions to ensure that a net metering system meets the criteria of Section 248 and will promote the general good of the state.~~

(~~1~~4) Hours of Construction. The construction of a net metering system shall be restricted to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays. No construction activities shall occur on

Sundays or state or federal holidays.

~~(2) Oil Containment. All pad-mounted transformers serving a net metering system must have oil containment sufficient to accommodate 110% of the volume of coolant contained in the transformer plus five inches of rain.~~

~~(3) Indiana Bat Habitat. Where the Agency of Natural Resources determines that a net metering system is located within Indiana bat habitat, except with written permission from the Agency of Natural Resources, no tree measuring 12 inches or greater in diameter as measured at breast height may be cut or trimmed except between November 1 and March 31.~~

~~(4) Deer Wintering Areas. Where the Agency of Natural Resources determines that a net metering system is located near or within a deer wintering area, except with written permission from the Agency of Natural Resources, there shall be no construction between December 15 and April 15. Winter access shall be limited to routine maintenance no more than one occurrence per month, excepting emergency activities. In the case of emergency activities, the Department of Fish and Wildlife staff shall be contacted within 24 hours of the emergency and provided with details explaining why the response was necessary and the extent of personnel and equipment involved in the response.~~

(~~2~~5) ~~Soil Erosion. The net metering system must be constructed in accordance with the *Low Risk Site Handbook for Erosion Prevention and Sediment Control* (2006), and as may be amended from time to time, or in compliance with the terms of a general or individual construction stormwater permit, if applicable.~~

~~(3) Streams. All certificate holders shall maintain a 50-foot undisturbed buffer zone from all streams, as measured from the top of the stream bank. The following activities are prohibited in the buffer zone: construction; earth-moving activities; snowplowing; storage of materials; tree, shrub, or groundcover removal; and mowing.~~

~~(7) Wetlands. Where the Agency of Natural Resources determines that a net metering system is located near or in a jurisdictional wetland, prior to commencing site~~

~~preparation or construction, a certificate holder shall submit a professionally prepared wetland delineation to the Agency of Natural Resources for review and approval or obtain a written confirmation from the Agency of Natural Resources that no delineation is required. The term "disturb" means activities that may cause or contribute to ground or vegetation disturbance or soil compaction, including but not limited to construction; driving upon; earthmoving activities; storage of materials; tree trimming or canopy removal; tree, shrub, or groundcover removal; plowing or disposal of snow; grazing; and mowing.~~

(~~4~~68) Screening. All screening installed in connection with the installation of a net metering system shall be maintained for the life of the net metering system. All dead or dying vegetation shall be replaced unless the surrounding vegetation has grown to take its place.

Commented [C359]: The addition puts boundaries on the "screening" at issue. A net metering customer should not be responsible for maintaining screening that is not part of a project or applicant's proposal, including existing vegetation outside the applicant's ownership or control.