



Vermont Law School
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March 29, 2016

Via E-mail (CBray@leg.state.vt.us)

The Honorable Christopher Bray
Chair, Senate Committee on Natural Resources and Energy
Vermont State House
115 State Street
Montpelier, VT 05633-5401

Re: Department of Public Service testimony at February 26, 2016 Senate Committee on Natural Resources and Energy meeting.

Dear Senator Bray,

Thank you for providing the Vermont Law School Energy Clinic with the opportunity to write our analysis on renewable energy credits in Vermont. We enjoyed presenting our findings to the Senate Committee on Natural Resources and Energy on February 26, 2016. The purpose of this letter is to briefly address testimony presented by the Department of Public Service at the February 26 Committee meeting.

Act 56 will NOT solve the problems associated with RECs identified in our report.

The Renewable Energy Standard (RES) established by Act 56 will not solve the problems associated with RECs in Vermont for existing resources because utilities will continue to have an incentive to sell RECs out-of-state. Two provisions in the RES create this incentive. First, unlike every other renewable portfolio standard in New England, Vermont's RES allows any class of RECs (including large hydroelectric dams) to count towards its total renewable energy (Tier 1) requirement. Second, the RES includes a low non-compliance penalty of 1 cent per kWh that utilities are allowed to pay instead of acquiring renewable energy. Since the RES does not require utilities to count premium renewables (often referred to as Class 1: solar, wind, and biomass), towards the Tier 1 requirement, the incentive (created by Act 56) is for utilities to sell Class 1 RECs out-of-state, and instead procure lower value RECs (that other states do not allow to count towards their programs) for compliance with the RES. As a result, RECs from existing large-scale solar, wind, and biomass projects will continue to be sold out-of-state. If no further changes are made to the RES, in 2032, other than resources procured for the 10 percent distributed tier, Vermont will still receive almost none of its electricity from solar, wind, and biomass.

Act 56 also fails to address issues associated with misleading and deceptive practices by Vermont utilities and other companies marketing renewable energy products. As extensively explained in our report, when a Vermont utility sells the RECs out-of-state from a utility-owned renewable energy project, the utility cannot state or imply that its customers are receiving renewable electricity from the facility. Utilities should be required to communicate accurately and transparently with the public regarding the nature of the electricity they are providing. State law should prohibit utilities from stating or implying that a renewable facility provides its customers with renewable electricity or any of the environmental attributes of that electricity if the utility sells the RECs.

RECs sold out-of-state from Vermont solar, wind, and biomass projects do not increase renewable energy deployment throughout the region because no additional renewable energy is being built beyond that mandated by other states.

The proposed Public Service Board net metering rule 5.100 will make it significantly more difficult for Vermonters to “go solar” and will create new potential for deceptive marketing.

The proposed net metering rule will discourage Vermonters from going solar by significantly reducing compensation to net metering customers who retain and retire their RECs in Vermont. The draft rule eliminates the “solar adder” and replaces it with the “REC adjuster.” Under the REC adjuster, a net metering customer who retains their RECs will have their net metering credit *reduced* by 3 cents per kWh, thereby undermining the economics of going solar. In contrast, a net metering customer who transfers their RECs to the utility will have their net metering credit *increased* by 3 cents per kWh. In total, a Vermont customer who goes solar (by retaining and retiring their RECs) will be penalized by 6 cents per kWh. No sound policy rationale exists for this new provision. A net metering customer should receive the same credit for retaining and retiring their RECs as they would if they transferred the RECs to the utility for retirement because both actions equally help Vermont meet its renewable energy and greenhouse gas reduction goals.

The REC adjuster will create confusion for both solar customers and installers. Solar customers who transfer their RECs to the utility may wrongly believe that they are consuming solar energy (when in reality they are not). Similarly, solar installers who advertise that their customers will “go solar,” will not be providing their customers with the ability to consume solar energy if the RECs are irrevocably transferred to the utility. As currently proposed, the REC adjuster will provide a significant incentive for installers to sell solar products which do not provide their customers with solar electricity, creating potential for violations of Vermont’s consumer protection statutes and federal law. Furthermore, if regulators strongly incentivize all new net metered solar to transfer RECs to the utilities, the distributed tier of the RES essentially becomes a 10 percent cap on solar developed for Vermont.

The proposed net metering rule also fails to address current problems associated with the out-of-state sale of RECs from existing solar facilities. Even though Vermonters will not be receiving renewable energy from existing facilities which sell RECs to utilities in other states, Vermont ratepayers will continue to be required to pay these facilities 19-20 cents per kWh under the proposed rule, an unjustified premium for non-renewable electricity.

Legislative action is needed in order to remedy the issues addressed in our report.

To address the problems associated with the RES and RECs in Vermont, the Legislature must: 1) require utilities to procure Class 1 RECs for compliance with Tier 1 of the RES; 2) encourage retirement of RECs from former SPEED projects and utility-owned projects; 3) allow Vermonters to retain and retire their net metering RECs without penalty; and 4) improve transparency and disclosure in Vermont's Renewable Energy Sector.

Detailed explanations of our recommended policy changes can be found in our Report. Should you have any questions, please do not hesitate to call us at (802) 831-1151 or email us at energyclinic@vermontlaw.edu.

Sincerely,

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