

RELEVANT LAW RE NET METERING RULES (16-P62)

Office of Legislative Council Feb. 21, 2017

I. *Current Net Metering Statute – 30 V.S.A. § 8010*

§ 8010. SELF-GENERATION AND NET METERING

(a) A customer may install and operate a net metering system in accordance with this section and the rules adopted under this section.

(b) A net metering customer shall pay the same rates, fees, or other payments and be subject to the same conditions and requirements as all other purchasers from the interconnecting retail electricity provider in the same rate-class, except as this section or the rules adopted under this section may provide, and except for appropriate and necessary conditions approved by the Board for the safety and reliability of the electric distribution system.

(c) In accordance with this section, the Board shall adopt and implement rules that govern the installation and operation of net metering systems.

(1) The rules shall establish and maintain a net metering program that:

(A) advances the goals and total renewables targets of this chapter and the goals of 10 V.S.A. § 578 (greenhouse gas reduction) and is consistent with the criteria of subsection 248(b) of this title;

(B) achieves a level of deployment that is consistent with the recommendations of the Electrical Energy and Comprehensive Energy Plans under sections 202 and 202b of this title, unless the Board determines that this level is inconsistent with the goals and targets identified in subdivision (1)(A) of this subsection. Under this subdivision (B), the Board shall consider the Plans most recently issued at the time the Board adopts or amends the rules;

(C) to the extent feasible, ensures that net metering does not shift costs included in each retail electricity provider's revenue requirement between net metering customers and other customers;

(D) accounts for all costs and benefits of net metering, including the potential for net metering to contribute toward relieving supply constraints in the transmission and distribution systems and to reduce consumption of fossil fuels for heating and transportation;

(E) ensures that all customers who want to participate in net metering have the opportunity to do so;

(F) balances, over time, the pace of deployment and cost of the program with the program's impact on rates;

(G) accounts for changes over time in the cost of technology; and

(H) allows a customer to retain ownership of the environmental attributes of energy generated by the customer's net metering system and of any associated tradeable renewable energy credits or to transfer those attributes and credits to the interconnecting retail provider, and:

(i) if the customer retains the attributes, reduces the value of the credit provided under this section for electricity generated by the customer's net metering system by an appropriate amount; and

(ii) if the customer transfers the attributes to the interconnecting provider, requires the provider to retain them for application toward compliance with sections 8004 and 8005 of this title.

(2) The rules shall include provisions that govern:

(A) whether there is a limit on the cumulative plant capacity of net metering systems to be installed over time and what that limit is, if any;

(B) the transfer of certificates of public good issued for net metering systems and the abandonment of net metering systems;

(C) the respective duties of retail electricity providers and net metering customers;

(D) the electrical safety, power quality, interconnection, and metering of net metering systems;

(E) the formation of group net metering systems, the resolution of disputes between group net metering customers and the interconnecting provider, and the billing, crediting, and disconnection of group net metering customers by the interconnecting provider; and

(F) the amount of the credit to be assigned to each kWh of electricity generated by a net metering customer in excess of the electricity supplied by the interconnecting provider to the customer, the manner in which the customer's credit will be applied on the customer's bill, and the period during which a net metering customer must use the credit, after which the credit shall revert to the interconnecting provider. When assigning an amount of credit under this subdivision (F), the Board shall consider making multiple lengths of time available over which a customer may take a credit and differentiating the amount according to the length of time chosen. For example, a monthly credit amount may be higher if taken over 10 years and lower if taken over 20 years. Factors relevant to this consideration shall include the customer's ability to finance the net metering system, the cost of that financing, and the net present value to all ratepayers of the net metering program.

(3) The rules shall establish standards and procedures governing application for and issuance or revocation of a certificate of public good for net metering systems under the provisions of section 248 of this title. In establishing these standards and procedures:

(A) The rules may waive the requirements of section 248 of this title that are not applicable to net metering systems, including criteria that are generally applicable to public service companies as defined in this title.

(B) The rules may modify notice and hearing requirements of this title as the Board considers appropriate.

(C) The rules shall seek to simplify the application and review process as appropriate, including simplifying the application and review process to encourage group net metering systems when the system is at least 50 percent owned by the customers who receive the bill credits for the electricity generated by the system.

(D) With respect to net metering systems that exceed 150 kW in plant capacity, the rules shall apply the so-called "Quechee" test for aesthetic impact as described by the Vermont Supreme Court in the case of *In re Halnon*, 174 Vt. 515 (2002)(mem.). The rules and application form shall state the components of this test.

(E) The rules shall not waive or include provisions that are less stringent than the requirements of subdivision 248(a)(4)(J) (required information) of this title.

(F) This subdivision (F) applies to an application for a net metering system with a capacity that is greater than 15 kilowatts, unless the system is located on a new or existing structure the primary purpose of which is not the generation of electricity. With respect to such a system, the rules shall not waive or include provisions that are less stringent than each of the following:

(i) the requirement of subdivision 248(a)(4)(C) of this title to provide a copy of the application to the Agencies of Agriculture, Food and Markets and of Natural Resources; the Department of Public Service; the Division for Historic Preservation; the municipal legislative body; and the municipal and regional planning commissions; and

(ii) the requirements of subsection 248(f)(preapplication submittal) of this title.

(4) This section does not require the Board to adopt identical requirements for the service territory of each retail electricity provider.

(5) Each retail electricity provider shall implement net metering in its service territory through a rate schedule that is consistent with this section and the rules adopted under this section and is approved by the Board.

(d) On or before January 15, 2020 and every third January 15 thereafter, the Department shall submit to the Board a report that evaluates the current state of net metering in Vermont. The Department shall make this report publicly available. The report shall:

(1) analyze the current pace of net metering deployment, both statewide and within the service territory of each retail electricity provider;

(2) after considering the goals and policies of this chapter, of 10 V.S.A. § 578 (greenhouse gas reduction), of section 202a (State energy policy) of this title, and of the Electrical Energy and Comprehensive Energy Plans under sections 202 and 202b of this title, recommend the future pace of net metering deployment statewide and within the service territory of each provider;

(3) analyze the existence and degree of cross-subsidy between net metering customers and other customers on a statewide and on an individual provider basis;

(4) evaluate the effect of net metering on retail electricity provider infrastructure and revenue;

(5) evaluate the benefits to net metering customers of connecting to the provider's distribution system;

(6) analyze the economic and environmental benefits of net metering, and the short- and long-term impacts on rates, both statewide and for each provider;

(7) analyze the reliability and supply diversification costs and benefits of net metering;

(8) evaluate the ownership and transfer of the environmental attributes of energy generated by net metering systems and of any associated tradeable renewable energy credits; and

(9) examine and evaluate best practices for net metering identified from other states.

(e) If a hydroelectric generation plant seeking approval as a net metering system is subject to licensing jurisdiction under the Federal Power Act, 16 U.S.C. chapter 12, subchapter 1, the Board shall require the plant to obtain such approval through means other than by application for a certificate of public good under section 248 of this title.

II. *Relevant Definitions – Excerpts from 30 V.S.A. § 8002*

§ 8002. DEFINITIONS

As used in this chapter:

* * *

(4) "Customer" means a retail electric consumer.

* * *

(7) "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 to air, water, or soil that may occur through the plant's displacement of a nonrenewable energy source.

* * *

(10) "Group net metering system" means a net metering system serving more than one customer, or a single customer with multiple electric meters, located within the service area of the same retail electricity provider. Various buildings owned by municipalities, including water and wastewater districts, fire districts, villages, school districts, and towns, may constitute a group net metering system. A union or district school facility shall be considered in the same group net metering system with buildings of its member municipalities that are located within the service area of the same retail electricity provider that serves the facility.

* * *

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

(A) using a single, non-demand meter or such other meter that would otherwise be applicable to the customer's usage but for the use of net metering; or

(B) 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.

(16) "Net metering system" means a plant for generation of electricity that:

(A) is of no more than 500 kW capacity;

(B) operates in parallel with facilities of the electric distribution system;

(C) is intended primarily to offset the customer's own electricity requirements; and

(D)(i) employs a renewable energy source; or

(ii) is a qualified micro-combined heat and power system of 20 kW or fewer that meets the definition of combined heat and power in subsection 8015(b) of this title and uses any fuel source that meets air quality standards.

* * *

(18) "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 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, contiguity in time of construction, and proximity of facilities to each other shall be relevant to determining whether a group of facilities is part of the same project.

(19) "Plant 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.

* * *

(21) "Renewable energy" means energy produced using a technology that relies on a resource that is being consumed at a harvest rate at or below its natural regeneration rate.

(A) For purposes of this subdivision (21), methane gas and other flammable gases produced by the decay of sewage treatment plant wastes or landfill wastes and anaerobic digestion of agricultural products, byproducts, or wastes, or of food wastes shall be considered renewable energy resources, but no other form of solid waste, other than silvicultural waste, shall be considered renewable.

(B) For purposes of this subdivision (21), no form of nuclear fuel shall be considered renewable.

(C) The only portion of electricity produced by a system of generating resources that shall be considered renewable is that portion generated a technology that qualifies as renewable under this subdivision (21).

(D) The Board by rule may add technologies or technology categories to the definition of "renewable energy," provided that technologies using the following fuels shall not be considered renewable energy supplies: coal, oil, propane, and natural gas.

(E) In this chapter, renewable energy refers to either "existing renewable energy" or "new renewable energy."

* * *

(23) "Retail electricity provider" or "provider" means a company engaged in the distribution or sale of electricity directly to the public.

* * *

(26) "Tradeable renewable energy credits" means all of the environmental attributes associated with a single unit of energy generated by a renewable energy source where:

(A) those attributes are transferred or recorded separately from that unit of energy;

(B) 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

(C) 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.

* * *

(29) "RES" means the Renewable Energy Standard established under sections 8004 and 8005 of this title.

III. *Bill Credit Rights of Preexisting Net Metering Systems*

From former 30 V.S.A. § 219a, repealed Jan. 1, 2017 (emphasis added)

The electric company shall calculate a monetary credit to the customer by multiplying the excess kWh generated during the billing period *by the kWh rate paid by the customer for electricity supplied by the company and shall apply the credit to any remaining charges on the customer's bill for that period.*

30 V.S.A. § 219a(e)(3)(A).

1 V.S.A. § 214 (emphasis added)

§ 214. EFFECT OF AMENDMENT OR REPEAL

* * *

(b) The amendment or repeal of an act or statutory provision, except as provided in subsection (c) of this section, shall not:

(1) affect the operation of the act or provision prior to the effective date of the amendment or repeal thereof;

(2) affect any right, privilege, obligation, or liability acquired, accrued, or incurred prior to the effective date of the amendment or repeal;

* * *

(c) If the penalty or punishment for any offense is reduced by the amendment of an act or statutory provision, the same shall be imposed in accordance with the act or provision as amended unless imposed prior to the date of the amendment.

2014 Acts and Resolves No. 99, Sec. 10(f)

30 V.S.A. § 219a and rules adopted under that section shall govern applications for net metering systems filed prior to January 1, 2017.

2015 Acts and Resolves No. 56, Sec. 28(g)

Sec. 12 (net metering systems; environmental attributes) shall amend 30 V.S.A. § 8010 as added effective January 1, 2017 . . . Sec. 12 shall not affect a net metering system for which a complete application was filed before January 1, 2017.

Supreme Court vested rights doctrine (developed in land use cases)

“[A]pplicant gains a vested right in the governing regulations in existence when a full and complete permit application is filed.” In re Paynter 2-Lot Subdivision, 2010 VT 28, ¶ 9.