c/o LEGISLATIVE COUNCIL
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Rep. Linda K. Myers
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Sen. Mark A. MacDonald, Chair
Sen. Joseph Benning
Sen. Virginia "Ginny" Lyons
Sen. Michael Sirotkin

STATE OF VERMONT
LEGISLATIVE COMMITTEE ON
ADMINISTRATIVE RULES

MEMORANDUM

To: Rep. Stephen Carr, Chair, House Committee on Energy and Technology
Sen. Ann Cummings, Chair, Senate Committee on Finance
Sen. Christopher Bray, Chair, Senate Committee on Natural Resources and Energy

From: Legislative Committee on Administrative Rules
Sen. Mark MacDonald, Chair

Date: March 16, 2017

Subject: 16-P62; Public Service Board –5.100 Rule Pertaining to Construction and Operation of Net Metering Systems

Pursuant to 3 V.S.A. § 817(e), the Legislative Committee on Administrative Rules (LCAR) writes to make the standing committees having jurisdiction aware of issues that arose during its review of the above-referenced rule. These issues include: (a) "preexisting net metering systems," meaning net metering systems for which applications were filed prior to January 1, 2017, and the authority of the Public Service Board to change the bill credit rate structure for those systems; (b) the limit in the "preferred site" definition for parking lots to paved parking lots; and (c) the adjustor related to retention or transfer of renewable energy credits. The committees may wish to consider legislation to address these issues.

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REP. MICHAEL YANTACHKA

STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

March 2, 2017

James Volz, Chair
Vermont Public Service Board
State of Vermont
112 State Street
Montpelier, VT 05620-2701

Re: Rule 16-P62 – 5.100 Rule Pertaining to Construction and Operation of Net Metering Systems

Dear Chair Volz:

This letter is to notify you formally that the Joint Legislative Committee on Administrative Rules voted on March 2, 2017 to object to Section 5.125 of the Public Service Board's (Board) final proposal 16-P62 relating to 5.100 Rule Pertaining to Construction and Operation of Net Metering Systems. The Committee determined to approve the remainder of the rule. The version of the final proposed rule to which the Committee's actions apply is the version submitted by Jake Marren, Esq, on behalf of the Board, attached to a memorandum dated February 7, 2017 and showing changes from the final proposal submitted on January 20, 2017.

Section 5.125 concerns preexisting net metering systems; that is, systems for which applications were filed before January 1, 2017. Under this section, 10 years after installation, each such system would see a change in the rate structure for bill credits and be unable to apply its credits to all charges on the bill. These systems would become subject to the bill credit rates and non-bypassable charges applicable to net metering systems for which applications were or are filed on or after January 1, 2017, including receiving the lowest one of three bill credit rates: the utility's general residential service rate; a blend of the utility's block rates, if it has block rates; or a statewide average rate calculated by the Board. See Rules 5.103, 5.125, 5.127.

The Committee objects to Rule 5.125 pursuant to 3 V.S.A. § 842(a) as beyond the authority of the Board and contrary to legislative intent. The statute under which these customers received approval for their net metering systems, 30 V.S.A. § 219a, provided these systems with the right to bill credits at the retail rate and to apply the credits to any part of the bill. There was no authority for the Board to vary, from the statutory requirements, the bill credit rate or the application of bill credits to charges on the bill. There was no authority for the Board to set a time limit on the availability of those benefits. The statute stated:

> 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*

Under 3 V.S.A § 842(a), the Vermont Public Service Board must respond within 14 days of receiving this notice. After receipt of a response, the Committee may reschedule the rule and determine whether to withdraw or modify its objection. You should also note that the Vermont Public Service Board may not adopt the rule until it has responded to this objection.

Sincerely,

Aaron Adler,
Committee Counsel

cc: Members, Legislative Committee on Administrative Rules
Louise Corliss, APA Clerk, Office of the Secretary of State

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STATE OF VERMONT

Legislative Committee on Administrative Rules (LCAR)

March 2, 2017

James Volz, Chair
Vermont Public Service Board
State of Vermont
112 State Street
Montpelier, VT 05620-2701

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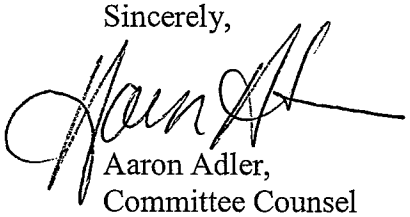
Sincerely,



Aaron Adler,
Committee Counsel

cc: Members, Legislative Committee on Administrative Rules
Louise Corliss, APA Clerk, Office of the Secretary of State

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STATE OF VERMONT
SENATE COMMITTEE ON NATURAL
RESOURCES AND ENERGY

MEMORANDUM

To: Legislative Committee on Administrative Rules
Sen. Mark A. MacDonald, Chair

From: Sen. Christopher Bray, Chair

Date: February 28, 2017

Subject: 16-P62 – Public Service Board/**5.100 Rule Pertaining to Construction and Operation of Net Metering Systems**

Cc: Public Service Board

The Senate Committee on Natural Resources and Energy (the Committee) writes to recommend a course of action on the above-referenced rule.

Summary

At this time, the Committee recommends that the Legislative Committee on Administrative Rules (LCAR) postpone action on the rule until LCAR's meeting immediately prior to June 1, 2017, provided that the Public Service Board (PSB or Board) agrees to extend LCAR's review period to June 1, 2017. The purpose of this request is to allow the consideration and potential passage of legislation regarding the authority of the Board to change the bill credit rate structure for preexisting net metering systems and how those credits are applied to the bill.

On this rule, the Committee itemizes below eight issues that have been raised. In addition to the issues related to pre-existing net metering systems:

- On four of these issues, the Committee considers the rule to be within the Board's authority and not contrary to legislative intent or arbitrary: production meters, applying adjustors to total rather than net production, using a six-cent spread for the Renewable Energy Credit (REC) adjustor, and requiring preferred sites for parking lots to be paved.

- On two of the issues, the Committee suggests below to LCAR and the Board modifications to the rule that could be made by the Board to satisfy the LCAR review criteria. These issues relate to amending the numerical adjustor amounts outside the rulemaking process and required preferred sites for gravel pits and similar locations to be in lawful operation as of January 1, 2017.

However, please also see no. 4, immediately below.

4. Rule 5.126(B)(2), (C)(2), and 5.127; changing adjustor amounts outside rulemaking

Rules 5.126(B)(2) and (C)(2) state initial REC and siting adjustor amounts that, under Rule 5.127, will be updated every two years by the PSB, which has indicated that it does not intend to conduct the biennial updates as rulemaking proceedings. See Memorandum, J. Marren to A. Adler, Response to 30 (Feb. 7, 2017). However, under 3 V.S.A. § 845, rule amendments are made through the rulemaking process.

The Committee therefore recommends suggesting to the PSB that the initial REC and siting adjustor amounts be set forth in an order issued concurrently with final rule adoption, and that the rule enumerate a process for biennial updates that includes public notice and opportunity to submit written comments and request a public hearing before issuance of an order. In this regard, the statute does not require stating the amounts for the bill credit in the rule and instead directs that the rule include "provisions that govern . . . the amount of the credit . . ." 30 V.S.A. § 8010(c)(2)(F).

5. Rule 5.103; definitions; preferred sites, subdivision (2), parking canopy over "paved" parking lot

The Committee considers this definition to be within the authority of the Board and not contrary to legislative intent or arbitrary. The requirement for the parking lot to be paved is consistent with a similar definition included in the standard offer program's "preferred location" pilot, which reads: "A parking lot canopy over a paved parking lot, provided that the location remains in use as a parking lot." 30 V.S.A. § 8005a(c)(1)(D)(iv)(II).

6. Rule 5.103; definitions; preferred sites, subdivision (6), gravel pits and similar sites

The Committee considers this definition to be within the authority of the PSB and not contrary to legislative intent or arbitrary if the words "lawfully operated" are substituted for the words "in lawful operation on January 1, 2017."

Requiring a gravel pit or similar site to have been in lawful operation on January 1, 2017 is contrary to legislative intent when compared to a similar definition included in the standard offer program's "preferred location" pilot, which has no such date. The relevant statutory definition for that program reads: "The disturbed portion of a gravel pit, quarry, or similar site for the extraction of a mineral resource, provided that all activities pertaining to site reclamation required by applicable law or permit condition are satisfied prior to the installation of the plant." 30 V.S.A. § 8005a(c)(1)(D)(iv)(VI).

7. Rule 5.103; definitions; non-bypassable charges

The Committee would consider this definition to be within the authority of the Board and not contrary to legislative intent or arbitrary if written clarification is submitted by the Board to LCAR.

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State of Vermont
Public Service Board

March 15, 2017

Hon. Mark MacDonald
Legislative Committee on Administrative Rules
115 State Street
Montpelier, VT 05633-5301

Re: Rule 16—P62 – Rule Pertaining to Construction and Operation of Net-Metering Systems

Dear Senator MacDonald:

Pursuant to 3 V.S.A. § 842(c), the Vermont Public Service Board hereby responds to the Legislative Committee on Administrative Rules' objection to Section 5.125 of the Board's net-metering rule. We respectfully disagree with the basis for the committee's objection. We request that the committee withdraw its objection.

As discussed in more detail below, Act 99 authorizes the Board to adjust the rates and terms of service for pre-existing systems. This authority is essential to implementing Act 99's directive to establish a revised net-metering program that balances the costs and benefits of net-metering, limits rate impacts, and reduces cost shifts. In contrast, the interpretation of Act 99 articulated in the committee's objection would thwart the implementation of Act 99 by permanently enshrining a costly net-metering program. The Board submits that this was not what the letter or intent of Act 99 requires.

The Board plans to postpone adoption of a final rule. It is our understanding that the Legislature is considering a clarification of the Board's authority concerning pre-existing net-metering systems. If the committee certifies its objection and if the Legislature does not clarify that the Board has authority to adopt Section 5.125, the Board will modify the final rule to maintain the rates and terms of service for pre-existing net-metering systems to avoid uncertainty regarding the validity of the rule. An annotated version of the rule reflecting such changes and a few technical corrections is included with this response.

Very truly yours,

James Volz
Chair

Margaret Cheney
Board Member

Sarah Hofmann
Board Member

VERMONT

Nothing in Act 99 indicates that the Legislature intended that the revised net-metering program would be applicable only to new net-metering systems. For example, 30 V.S.A § 8010 gives the Board authority to adopt rules "adopt and implement rules that govern the installation and operation of net metering systems." This authority is not limited to new net-metering systems.

Also, Section 10(c) of Act 99 specifically addresses how the repeal of Section 219a would affect pre-existing net-metering systems:

> [N[othing in this section or in the repeal of 30 V.S.A. § 219a or 219b shall affect the validity or terms of a certificate of public good issued for a net metering system prior to that date. A solar net metering system receiving a mandatory incentive under 30 V.S.A. § 219a(h)(1)(K) shall continue to receive that incentive through the end of the 10-year period set forth in that subdivision.

Pursuant to Section 10(c), pre-existing net-metering systems are entitled to receive the Section 219a incentive rates for 10 years. There are no other limits on the Board's authority with respect to ratemaking for pre-existing systems. Therefore, the Board has authority to change the rates available to pre-existing net-metering systems after this ten-year period expires.

Sections 10(f) and (g) do not reflect legislative intent to generally "retain the status quo" for pre-existing net-metering systems. First, such an interpretation is illogical and contrary to standard rules of statutory construction because it would render superfluous Section 10(c), which preserves the status quo for the solar incentive program that was established by 30 V.S.A. § 219a.[4] Instead, the plain language of Sections 10(f) and (g) reflect the Legislature's choice of law governing "*applications* for net-metering systems." The Board's net-metering rule fully implements legislative intent by requiring that *applications* for net-metering systems filed before January 1, 2017, be reviewed and approved under the portions of Section 219a and the prior Board Rule implementing that statute that relate to applications for net-metering systems. For the same reasons, the regulation of pre-existing net-metering systems does not countermand the requirements of Section 10(f) and (g).

Sections 10(f) and (g) of Act 99 do not address what law applies to pre-existing net-metering systems and therefore does not constrain the Board's ratemaking authority over such systems. These sections deal with what law governs applications for net-metering systems. It is important that the Legislature distinguished between "applications for net-metering systems" and "net-metering systems."[5] The word "applications," as used in Act 99, refers to applications

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[4] *Payea v. Howard Bank*, 164 Vt. 106, 107 (1995) ("We will not construe a statute in a way that renders a significant part of it pure surplusage.")(Internal quotes omitted).

[5] Compare with Act 99 of 2014 (Vt. Adj. Sess.) § 10(c) (using the term "net-metering system" as opposed to "applications for net-metering system"). It is a canon of statutory construction that the Legislature chooses its words advisedly. *Trombley v. Bellows Falls Union H.S.*, 160 Vt. 101, 104(1993).

5.100 RULE PERTAINING TO CONSTRUCTION AND OPERATION OF NET-METERING SYSTEMS

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applicable to the net-metering system.

(2) The following changes constitute a "minor" amendment:

(a) proposing additional aesthetic mitigation; or

(b) any other change to the physical plans or design of the system that is not a major amendment.

"Applicant" means the entity seeking authorization to construct and operate a net-metering system.

"Billing Meter" means an electric meter that measures either the consumption of electricity by a customer or the net of electric consumption by the customer and production by the net metering system.

"Blended Residential Rate" means the lesser of either:

(1) For electric companies whose general residential service tariff does not include inclining block rates, the $/kWh charge set forth in that electric company's tariff for general residential service;

(2) For electric companies whose general residential service tariff does include inclining block rates, a blend of the electric company's general residential service inclining block rates that is determined by adding together all of the revenues to the company during the most recent calendar year from kWh sold under those block rates and dividing the sum by the total kWh sold by the company at those rates during the same year; or

(3) The weighted statewide average of all electric company blended residential retail rates, as determined by the Board, whichever is lower.

"Board" means the Public Service Board of the State of Vermont and the employees thereof.

"Capacity" means the rated electrical nameplate for a plant, except that, in the case of a solar energy plant, the term means the aggregate AC nameplate capacity of all inverters used to convert the plant's output to AC power. The capacity of an inverter is not changed when it is derated.

application was either filed at a time when net-metering was being offered by the electric company pursuant to 30 V.S.A. § 219a (h)(1)(A) as the statute existed on December 31, 2016, or qualified under state law as a system that did not count towards the capacity limit on net-metering contained in that statute.

"Preferred Site" means one of the following:

(1) A new or existing structure whose primary use is not the generation of electricity or providing support for the placement of equipment that generates electricity;

(2) A parking lot canopy over a paved parking lot, provided that the location remains in use as a parking lot;

(3) A tract previously developed for a use other than siting a plant on which a structure or impervious surface was lawfully in existence and use prior to July 1 of the year preceding the year in which an application for a certificate of public good under this Rule is filed. To qualify under this subdivision (3), the limits of disturbance of a proposed net-metering system must include either the existing structure or impervious surface and may not include any headwaters, streams, shorelines, floodways, rare and irreplaceable natural areas, necessary wildlife habitat, wetlands, endangered species, productive forestlands, or primary agricultural soils, all of which are as defined in 10 V.S.A. chapter 151;

(4) Land certified by the Secretary of Natural Resources to be a brownfield site as defined under 10 V.S.A. § 6642;

(5) A sanitary landfill as defined in 10 V.S.A. § 6602, provided that the Secretary of Natural Resources certifies that the land constitutes such a landfill and is suitable for the development of the plant;

(6) The disturbed portion of a lawful gravel pit, quarry, or similar site for the extraction of a mineral resource, provided that all activities pertaining to site reclamation required by applicable law or permit condition are completed prior to the installation of the plant;

(7) A specific location designated in a duly adopted municipal plan under 24 V.S.A.

the thirty-first day following the filing of the form.

(D) Service. Upon filing the net-metering registration form with the Board, the applicant must also cause notice of the form to be sent to the electric company and to the Department via the Board's electronic filing system.

(E) Interconnection. If the 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 the timeframes in (C), above. 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 may not commence construction of the project until the interconnection issues have been resolved. Disputes between the applicant and the electric company will be resolved using the dispute resolution procedures contained in Board Rule 5.500, which governs interconnection requests.

5.106 Applications for Ground-Mounted Photovoltaic Net-Metering Systems Greater Than 15 kW and Up to and Including 50 kW and for Facilities Using Other Technologies Up to and Including 50 kW

(A) Applicability. This application procedure is applicable to ground-mounted photovoltaic net-metering systems that are greater than 15 kW and up to 50 kW in capacity. This application procedure is also applicable to net-metering systems of 50 kW or less that use other eligible technologies. This application procedure does not apply to hydroelectric facilities or roof-mounted photovoltaic net-metering systems.

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

construction and as a permanent measure;

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

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

(h) The latitude and longitude coordinates for the proposed project; and

(i) The approved site plan from any Act 250 Land Use Permit applicable to the host parcel.

(6) Wetland delineation. The applicant must provide either a wetland delineation prepared by a ~~person on the Agency of Natural Resources' list of "~~qualified consultants,~~"~~ or an approved letter from the district wetland ecologist or a qualified consultant stating that no delineation is necessary because the net-metering system will not be ~~within 150 feet of~~proximate to any significant wetlands.

(7) Response to comments received in response to 45-day advance submission. The applicant must file a document summarizing the comments and recommendations received in response to the 45-day notice. The document must respond to the issues raised in those comments and recommendations and must state what steps the applicant has taken to address those issues or why the applicant is unable to do so.

(8) Statement of Consistency with Act 250 Land Use Permit. If the host parcel is subject to an Act 250 Land Use Permit, the applicant must file a document describing whether the construction of the proposed net-metering system will interfere with the satisfaction of any condition contained in the Act 250 Land Use Permit. If the construction will

recipient, the applicant may serve a copy of the advance submission via electronic mail.

(3) Contents of Advance Submission. The notice must state that the applicant intends to file a Section 8010 application with the Board, must identify the location of the project site and the number of any Act 250 Land Use Permit applicable to the host parcel, and must provide a description and site plan of the proposed project in sufficient detail 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 submission must 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.

(4) Timing of Advance Submission and Application. If, within 180 days of the date of the advance submission, the applicant has not filed a complete application for the project that fully complies with the filing requirements of this Rule, the submission will be treated as withdrawn without further action required by the Board.

(C) Filing Requirements. Applications for net-metering systems subject to this Section 5.107 must contain the following information. Failure to provide any required information will result in the application being deemed incomplete:

(1) Applicant name. The application must include the legal name (and the "doing business as" name, if different), contact information, Vermont business registration number (if applicable), and a description of the company or person making the application. For example:

XYZ Corporation (d/b/a ABC Solar)

ecologist or a qualified consultant stating that no delineation is necessary because the net-metering system will not be proximate to any significant wetlands.

(10) Interconnection.

(a) For net-metering systems with a capacity greater than 150 kW, the applicant must 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 adverse impact on system stability or reliability. The letter must also describe all improvements to the grid necessary to interconnect the net-metering system.

(b) For systems with a capacity less than or equal to 150 kW, no letter from the electric company is required as part of the application. However, if the electric company finds that the interconnection of the net-metering system will have an adverse effect on system stability or reliability, the electric company shall convey these concerns in writing to the applicant and the Board no later than the thirty-first day following the Board's determination that the application is complete. The electric company's filing must include a recommendation as to how the interconnection issues could be resolved by the applicant. If a concern is raised, a CPG will not issue until the electric company files a letter that the concern has been addressed or the Board finds that the proposed net-metering system may be safely interconnected with the company's distribution grid without having an adverse impact on system stability and reliability. The letter must also describe all improvements to the grid necessary to interconnect the net-metering system. Any dispute between an applicant and the

mounted systems, certificate holders must provide notice of all minor amendments to the Board, the Department of Public Service, the Natural Resources Board if the host parcel is subject to an Act 250 Land Use Permit, and any party to the proceeding in which the net-metering system was granted a CPG. The notice must 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 persons specified in this subsection, the certificate holder may not implement the proposed minor amendment until the objection has been withdrawn or resolved by the Board.

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

(C) Maintenance and Repair. The maintenance and repair of net-metering systems and the replacement of equipment with like equipment do not require prior notice or Board approval.

5.110 Transfer and Abandonment of CPGs

(A) Transfer With Change in Ownership of Host Property. A CPG for a 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:

(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 of a ground-mounted system completes and files an official transfer form

with specificity what type of development is permitted. The statement "all development in the Maple Road scenic protection area must maintain the rural character of the area" would not be a clear standard because it does not state with specificity what type of development is permitted.

(D) Offend the Sensibilities of the Average Person. A project will be found to offend the sensibilities of the average person if the project would be so out of character with its surroundings or so significantly diminish the scenic qualities of the area as to be offensive or shocking to the average person. In determining whether a project would offend the sensibilities of an average person, the Board will consider the perspective of an average person viewing the project from both adjoining residences and from public vantage points.

(E) Generally Available Mitigating Steps. In determining whether an applicant has taken generally available mitigating steps, the Board may consider the following:

(1) what steps, such as screening, the applicant is proposing to take;

(2) whether the applicant has adequately considered other available options for siting the project in a manner that would reduce its aesthetic impact;

(3) whether the applicant has adequately explained why any additional mitigating steps would not be reasonable; and

(4) whether mitigation would frustrate the purpose of the Project.

5.113 Setbacks

Setbacks. Applicants seeking authorization to construct a ground-mounted net-metering system must 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.

facility's tallest component, whichever is greater

(f) adjoining landowners;

(g) the Vermont Agency of Agriculture Food and Markets; and

(h) the Vermont Division for Historic Preservation.

(C) Any other 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.

(D) Any person who obtains party status acquires all of the legal rights and obligations of a party in a Board proceeding. The filing of public comments on an application and the consideration of such public comments by the Board do not confer party status. Party status is conferred only upon the filing of a notice of intervention by the persons listed in (B)(3), above, or upon issuance of an order from the Board granting a duly filed motion to intervene.

5.118 Requests for Hearing

The review of net-metering CPG applications is based upon the information contained in the application filed by the applicant. If a party wishes to offer contrary evidence or to challenge the accuracy of information contained in an application, then the party must request a hearing to present such evidence and argument. A party must file a request for hearing within 30 days from the date of notification by the Board that the application is administratively complete. The request must identify the proposed issues to be resolved through the hearing. Unless the party has already been granted party status by the Board, a request for a hearing must be accompanied by a notice of intervention or motion to intervene, pursuant to Section 5.117 of this Rule.

5.119 Circumstances When the Board Will Conduct a Hearing

(A) The Board will grant a request for a hearing only if such request is filed by a party. Such a request may be included with a notice of intervention or motion to intervene. A hearing requested by a party will be granted provided that the request raises:

PART IV: THE NET-METERING PROGRAM

5.125 Pre-Existing Net-Metering Systems

(A) Eligibility. A pre-existing net-metering system must:

(1) have a complete CPG application filed with the Board prior to January 1, 2017; and

(2) the complete CPG application must have been filed at a time when the electric company was accepting net-metering systems pursuant to 30 V.S.A. §219a (h)(1)(A) as the statute existed on December 31, 2016, or qualified under state law as a system that did not count towards the capacity limit on net-metering contained in that statute.

~~(B) Rules Applicable to the Review of CPG Applications for Pre-Existing Net-Metering Systems. Any complete CPG application filed prior to January 1, 2017, shall be reviewed pursuant to the version of Rule 5.100 that was in effect at the time the complete application was filed.~~

(B) Exemption from the Requirements of this Rule. Except as provided in this Section, pre-existing net-metering systems are exempt from the requirements of this Rule.

~~(C) Applicable Rates for Pre-Existing Net-Metering Systems. Customers using pre-existing net-metering systems shall, for a period of 10 years from the date of the net-metering system's commissioning, be credited for generation according to the rates and incentives provided for in 30 V.S.A. § 219a, as the statute existed on December 31, 2016, and the Board's rules implementing that statute If the customer's system was commissioned before the electric company's first rate schedule to comply with Section 219a(h)(1)(K) took effect, then the 10-year period shall run from the effective date of the electric company's first rate schedule implementing the incentive. At the end of the applicable 10-year period, customers using pre-existing net-metering systems shall be credited for excess generation as provided in Section 5.126 of this Rule or its successor.~~

Interconnected: For customers who elect to wire group net-metering systems such that they offset consumption on the billing meter, the billing meter establishes the billing determinants for the customer's bill based on the rate schedule for the customer.

(a) At the end of the billing period, the electric company must net electricity produced with electricity consumed on the generation account.

(i) If electricity consumed by the customer exceeds the electricity produced by the net-metering system, the customer must be billed the difference, net of any credit accumulated in the preceding 12 months. Credits may not be applied to non-bypassable charges as identified in a utility's tariff.

(ii) If the electricity produced by the net-metering system exceeds the electricity consumed, the excess generation must be allocated to group members and monetized at the applicable blended residential rate. The monetized credit applies to all charges on the bill not identified as non-bypassable charges in a utility's tariff.

(iii) For the first 10 years after the system is commissioned, any zero or positive siting or REC adjustor set forth in the net-metering facility's CPG is multiplied by the kWh from the production meter, allocated to the group members and applied to the bills as credits. For example, the $0.01/kWh siting adjustor for net-metering systems 15 kW or less will result in such systems receiving a bill credit of $0.01/kWh multiplied by all allocated kWh from the production meter.

(iv) Any negative siting or REC adjustor set forth in the net-

(3) Initial REC adjustors at the time this Rule becomes effective (January 1, 2017) are as follows:

(a) REC Adjustor (Transfer) = 3 cents per kilowatt hour;

(b) REC Adjustor (Retention) = negative 3 cents per kilowatt hour.

(c) Hydroelectric facilities net-metering under this rule are not subject to a REC adjustor.

(C) The siting adjustors are determined as follows:

(1) In order to provide incentives for the appropriate and beneficial siting of net-metering systems, each net-metering system may receive the highest-value siting adjustor for which it meets the applicable criteria. The net-metering system's siting adjustor must be expressed in dollars per kWh ($/kWh) at the time the Board issues the net-metering system a CPG. A zero or positive siting adjustor applies for a period of 10 years from the date the system is commissioned; a negative siting adjustor applies in perpetuity. Except for systems that register pursuant to Section 5.105 of this Rule, both the amount and the term of the siting adjustor must be stated in the net-metering system's CPG.

(2) The initial siting adjustors at the time this Rule becomes effective (January 1, 2017) are as follows:

(a) Category I = 1 cent per kilowatt hour;

(b) Category II = 1 cent per kilowatt hour;

(c) Category III = negative 1 cent per kilowatt hour;

(d) Category IV = negative 3 cents per kilowatt hour;

(e) Hydroelectric facilities = 0 cents per kilowatt hour.

5.128 Biennial Update Proceedings

(A) The Board must conduct a biennial update in 2018 and every two years thereafter to update the following:

(1) REC adjustors;

5.130 Group System Requirements

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

(1) The meters to be included in the group system, which must be located within the same electric company service territory;

(2) A process for adding and removing meters in the group and an allocation of 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 5.130(A)(3), and any such change may only apply on a prospective basis;

(3) The name and contact information for a designated person who is 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 may 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 must implement appropriate changes to a net-metering group within 30 days after receiving written notification of such changes from the person designated under subsection 5.130(A)(3). Written notification of a change in the person designated under subsection 5.130(A)(3) is effective upon receipt by the electric company. The electric company is not liable for the consequences from actions based on such notification.

(C) For each group member's customer account, the electric company must bill that