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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 24, 2017

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

The Senate Committee on Natural Resources and Energy writes to recommend a course of action on the issues regarding the above-referenced rule described below:

Summary

[To be completed after committee discussion of draft]

Issues

1. Requiring a production meter for an individual net metering system – Rule 5.125(A)

   The Committee recommends determining this requirement to be within the authority of the Public Service Board (PSB or the Board) and not contrary to legislative intent or arbitrary. While 30 V.S.A. § 8002(15) defines "net metering" for non-group systems to use a single meter that measures excess generation, 30 V.S.A. §§ 8005(a)(2) and 8010(c)(1)(H) contemplate that the renewable energy credits (RECs) for all of the energy generated by net metering systems will be transferred to the utilities and count toward their obligations under Tier 2 of the Renewable Energy Standard (RES), unless a customer retains the RECs. A meter that measures the total production of a net metering system is necessary to achieve this goal.

2. Applying the REC and siting adjustors to total rather than net system production – Rule 5.125(A)

   The Committee recommends determining these rule provisions to be within the authority of the PSB and not contrary to legislative intent or arbitrary.

   On the REC adjustor, please see no. 1, immediately above.

On the siting adjustor, the PSB has authority under 30 V.S.A. § 8010 to adopt provisions governing the bill credit for net metering systems for which applications are filed on or after January 1, 2017. The Board may choose to use the bill credits to encourage sites for renewable generation that are "preferred" for reasons relating to the environment and land use.

Such use is consistent with the legislative intent to support "development of renewable energy that uses natural resources efficiently." 30 V.S.A. § 8001(a)(2). In addition, under the separate "standard offer" program that encourages renewable energy plants larger than net metering systems, the General Assembly enacted a pilot project to encourage these plants to use "preferred locations." 30 V.S.A. § 8005a(c)(1)(D).

Application of the siting adjustor to total production is not arbitrary because it is such application that is likely to encourage the use of preferred sites. In contrast, applying the adjustor only to net production would be a much smaller incentive that is therefore less likely to succeed.

3. Rule 5.126(B); applying a REC adjustor spread of six cents per kWh

   The Committee considers the proposed REC adjustor amounts to be within the Board's authority and not contrary to legislative intent or arbitrary. In 30 V.S.A. § 8010(c)(1)(H), the General Assembly directed the Board to reduce the bill credit by "an appropriate amount" if a net metering customer elects to retain RECs rather than transfer them to the utility. The six cent amount is not contrary to legislative intent or arbitrary because it is based on the statutory alternative compliance payment for RES Tier 2. 30 V.S.A. § 8005(a)(4).

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

4. 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 recommends determining 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."

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

   The Committee recommends determining 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." 30 V.S.A. § 8005a(c)(1)(D)(iv)(II).

   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 recommends determining 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 the Legislative Committee on Administrative Rules.

   The PSB's initial response to questions from legislative counsel indicated that this definition "does permit a utility to propose for Board review and approval a tariff that includes a non-bypassable charge which is specific to net metering customers." See Memorandum, J. Marren to A. Adler, Response to 4 (Feb. 7, 2017).

   This response raised a question on whether the definition conflicts with 30 V.S.A. § 8010(b), which states that: "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 . . ."

   The Committee now understands from the Board that this definition does *not* permit a utility to propose a non-bypassable charge that is specific to net metering customers. In a memorandum submitted to the Committee dated February 21, 2017, Board staff attorney Jake Marren states:

   > [T]he definition of non-bypassable charges does not authorize a utility to create new charges that would be applicable only to net-metering customers. Section 5.103 defines "non-bypassable charges as "those charges on the electric bill defined in an electric company's tariffs that apply to a customer <u>regardless of whether they net-meter or not</u>." The underlined language makes clear that only charges that are applicable to all customers (not just net-metering customers) may be <u>non-bypassable</u>.

8. Rule 5.124(C), (D); preexisting net metering systems; rate structure, application of bill credits

   [to be completed after committee discussion]