VERMONT

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July 15, 2016

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

Re: Request for Reconsideration of In Re: Revised net-metering rule pursuant to Act 99 of 2014

Dear Ms. Whitney:

The Department of Public Service ("Department") thanks the Public Service Board ("Board") for the opportunity to comment on, and ask for reconsideration of, aspects of the Revised Net Metering Program (Program) that the Board adopted by order on June 30, 2016 (June 30 Order). We very much appreciate the Board for its careful consideration of the issues raised by stakeholders as well as the balancing required by the statutory requirements for the new net metering program.

The Department understands that these comments will inform the draft rule that the Board intends to file shortly in the formal rulemaking process, and as we urge herein may also cause the Board to reconsider the Program adopted by the June 30 Order. The Department shares the Board's objective of adopting a final rule before January 1, 2017. To that end, we are sharing comments at this time that address significant or structural issues with the Program, so that the rulemaking process is not unduly delayed. Our comments address three topics:

- Grandfathering and non-bypassable charges,
- The exclusion of "Category V", and
- Pacing and the proposed annual 4% cap.

In light of the timeline for these comments, the Department will likely raise other issues in the rulemaking process, as time allows us to complete a more thorough analysis. The three issues identified here address essential structural Program elements; we expect subsequent comments in the rulemaking process to be directed toward issues of policy or process that would not change the fundamental structure of the rule.

Grandfathering and Non-Bypassable Charges

The Department is concerned that the Program changes the treatment of the customer charge for existing net metering customers. The Department understands and appreciates the argument that all customers ought to contribute to the costs connecting them to the electric grid, reflected in the customer charge. However, net metering customers reasonably relied on the framework embedded in the existing net metering rule in deciding how to size their net metering systems. It stands to reason that customers would install a system designed to offset up to their entire electric bill, because the program in effect when they installed that system allowed them to do so. Importantly, the existing net metering statute explicitly guarantees the solar adder for ten years; and it is primarily the solar adder that allows a net metering customer to reduce their annual electric bill below the annual sum of customer charges. Thus a customer had a reasonable expectation that they would continue to be able to offset those charges. There should be no misunderstanding about this – customers do pay for customer charges, they just do so through credits for power generated.

To demonstrate the concrete financial impact of not allowing the customer charge to be offset by net metering credits, imagine a homeowner who uses a typical Vermont home's 6,500 kWh per year, installs a typical solar PV system to offset their entire current electric bill under the existing net metering rules, and utilizes a home equity loan to make the purchase[1]. If electric rates rise approximately in line with 2% inflation (as they have in Vermont over the last two decades), their 25-year rate of return would be only 0.4%. (Almost all of their net bill savings is used to pay the interest on their relatively low-interest loan, and annual net savings are only seen after the loan is paid off.) However, if the proposed Program goes into effect and they unexpectedly cannot offset the customer charge, they have three options:

1) Allow their rate of return to fall to minus 0.1%, and thus their investment becomes a net loss,
2) Increase their electricity use, taking advantage of the effectively free electricity they would otherwise have given to their utility, or
3) Create a group system and assign a fraction of their credits to another account in exchange for some payment, incurring significant transaction costs for two customers, the Board, the Department, and the utility (which, if this were to go into effect, could see thousands of group membership requests in a short period of time).

None of these options is appealing. Nor is the benefit to other non-net metering customers significant from such a retroactive change. At the same time, the costs to the credibility of the net metering program would be substantial. Retroactive application of charges would send a chilling signal to investment in net metering systems, more than countering any ratepayer or fairness benefit perceived to be achieved through its application.

The Department has been agnostic on the requirement to pay the customer charge throughout these proceedings – provided it is applied on a going-forward basis only. The extent to which net metering customers will face non-bypassable charges should be known in advance, as it is a critical input in the sizing of net metered generators. Accordingly, the Department recommends revising the Program's grandfathering provisions to institute the proposed non-bypassable charges on a going-forward basis only. At minimum, the Program's grandfathering

[1] Under Green Mountain Power's current residential rates, this customer would pay $1,115 per year for their total electric bill. Given that unused credits revert to the utility, such a customer wishing to offset their entire bill, but no more, would need to generate 5,575 kWh per year at 20 cents/kWh. Assuming a 14.5% AC capacity factor, this customer would choose a 4.4 kW-AC solar system. At $3.90/W-AC and after the Federal investment tax credit, the system would cost about $12,000. 10-year home equity loans are available at 3.75%.

provisions should be amended to allow net metering credits to be applied to the customer charge for a period of ten years after the system's commissioning (the same period as the solar adder). In this way, existing net metering customers will receive the full value of the solar adder for the full 10-year period, consistent with the intent of section 10(c) of Act 99. After ten years, most net metered generators should not be generating enough credit over the course of the year to cover the customer charge, so allowing separate treatment to end would not adversely affect net metering customers.

Treatment of other possible non-bypassable charges (such as the energy efficiency charge or the energy assistance program charge) should be simply grandfathered for ten years from the system's commissioning – if they are bypassable under a utility's current tariff they would remain so; if not bypassable they would remain not. Again, the rationale here is to disrupt existing net metering customers' expectations as little as possible, and not to do so where there is no significant policy gain to justify the change.

On the other hand, the Department believes that net metering credits should not be applied to equipment rental charges in any case, and therefore supports retaining these charges as non-bypassable as proposed in the ordered rule. Net metering is fundamentally a program for self-supply of energy; over-generating in order to generate monetary credits applied to the rental of appliances or other hardware violates the spirit of the program.

The Exclusion of "Category V"

The Department was disappointed to see that the Program removes Category V (systems 150 kW to 500 kW in capacity that do not meet a Category III siting criterion). We believe the legislation governing net metering to expect that all renewable generation up to 500 kW would be eligible. We urge the Board to reconsider this decision. The Department believes that the net metering program would be stronger and more flexible if this category is maintained. If the Board is concerned that inclusion of this category would create significant costs to ratepayers or attract a pace of development faster than the Board would like, the Board need only adjust the siting adjustor for that category to a lower value. The biennial review process allows the Board to revisit the criteria for qualification in the different categories. Without the flexibility that comes from having both Category III and Category V, if the pace of development is slower than hoped for, the Board will likely face greater pressure to expand the siting criteria of Category III. This would dilute the siting preference and give what might rightly be Category V projects Category III levels of compensation.

Pacing and the Proposed Annual Cap

The Department is keenly aware that the question of the pace of net metering program growth is a key issue in the development of the Program. To the extent that net metered systems create costs that are not compensated (either immediately or over time) by benefits provided, this creates rate pressure. Meanwhile, the development of new electric generation may be the State's largest new land use, and a rapid pace of development stresses both the siting process and public acceptance. As such, we appreciate the need for mechanisms to regulate the pace of development in this rule. However, we are concerned that the proposed utility-specific 4% annual capacity cap may lead to unintended consequences and is likely unnecessary.

This proposed annual cap is likely unnecessary in the context of the Program because the pace of deployment is likely to fall below the 4% annual level. The effective levels of compensation to net metered system generators above 15 kW are between one-quarter and one-third lower under the proposed Program than under the current rules. Even if Category V is reinstated, it may not attract significant development. The siting criteria for eligibility for Categories II and III are relatively restrictive (e.g. requiring a town plan to identify a preferred area, which would likely require a lengthy amendment process, rather than allowing for a simple letter from the town's Selectboard and Planning Commission to suffice), and there are limited gravel pits, landfills, and brownfields. There are higher costs to construct on rooftops or parking lot canopies, and we are seeing relatively little such development even at today's higher levels of compensation.

A cap that may never be invoked may appear acceptable. However, it may still have adverse unintended consequences. Vermont's smaller utilities may hit the 4% cap with the development of a relatively small number of small projects. (In Jacksonville, for example, a single 40 kW system would close net metering to all customers for the remainder of the year.) There are no utility-specific rate adjustors, so such a circumstance could occur in multiple years for small utilities while GMP or other larger utilities remain consistently below the cap. At the same time, the simple existence of a cap, whether it appears likely to be hit or not, could encourage speculative projects to apply for interconnection earlier than otherwise, resulting in annual boom-bust cycles in interconnection and permit processing.

However, perhaps more importantly, the Program does not explain what happens if and when the 4% annual cap is reached. The proceeding involving GMP's recent petition regarding a limited lifting of the cap in Docket No. 8652 has demonstrated that stakeholders may have different views on the procedures and possibilities once a cap is reached. Resolving that question in the context of the existing net metering rule has been time consuming and has resulted in significant uncertainty. Accordingly, if a cap is to be included in the Program, the Board should provide details regarding how the cap would be implemented, in case it is triggered. Will there be a waiting list? What happens when projects are abandoned? Is cap space carried over from previous years? Are utilities permitted to continue to accept some net metering (e.g. systems under 15 kW) after the cap is hit? Are utilities prohibited from accepting net metering applications for the balance of the year, full stop?

As previously stated, the Department appreciates the desire for some kind of pacing mechanism to ensure that net metering is a successful and sustainable program, supported by a successful and sustainable industry, with reasonable costs. The Department believes that the biennial update process described in section 5.127 meets this threshold. If the Board does not agree, we urge the Board to consider the pacing mechanism described in our May 12, 2016 comments. At minimum, if the Board chooses to retain a cap, we suggest that it not apply to systems under 15 kW and that it be applied on a statewide basis. The current status of progress toward the cap must be public and up-to-date[2]. If interconnection applications were used for the cap, the interconnection queue could also act as the Program queue.

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[2] This could be enabled by the online statewide interconnection application included in the proposed Rule 5.500 amendments under consideration by the Board.

Conclusion

The Department understands that the comments of the Agency of Natural Resources identify an issue regarding the waiver or inclusion of the sub-criteria of 30 V.S.A. § 248(b)(5). The Department supports ANR's comments, and urges the Board to confirm that the entirety of (b)(5) applies to non-Category I systems.

The Department believes that with the changes described above, the Net Metering Program established by the June 30 Order establishes a sound framework for carrying net metering into the future. The Department again commends the Board for its work in crafting a balanced Net Metering Program. We look forward to contributing to the final stages of the Act 99 process in the upcoming rulemaking proceeding.

Please let us know if we can be of any further assistance.

Sincerely,

/s/	/s/
Asa Hopkins Director of Energy Policy and Planning	Timothy M. Duggan Special Counsel