

Group Net Metering & Vermont Model Solar Contracts

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*****Informational Purposes Only. Not Legal Advice. *****

Ethan McLaughlin

- Attorney at Gravel & Shea PC, in Burlington
- Specialize in Renewable Energy, Corporate and Business Matters.
- Experience drafting and negotiating group net metering agreements from both sides.
- Clients include wide range of stakeholders:
 - Offtakers;
 - Developers;
 - Project Owners; and
 - Financing Sources.

Topics:

- About the Model Solar Contracts Project
- How Group Net Metering Works
- Transaction Structure
- Allocation of Risk
- Renewable Energy Credits (RECs)
- Authority
- Questions

Model Solar Contracts Project

- **Standardized Contracts.** Widespread desire for standardized contracts for solar **group net metering** arrangements between a Vermont municipality or school and a private Project Owner. Goal is contracts that stakeholders will actually use.
- **Fair and Reasonable.** Contracts must be mutually acceptable to all stakeholder groups.
- **Commercially Viable.**
 - Straightforward and Understandable
 - Fair to Municipalities and Schools
 - Commercially Viable for Developers and Owners
 - Financeable/Bankable
 - Comply with VT Law and Tax Requirements

Model Solar Contracts Project (continued...)

- **Pro Bono Project.**
- **Stakeholder Input and Approval.** Contracts are based on input from all stakeholder groups:
 - Schools and Municipalities
 - Project Owners and Developers
 - Banks
 - Tax Equity Financing Sources
 - Nonprofits and other stakeholders

What is Net Metering?

- Single-member net metering allows a utility customer to generate electricity from a renewable energy system and feed that electricity into the electric grid.
- Within each billing cycle, the electricity produced by the system is offset from the electricity that the customer uses, for a reduced “net metered” bill.
- The utility customer also receive credit for excess generation at the billing rate they pay the utility for usage.
- For solar systems, the customer receives an additional “solar adder” for each kWh of generation, which is applied to the customer’s utility bill as a monetary credit.

What is Group Net Metering?

- Group net metering allows owners of certain renewable energy generating systems to form a group with multiple customers (or multiple electric meters) within the same utility service territory, in order to offset the electric bills of the group members against the production of the system.
- The group provides the utility with instructions for allocating credits among the meters in the group.
- The utility is then responsible for allocating and reflecting the credits on the group members' bills.

Group Net Metering Example

- A group is formed with 2 customers, each with a rate of \$0.15 per kWh. The system is directly connected to the grid. Generation is allocated 50-50 between the meters of the 2 customers.
- If the system produces 100 kWh in a month, then each customer would receive a monetary credit on their utility bill of \$7.50 ($\$0.15 \times 50 \text{ kWh}$).
- For solar facilities, an additional “solar adder” applies for the first 10 years of operation. The amount of the adder is set based on the Utility tariff in effect at the time of commissioning.
- If the solar adder is \$0.05 per kWh, each customer would receive an additional monetary credit of \$2.50 ($\$0.05 \times 50 \text{ kWh}$).

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Group Net Metering Example (continued)

- The value of the credits and the reduction of each group member's bill will vary depending on the utility's net metering tariff and the rate associated with the specific meters of each group member.
- **The Service Provider is responsible for collecting any payments from individual group members for the net metering benefits the members receive.**
- **The amount that a group member is required to pay the Service Provider is established by contract.**

Eligibility for Group Net Metering

- **Eligible Facilities:** Facilities with a capacity of up to 500 kW (AC) that generate electricity using eligible renewable-energy resources.
- **Facility Site:** Must be sited within the utility service area.
- **Participants:** Group net metering systems may only include members who are customers of the same utility within the same service area. Participating member meters do not necessarily need to be located on contiguous property.
- **Capacity:** Net metering is available until the cumulative capacity of net-metered systems equals 15% of a utility's peak demand during 1996 or the peak demand during the most recent full calendar year, whichever is greater.

Legal Requirements

- **Certificate of Public Good:** All group net metering systems require a certificate of public good, issued by the Vermont Public Service Board (the "PSB"). Because the System Owner is typically a newly formed entity, it may not be a "Customer" of the utility until the project is complete and interconnected to the grid.
- **Interconnection:** A group net metering system is responsible for funding its grid interconnection.
- **Group Administrator:** Groups must have a dedicated point of contact.
- **Group Protocols:** Groups must establish protocols for adding and removing meters and for resolving conflicts between group members.

Certificate of Public Good

2 Procedures, Depending on System Size:

- **Over 150 kW:** Must formally petition the Public Service Board for a CPG under 30 V.S.A. § 248.
- **150 kW or Less:** A simpler process involving submission of an application form to the Public Service Board.

Structuring Group Net Metering Agreements

- There are many *potential* ways to structure group net metering arrangements. The model contracts only address one common structure employed in Vermont.
- **Key Provisions Include:**
 - Service Fee - Price and billing for group net metering benefits
 - Environmental Attributes (RECs)
 - Term of Agreement
 - Authority
 - Termination

Model Solar Contracts Transaction Structure

- **Group Net Metering “Power Purchase Agreement” Structure.**
- “third-party” ownership model, which requires a separate, taxable entity (“Service Provider”) to permit, construct, install, own and operate the solar PV system.
- The Customer enters into a long-term contract to pay the Service Provider for net metering benefits attributable to electricity generated by the system and allocated to the government agency’s electric meters.
- System can be located on land owned or leased by the Service Provider, or hosted on land of the Customer.

Model Solar Contracts Transaction Structure

- **Advantages to Government Agency:**
 - Lion's share of the risk is allocated to the System Owner/Developer
 - No up-front cost
 - Ability for tax-exempt entity to enjoy lower electricity prices thanks to savings passed on from federal tax incentives
 - Developer/Owner bears all permitting, construction, financing and electricity production risk
 - No operating and maintenance responsibilities
 - Only pay for net metering benefits actually received

Model Solar Contracts Transaction Structure

- **Risks and Responsibilities Allocated to Government Agency:**
 - Electricity charges and usage must equal or exceed value of net metering benefits allocated from the system. The Government Agency is generally responsible for using the net metering benefits allocated to it. ***
 - Developer/Owner Fails to construct the facility.
 - Energy prices fall below the floor rate, if any, specified in the contract.
 - Permitting controversy.
 - System produces less than expected, or fails, resulting in less savings.
 - Additional risks when project hosted on the Government Agency's property.

Model Solar Contracts

Service Fee – 2 Alternatives

- **Alternative 1- Percentage of Net Metering Credits Generated.** Service Fee calculated based on a percentage of the amount of the monetary credit allocated to a Customer's Utility bills due to inclusion in the group net metering arrangement.
 - Service Fees for Net Metering Credits are incurred based on Service Provider's generation of the credits.
 - Cap, if the generation exceeds the estimated production AND the customer's usage (the credits expire due to non-use.)
- **Alternative 2 - Percentage of Net Metering Credits Used.** Service Fee calculated based on a percentage of the savings realized on the Customer's Utility bills due to inclusion in the group net metering arrangement (i.e., a set percentage of the cost that the Customer avoids having to pay the utility with respect to its electricity bills).
 - Service Fees for Net Metering Credits are incurred based on Customer's use of the credits.
 - Typically involves a minimum usage requirement.

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Model Solar Contracts Flat Fee Not Included

- **Alternative 3-** Flat rate per kWh generated by the System and allocated to a customer's meter.
 - A valid and viable option, which may present a better deal in the long term.
 - Typically requires the customer to assume more risk, and requires a different contract.
 - The predominate model in the rest of the country, but not in Vermont.
 - Preferred by many banks and financing sources for its predictability.

Renewable Energy Certificates (RECs)

- The Model Solar Contracts will allow the parties to select whether Renewable Energy Credits and Environmental Attributes will be owned by the System Owner or by the Customer
- A Customer that negotiates to buy the RECs in addition to the Net Metering Credits will typically pay a higher fee than if the System Owner retains the RECs.

Renewable Energy Certificates (RECs)

- RECs are the tradable environmental “attributes” of electricity generated from renewable resources (1 REC = 1 MWh), and can be bought and sold separately from the electricity itself.
- **Only the owner of the RECs associated with the system can claim to be using solar power generated by the system or claim to be reducing its carbon footprint.**

Term

The Model Solar Contracts will allow the parties to select the term of the agreement.

20 years is common.

Authority

The Model Solar Contracts require the Customer to represent that is has all necessary authority to enter into the Contract, and that the Contract will be enforceable against it.

Questions and Discussion:

- *Exclusivity*
- *Termination*
- *Lender Cure Rights*
- *Assignment*
- *Minimum Requirements*
- *Purchase Options*
 - *No less than fair market value*
- *Projects Hosted on Offtaker's Property:*
 - *Approval rights over design and site plan*
 - *Approval Rights with respect to construction timing and schedule*
 - *Insurance Requirements*
 - *Removal and Restoration at End of Term*

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