

**Vermont Group Net Metering:  
Information & Guidelines for 150 kW (AC)  
Community Solar Projects**



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## **Disclaimer**

The contents of this report are for informational purposes only and should not substitute for professional legal advice. Readers should contact a licensed attorney in the relevant jurisdiction, for counsel with respect to any particular questions, or issues concerning developing a community-owned group net metering project. The opinions expressed herein are the opinions of the individual authors and may not reflect the opinions of Vermont Law School.

## Introduction

Group net metering programs allow individual customers within one utility service territory to form a group, construct and operate a renewable energy project, as well as distribute net metering credits to the participants. This Guide provides information and tools to help assist with the development of community-owned solar facilities up to 150 Kilowatts (kW) through Vermont’s group net metering program. Our model focuses on solar arrays 150 kW and smaller for two reasons. First, solar arrays greater than 150 kW in Vermont are subject to more costly and time-consuming requirements. Second, solar arrays account for the majority of installed net metering capacity in Vermont (93.5%).<sup>1</sup>

Community solar provides several important benefits. It dramatically increases access to renewable energy. Individuals who traditionally were unable to go solar (i.e. renters, property owners with inadequate solar resources, individuals who cannot afford upfront solar installation costs) can now go solar. Additionally, it brings economy of scale to project pricing by dividing installation costs among multiple participants. Further, it provides flexibility by allowing participants to transfer their “solar shares” to a new home or rental. Finally, it supports the local economy by creating jobs and financial savings for the community.

The community solar model advocated in this Guide maximizes the economic and environmental benefits of solar energy development. This is accomplished by allowing direct ownership of the community solar array by its participants, retaining full ownership of the environmental attributes<sup>2</sup> (i.e. RECs) generated by the solar array, and creating partnerships between community solar groups and solar installers.

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<sup>1</sup> Vermont Public Service Department. *Evaluation of Net Metering in Vermont Conducted Pursuant to Act 99 of 2014* (2014).

<sup>2</sup> “Environmental attributes” are defined as “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” 30 V.S.A. § 8002[6]. These environmental attributes are monetized as renewable energy credits (REC).

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## **Executive Summary**

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Vermont Law School's Energy Clinic created this guide to help Vermonters develop community-owned solar facilities under 150 kW (AC) through Vermont's group net metering program. This guide explains the laws and regulations governing group net metering in Vermont and provides step-by-step advice on how to develop a community solar project. Although our Guide is based on rules for group net-metered systems located in the Green Mountain Power service territory, many provisions are applicable to other utility service territories in Vermont.

Part one of this guide provides step-by-step instructions on how to establish a group net metering project, such as information about forming a net metering group, finding a site for a solar array, financing the project, and establishing group governance.

Part two explains Vermont's current net metering laws and regulations as well as discusses the future of net metering at the state and federal level.

The Appendix provides additional tools and resources, including: a list of abbreviations used in this report, contact information for Vermont utilities, a Certificate of Public Good (CPG) application, model operating and land lease agreements, an explanation of different entity models available to net metering groups, and a summary of renewable energy credits (RECs) and why they are important to community solar projects.

# **1. Establishing a Project**

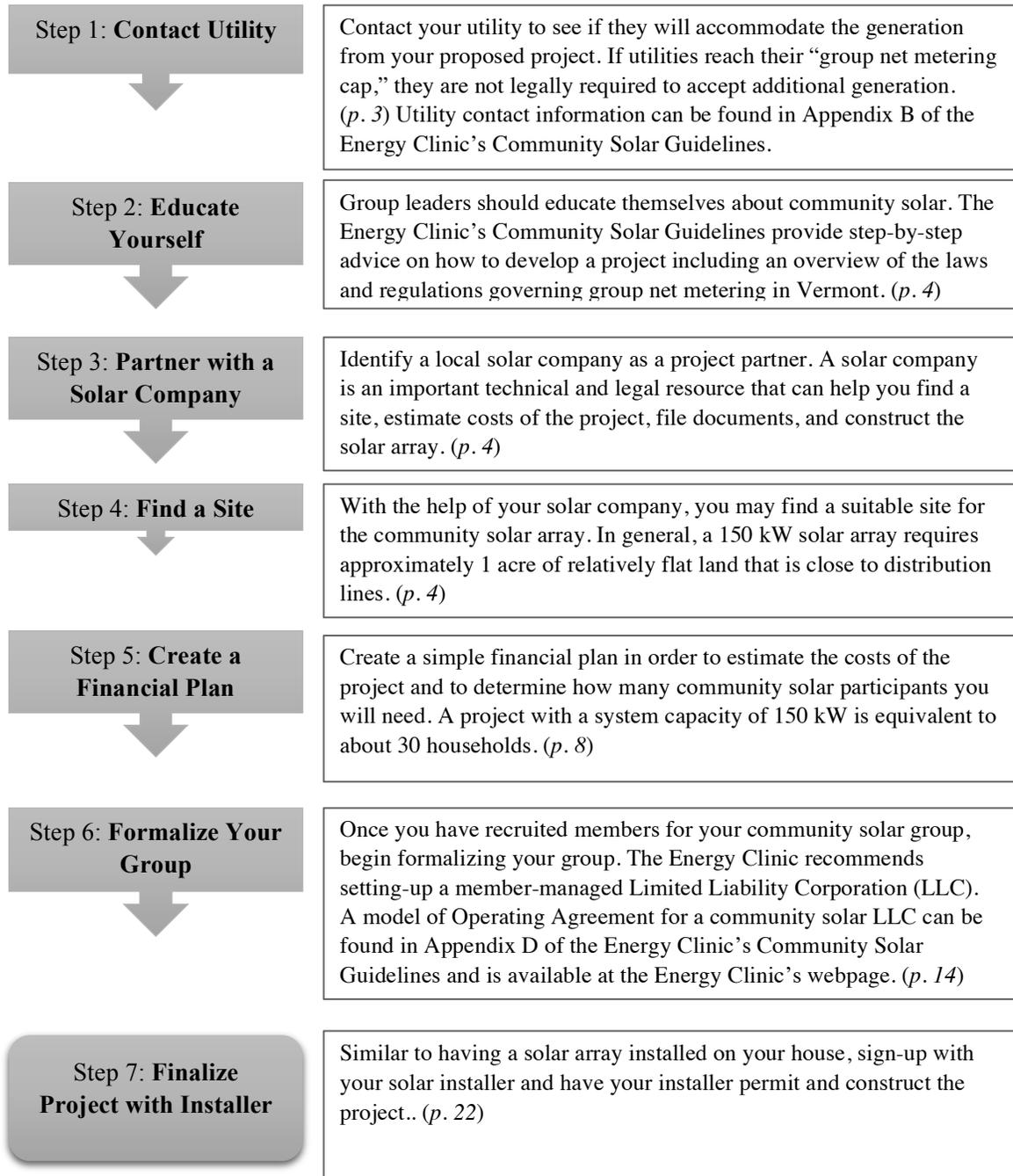
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## **Introduction**

Individual customers who are ready to form a net metering group must be cognizant of the legal, financial, logistical, and organizational constraints that lie ahead. This chapter details the various considerations involved in establishing a community-owned solar array between 15 kW and 150 kW (AC) that participants should heed in order to obtain a Certificate of Public Good (CPG). Each net metering group will face unique circumstances that will require specialized solutions within regulatory and financial constraints.

The net metering group must determine whether the host utility is obligated to accept the net metering project. The next step is to find a site that conforms to the standards set forth in 30 V.S.A. Section 248a. This Chapter details the requirements that a site must satisfy. Further, it discusses the various financing mechanisms available to net metering participants. The appropriate mechanism for participating group will depend largely on group construction. Once the net metering group secures a site and financing for the solar array, group governance must be established. This chapter describes the organizational requirements group must meet in order to obtain a CPG and concludes with an overview of the CPG application process.

## Overview to Community Solar Ownership



## 1.1 Contact the Service Utility

Prospective net metering participants should contact the utility within their service territory to determine if the utility is obliged to accommodate the generation from their project. Vermont law requires that utilities make 15% of their peak cumulative capacity eligible for group net metering systems. Once utilities reach the cap, they are not legally required to accept additional generation.

3/9/16											
	Solar		Wind		Methane		Hydro		ALL		
	Count	Capacity	Count	Capacity	Count	Capacity	Count	Capacity	Total Cap	PEAK	% PEAK
Barton	12	64	2	19	0	0	0	0	83	3040	2.73%
BED	119	4188	4	15	1	248	0	0	4451	67000	6.64%
Enosburg	17	109	0	0	0	0	0	0	109	5740	1.90%
CVPS	888	7054	63	344	2	84	4	446	7928		
GMP	4476	100897	48	940	5	405	12	2806	105049	766200	14.75%
Hardwick	83	1087	9	79	0	0	0	0	1166	6930	16.82%
Hyde Park	29	342	1	10	0	0	0	0	351	2530	13.88%
Jacksonville	4	166	3	11	0	0	0	0	176	1180	14.95%
Johnson	3	22	0	0	0	0	0	0	22	2800	0.79%
Ludlow	1	10	0	0	0	0	0	0	10	12400	0.08%
Lyndonville	55	350	2	99	0	0	0	0	449	13480	3.33%
Morrisville	48	721	4	38	0	0	0	0	759	9170	8.28%
Northfield	22	137	0	0	0	0	0	0	137	5330	2.56%
Orleans	3	21	0	0	0	0	0	0	21	3570	0.59%
Stowe	42	349	0	0	1	20	0	0	369	18680	1.98%
Swanton	17	591	0	0	0	0	0	0	591	10430	5.67%
VEC	753	10932	45	332	1	62	0	0	11326	83170	13.62%
WEC	258	1964	8	70	0	0	0	0	2035	16010	12.71%
<b>TOTAL</b>	<b>6830</b>	<b>129006</b>	<b>189</b>	<b>1956</b>	<b>10</b>	<b>819</b>	<b>16</b>	<b>3253</b>	<b>135033</b>	<b>1027660</b>	<b>13.14%</b>

For example, the only Vermont utility in this table that is not required to provide service for net metering system is Hardwick since it has reached the 15% program cap. However, it is notable that the peak percentage listed in this table may not be current.<sup>3</sup> Thus, we recommend readers of this guide contact utility directly to ascertain whether utility is accepting and processing applications at this time. It is notable that GMP reached its net metering cap for solar power in November 2015 and sought approval from the PSB to offer customers connecting net

<sup>3</sup> Net metering group participants can check the percentage of the utility's peak load in the Department of Public Service website, [http://publicservice.vermont.gov/renewable\\_energy/net\\_metering](http://publicservice.vermont.gov/renewable_energy/net_metering) (last visited April. 25, 2016).

metering systems above its cap.<sup>4</sup> However, there was no response from the PSB. We expect that the current program cap will be raised upon adoption of a revised net metering program by the Vermont Public Service Board, which is expected to occur on or before January 1<sup>st</sup>, 2017. Net metering participants can find the contact information for each Vermont utility in Appendix B.

## **1.2 Educate Yourself about Group Net Metering Program**

Group leaders including community solar members should educate themselves about group net metering program. The Energy Clinic's Community Solar Guidelines provide step-by-step advice on how to establish a community solar project as well as an overview of the laws and regulations governing group net metering in Vermont. An online version of the Community Solar Guidelines can be found at Vermont Law School's energy clinic website.<sup>5</sup>

## **1.3 Partner with a Solar Company**

Group leaders in community solar project should contact and identify a local solar company as a project partner early on in the process. A solar company will be an important technical and legal resource that can help net metering group find a site, estimate costs of the project, file document, and construct the solar array.

## **1.4 Find a Site**

Finding a site that conforms to the standards set forth in 30 V.S.A. Section 248a is the top priority. 30 V.S.A. Section 248a governs the siting and construction of new electric facilities. When evaluating a new solar facility, the Public Service Board (PSB) will waive the majority of the requirements found in Section 248a. However, four requirements cannot be waived: *Orderly*

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<sup>4</sup> *Petition of Green Mountain Power for Approval to Offer Net Metering to Customer Above the Statutory Cap Pursuant to 30 V.S.A. § 219a(h)(1)*, State of Vermont Public Service Board (November 2015), <http://www.greenmountainpower.com/upload/photos/426Petition.pdf> (last visited April. 25, 2016)  
See also Mike Polhamus, *State's Largest Utility Seeks to Raise Net Metering Capacity* (Nov. 18, 2015), <http://vtdigger.org/2015/11/18/states-largest-utility-seeks-to-raise-its-net-metering-capacity/> (last visited April. 25, 2016)

<sup>5</sup> See <http://www.vermontlaw.edu/academics/clinics-and-externships/energy-clinic> (last visited April. 19, 2016)

*Development, Stability and Reliability, Environmental Considerations, and Outstanding Resource Waters.*<sup>6</sup>

#### **1.4.1. Orderly Development/ Comprehensive Planning**

Solar Installer and other parties building community solar projects should review the relevant town and regional plans of their county and municipality to ensure their project is consistent with these plans. In order to obtain a CPG, potential projects must not “unduly interfere with the orderly development of the region.”<sup>7</sup> After the net metering group submits the CPG application, the PSB will take into consideration the “recommendations of the municipal and regional planning commissions, the recommendation of the municipal legislative bodies, and the land conservation measures contained in the plan of any affected municipality” to inform their decision.<sup>8</sup>

#### **1.4.2. Stability and Reliability/Interconnection Requirements**

In order to optimize distributed generation as a grid resource, renewable facilities should connect to three-phase power lines when possible. Single-phase and three-phase power lines are the most common method for electrical transmission in Vermont. Three-phase power distribution lines transfer electricity over long distances, while single-phase power generally enters homes and businesses to power appliances. Three-phase power lines can handle a higher electricity load, making them a key piece of the electricity infrastructure needed for the integration of renewable facilities. While proximity to three-phase power distribution lines<sup>9</sup> greatly improves the chances of interconnection, many single-phase power distribution lines can accommodate the

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<sup>6</sup> PSB Rule 5.108(B).

<sup>7</sup> VT. STAT. ANN. tit. 30, § 248 (West).

<sup>8</sup> *Id.*

<sup>9</sup> For an interactive map of Green Mountain Power’s three-phase distribution system, *see*:

[http://www.greenmountainpower.com/innovative/solar\\_capital/3-phase-service-in-vermont/](http://www.greenmountainpower.com/innovative/solar_capital/3-phase-service-in-vermont/) (last visited April. 10, 2016).

capacity added by a 150 kW system without disrupting grid stability and reliability. The solar company installing the group system should communicate directly with the utility regarding interconnection requirements.

#### **1.4.3. Environmental Considerations/Outstanding Water Resources**

When siting the project, net metering participants should be attentive to the proximity of bodies of water, wetlands, deer wintering areas, threatened or endangered species, and any other applicable sensitive environmental factors. The Agency of Natural Resources' (ANR) website contains a map of many of these environmental resources.<sup>10</sup> When selecting a site and designing the solar array, the organizers of a community solar project should consult ANR's map and avoid impacting environmental resources when possible. Impacts to these resources can delay the permitting process or cause the proposed community solar array not to receive a permit. The solar company **may be** able to assist in identifying suitable sites for the solar array.

#### **1.4.4. Optimal Siting and the "Quechee Test"**

Net metering participants must evaluate potential sites for their proximity to distribution lines with available capacity for accommodating a system between 15 kW and 150 kW, and potential aesthetic impacts. Proximity to distribution lines restricts the number of potential sites for a solar array. Most of Vermont's electricity distribution system runs along the highway system. This means any potential project will most likely be visible from the road, and those who find the view unpleasant will have grounds for complaints.

In order to address complaints about the aesthetics of the array, the PSB usually applies the two-step "Quechee Test" to weigh the public's aesthetic concerns against the potential

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<sup>10</sup> See <http://biofinder.vt.gov/biofindermap.htm> (last visited April. 10, 2016).

benefits of the project.<sup>11</sup> The first step of the test examines five criteria to determine if the project will have an adverse aesthetic impact on the surrounding area:<sup>12</sup>

1. The nature of the project's surroundings.
2. Whether the project's design is compatible with its surroundings.
3. Whether the colors and materials selected for the project are suitable to the surroundings.
4. From where is the project visible.
5. The impacts on open space.

The Board applies the greatest scrutiny to the first two criteria. Therefore, solar installer should design the proposed array with consideration to the system's surroundings. Net metering participants should be attentive to the quality of landscaping because it could be an effective means of mitigation.

If the Board determines that the project has an adverse impact on the surrounding area, then in the second step, it tests whether the adverse impact will be "undue."<sup>13</sup> Here, the Board will consider three criteria:

1. Would the project violate a clear, written community standard intended to preserve the aesthetic or scenic, natural beauty of the area?
2. Would the project offend the sensibilities of the average person?

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<sup>11</sup> *In re Lakes Corporation*, 154 Vt. 543, 550 (1990). 30 V.S.A. Section 219a only requires that systems exceeding 150 kW (AC) be subject to the "Quechee Test"; however, this report includes a review of that Test in order to provide understanding of how the Board evaluates the aesthetic impacts of solar arrays. While systems under 150 kW (AC) are not explicitly subject to the Test, the Environmental Information section of the CPG application does require applicants "describe the visible and aesthetic impact of the project and why it will not have an undue effect on aesthetics and the scenic and natural beauty of the area."

<sup>12</sup> Chelsealm, *Adverse Aesthetic Impacts: Act 250's Criterion 8 Upheld in Quechee Lakes*, VT. LAW SCH. LAND USE CLINIC, (May. 13, 2011), <http://openspacevt.wordpress.com/2011/05/13/act-250-and-adverse-aesthetic-impacts-criterion-8-upheld-in-quechee-lakes/> (last visited April. 10, 2016).

<sup>13</sup> The revised net metering rule describes how the Queechee test is applied. P.19-22, <http://psb.vermont.gov/sites/psb/files/docketsandprojects/electric/Rule51002016/Draft5%201003%207%202016JM.pdf> (last visited April. 10, 2016).

3. Has the applicant failed to take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings?

The second step of the “Quechee Test,” demonstrates the importance of considering the region’s planning devices, such as the town and county comprehensive plans. When determining an optimal site, groups should consider the three prongs of the second step of the “Quechee Test.” Prospective net metering participants should be prepared to mitigate any adverse aesthetic effects of their projects. Early evaluation of the site based on the test will provide insurance against potential future complaints against the proposed project to the PSB.

Once a site has been found, the net metering group must work out the legal and financial relationship with the landowner. The VLS Energy Clinic has developed a model land lease agreement executed by the landowner, the agent for the group’s LLC, and the solar company. Under our model land lease agreement, the landowner receives a share of the net metering credits generated by the project as compensation for the lease. If the landowner has any mortgages remaining on his property, then the LLC and the financial institutions should execute a subordination, non-disturbance and attornment (SNDA) agreement in order to establish a contractual process in the event of a foreclosure upon the landowner’s property.<sup>14</sup> Vermont Law School’s model land lease, attached as Exhibit E, contains an SNDA agreement. However, groups should consult an attorney experienced in Vermont real estate transactions for more information on Vermont property law.

## **1.5 Financing**

Financing and monetary incentives are critical issues for Vermont residents and small businesses seeking to participate in community-owned group net metering. The costs of material

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<sup>14</sup> Morton P. Fisher, Jr., Richard H. Goldman, REAL PROPERTY, PROBATE, AND TRUST JOURNAL 355-398 (1995).

for solar arrays have decreased tremendously in recent years.<sup>15</sup> However, installation and maintenance still require a significant financial commitment. In addition, the solar company can help develop a simple financial plan by estimating costs for the project, and a net metering group can further estimate how many community participants they approximately need to invest in the project.

This section clarifies the financing options for prospective net metering participants based on the state and the national tax climate as of January 2015. The October 1, 2014 PSD report on the status of net metering in Vermont encourages net metering participants to take advantage of the current federal tax incentive structure to build well-sited distributed net metered generators, including solar PV. How a group chooses to finance the solar array depends on how the group chooses to organize. This report encourages net metering groups to organize in a way that maximizes returns from federal investment tax credits. A net metering group allows individuals, businesses, nonprofits, and municipalities to join together to govern and finance a solar facility.

This section identifies the tax credits that are available to residential and commercial customers through the federal tax system, and articulates three avenues through which prospective net metering groups may finance their project. It also discusses state-supported incentives programs and loans, tax-exempt financing options as substitutes or supplements to personal loan programs of credit unions and banks.

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<sup>15</sup> By some estimates, prices for household solar photovoltaic systems fell by almost 30 percent from 2010 to 2013, <http://blog.ucsusa.org/cost-of-installing-solar-panels-635> (last visited April. 10, 2016).

### **1.5.1. Federal Tax Incentives**

Net metering participants should take advantage of the federal investment tax credits to help offset a significant portion of the installation costs.<sup>16</sup> Under the Internal Revenue Code, a 30% federal Investment Tax Credit (ITC) is available to both residential and commercial solar Photovoltaic (PV) systems.

#### ***Claiming the Commercial Investment Tax Credit***

##### **1) Commercial Energy Investment Tax Credit (ITC):**

Qualified community solar projects are entitled to a tax credit – 30% of its investment cost.<sup>17</sup> Section 48 of the Internal Revenue Code creates a 30% investment tax credit for solar photovoltaic (PV) investment in the commercial, industrial, investor-owned utility, cooperative utilities, and agricultural sectors.<sup>18</sup> This tax benefit covers expenditures for “energy property” as defined in §48(a)(3), which includes solar facilities - and is not subject to a maximum credit limit. Any unused credits may be carried forward to be used in future years.<sup>19</sup> State rebates and grants are not calculated into the 30% ITC, unless they are considered taxable income.<sup>20</sup> Hence, subsidized energy financing expenditures through a federal, state, or local program designed to produce or conserve energy cannot be earned back through the credit.

##### **2) The Modified Accelerated Cost Recovery System (MACRS):**

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<sup>16</sup> Jason Coughlin et al., *A Guide to Community Shared Solar: Utility, Private, and Nonprofit Project Development* 38, U.S. DEPARTMENT OF ENERGY (2012). (Citing Financing Non-Residential Photovoltaic Projects: Options and Implications, Lawrence Berkeley National Laboratory, Jan 2009), <http://eetd.lbl.gov/ea/emp/reports/lbnl-1410e.pdf> (last visited April. 10, 2016).

<sup>17</sup> The Internal Revenue Service, *Private Letter Ruling on the Eligibility of an Individual Panel Owner in an Offsite, Net-metered Community-Shared Solar Project to Claim the Section 25D Tax Credit*, Clean Energy States Alliance, <http://www.cesa.org/assets/2015-Files/IRS-Community-Shared-Solar-PLR.pdf> (last visited April. 25, 2016) See also Wilson Ring, *IRS Backs Investor in Westside Solar Farm* (Sep. 2, 2015), The Rutland Herald, <http://www.rutlandherald.com/article/20150902/NEWS03/709029895/1001/NEWS> (last visited April. 18, 2016)

<sup>18</sup> 26 U.S.C. § 48(a)(3)(A)

<sup>19</sup> Mark Bolinger, *An Analysis of the Costs, Benefits, and Implications of Different Approaches to Capturing the Value of Renewable Energy Tax Incentives* (May 2014), [http://eetd.lbl.gov/sites/all/files/lbnl-6610e\\_0.pdf](http://eetd.lbl.gov/sites/all/files/lbnl-6610e_0.pdf). (last visited April. 10, 2016).

<sup>20</sup> If the incentive is considered taxable income, then it does not need to be subtracted from the cost basis. *Id.* at 43.

The MACRS allows businesses to recover energy investments through a method of depreciation for the declining value of qualified PV assets at an accelerated rate on their tax returns.<sup>21</sup> Qualified businesses can depreciate their PV assets,<sup>22</sup> in the form of a tax deduction, over a five-year period. The owner of the PV array could then offset other sources of passive income “with losses generated by accelerated depreciation deductions under [MACRS].”<sup>23</sup>

Utilizing the commercial ITC to develop a community solar project generally requires an intricate partnership with a tax-motivated investor through tax equity financing. Although there are different variations<sup>24</sup> of this arrangement, the overriding principle remains the same: the group invites a tax equity investor to monetize the investment tax credit, while the tax equity investor provides the start-up capital and fills the role of debt-based financing.

Although this is a plausible means to utilize the ITC, it is by no means simple, and comes with its own unique set of costs. Mark Bolinger of the Lawrence Berkeley National Laboratory claims that the magnitude of the net benefit conferred by tax equity funding “is diminished by the fact that tax equity is currently twice as expensive (on a comparable after-tax basis) as the project-level term debt that might otherwise be used in its place.”<sup>25</sup> Thus, if tax equity investors are brought into the equation to monetize the tax benefits, community groups who want to

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<sup>21</sup> 26 U.S.C. § 168(e)(3)(B)(vi) under the MACRS, which refers to the property described in 26 USC §48(a)(3)(A)

<sup>22</sup> 26 U.S.C. § 167, a depreciation deduction allowance for assets generally applies to a property used in trade or business or income-producing activity (investment use) defined in section 167(a)(1), (2), [https://www.irs.gov/publications/p946/ch01.html#en\\_US\\_2013\\_publink1000107298](https://www.irs.gov/publications/p946/ch01.html#en_US_2013_publink1000107298) (last visited April. 19, 2016)

<sup>23</sup> Mark Bolinger, *An Analysis of the Costs, Benefits, and Implications of Different Approaches to Capturing the Value of Renewable Energy Tax Incentives* (May 2014), P. 39, [http://eetd.lbl.gov/sites/all/files/lbnl-6610e\\_0.pdf](http://eetd.lbl.gov/sites/all/files/lbnl-6610e_0.pdf) (last visited April. 10, 2016).

<sup>24</sup> *Sale-Leaseback structure*: where the community sells the completed systems in their entirety to a tax equity investor, and the investor then leases the system back to the community. *Partnership Flip structure*: where the community and the tax equity investor partner together to finance and own the project and share in both its risks and rewards. The community may regain 100% ownership of the assets at reasonable cost after all the tax benefits have been used by the tax investor. *Inverted Lease structure*: where first, the community and tax equity investor jointly fund a “master tenant,” who will be 99% under the tax equity investor’s control. Next, the community and master tenant fund an “owner/lessor”, who is 51% owned by the community, to own and lease the systems to the tenant. This method allows the community to keep half the depreciation tax benefits.

<sup>25</sup> Mark Bolinger, *An Analysis Of the Costs, Benefits, And Implications Of Different Approaches To Capturing The Value of Renewable Energy Tax Incentives*, 1 (May 2014).

develop a group net metering solar array will essentially “forfeit one-third or more of the economic value of a project’s tax benefits.”<sup>26</sup>

Moreover, we suggest that community solar participants look towards self-financing their group net metered project from their own savings or through financing with your local bank or credit union in order to avoid reduction in customer benefits and the complicated nature of tax equity financing.

### ***Claiming the Residential Investment Tax Credit***

The simplest way for individual customers who are not businesses to finance their share of the solar array is through personal investment supplemented by the federal 30% Residential Investment Tax Credit. Among other renewable energy expenditures, this tax benefit covers expenditures for “solar electric property” defined in § 25D(d)(2) and is not subject to a maximum credit limit. This method requires individual customers to rely on their own savings, traditional loans from lending institutions, and/or government subsidized loan programs to fund their projects, while capturing the 30% tax credit against their own household income<sup>27</sup>. Net-metered projects appear to be able to claim the residential ITC, granted the following requirements are met:

1. The installed capacity is off-site, or not directly located on the taxpayer’s home.

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<sup>26</sup> *Id.*

<sup>27</sup> In 2013, the IRS issued guidance that confirmed residential tax benefits can be used for solar projects not located at or on the owner’s residence. This guidance does not necessarily cover all project arrangements. Further IRS guidance would be helpful. Please consult a tax attorney regarding your eligibility for federal tax incentives, <http://www.irs.gov/pub/irs-irbs/irb13-47.pdf> (Notice 2013-70), P. 531. *See also*, <http://www.energycleantechcounsel.com/2013/11/07/irs-opens-the-door-to-expanded-use-of-residential-section-25d-credit-in-offsite-solar-and-other-renewables-projects/> (last visited April. 10, 2016).

2. The taxpayer's net metering contract specifies that the taxpayer owns the energy transmitted by the solar panels to the utility grid until drawn from the grid at his residence.
3. The installed system is not used to generate significantly more<sup>28</sup> power than is consumed by that taxpayer at his or her home.

The 30% Residential ITC may be applied directly to the taxpayer's federal income taxes. The rebate amount of 30% will remain until December 31, 2019, which is the last day a community solar array should begin construction of the project in order to obtain the full 30% tax credit. The rebate amount will decrease to 26% in 2020, 22% in 2021, and continue at 10% in the following years. The designation of whether an installed system is commercial or residential will depend on the entity filing the application.

The challenges of financing a community-owned solar array system through loans and the residential ITC lie in each net metering participant securing their own financing, and forming an association or an agreement that will determine group governance structure and accountability for managing the solar array.<sup>29</sup>

### **1.5.2. State Tax Benefits and Programs**

Group net metering participants will be able to take advantage of Vermont's tax benefits towards the use of their solar energy generation facility. Any systems over 50 kW will be assessed a uniform \$4/kW tax.<sup>30</sup> With regards to municipal tax, Vermont gives discretion to each

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<sup>28</sup> The IRS did not quantify "significantly more" in its Guidance Notice.

<sup>29</sup> In the past, community solar groups have formed limited liability companies (LLC) to meet this need. For instance, the Boardman Hill Community Solar project participants organized an LLC (Boardman Hill Solar Farm, LLC) to undertake financial, administrative, and management responsibilities for the group's solar project. (PDF version of Boardman Hill Solar Farm power point presentation on file with IEE)

<sup>30</sup> 32 V.S.A. 3481

municipality to waive the property taxes for PV facilities and any land, not to exceed one-half acre, on which it is built.<sup>31</sup>

Regarding the personal debt equity, some lending institutions, such as the Vermont State Employees Credit Union,<sup>32</sup> offer specialized loan options for solar projects.<sup>33</sup>

## **1.6 Establishing Group Governance and Group Procedures**

Act 99 and Rule 5.100 require that applicants establish certain group governance procedures before the Board awards a CPG. Formation of a legal entity may be useful for group governance and managerial purposes, but prospective net metering participants should ensure that the ownership interest in the facility remains with the participants, rather than being transferred to the legal entity. Regardless of the legal structure of the group, the CPG application must contain the following:<sup>34</sup>

- A process for adding and removing meters; allocation of excess generation;
- A dispute resolution process;
- A designated process for communicating with the host utility, including a designated communicator; and
- An explanation of the ownership of the renewable energy credits produced by the group system.

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<sup>31</sup> See <http://www.leg.state.vt.us/reports/2012ExternalReports/274975.pdf> (last visited April. 10, 2016).

<sup>32</sup> VERMONT STATE EMPLOYEES CREDIT UNION, <https://www.vsecu.com/articles/invest-in-solar> (last visited April. 10, 2016).

<sup>33</sup> The Clean Energy Development Fund (CEDF), a subsidized state loan program, offers low-interest loans (at a fixed rate of 4%) for renewable energy technologies. Individuals, sole proprietorships, partnerships, limited liability corporations, corporations, non-profit corporations, Subchapter S corporations, municipalities, and foreign corporations with Vermont subsidiaries or affiliates are all eligible for the CEDF loan program; however, the loan amount must be at least \$50,000, and cannot exceed \$250,000. Given the high minimum amount requirement, this loan option may only be feasible for community groups that have consolidated their loans.

<sup>34</sup> 2014 Vermont Public Service Board Certificate of Public Good.

This section describes the choices that must be made for each process and the different entity structures available to the group to administer the group system. Groups should utilize this section to evaluate the fit of the following entity structures based on their unique circumstances and group composition.

When a group forms, the individual participants own the array and manage the operations of the LLC. The formation process operates smoother if the core group is comprised of people with prior relationships with one another. That group could be a local town energy committee, a church fellowship, a local rotary club, a neighborhood, political committee, or softball league. Having a core group of individuals and businesses willing and able to help the group reach critical mass and fully subscribe the solar array on a timely basis expedites the process and lead to a well- functioning member-managed team.

Community solar arrays are federal and state securities laws. We have structured our model LLC Operating agreement to minimize these concerns by giving the participants direct ownership and control over the operations of the solar array. The Vermont State Department of Financial Regulation published an Order illustrating a securities exemption for Community Solar Projects. This exemption, known as the Vermont Solar Utility No-Action Exemption (The “SUN Exemption”) provides a test for determining whether Community Solar Projects will need to register with the Department of Financial Regulation.<sup>35</sup> As background, under the Vermont Uniform Securities Act a “security” is defined to include an “investment contract,” a term whose definition has gathered a bit of attention.<sup>36</sup> In the United States Supreme Court case, *S.E.C. v. W.J. Howey*, the Court clarified the definition finding that an investment contract is “a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to

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<sup>35</sup> See State of Vermont Department of Financial Regulation, Securities Division, Order No. 14-023-S.

<sup>36</sup> See VT. STAT. ANN. tit. 9, § 5102 (West).

expect profits solely from the efforts of the promoter or a third party.”<sup>37</sup> Vermont has, in effect, accepted this *Howey Test* as evidenced by their incorporating its terms into their definition of a security:

[The term security also] includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a ‘common enterprise’ means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors.<sup>38</sup>

Applying this definition, the Vermont Department of Financial Regulation developed the following test for determining if any particular investment contract will be considered a security, thereby requiring registration under the Vermont Uniform Securities Act:

- (i) There must be an “investment”;
- (ii) In a “common enterprise”;
- (iii) With the “expectations of profits”;
- (iv) That are “derived primarily from the efforts of a person other than the investor.”<sup>39</sup>

Only by meeting each of these four prongs will an investment contract be deemed a security. We firmly believe that the structure of our model operating agreement in the Community Solar Project will not meet these four prongs of the *Howey Test* because it gives LLC members direct ownership interest over panels and direct control over the management and operations of the project. What this means is that participants of Community Solar Projects following our guidelines should not need to register the

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<sup>37</sup> S.E.C. v. W.J. Howey Co., 328 U.S. 298-99 (1946).

<sup>38</sup> VT. STAT. ANN. tit. 9, § 51021(West).

<sup>39</sup> State of Vermont Department of Financial Regulation, Securities Division, Order No. 14-023-S at 2.

security offering. For more information on securities regulations, net metering group should consult an attorney.

### **1.6.1. Management Structure**

Because of the management obligations listed above, and the obligations that come with operating and decommissioning the system, net metering groups are advised to consider forming a legal association like a limited liability company (LLC), consumers' cooperative, or multilateral licensing agreement<sup>40</sup> for the purpose of group governance and project management. We recommend that the group form a member managed LLC, because it provides a number of legal and structural benefits for a group net-metered project. Our LLC Operating Agreement--attached to this report as Appendix D--details the organizational structure and business rules for a typical group net-metered project. For tax purposes, groups should ensure that any corporate form they create should not possess ownership interest in the solar facility. The IRS has not provided clarification on whether residents may still claim the 30% Residential ITC, if they convey the proprietary interests to the group business organization like an LLC. However, §25D does allow cooperative housing corporations to claim the 30% residential ITC on solar electric property expenditures.<sup>41</sup> In Appendix F, the available options for organization structures to net metering groups are discussed.

### **1.6.2. Meter Management**

The group must develop methods for adding and removing meters included in the group system, and determining credit allocation. Groups may add or remove meters only after written

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<sup>40</sup> Michael Dworkin, Dan Ingold, Ralph Meima, Carey Rosser, Jonathan Voegelé, Mary Westervelt, VERMONT'S CLEAN ENERGY DEVELOPMENT FUND (ARRA) AND POWERSMITH FARM, VERMONT GROUP NET METERING INFORMATION AND GUIDELINES, 14 (Dec. 2010).

<sup>41</sup> 26 U.S.C.A. § 25D (West).

notice to the host utility. The Energy Clinic’s sample LLC Operating Agreement--attached to this report as Appendix D--has a provision that manages the addition and subtraction of meters.

The group must also provide guidance on how the utility will “allocate any credits among the meters included in the system.”<sup>42</sup> We recommend that groups install a production meter. A production meter credits the group at the utility’s residential rate, regardless of whether certain net metering participants are generally billed at the time-of-use or demand rates. This can define the amount of credit the group will receive.

Then, the community solar group must choose how to allocate the kWh production credit amongst its members. It can allocate kWh credits on a percentage basis or choose to allocate credits in some other manner. For example, a group can choose to allocate credits “such that the bill of one member or account is first offset, with any additional kWh credits applied to the next group member(s) or account(s) in an order selected by the participants or group.”<sup>43</sup> How the group determines kWh allocation depends on the makeup of the group. Installing a production meter at the facility and distributing the production of the system on a fixed percentage basis allows each participant to be credited most accurately for his or her capital investment in the project. This allocation can only be changed on written notice to the electric company from the group’s designated communicator.

### ***1.6.3. Construction and Management of the Array***

Our model agreements envision the group selecting a qualified local solar company to construct and turn over to the individual members an operational solar array. The developer of the turnkey system would be responsible for all permitting, and would execute contracts with individual group members. The contract between the developer and individual group members

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<sup>42</sup> Vt. PSB Rule 5.106(A).

<sup>43</sup> Vt. PSB Rule 5.105 (e).

would detail the technical specifications of the array, including any warranties, and a schedule of deposits and payments that would culminate in construction of the array when minimum levels of contractual commitments were reached.

According to the process detailed in our model LLC operating agreement, ongoing management and maintenance would be handled by the LLC and funded by annual operating expense charges billed by the treasurer of the LLC.

We expect the annual operating expenses to be modest. Some expenses the group should think about include lawn care, insurance costs, and component replacement. Component replacement will generally be limited to the solar inverters. The lifespan of inverters is typically 10 to 15 years, and groups should expect to replace these components at least once during the length of the agreement. Warrantees on inverters usually cover the first 10 to 12 years of operation.

#### ***1.6.4. Dispute Resolution***

Each group must have “a binding process for the resolution of any disputes within the group system relating to net metering that does not rely on the serving utility, the Public Service Board or the Public Service Department.”<sup>44</sup> This process does not include disputes between the electric company and individual group members regarding billing, payment, or disconnection. The Energy Clinic’s model LLC Operating Agreement--attached to this report as Appendix D--contains an example of a binding arbitration clause.

#### ***1.6.5. Communication with the Utility***

Each group must also designate a person who will be responsible for all communication with the service utility, except for communications related to billing, payment, and

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<sup>44</sup> Vt. PSB Rule 5.106(A)(4).

disconnection. All communications regarding billing, payment, and disconnection will be sent directly from the utility to the individual consumer.

#### **1.6.6. Excess Generation Distribution**

Groups must establish a process for the allocation of excess generation. At times, mostly during the spring and summer, the group solar array may produce more electricity than the group can consume. 5.104(A)(3) states: “[i]f, at the end of a billing period, the electricity generated by the customer or group exceeds the electricity supplied by the electric company, the electric company shall calculate a monetary credit to the customer pursuant to the billing procedures set forth in Section 5.105.” The monetary credit generated by the excess generation will be applied to the customer’s bill during months where the customer’s energy usage exceeds energy production. Groups should be aware that any accumulated credit must be used within twelve months of the original month the credit was earned or such amount will revert to the utility without compensation.<sup>45</sup> Groups can easily establish a process for the allocation of excess generation by using a fixed percentage calculation to determine the distribution of electricity production.

#### **1.6.7. Distribution of Renewable Energy Credits**

A Renewable Energy Credit (REC) is the property right to all of the environmental attributes of a unit of electricity produced by a renewable source. The environmental attributes include the renewable characteristic of that electricity and all environmental benefits, including the avoided emissions and impacts to air, water, or soil from the displacement of other non-renewable energy generation.

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<sup>45</sup> Vt. PSB Rule 5.104(A)(4).

RECs can be transferred to the utility company or retained by the community solar project. RECs retained can either be retired or sold to another party. If RECs are sold to another party or transferred to the utility for compliance with a renewable energy standard, the community solar members can no longer claim to be consuming solar energy or to be benefitting the environment as these rights are exclusive and are disclaimed when transferred to the utility or sold to another party.<sup>46</sup> Only by retaining and retiring (not reselling) the RECs can the members of a community solar array legally consume solar energy and make claims that their electricity is “clean”, “green”, “renewable”, etc. This guide therefore recommends that all RECs be retained and retired by the community solar project.

When filing a permit application (CPG application) in Vermont, the filer must declare “whether the customer retains ownership of the environmental attributes of any electricity generated by the net metering system or transfers ownership of those attributes to the interconnecting electric company.”<sup>47</sup> We recommend all community solar groups “retain” their RECs rather than transferring them to the utility so that the group members can consume solar energy and make the claim that their power is clean, green, and renewable.

This guide recommends that any agreement establishing a group net metering system require that the customer retain and retire the RECs, rather than transferring them to another entity as part of a financing tool. Selling the RECs strips the solar array’s electricity of the characteristics that qualify it as renewable, solar electricity. If the RECs are sold, the community solar members will consume non-renewable energy, also referred to as the “residual mix”, which consists of coal, oil, nuclear, and natural gas generated electricity and virtually no renewable energy. Community solar groups can retire the RECs by simply choosing not to sell them. The

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<sup>46</sup> 16 C.F.R. § 260.15(d).

<sup>47</sup> 30. V.S.A. 219a(b)(3) .

Energy Clinic's LLC Operating Agreement--attached to this report as Appendix D--includes a sample clause that can ensure the group members retain the RECs and therefore that the community solar array truly provides solar electricity to its members.

### **1.6.8. Other Considerations**

Individual group members should also be aware of the provisions in the net metering tariff of their local utility. For instance, each electric meter can only participate in one group. Individual customers who have home PV systems may also participate in a group net-metered project; however, any monthly excess generation from their individual system will be swept into the net metering group's account. Then, the utility distributes the excess generation amongst group members according to the group's excess generation procedure.<sup>48</sup>

## **1.7 Certificate of Public Good Application**

Obtaining a Certificate of Public Good (CPG) is a mandatory step in completing a net metering project. The net metering group must apply for the CPG after they confirm the host utility has capacity for their system and establishes the necessary governance and procedures. CPG application forms are located on the website of host utilities or the website of the PSB<sup>49</sup>, or attached to this report as Appendix C.

The group must send a copy of the application to the following parties: the PSB; the Vermont Department of Public Service; the host utility; the local planning commission; the local legislative body (typically the Select Board); the Planning Division of the Agency of Natural

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<sup>48</sup> GREEN MOUNTAIN POWER'S NET METERING TARIFF, [http://www.greenmountainpower.com/upload/photos/307Self\\_Generation\\_and\\_Net\\_Metering\\_2013\\_10\\_14.pdf](http://www.greenmountainpower.com/upload/photos/307Self_Generation_and_Net_Metering_2013_10_14.pdf) (last visited April. 10, 2016).

<sup>49</sup> PSB, <http://psb.vermont.gov/sites/psb/files/forms/2014revisedNMAApplicationForm-1.pdf> (last visited April. 10, 2016).

Resources; and all adjoining landowners. Additionally, groups must submit a list of all the parties notified with the application.<sup>50</sup>

A group's submission of an application triggers a thirty-day period for comments and hearing requests regarding the proposed project. If any party requests a hearing, they must show that the application "raises a significant issue regarding one or more of the substantive criteria pursuant to 30 V.S.A. §248."<sup>51</sup> Once the CPG is issued, construction on the solar array can begin. Under the Energy Clinic's model operating agreement, obtaining the CPG would be taken care of by the solar installer retained by the group.

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<sup>50</sup> *Vermont Public Service Board Certificate of Public Good Application* (2014).

<sup>51</sup> VT. STAT. ANN. tit. 30, § 248 (West).

## **2. Overview of Group Net Metering**

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### **Introduction**

When establishing a community net metering group, participants should be attentive to Vermont's net metering laws and the state and federal financial incentives available to net metered customers. Projects that finalize construction prior to January 1, 2017 may take full advantage of a simple application process and generous financial incentives. Both the legal and financial landscape of net metering could change dramatically by 2017.

Subsection A provides an overview of group net metering law in Vermont, including:

- 30 V.S.A. Section 219 which governs Vermont's net metering program;
- 30 V.S.A. Section 248a, which governs siting procedures for electric generation facilities;
- Public Service Board Rule 5.100, which implements 30 V.S.A. Section 219;
- Public Service Board Rule 5.500, which establishes interconnection requirements;
- and
- Obtaining a Certificate of Public Good (CPG).

Subsection B discusses the future of net metering at the state and federal level. In addition to the changes Act 99 made to Vermont's net metering program, the Act also requires that the Public Service Board develop a new net metering program that will commence on January 1, 2017. At the federal level, the tax incentives that currently support the installation of renewable energy will remain at the current rate until December 2019.

## 2.1 Net Metering Law in Vermont

### 2.1.1 30 V.S.A. Section 219a and Act 99

In 2013, the Vermont Legislature amended 30 V.S.A. Section 219a, Vermont's net metering statute, with the passage of Act 99. This Act makes a number of changes to Vermont's net metering law which are relevant to those interested in participating in a group net metering system. These changes include:

- An increase in the threshold of net metering participation that utilities must allow from 4% of peak capacity to 15% of peak capacity;
- A reduction in the solar credit for systems over 15 kW to 19 cents, down from 20 cents;
- New guidelines for the ownership and transfer of the environmental attributes of generation.
- Authorization for a number of pilot projects for qualifying utilities, including special provisions for landfill solar development.
- Authorization for utilities whose power supply portfolio is 90 percent renewable to establish an alternative net metering program, and electric cooperatives to develop pilot net metering projects.<sup>52</sup>

In 2017, the state legislature will repeal the current 30 V.S.A. Section 219a and replace it with "a statute that provides policy direction to the Public Service Board for a revisited net metering program that would be governed by Board rules."<sup>53</sup> This timeframe provides an incentive for net metering participants to initiate the group approval process before January 2017. All systems in place by December 2016 will be governed according to 30 V.S.A. Section

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<sup>52</sup> Vt. H.B. 702, *Statement of Purpose* (2014).

<sup>53</sup> *Id.*

219a. Repeal of this section will not affect systems that obtained a Certificate of Public Good (CPG) under the terms of this law.

### **2.1.2 30 V.S.A. Section 248a**

30 V.S.A. Section 248 governs the siting and construction of new electric facilities. Before construction can begin on any new electric generation facility, the solar installer must obtain a Certificate of Public Good (CPG). Act 99 dramatically simplified the application process for any solar installation sized between 15 kW (AC) and 150 kW (AC). When evaluating a proposed solar facility under 150 kW (AC), the PSB will generally waive all but four of the requirements found in Section 248: (1) Orderly Development, (2) Stability and Reliability, (3) Environmental Considerations, and (4) Outstanding Resource Waters. The required elements will be discussed in greater detail in the “Find a Site” section in Part Two of this report.

### **2.1.3 Public Service Board Rule 5.100 Group System Requirements**

The Vermont legislature, through Section 219, delegated the responsibility to implement the state’s group net metering program to the PSB, which in turn, has promulgated Rule 5.100 to achieve those ends. Rule 5.100 provides “the standards and procedures governing application for, and issuance of revocation of, a Certificate of Public Good for net metering systems under 30 V.S.A. 219a, 219b and 248. This rule also incorporates the technical specifications related to interconnection requirements and safety standards for net metering systems.”<sup>54</sup> Rule 5.100 also provides billing guidelines and schedules for the consumer and utility.

### **2.1.4 Public Service Board Rule 5.500 Interconnection Procedures**

Rule 5.500 establishes the interconnection standards for the solar facility. The contractor hired to install the system will generally ensure that the solar facility meets all interconnection

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<sup>54</sup> Vt. PSB 5.101

requirements. However, net metering participants should familiarize themselves with these guidelines because the Board requires a separate interconnection application to be filed along with the CPG. The rule explains the process for contacting the host utility, guidelines and fees for the interconnection application, the details of the fast track program, and feasibility and grid impact study requirements.

### **2.1.5 Certificate of Public Good**

Pursuant to 30 V.S.A. Section 248, every new electric generation facility must obtain a Certificate of Public Good (CPG) before initiating construction. The PSB has a fairly simple application process for projects between sized 15 kW and 150 kW. The application for a CPG for a project in this range is on the PSB's website<sup>55</sup> and is attached to this report as Appendix C. After a group submits the application form to the Board, utilities, state agencies, and other citizens have a thirty-day period to comment or request hearings on the project. Once the net metering group obtains a CPG, the group will work exclusively with the host utility and the solar installer to complete the project.

## **2.2 The Future of Net Metering**

### **2.2.1 State Program**

In 2017, Vermont will repeal 30 V.S.A. Section 219a and replace it with “a statute that provides policy direction to the PSB for a revisited net metering program that would be governed by Board rules.”<sup>56</sup> Prior to being repealed, Act 99 requires that the PSB, through the Department of Public Service, deliver recommendations to the legislature regarding net metering

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<sup>55</sup> A CPG application for a system under 150 kW can be found at:  
<http://psb.vermont.gov/utilityindustries/electric/backgroundinfo/netmetering>

<sup>56</sup> Vt. H.B. 702. *Statement of Purpose* (2014)

deployment, renewable energy credit (REC) ownership and transfer, and the feasibility of an RPS. The first required report was published on October 1, 2014. In this report, titled *Evaluation of Net Metering in Vermont Conducted Pursuant to Act 99 of 2014* (2014), the Public Service Department (PSD) acknowledged that the environment in which distributed generation has developed could be coming to an end. Thus, a new net metering program will commence on January 1, 2017.

### **2.2.2 Federal Program**

The current federal Commercial Energy Investment Tax Credit (ITC) for solar technologies is 30%.<sup>57</sup> The Commercial ITC is available to commercial, industrial, investor-owned utility, cooperative utilities, and agricultural investors in solar energy. Notably, the rebate amount of 30% will remain until December 31, 2019, which is the last day a community solar array should begin construction of the project in order to obtain the full 30% tax credit.

The federal investment tax credit will slightly decline to 26% in 2020, 22% in 2021, and remain at 10% in the following years. The table below shows the value of the ITC for each technology by year.<sup>58</sup>

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<sup>57</sup> 26 U.S.C. § 48.

<sup>58</sup> Business Energy Investment Tax Credit (ITC), Database of State Incentives for Renewable Energy, <http://programs.dsireusa.org/system/program/detail/658> (Last visited April. 10, 2016)

Technology	12/31/16	12/31/17	12/31/18	12/31/19	12/31/20	12/31/21	12/31/22	Future Years
PV, Solar Water Heating, Solar Space Heating/Cooling, Solar Process Heat	30%	30%	30%	30%	26%	22%	10%	10%
Hybrid Solar Lighting, Fuel Cells, Small Wind	30%	N/A						
Geothermal Heat Pumps, Microturbines, Combine Heat and Power Systems	10%	N/A						
Geothermal Electric	10%	10%	10%	10%	10%	10%	10%	10%
Large Wind	30%	24%	18%	12%	N/A	N/A	N/A	N/A

The Residential Renewable Energy Tax Credit applies to residential investors. A taxpayer may claim a credit of 30% of qualified expenditures (e.g. labor costs for onsite preparation, system installation, and wiring to interconnect a system to the home) for a solar energy system placed in service within December 31, 2019.<sup>59</sup> The residential renewable energy tax credit will gradually decline to 26% in 2020, and 21% in 2021.

Beside the difference of the customer status claiming either one of these programs, another difference between commercial and residential tax credit is that commercial investors may claim the commercial ITC when the construction of the solar array begins, while residential investor may claim tax credits when the installation is completed and operational.

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<sup>59</sup> 26 U.S.C. § 25D.

### **3. Conclusion**

Vermont's net metering program will undergo significant changes beginning in 2017 with the adoption of a revised net metering program beginning January, 1<sup>st</sup> 2017. The new net metering program is currently in the process of being developed by the Vermont Public Service Board (PSB), which is engaged in a rulemaking process (rule 5.100). Readers of this guide can obtain a copy of the latest draft of the proposed net metering rules and may be able to submit comments on the new net metering rules to the PSB by visiting the PSB's website and navigating to the "rule 5.100" webpage.

Full ownership of a group net-metered solar array is critical to those who wish to retain the maximum economic and environmental benefits from the generation of their own renewable energy. Many financing models offered by third-party developers may ease the upfront financial cost of owning a PV system. However, this sometimes comes at significant long-term economic loss, and is often paired with the loss of the environmental attributes, that allow the system to qualify as renewable. When owners retain the environmental attributes, including the RECs, they maximize the usage of the environmental benefits of their solar array, and reduce their own carbon footprint and Vermont's.

This guide provides a framework for groups to build on that maximizes the present legal and financial benefits available to community solar. Groups can use the guide to determine how it will be managed, where the project will be located, and how the project will be financed. Every community-owned group's net-metered project will bear unique circumstances, and needs to seek unique financial and regulatory compliance solutions. This guide is a starting point, we hope that your group may optimize its resources to develop a durable and successful community group net-metered solar project.

## **List of Abbreviations**

ANR – Vermont Agency of Natural Resources.

ADR – Alternative Dispute Resolution.

CEDF – Clean Energy Development Fund.

Coop – Cooperative Corporation.

CPG – Certificate of Public Good.

IRS – Internal Revenue Service.

ITC – Investment Tax Credit. Federal tax incentive available to commercial and residential customers.

GMP – Green Mountain Power Corporation.

kW – Kilowatt or Kilowatts.

kWh – Kilowatt hour or hours.

LLC – Limited Liability Company.

L3C – Low-profit Limited Liability Company.

MACRS – Modified Accelerated Cost Recovery System.

MBE – Mutual Benefit Enterprise, or Limited Cooperative Association.

MLA – Multilateral Licensing Agreement.

PSB – “The Board” or the Vermont Public Service Board.

PSD – Vermont Public Service Department.

PV – Photovoltaic.

REC – Renewable Energy Credit or Certificate. 30 V.S.A. Section 8002 defines “tradeable renewable energy credits” as “all of the environmental attributes associated with a single unit of energy generated by a renewable energy resource.”

RPS – Renewable Portfolio Standard. Some states have laws called renewable portfolio standards which require each electric company to obtain a certain percentage of their power portfolio from renewable sources.

SPEED – Sustainably Priced Energy Development program. The goal of Vermont’s SPEED program is to promote the development of in-state renewable energy resources.

V.S.A. – Vermont Statutes Annotated.

**OPERATING AGREEMENT  
for Member-Managed  
[Name of Entity] LLC<sup>1</sup>**

**INTRODUCTION**

This Operating Agreement (“Agreement”) is made and entered into by and between [Name of Entity] LLC (“Company”) and the undersigned as an initial member (“Member”) of the Company as set forth in the Business Purpose and Members herewith.

The undersigned hereby adopt the following Agreement and, in consideration of the mutual covenants and agreements contained in this Agreement and other good and valuable consideration, and intended to be legally bound hereby, the undersigned parties agree as follows:

**DEFINITIONS**

Capitalized terms used herein, but not otherwise defined, shall have the following meanings:

“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 on air, water, or soil that may occur through the plant’s displacement of a non-renewable energy source as defined by Vt. Stat. Ann. tit. 30 § 8002(7).

“Land Lease” means the land lease agreement made and by and between [redacted] (“Owner”) with an address at [redacted], and the Company as of [redacted] [date].

“Member” means the person or persons associated with and responsible for a membership share of the Solar Facility, a metered account with the Utility, and owns a panel or multiple panels of the Solar Facility.

“Member Meters” means all electricity Meters of the Member that are identified as a Member Meter in Exhibit “A” unless the Member and the Company agree to include additional meters.

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<sup>1</sup> Disclaimer: This agreement is intended as a model agreement that should be reviewed and modified by the user to apply to their specific circumstances and current law. We strongly recommend that all users of this agreement consult with legal counsel licensed to practice law in the relevant state on how to apply this model agreement to their specific circumstances.

“Net Metering” means measuring the difference between the electricity supplied to a customer and the electricity fed back by a net metering system during the customer’s billing period.

“Net Metered Customer” means a Vermont electric consumer who receives net metered energy from the Solar Facility, including the Owner.

“Output” means all of the electricity the Solar Facility produces, delivered to the Utility and allocated to the Member Meters, measured in kilowatt hours.

“Owner” means the owner of the land upon which the Project is sited.

“Pro-Rata Ownership” is defined as the rated DC output of the solar panels owned by the Member as a percentage of the total rated DC output of the solar array.

“Renewable Energy Credits (REC)” mean all “tradeable renewable energy credits” as defined in Vt. Stat. Ann. tit 30 § 8002(26) associated with a single unit of energy that the Solar Facility generates.

“Services” means any and all of the services the Company provides the Member pursuant to this Agreement.

“Site” means any and all real property in which the Company installs and constructs the Solar Facility.

“Solar Facility” shall have the meaning given to such term in the Background and shall include all equipment, facilities, and materials, including photovoltaic arrays, DC/AC inverters, wiring and other components included therein. The System excludes any part of the Members’ existing electrical systems that are owned or leased, operated, maintained and controlled by the Member, and interconnected with the Utility. See Exhibit “A.”

“Turnkey” means that the Developer will install and construct the Solar Facility such that upon completion the Solar Facility will be generating electricity and Net Metering Credits.

“Unbundled” means RECs that are sold separately from the unit of renewable energy.

“Utility” means the retail electric company serving the Member.

## **BACKGROUND**

- a. The parties are organizing and operating a limited liability company, subject to the conditions in this Agreement, for the purpose of managing a net metered community solar electric facility (“Solar Facility”). See Exhibit “A.”
- b. The Members own the Solar Facility pursuant to the conditions of this Agreement.
- c. The Solar Facility is intended to offset Members’ electric bills and reduce carbon emissions from the State of Vermont.
- d. The parties have agreed to make certain payments to the Company in order to pay for the Solar Facility’s operating expenses.

## **ARTICLE I. ORGANIZATION**

Name: The name of the Company is [Name of Entity] LLC.

Formation: The Company was granted Articles of Organization as a Limited Liability Company by the Office of Secretary of State, State of Vermont, effective [Month, Day, Year]. The rights and obligations of the Members and the Company shall be as provided under the Articles of Organization and this Agreement.

Principal Office: The principal office of the Company shall be such address as may be designated from time to time by its Members or their representative officers.

Purpose of Formation: The Company is organized to develop, install, operate, and manage the solar array and to do any and all things necessary, convenient, or incidental to that purpose.

Initial Registered Agent and Office: The name and address of the initial registered agent of the Company shall be [Name of Agent], [Address of Agent].

## **ARTICLE II. BUSINESS PURPOSE**

Business Purpose: The purpose of [Company] is to serve as an entity that represents the common interests of its members in managing certain administrative and financial matters in connection with their separate acquisition of solar panels from [Developer] or another company.

The Company will develop a solar photovoltaic array of [capacity in kW] (“Project”) in which Members separately purchase and own their solar panels. Initial members of the Company are those who buy into a “turnkey” system of solar panels and its components, including installation, permitting and monitoring, from [Developer]. The electricity production of the solar panels in the Project is or will be fed into the [Name of Utility] (“Utility”) grid. The Utility issues or will issue credits on a pro-rata basis to Members’ meters via net metering to offset Members’ electric use and to the landowner of the Project site as land lease payments.

### **ARTICLE III. MEMBERS**

Members: Members of [Company] are owners of their solar panels and a percentage of the Project.

Initial Members: The names, addresses and emails of the initial Members are listed in Exhibit B.

Liability of Members: No Member shall be liable, responsible, or accountable, in damages or otherwise, to any other Member or to the Company for any act performed by the Member with respect to Company matters, except for fraud, gross negligence, or an intentional breach of this Agreement.

The Company and each Member shall each defend, save harmless, and indemnify the other from and against any claim, proceeding (whether legal or administrative), and expenses that are related to this Agreement and that are (i) caused by an act or omission of the indemnifying party or (ii) sustained on or caused by equipment or facilities, or the use thereof, that the indemnifying party owns or controls.

Each party agrees to waive any claim against the other for indirect, incidental, consequential, or punitive damages. Neither the Company nor any Member shall be liable to the other for, or as a result of, any proceeding in which rates are reviewed or established for either party by the Public Service Board or similarly authorized entity. In no event shall the Company be liable under this Agreement if the Solar Facility fails to generate electricity or Net Metering Credits, as a result of the Company failing to obtain or maintain any necessary permit, license or governmental approval, or for any error or omission in any filing or instructions submitted by or on behalf of the Company, when acting as the Administrator of the Group Net Metering Arrangement to the Utility or any governmental entity.

The debts, obligations and liabilities of the Company, a limited liability company, are solely the debts, obligations and liabilities of the Company. A Member or manager is not personally liable for any debt, obligation or liability of the Company solely by reason of being or acting as a Member or manager. (Vermont Statutes Annotated, Title 11 Section 3043(a-b)).

### **ARTICLE IV. MANAGEMENT**

Member-Managed: The [Company] will be a member-managed limited liability company. As such, the management of the Company will be vested in the Members pursuant to 11 V.S.A. § 3054(a). Each Member has equal rights in the management and conduct of the Company's business, and any matter relating to the business of the Company may be decided by a majority of the Members. Each Member will have one (1) vote regardless of the number of panels or other assets owned.

General Powers: Members, acting together on behalf of the Company, shall have full, exclusive, and complete discretion, power, and authority, subject in all cases to the other provisions of this Agreement and the requirements of applicable law, to manage, control, administer, and operate the business and affairs of the Company for the purposes herein stated. Excluding the power to enter into real property contracts, Members have the power to make all decisions affecting such business and affairs, including, without limitation, the power to:

- a. Contract for liability and casualty insurance on the Project.
- b. Administer the payment of applicable state or other tax obligations on the Project.
- c. Administer the collection from Members of annual operating expense fees and the payment of such amounts due for tax, insurance, maintenance, service and other operating costs of the Project.
- d. Coordinate net metering and other arrangements with the Utility.

Representative Management: Members shall appoint a board of officers to serve as their representative management and the following provisions shall apply:

- a. Officers: The officers shall act in the name of the Company and shall supervise its operation under the direction and management of the Members, as further described below. The officers of the Company initially shall consist of a registered agent who is the presiding officer, a treasurer, and a secretary, and/or other officers or agents as may be elected and appointed by the Members.
- b. Election and Term of Office: The officers of the Company shall be elected annually by the Members by a majority vote. The Members of the Company shall have the right to replace the officers of the Company at any time during the year in the event of the relocation, illness, or death of an officer, or for any reason that may come up, for the term determined and by a majority vote.
- c. Authority: The initial registered agent, treasurer, and secretary may act for and on behalf of the Company and shall have the power and authority to bind the Company in all matters pertaining to the ordinary course of business. Any matters outside the ordinary course of business must be approved by a majority of the Members.
- d. Treasurer: The treasurer shall be the chief financial officer of the Company. The treasurer shall not be required to give a bond for the faithful discharge of his/her duties. The treasurer shall: (i) have charge and custody of and be responsible for all funds and securities of the Company; (ii) receive and give receipts for moneys due and payable to the Company from any source whatsoever, and deposit all such moneys in the name of the Company in such banks, trust companies, or other depositories as shall be authorized by Members of the Company; (iii) administer the collection from Members of annual operating expense fees and the payment of such amounts due for tax, insurance, maintenance, service; and (iv) in general perform such other duties as from time to time may be assigned by the Members. Prior to paying the cost of operating expenses, the Treasurer shall annually assess

and assign a per kW subscription charge to Members. The Treasurer shall begin collecting these expenses as soon as kW generation from the Facility is fully subscribed.

- e. Secretary: The secretary shall: (i) be custodian of the Company records; (ii) keep a register of name and addresses of Members; (iii) administer net metering arrangements with the Utility; and (iv) in general perform such other duties as from time to time may be assigned by the Members. If supported by a majority vote of the Members, the Secretary has the power to enter the Company into the Land Lease and any other real property contracts.

## **ARTICLE V. CONTRIBUTIONS, PROFITS & LOSSES, AND DISTRIBUTIONS**

Contributions and Interests of Members: Members shall make no initial capital contribution to the Company. Members' only contributions to the Company will be periodic pro-rata contributions for operating expenses, all of which will be paid out to third party vendors. Members shall contribute an initial per kW subscription cost as determined by the Treasurer. Each Member purchases and owns portions of solar panels separately and independently from the Company.

The Company has no ownership interest in its Members' solar panels or in such panels' electricity productions or net metering credits. The Company exists as a separate legal entity solely to represent the common interests of the Members in managing certain administrative or financial matters on their behalf in connection with their acquisition of solar panels in the Project.

Allocation of Net Metering Credits to Landowner and Other Parties: For purposes of this Agreement, Members agree to allocate a percentage, as explained in the Allocation Instructions ("Exhibit B"), of the total electric output of the power production of the Project, in the form of net metering credits, to the Owner of the Project site as payment for the use of the site. Such net metering credits shall be credited to Owner's Utility Account (or any successive account designated by the Owner).

Profits, Losses, and Distributions: The Company will have no assets, other than contributions that are made from time to time by Members in respect of operating expenses and the 25 year Land Lease with the Owner. Operations of the Company are administrative in nature and are expected to be managed at a near-zero profit.

Tax Status and Tax Credits: The Company shall have pass-through taxation allowing company profits to be taxed at individual rates. Any tax credits of the Company shall be allocated to the Members in proportion to their Percentage Interests as explained in the Allocation Instructions (Exhibit "B").

Operating Expenses and Annual Fees: Members are responsible for those expenses associated to liability and casualty insurance, state and municipal tax, maintenance and

service, and other such expenses in connection with Members' ownership of solar panels in the Project.

Members shall pay an annual operations expense fee for such expenses in such amount as may be determined from year to year by the Treasurer. The Treasurer shall also have the discretion and right to assess for unexpected or additional expenses during the year, should they occur, for any reason and as needed.

The annual operations expense fee and any additional expenses shall be pro-rated to Members according to Members' ownership share of the Project. Members operating expenses are due and payable as determined by the Company. Members have sixty (60) days to make any required payment after request thereof. After sixty days, the Company shall have the right, among other remedies, and without any further demand to the Member, to direct the Utility to halt net metering credits to such Member and to reallocate them to the Company until the Member is brought current.

## **ARTICLE VI. VOTING, CONSENT TO ACTION, AND MEETINGS**

Voting by Members: Each Member shall be entitled to one vote on all matters which provide for a vote of the Members, regardless of the number of panels owned. Matters relating to the management, conduct, and business of the company must be decided by a majority of the Members. Amendments to this Agreement must be approved by a supermajority of the Members. A supermajority is 75 percent of the Members.

Meetings – General and Special: The Members shall hold general meetings from time to time throughout the year to be determined by a majority of the Members. Such general meetings shall serve as a time to discuss matters related to the Solar Facility. The date of the last meeting for any given year must be within six (6) months of the end of the fiscal year.

Upon Member request and subject to majority vote, special meetings may be called in the interval between general meetings. If approved, the secretary shall provide written notice of the meeting not less than 15 days nor more than 30 days before the meeting. The notice shall set the time, place and purpose of the meeting.

Meetings – Written Consent: Action of the Members or officers may be accomplished with or without a meeting. If a meeting is held, evidence of the action shall be by minutes or resolution reflecting the action of the meeting, signed by a majority of the Members, or the secretary or such officer who may be designated. Action without a meeting may be evidenced by written consents signed by a majority of the Members, or the secretary or such officer who may be designated.

## **ARTICLE VII. ASSIGNMENT OF MEMBERSHIP INTERESTS**

Solar Energy Environmental Attributes: Each Net Metered Customer shall own and retain all of the environmental attributes of their net metered energy produced by the Solar

Facility. Net Metered Customers shall not unbundle or separately sell the environmental attributes, including any renewable energy credits (RECs) or certificates, from the net metered electricity. Net Metered Customers shall have all rights to make green or renewable energy claims in regards to their net metered energy as long as the RECs are not unbundled.

Assignment of Membership Interests: A Member may assign, transfer or sell their bundled interest in their solar panels in whole or in part to a third party in the Utility territory.

Termination of Membership: Membership in the Company terminates and there are no further rights and obligations of the Member under the Articles of Organization of the Company and this Agreement upon the occurrence of the assignment, transfer or sale of all of a Member's interest in solar panels in the Project to a third party and upon signing and filing of Form LLC-3A Dissociation in compliance with 11 Vt. Stat. Ann. 3094. The former Member shall pay the \$20.00 filing fee.

Member Default on Solar Financing: In the event that a Member defaults on their loan agreement with a financial institution resulting in foreclosure of the Member's solar panels, the financial institution shall be entitled to take possession and ownership of said membership including the solar panels and have the right to assign or sell their ownership share (the foreclosed solar panels) to a party.

Event of Default on Contribution Payments: With respect to any Member, a Member who fails to make any payment on the date such payment is due, and such failure continues for a period of [sixty (60)] days after the applicable due date, shall be considered to be in Default with respect to this Agreement.

Upon Default of this Agreement, the defaulting Member shall relinquish all rights to net metering credits. A defaulting Member's net metering credits shall be distributed to any other Member of the Company in exchange for payment of the Defaulting Member's owed payment. A defaulting Member's net metering credits shall be redistributed for such a period of time as the defaulting Member remains delinquent with regard to the payment due. The Secretary shall notify the Utility of the new allocation schedule for disbursement of net metering credits.

Succession Members: The assignment, transfer or sale of a Member's interest in his or her solar panels in and of itself permits the assignee, transferee or purchaser to become a Member in the Company, with all the rights and obligations of the Member under the Articles of Organization of the Company and this Agreement. The assignment, transfer or sale of a Member's interest in their solar panels is subject to the following conditions:

- a. The assignee, transferee or purchaser becomes a Member.
- b. The assignee, transferee or purchaser is or will be located within the service territory of the Utility;

- c. The assignee, transferee or purchaser gives the Company meter information; and
- d. [Current Members the right to approve assignment, transfer or sale of Member's interest in his or her solar panels to the new Member (Right of First Refusal).  
(Note: only to be included if you want to have a right of first refusal).]

Responsibility in Assignment: Responsibility in the assignment, transfer or sale of a Member's interest in his or her solar panels is the sole responsibility of the Member and not the Company. Upon notice of a transfer of ownership, the Company's only responsibility is to notify the Utility of the change in net metering credits to an owner's meter.

### ARTICLE VIII. DISPUTE RESOLUTION

The parties shall negotiate any breach or dispute ("Dispute") arising out of this Agreement. If the Dispute is not resolved through negotiation within [ ] [X] days, **it is hereby agreed that the dispute shall be submitted to binding arbitration** in accordance with the rules then prevailing of the American Arbitration Association. The arbitrator's decision shall be final and binding, and judgment may be entered thereon. The cost of any such arbitration shall be paid as determined by the arbitrators. The judgment rendered by the arbitrators may be entered into any court of competent jurisdiction.

### ARTICLE IX. ADDITIONAL PROVISIONS

In witness whereof, all Members will sign and be bound to the terms of this agreement.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Member #	Name	Address	Email

Exhibit “A”

Description of Solar Facility

The Solar Facility consists of an array of photovoltaic panels with a facility-rated output of [ ] kW AC ([ ] kW DC) and [ground mounted on a fixed ground mounted rack facility] located at [\_\_\_\_\_].

Exhibit “B”

Allocation Instructions

The Company shall instruct the Utility to allocate credits for the kilowatt hours of electricity the Solar Facility generates each month to the Meters set forth below:

The Members of the Company agree that [five percent (5%)] of the total electric output of the Solar Facility will be credited to Owner’s Utility Account as payment for use of Solar Facility site in the form of net metering credits. Each Member’s percentage allocation will equal the following:

(1-[.05]) X (Members kW/total kW capacity of the Project)

The Members and the Company may agree to add meters. The Utility shall allocate kWh on a percentage basis to each Member’s account.

Company Meter: [Note to Draft: Typically the usage meter located at the site of the array for the nominal electricity used by inverters, etc.]

Percentage Allocation	Account Name	Account #
%*		
%		
%		
%		
%		
%		

\* The first line of this allocation schedule should be designated to the Owner of the Project site at [5%] of total output. Upon the reasonable request of the Company, the Members shall designate such additional Member Meters to the foregoing list to the extent reasonably necessary to ensure that the total annual consumption of all the Member Meters included in the group exceeds [\_\_\_\_\_] kWh.

## LAND LEASE AGREEMENT<sup>1</sup>

This land lease agreement (“**Lease**”) is entered into as of the “**Effective Date**” (as defined in Subsection 19(k)). This Lease is made by and between [REDACTED] (“**Owner**”) with an address at [REDACTED], and [REDACTED] (“**Tenant**”; together with Owner, referred to jointly as the “**Parties**”), a limited liability company, organized and existing under the laws of the State of Vermont, with an address at [REDACTED].

**WHEREAS**, Owner holds title to an approximately [REDACTED] acre parcel of real property located in the Town of [REDACTED], State of Vermont (“**Property**”; as described more fully in attached Exhibit “**A**”);

**WHEREAS**, Tenant desires to lease from Owner and Owner desires to lease to Tenant an approximately [REDACTED] acre portion of the Property (the “**Site**”; as described more fully in attached Exhibit “**B**”), for the site of a net-metered community solar electric facility (the “**Solar Facility**”; as defined in Subsection 5(a)), which, pursuant to a separate agreement and at Tenant’s expense, will be constructed by an entity selected by Tenant (“**Developer**”), and in which members of the Tenant (“**Participants**”) separately purchase percentages of Solar Facility from Developer;

**WHEREAS**, the power from the Solar Facility will be fed into the Green Mountain Power (GMP) electric grid and GMP will issue credits representing the power to Participants and Owner as follows: a portion of which credits will be allocated to Owner to offset Owner’s electrical use as land lease payments for use of the Site (“**Lease Payments**”; as defined in Section 3). The balance of such credits will be allocated on a pro-rata basis to Participants, pursuant to separate agreements with GMP and via “net metering” (as defined by Public Service Board Rule 5.100), to offset Participants’ electrical use;

**WHEREAS**, Tenant has been organized for the purpose of managing certain administrative and financial matters on Participants’ behalf, including acting as liaison with Owner and GMP;

**WHEREAS**, the Parties desire to set forth the terms and conditions of the lease of the Site through this agreement;

**NOW, THEREFORE**, in consideration of all covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to be legally bound as follows:

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<sup>1</sup> Disclaimer: This agreement is intended as a model agreement that should be adapted by the user to apply to their specific circumstances and current law. We strongly recommend that all users of this agreement consult with legal counsel licensed in the appropriate jurisdiction on how best to apply this model agreement to their specific circumstances.

### **Section 1: Lease of Premises.**

Owner agrees to lease to Tenant and Tenant agrees to lease from Owner the Site for the purposes described herein, together with all required utilities and other Easements (as defined in Subsection 5(e)) and rights of access to the Site, to have and to hold the Site, the Easements and rights of access, together with all rights, privileges, easements and appurtenances thereunto belonging and attaching, unto Tenant. This Lease sets forth the covenants and agreements that the Parties agree to comply with during the Term (as defined in Subsection 2(a)).

### **Section 2: Term.**

(a) The term of this Lease (the “**Term**”) shall be twenty five (25) years, commencing on the Effective Date and expiring on the twenty fifth (25th) anniversary of the Effective Date, unless otherwise terminated at an earlier date in accordance with the terms of this Lease.

(b) Provided that Tenant is not in default under the Lease, Tenant, upon mutual agreement with the Landowner, shall have the option to renew this Lease for an additional term of a length agreed upon by the Parties.

### **Section 3: Lease Payments.**

The Lease Payments made to Owner by Tenant for the use of the Site and Easements shall be the electric output of **five percent (5%)** of the power production of the Solar Facility, which shall be paid by net meter credits to **Owner’s GMP Account#** \_\_\_\_\_ or any successor account that may be designated by Owner.

### **Section 4: Feasibility and Permitting Period.**

(a) Commencing on the Effective Date and terminating twelve (12) months thereafter (the “**Feasibility Period**”), which period may be extended pursuant to Section 4(c), Tenant and its invitees and licensees are hereby granted the right, at no additional cost to Tenant, to enter upon the Site and Property and conduct such analyses, tests, reviews, inspections and studies (collectively, the “**Tests**”) as are required to determine the suitability of the Site for Tenant’s intended use and to obtain any and all government certificates, permits, variances, licenses, agreements, and entitlements necessary for said use (collectively, the “**Approvals**”). Such Tests may include, but are not limited to, surveys, soil tests, environmental evaluations, solar assessments, and other Tests as Tenant or its invitees or licensees find necessary. In addition, Tenant may obtain an abstract or preliminary title report (the “**Title Report**”) regarding the Property from a title insurance company of its choice. Tenant shall not be liable to Owner or any third party for any pre-existing defect, condition or encumbrance on or with respect to the Property, title to the Property and/or any improvements located on the Property, regardless of whether such defect, condition or encumbrance is disclosed by the Tests, the Title Report, or otherwise known by Tenant. The Owner shall not bear the costs of the Test and Approvals.

(b) During the Feasibility Period and throughout the Term, Owner shall cooperate with Tenant, shall execute all documents required to obtain all permits, zoning, and land use approvals, and authorize Tenant and Tenant’s invitees and licensees to act as Owner’s agents for the limited purpose of

obtaining such permits and approvals regarding this Solar Facility, the Site and the Easements. Owner shall permit Tenant's intended use of the Site and the Easements in compliance with zoning, land use, utility service and building laws, rules, ordinances, permits, approvals, variances, and other governing rules and regulations. Owner shall not take any action that would adversely affect Tenant's ability to obtain or maintain any governmental approval.

(c) Tenant shall have the right to extend the Feasibility Period for additional six (6) month periods (each a "**Feasibility Extension Period**"; collectively the "**Feasibility Extension Periods**") by providing written notice thereof to Owner at least ten (10) days prior to expiration of the Feasibility Period or the Feasibility Extension Period then in effect, provided that: (i) Tenant is diligently and in good faith seeking to obtain the Approvals (as defined in Section 10); (ii) a required Approval has not been rejected without an opportunity to appeal; and (iii) Tenant pays to Owner the sum of \$ .00 for each Feasibility Extension Period that Tenant extends in accordance with the terms of this Lease. Tenant shall make each such feasibility extension payment prior to the commencement of the Feasibility Extension Period to which such payment relates.

(d) If the state of title to the Property as set forth in the Title Report indicates any liens, claims or encumbrances which may interfere with Tenant's use and operation of the Site and/or the Easements, Tenant shall have the right but not the obligation to either (i) attempt to discharge such liens, claims and/or encumbrances, if possible, and deduct the cost thereof from the Lease Payments due in accordance with Section 3 of this Lease, or (ii) terminate this Lease by providing written notice thereof to Owner. Upon and after such termination, neither Owner nor Tenant shall have any further obligation or liability under this Lease except as otherwise expressly provided herein.

#### **Section 5: Use.**

(a) Tenant is granted the sole and exclusive right to use the Site (as described more fully in Exhibit "B") for the purpose of constructing, installing, removing, replacing, reconstructing, maintaining and operating a solar array, including solar panels, equipment, equipment shelters and buildings, electronics equipment, generators, electric cable, poles, conduits, and, other equipment, improvements, and such other personal property, fencing and landscaping within and around the perimeter of the Site or portion thereof (the "**Solar Facility**"; as described more fully in Exhibit "B"). Any and all such materials installed in, on, or under the Property shall be deemed property of the Participants, and shall not become fixtures or be deemed a permanent part of the Property. Tenant shall have the right to alter, replace, expand, enhance and upgrade the Solar Facility at all times (as defined below in subsection 5(h)) during the Term. Tenant shall require Developer to construct the Solar Facility and any modifications in material compliance with all applicable laws, rules, regulations, ordinances, permits, approvals and variances.

(b) Tenant shall keep and maintain the Solar Facility and the Site in good condition and repair, and shall maintain and operate the Solar Facility in material compliance with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, approvals, and variances. Except, Tenant is not liable for normal wear and tear and casualty not caused by Tenant or, its invitees or licensees.

(c) Tenant has the right to fence the Site and the Solar Facility, and the right to clear and keep the Site and Easements clear of all trees, bushes, rocks, crops and other vegetation using mechanical means, provided that no pesticides or herbicides shall be used at any time. During the construction or any required major repair or reconstruction of the Solar Facility only, Tenant shall have the right to use portions of the Property adjacent to the Site in connection with the construction, repair or reconstruction of the Solar Facility

(d) Pursuant to a separate agreement between Tenant and Developer, the Parties expect that Developer will pay for all utility services used at the Site and the Parties shall not, therefore, be required to do the same. If the Site does not have utility services, Developer shall have the right to cause utility services to be installed at the Site at Developer's sole expense and the Parties shall not, therefore, be required to do same. Owner agrees to use reasonable efforts to assist Tenant in acquiring any necessary utility services to the Site. Owner is not liable for any costs incurred for Solar Facility's utility services.

(e) As partial consideration for the Lease Payments, Owner hereby grants to Tenant, for the benefit of Tenant and its invitees, licensees, successors, and assigns, during the Term or any extension thereof, easements in, under, and across the Property: (i) for ingress, egress and access to the Site, by foot and motor vehicles, including trucks and heavy equipment; (ii) to install utility services; (iii) to install storm water management systems; (iv) for the installation and maintenance of equipment, utility wires, poles, cables, conduits, drainage lines, and pipes to operate the Solar Facility and accommodate the permitted use of the Site; and (v) to capture, use and convert the unobstructed solar resources at the Site (collectively, the "**Easements**"). The Easements shall be located on the Property, in the areas described and depicted in Exhibit "B" attached hereto, or as required in order to effectively operate the Solar Facility, and shall have the same term as this Lease.

(f) In the event that any utility company requires an easement not otherwise located within the area of the Easements to provide utility services to the Site, Owner agrees to grant such necessary easement to said utility company. Such additional easements in favor of the utility companies shall be located within the Property in one or more areas mutually approved by and acceptable to Owner, such utility companies, and Tenant. Owner shall not be entitled to payment of any additional amount for use of any Easements or any electromagnetic, visual, view, light, noise, vibration, electrical, or other effects attributable to the Easements or other aspects of the Solar Facility.

(g) The Easements are non-exclusive easements to and for the benefit of Tenant and its invitees, licensees, successors, and assigns. Tenant shall have the right to construct, maintain and repair a roadway over the aforementioned Easements, including such work as may be necessary for slope and drainage and to install such poles, wires, pipes, cables, conduits and related appurtenances as shall be necessary to install services and systems, as defined in Subsection 5(e), for the Solar Facility. **If Owner or other tenants, employees, agents, contractors, licensees or invitees of Owner damage or disturb the Easements, then Owner and Owner's other tenants, employees, agents, contractors, licensees and invitees shall share in the reasonable and proportionate costs incurred to repair such Easements.**

(h) Tenant and its invitees and licensees shall have reasonable access to the Site and the Easements for the purposes of constructing and maintaining the Solar Facility during the Term, provided that, barring exigent circumstances, all work shall be performed during daylight hours only. Tenant and

its invitees and licensees shall have the right to park their vehicles on the Property during construction, repair, replacement, and/or servicing of the Solar Facility. All other access to the Property by the Tenant and its invitees and licensees will only be allowed through the advance notice and approval of the Owner.

(i) Tenant covenants that it shall comply with the decommissioning plan approved by the Public Service Board in connection with the issuance of its Certificate of Public Good.

#### **Section 6: Assignment.**

(a) [Upon notice to Owner and subject to Owner's approval, such approval not to be unreasonably withheld,]<sup>2</sup> Tenant shall have the right to assign or transfer its rights under this Lease, in whole or in part, to any person or any business entity at any time, subject to the assignee assuming all of Tenant's obligations hereunder.

(b) After delivery by Tenant to Owner of an instrument of assumption by an assignee wherein such assignee assumes all of the obligations of Tenant under this Lease, Tenant will thereafter be relieved of all liabilities and obligations pursuant to this Lease.

(c) Owner may assign its rights and obligations under this Lease to its successor in interest in and to the Property without the prior consent of Tenant. The Parties agree that Tenant's rights under this Lease shall continue for the full Term regardless of a sale, conveyance, transfer or other disposition of the Property or any part thereof or interest therein. **Owner agrees that all sales, leases and transfers of the Property or any part thereof, and the granting of any easement, encumbrance or interest in and to the Property or any part thereof, shall, during the Term and any extension thereof, be subject to this Lease.** Owner also agrees that all such sales, leases, and transfers of the Property and granting of any easement or interests shall be subject to Tenant's rights and options under this Lease for the duration of the Term and shall not adversely affect the use of the Site or Easements by Tenant and its invitees and licensees.

#### **Section 7: Taxes.**

(a) As of the date that the Solar Facility becomes operational (the "**Commencement Date**"), Tenant agrees to pay, or ensure payment will be made when due, for any increase in real estate taxes, municipal charges and assessments, as determined by tax authorities, due against the Property because of the Solar Facility's presence on the Property. Owner shall cooperate with Tenant in the protest of any tax assessment by providing Tenant with information regarding the relative valuation of the Property and allowing Tenant to participate in any proceeding related to such tax protest. Nothing in this Subsection shall be construed as limiting Tenant's right to contest, appeal, or challenge any tax assessment.

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<sup>2</sup> All bracketed text is subject to the parties' negotiations and final agreement. If desired, parties may eliminate bracketed text without undermining the remaining provisions.

(b) Tenant shall pay when due all personal property taxes that are directly attributable to the presence or installation of the Solar Facility on the Property.

**Section 8: Removal of Solar Facility.**

(a) Tenant shall have the right at any time during the Lease to remove the Solar Facility without the consent of the Owner. If Tenant intends to remove the Solar Facility prior to the Term's expiration, Tenant shall provide the Owner prior written notice of such intent to remove the Solar Facility at least [redacted] days prior to such removal.

(b) Upon written request of Owner, given to Tenant ten (10) days or more prior to the expiration or earlier termination of this Lease, all personal property and trade fixtures of Tenant, Participants, Developer, and/or other third parties, specifically including, but not limited to, the Solar Facility, shall be removed by Tenant from the Site within [redacted] days after the expiration or earlier termination of this Lease or as soon thereafter as weather and ground conditions reasonably allow.

**Section 9: Liability Insurance.**

At its sole cost and expense, Tenant shall procure and maintain during the Term a Commercial General Liability policy issued by a company licensed to do business in Vermont by the Department of Financial Regulation. The policy shall insure Tenant and name Owner as an additional insured in the event of liability for injury or death of a person or persons or damage to property occasioned by or arising out of or in connection with Tenant's occupation and use of the Site or activities thereon. [Tenant's insurance policy shall provide a limit of at least \$100,000 for a residential facility or a limit of at least \$300,000 coverage for non-residential facilities, as formerly required by the Vermont Public Service Board Rule 5.100 and the GMP net-metering tariff.]

**Section 10: Termination.**

(a) Tenant may terminate this Lease at any time, in its sole discretion, upon written notice to Owner prior to the Commencement Date.

(b) Further, this Lease may be terminated by Tenant immediately, at any time, upon giving written notice to Owner, and if: (i) Tenant cannot obtain all governmental certificates, permits, variances, leases or other approvals (each an "Approval"; collectively, the "Approvals") and/or any easements required for the installation and operation of the Solar Facility as contemplated hereunder; (ii) any Approval is canceled, terminated, or expires or lapses; (iii) Owner fails to deliver to Tenant any non-disturbance agreement or subordination agreement required hereunder (as defined in Subsection 16(b)); (iv) Owner does not have proper ownership of the Property and/or authority to enter into this Lease; (v) Tenant permanently and completely removes the Solar Facility (as defined in Subsection 8(a)); (vi) Tenant determines that the Property contains Hazardous Substances (as defined in Subsection 12(a)) and such Hazardous Substances were not introduced to the Property by Tenant; or (vii) Owner is in default hereunder and fails to cure such default within the periods specified in Section 15.

(c) **Tenant shall have the right at any time prior to the expiration of the Feasibility Period and any Feasibility Extension Period to terminate this Lease by providing written notice to Owner** if: (i) Tenant is unsuccessful in obtaining the permits necessary for the solar array; or (ii) in the sole and absolute discretion of the Tenant, Tenant determines that the Site are not suitable for the use of a solar array; (iii) or that the construction and operation of the Solar Facility on the Site would not be in the best interest of Tenant. Upon and after such termination, neither Owner nor Tenant shall have any further obligation or liability under this Lease except as otherwise expressly provided in this Lease.

(d) Any termination of this Lease pursuant to this Section 10 shall not constitute a waiver of Parties' rights under Section 11 and Section 12. Tenant, upon termination, shall, at its sole cost and expense, restore the Site as reasonably possible to its original condition.

### **Section 11: Indemnity and Arbitration.**

(a) The Parties agree to indemnify and hold harmless one another from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liabilities including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees (collectively, "**Losses**"). The Parties must indemnify against Losses to the extent such Losses are caused by or arise out of (i) the negligent acts or omissions of the indemnifying party; or (ii) a breach of, or default by, the indemnifying party under this Lease that has not been cured in accordance with the terms hereof. Notwithstanding the foregoing, this indemnification shall not extend to Losses exclusively arising from the negligence or intentional misconduct of the indemnified party.

(b) The indemnifying party's obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party hereto, and (ii) the indemnified party's granting such indemnifying party the right to control the defense and settlement of the matter for which indemnification is being given, provided that no such settlement shall be agreed to or otherwise effective unless the same has been approved in advance by the indemnified party, such approval has not been unreasonably withheld, and the indemnified party shall have the right to participate in such defense with counsel selected by the indemnified party, and all costs and expenses of such counsel selected by the indemnified party shall be borne exclusively by the indemnified party.

(c) **In the event a dispute shall arise between the Parties with respect to this Lease the dispute shall be submitted to binding arbitration in accordance with the rules then prevailing of the American Arbitration Association. The arbitrator's decision shall be final and binding, and judgment may be entered thereon.** The cost of any such arbitration shall be paid as determined by the arbitrators. The judgment rendered by the arbitrators may be entered into any court of competent jurisdiction.

### **Section 12: Hazardous Substances.**

(a) Owner hereby represents and warrants that it has no knowledge of any substance, chemical, or waste on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation (collectively, the "**Hazardous Substances**"). Owner has not

introduced or used, and shall not introduce or use, any Hazardous Substance on the Property in violation of any applicable law. Owner shall be responsible for, and shall promptly conduct, any investigation and remediation as required by any applicable federal, state, and local laws or regulation of all spills or other releases of any Hazardous Substance caused solely by Owner or any employee, agent, licensees and invites, contractor, representative or affiliate of the Owner, that have occurred or may occur on the Property during the Term.

(b) Tenant hereby represents and warrants that it shall not: (i) bury underground or discharge into the sewage system at the Property any Hazardous Substances, or (ii) use the Property as a storage site for Hazardous Substances, except minimal quantities used in the ordinary course of business in accordance with all applicable environmental laws.

(c) The Parties each agree to defend, indemnify, and hold each other harmless from and against any and all Losses (as defined in Subsection 11(a)) that indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment that arise from the indemnifying party's activities on or at the Property. The indemnification obligations set forth in this Subsection specifically include, without limitation, costs incurred in connection with any investigation of site conditions and/or any cleanup, remedial, removal or restoration work required by any governmental authority. This Subsection shall survive the termination or expiration of this Lease (as described in Subsection 10(d)).

### **Section 13: Casualty/Condemnation.**

(a) If there is a condemnation of the Site, the Easements, and/or the Property, or a portion thereof which is sufficient to render the Site and/or the Easements unsuitable for Tenant's purposes, including but not limited to a transfer of the Site, the Easements and/or the Property or a part thereof by consensual deed in lieu of condemnation, then this Lease shall, at the option of Tenant, terminate upon transfer of title to the condemning or deeded authority, without further liability to either of the Parties, except as otherwise expressly provided herein. The Lease Payment due hereunder shall be prorated to the date of the taking, and Tenant shall not be required to make any payments for the period following the date of such taking. Tenant and Owner shall be entitled to pursue their own separate condemnation awards with respect to any such taking, which award to Tenant may include, where applicable, the value of the Solar Facility, moving expenses, prepaid rent to the extent not reimbursed to Tenant by Owner, and business dislocation expenses.

(b) If the Site, the Solar Facility, the Easements, and/or the Property are damaged or destroyed to an extent sufficient to render the Site and/or the Easements unsuitable for Tenant's purposes, Tenant shall have the right, but not the obligation, to not rebuild, replace or repair any improvement and to terminate this Lease as of the date that such damage or destruction occurred, without prejudice to or otherwise affecting any rights or remedies that Tenant may have hereunder or at law or in equity, and the Lease Payment due hereunder shall be prorated to such date of termination.

(c) Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Property or any portion thereof during such time as any security instrument shall remain unsatisfied, the financing entity in whose favor such security instrument has been granted shall

be entitled to receive all insurance proceeds and/or condemnation awards, up to the amount of the indebtedness secured by such security instrument, otherwise payable to Tenant and apply such proceeds in accordance with the terms of the security instrument, and shall further have the right, but not the obligation, to restore the Property, as reasonably possible to its original condition, in the event that the same is damaged or destroyed.

#### **Section 14: Quiet Enjoyment.**

(a) Owner agrees that Tenant, upon making Lease Payments and complying with all covenants and terms of this Lease, shall and may peaceably and quietly have, hold and enjoy the Site and the Easements and all related appurtenances, rights, privileges and easements throughout the Term without any unlawful hindrance or interruption by Owner and any person claiming to act by, through, or under Owner. Owner shall have access to the Site, but shall not take any action to interfere with the optimal and safe operation or maintenance of the Solar Facility.

(b) The Solar Facility shall be the exclusive property of and owned by Tenant, Participants, and/or Developer, as set forth in separate agreements between them, and not the property of the Owner. Owner covenants and agrees that neither the Solar Facility nor any part of the improvements constructed, erected or placed by Tenant on the Site or the Easements shall become or be considered as being affixed to or a part of the Property. The Parties agree and specifically intend that the Solar Facility and all improvements of every kind and nature constructed, erected, or placed by the Tenant on the Site, and the Easements **shall be and remain the property of Tenant, Participants and/or Developer, as set forth in separate agreements between them.** The Owner agrees and acknowledges that none of the above listed improvements or Easements, including, without limitation, any trade fixtures, shall become the property of Owner upon termination or expiration of the Lease. Owner hereby waives any and all lien rights and/or security interests it may have, statutory or otherwise, in or otherwise with regard to the Solar Facility or any portion thereof.

(c) Owner agrees for itself and all future holders of the Property that no use shall be made of the Property that would interfere with Tenant's use of the Site and the Easements, including, without limitation, the operation of the Solar Facility.

(d) Owner hereby represents and warrants to Tenant that: (i) Owner is the fee owner of the Site and the Easements and the lands immediately adjacent which comprise the easements and rights of way granted to Tenant in this Lease; (ii) such ownership is free and clear of all liens, claims, and encumbrances other than those which do not interfere with Tenant's use of the Site and the Easements; (iii) Owner has the lawful right and authority to execute this Lease and to grant the leasehold interests, Easements, rights of way, and other rights described herein; (iv) the Tenant's intended use of the Site and the Easements by Tenant does not conflict with any agreements, restrictions, covenants, conditions, easements or licenses, whether or not of record, that affect the Premises and/or the Easements; (v) the Property, including the Site and the Easements, and all improvements located thereon, other than improvements constructed by Tenant, are in substantial compliance with all laws, rules, regulations and ordinances, including, but not limited to, building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities; and (vi) Owner has obtained and delivered to Tenant the consents of all parties other than Owner that hold any encumbrance upon or interest in the Site and/or the Easements to the existence, execution, and delivery of this Lease, the granting of a leasehold

interest in the Site and the granting of the Easements to Tenant in accordance with the terms in this Lease, and Tenant and its successors and assigns utilization of the Site and the Easements for the purposes described herein.

### **Section 15: Default.**

Notwithstanding anything contained herein to the contrary, and without waiving any other rights granted at law or in equity, if either of the Parties is in default under this Lease for a period of (i) forty-five (45) days following receipt of notice of default from the non-defaulting party, and where the default may be cured solely by the payment of money; or (ii) sixty (60) days following receipt of notice of default from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available against the defaulting party under applicable law or in equity, subject to the terms of Subsection 11(b) of this Lease. If a non-monetary default may not reasonably be cured within such 60 day period, the Lease may not be terminated if the defaulting party commences action to cure the default within such 60 day period and proceeds with due diligence to fully cure the default as soon as reasonably practicable thereafter.

### **Section 16: Subordination and Non-Disturbance<sup>3</sup>.**

(a) Tenant acknowledges that prior to the Commencement Date, Owner may have granted a mortgage, deed of trust, or other security instrument (“**Mortgage**”) which encumbers some or all of the Property and/or the Easements to certain institutions or persons (collectively, the “**Mortgagees**”; individually, a “**Mortgagee**”). Tenant also acknowledges that Owner, may grant a Mortgage that encumbers some or all of the Property and/or the Easements to a Mortgagee on or after the Commencement Date.

(b) With regard to each Mortgage that is in effect and/or of record on or prior to the recordation of a **Memorandum/Notice of Lease**, (“**MOL**”), substantially in the form of Exhibit “C” attached hereto. Owner hereby grants to Tenant permission to insert the Commencement Date of this Lease into the MOL after execution of the MOL and to record the MOL in the proper jurisdiction.

(c) Owner will request the Mortgagee to execute and deliver to Tenant a **subordination, non-disturbance and attornment agreement (“SNDA Agreement”)** among Owner, Tenant and Mortgagee. In the SNDA Agreement: (i) Tenant confirms that this Lease is subordinated to the Mortgage granted to Mortgagee; (ii) Tenant agrees to attorn to Mortgagee in the event that the Mortgagee acquires title to the Property; and (iii) **Mortgagee agrees to honor the Lease in the event of foreclosure under the Mortgage to which Owner and Mortgagee are parties, and that the Lease shall remain in full force and effect and shall not be terminated, and Tenant shall be permitted to exercise all of its rights and remedies, as long as Tenant is not in default under the Lease.** If Owner

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<sup>3</sup> Subordination and Non-disturbance Agreements are subject to Vermont state and local laws and customs. In crafting such agreement, we strongly recommend users of this model obtain independent counsel from an attorney with expertise in Vermont real estate and mortgage law.

fails to deliver a SNDA Agreement to Tenant on or prior to the execution of the MOL, then Tenant shall have the right, in its sole discretion, to terminate this Lease by providing written notice thereof to Owner. Upon such termination neither of the Parties shall have any further obligations or liabilities hereunder.

(d) With regard to each Mortgage in effect and/or of record after the recordation of the MOL, Tenant shall promptly enter into a SNDA Agreement with Owner and the Mortgagee thereunder. If Tenant fails to deliver a SNDA Agreement to Owner, then Owner shall have the right, in its sole discretion, to terminate this Lease by providing written notice thereof to Tenant, and upon such termination neither of the Parties shall have any further obligations or liabilities hereunder.

(e) With regard to each Mortgage granted by the Owner after the recordation of the MOL, Owner shall promptly request the Mortgagee execute and deliver to Tenant a SNDA Agreement among Owner, Tenant, and Mortgagee. If Owner and Mortgagee fail to deliver a SNDA Agreement to Tenant, then Tenant shall have the right, in its sole discretion, to terminate this Lease by providing written notice thereof to Owner, and upon such termination neither of the Parties shall have any further obligations or liabilities hereunder.

(f) The Parties covenant and agree that, notwithstanding anything to the contrary set forth herein, the form and terms of each SNDA Agreement shall be mutually approved by and deemed acceptable to Owner, Tenant, and the Mortgagee that is a party to such SNDA Agreement.

#### **Section 17: Solar Energy Environmental Attributes**

(a) A net-metered customer (“**Net Metered Customer**”) for the purposes of this Section is defined as a Vermont electric consumer who receives net-metered energy from the Solar Facility, including the Participants and Owner.

(b) Each Net Metered Customer shall own and retain the environmental attributes of their net metered energy produced by the Solar Facility and shall have sole rights to make any green or renewable energy claims in regards to their net metered energy. Net Metered Customers shall not unbundle or separately sell the environmental attributes, including any renewable energy credits or certificates, from the net-metered electricity.

#### **Section 18: ACKNOWLEDGMENT OF ARBITRATION**

Owner and Tenant each acknowledge that this Lease contains an agreement to arbitrate in Subsection 11(b) above. After signing this document, **Owner and Tenant each understands that it will not be able to bring a lawsuit concerning any disputes that may arise which is covered by the agreement to arbitrate**, unless such dispute involves a question of constitutional or civil rights.

#### **Section 19: Miscellaneous**

(a) Owner and Tenant each represents and warrants that it has all right and authority to execute this Lease, and that, upon execution of this Lease, the Lease shall be fully binding upon the Parties.

(b) This Lease sets forth and contains the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior discussions, agreements and negotiations between the Parties with regard to the subject matter hereof.

(c) The Parties may sign this Lease in multiple counterparts, each of which, when executed, shall be deemed to be an original instrument, and all of which, taken together, shall constitute one and the same agreement.

(d) The terms and conditions of this Lease shall extend to and bind the heirs, personal representatives, successors, and assigns of the Parties.

(e) In the case a dispute arises that does not follow the resolution terms agreed upon per the indemnification and arbitration clause set forth in Section 11, the substantially prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorneys' fees and other reasonable enforcement costs and expenses from the non-prevailing party.

(f) Notices, requests, and other communication shall be in writing and sent by United States Mail, postage prepaid, certified or registered with return receipt requested, or by any nationally recognized overnight courier service for priority delivery, to the respective addresses set forth below. Any such notice shall be deemed given when deposited in the United States Mail or delivered to such courier service. Notices shall be sent to:

For Tenant:  
(Include Address and Name of Interested Party)

For Owner:  
(Include Address and Name of Interested Party)

Either party may change the address for notice by sending written notice to the other.

(g) This Lease shall be governed by and construed in accordance with the laws of the state in which the Property is located, without giving effect to the conflicts of laws rules of such state.

(h) If Owner is represented by any broker or any other leasing agent in connection with the transactions contemplated by this Lease, Owner shall be responsible for and shall pay when due all commissions, fees and/or other payments to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker with regard to such commissions, fees and payments. If Tenant is represented by any broker or any other leasing agent in connection with the transactions contemplated by this Lease, Tenant shall be responsible for and shall pay when due all commissions, fees and/or other payments to such agent, and agrees to indemnify and hold Owner harmless from all claims by such broker or anyone claiming through such broker with regard to such commissions, fees and payments.

(i) This Lease may not be amended, supplemented or restated except by a written instrument that has been executed and delivered by each of the Parties.

(j) The effective date of this Lease is the date of execution by the last party to sign the Lease (the "Effective Date").

(k) The waiver by any party hereto of a breach of any provision of this Lease shall not bar or be construed as a waiver of any subsequent breach by any party.

(l) If any provision of this Lease is found by a court of competent jurisdiction to be unenforceable or illegal, such findings shall not impair the remaining provisions of this Lease and the remainder of this Lease shall be enforceable as if such illegal or invalid provision had not been contained within this Lease.

IN WITNESS WHEREOF, the Parties do hereby execute this Lease as of the [redacted] day of [redacted], 20 [redacted].

IN PRESENCE OF: (NAME OF OWNER), as Owner

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Duly Authorized Agent

(NAME OF LLC), as Tenant

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

On this [redacted] day of [redacted], 20 [redacted], personally appeared (NAME OF OWNER) to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me, \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

Notary commission issued in XXX County  
My commission expires: DATE OF EXPIRATION

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

On this [redacted] day of [redacted], 20 [redacted], personally appeared [redacted] Duly Authorized Agent of (NAME OF LLC) to me known to be the person who executed the foregoing

instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of (**NAME OF LLC**).

Before me, \_\_\_\_\_

Notary Public

Printed Name: \_\_\_\_\_

Notary commission issued in **XXX** County

My commission expires: **DATE OF EXPIRATION**

## EXHIBIT "A"

### LEGAL DESCRIPTION OF PROPERTY

The Site (as described further in Exhibit "B") is located on the "**Property**". The Property is a [REDACTED] acre (approximately) parcel including (i.e. lands and premises, farm buildings and easements). The entire parcel, located in (enter location by address or in manner recorded by municipality). Said overall parcel is described and annotated by metes and bounds descriptions in the following deeds recorded in the (Municipal) Land Records:

1. (Include here, if any, a) Warranty Deed of any (Person), dated (Date) and recorded on (Location).
2. (Include here, if any, a) Quit Claim Deed of (Person) dated (Date) and recorded in (Location).

The following Rights of Way and Easements are annotated in the Deeds mentioned above.

1. (Include here, if any a) Right of Way in warranty Deed, (Date and Location)
2. (Include here, if any a) Utility Line Easements: (Location).

## EXHIBIT "B"

### DESCRIPTION OF THE SOLAR FACILITY AND SITE

A [REDACTED] kW AC nameplate solar generating Solar Facility ("Solar Facility") as specifically designed, approved and permitted in the Certificate of Public Good issued by the Public Service Board.

The Solar Facility shall be comprised of [REDACTED] watt solar modules, required racking assembly, combiner boxes, inverters, panel boards, fuses, disconnects, data acquisition equipment, and meters consistent with all local, state, and federal codes.

The "Site" is the land area within the Owner's Property (as described further in Exhibit "A") that will be utilized by the Solar Facility and will be approximately [REDACTED] acres or less. The Site should not be any larger than necessary to accommodate the Solar Facility's design and to ensure compliance with zoning, land use, utility service and building laws, rules, ordinances, permits, approvals, variances, and other governing rules and regulations. The Solar Facility will be located in **(describe the area where Solar Facility will be located on Property<sup>4</sup>)** as depicted below.

CAN INCLUDE HERE GOOGLE (OR  
EQUIVALENT) EARTH IMAGE OF  
SITE AND PROPERTY  
DELINEATIONS INCLUDING THE  
LAYOUT OF SOLAR FACILITY

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<sup>4</sup> In describing the property give particular focus upon any potentially sensitive ecological or man-made features within the Site that may influence the Site's preparation, Solar Facility construction, operation, and maintenance activities.

**EXHIBIT "C"**

**MEMORANDUM/NOTICE OF LEASE**

Site Name/Location: [REDACTED]  
[REDACTED]

This Memorandum/Notice of Lease, dated [REDACTED], 20[REDACTED], evidences that a land lease agreement (the "**Lease**") dated [REDACTED], 20[REDACTED], was made and written between [REDACTED] ("**Owner**"), and [REDACTED] ("**Tenant**"), a Vermont limited liability company with an address at [REDACTED]. The terms and conditions of the Lease are incorporated herein by this reference. Nothing in this Memorandum/Notice of Lease shall be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum/Notice of Lease and the terms of the Lease, the terms of the Lease shall control.

Such Lease provides in part that Owner leases to Tenant that certain parcel of real property located at [REDACTED], Town of [REDACTED], State of Vermont, more particularly described in Exhibit "A" attached hereto (the "**Site**"). The Site is situated within a larger parcel of real property that is owned by Owner and more particularly described in Exhibit "B" attached hereto (the "**Property**"). Pursuant to the Lease, Owner has also granted to Tenant an easement for non-exclusive rights of access to the Site and for electric, stormwater management, and other utility services and facilities to the Site. The date of the Lease is as of [REDACTED]. The Lease term shall commence on the [REDACTED] day of [REDACTED], [REDACTED], which is the date the Solar Facility is commissioned at the Solar Site (the "**Commencement Date**"), and ends on the 25th anniversary of the Commencement Date.

The Lease provides [subject to written notice to Owner and Owner's consent, which consent shall not be unreasonably withheld] Tenant the right to assign or transfer its rights under the Lease, in whole or in part, to any person or any business entity at any time, subject to the assignee assuming all of Tenant's obligations thereunder. After delivery by Tenant to Owner of an instrument of assumption by an assignee, wherein such assignee assumes all of the obligations of Tenant under the Lease, Tenant will thereafter be relieved of all liabilities and obligations pursuant to the Lease.

Upon the cancellation, termination or expiration of the Lease, Tenant will make, execute and deliver to Owner an instrument releasing this Memorandum/Notice of Lease, which instrument shall in form and substance be satisfactory to Owner and shall be in recordable form.

Tenant does hereby make, constitute and appoint Owner as Tenant's true and lawful agent for the limited, specific and exclusive purpose of executing, delivering and recording a termination of this Memorandum/Notice of Lease, in the event that Tenant has not signed and

returned to Owner a termination of this Memorandum/Notice of Lease, within ten (10) business days after the cancellation, termination or expiration of the Lease, in accordance with the terms thereof. This agent is coupled with an interest and shall be irrevocable until this Memorandum/Notice of Lease has been validly released of record. The agency relationship set forth in this paragraph is hereby expressly limited to the specific matters and rights set forth in such paragraph.

This Memorandum/Notice of Lease may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Lease.

The location of the original Lease is on file and available for inspection during usual business hours at the offices of Tenant.

IN WITNESS WHEREOF, the Parties hereto have executed the Memorandum/Notice of Lease as of the day and year first above written.

IN PRESENCE OF: **NAME OF LANDOWNER, as Owner**

\_\_\_\_\_  
Witness By: \_\_\_\_\_  
Duly Authorized Agent

**NAME OF COMPANY/ENTITY, as Tenant**

\_\_\_\_\_  
Witness By: \_\_\_\_\_  
Duly Authorized Agent

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_  
Duly Authorized Agent of **NAME OF LANDOWNER** to me known to be the person who  
executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be  
his free act and deed and the free act and deed of **NAME OF LANDOWNER**

Before me, \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

Notary commission issued in **XXX** County

My commission expires: **DATE OF EXPIRATION**

STATE OF VERMONT  
COUNTY OF \_\_\_\_\_, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_ Duly Authorized Agent of **COMPANY/ENTITY** to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of **COMPANY/ENTITY**.

Before me, \_\_\_\_\_  
Notary Public

Printed Name: \_\_\_\_\_

Notary commission issued in **XXX** County  
My commission expires: **DATE OF EXPIRATION**

\_\_\_\_\_

## **Business Entities for Group Net Metering**

There are multiple business entities suitable for group net metering projects. Below are descriptions of primary business entities, including brief discussions of the advantages and disadvantages associated with each. There are additional feasible business entities available for group net metering; however, we selected these based on the existing state and federal regulatory and policy framework around group net metering.

### **Limited Liability Company**

When a group forms a limited liability company (LLC), such members, own the company, and form a separate and distinct legal entity from the project itself. The LLC structure provides limited liability protection for its members and two primary benefits: pass-through taxation, and flexibility in governance.

First, the LLC structure allows for the profits of the company to “pass through” to its members.<sup>1</sup> Regular corporations are taxed twice, once at the corporate level and again when the profits are distributed to the members, conversely, the profits of an LLC are taxed only once at the individual tax rates. An added benefit here is each member of the LLC can claim the *commercial* ITC, while a residential customer may claim the *residential* ITC. An LLC limits the liability of individual participants to the value of their initial investment, even if they actively participate in or control the firm’s management.<sup>2</sup> But, a member may become liable for LLC debts if: the member personally guarantees the debts, personal funds are intermingled with LLC funds, the LLC has minimal insurance, or the members did not contribute enough funds to the LLC upon its formation.

The second benefit is the flexibility offered in an LLC governance. An LLC can be either member-managed or manager-managed. Under the member-managed model, the company’s operations are managed directly by the members, in a manner established by the group. Here, the members are directly responsible for the running of the company. In contrast, in a manager-managed LLC, the company members elect or hire a manager to manage the operations of the LLC – similar to a director of a corporation. This manager can be a group

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<sup>1</sup> PAHL GREG, POWER FROM THE PEOPLE: HOW TO ORGANIZE, FINANCE, and LAUNCH LOCAL ENERGY PROJECTS 82 (CHELSEA GREEN., 2012).

<sup>2</sup> JAMES D. COX, THOMAS L. HAZEN, BUSINESS ORGANIZATIONS LAW 28 (Thomson Reuters., 3d ed. 2011).

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member or an outside hire. Designating an outside manager may be useful if members do not have the skills, experience, or time to participate effectively in the management of an LLC. But compensating a manager may be an additional expense to the group. In addition, when members do not manage the LLC, their passive involvement carries the risk that the membership interest will classify as a security.

Groups can form an LLC through the Vermont Secretary of State's website.<sup>3</sup> Also, an LLC or Operating Agreement is necessary to govern the relationship of the members, the management structure, the financial regulations, and the regulation of transfer of membership interests or admission of new members. Without an LLC agreement, the state LLC laws will apply to the LLC the group members' form. Groups interested in establishing an LLC should consult a legal professional to create an LLC that addresses the needs of their group.

### **Low-Profit Limited Liability Company (L3C)**

Additionally, a group can choose to organize as a low-profit LLC, called an L3C. An existing LLC can convert to an L3C with a members' vote and an amendment to the entity's contract. Similarly, groups can form an L3Cs on the Vermont Secretary of State's website. An L3C is a hybrid nonprofit and LLC model with a charitable mission. However, the L3C can distribute profits, after expenses, to owners or investors. A company shall create an L3C because of the entity's "relationship to the accomplishment of a charitable or educational purpose".<sup>4</sup> Unlike, an LLC, an L3C is not obligated to construct an operating agreement. The Vermont L3C statute<sup>5</sup> requires the group be organized for a "business purpose" and continuously operates satisfying the three requirements of a Program-Related Investment (PRI).<sup>6</sup> First, the L3C investment must "further the accomplishment of one or more charitable or educational purpose", adhering to definition of 26 U.S.C. Section 170 (c)(2)(B), of the IRS Code of 1986.<sup>7</sup> Secondly, the "appreciation of property or production of income is not the" main purpose for the investment.<sup>8</sup> Third, the L3C must abide 26 U.S.C. Section 170(c)(2)(D) of the IRS code of 1986

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<sup>3</sup> VERMONT SECRETARY OF STATE, LIMITED LIABILITY COMPANY, <https://www.sec.state.vt.us/corporations/start-or-register-a-business/limited-liability-company.aspx#reg> (last visited July 20, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> VT. STAT. ANN. tit. 11, § 4001 (West 2015).

<sup>6</sup> JANELLE ORSI, PRACTICING LAW IN THE SHARING ECONOMY: HELPING PEOPLE BUILD COOPERATIVES, SOCIAL ENTERPRISE, AND LOCAL SUSTAINABLE ECONOMIES 175 (2012).

<sup>7</sup> VT. STAT. ANN. tit. 11, § 4001 (West 2015).

<sup>8</sup> ORSI, *supra* note 6, at 176.

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and “not make influencing legislation the company’s purpose, or take part in political campaigns on behalf of candidates”.<sup>9</sup> An L3C will cease to exist if any one of the requirements at any time is unsatisfied. Subsequently, the company will continue to exist as a limited liability company. Nevertheless, the name of the company has to change to conform to subsection 3005(a) of 11 V.S.A. § 3001(23).<sup>10</sup>

In order for community- owned solar groups to secure a tax-exempt investment, they should consult with a certified public accountant and/or tax attorney to verify whether their interest of furthering a charitable or educational purpose, aligns with section 501(c)(3) of the Internal Revenue Code and the state equivalent. In the end, L3Cs help a for-profit business express a strong commitment to educational and/or charitable purpose and through its potential PRI status attract foundation and donor funding. An L3C is unlikely to hold greater benefits than an ordinary LLC, for the purposes of a community-owned group net metering project.

### **A Consumers’ Cooperative**

A consumers’ cooperative corporation (co-op) is an entity that prioritizes the common goals of its members. A co-op is a legal entity owned and democratically controlled by its members. Here, the members use the service the cooperative offers and are referred to as “patrons”. In a consumer cooperative the patronage is the purchase of goods from such cooperative.<sup>11</sup> In a community solar consumer cooperative, the members or patrons would form a cooperative to construct a solar array and purchase its solar energy. A members’ patronage is measured by the amount of energy he/she buys from the cooperative.<sup>12</sup> Community solar groups can form a cooperative by filing articles of incorporation with the Secretary of State’s office. In addition, groups should create bylaws governing members’ relationships, and their respective duties, and clearly define the managing obligations of the board of directors.

A consumers’ co-op structure appeals to groups seeking to organize a group net metering project, because of the democratic nature of its governance and management. In addition, co-ops

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<sup>9</sup> *Id.*

<sup>10</sup> VT. STAT. ANN. tit. 11 § 4001 (West 2015).

<sup>11</sup> ORSI, *supra* note 6, at 186.

<sup>12</sup> *See* ORSI, *supra* note 6, at 192.

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are lucrative because its members can pool their financial resources together to leverage debt financing<sup>13</sup>. However, there are some significant drawbacks to using this model for a community solar project. Members traditionally have little input into day-to-day and big business operations decisions.<sup>14</sup> However, significant decisions like an amendment to a bylaw will require an all member vote.<sup>15</sup> Moreover, each fiscal year the cooperative's board decides how to distribute the co-op's net earnings after expenses.<sup>16</sup> The co-op could save its revenue for emergency expenses or allocate the surplus to members based on their patronage.<sup>17</sup> To qualify for a tax benefit, co-ops adhere to Subchapter T of the Internal Revenue Code when allocating patronage dividend distributions to its members.<sup>18</sup> However, regardless the value of a member's dividend, each co-op member receives one vote. Voting rights are unbundled from financial investment.

Further, members have limited equity in a cooperative.<sup>19</sup> When a member leaves a cooperative, he/she collects only what is available in their capital account; usually it is their initial capital contribution, rather than the market value of their share of the business.<sup>20</sup> Additionally, such collection of capital contribution becomes a loan from the member leaving the co-op. Then the co-op will pay back such amount over a period identified in the initial member's contract.<sup>21</sup> Funding a co-op can be a struggle because the corporation may not give non-member investors, power to make significant decisions.<sup>22</sup> The Internal Revenue Service agency views such allocation of rights to non-members as deviation from "operating as a cooperative."<sup>23</sup>

Analyzing a cooperatives tax benefits, a co-op is not eligible to apply for a 501(c)(3)-tax exemption.<sup>24</sup> Nonetheless, a co-op satisfying the requirements in Sub-chapter T of the Internal Revenue Code can "avoid traditional corporate double-tax and the corporation won't have to pay income tax on its net earnings."<sup>25</sup> Such requirement is met if "20 percent of every patronage

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<sup>13</sup> COX, *supra* note 2, at 83.

<sup>14</sup> ORSI, *supra* note 6, at 194.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> ORSI, *supra* note 6, at 195.

<sup>19</sup> *Id.*

<sup>20</sup> ORSI, *supra* note 6, at 194.

<sup>21</sup> *Id.*

<sup>22</sup> See ORSI, *supra* note 6, at 198.

<sup>23</sup> *Id.*

<sup>24</sup> See ORSI, *supra* note 6, at 197.

<sup>25</sup> See ORSI, *supra* note 6, at 195; 26 U.S.C.A. § 1381; 26 U.S.C.A. § 1382; 26 U.S.C.A. § 1383.

dividend is paid in cash.”<sup>26</sup> If the co-op meets Sub-chapter T, its members will only pay income tax based on their share of the overall cooperative’s net earning.<sup>27</sup> However, each member will pay income tax on their total patronage dividend regardless of whether it is a cash payment or a credit to a “member’s capital account.”<sup>28</sup>

Lastly, a consumer cooperative is not as suitable a business entity as an LLC for the VLS community net-metered solar model. The VLS model is not organized to distribute net-earnings to its members, other than in the form of net-metering credits. The main purpose of a consumers’ co-op is delivering goods or services instead of producing a high profit from selling such good or service. Federal securities regulations make it difficult for members to capitalize on financial returns to the company and earn a profit on their initial investment. Nevertheless, a consumer co-op model is an option to community solar groups.

### **Mutual Benefit Enterprise**

The Mutual Benefit Enterprise (MBE), also known as a limited cooperative association, is another hybrid LLC structure that combines the LLC’s financial and governance flexibility with the missions and goals of a traditional cooperative.<sup>29</sup> 11C V.S.A. § 104 defines a mutual benefit enterprise as “an autonomous, unincorporated association of persons united to meet their mutual interests through a jointly owned enterprise primarily controlled by those persons.”<sup>30</sup> The statute permits combining (1) ownership, financing, and receipt of benefits by the members for whose interests forms the enterprise; and (2) separate investments in the enterprise by members who may receive returns on their investments and a share of control.<sup>31</sup> Vermont has no restriction on a mutual benefit enterprise organizational purpose. The state allows individuals or businesses to “unite to meet their mutual business interests by creating and using a jointly owned enterprise.”<sup>32</sup> The MBE improves the “equity investment opportunities for capital-intensive and startup cooperative enterprises by allowing, but not requiring, the MBE to have voting investor

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<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> VT. STAT. ANN. tit. 11. § 4162 (West 2015); VT. STAT. ANN. tit. 11C. § 105 (West 2012).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> VERMONT SECRETARY OF STATE’S, <https://www.sec.state.vt.us/corporations/start-or-register-a-business/mutual-benefit-enterprise.aspx> (last visited July 25, 2015).

members in addition to patron members.”<sup>33</sup> An MBE does not require all members to participate in-group governance, as in a cooperative. “The relations between a mutual benefit enterprise and its members are consensual and are organic.”<sup>34</sup> This model holds great promise for community-owned solar because it is more flexible than an LLC, and less cumbersome than a cooperative.

### **Multilateral Licensing Agreement**

The multilateral licensing agreement (MLA) is a legal agreement between all stakeholders articulating government of the group. If a group chooses to organize through a MLA, the agreement should contain all of the provisions required to obtain a Certificate of Public Good, addressed in Appendix C.

The multilateral licensing agreement preserves tax benefits for multiple parties, allows participants discretion to tailor the structure of their association, and minimizes the cost of execution. Participants may select a single administrator to oversee communications and operations for the net metering group.

Unfortunately, an MLA lacks liability shielding. Under the LLC model, each member enjoys liability that does not exceed his or her investment in the project. The MLA offers no such protection. To mitigate liability for any direct or indirect harm upon third parties by the solar facility, participants may purchase liability insurance on the project.

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<sup>33</sup> *See id.*

<sup>34</sup> VT. STAT. ANN. tit. 11C § 113 (West 2012).

## Understanding Renewable Energy Credits

Renewable energy generation facilities, like a community-owned solar array, create two distinct products: electricity and renewable energy credits (RECs). This brief report provides an overview of RECs and REC markets, including: what they are, how they are generated and traded, and why they are important to community solar ownership.

### What Are RECs?

In Vermont, renewable energy credits are defined as “all of the environmental attributes associated with a single unit of energy generated by a renewable source”<sup>1</sup>. Once an electricity generation facility transmits power to the grid, that power becomes indistinguishable from the general grid mix. RECs act as a tool to differentiate renewable generation from traditional generation like coal-fired power plants and “allow buyers to make specific environmental claims about how their electricity is produced”<sup>2</sup>.

One megawatt-hour of renewable energy creates one REC. That REC is then valued based on where and when it was generated, and what renewable source produced the electricity. Each of these attributes affects the value of the REC on regional REC markets. A tradeable REC then acts as a currency. The purchaser of the REC can claim the environmental attributes associated with the electricity created by a renewable generation facility.

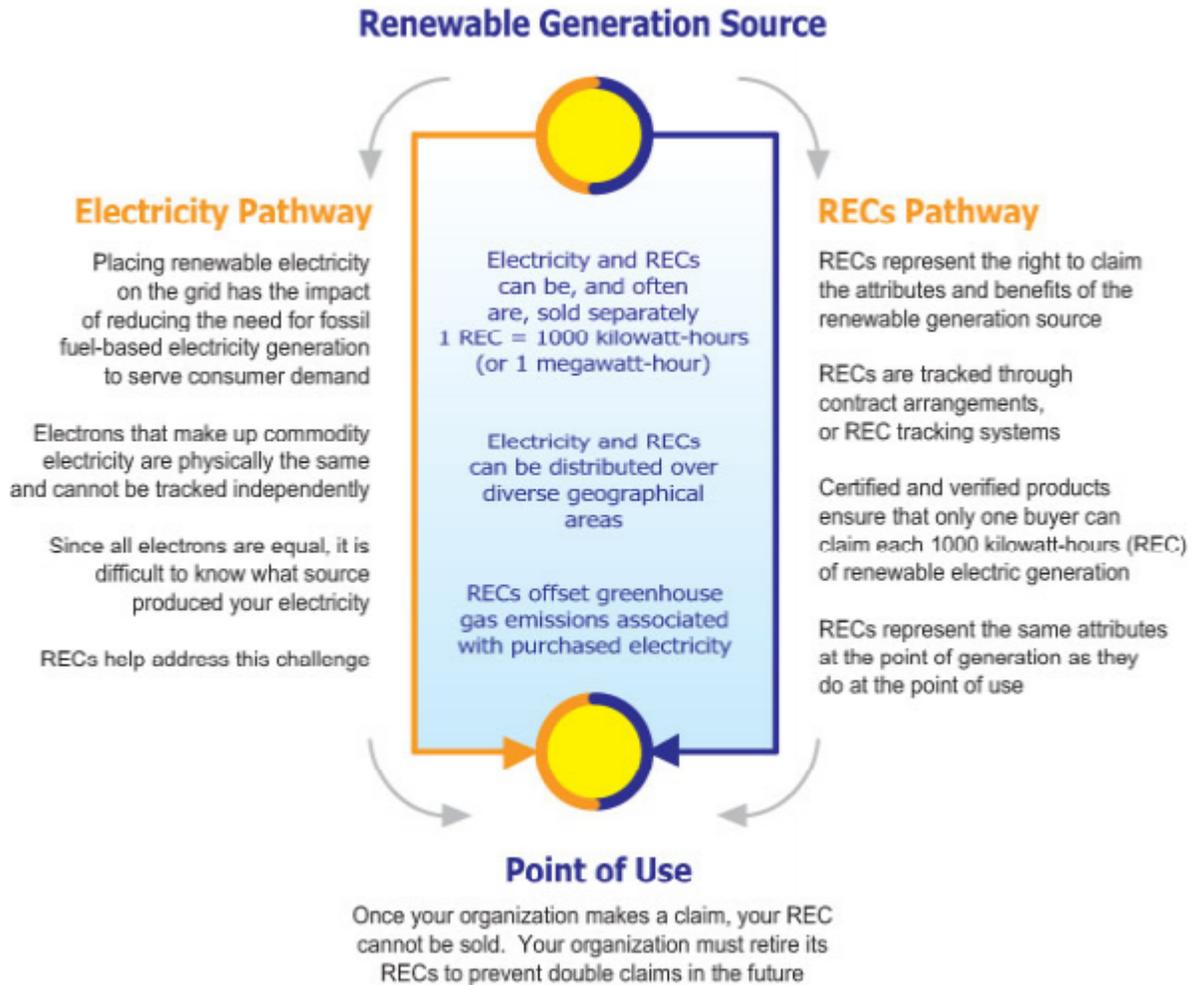
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<sup>1</sup> 30 V.S.A. § 8002(26)

<sup>2</sup> *EPA Green Power Partnership*. Environmental Protection Agency, July 2008. Web. 19 Jan. 2015. <[http://www.epa.gov/greenpower/documents/gpp\\_basics-recs.pdf](http://www.epa.gov/greenpower/documents/gpp_basics-recs.pdf)>.

Figure 1 illustrates the parallel lifecycle of the electricity and RECs generated by a renewable facility.

Figure 1<sup>3</sup>:



<sup>3</sup> Renewable Generation Figure. Digital image. EPA Green Power Partnership. Environmental Protection Agency, July 2008. Web. 19 Jan. 2015. <[http://www.epa.gov/greenpower/documents/gpp\\_basics-recs.pdf](http://www.epa.gov/greenpower/documents/gpp_basics-recs.pdf)>.

## What is a Regional REC Market?

The New England Power Pool (NEPOOL) administers the REC tracking system for New England, known as the Generation Information System (GIS). The NEPOOL GIS currently tracks every MWh of generation in New England. The GIS is an electronic registry where RECs are created and tracked. The GIS is meant to be an accounting system not a market or trading system. Transactions between bilateral parties happen outside the system and then are reported to GIS for tracking. .. Most RECs from Vermont solar projects are sold on the compliance market. Compliance markets allow utilities to purchase RECs in order to comply with their state's renewable portfolio standard<sup>4</sup> (RPS). Vermont does not currently have a RPS, so utilities like Green Mountain Power can decouple the RECs from the electricity and sell them to utilities in other NEPOOL states.

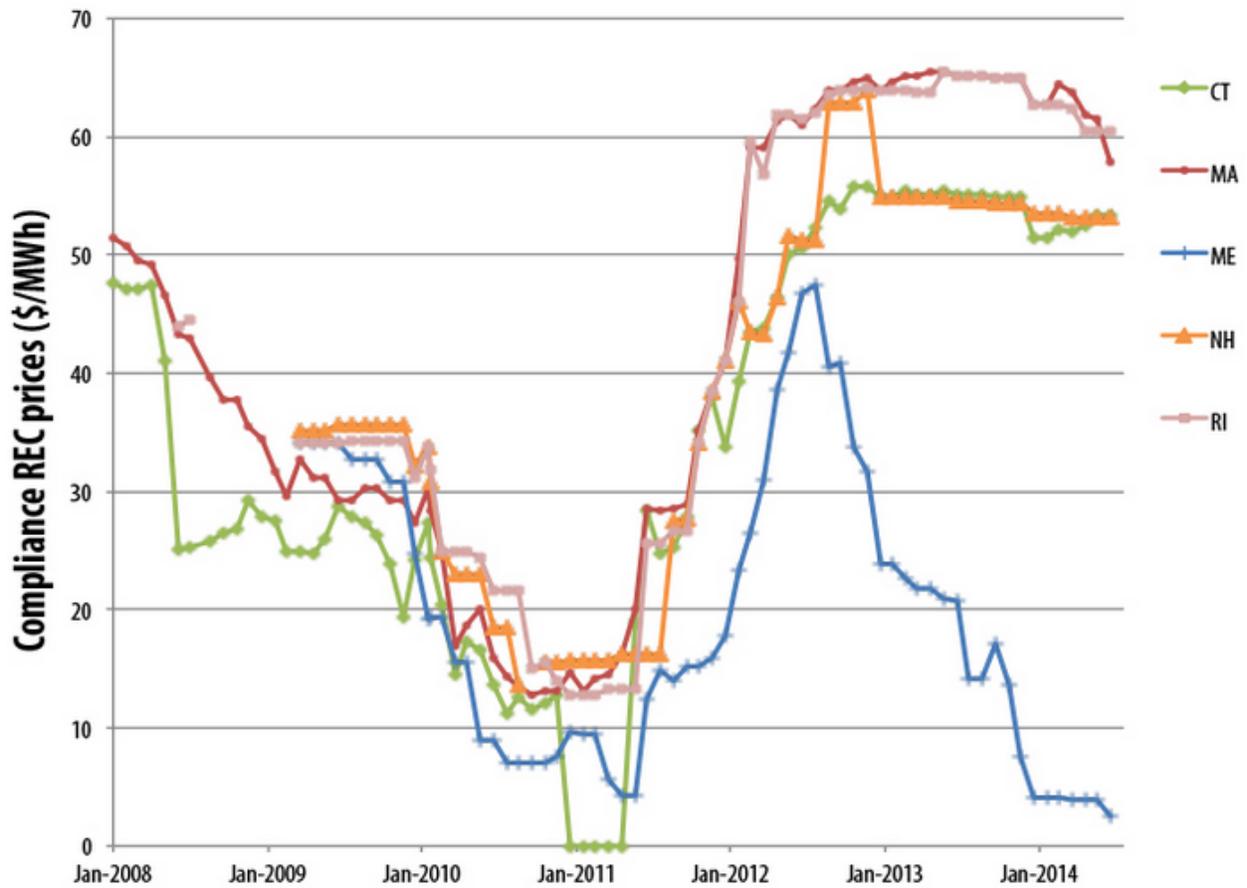
Figure 2 shows the historic REC prices on the NEPOOL compliance market. As you can see, Vermont developers and utilities can generate a significant amount of revenue by decoupling and selling the RECs. However, the renewable energy facility owners who choose to do so *“are no longer using green power and cannot be making a claim to be doing so”*<sup>5</sup>.

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<sup>4</sup> A Renewables Portfolio Standard is a regulatory minimum standard that would require investor-owned utilities, electric service providers, and community choice aggregators to increase procurement from eligible renewable energy resources to a designated percentage of the entire state's total energy consumption.

<sup>5</sup> *EPA Green Power Partnership*. Environmental Protection Agency, July 2008. Web. 19 Jan. 2015. <[http://www.epa.gov/greenpower/documents/gpp\\_basics-recs.pdf](http://www.epa.gov/greenpower/documents/gpp_basics-recs.pdf)>.

Figure 2<sup>6</sup>:



<sup>6</sup> "Renewable Energy Certificates (RECs)." *Green Power Network: REC Prices*. U.S. Department of Energy, 2014. Web. 22 Jan. 2015. <<http://apps3.eere.energy.gov/greenpower/markets/certificates.shtml?page=5>>.

## Why Are RECs Important To Community Solar Ownership?

Vermont residents interested in investing in a community-owned solar array must understand that they will not buy and consume the actual power generated by the solar array. When a group net metering system transmits power to the grid, it becomes impossible to differentiate the power generated by a solar array from the power generated by a coal-fired power plant. Virtual net metering agreements makes up for this by allowing customers who invest in renewable energy to be credited for an amount of power on the grid equal to what their system produces.

Many developers seek ownership of the environmental attributes (RECs) generated by a renewable energy facility in order to sell them on the NEPOOL REC markets. In exchange for monetizing the RECs, developers promise net metering participants zero-upfront cost arrangements. Although this may seem like a favorable deal, when the environmental attributes are stripped and sold, participants can no longer truly claim that they are purchasing and consuming renewable energy. According to the EPA, “[i]f the onsite system owner wants to make an environmental claim about the use of renewable electricity from the onsite system, they should ensure that they have and retain ownership of the RECs produced by the onsite renewable electricity system.”<sup>7</sup>

True community solar ownership includes the rights to the RECs generated by the projects. Decoupling the RECs from the electricity removes any claim to the environmental benefits of the renewable facility.

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<sup>7</sup> *EPA Green Power Partnership*. Environmental Protection Agency, July 2008. Web. 19 Jan. 2015. <[http://www.epa.gov/greenpower/documents/gpp\\_basics-recs.pdf](http://www.epa.gov/greenpower/documents/gpp_basics-recs.pdf)>.