Vermont Group Net Metering: Information & Guidelines for 150 kW (AC)

Community Solar Projects

This Guide is a publication of the Vermont Law School Energy Clinic

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1. Acknowledgements

This report is a work product of the Vermont Law School's Energy Clinic. The Energy Clinic is an academic program of the Institute for Energy and the Environment. The Energy Clinic provides opportunities for students to progressively develop the knowledge, skills, and values integral to the practice of energy law and policy while helping our clients meet local energy needs with reliable, clean and affordable resources. Energy Clinicians undertake energy projects that integrate doctrine, theory, and practice to resolve energy policy challenges in a sustainable and socially equitable manner for both the local community and the world. For more information about the energy clinic you can contact us at energyclinic@vermontlaw.edu

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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.

2. Executive Summary

Vermont Law School's Energy Clinic created this guide to assist Vermonters developing community-owned solar facilities under 150kW (AC) through Vermont's group net metering program. This guide specifies how communities form a net-metering group and find a site for an array. It also clarifies the options available for financing and managing the array while maintaining complete ownership of the project. Although the Energy Clinic developed the guide based on the rules for group net metered systems located in the Green Mountain Power service territory, many provisions are applicable across the state.

Part One of this guide provides an overview of Vermont's current net metering laws and regulations. This document then discusses the future of Vermont's net metering program, and the expected changes in federal tax incentives, starting in 2017.

Part Two of this guide provides a step-by-step process for establishing a group that conforms to state law and enhances the financial benefit for each member of the group, regardless of the member's tax status.

The Appendix provides resources referenced in this guide, including: a list of abbreviations used in this report; contact information for Vermont utilities; a Certificate of Public Good (CPG) application; an overview of the different entity models available to net metering groups; an overview of renewable energy credits (RECs); and the Energy Clinic's sample contracts that encompass the legal requirements that this report analyzes.

3. Introduction

Group net metering allows individuals within a service territory to form a group that distributes their shared renewable energy facility's generated power and environmental attributes.[1] One enormous benefit of this arrangement is the freedom for customers who cannot host solar panels, like those dwelling in apartments and condominiums, to join with other consumers to invest in renewable energy.

The VLS Energy Clinic supports the retention of *all* benefits of renewable energy by those who pay for and install generating systems. To that end, this guide clarifies the regulatory and financial constraints of owning and operating a community-owned solar facility in Vermont. The model advocated in this guide allows participants to control and enjoy all generated benefits of the project. Under this model, participants own a share of the facility from the inception of its development.

This guide summarizes Vermont's group net metering laws and regulations for community-owned solar facilities of 150kW (AC) or less. This model is ideal for individuals, businesses, not-for-profits, and municipalities. This flexible model maximizes the economic and environmental benefits for solar development. We focus on solar arrays no larger than 150kW for two reasons. First, solar arrays under 150 kW are not subject to the costly and time intensive

[11] "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 (RECs). In a sense, renewable energy credits are like a currency. Much like a typical form of currency, RECs are expendable and fungible. Once a REC is used, i.e. sold, retired, traded, it cannot be used again. Only one party can own the environmental attributes at any given time.

regulatory requirements that must be met by systems over 150 kW. Second, solar arrays account for an overwhelming majority of the installed net metering capacity (93.5%) in Vermont[2].

Part One of this guide covers the existing laws and rules that govern group net metering in the state of Vermont, as well as the role of the Public Service Board ("PSB" or the Board) in approving group net metering projects. Part One also addresses predicted state and federal changes that will affect the legal future of net metering in Vermont. The Vermont Public Service Department is required to submit studies and suggestions to the legislature regarding Vermont's net metering laws and a Renewable Portfolio Standard.[3] The result of these efforts could reshape Vermont's policy by January 1, 2017. At the federal level, significant tax policy changes will also affect the Vermont residents' investment decisions in community solar energy. Generous federal tax benefits for residential and commercial taxpayers who choose to install a net metering system are set to expire at the end of 2016.[4]

Part Two gives a step-by-step guide for establishing a group net metering project. Specific requirements including communication with the serving utility, siting process, group governance, and financing options are described in detail. The Appendix contains additional resources that communities can use as a guide when building a solar facility. These resources include a sample LLC operating agreement, land lease agreement, and the application forms necessary for interconnection to the grid and obtaining a Certificate of Public Good (CPG).

[2] VT Public Service Department. *Evaluation of Net Metering in Vermont Conducted Pursuant to Act 99 of 2014* (2014).
[3] 30 V.S.A. §8010(d)
[4] 26 U.S.C §48

4. Part One: Overview of Group Net Metering

4.1 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 which 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 renewable installation are set to expire in 2016 for residential customers and will be reduced significantly for commercial customers. It is unclear at this time whether these incentives will be renewed.

4.2 Net Metering Law in Vermont

4.21 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.[5]

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."[6] This timeframe provides an incentive for 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 219a. Repeal of this section

[5] Vt. H.B. 702, *Statement of Purpose* (2014)
[6] Ibid.

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

4.22 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 developer must obtain a Certificate of Public Good (CPG). Act 99 dramatically simplified the application process for any solar installation sized between 15kW (AC) and 150kW (AC). When evaluating a proposed solar facility under 150kW (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.

4.23 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."[7] Rule 5.100 also provides billing guidelines and schedules for the consumer and utility.

4.24 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

[7] Vt. PSB 5.101

requirements. However, participants should familiarize themselves with these guidelines because the Board requires a separate interconnection application to be filed along with the CPG. The rule also 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.

4.25 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 15kW and 150 kW. The application for a CPG for a project in this range is on the PSB's website[8] and is attached to this report as Appendix C. After a group submits the application form to the Board, utilities and other citizens have the opportunity to comment on the project. If the Board does not receive comments within ten days, then it will issue the CPG on the eleventh day and "the applicant may commence construction of the system."[9] Once the net metering group obtains a CPG, the group will work exclusively with the host utility and the developer to complete the project.

4.3 The Future of Net Metering

4.31 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."[10] Prior to being repealed, Act 99 requires that the PSB, through the Department of Public Service, deliver recommendations to the legislature regarding net metering

[8] A CPG application for a system under 150kW can be found at: http://psb.vermont.gov/utilityindustries/electric/backgroundinfo/netmetering
[9] Vt. PSB 5.110(3)
[10] Vt. H.B. 702. *Statement of Purpose* (2014)

deployment, cross-subsidy[11] between consumers, 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. To date, federal tax subsidies have provided a large portion of the financial incentives for the development of renewable energy systems. The Department believes,

> "[i]t is likely that the solar PV industry in Vermont and around the country will see a boom from now until the end of 2016...Once Federal tax treatment changes, however, the industry will be at risk of a significant drop in activity, with associated economic hardship for particular firms and their employees. If this bust is sharp and deep, it may hamper the industry's ability to rebound, and thus the state's ability to meet long-term renewable energy goals. To that end, stakeholders and the PSB should consider industry impacts when evaluating the impacts of different policy options for the post-2016 period."[12]

The PSD's report indicates that the Board will consider the potential changes in the federal tax climate when engaging in workshops and rulemaking proceedings prior to the 2016 legislative session. These considerations are likely to appear in the Board's 2016 report to the General Assembly regarding net metering in Vermont. The legislature will then use the PSB's

[11] Cross-subsidy refers to the potential that net metering is shifting the cost of grid maintenance and services on to traditional customers. In 2017, The Vermont legislature may adjust net metering billing standards to include a grid services charge. For a full analysis of cross-subsidy, see: http://publicservice.vermont.gov/sites/psd/files/Topics/Renewable_Energy/Net_Metering/Act%2099%20NM%20Study%20FINAL.pdf

[12] VT Public Service Department. *Evaluation of Net Metering in Vermont Conducted Pursuant to Act 99 of 2014* (2014).

recommendations to construct a new net metering program, which will commence on January 1, 2017.

4.32 Federal Program

Customers establishing a net metering group should begin construction as soon as possible to maximize available tax benefits. Investment in PV equipment installed and generating electricity by December 31, 2016 will qualify for the Federal Commercial Investment Tax Credit[13] or the Federal Residential Investment Tax Credit[14]. Either ITC results in a 30% tax credit. The Commercial ITC is available to commercial, industrial, utility, and agricultural investors in solar energy, while the Residential ITC is available to residential investors. In the absence of congressional action to renew the credits, the Commercial ITC will expire at the end of 2016, ramping down from 30% to 10%, and the Residential ITC will disappear completely. This guide will describe these credits in further detail below in Section Two, Subsection C.

[13] 26 Internal Revenue Code §48, 26 U.S.C. 48
[14] 26 Internal Revenue Code §25D, 26 U.S.C. 25D

5. Part Two: Establishing a Project

5.1 Introduction

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 section 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.

First, the net metering group must determine whether the host utility is obliged to accept the net-metered project. Vermont law only requires that utilities make 15% of peak demand available for net metering. Finding a site that conforms to the standards set forth in 30 V.S.A Section 248a then becomes the top priority. Fortunately, solar facilities of 150kW or less are exempted from many Section 248 requirements. Section B details the remaining requirements that a site must satisfy. Section C discusses the various financing mechanisms available to net metering participants. The appropriate mechanism for participating groups will depend largely on group construction.

Once the net metering group secures a location and financing for the solar array, group governance and procedure must be established. Section D describes the organizational requirements groups must meet in order to obtain a CPG. These include electricity credit distribution, dispute resolution, the designated contact person, and renewable energy credit (REC) ownership.

This guide concludes with an overview of the CPG application process. For systems under 150 kW, there is a four page application and ten day comment period. If no comments

have been filed, then on the eleventh day a CPG will be issued and construction on the project can commence.

5.2 Forming a Group

5.21 Contact the Service Utility

First, prospective net metering participants should contact their utility 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. The contact information for each Vermont utility is attached to this report as Appendix B.

5.22 Find a Site

30 V.S.A. Section 248a governs the siting and construction of new electric facilities. When evaluating a new solar facility, the PSB will waive the majority of the requirements found in Section 248a. However, four requirements cannot be waived: Orderly Development, Stability and Reliability, Environmental Considerations, and Outstanding Resource Waters.[15]

Orderly Development/ Comprehensive Planning

Developers and other parties building community solar projects should review the relevant comprehensive plans of the county and municipality to ensure the project's compliance with the planning instruments of the region. To ensure compliance with these planning instruments[16], early and extensive communication with the town and county planning commissions and local legislative bodies[17] regarding the physical details of the project is essential. In order to obtain a CPG potential projects must not "unduly interfere with the orderly

[15] PSB Rule 5.108(B)
[16] In Vermont, these planning instruments are generally the town and county regional plans. Zoning ordinances are afforded less review in the CPG application process.
[17] In Vermont, the town select board generally serves as the local legislative body. Residents of the town also serve as the legislative body through town meeting.

development of the region."[18] 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.[19]

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[20] greatly improves the chances of interconnection, many single-phase power distribution lines can accommodate the capacity added by a 150kW system without disrupting grid stability and reliability. The solar developer installing the group system must communicate directly with the utility regarding interconnection requirements.

Environmental Considerations/Outstanding Water Resources

When siting the project, participants should be attentive to the proximity of bodies of water that have exceptional natural, recreational, cultural, or scenic values. Section 248a requires that before the Board approves a CPG, it must find that the project does not affect, and is not located on "any segment of the waters of the State that has been designated as outstanding resource

[18] Ch. 5. 30 V.S.A. Section 248(b)(1)
[19] *Id.*
[20] 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/

waters by the Secretary of Natural Resources."[21] The Agency of Natural Resources' website contains a map of these outstanding resources waters.[22]

Optimal Siting and the "Quechee" Test

Participants must evaluate potential sites for their proximity to distribution lines that have available capacity for accommodating a system between 15kW and 150kW, 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 benefits of the project.[23] The first step of the test examines five criteria to determine if the project will have an adverse aesthetic impact on the surrounding area:[24]

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.

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[21] Ch. 5. 30 V.S.A. Sec. 248(b)(8)
[22] *See http://www.watershedmanagement.vt.gov/planning/images/pl_watershedmap.gif*
[23] *In re Quechee Lakes Corporation,* 154 Vt. 543, 550 (1990). 30 V.S.A. Section 219a only requires that systems exceeding 150kw (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 150kw (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."
[24] Act 250 and Adverse Aesthetic Impacts Criterion Upheld in *Quechee Lakes.* Vermont Law School Land Use Clinic (2011). Retrieved from http://openspacevt.wordpress.com/2011/05/13/act-250-and-adverse-aesthetic-impacts-criterion-8-upheld-in-quechee-lakes/.

The Board applies the greatest scrutiny to the first two criteria. Therefore, developers should design the proposed array with consideration to the system's surroundings. 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." Here, the Board will consider three criteria:

1. Does the project violate a clear, written community standard intended to preserve the aesthetic, scenic or natural beauty of the area?
2. Is the project offensive or shocking to the average person?
3. Has the applicant failed to take generally available mitigating steps to improve the harmony of the proposed project with its surroundings?

The second step of the 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 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 array developer. 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.[25] The Vermont Law School model land lease, attached as Exhibit E, contains an SNDA agreement. Groups should consult an attorney experienced in Vermont real estate transactions for more information on Vermont property law.

5.23 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 for solar arrays have decreased tremendously in recent years.[26] However, installation and maintenance still require a significant financial commitment. This section clarifies the financing options for prospective participating community members 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 customers to take advantage of the current federal tax incentive structure to build well-sited distributed net metered generators, including solar PV, in the state between now and the end of 2016. At the end of 2016, the federal tax credit for solar PV is scheduled to expire.[27]

How a group chooses to finance the solar array will depend on how the group chooses to organize. This report encourages groups to organize in a way that maximizes returns from

[25] Morton P. Fisher, Jr. and Richard H. Goldman. *Real Property, Probate and Trust Journal* Vol. 30, No. 3 (FALL 1995), pp. 355-398. http://www.jstor.org/stable/20782085.

[26] 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.

[27] VT Public Service Department. *Evaluation of Net Metering in Vermont Conducted Pursuant to Act 99 of 2014* (2014).

federal investment tax credits. Group net metering allows individuals, businesses, nonprofits, and municipalities to join together to govern and finance a solar facility. This section first identifies the credits that are available to residential or commercial participants through the federal tax system, and then articulates three avenues through which prospective community group net metering participants may finance their project. Lastly, this section discusses state-supported incentives programs and loans, tax-exempt financing options as substitutes or supplements to personal loan programs of credit unions and banks.

Federal Tax Incentives

Customers who intend to use federal tax incentives to help finance a solar array must complete construction by December 2016. Developers should take advantage of the federal investment tax credits to help offset a significant portion of the installed cost of a residential installation.[28] Under the Internal Revenue Code, a 30% federal investment tax credit is available to both residential and commercial PV systems. [29] There is some urgency in claiming these tax credits, as the commercial ITC (Internal Revenue Code §48) is set to drop to 10% after

[28] JASON COUGHLIN ET AL., U.S. DEPARTMENT OF ENERGY, A GUIDE TO COMMUNITY SHARED SOLAR: UTILITY, PRIVATE, AND NONPROFIT PROJECT DEVELOPMENT 38 (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.).

[29] The Department of Energy asserts in its May 2012 Publication that the Renewable Energy Tax Credit is not available to community shared solar projects because it only applies to taxpayers who install a solar system on their own residences. However, in a Q&A guidance notice (hereinafter, "Guidance Notice") in late 2013, the IRS instructed that the residential ITC is available to residential tax-payers who want to claim a credit for "off-site" solar panels that are not installed on "a dwelling . . . used as a residence by the taxpayer." IRS Q&A on Tax Credits for Sections 25C and 25D, Q-26, Notice 2013-70. Although this is not an explicit authorization of residential investment tax credit for community shared group net metering systems, the description of an eligible taxpayer in Q-26 seems to be consistent with community-owned group net metering participants. *Id.* Furthermore, the absence of language strictly prohibiting community shared group net metering systems in both the tax code itself, as well as the Guidance Notice, is informative of the Legislature's and the IRS's intent. Lastly, §25D(e)(4) of Title 26 of the Internal Revenue Code considers how to allocate the residential ITC to joint occupants who jointly off-take from a single fuel-cell source, demonstrating that the Legislature allows ITCs for cooperatively funded renewable energy property intended for joint usage. 26 Internal Revenue Code §25D(e)(4), 26 U.S.C. 25D(e)(4). The Internal Revenue Code gives the same consideration to "cooperative housing corporations" with regards to qualification for the residential ITC. *Id.*, at 25D(e)(6). Ultimately, however, this is a legal gray area, and future participants should consult a tax professional regarding their eligibility for the federal investment tax credit.

December 31, 2016, and the residential ITC (Internal Revenue Code §25D) is scheduled to be discontinued.

Claiming the Commercial Investment Tax Credit

As stated above, §48 of the Internal Revenue Code creates a 30% investment tax credit for solar photovoltaic (PV) investment in the commercial, industrial, utility, and agricultural sectors. To be eligible for the Commercial Investment Tax Credit (ITC), qualified systems must be placed in service before January 1, 2017.

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.[30] State rebates and grants are not calculated into the 30% ITC, unless they are considered taxable income.[31] 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.

In addition, businesses can use the Modified Accelerated Cost Recovery System (MACRS) to expense the declining value of qualified PV assets at an accelerated rate on their tax returns. MACRS qualified businesses can depreciate their PV assets, 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]."[32]

[30] Mark Bolinger, An Analysis of the Costs, Benefits, and Implications of Different Approaches to Capturing the Value of Renewable Energy Tax Incentives, 9 (May 2014). http://eetd.lbl.gov/sites/all/files/lbnl-6610e_0.pdf

[31] If the incentive is considered taxable income, then it does not need to be subtracted from the cost basis. *Id.* at 43.
[32] *Id.* at 39.

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[33] 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."[34] Thus, if tax equity investors are brought into the equation to monetize the tax benefits, community groups who want to develop a group net metering solar array will essentially "forfeit one-third or more of the economic value of a project's tax benefits."[35]

Given the reduction in customer benefit and the complicated nature of tax equity financing, 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.

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[33] *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.

[34] 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).

[35] *Id.*

Claiming the Residential Investment Tax Credit

The simplest, most straightforward way for participants 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. Like the Commercial ITC, qualified systems must be placed in service before January 1, 2017 in order to claim the Residential ITC. 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 participants 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[36].

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.
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[37] power than is consumed by that taxpayer at his or her home.

[36] 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. *See* http://www.irs.gov/pub/irs-irbs/irb13-47.pdf (Notice 2013-70).
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/.

[37] The IRS did not quantify "significantly more" in its Guidance Notice.

The 30% Residential ITC may be applied directly to the taxpayer's federal income taxes. Furthermore, if the taxpayer's liability falls short of the tax credits available for a given fiscal year, the excess credits may be carried forward to the following taxable year until 2016.

The challenge of financing a community-owned solar array system through loans and the residential ITC lie in each participant securing their own financing, and forming an association or agreement that will determine group governance structure and accountability for managing the solar array.[38] Section D will discuss group governance and associations.

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 10kW will be assessed a uniform $4/kW tax.[39] With regards to municipal tax, Vermont gives discretion to each municipality to waive the property taxes for PV facilities and any land, not to exceed one-half acre, on which it is built.[40]

With regards to personal debt equity, some lending institutions like Vermont State Employees Credit Union[41] offer specialized loan options for solar projects.[42]

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[38] 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)

[39] 32 V.S.A. Chapter 215 §8701(b)

[40] *See* http://www.leg.state.vt.us/reports/2012ExternalReports/274975.pdf

[41] *See* VERMONT STATE EMPLOYEES CREDIT UNION, https://www.vsecu.com/articles/invest-in-solar

[42] Additionally, 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.

5.24 Establishing Group Governance and Group Procedures

Act 99 and Rule 5.100 require that applicants establish certain group governance procedures before the Board will award a CPG. Formation of a legal entity may be useful for group governance and managerial purposes, but prospective 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:[43]

- 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.

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.

In forming a group that will individually own the array and manage the operations of the LLC, there is much to be said for beginning the process with a core group of individuals who have a prior relationship 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 that are willing and able to help the group

[43] 2014 Vermont Public Service Board Certificate of Public Good

reach critical mass and fully subscribe the solar array on a timely basis will expedite the process and lead to a well- functioning member-managed team.

One concern raised for community solar arrays are federal and state securities laws. We have structured our model LLC Operating agreement to minimize these concerns by giving the members direct ownership and control over the operations of the solar array. The Vermont State Department of Financial Regulation published an Order on this issue in which they illustrate 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.[44] 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.[45] 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 expect profits solely from the efforts of the promoter or a third party."[46] 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.[47]

[44] *See* State of Vermont Department of Financial Regulation, Securities Division, Order No. 14-023-S
[45] *See* 9 V.S.A. § 5102(28)
[46] S.E.C. v. W.J. Howey Co., 328 U.S. 298-99 (1946]
[47] 9 V.S.A. § 5102(28)(D)

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."[48]

Only by meeting each of these four prongs will an investment contract be deemed a security. By structuring our model operating agreement to give LLC members direct ownership interest over panels in the Community Solar Project and direct control over the management and operations of the project, we firmly believe that the fourth prong of the *Howey Test* will not be met. What this means is that members of Community Solar Projects following our guidelines should not need to register the security offering. For more information on securities regulations, group member should consult an attorney.

Management Structure

Given the management obligations listed above, and the additional obligations that come with operating and decommissioning the system, this guide recommends that the net metering group consider the formation of a legal association like a cooperative, limited liability company (LLC), or multilateral licensing agreement[49] for group governance and project management purposes. For the purposes of our model agreements we have recommended that the group form

[48] *See* [48] *See* State of Vermont Department of Financial Regulation, Securities Division, Order No. 14-023-S at 2.
[49] *See* Michael Dworkin, Dan Ingold, Ralph Meima, Carey Rosser, Jonathan Voegele, Mary Westervelt. Vermont's Clean Energy Development Fund (ARRA) & Powersmith Farm. Vermont Group Net Metering Information & Guidelines, 14 (December, 2010).

a member managed LLC which 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.[50] The options for organization structures available to net metering groups are discussed in Appendix E.

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 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."[51] We recommend that groups install a production meter. A production meter credits the group at the utility's residential rate, regardless of whether certain participants are generally billed at the time-of-use or demand rates. This can define the amount of credit the group will receive.

The group must then choose how it will allocate the kWh production credit amongst its members. It can allocate kWh credits on a percentage basis or choose to allocate credits in some

[50] *See* 26 Internal Revenue Code §25D(e)(6), 26 U.S.C. 25D(e)(6).
[51] Vt. PSB Rule 5.106(A)

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 customer or group."[52] 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 their capital investment in the project. This allocation can only be changed on written notice to the electric company from the group's designated communicator.

Construction and Management of the Array

Our model agreements envision the group selecting a qualified local solar installer 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 member 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.

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

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

[52] Vt. PSB Rule 5.105 (e)

Board or the Public Service Department."[53] 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.

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

Excess Generation Distribution

Groups must establish a process for the allocation of excess generation. At times, usually 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 must be aware that any accumulated credits must be used within twelve months of the original month the credits were earned or they will revert back to the utility without compensation.[54] The group can most easily establish a process for the allocation of excess generation by using a fixed percentage calculation to determine the distribution of electricity production.

[53] Vt. PSB Rule 5.106(A)(4)
[54] Vt. PSB Rule 5.104(A)(4)

Distribution of Renewable Energy Credits

The CPG application 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."[55] This guide recommends that any agreement establishing a group net metering system require that the customer retain and retire the environmental attributes,[56] rather than transferring them to another entity as a part of financing tool. Selling the environmental attributes, specifically the renewable energy credits (RECs), strips the solar array of the characteristics that qualify it as renewable power. Many developers use REC sales as part of their financing models, so groups may face resistance from developers if they try to keep the RECs. Groups can retire the RECs by simply choosing not to sell them. The Energy Clinic's LLC Operating Agreement--attached to this report as Appendix D--includes a sample clause that can ensure the environmental attributes are retained by the customer.

Groups can also surrender ownership of the RECs to the host utility. Under Vermont law, if the customer chooses to transfer ownership of the RECs to the utility, then the "company shall retain ownership of and shall retire the attributes and credits received from the customer, which shall apply toward compliance with any statutes enacted or rules adopted by the State requiring the company to own the environmental attributes of renewable energy."[57] Surrendering ownership of the RECs to the host utility provides no financial benefit to the group

[55] 30. V.S.A. 219a(b)(3)

[56] "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 valuated as Renewable Energy Credits. In a sense, renewable energy credits are like a currency. Much like a typical form of currency, it has the property of expendability and fungibility. This means that once an amount is used, it cannot be resurrected; however, before it is used, it may be exchanged for a currency of equal value.

[57] Ch. 5. 30 V.S.A. Section 219a(I)

and would preclude the group members from individually or as a group claiming or advertising that they are consuming renewable energy.

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. Customers who have home PV systems may also participate in a group net metered project, but any monthly excess generation from their individual system will be swept into the net metering group's account. The utility then distributes the excess generation amongst group members according the group's excess generation procedure.[58]

5.3 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 that the host utility has capacity for their system and they have established the necessary governance and procedures. CPG application forms are located on the website of host utilities or the website of the PSB[59], 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 Resources; and all adjoining landowners. Additionally, groups must submit a list of all the parties notified with the application.[60]

[58] See Green Mountain Power's net metering tariff: http://www.greenmountainpower.com/upload/photos/307Self_Generation_and_Net_Metering_2013_10_14.pdf
[59] PSB: http://psb.vermont.gov/sites/psb/files/forms/2014revisedNMApplicationForm-1.pdf
[60] 2014 Vermont Public Service Board Certificate of Public Good Application

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."[61] 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.

6. Conclusion

Developing a community-owned solar project under today's regulatory and financial constraints will be a time-sensitive affair. Vermonters interested in establishing a community-owned solar array should complete construction by December 2016 to maximize the financial and regulatory incentives available to such a project. The impending changes to the federal tax code will reduce the commercial tax incentives for solar installation and eliminate tax benefits for residential solar installation. Furthermore, Vermont's group net metering program could also undergo dramatic changes in 2017.

Full ownership of a group net metered solar array is critical to those who wish to retain the maximum economic and environmental benefits derived from their own generation of 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. By retaining the environmental attributes, including the RECs, owners maximize their usage of the environmental benefits of their solar array, and have a direct impact on reducing their own and Vermont's carbon footprint.

[61] Ibid.

This guide provides a framework for groups to build on that maximizes the present legal and financial benefits available to community solar. With it, groups will be able to determine how the group will be managed, where the project will be located, and how the project will be financed. That said, every community-owned group net metered project will bear unique circumstances, and as such, will need to seek unique financial and regulatory compliance solutions. By using this guide as 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.

VERMONT PUBLIC SERVICE BOARD
ELECTRIC COMPANIES
AUTHORIZED TO OPERATE IN VERMONT

BARTON VILLAGE, INC. ELECTRIC DEPARTMENT
Brian Hanson, Village Supervisor
PO Box 519
Barton VT 05822
(802) 525-4747

BURLINGTON ELECTRIC DEPARTMENT, CITY OF
Neil Lunderville, General Manager
585 Pine Street
Burlington VT 05401
(802) 658-0300

William F. Ellis, Esq.
McNeil, Leddy & Sheahan
271 South Union Street
Burlington, VT 05401
(802) 863-4531

CITIZENS COMMUNICATIONS COMPANY d/b/a Citizens Energy Services
~~Victoria J. Brown, Esq.~~ (No longer providing service, but has a CPG)
Primmer Piper Eggleston & Cramer, PC
150 South Champlain Street - PO Box 1489
Burlington, VT 05402-1489
(802)864-0880

ENOSBURG FALLS WATER & LIGHT DEPARTMENT, INC., VILLAGE OF
Jonathan Elwell, Village Manager
42 Village Drive
Enosburg Falls VT 05450
(802) 933-4443

ENTERGY NUCLEAR VERMONT YANKEE, LLC
ENTERGY NUCLEAR OPERATIONS, INC.
Michael Colomb, Site Vice President
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GREEN MOUNTAIN POWER CORPORATION
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Rutland, VT 05702
(802) 747-5511

HARDWICK ELECTRIC DEPARTMENT, TOWN OF
Michael Sullivan, General Manager
123 North Main Street - PO Box 516
Hardwick VT 05843
(802) 472-5201

HYDE PARK ELECTRIC DEPARTMENT, VILLAGE OF
Carol Robertson, General Manager
PO Box 400
Hyde Park VT 05655
(802) 888-2310

JACKSONVILLE ELECTRIC COMPANY, VILLAGE OF
Pamela Moore, Clerk/Treasurer
P.O. Box 169
Jacksonville VT 05342-0169
(802) 368-7010

JOHNSON WATER & LIGHT DEPARTMENT, VILLAGE OF
Duncan Hastings, Village/Town Administrator
PO Box 383
Johnson VT 05656
(802) 635-2301

LUDLOW ELECTRIC LIGHT DEPARTMENT, VILLAGE OF
James V. Pallotta, Controller
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Ludlow VT 05149
(802) 228-7766

LYNDONVILLE ELECTRIC DEPARTMENT, VILLAGE OF
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20 Park Avenue - PO Box 167
Lyndonville VT 05851
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State of Vermont Public Service Board

Application for a Certificate of Public Good for Net Metered Power Systems that are Non-Photovoltaic Systems Up to 150 kW (AC) in Capacity; or Photovoltaic Systems Greater Than 15 kW (AC) and up to 150 kW (AC) in Capacity[1]

Net Metering Customer Name (please print):_____

General Instructions:
Applicants must complete sections 1-3 and any other sections applicable to the type of system to be installed. Specific instructions for each type of system are included under the applicable section. For example, an applicant for a wind turbine system must complete sections 1-3, 5 and 8. **Failure to complete all applicable sections of this application may result in delay or denial.** Once the application form is completed, the applicant must mail the applicable sections of the completed application to the Public Service Board, the Vermont Department of Public Service, the applicant's respective utility, and to all other parties as specified in each of the sections applicable to the net metering project. For example, an applicant for a photovoltaic system installed on an existing structure is required to mail copies to the Public Service Board, the Department of Public Service, and his or her utility. Applicants must also submit a list of the persons that they have mailed a copy of the application to in accordance with the instructions for each type of installation along with the completed application. It is recommended that the applicant contact their utility ***prior to applying for a certificate*** in order to determine whether the utility's capacity regarding net metering projects has been met, and any utility specific requirements. Please contact the Public Service Board at (802) 828-2358 if you have any questions regarding this application form.

Notice To Those With Concerns About The Net Metering Proposal
If you have received a copy of this application, you have the opportunity to comment on the project and to request a hearing before the Public Service Board to raise any concerns you may have regarding this project. For all systems *with the exception of photovoltaic systems on existing structures*, if you wish to comment to the Public Service Board about this proposal or request a hearing, you must file your comments with the Board and the applicant within 30 days of the date that the application was sent to the Board and all required parties; if you wish to request a hearing, you must include your request with your comments. With respect to photovoltaic systems on existing structures, if you wish to comment to the Public Service Board about this proposal, you must file the comments and any request for a hearing with the Board and the applicant within *ten* working days of the date that the application was sent to the Public Service Board and all required parties. If you request a hearing, you must make a showing that the application raises a significant issue regarding one or more of the substantive criteria pursuant to 30 V.S.A. § 248. The Board may determine to hear evidence on the issue if it concludes that the project raises a significant issue with respect to one or more of those substantive criteria. Comments and requests must be in writing and sent to the Board at 112 State Street, 4th Floor, Montpelier, VT 05620-2701. If you have any questions, contact the Clerk of the Public Service Board at (802) 828-2358, e-mail address: psb.clerk@state.vt.us.

[1] Applicants for photovoltaic systems of 15 kW or less in capacity must use the Board's Net Metering Registration Form.

Appendix C

Customer Information	- Section 1.

(Please print all information clearly)

Net Metering Customer Name:_____

Service Address (please include street name and number; no P.O. boxes):_____

Town/City/State:_____

Zip Code:_____

Mailing Address (if different from above):_____

Daytime telephone:_____

Utility & Account #:_____

Property owner name (if different than above):_____

Mailing address:_____

Town/City/State:_____

Zip Code:_____

Daytime Telephone:_____

Is this an amendment to an existing system? If so, please indicate the existing CPG No. _____

Date application was sent to the Public Service Board and other parties as required by type of net metering project: _____

Applicant must indicate the date the application was sent to the Board and other parties, and also submit a list of the names and addresses of the parties notified of this application along with the completed application.

Installer Information	- Section 2.

(Please print all information clearly)

Installer Name:_____

Mailing Address:_____

Town/City/State:_____

Zip Code:_____

Daytime Telephone:_____

e-mail address:_____

Certification	- Section 3.

The undersigned declares, under the pains and penalties of perjury, that:

(1) having exercised due diligence and made reasonable inquiry, the information which I have provided on this form and any attachments is true and correct to the best of my knowledge;

(2) the project for which this application seeks approval is in compliance with the land conservation measures contained in the applicable Town Plan which would apply if the project were not subject to 30 V.S.A. § 248;

(3) the project is in compliance with all applicable state and federal requirements and has the necessary approvals for operation of this type of system;

(4) any waste generated by the construction of this project will be disposed of at a state-approved disposal facility;

(5) any construction activities will follow the recommendations of *the Vermont Erosion Control Handbook* (available from the Agency of Natural Resources, 1-802-828-1535 or anr.wsmdstormwatergeneral@state.vt.us);

(6) the system will be installed in compliance with the interconnection safety and technological requirements of Public Service Board Rule 5.100; and

(7) I have sent a copy of this complete application to all parties as required by this form.

(8) Site preparation or construction of the project will not commence until a certificate of public good is issued.

Making false or misleading statements on this application is subject to penalties under 30 V.S.A. § 30 and/or revocation of any approval granted.

Customer Signature_____ Date_____

Installer Signature_____ Date_____

Renewable Attribute Election:

I elect to retain ownership of any renewable attributes associated with the system (*please circle one*) **yes or no**.

I elect to transfer ownership of any renewable attributes associated with the system to the serving utility (*please circle one*) **yes or no**.

If installing a photovoltaic (PV) system, complete Section 4.*

If installing a wind system complete, Sections 5 and 8.

If installing another type of net metering system, complete Sections 6 and 8.

If installing a group system, complete the sections applicable to the net metering system employed and Section 7.

***Ground mounted PV systems must complete Section 8 (environmental information). See instructions in Section 4 below.**

Photovoltaic System (PV) Information	- Section 4.

PV Module Manufacturer:

Module Model Number:_____

Number of Modules:_____

Power Rating per Module:_____DC Watts

Total Array Output:_____DC Watts (no. of modules x power rating)

System Capacity: _____AC Watts (AC Nameplate Capacity of the Inverter(s))

Inverter Manufacture:_____

Inverter Model Number:_____

Describe the physical location of the installation and/or mounting structure:

Describe the physical location of the facility's lockable disconnect switch:

Installation Type (*please circle one*): an existing home or business; a new home or business; ground mount; other (please describe)_____

If you are installing a system that is not attached to an existing or new home or business, you must also complete Section 8 of this application.

Notice Requirements:

If you are installing a PV system on a new or existing home or business, you must send copies of this application to the Public Service Board at 112 State Street, 4th Floor, Montpelier, VT 05620-2701; the Vermont Department of Public Service at 112 State Street, 3rd Floor, Montpelier, VT 05620-2601; and your utility.

If you are otherwise installing your PV system on a new structure, such as a pole-mounted system, then you must send a copy of the application to the Public Service Board; the Vermont Department of Public Service; your utility; the Planning Division, Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, VT 05620-3901; your local planning commission; the municipal legislative body for the town in which the system is to be installed (typically, the selectboard); and all adjoining landowners.

Please note that all applicants must submit a list of the parties notified along with the completed application.

Wind System Information	- Section 5.

Wind Turbine Manufacturer:_____

Turbine Model Number:_____

Turbine Tower Height:_____ft

Turbine Tower Diameter_____ft

Rotor Diameter:_____ft

Wind Turbine Power Output:_____Watts
(Peak output up to 30mph wind speed)

AC Source (circle one): Inverter Synchronous Generator Induction Generator

Describe the physical location of the installation and/or mounting structure:

Describe the physical location of the facility's lockable disconnect switch:

If using an inverter, complete the following:

Inverter Manufacturer:_____

Inverter Model Number:_____

Inverter's Continuous AC Rating:_____AC Watts

System Rated Output:_____AC Watts (wind turbine power output x .95)

All applicants for wind systems must also complete Section 8 (Environmental Information) below.

Notice Requirements:

If interconnecting a wind system, you must send copies of this application to the Public Service Board at 112 State Street, 4th Floor, Montpelier, VT 05620-2701; the Vermont Department of Public Service, 112 State Street, 3rd Floor, Montpelier, VT 05620-2601; your utility; your local planning commission; the municipal legislative body for the town in which the system is to be installed (typically, the selectboard); the Planning Division, Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, VT 05620-3901; and your adjoining landowners.

Please note that all applicants must submit a list of the parties notified along with the completed application.

Other Types of Systems	- Section 6.

Description of the type of net metering system employed (fuel cell, hydroelectric, biomass, etc.):_____

Manufacturer:_____

Model Number:_____

Rated Power Output (AC continuous):_____

System Rated Output (power output x .95) :_____ AC Watts

AC Source (circle one): Inverter Synchronous Generator Induction Generator

Describe the physical location of the installation and/or mounting structure:

Describe the physical location of the facility's lockable disconnect switch:

If using an inverter, complete the following:

Inverter Manufacturer:_____

Inverter Model Number:_____

Inverter's Continuous AC Rating:_____ AC Watts

Describe the physical location of the installation and/or mounting structure:

Describe the physical location of the facility's lockable disconnect switch:

All applicants for systems under this section must also complete Section 8 (Environmental Information) below.
Applicants for hydroelectric and biomass systems must submit copies of all necessary federal and state approvals for the project along with this application.
Applicants for biomass systems that utilize off-site waste resources must provide a detailed description of any waste transportation, storage, and handling related to the project.

Notice Requirements:

If interconnecting a system, you must send copies of this application to the Public Service Board at 112 State Street, 4th Floor, Montpelier, VT 05620-2701; the Vermont Department of Public Service, 112 State Street, 3rd Floor, Montpelier, VT 05620-2601; your utility; your local planning commission; the municipal legislative body for the town in which the system is to be installed (typically, the selectboard); the Planning Division, Agency of Natural Resources, 1 National Life Drive, Davis 2, Montpelier, VT 05620-3901; and your adjoining landowners.

Please note that all applicants must submit a list of the parties notified along with the completed application.
Please note that in order for a system to be eligible for net metering it must employ a renewable energy source that is being consumed at a harvest rate at or below its natural regeneration rate, pursuant to Board Rule 5.100.

Group System Information	- Section 7.

If interconnecting a group system, applicants must provide the required application information corresponding to the type of net metering system(s) to be constructed as outlined in sections 4-6. In addition, applicants must also provide on a separate sheet:

(1) the meters to be included in the group system identified by account number and location;

(2) the procedure for adding and removing meters included in the group system, and direction as to the manner in which the serving utility shall allocate any accrued credits among the meters in the group;

(3) a designated person, including address and telephone number, responsible for all communications from the system to the serving electric utility, except for communications related to billing, payment, and disconnection; and

(4) a binding process for the resolution of any disputes within the group system relating to net metering that does not rely on the serving electric utility, the Public Service Board or the Department of Public Service.

Please note that all meters included in a group system must be within the same electric utility service territory in which the generation facility is located.

Environmental Information	- Section 8.

You must complete this section if you are installing any one of the following:

- **A PV system on a new structure which is not a home or a business under Section 4**
- **A wind system under Section 5**
- **A system under Section 6**

1. State whether the system will be sited on, near, or within any of the following (*answer yes or no*): a floodway___ shoreline_____ stream_____ wetland_____ historic site or district_____ rare and irreplaceable natural area_____ necessary wildlife habitat_____ area where an endangered species is present_____

   If the answer to any one of the foregoing is yes, please attach a separate sheet:
   (a) showing the location of the system in relation to the resource, and
   (b) stating the impact which the system, including its installation, will have on the protected resource and what measures, if any, will be taken to minimize any such impact.

2. On a separate sheet, describe the visible and aesthetic impact of the project and why it will not have an undue adverse effect on aesthetics and the scenic and natural beauty of the area. Describe the location of the facility in relation to adjoining properties and include a specific statement about the visibility of the facility from adjoining properties; and, if it is highly visible, what measures you have taken, if any, to minimize the visible impact.

OPERATING AGREEMENT
for Member Managed
[NAME OF CORPORATION] LLC[1]

INTRODUCTION

This Operating Agreement ("Agreement") is made and entered into by and between [Company] LLC ("Company") and the undersigned as an initial member ("Member") of [Company] as set forth in 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:

BACKGROUND

a. The parties are organizing and operating a limited liability company subject to the conditions in this Agreement, in order to manage a net metered community solar electric facility ("Facility").
b. The Members own the Facility pursuant to the conditions of this Agreement.
c. The Facility is intended to offset Members' electric bill 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 Facility's operating expenses.

ARTICLE I. ORGANIZATION

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

Formation: [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 [Company] shall be as provided under the Articles of Organization and this Agreement.

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

[1] 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 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.

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 [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 the members of [Company] in managing certain administrative and financial matters on their behalf in connection with their separate acquisition of solar panels from [Developer] or another company.

Such solar panels are part of a community scale solar photovoltaic array of [capacity in kW) (the "PROJECT") in which participants separately purchase and own their solar panels and, upon becoming members of [Company], are also entitled to a percentage share of the production from the system's solar array, net of allocable expenses. Initial members of [Company] are those who buy into a 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 fed into the [Name of Utility] ("[UTILITY]") grid and [UTILITY] issues credits on a pro-rata basis to owners' meters via net metering to offset owners' electric use.

Members of [Company], as part of the cost of initial members' purchase of a "turnkey" system of solar panels and components from [Developer], also own a percentage share of a certain solar panel array of [Capacity, kW DC] in the PROJECT, the electrical production from which is fed into the [UTILITY] grid and [UTILITY] issues credits via net metering to the landowner of the PROJECT site as land lease payments for use of the site.

ARTICLE III. MEMBERS

Members: Members of [Company] are owners of solar panels in the PROJECT.

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

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, and neither party 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 [Company] be liable under this Agreement if the Facility fails to generate electricity or Net Metering Credits, as a result of [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 [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 [Company], a limited liability company, are solely the debts, obligations and liabilities of [Company]. A member or manager is not personally liable for any debt, obligation or liability of [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: [Company] will be a member managed limited liability corporation. As such, the management of [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 [Company's] business, and any matter relating to the business of [Company] may be decided by a majority of the members. Each member will have one (1) vote regardless of the number of panels owned.

General Powers: Members, acting together on behalf of [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 [Company] for the purposes herein stated, and to make all decisions affecting such business and affairs, including, without limitation, the power to:

a. Enter into contract with the landowner of [name of site] in [city, state] or another property, for hosting the site of the PROJECT.
b. Contract for liability and casualty insurance on the PROJECT.
c. Administer the payment of applicable state or other tax obligations on the PROJECT.
d. 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.
e. Coordinate net metering and other arrangements with [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 [Company] and shall supervise its operation under the direction and management of the members, as further described below. The officers of [Company] initially shall consist of a registered agent who is the presiding officer pro-tem, 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 [Company] shall be elected annually by the members by a majority vote. The members of [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 [Company] and shall have the power and authority to bind [Company] in all transaction and business dealings of any kind except as otherwise provided in this Agreement.

d. Treasurer: The treasurer shall be the chief financial officer of [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 [Company]; (ii) receive and give receipts for moneys due and payable to [Company] from any source whatsoever, and deposit all such moneys in the name of [Company] in such banks, trust companies, or other depositories as shall be authorized by members of [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 other operating costs; and (iv) in general perform such other duties as from time to time may be assigned by the members.

e. Secretary: The secretary shall: (i) be custodian of [Company] records; (ii) keep a register of name and addresses of members; (iii) administer net metering arrangements with [UTILITY]; and (iv) in general perform such other duties as from time to time may be assigned by the members.

ARTICLE V. CONTRIBUTIONS, PROFITS & LOSSES, AND DISTRIBUTIONS

Contributions and interest of members: Members shall make no initial capital contribution to [Company]. Members' only contributions to [Company] are periodic contributions for operating expenses, all of which will be paid out to third party vendors. Members will own only a pro-rata percentage interest of such contributions, net of expenses. Each member purchases and owns solar panels separately and independently from the Company. [Company] has no ownership interest in its members' solar panels or in such panels' electricity productions or net metering credits. [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: For purposes of this Agreement, Members agree to allocate [five percent (5%)] 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: [Company] will have no assets, other than contributions that are made from time to time by members in respect of expenses. Operations of [Company] are administrative in nature and are expected to be managed at a near-zero profit. Because the Company shall not hold any capital or interest there will be no distributions of moneys to the members.

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

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 [Company]. Members have sixty (60) days to make any required payment after request therefor. After sixty days [Company] shall have the right, among other remedies, and without any further demand to the member, to direct [UTILITY] to halt net metering credits to such member and to reallocate them to [Company] until the member is brought current.

ARTICLE VI. VOTING; CONSENT TO ACTION

Voting by members: Members shall be entitled to one vote on all matters, which provide for a vote of the members, regardless of the number of panels owned. Each member has

equal rights in the management and conduct of [Company] business, and any matter relating to the business of the company may be decided by a majority of the members.

Meetings – General and Special: The Members shall hold general meetings from time to time throughout the year to be determined by members. Such general meetings shall serve as a time to discuss matters related to the 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: 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 Facility, including the Tenants and Owner.

Each Net Metered Customer shall own and retain the environmental attributes of their net metered energy produced by the Facility and shall have all 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 (RECs) or certificates, from the net-metered electricity.

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 qualified third party in [UTILITY] utility territory.

Termination of Membership: Membership in [Company] terminates and there are no further rights and obligations of the member under the Articles of Organization of [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 qualified third party.

Member Default: 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 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 qualified party.

Event of Default: 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. Defaulting Member's net metering credits shall be distributed to any other member of the Company in exchange for payment of Defaulting Member's owed payment. 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 [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 their solar panels in and of itself entitles the assignee, transferee or purchaser to become a member in [Company], with all the rights and obligations of the member under the Articles of Organization of [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 Transferee is an existing customer of [UTILITY];

b. The Transferee gives [Company] its meter information

c. [The Transferor gives the current Members the right to approve assignment, transfer or sale of member's interest in their 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 their solar panels is the sole responsibility of the member and not the [Company]. The sole responsibility of [Company] in the assignment of interest or ownership of a member's panels is, upon notice of such transfer of ownership by member, to notify [UTILITY] of the change in credits to owners' meters via net metering.

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, the parties shall mediate the Dispute. The parties shall mutually choose a mediator within [ ] [x] days. The parties may choose a mediator from the Vermont Environmental Division Mediator Roster or any other mediator mutually agreed upon. If the Dispute is not resolved through mediation within [_____] [X] days, each party may pursue any rights and remedies as each may have pursuant to Section 18 of this Agreement.

ARTICLE VIV. ADDITIONAL PROVISIONS

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

Member

By: _____

Date: _____

Signature:

Member #	Name	Address	Email

Exhibit "A"

Definitions

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

"Member" shall have the meaning given in the introductory paragraph to this Agreement.

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

"Commissioning Date" means the date on which the Facility begins delivery of electricity to the Utility.

"Facility" shall have the meaning given to such term in the Background and shall include all equipment, facilities, and materials, including phovoltaic 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 inteconnected with the Utility.

"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 retail electric consumer who uses a net metering system.

"Output" means all of the electricity the 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.

"Renewable Energy Credits (REC)" means all "tradeable renewable energy credits" as defined in 30 V.S.A. § 8002(8) associated with a single unit of energy that the 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 Facility.

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

"Utility" means the retail electric company serving the Member. The Utility is currently Green Mountain Power.

Exhibit "B"

Description of Solar Generation Facility

The solar generation 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 "C"

Allocation Instructions

The Company shall instruct the Utility to allocate credits for the kilowatt hours of electricity the 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 Facility will be credited to Owner's [UTILITY] Account as payment for use of 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 Member and the Company may agree to add meters. The Utility shall allocate KWh on a percentage basis to each group member 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 Member 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[1]

This Land Lease Agreement ("Lease") is made and entered into as of the Effective Date (as such term is hereinafter defined), by and between _____ ("Owner") with an address at _____, and _____ ("Tenant"), a _(type of organization)_ organized and existing under the laws of the State of Vermont.

WHEREAS, Owner is the owner of an approximately ____acre parcel of real property located in _____, State of Vermont, (more details about the property in Exhibit "A" are attached at the end of this agreement) and referred to here as (the "Property");

WHEREAS, ("Tenant") desires to lease from Owner and Owner desires to lease to ("Tenant") an approximately _____ acre section of the parcel (fully described in Exhibit B and referred to in this Lease as the "Site"), for the site of a community scale solar PV "farm" (the "Project"), in which participants in the Project ("Participants") separately purchase solar panels from ("Vendor") and ("Developer") and its agents, will install the panels at the Site;

WHEREAS, the power from the Participants' solar panels will be fed into the Green Mountain Power ("GMP") electric grid and GMP will issue credits representing the power with an agreed upon formula, (See Exhibit C of Operating Agreement) under which a portion (See Section 3) of the credits will be allocated to Owner to offset Owner's electrical use as land lease payments for use of the Site, and the balance will be allocated on a pro-rata basis to Participants via net metering to offset Participants' electrical use;

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

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

NOW, THEREFORE, in consideration of all covenants contained in this lease agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to be legally bound:

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 utility Easements (as such term is hereinafter defined) and rights of access to the Site (as described in Exhibit B) 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

[1] 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 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.

the covenants and agreements that the parties agree to comply with during the Term (as such term is defined in Section 2).

Section 2: Term. 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.

Section 3: Lease Payments. For purposes of this agreement, 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 Project, 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) During the Feasibility Period, commencing on the Effective Date and terminating twelve (12) months after (the period may be extended pursuant to Section 4(c) h), ("the Developer") and/or any of its agent(s), other contractor, subcontractor, repairman, utility installer, or other person (all referred to here as "Contractor") whose services at the Site are required in connection with the Project are hereby granted the right, at no cost to the Owner or ("LLC"), 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 permits, licenses, agreements and entitlements necessary for said use. Such Tests may include, but are not limited to, surveys, soil tests, environmental evaluations, solar assessments, and other Tests as the ("Developer") or its Contractor finds 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 or the Title Report, or otherwise known by Tenant.

(b) During the Feasibility Period and throughout the Term, Owner shall cooperate with ("Developer") and its Contractor and shall execute all documents required to assist in obtaining all permits and to 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 ("Developer") or its Contractor's ability to obtain or maintain any governmental approval. Owner hereby appoints the ("Developer"), its Contractor, or any other agent of ("Developer") as described in Subsection (a) of this Section 4 as its agent for the limited purpose of making such filings and taking such actions as are necessary to obtain any desired zoning and land use approvals and/or building permits regarding this Project, the Site and the Easements.

(c) Tenant shall have the right to extend the Feasibility Period for additional six (6) month periods (each called 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 if in effect, provided that: (i) ("Developer") and its Contractor is diligently and in good faith seeking to obtain the Approvals (as such term is hereinafter defined); (ii) a

required Approval has not been rejected without an opportunity to appeal; and (iii) Contractor pays to Owner the sum of _____ ($___.00) for each Feasibility Extension Period that Tenant extends in accordance with the terms of this agreement, where each payment is to be made prior to the commencement of the Feasibility Extension Period to which such payment relates.

(d) If, in the sole and absolute discretion of the Developer and/or its Contractor, the Site and Property are not suitable for the use of a solar array, or said Developer and/or its Contractor determines that the construction and operation of the Project on the Site and Property would not be in the best interest of Tenant, Participants, or Developer/Contractor, by and through their agents, are unsuccessful in obtaining the permits necessary for the solar array, then **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**. 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.

(e) 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.

(f) Developer shall pay for all costs incurred by them in connection with the Tests and its permitting and approval activities with regard to the Site and the Easements and its general due diligence review of the Property.

(g) Developer agrees to promptly, to the extent reasonably practicable under the circumstances, repair any damage to the Property that is caused by the Tests and restore the Property to the condition it was in immediately prior to such Tests.

(h) The provisions of this Section 4(f) – (h) shall survive the termination of this Lease for a period of one (1) year, notwithstanding anything in this Lease to the contrary.

Section 5: Use.

(a) Developer, either solely or by and through its Contractor(s), is granted the sole right to use the Site for the purpose of constructing, installing, removing, replacing, reconstructing, maintaining and operating a solar array project, including solar panels, equipment, equipment shelters and buildings, electronics equipment, generators and other equipment, improvements and such other personal property, fencing and landscaping around the perimeter of the Site or the portion thereof within which such Project shall be located (the "Solar Compound"), and a gate to the Solar Compound, all as described and depicted in Exhibit B (collectively, the "Solar Facility"). Any and all such materials installed by Developer and/or its Contractor in, on, or under the Property shall be deemed property of the individual members of Tenant or third parties, and shall not become fixtures or deemed a permanent part of the Property. Developer and/or its Contractor shall have the right to alter, replace, expand, enhance and upgrade the Solar Facility

within the Site at any time during the Term of this Lease. Developer shall cause the construction of and all modifications to the Solar Facility to occur in material compliance with all applicable laws, rules, regulations, ordinances, permits, approvals and variances.

(b) Tenant (and/or their designated service contractors) shall keep and maintain the Solar Facility now or hereafter located on 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, normal wear and tear and casualty not caused by Tenant or any employee, agent, contractor or representative thereof excepted.

(c) Developer and/or its Contractor, shall have the right to fence the Site or the Solar Compound and shall have 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, Developer and/or its Contractor 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 at the Site. **If the construction or maintenance of the Solar Facility results in damage to any adjacent lands of Owner** (other than as permitted or otherwise contemplated herein), **Owner shall have the right to look to Developer to pay to Owner any sum reasonably required to be expended by Owner to affect the repair of such damage.**

(d) Developer will pay for all utilities services used at the Site. If the Site does not have utilities services thereat, Developer shall have the right to cause utilities services to be installed at the Site, at its sole expense.

Owner agrees to use reasonable efforts to assist Developer in acquiring any necessary utilities services to the Site. Owner is not liable for any costs incurred for utilities services used at the Site and caused by the Project. Costs for utilities services shall be paid in the manner agreed upon by Developer and the Participants of (LLC).

(e) As partial consideration for the rent paid pursuant to this Lease, Owner hereby grants to Contractor and its successors and assigns, during the Term, easements in, under, and across the Property: (i) for ingress, egress and access to the Site, by foot and motor vehicles (including trucks); (ii) to install utilities 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 Project and accommodate the permitted use of the Site by Tenant and Contractor; 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 hereto or as required in order to effectively operate the Project. The Easements granted hereunder shall have the same term as this Lease. In the event that any utility company requires an easement not otherwise located with the area of the Easements to provide utilities services to Contractor, 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 an area(s) that is/are mutually approved by and acceptable to Owner, such utility companies, and Contractor. 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.

(f) The Easements are non-exclusive easements to and for the benefit of Tenant, Developer and its Contractor(s) and its respective successors and assigns. Developer and its Contractor(s) 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 for the proper conduct of the Project at the Site, and for electricity, water, telephone and gas services. **If Owner or other tenants, employees, agents, contractors or invitees of Owner damage or disturb the Easements, then Owner or Owner's other tenants, employees, agents, contractors and invitees shall share in the reasonable and proportionate costs incurred to repair such Easements.** Owner represents and warrants that the intended use of the Site and the Easements by Tenant, Developer and/or its Contractor 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.

(g) Tenant, Tenant's invitees, and Developer and/or its Contractor shall have reasonable access to the Site and the Easements (the "Access") for the purposes of constructing and maintaining the Solar Facility during the Initial Term of this Lease and any Renewal Term, provided that, barring exigent circumstances, all work shall be performed during daylight hours only. Tenant, Tenant's invitees, and Developer and/or its Contractor, 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 site by the Tenant, Tenant's invitees or the Developer and/or its Contractor will only be allowed through the advance notice and approval of the Owner.

(h) 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, 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. 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.

(b) 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 and any renewal 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, encumbering or interest in and to the Property or any part thereof, shall, during the Term and any renewal term, be subject to this Lease**. Owner also agrees that all such sales, leases, and transfers of the Property and granting of any easement shall be subject to Tenant's rights and options under this Lease for the duration of the Term and any renewal term and shall not adversely affect the use of the Site or Easements by Tenant, Tenant's agents, contractors and invitees.

Section 7: Taxes.

(a) As of the date that the Solar Facility becomes operational (the "Commencement Date"), Tenant agrees to pay or ensures payment will be made when due because of 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 Section 7(a) shall be construed as limiting Tenant's right to contest, appeal, or challenge any tax assessment.

(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. Upon written request of Owner given to Tenant within ten (10) days of the expiration or earlier termination of this Lease, or at Tenant's option, all personal property and trade fixtures of Tenant and Participants, specifically including, but not limited to, the Solar Facility, shall be removed by Tenant from the Site within _____ (numerical value) days after the expiration or earlier termination of this Lease or as soon thereafter as weather and ground conditions reasonably allow. In addition, Tenant shall, at its sole cost and expense, restore the Site to its original condition. Tenant shall have the right at any time during the Term of this Lease to remove the Solar Facility from the Site without the consent of the Owner.

Section 9: Insurance. At its sole cost and expense and to the extent available, Tenant shall procure and maintain during the Term and any renewal term a Commercial General Liability policy insuring against 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 name Owner as an additional insured.

Section 10: Termination. Tenant may terminate this Agreement at any time, in its sole discretion, upon written notice thereof to Owner prior to the Commencement Date. Further, this Agreement may be terminated by Tenant immediately, at any time, upon giving written notice to Owner, if: (a) 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 at the Site as contemplated hereunder; (b) any Approval is canceled, terminated, or expires or lapses; (c) Owner fails to deliver to Tenant any non-disturbance agreement or subordination agreement required hereunder; (d) Owner fails to have proper ownership of the Property and/or authority to enter into this Agreement; (e) Tenant determines that the Property contains Hazardous Substances (as such term is defined below) and such Hazardous Substances were not introduced to the Property by Tenant; or (f) Owner is in default hereunder and fails to cure such default within the periods specified in and otherwise in accordance with the terms set forth in this agreement. Any termination of this Agreement pursuant to this Section 10 shall not constitute a waiver of Tenant's rights under Section 11 below.

Section 11: Indemnity and Arbitration.

(a) Owner and Tenant each agree to indemnify and hold harmless the other party from and against any and all claims, losses, liabilities, obligations, damages, cost and expenses, including reasonable attorney fees (collectively, the "Losses"), to the extent caused by or arising out of the negligent acts or omissions of the indemnifying party; or (b) 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. 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 not be 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.

(b) In the event a dispute shall arise between the parties to this Lease, **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.

Section 12: Hazardous Substances.

(a) Owner hereby represents warrants that it has no knowledge of any substance, chemical, or waste (collectively, the "Hazardous Substances") on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation. 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 environmental laws of all spills or other releases of any Hazardous Substance caused solely by Owner or any employee, agent, contractor, representative or affiliate of the Owner, that have occurred or may occur on the Property during the Term of this Lease.

(b) The Tenant, Tenant's Agents, the Developer, Developer's Contractor(s), and all other agents not under control of Owner, 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 the Tenant, Tenant's Agents, the Developer, Developer's Contractor(s) business in accordance with all applicable environmental laws.

(c) The Tenant, Tenant's Agents, the Developer, Developer's Contractor(s) and Owner each agree to defend, indemnify, and hold harmless the other party from and against all administrative and judicial actions and rulings, claims, causes of action, demands and liabilities (collectively, the "Claims") including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments

and reasonable attorney fees 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 (collectively, the "Actions"), that arise from the indemnifying party's activities on or at the Property. The indemnification obligations set forth in this Subsection 12(c) 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 12(c) shall survive the termination or expiration of this Lease.

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 party hereunder (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 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 Annual Rent 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 (as such term is hereinafter defined) 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 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 and any renewal 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 the Tenant. Owner covenants and agrees that neither the Solar Facility nor any part of the improvements constructed, erected or placed by the Developer and its Contractor(s) on the Site or the Easements shall become or be considered as being affixed to or a part of the Property, it being the specific intention of Owner that the Solar Facility and all improvements of every kind and nature constructed, erected, or placed by the Tenant, Tenant's agents, Developer, Contractors or invitees on the Site and the Easements **shall be and remain the property of the members of Tenant**. Owner agrees and acknowledges that none of the assets and properties of Tenant or its members, including, without limitation, the Solar Facility and Tenant's 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 as described herein, 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 and operations at 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 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 (v) 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 Tenants 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 party 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 Section 14(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.

(a) Tenant acknowledges that prior to the Commencement Date, Owner may have granted a mortgage(s), deed(s) of trust, or other security instrument which encumber 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(s), deed(s) of trust or other security instrument which encumber some or all of the Property and/or the Easements to certain institutions or persons 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 the Memorandum of Lease, ("MOL"), (see Exhibit C), Owner will request from 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 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 proving written notice thereof to Owner. Upon such termination neither of the parties hereto shall have any further obligations or liabilities hereunder.

(c) 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 proving written notice thereof to Tenant, and upon such termination neither of the parties hereto shall have any further obligations or liabilities hereunder.

(d) 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 proving written notice thereof to Owner, and upon such termination neither of the parties hereto shall have any further obligations or liabilities hereunder.

(e) The parties hereto 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 Agreement contains an agreement to arbitrate (Section 11(b)). After signing this document, **Owner and Tenant each understand that it will not be able to bring a lawsuit concerning any disputes that may arise which is covered by the arbitration agreement**, unless it involves a question of constitutional or civil rights. Instead, Owner and Tenant each agree to submit any such dispute to an impartial arbitrator.

Section 19: Miscellaneous.

(a) Owner and Tenant each represent and warrant that they have all right and authority to execute this Lease, and that, upon execution of this Lease, the Lease shall be fully binding upon all parties.

(b) This Lease sets forth and contains the entire agreement between the parties hereto 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 Owner and Tenant.

(e) In the case a dispute arises that does not follow the resolution terms agreed upon per the indemnification and arbitration clause (see 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) Owner shall at Tenant's request execute, acknowledge and deliver to Tenant for recording a Memorandum/Notice of Lease (the "MOL") in the form of Exhibit "C" attached hereto. Owner hereby grants to Tenant permission to insert the Commencement Date of this Agreement into the MOL after execution of the MOL and to record the MOL in the proper jurisdiction.

(g) 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 notice to the other.

(h) 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.

(i) 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.

(j) This Agreement may not be amended, supplemented or restated except by a written instrument that has been executed and delivered by each of the parties hereto.

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

(l) 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.

(m) 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 Agreement as of the _____ day of _____, 20__.

IN PRESENCE OF:

_____ _____
Witness (NAME OF OWNER), as Owner

(NAME OF LLC), as Tenant

_____ By:_____
Witness Duly Authorized Agent

(NAME OF Developer), as Developer

_____ By:_____
Witness Duly Authorized Agent

STATE OF VERMONT
COUNTY OF _____, SS.

On this _____ day of _____, 2015, 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 _____ County
My commission expires: DATE OF EXPIRATION

STATE OF VERMONT
COUNTY OF _____, SS.

On this _____ day of _____, 20__, personally appeared _____ 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 subject property is a ___ 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 ____ kW AC nameplate solar generating facility (System) as specifically designed, approved and permitted in the Certificate of Public Good issued by the Public Service Board.

The system shall be comprised of ____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 area to be utilized by the solar facility will be approximately ___ Acres (or less). The solar facility will be located in (describe the area where solar array will be located on the property) as depicted below.

CAN INCLUDE HERE GOOGLE (OR EQUIVALENT) EARTH IMAGE OF SITE WITH LAYOUT OF SOLAR ARRAY

EXHIBIT "C"

MEMORANDUM/NOTICE OF LEASE

Site Name/Location: _____
_____

This Memorandum/Notice of Lease, dated as of _____, 20__, evidences that a Land Lease Agreement (the "Lease") dated as of _____, 20___, was made and written between _____ ("Lessor"), and _____ ("Lessee"), a [Vermont limited liability company] with an address at _____, and the terms and conditions of such 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 Lessor leases to Lessee a certain parcel of real property located at _____, Town of _____, State of Vermont, more particularly described in Exhibit A attached hereto (the "Solar Site"). [The Solar Site is situated within a larger parcel of real property that is owned by Lessor and more particularly described in Exhibit A attached hereto ("Lessor's Property").] Pursuant to the Lease, Lessor has also granted to Lessee an easement for non-exclusive rights of access to the Solar Site and for electric, stormwater management, and other utilities services and facilities to the Solar Site. The date of the Lease is as of _____. The Lease term shall commence on the date [Lessee commissions its Solar Facility at the Solar Site](the "Commencement Date") and ends on the 25th anniversary of such Commencement Date. Lessee has three options to extend this Lease, each option being for a term of ten (10) years. [The Lease grants Lessee an [right of first refusal] to purchase Lessor's Property.]

The Lease provides Lessee 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 Lessee's obligations thereunder. After delivery by Lessee to Lessor of an instrument of assumption by an assignee wherein such assignee assumes all of the obligations of Lessee under the Lease, Lessee will thereafter be relieved of all liabilities and obligations pursuant to the Lease.

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

Lessee does hereby make, constitute and appoint Lessor Lessee'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 Lessee has not signed and returned to Lessor, within ten (10) business days after the cancellation, termination or expiration of the Lease in accordance with the terms thereof, a signed termination of this Memorandum/Notice of Lease. 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 have executed the Memorandum/Notice of Lease as of the day and year first above written.

IN PRESENCE OF: **NAME OF LANDOWNER**

_____

By:_____

Witness Duly Authorized Agent

COMPANY/ENTITY

_____

By:_____

Witness 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

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Business Entities for Group Net Metering

There are multiple business entities suitable for group net metering projects. Below are descriptions of primary business entities as well as brief discussions of the advantages and disadvantages associated with each. It should be noted that 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

In forming a limited liability company (LLC) owners (members) of the company form a separate and distinct legal entity from the project itself. The LLC structure provides limited liability protection for its members in addition to 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.[1] Where regular corporations are taxed twice, once at the corporate level and then again when the profits are distributed to the members, the profits of an LLC are taxed only once at the individual tax rates. An added benefit here is that 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.[2] However, a member may become liable for LLC debts if the member personally guarantees the debts, if personal funds are intermingled with LLC funds, if the LLC has minimal insurance, or if the members do not contribute enough funds to the LLC when it is formed.

The second primary benefit to the LLC structure is the flexibility offered in its 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

[1] Pahl, Greg. *Power from the People: How to Organize, Finance, and Launch Local Energy Projects*. White River Junction, VT: Chelsea Green Pub., 2012. Print. P.82.
[2] James D. Cox & Thomas L. Hazen, Business Organizations Law, Third Edition, Thomson Reuters (2011), pg 28

determined by the group. Meaning, the members are directly responsible for the running of the company. 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 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.[3] In addition, 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 be applied to the LLC. This report recommends to groups that may be interested in establishing this business form to consult a legal professional to create an LLC form that addresses the needs of the group.

A group can also choose to organize as a low-profit LLC, called an L3C. An L3C is a hybrid nonprofit and LLC model designed around a mission or social goal. The hybrid structure allows the entity to raise money through traditional private investment and donations and philanthropic capital. For the purposes of a community-owned group net metering project, an L3C is unlikely to hold greater benefits than an ordinary LLC.

Cooperatives

A consumers' cooperative corporation (coop) is an entity that prioritizes the common goals of its members. A coop is a legal entity that is owned and democratically controlled by its customers (members). Coop members pool their financial resources together to leverage debt financing[4]. The corporation's earnings are shared with members as dividends, which are divided among the members according to their participation in the company, rather than according to the

[3] Vermont Secretary of State, Limited Liability Company, https://www.sec.state.vt.us/corporations/start-or-register-a-business/limited-liability-company.aspx#reg.
[4] Id. At p.83

value of their shares. However, regardless of this value, each member of a coop receives one vote.

This coop structure often appeals to groups seeking to organize a group net metering project because of the democratic nature of its governance and management. However, there are some significant drawbacks to using this model for a community solar project. Members traditionally have little input into business operations. Voting rights are unbundled from financial investment. This can create intragroup gridlock, and does not distinguish between large and small investors. In addition, like the LLC, coops have trouble meeting the "tax appetite" threshold.

Cooperatives are formed by filing articles of incorporation with the Secretary of State's office. In addition, bylaws should be created which govern members' relationships and the duties and obligations of the board of directors that will operate the business. Management of the coop is done without significant input from its members so the mechanics of managing the organization should be clearly defined. Overall, cooperatives have not been found to be as attractive a business entity as LLC's. Federal securities regulations make it difficult for members to capitalize on financial returns to the company and to earn much of a profit on their initial investment. Cooperatives have gained more popularity in Europe where there is a different regulatory structure; nevertheless, coops are available to groups wishing to explore this model.

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.[5] It allows individuals or businesses to

[5] 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, which permits combining (1) ownership, financing, and receipt of benefits by the members for whose interests the enterprise is formed; and (2) separate investments in the enterprise by members who may receive returns on their investments and a share of control. The law in Vermont also places no restriction on the purpose for which a mutual benefit enterprise is organized. *See* 11C V.S.A. § 105.

"unite to meet their mutual business interests by creating and using a jointly owned enterprise."[6] 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 members in addition to patron members."[7] An MBE does not require all members to participate in group governance, as in a cooperative. This model holds great promise for community-owned solar because it is more flexible than an LLC and less cumbersome than a cooperative.[8]

Multilateral Licensing Agreement

The multilateral licensing agreement (MLA) is a legal agreement between all stakeholders that articulates how the group will be governed. If a group chooses to organize through a MLA, the agreement should contain all of the provisions required to obtain a CPG, listed in the Introduction of this section.

The multilateral licensing agreement preserves tax benefits for multiple parties, allows participants discretion in tailoring 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 their 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.

[6] See the Vermont Secretary of State's Website for additional resources on forming LLC's, coops, and mutual benefit enterprises. https://www.sec.state.vt.us/corporations/start-or-register-a-business/mutual-benefit-enterprise.aspx

[7] *Id.*

[8] "The relations between a mutual benefit enterprise and its members are consensual." *See* 11C V.S.A. §113. The articles of organization and bylaws of an MBE, known under 11C V.S.A. as "organic rules," have little limit as to what they may contain. Instructions on forming a mutual benefit enterprise may be found in Chapter 3 of Title 11C of the Vermont Statutes Annotated.

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?

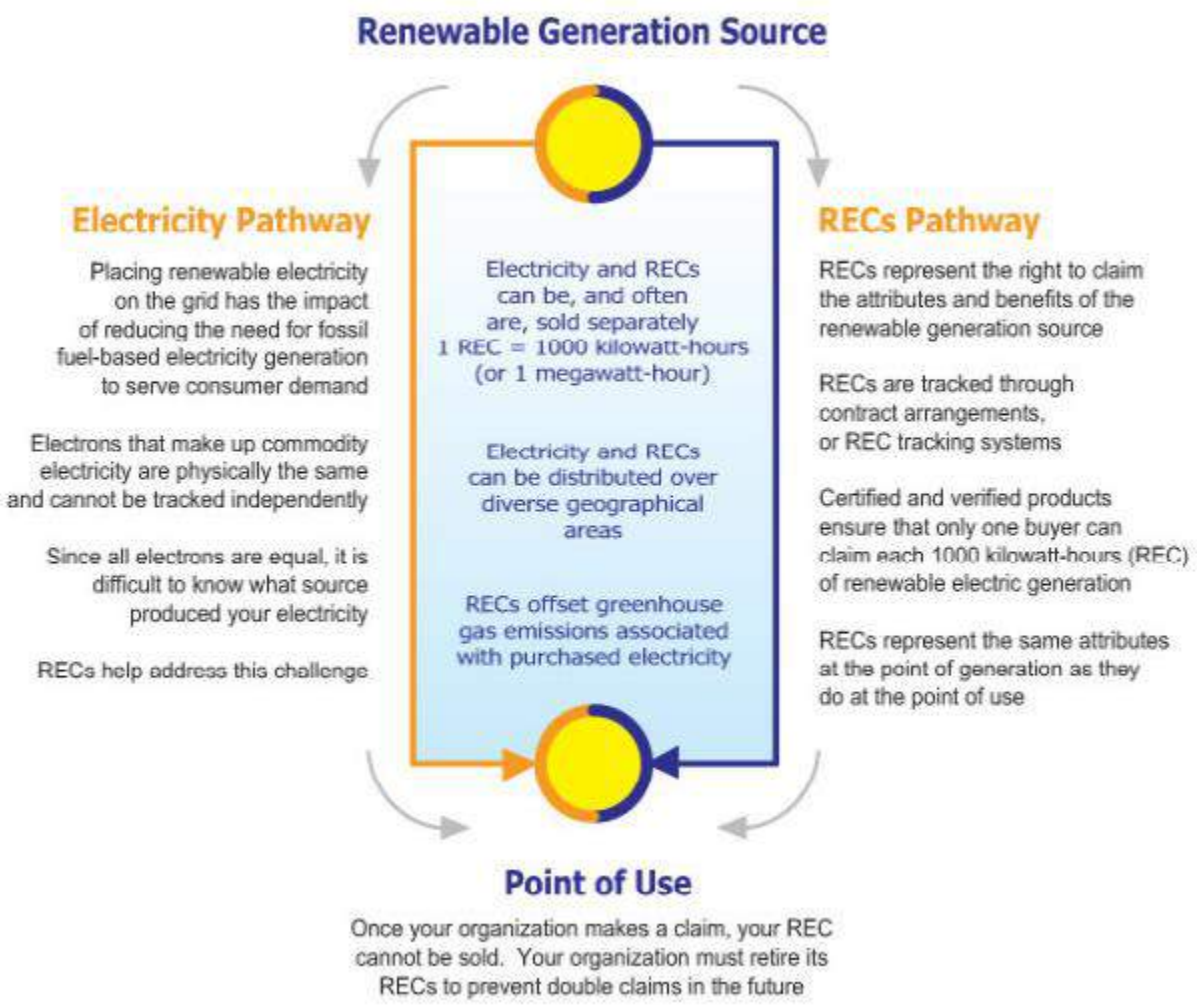
In Vermont, renewable energy credits are defined as "all of the environmental attributes associated with a single unit of energy generated by a renewable source"[1]. Once an electricity generation facility transmits power to the grid, that power becomes indistinguishable from the general grid mix. RECs 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"*[2].

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.

[1] 30 V.S.A. § 8002(26)
[2] *EPA Green Power Partnership*. Environmental Protection Agency, July 2008. Web. 19 Jan. 2015. <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[3]:



[3] 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>.

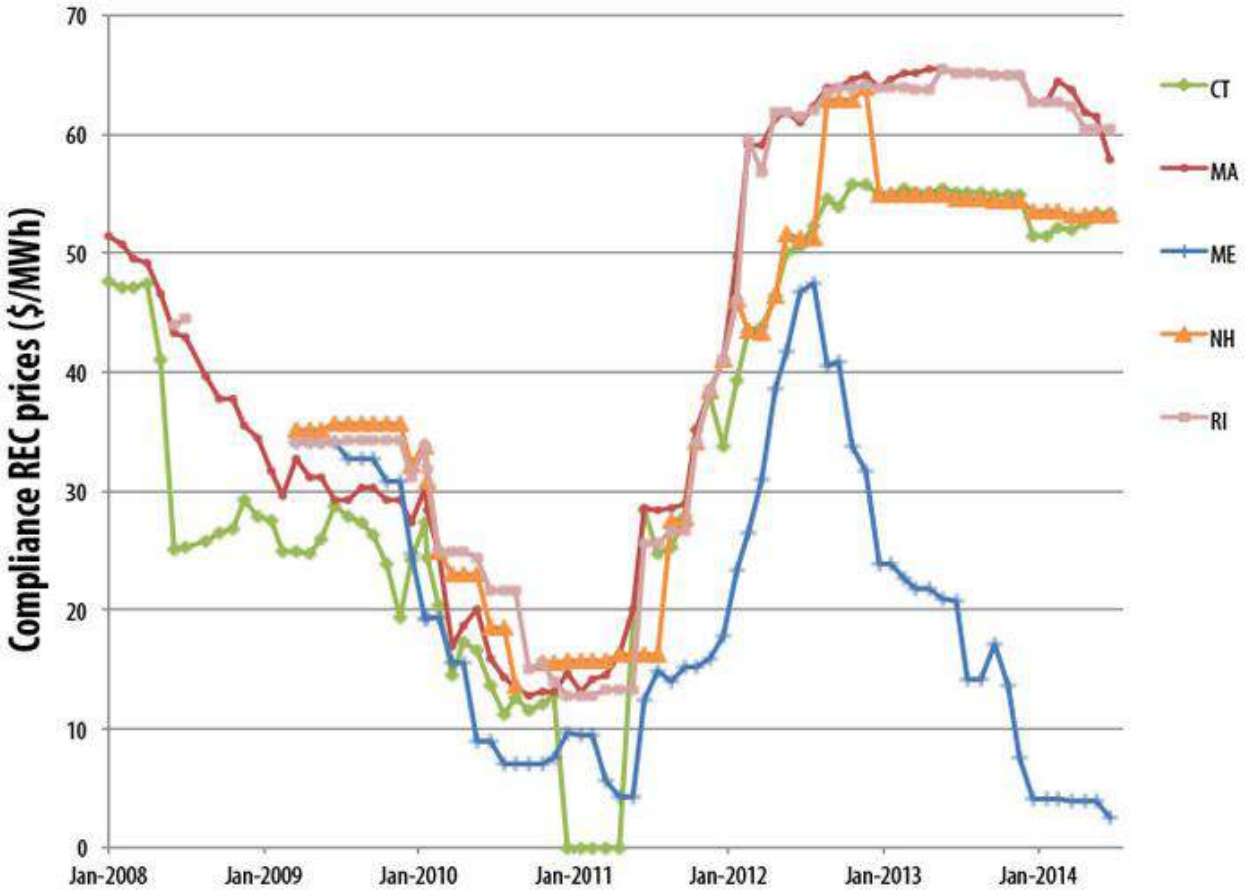
What is a Regional REC Market?

The New England Power Pool (NEPOOL) administers the REC tracking system for New England, known as the Generation Information System (GIS). The NEEPOOL 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[4] (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"*[5].

[4] 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.
[5] *EPA Green Power Partnership*. Environmental Protection Agency, July 2008. Web. 19 Jan. 2015. <http://www.epa.gov/greenpower/documents/gpp_basics-recs.pdf>.

Figure 2[6]:



[6] "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."[7]

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

APPENDIX G

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.