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October 17, 2022

Deandra Perruccio
New Hampshire Department of Energy
21 S. Fruit Street
Concord, NH 03301

Re: Comments on Department’s Straw Proposal Implementing Senate Bill 270 Low to Moderate Income Community Solar Program

Dear Ms. Perruccio:

Thank you for the opportunity to comment on the New Hampshire Department of Energy’s (the “Department”) straw proposal for implementation of the SB 270 Low to Moderate Income Community Solar Program for EAP customers (the “EAP Program”). As you are aware, the Vermont Law and Graduate School Energy Clinic has participated in the development of several low-moderate income (LMI) Community Solar projects in New Hampshire, and we are excited about the opportunity for SB 270 to provide further benefits to LMI households in New Hampshire through renewable energy projects. We appreciate the Department’s commitment to help overcome barriers to LMI adoption of renewable energy.

I. EXECUTIVE SUMMARY:

Our comments below specifically address the following topics:

1. Requirement that at least 25% of the total on-bill credits be allocated to EAP participants:
 - Our comments include financial analysis supporting 25% requirement and propose that the minimum credit amount should be set annually on an RFP-by-RFP basis based on current market conditions rather than being fixed in new En 900. *See, Straw Proposal Section I.B.1.c.*
2. Determining a meaningful credit for each EAP participant:
 - What is meaningful should be determined annually on an RFP-by-RFP basis based on current market conditions rather than being fixed in new En 900. *See, Straw Proposal Section II.A.1.c.*
3. Affordable Housing and Manufactured Housing Projects:
 - Limiting group members to EAP customers only – we propose an exception where host is an Affordable Housing Projects or LMI manufactured housing cooperative such as a ROC, in which case we propose allowing host’s annual electricity usage to count toward group’s total annual load. *See, Straw Proposal Section II.A.5; Section II.A.1.b; Section II.B.1.b.2.*

- We propose scoring criteria that favors projects where host is an Affordable Housing Project or LMI manufactured housing cooperative such as a ROC. *See, Straw Proposal Section I.A.2.a.*
 - We propose a process for group management and reporting where the host is an Affordable Housing Project or manufactured housing cooperative. *See, Straw Proposal Section III.*
4. Eligibility for Renewable Energy Fund(“REF”) Grants:
- We recommend allowing EAP projects to be eligible for the REF LMI Community Solar grants, but the Department should ensure the scoring criteria for REF grant funding appropriately prioritize non-EAP projects that serve extremely low-income customers in Affordable Housing Projects and projects serving a mix of low- and moderate-income customers that are not eligible for the EAP Program and have higher customer acquisition and administrative costs. *See, Straw Proposal Section V.*
5. Consumer Protection:
- Given the passive “opt-out” nature of this EAP Program, we propose a number of important consumer protection measures to ensure EAP customers understand what their membership entitles them to and what is excluded. *See, Straw Proposal Section II.B.a,*

In addition to the above topics which are discussed more fully below, the Energy Clinic notes its support for the following sections of the Department’s straw proposal:

- Issuing an RFP for eligible projects with a multiple-month open period. To the extent possible, we recommend aligning the timing for the EAP Program RFP and the RFP for the REF LMI community solar grants so that proposed EAP projects where the host is an Affordable Housing Project or manufactured housing cooperative can apply for both at the same time. *See, Straw Proposal Section I.A.1-2.*
- LMI EAP projects only are counted against the 6 MW annual cap. *See, Straw Proposal Section I.A.3.a.*
- Giving priority to EAP customers within the project’s zip code. This method is consistent with the “community” aspect of low-moderate income community solar and principles of environmental justice. We believe that providing on-bill credits to low-income participants in the same zip code as the solar array serves the purposes behind environmental justice designations by ensuring that the community where facilities are located are benefited, rather than unduly burdened, by siting decisions. *See, Straw Proposal Section II.A.2 and 3.*
- Removing the administrative cost of LMI customer identification, acquisition, maintenance, and reporting from projects. This likely reduces the administrative and customer acquisition costs below that of non-LMI projects, making these LMI projects equally or more financially attractive to developers, helping to accelerate the development of LMI community solar projects in New Hampshire.

II. COMMENTS

1) Proposed requirement that at least 25% of the total on-bill credits be allocated to EAP Participants – Financial Analysis

Section I.B.c. of the Department's straw proposal tentatively proposes as a project eligibility requirement that at least 25% of a proposed EAP project's total on-bill credits be allocated to the EAP-eligible LMI participants. The Energy Clinic considers this to be an appropriate minimum percentage given current market conditions, particularly the base net metering rate, and the reduced customer acquisition and administrative costs associated with LMI community solar projects participating in the EAP Program. We note, however, that the appropriateness of a specific minimum percentage is highly dependent on current market conditions and as such the Department should avoid setting a specific percentage of the on-bill credits as a minimum eligibility requirement in the new En 900 rules but should instead set the specific percentage on an annual basis when it issues its RFP for the EAP Program. This will give the Department flexibility to respond to current market conditions to ensure LMI community solar projects continue to be an attractive option for solar developers in New Hampshire.

The Energy Clinic believes that it is appropriate to set a higher minimum LMI requirement for projects participating in this EAP Program than the 12% requirement for LMI Community Solar Projects that are not participating in the EAP Program. The 12% requirement set in 2019 assumed that LMI community solar projects involved greater financial risk and customer acquisition and administrative costs to developers than non-LMI solar projects. At that time, the developer community asserted that it would need to receive 100% of the base net metering credits and at least 50% of the LMI Adder to make LMI community solar projects financially viable for developers. As the entity that has been providing administrative support to ROC-owned community solar projects we can attest that managing individual group members and providing initial and ongoing certification of income-eligibility is expensive and time-consuming. The goal, based on the information provided by the developer community, was to make LMI community solar projects financially equal, from a developer perspective, to non LMI projects. Based on the base net metering rate at that time (approximately 10 cents/kWh), 12% of the total on-bill credits was approximately equal to 50% of the LMI Adder. This approach, rather than allocating 50% of the LMI Adder to LMI customers, was more simple for utilities to administer as on-bill credits and ensured that LMI customers, like their non-LMI counterparts in New Hampshire, received an on-bill credit that increased with rate increases to help offset rising electricity costs over time. Current market conditions illustrate how important this program design was. If LMI customers had been allocated just 50% of the LMI Adder instead of a percentage of the combined net metering rate, those customers would continue to receive 1.25 cents/kWh today despite electric rates doubling since 2019 and would do little to offset their energy burden. The 2019 financial analysis for the 12% requirement is attached to this filing.

The rationale behind the 12% requirement does not apply to LMI community solar projects participating in the EAP Program. In particular, the EAP Program is designed to eliminate the customer acquisition and administrative costs to developers associated with group net metering

projects generally and LMI projects specifically. It is appropriate to set the minimum requirement at a rate that puts EAP projects on equal or slightly better financial footing from a developer perspective than non LMI projects. In a standard community solar project:

1. Community solar subscribers receive benefits from production, generally on the order of a 5-15% reduction in their electric bill¹;
2. There are significant customer acquisition and subscriber management costs associated with community solar, which can be in the order of 5-10% of generation revenue², that can be avoided by relying on an EAP list under SB 270;
3. On-bill credits for standard community solar projects are paid out at the end of the year, whereas LMI Community Solar credits can be cashed out monthly (this can be particularly significant in times of high inflation/interest rates).

The Energy Clinic strongly encourages the solar developer community to submit feedback on the above factors as they apply in New Hampshire. In addition, we note that we have not attempted to quantify the cost of going through an RFP process, and we would be very interested in developers' perspectives on these costs and benefits. However, accepting the above factors as true, in a non-LMI group net metering/community solar project developers are retain approximately 75-90% of the total net metering revenue from a project. At current rates, assuming the default energy rate is 22 cents/kWh, developers receive approximately 16.5-19.8 cents/kWh, which is equivalent to approximately 67.3-80% of the combined net metering rate (24.5 cents/kWh). Based on these basic calculations, it is appropriate to allocate 20-30% of the combined on-bill credits to LMI customers under the EAP Program. We note that this analysis changes as the base net metering rate changes. For example, if the base rate were to decrease back to 10 cents/kWh then in a non-LMI group net metering situation, developers would receive approximately 7.5-9 cents per kWh, which is equivalent to approximately 75-78% of the combined net metering rate.

In conclusion, VLGS's analysis indicates that a 20-30% LMI minimum for SB 270 project would be reasonable under strong market conditions/relatively high net metering rates. Given the recent volatility of electricity supply as well as costs, however, it may not be wise to establish this higher minimum in a Rule, but to adjust the minimum on an RFP-by-RFP basis. The Department may wish to consider holding an RFP with an elevated LMI minimum early in the year, with an option for a second round at the 12% minimum if the entire 6 MW capacity is not designated.

2) Determining a Meaningful Credit for Each EAP Participant

Section II.A.1.c of the Department's straw proposal suggests setting a meaningful credit for each EAP participant in the new En 900 rules. Consistent with our analysis above about setting a minimum percentage allocation to LMI customers, the Energy Clinic believes that analysis of

¹ See Energy Sage, "Community solar pricing models – what you need to know", <https://news.energysage.com/community-solar-pricing-models-overview/>

² See Elevate Energy, *Community Solar Business Case Tool*, <https://www.elevatenp.org/publications/community-solar-business-case-tool/>

what constitutes a “meaningful credit” to each EAP participant is highly dependent on current electricity rates and should be determined annually on an RFP-by-RFP basis.

By way of example, in the context of the ROC LMI community solar projects, the Energy Clinic found that a \$20 monthly lot rent reduction or on-bill credit was meaningful to participants when electricity rates were approximately 10 cents/kWh. This was the threshold at which residents indicated they would be interested in proceeding with a solar project. But in circumstances where electricity rates have doubled, \$20 is less likely to be “meaningful” for LMI households. Assuming average monthly household electricity use is 886 kWh, \$20 per month is approximately 22.5% of the average monthly electric bill. It would be helpful to understand, perhaps from New Hampshire utilities, what the range of average monthly bills are for EAP customers prior to the Department issuing an RFP for LMI community solar projects under the EAP Program. The Department might consider setting the minimum credit per customer at a dollar value that represents a certain percentage, say 25%, of the average EAP bill.

For example:

- Assume a 1 MW project producing 135,000 kWh per month (based on an average 4.5 hours of sunlight per day); assume a base net metering rate of 22 cents/kWh and LMI Adder of 2.5 cents/kWh for a combined net metering rate of 24.5 cents/kWh; and assume 25% of the combined net metering credit will be allocated to EAP customers.

$(135,000 \times 0.245) \times 25\% = \$8,270$ available to allocate to EAP customers.

- Assume the average household uses 886 kWh per month.³ This means that there will need to be at least 152 EAP customers enrolled in a 1 MW project so that load is equal to or greater than production. This results in a \$54.40 monthly on-bill credit per household.
- Assume the retail electric rate is 22 cents/kWh and an average customer has a monthly bill of \$194.92. EAP provides discounts to customers ranging from 8-76%.
 - If we assume an average discount rate of 25%, EAP customer bills, on average are nearly \$150/month. If we assume that an on-bill credit equal to 25% of the EAP customer bill is “meaningful” then the Department would set the amount at \$37.50.
 - If we assume an average discount rate of 50% then EAP customer bills on average are approximately \$97.50 a month. If we assume that an on-bill credit equal to 25% of the EAP customer bill is “meaningful” then the Department would set the amount at \$24.37.

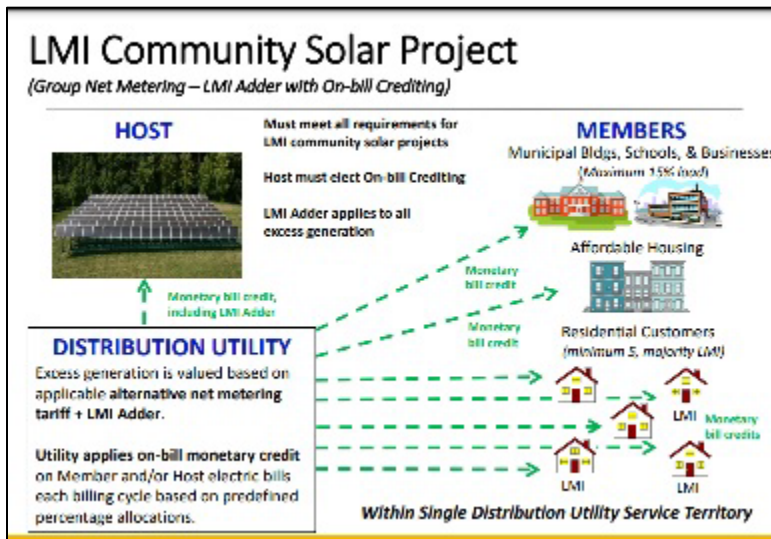
³ <https://www.eia.gov/tools/faqs/faq.php?id=97&t=3>. We note the comment made by a stakeholder at the previous SB 270 stakeholder session that LMI customers may use less electricity than average households.

3) Limiting group membership to the EAP list needlessly limits the potential for SB 270 to remove obstacles to valuable LMI projects, particularly those involving affordable housing and moderate-income customers.

The Energy Clinic strongly recommends that the Department of Energy revise its preliminary position that there may be no group members other than those on the EAP list. While the Department views this as a matter of simplifying the process, that decision would eliminate the potential for SB 270 to remove obstacles to worthy potential LMI projects currently stymied by the requirement of serving “at least 5 residential end-user customers, where at least a majority of the residential end-user customers are at or below 300 percent of the federal poverty guidelines.”

Our understanding, anecdotally, has been that inability to meet this requirement has been the major stumbling block for projects that would benefit multi-family affordable housing complexes meeting the definition of “Affordable Housing Projects” in Puc 900. Affordable Housing Projects are often occupied by the State’s most economically vulnerable households but because utilities are paid for by the Affordable Housing Project and passed on through rents, those households do not qualify for financial assistance such as EAP and Affordable Housing Projects do not qualify for the LMI Adder or REF LMI community solar grants. We believe this was an unintended oversight by the legislature. Our initial view of SB 270 is that it would be extremely valuable in unlocking projects benefitting Affordable Housing Projects. However, the Department’s determination to disallow group members beyond the EAP list frustrates that potential.

As an example, take the classic group net metering arrangement used by the PUC to explain group net metering in its Local Energy Solutions 2020 Webinar. As shown in that Powerpoint, municipal buildings could account for 15% of the load, with the rest accounted for by affordable housing and at least 5 residential customers, the majority of whom are LMI.



<https://www.puc.nh.gov/sustainable%20energy/Group%20Net%20Metering/PUC-SE-GNM-Overview-2020.pdf>

Under the interpretation the Department is currently proposing, this type of project would not be permitted to take advantage of the EAP list to provide the “residential customer” component of the load, even though it is well-established that the need to identify individual low-income

customers is a major obstacle to such a project, and even though the proportion of the project that is benefitting low income users is far higher in this project than in one where a developer/host retains 75-88% of the on-bill credits.

At a minimum, we recommend that the Department allow Affordable Housing Projects and manufactured housing cooperatives to qualify as the “host” for EAP community solar projects, and that the Affordable Housing Project’s load be counted toward the load of the project’s group members. The project would be required to allocate at least 25% (or other percentage set by the Department on an annual basis) of the total on-bill credits to EAP customers and would be entitled to retain 75% as the host. The new rules for the EAP Program would require the Affordable Housing Project to establish that it was passing on the benefits of the community solar project to its residents, as is currently required for other LMI Community Solar Projects under Puc 900. This is consistent with both the statutory language for LMI Community Solar and the REF grants, as well as its spirit and intent of distributing the benefits of renewable energy to New Hampshire’s most economically vulnerable. The Energy Clinic believes that project proposals structured in this way should also score higher in the RFP process to acknowledge that functionally almost 100% of the total on-bill credits will serve LMI customers in New Hampshire.

4) EAP Community Solar Projects Should be Eligible for the Renewable Energy Fund LMI Grant Program

Upon consideration of the discussion at the Stakeholder meetings for both SB 270 and the LMI Grant Program, the VLGS Energy Clinic recommends that the Department allow EAP community solar projects to qualify for REF LMI community solar grants. The Department should ensure the scoring criteria for REF LMI community solar grant funding appropriately prioritizes EAP and non-EAP projects that serve extremely low-income customers in Affordable Housing Projects and projects serving a mix of low- and moderate-income customers, such as ROC projects, that may not be eligible for the EAP Program and have higher customer acquisition and administrative costs.

The main reason for this recommendation is to remove barriers to Affordable Housing Projects. It seems clear that the main purpose of SB 270 is to reduce the administrative obstacle of having to identify at least five specific residential end users with the majority LMI, and to perform ongoing updating and verification of those users. This is particularly important for Affordable Housing Projects where large numbers of LMI residents are not individual utility customers. Affordable Housing Projects are also specifically intended to benefit from the REF LMI community solar grant program, as they are specifically named (along with manufactured housing communities) in the enabling legislation and Puc 900. We believe the Department should be opening doors to such projects to the maximum extent achievable under current legislation, and that can be done by allowing such projects to take advantage of both programs.

There are of course practical obstacles to having projects that need to go through two separate RFPs where the proposed timing that the REF RFP process occurs in the fall, and the SB 270 designation process starts early (the following) year. If possible, the Department might consider aligning the timing of the two RFPs. Alternatively, in a situation where a project submits an application for an REF LMI community solar grant prior to a receiving SB 270 designation, we

recommend that the Department provide automatic SB 270 designation for Affordable Housing Projects using the EAP Program structure that have successfully obtained an REF LMI community solar grant, excluding such projects for having to also submit an RFP proposal under the EAP Program. Establishing a fast-track process for high benefit projects would be consistent with the statutory directive to select projects that offer the largest on-bill credit.

5) Consumer Protection

Given the passive “opt-out” nature of this EAP Program, we propose a number of important consumer protection measures to ensure EAP customers understand what their membership entitles them to and what is excluded. The Department’s straw proposal appropriately provides that potential participants will be provided with a notice outlining the terms and conditions of their participation in the project. Those terms and conditions should include the types of protections required for LMI Community Solar Projects under Puc 900. In addition, where projects will not be transferring the renewable energy certificates (RECs) to the participating customers or retiring the RECs on those customers’ behalf, the notice must also include an unambiguous disclosure explaining that the customer will not be receiving solar power or reducing its carbon footprint; the benefit to the LMI customer is purely financial in nature. This is because ownership of the REC establishes who is legally entitled to the environmental attributes of the solar energy produced by a project – that is, who can claim that they have “gone solar” or are “running on renewable energy.” Failure to make such a disclosure would reasonably lead participants to believe they are receiving solar power and would violate the FTC guidelines for clean energy marketing.⁴ Similarly, project developers must not market such projects as providing solar power to LMI customers or reducing LMI customers’ carbon footprint.

III. CONCLUSION

Thank you for initiating this stakeholder process and considering the VLGS Energy Clinic’s comments relating to the implementation of SB 270. We look forward to participating in further stakeholder sessions and discussing our comments with you. Please do not hesitate to contact us should you have any questions.

Sincerely,

The VLGS Energy Clinic Team: Jeannie Oliver (Professor and Staff Attorney) and Student Clinicians David Cressy, Adam Fane, Susan Murphy, Yifei Zhou.

⁴ <https://www.ftc.gov/news-events/topics/truth-advertising/green-guides>. See also, RSA 362-A:9, XIX. No person, owner, developer, or installer of an eligible customer-generator facility, business organization, or any subsidiary thereof, shall use any unfair method of competition or any unfair or deceptive act or practice in any way for projects involving net metering.

MEMORANDUM

To: PUC Staff and stakeholders

From: Vermont Law School Energy Clinic

Date: December 17, 2019

Subject: PUC Rule 900 and SB 165 LMI Adder Rule Making

1. Background

The low-moderate income adder (LMI Adder) mandated by SB 165 is intended as a tool to expand the benefits of renewable energy to LMI communities. The additional value makes it more feasible for the developers, looking for safe investments, to finance what are otherwise considered higher financial risks. Getting the allocation of the credit right is going to be most important when judging the success of this program.

During the October 31, 2019 stakeholder meeting, stakeholders and the PUC staff discussed a “two bucket” net metering credit structure as part of the PUC Rule 900 rulemaking to give effect to the LMI Adder mandated by SB 165. Under that proposal, the net metering credits for LMI projects would be split into two credit buckets – one bucket for the base net metering rate and one bucket for the LMI Adder. The project host would be required to allocate at least 50 % of the LMI Adder credits to the project’s LMI participants. The host and other non-LMI project participants (if any) would be entitled to receive the remaining 50% of the LMI Adder credits and up to 100% of the base net metering rate credits. Credits are allocated as “on-bill” credits by the utility.

During the October 31 stakeholder meeting, participating utilities noted that this “two-bucket” system would be difficult to implement for billing purposes. After reflecting on those discussions, the Vermont Law School Energy Clinic (VLS) identified a number of additional potential downsides to the “two bucket” proposal. The LMI Adder is variable in nature, decreasing from 3¢/kWh to 2.5¢ after year two of the program. By contrast, the base net metering rate is based on applicable electricity rates which generally rise in value over time. Making a rule that gives the LMI participants the part of the credit that loses value while allowing other members to reap the more valuable credit seems counter to the spirit of SB 165. The LMI Adder should be used as a tool to promote the construction of solar projects that otherwise may not get built, and this means that developers need a sufficient financial incentive. However, because of its variable and decreasing nature, the LMI Adder should not be the only vehicle for distributing the financial value from the renewable energy project to those the program intends to serve.

To address the above concerns and the utilities’ preference to allocate a single credit rather than two buckets of credits, VLS proposed two different combined credit options as an alternative to the “two bucket” structure. VLS briefly presented these options at the December 12, 2019 stakeholder meeting. This memorandum summarizes the two options for consideration by stakeholders and PUC Staff.

2. Alternative Options

A. Option 1:

- a) Combine base net metering credit and LMI Adder into one credit (Combined Credit) instead of separating into “two buckets.”
- b) Host may take up to 80% of the Combined Credits generated by a system.
- c) At least 20% of the Combined Credit must be allocated to the project’s residential off-takers that are not the host, of which at least half (10% of the total Combined Credits) must be allocated to participating LMI customers.

B. Option 2:

- a) Combine base net metering credit and LMI Adder into one credit (Combined Credit) instead of separating into “two buckets.”
- b) Require that at least 12% of the Combined Credit be allocated to participating LMI customers (an amount approximately equal in dollar terms as 50% of the LMI Adder at 3 cents/kWh).
- c) No minimum allocation requirement for non-LMI customers (i.e. host may keep up to 88% of the Combined Credit).

3. Benefits of Combined Credit Approach

The above Combined Credit structures have the following benefits compared to requiring the host to allocate 50% of the LMI Adder to participating LMI customers through the “two bucket” proposal:

- a) Administratively more simple for utility billing by reducing the burden of calculating and allocating two different rates. At the December 12 stakeholder meeting, some utility attendees expressed concern about the convoluted nature of the “two bucket” calculation which might result in less than 50% of the LMI Adder being allocated to LMI participants in some circumstances, requiring annual “true up” calculations and allocations. The Combined Credit structure avoids this dilemma. The more simple Combined Credit calculation will have the added effect of reduced costs for implementing the billing which in turn saves ratepayers money.
- b) Ensures LMI customers get to share the benefit of increasing rates over time rather than exposing LMI customers to the risk of the LMI Adder decreasing or even being eliminated over time. This structure spreads the regulatory risk and ensures that the developer community has a financial interest to advocate for the LMI Adder into the future.
- c) Option 1 (but not Option 2) has the additional benefit of addressing a potential “dilution” problem. Under the current “two buckets” proposal – the greater the LMI participation, the less meaningful the LMI Adder since 50% of the LMI Adder will be diluted. Under this “two bucket” structure, the developer/host has an incentive to maximize LMI participation but the greater the number of LMI participants the less each LMI customer benefits from the project since the host is unlikely to distribute more than the required minimum 50% of the LMI Adder. By contrast, where the project consists of 50% LMI customers and 50% non-LMI customers, the non-LMI customers are likely retaining a percentage of the net metering credits under a power purchase agreement. Under the alternative combined credit option, requiring that a minimum percentage of the Combined Credit be allocated to all residential off-takers ensures that if the project has more than 50% LMI customer participants, the LMI customers’ share of the Combined Credits is not overly diluted. For example, if 100% of the participating residential customers are LMI customers, this structure would ensure they share 20% of the Combined Credit rather than spreading 10% over a wider pool of participants. That prevents the financial benefits to LMI customers – the very purpose of the LMI Adder – from becoming negligible.
- d) Ensures LMI customers get to share the benefit of increasing rates over time rather than exposing LMI customers to the risk of the LMI Adder decreasing or even being eliminated over time. This structure spreads the regulatory risk and ensures that the developer community has a financial interest to advocate for the LMI Adder into the future.

Keeps developers’ interests in mind while also more effectively serving the LMI community’s long-term interests than the current “two bucket” proposal. The host/developer will receive similar compensation (less than 10% difference) in dollar terms under this proposed Combined Credit

structure to the “two-bucket” structure but with the added benefits to the LMI participants set out above. To illustrate see Tables 1, 2 and 3, below.

Table 1 shows the dollar value accruing to the LMI customers under the Combined Credit structure assuming the LMI customers must be allocated a minimum of either 10%, 11%, or 12% of the total Combined Credits, versus the “two bucket” proposal. This illustration assumes that the project produces 100,000 kWh per year and a base net metering rate of 10 cents per kWh. At 12% the benefit is almost the same between the proposals when the LMI Adder is 3 cents per kWh and at 10% the benefit is the same between the proposals after the LMI Adder drops to 2.5 cents per kWh, assuming that electric rates stay the same. As electric rates go up this will be a benefit fairly shared by both the developer and all other off-takers participating in the community array. If and when the LMI Adder is discontinued, the LMI participants would still receive a portion of the base net metering rate, unlike under the current “two bucket” proposal where they would receive nothing.

Table 1

LMI Adder	Total \$ to LMI at 12% Combined Credit	Total \$ to LMI at 11% Combined Credit	Total \$ to LMI at 10% Combined Credit	Total \$ to LMI - “Two Bucket” Proposal
3¢	\$1560	\$1430	\$1300	\$1500
2.5¢	\$1500	\$1375	\$1250	\$1250

Table 2 shows the dollar value accruing to the host (potentially shared with other non-LMI participants, depending on the contractual arrangement in place) in the same scenarios as for Table 1.

Table 2

LMI Adder	Total \$ to host at 88% Combined Credit	Total \$ to host at 89% Combined Credit	Total \$ to host at 90% Combined Credit	Total \$ to host - “Two Bucket” Proposal
3¢	\$11,440	\$11,570	\$11,700	\$11,500
2.5¢	\$11,000	\$11,125	\$11,250	\$11,250

Table 3 shows the dollar value accruing to the LMI customers under both the Combined Credit structure (with LMI participants receiving 10%) and the “two bucket” structure at 5 years, 10 years, and 20 years based on the following assumptions:

- i. System produces 100,000 kWh per year.
- ii. LMI Adder is 2.5 cents per kWh.
- iii. Base rate is 10 cents per kWh in year 1 with a 2.5 % annual escalator.

Table 3

Year	Year 5		Year 10		Year 20	
Base Rate	\$0.11038		\$0.12489		\$0.15987	
Combined Credit	\$0.13538		\$0.14989		\$0.18487	
	Annual	Aggregate	Annual	Aggregate	Annual	Aggregate
LMI Combined	\$1,353.81	\$6,506.33	\$1,498.86	\$13,703.38	\$1,848.65	\$30,544.66
LMI 2 bucket	\$1,250.00	\$6,250.00	\$1,250.00	\$12,500.00	\$1,250.00	\$25,000.00
Host Combined	\$12,184.32	\$56,250.00	\$13,489.77	\$112,500.00	16,637.85	\$225,000.00
Host 2 bucket	\$12,288.13	\$58,813.26	\$13,738.63	\$124,533.82	\$17,236.50	\$280,446.58

- e) We understand from an Eversource presentation at the New Hampshire Local Energy Solutions Conference in November that an 80:20 ratio of credit sharing between the developer/host and participating customers is not unusual in virtual net metering projects in Massachusetts. Given the intention of SB 165 to help serve LMI communities, VLS believes that the PUC should err on the side of greater benefits to LMI customers and we strongly encourage the PUC to consider implementing the Combined Credit structure, at least on a trial basis to test commercial feasibility and the costs and benefits of the program as part of its reporting obligations under SB 165.

4. Other Considerations

A. Consumer Protection

At the December 12 stakeholder meeting, comments were made to the effect that if the LMI Adder were to be eliminated, developer/hosts would likely immediately stop serving the participating LMI customers. Because LMI customers cannot enter into power purchase agreements (PPAs) or similar arrangement under the proposed LMI Adder program, there is not a contractual mechanism by which the LMI participants can negotiate to protect their rights. This suggests that consumer protection measures will be required in the rules to help protect LMI customers against these scenarios, for example by requiring a minimum notice period for terminating LMI membership.

B. Power Purchase Agreements

We also have concerns about the prohibition against PPAs for LMI customers participating in an LMI project (Rule 909.13(d)(8)). We are worried that this prohibition will overly restrict a LMI community's options for community solar projects. For example, when VLS issues requests for proposals for LMI projects for resident owned communities (ROCs), it generally seeks proposals for both a PPA arrangement and a turnkey project so that it can compare the relative benefits to the community. PPAs are often the only viable option for LMI communities such as ROCs because they generally do not require an initial capital investment by the LMI community. We propose allowing LMI customers to enter into agreements such as PPAs if, and only if, the agreement will result in the LMI customer receiving more than the minimum benefits prescribed by the rules.

C. Affordable Housing

Finally, we note that the PUC Staff requested that this memorandum address affordable housing, if possible. We believe that the proposed Combined Credit structure is compatible with how the PUC has drafted the affordable housing provisions in the current draft rules and will not require additional changes. Just as under the current “two bucket” method, an affordable housing project would be one of the LMI participants and would be entitled to a portion of the Combined Credit that is required to be allocated to LMI participants.

Thank you for the opportunity to provide these comments and to participate in the stakeholder discussions. Please feel free to reach out with any questions or for any clarifications. The primary contacts for this proposal are student clinician, Chris Heine (ChristopherHeine@vermontlaw.edu) and staff attorney, Jeannie Oliver (joliver@vermontlaw.edu).

Submitted respectfully,

Vermont Law School Energy Clinic, LMI Solar Team

Jeannie Oliver, Chris Heine, Ellie Bortiatynski, Sally Natasha, Bede Emuka, Lucas Joseph