# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 11-11-A May 7, 2012

Inquiry Into Net Metering and Interconnection of Distributed Generation, pursuant to An Act Relative to Green Communities, St. 2008, c. 169, §§ 138-140 and St. 2010, c. 359, § 30.

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ORDER ADOPTING A
SYSTEM OF ASSURANCE OF NET METERING ELIGIBILITY

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## I. INTRODUCTION AND PROCEDURAL HISTORY

On October 15, 2010, Governor Patrick signed into law Chapter 359 of the Acts of 2010, An Act Making Appropriations for the Fiscal Years 2010 and 2011 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects ("Act"). The Act requires, among other things, that the Department of Public Utilities ("Department") adopt a system that provides proposed certain facilities with an assurance of net metering eligibility (often referred to as a "net metering queue"). St. 2010, c. 359, §§ 25-30. Because there is a statutory cap on overall net metering capacity,[1] a system of assurance of net metering eligibility: (1) assures customers that they will be able to receive net metering services when their net metering facility is ready to interconnect; and (2) facilitates more efficient planning and development of distributed generation resources within Massachusetts.

On September 13, 2011, the Department proposed a system of assurance of net metering eligibility ("System of Assurance").[2] Initial comments were filed on October 4,

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[1] Pursuant to G.L. c. 164, § 139(f), "[t]he aggregate net metering capacity of facilities that are not net metering facilities of a municipality or other governmental entity shall not exceed 1 per cent of the distribution company's peak load. The aggregate net metering capacity of net metering facilities of a municipality or other governmental entity shall not exceed 2 per cent of the distribution company's peak load." In this Order, we refer to the two percent cap on net metering facilities of a municipality or other governmental entity as the "public cap." We refer to the cap on all other net metering facilities as the "private cap."

[2] For additional procedural history, refer to Inquiry Into Net Metering and Distributed Generation, D.P.U. 11-11, at 2-4 (2011).

2011,[3] and reply comments were filed on October 12, 2011.[4] In this Order, the Department adopts a final System of Assurance, which is attached to this Order as Appendix A.

## II. COMMENTS

### A. Introduction

In general, commenters supported the Department's proposed System of Assurance. However, commenters also recommended specific changes or sought clarification on some of the System of Assurance provisions. In recommending alternatives, some commenters referred to earlier proposals submitted to the Department in this proceeding (i.e., the comments of the "Joint Proponents").[5] See e.g., D.P.U. 11-11, at 3. Commenters addressed, among other things, issues related to: (1) participation in the System of Assurance; (2) the administrator; (3) applications; (4) reservation periods; (5) net metering facilities within the public cap; (6) project changes; (7) applications that exceed the net metering caps; (8) fees; (9) the

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[3] Initial comments were submitted by the following seven commenters: Attorney General of the Commonwealth ("Attorney General"); Cape Light Compact and Cape and Vineyard Electric Cooperative, jointly (together, "CLC and CVEC"); Department of Energy Resources ("DOER"); Fitchburg Gas and Electric Light Company d/b/a Unitil ("Unitil"), Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, NSTAR Electric Company ("NSTAR Electric"), and Western Massachusetts Electric Company ("WMECo"), jointly (together, "Distribution Companies"); My Generation Energy, Inc. ("My Generation"); Palmer Capital Corporation ("Palmer Capital"); and Renewable Resource Development Coalition ("RRDC").

[4] Reply comments were submitted by the following five commenters: Attorney General; Berkshire Photovoltaic Systems ("BPVS"); CLC and CVEC; Distribution Companies; and My Generation.

[5] The comments of the "Joint Proponents" were developed and filed by a group of individual and allied entities, which include: (1) CLC and CVEC; (2) the Massachusetts Net Metering Coalition; and (3) RRDC.

carve-out for small Class I net metering facilities; (10) reporting requirements; (11) dispute resolution; and (12) facilities with no excess generation.

B. Participation in the System of Assurance of Net Metering Eligibility

Under the Department's proposed System of Assurance, participation would be optional. The Attorney General, BPVS, and the Distribution Companies assert that participation should be mandatory for all prospective net metering customers (Attorney General Reply Comments at 2; BPVS Reply Comments at 2; Distribution Companies Comments at 3-4). In the Distribution Companies' view, a voluntary system will lead to confusion (Distribution Companies Comments at 3-4). BPVS claims that mandatory participation will provide more clarity regarding remaining net metering capacity (BPVS Reply Comments at 2).

C. Administrator of the System of Assurance of Net Metering Eligibility

The Attorney General, CLC and CVEC, and the Distribution Companies all support the Department's proposal to: (1) engage a third-party as administrator ("Administrator"); and (2) use a request for proposals ("RFP") process to select the Administrator (Attorney General Reply Comments at 2; CLC and CVEC Comments at 8; Distribution Companies Comments at 1-2; Distribution Companies Reply Comments at 1). The Distribution Companies also request an express statement that the Department will manage and oversee the Administrator (Distribution Companies Comments at 2).

The Attorney General and the Distribution Companies seek more clarity on the Department's expectations regarding the RFP process, criteria, and timeline (Attorney General Reply Comments at 2; Distribution Companies Comments at 1-2). The Distribution

Companies propose a sample schedule for developing and issuing an RFP (Distribution Companies Comments at 1-2).[6]

Commenters were divided on who should be involved in the development of an RFP and the selection of the Administrator. DOER suggests that, similar to the process used for developing an RFP to solicit long-term contracts for renewable energy, the Distribution Companies should develop the RFP to obtain an Administrator in consultation with DOER (DOER Comments at 1). Palmer Capital and CLC and CVEC contend that DOER should administer the RFP or at least actively participate in its development and administration (Palmer Capital Comments at 1; CLC and CVEC Comments at 7-8; CLC and CVEC Reply Comments at 5). The Distribution Companies support DOER's involvement in the RFP process (Distribution Companies Reply Comments at 1). The Attorney General states that while DOER's input may be helpful, the Department cannot, and should not, delegate power or oversight of net metering to DOER (Attorney General Reply Comments at 1-2). Instead, the Attorney General suggests that the Distribution Companies determine the elements and

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[6] The Distribution Companies recommend that, from the date that the Department issues this Order, a reasonable 70-day timeline for developing and issuing an RFP would include: (1) comments from the Distribution Companies on the scope and procedures for an RFP within 14 days; (2) within the next 14 days, a decision on scope and procedures for the RFP from the Department; (3) within 14 days of a Department decision on scope and procedures for the RFP, a draft RFP from the Distribution Companies; (4) initial comments from interested persons on the Distribution Companies' draft RFP within seven days, which may include a list of proposed RFP recipients; (5) within the next seven days, reply comments from interested persons; (6) within the next seven days, the Department directs the Distribution Companies to issue the RFP; and (7) within seven days of the Department's directive, the Distribution Companies issue the RFP (Distribution Companies Comments at 2).

criteria used to select the administrator, with appropriate oversight from the Department (Attorney General Reply Comments at 2). Palmer Capital suggests that the Joint Proponents assist with RFP development (Palmer Capital Comments at 1). The Attorney General cautions that, due to their financial interests, developers of net metering projects should not significantly contribute to the development of an RFP (Attorney General Reply Comments at 2).

Regarding the recovery of costs to obtain an Administrator, the Distribution Companies request that the costs be recoverable through the net metering recovery surcharge ("NMRS") (Distribution Companies Comments at 2). The Attorney General opposes the recovery of costs associated with the development and issuance of the RFP through the NMRS (Attorney General Reply Comments at 2). According to the Attorney General, all costs associated with the Administrator should be collected through fees paid by net metering customers, and any costs that are incurred before such fees are collected should be deferred for recovery until a fee structure has been implemented (Attorney General Reply Comments at 2).

D. Application Issues

Commenters took a number of different positions on the Department's proposal regarding the processing and content of applications. As an initial matter, the Distribution Companies seek clarification of whether electronic submission is mandatory or optional (Distribution Companies Reply Comments at 4). My Generation recommends that all

documentation and communication related to the System of Assurance be automated and electronic (My Generation Comments at 4).[7]

The Distribution Companies note that there are many different "applications" related to distributed generation projects, and an application to the System of Assurance should be called either a Cap Allocation Application or a System of Assurance Application (Distribution Companies Comments at 4). My Generation supports both of the Distribution Companies' proposed names for the application (My Generation Reply Comments at 3).

Regarding the requirement that an application include a signed Interconnection Service Agreement ("ISA"), Palmer Capital requests clarity as to whether the ISA must be signed by both parties (i.e., the Host Customer[8] and the Distribution Company) or just "tendered" (i.e., offered) by the Distribution Companies (Palmer Capital Comments at 4).[9] CLC and CVEC and My Generation support the requirement that an ISA only has to be tendered by the Distribution Company (CLC and CVEC Reply Comments at 7; My Generation Reply Comments at 2). Palmer Capital also questions the inclusion of an ISA as an element of an application to the System of Assurance given that, under the interconnection process, a Host

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[7] My Generation cites the rebate application process administered by the Massachusetts Clean Energy Center as a model for an automated, electronic process (My Generation Comments at 4).

[8] Pursuant to 220 C.M.R. § 18.02, Host Customer is defined as "a Customer with a Class I, II, or III Net Metering Facility that generates electricity on the Customer's side of the meter."

[9] At present, it is customary for a Distribution Company to draft an unsigned ISA and tender it to the Host Customer for signature. Once the Host Customer has signed the ISA, it is returned to the Distribution Company for signature.

Customer need not sign an ISA (Palmer Capital Comments at 4). Palmer Capital recommends that the developer of the facility be allowed to submit an application to the System of Assurance, rather than requiring the Host Customer to do so (Palmer Capital Comments at 2).

CLC and CVEC oppose the prioritization of applications on a "first come, first served basis," and recommend that when applications are submitted on the same day, the Department should employ certain criteria to prioritize some projects over others, as originally proposed by the Joint Proponents (CLC and CVEC Comments at 8-9).

Palmer Capital argues that unless the Administrator responds to an application within 15 days, the application should be deemed complete (Palmer Capital Comments at 5). Palmer Capital and CLC and CVEC oppose the Department's proposal that incomplete applications must be resubmitted with all accompanying information as new applications, and recommend a ten-day cure period, as suggested in the comments of the Joint Proponents (Palmer Capital Comments at 5; CLC and CVEC Comments at 9-10).[10] In addition, CLC and CVEC argue that if the Administrator seeks additional information from an applicant, the applicant's compliance period should be increased from the Department's proposed ten days to 20 days, given that the comments of the Joint Proponents suggested a 45-day period (CLC and CVEC Comments at 14-15).

Palmer Capital and CLC and CVEC recommend that the Department require an application to be certified under the pains and penalties of perjury (Palmer Capital Comments

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[10] CLC and CVEC also propose additional language that would discourage applicants from submitting applications prematurely or attempting to "game" this aspect of the System of Assurance (CLC and CVEC Comments at 10).

at 2; CLC and CVEC Reply Comments at 6). CLC and CVEC argue that all applications granted a cap allocation or a place on the waiting list should be publicly available online because this will allow participants within the System of Assurance to self-police (CLC and CVEC Comments at 12).

E. Reservation Periods

My Generation supports the Department's proposals for the initial reservation periods as well as the extended reservation periods as equitable and efficient (My Generation Comments at 4). The Distribution Companies recommend that each reservation period within the System of Assurance be shortened and aligned with those of the interconnection process (Distribution Companies Comments at 5). CLC and CVEC oppose the Distribution Companies' view and contend that the timelines used to develop the reservation periods in the System of Assurance reflect the first-hand knowledge of the Joint Proponents about the development of net-metered renewable energy projects, and the timeframes proposed in the System of Assurance are more appropriate than the current timelines in the interconnection tariffs (CLC and CVEC Reply Comments at 1-3).

With regard to the proposed extension of the reservation period for "up to six months" based on a legal challenge, Palmer Capital seeks clarification as to whether the length of the extension would be based upon the request of the Host Customer or upon a determination by the Administrator (Palmer Capital Comments at 5-6). Regarding the proposed requirement that an applicant request an extension at least 30 days before the end of the initial reservation period, Palmer Capital questions what happens if a legal challenge occurs within the final

30 days of the applicant's reservation period or during the extended reservation period (Palmer Capital Comments at 6). In addition, Palmer Capital suggests that there may be an inconsistency in fee requirements between Section 7(B)(iii) and Section 7(B)(iv) of the System of Assurance (Palmer Capital Comments at 6). CLC and CVEC recommend that the System of Assurance provide an additional extension for a fee (CLC and CVEC Comments at 13-14; CLC and CVEC Reply Comments at 1-2).

F. Public Facilities and Special Public Facilities

According to CLC and CVEC, the definitions of "Public Facility" and "Special Public Facility" are redundant and confusing (CLC and CVEC Comments at 6-7; CLC and CVEC Reply Comments at 7-8). In addition, CLC and CVEC propose that the definition of Special Public Facility be revised to allow the municipality or other governmental entity to own and/or operate the net metering facility (CLC and CVEC Comments at 6-7; CLC and CVEC Reply Comments at 7-8). Palmer Capital asserts that the definitions of Public Facility and Special Public Facility should: (1) include Class I net metering facilities; (2) allow for the participation of more than one municipality or other governmental entity; and (3) not necessarily require that municipalities or other governmental entities be the Host Customer (Palmer Capital Comments at 2-3). CLC and CVEC support Palmer Capital's request that the Department include Class I net metering facilities in the definition of Public Facilities (CLC and CVEC Reply Comments at 7). RRDC maintains that Public Facilities should be able to allocate net metering credits to more than one municipality or other governmental entity

(RRDC Comments at 1-2 & Att. A). In addition, RRDC recommends that Special Public Facilities be limited to 15 percent of the public cap (RRDC Comments at 2).

G. Project Changes

Palmer Capital recommends that the Department require applicants to report a project change as soon as the change occurs rather than in a quarterly report (Palmer Capital Comments at 5). This allows the Distribution Companies to know about changes to overall net metering capacity immediately (Palmer Capital Comments at 5). However, Palmer Capital suggests that if an applicant fails to file a quarterly report, the applicant should be given an opportunity to cure this deficiency (Palmer Capital Comments at 5). Moreover, Palmer Capital asserts that if a Distribution Company unilaterally changes an ISA, such change should not affect the Host Customer's position within the System of Assurance (Palmer Capital Comments at 6-7).

The Distribution Companies note that some of the proposed "permissible" changes could require an entirely new ISA (Distribution Companies Comments at 5). Further, the Distribution Companies assert that they must know immediately if there are any changes to an ISA (Distribution Companies Reply Comments at 4).

CLC and CVEC seek clarification of the revisions to an ISA that will or will not invalidate an application, a cap allocation, or a place on the waiting list (CLC and CVEC Reply Comments at 3-4).

H. Applications that Exceed all Remaining Net Metering Capacity

Palmer Capital seeks confirmation that an applicant who requests more capacity than is available under the cap could eventually receive more capacity on the waiting list (Palmer Capital Comments at 6). CLC and CVEC recommend that if an applicant accepts a partial cap allocation and a place on the waiting list for the remaining capacity, the reservation period would not begin until the applicant has been awarded the full cap allocation that was requested (CLC and CVEC Comments at 11). Palmer Capital seeks clarification of whether an application on the waiting list would still have an expiration date on its ISA (Palmer Capital Comments at 4). CLC and CVEC seek clarification as to whether an applicant to be placed on the waiting list must pay the full application fee when filing the application (i.e., to ensure that it will be deemed complete) or when the full cap allocation becomes available (CLC and CVEC Comments at 10-11). Palmer Capital seeks clarification as to whether applicants for small Class I net metering facilities must submit an application fee in order to be placed on the waiting list if they are otherwise exempt from fees, as stated in Section 5(E) and Section 7(B) of the System of Assurance (Palmer Capital Comments at 7).

I. Fees

As an initial matter, commenters sought clarification as to whether application fees must be submitted via electronic payment (Palmer Capital Comments at 4-5; Distribution Companies Reply Comments at 4).

In general, the Attorney General, the Distribution Companies, and RRDC support the Department's approach to fees, which anticipates that the cost to administer the System of

Assurance will be collected from its participants (Attorney General Reply Comments at 3; Distribution Companies Comments at 2-3; Distribution Companies Reply Comments at 1-2; RRDC Comments at 2). According to the Distribution Companies, neither they nor ratepayers ought to bear any such costs (Distribution Companies Comments at 2-3; Distribution Companies Reply Comments at 1-2).

The Attorney General, the Distribution Companies, and RRDC support the Department's proposal to develop the fee structure some time after receiving responses to the RFP for an Administrator (Attorney General Reply Comments at 3; Distribution Companies Reply Comments at 1-2; RRDC Comments at 2). CLC and CVEC oppose the Department's proposed approach to fees (CLC and CVEC Comments at 11-12). Specifically, CLC and CVEC recommend that the Department adopt the fee schedule set out by the Joint Proponents (CLC and CVEC Comments at 11-12).

CLC and CVEC request that all fees for public entity applicants be refunded if their projects are not interconnected with net metering (CLC and CVEC Comments at 12). With regard to CLC and CVEC's request, the Attorney General recommends that the Department consider the financial ramifications of such refunds (Attorney General Reply Comments at 3).[11]

BPVS asserts that the Department's proposal to exempt small Class I net metering facilities from reservation and extension fees is appropriate, and contends that application fees for small Class I net metering facilities should be less than $25 (BPVS Reply Comments at 2).

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[11] The Attorney General notes that the financial shortfall that would occur as a result of refunds would have to be recovered elsewhere (Attorney General Reply Comments at 3).

The Attorney General notes that the fee structure for smaller projects can be designed to minimize inefficiencies, additional costs, and administrative burdens (Attorney General Reply Comments at 2).

J. Small Class I Net Metering Facilities

My Generation and BVPS strongly support the ten percent carve-out for small Class I entities, calling it reasonable and well-substantiated (My Generation Comments at 4-5; My Generation Reply Comments at 3; BPVS Reply Comments at 1).[12] My Generation and the Distribution Companies seek clarification on how the carve-out will be calculated (My Generation Comments at 5; Distribution Companies Comments at 4). Specifically, the Distribution Companies understand the carve-out to mean that, as of the effective date of the System of Assurance, the Distribution Companies must calculate the available cap space under the private cap, and of the available cap space, ten percent of what remains must be reserved for small Class I systems (Distribution Companies Comments at 4). BPVS and the Distribution Companies seek confirmation that the carve-out is "a floor, not a ceiling," and that the amount of capacity for small Class I net metering facilities could be expanded (Distribution Companies Comments at 4; BPVS Reply Comments at 2).

RRDC claims that the comparative ease with which small Class I net metering facilities can interconnect obviates any need for a carve-out, thereby leveling the playing field for projects of different sizes (RRDC Comments at 2). In addition, RRDC cautions that the

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[12] Without specifying their names, BPVS asserts that seven other Massachusetts companies support the reservation for small Class I net metering facilities (BPVS Reply Comments at 1).

proposed carve-out for small Class I net metering facilities could result in unused net metering capacity (RRDC Comments at 2). Instead, RRDC proposes an alternative under which, if capacity within the carve-out is unused for more than six months, 500 kilowatts ("kW") of the carve-out will be released to other applicants (RRDC Comments at 3). RRDC claims that its alternative will allow large systems on the waiting list to advance while protecting the interests of small Class I net metering facilities by providing an incentive for them to use the carve-out capacity in a timely manner (RRDC Comments at 3). BPVS opposes RRDC's view that the carve-out for small Class I net metering facilities should be subject to forfeiture, arguing that it should be permanent (BPVS Reply Comments at 1-2). The Distribution Companies note that the RRDC proposal to release excess capacity within the carve-out would not work for the Distribution Companies with smaller net metering caps, whose entire carve-out may be less than 500 kW (Distribution Companies Reply Comments at 3-4).[13]

K. Reporting Requirements

CLC and CVEC support the Department's proposal of daily reporting but would support a compromise of weekly reporting (CLC and CVEC Reply Comments at 5-6). The Distribution Companies oppose the Department's proposal to have daily reporting of net metering capacity, calling it administratively burdensome (Distribution Companies Comments at 5). Instead, the Distribution Companies propose a compromise in which they would provide monthly reports until they reach 80 percent of their net metering cap, and weekly reports

[13] For example, WMECo and Unitil would both have carve-outs that are less than 500 kW.

thereafter (Distribution Companies Comments at 5). The Attorney General supports the Distribution Companies' proposal regarding reporting obligations in order to minimize costs to ratepayers (Attorney General Reply Comments at 2-3). My Generation states that daily monitoring and reporting of net metering capacity is critically important to providing market transparency for participants (My Generation Comments at 4). CLC and CVEC claim that the Distribution Companies should be required to separately report the public and private caps because of the need for transparency (CLC and CVEC Comments at 13).

L. Dispute Resolution

CLC and CVEC address the dispute resolution provisions of the System of Assurance (CLC and CVEC Comments at 15-16). Specifically, CLC and CVEC seek clarification that an "aggrieved party" would include an applicant who was denied an allocation because the cap was full (CLC and CVEC Comments at 15-16). In addition, in CLC and CVEC's view, the System of Assurance should include a provision for an entity to challenge another entity's application or award of a cap allocation (CLC and CVEC Comments at 15-16).

Palmer Capital seeks clarification as to the status of an application, cap allocation, or position on the waiting list during the dispute resolution process (Palmer Capital Comments at 7). Specifically, Palmer Capital seeks clarification as to whether the position of the application within the System of Assurance is determined prior to or after the dispute is resolved, or whether an application loses its cap allocation during the pendency of a dispute (Palmer Capital Comments at 7).

M. Net Metering Facilities with No Excess Generation

CLC and CVEC claim that facilities with no excess generation should not count against the cap, arguing that if a facility never exports electricity to the electric grid, it is not actually net metering and should not count against the overall net metering cap (CLC and CVEC Comments at 18-21). According to the Distribution Companies, all facilities that take service under the net metering tariff should count towards the overall net metering cap; however, if a customer's generation never exceeds his or her electricity consumption, there is no need for that customer to take service under the net metering tariff (Distribution Companies Reply Comments at 2). On the issue of net metering facilities with no excess generation, the Attorney General requests that the Department defer any decision until there has been further discussion among stakeholders (Attorney General Reply Comments at 3).

N. Other Comments

Palmer Capital asserts that Section 4(A) of the System of Assurance, "Transitional Period from Effective Date," should be changed so that a facility needs only to notify the Distribution Company that it is ready for a witness test,[14] instead of the Department-proposed requirement that the facility has received an authorization to interconnect (Palmer Capital Comments at 3-4).

The Distribution Companies note that every additional complexity within the System of Assurance creates the potential for complications, disputes, reduced certainty, and reporting

[14] A "witness test" for purposes of interconnection means a site visit in which observers examine a piece of electrical equipment and watch it perform various tests to ensure that it is functional and meets specifications.

burdens (Distribution Companies Reply Comments at 3). The Distribution Companies also note that only one entity should be allowed to be the Host Customer (Distribution Companies Reply Comments at 2-3).

My Generation addresses the issue of net metering credit allocations, and seeks clarification on the manner in which net metering credits are used to offset specific charges on a customer's bill (My Generation Comments at 5-6). The Distribution Companies claim that net metering credit allocation issues are unrelated to the System of Assurance and should be addressed in a future technical conference (Distribution Companies Reply Comments at 4).

BPVS contends that the Administrator should be obligated to provide educational opportunities to potential applicants (BPVS Reply Comments at 2).

Finally, CLC and CVEC request that the Department clarify the options available to prospective distributed generation customers after the net metering caps have been filled (i.e., whether compensation for excess generation would be determined under regulations governing qualifying facilities ("QFs"), and whether facilities without excess generation would still be able to use self-generated electricity onsite) (CLC and CVEC Comments at 16-18). Furthermore, CLC and CVEC argue that because the System of Assurance is informed, in part, by the rulemaking in D.P.U. 11-10 (to update 220 C.M.R. § 18.00 et seq.), the Department should solicit additional comments after these new regulations are adopted (CLC and CVEC Reply Comments at 8).

## III. ANALYSIS AND FINDINGS

### A. Introduction

In adopting the System of Assurance, the Department seeks to adopt an efficient, objective, transparent, and fair process by which prospective net metering customers will know that they will be able to net meter when they are ready to interconnect their facilities. Furthermore, the Department has attempted to balance the interests of all parties.

Here, the Department analyzes eleven specific implementation issues raised by the language of the Act and addressed by commenters: (1) participation in the System of Assurance; (2) the Administrator; (3) applications; (4) reservation periods; (5) net metering facilities within the public cap; (6) project changes; (7) applications that exceed the net metering caps; (8) fees; (9) the carve-out for small Class I net metering facilities; (10) reporting requirements; and (11) dispute resolution. Because some comments were outside the scope of the System of Assurance, the Department does not address every issue raised by commenters.

### B. Participation in the System of Assurance of Net Metering Eligibility

The Department proposed to allow, but not require, all customers who plan to install behind-the-meter generation (i.e., Host Customers) that is potentially eligible to net meter to apply for an assurance of net metering eligibility in advance of interconnecting the facility. D.P.U. 11-11, at 5-6. Reasoning that some Host Customers may experience a relatively easier permitting process and shorter timeframe to interconnect, the Department suggested that requiring all entities to seek an assurance of net metering eligibility would be inefficient, and

could create unnecessary costs and administrative burdens. D.P.U. 11-11, at 6. Instead, we proposed that, while there would be no guaranty of net metering eligibility without applying to the System of Assurance, any prospective Host Customer could interconnect a net metering facility without first seeking an assurance if there were space under the applicable cap. D.P.U. 11-11, at 6.

All commenters who addressed participation in the System of Assurance opposed the Department's proposal, arguing that participation should be mandatory (Attorney General Reply Comments at 2; BPVS Reply Comments at 2; Distribution Companies Comments at 3-4). Commenters predicted that an optional process would be confusing, while a mandatory system would provide clarity regarding the outstanding amount of available net metering capacity (BPVS Reply Comments at 2; Distribution Companies Comments at 3-4).

We are persuaded that our concern that prospective net metering customers might bear additional administrative costs and burdens is outweighed by the benefits of a mandatory System of Assurance. Specifically, a mandatory system will minimize confusion and maximize clarity for all interested persons. Accordingly, we find that it is reasonable to require that all prospective net metering customers participate in the System of Assurance. See System of Assurance, § 2.

C. Administrator of the System of Assurance of Net Metering Eligibility

In developing a proposal for retaining a third-party Administrator, the Department proposed to direct the Distribution Companies to jointly develop an RFP for that purpose. D.P.U. 11-11, at 8. Also, the Department proposed to review and approve the RFP prior to

its issuance. D.P.U. 11-11, at 8. Finally, the Department proposed that, once the Distribution Companies received responses to the RFP, they would prepare a short list of bidders, upon which DOER could comment, and from which the Department would select the Administrator. D.P.U. 11-11, at 8.

In general, commenters supported the Department's proposed solicitation process (Attorney General Reply Comments at 2; CLC and CVEC Comments at 8; Distribution Companies Comments at 1-2; Distribution Companies Reply Comments at 1). Some commenters sought more details or offered suggestions regarding the RFP process, criteria, and timeline (Attorney General Reply Comments at 2; Distribution Companies Comments at 1-2). Commenters had conflicting views on DOER's involvement in the development of the RFP and selection of an Administrator (Attorney General Reply Comments at 1-2; CLC and CVEC Comments at 7-8; CLC and CVEC Reply Comments at 5; Distribution Companies Reply Comments at 1; DOER Comments at 1; Palmer Capital Comments at 1). Commenters also were divided on whether renewable energy developers, who are likely to be participants in the System of Assurance, should assist with the development of the RFP (Attorney General Reply Comments at 2; Palmer Capital Comments at 1). Finally, commenters held opposing views on how to treat any costs associated with the development and issuance of the RFP (Attorney General Reply Comments at 2; Distribution Companies Comments at 2 & n.2).

Upon review of the comments on this topic, we find that the Distribution Companies are in the best position to develop and issue the RFP. Thus, we direct the Distribution Companies to: (1) within 20 business days of the date of this Order, issue an RFP on which

DOER and the Attorney General have been provided a reasonable opportunity to offer input; (2) following the issuance of the RFP, hold open the solicitation for ten business days; and (3) within five business days of the close of the solicitation period, submit to the Department the Distribution Companies' proposed candidate for Administrator along with documentation of the evaluation process. To assemble a pool of qualified candidates from both within and outside New England, we direct the Distribution Companies to use reasonable means of publicizing the RFP, which may involve using Internet-based resources such as trade association websites and electronic publications. In addition, the Distribution Companies must provide a copy of the RFP, preferably by electronic mail, to any person or entity who requests one. Once the Distribution Companies have proposed a candidate, the Department will make a final selection in a timely fashion. We expect that, within 20 business days of being selected, the Administrator will be able to begin accepting applications. Accordingly, the Department estimates that the Administrator will be able to begin accepting applications within approximately 90 days of the date of this Order.

Commenters were divided regarding the recovery of the costs associated with retaining the Administrator. As we previously stated, "the intent of [application and reservation] fees is to defray all of the Administrator's costs of administering the System of Assurance." D.P.U. 11-11, at 14. On the other hand, the creation of a System of Assurance is required by St. 2010, c. 359, § 30. Accordingly, we will defer a decision regarding the recovery of any costs associated with retaining the Administrator until such costs are reasonably known and

measureable, and recovery is sought in a separate proceeding, in which parties may present evidence and argument to support their views.

D. Application Issues

As set forth in the System of Assurance, § 4(B), the Department proposed that all applications must be submitted: (1) to the Administrator via electronic mail only; (2) by the Host Customer; and (3) with the required fee. D.P.U. 11-11, App. A at 3-4. Pursuant to the System of Assurance, §§ 4(B) and 5(C), the Department proposed that: (1) the date the Administrator receives a complete application would be its submission date; (2) applications would be prioritized on a "first-come, first-served" basis, according to their submission date and time; and (3) if multiple applications were received at the same minute, the Administrator would examine the seconds to determine priority. D.P.U. 11-11, App. A at 3, 5. In addition, the Department proposed that a complete application must include, among other details, a certification and supporting documentation to establish that the Host Customer has, with respect to the net metering facility: (1) an executed ISA, as tendered by the Distribution Company; (2) adequate site control for the location specified in the ISA; and (3) subject to certain exceptions, all necessary governmental permits and approvals to construct the net metering facility notwithstanding any pending legal challenge(s) to one or more permits or approvals. D.P.U. 11-11, App. A at 3-4.

With regard to the proposed process, commenters sought clarification of or expressed support for mandatory electronic submission of applications and fees (Distribution Companies Reply Comments at 4; My Generation Comments at 4). Commenters recommended that all

applications awarded a cap allocation or a place on the waiting list be made publicly available on the Internet (CLC and CVEC Comments at 12). Commenters recommended creating a special name for applications in order to distinguish them from other types of applications related to distributed generation facilities (Distribution Companies Comments at 4; My Generation Reply Comments at 3). Commenters opposed prioritizing applications on a "first come, first served" basis, recommending instead the use of certain criteria (CLC and CVEC Comments at 8-9). In addition, commenters addressed the notion of a "complete" application by: (1) opposing the requirement that incomplete applications must be resubmitted as new applications to determine priority; (2) recommending the inclusion of an opportunity to "cure" application deficiencies; (3) recommending a presumption that, if no response to an application is received within 15 days, the application be deemed complete; and (4) recommending that when additional information is needed from an applicant, the applicant be given between 20 and 45 days to comply (Palmer Capital Comments at 5; CLC and CVEC Comments at 9-10, 14-15).

With regard to the application, commenters generally questioned the requirement that an ISA be an essential element, and recommended that if an application must include an ISA, it should be an ISA tendered by the Distribution Companies, as opposed to an executed ISA (CLC and CVEC Reply Comments at 7; Palmer Capital Comments at 2, 4; My Generation Reply Comments at 2). Commenters also recommended that an application include a certification under the pains and penalties of perjury (Palmer Capital Comments at 2; CLC and CVEC Reply Comments at 6).

As an initial matter, the Department agrees that it is reasonable to adopt a special name for these applications. Thus, we will use the term "Application for a Cap Allocation" or "ACA" to distinguish an application to the System of Assurance from other applications. In addition, the Department clarifies that each ACA must be submitted electronically along with all associated fees (see Section III.I. below). We expect that an electronic process will minimize the potential for clerical errors by the Administrator, and result in a more efficient process. Regarding the prioritization of applications, the Department declines to use criteria to prioritize some applications over others. There is inadequate rationale for the use of priority criteria and it unfairly favors certain types of projects. As such, all ACAs will be processed on a "first-come, first-served" basis.

As for the commenters' positions on ISAs, the Department has not been persuaded to amend our proposed requirements. First, we find that an applicant with an executed ISA is at an advanced project stage, which makes an executed ISA an appropriate requirement for filing an ACA. Further, an applicant cannot be said to truly have an ISA until it has been executed (i.e., both parties have signed the document). Until an electric distribution company has signed the ISA there is still a risk, however small, of further changes or requirements that could add time or cost to a project's development and alter the likelihood of its completion.[15] Accordingly, we find that an ACA must be accompanied by a fully executed ISA.

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[15] As stated in note 9, above, at present, it is customary for a Distribution Company to draft an unsigned ISA and tender it to the Host Customer for signature. Once the Host Customer has signed the ISA, it is returned to the Distribution Company for signature. Once the Distribution Company signs the ISA, it has been executed.

Second, while a Host Customer may not have an ownership interest in or bear responsibility or liability for a net metering facility, the Host Customer should nonetheless be identified on the ISA as the customer of record for the facility. The net metering facility will be interconnected behind the Host Customer's meter and, as the Department clarified in D.P.U. 11-10-A, at 28, only the Host Customer can be said to receive net metering services. Accordingly, the Host Customer must be the applicant for an ACA. Nothing prevents the Host Customer, however, from seeking and receiving assistance in completing the ACA.

In response to the opponents of our proposed requirement that incomplete applications be resubmitted as new applications, we recognize that our proposal places the onus on the applicant to submit a complete ACA. However, if the Department provided an opportunity to "cure" an incomplete ACA, as proposed by some commenters, it could encourage applicants in a "first-come, first-served" system to submit incomplete ACAs in an attempt to get ahead of others. This practice would clearly undermine the Department's goal of an orderly process for the System of Assurance. In addition, providing an opportunity for applicants to "cure" an incomplete ACA would shift some burden and risk from the applicants onto the Administrator, which would likely slow down processing times for ACAs and increase costs for all participants.

We also decline to adopt the recommendation that applicants should be provided 20 business days to respond to questions from the Administrator; but instead of ten business days as we proposed, we will amend the response period to 15 business days. See System of Assurance, § 9(B). The purpose of this provision is to allow the Administrator to verify

information submitted by applicants in a timely manner. Information regarding an application should be readily available to the applicant and easy to submit to the Administrator. Accordingly, we find that 15 business days is sufficient time.

Further, the Department declines to require that an ACA be submitted under the pains and penalties of perjury. While we agree that all information contained in an ACA should be true and accurate,[16] a more effective means of installing discipline on applicants would be to punish false assertions made in an ACA by revoking a cap allocation. See System of Assurance, § 12. We expect that this potential punishment will provide applicants with an adequate deterrent to supplying false information.

Finally, we agree with commenters that, to encourage transparency, all ACAs should be publicly available on an Internet website maintained by the Administrator, subject to certain exceptions. We recognize that some information may be proprietary and should be kept confidential. Nonetheless, we assume that all information in an ACA will be made publicly available and that the applicant will bear the burden of demonstrating that protective treatment

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[16] Moreover, false assertions to the Department are punishable under a specific statute. As stated in G.L. c. 268, § 6, "whoever shall wilfully make false report to the department of public utilities . . . or who before any such department, board or commissioner, shall testify or affirm falsely to any material fact in any matter wherein an oath or affirmation is required or authorized, or who shall make any false entry or memorandum upon any book, report, paper or statement of any company making report to any of the said departments or board or said commissioner, with intent to deceive the department or board or commissioner, or any agent appointed to examine the affairs of any such company, or to deceive the stockholders or any officer of any such company, or to injure or defraud any such company, and any persons who with like intent aids or abets another in any violation of this section shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than one year, or both such fine and imprisonment."

is warranted. Using the Department's standards, the Administrator will determine whether part or all of the ACA warrants protective treatment.

E. Reservation Periods

Commenters took differing positions with regard to the Department's proposal to allow various reservation periods and a number of extensions. Some commenters supported the Department's proposed reservation periods, others recommended that each reservation period be matched to the timelines in the interconnection process, and other commenters re-proposed the timelines from the comments of the Joint Proponents (My Generation Comments at 4; Distribution Companies Comments at 5; CLC and CVEC Reply Comments at 1-3). In addition, one commenter proposed that the System of Assurance include an additional extension for a fee (CLC and CVEC Comments at 13-14; CLC and CVEC Reply Comments at 1-2).

The purpose of reservation periods and extensions is to allow viable projects to progress to completion and to remove non-viable projects to make room for others. While we recognize that the timelines in the System of Assurance do not align with the current interconnection timelines, we have not been persuaded that the interconnection timelines should be replicated here. In addition, the Department currently has an open proceeding on the interconnection process, Investigation Into Distributed Generation Interconnection, D.P.U. 11-75, which could result in adjustments to the current interconnection timelines.

Because the commenters have not persuaded us to change our proposed reservation periods or extensions, with some limited exceptions,[17] we adopt them as proposed.

F. Public Facilities and Special Public Facilities

One commenter asserted that the definitions of Public Facility and Special Public Facility are redundant and confusing (CLC and CVEC Comments at 6-7; CLC and CVEC Reply Comments at 7-8). We disagree. Because Special Public Facilities are a subset of Public Facilities, in order to qualify as a Special Public Facility an applicant also must meet all of the requirements for Public Facilities. In addition, one commenter recommended that the proposed definition of Special Public Facilities be expanded to include municipalities or other governmental entities that plan to operate net metering facilities in addition to those that plan to own them (CLC and CVEC Comments at 6-7; CLC and CVEC Reply Comments at 7-8). However, the Special Public Facilities category was designed for the special circumstances of a municipality or other governmental entity that seeks to own a net metering facility, which has been described as a substantial undertaking and commitment of public resources. We are unconvinced that merely operating a facility is a sufficiently substantial undertaking to warrant

[17] Palmer Capital noted three implementation issues posed by our proposed reservation periods and extensions: (1) because the duration of a legal challenge could be shorter than six months, any extension should end as soon as the legal challenge is resolved; (2) an extension based on a legal challenge should be available at any time during the initial or extended reservation periods; and (3) any fees for an extended reservation period should not be forfeited as a result of waiting for authorization to interconnect (Palmer Capital Comments at 5-6). We agree, and to remedy and clarify these issues, we have amended the provisions of the System of Assurance, § 7(B), accordingly.

the inclusion of a municipality or other governmental entity as a Special Public Facility, and we decline to amend our proposed definition.

Some commenters asserted that the definitions of Public Facility and Special Public Facility should include Class I net metering facilities (Palmer Capital Comments at 2; CLC and CVEC Reply Comments at 7).[18] We decline to adopt this recommendation because it would be inconsistent with the express language of the statute, which defines a net metering facility of a municipality or other governmental entity as "a Class II or III net metering facility." G.L. c. 164, § 138. One commenter recommends that Special Public Facilities be limited to 15 percent of the capacity available within the public cap, as provided in the comments of the Joint Proponents (RRDC Comments at 2). While we recognize that this recommendation likely reflects a compromise among stakeholders, the Department declines to adopt it without a persuasive rationale for either the limitation itself or the determination that 15 percent is a reasonable threshold. Accordingly, we decline to amend the provision for Special Public Facilities.

G. Project Changes

In our proposed System of Assurance, the Department included several provisions to address permissible and impermissible project changes. Several commenters sought further

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[18] With regard to the definitions of Public Facilities and Special Public Facilities, Palmer Capital also sought clarification of: (1) the ability of more than one municipality or other governmental entity to participate in the development of a net metering project; and (2) the requirement that municipalities or other governmental entities serve as the Host Customer (Palmer Capital Comments at 2-3). The Department addressed both of these issues in D.P.U. 11-10-A at 22-31.

clarification of these provisions. Specifically, commenters posed questions or offered opinions about permissible project changes and the circumstances that either would require applicants to provide notice of a change to an ISA or would invalidate an ISA altogether (Distribution Companies Comments at 5-6; Distribution Companies Reply Comments at 4; Palmer Capital Comments at 5-7). In addition, commenters sought clarification of whether revising an ISA would impact an ACA, a cap allocation, and a place on the waiting list (CLC and CVEC Reply Comments at 3-4).

After considering the questions and comments, the Department finds that the provisions of the System of Assurance that address project changes require further clarification. As an initial matter, for multiple reasons, we find that an applicant must report all project changes to a Distribution Company as early as possible and to the Administrator in the project's next quarterly report. First, as a signatory to the ISA, a Distribution Company must be notified if the terms of the ISA must change or are likely to change. In addition, because project changes could affect an ACA, a cap allocation, or a place on the waiting list, an applicant must report all changes to the Administrator.

In general, if a project change will have no effect on a project's physical design or on its status or capacity within either of the net metering caps, it will be considered purely an administrative change, and can be made without altering a cap allocation or a position within the System of Assurance. In contrast, changes requiring the project to be included in a different cap (i.e., a privately-owned project obtains a public partner as a Host Customer and seeks admission to the public cap, or vice versa), will constitute a material change. An

increase in the requested capacity amount also will constitute a material change. Finally, a change to the project's physical design that could require additional engineering study or analysis by a Distribution Company may or may not constitute a material change. At a minimum, this type of project change will require a determination as to whether or not it will invalidate the ISA. As both a party to the ISA and the owner of the electric distribution system, the Distribution Company is best situated to make the determination of whether or not a project change invalidates the ISA. Accordingly, we will provide the Distribution Company up to 20 business days from the date it is notified of a project change to provide an applicant with a determination as to whether or not a project change will be inconsistent with the ISA. While the applicant is waiting for this determination, however, the applicable reservation or extension period will be suspended.

Finally, we find that the requirement to report on the existence of project changes every quarter is not unreasonably burdensome for applicants. Thus, we decline to establish provisions for a special right to "cure" an applicant's failure to provide a quarterly report. Based on the claims of commenters that a cap allocation is of fundamental importance to a net metering project, applicants should place importance on keeping the Distribution Companies and the Administrator informed of any project changes, especially material changes, which is an applicant's continuing responsibility.

H. Applications that Exceed all Remaining Net Metering Capacity

No commenters opposed the Department's proposal for a waiting list in the event that additional net metering capacity becomes available, but commenters requested a number of

clarifications regarding the waiting list. First, one commenter recommended that if a project accepts a partial cap allocation and chooses a place on the waiting list for additional capacity, the project's reservation period should not begin until the applicant has been granted the full cap allocation from the request (CLC and CVEC Comments at 11). Second, one commenter seeks clarification as to whether an applicant on the waiting list is supposed to submit with an application: (1) a fee for the full amount of the request, so that the application will be deemed complete; or (2) a partial payment for the capacity currently available, with the remaining fee to be submitted once the full cap allocation is available (CLC and CVEC Comments at 10-11). Third, one commenter seeks clarification as to whether small Class I net metering facilities must submit fees to obtain a place on the waiting list, in light of the proposal that they be exempt from application fees (Palmer Capital Comments at 7). Fourth, one commenter seeks clarification as to whether all projects on the waiting list must observe the expiration date on their ISAs (Palmer Capital Comments at 4).

As an initial matter, we agree that a reservation period will not start until an applicant has left the waiting list and received a full cap allocation. Thus, applicants will not be required to pay reservation or extension fees while they remain on the waiting list. In addition, as provided in Section 11 of the System of Assurance, small Class I net metering facilities are exempt from the reservation fees associated with Sections 5(E) and 7(B), but they are not exempt from the application fee required by Section 5(D). As such, we find that applicants for small Class I net metering facilities, like all other applicants, must submit an application fee to be placed on the waiting list. With regard to the expiration date of an ISA, we find that the

provisions of the System of Assurance should not alter each Distribution Company's applicable interconnection tariff. Accordingly, a place on the waiting list will have no bearing on whether or not an ISA will expire, and applicants bear a continuing responsibility to make sure that their ISAs, along with any other permits and certificates, do not lapse or expire.

I. Fees

In general, commenters supported the Department's approach to fees, which is to: (1) collect the cost of administering the System of Assurance from its participants; and (2) develop the fee structure after receiving bids from Administrator candidates (Attorney General Reply Comments at 3; Distribution Companies Comments at 2-3; Distribution Companies Reply Comments at 1-2; RRDC Comments at 2). One commenter opposed the Department's proposal, recommending instead that: (1) the fee schedule should include a fixed base fee of $60 as well as a scaled fee based on project size of $2 per kW; and (2) all fees should be refunded to public entity applicants for any net metering projects that are not ultimately interconnected (CLC and CVEC Comments at 11-12; CLC and CVEC Reply Comments at 5). Commenters who addressed the Department's proposal to charge small Class I projects an initial ACA fee suggested that such facilities could afford modest ACA fees and recommended some amount less than $25 (BPVS Reply Comments at 2; Attorney General Reply Comments at 2).

While we recognize that establishing a fee structure in this Order would provide certainty for potential applicants regarding the cost of seeking a cap allocation, there is no way to determine an appropriate fee structure before receiving responses to an RFP for the

Administrator. Until bids are submitted by potential candidates, the cost of administering the System of Assurance is unknown, and any fee structure that we adopted in advance would almost certainly set fees too high or too low.[19]

Also, the recommendation that fees be refunded to public facilities for any projects that are not ultimately interconnected is problematic. The fees are for the Administrator's work, which must be performed regardless of whether projects are successfully interconnected or not. If fees are refunded to some applicants but not others, the costs of administering the System of Assurance would not be equally borne by its participants, which would be unfair. Finally, to increase efficiency and minimize disputes over when an ACA is complete, we conclude that applicants must submit any associated fees to the Administrator electronically.

J. Small Class I Net Metering Facilities

In D.P.U. 11-11, at 15, the Department proposed a carve-out provision for small Class I net metering facilities. No commenter opposed the carve-out; however, some commenters sought clarification with respect to: (1) how it would be calculated; (2) whether the aggregated capacity of small Class I net metering facilities could exceed the ten percent

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[19] With regard to the proposal to establish the ACA fee for small Class I net metering facilities in advance, as stated above, now is not the appropriate time to determine fee structure. However, we note that because all small Class I net metering facilities will be included only within the private cap, there will be no need to examine their eligibility for the public cap. In addition, applicants for such facilities will all use the simplified interconnection application (and the resulting ISA), which should provide for quick review by the Administrator. Accordingly, it seems likely that there will be little time and corresponding cost associated with reviewing and approving ACAs for small Class I net metering facilities. Nonetheless, until there are bids for the position of Administrator to support this assumption, we decline to establish specific fees.

threshold; and (3) whether unused carve-out capacity could be made available to other applicants within the private cap on an incremental basis (My Generation Comments at 5; Distribution Companies Comments at 4; BPVS Reply Comments at 2; RRDC Comments at 3).

In the Department's view, the Administrator's first task will be to calculate the total remaining net metering capacity, which will include the capacity remaining within the private cap. Once the remaining net metering capacity has been calculated, an amount equal to ten percent of the capacity will be reserved for small Class I net metering facilities. This carve-out is a minimum amount of capacity to be made available to small Class I net metering facilities and not a maximum.

While one commenter comments on the potential for unused capacity within the carve-out and proposes a method by which increments of 500 kW of associated capacity could be made available to other applicants,[20] we decline to adopt this proposal for two reasons. First, the proposed increments of 500 kW would be too large for Distribution Companies with a total carve-out of less than 500 kW (Distribution Companies Reply Comments at 3). Second, the proposal is inconsistent with the intent of the carve-out. The carve-out is intended to allow for the continued development of small Class I net metering facilities. Accordingly, unused or slowly-filling capacity within the carve-out would demonstrate that the provision of reserved space for small Class I net metering facilities within the private cap was warranted.

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[20] RRDC proposes that, every six months, an additional 500 kW of unused capacity could be made available to other applicants (RRDC Comments at 3).

K. Reporting Requirements

In D.P.U. 11-11, at 5-7, the Department proposed a System of Assurance that would be voluntary for participants, and further proposed that the Distribution Companies and the Administrator would be required to provide daily reports on net metering capacity. Commenters expressed differing views on how often the amount of net metering capacity ought to be reported (Attorney General Reply Comments at 2-3; CLC and CVEC Comments at 13; CLC and CVEC Reply Comments at 5-6; Distribution Companies Comments at 5: and My Generation Comments at 4). The Distribution Companies proposed to report on installed net metering capacity within their individual service territories on a monthly basis until 80 percent of a net metering cap is reached, at which point they would begin providing weekly reports (Distribution Companies Comments at 5). One commenter recommended separate reports on installed net metering capacity within the public and private caps (CLC and CVEC Comments at 13).

If the System of Assurance were optional for its participants, daily reporting on net metering capacity by the Distribution Companies would likely be essential. As discussed in Section III.B., above, however, the System of Assurance will be mandatory for all participants that seek net metering services. Thus, applicants should be able to verify the amount of net metering capacity remaining because all projects must appear as either: (1) an operational net metering facility, which will be included in the report of aggregated capacity on the Distribution Companies' websites; or (2) a pending or granted ACA, which will be listed on the Administrator's website. In addition, the Department finds that the proposal to require the

Distribution Companies to provide monthly reports until 80 percent of their available net metering capacity has been reached, and weekly reports thereafter, is a reasonable approach, which we adopt. Further, we find that both the Distribution Companies' and the Administrator's reports should include information on both public and private net metering capacity.

L. Dispute Resolution

In the proposed System of Assurance, the Department included provisions on dispute resolution. D.P.U. 11-11, App. A at 11-12. Commenters addressed three issues related to dispute resolution, seeking clarification that: (1) an "aggrieved party" would include an applicant who was denied an allocation because the cap was full; (2) an applicant would be able to challenge the application or the cap allocation of another entity; and (3) an applicant would not lose its cap allocation or position on the waiting list as a result of participation in the dispute resolution process (CLC and CVEC Comments at 15-16; Palmer Capital Comments at 7).

The purpose of the dispute resolution process is to resolve issues that arise between an applicant and the Administrator. It is not a process for an applicant to raise broad issues within the System of Assurance nor is it a process for one applicant to bring a challenge against the ACA of another applicant. To address broad issues regarding the System of Assurance, an applicant should contact the Department. To recommend closer scrutiny of another applicant's ACA, an applicant should contact the Administrator, who will determine an appropriate course of action. We agree, however, that an applicant should not automatically

lose anything (i.e., a submission date, a cap allocation, a place on the waiting list, etc.) as a result of initiating the dispute resolution process. Accordingly, pending the outcome of the dispute resolution process, an applicant's status, submission date, and timeline will be frozen. In addition, applicants may not use the dispute resolution process as an opportunity to "cure" deficiencies within their ACA. Accordingly, a dispute will be resolved on the basis of the originally-filed ACA and new information may not be introduced.

M. Net Metering Facilities with no Excess Generation

According to one commenter, if a net metering customer never has any excess generation and only offsets his or her own electricity consumption, the associated capacity should not count toward the aggregate net metering cap because, technically, the customer is not net metering (CLC and CVEC Comments at 18-21). In contrast, another commenter contends that all net metering facilities should count toward the aggregate net metering cap, but nonetheless recognizes that if a customer never has excess generation, that customer need not take service under the net metering tariff (Distribution Companies Reply Comments at 2).

We recognize that a customer who never exports electricity is not using the utility meter's ability to "net" electricity by running the utility meter backwards and is, technically, not using the net metering function of the utility meter. Nonetheless, we find that if a customer takes service under the net metering tariff, then the capacity of the associated facility must count toward the aggregate net metering cap. Even if a customer need not take service

under the net metering tariff, it is the customer's place to choose the best tariff for his or her needs.[21]

N. Other Comments

Commenters addressed a number of other issues related to net metering that are outside the scope of the System of Assurance. The Distribution Companies claim that only a single entity should be deemed the Host Customer (Distribution Companies Reply Comments at 2-3). BPVS recommends that the Department direct the Administrator to educate prospective applicants about the System of Assurance (BPVS Reply Comments at 2). CLC and CVEC encourage the Department to solicit additional comments on the System of Assurance as a result of the issuance of updated net metering regulations in D.P.U. 11-10-A (CLC and CVEC Reply Comments at 8). Finally, Palmer Capital suggests that Section 4(A), which addresses the transitional period, should be amended to require that an applicant notify only the

[21] In addition, it is worth distinguishing between a project that never exports electricity at any time during the billing period and one that has no excess generation by the end of the billing period. If a customer's electricity generation offsets his or her consumption at all times during the billing period and never exports electricity, then the customer could take service under 220 C.M.R. § 8.00 et seq. (regulations on QFs) instead of 220 C.M.R. § 18.00 et seq. (regulations on net metering). Nonetheless, if a customer has excess generation at any point during the billing period or if his or her usage ultimately exceeds his or her generation for the billing period, then the customer would probably want to take service under either: (1) the net metering regulations; or (2) the QF regulations on systems up to 60 kW. Pursuant to 220 C.M.R. § 18.00 et seq. and 220 C.M.R. § 8.05(2)(c), only net metering customers and customers with QFs up to 60 kW may have a meter that can also run backwards. Without a meter that can run backwards, a customer could not benefit from having his or her electricity consumption "debited" from the meter as a result of his or her excess generation.

Distribution Company when the facility is ready for a witness test (Palmer Capital Comments at 3-4).

Consistent with the Department's decision in Rulemaking on Net Metering, D.P.U. 11-10-A at 24, we agree that there can be only one Host Customer per net metering facility, because there can only be a single customer of record with the Distribution Company. We also recognize that the implementation of the System of Assurance will undoubtedly require some educational support. While we decline to impose an educational obligation on the Administrator at this time, we will reconsider such obligation as needed. In addition, while we acknowledge that all aspects of net metering are interrelated, we find that the adoption of final net metering regulations do not warrant an additional round of comments on the System of Assurance. The net metering regulations and applicable tariffs establish the rules by which the Distribution Companies and the Host Customer must operate, whereas the System of Assurance is the process by which the Administrator determines whether or not a potential Host Customer is eligible for an assurance that net metering capacity is available and implements that determination. The Department has gathered substantial comments in order to make the necessary findings here, and we need not solicit additional input.

Finally, the purpose of the transition period is to allow net metering projects that are nearly complete – and not relying on an assurance of net metering – to finish the interconnection process without seeking a cap allocation through the System of Assurance. Because a witness test could trigger additional work instead of representing a final step in a project's development, it is not as useful as an endpoint for a project as a Distribution

Company's authorization to interconnect. Potential Host Customers and project developers who wish to avail themselves of the transition period should plan accordingly and give themselves adequate time to receive an authorization to interconnect from the Distribution Company.

## IV. CONCLUSION

In developing its final System of Assurance, the Department sought to provide clarity and guidance to all stakeholders regarding the issues that were raised in this proceeding. Accordingly, the Department adopts the final System of Assurance attached to this Order as Appendix A. A redlined copy is attached as Appendix B to show changes from the Department's initial proposal. The effective date of the System of Assurance is the date of this Order. See System of Assurance, § 3.

## V. ORDER

Accordingly, after due notice, comment, and consideration, it is hereby

ORDERED: That the System of Assurance of Net Metering Eligibility is adopted, effective today.

By Order of the Department,

/s/
Ann G. Berwick, Chair

/s/
Jolette A. Westbrook, Commissioner

/s/
David W. Cash, Commissioner