



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-64-A

May 19, 2016

Investigation of the Department of Public Utilities, on its own Motion, Commencing a Rulemaking pursuant to G.L. c. 164, §§ 138 and 139; G.L. c. 30A, § 2; 220 C.M.R. § 2.00 et seq.; and Executive Order 562, to Amend 220 C.M.R. § 18.00 et seq.

ORDER CLARIFYING EMERGENCY NET METERING REGULATIONS

I. INTRODUCTION

On April 11, 2016, Governor Charlie Baker signed into law Chapter 75 of the Acts of 2016, An Act Relative to Solar Energy (“Act”). Among other things, the Act requires: (1) the Department of Public Utilities (“Department”) to amend its rules and regulations implementing certain changes to the net metering provisions of G.L. c. 164, §§ 138-139; and (2) the Department of Energy Resources (“DOER”) to determine and notify the Department that the “aggregate nameplate capacity of solar net metering facilities qualified under” G.L. c. 25A, § 11F(g), is equal to or greater than 1,600 megawatts direct current (“1,600 MW threshold”). St. 2016, c. 75, §§ 3-9, 12. Upon receipt of DOER’s determination, the Act directs the Department to certify the date provided by DOER and establish a Notification Date that will trigger the implementation of Distribution Companies’ calculation of Market Net Metering Credits.

On May 11, 2016, pursuant to G.L. c. 30A, § 2 and 220 C.M.R. § 2.00 et seq., the Department commenced a rulemaking and adopted Emergency Regulations (“Emergency Net Metering Regulations”) amending 220 C.M.R. § 18.00 et seq.,¹ to implement certain changes to the net metering provisions of G.L. c. 164, §§ 138-139. St. 2016, c. 75, §§ 3-9, 12. Net Metering Rulemaking, D.P.U. 16-64 (May 11, 2016). On May 18, 2016, the Department received a letter from the Commonwealth of Massachusetts Joint Committee on Telecommunication, Utilities, and Energy (“TUE Committee”) clarifying the legislative intent regarding the Act. In its letter, the TUE Committee stated its intent that 1,600 MW of projects

¹ We refer to 220 C.M.R. § 18.00 et seq. as Net Metering Regulations.

would qualify for Net Metering Credits before the Market Net Metering Credits would take effect (TUE Committee Letter at 1). The TUE Committee states that it desires to create a seamless transition to the Market Net Metering Credit, which it suggests could happen if the Department uses the submission of an application for a cap allocation as the standard for determining project eligibility for the Market Net Metering Credit instead of the date of interconnection standard (TUE Committee Letter at 2). Further, the TUE Committee encourages the Department to establish a Notification Date as soon as possible to allow solar projects to plan accordingly (TUE Committee Letter at 2). On May 18, 2016, the Department received a letter from DOER notifying the Department of its intent to file its determination that the 1,600 MW threshold will be met on June 1, 2016, and requesting clarification of the Emergency Net Metering Regulations (DOER Letter at 1). DOER specifically seeks clarification of the Department's interpretation of its definition of Market Net Metering Credit in 220 C.M.R. § 18.02, and requests that solar facilities that receive a cap allocation prior to or on the Notification Date will receive Net Metering Credits at the level available prior to the Notification Date and that solar facilities that receive a cap allocation after the Notification Date will receive Market Net Metering Credits (DOER Letter at 2).

II. CLARIFICATION OF EMERGENCY NET METERING REGULATIONS

At this time, the Department finds it necessary to provide interim direction concerning its interpretation of the Emergency Net Metering Regulations with regard to: (a) the definition of Market Net Metering Credit; and (b) which Solar Net Metering Facilities will receive

Market Net Metering Credits after the Notification Date. The Emergency Net Metering

Regulations define Market Net Metering Credit as:

Market Net Metering Credit means a Net Metering Credit provided by a Distribution Company for the excess electricity generated and fed back to the Distribution Company by a Class I Solar Net Metering Facility, Class II Solar Net Metering Facility, Class III Solar Net Metering Facility or Solar Neighborhood Net Metering Facility that is **interconnected to a Distribution Company after the Notification Date.**

220 C.M.R. § 18.02 (emphasis added). The phrase “interconnected to a Distribution Company” before/after the Notification Date also is located in the Emergency Net Metering Regulations at 220 C.M.R. § 18.04.

It has come to the Department’s attention that the above-referenced phrase has raised concerns among solar stakeholders because interconnection is the final step in solar project development.² Certain interpretations of the phrase, “interconnected to a Distribution Company after the Notification Date,” could negatively affect projects that are presently in advanced stages of development, including those already under construction or fully financed. The Department recognizes that a Solar Net Metering Facility that obtains a cap allocation from the Massachusetts System of Assurance of Net Metering Eligibility (“System of Assurance”)³ is on the path toward interconnection. A cap allocation “means an assurance that

² The Department notes that it received letters from the Solar Energy Industries Association and the Northeast Clean Energy Council on May 12, 2016.

³ The System of Assurance is set forth in Appendix A to Net Metering, D.P.U. 11-11-A (2012).

a Host Customer will receive Net Metering Services upon a Host Customer's receipt of notice of authorization to interconnect." System of Assurance, § 3.

Regarding the Emergency Net Metering Regulations, the Department clarifies its interpretation of the phrase, "interconnected to a Distribution Company after the Notification Date," to mean all Solar Net Metering Facilities interconnected to a Distribution Company, including those Solar Net Metering Facilities that are in receipt of a cap allocation from the System of Assurance after the Notification Date, even if it is not yet interconnected to a Distribution Company. 220 C.M.R. § 18.04(3), (4), and (6). Thus, for the duration of the Emergency Net Metering Regulations, all Solar Net Metering Facilities interconnected to a Distribution Company or in receipt of a cap allocation from the System of Assurance prior to the Notification Date shall receive Net Metering Credits as defined in 220 C.M.R. § 18.04(1) and (5).

Further, the Department notes that establishing a Notification Date is a critical step to ensure a smooth transition to the Market Net Metering Credit, and should be announced in short order to allow solar project proponents to plan accordingly. However, the Department will not establish the Notification Date that will be used to delineate a timeline for when the Distribution Companies will begin to calculate Market Net Metering Credits for Solar Net Metering Facilities until after it receives notice from DOER that the 1,600 MW threshold has been reached, and the Department promulgates final regulations amending 220 C.M.R. § 18.00 et seq. ("Final Net Metering Regulations"), which will replace the

Emergency Net Metering Regulations.⁴ Therefore, the Department's interpretation of "interconnected" as provided herein will remain for the duration of the Emergency Net Metering Regulations effective period.

III. EFFECTIVE PERIOD OF CLARIFICATION

The Department's clarification of its interpretation of Market Net Metering Credit will remain in effect for a period not to exceed the effective period of the Emergency Net Metering Regulations.⁵ The Department intends to solicit comments on the Emergency Net Metering Regulations and related issues, conduct a public hearing, and promulgate Final Net Metering Regulations, which will become effective July 29, 2016. The Department's interpretation of the term "interconnected" as discussed herein is intended to be applicable to the Emergency Net Metering Regulations only.

In Net Metering Rulemaking, D.P.U. 16-64 (May 11, 2016) (Order Adopting Emergency Regulations), the Department stated that it seeks written comments on the Emergency Net Metering Regulations. The Department invites specific recommended

⁴ The TUE Committee recommends that solar projects that submit an application for a cap allocation after the Notification Date receive Market Net Metering Credits. DOER recommends that solar projects that receive a cap allocation after the Notification Date receive Market Net Metering Credits. The Department acknowledges that there is a distinction between the TUE Committee's recommendation to use the application for a cap allocation submission date and DOER's suggestion to use the cap allocation receipt date. Because the Department will not establish the Notification Date until after it promulgates Final Net Metering Regulations, the Department will consider additional public comments on the issue of cap allocation submission date versus receipt date.

⁵ The Emergency Net Metering Regulations became effective May 11, 2016, upon filing with the Secretary of the Commonwealth, and will remain in effect for a period not to exceed three months. G.L. c. 30A, § 2.

language changes to the Emergency Net Metering Regulations and seeks comment on several specified topics including: what would be a reasonable amount of time between (a) the DOER's determination that the aggregate nameplate capacity of Solar Net Metering Facilities qualified under G.L. c. 25A, § 11F(g), is equal to or greater than 1,600 MW direct current and (b) the Notification Date to be established pursuant to Department Order following receipt of the DOER's determination. D.P.U. 16-64 at 7-8. The Department encourages anyone seeking to comment on this Order to submit written comments in docket D.P.U. 16-64.⁶ There is no service list in D.P.U. 16-64. The Department will update its online File Room daily and post written comments received in D.P.U. 16-64. See <http://web1.env.state.ma.us/DPU/FileRoom/dockets/bynumber> (insert 16-64).

⁶ Written comments shall be limited in length to a maximum of twenty one-sided, double-spaced typewritten pages. Any person who desires to file written comments shall file an original and one (1) copy of such written comments with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, Boston, Massachusetts, 02110. All documents should also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dpu.efiling@state.ma.us and the hearing officer [Staci.Rubin@state.ma.us]; or (2) on a CD-ROM. The text of the e-mail or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 16-64); (2) the name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing should also include the name, title, and telephone number of a person to contact in the event of questions about the filing. Documents filed with the Department will be available for public inspection at its offices during business hours and through our website by looking up the docket by its number in the docket database at <http://web1.env.state.ma.us/DPU/FileRoom/dockets/bynumber> (insert 16-64).

IV. ORDER

Accordingly, it is

ORDERED: That the Emergency Net Metering Regulations be interpreted as provided herein until the Department issues final regulations amending 220 C.M.R. § 18.00 et seq.

By Order of the Department,

/s/
Angela M. O'Connor, Chairman

/s/
Jollette A. Westbrook, Commissioner

/s/
Robert E. Hayden, Commissioner