

## Energy and Clean Technology Alert: Massachusetts Department of Public Utilities Proposes Rules under Green Communities Act

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On March 6, 2009, the Massachusetts Department of Public Utilities (DPU) issued orders regarding net metering and long-term contracts to implement provisions of the Green Communities Act (GCA). The DPU has proposed new regulations on net metering and long-term contracts, and has opened an investigation designed to develop tariffs related to net metering. The DPU's process will create important opportunities for renewable energy investors, suppliers and consumers to define how renewable energy will be regulated, including—significantly—net metering, contracts, and tariffs. This alert will summarize upcoming comment periods, hearings, and the regulatory stakeholder processes.

### Implementing Net Metering

The GCA required the Commonwealth's investor-owned utilities to offer net metering for wind, solar, and agricultural facilities. Net metering allows consumers who own small renewable energy facilities, such as wind, solar power, or agricultural facilities, to receive retail credit for at least a portion of the electricity they generate.

As set forth in the GCA, the maximum amount of customer load that can utilize the benefits associated with net metering is limited to 1% of each utility's peak load. The GCA established three separate categories of net-metering facilities:

Class I facilities are generally defined as systems up to 60 kW in capacity.

Class II facilities are generally defined as systems greater than 60 kW and up to 1 MW in capacity that generate electricity from agricultural products, solar energy, or wind energy.

Class III facilities are generally defined as systems greater than 1 MW and up to 2 MW in capacity that generate electricity from agricultural products, solar energy, or wind energy. Although municipal utilities are not obligated to offer net metering, they may do so voluntarily.

### Proposed Regulations

Under the GCA, the DPU was required to amend the net-metering regulations by, among other things:

expanding the net-metering eligibility requirements to include wind, solar, and agricultural facilities with an output of 60 kW to 2 MW; and adding a new category of net-metering eligibility for neighborhoods.

On October 30, 2008, the DPU held a technical conference to solicit feedback on how best to carry out its net-metering mandate under the GCA.

As a result of the feedback received at the technical conference, the proposed regulations include several specific details on the net-metering program, including:

limiting the definition of "neighborhood" to the boundaries of a municipality;

clarifying that neighborhood net-metering credits will be calculated based on the residential rate class applicable to at least one of the residential customers participating in the neighborhood net-metering facility;

requiring distribution companies to track participation and trends in net metering through reports; and

explaining that renewable energy credits associated with the generation of a net-metering facility are the property of the owner of the facility.

Overall, the proposed net-metering regulations offer significant financial incentives for the development and installation of eligible renewable facilities as standalone or neighborhood projects. Stakeholder participation in and comments on the proposed plan will be crucial to retain and/or expand these opportunities.

To provide opportunity for comment on the proposed regulations, the DPU will conduct a public hearing on Monday, April 27, 2009 from 10:00 am to 5:00 pm at the Division of Insurance Hearing Room, Fifth Floor, One South Station, Boston, Massachusetts. Persons who wish to submit comments prior to the public hearing must file the comments no later than 5:00 pm on Tuesday, April 14, 2009.

### Investigation into Model Tariff

In addition to the proposed regulations, the DPU plans to establish additional details associated with the provision of net-metering services through DPU-approved tariffs. The DPU recognizes that the proposed regulations cannot address every aspect of net metering, and therefore the tariffs will provide additional flexibility to address the challenges that will arise in the implementation process. The goal of the DPU is to develop a model net-metering tariff that will set forth the rights and obligations of distribution companies and customers.

Specifically, the DPU anticipates that the model net-metering tariff will address the following topics, and is seeking input on the terms and conditions of each of these subjects:

procedure for requesting net-metering services;

information that distribution companies may require in a request for net-metering services;

qualifications for neighborhood net-metering facilities;

the manner in which distribution companies process requests for net-metering services (including a timeline);

metering and technical requirements;

administration of net-metering credits, including the calculation, allocation, designation, billing, and purchase of net-metering credits;

calculation and recovery of revenue losses attributable to net metering;

termination of net-metering services; and

closure of tariff to new customers when 1% limit is reached.

The model tariff will be developed through a stakeholder process. The first part of this process involves distribution companies working together to file a single proposed net-metering model tariff with the DPU on March 27, 2009. The next phase of the stakeholder process will be a technical conference to discuss the model tariff, which will be held by the DPU on Thursday, April 7, 2009 at 10:00 am at the Division of Insurance Hearing Room, Fifth Floor, One South Station, Boston, Massachusetts.

### Implementing Long-Term Contracts for Renewable Energy

The GCA required the DPU to adopt rules and regulations necessary to implement provisions relating to long-term contracts between electric distribution companies and renewable energy project developers. The DPU is responsible for reviewing a range of factors, including price, when reviewing such long-term contracts. The recent order includes proposed regulations governing the long-term contracts designed to facilitate the financing of renewable energy generation in Massachusetts.

Under the proposed regulations, distribution companies are required to solicit bids for long-term contracts from renewable energy developers. The Department of Energy Resources (DOER) will oversee the solicitation process. A distribution company may participate in the DOER-administered solicitation process, but is free to utilize other solicitation methods, including public solicitations or individual negotiations. A distribution company's method of solicitation will also be subject to review and approval by the DPU. The proposed regulations further clarify that a distribution company's obligation to enter into long-term contracts is separate and distinct from its obligation to meet RPS requirements.

As proposed, long-term contracts must be with renewable energy generation sources that:

- have a commercial operation date, as verified by DOER, on or after January 1, 2008;
- are qualified to participate in the RPS program;
- are qualified to sell renewable energy credits;
- enhance electricity reliability;
- contribute to moderating system peak load requirements;
- are cost effective to ratepayers; and
- are a cost-effective mechanism for procuring renewable energy on a long-term basis.

The proposed criteria set forth the fundamental requirements of every contract and as such they should be carefully reviewed by interested stakeholders. The DPU's regulatory process creates an important opportunity to offer support, raise objections, and/or suggest clarifications with respect to the requirements for, and the review and approval of, long-term contracts for renewable energy facilities in the Commonwealth.

To provide opportunity for comment on the long-term contract proposed regulations, the DPU is holding a public hearing on Tuesday, April 28, 2009 at 10:00 am at the DPU's offices, One South Station, Second Floor, Boston, Massachusetts. The DPU will accept written comments prior to the public hearing, but they must be submitted no later than 5:00 pm on April 14, 2009.

## Conclusion

The upcoming hearings to discuss the proposed regulations and the ongoing investigation present a significant opportunity for companies and investors in the renewable energy industry to influence state rules on net metering and long-term contracts. Mintz Levin and ML Strategies can provide additional information regarding the DPU's rulemaking authority under the Green Communities Act and guidance on how best to participate in the forthcoming regulatory process.

*If you have any questions about the new regulations or the regulatory process, please call your Mintz Levin service professional or any of those listed below.*

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