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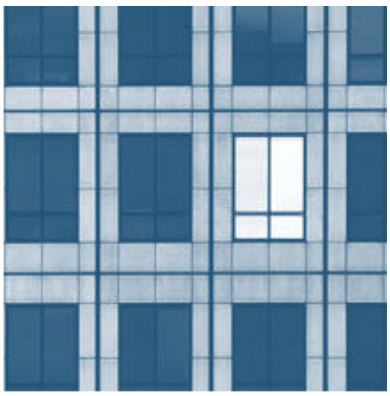
On the Subject



Energy & Commodities Advisory

June 17, 2010

The Department of Public Utilities reverses the geographic limitation that required electric distribution companies to enter into long-term contracts for renewable energy or renewable credits generated within Massachusetts's borders.

Massachusetts Department of Public Utilities Adopts Emergency Regulations with Regard to Long-Term Renewable Energy Contracts

The Department of Public Utilities (DPU) issued an order and emergency regulations on June 9 in DPU 10-58 that eliminate the geographic limitation on the requirement that electric distribution companies solicit proposals and sign long-term contracts to facilitate renewable energy generation within Massachusetts's borders. The in-state limitation originated in section 83 of the Green Communities Act, which was passed by the Massachusetts Legislature in July 2008. The Act requires each distribution company to solicit proposals twice over a five-year period and then enter into cost-effective long-term contracts to facilitate the financing of renewable energy generation within the state's borders, including state waters or adjacent federal waters. DPU and the Department of Energy Resources (DOER) issued regulations consistent with the Act at 220 CMR 17.00 and 225 CMR 18.00, respectively.

While the in-state requirement of the Act has been suspended, all other portions of it remain in effect. Electric distribution companies must still solicit proposals for long-term contracts with renewable energy developers at least twice over the five-year period from July 1, 2009 to June 30, 2014. Long-term contracts are defined as between ten and fifteen years and may be for energy, renewable energy certificates or both.

TransCanada Lawsuit

The reversal by DPU follows a lawsuit filed by TransCanada Power Marketing in U.S. District Court in Massachusetts in April 2010. TransCanada claimed that the in-state limitation discriminated against out-of-state renewable energy producers in violation of the Commerce Clause of the US Constitution. TransCanada argued that the in-state limitation, which is contained in the Act, the associated regulations and a Request for Proposals (RFP) issued jointly by several electric distribution companies for 750,000 megawatt-hours of renewable energy from new in-state projects, prevents it from bidding on long-term contracts by offering renewable energy generated out-of-state, particularly from its Kibby Wind project in Maine. TransCanada also claimed that the in-state requirement would harm Massachusetts consumers by decreasing competition and thereby increasing prices for renewable energy.

TransCanada's lawsuit also challenged Massachusetts's new "solar carve-out" program that requires electric distribution companies to hold Solar Renewable Energy Credits (SRECs). SRECs can be produced only by in-state solar facilities. Claims relating to the solar carve-out program were settled in May. The key piece of the settlement agreement was that the Alternative Compliance Payment, which electric companies must pay if they fail to hold the required amount of SRECs, was lowered significantly.

Effects on Future Long-Term Contracts

Electric distribution companies that participated in the RFP, which was issued in January, had expected to execute long-term contracts by July 21. However, the emergency regulations require that the RFP be reopened to allow for bids from developers with proposals for out-of-state projects. According to the original RFP, bids would be ranked against each other with eighty percent of the ranking based on price and the remaining twenty percent based on factors such as project siting, operational viability, financing and experience of the project team. Developers with out-of-state projects now have an opportunity to enter the Massachusetts market, particularly if their projects are less expensive than in-state projects.

The emergency regulations could also affect the Cape Wind long-term power purchase agreement which was submitted to DPU for its approval on May 10 and now will need to comply with the

emergency order and regulations. The key factors listed in the regulation are that the project must provide enhanced electricity reliability within Massachusetts, contribute to moderating system peak load requirements, be cost-effective to in-state ratepayers over the term of the contract, create additional employment where feasible and be a cost-effective mechanism for procuring renewable energy on a long-term basis. Prior to the emergency order, DPU would have compared the cost-effectiveness of the agreement only to other Massachusetts projects. However, DPU will now have to evaluate whether or not Cape Wind is cost-effective relative to out-of-state projects as well.

Public Comments

The Department will hold a public hearing on the emergency regulations on July 15 at 10 a.m. at its offices in Boston. Written comments are also due on July 15.

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