



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 11-10

July 22, 2011

Order Opening a Rulemaking pursuant to G.L. c. 30A, §2, and 220 C.M.R. §2.00 et seq. to Amend 220 C.M.R. § 18.00 et seq. by Implementing the Net Metering Provisions of 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, St. 2010, c. 359, §§ 25-30.

ORDER OPENING RULEMAKING

I. INTRODUCTION

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 the Department of Public Utilities (“Department”) to adopt rules and regulations implementing certain changes to the net metering provisions of G.L. c. 164, §§138 and 139. St. 2010, c. 359, §§ 25-30. The Department institutes this rulemaking for the purpose of implementing the Act’s net metering provisions.

II. PROPOSED REGULATIONS

A. Introduction

To implement the net metering provisions of the Act, the Department proposes revisions to the regulations contained in 220 C.M.R. § 18.00 et seq.¹ The proposed regulations are attached to this Order as Appendix A.² The proposed regulations implement all changes to the provision of net metering in the language of the Act. Below, we discuss how the proposed regulations will implement the amendments to G.L. c. 164, §§ 138 and 139.

¹ Net metering is available in the Commonwealth pursuant to: (1) 220 C.M.R. § 8.00 et seq., Sales of Electricity by Qualifying Facilities and On-site Generating Facilities to Distribution Companies, and Sales of Electricity by Distribution Companies to Qualifying Facilities and On-site Generating Facilities; (2) 220 C.M.R. § 11.00 et seq., Rules Governing the Restructuring of the Electric Industry; and (3) 220 C.M.R. § 18.00 et seq. For additional procedural history on net metering regulations, see Net Metering Rulemaking, D.P.U. 08-75, at 1-2 (2009).

² A redlined version identifying the proposed changes is attached as Appendix B.

B. Amendments to G.L. c. 164, § 138

The Act changes several aspects of G.L. c. 164, § 138. St. 2010, c. 359, §§ 25-27. To incorporate these changes, the proposed regulations now define a “Net Metering Facility of a Municipality or Other Governmental Entity” as “a Class II or III net metering facility: (1) that is owned or operated by a municipality or other governmental entity; or (2) of which the municipality or other governmental entity is assigned 100 [percent] of the output” (Apps. A and B, § 18.02). In addition, the proposed regulations amend the definitions of “Class II Net Metering Facility” and “Class III Net Metering Facility” to include a Net Metering Facility of a Municipality or Other Governmental Entity (Apps. A and B, § 18.02). Finally, the proposed regulations also clarify the appropriate calculation of net metering credits for a Net Metering Facility of a Municipality or Other Governmental Entity (Apps. A and B, § 18.04(1)).

While the Department has employed the language of the Act for revising 220 C.M.R. § 18.00 et seq., we seek comment on one definition that will require further clarification. With regard to the definition of “Net Metering Facility of a Municipality or Other Governmental Entity means a Class II or III Net Metering Facility . . . of which the municipality or other governmental entity is assigned 100 percent of the output,” the Department interprets this provision to require that the municipality or other governmental entity receive 100 percent of the benefits provided by the electricity output of the Class II or Class III net metering facility (see Apps. A and B, § 18.02). In the Department’s view, the electricity output of a Class II or Class III net metering facility provides two types of benefits: (1) the electricity output that is used on-site and reduces the metered consumption of the Host

Customer;³ and (2) the net metering credits that are calculated based on the electricity output that exceeds the Host Customer's consumption. As such, the Department infers that to receive 100 percent of these benefits, a municipality or other governmental entity must: (1) be the Host Customer; and (2) assign, if applicable, all net metering credits to accounts of the municipality or other governmental entity. The Department seeks public comment on whether this or any other definition related to the net metering provisions of the Act requires clarification.

C. Amendments to G.L. c. 164, § 139

The Act also changes several aspects of G.L. c. 164, § 139. St. 2010, c. 359, §§ 28-30. Consistent with the Act, the proposed regulations include new limits on the aggregate capacity of net metering facilities, creating one limit for Net Metering Facilities of a Municipality or Other Governmental Entity and another limit for all other net metering facilities (Apps. A and B, §§ 18.07(1)(a-b)). Net Metering Facilities of a Municipality or Other Governmental Entity are limited to two percent of an electric distribution company's historical peak load, and all other net metering facilities are limited to one percent of historical peak load (Apps. A and B, §§ 18.07(1)(a-b)). In addition, the proposed regulations now limit the amount of generating

³ Pursuant to 220 C.M.R. § 18.02, a "Host Customer" means a customer with a net metering facility that generates electricity on the customer's side of the meter. See also Rulemaking on Net Metering, D.P.U. 08-75-A at 4-7 (2009).

capacity eligible for Net Metering Facilities of a Municipality or Other Governmental Entity to ten megawatts (“MW”) (Apps. A and B, § 18.07(2)).⁴

In addition, the Act directs the Department to provide a system of assurance of eligibility for net metering. St. 2010, c. 359, § 30. The Department is required to adopt such a system for Net Metering Facilities of a Municipality or Other Governmental Entity, and it is authorized to adopt such a system for all other facilities. St. 2010, c. 359, § 30. The Department has been exploring the development and implementation of a system of assurance of eligibility for net metering through a stakeholder process in a separately docketed proceeding.⁵ See Inquiry into Net Metering and Interconnection of Distributed Generation, D.P.U. 11-11. Substantial remarks, written comments, and proposals have been offered by participants in that proceeding. The Department expects to continue developing its proposed system of assurance of eligibility for net metering in D.P.U. 11-11, in addition to addressing other topics raised by stakeholders, and will not address these issues in this rulemaking proceeding.

D. Clarifications on Allocation of Credits and Current Specifications

The Department proposes additional clarifications to 220 C.M.R. § 18.00 et seq. that are not directly related to changes required by the Act. First, the proposed regulations now clarify that Host Customers may allocate net metering credits generated by any type of net metering

⁴ The limit for all other facilities’ generating capacity eligible for net metering is two MW. 220 C.M.R. § 18.02 (definition of Class III Net Metering Facility).

⁵ Technical conferences were held by the Department on February 14, March 23, April 25, and May 16, 2011.

facility (Apps. A and B, §18.05). In addition, the proposed regulations clarify that capacity and energy are measured in alternating current (“AC”), not direct current (“DC”) except where otherwise specified, which is consistent with the configuration of the electric distribution system that operates in AC (Apps. A and B, § 18.09(6)). Finally, the proposed regulations clarify that, for the purpose of calculating the aggregate capacity of all net metering facilities, the capacity for all net metering facilities that are not solar facilities is the “nameplate rating” (Apps. A and B, § 18.07(4)(b)). The Department expects that these clarifications will assist with the public’s understanding of its net metering regulations and with the electric distribution companies’ evaluation of interconnection applications for net metering facilities.

III. SOLICITATION OF COMMENTS

To provide opportunity for comment on the proposed regulations, the Department will conduct a public hearing pursuant to G.L. c. 30A, §2, and 220 C.M.R. §2.05. The hearing will take place on **Tuesday, September 6, 2011**, beginning at 10:00 a.m., at the Department’s offices, One South Station, 5th Floor, Boston, Massachusetts, 02110.

Interested persons may present facts, opinions, or arguments relating to the proposed regulations at the public hearing. The Department seeks initial written comments prior to the public hearing, but no later than 5:00 p.m., **Tuesday, September 6, 2011**. Following the public hearing, written reply comments must be filed no later than 5:00 p.m. on **Tuesday, September 13, 2011**.

The original of all documents (i.e., paper copy) must be filed with Mark D. Marini, Secretary, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts, 02110. In addition, three (3) paper copies of all documents filed with the Department must be sent to Laura Bickel, Hearing Officer, Department of Public Utilities, One South Station, 5th Floor, Boston, Massachusetts 02110. All documents exceeding 20 pages in length must contain an executive summary.

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 [laura.bickel@state.ma.us]; or (2) on a 3.5" disk or CD-ROM. The text of the e-mail, disk label, or CD-ROM must specify: (1) the docket number of the proceeding (D.P.U. 11-10); (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. The Department strongly encourages filers to avoid submitting scanned files but will accept them for posting when an alternative version does not exist in electronic format. Documents filed

with the Department will be available for public inspection at its offices during business hours and through its website, <http://www.mass.gov/dpu>, by accessing the File Room link.

By Order of the Department,

/s/

Ann G. Berwick, Chair

/s/

Jolette A. Westbrook, Commissioner

/s/

David W. Cash, Commissioner