



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 11-11-F

October 30, 2013

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, §§ 25-30.

ORDER ON EARLY INTERCONNECTION SERVICES AGREEMENTS

I. INTRODUCTION

On March 13, 2013, the Department of Public Utilities (“Department”) issued an Order in D.P.U. 11-75 that adopted a new model interconnection tariff. Distributed Generation Interconnection, D.P.U. 11-75-E, App. A, Uniform Standards for Interconnection of Distributed Generation (“Interconnection Tariff”) (March 13, 2013). Among other things, the Interconnection Tariff created a new designation for particular interconnection service agreements (“ISA”)¹ called the Early ISA. D.P.U. 11-75-E at n.29. In D.P.U. 11-75-E, we referred for consideration in D.P.U. 11-11 the question of whether an Early ISA would meet the “executed ISA” requirement for entrance into the System of Assurance of Net Metering Eligibility (“System of Assurance”).² D.P.U. 11-75-E at n.29, citing Net Metering and Interconnection of Distributed Generation, D.P.U. 11-11-A at 24 (2012). This Order addresses whether an executed Early ISA meets the executed ISA requirement for the System of Assurance.³

¹ An interconnection service agreement, which is executed between the electric distribution company and a prospective interconnecting customer, sets forth the terms and conditions for connecting the customer’s electric generating facility with the company’s electric power system.

² The Department created the System of Assurance: (1) to track the aggregate capacity of all net metering facilities and (2) to provide an interconnecting customer with an assurance, before beginning construction, that a facility would be eligible to receive net metering services once it is interconnected.

³ An ISA is executed when it is signed by both parties (i.e., the distribution company and the interconnecting customer). See, Net Metering and Distributed Generation, D.P.U. 11-11-A at 24 n.15 (2012). The executed ISA requirement is one of the four requirements for admission into the System of Assurance, the other three being: (1) adequate site control; (2) all necessary non-ministerial permits and approvals; and

Before the Department's 11-75-E Order, the Department did not recognize different categories or types of ISAs. For the purposes of this Order, we will refer to any non-Early ISAs as "Traditional" ISAs. There are three significant differences between an Early ISA and a Traditional ISA: (1) an Early ISA is signed at the completion of an Impact Study whereas the Traditional ISA is signed later in the process, at the completion of the Detailed Study;^{4,5} (2) an Early ISA requires the interconnecting customer to bear a plus or minus 25 percent

(3) payment of the application fee. See, D.P.U. 11-11-D, App. A. ("System of Assurance Standards") § 4(B).

⁴ An Impact Study is the engineering study conducted by the distribution company to determine the scope of the required modifications to the company's electric power system and/or the interconnecting facility to provide the requested interconnection service. Interconnection Tariff § 1.2 (Definitions). A Detailed Study is the final phase of analysis conducted by the company to determine the specifics of substantial modifications to the company's electric power system resulting in project cost estimates and a construction schedule for such modifications that will be required to provide the requested interconnection service. Interconnection Tariff § 1.2 (Definitions).

⁵ All interconnection applications that proceed through the expedited and standard processes require an Impact Study. Interconnection Tariff, §§ 3.3, 3.4. However, not all interconnection applications require an additional Detailed Study. Section 3.4 of the Interconnection Tariff states:

If the Company determines, in accordance with Good Utility Practice, that the System Modifications to the Company [electric power system] are not substantial, the Impact Study will determine the scope and cost of the modifications as defined in Section 5.0. If the Company determines, in accordance with Good Utility Practice, that the System Modifications to the Company EPS are substantial, the Impact Study will produce an estimate for the modification costs (within $\pm 25\%$) and a Detailed Study Agreement and cost for Interconnecting Customer's approval.

Accordingly, an interconnection application may or may not require a Detailed Study. An Early ISA is only an option for projects that require a Detailed Study.

range for upgrade costs,⁶ whereas the Traditional ISA has a plus or minus ten percent range for upgrade costs; and (3) an Early ISA does not include the distribution company's upgrade construction schedule while a Traditional ISA does. See D.P.U. 11-75-E at 23.

When filing an application for a cap allocation ("ACA")⁷ to the System of Assurance, the Host Customer must include an executed ISA. See, D.P.U. 11-11-D, App. A. ("System of Assurance Standards"), § 4(B) (2012). The purpose of this requirement is ensure that only projects that are at an advanced stage of development receive cap allocations. See, D.P.U. 11-11-A at 24.

On Wednesday, July 17, 2013, the Department held a technical conference focused on whether an Early ISA should satisfy the "executed ISA" requirement for filing an ACA with the System of Assurance. See, D.P.U. 11-11-D, App. A. System of Assurance Standards, § 4(B). On July 24, 2013, the Department sought written comments from interested parties on

⁶ If a distribution company determines that the interconnection of a proposed project necessitates upgrades to the distribution company's infrastructure, the interconnecting customer must pay for the required upgrades. Section 5.3 of the Interconnection Tariff states:

The Interconnecting Customer shall also be responsible for all costs reasonably incurred by [the] Company attributable to the proposed interconnection project in designing, constructing, operating and maintaining the System Modifications.

⁷ An ACA is the application that a Host Customer must complete in order to gain admission to the System of Assurance. See, System of Assurance Standards, § 3 (Definitions).

this issue, with a submission deadline of August 9, 2013, for initial comments⁸ and August 16, 2013, for reply comments.⁹

II. COMMENTS

A. Introduction

CVEC, DOER, Pope, and SEIA each took the position that an Early ISA should satisfy the executed ISA requirement (CVEC Comments at 3; DOER Comments at 1-2; Pope Comments at 1; SEIA Comments at 2-3). SunEdison stated that an Early ISA should satisfy the executed ISA requirement if it is accompanied by additional indicia that the project is at an advanced stage of development (SunEdison Comments at 1-2). The Distribution Companies took no position (Distribution Companies Comments at 1). Commenters also discussed whether allowing Early ISAs to satisfy the executed ISA requirement unfairly favors projects with Early ISAs (SunEdison Comments at 2; SEIA Comments at 4; DOER Comments at 4).

B. Should an Early ISA Satisfy the Executed ISA Requirement?

SEIA argues that an Early ISA should satisfy the executed ISA requirement for two main reasons (SEIA Comments at 2-3). First, SEIA argues that an Impact Study determines project feasibility and the Detailed Study provides no additional valuable information about a

⁸ The Department received comments from the following: Cape & Vineyard Electric Cooperative, Inc. (“CVEC”); Fitchburg Gas and Electric Light Company d/b/a Unitil, Massachusetts Electric Company and Nantucket Electric Company, each d/b/a National Grid, NSTAR Electric Company and Western Massachusetts Electric Company (collectively, the “Distribution Companies”); the Department of Energy Resources (“DOER”); Pope Energy (“Pope”); the Solar Energy Industries Association (“SEIA”); and SunEdison LLC (“SunEdison”).

⁹ The Department did not receive any reply comments.

project's feasibility (SEIA Comments at 2-3). As such, SEIA contends that the Impact Study provides all of the necessary information to determine whether the project will proceed to completion (SEIA Comments at 2-3). Second, SEIA claims that the completion of the Impact Study often concludes simultaneously with the interconnecting customer's acquisition of all the necessary non-ministerial permits¹⁰ (SEIA Comments at 2-3). SEIA states that, therefore, a cap allocation¹¹ is the last hurdle to securing project financing. (SEIA Comments at 2-3). CVEC agrees with SEIA (CVEC Comments at 3). CVEC also adds that, due to recent changes in the interconnection tariff,¹² projects with Traditional ISAs are not necessarily more advanced (i.e., further along the development process) than projects with Early ISAs (CVEC Comments at 4).

DOER states that executing an Early ISA is a significant step for a customer, because the customer commits to making payments to the distribution company to begin constructing upgrades (DOER Comments at 2). DOER argues that the customer's commitment to make

¹⁰ Non-ministerial permits are permits for which one or more officials consider(s) various factors and exercise(s) some discretion in deciding whether to issue (typically with conditions) or deny permits (e.g., include Wetlands Order of Conditions, Special Permit, Zoning Variance, Endangered Species). See Glossary of Terms, at 3, available online at <http://massaca.org/pdf/Glossary.pdf>.

¹¹ In order to receive net metering service from the distribution company, each customer must apply for -- and receive -- a cap allocation from the System of Assurance. D.P.U. 11-11-A at 18-19 (2012).

¹² The change referenced by CVEC is that projects with Traditional ISAs may opt for a payment schedule for the construction of upgrades, and that the timing of payments is likely to have an impact on the construction schedule delivered as a part of the Detailed Study (CVEC Comments at 3, citing Interconnection Tariff at § 3.4(i)).

payments provides strong evidence that the project will be completed (DOER Comments at 2). DOER concludes that because its Solar Renewable Energy Certificate (“SREC”) regulations do not make a distinction between the various forms of ISAs for SREC qualification purposes, it would provide consistency if the Department took the same approach with respect to the System of Assurance (DOER Comments at 2, citing 224 C.M.R. § 14.05(4)(k)).

SunEdison argues that Early ISAs, without additional documentation, should not satisfy the executed ISA requirement in the System of Assurance (SunEdison Comments at 1). SunEdison argues that to satisfy the executed ISA requirement, an Early ISA should be accompanied by proof of either: (1) payment in full for the Detailed Study; or (2) a 25 percent installment payment towards the estimated interconnection upgrade costs (SunEdison Comments at 1). CVEC argues against this approach, saying that it would create non-uniform standards in the different service territories for certain customers because each distribution company takes a different approach to: (1) the cost of a Detailed Study; and (2) when it provides a construction schedule to the customer (CVEC Comments at 4-5).

C. Potential Impacts on the System of Assurance

SEIA asserts that by allowing Early ISAs into the System of Assurance, the rate at which projects that will have their cap allocation revoked¹³ might increase, but the impact would be minimal (SEIA Comments at 3-4). SEIA maintains that the interconnection

¹³ A project may be removed from the System of Assurance for many reasons, such as the provision of incorrect information to the administrator of the System of Assurance. However, the immediate context refers to a project being removed from the System of Assurance because the project was not completed (i.e., operational) in the allotted reservation period and any applicable extensions. See, e.g., D.P.U. 11-11-D, App. A.

feasibility step is the Impact Study, not the Detailed Study (SEIA Comments at 3-4). DOER argues that by signing the Early ISA, a project will likely be delayed by no more than six to eight weeks as a result of the Detailed Study, and that responsible customers would take this information into consideration before applying to the System of Assurance (DOER Comments at 3-4).¹⁴

D. If an Early ISA Satisfies the Executed ISA Requirement, Will Projects with an Early ISA Have an Unfair Advantage?

SEIA argues that allowing an Early ISA to satisfy the executed ISA requirement will not create an unfair advantage, but will remove the existing disadvantage faced by projects that need a Detailed Study (SEIA Comments at 4). DOER agrees with SEIA and adds that the Interconnection Tariff allows a customer many ways to obtain an executed ISA without completing a Detailed Study, and since such ways are not considered to confer an unfair advantage, allowing an Early ISA to satisfy the executed ISA requirement also does not create an unfair advantage (DOER Comments at 4).

SunEdison responds that an immediate and unconditional recognition that Early ISAs satisfy the executed ISA requirement will penalize those project developers who, based on the existing rules, opted for the certainty of Traditional ISAs (SunEdison Comments at 2).

¹⁴ Projects that enter the System of Assurance must be built within a certain timeframe (e.g., nine months for solar). DOER argues that a responsible customer should wait to submit an application to the System of Assurance until the customer is certain that the project can be constructed within the timeframes outlined in the System of Assurance (DOER Comments at 3-4).

SunEdison worries that the potential influx of many large projects into the System of Assurance could cause the caps to become fully subscribed (SunEdison Comments at 2).

III. ANALYSIS AND FINDINGS

A. Introduction

A Host Customer must provide evidence of the following when submitting an ACA to the administrator of the System of Assurance: (1) adequate site control; (2) all necessary non-ministerial permits and approvals; (3) an executed ISA; and (4) payment of the application fee. System of Assurance Standards, § 4(B). Regarding the ISA requirement, we previously found that an “applicant [to the System of Assurance] with an executed ISA is at an advanced project stage, which makes an executed ISA an appropriate requirement for filing an [application for a cap allocation to the System of Assurance].” D.P.U. 11-11-A at 24. We now assess whether to allow an Early ISA to meet the executed ISA requirement. As we consider this issue, we address two broad concerns. First, we consider the potential effects on the System of Assurance itself of allowing projects with Early ISAs into the System of Assurance. Second, we assess whether an Early ISA provides sufficient demonstration that a project is at an advanced stage of development such that it is likely to be built.

B. Early ISAs and the System of Assurance

The System of Assurance was designed with a variety of mechanisms -- including reporting requirements, reservation periods, verification procedures, and a system of dispute resolution -- to ensure that it is comprehensive, transparent, and robust. See e.g., D.P.U. 11-11-D, App. A. at §§ 6-11. Regarding potential effects on the System of Assurance,

the commenters expressed limited concern about any potential negative impacts (DOER Comments at 3-5; SEIA Comments at 3-4). While it is not possible to perfectly predict potential future impacts, we share these commenters' comfort about the implications of Early ISAs for the integrity of the System of Assurance.

C. Early ISAs and Advanced Stage of Development

1. Introduction

The Department requires that Host Customers submit an executed ISA with their ACA. We see an executed ISA as an indicator that a project is at an advanced stage of development because the project's engineering has been finalized and approved by the distribution company. A project with a Traditional ISA has completed a significant hurdle in the development process, and is therefore likely to be built. Thus, to determine if an Early ISA should satisfy the executed ISA requirement, we consider whether a project with an Early ISA is similarly likely to be built. To make this evaluation we: (1) consider an executed ISA in the context of all of the requirements to enter the System of Assurance; and (2) compare the requirements of an Early ISA with a Traditional ISA. We discuss each in turn.

2. Other Requirements to Enter the System of Assurance

The executed ISA requirement is one of four requirements for entry into the System of Assurance. See, note 3, above. Each of the other three requirements -- adequate site control; all necessary non-ministerial permits and approvals; and payment of the application fee -- provides an indication of a project's advanced stage of development. These three components require a significant investment of time and/or resources by the Host Customer. Accordingly,

even if an Early ISA demonstrates a slightly less advanced stage of project development as compared with a Traditional ISA, we recognize that compliance with the other requirements of the System of Assurance provide additional assurance that a project is at an advanced stage of development.

3. Timing of the Detailed Study

A distribution company conducts an Impact Study to determine the impact a project may have on the distribution company's electric power system. Interconnection Tariff, §§ 1.2 (Definitions), 3.4. If, as a result of an Impact Study, a distribution company determines that a project's interconnection will require substantial distribution system upgrades, the distribution company is required to conduct a Detailed Study. See Interconnection Tariff, § 3.4. Thus, when the distribution company starts a Detailed Study, the basic scope of upgrades has already been determined by the Impact Study. See Interconnection Tariff, § 3.4. What remains to be analyzed by the distribution company in the Detailed Study is the specific equipment required for the upgrades. See Interconnection Tariff, § 1.2 (Definitions). Because the Detailed Study itself does not usually change the scope of the necessary upgrades, whether or not this study is conducted has little effect on determining whether a project will be built.

4. Range of the Cost Estimate for Upgrades

At the completion of an Impact Study, a distribution company provides a customer a cost estimate of what the customer will have to pay to modify the distribution system to accommodate the customer's project. With an Early ISA, a customer's ultimate cost responsibility is limited to plus or minus 25 percent of the estimate. See Interconnection

Tariff, § 3.4. At the completion of a Detailed Study, if the customer has not already signed an Early ISA, a distribution company provides the customer an upgrade cost estimate with a range of plus or minus ten percent. See Interconnection Tariff, § 3.4, Exhibit F § 8. Compare two hypothetical projects, one with a Traditional ISA (“Project One”) and one with an Early ISA (“Project Two”), whereby each receives an upgrade cost estimate of \$250,000; Project One at the conclusion of the Impact Study and Project Two at the conclusion of the Detailed Study. For Project One, the maximum upgrade cost responsibility is \$275,000 (\$250,000 plus ten percent of \$250,000, or \$25,000). The maximum upgrade cost responsibility for Project Two is \$312,500 (\$250,000 plus 25 percent of \$250,000, or \$62,500). In other words, the difference in maximum upgrade costs between Project One and Project Two is \$37,500 (15 percent of the \$250,000 estimate). Although this is not a nominal difference, we expect that a customer’s decision whether to build a project in most cases depends more on the estimate of upgrade costs (e.g., the \$250,000 value used in the hypothetical), than on the margin of error associated with either the Early ISA or the Traditional ISA.

5. Timing of the Delivery of the Construction Schedule

A distribution company is not required to provide an interconnecting customer with a construction schedule for distribution system upgrades until the completion of the Detailed Study. See Interconnection Tariff, § 3.4. Thus, at the time a customer signs an Early ISA, the customer does not know how long it will take the distribution company to complete the required system upgrades. Such a customer would be informed as to the basic timeframe for the distribution company to complete the required system upgrades based on (1) the scope of

necessary upgrades determined by the Impact Study; and (2) the timelines¹⁵ for the construction of specific upgrades as set forth in the Technical Standards Manual. See Distributed Generation Interconnection, D.P.U. 11-75-E at 39, citing Proposed Changes to the Uniform Standards for Interconnecting Distributed Generation in Massachusetts (“Working Group Report”) at 17-18, 30, 33. Because an interconnecting customer should have a basic understanding of the timeframe for the construction of distribution system upgrades at the time that the Impact Study is complete, we expect that the specifics of the construction schedule for distribution system upgrades will not be a determining factor as to whether a project is built.

We also note that the length of time to complete distribution system upgrades does not impact a customer’s reservation period in the System of Assurance. D.P.U. 11-11-D, App. A., § 7(B)(iv). The Extended Reservation Period Pending Authorization to Interconnect allows for a customer with a reservation in the System of Assurance to stay in the System of Assurance until the distribution company completes distribution system upgrades and the distribution company is able to provide an authorization to interconnect.

6. Conclusion

None of the aforementioned factors, individually or together, evinces a significant difference in whether a project with a Traditional ISA or an Early ISA is built. Although the Early ISA may result in some increased risk of a project not being built (as reflected in the

¹⁵ The Technical Standards Manual also establishes costs for various distribution system upgrades. See Working Group Report at 18.

higher upgrade cost range), it is not clear that a project with an Early ISA is significantly less likely to be built than a comparable project with a Traditional ISA.

All commenters but one agree that an Early ISA should satisfy the executed ISA requirement to enter the System of Assurance (CVEC Comments at 3; DOER Comments at 1-2; Pope Comments at 1; and SEIA Comments at 2-3). The common thread among these comments is that the execution of an Early ISA represents a major step in project development and, as such, provides significant assurance that the project will be built. To achieve an Early ISA, a project developer must (1) design a project that its distribution company finds to be an acceptable engineering option, and (2) commit to spend significant funds for the Detailed Study fee and for any required upgrades. With the exception of SunEdison, the commenters assert that although a project with a Traditional ISA may be somewhat more likely to be built than a project with an Early ISA, the difference is not enough to warrant excluding projects with Early ISAs from the System of Assurance. We agree and find that a project with an Early ISA has made a significant demonstration that it is likely to be built, and, thus, is at an advanced stage of development.

We decline to require supplemental information from customers with Early ISAs because such information would needlessly burden applicants, the administrator of the System of Assurance, and the distribution companies.

D. Timing to Enter the System of Assurance

1. Introduction

Although we have found that Early ISAs satisfy the executed ISA requirement, it is necessary to ensure that in implementing this finding projects with an Early ISA are not unfairly favored over projects with a Traditional ISA, or vice versa. We therefore establish: (1) the effective date for the rules established in this Order (“Effective Date” as further defined below); and (2) a transition process between the issuance of this Order and the Effective Date.

2. Effective Date for Early ISAs to Enter the System of Assurance

Projects that opted for the certainty of the Traditional ISA should not be penalized for their approach in attaining an ISA and securing entry into the System of Assurance (Sun Edison Comments at 2). Furthermore, the administrator of the System of Assurance needs sufficient time to prepare to process Early ISAs, which did not exist when the System of Assurance started accepting ACAs.¹⁶ Therefore, we will not allow projects that elect Early ISAs into the System of Assurance immediately. Rather, we choose an appropriate date in the future, the Effective Date, on which all Early ISAs will meet the executed ISA requirement. In establishing the Effective Date, we consider when (1) all parties should be able to make an informed decision based on this Order, and (2) no party has an advantage over another party based on decisions made before the issuance of this Order. Pursuant to the Interconnection Tariff, the distribution company has 30 business days to complete a Detailed Study and an additional 15 business days to tender an ISA. See Interconnection Tariff at Table 3. We

¹⁶ The System of Assurance started accepting ACAs on January 24, 2013, and the use of Early ISAs was authorized on March 13, 2013.

therefore find that Early ISAs shall meet the executed ISA requirement for entrance into the System of Assurance 45 business days from the date of this Order, making the Effective Date January 1, 2014. A customer that opted for the Traditional ISA process should have finished its Detailed Study before the date that Early ISAs can enter the System of Assurance, thereby equalizing the interests of customers with an Early ISA and a Traditional ISA.

3. Transition Period to the Effective Date for Early ISAs to Enter the System of Assurance

The Department authorized the use of Early ISAs on March 13, 2013. See, D.P.U. 11-75-E at 32 n.29. Customers with an Early ISA executed between March 13, 2013 and the Effective Date must have a means to enter the System of Assurance. It is likely that there exist customers who opted for an Early ISA and, as of the date of this Order, have received their Detailed Study. If a distribution company has completed a Detailed Study for a project with an Early ISA, the project would fundamentally be at the same stage of development as a project with a Traditional ISA. It would be unfair to deny such a project immediate access to the System of Assurance. We expect the administrator of the System of Assurance is equipped to handle the relatively small number of anticipated projects that will be able to apply to the System of Assurance before the Effective Date. Therefore, we find that any project that has an Early ISA executed between March 13, 2013 and the Effective Date and a complete Detailed Study shall satisfy the executed ISA requirement immediately.

To date, the administrator of the System of Assurance has not accepted Early ISAs as an executed ISA. See, D.P.U. 11-75-E at 32 n.29. In order for an applicant to inform the administrator that the distribution company has completed the Detailed Study, and therefore,

that the customer can use its Early ISA to apply to the System of Assurance, the customer must submit an attestation that the customer has received written notice from the distribution company that the Detailed Study is complete.¹⁷

4. Conclusion

Accordingly, we direct the administrator of the System of Assurance to (1) immediately begin treating applications with Early ISAs and attestations of a complete Detailed Study as having met the executed ISA requirement; and (2) as of the Effective Date, January 1, 2014 to make no distinction between Early ISAs and Traditional ISAs.

¹⁷ Consistent with Section Eleven of the System of Assurance, if a customer makes a false assertion about the completion of a Detailed Study associated with an Early ISA, the administrator or Department may revoke the customer's cap allocation or place on the waiting list. In addition, false attestations are punishable under G.L. c. 268, § 6. See, e.g., D.P.U. 11-11-A at 26 n.16.

An appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of the twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. G.L. c. 25, § 5.