Net Metering in Massachusetts

Jonathan Klavens
Klavens Law Group, P.C.
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Klavens Law Group, P.C.

- Small law firm focused on clean energy ventures and projects
- Help companies, investors, public entities and nonprofits
- Provide start-up, outside general counsel, transactional, project development and regulatory services
- Bring the interdisciplinary approach this field needs by drawing on experience in corporate, energy, land use, environmental, municipal and nonprofit law

Are we there yet? (Almost)

- 7/2/08 – Green Communities Act signed
- 6/26/09 – DPU approves net metering regulations (220 CMR 18.00)
- 8/20/09 – DPU approves model net metering tariff
- 12/1/09 – Expected outside date for DPU approval of each utility's tariff

What's new?

- Maximum facility capacity - 60 kW to 2 MW
- Net metering credit – increased from wholesale rate to near-retail rate
- No expiration of unused credits
- Credits are transferable

Key Concepts

- Transition – New <u>and existing</u> interconnected facilities can apply
- System limit – Door closes at 1% of utility's highest historical peak load
- "Host Customer" – distribution company customer "with" an eligible net metering facility on the customer's side of the meter
- <u>Net</u> metering - Credits accrue for excess monthly generation
- Nature of credits – Dollar (not kWh) credits

Agricultural Net Metering Facility

- Renewable Energy facility that:
  - generates electricity
  - is operated as part of an agricultural business
  - is located on land owned or controlled by the business
  - provides energy to metered accounts of the business
- "Renewable Energy" is Class I or Class II facility under MA RPS so includes, among others:
  - Tidal energy
  - Low emission advanced biomass (e.g., anaerobic digestion)
  - NOTE: DOER, in consultation with MDAR, can add others

Class I Net Metering Facilities

- Facility type: Any (not limited to MA RPS-eligible technologies)
- Capacity: ≤ 60 kW per facility
- Credit calculation:
  - *Wind/solar/agricultural* - kWh-based default service, transmission, transition and distribution charges (DS+T+T+D)
  - *Other* – Average monthly ISO-NE clearing price
- Allocation: Only wind/solar/agricultural; to other customers of same utility and ISO-NE load zone
- Meters: If no GIS account, must report data

Class II Net Metering Facilities

- Facility type: Wind, solar or agricultural net metering facilities
- Capacity: > 60 kW and ≤ 1 MW per facility (per unit if publicly owned or operated)
- Credit calculation: DS+T+T+D charges
- Allocation: To other customers of same utility and ISO-NE load zone
- Meters: Must install revenue grade output meter

Class III Net Metering Facilities

- Facility type: Wind, solar or agricultural net metering facilities
- Capacity: > 1 MW and ≤ 2 MW per facility (per <u>unit</u> if publicly owned or operated)
- Credit calculation: DS+T+T charges (+ kWh-based distribution charges if host customer is public entity)
- Allocation: To other customers of same utility and ISO-NE load zone but distribution company can elect to buy
- Meters: Must install revenue grade output meter

Neighborhood Net Metering

- Special status “awarded” to Class I, II or III facilities that are owned by or served the needs of at least 10 residential customers in a neighborhood
- Disadvantages:
  - Restrictive ownership provisions
  - Lower credit amounts
  - Restrictive allocation provisions
- Advantages: Arcane

BOTTOM LINE: DON’T BOTHER!

Customers on Competitive Supply

Can a customer that purchase electricity from a competitive supplier (via a municipal aggregation program or independently) take advantage of net metering?

YES:

- All customers on competitive supply are still customers of a distribution company
- Default service charge component of net metering credit would still be in effect
- Open question as to which default service rate would apply

Implementation of System Limit

Will a net metering facility see its net metering credits stop or decrease when the 1% system limit is reached?

PROBABLY NOT:

- Key legislators and stakeholders apparently understood that the 1% limit would apply only to newcomers
- Uncertainty would severely undermine goal of driving development of new renewable generation
- § 1.09 of model tariff provides good comfort: tariff is closed to “new applicants” when the limit is reached

What is a "facility"?

- Not defined in the regulations
- Bigger than a "unit"
- Perhaps smaller than all generating equipment behind a single interconnection
- Can there be multiple "facilities" on the same property? Factors might include:
  - Separate interconnections?
  - Different types of facilities?
  - Separate controls/data systems?
  - Significant physical separation?
  - Separate project for other permitting/approval purposes?

What is a "unit"?

- Not defined in the regulations
- For wind, "unit" must be a turbine
- For solar, bigger than a panel?

How will the queue work?

- Not defined in the regulations or tariffs
- For new facilities, application to be a net metering facility is tied to the interconnection application process (via Schedule Z to the interconnection tariff)
- No express vested right to place in interconnection queue but no automatic loss of rights for delay
- Distribution company <u>may</u> terminate application for delay
- DPU: wait and see approach

Third Party Ownership

Can a host customer get net metering credits even if a third party owns the facility?

YES:

- Credits accrue to the host customer
- "Host Customer" is a customer that is merely "with" a behind-the-meter facility
- § 18.09(5) of regulations disclaims limitation on net metering eligibility based on third-party ownership arrangement
- DPU order says so

Stand-alone Facilities

Can the net metering facility be behind its own meter?

YES:

- The host customer must be a distribution company customer and facility must be behind the customer's meter
- BUT . . . DPU order notes that the regulations "place no restrictions on the amount or purpose of a Host Customer's consumption"
- Applicable rate may be a conundrum – consult the applicable tariff and be prepared for test cases

Ineligible Market Participants

Host customer cannot be "an electric company, generation company, aggregator, supplier, energy marketer or energy broker." Does this impact net metering?

MAYBE:

- What if a third party owner falls within one of these categories? Not an issue: third party is not the host customer.
- What if a host customer owns its own facility and wants to sell RECs? BEWARE: Likely unintended consequence but, pending clarification from DPU, retail sale of RECs may make the host customer a "generation company" and jeopardize net metering rights.

RECs

Can the facility owner retain or sell renewable energy certificates ("RECs") if the facility is a net metering facility?

YES:

- § 18.09(1) of regulations clarifies that award of net metering credits by distribution company does not mean the company owns or has right to purchase renewable energy or environmental attributes, including RECs.
- BEWARE: Likely unintended consequence but, pending clarification from DPU, <u>retail</u> sale of RECs by a host customer may make the host customer a "generation company" and jeopardize net metering rights.

Capacity Payments

Can the facility owner seek capacity payments from ISO-NE if the facility is a net metering facility?

YES . . . IF THE UTILITY ELECTS NOT TO:

- § 1.08(8) of the model net metering tariff provides that the distribution company may elect to seek capacity payments for power generated by Class II and Class III net metering facilities.
- Item H of Schedule Z says company will elect within 30 days

Federal PTC

Can the facility owner take advantage of the federal production tax credit if the facility is a net metering facility?

PROBABLY YES:

- PTC is available for kWh of renewable electricity sold to an unrelated third party
- No PTC for power used by facility owner
- Delivery of <u>excess</u> kWhs in exchange for net metering credits should constitute "sale" to the distribution company – BUT MAY NEED IRS BLESSING

Federal ITC and Cash Grant

Can the facility owner take advantage of the federal investment tax credit ("ITC") or cash grant in lieu of the ITC if the facility is a net metering facility?

PROBABLY YES:

- Read literally, the new tax code provisions allowing PTC-eligible facilities to elect instead to use the federal ITC or cash grant do NOT carry over the requirement of a sale to an unrelated third party so the ITC and cash grant should be available to owners of net metering facilities – BUT MAY NEED IRS BLESSING

How will credits be transferred?

- For intra-entity transfers, may simply involve notice to distribution company to apply credits to other meter(s)
  - Great option for municipalities
- For transfers from one customer to another, would involve a credit purchase agreement – similar in some respects to a power purchase agreement and REC purchase agreement

Regulation of Credit Sales

Do you need a license to sell net metering credits?

MAYBE:

- Retail sale of net metering credits could be considered sale of “related services” that makes the seller a “Competitive Supplier” – for which a license is required
- Related issue – sale of credits could make the seller a “Generation Company” and undermine net metering rights
- Likely unintended consequence - DPU clarification would be helpful

Resources

Please see the Massachusetts DG and Interconnection website (http://sites.google.com/site/massdgic/), developed collaboratively by the Department of Energy Resources, Renewable Energy Trust and the utilities, for links to the specific net metering and interconnection tariffs for each utility

Contact

Jonathan Klavens
Klavens Law Group, P.C.
420 Boylston Street, 5th Floor
Boston, MA 02116
(617) 266-2879
jklavens@klavenslawgroup.com
http://www.klavenslawgroup.com