July 2, 2013

Massachusetts DOER Issues Emergency Solar Regulations

On Friday, June 28, the Massachusetts Department of Energy Resources (DOER) issued immediately effective emergency regulations to expand the RPS Solar Carve-Out Program Capacity Cap. The regulations will accommodate solar projects that have not previously qualified under the cap but are demonstrably far along in the development cycle and will also allow for small projects (100 kW and under) to continue to proceed, notwithstanding the fact that the program cap of 400 MW has been reached.

DOER announced its intent to issue these emergency regulations during DOER's June 7 RPS Solar Carve-Out presentation [see Day Pitney's 6/10/13 client alert]. The emergency regulations are consistent with market expectations following that June 7 presentation.

Some of the noteworthy elements of those regulations include:

- The new Solar Carve-Out Program Capacity Cap will be the megawatt capacity of all Solar Carve-Out Renewable Generation Units that are ultimately qualified through June 30, 2014, and will be announced by DOER no later than July 31, 2014.
- The formula to determine the number of Solar Carve-Out Renewable Attributes (SRECs) a retail supplier must obtain to demonstrate compliance with the regulatory requirements will be revised to match the new Solar Carve-Out Program Capacity Cap. However, DOER will provide an exemption to the additional compliance obligation for loads under contract prior to June 28, 2013.
- A project with a rated capacity equal to or less than 100 kW (or that has qualified as a Community Solar Project under the Massachusetts Clean Energy Center's Commonwealth Solar II Rebate Program) will be provided a Statement of Qualification so long as it has received authorization to interconnect or permission to operate from the applicable local distribution company and has submitted a Statement of Qualification Application by the effective date of the next solar carve-out program established by DOER or by June 30, 2014, whichever is earlier.
- No later than July 12, 2013, DOER will publish on its website a list of all projects that are within the existing 400 MW capacity limit as well as a list of projects that have submitted a Statement of Qualification Application and are outside the 400 MW capacity limit. DOER will provide a Statement of Qualification to each project with a rated capacity greater than 100 kW that has a pending application and falls outside the 400 MW cap, provided (1) it has received a fully executed Interconnection Service Agreement from the local distribution company, dated on or before June 7, 2013, and provides DOER a copy of that agreement on or before July 5, 2013; and (2) it meets the project construction timelines described below.
- Each project with a capacity greater than 100 kW must meet the following construction timelines in order to receive a Statement of Qualification:
    - It must receive its authorization to interconnect or permission to operate from its local distribution company on or before December 31, 2013.

- A project that fails to receive its authorization to interconnect or permission to operate by December 31, 2013, will be provided an extension to obtain that authorization/permission until June 30, 2014, only if the project can demonstrate to the satisfaction of DOER that at least 50 percent of its total construction costs have been expended by December 30, 2013.
    - *Note: The June 30, 2014, deadline changes the March 30, 2014, date that was originally proposed by DOER in its June 7, 2013, announcement, providing projects an additional three months of project completion time allowance.*
- A project may receive an extension to receive its Statement of Qualification beyond the June 30, 2014, date only if it can demonstrate to DOER's satisfaction that interconnection depends only on the receipt of notice of authorization to interconnect or permission to operate from the applicable local distribution company, and receipt has been delayed either by that local distribution company or because remaining steps are required by other parties for safe and reliable interconnection.

- To the extent that the final capacity of a project as of June 28, 2013, exceeds the amount provided in the Statement of Qualification Application or the Statement of Qualification, the incremental generation in excess of that amount will not be eligible to generate SRECs.
- The effective date of the RPS qualification of any project that ultimately qualifies under this Solar Carve-Out Program shall be no later than December 31, 2013, regardless of when the project achieves commercial operation, ensuring the compliance obligation of the current Solar Carve-Out Program will not be extended by an additional year.

DOER has posted on its website?two Excel spreadsheets, one listing all projects that have been deemed qualified and are within the 400 MW capacity limit (RPS Solar Carve-Out Qualified Units) and one listing all projects that have submitted applications that are outside the 400 MW capacity limit (Pending SQAs). As discussed above, no later than July 12, 2013, DOER will post a final version of both lists, providing a final tally of projects that either have already qualified for the Solar Carve-Out Program or will be awarded a Statement of Qualification if the construction timelines described above are met.

By virtue of their nature as emergency regulations, these new rules became effective June 28. In accordance with Massachusetts law, they will remain in effect for 90 days, with an opportunity for DOER to make the regulations permanent. In its announcement corresponding to the issuance of the emergency regulations, DOER announced its intention to "soon schedule and announce a Public Hearing and comment period, in accordance with administrative procedures, and move to quickly promulgate the final regulation so as to keep the regulations in effect throughout the construction timelines and until the new Solar Carve-Out Program is commenced."

Those individuals with concern about the potential for change between the emergency regulations and the final regulations may take comfort in a statement made by DOER in its announcement of the issuance of the emergency regulations: **"Given the importance of business decisions being made expeditiously based on the rules of the Emergency Regulations, DOER recognizes the prudence of completing the regulatory process quickly and without deviation".**

As always, Day Pitney LLP will continue to stay abreast of the latest Massachusetts solar market developments and update our clients and friends.