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Massachusetts Issues Major New Solar Energy Regulations

On June 5, the Massachusetts Department of Energy Resources (DOER) issued emergency regulations to launch its next major phase of solar energy incentives in Massachusetts.[1] The DOER's new solar program, known as the Solar Massachusetts Renewable Target or "SMART," is designed to incentivize development of another 1,600 MW of solar energy in the Commonwealth.[2] Implementation of the program will commence in 2018 after additional regulatory and administrative processes are completed in 2017 to allow full implementation. SMART will succeed the current Solar Renewable Energy Certificate II (SREC-II) program and aims to provide a more cost-effective and secure long-term solar subsidy plan for the state. The DOER has provided a transition mechanism for completion of SREC-II while awaiting full implementation of the SMART program. Unlike the SREC programs, the SMART program will not provide for tradable solar energy certificates, but will use electric distribution company (EDC) tariff mechanisms to compensate eligible solar energy projects under long-term procurements. The SMART program has been designed to continue to incentivize major solar development in Massachusetts, while limiting costs compared to the previous SREC programs, and incentivizing certain types of solar projects and certain types of land use. Some of the key features of the program are summarized below.

This summary provides only a high-level overview of the complex SMART program. If you would like further information about the details of SMART, or assistance from Day Pitney with solar energy matters, please contact any of the attorneys listed on this alert.

Overview

SMART provides for Massachusetts EDCs to procure up to 1,600 MW of new solar capacity (i.e., solar generation with a commercial operation date on or after January 1, 2018), with each EDC procuring an amount proportionate to its load share. The program will use a declining block procurement mechanism, with the initial rate for projects greater than 1 MW set by a competitive RFP to be conducted by October 3, 2017, and initial rates for projects 1 MW or less set by DOER-determined indices, and then subsequent 200 MW blocks of solar capacity procured at rates that decline by 4 percent for each capacity block. EDCs will pay for both the energy value and the solar incentive, and will commit to a fixed price for a 10- or 20-year term depending on the size of the projects (10 years for smaller projects, 20 years for larger projects). Eligible projects will receive energy value compensation through net metering credits, an on-bill crediting mechanism like net metering or through a State Qualifying Facility rate. Unlike the SREC programs, which used tradable credits that were subject to price fluctuations, SMART will use a tariff procurement mechanism that will provide fixed pricing over a long term for more certain, predictable revenue streams and less financing risk.

SMART provides for different compensation rates for "stand-alone" projects (defined as facilities with no associated load other than parasitic or station load) versus "behind-the-meter" projects (any facility that does not meet the definition of stand-alone). The program also provides for higher incentive rates for smaller projects, with gradually decreasing incentives for larger projects. Additionally, SMART seeks to promote certain types of land use and certain types of off-takers from projects through a system of "adders" and "reducers" applied to the compensation of projects in the program. In the land-use category, adders would apply to building-mounted, brownfield, landfill and canopy solar facilities. In the off-taker category, adders would apply to public entity, community shared solar, low-income and low-income community shared solar facilities. SMART will also incentivize the development and deployment of energy storage devices by providing a separate adder for energy storage combined with a solar project. The maximum size for any project will be 5 MW.

As mentioned above, SMART will not be complete and implemented until sometime in 2018. In the meantime, the DOER is providing for extensions under the SREC-II program that will allow for some additional solar development under that program. The DOER has published guidelines that describe the transition and the availability of extensions of certain deadlines at reduced incentives under that program for projects that are currently qualified but have not yet secured a construction deadline extension.

For investors in and developers of solar energy and energy storage projects, certain types of landowners, and retail electricity customers, SMART will continue to provide significant incentives to pursue solar energy in Massachusetts. Day Pitney will continue to monitor the development and implementation of the SMART program and the SREC-II transition, and will provide updates as warranted.

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[1] The emergency regulations can be accessed here. The emergency regulations take effect immediately, but they can only remain in effect for three months pending a full rulemaking proceeding conducted by DOER, at which time final rules will be promulgated. The final rules will likely be very similar.

[2] The DOER's January 31, 2017 full presentation on the final SMART program design can be accessed here.

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