June 10, 2013

MA Proposes Regulations to Expand In-State Solar Generation

On June 7, the Massachusetts Department of Energy Resources (DOER) presented two proposed sets of regulations designed to further transform the solar power market in the Commonwealth. The first proposal provides relief to solar project developers caught by surprise by DOER's announcement that it had reached the 400-megawatt (MW) cap for its existing Solar Carve-Out program. The second proposal creates a new solar incentives program designed to significantly increase solar generation in the Commonwealth while gradually reducing the incentives available to developers of that generation.

Relief under Existing Cap

As we reported on May 30, last month DOER announced the 400 MW cap for its Solar Carve-Out program had been reached much sooner than anticipated. Recognizing the cap had been reached much faster than expected, DOER acknowledged some solar developers have expended significant funds to develop solar projects in Massachusetts but now may not qualify under the existing Solar Carve-Out program, resulting in substantial loss of financial incentives for solar developers. In response, DOER announced its intent to accommodate within the Solar Carve-Out program those projects that are "demonstrably well invested in the development cycle" but have not yet received the Statement of Qualification necessary to participate in the program.

Who Qualifies?

All solar generation units greater than 100 kW in capacity that have already received a Statement of Qualification or have submitted a Statement of Qualification Application that has been deemed administratively complete by DOER will qualify under the existing Solar Carve-Out program, so long as those projects continue to meet their prescribed project construction timelines.

In addition, all solar generation units greater than 100 kW in capacity that currently fall beyond the 400 MW cap and possess an executed Interconnection Service Agreement with their local electric distribution company dated on or before June 7, 2013, may be provided a Statement of Qualification under the existing Solar Carve-Out program as projects that are "demonstrably well invested in the development cycle" but only if they meet the prescribed construction timelines described below. These market participants must provide DOER with that executed Interconnection Service Agreement no later than one week from the effective date of the emergency regulations (currently unknown) or their Statement of Qualification Application will be rejected.

Last, DOER acknowledged particular concern for the small solar (100 kW or less) market sector, which has a short project development cycle, and participants in that sector are at risk for business suspension if they do not qualify under the existing Solar Carve-Out. As a result, DOER announced that all solar generation units with a nameplate capacity of 100 kW or less that have an executed Authorization to Interconnect from the local distribution company and have submitted a Statement of Qualification application prior to the effective date of the post-400 MW Solar Carve-Out program regulation (DOER's aspirational goal is December 31, 2013) will be provided a Statement of Qualification under the exiting Solar Carve-Out program.

Project Construction Timeline

As discussed above, both generation units that have Statements of Qualification under the 400 MW cap and those seeking to obtain a Statement of Qualification under the existing Solar Carve-Out program by virtue of having an executed Interconnection Service Agreement dated on or before June 7 must meet the prescribed project construction timelines in order to receive the benefits of the Solar Carve-Out program. Projects must receive an Authorization to Interconnect from the

distribution company on or before December 31, 2013. Projects that do not satisfy this deadline will be provided an extension to obtain an Authorization to Interconnect until March 31, 2014, but only if the project can demonstrate it has expended at least 50 percent of its total construction costs by December 31, 2013. Further, if a project can demonstrate either of the timelines above has been met but the project is awaiting the Authorization to Interconnect from the distribution company, and that authorization is delayed solely due to a distribution company, the Statement of Qualification will be extended indefinitely until that authorization is either received or denied.

What's Next?

In order to accommodate the number of projects that may qualify beyond the 400 MW Solar Carve-Out Program cap, DOER will increase the Solar Carve-Out compliance obligation for retail electric service providers from 400 MW total to the quantity of megawatts that ultimately qualifies under the Solar Carve-Out program as of April 1, 2014. DOER announced its intent to file the proposed emergency regulations as soon as possible, ideally no later than the end of June. By virtue of the "emergency" nature of those regulations, there will be no public hearing prior to that filing. Rather, a public hearing will be required upon the determination that these emergency regulations will be in effect for a period greater than 90 days, which is the likely outcome.

Post-400 MW Proposal

In furtherance of Governor Patrick's new goal of 1,600 MW of solar generation in the Commonwealth by 2020, DOER announced a new program to encourage steady, sustainable growth, ultimately driving the solar photovoltaic market toward cost parity with other Renewable Portfolio Standard (RPS) Class I generation technologies.

This proposed post-400 MW program (preliminarily dubbed SREC-II) will create a new, separate Solar Renewable Energy Credit (SREC) market with a corresponding compliance obligation for retail electricity suppliers and a separate Solar Credit Clearinghouse Auction. Unlike the existing Solar Carve-Out program, the financial incentives under SREC-II will adjust over time as the market grows. Further, SREC-II will differentiate incentives among solar market sectors and will establish a fixed term of 10 years for each project to be capable of producing SREC-IIs.

The most substantial change from the existing Solar Carve-out Program is the introduction of the concept of the "Adjusted SREC Factor." This Adjusted SREC Factor results in a mix of both SREC-IIs and RPS Class I RECs produced, representing each megawatt of solar generation by a project. The portion of each megawatt that results in SREC-IIs rather than Class I RECs is determined by the Adjusted SREC Factor. Each project will have the same Adjusted SREC Factor for the 10-year term of a project's participation in the SREC-II program. The Adjusted SREC Factor for new projects will decline gradually over time, using a formula that is based on the cumulative number of megawatts qualified for the SREC II program. The decline of the Adjusted SREC Factor is intended to be gradual in order to reduce financial uncertainty and avoid rapid market reactions. The Adjusted SREC Factor will additionally enable incentive differentiation across market sectors (small systems, projects located on landfills or brownfields, etc.) by providing different Adjusted SREC Factors to those sectors. DOER likely will reserve the discretion to adjust the SREC Factor to account for certain external market changes as well.

DOER plans to manage the SREC-II supply by limiting (quarterly or annually) the available megawatts of qualifications extended to certain market sectors (likely large ground-mounted arrays not located on landfills or brownfields). This managed supply will be competitively qualified based on criteria to be established by DOER, potentially including price and nonprice criteria (land use attributes, development timelines, local benefits, etc.). DOER expects this management of supply to enable a more accurate projection of SREC supply, which will allow for annual adjustment of the corresponding compliance obligation in order to better maintain market balance and avoid unfettered expansion and oversupply. Last, the alternative compliance payment (ACP) rate - the rate retail suppliers must pay for failure to obtain the requisite number of SRECs?--proposed for SREC-II will be substantially less than the one in place for the current Solar Carve - Out program ($375 vs. $523 in 2014).

As stated above, both the emergency regulations and the SREC-II program are currently only in proposal form, with no corresponding regulations yet available. Details of both may change as the Massachusetts solar marketplace continues to evolve. Day Pitney LLP will continue to stay abreast of the latest market developments and update our clients and friends.