



The Commonwealth of Massachusetts

DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 16-116

September 12, 2017

Petition of Genbright LLC for a Declaratory Order concerning Net Metering Rules and Regulations.

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I. INTRODUCTION

This matter concerns the eligibility of battery storage projects to net meter pursuant to G.L. c. 164, §§ 138-140 and 220 CMR 18.00 and interpretation of the rules and regulations pertaining to obtaining payments for capacity products associated with solar net metering facilities pursuant to Net Metering Tariff, D.P.U. 09-03-A (2009) (“2009 Order”). Under the statutory and regulatory framework in Massachusetts, net metering allows customers to generate credits for excess electricity that net metering facilities generate. To qualify for net metering services, a customer may install any type of generating facility, regardless of fuel source, as long as the facility is smaller than 60 kilowatts (“kW”). 220 CMR 18.02. Facilities of up to two megawatts (“MW”) are eligible for net metering services if they generate electricity with renewable technologies (*i.e.*, wind, solar photovoltaics, or anaerobic digestion facilities). 220 C.M.R. § 18.02. On August 24, 2012, the Department issued Net Metering, D.P.U. 11-11-C (2012), clarifying which projects are eligible for net metering and which are not. D.P.U. 11-11-C at 21-23.

On August 20, 2009, the Department issued Net Metering Tariff, D.P.U. 09-03-A (2009), allowing, but not requiring the electric distribution companies to bid the capacity of Class II and Class III net metering facilities into the Forward Capacity Market (“FCM”) administered by ISO New England Inc. (“ISO-NE”). D.P.U. 09-03-A at 18. The Department requires the electric distribution companies to use any energy and/or capacity payments to offset the total net metering recovery surcharge (“NMRS”) to be recovered from ratepayers. D.P.U. 09-03-A at 18. An electric distribution company must declare its intent

to seek capacity payments when a Host Customer applies for net metering services, and the company is then obligated to act in a commercially reasonable manner to obtain such capacity payments, which will be applied to offset any NMRS. D.P.U. 09-03-A at 19.

On July 12, 2016, Genbright LLC (“Genbright” or “Petitioner”) filed a petition (“Petition”) with the Department for a declaratory order pursuant to G.L. c. 30A § 8 and 220 CMR 2.02. Specifically, Genbright seeks a declaratory order with respect to whether Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid (“National Grid”) is complying with the Order Adopting Net Metering Tariff, D.P.U. 09-03-A (August 20, 2009) and acting in a commercially reasonable manner to obtain payments for capacity products associated with solar net metering facilities. The Department docketed this matter as D.P.U. 16-116, and on August 16, 2016, directed Genbright to issue a notice of filing and request for comments to the electronic service lists in Net Metering and Interconnection of Distributed Generation, D.P.U. 11-11 (2011) and Net Metering Rulemaking, D.P.U. 16-64 (2016). The Petitioner timely filed a return of service certifying that it complied with the notice requirements. The Department received comments from several interested stakeholders in response to the notice.¹ The Department held a public hearing on September 26, 2016. On November 9, 2016, the Department granted petitions to intervene from NSTAR Electric Company and Western Massachusetts Electric Company each d/b/a Eversource Energy (“Eversource”) and National Grid.

¹ The Department received comments from the following entities: Attorney General Maura Healey (“Attorney General”); National Grid; and Northeast Clean Energy Council (“NECEC”).

On November 4, 2016, Genbright filed a motion for leave to amend its petition and an amended petition for a declaratory order. In addition to the relief sought in the initial petition, Genbright's amended petition seeks a declaratory order that battery storage projects² are not subject to the net metering rules and regulations. Genbright filed an initial amended petition with the Department on October 11, 2016 and related motion for leave to amend on October 19, 2016, which are superseded by the Petitioner's November 4, 2016 filings. On November 9, 2016, the Department directed Genbright to issue a second notice and request for comments regarding the amended petition to the electronic service lists in D.P.U. 11-11 and D.P.U. 16-64. The Petitioner timely filed a return of service certifying that it complied with the second notice requirements.³

II. GENBRIGHT'S PETITION⁴

Genbright seeks a declaratory order with respect to National Grid complying with the 2009 Order and acting in a commercially reasonable manner to obtain payments for capacity products associated with solar net metering facilities. Specifically, the Petitioner seeks a determination from the Department that: (1) confirms that Genbright may qualify the capacity products from any solar net metering facilities to which National Grid did not assert

² The Petitioner seeks a declaratory order concerning "battery storage projects" but does not define the term.

³ All references to the Petition are to the amended petition filed on November 4, 2016.

⁴ Genbright's filing consists of its Petition, including four supporting exhibits

title during the 30-day window provided for in the Schedule Z⁵ for solar net metering facilities (“30-Day Window”) both now and in the future; (2) permits Genbright to qualify the capacity products from any solar net metering facilities to which National Grid asserted title during the 30-Day Window, but has not qualified for the eleventh Forward Capacity Auction (“FCA”) organized by ISO-NE or future ISO-NE auctions; (3) permits Genbright to qualify the capacity products from any solar net metering facilities to which National Grid has not yet asserted title during the 30-Day Window until such time as National Grid can and does qualify those capacity products; and (4) states that battery storage projects are not subject to the net metering regulations (Petition at 6).

The Petitioner states that it seeks the above determinations to reduce the harm that Genbright, host customers of solar net metering facilities, and ratepayers are experiencing as a result of National Grid’s current business practices (Petition at 4).

III. COMMENTS

A. National Grid

National Grid argues that Genbright does not have standing to claim capacity rights under Department policy or National Grid’s net metering tariff (collectively known as

⁵ Schedule Z is a part of each electric distribution company’s Standards for Interconnection of Distributed Generation (Interconnection Tariff). Schedule Z is a comprehensive application for net metering services. Schedule Z allows net metering Host Customers to allocate net metering credits to other customers located in the same distribution company territory and ISO New England Inc. load zone. See Massachusetts Electric Company and Nantucket Electric Company, M.D.P.U. No. 1320, Sheet 137; see also G.L. c. 164, §§ 139(a)(1), (b)(1); 220 C.M.R. 18.05(1).

“Capacity Rules”) because Genbright is not a host customer and has not provided additional information from a host customer authorizing Genbright to file a claim with the Department on the host customer’s behalf (National Grid Comments October 26, 2016, at 4-5; National Grid Comments December 14, 2016, at 6-7).

National Grid maintains that the Petitioner’s request should not be granted because Genbright is seeking blanket rights to assert title to unspecified capacity products from unspecified solar facilities (National Grid Comments October 26, at 6; National Grid Comments December 14, 2016, at 7-8). Furthermore, National Grid argues that it does not have enough information to determine whether Genbright’s claims are true (National Grid Comments October 26, 2016, at 7).

National Grid asserts that the Capacity Rules allow National Grid to provide its customers with both the direct and indirect benefit of capacity revenues by taking title to net metering capacity and, within its reasonable judgment, bidding it into the FCM (National Grid Comments October 26, 2016, at 8). National Grid argues that if the Department were to approve the Petitioner’s request, it would give Genbright superior rights than those of net metering customers under the Capacity Rules, at the expense of National Grid’s customers (National Grid Comments September 26, 2016, at 5; National Grid Comments October 26, 2016, at 9; National Grid Comments December 14, 2016, at 10).

In response to Genbright’s argument that National Grid is not acting in a commercially reasonable manner, National Grid argues that it has undertaken significant efforts to evaluate the risks, costs, and benefits of bidding such capacity into the FCM and

the Capacity Rules do not require National Grid to act within a set time frame (National Grid Comments September 26, 2016, at 3-4; National Grid Reply Comments October 3, 2016, at 2-3; National Grid Comments December 14, 2016, at 9-10). In response to Genbright's argument that enrolling the solar facilities into the ISO-NE FCM will be beneficial for ratepayers, National Grid argues that there is no guarantee of lower capacity prices (National Grid Comments September 26, 2016, at 5). National Grid further argues that Genbright fails to quantify or demonstrate that the relief it is seeking will result in indirect benefits to customers that outweigh the direct benefits that can be achieved by National Grid (i.e., the benefit of revenue from capacity payments to offset the cost of the net metering programs for all customers) (National Grid Comments September 26, 2016, at 5; National Grid Reply Comments October 3, 2016, at 5).

With regard to whether battery storage technology can be net metered, National Grid agrees with Genbright that the net metering regulations are irrelevant to battery storage (National Grid Comments December 14, 2016, at 12-13). However, National Grid argues that the requested relief should be rejected for lack of sufficient information (National Grid Comments December 14, 2016, at 14). National Grid states that it is not aware of any solar facilities that are co-located with battery storage to which Genbright has asserted title to the existing capacity products, and therefore argues that Genbright's requests are either projected requests, or such information was omitted from an interconnection application and/or application for net metering services (National Grid Comments October 26, 2016, at 9; National Grid Comments December 14, 2016, at 13).

B. Genbright

Genbright argues that National Grid refused to discuss the possibility of enrolling solar facilities into the eleventh FCA, which is why National Grid has not acted in a commercially reasonable manner (Genbright Reply Comments at 5).

The Petitioner further argues that National Grid mischaracterizes the relief that Petitioner is requesting; Genbright maintains that rather than requesting an exception, Genbright is asking the Department to “prevent National Grid from claiming a de facto exception to the [net metering] rules and regulations that would violate the spirit and letter of those requirements” (Genbright Reply Comments at 3).

In response to National Grid’s argument that Genbright lacks standing because it is neither a host customer nor an electric distribution company, Genbright maintains that the Department never intended to diminish the value of capacity rights by narrowly defining the term host customer (Genbright Reply Comments at 5-6).

C. NECEC

NECEC argues that National Grid’s failure to enroll solar projects into the eleventh FCA harms ratepayers by raising capacity prices (NECEC Comments at 1). NECEC requests that the Department approve Genbright’s Petition (NECEC Comments at 2).

D. Attorney General

The Attorney General states that the Department declined to address ratemaking treatment of certain FCM costs and proceeds in Massachusetts Electric Company and Nantucket Electric Company, D.P.U. 15-155 and indicated that it would address those in a

future generic proceeding (Attorney General Comments at 1). The Attorney General argues that the Department should decline to review Genbright's Petition, and, in the alternative, should discuss the FCM matters in an administrative adjudication (Attorney General Comments at 1). National Grid agrees with the Attorney General that the Department should open a broader investigation of the FCM (National Grid Comments December 14, 2016, at 11).

In response to the Attorney General's and National Grid's request to not address this Petition in a separate proceeding, Genbright argues that it is appropriate to address Genbright's request in the current docket because there will be unnecessary delays in direct and indirect benefits that would flow to ratepayers if addressed in a separate proceeding at a later date (Genbright Reply Comments at 2). Genbright argues that this Petition was noticed to the D.P.U. 11-11 and D.P.U. 16-64 electronic service lists so stakeholders and potential participants received adequate notice of the Petition (Genbright Reply Comments at 3).

IV. ANALYSIS AND FINDINGS

During the past year the Department has received numerous inquiries from net metering stakeholders via phone and email seeking clarification of whether energy storage systems are eligible to participate in the net metering program,⁶ and, through public

⁶ For example, on May 18, 2017, Tesla, Inc. ("Tesla") filed a petition with the Department pursuant to G.L. c. 30A § 8 and 220 CMR 2.08 seeking emergency declaratory relief or an advisory ruling with respect to the eligibility for net metering of certain solar power generation systems paired with battery storage, pursuant to G.L. c. 164, §§ 138-140 and 220 CMR 18.00. Specifically, Tesla sought a determination from the Department that solar power generating systems that meet the following criteria qualify as a solar net metering facility under G.L. c. 164, § 138 and

comments provided in this docket, net metering stakeholders have expressed a desire for the Department to consider allowing entities other than electric distribution companies to obtain payments for capacity products associated with solar net metering facilities. While some of the commenters in this docket argue in favor of the Department's granting Genbright's request (Genbright Reply Comments at 2-3; NECEC Comments at 2), commenters also raise a number of complex and unresolved issues surrounding the subject matter of the Petition (Attorney General Comments at 1-2; National Grid Comments September 26, 2016, at 3-5; National Grid Reply Comments October 3, 2016, at 2-3, 5, 9; National Grid Comments December 14, 2016, at 9-10, 13). In addition, the Attorney General and National Grid both suggest that the Department should consider Genbright's requests in a separate and more broad proceeding, citing to the Department's prior ruling in D.P.U. 15-155 where we declined to address ratemaking treatment of certain FCM costs and proceeds and stated that we would address those issues in a future generic proceeding (Attorney General Comments at 1; National Grid Comments December 14, 2016, at 11). D.P.U. 15-155, Interlocutory Order On Scope Of Proceeding, at 6 (February 9, 2016).

220 CMR 18.02: (1) the solar net metering facility has a nameplate capacity of 60 kW or less alternating current ("AC"); (2) the battery storage charges only from the solar net metering facility; and (3) the battery storage component of the facility does not export power to the electric grid ("Small Scale Solar & Storage Facilities") (Tesla Petition at 1). On September 12, 2017, the Department issued a limited scope advisory ruling, issued only to Tesla, offering its advisory opinion that while the general eligibility to net meter of energy storage systems paired with net metering facilities requires further investigation, in the interim, Small Scale Solar & Storage Facilities should be eligible to net meter pursuant to G.L. c. 164 §§ 138-140 and 220 CMR 18.00, subject to certain configuration conditions. Tesla, Inc., D.P.U. 17-105 at 16 (September 12, 2017).

As such, the Department finds that the quantity and range of stakeholder interest and concern in this matter warrant the Department's further consideration of the net metering rules and regulations relating to the participation of certain net metering facilities in the FCM, as well as the eligibility of energy storage systems for net metering. However, the Department also finds that several complex issues exist surrounding both matters that require additional stakeholder input and process. These issues include, but are not limited to: (1) the responsibilities of the electric distribution companies with respect to title to capacity rights and revenues from the FCM; (2) technical and definitional considerations for the eligibility of various types of energy storage systems to net meter; (3) the process surrounding compliance with the Department's Orders relating to net metering facilities paired with energy storage systems; and (4) whether the capacity of a solar net metering facility paired with an energy storage system is based on the solar facility itself or the combined capacity of the solar facility and energy storage system.

As such, in response to stakeholder inquiries, Genbright's Petition, the petition in Tesla, Inc., D.P.U. 17-105, and public comments, the Department intends to open an Inquiry on its own Motion into the eligibility of energy storage systems to net meter pursuant to G.L. c. 164, §§ 138-140 and 220 CMR 18.00, and into application of the net metering rules and regulations relating to the participation of certain net metering facilities in the FCM pursuant to Net Metering Tariff, D.P.U. 09-03-A (2009) ("Inquiry"). The Department intends to open said Inquiry to expand the process for stakeholder input and resolve additional matters

that exceed the scope of Genbright's Petition. Thus, the Department finds that it would be inefficient to resolve Genbright's Petition prior to completion of the Department's Inquiry.

V. CONCLUSION

The Department, after review, consideration, and study of the aforementioned Petition, has determined that further investigation is necessary. As such, the Department finds it necessary to suspend the review of Genbright's Petition in this docket until that investigation and the Department's findings regarding the same are concluded. Therefore, in lieu of ruling on the Petition in this docket, the Department intends to commence an Inquiry concerning the eligibility of energy storage systems to net meter pursuant to G.L. c. 164, §§ 138-140 and 220 CMR 18.00 and the application of the net metering rules and regulations relating to the participation of certain net metering facilities in the FCM pursuant to Net Metering Tariff, D.P.U. 09-03-A (2009).

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.