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MA Senate Bill Would Revise Incentives for Renewable Energy Development

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On April 5, 2012, the Massachusetts Senate unanimously passed a bill that aims to curb rising energy costs and expand renewable energy development. Senate Bill (SB) 2214, a bill "Relative to Competitively Priced Electricity in the Commonwealth," would alter existing requirements and incentives under the Green Communities Act (GCA) and other areas of state energy law. These amendments primarily impact the long-term contracting requirements of electric distribution companies for the purchase renewable energy, the net metering eligibility and tax treatment of energy generation facilities, and the treatment of hydroelectric and anaerobic digestion technologies under existing programs. The bill now moves to the House of Representatives for consideration.

Here, we summarize the Senate's most significant alterations to the requirements and opportunities for renewable energy development in Massachusetts.

Long-Term Power Purchase Agreements

Section 83 of the GCA currently requires distribution companies to obtain 3% of their total annual electricity supply from long-term power purchase agreements for renewable energy with terms of 10 to 15 years. SB 2214 would add a new Section 83A increasing the overall requirement by 4% to a total of 7% between Sections 83 and 83A. Beginning January 1, 2013, distribution companies would be required to solicit proposals for long-term contracts with terms of 10 to 20 years in order to achieve the additional 4%. The long-term contracts would have to be developed pursuant to a competitive bidding process (as opposed to the one-on-one negotiations allowed under the original Section 83) and must then be deemed "cost effective" by state utility regulators. If a distribution company determines that a contract would place an "unreasonable burden" on its balance sheet, it may decline the proposal subject to the approval of the Department of Public Utilities (DPU).

Net-Metering

Massachusetts "net metering" policy allows retail electricity customers to own certain distributed generation facilities and receive retail rates for electricity they produce in excess of what they consume. Currently, distribution companies must reserve 3% of their respective historic peak loads for net metering customers, of which 1% is reserved for private projects, and 2% for public projects. SB 2214 would double the portion of total demand eligible for net-metering credit to 6%, evenly divided between public and private projects.

SB 2214 would extend net metering eligibility to anaerobic digestion technologies and modify the treatment of Class I facilities under the capacity cap. A privately-owned Class I facility would be exempt from the cap if its nameplate capacity was less than 10 kilowatts on a single-phase circuit or 25 kilowatts on a 3-phase circuit, or if DPU determines that the facility doesn't generate more electricity than its host consumes over a calendar year.[1]

Property Taxes

Under current Massachusetts law, only a wind or solar system being utilized as an auxiliary power system for

heating purposes or that is supplying energy to an otherwise taxable property is exempt from local property taxes. SB 2214 would significantly expand the existing property tax exemption to include any Class I renewable generation facility that supplies 50% or more of its output to: (i) the municipality in which the facility is located, or (ii) to the government entity that owns the land on which the facility is located. Solar or wind powered systems that are capable of producing no more than 125% of the annual power consumption of the host property and located behind the meter serving the energy needs of the host property would also qualify for exemption. Other solar or wind powered systems that do not meet this standard could qualify for exemption if the owner makes a "payment in lieu of taxes" to the municipality where the system is located equal to 5% of its gross electricity sales, including the receipt of net metering credits.

Treatment of Hydro Power

SB 2214 would increase the capacity limitation on "low impact" hydroelectric projects for eligibility under the Renewable Portfolio Standard from 25 to 30 MWs for Class I facilities and from 5 to 30 MWs for Class II facilities. The bill would also amend the GCA to say that hydropower projects, regardless of RPS eligibility, are included among the "new, renewable and alternative energy" sources that should constitute 20% of the Commonwealth's electric load by 2020. In a similar vein, the Executive Office of Energy and Environmental Affairs would be required to issue a study in the next few years outlining the process for reactivation of pre-existing hydroelectric power sites throughout the Commonwealth.

Other Changes

The statute would also require studies of various proposals with potential impacts on the state's renewable energy policies. These include:

- bulk procurement by the state under long-term contracts of Class I renewable energy and transmission scheduling rights;
- establishment of a "clean energy performance standard;" and
- the addition of renewable thermal energy facilities to those eligible for credit under the Alternative Energy Portfolio Standard.

Mintz Levin and ML Strategies continue to track this legislation and is available to advise on its potential implications.

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Endnotes

[1] A facility's capacity as well as its technological and input requirements determines its eligibility for net metering benefits. DPU regulations currently classify net metered facilities and project proposals as follows; Class I covers facilities of 60 kW or less, Class II above 60 kW but no more than1 MW, and Class III facilities of greater than 1 MW but no more than 2 MW. For Class I facilities, any generation technology is permitted, while Class II and III facilities are restricted to wind or solar installations or RPS Class I or RPS Class II renewable sources providing energy to certain agricultural businesses.