

## LEGAL ALERT

# The Climate Continues to Improve for Energy Storage, and Energy Storage Continues to Improve the Climate

On February 1, 2019, the Massachusetts Department of Public Utilities (the “Department”) issued two Orders in D.P.U. 17-146.<sup>i</sup> Order D.P.U. 17-146-A will broaden the ability of storage, a game-changing technology, to provide still greater benefits to the owners of the facilities that deploy the technology, to electricity customers generally, to the electric distribution system, and to society at large.<sup>ii</sup> The Order [1] expands the types of Solar+Storage facilities (or “paired facilities”) that are eligible to participate in the Commonwealth’s net metering program; and [2] clarifies that paired facilities participating in net metering can participate in the Forward Capacity Market (“FCM”) administered by NE-ISO. Both questions had been pushed forward by businesses seeking to incorporate storage technologies into their customers’ energy mix. Roughly two years in the making, Friday’s action by the Department will finally provide much-needed regulatory and business certainty to developers and customers wishing to invest in storage technologies.

In January of 2017, Tesla, Inc. (“Tesla”) asked the Department to find that small net metering facilities paired with battery storage facilities, where the battery charges only from the solar facility and does not export, were eligible for net metering services pursuant to National Grid’s Net Metering Provision tariff.<sup>iii</sup> In September, 2017, the Department issued an Advisory Ruling that found that paired facilities configured as Tesla proposed are net metering eligible. The Department also indicated that it would open a docket “to investigate all potential issues related to the eligibility of net metering facilities paired with energy storage systems.”<sup>iv</sup>

Meanwhile, in July of 2016, Genbright LLC (“Genbright”) had asked the Department to order National Grid to act in a commercially reasonable manner to obtain payments for capacity products associated with Genbright’s solar net metering facilities.<sup>v</sup> In Massachusetts, electric companies may bid the capacity of net metering facilities into the FCM by asserting title to the right to seek those capacity payments. Genbright claimed the ISO-NE had disqualified most of Genbright’s facilities because of a lack of clarity as to who

had title to battery storage in a Solar+Storage facility. Genbright asked the Department to declare that battery storage projects were not subject to net metering regulations. In lieu of ruling, the Department determined it would commence an inquiry into the eligibility of energy storage systems to net meter; and the applicability of the net metering rules to the participation of certain net metering facilities in the FCM.

In October, 2017, the Department opened D.P.U. 17-146 to broadly explore the eligibility of paired systems to net meter, and the appropriate definition of energy storage systems for net metering purposes. In June of 2018, the Department broadened the scope of D.P.U. 17-146 to include an inquiry into whether the “inadvertent export” of electricity from a battery storage system would destroy the net energy metering eligibility of a paired facility configured not to export.<sup>vi</sup>

With its February 1, 2019 Order D.P.U. 17-146-A, the Department established the eligibility of certain paired systems to net meter, and clarified the net metering rules and regulations applicable to such paired systems.

With regard to the latter, the Department found that the Commonwealth’s utilities do not have exclusive title to the energy rights associated with an energy storage system that is part of a paired system. This ruling should facilitate paired systems’ participation in the FCM by clarifying that the inclusion of an energy storage system will not impair the net metering facility’s participation.

With regard to the former, the Department found that configurations [1] where the energy storage system charges only from the net metering facility and cannot export; [2] where the energy storage system charges only from the net metering facility but is programmed to allow exports; and [3] where the energy storage system charges from both the net metering facility and the electrical grid but cannot export, are all eligible to participate in net metering. The Department held that the three configurations “balance the need to safeguard against manipulation of the net metering program with the need for operational flexibility to take advantage of revenue streams associated with [storage] that could benefit the electrical grid and the Commonwealth.”<sup>vii</sup> The Department declined to make any findings with respect to the technical requirements necessary to ensure compliance with the three configurations, finding the utilities “best situated” to do so.<sup>viii</sup>

The Department was not persuaded that it should presently find net metering eligible [4] a paired system where the energy storage system is not restricted to a charging source and can export to the grid. The Department stated: “...the risk of irregularities or non-compliance with essential rules and regulations is too high for a customer to receive net metering credits for generation that does not come from an eligible net metering source.”<sup>x</sup> However, it left open the possibility that it would consider such a configuration again, “...once developers, the Distribution Companies, other stakeholders, and the Department gain experience with the deployment of paired systems.”<sup>x</sup>

Finally, the Department agreed with Tesla and others that possible inadvertent export under a non-export configuration should not affect the eligibility of paired systems to net meter. The Department also agreed with Tesla and others that it need not reinvent the wheel in order to define “inadvertent export,” and could borrow a definition used in other jurisdictions. Thus, it accepted the definition adopted by the California Public Utilities Commission: that “inadvertent export” means “the unscheduled and uncompensated export of real power from a generating facility from a limited duration;” and “limited duration” means a period of time not to exceed 30 seconds.”<sup>xi</sup>

While not going as far as some commenters would have liked, Order D.P.U. 17-146-A should go a long way towards facilitating more robust deployment of Solar+Storage, consistent with the Legislature’s intent to promote the use of energy storage systems and renewable and alternative energy in the Commonwealth.<sup>xii</sup>

Bicky Corman served as a legal consultant to Tesla in D.P.U. 17-105 and 17-146.

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<sup>i</sup> *Inquiry by the Department of Public Utilities 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 application of the net metering rules and regulations relating to the participation of certain net metering facilities in the Forward Capacity Market pursuant to Net Metering Tariff, D.P.U. 09-03-A (2009).*



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<sup>ii</sup> Order D.P.U. 17-146-B addresses the qualification and participation in the Forward Capacity Market of certain distributed generation facilities participating in the net metering and SMART programs. The Solar Massachusetts Renewable Target (“SMART”) program is the successor to the Commonwealth’s net energy metering program.

<sup>iii</sup> D.P.U. 17-05, *Petition of Tesla, Inc. for Emergency Declaratory Relief or an Advisory Ruling pursuant to G.L. c. 30A, § 8 and 220 CMR 2.02*.

<sup>iv</sup> D.P.U. 17-05, September 12, 2017 Order, p. 18.

<sup>v</sup> D.P.U. 16-116, *Petition of Genbright LLC for a Declaratory Order concerning Met Metering Rules and Regulations*, July 12, 2016 Petition.

<sup>vi</sup> See M.D.P.U. 17-146, June 19, 2018, Notice of Request for Public Comments, Q. 17, p. 5. See also, D.P.U. 17-146-A, pp. 32 – 33.

<sup>vii</sup> D.P.U. 17-146-A, p. 29.

<sup>viii</sup> *Id.* at 31.

<sup>ix</sup> *Id.* at 31.

<sup>x</sup> *Id.*

<sup>xi</sup> *Id.* at 35.

<sup>xii</sup> See *Id.* at 3, citing An Act to Promote Energy Diversity, St. 2016, c. 188, and An Act Relative to Green Communities, St. 2008, c. 169.