



# The Commonwealth of Massachusetts

## DEPARTMENT OF PUBLIC UTILITIES

D.P.U. 08-75-A

June 26, 2009

Order Instituting a Rulemaking pursuant to G.L. c. 30A, § 2 and 220 C.M.R. § 2.00 et seq. to Implement the Net Metering Provisions of An Act Relative to Green Communities, St. 2008, c. 169, § 78 and to Amend 220 C.M.R. § 8.00 et seq., Qualifying Facilities and On Site Generating Facilities, and 220 C.M.R. § 11.00 et seq., Electric Industry Restructuring.

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ORDER ADOPTING FINAL REGULATIONS

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## I. INTRODUCTION

On July 2, 2008, Governor Patrick signed into law Chapter 169 of the Acts of 2008, an Act Relative to Green Communities (“Green Communities Act”). The Green Communities Act requires the Department of Public Utilities (“Department”) to adopt rules and regulations necessary to implement provisions relating to net metering. St. 2008, c. 169, § 78. On March 6, 2009, pursuant to this directive, the Department issued an Order proposing draft regulations that implement the net metering provisions of the Green Communities Act. Order Instituting Rulemaking, D.P.U. 08-75 (March 6, 2009). With this Order, the Department adopts final regulations contained in 220 C.M.R. § 18.00 et seq., 220 C.M.R. § 8.00 et seq., and 220 C.M.R. § 11.00 et seq.<sup>1</sup>

## II. PROCEDURAL HISTORY

On March 20, 2009, the Department published notice of the proposed rulemaking in the Massachusetts Register. On April 27, 2009, the Department held a public hearing to receive comments on the proposed changes.<sup>2</sup> Initial written comments were due on April 14, 2009.<sup>3</sup>

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<sup>1</sup> These regulations are attached to the Order as Appendices A, B and C, respectively.

<sup>2</sup> The following commenters testified at the public hearing: Mary Knipe of the Wind Energy Center at UMass Amherst; Luke Hinkle; Larry Chretien of the Massachusetts Energy Consumers Alliance; Tom Michelman of Boreal Renewable Energy Development (“Boreal”); Margaret Downey of the Cape & Vineyard Electric Cooperative, Inc. (“CVEC”); Tyler Studds of the Community Wind Resource Mapping Project; Roger Borghesani of The Energy Consortium; Lynn DiTullio, Town of Whately Energy Committee member; Kevin Fox of the Interstate Renewable Energy Council (“IREC”); Dave Hebert of Gloria Spire Solar; Dick Koehler of the Falmouth Energy Committee; and Bruce Meacham of Mount Blue Farm in Norwell, Mass.

Written reply comments were due on May 4, 2009.<sup>4</sup> The Department thanks the commenters for their participation, which has assisted us in implementing the net metering provisions of the Green Communities Act in an appropriate manner.

### III. FINAL REGULATIONS

#### A. Overview

In adopting these regulations, the Department seeks to provide clarity and guidance to Distribution Companies,<sup>5</sup> Customers, renewable energy developers, and other stakeholders regarding the scope of Net Metering available pursuant to § 78 of the Green Communities Act. These regulations, however, cannot and do not address every aspect of Net Metering services

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<sup>3</sup> The following 19 commenters submitted initial written comments: (1) the Attorney General of the Commonwealth; (2) Boreal; (3) CVEC; (4) Department of Energy Resources (“DOER”); (5) IREC; (6) Klavens Law Group, P.C.; (7) Brian Kopperl, Esq.; (8) the Large Scale Retail Development Solar and Efficiency Measures Task Force (“Task Force”); (9) Massachusetts Net Metering Coalition (“Coalition”); (10) State Senators Michael Morrissey and Robert O’Leary (“State Senators”); (11) Massachusetts Electric Company and Nantucket Electric Company d/b/a/ National Grid (“National Grid”); (12) NSTAR Electric Company (“NSTAR”); (13) Palmer Capital Corporation (“Palmer”); (14) State Representatives Matthew Patrick and Cleon Turner (“State Representatives”); (15) Solar Energy Business Association of New England (“SEBANE”); (16) Solaya Energy LLC; (17) SunEdison LLC (“SunEdison”); (18) Fitchburg Gas and Electric Light Company d/b/a Until (“Unutil”); and (19) Town of Wellfleet Energy Committee (“Wellfleet Energy”).

<sup>4</sup> Written reply comments were submitted by the following ten commenters: (1) CVEC together with the Coalition (“CVEC/Coalition Reply Comments”); (2) DOER; (3) The E Cubed Company LLC; (4) IREC; (5) Massachusetts Bay Transportation Authority (“MBTA”); (6) National Grid; (7) MS Boston Seaport, LLC; (8) NSTAR; (9) Sustainable Energy Developments, Inc.; and (10) Western Massachusetts Electric Company (“WMECo”).

<sup>5</sup> Unless the context otherwise requires, capitalized terms used in this Order have the meanings provided in 220 C.M.R. § 18.00 et seq.

enabled by the Green Communities Act. The Department will address additional details associated with the provision of Net Metering services in a model Net Metering tariff, which the Department anticipates issuing shortly in the pending related docket, Net Metering Tariff, D.P.U. 09-03.

In developing these regulations, the Department considered the various, and sometimes opposing, viewpoints of the commenters. The Department's final regulations do not address every issue that the commenters, as some recommendations were related to issues outside the scope of this rulemaking; some are better addressed in the related Net Metering tariff docket; and others are not yet ripe for review.

B. Location and Metering Requirements

1. Introduction

The regulations as proposed distinguished between Class I, II, and III Net Metering Facilities and Neighborhood Net Metering in terms of location and metering requirements. First, the proposed regulations required that Class I, II, and III Net Metering Facilities generate electricity on a Customer's side of the meter, a requirement that was not placed on Neighborhood Net Metering Facilities. D.P.U. 08-75, at 4-5, Att. A, 220 C.M.R. § 18.02 (definition of term "Host Customer"). Second, the proposed regulations provided that, for Class I, II, and III Net Metering Facilities, excess generation during a billing period would be calculated as the difference of the output of a facility and the consumption of the Host Customer. D.P.U. 08-75, Att. A, 220 C.M.R. § 18.03(3). Meanwhile, for Neighborhood Net Metering Facilities, excess generation would be calculated as the difference of the output

of the facility and the consumption of the facility itself. D.P.U. 08-75, Att. A, 220 C.M.R. § 18.03(3). To satisfy this provision, the Department stated that the output of Class I, II, and III Net Metering Facilities must flow through the Host Customer's meter, while the output of Neighborhood Net Metering Facilities must flow through an independent meter.

D.P.U. 08-75, at 4-5.

## 2. Positions of the Parties

A number of commenters state that the proposed regulations inappropriately restrict the location of Class I, II, and III Net Metering Facilities. They contend that the Green Communities Act does not require Net Metering facilities to be behind a meter or to be located on a Customer's premises (CVEC Initial Comments at 5-10; CVEC/Coalition Reply Comments at 3-8; DOER Initial Comments at 1-2; Coalition Initial Comments at 1-2; Palmer Comments at 3; Tr. passim). They argue that the Legislature in enacting the Green Communities Act intended to allow stand-alone generating facilities to net meter (i.e., "virtual" Net Metering) without the requirement of on-site load, particularly with respect to municipalities and other public entities (CVEC Initial Comments at 8; Coalition Initial Comments at 1-2; CVEC/Coalition Reply Comments at 7; DOER Initial Comments at 2; Palmer Comments at 3; State Senators at 1-2; Tr. 7, 12, 16-19, 22, 25, 36-37, 39-42). They assert that any Net Metering facility with a load, no matter how small, should qualify for Net Metering services (Boreal Comments at 1; CVEC Initial Comments at 5-7; Coalition Initial

Comments at 1-2; DOER Initial Comments at 1-2; Palmer Comments at 3; State Senators at 1-2; Tr. at 36-38, 52-53, 55).<sup>6</sup>

As evidence that the Legislature intended to provide expanded Net Metering benefits to municipalities, these commenters point to the special treatment that the Green Communities Act affords governmental entities such as allowing larger Net Metering facilities and greater compensation for Net Metering credits (CVEC Initial Comments at 10; CVEC/Coalition Reply Comments at 3-8; Tr. at 39-42). In support of the ability of stand-alone generating facilities to net meter, they rely upon the Green Communities Act's definition of "customer," which includes "net metering facilities" (CVEC Initial Comments at 6-10; CVEC/Coalition Reply Comments at 3-8, DOER Initial Comments at 1-2; MBTA Comments at 1-2). These commenters acknowledge that their interpretation would essentially render neighborhood net metering superfluous (CVEC Initial Comments at 6-10; CVEC/Coalition Reply Comments at 3-8, DOER Initial Comments at 1-2; MBTA Comments at 1-2; Tr. at 16-25). They contend that any lack of clarity is a result of inexact statutory language (Tr. at 16-20, 36-37, 42-43, 49-50).

### 3. Analysis and Findings

In the final regulations, the Department eliminates the distinctions between Class I, II, and III Net Metering Facilities and Neighborhood Net Metering Facilities that existed in the

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<sup>6</sup> Other commenters agree with the metering requirement but argue that it would be reasonable to allow a minimal on-site load (Boreal Comments at 1; Palmer Comments at 3; State Senators at 1; Tr. at 36-38).

proposed regulations in terms of location and metering requirements. First, the Department revises the term “Host Customer” to require that all classes of Net Metering facilities generate electricity on the Customer’s side of the meter.<sup>7</sup> Second, the Department revises the manner in which excess generation during a billing period is calculated, so that, for all Net Metering facilities, excess generation is calculated as the difference of the output of a facility and the consumption of the Host Customer. D.P.U. 08-75, Att. A, 220 C.M.R. § 18.03(3). This requires that the output of all Net Metering facilities flow through the Host Customer’s meter. Requiring the output to flow through the Host Customer’s meter is consistent with concepts in the Green Communities Act<sup>8</sup> and with the traditional treatment of net metering facilities.<sup>9</sup>

Although the final regulations require the output of Net Metering facilities to flow through a Host Customer’s meter, consistent with comments received in this proceeding, they

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<sup>7</sup> The definition of Host Customer is set forth in Appendix A, 220 C.M.R. § 18.02.

<sup>8</sup> The Green Communities Act specifically contemplates the use of generation behind a Customer’s meter in meeting the Commonwealth’s renewable and alternative energy goals. See St. 2008, c. 169, § 116 (stating goal of using demand side resources, including “generation that is located behind a customer’s meter,” to meet at least 25 percent of Commonwealth’s electric load, including both capacity and energy, by year 2020).

<sup>9</sup> Requiring Net Metering facilities to be located behind a Customer’s meter is consistent with the way net metering has traditionally occurred in the Commonwealth. See Electric Industry Restructuring Rulemaking, D.P.U. 96-100 (1998), Att. A, 220 C.M.R. § 11.04(7)(c) (allowing certain facilities to run meter backward and receive credit in any month with a positive net difference between kilowatthours generated and consumed); see also 220 C.M.R. § 8.05(3); NSTAR Electric Company, Power Purchase Rate P-2, M.D.T.E. No. 161; Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, Qualifying Facility Power Purchase Rate P, M.D.T.E. No. 1032 C.

place no restrictions on the amount or purpose of a Host Customer's consumption. As long as (1) a person or entity satisfies the definition of a Customer, and (2) the applicable facility generates electricity on the person's or entity's side of the meter, that person or entity qualifies as a Host Customer and is eligible to receive Net Metering services from its Distribution Company. For all these reasons, the Department concludes that requiring the output of Net Metering facilities to flow through a Host Customer's meter is consistent with the Green Communities Act and provides appropriate flexibility regarding facility location.

C. Allocation of Net Metering Credits

1. Introduction

The Department's proposed regulations directed Distribution Companies to allocate Net Metering credits, as designated by a Host Customer, to other eligible Customers.<sup>10</sup>

D.P.U. 08-75, Att. A, 220 C.M.R. § 18.05. The only exception to this requirement was, in the case of Class III Net Metering Facilities, a Distribution Company could elect not to allocate Net Metering credits and instead directly pay the Host Customer. Id.

1. Positions of the Parties

The Distribution Companies oppose the requirement that they allocate Net Metering credits, arguing that the Green Communities Act tasks Customers, not the Distribution Companies, with the responsibility for allocating these credits (NSTAR Initial Comments at 2;

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<sup>10</sup> In this instance, the term "eligible Customers" refers to Customers that are located in the same Distribution Company service territory and ISO New England Inc. load zone as the Host Customer. D.P.U. 08-75, Att. A, 220 C.M.R. § 18.05.

National Grid Initial Comments at 3; Unitil Comments at 1-3; WMECo Comments at 5-6, Att. at 8, 11). In lieu of allocating Net Metering credits to other eligible Customers, the Distribution Companies propose to directly pay Host Customers, via checks, the value of the credits (National Grid Initial Comments at 3; NSTAR Initial Comments at 2; Unitil Comments at 1-2; WMECo Comments, at 5-6, Att. at 8, 11).<sup>11</sup> They contend that allowing checks to be issued is within the Department's broad authority to regulate and is consistent with the intent of the Green Communities Act (NSTAR Initial Comments at 2-4; National Grid Initial Comments at 3; Unitil Comments at 2-3).

The Distribution Companies also assert that the administrative burden and cost associated with allocating Net Metering credits are sufficient reasons to not require the allocation of credits (National Grid Initial Comments at 3; WMECo Comments at 5-6, Att. at 7-8).<sup>12</sup> To minimize the administrative burden associated with allocation, some commenters

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<sup>11</sup> Although the Green Communities Act allows Distribution Companies to issue checks for Class III Net Metering Facilities, the Distribution Companies assert that nothing prohibits them from issuing checks for Class I or II Net Metering Facilities (NSTAR Initial Comments at 2-3; National Grid Initial Comments at 3; Unitil Comments at 1-2; WMECo Comments, Att. at 10-11).

<sup>12</sup> The administrative burden and costs associated with the allocation of credits include modifications to the billing systems, management of the Customer information data base, and managing Customer inquiries and disputes regarding the credits (National Grid Initial Comments at 4; WMECo Comments at 5-6, Att. 7-8).

propose limiting the number of Customers to whom credits may be allocated (WMECo Comments, Att. at 11; SunEdison Comments at 5).<sup>13</sup>

Two commenters disagree with the Distribution Companies' legal argument against allocation, finding it is contrary to the plain language of the Green Communities Act (IREC Reply Comments at 8-9; SunEdison Comments at 4). They contend that where the Green Communities Act specifically allows Distribution Companies to purchase credits from Class III Net Metering Facilities -- but has no comparable provision for other classes -- that this exhibits a legislative intent to limit the purchase option to Class III facilities (IREC Reply Comments at 8; SunEdison Comments at 4). They also contend that the Green Communities Act unambiguously contemplates that Distribution Companies would allocate credits (IREC Reply Comments at 9; SunEdison Comments at 4-5).

## 2. Analysis and Findings

The Department disagrees with the argument put forth by the Distribution Companies that the Green Communities Act does not obligate them to allocate Net Metering credits to other Customers. Specifically, the Green Communities Act includes two provisions that refute the Distribution Companies' position. First, the Green Communities Act requires Host Customers that seek to allocate Net Metering credits to other Customers to provide Distribution Companies with "[w]ritten notice of the identities of the customers so designated and the amounts of the credits to be attributed to such customers . . . in a form as the

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<sup>13</sup> This topic will be further explored in the context of Net Metering Tariff, D.P.U. 09-03.

distribution company shall reasonably require.” G.L. c. 164, § 139(a)(1). Absent the requirement that Distribution Companies allocate Net Metering credits to other Customers, there would be no need for the Green Communities Act to include this notice requirement. Second, the Green Communities Act specifies that, with respect to Class III facilities, a “distribution company may elect not to allocate such credits and instead may purchase” them. G.L. c. 164, § 139(b)(1). It is reasonable to conclude that, if the Legislature intended to apply this same discretion to the allocation of credits from Class I and II Net Metering Facilities, it would have stated so explicitly. Furthermore, the language supports the premise that the allocation of credits by Distribution Companies is to be the standard practice, and that paying for the value of the credits is an exception. Therefore, consistent with the directives of the Green Communities Act, the Department adopts in the final regulations the requirement that Distribution Companies are to allocate Net Metering credits generated by Class I and II Net Metering Facilities.

D. Third-Party Financing or Ownership

1. Introduction

The regulations as proposed do not specifically address third-party financing or ownership of Net Metering facilities. D.P.U. 08-75, Att. A. IREC observes, and the Department recognizes, that third-party arrangements have become increasingly important to the deployment of renewable energy resources (IREC Initial Comments at 2).

## 2. Positions of the Parties

There is universal agreement among the commenters that addressed this topic that the regulations should unambiguously allow third-party ownership or financing of Net Metering facilities. Most commenters state that the proposed definition of “Host Customer” is so ambiguous that it could be read to prevent third-party arrangements (CVEC Initial Comments at 12-14; IREC Initial Comments at 2; IREC Reply Comments at 2; Klavens Comments at 1-2; Kopperl Comments at 1; Coalition Initial Comments at 3; MBTA Comments at 3; Palmer comments at 1-4; SEBANE Comments at 1; SunEdison Comments at 1-3; Task Force Comments at 2; WMECo Comments, Att. A at 5-6; Tr. 12, 28, 58-60).<sup>14</sup> To make it clear that third-party ownership or financing of Net Metering facilities is permitted, these commenters propose to define a Host Customer as “(a) a Customer that controls, owns, operates, hosts, or otherwise receives electricity from a Class I, II, or III Net Metering Facility that is located on the Customer’s property and that generates electricity on the Customer’s side of the meter; or (b) the Customer, person, group or other entity or organization that controls, owns, operates or otherwise hosts a Neighborhood Net Metering Facility” (IREC Initial

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<sup>14</sup> The proposed regulations defined a “Host Customer” as “(a) a Customer with a Class I, II, or III Net Metering Facility that generates electricity on the Customer’s side of the meter; or (b) the Customer, person, group or other entity or organization that controls, owns, or operates a Neighborhood Net Metering Facility.” D.P.U. 08-75, Att. A, 220 C.M.R. § 18.02.

Comments at 2-3; IREC Reply Comments at 2; Klavens Comments at 1-2; Palmer comments at 1-3; SEBANE Comments at 1; SunEdison Comments at 2-3; Task Force Comments at 2).<sup>15</sup>

DOER proposes an alternative solution for expressly allowing third-party ownership or financing (DOER Initial Comments at 2-3). DOER proposes a separate catch-all provision of the regulations stating that a third-party agreement does not limit eligibility for Net Metering if all other requirements are met (DOER Initial Comments at 2-3; CVEC/Coalition Reply Comments at 9).

### 3. Analysis and Findings

The Department recognizes the importance of ensuring that its regulations implementing Net Metering are sufficiently flexible to accommodate different Net Metering ownership and business models. To ensure that our final regulations do not impede the development of third-party ownership or financing arrangements, the Department adopts a new section in the regulations clarifying that third-party ownership or financing of Net Metering facilities is permissible, consistent with DOER's proposal.<sup>16</sup> With the addition of this clarifying language and the permissive definition of Host Customer, we anticipate that the regulations will be sufficiently flexible to accommodate the developing Net Metering market.

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<sup>15</sup> Some commenters advocate for similarly expanding the ownership language with respect to municipalities in the definitions of Class II and III Net Metering Facilities (DOER Reply Comments at 1; IREC Reply Comments at 6-7; Palmer Comments at 4-5; SunEdison Comments at 3; Task Force Comments at 2). Likewise, IREC proposes to expand the ownership language for neighborhood net metering (IREC Initial Comments at 4-5).

<sup>16</sup> This new section is set forth in Appendix A, 220 C.M.R. § 18.09(5).

E. Entities Prohibited from Net Metering

To implement G.L. c. 164, § 139(e), the regulations as proposed prevent Distribution Companies from providing Net Metering services to a Host Customer who is an electric company, generation company, aggregator, supplier, energy marketer, or energy broker, as those terms are used in G.L. c. 164, §§ 1, 1F. D.P.U. 08-75, at 7-8, Att. A, 220 C.M.R. § 18.06. Commenters contend that the regulations as proposed mistakenly interpret G.L. c. 164, § 139(e), which they claim was intended to be a “safe harbor” from regulation rather than a barrier to eligibility for Net Metering (CVEC Initial Comments at 10-12; CVEC/Coalition Reply Comments at 8-9; IREC Initial Comments at 5; IREC Reply Comments at 3-4; Coalition Initial Comments at 2-3; MBTA Comments at 3). They assert that, in enacting G.L. c. 164, § 139(e), the Legislature intended, like other states, to exempt those receiving Net Metering services from being regulated as one of the listed entities (CVEC Initial Comments at 10-12; IREC Initial Comments at 5; IREC Reply Comments at 3-4; Coalition Initial Comments at 2-3; MBTA Comments at 3). In support of their position, the commenters observe that G.L. c. 164, § 139(e) appears in the section of the Green Communities Act describing how Net Metering is to be regulated (CVEC Initial Comments at 10-12; Coalition Initial Comments at 2; MBTA Comments at 3). They argue that, had the Legislature intended to prohibit certain entities from Net Metering, it would have done so in the definition section (CVEC Initial Comments at 10-12; Coalition Initial Comments at 2).

In the final regulations, the Department retains the section implementing G.L. c. 164, § 139(e) as a limitation on eligibility for Net Metering services.<sup>17</sup> Nevertheless, we recognize and share the concerns voiced by the commenters that it would be inconsistent with the goals of the Green Communities Act to subject those who receive Net Metering services to regulation as an electric company, generation company, aggregator, supplier, energy marketer, or energy broker solely because of their eligibility to receive Net Metering services.

F. Customers Eligible for Neighborhood Net Metering

The regulations as proposed did not specify whether non-residential Customers that reside in the Neighborhood may participate in neighborhood net metering. D.P.U. 08-75, at 6-7, Att. A, 220 C.M.R. § 18.02 (definition of Neighborhood and Neighborhood Net Metering Facility). On one hand, some commenters support allowing participation by non-residential customers that reside in the Neighborhood (DOER Initial Comments at 2-3; Coalition Initial Comments at 6; MBTA Comments at 3-4; Palmer Comments at 4). On the other hand, WMECo contends that only residential customers should be able to participate in neighborhood net metering (WMECo Comments, Att. A at 8).

In the final regulations, the Department clarifies that both residential and other Customers that reside in the Neighborhood may participate in neighborhood net metering.<sup>18</sup>

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<sup>17</sup> The relevant section is set forth in Appendix A, 220 C.M.R. § 18.06.

<sup>18</sup> This clarification is set forth in Appendix A, 220 C.M.R. § 18.02 (definition of “Neighborhood Net Metering Facility”) and § 18.05(2) (allocation of credits from a Neighborhood Net Metering Facility).

While neighborhood net metering requires participation by at least ten residential Customers, nothing in the Green Communities Act limits participation to residential Customers. See G.L. c. 164, §§ 138, 140. For example, the Green Communities Act allows those Customers who reside in the Neighborhood and who have an ownership interest in the Neighborhood Net Metering Facility to receive Net Metering credits. G.L. c. 164, § 140(a). It is significant that section 140(a) does not use the term “residential customer,” but instead refers to those who reside “in the same neighborhood in which the neighborhood net metering facility is located.” G.L. c. 164, § 140(a). In addition, commercial properties are expressly included in the definition of Neighborhood, recognizing the possibility that a commercial Customer may reside in the Neighborhood.<sup>19</sup> G.L. c. 164, § 138. For these reasons, the Department determines that allowing participation by residential and non-residential Customers who reside in the Neighborhood is consistent with the Green Communities Act.

G. Definition of Neighborhood

The regulations as proposed limited a Neighborhood to the boundaries of a municipality, but expressly allow a Customer to seek an exemption. D.P.U. 08-75, at 5-6, Att. A, 220 C.M.R. § 18.02 (definition of term “Neighborhood”) and § 18.09(5) (exceptions to regulations may be granted for good cause). The State Representatives object to this geographic limitation, arguing it is unnecessarily restrictive and would burden those who would need to seek an exemption (State Representatives Comments at 1).

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<sup>19</sup> The definition of Neighborhood is set forth in Appendix A, 220 C.M.R. § 18.02.

In the final regulations, the Department retains without change the definition of the term “Neighborhood.”<sup>20</sup> As we explained in D.P.U. 08-75, at 5-6, the Green Communities Act requires the Department to “further defin[e] the term ‘neighborhood’ and [limit] the number of customers that may be designated by neighborhood net metering facilities to receive neighborhood net metering credits.” St. 2008, c. 169, § 78. The Department finds that the boundaries of a municipality provide a bright line that will be easy for the Distribution Companies to implement and for Customers to ascertain. In addition, we find that this geographic limitation continues to operate as an appropriate limitation on the number of possible participants. We, therefore, see no reason to deviate from the proposed definition of Neighborhood in the final regulations. As in the proposed regulations, in those instances where the boundaries of a municipality prove restrictive or inappropriate, there is the opportunity for Customers to apply to the Department for an exception. D.P.U. 08-75, at 6, Att. A, 220 C.M.R. § 18.09(5).<sup>21</sup>

#### H. Extending Prohibition on Special Fees Beyond Class I

The regulations as proposed exempted Class I Net Metering Facilities from special fees consistent with the Green Communities Act. D.P.U. 08-75, Att. A, 220 C.M.R. § 18.03(2). Some commenters assert that the final regulations should exempt Class II Net Metering Facilities from special fees, while others assert that this exemption should apply additionally to

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<sup>20</sup> See supra n.19.

<sup>21</sup> The Department’s authority to grant exceptions is set forth in Appendix A, 220 C.M.R. § 18.09(6).

Class III Net Metering Facilities (IREC Initial Comments at 3-4; Kopperl Initial Comments at 2; Coalition Initial Comments at 6; CVEC Initial Comments at 16; IREC Reply Comments at 3). In addition, National Grid would like the Department to clarify what qualifies as special fees (National Grid Initial Comments at 2).

In the final regulations, the special fees section remains unchanged.<sup>22</sup> The Green Communities Act is explicit in exempting only Class I Net Metering Facilities from the application of special fees. Had the Legislature intended to extend this limitation to other classes of Net Metering facilities, it would have explicitly done so. Additionally, as this language on special fees has been operational in the context of net metering since 1998,<sup>23</sup> the Department finds that no further clarification is necessary.

#### I. Calculation of Net Metering Credits

The proposed regulations directed Distribution Companies to calculate Net Metering credits for Class I, II, and III Net Metering Facilities based upon the charges applicable to the rate class under which the Host Customer takes service. D.P.U. 08-75, at 6-7, Att. A, 220 C.M.R. § 18.04. For Neighborhood Net Metering Facilities, the proposed regulations

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<sup>22</sup> The relevant section is set forth in Appendix A, 220 C.M.R. § 18.03(2).

<sup>23</sup> Specifically, 220 C.M.R. § 11.04(7)(c) states in pertinent part: “Distribution Companies shall be prohibited from imposing special fees on net metering Customers, such as backup charges and demand charges, or additional controls, or liability insurance, as long as the Generation Facility meets the Interconnection Standards and all relevant safety and power quality standards.” The Department’s regulations at 220 C.M.R. § 11.00 et seq., including the provisions of section 11.04(7)(c), were promulgated in 1998. D.P.U. 96-100.

directed Distribution Companies to calculate Net Metering credits based upon the charges applicable to the residential rate designated by the Host Customer. D.P.U. 08-75, at 7, Att. A, 220 C.M.R. § 18.04(4).

Some commenters argue that Net Metering credit calculations should be based upon the charges applicable to the recipient of the Net Metering credit<sup>24</sup> or the facility itself, and not the charges applicable to the Host Customer (Coalition Initial Comments at 6; Palmer Comments at 3; CVEC/Coalition Reply Comments at 12-13; IREC Reply Comments at 7). DOER, on the other hand, submits that the credit calculation for neighborhood net metering should be calculated at the rate class of the Host Customer (DOER Initial Comments at 3). Wellfleet Energy has a related, but different, concern when it states that credits that are generated from a Net Metering facility where the Host Customer is a municipality or governmental entity should always include the full value (include the default service charge, the distribution charge, the transmission charge, and the transition charge) without regard to whom the credit is allocated (Wellfleet Energy Comments at 1).

The final regulations make no changes to the charges to be used in the calculation of Net Metering credits for Class I, II, and III Net Metering Facilities. However, for Neighborhood Net Metering Facilities, the final regulations direct the Distribution Companies to calculate Net Metering credits based upon the charges applicable to the rate class under

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<sup>24</sup> Several commenters assert that, when a municipality or governmental entity is the recipient of a net metering credit, the credit should include the distribution portion of the municipality's or governmental entity's rate (Coalition Initial Comments at 6; Palmer Comments at 3; IREC Reply Comments at 7).

which the Host Customer takes service. In so doing, the Department achieves a Net Metering credit calculation that is uniform across all classes of Net Metering facilities.<sup>25</sup> Because the final regulations require all Net Metering facilities to have a meter, using the rate applicable to the Host Customer to calculate Net Metering credits will reduce confusion, ease the administrative burden that using multiple rates would create and satisfy the rate design objective of simplicity. See D.P.U. 08-75, at 7. In addition, the Department takes this opportunity to clarify that the credit is to be calculated before it is allocated. Therefore, the value of the credit will not change depending upon the character of the credit recipient.

J. Net Metering Capacity Limit

The proposed regulations stated that each Distribution Company shall determine its one-percent limit on Net Metering capacity based upon the company's highest historical peak load. D.P.U. 08-75, Att. A, 220 C.M.R. § 18.07. In response to comments received (see CVEC Initial Comments at 18-19; DOER Initial Comments at 2; Coalition Initial Comments at 4; Wellfleet Energy Comments at 2), the Department clarifies that using a Distribution Company's highest historical peak load as the basis for determining its one-percent cap ensures that the megawatt value of the cap can only increase over time.<sup>26</sup> The Department has added in the final regulations the requirement that each Distribution Company annually identify and post

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<sup>25</sup> The relevant sections are set forth in Appendix A, 220 C.M.R. § 18.04.

<sup>26</sup> While the Department makes this clarification in this Order, we see no reason to revise the proposed regulations on this matter.

on its website, by February 1, its historical peak load, in an effort to ensure that all interested parties have the opportunity to ascertain each company's Net Metering capacity limit.<sup>27</sup>

Some commenters recommend that the final regulations expressly exclude existing Net Metering facilities from counting toward the one-percent cap (CVEC Initial Comments at 17; Coalition Initial Comments at 4).<sup>28</sup> The Department disagrees with these commenters. The Green Communities Act does not distinguish between new and existing Net Metering facilities in terms of determining whether a Distribution Company's aggregate Net Metering capacity has exceeded one percent of its historical peak load. In the absence of any such distinction, the Department concludes that the Legislature intended for each Distribution Company to determine its aggregate Net Metering capacity based on all facilities to which it provides Net Metering services pursuant to 220 C.M.R. § 18.00, regardless of when a facility first received Net Metering services.

K. Queue

The regulations as proposed did not specifically address the queuing of applications for Net Metering services. D.P.U. 08-75, Att. A. Instead, the regulations as proposed required Distribution Companies to track participation and trends in Net Metering so that the

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<sup>27</sup> This requirement is set forth in Appendix A, 220 C.M.R. § 18.07.

<sup>28</sup> The same commenters have asked that the final regulations expressly exclude utility-owned solar generation from counting toward the one-percent cap (CVEC Initial Comments at 18; Coalition Initial Comments at 4). The Department considers this point to be moot, as G.L. c. 164, § 139(e) precludes electric companies from taking Net Metering services.

Department may ascertain whether, for example, adjustments to Net Metering tariffs are necessary. Id. at 8, Att. A, 220 C.M.R. § 18.08. A number of commenters support including parameters of some kind on the queuing of Net Metering applications in the final regulations in order to avoid speculative development (CVEC Initial Comments at 19-20; Coalition Initial Comments at 5; SunEdison Comments at 3-4; IREC Reply Comments at 5-6; CVEC/Coalition Reply Comments at 13-14; Tr. at 31-36, 63-64).

In the final regulations the Department makes no specific provision for the queuing of applications for Net Metering services. We recognize that this is an issue that interested parties will need to take into account as Distribution Companies approach the one-percent limit on Net Metering capacity set forth in G.L. c. 164, § 139(f). However, we disagree that the issue needs to be addressed in these regulations. We consider that the reporting provisions contained in the final regulations will provide the Department, potential Net Metering Host Customers, and other Net Metering stakeholders with sufficient information to monitor the development of Net Metering within the requirements and limitations of the Green Communities Act.<sup>29</sup>

L. Renewable Energy Certificates

The proposed regulations precluded Distribution Companies from owning renewable energy certificates (“RECs”) generated by Net Metering facilities without first purchasing the RECs from the Host Customer. D.P.U. 08-75, at 8, Att. A, 220 C.M.R. § 18.09(1). Some

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<sup>29</sup> The reporting provisions are set forth in Appendix A, 220 C.M.R. § 18.08.

commenters argue that the reference to the Host Customer is unnecessary (DOER Initial Comments at 3; IREC Initial Comments at 6; Task Force Comments at 3; CVEC/Coalition Reply Comments at 10; IREC Reply Comments at 4). A smaller group of commenters contend that doing so may inadvertently limit third-party arrangements (IREC Initial Comments at 6; Kopperl Comments at 3; Task Force Comments at 3). Furthermore, CVEC and the Coalition jointly filed comments that argue for eliminating all reference to distribution companies in 220 C.M.R. § 18.09(1), and state outright that the Host Customer (or conversely the Class I, II, III Net Metering Facility or Neighborhood Net Metering Facility) owns the RECs (CVEC/Coalition Reply Comments at 9-10).

The Department has modified 220 C.M.R. § 18.09(1) in the final regulations to clarify that Distribution Companies are not entitled to renewable energy attributes as a result of providing Net Metering services.<sup>30</sup> The final regulations remove reference to the Host Customer, as requested by some commenters, in order to allow flexibility on the matter of who owns the RECs. The final regulations have also expanded 220 C.M.R. § 18.09(1) in order to incorporate renewable energy and environmental attributes beyond RECs.

M. 220 C.M.R. § 8.05

The proposed revisions to 220 C.M.R. § 8.05 directed all Net Metering credit calculations to 220 C.M.R. § 18.00. D.P.U. 08-75, Att. B, 220 C.M.R. § 8.05. In considering how the final regulations would implement the Net Metering provisions of the

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<sup>30</sup> The relevant sections are set forth in Appendix A, 220 C.M.R. § 18.09(1).

Green Communities Act, the Department further revised to 220 C.M.R. § 8.05 to clarify how qualifying facilities and on-site generating facilities meter and calculate compensation for excess generation to comply with the Public Utility Regulatory Policies Act. Specifically, in the final regulations, the Department clarifies that on-site generating facilities under 220 C.M.R. § 8.00 may elect Net Metering consistent with 220 C.M.R. § 18.00.<sup>31</sup> In the final regulations, the Department also maintains the provision that qualifying facilities with a design capacity of 60 kilowatts or less may run their meter backwards, but excess generation shall be calculated at the arithmetic average of the Short-Run Energy rate in the prior calendar month.<sup>32</sup>

N. Conclusion

The Department finds that the regulations designated as 220 C.M.R. § 18.00 et seq. and attached to this Order as Appendix A are reasonably necessary for the implementation of the Net Metering provisions of the Green Communities Act, and we adopt those as final regulations. The Department also adopts the final amended regulations contained in 220 C.M.R. § 8.00 et seq. and 220 C.M.R. § 11.00 et seq. and attached to this Order, respectively, as Appendix B and Appendix C. The effective date of these regulations will be the final date of publication in the Massachusetts Register.

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<sup>31</sup> This provision is set forth in Appendix B, 220 C.M.R. § 8.05(3).

<sup>32</sup> This provision is set forth in Appendix B, 220 C.M.R. § 8.05(2).

