

220 CMR 21.00: COMPETITIVELY SOLICITED LONG-TERM CONTRACTS FOR RENEWABLE ENERGY

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21.01: Purpose and Scope

(1) Purpose. 220 CMR 21.00 establishes regulations for electric Distribution Companies to enter into Long-term Contracts with Renewable Energy Developers to facilitate the financing of renewable energy generation.

(2) Scope.

(a) 220 CMR 21.00 applies to electric Distribution Companies within the Commonwealth of Massachusetts.

(b) 220 CMR 21.00 applies to Long-term Contracts between Renewable Energy Developers and electric Distribution Companies, and the resources proposed under such contracts.

21.02: Definitions

For the purposes of 220 CMR 21.00, the terms set forth in 220 CMR 21.02 are defined as follows, unless the context otherwise requires.

Customer means a recipient of distribution service provided by a Distribution Company.

Department means the Department of Public Utilities.

Distribution Company means electric Distribution Company, as defined in M.G.L. c. 164, § 1.

DOER means the Department of Energy Resources.

Long-term Contract under 220 CMR 21.00 means a contract with a term of ten to 20 years.

Renewable Energy Generation Source means a source of generation of electricity or related attributes from renewable resources.

Renewable Energy Developer means an individual or company engaged in the business of developing renewable energy generation sources for the production of electricity and renewable energy generation attributes.

Renewable Resources shall be as defined in M.G.L. c. 25A, § 11F.

21.03: General Terms and Conditions

(1) Commencing on January 1, 2013 and ending on December 31, 2016, all Distribution Companies shall conduct two joint solicitations for proposals from Renewable Energy Developers.

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- (2) A Distribution Company may satisfy its obligations under 220 CMR 21.00 through individual competitive solicitations that are independent from the two joint solicitations for proposals from Renewable Energy Developers and, provided reasonable proposals have been received, enter into cost effective Long-term Contracts to facilitate the financing of Renewable Energy Generation under 220 CMR 21.00 if, upon petition to the Department prior to the first joint solicitation, the Department rules that a solicitation by an individual Distribution Company would be more cost effective to ratepayers than said Distribution Company engaging in a joint solicitation.
- (3) A Long-term Contract entered into by a Distribution Company shall be filed with and approved by the Department before it becomes effective.
- (4) A Long-term Contract must meet the criteria established by 220 CMR 21.00, and other applicable Department precedent.

21.04: Methods for Soliciting and Entering into Long-term Contracts

- (1) Distribution Companies shall consult with DOER in developing their timetables and methods for solicitations to ensure that the timing of their solicitations is appropriate. Distribution Companies shall consult with DOER regarding methods of execution of Long-term Contracts, and the joint solicitations required by 220 CMR 21.00 shall be coordinated by DOER.
- (2) Distribution Companies shall consult with the Attorney General and DOER regarding the choice of contracting and solicitation methods.
- (3) Beginning January 1, 2013, the Distribution Companies shall jointly select a reasonable method of soliciting proposals, which may include one developed by a regional organization in coordination with other New England states, from Renewable Energy Developers using a competitive bidding process only.
- (4) In developing the provisions of Long-term Contracts, Distribution Companies shall consider multiple contracting methods including Long-term Contracts for renewable energy certificates (RECs), for energy, or for a combination of RECs and energy.
- (5) A Distribution Company may decline to consider Long-term Contract proposals having terms and conditions that it determines would place an unreasonable burden on the Distribution Company's balance sheet, and may structure its Long-term Contracts, pricing or administration of the products purchased to mitigate impacts on the balance sheet or income statement of the Distribution Company or its parent company, subject to the approval of the Department; provided, that such mitigation shall not increase costs to ratepayers.
- (6) Prior to initiating a solicitation, a Distribution Company's timetable and methods for solicitation and contracting shall be subject to review and approval by the Department. Distribution Companies may use timetables and methods for the solicitation of competitively bid Long-term Contracts approved by the Department pursuant to 220 CMR 17.00: *Long-term Contracts for Renewable Energy* prior to January 1, 2013, upon notification to the Department prior to initiating a solicitation.
- (7) In any filing with the Department regarding the timetable and methods for soliciting and contracting consented to by DOER and the Attorney General, Distribution Companies shall describe the proposed methods reviewed and selected.
- (8) In any filing with the Department regarding the timetable and methods for soliciting and contracting where there are areas of disagreement between Distribution Companies, DOER and/or the Attorney General, Distribution Companies shall:
 - (a) Identify the areas of disagreement;
 - (b) Document the agenda, content, and outcome of all consultations with DOER and the Attorney General;
 - (c) Attach to their filing comments by DOER and/or the Attorney General on the solicitation and contracting methods reviewed and selected; and

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(d) Respond to each question or concern raised by DOER and/or the Attorney General in their comments with respect to the solicitation and contracting processes reviewed and selected.

21.05: General Criteria for Long-term Contracts and Renewable Energy Generation Sources

- (1) Long-term Contracts must be with renewable generation sources that:
 - (a) Have a commercial operation date, as verified by DOER, on or after January 1, 2013;
 - (b) Are qualified by DOER as eligible to participate in the Renewable Portfolio Standards (RPS) program, and to sell RECs under the RPS program;
 - (c) Are determined by the Department to:
 1. Provide enhanced electricity reliability within the Commonwealth of Massachusetts;
 2. Contribute to moderating system peak load requirements;
 3. Be cost effective to Massachusetts electric ratepayers over the term of the contract; and
 4. Create additional employment and economic development, where feasible; and
 - (d) Are a cost-effective mechanism for procuring low cost renewable energy on a long-term basis taking into account the factors outlined in 220 CMR 21.00.

- (2) The market products of Renewable Energy Generation Sources through the Long-term Contract(s) shall be apportioned among the Distribution Companies. The apportioned share shall be calculated and based upon the total energy demand from all Customers in each service territory of the Distribution Companies.

- (3) 10% of the aggregate level of Long-term Contracts under 220 CMR 21.00 shall be reserved for newly developed, small, emerging or diverse renewable energy distributed generation facilities, as determined by DOER, which are located within each Distribution Company's service territory. Notwithstanding anything contained in 220 CMR 21.00 to the contrary, each Distribution Company shall be required to solicit proposals for such distributed generation facilities separately through competitive bidding process only. Distributed generation facilities qualifying under 220 CMR 21.05(3) shall have nameplate capacity not larger than six megawatts, and shall not qualify as a Class I, II or III net metering facility, as defined by M.G.L. c. 164, § 138; provided, however, that Long-term Contracts reserved for newly developed, small, emerging or diverse renewable energy distributed generation facilities shall not be awarded to any technology that had more than 30 megawatts of capacity installed in the Commonwealth prior to April 1, 2012, as determined by DOER.

- (4) In evaluating Long-term Contracts, the Department will consider the recommendations of the Attorney General, which shall be submitted to the Department within 45 days of the filing of Long-term Contracts.

- (5) If the Distribution Companies are unable to agree on a winning bid under a joint solicitation under 220 CMR 21.00, the matter shall be submitted to the Attorney General, in consultation with DOER for a final, binding determination of the winning bid.

21.06: Use of Energy and RECs Obtained through Long-term Contracts

- (1) After purchasing renewable energy, RECs, or both, a Distribution Company may:
 - (a) Sell the energy to its basic service Customers, and retain RECs for the purpose of meeting the applicable annual RPS requirements.
 - (b) Sell the energy into the wholesale electricity spot market, and sell the purchased RECs through a competitive bid process; or
 - (c) Select an alternative approach in accordance with 220 CMR 21.04(5), subject to review and approval of the Department.

- (2) If the Distribution Company sells the energy and RECs as provided in 220 CMR 21.06(1), it shall:
 - (a) Calculate the net cost of payments made under the Long-term Contracts against the proceeds obtained from the sale of energy and RECs;

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- (b) Credit or charge all Customers the difference between the contract payments and proceeds through a uniform, fully-reconciling annual factor in distribution rates, subject to review and approval by the Department; and
- (c) Design a reconciliation process that allows the Distribution Company to recover all costs incurred under such contracts, subject to review and approval by the Department.

21.07: Remuneration to Distribution Companies

- (1) A Distribution Company may receive an annual remuneration equal to 2.75% of the annual payments under a Long-term Contract.
- (2) The purpose of such remuneration shall be to compensate the Distribution Company for accepting the financial obligation of the Long-term Contract.
- (3) To the extent that significant transmission costs are included in a bid, the Department will authorize the contracting parties to seek recovery of such transmission costs through federal transmission rates, consistent with policies and tariffs of the Federal Energy Regulatory Commission, to the extent the Department finds that such recovery is in the public interest.
- (4) 220 CMR 21.07 shall be acted upon by the Department at the time of contract approval.

21.08: Long-term Contracts and RPS Requirements

- (1) A Distribution Company's obligation to enter Long-term Contracts is separate and distinct from its obligation to meet RPS requirements.
- (2) 220 CMR 21.00 will not limit consideration of other short- or Long-term Contracts for power and/or RECs submitted by a Distribution Company for review and approval by the Department.
- (3) If RPS requirements terminate, a Distribution Company's obligation to solicit Long-term Contracts under 220 CMR 21.00 shall also cease. However, Long-term Contracts that are already signed and approved by the Department will remain in full force and effect.
- (4) Distribution Companies shall not enter into Long-term Contracts under 220 CMR 21.00 that would, in the aggregate, exceed 4% of total energy demand from all Customers in the service territory of the Distribution Company.
- (5) If a Distribution Company has entered into Long-term Contracts consistent with 220 CMR 21.00, it shall not be required by regulation or order or other agreement to enter into additional Long-term Contracts under 220 CMR 21.00.
- (6) Provided, however, Distribution Companies may voluntarily execute additional Long-term Contracts, subject to the approval of the Department.

21.09: Exceptions

The Department may grant an exception from any provision of 220 CMR 21.00 for good cause shown.

REGULATORY AUTHORITY

220 CMR 21.00: St. 2012, c. 209, § 36.