

Stakeholder Comments: 400MW Emergency Regulation

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Introduction

The 400MW Review – Emergency Regulation brought several issues to our attention. These are detailed and categorized below based on the subject: Land Use, Grandfathering for Ineligible Land Use Provisions, Set-aside for small and low-income projects, Public Entity Offtake, and Coronavirus Extension. We feel that though the department rightly expanded the program to 3200 Megawatts, the other regulations are stranding hundreds of megawatts and millions of dollars in investment capital. These changes impact the financial viability of projects in an economically unstable time. While we do not outright oppose the conceptual intent, we do believe that the implementation as stated will have dramatic negative consequences. We ask that you contemplate our comments from the perspective of the developer who has spent hundreds thousands of dollars and years of planning making a project viable; as a landowner that is watching a portion of their retirement plan go up in flames; and with a understanding of our current economic crisis caused by the Coronavirus. Thank you for your consideration.

I. Land Use

225 CMR 20.05(7)(c): Ineligible Land Use. Solar photovoltaic Generation Units that meet or one or more of the following criteria shall not be eligible to qualify as Solar Tariff Generation Units under 225 CMR 20.00:

- 1. One or more of the criteria established in 225 CMR 20.05(5)(e)5; or*
- 2. Solar Tariff Generation Units sited on land designated as Priority Habitat, Core Habitat or Critical Natural Landscape, that do not meet the criteria of Category 1 Land Use.*
- 3. Solar Tariff Generation Units sited on a parcel with 50% or more of its area designated as Priority Habitat, Core Habitat and/or Critical Natural Landscape, that do not meet the criteria of Category 1 Land Use.*

The new rules surrounding land use present a multitude of unintended consequences. **The biggest impact is in the magnitude of over 400MW – the collapse of hundreds of responsibly developed projects based on statutory and regulatory rules.**

While we respect the reaction to environmental complaints encouraging protection of critical habitats, this language impedes on jurisdictional governance over conservation concerns – towns, municipalities, counties, and the Department of Environmental Protection (DEP). The DEP has departments that oversee and ensure responsible development and treatment of these core areas. Localities have bylaws further adding to the statutes and regulations. Developers must work

with all agencies involved to ensure proper management of wetlands, species, and resources. **Often, we are required to fund tree plantings, improve land for better habitation of endangered species, and permanently place areas in conservation designation so that they are protected forever.**

This rule also prevents the development of clean, renewable energy in favor of much more environmentally hazardous development. Landowners can develop their land as they wish within the law. Many are counting on these solar projects as a source of secondary income – used to keep land that has been in their families for centuries but is constantly assessed higher tax rates making it harder to manage. Landowners, such as the ones we work with, love their land and their towns. Solar was a solution that allowed them to earn money, keep their land, and do so in an environmentally friendly way. However, this rule will force many of them to move toward other types of development such as large chain stores, phone towers, and housing. These types of development are infinitely more environmentally damaging than solar, which can be designed in conjunction with environmental concerns and improve upon habitat. It is essentially killing one industry, in favor of others. Industries that are not environmentally friendly, nor fit the small-town culture and pride that the Landowners have in their localities.

We have one particular project that will be eradicated by this rule. It has been under development and in the utility interconnection queue since 2018. It is in Rochester, Massachusetts on the land of a couple who just retired. They saw solar as an opportunity earn some income in a way that wouldn't destroy the land they've made their life on. They were considering other forms of development income, but ultimately decided on solar because it would both make retirement more comfortable and leave a legacy for their children and grandchildren. Solar allowed them to keep and utilize the land. According to the GIS, half this land is core habitat. We worked with Natural Heritage and the Conservation Commission to design a system that would be beneficial to the endangered box turtles and surrounding habitats. These rules negate our development efforts and deprive the landowners of their goal of an environmentally friendly inheritance for their family. They will be forced to sell the land to the developers that will utilize it in a much more nefarious manner.

The other issue with this language come from the Guideline Regarding Land Use, Siting, and Project Segmentation:

These land designations have been identified by the Massachusetts Division of Fisheries and Wildlife BioMap2 framework within the Natural Heritage and Endangered Species Program. BioMap2 is a web-based mapping resource that can be used to see land that is identified as Priority Habitat, Core Habitat, or Critical Natural Landscape. The BioMap2 framework may be updated or reissued as data layers are revised.

The utilization of BioMap2 is an inappropriate method to determine the Priority Habitat regions. This tool was not meant to be used on a parcel-by-parcel basis, and even the governing departments do not use it to make determinations. Several of our projects have "Core Habitat" within or near the parcel. In these cases, our first step is to reach out to Natural Heritage and the Conservation Commission. We submit a project notification form. They then

issue a no-take letter, or we begin discussions about the project and how to best protect the important habitats within. Many times, this means reducing project size, and dedicating a portion of the land to permanent conservation. The tool used in those discussions is the GIS Mapping on OLIVER and their own internal departmental maps. It gives a more accurate footprint on a parcel-by-parcel basis. Never have they used BioMap2.

We also have a five megawatt project located on industrial zoned land in Freetown. This land has Priority Habitat abutting it, so we submitted project notification to Natural Heritage. They looked at where our system would be built and determined a “no-take” situation. The Town already approved the Wetland Delineation, so we are not encroaching on that habitat. **However, using BioMap2, this entire parcel is deemed ineligible.** The intent of this law is to protect critical habitat. If the Department that oversees that protection didn’t use BioMap2 as a determining factor, why is the DOER? This project is almost entirely through permitting; in the middle of an ISO-NE Affected System Operator Study and Eversource Group Study; and has well over one hundred thousand dollars in development capital invested. **We have checked all the boxes of a responsibly developed project, and this DOER ruling is essentially punishing us for our trouble.**

In addition, we have another dual-use agriculture project on farmland that has been tilled for centuries, dating back to the 1700s. This parcel has Priority Habitat over the entire farm. We have worked with Natural Heritage to design a system that would make appropriate accommodations for the species or environments in jeopardy. In this case, it simply meant raising the fence several inches. Natural Heritage and Local Conservation Commissions understood that this land was continually utilized farmland and not critical to species as more than a passthrough. DOER is incentivizing systems just like this one, yet now **it’s being threatened by these over-arching land use restrictions.**

Outlined above, we argue that this massive change in rules creates uncertainty in the Massachusetts Solar Industry in an already difficult economic time. **We propose eliminating these new land use restrictions entirely, allowing the local and state governing bodies to continue their jurisdictional rulings. At the very least, we recommend: 1) not using BioMap2 to determine the Core Habitats. Instead utilize GIS and DEP/Conservation Commission determinations performed by 3rd party engineers. If you have an approval from a governing body, that should be enough to prove conservation measures have been met. And 2) implement this starting with the added capacity – Blocks Nine through Sixteen.**

Not using BioMap2 ensures that the regulations agree with the development rules within the conservation commissions and Department of Environmental Protection, making them fair for all projects and not only penalizing solar. And, implementing the rules only for the new blocks shows the financial industry, who is providing necessary capital for solar development, that Massachusetts is building a stable structure and isn’t going to change the rules in the middle of the game. Implementing the rules in the way we proposed also give landowners more say over their land and helps them in these volatile times – preserving the small town way of life they are trying to protect.

II. Grandfathering for Ineligible Land Use Provisions

225 CMR 20.05(5)(e)(1)(c): Exception to 20.05(5)(e)1(b). Solar Tariff Generation Units that meet the requirements of 225 CMR 20.06(1)(c) 2 and 225 CMR 20.06(1)(c)3 as of the Publication Date and submit an executed Interconnection Service Agreement as detailed in 20.06(1)(c)1 within 6 months of the Publication Date shall be subject to the Land Use and Siting Criteria as outlined in 225 CMR 20.05(5)(e)2 through 6.

We appreciate the inclusion of a grandfathering clause, however, even this strands hundreds of projects that have been in development for two or more years. Given the havoc that COVID-19 has reaped on the economy, now is not the time to set fire to millions in investment dollars and endanger jobs within the solar industry. Especially with Massachusetts's lofty renewable energy goals.

Solar project development has a certain order of operations to ensure a smooth transition from site control to interconnection. First, we secure Site Control. Second, we apply for Interconnection. While the utility reviews our interconnection application, we start on the civil design and permitting. The goal is to get Site Permitting and Interconnection Service Agreement (ISA) simultaneously. This allows us to apply for the SMART Program, and still meet the construction deadlines imposed by the municipal permits and the ISA.

In past programs, this has been relatively simple. However, as I am sure you are aware, there have been **massive delays in the interconnection queues, particularly in Eversource. Most of our projects have been in queue for two years** (such as the two I referenced in the section above). This is a repeated scenario across all developers. In Eversource, we have been on a utility hold waiting for a DPU approval of Group Studies that was just given a month ago. **Between the Transmission Studies by ISO-NE and the delays in Distributed Generation Studies by Eversource, most of these projects will not see an ISA until 2021 at the earliest.**

These scenarios do not mean that developers have been sitting on their hands. We are investing in engineering both civil and electrical, permitting, and in many cases paying development rent out of pocket to landlords. **Grandfathering projects with site control, permitting, and an ISA within six months of the Publication Date helps nobody, especially in the Eversource Territory – the territory with the least amount of development but the greatest need for low income and community projects.**

We propose using proof of Site Control and an Interconnection Application date prior to the Publication Date as the marker rather than what is currently written. This saves the projects that have been investing massive amounts of development capital for years while waiting on an ISA. Also, as described above, permitting is not a practical marker due to timeline restrictions on construction start. We cannot gain permitting too early, as we cannot start construction without an ISA.

III. Set-aside for small and low-income projects

225 CMR 20.05(3)(c) and (d):

(c) Set-aside for Solar Tariff Generation Units Greater than 25kW and Less than or Equal to 500 kW. Each Capacity Block, starting with the first full capacity block after the Publication Date, shall have a minimum of 20% of its total available capacity reserved for Solar Tariff Generation Units with nameplate capacities greater than 25kW and less than or equal to 500 kW.

(d) Set-aside for Low Income Community Shared and Low Income Property Solar Tariff Generation Units. Each Capacity Block, starting with the first full capacity block after the Publication Date, shall have a minimum of 5% of its total available capacity reserved for Low Income Community Shared and Low Income Property Solar Tariff Generation Units.

We foresee a problem with fairness across utility zones in this rule. We mentioned above how Eversource has been stalling for years with completing studies and issuing ISAs. While we were waiting on a DPU ruling to allow Group Studies, National Grid filled all its Blocks. Per the typical pattern in Massachusetts, Eversource has remained less than half full. **This rule retroactively reduces the block sizes for the original eight Blocks, essentially penalizing developers in Eversource and rewarding the utility for their stall tactics.** With this new rule, larger projects who have been waiting in the queue can now expect a Block assignment much further down the line than originally anticipated. This is especially difficult given the rising cost of interconnection upgrades making the projects much more expensive than they used to be.

We suggest implementing these rules for only the new capacity blocks – Blocks Nine through Sixteen. This still accomplishes the intent of the rule, while not punishing developers for the utility's holds. I might also note that these set asides will likely never be filled in Eversource – a perfect example is the net metering blocks that remain open from four years ago. **The economics on smaller project simply won't work for another 5-7 years, if ever.**

IV. Public Entity Offtakers

Public Entity Solar Tariff Generation Unit. A Solar Tariff Generation Unit that is:

- (a) Sited on property owned by a Municipality or Other Governmental Entity and is either:
 - (i) owned or operated by a Municipality or Other Governmental Entity; or*
 - (ii) the Owner has assigned 100% of its output to Municipalities or Other Governmental Entities; or**
- (b) Sited on privately owned property and is either:
 - (i) Owned or operated by the Municipality in which the Solar Tariff Generation Unit is sited; or*
 - (ii) the Owner has assigned 100% of its output to the Municipality or Other Governmental Entities in the Municipality in which the Solar Tariff Generation Unit is sited.**

The expansions on the Public Entity Solar Tariff Generation Unit are certainly more inclusive. However, **we suggest eliminating the clause requiring that a solar system be sited in the municipality in which the offtaker resides.** In many cases, there is not enough viable space within a municipality's borders to serve their load. For example, in metro Boston, there are massive amounts of potential public offtakers, however, there are not nearly enough solar viable rooftops or spaces to supply them. By allowing Public Entities to take 100% for the offtake from a system outside city limits, they too can benefit and help move toward their renewable energy goals.

V. Coronavirus Extension

Statement of Qualification Reservation Period Guideline:

g) Extended Reservation Period for COVID-19

As of April 15, 2020, all Solar Tariff Generation Units shall have their Reservation Period extended six months. All new applications received between April 15, 2020 and July 1, 2020, shall also have their initial reservation period extended six months.

We appreciate this extension, but as we learn more about the current and post-COVID situation, we feel that a longer extension is necessary. We have several letters from banks that are currently not reviewing Tax Equity financing for projects due to economic uncertainty. Along with Tax Equity financing is our Construction Financing. Most lenders will not even consider construction loans because 1) we currently can't get tax equity, and 2) the timelines are so questionable. To get a construction loan, you need a set timeframe from construction start to Permission to Operate. Nobody can provide the timeline guarantees banks require – we have long delays in manufacturing and procurement of materials for construction, and nobody knows if localities will be issuing permits or calling for halts to construction due to virus outbreaks.

We are navigating a new economy, and it will take more than six months to bounce back. The state of the economy is in constant flux at this time and will be for the foreseeable future. Talks of a second wave of the virus in the fall have many businesses wondering about procurement and construction timelines. Is it worth the capital to move forward with procurement? Will our doors be open in a few months? Will we be allowed to resume construction activities? As you can imagine, electrical equipment gets outdated fast when it sits in storage for months. Extra leeway for projects allows companies to keep their doors open, keep providing essential jobs, and navigate the ever-changing currents.

We suggest lengthening this extension from six, to eighteen months; at least for near term projects that are approaching their construction deadline within six months. This gives projects who have already obtained a Statement of Qualification but were stalled by the COVID-19 situation time to rebound. Equipment will need ordered and developers need more time to finalize financing – something that cannot be done in the current economic environment.

Synopsis

1) Eliminate the new Land Use core habitat restrictions.

Regulate through the current governing channels (i.e., DEP, Natural Heritage, Local Conservation Commissions, etc.).

2) Remove BioMap2 as the determining factor of Core Habitats.

Regulate through current governing channels (i.e., DEP, Natural Heritage, Local Conservation Commissions, etc.). Approval from these channels negotiated through licensed engineers in the field.

3) Do not implement Land Use Ineligibility Rules until Blocks Nine through Sixteen.

This eliminates the issue of “changing the rules in the middle of the game.” Keeps the faith of financial backers investing in the state’s renewable energy development

4) Land Use Ineligibility Grandfathering – We propose using proof of Site Control and the Interconnection Application date prior to the Publication Date as the markers.

This ensures developers who have been held up for years by the utilities are able to salvage their project. Also allows time for recently announced ISO-NE Transmission Studies and Distributed Generation Group Studies.

5) Do not implement set-aside rules until Blocks Nine through Sixteen.

This accomplishes the intent of the rule, while not punishing developers for the utility’s holds and studies. Also, it keeps the pattern of not retroactively changing the rules; only applying the new regulation to the new capacity. It is unlikely these set asides will get filled in Eversource anyway.

6) Eliminate the clause requiring that a system be sited in the municipality in which the oftaker resides to qualify as a Public Entity Solar Tariff Generation Unit.

Creates a fairer playing field and more viable spaces for 100% Public Offtake Systems.

7) We suggest lengthening the Coronavirus extension from six, to eighteen months; at least for near term projects that are approaching their construction deadline within six months.

Due to a stagnation in manufacturing and procurement as well as inability to obtain construction and tax equity financing, near term projects should be granted more time to navigate the new economy.