

220 CMR: DEPARTMENT OF PUBLIC UTILITIES

220 CMR 17.00: LONG-TERM CONTRACTS FOR RENEWABLE ENERGY

Section

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17.01: Purpose and Scope

(1) Purpose. 220 CMR 17.00 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 17.04 applies to electric distribution companies within the Commonwealth of Massachusetts.

(b) 220 CMR 17.05 and 220 CMR 17.06 apply to long-term contracts subject to 220 CMR 17.00 between renewable energy developers and electric distribution companies, and the resources proposed under such contracts.

17.02: Definitions

For the purposes of 220 CMR 17.00, the terms set forth in 220 CMR 17.02 will be 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.

DOER means the Department of Energy Resources.

Distribution Company shall be as defined in M.G.L. c. 164, § 1.

Long-term Contract under 220 CMR 17.00 means a contract with a term of ten to 15 years.

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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 are as defined in M.G.L. c. 25A, § 11F.

17.03: General Terms and Conditions

- (1) Commencing July 1, 2009 and ending June 30, 2014, each distribution company shall conduct at least two separate solicitations for long-term contract proposals from renewable energy developers. A distribution company may also voluntarily solicit additional proposals under 220 CMR 17.00 over the five-year period.
- (2) Long-term contracts executed by the distribution company shall be filed with and approved by the Department before they become effective.
- (3) Long-term contracts must meet the criteria established by 220 CMR 17.00, and other applicable Department precedent.

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

- (1) Distribution companies shall coordinate with DOER in developing their timetables and methods for solicitations and contracting to ensure that the timing of their solicitations is appropriate and the methods will foster competitive bids. Distribution companies shall consider participating in a DOER-administered solicitation process prior to conducting their own solicitations. Distribution companies may consider additional reasonable methods of soliciting proposals from renewable energy developers including public solicitations, individual negotiations, or other methods.
- (2) In developing the provisions of long-term contracts, distribution companies shall consider multiple contracting methods such as long-term contracts for renewable energy certificates (RECs), for energy, or for a combination of RECs and energy.
- (3) If a distribution company determines that the terms and conditions of a contract obligation would place an unreasonable burden on its balance sheet, it may decline to consider the contract proposal. Distribution companies shall report to and demonstrate for the Department the effect that a rejected contract proposal

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would have had on its balance sheet within ten business days of the rejection.

- (4) 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.
- (5) In any filing supporting the timetable and methods for solicitation and contracting, distribution companies shall:
 - (a) Describe proposed methods reviewed or selected;
 - (b) Document the agenda, content, and outcome of all consultations with DOER;
 - (c) Attach to their filing comments by DOER on the solicitation and contracting methods reviewed and selected;
 - (d) Identify areas of agreement and disagreement with DOER; and
 - (e) Respond to each question or concern raised by DOER in its comments with respect to the solicitation and contracting processes reviewed and selected.

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

- (1) Long-term contracts must be with renewable energy generation sources that:
 - (a) Have a commercial operation date, as verified by DOER, on or after January 1, 2008;
 - (b) Be qualified by DOER as eligible to participate in the Renewable Portfolio Standards (RPS) program, and to sell RECs under the program, pursuant to M.G.L. c. 25A, § 11F;
 - (c) Be 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, where feasible; and
 - (d) Be a cost-effective mechanism for procuring renewable energy on a long-term basis.
- (2) In evaluating long-term contracts, the Department will consider the recommendations of the Attorney General of the Commonwealth of Massachusetts, which shall be submitted to the Department within 45 days of the filing of long-term contracts.

17.06: Use of Energy and RECs Obtained Through Long-term Contracts

- (1) After purchasing renewable energy, or RECs, or both, a distribution company

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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 transactional approach, in consultation with DOER and subject to review and approval of the Department.
- (2) If the distribution company sells both the energy and RECs as in 220 CMR 17.06(1)(b), 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;
 - (b) Credit or charge all distribution 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.

17.07: Remuneration to Distribution Companies

- (1) A distribution company may receive an annual remuneration equal to 4% of the annual payments under a contract.
- (2) The purpose of such remuneration shall be to compensate the company for accepting any financial obligation of the long-term contract.
- (3) 220 CMR 17.07 will be acted upon by the Department at the time of contract approval.

17.08: 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 17.00 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 shall also cease. However, contracts already executed and approved by the Department will remain in full force and effect.

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- (4) If a distribution company has entered into long-term contracts consistent with St. 2008, c. 169, § 83, it shall not be required by regulation or order to enter into contracts with terms of more than three years to meet its annual RPS requirements, pursuant to M.G.L. c. 25A, § 11F, unless the Department finds that such contracts are in the best interests of customers. Electric distribution companies may voluntarily execute long-term contracts to meet applicable annual RPS requirements, subject to the Department's approval.
- (5) Distribution companies shall not be obligated to enter into long-term contracts under St. 2008, c. 169, § 83 that would, in the aggregate, exceed 3% of total annual energy demand (in megawatt-hours) from all distribution customers in the service territory of the distribution company.

17.09: Exceptions

The Department may grant an exception from any provision of 220 CMR 17.00 for good cause shown.

REGULATORY AUTHORITY

220 CMR 17.00: St. 2008, c. 169, § 83.