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VIA Email Only

DG Stakeholder Electronic Distribution List¹

RE: The Department's Implementation of Recent Net Metering Legislation

Dear Distributed Generation Stakeholders,

By this letter, the Department of Public Utilities ("Department") provides an overview of the requirements for a rulemaking proceeding and detail regarding the Department's implementation of the revisions to the Commonwealth's Net Metering Program consistent with the provisions of (1) Chapter 8 of the Acts of 2021, An Act Creating a Next-Generation Roadmap for Massachusetts Climate Policy ("2021 Climate Act") and (2) Chapter 179 of the Acts of 2022, An Act Driving Clean Energy and Offshore Wind ("2022 Clean Energy Act"). This letter explains the need for the Department to conclude one net metering rulemaking proceeding and then commence another rulemaking proceeding to implement the recent net metering legislation.

¹ Over an extended period of time in the course of rulemakings, policy initiatives, and adjudicatory proceedings, the Department has compiled a listing of parties, participants, and other entities interested in and contributing to the Department's decision-making in the areas of distributed generation, interconnection with the electric power system, net metering, renewable energy, and solar energy. The Department refers to this listing as the "DG Stakeholder Electronic Distribution List." At times, the Department uses this list to provide notice in docketed matters and to provide information to a broad community of interest.

As you are likely aware, these two major pieces of legislation contain provisions modifying the Commonwealth's Net Metering Program. On March 26, 2021, the Governor signed into law the 2021 Climate Act, which, in pertinent part, amends G.L. c. 164, §§ 138 and 139, that provide the primary authority for the Commonwealth's Net Metering Program. On August 11, 2022, the Governor signed into law the 2022 Clean Energy Act, which also amends G.L. c. 164, § 139.

These modifications to the Net Metering Program are not implemented automatically upon Governor signature; the Department must promulgate appropriate rules and regulations to implement them. The Legislature required that the Department establish the Commonwealth's Net Metering Program through rulemakings² and the approval of Net Metering Tariffs for Electric Distribution Companies ("EDCs").³ While the Net Metering Program is governed by the regulations and tariffs, the Department also has employed policy inquiries, adjudicatory proceedings, and issuance of guidelines to provide details for the implementation of the Net Metering Program. The Legislature's amendments to G.L. c. 164, §§ 138 and 139 separately under the 2021 Climate Act and the 2022 Clean Energy Act require amendments to the Net Metering Regulations. To make any change to the Net Metering Regulations, the Department is required by law to open a rulemaking, to seek public comment, and to hold a public hearing on any proposed changes. See G.L. c. 30A, § 2 and 220 CMR 2.00 (outlining due process requirements for adopting, repealing, or amending regulations).⁴

To amend the Net Metering Regulations consistent with the provisions of the 2021 Climate Act, the Department opened the rulemaking entitled Investigation by the Department of Public Utilities, On its Own Motion, Instituting a Rulemaking Pursuant to the Acts of 2021, c. 8, §§ 82-85, G.L. c. 30A, § 2, and 220 CMR 2.00 to Amend the Net Metering Regulations at 220

² With the Legislature's initial enactment of G.L. c. 164, § 139, the Department initiated a rulemaking and promulgated the Net Metering Regulations at 220 CMR 18.00. Net Metering Rulemaking, D.PU. 08-75-A (2009); G.L. c. 164, § 139(d) (the Department shall adopt rules and regulations to carry out this Section).

³ G.L. c. 164, § 139(d) (the EDCs shall impose tariffs approved by the Department regarding necessary studies and the type, cost, and timeframe for metering and system upgrades for installations to receive net metering services).

⁴ See also 950 CMR 20.00: "Preparing and Filling Regulations" (Secretary of the Commonwealth); Secretary of the Commonwealth, The Regulations Manual (2016), available at www.sec.state.ma.us/spr/sprpdf/manual.pdf.

CMR 18.00, D.P.U. 21-100. In this docket, which is an active matter as of this writing, the Department has:

- Issued its Order initiating the Rulemaking with proposed, amended Net Metering Regulations;
- Conducted a public hearing, sought written comments on the proposed amended Net Metering Regulations, and sought responses to specific questions related to the provisions of the 2021 Climate Act; and
- Received thirteen sets of written, initial comments and four sets of written, reply comments.

As evidenced by the extent of the comments in this proceeding, the complicated and challenging questions issued by the Department, and the varied (and sometimes contested) interests of the participants in this rulemaking, the Department must resolve difficult issues to issue final Net Metering Regulations and the explanatory Order to promulgate amended regulations under the 2021 Climate Act.⁵ The Department has dedicated substantial resources to this proceeding and, while not assigning a specific date, we are committed to issuance of final Net Metering Regulations as soon as practicable.

Because the scope of the rulemaking in D.P.U. 21-100 is limited to the 2021 Climate Act, we must open a subsequent rulemaking proceeding that creates a new scope related to the 2022 Clean Energy Act and meet the legal requirements for public input. The subsequent rulemaking proceeding involves matters that we anticipate will be less complicated than those raised in D.P.U. 21-100. All Department rulemakings must comply with the requirements of G.L. c. 30A, § 2, 220 CMR 2.00, 950 CMR 20.00, and the Secretary of the Commonwealth's Regulations Manual. In addition, all Department rulemakings require the involvement of other administrative agencies within the Executive Branch, including the Executive Office of Energy and Environmental Affairs and the Executive Office of Administration and Finance before the Department can issue Final Regulations and the accompanying Final Order. No specific timetable is set for the involvement of the other agencies.

As with the Department's rulemaking in D.P.U. 21-100, the Department has assigned significant resources to developing the rulemaking under the 2022 Clean Energy Act. The Department is taking the necessary preliminary steps and we intend to issue an Order Instituting

⁵ Consistent with the Legislature's stated means for implementing the Net Metering Program, it is likely that the EDCs will need to file Net Metering Tariffs for review and approval by the Department to implement the requirements of the 2021 Climate Act and the amended Net Metering Regulations.

a Rulemaking together with proposed amended Net Metering Regulations as soon as practicable after issuing an Order in D.P.U. 21-100 to implement the provisions of the 2022 Clean Energy Act pertaining to the Net Metering Program.

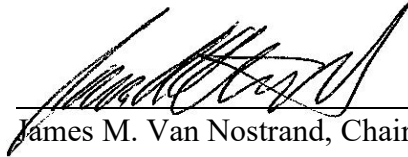
In addition, the 2022 Clean Energy Act requires the Department to examine the propriety of its administratively established “Single Parcel Rule.”⁶ The Department has commenced a proceeding to address exceptions to the Single Parcel Rule consistent with the 2022 Clean Energy Act, Investigation by the Department of Public Utilities on its Own Motion into Revisions to the Single Parcel Rule Pursuant to the Act of 2022, c. 179, § 55, D.P.U. 23-20. This investigation will not involve a rulemaking as described above; however, implementation of the exceptions will require careful consideration of such issues as eligibility, necessary supporting documentation, and responsibility for review and approval. As an initial matter, the Department has released a written preliminary proposal for use of a self-certification process for these exceptions. The Department held a conference call with stakeholders to gain feedback and insight into implementation issues. The Department is preparing a more detailed self-certification proposal with a draft form, which the Department expects to issue shortly.

The implementation of the 2021 Climate Act and the 2022 Clean Energy Act’s changes to the Net Metering Program are a top Department priority. Please be assured the Department is working expeditiously to implement the changes required by legislation; stakeholders’ inquiries on the subject have not gone unheard. In these matters, the Department will use the DG Stakeholder Electronic Distribution List for distribution of all Orders, regulations, and other communications. In addition, with the issuance of Order and regulations, the Department will update the [Net Metering Filings & Tariffs webpage](#). In the meantime, you may always submit any questions to the Department’s DG Team utilizing our [online inquiry form](#).

⁶ The Single Parcel Rule defines a net metering facility as “the energy generating equipment associated with a single parcel of land, interconnected with electric distribution system at a single point, behind a single meter.” Definitions of Unit and Facility, D.P.U. 11-11-C at 23 (2012). The Department adopted the Single Parcel Rule to prevent artificial and unfair manipulations of the regulatory system that might result from parties’ subdividing land or otherwise gaming the net metering system. D.P.U. 11-11-C at 19.

The Department looks forward to continuing our work with you on these important issues and we thank you for your time and commitment in support of the Department's efforts in resolving these significant undertakings.

Sincerely,



James M. Van Nostrand, Chair