



June 19, 2014

RE: Consolidated amendments for H. 4185

Dear Chairmen Dempsey and Brewer and Chairmen Downing and Keenan,

Boston Community Capital (BCC) is seeking a series of amendments to H. 4185 (An Act relative to net metering and solar power) to ensure that the legislation fulfills several of the objectives its drafters sought to achieve, including:

- Grandfathering existing solar projects under current policy frameworks (amendment 1);
- Maintaining equitable access to the benefits of solar for customers whose roofs or circumstances are not suitable for on-site solar installations (amendments 2,3,4);
- Encouraging new solar applications, such as storage and emergency generation (amendment 5); and
- Protecting low income customers (amendment 6).

As currently drafted, the legislation reflects the intent of the drafters to carry out these objectives. However, the actual language of the bill does not adequately or completely enable the desired outcomes. The amendments outlined in the following pages address these issues and will contribute to the continued success of Massachusetts' solar policy and leadership in this area. Additionally, we suggest an alternative approach to the minimum monthly contribution to limit its potential impact on low income communities and account for the benefits that renewable energy provides to maintaining the distribution grid.

BCC's view of H. 4185 is shaped by our 30 year history as a community development financial institution with a mission to build healthy communities where low income people live and work. Since 2008, we have endeavored to help low-income communities gain access to the cost savings and price stability of solar power and participate in efforts to address climate change. We develop and operate photovoltaic systems for customers serving low income communities and now have 4 megawatts of solar capacity across 30 Massachusetts projects. Two thirds of our projects serve affordable, multifamily housing developments and typically meet 100% of their common area electricity needs. The remainder serves non-profit organizations and municipal facilities, such as the Greater Boston Food Bank. Our solar work was recently recognized by President Obama as a Solar Champion of Change. Thus, our concerns with the legislation focus on its potential to impact low income residents and limit access to solar.

Thank you for your attention this matter.

A handwritten signature in blue ink, appearing to read "DeWitt Jones".

DeWitt Jones, President
BCC Solar Energy Advantage

1. Grandfathering existing solar facilities under current net metering and SREC programs

As stated by the Department of Energy Resources, the intent of the legislation is to grandfather existing solar systems under the current SREC and net metering frameworks. The legislation, however, lacks language to that effect, leaving existing solar projects vulnerable to future regulatory changes. The amendment below adds that language to the legislation, explicitly grandfathering existing solar system and protecting them from future regulatory changes.

AMENDMENT

SECTION 8, beginning at line 615: *Nothing provided in this section shall preclude solar facilities from being qualified as a phase 2 solar net metering facility or solar virtual metering facility under section 139A of said chapter 164 or as an eligible renewable generating resource under subsection (c) of said section 11F of said chapter 25A or any facility eligible under section 11K of said chapter 25A as of the effective date. In no case, however, shall a solar facility previously qualified as a solar net metering facility under sections 138 and 139 of chapter 164 of the General Laws or as a renewable generating resource for a program under subsection (g) of section 11F of chapter 25A lose those qualifications provided such solar facility continues to meets the requirements of said sections and applicable regulations. Provided further, such solar facilities shall be subject to the terms and conditions of said sections and applicable regulations in place at the time this bill takes effect.*

2. Revising the definition for low income residential solar facilities

H.4185 recognizes the important role that solar can play in addressing energy affordability concerns in low income communities by, for example, creating a special category of solar virtual metering facilities that serve affordable housing developments. The legislation labels these types of projects as “low income residential solar virtual metering facilities” and defines them by referencing M.G.L. c.40B, section 20.¹

This definition inadvertently excludes many affordable rental housing developments developed under the Low Income Tax Credit program since those are owned or operated by LLCs and other entities. It is also likely to exclude affordable housing developments that include a mixed-use component, such as a community center or social service facility. Finally, the definition also leaves out non-profit organizations whose primary mission is to serve low income communities.

The impact of this definition on low income communities is readily apparent by examining BCC’s current portfolio of solar projects. Several of our projects would not have been eligible under this definition, including the Old Colony redevelopment in South Boston, the Union Crossing mixed use redevelopment in Lawrence, and the Greater Boston Food Bank in Roxbury. Our newly commissioned solar project in Gardner, which benefits the Heywood Wakefield Commons Assisted Living Facility and GAAMHA, a social service agency serving people with disabilities, also would not have been possible under this legislation. The changes proposed below make sure that with the passage of H. 4185 affordable housing and other solar projects benefitting low income communities will continue to be eligible for virtual net metering.

AMENDMENT

SECTION 1, lines 46: “*Low income ~~residential~~ solar virtual metering facility*”...

SECTION 1, line 105: said chapter 164: *low income ~~residential~~ solar virtual metering facility*...

SECTION 5, beginning at line 336: “*Low income ~~residential~~ solar virtual metering facility*”, a solar virtual metering facility that allocates all of its solar virtual metering credits to ~~the~~ (1) providers or residents of low or moderate income housing publicly assisted housing, as defined under section 20 1 of chapter 40B; or (2) a 501(c)(3) not-for-profit organization, who is incorporated under state law as a not-for-profit corporation, and whose primary mission is to provide services and support to low income communities.

SECTION 5, Line 359: *low income ~~residential~~ solar virtual metering facility*...

SECTION 5, Line 399: *low income ~~residential~~ solar virtual metering facility*...

¹ “Low or moderate income housing” is defined as any housing subsidized by the federal or state government under any program to assist the construction of low or moderate income housing as defined in the applicable federal or state statute, whether built or operated by any public agency or any nonprofit or limited dividend organization.

3. Preserving equitable access to solar for low income communities

Low income communities rely on virtual metering to access solar. In multi-building affordable housing developments, for example, virtual metering is used to install solar on the rooftops best suited for solar and credits are virtually metered across all or a set of meters on the property. H. 4185 would reduce the value of the net metering credits these projects receive and bundle the value of the solar incentive and net metering credit as a fixed level. These changes could restrict access to solar for low income communities by making them less economic and preventing a solar developer from offering net metering credits to solar customers as a hedge against rising and volatile electricity prices. For example, BCC's solar projects for the North Canal apartments in Lowell Charlestown and the Cambridge Housing Authority's Lincoln Way development would not have been feasible under the current language.

To fulfill the objective of equitable access to solar, one approach is to amend the legislation to treat all virtually metered systems sized 1 MW or less as phase 2 solar systems, such that they receive the full retail rate for net metering credits and an unbundled solar incentive. That language is included below.

AMENDMENT

SECTION 1, beginning at line 36: *in the instance of a solar virtual metering facility with a generating capacity of 1 megawatt CA or less, it shall be the phase 2 solar incentive; in the instance of a solar virtual metering facility with a generating capacity greater than 1 megawatt AC, it shall be the bundled solar incentive compensation value...*

SECTION 1, beginning at line 57: associated with electricity produced by a phase 2 solar net metering facility or a solar virtual metering facility with a generation capacity of 1 megawatt AC or less that shall be a fixed per kilowatt-hour amount over the incentive term, and is independent of and paid separately from phase 2 solar net metering credits and solar virtual metering credits.

SECTION 1, beginning at line 119: *For a solar virtual metering facility with a generating capacity of 1 megawatt AC or less, the incentive value shall be the phase 2 solar incentive; and for a solar virtual metering facility with a generating capacity greater than 1 megawatt AC, the incentive...*

SECTION 5, beginning at line 388: *"Solar virtual metering credit", for solar virtual metering facilities with a generating capacity less than or equal to 1 megawatt AC, a credit for the production of solar electricity equal to the excess kilowatt-hours by time of use billing period, if applicable, multiplied by the sum of the distribution company's: (i) default service kilowatt-hour charge in the ISO-NE load zone where the customer is located; (ii) distribution kilowatt-hour charge; (iii) transmission kilowatt-hour charge; and (iv) transition kilowatt-hour charge; provided, however, that this shall not include the demand side management and renewable energy kilowatt-hour charges set forth in sections 19 and 20 of chapter 25 or the rate recovery mechanism set forth in chapter 94K. For solar virtual metering facilities with a generating capacity greater than 1 megawatt AC, a credit...*

4. Maintaining the ability for affordable housing and non-profit organizations to benefit from federal tax incentives

Solar projects on affordable housing and non-profits typically access solar through third party ownership models in order to capture federal tax benefits. The definition for “campus solar virtual metering facility” however, inadvertently prevents third party ownership models by requiring that the facility, customer of record and the recipients of the credits be located on the same parcel of land. This arrangement is often not possible in third party models, because some banks require the third party owner to own the solar system meter and thus be the customer of record. This arrangement helps mitigate risk to the project in the event a solar customer goes bankrupt or stops honoring the terms of a solar power purchase agreement. The amendment below removes the requirement that the customer of record be located on the same parcel of land and makes clear that third party ownership models are permitted for these types of systems.

AMENDMENT

SECTION 5, beginning at line 317: *“Campus solar virtual metering facility”, a solar virtual metering facility where the facility, ~~the customer of record,~~ and the recipients of credits are all located on the same parcel of land and where ~~they~~ the customer of record and the recipients of the credits have a documented relationship regarding the use or occupancy of the land other than a beneficial interest in the solar virtual metering facility, including but not limited to a landlord-tenant relationship or a rooftop lease agreement.*

5. Enabling solar storage, emergency power generation and other solar services

In exchange for the proposed new solar incentive, a solar system owner would be required to give distribution companies title to all the “energy and non-energy attributes” produced by the solar system. This language could include title to storage, resiliency, back up benefits and other solar services and prevent these types of projects from being built. To clarify this is in fact not the case, this amendment grants the distribution companies title to energy and renewable attributes only, as is the case in the current SREC and RPS programs.

The amendment further clarifies that solar storage and back-up systems are eligible for net metering treatment and should not be subject to special interconnection fees. This will avoid a scenario, already unfolding in states like California and Wisconsin, where distribution companies deny net metering treatment to solar systems with storage or back-up capabilities and/or require these projects to pay large, special fees in order to interconnect. Finally, the amendment clarifies that any costs associated with installing a second meter shall be borne by the distribution company, unless the Department of Public Utilities (DPU) determines otherwise.

AMENDMENT

SECTION 1, line 25: ~~non-energy~~ renewable attributes ...

SECTION 1, line 56: ~~non-energy~~ renewable attributes...

SECTION 1, insert at line 65: “Renewable Attribute”, a non-price characteristic of the electrical energy output of a specific phase 2 solar net metering facility, solar virtual metering facility, and merchant generating facility that derives from the a facility’s production of renewable electrical energy output and is used by distribution companies for compliance under section 11 F.

SECTION 1, beginning at line 212: ~~non-energy~~ renewable attributes to the distribution company to which said facilities are interconnected. The distribution company may elect to retain such attributes to meet the applicable annual requirements under section 11F, provided that any attributes not so used shall be sold into the market. ~~To the extent there are any other market products or attributes that are obtained from such facilities, such market products shall be sold in the market.~~

SECTION 1, lines 228-229: ~~environmental~~ renewable and any other attributes acquired.

SECTION 2, line 261-262: Any net proceeds obtained by a distribution company from any resulting energy, ~~environmental~~ or renewable attributes ~~or other market products~~ shall be applied to the rate recovery mechanism.

SECTION 2, line 272: ~~environmental~~ renewable attributes...

SECTION 5, insert at line 421: (3) For the avoidance of doubt, emergency power generating facilities and other solar facilities with battery storage shall be eligible net metering facilities and shall receive solar net metering credits or solar virtual metering credits for the portion of the electricity generated by the solar facility and exported to the distribution system. Distribution companies shall be prohibited from imposing special fees on these facilities.

SECTION 5, add to line 453: Any costs associated with installing a second meter shall be borne by the distribution company, unless otherwise decided by the department.

6. Minimum monthly contribution

The language dictating which costs will be included in the minimum monthly is vague and subject to a range of interpretations. This is concerning because even a low minimum monthly bill could materially impact affordable housing developments that net metering across multiple accounts. For example, with a \$10 minimum bill, the affordable housing development Olde English Village, which net meters across 10 electricity accounts, could face \$900 in new electric charges, an amount equivalent to 15% of their total savings from solar. Also, our solar project at Mishawum Park in Charlestown, which generates solar electricity on 15 of its roofs and net meters to an additional 60 meters in the development, would easily face several thousand dollars in new bills annually.

To address these concerns, BCC's amendment makes implementation of the minimum monthly contribution optional. Also, renewable energy generating facilities would only be subject to a minimum contribution if the DPU determines the benefits these facilities provide to the grid is less than the minimum monthly contribution they would otherwise be subject to. Finally, BCC suggests that the language around exempting low income ratepayers be clarified and expanded. Towards that end, the amendment mandates that the low income rate class and affordable housing customers are exempt from a minimum monthly contribution.

AMENDMENT

SECTION 2, beginning at line 235: Section 94J. *For all rate classes of each distribution company, the department shall ~~review and approve~~ determine if a minimum monthly contribution ~~to~~ should be included on a customer's total bill ~~that~~ to ensures each customer contributes each month a reasonable amount toward the minimum costs of the electric distribution system that are not caused by volumetric consumption. Minimum monthly contributions may differ by rate class and by amount of customer load within each rate class. The low income rate class and any affordable housing customer, as defined under section 1 of chapter 40T, shall be ~~The department may~~ exempt from any or modify the minimum monthly contribution for the low income rate class. Customers with renewable energy generating facilities shall only be subject to a minimum monthly contribution upon determination by the department that the benefits and services provided to the grid by these facilities is less than the minimum monthly contribution these customers would otherwise be subject to. Each distribution company may elect to include its proposal for minimum monthly contributions: (1) as part of its next base distribution rate proceeding; or (2) as part of a revenue neutral rate design filing that is supported by appropriate cost of service data across all rate classes and that is decided within six months of its filing. A distribution company may propose minimum monthly contributions in a revenue neutral, rate design filing, as long as the scope of the filing is limited to the minimum monthly contributions requirements authorized by this section. ~~The department shall ensure that any minimum monthly contributions approved in a revenue neutral rate design filing are applied in a nondiscriminatory manner so that customers with renewable energy generating facilities are subject to the same monthly contributions as customers who do not have onsite renewable energy generating facilities.~~*

SECTION 5, line 422: ~~shall~~ may be subject to a minimum monthly contribution