

Will Community Solar Ever See the Light in Pennsylvania?

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OVERVIEW

“Community Solar” is a solar energy system that benefits multiple customers (who are called subscribers). These customers, who can be homeowners, renters, or businesses, “subscribe” (or purchase) a portion of the energy generated by a shared solar array, often located off-site, and receive credits on their electricity bills for the power their share produces. Essentially, it's a way for people who can't or don't want to install solar panels on their own property to access the benefits of solar energy.

In Pennsylvania state lawmakers have tried but failed to enable Community Solar facilities via statute. Last Year we published [“Community Solar, Coming to Pennsylvania?” Eckert Seamans’ Energy Update, April 2024](#). Since then, a recently proposed Bill, [House Bill 1155](#), would authorize Community Solar in Pennsylvania. It has 39 co-sponsors, all of whom are Democrats. There are no Republican co-sponsors. HB 1155 Section 9(a)(1) provides that an “... electric distribution company shall...accept interconnection applications for Community Solar facilities on a nondiscriminatory basis ... in accordance with best practices.”

The current interconnection rules and tariffs, which have been approved by the Pennsylvania Public Utility Commission (“Commission”), do not explicitly authorize Community Solar service. Under the proposed legislation the Commission will be required to promulgate regulations to implement Community Solar. HB 1155 at Section 11; see also HB 1155 at Section 6(a), 6(f), 12. Those regulations and any related Implementation Order should address the ability of Community Solar projects to use the commission-approved interconnection rules and tariffs as those rules and tariffs are written for net metering customer-generators.

ANALYSIS

Should HB 1155 become law, we do not predict that the Commission would create new and distinct interconnection standards for Community Solar facilities because, as written, Section 5(a)(1) directs the use of an “executed interconnection agreement ... in accordance with 52 Pa. Code Ch. 75 relating to alternative energy portfolio standards.” However, interestingly, other language in HB 1155 could prevent an existing facility from becoming a Community Solar facility because the definitions of HB 1155 place restrictions on “community solar facilities,” such as the facilities being owned by a “community solar organization.” See HB 1155 at Section 3. In addition, Section 12 contains language that limits the location of multiple Community Solar facilities in proximity with others. This would prohibit owning or operating more than one Community Solar facility on the same parcel or contiguous parcels of land. As in previous bills, the bill contains language requiring compliance with prevailing wage and labor requirements which might also hamper facilities already built which did not pay prevailing wage.

Second, Pennsylvania passage of Community Solar legislation seems unlikely in this session of the General Assembly. Relations between Pennsylvania Democrats and Republicans on energy issues continue to be contentious. A stalemate between the House, Governor and the Senate remains in full effect. This is largely related to a disagreement regarding the Regional Greenhouse Gas Initiative (“RGGI”). In short, if HB 1155 were to pass the House,

there is a great likelihood that it would not get through the Senate as long as issues relating to RGGI remain unresolved.

Third, many utilities believe that Hommrich¹ net metering systems are receiving “too much” compensation for their excess generation. Solar facilities now operating in Pennsylvania and taking advantage of net metering opportunities through the so called “Hommrich Loophole” are also concerned about legislative attempts to “close” that “loophole.” Prior to the Hommrich ruling, the Commission had regulations that limited net metering to customers who used the generated energy on-site. The Hommrich ruling, however, interpreted the law to allow developers of solar projects (even large-scale ones) that did not have any offsetting electric demand, to sell all their energy to the utility at retail rates, bypassing the wholesale market, if their project was 3 MW or less. While the stalemate mentioned above makes it unlikely that a Community Solar bill will become law in this session of the General Assembly, it also makes it unlikely that any legislative efforts to “close the Hommrich loophole” will be passed in this session of the General Assembly.

Fourth, other challenges exist for companies involved in, or interested in getting involved in, net metering in Pennsylvania. One electric company has filed, and obtained Commission approval for, changes in the default service supply categories that would apply to a distributed energy project. In general customers are placed into default service procurement groups usually based on the tariff provision under which they receive service from the electric distribution company. The tariff provision under which they receive service is based on the characteristics of the demand the customer places on the system. Each of those groups has different default pricing due to the way in which they use energy and the way in which energy is procured for them. In this recent case, the classification of customers in one group versus another was changed to each customer’s “net supply peak load impact.” Classification by “net supply peak load impact” is a significant change. That classification change “moved” certain net-metering customers (and merchant generators) into an hourly pricing class, which reduces the compensation that projects will receive for excess generation compared to the compensation under the previous procurement class. The Commission’s approval of these classification changes has been appealed to the Commonwealth Court; however, other electric distribution companies (“EDCs”) are also seeking to modify their tariffs to divide customers into two default service rate classifications for this same purpose.

It remains to be seen whether other EDCs will attempt to follow suit and modify their default service procurement groupings, which would in turn modify the price that would apply to excess energy sold by a net metering customer to the EDC. In any event, it would not seem practical for EDCs to try to make a major modification in default service procurement groupings outside of a default service procurement proceeding, which only occurs when the EDC is proposing a new default service procurement plan. For the major EDCs, their current default service plans will not end for a few years.

Another issue facing any Community Solar effort in Pennsylvania would be varying interpretations of net metering project requirements and existing interconnection requirements and costs. Several EDCs have imposed, or tried to impose policies that would make Community Solar development more difficult. For example, one EDC changed its policy on “site control” documentation and rejected exclusive option agreements as adequate evidence of site control. After solar developers challenged those policy changes before the Commission, it appears that the EDC has reversed its policy change and resumed acceptance of option agreements as adequate evidence of site control for net metering. Another example is EDC non-refundable deposit and payment requirements, which lock developers into large interconnection cost payments even when the project is cancelled. These changing and varied requirements would also have to be reviewed and potentially modified for Community Solar (or any net metered project) to be successful.

¹ *Hommrich v. Commonwealth*, 231 A.3d 1027 (Pa. Cmwlth. 2020), *affirmed*, 245 A.3d 637 (Pa. 2021) (Per Curiam).

CLOSING

Because members of the Pennsylvania General Assembly have once again introduced a bill on Community Solar, if, and only if, Pennsylvania's Governor and Legislature are able to resolve their differences over RGGI, this bill may eventually see the light. To the extent that the legislation ends up making net metering reforms it might exclude existing entities. On the other hand, it may also include grandfathering provisions and other matters not yet debated. Consequently, solar facilities now operating in Pennsylvania, and those interested in operating in Pennsylvania, must be diligent in tracking and commenting on proposed legislation, monitoring and responding to unfair tariff and policy changes proposed by EDCs, and addressing matters which may discourage, rather than encourage, investment in solar facilities in Pennsylvania.

For more information and assistance with monitoring the progress of Community Solar or understanding the current Bills and their status contact Robert J. DeSousa at rdesousa@eckertseamans.com, or Renardo (Rick) Hicks at rhicks@eckertseamans.com. For questions about existing solar, net metering and interconnection rules contact Bob, Rick, Carl Shultz at cshultz@eckertseamans.com, or Dan Clearfield at dclearfield@eckertseamans.com. Eckert Seaman's attorneys have practical experience across a broad range of practices, such as government relations, energy, utilities, and public transit, and work with a diverse group of clients, including government entities and private businesses. We are a full-service law firm that can assist with issues in and around solar and other energy platforms.