Net Metering and Renewable Energy Investments: A Presentation for the New York Coalition for Sustainability in Higher Education

January 14, 2016

Adam T. Conway
Couch White, LLP

Agenda

• Net Metering
  ➢ What Is It?
  ➢ Why Now?

• Beyond Net Metering
  ➢ What Comes Next?
  ➢ What Else is Available?

• Contract Issues
  ➢ Buyer Beware
  ➢ Protect Your Long-Term Interests
Net Metering

• What Is It?

- Net metering reduces utility bills for customers that install qualifying renewable generation facilities
  - Solar, wind, micro-hydro, fuel cell, farm waste
- Generation is interconnected with utility distribution system
- Generation can be “behind-the-meter,” which reduces usage at the generation site, or remote
Remote Net Metering

- Customer earns credits at a remote location (the “Host Account”) that are applied against existing utility accounts (the “Satellite Accounts”)

- Key Issues:
  - Monetary vs. Volumetric Crediting (Grandfathered Projects)
  - Customer Must Own or Operate the Generating Equipment
  - Customer Must Own or Lease the Real Property
  - Solar, Wind and Hydro Projects Sized at No More Than 2 MW
  - Satellite Accounts Limited to 2 MW of Net Metered Capacity
Remote Net Metering: Why Now?

- New York heavily invested in solar (NY Sun, NYSERDA MW Block);
- Investment Tax Credit recently extended;
- Reduce expenses;
- No upfront capital commitment (the PPA model);
- Hedge against rising utility rates, stabilize budgets;
- Achieve sustainability goals;
- Take advantage of favorable program before it is gone.
Beyond Net Metering: What to Expect
Changes to Net Metering

• Net Metering Has Undergone Significant Transformation Over the Past Year
  • December 15, 2014: PSC raises net metering cap to 6%, clarifies customer cost responsibility for utility interconnection, and eliminates monetary crediting for most projects;
  • April 17, 2015: PSC issues Transition Plan grandfathering certain projects back into monetary crediting;
  • July 17, 2015: PSC issues order establishing Community Distributed Generation Program;
  • October 16, 2015: PSC issues orders: (i) directing creation of interim successor to net metering; (ii) temporarily removing cap on net metered generation; and (iii) clarifying rules governing eligible Satellite Accounts;
  • November 16, 2015: utilities file petition for rehearing of October 16 decision to temporarily remove the net metering cap;
  • December 17, 2015: NYSERDA study examining costs and benefits of net metering is published; and
  • December 23, 2015: PSC starts proceeding to determine interim successor to net metering.
Changes to Net Metering

• Certainty for Grandfathered Projects
  ➢ Monetary crediting for a period of 25 years from a project’s in-service date

• Uncertainty for Other Net Metered Projects
  ➢ Utilities are asking PSC to clarify that, once net metering successor is developed, net metering “will not constitute a minimum compensation rate” for projects developed in the interim
  ➢ PSC likely to rule on this request in February or March
  ➢ A ruling in the utilities’ favor could create significant near-term uncertainty

• Customers who are well-informed on available options likely will achieve best results
  ➢ Rapid changes in solar programs highlight the need to stay informed
Other Customer Options

• Hedge Contracts
  ➢ “Fixed for floating” or “contract for differences”
    o Customer takes market price risk in exchange for guaranteeing developer a fixed price
    o Unlike net metering, no 2 MW cap on the amount of capacity that can be contracted for
    o Customers can bargain for renewable energy credits in addition to price certainty

• Energy Performance Contracts
  ➢ Developer installs project at low or no up-front customer cost (can include purchase option)
  ➢ Energy savings can be guaranteed based on certain parameters
  ➢ Current low cost of electricity/heating oil can limit available offerings

• Community DG
  ➢ Larger customers can contract for up to 40% of project output
  ➢ Near-term uncertainty over compensation (net metering)
Purchasing Renewable Energy: Issues to Watch For
PPA – Issues for Customers

• Project developers can oversell the benefits

  ➢ Overestimate potential credits from remote net metering by using anomalous monthly data (use months with highest rates)
  ➢ Overestimate projected utility rates in out years to enhance savings estimates
  ➢ Disguise PPA terms that could erode savings (e.g., price escalators)

• Bottom line: proposals from developers must be analyzed very closely to ensure that purported savings are real
PPA – Issues for Customers

- **PPA Issues for Customers**
  - Should establish conditions precedent
    - Utility approval of remote net metering and interconnection
    - Customer reimbursed for all interconnection costs
    - Receipt of all permits, approvals and real property agreements
    - Termination right if project not in-service by NYSERDA deadline
  - Seek ownership of environmental attributes
    - Likely required if solar project included as part of sustainability efforts
    - Ownership rules for NYSERDA-funded projects are fluid
    - May have independent financial value in the future
  - Adopt tight indemnification provisions
    - If customer simply is purchasing from a “remote” project, developer should fully indemnify customer from injuries or damages related to the system
PPA – Issues for Customers

• PPA Issues for Customers
  ➢ Address the remote net metering requirements
    ➢ Customer must ‘own or operate’ the generating equipment
    ➢ If project not on customer-owned property, customer needs real property interest
    ➢ If project on customer-owned property, developer needs real property rights from customer
      and should restore property upon system removal
  ➢ Address the risk of changes in law
    ➢ PPAs are long-term agreements, often 20-25 years
    ➢ Regulatory environment has been challenging at times
    ➢ Consider termination or modification to preserve economic benefits
  ➢ Default and remedies
    ➢ Customer remedies: purchase option; system removal; cost of replacement electricity

• Bottom Line: PPAs present numerous legal issues and the customer needs to protect its interests

Couch White, LLP

- We are a full-service business law firm specializing in energy and construction law
- Our energy practice has 10 attorneys with over 150 years of combined experience
- We regularly appear before regulatory agencies in New York and Connecticut and the Federal Energy Regulatory Commission on behalf of end-use consumers such as NYCSHE members
- We represent the interests of large industrial, commercial, and institutional customers in energy negotiations and contract drafting and in energy-related regulatory proceedings
  - We have done significant legal work for current NYCSHE members pursuing sustainable energy projects (solar; wind; hydro)
- We are very active in the PSC proceedings mentioned herein and related matters
- DISCLAIMER. This presentation is for informational purposes only and provides general information concerning net metering and renewable energy investments to help you identify when you may need additional advice. It is not an exhaustive treatment of the statutes, case law or regulations that are involved with the subject. Please recognize that the law is developing rapidly in this area and you will want to obtain current legal advice on your specific situation before taking action. Use of this presentation does not create any attorney-client relationship between the user and the author.
Questions???

Adam Conway
518-320-3423
aconway@couchwhite.com