Published on *The National Law Review* https://natlawreview.com

Net Metering 2.0: Big Changes Across New England

Article By:

Brook J. Detterman

Marc J. Goldstein

Summary: April is turning into a busy month for solar energy policy in New England: Massachusetts and New Hampshire recently enacted new net metering legislation, while lawmakers in Maine debate a novel proposal that would revamp the way solar owners are compensated for the power they produce and Vermont regulators recently proposed an overhaul of that state's net metering program.

As described in our previous article, net metering is crucial for the success of solar power: it allows solar owners to trade their excess power during the day (when the sun is shining) for power from the grid when it's dark. This system relies on two things: a well-functioning electric grid and policies that fairly compensate both solar owners and the utility companies that provide valuable grid services.

Despite their apparent simplicity, net metering programs have suffered criticism since their inception. Utilities often complain that they are not adequately compensated for grid services, while solar owners and developers argue that solar power is often undercompensated and that net metering caps create uncertainty in the marketplace.

The NC State University Clean Energy Technology Center recently reported that 46 states took some action on net metering or distributed generation during 2015. Of those, 27 states considered or enacted changes to their net metering programs.

Policy makers across New England are making decisions this spring that will affect solar power for years to come. And as they do so, a few trends are emerging. Lawmakers are lifting net metering caps, looking for ways to fairly value solar power, and providing ways for utilities to recover costs associated with grid services. In short, they are trying — with mixed degrees of success — to address the complaints faced by early net metering programs.

Massachusetts raises net metering caps, lowers rates

After recently hitting net metering caps, many commercial and municipal solar projects across Massachusetts were placed on ice. On April 11, 2016, Massachusetts Governor Charlie Baker signed into law a bill that raises net metering caps, but that also lowers net metering rates for

certain types of installations. The new legislation, Bill H. 4173, raises caps from 4% to 7% of peak load for privately owned systems and from 5% to 8% for municipally owned installations. Smaller residential arrays continue to remain exempt.

The law also lowers the reimbursement rate for commercial projects by 40%. In effect, Massachusetts now has "60% metering" instead of "net metering" for commercial installations. Massachusetts legislators made no changes to the reimbursement rates for municipalities or smaller residential installations, and existing installations are grandfathered into their old rates for 25 years.

At the same time, the bill also allows utilities to apply to state regulators for permission to charge "a monthly minimum reliability contribution." This is a fee that appears on monthly bills to offset the utility's costs of providing grid-based services to the solar customer. That's a fair concept. But by*also* cutting reimbursement rates by 40%, Massachusetts has taken a step in the wrong direction. As noted below, Maine lawmakers have recognized that solar often provides *higher* value because it comes during periods of peak demand and has fewer environmental costs. Some commercial projects may suffer from lower rates, especially community-based solar installations that have the potential to benefit lower-income ratepayers.

In the short term, lifting the net metering cap will breathe life back into the Massachusetts solar industry and its 15,000 employees. The next time the cap is hit, the Massachusetts legislature should enact legislation that (i) eliminates or significantly raises net metering caps to avoid continual market uncertainty, (ii) properly compensates solar owners for the full value of their solar power, and (iii) allows utilities to recover reasonable costs associated with providing grid services. In the meantime, no one is 100% happy, but perhaps that's a sign that Massachusetts is getting net metering at least partially right.

Massachusetts is also in the process of updating its solar renewable energy credit ("SREC") program, a topic for another day.

Maine at a crossroads

Maine has had a net metering program in place for several years. The current program compensates solar owners at the retail rate of power and also provides for a "minimum bill" of about $10 per month. The minimum bill charge is intended to compensate utilities for the grid services they provide to net metering customers.

In an effort to update the program, Maine lawmakers are considering a bill, L.D. 1649, which would change the landscape for solar by eliminating traditional net metering and replacing it with a program that compensates solar owners at potentially higher rates for the power they produce. A "standard buyer" would aggregate solar power and sell it into energy markets, with solar owners compensated at a rate designed to foster solar installations. In the case of residential solar and small businesses, those rates would be set by the Maine Public Utilities Commission, guaranteed for 20 years, and gradually decline. Additional provisions cover ownership of Renewable Energy Credits, community solar, and larger commercial and grid-scale solar installations.

While the aggregation and compensation mechanism is novel, the proposed bill retains some features of net metering: solar owners receive "payment" in the form of bill credits, which expire on certain intervals if not used by the owner. The standard buyer will retain any expired credits.

Key aspects of the bill include:

- A goal of 250MW installed solar by 2022 (this is over 10x what Maine has now)
- Expansion of the solar market in Maine to reach to include utility-scale projects, commercial/industrial projects, while also lifting the cap on community solar.
- Creation of a system in which power produced by small solar owners is aggregated and sold into energy markets, better capturing the value of solar power.
- Savings to Maine rate payers of more than $100,000,000 over the program's life, according to the bill's advocates.
- Fixed-rate 20-year contract price for exported solar power for all solar projects under the new.
- Grandfathering of existing net metering customers (and new customers until program implementation).

Maine Governor Paul LePage opposes the bill and, in a recent turn of events, some Republican lawmakers have withdrawn support for the bill and backed the governor's proposal to allow the Maine Public Utilities Commission to decide the fate of net metering in Maine. That would be a mistake. As recent experience in Nevada has shown, allowing energy policy to depend on the whims of each administration creates uncertainty for solar owners, chaos for the solar industry, and slows the growth of a valuable form of renewable power. By contrast, Maine's proposed legislation — even if imperfect — will create certainty, solve some of the pricing problems associated with solar net metering, and gives solar power a clear path forward in Maine.

New Hampshire doubles net metering cap

Following (or perhaps leading) a regional trend to raise net metering caps, New Hampshire lawmakers recently passed a bill, H.B. 1116, that raises the state's net metering cap from 50MW to 100MW. The bill was passed on Thursday, April 7, 2016, and awaits Governor Maggie Hassan's signature. Governor Hassan has expressed support for the measure, and is expected to sign the bill.

This is a crucial development for the solar industry in New Hampshire, since as installations are rapidly approaching the previous 50MW cap. The bill also directs the Public Utilities Commission to develop a "new alternative net metering tariff" that must take into account a range of factors. That provision reflects a growing trend to better account for the benefits and costs of solar power, rather than simply relying on a basic net metering program. The NH PUC has roughly 10 months to create an alternative net metering tariff.

This bill resulted from months of negotiations between legislators, industry, and other stakeholders. Policy makers hope that increasing the net metering cap will buy enough time for the NH PUC to develop a new net metering tariff that properly captures the value of solar while accounting for its costs.

Vermont aims to reduce impacts of solar development

Vermont is near its net metering cap, with over 100 MW installed. That's a lot of solar in a relatively small state. But Vermont's current net metering program expires in 2017, and the Vermont Public Service Board is tasked with creating new program. The VSB recently released proposed regulations

that would raise caps and also aims to do something unique: reduce development impacts associated with solar by encouraging certain types of installations.

The proposed regulations would create preferential payments for installations in preferred locations, including:

- New or existing structures, where the primary purpose of such structure is not the generation of electricity (*i.e.* buildings);
- Previously developed sites that are not agricultural or wildlife habitat;
- Brownfields;
- Landfill or former leach fields; and
- “Locally Preferred” sites (based on designation of the host municipality)

These provisions could reduce impacts of solar development by creating price signals for preferred sites. The proposed regulations would also include a new monthly “grid-service fee” imposed on net-metering customers and intended to compensate utilities for providing grid services.

Observations and regional trends

Across New England, solar is growing rapidly when given a fair chance. Net metering programs are experiencing innovation as policy makers and various stakeholders seek to better allocate the costs and benefits of solar power. But net metering is not a subsidy: it is fair payment for power provided by solar to the grid, which can at times have a high value based on timing and environmental attributes. At the same time, the grid doesn’t run for free, and solar owners are increasingly being asked to pay their fair share for its maintenance. No state has a perfect net metering or solar tariff program but these recent changes and proposals hold opportunity over the long term.

National Law Review, Volume VI, Number 105