

Message from the Massachusetts Electric Distribution Companies Re: Distributed Generation-Related Business Continuity and Invocation of Force Majeure

Several distributed generation customers have asked the electric distribution companies about their business continuity plans during the COVID-19 crisis. As you are likely aware, the Governor of Massachusetts declared a state of emergency on March 10 and subsequently ordered businesses that do not provide COVID-19 essential services to cease in person operation for two weeks, from March 24 until April 7. As energy providers, the distribution companies are considered providers of COVID-19 essential services, and are continuing to operate during the COVID-19 crisis. Each EDC plans to progress DG interconnection work to the fullest extent possible during the COVID-19 crisis, recognizing that circumstances outside of the EDC's control related to the pandemic could affect the timing of that work. Specifically, each of the EDCs is continuing to process DG interconnection applications and studies in the ordinary course, by doing the work remotely. However, due to COVID-19, there is a potential risk of slowdowns in this work. Each of the EDCs currently is continuing field-based work in the ordinary course. The field-based work has a higher risk of slowing down or stopping due to circumstances related to COVID-19, such as municipal restrictions on construction work. This risk that an EDC may need to modify or suspend work on certain DG interconnection projects will continue during the COVID-19 pandemic and until such time as each EDC has determined, respectively, that employees and contractors will be safe and healthy returning to normal working arrangements.

During this health emergency, both the EDCs and Interconnecting Customers continue to be obligated to process applications for distributed generation pursuant to each EDC's Department-approved interconnection tariff. Many of you are likely aware that the tariff includes provisions covering "Force Majeure Events," defined as "any event that this is beyond the reasonable control of the affected Company or Interconnecting Customer, and that the affected Company or Interconnecting Customer is unable to prevent or provide against by exercising commercially reasonable efforts." COVID-19 is clearly an event beyond the reasonable control of the EDCs, and the EDCs are unable to prevent or provide against it. Accordingly, the EDCs are treating the COVID-19 crisis as a "Force Majeure Event" for purposes of implementing the interconnection tariff. As such, the EDCs are entitled under the tariff to modify or suspend their performance obligations under the tariff, although only to the extent that the effect of the Force Majeure Event cannot be mitigated by the use of reasonable efforts.

However, as noted, the EDCs do not currently intend to modify or suspend their DG interconnection performance obligations under the tariff, and intend to continue DG interconnection work, using commercially reasonable efforts, during the COVID-19 crisis. The EDCs ask customers to understand that the COVID-19 crisis creates risks of some delays to or suspensions of DG interconnection work that would not ordinarily occur in the normal course. Accordingly, each EDC will be notifying Interconnecting Customers formally that they intend to invoke the Force Majeure provisions of the tariff, while intending to continue to progress DG interconnection work during the crisis using commercially reasonable efforts.

The Force Majeure provisions of the tariff are also available to Interconnecting Customers. Several developers have raised the potential to invoke Force Majeure with respect to payments owed to an EDC for services already performed, or scheduled to be performed. The EDCs respect the rights of Interconnecting Customers to invoke Force Majeure in good faith.

The Force Majeure provisions of the tariff do not entitle a party to modify or suspend an obligation to make payments that are then due or are becoming due in the future under the tariff. However, , recognizing the disruption and hardships the COVID-19 crisis has caused, the EDCs will consider requests for an extension for payments for DG projects due under the tariff between certain dates, for example, a 20 business day payment extension for payments due from March 10 through April 7 for projects that are not already in default. Please note that all payments shall be received in full before equipment will be ordered and construction can start.