

STATE OF NEW HAMPSHIRE

Intra-Department Communication

DATE: June 19, 2015

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FROM:  Elizabeth R. Nixon, Energy Analyst

SUBJECT: DE 10-212 Commercial and Industrial Solar Rebate Program
Clarification Request Regarding Proposed Sale-Leaseback
Financing Transactions and System Ownership Changes

TO: Martin P. Honigberg, Chairman
Robert R. Scott, Commissioner
Debra A. Howland, Executive Director and Secretary

CC: Karen Cramton, Director, Sustainable Energy Division
David K. Wiesner, Staff Attorney

The Commission approved a commercial and industrial (C&I) solar rebate program (Program), pursuant to RSA 362-F:10, VIII, by Order No. 25,151 issued on October 1, 2010 (Initiation Order). The Program was recently expanded and modified pursuant to Order No. 25,764 issued on February 20, 2015 (Modification Order). The expanded and modified Program was implemented beginning on April 17, 2015.

Recently, a representative of a Program applicant requested that the Commission clarify one of the approved terms and conditions of the Program, that requires the applicant to “commit that [the] system will not be sold or otherwise transferred, except to the host property owner or as part of a sale of the affected property, for a period of 10 years following Step 2 approval.” Modification Order at 16, 19 and 21.

The applicant representative requested that the Commission interpret this restriction on system sales and transfers not to prohibit the use of a sale-leaseback financing mechanism designed to permit the realization of federal tax benefits by a tax equity investor through a lease arrangement with the system operator who has a power purchase agreement (PPA) with the customer. In effect, the requested interpretation would represent a limited exception to the general ten-year restriction on project sales and transfers.

According to the applicant representative, most solar installers and system operators do not have sufficient federal income tax obligations of their own to take full economic advantage of the 30% federal investment tax credit and accelerated depreciation tax benefits. In order to realize the economic benefit of these tax incentives, solar developers seek equity investors that are able to use these tax benefits. These tax equity investments are essentially financing mechanisms that may be structured in various ways, including the so-called “partnership flip” model and the proposed “sale-leaseback” model. The

“partnership flip” model may involve changes in the equity ownership of a special purpose entity, such as a limited liability company, formed to own and operate the solar energy project. This model for tax equity investment does not involve an actual sale of the system; instead the majority ownership of the special purpose entity typically changes from the installer or system operator to the tax equity investor.

In the sale-leaseback model, the system operator pays for the system and takes title to the system from the installer immediately before the system is interconnected to the utility grid. The system operator then has 90 days under Internal Revenue Service rules to sell the system to the tax equity investors. In connection with this transfer of title to the system, the tax equity investors lease the system back to the system operator, typically for a term of seven years, and the system operator operates and maintains the leased system and sells the electricity output of the system to the host customer pursuant to a PPA, typically with a term of 15 years. At the end of the leaseback term, the system operator exercises its right to purchase the system from the tax equity investors for the system’s fair market value so the system operator may continue to perform under its PPA with the customer.

The sale-leaseback transaction structure essentially is a financing mechanism designed to permit the project stakeholders to monetize available federal tax incentives. The tax equity owners hold merely a passive investment interest in the project, and the system operator at all times operates and maintains the installed system and provides electric service to the host customer under the terms of its long-term PPA.

The sale-leaseback model is functionally equivalent to the so-called “partnership flip” model, which would not implicate the ten-year transfer restriction because the ownership changes take place at the special purpose entity level rather than through a transfer of title to the system itself. In either case, electric service to the host customer under its PPA is continuously administered by the system operator as a dedicated provider. These transactions are designed to efficiently realize federal tax benefits, which in turn provide direct or indirect economic value to all project participants and stakeholders.

Note that, under either tax equity transaction structure, the host customer may have the right to purchase the system after the special purpose entity has fully realized the federal tax benefits. The Modification Order expressly states that this type of sale to the host customer is permitted without regard to the general ten-year transfer restriction.

Please note also that the discussions in this memorandum related to various business structures are for the sole purpose of clarifying the program term restricting the sale or transfer of an eligible system, and are not applicable to other terms and conditions of the program, including, but not limited to, interpretation and application of the applicant cap restrictions.

Staff recommends that the Commission resolve this issue to provide certainty for this and other similarly-situated applicants.

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Pursuant to N.H. Admin Rule Puc 203.09 (d) and 203.11 (a) (11) Electronic copies of all discovery shall be served on every person designated for discovery filings on the Commission's official service list. [Discovery shall not be filed as part of a docket filing pursuant to 203.02]

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- a) Pursuant to N.H. Admin Rule Puc 203.02 (a), with the exception of Discovery, file 7 copies, as well as an electronic copy, of all documents including cover letter with: DEBRA A HOWLAND
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