

IS THE SUN SETTING ON SOLAR IN MASSACHUSETTS?

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Massachusetts has, in recent years experienced significant development of solar photovoltaic facilities, many of which have been located on municipal land by third parties who will build, own and operate the facilities at no cost to the municipality. These third-party owned facilities have resulted in significant municipal revenue in the form of rent and tax payments, and significant savings in the form of “discounted” net metering credits.

The development of such facilities has been encouraged by various governmental incentives, including:

- (i) Net metering credits, which are purchased by the municipality at a price that is less than their face value—like paying 80 cents for one dollar—and are used by the municipality to pay some or all of its electricity bills;
- (ii) The federal investment tax credit (ITC), which gives the developer a tax credit of up to 30 percent of the allowable cost of the solar facility; and
- (iii) Solar renewable energy certificates (or “SRECs”), which are, in essence, state-created vouchers generated by the operation of a solar facility that can be sold by the developer to electric utilities and other electricity suppliers who, in turn, use the certificates to satisfy their legal obligation to purchase some of their energy from renewable sources.

However, it is anticipated that these governmental incentives will not remain in place permanently. They are intended to increase solar development under the theory that such increase will result in a corresponding decrease in the cost of such development. Thereafter, as the cost of such development decreases and becomes economically self-sustaining, the incentives will be withdrawn. The challenge is to avoid withdrawing the incentives too quickly.

Changes to some of these governmental incentives have already been implemented. Recently, for example, the state SREC program was adjusted, making it less robust. Whereas previously each megawatt (1,000 kilowatts) of energy produced by a solar facility generated one SREC regardless of the location of the facility, now the quantity of SRECs generated by a megawatt of energy depends on the location of the facility. For example, a residential facility will generate more SRECs per megawatt than a landfill facility, which will, in turn, generate more SRECs per megawatt than a facility on virgin land. The purpose of the change is to incentivize

the installation of solar facilities in sectors that have been slower to develop, like residential. The change has resulted in a corresponding increase in the price of net metering credits, reducing the potential savings for municipalities that enter into a contract to purchase such credits.

Similarly, the ITC was set to be reduced at the end of 2016 from 30 percent to 10 percent. This reduction would have further increased the price of net metering credits, and in turn, significantly slowed solar development. In a holiday surprise, however, Congress extended to 2019 the date of such reduction. Many hoped for a similar surprise from the Massachusetts legislature, whose action is required to raise the state's net metering caps, which limit the amount of net metering that utilities are required to provide by law. The caps will likely be reached in 2016, at which point net metering credits will no longer be available for purchase, and solar development will likely come to a halt. As of this writing, there is no clear indication of whether the legislature will raise the caps. Even if it does, a question remains as to whether the legislature will make the state's net metering program less robust, as occurred with the SCREC program.

So is the sun setting on solar in Massachusetts? Probably not. Although it may not be high noon, the sun is still shining.

Should you have any questions about development of solar photovoltaic facilities on municipal land, power purchase agreements or net metering, please contact Attorney Richard T. Holland by e-mail at rholland@k-plaw.com or by phone at 617.556.0007.

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