2020 Municipal Law Update

RICHARD HEINEMANN  3.4.2020
rheinemann@boardmanclark.com
608.283.1706
Agenda

• State Legislation
  • Act 14 (the “small cell” bill)
  • AB 233/SB 236 (EV charging)

• FERC Issues
  • PURPA Revisited
  • Storage Order

• Municipal Utility Responses to DER
  • Energy Storage
  • EV
  • Solar
State Legislation
2019 ACT 14 (Wisconsin’s Small Cell Bill)  
Wis. Stat. Sec. 66.0414
FCC Orders
Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment

- State and local governments cannot adopt regulations that prohibit or have the effect of prohibiting wireless or wireline telecommunications services.

- Applies to local regulations affecting use of public (e.g., local ROW) and private property for telecommunications purposes.
2019 ACT 14 (Wisconsin’s Small Cell Bill) Wis. Stat. Sec. 66.0414

- Mirrors FCC’s limitations on municipal ROW regulation of SWF
- Creates “regulatory framework” for deployment of 5G cellular technology in Wisconsin
- Prohibits exclusive arrangements in municipal ROW
- Providers granted right of access in ROW, but may not obstruct/hinder “travel, drainage, maintenance, or the public health and safety, and general welfare” in ROW
2019 ACT 14 (Wisconsin’s Small Cell Bill)
Wis. Stat. Sec. 66.0414

• Sets parameters for an expedited permitting process
• Applies to all permits required for the wireless installation
  (eg. building, excavation, electrical)
• Establishes “shot clocks”
  • Completeness Review (10 days)
  • 60 days for collocation on existing structure
  • 90 days for new or replacement utility poles
  • Application granted if deadline missed

• Aesthetic requirements must be reasonable, uniform and objective
• Sets caps on application and attachment fees
2019 ACT 14 (Wisconsin’s Small Cell Bill)
Wis. Stat. Sec. 66.0414

• Allows nondiscriminatory rates for use of ROW w/re colocation or installation, modification or replacement of MEU poles
• Attachment rates for MEU poles supporting aerial cables must be negotiated with the small cell provider (PSCW as backstop)
• Rates for other municipal poles may not exceed “lessor of” actual cost or $250 per facility (e.g. street lights, traffic, signal poles)
• Imposes FCC rules on make-ready work (eliminating “Municipal Exemption”)
• All disputes adjudicated by court (not PSCW)
EV Charging Bill

• AB 233/SB 236 designed to award grants to businesses installing EV charging facilities
• MEUW supported amendment including municipal utilities as eligible grant recipients
• Legislation hit a wall; may be revisited next session
Federal Legislation
PURPA reform

- Public Utility Regulatory Policy Act of 1978
  - Designed to encourage renewable generation and cogeneration
  - Utilities required to purchase output from qualified facilities less than 80 MW at avoided cost rate
  - Utilities must sell power to QFs at just and reasonable, non-discriminatory rates
  - EPA of 2005 allowed utilities to terminate the must purchase obligation if FERC determines QFs have access to competitive markets (e.g. RTOs)
PURPA Reform

• FERC issued a NOPR to amend PURPA regulations in 2019
  • Set avoided cost rates based on competitive market factors (LMP)
  • Allow utilities to provide fixed energy rates based on forecasted energy prices over life of contract
  • Allow for variability of avoided costs based on time of delivery
  • Modify one-mile rule
  • Clarify criteria establishing the must-purchase requirement
  • Lower rebuttable presumption threshold re nondiscriminatory access from 20 MW to 1 MW

• APPA has filed supportive comments
City of Farmington PURPA case

• Decision in closely watched New Mexico federal district court case issued on February 11
• Court dismissed lawsuit against a municipal utility alleging retail rate design inconsistent with PURPA non-discrimination requirements
• Dismissal based on jurisdictional reasons, not substantive (and without prejudice)
• Reasoning could narrow types of PURPA enforcement actions, at least in federal court
Amending PG tariffs

• WI Utilities are updating parallel generation tariffs
  • More appropriately reflect avoided cost payments to DG-owning customers
  • Grandfathering treatment for existing net metering customers
• Munis following suit
**Order 841/841A- Energy Storage**

- Orders require RTOs and ISOs to revise tariffs to remove barriers for storage resources
- Prohibit states from broadly preventing electric storage resources located on retail premises or local distribution systems from participating in wholesale electric markets
- Policy of opening markets to more resources (incl. demand response)
- RTOs engaged in developing rules to implement
Order 841/841A

• Regulatory definition: “a resource capable of receiving electric energy from the grid and storing it for later injection of electric energy back to the grid”

• Includes “all electric storage technologies, and . . . resources that are interconnected to the transmission system, distribution system, or behind the meter”

• FERC grants itself exclusive jurisdiction over these resources; rejects the Order 719 “opt out” approach, while recognizing “ongoing, vital role of states” w/re to development and operation of storage technologies
Order 841/841A

• Numerous industry stakeholders raised questions about impact of the Order on storage facilities interconnected to local distribution systems

• On rehearing, FERC clarifies that denying RERRA veto pertains to storage sales into wholesale markets

• APPA (and NRECA) has appealed to DC Circuit:
  • FERC’s prohibition violates the standard of “cooperative federalism”
  • Same “opt-in/opt-out” standard should be applied as is employed for demand response under the Order 719 framework
Municipal Responses to DER
Energy Storage

• Energy Storage refers to technologies that enable collection of energy at one point in time for use at another (batteries, pumped hydro, flywheels)
• Systems generally designed to enable generation to meet load when needed and maintain balance
• Storage allows energy to be produced and then distributed when it is most valuable
• Costs have been declining in recent years, especially batteries
Energy Storage - Uses

• Deferral of investment in infrastructure
• Peak system load management
• Frequency regulation
• Energy price arbitrage
• Customer demand-side management
• Back-up power
**GENERATION**
Small scale generation such as solar, wind, hydro, bioenergy and combined heat and power are connected to the distribution grid.

**SMART HOMES**
Consumers can better control their energy use at home with smart lighting and appliances. On-site generation and energy storage can help shift energy use at home or sell to the grid. Several homes can even be aggregated to provide electricity services back into the grid.

**TRANSMISSION GRID**

**LOCAL DISTRIBUTION GRID**

**STORAGE**
Storage technologies such as batteries can withdraw electricity from the grid when prices are low, store it, and release the energy back into the grid.

**CUSTOMERS WITH GENERATION AND CONTROLLABLE EQUIPMENT**
Businesses use a combination of energy efficiency, demand response techniques, as well as on-site generation to manage their energy use and costs. Equipment such as heating and cooling pumps can be controlled to ramp up or down depending on electricity prices. They can also generate and/or store their own electricity to use or sell to the grid.

Note: For illustrative purposes only. Not inclusive of all types of distributed energy resources or types of connections are shown.
Energy Storage: Deployment

Figure 1: 2018 Annual Energy Storage Deployment (MWh)
Energy Storage: Regulatory response

- State Legislation
  - Net metering rules for pairing storage and solar (Ark., Cal., Mass., NY)
- Regulatory Studies (Nev, MN, NC)
- Utility Resource Planning rules (Del, Ind, Me, MN, Nev, OH, Or)
- State Energy Storage Targets (Cal, Mass, NJ, NY, Or)
Electric Vehicles

- Customers increasingly interested in PEVs
- Over 1.27 mil EVs as of June, 2019
- Electric utilities looking at how to prepare systems for adoption
- Regulators and policymakers and stakeholder groups are increasingly engaged
5-EI-136 - Investigation into EV Policy and Regulation

• NOI issued Feb, 2019
• Request for comment issued April, 2019
• Summary comments transmitted Sept, 2019
• Priority issues identified by respondents include:
  • Access to EV infrastructure
  • EV-related pricing and rate design
5-EI-136- Investigation into EV Policy and Regulation

• Municipal utilities support utility action to encourage growth of EV load
• Support for TOU rates to encourage residential charging during off-peak periods
• No limits on EV charging infrastructure
• Be proactive, but not prescriptive
• Munis well-suited to be pilot projects
SPU applied for approval of new TOU rate

Intended for optional residential nighttime service to incentivize off-peak use for residential customers with EV

Paired with outreach and charger incentive programs

Commission denied, citing existing TOU service and need for more data (while applauding SPU’s initiative 😊)

CUB testimony appeared decisive
Butter Solar Project - DG on large scale

- 10 Wisconsin installations
- 32.25 MWdc
- 85,000 panels
- 45 million KWh/year
- Installations on muni-owned, as well as private land
Forest City, IA – 4.4MWdc

Lanesboro, MN – 1MWdc

Arcadia, WI – 7.5MWdc
Cashton, WI – 2.6MWdc
St Charles, MN – 2.6MWdc
La Farge, Viola, Merrilan WI

Lanesboro, MN – 1MWdc

Forest City, IA – 4.4MWdc

Cumberland, WI – 3.4MWdc
New Lisbon, WI – 3.5MWdc
Elroy, WI – 2.1MWdc
Fennimore, WI – 4.1MWdc
Argyle, WI – 1.1MWdc
Butter Solar Project
Revenue Structure and Economics

- Long term REC contract with Organic Valley
  - Supplemented later with REC purchases from COM
- Long term PPA with UMMEG members
- Project synergies in procurement and single construction mobilization
- USDA loan and single financing counterparty
Butter Solar Project
Offtaker’s perspective

• Competitive fixed $/MWh price over 25 years
• Long term hedge over market energy
• Capacity value lowers overall power costs
• Installations sized to ensure no output to grid
• Wholesale energy purchase, so no need for regulatory approval (other than substation upgrades)
• Promoted in community as local green energy
Example – Arcadia, WI

Prospecting (Mid 2017)
- Looking for ~35 acres within city limits to build 5 MW project
- Avoid future conflicts with other land uses
- City administrator and utility manager helped developer identify 3 potential options
- Worked with landowner to sign 35-year lease agreement

Interconnection and Permitting (2018)
- Developer verified utility infrastructure could accommodate the project cost-effectively
- Worked with landowner and City to annex parcel
- Permit project through City’s conditional use process

- Build Road, laydown yard and Fence
- Drive piles, build racking
- Set panels, wire panels and inverters
- Connect project to existing utility infrastructure
Arcadia (continued)

• 5MWac (7.5MWdc)
Arcadia Solar Project
  • ~30 acres
  • 19,600 panels
  • 9,340,000 kWh expected production
  • ~12% of City’s Electrical Use
  • Enough electricity for ~1,000 average Wisconsin households
Renewable Energy Certificate Riders
Viola’s RER-2

- Customer purchases RECs ($2.00/REC)
  - Supplemental charge on monthly bill
  - RECs derived from renewable energy tracked by M-RETS
  - Viola purchases RECs from wholesale provider (UMMEG)
  - Requires REC purchase and sale agreement with customer
- Customer meets green energy goals
- Utility can monetize renewable investments beyond RPS
Thank you!

RICHARD HEINEMANN
rheinemann@boardmanclark.com
608-283-1706