

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS SOLAR MARKET –
RPS SOLAR CARVE-OUT II

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JANUARY 29, 2014

**COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE PROPOSED SREC-II REGULATIONS**

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Energy Resources’ (“Department” or “DOER”) Notice of Public Hearing and Comment (“Notice”) in connection with proposed amendments to portions of 225 CMR 14 – Renewable Energy Portfolio Standard. RESA appreciates the opportunity to comment on this important matter.

INTRODUCTION

RESA is a non-profit organization and trade association that represents the interests of its members in regulatory proceedings in the Mid-Atlantic, Great Lakes, New York and New England regions. RESA members are active participants in the retail competitive markets for electricity, including the Massachusetts retail electric market. Several RESA member companies are licensed by the Department of Public Utilities (“DPU”) to serve residential, commercial and industrial customers in Massachusetts and are presently providing electricity service to

¹ RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

customers in the State. As such, RESA and its members have an interest in ensuring that the creation of a new market Class I Solar Renewable Portfolio Standard (“RPS”) Carve-Out program (“Program”) does not have an adverse effect on RESA members, their customers or the continued success of the retail electric market in Massachusetts.

BACKGROUND

Pursuant to the Green Communities Act, Retail Electricity Suppliers² must provide a specified percentage of electricity generation from renewable energy sources, including solar photovoltaic. In accordance with this requirement, the Department issued final regulations in June 2010 that, among other things, established the current Program (“SREC-I Program”).³

On January 3, 2014, the Department announced proposed changes to the current Program regulations to implement the Solar Renewable Energy Credit II program (“Proposed SREC-II Regulations”) and offered interested persons an opportunity to comment on those regulations.⁴ In response to the Notice, RESA hereby submits its comments on the Proposed SREC-II Regulations.

COMMENTS

During the stakeholder meetings that the Department held prior to issuing the Proposed SREC-II Regulations, it identified the following objectives for the SREC-II policy:

- Provide economic support and ***market conditions*** to maintain and expand photovoltaic (“PV”) installations in Massachusetts;
- ***Control ratepayer costs***;
- Maintain robust growth across installation sectors;

² Capitalized terms used but not defined herein have the meaning provided in the Proposed SREC-II Regulations at § 14.02.

³ See, generally, 225 CMR 14.01 *et seq.*

⁴ See, generally, Notice.

- Manage market growth to meet 2020 goal and until the market is better prepared for Class I renewable energy credits (“RECs”);
- Maintain competitive market of diverse PV developers without undue burdens of entry;
- Address financing barriers limiting direct ownership without compromising third-party ownership model; and
- ***Minimize regulatory complexity*** and maintain flexibilities to respond to changing conditions.⁵

The Department previously determined that the current SREC-I Program “provides a ***robust market*** demand growth for the solar industry”⁶ and “maintains ***market balance***.”⁷ Since the existing SREC-I Program already self-adjusts depending on the pace of solar growth and results in a more stable market by dampening fluctuations, it currently provides economic support and market conditions to maintain and expand PV installations, maintains growth across installation sectors, and maintains a competitive market of diverse PV developers without undue burdens of entry.

Nevertheless, despite the relative immaturity of the SREC-I Program, the Department in the month of June 2013 alone implemented or proposed sweeping changes that included:

⁵ RPS Solar Carve-Out II Updated Proposed Design Presentation (Aug. 12, 2013), available at: <http://www.mass.gov/eea/docs/doer/renewables/solar/srec-ii-final-proposed-design-stakeholder-review-mtg-081213.pdf> (“August Presentation”), at 3; *see also* Post-400 MW Solar Program Policy Design Presentation (Jun. 7, 2013), available at: <http://www.mass.gov/eea/docs/doer/rps-aps/doer-post-400-mw-solar-policy-design-stakeholder-review-mtg-060713.pdf> (“June Presentation”), at 10; Post-400 MW Policy Presentation (Mar. 22, 2013), available at: <http://www.mass.gov/eea/docs/doer/rps-aps/doer-post-400-mw-solar-policy-design-stakeholder-mtg.pdf> (“March Presentation”), at 9-10.

⁶ *See* “Minimum Standard: Base Growth Rate” available at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/adjusted-mechanics-to-the-minimum-standard.html> (emphasis added).

⁷ *See* “Minimum Standard: Market Balance Adjustments” available at: <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/adjusted-mechanics-to-the-minimum-standard.html> (emphasis added).

- adopting changes to the Minimum Standard formula, which *increased* Retail Electricity Suppliers' compliance obligations;⁸
- issuing Emergency Regulations, which *further increased* Retail Electricity Suppliers' compliance obligations;⁹ and
- announcing its plans to “create a new separate SREC market (SREC-II) with *separate new* compliance obligation on retail electricity suppliers.”¹⁰

Each of these recent regulatory changes has or will increase ratepayer costs in direct contravention of the Department's stated goal to *control ratepayer costs*.¹¹ Continuously altering the Program increases costs because it “increases regulatory risk and introduces uncertainty regarding the possibility of more changes in the future.”¹² As the Joint Committee on Telecommunications, Utilities and Energy (“Joint Committee”) previously noted, “[i]nvestment will slow down for both solar development and competitive retail electricity supply in the Commonwealth if the business community feels that DOER is too willing to make regulatory changes that impact return on that investment after that investment has already occurred.”¹³ It is a basic tenet of economics that less investment means less competition and less competition means higher prices.

Accordingly, in order to mitigate the effects of these recent changes and control ratepayer costs, as discussed more fully below, RESA requests that the Department ensure that the final SREC-II regulations provide for as much quantity certainty as possible, provide compliance flexibility and are instituted on a prospective basis only and in a competitively neutral fashion.

⁸ See 225 CMR 14.07(2) (as published June 7, 2013).

⁹ Emergency Regulations, at 225 CMR 14.07(2).

¹⁰ June Presentation, at 18 (emphasis added).

¹¹ August Presentation, at 3.

¹² Cf. Report of the Committee on Proposed Changes to the RPS Solar Carve-Out Program (225 CMR 14.00) (Apr. 25, 2013), available at: <http://www.mass.gov/eea/docs/doer/rps-aps/joint-committee-comments-to-doer-042513.pdf>, at 2.

¹³ *Id.*

I. THE SREC-II PROGRAM DESIGN SHOULD PROVIDE AS MUCH QUANTITY CERTAINTY AS POSSIBLE

When it adopted the Program, the Department specifically indicated that one of its goals was to minimize ratepayer impacts and reduce costs to ratepayers.¹⁴ However, the modifications to the Program and development of a new SREC-II compliance obligation, which negatively impact customers and increase costs, appear to contradict this objective. In Massachusetts, nearly all load is served, directly or indirectly, by competitive suppliers, who either provide wholesale service to the electric distribution companies and municipalities or who provide retail service directly to end-use customers. To meet the Program's obligations, these suppliers enter into contracts for Solar Renewable Energy Credits ("SRECs").

In deciding what SREC purchases to make, Retail Electricity Suppliers face several risks. If the price of SRECs goes up and no hedges have been purchased, then the suppliers are stuck having to cover compliance obligations in a high price market. It would, therefore, seem prudent to cover at today's SREC prices with a forward purchase and to bundle the cost of those SRECs into the sales price to the customer. Indeed, the Department anticipated that the current SREC-I Program design would create such a market demand.¹⁵ Balanced against this, however, is the risk associated with the imposition of new Retail Electricity Supplier obligations such as those currently being proposed in the Proposed SREC-II Regulations.

Faced with an uncertain regulatory environment, Retail Electricity Suppliers will seek to manage the regulatory risk that the Department will continue to make modifications to their compliance obligations in one of several ways. First, by shortening the length of their retail load

¹⁴ See Solar RPS Carve-Out Straw Proposal Presentation, Public Stakeholder Meeting, Boston, MA (Aug. 26, 2009), available at: <http://www.mass.gov/eea/docs/doer/renewables/solar/solar-rps-carve-out-program-straw-proposal-stakeholder-mtg-corrected-090409-doer.pdf> ("Straw Proposal"), at 3, 5; see also August Presentation, at 3; June Presentation, at 10; March Presentation, at 9-10.

¹⁵ Straw Proposal, at 8.

serving contracts, perhaps to 12 months or less, Retail Electricity Suppliers and their customers can re-price and re-negotiate at the time of annual renewal; thereby, shifting the risk associated with compliance obligation changes to customers. Alternatively, Retail Electricity Suppliers can offer longer term contracts for electricity with a pass-through for compliance costs. This shifts the regulatory risk from the Retail Electricity Suppliers to customers but also undercuts the Retail Electricity Suppliers incentive for SREC hedging for customers. As a third option, Retail Electricity Suppliers could build a significant risk premium into the cost associated with compliance to ensure that future regulatory changes do not create potentially uneconomic contracts. This risk premium will then be reflected in the prices paid by consumers. By contrast, by setting compliance obligation requirements for an extended period, the Department can send a message that it is safe to continue to invest in the Commonwealth and avoid potential negative impacts to customers.

Perhaps recognizing this issue, in an effort to provide greater cost certainty¹⁶ in connection with the SREC-I Program, the Department developed a ten year forward schedule of the Alternative Compliance Payment (“ACP”).¹⁷ The Proposed SREC-II Regulations also include an ACP rate schedule that provides cost certainty.¹⁸

While RESA appreciates the Department’s efforts to provide forward cost certainty, a formula that fails to provide a transparent and predictable method for determining future quantity compliance obligations creates uncertainty that forces Retail Electricity Suppliers to estimate their obligations and to include a significant premium in what they charge consumers to protect

¹⁶ Guideline on the Forward Schedule of the Solar Carve-Out Alternative Compliance Payment (ACP) Rate (Dec. 28, 2011), available at: <http://www.mass.gov/eea/docs/doer/rps-aps/forward-solar-acp-rate-guideline.pdf>, at 1.

¹⁷ See 225 CMR 14.08(3)(b)(2).

¹⁸ Proposed SREC-II Regulations, at § 14.08(3)(c)(2) (providing ten year forward ACP schedule).

against that risk; thereby, increasing prices in contravention of one of the Department's goals of reducing ratepayers costs. Furthermore, if the compliance obligation is ultimately less than the Retail Electricity Suppliers estimated, customers will have paid more for Program compliance than was actually necessary. Conversely, by providing quantity certainty, the Department can eliminate risk premiums associated with such uncertainty; resulting in lower prices for consumers. Thus, RESA urges the Department to adopt known quantity schedules to allow businesses to manage their affairs more effectively and reduce risk premiums; thus, mitigating costs to End-use Customers.

While the SREC-II Minimum Standard will be known for 2014 and 2015 at the time the Proposed SREC-II Regulations become effective, for future years, the Department proposes to announce the SREC-II Minimum Standard no later than August 30 of the preceding Compliance year.¹⁹ After the first two (2) years of the SREC-II program, the compliance obligation will be set by formula.²⁰ In particular, the total compliance obligation for each year will be equal to the sum of the quantity of SREC-IIs associated with the following: (a) Installed SREC-II Supply; (b) Qualified but not Installed SREC-II Supply; (c) Projected New Supply; (d) Rollover Volume; and (e) Third Round Auction Volume Doubling.²¹ This formula allows the Department to provide more quantity certainty as the information on which it will calculate the SREC-II compliance obligation will be based on more definitive data than that associated with the calculation of the current SREC-I Program compliance obligation formula.

¹⁹ See Proposed SREC-II Regulations, at § 14.07(3).

²⁰ *Id.* at § 14.07(3)(e).

²¹ *Id.* at § 14.07(3)(e).

First and foremost, based on the Department's review and approval of Statement of Qualification Applications,²² it will have a considerable amount of information available on which it can make reasonable predictions for two of the factors included in the compliance obligation formula – namely, the SREC-II Supply²³ and the Qualified but not Installed SREC-II Supply.²⁴ Moreover, since the Rollover Volume and Third Round Auction Volume Doubling are based on information provided to the Department for the Compliance Year two years prior to the Compliance Year for which the compliance obligation is being calculated, the Department will also have certainty with respect to these factors.²⁵ Lastly, the Projected New Supply can also be calculated with some confidence because it will be based on prior growth trends by market sectors (e.g., SREC-II Supply and the Qualified but not Installed SREC-II Supply) and announced annual capacity blocks, which will be available for the Compliance Year two years in the future.²⁶

Given the substantial amount of information that will be available to the Department to calculate the compliance obligation in future years, consistent with the Department's stated policy objective of controlling ratepayer costs, RESA urges the Department to provide known quantity certainty regarding Retail Electricity Suppliers' SREC-II compliance obligations. Otherwise, customer contracts are likely to include a substantial risk premium to protect Retail Electricity Suppliers from future quantity risk. In particular, RESA proposes that, at the time the new SREC-II Program regulations are adopted, the Department publish a schedule that

²² *See, generally*, Proposed SREC-II Regulations, at § 14.06.

²³ *Id.* at § 14.07(3)(e)(1) (projection based on units already installed and assigned SREC Factors).

²⁴ *Id.* at § 14.07(3)(e)(2) (projection based on units that have received Statements of Qualification and assigned SREC Factors).

²⁵ *Id.* at § 14.07(3)(e)(4), (5).

²⁶ *Id.* at § 14.07(3)(e)(3); *see also Id.* at § 14.05(9)(m)(1).

establishes the compliance obligation for the first three (3) years of the Program and then, each year, establish the compliance obligation for the compliance year three (3) years forward. By establishing a three (3) year forward compliance obligation, the Department can eliminate the quantity risk premium in the majority of customer contracts; thereby, effectively meeting the policy objective of controlling ratepayer costs associated with the Program. Conversely, if the Department does not provide quantity certainty for several years, customers with multi-year fixed price arrangements like governmental, institutional and commercial enterprises will still be faced with increased risk premiums to account for the quantity uncertainty in the later years of those agreements.

As the Department is aware, based on its experience in the SREC-I Program, at any given time, there may be an undersupply or an oversupply of resources available to satisfy a given Compliance Year's obligations.²⁷ In years in which there is sufficient or over supply, Retail Electricity Suppliers are typically able to purchase SREC-IIs at or below the ACP to satisfy their compliance obligations. The cost savings associated with not having to pay the ACP is then generally reflected in the prices offered to consumers. Conversely, in years in which there is an undersupply of SREC-IIs, suppliers will be required to pay more for the SREC-IIs and/or pay the ACP; thereby, increasing costs to customers. To better control ratepayer costs, RESA requests that the Department also modify the Proposed SREC-II Regulations to reduce the impact of future increases in the Minimum Standard by prorating and/or delaying future adjustments.

²⁷ For example, the Solar Credit Clearinghouse Auction Account for Compliance Year 2011 closed with no SRECs deposited reflecting the shortage of SRECs available to meet that year's compliance obligation.

In Compliance Years in which there is an undersupply (i.e., the auction does not clear), the Department would also adjust the Minimum Standard.²⁸ Just as uncertainty about the underlying obligation affects the prices that Retail Electricity Suppliers charge customers for compliance with the Program's obligations, the potential that the compliance obligation could be suddenly adjusted due to items outside the suppliers' control also affects the prices that customers ultimately pay either through risk premiums or unanticipated changes to prices. These financial impacts can be particularly difficult for customers to absorb, especially residential, governmental and institutional customers, who have contracted for a fixed price and will now be subject to new and unanticipated charges that are not within their budgets. Thus, in order to control ratepayer costs and minimize the potential shock to customers, RESA requests that, the Department modify the Proposed SREC-II Regulations to provide that, in the event an auction does not clear, the Department will ratably adjust the Minimum Standard over a three (3) year period to account for the undersupply.

Retail Electricity Suppliers are also faced with annual increases in the Minimum Standard.²⁹ When this annual increase is accompanied by an adjustment to the Minimum Standard to address a prior year's undersupply, the cost impacts to customers are compounded. Thus, in order to further control costs, RESA requests that the Department provide for a process, if there is an undersupply in a given Compliance Year, that would allow it to evaluate whether to delay the annual increase in the RPS, including the annual increase in the SREC-I and SREC-II Minimum Standards, during the following Compliance Year as has been done in other New England states.

²⁸ Proposed SREC-II Regulations, at §14.07(3)(f) (providing for the Department to "recalculate the Solar Carve-Out II Minimum Standard for the Compliance Year two years following the Compliance Year in which the SREC IIs deposited into the Solar Credit Clearinghouse Auction-II Account were generated.")

²⁹ See, generally, Proposed SREC-II Regulations, at § 14.07(3).

For instance, pursuant Rhode Island General Laws section 39-26-6(d), the Rhode Island Public Utilities Commission (“RI PUC”) was required to determine, on or before January 1, 2010 and on or before January 1, 2014, the adequacy, or potential adequacy, of renewable energy supplies to meet the increase in the percentage requirement of energy from renewable energy resources to go into effect in 2011 and 2015, respectively.³⁰ If the RI PUC determined that an inadequacy or potential inadequacy existed, it was required to delay the implementation of the scheduled percentage increase for a period of one year or recommend to the legislature a revised schedule of percentage increases.³¹ In fact, the RI PUC has recently determined that there was indeed insufficient renewable energy resources and, as a result, has delayed the implementation of the scheduled increase for year 2015.³² Similarly, the New Hampshire Public Utilities Commission (“NH PUC”) may “delay by up to one year, any given year's incremental increase in class I or II renewable portfolio standards requirement”³³ The NH PUC may also modify the Class III and IV renewable portfolio standards requirements so that those requirements account for the reasonably expected potential annual output of available resources.³⁴

These market mechanisms provide a means by which states can continue to support and promote their renewable policies but in a way that reasonably contains the cost of compliance with such programs. Thus, in order to control ratepayer costs and allow the market sufficient time to respond to the increased demand, as part of the final SREC-II regulations, RESA urges

³⁰ R.I. G.L. § 39-26-6(d).

³¹ *Id.*

³² See RI PUC Docket 4404, *Investigation Pursuant to R.I.G.L. Sec. 39-26-6(D) to Determine the Adequacy or Potential, of Renewable Energy Supplies to Meet the Increase in the Percentage Requirement of Energy from Renewable Energy Resources in 2015*, available at: <http://www.ripuc.org/eventsactions/docket/4404page.html> (decision announced at December 20, 2013 meeting; written report and order is expected to be issued shortly).

³³ NH RSA 362-F:4,V.

³⁴ NH RSA 362-F:4,VI.

the Department to provide for a process to determine whether the annual Minimum Standard increase should be delayed.

II. THE SREC-II PROGRAM DESIGN SHOULD PROVIDE COMPLIANCE FLEXIBILITY

Pursuant to the Proposed SREC-II Regulations, a Solar Carve-Out II Renewable Generation Unit will generate two types of GIS Certificates one “encoded as solar photovoltaic, *but without RPS Class I Renewable Generation Attributes* or Solar Carve-Out II Renewable Generation Attributes” and the other shall be encoded as SREC-II.³⁵ Based on the SREC Factor assigned to the unit, the Department will determine “the proportion of the two types of GIS Certificates the Generation Unit will generate.”³⁶ Although this provision recognizes that there is value to the generation unit that does not qualify as an SREC-II due to the application of the SREC Factor, its fails to provide sufficient compliance flexibility; thereby, unnecessarily increasing the costs associated with overall Program compliance. Thus, consistent with the Department’s stated policy objective of controlling ratepayer costs, RESA requests that the Department modify the Proposed SREC-II Regulations to specifically provide that the portion of the generation unit that does not qualify as SREC-II, will qualify for RPS Class I Renewable Generation Attributes. Since the supply of RECs associated with the RPS Class I Renewable Generation Attributes is currently limited,³⁷ through this change to the proposed regulations, the Department can make available additional RECs that can be used for overall Program compliance and, to the extent those RECs can be purchased for less than the ACP, provide potential price relief to customers.

³⁵ See Proposed SREC-II Regulations, at § 14.05(9)(k) (emphasis added).

³⁶ See *Id.* at § 14.05(9)(l).

³⁷ See, e.g., Massachusetts RPS & APS Annual Compliance Report for 2011, available at: <http://www.mass.gov/eea/docs/doer/rps-aps/rps-aps-2011-annual-compliance-report.pdf>, at 3 (“The supply of 2011 RPS Class I RECs fell about 9% short of demand.”).

In order to further control ratepayer costs, RESA requests that the Department also modify the Proposed SREC-II Regulations to provide Retail Electricity Suppliers the flexibility to determine the most cost effective way to undertake market-driven measures to optimize their portfolio and satisfy their compliance obligations under the Program. The current Program regulations provide:

A Retail Electricity Supplier may use RPS Class I Renewable Generation Attributes or Solar Carve-Out Renewable Generation Attributes produced in one Compliance Year for compliance in either or both of the two subsequent Compliance Years, subject to the limitations in 225 CMR 14.08(2) and provided that the Retail Electricity Supplier is in compliance with 225 CMR 14.00 for all previous Compliance Years.³⁸

The Department has interpreted this provision as requiring Retail Electricity Suppliers with excess SRECs in a year who have not meet their non-solar Class I RPS obligations in that same year to use those excess SRECs to satisfy their non-solar Class I RPS obligations. This interpretation unnecessarily increases the cost of overall RPS compliance because SRECs are more expensive than RECs.³⁹ In addition, this interpretation forces Retail Electricity Suppliers to increase the cost that customers pay for compliance to account for the risk that a portion of their non-solar Class I RPS compliance will have to be met with more expensive SRECs in direct contravention of the Department's stated goal to control ratepayer costs.

Thus, RESA requests that the Department permit Retail Electricity Suppliers to pay the ACP to satisfy their non-solar Class I RPS obligations even in years in which they may have excess SREC-Is or SREC-IIs. Further, RESA requests that the Department permit Retail Electricity Suppliers to pay the ACP to satisfy their SREC-I obligations even in years in which

³⁸ 225 CMR 14.08(2).

³⁹ Cf. 2013 RPS Class I ACP of \$65.27 per MWh with 2013 RPS Class I Solar Carve-Out ACP of \$550.00 per MWh. See <http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/retail-electric-supplier-compliance/alternative-compliance-payment-rates.html>.

they may have excess SREC-IIs and vice versa. Lastly, RESA requests that the Department permit Retail Electricity Suppliers to use SREC-Is to satisfy their SREC-II obligations. By providing this flexibility, the Department can reduce the cost of overall RPS compliance and decrease the risk premiums imposed on customers; thereby, controlling ratepayer costs.

III. THE PROTECTION OF EXISTING RATEPAYER AND COMPETITIVE SUPPLIER EXPECTATIONS HELPS TO CONTROL COSTS

The Proposed SREC-II Regulations provide that “in determining the Solar Carve-Out II Minimum Standard applied to competitive Retail Electric (sic) Suppliers, the Department shall not include that portion of electrical energy sales that were subject to a contract executed or extended prior to the effective date of this subsection”⁴⁰ RESA appreciates the Department’s recognition and protection of ratepayer and competitive supplier’s existing expectations and urges the Department to ensure that this important provision remains in the final SREC-II regulations.

An important design element of any new program is to ensure that it does not disrupt or otherwise harm existing stakeholder expectations. As the Department most certainly appreciates, the competitive electricity market in the Commonwealth continues to advance and Retail Electricity Suppliers continue to enter into contractual obligations, often with multi-year terms of service, while new regulations are being proposed, amended and promulgated by the Department. However, Retail Electricity Suppliers do not take market positions or enter into agreement terms with customers based simply on the announcement that a regulatory change may occur or even based on the release of proposed regulatory revisions. Rather, since announced or even proposed regulatory revisions are subject to change based on legislative considerations as well as the regulatory input process, Retail Electricity Suppliers take market

⁴⁰ Proposed SREC-II Regulations, at § 14.07(3)(b).

positions and enter into agreements based only on actual regulatory requirements officially promulgated by the governing regulatory authority. In this way, customers are not exposed to unnecessary price increases and/or pricing volatility as a result of speculative regulatory changes that may never be adopted or that may be significantly modified through the regulatory process before such changes ultimately become effective. Accordingly, Retail Electricity Suppliers have entered into and continue to enter into agreements with customers based on the current SREC-I Program design. Only once the Department officially promulgates the Proposed SREC-II Regulations will Retail Electricity Suppliers modify their market positions and/or the terms of their agreements with customers to account for any new or modified regulatory requirements. Thus, it is important, as the Department has recognized, that the Proposed SREC-II Regulations be instituted on a prospective basis only.⁴¹

Furthermore, because Retail Electricity Suppliers enter into multi-year agreements, even if the Department institutes any new SREC-II Program design prospectively, customers with fixed price arrangements will still be faced with unexpected price increases to account for the new obligation if steps are not taken to protect current expectations. When a new obligation is imposed, it impacts existing contracts that were priced based on the prior obligation and may have a term of service that extends over multiple years. While Retail Electricity Suppliers may have contractual and legal means to address change of law circumstances, these mechanisms will have a direct and immediate financial impact to customers, especially residential, governmental and institutional customers, who have contracted for a fixed price and will now be subject to new and unanticipated charges that are not within their budgets. These unanticipated charges place customers in an untenable position as they may be required to retroactively pay these costs per

⁴¹ See, e.g., Proposed SREC-II Regulations, at § 14.07(3)(c) (indicating that the SREC-II compliance obligation will not begin until 2014).

the terms of their contractual agreements. The retroactive cost impact is particularly difficult for local and state governments, as well as, institutional customers like hospitals and colleges that generally have limited budgetary flexibility. Moreover, they undermine the customers underlying confidence that the competitive electricity market can provide and deliver the type of pricing products they desire and have contracted to meet their energy needs. Accordingly, RESA appreciates the Department's recognition and protection of existing stakeholder expectations and urges the Department to ensure that these protections remain in the final SREC-II regulations.

IV. ALLOWING MARKET FORCES TO SUPPORT THE SOLAR INDUSTRY WILL REDUCE RATEPAYER COSTS

Through the SREC-I program, the expansion of the SREC-I capacity cap and now the SREC-II program, the Department has provided considerable economic support to the solar industry in Massachusetts. However, this support has come a significant and continuing cost to Retail Electricity Suppliers and their customers. Thus, rather than continuing to create an artificial "market" construct, once the SREC-II regulations are finalized, the Department should refrain from making further changes to the regulations and/or advocating for other changes or laws that would continue to increase the support to the industry and increase the costs to Retail Electricity Suppliers and ratepayers.

For instance, currently there is an aggregate cap on the availability of net metering in the Commonwealth.⁴² The creation of the SREC-II market with its ultimate goal of 1,600 MW of installed solar capacity⁴³ appears to assume that the legislature will raise the current net metering

⁴² M.G.L. c. 164, § 139(f) ("[t]he aggregate net metering capacity of facilities that are not net metering facilities of a municipality or other governmental entity shall not exceed 3 per cent of the distribution company's peak load. The aggregate net metering capacity of net metering facilities of a municipality or other governmental entity shall not exceed 3 per cent of the distribution company's peak load.").

⁴³ See Proposed SREC-II Regulations, at § 14.07(3)(e)(3) (establishing the cumulative installed capacity target).

caps. However, expanding the caps would perpetuate the subsidies embedded in net metering that stay in effect for the life of the units installed. The costs of these subsidies are then passed onto ratepayers in addition to the costs those ratepayers are already paying for Program compliance.

By providing for ACP Rates that decrease annually in connection with both the existing SREC-I program and proposed SREC-II program,⁴⁴ the Department has reduced out of market support for solar projects and will continue to reduce this support over time. In light of this decline, it would be consistent with Department policy to expand net metering or eliminate the current limits on net metering because such action would increase out of market support to the solar industry with one hand while reducing it with the other. Thus, rather than providing for the continued, subsidization of the solar industry through the Solar Carve Out program explicitly and the net metering provisions implicitly, the Commonwealth should allow competitive forces and the efficient market design of supply and demand to self-correct and adjust as appropriate. In this way, solar developers will compete to provide their products at the best price and ratepayers will have an accurate view of the costs of solar installations.

CONCLUSION

For all of the foregoing reasons, RESA urges the Department to ensure that the final SREC-II regulations provide for as much quantity certainty as possible, provide compliance flexibility and are instituted on a prospective basis only and in a competitively neutral fashion.

⁴⁴ See Proposed SREC-II Regulations, at § 14.08(3)(b)(2), (c)(2).

Respectfully submitted,
RETAIL ENERGY SUPPLY
ASSOCIATION

A handwritten signature in black ink that reads "Joey Lee Miranda". The signature is written in a cursive, flowing style.

By _____
Joey Lee Miranda
Robinson & Cole LLP
280 Trumbull Street
Hartford, CT 06103
Phone: (860) 275-8200
Fax: (860) 275-8299
E-mail: jmiranda@rc.com