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Natalie Howlett
Department of Energy Resources
100 Cambridge St., Suite 1020
Boston, MA 02114

**Re: Proposed Amendments to DOER Regulations 225 CMR 14.00 et al.;
Establishing a Solar Carve-Out Program**

Dear Ms. Howlett:

On January 8, 2010, Department of Energy Resources ("DOER") issued emergency regulations to establish a renewable portfolio standard ("RPS") carve-out program to promote development of solar photovoltaic generation resources ("PV") within the Commonwealth. 225 C.M.R. § 14.00 *et al.* Prior issuing the emergency regulations, DOER had engaged in a stakeholder process to develop the program. DOER now proposes permanent adoption of the emergency regulations, and began a formal rulemaking process as required by G.L. c. 30A. DOER held public hearings on March 2, 2010, and requested written comments to be filed on or before March 9, 2010. Pursuant to DOER's request, the Attorney General now submits these comments for the Department's consideration.

The Green Communities Act ("GCA") of 2008 amended the existing RPS Program to authorize DOER to establish a "carve-out" RPS requirement targeted at stimulating new development of small, on-site renewable energy generation in Massachusetts. *See* G.L. c. 25A, § 11F(g). DOER has invoked its authority under the GCA to establish a carve-out program exclusively for development of PV ("Solar Carve-Out Program"). *See id.* § 11F(h). The Attorney General supports establishing a carve-out in order to promote the development of renewable energy in Massachusetts; however, the program should be implemented in a manner that poses the lowest possible cost to Massachusetts customers who are already paying some of the highest electricity rates in the country.

In the creation of the Solar Carve-Out Program, DOER recognized that minimizing ratepayer impacts is an important goal of the program. DOER's own estimates demonstrate that the upper range of ratepayer exposure in a given year (at a \$600/MWh Alternative

Compliance Payment rate) could be approximately \$273 million a year, amounting to an approximate \$0.0054/kWh increase in rates, or an estimated \$2.72 per month rate increase for a customer using 500 kWh per month.¹ Even if the program were designed in a least-cost manner, implementation of the Solar Carve-Out Program would still be expected to be expensive, because solar energy is currently the most expensive form of renewable energy for Massachusetts.

The Solar Carve-Out Program's success and cost will depend on many factors beyond the control of DOER. If DOER ultimately chooses to ratify the emergency regulations, it should amend the proposed emergency regulations to require regular, periodic evaluation of the Solar Carve-Out program results to ensure that the program operates as intended, that the program design is least-cost, and that benefits of the program are materializing. Importantly, the evaluation and program results should be made publicly available on a timely basis. If significant issues arise, DOER should fully review the viability of the program and its impact on ratepayers. If DOER concludes that the program is not achieving its stated goals at the lowest cost to consumers, it should modify the program accordingly.

Overview of the Solar Carve-Out Program

The Solar Carve-Out Program is designed to increase deployment of PV in Massachusetts to facilitate the Governor's stated goals of achieving the installation of 250 MW of solar energy generation within the Commonwealth by 2017 and developing a robust solar energy market in Massachusetts. The program creates a market for solar renewable energy certificates ("S-REC") that will provide owners of newly developed, small scale solar energy in Massachusetts an opportunity to receive a premium on the returns associated with their solar investment. DOER has described the Solar Carve-Out Program as "a market-based incentive program to support residential, commercial, public, and non-profit entities in developing 400 MW of solar photovoltaic (PV) across the Commonwealth." DOER's goals for the Solar Carve-Out Program are:

- (1) Sustain long-term growth of solar market;
- (2) Develop smooth transition from upfront rebate-only incentives to production-based market priced S-RECs;
- (3) Cultivate solar development across multiple sectors and generator sizes, and;
- (4) Develop a sustainable solar market that reduces dependence on state Subsidies;
- (5) Minimize ratepayer impacts.²

Under the Solar Carve-Out Program, suppliers must purchase S-RECs to ensure that a portion of the energy that they supply to customers comes from newly developed, small

¹ DOER Presentation, Solar RPS Carve-Out, Final Design Documents for Regulations, Dec. 10, 2009 available at <http://www.mass.gov/Eoeea/docs/doer/renewables/solar/solar-webinar-2009dec18.pdf>. This estimation assumes that in a given compliance year, the Minimum Standard Cap of 455,520 MWh is reached.

² DOER Presentation, Solar RPS Carve-Out, Straw Proposal, Aug. 26, 2009 available at [http://www.mass.gov/Eoeea/docs/doer/renewables/solar/Solar%20RPS%20Carve-Out%20Program%20Straw%20Proposal%20-%20Stakeholder%20Mtg%20\(Corrected\)%20090409%20DOER.pdf](http://www.mass.gov/Eoeea/docs/doer/renewables/solar/Solar%20RPS%20Carve-Out%20Program%20Straw%20Proposal%20-%20Stakeholder%20Mtg%20(Corrected)%20090409%20DOER.pdf)

scale solar energy generation in Massachusetts. DOER will annually determine the amount of S-RECs (the Minimum Standard) that must be purchased according to a formula. An auction process for S-RECs is available, with a floor price set at \$300 per S-REC.

If available S-RECs are insufficient to meet their required compliance obligation, suppliers must make alternative compliance payments (“S-ACP”) set at \$600 per MWh. To respond to fluctuations in the S-REC market, DOER retains the discretion to reduce the S-ACP rate by up to 10% per year. The overall goal is to develop 400 MW of installed solar generation resources in Massachusetts by increasing the amount S-RECs required to be procured by 30% each year. Once 400 MW is achieved, at a time which is currently unknown, no new generation units will qualify under the program.³

Regular and Periodic Monitoring and Evaluation of the Solar Carve-Out Program

If DOER chooses to ratify the emergency regulations, it should amend them to include a provision that requires an annual evaluation of the Solar Carve-Out Program results separate and apart from the RPS program reporting. Although the regulations as proposed establish reporting obligations for DOER, *see* 225 C.M.R. § 14.10(2)⁴, they appear to bundle reporting for the Solar-Carve-Out Program with the RPS Program (RPS Class I Program). Because the success of this new program depends on numerous factors, many of which are beyond the influence of DOER, and because the cost to ratepayers potentially could be significant, DOER should establish more than just a summary reporting requirement.

Continuous evaluation of the program is necessary to ensure that this program is effective, and results of the program evaluation should be made available to the public on a timely basis. Although a need for regulatory certainty exists, the regulation should also provide for the re-evaluation of the program’s continuation and design. The program should be re-evaluated if the regular monitoring and evaluation reveals serious flaws in the program, *e.g.* a large portion of compliance comes through S-ACP payments, S-ACP is set well above what it should be, significant auction or market manipulation occurs, etc.

The Attorney General proposes the addition of the following provision to the regulations:

14.14 Solar Carve-Out Program Review

- (1) **Evaluation:** At a minimum of an annual basis, the Department will report on the Retail Electricity Supplier compliance with meeting Solar Carve-Out Minimum Standard, results of the Solar Credit Clearing House Auction, and Alternative

³ Considering the potential costs and stated goals and benefits of the Solar Carve-Out Program, DOER should make its supporting analysis available to the public in course of finalizing its regulations and filing the Final Regulations with the Legislature. DOER should provide the support and basis for its program installation target of 400 MW, the Alternative Compliance Rate of \$600 per MWh and \$300 per MWh floor price for S-RECs. In addition to providing transparency to these key assumptions, memorializing the analysis and assumptions at the inception of the Program will be of assistance in evaluating the Program’s ongoing success.

⁴ 225 C.M.R. § 14.10(2) provides that “The Department shall produce an annual report that summarizes information submitted to the Department by Retail Electric Suppliers in the Annual Compliance Filing submitted to the Department pursuant to 225 CMR 14.09(2).”

Compliance Payments made for Solar Carve-Out Renewable Generation Attributes.

- (a) The report shall address progress towards achieving solar development goals and provide detailed data and analysis of the status of the market for Solar Carve-Out Renewable Generation Attributes.
 - (b) The report will be conducted in addition to reporting requirements in section 14.10 of this regulation.
- (2) Program Re-Evaluation: If the regular monitoring and evaluation reveals serious flaws in the design of Solar Carve-Out Minimum Standard, Solar Credit Clearing House Auction, and the Alternative Compliance Payments for Solar Carve-Out Renewable Generation Attributes, the Department shall re-evaluate the program design and make a determination as to the viability of the program in meeting the program goals. This evaluation and determination shall be memorialized in a report.
- (3) Dissemination: The Department will make all reports developed under this section 225 CMR 14.14 along with supporting evaluations, and auction and compliance data publicly available through its website.
- (4) Goals: Goals referred to in this section include:
 - (a) sustaining long-term growth of solar market,
 - (b) developing smooth transition from upfront rebate-only incentives to production-based, market priced Solar Carve-Out Renewable Generation Attributes;
 - (c) cultivating solar development across multiple sectors and generator sizes and developing a sustainable solar market in Massachusetts that reduces dependence on state subsidies, and;
 - (d) minimizing ratepayer impacts.

Soon after the promulgation of this rule, DOER should provide a clear description of its review process and provide the criteria (*e.g.* declining cost of solar installation) by which it will review the program to determine whether the program is meeting and achieving DOER's program goals. It should also identify triggers that will lead the DOER to modify the Solar Carve-out Program.

At a minimum, the program results that DOER should evaluate and post on its website include the following Solar Carve-Out Program data aggregated by utility service territory:

- number and kW size of applications received;
- number and kW applications approved with estimated in-service dates;
- number and kW size of aggregations;
- data regarding auction opt-in kW (in-service date and opt-in term);
- number and dollar amount of S-REC and Auction transactions, and;
- number and amount of S-ACP.

C. Conclusion

The Attorney General respectfully recommends that DOER adopt the recommendations made within these comments.

Respectfully submitted,

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ATTORNEY GENERAL

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