

COMMONWEALTH OF MASSACHUSETTS

**COMMENTS OF THE CAPE LIGHT COMPACT
ON THE DEPARTMENT OF ENERGY RESOURCES SOLAR RPS CARVE-OUT
STRAW PROPOSAL**

The Cape Light Compact (the “Compact”) hereby submits the following comments pursuant to the Department of Energy Resources (“DOER”) instruction at the public stakeholder meeting on August 26, 2009 regarding the above-referenced topic.

I. BACKGROUND

The Compact is a governmental aggregator under G.L. c. 164, §134 and consists of the twenty-one towns in Barnstable and Dukes Counties, as well as the two counties themselves. It is organized through a formal Intergovernmental Agreement under G.L. c. 40, §4A. The Compact’s Aggregation Plan was approved by the Department in D.T.E. 00-47. The Compact maintains a business office within the Barnstable County offices located at the Superior Courthouse at 3195 Main Street in Barnstable, MA 02630.

The purposes of the Compact include, among other things, (1) to provide the basis for aggregation of all customers on a non-discriminatory basis; (2) to acquire the best market rate for electricity supply and transparent pricing; (3) to explore all available options for the development of renewable energy resources; (4) to utilize and encourage renewable energy development; (5) to utilize and encourage demand-side management and other forms of energy efficiency by advancing consumer awareness and adoption of a wide variety of energy efficiency measures through the implementation of an energy efficiency plan; (6) to provide and enhance consumer protection and provide full public accountability to consumers; and (7) to utilize municipal and other powers and authorities that constitute basic consumer protections to achieve these goals.

See First Amended and Restated Inter-Governmental Agreement of the Cape Light Compact at Article I (September 13, 2006).

Toward that end, the Compact presently offers a competitive power supply option on an opt-out basis to over 200,000 customers across all customer classes, who are located within the Compact's service territory. The Department approved the Compact's current form of universal service competitive electric supply agreement in D.T.E. 04-32 (May 4, 2004), pursuant to which the Compact has entered into supply agreements with Consolidated Edison Solutions, Inc.

On July 2, 2008, the Green Communities Act (the "Act") was signed into law. The Act included, among many other things, changes to Renewable Energy Portfolio Standard ("RPS") requirements. Specifically, the Act included language stating that:

(g) In satisfying its annual obligations under subsection (a), each retail supplier shall provide a portion of the required minimum percentage of kilowatt-hours sales from new on-site renewable energy generating sources located in the commonwealth and having a power production capacity of not more than 2 megawatts which began commercial operation after December 31, 2007, including, but not limited to, behind the meter generation and other similar categories of generation determined by the department. The portion of the required minimum percentage required to be supplied by such on-site renewable energy generating sources shall be established by the department; provided, however, that the department may specify that a certain percentage of these requirements shall be met through energy generated from a specific technology or fuel type.

(h) The department shall adopt regulations allowing for a retail supplier to discharge its obligations under subsection (g) by making an alternative compliance payment in an amount established by the department; provided, however, that the department shall set on-site generation alternative compliance payment rates at levels that shall stimulate the development of new on-site renewable energy generating sources.

G.L. c. 25A, §11F.

On August 26, 2009 DOER held a public stakeholder meeting regarding a proposal to implement this provision of the Act. The Compact made comments at the public stakeholder

meeting. These comments follow-up on and amplify the Compact's comments at the stakeholder meeting.

II. COMMENTS

A. **DOER's Proposal Must Recognize the Role of Load Serving Entities Other than Distribution Companies.**

The Compact's major concern is that in many instances, the proposal neglects or omits entirely the role of load serving entities other than distribution companies, in particular competitive suppliers.

For example, the proposal states that utilities can use solar renewable energy certificates ("S-RECs") to meet their solar RPS carve-out obligations. However, this fails to acknowledge that the language in G.L. c. 25A, §11F explicitly applies to "all retail electricity suppliers," not just distribution companies (emphasis added). The proposal should not give distribution companies preferential treatment or exclusive access to S-RECs. DOER's proposal should treat all suppliers, both competitive suppliers and distribution companies, the same by providing equal access to S-RECs.

Allowing the distribution companies to have priority, or first access, to S-RECs will enable them to avoid paying the alternative compliance payment ("ACP"), while potentially forcing competitive suppliers to pay the ACP because they did not have the opportunity to procure available S-RECs. All things being equal, this strategy will potentially keep distribution companies' basic service rates lower than competitive supplier rates since competitive suppliers will have to include ACP costs in their rates. This strategy is of grave concern to the Compact because it undermines the intent of the Green Communities Act and sends incorrect market signals to the competitive market.

Another troubling aspect of the proposal is the DOER statement that the utilities (through their ratepayers) have a critical role in providing securitization (in the form of long-term contracts) to solar investors. Again, this language ignores the role that other load serving entities, such as competitive suppliers, may play. Additionally, requiring the securitization of S-RECs on the distribution companies' balance sheets, via long-term contracts, is likely to come at a cost to all ratepayers. DOER need only to look to the Act's provisions for long-term renewable contracts (wherein distribution companies receive a 4% return on the use of their balance sheet). St. 2008, c. 169, §83. Will the distribution companies require a fee for securitizing S-RECS? DOER's proposal should be revised to include equal access to S-RECs for all competitive retail suppliers, and not require securitization of S-RECs by distribution companies only. Providing flexible market options, as opposed to restricting options to limited and heavily regulated measures, such as long-term contracts, will help ensure that the market remains competitive and that S-RECs truly are procured at the least cost to ratepayers.

This is illustrated in DOER's flowchart regarding "Securitizing Long-Term S-REC Revenues, Enabling Project Financing and Mitigating Risks." The "Opt-in Opportunity" for Competitive Suppliers in a competitive solicitation or central auction is left completely unexplained. In fact, DOER's explanations of the least-cost competitive procurement and central auction only refer to distribution utilities. The role of any entities other than distribution utilities is therefore undefined and unclear. According to DOER's flowchart, entities that do not participate in the proposed competitive solicitation or central auction must procure S-RECs from a limited amount of S-RECs that are put into in the spot market or made available for "non-utility" contracts, which seems to refer to contracts with entities such as competitive suppliers. This type of approach heavily favors distribution utilities by automatically allocating to them at

least 75% of their S-REC compliance needs through the long-term market. This leaves other retail suppliers to compete over the remaining supply to be purchased in the spot market or through other contracts. This will in all likelihood raise the cost of complying with RPS requirements for entities other than the utilities, simply based on the limited supply of S-RECs being offered to non-utility entities.

A related concern is whether utilities will be required to purchase at least 75% of the S-RECs they will need for compliance purposes through the long-term market. It is not clear from DOER's proposal that the utilities require that percentage of S-RECs for compliance purposes. If the 75% amount is mandatory and the utilities do not require that amount of S-RECs, some of those S-RECs will likely be purchased and sold at above market prices, based on the lack of need and demand for those S-RECs. The type of situations described above illustrates the need for flexible market-based options as opposed to limited, regulated options.

Based on the foregoing, the Compact strongly urges DOER to reconsider and revise its proposal in order to address the role of load serving entities other than the distribution utilities. Such an approach would, most importantly, ensure that there are more flexible market-based options for solar investors as well as non-utility load serving entities. This, in turn, will help ensure that the market for S-RECs is competitive and that procurement of S-RECs can be done at the least cost to ratepayers. Furthermore, such an approach would be more appropriate and equitable for all entities with RPS compliance requirements, and be more consistent with the statutory language regarding the applicability of RPS requirements to all retail suppliers.

The Compact understands that there is a need for long-term contracts for S-RECs to ensure the continued development of solar projects in the Commonwealth; however, the securitization role of S-RECS should be provided by an entity such as the Massachusetts

Renewable Energy Trust (“MRET”) rather than the distribution companies. For example, MRET is well positioned to hold auctions for S-RECs that will allow all retail suppliers equal access to S-RECs. MRET could even receive a rate of return for using its balance sheet that would be below the return potentially required by the distribution companies.

B. The Compact Requests Clarification of Certain Aspects of the Proposal.

In addition to its above comments, the Compact seeks clarification on certain aspects of DOER’s proposal:

1. The statutory carve-out is for on-site renewable generation in general. However, at this time DOER is only proposing a carve-out for solar. Could community wind facilities also be made eligible for this carve-out? If not at this time, could this be considered at some point in the future?
2. Will generation from utility-owned solar projects (under St. 2008, c. 169, §58) create S-RECs that will be eligible for the proposed carve-out? They should not because the utilities can recover the costs of their solar facilities through their rates. Utilities should not get a revenue stream, in addition to cost recovery from ratepayers, for their solar facilities.
3. Load serving entities may, in some cases, have already entered into long-term contracts for RECs based on pre-existing compliance requirements. How will DOER ensure that existing contractual obligations are not negatively affected by any new compliance requirements?
4. Could a project be eligible to participate in the carve-out program *and* the Commonwealth Solar rebate program during the transition period from customer rebates to S-RECs?
5. How will S-RECs be recorded? Is it DOER’s intent for recording to take place through MTC’s production tracking system?
6. DOER estimates the proposal’s overall cost to ratepayers, but does not provide details on what those maximum overall costs could mean in terms of actual customer rate or bill impacts.
7. Will the carve-out only apply to facilities that are behind a customer’s meter? The language of G.L. c. 25A, §11F does not contemplate such a limitation.
8. Will S-RECs be subject to the same regulatory treatment as Class I RECs pursuant to 225 C.M.R. 14.00?

9. For purposes of procuring financing (which developers generally seek for a minimum term of 15 years), could DOER provide further clarification on the alternative compliance payment beyond 2020?
10. Any competitive procurement or central auction for S-RECs should be administered by DOER and not the distribution utilities. This is imperative to address DOER's concern regarding potential collusive behavior.

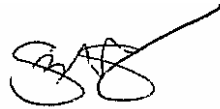
III. CONCLUSION

The Compact appreciates the opportunity to provide Comments in this proceeding. The Compact looks forward to working with DOER and other stakeholders to implement the relevant provisions of the Green Communities Act in a manner that protects ratepayer interests and provides fair and equitable treatment of participants in the competitive market.

Respectfully submitted,

THE CAPE LIGHT COMPACT

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