COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS RPS CLASS I EMERGENCY REGULATION (225 CMR 14.00)	:	AUGUST 2, 2013

COMMENTS OF RETAIL ENERGY SUPPLY ASSOCIATION

The Retail Energy Supply Association ("RESA")[1] hereby submits its comments in response to the Department of Energy Resources' ("Department" or "DOER") Emergency Regulations, issued on June 28, 2013.[2] 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

[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.; Hess Corporation; 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.

[2] Emergency Regulations with tracked changes (released June 28, 2013), available at: http://www.mass.gov/eea/docs/doer/rps-aps/225-cmr-14-00-062813-tracked-changes.pdf ("Emergency Regulations").

industrial customers in Massachusetts and are presently providing electricity service to customers in the State. As such, RESA and its members have an interest in ensuring that changes to the Class I Solar Renewable Portfolio Standard ("RPS") Carve-Out program ("Program") do 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,[3] Retail Electricity Suppliers[4] 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.[5] These regulations originally set a 400 MW cap on the capacity that could qualify under the Program.[6]

Since April 2013, the Department has received Statement of Qualification Applications ("SQAs") at an accelerating rate, resulting in a diminishing window under the 400 MW cap.[7] Based on this, the Department announced that it intended to issue "an Emergency Regulation to allow the current 400 MW cap program to expand to accommodate those projects which are demonstrably well invested in the development cycle and for small projects to continue to proceed."[8] To that end, on June 28, 2013, the Department issued the Emergency Regulations

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[3] *See* Chapter 169 of the Acts of 2008, *An Act Relative to Green Communities*, at § 32.

[4] Capitalized terms used but not defined herein have the meaning provided in 225 CMR 14.02.

[5] *See, generally*, 225 CMR 14.01 *et seq.*

[6] *See* Emergency Regulations, at 225 CMR 14.07(2)(e) (recognizing prior 400 MW cap).

[7] Massachusetts Solar Market Post-400 MW Solar Program Policy Design Stakeholder Briefing, June 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 ("Post-400 MW Presentation"), at 4

[8] *Id.* at 5.

that, among other things, increased the cap under the Program and the corresponding compliance obligation imposed on Retail Electricity Suppliers.[9]

Subsequently, the Department issued a notice offering interested stakeholders an opportunity to submit comments on the Emergency Regulations.[10] RESA hereby submits its comments in response to the Notice.

COMMENTS

When it adopted the Program, the Department specifically indicated that one of its goals was to minimize ratepayer impacts and reduce costs to ratepayers.[11] Because of the complexity and unpredictability of the Program's Minimum Standard formula, the Program has actually resulted in significant ratepayer impacts and increased costs to ratepayers, especially those in competitive multi-year, fixed price arrangements. The administration of and recent modifications to the Program have compounded these adverse impacts.

For instance, the 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.[12]

The Department has interpreted this provision as requiring Retail Electricity Suppliers with excess Solar Renewable Energy Credits ("SRECs") in a year who have not meet their non-

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[9] *See* Emergency Regulations, at 225 CMR 14.07.

[10] *See* Notice of Public Comment and Hearing, available at: http://www.sec.state.ma.us/spr/sprpub/20130719d.pdf ("Notice").

[11] *See* Solar RPS Carve-Out Straw Proposal Presentation, Public Stakeholder Meeting, Boston, MA, August 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.

[12] 225 CMR 14.08(2).

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 Class I Renewable Energy Credits ("RECs").[13] In addition, this interpretation forces Retail Electricity Suppliers to increase the cost that customers pay for Program 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.

Moreover, continuously altering the Program also increases costs because it "increases regulatory risk and introduces uncertainty regarding the possibility of more changes in the future."[14] As the Joint Committee on Telecommunications, Utilities and Energy ("Joint Committee") recently 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."[15] It is a basic tenant of economics that less investment means less competition and less competition means higher prices.

Nevertheless, despite the relative immaturity of the Program, the Department in the month of June alone:

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[13] *Compare* 2013 RPS Class I Alternative Compliance Payment ("ACP") of $65.27 per MWh *with* 2013 RPS Class I Solar Carve-Out of $550.00 per MWh (available at: http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/rps-aps/retail-electric-supplier-compliance/alternative-compliance-payment-rates.html). The ACP is the benchmark used by Retail Electricity Suppliers to price the RPS compliance obligation included in their customer contracts.

[14] *Cf.* Report of the Committee on Proposed Changes to the RPS Solar Carve-Out Program (225 CMR 14.00), dated April 25, 2013, available at: http://www.mass.gov/eea/docs/doer/rps-aps/joint-committee-comments-to-doer-042513.pdf ("Committee Report"), at 2.

[15] *Id.*

- adopted changes to the Minimum Standard formula, which ***increased*** Retail Electricity Suppliers' compliance obligations;[16]

- issued the Emergency Regulations, which ***further increased*** Retail Electricity Suppliers' compliance obligations;[17] and

- announced its plans to "create a new separate SREC market (SREC-II) with ***separate new*** compliance obligation on retail electricity suppliers."[18]

Each of these recent Program changes has or will increase ratepayer costs in direct contravention of the Department's stated goal of providing "clear policy mechanisms that ***control ratepayer costs and exposures***."[19] As discussed more fully below, the effects of these changes can be mitigated by providing as much Program quantity and price certainty as possible and protecting existing stakeholder expectations. Thus, RESA requests that the Department adopt the proposed revisions to the Program regulations set forth below before adopting final, permanent regulations.

I. THE EMERGENCY REGULATIONS SHOULD BE MODIFIED TO MINIMIZE RATEPAYER IMPACTS

In Massachusetts, nearly all load is served, directly or indirectly, by competitive suppliers, who either provide wholesale service to the electric distribution companies ("EDCs") and municipals or who provide retail service directly to end-use customers. To meet the Program's obligations, these suppliers enter into contracts for SRECs. The costs of purchasing the SRECs in order to comply with the Program are included in the prices customers pay their Retail Electricity Suppliers. Thus, every time the compliance obligation is increased or a new obligation is imposed, the cost to customers is increased.

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[16] *See* 225 CMR 14.07(2) (as published June 7, 2013).

[17] Emergency Regulations, at 225 CMR 14.07(2).

[18] Post- 400 MW Presentation, at 18 (emphasis added).

[19] *Id.* at 10 (emphasis added).

In an apparent attempt to mitigate the immediate financial impact to customers of the increased compliance obligation associated with the expanded Program cap, the Emergency Regulations provide:

> In the event the Solar Carve-Out Program Capacity Cap exceeds 400 MW, the Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers in the Compliance Year in which 225 CMR 14.07(2)(e) takes effect shall be based on a Compliance Obligation calculated per 225 CMR 14.07(2)(e) as if the Solar Carve-Out Program Capacity Cap was 400 MW for that portion of electrical energy sales that were subject to a contract ***executed or extended prior to the effective date of this section***.[20]
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> In the event the Solar Carve-Out Program Capacity Cap exceeds 400 MW, the Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers in the Compliance Year in which 225 CMR 14.07(2)(g) is effective shall be calculated based on a Compliance Obligation calculated per 225 CMR 14.07(2)(g) as if the Solar Carve-Out Program Capacity Cap was 400 MW for that portion of electrical energy sales that were subject to a contract ***executed or extended prior to the effective date of this section***.[21]

While RESA appreciates the Department's accommodation and recognition that changes to Retail Electricity Suppliers' compliance obligations will impact existing contracts, the Emergency Regulations only protect a limited number of customers. To ensure that the Emergency Regulations control ratepayer costs and exposures as much as possible, RESA requests that the Department modify the "grandfathering" provision in the Emergency Regulations to exempt all contracts executed or extended ***prior to the date on which the Solar Carve-Out Program Capacity Cap is announced*** from the increased compliance obligation associated with the expanded cap.

[20] Emergency Regulations, at 225 CMR 14.07(2)(a)(4) (emphasis added).

[21] *Id.* at 225 CMR 14.07(2)(a)(5) (emphasis added).

The effective date of the Emergency Regulations was June 28, 2013 ("Effective Date").[22] However, the new Solar Carve-Out Program Capacity Cap was not known on the Effective Date, is not yet known and will not be known for almost a year.[23] As a result, the corresponding compliance obligation associated with the new cap is not currently known and will not be known for almost a year. Suppliers include a premium in their prices to account for the risk associated with the uncertainty of their quantity obligations under the Program because the Minimum Standard formula already does not provide absolute quantity certainty. Adding more uncertainty about this quantity obligation will only increase this risk premium leading to even higher prices. As a result, customers who enter into contracts on or after the Effective Date and before the expanded cap is known will be exposed to increased prices to account for the risk that the compliance obligation will be the maximum possible Solar Carve-Out Program Capacity Cap. This potential exposure to higher risk premiums and the resulting cost impact directly contravene the recent policy statement of the Joint Committee, which states "we look forward to being a partner with DOER as the Commonwealth considers policy options to maintain the growth of solar PV market in Massachusetts ***at the least cost to ratepayers*** after the 400 MW cap of the Solar Carve-out is reached."[24]

According to the Department's listing of RPS Solar Carve-Out SQAs that are currently under review, approximately 273 additional MW above the previous 400 MW cap have the potential to qualify under the Emergency Regulations' expanded Solar Carve-Out Program

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[22] Department Announcement re Emergency Regulations, available at: http://e2.ma/webview/omuuh/80de653af4814f5ee65169a284841296 (indicating that the Emergency Regulations were released on June 28, 2013 and "are now in effect.").

[23] *See* 225 CMR 14.01 (defining "Solar Carve-Out Program Capacity Cap" as "[t]he capacity, in MW, of Solar Carve-Out Renewable Generation Units qualified by the Department ***through June 30, 2014***, and as announced on its website by the Department ***no later than July 31, 2014***.") (emphasis added).

[24] Committee Report, at 2 (emphasis added).

Capacity Cap.[25] Thus, Retail Electricity Suppliers' compliance obligations for contracts entered into on or after the Effective Date have the potential to increase by more than sixty-eight percent (68%) under the Emergency Regulations. While it is possible that not all of the currently pending projects will qualify under the Emergency Regulations, in order to protect their commercial interests, Retail Electricity Suppliers will include the cost associated with the maximum potential compliance obligation in the prices they charge to customers. As a result, the costs associated with Program compliance included in customer contracts executed or extended on or after the Effective Date also have the potential to increase ***by more than sixty-eight percent (68%)*** under the Emergency Regulations. If the final amount of capacity that qualifies under the Emergency Regulations is less than this possible maximum, customers will have paid more for Program compliance than was ultimately necessary. In order to avoid these significant and potentially surplus price increases, RESA requests that the Department modify the "grandfathering" provision in the Emergency Regulations to exempt all contracts executed or extended ***prior to the date on which the Solar Carve-Out Program Capacity Cap is announced*** from the increased compliance obligation associated with the expanded cap.

The Department has suggested that, once the expanded Solar Carve-Out Program Capacity Cap is finally announced, Retail Electricity Suppliers could simply provide credits to customers if the cost of Program compliance turns out to be less than was included in the contract price. However, this approach does not send customers accurate price signals and may not be practical or economical. First, these types of reconciliations provide distorted price signals to customers and decrease the transparency of the costs associated with Program

[25] *See* RPS Solar Carve-Out SQAs Under Review (updated July 12, 2013), available at: http://www.mass.gov/eea/energy-utilities-clean-tech/renewable-energy/solar/rps-solar-carve-out/current-status-of-the-rps-solar-carve-out-program.html.

compliance because they do not accurately reflect the actual cost of Program compliance either during the period in which customers were potentially charged more than was necessary for Program compliance or during the period of time in which any credit is provided because customers will be charged less than the actual cost of compliance for that period. Moreover, this mechanism is anti-competitive, confusing to retail customers and appears to violate the Department's Policy Development Objective of providing "***clear policy mechanisms*** that control ratepayers costs and exposures."[26] In addition, due to customer migration from Retail Electricity Supplier to Retail Electricity Supplier, reconciliations can also create "intergenerational" issues by passing back credits to customers who were not responsible for paying those costs in the first place. Further, even if suppliers were able to provide credits to the customers that incurred the costs if the actual compliance costs turn out to be less than expected, there is a cost associated with the administrative process to do so that may be more than the value of credits. Thus, this option does not provide practical relief for customers.

Accordingly, rather than exposing customers to substantial price increases to account for the risk that the Retail Electricity Suppliers' Program compliance obligations will expand by as much as sixty-eight percent (68%), the Department should modify the exemption in the Emergency Regulations to protect customers against these price effects. Thus, RESA requests that the Department modify the "grandfathering" provisions in 225 CMR 14.07(2)(a)(4) and 225 CMR 14.07(2)(a)(5) of the Emergency Regulations to exempt all contracts executed or extended ***prior to the date on which the expanded Solar Carve-Out Program Capacity Cap is announced*** from the increased compliance obligation. In that way, the Department can protect customers from paying more for compliance than ultimately may be necessary as a result of pricing that

[26] Post-400 MW Presentation, at 10 (emphasis added).

includes a risk premium to account for the maximum potential compliance obligation associated with the expanded cap.

II. THE EMERGENCY REGULATIONS SHOULD BE REVISED TO ENSURE THAT THE GRANDFATHERING PROVISIONS ADEQUATELY PROTECT EXISTING RATEPAYER AND COMPETITIVE SUPPLIER EXPECTATIONS

As currently written, the Emergency Regulations also do not adequately protect customers who executed or extended contracts ***prior to*** the Effective Date. The Emergency Regulations provide:

> In the event the Solar Carve-Out Program Capacity Cap exceeds 400 MW, the Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers ***in the Compliance Year in which 225 CMR 14.07(2)(e) takes effect*** shall be based on a Compliance Obligation calculated per 225 CMR 14.07(2)(e) as if the Solar Carve-Out Program Capacity Cap was 400 MW for that portion of electrical energy sales that were subject to a contract executed or extended prior to the effective date of this section.[27]

However, 225 CMR 14.07(2)(e) does not take effect until the year in which the Solar Carve-Out Program Capacity Cap is reached.[28]

The Emergency Regulations further provide:

> In the event the Solar Carve-Out Program Capacity Cap exceeds 400 MW, the Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers ***in the Compliance Year in which 225 CMR 14.07(2)(g) is effective*** shall be calculated based on a Compliance Obligation calculated per 225 CMR 14.07(2)(g) as if the Solar Carve-Out Program Capacity Cap was 400 MW for that portion of electrical energy sales that were subject to a contract executed or extended prior to the effective date of this section.[29]

However, 225 CMR 14.07(2)(g) is not effective until the Compliance Year after the Solar Carve-Out Program Capacity Cap is reached.[30]

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[27] Emergency Regulations, at 225 CMR 14.07(2)(a)(4) (emphasis added).

[28] *Id.* at 225 CMR 14.07(2)(e).

[29] *Id.* at 225 CMR 14.07(2)(a)(5) (emphasis added).

[30] *Id.*at 225 CMR 14.07(2)(g).

As a result, these provisions essentially obliterate the compliance obligation exemption provided to previously executed or extended contracts under the Emergency Regulations. In particular, these provisions create a situation where Retail Electricity Suppliers could be subject to an increased compliance obligation associated with an exempt contract above the current 400 MW cap but below the expanded Solar Carve-Out Program Capacity Cap because the capacity could exceed the previous 400 MW cap in a year or years before "the Compliance Year in which 225 CMR 14.07(2)(e) takes effect."

For example, if the expanded Solar Carve-Out Program Capacity Cap equals 673 MW, it is possible that in Compliance Year 2014, the previous 400 MW cap will be exceeded but that the capacity under the Program will only reach 500 MW; thus, not reaching the expanded cap. If this were to occur, because 225 CMR 14.07(2)(e) will not take effect until the expanded Solar Carve-Out Program Capacity Cap (i.e., 673 MW) is reached, based on the current language of the Emergency Regulations, even contracts that were executed or extended prior to the Effective Date would be subject to a compliance obligation of 500 MW during 2014. This issue could then also carry over into subsequent years. Continuing with the example above, if in Compliance Year 2015, the capacity only reached 575 MW, based on the current language, the expanded Solar Carve-Out Program Capacity Cap still would not be met; thereby, exposing Retail Electricity Suppliers and, as a result, their customers, to a compliance obligation associated with capacity of 575 MW in Compliance Year 2015 ***even for "grandfathered" contracts***.

To rectify this situation, RESA recommends that the Department revise 225 CMR 14.07(2)(a)(4) of the Emergency Regulations to read:

> In the ~~event~~ Compliance Year in which the ~~Solar Carve-Out Program Capacity Cap~~ expected generation exceeds 400 MW, the Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers ~~in the Compliance Year in which 225 CMR 14.07(2)(e) takes effect~~ shall be based on a Compliance Obligation calculated per 225 CMR 14.07(2)(e) as if the Solar Carve-Out Program Capacity Cap was 400 MW for that portion of electrical energy sales that were subject to a contract executed or extended prior to the effective date of this section. This provision applies only if the Retail Electric Supplier provides documentation, satisfactory to the Department, identifying the terms of such contracts including but not limited to, the execution and expiration dates of the contract and the annual volume of electrical energy supplied.[31]

This revision would also require a corresponding revision to 225 CMR 14.07(2)(a)(5). Otherwise, a situation would be created whereby for the Compliance Year in which the capacity reached 400 MW, Retail Electricity Suppliers would only have a 400 MW compliance obligation for exempt contracts but, in subsequent years, these same suppliers for these same contracts may have an increased compliance obligation because the Solar Carve-Out Program Capacity Cap still has not been reached and thus, 225 CMR 14.07(2)(g) is still not effective. Accordingly, RESA requests that the Department also revise 225 CMR 14.07(2)(a)(5) of the Emergency Regulations to read:

> In ~~the event~~ each Compliance Year after the ~~Solar Carve-Out Program Capacity Cap~~ expected generation exceeds 400 MW, the Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers ~~in the Compliance Year in which 225 CMR 14.07(2)(g) is effective~~ shall be calculated based on a Compliance Obligation calculated per 225 CMR 14.07(2)(g) as if the Solar Carve-Out Program Capacity Cap was 400 MW for that portion of electrical energy sales that were subject to a contract executed or extended prior to the effective date of this section. This provision applies only if the Retail Electric Supplier provides documentation, satisfactory to the Department, identifying the terms of such contracts including but not limited to, the execution and expiration dates of the contract and the annual volume of electrical energy supplied.

[31] Shown as blacklined comparison to Emergency Regulations (proposed additions shown as double underlined text; proposed deletions shown as strike through text).

These proposed revisions will ensure that existing ratepayer expectations are protected. Thus, RESA urges their adoption prior to the issuance of final, permanent regulations.

III. THE DEPARTMENT SHOULD CLARIFY AND/OR MODIFY OTHER PROVISIONS OF THE REGULATIONS

The Program regulations provide: "The ***Compliance Year 2013*** Solar Carve-Out Minimum Standard applied to Retail Electric Suppliers shall remain at 0.2744% for that portion of electrical energy sales that were subject to a contract executed or extended ***prior to the effective date of this section*** . . . ."[32] This section was effective on June 7, 2013. However, anyone reviewing the regulations would not know the effective date. Thus, rather than using the phrase "prior to the effective date of this section," RESA recommends the Department modify this provision to read: ". . . executed or extended prior to June 7, 2013."

RESA also requests that the Department modify the compliance exemption from the Minimum Standard formula as revised on June 7, 2013 so that it protects customer expectations under multi-year agreements ***until the expiration*** of any contracts existing as of that date. As currently written, the exemption only fully protects customers who have entered into contracts that expire in 2013. Because Retail Electricity Suppliers enter into multi-year agreements, customers in multi-year, fixed price arrangements will still be faced with unexpected price increases to account for the increased Minimum Standard obligation in the later compliance years (i.e., beyond the 2013 Compliance Year) of those multi-year agreements.

In serving their customers, Retail Electricity Suppliers made their pre-June 7, 2013 contracting decisions in reliance on the previous Minimum Standard formula. While the formula that existed prior to June 7, 2013 did not provide absolute quantity certainty, it did allow these providers to approximate their obligations and, based on that, to make appropriate business

[32] 225 CMR 14.07(2)(a)(2) (emphasis added).

decisions. For instance, Retail Electricity Suppliers determined the cost that they included in the price that they charged consumers for RPS compliance for the length of the contract with the consumer based on the prior formula.

When the compliance obligation changes, it impacts existing contracts that were priced based on the prior obligation and may have a term of service that extends over multiple years (i.e., beyond Compliance Year 2013). 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 and retroactively applied charges place customers in an untenable position. 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. Thus, RESA requests that, rather than exempting existing contracts as of June 7, 2013 ***from only the 2013 Compliance Year*** obligation, the Department revise the Program regulations so that the exemption from the increased compliance obligation resulting from the June 7, 2013 revised Minimum Standard formula extends ***until the expiration*** of all such contracts.

This can be accomplished in one of several ways. First, the Department could simply set the compliance obligation for the entire length of these pre-existing contracts equal to the Compliance Year 2013 Minimum Standard that existed prior to June 7, 2013 (i.e., 0.2744%). Alternatively, the Department could publish a schedule, based on an estimation of what the Department reasonably expected the change to be in the Minimum Standard each year under the previous formula, that would allow suppliers to know with certainty what their compliance

obligations will be through the expiration of the contracts that existed as of June 7, 2013. As another alternative, the Department could permit Retail Electricity Suppliers to pay the Class I ACP (rather than the Solar Carve-Out ACP) for that portion of a Retail Electricity Supplier's Solar Carve-Out obligation above the 2013 Compliance Year obligation that was contractually committed prior to June 7, 2013 until the expiration of those agreements as it did when the Program was originally adopted. [33]

By adopting any of these options, the Department can alleviate the need for Retail Electricity Suppliers to invoke their change of law provisions for contracts that extend beyond Compliance Year 2013; thereby, protecting existing ratepayer expectations under these agreements. Accordingly, RESA requests that, rather than exempting existing contracts as of June 7, 2013 from ***only*** the 2013 Compliance Year obligation, the Department revise the Program regulations so that the exemption from the increased compliance obligation resulting from the revised Minimum Standard formula extends until the ***expiration*** of all such contracts.

CONCLUSION

For all of the foregoing reasons, RESA requests that the Department adopt the proposed revisions to the Program regulations set forth above before adopting final, permanent regulations.

[33] *See* 220 CMR 14.08(3)(B)(3) (setting the ACP Rate for that portion of a Retail Electricity Supplier's Solar Renewable Energy Credit obligations that were contractually committed or renewed prior to January 1, 2010 to the RPS Class I ACP Rate for the applicable Compliance Year).

Respectfully submitted,
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