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From:

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Via Email To:

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Re: Comments on RPS Class I Emergency Regulation

I write to provide my comments on the RPS Class I Emergency Regulation.

I cover four topics, asking questions I believe the DOER owes it to the public to answer:

- 1) **DOER accountability in creating the need for emergency regulation** – What went wrong causing the need for the emergency regulation, and what is the DOER doing to ensure a similar error doesn't occur in the future?
- 2) **Lack of ratepayer cost estimates** – How much will the emergency regulation cost ratepayers? Why have such cost estimates never been a significant part of any public DOER discussions about the state's SREC program, from the design phase in '09 through the most recent proposed regulation changes? Absent any evidence of the DOER making ratepayer cost estimates and including them in their program design and modification decisions, how does the DOER substantiate its claim to be taking the goal of minimizing ratepayer costs seriously?
- 3) **The DOER's misleading reports of program success** – Why do the DOER, Governor Patrick, and other government officials report the state's SREC program as 'successful' based solely on the increased rate of solar installation in the state, completely ignoring the cost to ratepayers of the program – e.g. whether funds have been allocated efficiently - and the many challenges the program has faced in trying to operate effectively?
- 4) **DOER accountability for SREC program design and management errors** - the DOER appears to have made numerous errors in designing the program

and in describing the way the program works to the public. These errors (I provide one example) have cost ratepayers hundreds of millions of dollars in wasted funds for over-subsidization. Does the DOER acknowledge these errors, or do they have a different explanation? How do they plan to ensure similar types of errors don't occur in the SREC II program currently being designed?

Section 0: Introduction and Context

First, some context is in order. In the last several months the state's SREC program has been impacted by a number of unexpected blows.

In March of this year the DOER held a public meeting to allow testimony about program rule changes the DOER proposed intended to relieve heavy oversupply in the state's SREC market. Government officials were concerned that, quote "there may be negative impacts on solar investment"¹ unquote if the DOER did not intervene to support the market.

The DOER pushed through a number of program rule changes including increasing the 2013 TCO, and removing the otherwise expected decline in the opt-in period for upcoming projects.

A few months later, in June, the DOER held another public meeting, but this time with almost exactly the opposite problem: now the concern was not, as quoted above, that solar investment levels were at risk; in fact, the number of applications to the program had completely swamped all expectations and in a series of announcements the DOER made clear that had received 550MW, then 600+MW, and eventually as much as 900MW of applications for the program as of mid-2013. This for a program intended to accept only 400MW and last through 2017.

How such a radical switch in the DOER's view of the market happened over the course of a few months – from feeling the need to intervene and support a heavily oversupplied SREC market to ensure continued investment inflow, to having a program oversubscribed by a factor of 2X or more years earlier than expected – is unclear.

In hindsight it seems abundantly clear that the rule changes discussed in March of this year were not needed to keep investment money flowing into the program; many of those rule changes were a waste of time if this was the goal.

In fact, the very rapid flow of investment dollars into Massachusetts solar at a rate many multiples faster than designed into the original program is unmistakable evidence that the program has been too generous, far too generous, with rate-payer

¹ <http://www.mass.gov/eea/docs/doer/rps-aps/joint-committee-comments-to-doer-042513.pdf>

funds in seeking to fulfill the program's original goal: subsidizing the installation of 400MW of solar in the state over the 2010 to 2017 time period.

That so many solar installation applications could be submitted so quickly to the DOER – again, perhaps as much as 900MW to date – is clear evidence that, even with the state's currently heavily oversupplied SREC market, where SRECs are typically valued by brokers at roughly \$200 each or less for the foreseeable future – that expected SREC price has generated too much installation activity.

When we add to that the fact that the actual payout by ratepayers is likely to be well above \$200 per SREC, the ratepayer over-subsidization problem looks even worse.

The state could have easily gotten as much solar installation activity as it has gotten simply by agreeing to pay \$200 or perhaps less per SREC for all SRECs. However the SREC market rules are likely going to end up committing ratepayers to paying out average SREC prices substantially higher than that, perhaps over \$300 per SREC. That \$200 to \$300 SREC price gap alone is costing ratepayers hundreds of millions of dollars in over-subsidization costs because the program is too complex, volatile, and uncertain and market participants have discounted expected SREC payouts heavily for those reasons.

Add to that the fact that, if the goal was truly to build 400MW between 2010 and 2017, a subsidy level averaging well under the currently perceived \$200 per SREC value would have been needed to slow down the installation rate. That would add another several hundred million dollars in avoidable subsidization costs to the ratepayer burden.

On top of that, the fact the this first '400MW' program is ending years early, while the solar installation industry in the state still needs substantial subsidies to survive, means that a new program handing out hundreds of millions more in subsidies is having to be adopted much earlier than planned.

All told, these flaws in the performance of the state's SREC program are costing ratepayers easily in excess of \$1B in subsidy overpayment. That is, the original goals of the program could have been achieved by committing \$1B less in subsidies.

Section 1: DOER Accountability in Creating the Need for Emergency Regulation

As described in the previous section, the DOER's stance towards the state's SREC market seemed to change abruptly between (a) March/April 2013 when they were pushing through a series of rule changes they largely justified as needed to support a heavily oversupplied market that was at risk of reducing demand for the program, to (b) in May and June 2013 reporting that the entire program cap – expected to last

into 2017 in the original program design – had suddenly been exhausted by huge demand for the program.

DOER communication with the public described the situation (in a May 29th 2013 email, for example) as follows:

“[T]he Department of Energy Resources (DOER) has received a tremendous volume of Statement of Qualification Applications (SQA) for the Solar Carve-Out program. At this time, DOER wants stakeholders to know that it has over 550 MW of applications that have either been qualified or are under review.”²

The DOER provided no further public explanation. If there was any underlying cause in the sudden, unexpected, and overwhelming surge in applications that apparently started sometime between March/April and May 2013, the DOER has not publicly said so. That over the course of a month or two as much as 400MW to 700+ MW of applications were submitted, compared to about 200-300MW total submitted over the previous 3+ years, suggests something other than natural, rapid, growth in the market occurred.

Market participants have described to me personally that a loophole was found by some developers allowing large projects to be split into smaller ones and then submitted through a more rapid approval process, and that knowledge of this loophole spread throughout the industry rapidly and led to many large projects being split into small ones and submitted to the DOER over a few weeks.

The sudden jump in application volume this led to and the unexpectedly rapid exhaustion of the program cap it caused had major effects across the state’s solar installation industry – many in-process projects were stopped due to the sudden uncertainty of their ability to secure a place in the subsidy program, solar industry workers were put on hold, and managers in these companies were tasked with meeting with state lawmakers to get them to ‘do something!’ to resolve the issue and get good projects back on track.

In addition, the emergency regulation passed to resolve the situation will likely cost state ratepayers many millions of dollars above and beyond what was intended in the original design of the program. (Unfortunately the DOER appears not to have provided any public estimate of this cost – see the next section.)

Look even on the small scale – today’s (August 2nd) clearinghouse auction failure (3 credits cleared in the final round, nearly 39K unsold). A couple of months ago system owners were operating under a view of the future where the DOER’s recent increase in the 2013 TCO seemed likely to make 2015 an undersupplied year and hence the 2012 clearinghouse auction more likely to clear. But the turmoil over the last couple of months followed by the drastic increase in the program cap caused by

² Available on the DOER website, or through this link: <http://e2.ma/message/clhmf/gk3lw>

the emergency regulation has dramatically changed the situation. System owners, including homeowners, who chose not to sell their credits and instead deposited them into the auction have found themselves suddenly in a market with new rules and conditions, and are today taking the hit for it.³

The DOER owes it to the public to provide more detail on what happened that led to the situation the emergency regulation is intended to address. Is it, as stakeholders have described, related to the discovery of a loophole for large projects? Was it something else?

Furthermore, to the extent program loopholes or other program design or management issues were a significant underlying cause of the situation, the DOER owes it to the public and to general principles of good government accountability to describe the circumstances of their contribution to the possible error and what they will do to avoid a similar error in the future.

Section 2: Lack of Ratepayer Cost Estimates

Here are several important questions I ask the DOER:

- a) What is the additional cost to ratepayers of the emergency regulation?
- b) What was the cost to ratepayers of alternative actions you considered?
- c) What weighing of cost vs. benefit tradeoffs did you make - taking the ratepayer cost burdens of the various emergency legislation options you considered vs. their benefits to the industry – that led to your decision?

The DOER, including Commissioner Mark Sylvia, sat on the dais in the Gardner Auditorium in the June 2013 meeting describing the emergency regulation and promised they would provide such cost estimates. They have not presented this information in any public forum I have been able to access.

In fact, let's broaden the question: throughout the entire history of the SREC program, from design and implementation as far back as 2009 to the rule change discussions starting last year, to even the current discussions on the successor program SREC II: when in those discussions has the overall cost burden to ratepayers of various program design options, or subsequent rule change proposals, been discussed AT ALL, much less considered as a crucial driver of the final decision of which design or rule change alternative to adopt?

I've been following the program closely for at least a year and have scoured historic documents back to 2009 as I've studied the program, and I find literally NO mention of the specifics of the ratepayer cost burden under various versions of the program.

³ Or perhaps (as one market expert told me) the DOER's plan to use internal funds (from ACP overpayment? See section 4) to buy up about 40K of credits to compensate for grandfathered load commitments will almost exactly offset the auction failure.

If such a set of figures exists, they must be buried in detail. They certainly have not been a significant part in any public discussions of the design and modification of the program.

Why does this matter?

The DOER has stated repeatedly that efficient use of ratepayer funds is one of their primary goals. And it is not just that they have stated it: it should very obviously be the case. Billions of dollars are being spent here and it is important that that money be spent wisely.

The goal of spending ratepayer funds wisely has at least two implications for how the DOER should be including ratepayer cost estimates in its program design and management processes. I cover the first in this section and the second in the following one.

First, in designing the program, and in considering changes to the program, the overall cost to ratepayers must be a critical input. The DOER **MUST** estimate the cost to ratepayers of various program alternatives, and weigh those costs relative to the benefits to the industry of the various subsidy program alternatives.

The DOER claims to be carefully considering the ratepayer burden, but they have shown absolutely no signs of making ratepayer cost estimates at all:

- a) They haven't shown any ratepayer cost figures I'm aware of for the program itself or for the rule changes they have pushed through
- b) They haven't shown any discussion of ratepayer costs vs. subsidy benefit considerations when proposing alternative program designs or rule change options; ratepayer cost estimates do not seem in any way to be a part of their decision making process
- c) Certainly here, for this emergency legislation, there is no evidence whatsoever that they even calculated ratepayer cost estimates for various legislative options, much less took them into account in deciding what path to pursue.

Basically, the DOER's stated devotion to using ratepayer funds efficiently is not backed up by any publicly available work they have done, at all.

Even when the DOER and Commissioner Sylvia promise us ratepayer cost estimates, as they did in this case, they have failed to provide them. That's evident right now, and it is just as painfully evident in examining the record of the program over the last three-plus years.

But that's just the first important role ratepayer costs should have been playing in discussions about the program. There is a second area where they are critical: in measuring the success of the program – discussed in the next Section.

Section 3: The DOER's and Governor Patrick's Misleading Reports of Program Success

It seems obvious that the state's SREC program would not be successful if it had achieved 400MW of installed solar at the exaggerated cost of \$100 billion dollars. Or even at \$5 billion dollars. In fact, the overall cost to ratepayers of the solar installation subsidy in the state is an important consideration in determining the success of the program.

Yet the DOER has provided no estimate of what it thought the cost would be, what the cost is turning out to be, what impact regulation changes have had on those costs, etc. No overall cost information at all, unless it is buried in detail. The topic is never to my knowledge discussed publicly.

In fact, the DOER has, in portraying the success of the program, taken the easiest approach, but a very misleading one. They simply quote the amount of solar installed and leave off any mention of cost. That's what the DOER regularly does when touting their supposed success, what Gov. Patrick, and members of his administration have also chosen to do.

They call this program a success simply because it has led to a substantial increase in the amount of solar installed in the state. Of course subsidizing what was a fairly small industry prior to 2010, and one already growing very rapidly, with hundreds of millions to billions of dollars was going to lead to rapid expansion. Pointing to that expansion just shows you can successfully take large sums of money from ratepayers and give it to the solar industry. But the real question is: has it been spent efficiently, has the DOER achieved the goals they told the citizens of this state they were targeting?

In the state's SREC program, the too rapid exhaustion of the program cap makes it blindingly obvious that the program has heavily overpaid for solar installation activity.

The entire premise of the program was that SREC prices would have to drop – saving ratepayers money – if the rate of installation was going too fast. That is the central concept of an SREC market.

But the design of the program is substantially flawed - the program floor and other poor program design elements have led to perverse SREC market behavior that has kept (and will keep) average SREC payouts substantially higher than they needed to be to actually perform their intended market function in this case, which was to provide a brake on too-rapid industry growth rates. In fact actual SREC payouts are not going to be substantially lower in this far-too-fast solar infrastructure build-out than they would have been had the build-out been much slower. That perverse

failure of the SREC program pricing mechanism to function as intended is at the heart of the failure of the program to spend ratepayer funds effectively.

Government officials ignoring the ratepayer cost side of the equation in evaluating the success of the program are covering over this massive failure in the current SREC program.

In summary:

- The DOER claims to have as a primary goal ensuring efficient use of ratepayer funds, but their entire process of designing, managing, modifying and reporting on the success of the SREC program lacks – to its very core – any mechanism of actually taking into account ratepayer cost tradeoffs.
- Furthermore, the DOER and other government officials go out of their way to avoid providing any overall ratepayer cost data at all in their public conversations
- This problem cuts so deep, it can't be fixed by the DOER just putting out in a week or a month some ratepayer cost estimates – the entire process by which programs are designed, managed and modified needs to change to actually include ratepayer costs in the decision making and accountability processes.
- Right now DOER processes do not take into account the burden on ratepayers, and hundreds of millions of dollars to a billion dollars has been wasted.

The DOER has failed as a responsible steward of ratepayer funds.

Section 4: DOER Accountability for SREC Program Design and Management Errors

4.0 - Background

The DOER has made numerous mistakes in the design and management of the state's SREC program. These mistakes have been the major contributor to the failure of the program to efficiently allocate ratepayer funds, and to the waste of hundred of millions to over a billion dollars in over-subsidization.

The DOER has refused to acknowledge publicly any of their mistakes. Here I ask the DOER to publicly respond to one example - an apparent error in the design of the SREC I program – either acknowledging the error and explaining how it came about, or explaining the set of facts in such a way as to explain away the apparent error.

This is particularly important now, when the DOER is in the process of designing the follow-on program, SREC II. The new program will be the central driver in allocating perhaps another \$1-\$2B of ratepayer funds to the state's solar installation industry. The DOER appears to be following a similar design process as with the

original SREC I program, which allows a similar high likelihood of the DOER unknowingly incorporating errors in the SREC II program design that again will lead to poor program performance and the waste of ratepayer funds.

The DOER accepting responsibility for the errors they have made in the design and management of SREC I is absolutely critical in contributing to a successful SREC II design process, as well as repairing the DOER's damaged credibility with financial markets.

On that last point – the DOER's damaged credibility with financial markets: the damage the DOER has done in operating such a poorly designed and managed program goes beyond just the huge amount of wasted ratepayer funds. The overly complex program design (with few compensating benefits), high SREC price volatility, and the too-frequent need for DOER intervention to fix the market in response to unexpected market challenges have greatly sapped the confidence of potential investors in the state's SREC market. Instead of building what should have been a robust, competitive solar installation market supported by a strong, competitive solar project financing sector, the state's multi-billion-dollar subsidy investment in solar has largely been captured by connected insiders and their associates.

One clear example of that is the situation that led to the emergency regulation being discussed here. First, the loophole that was apparently found was spread quickly among friendly players in the market; anyone not in the 'club' was left out and found out too late to take full advantage. Second, once the DOER announced the program oversubscription problem, every developer I spoke to immediately began working their government contacts to try to get a political intervention to fix the situation in their favor.

Anyone not plugged into this small community – and I have spoken to outside investors who have refused to enter the market specifically because they see this as a group of insiders they are not a part of – would be left out of critical inside knowledge and decision-making processes.

This barrier to new entrants has led to substantial inefficiency in the financing of solar projects in the state. One clear downside for those actually doing the development and installation work is that the lack of substantial competition among financiers has given the financiers much of the market power – the financiers are the ones likely to benefit the most from the over-subsidization the state's poorly designed SREC program has caused because of the project financing terms they have been able to force many developers to accept.

In addition, little liquidity has entered the market the way one would expect in a truly open, robust, and transparent market. For instance the ability for homeowners to easily sell their future SREC stream for cash. The only easy way they can do this is by having the company that installs the system also own the

system, with that company selling back the electricity to the homeowner and also capturing the bulk of the fairly high SREC return opportunity, leaving little of the benefit to homeowners. Normally financial players would enter the market to provide this service to homeowners. That hasn't happened, and instead the DOER has felt the need to instead put this service into the SREC II program design because the market itself doesn't have the robustness to provide what should be a fairly routine financial product.

Note as well that the explosion in applications for the program the emergency regulation is addressing came, not from any price or quality or performance improvement breakthrough by market participants as would happen in a normal market; it apparently came instead from the discovery of a bureaucratic loophole. That's exactly the wrong kind of incentive the program should be creating.

Solar developers in the state spend more time evaluating and managing their SREC risk and competing for SREC-dependent financing than they do competing over the price and quality of the solar systems they can design and install.

I invite the DOER to talk with market participants as I have and provide a public report on whether developers and installers feel they are spending most of their time and effort competing primarily on price and quality vs. other non-market factors.

Overall, the state is allocating billions of dollars in subsidies to build a robust, competitive solar industry, but instead has had a substantial amount of that money captured by a small group of well-connected, well-financed insiders, in a market where dealing with the bureaucratic nuances of the subsidy program are swamping out real, valuable competition.

4.1 – Error in Early Year TCO Calculation

The DOER appears to have made a substantial mistake in the calculation of the minimum standard for the first two years of the program (2010 and 2011). Specifically, the DOER made the following statements during the design phase of the program⁴:

- “DOER establishes the minimum standard for 2010 at 20MW” (later increased to 30MW)
- “Minimum standard will increase to allow for a 30% per year growth rate in new solar installation, unless adjusted up (or down) due to market conditions as prescribed in regulations”

In that same document on pages 18-20, the DOER shows charts displaying the minimum

⁴ Quoted from page 6 of the DOER's October 23, 2009 presentation on the design of the program, available on the DOER website

standard over time under various installation rate growth scenarios – for instance on page 18 the ‘perfect market balance’ scenario described as “PV installation starts at exactly 20 MW in 2010 and grows at exactly 30% per year”.

The DOER translated their stated design plan above (30MW in 2010, 30% per year growth rate in new installations) into TCO values for 2010 and 2011 of 34K and 79K, respectively written directly into the original program regulation (see 225 CMR 14.07 2(b)). Their 34K calculation, for example, is based on 30MW producing for 365 days, 24 hours a day, at a 13% capacity factor.

Unfortunately the DOER made the same mistake throughout, both in the charts they displayed and in the TCO values written into the regulation. The error is this: systems installed in a year do not produce MWh for the entire year; on average they produce for about half a year⁵. Because of this, a 30MW target for a year – interpreted as the market installing 30MW during the year – would lead to about 17K SRECs in 2010, not the 34K the DOER improperly calculated. To hit the DOER target, one would need to have installed 60MW throughout 2010, assuming starting from zero (see below for more on this assumption).

Now the DOER could perhaps argue that the terminology ‘establish[ing] the minimum standard for 2010 at [30]MW’ wasn’t intended to mean that the 30MW figure they set in the first statement above was intended to be new solar installations put in place in 2010...

...Except then they run into the problem of the second statement, which says that subsequent years will be a 30% increase on the previous year’s new solar installation. Meaning - how did they set the 2011 TCO? By taking the 30MW from 2010, growing it by 30%, and using that as the estimate for 2011 installation activity. That must mean the 2010 30MW figure was, in fact, the 2010 ‘new solar installation volume’. The errors in the pages 18-20 charts I described in an earlier comment further support this claim.

In fact, there is no way to create a reasonable set of month-to-month solar installation volume scenarios for 2010 and 2011 that live up to the stated goals of ‘30MW in 2010’ (however you interpret it) and then ‘30% per year growth rate in new solar installation’, and that yields solar output matching the TCO values written into the regulations. It’s simply impossible to come up with anything that makes any sense and satisfies all of these requirements. The DOER wrote into the regulations a set of goals for 2010 and 2011 that simply could not be met under any reasonable forecast for solar installation activity in the state.

Here’s an example attempt to rationalize their numbers. In 2010, if one wanted to generate 34K SRECs starting from zero solar capacity installed, one would need to

⁵ This assumes that installation activity throughout the year is roughly consistent from month-to-month, which has proven very roughly to be the case in the real world.

install roughly 60MW of solar during the year. That would give an effective generating capacity of roughly 30MW during the year, which would generate about 34K SRECs in 2010. The problem, then, is 2011. The 60MW you ended 2010 with would on its own generate approaching 70K of SRECs in 2011 now that the systems would all be operating for a full year. So on the one hand, with a 79K TCO target for 2011, one can't add many new systems in 2011 – perhaps no more than 18MW worth. On the other hand, if 30% growth in the annual installation rate is a baseline assumption, you have to add lots new systems in 2011, 78MW worth. You can't reconcile these two conflicting statements, both part of the DOER's stated assumptions.

I spoke to the DOER about this a few months ago – and wrote a comment about it to the DOER (which unfortunately appears to have been deleted from the web site in spite of many other comments from that March '13 comment cycle still being posted). The conversation I had with them was surreal – at first they refused to say anything beyond 'what was written into the regulation was the goal; any underlying calculation error doesn't matter' (this and the following quote are my attempt to paraphrase, these are not direct quotes), and then when I pointed out that it was impossible for any reasonable scenario for 2010 and 2011 installation rates to match the TCO figures they wrote into the regulation they began to brainstorm along the lines of 'well, maybe if 2010 started with some solar capacity already installed...'. My response: first, the program rules explicitly block almost all systems installed prior to 2010 from the program (and very few have qualified based on available data). But more important – the DOER was brainstorming in 2013 to explain an apparent error in their 2009/2010 program design?

This isn't something where brainstorming is relevant. Either the DOER has a model and set of assumptions from their 2009/2010 work that explains the odd TCO values they wrote into the regulation, or they don't. I asked them to provide me the monthly installation figures they assumed in their program design base case, but to date they have provided nothing.

This matters for two reasons. First, the apparent error led to too high TCO's in 2010 and 2011 that in turn contributed to high SREC prices in those years, and led to ACP overpayments in those years (of about \$25M). Note that ACP payments go into a fund the DOER apparently controls with little oversight. Furthermore, those ACP payments in 2010 and 2011 in turn affected later year TCO's through TCO correction terms (and a higher 2011 TCO base upon which the 2012 TCO calculation was based), continuing the impact on the market.

But more important is this: the DOER apparently DID NOT HAVE A MODEL of what they expected growth in the market to be in 2010 and 2011, or at least not one that they carefully and competently compared with the program regulations to ensure their design and assumptions made sense. If they had such a model and did such a comparison, it would have been immediately obvious to them that they had written

TCO targets for 2010 and 2011 into the regulation that no reasonable scenario for solar installation volumes in 2010 and 2011 could match.

That they didn't catch this apparent error is an undeniable sign of a lack of thoroughness, and of incompetence. Whether the \$25M ACP impact in 2010/2011, or the more complex impact rolling into later years, is a big issue one can perhaps argue. Personally I think the DOER making this mistake and setting too-high TCO levels in the first two years of the program led to heavy undersupply and too-high confidence among market participants in the early years that the program would remain largely undersupplied for some time, increasing the shock as 2012 came in oversupplied.

But the DOER's apparent lack of modeling thoroughness sufficient to catch this basic error is simply shocking. It makes it very hard to trust that the DOER is doing anything close to what they need to be doing to ensure good program design.

It is critical for the DOER to maintain its credibility to answer this simple question: in 2009/2010, during the design of the program just before implementation, what base case assumptions did you make about the monthly rate of installs that both matches your stated goals – '30MW in 2010', and a 30% growth rate in new installs per year – and that hits the 2010 and 2011 TCO targets you set?⁶

And further: what was the level of modeling the DOER did during the 2009/2010 design phase? Did it go deeper than that shown on pages 18-20 of the document from October 2009 I referenced earlier, which clearly has errors I outlined in a previous comment to the DOER? If so, the DOER owes it to the public to release those modeling materials so market participants can evaluate the DOER's design process.

If not, or if the DOER can not explain the odd TCO values they set for 2010 and 2011, the DOER needs to publicly acknowledge their mistake and provide some reassurance to the market that their next round of market design work will be much more thorough – and allow for much more public oversight – than what seems evident from this example of their 2009/2010 work.

If the DOER does not begin to open up its program design effort – both in releasing key documents from the 2009/2010 SREC I design period, and in opening up the current SREC II design effort to a much larger extent, the DOER sets themselves up for continued poor performance, and risks continuing to waste ratepayer funds as well as push poor incentives on the state's solar installation industry.

⁶ And if the DOER tries to satisfy this by assuming a substantial amount of solar entered the program already installed at the beginning of 2010, the DOER needs to demonstrate this was their assumption in 2009/10 and not a backwards rationalization. And further explain – why was that assumption never made public? Why did you have that expectation when the program rules seem designed to prevent this from happening? And why, if you expected it to happen, did it not happen?