COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS SOLAR MARKET POST-400 MW SOLAR PROGRAM POLICY DESIGN	:	JUNE 21, 2013

COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE SREC-II POLICY DESIGN

The Retail Energy Supply Association ("RESA")[1] hereby submits its comments in response to the Department of Energy Resources' ("Department" or "DOER") Post-400 MW Solar Program Policy Design presentation ("Presentation") discussed at the June 7, 2013 Stakeholder Briefing. 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 customers in the State. As such, RESA and its members have an interest in ensuring that

[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.

proposed 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, Retail Electricity Suppliers[2] 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.[3]

The Department is now engaged in developing a policy to determine what will occur after the 400 MW cap of the current Program is reached. As part of this effort, the Department held a Post-400 MW Solar Program Policy Design Stakeholder Briefing on June 7, 2013 ("Stakeholder Briefing") at which it discussed its plans to: (a) issue an emergency regulation "to allow the current 400 MW cap program to expand"[4] and (b) create an SREC-II market to meet the Governor's goal of 1600 MW by 2020.[5]

As a follow-up to the Stakeholder Briefing, the Department offered interested parties an opportunity to submit comments on the proposed SREC-II policy design.[6] RESA hereby submits its comments on the proposed design.

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

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

[4] Presentation, at 5.

[5] *Id.* at 9.

[6] *Id.* at 33.

COMMENTS

During the Stakeholder Briefing, the Department identified the following objectives for the Post-400 MW cap policy:

- Provide economic support and ***market conditions*** to maintain and expand photovoltaic ("PV") installations in Massachusetts;
- Provide ***clear*** policy mechanisms that ***control ratepayer costs and exposures***;
- Maintain robust growth across installation sectors;
- Maintain competitive market of diverse PV developers without undue burdens of entry; and
- Address financing barriers limiting direct ownership without compromising third-party ownership model.[7]

The Department previously determined that the current Program "provides a ***robust market*** demand growth for the solar industry"[8] and "maintains ***market balance***."[9] Since the existing 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 robust growth across installation sectors, and maintains a competitive market of diverse PV developers without undue burdens of entry. Accordingly, for the reasons discussed more fully below, RESA urges the Department to be measured in its approach and to simply expand the existing Program, rather

[7] Presentation, at 10.

[8] *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).

[9] *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).

than creating an entirely new program, and to ensure that ***any*** Program changes provide for as much quantity and cost certainty as possible and are instituted on a prospective basis only and in a competitively neutral fashion.

I. CREATING AN ENTIRELY NEW MARKET AND COMPLIANCE OBLIGATION WILL NEGATIVELY IMPACT RATEPAYERS

In the just three (3) years since it was developed, the existing Program framework has been "successful in aggressively growing solar installations and businesses in MA"[10] and has resulted in project development being "reasonably well distributed across system size . . . ."[11] Despite the success of the current Program and its relative immaturity, ***in the last two weeks***, the Department has:

- adopted changes to the Minimum Standard compliance obligation formula;[12]
- indicated its intent to issue emergency regulations that will increase the current cap and further change the compliance obligation;[13] and
- announced its plans to "create a new separate SREC market (SREC-II) with separate new compliance obligation on retail electricity suppliers."[14]

Continuously altering the Program "increases regulatory risk and introduces uncertainty regarding the possibility of more changes in the future."[15] As the Joint Committee on

[10] Massachusetts Solar Market, Post-400 MW Solar Program Policy Design, Stakeholder Meeting, Renewable Energy Division, March 22, 2013, available at: http://www.mass.gov/eea/docs/doer/rps-aps/doer-post-400-mw-solar-policy-design-stakeholder-mtg.pdf, at 4.

[11] *Id.*

[12] *See* 225 CMR 14.07(2) (published June 7, 2013), available at: http://www.mass.gov/eea/docs/doer/renewables/rps-class-i-225-cmr-14-dot-00-published-6-7-2013.pdf.

[13] Presentation, at 6-8.

[14] *Id.* at 18.

Telecommunications, Utilities and Energy 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."[16] In addition, an entirely new program will lead to increased market volatility, reduced Program transparency and added administrative burdens on all stakeholders. Wholesale changes in the Program will also increase ratepayer costs in direct contravention of the Department's stated goal of providing ***clear*** policy mechanisms that ***control ratepayer costs and exposures***.[17]

When it adopted the Program, the Department specifically indicated that one of its goals was to minimize ratepayer impacts and reduce costs to ratepayers.[18] However, modifications to the Program and development of a new compliance obligation will negatively impact customers and increase costs. 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 Solar Renewable Energy Credits ("SRECs").

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[15] *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, at 2.

[16] *Id.*

[17] *Contra* Presentation, at 10.

[18] *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.

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 Program design would create such a market demand.[19] Balanced against this, however, is the risk associated with unexpected changes to the Program such as those currently being considered by the Department.

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 the Program in one of several ways. First, by shortening the length of their retail load 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 Program changes to customers. Alternatively, Retail Electricity Suppliers can offer longer term contracts for electricity with a pass-through for Program 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 Program 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.

[19] Straw Proposal at 8.

By contrast, by setting Program requirements for an extended period, the Department can send a message to that it is safe to continue to invest in the Commonwealth and avoid potential negative impacts to customers. Thus, RESA urges the Department to forego the development of an entirely new SREC market and to engage in a measured approach that simply expands the existing Program.

II. THE DEPARTMENT SHOULD PROVIDE QUANTITY AND COST CERTAINTY

The current Program contains a complex formula for determining the amount of SRECs that Retail Electricity Suppliers must purchase in order to satisfy the Program's compliance obligation. Specifically, as of June 7, 2013, the current Program's compliance obligation is determined each year through the following formula:

> $\text{Total Compliance Obligation}_{CY} = \text{Total Compliance Obligation}_{CY-1} + [\text{Total SRECs Generated (projected)}_{CY-1} - \text{SRECs Generated(actual)}_{CY-2}] \times 1.3 + \text{Banked Volume}_{CY-2} + \text{Auction Volume}_{CY-2}$[20]

While the current Program does not provide quantity certainty, in an effort to provide greater cost certainty,[21] the Department developed a ten year forward schedule of the alternative compliance payment ("ACP").[22]

The Department's proposal for the SREC-II program design also includes an ACP rate schedule that provides cost certainty.[23] However, after the first two (2) years of the new

[20] 225 CMR 14.07(2)(d).

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

[22] *See* 225 CMR 14.08(3)(b)(2).

program,[24] the "[c]ompliance obligation will be set by formula" pursuant to a "managed growth" provision.[25] Just as an entirely new obligation creates market uncertainty with negative impacts for ratepayers so does a program design in which the compliance obligation is unknown or subject to change. Thus, if the Department chooses to proceed with the development of an entirely new SREC market (which RESA strongly discourages) or to make changes to the compliance obligations under the existing Program, RESA requests that it provide both quantity and cost certainty regarding Retail Electricity Suppliers' compliance obligations. Otherwise, customer contracts are likely to include a substantial risk premium to protect Retail Electricity Suppliers from future quantity risk.

Published, predictable quantity and ACP[26] schedules allow businesses to manage their affairs more effectively and reduce risk premiums. A formula that fails to provide an easy and predictable method for determining compliance creates uncertainty that forces Retail Electricity Suppliers to estimate their compliance obligations and to include a significant premium in what they charge consumers to protect 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

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[23] Presentation, at 27.

[24] *Id.* at 25.

[25] *Id.* at 18.

[26] The ACP is the benchmark used by Retail Electricity Suppliers to price the RPS compliance obligation included in their customer contracts.

quantity and cost certainty, the Department can eliminate risk premiums associated with such uncertainty; thereby, resulting in lower prices for consumers.

Thus, RESA requests that, rather than using a formula with unknown and unpredictable variables to calculate the compliance obligation, the Department provide a schedule that allows suppliers to know with certainty at the time the new or modified program regulations are adopted what their compliance obligations will be for the life of the program or, at least for a significant period of time into the future. Such certainty would allow Retail Electricity Suppliers to make appropriate forward SREC contracting decisions and eliminate the need to include risk premiums in their customer contracts to cover quantity uncertainty. As an alternative, if the Department requires flexibility in the annual compliance obligation in order to ensure that it can achieve the Governor's ultimate goal of 1600 MW by 2020, RESA suggests that, at the time the new or modified program regulations are adopted, the Department publish a schedule that establishes a minimum and maximum compliance obligation for each year of the Program. In this way, Retail Electricity Suppliers will know their maximum compliance obligation in a given year. While this approach would still result in end use customers potentially paying more for compliance than is necessary, it would limit any premium associated with quantity risk to only that necessary to protect against the limited risk that the compliance obligation would reach the published maximum obligation in any given year.

III. THE DEPARTMENT SHOULD PROTECT EXISTING RATEPAYER AND COMPETITIVE SUPPLIER EXPECTATIONS

Another important design element of any new or expanded program is to ensure that it does not disrupt or otherwise harm existing stakeholder expectations. Thus, RESA encourages

the Department to ensure that any new or modified program design is implemented prospectively only and in a competitively neutral fashion.

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 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 Program design. Only once the Department officially promulgates the new or modified program 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, RESA requests that the Department ensure that any new or modified program design is instituted on a prospective basis only.

Furthermore, because Retail Electricity Suppliers enter into multi-year agreements, even if the Department institutes any new or modified program design prospectively, customers with fixed price arrangements will still be faced with unexpected price increases to account for the

new or modified compliance obligation. When the compliance obligation changes or 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. In RESA's view, these unanticipated 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. Accordingly, similar to when the Program was originally instituted,[27] RESA requests that the Department create a compliance exemption, subject to Retail Electric Suppliers providing appropriate documentation, from the new or modified program compliance obligation until the expiration of any contracts existing as of the effective date of the regulations establishing the new or modified market design. In this way, the Department can establish a paradigm that protects existing stakeholder expectations.

CONCLUSION

For all of the foregoing reason, RESA encourages the Department to be measured in its approach and to simply expand the existing Program, rather than creating a whole new market

[27] *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).

design and to ensure that any Program changes provide for as much quantity and cost certainty as possible and are instituted on a prospective basis only and in a competitively neutral fashion.

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