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Mark Sylvia, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, Massachusetts 02114

By email to DOER.SREC@state.ma.us

Re: SREC-II Policy Design Comments

Dear Commissioner Sylvia:

On June 7, 2013, the DOER presented its "Post-400 MW Solar Program Policy Design" (the "Presentation") that serves as an extension to the solar carve-out program initially undertaken to implement Section 11F(g) of the General Laws. More specifically, pursuant to Section 32 of Chapter 169 of the Acts of 2008, an Act Relative to Green Communities, which amended Section 11F of Chapter 25A of the General Laws, the Department of Energy Resources ("DOER") was authorized to require retail electric suppliers:

> [to] provide a portion of the required minimum percentage of kilowatt-hours sales from new on-site renewable energy 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… 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.

TransCanada has been granted a license as a competitive electric supplier in the Commonwealth of Massachusetts by the Department of Public Utilities. As a duly licensed supplier serving retail customers in the service territories of each of the regulated distribution companies in the Commonwealth, TransCanada will be obligated to comply with legislative and administrative obligations as they pertain to Massachusetts' Renewable Portfolio Standards. Accordingly, TransCanada respectfully submits these comments on the Post-400 MW Solar Program Policy Design.

COMMENTS

1. THE POST-400 MW SOLAR PROGRAM POLICY DESIGN WILL LIKELY IMPOSE SIGNIFICANT COSTS ON CONSUMERS

The installation of an additional 1200 MW of solar PV systems will impose multi-billion dollar costs on Massachusetts ratepayers. While solar PV costs have seen significant decline, Massachusetts solar RECs are selling on the market at $200/REC, and depending on how the DOER manages the market, the price could be pushed to $300/REC if the DOER auction floor price is held. This means an incremental annual cost impact to consumers of $225 Million - $375 Million at full program build out. At that level, ratepayers will incur an increase of 6% - 10% in their power prices, or 3% - 5% increase in their total electric bill. In the Presentation, however, the DOER stated as one of its primary objectives that it wants to "provide clear policy mechanisms that control ratepayers costs and exposures." (Presentation at 10). The increased costs run contrary to the stated objectives of the program and the DOER has failed to justify an increased cost to consumers of this magnitude.

2. LEGISLATIVE APPROVAL SHOULD BE SOUGHT BEFORE IMPLEMENTING FURTHER EXPANSION OF SOLAR PROGRAMS

The legislature never authorized the solar carve-out program. The legislation on which the DOER has based its entire solar carve-out never even used the word "solar" in its construction. The legislation established no cost or volume bounds of any sort. Yet within the Green Communities Act there are numerous explicit references to the bounds on various initiatives. As just one example, when the legislature authorized contracting for new renewable resources, it explicitly limited the amount that could be contracted. It is hardly reasonable for the DOER to assume that the legislature provided unbounded authority to the DOER to construct multi-billion dollar programs without getting its explicit authorization. In fact, in a letter to DOER Commissioner Mark Sylvia dated April 25, 2013 signed by both the Senate and House chairs of the Joint Committee on Telecommunications, Utilities and Energy, the chairs stated "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 400MW cap of the Solar Carve-Out is reached." (emphasis added.)

3. CRITICALLY PRICE SENSITIVE CUSTOMER CLASSES SHOULD BE EXEMPTED FROM MANDATORY PARTICIPATION

TransCanada believes certain classes of customers should be provided with optional exemption from the cost impacts that will be incurred due to any implementation of the Post-400 MW Solar Program. First, industrial customers should be allowed exemption. Industrial customers are highly price sensitive. The jobs provided by industrial customers are critical to the well-being of our citizens and our communities. The rate increases that will be driven by the

DOER's program can only result in job loss if the industrial facilities move operations, partially or entirely, to lower cost areas of the country. The jobs provided by the solar program will only exist as long as subsidies continue; any industrial job loss is likely permanent. Second, hospitals should be allowed exemption. Hospitals are major electric consumers, and the state should not be undertaking programs that result in health care cost increases. Third, education facilities should be allowed exemption. Our state's colleges and universities are major electric consumers, and the state should not be undertaking programs that result in education cost increases. Finally, municipalities should be allowed exemption. Municipal facilities such as schools, water supply and sewage treatment facilities are all significant electric consumers, and the state should not be undertaking programs that drive up its residents' property taxes or fees. All of these customers should be provided with the ability to opt-in at their discretion if they desire to provide solar program support.

4. EXISTING RETAIL ELECTRIC AGREEMENTS SHOULD BE GRANDFATHERED

Massachusetts has a thriving competitive electric market. Commercial and industrial customers are often served by competitive retail providers, while residential customers benefit from vigorous wholesale competition among suppliers of basic service. A key feature of the market for customers taking service from competitive retail providers is the ability to lock in a fixed price for a fixed term of their choosing. Regulatory change that impacts already executed agreements can only introduce inefficiencies into this market and harm competition. The Massachusetts legislature has recognized this issue, and provided grandfathering for existing

contracts when it made changes to supplier RPS obligations in the Green Communities Act. Any program implemented by the DOER should do the same.

5. THE PROGRAM DESIGN IS OVERLY COMPLEX AND INEFFICIENT

At the highest level, administratively picking winners and losers among competing renewable technologies will only serve to drive up cost to the electric consumer versus allowing consumers to choose on the basis of price and quality of products and services. The Post-400 MW Solar Program Policy Design goes far beyond picking a winner from competing renewable technologies, however. Within the solar technology itself, the program picks winners or varies SREC credit value, with a variable identified as the "Adjusted SREC factor", based on size of installation, vintage of application, and other non-economic and non-feasibility criteria. In fact, extensive lobbying will likely take place that will change the structure and shape of the DOER's program even more. Ultimately, the consumer will pay for all of the inefficiencies introduced into the program by its state agency managed design. Any expansion of the existing solar carve-out program should be based upon the existing design to reduce complexity and inefficiency.

6. DOER MUST SEEK AN OPINION FROM THE ATTORNEY GENERAL THAT THE IN-STATE GENERATION MANDATE DOES NOT VIOLATE THE COMMERCE CLAUSE

Finally, the renewable portfolio standard as proposed must be reviewed for compliance with the Commerce Clause of the Constitution. On June 7, 2013, the U.S. Court of Appeals for the 7th Circuit issued a decision in *Illinois Commerce Commission, et al. v. Federal Energy Regulatory Commission* (11-3421, 2013 WL 2451766). Specifically, the court stated that Michigan's in-state generation mandates in its renewable portfolio standard are a violation of the

Commerce Clause, and thereby unlawful. Although in dicta, TransCanada understands this is the first statement regarding RPS discrimination made to date by a federal court. Accordingly, before proceeding with any dramatic expansion of its existing program, the DOER must ensure that one of its fundamental elements—exclusion of out-of-state solar resources—does not create a constitutional objection.

CONCLUSION

TransCanada thanks the DOER for the opportunity to submit these comments and hopes that its comments and observations will assist the DOER.

Regards,

Michael E. Hachey
Vice-President
Regulatory Affairs and Compliance