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June 21, 2013

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

**Re: Post-400 MW Policymaking for Maintenance and Growth of the  
Massachusetts Solar Photovoltaic Markets**

Dear Commissioner Sylvia:

Enclosed please find the Comments of the Office of the Attorney General on the Post-400 MW Solar Program Policy Design. We appreciate the opportunity to file comments on the development of further solar policy in Massachusetts and look forward to participating in the Department of Energy Resources' stakeholder process on development of solar policy.

Thank you for your assistance in this matter.

Sincerely,

*/s/ Jamie Tosches*

Jamie Tosches  
Assistant Attorney General

Enclosures (1)

cc: Elizabeth Mahony, Legal Counsel, Massachusetts Department of Energy Resources  
sent via email to [doer.srec@state.ma.us](mailto:doer.srec@state.ma.us)

**COMMONWEALTH OF MASSACHUSETTS  
DEPARTMENT OF ENERGY RESOURCES**

**Post-400 MW Solar  
Renewable Energy Certificate Policy**

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**COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL**

The Department of Energy Resources (“Department”) has requested written comments on its Post-400 MW Solar Program Policy Design to be filed on or before June 21, 2013. The Office of the Attorney General (“AGO”) hereby submits these comments.

**I. Introduction**

The Massachusetts solar photovoltaic (“PV”) market is currently supported by a carve-out of the Class I renewable energy requirements under the Massachusetts Renewable Energy Portfolio Standard (“RPS”), established pursuant to G.L. c. 25A, § 11F and 225 C.M.R. 14.00 *et seq.* By design, the program requires Retail Electricity Suppliers, and ultimately their customers, either to subsidize the development of solar PV through purchase of solar renewable energy certificates (“S-REC”), or to pay an alternative compliance payment to a fund held by the Massachusetts Clean Energy Center. The fund is overseen by the Department.

The current S-REC program is capped at 400 megawatts (“MW”). The cap precludes new generation from qualifying for the program once the Department determines that 400 MW of solar units that have qualified for the program have been installed. The Department stated that it has received S-REC applications that total an amount above 400 MW cap, and that it will promulgate emergency regulations at the end

of this month to extend the cap on a short-term basis only for projects that are well underway. However, the Department also seeks to establish a new program to take the place of the existing S-REC program after that program ends. This comment focuses on the latter proposal.

## II. Policy Development Background

The Department previously solicited comments on whether the Department should establish a new central procurement framework for solar through a long-term contract solicitation, or a feed-in tariff, or whether it should maintain and expand, with revisions, the RPS S-REC program framework for the period after the 400 MW cap is met.<sup>1</sup> Stakeholder comments were submitted on or before April 8, 2013 on the issue. The Department held a stakeholder meeting on June 7, 2013 and established this post-400 MW program comment period as a next step towards establishing a new program to support the solar PV market. As explained below, the Proposed Post-400 MW Program, which maintains and expands, with revisions, the framework of the existing S-REC program.

## III. Brief Description of the Proposed Post-400 MW Program and Planned Analysis of the Existing S-REC Program and Policy Options

The Department provided an explanation of its Proposed Post-400 MW Program at the stakeholder meeting held on June 7, 2013. According to the Department, it proposes to establish a post-400 MW program that would create a new, separate S-REC market with a separate new compliance obligation on retail electricity suppliers.<sup>2</sup> The

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<sup>1</sup> See *Massachusetts Solar Market Post-400 Solar Program Policy Design*, Stakeholder Meeting, Renewable Energy Division, Massachusetts Department of Energy Resources, p. 11 (March 22, 2013).

<sup>2</sup> *Massachusetts Solar Market, Post-400 MW Post 400 MW Program, Stakeholder Briefing*, Massachusetts Department of Energy Resources, p. 18 (June 7, 2013) (“Policy Presentation”).

new program will take the place of the existing S-REC program once the existing program concludes sometime in 2013. The Proposed Post 400-MW Program will set the program cap at 1200 MW with an offset to the extent that the extension of the current S-REC cap exceeds 400 MW.<sup>3</sup> *Id.* The 1200 MW cap is designed to facilitate the Governor’s newly established goal of achieving 1600 MW of installed solar capacity in Massachusetts by 2020.<sup>4</sup>

The Department has stated that it “will carefully consider provisions to enable small/residential projects to opt into ‘Forward Minting’ of SRECs to reduce SREC transaction costs and alleviate financing burden.”<sup>5</sup> For example, the minting of 10 years of estimated SREC generation at project start-up for “up-front” revenue stream is being considered.<sup>6</sup>

In addition, the Department has stated that it has contracted with a consulting team to assist it in conducting an analysis of: the evaluation of the current solar costs and needed incentive levels across solar sectors; comparative evaluation of carve-out policy with other policy alternatives; evaluation of the existing S-REC programs’ success in meeting objectives; an analysis of the economic costs and benefits of the post-400 MW solar program, and; a comparative regional economic impacts of solar ownership and financing alternatives (“Solar Program Analysis”).<sup>7</sup>

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<sup>3</sup> The Department has stated that it will promulgate emergency regulations at the end of this month to raise the cap for certain projects. *See* Policy Presentation, pp. 4-8.

<sup>4</sup> *See id.*, pp. 9, 11.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*, p. 32.

#### IV. Comments of the Attorney General

As an initial matter, the Department has stated that it seeks to control ratepayer costs and exposure under the Proposed Post-400 MW Program.<sup>8</sup> However, it has not addressed the issue fully in its June 7, 2013 presentation, and has not provided estimated ratepayer impacts of what it is proposing in that presentation. The AGO understands that the development of a post-400 MW program is a phased process that is ongoing. Therefore, the AGO urges the Department to more fully address mitigation of ratepayer impacts in future presentations on a going forward basis. The Department should include in its presentations estimates for ratepayer bill impacts and total program costs, as well as a substantive description of why it believes the program design will control ratepayer costs and exposures. This is absolutely necessary in order to provide transparency regarding the Department's efforts to account for ratepayer protections in its Proposed Post-400 MW Program design.

*A. The Department Should Not Establish a New S-REC Program Until After It Publicly Evaluates the Existing S-REC Program and the Economics of the Solar PV Market.*

The Department should conduct an analysis of the success of the existing S-REC program and an economic analysis of the solar PV Market prior to determining the structure for the post-400 MW solar program. As explained in AGO's comments filed with the Department on June 8, 2012, the existing S-REC program should be fully evaluated to identify potential program flaws and to determine whether the program met the objectives and goals set out for the program.<sup>9</sup> The Department has taken a step in the right direction by announcing in its June 7, 2013 presentation that it will commit to

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<sup>8</sup> Policy Presentation, p. 10.

<sup>9</sup> Comments of the Office of the Attorney General, Post-400 MW Policy Making for Maintenance and Growth of the Massachusetts Solar Photovoltaic Markets, pp. 5-7 (June 8, 2013).

conducting the Solar Policy Analysis described in its presentation.<sup>10</sup> The Department has stated that, among other things, the Solar Policy Analysis will include a review of the success of the existing S-REC program in meeting objectives of the program, as well as the economic costs and benefits of the post-400 MW solar program.<sup>11</sup> The AGO recommends that the Solar Policy Analysis should be provided to the public on a timely basis to ensure transparency in the process and so that the analysis may be considered during the development of the Proposed Post-400 MW Program.

The analysis of the existing S-REC program must be a significant factor in the decision-making process for determining how the Proposed Post-400 MW Program should be designed in furtherance of the governor's 1600 MW goal for 2020. This is especially true since the Department is considering a Proposed Post-400 MW Program that would build on the existing S-REC market. The Department's analysis should provide a description of the lessons learned from the existing S-REC program, and will address why the 400 MW cap was hit three years in advance of the optimal projected target date. This evaluation and the lessons learned from it must be incorporated into the program design. Without it, it is difficult or impossible to conclude that any solar program design will truly mitigate ratepayer impacts.

Based on the Department's June 7, 2013 presentation, it appears that the analysis will come after the Department makes key decisions on the post-400 MW policy design. The Department's presentation fails to mention any timeline for the analysis. The presentation also appears to already pronounce key aspects of the new S-REC program design. Among other things, the presentation states that the Department will establish a

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<sup>10</sup> See Policy Presentation, p. 32.

<sup>11</sup> *Id.*

second S-REC program that will include a solar clearing action framework.<sup>12</sup> The framework will provide a mechanism to reduce the incentive value as the market expands, and installation costs decline.<sup>13</sup>

Thus, AGO requests that the Department refrain from making key or final determinations on a design for the Proposed Post-400 MW Program until it has conducted the appropriate analysis necessary to base its program design on. In furtherance of this recommendation, the AGO requests that the Department issue a schedule for providing stakeholders the planned analysis, and to give stakeholders an opportunity to comment on the post-400 MW policy design in light of that analysis. The analysis will be of little value for stakeholders if it is provided after the Department takes comments on the Proposed Post 400 MW Program design or after it makes significant decisions on that program design.

*B. The Department Should Reconsider Whether a Price Support Mechanism is a Necessary Aspect of the S-REC Program.*

Consistent with the AGO's prior statement that a new program must mitigate impacts to ratepayers, the AGO requests that the Department reconsider whether to establish any floor price for the auction. The Department's June 7, 2013 Presentation announces that the Proposed Post-400 MW Program considers a solar clearing house auction framework with a floor value for the S-REC subsidy.<sup>14</sup> Although the subsidy value will have a reduced incentive value as the market expands and installation costs

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<sup>12</sup> See Policy Presentation, p. 19.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

decline,<sup>15</sup> there is little explanation provided for why any floor price is needed and little basis to evaluate whether the framework is likely to sustain the solar industry.

Perhaps the Department's planned analysis of the current solar costs and needed incentive levels across sectors<sup>16</sup> will shed light on the issue. This is yet another reason for the Department to refrain from establishing a program design until it conducts and makes public the requisite analysis.

At a minimum, the Department should not require customers to pay for a subsidy value without first providing the economic basis for the subsidy. As noted in the AGO's April 8, 2013 Comments, a floor price that provides subsidized revenues above the marginal cost of a new solar generation unit will lead to continued oversupply and social welfare losses under classical economic theory. Thus, the Department should base this aspect of the program on concrete economic analysis.

*C. The Department Should Not Allow Forward Minting for Residential Customers On a Wide-Scale Basis.*

Forward minting will significantly shift the risk of solar unit non-performance to ratepayers. It is unclear why this type of program would be necessary or a good design. Before implementing such a design, the Department must evaluate whether such a feature will improve the residential solar installation rate without creating REC market uncertainty or increasing the complexity of the program necessary to ensure future performance. In addition, the Department should evaluate rate impacts of the program, and must put in place protections to ensure that customers do not experience significant rate increases as a result of this program.

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, p. 32.

**V. Conclusion**

For these reasons, we recommend that the Department first evaluate whether the existing S-REC Program achieved program objectives before it establishes a post 400 MW program design. The Department should also provide a schedule by which it will publicly provide its analysis and allow stakeholders to comment on the Proposed Post-400 MW Program design in light of that analysis. Also, on a going forward basis, the Department should illustrate how it will ensure that impacts on ratepayers are minimized by its various post 400 MW program design elements. Finally, the Department should not roll out a wide-scale program for forward minting for residential customers.

Respectfully submitted,

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*/s/ Jamie Tosches*

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