

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF ENERGY RESOURCES

MASSACHUSETTS SOLAR MARKET POST-
400 MW SOLAR PROGRAM POLICY DESIGN : APRIL 8, 2013

**COMMENTS OF
RETAIL ENERGY SUPPLY ASSOCIATION
RE POST 400 MW POLICY**

The Retail Energy Supply Association (“RESA”)¹ hereby submits its comments in response to the Department of Energy Resources’ (“Department”) Post-400 MW Policy Presentation (“Presentation”) discussed at the March 22, 2013 Stakeholder Meeting. 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: 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 Suppliers² 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 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 Policy Stakeholder Meeting on March 22, 2013 (“Stakeholder Meeting”) at which it presented its observations of the current market, post-400 MW policy objectives, policy design framework options, and detail on policy directions under consideration. As a follow-up to the Stakeholder Meeting, the Department offered interested parties an opportunity to submit comments on the Presentation. RESA hereby submits its comments on the Presentation.

COMMENTS

During the Stakeholder Meeting, 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;

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.*

- 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.⁴

The Department presented two potential policy approaches to meet these objectives: (a) Extension/Modification of existing Program; and (b) Central Procurement.⁵

The Department has already determined that the current Program “provides a *robust market* demand growth for the solar industry”⁶ and “maintains *market balance*.”⁷ Since the current Program already self-adjusts depending on the pace of solar growth and results in a more stable market by dampening fluctuations, the current Program already provides economic support and market conditions that maintain and expand PV installations, that maintains robust growth across installation sectors and that 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 extend the existing Program.

⁴ Presentation at 9-10.

⁵ *Id.* at 12-13.

⁶ 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).

⁷ 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).

I. MODIFYING THE EXISTING PROGRAM WILL NEGATIVELY IMPACT RATEPAYERS

In the just over two (2) years since it was developed, the existing Program framework has been “successful in aggressively growing solar installations and businesses in MA”⁸ and has resulted in project development being “reasonably well distributed across system size”⁹ Despite the success of the current Program and its relative immaturity, the Department has already proposed changes to the Minimum Standard formula¹⁰ and now proposes modifying the Program further once it reaches the current 400 MW cap, which is expected in the next 18-24 months. Constant changes to the Program create uncertainty leading to increased market volatility, reduced Program transparency and added administrative burdens on all stakeholders. Thus, RESA encourages the Department to forego comprehensive changes to the Program and to simply extend the existing Program without modification.

The current Program already contains a complex formula for determining the amount of Solar Renewable Energy Credits (“SRECs”) that Retail Electricity Suppliers must purchase in order to satisfy the Program’s Minimum Standard requirements. Specifically, the Minimum Standard is determined each year through the following formula:

⁸ Presentation at 4.

⁹ *Id.*

¹⁰ See Notice of Public Comment and Hearing re proposed amendments to portions of 225 CMR 14-- Renewable Energy Portfolio Standard – Class I, available at: <http://www.mass.gov/eea/docs/doer/renewables/225-cmr-14-00-notice-of-public-comments-and-hearing.pdf>.

$$\text{Total Compliance Obligation}_{CY} = \text{Total Compliance Obligation}_{CY-1} + [\text{Total SRECs Generated (projected)}_{CY-1} - \text{SRECs Generated(actual)}_{CY-2}] \times 1.3 - \text{ACP Volume}_{CY-2} + \text{Banked Volume}_{CY-2} + \text{Auction Volume}_{CY-2}$$
¹¹

Nevertheless, as a potential modification to the existing Program, the Presentation provides for the development of an SREC-II Market using an SREC Factor.¹² Under the SREC Factor, each MWh of generation would generate the following attributes:

- SRECS = 1MWh x SREC Factor
- RPS Class I RECs = 1MWh x (1-SREC Factor)¹³

The SREC Factor would start at one (1) and decline gradually based on a formula dependent on cumulative MW qualified or time.¹⁴ However, the Presentation itself acknowledges that the new SREC-II market “requires additional compliance burdens”¹⁵ and that the SREC Factor adjustment is complicated.¹⁶ RESA agrees. In fact, these sweeping changes in the Program and the development of a new type of SREC market will add unneeded complexity that will be a determinant to the success of the Program.

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*. When it adopted the Program, the Department specifically indicated that one of its goals was to minimize ratepayer impacts and reduce costs to

¹¹ 225 CMR 14.07(2)(d).

¹² Presentation at 18.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 15.

¹⁶ *Id.* at 20.

ratepayers.¹⁷ 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 SRECs.

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.¹⁸ Balanced against this, however, is the risk associated with unexpected changes to Program design such as those currently being considered by the Department.

In serving their customers, Retail Electricity Suppliers have made contracting decisions in reliance on the current Program design. While the current Program does not provide absolute quantity certainty, it does allow these providers to approximate their obligations and, based on that, to make appropriate business decisions. For instance, based on the current requirements,

¹⁷ 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>, at 3, 5.

¹⁸ *Id.* at 8.

Retail Electricity Suppliers determine the cost that they will include in the price that they charge consumers for Program compliance. 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.

Furthermore, the fact that the Department is already seeking to modify the Program when it has only been in existence for just over two years creates an environment of regulatory uncertainty that could further negatively impact the costs that customers incur on a going forward basis. Faced with an uncertain and continuously changing 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 changes in Program requirements 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 the customer but also undercuts the Retail Electricity Suppliers incentive for SREC hedging for that customer. 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.

By contrast, by setting Program requirements for an extended period, the Department can send a message to Retail Electricity Suppliers that it is safe to continue to enter into forward contract arrangements within Massachusetts and avoid potential negative impacts to customers. Thus, RESA urges the Department to forego wholesale Program changes and to engage in a measured approach that simply expands the existing Program. RESA also encourages the Department to ensure that any expansion or modification of the Program is made in a competitively neutral fashion that protects existing ratepayer and competitive supplier expectations by making all Program changes prospective only and grandfathering any existing contracts until their expiration.

II. INCORPORATING LONG-TERM CONTRACTS INTO THE PROGRAM WILL INCREASE RATEPAYER COSTS

Under the Central Procurement model, the EDCs or a state agency would solicit long-term contracts for SRECs or a feed-in-tariff would be created.¹⁹ The Presentation states that a

¹⁹ Presentation at 23.

Central Procurement design will “*reduce financial risks* to developers and ratepayers.”²⁰ The Presentation further provides that increasing the 400 MW cap “is only practical at costs to ratepayers (per MW) *less than today*.”²¹ However, long-term contracts will actually result in increased financial risks and added costs to ratepayers. Accordingly, RESA encourages the Department to avoid the use of long-term contracts between the EDCs and developers as a means to spur renewable project development.

As a general rule, if investment in renewable generation makes business sense, whether via ownership or long-term contracts, private capital will flow to those investments. There is no shortage of private capital available to finance investments in renewable generation when the marketplace believes it will bring a reasonable return. Moreover, RESA believes the Commonwealth’s current regulatory constructs, including the Program, provide a sufficient level of financial support for solar development as well as other types of renewable technologies. Therefore, RESA encourages the Department to recognize the substantial ratepayer-supported subsidies that already flow to the benefit of the solar development industry. RESA thinks it is time for the solar development industry to transition to business models that support greater financial independence and not require new levels of ratepayer subsidies. If the marketplace does not step up, then this indicates that the right price signals are not being sent (*i.e.*, the marketplace is signaling that the return on investment will not be sufficient). Therefore, allowing the EDCs to enter into long-term contracts for renewable generation under these

²⁰ Presentation at 25 (emphasis added).

²¹ *Id.* at 9 (emphasis added).

circumstances should be cause for concern since the stranded costs of any unwise investment will be borne by the ratepayers. Thus, rather than using ratepayer dollars to fund renewable investment, RESA urges the Department to allow the competitive market to determine the appropriate investment.

Prior to restructuring, when a regulated EDC was the monopoly supplier to retail customers, it did not face a migration risk if it entered into long term commitments and then market prices fell, leaving the EDC's costs above the prices available in the markets. It did, however, face disallowances based on theories that the commitments were imprudent or not "used and useful." In fact, these very "above market" costs created by some long term EDC commitments were among the primary drivers behind the initiatives to move from regulation to retail competition.

Although long-term contracts with unregulated generators may seemingly provide a ratepayer hedge against market prices, these long-term contracts present significant risks to ratepayers. In particular, if the EDCs predict long-term prices and the market brings lower prices, then ratepayers will be locked in to higher prices for several years. If an EDC makes long-term commitments to acquire a large amount of SRECs and then prices fall, the EDC's rates will be above prevailing market prices. In that case, customers will have an incentive to migrate to competitive providers, leaving the EDC to recover the cost of its above-market commitments from its remaining customers. As the EDC attempts to collect this amount from a shrinking pool of default service customers, this action will raise the price even further and, in turn, induce further migration away from default service. Thus, a Central Procurement design will *not*, as the

Department postulates, *reduce* financial risks or costs to ratepayers; instead, it will increase these risks and costs. Thus, RESA urges the Department to forego incorporating long-term contracts into the Program.

III. INCORPORATING LONG-TERM CONTRACTS INTO THE PROGRAM COULD RESULT IN CUSTOMERS PAYING DUPLICATE COSTS

Currently, the DPU allows the EDCs to collect above-market costs associated with renewable energy contracts from *all* customers.²² Generally, the decision of which costs should be allocated to the EDCs' generation rates should be based on cost causation principles. Thus, any costs that the EDCs incur to provide generation services should be included in their generation rates.

As the Department is aware, both the EDCs and electric suppliers have an obligation to comply with the Program.²³ A particular entity's (i.e., the EDC or electric supplier) Program obligations are based on the amount of electric *generation* services that the EDC or electric supplier provides to Massachusetts customers in a given year.²⁴ Therefore, if the EDCs were not providing generation services, they would not be required to purchase any SRECs. Accordingly, the costs of purchasing SRECs and administering a program for the purchase of SRECs are properly characterized as generation related charges.

²² See, e.g., DPU Docket 10-54 (allowing National Grid to recover the estimated above-market cost of payments and other costs under long term renewable energy contracts in the distribution portion of rates).

²³ See 225 CMR 14.02 (defining "Retail Electricity Supplier" as "[a] person or entity that sells electrical energy to End-use Customers in Massachusetts, including but not limited to *electric utility distribution companies* supplying basic service or any successor service to End-use Customers.") (emphasis added).

²⁴ See 225 CMR 14.07(2)(a) (requiring that Retail Electricity Suppliers provide "a minimum percentage of electric energy sales with Solar Carve-Out Renewable Generation Attributes.").

In addition, as customers migrate from Basic Service, the EDCs' Program obligations decrease. Conversely, as those customers migrate to competitive supply, the electric suppliers' Program obligations increase.²⁵ As a consequence, when a customer migrates from Basic Service to competitive supply, there is no longer a cost to the EDCs for purchasing SRECs to meet the Program obligations associated with that particular customer's load; rather, that cost is now borne by the customer's electric supplier. Thus, the costs associated with the purchase of SRECs should be bypassable (i.e., avoided) when a customer migrates from Basic Service to competitive supply.

Furthermore, because both the EDCs and electric suppliers incur the costs associated with purchasing SRECs, if those costs are not collected through the bypassable portion of rates, when a consumer selects an electric supplier, the customer will end up paying duplicate costs – once in the supplier's price and once in the EDCs' distribution rates. As a result, customers who receive their energy from an electric supplier will subsidize the costs that the EDCs incur to provide Basic Service to those customers who do not switch. This structure also creates two other issues: (1) the EDCs are charging consumers artificially low generation rates that do not provide accurate price signals regarding the cost of generation; and (2) consumers receive inaccurate price signals regarding the value of the service provided by retail suppliers. By properly allocating the costs associated with the purchase of SRECs and of administering the Program to the EDCs' generation rates, consumers avoid paying costs for which they are not responsible and can properly evaluate the cost of generation services. Accordingly, rather than requiring that the

²⁵ See *Id.* (Program obligation measured as percentage of energy sales).

EDCs enter into long-term contracts that could result in customers paying unwarranted costs, RESA encourages the Department to expand the existing Program without comprehensive changes.

CONCLUSION

For all of the foregoing reason, RESA encourages the Department to be measured in its approach and to simply extend the existing Program, rather than making wholesale Program design changes.

Respectfully submitted,
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