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Massachusetts Finalizes Solar Credit Clearinghouse Program

DEVELOPMENT OF SOLAR PHOTOVOLTAIC FACILITIES RECEIVES BOOST UNDER COMMONWEALTH'S RPS PROGRAM

The Massachusetts Department of Energy Resources (the "DOER") is finalizing regulations, thus paving the way for a new solar credit clearinghouse program, known as the Renewable Portfolio Standard ("RPS") Solar Carve-Out (the "Program"). The Program is designed to facilitate the development of solar photovoltaic (PV) energy in Massachusetts consistent with the Massachusetts RPS that was established in regulations issued by the DOER in 2002. These regulations require, among other things, that approximately 1% of the Commonwealth's total electricity supply be provided by solar PV. The DOER has been operating the Program under emergency regulations since January 2010, with the final regulations expected to go into effect this summer. The Program has two fundamental characteristics: (i) a legislatively-created market for Solar Renewable Energy Credits ("SRECs"), each of which represents one megawatt-hour ("MWh") of solar electricity, generated through eligible and approved solar PV projects; and (ii) the establishment of a price support mechanism providing project developers and investors with a methodology to calculate their returns on investment.

CREATION OF THE SREC MARKET

DOER regulations mandate that all load-serving entities ("LSEs") (i.e., regulated utilities and competitive electrical suppliers) operating in Massachusetts obtain 15% of their electricity from renewable energy by the end of 2020, including solar carve-out renewable generation. With respect specifically to solar, the Program establishes a minimum number of SRECs that each LSE must purchase annually, called the minimum standard. The DOER sets the minimum standard by identifying the total amount of solar energy generation in MWh required by the Program and dividing that amount among the LSEs according to their proportion of total electricity sales. The resulting number represents the minimum number of SRECs that each utility must purchase. In 2010, each utility must purchase at least 30 SRECs, which the DOER can adjust

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by up to 30% for the subsequent compliance year, in response to market conditions.

If an LSE fails to purchase a sufficient number of SRECs to meet its compliance obligation in any given year, the entity is required to make an Alternative Compliance Payment ("ACP"). In 2010, the ACP is \$600/MWh. Thereafter, the penalty amount can be decreased by up to 10% on a yearly basis, at the discretion of the DOER. However, for all contracted obligations entered into prior to January 1, 2010, the ACP rate remains at \$60.93/MWh, adjusted by the Consumer Price Index.

To be eligible to generate SRECs, solar PV projects must be:

- located in Massachusetts;
- 2 MW or smaller (calculated per parcel of land and not per meter);
- interconnected with the electric grid; and
- installed on or after January 1, 2008.

The project also must use some of the electricity it generates on-site.

Projects that received funding from the Commonwealth Solar I Program (or its predecessor programs), or received substantial support through federal stimulus funds (67% funded), are ineligible.

Solar PV projects that meet the eligibility requirements may submit an application to the DOER. Following review and determination of eligibility, the DOER will issue a Statement of Qualification allowing the project to generate SRECs on the New England Power Pool Generation Information System ("NEPOOL GIS"). These SRECs can be sold on the open market, or through the Program's price support mechanism. As soon as the SRECs are minted at the NEPOOL GIS, a generator may begin marketing them to LSEs. The first SRECs are scheduled to be minted on July 15, 2010.

PRICE SUPPORT MECHANISM

The Program establishes a price support mechanism for SRECs which may be changed over time based upon market conditions.

The Program provides an auction clearinghouse to be held once annually, starting in July 2011. The

auction clearinghouse is intended to provide price floor assurance for SRECs sold by generators. If a generator cannot sell some or all of its SRECs on the open market, that generator may "opt-in" and deposit its surplus SRECs into an auction account established by the DOER. The opt-in eligibility of a particular solar PV project will be determined by the DOER simultaneously with the issuance of the Statement of Qualification. If the DOER qualifies a project during 2010, the project is eligible to opt-in for ten years at the guaranteed price of \$300/MWh. Thus, the project generator may sell its excess SRECs over a ten year period for at least \$300/SREC. The term can be adjusted, but generators who opt in from 2010-2016 are guaranteed at least five-year terms during which to sell their SRECs through the DOER's auction clearinghouse.

Once SRECs are placed into auction, their shelf life is extended from one to two years. LSEs that require additional credits to satisfy their mandatory solar power requirement can bid on SREC volumes, fixed at the guaranteed price, or \$300/SREC. The SREC generator will receive the revenue from the auction, minus a 5% auction fee (\$15/SREC). If total bid volume does not clear all SRECs in the system, the shelf life of the unsold SRECs is extended, again, for a third additional year and the unsold SRECs are returned to the generators who may attempt to sell them on the open market.

CONCLUSION

The Program presents an opportunity for project developers and financiers to undertake solar PV projects in Massachusetts. However, the Program is targeted to support only 400 MW of solar facilities (1% of the Commonwealth's total electricity supply). Therefore, once this target is reached and all the opt-in SRECs have been auctioned and the shelf lives of the SRECs have expired, the Program is scheduled to terminate.

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If you have any questions about participation in the Program or the application process, or if you require advice regarding marketing or obtaining SRECs, please contact any of the attorneys listed in this Advisory.

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