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September 13, 2011

***VIA ELECTRONIC MAIL
ORIGINAL BY HAND DELIVERY***

Mark D. Marini, Secretary
Department of Public Utilities
One South Station, 5th Floor
Boston, MA 02110

Re: Rulemaking on Net Metering -- D.P.U. 11-10

Dear Secretary Marini:

Please find enclosed for filing an original Reply Comments of the Cape Light Compact and Cape & Vineyard Electric Cooperative, Inc. on the Department of Public Utilities' Proposed Regulations in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Rebecca F. Zachas".

Rebecca F. Zachas

RFZ/drb

Enclosures

cc: Laura Bickel, Hearing Officer (w/enc.)(via e-mail and hand delivery (3 copies))
Margaret T. Downey, CVEC (w/enc.)(via e-mail and first class mail)

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COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC UTILITIES

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|---|--------------|
| Order Opening a Rulemaking pursuant to G.L. c. 30A, §2,) | |
| and 220 C.M.R. §2.00 <u>et seq.</u> to Amend 220 C.M.R.) | |
| § 18.00 <u>et seq.</u> by Implementing the Net Metering) | |
| Provisions of An Act Making Appropriations for Fiscal) | D.P.U. 11-10 |
| Years 2010 and 2011 to Provide for Supplementing) | |
| Certain Existing Appropriations and for Certain Other) | |
| Activities and Projects, St. 2010, c. 359, §§ 25-30.) | |

REPLY COMMENTS OF
THE CAPE LIGHT COMPACT AND
THE CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

The Cape Light Compact (the “Compact”) and the Cape & Vineyard Electric Cooperative, Inc. (“CVEC”) hereby submit the following Reply Comments pursuant to the Order Opening Rulemaking dated July 22, 2011 (“Order Opening Rulemaking”) issued by the Department of Public Utilities (the “Department”) in the above-referenced proceeding. The Compact and CVEC filed Comments (“Comments”) and offered testimony at the public hearing on September 6, 2011.¹

I. COMMENTS

A. The Department Should Refine and Clarify its Interpretation of Section 18.02(b) to the Extent that Interpretation Would Require One Municipality or Other Governmental Entity to Use 100% of Project Output.

In their Comments, the Compact and CVEC generally requested the Department to interpret its proposed Section 18.02(a) and (b) such that they apply to one or more municipalities

¹ These Reply Comments are not intended to respond to every comment made in the initial comments of other participants or at the public hearing. Silence on any issue should not be construed as agreement with any comment made in the initial comments or at the public hearing. Also, please refer to the Compact and CVEC’s original Comments filed on September 6, 2011 in this docket for a full discussion of these and other relevant issues.

or other governmental entities. Comments at 4-11. The Compact and CVEC respectfully disagreed with the Department's interpretation of Section 18.02(b) to the extent that it would require one municipality or other governmental entity (which is acting as the Host Customer) to receive 100% of the project output. *Id.* Other commenters generally agreed with the Compact and CVEC's position on this interpretation. See Renewable Resource Development Coalition ("RRDC") Comments at 2-3; Department of Energy Resources ("DOER") Comments at 3-4, Capital Dynamics US Solar – MA 1, LLC ("Capital Dynamics") Comments at 2-5.

On the other hand, two utilities, NSTAR Electric Company ("NSTAR") and National Grid, and My Generation Energy, Inc. ("My Generation") appear to disagree with the Compact and CVEC (as well as DOER, RRDC and Capital Dynamics) on this issue. NSTAR's comments state that it "agrees that all net-metering credits shall be assigned to accounts of the subject municipality or other government entity." NSTAR Comments at 2. National Grid states that "all of the benefits from the facility must be tied to [the municipality or other governmental entity] as the host customer." National Grid Comments at 1. My Generation also supports the Department's interpretation of Section 18.02(b), stating that it is in agreement with the "Department's 100% of the output classification for a Municipality or Other Governmental Entity." My Generation Comments at 1.

For all of the reasons set forth in their Comments, the Compact and CVEC believe the utilities' comments, as well as the comments of My Generation, are entirely inconsistent with the overall legislative intent of the net metering statutes, and would discriminate against towns with smaller municipal loads that may not be able to take 100% of project output and towns without the land to site renewable energy projects. Such an interpretation would also invalidate such entities' statutory right to assign credits to other Customers. G.L. c. 164, §139(b)(1).

The Department has the discretion to expand its definition and interpretation of a Net Metering Facility of a Municipality or Other Governmental Entity. *Id.* at 7-8. DOER's comments noted the preferences accorded to municipalities and governmental entities in the Green Communities Act (the "GCA"), St. 2008, Chapter 169, §78. DOER Comments at 1 ("These incentives include an ability to exceed the per-facility cap size by capping the unit of generation and not the facility, as well as inclusion of the distribution in the calculation of the net metering credit for Class III facilities."). Those preferences were expanded upon by the legislature in Chapter 359 of the Acts of 2010, An Act Making Appropriations for the Fiscal Years 2010 and 2011 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects (the "Act"), when, among other things, it added a separate governmental cap. Nothing in the Act or its legislative intent suggests that the General Court sought to restrict the development of governmental renewable energy projects. Yet, the Department's proposed requirement that the Host Customer be the sole off-taker of project output would do exactly that.

As noted in its Comments, CVEC is well along in the development of solar projects for which CVEC would act as the Host Customer with its various governmental members taking 100% of the output. Comments at 3, 5-6. CVEC itself does not have a load, but yet is an Other Governmental Entity and thus should be able to act as the Host Customer for a Net Metering Facility of a Municipality or Other Governmental Entity.

However, although DOER generally supported the concept of multiple off-takers for governmental net metering projects, DOER's comments also stated that:

definitive lines are necessary to ensure a clear distinction between projects that are public and those that are private, and that a showing of concrete benefits to public entities should be required. This flexibility could be achieved, for example, by including 100%

of the output assigned to one public entity or a public entity hosting the site on public land and taking 100% of its load obligation from the facility with the remainder assigned to other public entities.

DOER Comments at 4-5. DOER notes that it is open to options other than this example, and the Compact and CVEC ask the Department to consider among the “options other than this example,” the public project structure described by CVEC on pages 9-10 of its Initial Comments (noting that for many towns, suitable siting is an obstacle to project development and to benefit from renewable energy (in accordance with state goals), those towns must rely on other towns that are able to site renewable projects). *Id.* Otherwise, without allowing for this other public project structure, an overly restrictive requirement would make it more difficult for entities such as CVEC to assist municipalities and other governmental entities in development of renewable energy projects because CVEC does not have a load of its own. Further, it would make it impossible for a town such as Barnstable, which has land to site renewable energy projects, to host a project for another town, such as Provincetown, which is unable to site such a project. In that example, Barnstable may not take any output from the project; Provincetown and other municipalities or other governmental entities would take 100% of the output. A narrow application of DOER’s example, not taking into consideration what CVEC and the Compact believe is DOER’s willingness to consider other options which are consistent with its policy objectives, would prevent such a joint undertaking and should not be adopted.

Instead, the Compact and CVEC request that the Department refine and clarify its interpretation of Section 18.02(b) as offered in the Order Opening Rulemaking, and specifically allow for a “Net Metering Facility of a Municipality or Other Governmental Entity” to be

eligible for net metering if the project's output is assigned 100% to municipalities or other governmental entities.²

B. The Department Should Clarify the Proposed Regulation Limiting the Net Metering Capacity of Municipalities and Other Governmental Entities to 10 MW.

In their Comments, the Compact and CVEC asked that the Department carefully interpret Section 18.07 such that a project's capacity is assigned to the entity or entities actually benefitting from the project (*i.e.*, receiving the project output). Comments at 12-13. Their Comments described CVEC's unique role as an arranger and financier of renewable energy projects. *Id.* at 12. In this role, CVEC itself should not be limited to 10 MW if it is simply developing projects on behalf of other municipalities or governmental entities (*e.g.*, CVEC municipal members or other governmental entities with interest in renewable project development on the Cape & Vineyard). That project capacity should instead flow through CVEC and be assigned to the municipal member(s) or other governmental entities receiving the project output.

The same construct should apply when a municipality hosts a project for another municipality that may not be able to site renewable energy projects in its own town. *Id.* at 12-13. As testified by Maggie Downey on behalf of the Compact and CVEC at the public hearing, Provincetown is one example of a town that does not have the ability to site its own renewable energy projects, but yet is eager to participate in such projects. Provincetown must rely on the cooperation of other towns (*e.g.*, Barnstable) or entities (*e.g.*, CVEC) to assist it in such

² The Compact and CVEC also strongly urge the Department to ensure that no interpretation of Section 18.02(b) allow for a private entity to be the end user/off-taker of the output from a Net Metering Facility of a Municipality or Other Governmental Entity whether initially or as the product of any assignment or reallocation. To do so would conflict with the spirit and intent of the Act and further serve to erode the benefits to public projects that were clearly inherent in the GCA.

participation. In one scenario, if Barnstable were to host a project with Provincetown and other municipalities (and not Barnstable) as off-takers of the project output, then Barnstable should not have any capacity applied towards its own 10 MW cap.

In its comments, DOER asked the Department to define “Other Governmental Entity” for purposes of the 10 MW cap as: “any agency, authority, board, bureau, commission, committee, council, department, division, institution, office, officer, agency of the Commonwealth doing business at a specified location.” DOER Comments at 5. The language “doing business at a specified location” is designed to allow such other governmental entities as the Department of Corrections to have 10 MW for each of its location (e.g., Walpole gets 10 MW and Gardner gets its own 10 MW). *Id.* at 5-6. The Compact and CVEC agree that such entities should be included in a definition of “Other Governmental Entity.” See *infra* Section II.C. for discussion on the Compact and CVEC’s proposed definition of “Other Governmental Entity.” However, within the confines of the current capacity cap, the Compact and CVEC respectfully disagree with DOER’s proposed “doing business at a specified location” language. While the Compact and CVEC understand the complexities involved in creating a regulatory construct to implement the statutory limit of 10 MW, DOER’s proposal is too expansive at this time, given the current cap. It could allow a single entity with various locations to fill up the entire allocation on its own. The Compact and CVEC ask the Department not to include such language.

Accordingly, the Compact and CVEC request that the Department clarify that it interprets Section 18.07 to mean that the 10 MW cap applies to the project’s actual beneficiaries in terms of project output (based on percentage received of that output if not 100%) and not to project facilitators or project hosts.

C. **The Department Should Add a Definition of “Other Governmental Entity” in its Regulations.**

The Compact and CVEC’s Comments requested that the Department clarify the term “Other Governmental Entity” by adding a definition in its net metering regulations. Comments at 13-15. Specifically, the Compact and CVEC suggested the following as language for the definition:

“Other Governmental Entity” shall mean a city, town, district, regional school district, county, or an agency or authority thereof, a regional planning commission however constituted, a state agency as defined in section 1 of chapter 6A (which shall include any department, office, commission, committee, council, board, division, bureau, institution, officer or other agency within the executive department), a combination of 2 or more such cities, towns, districts, regional school districts or counties, or agencies or authorities thereof, a public authority, or a governmental body: (i) as an energy supplier under a license granted by the department of public utilities pursuant to section 1F of chapter 164; (ii) in the course of activities conducted as a municipal aggregator under section 134 of said chapter 164; or (iii) in the course of activities conducted by a cooperative consisting of governmental entities organized pursuant to section 136 of said chapter 164.³

Id. at 15. This proposed definition would allow local, county and state entities, including school districts, as well as governmental entities such as the Compact and CVEC to qualify for net metering as an Other Governmental Entity. It is important for the Department to remove any uncertainty as to which entities constitute an “Other Governmental Entity,” especially for financing purposes.

In its initial comments, Boreal Renewable Energy Development (“Boreal”) also suggests that the Department should add a definition of this term, and specifically references “entities that have been created or chartered directly by a public vote or act of the legislature or of the executive

³ See *infra* Section II.B. The Department should not apply the 10 MW cap to any entity that may constitute an “Other Governmental Entity” under this definition, but which is merely performing a pass through service.

branch of the Commonwealth or its municipalities and counties.” Boreal Comments at 1. The Compact and CVEC’s proposed definition (see above), incorporates such entities (e.g. water and sewer districts, regional planning, and state agencies and departments) while also expressly including governmental bodies such as the Compact (a governmental aggregator) and CVEC (a governmental cooperative).

In addition, as set forth above, DOER proposed its own definition of “Other Governmental Entity.” See *supra* Section II.B.; DOER Comments at 5-6. The Compact and CVEC have two concerns with this proposed definition. First, this definition does not account for districts or governmental bodies such as the Compact and CVEC, and thus would need to be expanded to include those entities. Second, as discussed above, this proposed definition goes too far in allowing every individual location of the included entities to constitute an Other Governmental Entity.⁴

Accordingly, the Compact and CVEC ask the Department to add their proposed definition of “Other Governmental Entity” to its net metering regulations.

⁴ For instance a regional school district with multiple school locations might, in and of itself, use the entire cap of its Distribution Company.

II. CONCLUSION

The Compact and CVEC appreciate the opportunity to provide Reply Comments in this proceeding and urge the Department to revise its regulations accordingly.

Respectfully submitted,

CAPE LIGHT COMPACT
CAPE & VINEYARD ELECTRIC COOPERATIVE, INC.

By its attorneys,



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