November 14, 2016

Mark Marini, Secretary
Department of Public Utilities
Commonwealth of Massachusetts
One South Station
Boston, MA 02110

Re: D.P.U. 16-64, Notice of Request for Public Comments following Technical Conference on October 24, 2016

Dear Secretary Marini:

The Clean Energy Stakeholders greatly appreciate the opportunity to provide comments in response to the Hearing Officer's Memorandum dated November 1, 2016 (deadlines subsequently amended by email dated November 2, 2016) ("Memorandum"), regarding the Minimum Monthly Reliability Charge ("MMRC") described in Chapter 75 of the Acts of 2016, *An Act Relative to Solar Energy* ("Act"). We commend the Department of Public Utilities ("DPU" or "Department") for its efforts to seek consensus on an MMRC through development of its own straw proposal, soliciting alternative proposals from the distribution companies and stakeholders and by convening two technical sessions to present and discuss them. The Clean Energy Stakeholders include Boston Community Capital ("BCC"), the City of Cambridge, Energy Freedom Coalition of America ("EFCA"), MassSolar, the Northeast Clean Energy Council ("NECEC"), the Solar Energy Business Association of New England ("SEBANE"), The Alliance for Solar Choice ("TASC"), Vote Solar, and WinnCompanies.

INTRODUCTION

The Clean Energy Stakeholders reiterate here our position that if an MMRC – whether interim (Phase I) or permanent (Phase II) – is to be established it must be proposed and approved in a manner that meets both the process and criteria laid out in the Act. With respect to process, the Act states, "Distribution companies may submit…proposals for an MMRC in: (i) the distribution company's base distribution rate proceeding; or (ii) a revenue neutral rate design filing that is supported by appropriate cost of serve data across all rate classes." The Act further makes it clear that the "department shall conduct a full adjudicatory proceeding when reviewing proposals" for an MMRC. (Act, Section 9(j)) The Department can appropriately consider and balance among the interests and perspectives of all customers, including low-income, distribution companies, clean energy companies and other stakeholders only if these process requirements are met. Therefore, as a threshold matter, an MMRC cannot be proposed and approved outside a full adjudicatory proceeding where all of these stakeholders are allowed to participate as full parties.

The Act also makes it clear that the Department may only approve an MMRC that: "(i) equitably allocates the fixed costs of the electric distribution system not caused by volumetric consumption; (ii) does not excessively burden ratepayers; (iii) does not unreasonably inhibit the development of Class I, Class II, Class III facilities; and (iv) is dedicated to offsetting reasonably and prudently incurred costs necessary to maintain the reliability, proper maintenance and safety of the electric distribution system." (Act, Section (9j)) Determining whether an MMRC proposal meets these criteria requires review in a full adjudicatory proceeding where the data and analysis presented by a distribution company to support its proposal can be examined and questioned by parties to that proceeding so that the Department has the evidence it needs to make a decision whether an MMRC is in fact even needed and then whether the form of the MMRC complies with the statutory requirements.

The Clean Energy Stakeholders further suggest, as the Department's Memorandum notes, that an MMRC should be "developed in the context of the new solar incentive program" (Memorandum at p.3) in order to ensure that the MMRC "does not unreasonably inhibit the development of Class I, Class II, Class III facilities," the third criterion articulated in the statute. Evaluating the effect of an MMRC on net metering facilities will need to take into account the policy environment in which the facilities are being developed.

In this non-adjudicative docket, input from stakeholders and memos from the Department are helpful to explore everyone's perspectives and illuminate the relevant issues. Such proceedings are often helpful to resolving difficult issues, if not in the short term, then in the longer term. However, the Department is limited in the types of guidance it may provide in this proceeding. First, it would be inappropriate and contrary to law to issue binding substantive guidelines in this docket when resolution of the policy and statutory questions statutorily requires an adjudicative proceeding. Second, it would be concerning if the Department issued guidelines regarding participation in adjudicatory proceedings that in any way narrowed existing standards and rights for intervenors and limited participants.

1. Feedback on MMRC proposal: Please provide detailed feedback regarding each MMRC proposal including: (i) strengths and weakness of the proposal; (ii) specific data, if any, that is necessary to fully assess the proposals; and D.P.U. 16-64 Page 5 (iii) refinements that would address any weaknesses identified.

(A) Department's straw proposal

The Clean Energy Stakeholders appreciate the Department's efforts to engage in productive discussions regarding the MMRC provisions of the Act by putting forward a straw proposal for implementation of an MMRC in two phases. As discussed above, the Clean Energy Stakeholders' position is that an MMRC cannot be considered or approved outside a full adjudicatory proceeding, with the cost of service data and analysis needed to evaluate whether it meets the four criteria in the Act. We therefore do not address the merits of the Department's straw proposal at this time. We reserve the right to do so in reply comments.

(B) Distribution Companies' proposal:

The Clean Energy Stakeholders' main criticism of the Distribution Companies' October 12, 2016 Alternative Monthly Minimum Reliability Contribution joint proposal is that it departs from the purpose of the MMRC, which was intended to "ensure that all distribution company customers contribute to the fixed costs of ensuring the reliability, proper maintenance and safety of the electric distribution system," Section 9 of chapter 75 of the Acts of 2016, lines 65. Rather, the Companies' joint proposed alternative MMRC is a proposed new rate design (as explained below) but without any showing as to the costs incurred in serving the customers who would be charged, nor any showing of compliance with the criteria required by the statute. These require a showing that the proposed MMRC: (i) equitably allocates the fixed costs of the electric distribution system not caused by volumetric consumption; (ii) does not excessively burden ratepayers; (iii) does not unreasonably inhibit the development of Class I, Class I, Class II facilities; and (iv) is dedicated to offsetting reasonably and prudently incurred costs necessary to maintain the reliability, proper maintenance and safety of the electric distribution system.

The Distribution Companies' proposal is not aligned with the Department's interpretation that the MMRC should align with customer-related charges.[1] *See* the Department's August 18, 2016 Memo, p. 5, Section D., where the Department sets forth its Phase I straw proposal, which would simply revise the mechanism with which the customer charge is collected, and its Phase II proposal, *Id.*, which would allow for modification of [only] the customer charge. To the contrary, the Companies assert that the purpose of "[the] MMRC is <u>not</u> to recover customer-related costs, which is the intent of the customer charge, but to <u>introduce the recovery of demand-related system costs</u>...." from NM customers.[2] However, demand-related system costs are volumetric, as demand is driven by consumption. Thus, at the outset, the Companies' proposed alternative MMRC seeks relief that is not consistent with the scope of the Act.

The Distribution Companies do not provide legal support for their expansive interpretation as to the contents of their proposed alternative MMRC (that is, that the charge was intended to permit recovery of demand-related system costs and customer-related costs). The Companies have also not shown as a *factual* matter the degree, if any, to which NEM customers are allegedly underpaying their share of the "fixed costs of the electric distribution system not caused by volumetric consumption." They have also failed to show the degree, if any, to which NEM customers are underpaying their share of demand-related system costs.

Even if the Companies *could* meet the above-described burdens, they have proposed an MMRC that is discriminatory, insofar as it consists of an additional charge[3] *as well as* a reduction in the energy charge[4] explicit to net metering customers without data and evidence indicating such a charge is warranted. The Companies have essentially proposed an MMRC that amounts to a decoupling mechanism that would serve as a means by which they would obtain a set amount of revenue from a NEM customer regardless of that customer's consumption. But whereas decoupling appropriately spreads any revenue shortfall across <u>all</u> customers, some of the Companies' proposed "MMRC" places the burden solely on NEM customers, so is therefore

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[2] *See,* DCP, Slide 5 (emphasis theirs).
[3] *Id.,* Slide 5 ("MMRC is an incremental charge to the customer charge . . . ")
[4] *See Id.*, Slide 5, in which the Companies propose the following formulation as the basis of the MMRC: "Using either data from a test year or the most recent calendar year, determine revenue generated by MMRC and reduce the kWh component of rates by an amount equal to 'test' year' MMRC revenue." *See also* Slide 15, "MMRC is simple flat charge added to the customer charge offset by a decreased distribution kWh charge."

discriminatory. For instance, a non-net metered customer that significantly reduces his or her consumption because he or she installs new energy efficient appliances and lighting, or because the kids go to college, or because the customer becomes a seasonal customer, is not subject to an MMRC, even though that customer's reduced consumption has an impact on the Companies' revenue similar to that caused by NEM customers.

Further, the Companies' proposal improperly treats NM customers as if they are a separate rate class (as explained further, below), but without having first demonstrated that NM customers are significantly different than other customers. Thus, the proposal not only fails to satisfy the Act's requirements,[5] it also raises the very real possibility that imposition of an MMRC on only NEM customers would result in NM customers subsidizing non-NM customers (at values beyond the net benefits DG provides). That also makes the proposal unjust.

The Companies' proposal to apply its alternative MMRC solely to NM customers may also be anti-competitive in effect, as by explicitly targeting NM, the Companies proposed MMRC might deter customers from investing therein. At a minimum, such targeting could unreasonably inhibit development of Class I, Class II, Class III NM projects, contrary to the third MMRC criterion.[6] We note that an additional $200 is not "small," as the Companies claim.[7] Further, as the Companies have proposed setting the MMRC as a separate billing item,[8] which would give the Companies a mechanism with which to increase the MMRC in the future,[9] the charge is unlikely to remain "small." This uncertainty may also unreasonably inhibit the development of future Class I, Class II, and Class III facilities, contrary to the statute.[10]

Data Needed to Fully Assess the Proposals

The Clean Energy Stakeholders appreciate the Department's attention to the data needed to support any MMRC proposal. However, we are concerned that the DPU's Request for feedback on the data needed to assess the Distribution Companies' Alternative MMRC Proposal may inadvertently shift the burden of proof from the Distribution Companies to the Stakeholders. The Act made clear that the Companies could, but were not required to, propose an MMRC (see Section 9 of chapter 75 of the Acts of 2016, p. 5, lines 61-62); that each such proposal would be "subject to review and approval of the department" (*Id*., line 64); that in order for their proposals to be approved, the Companies must show to the Departments' satisfaction that the proposed MMRCs meet the four statutory criteria (*Id*., lines 69–74); and finally, that a

[5] *See* H4153, p. 5, lines 68-69, which specifies that the Companies must support their proposals for new charges in base distribution rate proceedings, or in revenue neutral rate design filings supported by appropriate cost of service data across all rate classes.

[6] *See Id*. at lines 71 – 72.

[7] *See* DCP Slide 11 (Alternative 1), estimating that the "Distribution company recovers $200.88 from net metering customer annually;" *and* Slide 14 (Alternative 2), estimating that the "Distribution Company draws back $245.04 from net metering customer annually." A charge at this level would amount to a 16-17% bill increase, contrary to precedent (*see* D.P.U. 09-39, p. 402), as well as the widely-accepted principle that rate design changes should be gradual, as the Distribution Companies themselves note on DPC Slide 3.

[8] *See* DCP Slide 5, in which the Companies state that the "MMRC is an incremental charge [sic] to the customer charge and is billed in the same way as the existing customer charge."

[9] *See* Slide 8, where the Companies make clear their intent to raise the MMRC, inasmuch as they state that the "Phase I proposal represents a floor for what an MMRC should be."

[10] *See* Section 9 of chapter 75 of the Acts of 2016, p. 5, lines 71 – 72.

proposed MMRC must either constitute a revenue neutral rate design supported by appropriate cost of service data across all rate classes (*Id*., lines 68-69), or be proposed in a base distribution rate proceeding (*Id*., line 67), in which case it must be supported by a cost of service study.[11] In other words, the Act confirmed the long-standing requirement under M.G.L. ch. 164, § 94 that the Company meet its burden of proving that a proposed rate is warranted. [12]

Here, in this proceeding, however, we seem to be proceeding in opposite fashion. The Companies have proposed a new charge without having proven either that the proposed new rate meets the specific requirements of the Act, or the criteria ordinarily required in a traditional rate case. The Clean Energy Stakeholders object to shouldering the Companies' burden for them, that is, of bearing the burden of identifying for the Companies the support that is required for the Department to approve the proposal.

Notwithstanding the above, the Clean Energy Stakeholders assert that the following data are needed to understand the Companies' proposal:

- **All background data, analyses, assumptions and worksheets (with formulae intact) required to justify the need for an MMRC *now*.** The Companies should provide an evidentiary basis supporting their claim of the need to do something now with regard to an MMRC, without their having first each gone through the full adjudicatory proceeding contemplated by the Act. To that end, **the Clean Energy Stakeholders request that the Companies explain the basis of their request for relief now, and how that justifies departing from the Act's mandate that the relief be accorded in base distribution rate proceedings or a revenue neutral rate proposal based upon an appropriate cost of service study.**

- **All background data, analyses, assumptions and worksheets (with formulae intact) required to justify the need for an MMRC at all.** On their Slide 4, the Companies state that the "Phase I MMRC is a first step toward a more equitable construct … "suggesting that their purpose in imposing an "incremental charge" that would go beyond the customer charge, and would begin to permit the Companies to "introduce the recovery of demand-related system costs" (Slide 5), is to capture purported under-payments by NEM customers. However, in its September 30, 2016 decision in the National Grid General Rate Case (D.P.U. 15-155), the Department not only rejected National Grid's proposed fixed charge, which National Grid had promoted, based upon its allegation that DG customers shift their distribution system costs to non-DG customers;[13]it also expressed skepticism that a cost-shift even exists.[14] In light of such holding, **the Clean Energy Stakeholders wish to learn what the Companies can now point to in support of their proposed MMRC that shows (a) that NEM customers are under-paying; and (b) that the current construct is not "equitable."**

[11] *See* Sept. 30, 2016 Order, D.P.U. 15-155, p. 384.
[12] *See Id.,* p. 15, and cases cited therein.
[13] The Department found that National Grid had failed to quantify either the amounts of costs attributable specifically to DG customers, or the distribution system benefits associated with DG customers. D.P.U. 15-155 Order, p. 458.
[14] *Id*.

- The Companies should also explain the need for an MMRC in light of the fact that the same Act that called for the MMRC also called for NEM customers to begin receiving credits at the market rate, rather than at the retail rate, or essentially a 40% reduction in the NEM credit value. **The Companies should quantify and assess the impacts of the 40% reduction in NEM credit on the utilities' recovery from NEM customers of "the fixed costs of the electric distribution system not caused by volumetric consumption."** Section 9 of chapter 75 of the Acts of 2016, lines 65, and 70 – 71.

- **The Companies should also explain the degree to which NEM customers' alleged under-payments for "the fixed costs of the electric distribution system not caused by volumetric consumption" are mitigated by the amounts collected from such customers via the interconnection tariff**, including amounts NEM customers generate through system modification investments.

- On Slide 2, the Distribution Companies expressed a concern with "administration of [the DPU's August 23, 2016 straw] proposal that "customers would not pay the customer charge given the presence of the credit balance." The Companies therefore asserted their confidence that customers would not pay the customer charge as requiring the addition of a separate MMRC line item in addition to the customer charge. At the Technical Session, the Companies illustrated their concern by expressing skepticism that if a Customer owed $5, but had a credit of $200, that the Customer would pay the $5. Clean Energy Stakeholders inquired into the basis of the Companies' skepticism, to which the Companies replied: that is what is happening today. **The Companies should provide all data and analyses, including worksheets with formulae intact, that support their belief that "customers would not pay the customer charge given the presence of the credit balance."**

- Today, customers are legally able to use net metering credits to zero out their bills. *See* the Department's August 19, 2016 Memorandum, p. 4, citing 220 C.M.R. § 18.05(3), and Sections 1.06(5) and 1.07(4) of each distribution company's net metering tariff. If the Department's Phase I Straw Proposal were implemented, that would no longer be the case. But in any event, the Companies have neither **(i)** identified the numbers of customers today that receive zero bills under today's regime, **(ii)** the impact zero bills have on the Companies, nor **(iii)** the Companies' basis for asserting that even after the tariffs or the regulations might change in a manner that might outlaw zero bills, that customers will elect to default on their obligations, and refrain from paying a $5 MMRC. **The Companies should provide all the data and analyses including worksheets with formulas intact explaining the basis of these three claims ((i) – (iii), above). The Companies should also explain whether they are or are not able to plan in a way that permits them to anticipate some number of customers receiving zero bills, and still fulfill their obligations to serve.**

- The Act requires that the electric distribution companies' MMRC proposals be filed with the department in: (i) the distribution company's base distribution proceeding; or (ii) a revenue neutral rate design filing that is supported by appropriate cost of service data across all rate classes. **The Companies should provide their cost of service studies and revenue requirements in order to assess how they are allocating costs to determine the basis for the proposed charges, and whether their proposal is revenue neutral.**

- The Companies' Slide 6 provides an axis chart that depicts their analyses showing that the MMRC maintains significant bill reductions. **The Companies should provide all data, worksheets with formulas intact, and analysis used to develop Slide 6.**

- The Companies' Slide 7 claims that the "Annual impact of MMRC is roughly equivalent to payment of customer charge as proposed in DPU Straw Proposal." **The Companies should provide the data and analyses underlying their estimates of pre- and post-net metering charges.** Similarly, the Companies should provide the data and analyses underlying the estimates depicted on **Slides 10, 13 and 14.**

- The Companies' proposal makes repeated references to their proposal, and/or the Department's Phase I proposal, representing "a floor for what an MMRC should be," Slide 8, and a "first step forward towards a more equitable construct…." **The Companies should explain what they believe a successful end point will look like, i.e., what amount of revenue they are seeking to obtain from net metering customers by way of their proposed MMRC alternative, and how (i.e., all at once? In phases?)** More to the point, to the extent that the Companies are viewing the customer charge as a point of departure, and/or distinguishable from an MMRC, **the Companies should explain specifically what "fixed costs of the electric distribution system not caused by volumetric consumption" are *not* captured in the customer charge, and what other costs might each seek in Phase II proposals.**

- The Companies' Slide 9 (Alternative 1) depicts an "MMRC Based on Minimum Distribution System Costs." **The Companies collectively, or National Grid, should provide the data and worksheets used to determine the average distribution cost per customer per month, the minimum load, and the peak load**. Additionally, Slide 9 states that the proposed MMRC is "based on the cost of a distribution system necessary to supply a theoretical minimum load." **The Companies collectively, or National Grid, should explain why they used a *theoretical* minimum load.' They should also identify "*theoretical* minimum," describe it, and show how it is calculated, including by providing all formulae, methodologies and actual values.**

- In Alternative 2, Slide 12, the Companies have included in the proposed MMRC the "allocated costs of secondary circuits and line transformers that are basic to all secondary customers." Slide 12 further references "Unitil's cost allocation study." **The Companies collectively or Unitil should provide the referenced cost allocation study, and/or the data and analyses showing that it is appropriate to allocate** [A5] **the costs of secondary circuits and line transformers to NEM customers**.

Comments on Companies' Specific Alternative Proposals

1. Lead Proposal (Eversource, supported by National Grid and Unitil)

The clean energy stakeholders do not support the proposal of the distribution companies. The lead proposal provides for different kWh charges for net metering customers and non-net metering customers, and thereby creates a separate rate class for net metering customers without any supporting information. Currently, customers (e.g. residential, commercial, and industrial) are grouped together in a rate class even though there is significant diversity of demand among the customers. Separation of customers within the rate class requires a significant demonstration that the segregated customers are fundamentally different from the rest of the rate class; any arbitrary segregation would be unduly discriminatory. Simply put, there is no information to support the creation of a separate rate class for net metering customers.

Furthermore, there is nothing in M.G.L. c. 164 § 139(j) that would imply a separate rate class is warranted. To the contrary, M.G.L. c. 164 §§ 138-139 provide for net metering credits to be calculated based on the distribution company's retail rates, with no mention of a separate rate class for net metering customers.

The end result of the lead proposal is a reduction in the motivation to reduce energy usage. The lead proposal would cut the financial motivation for net metering customers to reduce energy usage through energy efficiency, energy conservation, renewable energy, and all other distributed energy resources. Such an outcome is clearly inconsistent with Department precedent.

Nonetheless, the clean energy stakeholders acknowledge that rates – and the design of rates – may change over time. That is a risk that net metering customers and developers bear. However, the evolution of rates and rate design is substantively different from the segregation of net metering customers into a separate rate class.

2. Alternative 1 (National Grid)

National Grid's proposal does not appear to have the same deficiencies as the lead proposal. However, the clean energy stakeholders note that Alternative 1 must still satisfy the substantive and procedural requirements of the MMRC statute before it can be implemented.

3. Alternative 2 (Unitil)

The Alternative 2 proposal has the same deficiencies as the lead proposal.

(C) Clean Energy Stakeholders' proposal

See introductory paragraph.

(D) Low Income Network's proposal

The Clean Energy Stakeholders wish to express their support for the Low Income Network's proposal to exempt low-income customers from any MMRC (*see* the Low Income Network's written comments on "Low Income Exemption," submitted to the DPU on November 14, 2016).

However, for the reasoning laid out in our comments above, we do not support the Low Income Network's comments with respect to the Department's Straw Proposal.

2. Potential exemptions or exceptions from an MMRC. *Please discuss whether the following proposed exemptions and exceptions from an MMRC would be appropriate. Comments should discuss the process by which these customers and/or net metering facilities would be identified by the Distribution Companies, if they were to be exempt or excepted from an MMRC:*

(i) Low income customers on R-2 rate

An exemption for low income customers on the R-2 rate from an MMRC is appropriate and in line with the Department's ratemaking principles of continuity, simplicity, efficiency, earnings stability, and fairness.

R-2 ratepayers, by definition, lack the resources to pay their electricity bills, thus an MMRC for R-2 solar customers that own or are otherwise receiving net metering credits undercuts the purpose of the R-2 rate and risks exacerbating energy affordability issues[15] in low income households. What's more, an MMRC could easily serve as an additional barrier to solar for low income households, a market segment where solar penetration is currently very low. As solar prices continue to decline, however, relief from the MMRC could, along with other assistance, could make it possible for increasing numbers of R-2 ratepayers to take advantage of the Commonwealth's solar energy programs. In this way, the Department's principle of fairness would be met by a low-income exemption.

The Department's continuity and simplicity goals are met by not imposing a new charge on customers on the R-2 rate. R-2 ratepayers are easily and efficiently identified by rate code and represent about 300,000 electricity account across the Commonwealth. Efficiency and earnings stability will not be affected by the very small number of R-2 customers who would qualify for the exemption.

An MMRC could undermine a number of programs put in place to lower and make electricity bills more affordable. This includes the R-2 discount rate, energy efficiency programs as well as utility bill assistance programs. Imposing an MMRC on these electricity accounts runs counter to efforts to lower utility bills for low income households as much as possible.

Finally, an MMRC on R-2 customers would run counter to the Baker administration's and solar program goals to increase access to solar in low income communities. In February 2016, for example, the Baker administration launched a new initiative, along with $15 million in funding, to help low- and moderate-income Massachusetts residents access solar along with other cost-saving, clean and efficient energy technologies.[16] In the press release announcing the initiative,

[15] Energy affordability is a significant problem a significant problem; a Massachusetts family with income at the federal poverty rate ($16,020 for a family of two) pays nearly 6% of their income for electricity, more than triple what a family with median income pays.

[16] *See*, http://www.mass.gov/governor/press-office/press-releases/fy2016/funding-to-increase-affordable-access-to-clean-energy.html.

Governor Baker stated, "Everyone in Massachusetts should have affordable access to the economic and environmental benefits of energy efficiency and renewable energy."[17]

Other Commonwealth programs aimed at increasing access to solar include the Mass Solar Loan program, which provides additional support to income-qualified lenders; the Department of Energy Resources assignment of an SREC Factor of 1 to solar projects that serve affordable housing developments; and the Massachusetts Clean Energy Center's on-going efforts to address barriers and expand access to solar in low income communities.

(ii) Publicly assisted housing customers

An R-2 exemption from an MMRC would not cover the full range of "low income ratepayers" contemplated by H. 4173. For example, there are approximately 300,000 R-2 customers in the Commonwealth but many more households than that living below the poverty line. Upwards of 12% of the 6.75 million people in Massachusetts live below the federal poverty line.[18] Many of these individuals live in affordable housing developments, which often are master metered and the property pays all of the electricity costs. As a result, these low income residents do not have any direct electricity costs and the affordable housing properties paying the electricity costs are otherwise unable to benefit from the R-2 rate.

Nevertheless, such individuals and affordable housing properties are impacted significantly by rising and volatile electricity prices. Higher electricity bill charges, like an MMRC, for example, increases costs to affordable housing property owners, which reduces the funds available for other property expenses and resident services. For this reason, and the reasons outlined for exempting R-2 customers from an MMRC, the Department should define "low-income ratepayers" so as to include "any provider or resident of publicly assisted housing, as defined under M.G.L. c. 40T, § 1.

Of particular concern is the retroactive application of an MMRC to projects and electricity accounts already serving affordable housing properties. An MMRC jeopardizes the savings associated with these kinds of solar projects and undermines their purpose, which is to reduce and stabilize electricity bills in low income communities. What's more, the contracts and financing associated with such projects could be at risk, to the extent that the savings are reduced or eliminated.

An MMRC is also a concern for new low income solar projects as many are set to receive the lower Market Net Metering Credit. This lower credit will increase the challenge of expanding access to solar in low income communities and make it harder to use solar to lower and fix electricity bills. An MMRC is likely to make it harder still and stifle the range of efforts underway in the Commonwealth to promote solar as a solution to energy affordability in low income communities.

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17 *Id.*

18 The U.S. Census Bureau's poverty threshold for a family with two adults and one child was $19,078 in 2015. *See*, e.g., http://kff.org/other/state-indicator/distribution-by-fpl/?currentTimeframe=0&sortModel=%7B%22colId%22:%22Location%22,%22sort%22:%22asc%22%7D

In terms of identifying eligible affordable housing electricity accounts in order to exempt them from an MMRC, this is readily done by verifying that a solar project and associated electricity accounts have qualified as a "Low Income Housing Generation Unit" under DOER's SREC II and any successor solar program. In this way, any administrative burden on the distribution companies would be minimal. For the handful of affordable housing solar projects developed before the SREC II program was implemented, self-certification is likely the best option.

(iii) Existing net metering facilities (please specify a date to delineate existing net metering facilities from new net metering facilities)

The Distribution Companies asserted that "[b]ill impacts do not merit exemptions at this time." DCP, Slide 17.

As "grandfathered" status means a facility is simply not subject to a change in the law (i.e., the facility need not be declared "exempt" from the new law), it is unclear whether the Distribution Companies oppose grandfathering.

In an abundance of caution, some of the Clean Energy Stakeholders wish to make clear their belief that existing NM facilities should be, and were intended to be grandfathered, for several policy-based and legal reasons.

First, **imposing the MMRC on existing facilities would conflict with the rest of** chapter 75 of the Acts of 2016, which grandfathers existing facilities from being subject to market net metering rates for 25 years from date of the facility's interconnection.[19]

Second, imposition of an MMRC on existing net metering customers would severely compromise investor confidence**, in conflict with the Commonwealth's renewable energy goals as reflected in its RPS and GWSA**, and **in conflict with the legislative intent that** chapter 75 of the Acts of 2016 **not "cause unnecessary disruption in the market."[20]** A lack of grandfathering will disrupt and necessarily complicate the contractual relationships between customers and 3rd party owners that finance the customers' solar energy facilities. Reaching agreement on change in law provisions in power purchase agreements will become extremely problematic in an environment where there can no longer be any assurance of a stable economic and regulatory environment for host customers and financing partners.

Third, imposition of an MMRC on existing net metering customers would clearly **conflict with § 139(j)'s third criterion**, which requires that the MMRC be fashioned in such a way that it will not "unreasonably inhibit the development of Class I, Class II and Class III net metering facilities," setting a harmful precedent that the market is not certain for those who would invest. The attempt to impose a retroactive charge on existing customers in Nevada illustrates dramatically how the lack of a grandfathering clause significantly disrupted the market and

[19] *See* H4153, p. 6, lines 95-98.
[20] The Joint Committee on Telecommunication, Utilities and Energy confirmed this was its intent in a May 18, 2016 Letter to Matthew Beaton, Secretary, Executive Office of Energy and Environmental Affairs, and Angela O'Connor, Chair, Department of Public Utilities.

deterred investment in net metering facilities. In fact, several large solar energy companies withdrew from doing business in Nevada primarily because of this issue.[21]

A failure to grandfather may also be legally vulnerable, for at least two legal reasons.

First, the plain language of chapter 75 of the Acts of 2016 **compels the conclusion that existing facilities were intended to be grandfathered.** Though poorly drafted, it seems clear that the only customers the Legislature intended be subject to the MMRC were those who would also be eligible only for "***market*** net metering rates," i.e., those who had not yet installed net energy metered systems before the Notification Date. The first line of subsection (j) says: "Distribution companies may submit to the Department proposals for a monthly minimum reliability contribution to be included on electric bills for distribution utility accounts that receive Class I, Class II, Class III or ***market*** net metering credits pursuant to this section . . . . ."

Subsection (j) also grants the Department authority to grant a two-year exemption from the MMRC to some subset of facilities that were not in service by December 31, 2016. But that specific language permits the Department to grant a two-year exemption with regard to the discrete number of ***net metered*** facilities that were not in service by December 31, 2016. As for **net metered** facilities that were in service by the date the Act became effective, or by June 11, 2016, the Act is silent, making plain that those facilities' relief from the MMRC is not governed by the two-year exemption language,[22] thus supporting the argument that the Legislature intended that they be treated differently, or grandfathered.

Second, statutory changes are presumed to apply prospectively, absent express language to the contrary.

The law generally frowns upon retroactive application of legislation, especially absent a clear statement from the legislature that it intended such operation.[23] For example, in Biogen IDEC

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[21] On September 12, 2016, a Nevada court invalidating the Public Utilities Commission of Nevada's ("PUC's") first-time-ever decision to retroactively apply reduced net metering rates and increased fixed charges to existing rooftop solar customers. *Vote Solar v. The Public Utilities Commission of Nevada, et al.*, Case No. 16 OC 0052 1B, September 12, 2016 Order. On September 21, 2016, the Public Utilities Commission of Nevada accepted a Stipulation entered into between Nevada Power Company d/b/a NV Energy, Sierra Pacific Power Company d/b/a NV Energy, the Attorney General's Bureau of Consumer Protection, the Regulatory Operations staff of the Commission, and SolarCity that broadened the universe of parties eligible for grandfathering to include, in addition to NEM customers who have already interconnected systems, the subset of residential customers that have not yet interconnected systems, but had "active applications pending," defined as customers who either had pre-existing incentive reservations under the Renewable Generations program, or who withdrew an application, or who had a reservation expire, between December 23, 2015 and December 31, 2015, and who file opt-in requests between November 21, 2016 and February 28, 2017. September 21, 2016 Order, Public Utilities Commission of Nevada, Docket No.s 16-07028, 16-07029.

[22] Section 12 of chapter 75 of the Acts of 2016 specifies that Section 4 of the Act (which creates the new market net metering rate) would become effective 30 days after enactment, thereby presumably applying only to facilities that came into service after June 11, 2016. By contrast, as it lacks any such specificity, the remainder of the Act, including Section 9 (which creates the new MMRC) presumably became effective upon enactment, i.e., would impose the MMRC upon facilities that came into service after May 11, 2016.

[23] In commenting that the law generally frowns upon retroactive application of agency policies, we are not arguing that imposition of MMRCs constitutes retroactive ratemaking. That concept applies when utilities improperly seek to collect revenues to compensate for their prior over- or under-recoveries. *See Boston Edison Co. v. Department*

MA, Inc. v. Treasurer & Receiver Gen., 454 Mass. 174, 175, 908 N.E.2d 740, 742, 2009 Mass. LEXIS 327, *1 (Mass. 2009), the SJC held that a new agency policy may not be retroactively applied where a prior agency policy existed, unless the existing policy was plainly contrary to the enabling statute. It further stated that regulatory changes may operate retroactively (1) where legislative intent expressly or impliedly indicates retroactive application is desirable; (2) where the statute is ameliorative or curative in nature; or (3) where fulfillment of the parties' reasonable expectations may require the statute's retroactive application.

Consistent with this precedent, the Clean Energy Stakeholders believe that at a minimum, before including an MMRC in future bills of existing net metering accounts, the utilities should prove that their doing so comports with the above-mentioned three criteria.

Additionally, a February 1, 2016 Department decision in D.P.U. 11-84 is instructive. *See Petition of New England Gas Company for approval of its annual pension expense factor reconciliation filings*, 2016 Mass. PUC LEXIS 14, *30-31 (distinguishing the Department's authority to retroactively apply a reconciliation mechanism, on grounds it is a mechanically-applied technical formula that adjusts to reflect utility costs that were actually incurred). In that case, the Department ruled that among other considerations:

> The retroactive application of government action to a party is generally prohibited because it is fundamentally unfair and creates legal uncertainty . . . . It is only statutes regulating practice, procedure and evidence … not affecting substantive rights, that commonly are treated as operating retroactively, and as applying to pending actions or causes of action.

(iv) Class I net metering facilities

Some of the Clean Energy Stakeholders Also Believe That There Are Sound Policy and Legal Reasons Why Class I Facilities Are Not, And Were Not Intended to Be, Subject to the MMRC[24].

First and foremost, **it has been the Commonwealth's long-standing policy to foster residential rooftop solar.** It would be inconsistent for the Department to subject Class I Net Metering Facilities to the MMRC, while simultaneously confirming their special status by creating a new definition for them. *See* Order 16-64-D at 13 ("The Act requires new definitions in 220 C.M.R. § 18.02 for the following term[]: . . . 'Cap Exempt Facility[.]'")

Second, as a legal matter, the Department is not authorized to disregard chapter //, subsection (d). Where a statute contains two provisions whose meaning cannot be reconciled, it is not left to an agency to resolve such conflict. Rather, it is the job of the Legislature to clean up the conflict it created with its legislative drafting.

Pub. Utils., 375 Mass. 1, 6, 375 N.E.2d 305 (1978) ("a rate increase may not be awarded retroactively as matter of law").

[24] NECEC is not adopting the comments in this section.

New subsection (j) purports to subject Class I NEM facilities to the MMRC. However, existing subsection (d) continues to prohibit the imposition of "special fees" on Class I NEM facilities, except those necessary to meet the interconnection tariff and all relevant safety and power quality standards. **Subsection (j) cannot be read as repealing or replacing subsection (d),** as **the universe of entities impacted by (d) and (j) are different.** Subsection (d) prohibits "impos[ition of] special fees on **Class I net metering facilities**;" while new subsection (j) allows that " . . . distribution companies may submit to the department proposals for a monthly minimum reliability contribution to be included on electric bills for **distribution utility accounts** . . . ."[25]

Additionally, **the fee under (d) and charge under (j) are for different purposes. Subsection (d)** permits imposition of fees on Class I facilities that fail to "meet[] . . . all **relevant safety** and **power quality** standards." By contrast, the MMRC authorized by **subsection (j)** is intended to "ensure that all distribution company customers contribute to the fixed costs of ensuring the **reliability, proper maintenance and safety** of the electric distribution system."

It is black letter law that a court must try to harmonize conflicting laws if it can do so while preserving the two laws' sense and purpose. *See Ruckleshaus v. Monsanto Co.*, 467 U.S. 986, 1017-18 (1984) (rejecting a contention that FIFRA repealed by implication a Tucker Act remedy, and reconciling the two by implying a requirement that remedies under FIFRA must be exhausted before relief under the Tucker Act could be obtained). *See also Engie Gas & LNG LLC v. Department of Public Utilities*, 2016 Mass. LEXIS 603 (August 17, 2017), *22 ("**provisions of an amendatory act [are] to be considered together with the provisions of [the] original act**.")

It is also black letter law that if the law is ambiguous, then a court must defer to the agency's reasonable interpretation, rather than substitute its own reading. *See Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-44 (1984). **However, where a later enacted statute conflicts with an earlier one, <u>courts are reluctant to find repeal by implication</u>, absent specific statutory text or legislative history making clear that the legislature intended to repeal the earlier statute and simply failed to do so.** *See Brown & Williamson*, 329 U.S. 120, 147 (2000), where, **the Supreme Court** held: "Of course, whether the Congress that enacted the FDCA specifically intended the Act to cover tobacco products is not determinative; '**it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed**.'" *See also* United States v. Barrett, 837 F.2d 933, 934 (10th Cir. 1988). [28] *See also* Kremer v. Chemical Constr. Corp., 456 U.S. 461, 470, 72 L. Ed. 2d 262, 102 S. Ct. 1883 (1982) (**"an implied repeal must ordinarily be evident from the language or operation of the statute"**).

Further, where conflicting provisions in the same law are irreconcilable, as they are in this instance, it is <u>not</u> the province of the agency to attempt to interpret them. *See Michigan v. EPA*, 135 S.Ct. 2699 (June 29, 2015) ("***Chevron*** allows agencies to choose among competing reasonable interpretations of a statute; it **does not license interpretive gerrymanders under**

[25] It is possible that the legislature <u>only</u> intended that VNEM customers be subject to the MMRC, as it is those customers' accounts to which the Distribution Company allocates Net Metering Credits, as designated in writing by the Host Customer. *See* 220 CMR § 18.05 (Allocation of Net Metering Credits).

which an agency keeps parts of statutory context it likes while throwing away parts it does not.") *See also Scialabba v. De Osorio*, 134 S. Ct. 2191. In *Scialabba* (which is being hotly contested right now in the context of the litigation over EPA's Clean Power Plan now in the D.C. Circuit), the plurality upheld an agency's reasonable interpretation where the statute being interpreted did not speak unambiguously. In that case, two clauses within the same paragraph of a single statute did not "cohere:" one clause stated a condition that encompassed a whole category of beneficiaries, while a second clause prescribed a remedy that could apply to only a subset of the beneficiaries described in the first clause. A plurality of the justices upheld the agency's reasonable interpretation to allow the benefit to apply only to the narrower subset described in the second clause, rather than to "match the sweep of the first clause's condition." However, it is notable that while **Chief Justice Roberts** and Justice Scalia concurred with the result and agreed that the benefits should extend to only the narrower subset of beneficiaries, they **disagreed that the agency had the authority to interpret conflicting statutory provisions**. Importantly, Roberts wrote:

> To the extent the plurality's opinion could be read to suggest that deference is warranted because of a direct conflict between these clauses, that is wrong. Courts defer to an agency's reasonable construction of an ambiguous statute because we presume that Congress intended to assign responsibility to resolve the ambiguity to the agency. [internal citation omitted.] But when Congress assigns to an agency the responsibility for deciding whether a particular group should get relief, it does not do so by simultaneously saying that the group should and that it shouldn't. **Direct conflict is not ambiguity, and the resolution of such a conflict is not statutory construction but legislative choice. *Chevron* is not a license for an agency to repair a statute that does not make sense.**

Second, it is not clear that the Department provided notice of its intent to read subsection (d) out of existence; it certainly did not solicit comment on such outcome, raising due process concerns.

In Order D.P.U. 16-64, in which the Department commenced a rulemaking on its Emergency Regulations, the Department requested input into 9 topic areas. **In Topic 8,** the Department asked "**Whether the Department should exempt any [other] class** or sub-class of net metering facilities that were **in service before December 31, 2016**."

The Department never asked for comment on **whether it should exempt any other class** or sub-class of net metering facilities that are **in service after December 31, 2016.**

The Department also never asked whether it should take away special status for Class I NEM facilities still set forth in § 139(d) and 220 CMR 18.03(2) as then framed, and **never** stated anywhere that it was proposing to do so.

In D.P.U. 16-64-C, pp. 38-39, **the Department inaccurately stated that it received comments on . . .** "**whether any class or sub-class of net metering facilities should be exempt**." In other words, the Department dropped language limiting its inquiry into an exemption to "facilities that were in service before December 31, 2016."

As a result, the removal of the § 139(d) bar on imposing fees on Class I Net Metering facilities was **not the "logical outgrowth" of the proposed regulation**, that neither provided notice, nor sought comment, thereon. *See Grocery Mfrs. Of America, Inc. v. DPH*, 379 Mass. 70, 78 (1979) ("The requirement of submission of a proposed rule for comment does not automatically generate a new opportunity for comment merely because the rule promulgated by the agency differs from the rule it proposed, partly at least in response to submissions."). *See also South Terminal Corp. v. EPA*, 504 F.2d 646, 659 (1st Cir. 1974) ("A hearing is intended to educate an agency to approaches different from its own; in shaping the final rule it may and should draw on the comments tendered. The plan seems a logical outgrowth of the hearing and related procedures.")

3. Application of an MMRC to certain customers. *Should an MMRC apply only to host customers or to all recipients of net metering credits? Please discuss any potential procedural or administrative obstacles in applying an MMRC to host customers only or to all recipients of net metering credits.*

Some of the Clean Energy Stakeholders expect that this would be an important part of the design of an MMRC if one were implemented; the decision to *whom* the MMRC should apply is integrated with *how* the MMRC is structured. As we have discussed above, there is significant data and information that is still required relating to the overall MMRC construct. From an administrative perspective, and considering the current administrative processes in place today, it would be much more complex to apply the MMRC to recipients. Because Schedule Z may be updated periodically (twice annually), those customers with allocations may change over time, whereas the host customer will remain constant (or, relatively constant).

4. Approach of an MMRC. *The MMRC proposals envision an MMRC either as a minimum bill for all customers or an additional fixed charge to certain customers. Please discuss the strengths and weaknesses of each approach.*

The Clean Energy Stakeholders believe that a fixed charge on certain customers participating in net metering is inappropriate. Implementing a fixed charge on certain customers, specifically net metering customers, requires proof that a new customer class is required which is a significant effort with substantial implications for NEM customers' energy costs. In comparison, the Clean Energy Stakeholders believe that a minimum bill for all customers is more appropriate. There are several ways to implement a minimum bill that would have minimal effect on the price signals to a customer while also ensuring that all customers pay for the fixed customer costs the utility company incurs to ensure the reliability of the grid.

First and foremost, the creation of a new rate (i.e., the fixed charge) to be applied to a specific subset of customers requires the appropriate cost of service studies to determine whether or not a separate customer class is necessary. See Sept. 30, 2016 Order, DPU 15-155, p. 384. Until sufficient data and analysis are provided to warrant this first step, it is premature to analyze whether a fixed charge will meet the four criteria set forth by the DPU and fulfill the requirements of developing an MMRC. To implement a minimum bill on the other hand as the MMRC, one can utilize the cost of service studies in place today to determine the appropriate levels of the MMRC and ensure that the Distribution Utilities are able to recover their approved fixed costs from each customer.

Minimum bills are the most effective means to ensure all customers pay for their fixed customer costs without unreasonably impacting customers who use the grid less or invest in different technologies to reduce their energy consumption[26]. The minimum bill requires no changes to the rate designs in place by the different utility companies while also minimizing adverse impacts on ratepayers when cost recovery is increased. For example, an NREL study analyzed the impacts of adjusting different bill components, such as applying a minimum bill, increasing a customer's fixed charge, or adding a demand charge. The study concluded that minimum bills have the least amount of impact on increasing NEM customer costs based on the current rate designs studied[27]. Additionally, a minimum bill aligns more appropriately with cost causation where the volumetric price signal is not diminished and continues to encourage prudent usage of the system.[28]

Lastly, minimum bills that are set annually are also able to ensure that the costs recovered under the minimum bill are equitable throughout the year. For example, if a net metering customer has produced more than consumed for several months but in the remaining months had a high amount of net consumption, then the annual minimum bill will ensure that the customer does not over pay the minimum contribution needed. This practice is currently being used in California, where investor owned utilities such as PG&E apply the $10 monthly minimum bill at the annual true-up period and credit prior month minimum bill payments towards any net consumption payments due to the utility.[29] The Clean Energy Stakeholders strongly urge the DPU to set a similar minimum bill framework when implementing the MMRC.

5. Characterization of and charges to a rate class. *Please discuss whether an MMRC should subject every customer in the same rate class to the same base distribution volumetric rate (per kWh) or if certain members of a rate class should be subjected to a different base distribution volumetric rate. Please address whether charging customers within the same rate class a different base distribution volumetric rate meets the Department's rate design goals.*

The Clean Energy Stakeholders do not believe that an MMRC should assign different base distribution volumetric rates to different customers within the same rate class for several reasons, primarily because doing so would not meet the Department's overwhelming rate design goal of "provid[ing] strong signals to all consumers to decrease energy consumption…."[30]

First, the Clean Energy Stakeholders believe that NM customers in a given rate class are not so distinguishable from other members of the same rate class that they would warrant assignments of distinct distribution volumetric rates. As was stated above, NM customers are not so different from non-NM customers whose consumption drops as a result of their becoming energy

[26] See D.P.U. 15-155, Sept. 30 Order, pp. 383-384.
[27] http://www.nrel.gov/docs/fy15osti/64850.pdf
[28] Regulatory Assistance Project (2014) Electric Utility Residential Customer Charges and Minimum Bills: Alternative Approaches for Recovering Basic Distribution Costs. Available at http://www.raponline.org/wp-content/uploads/2016/05/rap-lazar-electricutilityresidentialcustomerchargesminimumbills-2014-nov.pdf
[29] NARUC (November 2016) Distributed Energy Resource Rate Design and Compensation. Available at http://pubs.naruc.org/pub/19FDF48B-AA57-5160-DBA1-BE2E9C2F7EA0 pg 117
[30] *See* D.P.U. 15-155 Sept. 30 Order, pp. 383-384.

efficient, become seasonal, or simply use less energy (in the case of a household, when the kids go to college; in the case of a business, because it ceases a particular manufacturing operation). It is precisely these fluctuations that are intended to be captured by the time-honored concept of "diversity."

Second, the Clean Energy Stakeholders are concerned that treating diverse customers differently is tantamount to placing them in a separate rate class,[31] albeit, without the traditional level of supporting information. The creation of a new rate class typically requires findings that the costs of serving the rate class are distinct. *See* NARUC Electric Utility Cost Allocation Manual, p. 22, explaining that the three principal customer classes (residential, commercial and industrial) may be further subdivided "based on characteristics such as size of load, the voltage level at which the customer is served, and other service characteristics such as whether a residential customer is all-electric or not."[32] We do not believe such record has been made in this or any other proceeding.

Indeed, it bears noting that in the only decision on the matter about which we are aware, the New Mexico Public Regulation Commission ("Commission") *rejected* a utility proposal to impose a higher energy charge on a new rate class of NEM customers.[33] In that case, the Commission found that the language of New Mexico's "interconnection" regulation specifically prohibited the imposition of distinct rates on net metered qualifying facilities. It further found that the regulation essentially resolved the issue of whether DG customers impose greater costs on the system than do non-DG customers, and to the extent it was found that they did, provided methods for recovery of such cost differentials. Finally, it found that its interpretation furthered the state's policy objective of encouraging the use of small-scale customer-owned renewable or alternative energy resources; and, citing Massachusetts case law, found that its interpretation furthered PURPA's objective of achieving energy independence by encouraging co-generation and small power production. Order ¶ 38, citing *Massachusetts Institute of Technology v. Massachusetts Dept. of Pub. Utilities*, 941 F. Supp. 233, 235 (D. Mass. 1996) (citing PURPA at 16. U.S.C. § 824a-3(a) & 3(f)).

Finally, we believe that removing NEM customers from the rate classes could lessen the incentive on remaining members to seize opportunities to reduce their own consumption. The recent Department decision in the National Grid rate case underscored the Department's desire to ensure that price signals incent *all* customers to invest in means of reducing their demand.[34] The Clean Energy Stakeholders are concerned that by singling out NEM customers for distinct

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[31] The Distribution Companies proposal asserts a separate rate class for net metering customers by proposing to explicitly increase a net metering customer's fixed charge and decrease their volumetric charge. No other types of customers will be subject to these unique charges aside from those who net meter. In the case of the Distribution Utilities proposal, they have provided a variance in rates without evidence; such evidence is characterized by the customer class in which the electric charges are applied. Customer classes are determined through "size of the customer (demand), how they take their service (voltage level, primary, secondary), load factor, and other characteristics, none of which has been analyzed or provided as evidence in their proposal. NARUC, Electric Utility Cost Allocation Manual (January 1992) at p. 22.

[32] *See also* Sept. 30 Order in D.P.U. 15-155, pp. 384-385.

[33] *In the Matter of the Application of El Paso Electric Company for Revision of its Retail Electric Rates Pursuant to Advice Notice No. 236,* Case No. 15-00127-UT, New Mexico Public Regulation Commission, Order Granting Interlocutory Appeals, Oct. 28, 2015.

[34] *See e.g, Sept. 30, 2016 Order, D.P.U. 15-55, p. 456 (demand ratchets).*

charges, many of which promise only to increase under the utility's proposal, would defeat the Department's "rate design foals of simplicity and efficiency, and [would] not provide strong signals to consumers to decrease energy consumption in consideration of price and non-price social, resource, and environmental factors." Sept. 30 Order, pp. 461-462. This would especially be the case where as here, the Companies have not provided a basis for their new charge, have not explained how the costs of serving NEM customers are not met, and have not indicated how treating NEM customers as a distinct rate class would further the Department's rate design objectives.

6. Phased approach of an MMRC. *To the extent that your comments do not already address this issue, please discuss whether an MMRC, if approved by the Department, should be implemented in a phased approach.*

While the Clean Energy Stakeholders appreciate that the Department may be seeking to provide a path to smooth implementation of an MMRC, for the reasons stated above, we do not think a phased approach to implementation of an MMRC is appropriate. The Act requires a full adjudicatory proceeding before approval of an MMRC must be met and distribution companies must demonstrate in those proceedings that an MMRC proposal meets the four criteria set forth. Therefore, it appears that it would be inefficient to conduct such proceedings twice – first for Phase I and then for Phase II.

NEXT STEPS

An alternative approach to provide guidance to distribution companies regarding development of an MMRC would be to open a new, separate proceeding to establish a methodology for an MMRC, which they could then implement through compliance filings in adjudicated rate cases or revenue neutral proceedings. This new, separate proceeding should identify the information and data that would be required to demonstrate that an MMRC is in fact needed and that it meets the four statutory criteria. In this proceeding, the Department could consider structures for an MMRC and how it would apply, address the "grandfathering" of existing projects and exemptions for low-income and other classes and sub-classes of customers.

All stakeholders that would be affected by implementation of an MMRC – the distribution companies, customers (including low-income), clean energy providers (including Class I, Class II and Class III net metering facility owners and credit recipients) – should be allowed to participate as full parties in the adjudicatory proceedings where MMRC proposals are reviewed.

CONCLUSION

The Clean Energy Stakeholders reiterate our appreciation of the opportunity to provide these comments. We look forward to working with the Department, the distribution companies and all stakeholders to implement the Act in a manner that will be fair and equitable to all customers and continue to support customers' ability to choose distributed clean energy options to meet their energy needs.

Sincerely,

Nathan Phelps, on behalf of Clean Energy Stakeholders:

Boston Community Capital ("BCC")
City of Cambridge
Energy Freedom Coalition of America ("EFCA")
MassSolar
NECEC
Solar Energy Business Association of New England ("SEBANE")
The Alliance for Solar Choice ("TASC")
Vote Solar
WinnCompanies

Cc: Staci Rubin, Hearing Officer