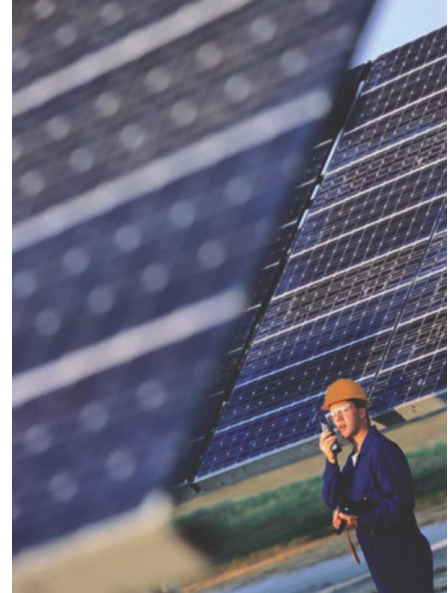




SOLAR ENERGY SERVICES AS RELIABLE AS THE SUN



**Implications of the Interstate Commerce
Clause for State Solar RPS Programs**
Renewable Energy Markets Conference
October 2010





SunEdison company overview

We develop, build, finance, own and operate solar power plants in order to deliver solar services / sell commercial retail electricity at competitive prices

Pioneer solar systems and services provider

- First to develop PPA concept for solar (no customer capital outlays and a predictable energy price over 20 year service contract)
- Built first utility scale plant in the U.S and Canada
- Currently building Europe's largest solar power plant – 72MWs

The largest solar energy services provider in North America

- Over 130 MW of renewable electricity under management
- 325+ projects in 11 states plus Canada, Spain, Italy
- Tracking 4 GW in project development

Core competencies and key advantages:

- Financing capabilities enable project growth - \$1B in financing to date
- Subsidiary of MEMC (NYSE: WFR), a Fortune 1000 company
- Internal R&D to optimizes system design and production
- Leading monitoring technology to maximize uptime and production
- Regulatory leadership to enable solar markets





Presentation Overview

- **Dormant Commerce Clause explained**
- **Geographic preferences in state solar RPS programs**
- **Business perspective on Commerce Clause risk**



Dormant Commerce Clause

- **Power reserved to Congress to regulate commerce between the States**
 - Nation as an integrated economic unit
 - Prevents states from erecting barriers that would inhibit the free flow of commerce across state lines
- **Supreme Court jurisprudence**
 - Does the law draw a distinction based on the state of origin of the product or service?
 - Facially discriminatory laws – “virtually *per se* invalid”
 - Absolute restriction to state market not required
 - Additional costs, burdens or disadvantages
 - Discrimination in practical effect – Generally upheld under *Pike* balancing test where:
 - Burden on interstate commerce is incidental
 - Law seeks to promote a legitimate local interest





State Solar Carve-Out Eligibility Restrictions

- **Eligibility defined by location of renewable resource**
 - Program restricted to in-state generation (e.g., MA)
 - Specified percentage (e.g., 50%) from in-state facilities
- **Preference for in-state renewable resources**
 - Credit multipliers
 - Default to neighboring states if in-state RECs not available
- **Deliverability restrictions**
 - Resources within ISO region
 - Demonstration of ability to displace conventional resources otherwise used to meet in-state load
 - Resource connected to distribution system serving the state



State Interests Served through Solar Carve-Outs

- **State solar carve-outs generally require a premium above conventional generation and Class I RECs**
- **This premium is often justified based on unique local benefits of solar resource:**
 - Displacement of conventional fossil generation
 - Local air quality and associated public health benefits
 - Avoidance of peak energy/demand charges
 - Grid reliability benefits and deferral of distribution system costs
 - *Promotion of in-state jobs and local green economy*
- **Constitutionality turns on the legal *legitimacy* of these local interests**
- **Divining legislative intent**





TransCanada Challenge

- **Facial challenge to two elements of the MA Green Communities Act limiting eligibility to resources located in the Commonwealth:**
 - Utility long-term contracting requirement for Class I RECs
 - Solar carve-out
- **TransCanada's interests implicated:**
 - As wind developer
 - As retail electric supplier
- **Recent developments**
 - Partial settlement reached on solar carve-out
 - Suppliers subject to lower Class I ACP (~\$61) in lieu of much higher SACP rate (\$600) for grandfathered load
 - DPU suspends operation of geographic limitation for renewable LTC RFP
 - Emergency rules issued to remove offending language
 - Utilities reopen RFPs to allow bids from out-of-state renewable generators
 - Litigation proceeds with oral arguments on 10/15/10



Evaluating DCC Risks

- **Legal risk**
 - Intrinsic vulnerability of state law/regulation under DCC?
 - Likelihood of challenge?
- **Political risk**
 - Depth of legislative support for RPS?
 - Subject other elements of RPS to adjustment?
- **Business risk**
 - Evaluation of viability of new markets?
 - Implications for existing commercial contracts?



Questions?



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