

PARTIAL SETTLEMENT AGREEMENT

WHEREAS, TransCanada Power Marketing Ltd. (“TransCanada”) filed a lawsuit in U.S. District Court for the District of Massachusetts (Central Division), Civil Action 40070-FDS (“the TransCanada Lawsuit”) against various officials of the Commonwealth of Massachusetts (“Defendants”) in their official and individual capacities alleging that the long-term contracts provision for renewable energy set forth in section 83 of the Green Communities Act, the regulations established by the Department of Public Utilities (“DPU”) at 220 CMR 17.00, and the request for proposals for long-term contracts issued on January 15, 2010 (the “long-term contract program”), and a Solar Renewable Energy “Carve-out” (“Solar Carve-Out”) established by section 32 of the Green Communities Act and 225 CMR 14.00 violate the Commerce Clause of the United States Constitution;

WHEREAS, the Defendants dispute that the long-term contract program and the Solar Carve-out, and the state laws and regulations that relate to them, violate the Commerce Clause;

WHEREAS, the Parties recognize the delays, uncertainties and costs of litigation and wish to take advantage of settlement and resolve a portion of their dispute in an amicable manner;

THEREFORE, the Parties hereby enter into this Partial Settlement Agreement relating to Counts III, IV, V and VI of the complaint in the TransCanada Lawsuit.

TERMS OF PARTIAL SETTLEMENT

1. This Partial Settlement Agreement establishes a process to resolve Counts III, IV, V and VI of the TransCanada Lawsuit.
2. The Plaintiff is TransCanada.
3. The Defendants named in the TransCanada Lawsuit (collectively, “the Defendants”) are: (i) Ian A. Bowles, Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs; (ii) Philip Giudice, Commissioner of the Massachusetts Department of Energy Resources (“DOER”); (iii) Paul J. Hibbard, Chairman of the DPU; (iv) Tim Woolf, Commissioner of DPU; and (v) Jolette A. Westbrook, Commissioner of DPU. TransCanada and the Defendants are each referred to as a “Party” and are collectively referred to as “the Parties”.
4. The DPU has announced that Paul J. Hibbard is planning to resign from his position as Chairman of DPU, and that Ann Berwick will take his place in that position. If the replacement should occur before this Partial Settlement Agreement has been executed, then this Settlement Agreement will be signed by Ann Berwick in her official capacity as Chair of DPU, and will be signed by Paul J. Hibbard in his individual capacity.
5. This Partial Settlement Agreement shall be binding on the Parties and on their successors.
6. The date on which the last of the Parties signs this Partial Settlement Agreement is referred to as the “Effective Date”.

7. In January 2010 DOER issued emergency regulations (codified as 225 CMR 14.00), which are scheduled to remain in effect until July 8, 2010. In March 2010 DOER issued proposed amended regulations (i.e. proposed amendments to 225 CMR 14.00), and these have not yet been finally adopted.

8. Within seven days of the Effective Date, DOER intends to issue further amended regulations (further amending 225 CMR 14.00). DOER intends these amended regulations to state as follows in Section 14.08(3)(b)(3):

The ACP Rate for that portion of a Retail Supplier's Solar Renewable Energy Credit obligations that were contractually committed or renewed prior to January 1, 2010, shall be equal to the RPS Class I ACP Rate as calculated for the applicable Compliance Year under 225 CMR 11.08(3)(a)(2). This provision does not apply to obligations that were contractually committed or renewed on or after January 1, 2010.

Apart from the sentences quoted in this paragraph, DOER intends the amended regulations to remain substantially the same as those issued in March 2010.

Pursuant to Mass. G.L. chapter 25A, section 12, DOER regulations are not final unless the following procedure is followed: DOER must file the regulations with the Clerk of the House of Representatives, who shall refer them to the Joint Committee on Telecommunications, Utilities, and Energy. This committee has a period of 30 days from such referral to hold a public hearing and provide comments to DOER. DOER may not file the regulations with the Secretary of State until the earlier of a) 30 days from the receipt of comments from the Committee, or b) sixty days from the referral. If DOER makes any substantive changes to the amended regulations either prior to or after filing them with the legislature, DOER shall describe the changes to TransCanada's counsel in advance of making such changes.

9. Within two days of the Effective Date of this Partial Settlement Agreement, TransCanada shall file a stipulation of dismissal with prejudice of Counts III, IV and VI as to defendants Paul J. Hibbard, Jolette A. Westbrook, and Tim Woolf in the form attached as Exhibit A.

10. If DOER files with the legislature the amended regulations in the form stated in paragraph 8 above, then within two days after the amended regulations are filed with the legislature, TransCanada shall file a stipulation of dismissal in the form attached as Exhibit B and as follows:

Dismissal without prejudice of Counts III, IV and VI as to defendants Ian Bowles and Phil Giudice;

Dismissal without prejudice of Count V as to all defendants.

Thereafter, TransCanada may re-allege Counts III, IV and VI of the TransCanada Lawsuit only if the amended regulations stated in Paragraph 8 do not come into effect or if TransCanada has grounds to believe that one or more of the defendants Bowles and Giudice are taking actions to

increase the ACP Rate for solar renewable energy credits pertaining to obligations that were contractually committed or renewed prior to January 1, 2010 above the following amount: \$60.93 per MWh in 2010, as adjusted up or down in each subsequent Compliance Year according to changes in the previous year's Consumer Price Index -- All Urban Consumers, Northeast Region All Items (Not Seasonally Adjusted), as published by the U.S. Bureau of Labor Statistics. In that event TransCanada may re-allege Counts III, IV, and VI against Bowles and Giudice, but under no circumstances shall TransCanada revive these counts as to Hibbard, Westbrook and Woolf. If TransCanada re-alleges Counts III, IV and VI, Bowles and Giudice shall have the right to assert any and all applicable defenses (including, without limitation, that the increased ACP Rate is lawful and constitutional), except that they shall not assert (and hereby waive) any contention that TransCanada's execution of this Partial Settlement Agreement gives rise to a defense of release, estoppel, waiver, or laches or any defense based on the passage of time between the date of the Complaint and the date of the alleged increase of the ACP rate.

11. If DOER files with the Secretary of State the amended regulations in the form stated in paragraph 8 above, then within two days after the amended regulations are filed, TransCanada shall file an amended stipulation dismissing with prejudice Counts III, IV, and VI of the TransCanada Lawsuit as to defendants Bowles and Giudice. Thereafter, if TransCanada has grounds to believe that Bowles or Giudice are taking actions to increase the ACP Rate for solar renewable energy credits pertaining to obligations that were contractually committed or renewed prior to January 1, 2010 beyond the numerical amount specified in paragraph 10 above, TransCanada may re-allege Counts III, IV and VI against Bowles and Giudice, but under no circumstances shall TransCanada revive these counts as to Hibbard, Westbrook and Woolf. If TransCanada re-alleges these counts, Bowles and Giudice shall have the right to assert any and all applicable defenses (including, without limitation, that the increased ACP Rate is lawful and constitutional), except that they shall not assert (and hereby waive) any contention that TransCanada's execution of this Partial Settlement Agreement gives rise to a defense of release, estoppel, waiver, or laches or any defense based on the passage of time between the date of the Complaint and the date of the alleged increase of the ACP rate.

12. This Partial Settlement Agreement is the entire agreement between the Parties with respect to the subject matter hereof. This Partial Settlement Agreement supersedes all prior and contemporaneous oral and written agreements and discussions.

13. Each of the Parties has received or has been given the opportunity to receive independent legal advice from attorneys with respect to the negotiation, drafting and execution of this Partial Settlement Agreement.

14. Counsel for each of the Parties has provided input in the preparation of this Partial Settlement Agreement. The terms and provisions of this Partial Settlement Agreement shall be construed fairly as to all of the Parties and not in favor of or against any Party, regardless of which Party was generally responsible for the preparation of particular terms or provisions of this Partial Settlement Agreement.

15. This Partial Settlement Agreement may be amended only by an agreement in writing, signed by all of the Parties or their successors in interest.

16. TransCanada represents and warrants that its representatives identified below have due authority to execute this Partial Settlement Agreement. Each of the Defendants represents and warrants that he or she has due authority to execute this Partial Settlement Agreement.

17. The rights and obligations of the Parties to this Partial Settlement Agreement shall be construed and enforced in accordance with, and shall be governed by, the laws of the Commonwealth of Massachusetts.

18. A failure or delay of any Party in exercising or enforcing any right or remedy hereunder shall not operate as a waiver thereof. A single or partial exercise of any right or remedy hereunder shall not preclude any other or further exercise of a right or remedy hereunder. Any agreement by a Party to waive a right or remedy under this Partial Settlement Agreement shall be valid only if set forth in a written instrument executed by such Party.

19. This Partial Settlement Agreement may be executed in two or more counterparts, and transmission of signatures by facsimile or pdf is acceptable. All counterparts so executed shall constitute one agreement, binding as stated herein, notwithstanding that all the Parties may not have signed the original or the same counterpart.

**TRANSCANADA POWER MARKETING,
LTD.**

By: _____

Dated: _____

And By: _____

Dated: _____

**IAN A. BOWLES, Secretary of the
Massachusetts Executive Office of Energy and
Environmental Affairs**

Dated: _____

**PHILIP GIUDICE, Commissioner of the
Massachusetts Department of Energy Resources**

Dated: _____

**PAUL J. HIBBARD, Chairman of the
Massachusetts Department of Public Utilities**

Dated: _____

**TIM WOOLF, Commissioner of Massachusetts
Department of Public Utilities**

Dated: _____

**JOLETTE A. WESTBROOK, Commissioner of
Massachusetts Department of Public Utilities**

Dated: _____

UNITED STATES DISTRICT COURT
EXHIBIT A

DISTRICT OF MASSACHUSETTS

TRANSCANADA POWER MARKETING, LTD.,

Plaintiff,

v.

IAN A. BOWLES, individually and in his official capacity as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs; PHILIP GUIDICE, individually and in his official capacity as Commissioner of the Massachusetts Department of Energy Resources; PAUL J. HIBBARD, individually and in his official capacity as Chairman of the Massachusetts Department of Public Utilities; and TIM WOOLF and JOLETTE A. WESTBROOK, individually and in their official capacities as Commissioners of the Massachusetts Department of Public Utilities,

Defendants.

Civil Action No. 4:10-cv-40070-FDS

NOTICE OF PARTIAL DISMISSAL OF ACTION

Plaintiff, TransCanada Power Marketing, Ltd. (“TransCanada”), hereby gives notice that it is dismissing certain counts of the complaint in the above-captioned matter pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i). None of the Defendants has filed an answer or motion for summary judgment.

TransCanada will dismiss the following counts of the complaint as follows:

1. TransCanada dismisses Counts III, IV, and VI of the complaint with prejudice as to Defendants Paul J. Hibbard, Tim Woolf, and Jolette A. Westbrook.

Respectfully submitted,

TRANSCANADA POWER MARKETING LTD.

Robert M. Buchanan (BBO No. 545910)

rbuchanan@choate.com

Daniel C. Winston (BBO No. 562209)

dwinston@choate.com

Brian C. Barry (BBO No. 661518)

bbarry@choate.com

Nellie E. Staley (BBO No. 676886)

nstaley@choate.com

CHOATE, HALL & STEWART LLP

Two International Place

Boston, Massachusetts 02110

(617) 248-5000

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent by regular mail to individuals indicated as non-registered participants (if any) on May __, 2010.

EXHIBIT B

DISTRICT OF MASSACHUSETTS

TRANSCANADA POWER MARKETING, LTD.,

Plaintiff,

v.

IAN A. BOWLES, individually and in his official capacity as Secretary of the Massachusetts Executive Office of Energy and Environmental Affairs; PHILIP GUIDICE, individually and in his official capacity as Commissioner of the Massachusetts Department of Energy Resources; PAUL J. HIBBARD, individually and in his official capacity as Chairman of the Massachusetts Department of Public Utilities; and TIM WOOLF and JOLETTE A. WESTBROOK, individually and in their official capacities as Commissioners of the Massachusetts Department of Public Utilities,

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TransCanada will dismiss the following counts of the complaint as follows:

1. TransCanada dismisses Counts III, IV, and VI of the complaint without prejudice as to Defendants Ian A. Bowles and Philip Giudice.

2. TransCanada dismisses Count V of the complaint without prejudice as to all Defendants.

Respectfully submitted,

TRANSCANADA POWER MARKETING LTD.

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rbuchanan@choate.com

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dwinston@choate.com

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