



**PROPOSED AWARD TO TOWN OF FALMOUTH TO
MITIGATE FINANCIAL IMPACTS OF
REDUCED WIND PROJECT OPERATION**

Staff Memorandum for March 26, 2014 Meeting of
MassCEC Board of Directors

Summary:

Staff requests authorization to modify the existing prepaid Renewable Energy Certificate (REC) purchase agreement between MassCEC and the Town of Falmouth and make new awards to the Town of Falmouth, as follows: (1) For the REC agreement, waive refund provisions for RECs not delivered to MassCEC and make additional payments to the Town for RECs delivered to MassCEC at a rate of up to \$45/REC, with maximum annual payments of \$85,500; and (2) Make a new award of up to \$500,000 to the Town to re-establish an operating reserve fund for the Wind 1 and Wind 2 turbines with provisions for MassCEC to recover a portion of these funds upon decommissioning of the turbines.

Any waivers and/or new payments for RECs will be applicable only to periods when the Falmouth Wind 1 turbine is operated between 70 and 115 hours per week, on average, by municipal decision or pursuant to a court order. Repayment waivers will also be available for an operation level of less than 70 hours per week, on average, but only if the level of operation is ordered by a court. Note however that MassCEC would still receive and re-sell RECs over time.

The financial implications of this proposal involve (a) the foregone value of the RECs that are not generated and not delivered to MassCEC under the current contract, (b) the amount of new awards to the Town of Falmouth, and (c) the amounts recovered by MassCEC upon re-sale of RECs that are delivered to MassCEC:

- (a) the foregone value of refund waivers to the Town over the 15-year life of the REC agreement would range from \$505,000 (for 112 hours per week of operation) to \$1,085,000 (for 72 hours per week of operation), depending upon the level of operation of the Wind 1 turbine.
- (b) The aggregate MassCEC additional payments for RECs over time would be up to \$1,300,000. Coupled with the reserve fund grant, new cash payments to the Town will be up to \$1,800,000.
- (c) With an assumed REC re-sale price of \$50/REC MassCEC would recoup between \$1,200,000 and \$1,950,000 over the contract life. This would result in potential outcomes (with respect to new funding authorized herein) ranging from a *net* expenditure of up to \$380,000 to a net gain of up to \$475,000.

The Board Subcommittee appointed in March 2013 to review and approve modifications to the Falmouth REC agreement met on March 13, 2014 and reviewed the recommendations contained herein. The Subcommittee unanimously endorsed forwarding the proposed actions and recommended that the matter be taken up by the full Board.

Background:

The Town of Falmouth continues to incur annual financial losses associated with curtailed operation to their two wind turbines at the Town wastewater treatment plant. For the current level of operation (72 hours per week pursuant to a Barnstable Superior Court preliminary injunction ordered in November 2013), Town losses are projected to be over \$175,000 per year for the five-year period FY2015 – FY2019. The Town's financial exposure is compounded by depletion of its original ~\$1 million operating reserve.

There are several court proceedings in play. According to the Town, the case in Barnstable Superior Court through which the injunction was ordered will not be heard until late 2014 or early 2015. If the terms of the preliminary injunction are taken as an indicator, the prospects are at best uncertain for an outcome that the Town can manage financially. Any appeal of an initial judgment would substantially extend the timeframe for resolution, with a high

likelihood that the Town could continue to incur financial losses during that period.

The Board of Selectmen is placing an article on the warrant for its upcoming April 7 Town Meeting for approval of a \$300,000 transfer of Town funds to the wind turbine operating reserve account. The Town has also requested financial assistance from MassCEC to help reduce, but not eliminate, the financial losses and uncertainties for the foreseeable future associated with reduced operation of their wind turbines while court cases play out. MassCEC's proposed \$500,000 payment to the reserve account would be contingent on approval of the \$300,000 in local funds.

Proposed Authorization:

Staff requests that the Board authorize the CEO to modify the existing REC agreement between MassCEC and the Town of Falmouth and make new awards to the Town of Falmouth, as follows:

1. Modify REC agreement terms as described below for any portion of the REC delivery period during which operation of the Wind 1 turbine is restricted to 70 to 115 hours per week, on average, pursuant to a municipal decision or court order:
 - a. Reduce the number of RECs required to be delivered to MassCEC to correspond to actual REC production, and to waive applicable default and refund provisions arising from the reduced number of RECs. The aggregate nominal value of waiver of refund provisions, assuming the current 72 hours per week turbine operation, is \$1,085,000.
 - b. Make additional payments of up to \$45 per REC to the Town for all RECs delivered to MassCEC, with an aggregate REC payment to the Town over the agreement term of up to but not exceeding \$1,300,000. The price paid per REC will be tiered based on the number of hours of turbine operation. Thus, MassCEC additional payments will decrease as turbine operation, and associated project revenues to the Town, increase.
 - c. Modify other REC agreement terms in a manner consistent with the following principles:
 - i. The financial value of the waivers and new payments to the Town shall not exceed the estimated financial loss expected to be incurred by the Town through the action taken.
 - ii. The nature of the action taken by the Town shall advance the general interests of ratepayers of MassCEC's Renewable Energy Trust.
 - iii. The MassCEC waiver of default and refund provisions shall not be available for a Town action involving decommissioning and/or removal of the Wind 1 turbine unless by court order.
2. In the event of a permanent or temporary court order for a Wind 1 operational level averaging less than 70 hours per week, reduce the number of RECs required to be delivered to MassCEC to correspond to actual REC production, and to waive applicable default and refund provisions arising from the reduced number of RECs.
3. Make a new award to the Town of up to \$500,000 for the purpose of re-establishing an operating reserve fund for the Wind 1 and Wind 2 turbines, subject to the following conditions:
 - a. The Town shall make an initial contribution of \$300,000 to the operating reserve fund.
 - b. The fund will be used solely for expenses related to ongoing operation of the turbines and resolution of neighbor relations issues.
 - c. The Town shall refund a portion of any funds remaining in the operating reserve at the end of project life for Wind 1 and Wind 2, with specific refund provisions to be approved by the CEO.

Benefits:

A fair and equitable resolution of the wind facility public acceptance issues in Falmouth is important to the affected neighbors and the Town, and is also of vital importance to our overall efforts to support appropriate siting of land-based wind energy in Massachusetts. The proposed waivers and new awards will mitigate financial losses incurred

by the Town as the result of unanticipated exceedance of DEP's noise policy as well as an unforeseen court order and will leverage an additional Town commitment of \$300,000 for the project operating reserve fund. These actions will provide the Town with greater financial certainty regarding the wind project as it proceeds through a number of court challenges.

Risks/Due Diligence:

- **Financial analysis.** A firm with extensive energy project financial analysis experience, under contract to MassCEC, has provided independent analysis of project financials including evaluation of a number of operational scenarios. The Town and MassCEC have jointly overseen this analysis.
- **RET Ratepayer Interests.** We propose to structure the additional payments for RECs in a manner that compensates the Town for a portion of the financial losses that result from reduced operation of the turbines. However, to avoid over-compensation, the additional MassCEC payments per REC will decrease as operational levels (and Town cash-flows from the project) increase. [
- **Recovery of New Awarded Funds.** MassCEC proposes to structure the REC agreement modifications and award for the operating reserve in a manner that makes it possible for MassCEC to recover funds. For the REC agreement, we will still require the Town to deliver to MassCEC all RECs generated by Wind 1. This will allow MassCEC to re-sell the RECs and recover some or all of the funds expended for additional payments per REC to the Town. The rate of recovery of funds depends upon REC market prices over time. MassCEC may also recover a portion of any remaining funds in the operating reserve at the end of the wind project life.

Metrics for Evaluation:

- The extent to which Town financial losses for operation of the wind turbines are mitigated but not over-subsidized.
- The amount of funds recovered by MassCEC through re-sale of RECs that are received.

Motion:

To authorize (1) the modification of the existing prepaid REC purchase agreement between MassCEC and the Town of Falmouth by waiving the refund provisions for RECs not delivered to MassCEC and making additional payments to the Town for RECs delivered to MassCEC at a rate of up to \$45/REC, with maximum annual payments of \$85,500; and (2) a new award to the Town of Falmouth of up to \$500,000 to re-establish an operating reserve fund for the Wind 1 and Wind 2 turbines with provisions for MassCEC to recover a portion of these funds in the event of a decommissioning of the turbines and provided the Town transfers \$300,000 into the reserve fund. Further, to authorize MassCEC's Chief Executive Officer to enter into such agreements as may be reasonably necessary to consummate said transaction, subject to mutual agreement of terms and conditions to be negotiated by staff consistent with the recommendations described in the staff memorandum.