



RENEWABLE ENERGY PROVIDER

January 19, 2016

Commissioner Judith Judson
Michael Judge, Director, Renewable and Alternative Energy Division
Massachusetts Department of Energy Resources
100 Cambridge St., Suite 1020
Boston, MA 02114

RE: Comments of Soltage, LLC on DOER's Proposed Revisions to its Assurance of Qualification Guideline

Dear Commissioner Judson, Mr. Judge, and to whom it may otherwise concern:

Soltage, LLC ("Soltage") appreciates the opportunity to submit these comments in response to DOER's proposed revisions to its RPS Solar Carve-Out II Assurance of Qualification Guideline as indicated in a draft dated January 4, 2016 that DOER provided to stakeholders by email on January 5, 2016 (the "Draft Guideline"). Among other things, DOER has explained that it has proposed the further revisions included in the Draft Guideline to: (1) establish a 120MW set-aside of capacity under the SREC II Program Capacity Cap reserved exclusively for Small Generation Units with a capacity of less than 25 kW; and (2) to clarify what constitutes a complete Statement of Qualification Application (SQA).

Soltage, founded in 2005, is a leader in the development, financing, and operation of utility-scale solar power systems for commercial, industrial, and municipal customers across the United States. Soltage has developed 35 solar energy projects with 90 MW total distributed generating capacity. Soltage has been actively developing solar projects in the Commonwealth since 2012 with over 30MW of operating assets under management and additional assets under development and construction. Soltage is backed by a group of investors including Tenaska. For more information, visit www.soltage.com.

Soltage provides these comments in order to bring to DOER's attention that, as a likely consequence of the establishment of such a large carve-out for Small Generation Units, due to the time and effort required to obtain post-closure use permits from the Department of Environmental Protection ("MassDEP"), a large number of Solar Carve-out II Solar Generation Units intended to be installed on Eligible Landfills (as defined at 225 CMR 14.02) may not be in a position to receive an Assurance of Qualification before the portion of the SREC II Program Cap not reserved for Small Generation Units has been reached.

This result would defeat the Commonwealth's important public policy interest in repurposing closed landfills as hosts for solar installations. It would undercut the work of MassDEP, which has been diligently working with solar developers seeking permission for post-closure use of landfills for solar projects pursuant to 310 CMR 19.143: *Post-closure Use of Landfills*. Soltage respectfully provides these comments in order to propose a possible solution which may avoid such unintended consequences.

The revisions that DOER has proposed in the Draft Guideline makes certain additions to Section 4)(C)(i)(a) to define a complete application for Assurance of Qualification, including item 7, which adds a requirement for submittal of "non-ministerial permits."

225 CMR 14.05(9)(p) requires that DOER grant an Assurance of Qualification to Solar Carve-out II Solar Generation Units that provide evidence of the following: (1) an executed Interconnection Service Agreement, as tendered by the distribution company; (2) adequate site control (a sufficient interest in real estate or other contractual right to construct the Unit at the location specified in the Interconnection Service Agreement); and (3) all necessary governmental permits and approvals to construct the Unit with the exception of ministerial permits, such as a building permit, and notwithstanding any pending legal challenge(s) to one or more permits or approvals.

Neither DOER's regulations nor the Guideline define the terms "ministerial permits" or "non-ministerial permits." Soltage requests that the DOER revise its Draft Guideline so as to construe these terms consistent with the public policy goal of permitting the installation of Solar Carve-out II Generation Units on Eligible Landfills under the SREC II program cap.

The development of Solar Carve-out II Generation Units on Eligible Landfills requires the investment of more resources and involves more extended permitting and approval processes and timelines than those required for the development of Small Generation Units and all other types of Solar Carve-out II Generation Units. The lead time and effort involved with preparing and submitting the landfill post-closure use permit applications are significant, proper applications take months to prepare, and the timeline to receive the post-closure use permit following application adds several more months to the process, even though MassDEP is making its best efforts to process these permits as efficiently and expeditiously as possible.

As DOER may be aware, MassDEP has two separate tracks for review of post-closure use permits, depending on whether the use is located on the final cover of the landfill. Post-closure use permits for uses that are located on final landfill cover undergo what MassDEP calls "administrative completeness review". Post-closure uses that are not located on the former landfill cover are subject to more streamlined review by MassDEP. Such projects are subject to what is known as "presumptive approval" by MassDEP under 310 CMR 19.034 and the permit submittal does not undergo a formal administrative completeness review. 310 CMR 4.10(4)(jj). Per the MassDEP's regulations, the period from submittal of an application to completion of administrative completeness review may be as long as 24 days (310 CMR 4.10(4)(ii)) and the

period after that before granting of a post closure use permit is as much as an additional 72 days.

In order to avoid disrupting the continued development of Solar Carve-out II Generation Units on Eligible Landfills, Soltage proposes that the DOER consider and adopt one of the following three alternative solutions, any one of which Soltage suggests should satisfy both the requirement under 225 CMR 14.05(9)(p)(3) and the requirement under the Draft Guideline at 4)(C)(i)(a)7 (together, we refer to these requirements as the "Permitting Standard"):

Proposal 1. As a first proposal, Soltage suggests that the Draft Guidelines be revised so that a Solar Carve-out II Generation Unit intending to be located on an Eligible Landfill would be determined by DOER to have complied with the Permitting Standard and be permitted to receive an Assurance of Qualification under Market Sector C upon its certifying to the DOER that it has submitted an application for a post-closure use permit to MassDEP that complies with the requirements of the post-closure use regulations.

Proposal 2. As a second proposal, Soltage suggests that the Draft Guidelines be revised so that a Solar Carve-out II Generation Unit intending to be located on an Eligible Landfill would (a) be granted a reservation of capacity and initial Reservation Period under the SREC II Program Cap upon its certifying to the DOER that it has submitted an application for a post-closure use permit to MassDEP that complies with the requirements of the post-closure use regulations and (b) be determined by DOER to have complied with the Permitting Standard and be permitted to receive its Assurance of Qualification under Market Sector C upon its receipt from MassDEP upon submittal to the DOER of evidence that MassDEP has completed its administrative completeness review and found the application to be complete.

Proposal 3. Soltage believes that Proposals 1 and 2 would both advance the Commonwealth's twin policy goals of encouraging productive reuse of landfills and turning such brownfields properties into sources of renewable energy, while ensuring that an Assurance of Qualification under Market Sector C is only provided to projects that are very likely to be implemented. However, if DOER concludes that greater certainty is required, then Soltage would suggest that it may be appropriate for the DOER's issuance of an Assurance of Qualification to closely track the MassDEP approach such that the Draft Guidelines be revised so that a Solar Carve-out II Generation Unit intending to be located on an Eligible Landfill would be determined by the DOER to have met the Permitting Standards and to qualify to receive an Assurance of Qualification (a) if such project qualifies for presumptive approval, simply by certifying to the DOER that it has submitted an application for a post-closure use permit to MassDEP that complies with the requirements of the post-closure use regulations or (b) if such project requires administrative completeness review, upon submittal to the DOER of evidence that MassDEP has completed its administrative completeness review and found the application to be complete.

Discussion

The purpose of requiring evidence of non-ministerial permits in order to obtain an Assurance of Qualification is to ensure that only projects that are likely to be developed and go into operation are eligible.

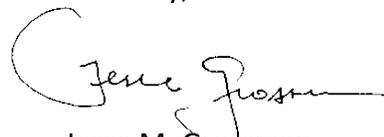
Solar Carve-out II Generation Units on Eligible Landfills are the most complicated type of Solar Carve-out II Generation Unit to permit and develop. They also provide benefits beyond those provided by other types of Solar Carve-out II Generation Units and promote multiple goals of the Commonwealth, including the beneficial redevelopment of landfill properties.

DOER should not revise its Guideline in a way that disadvantages solar projects developed on landfills. The regulations do not require such a result. Once a project developer has submitted complete post closure use permit application to the MassDEP in connection with a solar development project on an Eligible Landfill and MassDEP has completed its administrative completeness review and found the application to be complete, the remaining permit issuance from MassDEP is a ministerial task analogous to the issuance of a building permit. The timing and nature of MassDEP's process leading to issuance of a post-closure use permit after a project has submitted a complete application is also similar to the timing and nature of a local distribution company's process leading to issuance of permission to operate or its authorization to interconnect after a project as achieved mechanical completion. In both cases, the authority reviewing the application performs a significant and important role over which the project has little influence as to timing once the application has been made or the request for a witness test leading to the authorization to interconnect or permission to operate.

Soltage respectfully observes that DOER should recognize that the final issuance of a post-closure use permit becomes ministerial when all necessary steps have been demonstrated. It should not revise its guidelines so as to create a hurdle to the development of landfill solar projects in the Commonwealth out of the often lengthy permitting process associated with redeveloping landfill properties.

Thank you for this opportunity to provide comments regarding the Draft Guideline.

Sincerely,

A handwritten signature in black ink that reads "Jesse Grossman". The signature is written in a cursive style with a large, sweeping initial "J".

Jesse M. Grossman,
CEO, Soltage, LLC