Integrys Solar, LLC

Integrys Solar, LLC
1716 Lawrence Drive
De Pere, WI 54115

Via email to DOER.SREC@state.ma.us

October 7, 2013

Dwayne Breger, Ph.D.
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114

Re: Solar Construction Guideline Comments

Dear Mr. Breger:

Integrys Solar appreciates the opportunity to comment on the Department of Energy Resources (DOER) proposed draft solar construction extension guidelines as provided in regulation at 225 CMR 14.05(4)(k)(4)b.

The Massachusetts solar carve-out program has proved to be highly successful in growing solar development throughout the Commonwealth as was demonstrated by the number of administratively complete Statement of Qualification Applications that had been received through this past June. Integrys Solar appreciates the DOER's efforts and actions that were taken in response to this high degree of success of the solar program through the swift implementation of the Emergency Regulations filed on June 28th.

On September 27, 2013 the DOER posted the draft guideline on construction timeline extensions. As an active investor in solar generating assets in the Commonwealth, Integrys Solar is motivated to ensure that the construction guidelines that are ultimately implemented are written in such a manner as to provide long term owners the comfort that is required to encourage and enable capital to be deployed to help the continued success of solar development in Massachusetts.

Integrys Solar's primary concern with the draft construction guidelines is the uncertainty provided for in Section 4 – Incurred Costs. The draft language states:

> *"Costs will be considered to have been incurred by the developer for actual disbursement of funds and upon entering into a binding legal obligation for goods and services. Costs must be incurred no later than December 31, 2013."*

While it is not entirely clear, it appears as if the DOER's proposal requires the incurred cost to be measured on a cash basis as opposed to an accrual basis due to

the reference to "for actual disbursement of funds". If this is indeed the case, this is a fairly significant deviation from a more common approach whereby the cost incurred standard is based on either a cash or an accrual basis.

For example, under the American Recovery and Reinvestment Act of 2009, the Section 1603 Payments for Specified Energy Property in Lieu of Tax Credits incorporated a 5% Safe Harbor test to allow applicants the ability to demonstrate that construction began prior to December 31, 2011. The US Treasury through its frequently asked questions stated that if 5% or more of the total cost had been incurred prior to the end of 2011, then the applicant meets the 5% safe harbor test. The Treasury went on to further define the "paid or incurred" within the meaning of Treasury Regulations §1.461-1(a)(1) and (2), being "costs are taken into account when a cash-method taxpayers "pay" them and when accrual-method taxpayers "incur" them."[1]

Integrys Solar respectfully asks that the DOER consider further incorporating the following two concepts in Section 4 of the draft guidelines.

1. The incurred cost standard should be expanded to explicitly allow for costs to have been considered incurred on either a cash or accrual basis. Construction contracts are oftentimes structured such that the owner of the generating facility makes progress payments to the contractor, based on pre-negotiated payment terms, as work is completed. Basing the incurred cost standard solely on the actual disbursement of funds does not most accurately represent the total cost incurred for any specific solar project under construction.

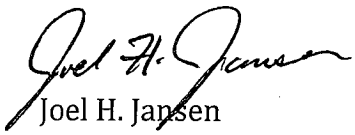
2. The incurred cost standard should also be expanded to allow for all eligible costs specific to an individual solar project that have been incurred to be included in the measurement to verify the 50% cost standard. Construction contracts oftentimes have a few key milestones in which the owner and contractor agree to make milestone payments for work as it is completed. As such, the 50% cost incurred should look at the solar project in totality, not just as incurred by the ultimate owner. For example, under a binding construction contract the contractor will place firm orders for equipment early in the construction process to ensure equipment is delivered in a timely manner. The owner may very well not need to make payment to the contractor for the equipment until after it is installed, but if the contractor has a firm obligation to pay for the equipment that has been ordered, the eligible costs specific to the project should be considered in totality. This could reasonably be accomplished by allowing both the owner and the

[1] US Treasury Section 1603 FAQ Question and Answer 16 available at http://www.treasury.gov/initiatives/recovery/Documents/FAQs%20for%20Begun%20Construction%20web4.pdf

contractor to submit construction timeline extension affidavit's for a single solar project to in total meet the 50% incurred cost standard.

Thank you for your consideration of these comments as we continue to look forward to the continued success of the solar marketplace in the Commonwealth.

Sincerely,



Joel H. Jansen
Vice President