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: Comments on Construction Extension Timeline

Dear Dr. Breger:

Please accept these brief comments on behalf of SunEdison LLC on the recently released Department of Energy Resources (DOER) draft guidelines pertaining to RPS Solar Carve-Out Construction Timeline Extensions.

In general, SunEdison wholeheartedly supports the basic framework proposed by DOER for granting limited SREC I qualification extensions to projects incurring at least 50% of total construction costs prior to the end of Calendar Year 2013. In particular, the approach taken by DOER of establishing a presumptive installed cost for projects of various system sizes, coupled with spot audits, is a very workable framework. This approach will discourage gaming while limiting the administrative burden on both developers and DOER. Further, we believe the presumptive cost figures are appropriately conservative given the purpose of the test to screen out projects that are not demonstrably progressing towards commissioning.

We do, however, seek clarification on certain aspects of the proposed guideline that, as written, may not reflect the DOER intent, do not cover the full range of scenarios, or are otherwise ambiguous. We offer these comments in the spirit of tightening up a sound set of guidelines.

1. **The Guidelines Should Make Provision for Internally Sourced Goods and Services.**

Paragraph 4 of the Guidelines state that "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." It is unclear from these guidelines how DOER would treat intra-company costs,

such as equipment that was manufactured internally for deployment on the subject project. For vertically integrated companies such as SunEdison, that may use its own modules, this becomes an important consideration. We presume that DOER's intent is to treat such equipment on par with externally resourced goods and services, but the guidelines do not clearly convey this intent. Therefore, we would suggest the following amendment to Paragraph 4:

"Goods and services procured internally shall be demonstrated through a Purchase Order or equivalent documentation specifically assigning such goods or services to the Generating Unit."

2. **The Guidelines Should Clarify that Cash Outlays and Contractual Commitments are Separate, Independent and Additive Means of Satisfying the 50% Test.**

As currently written, Paragraph 4 is subject to the interpretation that both cash out the door and contractual obligations are required for any particular line item proffered towards fulfillment of the 50% test. We would think that a binding legal obligation is a sufficient indicator of seriousness and should itself satisfy the cost incurrence standard. Further, a binding legal obligation as an independent basis for satisfying the 50% cost threshold is more consistent with the Section 1603 grant in lieu of safe harbor provisions, from which DOER has adapted these guidelines. As such, Paragraph 4 of the guidelines should be amended as follows:

Costs will be considered to have been incurred by the developer for the total combined costs of: 1) actual disbursement of funds and 2) ~~upon entering into a~~ binding legal obligations for goods and services.

3. **Developers Should be Able to Receive More Timely Notification of Extension.**

DOER has adopted a notification provision, which as SunEdison noted in its initial comments, is critically important documentation for purposes of securing project finance. While we appreciate DOER's inclusion of a notice provision, we do believe that such notice may be more timely offered, thus limiting the period under which developers remain in a state of uncertainty and risk exposure.

Specifically, as currently written, DOER will have 30 days from the submission deadline to issue notification. Given the submission deadline of January 6, 2014, this effectively means that DOER will potentially not issue confirmation of an extension until February 6, 2014. This puts developers in a bit of a quandary as to whether to continue to move forward with construction in the absence of an affirmation from DOER whether the project will qualify, or alternatively, hold off forward progress and risk meeting the 6 month extension window for commissioning the project.

SunEdison believes developers and DOER would be better served by a process which allows developers to submit an application for an extension whenever it becomes apparent that the December 31, 2013 deadline will be missed but that the project has met the 50% cost threshold. Further, the response from DOER should be pegged to the date of submission rather than to the

January 6, 2014 deadline. As such, SunEdison would suggest the following modifications to Paragraph 6:

The Department will notify applicants seeking extensions under Sections IV and V of this Guideline of whether or not they will receive an extension within 30 days of ~~the~~ submission by the applicant. ~~deadline for obtaining each extension.~~ This notification will be provided by the Department in writing.

4. **The Guidelines Should Make Clear that Use of Either the Presumptive or Actual Costs for Calculation of Total Project Costs Should be at the Discretion of the Applicant.**

As previously noted, SunEdison strongly supports the application of a "presumptive" total cost in determining whether the 50% cost threshold has been satisfied.

The rules go on to suggest that *either* the presumptive costs or the actual costs can be used. We also believe this option is appropriate if the developer can provide proof that the actual installed cost is lower than for the prototypical facility, thus making satisfaction of the 50% test easier.

However, what is unclear is whether this election is at the sole discretion of the applicant, or whether DOER can deny an extension on the basis of actual costs that are greater than the presumptive cost based on the detailed cost breakdown reported to DOER on the on the cost breakdown form. We do not believe the latter to be DOER's intent, but the guidelines should clarify this point. Alternatively - and perhaps preferably – we would suggest that the total costs be the lower of these two methods. We would propose amending Paragraph 3 of the guidelines as follows:

> *The total construction costs of a Generation Unit will be the lower of:~~either~~ 1) ~~estimated by multiplying~~the product of its total capacity as measured in direct current multiplied by the corresponding dollar per watt cost as set forth below in Section IV.3(a-d), or 2) by the Authorized Agent of the Generation Unit Owner or Operator providing the Department with actual demonstrated costs in the Detailed Construction Costs Form described in Section IV.5.a of this Guideline and appropriate documentation of such costs.*

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SunEdison appreciates the opportunity to submit these comments. Please do not hesitate to contact us should you have any questions regarding this submission.

Sincerely,

Fred Zalcman
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