

CARBON FINANCE STRATEGIES LLC

Washington DC • Boston MA

BY E

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MA Department of Environmental Resources ("DOER")

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January 29, 2013

RE: COMMENTS – SREC-II Program Proposed Rules (released Jan. 3, 2014)

Gentlemen:

This presents comments of CFS and its MA co-developers Kearsarge Renewables LLC and SunDurance Energy LLC on key aspects of the proposed rule. We appreciate the opportunity for input.

CFS is a solar center of excellence with approximately 40 MW of ground-mounted solar PV facilities under development in Massachusetts and elsewhere. Kearsarge Renewables, an affiliate of Kearsarge Energy, LP (Watertown MA), has more than 60 MW of projects in development, operation or scheduled for commercial operations this year in MA, North Carolina and Hawaii, including New England's largest operating ground-mounted solar PV project to date. SunDurance, a subsidiary of The Conti Group, Inc. (Edison NJ), is a solar PV developer and turnkey EPC provider with numerous PV projects completed or under development on both coasts.

We support the proposed rule's intent to better maintain market equilibrium, reduce SREC volatility, and smooth development bumps within a single SREC market to encourage installation of about 1000 MW of solar PV beyond the "oversubscribed" SREC-I program.

However, consistent with prior communications, we have certain concerns about the Managed Growth Sector's scope and implementation, plus some suggestions for program improvement that mostly are in the nature of requests for clarification.

We start below with a narrow matter, then move to larger ones.

- **Market Sector C (landfills and brownfields, etc. – SREC-II Factor 0.8) should expressly include the areas over wellheads in municipal water districts**

DOER apparently has declined to adopt (though it has not expressly responded to) our suggestions that virtual-net-metered projects should “count” as having 67% on-site use under Market Sector B, *at least where they are net-metered under the public cap*. Those suggestions aimed to preserve PV benefits for hard-pressed municipalities that otherwise would seem to be eroded or subjected to significant further development uncertainty, if such projects fell by default into the Managed Growth Sector.

Because those suggestions were founded on what we believe to be beneficial public policy, we incorporate them without repeating them. Our point here is that DOER could provide municipalities modest similar benefits at the margin, without material risk to SREC market equilibrium.

Wellhead areas in municipal water districts closely resemble landfills and brownfields in numerous respects. For example, they typically cannot accommodate higher-value (or any) uses than solar PV, and costs of permitting, installing and maintaining PV at them typically are greater than for installations on open land. Allowing such installations to qualify for a 0.8 Factor could help make such projects financeable. It also would help municipalities benefit from (for example) direct-purchased, reliable, non-emitting solar power that technically may not be used “on site.”

- **Whatever projects’ Market Sector, the final rule should expressly allow the balance of their generation which does not qualify for SREC-IIs to generate Class I RECs, rather than be totally retired**

The proposed rules, like the SREC-I program, expressly contemplate that otherwise-qualified SREC generation (as well as excess generation from projects over 6 MWp in capacity on a “single parcel of land”) in general will translate seamlessly into Class I MA RECs – not disappear completely.

We see no reason why (for example) a Unit under 500 kWp capacity in Market Sector C -- let alone a Managed Growth Unit -- should be penalized by disappearing SRECs, instead of being able to capture at least the value of a supplemental Class I REC revenue stream to facilitate financing and reduce potential development uncertainties. This alternative approach would appear to pose no cognizable threat to how DOER proposes to manage the SREC-II market. But it could go a significant way to help mitigate potential programmatic impacts. For example, a project that is assured of generating Class I RECs while it awaits an SREC-II block allocation may find it easier to manage that gap.

- **DOER should clarify ASAP how “first come first served” will work when a Managed Growth project with a complete SQ does not get a block allocation for the first year in which it projected commercial operation**

The promised Assurance Guideline apparently is planned to address this issue in detail. However, we want to underscore the importance of prompt resolution on which project proponents and their financiers can rely.

The reliance point tells us that *as a procedural matter*, whenever the Guideline is released and finalized, as much of it as reasonable should be reflected in a final SREC-II rule – perhaps as a statement of operating principles, if no more is feasible -- for regulatory certainty purposes.

Substantively, we understand “first come” is intended to mean that a Managed Growth project which receives an SQ but does not get an initial-year block allocation *will be first-in-line* (depending only on its SQ date) *for an allocation under the next available block*, and that its SQ or a subsequent DOER letter or notice will confirm that “queue position.” This seems the only reasonable way that DOER can achieve its goal of providing Managed Growth projects sufficient planning and financing certainty. **We urge DOER to confirm it in the final rule.**

- **DOER promptly should clarify when the 40 quarters of SREC-II eligibility guaranteed to qualifying Managed Growth projects will start to run**

We understand that under the proposed rules, once such a project receives an SQ, it will be assured that 40 quarters of its generation X 70% will generate SREC-IIs. However, it remains unclear to us whether the 40 quarters start to run *when that project commences operation*, or *in the first quarter after it receives its SQ regardless of whether it commences operation a year or more later*. Informal DOER explanations on this point appear inconsistent with each other.

Given other uncertainties in the block allocation process (see, for example, our next point below), **we urge DOER to make clear that the 40 SREC-II quarters will run from project COD and will not be “eroded” by an earlier start date.** While we appreciate the need to manage SREC-II market equilibrium, there already will be substantial value erosion from the Market Factors, reductions in the Auction Floor price, and reductions in the SACPs.

- **DOER should avoid (and disavow) any Catch-22 in which Managed Growth projects receiving sufficient notice of their downstream block allocation seek to manage the gap between expected COD and receipt of that allocation by deferring project construction or completion**

We understand DOER may believe that projects with sufficient advance notice of when they will receive a block allocation should be able to “manage the gap” between when they commence operation and when the allocation will be available, to avoid potentially operating for a year or more without any SREC-IIs.

We have serious concerns that “managing the gap” by deferring COD may not be as easy or risk-free as DOER appears to assume.

Among other things, under the proposed rules receipt of an SQ requires substantial investment as a threshold matter – as drafted, those rules appear to require that SQ-eligible projects in effect *already be interconnected* (i.e., completed) or that they have in hand site control, *and* an executed Interconnection Service Agreement (“ISA”), *and* all necessary permits or approvals to start construction. This typically means that

substantial project engineering/design work must already have been done, that local utility System Impact and System Upgrade studies must have been done and paid for, and that often-iterative local planning board, wetlands, and other permit notices, hearings, and Selectman approvals must have been completed. It also may mean that to assure timely project financing, EPC contracts with fixed payment milestones must have been signed and certain utility-side or other equipment must have been paid for in advance to meet project delivery schedules.

These threshold requirements often have their own self-executing deadlines. For example, ISAs and local permits typically expire within a year or two of being granted, and may be vitiated sooner if not diligently pursued. Moreover, SQs themselves typically expire by dates certain if a project is not completed before then. While force majeure or other exemptions theoretically may be available to mitigate these risks, financiers often flee such situations.

Thus a project which defers completion to assure it will have “bankable” SREC-IIs when it starts operating may put at risk the viability of its ISA, its permits, or its financing. Most pertinently, it may put at risk the viability of its SQ.

We accordingly **urge that at minimum DOER expressly state that a Managed growth project’s SQ will be good for as long as it takes to receive a block allocation and thereafter reasonably proceed to achieve COD.** This approach would help avoid situations in which SREC-II project proponents are caught between a rock and multiple hard places.

Thanks as always for your attention to these comments.

Cordially,

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Cc (e): Andrew Bernstein, KR; Todd Martin, SunDurance