

Via email

January 27, 2014

Mark D. Sylvia
Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street
Suite 1020
Boston, MA 02114

Dear Commissioner Sylvia:

We are writing in response to the DOER's recent promulgation of draft changes to 225 CMR 14.00 Renewable Energy Portfolio Standard – Class I.

Background:

One of the goals of Governor Patrick and the DOER with respect to solar development in Massachusetts is to encourage the development of solar projects on a variety of properties and by a variety of property owners, including non-profits. In its presentation on June 7, 2013, the DOER noted that there was diversity among homeowners, roof mounted projects, and ground mounted projects, and in its presentation on December 13, 2013, the DOER further noted that one of its SREC-II Policy Objectives was to “address financing barriers limiting residential and non-profit direct ownership, without compromising third-party ownership model.”

Many non-profits / religious entities' purposes are fundamentally aligned with clean and renewable energy and they are natural hosts for solar facilities given their educational or charitable missions. However, while non-profits provide about 15% of the Commonwealth's employment, less than 3% of solar projects to date have been on property of non-profit or religious entities¹. In addition, the DOER's Task 3a Report on September 30, 2013 noted that only 3% of solar projects to date are owned by Public/Non-Profit entities. These data were for projects in the SREC-I program, which was more financially advantageous to developers than the proposed SREC-II program, evidencing that engagement of the non-profits, which are obvious mission partners in renewable energy development, has been difficult.

One of the likely reasons behind these data is that, as tax-exempt entities, non-profit entities cannot directly utilize the important tax benefits that greatly impact the cost of solar projects. As a result, they must accept far lower (or uneconomic) returns by foregoing this large benefit, or enter into complicated arrangements with an entity that can utilize the tax benefits, creating significant additional costs. In addition to adding significant costs, these arrangements involve long lead times to find a partner, more transaction costs and risks, and generally significantly more complexity than a traditional commercial project. Taxable entities do not face the added complexity of needing a tax partner, and, while they may choose to enter into such arrangements, they also have the option of utilizing the tax benefits themselves and thereby reducing overall costs.

In addition, for many non-profits, engaging in commercial ventures, such as owning and deriving revenue from a solar facility, can present complex questions involving their tax filings, or even their status. Also, many non-profits have constraints when a project is beyond the scope of its core mission. As such, it is likely that the ownership model will not make fiscal or even organization sense. Nevertheless, many non-profits still desire to support renewable energy projects and participate in Governor Patrick's “clean energy revolution.”

As a result of the factors mentioned above, direct ownership adds too much cost to a project or might otherwise interfere with a non-profit's mission. Utilization of a third party ownership model will assist these organizations

¹ Source: DOER's RPS Solar Carve-Out Qualified Renewable Generation Units updated August 21, 2013.

in achieving their goal to engage in renewable energy development, but even with this approach, non-profits still face unique challenges that place them in a different fiscal position than commercial projects.

While the DOER cannot change the tax code and how its benefits flow, it should be interested in supporting ways for non-profit entities to support renewable energy development in greater numbers that reflect their prominent role in the Commonwealth's economy. Many non-profits, including many religious and educational institutions that have available land for project development, have expressed strong interest in finding ways to promote renewable energy, but a requirement to compete for spots in the "Managed Growth" category will continue to stunt increased participation by the non-profit sector. The DOER should be finding ways to facilitate the logical nexus between supporting the non-profit sector generally, and an entity's interest in supporting renewable energy development. Forcing such projects into open competition with well-capitalized commercial ventures in the managed growth sector is unlikely to see increased numbers in non-profit participation in renewables.

Taking non-profit projects out of the managed growth sector supports a public policy goal to assist these entities that wish to participate as part of a shared commitment to combating climate change. It also provides needed flexibility for such project development, without the pressure of competing with large commercial projects for capacity allotments. Since non-profits' fiscal and mission situations are more complex, even in the third party ownership model, competing on a first come first served basis cuts directly against the goal of increasing non-profit participation.

In addition to supporting non-profits that have a fundamental desire to do their part in addressing climate change, the third party ownership model can provide ways to control costs or provide additional revenue for non-profits, freeing up limited funds to help non-profits meet their programmatic goals and help retain jobs for the 15 percent of the Commonwealth's workforce that non-profits employ.

Accommodation would be similar to that provided to other categories that face hurdles:

The DOER's design of the SREC-II program has attempted to encourage development of solar facilities on favored property such as small systems, Canopy Generation Units, Emergency Power Generation Units, or Community Shared Solar Generation Units, which face hurdles similar to those faced by non-profits. In your presentation on December 13, 2013, you noted that one of the DOER's Policy Objectives was to "address financing barriers limiting residential and non-profit direct ownership, without compromising third-party ownership model." This goal is equally applicable to residential projects and non-profit/religious entities, because of their unique hurdles and tax status.

Similar to the DOER's treatment of residential systems, the DOER could help encourage development of facilities on property of non-profit/religious entities by pulling projects on their property out of the "Managed Growth" category and giving them a preset SREC factor equal to residential projects; this would encourage development on their property by reducing uncertainty so they can better address their unique financing hurdles, and by accommodating the extra hurdles and costs that have constrained development so far with a higher SREC factor without reducing the incentives relative to other encouraged groups.

Suggested solution:

In order to address the additional burdens that non-profit entities face and promote positive public policy by engaging such entities in renewable energy development, we respectfully suggest that the DOER make the following modifications to 225 CMR 14.00 Renewable Energy Portfolio Standard – Class I:

14.02: Definitions:

Non-Profit Generation Unit. A solar photovoltaic Generation Unit that provides net metering credits to one or more utility accounts, located on a parcel of land or building owned as of January 1, 2014 by a not-for-profit organization whose purposes are among those listed in Section 501(c)(3) of the Internal Revenue Code, and who is incorporated under state law as a not-for-profit corporation. For any Non-Profit Property for which a Solar Carve-Out II Generation Unit has submitted a Statement of Qualification Application, if its current boundaries are the result of a transfer of ownership recorded after January 1, 2014, the Owner or Operator shall demonstrate to the Department that the transfer was not for the purpose of obtaining eligibility as a Non-Profit Property. If the Owner or Operator fails to make such a showing to the Department, the ownership status of the property as of January 1, 2014 shall apply.

14.05(9)(I)3.:

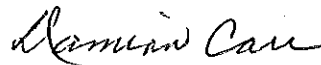
3. An SREC Factor under 225 CMR 14.05(9)(I)1. shall apply to Generation Units installed in the following market sectors:

a. Market Sector A: any Generation Unit with a capacity equal to or less than 25 kW, Solar Parking Canopy Generation Unit, Emergency Power Generation Unit, Community Shared Solar Generation Unit, or Non-Profit Generation Unit. For the purposes of Market Sector A, a Unit's capacity shall be measured as the total nameplate capacity of the qualified Solar Carve-Out II Renewable Generation Units on a single parcel of land or on a roof of a single building, whichever is less.

This would provide that projects on property owned by non-profit entities will not be included in the Managed Growth Sector and will enjoy the same right to SREC-IIs as projects on residential properties. Similar to the single parcel requirement, this suggestion is crafted to exclude projects that might try to "game" the system by focusing on the original landowner as of a prior date.

Thank you for your consideration.

Best regards,



Fr. Damian Carr
Abbot

Cc: Senator Stephen M. Brewer
Representative Anne Gobi
Fr. Robert Morhous
Fr. Vincent Rogers