NRG

NRG Energy, Inc.
211 Carnegie Center
Princeton, NJ 08540

Jonathan J. Milley
Vice President, Northeast
Jonathan.Milley@nrgenergy.com
Phone: 609.524.4680
Fax: 609.524.4941

9 September 2009

Susan Leavitt,
Susan.Leavitt@state.ma.us
Executive Assistant
Massachusetts Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114
(Via electronic mail)

NRG Energy, Inc. Comments on Solar RPS Carve-Out Straw Proposal

Dear Ms. Leavitt:

NRG Energy Inc. ("NRG") appreciates the opportunity to submit comments regarding the Department of Energy Resources' ("DOER") Solar RPS Carve-Out Straw Proposal ("Straw Proposal"). Following its review of stakeholder comments on the Straw Proposal, DOER plans to offer draft regulations for additional comments in October, 2009 ("Draft Regulations").

NRG is an independent power producer with numerous renewable energy facilities operating and/or under development throughout the country and more specifically, is the owner of Somerset Station in Somerset, Massachusetts that NRG is currently redeveloping with a renewable component. NRG is interested in pursuing large scale, e.g., 10 MW and larger solar projects in Massachusetts. As a developer of renewable projects, NRG believes that the implementation of a robust S-REC plan will serve to expand market growth of solar development beyond levels that would otherwise result from existing solar programs in the Commonwealth.

In its Straw Proposal, DOER recognizes that the S-REC regulations should be designed, among other things, to sustain long term growth, encourage development across multiple sectors and generator sizes (residential, commercial, and utility scale), reduce subsidies and minimize ratepayer impacts. To successfully reach these goals, the Draft Regulations should include a strong price signal with a robust solar energy carve-out (to stimulate demand and sustain long term growth), a structure that encourages solar project development and provides a reasonable opportunity to mitigate the risks. Accordingly, NRG submits these comments in support of DOER's efforts to incentivize solar project development, and encourages DOER to issue Draft Regulations that (a) initiate and maintain a competitive S-REC price, (b) increase the minimum percentage of required solar generation, particularly in the near term, and (c) encourage utility-scale solar power development by conducting an RFP process that requires distribution utilities to enter into contracts with solar power generators with terms of at least 15 years.

The S-REC Proposal Should Be Designed to Stimulate Demand for Solar Development

The Draft Regulations should include an S-REC structure that is competitive on a national level and require that solar generation comprise a robust percentage of the RPS Standard to incentivize solar power development. The maximum price signals, i.e., ACP Rates, should be competitive with other jurisdictions such as New Jersey, Maryland and Pennsylvania. In addition, the Draft Regulations should include a mechanism that allows the ACP Rates to be flexible enough to maintain such a competitive edge in the solar development marketplace. Thus, while NRG supports DOER's apparent intention to set the ACP rate levels in line with other jurisdictions to encourage development, ultimately the Draft Regulations must include a mechanism to maintain such competitive pricing of S-RECs. In this regard, an explicit adjustment or re-opener mechanism should be developed as part of the Draft Regulations.

Moreover, the amount of the carve out, i.e., the percentage of the RPS Minimum Standard that must be met with solar PV energy, should have sufficient bandwidth to support all generator sizes (residential, commercial and utility scale), particularly in the early years. In this regard, the Straw Proposal design, which seems to recognize and incentivize strong demand after 2012 (Straw Proposal at 9), with a significant increase in the Solar Minimum Standard at that time, should be modified in Draft Regulations to provide more aggressive growth targets in the early years. As DOER is aware, incentives in the federal American Recovery and Reinvestment Act ("ARRA") are designed to encourage shovel-ready projects in the near term. The Draft Regulations should therefore reinforce the ARRA incentives and provide higher minimum percentages in 2010 – 2011 to ensure that the Commonwealth can benefit from these early projects. Accordingly, the near term Solar RPS Minimum Standard should be set higher than the Straw Proposal's 0.007 and 0.009 minimum percentages in 2010 and 2011 to encourage early development and better align the S-REC program with ARRA.

The S-REC Proposal Must Focus on All Solar Development Opportunities, Including Utility Scale Projects

As part of the Straw Proposal, DOER appropriately recognizes that in order to reach the Commonwealth's goal of 250 MW of solar capacity by 2017, the S-REC proposal must encourage growth among all sectors and generator sizes, including utility scale projects. As a general matter, larger projects will provide power at a lower cost than smaller projects due to their access to economies of scale in procurement, construction and operation, as well as more efficient financing options.

Consequently, in the Draft Regulations, DOER should define the 2 MW power production requirement, as set forth in the Green Communities Act, Section 32, 11F(g), to allow for utility scale development on large sites such that the cumulative development on a site would more fully capture larger scale efficiencies, economies and financeability. We suggest that the Draft Regulations contemplate the co-location of multiple projects on one or more sites owned by a single developer which may be, in aggregate, larger than 2 MWs and be capable of being bundled into a single portfolio of projects with a single long-term contract, unitary financing and common operation and maintenance.

<u>The S-REC Program Must Recognize the Challenges of Solar Project Development</u>

NRG has extensive experience in independent power project development, both conventional and renewable, and appreciates the significant financial, regulatory, construction and operational challenges associated with power generation development. As part of the successful development of any solar project, clearly the availability of project financing is a key element. The Draft Regulations should be designed to facilitate financing of projects and consider challenges associated with debt and equity financing. In this regard, as considered below, long term contracts and a transparent RFP process are important elements.

<u>Contract Terms</u>: A key component of the process is a financeable, long term power supply contract with a utility. Long term contracts are defined in the Green Communities Act as having a term of 10-15 years The DOER is presently considering, in a related docket, distribution utilities' draft proposals to procure renewable energy from developers in a long term contract solicitation process. In the Straw Proposal, DOER seeks comments regarding its plan to securitize S-REC revenues through long term contracts with utilities with a proposed term of 10 years. The contract duration in the Draft Regulations should extend beyond the 10 year term reflected in the Straw Proposal – terms of 15 years or more should be allowed to encourage lower prices, price stability and the development of larger scale projects.

By extending the time to repay capital cost investment, longer contract terms lower power prices to consumers and provide security to banks, equity investors and other sources of development funds. Thus, longer contract terms will enable longer-term financing, which will generally lower the effective price of energy and S-RECs from the project, as well as providing additional price stability for consumers. The useful life of a given solar project is estimated to be greater than 25 years and therefore contract durations should not be unduly restricted. Accordingly, as a mechanism to lower project financing costs and enhance the benefits to customers in the Commonwealth, the Draft Regulations should provide for a contract term with distribution utilities of at least 15 years.

If it is to be truly effective in promoting the development of solar projects, the S-REC program must be considered in connection with a viable long term power contract requirement that properly allocates development risks among the parties. In this regard, as part of its evaluation of S-RECs and long term power contracts, it is critically important that DOER recognize that long term power contracts for solar development should include fixed annual payments (indexed appropriately to inflation) sufficient to allow the developer to incur and service fixed obligations, such as debt service requirements (including interest, amortization, maintenance of reserves and debt service coverage ratios), return requirements and fixed operating costs. Contracts structured with compensation based on the number of S-RECs produced by the facility will likely be insufficient to support financeable projects. Additionally, variable payments should be incorporated in the contracts both to cover variable cost components and to incentivize good performance provided that these performance incentives be based on facility availability or other objective measures of developer performance. Variable payments should not be tied to market energy prices or energy output from the facility because both of these measures relate to forces – the market and the weather – that are beyond the control of the developer. If the long term power contracts do not provide this level of certainty, it will be exceedingly difficult and expensive to finance the projects, even assuming a S-REC program, thereby increasing the costs to ratepayers and decreasing the effectiveness of the program overall.

RFP Process: NRG submits that a competitive procurement process incorporating, as noted above, long term contracts with utilities is the best option to ensure that the most cost-effective and highest-quality projects are obtained and that they will actually get built. The procurement process rules should be transparent and flexible with a solicitation that clearly outlines the amount of power required and the criteria for decision-making. The utilities could administer the process directly, with appropriate oversight by the Department of Public Utilities and appropriate affiliate self-dealing protections, or a central procurement entity could administer a competitive market driven process. Moreover, the process should allow for considerations of factors beyond price such as the term of contract, financial viability, development experience and risks in clearly defined and evenly applied ways.

In conclusion, NRG supports DOER's goal to create a significant incentive for the development of solar facilities in the Commonwealth, subject to the comments noted herein.

Thank you for the opportunity to submit these comments. Please contact me if you have any questions or comments.

Respectfully submitted

J. J. Milley

Jonathan Milley
Vice President, Northeast
NRG Energy, Inc.