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

August 1, 2013

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

Re: Solar Carve-Out Emergency Rules

Dear Mr. Breger:

SunEdison appreciates the opportunity to comment on the Department of Energy and Natural Resources (DOER) proposed emergency rules governing the Solar Carve-Out Program.

In general, SunEdison supports the prompt and permanent adoption of the emergency rules governing the wind-down of the Phase I Solar Carve-Out Program. The rules strike a fair balance by giving advanced stage projects a reasonable opportunity to achieve commercial operation to secure their Phase I eligibility while deferring less mature projects to a subsequent phase of this program. While any transitional rule will inevitably create winners and losers, DOER has done an admirable job in equitably sorting through the competing interests and rewarding those projects most shovel-ready.

Given the aggressive timelines for Phase I qualified projects to retain Solar Carve Out program eligibility, SunEdison supports DOER's adoption of a "50% expenditure test". Under this test, a developer must have expended a least 50% of the total project cost by the end of calendar year 2013 in order to secure an additional 6 months (i.e., until June 30, 2013) to achieve commercial operation. This allowance will provide a well-defined and limited opportunity for projects that are both real and moving forward to perfect their program eligibility.

Further, SunEdison applauds the DOER for its commitment to providing the industry with guidance on how this safe harbor test will be applied. It is absolutely essential - from both the standpoint of program participants and administrators - that the operational rules be clear, simple and objective. This will minimize compliance costs, ease DOER's administrative burden, allow differentiation of those

projects that are in advanced-stage development from those that are more speculative, and promote even-handed application and predictable outcomes.

To that end, while we believe DOER should look to the U.S. Treasury Department's Section 1603 5% safe harbor provisions as a potential starting point, we do not believe these guidelines should be adopted wholesale by DOER for the instant purpose. Simply put, we are concerned that DOER may be inviting an administrative morass given the complex thicket of accounting rules and rigorous enforcement mechanisms that have developed around the federal safe harbor provisions. Replication of the Treasury's guidelines, while intuitively appealing, will be burdensome on the developer community and challenge DOER's own limited resources to administer.

Specifically, the Treasury Department relies on certified independent audit analysis to validate that the 5% threshold has been met for federal tax purposes. While an independent audit will substantiate the costs incurred by the developer relative to the total cost of construction based on accepted accounting principles, it is a very detailed – and expensive – process and may be overkill given DOER's limited objective here.

On the other hand, we would venture to say that DOER will not want to put itself in the position of having to sift through countless contracts, purchase orders, invoices and the like to tally up a developer's bona fide costs. This creates the potential for ad hoc application and uncertainty. It may also invite developer gaming through minimization of total project cost or inflation of the value of costs already incurred.

Given this Hobson's choice, we encourage DOER to opt for a simpler and more streamlined compliance and enforcement mechanism comprised of the following elements:

- Developers would self-certify that they have met the 50% threshold. The certification would be backed by an affidavit signed by an officer of the solar development company under penalty of perjury, and supported with necessary documentation (see below).
- To minimize the ambiguity (and administrative burden) surrounding the quantification of total project costs, DOER would develop default costs for prototypical installations (e.g., residential and small commercial rooftop systems, parking lot canopies, large ground mounted systems, etc.). For example, DOER would set a presumptive total cost of $2.25/watt for large commercial ground mount systems. Developers would have the option of using these default values, or actual demonstrated project costs, within the certification process.
- DOER would develop a standardized one-page certification form eliciting information regarding major cost components. Developers would submit this certification form along with proof of cost incurrence such as executed contracts, purchase orders or invoices.

Whether DOER opts for a developer self-certification process as suggested here or a detailed agency/audited review, certain principles should pertain. These may or may not correspond strictly to the Treasury 1603 provisions, which depend upon whether the taxpayer is a "cash method" or "accrual

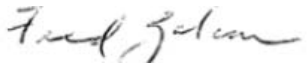
method" taxpayer. Again, SunEdison recommends that DOER's guidelines bias towards simplicity and liberality; namely:

- Total project cost should reflect the actual cost of construction rather than fair market value of the project from a finance valuation perspective. This would exclude profi*t* margins, which are inherently subjective and may not be known at the time the 50% determination is made.
- Cost incurrence should be demonstrated by the developer entering into a binding legal obligation for goods or services, rather than a requirement for actual cash payment or delivery by a date certain.
- The special circumstances of vertically-integrated solar companies should be addressed within the guidelines. For example, modules or other equipment sourced internally should "count" towards the expenditure test. Intra-company purchase orders can be provided to show that such goods have been allocated to the project in question. Further, internally sourced goods should be allowed to carry a margin to put such equipment on a level playing field with equipment that may be bought outside the company.

Lastly, SunEdison strongly encourages DOER to issue a short, standard letter to the applicant affirming that the project qualifies for the 6-month extension. Construction financing hinges on the project's status as qualified for SREC generation and financing parties will want some written assurance from DOER that the project in fact meets the DOER's 50% expenditure test.

Thank you for your consideration of these comments and your continued efforts in building a vibrant and self-sustaining solar marketplace in the Commonwealth.

Sincerely,



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