June 7, 2019

Judith Judson, Commissioner
Massachusetts Department of Energy Resources
100 Cambridge Street, 10th floor
Boston, MA 02116

Re: Renewable Portfolio Standard Class I and II Rulemaking on 225 CMR 14.00 and 15.00

Dear Commissioner Judson:

NECEC greatly appreciates the opportunity to provide feedback to the Department of Energy Resources (DOER) on the proposed updates to the Renewable Portfolio Standard (RPS) Class I and Class II regulations, filed on April 5, 2019, amending portions of 225 CMR 14: Renewable Energy Portfolio Standard – Class I ("RPS Class I") and 225 CMR 15: Renewable Energy Portfolio Standard – Class II ("RPS Class II"). We appreciate the effort that has gone into developing and refining these draft regulations to implement the changes enacted in last year's legislation, and we are glad to provide feedback and recommendations from the clean energy business perspective as DOER moves through the next stages of the rulemaking process.

NECEC is a clean energy business, policy, and innovation organization whose mission is to create a world-class clean energy hub in the Northeast, delivering global impact with economic, energy and environmental solutions. NECEC is the only organization in the Northeast that covers all of the clean energy market segments, representing the business perspectives of investors and clean energy companies across every stage of development. NECEC members span the broad spectrum of the clean energy industry, including energy efficiency, wind, solar, energy storage, microgrids, fuel cells, and advanced and "smart" technologies. Many of our members are operating and investing in Massachusetts, and more are interested in doing so.

NECEC is pleased to present the following recommendations and comments to the Department for consideration.

I. Proposed changes to SREC I eligibility, 225 C.M.R. 14.00

NECEC writes to express our strong concern with the proposal to limit SREC I eligibility for existing SREC I solar projects, as echoed by numerous other solar industry participants and groups through individual and sign-on comments. Though DOER has characterized its proposed changes to 225 C.M.R. 14.00 as a clarification, the changes represent a substantive modification of and deviation from the SREC I program rules relied on by market participants since program inception. If enacted, these changes will harm many SREC I solar system customers and owners and erode investor and lender confidence in the Massachusetts solar market, causing a considerable chilling effect to the detriment of future market maturation.

Simply put, the SREC I regulations currently allow solar projects to generate SRECs for the entirety of the SREC I program. DOER's proposal would shorten this SREC eligibility period and only permit solar projects to generate SRECs for the first 40 quarters in which they are eligible. To effect this change, DOER has proposed amendments to 225 C.M.R. 14.00, including a new definition for "Opt-In Term" and new language that states a solar project can no longer generate SRECs after the end of the Opt-in Term. See 225 C.M.R. 14.02 and 225 C.M.R. 14.06(3)(f). We

concur with other stakeholders that limiting SREC I eligibility in this manner is a material and retroactive change that runs counter to the original intent of the SREC I program.

A plain reading of the existing rules in 225 C.M.R. 14.00 unambiguously demonstrates that solar projects retain their SREC I eligibility through the end of the program. See 225 C.M.R. 14.07. The regulations also already clearly and exclusively define "Opt-in Term" in relation to Solar Credit Clearinghouse Auction eligibility rather than overall SREC I program eligibility. See 225 C.M.R. 14.06(3)(d). This interpretation of the regulations is long-standing and has been confirmed by DOER on several occasions, as evidenced in multiple explanatory materials and presentations produced by DOER staff.[1]

Placing greater time limits on SREC I eligibility in a retroactive manner would be detrimental to the many homeowners, businesses, municipalities, and others who helped launch the Commonwealth's solar industry. In making their investment decisions, these parties relied on the SREC I's regulatory provisions, including that solar projects would generate SRECs through the end of the program. Changing the rules mid-program would not only violate the legitimate expectations of SREC I solar project owners, it would undermine trust in the Massachusetts solar market and potentially impact the ability to develop and finance new solar projects in what is an already challenging environment. While we understand the Department's desire to realize ratepayer savings whenever available, we contend that the regulatory uncertainty a change of this nature would create would do much more to harm lender confidence and ease of financing, causing project cost increases that will likely outweigh and exceed any expected savings.

For these reasons, we strongly recommend that DOER's rescind the proposal and preserve the existing rules for SREC I eligibility, ensuring that all SREC I solar projects retain their eligibility through the end of the program as intended.

II. Proposed changes to import delivery and capacity obligation requirements in the Class I and Class II regulations, at 225 CMR 14.05(5) and 225 CMR 14.05(1)(e), and 225 CMR 15.05(3)(a) and 225 CMR 15.05(1)(e)

A second set of DOER proposals would eliminate key RPS delivery and capacity commitment provisions in the Class I and II regulations at 225 CMR 14.05(5), 14.05(1)(e), 225 CMR 15.05(3)(a), and 225 CMR 15.05(1)(e). By deleting existing delivery provisions, the Massachusetts RPS rules would no longer include the long-established requirements for verifying attributes of imported energy, including (i) unit-specific import contracts ("Legal Obligations"), (ii) associated transmission rights for delivery of the Unit's energy to ISO-NE system, (iii) actual settlement of import transactions in the ISO-NE system, (iv) hourly verification of production, and (v) the resulting NERC tags confirming the import transaction. Further, not all importing pools have yet implemented any equivalent attribute tracking system to assure comparable data quality, which was a primary reason for the Commonwealth's existing RPS delivery and verification provisions. NECEC is concerned by the potential removal of such requirements set by the Commonwealth to support its renewable policies.

As the Department is undoubtedly aware, the current Massachusetts RPS delivery rules were developed concurrently with the delivery rules of the NEPOOL Generation Information System

[1] See also, Attachment 1 - "Regulation and Guidance on SREC I Creation and Opt-In" – submitted by other solar industry stakeholders as part of the present rulemaking. This document cites five communications, FAQ answers, and other materials issued by the Department between 2009 and 2014, each supporting and confirming the original 40-quarter understanding.

("NEPOOL-GIS") attribute certificate tracking system, which itself was developed by the unanimous consensus of a multi-party regional working group including DOER and other state agencies. Most importantly, the proposal would deviate from these efforts by remove long-standing provisions of the current RPS Rules that (i) assure that attributes of imported energy have the same degree of verification as intra-pool resources, and (ii) require the commitment of capacity to ISO-NE, as required by Massachusetts legislation.[2] Furthermore, the current NEPOOL-GIS rules do not include the same provisions for imported attribute verification as the RPS Rules, including the requirement of unit-specific "Legal Obligations" and the hourly verification of production. NEPOOL-GIS Rules should be an instrument to implement energy polices set by the Commonwealth and should not be allowed to define or undermine those policies by default.

DOER's proposals to eliminate from the Class I and II regulations at 225 CMR 14.05(1)(e) and 225 CMR 15.05(1)(e) the requirement that generation capacity of non-intermittent sources be committed to the ISO-NE Control Area appear to conflict with statutory requirements. In our interpretation, those proposed changes would violate the Green Communities Act (GCA) requirement that non-intermittent imports must commit capacity to ISO-NE, as also required by Massachusetts Department of Environmental Protection (MassDEP) air regulations. The DOER proposal would violate the GCA[3] by eliminating the requirement of the RPS rules that a non-intermittent importing unit can be RPS eligible only if it "commits the renewable generating source as a committed capacity resource" to ISO-NE. The prospect of multiple eligibility and accounting standards for the same transactions within the Massachusetts regulatory system carries a risk of frustrating attempts to align state policy and causing confusion and conflict within the market.

In light of last year's enactment of an RPS increase, our concern with the proposed changes is intensified by the potential impacts on the Commonwealth's RPS markets. By relaxing the rules on entry, the DOER proposal could increase the supply of renewable attributes beyond those already expected under state policies to an extent that exacerbates the recent drop in the value of Massachusetts Renewable Energy Certificates (RECs). Because of this risk, DOER should not enact any such eligibility changes without first conducting a careful evaluation of potential effects upon REC market equilibrium and effects to the in-state and in-region renewable market. We are also concerned that the proposed elimination of the current delivery verification rules of the RPS could also open the door to market abuses (e.g., double counting, green-washing, etc.) that would further destabilize the RPS market, and that those and the removal of capacity commitment obligations conflict with statutory requirements.

In conclusion, the proposal to remove the long-standing rules for documenting and verifying compliance with the eligibility requirements of the Massachusetts RPS should not move forward. In lieu of the current delivery requirements set by the Commonwealth to support its own renewable policies, the proposed changes would effectively defer judgment and discretion regarding import verification to NEPOOL, which could at any time revise the NEPOOL-GIS Rules. The proposal would run counter to the plain legislative requirements of the GCA regarding capacity commitment and, further, the proposal could destabilize the REC market to the detriment of the local renewable energy market and future Administration-supported policy and market development efforts. At a minimum, the DOER should not relax any RPS rules

[2] See GCA Section 105(c), https://malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter169
[3] See GCA Section 105(c), https://malegislature.gov/Laws/SessionLaws/Acts/2008/Chapter169. (Per GCA Section 105(g), the foregoing condition (3) regarding commitment of capacity does not apply to intermittent generators.)

absent a thorough market analysis of the potential adverse impacts and absent the clear legislative authority to do so.

III. Conclusion

Thank you for the opportunity to submit feedback and for the Department's thoughtful consideration of these comments. Please let us know if we can be of any assistance to the Department during the remainder of the rulemaking process.

Sincerely,

Peter Rothstein
President

Jeremy McDiarmid
VP of Policy & Government Affairs

cc: Michael Judge, Director of Renewable and Alternative Energy Division, DOER
Jamie Dickerson, Senior Policy Manager, NECEC