



via email: DOER.SREC@state.ma.us

May 27, 2016

MA Department of Energy Resources
100 Cambridge Street, Suite 1020
Boston, MA 02114
Attention: Kaitlin Kelly

Re: RPS Class I Emergency Regulation (225 CMR 14.00)
Stakeholder Comments

Dear Commissioner Judson and DOER staff,

Thank you for the opportunity to comment on the referenced emergency regulations.

American Capital Energy Inc is a project development firm developing commercial-scale solar and other renewable energy projects throughout New England, with a focus on projects developed on behalf of both public and private sector entities including municipalities, schools and utilities. To date, we have developed or co-developed over 50 MW of solar PV under the SREC I and SREC II programs.

As provided in the proposed regulations section 14.05(9)(s)4, projects >25kW must receive written authorization to interconnect/permission to operate from the local distribution company (LDC) by January 8, 2017 in order to retain a Statement of Qualifications (SOQ). The only two contingencies under which a project's SOQ can be retained beyond January 8, 2017 are 1) the project interconnection depends solely on the LDC or 2) the project sponsor can "demonstrate to the Department's satisfaction that good cause warrants an extension..."

We note that prior to the release of the emergency regulations, the Department's Assurance of Qualifications guideline (Guideline) provided for an extended reservation period for legal challenges as follows:

Any Solar Carve-Out II Renewable Generation Unit may seek an extended Reservation Period of up to six months if the Solar Carve-Out II Renewable Generation Unit submits a Certification that a governmental permit or approval of the Solar Carve-Out II Renewable Generation Unit was subject to a legal challenge during the initial Reservation Period, and the legal challenge remains pending (AoQ Guideline section 5.B.ii)

We would also note that the Department of Public Utilities' System for Assurance for Net Metering contains a similar provision allowing an extension of net metering assurance for legal challenges.

Providing an extension for retaining a project's SOQ for legal challenges is consistent with the Department's policy immediately prior to the release of the emergency regulations and is also consistent with the underlying logic behind the extension allowed for LDC delay. In both cases (LDC delay and legal challenge), the project would be otherwise interconnected and operational (or proceeding dutifully along that path) but for the actions of a third party. An extension for legal challenges is especially critical given how easy it is under State law for an aggrieved party to appeal a local decision and delay a project for 90 days or more, even if the appeal is without merit.

While it is conceivable that a project sponsor delayed by a legal challenge could successfully petition the Department for an extension under the "good cause" provision in 14.05(9)(s)4.b, the likelihood of approval is uncertain as written. This uncertainty will likely jeopardize the financing arrangements of affected projects, and may result in their abandonment, an outcome that does not further the interests of the administration or solar project stakeholders.

Accordingly, we respectfully request the Department to consider amending the emergency regulations to incorporate a provision allowing extension of an SOQ beyond January 8, 2017 for legal challenges, similar to the provision contained in the current Guideline.

In closing, we would like to commend Department staff for their work in developing the emergency regulations. Thank you again for the opportunity to comment on the restructuring of this important program.

Regards,



William D. Fitzpatrick
VP Business Development
American Capital Energy Inc.