



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

May 27, 2016

Massachusetts 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 regulation adopted by the Department of Energy Resources (“DOER”) on April 8, 2016. We offered verbal comments at the recent public hearing and would like to supplement our comments in writing.

As background, Renewable Energy Development Partners, LLC (“REDP”) 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 public sector entities including municipalities, water and school districts, and public educational facilities. To date we have developed or co-developed nearly 40 MW of solar PV under the SREC I and SREC II programs.

As provided in the emergency regulation, 220 CMR 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 (“SQ”). 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 DOER’s satisfaction that good cause warrants an extension...”

We note that DOER’s Assurance of Qualifications guideline (“Guideline”) provides 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.

(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 SQ for legal challenges is consistent with DOER's policy immediately prior to the release of the emergency regulation 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 DOER to consider amending the emergency regulations to incorporate the following provision allowing extension of an SQ beyond January 8, 2017 for legal challenges, similar to the provision contained in the current Guideline. We would suggest inserting the following "c" paragraph in 220 CMR 14.05(9)(s)(4):

- c. Any Solar Carve-Out II Renewable Generation Unit may obtain an extension of six months if the Owner or Operator of the Solar Carve-Out II Renewable Generation Unit certifies that construction and interconnection of the Solar Carve-Out II Renewable Generation Unit has been delayed due to a legal challenge.

In closing, we would like to commend DOER 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,



Hank Ouimet, PE (FL), LEED AP
Managing Partner