



## **COMMENTS OF THE SOLAR ENERGY INDUSTRIES ASSOCIATION ON SOLAR RENEWABLE ENERGY CREDITS II EMERGENCY REGULATIONS**

### **225 CMR Department of Energy Resources 225 CMR 14.00 Renewable Energy Portfolios Standard – Class I**

#### **5.27.16**

The Solar Energy Industries Association (SEIA) thanks the Massachusetts Department of Energy Resources (DOER) for the opportunity to provide comments on the proposed rules intended to extend the Solar Renewable Energy Credits II (SREC) program. Along with signing the law that raised the net metering caps in April, this extension by the Baker Administration is another critical step in restarting the solar market in Massachusetts. We applaud the Governor's leadership on these issues. We look forward to working with the DOER on finalizing these regulations as well as designing the successor to the existing SREC II program.

Established in 1974, SEIA is the national trade association of the United States solar energy industry and is a broad-based voice of the solar industry in Massachusetts. Through advocacy and education, SEIA and its 1,000 member companies are building a strong solar industry to power America. There are 40 SEIA member companies in operation in Massachusetts working in all market segments – residential, commercial, and utility-scale. SEIA member companies provide solar panels and equipment, financing, and other services to a large portion of Massachusetts solar projects.

#### **A) SEIA strongly supports the extension of the SREC II program.**

SEIA strongly supports the extension of the SREC II program. SREC incentives are a fundamental component of financing for many solar projects. The extension of SREC II, as executed in the emergency regulation and now under consideration for the final regulation, will serve as a bridge to the successor incentive program, maintain the current market structure that determines SREC pricing, and help preserve the more than 15,000 solar industry jobs in Massachusetts.

SEIA also supports the proposal's extension provisions that are based on a date certain, and not on an additional allocation of megawatts. We recommend that this approach be applied to both large and small project categories. This flexible approach using the date as a milestone would allow for a more orderly application process and provide for a smoother transition to the successor incentive program. Additional allocations of a designated amount of megawatts may result in further oversubscription problems and program administration issues.

Issuance of the Emergency Regulations was a critical step in creating a smooth transition from the SREC II program, and particularly given the relatively tight timeframe for bringing projects to mechanical completion by January 8, 2017, solar firms are currently making investment decisions based on the Emergency Regulations.

*Our threshold recommendation to the DOER is to not make any changes from the emergency proposal advanced by DOER on April 8, 2016 that would negatively impact projects qualified under the Emergency Regulations as this would jeopardize these investments, cause confusion, and create uncertainty in the solar market.*

While on the one hand it is true that solar companies making investments on the basis of the Emergency Regulation do so at some risk that the regulation will be different in its final form, the very purpose of issuing an Emergency Regulation, rather than going through the standard promulgation process, is to provide critical stability to the marketplace, and substantial changes to the regulation in its final form would result in the exact opposite effect.

We offer the following limited set of recommendations to improve the final regulations.

## **B) Suggestions to improve the proposal.**

We recommend the following changes: 1) address a minor inconsistency between the language around removing the current SREC cap and later sections of the regulation; 2) set an alternative milestone for SREC II eligibility for projects less than or equal to 25kw; 3) set an alternative milestone for SREC II eligibility for projects greater than 25kw; 4) further clarify the mechanical completion standard proposed for projects larger than 25kw by explicitly listing documentation needed to establish whether a project is mechanically complete; and 5) provide additional guidance for the timing of making a “good cause” determination.

### **1) Address a minor inconsistency between the language on the SREC cap with the later sections of the regulation.**

SEIA believes there is a minor inconsistency in the definition of “Solar Carve-out II Program Capacity Cap” in 225 CMR 14.02 and the provisions included in 225 CMR 14.05(s)3. In the proposed regulations, the aggregate eligible capacity would be the number of megawatts of solar units qualified within nine months of April 8, or the upon the establishment of a new incentive program, whichever occurs first (emphasis added) minus the aggregate capacity of SREC I.

However, under the provisions governing renewable energy generating units with a capacity of less than 25kw, in 225 CMR 14.05 (s)3, a slightly different standard is used. Here projects would be eligible for SRECs as long as they have interconnected or received permission to operate as well as submitted a Statement of Qualification Application by the effective date of the new solar incentive program.

This inconsistency creates a question about what happens in the event that the successor program is not finalized until after January 8, 2017, and how the allocations would be counted during that interim period. Failure to clearly articulate the threshold for calculating the megawatts that make

up SREC II may cause confusion upon establishing the goal of the next program, whatever form it may take.

SEIA recommends that the Solar Carve-out II Program Capacity Cap definition should instead read “within nine months from April 8, 2016, or upon the establishment of a new incentive program, whichever is later, minus the Solar Carve-out Program Capacity Cap.”

## **2) Set an alternative milestone for SREC II eligibility for projects under 25kw.**

SEIA recommends that DOER sets alternative milestones for eligibility for SREC II. For projects less than 25 kw in size, the regulation currently reads that these systems would be eligible for SRECs if they are interconnected or have obtained permission to operate and have submitted a Statement of Qualification Application (SQA) by the effective date of the new solar incentive program.

SEIA maintains its concern that the requirement that projects should be connected to the grid by the start of the new program will likely not achieve DOER’s intent of maintaining continuous activity in the small market segment during the transition to a new program. We believe the proposed standard would slow the pace of market activity. As the year goes on, firms would be less and less able to provide customers with accurate pricing information as details about the successor program would not be known. Furthermore, this eligibility standard subjects the project’s SREC status to forces beyond the developer’s control. In the end, the project is ultimately awaiting final approval from the utility to interconnect.

*SEIA recommends instead setting an alternative milestone, such that projects that have submitted a Statement of Qualification Application within nine months of April 8, 2016 or the effective date of the new program, whichever is later, would be eligible for SREC II.*

Establishing the date by which applications must be received provides greater certainty for the length of the program, and clarifying that projects will be eligible for SRECs until that date or until the start of the new program eliminates any possibility of a gap between the end of the transitional program and the start of the successor incentive program.

In the event that DOER rejects these recommendations, we would urge DOER to at least add similar provisions that were proposed regarding larger projects regarding appeals. Projects that can demonstrate that they are mechanically complete and are simply waiting on the utility to interconnect, or can otherwise demonstrate good cause, should be eligible for SREC II.

## **3) Set an alternative milestone for SREC II eligibility for projects greater than 25kw.**

For projects greater than 25 kw, the regulations currently propose that a unit that has received a Statement of Qualification (SOQ) must receive its authorization to interconnect or permission to operate within nine months of April 8, 2016 in order to retain its Statement of Qualification. We recommend DOER adopts a modified eligibility standard.

*SEIA proposes instead that projects greater than 25kw that have received authorization to interconnect within nine months of April 8, 2016 should retain their SOQ, or projects that have an SOQ and can demonstrate to DOER's satisfaction that 50 percent of the total construction costs have been incurred by November 8, 2016 should retain their SOQ until May 8, 2017, or four months after the end of SREC II.*

The additional time to complete projects, projects that have simply been waiting for legislative action to lift the net metering caps, recognizes the current realities of the extremely tight labor market. This eligibility standard is also similar to the standard adopted by the DOER during the transition from SREC I to SREC II.

**4) Further clarify the mechanical completion standard proposed for projects larger than 25kw by explicitly listing the required documentation.**

For projects greater than 25 kw, in 225 CMR 14.05 (9)(s)4a, the proposed regulation goes on to extend eligibility to projects that can demonstrate to the DOER that they are mechanically complete and that interconnection only depends on receipt of notice to interconnect from the distribution company.

SEIA strongly supports this provision and the application of this standard. Use of the mechanically complete standard is far superior to interconnection. As we have argued elsewhere in these comments, interconnection is the last step in the process of project construction. The distribution utility ultimately makes this determination and using the interconnection standard would subject project developers to forces out of their control. The mechanical completion standard has also been used by DOER in the past.

However, we recommend that either in the regulations or in further guidance DOER clarifies the documentation that would be required to demonstrate whether a project is mechanically complete. In the past, DOER has stated that a copy of the certificate of completion signed by the local wiring inspector, proof that a wiring inspection has been scheduled, an affidavit signed by the engineer of record stating that the project is “mechanically complete,” or other documentation deemed acceptable to the DOER, would demonstrate whether the project is complete.

Explicitly describing the documentation needed to establish the mechanically complete standard would benefit project developers and program administration by establishing clear expectations.

**5) Provide additional guidance for the timing of making a “good cause” determination.**

For the larger project category, the proposed regulation says DOER can extend a Statement of Qualification if the agency finds good cause to do so. SEIA strongly supports this provision.

Unforeseen circumstances, such as strike by a major labor union, or transportation disruption affecting the supply chain, both of which are beyond the project developer's control could have an impact on project completion deadlines. The current Verizon strike, for example, impacts the ability of developers to schedule construction activities that involve cooperation between electric

and communications utilities. These delays, once again outside of the project developer's control, could impact project completion timelines and the ability of such projects to coordinate with the utility for final interconnection activities. Adopting the "good cause" provision allows the project developer to make their case for maintaining SREC eligibility.

However, SEIA encourages DOER to put a boundary on when this determination would be made. We recommend that the DOER establish a 21-day period for making a determination about whether a renewable energy generation unit has good cause to receive and extension of its SOQ. The bounded period for making this determination keeps the developer and agency on track, and prevents requests for extensions from lingering without resolution.

### **C) Brief recommendations about the design of the SREC II successor program.**

As the DOER begins its deliberations over designing the successor program, SEIA also advances the following principles for consideration. As we advanced in the Net Metering and Solar Task Force Report, future incentives for solar should:

- a. Impose competitive discipline on market participants and create a robust competitive marketplace.
- b. Have performance-based incentives (i.e., paid out over time based on demonstrated actual production).
- c. Be designed to avoid conflicts with Federal Energy Regulatory Commission jurisdiction over markets for energy and capacity.
- d. Support both orderly deal flow and the orderly recovery of the system costs from its beneficiaries (i.e., a regularly available incentive structure to prevent start/stop markets, and regular contributions to the expenses associated with the electric distribution grid).<sup>1</sup>

SEIA recommends two possible paths forward in establishing a new program.

First, we would support the continuation of the existing SREC II framework, with additional program cost reductions accomplished through a further reduction of the existing ACP and floor price schedules. The Solar Carve-Out Program, thoughtfully designed from the outset and further refined under SREC-II, has been an unqualified success for Massachusetts. Over several years, the SREC program has earned the confidence of the investor community. Importantly, the SREC program is proven to work well with the existing net metering structures that the industry has worked so hard to preserve. Together, the programs have supported a robust market for a wide variety of project and customer types. Minor changes to the current incentive program design would ensure a smooth transition to a successor program while achieving the cost containment and policy goals supported by SEIA and the Administration.

Second, SEIA would also support the implementation of a Declining Block Incentive (DBI) structure that can adjust to respond to market conditions. The DBI model used in New York and California have been designed as an "open access" program where incentives are continuously available to market participants. The DBI model ensures that the incentive level is transparent

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<sup>1</sup> See Massachusetts Net Metering and Solar Task Force: Final Report to the Legislature (April 30, 2015) at 12. Available at: <http://www.mass.gov/eea/docs/doer/renewables/final-net-metering-and-solar-task-force-report.pdf>

and predictable. The DBI model has the advantage of providing transparency on incentive levels and availability during early-stage project development. The DBI framework also works well with existing net metering structures, which should be maintained. The DBI framework should not be considered a replacement for net metering. This is consistent with the way DBI framework has been applied in other jurisdictions.

One of the major benefits both approaches is that incentive funding is available to projects on their development schedule, not on the solicitation schedule. In other words, the programs are “always on”, increasing the efficiency of project development activities and reducing overall costs. The market discipline imposed by transparent incentive levels or fixed program budget will ultimately lead to a self-sustaining industry. Both models are consistent with the Baker Administration’s and SEIA’s policy objectives.

We thank you for the opportunity to submit these comments. I can be reached at (518) 487-1744 or at [dgahl@seia.org](mailto:dgahl@seia.org) with any questions. We look forward to working with the DOER to finalize these regulations and design the next incentive program.

Yours sincerely,

/s/

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