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BY E

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MA Department of Environmental Resources ("DOER")

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August 26, 2013

RE: COMMENTS – SREC-II Program Final Proposed Design (Aug. 12, 2013)

Gentlemen:

This presents comments of CFS and its MA co-developers Kearsarge Renewables LLC and SunDurance Energy LLC on key aspects of the Design. We appreciate the opportunity for input and would be pleased to discuss these comments further.

CFS is a solar center of excellence with approximately 40 MW of ground-mounted solar PV facilities under development in Massachusetts and elsewhere. Kearsarge Renewables, an affiliate of Kearsarge Energy, LP (Watertown MA), has more than 60 MW of projects in development, operation or scheduled for commercial operations this year in MA, North Carolina and Hawaii, including New England's largest operating ground-mounted solar PV project to date. SunDurance, a subsidiary of The Conti Group, Inc. (Edison NJ), is a solar PV developer and turnkey EPC provider with numerous PV projects completed or under development on both coasts.

We support the Design's intent to better maintain market equilibrium, reduce SREC volatility, and smooth development bumps within a single SREC market so as to encourage installation of about 1000 MW of solar PV beyond the "oversubscribed" SREC-I program.

However, we have serious concerns about the open-ended unpredictability of certain SREC revenues under the current Design, that uncertainty's impact on project financing, and the potential effects of related Design aspects on market robustness, ratepayer costs, and developer/geographic diversity.

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As DOER knows, the more uncertainty that surrounds key assumptions which drive expected project revenues, the more difficult it becomes to finance projects. DOER has been sensitive in the past to such program-related market disruptions. The multiple Design uncertainties we note not only will make it harder to finance high-quality PV projects in the Commonwealth, but will tend to push financing to global companies prepared to underwrite these risks, in part because they may be affiliated with large overseas module producers or otherwise have unusually low costs of capital. Local and U.S. developers (as well as local communities) in turn could be brushed aside.

We outline below our concerns and suggestions. We believe our recommendations are not only consistent with DOER's Policy Objectives (Aug. 12 PPT, p. 3), but will better effectuate them.

Our most important recommendations to reduce financing uncertainty without compromising the Design's policy goals are:

- We recognize the need for managed growth. However, we strongly recommend that the **"Managed Growth" category include an SREC Factor "floor" which assures bidders a minimum Factor (e.g., 0.6 or 0.7) for financing predictability**, with bids and awards focused on the extent to which a higher factor may be warranted. .
- **The Non-Price Criteria must be objectified** (for example, through replicable score-sheets or formulas) **to minimize the chance these determinations will be subjective, arbitrary, and ad hoc case-by case.** Without this step and the previous one, project financials could not even be modeled reliably, much less justified to financiers. Such steps also can help minimize potentially crushing administrative burdens on agency solicitation deciders.
- **The "67% on-site use tests" should expressly include ("count" as qualifying) virtual net metering as well as physical net metering, at least for projects under the public caps.** The public-good, distributed-generation, reduced ratepayer costs, and other benefits of VNM are virtually indistinguishable from those of physical net metering. In many cases – especially for communities that have few suitable ground areas

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and scattered municipal buildings with relatively small older roofs – the benefits often will be greater, since it makes more economic and technical sense to VNM from one location than try to install a dozen dispersed systems on Town Halls and schools.

I. SREC Factors (PPT, p. 12)

- A. The Table should start with a Factor of 1.0 for its first market sector, and adjust other market sectors upward accordingly. SREC-I ACP and Auction floors already would decrease substantially under the Design, making SREC Factor reductions a “triple haircut” for financing purposes.**

We understand that very small, residential and/or rooftop PV projects *generally* (i) will continue to have higher install costs than other sectors, (ii) require more vigorous SREC support, and (iii) create less risk of “market overhang” from higher SREC Factors because DOER expects their total capacity to remain a fraction of overall installs.

We *do not* understand why DOER believes that a threshold across-the-board “SREC tax” of up to 30% for a large class of ground mounted projects is required to manage SREC volume. The ACP and Auction Floors already will be lowered significantly, at a time when local PV tax assessments are rapidly increasing. Adding an SREC reduction to this “triple whammy” will put at risk numerous ground-mounted projects over 500 KW that are not being developed by large deep-pockets entities (including entities with ties to equipment vendors whose inter-book transfers silently cover such risks). Such anti-competitive effects would not serve the Design’s Policy Objectives.

We urge that **the first two market sector categories start at 1.0, with subsequent sectors’ Factors increased accordingly.** This recommendation is reinforced by our sector-specific comments below.

- B. The 67% “on-site use” criterion appears to be arbitrarily applied**

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For example, physically net-metered projects *of any size* apparently would qualify for the highest available SREC Factor as long as 2/3 of their output is consumed on-site – notwithstanding that they (i) could range up to several MW DC, (ii) capture the same scale economies as the “Managed Growth” sector, and (ii) often have greater electricity-related “revenues” than grid-feed or other wholesale projects because they discount from a retail rate which is widely expected to rise over time.

If the goal is to limit qualified SREC generation, this approach seems poorly structured to do so. It also could encourage forms of market manipulation such as installation of excess lighting, Cadillac monitoring, and sufficient storage batteries – or efforts to split projects into qualifying 500 kW units -- to satisfy the 67% test.

C. Public net metering should satisfy the 67% “on-site load” test

For reasons above, **virtual net metering (“VNM”) should be treated the same as physical on-site net metering for purposes of the proposed 67% SREC Factor requirement, at least with respect to VNM under the public caps.** Public-VNM reduces ratepayer costs while directly benefitting local communities, the public good, distributed-generation goals, and developer/geographic diversity. Indeed, a core motive for the path-breaking VNM program was to re-allocate or more easily “share” PV benefits among Towns and other job providers, by breaking down artificial barriers. The SREC Factors should complement that goal.

Under the current Design, despite their long-standing expectations many Towns could end up not benefitting at all from the Commonwealth’s centerpiece solar programs. Large developers, big-box stores, and other commercial centers primarily would benefit instead. Towns would be prejudicially treated, and could be harmed the most – they could risk losing at least two value streams: long-term guaranteed (a) tax revenues and (b) savings from reduced retail electricity rates under properly-structured Net Metering Credit agreements. These exposures are not trivial, particularly for smaller

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Towns. One 6 MW project easily may generate over \$5 million in combined tax revenues and avoided electricity costs (i.e. more financial margin for jobs or local job incentives) over 25 years.

D. Projects sited on landfills or brownfields should not be unjustifiably penalized

The Design's apparent rationale for assigning an 0.8 SREC Factor to this market segment is that because such projects tend to be multi-MW, they will achieve the same scale economies as projects on industrial-zoned or other sites.

We believe this misses the mark. Institutionally-controlled (e.g., fenced-off) landfills and remediated sites typically entail complex, costly technical and regulatory hurdles not faced by conventional PV projects – for example, subsidence risks, onerous DEP negotiations and permitting, closure/post-closure complications, compliance with special insurance mandates, special catchment or leachate protection requirements, and ballast or other custom mounting arrangements to avoid penetrating closure caps or compressing gas-collection equipment. Sites that involve PRP groups add protracted, frequently painful multiparty negotiations which any “P” often can veto. The costs (and more important, the time delays) of resolving such issues often swamp any economies of scale that theoretically may be available.

Moreover, the “multi-MW” aspect is overstated in our view. Based on our experience, (i) large areas of existing closed landfills or closed landfill cells typically are not suitable for quality PV installations due to slope, configuration, or other factors; and (ii) large closed private landfills like those owned by multistate waste corporations generally are not available for PV development – feasible lease rates are not worth those companies' time and liability concerns. Thus the impact of a 20% SREC Factor “discount” for this sector will fall heavily on public sites that can least afford to lose PV development opportunities. Such an outcome would contravene the “highest and best use” principle.

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For these reasons, we recommend that **landfills and brownfields subject to institutional controls generally should receive the most favorable threshold SREC Factor – 0.9 under the Design, or 1.0 under our Factors recommendation above.**

- E. **“Competitive bid” for the “Managed Growth” Sector (PV projects over 500 kW capacity with less than 2/3 on-site demand) will be a financing catastrophe, if adopted as Designed**

1. **Market and financing predictability will be severely compromised if not destroyed.** As we understand this Sector approach, bids for available quantities of SRECs would be solicited semi-annually, with eligible capacity awarded to bidding projects by multi-agency decision.

Our experience with similar bid processes in California strongly suggests the result will be a race to the bottom, with bidders rolling the dice on continued component cost decreases (and/or corner-cuts in component quality or long-term O & M) in a scramble to avoid receiving either no SRECs or an SREC volume that precludes workable financing. This in turn would mean that financing likely will stop dead until bid results are released (imposing added development costs). It also would mean projects that are more likely to not get built or be properly operated/maintained beyond their five-year tax benefits period. To the extent such outcomes are avoided, they most likely will be avoided by the few deep-pocket developers (mostly affiliates of overseas entities with state-subsidized capital costs) that can absorb the uncertainty-period “bridge risk.” Such outcomes would undermine the Design’s stated “developer diversity” and “no undue entry barrier” goals.

None of these results serves the Design’s policy interests. Nor would they “control ratepayer costs.” In the long run they seem more likely to multiply such costs while undermining overall project quality and long-term reliability.

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- 2. The approach should avoid eviscerating the large-project PV “Zoning as of Right” Bylaw process and other foundations that DOER has carefully built and local communities have relied on under the Green Communities Act**

Since 2011 the Department has vigorously promoted PV “zoning-as-of-right” bylaws for ground-mounted PV projects over 250 MWp, as a threshold requirement for cities and Towns to qualify for special benefits under the Act.

Numerous communities have adopted local versions of DOER’s Model Bylaw to encourage such projects by “ensur[ing] that in designated locations local regulatory barriers that may adversely affect large-scale ground-mounted projects are minimized.” [Model As-of-Right Zoning Bylaw: Allowing Use of Large-Scale Ground-Mounted Solar [PV] Installations,” pp 1, 3 *passim*] (DOER/EOEA, March 2012]

In the final Bylaw DOER emphasized that Planning Boards cannot deny such PV applications, but may only “impose [narrow] reasonable conditions upon them” (Model Bylaw, p. 4).

We recognize that streamlined local zoning is not the same animal as a statewide SCO under the RPS, and that SREC circumstances have changed since the Bylaw was issued.

We also recognize the Design’s apparent intent to limit large greenfield PV development, *at least where an absence of landowner, public good, developer/geographic diversity, and DG grid benefits warrants such limits.*

Nevertheless, communities have continued to rely on these zoning measures to attract large ground-mounted projects, many of which now are actively in development. An SREC-II adjustment should not be a U-turn which undermines their reliance by putting such projects at risk. As a practical matter, “Managed Growth” in its current form could make local Of-Right bylaws an empty box.

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One way to mitigate such effects consistent with state/local comity could be to **limit the “competitive bid” Managed Growth Sector solely to projects sited in current agricultural-restricted zones.** We suggest other steps below.

3. **Unbounded uncertainty regarding both a project’s SREC values and its volume of qualified SRECs will poison project financing**

Developers and their financiers know how to deal with market-driven swings in *the value of individual SRECs*. However, the prospect of a project *receiving no SRECs or substantially fewer SRECs than it conservatively modeled* is a different matter entirely. Especially when power-sales revenues have been generally depressed by shale-gas and other factors, predictable (or at least boundable) SREC revenue streams are project lifelines.

As currently drafted, what volume of SRECs a “Managed Growth” project will receive under the Design appears to be totally unpredictable until project-specific grants are made under a semi-annual solicitation. Even then a project may receive far less qualified capacity than expected. Moreover, confidential business information (“CBI”) constraints may well limit its developer’s ability to place a winning bid the next time – or two or three -- around.

Beyond this, the Design is unclear whether “Managed Growth” bids are capped at the next “highest” sector’s SREC Factor, or may exceed that Factor where competing bids together with “non-price criteria” justify such a result.

For fundamental finance-predictability reasons **we accordingly urge that the post-Design program set a clear floor** (say, a Factor of 0.6 in the Design version, or a Factor of 0.7 in our suggested modified version) **for what portion of total SRECs generated any Managed Growth project can be sure to receive.** Solicitations could then determine whether and to what extent bidding projects receive more than that floor. This approach also would help “minimize regulatory complexity.”

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4. The Non-Price Criteria for Managed Growth Bids must be objectified

Whether or not DOER adopts our floor approach for “Managed Growth” bids, **the Design’s Non-Factor criteria cannot remain subjective, *ad hoc*, and case-by-case.** That would exacerbate blanket uncertainty, impose potentially crushing administrative burdens on agency solicitation deciders, and risk litigation on arbitrariness grounds.

So far as possible **these criteria must be reduced to mathematical formulas or point-scoring sheets that allow developers reasonably and objectively to predict outcomes – and show their financiers a defensible basis for those predictions.**

Such objective criteria might include projects that are sited on land (i) zoned “industrial” as of Aug 12, 2013; (ii) within 2 miles of a substation; (iii) whose trees occupy no more than 10% of the approved layout; (iv) whose fertilizer runoff or soil-stabilization will be improved by the planned PV facility; and/or (v) that the local Planning Board has determined (say, by virtue of issuing a permit) is a “higher or better use.”

II. Other Design aspects

A. The 3-month SREC Factor downward-adjustment period is too short

It appears to involve the same lack of reasonable predictability as the Managed Growth sector Design above. Specifically, a 3-month window still would seem to catch numerous projects that are in active development in reliance on the previous Factor. It often may take more than 6 months for a developer to line up and sufficiently lock down all the threshold ducks required responsibly to file an SQA.

We urge that the final program enlarge this downward-adjustment period to a minimum of 9 months’ notice, and that such notices

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create project-specific bright-line “before and after” dates for predictability purposes.

B. We caution against over-promoting rooftop installations at the expense of other market sectors

The Commonwealth’s snow and wind loads *both* limit optimal rooftop installations *and* drive up roof-install costs beyond their generally higher-than-ground-mount costs. Viewed collectively, this seems a poor way to “control ratepayer costs.” It also risks delivering this sector to the industry’s largest public companies – entities with sufficient resources, low-cost capital and captive EPC contractors quickly to identify “good roofs” and finance their way past surrounding uncertainties. That seems a poor way to promote “diverse PV developers, without undue barriers to entry.”

We also note that **certain hidden risks of (typically) net-metered rooftop installations can result in more project pain than benefits.** For example, installing a 400 kW array on a big-box store whose annual demand is only 40,000 kWh/year less than expected PV production (a fairly representative calculation) could drop that store to a different rate class that erodes its electricity- savings contract. This could have ominous implications for the long-term viability of such projects – and for the credibility of solar PV more generally.

C. We oppose “forward minting” for 3rd-party-owned residential installations

We support “forward minting” for homeowners that own their PV systems outright, due to the comparatively limited access to SREC monetization for such tiny transactions.

However, we believe that **extending this option beyond directly-owned residential installations would have adverse market effects far exceeding any supposed benefits.** Among other things it could grant a further incentive (in the nature of a windfall) to large third-party rooftop developers with little need for more programmatic benefits.

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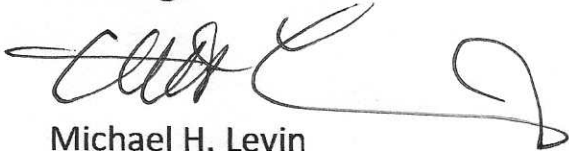
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That in turn would raise barriers to entry for smaller 3rd-party developers.

We accordingly urge that **the final program stringently limit forward minting to residential homeowners.** At minimum, if the SREC-II program adopts such an expansion, it should be limited to developers whose consolidated revenues or aggregate MWs fall below a relatively small defined size.

We appreciate DOER's candor and inclusiveness in developing the SREC-II program. Please contact me if you have questions or would like to explore any aspect of these comments further.

Best regards.

A handwritten signature in dark ink, appearing to read 'Michael H. Levin', with a long horizontal flourish extending to the right.

Michael H. Levin
Managing Director & General Counsel

Cc (e): Howard Bernstein (DOER/ENE);
 Andrew Bernstein, Everett Tatelbaum (KR);
 Justin Marron, Todd Martin (SunDurance)