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August 26, 2013

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Department of Energy Resources
100 Cambridge Street, Suite 1020
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Counselors at Law

Re: SREC-II Final Proposed Design

To Whom It May Concern:

We have several clients involved in the development of solar projects in Massachusetts and commend the Patrick Administration and the Department of Energy Resources (DOER) for their leadership encouraging development of solar power in Massachusetts. Our clients are looking forward to developing, building, and owning more solar projects in Massachusetts under the SREC-II program.

The DOER has taken a very thoughtful and responsive approach in designing the SREC-II program. In general our clients are supportive of the new design proposed at the August 12th public meeting. Based on feedback from our clients, we see potential issues with qualifying a project to a Market Sector(s) that can hopefully be addressed in the rulemaking process.

We think it is important to assign projects to a Market Sector early in the development process. One can imagine several scenarios where a developer/owner expected a project to qualify in one Market Sector, only to find out later that the DOER has assigned it to a different Market Sector. Developers will often be seeking financing for the construction of projects. Because each Market Sector will have a different amount of SRECs generated by projects within it and the likelihood of qualifying will vary based on Market Sector, lenders and equity partners will assign different risk profiles and assumptions to a project depending on which Market Sector it is in. Uncertainty about the correct Market Sector for projects could discourage developers from pursuing new projects where the relevant Market Sector was not clear-cut. Further, uncertainty would create unnecessary barriers to financing, as financiers would likely be unwilling to risk receiving a lower SREC factor than their models anticipated.

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There are several potential mechanisms for assigning projects to a Market Sector and we urge the DOER to put a process in place in the rule making process. Potential processes include, although may not be limited to:

- A simple pre-application where the DOER provides the project with a letter specifying the Market Sector it will qualify for based on the location of the project and a brief description of the project.
- The formerly proposed SREC System of Assurance could be revitalized and updated to include Market Sector and SREC Factor qualifications.

An additional concern we have heard from clients is that there could be potential confusion about projects that may or may not qualify in the Landfills and Brownfields Classification. We understand the Department of Environmental Protection (DEP) and the Executive Office of Energy and Environmental Affairs (EEA) will be defining what constitutes a landfill and a brownfield, and we look forward to learning what those definitions are. Not only should the DOER define these two categories, but they should also consider if a project will qualify for the Market Sector if:

- the Landfill/Brownfield only takes up a portion of the parcel, but the solar array is built on the entire parcel?
- a project is on two parcels, of which only one is a Landfill/Brownfield, but the project has only one interconnection and/or one landowner?

We appreciate the opportunity to comment on the SREC-II program design. We thank the DOER for their continued leadership and Massachusetts' commitment to solar power. Please feel free to reach out to us with any questions.

Sincerely yours,

Hemenway & Barnes LLP

By: 
Stephen W. Kidder