

Massachusetts DOER Releases Draft SREC II Regulations

Written by Mark A. Barnett, Zachary Gerson, Adam Wade

January 10, 2014

The Massachusetts Department of Energy Resources (MA DOER) has released draft regulations for its SREC II solar program. The regulations are the latest step toward implementing the Commonwealth's goal to install a total of 1.6 GW of solar in the state by 2020. (As the Energy Cleantech Counsel blog has noted, that's more than 1.21 new Gigawatts on top of the 361MW currently installed.)

Governor Patrick first announced the expanded solar goal in May of last year. Over the summer, DOER has provided glimpses of what it thought SREC II might look like, but this is the first step in implementing regulations on which the program will be operated.

The draft regulations largely track the expectations set by DOER over the summer, but incorporate the policy proposal resets announced by DOER Commissioner Mark Sylvia in his presentation to the Restructuring Round Table held in Foley Hoag's Boston offices December 13.

DOER had indicated in its public meetings that the agency would direct SREC II policy toward development of rooftops, sites where power would be used predominately onsite and away from projects built on open land or "green fields" where most of the power generated is delivered to the utility in exchange for net metering credit. This is the so-called "Managed Growth Sector," where much of the recent growth in large distributed MA solar installations has been seen. The proposed regulations will cap the volume of installations of this kind under a pre-determined set-aside of capacity within the SREC II program.

The draft regulations deliver on that promise and incorporate the following features:

- Specific preferences for projects that include emergency power generation capability or are installed on parking canopies.
- Creation of a definition for Community Shared Solar Generation Units based upon shared ownership of solar projects under "solar garden" models and the like.
- Creation of a definition for "Brownfields" tied to existing Massachusetts regulations of "disposal sites" that have received a tracking from MA DEP under 310 CMR 40.0000 and whose development have been determined by DEP and DOER to have been hindered by contamination.
- An "SREC Factor" that differentiates among different market segments according to site attributes and on-site consumption. The SREC Factor is essentially a deflator that reduces the number of SRECs created from an MWh of generation. The most favored projects will receive a factor of 1.0 and Managed Growth (disfavored) projects will be assigned a factor of 0.7.
 - ▶ At the most favored segment of the market, small systems (under 25kW DC), systems installed on parking canopies, those that have emergency power features and community shared solar installations will receive an SREC Factor of 1.0; i.e. no deflator will be applied.
 - ▶ Rooftop systems and ground mounted systems whose output is largely (67% or more) consumed onsite will receive a factor of 0.9.
 - ▶ Groundmounts located at a landfill or a brownfield or projects smaller than 500kW whose output is largely (67% or more) consumed on site will receive a factor of 0.8.
 - ▶ Projects that fall into the residual bucket will be treated as part of the "Managed Growth" sector and will receive a factor of 0.7.

The draft regulations make some policy course corrections compared to policy proposals made this summer, including:

- At the large end of the market, abandoning plans for competitive solicitation for qualification of large PV projects with little onsite consumption. The summer's iterations of SREC II policy proposals contemplated a bidding process where bids for the lowest SREC factor within the managed growth sector would receive qualification for SREC II. Under the proposed regulations, Managed Growth projects will continue to be disfavored, but reserved capacity will not be subject to competitive procurement. Instead, DOER will announce available MW blocks for such projects, available on a first-ready basis under a queue and Assurance of Qualification system.
- At the small end of the market, abandoning plans for forward minting in favor of authorization of an as-yet undefined and to-be created program that will draw on ACP funds to "enhance the availability of ownership financing options" and for systems installed on residences and at 501(c)(3) nonprofit businesses. DOER will issue future Guidance on the details of such programs.

Some notable mechanics for qualification for SREC II:

- SREC II will include not only a declining ACP schedule that reduces ACP amounts over future years, but also a declining auction price schedule that reduces the clearinghouse auction price as the program progresses into future years.
- DOER will implement an Assurance of Qualification system and a related queue system. Projects will need to have an Interconnection Services Agreement executed by the utility, hold site control and required governmental approvals before receiving an Assurance of Qualification. (DOER will provide administrative Guidance describing the processes and requirements for the Assurance of Qualification and the queue system.)
- Eligible projects must have a commercial operation date on or after 1/1/2012 and must not have been qualified under SREC I.
- In compliance year 2014, the available Managed Growth block will be 26MW; in 2015 it will be 80MW. On June 30 of each calendar year, DOER will announce the size of the Managed Growth blocks for the following 2 years' compliance years.
- The total compliance year 2014 obligation of 41,279 MWh is based on 85MW of installed capacity; the 2015 obligation of 161,958 MWh is based on 230 MW of installed capacity. Future years' obligations will be issued by DOER in further Guidance, but will be in essence capped on an annual basis according to a schedule in the proposed regulations in order to attempt a somewhat steady rate of installation growth as indicated in the proposed regulations.

Summing Up

Whether the program will be successful in diverting developer attention and capital away from the Managed Growth Sector to favored sectors remains to be seen. Developers and financiers interested in the favored sections of the market will need to pay attention to important distinctions in project structuring, project engineering and environmental due diligence for many of those favored sectors. Those may not be difficult risks to navigate, but they may represent novel considerations not often addressed to date in Massachusetts solar projects and will be fertile ground for comments in the administrative process.

DOER will hold a public meeting on Friday, January 24 at the State House and will receive written comments starting now through January 29.

This communication is intended for general information purposes and as a service to clients and friends of Foley Hoag LLP. This communication should not be construed as legal advice or a legal opinion on any specific facts or circumstances, and does not create an attorney-client relationship.

United States Treasury Regulations require us to disclose the following: Any tax advice included in this document was not intended or written to be used, and it cannot be used, for the purpose of avoiding penalties under the Internal Revenue Code.

Attorney advertising. Prior results do not guarantee a similar outcome. © 2017 Foley Hoag LLP. All rights reserved.