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MA Solar Program Clouded by Changes

BY MIKE HOBAN

BOSTON — Success of the state's Renewable Portfolio Standard Solar Carve-Out program may be great news for civic leaders and proponents of renewable energy, but uncertainty over how Solar Renewable Energy Credits (SREC) will be administered going forward has many in the emerging industry on hold. That was a common theme at last week's "Solar Marketplace Update" hosted by Sherin and Lodgen at the law firm's 101 Federal St. office, where a panel of experts weighed in on the future of the industry as they await an overhaul of the state's solar power incentive program known as SREC I into SREC II.



Bethany A. Bartlett



Douglas M. Henry

Experts speaking included David Milner, founder and CEO of commercial scale solar system developer NuGen Capital Management; Elizabeth Youngblood, project manager for Commonwealth Solar Programs at the Massachusetts Clean Energy Center; Stephen Pratt-Otto, Senior VP of community development lending for Eastern Bank; Bethany A. Bartlett, chair of Sherin and Lodgen's Solar Energy Practice Group, and Douglas M. Henry, partner in the firm's Real Estate department.

The current Solar Carve Out program established by the Massachusetts Department of Energy Resources initially called for 400 megawatts of solar energy to be installed by 2017, but in May the administration announced that 250 MW had already been installed, and proposals for an additional 619 MW to be built were submitted by early June. DOER issued emergency regulations increasing the limit, but only to qualified projects submitted before June 7th that would either be completed by December 31st or meet the extension of



March 2014 – provided 50 percent of the total construction costs of the project have been expended by December 31st. Projects that meet the deadline would be eligible for the state's SREC I program that guarantees a fixed price of \$285 (net) for each SREC (equivalent to 1 MW of power) purchased by DOER. The new program uses a more complicated formula, and has forced the state to re-consider the process, thus in some views creating an uncertain market which profoundly affects developers and financing institutions.

"The new regulations haven't been drafted yet and it's really early on in the process, but what we're seeing in the initial proposals is that large scale developers don't see the same certainty there was with the existing program, and they're waiting to see when that certainty develops," explains Sherin and Lodgen's Henry. "There are people out there working on projects, and they're trying to figure out what the financial incentives are. Until it's finalized they're not going to be able to get the financing because no one knows what it's going to be."

Eastern Bank's Pratt-Otto, whose bank financed \$68 million in projects under the existing program, says momentum generated for financing projects under SREC I has stalled. "I'm happy with what DOER did to protect SREC I, and I'm happy with everything that the state is doing, but I don't know what the next program will be . . . so we're not interested (in financing new projects)—nobody is."

Bartlett acknowledges that the SREC II regulations not being finalized makes it harder to underwrite new projects, but characterizes the uncertainty as more of a

hiccup than a death knell for the Bay State's solar industry. "I don't think solar is going to go away. I think people are still looking at going through with looking at projects," says Bartlett. "But I (agree with) what panelist David Milner said, that (the process) is going to change and adapt over the next few years. (Solar) just needs to decide as an industry whether it's going to take an approach to make it more streamlined and more on a national level as opposed to a state-by-state level."

She adds that the solar business has been fairly robust for the firm. "It has been very busy throughout the year, and right now it is still financing these transactions. And we have seen a lot of activity in this last month," says Bartlett. Sherin and Lodgen began 2013 representing Highland First Solar LLC in the purchase, installation, and financing of a photovoltaic installation on the roof of a 450,000-sf office/warehouse building in Hyde Park – the largest solar installation in the city of Boston. Sherin and Lodgen attorneys, Ani Ajemian and Ronald Ruth managed drafting and negotiation of the applicable lease agreement, corporate structure, utility agreements, federal grant-related issues, and securing a loan in the amount of \$2.5 million.

Despite the legislative glitches, Bartlett says she is optimistic going forward. "It's just a (temporary problem) until we find out how exactly the SRECs are priced, because that is a big part of the income source when you're underwriting these loans and you're looking at how you're going to be paid back," she says. ■